

## Planning and Assessment

IRF20/1338

### Plan finalisation report

**Local government area:** The Hills Shire

#### 1. NAME OF DRAFT LEP

The Hills Local Environmental Plan 2019 (Amendment No 6). The draft written instrument is at Attachment LEP.

#### 2. SITE DESCRIPTION

The planning proposal applies to land at 6-12 & 16-20 Garthowen Crescent, Castle Hill. The site comprises eight (8) residential allotments (shown in Table 1 below):

Table 1: Subject allotments

	Street Address	Lot	DP
1	6 Garthowen Crescent, Castle Hill	Lot 23	DP222257
2	8 Garthowen Crescent, Castle Hill	Lot 24	DP222257
3	10 Garthowen Crescent, Castle Hill	Lot 25	DP222257
4	12 Garthowen Crescent, Castle Hill	Lot 1	SP40627
5	12A Garthowen Crescent, Castle Hill	Lot 2	SP40627
6	16 Garthowen Crescent, Castle Hill	Lot 28	DP222257
7	18 Garthowen Crescent, Castle Hill	Lot 29	DP222257
8	20 Garthowen Crescent, Castle Hill	Lot 30	DP222257

The site is located in the north eastern portion of the Castle Hill North Precinct and is approximately 420 metres walking distance from Castle Towers Shopping Centre and Castle Hill Metro Station. The site has a total area of 6,010m<sup>2</sup> and is currently zoned R3 Medium Density Residential under The Hills LEP 2019.

The site is irregular in shape and has a northern and southern frontage to Garthowen Crescent. The site adjoins a locally listed heritage item, known as 'Garthowen', which is currently operating as a childcare centre. The surrounding area is currently characterised by low and medium density homes, which is expected to change over time.



Figure 1 Location Plan (Source: Council's post exhibition planning proposal)

The Council-led Castle Hill North Planning Proposal also applies to the subject site and locality. Under the Castle Hill North Planning Proposal, the subject site was identified as a key site with a requirement that high density development demonstrate a visually sympathetic treatment to 'Garthowen' house. Under the Castle Hill North Planning Proposal, the subject site was proposed to have the same land use zone as the subject proposal (R4 High Density Residential). However, a lower maximum building height limit of 10 storeys, a lower floor space ratio of maximum 1.85:1 and a lower density (approximately 111 units) applied under the Castle Hill North Planning Proposal.

This site-specific planning proposal was progressed independently of the broader precinct plan as the proposal demonstrated strategic and site-specific merit. It represented an opportunity to enable development of a large, amalgamated development site with associated public benefits and urban design outcomes. This proposal would result in built form consistent with the strategic outcomes envisaged under the Castle Hill North Planning Proposal. It facilitates an appropriate transition in density and height between the centre of the Precinct, high density development to the west of the site, 'Garthowen' house and medium density development to the east and north of the site.

The proposal is supported by a local voluntary planning agreement, allowing development to proceed on this site ahead of Castle Hill North planning proposal and the adoption of the draft Castle Hill North Contributions Plan.

### **3. PURPOSE OF PLAN**

To facilitate a high-density residential development incorporating up to 190 residential dwellings in two towers of up to 13 and 18 storeys (**Attachment A**), the draft LEP seeks to amend LEP 2019 as follows:

- Rezone the site from R3 Medium Density Residential to R4 High Density Residential;
- Increase the minimum lot size from 700sqm to 1,800sqm;
- Increase the maximum building height from 9 metres to 57 metres;
- Apply a maximum floor space ratio (base) of 1:1 and identify the subject site as 'Area A' on the floor space ratio map ensuring Clause 7.11 of The Hills LEP 2019 is applicable to the site;
- Apply a maximum incentivised floor space ratio of 2.5:1 which would be achievable subject to compliance with Clause 7.11 of LEP 2019;
- Identify the site as 'Area L' on the Key Sites Map; and
- Include an additional local provision (new Clause 11A) to permit up to 20% additional floor space above the incentivised floor space ratio if the development provides certain public benefits including the provision of quality public domain, improved pedestrian connections and lot amalgamation. This would allow the development of the subject site to achieve a maximum floor space ratio of 3:1.

The draft LEP is supported by a draft The Hills Development Control Plan 2012 Part D Section 24 Garthowen Crescent.

### **4. STATE ELECTORATE AND LOCAL MEMBER**

The site falls within the Castle Hill State electorate. Mr Ray Williams MP is the State Member.

The site falls within the Mitchell Federal electorate. Hon Alex Hawke MP is the Federal Member.

To the planning team's knowledge, neither MP has made any written representations regarding the proposal

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 13 October 2017 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Condition 1(f) required Council to update of Urban Design Concept Plan and Report, Transport and Access Report and Heritage Impact Report. Condition 1(g) required the planning proposal be re-submitted to the Department for review and endorsement prior to exhibition. The Department issued a letter dated 21 December 2018 (**Attachment C**) confirming the planning proposal could proceed to exhibition.

The Gateway determination was altered on a number of occasions (**Attachment B-B1**) as follows:

- 7 February 2018 – Condition 1(d) of the Gateway Determination was replaced with: “amend the planning proposal to clarify that the maximum floor space ratio of 3:1 for the site is achieved by the following mechanisms:
  - (i) The floor space ratio map is to apply a base floor space ratio of 1:1 to the site and identify it as Area A;
  - (ii) The floor space ratio incentive map is to be apply an incentivised floor space ratio of 2.5:1 to the site; and
  - (iii) Include a local provision to specify key site outcomes that enable the site to achieve a 20% bonus floor space incentive (0.5:1)”
- 22 October 2018 – to extend the timeframe for completing the LEP to 15 July 2019;
- 6 July 2019 – to extend the timeframe for completing the LEP to 13 March 2020;
- 22 April 2020 – to remove Council as the local plan making authority and revoke the Written Authorisation to Exercise Delegation issued on 13 October 2017. This amendment was required as there was an unresolved objection from Transport for NSW.

The finalisation date for this proposal expired on 13 March 2020 but the LEP can be validly made without extending the Gateway.

Council's request to the Department to finalise the planning proposal was made on 23 December 2019 prior to the due date. The Department is now satisfied that Council has met the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

The planning proposal was not referred to the local planning panel under Section 2.19(1)(b) of the Act. The requirement for councils to seek advice from the Local Planning Panel on planning proposals prior to reporting to Council for a Gateway Determination came into effect in mid-2018. Council considered whether to forward this planning proposal to the Department for a Gateway Determination on 8 August 2017. Therefore, the requirement to refer the matter to the Panel does not apply in this instance.

## 6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 22 January to 22 February 2019.

13 submissions were received from the community during the exhibition period. Key issues that were raised by the community are outlined below.

- Height of Buildings

Concern was raised that the proposed maximum building heights that would enable buildings of 13 and 18 storeys are excessive and would adversely impact the surrounding area in respect of visual, amenity, privacy and overshadowing impacts.

### Council response

Council acknowledged that the proposed height is a substantial variation from the heights which were anticipated within the Castle Hill North planning proposal (4-10 storeys). However, the proposed heights were acceptable when viewed within the overall context of the Precinct (Council's report included a height plan to demonstrate this, see Figure 2 below). This takes into account the relationship between the site and adjoining sensitive uses. The annotation of 'Future' in Figure 2 refers to the proposed building heights within the Castle Hill North planning proposal.

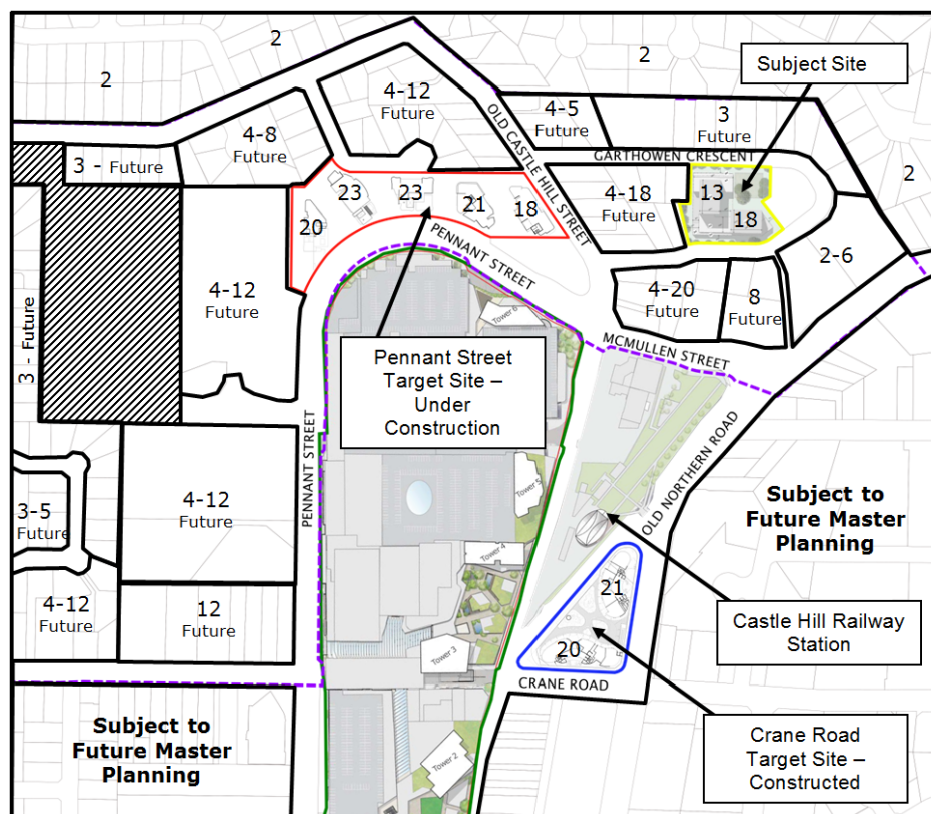


Figure 2 Distribution of Height – Surrounding Sites (Source: Council's post exhibition planning proposal)

Council states that the proposed layout of the 18 and 13 storey building elements would result in a reasonable transition of heights on the site and is suitable looking at the precinct holistically. Building heights taper downward from the highest elements close to the station to the lower and medium density development to the north. In regard to separation between the tallest building element and the lower scale development, an 18 storey tower in the south of the site would be located around 60 metres from medium density development on the northern side of Garthowen Crescent.

Measures have been incorporated into the concept, supported by a site-specific development control plan which includes a site structure plan, to ensure that the



development could provide an appropriate address to the medium density development to the north through:

- communal open space and deep soil planting to the north eastern portion of the site. The open space extends approximately 35m along the frontage and would reduce the apparent scale of the development when viewed from the north;
- 7.5m minimum setback to Garthowen Crescent (measured from the adjusted boundary following road widening land dedication), and a further 6m minimum setback for all storeys above the 4<sup>th</sup> storey; and
- The proposed setback would be sufficient to enable adequate tree planting.

Council provided comments in relation to the proposal's impacts on solar access and overshadowing on adjoining properties. The exhibited Urban Design Report demonstrated that the concept built form would allow at least 4 hours of unobstructed sunlight access (during Winter Solstice) for principal open spaces within the adjoining residential developments situated predominantly south of the site.

The overshadowing analysis also indicated that the primary communal open space of the future development, as incorporated to east of the concept built form would have unobstructed solar access from 9am to 1pm and be generally free from significant levels of overshadowing.

In addition, future development on the site would be subject to the following solar access and overshadowing requirement:

- The principal useable part of the common open space shall receive a minimum of 2 hours of sunlight between 9am and 3pm on 21st of June.
  - Buildings must be designed to ensure that adjoining residential buildings and the major part of their landscape receive at least four hours of sunlight between 9am and 3pm on 21 June.
- Interface with Adjoining Heritage Item (Garthowen House)

Concern was raised that the scale of the proposed built form could potentially have adverse impacts on the adjoining heritage item, including visual dominance, overshadowing, loss of privacy, outlook and disturbance to the amenity on the site.

#### Council response

Council confirmed that 'Garthowen' house is listed under Schedule 5 of LEP 2019 as an item of local heritage significance. It is anticipated that any future development on the site would have regard to the significance of the item and ensure an appropriate relationship between the development and the site is achieved.

Council argued the proposal's concept design 'softens' the visual impact of the development at the interface with Garthowen House through minimising site coverage, increasing upper level setbacks, incorporating landscaping within setback areas and including a large common open space adjoining the heritage item. The physical separation distance between the proposed 13 storey tower and heritage item is approximately 50 metres.

The position of the proposed 18 storey building is not considered to unreasonably impact on the heritage significance of the item for the following reasons:

- Unlikely to impact on any key view lines to or from the heritage item;
- Heritage item would continue to receive adequate solar access, most importantly to the heritage garden along the northern frontage of the site;

- Exhibited controls require a setback of at least 6 metres from the heritage item's property boundary.

In addition, the draft LEP instrument includes an objective to ensure development is sympathetic to the character of heritage items. It also includes a control to ensure the development will not overshadow or detract from the heritage value of 'Garthowen' (house) and require a ground level common open space to be provided between the development and the heritage item.

Further consideration of heritage impacts would occur as part of the detailed development assessment process.

- Land Dedication Plan

Concern was raised about the land dedication identified to sites which have already been developed, or sites that are not proposed to be rezoned as part of Castle Hill North planning proposal. Concern was also raised that the proposed widening was insufficient to ensure an appropriate level of traffic and pedestrian safety. Figure 3 replicates the exhibited land dedication plan, the area circled in yellow represents properties not proposed to be rezoned as part of the Castle Hill North planning proposal.

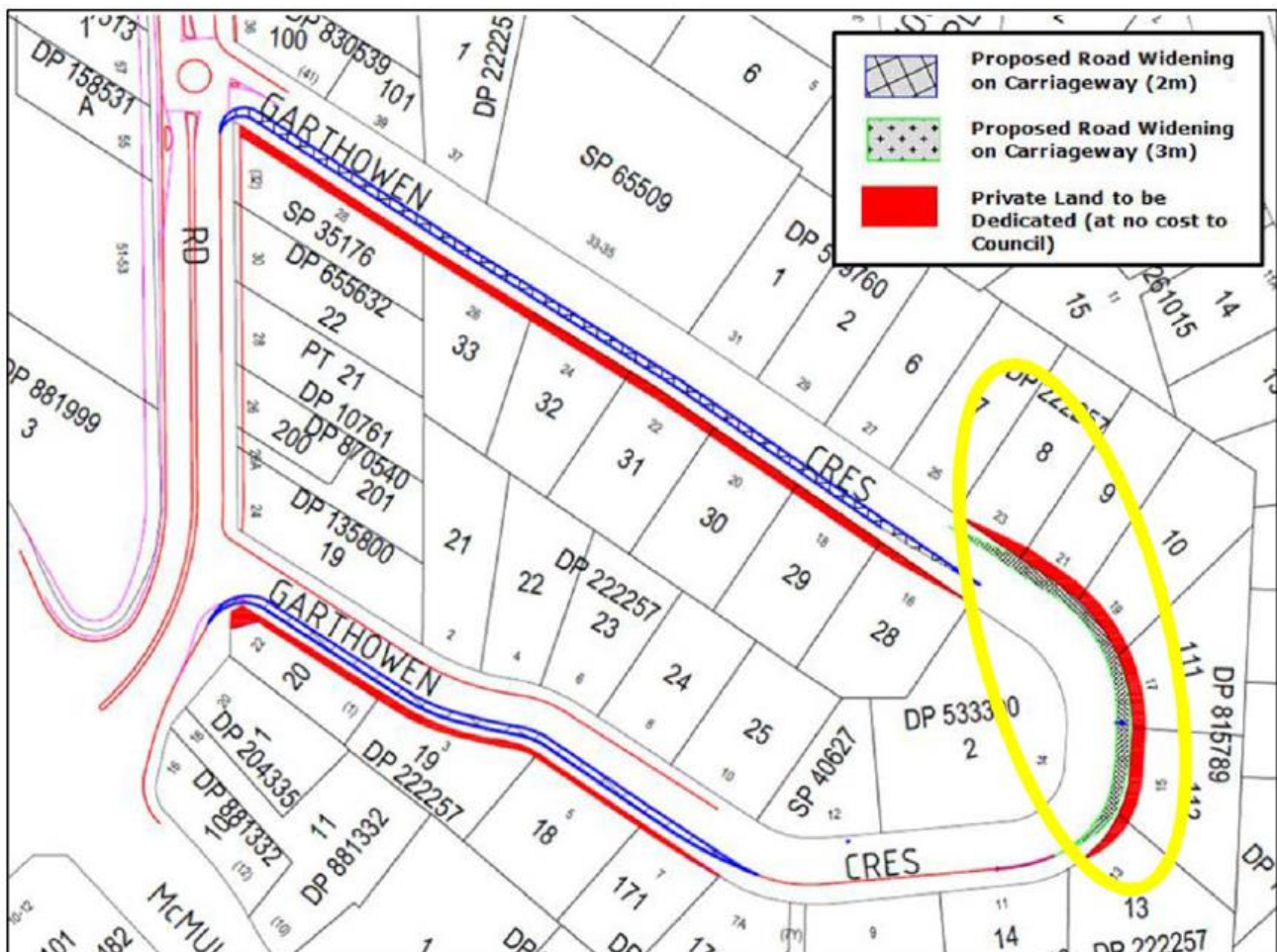


Figure 3 Exhibited Land Dedication Plan – Garthowen Crescent

(Source: Council's post exhibition planning proposal)

### Council response

The street cross section within the draft Castle Hill North DCP identifies a 17 metre road reservation with a 10.2m carriageway width along Garthowen Crescent. Currently, the road reservation is around 15-16m with a 7.5m wide carriage. Council considers the extent of

proposed widening sufficient to ensure a safe development outcome for traffic and pedestrians.

In order to facilitate the 17 metre road reservation, a concept plan was prepared which identified locations where the carriageway could be widened. It was intended that the land would be dedicated as redevelopment occurs. However, the exhibited plan included land already developed and was not proposed to be rezoned as part of the planning proposal (refer to Figure 3).

This issue was identified and corrected as part of the consideration of submissions received during the exhibition of the Castle Hill North Planning Proposal. Accordingly, the land dedication plan within the draft Castle Hill North DCP no longer applies to those properties.

- **Traffic Congestion & Parking**

Concern was raised in relation to the potential traffic impacts on the local road network as a result of additional residential density beyond that already envisaged under the Castle Hill North planning proposal. Concern was also raised in relation to an increased amount of traffic using Garthowen Crescent as a result of this development, and adequate parking restrictions should be included in the planning proposal.

#### Council response

Additional intersection improvements were proposed as part of the Castle Hill North planning proposal to ensure the road network operates at an efficient level of service to support the development of the precinct. These improvements include road widening along Old Castle Hill Road and Castle Street, two pedestrian bridges, four new roundabouts and future road widening along Garthowen Crescent.

The planning proposal was supported by a traffic report assessing the impact of the proposal on the surrounding road network. It concluded that the development would have negligible impact on the surrounding road network.

Council is currently working with TfNSW and the Department to undertake comprehensive traffic modelling for the Castle Hill area to understand the road infrastructure implications of development within the precinct. TfNSW has advised that this proposal could proceed ahead of this work concluding.

In respect of parking restrictions, Garthowen Crescent is included within the overall Parking Management Strategy that was developed by Sydney Metro in accordance with a condition of the Sydney metro's project's planning approval. Sydney Metro is required to monitor parking around Castle Hill metro station every quarter for the first 12 months of the Metro's operation. Data collected from the monitoring would assist Sydney Metro and Council to determine whether any changes need to be made to the implementation of the Parking Management Strategy.

- **Privacy and Loss of Outlook**

Concern was raised that the proposed towers would impact on the privacy of adjoining properties.

#### Council response

In order to ensure that the privacy of residents is maintained, development controls within the draft DCP for the site aim to ensure private open space and habitable rooms of proposed and existing residential dwellings are reasonably protected. These include controls relating to the podium and tower form, building orientation and layout, location, size and placement of windows and balconies, screening devices and landscaping. In addition, a future development would have to comply with *SEPPNo.65 – Design Quality of Residential Apartment Development*.

Design excellence provisions (Clause 7.7 of LEP 2019) would apply to all development with a height of 25 metres or more (around 8+ storeys). This provision requires that development consent must not be granted to development unless the consent authority considers that the development exhibits design excellence.

- Impact on Amenity during construction (dust, noise and traffic)

Concerns were raised in relation to the impact of construction activity such dust, noise and traffic.

#### Council response

Council states that managing and mitigating the impact of construction activity is a matter that's addressed as part of the development assessment process. The following requirements are generally imposed through conditions on a development consent:

- construction noise management plan;
  - construction management plan and traffic control plan;
  - restrictions on hours of work; and
  - conditions relating to dust emission.
- Inadequacy of local infrastructure

Concern was raised in relation to the adequacy of local infrastructure to service the additional yield.

#### Council response

Council stated that the value of monetary contributions secured through the local voluntary planning agreement would secure a fair and reasonable contribution from the developer, which is proportionate to the demand for additional infrastructure likely to be generated by the planning proposal.

- Density and impact on local character

Concern was raised that the proposal would result in overdevelopment of the site (the development potential proposed under the Castle Hill North Precinct Plan was sufficient) and would be out of character with the locality.

#### Council response

The site is located within Castle Hill North that was already identified to undergo substantial transformation over the coming years including the character of the area. While the proposal seeks to further increase density above what was proposed in Castle Hill North, the proposed development is not considered to be inconsistent with scale of future high density development in the area. The proposal is justified on the following grounds:

- Amalgamation of the key site would facilitate a master planned development outcome which can better accommodate a higher and more dense built form;
- The potential amenity impacts on adjoining sites including the heritage item can be addressed; and
- The additional demand on local infrastructure resulting from the unplanned dwellings can be addressed through the financial contribution specific within the draft VPA.

Council also provides comment on the management of building dominance of the proposal. The proposal has demonstrated a quality urban design outcome can be achieved and incorporates key design features to assist in achieving this. Key design features include minimised bulk and site coverage, appropriate levels of height transition to adjoining



properties, sufficient site setbacks for landscaping and a substantially sized deep soil open space.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult Sydney Water, Department of Education (now Schools Infrastructure NSW), Office of Environment and Heritage (now Environment, Energy and Science), Transport for NSW including former RMS in accordance with the Gateway determination.

Council has consulted these authorities. Submissions were received from Sydney Water, RMS and Transport for NSW. Sydney Water raised no objection to the planning proposal. Comments from the Transport authorities are discussed further below.

### Transport NSW (former RMS and Transport for NSW)

RMS and Transport for NSW provided individual submissions but raised similar issues relating to the need to consider cumulative traffic impacts across the broader precinct. Concerns were raised regarding the need for a mechanism to fund State infrastructure required to support the proposed uplift and the need to reserve land for road widening purposes.

It was requested site specific planning proposals be deferred and considered or assessed in the context of the cumulative impacts of the proposed development uplift in the Precinct. The then RMS suggested that if the Department and Council supported the planning proposal prior to the completion of the broader Precinct-wide traffic study, Council needed to be satisfied that a suitable planning agreement is in place to ensure developer contributions are obtained for the provision of regional transport infrastructure required to support development uplift in Castle Hill.

### Council Response

Council is currently working with TfNSW and the Department to prepare comprehensive traffic modelling for the Castle Hill Precinct. This modelling will enable Council and State Government to better analyse the traffic implications associated with development in the Castle Hill Precinct and subsequently enable the finalisation of the Castle Hill North Planning Proposal and adoption of the associated Contributions Plan No. 17 – Castle Hill North Precinct.

The draft contributions plan for Castle Hill North includes funding of certain regional traffic infrastructure including an upgrade to the intersection of McMullen Avenue and Old Northern Road which is required to support the anticipated growth under the Castle Hill North Planning Proposal. A local contribution for this proposal would contribute to the cost of the traffic improvements required.

Council considers that the concerns raised by the Transport cluster would be satisfied by the payment of monetary contributions under the executed local Voluntary Planning Agreement which would contribute towards the provision of regional transport infrastructure under the Castle Hill North Contribution Plan. This includes an apportioned cost for regional road infrastructure (being the upgrade of the McMullen Avenue and Old Northern Road intersection).

### Department Comment

The local voluntary planning agreement is based on monetary contributions per dwelling to be allocated towards local public infrastructure. Council has stated that contributions would go towards the cost for the regional road infrastructure identified in the draft Contributions Plan.

As noted above, the regional traffic modelling is underway with the recommendations for transport infrastructure upgrades to support the uplift in Castle Hill are unknown. As an interim measure, the Department will apply a Satisfactory Arrangements Clause (SAC) for this site within this LEP amendment and for the broader Castle Hill North Precinct to enable the State government to collect monies proportionally to development towards any regional traffic infrastructure that may result from this study.

As this site does not have frontage to any State roads, there is no risk that this site may be required for state infrastructure. Council has identified the local road widening required to support the local road network, as identified in its report (**Attachment A**). This ameliorates any risk that making this plan prior to the broader Castle Hill North Planning Proposal would hinder the ability to secure SP2 (road widening) zones that may be required following the completion of the traffic modelling.

Given the above, it is considered that the issues raised by TfNSW's have been resolved and there is an appropriate pathway identified to resolve the broader traffic issues.

## **8. POST-EXHIBITION CHANGES**

The Department has made a post-exhibition change to the planning proposal to map the subject site as an 'urban release area' in the relevant LEP map. This would require the consent authority to consider the provisions of Part 6 Urban Release Areas of The Hills LEP. Clause 6.2 will require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area.

This post-exhibition change is required to resolve the concerns raised by Transport for NSW and to ensure that a suitable mechanism would be in place for developer contributions are obtained for the provision of regional transport infrastructure required to support development uplift in Castle Hill.

## **9. ASSESSMENT**

### **9.1 Section 9.1 Directions**

The Gateway Determination referred to inconsistency with Section 9.1 Direction, 2.3 Heritage Conservation however it was justified in accordance with the terms of the Direction.

The post exhibition planning proposal stated the following Section 9.1 Directions were relevant, and the proposal is consistent with these Directions.

- Direction 3.1 Residential Zones
- Direction 3.4 Integrated Land Use & Transport
- Direction 5.9 North West Rail Link Corridor Strategy
- Direction 6.1 Approval and Referral Requirements
- Direction 6.3 Site Specific Provisions

There were no unresolved Section 9.1 Directions and no additional inconsistencies with Section 9.1 Directions identified.

### **9.2 State environmental planning policies**

The draft LEP is consistent with the relevant SEPPs or deemed SEPPs.

### **9.3 State, regional and district plans**

The Central City District Plan is applicable to this planning proposal. The following key priorities are relevant:

- Planning Priority C5: Providing housing supply, choice and affordability with access to jobs, services and public transport; and
- Planning Priority C6: Creating and renewing great places and local centres and respect the District's heritage.

The delivery of a high density residential development within the walkable catchment of the Castle Hill metro station would facilitate an increase in the supply of housing with good access to jobs, services and public transport. Further, the proposal provides for diversity of apartment types and sizes that provides housing choice in the market.

In respect of heritage, the planning proposal contains design strategies both in the draft LEP and DCP to assist in future built form responding sympathetically to the heritage item.

## 10. MAPPING

The LEP amendment is supported by 6 maps including the following:

- Land Use Zoning Map - Sheet LZN\_024 (7420\_COM\_LZN\_024\_020\_20200330)
- Height of Buildings Map - Sheet HOB\_024 (7420\_COM\_HOB\_024\_020\_20200330)
- Lot Size Map – Sheet LSZ\_024 (7420\_COM\_LSZ\_024\_020\_20200330)
- Floor Space Ratio Map – Sheet FSR\_024 (7420\_COM\_FSR\_024\_020\_20200330)
- Floor Space Ratio Incentive Map – Sheet FSI\_024 (7420\_COM\_FSI\_024\_020\_20200330)
- Urban Release Area Map/ Key Sites Map – Sheet CL2\_024 (7420\_COM\_CL2\_024\_020\_20200330)

These have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**). Council confirmed on 17 June 2020 that it was satisfied with the draft and that the plan should be made (**Attachment E**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 16 June, 2020 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

### **13. RECOMMENDATION**

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- Amending the land use zoning, floor space ratio and height of building controls would allow the redevelopment of this site for high density residential in close proximity to the Castle Hill metro station and strategic centre.
- The Gateway determinations as well as the relevant community and public agencies submissions have been satisfied.
- The plan is consistent with the relevant Section 9.1 Directions and State Environmental Planning Policies.
- The amending plan gives effect to the Central City District Plan.



**17 June 2020**  
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