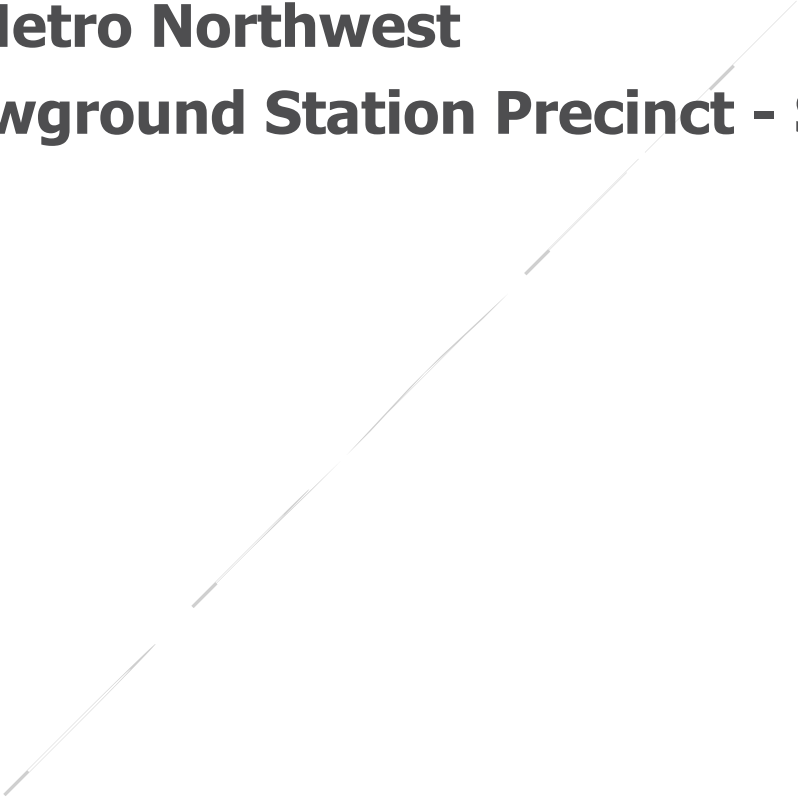

Clause 4.6 Variation

- **Minimum Lot Sizes**
- **Minimum Building Setbacks**

**Sydney Metro Northwest
Hills Showground Station Precinct - SSD
9653**



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Executive Summary

This clause 4.6 Variation (Variation) seeks to justify the contravention of the development standards in Part 9 of Hills Local Environmental Plan 2012 (THLEP) as follows:

- » Clause 9.1 relating to minimum lot size: the minimum lot size for residential flat buildings and shop top housing with a height of 11m or more in the B2 Local Centre and R1 General Residential zone being 3,600m²; and
- » Clause 9.3 relating to minimum building setbacks: being 5m for a north south road connecting De Clambe Drive and Carrington Road.

The Variation relates to:

- » Existing Lot 53 DP 1253217 – this lot is 3,293m², 8.5% less than the minimum lot size prescribed in clause 9.1.
- » Proposed Lot 3 in existing Part Lot 56 and Part Lot 50 DP 1252317 – Lot 3 is identified in the concept proposal as a proposed lot with an area of 2,286m², being 1,314m² (or 37%) less than the minimum lot size prescribed in clause 9.1.
- » The setback from the internal local road proposed as part of the subdivision of Lot 56 DP 1252317. The development standard on the Building Setback Map referenced in clause 9.3 of THLEP is 5m and the concept plan proposes a 4.5m setback.

Clause 4.6 of THLEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- » that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- » that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard
- » that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which development is proposed to be carried out.

The Variation request has considered the relevant matters prescribed under clause 4.6 of THLEP and the principles set out in decisions in the Land and Environment Court in relation to demonstrating that compliance with the development standard is unreasonable and/or unnecessary in the circumstances.

The development standards have been considered in the context of the Concept Proposal for the precinct in its entirety rather than on a site by site basis. The purpose of the Concept Proposal in itself is to demonstrate the orderly and economic development of the Hills Showgrounds Station Precinct via the provision of built form outcomes that are consistent with a high-density, transit orientated mixed-use precinct.

The proposed variations to the lot size and building setback development standards will not result in any adverse impacts to surrounding residents, is consistent with the envisaged built form for the site and locality, and will achieve standards of amenity required for future residents. The proposal is considered to have sufficient planning grounds to justify the contravention in both cases.

There are no environmental planning grounds that warrant strict compliance with the numerical lot size and building setback standards in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the controls allowed by Clause 4.6 of the THLEP.

1 Introduction

The Concept Proposal

The Concept Proposal comprises residential, retail and commercial uses and building envelopes of varying heights from two to twenty storeys. It also includes car parking, roads, landscaping, services and the provision of publicly accessible open space in the form of Doran Drive Plaza, a local park and pedestrian through site link. An indicative yield of up to 1,900 dwellings and up to 13,600m² of non-residential floor space is accommodated in the proposal.

Figure 1 Concept Proposal Masterplan



Source: Cox Architecture 2019.

Clause 4.6 Variation request

This clause 4.6 Variation request has been prepared by Elton Consulting on behalf of Landcom. The request seeks to justify the contravention of the development standards in Part 9 of Hills Local Environmental Plan 2012 (THLEP) as follows:

- » Clause 9.1 relating to minimum lot size: the minimum lot size for residential flat buildings and shop top housing with a height of 11 m or more in the B2 Local Centre and R1 General Residential zone being 3,600m²; and

Clause 9.3 relating to minimum building setbacks: being 5m for a north south road connecting De Clambe Drive and Carrington Road: the setback from the internal local road proposed as part of the subdivision of Lot 56 DP 1252317. The development standard on the Building Setback Map referenced in clause 9.3 of THLEP is 5m for a road connecting De Clambe Drive and Carrington Road, and the Concept Proposal proposes a 4.5m setback for a road with an alternative alignment

The request should be read in conjunction with the Environmental Impact Statement (EIS) and other supporting documentation submitted with the State Significant Development Application (SSDA).

This Variation request is submitted to the Department of Planning, Industry and Environment (the Department) in support of a State Significant Development Application (SSDA) for a Concept Proposal for a high-density mixed-use precinct in the Hills Showground Station Precinct (the Site).

Site Background

The Site was previously subdivided into three lots to enable the construction and dedication of roads associated with the new metro station. This created three distinct development lots as described in the **Table 1**. Below.

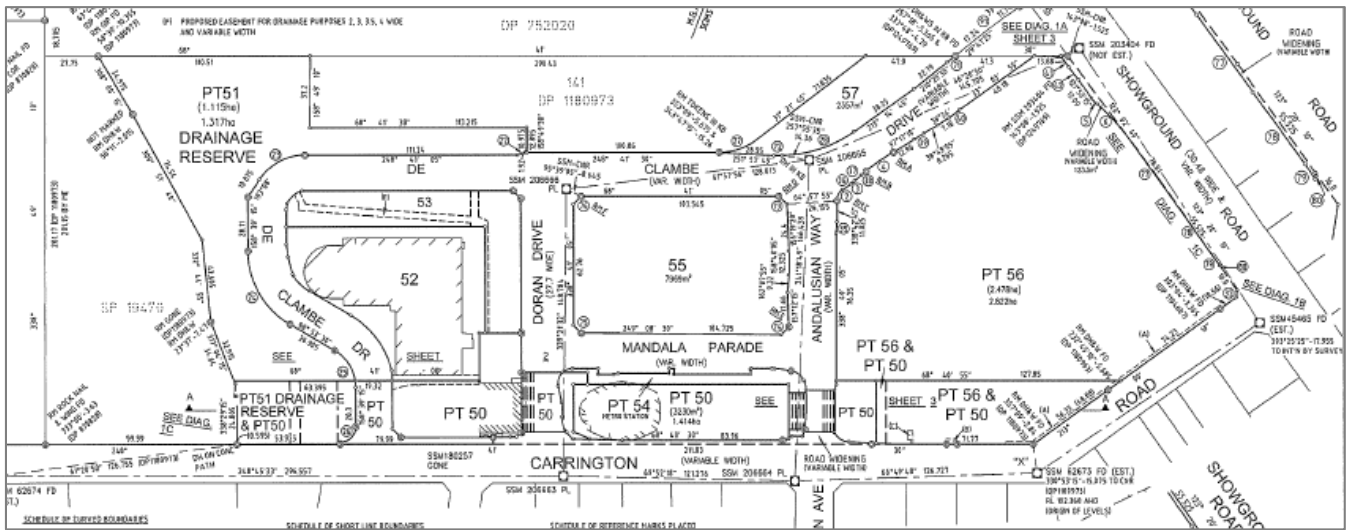
Table 1 Development lots

Name	Legal Description	Description of existing development	Area (m ²)
Hills Showground Precinct West	Lot 53 DP 1253217	L shaped vacant lot with no vegetation cover, with existing stormwater drainage easement on the portion adjacent to De Clambe Drive. The lot is characterised by sloping batters and levelled batter-toe areas retaining the two street reserves above the carpark ground floor levels with the exception of a set of constructed access stairs and level footpath for the carpark in the northern portion of the site.	3,293
Doran Drive Precinct	Lot 55 DP 1253217	Vacant lot with no vegetation cover. Lot is secured by construction hoarding and security fencing, surrounded by newly constructed road reserves.	7,969
Hills Showground Precinct East	Part Lot 50 & Part Lot 56 DP 1253217	Part Lot 56 - Former two storey Council administration building and associated hardstand concrete/asphalt paved parking lots and landscaping. The building, associated structures and some vegetation is proposed to be removed. Part Lot 50 – facilitates the expansion of the rail corridor at the point where it exits the station. Subterranean limited in height and depth.	28,226

Figures 2-4 should be read together. **Figure 2** is an extract of the Deposited Plan and shows the existing land tiles in DP 1253217. As noted above, this subdivision was carried out to enable the delivery of roads associated with the new metro station, and resulted in the creation of development lots (**Figure 3**). Lot 53 was created as part of this subdivision and has an area of 3,293m².

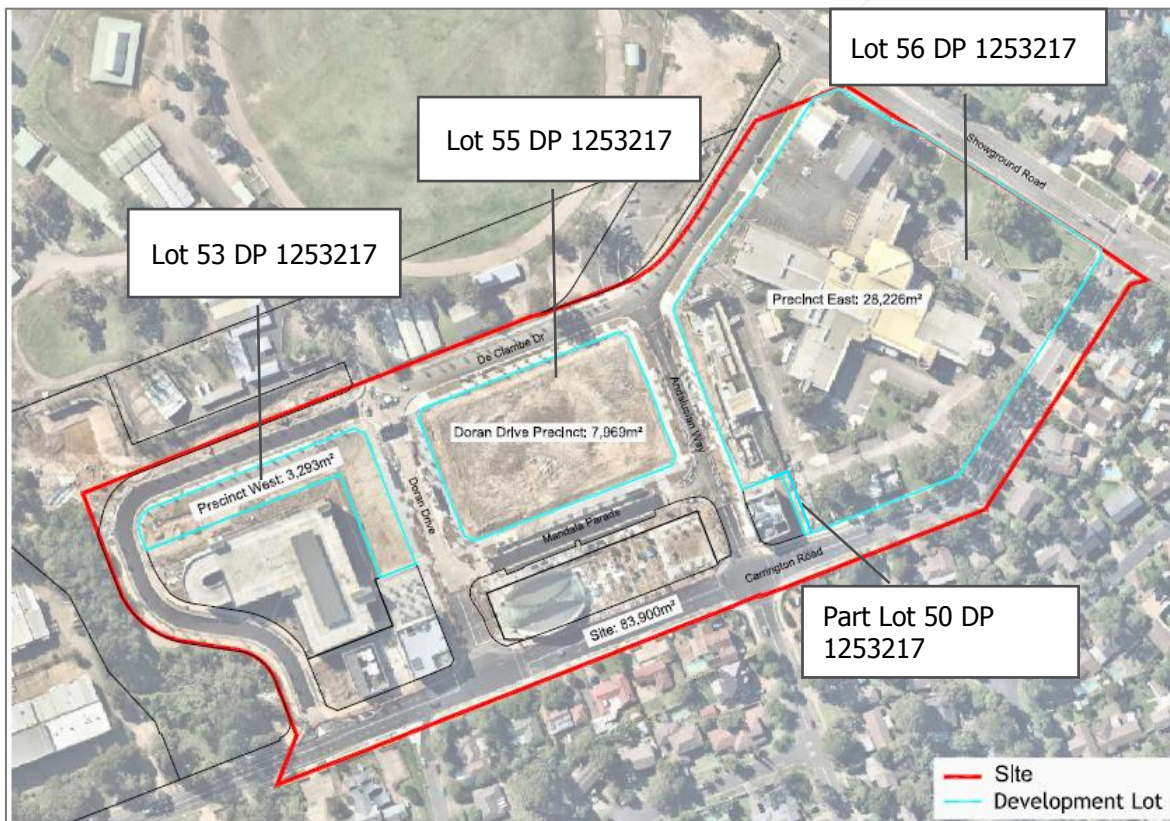
The Concept Proposal includes the anticipated further subdivision of Part Lot 50 and Part Lot 56 DP 1253217 to create roadways and public open space. This subdivision creates five lots, one of which is referred to as Proposed Lot 3 which has an area of 2,286m² (**Figure 4**).

Figure 2 Deposited Plan 1253217



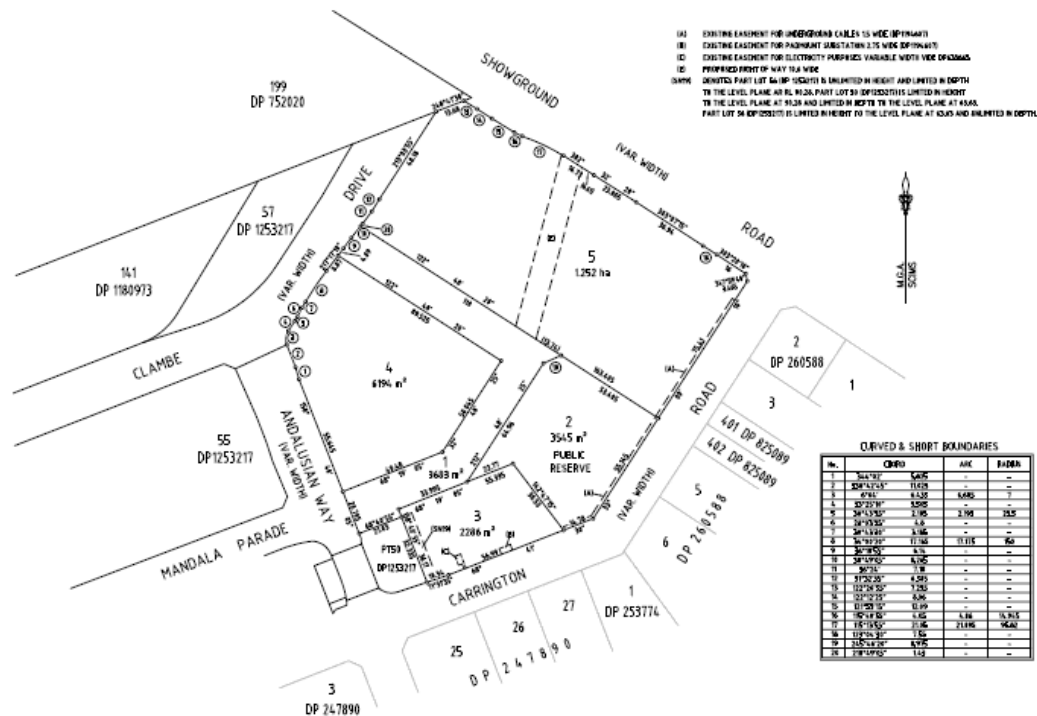
Source: Moyce, 28/08/2019

Figure 3 The Hills Showground Station Precinct (the Site) & Development Lots



Source: Cox Architecture 2019

Figure 4 Proposed Subdivision of Part Lot 56



Source: Extract Draft Subdivision Plan Surveyor Terry Edward Bartlett, October 2019

Land to which The Variation relates

The Variation relates to land as follows:

- » Existing Lot 53 DP 1253217 – this lot is 3,293m², being 307m² (or 8.5%) less than the minimum lot size of 3,600m² prescribed in clause 9.1.
- » Proposed Lot 3 in existing Part Lot 56 and Part Lot 50 DP 1253217 – this lot is identified in the concept proposal as a proposed lot with an area of 2,286m², being 1,314m² (or 37%) less than the minimum lot size prescribed in clause 9.1.

The Variation request is made pursuant to Clause 4.6 of the THLEP and should be read in conjunction with the EIS.

Clause 4.6 of THLEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- » that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- » that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard
- » that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which development is proposed to be carried out.

The approach to justification of the contravention to a development standard is taken from the applicable decisions of the NSW Land and Environment Court in:

- » *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
- » *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The variation request establishes that compliance with the development standards are unreasonable and unnecessary in the circumstances of the case.

This request demonstrates that there are sufficient environmental planning grounds to justify the contravention and provides an assessment of the matters required to consider before supporting the variation.



2 Development Standards

2.1 Clause 9.1

The first development standard to be varied as part of this request is Clause 9.1 of Part 9 of the THLEP which relates to land within the Showground Station Precinct. Clause 9.1 sets out the minimum lot sizes for residential flat buildings and shop top housing in the Showground Station Precinct. Clause 9.1 of THLEP is reproduced below in its entirety:

9.1 Minimum lot sizes for residential flat buildings and shop top housing

Despite any other provision of this Plan, development consent may be granted to development on a lot within the Showground Station Precinct in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.

Column 1	Column 2	Column 3
Residential flat building with a building height of 11 metres or more	Zone R1 General Residential	3,600 square metres
	Zone R4 High Density Residential	3,600 square metres
	Zone B2 Local Centre	3,600 square metres
Residential flat building with a building height of less than 11 metres	Zone R1 General Residential	1,800 square metres
	Zone R4 High Density Residential	1,800 square metres
Shop top housing	Zone R1 General Residential	3,600 square metres
	Zone R4 High Density Residential	3,600 square metres
	Zone B2 Local Centre	3,600 square metres

Note: Green shading denotes specific controls that relate to the concept proposals

Under THLEP the land subject of this request is zoned B2 Local Centre (Lot 53 DP 1253217) and R1 General Residential (Lot 50 and 56 DP 1253217).

2.2 Clause 9.3

Clause 9.3 of THLEP provides development standards for building setbacks to certain roads show on the Building Setback Map.

9.3 Minimum building setbacks

Development consent must not be granted to development on land within the Showground Station Precinct unless the front building setback of any building resulting from the development is equal to, or greater than, the distance shown for the land on the [Building Setback Map](#).

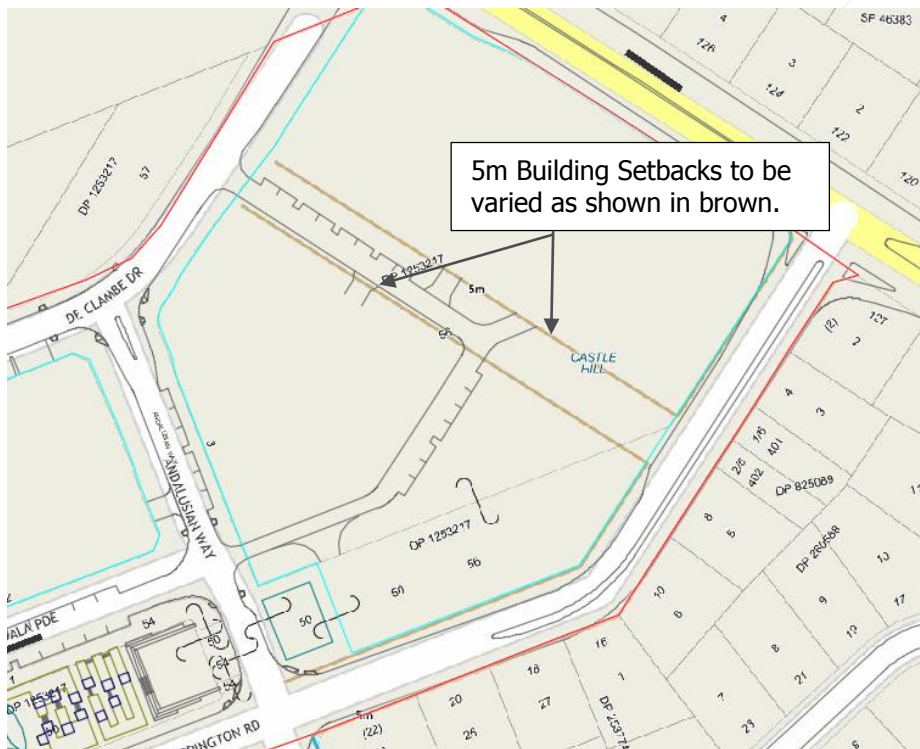
The Building Setback Map as it relates to the site is shown in **Figure 5**, and as it relates to the Concept Proposal in **Figure 6**.

Figure 5 Extract Building Setback Map



Source: Extract from The Hills LEP Building Setback Map STB_016

Figure 6 THLEP Building Setback Imposed on Concept Proposal



Source: Cox Architecture, October 2019.

2.3 Background to the development standards

The site is located within the broader Showground Station Precinct that was rezoned under the Department's Planned Precincts Program in December 2017.

The Precinct is intended to deliver capacity for 5,000 dwellings and 2,300 jobs over 20 years.

As part of the rezoning and changes to height and density controls, site specific controls were developed for the Showground Station Precinct. The site-specific controls are outlined in Part 9 of THLEP and those relevant to this Variation request include:

- » Clause 9.1 Minimum lot sizes for residential flat buildings and shop top housing, subject of this variation request
- » Clause 9.3 Minimum building setbacks

Minimum Lot Size

The original planning proposal indicated a minimum lot size of 1,500m² for residential flat buildings. The Showground Station Precinct Planning Report (Department of Planning and Environment December 2015, page 43) stated that *'this is considered to be sufficient to provide for the smaller apartment buildings in the precinct'*.

The report summarised the intention of the controls was to ensure that future redevelopment:

- » can facilitate good design with appropriate building footprints and built form
- » has lot sizes and dimensions that are appropriate for scale and character of precinct renewal proposals
- » responds to the proposed vision and future character of the area, its subdivision pattern and street structure
- » respects and minimises impact on the privacy and amenity of neighbouring properties.

The Department's final recommendation for minimum lot sizes were recommended in the Showground Station Precinct Planning Finalisation Report (Department of Planning and Environment December 2015, page 55) (Finalisation Report) as follows:

- » minimum lot size of 3,600m² for residential flat buildings with a building height of 11m or more
- » minimum lot size of 1,800m² for residential flat buildings and shop top housing with a building height up to 11m.

In a comment on the recommended change the Finalisation Report states:

*The Department has adopted Council's request to increase minimum lot size controls for medium rise residential flat buildings and all types of shop top housing **to encourage the formation of larger development sites.** (emphasis added)*

The Department's recommendation is consistent with the current controls in THLEP.

Minimum Building Setbacks

The Building Setbacks Map was based on an indicative layout provided to demonstrate the strategic merit of the proposal through the rezoning process. The planning proposal as exhibited did not include any development standards for building setbacks. These provisions did not appear until the instrument was published. The Showground Station Precinct Planning Finalisation Report (Department of Planning and Environment December 2015, page 32) (Finalisation Report) includes the following comment:

The draft plans included several indicative new roads that could be constructed. The purpose of these roads is to demonstrate and encourage more access through the precinct as development occurs. These areas have not been rezoned for roads, nor have they been identified for acquisition for roads. A proposed road network will be included in the DCP and new roads will be assessed by Council as part of development applications and site specific DCP requirements to ensure that they provide the required level of connectivity throughout the precinct. New road patterns ultimately will depend on the type of buildings to be provided by the development industry in the precinct.

While the planning proposal was silent in regard to building setbacks, Council made representations to the Department during the public exhibition period. The Finalisation Report does include the following comment in response to a submission from Council in relation to setbacks:

*The refinement and testing of setback controls was one of the matters investigated and discussed in detail by the Department and Council following rezoning. The agreed **setback controls reflect the urban town centre characteristics consistent with the metro station location, and are also intended to create more active and safer streets with less vacant spaces and more passive surveillance**, which is particularly beneficial after dark. Greater setbacks are proposed further from the station and **along streets that will be more suburban in character**. Following discussions with Council, a statutory control has been included in the proposed SEPP specifying the minimum front setbacks for certain development in the precinct. Key setback controls are to be included in the LEP. (page 47). (emphasis added)*

The changes proposed to be incorporated in the planning instrument following the exhibition were set out in a Table 4 in Section 6 Recommended changes in the Finalisation Report, however, it does not include the numerical standards to be adopted.

3 Clause 4.6 Framework

Clause 4.6 of THLEP provides for a variation to a development standard under certain circumstances.

The objectives of clause 4.6 are:

- » to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- » to achieve better outcomes for and from development by allowing flexibility in particular circumstances

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) there are sufficient environmental planning grounds to justify contravening the development standard.*

As per subclause (4) the consent authority must be satisfied that the matters above have been addressed, that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and that the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) The public benefit of maintaining the development standard, and*
- c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Clause 4.6 is provided in Attachment A.

4 Clause 4.6 Case Law

The Land and Environment Court (LEC) reiterated in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 per Preston CJ at [11] the four tests imposed by clause 4.6 as follows:

1. That compliance with the relevant development standard must be **unreasonable or unnecessary** in the circumstances of the case
2. That there are **sufficient environmental planning grounds** to justify contravening the development standard
3. That the applicant's written request has **adequately addressed the matters** required to be demonstrated by subclause 3
4. That the proposed development would be in the public interest because it **is consistent with the objectives of the particular standard and the objectives for development within the relevant zone.**

The test for "unreasonable or unnecessary" has also been settled by the LEC. In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ identified a five-part test that could be applied to demonstrate that an objection to a development standard is reasonable and will deliver an outcome consistent with the relevant policy framework. The five elements are identified below:

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

In this recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge also noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

5 Proposed Variation

5.1 Concept Proposal

This Variation Request accompanies a SSDA for a Concept Proposal for a high-density mixed-use precinct located in the Hills Showground Station Precinct.

The Concept Proposal comprises residential, retail and commercial uses and building envelopes of varying heights from two to twenty storeys. It also includes car parking, roads, landscaping, services and the provision of publicly accessible open space in the form of Doran Drive Plaza and a park.

The Concept Proposal comprises residential, retail and commercial uses and building envelopes of varying heights from four to twenty storeys. It also includes car parking, roads, landscaping, services and the provision of publicly accessible open space in the form of Doran Drive Plaza, a local park and pedestrian through site link. An indicative yield of up to 1,900 dwellings and up to 13,600m² of non-residential floor space is accommodated in the proposal (**Figure 6**).

The Concept Proposal specifically seeks approval for:

- » a maximum total GFA of 175,796m² and a maximum of 169,096m² residential GFA equating to up to 1,900 dwellings including a minimum of five percent for affordable housing
- » non-residential uses – a minimum of 6,700m² and maximum of 13,600m²
- » Doran Drive Plaza – minimum of 1,400m²
- » a new public park to be known Precinct Park East – minimum of 3,500m²
- » Car parking rates
- » Bicycle parking rates
- » Strategies for utilities and services provision, managing stormwater and drainage, achievement of ecologically sustainable development (ESD) and design excellence
- » Staging plan addressing the timing of future subdivision, construction, release and development of land
- » Concept principal subdivision of development Lot 56 DP 1253217 (Hills Showground Precinct East) to create a road, Precinct East Park and three development lots.

No building or construction works are proposed to be undertaken as part of this Concept Proposal. Once the SSDA is approved, the successful purchasers of the development precincts and/or lots from Sydney Metro, will be responsible for submitting subsequent DAs for the design and construction of the buildings and public domain areas in accordance with the approved Concept.

An excerpt of the Concept Proposal Reference Scheme (**Error! Reference source not found.**) and Building Height Plan (**Figure 8**) for the Site are provided below.

Minimum Lot Size in Clause 9.1

This variation request relates to the following development lots:

- » Hills Showground Precinct West (Lot 53 DP1253217) at 3,293m² upon which shop top housing with varying heights with a four-storey podium and towers at a maximum height of 20 storeys. (with a maximum height of 68m) are proposed.
- » Hills Showground Precinct West (Part Lot 50 and Part Lot 56 DP 1253217) to be subdivided to create a road, Precinct East Park and three development lots, one of which (proposed Lot 3) is 2,286m² upon which a 4 to 12 storey (39m) residential flat building is proposed.

Both of these lots are below the minimum lot size expressed as a development standard in clause 9.1 being 3,600m². The variation to the development standard (minimum lot size for shop top housing >11m) in respect of

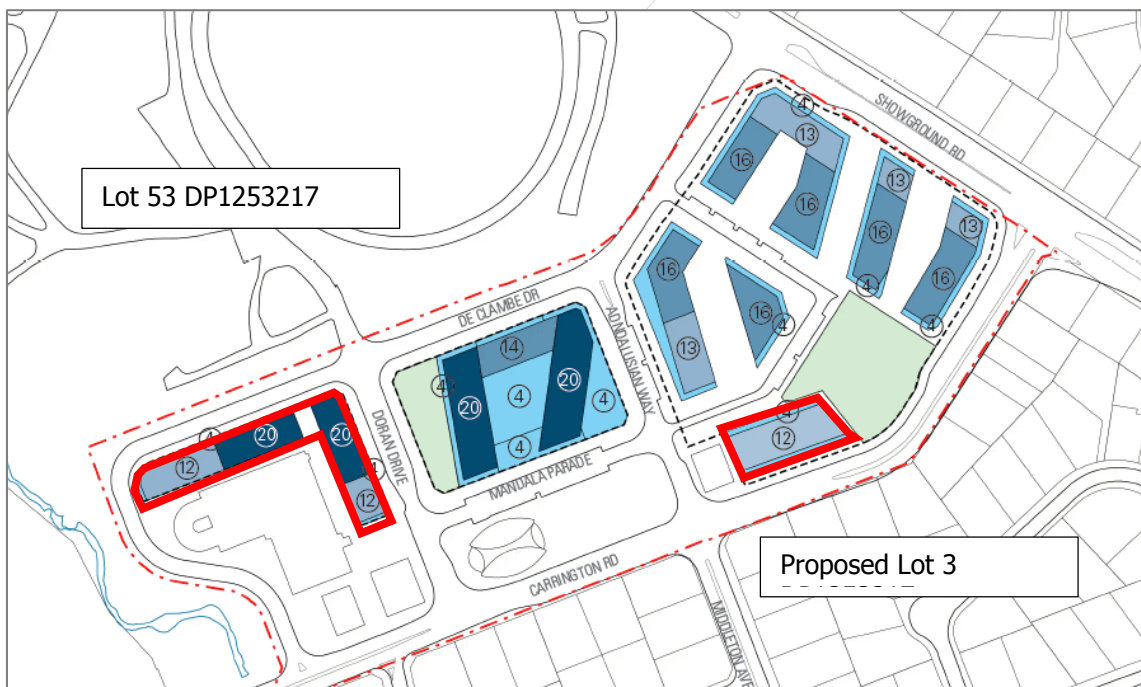
Lot 53 DP1253217 by 307m² representing less than 10% being 8.5%. In the case of the proposed development lot in the Draft Plan of Subdivision of Part Lots 50 and 56 DP 1253217 the variation to the development standard (minimum lot size for residential flat building >11m) is 2,268m² representing a 37%.

Figure 7 Concept Proposal Reference Scheme indicating relevant lots seeking variation



Source: Cox Architecture 2019, Urban and Landscape Design Report Hills Showground Station Precinct

Figure 8 Building Height Plan



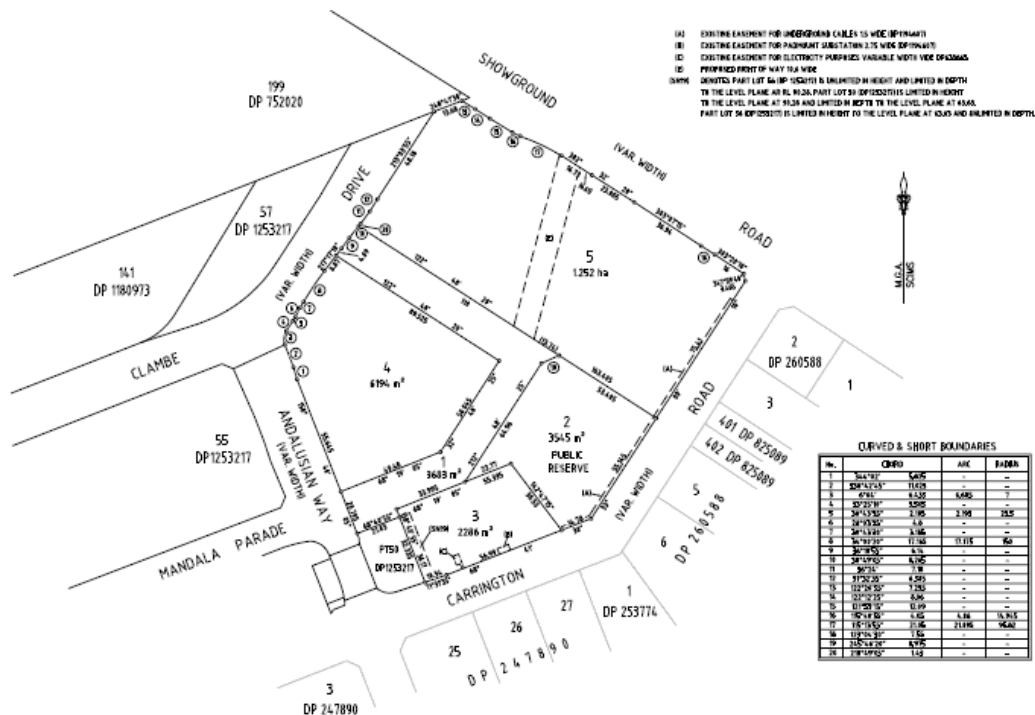
Source: Cox Architecture 2019, Urban and Landscape Design Report Hills Showground Station Precinct

Building Setback

The Concept Proposal includes the proposed subdivision of Hills Showground Precinct East (Part Lot 50 and Part Lot 56 DP 1253217) in order to excise the new road and public open space for the ultimate purpose of dedication

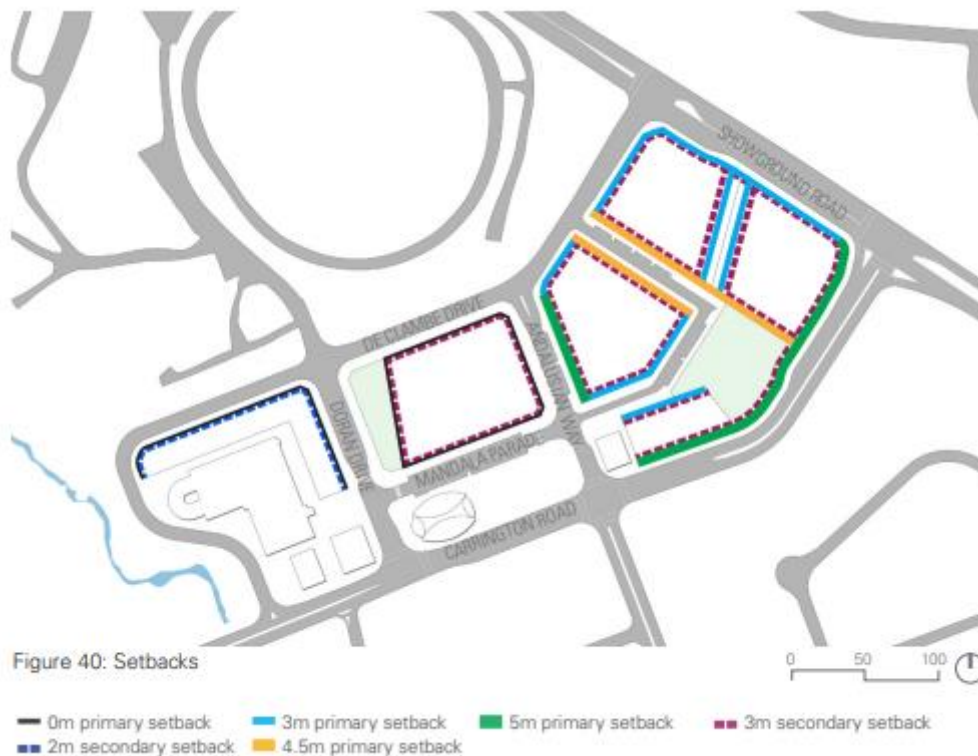
by the future developer. The proposed road separating proposed Lots 4 and 5 has a building setback of 4.5m. This is a variation of 10% to the 5m development standard under clause 9.3 of THLEP.

Figure 9 Proposed Subdivision of Part Lot 56



Source: Terry Edward Bartlett 2019

Figure 10 Proposed Setbacks in Concept proposal



Source: Extract from Hills Showground Precinct Urban Design Report, Cox Architecture and Oculus, October 2019.

5.2 Background to the variation request

Hills Showground Precinct West Lot 53 DP 1253217

The initial SEARs request applied to Lot 140 DP 1180973. Due to the timing and opening of the Hills Metro Station it was in the public interest that roads and public domain be delivered ahead of the SSDA to facilitate the activation and operation of the station. As a result, in August 2019, Sydney Metro submitted an application directly to Land Registry Services to subdivide Lot 140 DP 1180973 to create the roads and a number of lots in DP 1253217. The subdivision plan was registered on 29 August 2019.

Lot 53 DP 1253217 was created as part of this subdivision process. Under THLEP this Lot is zoned B2 Local Centre, with a maximum height of 68m and maximum FSR of 5:1. The lot is an "L" shaped parcel of land fronting De Clambe Drive to the north and Doran Drive immediately east. The lot was excised from the recently completed multi storey car park that has been delivered to service the Hills Showground Metro Station.

Detailed urban design analysis in the EIS demonstrates that this lot at 3,293m² is able to accommodate shop top housing development of over 11 storeys. Refer Urban and Landscape Design Report and justification in Section 8.3 of the EIS.

Hills Showground Precinct East (Part Lot 50 and Lot 56 DP 1253217)

As detailed above, the SSDA seeks approval of a Concept Proposal to subdivide existing 56 DP 1253217 and part of Lot 50 DP 1253217 to create the following lots:

- » Lot 1 – A new local street of 3,683m² from Andalusian Way to De Clambe Drive to provide access to the development lots
- » Lot 2 – A new public park known as Precinct East park of 3,545m²
- » Lot 3 – Development lot of 2,286m² proposed to accommodate a future residential flat building of up to 12 storeys (39m) with a street wall height of 4 storeys subject of this request
- » Lot 4 – Development lot of 6,794m² proposed to accommodate two residential flat buildings ranging from 13 storeys to 16 storeys with a street wall height of 4 storeys
- » Lot 5 – Development lot of 1.252ha proposed to accommodate three residential flat buildings ranging from 13 storeys to Showground Road to 16 storeys with a street wall height of 4 storeys.

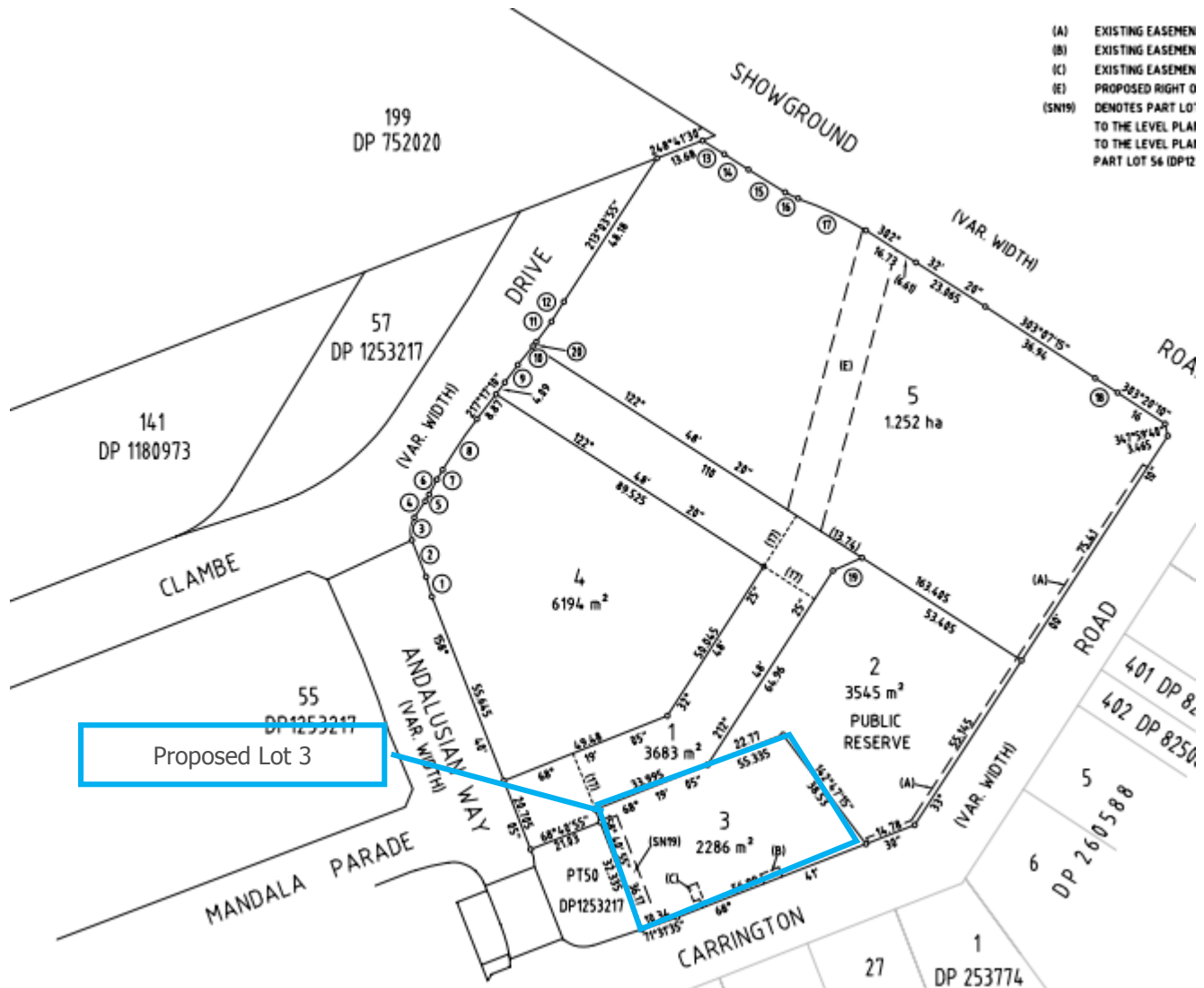
The proposed subdivision is a mechanism for the future sale and delivery of these site and the ultimate dedication of lands to Council integrated into the SSDA. The well considered urban design of the site in totality is unchanged by this process.

The master planning of Precinct East has resulted from a rigorous urban design process that considered the optimum structure plan for the entire Hills Showground Station Precinct and its relationship to surrounding roads and sites. This process included consultation with various stakeholders including Council, the State Design Review Panel (SDRP) and the Government Architect (GA).

The size of the proposed Lot 3 and the building proposed has largely been driven by the structure plan developed through this process, leading to the creation of the new road through the precinct, and the new park in Precinct East. Earlier options considered included lower density in this part of the site. Feedback from the SDRP questioned this, preferred to see an option that was closer aligned to the high density objectives for the precinct. Both the SDRP, GA and Council recognised the opportunity for open space at the adjacent showground, however, commented on the need for a local park to cater for the immediate needs of the new community. Realignment of the proposed new local road from intersecting with Carrington Avenue to Andalusian Way and a reduction in the

size of proposed Lot 3 resulted in a better design outcome for traffic and pedestrian accessibility and local open space provision.

Figure 11 Draft Plan of Subdivision Pt Lots 50 and 56 DP 1253217



Source: Terry Edward Bartlett 2019

Building Setback

The building setback controls in THLEP are based on a road layout that is now redundant as the structure plan has been evolved through the urban design process.

The setbacks for the revised structure plan proposed align with the intended outcome as described by the Department in the Finalisation Report meeting the objectives of active and safe streets that are suburban in character.

6 Assessment

In considering clause 4.6 it is confirmed that:

- » the planning controls being varied are numerical development standards imposed under clause 9.1 and clause 9.3 of THLEP
- » neither of the development standards are excluded from the operation of clause 4.6.

6.1 Justification under Clause 4.6(3) – Minimum Lot Size

Under clause 4.6(3) a development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

As noted above, the test for unreasonable or unnecessary is a 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. It is noted that an applicant does not need to establish all of the tests or 'ways' the standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more are applicable further ways may be demonstrated.

The development is justified against the five-part test in *Wehbe* as set out below.

1. The objectives of the standard are achieved notwithstanding the noncompliance with the development standard

There are no objectives underlying the development standard in clause 9.1, however, the objectives dealing with minimum lot size per se in clause '4.1 Minimum subdivision lot size' and the objectives in '4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings' as well as exception to that clause have been considered. These objectives are as follows:

4.1 Minimum subdivision lot size

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

- (a) to provide for the proper and orderly development of land,
- (b) to prevent fragmentation or isolation of land,
- (c) to ensure that the prevailing character of the surrounding area is maintained.

4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings

(1) The objective of this clause is to achieve planned residential density in certain zones.

(3) Despite subclause (2), development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to subclause (2) for multi dwelling housing or residential flat buildings where the area of the lot is less than the area specified for that purpose and shown in Column 3 of the Table, if Council is satisfied that:

- (a) the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height; and*
- (b) the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy; and*
- (c) the dwellings are designed to minimise energy needs and utilise passive solar design principles; and*
- (d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.*

These objectives have been considered in **Table 2**.

Table 2 Objectives Minimum Lot Size Clauses 4.1 and 4.1A

Objective	Response
<i>4.1 Minimum subdivision lot size</i>	
<i>(a) to provide for the proper and orderly development of land</i>	<p>The broader Showground Station Precinct was rezoned as a key outcome from the Planned Precincts work is to realise the potential for increase in density following the delivery of the Metro.</p> <p>To achieve this, a significant area of low-density residential land has been up-zoned. To meet the control, redevelopment will require consolidation of existing residential lots into larger parcels.</p> <p>In the case of the Hills Showground Station Precinct, Landcom and Metro have taken advantage of the entire site of 83,900m² to deliver a site composition that allows for density in the most suitable areas adjacent to the station.</p> <p>The detailed masterplan by COX including building envelopes, ADG compliance testing, urban design guidelines and other key urban design framework elements as part of the SSDA submission ensures the proper and orderly development of land. The purpose of the Concept Proposal is to ensure the proper and orderly development of the land and compliance with the minimum lot size provision in clause 9.1, in this instance, is unnecessary.</p>
<i>(b) to prevent fragmentation or isolation of land</i>	<p>Avoiding fragmentation of land that inadvertently results in small, inefficient parcels of land from a broader, integrated development can be assisted by limiting the opportunity for small lots to be created.</p> <p>Again, this is not the case in the Concept Proposal, which, as noted above has been developed following a robust urban design process. The land to be developed is that land available following the completion of the Metro and associated works.</p>
<i>(c) to ensure that the prevailing character of the surrounding area is maintained.</i>	<p>The Precinct Plan provides for a mixed-use local centre adjacent to the station. Creating development lots as proposed in the Concept proposal does not alter the intent of the Precinct Plan. The appropriate urban design outcome will be achieved, with the subdivision providing a feasible delivery mechanism for the construction stages of the SSDA.</p>
<i>4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings</i>	
<i>(1) The objective of this clause is to achieve planned residential density in certain zones.</i>	<p>The lot size does not change the built form outcomes. The development proposed on the lots forms part of a cohesive broader structure plan and is consistent with the intended density for land adjacent to the Metro station, being a high density, transit orientated development.</p>

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

The Concept proposal deals with the development through detailed design and master planning exercise.

The subdivision is secondary. The lot size does not change the built form outcomes.

3. **The underlying object or purpose would be defeated if compliance was required therefore compliance is unreasonable.**

Not relied on. The variation does not go to the underlying object of the development standard.

4. **The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable**

Not relied on. The controls for the wider Showground Station Precinct were introduced in 2017. Since then there have been a total of eight DAs lodged and one Planning Proposal for apartment buildings as at the 10 October 2019. We are not aware of Council granting consent to variations to the minimum lot size controls under Clause 9.1.

Notwithstanding the above, Clause 4.1A (3) of THLEP enables Council to grant consent to the erection of residential flat buildings on lots less than the minimum lot size subject to satisfying certain criteria which is addressed in Table 3 below.

5. **The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

Not applicable as this request does not vary the zoning controls.

Clause 4.6(3) (b) - Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the lot size control as it applies to the site.

The Hills Showground Station Precinct has been subject of a detailed urban design analysis to determine the appropriate built form outcomes on the two lots subject of this variation request.

The proof of concept designs demonstrate that the lots can accommodate shop top housing and a residential flat building on the nominated lots, that are of good design and provide sufficient amenity for future residents. It is as a result of the analysis and recommendations by the State Design Review Panel that apartment scale massing was introduced onto proposed Lot 3, to provide a better overall site composition and relationship to the building scale across Carrington Road to the south of the development. This modification to the design also enabled the accommodation of a better traffic and pedestrian environment and the local park. The creation of the proposed Lot 3 is the delivery mechanism enabling the development of this part of the precinct and the resulting lot size will not impact the design outcome.

The proposed development on each of the lots are able to meet Apartment Design Guideline objectives and criteria have been met including building separation, solar access, ventilation. The Design Excellence Strategy and Landcom's divestment strategy will ensure high quality-built form outcomes are delivered on both of the lots consistent with the concept approval.

In the case of Precinct West, the variation sought is minor being less than 10%. In the case of proposed Lot 3 of Precinct East the value is not considered necessary given the precinct as a whole has been the subject of detailed master planning process in consultation with stakeholders that has demonstrated that the proposed development on each of the lots subject of this variation request can be accommodated on the lots proposed.

In addition, the matters for consideration specified in Clause 4.1A (3) when Council considers a variation to the minimum lot size controls for residential flat buildings across the Hills LGA have been considered in justifying the variations sought.

Table 3 Matters considered

THLEP Clause 4.1A (3)	Assessment
(a) the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height, and	The proposed development has been subject of a detailed master planning process to ensure the integration of the existing buildings housing metro facilities with the buildings proposed in the Concept Proposals, as well as development context surrounding the site. The proposed development complies with building separation distances and setback controls in the ADG and sit within the height limit controls in the LEP. In addition, both buildings will have a street wall height of four storeys to ensure that the scale of buildings is appropriate for pedestrians at the street level as well as adjoining structures across the site and surrounding.
(b) the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and	The proof of concept design demonstrates that the buildings will be able to meet open space provision, visual, ventilation and solar access requirements. An Acoustic report supports the Concept Proposal and confirms the compliance potential.
(c) the dwellings are designed to minimise energy needs and utilise passive solar design principles, and	<p>The Concept Proposal has carefully considered how to balance amenity, solar access and built form definition of the public domain. Residential towers above the podium have been oriented so that solar access, natural ventilation and building separation exceed ADG requirements.</p> <p>The proof of concept designs demonstrate that living areas and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours' direct sunlight between 9am and 3pm at mid-winter and that maximum of 15% receive no direct sunlight between 9am and 3pm, pursuant to the ADG.</p>
(d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.	<p>Precinct East is the only development lot that contains existing trees. A total of 100 trees are found within the development lot and 5 within Council's verge, 57 of which are proposed to be removed by way of the separate DA (1617/2019/HA) associated with the demolition of the former Council Administration building currently under assessment.</p> <p>A large amount of existing vegetation, including mature trees, is proposed to be retained within the new Precinct East Park.</p> <p>Moreover, there is a significant number of trees that exist within the public domain across the site and adjacent to the development lots subject of this variation request. Refer to the Urban Design and Landscape Report for further details.</p>

If the standard were to be maintained this would result in built form outcomes that are inconsistent with the scale of development that is envisaged for the site being a high-density, transit orientated mixed-use precinct with a height of buildings and densities well below what is permitted. It would go against the recommendations of the State Design Review Panel with respect to the configuration of density on the site, and result in a smaller public park area. The location of the development parcel adjacent to the proposed park also assists in alleviating the impact that the smaller lot may have in an alternative location.

On balance, varying the development standard would not result in any adverse impacts to surrounding residents, is consistent with the envisaged built form for the site and locality, and will achieve standards of amenity required

for future residents. As such the proposal is considered to have sufficient planning grounds to justify the contravening of the minimum lot size development standard.

In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical lot size standard in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the lot size control allowed by Clause 4.6 of the THLEP.

6.2 Justification under Clause 4.6(3) – Building Setback

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

Clause 9.3 does not include a purpose or any development objectives for building setbacks and nor are there any parallel objectives in THLEP as there are in the case of minimum lot sizes as outlined above. Therefore, the five-part test in *Wehbe* has been considered in the context of the relevant objectives of THDCP in general terms.

The relevant objects for building setbacks in the DCP are addressed in the following table.

Table 4 THDCP Objectives for Setbacks

Objective	Response
<i>(a) To provide strong definition to the public domain and create a consistent streetscape.</i>	Definition of the public domain and a consistent streetscape is achieved through a 4.5m primary setback
<i>(b) To set taller building elements back from the street to reduce building scale and bulk and enable adequate sunlight access to the public domain.</i>	A 4.5m primary setback, in addition to a 17m road reserve provides a minimum 26m separation between buildings to provide adequate sunlight access to the public domain.
<i>(c) To provide articulation zones to complement building mass and emphasise key design elements such as entrance points and respond to environmental conditions including solar access, noise, privacy and views.</i>	A 4.5m primary setback allows sufficient zones for articulation and celebration of design elements such as entrances, private courtyards to garden apartments, solar access to the courtyards and a sufficient distance from the public domain to ground floor habitable rooms to ensure noise is mitigated and visual privacy maintained.
<i>(d) To ensure adequate separation between buildings on different sites to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.</i>	A 4.5m primary setback, in addition to a 17m road reserve provides a minimum 26m separation between buildings to alleviate any potential amenity impacts.
<i>(e) To facilitate a landscaped streetscape that can accommodate larger trees.</i>	A 4.5m primary setback, in addition to being prescribed as deep soil can accommodate significant tree species to contribute to the overall cohesion and connectivity between the public and private domain.

1. The objectives of the standard are achieved notwithstanding the noncompliance with the development standard

The Concept proposal has reconsidered the location of the local street through Lot 56 from a “gun barrel” road linking Carrington Road and De Clambe Drive to a local road that wraps around to meet Andalusian Way. This has been carried out as a result of consultation with RMS and the State Design Review Panel.

In the absence of specific objectives in clause 9.3 of THLEP, the relevant objectives in THLEP have been considered. As outlined in Table 4, above, these objectives can be achieved despite the minor variation to the numerical standard in the Concept proposal from 5m to 4.5m.

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

This test has not been relied on.

3. **The underlying object or purpose would be defeated if compliance was required therefore compliance is unreasonable.**

Not relied on. The variation does not go to the underlying object of the development standard.

4. **The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

Not relied on. The controls for the wider Showground Station Precinct were introduced in 2017. The development standard of 5m is unique to this site and has not previously been tested.

5. **The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

Not applicable as this request does not vary the zoning controls.

Clause 4.6(3) (b) - Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the building setback control as it applies to the site.

The design of the streetscape within Precinct East has evolved with the structure plan for the precinct. Through design excellence consultation along with engagement with key authorities, the site structure has been amended to allow for a larger public open space and to avoid a troublesome intersection with Carrington Road that is undesired by RMS by wrapping the road around to meet Andalusian Way. This has created a more relaxed, comfortable and pedestrian friendly environment within this residential village area, with provision for drop off and parking along this public space, instead of a more formal straight connection between Carrington Road and De Clambe Drive.

The design of the street and setbacks suits this new structure, and maintains an ample primary setback of 4.5m throughout the curved road, with room for significant mature landscape elements and trees.

A key urban design principle for the overarching master plan is to instead ensure Andalusian Way provides a strong north-south green link between these two roads, and as such the setback to the east of this road (within Precinct East) has been increased to 5m (above the DCP guidance of 3m).

To demonstrate the ability to achieve a public and private domain outcome in line with the desires of Hills Shire Council and the objectives of the DCP, Cox Architecture has noted some particular precedents:

Newington (by Cox Architecture)

4.5m primary setback from the road reserve.

Demonstrates enough room for a secondary tree in the private domain courtyards to support the street trees. Garden apartments are accessed from the public domain (as is proposed within the subject Concept proposal)

**Lidcombe Botanica (by Cox Architecture)**

2m primary setback

Enables room for planting to provide canopy cover and visual privacy for ground floor habitable rooms. Residences are accessed via the public domain

**Harold Park (Mirvac)**

3m primary setback (balconies, sun shading and architectural elements can encroach up to 1m into this primary setback)

Ground floor apartments are accessed from the public domain



6.3 Justification under Clause 4.6(4)(a)(ii)

Clause 4.6(4) provides that:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Consistency with objectives of the development standard – minimum lot size and building setbacks

As noted above, the specific development standards are not accompanied by specific objectives. However, the proposal has been considered having regard to the general objectives for minimum lot size as expressed in clause 4.1 and the objective relates to minimum lot sizes for residential flat building and other forms of residential accommodation in the Hills LGA expressed in Clause 4.1A.

The building setback has been assessed having regard to the objectives in THDCP which demonstrates that the standard is unnecessary in this case.

The proposed development is consistent with the objectives of the THLEP clauses and THLEP objectives, for the reasons outlined above.

Consistency with objectives of the zone

Minimum Lot Size

The proposed development does not meet the minimum lot size requirements for shop top housing over 11m in the B2 Local Centre zone and residential flat building in the R1 General Residential zone being 3,600m². Accordingly, the objectives of these zone are required to be considered in determining whether the variation is supportable.

Building Setbacks

The proposed development does not achieve the minimum 5m setback to the local road. The variation to the setback is within the R1 General Residential zone in THLEP.

A summary of the consistency with these land use zones is provided in **Table 5**.

Table 5 Consistency with zone objectives

Zone Objectives	Comment
B2 Local Centre – Doran Drive Precinct	
» To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	Consistent
» To encourage employment opportunities in accessible locations.	The proposed lot size variation will enable a high density mixed use building comprising a residential tower and ground floor retail uses fronting Doran Drive and De Clambe Drive.

Zone Objectives	Comment
» To maximise public transport patronage and encourage walking and cycling.	<p>The retail and commercial uses will serve the daily needs of the community as well as provide employment and business opportunities in a highly accessible location.</p> <p>The high density development will seek to maximise public transport patronage with the metro and bus services and pedestrian and cycle connections thereby encouraging walking and cycling.</p>
R1 General Residential - Precinct East	
<ul style="list-style-type: none"> » To provide for the housing needs of the community. » To provide for a variety of housing types and densities. » To enable other land uses that provide facilities or services to meet the day to day needs of residents. » To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas. 	<p><u>Minimum Lot Size</u></p> <p>The proposed variation will enable high density residential flat buildings with one, two and three bedroom apartments. The buildings sits within a master planned site that has been design to facilitate a high density transit orientated development.</p> <p>The proposed buildings will support the nearby commercial and retail uses to be located at Precinct West and Doran Drive as well as in the surrounding area.</p> <p>The height of the buildings will not cause additional overshadowing impacts on neighbouring areas including the residential areas to the south or the new park.</p> <p><u>Building Setback</u></p> <p>The variation to the building setback is not inconsistent with, nor does it undermine the objectives of the R1 zone.</p>

6.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

These matters are addressed in detail below.

Matters of Significance for State and Regional Planning

The variation of the minimum lot size development standard does not raise any matter of significance for State or regional planning. We do note, however, that the Concept Proposal is consistent with various strategic planning policy documents.

The public benefit of maintaining the development standard

There is no public benefit in maintaining the development standard in this case.

The proposed variation allows for the development of the site for a high density, transit orientated, mixed used precinct in line with the government policy and the current planning controls for the site established under THLEP.

The Concept proposal has been developed following a thorough urban design process including engagement with key stakeholders and the wider community. AS a result, the Concept proposal reconsidered the location of the local street through Lot 56 from a "gun barrel" road linking Carrington Road and De Clambe Drive to a local road that wraps around to meet Andalusian Way. This has been carried out as a result of consultation with RMS and the State Design Review Panel.

The subdivision to create development Lot 53 as well as the proposed subdivision in the Concept SSDA to create Lot 3 is considered to be a delivery mechanism and size does not change the built form outcomes.

The reduction in height to comply with the lot size development standard would be contrary to the public interest as it would not facilitate high density development that is envisaged at the site.

Other matters for consideration

In addition to the matters already outlined, it is worth noting that the variation to the controls relating to the minimum lot size in respect of Precinct West and proposed Lot 3 of Precinct East, and the variation to the building setback will not have a significant detrimental impact on the amenity of surrounding properties or future users of the site. As outlined the proof of concept designs demonstrate that the Apartment Design Guideline objectives and criteria have or can be met including building separation, solar access and ventilation

Moreover, the Design Excellence Strategy and Landcom's divestment of the sites will ensure high quality-built form outcomes are delivered on both of the lots consistent with the concept approval.

7 Conclusion

The assessment above demonstrates that compliance with both the minimum lot size control development standard for residential flat buildings and shop top housing contained in Clause 9.1 and building setbacks as determined by clause 9.3 of THLEP is deemed unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.

It is considered that the variations allow for the orderly and economic use of the land in an appropriate manner.

The Concept Proposal approach enables the consent authority to assess the application for the site in its entirety, rather than consideration of individual development applications in an ad hoc manner. This ensures a cohesive and integrated approach enabling a better urban design and planning outcome for the site.

The variation to the development standards will not result in any adverse impacts to surrounding residents, is consistent with the envisaged built form for the site and locality, and will achieve the standards of amenity required for future residents. The proposal is considered to have sufficient planning grounds to justify the contravening of both the minimum lot size and building setback development standards in this case.

There are no environmental planning grounds that warrant maintaining the numerical standards in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the lot size and building setback controls allowed by Clause 4.6 of the THLEP.

Appendix



A

Clause 4.6

The Hills Local Environmental Plan 2012

Current version for 28 February 2019 to date (accessed 18 October 2019 at 18:50)

[Part 4](#) > [Clause 4.6](#)



4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (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.



