VOTING FOR THE MOTION
Clr R A Preston
Clr B L Collins OAM
Clr F P De Masi
Clr A N Haselden
Clr Dr P J Gangemi
Clr A J Hay OAM
Clr M G Thomas

VOTING AGAINST THE MOTION
Mayor Dr M R Byrne
Clr R Jethi
Clr J Jackson
Clr E M Russo
Clr S P Uno
Clr R M Tracey

9.18pm Councillor Tracey left the meeting and returned at 9.19pm during Item 5

ITEM-5 AMENDED GATEWAY DETERMINATION AND VOLUNTARY PLANNING AGREEMENT - 55 COONARA AVENUE, WEST PENNANT HILLS (1/2018/PLP)

Proceedings in Brief
Joan Rowley of West Pennant Hills Valley Progress Association (Objector) representing the residents of the local community addressed Council regarding this matter.

Adrian Checchin – Development Director of Mirvac (Applicant) addressed Council regarding this matter.

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR UNO THAT the Recommendation contained in the report be adopted with minor amendments.

THE MOTION WAS PUT AND CARRIED.

552 RESOLUTION

1. Council request the Department of Planning and Environment endorse an alternate approach under the current Gateway Determination so that the local provision is able to facilitate suitable assessment of the subdivision and development of micro lot housing as part of the maximum 600 dwellings over the site.

2. The Draft Voluntary Planning Agreement, as detailed in Attachment 5, be subject to a legal review at the cost of the proponent, prior to public exhibition

3. The Draft Voluntary Planning Agreement be updated, as required, prior to exhibition to incorporate the recommendations of the legal review.
MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 25 September 2018

4. The draft Voluntary Planning Agreement and the Draft Hills Development Control Plan Part D Section 19 – 55 Coonara Avenue as detailed in Attachments 4 and 5 be exhibited concurrently with the planning proposal.

*Being a planning matter, the Mayor called for a division to record the votes on this matter*

**VOTING FOR THE MOTION**
Clr R A Preston  
Clr B L Collins OAM  
Clr J Jackson  
Clr E M Russo  
Clr F P De Masi  
Clr A N Haselden  
Clr Dr P J Gangemi  
Clr S P Uno

**VOTING AGAINST THE MOTION**
Mayor Dr M R Byrne  
Clr R M Tracey  
Clr M G Thomas  
Clr A J Hay OAM  
Clr R Jethi

10.08pm Councillor Tracey left the meeting and returned at 10.09pm during Item 6.

**ITEM-6 REVISED VOLUNTARY PLANNING AGREEMENT OFFER**
- 8 SOLENT CIRCUIT, NORWEST (11/2018/PLP)

**Proceedings in Brief**
*Todd Symons from Eden Brae Homes Investments (Applicant) addressed Council regarding this matter.*

**SUSPENSION OF STANDING ORDER’S**

A MOTION WAS MOVED BY COUNCILLOR JETHI AND SECONDED BY COUNCILLOR DR GANGEMI THAT Standing Order’s be suspended to allow Todd Symons from Eden Brae Homes Investments (Applicant) to readdress Council.

THE MOTION WAS PUT AND CARRIED.

**553 RESOLUTION**

Standing Order’s be suspended to allow Todd Symons from Eden Brae Homes Investments (Applicant) to readdress Council.

At 10.22pm Standing Order’s were suspended.

**Proceedings in brief**
*Todd Symons from Eden Brae Homes Investments (Applicant) readdressed Council regarding this matter.*
EXECUTIVE SUMMARY
This report recommends that Council write to the Department of Planning & Environment seeking endorsement of an approach that will enable public exhibition of the planning proposal and supporting draft development controls and draft Voluntary Planning Agreement for land at 55 Coonara Avenue, West Pennant Hills (IBM site).

The planning proposal, as recommended, will facilitate a medium to high density residential development incorporating 600 dwellings on the site together with public open space and land for environmental protection. The proposed dwelling mix includes 400 apartment dwellings and 200 medium density dwellings including ‘micro-lot housing’, terrace style dwellings on lots with a minimum size of 86m².

Planning Proposal
Since the proposal was first considered by Council in July last year, it has been the subject of two Gateway Determinations, neither of which has provided sufficient certainty that the master-planned outcome originally supported by Council will be achieved. Key components of the proposal previously supported by Council include:
- Dwelling cap of 600 dwellings comprised of 400 apartments and 200 medium density dwellings;
- Negotiated dwelling size and mix to provide for diversity and choice consistent with the Hills family and household structure;
- Development to be undertaken by a single owner/developer;
- Site specific small lot housing; and
- Provision of public open space.

Concerns with the latest alteration to the Gateway Determination relate to the requirements of the Gateway Determination to map outcomes such as minimum lot size, rather than rely on a site specific provision to detail how the site should be developed. The conditions of the
Gateway permit a local provision to adopt a 600 dwelling cap only and do not cover dwelling size and mix.

These requirements do not completely align with Council’s approach in that it does not provide certainty of outcomes regarding dwelling size and mix and that subdivision for very small ‘micro’ lots could occur without integrated consideration of the dwellings proposed on such lots.

The approach for the planning proposal, as set out in the report, is to add a local provision that specifies a maximum dwelling cap of 600 dwellings and provides a mechanism to consider lots smaller than the minimum lot size map subject to any application for subdivision being accompanied by a dwelling design. The negotiated dwelling size, mix and parking and single owner/developer is recommended to be included in a site specific Development Control Plan. Height of buildings and minimum lot size are proposed to be mapped as per the requirements of the Gateway Determination and floor space ratio mapping is proposed to be removed from the site, noting the density of development will be controlled by the dwelling cap. The Department of Planning & Environment have indicated their support for Council to submit an amended planning proposal for endorsement in line with the above and should any changes be required to the Gateway Conditions that the Department will address these as part of the endorsement process.

This approach is essentially a compromise position which will achieve the intent of the gateway conditions without compromising on the ability to control the development in a manner which is appropriate for the site. Given the public interest in this proposal it is important that the process of public authority and community consultation be commenced. This will enable all views to be considered and, if warranted, further changes can be considered post exhibition to ensure the mechanisms achieve the intended outcomes.

*Development Control Plan*

It is further recommended that amendments be made to the draft Development Control Plan to be exhibited concurrently with the planning proposal. The changes incorporate elements of the planning proposal which the Gateway Determination does not permit for inclusion in a local provision. This includes the negotiated dwelling size and mix and car parking rates.

In addition, the amended DCP contains an 8 metre vegetation buffer along Coonara Avenue and built form provisions necessary to facilitate the micro terraces which the proponent considers are critical to delivering 200 medium density dwellings in the developable area. The proposed terraces are three storeys high, occupying a site area of a minimum 86m².

*Voluntary Planning Agreement*

It is further recommended that the draft Voluntary Planning Agreement be subject to legal review and any changes incorporated to be exhibited concurrently with the planning proposal. The draft VPA details the provision of 2.5ha of public open space including construction of a synthetic playing field, as well as the construction and dedication of a public perimeter road around the development site to provide access to the public open space.

The offer is considered to be reasonable and will assist in addressing an existing shortfall in playing fields in West Pennant Hills.

**APPLICANT**

Mirvac Capital Pty Ltd
OWNERS
Mirvac Projects (Retail and Commercial) Pty Ltd

POLITICAL DONATIONS
Nil disclosures by the proponent.

HISTORY
25/07/2017 Council resolve to proceed with the Planning Proposal based on the proposed development being permissible as an additional permitted use in Schedule 1 of The Hills Local Environmental Plan 2012.

31/10/2017 Department of Planning and Environment issued Gateway Determination.

17/12/2017 Council resolves to seek alternative Gateway Determination to include amended mapping for zoning, minimum lot size and height as well as a local provision to deliver a single owner/developer and preferred dwelling size and mix.

13/06/2018 Department of Planning and Environment issued a further amended Gateway Determination.

BACKGROUND
Since 2015 there have been several planning proposals on the subject site, seeking to permit high and medium density residential development. The original planning proposal for the site sought re-zoning to facilitate 1,270 dwellings; over time this has been revised to the current proposal which seeks re-zoning to facilitate 600 dwellings.

In July 2017 Council resolved to forward the current proposal to the Department of Planning and Environment for Gateway Determination, based on a negotiated dwelling yield of 600 dwellings comprising 400 apartments and 200 medium density dwellings. Council’s initial approach was to facilitate the development through an additional permitted use in Schedule 1 of The Hills Local Environmental Plan 2012. This approach would enable Council to ‘lock-in’ the negotiated master-planned outcome for the site including a dwelling cap, dwelling size and mix.

The Department did not support this approach and issued a Gateway Determination in October 2017 requesting Council re-zone the site and make amendments to the height, minimum lot size and floor space ratio maps in the LEP to facilitate the proposal. The conditions of the Gateway Determination suggested zones including RE1 Public Recreation and E2 Environmental Conservation.

The Gateway Determination did not accord with Council’s position in relation to the proposal as it resulted in land use zones which potentially trigger an acquisition liability and did not suitably facilitate the desired master-planned outcome on the site. In December 2017 Council resolved to write to the Department to seek an alternative Gateway Determination. The request for alteration sought to include a local provision which would control the desired dwelling cap, dwelling size and mix provisions as well as provide a site specific mechanism to facilitate small lot housing on lots as small as 86m². In this report these lots are referred to as ‘micro’ lots to distinguish from conventional small lot housing on lots down to 240m² currently allowed for under clause 4.1B of LEP 2012.
Copies of the previous Council reports are contained in Attachments 1 and 2.

An alteration to the Gateway Determination was subsequently issued by the Department in June 2018. The Determination does not align with Council’s previous requests for alteration. The following report details the content of the amended Gateway Conditions and suggests an approach to progressing the planning proposal.

**PLANNING PROPOSAL**

The site is located on the eastern side of Coonara Avenue, close to the intersection of Castle Hill Road. The site is 25.87ha in area and has a walking distance of 860m to Cherrybrook Railway Station from the existing driveway entry. The site slopes away from Coonara Avenue and two watercourses traverse the site.

The site is currently occupied by seven (7) low-rise commercial buildings and associated carparks surrounded by ecologically significant vegetation which includes Blue Gum High Forest and Sydney Turpentine Ironbark Forest. The vegetation on the site and adjoining land result in the site being identified as bushfire prone, both category one (1) and bushfire buffer. An aerial view of the site and surrounding locality is provided in Figure 1.

![Aerial view of the site and surrounding locality](image)

The planning proposal, as supported by Council at its Ordinary Meeting of 25 July 2017, seeks to facilitate a master-planned residential outcome comprising a mix of 200 medium density dwellings and 400 apartment dwellings. Buildings range from two (2) to six (6) storeys in height.
Figure 2
Development Concept
REPORT

The purpose of this report is to discuss an altered Gateway Determination for land at 55 Coonara Avenue, West Pennant Hills, and a draft Voluntary Planning Agreement supporting the planning proposal on the site.

1. GATEWAY DETERMINATION

At its Ordinary Meeting of 17 December 2017 Council resolved to write to the Department of Planning and Environment requesting an amended Gateway Determination that:

- Removed references to RU3 Forestry, RE1 Public Recreation, E4 Environmental Living and E2 Environmental Conservation zones and removes reference to Floor Space Ratio mapping;
- Required the site to be rezoned from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, and E3 Environmental Management;
- Required Minimum Lot Size mapping for the site of 700m$^2$, 1,800m$^2$ and 2 hectares;
- Required Maximum Height of Building mapping of 9 metres, 10 metres and 19 metres; and
- Included a local provision to facilitate key site outcomes - single owner/developer, maximum 600 dwellings (no more than 400 in form of...
residential flat buildings), agreed dwelling mix, size and car parking provision and small lot housing as an integrated product.

On 13 June 2018 an altered Gateway Determination (Attachment 3) was issued by the Department of Planning and Environment. The Gateway Determination states that the planning proposal should proceed to public exhibition, subject to the following conditions:

1. Prior to undertaking community consultation, Council is required to:
   (a) remove references to proposed amendments to Schedule 1 – Additional Permitted Uses;
   (b) amend the planning proposal to seek to rezone the site from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, RE1 Public Recreation, and appropriate environmental zones (Such as E4 Environmental Living, E3 Environmental Management, and E2 Environmental Conservation) in accordance with Part 2 of The Hills Local Environmental Plan 2012;
   (c) Amend the planning proposal to seek amendments to the minimum lot size map, floor space ratio map, and height of buildings map, in accordance with the Hills Local Environmental Plan 2012;
   (d) Update the planning proposal to provide more information regarding community benefits associated with the proposal, including the identification of traffic and transport accessibility improvement for local infrastructure to be provided, and updated supporting studies as identified in Council’s report dated 25 July 2017;
   (e) Update the Explanation of Provisions to include a satisfactory arrangements provision for contributions to State public infrastructure and to include a proposed local provision facilitating a maximum of 600 dwellings over the site;
   (f) Refer the planning proposal and its accompanying Ecological Assessment to the Rural Fire Service and update in accordance with any comments received; and
   (g) Update the planning proposal as required to ensure the following matters are addressed:
      1. Ecological values (flora and fauna)
      2. The use of appropriate land use zones;
      3. Investigation of infrastructure and traffic considerations; and
      4. Submit the updated planning proposal to the Department for endorsement.

The amended Gateway Determination and associated conditions do not accord with Council’s request of December 2017 and may result in an outcome which does not produce the desired master-planned result based on extensive consultation and negotiation with the proponent.

The Department has advised, within the revised Gateway Determination that Council’s previous approaches to managing the site outcomes are not supported on the basis that it is preferable to limit the number of site specific provisions within the LEP. The revised Gateway Determination requests Council to use standard control methods including mapping for land use zones, minimum lot size and heights, and make use of existing Clauses relating to small lot housing and apartment mix to achieve the desired outcome.

Standard LEP controls such as minimum lot sizes, height of buildings maps and floor space ratio maps serve an important purpose in land use planning. They provide a toolbox for broad scale planning over large areas to guide development towards a desired future outcome. In the majority of circumstances the available tools within the LEP enable sufficient control to provide some certainty of outcomes on a large scale whilst containing sufficient flexibility to accommodate individual site requirements. However, it is impossible to
adopt a true ‘one-size fits all’ approach to planning and as such there will always be situations in which the ‘standard’ tools don’t produce the intended outcomes. In these situations it is necessary to fashion new, specialised tools which reflecting the unique characteristics of a particular site.

The Coonara site is one such example where the standard tools are not a ‘comfortable’ fit. The site is unique and subject to a series of complex constraints whereby a tailored response is best suited to achieve an outcome which reflects the characteristics of the site. This is not reflected in the amended Gateway Determination. Notwithstanding, the following section of this report details the individual components of the Gateway conditions and how the specified tools may be utilised to provide an acceptable outcome, or where a specialised tool is still required in order to progress the proposal.

a) Land Use Zones

The amended Gateway Determination nominates the use of R4 High Density Residential, R3 Medium Density Residential, RE1 Public Recreation and ‘appropriate environmental zones’ such as E4 Environmental Living, E3 Environmental Management or E2 Environmental Conservation.

Environmental zones
Council’s gateway alteration request of December 2017 sought to remove reference to the E2 Environmental Conservation zone. The E2 zone was not supported as a Department issued practice note indicated that application of the E2 Environmental Conservation zone could result in an acquisition liability under the Land Acquisition (Just Terms Compensation) Act 1991. Instead Council proposed to zone the forested areas of the site E3 Environmental Management and apply a minimum lot size which would prevent further subdivision.

The Department did not support Council’s reasoning for not pursuing the E2 Environmental Conservation zone, suggesting that applying the zone would not result in any acquisition liability regardless of whether the rezoning would result in a reduced development potential for the land. To further allay any concern, the proponent sought to include an additional clause in the draft Voluntary Planning Agreement stating that should any acquisition liability arise, Council may purchase the land for $1. Council has sought independent legal advice that generally supports this position and indicates that the proposed VPA clause reduces any risk to an acceptable level.

Whilst the Gateway Determination conditions do not strictly specify that the E2 Environmental Conservation zone must be applied, the accompanying letter urges Council to seek ‘the highest level of protection to the relevant portion of the site’ suggesting that the Department’s preference would be to see the forested areas of the site zoned E2 Environmental Conservation. This approach to the zoning of the forested areas is supported by the proponent and would likely be of benefit in addressing community concerns regarding protection of the environmental values of the site.

It is understood that the proponent is negotiating with the State Government in regards to the dedication of the forested area of the site to the State. Whilst the outcome of those negotiations is not yet known, should they be successful, any potential acquisition liability for Council would cease to exist.

If Council were required to acquire the forested area, the cost to Council would be in the ongoing maintenance of the site. Subject to further detailed ecological investigations, the site may have potential as a stewardship site under the Biodiversity Conservation Act 2016.
Entering into a stewardship arrangement may assist in off-setting any vegetation removal which Council may require in the future, or alternatively any biodiversity credits acquired through the stewardship arrangement may be sold. Ongoing costs associated with a stewardship agreement involve the ongoing maintenance of the site. Based on a review of the Cadwells Road bio-bank site over a 10 year term, the bush care management cost equated to $2,100 per Hectare. The forested area is approximately 12ha which would result in an annual maintenance cost of approximately $26,000. Management of bushland sites is generally most intensive over the first five years, after this time bushland sites tend to become self-sustaining thus reducing the annual maintenance costs over time.

Public open space
In regards to the proposed area of public open space, Council’s position in the gateway alteration request was not to apply the RE1 Public Recreation zone initially, thereby avoiding any potential acquisition liability until such time at the public open space and improvements nominated in the VPA are ready to be handed over to Council. Once the land has been acquired a separate ‘housekeeping’ amendment could be undertaken to apply the RE1 Public Recreation zone. The Department did not support this position and the gateway determination specifies the use of the RE1 Public Recreation zone. In response to Council’s concerns about premature acquisition of the site, the Department consider that VPA gives sufficient assurance to Council and that the planning proposal could be amended to nominate the preferred zoning of RE1 Public Recreation in addition to a ‘fall-back’ zone which could be applied should the VPA negotiation be unsuccessful.

In light of the above and given both Council’s legal advice and the advice of the Department, it would appear that any risk associated with applying the E2 Environmental Conservation zone is minimal. Therefore it is recommended that the E2 Environmental Conservation zone be applied to the forested areas and the RE1 Public Recreation zone be applied to the future public open space, noting a ‘fall-back’ zone of E2 Environmental Conservation be applied to the open space should the VPA not proceed.

The proposed zoning map below satisfies the conditions of the Gateway Determination. The zone boundaries align with the proposed residential areas as well as the proponent’s request to include asset protection zones within the residential zones to facilitate the subdivision and ongoing management of those areas.
b) Minimum Lot Size

Council's previous approach to minimum lot size across the site in response to the original Gateway Determination, was to map minimum lot sizes of 700m² in the R3 Medium Density Residential zone and 1,800m² in the R4 High Density Residential zone, consistent with the approach taken across most areas of the Shire. A minimum lot size of 2ha was applied over the forested areas to enable the future subdivision of the proposed public open space.

A local provision was proposed which would enable the subdivision of lots smaller than 700m² in the R3 Medium Density Residential zone subject to submission of a single application for a dwelling and subdivision.

The amended Gateway Determination did not support this approach and instead requested that minimum lot size be applied using the minimum lot size map only. The Department felt that this approach gives Council sufficient flexibility to address minimum lot size.

The conditions of the Gateway Determination do not specify a range of lot sizes to be applied to the site, therefore Council has a number of options for applying minimum lot size as discussed below:
Option A – Minimum lot sizes to facilitate micro lots and protect forested areas

In order to facilitate the anticipated built form outcomes previously agreed to by Council, which include micro-terrace dwellings on lots as small as 86m² and comply with the gateway conditions it would be necessary to map a minimum lot size of 86m² over the R3 Medium Density Residential zoned portion of the site. This approach is generally not supported as it could result in applications for subdivision of micro lots without an approved dwelling design.

In this regard, the smallest minimum subdivision lot size allowed for in the Shire without an accompanying dwelling is 300m² in the Box Hill Precinct and 450m² in locations such as Box Hill North and Kellyville/Rouse Hill. For anything smaller than this, the planning framework requires the dwelling design (or in some case building envelope plan) to be considered at the same time as the subdivision. Currently the minimum lot size that can be achieved for small lot housing under Clause 4.1B of LEP 2012 is 240m² where an application is for both subdivision and a dwelling.

The smaller lot sizes, down to 86m² for the subject planning proposal, are an integral part of the negotiated master planned outcome and have been considered within the context of the single ownership of the site and the alternative that such housing provides to apartment living. Given this is a new type of housing product for the Shire, it is important that the assessment of both the subdivision and dwelling is considered together to provide certainty that all residential lots can achieve an appropriate level of amenity.

Despite not yet having been exhibited, there has been significant community interest in the subject planning proposal with concern raised regarding development potential in the forested area to the south of the site. In order to provide increased certainty of outcomes in relation to the forest, it is recommended that a minimum lot size of 10ha be applied to effectively prohibit any further Torrens Title subdivision. This will assist in addressing community concerns already raised in regards to protection of the forested area.

It is noted that Community Title subdivision of the E2 Environmental Conservation zone, may permit lot sizes smaller than the minimum lot size map. The E2 Environmental Conservation zone has a restricted amount of permitted uses which do not include any residential uses; therefore it is unlikely that any further subdivision of the forested areas would occur.

Option A, as depicted in Figure 5 suggests the following:

- Minimum lot size of 86m² in the R3 Medium Density Residential zone, consistent with the planning proposal to provide terrace style dwellings on micro lots;
- Minimum lot size of 1,800m² in the R4 High Density Residential zoning consistent with the approach in other areas of the Shire;
- Minimum lot size of 2ha RE1 Public Recreation zoning, consistent with the conditions of the amended Gateway Determination; and
- Minimum lot size of 10ha in the E2 Environmental Conservation zone to provide certainty of outcomes by effectively prohibiting further subdivision of the forested areas.
Option B – Local Provision mechanism for micro-lots
Council’s previous approach to minimum lot size by way of a local provision to permit smaller lot sizes subject to submission of a dwelling design and subdivision application is still considered to be the preferred option to deliver small lot housing on the site. This approach does not strictly comply with the amended Gateway Determination as it would require an amendment to include a site specific mechanism for consideration of small lots in the proposed local provision. However, the Department have indicated that Council may amend the planning proposal based on this option and if necessary the Department may amend the Gateway Determination to suit, prior to endorsement.

Including a mechanism for micro-lot housing in a local provision provides an avenue to achieve the desired outcome without limiting options for development of the site. This approach encourages and facilitates a diversity of housing products rather than appearing to encourage the minimum possible lot size as a desired outcome. Should the anticipated micro-lot housing not proceed for any reason, the proposed minimum lot size of 700m² will still be capable of facilitating medium density development across the site in a variety of forms.

Option B, as depicted in Figure 6 recommends the following:
- Minimum lot size of 700m² in the R3 Medium Density Residential zone, consistent with the approach in other areas of the Shire;
- Minimum lot size of 1,800m² in the R4 High Density Residential zone consistent with the approach in other areas of the Shire;
- Minimum lot size of 2ha RE1 Public Recreation zone, consistent with the conditions of the amended Gateway Determination;
• Minimum lot size of 10ha in the E2 Environmental Conservation zone to provide certainty of outcomes by effectively prohibiting further subdivision of the forested areas; and
• Inclusion of a mechanism to facilitate small lot housing through a site specific local provision.

The proponent is generally in support of the above approach. Potential wording for a new local provision including a mechanism to achieve the proposed small lots is discussed in section 1(e) this report, however it is noted that final wording of any clause may be subject to change following consideration by Parliamentary Counsel.

![Minimum Lot Size map – Option B](image)

**Option C**

Alternatively, in order to proceed in accordance with the conditions of the Gateway Determination, Council may consider applying the minimum lot sizes described in Figure 6 and rely on existing Clause 4.1B of LEP 2012 to provide flexibility for small lot housing. Clause 4.1B currently permits exceptions to minimum lot size for certain residential developments to a minimum of 240m² where applications propose both subdivision and a dwelling design. This approach would effectively prohibit the proposed micro terraces as anticipated in the planning proposal and would impact on the ability to deliver 200 medium density dwellings within the bounds of the proposed R3 Medium Density Residential area.

**c) Height of Buildings**

The proponent’s design concept illustrates that the residential flat building precinct will have a maximum height of six (6) storeys and the mixed housing precinct will have a maximum height of three (3) storeys with the housing product along the Coonara Avenue frontage of the site limited to a height of two (2) storeys. The Gateway Determination requires the planning proposal to be amended to include a height of buildings map.
The current maximum height applying to the site under LEP 2012 is 22 metres. Council’s approach to the original Gateway Determination was to apply heights of 9m, 10m and 19m. It was felt that these heights would facilitate the proposed number of storeys for each dwelling type. In some instances, due to the slope of the site, there may have been cause for variation to these heights.

The amended Gateway Determination does not support an approach which is likely to necessitate a Clause 4.6 variation request. Based on this advice it is recommended that the height of buildings map be amended to include heights of 9m, 12m and 22m across the site. The proposed heights will add some flexibility in the design of buildings without compromising the anticipated outcomes in regards to density. As a dwelling cap will apply across the site, the proposed increase in height will not result in additional unplanned dwellings.

![Height of Buildings Map](image)

**Figure 7**
Height of Buildings Map

**d) Floor Space Ratio**

The amended Gateway Determination includes a direction to Council to make amendments to the Floor Space Ratio map. Under the current B7 Business Park zoning, the site has an applicable floor space ratio of 0.2:1 for the whole of the site. Consideration has been given to a floor space ratio that would be appropriate for the proposed R3 Medium Density Residential and the proposed R4 High Density Residential components of the development. In this regard an FSR of 1:1 and 0.75:1 respectively would reflect the agreed masterplan concept.

Notwithstanding, it is noted that the Gateway Determination supports the inclusion of a local provision to cap dwelling numbers at 600. A floor space ratio is often used in conjunction with a building height as mechanism to manage building bulk, scale and density on a given
As the density of dwellings across the site will be capped at 600 and there will be a building height control, it is not considered necessary to impose a specific floor space ratio to the subject site.

In fact, the removal of the floor space ratio may result in the proponent achieving a greater level of larger apartments due to the ability to create a final design that is not restricted to a finite quantum of floor area. This approach is also supported by the Proponent.

Therefore, it is recommended that the Floor Space Ratio map be amended to remove any reference to a Floor Space Ratio across the site as per figure 8 below:

![Floor Space Ratio Map](image)

**e) New Local Provision**

After Council’s initial approach of including the development of the site as an additional permitted use in schedule 1 of LEP 2012 was rejected by the Department, Council sought to include a new local provision which would deliver the ‘master-planned’ outcome envisaged for the site. The local provision proposed included a dwelling cap including dwelling size and mix, as well as a requirement for development of the site to be undertaken by a single owner/developer. The provision also included a mechanism for supporting minimum lot sizes smaller than the minimum lot size map and specified car parking requirements for the site.

The amended Gateway Determination specifies that a new Local Provision may include a dwelling cap of 600 dwellings, but does not support the remainder of Council’s intended inclusions. In discussions with the Department, concern was raised that Council’s request to include a requirement for the development to be undertaken by a single owner/developer would be unlikely to be supported by Parliamentary Counsel. Consequently, this
requirement was excluded from the local provision permitted under the Gateway Determination. This is matter that could be included within the Development Control Plan.

In relation to dwelling size and mix the Department considers this outcome can be appropriately handled by the use of existing Clause 7.12 of LEP 2012 which applies to land in the Sydney Metro Northwest Corridor.

Clause 7.12 provides a floor space incentive for delivery of a specified housing mix in apartment buildings. In order to apply the clause to the subject site, Council would need to first determine an appropriate Floor Space Ratio and Incentivised Floor Space Ratio for the site, which as previously discussed, is not the preferred approach given that density is proposed to be managed through a dwelling cap. In addition, the dwelling mix negotiated for the subject site includes both apartment dwellings and medium density dwellings, something which cannot be achieved through the application of Clause 7.12 which applies only to apartment dwellings. A comparison of the mix achieved under Clause 7.12 and the negotiated mix for the subject site is provided below:

The removal of the key elements of the proposed local provision will make it difficult for Council to ensure the final development reflects the desired master-planned outcome. Whilst the proponent has re-iterated their intent to deliver on the development as negotiated, if the key elements of dwelling size and mix are not specified in the local provision it will be very difficult to provide certainty of outcomes.

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Table 2
Comparison of dwelling mix outcomes

In order to comply with the conditions of the Gateway Determination and progress the proposal towards exhibition, it is recommended that the provisions relating to dwelling size and mix and car parking be included in the draft Development Control Plan for the site (Attachment 4). Whilst it would be preferable to include the dwelling size and mix provisions in a local provision, to give the arrangement more statutory weight, inclusion in the Development Control Plan will ensure that a mechanism is in place to guide development towards the desired outcome.

With reference to the previous discussion on minimum lot size, it is considered that any local provision should include as a minimum, both the proposed dwelling cap and a mechanism to consider small lot sizes. This approach is supported by the proponent. The following image details the content of the proposed Local Provision as drafted by Council, the Proponent and the content specified in the Gateway Determination.
The Department have indicated that Council may amend the planning proposal prior to endorsement to include any proposed changes to the local provision. This will be considered as part of the endorsement process and the Gateway Determination may be amended as necessary by the Department prior to endorsement and exhibition.

Suggested wording for an alternative local provision which accommodates a dwelling cap and exception to minimum lot size is as follows:

7. **XX Residential Development Yield and Exception to Minimum Lot Size on land at 55 Coonara Avenue, West Pennant Hills**

(1) The objective of this clause is to manage density and encourage housing diversity through the redevelopment of the former IBM site at West Pennant Hills.

(2) This clause applies to development on land in the following zones:
   (a) Zone R3 Medium Density Residential,
   (b) Zone R4 High Density Residential.

(3) Despite Clause 4.1, Development consent may be granted to a single development application for development to which this clause applies that is both of the following:
   (a) the subdivision of land into 2 or more lots,
   (b) the erection of an attached dwelling or a dwelling house on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:
      i. for the erection of a dwelling house—180 square metres, or
      ii. for the erection of an attached or semi-detached dwelling—86 square metres.

(4) The consent authority must not grant development consent to development that results in more than 600 dwellings within the boundaries of the development site known as Lot 61, DP737386.
In order to ensure that the dwelling cap and minimum lot size are not further varied, it is recommended that Clause 4.6(8) of LEP2012 be amended to prohibit any variation to the development standards contained within the proposed local provision. Proposed amendments to Clause 4.6(8) are noted in bold text below:

**4.6 Exceptions to development standards**

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

(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(ca) clause 6.1 or 6.2,
(cb) clause 7.12.
(cc) clause 7.XX

f) Infrastructure and Traffic

The original Gateway Determination requested additional information in regards to Infrastructure and Traffic. The Departments primary concern was in relation to access to the proposed public open space. The draft Voluntary Planning Agreement submitted with the planning proposal includes construction and dedication of a public road to provide access to public open space. This is considered to satisfactorily address the Department’s concerns in regards to access.

The proponent has maintained that the proposal would result in less vehicle movements per day than the previous commercial use and therefore will result in a net improvement in traffic conditions within and around the subject site. Council has engaged GTA Consultants to prepare a traffic report to investigate the impact of the proposed development on the surrounding street network. The results of the report conclude that the planning proposal is likely to result in additional traffic entering the existing road network. The report indicates that there are existing capacity constraints at Castle Hill Road, Oakes Road and Aiken Road. The additional traffic generated by the proposed development is likely to have only a marginal impact on existing conditions.

In regards to Aiken Road in particular, the report notes that the Aiken Road/Oakes Road roundabout is currently performing at capacity and any increase in traffic will lead to long queues and delays, however, the problem is attributed to queues in other areas spilling back all the way to the roundabout. Therefore the poor performance of the roundabout cannot be directly attributed to additional traffic generated by the proposed development.

2. DEVELOPMENT CONTROL PLAN

The draft Development Control Plan previously considered by Council proposed amendments to Part B Section 2 – Residential of DCP 2012 relating to site planning, streetscape, character, access, vegetation and fencing. In response to the revised Gateway Determination the draft DCP has been further amended to include controls relating to the following matters:
Single owner/developer
Given the Gateway Determination did not support the inclusion of a requirement for the land to be owned and developed by a single entity, the draft DCP has been amended to include this requirement, noting that the proponent has re-iterated their intent to deliver on the development as negotiated.

Dwelling Size and Mix
In response to the Gateway Determination which did not support the inclusion of a fixed agreement in relation to dwelling mix and size in the form of a local provision, the draft DCP has been amended to include the agreed dwelling size and mix as follows:

- At least 40% of all dwellings on the land are to be 2 bedroom dwellings.
- At least 40% of all dwellings on the land are to be 3 bedroom dwellings (or larger).
- At least 15% of all 2 bedroom dwellings on the land will have a minimum internal floor area of 110m².
- At least 50% of all 3 bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m².

The inclusion of the dwelling size and mix in the draft DCP seeks to preserve the intent of Council’s previous approach to delivering a negotiated, master-planned outcome for the site.

Car Parking
Section 2.6 of the draft DCP has been amended to include car parking rates for both multi-dwelling housing and residential flat buildings which were previously contained in the proposed local provision.

The controls specify that the car parking rates (which are slightly less than would otherwise be required under Part C Section 1 of the DCP) only apply subject to the development complying with the dwelling mix and size provisions which are now located within the draft DCP.

It is further noted that should the development not comply with the housing size and mix requirements, that car parking rates will revert to those contained in Part C Section 1 – Car Parking of The Hills DCP.

Vegetation Buffer
The proponent has requested that a vegetation buffer of 8 metres in width be provided along the Coonara Avenue frontage of the site. The vegetation buffer will assist in addressing community concerns regarding the threat to vegetation on the site and will maintain the established character of the streetscape. The draft DCP has been amended to include a requirement for the establishment of a vegetation buffer along the Coonara Avenue frontage.

Built Form – Micro Terraces and Small Lot Housing
The proponent maintains that in order to deliver on the agreed dwelling mix, it is necessary for Council to consider alternative building forms to those currently available within The Hills. Specifically, the proponent seeks to deliver small lot housing and micro terraces on lots between 86-300 square metres. These dwellings would comprise a mix of 2 and 3 storey attached, semi-detached and detached dwellings.

The draft DCP contains a suite of controls in relation to built form, required to facilitate the types of micro terraces and small lot housing proposed. Notable differences to existing and proposed controls for small lot housing include:
- Lot widths of 4 metres;
- Lot depths for terrace housing of 20 metres;
- 2 metre front setback;
- Provision for above ground private open space to micro terraces;
- Private open space in the range of 8m² – 15m² for terraces and 25m² for detached small lot housing.

The proponent has provided an example floor plan for a 3 storey dwelling on an 86m² lot. The example provided shows private open space located on the first floor of the dwelling over a stacked car space as demonstrated in figure 10 below:

![Figure 10](image)

Further to the additional controls proposed, it is recommended that the site specific controls be moved into a standalone site specific section of the DCP. This will assist in ensuring it is more easily located by users and can be repealed once the works have been completed without needing to amend the Residential section of the DCP. An updated copy of the draft DCP amendments is included in Attachment 4.

3. VOLUNTARY PLANNING AGREEMENT

The Proponent has submitted a draft Voluntary Planning Agreement which provides the following obligations in association with any future development of land at 55 Coonara Avenue, West Pennant Hills:

a) dedication of public open space (24,943m²);
b) Construction of a synthetic turf playing field; and
c) Construction and dedication of a public road to access the public open space.
The 600 additional unplanned dwellings sought through the current planning proposal would generate a demand for:

- 30% of a new sports field;
- 30% of a local park;
- 30% of a netball court;
- 30% of a tennis court; and
- 15% of a local community centre.

**Public Open Space**

Currently, the open space site comprises an unimproved grassed area and established car park. The estimated cost of providing a synthetic playing field is approximately $2.2M. The VPA offer includes the dedication of land and construction of a synthetic playing field.

The public open space including the construction of a synthetic playing field provides additional public infrastructure that will exceed the demand generated by the planning proposal and assist in meeting existing demand for active open space for the broader West Pennant Hills area.

Should the field not be acquired through the draft VPA, an alternative field would need to be sourced and acquired to satisfy existing demand. The draft VPA, presents an opportunity to satisfy a portion of the demand for active open space at no initial cost to Council.

**OPTIONS**

**Option 1 - Do not proceed with the Planning Proposal**

1. Council not proceed with the planning proposal which seeks to facilitate a medium to high density residential development at 55 Coonara Avenue, West Pennant Hills.

2. Council request the Minister for Planning to not proceed with the Planning Proposal (1/2018/PLP).

**Comment**

The amended Gateway Determination does not align with Council's resolution of the 17 December 2017. The Gateway Conditions do not reflect the unique nature of the site and do not ensure that master-planned, negotiated outcomes can be achieved with any certainty. Revisions to the planning proposal as outlined in the Gateway conditions would mean that there is no certainty of dwelling mix and size and that subdivision for very small lots may occur without a dwelling application. As the Gateway conditions do not align with Councils previous resolution, Council may choose not to proceed with the planning proposal.

Choosing not to proceed with the planning proposal will mean that the playing field, proposed to be constructed and dedicated to Council under the draft VPA, will not be provided. Council would need to source, acquire and undertake improvements to an alternate site.

Should Council choose not to proceed it is open to the proponent to seek an alternate planning proposal authority to be appointed for the proposal. In this regard it is noted that such a request was made for the planning proposal at 360 Windsor Road Baulkham Hills (19/2016/PLP - Bull and Bush site) and the Department of Planning and Environment recently agreed to the request, determining that the Sydney Central City Planning Panel carry out the role of the planning proposal authority.
**Option 2 - proceed as per the Gateway Determination conditions**

1. Council forward a planning proposal to the Department of Planning and Environment for endorsement that demonstrates compliance with all of the requirements of the Gateway Determination.

2. The Draft Voluntary Planning Agreement, as detailed in Attachment 5, be subject to a legal review at the cost of the proponent, prior to public exhibition.

3. The Draft Voluntary Planning Agreement be updated, as required, prior to exhibition to incorporate the recommendations of the legal review.

4. The draft Voluntary Planning Agreement as detailed in Attachment 5 and an amended supporting draft Development Control Plan be exhibited concurrently with the planning proposal.

**Comment**
Under this option the approach for land use zoning, height of buildings and floor space ratio would be as set out in the report (Figures 4, 7 and 8 respectively). This option would also involve minimum lot size mapping down to 86m$^2$ for the area to be zoned R3 Medium Density Residential (Figure 5). The local provision would only include a 600 dwelling cap.

To support this option Council would need to rely upon the Development Control Plan to address the key site outcomes (single owner/developer, dwelling mix, size and car parking and micro lot housing as an integrated product).

**Option 3 - Council seek an alteration to Gateway Determination**

1. Council write to the Department of Planning and Environment requesting that an altered Gateway Determination be issued so that the local provision is able to facilitate the agreed dwelling mix, size and car parking and the suitable assessment of the subdivision and development of micro lot housing, in addition to the maximum 600 dwellings over the site.

2. Should an altered Gateway Determination in line with item 1 be received, the Draft Voluntary Planning Agreement, as detailed in Attachment 5, be subject to a legal review at the cost of the proponent, prior to public exhibition.

3. The Draft Voluntary Planning Agreement be updated, as required, prior to exhibition to incorporate the recommendations of the legal review.

4. The draft Voluntary Planning Agreement as detailed in Attachment 5 and an amended supporting draft Development Control Plan be exhibited concurrently with the planning proposal.

**Comment**
Under this option the approach for land use zoning, minimum lot size, height of buildings, and floor space ratio would be as set out in the report (Figures 4, 6, 7 and 8 respectively). The local provision would address the majority of key site outcomes apart from the requirement for a single/owner developer which has been indicated by the Department as a
provision that is as unlikely to be supported by Parliamentary Counsel. This could be included in an amended Development Control Plan.

This option would reflect the desire to ensure that the negotiated master-planned outcomes, particularly dwelling size and mix and a suitable mechanism for micro lot housing, are given certainty through the LEP. However given the Department position on dwelling size and mix as outlined in the Gateway Determination letter, the likelihood of agreement from the Department is minimal.

**Option 4 - Request Department of Planning and Environment endorse an alternate approach**

1. Council request the Department of Planning and Environment endorse an alternate approach under the current Gateway Determination so that the local provision is able to facilitate suitable assessment of the subdivision and development of micro lot housing, in addition to the maximum 600 dwellings over the site.

2. The Draft Voluntary Planning Agreement, as detailed in Attachment 5, be subject to a legal review at the cost of the proponent, prior to public exhibition.

3. The Draft Voluntary Planning Agreement be updated, as required, prior to exhibition to incorporate the recommendations of the legal review.

4. The draft Voluntary Planning Agreement and the Draft Hills Development Control Plan Part D Section 19 – 55 Coonara Avenue as detailed in Attachments 4 and 5 be exhibited concurrently with the planning proposal.

**Comment**

Under this option the approach for land use zoning, minimum lot size, height of buildings, and floor space ratio would be the same as option 3 (Figures 4, 6, 7 and 8 respectively). The local provision would include a 600 dwelling cap and a mechanism for micro lot housing.

To support this option, the remaining items previously requested to be included in a local provision (single owner/developer, dwelling mix, size and car parking) would be incorporated into a Development Control Plan for the site (refer Attachment 4).

This position is a compromise position which would not allow Council to 'lock in' the dwelling size and mix provisions in LEP 2012, but would ensure that development and subdivision of micro lots could occur in an appropriate manner. This is the recommended option. Whilst not the ideal outcome, the Department have indicated that the proposed changes to the local provision can be considered as part of the endorsement of planning proposal. Under this option the planning proposal is likely to proceed in a timely manner, enabling the process of public authority and community consultation to be commenced.

**IMPACTS**

**Financial**

This matter includes or may lead to a “Works in Kind” agreement between the developer and Council relating to works included in a voluntary planning agreement and will have no impact on the adopted Budget.

The Voluntary Planning Agreement offer which includes construction and dedication of a synthetic playing field ($2.2m) along with the associated land and the construction and dedication of a public road is considered reasonable having regard to the incremental...
demand for local infrastructure generated by this proposal and the likely cost to Council in providing local infrastructure.

Unfunded costs to Council associated with the above offer include the provision of amenities and lighting to the field should that be required, as well as the ongoing maintenance costs associated with a synthetic playing field. Dependent on the frequency of use, the surface of a synthetic playing field is required to be replaced approximately every ten years. After 20 years both the surface and sub-grade are generally required to be replaced. At present the replacement cost associated with the surface of a synthetic field is approximately $1.6M.

Impact of maintenance needs for the playing field will be included in a future budget review when the field is constructed and dedicated to Council.

Impact of maintenance needs for the forested area will be included in a future budget review should the land be acquired.

**Strategic Plan - Hills Future**

The planning proposal is considered to be generally consistent with The Hills Future, community strategic plan. Specifically, the proposal will deliver a well-planned and liveable development which will contribute to meeting the demand for housing associated with population growth whilst maintaining a reasonable level of amenity of existing and future residents.

**RECOMMENDATION**

1. Council request the Department of Planning and Environment endorse an alternate approach under the current Gateway Determination so that the local provision is able to facilitate suitable assessment of the subdivision and development of micro lot housing, in addition to the maximum 600 dwellings over the site.

2. The Draft Voluntary Planning Agreement, as detailed in Attachment 5, be subject to a legal review at the cost of the proponent, prior to public exhibition

3. The Draft Voluntary Planning Agreement be updated, as required, prior to exhibition to incorporate the recommendations of the legal review.

4. The draft Voluntary Planning Agreement and the Draft Hills Development Control Plan Part D Section 19 – 55 Coonara Avenue as detailed in Attachments 4 and 5 be exhibited concurrently with the planning proposal.

**ATTACHMENTS**

2. Council Report 17 December 2017 (17 Pages)
3. Gateway Determination including composite of Gateway Conditions (5 Pages)
4. Draft The Hills Development Controls Plan – Part D Section 19 (8 Pages)
5. Draft Voluntary Planning Agreement (32 Pages)
ITEM-4    PLANNING PROPOSAL - IBM SITE - 55 COONARA AVE, WEST PENNANT HILLS (1/2018/PLP)

THEME:    Balanced Urban Growth

OUTCOME:  7 Responsible planning facilitates a desirable living environment and meets growth targets.

STRATEGY: 7.2 Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

MEETING DATE: 25 JULY 2017
COUNCIL MEETING

GROUP: STRATEGIC PLANNING

AUTHOR: SENIOR TOWN PLANNER
PATRICE GRZELAK

RESPONSIBLE OFFICER: ACTING MANAGER FORWARD PLANNING
JANELLE ATKINS

EXECUTIVE SUMMARY

This report recommends that a revised planning proposal to facilitate a medium to high density residential development incorporating a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills, be forwarded to the Department of Planning and Environment for Gateway Determination. To provide certainty of key outcomes relating to number of dwellings, building heights and apartment size, mix and car parking provision it is recommended that the revised concept be enabled by way of amendment to Schedule 1 Additional Permitted Uses of Local Environmental Plan 2012, rather than by amending the zone, height and floor space ratio as sought by the proponent.

It is further recommended that the planning proposal be supported by amendments to the Residential section of Development Control Plan 2012 and these amendments be exhibited concurrently with the planning proposal. It is also recommended that Council proceed with discussions with the proponent to prepare a draft Voluntary Planning Agreement which secures the delivery of proposed public facilities and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

The development concept provided by the proponent provides for approximately 400 apartments and 200 medium density dwellings in buildings ranging from two (2) to six (6) storeys in height. The provision of a community precinct is also proposed that includes the dedication of land for public open space and associated at grade car parking, playing field and general purpose community facility room.

It is noted that the current development concept is the fourth concept that has been provided for the site with earlier concepts providing for higher residential yields up to 1,270 dwellings. The last concept provided for 800 dwellings (640 apartments and 160 medium density dwellings) and was not progressed by Council to Gateway Determination for several reasons including inconsistency with State and Council rail corridor strategies.
which do not envisage a residential outcome on the site, walking distance from the future Cherrybrook station, impacts on the local and regional road network and the need to address the demand for local infrastructure.

The current concept improves on the previous proposal by way of reduced density and dwelling yield, including a higher proportion of medium density dwellings to apartments. It also proposes to retain existing roadways through the site that will give better connection for the community to the proposed public open space and facilities at the rear of the site. Given these factors, there is considered to be sufficient strategic justification and merit for a residential development outcome on the site, particularly having regard to the difficulties in maintaining the site as a stand-alone employment use.

As identified in the report, some revision may be needed to the concept to ensure sufficient area for visitor parking for the medium density portion of the development. The use of Schedule 1 - Additional Permitted Uses will enable a degree of flexibility as to the exact boundaries between the different proposed land uses, as the proposal progresses to development application and implementation. Changes to zones and planning controls can then be undertaken as part of a future housekeeping amendment to LEP 2012.

The Gateway Process allows for some of the detail associated with the planning proposal to be considered and for consultation with the NSW Government and the public to occur, as well as further work and refinements to the planning proposal as necessary. Prior to public exhibition, the proponent will be required to submit an updated Urban Design Analysis for the proposed small lot housing and updated bushfire, ecological and geotechnical assessments reflecting the new planning proposal.

**PROPO crappyty**
Mirvac Capital Pty Limited

**OWNERS**
Mirvac Projects (Retail and Commercial) Pty Ltd

**THE HILLS LOCAL ENVIRONMENTAL PLAN 2012**

<table>
<thead>
<tr>
<th>Current</th>
<th>Proposal (as submitted)</th>
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<tbody>
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<td>Zone:</td>
<td>B7 Business Park</td>
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<tr>
<td></td>
<td>Part R4 High Density Residential</td>
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<tr>
<td></td>
<td>Part R2 Low Density Residential</td>
</tr>
<tr>
<td></td>
<td>Part RE1 Public Recreation</td>
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<tr>
<td>Maximum Height:</td>
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<td></td>
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<td></td>
<td>0.4:1</td>
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<tr>
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<td>86m² to 8,000m²</td>
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**POLITICAL DONATIONS**
Nil disclosures by the proponent.

**HISTORY**
10/03/2016 Planning Proposal and concept lodged - The Master Plan envisaged 3 storeys residential flat buildings to Coonara Avenue transitioning to 4 storeys, 5 storeys, 6 storeys and 8 storeys at the rear of the site. The concept had a total yield of approximately 1,270 dwellings.
Councillors were briefed on the planning proposal.

Feedback provided to the proponent, indicating that a high density residential outcome on this site was not supported.

A revised planning proposal was submitted to Council. The revised Master Plan envisaged 2 to 3 storey residential flat buildings to Coonara Avenue transitioning to 4 storeys, 5 storeys, 6 storeys and 8 storeys at the rear of the site. The key change made by the proponent was to reduce the maximum building height fronting Coonara Avenue from 14 metres to 9 metres, which reduced the overall yield on the site from 1,270 dwellings to 1,119 dwellings.

Previous comments regarding high density residential outcomes for the site were reiterated to the proponent and advising that Council supports investigation of other land uses consistent with the approach to land use, density and built form identified in State and local strategic documents.

A further revised planning proposal was submitted to Council. This further reduced the proposed yield on the site to approximately 800 dwellings in buildings ranging from 2 to six (6) storeys in height.

Councillors were briefed on the revised planning proposal.

Councillors were further briefed on the revised planning proposal.

Council considered a report on the revised planning proposal which proposed 800 dwellings and resolved not to proceed to Gateway Determination on the following grounds:

1. The proposal is inconsistent with the objectives of State Government Corridor Strategy, specifically it does not facilitate employment outcomes consistent with the business park designation;

2. The proposal is inconsistent with The Hills Corridor Strategy which does not envisage a residential outcome for the site and proposes lower density land uses adjacent to the site;

3. The proposal seeks to locate high density residential development outside of the walkable catchment of the future Cherrybrook Railway Station;

4. The impacts on the local and regional road network have not been adequately addressed;

5. The proposal fails to adequately address the demand for additional local infrastructure;
6. Permitting high density residential development on the site prior to the completion of the master planning process for the Cherrybrook Railway Station Precinct as part of the Urban Transformation Program would be premature and could undermine the outcome of the master planning process.

07/06/2017 Councillors were further briefed on the current planning proposal.

REPORT

The purpose of this report is to consider a revised planning proposal to amend The Hills Local Environmental Plan 2012 (LEP 2012) to facilitate a medium and high residential development resulting in 600 dwellings with the inclusion of a community precinct.

1. THE SITE

The site is located on the eastern side of Coonara Avenue, close to the intersection of Castle Hill Road. The site is 25.87ha in area and has a walking distance of 860 metres to Cherrybrook Railway Station from the existing entry, 430 metres to Coonara Shopping Village and 1.7km to the shopping facilities at Thompsons Corner. The topography forms a south facing “tilted bowl” or “amphitheatre” located below the east-west ridgeline of Castle Hill Road and north-south ridgeline of the adjoining State Forest. The site slopes away from Coonara Avenue and two watercourses traverse the site.

The site is currently occupied by seven (7) interconnected low-rise buildings totalling 36,000m² in commercial floor space, two (2) car parks comprising 1,687 car spaces, and a levelled grass area, all surrounded by ecologically significant vegetation. The vegetation on the site includes Blue Gum High Forest and Sydney Turpentine Ironbark Forest, which are identified as critically endangered and endangered ecological communities. The vegetation on the site and adjoining land result in the site being identified as bushfire prone, both category one (1) and bushfire buffer.
2. PLANNING PROPOSAL

The development concept submitted by the proponent is the fourth revision to the concept since it was lodged on 10 March 2016. The proposal identifies two residential precincts (housing and apartments) and includes a dwelling mix of 400 apartment dwellings and 200 medium density dwellings. Buildings range from two (2) to six (6) storeys in height. The proposal is intended to be developed under a community title arrangement with the medium density housing precinct to be Torrens Title and apartments to be Strata Title. In support of the planning proposal, the proponent has submitted a design concept illustrating the intended future development outcomes for the site.
The following table provides an overview of the development concept/proposal revisions.

<table>
<thead>
<tr>
<th>Current Controls</th>
<th>Original Application</th>
<th>August Proposal</th>
<th>October Proposal</th>
<th>June 2017 Proposal (Current Concept)</th>
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<tr>
<td>Zone</td>
<td>Zone 87 Business Park</td>
<td>Part R4 High Density Residential (23.37ha) Part RE1 Public Recreation (2.49ha)</td>
<td>9m to 22m (2-6 storeys)</td>
<td>Part R4 High Density Residential and R2 Low Density Residential Land (23.37ha) RE1 Public Recreation (2.49ha)</td>
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<tr>
<td>Maximum height</td>
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<td>14m to 30m (3-8 storeys)</td>
<td>9m to 30m (2-8 storeys)</td>
<td>9m to 22m (2-6 storeys)</td>
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<td>Lot Size</td>
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<td>86m², 700m² and 8000m²</td>
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<td>Development</td>
<td>7 commercial buildings (36,000m²)</td>
<td>1,270 dwellings</td>
<td>1,119 dwellings</td>
<td>800 Dwellings (160 medium density dwellings 640 apartments)</td>
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<tr>
<td>Car parking</td>
<td>1,687 existing car spaces</td>
<td>1,715 car spaces (including visitors)</td>
<td>1,500 car spaces (including visitors)</td>
<td>1,200 car spaces (including visitors)</td>
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Table 1
History of Proposed Development Concepts
The proposed dwelling mix within the apartment precinct includes 20 x studio apartments, 100 x one (1) bedroom apartments, 220 x two (2) bedroom apartments and 60 three (3) bedroom apartments. It is noted that the proposed apartment mix is not consistent with Council’s requirements as contained in the agreed methodology for development of land within the Sydney Metro Northwest Urban Renewal Corridor that seeks to promote housing choice for different demographics, living needs and household budgets. This is discussed further in section 4d) of the report.

The proposed dwelling mix for the housing precinct includes 180 x three (3) and four (4) bedroom homes and 20 x two (2) bedroom homes across a range of lot sizes that would facilitate a medium density housing outcome. Dwelling types included in the housing precinct are as follows:

- Attached front-loaded 2 storey dwellings (lot sizes 130-240m²);
- Detached front-loaded 2 storey dwellings (lot sizes 300m²);
- Detached, semi-detached and attached front-loaded 2 storey dwellings lot sizes 180-300m²);
- Attached rear-loaded 2 storey dwellings (lot sizes 150-175m²); and
- Attached rear-loaded 3 storey dwellings (lot sizes 86-175m²).

The suitability of proposed lot sizes is discussed further in section 4b) of the report.

![Figure 3](image)

Proposed Housing Products and Lot sizes for Housing Precinct

The current concept retains the dedication of 2.49ha for a new public park and an adjoining open air carpark but additionally includes the dedication of a general purpose community facility room, located at the existing carpark structure and a playing field.
The proponent has offered to enter into a Voluntary Planning Agreement for the dedication of open space and community facilities.

The planning proposal, as revised by the proponent, seeks to amend the Local Environmental Plan 2012 as follows:

1. Amend the Land Zoning from B7 Business Park to part R4 High Density Residential, R2 Low Density Residential and RE1 Public Recreation;
2. Amend the Height of Building Map from 22 metres to heights ranging from 9 metres, 12 metres and 22 metres;
3. Amend the Floor Space Ratio Map from 0.2:1 to 0.4:1; and
4. Amend the Lot Size Map from 8,000m² to include 86m² and 700m² lot sizes at the front of the site in addition to 8,000m² lot size for the rear portion of the site.

3. MATTERS FOR CONSIDERATION
The current proposal requires consideration of a range of matters including:

a) Strategic context;
b) Residential character;
c) Proposed lot sizes;
d) Apartment mix and size;
e) Proposed height of apartment development;
f) Loss of employment land;
g) Traffic implications;
h) Visitor parking provision;
i) Bushfire and ecological constraints;
j) Geotechnical Stability; and
k) Public benefit and local infrastructure.
a) Strategic Context

A Plan for Growing Sydney
A key principle for growth under the metropolitan strategy includes increasing the housing choice around centres by accelerating housing supply and urban renewal. The planning proposal seeks to facilitate the delivery of housing within the Cherrybrook Rail Station Precinct and as such is consistent with the broad objective of increasing housing supply and choice.

However, the proposal will result in a reduction in employment generating opportunities within the local area which is inconsistent with objectives in a ‘A Plan for Growing Sydney’ related to economic growth and the delivery of jobs close to home.

It is recognised however, that the capacity of the site to continue to deliver an employment outcome is limited for a number of reasons including lack of competitive offer compared to other commercial spaces in Sydney and the North West which have more modern premises and flexible options and greater access to outside amenities for workers.

Draft West Central District Plan
The draft West Central District Plan identifies ‘liveability’ priorities and actions for the West Central District which respond to improving housing choice, diversity and affordability. The draft plan identifies a five-year housing supply target and predicts that The Hills will require an additional 8,550 dwellings by 2021.

The planning proposal addresses the need for additional housing stock and provides both small lot housing as well as apartments that meets the needs of current and future residents and is considered to be consistent with this Priority.

The draft Plan also aims to protect and enhance biodiversity and attempts to strengthen the protection of bushland in urban areas. The planning proposal seeks to balance these competing land uses by delivering additional housing while retaining the significant vegetation on the site. As such, the current planning proposal with reduced yield is considered to be consistent with the objectives of the draft West Central District Plan.

North West Rail Link Corridor Strategy and Hills Corridor Strategy
Under the NSW Government Corridor Strategy it is projected that an additional 3,200 dwellings will be provided by 2036 within the Cherrybrook Station Precinct, which extends over Hornsby and the Hills LGAs.
The Structure Plan identified the site as being suitable for a Business Park land use. The proponent submits that this use is unsuitable and not economically viable due to current market conditions and growth of other employment areas. Whilst the current proposal is inconsistent with the land use identified in the Structure Plan, the Strategy also indicates that the site is a significant holding that is subject to further consideration and collaboration with stakeholders to determine its role in the future. In this regard, should Council support the proposal the Gateway process provides a mechanism for this more detailed consideration and collaboration to occur.

The Hills Corridor Strategy sets out a vision for Cherrybrook Precinct of increased residential densities within walking distance of the station including a variety of housing types together with a mix of neighbourhood shops and services to provide for the daily needs of the local community. The area immediately to the south of Castle Hill Road is identified as appropriate for 3-6 storey apartments subject to detailed geotechnical, vegetation and traffic investigation. Within the Hills Shire part of the precinct, capacity for an additional 1,694 dwellings is identified west of Coonara Avenue. No change in land use or density is identified for the subject site under Council’s Corridor Strategy.
Under the Hills Corridor Strategy land immediately adjacent to the Railway Station has a proposed density of 144 dwellings per hectare and a proposed density of 96 dwellings per hectare on the outer edge of the walkable catchment.

The total area of the subject site is 25.87ha, of which approximately 7.59ha will accommodate the medium and high density residential development and would form part of the developable area. The proposed development outcome for the site of 600 residential dwellings equates to a density of 79 dwellings per hectare if calculated on the developable portion of the site, and 23 dwellings per hectare when calculated on the total site area including the environmentally constrained land.

The proposed reduced density of residential development is considered to provide for an appropriate transition from the station. This, coupled with the provision of public recreational space that will support residential growth within the site and wider Cherrybrook Precinct and the opportunity to provide a master planned outcome, provides reasonable justification for the inconsistency of the planning proposal with the Hills Corridor Strategy in this instance.

Ministerial Section 117 Directions

Section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) enables the Minister for Planning and Environment to issue directions that Councils must address when preparing planning proposals for a new LEP. The relevant Section 117 Directions are:

- Direction 1.1 –Business and Industrial Zones
- Direction 2.1 –Environmental Protection Zones
- Direction 2.3 - Heritage Conservation
- Direction 3.1 - Residential Zones
- Direction 3.4 - Integrating Land Use and Transport
- Direction 4.3 - Flood Prone Land
- Direction 5.9 – North West Rail Link Corridor Strategy
The planning proposal is generally consistent with these Directions with the exception of Direction 1.1 – Business and Industrial Zones, Direction 4.3 Flood Prone Land and Direction 5.9 – North West Rail Link Corridor Strategy.

Direction 1.1 – Business and Industrial Zones requires that a planning proposal must retain the areas and locations of existing business zones and not reduce the total potential floor space area for employment uses in a business zone. The proposal is inconsistent with this Direction given it would result in a reduction in the amount of potential floor space area for employment uses on the site. However, taking into account the stand alone nature of the business park and the factors that constrain its competitiveness and future growth, the inconsistency is considered justified in this instance. Other employment generating opportunities along the rail corridor are better located and less constrained than the subject site and provide the potential to offset the loss of employment land.

Direction 4.3 Flood Prone Land applies to the site as it is identified within a flood prone area. The direction requires that a planning proposal must be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. First and second order tributaries of Darling Mills Creek diagonally traverse the property from northeast to southwest. The flooding associated with these tributaries is a constraint over the land and its future development. Flood extent mapping for the 100 year average recurrence interval (ARI) flood event expected to impact the property is shown in Figure 7.

The Hills DCP gives effect to the NSW Flood Prone Land Policy and Floodplain Development Manual 2005 and applies controls to guide the management of flood risk associated with development. Any future development will be subject to the relevant development controls in The Hills Shire Council Development Control Plan 2012 (Part C Section – Flood Controlled Land). Potential flood constraints on the land would be considered as part of the development assessment process and appropriate flood
mitigation measures determined and implemented. If the planning proposal is progressed, the Gateway process provides for more detailed consideration and consultation with relevant public authorities to occur to ensure consistency with this Direction.

Direction 5.9 – North West Rail Link Corridor Strategy requires that a planning proposal must be consistent with the North West Rail Link Corridor Strategy, including growth projections and proposed future character for each of the precincts. Whilst the proposal is inconsistent with the land use outcomes identified in the Corridor Strategy, the Strategy also indicates that the site is a significant site that is subject to further consideration and collaboration with stakeholders to determine its role in the future. If progressed, the Gateway process provides a mechanism for this more detailed consideration to occur.

b) Residential Character

Opposite the site on Coonara Avenue, the existing character is of low density housing, predominately two storey dwellings with generous setbacks and established well maintained gardens. As indicated within the State and Hills Corridor strategies, part of this interface, closest to Castle Hill Road, is identified for change with a future character of medium density apartment living. This could comprise 3-6 storey apartment buildings master planned around communal open spaces and incorporating landscaped setbacks to existing streetscapes. For the lower section of Coonara Avenue, the areas are expected to remain unchanged so it is important that development on the subject site provides an appropriate interface with the low density environment.

In this regard the housing product proposed along the Coonara Avenue frontage of the subject site is identified as attached 2 storey dwellings on lot sizes 130-240m² and a small area of detached 2 storey dwellings on lot sizes of 300m² (refer Figure 3). Under the development concept, driveway access to these dwellings is from a laneway at the rear with courtyards along the Coonara Avenue frontage. An indication of the type of housing proposed is included in Figure 8.

The abovementioned housing products are considered to provide an appropriate interface and transition of building height to the existing low density dwellings on the adjacent side of Coonara Avenue, subject to suitable treatment along the road frontage.
This can be addressed by appropriate development controls relating to location and type of courtyard fencing, setbacks and landscaping.

c) Proposed lot sizes

As shown in Figure 3 there are a range of housing products and lot sizes proposed under the submitted development concept including attached and detached dwellings, some front loaded, some rear loaded with lot sizes ranging between 86m² – 300m². The proposal for small minimum lot sizes down to 86m² would facilitate a new type of housing product in the Shire, being 3 storey terrace homes.

Under LEP 2012 Clause 4.1B establishes a framework for small lot residential development, allowing for attached dwellings or dwelling houses on lots down to 240m² in area in R3 Medium Density and R4 High Density Residential zones where development is undertaken as integrated development (that is a single application for subdivision and the dwelling house or attached dwelling). For the planning of Rouse Hill regional centre, allowance was made for some lots less than this size down to approximately 180m² on the basis that the development was undertaken as an integrated subdivision and dwelling design and the final product was a known outcome.

The proponent has provided examples of the housing typology that can be provided on the 86m² minimum lot size as shown in Figures 9-11.
The proponent seeks consideration of the proposed smaller lots and new housing typology as an integral part of what can be achieved under their 600 dwelling master planned scheme. They point to the diversity of housing and apartments proposed on the site and the considerable reduction in dwelling yield from previous proposals.

Given the single ownership of the site there is opportunity to achieve a variety of housing types consistent with State and local objectives. Smaller lot housing provides an opportunity for an alternative to apartment living at an affordable price point when compared to conventional large lot dwellings. Despite the proposed torrens titling arrangement of the development it is best considered as a medium density housing development and in this regard the density of the mixed housing component equates to approximately 39 dwellings (or 112 persons) per hectare. When considered together...
urban design analysis should be undertaken to demonstrate that the smaller lot products are suitable in this locality and will provide adequate outcomes in terms of setbacks, building design and bulk, landscaping, privacy, solar access, private outdoor areas and on street and off street parking.

Prior to any public exhibition, the proponent will be required to submit an updated Urban Design Analysis for the proposed small lot housing addressing the foregoing matters. The Gateway Process will then allow the appropriate minimum lot size to be considered, consultation with public authorities and the public to occur, as well as further work and refinements to the planning proposal as necessary.

d) Dwelling mix and size

Over the past four (4) years, Council has sought amendments to SEPP 65 or an endorsed local approach from the NSW Government to ensure that new high density development suits the anticipated demographic within the Shire and provides an appropriate mix, size and diversity of housing product. This position is based on a strong body of evidence including the NSW Government’s population projections for the Shire and recently released ABS Census data which highlights that the Hills Shire population is, and will continue to be, characterised by larger than average household sizes.

In October 2016, Council and the NSW Government reached agreement with respect to a local methodology to ensure that planning proposals for land within the Sydney Metro North West rail corridor deliver appropriate housing products which respond to the characteristics and expectations of the local housing market and demographic within The Hills Shire.

While the Cherrybrook Station Precinct, within which the site is located, has recently been identified as a ‘Priority Precinct’, the letter of agreement to the methodology received from the NSW Chief Town Planner endorsed the application of the local methodology to planning proposals within the Cherrybrook Station Precinct. Accordingly, this local methodology is a key matter for consideration in the assessment of this proposal.

Council has recently amended LEP 2012 to include a new clause (7.12) which reflects the agreed methodology and requires development within the Sydney Metro Northwest Corridor to comply with Council’s housing mix and size requirements. The provision provides certainty to Council and the community that a diversity of housing will be provided, which suits the current and future anticipated family demographic of the Shire.

The methodology enforces the premise that additional yield within the station precincts should deliver a housing product that is appropriate for the current and future community of the Shire.

In assessing the appropriateness of this planning proposal, it is critical to undertake an analysis of the proposed residential outcome in comparison to Council’s stated and established housing mix and diversity requirements (as contained within Clause 7.12 of LEP 2012).
Dwelling Mix

An analysis of the proposed residential flat building component of the development against Council’s unit mix requirements is provided below:

<table>
<thead>
<tr>
<th>Cl. 7.12</th>
<th>Required</th>
<th>Proposed</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio / 1 Bedroom Dwellings</td>
<td>No more than 25%</td>
<td>100 (max.)</td>
<td>120</td>
</tr>
<tr>
<td>2 Bedroom Dwellings</td>
<td>Not specified</td>
<td>220</td>
<td>220</td>
</tr>
<tr>
<td>3 or more Bedroom Dwellings</td>
<td>At least 20%</td>
<td>80 (min.)</td>
<td>60</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>400</td>
<td>400</td>
<td></td>
</tr>
</tbody>
</table>

As demonstrated above, the proposed residential flat building component of the development does not comply with Council’s unit mix requirements when viewed in isolation. In particular, the proposal includes an insufficient number of 3 bedroom dwellings and more 1 bedroom dwellings than permitted under Council’s requirements.

Notwithstanding this, the proposal provides a relatively unique mix of dwelling types, including ‘medium density housing’ in addition to the proposed residential flat building. Given this, it is considered reasonable to assess the dwelling mix of the overall development proposal holistically, as provided below:

<table>
<thead>
<tr>
<th>Cl. 7.12</th>
<th>Required</th>
<th>Proposed</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio / 1 Bedroom Dwellings</td>
<td>No more than 25%</td>
<td>150 (max.)</td>
<td>120 (units)</td>
</tr>
<tr>
<td>2 Bedroom Dwellings</td>
<td>Not specified</td>
<td>330</td>
<td>220 (units) 20 (townhouses) 240 (total dwellings)</td>
</tr>
<tr>
<td>3 or more Bedroom Dwellings</td>
<td>At least 20%</td>
<td>120 (min.)</td>
<td>60 (units) 180 (townhouses) 240 (total dwellings)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>600</td>
<td>400 (units) 200 (townhouses) 600 (total dwellings)</td>
<td></td>
</tr>
</tbody>
</table>

As demonstrated above, when the broader proposal (including the proposed ‘medium density’ housing types) is assessed against Council’s unit mix requirements, the overall housing mix proposed is compatible with Council’s requirements.

Having regard to the broader mix of dwelling types proposed across the entire development, it is considered that the proposal ultimately achieves an appropriate mix of dwellings which is consistent with both the intent and requirements of Council’s
requirements. In particular, it is noted that 80% of the dwellings proposed within the entire development would be 2 or 3 bedroom dwellings (as opposed to the 75% required under Council’s local provision and the 70% proposed within the residential flat building component when viewed in isolation). The overall number of studio and one bedroom dwellings will be expected to provide an affordable option for younger persons wishing to stay in the area.

_Dwelling Size_

An analysis of the proposed high density portion of the development against Council’s unit size requirements is provided below. It is noted that Council’s unit size requirements result in 30% of all units within a development being at Council’s larger sizes.

<table>
<thead>
<tr>
<th>Cl. 7.12</th>
<th>Required</th>
<th>Proposed</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Bedroom Dwellings</td>
<td>40% min. internal floor area of 110m²</td>
<td>88 units out of 220</td>
<td>22 units out of 220 (10%)  Non-compliant – 66 fewer 2 Bedroom Dwellings meet size requirement</td>
</tr>
<tr>
<td>3 or more Bedroom Dwellings</td>
<td>40% min. internal floor area of 135m²</td>
<td>24 units out of 80</td>
<td>6 units out of 60 (10%)  Non-compliant – 18 fewer 3 Bedroom Dwellings meet size requirement</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30% of units at larger size</strong></td>
<td><strong>112 units out of 400 (30%)</strong></td>
<td><strong>28 units out of 400 (7%)</strong> 84 fewer larger sized units than required</td>
</tr>
</tbody>
</table>

As demonstrated above, the proposed high density portion of the development does not comply with Council’s unit size requirements. In particular, only 7% of units within the residential flat building component are of a larger size, as opposed to 30% of units required by Council’s local provision.

An analysis of the entire development proposal (including the proposed ‘medium density’ housing types), considered holistically, against Council’s unit size requirements is demonstrated below:

<table>
<thead>
<tr>
<th>Cl. 7.12</th>
<th>Required</th>
<th>Proposed</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Bedroom Dwellings</td>
<td>40% min. internal floor area of 110m²</td>
<td>96 dwellings out of 240 (40%)</td>
<td>22 (units) 10 (townhouses) 32 (total) out of 240 (13%)  Non-compliant – 64 fewer 2 Bedroom Dwellings meet size requirement</td>
</tr>
<tr>
<td>3 or more Bedroom Dwellings</td>
<td>40% min. internal floor area of 135m²</td>
<td>96 dwellings out of 240 (40%)</td>
<td>6 (units) 120 (townhouses) 126 (total) out of 240 (53%)  Compliant – 30 more 3 Bedroom Dwellings meet size requirement</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>192 dwellings out of 600 (30%)</strong></td>
<td><strong>158 dwellings out of 600 (26%)</strong></td>
<td>Non-compliant – 34 fewer larger dwellings than required</td>
</tr>
</tbody>
</table>

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As demonstrated above, the proposal does not comply with Council’s requirements, primarily as a result of an undersupply of larger 2 bedroom dwellings proposed. However, it is noted that the proposed development would include substantially more larger 3 bedroom dwellings than would otherwise be required by Council’s local provision.

Having regard to the above, it is considered that the proposed dwelling mix and size is reasonable on the basis that:

- The proposed development includes substantially more 3 bedroom dwellings (suitable for larger family households) than required (240 x 3 bedroom dwellings proposed rather than 120 x 3 bedroom dwellings required); and
- 126 (53%) of the 3 bedroom dwellings proposed are larger than Council’s requirement of 135m² rather than the minimum 96 (40%) 3 bedroom dwellings which would be required to meet this larger size under Clause 7.12.

Accordingly, it is considered that the dwelling mix and size proposed within the proponent’s development concept is acceptable and consistent with the intent of Council’s local provision to secure a diversity of housing suitable to larger households, typical of the Shire’s population. To secure the dwelling mix and size outcomes proposed by the proponent, it is recommended that these be reflected within the proposed Schedule 1 provision as requirements which must be met in order for the proposed residential development to be permissible on the site. Specifically, the Schedule 1 provision should require that at least:

1. 40% of all dwellings on the land are 2 bedroom dwellings;
2. 40% of all dwellings on the land are 3 bedroom dwellings (or larger);
3. 15% of all 2 bedroom dwellings on the land will have a minimum internal floor area of 110m², and
4. 50% of all 3 bedroom dwellings on the land will have a minimum internal floor area of 135m².

It is noted that the above criteria reflects the unit mix and sizes proposed within the development concept and planning proposal information submitted and will facilitate the development outcomes sought by the proponent whilst also giving Council adequate certainty that an appropriate diversity and mix of housing will be provided on the site.

**e) Proposed height of apartment development**

The revised proposal provides for a reduction in maximum building heights from eight (8) storey apartments to a maximum of six (6) storeys. The location of the apartment component of the development, internal to the site and towards the lowest point of the site allows for the visual impact of the development to be minimised. The design approach proposed by the proponent seeks to respond to the site characteristics and context and ensure that the height of development when viewed from locations external to the site, including along the Coonara Avenue frontage, is perceived as two (2-3) storeys.

It is noted that the current maximum building height applying to the subject site under LEP 2012 is 22 metres. Whilst this height could potentially facilitate seven (7) storey residential flat buildings, consideration is needed of the site topography. To provide certainty of the six (6) storey built form, it is recommended that the proposed height in
storeys under the development concept be contained as requirements to be met in order for the proposed residential development to be permissible on the site.

f) Loss of Employment Land

As noted previously, the site is currently occupied by seven (7) interconnected low-rise buildings totalling 36,000m² of commercial floor space. An Economic Assessment submitted (Hill PDA, January 2016) concluded that the site will face considerable challenges in maintaining commercial office uses once the current tenants vacate the site for the following reasons:

- Other commercial spaces across Sydney and the North West metropolitan market are characterised by fierce competition for tenants, compressed yields and high incentives;
- The existing floor plate is not modern and has poor access to outside amenity resulting in difficulties to meet the demands of current potential tenants in the market;
- The suitability of the site for commercial functions is not suitable and not considered best use of the land given the pending Sydney Metro Link;
- Poor competitive offer of the site. The site is competing with other employment centres such as Macquarie Park, Norwest, Rhodes and the regional city of Parramatta. All of these employment centres are noted to offer greater amenity, transport access, retail services and flexible range of employment space compared to the subject site;
- The loss of commercial space on the site is inconsequential compared to growth in Parramatta, Norwest and Macquarie Park employment areas; and
- 1,200 to 1,700 jobs loss is insignificant when compared to jobs gains by 2036.

The submitted assessment suggests that the proposed change for the subject site is considered minor as the new rail infrastructure will significantly increase employment opportunities and would offset any loss of employment for the subject site.

Given the difficulties faced in maintaining the site as a stand-alone employment use and opportunities along the rail corridor for better placed and more competitive commercial growth, there is considered to be reasonable justification for an alternative residential development outcome on the site.

g) Traffic implications

Based on traffic surveys completed, the current use of the site generates 371 AM peak hour vehicles trips and 345 PM peak hour vehicle trips, with the following characteristics:

**Directional Distribution**
- 80% of peak hour trips via Coonara Avenue to/from the north (towards Castle Hill Rd)
- 20% of peak hour trips via Coonara Avenue to/from the south

**Arrival and Departure Distribution**
- 93% of AM peak hour trips inbound to the site and 7% of AM peak hour trips outbound from the site;
- 4% of PM peak hour trips inbound to the site and 96% of PM peak hour trips outbound from the site;
The figure below illustrates the distribution of traffic associated with the current use of the site for commercial purposes.

Figure 12
Directional and Arrival/Departure Distribution – Commercial Operation of the Site

While the existing premises on the site has a total floor area of nearly 34,000m², this space is currently underutilised with 7,500m² of vacant floor area, 4,600m² of common area and lower staff occupancy rates than typically found within commercial uses. Importantly, it is anticipated that if leased at full capacity, the existing premises on the site would be likely to generate between 441 and 672 peak hour vehicle trips based on RMS Traffic Generating Guidelines, with directional and arrival and departure distribution likely to remain unchanged (as detailed above).

Based on RMS Traffic Generating Guidelines, the proposal to facilitate 600 residential dwellings on the site (200 low density dwellings and 400 apartments), would be likely to result in average traffic generation of 379 peak hour vehicle trips. While the volume and directional distribution of traffic generated by the proposal would be similar to the current use of the site (and significantly less than if the commercial capacity of the site was fully utilised), a transition to a residential land use would result in a significant shift in the arrival and departure distribution, with:

- 20% of AM peak hour trips inbound to the site and 80% of AM peak hour trips outbound from the site;
- 80% of PM peak hour trips inbound to the site and 20% of PM peak hour trips outbound from the site;

As detailed above, while commercial use of the site predominantly ‘attracts’ traffic to the site during the AM peak and generates outbound traffic from the site during PM peak, residential uses would have the opposite effect, generating outbound traffic from the site during the AM peak (as residents leave home in the morning) and ‘attracting’ traffic to the site during the PM peak (as residents return home in the evening), as illustrated below.
With respect to the intersection of Coonara Avenue and Castle Hill Road, the anticipated shift in arrival and departure distribution associated with a residential use of the site (with no assumed take-up of the Sydney Metro Northwest from this site) would result in:

- No change to the function of the intersection during the morning peak period – while the number of outbound trips through this intersection will add to the demand for movement out of Coonara Avenue onto Castle Hill Road, this is offset by the significant reduction in the overall volume of trips through this intersection (and the reduction in vehicles turning right from Castle Hill Road into Coonara Avenue to access the site during this period); and

- Improvement in the function of the intersection during the evening peak period from a Level of Service ‘F’ to a Level of Service ‘C’ – this is due to reduced traffic northbound along Coonara Avenue utilising this intersection to exit onto Castle Hill Road during the evening period.

It is important to note that this proposal represents one of many sites within the Cherrybrook Precinct which is likely to accommodate increased development yields and cumulatively, result in an intensification of traffic issues more broadly within the locality.

It is anticipated that key potential traffic improvements required within the locality to support precinct-wide growth may include, but not be limited to the upgrade of the intersection of Coonara Avenue and Castle Hill Road to replace the current ‘split-phase’ operation with ‘diamond overlap phasing’ (allowing for turning movements through the intersection to occur concurrently). This would require widening of the intersection approaches along Coonara Avenue and Edward Bennett Drive.

It is also noted that the operation of this intersection is likely to be further moderated as a result of take-up of the Sydney Metro Northwest and increased patronage by users who would otherwise have driven along Castle Hill Road. Further, delays along Castle Hill Road eastbound are also likely to be reduced as a result of the Northconnex, due to open in 2019.

As part of the Gateway process, the proposal would be referred to Roads and Maritime Services (RMS) and Transport for NSW (TfNSW) for consultation. In addition to this, as part of the master planning process for the Cherrybrook Precinct, the NSW Government
is preparing precinct-wide traffic analysis, which will identify existing capacity within the existing network to accommodate future growth and any upgrades, improvements or new traffic infrastructure required.

While an assessment of this individual proposal, in isolation, concludes that the potential traffic impacts will be both minimal and reasonable, as one of many development sites which will result in a cumulative intensification of traffic issues within the locality, it is considered appropriate for any future development on the site to make a reasonable contribution towards the delivery of the required traffic infrastructure and upgrades within the locality by way of monetary contributions or where possible, works-in-kind.

**h) Visitor car parking provision**

Given the location of the site and considering the overall diversity of housing and the extent of resident parking proposed to be provided, it is reasonable to evaluate visitor car parking provision on the basis of 1 space per 5 dwellings for the totality of the site. In this regard the proposal to facilitate 600 residential dwellings would require approximately 120 visitor parking spaces based on 1 space per 5 dwellings. While 80 of these would be required as part of the high density (residential flat building) component of the development, the remaining 40 visitor parking spaces would be required in association with the 200 dwellings proposed within ‘mixed housing precinct’. Given the proposed configuration and size of lots, it is unlikely that this visitor parking will be able to be provided on individual dwelling allotments.

The proposal identifies that internal roads within the development would be no-through roads with turning circles to enable vehicles to enter and leave in a single direction. These roads are proposed to be 9 metres wide, with a 7 metre carriageway and 1.5 metre verge on each side. These roads would form part of the community title scheme. Examples of other private roads in the Shire which have a similar width include Skylark Circuit, Ibis Place and Linden Way which form part of a community title subdivision in Bella Vista, south of Norwest Boulevard.

It is noted that on-street car parking along roads with a carriageway less than 8.5 metres is not permitted due to safety concerns. Within other areas of the Shire where smaller road widths have been permitted, issues have arisen with respect to overspill of parking onto adjoining local roads. In light of this it is considered appropriate that measures be incorporated into the final concept design for the site to ensure that on-street parking/visitor parking is appropriately catered for, with respect to the 200 dwellings proposed within the ‘mixed housing precinct’. Possible measures to achieve this could include:

- Requiring internal roads on the site to have a carriageway width of at least 8.5 metres to ensure that the roads are capable of accommodating on-street car parking along at least one side.
- Alternatively, roads with a carriageway of 7 metres would be permitted if at least forty (40) visitor parking spaces (in addition to those required in association with any residential flat building on the site) are provided within a dedicated visitor parking area on the site. This number would be equivalent to a visitor parking provision of 1 spaces per 5 dwellings.

It is recommended that a new control be included within the DCP to ensure that either an 8.5 metre carriageway is provided to facilitate on-street parking, or a dedicated area/s is made available to cater for a minimum of 40 visitor parking spaces associated with the 200 dwellings proposed within the ‘mixed housing precinct’ (these visitor spaces would be in addition to those required in association with any high density development on the site).
i) Bushfire and Ecological Constraints

Ecological Assessment
The initial ecological assessment submitted with the proposal (prepared by Keystone Ecological dated March 2016) has not been amended to reference the updated development concept since the time of submission and the findings on these matters have remained the same. The previous report stated that such a large vegetated site within a highly urbanised area is of great ecological value, and this is in the context of not only within the Hills but for the Greater Sydney Region also. The assessment also identified that removal of any of the endangered ecological communities is likely to result in a significant impact and require a Species Impact Statement and Referral to the Commonwealth Environment Minister for approval.

The submitted assessment recognised the indicative master plan has been developed to have regard to significant ecological features that are both a constraint to development and a significant opportunity for conservation. However, Council’s assessment has concluded that the proposed development footprint in its current form has not considered suitable buffer distances around Powerful Owl nest trees. The Interim Lake Macquarie Large Forest Owl Planning and Management Guidelines 2014 require that all confirmed nests of large forest owls are to be retained with minimum 100m vegetation buffers.

Since that time, an additional information letter was submitted by Keystone Ecological dated 24 April 2017. The letter acknowledges the importance of the Powerful Owl habitat but also notes that the abovementioned requirement is a guideline rather than a regulation. Moreover, it is noted that the guidelines themselves acknowledge that measures such as corridor widths should be evaluated on a site-by-site basis and not applied as a blanket rule. The letter also identifies that the existing development and areas of maximum disturbance are located within 49-92 metres whereas the closest building proposed is 102 metres distant.

If the planning proposal is supported to proceed a revised Ecological Assessment will need to be submitted to reflect the new development concept of 600 dwellings but should formally acknowledge previous concerns raised by Council in particular appropriate buffer distances around Powerful Owl nest trees. In addition, Bushfire Asset Protection Zones are to be excluded from owl nest and roost trees and buffers, riparian habitat and corridors.

Bushfire Assessment
The proponent’s bushfire assessment prepared by Building Code and Bushfire Hazard Solutions dated March 2016 was based on the original development concept which proposed approximately 1,270 dwellings. Based on compliance with the requirements of Planning for Bushfire Protection 2006 and the management of the entire site to asset protection zone requirements the proposed subdivision was deemed by the proponent’s assessment to be generally acceptable.

The revised Bushfire Assessment should address the new development concept and previous concerns raised by Council regarding the eight (8) metre requirement for perimeter roads. Any future development application would need to address this issue. If the planning proposal proceeds to Gateway Determination and is to be exhibited, it would be referred to the NSW Rural Fire Service for further comment.

Should Council support the revised proposal and resolve to forward it to the Department for Gateway Determination, a package reflecting the new concept would be needed prior
to public exhibition to assist communication with the community and public authorities. This would include updated Bushfire and Ecological Assessments reflecting new development concept.

j) Geotechnical Stability

The site is not identified on the “Landslide Risk” map of LEP 2012. However, the site is located in an area close to a locality that is subject to landslide and is identified in the Landslide Risk Map 2012. Further, the topography of the site is also found to be steep, hence the site is more likely to be subject to geotechnical constraints.

The multi-storey residential development, associated basement carparks and the roadworks proposed by the development concept, would rely on significant earth works including excavation and filling. These activities could potentially disturb the sub surface and particularly the ground water conditions. In recognition of the site’s proximity to land which has been identified as being structurally unstable, it is recommended that if the planning proposal is supported, a geotechnical investigation be prepared by the proponent to identify the landslip affectation of the site and, if required, propose a stabilisation strategy.

k) Public Benefit and Infrastructure

Based on participation rates within The Hills Shire (from the 1995, 2005 and 2012 Recreation Plan household survey results), 2,000 additional dwellings within an area would typically generate the need for approximately:

- 1 (one) new sports fields;
- 1 (one) local park;
- 1 (one) netball court;
- 1 (one) tennis court; and
- 40% of a local community centre.

The 600 additional unplanned dwellings sought through the current planning proposal would generate the need for approximately:

- 30% of a new sports field;
- 30% of a local park;
- 30% of a netball court;
- 30% of a tennis court; and
- 2% of a local community centre.

The proponent submitted a letter of offer to Council which identifies items they propose to provide/fund through a Voluntary Planning Agreement in order to address the demand for public community facilities. These items are listed below:

**Public open space and associated on grade car parking**

- Dedication of 2.49ha to Council;
- The submitted development concept identifies location for a sports field to be dedicated to Council in its current state at no cost.
**General Community Facility Room**

- A room in the order of 250m² be constructed and dedicated to Council;
- It is envisaged the a completed base building would be provided including floor finishes, ceiling finishes, air conditioning, lighting and toilet facilities.

The proposed provision and dedicated of public open space and facilities as part of this planning proposal provides additional public infrastructure that will assist in meeting the demand generated not only generated by the planning proposal but for the broader Cherrybrook Railway Precinct.

A Voluntary Planning Agreement is proposed as the mechanism for ensuring the community and open space facilities are appropriately developed and provided to Council.

It is recommended that Council proceed with discussion with the Proponent to prepare a draft Voluntary Planning Agreement which will secure the following:

- Delivery of proposed public open space;
- Delivery of the proposed public access to recreation and community facilities;
- Provision of pedestrian linkages/ public right of access through the site; and
- Construction methods for delivery of the identified community room to Council standards.

**4. RECOMMENDED AMENDMENTS TO LEP 2012**

As set out in section 2 of this report the planning proposal, as submitted, seeks to change the zone, height and floor space ratio to facilitate the revised development concept. It proposes to rezone the front portion of the site to R2 Low Density Residential to facilitate the housing products identified for this area. However the range of attached, semi-detached and detached housing types identified in the development concept are mostly medium density housing types which would instead require application of the R3 Medium Density Residential zone.

The planning proposal also identifies an R4 High Density Residential zone on a portion of the site to facilitate residential flat buildings. The area of this zone identified by the proponent would be applied over the apartment precinct and extend to the rear boundary of the site over the existing significant vegetation area (see Figure 4).

The proposed approach is not supported as it does not reflect or facilitate the development concept submitted, which seeks to conserve the existing high value vegetation. This is particularly important as the site is heavily vegetated and Blue Gum High Forest and Sydney Turpentine Ironbark Forest are located on the site, which is identified as a Critically Endangered Ecological Community under the NSW Threatened Species Conservation Act 1995 and the Environment Protection and Biodiversity Conservation Act 1999.

An alternative approach would be to apply an environmental protection zone such as the E2 Environmental Conservation zone to the constrained parts of the site however the application of this zone has been used sparingly in the past as it could potentially trigger land acquisition liabilities.

In order to provide certainty with respect to the residential and environmental outcomes on the site, it is recommended that the B7 Business Park zone be retained and that the proposal be facilitated through the use of Schedule 1 Additional permitted uses within LEP 2012. This approach would enable the key components of the proposed development concept to be clearly articulated and for the master planned outcome to be
clearly guided. It would also provide a measure of flexibility as to the exact boundaries of land identified for different purposes and enable improved outcomes to be achieved as part of the preparation of detailed plans and development application for the site.

To facilitate the proposed development outcome, it is recommended that the following clause be inserted into Schedule 1 - Additional permitted uses of LEP 2012:

7 Use of certain land at 55 Coonara West, Pennant Hills

(1) This clause applies to that part of land at 55 Coonara Avenue, West Pennant Hills, comprising Lot 61 DP737386, that is zoned B7 Business Park, shown as "Item 15" on the Additional Permitted Uses Map.

(2) Development for a purpose shown in Column 1 of the table is permitted with development consent, subject to all conditions shown opposite in Column 2.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attached dwellings</td>
<td>Maximum combined number attached dwellings, dwelling houses, multi dwelling housing dwellings and semi-detached dwellings is not to exceed 200.</td>
</tr>
<tr>
<td>Dwelling houses</td>
<td>Maximum height of buildings is not to exceed two (2) storeys for any building fronting Coonara Avenue and three (3) storeys for development internal to the site.</td>
</tr>
<tr>
<td>Multi dwelling housing</td>
<td></td>
</tr>
<tr>
<td>Semi-detached dwellings</td>
<td></td>
</tr>
<tr>
<td>Residential flat buildings</td>
<td>Maximum combined number of dwellings within residential flat buildings is not to exceed 400.</td>
</tr>
<tr>
<td></td>
<td>Maximum height of buildings is not to exceed six (6) storeys.</td>
</tr>
<tr>
<td></td>
<td>Car parking is to be provided at a rate of:</td>
</tr>
<tr>
<td></td>
<td>☐ At least 1 space per residential dwelling;</td>
</tr>
<tr>
<td></td>
<td>and</td>
</tr>
<tr>
<td></td>
<td>☐ 1 visitor space per 5 residential dwellings.</td>
</tr>
</tbody>
</table>

(3) Development consent for any purpose under sub-clause (2) may only be granted if:

a. at least 40% of all dwellings on the land are 2 bedroom dwellings;

b. at least 40% of all dwellings on the land are 3 bedroom dwellings;

c. at least 15% of all 2 bedroom dwellings on the land will have a minimum internal floor area of 110m², and
d. at least 55% of all 3 bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m².

It is noted that community facilities and recreation areas are already permissible within the B7 Business Park zone applicable to the land and as such, these uses which are proposed to be incorporated as part of future development would not need to be specified within Schedule 1 of LEP 2012.

Should the planning proposal proceed to finalisation and the site be redeveloped for residential purposes, it may be appropriate for Council to consider housekeeping amendments to rezone the site to reflect the approved uses. However, at this stage, the use of Schedule 1 to permit the intended development outcomes provides a more appropriate balance between certainty of yield, use and built form outcomes and flexibility in detailed master planning for the site.

5. RECOMMENDED DEVELOPMENT CONTROL PLAN AMENDMENTS
In recognition of the need for a site specific development response and the intended master planned outcome, draft development controls have been prepared and included as an amendment to Part B Section 2 – Residential of DCP 2012 (Attachment 1). The purpose of the development controls is to regulate future development so as to ensure that the desired future character for the site is achieved and there is certainty of outcomes intended for the site.

The proposed development controls relate to the following key matters:

- **Site Planning** – providing for future development to be generally in accordance with the concepts provided and identifying the connections through the site and the provision of intended public space.
- **Streetscape and Character** – providing for retention of vegetation and landscaping to ensure the development is of high visual quality and in keeping with the Shire’s garden character.
- **Access** – providing for public access to proposed open space and community facilities.
- **Vegetation** – providing for a Vegetation Management Area to preserve significant vegetation and ensure ongoing maintenance.
- **Coonara Avenue frontage** – providing for courtyard fencing of high quality along Coonara Avenue that is softened by a landscaped setback.

The above controls will guide future development on the site, minimise impacts on the surrounding amenity and existing vegetation and ensure public access to community facilities. It is recommended that the draft development controls be exhibited concurrently with the planning proposal, should the proposal progress to public exhibition.

CONCLUSION
The size, location and environmental characteristics of the subject site creates an opportunity for residential development within reasonable proximity to the future Cherrybrook station that provides for a variety of different housing stock and choice for future residents within landscaped surrounds. Whilst there have been a number of iterations of development concepts for the site, the current concept is considered appropriate to progress to Gateway Determination given it provides for a density that transitions down from the station, it provides for a greater proportion of medium density forms of housing suited to the Shire’s family demographic and it is supported by significant communal and public open space and community facilities. Given these factors, there is considered to be sufficient strategic justification and merit for a
residential development outcome on the site, particularly having regard to the difficulties in maintaining the site as a stand-alone employment use.

It is recommended that the revised concept be enabled by way of amendment to Schedule 1 Additional Permitted Uses of Local Environmental Plan 2012, rather than by amending the zone, height and floor space ratio as sought by the proponent which will provide certainty as to the master planned outcomes and also enable a degree of flexibility as to the exact boundaries between the different proposed land uses, as the proposal progresses to development application and implementation.

As described throughout this report a range of updated and additional information will be needed prior to public exhibition including:

- An updated Urban Design Analysis that includes demonstration of how the proposed smaller lot housing will provide adequate outcomes in terms of building setbacks, building design and bulk, landscaping, privacy, solar access, private outdoor areas and parking.
- An updated Ecological Assessment to reflect the new development;
- An updated Bushfire Assessment to reflect the new development;
- Geotechnical Investigation to identify if there is any potential landslip affectation of the site and, if required, propose a stabilisation strategy.
- A draft Voluntary Planning Agreement that builds on the draft list of items provided by the proponent which addresses the delivery of proposed public open space, delivery of the proposed public access to recreation and community facilities, provision of pedestrian linkages/public right of access through the site and construction methods for delivery of the identified community room to Council standards.

The Gateway Process allows for some of the detail associated with the planning proposal to be considered and for consultation with the NSW Government and the public to occur, as well as further work and refinements to the planning proposal as necessary.

It is further recommended that the planning proposal be supported by amendments to the Residential section of Development Control Plan 2012 and these amendments be exhibited concurrently with the planning proposal with discussions to continue with the proponent to negotiate a draft Voluntary Planning Agreement which secures the delivery of proposed public facilities and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

**IMPLANTS**

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

**The Hills Future - Community Strategic Plan**
The proposal is consistent with the vision and objectives of The Hills Future – Community Strategic Plan as it will create a desirable place to live and provides built forms that respond appropriately to the surrounding area. The amended planning proposal also provides community facilities which allow the wider public to enjoy recreational benefits.
RECOMMENDATION
1. A planning proposal be forwarded to the Department of Planning and Environment for a Gateway Determination to amend Schedule 1 Additional Permitted Uses of LEP 2012 to facilitate a medium to high density residential development incorporating a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills.

2. Council proceed with discussion with the Proponent to prepare a draft Voluntary Planning Agreement which secures the delivery of the proposed public road access, public open space, community facility room and a sports field as identified in the development concept and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

3. Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.

4. Draft The Hills Development Control Plan Part B Section 2 – as detailed in Attachment 1 (ECM Document No.16017113), be exhibited concurrently with the planning proposal.

ATTACHMENTS
1. Draft The Hills Development Control Plan Part B Section 2 – Residential (67 pages)
MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 25 July 2017

ITEM-4  
PLANNING PROPOSAL - IBM SITE - 55 COONARA AVE, WEST PENNANT HILLS (1/2018/PLP)

Proceedings in Brief

Mr Adrian Checchin – Development Director of Mirvac Projects (Retail and Commercial) Pty Ltd addressed Council regarding this matter.

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR DR LOWE THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

365 RESOLUTION

1. A planning proposal be forwarded to the Department of Planning and Environment for a Gateway Determination to amend Schedule 1 Additional Permitted Uses of LEP 2012 to facilitate a medium to high density residential development incorporating a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills.

2. Council proceed with discussion with the Proponent to prepare a draft Voluntary Planning Agreement which secures the delivery of the proposed public road access, public open space, community facility room and a sports field as identified in the development concept and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

3. Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.

4. Draft The Hills Development Control Plan Part B Section 2 – as detailed in Attachment 1 (ECM Document No.16017113), be exhibited concurrently with the planning proposal.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION
Cllr Y D Keane
Cllr R A Preston
Cllr R K Harty OAM
Cllr Dr J N Lowe
Cllr Dr P J Gangemi

VOTING AGAINST THE MOTION
Cllr R M Tracey
Cllr Dr M R Byrne
Cllr A N Haselden

ABSENT
Cllr A J Hay OAM
Cllr M G Thomas

The is Page 8 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 25 July 2017
ITEM-7  GATEWAY DETERMINATION - IBM SITE 55 COONARA AVENUE, WEST PENNANT HILLS (1/2018/PLP)

THEME: Balanced Urban Growth.

OUTCOME:
1. Responsible planning facilitates a desirable living environment and meets growth targets.

STRATEGY:
1. Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

MEETING DATE: 12 DECEMBER 2017
COUNCIL MEETING

GROUP: STRATEGIC PLANNING

AUTHOR:
SENIOR TOWN PLANNER
PATRICE GRZELAK

RESPONSIBLE OFFICER:
MANAGER FORWARD PLANNING
STEWART SEALE

EXECUTIVE SUMMARY
This report recommends that Council write to the Department of Planning and Environment and request that a revised Gateway Determination be issued for the planning proposal applicable to land at 55 Coonara Avenue, West Pennant Hills (IBM Site) (1/2018/PLP).

At its Ordinary Meeting of 25 July 2017, Council resolved to proceed with the planning proposal to facilitate a medium to high density residential development comprising a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills. To provide certainty of key outcomes relating to the number of dwellings, building heights and apartment size, mix and car parking provision it was recommended that the revised concept be enabled through an amendment to Schedule 1 - Additional Permitted Uses of Local Environmental Plan 2012, rather than by amending the zone, height and floor space ratio as sought by the proponent.

Council has now received a Gateway Determination enabling the proposal to proceed to public exhibition (Attachment 1). However, the Gateway Determination requires that the proposal be amended to delete reference to Schedule 1 and instead enable the proposed development outcome through amendments to the zoning, minimum lot size map, floor space ratio map and height of buildings map.

The Gateway Determination requires the use of the R4 High Density Residential zone, the RU3 Forestry zone, the RE1 Public Recreation zone and an appropriate environmental management zone. The use of the RU3 Forestry zone and RE1 Public Recreation zone are not supported given that the RU3 Forestry zone does not reflect the function and private ownership of the land and the RE1 Public Recreation zone could trigger land acquisition liabilities, inconsistent with the intended dedication of this land.
To facilitate the intended outcomes the suitable zone selection would be the R4 High Density Residential zone, the R3 Medium Density zone and the E3 Environmental Management zone. These zones can be supported by minimum lot size and height of building mapping as set out in the report.

The Gateway Determination also contains no requirement to comply with the housing number, mix and diversity agreed for this site. This does not provide Council or the community with any certainty, does not align with the intent of the agreed methodology for housing mix and diversity within the Sydney Metro Northwest Corridor and does not meet Council’s intent in resolving to proceed with the planning proposal.

It is recommended that Council request a revised Gateway Determination be issued which enables the planning proposal to proceed to public exhibition consistent with the intent of Council and the proponent. The revisions, as recommended, would:

- Remove the RU3 Forestry and RE1 Public recreation zones and include the R3 Medium Density Residential zone;
- Remove the requirement for amendment to the floor space ratio map; and
- Include a new local provision to facilitate the key site outcomes (single owner/developer, maximum 600 dwellings, agreed dwelling mix, size and car parking provision and small lot housing as an integrated product).

Utilising this approach would satisfy the Department’s concerns (removing the use of Schedule 1), enable the proposed development outcome to occur and provide Council and the community with certainty that the master planned outcome with the agreed number and mix of dwellings are delivered.

It is further recommended that amendments be made to the draft Development Control Plan to be exhibited concurrently with the planning proposal. The changes include updating images to reflect the latest master plan layout, clearly identifying the land intended to be dedicated as public open space (in the absence of an RE1 Public Recreation zone) and requiring the main perimeter roadway to be constructed and dedicated as a public local road.

**PROPOINENT**
Mirvac Capital Pty Limited

**OWNERS**
Mirvac Projects (Retail and Commercial) Pty Ltd

**POLITICAL DONATIONS**
Nil disclosures by the proponent.

**REPORT**
The purpose of this report is to advise Council of the implications resulting from the Gateway Determination issued for the planning proposal at 55 Coonara Avenue, West Pennant Hills (1/2018/PLP) and detail the response to the conditions of the Gateway Determination which prevents Council utilising Schedule 1 – Additional permitted Uses to facilitate the proposed development outcome.
1. BACKGROUND
The site is located on the eastern side of Coonara Avenue, close to the intersection of Castle Hill Road. The site is 25.87ha in area and has a walking distance of 860m to Cherrybrook Railway Station from the existing entry. The site slopes away from Coonara Avenue and two watercourses traverse the site.

The site is currently occupied by seven (7) low-rise commercial buildings and associated carparks surrounded by ecologically significant vegetation which includes Blue Gum High Forest and Sydney Turpentine Ironbark Forest. The vegetation on the site and adjoining land result in the site being identified as bushfire prone, both category one (1) and bushfire buffer. An aerial view of the site and surrounding locality is provided in Figure 1.

![Aerial view of the site and surrounding locality](image)

2. PLANNING PROPOSAL
The current development concept is the fourth concept that has been provided on the site with earlier concepts providing higher residential yields up to 1,270 dwellings. The planning proposal, as supported by Council at its Ordinary Meeting of 25 July 2017, seeks to facilitate a master planned residential outcome comprising a mix of 200 medium density dwellings at the front of the site and 400 apartment dwellings at the rear of the site. Buildings range from two (2) to six (6) storeys in height. The previous report providing an assessment of the proposal is included as Attachment 3.
The development concept included a number of key development outcomes, which supported a high and medium density development on the site. The provision of a community precinct was also proposed and included the dedication of land for public open space and associated at grade car parking and general purpose community facility room.

To ensure that these development outcomes are delivered as an integral part of any future development, Council resolved to enable the planning proposal to proceed by amending Schedule 1 (Additional Permitted Uses) of LEP 2012, rather than amending the zoning and development controls applicable to the site (height and floor space ratio). The use of Schedule 1 provides certainty that the proposed high density outcome could only be achieved where all key site development outcomes are delivered as part of the development.

On 25 July 2017, Council resolved as follows:

1. A planning proposal be forwarded to the Department of Planning and Environment for a Gateway Determination to amend Schedule 1 Additional Permitted Uses of LEP 2012 to facilitate a medium to high density residential development incorporating a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills.

2. Council proceed with discussion with the Proponent to prepare a draft Voluntary Planning Agreement which secures the delivery of the proposed public road access, public open space, community facility room and a sports field as identified in the development concept and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

3. Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.

4. Draft The Hills Development Control Plan Part B Section 2 – as detailed in Attachment 1 (ECM Document No.16017113), be exhibited concurrently with the planning proposal.
In accordance with Item 1 of Council’s resolution, the planning proposal was forwarded to the Department of Planning and Environment for a Gateway Determination, which was received on 31 October 2017. The Gateway Determination is provided as Attachment 1 and is discussed further in Section 3 of this Report.

Ongoing dialogue is still occurring with the proponent in regards to the proposed Voluntary Planning Agreement and associated material public benefits. This matter is expected to be reported early next year.

3. GATEWAY DETERMINATION

On 31 October 2017 a Gateway Determination (Attachment 1) was issued by the Department of Planning and Environment. The Gateway Determination states that the planning proposal should proceed to public exhibition, subject to the following conditions:

1. Prior to undertaking community consultation, Council is required to:
   a) remove references to proposed amendments to Schedule 1 – Additional Permitted Uses;
   b) amend the planning proposal to seek to rezone the site from B7 Business Park to R4 High Density Residential, RE1 Public Recreation, RU3 Forestry, and appropriate environmental management zones (such as E4 Environmental Living, E3 Environmental Management, and E2 Environmental Conservation), in accordance with Part 2 of The Hills Local Environmental Plan 2012;
   c) amend the planning proposal to seek amendments to the minimum lot size map, floor space ratio map, and height of buildings map, in accordance with the Hills Local Environmental Plan 2012;
   d) update the planning proposal to provide more information regarding community benefits associated with the proposal, including the identification of traffic and transport accessibility improvement options for the Cherrybrook precinct and additional supporting information for local infrastructure to be provided, and updated supporting studies as identified in Council’s report dated 25 July 2017;
   e) update the Explanation of Provisions to include a satisfactory arrangements provision for contributions to State public infrastructure;
   f) refer the planning proposal and its accompanying Ecological Assessment to the Rural Fire Service and update in accordance with any comments received;
   g) update the planning proposal as required to ensure the following matters are addressed:
      1. ecological values (flora and fauna);
      2. the use of appropriate land use zones;
      3. investigation of infrastructure and traffic considerations;
   h) submit the updated planning proposal to the Department for endorsement; and

2. Community consultation for a minimum period of 28 days; and

3. Consultation with Transport for NSW, Transport for NSW - Roads and Maritime Services, Office of Environment and Heritage, NSW Rural Fire Services, UrbanGrowth NSW, Hornsby Shire Council; and relevant authorities for the supply of water, electricity, and the disposal and management of sewage.

Critically, Condition No.1 (a) to (c) requires that Council remove reference to Schedule 1 and instead facilitate the development outcome by amending the zoning and development standards applicable to the land. The Department’s Planning Team Report...
(Attachment 2) does not support the use of Schedule 1, as proposed by Council, stating that it lacks transparency in terms of defining the future planning standards, and locations for future land uses on the site.

The approach required under the Gateway Determination does not align with Council’s resolution to proceed with the planning proposal using Schedule 1 (Additional Permitted Uses). Rezoning the site and including development standards as identified under the Gateway Determination would enable a high density residential development to occur without any requirement to comply with the housing number, mix, diversity and car parking provision supported by Council for this site.

The Gateway Determination does not align with the intent of the methodology agreed between Council and State Government with respect for housing mix and diversity within the Sydney Metro Northwest Corridor and as such does not meet Council’s intent in resolving to proceed with the planning proposal.

The following section of the report considers an alternative approach to the use of Schedule 1 consistent with the intent of the Department’s requirements whist also enabling the development outcomes sought by the proponent and supported by Council to occur.

4. RESPONSE TO GATEWAY REQUIREMENTS

Conditions (a) to (c) require that the planning proposal be amended to remove the references to Schedule 1 and include recommend zones, floor space ratio, minimum lot size and height of building development standards. The following section considers an alternative approach to the use of Schedule 1 consistent with the intent of the Department’s requirements whist also enabling the development outcomes sought by the proponent and supported by Council to occur.

a) Land Use Zones

The Gateway Determination nominates the use of R4 High Density Residential, RE1 Public Recreation, RU3 Forestry and appropriate environmental management zones.

The R4 High Density Residential zone would best suit the residential flat buildings component of the proposal. However, the use of this zone for the proposed mixed housing precinct in the front portion of the site (Figure 2) is not supported given it would allow for high density residential development, inconsistent with the outcome supported by Council. The dwelling types proposed in the mixed housing precinct would fall within the definition of dwelling houses, attached dwellings and/or multi-unit housing all of which are permitted with Council consent in the R3 Medium Density Residential zone. The use of this zone would align with the development outcomes sought by the proponent and supported by Council.

The use of the RU3 Forestry zone is not supported. In preparing LEP 2012, the specific RU3 Forestry zone was applied specifically to Cumberland State Forest, to enable development such as the provision of roads and fire trails without consent, under the provisions of the Forestry Act 1916. It identifies specific land in State ownership with a different function to the environmental outcomes intended for the subject site.

Of the suggested environmental zones, the E4 Environmental Living zone is not appropriate as it allows for residential opportunities such as dual occupancies (attached), dwelling houses, and secondary dwellings. The suggested E2 Environmental Conservation zone is also not supported as it could potentially trigger land acquisition liabilities for Council and is not necessary given the framework proposed for the ongoing
management of the land as part of a Vegetation Management Plan under a privately titled development.

The E3 Environmental Management zone is best suited to conserving the existing high value vegetation and providing for ongoing management of this area. Under LEP 2012 this zone has been applied to geotechnical constrained land elsewhere in the Shire (Telfer Road locality) to recognise the specific constraints applying in this area. The objectives of this zone are:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To provide for residential development on the land having regard to the geotechnical constraints of the land.

The permitted uses include home occupations, dwelling houses, environmental protection works and roads. Whilst dwelling houses are permissible, draft development controls (Attachment 4) will ensure that an appropriate Vegetation Management Area is set aside and preserved under the provision of a Vegetation Management Plan. The protection of significant vegetation located on the site will also be regulated by the provisions of Commonwealth and State biodiversity legislation.

The use of the RE1 Public Recreation zone is not supported. Whilst this zone would recognise the intended function and future public ownership of the land proposed to be dedicated, it could create a potential acquisition liability for Council. Specifically, under the provisions of the Environmental Planning and Assessment Act 1979 (Section 27) if land is reserved for the purposes of public open space a relevant acquisition authority must be identified. Council is the identified acquisition authority for land zoned RE1 Public Recreation.

Whilst it is the intention of the Voluntary Planning Agreement (currently under negotiation) to dedicate the open space land at no cost to Council this dedication needs to occur before the land is rezoned so there is certainty that Council will not be subject to a land acquisition claim. It is therefore recommended that the land be zoned consistent with the surrounding land, in this case E3 Environmental Management. The area to be dedicated for open space can be more clearly identified within the draft DCP. Following dedication to Council, housekeeping amendments can then be undertaken to rezone the land to RE1 Public Recreation.

In summary the following zones best respond to the development outcomes sought and supported by Council:

- R3 Low Density Residential (Mixed Housing Precinct);
- R4 High Density Residential (Residential Flat Building Precinct & common areas); and
- E3 Environmental Management (Existing Vegetation Area and land identified for dedication as open space).

The recommended application of land zoning is shown in Figure 3 below.
b) Minimum Lot Size

The submitted development concept proposes a range of housing products and lot sizes including attached and detached dwellings with lot sizes ranging between 86m² – 300m² (refer Figure 4). The proposal for small minimum lot sizes down to 86m² would facilitate a new type of housing product in the Shire, being 3 storey terrace homes.
In assessing the planning proposal the smaller lot outcome was considered on the basis that it was an integral part of the 600 dwelling master planned scheme. It was supported subject to an updated Urban Design Analysis being submitted prior to exhibition to demonstrate suitable outcomes in terms of design, amenity, privacy, landscaping and parking.

Whilst the proposed mixed housing component of the development has some lot sizes down to 86m², it is not recommended that this be included as part of the minimum lot size mapping given that such sizes have only been considered on the basis of a master planned outcome. More certainty will be provided for the community and Council by applying the conventional lot size for R3 Medium Density zoned land elsewhere in the Shire (700m²) across the housing precinct. The ability to create smaller lots as proposed under the development concept can then be enabled by a local provision that ‘locks in’ the maximum number of dwellings and the need for the subdivision and dwelling design of the small lot product to be considered together.

For the land zoned R4 High Density Residential a minimum lot size of 1,800m² is appropriate and consistent with the approach for land zoned R4 under LEP 2012 elsewhere in the Shire. It does not change the requirement under Clause 4.1A of the LEP for a minimum lot size of 4,000m² for residential flat building development.

The remainder of the site (excluding the mixed housing precinct and the residential flat building precinct) is proposed to have a larger minimum lot size of 2 hectares. This will facilitate subdivision to create the open space intended to be dedicated to Council as part
of the Voluntary Planning Agreement and discourage subdivision of the ecologically significant land for residential purposes (noting that biodiversity legislation and proposed development controls will also ensure protection of this land).

The recommended application of minimum lot size mapping is shown in Figure 5.

![Proposed Minimum Lot Size Map](image)

**c) Height of Buildings**

The proponent’s design concept illustrates that the residential flat building precinct will have a maximum height of six (6) storeys and the mixed housing precinct will have a maximum height of three (3) storeys with the housing product along the Coonara Avenue frontage of the site limited to a height of two (2) storeys. The Gateway Determination requires the planning proposal to be amended to include a height of buildings map.

The current maximum height applying to the site under LEP 2012 is 22 metres. To facilitate the intended built form and provide certainty for the community it is recommended that a maximum height of nine (9) metres be applied to the Coonara Avenue frontage and the majority of the site of the site, which is consistent with the maximum building heights currently permissible in the surrounding residential locality. A maximum height of 10 metres is recommended for remaining part of the proposed mixed housing precinct and 19 metres for the proposed residential flat buildings location.

The recommended application of maximum height of buildings mapping is shown in Figure 6.
d) New Local Provision

Council previously supported the yield, dwelling mix and size proposed within the proponent’s development concept as it was considered acceptable and consistent with the intent of Council’s local provision to secure a diversity of housing suitable to larger households, typical of the Shire’s population. This was proposed to be secured by the use of Schedule 1 – Additional Permitted Use.

As the Gateway Determination requires that all references to Schedule 1 be removed, an alternative mechanism is needed to secure the master planned outcomes, specifically:

- Development of the site by a single developer;
- The agreed dwelling mix, size and car parking provision;
- The maximum of 600 dwellings where no more than 400 are developed as units; and
- The small lot housing product where the subdivision and dwelling design are considered together.

It is recommended that the following draft additional local provision be used:

**Part 7 Additional Local Provisions**

7. **XX Residential Development Yield for land at 55 Coonara Avenue, West Pennant Hills**

   (1) The objective of this clause is to provide for the redevelopment of the former IBM site at West Pennant Hills.

   (2) This clause applies to land at 55 Coonara Avenue, West Pennant Hills and comprising Lot 61, DP737386.
(3) Development consent must not be granted to development on land to which this clause applies for more a maximum of 600 dwellings of which no more than 400 dwellings are in the form of a residential flat building.

(4) Development consent for any purpose under sub-clause (3) may only be granted if:

- The land is owned and developed by a single entity;
- At least 40% of all dwellings on the land are 2 bedroom dwellings;
- At least 40% of all dwellings on the land are 3 bedroom dwellings (or larger);
- At least 15% of all 2 bedroom dwellings on the land will have a minimum internal floor area of 110m²;
- At least 50% of all 3 bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m²;
- Car parking is to be provided at a rate of at least 1 space per residential dwelling and 1 visitor space per 5 residential dwellings.

(5) For land zoned R3 Medium Density Residential or R4 High Density Residential development consent may be granted to lot sizes smaller than the minimum lot size map that involve the subdivision of land and the erection of a dwelling house or attached dwelling on each lot resulting from the subdivision.

It is noted that the Department may raise concern that the revised approach is inconsistent with Ministerial Section 117 Direction 6.3 Site Specific Provisions. The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. Given the outlined use of land use zones and development standards mapping where appropriate, the use of a local provision to secure the remaining agreed aspects of the development concept is considered warranted.

Application of a floor space ratio control as requested under the Gateway Determination could be unnecessarily restrictive when the master planning work has been done to identify the key outcomes that are able to be supported for this site. The recommended approach will facilitate the envisaged development outcome, ensure protection of high value vegetation and provide a reasonable level of certainty for Council and the community as to the yield and dwelling diversity to be accommodated on the site.

e) Other Gateway Conditions

As set out in section 3 of the report, prior to community consultation, the Gateway Determination also requires the planning proposal to be updated and/or expanded on a range of matters including:

- Community benefits associated with the proposal;
- Traffic and transport accessibility improvement options;
- Contributions to State public infrastructure;
- Any Rural Fire Service comments; and
- Ecological values (flora and fauna).

The additional information required is consistent with the planning proposal supported by Council and therefore it is not recommended that any change be sought to these Gateway requirements. The inclusion of further information on these matters will assist in effectively communicating the specific features of the proposal to the community.
This consultation will only be possible following endorsement of the planning proposal as required by Condition 1(h) of the Gateway Determination.

In relation to 'traffic and transport accessibility improvement options', clarification has been sought from the Department on the information needed to satisfy this requirement. The Department’s Planning Team Report (page 15) indicates that the provision of the public open space, adjoining carpark and community facilities may need access to be improved for residents of the wider area. The access arrangements to this area could be improved by requiring the main perimeter roadway to be constructed and dedicated as public road and clearly distinguished from the private roadways. The location and requirements for public road access can be included in the draft DCP.

5. DEVELOPMENT CONTROL PLAN
The Development Control Plan previously considered by Council proposed amendments to Part B Section 2 – Residential of DCP 2012. The proposed development controls relate to site planning, streetscape and character, access, vegetation and courtyard fencing along Coonara Avenue.

In accordance with the approach outlined in this report further amendments draft DCP are recommended and would be exhibited with the Planning Proposal to secure the key development outcomes. The proposed amendments include the following:

- Update all images to reflect the latest master plan layout;
- Clearly identify the land intended to be dedicated as public open space; and
- Require the main perimeter roadway to be constructed and dedicated as a local road.

An updated copy of the draft DCP amendments is included in Attachment 4.

6. VOLUNTARY PLANNING AGREEMENT
The Planning Proposal would enable additional residential yield on the site, over and above that planned for in the locality and in advance of the finalisation of Contributions Planning for the Cherrybrook Precinct. The Proponent intends to enter into a Voluntary Planning Agreement which details how the additional demand for local infrastructure generated by this additional residential density will be addressed.

Items proposed to be provided include dedication of 2.49 hectares of public open space and associated at grade car parking, construction and dedication of a general community facility room in the order of 250m², delivery of public access to recreation and community facilities and pedestrian linkages/rights of access through the site.

A preliminary draft of the Voluntary Planning Agreement has been submitted by the Proponent and it is recommended that negotiations on this matter continue. Prior to any public exhibition of the planning proposal, the draft Voluntary Planning Agreement will need to be reported to Council for consideration.

IMPEACTS
Financial
As this proposal will increase the planned population under the LEP for this area it will demand additional infrastructure to service the additional population. If this proposal is further advanced, a further report will be brought forward highlighting how the increased demand for additional infrastructure will be funded.
Strategic Plan - Hills Future

The amendments to LEP 2012 proposed within this report are consistent with the vision and objectives of The Hills Future – Community Strategic Plan as they will facilitate a desirable living environment and assist Council in meeting its growth targets. It is also consistent with the key strategy of managing new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

RECOMMENDATION

1. Council write to the Department of Planning and Environment requesting that a revised Gateway Determination be issued that:
   - Removes references to RU3 Forestry, RE1 Public Recreation, E4 Environmental Living and E2 Environmental Conservation zones and removes reference to Floor Space Ratio mapping;
   - Requires the site to be rezoned from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, and E3 Environmental Management consistent with Figure 3 in the report;
   - Requires Minimum Lot Size mapping for the site of 700m², 1800m² and 2 hectares consistent with Figure 5 in the report;
   - Requires Maximum Height of Building mapping of 9 metres, 10 metres and 19 metres consistent with Figure 6 in the report; and
   - Requires a local provision to facilitate key site outcomes - single owner/developer, maximum 600 dwellings (no more than 400 in form of residential flat buildings), agreed dwelling mix, size and car parking provision and small lot housing as an integrated product.

2. Council continue discussions with the proponent with respect to the preparation of a Voluntary Planning Agreement which resolves how the proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

3. Council request additional information from the Proponent required by Council and the Gateway Determination (Geotechnical Analysis, Ecological Analysis, Urban Design Analysis and Investigation of Infrastructure and Traffic Consideration).

4. Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.

5. Draft The Hills Development Control Plan Part B Section 2 – Residential as detailed in (Attachment 4) be exhibited concurrently with the planning proposal.

ATTACHMENTS

1. Gateway Determination (5 Pages)
2. Department of Planning and Environment - Planning Team Report (19 Pages)
4. Draft The Hills Development Control Plan – Part B Section 2 (70 Pages)
ORDINARY MEETING OF COUNCIL

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 12 December 2017

ITEM-7 GATEWAY DETERMINATION - IBM SITE 55 COONARA AVENUE, WEST PENNANT HILLS (1/2018/PLP)

Proceedings in Brief

Carol Flanagan – President of West Pennant Hills Valley Progress Association (Objector) representing the residents of the local area addressed Council regarding this matter.

Adrian Checchin on behalf of Mirvac (Applicant) addressed Council regarding this matter.

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR JETHI THAT Council not proceed with the Planning Proposal (1/2018/PLP) which seeks to facilitate a future medium to high density residential development at 55 Coonara Avenue, West Pennant Hills.

THE MOTION WAS PUT AND LOST.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION
Mayor Dr M R Byrne
Clr R M Tracey
Clr R Jethi
Clr A N Haselden

VOTING AGAINST THE MOTION
Clr R A Preston
Clr S P Uno
Clr B L Collins OAM
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr Dr P J Gangemi
Clr R K Harty OAM

ABSENT
Clr A J Hay OAM

A MOTION WAS MOVED BY COUNCILLOR TRACEY AND SECONDED BY COUNCILLOR HASELDEN THAT the planning proposal for a revised gateway determination which seeks to facilitate a future medium to high density residential development at 55 Coonara Avenue, West Pennant Hills be deferred to a Councillor workshop in February 2018.

THE MOTION WAS PUT AND LOST

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION
Mayor Dr M R Byrne
Clr R M Tracey
Clr R Jethi
Clr A N Haselden

This is Page 5 of the Minutes of the Ordinary Meeting of The Hills Shire Council held on 12 December 2017
VOTING AGAINST THE MOTION

Clr R A Preston
Clr S P Uno
Clr B L Collins OAM
Clr M G Thomas
Clr E M Russo
Clr F P De Masi
Clr Dr P J Gangemi
Clr R K Harty OAM

ABSENT

Clr A J Hay OAM

A MOTION WAS MOVED BY COUNCILLOR PRESTON AND SECONDED BY COUNCILLOR HARTY OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

660 RESOLUTION

1. Council write to the Department of Planning and Environment requesting that a revised Gateway Determination be issued that:
   
   - Removes references to RU3 Forestry, RE1 Public Recreation, E4 Environmental Living and E2 Environmental Conservation zones and removes reference to Floor Space Ratio mapping;
   - Requires the site to be rezoned from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, and E3 Environmental Management consistent with Figure 3 in the report;
   - Requires Minimum Lot Size mapping for the site of 700m², 1800m² and 2 hectares consistent with Figure 5 in the report;
   - Requires Maximum Height of Building mapping of 9 metres, 10 metres and 19 metres consistent with Figure 6 in the report; and
   - Requires a local provision to facilitate key site outcomes - single owner/developer, maximum 600 dwellings (no more than 400 in form of residential flat buildings), agreed dwelling mix, size and car parking provision and small lot housing as an integrated product.

2. Council continue discussions with the proponent with respect to the preparation of a Voluntary Planning Agreement which resolves how the proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.

3. Council request additional information from the Proponent required by Council and the Gateway Determination (Geotechnical Analysis, Ecological Analysis, Urban Design Analysis and Investigation of Infrastructure and Traffic Consideration).

4. Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.

5. Draft The Hills Development Control Plan Part B Section 2 – Residential as detailed in (Attachment 4) be exhibited concurrently with the planning proposal.
Being a planning matter, the Mayor called for a division to record the votes on this matter

**VOTING FOR THE MOTION**
Clr R A Preston  
Clr S P Uno  
Clr B L Collins OAM  
Clr M G Thomas  
Clr E M Russo  
Clr F P De Masi  
Clr Dr P J Gangemi  
Clr R K Harty OAM

**VOTING AGAINST THE MOTION**
Mayor Dr M R Byrne  
Clr R M Tracey  
Clr R Jethi  
Clr A N Haselden

**ABSENT**
Clr A J Hay OAM

**RESUMPTION OF STANDING ORDERS**
A MOTION WAS MOVED BY COUNCILLOR HARTY OAM AND SECONDED BY COUNCILLOR COLLINS OAM THAT standing orders be resumed.

THE MOTION WAS PUT AND CARRIED.

**661 RESOLUTION**
Standing orders be resumed.

*At 8.47pm standing orders were resumed.*

**ITEM-2**  
**MATTER REFERRED - DA NO. 620/2016/HB - RETENTION OF A HERITAGE LISTED BUILDING AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT - LOT 23 DP 739791 - 37-43 OLD NORTHERN ROAD, BAULKHAM HILLS**

**Proceedings in Brief**
Adam Byrnes on behalf of Think Planners (Applicant) addressed Council regarding this matter.

A MOTION WAS MOVED BY COUNCILLOR UNO AND SECONDED BY COUNCILLOR HASELDEN THAT the development application be deferred to allow the applicant to provide a unit mix compliant with Clause 3.11 (a) of the DCP (Part B Section 5 Residential Flat Buildings) to accommodate a range of household types and facilitate housing diversity.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.
Mr Michael Edgar  
General Manager  
The Hills Shire Council  
PO Box 7064  
BAULKHAM HILLS BC 2153

Dear Mr Edgar

Planning proposal PP_2017_THILL_006_00 – Alteration of Gateway determination

I refer to your request to alter the Gateway determination for planning proposal PP_2017_THILL_006_00, which seeks to facilitate a medium to high-density residential development at 55 Coonara Avenue, West Pennant Hills.

I have determined as the delegate of the Greater Sydney Commission, in accordance with section 3.34(7) of the Environmental Planning and Assessment Act 1979, to alter the Gateway determination dated 31 October 2017, as enclosed. In making this decision, I have carefully considered the views of Council, the proponent and the community, who have made representations directly to the Department.

As requested, the altered Gateway determination has been amended to remove the RU3 zone, supports the inclusion of the R3 Medium Density Residential zone, and supports the dwelling cap of a maximum of 600 dwellings.

The altered Gateway determination provides for a local provision to facilitate the dwelling cap. While the Department supports the overall cap on development over the site, the remaining elements of Council’s proposed local provision are not supported as the Department considers existing clause 7.12 of The Hills Local Environmental Plan 2012 (LEP), the most appropriate mechanism to achieve key site outcomes, as this clause implements the methodology for housing mix and diversity within the Sydney Metro Northwest Corridor, which was agreed to by Council and the Minister for Planning.

If Council wishes to achieve these agreed outcomes for housing size, mix and parking, Council may consider seeking an incentive FSR for the site to enable clause 7.12 to apply to any additional residential flat buildings on the site.

The altered gateway determination continues to require the proposal to be updated to seek amendments to the minimum lot size map, floor space ratio map and height of buildings map. Regarding Council’s request to specify the minimum lot sizes and maximum height of building controls, the Department considers that the Gateway determination already provides the necessary flexibility for Council to consider and propose appropriate controls for the site as part of the revised planning proposal.
I note however that the Department is supportive of the heights contained in Council’s proposal, that is, heights ranging from 9 to 22 metres, to provide for development ranging from 2 to 6 storeys. Controls that facilitate the intended development are considered transparent and will give the community certainty as to the intended outcomes for the site. Any controls that will require consideration of a variation to these controls at the development application stage under Clause 4.6 of the LEP to enable the envisaged development, will not be supported.

The Gateway determination remains unaltered regarding the requirement to consider and propose the RE1 Public Recreation zone. I understand that Council is currently working with the proponent towards the dedication of 2.49ha for potential public open space (including the adjoining car park and a general-purpose community facility room) through a Voluntary Planning Agreement (VPA), and that this VPA is anticipated to be publicly exhibited in conjunction with the revised planning proposal. The proposed public open space should be identified in the revised planning proposal as RE1 Public Recreation. Council may wish to note in the revised proposal that this portion of the site may have an alternative zone should VPA not progress.

The Gateway determination also remains unaltered regarding the requirement to consider and propose appropriate environmental zone (or zones). In proposing appropriate environmental zones, Council is requested to seek the highest level of protection to relevant portions of the site.

The Department has considered Council’s concerns regarding the potential acquisition liability in relation to applying the E2 Environmental Conservation zone. Having considered the Departments Practice Note PN09-002, the Department is satisfied that the rezoning of land to E2 does not give rise to the need to compensate a landholder, whether or not the rezoning results in a reduced development potential for the land. Additionally, such a rezoning of land does not trigger any requirement for the State or Council to acquire the land if the land is not also designated for acquisition for a public purpose.

If you have any questions in relation to this matter, I have arranged for Ms Ann-Maree Carruthers, Director, Sydney Region West, to assist you. Ms Carruthers can be contacted on 9274 6270.

Yours sincerely

David Gainsford
Acting Deputy Secretary
Planning Services

Encl: Alteration of Gateway determination

13/6/18.
Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2017_THILL_006_00)

I, the Acting Deputy Secretary, Planning Services at the Department of Planning and Environment, as delegate of the Greater Sydney Commission, have determined under section 3.34(7) of the Environmental Planning and Assessment Act 1979 to alter the Gateway determination dated 31 October 2017 for the proposed amendment to The Hills Local Environmental Plan 2012 to facilitate a medium to high-density residential development at 55 Coonara Avenue, West Pennant Hills as follows:

1. Delete condition 1(b) and replace with a new condition 1(b):

   “amend the planning proposal to seek to rezone the site from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, RE1 Public Recreation, and appropriate environmental zones (such as E4 Environmental Living, E3 Environmental Management, and E2 Environmental Conservation) in accordance with Part 2 of The Hills Local Environmental Plan 2012”.

2. At the end of condition 1(e), insert:

   “and to include a proposed local provision facilitating a maximum of 600 dwellings over the site.”

3. Delete condition 5, and replace with a new condition:

   “The timeframe for completing the LEP is to be 31 January 2019.”

Dated 13th day of June 2018.

David Gainsford
Acting Deputy Secretary
Planning Services
Department of Planning and Environment
Delegation of the Greater Sydney Commission

PP_2017_THILL_006_00 (IRF17/707)
Composite of Gateway Conditions – 55 Coonara Avenue, West Pennant Hills
(1/2018/PLP)

1. Prior to undertaking community consultation, Council is required to:
   (a) remove references to proposed amendments to Schedule 1 – Additional Permitted Uses;
   (b) amend the planning proposal to seek to rezone the site from B7 Business Park to R3 Medium Density Residential, R4 High Density Residential, RE1 Public Recreation, and appropriate environmental zones (Such as E4 Environmental Living, E3 Environmental Management, and E2 Environmental Conservation) in accordance with Part 2 of The Hills Local Environmental Plan 2012;
   (c) Amend the planning proposal to seek amendments to the minimum lot size map, floor space ratio map, and height of buildings map, in accordance with the Hills Local Environmental Plan 2012;
   (d) Update the planning proposal to provide more information regarding community benefits associated with the proposal, including the identification of traffic and transport accessibility improvement for local infrastructure to be provided, and updated supporting studies as identified in Council’s report dated 25 July 2017;
   (e) Update the Explanation of Provisions to include a satisfactory arrangements provision for contributions to State public infrastructure and to include a proposed local provision facilitating a maximum of 600 dwellings over the site.
   (f) Refer the planning proposal and its accompanying Ecological Assessment to the Rural Fire Service and update in accordance with any comments received.
   (g) Update the planning proposal as required to ensure the following matters are addressed:
      1. Ecological values (flora and fauna)
      2. The use of appropriate land use zones;
      3. Investigation of infrastructure and traffic considerations; and
      4. Submit the updated planning proposal to the Department for endorsement.

2. Community consultation is required under Sections 56(2) and 57 of the Environmental Planning and Assessment Act 1979 (the Act) as follows:
   a. The planning proposal must be made publically available for a minimum of 28 days; and
   b. The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for materials that must be made publically available along with the planning proposals as identified in Section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2016).

3. Consultation is required with the following public authorities and organisations under Section 56(2)(d) of the Act and/or to comply with the requirements of the relevant Section 117 Directions:
   - Transport for NSW;
   - Transport for NSW – Roads and Maritime Services;
   - Office of Environment and Heritage;
   - NSW Rural Fire Services;
   - UrbanGrowth NSW
   - Hornsby Shire Council; and
   - Relevant authorities for the supply of water, electricity, and the disposal and management of sewage.
Each Public Authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under Section 56(2)c of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 31 January 2019.
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1. INTRODUCTION
This Section of the DCP must be read in conjunction with the following parts of The Hills Development Control Plan 2012:
- Part A - Introduction
- Part B – Multi Dwelling Housing
- Part B – Residential Flat Buildings
- Part C
- Section 1 – Parking
- Section 3 – Landscaping
- Section 4 – Heritage
- Appendix A – Waste Management Plan
- Appendix B – Water Sensitive Urban Design

In the event of any inconsistency between this Section of the DCP and any other Sections of the DCPs, the provisions of this Section shall prevail only to the extent of the inconsistency.

1.1 LAND TO WHICH THIS SECTION OF THE PLAN APPLIES
This chapter of the Development Control Plan establishes site specific objectives and controls to guide future development on Lot 61 DP 737386, No.55 Coonara Avenue, West Pennant Hills (see Figure 1).

2. SITE SPECIFIC OBJECTIVES AND DEVELOPMENT CONTROLS
The objectives and development controls for this site are set out in the following sections.

2.1 SITE PLANNING
(i) To provide for a carefully master planned residential precinct that delivers a high level of amenity for existing and future residents.

DEVELOPMENT CONTROLS
(a) Future development is to be generally in accordance with the indicative layout and arrangement contained within Figures 2 and 3.
(b) Provision is to be made for connections through the site and provision of public spaces generally in accordance with Figure 4.
(c) The land is to be owned and developed by a single entity.

2.2 STREETSCAPE AND CHARACTER
OBJECTIVES
(i) To ensure that new development is sensitive to the landscape setting and environmental conditions of the locality.
(ii) To ensure that the appearance of new development is of a high visual quality, enhances the streetscape and complements surrounding development.
(iii) To ensure new development respects and enhances the green and garden character of The Hills Shire.

DEVELOPMENT CONTROLS
(a) Future development should retain mature vegetation where possible and provide landscaping within the housing lots and apartment development of a scale which compliments the built form.

2.3 ACCESS
OBJECTIVES
(i) To provide public access to open space and community facilities infrastructure.
(ii) Public access to open space and community facilities is to connect with existing public road network.

DEVELOPMENT CONTROLS
(a) Any future development on the site shall be publically accessible from Coonara Avenue. Public access should be located in accordance with Figure 4.
(b) The public access road identified as the yellow dashed line in Figure 4 is to be dedicated to Council as a public road and shall be constructed to Council’s specifications.
Figure 2: Indicative Site Plan

Figure 3: Location of Residential Precincts
2.4 VEGETATION

OBJECTIVES

(i) To preserve the existing significant vegetation on the site.

(ii) To ensure the ongoing maintenance of the significant vegetation on the site, at cost to any future residents on the site.

DEVELOPMENT CONTROLS

(a) Future development on the site should include a Vegetation Management area of approximately 18ha over the significant vegetation located in the southern portion of the site.

(b) The Vegetation Management Area should be identified as a Restricted Development Area on the title.

(c) Future development on the site should include the provision of a Vegetation Management Plan (VMP) in accordance with Council’s Vegetation Management Plan Guidelines.

(d) The Vegetation Management Area must not form any part of the Asset Protection Zone on the site.

2.5 COONARA AVENUE FRONTAGE

OBJECTIVES

(i) To protect and ensure a high visual quality along Coonara Avenue.

(ii) To enhance the appearance of the site and soften the built form to the street.

DEVELOPMENT CONTROLS

(a) A vegetated buffer zone of a minimum 8 metres width shall be provided along the Coonara Avenue frontage generally in accordance with figure 5.

(b) The rear façade of dwellings along Coonara Avenue should display a high quality architectural finish and be sympathetic to the landscape/bushland character.

(c) Private open space areas located along Coonara Avenue shall be enclosed with a wall or fence with an effective height of 1.8 metres from the finished ground level of the open space courtyard. All fencing enclosing private open space facing a common area or public place shall be constructed in masonry similar to the type and colour to be used in the building.

(d) Any fencing along Coonara Avenue shall have a two (2) metre landscaped setback between the frontage boundary line and fencing.
2.6 PARKING

OBJECTIVES

(i) To ensure that all car-parking demands generated by the development are accommodated on the development site.

(ii) To protect the free flow of traffic into and out of the residential development and the surrounding street network in accordance with Council’s ESD objective 7.

DEVELOPMENT CONTROLS

(a) On site car parking is to be provided at the following rates, subject to compliance with the dwelling size and mix controls contained in section 2.7:

<table>
<thead>
<tr>
<th>Dwelling Type</th>
<th>Car Parking Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi dwelling housing and semi-detached dwellings</td>
<td>1 space per 1 bedroom dwelling</td>
</tr>
<tr>
<td></td>
<td>2 spaces for dwellings with 2 or more bedrooms</td>
</tr>
<tr>
<td></td>
<td>A minimum 40 visitor car parks are to be provided either on-street through the provision of internal roads with a minimum carriageway of 8.5 metres and/or through the provision of a dedicated area for visitor parking.</td>
</tr>
<tr>
<td>Residential Flat Buildings</td>
<td>1 space per dwelling</td>
</tr>
<tr>
<td></td>
<td>1 visitor space per 5 dwellings</td>
</tr>
</tbody>
</table>

(b) If the dwelling size and mix provisions contained in Section 2.7 are not achieved, car parking rates shall revert to those for multi-dwelling housing and Residential Flat Buildings contained in Part C Section 1 – Car Parking of The Hills Development Control Plan.

2.7 DWELLING SIZE AND MIX

OBJECTIVES

(iii) To ensure the provision of a mix of dwelling types providing housing diversity and choice for different demographics, living needs and household budgets.

(iv) To promote development that accommodates the needs of larger households, consistent with the demographics and family household structures of The Hills Shire.
DEVELOPMENT CONTROLS

a) At least 40% of all dwellings on the land are to be 2 bedroom dwellings.
b) At least 40% of all dwellings on the land are to be 3 bedroom dwellings (or larger)
c) At least 15% of all 2 bedroom dwellings on the land will have a minimum internal floor area of 110m².
d) At least 50% of all 3 bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m².

2.8 MINIMUM LOT SIZES

OBJECTIVES

(i) The ensure allotment have sufficient area to provide adequate access, open space, a sufficient building platform and attractive presentation to the street.

DEVELOPMENT CONTROLS

a) Lot sizes are to comply with the minimum lot sizes prescribed in The Hills Local Environmental Plan.
b) Minimum lot widths and depths are to be provided in accordance with table 2.

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Minimum Lot Width</th>
<th>Minimum Lot Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Storey Front Loaded (Detached)</td>
<td>9m</td>
<td>20m</td>
</tr>
<tr>
<td>2 Storey Front Loaded (Attached, Semi-detached)</td>
<td>5m</td>
<td>20m</td>
</tr>
<tr>
<td>2 Storey Rear Loaded (Attached)</td>
<td>4m</td>
<td>20m</td>
</tr>
<tr>
<td>3 Storey Front Loaded (Attached, Semi-detached)</td>
<td>6m</td>
<td>20m</td>
</tr>
<tr>
<td>3 Storey Rear Loaded (Attached)</td>
<td>4m</td>
<td>20m</td>
</tr>
</tbody>
</table>

Table 2

2.9 BUILDING SETBACKS

OBJECTIVES

(i) To ensure the appearance of new development is of a high visual quality which contribute positively to the streetscape.

(ii) To ensure sufficient separation between buildings to protect privacy and access to sunlight to adjacent dwellings.

(iii) To ensure new development is sensitive to the landscape setting, site constraints and desired character of the locality.

DEVELOPMENT CONTROLS

a) Setbacks are to be in accordance with Table 3

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Front Setback</th>
<th>Rear Setback</th>
<th>Side Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Storey Front Loaded (Detached)</td>
<td>4.5m</td>
<td>3m</td>
<td>900mm</td>
</tr>
<tr>
<td>2 Storey Front Loaded (Attached, Semi-detached)</td>
<td>4.5m</td>
<td>3m</td>
<td>900mm (detached boundary line)</td>
</tr>
<tr>
<td>2 Storey Rear Loaded (Attached)</td>
<td>2m</td>
<td>0.5m</td>
<td>900mm (detached boundary line)</td>
</tr>
<tr>
<td>3 Storey Front Loaded (Attached, Semi-detached)</td>
<td>2m</td>
<td>3m</td>
<td>900mm (detached boundary line)</td>
</tr>
<tr>
<td>3 Storey Rear Loaded (Attached)</td>
<td>2m</td>
<td>0.5m</td>
<td>900mm (detached boundary line)</td>
</tr>
<tr>
<td>Garage</td>
<td>5.5m</td>
<td>0.5m (to rear laneway)</td>
<td>0m</td>
</tr>
</tbody>
</table>

Table 3

b) For corner allotments a secondary street frontage setback of 1.5m will apply to all attached, semi-detached and attached dwellings.

2.10 GARAGES

OBJECTIVES

(i) To ensure garages are sympathetically designed and do not dominate streetscapes.

DEVELOPMENT CONTROLS

a) All garage door openings must not exceed 3.2metres wide, or if the lot is greater than 12m wide, garage doors must not exceed 6m.
b) Garages shall be setback a minimum 1m behind the main face of the dwelling when addressing the primary street frontage.

2.11 OPEN SPACE

OBJECTIVES

(i) To provide private outdoor living space that is an extension of the dwelling for the enjoyment of residents.
(i) To provide private outdoor living space that receives a reasonable quality of sunshine during all months of the year.

(ii) To provide outdoor living space to meet the reasonably requirements for outdoor activities, privacy, access, drying and landscaping.

DEVELOPMENT CONTROLS

a) Each dwelling shall have access to an area of private open space that is directly accessible from primary living areas.

b) A minimum of 2 hours sunlight between 9 am and 3pm on 21 June, shall be achieved to at least 50% of the principal private open space of each dwelling, including adjoining dwellings.

c) The principal private open space area shall have dimensions in accordance with Table 4.

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Minimum area of Principal Private Open Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detached – Principal private open space at ground level</td>
<td>25m²</td>
</tr>
<tr>
<td>Attached, Semi-detached – Principal private open space at ground level</td>
<td>15m²</td>
</tr>
<tr>
<td>Attached, Semi-detached – Principal private open space located above ground level</td>
<td>8m²</td>
</tr>
</tbody>
</table>

2.12 PRIVACY

OBJECTIVES

(i) To site and design buildings to ensure privacy between dwellings and private open space.

DEVELOPMENT CONTROLS

a) Private open space areas and habitable rooms of adjacent dwellings should be reasonably protected from overlooking.

b) Windows of living rooms with direct outlook to any living room of any proposed or existing dwelling within 9 metres should:
   - Be offset a minimum of 1 metre from the edge of one window to the edge of another, or
   - Have a minimum sill height of 1.5m above finished floor level, or
   - Provide fixed obscure glazing to a height of 1.5 metres above finished floor level.
1 June 2018

The General Manager
The Hills Shire Council
3 Columbia Court
Baulkham Hills NSW 2153

Attention: Mr Stewart Seale

Dear Stewart,

RE: 55 Coonara Avenue, West Pennant Hills – Lot 61 / DP 737386
Letter of Offer #3 to enter into a Planning Agreement
PP_2017_THILL_006_00

WITHOUT PREJUDICE

We write following discussions at our meeting of 15 March 2018 and our meeting with Department of Planning and Environment on 14 May 2018. Subject to the planning controls making it possible to achieve the July 2017 endorsed proposal for 55 Coonara Avenue, West Pennant Hills, without prejudice, we confirm the following VPA offer in accordance with Section 7.4 of EP&A Act:

1. Dedication of 2.493 hectares of public open space land,
2. Construction of a synthetic soccer field on the public open space land, and
3. Perimeter road to be dedicated public road at widths indicated on the plan at Annexure A.

The above offer is made on the basis that it will fully satisfy all contributions payable in respect of the proposed development under Sections 7.11 and 7.12 of the EP&A Act.

In recognition of the above, please refer to the attached updated draft of the proposed VPA between Council and Mirvac (1 June 2018 version).

We look forward to your response in relation to the above offer, and can be contacted at any time on 9080 8765.

Yours sincerely,

Amanda Blake
Senior Development Manager

cc. Adrian Chechin, Mirvac

Mirvac Limited
ABN 92 003 280 699

Mirvac Funds Limited
ABN 70 002 566 640
AFSL 223521

Mirvac Real Estate Pty Ltd
ABN 65 003 342 452

Mirvac's Privacy Policy is on our website or contact our Privacy Officer on T: +61 2 9080 8000

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Appendix A – Indicative Public Roads Diagram

55 Coonara Avenue, West Pennant Hills
Public Streets

Primary Street
Public Road
2 way, Parking no yield
16.5m Street Reserve Width
8m Carriageway width

Primary Street
Public Road - Sensitive Bushland
2 way, No Parking
16.5m Street Reserve Width
8m Carriageway width
PLANNING AGREEMENT

THE HILLS SHIRE COUNCIL
MIRVAC PROJECTS (RETAIL AND COMMERCIAL) PTY LIMITED

www.thehills.nsw.gov.au
## Planning Agreement

### Summary Sheet

**Council**

<table>
<thead>
<tr>
<th>Name</th>
<th>The Hills Shire Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>3 Columbia Court</td>
</tr>
<tr>
<td></td>
<td>Baulkham Hills NSW 2153</td>
</tr>
<tr>
<td>Telephone</td>
<td>(02) 9843 0555</td>
</tr>
<tr>
<td>Facsimile</td>
<td>(02) 9843 0258</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:council@thehills.nsw.gov.au">council@thehills.nsw.gov.au</a></td>
</tr>
<tr>
<td>Senior Manager</td>
<td>Mr Michael Edgar – General Manager</td>
</tr>
<tr>
<td>Representative</td>
<td>[Council to advise]</td>
</tr>
</tbody>
</table>

**Developer**

<table>
<thead>
<tr>
<th>Name</th>
<th>Mirvac Projects (Retail and Commercial) Pty Limited ATF Mirvac Pennant Hills Residential Trust (ABN 80 199 861 372)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Level 28, 200 George Street&lt;br&gt;Sydney NSW 2000</td>
</tr>
<tr>
<td>Telephone</td>
<td>(02) 9080 8000</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:Adrian.Checchin@mirvac.com">Adrian.Checchin@mirvac.com</a>&lt;br&gt;<a href="mailto:Amanda.Blake@mirvac.com">Amanda.Blake@mirvac.com</a></td>
</tr>
<tr>
<td>Senior Manager</td>
<td>Stuart Penklis – Head of Residential</td>
</tr>
<tr>
<td>Representative</td>
<td>Toby Long – General Manager, Residential Development NSW &amp; Major Projects</td>
</tr>
</tbody>
</table>

**Land**

| Lot 61 in DP 737386 (or any subdivision of that lot) |

**Planning Proposal**

| 1/2018/PLP |

**Dedication Land**

| See Schedule 1 |

**Works**

| See Schedule 1 |
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</tbody>
</table>
Planning Agreement

Dated

Parties

The Hills Shire Council  ABN 25 034 494 656 of 3 Columbia Court, Baulkham Hills, NSW 2153 (Council)

Mirvac Projects (Retail and Commercial) Pty Limited as trustee for Mirvac Pennant Hills Residential Trust ABN 80 199 861 372 of Level 28, 200 George Street, Sydney NSW 2000 (Developer)

Background

A. Council is the consent authority pursuant to the Environmental Planning and Assessment Act 1979 (NSW) (Act) for the Proposed Development.

B. The Developer is the owner of the Land and has made a Planning Proposal in relation to the Land.

C. The Developer has offered to enter into this document with Council to provide the Material Public Benefits on the terms of this document.

Operative provisions

1 Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2 Application of this document

This document applies to:

(a) the Land,

(b) the Planning Proposal, and

(c) the Proposed Development.

3 No restriction on Council’s Powers

3.1 This Agreement or anything done under this Agreement:

3.1.1 is not to be taken as approval or consent by Council as a regulatory authority, and

3.1.2 does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,
pursuant to any legislation including the Act, the Roads Act 1993 (NSW) and the Local Government Act 1993 (NSW).

4 Operation of this Agreement

4.1 This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act.

4.2 Clauses 6 to 21 inclusive and clause 27 of this Agreement are effective and binding on the parties from the date that the Draft LEP commences in accordance with section 3.24(5) of the Act and that the remaining clauses of this Agreement are effective and binding on the parties from the date that this Agreement is executed; and

4.3 This Agreement will remain in force and effect until the earlier of:

4.3.1 provision of all of the Material Public Benefits by the Developer;

4.3.2 an effective Court declaration or order that the Draft LEP is invalid; or

4.3.3 termination pursuant to the terms hereof or by agreement.

5 Termination if Minister Decides not to make Draft LEP

5.1 In the event that the Minister decides at any time not to make the Draft LEP under section 3.36(2)(b) of the Act and informs a party in writing of that decision, then either party may terminate this Agreement by not less than 28 days’ notice to the other.

6 Material Public Benefits

6.1 The Developer must, at its own cost and risk, provide the Material Public Benefits set out in Schedule 1 to the Council in accordance with this document.

6.2 For the purposes of section 7.11 of the Act, Council accepts the provision of the Material Public Benefits as a material public benefit in full satisfaction of the requirement of the Developer to pay contributions under that section.

For clarity, by operation of this Agreement, no contributions are payable in respect of the Planning Proposal or a Proposed Development under sections 7.11 or 7.12 of the Act.

7 Assignment and Dealing with the Land

7.1 Subject to clauses 7.2, 7.3 and 27.3, the Developer must not have any Dealings (except the subdivision of the Land in accordance with this Agreement) with the Land unless the proposed assignee, purchaser or other Party (the Incoming Party) accepts such of the obligations of this Agreement as may be reasonably required.

7.2 For the purpose of giving effect to clause 7.1 the Council, the Developer and the Incoming Party must enter into a deed of novation whereby the incoming Party agrees to carry out the obligations of the Developer under the Agreement and the Developer is released, from the date of the deed of novation from the obligations contained in this Planning Agreement to the extent that they:

7.2.1 are novated to the Incoming Party, and

7.2.2 remain to be performed.
7.3 If the Incoming Party is acquiring an interest in the Land as a purchaser of one or more lots in a community scheme or a strata scheme, (whether or not the scheme has, at the date of exchange, been registered at Land and Property Information NSW), then the Developer may create that interest without requiring that party to enter into an Agreement with the Council and the interest so created will not be in breach of this Clause.

7.4 A deed of novation may be amended as agreed from time to time by the parties acting reasonably.

7.5 The parties acknowledge and agree that the rights of the Council under clause 8.2 are not diminished by the provisions of this Clause 4.

8 Dedication

8.1 The Developer must, at its own cost, Dedicate to Council the various Dedication Lands in accordance with the times listed in Schedule 1.

8.2 Encumbrances

8.2.1 Prior to transfer to the Council of the Dedication Land, the Developer may not, without the prior consent of the Council (which must not be unreasonably withheld), grant any lease or licence or create any easement, covenant or restriction burdening the Dedication Land which interest or right would subsist on the title at the date of transfer to the Council, other than:

(a) subject to clause 8.3, those easements, covenants and restrictions that exist at the date of this Agreement;

(b) interallotment easements for utilities, drainage and services, whether benefiting or burdening the Dedication Lands or other parts of the Land; and

(c) covenants, easements and restrictions required to comply with any development consent applicable to the Land;

provided that (other than the beneficiaries’ rights of installation, repair and maintenance) such interests do not, in the reasonable opinion of Council interfere with the intended use of the Dedication Land by Council.

8.3 Extinguishment of interests on Dedication Lands prior to transfer

8.3.1 The Developer agrees that prior to the transfer of the Dedication Lands it will use its best endeavours to extinguish all redundant encumbrances and those that, in Council’s opinion, would unreasonably impede the intended use of the Dedication Lands by Council in respect of all or part of the Dedication Lands.

8.4 The Dedication will be effected when:

8.4.1 a plan of subdivision dedicating the relevant Dedication Lands to Council is lodged for registration with Land and Property Information NSW, or

8.4.2 Council has in its possession everything necessary (including an executed transfer and certificate of title) for it to become the registered proprietor of an existing lot being part of the Dedication Lands.

8.5 Where an existing lot forming part of the Dedication Lands is to be transferred to Council,
8.5.1 the Developer will deliver to Council the following:

(a) transfer in registrable form signed by the registered proprietor of the lot,

(b) the Certificate of Title for the lot, and

(c) a discharge of mortgage, surrender of lease or other document to release the lot from any Encumbrance.

8.5.2 Council will on receipt of these documents arrange for the following:

(a) stamping of the transfer, and

(b) lodgement of the transfer and other documents at the office of Land and Property Information for registration.

8.6 Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the Dedication of the Dedication Lands including its legal costs and disbursements on an indemnity basis (including any registration fees).

8.7 The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under section 350(2) of the *Legal Profession Act 2004* (NSW).

8.8 The Developers must pay to Council the amount invoiced for expenses under clause 8.6 within 14 days of receipt of the invoice.

8.9 The Developer must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Lands. The Parties acknowledge that section 277 of the *Duties Act 1997* (NSW) provides generally that duty under that Act is not chargeable on dutiable transactions where Council is liable to pay the duty.

8.10 After the Dedication Lands are transferred to Council, Council will use the land for public purposes.

9 Works

9.1 Obligation to Carry Out Works

9.1.1 The Developer is to carry out and complete the Works listed in Schedule 1.

9.1.2 The Developer’s obligations under clause 9 exists irrespective of whether the Developer:

(a) carries out the Works itself, or

(b) enters into an agreement with another person under which the other person carries out the Works on the Developer’s behalf.

9.2 Plans and Specifications of Works

9.2.1 Before the Developer commences the Works, the Developer, at its own cost, is to prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the item.

9.2.2 The Council will, within 20 Business Days, give the Developer written notice:
(a) whether or not the design and description of the Works is satisfactory, and

(b) if the detailed design is not satisfactory, identifying the further information or modifications (as the case may be) required, including the reason for that modification.

9.2.3 If the Council does not provide such a notice within 20 Business Days, the Works will be deemed to be satisfactory for the purposes of clause 9.

9.3 Nature of Modifications Required

9.3.1 The parties acknowledge and agree that the Council may require modification under clause 9.2.2, only if:

(a) the standard of drawings does not reasonably allow a proper assessment and understanding of the proposal (including, without limitation, that the drawings submitted have insufficient data to allow a proper review (for example, levels and interface to public infrastructure, such as road levels, road alignments; and stormwater systems are not marked or reasonably capable of being derived);

(b) the design as proposed does not comply with any relevant legislative requirement (including requirements with respect to disability access);

(c) in relation to the Synthetic Soccer Field or the Perimeter Access Road, the design does not comply with the specifications identified in Schedule 1,

(d) the design is inconsistent with the relevant development consent, or with the outcome agreed by the parties as part of an applicable public consultation process;

(e) the materials, finishes or other items specified in a relevant standard or policy (as the case may be) are no longer readily capable of procurement, and (if so) the representative must identify an alternative or a reasonably similar and comparable nature;

(f) the design is not consistent with any of the Material Public Benefits (and in this event, both the relevant element, and the extent of any inconsistency, must be clearly identified by Council);

(g) for reasons identified by Council in the notice, an alternative product is considered preferable. Such reasons may include:
   (i) specification of a new, or improved, species or strain of grass, shrub or other planting, provided always such alternative is readily capable of procurement at no extra cost to the Developer; and
   (ii) the alternative may include efficiencies which are reasonably likely to either retain or reduce the overall costs and to improve the amenity of the construction and hand over process.

9.4 Consideration by the Developer

9.4.1 The Developer must promptly and in good faith take into account the comments made by the Council under the preceding sub-clause and either:

(a) amend the design to reflect the comments made; or
(b) to the extent the Developer declines to accommodate changes suggested under clause 9.3, notify Council that the Developer so declines, and provide written reasons together with any alternative which the Developer considers may address the concern.

9.4.2 The Parties expressly acknowledge that nothing in clause 9.3 is intended or will be construed to enable the Council to materially change the design in a manner which unreasonably increases the time or the costs associated with the Works.

9.5 The Developer is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:

9.5.1 any relevant development consent(s), and

9.5.2 all applicable laws, including those relating to occupational health and safety, and

9.5.3 this Agreement to the extent that it is not inconsistent with the relevant development consent(s) or an applicable law, and

9.5.4 the written approval given under clause 9.2.

9.6 It is the Developer’s responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.

9.7 The Works are to be Handed-Over to the Council:

9.7.1 by not later than the Hand-Over Date for the Works, and

9.7.2 otherwise in accordance with this Agreement.

10 Ownership of Works

10.1 Ownership of the Works is transferred to Council on Hand-Over and nothing in, or done under, this Agreement gives the Developer, after Hand-Over any right, title or interest in the Works.

10.2 On Hand-Over the Developer must cause the legal title in the Works and all materials and component of the Works to pass to Council free of any charge or other interest. The Developer warrants that after Hand-Over the Works are not subject to any security interest (as defined in the Personal Property Securities Act 2009 (Cth) (PPSA)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Works.

11 Access to the Land

11.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.

11.2 For the purposes of this clause 11, Council officers, employees, agents and contractors must comply with all HSE Requirements and any direction given by any statutory Authority or by the Developer or its ‘principal contractor’ appointed under applicable WH&S Laws in relation to health, safety or the environment concerning the Land.
12 Protection of People, Property and the Environment

12.1 The Developer is to ensure in relation to the carrying out of the Works that:

12.1.1 all necessary measures are taken to protect people, property and the Environment, and

12.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

12.1.3 nuisances and unreasonable noise and disturbances are prevented, and

12.1.4 all relevant laws and regulations with respect to water, air, noise and land pollution (including ‘pollution incidents’) as defined under the Protection of the Environment Operations Act 1997 (NSW).

13 Damage and Repairs to the Works

13.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works are Handed-Over to the Council.

14 Variation of Works

14.1 The Works are not to be varied by the Developer, unless:

14.1.1 the Parties agree in writing to the variation, and

14.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and

14.1.3 the Developer bears all of the Council’s costs of and incidental to agreeing to and approving any variation proposed by the Developer.

14.2 For the purposes of clause 14.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

14.3 If Council requests a variation, or a requirement in a development consent relating to the Works amounts to a variation, to the Works after Council has given its written approval under clause 9, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.

14.4 Council shall repay the amount referred to in clause 14.3 to the Developer after the Works are complete, and within 28 days of receipt of:

14.4.1 a tax invoice for the amount claimed by the Developer, and

14.4.2 documentation which demonstrates to Council’s satisfaction the increase in costs as a result of the variation requested by the Council.

14.5 If Council requests a variation, or a requirement in a development consent relating to the Works amounts to a variation, then the Hand-Over Date will be reasonably varied to the extent of any delay caused by the variation.
15 Hand-Over of Works

15.1 When an Item of Works has, in the opinion of the Developer, reached Completion, the Developer is to give the Council not less than 20 Business Days written notice of the date on which it proposes to Hand-Over an Item of Works to the Council, being a date not later than the Hand-Over Date for the relevant Item of Works.

15.2 Upon receipt of such a notice, Council is to provide, within 10 Business Days, written confirmation to the Developer that is accepts the Item of Works has reached Completion.

15.3 Works Not Complete

15.3.1 If the Council, acting reasonably, forms the view following inspection of the Item of Works that the Item of Works has not reached Completion, the Council may, within 10 Business Days of receiving a notice under clause 15.1, direct the Developer in writing:

   (a) to carry out work specified in the notice to complete the Works in accordance with clause 9 before it is Handed-Over to the Council, and
   
   (b) to Hand-Over the Works completed in accordance with the Council’s direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.

15.3.2 The Developer may, within 10 Business Days, provide a response to a direction under clause 15.3, which contains reasons, if any, as to why the work is not required under clause 9.

15.3.3 Where Council rejects or does not accept the Developer's response in writing within 10 Business Days, the matter may be referred as a Dispute in accordance with clause 26.

15.3.4 Where the Dispute resolution process results in the Developer being required to comply with the direction, the Developer is to comply with a direction according to its terms and at the Developer’s own cost.

15.4 Before the Works are Handed-Over to the Council, the Developer is to remove from the Land:

   15.4.1 any rubbish or surplus material, and
   
   15.4.2 any temporary works, and
   
   15.4.3 any construction plant and equipment, relating to the carrying out of the Works as the case requires.

15.5 If Council does not provide a written confirmation or direction in accordance with clauses 15.2 or 15.3 within 10 Business Days, the Item of Works will be deemed to have reached Completion.

15.6 An Item of Works is taken to be Handed-Over to the Council at the date specified in a notice under clause 15.1, subject to any dispute over whether the Item of Works has reached Completion under clause 15.3.
16 Failure to Carry out and Hand-Over Works

16.1 If the Council, acting reasonably, considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council must give the Developer a notice requiring:

16.1.1 the breach to be rectified to the Council’s satisfaction, or
16.1.2 the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to the Council’s satisfaction.

16.2 The Developer may, within 14 days, provide a response to a direction under sub-clause 15.3, which contains reasons, if any, as to why there has been no breach in relation to the carrying out of the Works.

16.3 Where Council rejects or does not accept the Developer’s response in writing within 14 days, the matter may be referred as a Dispute in accordance with clause 26.

16.4 Where the Dispute resolution process results in the Developer being required to comply with the notice, the Developer is to comply with the according to its terms and at the Developer’s own cost.

16.5 A notice given under clause 16.1 is to allow the Developer a reasonable period (and in any case not less than 28 days) to:

16.5.1 rectify the breach, or
16.5.2 pay appropriate compensation to Council in cases where it is not possible to rectify the breach.

17 Works-As-Executed-Plan

17.1 No later than 60 days after the Hand-Over Date, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Item of Works the subject of the notice.

17.2 The Developer shall provide with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

18 Rectification of Defects

18.1 During the Defects Liability Period the Council may, acting reasonably, give to the Developer a Rectification Notice in relation to any purported Defect in the Works specifying:

18.1.1 the Item of Works requiring rectification,
18.1.2 the action required to be undertaken by the Developer to rectify those Works, and
18.1.3 the date on which those Works are to be rectified.

18.2 The Developer may, within 14 days, provide a response to the Rectification Notice (Rectification Response) which contains reasons, if any, as to why the purported Defect is not a Defect.
18.3 Where Council rejects or does not accept the Developer's Rectification Response in writing within 14 days, the matter may be referred as a Dispute in accordance with clause 26.

18.4 Where the Dispute resolution process results in the Developer being required to comply with the Rectification Notice, the Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.

18.5 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.

18.6 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.

18.7 If the Developer does not comply with a Rectification Notice, the Council may issue a Dispute notice under clause 26.

19 Indemnity and Insurance

19.1 The Developer indemnifies the Council from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of the Works and any other obligation under this Agreement, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused or contributed to by Council, its employees, officers, agents and contractors.

19.2 The Developer is to take out and keep current the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:

19.2.1 contract works insurance for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants’ fees and authorities’ fees), to cover the Developer’s liability in respect of damage to or destruction of the Works,

19.2.2 public liability insurance for at least $10,000,000 for a single occurrence, which covers the Developer for liability to any third party, and noting the interest of Council. The Developer will ensure that each subcontractor effects and maintains insurance policies on terms similar to those applicable to the developer under this clause;

19.2.3 workers compensation insurance as required by law, and

19.2.4 any other insurance required by law.

19.3 If the Developer fails to comply with clause 19.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council. The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence, in the form of a Certificate of Currency, of all the insurances specified in clause 19.2.

20 Defects Liability Period

20.1 The Defects Liability Period commences from Completion and runs for 12 months.
20.2 On Hand-Over of the Works, the Developer is to provide the Defects Liability Security.

20.3 The Council is to release and return the Defects Liability Security upon the expiration of the Defects Liability Period.

21 Application of 7.11 and 7.12 of the Act

21.1 For the purpose of sections 7.4(3)(d) and 7.4(5) of the Act, this document wholly excludes, to the extent permitted by law, the operation of sections 7.11 and 7.12 of the Act in relation to the Planning Proposal and any Proposed Development on the Land.

22 Bankruptcy and Insolvency

22.1 Termination if Developer Insolvent

This Agreement will immediately terminate if the Developer becomes subject to external administration or insolvency proceedings.

22.2 Consequences

22.2.1 On the date of such a termination, subject to the following sub-paragraphs, each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.

23 Private Certifiers

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier.

24 Notices

24.1 Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

24.2 Any notice may be served by:

(a) delivery in person, or

(b) post, or

(c) transmission by facsimile, or

(d) email,

to the address(es) or number(s) of the recipient(s) specified in the Summary Sheet or most recently notified by the recipient to the sender.

24.3 Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.
25 Breach Notice and Rectification

25.1 If the Developer is, in the reasonable opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (Breach Notice).

25.2 The Developer may, within 14 days, provide a response to the Breach Notice (Breach Response) which contains reasons, if any, as to why it is not in breach of its obligations under this document.

25.3 Where Council rejects or does not accept the Developer's Breach Response in writing within 14 days, the matter may be referred as a Dispute in accordance with clause 26.

25.4 If following this the Developer is required to rectify the breach and the breach is not rectified within the time specified in the Breach Notice (being not less than 28 days), or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council inremedying the breach.

26 Dispute resolution

26.1 Dispute

If any Dispute arises, that Dispute must be referred for determination under this clause.

26.2 No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

26.3 Notice of disputes

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute.

26.4 Negotiated resolution and selection of expert

26.4.1 On referral of a Dispute, the Senior Managers must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within 10 Business Days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each Senior Manager.

26.4.2 If the Senior Managers are unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice they must endeavour within the following 10 Business Day-period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each Senior Manager.

26.4.3 If the Senior Managers do not record the appointment of an expert within that second 10 Business Day period, the expert must be appointed, at the request of any Party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

26.5 Assistance to the Expert

26.5.1 Once the Expert has been appointed (the Expert), the Parties must:
(a) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute, and

(b) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.

26.5.2 The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

26.6 Expert’s decision

26.6.1 The decision of the Expert must:

(a) be in writing and give reasons, and

(b) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.

26.6.2 The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre’s guidelines for expert determination of disputes or such other guidelines as it considers appropriate.

26.6.3 The Expert’s decision is final and binding on the parties, except as to matters of law or in respect of Disputes the total value of which exceeds $1 million.

26.6.4 The Expert must act as an expert and not as an arbitrator.

26.7 Expert’s costs

26.7.1 The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert’s remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.

26.7.2 In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties’ nominated officers as required by this clause.

26.8 Continual performance

Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.

27 Registration of document on Title

27.1 Acknowledgement

27.1.1 The Developer acknowledges that Council intends to register this document under section 7.6 of the Act on the Land and on registration by the Registrar-General the document will be binding on and enforceable against the owners of the Land from time to time as if each owner for the time being had entered into this document.

27.2 Consents to Registration
This document must be registered on the title of the Land as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land.

27.3 Release from Registration

27.3.1 Council will at the request of the Developer release the Land from registration of this document where the Material Public Works have been provided. The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this document.

27.3.2 Should the Developer request Council to extinguish the Agreement on folio(s) of the register for the Land, at any time, the Council will consider that request having regard to the:

(a) remaining Public Benefits to be provided; and

(b) the provision of security or other arrangements to Council's satisfaction to secure the performance of any outstanding obligations.

27.4 Registration Expenses

27.4.1 The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this document and the subsequent removal of registration.

27.4.2 The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under section 350(2) of the *Legal Profession Act 2004* (NSW).

27.5 Registration of Caveat by Council

27.5.1 Subject to subclause 27.5.2, until such time as registration of this Agreement on the Certificates of Title to the Land, the Developer agrees that Council may lodge a caveat reasonably necessary to prevent any dealing with the Land or any part of it in a manner which is inconsistent with this Agreement.

27.5.2 If Council lodges a caveat in accordance with this clause, then the Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Agreement or any related Dealing with the Land. The Council will promptly, following registration of this Agreement, do all things reasonably required to remove the caveat from the title to the Land.

28 Costs

28.1 The Developer is to pay to the Council the Council's reasonable actual costs of enforcing this Agreement up to a maximum of $10,000 within 14 days of a written demand by the Council for such payment.

28.2 Each Party must bear its own costs arising from or in connection with the entry into this Agreement.

29 GST

29.1 Interpretation
In this agreement:

(a) words or expressions that are defined in A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have the same meaning.

(b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably, and

(c) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

29.2 Divisions 81 and 82 exemptions

Subject to clause 29.2, the parties intend that Divisions 81 and 82 of the GST Act apply to any supplies or payments made under this document with effect that:

(a) no additional amount will be payable by a party on account of GST; and

(b) no tax invoices will be issued by any party.

29.3 Supply subject to GST

To the extent that clause 29.2 does not apply to a supply made under this document, this clause 29.3 will apply.

If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.

Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST Amount when it is liable to provide the consideration.

If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 29.3.2 if the payment is consideration for a taxable supply.

If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 29.3.2 will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

30 General

30.1 Governing law and jurisdiction

This document is governed by and construed under the law in the State of New South Wales.

Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
30.1.3 Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

30.2 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

30.3 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

30.4 Pre-contractual negotiation

This document:

30.4.1 expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and

30.4.2 supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

30.5 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

30.6 Continuing performance

30.6.1 Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.

30.6.2 Any indemnity agreed by any party under this document constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement.

30.7 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

30.8 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

30.9 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

30.10 Developer as Trustee and Limitation of Trustee Liability
30.10.1 The Trustee enters into the Agreement only in its capacity as trustee of the Mirvac Pennant Hills Residential Trust (Trust) constituted under the Trust Deed dated 6 November 2015 (Trust Deed) and in no other capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. Subject to subclause 30.10.3, this limitation of the Trustee liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

30.10.2 No party to this Agreement may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

30.10.3 The provisions of this clause 30.10 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under this Agreement or by operation of law, there is a reduction in the extent of the Trustee’s indemnification out of the assets of the Trust as a result of the Trustee’s failure to properly perform its duties as Trustee of the Trust.

30.10.4 The Trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless its liability is limited in the same manner as set out in subclauses 30.10.1 to 30.10.3.

30.10.5 Subject to subclauses 30.10.1 to 30.10.4, the Trustee has authority under the Trust Deed to enter into this Agreement.

30.10.6 The Trustee warrants that at the date of entering into this Agreement, the Land is an asset of the Trust.

30.10.7 In this clause, Trustee means the Developer.

30.11 Representations and warranties

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under the document and that entry into this document will not result in the breach of any law.

30.12 Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

31 Definitions and interpretation

In this document unless the context otherwise requires:

**Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*

**Agreement** means this document.
**Bank Guarantee** means a written guarantee without a time limit acceptable to Council issued by an Australian bank.

**Bond** means an insurance bond issued by an insurance bond provider.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

**Breach Notice** means a written notice to the Developer regarding a breach of this Agreement and requiring rectification of that breach within a reasonable period of time.

**Breach Response** is a written response to the Council following receipt of a Breach Notice, providing reasons as to why the Developer has not breached the Agreement.

**Completion** means the point at which the Works are complete except for minor defects:

(a) the existence of which do not prevent the Works being reasonably capable of being used for their intended purpose,

(b) which the Developer has grounds for not promptly rectifying, and

(c) rectification of which will not affect the immediate and convenient use of the Works for their intended purpose.

**Construction Certificate** has the same meaning as in the Act.

**Representatives** means the Council Representative and the Developer Representative, as specified in the Summary Sheet.

**Contribution Value** means the amount specified in column 3 of Schedule 1.

**Dealing** means selling, transferring, assigning, subdividing, mortgaging, charging or encumbering.

**Dedication** means the creation or transfer of an estate in fee simple free of any mortgage, lease or other Encumbrance of a lot registered under the *Real Property Act 1900* (NSW).

**Dedication Lands** means the parts of the Land specifically identified for Dedication to Council in items 2, 3 and 4 of the table in Schedule 1.

**Defect** means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Works or any other matter which prevents the Works from complying with the terms of this document.

**Defects Liability Period** means in relation to the Works the period of 12 months from the date on which each Item of Works reaches Completion.

**Defects Liability Security** means a Bank Guarantee or Bond in favour of the Council equivalent to 10% of the value of the Works.

**Dispute** means a dispute, difference of opinion or failure to agree relating to or arising from this document, including, but not limited to, those that arise under clauses 15, 16, 18 and 25.

**Dispute Notice** means written notice provided by a Party referring a dispute for determination under clause 26.3, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.
Draft LEP means the draft Local Environmental Plan proposed under the Planning Proposal.

Easement means the creation and registration of an Easement for Public Access on the title of the Land as described at Schedule 1 of this document.

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre.

Environment has the same meaning as set out in the Dictionary to the *Protection of the Environment Operations Act 1997 (NSW)*.

Expert means the expert appointed under clause 26.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (*GST Act*) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Hand-Over means the hand-over to the Council of the Works in accordance with this Agreement.

Hand-Over Date means the date specified in Column 2 of Schedule 1 in relation to the Works specified in Column 1 of that Schedule corresponding to that date.

Hand-Over Notice means a notice issued by the Council under clause 15.

HSE Requirements include any work, health, safety and welfare and environmental requirements of the Developer (as notified by the Developer to the Council from time to time), including but not limited to all work, health, safety and welfare and environmental requirements attached to or referred to in this Agreement.

Item of Works means an item of the Works.

Land means Lot 6 in DP 737386.

Location Plan means the plan contained in Schedule 2.

Material Public Benefits mean the items listed in the first column of the table in Schedule 1.

Minister means the NSW State government minister responsible for the Act.

Monetary Contributions means the monetary development contributions listed in item 1 of the table in Schedule 1.

Party means a party to this document, including their successors and assigns.

Planning Proposal means the planning proposal referred to in the Summary Sheet.

Perimeter Access Road means Perimeter Access Road as specified in Schedule 1.

Proposed Development means any development on the Land generally in accordance with the Planning Proposal and the subject of a development consent under the Act.

Rectification Certificate means a compliance certificate within the meaning of section 6.4(e)(iv) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.
Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the Defect within a specified period of time.

Rectification Response means a response in writing that provides reasons, if any, as to why a matter identified in a Rectification Notice is not a Defect.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Synthetic Soccer Field means Synthetic Soccer Field as specified in Schedule 3

Senior Managers means the Council Senior Manager and the Developer Senior Manager, as specified in the Summary Sheet.

WH&S Laws means any law regulating or otherwise relating to work health and safety including, without limitation where the relevant site is in NSW - the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW).

Works means the Synthetic Soccer Field and Perimeter Access Road as specified in Schedule 1.

Works-As-Executed-Plan means detailed plans and specifications of the completed Works.

31.1 Interpretation

In this document unless the context otherwise requires:

(a) clause and sub-clause headings are for reference purposes only,

(b) the singular includes the plural and vice versa,

(c) words denoting any gender include all genders,

(d) reference to a person includes any other entity recognised by law and vice versa,

(e) where a word or phrase is defined its other grammatical forms have a corresponding meaning,

(f) any reference to a party to this document includes its successors and permitted assigns,

(g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document,

(h) any reference to any agreement or document includes that agreement or document as amended at any time,

(i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it,

(j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time,

(k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally,

(l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally,
(m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document,

(n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment,

(o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day, and

(p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
The Developer must provide the Material Public Benefits in accordance with Schedule 1 and this document.

<table>
<thead>
<tr>
<th>Material Public Benefit</th>
<th>Hand-Over Date</th>
<th>Contribution Value</th>
<th>Additional Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Monetary Contribution</td>
<td>Not applicable</td>
<td>NIL</td>
<td>Not applicable</td>
</tr>
<tr>
<td>2. Dedication of Public Open Space and Car Park</td>
<td>Prior to the issue of the Occupation Certificate for the final stage of the Proposed Development.</td>
<td>No cost to Council</td>
<td>An area of not less than 2.493 hectares as public open space and associated on grade car parking, existing as at the date of this Agreement (subject to wear and tear), as identified on the Location Plan.</td>
</tr>
<tr>
<td>4. Perimeter Access Road</td>
<td>Prior to the issue of the Occupation Certificate for the adjacent stage of the Proposed Development.</td>
<td>No cost to Council</td>
<td>Staged construction and dedication of public road as identified on the Location Plan. Configuration of the road as specified in Schedule 4.</td>
</tr>
</tbody>
</table>
Schedule 2 – Location Plan
Schedule 3 – Synthetic Soccer Field – Indicative Layout
Schedule 4 - Perimeter Access Road Configuration – Minimum Requirements

Primary Street
Public Road
2 way Parking on Table
10.5m Street Reserve Widths
0.5m Carriageway width

Primary Street
Public Road - Sensitive Bushland
2 way No Parking
10.5m Street Reserve Widths
8m Carriageway width
## Execution Page

The common seal of The Hills Shire Council was affixed under a resolution passed by council on 
…………………………………………………..
in the presence of:

<table>
<thead>
<tr>
<th>General Manager</th>
<th>Mayor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print Name</td>
<td>Print Name</td>
</tr>
</tbody>
</table>

Witness

Print Name

Executed by the Developer in accordance with s127 of the Corporations Act 2001 (Cth):

<table>
<thead>
<tr>
<th>Secretary/Director</th>
<th>Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print name</td>
<td>Print name</td>
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</table>