



Nicole Brewer
Director, Energy Assessments
Department of Planning, Housing and Infrastructure (DPHI)
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150
[REDACTED]

27 March 2024
Matter 82721291
By Email

Dear Nicole

Letter to DPHI – Response to RFIs

We refer to the Department of Planning, Housing and Infrastructure’s (DPHI) letter dated 22 February 2024.

The purpose of this letter is to provide a response to DPHI’s requests for information set out in the 22 February 2024 correspondence.

Each request, together with our corresponding response, is set out in the table below.

DPHI request	Proponent response
1. Economics	
A revised economic analysis detailing the consequences of project design changes on the viability of the project, including quantitative evidence to support the LCOE figures presented to the Commission.	Refer to Attachment 1 – Letter from Proponent dated 27 March 2024.
2. DAD 01	
Details about the lawfulness (or otherwise) of the CDC and its relevance to the Department’s assessment;	Refer to: <ul style="list-style-type: none">Attachment 2 – Letter from Herbert Smith Freehills dated 27 March 2024; andAttachment 3 – BBC Consulting Partners’ advice dated 4 March 2024.

DPHI request	Proponent response
<p>An update on the status of the negotiations with the likely landowner, including consideration of their submission to the Commission; and</p>	<p>The Proponent has consulted with and engaged in protracted negotiations with the likely landowner, Mr Savage, since 1 November 2022.</p> <p>See Attachment 5 for a detailed consultation log with Mr Savage.</p> <p>Mr Savage's submission has also been considered in Attachment 2 – Letter from Herbert Smith Freehills dated 27 March 2024.</p>
<p>Any consideration of potential re-siting options for DAD 01 or the relevant wind turbines to meet the performance objectives Wind Energy Guideline (2016).</p>	<p>Refer to Attachment 4 & 4A – David Moir advice dated 14 March 2024 and Sonus advice dated 14 March 2024</p>
<p>3. Visual impact assessment</p>	
<p>Accompany the wire frame with vegetation overlay generated at NAD67 with an aerial image of the dwelling;</p>	<p>Refer to Attachment 4 –Moir Landscape Architecture advice dated 14 March 2024.</p>
<p>Consideration of the Wind Energy Guideline (2016) requirements relating to dwelling entitlements, and clarification on the meaning of 'dominance'; and</p>	<p>Refer to Attachment 4 – Moir Landscape Architecture advice dated 14 March 2024.</p>
<p>Consideration of the relevance of the Taralga case, particularly in relation to the different factual circumstances and the changes in policy settings since the judgment.</p>	<p>Refer to Attachment 2 – Letter from Herbert Smith Freehills dated 27 March 2024.</p>

Yours sincerely

Thierry Kalfon
 Managing Director Australia & South East Asia
 ENGIE

Per the Commission's Transparency Policy, the Panel has agreed to a request that the following pages 4-16 be redacted on the basis of commercial sensitivity.

Attachment 1 - Letter from Proponent dated 4 March 2024

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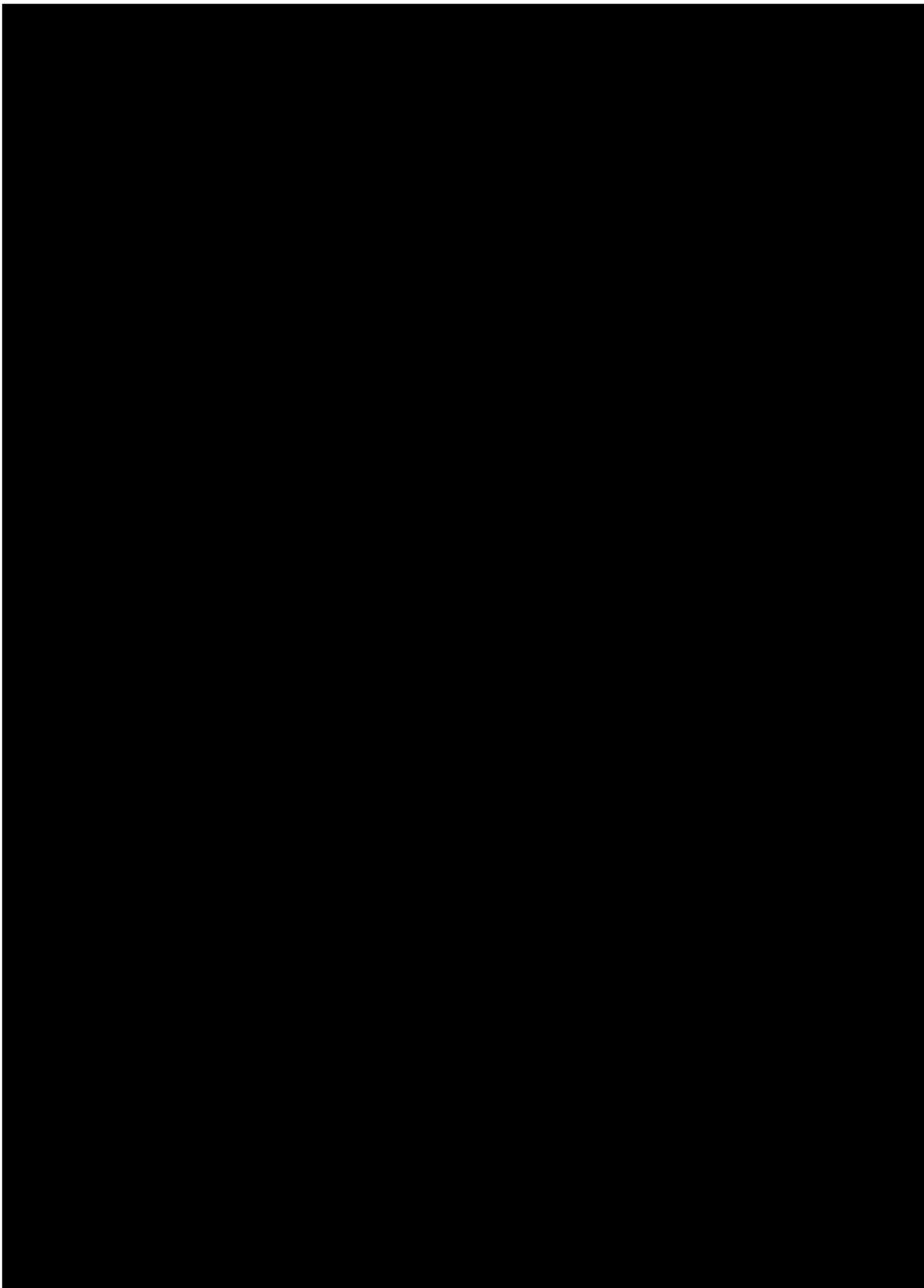
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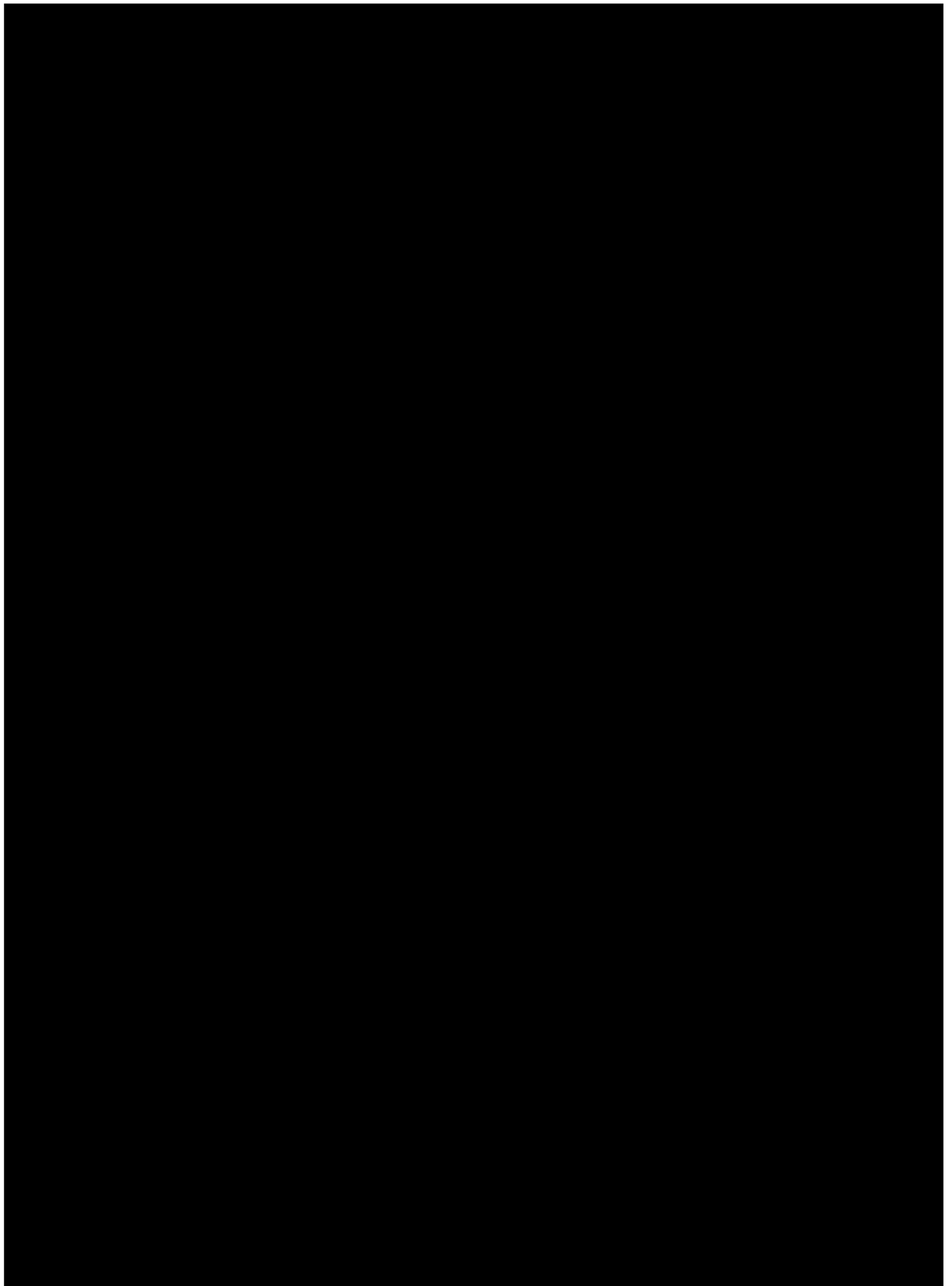
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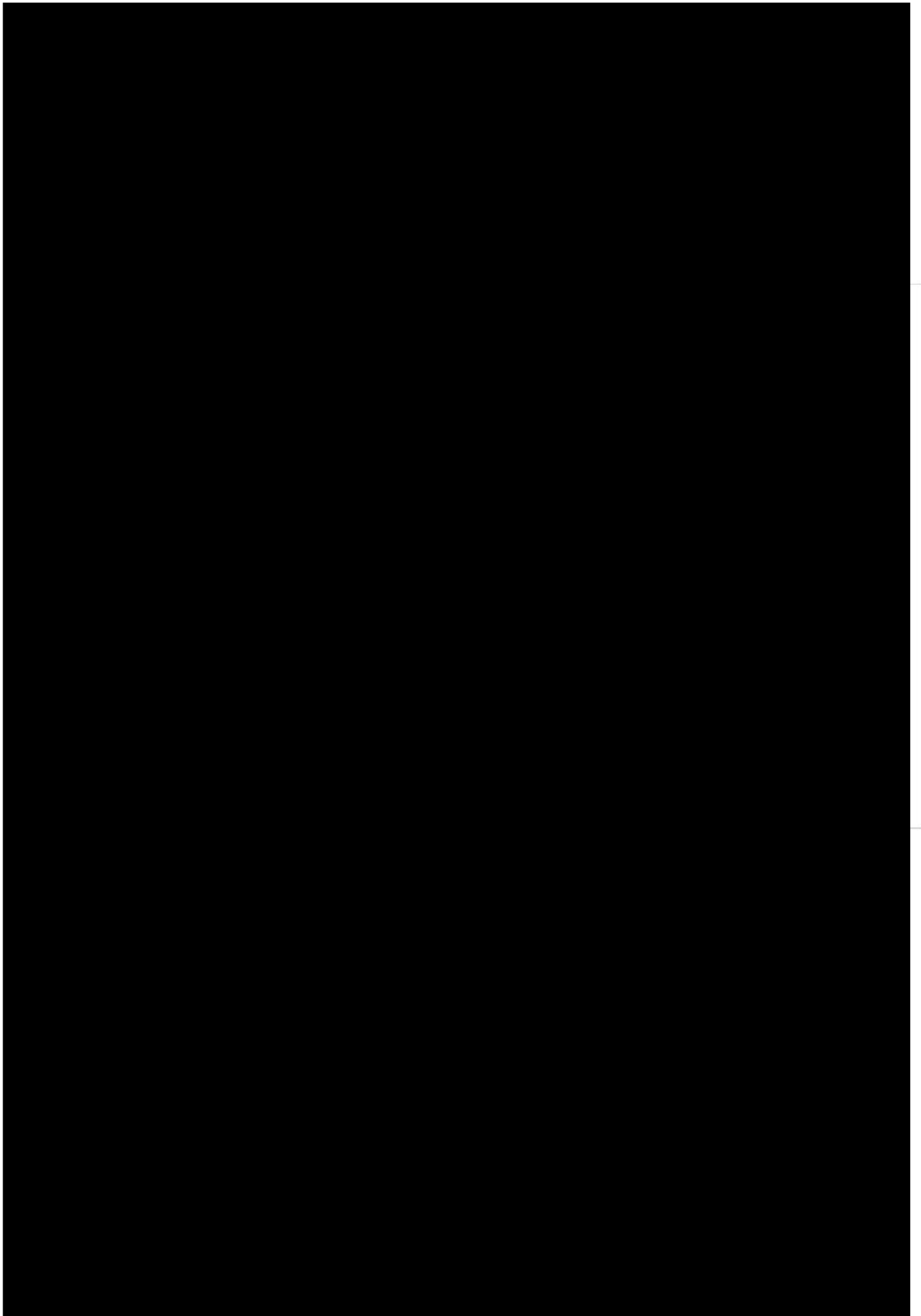
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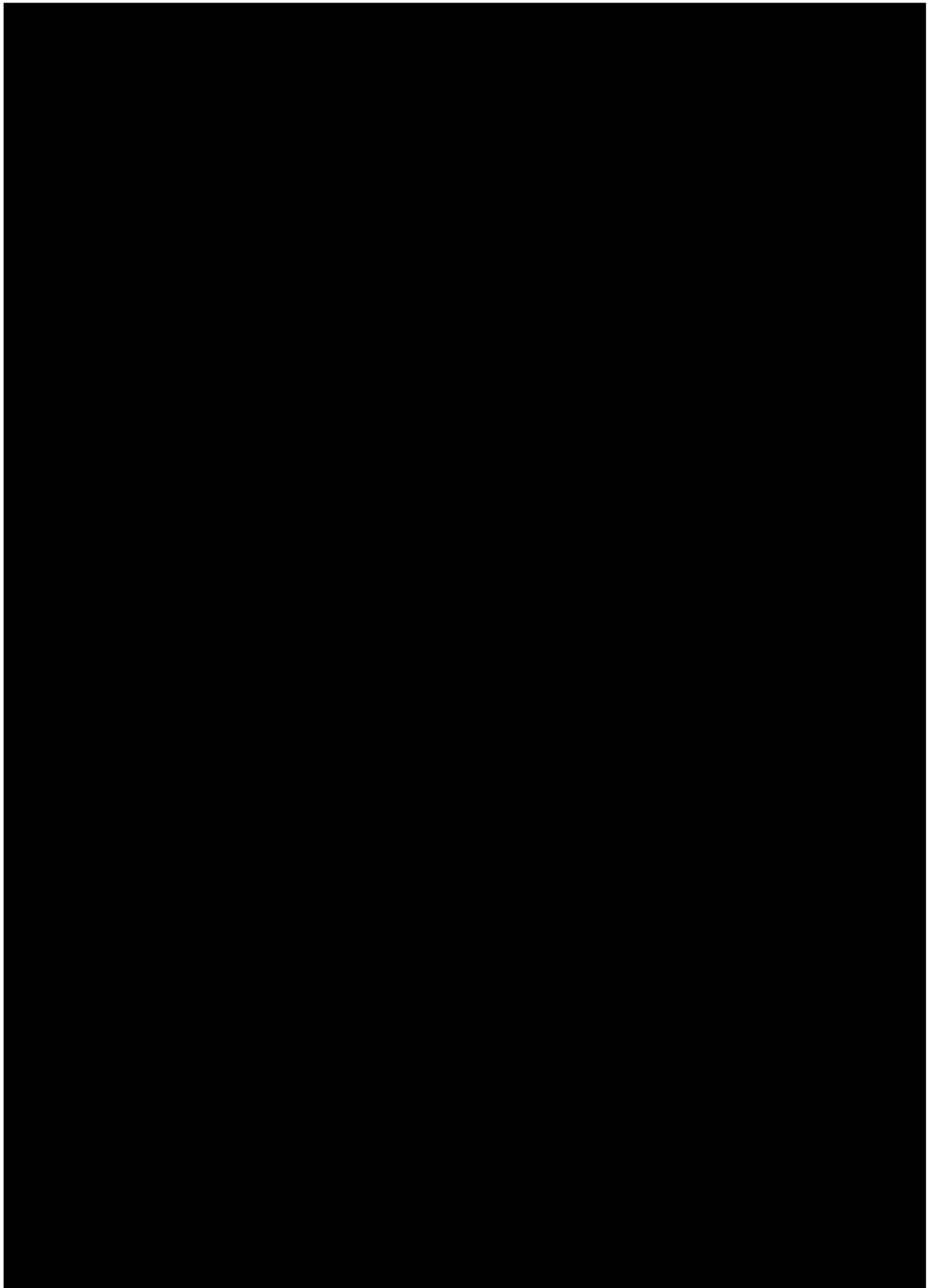
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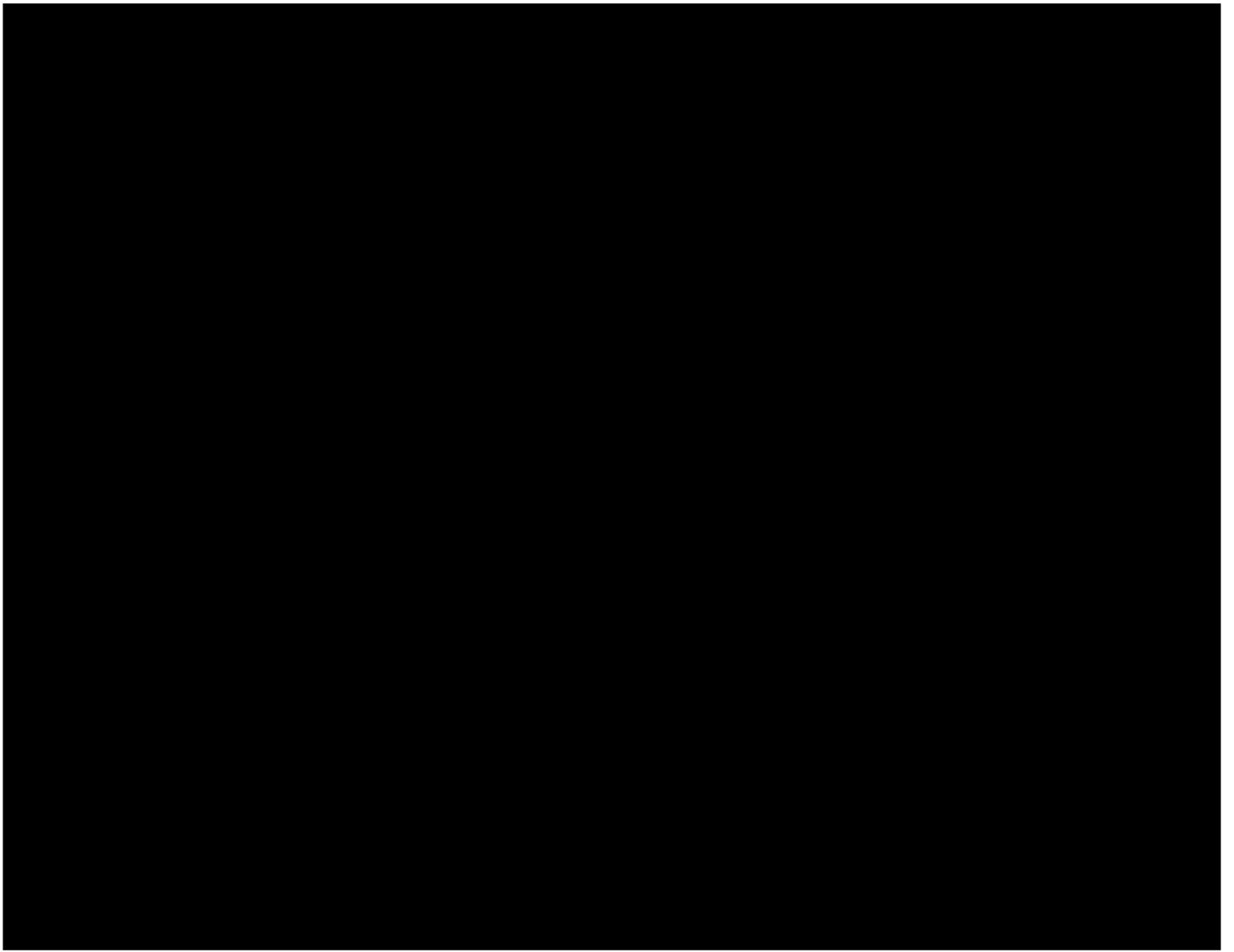
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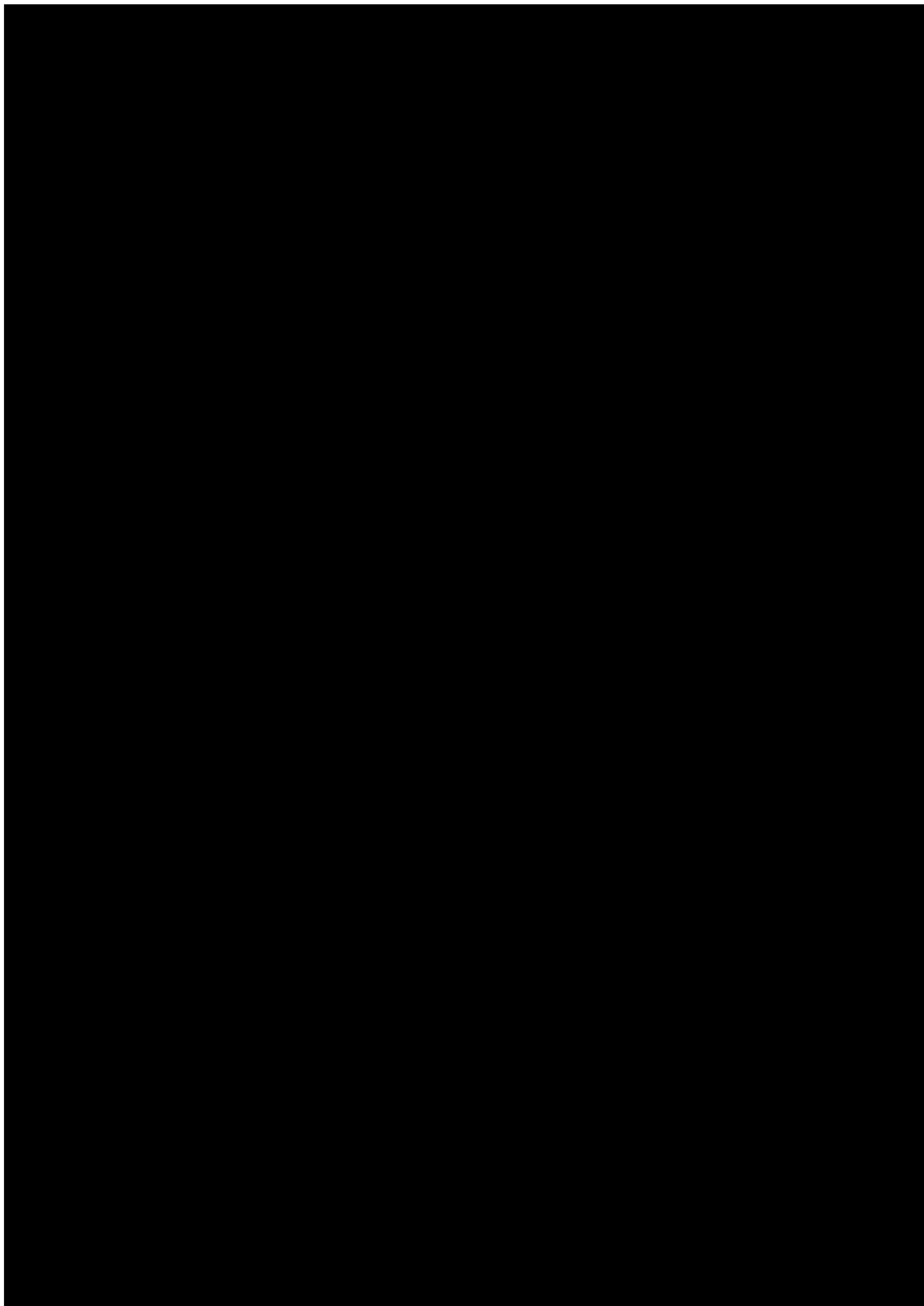
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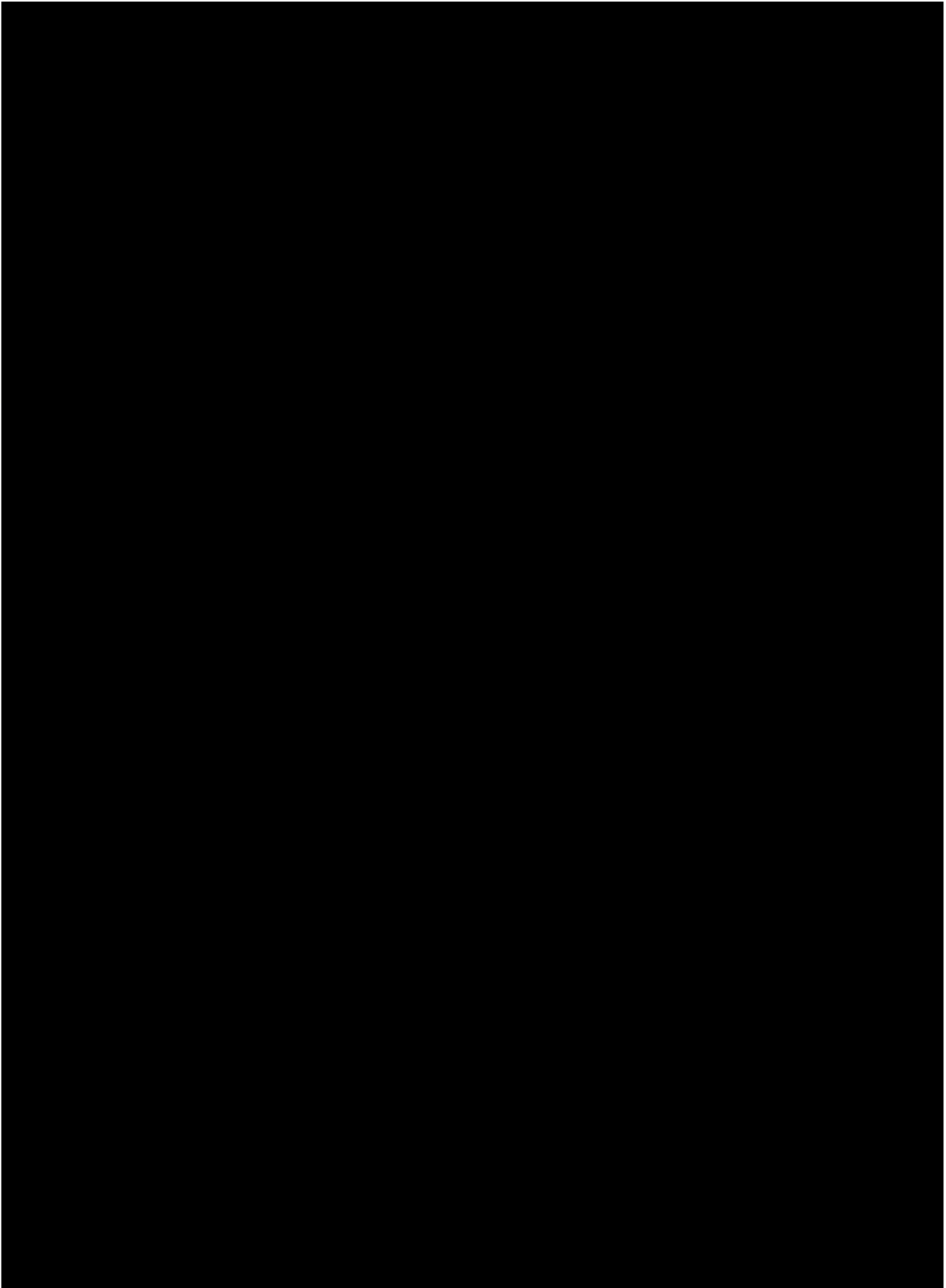
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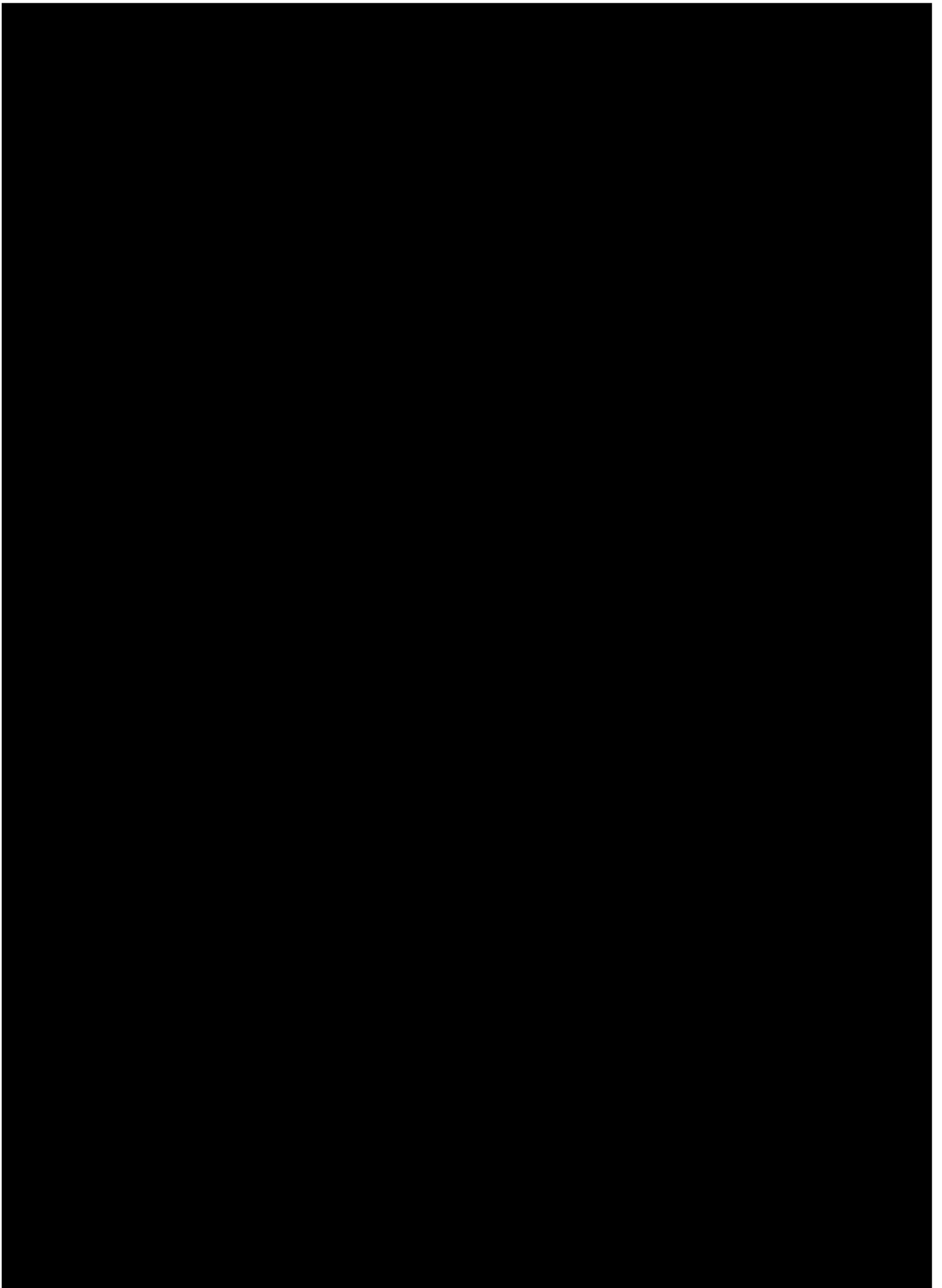


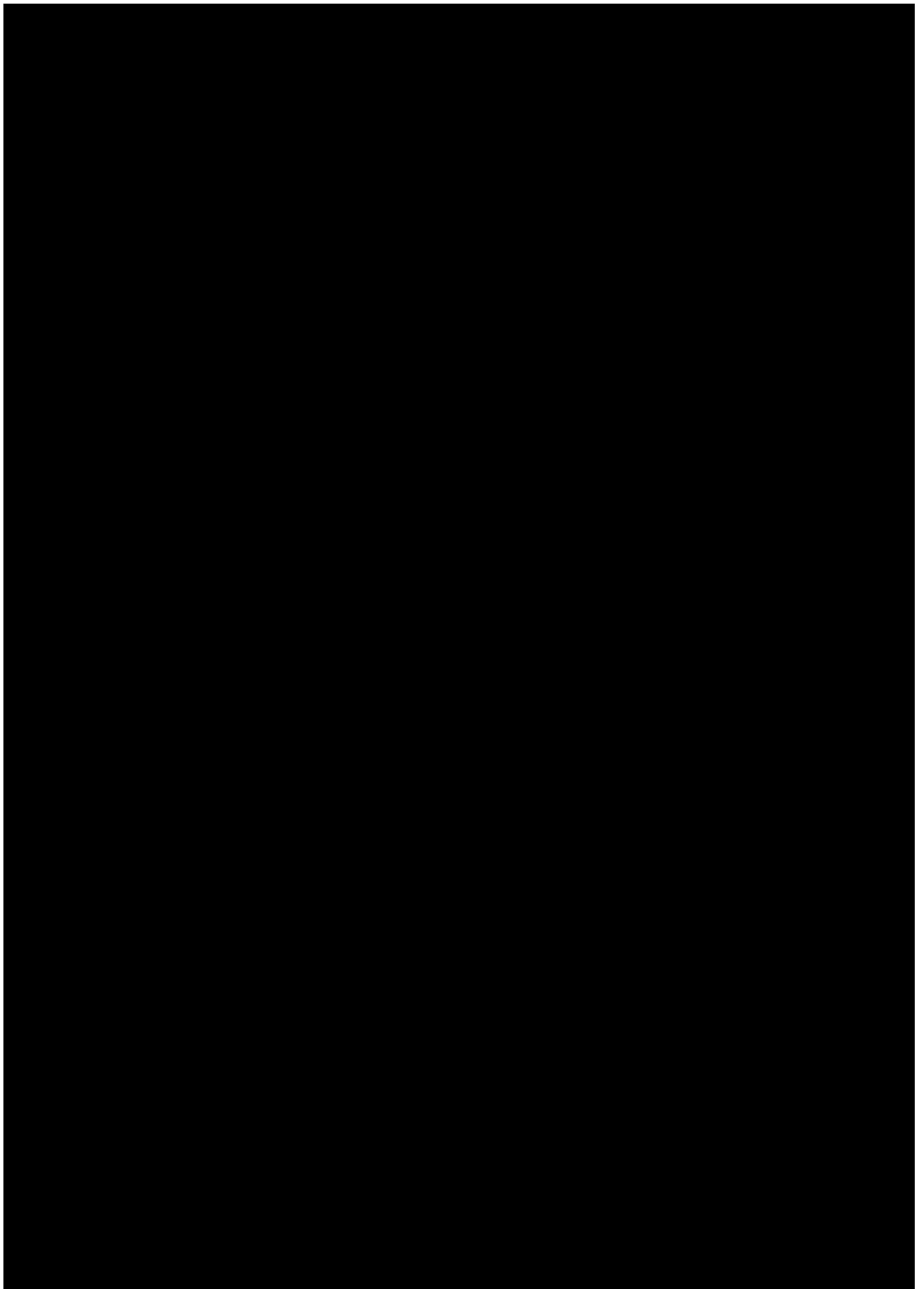


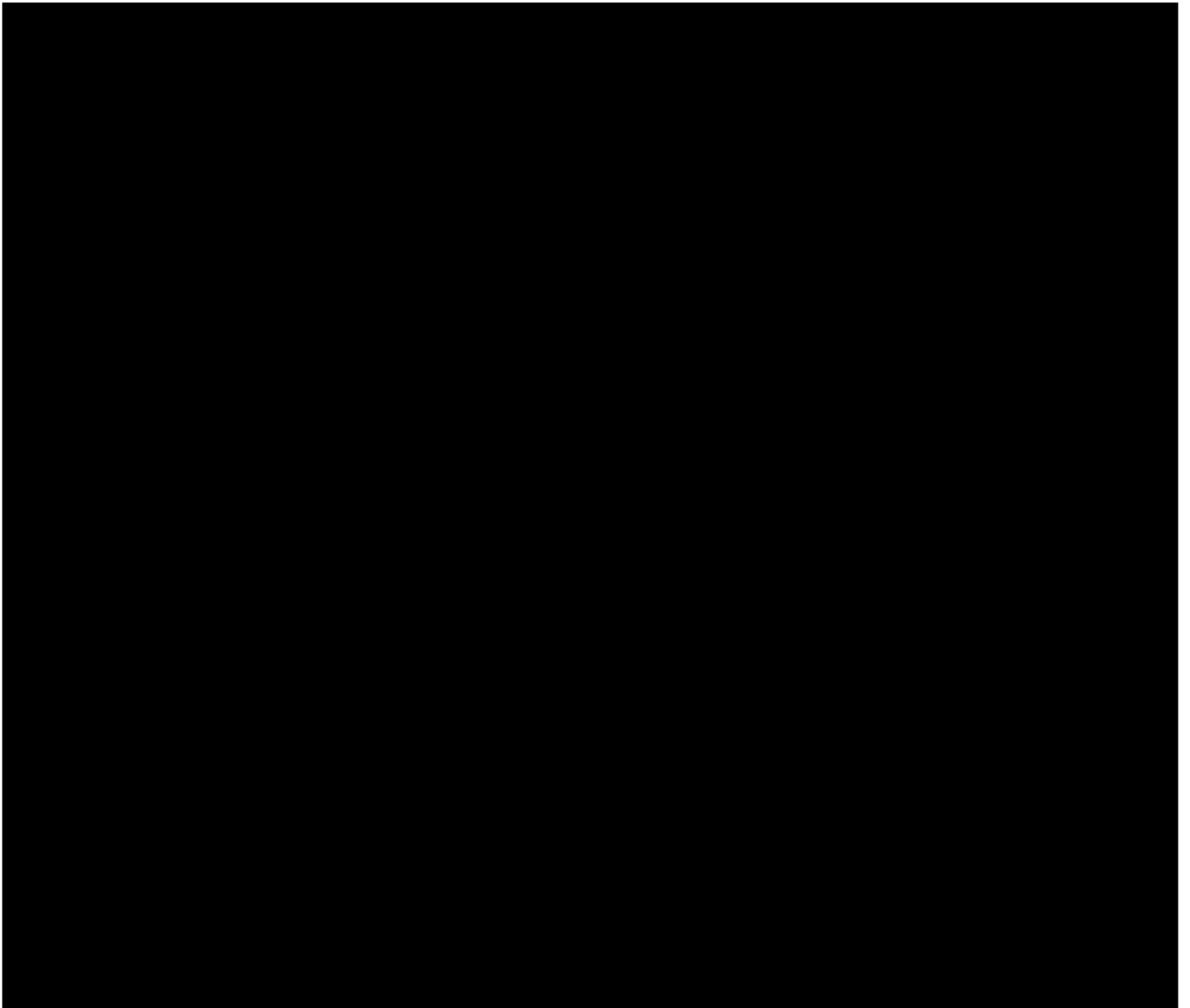


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Attachment 2 - Letter from Herbert Smith Freehills dated 4
March 2024



Nicole Brewer
Director, Energy Assessments
Department of Planning, Housing and Infrastructure (DPHI)
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

27 March 2024
Matter 82721291
By Email

Dear Nicole

Hills of Gold Windfarm Response to RFIs on behalf of the Proponent

We act for Hills of Gold Windfarm Pty Ltd (the **Proponent**) in relation to the proposed Hills of Gold Windfarm (SSD 9679) (**Project**) currently before the Independent Planning Commission (**IPC**).

We refer to DPHI's letter to the Proponent dated 22 February 2024 and further requests for information on 18 March 2024.

We are instructed by the Proponent to provide the following additional information to DPHI:

- in relation to DAD01, details about the lawfulness (or otherwise) of the complying development certificate (**CDC**) and its relevance to the Department's assessment, including consideration of the landowner's submission (see section 1); and
- consideration of the relevance of the Taralga case,¹ particularly in relation to the different factual circumstances and the changes in policy settings since the judgment (see section 2).
- evidence to support the statement that NSW is the only jurisdiction to consider approved but not constructed dwellings or dwelling (see section 3).

1 The CDC is unlawful and should be given very little, if any weight for the purpose of assessment

1.1 The CDC does not meet the requirements of the Codes SEPP and acting on it would amount to a breach of the EP&A Act

The approval which is relied upon for the purposes of DAD01 is a CDC issued by a private certifier on 11 November 2020. For the reasons set out in detail in the Proponent's submission dated 15 February 2024 (which we will not repeat in full here), the CDC is legally flawed and ought to be given very little, if any, weight.

A detailed assessment of the validity of the CDC is set out in the **attached** opinion from BBC Consulting Planners dated 4 March 2024.

In summary, the proposed development the subject of the CDC:

- does not meet the requirements of clause 3D.3(3) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*, in that the lot does not have lawful direct frontage access or a right of carriageway to a public road or a road vested in or maintained by local council.

¹ *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59.



Rather, the lot has access to an unformed Crown road that is not maintained. The track which is located on Lot 210 DP 819485 is owned and occupied by Russell and Myrtle Sydenham, an associated landowner for the purpose of the Project. That owner and occupier has not and will not provide consent for the use of access through his property to a dwelling on the relevant land. In that regard, we refer to Mr Sydenham's supplementary submission made to the IPC on 15 February 2024, in which he states, "[a]s the owner of Lot 210/DP819485, which is required for access to construct DAD01, I do not grant access." The unformed Crown road is located on steep and wooded land that is unsuitable for creation of a Crown road;

- does not meet the requirements of clause 3D.6(2)(b) of the Codes SEPP, in that the relevant area contains bushfire prone land, and as mentioned above, does not have access to a public road or a road vested in or maintained by local council; and
- is unlikely to meet the requirements of clause 1.19(1)(b) of the Codes SEPP, in that the accessway to the existing dwelling is densely vegetated and is bushfire prone land.

In this context, section 4.26 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) is particularly relevant.

Section 4.26 of the EP&A Act sets out the requirements for the carrying out of complying development, and sub-section (1) requires a person to carry out complying development not only in accordance with the CDC, but also in accordance with:

... any provisions of an environmental planning instrument, development control plan or the regulations that applied to the carrying out of the complying development on that land at the time the complying development certificate was issued.

(emphasis added)

In light of the non-compliances with the Codes SEPP set out above, the future landowner (Mr Savage) would be in breach of section 4.26(1)(b)(ii) of the EP&A Act if he were to construct the dwelling in accordance with the CDC.

1.2 **In any case, the CDC should be given little or no weight for a variety of other reasons, including that the future landowner is unlikely to act on the CDC before it expires**

The CDC is legally flawed for the reasons set out above. Even if the legal status of the CDC is put to one side, the following matters should be taken into account when apportioning weight to the CDC:

- the CDC has not been acted on and there is no current indication that it ever will be acted on;
- in accordance with section 4.29 of the EP&A Act, the CDC will lapse on 11 November 2025 (noting that it was issued on 11 November 2020) unless the development to which it relates is physically commenced before that date;
- in his written submission to the IPC dated 12 February 2024, Mr Savage states that: "... nothing can be done until probate is sorted" and he "intend[s] to build the house but with a bigger footprint to what has been approved. It will take some time to do the amendments";
- it appears clear from Mr Savage's own submission that he does not intend to act on the current CDC. As DPHI would be aware, if Mr Savage intends to build a dwelling with a bigger footprint, it will be necessary for him to make a new development application or apply for a new CDC. In our submission, for the reasons set out above, any such application is very unlikely to be successful;

- we note that local council previously rejected, on 24 September 2019, a development application lodged for a residence in a similar location on a number of grounds, including that *“the application has not provided documentary evidence that the subject site has the legal right to access the site over Lot 210 DP 819485 and the adjoining reserve”*; and
- even if, contrary to Mr Savage’s own admission, the future landowner were to take steps to commence the construction of the dwelling the subject of this CDC, it would be open to any person (including the Proponent) to apply to the Land and Environment Court under section 9.46(1) of the EP&A Act to seek relief, including to restrain a breach of section 4.26 of the EP&A Act for carrying out development in breach of the Codes SEPP.

While DPHI’s assessment report refers to a process of weighting impacts (at paragraph [102]), in our opinion that exercise has not been properly engaged with:

“102. The Department’s consideration of receivers is weighted more in favour of existing dwellings than potential future dwellings. Where there is an approved dwelling that is yet to be constructed or where there is the possibility of a future dwelling (subject to approvals processes), these warrant a lower weighting due to their uncertain nature and the ability for them to be designed, sited and oriented to avoid or reduce impacts.”

When this statement is considered against DPHI’s recommendation to remove 11 turbines on the basis of visual and noise impacts to a potential dwelling (which in all circumstances is unlikely to ever exist), it is apparent that the public interest benefits of the Project have been *“given mere lip service”* by DPHI.²

Requiring the removal of 11 turbines due to an impact on a dwelling that does not physically exist at the date of the decision (and which the future landowner apparently does not intend to utilise in any case) would clearly not be an appropriate weighting of impacts. It would not be possible to obtain development consent without significant time and resources to provide legal access to the property (especially in circumstances where the future landowner intends to build a dwelling with a larger footprint compared to what is provided for in the CDC).

The reasoning in *Tuite* should be applied in these circumstances, such that the impacts to the environment ought to be assessed based on the state of the environment at the time of the determination of the application.³ No reasonable person in the shoes of the decision maker would require the removal of these turbines due to a mere theoretical impact on this property at that date.

In these circumstances, it is clear that DPHI has not given the public interest considerations appropriate weight. The Court has previously observed that the public interest consideration under section 4.15 of the EP&A Act embraces the concept of ‘ecologically sustainable development’ (**ESD**), which, has evidently not been properly considered here by DPHI. Under the EP&A Act a key element of ESD is ‘inter-generational equity’⁴, which is *“that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations”*.⁵

² *Anderson v Director General of the Dept of Environment and Climate Change* (2008) 251 ALR 633, [58]; *Calardu Penrith Pty Ltd v Penrith City Council* [2010] NSWLEC 50, [100].

³ *Tuite v Wingecarribee Shire Council (No 2)* [2008] NSWLEC 321; *Tuite v Wingecarribee Shire Council* [2008] NSWLEC 1315.

⁴ *Environmental Planning and Assessment Act 1979* (NSW) s 1.4(1); *Protection of the Environment Administration Act 1991* (NSW) s 6(2).

⁵ *Ibid.*



In our view, DPHI has not properly considered the full extent of the public interest consideration under section 4.15 of the EP&A Act. It is established that “*the principles of sustainable development are central to any decision-making process concerning the development of new energy resources [and] one of the key principles underlying the notion of sustainable development is the concept of intergenerational equity*”.⁶ These 11 turbines are critical to the viability of the entire Project, and therefore, play an imperative role in the promotion of ESD.

There is no justifiable basis to support DPHI’s view that the removal of the 11 turbines would not jeopardise the energy transition in NSW.⁷ It is irrelevant that there are “*a significant number of wind farm projects proposed*”.⁸ A decision-maker should not disregard the public interest benefits from a single proposed project merely because there are an increasing number of renewables projects entering the grid contributing to the State’s energy transition.

In *Gray v Minister for Planning*,⁹ Pain J rejected a similar line of argument in the context of a coal mine where her Honour stated that “*climate change/global warming is widely recognised as a significant environmental impact to which there are many contributors worldwide... [but] the fact that there are many contributors globally does not mean the contribution from a single large source... should be ignored in the environmental assessment process*”.¹⁰

The Court has previously had to engage with the same balancing of the public benefit in renewable energy generation against private disbenefits to individual landowners, including for existing dwelling entitlements. In *Taralga Landscape Guardians Inc (Taralga)*¹¹, the now Chief Judge of the Land and Environment Court determined that the “*... overall public benefits [in renewable energy generation] outweigh any private disbenefits to the Taralga community and specific landowners*”.¹² The relevance of the Taralga decision is discussed further in section 2 below.

2 **Taralga is directly relevant to the assessment of impacts from the Project**

2.1 **The common law sets the applicable legal precedents**

As we would expect DPHI to understand, extrinsic materials are not sources of law, but may be used for interpretative purposes in certain circumstances. The common law, which is a source of law, will always prevail over extrinsic materials such as government policies.

In *Attorney-General (NSW) v Quin* (1990) 170 CLR 1, Brennan J (agreeing with Mason CJ) stated (emphasis added):

“The duty and the jurisdiction of the courts are expressed in the memorable words of Marshall CJ in Marbury v Madison (1803) 1 Cranch 137 at 177...:

It is, emphatically, the province and duty of the judicial department to say what that law is.”¹³

⁶ *Taralga* (n 1) [73].

⁷ Department of Planning and Environment, *Hills of Gold Wind Farm State Significant Development Assessment Report (SSD 9679)* (December 2023) [109].

⁸ *Ibid* [109].

⁹ *Gray v Minister for Planning (No 2)* [2006] NSWLEC 720.

¹⁰ *Ibid* [98].

¹¹ *Taralga* (n 1).

¹² *Ibid* [352].

¹³ *Attorney-General (NSW) v Quin* (1990) 170 CLR 1, 25.



In other words, the judiciary has a role to play in the interpretation, explanation and enforcement of laws and regulations.¹⁴ In the context of environmental law, the judiciary plays a critical role in the enhancement and interpretation of environmental law and the vindication of the public interest in a healthy and secure environment.¹⁵ The Land and Environment Court of NSW, the first specialist environment court established as a superior court of record in the world, provides a forum for full and open consideration of issues of importance, clarifies the meaning of legislation, ensures adherence to legislative principle and objectives, and focusses attention on the accuracy and quality of policy documents, guidelines and planning instruments through its merits review function.¹⁶ In this sense, the evolving body of environmental jurisprudence ‘says *what the law is*’. Accordingly, while Government policies may provide some degree of guidance to decision-makers, the common law will always prevail.

2.2 The policy settings at the time of Taralga and Chief Judge Preston’s approach

At the time of the Court’s decision in Taralga, the current *Wind Energy: Visual Assessment Bulletin December 2016 (Visual Bulletin)*, or any equivalent guideline, was not in place.

At that time, the NSW approach was to have regard to the 2003 South Australian document ‘*Wind Farms: Environmental Noise Guidelines*’. Those guidelines were focused on noise impacts and as far as we are aware, did not have regard to the assessment of visual impacts.

Notwithstanding the lack of a policy guideline at the time, the approach of Preston J (as the Chief Judge then was) in Taralga (at paragraphs 100 – 102) was to have regard to the visual impacts on three classes of property in the vicinity of the wind farm:

- properties where there are existing dwellings which Taralga Landscape Guardians Inc said would receive unacceptable visual impacts;
- properties with an existing dwelling entitlement but for which no development approval for a dwelling has been given; and
- properties where Taralga Landscape Guardians Inc said there was the loss of the development potential that would otherwise arise because of subdivision of concessional allotments or subdivision of a more general kind permitted under the LEP.

In Taralga, it was agreed by all parties that the most significantly impacted property was the Ross property (see paragraph 168), which was a property with an **existing dwelling** (i.e. within the first-bullet point above). The Court held at paragraph [244]:

“I am satisfied that the likelihood of this non-compliance, when coupled with the severe visual impact of the proposal on the Ross property, renders these impacts unacceptable. It is therefore appropriate to provide Mr and Mrs Ross with the option of requiring RES Southern Cross to purchase their property. The conditions are also to be amended to provide for this.”

Even in circumstances where there was “*no viable opportunity to ameliorate the visual impact on the Ross residence by landscaping*”,¹⁷ and curing visual and noise impacts

¹⁴ The Hon Justice Brian J Preston, ‘Operating an environmental court: the experience of the Land and Environment Court of New South Wales’ (Conference Paper, Inaugural Distinguished Lecture on Environmental Law, 23 July 2008) 1.

¹⁵ Ibid 1–2.

¹⁶ Ibid 2, 4.

¹⁷ *Taralga* (n 1), [166].



might have only been possible “*by the removal of a significant number of turbines*”,¹⁸ Preston J imposed an acquisition condition in respect of this property.

2.3 In light of the current policy settings, the reasoning in *Taralga* is even more applicable now

(a) The 2016 Wind Energy Guideline does not provide any guidance as to the assessment of dwelling entitlements, but elevates the significance of public interests considerations following *Taralga*

Since the *Taralga* decision, in 2016 DPHI published the Wind Energy Guideline (**Guidelines**) and supporting technical bulletins, including the Visual Bulletin. The Visual Bulletin was developed and introduced to guide the appropriate location of wind energy development in NSW and to establish an assessment framework for visual impacts.

We note that the Guidelines were developed in a manner that embraced the Chief Judge’s decision in *Taralga*, citing the precedent as a source of authority on two occasions. *Taralga* is also cited throughout the Visual Bulletin five separate times.

The Visual Bulletin does not require an assessment of dwelling entitlements, nor was it a requirement of the SEARS for the Project. The Visual Bulletin states, in a number of sections throughout, that the assessment tools in the bulletin “*include the consideration of the potential impact of the proposals on dwellings and key public viewpoints*”. There is no reference to “dwelling entitlements” in the Visual Bulletin.

The Proponent’s assessment of dwelling entitlements arose from discretionary RFIs from DPHI. There is no standard or accepted methodology for the assessment of visual impacts on dwelling entitlements in NSW.

In light of there being no accepted methodology, the Proponent assumed a ‘worst-case scenario’ and assessed the visual and noise impacts to DAD 01 as if there was an existing dwelling situated on it. DPHI, adopting the same methodology assessed the impacts to DAD 01 but in a manner that was technically flawed, overly-conservative and which overstated visual amenity impacts (refer to the Proponent’s submission dated 12 February 2024 together with the Moir Report annexed to that submission).

However, even if that position was not accepted by the decision maker, *Taralga* (as the leading case authority on the issue) demonstrates that it is open to a decision-maker, as a last resort, to impose an acquisition condition in respect of a property which is most severely impacted by a project.

(b) The 2023 Draft Energy Policy Framework is also consistent with the reasoning in *Taralga*

In November 2023, DPHI published the Draft Energy Policy Framework (**Draft Framework**) and its associated technical supplements, including the Technical Supplement for Landscape and Visual Impact Assessment (**Technical Visual Supplement**).

While the Draft Framework and Technical Visual Supplement do not strictly apply to the Project, the Draft Guideline does state that the relevant consent authority must consider visual impacts on dwelling entitlements. The Draft Technical Visual Supplement cites three separate examples where the Land and Environment Court has had to address the existence of dwelling entitlements on the evidence before it in merits appeal proceedings.¹⁹

The Draft Framework states (at section 3.3) that “*a dwelling entitlement refers to any parcel of land for which a development application could be made for a dwelling*.”

¹⁸ Ibid [251].

¹⁹ *King & anor v Minister for Planning; Parkesbourne-Mummel landscape Guardians; Gullen Range Wind Farm Pty Limited v Minister for Planning* [2010] NSWLEC 1102.



Environmental planning instruments dictate whether a dwelling entitlement exists. Relevant criteria include the zoning of the land and minimum lot sizes.”

There is no guidance in the Draft Framework or the Technical Visual Supplement as to how the impacts on dwelling entitlements are to be **weighted**. However, the Draft Technical Visual Supplement does provide that:

“Whilst impacts to dwelling entitlements must be considered, their uncertain nature including where and when a dwelling may be constructed, if at all, make the application of the visual assessment tools challenging.

Consequently, the visual impact assessment of a dwelling entitlements should be qualitative in nature and instead focus on whether the proposed development would unduly impact on the ability for a landowner to act on a dwelling entitlement.

This assessment should:

- *be confined to dwelling entitlements located within the setback as it is likely that any future dwelling outside this area could be located to avoid significant impacts*
- *consider the ability for a future dwelling to be designed, sited and oriented to avoid or reduce the potential for a significant impact to the visual amenity from the project, and*
- *consider the mitigating effects of existing topography and vegetation.”*

(c) A factual comparison to the assessment of impacts in Taralga

This approach to visual assessment in the existing Guideline and the Draft Framework is not inconsistent with the approach adopted in Taralga. For example, in considering the dwelling entitlements at the *Cloverlee* property, the Court found at [198] – [199]:

“I am satisfied that the visual impact on any dwelling on this property will be quite significant. The appropriate planning response to this impact is one which needs to be considered in conjunction with the noise impact of the proposal on any hypothetical dwelling on the property.

Although it was suggested to me that such a house could, effectively, be constructed within what amounted to a vegetated compound to shield it from the visual impact of the turbines, I do not consider that such a design option which shut out all parts of the otherwise pleasant rural aspect would be appropriate.”

The *Cloverlee* property was “at least 800 m from any turbine”.²⁰ Preston J rejected the proposition that any dwelling located on this site would not, in a practical sense, be surrounded by turbines.²¹ On the evidence before the Court, Preston J considered that the visual impacts on any dwelling on this property would have been “quite significant”.²² Ultimately, as a last resort, Preston J was satisfied “on balance” that this property should be subject to an acquisition condition.²³

In considering the dwelling entitlements at the *Cushendall Vineyard*, the Court was satisfied that “[a]lthough there will be some impact on the ambience of the vineyard itself, there is no sense that the vineyard would be dominated by the turbines although they are located in the obvious viewing orientation from the property.” In those circumstances, the Court found, at [190] (emphasis added):

²⁰ *Taralga* (n 1) [195].

²¹ *Ibid* [196].

²² *Ibid* [198].

²³ *Ibid* [253].



“I am satisfied that the more intensive vineyard development on this property compared to conventional grazing development elsewhere coupled with the clear present intention of the Miskellys to erect a residence (that clear present intention being absent for other vacant allotments) warrants a future dwelling being given a landscaping entitlement”.

Factually, the circumstances here can be compared to the Project as follows:

- The relevant property impacted by the Project **is not improved by an existing dwelling**, but rather a legally flawed CDC. For that reason, it is, in our submission, akin to a dwelling entitlement only and should be weighted accordingly;
- Consistent with the position in Taralga, there is **still no accepted methodology** for assessing visual or noise impacts on “dwelling entitlements”; and
- Having regard to the potential visual and noise impacts on the dwelling entitlement, it would be appropriate to address such impact through a landscaping entitlement, or in the very worst case, an owner led acquisition condition.

We are not aware of any other jurisdiction in Australia that requires an assessment of the impacts on ‘dwelling entitlements’ for wind energy developments.

2.4 The policy settings have changed since Taralga to respond to the urgent need for renewable energy source

In considering the policy framework in place at the time of the Taralga decision, Preston J recognised the urgent response required to address the implications of climate change, stating at [67]:

“Addressing the implications of climate change involves a complex intersection of political, economic and social considerations. It is widely recognised that the state of the global environment is in rapid decline, requiring an urgent response if the current quality of life enjoyed by most Australians is to continue and future generations are to have access to the resources of the present.”

Nearly 17 years has passed since that decision and the “urgent response” required to address the rapid decline of the global environment has become much more pressing in recent years.

In that regard, the international, national and state policy landscape has shifted rapidly and extensively in an attempt to address climate change risks. A detailed analysis of the policies that have been implemented in recent years (and the Project’s consistency with them) is set out in Schedule 2 of the Proponent’s Submission to the IPC dated 12 February 2024.

In determining the application for this Project, any decision maker (including the Court) would have regard to the current policy framework. In that regard, these relevant and mandatory “public interest” considerations now ought to weigh even more heavily in favour of renewable energy generation than was the case when the Taralga decision was made.

3 NSW is the only jurisdiction where dwelling entitlements and approved dwellings need to be considered and assessed

The consideration and assessment of visual impacts on dwelling entitlements and approved (but not constructed) dwellings is not an express requirement of any State or Territorial law or policy outside of NSW.

We have summarised the position of each relevant jurisdiction in the below table.



Jurisdiction	Applicable policy	In relation to wind energy developments, do visual impacts on dwelling entitlements and/or approved (but not constructed) dwellings need to be considered or assessed?
Queensland	State code 23: Wind farm development	<p>No.</p> <ul style="list-style-type: none">• Visual impact assessment is not required, unless wind turbines are proposed to be located in areas identified in the applicable local government planning scheme as areas of 'high scenic amenity' (see P9 of the State code).• These particular areas will depend on the applicable planning schemes, however, areas classified as having 'high scenic amenity' generally consist of key view corridors and public viewpoints.• The State code even acknowledges that "<i>in order to access a suitable wind resource, wind farm developments may be located in exposed and highly visible areas (such as ridgelines and hilltops) which may be identified by a local government as having particular scenic amenity. The height and potential scale of wind farms and wind turbines creates an unavoidable level of visibility which may impact on local perceptions of scenic amenity</i>" (see P9 of the State code, p 15).



Jurisdiction	Applicable policy	In relation to wind energy developments, do visual impacts on dwelling entitlements and/or approved (but not constructed) dwellings need to be considered or assessed?
Victoria	<p>Planning Guidelines for Development of Wind Energy Facilities</p>	<p>No.</p> <ul style="list-style-type: none"> The applicable visual impact requirement in Victoria relates to existing dwellings, not dwelling entitlements or approved dwellings. In particular, if an existing dwelling is located within 1 km of any turbine, the application must be accompanied by the written consent of the owner (see Planning Guidelines for Development of Wind Energy Facilities, September 2023). The meaning of “existing dwelling” was considered by the Victorian Civil and Administrative Tribunal (VCAT) in <i>Cherry Tree Wind Farm Pty Ltd v Mitchell Shire Council</i> (P2910/2012). In that case, VCAT rejected the objectors’ submission that an “existing dwelling” included a reference to a property on which a planning permit had been obtained but construction had not commenced. At [34], VCAT stated that an “existing dwelling” was instead a reference to the “state of the development as at the relevant date”, and to construe its meaning otherwise “would be to read into words that are simply not there.” In refusing to read ‘proposed use’ into the meaning of an ‘existing dwelling’, the Tribunal in <i>Cherry Tree Wind Farm Pty Ltd</i> provided the following key reasoning that can be applied to the analogous circumstances in a NSW context: <ul style="list-style-type: none"> “[t]hey are words that would defeat the purpose of clause 52.32 which is to <i>facilitate</i> the establishment and expansion of wind energy facilities” (see [35]); “Such a construction would enable a proposed wind farm to be frustrated simply by the ventilation of a proposal to use land within two kilometres of a wind turbine for a dwelling” (see [35]); and “... the interpretation suggested by Landscape Guardians would lead to a perverse result. A fully constructed wind farm could be prevented from operating, or further operating, by the subsequent construction of a house within the prescribed 2 kilometre distance from a turbine. Section 35(a) <i>Interpretation of Legislation Act 1984</i> requires the interpretation of a subordinate instrument to promote the purpose of the legislation, which in this case is “to facilitate the establishment and expansion of wind energy facilities” (clause 52.32). The interpretation contended for would serve the antithesis of this purpose.”
South Australia	<p>Wind farms environmental noise guidelines (November 2021)</p> <p>Based on our review, no visual guidelines.</p>	<p>No.</p> <ul style="list-style-type: none"> Based on our review, there is no legislative or policy requirement to consider or assess visual impacts on dwelling entitlements or approved (but not constructed) dwellings in South Australia.



Jurisdiction	Applicable policy	In relation to wind energy developments, do visual impacts on dwelling entitlements and/or approved (but not constructed) dwellings need to be considered or assessed?
Western Australia	Position Statement: Renewable energy facilities (March 2020)	No. <ul style="list-style-type: none">The location and siting of a renewable energy facility may require a visual impact assessment that addresses “likely impact on views including the visibility of the facility using view shed analysis and simulations of views from significant viewing locations including residential areas, major scenic drives and lookouts” (see Position Statement, p 4).While a visual impact assessment may need to be carried out against residential areas, this is limited to “significant viewing locations” and does not specify dwelling entitlements or approved (but not constructed) dwellings.
Tasmania	Based on our review, no applicable guidelines.	No. <ul style="list-style-type: none">There is no requirement in Tasmania to consider or assess visual impacts from wind energy developments on dwelling entitlements or approved (but not constructed) dwellings.Rather, impacts on ‘sensitive uses’ need to be assessed in accordance with the <i>Tasmanian Planning Scheme</i> (State Planning Provisions). A ‘sensitive use’ is defined in the State Planning Provisions to mean a “residential use or a use involving the presence of people for extended periods except in the course of their employment such as a caravan park, childcare centre, dwelling, hospital or school”.
Northern Territory	Based on our review, no applicable guidelines.	No.
Australian Capital Territory	Based on our review, no applicable guidelines.	No.



Yours sincerely

[Redacted signature]

Peter Briggs
Partner
Herbert Smith Freehills

[Redacted contact information]

Sophie Hazer
Senior Associate
Herbert Smith Freehills

[Redacted contact information]

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Attachment 3 - BBC Consulting Planners' advice dated 4 March
2024



4 March 2024

Our ref: DHB-22-015

Herbert Smith Freehills
Sydney

Attention: Sophie Hazer

Dear Sophie,

Re: Town planning advice on complying development certificate 828 Morrisons Gap Road, Hanging Rock, NSW 234

I have been asked to provide advice on the validity of Complying Development Certificate 684.1/2020 for a single storey dwelling with attached deck on Lot 47 in DP753722 ("the lot") at 828 Morrisons Gap Road, Hanging Rock NSW 2340 ("**the CDC**").

Summary of findings

In my opinion, the CDC was not validly issued because the development did not meet the requirements and standards prescribed for complying development pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ("**the Codes SEPP**") for the following reasons:

- The development does not meet the requirements of Clause 3D.3(3) of the Codes SEPP in that the lot does not have lawful direct frontage access or a right of carriageway to a public road or a road vested in or maintained by the council. The lot has access to an unformed Crown road that is not maintained.
- The development does not meet the requirements of Clause 3D.6(2)(b) of the Codes SEPP in that the lot contains bush fire prone land but does not have direct access to a public road or a road vested in or maintained by the council.
- The development may not meet the requirements of Clause 1.19A(1)(b) of the Codes SEPP in that the accessway to the house site is densely vegetated and bushfire prone land and may be bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), or (ii) grasslands.
- The development may not meet the standard in Clause 3D.15(1) in that the lot that which is assumed to have an off-street car parking space does not have a driveway to a public road.

Analysis

The CDC was issued 11 November 2020 under Part 3D Inland Code of the Codes SEPP. Information available on this CDC is contained in **Appendix 1**.

A complying development certificate can be issued for a development that meets the requirements and standards of the SEPP. General requirements are contained in clauses 1.17A to 1.19A.

Part 3D of the Codes SEPP contains the Inland Code which applies to the development that is specified in clauses 3D.3–3D.66 of the Codes SEPP on land in Zones RU1, RU2, RU3, RU4, RU5, RU6, R1, R2, R3, R4 and R5 in inland local government areas. Tamworth Regional Council is an inland local government area. The site is within zone RU1.

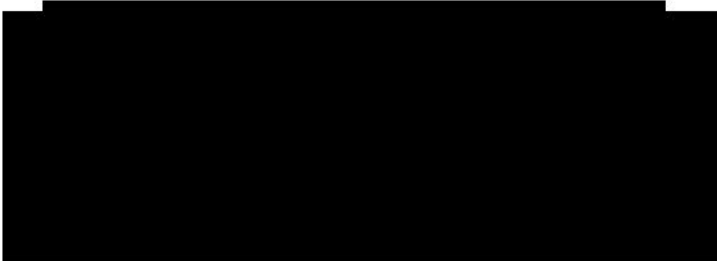
Clause 3D.3(1) identifies that the erection of a new 1 or 2 storey dwelling house and any attached development is complying development provided the requirements and standards for complying development are met. The requirements for this complying development are set out in clauses 3D(3) to 3D(8). The standards for this complying development are set out in clauses 3D(9) to 3D(16).

The table contained in **Appendix 2** assesses compliance against key provisions of these clauses based on available information. Access is not available to drawings showing the design of the house referred to in the CDC and therefore matters of detail have not been assessed. Areas of non-compliance are highlighted in yellow.

Appendix 3 shows that the effective access to the site is via the adjoining private land to the north. Relevant DPs and CTs are contained in **Appendix 4**.

Should you wish to discuss the above, please do not hesitate to contact this office.

Yours faithfully,
BBC Consulting Planners



Dan Brindle
Director



KAW 684.1/2020

11 November 2020

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

RE: Complying Development Certificate 684.1/2020
SITE: Lot 47, DP753722, 828 Morrisons Gap HANGING ROCK NSW 2340
PROPOSAL: Single Storey Dwelling with attached Deck

Thank you for choosing Pro Cert Group Pty Ltd for your development. Your application for a Complying Development Certificate has been approved and is attached.

Prior to Works Commencing

- Please provide a copy of the Owner Builder Permit to Pro Cert Group Pty Ltd prior to construction works commencing.
- At least 2 days prior to the commencement of any building works the attached "Notice to Neighbours Letter" must be provided to the occupier of each dwelling that is located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work is to be carried out.
- Please provide a copy of the completed "Pre Commencement Conditions Statement" to Pro Cert Group Pty Ltd prior to construction works commencing.
- A sign displaying our details as your Principal Certifier must be displayed on the site while the works are being carried out.
- Site signage must display the name of the principal contractor or owner builder and the telephone number on which that person may be contacted outside working hours.

Conditions of Consent

- Conditions of the Complying Development are outlined in **Schedule 2**.

Inspections

- Mandatory critical stage inspections are required to be undertaken by Pro Cert Group Pty Ltd at specific stages of construction and are outlined in **Schedule 3**.
- To arrange your inspections please contact the office by telephoning 02 6766 3388 or email info@procert.com.au, with at least twenty-four (24) hours prior notice.
- Should an inspection be missed, notice is to be given to Pro Cert Group Pty Ltd at the earliest opportunity for the required missed inspection process to commence. It should be noted that the missed inspection process will incur additional fees

During Construction Works

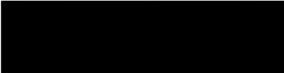
- General construction requirements applicable to the proposed development are outlined in **Schedule 4**.

Prior to Issuing an Occupation Certificate

- Installation certificates that are required to be submitted to Pro Cert Group Pty Ltd your PC in order for an Occupation Certificate to be issued are outlined in **Schedule 5**. These certificates can be submitted via email info@procert.com.au or delivered to the Pro Cert Group Office.

- The building shall not be used or occupied until completed and an Occupation Certificate has been issued by Pro Cert Group Pty Ltd.
- Please note that if a final Occupation Certificate has not been requested and issued within two (2) years of the date of approval, additional fees will be charged for the issue of an Occupation Certificate.
- In relation to any outstanding items identified during a final inspection, these items are required to be completed or provided within four (4) weeks of the date of the inspection.
- If the outstanding items identified are not provided or a re-inspection is requested outside the four (4) week period a re-inspection of the entire building will be required to be undertaken and will incur additional fees.

Yours faithfully



Mrs Kellie Woods
REGISTERED CERTIFIER
Registration No. BDC0833

Enclosures

1. Schedule 2 – Conditions of the Complying Development
2. Schedule 3 – Critical Stage Inspections
3. Schedule 4 – General Construction Requirements
4. Schedule 5 – Installation Certificates



COMPLYING DEVELOPMENT CERTIFICATE No. 684.1/2020

Issued Under Part 4 of the Environmental Planning and Assessment Act 1979

This certificate is issued by a certifying authority and if the work is completed in accordance with the documentation accompanying the application for the certificate will be complying development and comply with all development standards that apply to the development, and with the requirements of the Environmental Planning and Assessment Regulation 2000 concerning the issue of this certificate.

APPLICANT

Name [REDACTED]

Address [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

PROPOSED DEVELOPMENT

Address of Development: **No: 828 Morrisons Gap HANGING ROCK NSW 2340**
Lot: 47 DP: 753722

Building Classification **1a & 10a**

Description of Proposed Development **Single Storey Dwelling with Attached Deck**

Land use Zone **RU1 Primary Production**

SPECIFIED ASPECTS OF THE DEVELOPMENT

Plans and Specifications the work relates to **Schedule 1**

Fire Safety Schedule **N/A**

Issued Subject to Conditions **Schedule 2**

Decision made under this Planning Instrument **SEPP (Exempt & Complying Development Codes) 2008 Part 3D Inland Code**

DATED 11th day of November 2020

CERTIFICATE LAPSES 11th day of November 2025

SIGNED:

[REDACTED]

REGISTERED CERTIFIER: Mrs Kellie Woods
NSW Fair Trading Registration Number: BDC0833

**SCHEDULE 1
PLANS & DOCUMENTS**

Plan Title	Drawing No.	Revision	Date
Architectural Plans prepared by A1 Home Design & Draft			
Cover Sheet	1/5	-	01.08.2018
Part site plan	2/5	-	01.08.2018
Erosion & Sediment Control Plan	3/5	-	01.08.2018
Floor plan	4/5	-	01.08.2020
Elevations	5/5	-	01.08.2020
Engineering Details prepared by Barnson Job Reference No:35420			
Cover Sheet	-	-	-
Slab & footings plan and Slab Notes	S01	0	09.11.02020
Perimeter Pad Footing details	M.34001	A	-
Perimeter Pad Footing details	M.34002	A	-
Internal Pad Footing Details	M.34021	A	-
Residential Slab and footing design General Notes	G1020	B	11.10.2012
Legend of Diagram References and glossary of terms	G1021	A	24.02.2012
L and TEE intersection Details Mesh Lapping Details	G1022	B	11.10.201
Slab and Beam Service Penetration Details	G1023	B	11.10.2012
Waffle pod Slab			
Bearing Pier Requirements and Details	G1024	B	11.10.201
Strip Footing and waffle Pod Junction Detail			
Sloping Sites			
Slab & fill Requirements	G1025	B	11.10.2012
Excavation Requirements For Works			
Adjacent Existing Boundaries & Structures	G1026	A	24.02.2012
And General Cut & Fill Requirements			
Deepened Edge Beam Detail	G1027	B	11.10.2012
Slab Recesses	G1028	B	11.10.2012
BAL Certificate issued by Jeffrey Bretag, Perception Planning	1274	-	08.11.2020
Bushfire Specifications	1 of 1	-	-
BASIX Certificate	1154074S	-	11.11.2020
Specifications by HIA General Housing Specification Edition 2	Page 1-10	-	-
OSSM Approval Issued by Tamworth Regional Council	LG2021-0302	-	30.10.2020
Certificate of Title (Direct Info)	47/753722	4	09.09.2018
DP (Direct Info)	CP01389-1671	29.11.12	03.05.2020
LSL Receipt, Long Service Corporation	5318377		11.11.2020
Section 68 Plumbing and Drainage Approval issued by Tamworth Regional Council	LG2021-0302	-	30.10.2020
10.7 Planning Certificate issued by Tamworth Regional Council	PC2017/1523		02.02.2017

SCHEDULE 2 CONDITIONS RELATING TO COMPLYING DEVELOPMENT

Prescribed Conditions of Complying Development Consent

Environmental Planning & Assessment Regulation 200 Part 7 Division 2A Conditions of Complying Development Certificates

136A Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

- (1) A complying development certificate for development that involves any building work must be issued subject to the following conditions:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
 - (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance must be entered into and be in force before any building work authorised to be carried out by the certificate commences.
- (1A) A complying development certificate for a temporary structure that is used as an entertainment venue must be issued subject to the condition that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia (as in force on the date the application for the relevant complying development certificate is made).
- (2) This clause does not limit any other conditions to which a complying development certificate may be subject, as referred to in section 4.28 (6) (a) of the Act.
- (3) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building, other than a temporary structure that is used as an entertainment venue.
- (4) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant complying development certificate is made.

Note. There are no relevant provisions in the Building Code of Australia in respect of temporary structures that are not entertainment venues.

136AB Notice to neighbours

- (1) A complying development certificate for development on land that is in a category 1 local government area and that is not in a residential release area and that involves:
 - (a) a new building, or
 - (b) an addition to an existing building, or
 - (c) the demolition of a building,must be issued subject to a condition that the person having the benefit of the complying development certificate must give at least 7 days' notice in writing of the person's intention to commence the work authorised by the certificate to the occupier of each dwelling that is located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work is to be carried out.
- (2) A complying development certificate for development on land that is in a category 2 local government area or a residential release area and that involves:
 - (a) a new building, or
 - (b) an addition to an existing building, or
 - (c) the demolition of a building,
 - (d) must be issued subject to a condition that the person having the benefit of the complying development certificate must give at least 2 days' notice in writing of the person's intention to commence the work authorised by the certificate to the occupier of each dwelling that is located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work is to be carried out.
- (3) In this clause:

category 1 local government area means any of the local government areas of Ashfield, City of Auburn, City of Bankstown, City of Blacktown, City of Blue Mountains, City of Botany Bay, Burwood, Camden, City of Campbelltown, Canada Bay, City of Canterbury, City of Fairfield, City of Hawkesbury, City of Holroyd, Hornsby, Hunter's Hill, City of Hurstville, City of Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, City of Liverpool, Manly, Marrickville, Mosman, North Sydney, City of Parramatta, City of Penrith, Pittwater, City of Randwick, City of Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, City of Willoughby, Wingecarribee, Wollondilly or Woollahra.

category 2 local government area means any local government area that is not a category 1 local government area.

residential release area means any land within:

- i. an urban release area identified within a local environmental plan that adopts the applicable mandatory provisions of the Standard Instrument, or
- ii. a land release area identified under the Eurobodalla Local Environmental Plan 2012, or
- iii. any land subject to State Environmental Planning Policy (Sydney Region Growth Centres) 2006, or
- iv. any area included in Parts 6, 26, 27, 28 and 29 of Schedule 3 to State Environmental Planning Policy (Major Development) 2005.

136B Erection of signs

- (1) A complying development certificate for development that involves any building work, subdivision work or demolition work must be issued subject to a condition that the requirements of subclauses (2) and (3) are complied with.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifier for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building, that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a complying development certificate issued before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

136C Notification of Home Building Act 1989 requirements

- (1) A complying development certificate for development that involves any residential building work within the meaning of the Home Building Act 1989 must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.
- (2) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.

136D Fulfilment of BASIX commitments

- (1) This clause applies to the following development:
 - (a) BASIX affected development,
 - (b) any BASIX optional development in relation to which a person has made an application for a complying development certificate that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A of Schedule 1 for it to be so accompanied).
- (2) A complying development certificate for development to which this clause applies must be issued subject to a condition that the commitments listed in each relevant BASIX certificate for the development must be fulfilled.

136E Development involving bonded asbestos material and friable asbestos material

- (1) A complying development certificate for development that involves building work or demolition work must be issued subject to the following conditions:
 - (a) work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011,
 - (b) the person having the benefit of the complying development certificate must provide the principal certifying authority with a copy of a signed contract with such a person before any development pursuant to the complying development certificate commences,
 - (c) any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the bonded asbestos material or friable asbestos material is to be delivered,
 - (d) if the contract indicates that bonded asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the principal certifying authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.
- (2) This clause applies only to a complying development certificate issued after the commencement of this clause.

- (3) In this clause, bonded asbestos material, bonded asbestos removal work, friable asbestos material and friable asbestos removal work have the same meanings as in clause 317 of the Occupational Health and Safety Regulation 2001.

Note 1. Under clause 317 removal work refers to work in which the bonded asbestos material or friable asbestos material is removed, repaired or disturbed.

Note 2. The effect of subclause (1) (a) is that the development will be a workplace to which the Occupational Health and Safety Regulation 2001 applies while removal work involving bonded asbestos material or friable asbestos material is being undertaken.

Note 3. Information on the removal and disposal of asbestos to landfill sites licensed to accept this waste is available from the Office of Environment and Heritage.

Note 4. Demolition undertaken in relation to complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 must be carried out in accordance with Australian Standard AS 2601—2001, Demolition of structures.

136H Condition relating to shoring and adequacy of adjoining property

- (1) A complying development certificate for development must be issued subject to a condition that if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the certificate must at the person's own expense:
- (a) protect and support the building, structure or work from possible damage from the excavation, and
 - (b) where necessary, underpin the building, structure or work to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the complying development certificate owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

136I Traffic generating development

If an application for a complying development certificate is required to be accompanied by a certificate of Roads and Maritime Services as referred to in clause 4 (1) (j1) or (k) of Schedule 1, the complying development certificate must be issued subject to a condition that any requirements specified in the certificate of Roads and Maritime Services must be complied with.

136J Development on contaminated land

- (1) If an application for a complying development certificate is required to be accompanied by a statement of a qualified person as referred to in clause 4 (1) (l) of Schedule 1, the complying development certificate must be issued subject to a condition that any requirements specified in the statement must be complied with.
- (2) Subclause (1) does not apply to complying development carried out under the complying development provisions of State Environmental Planning Policy (Three Ports) 2013 in the Lease Area within the meaning of clause 4 of that Policy.

136K When complying development certificates must be subject to section 4.28 (9) condition

- (1) This clause applies if a council's contributions plan provides for the payment of a monetary section 7.11 contribution or section 7.12 levy in relation to development for a particular purpose (whether or not it is classed as complying development under the contributions plan).
- (2) The certifying authority must issue the relevant complying development certificate authorising development for that purpose subject to a condition requiring payment of such contribution or levy, as required by section 4.28 (9) of the Act.
- (3) Subclause (2) applies despite any provision to the contrary in the council's contributions plan.

136L Contributions and levies payable under section 4.28 (9) must be paid before work commences

- (1) A complying development certificate issued subject to a condition required by section 4.28 (9) of the Act must be issued subject to a condition that the contribution or levy must be paid before any work authorised by the certificate commences.
- (2) Subclause (1) applies despite any provision to the contrary in the council's contributions plan.

136M Condition relating to payment of security

- (1) This clause applies to a complying development certificate authorising the carrying out of development if:
- (a) the development is demolition of a work or building, erection of a new building or an addition to an existing building and the estimated cost of the development (as specified in the application for the certificate) is \$25,000 or more, and
 - (b) the development is to be carried out on land adjacent to a public road, and
 - (c) at the time the application for the certificate is made, there is specified on the website of the council for the area in which the development is to be carried out an amount of security determined by the council that must be paid in relation to:
 - (i) development of the same type or description, or
 - (ii) development carried out in the same circumstances, or
 - (iii) development carried out on land of the same size or description.
- (2) A complying development certificate to which this clause applies must be issued subject to a condition that the amount of security referred to in subclause (1) is to be provided, in accordance with this clause, to the council before any building work or subdivision work authorised by the certificate commences.
- (3) The security may be provided, at the applicant's choice, by way of:
- (a) deposit with the council, or
 - (b) a guarantee satisfactory to the council.

- (4) The funds realised from a security may be paid out to meet the cost of making good any damage caused to any property of the council as a consequence of doing anything (or not doing anything) authorised or required by the complying development certificate, including the cost of any inspection to determine whether damage has been caused.
- (5) Any balance of the funds realised from a security remaining after meeting the costs referred to in subclause (4) is to be refunded to, or at the direction of, the person who provided the security.

136N Principal certifier to be satisfied that preconditions met before commencement of work

- (1) This clause applies to building work or subdivision work that is the subject of a complying development certificate.
- (2) A principal certifier for building work or subdivision work to be carried out on a site, and over which the principal certifying authority has control, is required to be satisfied that any preconditions in relation to the work and required to be met before the work commences have been met before the work commences.

CONDITIONS OF COMPLYING DEVELOPMENT CERTIFICATES SEPP (Exempt & Complying Development Codes) 2008

Schedule 6 Conditions applying to complying development certificates under the Housing Code, the Rural Housing Code, the Greenfield Housing Code and the Inland Code

Note 1. Complying development under the Housing Code, the Rural Housing Code, the Greenfield Housing Code and the Inland Code must comply with the requirements of the Act, the Environmental Planning and Assessment Regulation and the conditions listed in this Schedule.

Note 2. Division 2A of Part 7 of the Environmental Planning and Assessment Regulation 2000 specifies conditions to which certain complying development certificates are subject.

Note 3. In addition to the requirements specified for development under this Policy, adjoining owners' property rights, applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply.

Note 4. If the development is in the proximity of infrastructure (including water, stormwater or sewer mains, electricity power lines and telecommunications facilities), the relevant infrastructure authority should be contacted before commencing the development.

Note 5. Under section 4.29 of the Environmental Planning and Assessment Act 1979, a complying development certificate lapses 5 years after the date endorsed on the certificate, unless the development has physically commenced on the land during that period.

Part 1 Conditions Applying Before Works Commence

1. Protection of Adjoining Areas

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

2. Toilet Facilities

(1) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

(2) Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

3. Garbage Receptacle

(1) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed.

(2) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.

4. Adjoining Wall Dilapidation Report

(1) If a wall on a lot is to be built to a boundary and there is a wall (the **adjoining wall**) on the lot adjoining that boundary that is less than 0.9m from that boundary, the person having the benefit of the complying development certificate must obtain a dilapidation report on the adjoining wall.

(2) If the person preparing the report is denied access to the adjoining lot for the purpose of inspecting the adjoining wall, the report may be prepared from an external inspection of the adjoining wall.

5. Run-off and Erosion Controls

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- (a) diverting uncontaminated run-off around cleared or disturbed areas, and
- (b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- (c) preventing the tracking of sediment by vehicles onto roads, and
- (d) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.

6. Tree Protection Measures

(1) This clause applies to each protected tree and any other tree that is to be retained on a lot.

- (2) The trunk of each of the following trees must be provided with a tree guard that is comprised of hardwood timber panels each having a minimum length of 2m, minimum width of 75mm and minimum thickness of 25mm and secured, but not permanently fixed or nailed, to the tree and spaced a maximum of 80mm apart:
 - (a) each tree that is within 6m of a dwelling house or any ancillary development that is to be constructed, and
 - (b) each protected tree that is within 10m of a dwelling house or any ancillary development that is to be constructed.
- (3) Each protected tree that is within 6m of a dwelling house, outbuilding or swimming pool must have a fence or barrier that is erected:
 - (a) around its tree protection zone as defined by section 3.2 of AS 4970—2009, *Protection of trees on development sites*, and
 - (b) in accordance with section 4 of that standard.
- (4) The person having the benefit of the complying development certificate must ensure that:
 - (a) the activities listed in section 4.2 of that standard do not occur within the tree protection zone of any tree on the lot or any tree on an adjoining lot, and
 - (b) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the lot during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.
- (5) The tree protection measures specified in this clause must:
 - (a) be in place before work commences on the lot, and
 - (b) be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the lot or on an adjoining lot are required to be pruned or removed.

Part 2 Conditions Applying During the Works

Note. The *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Noise Control) Regulation 2008* contain provisions relating to noise.

7. Hours for Construction

Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.

8. Compliance with Plans

Works must be carried out in accordance with the plans and specifications to which the complying development certificate relates.

9. Maintenance of Site

- (1) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- (2) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- (3) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- (4) During construction:
 - (a) all vehicles entering or leaving the site must have their loads covered, and
 - (b) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- (5) At the completion of the works, the work site must be left clear of waste and debris.

10. Earthworks, Retaining Walls and Structural Support

- (1) Any earthworks (including any structural support or other related structure for the purposes of the development):
 - (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and
 - (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
 - (c) that is fill brought to the site—must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the *Protection of the Environment Operations Act 1997* and
 - (d) that is excavated soil to be removed from the site—must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.
- (2) Any excavation must be carried out in accordance with *Excavation Work: Code of Practice* (ISBN 978-0-642-785442), published in July 2012 by Safe Work Australia.

11. Drainage Connections

- (1) If the work is the erection of, or an alteration or addition to, a dwelling house, the roof stormwater drainage system must be installed and connected to the drainage system before the roof is installed.
- (2) Any approval that is required for connection to the drainage system under the *Local Government Act 1993* must be held before the connection is carried out.

12. Swimming pool safety

If the work involves the construction of a swimming pool, a child-resistant barrier that complies with the requirements of the *Building Code of Australia* and AS 1926.1—2012, *Swimming pool safety—Part 1: Safety barriers for swimming pools* must be erected around that work during the construction.

13. Archaeology Discovered during Excavation

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- (a) all work must stop immediately in that area, and
- (b) the Office of Environment and Heritage must be advised of the discovery.

Note. Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the *Heritage Act 1997* may be required before further the work can continue.

14. Aboriginal Objects Discovered During Excavation

If any Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately in that area, and
- (b) the Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the National Parks and Wildlife Act 1974.

Note. If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the National Parks and Wildlife Act 1974.

Part 3 Conditions Applying Before the Issue of an Occupation Certificate

15. Vehicular Access

If the work involves the construction of a vehicular access point, the access point must be completed before the occupation certificate for the work on the site is obtained.

16. Utility Services

If the work requires alteration to, or the relocation of, utility services on, or adjacent to, the lot on which the work is carried out, the work is not complete until all such works are carried out.

SCHEDULE 3 CRITICAL STAGE INSPECTIONS

The Table below details the required inspections to be undertaken by Pro Cert Group Pty Ltd.

To arrange your inspections please contact the office by telephoning 02 6766 3388 or email info@procert.com.au, with at least twenty-four (24) hours prior notice.

CRITICAL STAGE INSPECTION	STAGE OF WORKS
Piers, Footings or Slabs	After the excavation of pier holes, footings, slabs and after all reinforcement and formwork is in place and prior to the pouring of any concrete.
Framework	Prior to the covering of the framework for any floor, wall, roof or other building element.
Waterproofing	Prior to the covering of waterproofing in any wet areas, including external first floor areas.
Stormwater	Prior to covering any stormwater drainage connections. (Noting this inspection will be undertaken at the Final Inspection)
Final	<p>After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.</p> <p>In relation to any outstanding items identified during a Final Inspection, these items are required to be completed or provided within four (4) weeks of the date of the inspection.</p> <p>If the outstanding items identified are not provided or a re-inspection is requested outside the four (4) week time period a re-inspection of the whole building will be required to be undertaken the payment of additional fees will also be required.</p>

**SCHEDULE 4
GENERAL CONSTRUCTION**

1. Prior to the framework inspection being undertaken the tie-down and bracing details for the wall and roof framing are to be provided.
1. Prior to the sub-floor framework inspection being undertaken details in relation to the sub-floor system, type of pier system and connection detail is to be provided.
2. Exhaust fans for bathrooms & WCs that have no or insufficient natural ventilation are to be either ducted to the outside air or into a ventilated roof space to ensure compliance with Clause 3.8.5.2 of the National Construction Code of Australia 2016 Vol 2 (NCC).
3. A roof space must be ventilated to outdoor air where exhaust fans installed in Kitchens, bathrooms, sanitary compartments or laundries that discharge into that roof space (including tactics) in accordance with Clause 3.8.7.4 of the NCC
4. Prior to the installation of the heater manufacturers' instructions and any relevant specifications are to be provided.
5. Stairways and landings (if required) are to be designed and constructed in accordance the NCC, noting that the stairways are also required to be designed to take loading forces in accordance with AS1170.0-2002.

(Extract from Part 3.9.1 of NCC)

Table 3.9.1.1 Riser and going dimensions (mm)

Stair type	Riser (R) (see Figure 3.9.1.4 below)		Going (G) (see Figure 3.9.1.4 below)		Slope relationship (2R+G)	
	Max	Min	Max	Min	Max	Min
Stairs (other than spiral)	190	115	355	240	700	550
Spiral	220	140	370	210	680	590

Note to Table 3.9.1.1: Riser and going dimensions must be measured in accordance with Figure 3.9.1.4.

Figure 3.9.1.4 Riser and going dimensions—Measurement

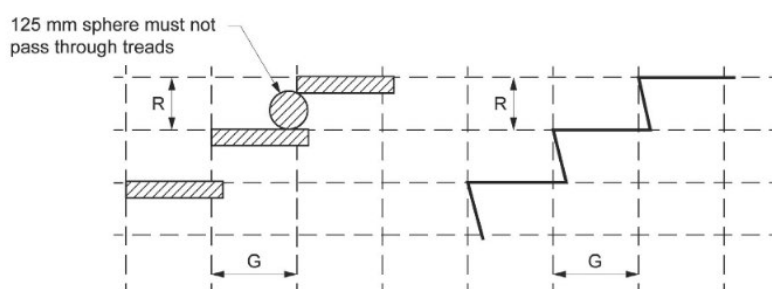
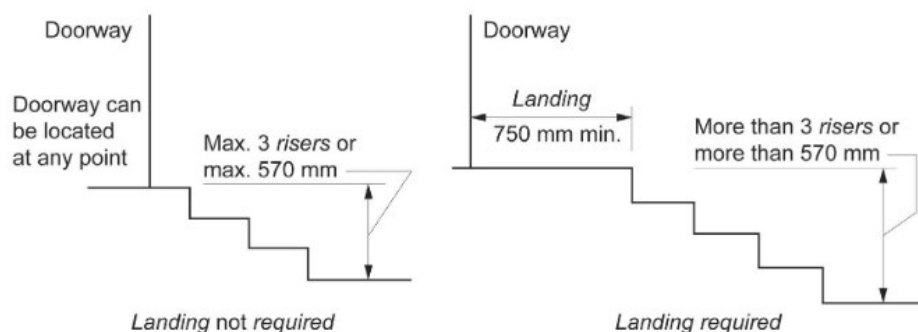


Figure 3.9.1.3b Threshold landing



6. Where a door threshold is more than 230 mm above the adjoining surface it must incorporate steps having riser (R) and going (G) dimensions in accordance with NCC Clause 3.9.1.2.
7. Treads of external stairs are required to have a wet slip resistance of P4 or R11 or provided with nosing strips having a slip resistance rating of P4 in accordance with NCC Table 3.9.1.1 and AS4586-2013.
8. The proposed building works are required to be constructed in accordance with the requirements of a Bushfire Attack Level of BAL-LOW in accordance with the requirements of AS3959-2019 and Planning for Bushfire Protection 2019.

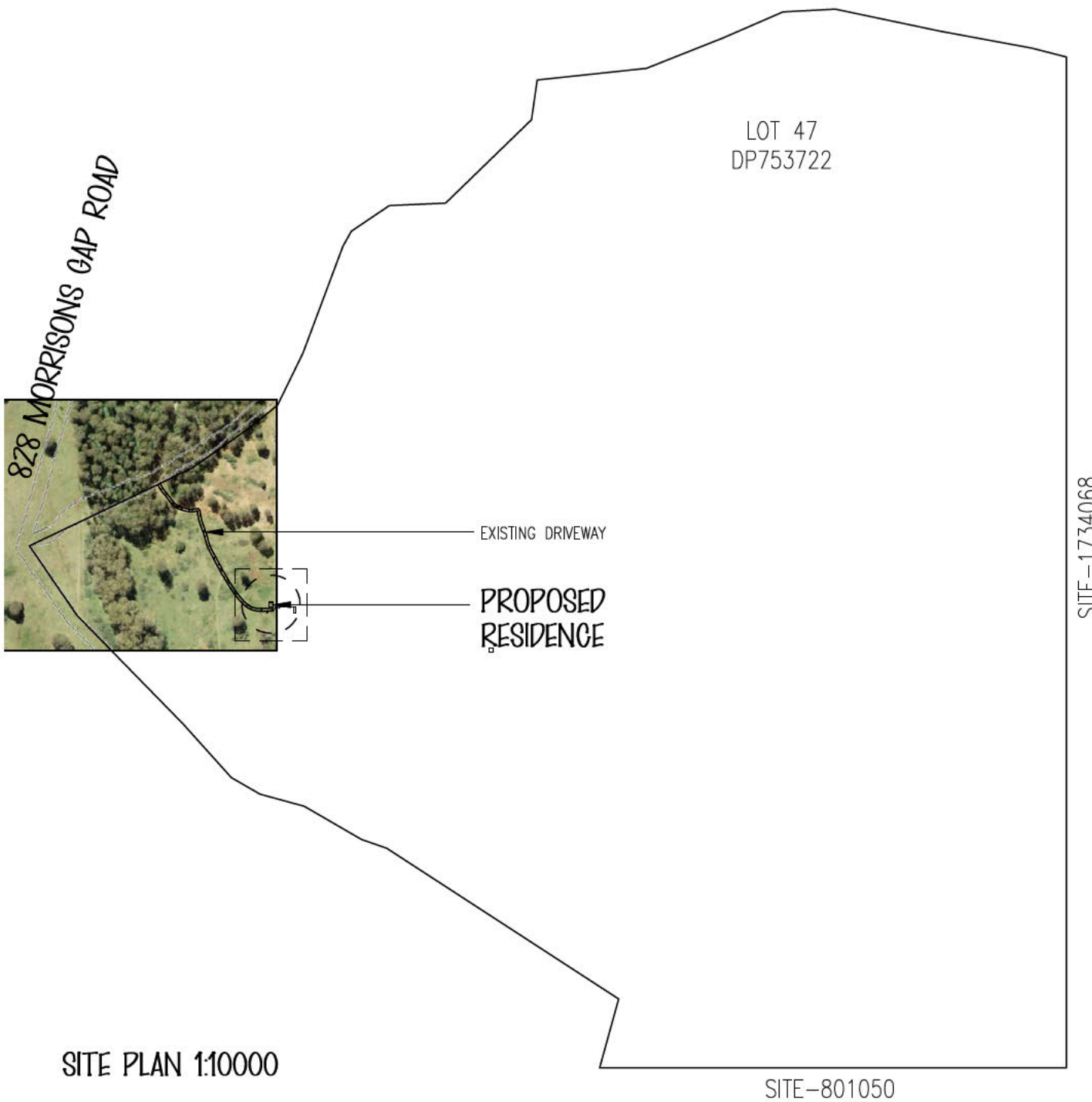
**SCHEDULE 5
INSTALLATION CERTIFICATES**

Below is a list of the installation certificates required prior to issuing an Occupation Certificate.

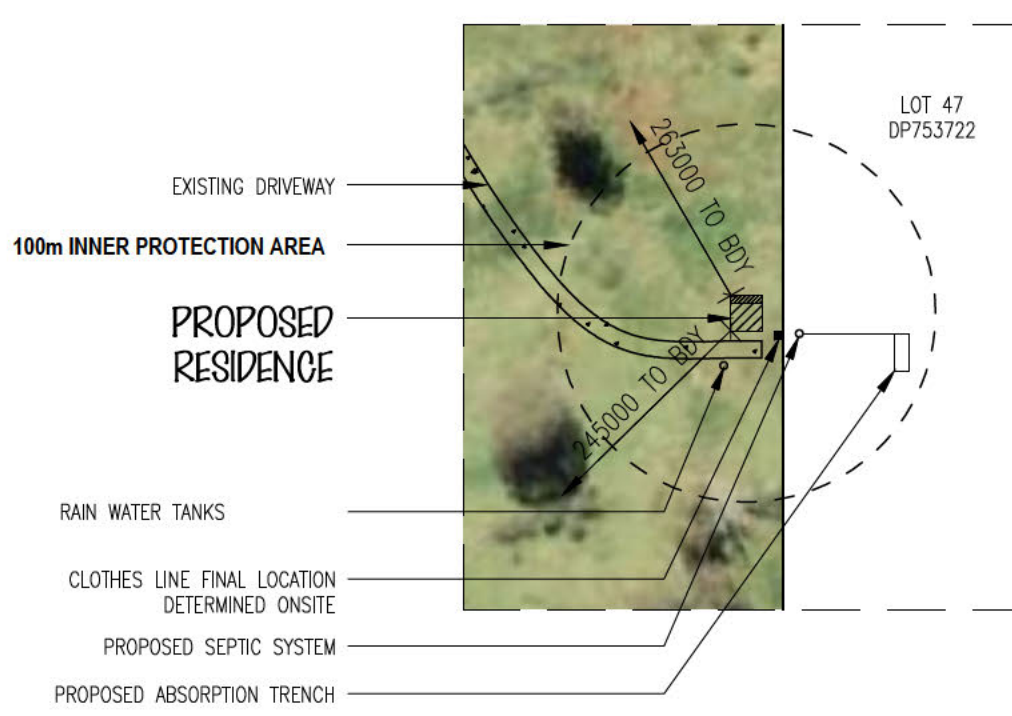
Each certificate must detail the following information:

1. Company name & clearly identify the person issuing the certificate i.e. name & position with the company;
2. Signed and dated;
3. Provide the qualifications of the signatory, i.e. licence number;
4. Provide the signatory's contact details;
5. Indicate what building the certificate relates to i.e. building name, address etc.;
6. Reference is made to the applicable version of the National Construction Code (NCC), i.e. NCC 2019 Vol 2 and reference the relevant Australian Standard and Year, i.e. AS3740-2010, and
7. Attach any test certificates / certification documents to Certificate that have been relied upon.

CERTIFICATION DOCUMENTATION		STANDARD OF INSTALLATION		
1.	Peg Out Survey	From a registered Land Surveyor upon completion of the set out of the footings / slab.		
2.	Timber Roof Trusses and Wall Frames	AS1684-2010 and AS4440-2004		
3.	Termite Risk Management System	NCC 2019 Vol 2 and AS3660.1-2014		
4.	Windows & Doors Glazing	NCC 2019 Vol 2 and AS1288-2006 & AS2047-2014		
5.	Shower Screens Glazing	NCC 2019 Vol 2 and AS1288-2006		
6.	Waterproofing of Wet Areas	NCC 2019 Vol 2 and AS3740-2010		
7.	Smoke Alarms	NCC 2019 Vol 2 and AS3786-2014		
8.	BASIX Commitments	Certification that all BASIX commitments listed in the relevant BASIX certificate have been complied with.		
9.	Bushfire Attack Level (BAL)	AS3959-2018 & Planning for Bushfire Protection 2020		
10.	Stormwater Drainage	AS/NZS3500.3-2015		
11.	Slip Resistance - Treads Surface - Nosing Strip		DRY	WET
		*NCC 2019 Vol 2 Table 3.9.1.1	P3 or R10	P4 or R11
		*NCC 2019 Vol 2 Table 3.9.1.1	P3	P4
*NOTE: Test certificates are required to outline compliance with the requirements of the Slip Resistance Classification in accordance with NCC 2019 Vol 2 Table 3.9.1.1 and AS4586-2013.				



SITE PLAN 1:10000



The 100m Inner Protection Area (IPA) is to be managed as follows:

- Trees**
 - Tree canopy cover should be less than 15% at maturity
 - Trees (at maturity) should not touch or overhang the building
 - Lower limbs should be removed up to a height of 2m above ground
 - Canopies should be separated by 2 to 5m
 - Preference should be given to smooth barked and evergreen trees
- Shrubs**
 - Create large discontinuities or gaps in the vegetation to slow down or break the progress of fire towards buildings
 - Shrubs should not be located under trees
 - Shrubs should not form more than 10% ground cover
 - Clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of vegetation
- Grass**
 - Should be kept mown (as a guide grass should be kept to no more than 100mm in height)
 - Leaves and vegetation debris should be removed

PRO CERT GROUP
PTY LTD
Complying Development Certificate
CDC Ref: 684.1/2020
11 / 11 / 2020



PART SITE PLAN 1:2000
LGA: TAMWORTH CITY REGIONAL COUNCIL
FIRE RATING: BAL-19

JOB DETAILS	PROPOSED RESIDENCE	SCALE	1:2000	COPYRIGHT AND REPRODUCTION
	FOR [REDACTED]	VIEW NAME	PART SITE PLAN	
DATE	01/08/18	DWG FILE	LAZRUSHKINA	<small>COPYRIGHT ON THE DRAWINGS, INFORMATION & DATA RECORDED HEREON AND THEREAFTER THE PRESENTED DATA IS THE PROPERTY OF A1 HOME DESIGN & DRAFT & MAY NOT BE USED, COPIED OR REPRODUCED IN WHOLE OR IN PART FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT IS SUPPLIED BY A1 HOME DESIGN & DRAFT WITHOUT THE PRIOR CONSENT OF A1 HOME DESIGN & DRAFT</small>
PAGE:2 OF 5	AT 828 MORRISONS GAP ROAD HANGING ROCK. NSW. 2340 LOT 47 DP 753722	DO NOT SCALE, IF IN DOUBT ASK		

A1 HOME DESIGN & DRAFT
YOUR DREAM HOME STARTS HERE

Section	Control	Response
Part 1 General		
Division 2 Exempt and Complying Development		
1.17A Requirements for complying development for all environmental planning instruments	(1) To be complying development for the purposes of any environmental planning instrument, the development must not—	
	(b) be on land that is critical habitat, or	Assumed not critical habitat
	(c) be on land that is, or is part of, a wilderness area (within the meaning of the Wilderness Act 1987), or	Assumed not wilderness area
	(d) be carried out on land that— <ul style="list-style-type: none"> i. comprises an item that is listed on the State Heritage Register under the Heritage Act 1977 or on which such an item is located, or ii. is subject to an interim heritage order under that Act or on which is located an item that is so subject, or iii. (iii) is identified as an item of environmental heritage or a heritage item by an environmental planning instrument or on which is located an item that is so identified, or 	N/A
	(e) except as otherwise provided by this Policy, be on land that is within an environmentally sensitive area. <i>environmentally sensitive area means any of the following—</i> <i>(a) the coastal waters of the State,</i>	Site not known to be environmentally significant land

	<p>(b) a coastal lake identified in State Environmental Planning Policy (Resilience and Hazards) 2021, Schedule 1,</p> <p>(c) land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2,</p> <p>(d) land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997,</p> <p>(e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,</p> <p>(f) land within 100m of land to which paragraph (c), (d) or (e) applies,</p> <p>(g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,</p> <p>(h) land reserved under the National Parks and Wildlife Act 1974 or land to which Part 11 of that Act applies,</p> <p>(i) land reserved or dedicated under the Crown Land Management Act 2016 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,</p> <p>(j) land identified as being critical habitat under the Threatened Species Conservation Act 1995 or Part 7A of the Fisheries Management Act 1994.</p>	

1.18 General requirements for complying development under this policy	(1) To be complying development for the purposes of this Policy, the development must—	
	(d) before the complying development certificate is issued, have an approval, if required by the Local Government Act 1993, for— (i) an on-site effluent disposal system if the development is undertaken on unsewered land, and (ii) an on-site stormwater drainage system, and	CDC refers to OSSM Approval Issued by Tamworth Regional Council LG2021-0302 - 30.10.2020.
	(h) for development involving the removal or pruning of a tree or other vegetation that requires a permit, approval or development consent—before the complying development certificate is issued, have the permit, approval or development consent.	Tree removal unknown – no reference to any permit in CDC. Site plan indicates that removal of trees not likely.
	(2) The erection of a new dwelling house or an addition to a dwelling house on land in the 20-25 ANEF contours is complying development for this Policy, if the development is constructed in accordance with AS 2021:2015, Acoustics—Aircraft noise intrusion—Building siting and construction.	N/A
1.19 Land on which complying development may not be carried out	(e) land identified by an environmental planning instrument as being— i. within a buffer area, or ii. within a river front area, or iii. within an ecologically sensitive area, or iv. environmentally sensitive land, or v. within a protected area, or	N/A
	(h) land that is in the 25 ANEF contour or a higher ANEF contour, unless the development is only for—	N/A

	<ul style="list-style-type: none"> i. the erection of ancillary development, attached development or detached development, or ii. (ii) the alteration of, or an addition to, ancillary development, attached development or detached development, or 	
	(i) land that is declared to be a special area under the Water NSW Act 2014, or	N/A
	(j) unsewered land— <ul style="list-style-type: none"> i. to which State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 8 applies, if that development will result in an increase to the number of bedrooms on the site or a site disturbance area of more than 250m², or ii. (ii) in any other drinking water catchment identified in any other environmental planning instrument. 	N/A
1.19A Land on which complying development may not be carried out – bush fire prone land	(1) To be complying development specified for any complying development code (except the Housing Alterations Code)—	
	(a) the development must not be carried out on land in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), and	Complies. Based on CDC. House site not bushfire prone land. All surrounding land is.
	(b) in the case of development specified for the Rural Housing Code—any associated access way to the development must be on land that is— <ul style="list-style-type: none"> (i) not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), or (ii) grasslands. 	May not comply. Although the CDC was issued under Part 3D Inland Code, the development is also specified for the Rural Housing Code (Part 3A of the SEPP). The accessway to the house site is densely vegetated and bushfire prone land. Fire attack level (BAL) not known.

	<p>(3) For the purposes of this clause, land is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ) if—</p> <p>(a) the council or a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment determines, in accordance with the methodology specified in Planning for Bush Fire Protection, that the land is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), or</p> <p>(b) in the case of development carried out on grasslands—the development conforms to the specifications and requirements of Table 7.9a of Planning for Bush Fire Protection that are relevant to the development.</p> <p>(4) Nothing in this clause prevents complying development being carried out on part of a lot that is not land referred to in this clause even if other parts of the lot are such land.</p> <p>(5) In this clause, grasslands has the same meaning as in Planning for Bush Fire Protection).</p>	<p>No advice available in relation to access road.</p> <p>Grasslands defined to be:</p> <p><i>Grasslands</i> <i>Grassed areas capable of sustaining a fire. Under AS 3959, this is identified as low open shrubland, hummock grassland, closed tussock grassland, tussock grassland, open tussock, sparse open tussock, dense sown pasture, sown pasture, open herbfield, and sparse open herb field.</i> <i>Grass, whether exotic or native, which is regularly maintained at or below 10cm in height (including maintained lawns, golf courses, maintained public reserves, parklands, nature strips and commercial nurseries) is regarded as managed land.</i></p>
	<p>(4) Nothing in this clause prevents complying development being carried out on part of a lot that is not land referred to in this clause even if other parts of the lot are such land.</p>	<p>House site not bushfire prone land. All surrounding land, including access, is.</p>
Part 3D Inland Code		
Division 1 Application of Code		
3D.1 Land to which code applies	<p>(1) Subject to subclause (2), this code applies to the development that is specified in clauses 3D.3–3D.66 on land in Zones RU1, RU2, RU3, RU4, RU5, RU6, R1, R2, R3, R4 and R5 in inland local government areas.</p>	<p>Complies.</p>

	<p>(4) In this clause, inland local government areas means the local government areas of Albury City, Armidale Regional, Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Bogan, Bourke, Brewarrina, Broken Hill, Cabonne, Carrathool, Central Darling, Cobar, Coolamon, Coonamble, Cootamundra–Gundagai Regional, Cowra, Dubbo Regional, Dungog, Edward River, Federation, Forbes, Gilgandra, Glen Innes Severn Shire, Goulburn Mulwaree, Greater Hume Shire, Griffith, Gunnedah, Gwydir, Hay, Hilltops, Inverell, Junee, Lachlan, Leeton, Lithgow, Liverpool Plains, Lockhart, Mid-Western Regional, Moree Plains, Murray River, Murrumbidgee, Muswellbrook, Narrabri, Narrandera, Narromine, Oberon, Orange, Parkes, Queanbeyan-Palerang Regional, Singleton, Snowy Monaro Regional, Snowy Valleys, Tamworth Regional, Temora, Tenterfield, Upper Hunter Shire, Upper Lachlan Shire, Uralla, Wagga Wagga, Walcha, Walgett, Warren, Warrumbungle Shire, Weddin, Wentworth and Yass Valley.</p>	Complies.
<p>Division 2 Requirements for complying development under this code</p>		
<p>3D.3 Development that is complying development under this code</p>	<p>(1) The following development is complying development under this code—</p> <ul style="list-style-type: none"> a) subject to subclause (2), the erection of a new 1 or 2 storey dwelling house and any attached development, b) the alteration of, or an addition to, a 1 or 2 storey dwelling house (including any 	Complies. Single Storey Dwelling.

	<p>addition that results in a 2 storey dwelling house) and any attached development,</p> <p>c) the erection of a farm building or detached development and the alteration of, or an addition to, a farm building or detached development.</p>	
	<p>(3) Development specified for this code may only be carried out on a lot that has lawful direct frontage access or a right of carriageway to a public road or a road vested in or maintained by the council (other than an unformed Crown road or a Crown road vested in the Council, but not maintained).</p>	<p>Does not comply Existing road/ track (as viewable via aerial imagery) currently transverse private land to the north of the site being Lot 210 in DP 819485 and, at points, a considerable distance outside from the crown road reserve including at the proposed access point as shown on the CDC plans.</p> <p>Note: DA refused due to no lawful access.</p>
3D.4 Development that is not complying development	<p>The following development is not complying development under this code—</p>	
	<p>(d) the erection of a building over a registered easement,</p>	N/A
	<p>(j) development that penetrates any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and reported to the Civil Aviation Safety Authority,</p>	N/A
3D.6 Complying development on bush fire prone land	<p>(2) If complying development under this code is carried out on bush fire prone land, the following development standards also apply in addition to any other development standards—</p>	<p>The development lot contains bush fire prone land. The house site is not on bush fire prone land. The access road is bush fire prone land</p>
	<p>(b) the lot on which the development is to be carried out must have direct access to a public road or a road vested in or maintained by the council,</p>	<p>The lot does not have direct access to a public road or a road vested in or maintained by the council as shown on the CDC plans. Physical access is via Lot 210 in DP819485.</p>

		Note: Previous DA refused due to no lawful access.
	(c) the dwelling house must be able to be connected to mains electricity,	TBC – no known mains electricity to site.
	(g) if the development is carried out on a lot in Zone R5, RU1, RU2, RU3, RU4 or RU5, there must be— (i) a reticulated water supply connection to the lot and a fire hydrant within 70m of any part of the development, or (ii) in the case of a lot with an area of 10,000m ² or less—a 10,000 L capacity water tank on the lot, or (iii) in the case of a lot with an area greater than 10,000m ² —a 20,000 L capacity water tank on the lot,	TBC – tank provision and capacity unknown.
The following standards relate to detailed dwelling design, which is currently unknown. Section 3D. 10 and 3D. 15 are addressed to the extent possible.		
Division 3 Development standards – dwelling houses and attached development in Zones RU1, RU2, RU3, RU4 and RU6		
Subdivision 2 Built form development standards for dwelling houses and attached development.		
3D.10 Lot requirements	(1) The lot must meet the following requirements— (a) the area of the lot must not be less than— (i) the minimum lot area specified in the environmental planning instrument that applies to the land concerned, or	The site has an area of 388.5 hectares and the minimum lot size is 800 ha under Tamworth LEP 2010. However, Clause 4.2B(3)(b) of Tamworth LEP 2010 allows the construction of a dwelling house on a lot on which the erecting of a dwelling house was permissible under the

	<p>(ii) if no size is specified in the environmental planning instrument—4,000m²,</p> <p>(b) there must only be 1 dwelling house on the lot at the completion of the development.</p> <p>(2) Subclause (1)(a) does not apply to development that is the alteration of, or an addition to, an existing dwelling house and the erection or alteration of, or addition to, any attached development.</p> <p>(3) For the purpose of calculating the area of a lot, the area of the access laneway is excluded if it is a battle-axe lot.</p>	provisions of Nundle Local Environmental Plan 2000. This is 200 ha.
3D.11 Maximum building height and siting of development		
3D.12 Minimum Setbacks		
3D.13 Setbacks from certain adjoining land		
3D.14 Exceptions to setbacks		
3D. 15 Vehicle access	<p>(1) A lot that has an off-street car parking space must have a driveway to a public road.</p> <p>(2) A driveway on a lot must be constructed in accordance with AS/NZS 2890.1:2004, Parking facilities, Part 1: Off-street car parking.</p>	No access to public road provided from the lot.



DP 013483

43

DP 0131000

42

DP 032122

41



Attachment 4 – Moir Landscape Architecture advice dated 4
March 2024



14 March 2024

Sophie Hazer
Senior Associate
Herbert Smith Freehills

Dear Sophie

Hills of Gold WF – Response to DPHI RFI 22 February 2024

Please find below my response to the request for additional information pertaining to the Landscape and Visual Impact Assessment of the Hills of Gold WF project. The information provided responds directly to the requests in point 3 of the RFI.

Request 2.3: *Any consideration for the potential re-siting options for DAD01 or the relevant wind turbines to meet the performance objectives in the Wind Energy Guidelines (2016).*

Response: A high-level assessment was undertaken of Lot 47 DP753722 (where DAD01 is located) to identify an alternate location for a future dwelling. The assessment is a high-level desktop assessment that considers topography, existing vegetation, opportunities for desirable orientation for views and solar access and noise. It does not consider other constraints such as access, servicing, biodiversity, noise, bushfire, etc. (Refer to Attachment A for wireframe assessment).

The current DAD01 site is located in a cleared area approximately 313m east of Morrisons Gap Road. Desirable views over the valley to the east are contained by topography. The site offers good opportunities for orientation for solar access, but opportunities for capitalising on the surrounding scenic amenity are low as views in all directions are generally contained by topography and vegetation.

Alternate Site: An alternate site has been identified on the western boundary of Lot 47. The site offers good opportunities to capitalise on views over the valley to the east. The distance to the nearest visible turbine is 2.17km, and views to turbines in the north and west will most likely be screened by topography and existing vegetation. The site sits within the 35db contour.

Request 3.1: *Accompany the wireframe with vegetation overlay generated at NAD67 with an aerial image of the dwelling.*

Response: Please refer to Attachment B

Request 3.2: *Consideration of the Wind Energy Guideline (2016) requirements relating to dwelling entitlements and clarification on the meaning of 'dominance'.*

Response (dwelling entitlements): The Wind Energy Guideline (2016) states that the Department will consider "existing dwelling entitlements on land within the vicinity of the wind energy project". However, the Wind Energy Visual Assessment Bulletin (2016) does not mention dwelling entitlements or provide a methodology for the assessment of dwelling entitlements on land within the vicinity of the wind energy project. The Bulletin states that the Visual Performance Objectives are for the assessment of "dwellings and key public viewpoints".

Assessing the potential for impact on land with dwelling entitlements is challenging as, without a comprehensive analysis and design process, there may be multiple opportunities for siting dwellings. As a dwelling does not exist, there may also be multiple opportunities to mitigate the potential impacts of a known project through the design and orientation of a new dwelling. Without a methodology for assessing dwelling entitlements, there is no mechanism for determining a threshold of what is considered to be an acceptable or unacceptable level of impact on land with a dwelling entitlement. Application of the Visual Performance Objectives of the Bulletin applies the same sensitivity to land with a dwelling entitlement as it does to an existing dwelling or key public viewpoint. The application of the performance objectives does not take into consideration the opportunities for mitigation through orientation and design and therefore potentially overstates the impact on land with a dwelling entitlement.

Considering that the Bulletin does not provide a methodology for assessing dwelling entitlements, it is reasonable to conclude that DPHI places less importance on the potential for impact upon dwelling entitlements than existing dwellings, as there is a greater opportunity to manage impacts through location, orientation, design, and mitigation in the context of the location and characteristics of a known project.

The assessment of dwelling entitlements is not a requirement of the evaluation of Landscape and Visual Impact for infrastructure or energy projects in the other jurisdictions where I have prepared LVIA, including Victoria, Queensland and Tasmania.

In contrast to the absence of a reference and methodology for the assessment of dwelling entitlements in the Bulletin, dwelling entitlements are addressed in Section 3.3 of the 2023 Draft Wind Energy Guidelines which state that:

“In addition to public viewpoints and private receivers, the relevant consent authority is obligated to consider visual impacts on dwelling entitlements 4,5. A dwelling entitlement refers to any parcel of land for which a development application could be made for a dwelling. Environmental planning instruments dictate whether a dwelling entitlement exists. Relevant criteria include the zoning of the land and minimum lot sizes.

Whilst impacts to dwelling entitlements must be considered, their uncertain nature including where and when a dwelling may be constructed, if at all, make the application of the visual assessment tools challenging.

Consequently, the visual impact assessment of a dwelling entitlements should be qualitative in nature and instead focus on whether the proposed development would unduly impact on the ability for a landowner to act on a dwelling entitlement.”

Response (clarity on the meaning of ‘dominance’): The current DPHI assessment report states that the reason for removing turbines is that “Turbines will dominate the landscape”; however, no methodology for determining visual dominance is provided. Generally, in the practice of LVIA, visual dominance results from an element in the landscape being clearly identifiable as the defining character element of a view or broader landscape character. My position in my submission to the IPC is that the DPHI HOG assessment overstates the impacts, particularly on NAD 33 and NAD 5. Further, in assessing dwellings, it is best practice to give greater weight to the potential impact on views from the main indoor/outdoor living areas and higher quality views on which the dwelling might be orientated to capitalise. Less weight is usually given to utility areas such as garages and driveways and from less desirable aspects (west and south if the dwelling is not oriented in these directions to capture desirable outlooks).

In the case of NAD 33, the introduction of the turbines on the ridgeline does not diminish the existing dominant character elements of the undulating cleared farmland and scattered trees in the fore and middle ground.

The view of NAD 5 is from the garage and driveway and should be considered a secondary view. The primary view of NAD 5 is over the valley to the south. There are no wind turbines present in this view.

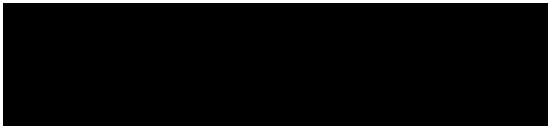


Furthermore, it has been demonstrated that mitigation of the impacts on this secondary view at NAD 5 is achievable, in keeping with the existing character of the dwelling and its curtilage, and will not impact the existing primary desirable views of the dwelling.

(Please refer to Attachment C)

Please do not hesitate to contact me if you require any additional information.

Kind regards,



David Moir B.L.Arch FRLA AILA

Director

Moir Landscape Architecture Pty Ltd

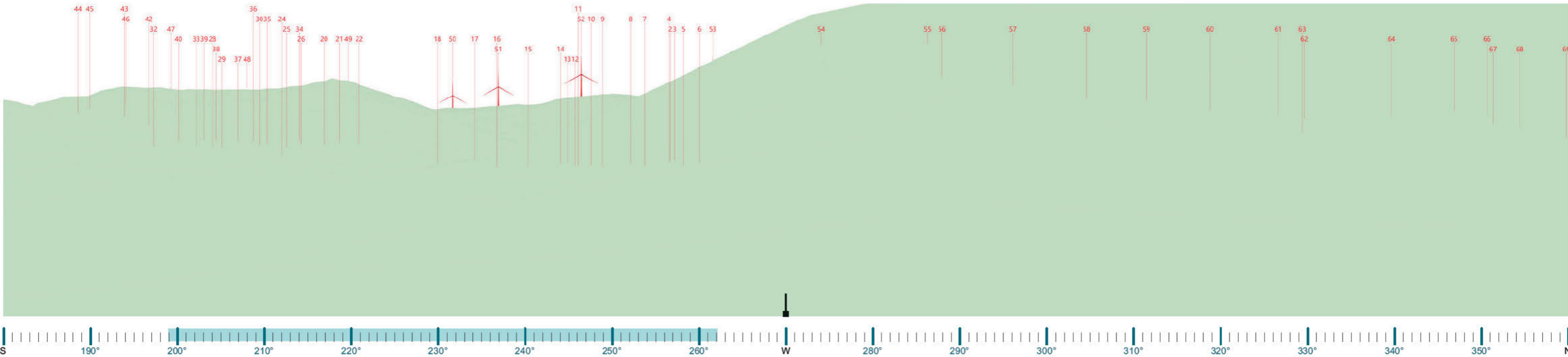


ATTACHMENT A – DAD01 Alternate Site Assessment

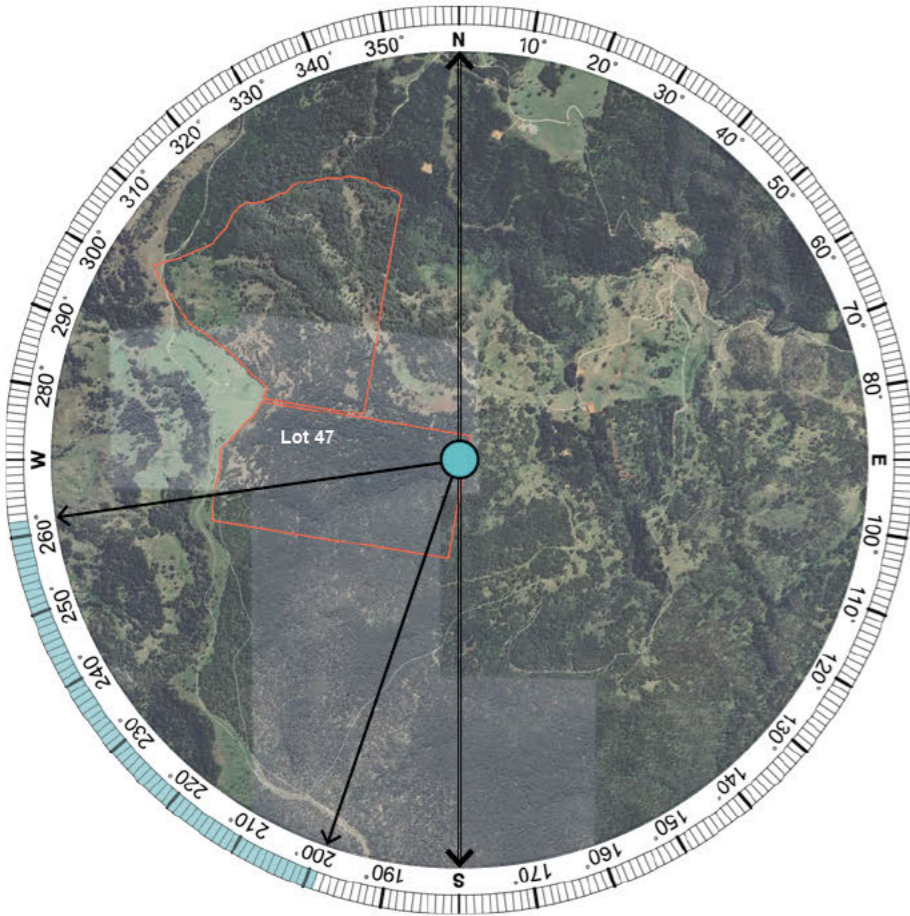
Dwelling ID:

DAD Alternate Site (West)

180° Wireframe Diagram



Viewpoint Location



- Alternate Site Location
- Extent of Potential Visibility

Coordinates: 31°34'18.19"S 151°11'8.53"E
Distance to nearest visible turbine: 2.00 km

Aerial Source: Google Earth, 2024



ATTACHMENT B – Lidar Assessment of NAD67

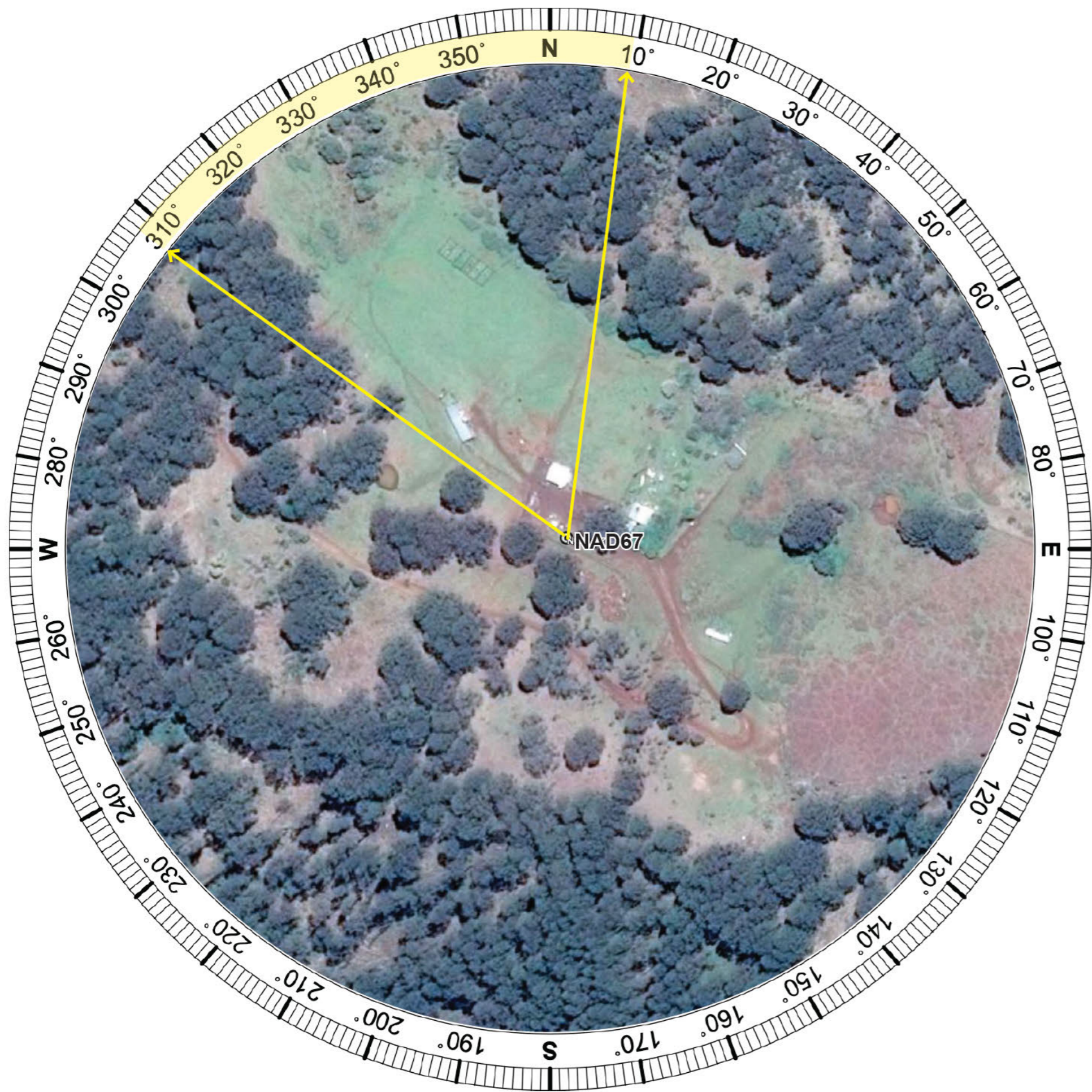


Figure A. Aerial Image of Dwelling NAD67
(Source: Google Earth, Imagery Date: 14/10/2016)

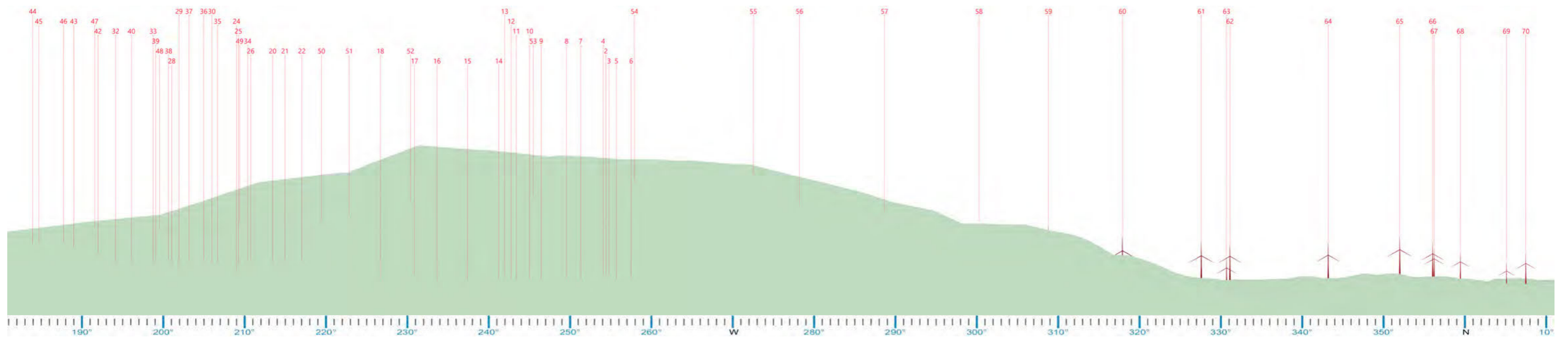


Figure 1. Bareground Wireframe Diagram from Dwelling NAD67

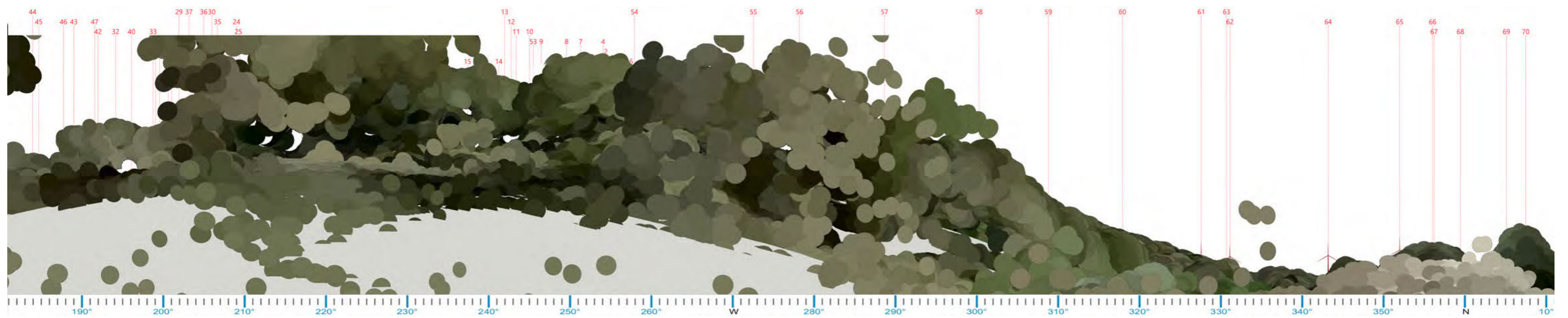


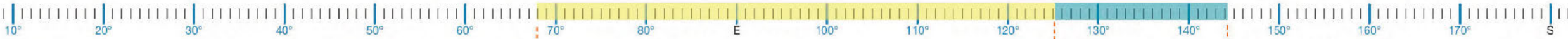
Figure 2. Wireframe Diagram with LiDAR Vegetation Overlay from Dwelling NAD67



ATTACHMENT C – Assessment of NAD 33 and NAD 5

DPHI Assessment Review – Hanging Rock Cluster – NAD 5

Turbines recommended for removal by DPHI



- Turbines visible within one sector
- Low Visual Impact with Visual Screening within 2 - 5 years (noting error in DPHI Assessment stating 10 years)

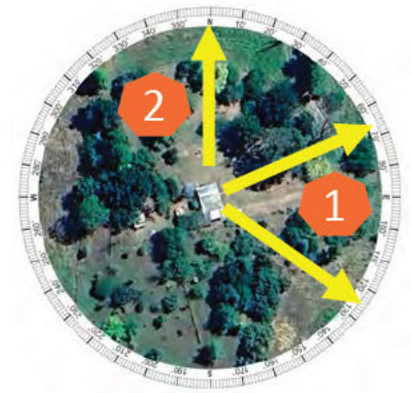


1 Photomontage (above) taken from east side of house, secondary view.



2 Primary views to the north, house is orientated with outlook over Nundle Creek Valley.

Opportunity to screen views to the project whilst maintaining desirable views.



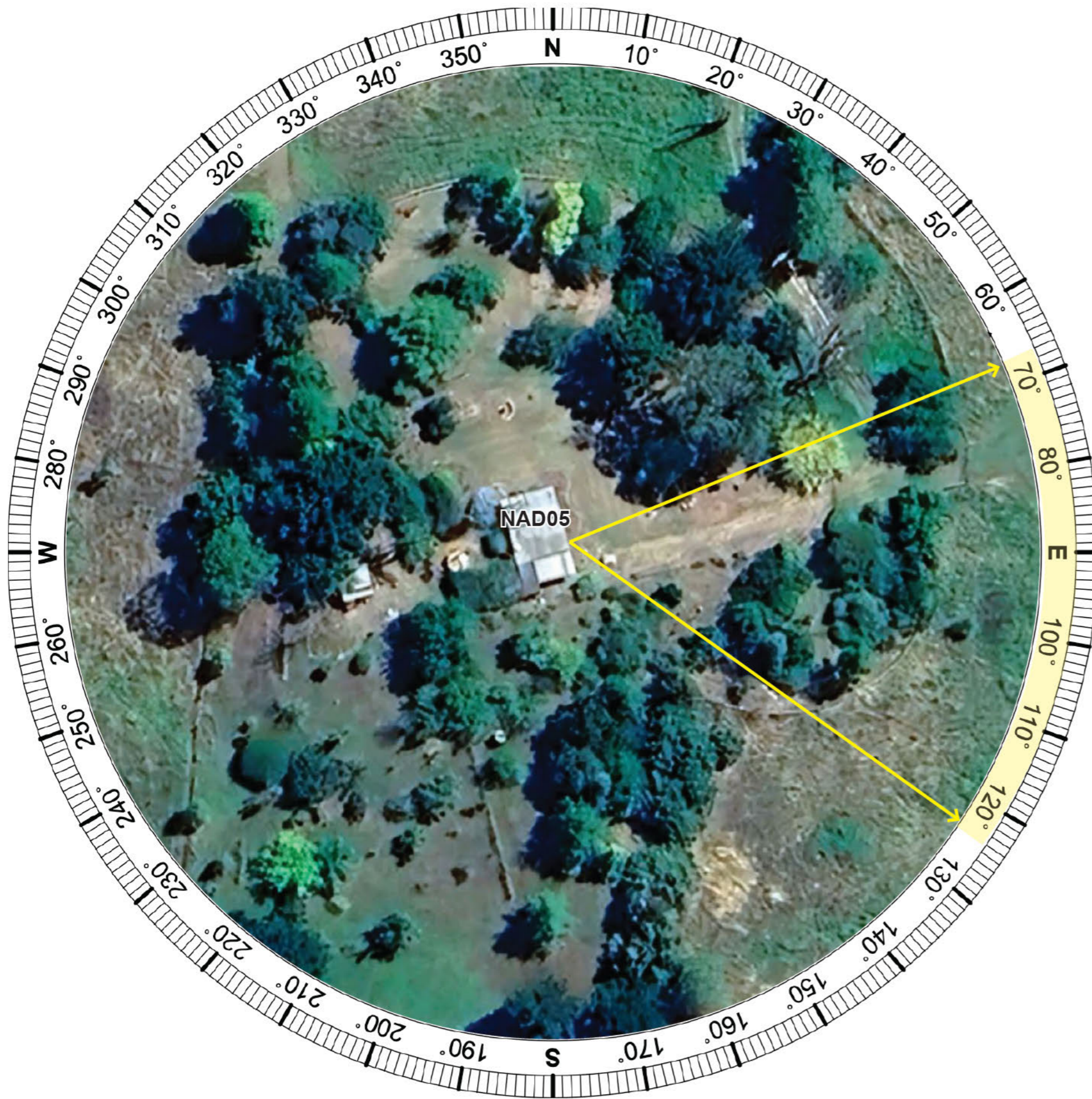
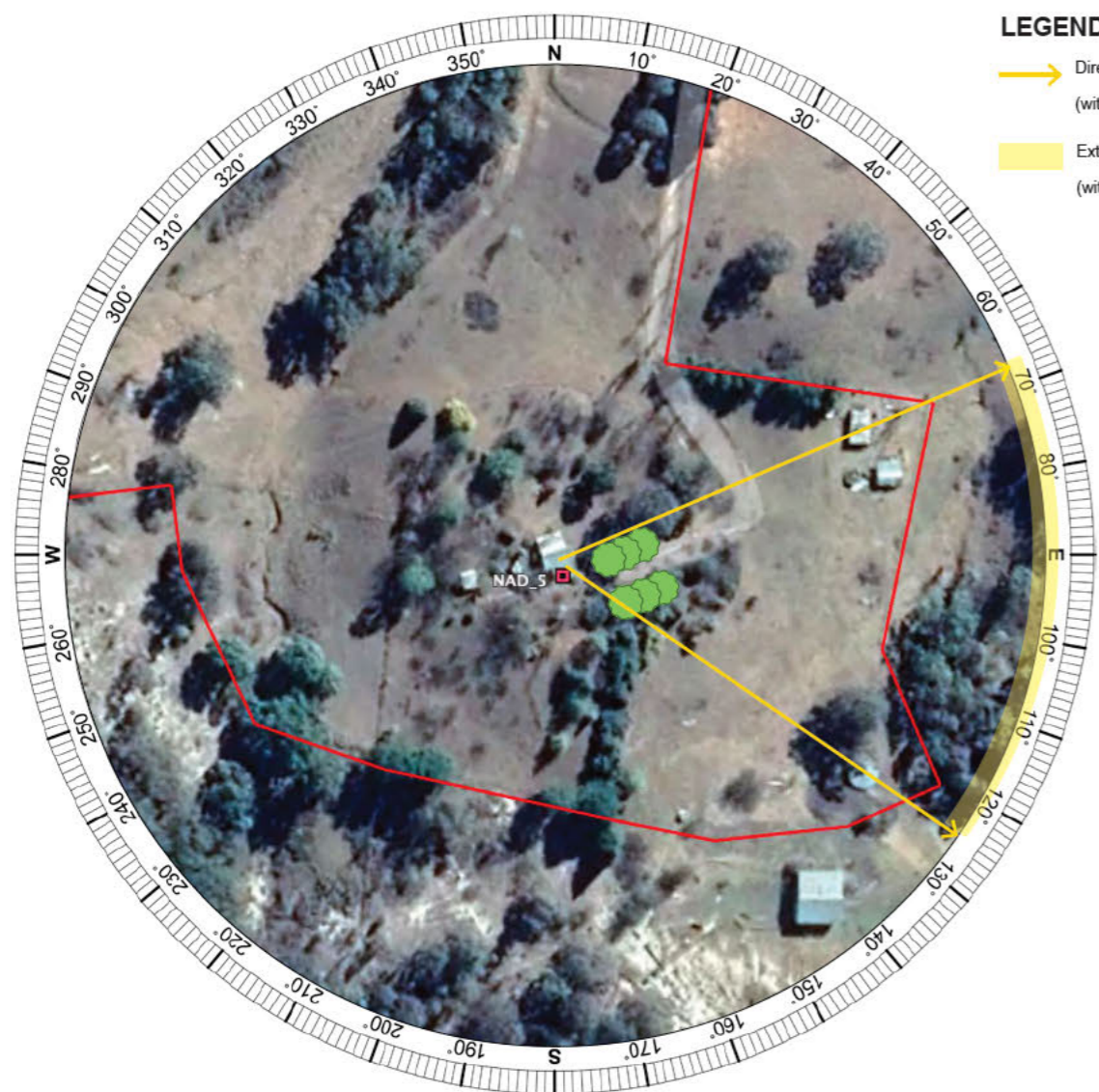
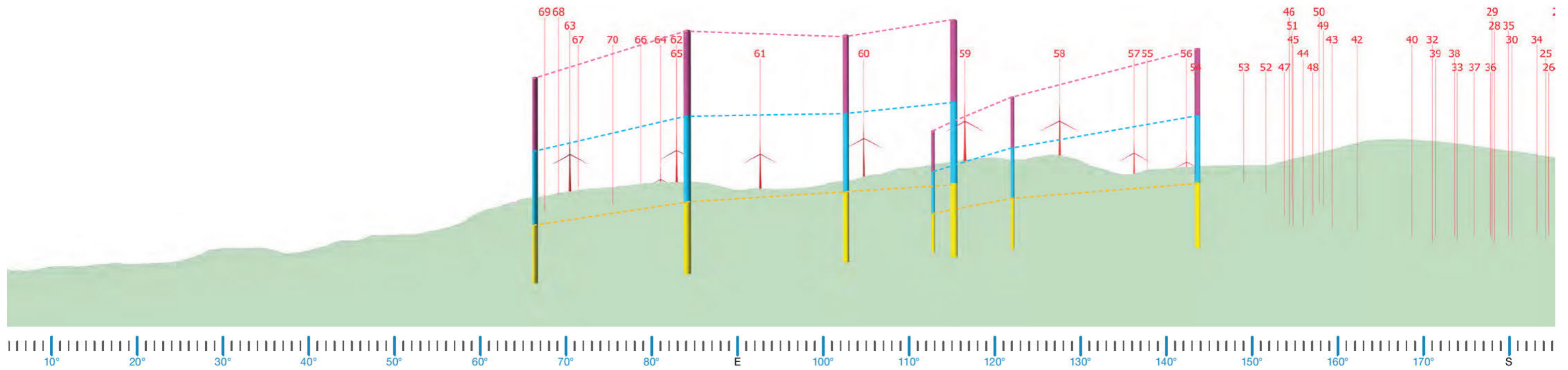


Figure 3. Aerial Image of Dwelling NAD05
(Source: Google Earth, Imagery Date: 02/07/2023)



LEGEND

- Direction of visible turbines (within 8000 m)
- Extent of visible turbines (within 8000 m)

LEGEND

- Direction of potentially visible turbines based on 3D assessment. NOTE: this does not taking into account existing intervening vegetation and any built form / structures.
- Extent of potentially visible turbines (within 4,550 m).
- Indicative location of visual screening. NOTE: Visual screening is proposed to be undertaken in consultation with land owner post construction.

Refer to wire frame diagram

LEGEND

- 7.5 metres
- 5 metres
- 2.5 metres

Visual Screening Notes:

Planting (as shown on aerial image) to the north and south of driveway would effectively screen visible turbines within 4,550m of the dwelling. As illustrated this would be achieved once vegetation reaches a height of 5m, i.e., 2 - 5 years of plant establishment.

Note: Visual screening location is indicative only and is proposed to be undertaken in consultation with the landowner post construction.

Aerial Image Source: Google Earth Imagery (February 2023)

Figure 4. Dwelling NAD05 Wireframe Diagram with Visual Screening Principles
 (Source: Moir Landscape Architecture Second Addendum to Landscape and Visual Impact Assessment, 5th April 2023)



Figure 5. Photograph taken from elevated garden on the southern side of NAD05

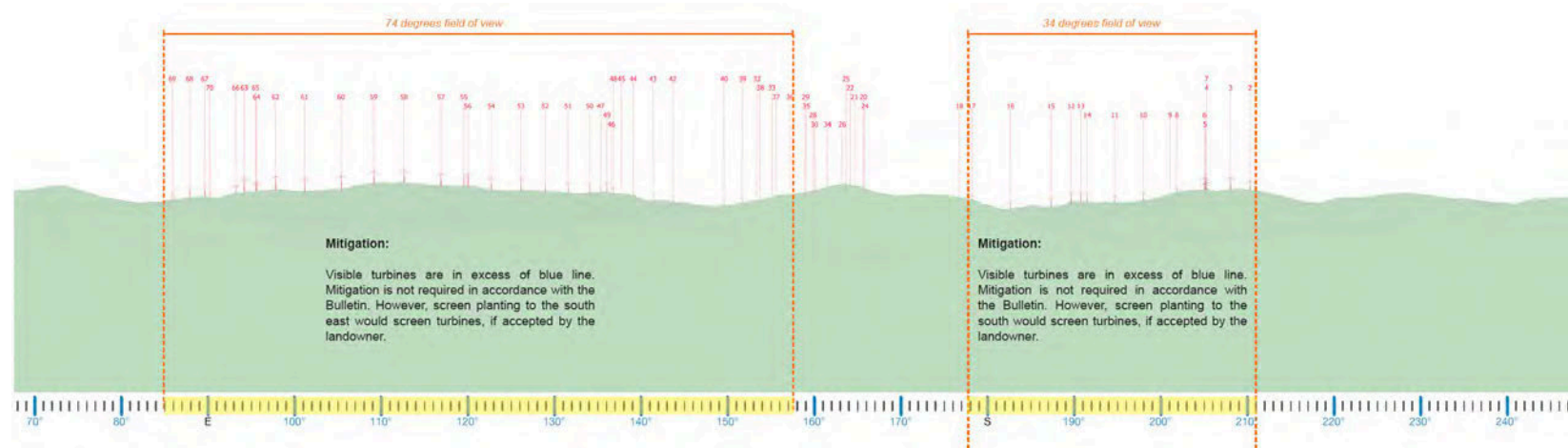


DPHI Assessment Review

Hanging Rock Cluster – NAD 33

- Turbines visible within two sectors after existing intervening vegetation
- Low Visual Impact with Visual Screening within 5 -10 years
- Primary view from house is NNE
- Photomontage produced from E to SSW in Secondary
- Performance objectives set out in Bulletin are met:
 - All turbines in excess of blue line
 - less than three (3) 60 degree sectors when considering vegetation screening
- DPHI states: “turbines dominate the landscape” and deleting turbines to address DAD01, NAD05, NAD67, NAD72 and NAD98 also benefits.
- Moir LA view that turbines do not dominate the landscape.
- Views are generally distant (in excess of the blue line) and are fragmented by vegetation to the east and south.

Nearest Turbines Proposed for Removal >5.5km



Existing View | 180 degree Baseline Panorama

Turbines likely to be visible along the furthest ridgeline. Views, however, will be distant. Additional screen planting to the south may help reduce potential visual impacts.

Turbines likely to be visible along the furthest ridgeline. However, views will be distant and it is likely the vegetated undulations in the middleground would remain the dominant landscape feature.



Herbert Smith Freehills
ANZ Tower
161 Castlereagh Street
Sydney 2000

S6400C35

Attention: Sophie Hazer

13 March 2024

Dear Sophie,

**HILLS OF GOLD WIND FARM
DAD_1 SUPPLEMENTARY NOISE ASSESSMENT**

This document is protected by legal professional privilege. To ensure privilege is not waived please keep this document confidential and in a safe and secure place. This document should not be distributed, nor any reference to it made, to any person or organisation not directly involved in making decisions on the subject matter of this document. If this document is required by a government officer, Herbert Smith Freehills should be contacted immediately to ensure that privilege is claimed over the document and it should not be shown to, nor the contents discussed with, the government officer.

The noise from the Hills of Gold Wind Farm (the **Wind Farm**) has previously been predicted for the development approved dwelling 1 (**DAD_1**) in the Sonus report with reference S6400C33, dated November 2022 (the **Previous Assessment**). The Previous Assessment considered the approved dwelling being built at the location shown in Table 1. The layout of the Wind Farm can be seen in Appendix A. The Previous Assessment found that for the Wind Farm to comply with the noise criteria at DAD_1, nine turbines (WP53, WP54, WP55, WP56, WP57, WP58, WP59, WP60, and WP61) would need to be removed.

This supplementary assessment has been completed to consider the implications of DAD_1 being located in an alternate location, denoted as DAD_1_Alt and shown in Table 1, as well as graphically in Figure 1 alongside the predicted noise level contours.

Table 1: Dwelling Location Coordinates

Dwelling ID	Coordinates (UTM WGS84 56J)	
	Easting	Northing
DAD_1	325891	6506836
DAD_1_Alt	327821	6505603

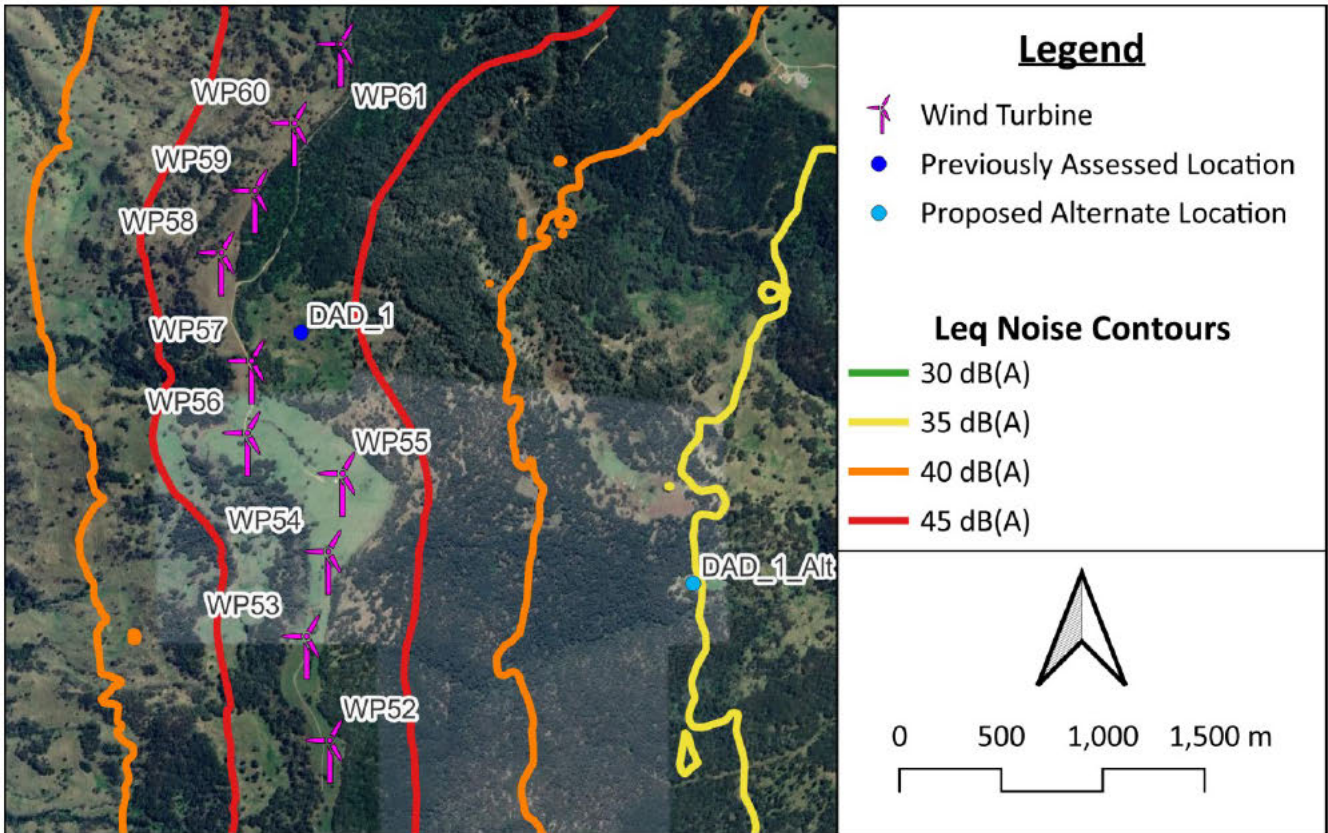



Figure 1: Dwelling Locations and Noise Contours

The predictions indicate that a noise level of 35 dB(A) is expected at DAD_1_Alt. This will achieve the criterion of 35 dB(A) applicable for DAD_1. No adjustment to the layout would therefore be required to achieve the applicable criterion at this alternate location.

If you have any questions or require clarification, please let me know.

Yours faithfully
Sonus Pty Ltd


Chris Turnbull
Principal

APPENDIX A: TURBINE LAYOUT

WTG	Coordinates (UTM WGS84 56J)		WTG	Coordinates (UTM WGS84 56J)	
	Easting	Northing		Easting	Northing
WP2	316685	6502790	WP38	325226	6499655
WP3	317115	6502997	WP39	325514	6499941
WP4	317470	6502965	WP40	325882	6500095
WP5	317647	6503322	WP42	326535	6501061
WP6	317819	6503697	WP43	326856	6501390
WP7	317184	6502323	WP44	327274	6501446
WP8	317589	6502128	WP45	327209	6501852
WP9	317453	6501428	WP46	327058	6502330
WP10	317888	6501332	WP47	326888	6502789
WP11	318352	6501232	WP48	326440	6502907
WP12	319127	6501525	WP49	326080	6503435
WP13	318925	6501260	WP50	325872	6504012
WP14	318778	6501033	WP51	325976	6504361
WP15	319342	6500600	WP52	326002	6504779
WP16	320042	6500330	WP53	325889	6505290
WP17	320737	6500327	WP54	325996	6505708
WP18	321008	6499686	WP55	326064	6506093
WP20	323083	6499078	WP56	325598	6506291
WP21	323138	6499552	WP57	325619	6506646
WP22	323096	6499979	WP58	325470	6507178
WP24	323308	6498135	WP59	325634	6507483
WP25	323581	6498727	WP60	325827	6507815
WP26	323547	6499108	WP61	326057	6508203
WP28	324614	6498101	WP62	326037	6508551
WP29	324633	6498516	WP63	325788	6508929
WP30	324230	6498999	WP64	326613	6508726
WP32	325799	6498718	WP65	327051	6508703
WP33	325259	6499020	WP66	327216	6508970
WP34	323774	6499407	WP67	327186	6509404
WP35	324283	6499336	WP68	327368	6509624
WP36	324597	6499498	WP69	327738	6509902
WP37	324879	6499589	WP70	327838	6509345

Attachment 5 – Consultation log

Consultation Log with likely new landowner of DAD01 and NAD67

Date	Interaction Type	Topic
1/11/2022	Phone Call	[REDACTED]
1/11/2022	Email	[REDACTED]
18/1/2023	Phone Call (~16min)	[REDACTED]
1/2/2023	Phone Call (~25min)	[REDACTED]
3/2/2023	Email Chain	[REDACTED]
6/2/2023	Phone call	[REDACTED]
6/2/2023	Email	[REDACTED]
8/2/2023	Face to face meeting	[REDACTED]
16/2/2023	Email	[REDACTED]
1/3/2023	Email	[REDACTED]
29/3/2023	Phone Call	[REDACTED]
6/4/2023	Email	[REDACTED]
19/4/2023	Email	[REDACTED]
26/5/2023	Email	[REDACTED]
18/7/23	Email	[REDACTED]
18/1/2024	Email	[REDACTED]