

8.52pm Councillor Dr Gangemi left the meeting and returned at 8.55pm during Item 4.

Proceedings in Brief

Simon Parson - Executive Director from PTW Architects (Applicant) representing the applicant addressed Council regarding this matter.

THE MOTION WAS PUT AND CARRIED.

1. The planning proposal be forwarded to the Department of Planning and Environment (including post-exhibition amendments as outlined in this report) for finalisation, noting that Council does not have delegation to make the plan due to outstanding objections from the RMS and TfNSW to:
 - a. Rezone the site from part R3 Medium Density Residential and part R1 General Residential to B4 Mixed Use;
 - b. Remove the maximum building height applicable to the site;
 - c. Apply a 'base' floor space ratio of 1:1, apply an 'incentivised' floor space ratio of 3.5:1 and identify the site as 'Area A' on the Floor Space Ratio Map to link the site to Clause 7.12 of LEP 2012.; and
 - d. Introduce a local provision to limit the number of dwellings on the site to 460 units.
2. Draft amendments to The Hills Development Control Plan 2012 Part D Section 21 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill, (Attachment 2 ECM No.182479928) be adopted and come into force following the notification of the planning proposal, with post-exhibition amendments as outlined in the report.
3. Council enter into the Voluntary Planning Agreement, as amended (Attachment 3 ECM No.183057044) and authorise Council's common seal to be affixed to the Voluntary Planning Agreement.
4. Council continue to work with Roads and Maritime Services and Transport for New South Wales to facilitate appropriate traffic and transport infrastructure in the Sydney Metro Northwest Corridor.

ITEM-4	POST EXHIBITION - PLANNING PROPOSAL, DRAFT VPA AND DCP AMENDMENTS - CECIL AVENUE AND ROGER AVENUE, CASTLE HILL (12/2016/PLP)
THEME:	Shaping Growth.
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	25 SEPTEMBER 2018 COUNCIL MEETING
GROUP:	STRATEGIC PLANNING
AUTHOR:	SENIOR TOWN PLANNER BRONWYN INGLIS
RESPONSIBLE OFFICER:	MANAGER FORWARD PLANNING STEWART SEALE

EXECUTIVE SUMMARY

This report recommends the planning proposal be forwarded to the Department of Planning & Environment for finalisation, noting that Council does not have delegation to make the plan due to outstanding objections from Roads & Maritime Services (RMS) and Transport for NSW (TfNSW). In addition, it is recommended that the draft Voluntary Planning Agreement (VPA) to provide for local infrastructure needs be executed and the Development Control Plan (DCP) be adopted with post exhibition amendments to come into force following notification of the planning proposal.

Planning Proposal

The planning proposal seeks to facilitate a mixed-use development on the site comprising 460 dwellings and at least 8,025m² of ground floor commercial floor space in four (4) residential flat buildings of between 3 and 18 storeys. The proposal also includes a 2,032m² public through-site pedestrian link between Cecil Avenue and Roger Avenue.

The planning proposal (including post exhibition amendments) will make the following changes to LEP 2012:

- Rezone the subject site to B4 Mixed Use;
- Remove the maximum height of buildings map from applying to the site;
- Amend the Floor Space Ratio Map to apply a base FSR of 1:1, an incentivised floor space ratio of 3.5:1 and identify the site as Area A on the Floor Space Ratio Map; and
- Introduce a local provision to limit the number of dwellings on the site to 460 units;

The identification of the site as "Area A" is a post exhibition amendment required to ensure that development provides an appropriate apartment mix and size when achieving the

“incentivised floor space ratio” under clause 7.12 *Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor* of LEP 2012. The local provision is also a post exhibition amendment to ensure that the number of units on the site does not exceed 460, as originally resolved by Council.

Development Control Plan

A draft amendment to the DCP has been prepared to regulate future development on the site so as to ensure that the intended built form and desired future character for the site are achieved. The development controls relate to land use, built form, building height, building setbacks, solar access, landscaping, safety, traffic, car parking and heritage.

There are some post exhibition amendments proposed in response to issues raised in submissions, such as increased setbacks and clarification regarding the built form outcomes. The issues raised in submissions have been addressed in this report and via amendments to the Development Control Plan where appropriate.

Voluntary Planning Agreement

The VPA provides for a public right of way easement over the land connecting Cecil Ave to Roger Ave, a public plaza to Cecil Avenue and embellishment of these areas. In addition, it will require a monetary contribution (anticipated value – \$15.5m) for local infrastructure as identified by Council.

Based on the demand generated by the commercial floor area and future population within the apartments it is envisaged that the monetary component of the VPA could be allocated towards:

- Traffic signals at the intersection of Old Northern Rd and Francis St; and
- Provision of open space facilities and upgrades to other local traffic infrastructure.

The applicant has prepared a concept design for the signalisation of the intersection at Old Northern Road and Francis Street, which requires acquisition of additional land. While a portion of the VPA funds could be used for the installation of traffic signals, ultimately as an RMS controlled road, the acquisition of additional land and construction of the intersection upgrade is the RMS's responsibility. Further negotiation will be required with the RMS (as Authority for Old Northern Road) to achieve the upgrade of this intersection.

It is recommended that Council execute the VPA with post exhibition amendments as per Attachment 3.

The Planning Proposal, draft DCP and draft VPA were exhibited from 24 August 2017 to 22 September 2017. Submissions were received on behalf of 24 properties and a further six (6) submissions were received from public authorities. There are unresolved concerns from Roads and Maritime Services and Transport for NSW.

The key issues raised in submissions relate to the scale and height of the proposed development, visual impact, the transition of heights to surrounding properties, the loss of solar access and privacy for adjoining properties, traffic generation and parking impacts, and the impacts of a lengthy construction period on adjoining neighbours. Concerns were also raised regarding the timing of the planning proposal in the absence of detailed strategic planning for the Castle Hill 'south' area.

Delegation for making of the LEP amendment was issued to Council under the Gateway Determination of 2 November 2016. However, Council is not able to exercise this delegation

as there are unresolved objections from RMS and TfNSW. Essentially the RMS and TfNSW recommend the planning proposal be deferred until the preparation of a precinct and infrastructure plan, together with a cumulative precinct wide transport study for the entire Castle Hill Precinct, including a funding mechanism for the required infrastructure works.

Unfortunately, negotiations to further this planning proposal have come to a point where State agencies (RMS & TfNSW) appear unwilling to work with Council and recognise their role and responsibilities for the road network and the provision of housing around the future rail stations. This is particularly important knowing that TfNSW has already developed a traffic/transport model for the entire rail corridor, which it has been unwilling to share the underlying data and assumptions or assist Council with its responsibility to deliver local infrastructure to accommodate the future growth around the new stations. It is also known that the RMS has undertaken preliminary design work in potential intersection improvements, but have not provided this to Council. It is also noted that the implications of the RMS and TfNSW comments is that they apply equally to five (5) other planning proposals that are currently under assessment in Castle Hill, which includes the Castle Hill North planning proposal that has been subject to extensive precinct planning.

The State Government's policy position, embodied in the 2013 North West Rail Link Corridor Strategy, seeks to capitalise on opportunities for new housing, jobs and business in the region to maximise the benefits of the major rail infrastructure investment. It is becoming increasingly apparent that the challenges of responding to and supporting such growth are difficult for agencies such as the RMS and TfNSW to resolve. To summarise, despite the development of a traffic/transport model for the entire corridor by TfNSW, there is a noticeable absence of either the findings of such work or State led solutions to regional transport issues. It is questionable as to what is to be gained from Council undertaking a new precinct wide transport study when data, findings and potential solutions should already be available. Given the foregoing and the VPA offer that provides capacity to respond (in part) to wider traffic management issues, the progression of the planning proposal to the Department of Planning and Environment for determination of unresolved issues is considered to be a reasonable approach.

It is recommended that the Planning Proposal be forwarded to the Department of Planning and Environment for finalisation, including resolution of outstanding objections with RMS and TfNSW, the draft DCP be adopted and come into force when the Planning Proposal is made and the draft VPA be executed.

APPLICANT

Merck Property Pty Ltd

OWNERS

Cecil Developments Pty Ltd
Merck Property Pty Ltd
Mr Z H Gu & Mrs W X Kong

POLITICAL DONATIONS

Yes

THE HILLS LOCAL ENVIRONMENTAL PLAN 2012

	Current	Proposed
Zone	Part R1 General Residential & part R3 Medium Density	B4 Mixed Use
Minimum Lot Size	Part 600m and part 700m	No change
Maximum Building Height	Part 9m and part 16m	Remove maximum height of buildings
Maximum Floor Space Ratio	Part 1:1 and part nil FSR	Apply a 'base' FSR of 1:1 with a maximum FSR incentive of 3.5:1 and identify the site as 'Area A'
Site Specific Clause	Nil	New clause limiting site yield to 460 dwellings

Table 1
Proposed LEP Amendments

REPORT

The purpose of this report is to consider submissions received during the exhibition of the Planning Proposal, draft DCP and draft VPA and the outcomes of consultation with public authorities.

The subject site is located on the southern side of the Castle Hill Town Centre and is approximately 620m walking distance from the future Castle Hill Station. The site consists of eighteen (18) residential lots and has a total land area of approximately 17,600m². The site adjoins low density dwellings, a church and St Paul's Cemetery (a local heritage item). The slope of the land falls from the north-west to the south-east by approximately 14 metres. The site's primary frontage is to Cecil Ave, with a secondary frontage to Roger Ave, as shown in Figure 1.



Figure 1
Aerial view of the site and surrounding locality

1. SUMMARY OF DRAFT PLANS

1.1 Planning Proposal

The planning proposal seeks to facilitate a mixed-use development on the site comprising 460 dwellings and at least 8,025m² of ground floor commercial floor space in four (4) residential flat buildings of between 3 and 18 storeys (approximately 56m at its highest point fronting Cecil Ave and approximately 9m at its lowest point fronting Roger Ave). The proposal also includes a 2,032m² public through-site pedestrian link between Cecil Ave and Roger Ave.

The planning proposal (including post exhibition amendments) will make the following changes to LEP 2012:

- Rezone the subject site to B4 Mixed Use;
- Remove the maximum height of buildings map from applying to the site;
- Amend the Floor Space Ratio Map to apply a base FSR of 1:1, an incentivised floor space ratio of 3.5:1 and identify the site as 'Area A' on the Floor Space Ratio Map; and
- Introduce a local provision to limit the number of dwellings on the site to 460 units;

The identification of the site as 'Area A' is a post exhibition amendment required to ensure that development provides an appropriate apartment mix and size when achieving the "incentivised floor space ratio" under clause 7.12 *Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor* of LEP 2012. The local provision is also a post exhibition amendment to ensure that the number of units on the site does not exceed 460, as originally supported by Council.

Figures 2 and 3 illustrate a possible development concept for the site.



Figure 2
View from Cecil Avenue

Should the planning proposal proceed to finalisation, the building designs will need to be refined and will be subject to the development application process.

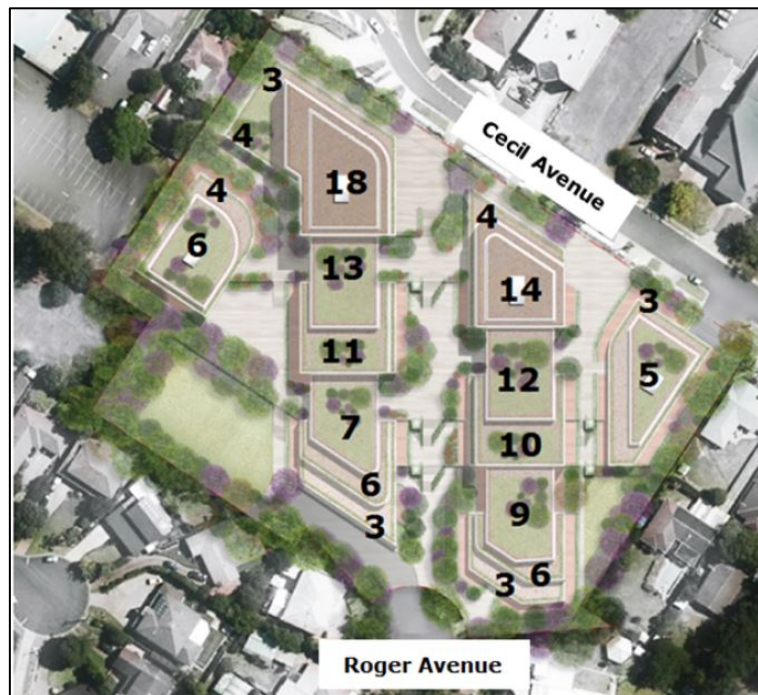


Figure 3
Proposed building heights (storeys) and layout

1.2 Draft Development Control Plan

Site-specific development controls have been prepared to provide a clear vision and desired future character for the site, and to encourage innovative and high quality architectural outcomes. The controls will regulate future development on the site so as to ensure that the intended built form and desired future character for the site are achieved. Proposed controls seek to achieve good solar access, pedestrian connectivity, an enhanced streetscape, and a built form that respects the topography of the site and nearby development. Figure 4 illustrates the anticipated land use distribution on site, as articulated in the draft DCP.

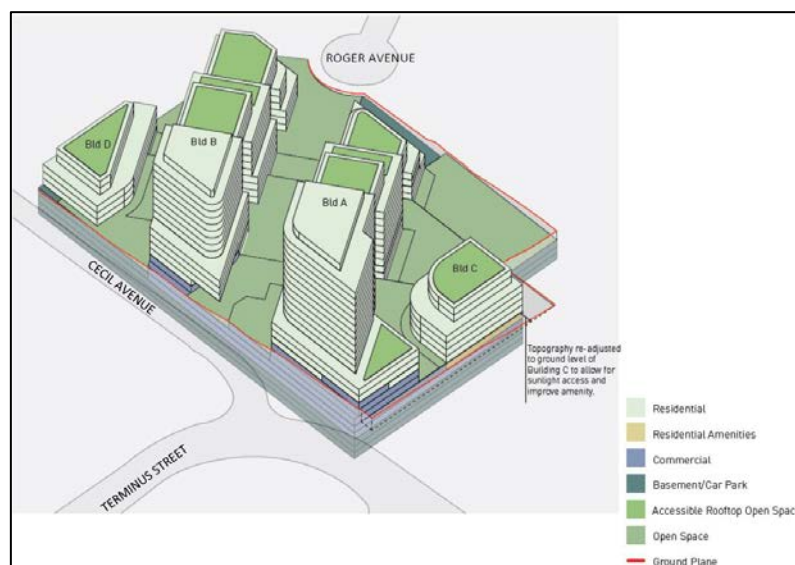


Figure 4
Proposed Land Use Distribution

There are some post exhibition amendments proposed in response to issues raised in submissions, such as increased setbacks and clarification regarding the built form outcomes. The issues raised in submissions have been addressed in Section 3.2 of this report and via amendments to the Development Control Plan where appropriate.

1.3 Draft Voluntary Planning Agreement

The draft VPA responds to the demand for additional infrastructure that would be generated by the increased development potential on the site and provides for the following:

- a) A public access easement over the land connecting Cecil Ave to Roger Ave and a public plaza to Cecil Ave, and the provision of embellishment works within the easement (Figure 5); and

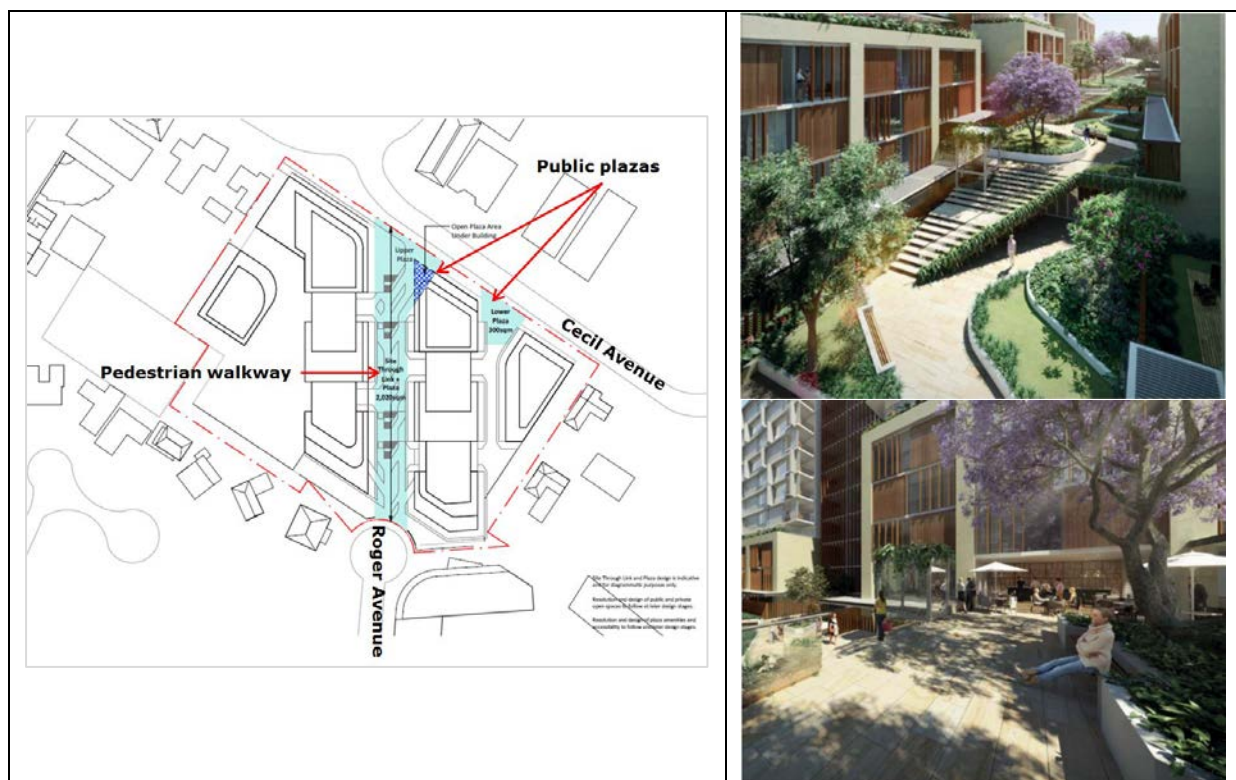


Figure 5

Location of proposed pedestrian walkway / easement and embellishment concepts

- b) Payment of a monetary contribution to Council (with an anticipated value of approximately \$15.5m) for expenditure on other local infrastructure as identified by Council.

The monetary contribution offered under the VPA is based on the concept development for the site and the unit size/mix requirement for housing diversity. Contributions under the VPA will be in lieu of Section 7.11 Developer Contribution payments, based on the following value per unit:

Unit Mix	Monetary Contribution Rate
1 bed	\$25,000
2 bed	\$32,092
3 bed	\$36,525
Commercial	\$150/m ²

Table 2

Monetary Contribution offered under the Voluntary Planning Agreement

Based on the current development concept for the site and the unit mix requirement that forms the basis of Council's housing diversity provision (Clause 7.12 of LEP 2012) the above rates would result in a contribution of \$15,558,326. The monetary component of the draft VPA could be allocated towards:

- Traffic signals at the intersection of Old Northern Rd and Francis St; and
- Provision of open space facilities and upgrades to other local traffic infrastructure.

The applicant has prepared a concept design for the signalisation of the intersection at Old Northern Road and Francis Street, which requires acquisition of additional land. While a portion of the VPA funds could be used for the installation of traffic signals, ultimately as an RMS controlled road, the acquisition of additional land and construction of the intersection upgrade is the RMS's responsibility. Further negotiation will be required with the RMS (as Authority for Old Northern Road) to achieve the upgrade of this intersection.

2. GATEWAY DETERMINATION

On 2 November 2016 Council received a Gateway Determination and authorisation to exercise its delegation to make the plan. The Gateway Determination contained conditions that were required to be addressed prior to exhibition of the proposal.

Condition 1 required the following:

- *Shadow diagrams be provided to demonstrate that private open space within all impacted neighbouring properties will continue to receive at least 4 hours of sunlight between 9am and 3pm on 21 June, where this is currently the case;*
- *A traffic study be provided which addresses the peak hour directional splits, potential impacts on the nearby intersections, measures to address capacity issues in Cecil Avenue and Roger Avenue; and*
- *Consistency with the methodology for the Local Residential Development Clause.*

Figure 6 illustrates the changes made to building heights and modulation across the site to allow for additional solar access to the private open spaces of existing neighbouring residential properties following the Gateway Determination. The building forms were reduced in height in many locations, with a complete building being removed from the south west corner of the site. The building height was increased by one (1) storey in the centre of the site.



Figure 6

Building Heights – Original (left) and Revised/Exhibited (right)

A Parking and Traffic Study was prepared and submitted that addressed the requirements of the Gateway Determination. In addition, the draft DCP includes controls relating to access and car parking.

Further, the proposed floor space ratio and floor space ratio incentive maps are consistent with the agreed methodology for securing housing mix and diversity within the Sydney Metro Northwest Corridor. Specifically, the 'base' floor space ratio has been calculated having regard to the walking distance of the site from the station and compliance with local provision 7.12 *Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor* of The Hills LEP 2012 is needed to achieve the 'incentivised floor space ratio'.

Conditions 2 and 3 of the Gateway required public exhibition of the planning proposal for a minimum of 28 days and consultation with the following public authorities:

- Office of Environment and Heritage;
- Transport for NSW;
- Transport for NSW – Roads and Maritime Services;
- Integral Energy; and
- Sydney Water.

The conditions of the Gateway Determination have been satisfied.

3. EXHIBITION DETAILS

The Planning Proposal, draft DCP and draft VPA were exhibited from 24 August 2017 to 22 September 2017. Six (6) submissions were received from public authorities. Submissions were received on behalf of twenty-four (24) properties, some of which were received prior to the exhibition period. The key issues raised in the submissions are discussed below.

3.1 Public Authority Consultation

Submissions were received from Roads and Maritime Services, Transport for NSW, the Heritage Council of NSW, Sydney Water, the Office of Environment and Heritage and Endeavour Energy.

Sydney Water, the Office of Environment and Heritage and Endeavour Energy have provided comments on the proposal but raised no objection. Comments from the Roads and Maritime Services, Transport for NSW and NSW Heritage Council and are outlined below.

(a) Roads and Maritime Services

Extensive consultation has been undertaken with the RMS for this planning proposal. The RMS have provided detailed feedback on the planning proposal, the proposed intersection upgrade (traffic signals) at the intersection of Old Northern Road / Francis Street and on issues related to broader strategic and transport planning in Castle Hill. However, the information provided by Council and the proponent has not been sufficient for RMS to give their support for the proposal. A summary timeline of correspondence from the RMS and is provided below:

Date	Summary of RMS Advice
20 September 2017	Letter received from the RMS raising concern that the planning proposal is being considered ahead of Council's development of a precinct plan for Castle Hill 'south' and in the absence of a cumulative traffic and transport assessment that considers all potential future uplift in the Castle Hill 'south' precinct. RMS requests that the proposal be deferred until the study is complete and a merit assessment of the intersection upgrade at Old Northern Road / Francis Street is further justified.
15 December 2017	Additional traffic information (including the Castle Hill South Traffic Study) forwarded to RMS.
17 April 2018	Letter received from the RMS requesting amendments to the proposed strategic concept design at Old Northern Road / Francis Street intersection, further justification for the traffic signals and noting that RMS would seek further input into the VPA as it relates to the traffic signals.
23 May 2018	Meeting attended by the RMS, Council officers and the proponent to discuss RMS' concerns.
2 July 2018	Letter received from the RMS advising that the proponent is withdrawing the proposal to signalise the existing priority intersection at Old Northern Road / Francis Street and that the RMS recommend all individual planning proposals be deferred until the cumulative / precinct wide transport study is complete and a funding mechanism for the required schedule of infrastructure works is in place.

Table 3

Timeline of correspondence / meetings with Roads and Maritime Services

Council Comment:

The State Government's North West Rail Link Corridor Strategy (and associated precinct structure plans) identified substantial opportunities for growth within the rail precincts. This has resulted in landowner expectations that growth will be supported, with some seeking to progress this by way of planning proposals. The Corridor Strategy was released in 2013 and in the time has elapsed since this growth was first flagged state agencies have had the opportunity to plan for the necessary infrastructure upgrades. RMS and TfNSW are the key

agencies responsible for the arterial road and transport network and it is their responsibility to plan for upgrades to these networks to support growth.

However, in the interests of progressing this planning proposal and having a basis for understanding traffic needs in the Castle Hill South locality, both the proponent and Council have undertaken significant traffic analysis and provided substantial information to assist RMS in assessing the proposal.

The proponent provided a Parking and Traffic Study (July 2017) that identifies the intersection of Old Northern Road and Francis Street as a key access point to the development. The traffic study concludes that the traffic generated by the commercial and residential components will not alter the level of service of the intersection under the current traffic circumstances. The level of service of the intersection is currently rated F, which is the lowest rating available. That said, the proponent has identified the need for this intersection to be upgraded and invested in concept designs (including a heritage report, land acquisition plan, concept intersection designs, signals warrant assessment and an indicative cost schedule) to further discussions with the RMS and provided a VPA offer which could contribute toward this work. This information has identified the need for land acquisition to accommodate the intersection design, which will impact on properties adjacent to the intersection and required right turn bay. The design also identified the need to restrict the Parsonage Road and Old Northern Road intersection to left in / left out, as the right turn bay for Francis Street will extend past Parsonage Road.

RMS are responsible for Old Northern Road and will be responsible for undertaking the intersection upgrade. Council and the RMS each require that 3.5m footpaths be provided on both sides of Old Northern Road for pedestrian safety reasons. Given the high pedestrian activity around this location it is preferable to maintain the 3.5m width footpath standard. The proponent's Heritage Report and the NSW Heritage Council support the implementation of the option which incorporates 3.5m footpaths on both sides of Old Northern Road and confines most land acquisition to the western side of the road. This design option is shown below:

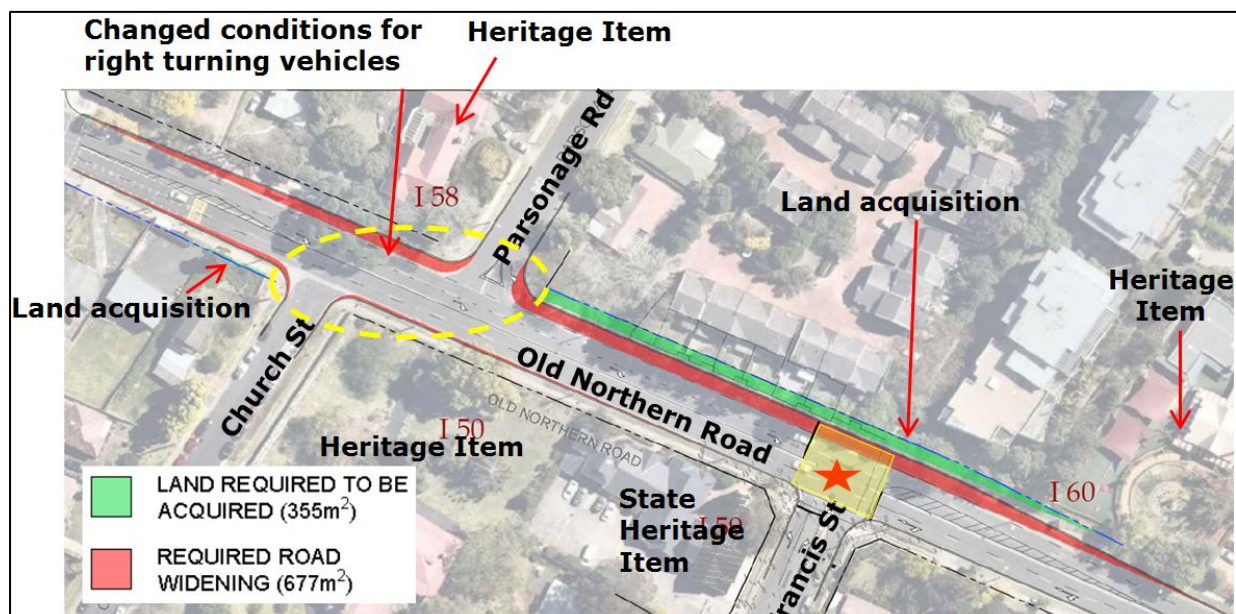


Figure 7
Traffic signals 'Option 1A'

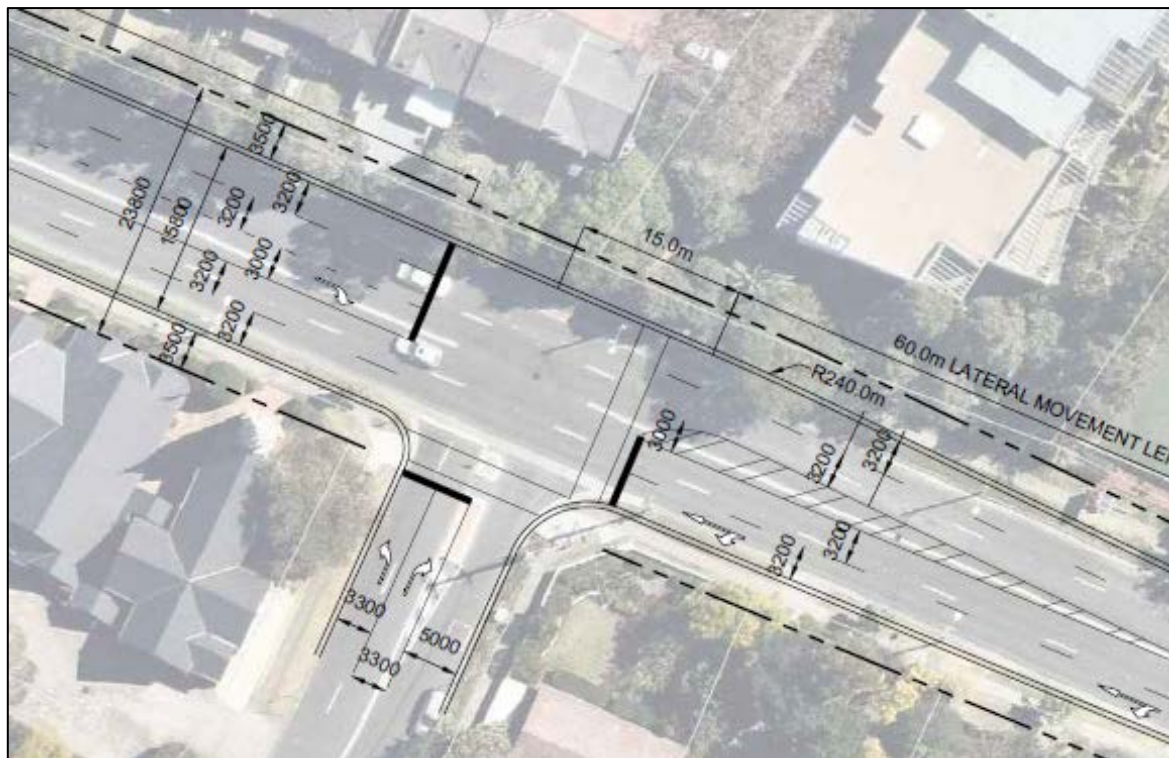


Figure 8
Concept intersection design

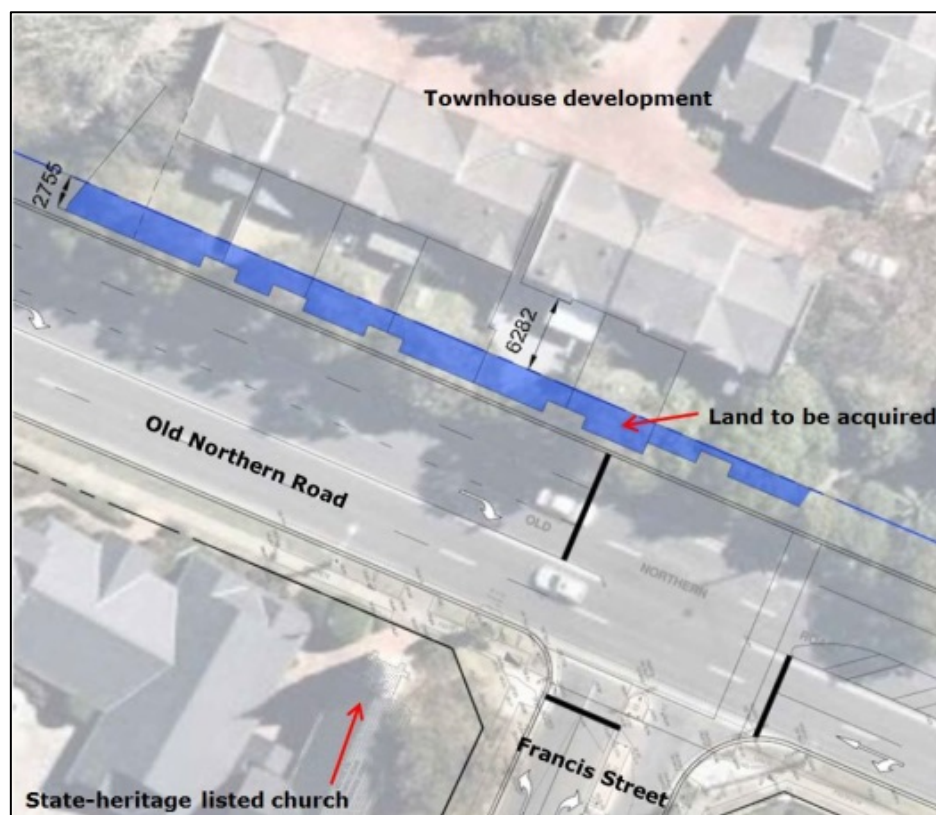


Figure 9
Land acquisition – townhouses

*Note: the above plans and land acquisition requirements are indicative only and may change depending on RMS final requirements for the road design.

It must be noted that whilst this option reduces the impact of the new traffic signals on the State-listed heritage item by shifting the required road widening away from the building, this option does have significant implications for numerous property owners on the western side of Old Northern Road (most notably the townhouses located at 2 Parsonage Road, the dwellings at 212 Old Northern Road and the apartment building at 220 – 222 Old Northern Road, Castle Hill).

In relation to the townhouses located adjacent to the Francis Street / Old Northern Road intersection, it is estimated that an approximate depth of 2.7 metres of land along the Old Northern Road frontage will be required for acquisition. This will reduce the townhouse courtyards to a depth of approximately 6.3 metres. This option is also likely to require the removal of a large Moreton Bay Fig tree located on the nature strip between Old Northern Road and the footpath outside the heritage-listed 'The Old Parsonage'.

The RMS has incorrectly assumed that the applicant has offered to undertake the necessary works associated with signalling the Old Northern Road / Francis Street intersection. The applicant does not have the ability to acquire land or deliver works located away from their site. The VPA offer is for the through site link and monetary contribution only. Council have identified that the intersection is an one of the potential items that this contribution could be spent on. Given that RMS are responsible for Old Northern Road, they would need to discuss the allocation of funds from the VPA with Council.

The RMS agrees that traffic signals (or interim treatment) at this intersection are required. However, it is important to note that a key factor in the traffic issues in Castle Hill is vehicles utilising the regional road network and travelling through the Centre to access locations beyond. The RMS plays a key role in the management of the regional road network and it is essential that they undertake the necessary traffic analysis and assessment that is needed as soon as possible to allow for the growth anticipated under the Castle Hill Station Structure Plan to occur.

Council commissioned the Castle Hill South Traffic Study to assess the implications of potential growth within the locality. The study examines existing road network conditions (including peak hour traffic volumes and the operation of major approach roads and critical intersections) and considers the potential impacts of 3,300 additional dwellings in the precinct. It also identifies road improvements in Castle Hill that are needed to address the projected growth. The Study made the following recommendations for traffic works:

- Widening of Crane Road between Terminus Street and Orange Grove to achieve a four lane carriageway;
- Provision of additional capacity at the intersections of Old Northern Road with Cecil Avenue and the intersection of Terminus Street with Crane Road;
- Installation of traffic signals at the junction of Old Northern Road with Francis Street together with restriction of traffic movement in Parsonage Road to left turn in and out only at Old Northern Road;
- Provision of a roundabout at the intersection of Crane Road with Orange Grove; and
- Consideration of the realignment of Brisbane Road with McMullen Avenue.

This information was provided to RMS for their review in December 2017. Council received a response in April 2018 requesting further information and triggering the need for a meeting between RMS, the proponent and Council. The meeting did not resolve the outstanding issues from the RMS and a further letter was received from them in July 2018 indicating that they do not support the proposal and request a traffic and transport study to be undertaken by Council for the whole Castle Hill Precinct.

Council and the proponent have provided sufficient information for RMS to consider the implications of the proposal and potential future growth in the Castle Hill 'south' locality to determine how they will manage the regional and road network to accommodate the anticipated growth. The RMS appear to be unwilling to take responsibility for this work and it is falling to Council and proponents.

The Department of Planning and Environment has seen fit to progress other station precincts to rezoning without the cumulative, precinct level traffic and transport studies that have been requested by RMS for this proposal. By contrast, the Showground Precinct has only been supported by a very high level Transport Plan prepared by TfNSW, which does not include any traffic analysis or long term road network responses to the cumulative increases in development uplift. It does not include timing, funding mechanisms or trigger points for the infrastructure items identified. The expectation from RMS that an individual proponent or Council should be responsible for detailed traffic and infrastructure planning work when the Department of Planning and Environment have not been required to undertake this for their precincts is unreasonable.

(b) Transport for NSW

TfNSW have provided feedback on the proposal and on issues related to broader traffic planning and infrastructure requirements to support future growth in Castle Hill. They recommend that Council should consider prioritising the preparation of a potential precinct rezoning and infrastructure plan prior to any further consideration of site-specific planning proposals within the Castle Hill Precinct, which would also identify funding measures and include cost estimates to undertake any required infrastructure works.

Date	Summary of Transport for NSW's Advice
6 October 2017	TfNSW advise that the proposed public right-of-way easement through the site would likely result in new pedestrian desire lines and may require additional pedestrian infrastructure improvements. They suggest that further consideration be given to pedestrian infrastructure improvements, bus shelter improvements, providing a breakdown of how the VPA contribution will be spent, trip generation rates and car parking provision. TfNSW also suggest precinct planning for Castle Hill be undertaken, including an infrastructure plan prior to any other individual planning proposals being considered.
30 April 2018	<p>TfNSW have reviewed the Castle Hill South Traffic Study. They note that regional road capacity issues, including the worsening Level of Service on certain sections of roads and intersections, have been identified in the study.</p> <p>TfNSW has developed a mesoscopic modelling tool for the Sydney Metro Northwest Corridor that covers the Castle Hill CDB and the planning proposal area that Council may use to assess cumulative traffic and transport impacts associated with uplift in the precinct.</p> <p>TfNSW also make comments on the proposed signalisation of Old Northern Road / Francis Street, indicating that the works should be provided as works in kind, adjacent properties will be impacted by land acquisition and that if the intersection is not to be delivered, the monetary contributions should still be provided and allocated toward other local traffic infrastructure.</p>

Table 4

Timeline of correspondence from Transport for NSW

Council Comment:

The comments provided by TfNSW are acknowledged, however the response to their concerns regarding the need for precinct wide cumulative traffic and transport studies is the same as that to RMS. Council agrees that the broader traffic analysis for the Castle Hill Precinct should be completed as soon as possible, but it is not reasonable that decisions on planning proposals be deferred when the traffic analysis work should have been completed by State agencies.

The subject planning proposal is offering a significant monetary contribution via a Voluntary Planning Agreement, plus the granting and embellishment of a public right of way through-site link from Cecil Avenue to Roger Avenue. The proposed monetary contribution would be available for allocation towards the provision of active open space facilities, upgrades to traffic and infrastructure and facilities and services that will be required to service the anticipated growth within the Castle Hill. The VPA is between Council and the applicant. The VPA contribution will be made to Council and Council will determine what infrastructure the contribution will fund. The recommendation by TfNSW that funds should contribute towards upgraded pedestrian infrastructure and bus shelter improvements will be considered once the precinct-wide infrastructure needs have been reviewed.

The peak hourly trip generations stipulated in the RTA's *Guide to Traffic Generating Developments Issue 2.2 October 2002* were adopted to estimate the likely trip generation of the proposed development. The trip generation of the proposed development is illustrated in Table 5.

	No. of Units	AM Peak		PM Peak	
		Arrive	Depart	Arrive	Depart
Residential	460	39	90	54	29
Office	8,000m ² GFA	115	13	24	72
Retail	810m ² GFA*	23	6	23	35
Total		177	109	101	136

*Gross leaseable floor area = 80% gross floor area

Table 5
Trip Generation of Proposed Development
(Source: TDG, July 2017, Parking and Traffic Study, Table 4)

TfNSW concerns about the mix of retail and commercial floor space and potential trip generation are not able to be resolved at the planning proposal stage. The mix of retail and commercial floor space may change at the Development Application stage, as it could in any B4 Mixed Use zone. The estimated trip generation is sufficient to allow assessment of the planning proposal. The car parking proposed for the residential component is consistent with the agreed methodology between the Department of Planning and Council. The suggestions from TfNSW that reduced car parking rates should be provided are inconsistent with Councils agreement with Government.

TfNSW have provided Council with a copy of the mesoscopic model, however this model only provides the base case scenario, not the underlying assumptions or development take up scenarios or other data that would allow Council to use the model effectively.

With respect to the intersection of Francis Street and Old Northern Road, it is not appropriate for the applicant to provide this intersection as works in kind. It is not possible for them to acquire land and deliver the intersection some distance from the subject site. The impacts on adjacent properties are discussed in response to the submission from RMS.

(c) Heritage Council of NSW

The Heritage Council of NSW provided comments on the impacts of the development on the heritage items in the vicinity of the site and also on the proposed traffic signals at the intersection of Old Northern Road and Francis Street. The location of heritage items in the vicinity of the proposal is identified in Figure 10.

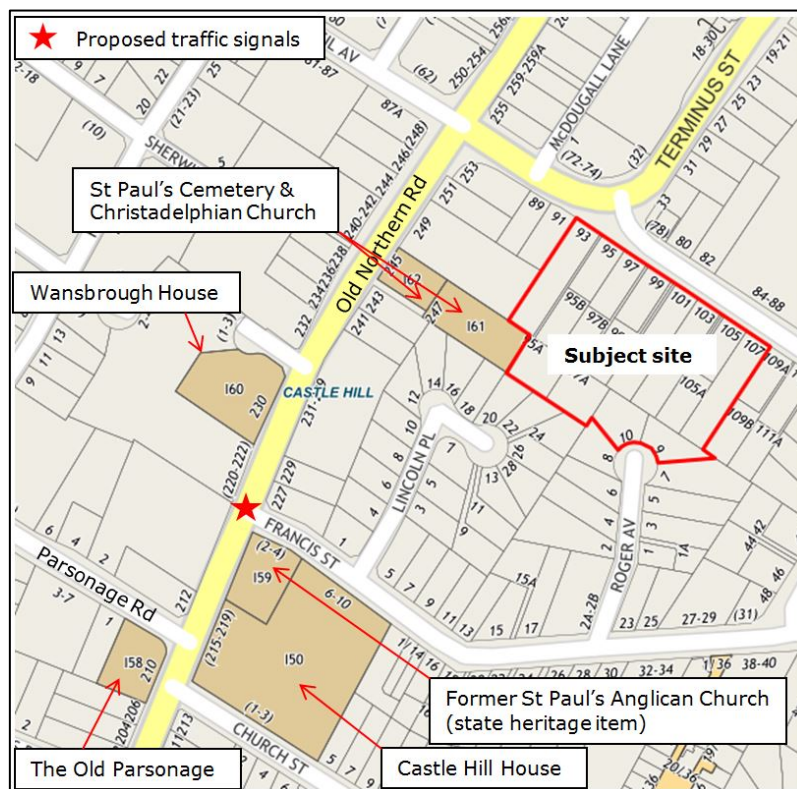


Figure 10

Heritage items in vicinity of subject site and proposed traffic signals

i. Heritage Items in the Vicinity of the Subject Site:

The subject site adjoins St Paul's Cemetery and is in the vicinity of the Christadelphian Church (at Nos.245 and 247 Old Northern Road, Castle Hill), which are local heritage items listed in LEP 2012. In this regard, the Heritage Council recommends the preservation of the existing relationship and sight lines between the St Paul's Anglican Church and the cemetery and consideration be given to any significant historic archaeology or relics that may be uncovered by future excavation or ground disturbance on the site.

Comment:

The potential impact of the proposal on the heritage items has been considered in the assessment of the planning proposal. The draft development controls will ensure that future development is sympathetic to the adjoining heritage items and their setting, and will soften the interface between the heritage items and the new development. The proposal will not impact on sight lines between the St Paul's Anglican Church and the cemetery. There are limited opportunities for interpretation of the linkages between the church and cemetery as part of the subject planning proposal, however it could be considered when broader precinct planning for the remainder of Castle Hill is undertaken. Should the planning proposal be supported, heritage impacts and the potential for archaeological relics will be assessed as part of a future development application.

ii. *Heritage Items in the Vicinity of the Old Northern Road / Francis Street Intersection:*
A number of heritage items are located in the vicinity of this intersection, including:

- Former St Paul's Anglican Church at 221 – 225 Old Northern Road, Castle Hill;
- Castle Hill House at 6 – 10 Francis Street, Castle Hill;
- Wansbrough House at 230 Old Northern Road, Castle Hill; and
- The Old Parsonage at 210 Old Northern Road, Castle Hill.

The abovementioned heritage items are identified as having local significance in The Hills LEP 2012, with the exception of the Former St Paul's Anglican Church which is listed on the State Heritage Register. A Heritage Impact Statement was prepared for the proponent in April 2018 to review the impacts of the proposed signalisation and intersection upgrade. The Heritage Statement presented a number of design options for the signalisation of the intersection.

The Heritage Council require that any required intersection works do not detract from the significance of the adjacent state heritage listed former church. They support one of the intersection upgrade design options as it is unlikely to impact on the state listed item. They also advise that the other options identified in the Heritage Impact Statement are likely to have adverse impacts on the significance of the State-listed item and are unlikely to be supported.

Further, they advise that any works within the curtilage of the State-listed heritage item will require approval from the Heritage Council of NSW under the *Heritage Act 1977*. Consideration should be given to the potential for any significant historic archaeological remains or relics that may be uncovered by future excavation or ground disturbance near the heritage items.

Comment:

The proponent's Heritage Report and the NSW Heritage Council support the implementation of the option which incorporates 3.5m footpaths on both sides of Old Northern Road and confines most land acquisition to the western side of the road. The requirements for approval for works in the heritage curtilage are noted.

3.2 Public Submission Summary

Submissions were received on behalf of twenty-four (24) property owners. Some submissions were received prior to the public exhibition period. One submission raised no objection to the planning proposal. The following key issues were raised in the submissions:

- (a) Strategic Justification and Precinct Planning
- (b) Traffic Report
- (c) Traffic Congestion
- (d) Car Parking
- (e) Pedestrian Movements in the Area
- (f) Scale of Development, Density and Yield
- (g) Building Heights
- (h) Loss of Privacy
- (i) Overshadowing
- (j) Compliance with the Apartment Design Guide
- (k) Capacity of Services and Stormwater Management

The key issues raised are summarised and addressed below.

a) *Strategic Justification and Orderly Development of the Castle Hill Precinct*

Submission authors raised a number of concerns about the strategic justification of the planning proposal and that the planning proposal being undertaken prior to precinct planning. Submissions stated that the proposal is inconsistent with both the State Government's North West Rail Link Corridor Strategy and Council's Hills Corridor Strategy. Submissions also raise concerns that the proposal ignores the previous Council report which stated that a B4 Mixed Use zone was inappropriate for this location. Submission authors are concerned that the supply of commercial floor space on this site is inappropriate, given the site is outside of the commercial core of Castle Hill.

Comment:

The site has been identified in both the State Government's North West Rail Link Corridor Strategy (Castle Hill Structure Plan) and the Hills Corridor Strategy for increased development opportunities.

The Castle Hill Structure Plan anticipated significant growth in Castle Hill, with approximately 4,400 additional dwellings and 9,500 additional jobs forecast for the centre between 2012 and 2036. The Structure Plan focussed high density residential development (7 – 20 storeys) in a 'ring' around the Castle Hill commercial centre / CBD. Medium density residential development (3 – 6 storeys) was proposed for the residential areas on the periphery of the core (including the subject site) that were within walking distance of the station.

The Castle Hill Station Structure Plan identifies the site as being suitable for 'medium density residential' (3 – 6 storey apartment buildings). The North West Rail Link Corridor Strategy identifies an assumed floor space ratio for future buildings for residential apartments of three (3) to six (6) storeys in height as being between 1:1 and 2:1. Based on these floor space ratio assumptions and the net developable area of the land, the site could deliver between 176 and 352 dwellings. This number of units and density would provide an outcome consistent with the North West Rail Link Corridor Strategy.

The planning proposal is substantially different from what the site is identified for in the Structure Plan. The development concept for the site includes maximum height of 18 storeys, with a yield of 460 units.

The Hills Corridor Strategy identifies opportunity for 2,491 additional dwellings and 3,650 additional jobs within the Castle Hill Precinct by 2036. Part of the subject site (approximately 10,000m²) falls within the identified Castle Hill Precinct of the Hills Corridor Strategy and is flagged as being suitable for employment generating uses with a floor space ratio of 1.5:1. If this Employment Floor Space Ratio was applied to this part of the site it could deliver approximately 15,000m² of employment generating floor space, providing approximately 395 jobs. No residential uplift is identified for the site under the Strategy.

The Hills Corridor Strategy was adopted by Council on 24 November 2015 to build upon the platform established by the NSW Government North West Rail Link Corridor Strategy and articulate redevelopment opportunities arising from the Sydney Metro Northwest around each of the seven (7) stations that are within, or close to, the Shire. It is underpinned by guiding principles such as a hierarchy of zones that see the greatest densities closer to transport or centres, while maintaining lower density housing options in more peripheral locations, providing a diversity of housing choice with a focus on family living and providing

job opportunities suited to Hills residents. These principles reflect the long held strategic direction of Council that is embedded in Council's Local Strategy and LEP 2012.

The Strategy identifies Castle Hill as a Major Centre and seeks to reinforce it as a vibrant and active centre comprising of offices, retail, community facilities, recreation, cultural, education and increased housing densities within walking distance of the station. The delivery of employment floor space identified in the Hills Corridor Strategy is critical to the success of Castle Hill as a strategic centre, to facilitate jobs delivery to support projected residential growth.

It is acknowledged that the subject planning proposal would facilitate a development outcome and yield that exceeds what has been envisaged for the site under both Council and the State Government's strategic planning for the Castle Hill precinct. Table 6 provides an overview of the outcomes anticipated for the site by the State Government and Council.

	North West Rail Link Corridor Strategy	Hills Corridor Strategy	Subject Proposal
Dwelling Yield	3 – 6 storey apartment buildings Approx. 176 – 352 dwellings	No additional residential dwellings.	3 - 18 storeys 460 dwellings
Employment Floor Space Ratio / Yield	Not proposed.	Employment FSR: 1.5:1 for part of the subject site Approx. 15,000m ² of employment generating floor space. Approx. 395 jobs	8,025m ² commercial floor space Approx. 211 jobs

Table 6
Comparison of Yields for Subject Site

The southern part of Castle Hill, including the subject site has not undergone precinct planning at this time. Precinct planning would consider the locality in a holistic way and is the preferred method for progressing the station precinct uplift identified by the State government. However, the planning framework allows land owners to lodge planning proposals in advance of precinct planning and Council is obligated to consider these proposals. As the site displays desirable attributes for increased density, in that it is a large site capable of being master planned to take advantage of efficiencies in common open space and access, the proposal has progressed to this point. Further, the site does not isolate any adjacent properties or prevent them from lodging planning proposals, nor does it prevent precinct planning from being undertaken.

The planning proposal includes 8,025m² of commercial floor space, which would provide approximately 211 jobs. Given there is somewhat of a disconnect from the core of the centre by the actual and perceived barrier created by the ring road, the 15,000m² of commercial floor space is not an ideal outcome. The proposed mixed use development with some commercial floor space as well as residential development blends the periphery of the centre with the nearby residential and allows for strategic objectives relating to jobs and housing delivery to be achieved. The use of the B4 Mixed Use Zone across the entire site expands the key uses in centre of Castle Hill to the periphery.

b) Traffic Report

Many submissions queried the methodology and conclusions of the traffic report. There were concerns that the impact of the proposal has been underestimated, the traffic report does not account for street parking or cumulative impacts of other development. Some submissions stated that environmental capacities were already being exceeded and that peak hour assumptions appear to be extremely conservative, do not capture the school or church peak periods and the number of existing road lanes in the current road network are incorrect. There is concerns that the statistical examples and sample periods used to calculate traffic generation are out-dated and do not represent the current situation, let alone beyond that with additional proposed yields. Submission authors raise concerns that the traffic report also does not account for the cumulative impacts of the proposed signalised intersection upgrade at Francis Street and Old Northern Road and other critical intersections within the network were not considered as part of the study area.

Comment:

The comments in this section relate to the traffic report placed on public exhibition. Since the conclusion of the exhibition period further traffic studies and work has been undertaken in response to submissions from the public and Roads and Maritime Services, such as the Castle Hill South Traffic Study.

The Parking and Traffic Study prepared by TDG in association with Gennaoui Consulting dated July 2017 contains traffic movement numbers based on the '*Guide to Traffic Generating Developments Issue 2.2 (October 2002)*' which is a widely used standard for estimating traffic generation.

The report classifies roads in the vicinity in terms of the number of lanes (including parking lanes), presence of clearways and whether the road is divided. There is some confusion regarding these classifications, where the number of lanes stated could be interpreted as more than what is existing, as the parking lanes are included in the number of lanes, not in addition. The classifications are used to determine the level of service of particular roads based on established thresholds for road types. The differences in the classification of Francis Street, Roger Avenue, Orange Grove does not substantially change the outcomes of traffic report. If road were reclassified to identify travel lanes only the existing and future levels of service do not change.

Many of the issues raised in submissions related to the traffic report are addressed within the Castle Hill South Traffic Study. The study takes into account what is needed to support the redevelopment of the Castle Hill 'south' locality and identifies a number of traffic infrastructure upgrades to support development. These are listed above in Section 3.1(a) of this report.

c) Traffic Congestion

Submissions raised concerns with traffic congestion in Castle Hill generally and the potential for increased congestion as a result of the increased traffic from the proposal. Comments indicated that traffic congestion is an existing problem and that congestion will worsen as growth continues. Submissions also identified the intersection of Francis Street and Old Northern Road, Francis Street, Orange Grove, Cecil Avenue and Roger Avenue as roads where there are existing congestion issues or that issues will be created if the proposal proceeds.

Comment:

It is acknowledged that there is traffic congestion in and around Castle Hill. This is part due to Castle Hill being a strategic centre and key destination for the region, as well as the key regional roads that pass through the centre bringing significant traffic. There is significant growth envisioned in Castle Hill, largely as a result of the rail and upgrades to key intersections and roads will be required to facilitate this growth. There will be some shift in the preferred method of travel from private vehicles to public transport when the rail opens. However, TfNSW has not released their anticipated take up of the rail over time or details regarding how other transport options will be impacted by the rail.

With respect to the proposal, there are a number of traffic measures intended to support the proposal, including the provision of a roundabout at Roger Avenue and Francis Street, widening of Roger Avenue as well as the potential traffic signals at Francis Street / Old Northern Road intersection. A detailed summary of issues raised in submissions with respect to traffic congestion in the immediate vicinity of the site and comments regarding these issues are provided in Attachment 1.

(d) Car Parking

Numerous submissions raised concern regarding the quantity of parking to be provided on-site and impacts on the availability of on-street car parking for existing residents and their visitors. Residents are also concerned that the pressures of on-street parking will reduce the flow of through-traffic on adjoining streets some of which currently cannot accommodate two vehicles passing simultaneously, which will worsen sight lines on dangerous bends on narrow roads that were not designed to withstand significant traffic volumes. The provision of a roundabout at the intersection of Lincoln Place and Francis Street was suggested as a way of improving safety for vehicles exiting Lincoln Place. Some submissions suggested parking restrictions to improve safety while others noted that restrictions were likely to worsen pressure on existing parking availability.

Comment:

Parking will be required to be provided in accordance with LEP 2012 Clause 7.12 *'Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor'* which is considered appropriate for a site that is within walking distance of bus and rail transport options. The parking provisions have been agreed with the State Government for land within the Sydney Metro Northwest corridor. The need for some parking restrictions has been identified in the Traffic and Parking Study which will be considered at the Development Application stage and also by the Local Traffic Committee if required.

A roundabout at the intersection of Francis Street and Lincoln Place is not proposed as part of the subject application. The need for such traffic infrastructure may be considered as part of future precinct planning for the remainder of the Castle Hill 'south' area or as part of a traffic management plans RMS may undertake when considering the signalisation of Francis Street / Old Northern Road.

(e) Pedestrian Movements in the Area

Concerns were raised that the development will result in increased pedestrian traffic, with associated noise, safety and security impacts for surrounding property owners. There was also concern about the safety of pedestrian movements at the intersection of Cecil Avenue and Terminus Street due to the lack of traffic lights in this location. In addition, a local church is concerned that there will be a need for a night patrol security service and a front fence on their site to deter trespassers.

Some submissions acknowledged that the proposed pedestrian through-site link may be a positive outcome, but considered that the traffic issues associated with the development would far outweigh the benefits provided by the walkway.

Comment:

Existing traffic signals at the intersection of Old Northern Road and Terminus Street (approximately 125m from the subject site) will allow pedestrians to safely walk to the Castle Hill centre. The proposed through-site link will encourage walking by reducing the distance for nearby residents to access the Castle Hill centre and the rail station and is considered to be a positive community benefit. Crime prevention through environmental design (CPTED) strategies would be considered at the Development Application stage to address any safety issues with the development and the through-site link. The cost of front fencing and the need for security patrols on a neighbouring site is not relevant to the consideration of a planning proposal and the landowner may wish to negotiate this with the developer.

(f) *Scale of Development, Density and Yield*

There was concern raised regarding general overdevelopment in the Shire, as well as specific concerns relating to the height, bulk, density and yield of the proposal and the appropriateness of its overall scale in a location that adjoins low-density residential properties. It was requested that Council consider whether the dominant scale and location of the development is suitable given the character of the surrounding area and that the age of some nearby homes makes redevelopment in the short-term less likely.

Comment:

Other sections in this report have addressed concerns relating to building height and impacts associated with the built form. The site is located within walking distance of the future Castle Hill rail station and there is strategic merit for increased density. A post-exhibition amendment is recommended to cap the dwelling yield on the site to 460 units and provisions in the DCP will shape the final built form outcome.

The scale of the development would be generally consistent with the scale of development that is envisaged for the Castle Hill strategic centre. On the opposite side of Terminus Street, building heights of approximately 45 metres (approximately 13 storeys) are anticipated. As redevelopment occurs around Castle Hill, tall buildings will be more common and the proposed development on the subject site will form part of the Castle Hill skyline.

(g) *Building Heights*

There was significant concern about the visual dominance and appropriateness of the built form and proposed building heights and requests for the building heights to be reduced. Residents are concerned about adverse impacts on the privacy, amenity and solar access of adjoining residential properties, and the lack of transition of heights to surrounding low-density residential properties that are zoned R3 Medium Density Residential and have a 9m height limit. The proposed removal of the height control is of concern to residents, as is the elevated topography of the site which will accentuate the height of any built form on the site. It was considered that retaining a building height for the site would give certainty to all stakeholders about the future built form, as there is no guarantee that future buildings on the site will be limited to the heights currently proposed.

Comment:

The proposal seeks to remove the maximum height of buildings control from the site, consistent with Councils approach in the Castle Hill North Precinct. Building heights in storeys are included in the Development Control Plan. It is considered that by using floor space ratio as the primary development standard in the LEP and including height in storeys

the DCP, there is more flexibility to articulate and guide the built form outcomes in response to concerns such as overshadowing and amenity. The taller built form will be concentrated towards the middle of the site and adjacent to Cecil Avenue. The plans for the site illustrate a potential development concept for the site and will require refinement prior to the lodgement of a development application to reflect post-exhibition amendments to the DCP.

It is acknowledged that the proposed buildings will be significantly higher than surrounding development and will not be in keeping with the existing character of the neighbourhood. Although precinct planning has not yet been undertaken for the remainder of Castle Hill, the proponent has the ability to lodge a planning proposal. On balance, it is considered that the draft DCP and post-exhibition amendments contain provisions to shape an appropriate built form outcome on the site. To minimise impacts on adjoining properties, the draft DCP requires building heights to transition over the site and respond to the topography of the site.

(h) Loss of Privacy

There are concerns that overlooking from balconies, windows and communal spaces in the proposed development will lead to a loss of privacy for adjoining residents and their backyards, which will negatively impact on their lifestyle and the enjoyment of their properties. Submission authors raised issues with noise and safety. There is also concern that the basement carpark will be located under the common open space area which, if elevated, could impact on the privacy of adjoining properties.

Comment:

The plans submitted in support of the planning proposal are conceptual only. A greater level of detail will be required as part of a future Development Application for the site. A post-exhibition amendment to the DCP will require that the proposed buildings, underground car parking structure and common open space areas follow the contour of the site to minimise the loss of privacy of adjoining private open space areas. Controls have been included to ensure light spill impacts are minimised. Controls relating to setbacks on the site have also been strengthened in response to resident concerns (see Attachment 2).

(i) Overshadowing

A number of submission authors raised concern that the future development will result in an unacceptable loss of solar access for adjoining properties. It is suggested that the loss of amenity from overshadowing is unreasonable and directly results from the unsatisfactory siting and massing of built form across the site. It was suggested that a smaller scale development would lessen these impacts and respond more appropriately to the site's topography and surrounding development.

There was also concern that the solar access diagrams are insufficient to demonstrate compliance with the Gateway's minimum solar access requirements, and that overshadowing impacts could be exacerbated by fencing or screening. Residents are also concerned about the operation of existing and future solar electricity systems on adjoining properties. Submissions also questioned whether the solar access plans would be checked for their accuracy.

Comment:

The accuracy of the shadow diagrams was checked by Council prior to exhibition. The draft DCP requires that building elements above 4 storeys in height be set back to create distinct podium and tower built forms, which will assist with reducing overshadowing. The draft DCP also requires that setbacks be increased where necessary to ensure the required solar access is provided and that all private open spaces within neighbouring low density

residential properties are to continue to receive a minimum of 4 hours of sunlight access between 9am and 3pm on 21 June, where this is currently the case.

(j) *Compliance with the Apartment Design Guide*

Some submissions raised concern with the proposed development's compliance with the Apartment Design Guide (particularly in relation to setbacks and building separation), with suggestions that greater setbacks are needed where there is a transition of zones.

Comment:

The plans and details are at a concept stage only. A full assessment of the proposal against the Apartment Design Guide will be undertaken at the Development Application stage if the planning proposal is supported. The following post-exhibition amendments are proposed to address concerns raised in submissions:

- A requirement that the ADG design criteria and provisions in The Hills DCP 2012 Part C Section 7 Residential Flat Building shall prevail where their standards exceed the setbacks specified in Section 2.4 of the draft DCP for this site; and
- The building setbacks diagram in Section 2.4 of the Draft DCP has been amended to increase side building setbacks along the boundary adjoining Nos.109A and 109B Cecil Avenue.

Future development on the site will be required taper down to follow the topography to minimise impacts on the amenity of adjoining properties. This requirement for an appropriate building height transition across the site is identified in Section 2.3 of the draft DCP.

(k) *Capacity of Services and Stormwater Management*

Concern was raised regarding the capacity of the existing stormwater and wastewater system to accommodate the proposed 460 dwellings and commercial uses associated with the subject planning proposal. There are suggestions that the site's topography is likely to have implications for the management of water runoff, particularly as the locality already experiences stormwater flooding and sewer capacity issues. Residents of Lincoln Place and Roger Avenue are particularly concerned about the existing capacity of easements and how the stormwater drainage network will be affected or is proposed to be upgraded in this area as a result of the new development.

There is concern that the development does not propose any additional upgrades to existing capacities, and that the need for further flood investigations, as earmarked in the Castle Hill Structure Plan to occur at the rezoning or development application stage, has not occurred as part of this proposal.

Comment:

The planning proposal was referred to Sydney Water who advised that network extensions or amplifications to the drinking water and wastewater system may be required to service the redevelopment of the site. The need for any such amplification will be assessed at the Section 73 (Sydney Water Act) application stage.

Future development on the site will need to comply with the stormwater management provisions in The Hills DCP Part B Section 5 – Residential Flat Buildings, which seek to control stormwater and ensure that residential flat buildings do not increase downstream drainage flows or adversely impact on adjoining and downstream properties. The need for stormwater easements to address any flooding concerns will need to be addressed as part of a future development application.

4. POST EXHIBITION AMENDMENTS

(a) Local Environmental Plan:

There are two post exhibition amendments proposed to ensure the planning proposal delivers the housing diversity desired in the Sydney Metro Northwest Corridor and limit the number of dwellings to 460, as was originally supported by Council.

An amendment to the Floor Space Ratio Map to identify the site as 'Area A' is needed to link the site to the housing diversity provision in Clause 7.12 of LEP 2012. The mechanisms to deliver the housing diversity outcomes agreed with Government have evolved since the Gateway determination was issued for this proposal and therefore this minor amendment to the map is needed to align the planning proposal with the mechanisms now in LEP 2012.

The planning proposal development concept indicates that the site will deliver 460 dwellings and Council reflected this yield in the resolution of 12 April 2016. When a Floor Space Ratio of 3.5:1 is applied the site, the potential yield is approximately 536 dwellings (once minimum commercial floor space is deducted from the floor area). This yield exceeds the maximum 460 dwellings for the site that was supported by Council. It is proposed to introduce the following local provision to limit future development on the site to 460 dwellings (subject to legal drafting):

"Clause X Maximum number of dwellings at 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill

- (1) This clause applies to land at 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill.*
- (2) Development consent must not be granted to development that results in more than 460 dwellings on the land to which this clause applies."*

The requested floor space ratio of 3.5:1 will remain as the maximum achievable floor area for the site. The retention of this floor space ratio allows the developer flexibility to achieve larger apartments and respond to market conditions.

(b) Development Control Plan:

Post exhibition changes are proposed to The Draft Hills Development Control Plan 2012 – Part D Section 21 – 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill to further refine the development outcome, respond to the local context and submissions received. Recommended changes include:

- Strengthen controls with respect the maximum number of storeys of the development;
- Increase and clarify setbacks of the development;
- Include new controls regarding privacy for adjoining properties;
- Introduce controls to limit heights of retaining walls and fencing above natural ground level to minimise visual impacts and overshadowing on adjoining properties;
- Clarify that mature landscaping be provided along all property boundaries that adjoin residential dwellings;
- Include a new control regarding light spill into adjoining properties;
- Require measures that prevent vehicles associated with the commercial businesses, visitors to the apartments and loading / delivery trucks from accessing the site via Roger Avenue.
- Clarify that carpark ventilation points must not protrude more than 1.2m above ground and be located on Cecil Avenue to avoid impacts on adjoining dwellings; and

- Introduce new requirements to widen Roger Avenue and the inclusion of road profiles for Roger Avenue.

Minor typographical and formatting changes have also been made. The recommended post exhibition changes to the DCP are identified by yellow highlight in Attachment 2.

(c) Voluntary Planning Agreement:

The draft Voluntary Planning Agreement has been subject to a legal review, in accordance with the Council resolution of 8 August 2017. As a consequence, some minor post-exhibition amendments have been made. The changes relate to:

- Minor typographical changes and the removal of duplication within the text for the purposes of clarity;
- Updated references to clauses within the Environmental Planning and Assessment Act 1979 as a consequence of amendments to the Act that occurred early in 2018;
- Remove references to the Provision of Security, as no Security is required under the Agreement;
- The removal of references to a future development consent, as this is a separate process;
- The insertion of details relating to the instrument change and proposed development; and
- The timing of payment reference be altered to any occupation certificate on the site, not the final occupation certificate.

The applicant has been given an opportunity to agree to the post-exhibition changes and provided further changes at the close of business Friday 14th September 2018. The further changes proposed by the applicant created ambiguity in the draft VPA as to the operation of the VPA in the event that the site does not receive development consent for 460 units and commercial floor space. The process of obtaining development consent is separate from the planning proposal and the outcome of the development assessment process should not be pre-determined by the draft VPA.

The attached draft VPA has been set up such that the contributions are payable based on how many units are approved on the site (refer to Schedule 1 in the draft VPA). If less than 460 units are achieved, the applicant only pays contributions for those units.

It is considered that the proposed post-exhibition amendments (identified above) do not change the intent of the exhibited Agreement. A copy of the final draft Voluntary Planning Agreement is provided in Attachment 3.

6. OPTIONS

The following options are presented for Councils consideration.

Option 1

1. The planning proposal be forwarded to the Department of Planning and Environment (including post-exhibition amendments as outlined in this report) for finalisation, noting that Council does not have delegation to make the plan due to outstanding objections from the RMS and TfNSW to:
 - a. Rezone the site from part R3 Medium Density Residential and part R1 General Residential to B4 Mixed Use;
 - b. Remove the maximum building height applicable to the site;

- c. Apply a 'base' floor space ratio of 1:1, apply an 'incentivised' floor space ratio of 3.5:1 and identify the site as 'Area A' on the Floor Space Ratio Map to link the site to Clause 7.12 of LEP 2012.
 - d. Introduce a local provision to limit the number of dwellings on the site to 460 units.
2. Draft amendments to The Hills Development Control Plan 2012 Part D Section 21 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill, (Attachment 2 ECM No.182479928) be adopted and come into force following the notification of the planning proposal, with post-exhibition amendments as outlined in the report.
3. Council enter into the Voluntary Planning Agreement, as amended (Attachment 3 ECM No.183057044) and authorise Council's common seal to be affixed to the Voluntary Planning Agreement.
4. Council continue to work with Roads and Maritime Services and Transport for New South Wales to facilitate appropriate traffic and transport infrastructure in the Sydney Metro Northwest Corridor.

Comment:

There is adequate strategic justification for higher density development on the site and to progress the planning proposal to the Department of Planning and Environment for finalisation. The outstanding objection from RMS and TfNSW will need to be resolved by the Department of Planning and Environment before the planning proposal can be finalised.

Option 2

The planning proposal not proceed for the following reasons:

1. The proposal is inconsistent with the State Government North West Rail Link Corridor Strategy, as it provides substantially more residential development that the strategy envisages;
2. The proposal is inconsistent with the Hills Corridor Strategy as it does not provide the identified commercial floor space that the strategy envisages and provides a significant increase in residential yield;
3. The proposal is premature, as no precinct plan is prepared for land in the south of the Castle Hill centre;
4. The built form would result in a poor transition to low density development and the amenity impacts on adjacent properties are not acceptable; and
5. The proposal will generate additional traffic that cannot be accommodated by the road network.

Comment:

The public authority consultation and public exhibition of the planning proposal revealed significant concerns with the proposal in terms of the timing being prior to precinct planning, the built form and scale of the development and the ability of local and regional infrastructure to accommodate the proposal. In the absence of precinct and infrastructure planning to support a holistic approach to planning for Castle Hill 'south' the option to not proceed with the planning proposal is presented for Councils consideration.

CONCLUSION

There is adequate strategic justification for higher density development on the site and to progress the planning proposal to the Department of Planning and Environment for

finalisation. The site is strategically located close to the core of Castle Hill and it has been identified in both state and local strategies for increased development opportunities.

The issues raised in submissions are outlined in this report. These issues have been addressed by amendments to the site-specific draft DCP or further justification for the proposal. The draft VPA ensures that community services and infrastructure are available to support the additional population and that Council will have funds available to provide necessary infrastructure to support the proposal.

Council and the applicant have attempted to resolve the outstanding objections from RMS and TfNSW by undertaking additional studies and providing concept plans for the Francis Street / Old Northern Road intersection. The RMS and TfNSW maintain their view that a traffic and transport study for the Castle Hill Precinct should be prepared by Council. It is Council's view that this is the responsibility of the State government and State government agencies who first identified the precincts surrounding the stations for uplift and triggered the lodgement of individual planning proposals for high density.

The State government agencies appear unwilling to undertake regional transport planning necessary to support the growth in the Sydney Metro Northwest Corridor. They are instead delaying development proposals by attempting to pass these responsibilities to developers and Council. The planning proposals in the corridor are a result of strategies released by the State government and it is not appropriate for regional transport planning to support these strategies to be undertaken by Council or developers.

Given the foregoing and the VPA offer that provides capacity to respond (in part) to wider traffic management issues, the progression of the planning proposal to the Department of Planning and Environment for determination of unresolved issues is considered to be a reasonable approach.

IMPACTS

Financial

The applicant has offered to enter a VPA which secures the construction and dedication of a new through site pedestrian link at no cost to council, the landscaping of the link as well as a monetary contribution of approximately \$15.5 million towards local infrastructure items to be determined Council in the future. This could include local traffic and transport facilities as well as open space facilities.

The Hills Future Community Strategic Plan

The planning proposal is consistent with the outcomes and strategies of the Community Strategic Plan as it contributes to housing diversity and housing growth targets in a location that will have good access to public transport, services and employment.

RECOMMENDATION

1. The planning proposal be forwarded to the Department of Planning and Environment (including post-exhibition amendments as outlined in this report) for finalisation, noting that Council does not have delegation to make the plan due to outstanding objections from the RMS and TfNSW to:
 - a. Rezone the site from part R3 Medium Density Residential and part R1 General Residential to B4 Mixed Use;
 - b. Remove the maximum building height applicable to the site;

- c. Apply a 'base' floor space ratio of 1:1, apply an 'incentivised' floor space ratio of 3.5:1 and identify the site as 'Area A' on the Floor Space Ratio Map to link the site to Clause 7.12 of LEP 2012.; and
 - d. Introduce a local provision to limit the number of dwellings on the site to 460 units.
2. Draft amendments to The Hills Development Control Plan 2012 Part D Section 21 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill, (Attachment 2 ECM No.182479928) be adopted and come into force following the notification of the planning proposal, with post-exhibition amendments as outlined in the report.
3. Council enter into the Voluntary Planning Agreement, as amended (Attachment 3 ECM No.183057044) and authorise Council's common seal to be affixed to the Voluntary Planning Agreement.
4. Council continue to work with Roads and Maritime Services and Transport for New South Wales to facilitate appropriate traffic and transport infrastructure in the Sydney Metro Northwest Corridor.

ATTACHMENTS

1. Details of Submissions relating to Traffic (3 pages)
2. Draft The Hills Development Control Plan Part D Section 21 – 93- 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill (20 pages)
3. Draft Voluntary Planning Agreement (28 pages)

Details of Submissions relating to Traffic**1. *Intersection of Francis Street and Old Northern Road***

There are concerns that the installation of traffic lights at the intersection of Old Northern Road and Francis Street will not address congestion problems and will push traffic queues further back in the local road network and impact on access and egress from various local streets. The signalised intersection will also create dangerous driving conditions and increase the number of road accidents. There are concerns that the road widening required to deliver the traffic lights will impact on pedestrian pathways and nearby heritage items.

Comment:

The proposal to signalise the intersection of Francis Street and Old Northern Road was identified in the Parking and Traffic Study (July 2017). The signalisation of this intersection is required based on the existing traffic volumes experienced now to facilitate right turns out of Francis Street on to Old Northern Road.

While traffic queues may extend back past Lincoln Place while waiting for the lights to change, the ability to make a right turn out of Francis Street will be greatly improved. Gaps in the traffic as the lights change will allow right hand turns out of Lincoln Place on to Francis Street. The introduction of signals will improve the safety of motorists and pedestrians in this location through controlling traffic.

The intersection design requires land acquisition to be delivered. The applicant was requested to provide a heritage report to investigate the various options for the intersection design and their impact on the heritage items in the vicinity, in particular item I59, Former St Paul's Church. The only option that was acceptable from a heritage perspective is one where almost all the land acquisition is taken from the opposite side of Old Northern Road.

The impact on properties on the opposite side of Old Northern Road is significant, given that these are townhouses with smaller private open space areas and this is the part of the site needed to deliver the intersection.

2. *Francis Street and Orange Grove*

A number of submissions raised concern about the capacity of Francis Street and Orange Grove to safely accommodate the additional traffic generated by the subject proposal, given their narrow width and existing carparking problems (from residents, commuters and funeral service attendees), and the potential for existing traffic congestion and safety issues to be exacerbated. Key concerns relate to:

- **Francis Street:** Turning right out of Lincoln Place into Francis Street is already difficult and unsafe due to limited visibility and will become more challenging if traffic flows increase. The need for a roundabout in this location was raised. There is also a dangerous bend in Francis Street where cars park on both sides of the road, causing vehicles to sometimes cross the centre line.
- **Orange Grove:** This road is already congested with commuter carparking, making it difficult for residents to exit their driveways or for cars and buses to pass. Cars currently have to stop on the side of the road to allow vehicles to pass. There was also concern about the cumulative traffic impact of the subject planning proposal and another proposal nearby on Orange Grove.

Comment:

The Traffic and Parking Study concludes that the surrounding road network can accommodate the traffic generated by the proposed development. The Francis Street and Orange Grove carriageways currently operate at a level of service 'A' in the AM and PM peak periods. The level of service for these roads will remain at a LoS 'A' in the peak periods with the proposed development. It is also expected that the commencement of the rail service in 2019 will reduce traffic and on-street parking demand in the vicinity of the site. Planning Proposal 10/2018/PLP for land on Orange Grove, Francis Street and Roger Avenue was lodged in May 2017, but has not yet progressed to a Gateway Determination.

3. Cecil Avenue

A number of submissions raised safety concerns about the proposed location of the underground car park entrance on Cecil Avenue, as it will be opposite a school, child care centre and church. Other concerns associated with the Cecil Avenue carpark entry include:

- The width of the local road network will be unable to accommodate the increased traffic and on-street parking, as well as access and egress movements resulting from the car park entrance location;
- The current location does not facilitate safe access for traffic travelling west along Cecil Avenue and this will create pressure on Francis Street;
- The 24-hour access will erode the amenity of existing residences; and
- Vehicles will be required to travel a circuitous route to access the site.

Concern was also raised that traffic volumes will affect the safety of students attending the school on Cecil Avenue, as the main driveway access is located within the school zone. The Hills Adventist College requested that they be consulted regarding traffic management plans affecting Cecil Avenue.

Comment:

The plans accompanying the planning proposal are conceptual and would need to be refined prior to the lodgement of a Development Application to ensure compliance with the DCP and to ensure that safety requirements such as site distances are met. Any requirement for acoustic attenuation would also be considered at that time. The Traffic and Parking Study does acknowledge that in Cecil Avenue, on-street parking adjacent to the development may need to be restricted. The need for such restrictions would be a matter for consideration by the Local Traffic Committee and at the Development Application stage if the planning proposal is supported. The Traffic and Parking Study also advises that following the signalisation of the Old Northern Road / Francis Street intersection the surrounding road network would be able to accommodate the traffic generated by the proposed development. Vehicles will be able to access the site via Francis Street (which will be supported by the installation of traffic signals) or by Crane Road / Orange Grove Road.

The Hills Adventist College will have a further opportunity to provide input into traffic management on Cecil Avenue at the Development Application stage if the planning proposal is supported.

4. Roger Avenue

Concerns were raised about the proposed access to the residential carpark being located on Roger Avenue due to the narrow width of the road, impacts on the availability of on-street parking for existing residents, the proximity of the proposed driveway to existing properties, pedestrian safety, vehicle emissions and whether the Roger Avenue cul-de-sac has the capacity to safely accommodate projected traffic flows. Some residents requested that all access to the subject site occur via Cecil Avenue only, and noted that the initial Council Report in 2016 indicated that no vehicular access will be provided via Roger Avenue.

Commercial, retail and visitors should be prevented from using the Roger Avenue entrance as large trucks will compromise the structural integrity of surrounding low density residences.

Comment:

It is acknowledged that vehicle trips on Roger Avenue will significantly increase as a consequence of the subject planning proposal. The location of vehicular access points for the proposed development has changed during the course of the assessment of the planning proposal. The Council Report of 12 April 2016 did envisage that all traffic associated with the proposed development would occur via Cecil Avenue only, in accordance with the proponent's November 2015 Traffic Report. A later Traffic Report (dated July 2017) advised that commercial and visitor access to the site will be provided from Cecil Avenue, with a secondary access being provided onto Roger Avenue that is restricted to residents of the future development only.

The draft DCP requires that a roundabout be required at the intersection of Roger Avenue and Francis Street which will improve safety and flows for vehicles exiting Roger Avenue. Post-exhibition DCP amendments are also recommended to ensure that only residents of the development utilise the Roger Avenue driveway to the site, and to illustrate an interim and long-term road widening solution that will enable parking to be maintained on one side of Roger Avenue and a footpath to be provided for the safety of pedestrians.

The Hills Development Control Plan (DCP) 2012

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ATTACHMENT 2

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Part D Section 21

93-107 Cecil Avenue and 9-10 Roger Avenue, Castle Hill

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1. INTRODUCTION

This Section of the DCP has been prepared to guide future residential development on the site at 93-107 Cecil Avenue and 9-10 Roger Avenue, Castle Hill.

1.1 LAND TO WHICH THIS SECTION APPLIES

This Section of the DCP applies to the area outlined in red on land at 93-107 Cecil Avenue and 9-10 Roger Avenue as shown in Figure 1 – Land to which the DCP applies.



The Site

Figure 1: Land to which the DCP applies

The site is legally identified as the following:

Lot 22 DP 778595	Lot 1 DP 531559	Lot 21 DP 778595
Lot 1 DP 591676	Lot 27 DP 15399	Lot 6 DP 705913
Lot 2 DP 591676	Lot 2 DP 581293	Lot 4 DP 531559
Lot 20 DP 15399	Lot 4 DP 581293	Lot 5 DP 705913
Lot 6 DP 29141	Lot 1 DP 547897	Lot 1 DP 581293
Lot 5 DP 29141	Lot 2 DP 547897	Lot 3 DP 581293

1.2 SITE CONTEXT**Figure 2: Urban Context**

The site's primary frontage is to Cecil Avenue, a short distance south east of the intersection of Terminus Street and Old Northern Road in Castle Hill. The site's secondary frontage is to Roger Avenue to the south, which is a cul-de-sac running north-south and connecting to Francis Street.

The site is situated 500m to 700m to the south west of Castle Towers and the proposed Castle Hill Railway Station.

1.3 OBJECTIVES OF THIS SECTION OF THE DCP**The objectives of this Section of the DCP are:**

- i) To provide a clear vision and desired future character for the site.*
- ii) To encourage innovative and high quality architectural outcomes and public spaces that will enhance the built form environment of Castle Hill.*
- iii) To ensure buildings are sited, angled and designed to provide high levels of solar access to the subject site and surrounding residential development.*
- iv) To provide density, height, bulk, scale, textures and colours that enhance the streetscape and respect the surrounding topography and nearby development, with taller buildings located adjacent to Cecil Avenue, transitioning to lower heights to the outer edges of the site.*
- v) To provide excellent pedestrian connectivity and amenity within the site, and to and from the surrounding locality including a site through link from Cecil Avenue to Roger Avenue;*
- vi) To encourage a mix of uses on the site with the focus on residential development, whilst activating key frontages and thoroughfares through the site.*
- vii) To ensure development is sympathetic with, and does not impact upon the heritage significance of the adjoining heritage items.*
- viii) To ensure that the development incorporates the principles of Ecologically Sustainable Development (ESD).*
- ix) To ensure the development promotes the principles of Crime Prevention through Environmental Design (CPTED).*

1.4 RELATIONSHIP WITH OTHER PLANS AND POLICIES

In addition to the policies, guidelines and documents specified in Part A – Introduction, this Section is to be read in conjunction with other relevant Sections of the DCP, including:

- Part B Section 5 – Residential Flat Buildings
- Part B Section 6 – Business
- Part C Section 1 - Parking
- Part C Section 2 - Signage
- Part C Section 3 - Landscaping
- Part C Section 4 - Heritage
- Part C Section 5 - Telecommunication Facilities
- Part C Section 6 – Flood Control Lots

Appendix A - Waste Management Plan

Appendix B - Water Sensitive Urban Design

Public Domain Plan – Castle Hill Centre

Where any provision of this Section of the DCP is inconsistent with any provision of any other Section of the DCP, the provisions of this Section of the DCP shall prevail to the extent of that inconsistency.

2. DEVELOPMENT CONTROLS

The objectives and development controls for development of the site are set out in this Section of the DCP.

2.1 LAND USE

OBJECTIVES

- i) *An appropriate mix of uses is facilitated on the site including residential, commercial / retail and ancillary uses that will activate the site and support the convenience and lifestyle needs of residents and the local community.*
- ii) *Useable and accessible common open space is provided at ground level and on roof tops.*
- iii) *The site accommodates an appropriate residential density having regard to its proximity to the train station, desired unit sizes, traffic generation and provision of community facilities.*

DEVELOPMENT CONTROLS

- (a) Uses on the site are to be generally located in accordance with Figure 3. (Note: Figure 3 represents an illustrative built form and is not intended to control building heights).
- (b) Key thoroughfares (through-site pedestrian link and plazas illustrated in Figure 4), and the Cecil Avenue frontage are to be activated by commercial, retail and other non-residential uses located at the lower ground, ground floor and podium levels, with residential uses located in tower forms above.
- (c) At least 8025m² of GFA of retail / commercial uses is to be provided on the site.
- (d) A maximum of 460 residential apartments are to be provided on the site.

Note: Non-residential uses may include shops, medical centre, cafes or other uses permitted in the zone.

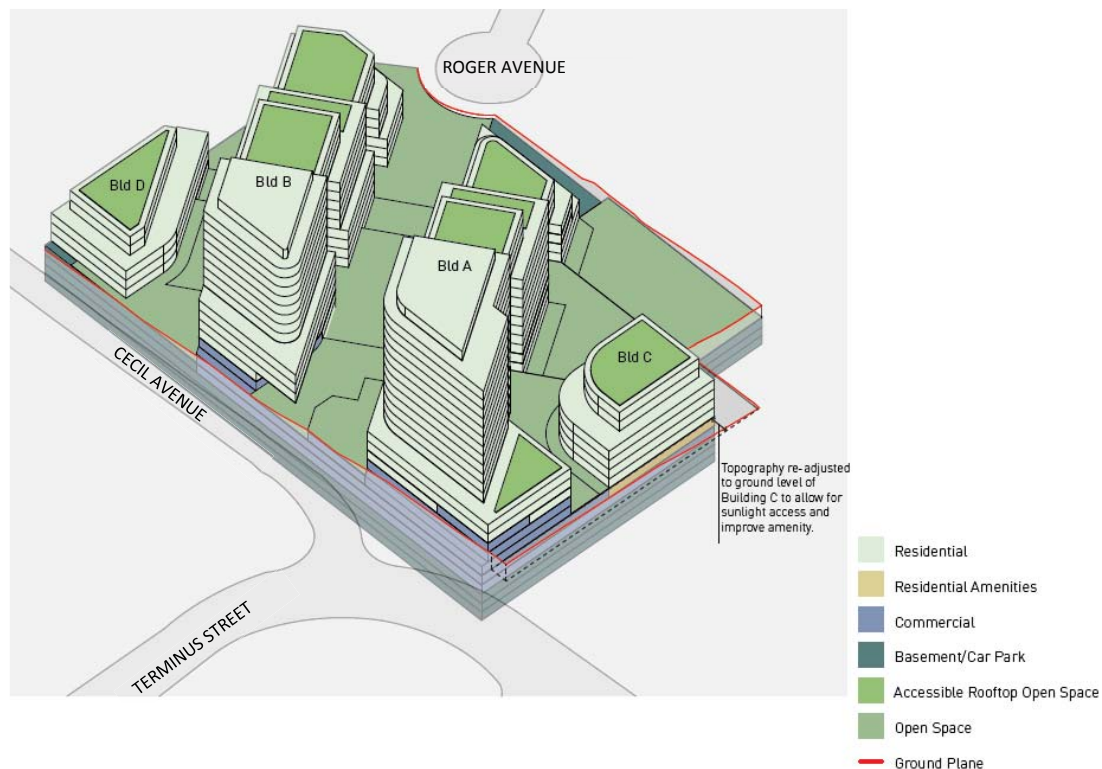


Figure 3: Land use distribution

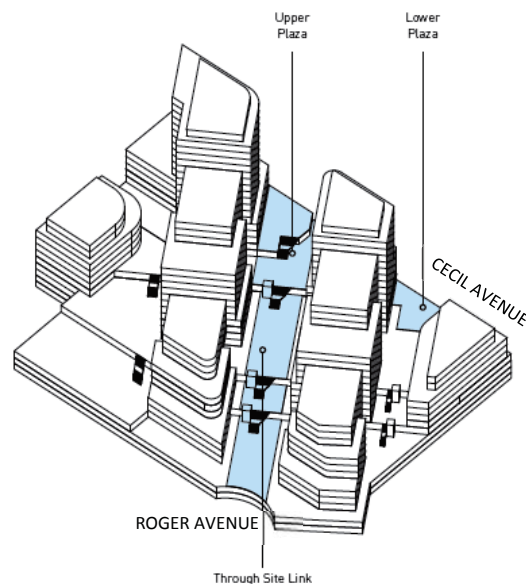


Figure 4: Publicly Accessible Areas requiring activation and surveillance

2.2 BUILT FORM AND DESIGN

OBJECTIVES

- i) *The site is a 'landmark' that provides a positive contribution and sensitive transition to the surrounding commercial and residential neighbourhood.*
- ii) *Building height, articulation and the use of a variety of materials and finishes ensures the bulk and massing of the development provides a high quality pedestrian environment and sets a high standard of design quality.*
- iii) *Development contributes to the activity, safety, amenity and quality of streets and the public domain, including the link from Cecil Avenue to Roger Avenue.*

DEVELOPMENT CONTROLS

- (a) The development shall utilise a wide variety of complementary and high quality architectural materials, textures and articulation to break down the built form and create a modern, attractive urban environment as illustrated in Figure 5.
- (b) Podium building form adjacent to Cecil Avenue should be designed to a pedestrian scale at street level to define the street edge.
- (c) Provide awnings to active frontages.
- (d) All ground floor entry points are to have a direct visual connection to the street or internal access ways. Separate entrances are required for commercial / retail and residential uses.
- (e) Buildings shall address common open space and public areas to increase the natural surveillance and safety of these areas.
- (f) Balconies to upper levels are to provide a minimum 50% opaque / solid balustrading to provide for residential amenity.
- (g) Treatment of the Cecil Avenue frontage shall integrate with the public domain treatments identified within the Castle Hill North Public Domain Plan and provide a consistent streetscape.



Figure 5: Indicative built form showing articulation and a variety of finishes and materials

2.3 BUILDING HEIGHT AND SITE LAYOUT**OBJECTIVES**

- i) *Building height is varied to create an articulated and visually interesting skyline and to reinforce a hierarchy of building forms in Castle Hill.*
- ii) *Development responds to the site's topography and interfaces with adjoining land uses by adopting upper floor setbacks and transition in height, with taller buildings located in the north of the site transitioning to lower rise buildings in the south and at the outer edges.*

DEVELOPMENT CONTROLS

- (a) Site layout and building heights shall **not exceed the number of storeys identified in Figure 6 and shall** be generally in accordance with Figures **s 6 and 7** with the highest built form fronting Cecil Avenue, and the lowest built form stepping down towards Roger Avenue and towards the outer edges of the site.
- (b) Buildings are to be sited with their long axis aligned north-south and with the main bulk positioned in the centre of the site to reduce the shadow impact on adjoining properties.



Figure 6: Indicative Site Layout and Building Height Plan (maximum number of storeys)



Figure 7: Building Height Transition

2.4 BUILDING SETBACKS

OBJECTIVES

- i) Appropriate separation is provided between buildings to ensure privacy and solar access.
- ii) Buildings are set back from site boundaries to minimise amenity impacts on adjoining residential development and nearby heritage items.

DEVELOPMENT CONTROLS

- a) Minimum building setbacks are to be generally consistent with the built form and setbacks illustrated in Figure 8 and include the following:
 - 6 metres from the Cecil Road frontage;
 - 10 metres to Cecil Avenue above four (4) storeys;
 - 8 metres to St Paul's Cemetery;
 - 6 metres to the western boundary;
 - 6 metres to the southern boundary; and
 - 9 metres to the eastern boundary for a maximum of (4) storeys.
 - 12 metres to the eastern boundary for storeys 5 to 8.
 - 15 metres to the eastern boundary for 9 storeys (25m) and above.

The ADG design criteria and provisions in The Hills DCP 2012 Part C Section 7 Residential Flat Building shall prevail where their standards exceed the above setbacks.

- b) The minimum residential tower separation is 24 metres, consistent with the NSW Government Apartment Design Guide to retain privacy.
- c) Buildings above four (4) storeys in height, are to be set back to create distinct podium and tower built forms.
- d) Setbacks shall be increased where necessary to ensure the required solar access is provided.



Figure 8: Building Setbacks

2.5 SUNLIGHT AND SOLAR ACCESS AND PRIVACY**OBJECTIVES**

- i) Key areas of the public and private domain on the subject site and adjoining residential development receive adequate solar access and amenity.
- ii) Energy efficiency principles are incorporated to ensure sustainability in design.
- iii) To reduce overlooking of the private open space on adjoining sites.

DEVELOPMENT CONTROLS

- (a) All private open space within neighbouring low density residential properties are to continue to receive a minimum four (4) hours of sunlight access between 9am and 3pm on 21st June, where this is currently the case.
- (b) Living rooms and private open spaces of at least 70% of apartments in a residential flat building on the site and adjacent sites receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter, as per SEPP 65 and the NSW Government's Apartment Design Guide.
- (c) Public open space areas to receive a minimum of 50% sunlight coverage between 12pm and 2pm on 21st June.
- (d) The proposed buildings, underground car parking structure and common open space areas are to follow the contour of the site to minimise overshadowing and the loss of privacy of adjoining private open space areas. Retaining walls and any fencing above should not exceed a total height of 1.8m above natural ground level.

2.6 OPEN SPACE, LANDSCAPING AND PEDESTRIAN AMENITY**OBJECTIVES**

- i) A network of well-located, accessible and useable landscaped spaces is provided with a clear distinction between public and private open spaces.
- ii) Attractive landscapes contribute to the amenity of the site and meet user requirements for privacy, solar access, shade and recreation.
- iii) Opportunities for landscaping are maximised, including the retention and/or planting of trees within deep soil areas to ensure a high level of amenity.
- iv) Landscaping and the location of common open space soften the impacts of the development on nearby heritage items.
- v) A convenient north-south link is provided through the site and is safe for pedestrians throughout the day and evening.
- vi) Water Sensitive Urban Design (WSUD) measures are employed in the management of stormwater in terms of water retention, reuse and cleansing.

DEVELOPMENT CONTROLS**Open Space**

- (a) A minimum of 20m² per dwelling shall be provided as common open space.
- (b) A minimum of 25% of the site area is to be allocated for communal open space. The remaining communal open space requirement may be provided internally or on rooftops.
- (c) External (outside) common open space areas are to be capable of accommodating substantial vegetation and are to be designed to incorporate active and passive recreation facilities (such as seating, shading, structures, BBQs and children's play equipment).
- (d) Common open space areas at ground level are to be located and designed to:
 - Provide for active and passive recreation needs of all residents;
 - Provide landscaping for the enjoyment of residents and to provide privacy to adjoining land;
 - Present as a private area for use by residents only;
 - Include passive surveillance from adjacent internal living areas and/or pathways;
 - Have a northerly aspect where possible;

- Be in addition to any public thoroughfares.
- (e) Roof gardens must be adequately enclosed and accessible to occupants of the development.
- (f) The design of exterior private open spaces such as roof top gardens is to address visual and acoustic privacy, safety, security, and wind effects.
- (g) Retaining walls and fencing on the boundary of the site are not to exceed a total (combined) height of 1.8m above natural ground level to minimise overlooking of adjoining properties.

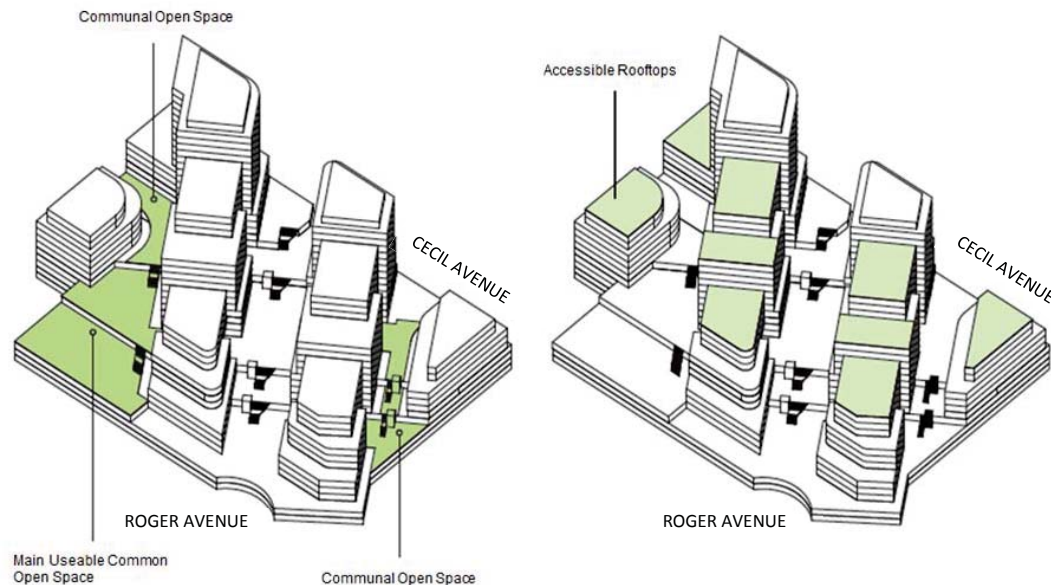


Figure 9: Ground level communal open space and accessible rooftops

Landscaping

- (h) 50% of site area - exclusive of building footprint/s, access driveways and parking. Terraces and patios within 1m of natural ground level shall be included in the calculation of landscaped open space.
- (i) Landscaped areas are to have a minimum width of 2m. Areas less than 2m in width will be excluded from the calculation of landscaped area.
- (j) Native ground covers and grasses are to be used in garden beds and path surrounds (turf is to be confined to useable outdoor areas).
- (k) A minimum of 5% deep soil landscaped space at ground level must be provided.
- (l) Deep soil zones are to allow for future planting of mature trees.
- (m) Green walls are encouraged on podium walls along active frontages to soften the interface between future development and the public realm.
- (n) Where roof gardens and green walls are provided, consideration should be given to the Urban Green Cover in NSW – Technical Guidelines, published by the Office of Environment and Heritage.
- (o) Mature vegetation to a minimum height of 2.5 metres is to be planted adjacent to the south-western boundary of the site to soften the visual impact of development on the adjoining St Paul's cemetery. Mature Landscaping to all other boundaries shall provide privacy to adjoining residential development.
- (p) Soft landscaping is to include a mix of mature and semi mature trees, shrubs, lawn turf and ground cover planting. Plant species are to be appropriate to the context and the specific microclimate within the development.

- (q) Drought tolerant plant species, and species that enhance habitat and ecology, are to be prioritised.
- (r) Hard landscaped areas are to be provided, including stairs and ramps connecting paved terraces on various levels.
- (s) Landscape design is to be integrated with water and stormwater management.
- (t) Landscaping on Cecil Avenue shall be consistent with the Castle Hill Public Domain Plan.

Pedestrian Amenity

- (u) The development must provide a minimum of two (2) public plazas fronting Cecil Avenue.
- (v) The development must provide a pedestrian site-through linkage between Cecil Avenue and Roger Avenue (Figures 10 and 11), with a minimum:
 - Width of 20m: and
 - Area of 2,020m².
- (w) The development shall provide opportunities for casual surveillance, enhancing safety of pedestrians moving within the site.
- (x) Street furniture is provided in the through-site link, including a high quality, durable and co-ordinated selection of paving, seating (minimum of five (5) bench seats), lighting, rubbish bins (minimum of 5), and directional signage.
- (y) On level access, paved pathways or lifts are to be provided to allow for the equitable movement of people across the site, in accordance with the Disability Discrimination Act 1992.



Figure 10: Ground level landscaped areas and indicative pedestrian link design



Figure 11: Illustrations of desirable public domain on the site.

2.7 SAFETY AND SECURITY

OBJECTIVES

- i) *Building design enhances safety and security for intended users.*

DEVELOPMENT CONTROLS

- (a) Above ground floor windows and balconies overlook all on-site pedestrian paths and communal open spaces.
- (b) Lighting at 4m intervals is provided along all on-site pedestrian paths and communal open spaces.
- (c) **Lighting is to be designed to avoid light spill onto adjoining properties.**
- (d) Entrances and exits to the street are directly accessible, illuminated and highly visible.
- (e) Dead-end corridors, alleyways, pathways and refuse areas are sign-posted and secured to prevent unauthorised access.
- (f) Development is to address the principles of Crime Prevention through Environmental Design (CPTED).

Note: Consideration shall also be given to The Hills Council's Policy Designing Safer Communities, Safer by Design Guidelines (June 2002).

2.8 TRAFFIC, PARKING AND VEHICULAR ACCESS

OBJECTIVES

- i) *To minimise adverse traffic impacts and improve the flow and function of the local road network.*
- ii) *To provide sufficient parking spaces for development while encouraging public transport use.*
- iii) *To ensure that car parking is appropriately located, reduces overall building size and enables the creation of a positive relationship between buildings and the adjoining public domain, through high levels of integration at the ground level.*
- iv) *Access to the site is to provide for the safe and efficient circulation of pedestrians, bicycles and motor traffic, as well as on street parking requirements.*

DEVELOPMENT CONTROLS

- (a) Vehicular access to the site shall be provided in accordance with Figure 12:
 - Residential vehicles are to have a maximum of two (2) vehicular access points, one (1) on Roger Avenue and one (1) on Cecil Avenue.
 - Commercial vehicles, including service vehicles and loading are to have one (1) vehicular access point on Cecil Avenue.

- The design of the car park shall prevent commercial and visitor vehicles from utilising Roger Avenue to access parking on site, for example via an access card system. Signage is to be erected to advise that access to the site from Roger Avenue is for residents only.
- (b) On-site carparking is provided in accordance with the following rates:
 - 1 space per apartment
 - 1 visitor spaces per 5 units
 - Commercial (office) component - 1 space per 25 m² GFA
 - Retail component - 1 space per 18.5m² GLFA
- (c) On-site car parking is to be provided in basement form only.
- (d) Basement car parking is to protrude above ground level for ventilation purposes only to a maximum of 1.2 metres and is not to reduce the potential for deep rooted planting and effective landscaping on the site.
- (e) Carpark access should not adversely affect pedestrian movement or the visual amenity of the public domain on Cecil Avenue.
- (f) A roundabout, designed and constructed to Council's requirements, is to be provided at the intersection of Roger Avenue and Francis Street.
- (g) The car park ventilation point is to be located on Cecil Avenue and must not be directed towards adjoining dwellings.

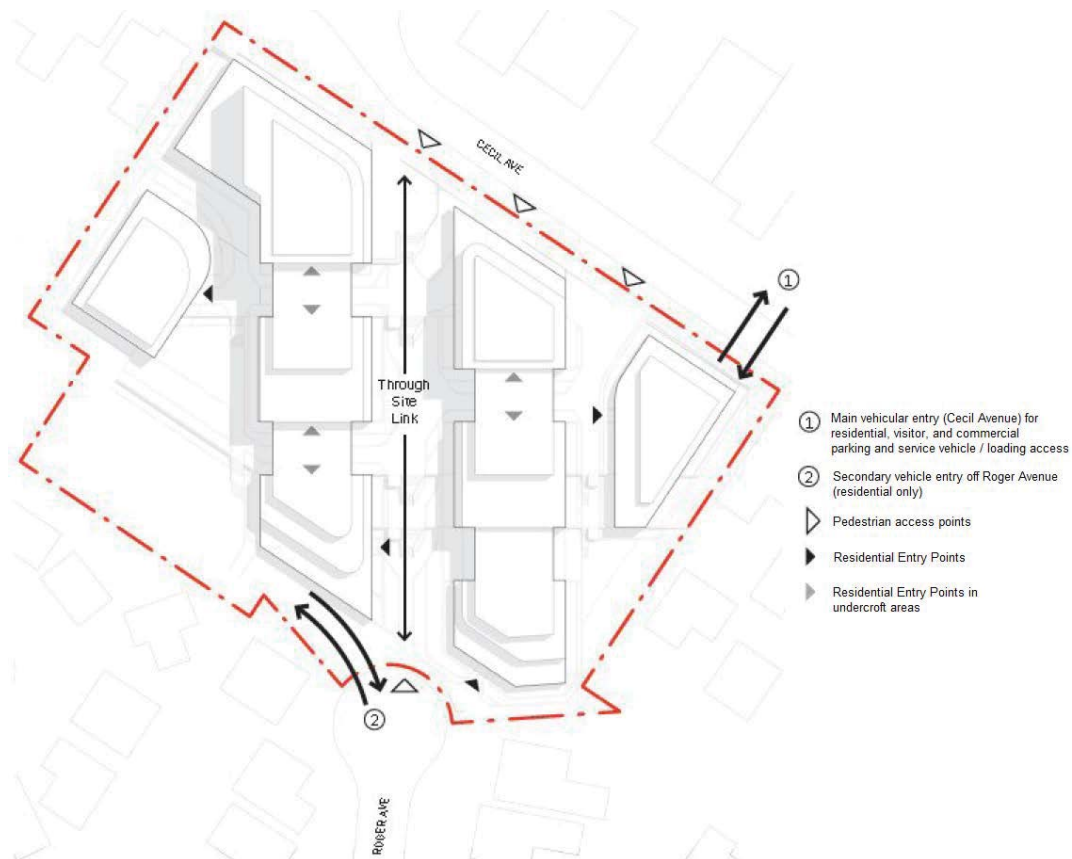
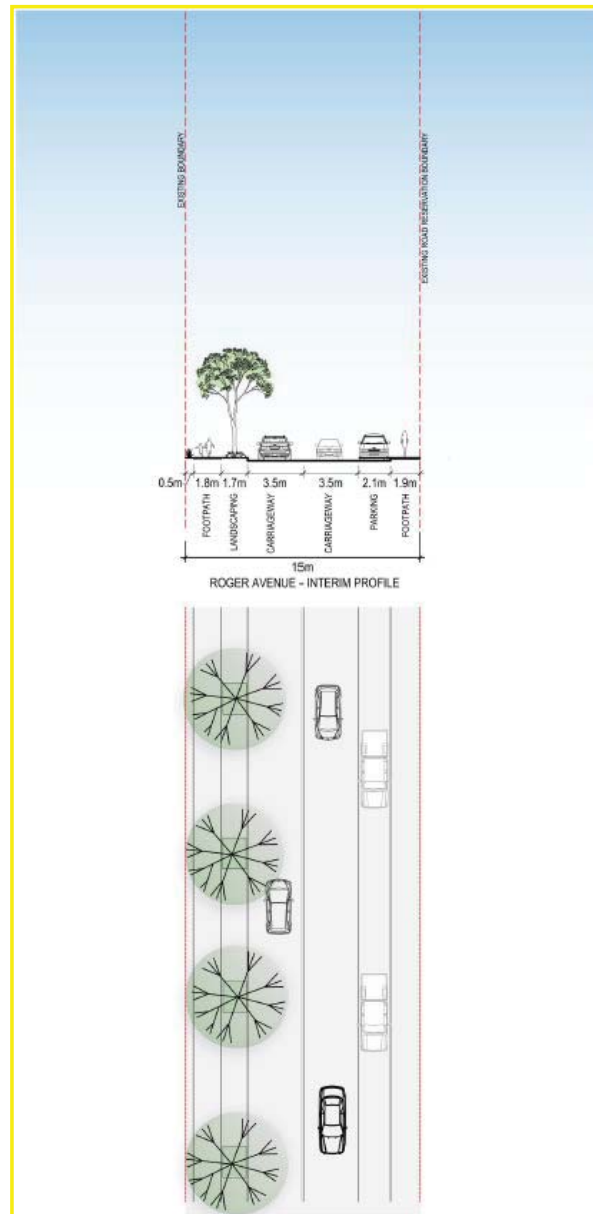


Figure 12: Access Network

(h) The following public roadwork improvements shall be provided prior to the completion and occupation of the development:

- Widening of the carriageway of Roger Avenue (within the existing road reserve) on the eastern side (from the development site up to and including No. 23 Francis Street) by approximately 2m to reflect the profile shown in Figure 13. The cost of the road widening is to be funded by the developer at no cost to Council.



- Widening of the road verge (see Figure 14) will be considered during future master planning of the area. The final design outcome will require a future developer to dedicate 2m of land to Council (at no cost to Council) to increase the Roger Avenue width of the footpath reservation to allow for landscaping.

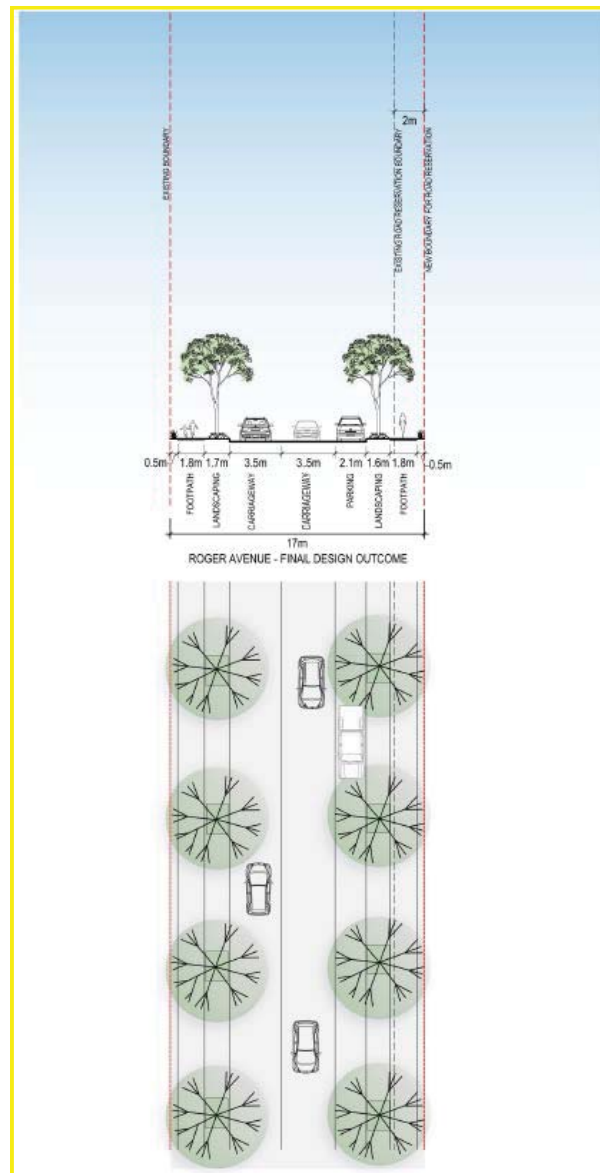


Figure 14: Roger Avenue – Final Design Outcome

2.9 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

OBJECTIVES

- Building designs are innovative and sustainable to reduce the reliance on, and consumption of, fossil fuels and potable water supplies.
- Development adapts to climate change.

- iii) *Developments contribute to improved quality of life, health and well-being of the community.*
- iii) *The design, construction and operation of development minimises adverse impacts on the natural environment.*

DEVELOPMENT CONTROLS

- (a) Residential flat buildings should achieve a minimum 5 star NatHERS energy rating for each unit.
- (b) Development other than residential should achieve a minimum 5 star Green Star Design and as Built rating, respectively,
- (c) Building operation should achieve a minimum 4.5 star base building and tenancy NABERS Energy rating, where applicable.
- (d) The incorporation of green walls and roofs into the design of buildings is encouraged. Where suitable, building facades should incorporate vertical landscaping features to soften the visual bulk of buildings and to improve streetscape appeal.
- (e) Canopy trees, understorey planting and permeable surfaces should be provided where possible to reduce the extent of paved surfaces and to enhance the amenity of the development and streetscape.
- (f) Buildings are encouraged to incorporate a trigeneration energy facility that provides energy-efficient power, heating and air conditioning for use on site.
- (g) Building designs are to:
 - Maximise the use of natural light and cross ventilation;
 - Reduce the reliance on mechanical heating and cooling through the use of eaves, awnings, good insulation and landscaping;
 - Include energy efficient light fittings and water fittings;
 - Allow for separate metering of water and energy usage for commercial and multi-unit tenancies.

2.10 HERITAGE**OBJECTIVES**

- (i) *To ensure that development is undertaken in a manner that is sympathetic to adjoining heritage items and their setting.*
- (ii) *To retain the landscape setting adjoining the heritage item and provide a landscaped buffer within the site to soften the interface between the heritage items and new development.*

DEVELOPMENT CONTROLS

- (a) Development must address and comply with the provisions of Part C Section 4 – Heritage of this DCP.
- (b) Impacts on the immediate setting of the Christadelphian Church and St Paul's Cemetery at 245 and 247 Old Northern Road respectively, are mitigated through appropriate setbacks, siting of common open space and landscaping to reduce the visual dominance of new buildings.
- (c) New planting and vegetation on the western boundary of the site are to be sympathetic to the landscape setting of the cemetery.
- (d) Hedging style plants and mature tree species are to be planted on the western interface of the site with the Cemetery, with mature trees having a minimum height of 2.5m.



Figure 15: Location of heritage items

DRAFT PLANNING AGREEMENT

93-107 Cecil Avenue and
9-10 Roger Avenue, Castle Hill

September 2018

ATTACHMENT 3

HILLS
Shire of Castle Hill
Shire of Rylance



www.thehills.nsw.gov.au

Summary Sheet

Council

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Address	3 Columbia Court NORWEST NSW 2153
Telephone	(02) 9843 0555
Facsimile	(02) 9843 0409
Email	council@thehills.nsw.gov.au
Representative	Mr Michael Edgar – General Manager

Developer

Name	Merck Property Pty Ltd (ACN 159 400 156)
Address	Suite A40C, 24-32 Lexington Drive Bella Vista NSW 2153
Telephone	(02) 9899 4000
Email	tony.merhi@merccapital.com.au
Representative	Tony Merhi – Director

Land Owners

Name	Merck Property Pty Ltd (ACN 159 400 156)
Address	Suite A40C, 24-32 Lexington Drive Bella Vista NSW 2153
Telephone	(02) 9899 4000
Email	tony.merhi@merccapital.com.au
Representative	Tony Merhi – Director

Name	Cecil Developments Pty Limited (ACN 619 221 644)
Address	C/- Tim Bottrell, Paul Bard Lawyers, PO Box H254, Australia Square, NSW 1215
Telephone	Tim Bottrell on 02 9224 7444
Email	tim.bottrell@paulbard.com.au

Name	Zu He Gu and Wei Xiang Kong
Address	95B Cecil Avenue, Castle Hill, NSW, 2154
Telephone	0435 546 855

Land

93-107 Cecil Avenue and 9-10 Roger Avenue, Castle Hill in the State of New South Wales, being the land legally known as:

1. Lot 6 DP 705913;
2. Lot 27 DP 15399;
3. Lot 1 DP 531559;
4. Lot 4 DP 531559;
5. Lot 5 DP 705913;
6. Lot 1 DP 581293;
7. Lot 3 DP 581293;
8. Lot 2 DP 581293;
9. Lot 4 DP 581293;
10. Lot 1 DP 547897;
11. Lot 2 DP 547897;
12. Lot 1 DP 591676;
13. Lot 2 DP 591676;
14. Lot 20 DP 15399;
15. Lot 6 DP 29141;
16. Lot 5 DP 29141;
17. Lot 21 DP 778595; and
18. Lot 22 DP 778595.

Planning Proposal	12/2016/PLP.
Instrument Change	The amendment of The Hills Local Environmental Plan 2012, as it relates to the Land, generally in accordance with the Planning Proposal.
Easement	See Schedule 2
Monetary Contributions	See Schedule 1
Works	See Schedule 3

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DRAFT

Planning Agreement**Dated****Parties**

The Hills Shire Council (ABN 25 034 494 656) of 3 Columbia Court, Norwest in the State of New South Wales (**Council**)

Merck Property Pty Ltd (ACN 159 400 156) of Suite 306, 25 Solent Circuit, Baulkham Hills in the State of New South Wales (**Developer**)

Cecil Developments Pty Limited (ACN 619 221 644) of Suite 8, 3 Victoria Road Parramatta NSW 2150 in the State of New South Wales and **Zu He Gu and Wei Xiang Kong** of **and Merck Property Pty Ltd (ACN 159 400 156) of Suite 306, 25 Solent Circuit, Baulkham Hills in the State of New South Wales** (collectively, **Land Owners**)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. On or about 25 October 2016, the Council submitted the Planning Proposal to the Department of Planning and Environment for the Instrument Change.
- C. On or about 2 November 2016, the Planning Proposal was approved by the Department of Planning and Environment at Gateway and returned to the Council for implementation.
- D. If the Instrument Change comes into force, the Developer is proposing to lodge an application for Development Consent to carry out the Proposed Development of the Land.
- E. The Developer acknowledges that if the Development Consent is granted and the Proposed Development carried out, it is likely to increase the demand for the provision of public facilities.
- F. As a consequence of the matters set out above, the Developer has offered to provide the Development Contributions, in the form of Monetary Contributions, Works and registration of the Easement on, and subject to, the terms set out in this Agreement if the Instrument Change occurs.

Operative provisions**1. Defined meanings**

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

2. Planning agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of **subdivision 2, Division 7.1, Part 7** of the Act.

3. Application of this document

This document is made in respect of the Proposed Development and applies to the Land.

4. No restriction on Council's Powers

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

5. Operation of this Agreement

5.1 This Agreement operates as a planning agreement for the purpose of the Act and commences operation once the Instrument Change is effected by the amending Local Environmental Plan being published on the NSW Legislation Website.

5.2 Notwithstanding clause 5.1, the obligation on the Developer to make the Development Contributions only operates from the date that Development Consent is granted and Notice is given to the Council of the appointment of the principal certifier and/or Notice is given to Council that work is to commence under the Development Consent.

5.3 When this Agreement is entered into it is a binding contract between the parties.

6. Dealings**6.1 Developer must not deal with property**

- (a) The Developer and the Land Owner must not during the term of this Agreement sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person, other than Cecil Developments Pty Ltd, over the Land (or any part thereof) without first obtaining Council's consent in writing, which must not be unreasonably withheld and the Developer procures that the transferee, assignee or novatee executes and delivers to Council a deed in favour of Council whereby:

- (i) the transferee, assignee or novatee becomes contractually bound with Council to perform all the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this Agreement; and
- (ii) the Developer is released from its obligations under this Agreement.

For clarity, Council's consent is not required to effect transfer of the Land to Cecil Developments Pty Ltd or to take steps to ensure that Cecil Developments Pty Ltd is the registered proprietor of the Land.

6.2 Caveat

- (a) The Developer and the Land Owner agree that its obligations under this Agreement create a caveatable interest in the Land.
- (b) The Developer must not object to, seek to withdraw or issue a lapsing notice for a caveat lodged by Council in respect of Land.
- (c) Council must not unreasonably withhold its consent to the registration of any dealing by a mortgagee that would not have a material adverse effect on Council's interest in the Land.
- (d) Council will give to the Developer a withdrawal of caveat within 7 days of this document being validly terminated.

7. Easement

- 7.1 The Developer must at its cost grant and register the Easement for the benefit of Council, on terms acceptable to Council, over the Land as a public right of way (as a pedestrian through link between Cecil Avenue and Roger Avenue) located generally in accordance with the Easement Plan in **Schedule 2**.
- 7.2 The minimum area of the Easement will be 2,320m².

- 7.3 The Registration of the Easement must be completed before the issue of the Final Occupation Certificate for the Proposed Development of the Land.
- 7.4 The Developer and/or any successor(s) in title of the Land will be responsible for the repair and maintenance of the Easement in perpetuity.
- 7.5 The Developer and/or any successor in title of the Land is to provide and maintain a \$10,000,000 public indemnity insurance policy for any claims and damages arising from the use of the Easement. The indemnity amount is to be indexed by CPI.

8. **Monetary Contributions**

8.1 Payment

The Developer must pay the Monetary Contributions on or before the date for payment specified in **Schedule 1**. Payment of the Monetary Contributions may be made by cheque or electronic bank transfer to Council's nominated bank account.

8.2 Annual Increases

On each anniversary of the date of this Agreement, the Monetary Contribution applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Consumer Price Index most recently published prior to the relevant anniversary. The increased Monetary Contributions will be the Monetary Contributions in the subsequent 12 months.

8.3 **Public Purpose**

The Monetary Contributions are required for the funding of the construction of improvements to the public domain, roads and traffic management works in the vicinity of the Land (including those specified in section 7.4(2) of the Act) as determined by Council from time to time and Council will use reasonable endeavours to apply the Monetary Contributions for those purposes.

8.4 **Calculation of Monetary Contribution**

- (a) The Developer is to make payment of the Monetary Contributions to the Council in accordance with the rates specified in **Schedule 1**.
- (b)

For clarity, the monetary contribution is calculated in accordance with the total number of 1, 2 and 3 bedroom residential apartments for the entire development multiplied by the respective \$ per apartment size as set out in Schedule 1.

The total monetary contribution for commercial space is calculated by GFA of commercial space x the per sqm rate in Schedule 1.

9. **Obligation to Carry Out Works**

- 9.1 The Developer is to carry out and complete the Works on the Land as specified in **Schedule 3** at the indicative locations shown on the Easement Plan in **Schedule 2**.
- 9.2 The Developer's obligation under clause 9.1 exists irrespective of whether the Developer:
- (a) carries out the Works itself, or

- (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- 9.3 Before the Developer commences an item of Works, the Developer, at its own cost, is to prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the item of Works.
- 9.4 Council, acting reasonably, may request that the Developer amend the detailed plans and specifications, and if it makes that request, the Developer must amend and resubmit the detailed plans and specifications with Council for approval under this clause.
- 9.5 The Developer is not to commence an item of Works unless the Council or the person specified by the Council has given the Developer written approval of the plans and specifications relating to the item of Works.
- 9.6 The Developer is wholly responsible to ensure that any, and all, items of the Work have the requisite statutory development consent, approvals and/ or certificates to undertake the Works.
- 9.7 The Developer is to carry out and complete all Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:
 - (a) the Development Consent, and
 - (b) all applicable laws, including those relating to work health and safety,
 - (c) this Agreement, and
 - (d) the written approval given under clause 9.5.

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

10. Ownership of Works

Ownership of the Works is retained by the Developer and/or any successor(s) in the title of the Land.

11. Access to the Land and location of Works

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

11.2 The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

12. Protection of People, Property and the Environment

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

- (a) all necessary measures are taken to protect people, property and the Environment;
- (b) unnecessary interference with the passage of people and vehicles is avoided;
- (c) nuisances and unreasonable noise and disturbances are prevented; and
- (d) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are adhered to.

13. Damage and Repairs to the Works

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

14. Variation of Works

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

- (a) the Parties agree in writing to the variation,
- (b) any consent or approval required under the Act or any other law to the variation is first obtained, and
- (c) the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation.

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

15. Failure to Carry out the Works

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

- (a) the breach to be rectified to the Council's satisfaction, or
- (b) the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to the Council's satisfaction.

15.2 A notice given under clause 15.2 is to allow the Developer a reasonable period (and in any case not less than 28 days) to rectify the breach.

15.3 If the Developer fails to rectify the breach the subject of a notice given under clause 15.2, the Council may carry out and complete or make safe the Works.

15.4 Despite clauses 15.2, 15.3 and 15.4 of this Agreement, if urgent action is necessary to protect the Works, other property or people and the Developer fails to take the action then, in addition to any other remedies of the Council, the Council may take the necessary action without the need to provide notice (although Council will use all reasonable endeavours to provide a reasonable amount of notice in the circumstances).

15.5 For the purposes of clauses 15.3 and 15.4:

- (a) the Developer must allow the Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works, and
- (b) the costs incurred by the Council in carrying out, completing, or making safe the Works or taking the necessary action, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

16. Works-As-Executed-Plan

16.1 The Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works prior to the Works Completion Date.

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

17. Rectification of Defects

17.1 During the Defects Liability Period the Council may give to the Developer a written notice in relation to the Works specifying:

- (a) the Works requiring rectification,
- (b) the action required to be undertaken by the Developer to rectify those Works, and
- (c) the date on which those Works are to be rectified. **(Rectification Notice)**

- 17.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 17.3 When the Developer considers that rectification is complete, the Developer may give to the Council written notice, including any relevant supporting certificate, confirming rectification of the Works the subject of the relevant Rectification Notice (**Rectification Certificate**).
- 17.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 17.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may recover, as a debt due in a court of competent jurisdiction, the costs incurred by the Council in rectifying the defect.

18. Cost of Works carried out by the Council

- 18.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Developer in a court of competent jurisdiction its full costs.
- 18.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include:
- (a) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (b) all reasonable fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified, and
 - (c) without limiting the generality of the preceding sub-clause, all reasonable legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

19. Indemnity and Insurance

- 19.1 The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of the Works and any other obligation under this Agreement, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, officers, agents and contractors.
- 19.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the Works Completion Date:
- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - (b) public liability insurance for at least \$10,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - (c) workers compensation insurance as required by law, and
 - (d) any other insurance required by law.
- 19.3 If the Developer fails to comply with clause 19.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- recovery as a debt due in a court of competent jurisdiction.

19.4 The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 19.2.

20. **Provision of Security – Not used**

21. Application of s7.11, s7.12 of the Act

For the purpose of section 7.4(5) of the Act, this Agreement excludes the application of sections 7.11 and 7.12 of the Act in relation to the Proposed Development.

22. Termination

This Agreement will terminate in the event that the Instrument Change does not occur.

23. Consequences

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

23.2 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

24. Private Certifiers

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

25. Notices

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

25.2 Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.

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

26. Breach Notice and Rectification

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

26.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of written notification of the breach.

26.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council in remedying the breach.

27. Registration of document on Title**27.1Acknowledgement**

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

27.2Consents to Registration

This document must be registered on the title of the Land by the Land Owners within sixty (60) days after it is entered into between the parties. Each Party must promptly execute any document and perform any action necessary to effect the registration of this document on the title of the Land.

27.3Release from Registration

Within thirty (30) days after receiving a written request from the Developer or Land Owner to do so, Council will release the Land (or part thereof) from registration of this Agreement where:

- (a) the Development Contributions have been made (including completion of the Works);
- (b) no other money is owing to Council under this Agreement; and
- (c) the Developer and/or Land Owners are not in breach of any of their obligations under this Agreement.

The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this Agreement.

27.4Registration Expenses

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

28. Costs

28.1The Developer must pay on demand Council's reasonable costs and expenses including legal costs and disbursements, survey fees and consultant's charges reasonably incurred in relation to:

- (a) the preparation, review, amendment and finalisation of this Agreement, including all attendances and related advice;
- (b) any action required of council to implement this Agreement
- (c) any request by the Developer under the Agreement;
- (d) the preparation, lodgement and withdrawal of any caveat over the Land or pursuant to this Agreement;

(e) any litigation or dispute resolution procedure involving the Council in respect of this Agreement in which no judgement or order is awarded against Council; and

(f) any breach of a provision of this Agreement by the Developer.

28.2 The Developer must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

29. GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

30. General

30.1 Assignment

- (a) The Developer and the Land Owners must not transfer any right or liability under this document without the prior consent of Council. Such consent must not be unreasonably withheld.
- (b) In the event that the Developer and/ or the Land Owners enter into a contract for the sale of the Land the subject of the Development Consent, the Developer and/ or the Land Owners (as vendor) shall disclose to the purchaser the existence of this Agreement.

30.2 Governing law and jurisdiction

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

30.2.2 Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

30.2.3 Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

30.3 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties. If a request for consent is made for amendment to this document, such consent shall not be unreasonably withheld.

30.4 Pre-contractual negotiation

This document:

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

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

30.5 Further assurance

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

30.6 Continuing performance

30.6.1 The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.

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

30.6.3 Any indemnity agreed by any party under this document:

30.6.3.1 constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and

30.6.3.2 survives and continues after performance of this document.

30.7 Waivers

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

30.8 Remedies

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

30.9 Counterparts

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

30.10 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

30.10.1 all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;

30.10.2 the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;

30.10.3 no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

30.11 Representations and warranties

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

30.12 Severability

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

31. Definitions and interpretation

31.1 In this document unless the context otherwise requires:

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

Agreement Contributions means the Monetary Contributions, grant of the Easement and provision of the Works, under this Agreement.

Bank Guarantee means a written guarantee without a time limit acceptable to Council issued by an Australian Bank.

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

Construction Certificate has the same meaning as in the Act;

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics or if this price index is discounted then such price index as Council may select.

Defects Liability Period means the period specified in Column 4 of **Schedule 3** in relation to the Works specified in Column 1 of that Schedule commencing on the Works Completion Date.

Development Contributions means the provision of the Monetary Contributions, Works and registration of the Easement under this Agreement as set out in Schedule 1, 2 and 3.

Development Consent means a development consent issued under the Act in respect of the Development.

Dwelling means a separate residential dwelling within a strata scheme that is used for residential purposes.

Easement means the public right of way easement running through the Land and connecting Cecil Avenue to Roger Avenue as generally identified on the Easement Plan. The right of way is to be a through site link for pedestrians from Cecil Avenue to Roger Avenue, and to the plaza space.

Easement Plan means the plan contained in **Schedule 2** depicting the indicative location of the Easement.

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

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

Final Occupation Certificate means the final Occupation Certificate for the Proposed Development.

Instrument Change means the amendment of The Hills Local Environmental Plan 2012, as it relates to the Land, generally in accordance with the Planning Proposal.

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

Land means the land specified in the Summary Sheet.

Monetary Contributions means the monetary contributions specified in Schedule 1.

Occupation Certificate has the same meaning as in the Act.

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

Planning Proposal means the planning proposal specified in the Summary Sheet.

Prescribed Rate means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Proposed Development means the proposed mixed use development of the Land comprising of the construction of approximately 460 Dwellings and approximately 8,025m² of commercial floor space.

Rectification Certificate has the meaning under clause 17 of this Agreement means a compliance certificate within the meaning of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

Rectification Notice has the same meaning as in clause 17 of this Agreement.

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

Works means the works specified or described in Column 1 of Schedule 3 and includes any Item of Work and any part of any Item of Work.

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

Works Completion Date means the date specified in Column 3 of Schedule 3.

31.2 Interpretation

In this document unless the context otherwise requires:

- 31.2.1 clause and subclause headings are for reference purposes only;
- 31.2.2 the singular includes the plural and vice versa;
- 31.2.3 words denoting any gender include all genders;
- 31.2.4 reference to a person includes any other entity recognised by law and vice versa;
- 31.2.5 where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- 31.2.6 any reference to a party to this document includes its successors and permitted assigns;
- 31.2.7 any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- 31.2.8 any reference to any agreement or document includes that agreement or document as amended at any time;
- 31.2.9 the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- 31.2.10 the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- 31.2.11 an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- 31.2.12 an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- 31.2.13 reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- 31.2.14 reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;

- 31.2.15 when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- 31.2.16 reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

DRAFT

Schedule 1 – Monetary Contributions**Quantum of Monetary Contribution**

The total quantum of the Monetary Contribution will be calculated once the Development has Development Consent and the configuration of units is known.

Unit Mix	Monetary Contribution Rate
1 bed	\$25,000.00
2 bed	\$32,092.00
3 bed	\$36,525.00
Commercial	\$150/m ²

Timing for payment of Monetary Contribution

Monetary Contribution	Date for Payment
\$5,000,000.00	Prior to the issuing of the Construction Certificate for the Development of the Land
Balance of the Monetary Contribution	Prior to the issuing of a n y Occupation Certificate for the Development of the Land.

Schedule 2 – Easement Plan

This plan depicts the indicative location for the pedestrian right of way (the Easement) over the Land. The precise location will be determined through the development consent process.

Schedule 3 – The Works

Column 1	Column 2	Column 3	Column 4
Item of Work	Works Description	Works Completion Date	Defects Liability Period
Embellishment of Easement – Public Right of Way between Cecil Avenue and Roger Avenue	<ul style="list-style-type: none"> - Hard landscaped areas to be provided, including stairs connecting paved terraces on various levels; these stairs and terraces to include handrails and balustrades where required by the relevant <i>Australian Standards</i> and/or by the <i>Building Code of Australia</i>; - <i>Disability Discrimination Act 1992 (DDA)</i> Access to be provided to allow for the equitable movement of people from Cecil Avenue and Roger Avenue; - Paving to have falls to allow rainwater to flow towards drainage points; - Soft landscaped areas to include areas of lawn turf, planter beds with small and medium trees, shrubs and ground cover planting; - Lighting and signage; - Paved pathways to create continuous paths of travel to residential lobbies and to retail areas on the two upper level plazas; - Street furniture including a minimum of 5 bench seats and 3 waste bins; - Soft landscaping is to include a mix of mature and semi mature trees and shrubs. 	Prior to the issuing of a n y Occupation Certification for the Proposed Development of the Land.	12 months

SITE THROUGH LINK PTW
INDICATIVE GRAPHIC OF SITE THROUGH LINK EMBELLISHMENTS



Figure 2: Indicative Graphic of Easement and Works.

Execution Page

The common seal of **The Hills Shire Council**
was affixed under a resolution passed by council
on
201X in the presence of:

Executed by **Zu He Gu and Wei Xiang Kong** in the presence of:

Witness (Signature)

Zu He Gu (Signature)

Name of Witness (Print Name)

Wei Xiang Kong (Signature)

Executed by **Cecil Developments Pty Ltd** in accordance with section 127(1) of the Corporations Act
by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)