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| ITEM-7 | DRAFT VPA AND DCP AMENDMENTS, PLANNING PROPOSAL - CECIL AVENUE AND ROGER AVENUE, CASTLE HILL (12/2016/PLP) |
| THEME: | Balanced Urban Growth. |
| OUTCOME: | 7 Responsible planning facilitates a desirable living environment and meets growth targets. |
| STRATEGY: | 7.2 Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations. |
| MEETING DATE: | 8 AUGUST 2017 COUNCIL MEETING |
| GROUP: | STRATEGIC PLANNING |
| AUTHOR: | SENIOR TOWN PLANNER KATE CLINTON |
| RESPONSIBLE OFFICER: | ACTING MANAGER FORWARD PLANNING JANELLE ATKINS |

EXECUTIVE SUMMARY

This report recommends that the draft Voluntary Planning Agreement (VPA) and draft amendments to the Development Control Plan (DCP) for land at 93-107 Cecil Avenue and 9-10 Roger Avenue, Castle Hill (12/2016/PLP) be publicly exhibited with the planning proposal for which conditional Gateway Determination was received on 2 November 2016.

The draft VPA responds to additional demand generated by increased residential development yield on the land. It will secure a pedestrian link through the site from Roger Avenue to Cecil Avenue as well as a monetary contribution of approximately \$15.5 million (based on the anticipated yield and mix of the development) towards the provision of new local infrastructure including road improvements and active open space facilities. Pending further investigation of the proposed traffic signals the offer appears to be fair and reasonable.

The draft DCP provides a framework of objectives and development controls to guide the form of development on the site, addressing matters such as land use mix, building height, built form, setbacks, solar access, landscaping, pedestrian amenity, parking and vehicular access and heritage.

Notwithstanding the foregoing, the planning proposal will be subject to consultations with relevant public authorities during the exhibition period. The exhibition allows all agencies and parties to consider the total package for the development including the planning proposal, DCP and VPA. Of key importance is consultation with the Roads and Maritime Services (RMS) with respect to the suitability, design and cost of proposed traffic signals at the intersection of Francis Street and Old Northern Road as recommended in the proponent's traffic report. As Old Northern Road is a classified road, the approval of the RMS must be obtained.

Should RMS approval not be obtained or should the costs of delivering the traffic signals exceed expectations or be prohibitive, the traffic impacts and solutions for the proposal, the appropriateness of the draft VPA monetary contribution and the proposed development yield may need to be re-evaluated. Accordingly, the required traffic network upgrades and funding allocation will need to be resolved prior to finalising the planning proposal following exhibition. It is important to note that depending on the outcomes, changes may be needed to the planning proposal and draft VPA and DCP amendments, thereby necessitating re-exhibition.

APPLICANT

Merck Property Pty Ltd

POLITICAL DONATIONS

Yes

THE SITE

The site consists of 18 residential lots with a total area of approximately 17,610m². The primary frontage is to Cecil Avenue, with a secondary frontage (two lots) to Roger Avenue, which is a cul-de-sac connecting to Francis Street. Part of the south-western boundary adjoins a church and the St Paul's Cemetery which are local heritage items listed in LEP 2012.



Figure 1
Aerial view of the site and surrounding locality

BACKGROUND

The planning proposal seeks to facilitate a mixed use development on the site, comprising 460 residential units, 8,025m² of commercial floor space and a through site link and public open space.

In April 2016, Council considered a report on the planning proposal and resolved that:

1. *A planning proposal be forwarded to the Department of Planning and Environment for a Gateway Determination to amend Local Environmental Plan 2012 to:*
 - a. *Rezone the site from R3 Medium Density Residential and 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 across the entire site and an 'incentivised' floor space ratio of 3.5:1 across the entire site to permit a maximum dwelling yield of 460 dwellings to the site; and*
 - d. *Provide 8,025m² of commercial floor space.*
2. *Council proceed with discussions with the applicant to prepare a draft Voluntary Planning Agreement which secures the delivery of the proposed pedestrian linkages and public domain improvements and resolves how the applicant will address the increased demand for local infrastructure generated by the proposed increase in residential density; and*
3. *Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.*

The Department of Planning and Environment has issued a Gateway Determination to enable the planning proposal to be exhibited for public comment. However prior to public exhibition, the proponent was required to address the following matters:

- Preparation of a 3D electronic model to assist with the communication and interpretation of the proposed development;
- Shadow diagrams 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 (winter solstice);
- A Traffic Study to address the peak hour directional splits, potential impacts on the nearby intersections and measures to address capacity issues in Cecil Avenue and Roger Avenue; and
- Demonstrate consistency with the agreed methodology for Local Residential Development.

The proponent has submitted all of the required information to enable the exhibition to proceed.

In order to guide the future redevelopment of the site, and in order to provide certainty with respect to the built form outcome on the site, draft development controls have also been prepared and are discussed in further detail within this report.

In response to the additional work completed, the following images illustrate changes made to building heights and modulation across the site to allow for additional solar access to private open spaces of existing neighbouring residential properties.



Figure 2
Building Heights – Original (left) and Revised (right)



Figure 3
Photomontage View from Cecil Avenue – Original (left) and Revised (right)

Other amendments include:

- Lowering of building podium height to three storeys generally, adjacent to existing neighbouring dwellings;
- Deletion of a building on the south-western corner of the site and its replacement with communal open space and landscaping; and
- Addition of roof-top gardens.

The traffic study also identified the need for the upgrade of the intersection of Francis Street and Old Northern Road to a signalised intersection to accommodate increased traffic generated by the development.

REPORT

The purpose of this report is to advise Council of the content of the Draft Voluntary Planning Agreement (VPA) and draft amendments to DCP 2012 and to consider their suitability for exhibition in conjunction with the planning proposal for the site.

1. DRAFT VOLUNTARY PLANNING AGREEMENT

The proponent has submitted a draft VPA for Council's consideration (Attachment 1) which offers the following:

- Granting of a public right of way easement for the benefit of the Council over the land connecting Cecil Avenue to Roger Avenue and the public plaza to Cecil Avenue;
- Provision of embellishment works within the easement area; and
- Payment of a monetary contribution to Council with an anticipated value of approximately \$15.5 million for expenditure on other local infrastructure as identified by Council.

Public access easement

The provision of a public right of way easement (pedestrian only) through the site to connect Roger Avenue to Cecil Avenue will benefit residents of the site and the surrounding area by increasing the permeability of the southernmost part of the Castle Hill Centre. It will offer an additional direct access route to the town centre and future train station. The link would be fully embellished with stairs, paving, landscaping and seating.

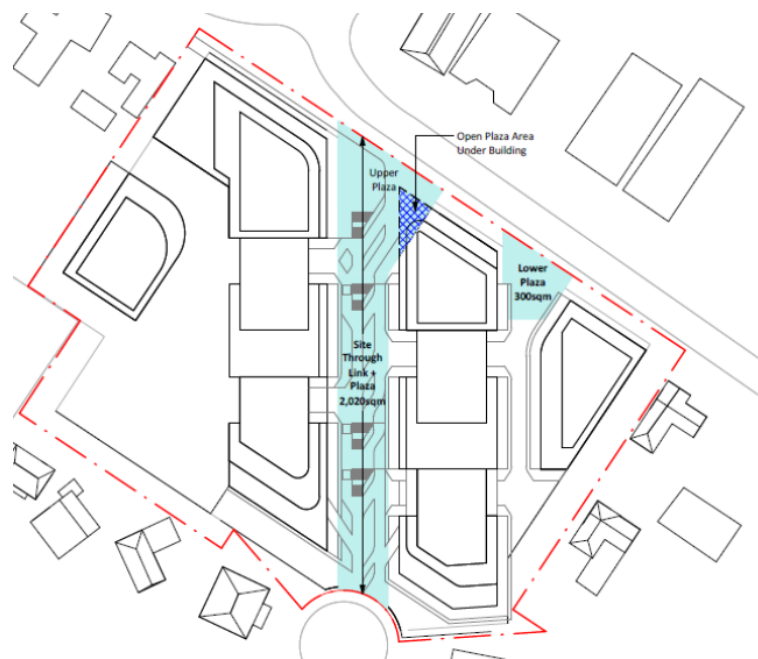


Figure 4
Plan of public pedestrian easement



Figure 5
Illustrations of pedestrian link

Monetary contribution

The draft VPA requires the developer to pay monetary contributions to Council at the following rates:

- 1 bedroom – \$25,000;
- 2 bedroom – \$32,092;
- 3 bedroom – \$36,525; and
- Commercial – \$150/m².

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. However, the final contribution amount may be subject to variation as a result of any changes to the development concept arising from the public exhibition of the proposal.

Under the draft VPA submitted, 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 Town Centre.

The value of the monetary contribution offered under the draft VPA must be further reviewed following consultation with the RMS and finalisation of plans and costs for the signalisation of the intersection of Francis Street and Old Northern Road to ensure sufficient funding will be available for these works.

Potential Traffic Works

In accordance with a condition of the Gateway the proponent has submitted an updated traffic report. The traffic report assesses both the current situation and the likely impacts of the proposal. Currently the intersections within the vicinity of the site operate at an acceptable level of service with the exception of the Francis Street/Old Northern Road intersection which operates at a level of service of F during both the AM and PM peak, and will continue to do so as a result of the proposal.

The traffic report recommends the signalisation of the Francis Street/Old Northern Road intersection to address existing traffic issues as well as additional traffic impacts that will be generated by the proposal.

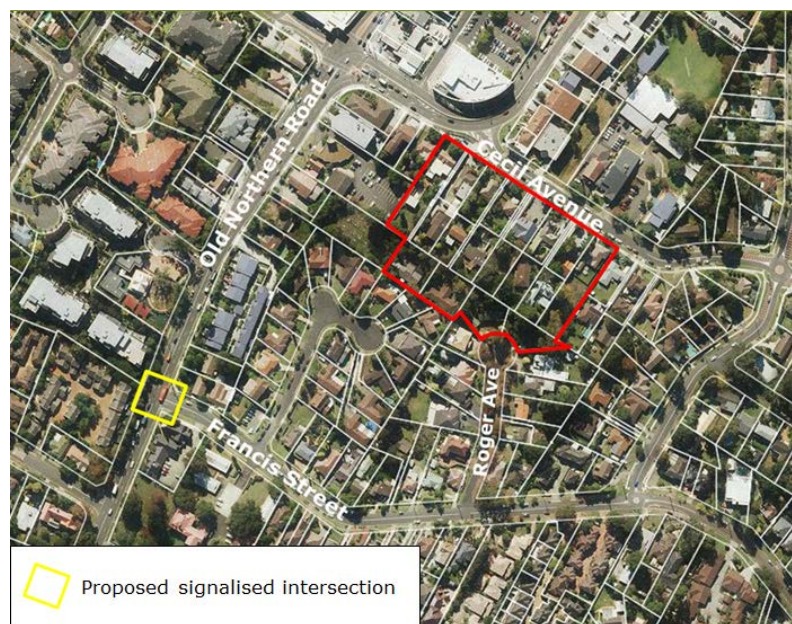


Figure 6
Location of proposed signalised intersection

The traffic report does not provide a concept drawing of the proposed signalised intersection of Francis Street and Old Northern Road, details of any land acquisition that may be required or an analysis on how the proposed signals will improve the efficiency of the intersection. The proponent has however, submitted a preliminary concept drawing to illustrate the possible layout of a signalised intersection and has provided a rough estimated cost between \$1.5-5 million, depending on the extent of associated utility services realignment and boundary adjustment, which could be funded through the proposed VPA.

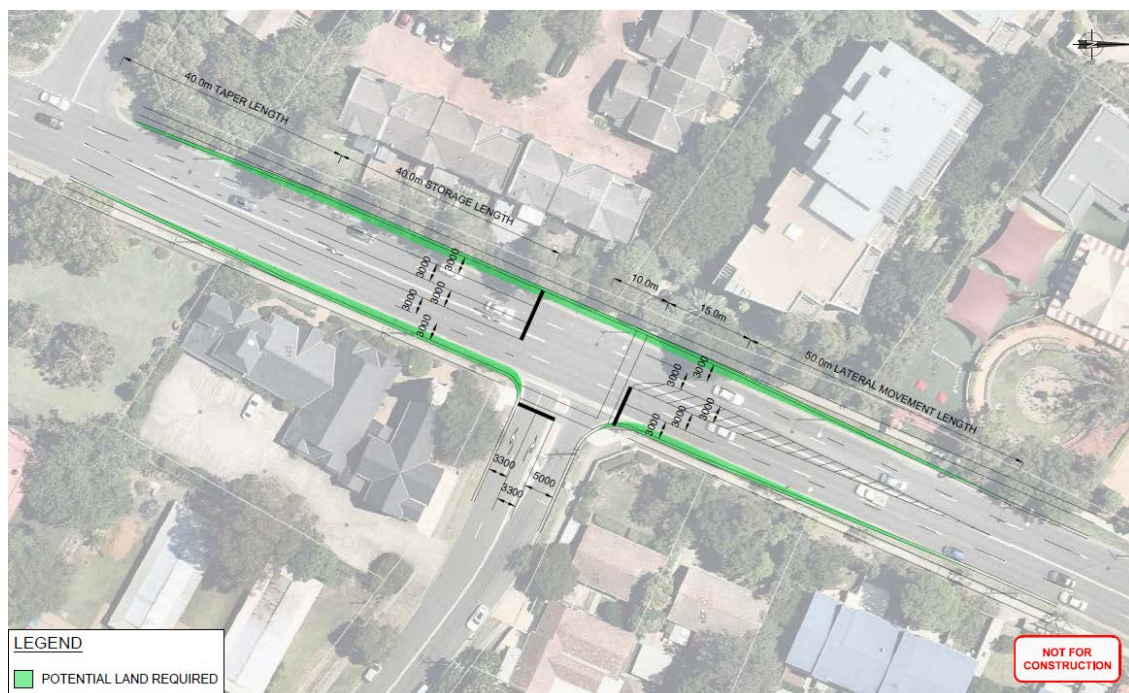


Figure 7
Preliminary concept design (Francis Street and Old Northern Road intersection)

Since Old Northern Road is a classified road, consultation with the RMS must be undertaken and any signalisation of the intersection will require RMS approval. The exhibition process allows all agencies and parties involved to consider the total package including the planning proposal, DCP amendments and draft VPA.

If RMS approval is not granted, or if the cost of signalisation exceeds expectations or is prohibitive, alternative road improvements will need to be investigated, the monetary contribution offered in the draft VPA and the development yield may need to be re-evaluated. Accordingly, the required traffic network upgrades and funding allocation will need to be resolved prior to finalising the planning proposal following exhibition. It is important to note that depending on the outcomes, changes may be needed to the planning proposal and draft VPA and DCP amendments, thereby necessitating re-exhibition.

Potential Active Recreation

Future development on the site (being 460 dwellings or 920 people) will generate demand for an additional 0.23 playing fields. This is based on a standard rule of thumb of around 1 playing field per 2,000 dwellings. In order to plan for active recreation, consideration needs to be given to the growth that is likely to be achieved within the broader precinct.

As part of the planning for the Castle Hill North Precinct a potential site in Glenhaven is being investigated for a new District open space facility which could include up to four (4) new playing fields. This facility could meet the demand that is likely to be generated from the broader Castle Hill Precinct and potentially a portion of the future demand within the Cherrybrook Precinct. The draft VPA would facilitate a contribution of approximately \$15,558,326 (based on the current development concept). It is considered that approximately \$3 million of this amount could be allocated toward the partial funding of land acquisition and capital costs of the new district open space facility.

Possible Additional Infrastructure Items

Additional infrastructure items which any remaining funds (not allocated to toward active open space and the signalisation of Francis Street and Old Northern Road) could be allocated to include the following:

- Realignment of McMullen Avenue/Brisbane Road and Old Northern Road junction.
- Additional lane on Crane Road (westbound) at the Crane Road/Terminus Street junction to improve the traffic flow from Crane Road onto Terminus Street.
- Minor improvements to the off-set junction of Orange Grove/Mercer Street/Crane Road to improve traffic flow.
- Pedestrian bridge over Terminus Street at Crane Road.
- Upgrades to the stormwater/drainage network within the broader Castle Hill Precinct.

The above infrastructure items, whilst not wholly required to support future redevelopment on the subject site at present, will likely be required in order to facilitate broader uplift in development potential within the Castle Hill Precinct as a whole. Accordingly, it is considered reasonable that any surplus funds not allocated to toward active open space and the signalisation of Francis Street and Old Northern Road be allocated toward the above projects. These projects will be further investigated as part of the master planning of the remainder of the Castle Hill Precinct.

Assessment of Suitability of VPA Offer

The Castle Hill Precinct is currently subject to the provisions of the Hills Section 94A Contributions Plan which levies development based on a percentage of the cost of the works. This plan is suitable for established areas where incremental growth is

anticipated but is not sufficient to provide for the infrastructure needs generated by the large scale urban redevelopment anticipated in the wider precinct.

Council has recently resolved to exhibit Draft Contributions Plan No.17 for Castle Hill North which can provide a broad comparison for the suitability of the current VPA offer, notwithstanding that Castle Hill south locality has yet to be subject to the same detailed precinct planning and contributions planning. For Castle Hill North the precinct planning process identified a range of new facilities and upgrades to support growth including roundabouts, road widening, intersection realignments, new playing fields, embellishment of passive open spaces, new stormwater management facilities, public domain works and pedestrian facilities. The draft contribution plan identifies a rate of \$20,985 for two bedroom units and \$29,146 for a 3 bedroom unit.

It is considered that the draft VPA offers a fair and reasonable contribution towards the provision of new local infrastructure which will be required as a result of the additional residential units which are proposed on the subject site, recognising that the proposal is in advance of detailed precinct planning and exact details of what is needed for the wider area is not yet known.

The value of the monetary contribution offered under the draft VPA must be further reviewed following consultation with the RMS and finalisation of plans and costs for the signalisation of the intersection of Francis Street and Old Northern Road to ensure sufficient funding will be available for these works. As stated previously, if signalisation of the intersection is not approved by RMS or is cost prohibitive the VPA and planning proposal may require revaluation or re-exhibition.

DRAFT DEVELOPMENT CONTROL PLAN

A draft amendment to the DCP has been prepared and is provided in Attachment 2. The purpose of the draft controls is 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 the following key matters:

- Land Use – setting out the required minimum commercial floor space, maximum number of residential units and distribution of uses on the site;
- Built Form and Design – the development is required to incorporate a variety of materials and finishes, articulation, podiums and pedestrian scale elements;
- Building Height – building height controls and diagrams illustrate the intended building orientation and transition of height across the site;
- Building Setbacks - minimum setbacks, building separation and podium setbacks are specified;
- Sunlight and Solar Access – addressing solar access requirements within and adjoining the site;
- Landscaping, Open Space and Pedestrian Amenity – providing minimum requirements for the provision of quality landscaping, common open space including roof gardens, and an embellished pedestrian link through the site from Roger Avenue to Cecil Avenue;
- Safety and Security – ensuring the safety of residents and users of the site particularly in common areas;
- Traffic, Parking and Vehicular Access – addressing parking provision, access points for commercial and residential vehicles to and from the site from Cecil Avenue and Roger Avenue, and the provision of a roundabout at the intersection of Roger Avenue and Francis Street to address environmental capacity;
- Ecologically Sustainable Development – controls to address energy efficiency, sustainable landscaping and building design; and

- Heritage - addressing the adjoining Church and St Paul's Cemetery and the provision of landscaping to soften impacts of the development.

IMPACTS**Financial**

The draft VPA secures a public pedestrian easement through the site and a monetary contribution of approximately \$15.5 million. Council will be able to allocate this contribution on the provision of new local infrastructure including improvements to the road network and new active open space which will service this development and the wider Castle Hill Precinct in the future.

Further assessment of the monetary contribution offered under the VPA must be completed following exhibition and the finalisation of details relating to required traffic upgrades within the locality. While a preliminary assessment indicates that the monetary contribution offered appears reasonable, the final contribution amount may be subject to change as a result of these further investigations or as a result of any changes to the development concept arising from the public exhibition of the proposal.

The Hills Future - Community Strategic Plan

The proposed VPA and DCP amendments will support the Community Strategic Direction as it will facilitate a desirable living environment and assists Council in meeting its growth targets. It is also consistent with the key strategy of managing new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

RECOMMENDATION

1. The draft Voluntary Planning Agreement and draft amendments to the Development Control Plan be publicly exhibited concurrently with the associated planning proposal (12/2016/PLP).
2. The draft Voluntary Planning Agreement be subject to a legal review at the cost of the proponent.

ATTACHMENTS

1. Draft Voluntary Planning Agreement (28 pages)
2. Draft amendments to the Development Control Plan (17 pages)

ATTACHMENT 1

DRAFT PLANNING AGREEMENT

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

June 2017

HILLS
Shire of Sydney's Garden



www.thehills.nsw.gov.au

Summary Sheet

Council

| | |
|----------------|---|
| Name | The Hills Shire Council |
| Address | 3 Columbia Court BAULKHAM HILLS 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 306, 25-27 Solent Circuit Baulkham Hills NSW 2153 |
| Telephone | (02) 9899 4000 |
| Email | tony.merhi@merccapital.com.au |
| Representative | Tony Merhi – Director |

Land Owner

| | |
|----------------|--|
| Name | Nordea Capital Pty Ltd (ACN 149 436 671) |
| Address | Suite 306, 25-27 Solent Circuit Baulkham Hills NSW 2153 |
| Telephone | (02) 9899 4000 |
| Email | tony.merhi@merccapital.com.au |
| Representative | Tony Merhi – Director |

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.

| | |
|--------------------------------|--|
| Development Application | Any and all development applications to carry out development on the Land. |
| Easement | See Schedule 2 |
| Monetary Contributions | See Schedule 1 |
| Works | See Schedule 3 |
| Security Amount | Not Applicable |

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DRAFT

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

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

Nordea Capital Pty Ltd (ACN 149 436 671) of Suite 306, 25 Solent Circuit, Baulkham Hills in the State of New South Wales (**Land Owner**)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Development.
- B. On or about 25 October 2016, the Council submitted the Planning Proposal with the Department of Planning and Environment for the Instrument Change to *The Hills Local Environment Plan 2012*.
- 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 a Development Application to carry out the Development of the Land.
- E. The Developer is the owner of the following properties comprising the Land:
 - (a) Lot 6 DP 705913;
 - (b) Lot 1 DP 531559;
 - (c) Lot 4 DP 531559;
 - (d) Lot 5 DP 705913;
 - (e) Lot 1 DP 581293;
 - (f) Lot 3 DP 581293;
 - (g) Lot 2 DP 581293;
 - (h) Lot 4 DP 581293;
 - (i) Lot 1 DP 547897;
 - (j) Lot 2 DP 547897;
 - (k) Lot 1 DP 591676;
 - (l) Lot 2 DP 591676;

- (m) Lot 20 DP 15399;
- (n) Lot 6 DP 29141;
- (o) Lot 5 DP 29141;
- (p) Lot 21 DP 778595; and
- (q) Lot 22 DP 778595.

(Collectively referred to herein as the **Developer's Land**).

F. The Land Owner is the owner of the following property comprising the Land:

- (a) Lot 27 DP 15399

(Referred to herein at the **Land Owner's Land**).

G. The Land Owner consents and agrees to be bound to by the terms of this Agreement.

H. The Land to which this Planning Agreement applies is the Developer's Land and the Land Owner's Land, known as 93 – 107 Cecil Avenue and 9 – 10 Roger Avenue, Castle Hill in the State of New South Wales (referred to herein as the **Land**).

I. The Developer intends to undertake a mixed-use development – commercial and residential and associated infrastructure and landscaping (referred to herein as the Development).

J. The Developer offers to:

- (a) Register the Easement for the benefit of the Council over the Land as a public right of way as a pedestrian through link between Cecil Avenue and Roger Avenue;
 - (b) Provide the Works; and
 - (c) Pay the Monetary Contributions,
- as set out in this Agreement.

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 6, Part 4** of the Act.

3. Application of this document

This document is made in respect of the 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 Until the planning agreement operates, this document constitutes the Developer's offer to enter into the planning agreement if consent under section 80 of the Act is granted to the Development Application.

5.2 The planning agreement operates only if:

- (a) the carrying out of the Development is subject to a condition imposed under section 93I(3) of the Act requiring this planning agreement to be entered into, and
- (b) the planning agreement is entered into as required by the condition in accordance with clause 25C(1) of the Regulation.

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

6. Dealings

6.1 Developer must not deal with property

- (a) The Developer 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 over the Easement (or any part thereof) without first obtaining Council's consent in writing, which must not be unreasonably withheld, unless, prior to any such transfer, assignment or novation, 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 deed; and
 - (ii) the Developer is released from its obligations under this document.

6.2 Caveat

- (a) The Developer and the Land Owner agree that its obligations under this document create a caveatable interest in the Easement.

- (b) The Developer must at the request of Council provide Council with survey plans for the Easement.
- (c) The Developer must not object to, seek to withdraw or issue a lapsing notice for a caveat lodged by Council in respect of Easement.
- (d) 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 Easement.
- (e) 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 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 Developer, at its own cost, will procure the preparation of the Transfer Granting Easement in registrable form (save for requiring the signature of the Council).
- 7.4 The Developer will bear the costs of and attend to the registration of the Transfer Granting Easement at Land and Property Information.
- 7.5 The Council must provide reasonable assistance to the Developer in registering the Transfer Granting Easement at Land and Property Information.
- 7.6 The Registration of the Easement must be completed before the issue of the Final Occupation Certificate for the Development of the Land.
- 7.7 The Developer and/or any successor(s) in title of the Land will be responsible for the repair and maintenance of the Easement.
- 7.8 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.
- 7.9 Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the grant and registration of the Easement including its legal costs and disbursements (including any registration fees).
- 7.10 The Developer must pay to Council the amount invoiced for expenses within 21 days of receipt of the invoice.

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 document 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 93(F)(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Monetary Contributions for those purposes.

8.4 Calculation of Monetary Contribution

- (a) The Monetary Contributions is calculated on the basis of the approved yield of residential and commercial units and commercial floor space for the Development of the Land.
- (b) The Developer is to make a monetary contribution to the Council in accordance with the rates specified 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** or as otherwise provided for under a Development Consent.
- 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, unless otherwise approved under a Development Consent.
- 9.4 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, unless otherwise undertaken in accordance with a development consent.
- 9.5 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.
- 9.6 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 occupational health and safety, and
- (c) this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law, and
- (d) the written approval given under clause 9.4.

9.7 In the event of an inconsistency between this Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.

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 made 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, and
 - (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.
- 14.3 If Council requests a variation to the Works after Council has given its written approval under clause 9, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.
- 14.4 Council shall repay the amount referred to in clause 14.3 to the Developer after the Works are complete, and within 28 days of receipt of:
- (a) a tax invoice for the amount claimed by the Developer; and
 - (b) documentation which demonstrates to Council's satisfaction the increase in costs as a result of the variation requested by the Council.

15. Failure to Carry out the Works

- 15.1 The parties agree that the Works Completion Date may be extended due to:
- (a) any Force Majeure Event,
 - (b) any delays on the part of any government authority (including the Council) in granting any approval, consent, licence or permit necessary for the Works to be completed, or
 - (c) any direction the Council gives extending the Works Completion Date.
- 15.2 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.
- 15.3 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.
- 15.4 If the Developer fails to rectify the breach the subject of a notice given under clause 15.2, the Council may:
- (a) call upon the Security, and
 - (b) carry out and complete or make safe the Works.

15.5 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:

- (a) 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); and
- (b) call upon the Security.

15.6 For the purposes of clause 15.4(b) and clause 15.5(a):

- (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) any difference between the amount of the Security called upon pursuant to clause 15.4(a) or clause 15.5(b) (as the case may be), and 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 Rectification 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.

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 a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.

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:

- (a) call upon the Security to meet its costs in rectifying the defect, and

- (b) recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and 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:

- (a) by calling upon the Security provided by the Developer to the Council under this Agreement, or
- (b) 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 Applicable

21. Application of s94, s94A and s94EF of the Act

21.1 For the purpose of section 93F(5) of the Act, this Agreement excludes the application of sections 94, 94A and 94EF of the Act in relation to the Development Application for the Development.

22. Modifications

22.1 In the event that the Development is changed, modified or amended prior to completion of the Development, and a further development or modification application is made for the Development of the Land, then any Agreement Contributions made pursuant to this Agreement shall, to the extent that it is lawful:

- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and
- (b) be taken into account in determining any development contribution under section 94 and s94A of the Act; and
- (c) be taken into account in determining whether or not any planning agreement excludes the operation of section 94 and/or section 94A of the Act; and
- (d) be taken into account for the purposes of section 94(6) of the Act; and
- (e) be taken into account for the purposes of section 79C of the Act.

23. Termination

23.1 Development Consents

If Development Consent is granted by the Council with respect to the Development Application, this document terminates with respect to that particular Development Consent:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or
- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

24. Consequences

- 24.1 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.
- 24.2 Any unapplied component of the Monetary Contributions or unapplied Security that has been provided to Council will be refunded to the Developer as soon as practicable after the date of termination.
- 24.3 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

25. Private Certifiers

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

26. Notices

- 26.1 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.
- 26.2 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.
- 26.3 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.

27. Breach Notice and Rectification

- 27.1 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**).
- 27.2 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.
- 27.3 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.

28. Registration of document on Title**28.1 Acknowledgement**

The Developer and the Land Owner acknowledges that Council intends to register this document under section 93H 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.

28.2 Consents to Registration

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

28.3 Release from Registration

Council will at the request of the Developer and/or Land Owner release the Land (or part thereof) from registration of this document where the Agreement Contributions have been made (including completion of the Works) and no other money is owing to Council 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 document.

28.4 Registration 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.

29. Costs

29.1 The Developer must pay on demand Council's reasonable costs and expenses including legal costs and disbursements as agreed or assessed, 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 request by the Developer under the Agreement;
- (c) the preparation, lodgment and withdrawal of any caveat over the Land or pursuant to this Agreement;
- (d) 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
- (e) any breach of a provision of this Agreement by the Developer.

29.2 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.

30. 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.

31. General**31.1 Assignment**

- (a) The Developer and the Land Owner 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 Owner enters into a contract for the sale of the Land the subject of the Development Consent, the Developer and/ or the Land Owner (as vendor) shall disclose to the purchaser the existence of this Agreement.

31.2 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) 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.
- (c) 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.

31.3 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.

31.4 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) 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.

31.5 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.

31.6 Continuing performance

- (a) 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.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:

- (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
- (ii) survives and continues after performance of this document.

31.7 **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.

31.8 **Remedies**

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

31.9 **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.

31.10 **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:

- (a) 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;
- (b) 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;
- (c) 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.

31.11 **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.

31.12 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.

32. Definitions and interpretation

32.1 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.

Developer means a person who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.

Development Application means the development application specified in the Summary Sheet.

Development means the development of the Land for mixed use - commercial and residential, and associated infrastructure and landscaping.

Development Consent means the development consent granted by the Council under section 80 of the Act to the Development Application.

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 Development issued in accordance with Part 4A of the Act.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or
 - (vi) anything done or not done by or to a person, except the party relying on force majeure;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

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 means an occupation certificate referred to in section 109C(1)(c) of the Act and may be an interim or final occupation certificate or issued for the whole or part of any building as provided for in section 109C(2) of the Act;

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

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.

Rectification Certificate means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

Rectification Notice means a notice in writing that identifies a defect in the Works and requires rectification of the defect within a specified period of time.

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

Security means a Bank Guarantee or bond in favour of the Council on terms satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

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 of the issue of the Final Occupation Certificate.

32.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;

- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

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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 the Final 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.

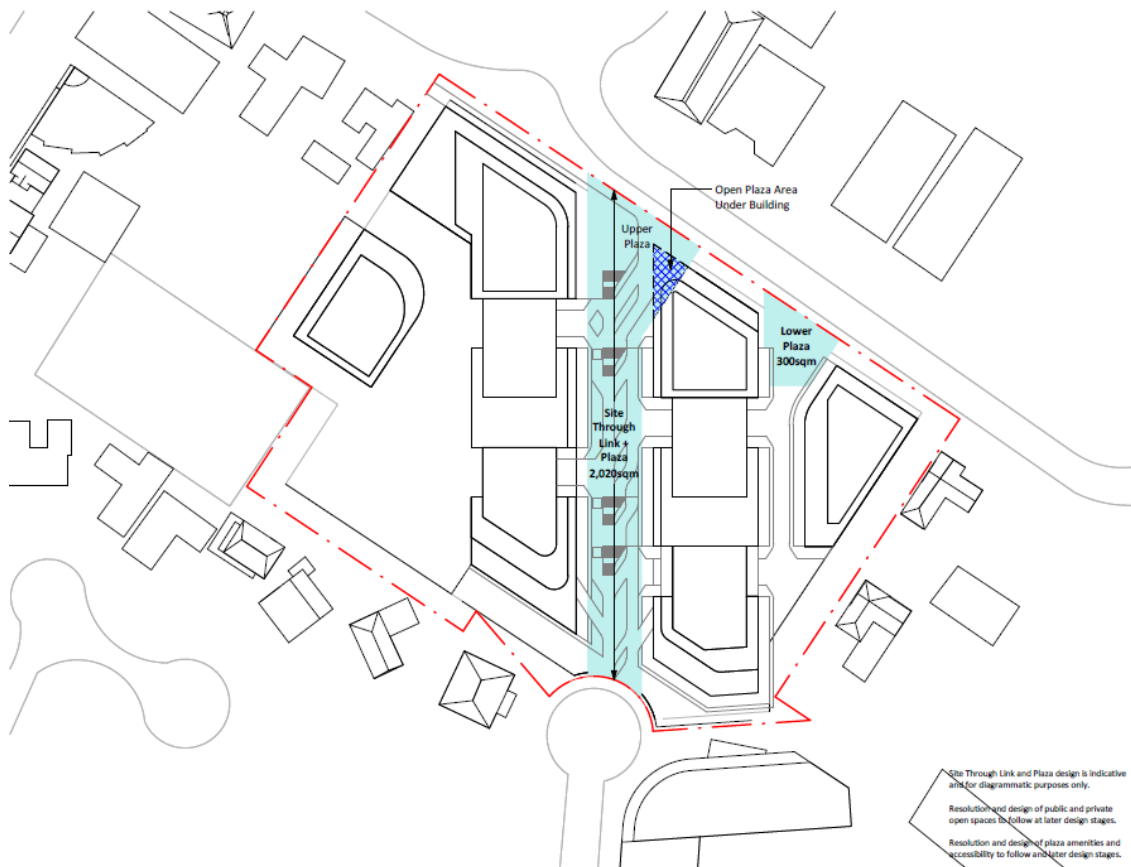


Figure 1: Easement Plan

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 the Final Occupation Certification for the Development of the Land. | 12 months |

SITE THROUGH LINK
INDICATIVE GRAPHIC OF SITE THROUGH LINK EMBELLISHMENTS

PTW



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:

General Manager

Mayor

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

Secretary/Director

Director

Print name

Print name

Executed by the Land Owner in accordance with
s127 of the *Corporations Act 2001* (Cth):

Secretary/Director

Director

Print name

Print name

ATTACHMENT 2

The Hills Development Control Plan (DCP) 2012

www.thehills.nsw.gov.au

THE
HILLS
Sydney's Garden Shire



Part D Section 21

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

DRAFT

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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.

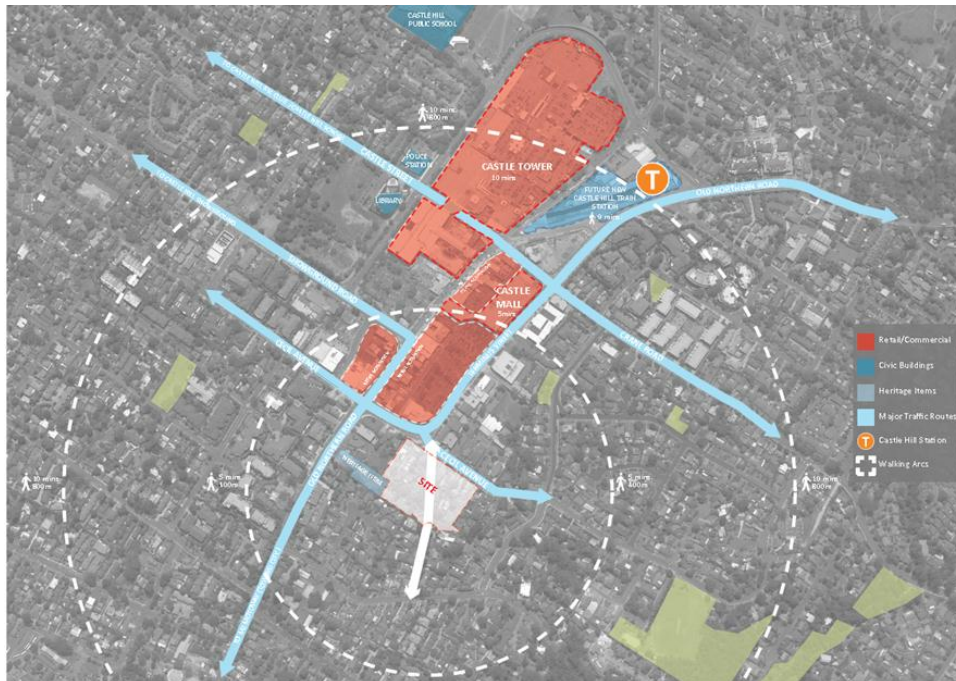


The Site

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

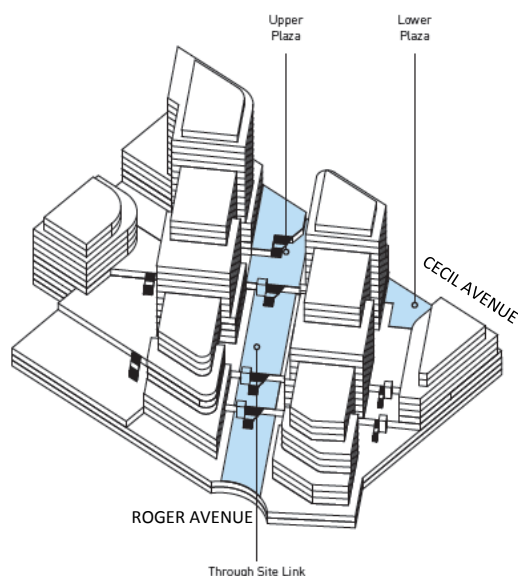


Figure 4: Publicly Accessible Areas requiring activation and surveillance

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 be generally in accordance with Figures 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.
- 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**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.*

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.

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.

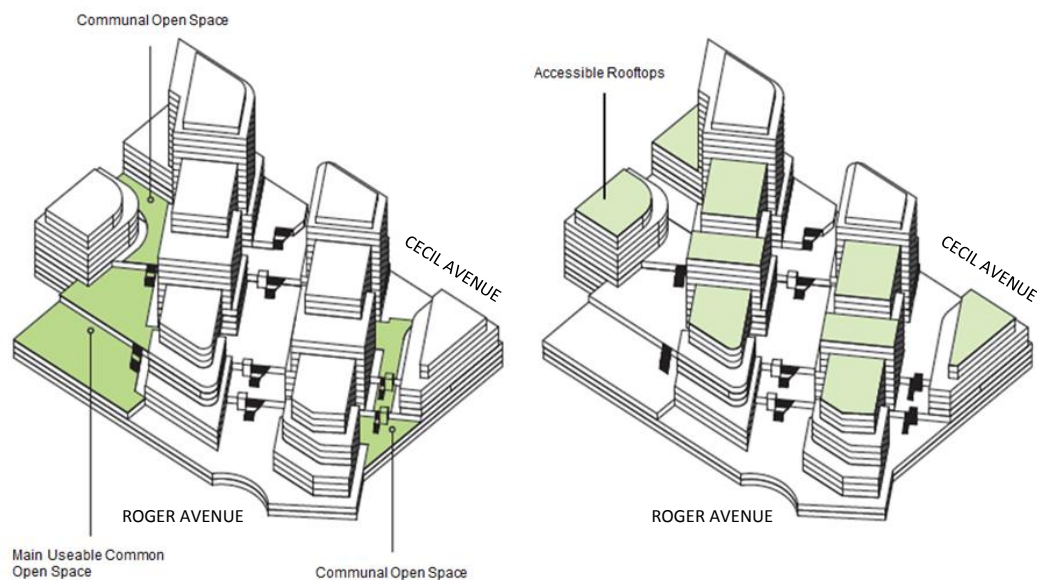


Figure 9: Ground level communal open space and accessible rooftops

Landscaping

- (g) 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.
- (h) 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.
- (i) Native ground covers and grasses are to be used in garden beds and path surrounds (turf is to be confined to useable outdoor areas).
- (j) A minimum of 5% deep soil landscaped space at ground level must be provided.
- (k) Deep soil zones are to allow for future planting of mature trees.
- (l) Green walls are encouraged on podium walls along active frontages to soften the interface between future development and the public realm.
- (m) 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.
- (n) 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. Landscaping to all other boundaries shall provide privacy to adjoining residential development.
- (o) 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.
- (p) Drought tolerant plant species, and species that enhance habitat and ecology, are to be prioritised.
- (q) Hard landscaped areas are to be provided, including stairs and ramps connecting paved terraces on various levels.
- (r) Landscape design is to be integrated with water and stormwater management.
- (s) Landscaping on Cecil Avenue shall be consistent with the Castle Hill Public Domain Plan.

Pedestrian Amenity

- (t) The development must provide a minimum of two (2) public plazas fronting Cecil Avenue.
- (u) 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.
- (v) The development shall provide opportunities for casual surveillance, enhancing safety of pedestrians moving within the site.
- (w) 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 3), and directional signage.
- (x) 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) Entrances and exits to the street are directly accessible, illuminated and highly visible.
- (d) Dead-end corridors, alleyways, pathways and refuse areas are sign-posted and secured to prevent unauthorised access.
- (e) 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.
- (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 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.

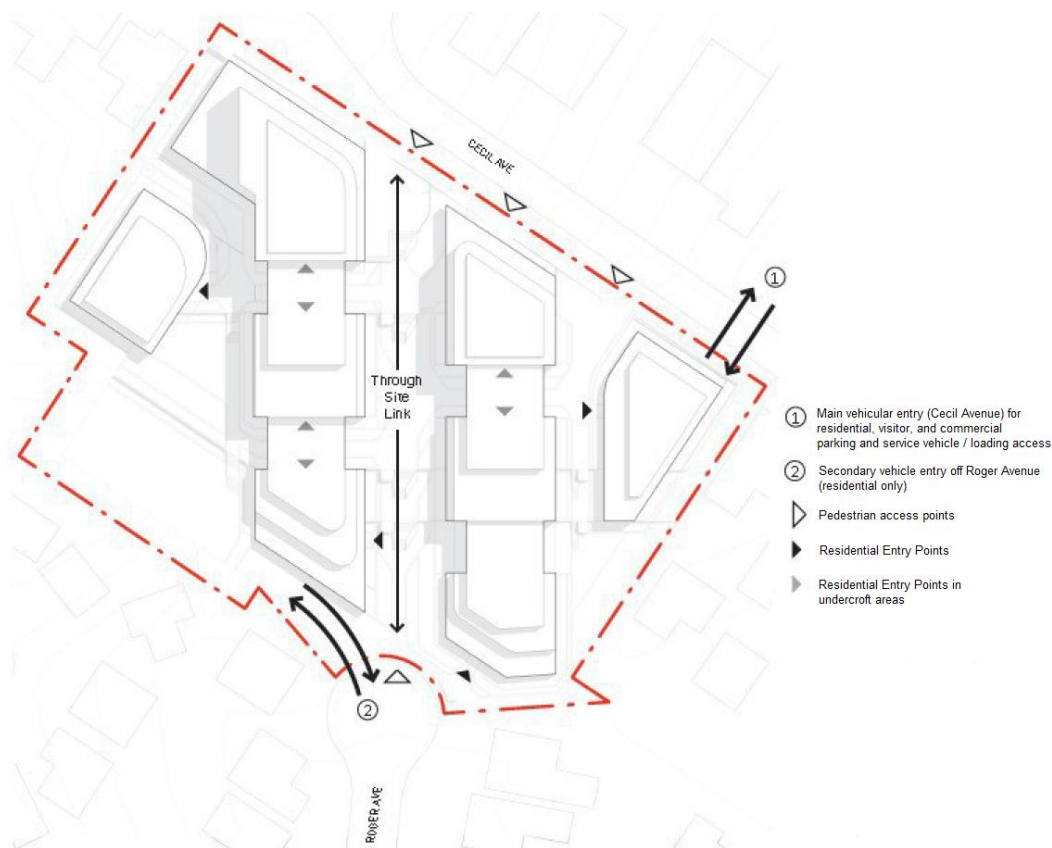


Figure 12: Access Network

2.9 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

OBJECTIVES

- i) Building designs are innovative and sustainable to reduce the reliance on, and consumption of, fossil fuels and potable water supplies.
- ii) 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 13: Location of heritage items

ITEM-7

DRAFT VPA AND DCP AMENDMENTS, PLANNING PROPOSAL - CECIL AVENUE AND ROGER AVENUE, CASTLE HILL (12/2016/PLP)

THE MOTION WAS PUT AND CARRIED.

1. The draft Voluntary Planning Agreement and draft amendments to the Development Control Plan be publicly exhibited concurrently with the associated planning proposal (12/2016/PLP).
2. The draft Voluntary Planning Agreement be subject to a legal review at the cost of the proponent.

VOTING FOR THE MOTION

Clr R A Preston
 Clr Dr J N Lowe
 Clr A N Haselden
 Clr M G Thomas
 Clr R M Tracey
 Clr A J Hay OAM
 Clr R K Harty OAM

Clr Dr M R Byrne
Clr Dr P J Gangemi

Clr Y D Keane