

## COUNCIL ASSESSMENT REPORT

### SYDNEY CENTRAL CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSCC-629 DA 856/2025/JP
<b>PROPOSAL</b>	Amending Development Application to an Approved Residential Flat Building Development (Under Development Application 846/2016/JP/A)
<b>ADDRESS</b>	Lot 122A DP 11104, 13 Terry Road Box Hill
<b>APPLICANT</b>	WSDC Box Hill Primitus Development Pty Ltd
<b>OWNER</b>	WSDC Box Hill Primitus Development Pty Ltd
<b>DA LODGEMENT DATE</b>	27 November 2024
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 5(b), Schedule 6 of the SRD SEPP (Planning Systems) 2021
<b>CIV</b>	\$8,905,627.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	SEPP (Precincts – Central River City) 2021, Clause 4.3 Height of Buildings
<b>KEY SEPP/LEP</b>	<p>Section 4.15 (EP&amp;A Act) – Unsatisfactory.</p> <p>SEPP (Resilience and Hazards) 2021 – Satisfactory.</p> <p>SEPP (Biodiversity and Conservation) 2021 – Satisfactory.</p> <p>SEPP (Sustainable Buildings) 2022 – Unsatisfactory.</p> <p>SEPP (Precincts – Central River City) 2021 – Unsatisfactory.</p> <p>SEPP (Housing) 2021 – Unsatisfactory.</p> <p>SEPP (Transport and Infrastructure) 2021 – Satisfactory.</p> <p>Apartment Design Guide – Unsatisfactory.</p> <p>The Hills DCP Part B Section 5 – Residential Flat Buildings – Unsatisfactory.</p> <p>The Hills DCP Part C Section 1 – Parking – Satisfactory.</p> <p>The Hills DCP Part C Section 3 – Landscaping – Unsatisfactory.</p>
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	NIL
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<p>Architecture – BKA Architecture</p> <p>Concept Engineering – Umbrella Civil Consulting Engineers</p> <p>Stormwater – S&amp;G Consultants Pty Ltd</p> <p>Building Code of Australia Report – Northwest Code Consulting</p> <p>BASIX &amp; NatHERS – Taylor Smith Consulting</p> <p>Landscaping – Canvas Landscape Architects</p> <p>Town Planning – Planning Ingenuity</p> <p>Accessibility – EBS Consultants</p> <p>Traffic and Parking – Transport and Traffic Planning Associates</p>

<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	Yes
<b>RECOMMENDATION</b>	REFUSAL
<b>DRAFT CONDITIONS TO APPLICANT</b>	Not Applicable
<b>SCHEDULED MEETING DATE</b>	ELECTRONIC
<b>PLAN VERSION</b>	9 October 2024, Revision D
<b>PREPARED BY</b>	Kate Clinton – Development Assessment Coordinator
<b>CONFLICT OF INTEREST DECLARATION</b>	None Declared
<b>DATE OF REPORT</b>	4 June 2025

## EXECUTIVE SUMMARY

The proposed development is an amending development application for alterations and additions to an approved residential flat building (as modified), for the purpose of affordable housing. The existing approved development consists of 114 units within three buildings (A, B and C) located at No. 13 Terry Road, Box Hill (Development Consent No. 846/2016/JP/A).

The proposal is for an additional four storeys to Building C, and an additional two storeys plus rooftop common open space to Buildings A and B. The application seeks approval for an additional 34 units, including 24 affordable units (resulting in a total of 148 units), and associated extension to the basement for additional car parking. Additional height and floor space ratio is available under the provisions of State Environmental Planning Policy (Housing) 2021 as a bonus above the limits that are set under State Environmental Planning Policy (Precincts) 2021.

The applicant seeks to vary the allowable bonus height by 2.2% and 6.59% to the roof top and lift overrun respectively, to Buildings A and B. A height variation of 3.3% and 9% was already approved (by the Land and Environment Court) when the original application was modified in 2023. A Clause 4.6 variation report has been submitted in support of the proposal. The 4.6 variation request has not demonstrated that that compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the development standard.

This application is now subject to a Class 1 Appeal (deemed refusal) in the Land and Environment Court, for which a Section 34 conference is scheduled on 10 June 2025.

The application proposes variations to a number of provisions under the Box Hill Development Control Plan, Apartment Design Guide and applicable State Policies which are outlined in this report. The application also lacks information to enable a thorough assessment of the application in relation to some controls. Matters deemed unsatisfactory include:

- Building Height
- Building separation

- Building setbacks
- Landscaped Area
- Common open space
- Deep Soil
- Solar access and amenity
- Site coverage
- Waste storage
- Subdivision Plan
- Waste water servicing and
- Civil design and stormwater matters.

The applicant advised on 20 December 2024 that they would not be providing additional information requested on 19 December 2024 in relation to waste storage and waste water servicing.

The application is not supportable in its current form and is recommended for refusal.

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

### **1.1 The Site**

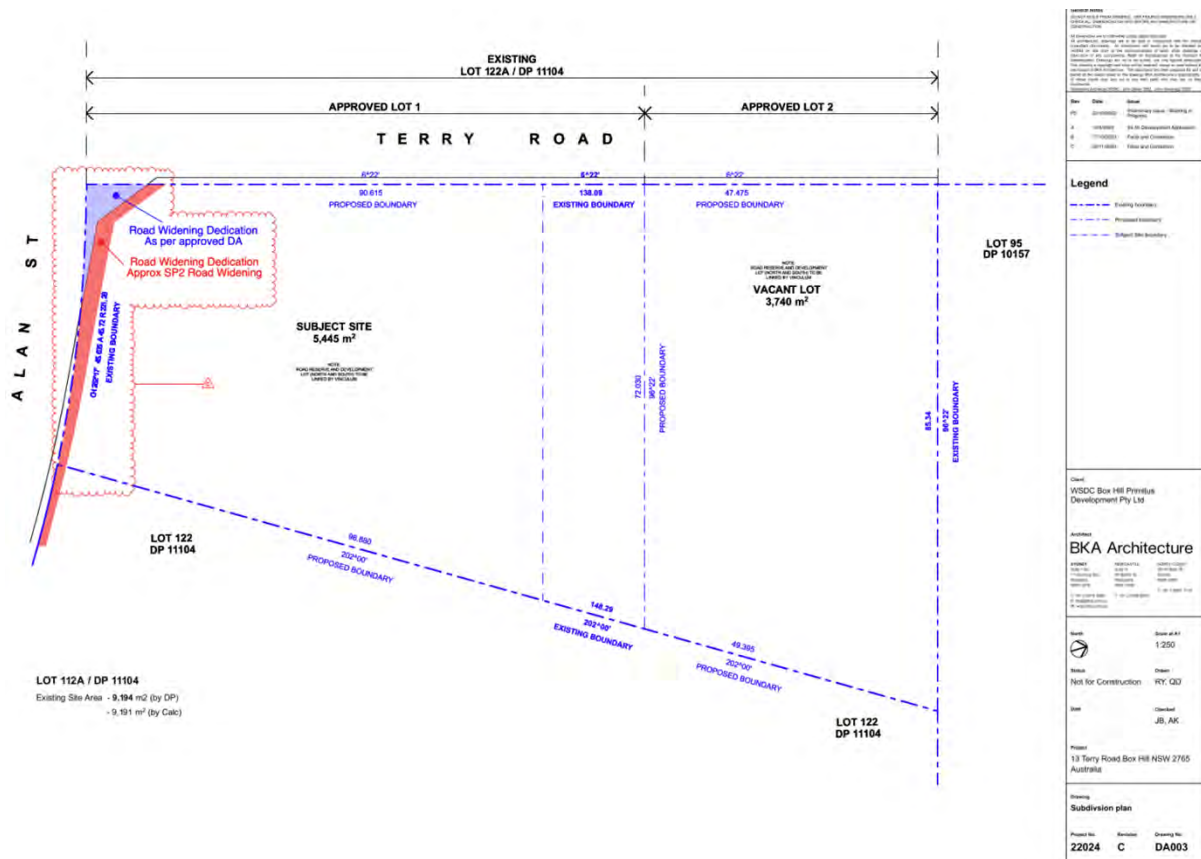
The site is No. 13 Terry Road, Box Hill and is legally identified as Lot 122A in DP 11104 (the site). The site is irregular in shape with a frontage to Terry Road of 138m, a 45.6m frontage to Alan Street, an eastern boundary of 148.29m, and a northern boundary of 72.03m. The site has a total area of approximately 9,194m<sup>2</sup>.

The site falls from the southern boundary to the northern boundary by approximately 3m and is clear of any development and significant vegetation.

The site is zoned part SP2 Infrastructure, part R4 High Density Residential, part R3 Medium Density Residential under the SEPP (Precincts) 2021, Appendix 10 The Hills Growth Centre.

The subject application only relates to the portion of the site identified as “Approved Lot 1” as per the approved subdivision plan under DA 846/2016/JP/A shown below. That part of the site is subject to a maximum Floor Space Ratio of 2:1, and a maximum building height of 21 metres. Approved Lot 1 has an area of 5,445m<sup>2</sup> and is shown below to include road widening on the Alan Street / Terry Road frontage which is yet to be acquired, and a future road which dissects the site in accordance with the Box Hill Development Control Plan future road layout.

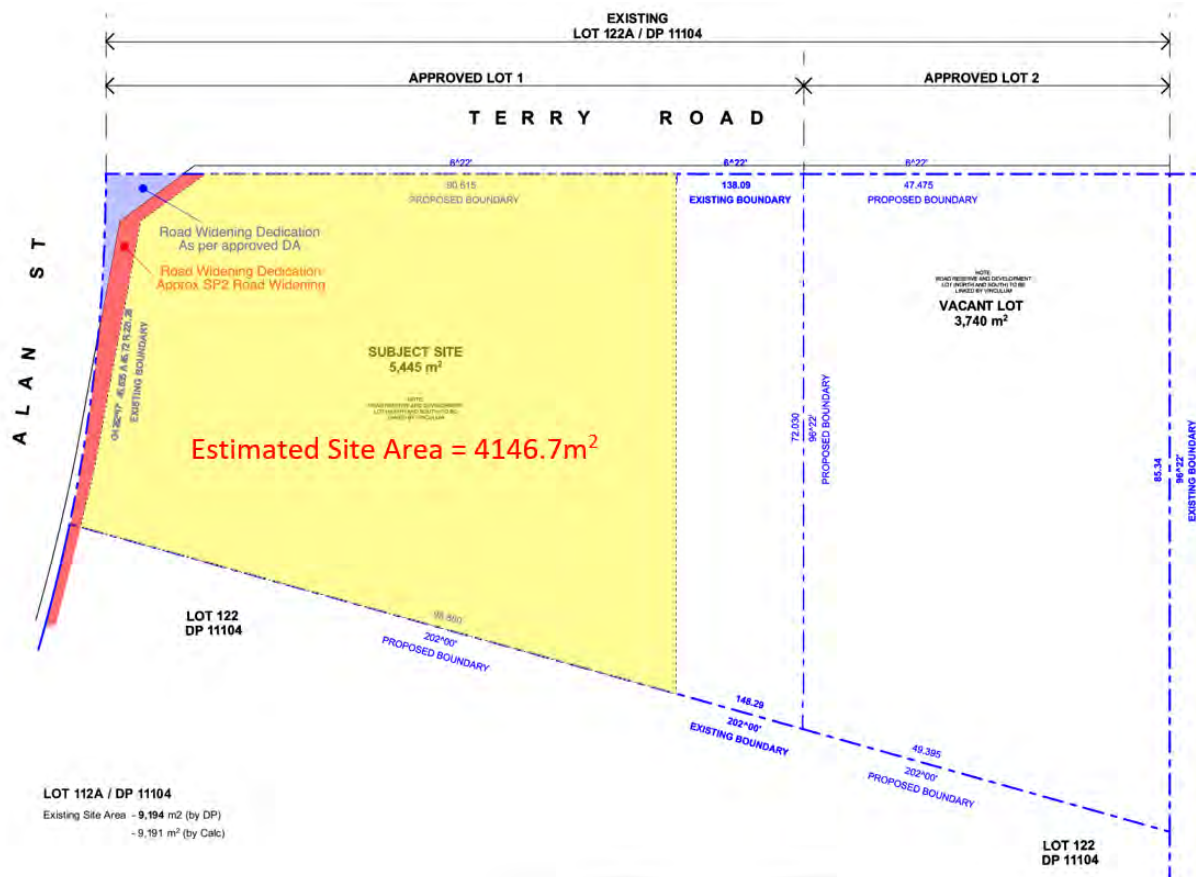
The majority of “Approved Lot 2” is affected by a Transgrid electrical easement and is not subject to this application.



### Approved Subdivision Plan 846/2016/JP/A

The approved subdivision plan is also subject to Condition No. 18 Approved Subdivision Plan and Condition No. 39 Engineering Works and Design, of Development consent 846/2016/JP/A. Therefore, in addition to the above plan, the subdivision must be carried out in accordance with additional requirements, including the provision of a splay corner (5m x 4m) at the corner of Terry Road and the future road which is not shown on the plan above.

The applicant's compliance calculations (ie. landscaped area, deep soil etc) are based on a site area of 5,445m<sup>2</sup> (total of Approved Lot 1 which includes the future road and road widening). An area calculation is not given for the site on which the residential flat building will be built following the construction and dedication of the future road, and the road widening on the Alan and Terry Street frontages. This site area is estimated to be approximately 4146.7m<sup>2</sup> as shown highlighted in yellow below and accounts for both the approved road widening dedication under DA 846/2016/JP/A, the SP2 land zoned for road widening, and the future local road to the north.



*Estimated RFB Site Area based on Subdivision Plan*

## 1.2 The Locality

The Site is located within the Box Hill Growth Centre approximately 220m from Windsor Road. The area is undergoing transition from low scale rural / residential land uses to more intensive urban development as provided for by the Growth Centres Precinct Planning.

The proposal is located adjacent to No. 2-4 Alan Street to the east, on which a 6-7 storey residential flat building is presently under construction, having been approved by the Joint Regional Planning Panel on 16 December 2015 (and subsequently modified) (Development Consent No. 1631/2015/JP). The maximum approved height is 20.87m, complying with the 21m height limit.

Opposite the Site to the south is No. 1-3 Alan Street, zoned R4 High Density Residential and subject to a height limit of 21 metres. A 7 storey residential flat building is approved on the land (Development Consent No. 1471/2022/HA (as modified)) with a maximum height of 24.46m (16.4% variation) to the lift overrun and minor rooftop elements (no internal floor space).

To the west of the Site on the opposite side of Terry Road is land zoned B7 Business Park which is subject to a height limit of 24 metres.

## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal



The proposal is an amending development application for alterations and additions to the approved residential flat building development as modified under Development Consent No. 846/2016/JP/A and consisting of 114 units. It seeks consent for an additional two storeys to Buildings A and B, and an additional four storeys to Building C to deliver an additional 34 units, including 24 affordable apartments in accordance with Part 2, Division 1 of the Housing SEPP.



*Excerpt from Architectural Plans (BKA Architecture) showing Buildings A, B and C*

The affordable units will be located throughout Buildings A (14 units) and B (10 units), with a total gross floor area of 1,936m<sup>2</sup> within the units and 161.79m<sup>2</sup> of circulation space. This equates to 2,125.4m<sup>2</sup> or 15% of the total GFA. The affordable apartments will comprise 6 x 1 bedroom and 18 x 2 bedroom units.

Overall, the proposal would result in a total of 148 apartments across the site consisting of:

- 10 x 1 bed, + study,
- 112 x 2 bedroom and
- 26 x 3 bedroom apartments.

### **Building A**

- Ground Floor to Level 6 - No change to units.
- Level 7 - The proposed additional Level 7 will provide for 2 x 2 bedroom apartments and 2 x 3 bedroom apartments. This level will also include an outdoor communal area including a BBQ area, tables and seating, artificial turf and landscape features.
- Level 8 - The proposed additional Level 8 will provide for 2 x 2 bedroom apartments and 2 x 3 bedroom apartments.
- Roof - The roof will include building services, lift overrun and solar panels.

### Building B

- Ground Floor to Level 6 - No change to units.
- Level 7 - The proposed additional Level 7 will seek to provide for 1 x 1 bedroom + study, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment. This level will also include an outdoor communal area including a BBQ area, tables and seating and landscape features.
- Level 8 - The proposed additional Level 8 will provide for 1 x 1 bedroom + study, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment.
- Roof - The roof will include building services, lift overrun and solar panels.

### Building C

- Ground Floor to Level 3 - No change to units.
- Level 4-7 - The proposed additional Levels 4-7 will be identical and provide 4 x 2 bedroom apartments.
- Roof - The roof will include building services, lift overrun and solar panels.

### Basement

The basement parking levels footprint has increased to accommodate an additional 31 parking spaces and the additional storage space required to accommodate the increased number of apartments on the site. Despite the increased size and changes to internal layout, the proposal maintains the location of vehicle access points, lift and stair cores and waste storage as approved. The waste storage area is proposed to be increased.

### Landscaping

The applicant advises that landscaped area approved under DA 846/2016/JP/A will reduce from 1,759m<sup>2</sup> to 1,749m<sup>2</sup>, and deep soil from 1,166m<sup>2</sup> to 483m<sup>2</sup>, as a result of the increase in basement. Landscaping is also proposed to the rooftop communal open spaces.

Since a final site area of the proposed residential flat building site has not been provided, compliance with site coverage, landscaped area and deep soil controls is estimated, based on a site area of 4,146.7m<sup>2</sup>.

**Table 1: Development Data**

Control	Proposal
Site area	9,194m <sup>2</sup> - Total site area 5,445m <sup>2</sup> - Area of approved Lot 1 and future road 4,146.7m <sup>2</sup> – Estimated RFB site area
FSR (residential)	2.6:1
Clause 4.6 Requests	Yes – Clause 4.3 Height of Buildings and Clause 16(3) of the Housing SEPP.
No of apartments	148 (including 24 affordable units)
Max Height	Building A: 27.9m to roof slab 29.1m to lift overrun  Building B: 27.9m to roof slab 29.1m to lift overrun  Building C: 24.8m to roof slab 26m to lift overrun

Landscaped area	Unable to be confirmed
Deep Soil	Unable to be confirmed
Car Parking spaces	178 resident and visitor spaces

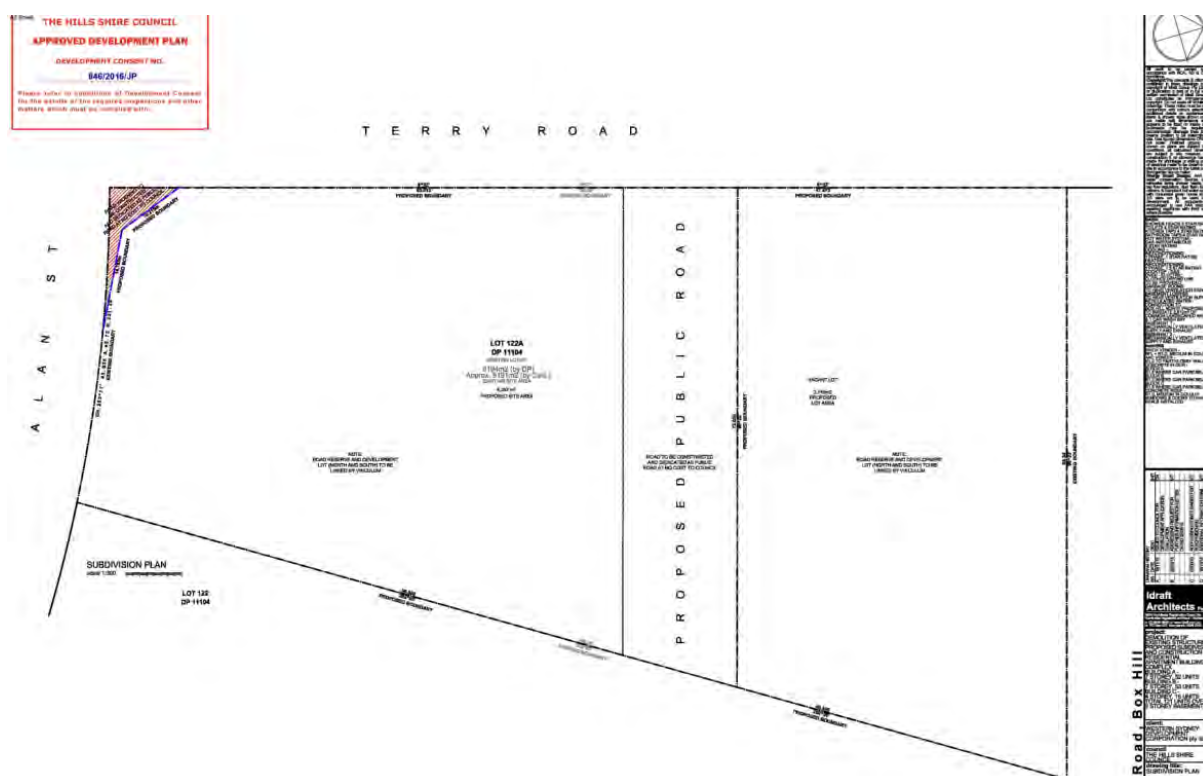
## 2.2 Background

### *Original Approval 846/2016/JP*

A Development Application 846/2016/JP was approved on 1 December 2016 by the Joint Regional Planning Panel (the 2016 Approval) for a residential flat building on the Site. The 2016 Approval comprised of:

- 13 x 1 bedroom units;
- 94 x 2 bedroom units;
- 14 x 3 bedroom units; and
- Basement parking (2 levels) for 152 cars.

The subdivision of the Site created a proposed public road and two parcels (4,252m<sup>2</sup> and 3,740m<sup>2</sup>) to be linked by vinculum, north and south of the future road.



*Approved Subdivision Plan, 846/2016/JP*

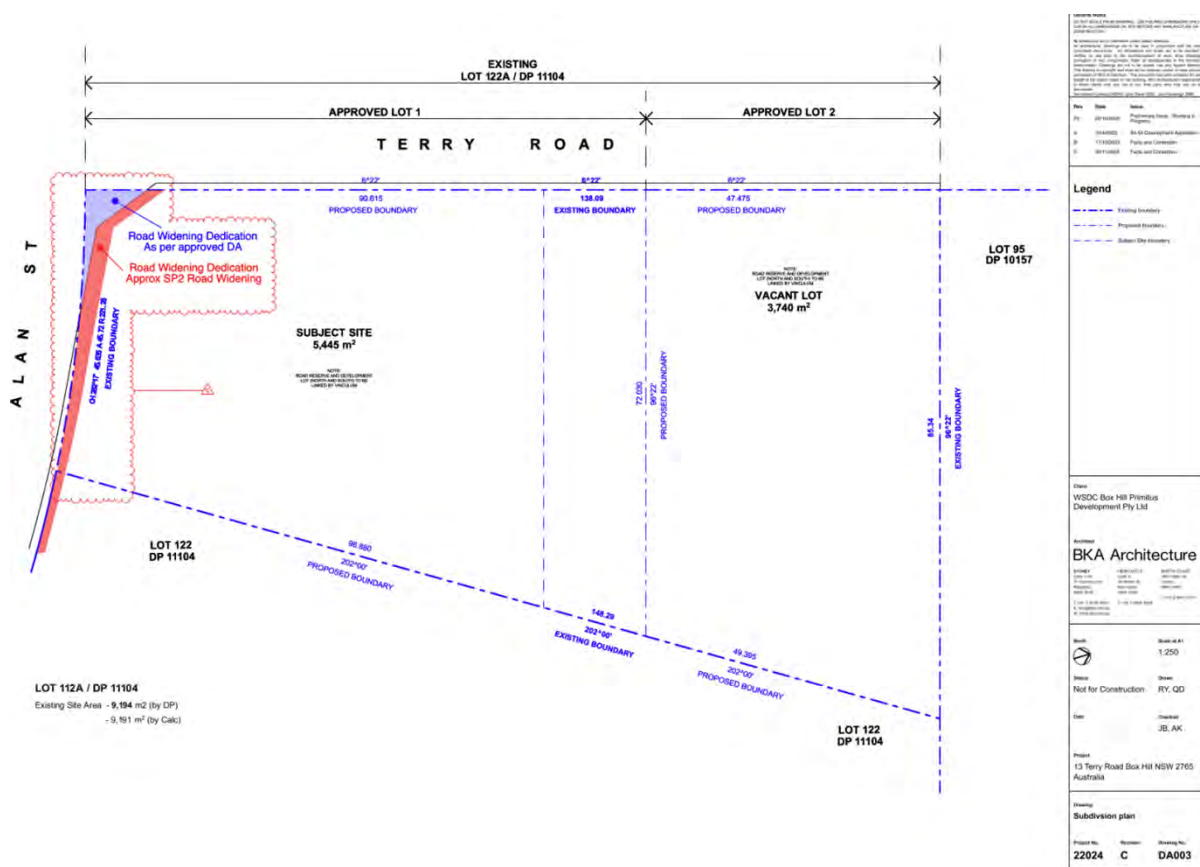
A variation to building height was approved (maximum of 21.8m in a max. 21m area). The additional height was limited to roof forms and lift overruns at the western ends of the buildings and is due to the slope of the site. The applicant's Clause 4.6 at that time noted that the portion of the building that exceeds the height control does not contain any floor space which assists with demonstrating that the proposal is not an overdevelopment of the site. The FSR was compliant at 1.97:1.



## Modification Approval 846/2016/JP/A

The 2016 Approval was modified (Development Consent No. 846/2016/JP/A) via a Class 1 Appeal on 13 December 2023. The modified application reduced the number of units from 121 to 114, increased the maximum building height to a maximum of 22.9m, and had an FSR of 1.9:1. The height increase was a result of increasing the floor to ceiling height within the development from 2.9m to 3.1m.

The modified subdivision plan created Lot 1 and Lot 2 in place of the two parcels linked by vinculum as approved under the original application. Lot 1 now also includes the area of the future local road through the site and was not separated as in the original subdivision plan.



Approved Subdivision Plan, 846/2016/JP/A

## Subject Application 856/2025/JP

The subject Development Application 856/2025/JP was lodged on 27 November 2024 and notified to adjoining properties between 28 November 2024 and 19 December 2024. No submissions were received.

Sydney Water, Transgrid and Endeavour Energy were also notified of the proposal. On 28 November 2024 comments and conditions were received from Endeavour Energy. On 13 December 2024 comments were received from Sydney Water. Sydney Water noted that the applicant had lodged a Section 73 case in relation to the 2016 Approval, with a Notice of Requirements issued in November 2024. Sydney Water confirmed that water servicing should

be available, however advised that there is currently no capacity available to service the development's waste water.

On 19 December 2024 a letter was sent to the Applicant advising that Sydney Water have advised no capacity is available to service the development. The letter also requested amendments to the bin storage room since it is undersized, and landscaping amendments to provide sufficient pot sizes and to reinstate turf to communal areas where it was proposed to be replaced with artificial turf.

The applicant responded to the above via email on 20 December 2024 advising that the requested information would not be provided, and indicating that the clock would not be stopped for the purpose of considering a deemed refusal of the application.

On 14 January 2025 the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the deemed refusal of the development application.

The Sydney Central City Panel were briefed on the proposal and subsequent Class 1 Appeal on 30 January 2025. The Panel provided the following summary from the briefing:

- *"The modification application is catalysed by the recent affordable housing incentives as well as a desire of the applicants to increase yield on site.*
- *Council has provided the Panel with a brief on the site location and characteristics.*
- *The site is surrounded by other sites where RFBs have been approved and are starting to be constructed.*
- *The site is currently vacant and the area remains largely undeveloped but is transitional in character.*
- *The site is zoned part R4 and part R3. There is an existing approval for a part 4 and part 7 storey RFB development.*
- *Opposite to the site there is a business park zoning.*
- *There is an approved subdivision plan that includes a road that bifurcates the site.*
- *A previously determined court modification resulted in a variation to overall height due to change of ceiling heights. The FSR remained compliant at this time.*
- *This application proposes to keep the same building footprint but to increase the number of units, with 24 units (15% of proposed yield) as affordable housing. It is proposed to increase the height of both buildings, which would result in a further variation of height to that already approved (600mm to building A and B and 1.8m to building B). The applicant has provided a clause 4.6 variation request in this regard.*
- *At this preliminary stage, Council considers key issues to be:*
  - *On a technical basis, is the provision able to be varied?*
  - *Parking will need to be increased regarding which the applicant is proposing decreasing deep soil and adding an extra basement – the implications of this will need to be reviewed.*
  - *The proposed additional height and FSR would set a precedent in this area, which as described above is transitional.*
- *Directions hearing is confirmed for 12 Feb, Council has engaged Pikes Verekers lawyers to assist.*
- *Council notes that they have a new legal counsel who will be assisting with this matter.*
- *Following this briefing, the Panel and Council have agreed a watching brief status, noting that council will aim to resolve the matter prior to it going to a full court hearing."*

On 31 January 2025 the Respondent received comments and conditions from Transgrid. No objections were raised.

Following a first Direction's Hearing on 12 February, Council's Statement of Facts and Contentions was filed at the Land and Environment Court on 21 February 2025. A copy of the filed Statement is provided in Attachment I. Proceedings have been listed for a section 34 conference on 10 June 2025 commencing on site at 9:30am.

The Applicant has lodged a Statement of Facts and Contentions in Reply on 26 May 2025 (Attachment J) which has responded to Council's contentions. Of note, the applicant:

- Maintains that applying the bonus height and FSR under the Housing SEPP for affordable housing is reasonable and allows for the full bonus FSR permitted under the Housing SEPP to be realised.

The Applicant states that additional information will be provided to address solar access, public utility infrastructure, thermal endorsement of plans, communal open space calculations, building separation details, revised waste management plan, revised civil drawings, traffic impact assessment, Subdivision Plan, stormwater details and architectural plans.

The Applicant requested and has been provided with a copy of the following documents in May 2025:

- Subdivision Works Certificate drawings for No. 4 Alan Street;
- Civil design drawings for Nos.1-3 Alan Street;
- Intersection upgrade drawings for Alan St and Terry Rd.

### **3. STATUTORY CONSIDERATIONS**

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

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

These matters are further considered below.

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

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Precincts – Central River City) 2021;
- State Environmental Planning Policy (Housing) 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; and
- State Environmental Planning Policy (Sustainable Buildings) 2022.

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

**Table 2: Summary of Applicable State Environmental Planning Policies**

EPI	Matters for Consideration	Comply (Y/N)
<b>Planning System SEPP</b>	Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6.	Y
<b>SEPP (Precincts - (Central River City) 2021 Appendix 10</b>	<ul style="list-style-type: none"> <li>• Clause 4.1A – Minimum lot sizes</li> <li>• Clause 4.1B – Residential Density</li> <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 5.1 – Relevant Acquisition Authority</li> <li>• Clause 6.1 – Public Utility Infrastructure</li> </ul>	Y Y N N* N Y N
<b>Housing SEPP</b>	<ul style="list-style-type: none"> <li>• Chapter 2 Affordable Housing – Division 1 In-fill affordable housing</li> <li>• Chapter 4 Design of residential apartment development and Schedule 9 – Design Principles.</li> </ul>	N N
<b>Resilience and Hazards SEPP</b>	<ul style="list-style-type: none"> <li>• Clause 4.6 Contamination and remediation</li> </ul>	Y
<b>Biodiversity and Conservation SEPP</b>	<ul style="list-style-type: none"> <li>• Chapter 6 Water Catchments.</li> </ul>	Y
<b>Transport and Infrastructure SEPP</b>	Clause 2.48(b)(i) Development carried out within or immediately adjacent to an easement for electricity purposes.	Y
<b>Sustainable Buildings SEPP</b>	BASIX Certificate required to accompany development application.	N

\*Compliant under SEPP Housing utilising FSR bonus.

### 3.2 Compliance with 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 Schedule 6, Clause 5 Private infrastructure and community facilities over \$5 million.

Accordingly it is listed with and reported to the Panel for determination.

### 3.3 Compliance with State Environmental Planning Policy (Precincts – Central River City) 2021

#### (i) Permissibility

The Site is zoned part SP2 Infrastructure, part R4 High Density Residential, part R3 Medium Density Residential under the SEPP (Precincts) 2021, Appendix 10.

The proposed alterations and additions to an approved residential flat building are located on land zoned R4 High Density Residential and the proposal is permitted development in the zone.

#### (ii) Zone Objectives

The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is considered to be consistent with the stated objectives of the zone, in that the proposal will provide for housing needs of the community, and provide a variety of housing types within a high density residential environment. As such, the proposal is considered satisfactory in respect to the zone objectives.

#### (iii) Development Standards

The following addresses the principal development standards of the SEPP relevant to the subject proposal:

**Table 3: Consideration of the SEPP Controls**

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	21 metres (but 27.1 metres with Housing SEPP bonus)	Building A: 27.9m roof slab - 600mm (2.2%) 29.1m lift overrun – 1.8m (6.59%)	<b>No</b>
		Building B: 27.9m roof slab - 600mm (2.2%) 29.1m lift overrun – 1.8m (6.59%)	<b>No</b>
		Building C: 24.8 roof slab 26m lift overrun	Yes
FSR (CI 4.4(2))	2:1	2.6:1 (as permitted by bonus GFA provisions under the Housing SEPP)	<b>No</b> – however complies with SEPP Housing

			Bonus Provisions
Land acquisition (CI 5.1)	SP2 Road widening on Alan Street frontage	SP2 road widening dedication is shown on the plans consistent with the approved DA 846/2016/JP/A.	Yes
Public Utility Infrastructure (CI 6.1)	Arrangements for water, sewer and electricity.	Insufficient information submitted with the application to demonstrate that adequate arrangements are in place.	No

**a. Clause 4.3(2) Height of Buildings**

A Clause 4.6 request has been submitted with the application for the exceedance of the maximum height in relation to Clause 4.3 of The Hills Growth Centre Precinct Plan (and Clause 16(3) of the Housing SEPP) in relation to bonus height for affordable housing. Refer to Section 3.4(i) of the report. The Clause 4.6 request is provided in Attachment H.

**b. Clause 4.2(2) Floor Space Ratio**

The application seeks to utilise the floor space bonus for affordable housing under the Housing SEPP. The proposed FSR of 2.6:1 complies with the bonus provisions and is discussed in Section 3.4(i) of the report.

**c. Clause 6.1 Public Utility Infrastructure**

Clause 6.1(1) states that *“Development Consent cannot be granted for development on land to which this Precinct Plan applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required”*.

Evidence from an Accredited Service Provider (ASP) (of an appropriate level and class of accredited to assess the electricity load and the proposed method of supply for the development) has not been provided to confirm the supply of electricity and advise of any extension or augmentation required. It is noted however that Endeavour Energy have provided conditions and did not object to the application.

With respect to waste water, Sydney Water have advised that *“The proposed development is part of NWGA and will discharge into SP1154. There is no current capacity at SP1154. Ultimate capacity is anticipated by Q4 2025 when the pressure main duplication at Windsor Rd is expected to be completed. Our interim servicing plans are anticipated to be completed end Q1 2025. We will continue to keep councils and developers, who register directly with Sydney Water, updated on these timescales..... Due to the potential complexities with out SP1154 asset, the proponent is strongly advised to engage with their WSC and SWC Case Manager(s) under 208853 as early as possible to understand the necessary servicing requirements, as well as managing timescales.”*

Evidence from a Water Servicing Coordinator and Sydney Water Corporation Case Manager (under reference 208853) that the proposed additional density can be serviced has not been provided. Since Council cannot be satisfied that essential public utility infrastructure can be provided as required under Clause 6.1 Public Utility Infrastructure it is not appropriate to grant consent.



### 3.4 Compliance with State Environmental Planning Policy (Housing) 2021

The Housing SEPP was amended on 14 December 2023 to further incentivise affordable housing and also to consolidate the provisions of SEPP 65 (Design Quality of Residential Apartment Development). The relevant sections of the Housing SEPP which apply to this development are:

- Chapter 2 Affordable housing, Division 1 (in-fill affordable housing);
- Clause 19 Non-discretionary development standards
- Clause 20 Design Requirements
- Chapter 4 Design of residential apartment development.

#### (i) Chapter 2 Affordable Housing, Division 1 (in-fill affordable housing)

The proposed alterations and additions seek to deliver in-fill affordable housing pursuant to Chapter 2 of the Housing SEPP.

On 14 December 2023, in-fill affordable housing reforms were gazetted to encourage private developers to boost affordable housing and deliver more housing. The reforms primarily deliver a floor space ratio bonus of 20-30% and building height bonus of 20-30% for projects that include at least 10-15% of gross floor area as affordable housing. The subject application seeks to benefit from the additional floor space and building height and to deliver affordable housing.

The site is within an “accessible area” as defined by the Policy which states:

**accessible area** means land within—

(a) 800m walking distance of—

- (i) a public entrance to a railway, metro or light rail station, or
- (ii) for a light rail station with no entrance—a platform of the light rail station, or
- (iii) a public entrance to a wharf from which a Sydney Ferries ferry service operates, or

(b) (Repealed)

(c) 400m walking distance of a bus stop used by a regular bus service, within the meaning of the Passenger Transport Act 1990, that has at least 1 bus per hour servicing the bus stop between—

- (i) 6am and 9pm each day from Monday to Friday, both days inclusive, and
- (ii) 8am and 6pm on each Saturday and Sunday.

The subject site is located across the road from the bus stop known as Terry Rd after Alan Street (Stop ID: 2765154). The stop is located within 400m of the site and is serviced by routes 643 Gables to Rouse Hill via Box Hill, 740 Gables to Rouse Hill and 746 Rouse Hill to Riverstone.

Section 16 (Affordable housing requirements for additional floor space ratio) of the Housing SEPP contains calculations for the provision of floor space ratio and building height bonuses.

It states that:

(1) *The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).*

(2) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{Affordable housing component} = \frac{\text{additional FSR (\%)}}{2}$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

*Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.*

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.

The subject site is permitted a FSR of 2:1 (GFA of 10,890m<sup>2</sup>) under the SEPP (Precincts – Central River City) 2021 (Precincts SEPP). The proposed development seeks a total FSR of 2.6:1 and GFA of 14,166m<sup>2</sup>. This equates to an additional GFA of 3,276m<sup>2</sup>, FSR of 0.6:1 and bonus of 30% when compared to the permitted GFA and FSR. In accordance with Section 16(2), 15% of the total GFA (or 2,124.9m<sup>2</sup>) must therefore be provided as affordable housing.

The proposal seeks to allocate a total GFA of 2,215m<sup>2</sup> or 15% of the total floor area as affordable housing in order to satisfy the Housing SEPP requirements. This includes 24 apartments equating to 1,963.60m<sup>2</sup> and 161.79m<sup>2</sup> of circulation space serving the affordable apartments at Level 2. It is noted that a total circulation space of 1,078.66m<sup>2</sup> is provided, and 15% of this space equates to 161.79m<sup>2</sup>, which will be allocated to affordable housing.

With respect to height, the 30% bonus provisions would increase the permitted height under the from 21 metres to 27.3 metres.

The approved development on the site (as modified) varied the 21 metre height permitted under the Precincts SEPP for Buildings A and B, and is seeking to apply the 30% bonus height to the approved height as *varied*, rather than the permitted maximum height under the SEPP. Building C currently complies as approved, and would also comply under the proposed application.

Building	Housing SEPP Height Limit	Proposed Height	Proposed Variation	Approved Variation
Building A	27.3m	27.9m to roof slab 29.1m to lift overrun	600mm (2.2%) 1.8m (6.59%)	700mm (3.3%) 1.9m (9%)
Building B	27.3m	27.9m to roof slab 29.1m to lift overrun	600mm (2.2%) 1.8m (6.59%)	700mm (3.3%) 1.9m (9%)
Building C	27.3m	24.8m to roof slab 26m to lift overrun	N/A	N/A

#### *Table of approved and proposed height variations (Statement of Environmental Effects)*

The applicant submitted the following building height plane diagrams to demonstrate that the proposed development complies with the 30% bonus when applied to the *approved* (already varied) height rather than showing the proposed height in relation to the maximum approved height based on a height limit of 21m plus the housing bonus.

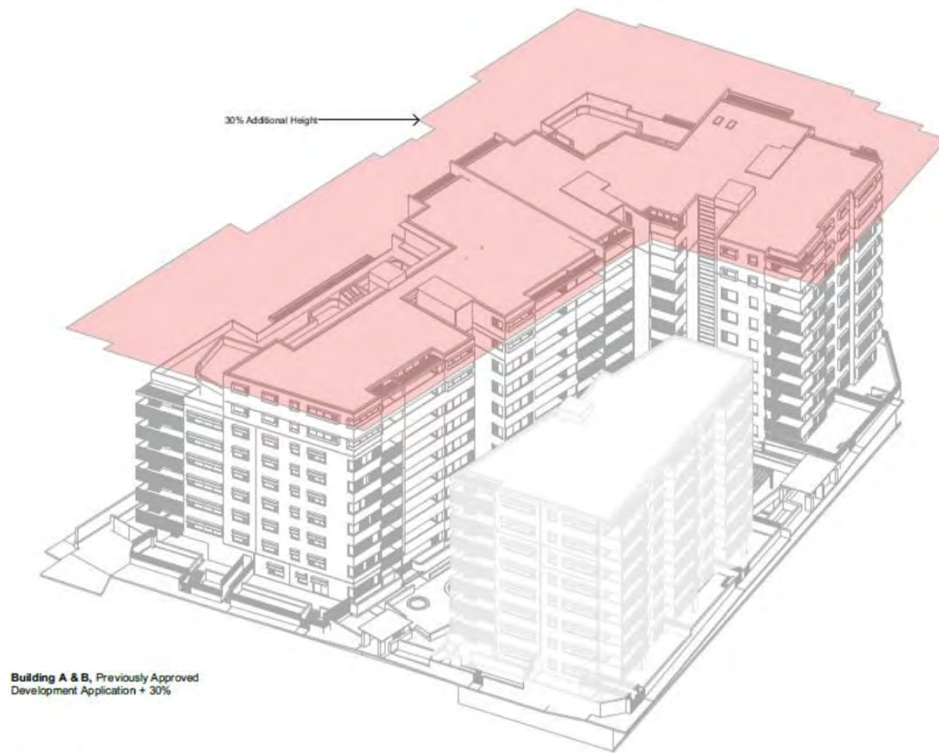


Figure 11 Height Blanket Diagram for Building A and B.

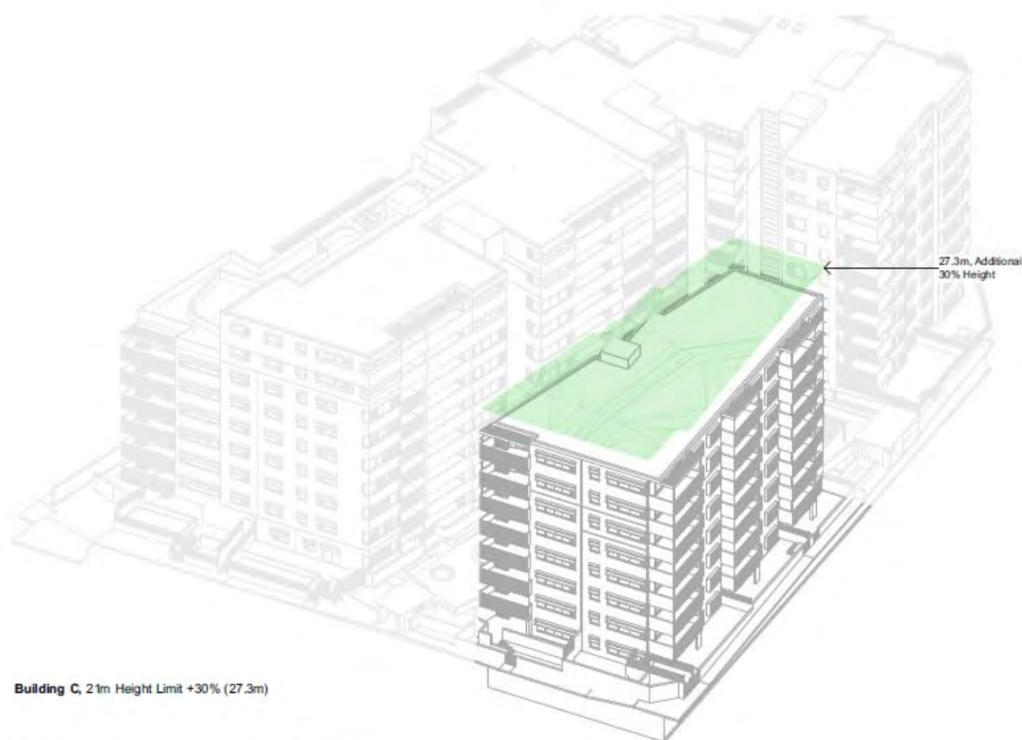


Figure 12 Height Blanket Diagram for Building C.

Notwithstanding the above, the applicant recognises that this is not the requirement under Clause 16(3) of the Housing SEPP which requires the 30% bonus height to be applied to the

‘maximum permissible building height for the land’. As such, the proposal seeks a variation to Clause 16(3) of the Housing SEPP.

The applicant has submitted a written Clause 4.6 variation request for the technical height non-compliance (refer Attachment H). The Clause 4.6 argues that strict compliance with the height of buildings standard is unreasonable and unnecessary in the circumstances of the case, specifically considering the approved development (DA 846/2016/JP/A), exceeded the building height limit. The Clause 4.6 variation request states:

*“Ultimately, it would be unreasonable to disregard the approved height variation on the site and require the proposal to strictly comply with the 30% bonus applied to the permissible LEP building height limit. If this were the case, there would be limited benefit to any approved development with an existing height variation to seek the bonus afforded by the Housing SEPP. This would result in a reduced number of developments looking to incorporate affordable housing and would therefore deny the efforts of the NSW Government to increase the affordable housing supply across the State. Importantly, the proposal has been designed to provide a variation to the SEPP height limit which is proportionate to that approved on the site, meaning that, the extent of the height variation proposed is no more than the extent approved for the site.”*

#### **Comment:**

A Building Height Plane diagram which clearly illustrates the proposed developments’ height in relation to the maximum height permitted under the Housing SEPP based on the 21m height limit permitted under the Precincts SEPP, has not been provided to enable a full assessment of the proposed height variation. A building height plane diagram should clearly show the proposed height exceedance and indicate whether it also includes habitable floor space.

Furthermore, insufficient information has been provided with the application to demonstrate that the additional building height and provision of rooftop open space will not result in adverse impacts on approved development adjoining the site in terms of overshadowing, privacy and amenity. As compliance with landscaped area and deep soil planting is not able to be confirmed, it is not demonstrated that the additional height will achieve a better outcome.

#### **(ii) Clause 19 Non-discretionary standards**

Clause 19 of the Housing SEPP identifies development standards for particular matters relating to residential development, that if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Clause	Standard	Compliance
Site Area	(a) 450m <sup>2</sup>	Yes - 5,445m <sup>2</sup> or 4146.7m <sup>2</sup> for final RFB site.
Landscaped area	(b) a minimum landscaped area that is the lesser of— (i) 35m <sup>2</sup> per dwelling, or (ii) 30% of the site area  35m <sup>2</sup> per dwelling equates to 5,180m <sup>2</sup> . 30% of RFB site area is 1,244m <sup>2</sup> .	Plan DA730 indicates that 1,749.34m <sup>2</sup> of the site is landscaped area.  Ground: 1273.75m <sup>2</sup> Level 7: 475.59m <sup>2</sup>  Landscaped area of the site cannot be confirmed due to insufficient information on the plans (including no scale) and

		<p>calculations not based on the correct (RFB) site area.</p> <p>Rooftop areas should be excluded as per the definition.</p>
<p><b>landscaped area</b> means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.</p>		
Deep Soil	<p>(c) a deep soil zone on at least 15% of the site area, where—</p> <p>(i) each deep soil zone has minimum dimensions of 3m, and</p> <p>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site</p> <p>15% of the site area is 622m<sup>2</sup>.</p>	<p>Plan DA730 indicates that 483m<sup>2</sup> of the site is deep soil.</p> <p>Deep Soil area of the site cannot be confirmed due to insufficient information on the plans (including no scale) and calculations not based on the correct site area and dimensions. Areas within road reserve are incorrectly included. Minimum dimensions are not provided.</p>
<p><b>deep soil zone</b> means a landscaped area with no buildings or structures above or below the ground.</p>		
Solar access	<p>(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter</p>	<p>Yes - Plans indicate compliance with minimum solar access to living rooms and private open space.</p>
Parking (affordable housing)	<p>(e) the following number of parking spaces for dwellings used for affordable housing—</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,</p>	<p>Yes –</p> <p>6 x 1 bedroom affordable apartments = 2.4 parking spaces</p> <p>18 x 2 bedroom affordable apartments = 9 parking spaces</p> <p>This requires a total of 11.4 (12) parking spaces for affordable apartments which are provided for within the 178 parking spaces on site.</p>
Parking (non-affordable housing)	<p>d. the following number of parking spaces for dwellings not used for affordable housing—</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space,</p> <p>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</p>	<p>Yes –</p> <p>4 x 1 bedroom apartments = 2 spaces</p> <p>92 x 2 bedroom apartments = 92 parking spaces</p> <p>26 x 3 bedroom apartments = 39 parking spaces.</p> <p>This requires a total of 133 parking spaces for standard apartments which are provided for within the 178 parking spaces onsite.</p>

### **(iii) Clause 20 Design Requirements**

Clause 20(3) states that:

*Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—*

- (a) the desirable elements of the character of the local area, or*
- (b) for precincts undergoing transition—the desired future character of the precinct.*

#### **Comment:**

The proposed development is not considered to be compatible with the desired future character of the precinct since it does not comply with the permitted building height under the Housing SEPP bonus provisions and will exceed the intended maximum height of buildings in the precinct. It cannot be confirmed that required landscaped area and deep soil planting is achieved, and the proposed additional levels do not comply with building setbacks required under the Apartment Design Guide and Box Hill DCP.

### **(iv) Chapter 4 Design of Residential Apartment Development**

The principal aim of Chapter 4 of the Housing SEPP is to improve the design quality of residential apartment development in NSW through the orderly design of new residential buildings based on improving the economic, cultural, environmental and social benefits of development.

#### **a) Design Quality Principles**

Part 3, Division 1, Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires that a Development Application for a residential apartment building must be accompanied by a design verification statement from a qualified designer, being a statement in which the qualified designer verifies. The statement must—

- (a) verify that the qualified designer designed, or directed the design of, the development, and*
- (b) explain how the development addresses—*
  - (i) the design principles for residential apartment development, and*
  - (ii) the objectives in Parts 3 and 4 of the Apartment Design Guide.*

A Design Verification Statement was prepared by Mr John Baker of BKA Architecture (registration number 3552) which provided the following:

*“It is considered the proposal demonstrates compliance with the design principles of both SEPP 65 and the Apartment Design Guide. It is an appropriate response to its context and will make a quality aesthetic contribution to the existing streetscape.*

*The achievement of the SEPP65 guidelines may be assessed by examining the compliance with the planning guidelines contained in the Apartment Design Guide (ADG) issued by Planning NSW. The ADG provides a summary of “best practice” design parameters for residential apartments in NSW. The compliance with the objectives specified in the Apartment*



*Design Guide may be viewed with the Statement of Environmental Effects (SEE) prepared by Planning Ingenuity.*

*In conclusion, I, John Baker, verify that as a Registered Architect, with the NSW Architects Registration Board (Registration No.3552) have participated in the design and development of this project. I certify that the design has been developed in accordance with the design quality principles outlined above.*

*In conclusion, I believe the proposed development satisfies the matters under the State Environmental Planning Policy No. 65: Design Quality of Residential Flat Development and is generally in accordance with the general guidelines and recommendations contained in Council's code and general planning policies.*

*As demonstrated in the Statement of Environmental Effects, prepared by Planning Ingenuity, the proposal will not result in adverse environmental impacts to nearby streetscapes, external appearance of the building or on the amenity of nearby residents and is viewed as a positive contribution to the current location."*

An assessment against the Design Quality Principles under Schedule 9 of the SEPP (Housing) 2021 was also submitted as part of the subject application.

An assessment of the proposed development in relation to these Principles is outlined below:

*Principle 1 – Context and neighbourhood Character*

A residential flat building development is consistent with the emerging context and neighbourhood character. A building height in excess of the bonus height permitted atop the maximum building height in the area under the Growth Centres SEPP would not be consistent with the desired character of the area. Furthermore, reduced deep soil planting and soft landscaping, and non-compliant setbacks to proposed additional storeys will not make a positive contribution to the streetscape.

*Principle 2 – Built Form and Scale*

The proposed building height will result in a bulk, height and scale that is inconsistent with the desired future character. Proposed additional levels do not comply with building separation required under the Apartment Design Guide, building setbacks under the Box Hill DCP, and rooftop common open space and additional overshadowing may adversely affect the amenity of adjoining development at 2-4 Alan Street and approved development at 1-3 Alan Street.

*Principle 3 – Density*

The proposed increase in site density results in reduced landscaped area, deep soil planting and site amenity for residents and adjoining development.

*Principle 4 – Sustainability*

The proposed development will result in a loss of landscaped area and deep soil planting on the site. Insufficient information has been provided to demonstrate that the amenity (solar access) of the adjoining development at 2-4 Alan Street and proposed development at No. 1-3 Alan Street will be maintained. Plans submitted with the application do not bear the stamp of thermal endorsement.

*Principle 5 - Landscape*

The reduction of soft and deep landscaping on the site will reduce the landscaped quality of the site.

*Principle 6 - Amenity*

Insufficient information is provided to demonstrate compliance with ADG and DCP requirements in relation to communal open space compliance, deep soil planting, landscaping and building separation both in relation to the subject site and adjoining sites.

The application has not adequately demonstrated that the design principles are achieved.

b) Apartment Design Guide

Clause 147(1)(b) of Chapter 4 requires that that development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the Apartment Design Guide (ADG).

The proposal has been assessed against the provisions of the Apartment Design Guidelines (ADG) as outlined below:

Clause	Design Criteria	Compliance												
<b>Part 3 - Siting the development</b>														
3D - Communal open space	<p>25% of the site</p> <p>1,036.68m<sup>2</sup> is required based on a site area of 4146.7m<sup>2</sup></p> <p>With 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.</p>	<p>1,327m<sup>2</sup> is said to be provided (Plan DA730) (32%)</p> <p>Ground: 856.96m<sup>2</sup> Level 7: 470m<sup>2</sup></p> <p>Areas cannot be confirmed due to insufficient information on plans. Some private areas are incorrectly included.</p>												
3E - Deep Soil Zone	<p>7% of site area (290.27m<sup>2</sup>)</p> <p>Minimum dimensions 6m x 6m</p> <p>On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m<sup>2</sup> and 15% for sites greater than 1500m<sup>2</sup>.</p>	<p>Plan DA730 indicates that 483m<sup>2</sup> of the site is deep soil.</p> <p>Deep Soil area of the site cannot be confirmed due to insufficient information on the plans (including no scale) and calculations not based on the correct site area and dimensions. Areas within road reserve are incorrectly included. Minimum dimensions are not provided.</p>												
3F - Separation	<p>Minimum separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>8m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><u>Non-Habitable Rooms:</u></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	8m	4.5m	over 25m (9+ storeys)	12m	6m	<p>Plans provide insufficient information – required setback lines and setback dimensions are not provided on the plans to clearly show proposed setbacks / separation and variations.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	8m	4.5m												
over 25m (9+ storeys)	12m	6m												

	<p>a space of a specialised nature not occupied frequently or for extended periods, including a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom or clothes-drying room, as defined by the BCA.</p>	<p>Roof top common open space is located within required 9 metre setback.</p> <p>Application has not provided sightline or built form analysis, nor sufficient shadow impact analysis in relation to impacts on adjoining development under construction at 2-4 Alan Street, nor on approved development at No. 1-3 Alan Street, as a result of variations.</p> <p>The required 9 metre and 12 metre setbacks, and variations to these setbacks are illustrated with the green line on the following plans. Works proposed under the subject application are shown in colour.</p>
3F – Separation between buildings on the same site	<p>Separation distance between buildings on the same site should combine required building separations depending on the type of room.</p>	<p>Complies.</p>
3J - Carparking	<p>Carparking to be provided based on proximity to public transport in metropolitan Sydney.</p> <p>For sites</p> <ul style="list-style-type: none"> <li>• within 800m of a railway station or light rail stop, 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> <p>the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is:</p> <p>Metropolitan Sub-Regional Centres:</p> <p>0.6 spaces per 1 bedroom unit. 0.9 spaces per 2 bedroom unit. 1.4 spaces per 3 bedroom unit. 1 space per 5 units (visitor parking).</p> <p>The recommended minimum number of off-street visitor parking spaces is one space for every 5 to</p>	<p>Complies.</p> <p>Affordable units require 12 spaces and non-affordable units require 135 spaces as per Housing SEPP.</p> <p>148 units requires 30 visitor spaces.</p> <p><b>TOTAL REQUIRED SPACES:</b></p> <p><math>135 + 12 + 30 = 177</math></p> <p>Yes - 178 provided</p>

	<p>7 dwellings. Councils may wish to reduce this requirement for buildings located in close proximity to public transport, or where short term unit leasing is expected.</p> <p>Rate is given in Guide for Traffic generating Development of 1 per 5 units. Box Hill DCP requires 1 per 5 units.</p>													
<b>Part 4 - Designing the Building</b>														
4A - Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.	Yes  103 of 148 units = 70%												
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Existing approval: Yes, 12/114 units receive no sunlight (10.5%)  Proposed units – Yes. 1 of the 34 new units proposed under this application do not receive any sunlight.												
4B - Natural ventilation	At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.	Complies – 80%												
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes												
4C - Ceiling heights	<p>Minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Yes – ceiling heights are 3.1m
Minimum ceiling height for apartment and mixed use buildings														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
4d - Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m<sup>2</sup> 1 bedroom – 50m<sup>2</sup> 2 bedroom – 70m<sup>2</sup> 3 bedroom – 90m<sup>2</sup></p>	Yes												

	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	
	Every habitable room must have a window in an external wall with a total minimum area of not less than 10% of the floor area of the room.	Yes
4D - Apartment layout	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	Yes
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	Yes
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Yes
4E - Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m<sup>2</sup> with no minimum depth  1 bedroom – 8m<sup>2</sup> with a minimum depth of 2m  2 bedroom – 10m<sup>2</sup> with a minimum depth of 2m  3 bedroom – 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	Yes
4F – Common circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level</p>	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A

4G Storage	-	Storage is to be provided as follows: Studio – 4m <sup>3</sup> 1 bedroom – 6m <sup>3</sup> 2 bedroom – 8m <sup>3</sup> 3+ bedrooms – 10m <sup>3</sup>  At least 50% of the required storage is to be located within the apartment.	Yes
4K Apartment mix	-	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	Yes

### 3D - Communal open space

25% of the site is required as communal open space. Based on an estimated site area of 4146.7m<sup>2</sup>, 1,036.68m<sup>2</sup> is required as common open space. Ideally common open space is provided in one area of the site however it is also permitted on rooftops. 856.96m<sup>2</sup> is proposed at ground level, and 470m<sup>2</sup> at Level 7, according to Plan DA730, being a total of 1,327m<sup>2</sup> or 32%. Areas cannot be confirmed due to a lack of detail on the plan, including no scale. Furthermore, areas have been included in the calculation which are located in private open space to Units BG.01, BG.02, and CG.01.

### 3E - Deep Soil Zone

7% of the site area is required as deep soil, with minimum dimensions of 6m x 6m. Ideally for a site of this size, 15% should be deep soil. Plan DA730 indicates that an area of 483m<sup>2</sup> is provided as deep soil. Areas cannot be confirmed due to a lack of detail on the plan, including no scale. Furthermore, areas are included in the calculation, including substation, and street tree planting that should not be included. Minimum 6m x 6m dimensions are also not achieved. A reduction in deep soil is partly due to the expansion of the basement to accommodate the additional cars required for the additional units.

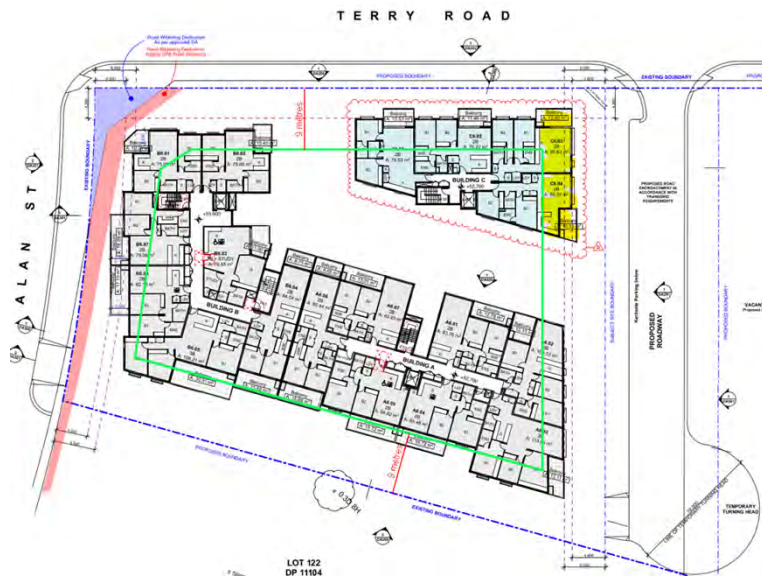
### 3F – Separation

Design Criteria 1 requires the following separation from buildings to the side boundaries:

Building Height	Habitable Rooms & Balconies	Non-habitable Rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

The plans do not provide setback dimensions to confirm compliance with the controls, however it appears that new levels proposed to Buildings A, B and C do not provide the required building separation as illustrated below, with encroachments highlighted in yellow.

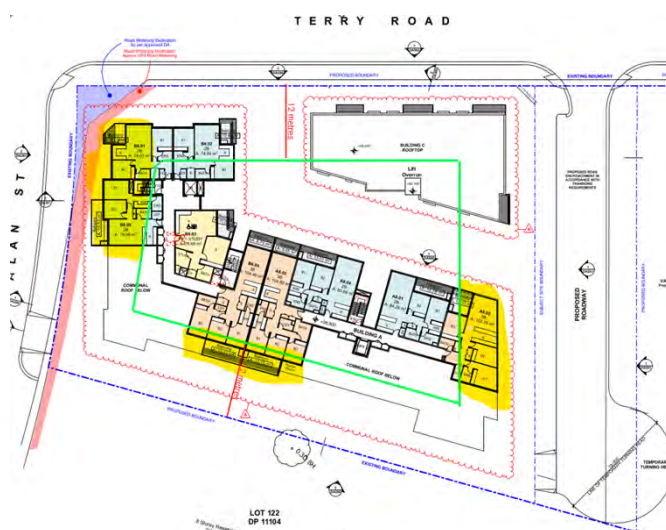




**Level 4-6 plan (9 metre separation required)**



**Level 7 plan (9 metre separation required)**



**Level 8 plan (12 metre separation required)**

The application has not provided sightline or built form analysis, nor sufficient shadow impact analysis in relation to impacts on adjoining development under construction at 2-4 Alan Street, and approved development at No. 1-3 Alan Street as a result of variations. Written justification has been provided as follows:

*"In terms of privacy, the proposed alterations and additions have been designed to minimise, as far as practicable, the likelihood of any adverse overlooking or invasion of aural privacy of neighbouring properties. When considering the visual and acoustic privacy of the neighbouring sites, this is achieved by providing appropriate setbacks, blank facades and orientation of views, as originally approved.*

*Importantly, the site is a corner site with three road frontages and only one (1) shared boundary with another residential site. As such, the visual privacy relationship to the north, east and south will not be impacted by the proposed development, noting the building setbacks of the approved development to these boundaries will be unaltered and the carriageway of the adjoining roads will offer additional building separation to existing and future developments on the opposite side of those carriageways.*

*With regard to the eastern side boundary, which is shared with No. 2-4 Alan Street, the proposal does not alter the setbacks of the approved development which provided a 9m building setback, with some balconies encroaching into that zone. This building separation, whilst not entirely compliant with the ADG requirements, was supported given the balconies offered articulation to the build form and were provided with privacy screens to maintain visual privacy to the neighbouring property. Furthermore, all internal habitable spaces within the approved development were provided with extended setbacks of 11.2m to the boundary, where only 9m is required, thereby exceeding the visual privacy expectations under the ADG. The additional levels will adopt the same approved setback of those lower levels, and like the approval will provide some minor balcony encroachments into the 9m setback required for Level 7, and the 12m setback required for Level 8. Importantly, the additional levels have been carefully designed to provide only two apartments at each level which are oriented towards the eastern side boundary so as to limit the amount of windows and openings at this elevation and enhance the overall privacy relationship between sites.*

*At Level 7, the proposal will achieve compliance with the ADG with the exception of only minor portions of the balconies of Apartment A7.03 and B7.04, which encroach into the 9m building separation required. These balconies are setback 8.7m and like the approved development, the proposal will provide privacy screens to these balconies to ensure an appropriate privacy outcome is achieved for both the proposal and adjoining development.*

*At Level 8, the proposal will provide the same setbacks to the eastern boundary as the level below, being 8.7m to the balconies and 11.2m to the habitable rooms of Apartment A8.03 and B8.04. Whilst these setbacks do not comply with the 12m requirement under the ADG, the balconies will be provided with privacy screening to mitigate the potential for overlooking. Furthermore, it is noted that the development approved on the east adjoining site is only 5 storeys in height and therefore there will not be any direct sightlines created by the proposal at this level. "*

Section 3F of the Apartment Design Guideline states that:

*Visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked. It balances the need for views and outlook with the need for privacy. In higher density developments it also assists to increase overall amenity.*

The objective of this section is:

*to ensure adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*

The applicant has not adequately considered impacts on the adjoining site and approved development opposite the site and seeks to continue setbacks approved on lower levels. Insufficient justification is provided in support of the significant variations to proposed new levels.

It is noted however that Clause 5.4(3) of the Box Hill Growth Centre Precincts Development Control Plan 2018 states that the primary controls for residential flat buildings takes precedence over the ADG where there is any inconsistency. Setbacks in relation to the DCP are addressed later in this report.

### **3.5 Compliance with 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.

As established in the original development application (DA 846/2016/JP, as amended), the site was considered suitable for the proposed development. The new application does not raise any issues that were not dealt with in the original application in this regard. The conditions of the existing development consent in respect of contamination will continue to apply and the proposal remains suitable for the approved use.

Council's Environmental Health team have raised no issues subject to conditions relating to acoustics and soil management.

### **3.6 Compliance with State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 6 - Water Catchments applies to the subject site. The subject site is located within the catchment of Hawkesbury Nepean River which is a regulated catchment under the provisions of the SEPP. The approved development provided a satisfactory outcome in terms of its impact on water quality within the catchment. The proposed changes to the approved development (as modified) do not have any significant impacts on the findings of the original assessment and the conditions imposed on the DA approval.

The proposal is considered to be satisfactory with respect to the SEPP.

### **3.7 Compliance with 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.

Subdivision 2 is concerned with development likely to affect an electricity transmission or distribution network. Clause 2.48 (Determination of development applications – other development) applies to development carried out within in immediately adjacent to an easement for electricity purposes.

The site is affected by a Transgrid electrical easement (within approved lot 2 not subject to the residential flat building development). As such, the development application was referred to Transgrid for comments. Transgrid gave its permission for the proposed works, subject to conditions.

The application is therefore satisfactory with respect to Clause 2.48 of SEPP (Transport and Infrastructure) 2021.

### **3.8 Compliance with State Environmental Planning Policy (Sustainable Buildings) 2022**

The provisions of SEPP (BASIX: Building Sustainability Index) 2004 (SEPP BASIX) were considered in the assessment of the original development application. Since that time, SEPP BASIX has been repealed and Chapter 2 Standards for residential development – BASIX, incorporated into the State Environmental Planning Policy (Sustainable Buildings) 2022. The proposed alterations and additions are submitted with a new BASIX certificate (674075M\_03) and NAtHERS Certificate (0011550589) which demonstrates that the proposal achieves the required water, energy and thermal comfort targets. If consent was granted to the application, a condition would be recommended requiring compliance with the BASIX Certificate. Further, a stamp of thermal endorsement should be provided on the plans since this is not currently shown.

### **3.9 Box Hill Growth Centres Development Control Plan**

The Box Hill Growth Centres Precincts Development Control Plan (Box Hill DCP) applies to the subject site. Specifically, Part 3 of the DCP addresses land development and subdivision, Part 4 establishes the objectives and controls that guide residential development and Part 5 provides specific controls for residential flat buildings.

#### **(i) Part 5.4 – Controls for residential flat buildings**

The relevant objectives of Section 5.4 – Controls for residential flat buildings, manor home and shop top housing are:

- a. To establish a high quality residential environment where all dwellings have a good level of amenity.*
- b. To encourage a variety of housing forms within residential areas.*
- c. To ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant.*

The development controls within Clause 5.4 of the DCP for residential flat building developments are addressed below:

1. In density areas of 20dw/Ha and 25dw/Ha, manor homes may only be located on corner lots.

N/A

2. Residential flat buildings are to:
  - be located on sites with a minimum street frontage of 30m;
  - have direct frontage to an area of the public domain (including streets and public parks); and

- not adversely impact upon the existing or future amenity of any adjoining land upon which residential development is permitted with respect to overshadowing impact, privacy impact or visual impact.

Insufficient information has been submitted with the application to demonstrate that the amenity of the adjoining development at No. 2-4 Alan Street will not be adversely impacted.

3. All residential flat buildings are to be consistent with:
  - the guidelines and principles outlined in *SEPP No. 65 – Design Quality of Residential Apartment Development*, and
  - the primary controls set out in **Table 19**, which take precedence over the above where there is any inconsistency.

See the table below for an assessment of the primary controls set out in table 19.

4. In all residential flat building developments containing 10 dwellings or more, a minimum of 10% of all apartments are to be designed to be capable of adaptation for access by people with all levels of mobility. Dwellings must be designed in accordance with the *Australian Adaptable Housing Standard (AS 4299-1995)*, which includes 'pre-adaptation' design details to ensure visitability is achieved.

16 (10.8%) adaptable units are within the development.

5. Where possible, adaptable dwellings are to be located on the ground floor. Dwellings located above the ground level of a building may only be provided as adaptable dwellings where lift access is available within the building. The lift access must provide access from the basement to allow access for people with disabilities.

Lift access is provided.

6. The development application must be accompanied by certification from an accredited Access Consultant confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the *Australian Adaptable Housing Standard (AS 4299-1995)*.

An Access Report was submitted as required.

7. Car parking and garages allocated to adaptable dwellings must comply with the requirements of Australian Standards for disabled parking spaces.

Satisfactory

8. A landscape plan is to be submitted with every application for residential flat buildings.

Submitted

## Table 19 - Key Controls for Residential Flat Buildings

(Calculations are based on a Site Area of 4,146.7m<sup>2</sup>)

	CONTROL	PROPOSED	COMPLIANCE
Site Coverage (maximum)	50% 2,073.4m <sup>2</sup>	1,886m <sup>2</sup> 45.5%	Yes, however compliance cannot be confirmed since a site coverage plan is not provided.
Landscaped Area (minimum)	30% 1,244m <sup>2</sup>	1749.34m <sup>2</sup> 42%  Ground: 1,273.75m <sup>2</sup> Level 7: 475.59m <sup>2</sup>  <i><b>Landscaped area is defined as an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted areas and the like.</b></i>	Yes, however landscaped area compliance cannot be confirmed since the areas shown to be included on the plan do not comply with the DCP definition of landscaped area.  No scale is provided on the plan (DA730). Landscaped area and deep soil calculations are not separated on the plan. It is unclear if landscaped area within the road reserve has been included.
Communal Open Space	15% 622m <sup>2</sup>	32% (1,327m <sup>2</sup> ) is said to be provided (Plan DA730).  Ground: 856.96m <sup>2</sup> Level 7: 470m <sup>2</sup>	Yes, however areas cannot be confirmed due to insufficient information on plans.
Principal Private Open Space (PPOS)	Minimum 10m <sup>2</sup> per dwelling with minimum dimension of 2.5m	All units shown as exceeding 10m <sup>2</sup> and 2.5m	Yes
Front Setback (minimum)	6m  Balconies and other articulation may encroach into the setback to a maximum of 4.5m from the boundary for the first 3 storeys, and for a maximum of 50% of the façade length.	<u><b>Terry Road</b></u> from proposed units in Buildings B and C.  <b>Building B:</b> 6m to building façade.  5.1m to some balconies.  <b>Building C:</b> 4.36m to building façade.  3m to balconies.	Yes  No – 900mm variation  No – 1.2m variation to proposed levels 4 – 7.  No – 3m variation to proposed levels 4 – 7.  See discussion below.
Corner lots secondary street	6m	<u><b>Alan Street</b></u>  <b>Building B:</b>	



setback (minimum)		Min 4m and 4.3m to façade of two units  Balconies set back minimum 2.7m  Rooftop COS 6.4m  <u><b>Proposed Road</b></u>  <b>Building A:</b> 6m to building facade  <b>Building C:</b> 4.8m to building facade	No – Max 2m variation to proposed units  No – 3.3m variation  Yes  Yes  No – 1.2m variation to proposed four new levels.
Side Setback (minimum)	Up to 3 storeys: 3m  Above 3 storeys: 6m	N/A	N/A
Rear Setback (minimum)	6m	Setback to 2-4 Alan Street:  <b>Building A and B:</b> Min. 6m	Yes
Zero lot line	Not permitted	N/A	N/A
Habitable room/balcony separation distance (minimum) for buildings 3 storeys and above	12m	12m	Yes
Car parking spaces	1 space per dwelling,  plus 0.5 spaces per 3 or more bedroom dwelling.  1 visitor car parking space per 5 apartments  Bicycle parking spaces: 1 per 3 dwellings	Non-affordable units  4 x 1 bed = 4 92 x 2 bed = 92 26 x 3 bed = 39 Required spaces = 135  Visitor spaces (for 148 units) = 30  Affordable units (24) (Housing SEPP) requires 12 spaces	Yes  191 parking spaces are required per the DCP based on the unit / bedroom mix, including visitor parking.  However since 24 units are proposed as affordable housing, the SEPP Housing parking rates will apply to those units (12 spaces).  Parking Required is therefore 167 + 12 = 177.

		<p>Total car spaces = 177 (135 + 12 + 30)</p> <p>Bicycle spaces = 50</p>	<p>A total of 178 parking spaces are proposed on the site.</p> <p>6 kerbside spaces are provided however these are not included in calculations of parking provision.</p> <p>52 bicycle spaces are proposed.</p>
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## Variations to Controls

Clause 5.4(3) of the Box Hill Growth Centre Precincts Development Control Plan 2018 states that the primary controls for residential flat buildings take precedence over the ADG where there is any inconsistency.

The Box Hill DCP objectives for residential flat buildings are:

- a. *To establish a high quality residential environment where all dwellings have a good level of amenity.*
- b. *To encourage a variety of housing forms within residential areas.*
- c. *To ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant.*

### i. Site Coverage

For the development site of 4,146.7m<sup>2</sup>, a site coverage of 2,073.4m<sup>2</sup> (50%) is permitted. The applicant advises that the site coverage is 1,866m<sup>2</sup>, being 34.6% of a site area of 5,445m<sup>2</sup>. Based on the correct site area this equates to 45.5% which complies with the control. No site coverage diagram has been provided, however the footprint of the above-ground elements of the building is not changed as part of this application, therefore compliance is assumed to be achieved.

### ii. Landscaped Area

For the development site of 4,146.7m<sup>2</sup>, a minimum landscaped area of 1,244m<sup>2</sup> (30%) is required. Under the original application, landscaped area consisted of ground level and rooftop (Building C) landscaped area, said to be a total of 1,759m<sup>2</sup>.

The proposed development removes landscaped area from Building C and replaces it with landscaped common open space on Buildings A and B. In total, the landscaped area proposed is 1,749.34m<sup>2</sup>, consisting of Ground: 1,273.75m<sup>2</sup> and Level 7: 475.59m<sup>2</sup>.



LANDSCAPE SCHEDULE	
Level	Area
Ground Level	1,273.75
Level 07	475.59
	1,749.34 m <sup>2</sup>

DEEP SOIL SCHEDULE	
Area	
483.78	

**Landscaped area** is defined as an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted areas and the like.

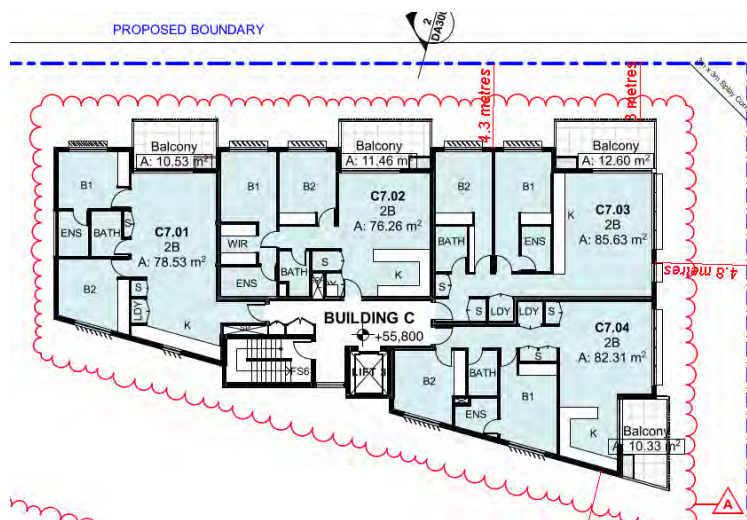
Landscaped Area is also assessed under the Housing SEPP provisions as addressed in earlier sections of this report.

Approved modification 846/2016/JP/A landscaped area of was incorrectly calculated based on a site area which included the future road, and included roof top landscaping originally approved on Building C.

Landscaped area compliance cannot be confirmed since the areas shown to be included on the plan do not comply with the DCP definition of landscaped area. No scale is provided on the plan (DA730). Landscaped area and deep soil calculations are not separated on the plan. It is unclear if landscaped area within the road reserve has been included. The applicant has not provided sufficient information or justification to address the proposed landscaping on the site.

### iii. Setbacks

The proposed additional levels do not comply with the required front setbacks (to Terry Road), corner lot secondary street setbacks (to Alan Street and future local road).



*Setbacks for Proposed Units within Building C to Terry Road and future road.*



Setbacks for proposed Building B units to Terry Road and Alan Street

### Front setbacks (Terry Road)

A 6 metre setback is required to Terry Road from the façade and balconies of additional storeys proposed to Building B and C.

Building B façade setback complies however a 5.1m setback is proposed to a balcony.

Building C proposes 4.36m setbacks to the four proposed additional levels of the façade, and 3m setbacks to balconies.

### Comment:

The applicant has not provided sufficient justification in relation to the proposed setback variations, citing consistency with the approved setbacks on the site and stating that *"The setbacks and separation distances of the proposed alterations and additions are consistent with the approved development and will not alter the relationship to the streetscape, neighbouring properties, or central communal open space"* (SEE, p33).

A setback of 5.1 metres to Terry Road to two balconies on Building B may be supportable, however the required 6 metre building setback should be provided to the four new upper levels of Building C to Terry Road which is opposite land zoned B7 Business Park in order to ensure a high quality residential environment and dwelling with good amenity are provided in accordance with the DCP objective (a).



A 6 metre setback to the façade and balconies is required to the proposed new levels of Building B to Alan Street, and Buildings A and C to the future local road.

Building C proposes a 4.8 metre setback to the building façade, being a variation of 1.2m to the proposed additional four levels to the future road.

**Comment:**

In relation to Building C, given that the land on the opposite side of the future local road will be largely undevelopable due to the transmission easement, a reduced building setback to Building C is considered reasonable in this instance.

In relation to Building B, the proposed setbacks will be further reduced to almost NIL setback to a proposed balcony and approximately 1.2 metres to the façade when road widening acquisition in accordance with the SP2 zoning is completed on the Alan Street frontage of the site, as indicated in red on the plan below.



That the proposed setbacks comply with lower levels which are already approved is not sufficient justification for an additional level 7 and 8 to share the same setbacks when such minimal setbacks will result following the completion of road upgrades at the intersection of Terry Road and Alan Street in accordance.

Furthermore, there has been no analysis of the impacts of these setbacks on the approved development on the opposite side of Alan Street (No. 1-3) under Development Consent No. 1471/2022/HA/B).

**(ii). Clause 5.4.1 Site Servicing**

**Controls for Residential Flat Buildings and Multi Dwelling Housing**

1. Garbage, mail box structures, service meters and the like are to be integrated with the overall design of the buildings and/or landscaping. Garbage storage areas are not permitted at the front of the development.

Satisfactory. A waste collection room is provided within the basement.

2. Provide communal or individual laundries to every dwelling and at least one external clothes drying area per building. Laundries are not permitted in front setbacks and must be appropriately screened from view if located in the side setback.

Each apartment is provided with an internal laundry.

3. Loading facilities must be at the rear of each development.

Provided at the rear via Alan Street and the future road.

4. Service access is permitted from rear lanes, side streets or right of ways.

Noted.

**(iii). Clause 5.5 Adaptable Housing**

The controls for adaptable housing in this clause are:

1. 10% of all apartments, multi dwelling housing and Residential Flat Buildings are to be designed to be capable of adaptation for disabled or elderly residents. Dwellings must be designed in accordance with the Australian Adaptable Housing Standard (AS 4299-1995).

Yes, 16 apartments within the development are adaptable.

2. Where possible, adaptable dwellings are to be located on the ground floor, for ease of access. Dwellings located above the ground level of a building may only be provided as adaptable dwellings where lift access is available within the building. The lift access must provide access from the basement to allow access for people with disabilities.

Lift access is provided as required to adaptable units not at ground level.

3. The development application must be accompanied by certification from an accredited Access Consultant confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Adaptable Housing Standard (AS 4299-1995).



Access Report prepared by EBS Consultants.

4. Car parking and garages allocated to adaptable dwellings must comply with the requirements of the relevant Australian Standard for disabled parking spaces.

Satisfactory.

### 3.10 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. It is considered that the proposed application will have an adverse impact on the amenity of the site and adjoining development, and is incompatible with the desired character of the

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

The development site is not considered to be suitable for the proposed alterations and additions.

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

No submissions were received during the notification period.

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

The application is not considered to result in a development that is in the public interest due to its non-compliant height and building setbacks.

## 4. REFERRALS AND SUBMISSIONS

### 4.9 Agency Referrals and Concurrence

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

**Table 2: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act) - NA</b>			
<b>Referral/Consultation Agencies</b>			
Transgrid	CI 2.48 of the Infrastructure SEPP Development near electrical infrastructure	Comments and conditions provided.	Y
Endeavour Energy	CI 2.48 of the Infrastructure SEPP Development near electrical infrastructure	Comment and conditions provided.	Y

Sydney Water	Sydney Water Act 1994 s. 78	Advised of waste water capacity issues	N – see below.
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#### Sydney Water comments

Sydney Water has advised that there is currently no capacity to manage waste water from the site. It was suggested that the applicant engage with their Water Servicing Coordinator and Sydney Water Case Manager as early as possible to understand the necessary servicing requirements, as well as managing timescales. This matter remains outstanding.

#### **4.10 Council Referrals**

The development application was referred to various Council officers (Waste, Engineering and Landscaping) for technical review. The matters raised by Council Officer have been included in the attached Statement of Facts and Contentions and remain outstanding (refer Attachment I).

#### **4.11 Community Consultation**

The proposal was notified to adjoining and nearby property owners in accordance with the Box Hill DCP and Council's Community Participation Plan from 28 November 2023 until 19 November 2024. No submissions were received.

### **5. CONCLUSION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls it is considered that the application cannot be supported.

The proposal seeks a building height in excess of the both the height limit as proposed under the Growth Centres SEPP, and the bonus height limit permitted by the Housing SEPP. Proposed building setbacks do not comply with the Box Hill Development Control Plan, and insufficient justification for a variation has been submitted with the application. Insufficient information has been submitted with the application to enable a full assessment of the application in relation to landscaping, waste, engineering matters and to assess impacts on existing and future development in the vicinity of the site. The resultant development would therefore be inconsistent with the intended neighbourhood character and site context.

### **6. RECOMMENDATION**

That the Development Application DA No. 856/2025/JP for Amending Development Application to an Approved Residential Flat Building Development (Under Development Application 846/2016/JP) at No 13 Terry Road, Box hill be REFUSED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to reasons for refusal as outlined below:

- 1) The proposed development proposes an unacceptable variation to the height of buildings control in relation to Clause 4.3 Height of Buildings of Appendix 10, State Environmental Planning Policy (Precincts – Central River City) 2021 and Clause 16(3) of the SEPP (Housing) 2021.  
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

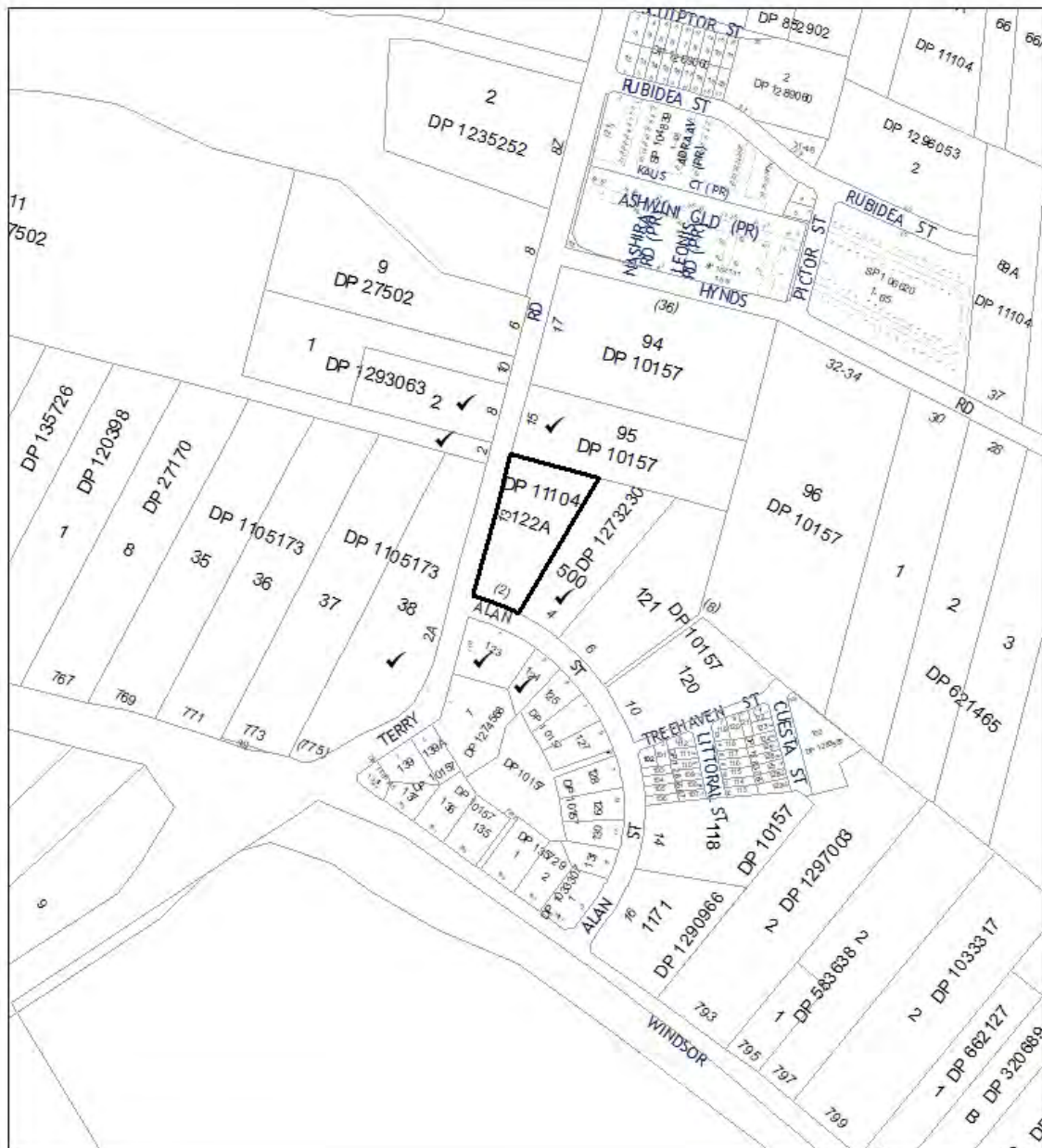
- 2) The Clause 4.6 variation request has not demonstrated that compliance with the development standard is unreasonable or unnecessary or that there is adequate environmental planning grounds to justify contravening the development standard.  
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 3) The proposal has not satisfied the design quality principles contained within Schedule 9 – Design Principles of SEPP (Housing) 2021 with respect to context and neighbourhood character, built form and scale, density, sustainability, landscaping and amenity.  
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 4) The proposal does not satisfy, or does not provide adequate information with respect to, the provisions of the Apartment Design Guidelines in relation to communal open space, deep soil and building separation.  
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 5) The proposed development does not satisfy, or does not provide adequate information with respect to, the requirements of the Box Hill Development Control Plan 2018 with respect to building setbacks, site coverage, landscaped area, and communal open space.  
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
- 6) The application is not supported by thermally endorsed plans as required pursuant to State Environmental Planning Policy (Sustainable Buildings) 2022.  
(Section 4.15(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 7) The proposal has not satisfied the requirements of Clause 6.1 – Public Utility Infrastructure of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 since evidence that the site can be serviced for sewer has not been submitted.  
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 8) The proposal has not satisfactorily addressed landscaping, subdivision engineering, and waste management matters to enable a full assessment of the application.  
(Section 4.15(1)(a)(i) and (iii), (b) and (c) of the Environmental Planning and Assessment Act, 1979).
- 9) The submitted plans are inadequate and lack detail which has prevented a complete assessment of the application.  
(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).
- 10) The proposal is not in the public interest since it is not demonstrated that the development is compatible with the surrounding context and approved development.  
(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979).

## **ATTACHMENTS**

Attachment A – Locality Plan  
Attachment B – Aerial Map  
Attachment C – Zoning Map  
Attachment D – Floor Space Ratio Map  
Attachment E – Height of Buildings Map  
Attachment F – Subdivision Plans  
Attachment G – Proposed Plans

Attachment H – Clause 4.6 variation request  
Attachment I – Council's Statement of Facts and Contentions  
Attachment J – Applicant's Statement of Facts and Contentions in reply

## ATTACHMENT A – LOCALITY PLAN



☐ SUBJECT SITE

☒ PROPERTIES NOTIFIED

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**

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ATTACHMENT B – AERIAL MAP



Imagery © Nearmap HERE



SUBJECT SITE

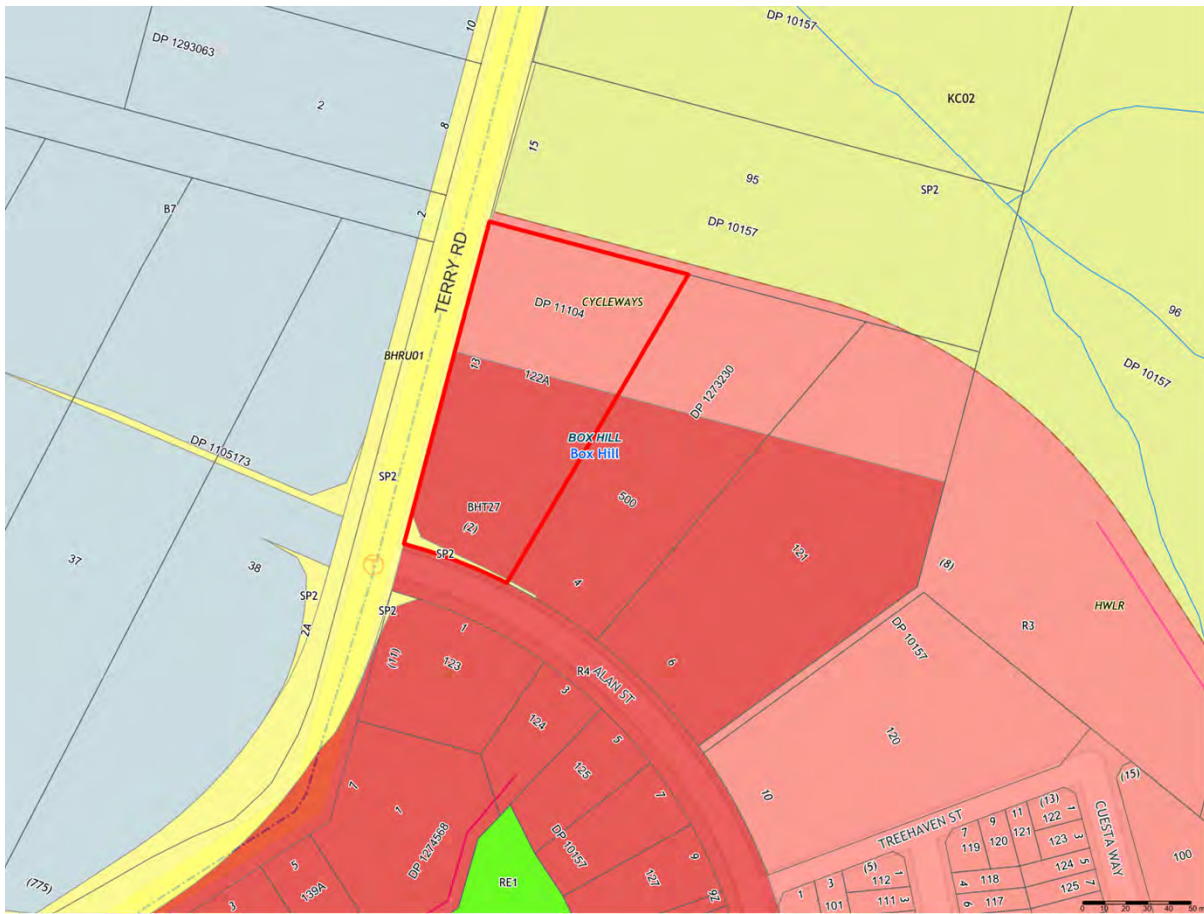
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## ATTACHMENT C – ZONING MAP




## SEPP SRGC Appendix 10 Box Hill

 Box Hill Precinct Boundary

Land Zoning (LZN)

 B2 Local Centre


 B6 Enterprise Corridor

 B7 Business Park

 E2 Environmental Conservation

IN2 Light Industrial

 R1 General Residential

 R2 Low Density Residential

 R3 Medium Density Residential

 R4 High Density Residential

RE1 Public Recreation

RE2 Private Recreation

SP2 Infrastructure

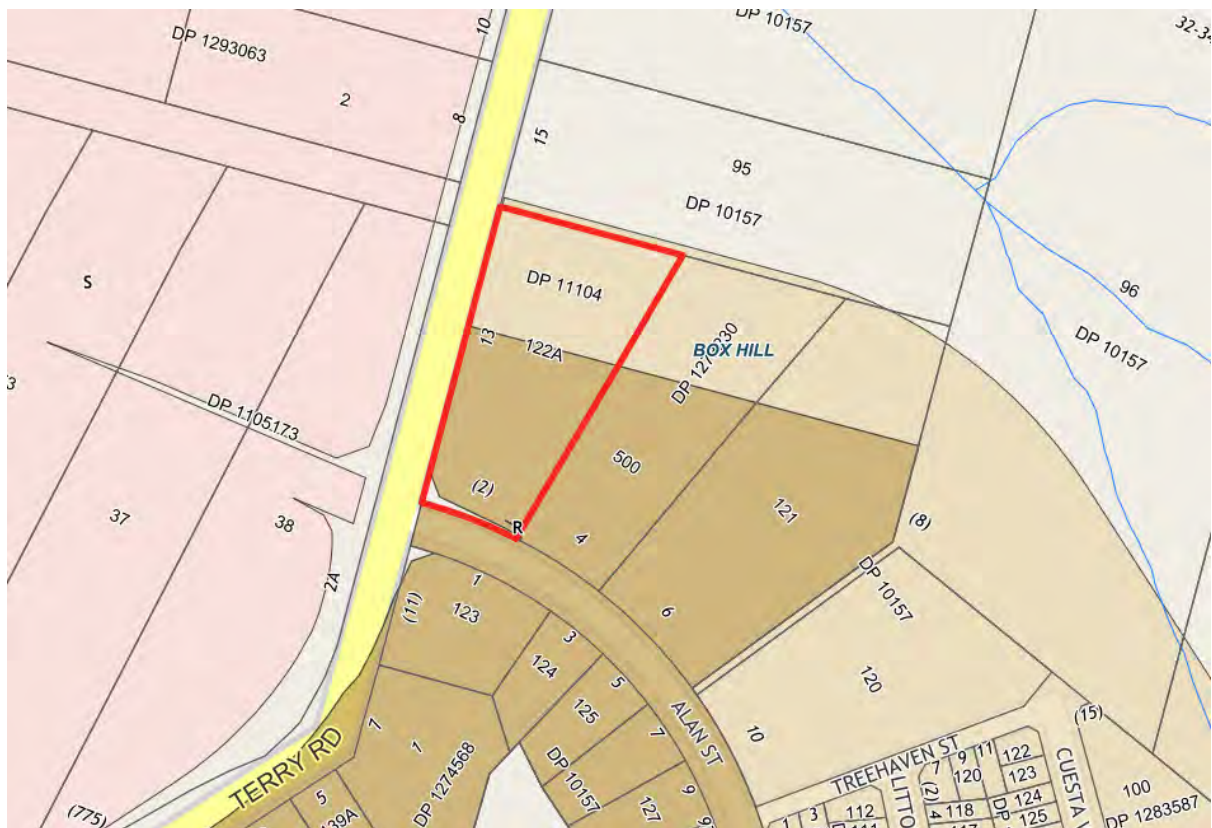


## ATTACHMENT D – FLOOR SPACE RATIO MAP



- SEPP SRGC Appendix 10 Box Hill
- Box Hill Precinct Boundary
- Floor Space Ratio (FSR)
- FSR
- A Refer to Appendix 11, Clause 4.4.A
  - B Refer to Appendix 11, Clause 4.4.A
  - C Refer to Appendix 11, Clause 4.4.A
- FSR - Maximum Floor Space Ratio (n:1)
- D 0.5
  - H 0.7
  - N 1.0
  - P 1.25
  - S 1.5
  - T 2.0

## ATTACHMENT E – HEIGHT OF BUILDINGS MAP



SEPP SRGC Appendix 10 Box Hill

Box Hill Precinct Boundary

Height of Buildings (HOB)

I 8.5

K 10

N 14

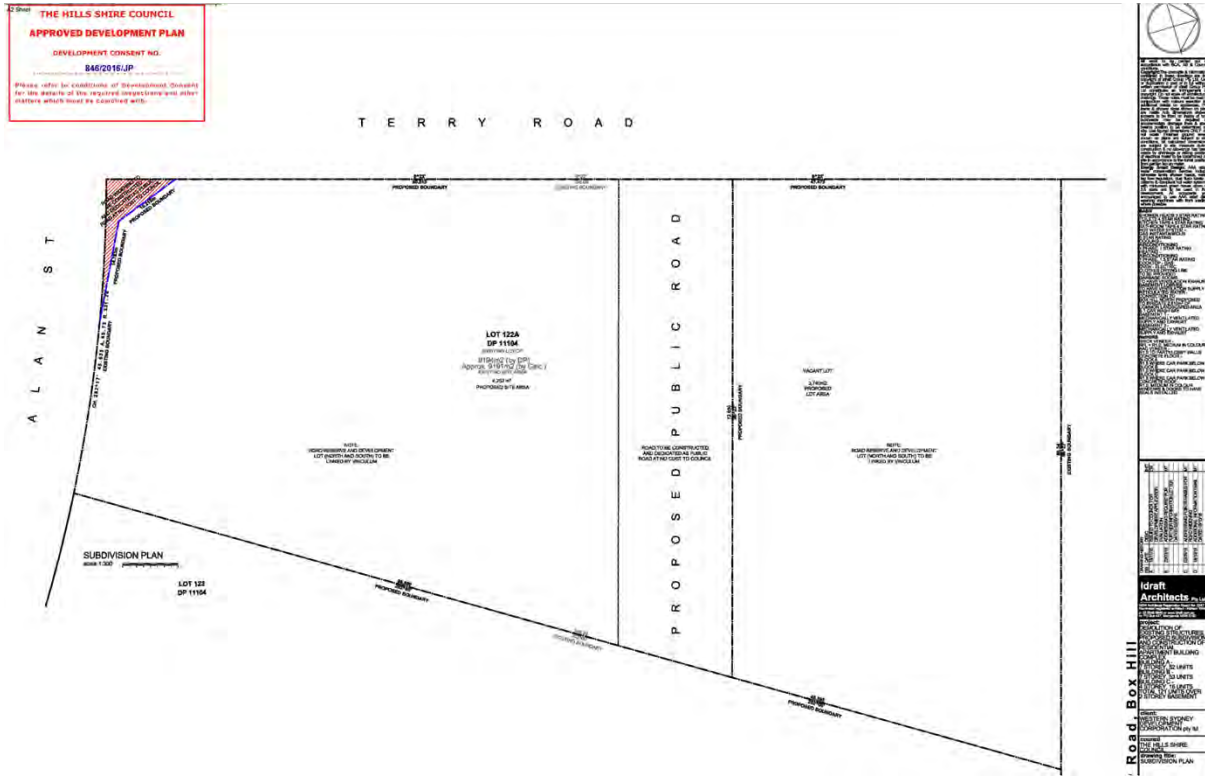
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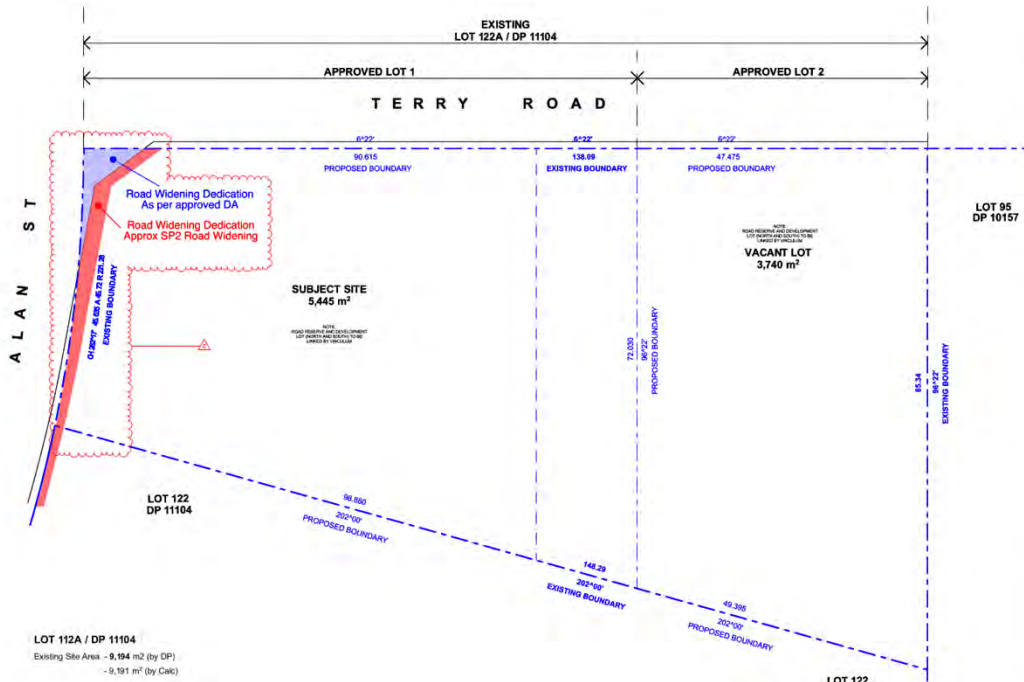
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## ATTACHMENT F – SUBDIVISION PLANS



*Approved Subdivision Plan, 846/2016/JP*

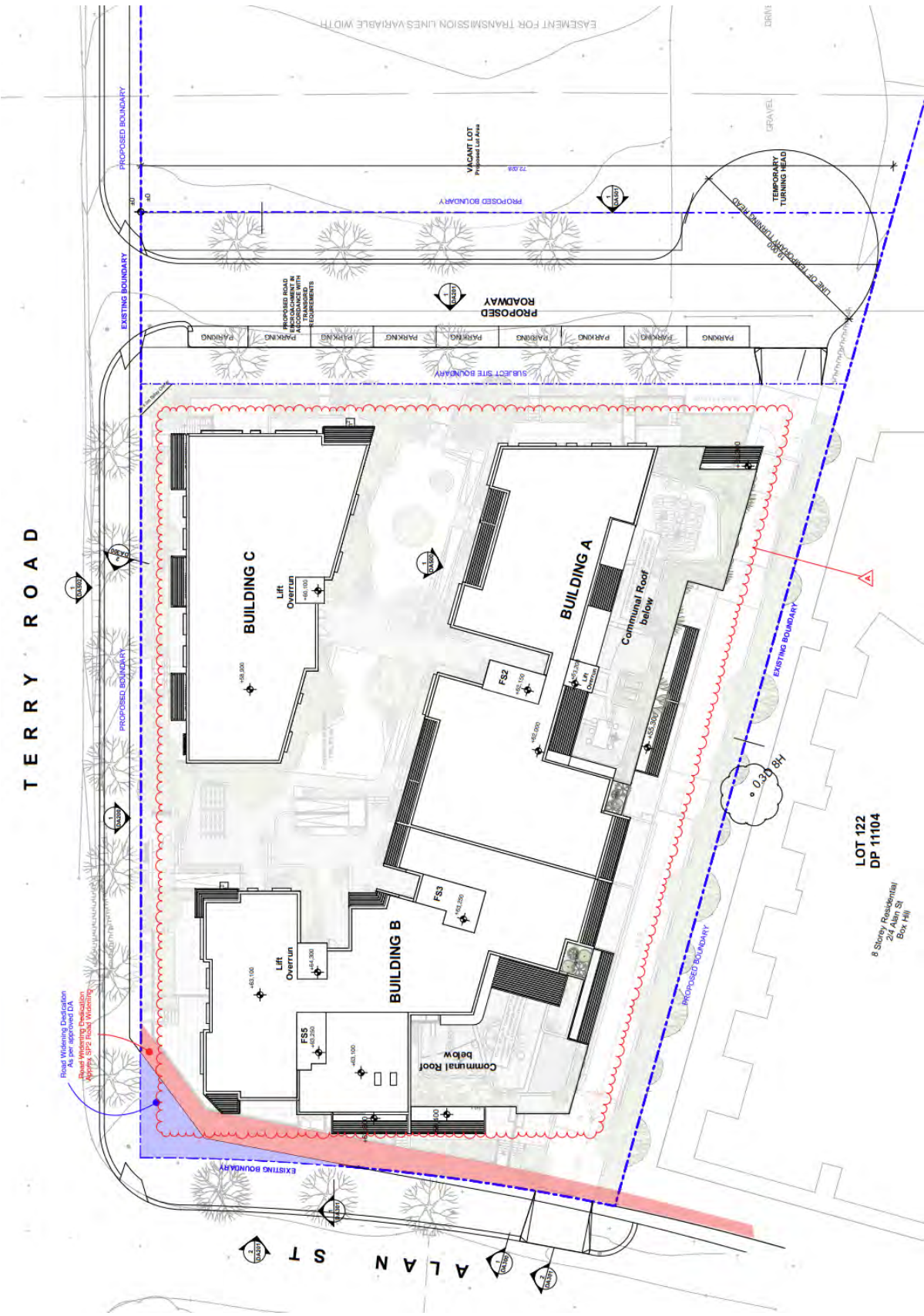


*Approved Subdivision Plan, 846/2016/JP/A*





ATTACHMENT G – PROPOSED PLANS  
SITE PLAN



## TERRY ROAD



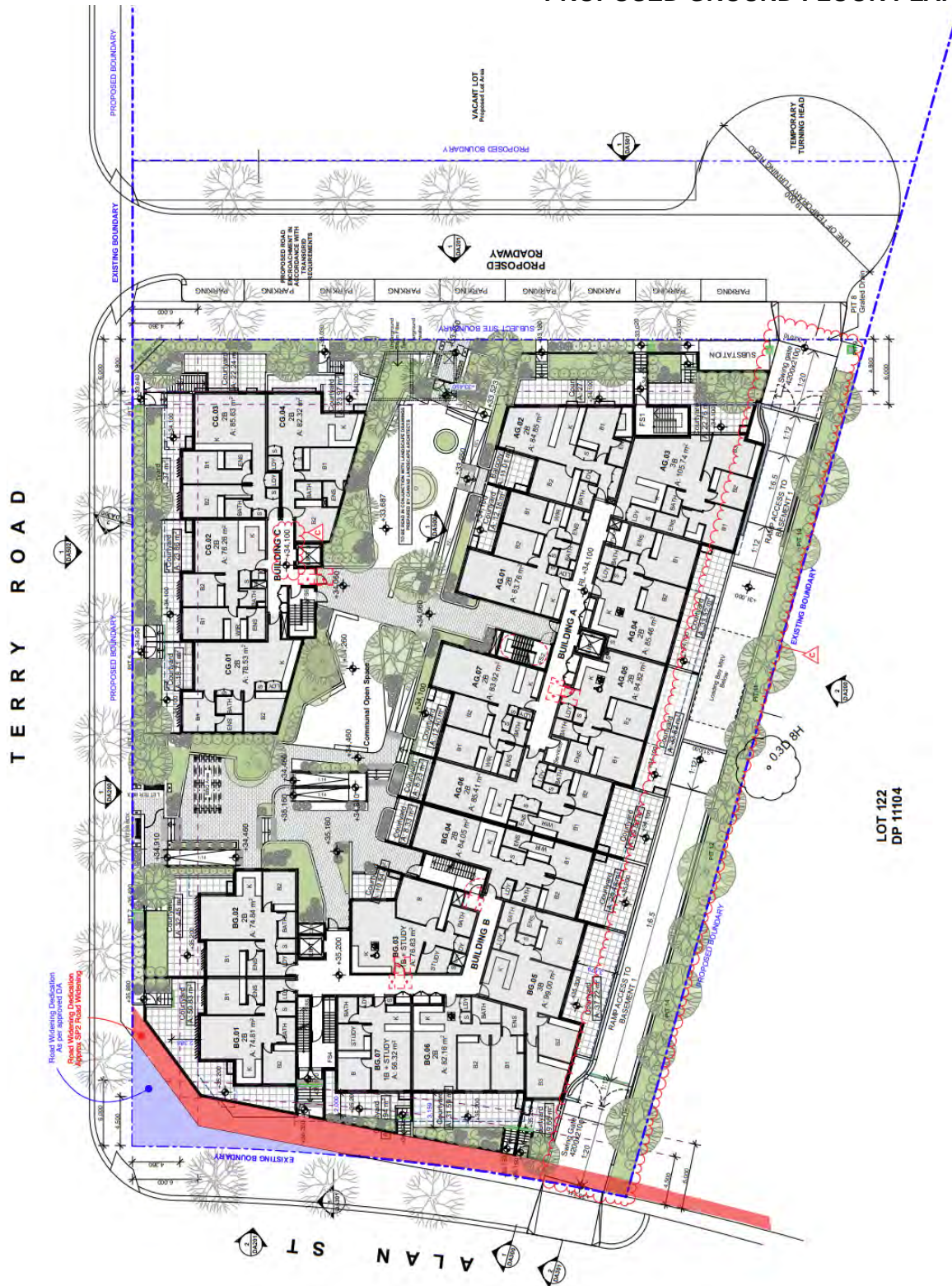


## TERRY ROAD





## PROPOSED GROUND FLOOR PLAN



### PROPOSED LEVEL 1-3 FLOOR PLAN





PROPOSED LEVEL 4-6 FLOOR PLAN



# PROPOSED LEVEL 7 FLOOR PLAN

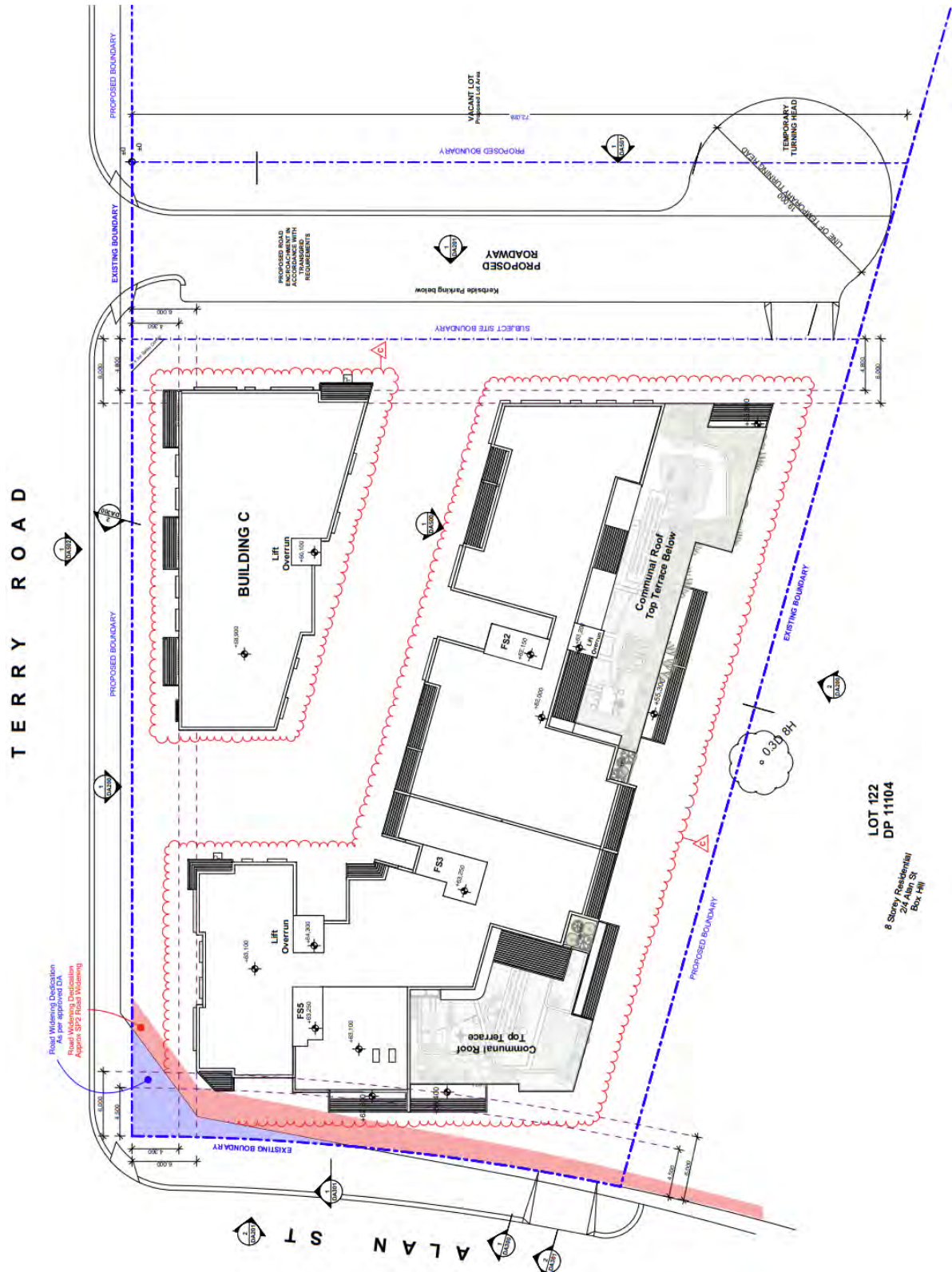




## TERRY ROAD

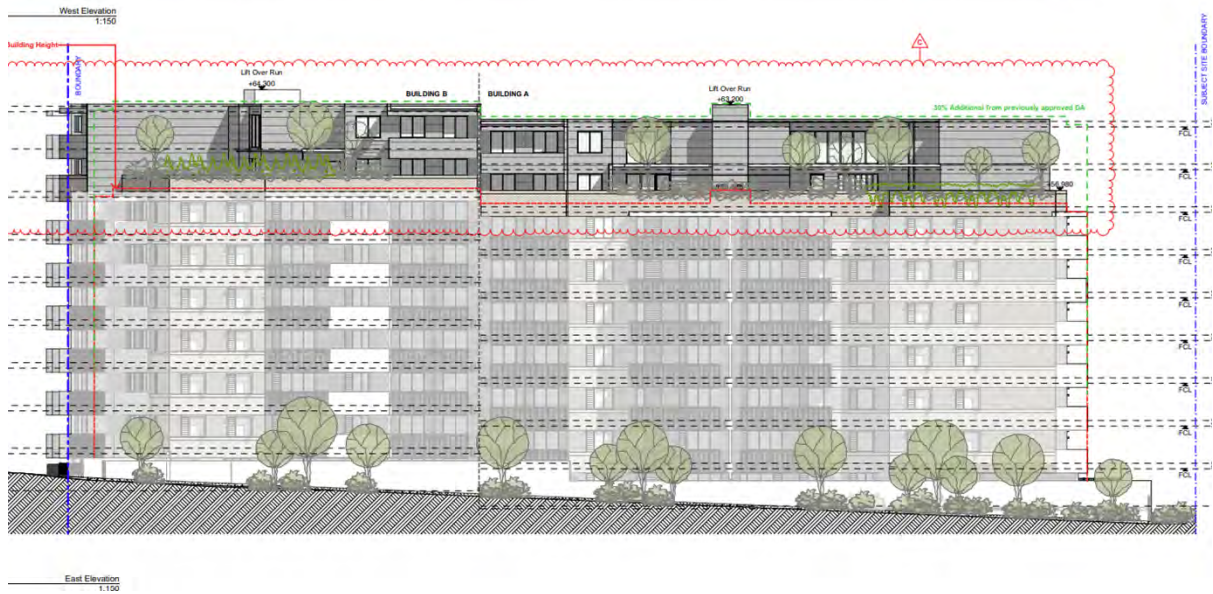


# PROPOSED ROOF PLAN



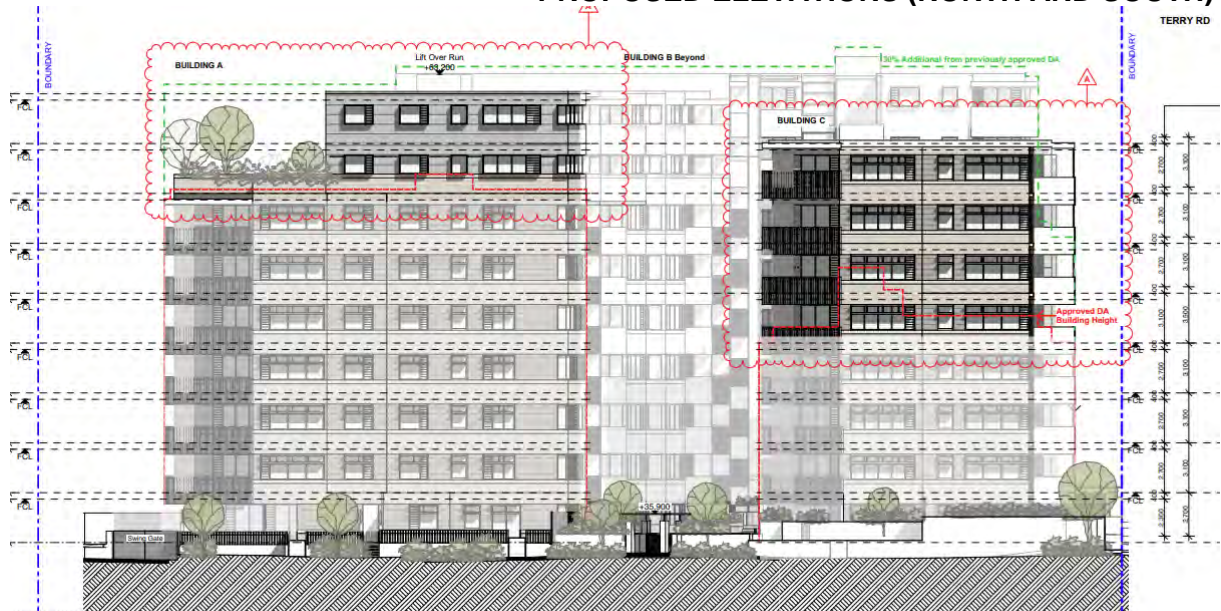


## PROPOSED ELEVATIONS (WEST AND EAST)

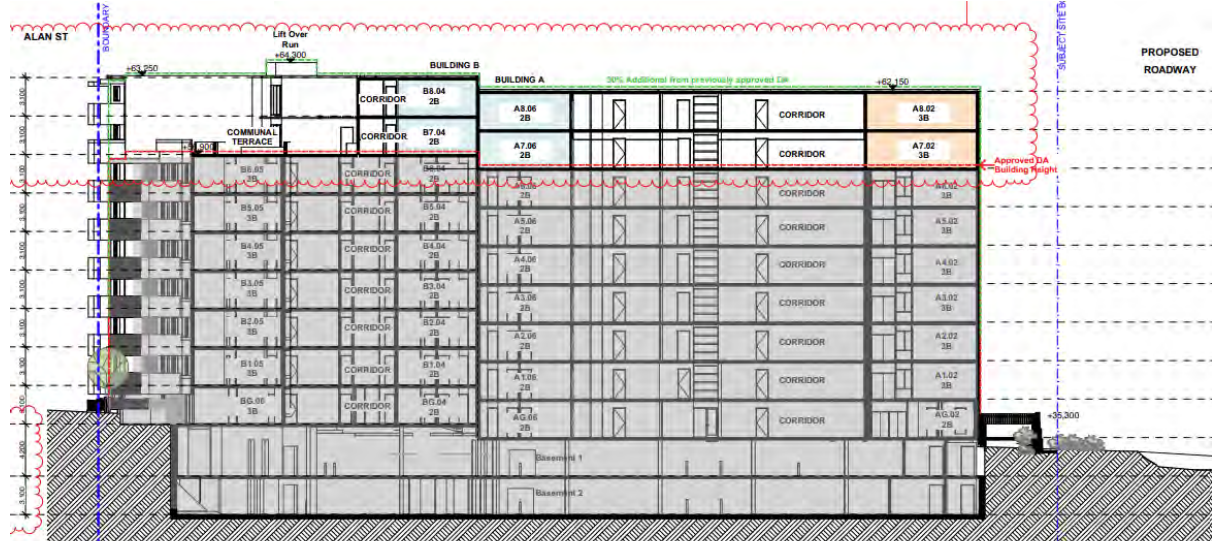




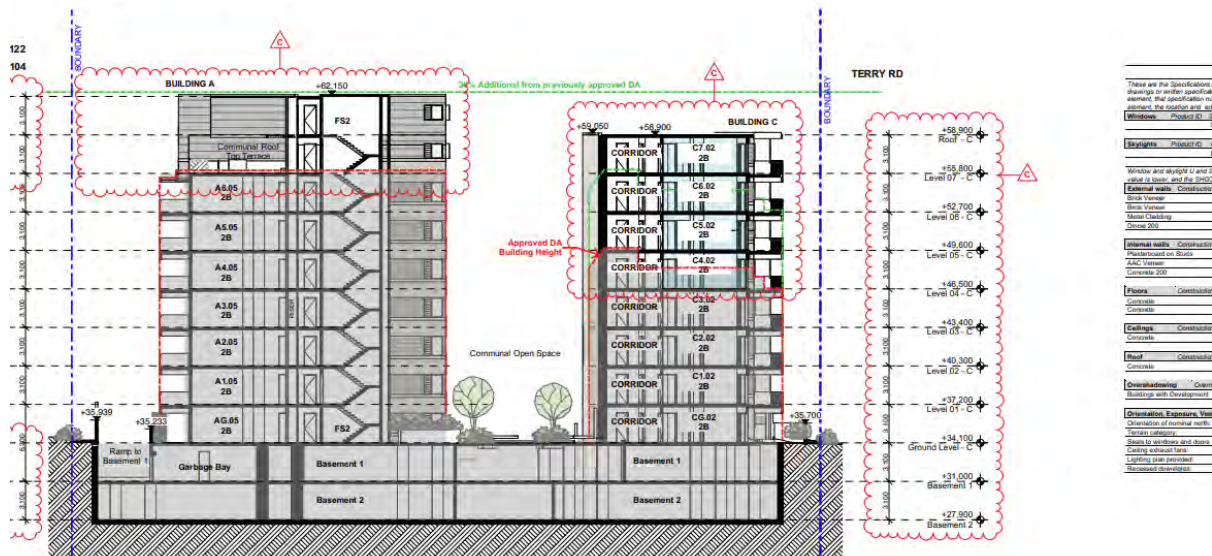
## PROPOSED ELEVATIONS (NORTH AND SOUTH)



## PROPOSED SECTIONS



1 SECTION A-A  
1:200

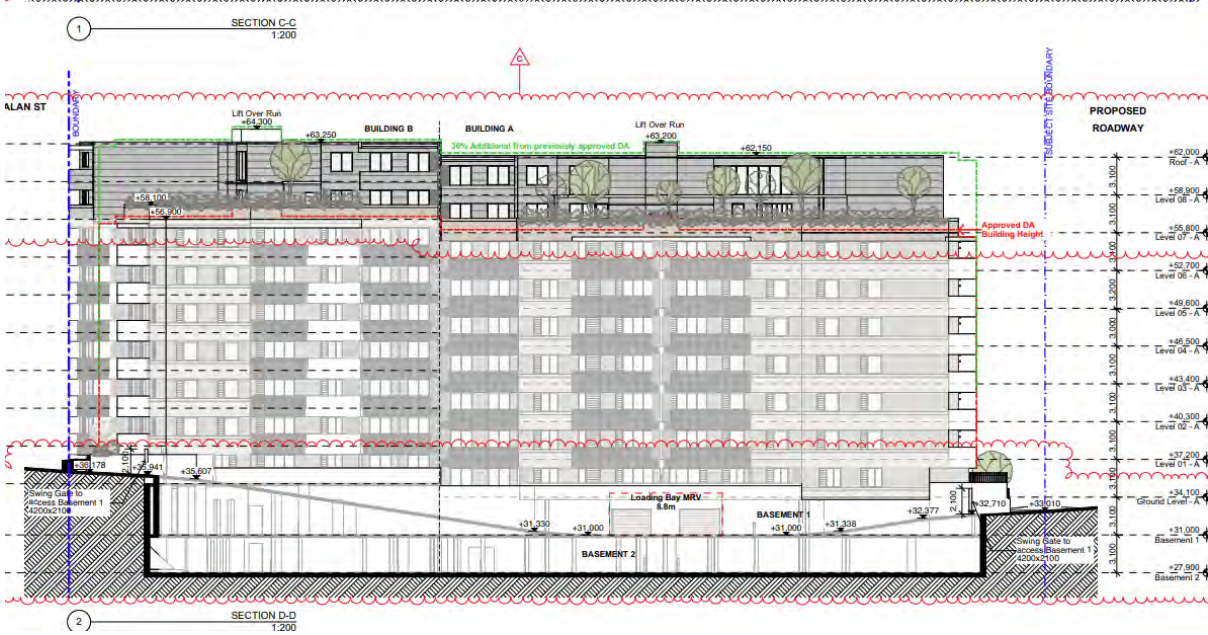
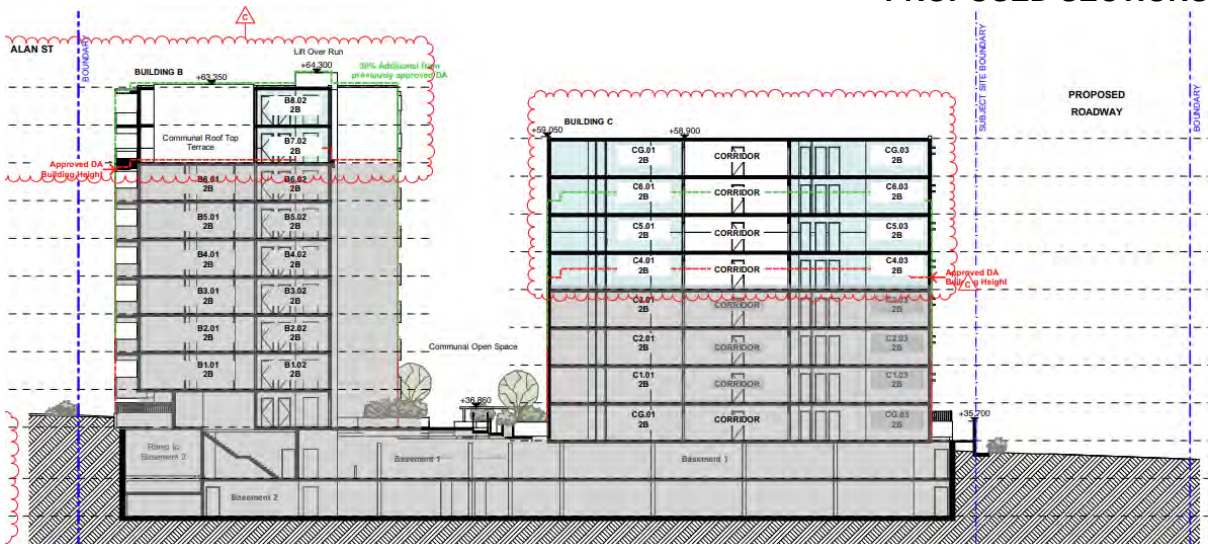


2 SECTION B-B  
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[illegible]



PROPOSED SECTIONS



DEEP SOIL AND LANDSCAPED AREA

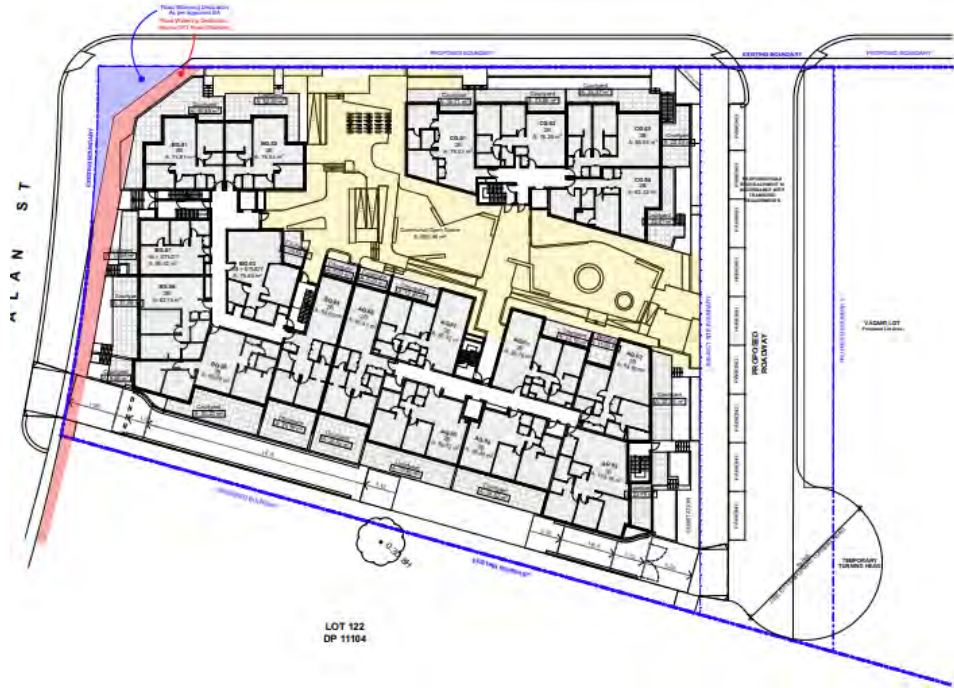


LANDSCAPE SCHEDULE	
Level	Area
Ground Level	1,273.75
Level 07	475.59
	1,749.34 m <sup>2</sup>

DEEP SOIL SCHEDULE	
Area	
	483.78



# PROPOSED COMMON AREAS

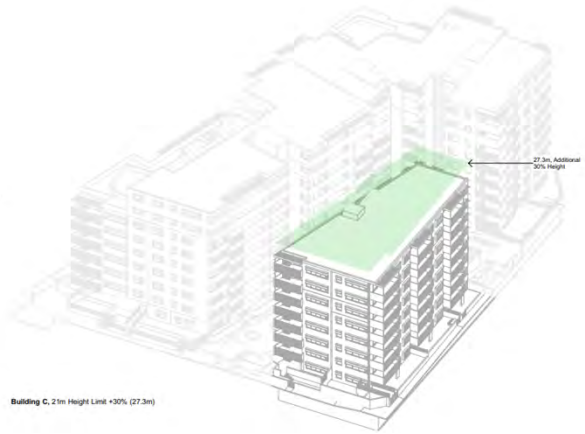
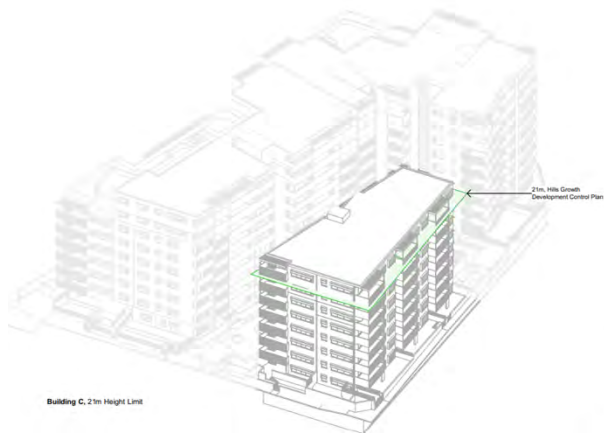
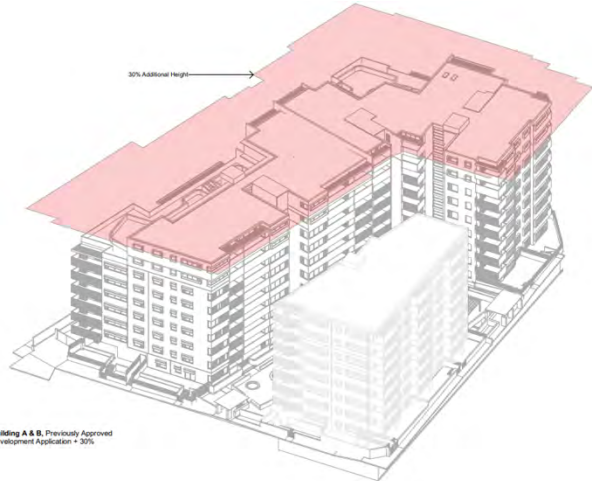
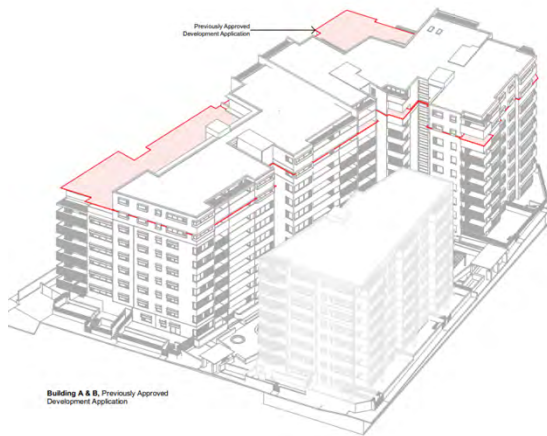


COMMUNAL OPEN SPACE SCHEDULE	
Level	Area
Ground Level	856.96
Level 07	470.00
	1,326.96 m <sup>2</sup>

SITE AREA SCHEDULE				
CATEGORY	CONTROL	REQUIRED	APPROVED DA	PROPOSED
COMMUNAL SPACE	15% SITE AREA	817 MIN	1,117	1,327
LANDSCAPE AREA	30% SITE AREA	1,634 MIN	1,759	1,749
SITE AREA		5,445		
SITE COVERAGE	50% SITE AREA	2,723 MAX	1,886	1,886
DEEP SOIL	7% SITE AREA	381 MIN	1,166	483

\*BOX HILL & BOX HILL INDUSTRIAL PRECINCTS DEVELOPMENT CONTROL PLAN 2014  
ADAPTATION DECISION GUIDE 2015

## ATTACHMENT 8 – BUILDING HEIGHT PLANE DIAGRAMS





## ATTACHMENT H – APPLICANT’S 4.6 VARIATION REQUEST

### CLAUSE 4.6 VARIATION STATEMENT – MAXIMUM HEIGHT OF BUILDINGS (CLAUSE 4.3) OF THE HILLS GROWTH CENTRE PRECINCT PLAN AND SECTION 16(3) OF HOUSING SEPP

#### 1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of The Hills Growth Centre Precincts Plan under the SEPP (Precincts – Central River City) 2021 to accompany the Development Application. The application seeks consent for alterations and additions to the approved residential flat building development (as modified by DA846/2016/JPA) at No. 13 Terry Road, Box Hill ('the site').

Clause 4.3 of The Hills Growth Centre Precincts Plan under the SEPP (Precincts – Central River City) 2021 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 21m.

Notably, the development approved on the site and subsequently modified by DA846/2016/JPA was approved at a height of 21.7m to the roof slab and 22.9m to the lift overrun of Building A and B within the development, despite the 21m maximum building height limit. As such, the approved development on the site established a height exceedance for development on the site, as supported by the Council, being approximately half a storey above the maximum permitted.

In addition to the above, this application is made pursuant to *Part 2 Development for affordable housing, Division 1 In-fill affordable housing, Section 16 Affordable housing requirements for additional floor space ratio*. Specifically, this application seeks to benefit from the 30% building height bonuses under Section 16(3) of the Housing SEPP, where affordable housing is provided to 15% of the total gross floor area (GFA) for a minimum 15-year period. Accordingly, and per the Housing SEPP, the subject site is permitted a maximum building height of 27.3m, where the 21m base height limit applies.

A comparison between the approved height variation for the site and the height limit permitted under Section 16(3) of the Housing SEPP is provided in **Table 10** below.

Table 10 Approved Height Variation				
Building	Central River City SEPP Height Limit	Approved Height under DA846/2016/JPA	Variation	Housing SEPP Bonus Height Limit
Building A	21m	21.7m to roof slab 22.9m to lift overrun	700mm (3.3%) 1.9m (9%)	27.3m
Building B	21m	21.7m to roof slab 22.9m to lift overrun	700mm (3.3%) 1.9m (9%)	27.3m
Building C	21m	12.4m to roof slab 16m to lift overrun	Nil	27.3m

As evidenced in the above table, the approved development was essentially approved more than half a storey above the permissible height limit for Building A and B. Notably, the modification application under DA846/2016/JPA which resulted in the height exceedance, increased the building height to ensure that appropriate floor to ceiling heights were provided. The modification increased the floor to floor heights from 2.9m to 3.1m, which is standard for residential developments, resulting in an increase in the overall height of the development to 22.9m for Building A and B. Building C was designed at a lesser height than the other buildings and achieved a compliant height of 16m.

Ultimately, it would be unreasonable to disregard the approved height variation on the site and require the proposal to strictly comply with the 30% bonus applied to the permissible LEP building height limit. If this were the case, there would be limited benefit to any approved development with an existing height variation to seek the bonus afforded by the Housing SEPP. This would result in a reduced number of developments looking to incorporate affordable housing and would therefore deny the efforts of the NSW Government to increase the affordable housing supply across the State.

Importantly, the proposal has been designed to provide a variation to the SEPP height limit which is proportionate to that approved on the site, meaning that, the extent of the height variation proposed is no more than the extent approved for the site.

Notwithstanding the above, whilst we submit that the proposal complies with the 30% height uplift when it is reasonably applied to the approved building height on the site, this is not the requirement under Clause 16(3) of the Housing SEPP which requires the 30% bonus height to be applied to the 'maximum permissible building height for the land'.

As such, the proposal seeks a variation to Clause 16(3) of the Housing SEPP and Clause 4.3 of The Hills Growth Centre Precincts Plan.

## 2. Proposed variation to Height of Buildings development standard

Clause 4.3 of The Hills Growth Centre Precincts Plan prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. The relevant map indicates that the maximum building height permitted at the subject site is 21m, as shown in **Figure 14** below.



**Figure 14** Extract from the Height of Buildings Map.

As previously stated, the approved development on the site was permitted with a maximum building height of 22.9m to Building A and B, where a 21m height limit applies, which exceeds the LEP maximum height limit by 1.9m (9%).





As identified, the 30% bonus afforded by the Housing SEPP will permit a maximum building height of 27.3m for the site.

As previously stated, it would be unreasonable to disregard the approved height variation on the site and require the proposed alterations and additions to comply with the 30% height bonus applied to the permissible building height limit under The Hills Growth Centre Precincts Plan. If this were the case there would be a limited benefit to any approved development with an existing height variation to seek the bonus afforded by the Housing SEPP to provide affordable housing. Insisting on strict numeric compliance would result in a reduced number of developments looking to incorporate affordable housing and would therefore deny the efforts of the NSW Government to increase the affordable housing supply across the State.

Following the above submission, the proposal has been designed to provide a variation to the Housing SEPP bonus height limit which is proportionate to that approved by DA846/2016/JPA, meaning that, the extent of the height variation proposed is no more than the extent approved with DA846/2016/JPA. Furthermore, the proposed variation only applies to Building A and B, consistent with the approved DA (as modified), whilst Building C complies with the Housing SEPP bonus height limit.

A breakdown of the proposed building height is provided in the table below.

Table 11 Proposed Building Height					
Building	Housing SEPP Height Limit	Proposed Height	Proposed Variation	Approved Variation	
Building A	27.3m	27.9m to roof slab 29.1m to lift overrun	600mm (2.2%) 1.8m (6.59%)	700mm (3.3%) 1.9m (9%)	
Building B	27.3m	27.9m to roof slab 29.1m to lift overrun	600mm (2.2%) 1.8m (6.59%)	700mm (3.3%) 1.9m (9%)	
Building C	27.3m	24.8m to roof slab 26m to lift overrun	N/A	N/A	

As shown above, the extent of the proposed variation to the SEPP height limit is less than the extent of the approved variation to The Hills Growth Centre Precincts Plan height limit, and therefore, when applying the 30% height bonus to the approved building height of Building A and B on the site, the proposal fully complies with the bonus. This is shown clearly in the height blanket diagram at **Figure 15** below, which applies a height blanket with a 30% uplift above the approved development height.

With regard to Building C, the approved building achieved compliance with the maximum building height limit under DA846/2016/JPA and therefore it is reasonable that the alterations and additions proposed to Building C comply with the 30% bonus height when applied to The Hills Growth Centre Precincts Plan height limit. The proposal has been designed to ensure that Building C remains height compliant with the maximum permitted building height on the site under the Housing SEPP of 27.3m. A separate height blanket diagram is provided at **Figure 16** below for Building C to indicate height compliance.



Figure 15 Height Blanket Diagram for Building A and B.



Figure 16 Height Blanket Diagram for Building C.





Notwithstanding the above, whilst we submit that the proposal complies with the 30% height uplift when it is reasonably applied to the approved building height of Building A and B, this is not the requirement under Clause 16(3) of the Housing SEPP which requires the 30% bonus height to be applied to the 'maximum permissible building height for the land', like that done for Building C.

As such, the proposal seeks to provide a maximum variation of 1.8m (6.59%) to the lift overrun to Building A and B and a variation of 600mm (2.2%) to roof slab of Building A and B.

The maximum building height under Clause 4.3 of The Hills Growth Centre Precincts Plan and Clause 16(3) of the Housing SEPP, are both a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of The Hills Growth Centre Precincts Plan.

### 3. Clause 4.6 to The Hills Growth Centre Precincts Plan

The objectives and provisions of Clause 4.6 are as follows:

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

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

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

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

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

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

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

**Note—**

*The Environmental Planning and Assessment Regulation 2021 requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

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

*(5) (Repealed)*

*(6) Development consent must not be granted under this section for a subdivision of land in Zone E2 Environmental Conservation, Zone RU6 Transition or Zone E3 Environmental Management if—*

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

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



(7) (Repealed)

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

(a) a development standard for complying development,

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

(c) section 5.4.

It is noted that Clause 4.3 is not “expressly excluded” from the operation of Clause 4.6. This request seeks a variation to the height of buildings control prescribed in Clause 4.3.

#### 4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

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

The judgement goes on to state that:

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

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

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





Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

*...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved, despite the variation, for the reasons set out in this request. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

The objectives and relevant provisions of Clause 4.3 of The Hills Growth Centre Precincts Plan are as follows:

- (a) to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,*
- (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- (c) to facilitate higher density development in and around commercial centres and major transport routes*

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below. Whilst it is noted that there are no objectives for the height bonus afforded by the Housing SEPP, the objective of *Division 1 In-fill affordable housing* of the Housing SEPP is also addressed.

**Objective (a): “to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,”**

The approved development on the site established a maximum variation to the height of buildings standard of 1.9m. The proposed development simply seeks to take up the bonus

The variation to the height of buildings development standard pertains to maximum variation of 600mm to the roof slab and 1.8m to the lift overrun above the permissible building height of 27.3m for the site. The extent of this variation is consistent with the variation approved on the site which equated to 700mm to the roof slab and 1.9m to the lift overrun above the base permissible height limit of 21m. In this regard, the approved development established a maximum building height on the subject site, which exceeded the development standard, and allowed for the erection of residential flat building development. Whilst the proposal will seek to increase this, the increased building height is in line with the bonus height afforded by the Housing SEPP incentives, which acknowledge the suitability of sites within highly accessible locations and of appropriate zonings, to accommodate higher density development.

Where the proposal is visible from the public domain, the modified building height is designed in such a way so that it will be consistent with the desired future character of the locality. Notably, the site is situated at the interface between numerous roadways, zones and building heights, and therefore lends itself to establishing a transition of density throughout the locality. Where visible, the proposal will appear as a predominantly compliant built form, with the non-compliant upper portions incorporated with appropriate materiality and design measures. At the pedestrianised scale, the non-compliances will be obscured and the development will appear as generally compliant to the casual observer.

Accordingly, objective (a) is satisfied despite the non-compliance.

**Objective (b): “to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space”**



In terms of visual impacts, the proposal maintains the form of a contemporary residential development and will have a positive impact on the scenic quality of the area. Whilst resulting in an additional two storeys to Building A and B, and four storeys to Building C, the built form is designed to maintain the architectural character and language so that it will be compatible with the desired character of the locality and will minimise any adverse scenic impacts. The additional building height, inclusive of the variation, will not result in any adverse bulk, scale or character impacts to the locality. It is also important to highlight

The proposal, including the non-compliances, has been designed to match the architectural style, design and presence of the approved contemporary development on the site. The non-compliances have been designed with appropriate architectural features including setbacks, vertical and horizontal elements, glazed openings and balcony articulation. The proposed materiality, containing a neutral colour scheme, also ensures the additional height is recessive and where visible from the public domain, is visually lightweight. At a pedestrianised scale the additional height breach will be appropriately concealed and the development appearing as a predominantly compliant built form.

From the surrounding properties, the considerable setbacks to the neighbouring properties in conjunction with the above-mentioned architectural measures, ensures that the non-compliance will not be visually obtrusive to the casual observer.

With regards to solar access, as shown in the submitted shadow diagrams, the majority of additional shadows cast by the proposal will fall over the subject site itself rather than to surrounding properties. Whilst the proposal will result in some extent of additional overshadowing at 9am and 10am during midwinter, the extent of this additional shadowing will fall predominately over Terry Road and will not have any adverse impacts on the solar access of surrounding residential sites, or any open spaces. Importantly, the proposal will not result in additional shadowing cast to the approved development to the east at No. 2-4 Alan Street during midwinter.

Accordingly, objective (b) is satisfied despite the non-compliance.

**Objective (c): “to facilitate higher density development in and around commercial centres and major transport routes”**

The proposal directly satisfies this objective in that it seeks to provide for a higher density of residential development within a high density residential area with good access to public transport along Terry Road and within 800m walking distance of the future Box Hill Town Centre. As such the site is considered to be a prime location for the proposed increase in residential density, as envisioned by the Housing SEPP density uplift, as well as this objective.

As such, objective (c) is satisfied despite non-compliance.

Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

**The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.**

The proposed development, including the non-compliant building height, will facilitate the delivery of new in-fill affordable housing which will meet the needs of very low, low and moderate income households. To request strict compliance and require deletion of the additional levels will adversely reduce the provision of affordable residential accommodation in the Box Hill Growth Centre Precinct, which directly offends the above objective. The proposed distribution of floor space is the most appropriate response to the site constraints, relationship to neighbouring properties and the public domain, and is largely a response to the approved built form on the site, which the development is consistent with in terms of building arrangement and setbacks.



The proposal will allocate 24 apartments as affordable housing per the Housing SEPP. Importantly, the site is ideally located to accommodate affordable housing, and the subsequent uplift in density, given its prime location within the Box Hill Growth Centre Precinct, with excellent access to public transport, and future commercial and retail premises and services within the Box Hill Town Centre. The site is unique in that it is a corner allotment with three street frontage, capable of accommodating additional density without adversely impacting the amenity of surrounding properties. Given the context of the site, it is considered suitable to accommodate the additional development density to support affordable housing without adversely impacting surrounding properties.

Ultimately, the provision of affordable housing on the site is delivering a significant social benefit to the locality.

To request strict compliance would be antipathetic to the objective of *Division 1 In-fill affordable housing* and as such, is considered acceptable.

#### **5. Sufficient environmental planning grounds (Clause 4.6(3)(b))**

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

In this case the whole of the development that is the subject of the current Development Application (being alterations and additions) represents the contravention. Accordingly, it is the environmental planning benefits of the whole development (being the alterations and additions) that need to be considered under the heading of 'sufficient environmental planning grounds'.

Having regard to clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Furthermore, the following planning grounds are submitted as planning grounds to justify contravening the maximum building height:

- The building under DA846/2016/JPA was approved at a height of 22.9m for Building A and B. The approved building height permitted a maximum non-compliance equating to 1.9m (9%) to the lift overrun, as well as a non-compliance to the roof slab of 700mm (3.3%). The approved building variation for the site establishes an accepted built height for the site which is more than half a storey above that permitted by the base control. The proposed development seeks to provide a building height that responds to the approved context of the site and therefore proposes a variation which equates to a maximum of half a storey above the height permitted for the application under the Housing SEPP.





- Following the above, the incentive provisions of the Housing SEPP seek to encourage the provision for affordable housing by permitting a 30% building height bonus to combat the burden of providing an affordable housing dedication. For those developments with existing approvals, it is considered unreasonable that the bonus height incentive would disregard the extent of the approved height variation and require the proposal to strictly comply with the 30% bonus applied to the permissible LEP building height limit. By doing so the incentive offered by the Housing SEPP would not outweigh the burden of providing affordable housing and the intentions and objective of the provisions would not be achieved. Indeed, if this were the case, there would be limited benefit to any approved development with an existing supported height variation to seek the bonus afforded by the Housing SEPP since a limited amount of additional floor space could be achieved within the strict height limit. Ultimately, this application would result in a reduced number of developments looking to incorporate affordable housing and would therefore deny the efforts of the NSW Government to increase the affordable housing supply across the State.
- More logically, in the case of an approved development where an appropriate building height for a site has been established by a variation, the 30% bonus height should be applied, on a merit basis, to the approved height of the development. This logic has been applied to the proposed development, which sits entirely within the building height limit when the 30% bonus under the Housing SEPP is applied to the approved building heights for the site.
- Notably, as a percentage, the proposal seeks to provide a maximum height variation to the lift overrun of 6.58% to the 27.3m SEPP height limit, which is less than the percentage variation previously supported and approved for the site (9%).
- Furthermore, it is important to highlight that the approved development on the site was permitted a maximum height variation of 9% in lieu of providing any affordable housing contribution on the site. The proposal seeks to provide an affordable housing provision of 2,125m<sup>2</sup>, equating to 15% of the total GFA of the development and a dedication of 24 residential apartments as affordable housing stock. The social benefit of providing affordable housing on the site, which is in a highly accessible location, is considered to outweigh the impacts of the height variation, which are considered to be negligible on the backdrop of the approved built form accepted on the site.
- Whilst exceeding the building height control, contravention is necessary to achieve a scale that is consistent with the strategic vision of the area, as evidenced by the incentive building height and floor space controls. The proposal will provide for a quantum of gross floor area which is permitted on the site under Clause 16(1) of the Housing SEPP and therefore, whilst height non-compliant, the density of development proposed for the site is anticipated by the provisions.
- As above, the proposed development provides a total quantum of gross floor area which complies with the maximum permitted under Clause 16(1) of the Housing SEPP. Whilst a built form on the site could potentially be designed to provide the same permissible gross floor area on the site within the building height limit, this would not provide a better outcome for the site in terms of built form arrangement and massing. Indeed, this same conclusion was reached when designing the approved building envelope on the site, which was supported with a similar height variation and a compliant total gross floor area. As such, the height variation, both as approved and proposed, is not considered to be a result of excess density, and instead provides a better distribution of permissible floor space across the site, in a way that responds to the context of the site.
- The proposed development has been designed to maintain the built form and massing arrangement of the approved development on the site since the approved scheme underwent considerable design development and review by a number of parties to ensure it achieve a high level of design quality and made a positive contribution to the streetscape. Indeed, the essence of the approved development being the three residential





buildings with a large ground floor communal open space is retained by this application. Whilst the proposal seeks to increase the building height on the site, the architectural intent of the approved scheme has been maintained and the proposal has been designed to ensure an integrated and cohesive presentation to the public domain, in which the proposed variation will not be perceptible to the casual observer.

- Following the above, whilst the development will also seek to increase the density in accordance with the Housing SEPP, there are significant public benefits afforded by the allocation of 24 affordable housing apartments in the Box Hill Growth Centre. The increase in height, beyond that approved, is consistent with the desire for high density areas in accessible locations and as afforded by the Housing SEPP. It would be antipathetic to the objective of Part 2, Division 1 of the Housing SEPP to deny the building height variation, which is consistent with an approved variation, and remove a significant quantum of affordable housing. As such, whilst the building height exceeds the standards, it is entirely consistent with the established and desired character of the Box Hill locality.
- The additional shadowing that the height non-compliance will generate is entirely reasonable. The additional building height, as afforded by the Housing SEPP, responds to the siting of the approved built form and the proposed height breach will not create any adverse shadow impacts to neighbouring properties when compared to the approved development. As shown in the shadow diagrams, the shadows cast by the proposed modifications have not been exacerbated by the non-compliant building height and the solar access to the neighbouring properties will be appropriately maintained.
- The additional building height will not result in any adverse view loss or visual impact. The location and distribution of building mass, whilst being greater than the approved development, is consistent with the approved built form on the site and has been designed as to provide a high quality, contemporary form as is consistent with the desire to deliver higher density development and affordable housing in accessible locations. In terms of view loss and outlook, the proposed building height and subsequent non-compliances will not compromise the use and enjoyment of neighbouring properties when compared to the approved development (or a compliant building height). That is, no significant views are enjoyed across the subject site and any incidental loss of views will be created by a compliant building envelope. As such, any view impact is a result of the compliant built form and is not worsened by the non-compliance.
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy. Whilst the height non-compliances include glazed openings and private open spaces, the separation distances and orientation of views limits to the street frontages any impact. Where the non-compliances oppose the eastern boundary appropriate privacy screening will be provided to ensure a suitable privacy relationship is maintained. As such, the privacy of neighbouring properties will be appropriately maintained despite the height modifications.
- The proposed development (which constitutes a 'contravention' in their entirety) aligns with the R4 zone objectives and the strategic intent for the locality than the approved development. The proposed will do this by:
  - providing for the housing needs of the community (within a high density residential environment) by providing for 34 additional apartments (without any material adverse impact);
  - contributing to the variety of housing types within the high density residential environment through the provision of additional 1 to 3 bedroom apartments;
  - providing for 24 affordable housing apartments in accordance with the Housing SEPP;
  - including additional dwellings on a site within a highly-accessible location, further supporting public transport patronage and also promoting walking and cycling.





- The additional apartments, inclusive of affordable housing, will 'better satisfy increasing demand, the changing social and demographic profile of the community, and the needs of a wide range of people, including persons with disability, children and seniors' (as per Clause 142(1)(d) of Chapter 4 of the Housing SEPP). The provision of additional one to three bedroom apartments, add to the choice for a diversity of households to be accommodated in the locality.
- The provision of 24 affordable housing apartments will also 'support housing affordability' per Clause 142(f) of Chapter 4 of the Housing SEPP. The additional affordable apartments, and subsequent non-compliance is only afforded through the proposed development which is made per the Housing SEPP.
- Given the absence of material adverse impacts, the changes will achieve 'good design' and 'a density appropriate to the site and its context' (in accordance with design quality principle 3 in Schedule 9 of Housing SEPP).
- The new dwellings, including affordable housing, will better 'respond to social context by providing housing and facilities to suit the existing and future social mix' (as per design quality principle 8 in Schedule 9 of Housing SEPP).
- The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
  - The proposal includes an ecologically sustainable development approach to apartment living use environmentally sound design features (1.3b).
  - The proposal promotes the orderly and economic use and development of land through the provision of a shop top housing development, with additional housing than approved (1.3c).
  - The proposal provides for the delivery of affordable housing on the site (1.3d).
  - The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context, consistent with the approval which was considered to exhibit a high design quality (1.3g).
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the approved building, the surrounding properties or the general public. Instead, strict compliance would constrain the provision of housing, including affordable dwellings, in a location which the planning controls identify as being a highly desirable place for the provision of high density housing that will support future walkable neighbourhoods and promote the use of public transport. Requiring strict compliance (and refusing the development application) would be a suboptimal planning outcome and antipathetic to the intent of the Housing SEPP. Avoiding that suboptimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control.

The above environmental planning grounds are not general propositions. The additional height has benefits specific to the site and the development as advanced above.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a clause 4.6 request does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby*



*properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

## **6. Conclusion**

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in The Hills Growth Centre Precinct Plan, alongside the bonuses afforded by the Housing SEPP. The request identifies that the maximum building height is 29.1m which equates to a numerical variation of 1.8m and percentage variation of 6.59%, as measured to the lift overrun.

The request explains that, despite the proposed variation, the development satisfies the objectives of the height of buildings standard and the objectives of Zone R4, and it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard.

In addition, the request demonstrates that there are sufficient site-specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.



## ATTACHMENT I – COUNCIL’S STATEMENT OF FACTS AND CONTENTIONS



Filed: 21 February 2025 9:37 AM



D00023RJQK

### Statement of Facts and Contentions

#### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00015592

#### TITLE OF PROCEEDINGS

First Applicant	WSDC Box Hill Primitus Development Pty Ltd
First Respondent	The Hills Shire Council ABN 25034494656

#### FILING DETAILS

Filed for	The Hills Shire Council, Respondent 1
Legal representative	ROSLYN MARY MCCULLOCH
Legal representative reference	
Telephone	02 9262 6188
Your reference	TW:250030

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Statement of Facts and Contentions - FILED.pdf)

[attach.]



**STATEMENT OF FACTS (PAGE 1) AND  
CONTENTIONS (PAGE 12)**

**COURT DETAILS**

Court	Land and Environment Court of NSW
Class	1
Case number	2025/15592

**TITLE OF PROCEEDINGS**

Applicant	<b>WSDC Box Hill Primitus Development Pty Ltd</b>
Respondent	<b>The Hills Shire Council</b>

**FILING DETAILS**

Filed for	<b>The Hills Shire Council</b> , Respondent
Legal representative	Roslyn Mary McCulloch, Pikes & Verekers Lawyers
Legal representative's reference	TAW:250030
Contact name and telephone	Thomas Ward, (02)9262 6188
Contact email	<a href="mailto:tward@pvlaw.com.au">tward@pvlaw.com.au</a>

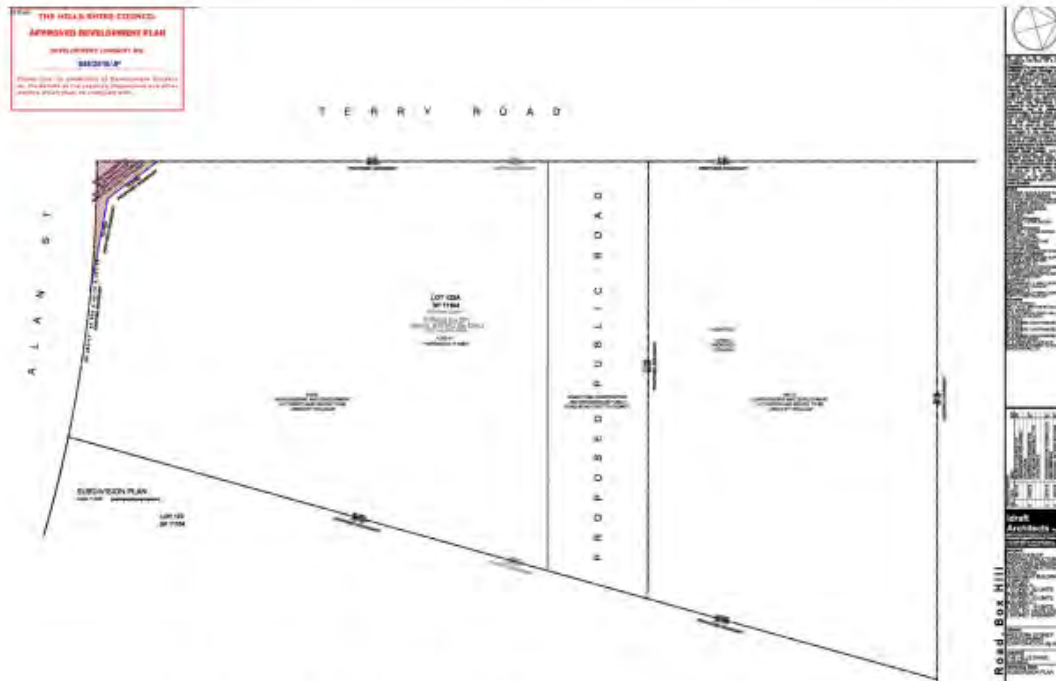
**PART A – STATEMENT OF FACTS**

**1. BACKGROUND**

- 1.1 Development Application 846/2016/JP was approved on 1 December 2016 by the Joint Regional Planning Panel (**the 2016 Approval**) in relation to the property located at 13 Terry Road, Box Hill (**the Site**).
- 1.2 The 2016 Approval was for a residential flat building containing 121 units comprising of:
- 13 x 1 bedroom units,
  - 94 x 2 bedroom units and
  - 14 x 3 bedroom units.
- Basement parking (2 levels) for 152 cars.

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- 1.3 The subdivision of the Site created a proposed public road and two parcels (4,252m<sup>2</sup> and 3,740m<sup>2</sup>) to be linked by vinculum, north and south of the future road.



Approved Subdivision Plan, 846/2016/JP

- 1.3. The 2016 Approval comprised of 2 residential flat buildings (Building A/B, and Building C):

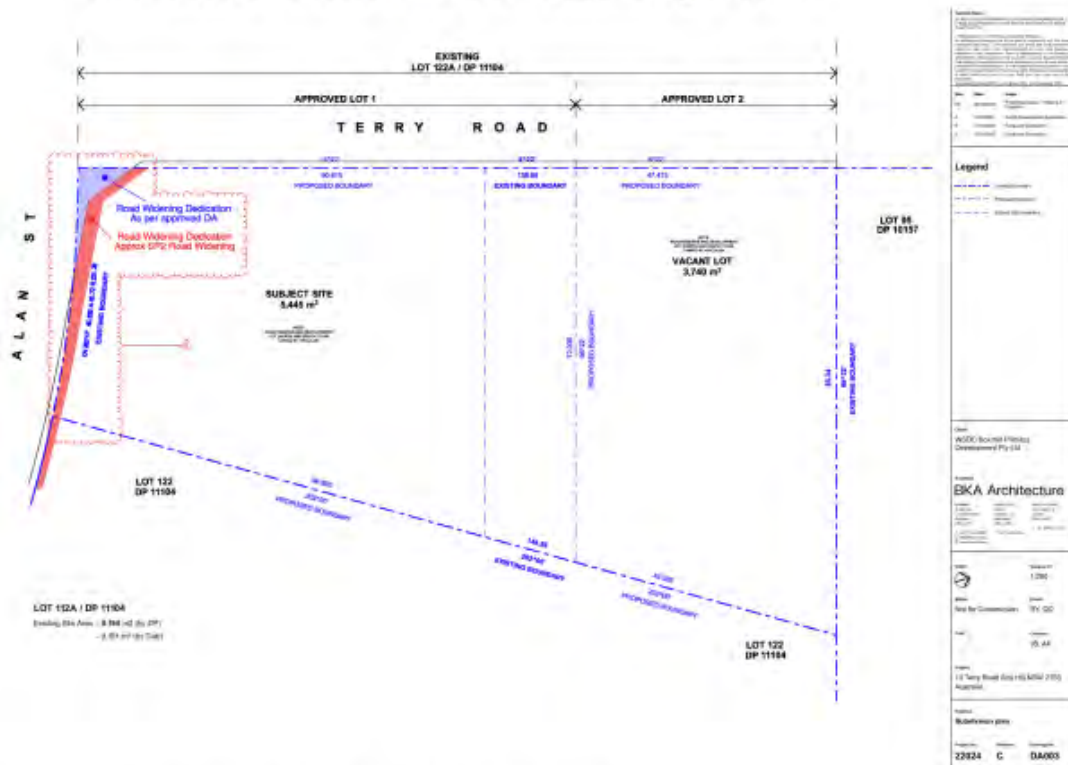
- Building A – 52 units (7 storeys).
- Building B – 53 units (7 storeys).
- Building C – 16 Units (4 storeys).

There were 2 levels of basement parking.

- 1.4 A variation to building height was approved (maximum of 21.8m in a max. 21m area). The additional height was limited to roof forms and lift overruns at the western ends of the buildings and is due to the slope of the site. The applicant's Clause 4.6 at that time noted that the portion of the building that exceeds the height control does not contain any floor space which assists with demonstrating that the proposal is not an overdevelopment of the site.



- 1.5 The FSR was 1.97:1.
- 1.6 The 2016 Approval was modified (Development Consent No. 846/2016/JP/A) via a Class 1 Appeal on 13 December 2023 (File No. 2023/215622).
- 1.7 The modified application reduced the number of units from 121 to 114, increased the maximum building height to a maximum of 22.9m, and had an FSR of 1.9:1. The height increase was a result of increasing the floor to ceiling height from 2.9m to 3.1m.
- 1.8 The subdivision plan approved under the modification created Lot 1 and Lot 2. Lot 1 includes the area of the future road through the site.



Approved Subdivision Plan, 846/2016/JP/A

## 2. THE PROPOSAL

- 2.1 These proceedings relate to amending development application (Development Application No. 856/2025/JP) (PPSSCC-629), for 13 Terry Road, Box Hill.

2.2 The proposal is for alterations and additions to the approved residential flat building development (114 units) as modified (DA846/2016/JP/A). It seeks consent for an additional two storeys to Buildings A and B, and an additional four storeys to Building C to deliver an additional 34 units, including 24 affordable apartments. 2.3

It will result in a total of 148 apartments across the Site:

- 10 x 1 bed, + study,
- 112 x 2 bedroom and
- 26 x 3 bedroom apartments.

#### **Building A**

- Ground Floor to Level 6 - No change to units.
- Level 7 - The proposed additional Level 7 will seek to provide for 2 x 2 bedroom apartments and 2 x 3 bedroom apartments. This level will also include an outdoor communal area including a BBQ area, tables and seating, artificial turf and landscape features.
- Level 8 - The proposed additional Level 8 will seek to provide for 2 x 2 bedroom apartments and 2 x 3 bedroom apartments.
- Roof - The roof will include building services, lift overrun and solar panels.

#### **Building B**

- Ground Floor to Level 6 - No change to units.
- Level 7 - The proposed additional Level 7 will seek to provide for 1 x 1 bedroom + study, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment. This level will also include an outdoor communal area including a BBQ area, tables and seating and landscape features.
- Level 8 - The proposed additional Level 8 will seek to provide for 1 x 1 bedroom + study, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment.
- Roof - The roof will include building services, lift overrun and solar panels.

#### **Building C**

- Ground Floor to Level 3 - No change to units.
- Level 4-7 - The proposed additional Levels 4-7 will be identical and seek to provide 4 x 2 bedroom apartments.
- Roof - The roof will include building services, lift overrun and solar panels.

- 2.4 It is noted that changes to ground floor landscaping are also proposed, including the reduction of permeable landscaping and deep soil planting associated with the extension of the basement.
- 2.5 The proposed increase in density is sought in accordance with the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*. Chapter 2 Affordable housing, Division 1 In-fill affordable housing of the Housing SEPP provides a floor space ratio (**FSR**) and building height bonus of 20-30% for developments that include at least 10-15% of gross floor area as affordable housing, for a minimum period of 15 years.
- 2.6 The proposal will allocate 24 units within the approved levels of Building C as affordable housing. Floor to ceiling heights in Building C will be reduced. Additional common open space will be included in new Level 1 to Buildings A and B.
- 2.7 The proposal also alters the approved basement parking levels to accommodate the additional parking spaces and storage required to support the increase in apartments. The development will provide for an additional 31 parking spaces, resulting in a total of 178 resident and visitor car spaces and an additional 9 kerbside parking spaces.
- 2.8 The proposed development seeks approval for an increase in floor space of 30% and building height of 30%, and will deliver affordable housing equating to 15% of the total floor area as required by the Housing SEPP.
- 2.9 The applicant has submitted a Clause 4.6 variation in support of a height variation above the permitted bonus. The applicant seeks to retain a similar variation to the maximum height under the bonus which was approved under the *State Environmental Planning Policy (Precincts - Central River City) 2021 (SEPP Precincts)*. A variation of 2.2% is proposed to the roof slab of Buildings A and B (600mm), and 6.59% (1.8m) to the lift overrun.
- 2.10 The proposed FSR is 2:1.



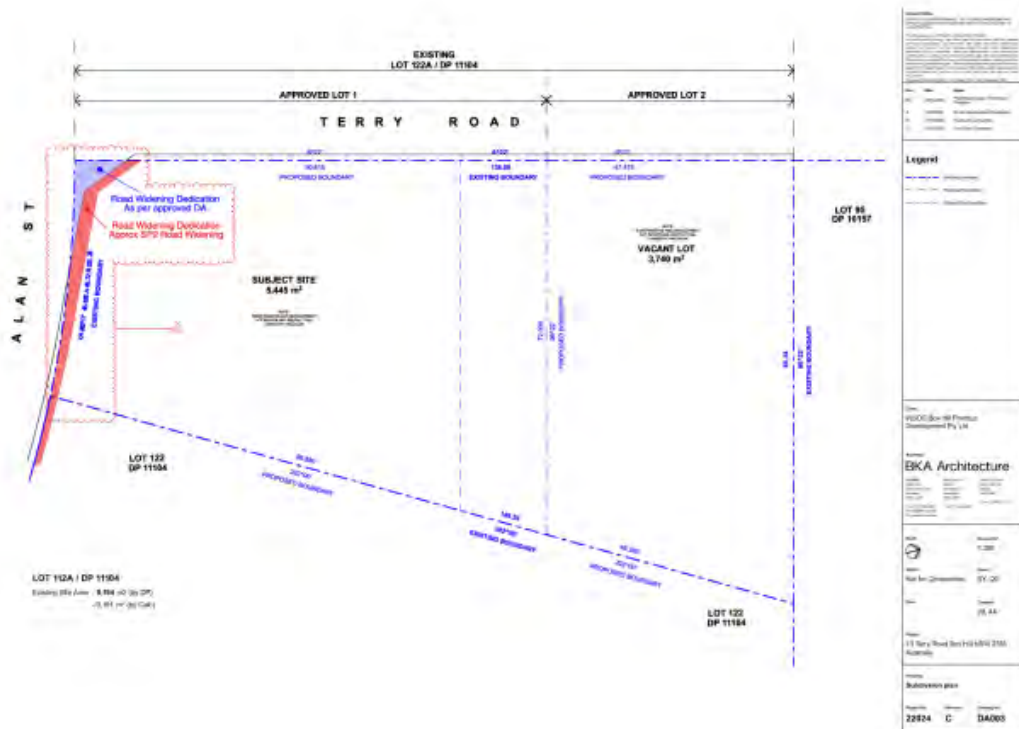
### 3. THE SITE

- 3.1 The site is No. 13 Terry Road, Box Hill and is legally identified as Lot 122A in DP 11104 (**the Site**). The Site is irregular in shape with a frontage to Terry Road of 138m, a 45.6m frontage to Alan Street, an eastern boundary of 148.29m to the east, and a northern boundary of 72.03m. The Site has a total area of approximately 9,194m<sup>2</sup>.
- 3.2 The Site falls from the southern boundary to the northern boundary by approximately 3m.



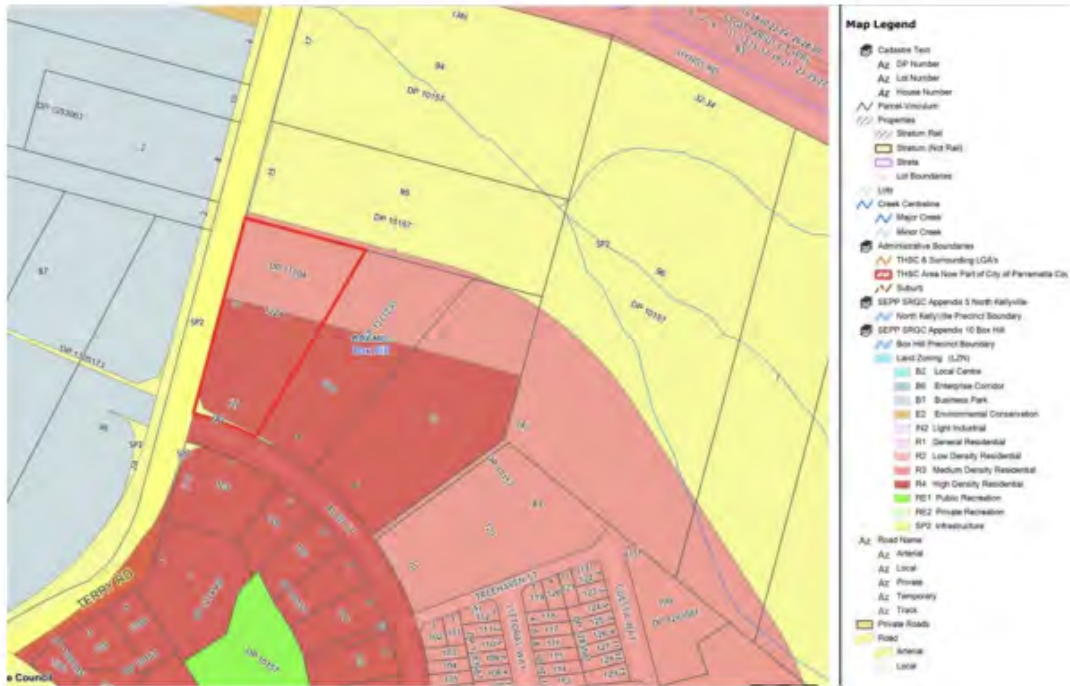
*Subject Site*

- 3.3 The subject application only relates to the portion of the Site identified as "Approved Lot 1", in accordance with the approved subdivision plan under DA846/2016/JP/A. Approved Lot 1 has an area of 5,445m<sup>2</sup>.



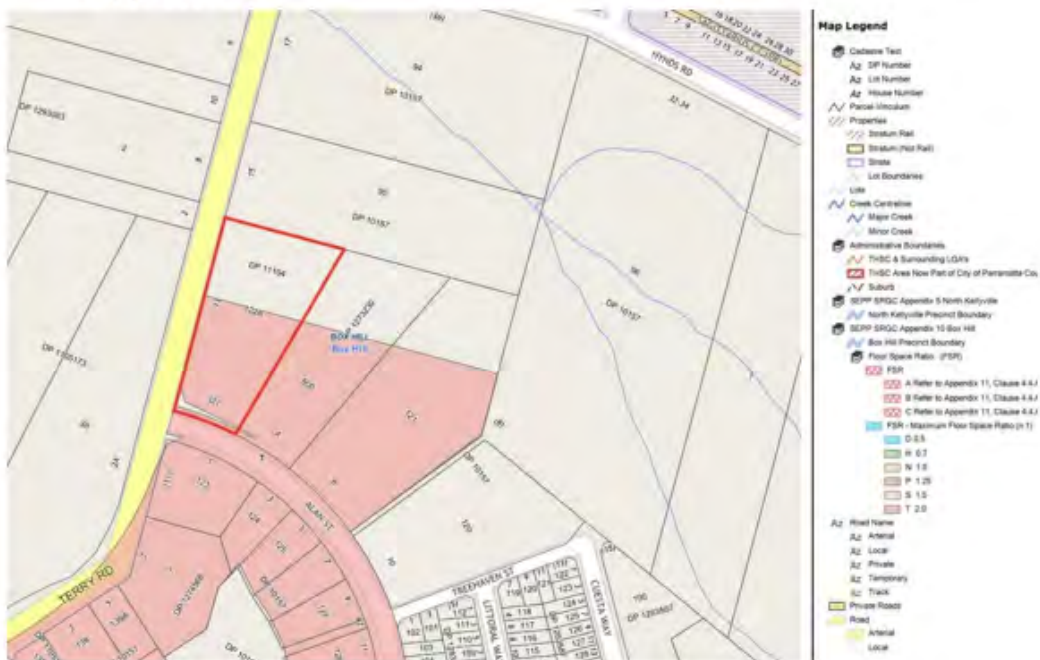
Approved Subdivision Plan 846/2016/JPA

- 3.4 Approved Lot 1 in the Subdivision Plan above includes the area of the future road which dissects the Site. A site area is not given for the land on which the residential flat building will be sited following the construction and dedication of the future road. The subdivision plan also identifies the road widening dedications along the Alan Street frontage.
- 3.5 The majority of approved Lot 2 is affected by a Transgrid electrical easement.
- 3.6 The existing Site is a rural allotment, clear of any development and significant vegetation.
- 3.7 The Site is zoned part SP2 Infrastructure, part R4 High Density Residential, part R3 Medium Density Residential under the SEPP (Precincts) 2021, Appendix 10.



Zoning Map

3.8 The Site is subject to a maximum Floor Space Ratio of 2:1 under SEPP Precincts, Appendix 10.



Floor Space Ratio Map



- 3.9 The Site is subject to a maximum building height of 21 metres under SEPP Precincts, Appendix 10.



#### 4. THE LOCALITY

- 4.1 The Site is located within the Box Hill Growth Centre approximately 220m from Windsor Road.
- 4.2 The proposal is located adjacent to a similar proposal at No. 4 Alan Street which is presently under construction, having been approved by the Joint Regional Planning Panel on 16 December 2015 (and subsequently modified). The area is undergoing transition from low scale rural / residential land uses to more intensive urban development as provided for by the North West Growth Centres Precinct Planning.
- 4.3 To the west of the Site on the opposite side of Terry Road is land zoned B7 Business Park which is subject to a height limit of 24 metres.
- 4.4 To the south of the Site on the opposite side of Alan Street is land zoned R4 High Density Residential which is subject to a height limit of 21 metres.

#### 4. STATUTORY CONTROLS

- 4.1 Environmental Planning and Assessment Act 1979 (**EP&A Act**).

- 4.2 Rural Fires Act 1997 (**RF Act**).
  - Planning for Bushfire Protection (**PBP**) 2019.
- 4.3 State Environmental Planning Policy (Resilience and Hazards) 2021
  - Chapter 4 Remediation of Land
- 4.4 State Environmental Planning Policy (Transport and Infrastructure) 2021.
  - Chapter 2 Infrastructure.
- 4.5 State Environmental Planning Policy (Housing) 2021 (**SEPP Housing**)
  - Chapter 2 Affordable Housing
  - Chapter 4 Design of residential apartment development
  - 4.5.1 The application has not been considered by a design review panel.
  - 4.5.2 The application includes a Design Verification Statement prepared by a registered Architect.
  - Schedule 9 Design principles for residential apartment development
  - 4.5.3 A statement addressing the Design Quality Principles has been provided.
- 4.6 Apartment Design Guide (**ADG**)
  - 4.6.1 The Apartment Design Guide has been considered by the applicant.
  - 4.6.2 An assessment of the modified proposal against the Part 3 Siting the development, and Part 4 Designing the building sections of the Apartment Design Guidelines has been undertaken.
- 4.7 State Environmental Planning Policy (Building Sustainability Index: BASIX).
  - 4.7.1 A BASIX certificate (674075M\_03) and NATHERS Certificate (0011550589) has been issued.
- 4.8 State Environmental Planning Policy (Biodiversity and Conservation) 2021.
  - Chapter 6 Water Catchments
- 4.9 State Environmental Planning Policy (Precincts – Central River City) 2021
  - Appendix 10 The Hills Growth Centre Precincts Plan (Box Hill Precinct ("THGCCPP")).
  - FSR of 2:1
  - Height of Buildings - 21 metres.
- 4.10 Box Hill and Box Hill Industrial Development Control Plan 2018
- 4.11 Contributions Plan No 15 – Box Hill Precinct.

## **5. ACTIONS OF THE RESPONDENT**

- 5.1 On 27 November 2024, the Development Application was lodged with the Respondent.
- 5.2 The Development Application was notified by the Respondent to adjoining properties between 28 November 2024 and 19 December 2024. No submissions were received.
- 5.3 The Respondent also advised Sydney Water, Transgrid and Endeavour Energy of the proposal.
- 5.4 On 28 November 2024 the Respondent received comments / conditions from Endeavour Energy.
- 5.5 On 13 December 2024 the Respondent received comments from Sydney Water.
- 5.6 On 19 December 2024 the Respondent issued a letter requesting amendments to the bin storage room since it is undersized, advising that Sydney Water have advised no capacity is available to service the development, and requesting landscaping amendments to provide sufficient pot sizes and to reinstate turf to communal areas.
- 5.7 On 14 January 2025 the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Respondent's deemed refusal of the development application.
- 5.8 On 31 January 2025 the Respondent received comments / conditions from Transgrid.



## **PART B – CONTENTIONS**

### **B1 – CONTENTIONS THAT THE APPLICATION BE REFUSED**

#### **1. Height**

The proposed development exceeds the maximum height of buildings development standard contained in the THGCPP. The proposal seeks to provide a maximum variation of 1.8m (6.59%) to the lift overrun to Building A and B and a variation of 600mm (2.2%) to roof slab of Building A and B.

#### **Particulars**

- a) The proposal seeks a variation to Clause 16(3) of the Housing SEPP and Clause 4.3 Height of Buildings of THGCPP and has submitted a Clause 4.6 variation. The applicant argues that the previous height variations approved under Modification Consent No. 846/2016/JP/A should be carried forward (albeit slightly different) into the proposed development which seeks to utilise the bonuses under the Housing SEPP.
- b) A Building Height Plane diagram which clearly illustrates the proposed developments height in relation to the maximum height permitted under the Housing SEPP based on the 21m height limit permitted under THGCPP, has not been provided to enable a full assessment of the proposed height variation. A building height plane diagram should clearly show the proposed height exceedance and indicate whether it also includes floor space. The Respondent does not agree that the bonus height available under the Housing SEPP is a development standard that should be varied nor that any variation to the THGCPP height limit should be retained in addition to the bonus available under the SEPP where it would result in a height beyond the bonus height. The maximum height available is limited to the maximum height permitted under the THGCPP plus the bonus height under the Housing SEPP, and no further variation is reasonable.
- c) Any height beyond the Housing SEPP bonus would be inconsistent with objective 1(a) of 4.3 Height of Buildings (THGCPP) which is to establish the maximum height of buildings on land within the Box Hill Precinct.

- d) It is not reasonable to expect that a previously approved height variation which was not considered in the context of a bonus height, should be retained. The proposed variation results in a development that not only exceeds the expected maximum building height in the Precinct but the expected maximum height after the bonus is applied and should not be supported. The applicant should amend the development to reduce the height to within the allowable bonus.
- e) The additional proposed height and variations to ADG building separation controls may adversely affect units in the adjoining development at No. 2-4 Alan Street. The submitted shadow diagrams do not demonstrate that the units within the development at No. 2-4 Alan Street will achieve the required solar access (Objective 4A-1 of the Apartment Design Guide) design criteria:
  - i. 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...
  - ii. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.
  - iii. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter
- f) Further analysis of the adjoining approved residential flat building development is to be provided to demonstrate that amenity to adjoining residential units is maintained despite the proposed increase in height.

## **2. Public Utility Infrastructure**

The applicant has not adequately addressed Clause 6.1 Public Utility Infrastructure of THGCPP to demonstrate that there is capacity to service the proposed additional 34 residential units.

### **Particulars**



- d) It is not reasonable to expect that a previously approved height variation which was not considered in the context of a bonus height, should be retained. The proposed variation results in a development that not only exceeds the expected maximum building height in the Precinct but the expected maximum height after the bonus is applied and should not be supported. The applicant should amend the development to reduce the height to within the allowable bonus.
- e) The additional proposed height and variations to ADG building separation controls may adversely affect units in the adjoining development at No. 2-4 Alan Street. The submitted shadow diagrams do not demonstrate that the units within the development at No. 2-4 Alan Street will achieve the required solar access (Objective 4A-1 of the Apartment Design Guide) design criteria:
  - i. 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...
  - ii. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.
  - iii. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter
- f) Further analysis of the adjoining approved residential flat building development is to be provided to demonstrate that amenity to adjoining residential units is maintained despite the proposed increase in height.

## **2. Public Utility Infrastructure**

The applicant has not adequately addressed Clause 6.1 Public Utility Infrastructure of THGCPP to demonstrate that there is capacity to service the proposed additional 34 residential units.

### **Particulars**



- a) Clause 6.1(1) of the THGCPP states that "Development Consent cannot be granted for development on land to which this Precinct Plan applies unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required".
- b) Evidence from an Accredited Service Provider (ASP) (of an appropriate level and class of accredited to assess the electricity load and the proposed method of supply for the development) has not been provided to confirm the supply of electricity and advise of any extension or augmentation required.
- c) Evidence from a Water Servicing Coordinator and Sydney Water Corporation Case Manager (under reference 208853) that the proposed additional density can be serviced has not been provided.
- d) With respect to waste water, Sydney Water have advised that "The proposed development is part of NWGA and will discharge into SP1154. There is no current capacity at SP1154. Ultimate capacity is anticipated by Q4 2025 when the pressure main duplication at Windsor Rd is expected to be completed. Our interim servicing plans are anticipated to be completed end Q1 2025. We will continue to keep councils and developers, who register directly with Sydney Water, updated on these timescales."

### **3. Thermal Endorsement**

#### **Particulars**

- a) A NatHERS certificate is lodged with the application. The stamp of thermal endorsement is not provided on the plans.

### **4. Landscaping**

The proposed development does not provide adequate and good quality landscaping.

#### **Particulars**

- a) The development application should be refused as landscape area and deep soil calculations do not comply with the controls and objectives within the ADG, and the Box Hill Growth Centre Precinct Development Control Plan.

- i. Control 3E-1 of the ADG states that a minimum 7% of the site is to compose of deep soil of minimum dimensions of 6m x 6m which has not been achieved with this proposal.
- ii. The definition of landscape area in accordance with the Box Hill Growth Precinct DCP relevantly states:

*'Landscaped area is defined as an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted areas and the like.'*

The development is not in compliance with control 5.4 of the Box Hill Growth Centre Precinct DCP which requires a minimum of 30% of the site to be landscaped.

- b) Landscaped area, communal open space, site coverage and deep soil areas must comply with the ADG:

- Deep soil – 7% of site area with minimum dimension of 6m.
- Communal open space – 25% of the site.

And the Box Hill DCP:

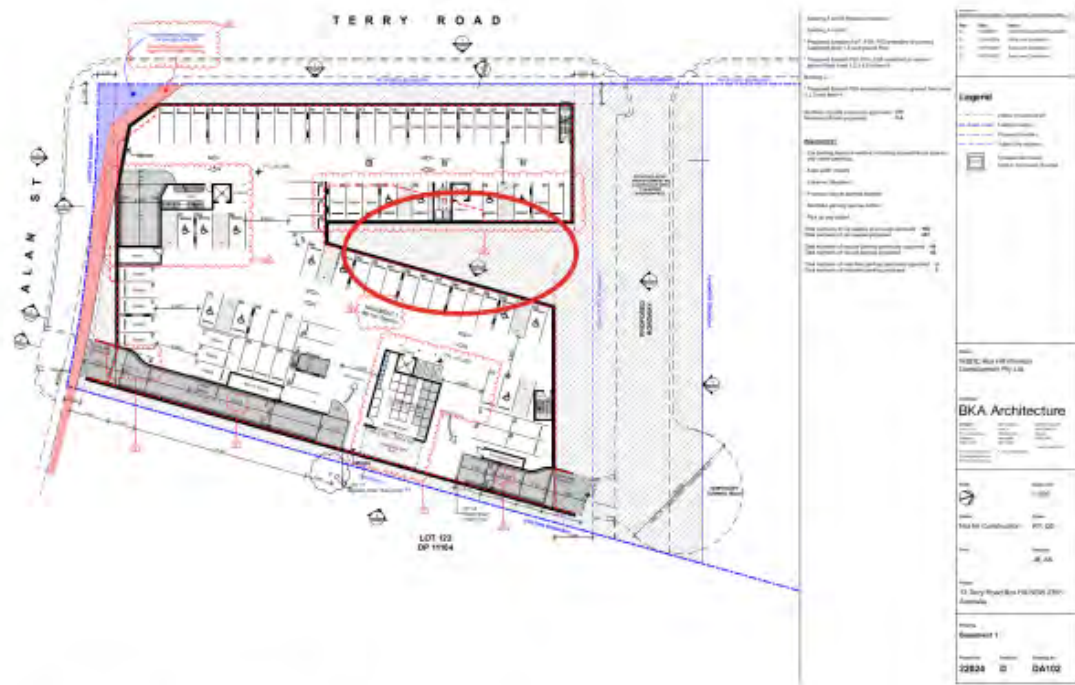
- Site Coverage – 50%

And the Housing SEPP:

- Landscaped Area 30%

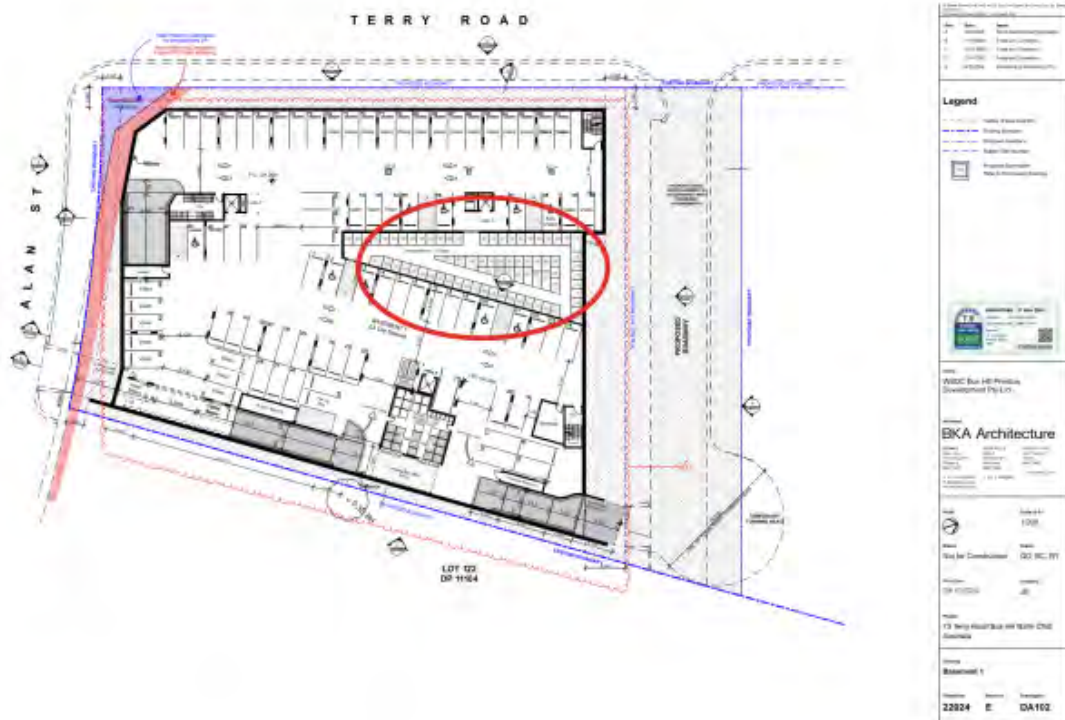
**"landscaped area** means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area."

- c) According to the Housing SEPP definition of landscaped area, rooftop common open space cannot be included in the calculation.
- d) The proposed increased basement footprint (ie. compare approved and proposed Basement 1 plans) significantly reduces the potential for deep soil planting.



Approved Basement 1 (846/2016/JP/A)





Proposed Basement 1 (856/2025/JP)

- e) The development application should be refused as it has not been demonstrated that minimum pot sizes have been provided in accordance with Clause 3.6 (e)(f)(g) of The Hills DCP 2012 Part C Section 3 – Landscaping.

## 5. Communal open space

The proposed development does not provide communal open space in accordance with the requirements of the ADG.

### Particulars

- a) The Statement of Environmental Effects (page 53) advises there is a shortfall of common open space as required by the ADG of 34m<sup>2</sup>, however the area of common open space and compliance cannot be confirmed based on the plans provided. Compliance with the ADG common open space area is required.

## 6. Building Separation

The proposed development does not provide ADG compliant building separation

### Particulars

- a) The development does not comply with the required building separation distances for proposed additional levels (ADG, 3F Visual Privacy).
- b) Required setback lines and setback dimensions are not provided on the plans to clearly show the required and proposed setbacks / separation and proposed variations. The applicant has not supported the proposed variations with analysis of sightlines or built form in relation to the adjoining development at 2-4 Alan Street to the east, nor other surrounding land. Roof top common open space is also within the required setbacks and may adversely affect the amenity of the adjoining development.

## 7. Waste - Garbage Bay Area

### Particulars

- a) The garbage bay area must be increased in size to accommodate a minimum of 34 x 1100 litre bins (17 bins for garbage and 17 bins for recycling). The dimensions of an 1100 litre bin are 1245mm (d), 1370mm (w), and 1470mm (h). Bins must not be stacked more than 2 bins deep and walkways must have a clear floor width of 1.5m. This is to ensure bins are accessible to residents and waste collectors.
- b) Due to the proposed NSW Government mandate requiring food waste to be collected separate from garbage at households by July 2030 (Food Organics and Garden Organics service), it is requested that the garbage bay area also be updated to accommodate 27 x 140 litre organics bins. Alternatively, a separate garbage bay area be provided within 10m of the MRV loading bay to store these organics bins so that the requirements of the mandate can be satisfied.



### **8. Civil Engineering Works (New Road, Road Widening and Temporary Detention Basin)**

The development application should be refused because the Civil Engineering Activities do not comply with the Council's design standards, are inconsistent to the original approval DA 846/2016/JP and the Subdivision Works Certificate issued for the development over the adjoining property 4 Alan Street.

#### **Particulars**

- a) The development was approved to provide Village View Street (Proposed Road 1), Alan Street reconstruction, Temporary Detention basin and other elements in accordance with the Civil Engineering Package Job Ref No. 15201 Revision D dated 28/09/2016 prepared by Umbrella Civil Consulting Engineers, approved under the consent DA 846/2015/JP. The applicant submitted a set of Civil Engineering Package Job Ref No. 15201 Revision B dated 18/03/2016 prepared by the same consultant Umbrella Civil Consulting Engineers that was superseded by the revision D, the later was accepted and referenced in the consent.
- b) The civil design plans do not depict the existing site boundaries and the future site boundary upon road widening, and the kerb alignment and footpath verge must be measured from the future site boundary.

### **9. Objects of the EPA Act**

The proposed development is contrary to the objects of the EPA Act.

#### **Particulars**

- a) Any orderly development (potential development) of Lot 2 has not been investigated with previous and/or current development applications.
- b) Insufficient information is provided to demonstrate that the proposed development will achieve good design and amenity in the built environment.

### **10. Public Interest**



Approval of the proposed development is not in the public interest.

**Particulars**

- a) The Development Application must be refused because the proposed development is not in the public interest having regard to the contentions raised above, is not suitable for the Site and represents an overdevelopment and unacceptable intensity of use.
- b) Approval of the Development Application would establish an undesirable precedent for future development within the locality and which is beyond the intended scope of the incentive bonuses permitted under the Housing SEPP.
- c) Insufficient information is provided to demonstrate that the Site is suitable for the proposed development and that the environmental impacts on the natural and built environment, and social impacts (ie. amenity) are reasonable.

**B2 – CONTENTIONS THAT MAY BE ADDRESSED BY CONDITION**

- a) Section 7.11 Contributions - Monetary contributions must be paid to Council in accordance with Section 7.11 of the EPA Act.
- b) Property Numbering for Residential Flat Buildings (Street/Units) - The Development will be required to adopt the street address and property numbering protocols and location of mailboxes as nominated by Council's Land Information Department.
- c) Endeavour Energy, Transgrid and Sydney Water conditions are required to be imposed.

**B3 – CONTENTIONS REQUIRING FURTHER INFORMATION**

**11. Insufficient information and detail has been included with the proposal to fully assess the development.**

**Particulars**

The development application as submitted does not include sufficient information relating to the following matters to enable a full and proper assessment of the proposal to be undertaken.

### **Planning**

- a) Lot 1 as identified on the subdivision plan (5,445m<sup>2</sup>) includes a future road. This road is to be constructed and dedicated to Council at no cost, as approved under the original Development Consent 846//2016/JP. No area calculation is provided for the Site, excluding the future road, upon which the residential flat building is proposed. Without this information, calculations for landscaped area, deep soil planting, site coverage etc cannot be determined and a full assessment cannot be undertaken.
- b) A final site area for the residential flat building development (excluding roads and road reserves) should be provided, and calculations for site coverage, landscape area, deep soil, common open space based on that area.
- c) Setback lines, proposed setbacks and dimensions from boundaries should be shown on the plans to clearly show compliance with / variations to required DCP and ADG setbacks and building separation controls.
- d) A Building Height Plane should be provided to clearly illustrate the proposed development in relation to the maximum height permitted under the Housing SEPP based on the 21m height limit permitted under THGCPP.
- e) A Site Coverage Calculations Plan is not provided and cannot be confirmed.
- f) Floor Space Ratio calculations cannot be confirmed since plans are not provided which show the floor areas of the RFB included in the calculations of FSR for each level of the proposed development.
- g) Insufficient information is provided to be able to assess the impacts of the additional proposed height on the adjoining residential development at 2-4 Alan Street, Box Hill.



- f) Drawing DA730 (Revision A) Landscape, Deep Soil and COS schedules has no scale. Landscaped area, communal space, site coverage and deep soil areas have not been calculated based on the RFB site area. They have been calculated on the given Lot 1 (5,445m<sup>2</sup>) which does not exclude the future road which must be constructed and dedicated to Council. Deep soil areas within the future road reserve have also been included in the calculation. These calculations are therefore incorrect and cannot be confirmed since the size of the RFB site is not given. Insufficient information is provided to enable a full assessment of the proposal and to determine compliance with the relevant controls.
- g) Deep Soil and Landscaped areas are shown on the same plan and it is unclear as to whether these areas overlap. Calculations cannot be confirmed. Separate Landscaped Area and Deep Soil calculation plans are required.







LANDSCAPE SCHEDULE	
Level	Area
Ground Level	1,273.75
Level 07	475.59
	<b>1,749.34 m<sup>2</sup></b>

DEEP SOIL SCHEDULE	
Area	
483.78	

*Excerpts from Drawing DA730 (Revision A) Landscape, Deep Soil and COS schedules*

### **Bushfire**

- a) The Site is bushfire prone, since it is not yet subdivided. A bushfire report has not been submitted with the application.

### **Vehicular Access, Car Parking and Traffic**

- a) The intersection of Terry Road and Alan Street will be signalized in the future. The Concept Engineering Plans prepared by Umbrella Civil, dated 18/03/2016 (ECM Document date 27/11/2024), for 13 Terry Road must align with the anticipated intersection upgrade works and civil works associated with the approved development at 1-3 Alan Street. These works include a 21m wide road reserve for Alan Street up to CH75, transitioning to a 20m road reserve beyond that. Additionally, the Civil Works Plan for 1-3 Alan Street shows a 3.5m wide footway area on the southern side of Alan Street, whereas the submitted

road layout shows a 4.55m wide footway for the same section. The applicant is to amend the plans and resubmit for review.

- b) Although the submitted cross-section of 'Road 1' meets the required 16.5m road reserve width in the Box Hill Growth Centre Precincts DCP (March 2018), it does not include the required 2.5m shared path. Refer to Figures 14 and 25 in the Box Hill DCP, and The Hills Shire Bike Plan. The applicant is to amend the plans and resubmit for review.
- c) Inadequate dimensions are provided ensuring the design compliance of the width of all aisles, carparks and clearance between walls and structures in accordance with AS 2890.1.
- d) Design details demonstrating the compatibility of amended carpark with the stormwater detention system required with the development.

#### **Subdivision and Dedication of Roads**

- a) A new road (proposed Road 1) identified as Village View Street on the predetermined street network on the Box Hill precinct DCP was approved to be constructed and dedicated as public road reserve with the development pursuant to the DA 846/2016/JP, which the applicant wants to retain under the current proposal. However, the Subdivision Plan project no. 22024 DA 003 prepared by BKA Architecture Revision D dated 09/10/2024 is not reflective to (removed) the details of public road reserve and the undertaking annotated regarding 'the road construction and dedication at no cost to council' on the original approved Subdivision Plan Job ref: 28305 drawing No. DA 0102 Revision D dated 18/10/2016, prepared by Idraft Architects Pty Ltd.
- b) The current BKA's Subdivision Plan incorporating the road reserve within a development lot 1 is inappropriate and inconsistent to the original approval as it will establish an undesirable precedent in the locality, delaying the provision of public infrastructure, which must be extended to facilitate the public road connection over the adjoining sites in the locality.



- c) The lot 2 as depicted on the Subdivision Plan by BKA Architects is not reflective to the original subdivision approved under the DA 846/2016/JP. The separation of lot 2 is contrary to the annotation about linking by the vinculum.
- d) The extent of road widening area fronts Alan Street and at the intersection of Terry Road must be identified as a separate lot for future acquisition by council.

#### **Stormwater Management**

- a) The development was approved to provide Temporary Onsite Stormwater Detention System and Water Sensitive Urban Design elements, consisting of Rainwater tank (21.6kL) and Treatment devices, in accordance with the set of Stormwater Concept Plans Project No. UMB15201 Issue E dated 19/09/2016 prepared by Umbrella Civil Consulting Engineers, approved under the consent DA 846/2015/JP. The applicant submitted a set of an amended Stormwater Drainage Design Project No. 20240176 Revision C dated 24/10/2024 prepared by a SGC Consultants Pty Ltd. The new set of stormwater plans are not supported by necessary calculations (DRAINS and MUSIC models) and Stormwater Management report.

#### **Groundwater Management**

- a) The development relying on excavation within the site to provide multiple basement levels is not supported by a Hydrogeological Report including Dewatering Management Plan, Groundwater Seepage Analysis report and Groundwater Management Plan.

#### **SIGNATURE**

Signature of Kate  
Clinton



Capacity

Coordinator- Development Assessment,  
The Hills Shire Council

Date of signature

20 February 2025



# ATTACHMENT J – APPLICANT’S STATEMENT OF FACTS AND CONTENTIONS IN REPLY



Filed: 26 May 2025 10:50 AM



## Statement of Facts and Contentions in Reply

### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00015592

### TITLE OF PROCEEDINGS

First Applicant	WSDC Box Hill Primitus Development Pty Ltd
First Respondent	The Hills Shire Council ABN 25034494656

### FILING DETAILS

Filed for	WSDC Box Hill Primitus Development Pty Ltd, Applicant 1
Legal representative	VASILI CONOMOS
Legal representative reference	
Telephone	02 9231 3221

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions in Reply (SOFAC in reply - 26 May 2025\_1.pdf)

[attach.]

## Applicant's Statement of Facts and Contentions in Reply

### COURT DETAILS

Court	Land and Environment Court of NSW
Class	1
Registry	Land and Environment Court Sydney
Case number	2025/15592

### TITLE OF PROCEEDINGS

Applicant	WSDC Box Hill Primitus Development Pty Ltd
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Respondent	The Hills Shire Council
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### FILING DETAILS

Filed for	WSDC Box Hill Primitus Development Pty Ltd, Applicant
Legal representative	Vasili Conomos, Conomos Legal
Legal representative reference	VC:SJ:H10397
Contact name and telephone	Vasili Conomos, 9231 3221
Contact email	vc@conomoslegal.com.au

### PART A - FACTS

**1. Background**

a. Agree.

**2. The Proposal**

a. Agree.

**3. The Site**

a. Agree.

**4. The Locality**

a. Agree.

**5. Statutory Controls**

a. Agree.

**6. Actions of the Respondent**

- a. Agree.

## PART B - CONTENTIONS

In response to *Part B – Contentions* in the Respondent's SoFAC, the Applicant says (adopting the Respondent's numbering where applicable):

### B1 - CONTENTIONS

#### 1. Height

- a) Agree.
- b) The Applicant agrees that a Building Height Plane diagram showing the proposal against the base 21m height plus the 30% bonus afforded by the Housing SEPP equating to 27.3m.  
  
The Applicant disagrees that a height variation to the bonus height available under the Housing SEPP cannot be varied. The proposed height variation to the 27.3m limit is predominantly roof slab and lift overrun which is consistent with the approved variation on the site both visually and when considering the numerical percentages. The bonus height provision under the Housing SEPP is not expressly excluded from the function of clause 4.6.
- c) The Applicant disagrees. The proposed height maintains an approved height variation which was considered to satisfy objective 1(a) of 4.3 Height of Buildings (THGCPP) to establish a maximum height of buildings on the land. Indeed, the approved variation established the accepted height of buildings for the site and the proposal seeks to apply the bonus provisions to that height in accordance with the Housing SEPP.
- d) The Applicant disagrees. It is reasonable to maintain an approved height variation on the basis that the Housing SEPP bonus height is tied to the bonus floor space which is permitted subject to the dedication of floor space to affordable housing. The height variation allows for the full bonus FSR permitted under the Housing SEPP to be realised despite the approved height variation on the site.
- e) The Applicant will provide additional shadow diagrams.
- f) The Applicant will provide additional shadow diagrams.

#### 2. Public Utility Infrastructure

- a) Agree.
- b) The Applicant will provide evidence from an Accredited Service Provider.
- c) The Applicant will provide evidence from a Water Servicing Coordinator.



- d) Noted.

### 3. Thermal Endorsement

- a) The Applicant will provide plans with a stamp of thermal endorsement following completion of S34 proceedings.

### 4. Landscaping

- a) ....
  - i. The Applicant agrees that the ADG requires deep soil to measure 6m x 6m to be counted in the 7% requirement. However, the Applicant will provide calculation plans showing that a deep soil area of 11.6% of the post-dedication site area is provided when measuring areas less than 6m x 6m. This is increased to 16% when including planting on structure with a 1m soil depth. The proposed deep soil area is capable of accommodating quality plantings to satisfy the objectives of the ADG deep soil requirement.
  - ii. The Applicant agrees that the DCP requires landscaped area to be provided at the ground level. Notwithstanding this, the 30% landscape area requirement for this application comes from the Housing SEPP and therefore the definition of landscaped area under the Housing SEPP is relevant. This is dealt with below.

- b) The Applicant agrees that compliance with the communal open space and site coverage requirements is important and therefore the proposal complies.

The Applicant agrees in part that the 7% deep soil area requirement should be complied with in terms of the minimum dimension requirements. The proposal is able to provide deep soil planting with lesser dimensions that is capable of accommodating quality tree plantings in order to satisfy the objective of the ADG deep soil requirement.

The Applicant submits that the proposal complies with the 30% landscape area requirement under the Housing SEPP.

- c) The Applicant disagrees. The Housing SEPP defines landscaped area as 'the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.' Based on the Housing SEPP definition and its application to this proposal, it is reasonable to include rooftop planting as landscape area since the likes of rainwater tanks and swimming pools are considered so by definition. Furthermore, it is important to identify the difference between the Housing SEPP's definition of Landscaped area and deep soil, whereby deep soil specifically excludes buildings and structures 'above or below the ground'. The landscaped area definition does not make this same distinction. The rooftop planting with a soil depth of 1m is not considered to be 'occupied by a building' but instead the building sits below the planting thereby satisfying the definition. When including rooftop landscape area the proposal has a landscape area equating to 31.3% of the post-dedication site area.
- d) The Applicant agrees that the increased basement size has reduced the availability of deep soil.

- e) The Applicant will provide revised Landscape Plans to address this item.

**5. Communal Open Space**

- a) The Applicant will provide communal open space calculations.

**6. Building Separation**

- a) The Applicant agrees that the proposal does not achieve full compliance with the ADG building separation requirements. The Applicant will make amendments to achieve a greater separation distance to 2-4 Alan Street to ensure privacy is achieved between the developments.
- b) The Applicant will provide additional measurements on the plans to indicate the proposed building separation.

**7. Watse – Garbage Bay Area**

- a) The Applicant will provide a revised Waste Management Plan to address this item.
- b) The Applicant will provide a revised Waste Management Plan to address this item.

**8. Civil Engineering Works (New Road, Road Widening and Temporary Detention Basin)**

- a) Noted.
- b) The Applicant will provide revised Civil Drawings to address this item.

**9. Objects of the EPA Act**

- a) The Applicant disagrees and submits that the vacant lot measures 3,740m<sup>2</sup> and is zoned R4 High Density Residential. The proposal will not have any impact on the potential future development on this site.
- b) The Applicant disagrees. The Architectural Plans are considered to reflect a good design and amenity for the build environment.

**10. Public Interest**

- a) The Applicant disagrees and submits that the above contentions can be suitably addressed.
- b) The Applicant disagrees. The precedent for building height on the site was set by the previous approval. The proposal seeks to maintain this height and apply the permissible bonus under the Housing SEPP.
- c) The Applicant will provide the additional information required.

**B2 - CONTENTIONS THAT MAY BE ADDRESSED BY CONDITION**

**11. Insufficient information and detail has been included with the proposal to fully assess the development.**

**Planning**

The Applicant will provide amended Architectural Plans which detail the requested information.

**Bushfire**

The Applicant will provide a Bushfire Assessment Report.

**Vehicular Access, Car parking and Traffic**

The Applicant will provide revised Civil Drawings and Traffic Impact Assessment.

**Subdivision and Dedication of Roads**

The Applicant will provide an amended Subdivision Plan.

**Stormwater Management**

The Applicant will provide the necessary calculations (DRAINS and MUSIC models) and Stormwater Management Report to support the submitted Stormwater Plans.

**Groundwater Management**

The Applicant will provide a Hydrogeological Report following the necessary testing.

**SIGNATURE**

Signature



Capacity

Solicitor

Date of signature

26 May 2025