
MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 28 September 2021

509 RESOLUTION

1. Council to light up its atrium at its Norwest Administration Building to support Mental Health Awareness Month.
2. Council to also paint the Old Tree Trunk Bike Rack blue to acknowledge the Blue Tree Project and to raise awareness of mental health and wellbeing in The Hills Shire.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

ITEM-2 PLANNING PROPOSAL - 21-23 LEXINGTON DRIVE, BELLA VISTA (1/2019/PLP)

Proceedings in Brief

Simon Wilkes, Associate Director, Urban Pty Ltd addressed Council regarding this matter.

A MOTION WAS MOVED BY COUNCILLOR JETHI AND SECONDED BY COUNCILLOR HAY OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

510 RESOLUTION

1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.
2. Draft amendments to The Hills DCP 2012, to apply the Commercial Centres Parking Rate to the site, be prepared and exhibited concurrently with the planning proposal.
3. Council accept, in principle, the draft Voluntary Planning Agreement (Attachment 4), with the VPA to be subject to legal review (at the cost of the Proponent), updated in accordance with the recommendations of the legal review and subsequently placed on public exhibition concurrent with the planning proposal and draft Development Control Plan.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr M R Byrne
Clr Dr P J Gangemi
Clr B L Collins OAM
Clr A N Haselden
Clr J Jackson
Clr M G Thomas
Clr E M Russo
Clr A J Hay OAM
Clr F P De Masi
Clr R M Tracey
Clr R Jethi

ITEM-2	PLANNING PROPOSAL - 21-23 LEXINGTON DRIVE, BELLA VISTA (1/2019/PLP)
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	28 SEPTEMBER 2021 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	SENIOR TOWN PLANNER TAMARA WEST
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON



REPORT

This report relates to the planning proposal applicable to land at 21-23 Lexington Drive (1/2021/PLP). The matter is being reported to Council for a decision on whether or not the planning proposal should be submitted to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.

RECOMMENDATION

1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.

2. Draft amendments to The Hills DCP 2012, to apply the Commercial Centres Parking Rate to the site, be prepared and exhibited concurrently with the planning proposal.
3. Council accept, in principle, the draft Voluntary Planning Agreement (Attachment 4), with the VPA to be subject to legal review (at the cost of the Proponent), updated in accordance with the recommendations of the legal review and subsequently placed on public exhibition concurrent with the planning proposal and draft Development Control Plan.

PROPONENT

Urbis Pty Ltd

OWNER

Capital Projects Corporation Pty Limited

POLITICAL DONATIONS

Nil disclosures by the proponent.

1. HISTORY

December 2017	The Bella Vista Station Precinct (including the subject site) was rezoned as part of the NSW Government's Planned Precinct Program. At this time, the site was subject to an increased FSR from 1:1 to 2:1.
July 2018	The subject planning Proposal (1/2019/PLP) was lodged to permit a twelve to fourteen storey commercial building with a total gross floor area of 35,153m ² and FSR of 3.45:1.
September 2018	The proposal was presented to the Local Planning Panel (LPP) where no advice was given.
December 2018	At the request of the Proponent, the Planning Proposal was placed on hold until further notice.
August 2020	A Development Application (172/2021/JP) was lodged with Council for the construction of an eleven storey commercial development, equating to an FSR of 2:1. The development comprised 16,500m ² of commercial floor space as well as food and drink premises, an indoor recreation facility, serviced apartments and 753 car spaces.
January 2021	Revised planning proposal documentation was received which sought to reduce the proposed maximum floor space ratio under the planning proposal from 3.45:1 to 2.7:1.
9 June 2021	Development Application (172/2021/JP) was unanimously approved by the Sydney Central City Planning Panel (SCPP).
August 2021	Planning Proposal 1/2019/PLP) was considered by the Local Planning Panel (LPP), who advised that the revised proposal is suitable to proceed to Gateway Determination.

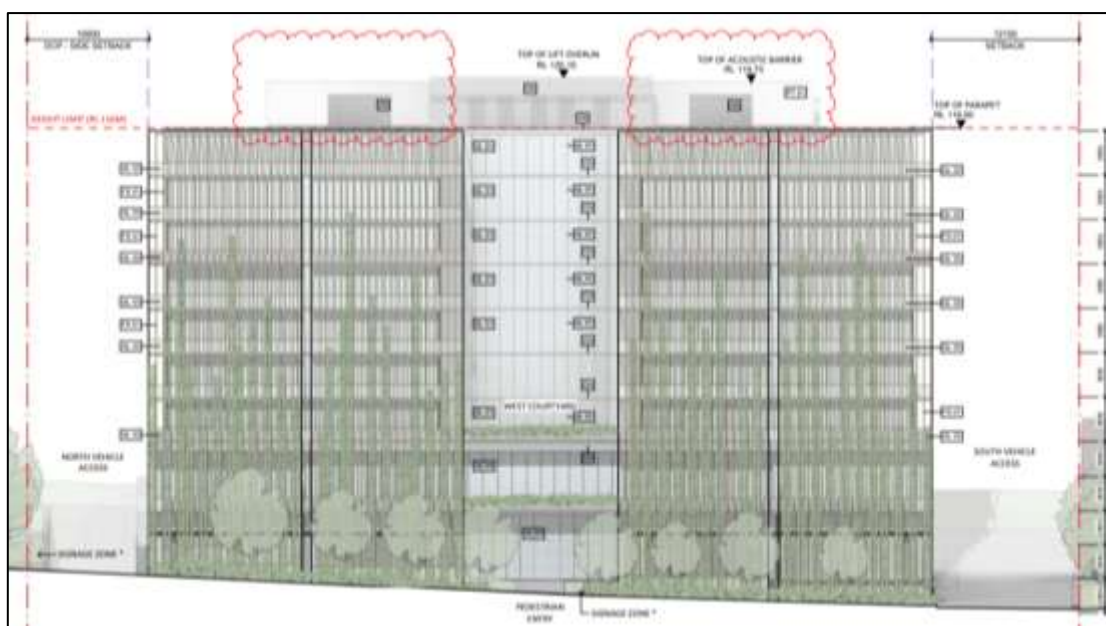
2. THE SITE

The subject site has an area of 1.02 hectares and is currently vacant. The land has a fall of approximately 8 metres from the north-east to the south-west of the site, towards Lexington Drive. The land is located approximately 500m walking distance from the Bella Vista Metro Station (refer to the figure below). It is within the Bella Vista Station Precinct and the Sydney Metro Northwest tunnel is located directly beneath the land.



Figure 1
Aerial view of the site and surrounding locality

The development application was approved under the current planning framework and complies with the relevant development standards currently applicable to the land (including the maximum building height of RL116 metres, maximum FSR of 2:1 and required parking rate of 1 space per 25m² of commercial GFA). The approval allows for an 11 storey commercial development with a total gross floor area of 20,400m² (FSR of 2:1) comprising 16,500m² of commercial floor space as well as food and drink premises, an indoor recreation facility, serviced apartments and 753 car spaces, as depicted below. The front elevation of the building is shown in Figure 2 below.

**Figure 2**

Approved built form Development Consent 172/2021/JP

3. DESCRIPTION OF PLANNING PROPOSAL APPLICATION

The planning proposal seeks to increase the maximum floor space ratio applicable to the site under LEP 2019 from 2:1 to 2.7:1. The Proponent is also seeking to reduce the car parking rate applicable to the site under Council's DCP from 1 parking per 25m² of GFA to Council's established Commercial Centres rate of 1 car parking space per 40m² of GFA.

In combination, these amendments would enable the Proponent to preserve the recently approved building envelope (DA 172/2021/JP) however convert two levels of approved above ground car parking into additional office space instead. The development concept provided to support the planning proposal is provided in Figures 3 and 4 below.

**Figure 3**

Proposed development concept, 21-23 Lexington Drive, Bella Vista

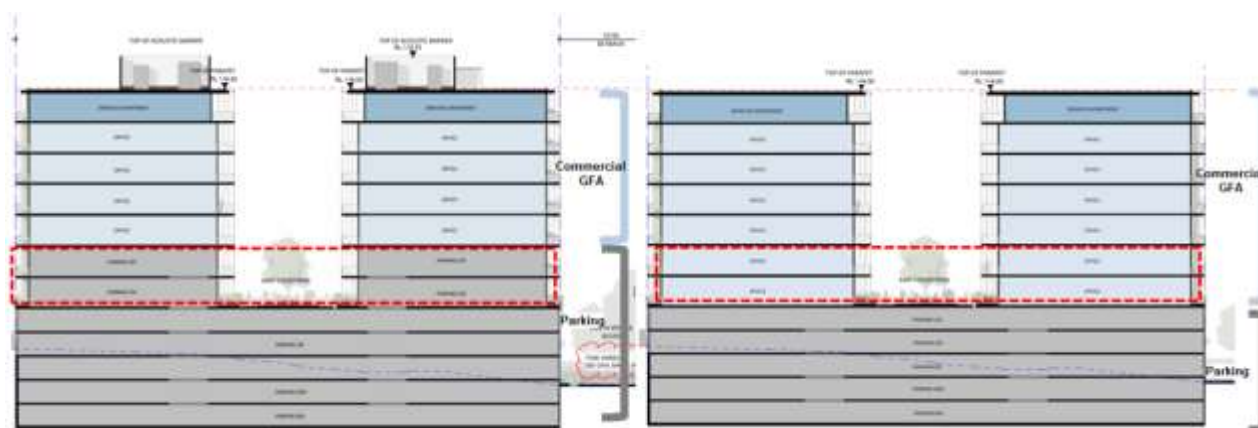


Figure 4
Development Consent (left) and Planning Proposal Concept (right)
Floors to be converted from parking to commercial space outlined in red

A comparison between the outcomes recently approved under the Development Consent (DA 172/2021/JP) and those sought through the planning proposal is provided in the table below.

	DA Approval (DA172/2021/JP)	Planning Proposal (2021)	Proposed changes
Zone	B7 Business Park	B7 Business Park	No change
Building Height	RL116 (11 storeys)	RL116 (11 storeys)	No change
FSR	2:1 (20,400m ² GFA)	2.7:1 (27,540m ² GFA)	+ 0.7:1 (7,140m ² GFA)
Jobs	680	918	+ 238 jobs
Parking spaces	753	676	- 77 spaces

Table 1
Comparison table between approved DA172/2021/JP to Planning Proposal

As detailed in the table above, the proposal would facilitate an additional 7,140m² of gross floor area (GFA) (approximately 238 jobs), with a corresponding reduction in the number of required parking spaces on the site from 753 to 676. It is noted that a portion of the commercial yield within both the approved and proposed development includes food and drink premises and serviced apartments. Parking rates for these components of the development are calculated in accordance with the respective DCP controls for these uses, rather than the general commercial parking rate.

A draft Voluntary Planning Agreement (VPA) has been submitted in association with the proposal. The VPA offer acknowledges that the existing development application (with an FSR of 2:1) has already been approved, with a contribution levy of 1% of the cost of works applied under the existing Section 7.12 Contributions Plan (which applied at the time of consent). The draft VPA does not seek to amend this established contribution amount, however offers a monetary contributions at a rate of 2.8% of the cost of works, with respect to the additional 7,140m² of commercial floor space that would be facilitated through the planning proposal. This is intended to reflect the rate established under Council's draft Section 7.12 Norwest Innovation Plan and would result in an approximate monetary contribution of \$249,000.

3. MATTERS FOR CONSIDERATION

A summary and discussion of key technical considerations associated with the planning proposal is provided below. The assessment has regard to and draws upon the previous technical assessment within the Council Officer Assessment Report to the Local Planning Panel on 18 August 2021, provided as Attachment 1 to this Report.

Key Consideration	Comment
Strategic Context	<p>A detailed discussion on the planning proposal's consistency with all applicable policies of the strategic planning framework is provided within the Council Officer Assessment Report (Attachment 1).</p> <p>The planning proposal is consistent with the Greater Sydney Region Plan and Central City District plan as it seeks to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport.</p> <p>The planning proposal would facilitate increased private sector investment in higher density commercial uses and assist the Norwest Business Park in realising its role as a strategic centre and one of nine (9) commercial office precincts that are essential for growing jobs and productivity to enhance Sydney's global economic competitiveness. The planning proposal would facilitate additional jobs and a choice of modern office space close to where people live, in a location that has good access to services and the Bella Vista Metro Station.</p> <p>The proposal demonstrates consistency with Council's Local Strategic Planning Statement (LSPS) as it would allow employment-generating development that suits the skills of local residents. The LSPS identifies that the Shire has historically had high levels of car ownership and usage, due to limited public transport options and long distances from key employment areas of Sydney. The proposed reduced parking rates, on a site within walking distance to Bella Vista station, is consistent with the priorities of the LSPS, which seek to ensure that future growth influences travel behaviour to promote sustainable choices.</p> <p>The State Government's North West Rail Link Corridor Strategy and Bella Vista Structure plan anticipated that the Business Park area of the precinct (including the subject site) could accommodate 4-6 storey commercial offices where development can be carefully designed to integrated into the surrounds. It is noted that this indicative height range is less than what could already be achieved under the height control that applied to the land at the time.</p> <p>The site was not included in Council's The Hills Corridor Strategy (2015) as the majority of land along Lexington Drive was heavily constrained by strata title developments and this land was subject to the State Government's precinct planning process at this time. The subject site is however an exception to this, being the one remaining vacant development site along Lexington Drive. The site is not subject to the same redevelopment constraints as other land within this locality, being strata title ownership and existing buildings/uses on the land. This places the site uniquely as one of</p>

Key Consideration	Comment
	<p>the few opportunity sites within the locality that could feasibly develop in the short term and contribute to the supply of new jobs and Council's employment targets.</p> <p>Both the North West Rail Link Corridor Strategy and The Hills Corridor Strategy were higher-level strategic planning documents, intended to be superseded by more detailed precinct planning work. Accordingly, while these documents provide useful context, the Bella Vista Precinct (including the subject site) has since been subject to detailed precinct planning work completed by Government in 2017, through the Planned Precinct program, which resulted in the application of an FSR of 2:1 to this site.</p> <p>In other Station Precincts, the Government's NWRL Corridor Strategy identifies that commercial development within a walkable catchment of a station would range in density between 2:1 - 4:1, with the density on individual sites ultimately depending on more detailed site specific consideration through the precinct planning phase.</p> <p>In contrast to this and the approach for Government-land surrounding the Bella Vista Station, the Department's approach of applying a blanket FSR of 2:1 to all sites along Lexington Drive appeared to have minimal regard to the unique circumstances affecting each individual site in this locality, including the scale and quality of existing development, ownership patterns and the potential for individual sites to accommodate differing scales and density of built form having regard to site specific factors.</p> <p>As noted above, much of the land along Lexington Drive has well-established and occupied development outcomes with strata titled ownership, which is a significant constraint to redevelopment in the short to medium term. Despite the uplift permitted through the Government's precinct planning work, the consolidation of ownership and demolition of established developments along Lexington Drive is unlikely to be feasible, in the short term, at an FSR of 2:1. As a result, the majority of this land will likely remain unchanged for the foreseeable future, representing longer term development opportunities.</p> <p>From a strategic planning perspective, a number of other sites within this locality would likely be capable of justifiably accommodating a yield in excess of 2:1. In comparison to the Government's approach of applying a blanket FSR of 2:1 to all land along Lexington Drive, Council-led precinct planning would generally attempt to differentiate between higher and lower FSRs having regard to the circumstance of each individual site. This would include the fundamental principle of reducing density as distance from the station increases (up to a walkable catchment of approximately 1 km, which would broadly encompass land up to the intersection of Lexington Drive and Norwest Boulevard) as well as consideration of the specific capacity of each individual site.</p>

Key Consideration	Comment
	<p>Despite this, given the layout of the precinct and the constraints to redevelopment of the majority of land along Lexington Drive in the short term, the FSR applied by the Government of 2:1 is considered to be an appropriate control to remain in place at this point in time. It is also the extent of growth which the Council has identified as being able to be supported by new and upgraded local infrastructure under the draft Section 7.12 Plan for the Norwest Innovation Precinct. Any broad-scale increase to permissible densities along Lexington Drive may have the impact of increasing potential local infrastructure requirements and costs, without actually unlocking any further redevelopment opportunities in the short to medium term.</p> <p>Should individual sites be able to demonstrate an ability to feasibly accommodate a higher employment yield without adverse built form or traffic impacts, it would be appropriate for Council to consider this in the future, especially as a means of accommodating further employment capacity beyond the 2036 employment targets. At this time, there would be ability to also consider the impact of such increases on infrastructure requirements, with greater knowledge of longer-term travel behaviours associated with the Sydney Metro North West. In such instances, the planning proposal pathway would provide the appropriate mechanism for further site-specific and detailed investigations to occur to ascertain the actual capacity of each individual site to accommodate density, in the same manner that has occurred with respect to the site subject of this planning proposal application.</p> <p>At a strategic level, it is considered that the higher FSR of 2.7:1 sought for the subject site through the planning proposal is not an unreasonable density to be applied to a development site within 500 metres walking distance of a station. A density of this scale would be comparable with the scale of other development expected to occur within the Norwest Strategic Centre and the walkable catchment of a train station.</p> <p>In terms of the more detailed level of site specific consideration required to determine the appropriateness of this density on an individual parcel of land, it is critical to note that the proposed density can be wholly accommodated within a built form that has already been approved under the existing development consent. That is, the density proposed can be accommodated within a built form outcome that has already been deemed to be acceptable on this specific site under the current planning framework, having regard to the rigorous and site specific assessment undertaken through the Development Assessment process (which included consideration of the proposal by the Design Excellence Panel).</p> <p>This is a particularly unique situation given the presence of an existing development consent over a vacant parcel of land and the proposal to increase the density of development without amending the approved building envelope. While the alternate development outcome that may result if the planning proposal is not supported is not strictly a strategic planning consideration, the Proponent has an existing development consent which could be readily acted upon and comparison between this “base case”</p>

Key Consideration	Comment
	<p>development outcome and the planning proposal outcome is nonetheless a critical consideration in determining the planning proposal.</p> <p>In this respect, from a strategic planning perspective the outcome sought through the planning proposal is considered to be superior in comparison to the outcome approved through the development consent, given the increased contribution towards employment within 500m walking distance from the station, reduced parking provision and absence of impact on the built form outcomes already approved.</p>
Built form and density	<p>In addition to relevant strategic factors (such as proximity to a public transport node), it is important for the determination of appropriate densities (FSR) and heights for any site to have regard to the individual characteristics of each site. Even in instances where two sites may be located similar distance from a transport node, the ultimate density and height appropriate for each site would nonetheless be influenced by other factors such as the size of the site (undersized, standard or master-planned), topography, environmental constraints, proximity to sensitive uses (for example low density residential development) and existing built form and approvals.</p> <p>Uniquely, the built form and building envelope proposed by this planning proposal has already been approved, by way of Development Consent granted in June 2021 (DA 172/2021/JP). This existing development consent could (and likely would) be readily acted upon by the Proponent if the planning proposal does not progress. Accordingly, while the site is vacant, the currently approved development outcome for the site is the “baseline” development scenario for the purposes of assessing this planning proposal.</p> <p>As a result of the rail corridor running beneath the north-eastern half of the site, there is limited scope for excavation of basement parking to occur and it was therefore necessary for the approved development to accommodate a greater share of the required on-site car parking in above-ground parking levels within the building envelope. Despite this constraint, the approved development application was able to demonstrate compliance with the current maximum floor space ratio and height controls for the site applicable under LEP 2019 as well as the required parking provisions under the DCP.</p> <p>The planning proposal does not seek to amend the applicable maximum height of buildings and would not result in any change to the height, built form or building envelope which is already permitted under the current controls and which has already been approved under the current Development Consent. Accordingly, in comparison to the “baseline” development scenario, the planning proposal would not result in any impacts in terms of amenity, bulk, scale, visual impact or overshadowing. This means that a number of site-specific considerations, which would typically be the subject of in-depth discussion in the assessment of a planning proposal, are not issues of concern for this particular proposal.</p>

Key Consideration	Comment
	<p>The planning proposal would permit an increased density of development on the site, by replacing two approved floors of above ground car parking with additional commercial floor space, equivalent to an FSR increase of 0.7:1 (approximately 7,140m² of commercial floor space and 238 additional jobs).</p> <p>Having regard to the unique factors relevant to this individual site, the proposed FSR increase is considered to be supportable for a number of reasons. These include the opportunity to increase employment capacity in close proximity to the Metro Station without any resulting built form impacts, the short term opportunity site given that the subject land is currently vacant and the decrease in traffic generation associated with development on the site as a result of the reduced parking rate. These factors are discussed in greater detail in Section 3(b) of the Council Officer Assessment Report (Attachment 1).</p>
Car parking and traffic impact	<p><u>Reduced Car Parking Rate</u></p> <p>The planning proposal is accompanied by a proposed amendment to the Hills DCP to apply Council's existing Commercial Centres parking rate of 1 car parking space per 40m² of commercial GFA, in comparison to the rate currently applicable to this site of 1 car parking space per 25m² of commercial GFA.</p> <p>The existing Development Consent includes 753 car parking spaces for a development with an FSR of 2:1 (it is noted that this incorporates some parking associated with serviced apartments, which has a rate of 1 car parking space per guest room and 1 per 2 employees). In comparison, if Council's Commercial Centres parking rate was applied to the proposed development (with an FSR of 2.7:1), the total number of parking spaces required would be approximately 676.</p> <p>The application of Council's existing Commercial Centres parking rate to the site is considered reasonable. This reduced rate was established prior to the opening of the Sydney Metro Northwest and has been applied to the centres of Castle Hill, Rouse Hill and Baulkham Hills in recognition of the availability of bus services to and from these centres at that time. While the Commercial Centres rate has not been revisited following the opening of the Sydney Metro Northwest and does not currently apply to the Norwest Strategic Centre, the opening of the Sydney Metro Northwest provides strong justification for the extension of this rate (or application of lower rates) to land within walking distance of Metro stations. This has been reflected in decisions on a number of other planning proposals in Norwest, where an even lower rate of 1 space per 60m² of commercial GFA was permitted. It is noted that a rate of 1 space per 60m² of commercial GFA would likely be justifiable for this subject site, however the Proponent has not sought to reduce the parking rate to this extent.</p> <p>It is acknowledged that some users of the Norwest Strategic Centre may be travelling from areas within the Shire that do not benefit from access to the Sydney Metro Northwest (for example the suburbs of Baulkham Hills or Crestwood). It is likely that many trips to the centre from these areas (for</p>

Key Consideration	Comment
	<p>example, to access medical services) will continue to demonstrate a higher level of car dependency and it is therefore important that adequate parking be available for customers/patients of uses within the centre, as distinct from employee parking for commercial development. This will ensure that the centre can be accessed by all users and avoid the need to rely on informal parking within nearby residential areas to service development.</p> <p>The proposed parking rate of 1 space per 40m² represents a balanced reduction that simultaneously acknowledges the mode shift that will occur as a result of the opening of the Metro (especially for workers within the centre), as well as the ongoing need to continue to provide parking for some users.</p> <p>As part of the detailed development application process, further consideration will need to be given to the particular commercial tenants that are likely to occupy the spaces and where these uses will attract a higher proportion of car dependent users, the car parking rates should be tailored and apportioned between the tenancies accordingly (also having regard to the rates within Council's DCP for certain distinct uses). A Green Travel Plan would also be an important component in reducing the parking demand from workers within the development, to offset the proposed parking reduction and ensure available spaces for customers and/or patients.</p> <p>Further, it is important to note that the proposed parking rate would be expressed as a <i>minimum</i> rate and therefore, additional spaces could be provided within the development should a particular use necessitate a greater provision of parking for access and/or viability (subject to appropriate re-design).</p> <p>Section 3(c) of the Council Officer Assessment Report (Attachment 1) provides further analysis on the appropriateness of applying Council's Commercial Centres parking rate to the subject site.</p> <p>It is recommended that if Council were to proceed with this reduced parking rate, it should be expressed as a minimum parking rate, which would result in the requirement for 676 spaces to be provided in association with the proposal. Parking requirements are currently specified as minimum rates within Council's DCP and are not mandated through primary controls contained within Council's LEP. When specified as minimum parking rates, individual developers would continue to have discretion to provide parking at a higher rate on any individual site, in response to market demands or the requirements of any specific tenants.</p> <p>It is noted that separate to this planning proposal, a broader review of parking rates within Council's Centres is currently underway in accordance with Action 12.1 of Council's LSPS. Regional traffic modelling for Castle Hill, Showground, Norwest and Bella Vista Precincts is also underway and expected to near completion in late-2021. The progression of this additional work will provide an evidence base for Council to determine the most appropriate parking rates and policies within its centres. It is anticipated that</p>

Key Consideration	Comment
	<p>if the planning proposal progresses to Gateway Determination and public exhibition, this evidence base would be available to Council at the time of making a decision with respect to the finalisation of the proposal and as such, the final parking rate could be reconsidered at this time.</p> <p>It would be open for Council to resolve to proceed with the DCP amendment to reduce the parking rate without also permitting the increased FSR sought. Irrespective of this proposal, there is substantial merit to the broader review of parking rates within the Norwest Strategic Centre and this work is currently underway holistically for Council's Strategic Centres. However, in the context of this individual site, given the Proponent already has an approved development outcome with which they can readily proceed to construction, there would be minimal incentive for the Proponent to amend their existing development consent to reduce the provision of parking (or make amendments to the built form), without these changes also resulting in a higher development yield. In short, if the FSR uplift sought through the planning proposal does not proceed, the currently approved development outcome (with the higher rate of parking already approved) would be the most likely development outcome to occur, regardless of whether or not the Council was to amend the DCP parking rate.</p> <p><u>Traffic Impact</u></p> <p>The Proponent has submitted a Strategic Transport Review in support of the proposal. The Review calculated that the proposed development would generate 332 AM peak trips and 252 PM peak trips. In comparison, the approved Development Application outcome would generate 361 trips in the AM peak and 272 trips in the PM peak, when calculated using the same methodology in the Strategic Transport Review provided with the planning proposal. Although the Development Consent provides less commercial floor space, the current car parking rate provides for significantly more car parking spaces and therefore greater potential for peak hour trip generation to and from the site. Therefore, the proposed increase in density would not result in any increase in traffic generated from the site, as a result of the reduced parking rate.</p> <p><u>Existing Car Parking Design</u></p> <p>The existing development consent accommodates 629 spaces within the first 5 parking levels within the development. It was anticipated that through minor internal re-design of the layout of these parking levels, additional car parking spaces would be accommodated on these levels. The mix of uses proposed within the additional commercial floor space would ultimately determine the required car parking provision. Based on the plans provided in support of the planning proposal a total of approximately 676 spaces would be required within the 5 parking levels within the approved building envelope (with the other 2 above ground parking levels being converted to commercial space). However, the plans provided indicate that 635 car parking spaces are proposed to be provided.</p>

Key Consideration	Comment
	<p>The Proponent was requested to provide additional information with respect to the proposed car parking rate, including demonstrating that the parking spaces required under the requested parking rate of 1 space per 40m² could be achieved.</p> <p>The Proponent has subsequently provided a written submission which seeks to justify the current parking design scheme, which is provided as Attachment 3 to this report. The implication of this is that the Proponent is foreshadowing the intent to vary the requested car parking rate of 1 space per 40m² at the development application stage, to instead seek approval for the provision of 635 car parking spaces (rather than the required 676).</p> <p>The justification put forward by the Proponent relies on various uses within the development sharing car parking spaces as they have peak demand at different times of the day or the customers are already accounted for in terms of parking as they are workers on the site or within walking distance. The sharing of car spaces between uses in a commercial development has merit, however the onus is on an applicant to demonstrate that the main usage periods of the component uses do not coincide. It is also noted that restaurants and cafés in commercial office buildings already attract a lower rate of 1 space per 25m², as distinct from those operating in other locations which attract a higher car parking rate.</p> <p>It is noted that even with the provision of 635 spaces (rather than the required 676 spaces), the proposal would result in parking provided at an approximate car parking rate of 1 space per 43m² of commercial floor space, which is similar to Council's centres parking rate and still represents a higher level of provision than a number of other recent planning proposals (with 1 space per 60m² of commercial floor space). It is considered that an effective rate of 1 space 43m² of commercial floor space is entirely justifiable given the proximity of the site to the Bella Vista station.</p> <p>Any variations to the required car parking rates would ultimately need to be assessed at the Development Application stage. However, it is considered that there is sufficient merit to enable the proposal to proceed, on the basis of a parking rate of 1 space per 40m², notwithstanding the foreshadowed variation of this rate at the DA stage to achieve an effective rate of 1 space per 43m² of commercial GFA (factoring in proposed car space sharing arrangements between uses).</p>
Infrastructure demand	<p><u>Infrastructure Demand and Voluntary Planning Agreement Offer</u></p> <p>The site is located within the Norwest Innovation sub-precinct of the Norwest Strategic Centre. Council recently adopted a draft Section 7.12 Contributions Plan for this sub-precinct, following the State Government's rezoning of the Bella Vista Station Precinct without any local contributions framework established to cater for the increased demand on infrastructure. This draft Plan is currently being reviewed by the Department of Planning, Industry and Environment, with Council seeking approval to levy a contribution of 2.8% of the cost of development to fund new and upgraded infrastructure necessary to service the precinct.</p>

Key Consideration	Comment
	<p>Council has previously relied on VPAs in association with a number of other site specific planning proposals, as a means to have in place an appropriate contributions mechanism where the proposal was in advance of the completion of detailed precinct planning and associated update of the contributions planning framework. However, within the Norwest Innovation Sub-Precinct, Council's planning has now progressed to the point where the uplift in development associated with the Sydney Metro Northwest has been considered, planned and catered for within this draft Norwest Innovation Section 7.12 Contributions Plan.</p> <p>The draft Norwest Innovation Section 7.12 Contributions Plan includes road upgrade works to Lexington Drive, contributions to traffic signals for Lexington Drive/Norwest Boulevard and intersection expansions at Lexington/Irvine and Woolworths Way and Lexington/Meridian Place. It also includes additional public domain works, pedestrian and cycle connections and passive open space for future workers within the Precinct.</p> <p>This plan was not in force at the time the existing Development Consent for the site was issued and as such, contributions were imposed within the existing development consent under the Shire-wide Section 7.12 Contributions Plan (1% of the cost of development). Following the finalisation of the draft Norwest Innovation Section 7.12 Contributions Plan, any <i>new</i> Development Consents would include conditions levying for contributions under the new contributions plan that applies.</p> <p>Once a Contributions Plan has been prepared and adopted for a Precinct which addresses the infrastructure requirements associated with the development of that Precinct, it is fair and reasonable for development within to be levied under this Contributions Plan. It is considered that the new draft Norwest Innovation Precinct Section 7.12 Contributions Plan is therefore appropriate to cater for the local infrastructure demand likely to be generated by this proposal, especially noting that the outcome would result in lower traffic generation in comparison to the currently approved development.</p> <p>The Proponent's revised planning proposal material had originally indicated that the uplift sought would be realised through a new development application. Accordingly, on this basis and at the time that Council Officers prepared the Local Planning Panel report, it was expected that if approved, the proposed development would be levied under Council's new Section 7.12 Contributions Plan (once in force), at a rate of 2.8% of the cost of development.</p> <p>However, since the finalisation of the Council Officer report to the Local Planning Panel and the consideration of the proposal by the Panel, the Proponent has indicated that they may pursue a Section 4.55 modification application to the existing development consent (as opposed to lodgement of a new development application). It is noted that when assessing a Section 4.55 Modification (as distinct from a new development application) a consent authority is required to levy contributions under the Plan that applied at the time the original consent was issued, regardless of any new</p>

Key Consideration	Comment
	<p>contribution plan which may have superseded this. Accordingly, should the Proponent seek approval for the uplift by way of a modification application, this uplift would only be levied at a rate of 1% of the cost of development.</p> <p>The development already benefits from a consent that was obtained in the interim period <i>between</i> the Government increasing the FSR in this locality (from 1:1 to 2:1). Despite the higher rate established by Council's S7.12 Plan for the Norwest Innovation Precinct, the existing development consent has secured the Proponent an outcome of 2:1 at a contribution rate of 1% of the cost of development. While it would be preferable for the entire development to pay contributions at the higher rate of 2.8% established by Council's draft S7.12 Plan, this outcome has not been achieved by virtue of the timing of the developer obtaining development consent.</p> <p>Given that the planning proposal application deals with the granting of additional development uplift (in the form of 7,140m² additional commercial floor space), it is considered to represent an acceptable balance for the higher contribution rate now established for that precinct to be applied to the portion of commercial floor space which is the subject of the planning proposal application. Accordingly, as a compromised position, it is considered that, at a minimum, the uplift sought through the planning proposal should pay contributions at the rate established by Council's draft S7.12 Plan.</p> <p>In recognition of the above, the Proponent has submitted a draft VPA (provided as Attachment 4), which would:</p> <ol style="list-style-type: none"> 1. Retain the contribution amount payable with respect to the currently approved development yield (up to 2:1) as per the existing development consent; and 2. Apply a higher contribution rate of 2.8% of the cost of works to the additional development yield (7,140m² of commercial floor space) sought through the planning proposal. <p>The draft VPA is intended to reflect the rate established under Council's draft Section 7.12 Norwest Innovation Plan and, based on an estimated cost of development of \$8.9 million for the proposed additional yield (7,140m²), would result in an approximate monetary contribution of \$249,000. These funds would be allocated towards infrastructure upgrades in the Norwest locality as identified in the Works Schedule to Council's Section 7.12 Plan for the Norwest Innovation Precinct.</p> <p>In doing so, the draft VPA would ensure that Council is able to secure a contribution of 2.8% of the cost of works associated with the uplift sought, irrespective of the timing of the finalisation of the draft Section 7.12 Plan for the Norwest Innovation Precinct and regardless of whether the Proponent seeks to achieve this development uplift through a new development application or a Section 4.55 modification application. The application of the rate established under Council's new Section 7.12 Plan for the Precinct to the uplift sought through the proposal is considered to represent a fair and</p>

Key Consideration	Comment
	<p>reasonable outcome given the circumstances of this case.</p> <p>With respect to State infrastructure, it is anticipated that as part of the Gateway determination process, consultation will occur with State government agencies and the need for further contributions toward state infrastructure may be identified.</p>

4. LOCAL PLANNING PANEL ADVICE

On the 18 August 2021, The Hills Local Planning Panel issued the following advice with respect to the subject planning proposal:

- 1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.*
- 2. Council Officers prepare amendments to The Hills DCP 2012 to reduce the parking rate applicable to the land to 1 space per 40m² of commercial gross floor area.*
- 3. Prior to the application being reported to Council, the Proponent submit additional information demonstrating the ability to achieve compliance with the proposed parking rates under the DCP following the conversion of the two above ground parking levels to commercial space.*

The Local Planning Panel minutes are provided as Attachment 2 to this Report. The additional information submitted by the Proponent in response to Point 3 has been addressed in Section 3 of this Report and is provided as Attachment 3 to this Report.

IMPACTS

Financial

The planning proposal has no impact on Council's budget or forward estimates. Should Council resolve to proceed with the proposal, the draft VPA would ensure that as part of any future development application or Section 4.55 Modification Application, the additional 7,140m² of commercial floor space resulting from the proposal would be levied at a rate of 2.8% of the cost of works, consistent with the rate established under Council's draft Section 7.12 Contribution Plan for the Norwest Innovation Precinct (equating to approximately \$249,000).

Strategic Plan – The Hills Future

The Hills Future aims to manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations. The planning proposal seeks to provide for additional employment opportunities, consistent with the Strategic Plan. The scale and built form of the development is consistent with what has been approved via Development Consent and is appropriate given the location of the site within the Norwest Strategic Centre and specialised employment precinct.

CONCLUSION

This report recommends that the planning proposal for land at 21-23 Lexington Drive, Bella Vista proceed to Gateway Determination.

In conjunction with the amendments to the maximum floor space ratio control under LEP 2019, it is recommended that a reduced car parking rate of 1 space per 40m² of gross floor area be applied to the site by way of amendments to the Parking section of The Hills Development Control Plan (DCP 2012) to identify the site as an area where the commercial centres parking rate applies. These amendments should be exhibited concurrently with the planning proposal. This reduced rate is consistent with Council's existing Commercial Centres rate and is appropriate given the proximity of the site to Bella Vista Metro Station.

In association with the development uplift sought through the planning proposal, it is recommended that Council accept, in principle, the draft Voluntary Planning Agreement (VPA) (Attachment 4), which would ensure the additional commercial floor space would be levied at a rate of 2.8% of the cost of works. This VPA should be subject to legal review at the cost of the Proponent prior to public exhibition, updated to reflect the outcomes and recommendations of the legal review and exhibited concurrently with the planning proposal and draft DCP.

RECOMMENDATION

1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.
2. Draft amendments to The Hills DCP 2012, to apply the Commercial Centres Parking Rate to the site, be prepared and exhibited concurrently with the planning proposal.
3. Council accept, in principle, the draft Voluntary Planning Agreement (Attachment 4), with the VPA to be subject to legal review (at the cost of the Proponent), updated in accordance with the recommendations of the legal review and subsequently placed on public exhibition concurrent with the planning proposal and draft Development Control Plan.

ATTACHMENTS

1. Council Officer Assessment Report to Local Planning Panel (18 August 2021) (15 pages)
2. Local Planning Panel Minutes (18 August 2021) (3 pages)
3. Additional Information Submitted by Proponent – Car Parking and Infrastructure (2 pages)
4. Draft Voluntary Planning Agreement (16 pages)

LOCAL PLANNING PANEL MEETING 18 AUGUST, 2021

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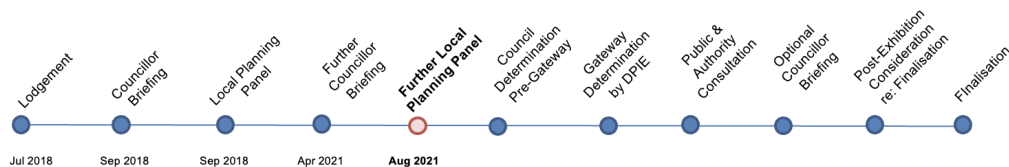
ATTACHMENT 1

ITEM-2	LOCAL PLANNING PANEL - PLANNING PROPOSAL - 21-23 LEXINGTON DRIVE, BELLA VISTA (1/2019/PLP)
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	18 AUGUST 2021 LOCAL PLANNING PANEL
AUTHOR:	SENIOR TOWN PLANNER TAMARA WEST
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON

Proponent	URBIS PTY LTD ON BEHALF OF CAPITAL PROJECTS CORPORATION
Owner	CAPITAL PROJECTS CORPORATION PTY LIMITED
Planning Consultant	URBIS PTY LTD
Architect	KOICHI TAKADA ARCHITECTS
Landscape Architect	SCOTT CARVER PTY LTD
Traffic Consultant	STANTEC GTA CONSULTANTS (NSW) PTY LTD
Site Area	1.02 HECTARES
List of Relevant Strategic Planning Documents	GREATER SYDNEY REGION PLAN CENTRAL CITY DISTRICT PLAN NORTH WEST RAIL LINK CORRIDOR STRATEGY THE HILLS LOCAL STRATEGIC PLANNING STATEMENT
Political Donation	NIL DISCLOSURES BY PROPONENT
Recommendation	THAT THE PLANNING PROPOSAL PROCEED TO GATEWAY DETERMINATION

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**EXECUTIVE SUMMARY**

This report recommends that the planning proposal for land at 21-23 Lexington Drive, Bella Vista (Lot 7081 DP 1037626) which seeks to increase the maximum floor space ratio from 2:1 to 2.7:1 under The Hills Local Environmental Plan 2019 (LEP 2019) proceed to Gateway Determination. The proposal relies on a recently approved Development Consent for the site and proposes to retain the approved building envelope however would enable conversion of two floors of approved above ground car parking into additional commercial space.

The proposal is supported for the following reasons:

- The proposal would increase the employment capacity of land within the Norwest Strategic Centre and walkable catchment of the Bella Vista Station, to accommodate an additional 238 jobs in comparison to the existing planning framework.
- The proposal would reduce the required parking rate for the site from 1 space per 25m² to 1 space per 40m² of gross floor area (which aligns with Council's existing centres parking rate). This modest reduction in required parking is considered reasonable within walking catchment of the Bella Vista Station. This reduction in parking would ultimately reduce the likely traffic generation associated with the development, irrespective of the increased density sought.
- The site benefits from a recent Development Consent which was issued under the current planning controls. The proposal would retain the building envelope approved under the current planning framework and, through reducing the required parking rate, allow for additional employment GFA to be accommodated within areas of the approved building envelope that would no longer be required for above ground parking. As a result, the planning proposal would not result in any increase or change to the built form already approved under the existing Development Consent.
- The infrastructure demand generated by the planning proposal can be appropriately catered for under the draft Section 7.12 Norwest Innovation Contributions Plan, which was recently adopted by Council post-exhibition.

This planning proposal is relatively unique, in that there is a recently approved 'baseline' development outcome which is likely to occur on the site under the current planning settings and the building envelope proposed by the planning proposal is identical to that which has already been approved. In addition to the normal strategic and site specific considerations, a key factor in determining the merit of the proposal is assessing whether or not the planning proposal outcome represents a superior outcome to the recently approved 'baseline' development outcome. In this regard, it is considered that the planning proposal does represent the superior development outcome on the basis that it would accommodate increased employment capacity within 500 metres of Bella Vista Station, with lower traffic generation from the development and no change to the approved built form and building envelope.

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In conjunction with the amendments to the maximum floor space ratio control under LEP 2019, it is recommended that a reduced car parking rate of 1 space per 40m² of gross floor area be applied to the site under The Hills Development Control Plan (DCP 2012). This reduced rate is consistent with Council's existing Commercial Centres rate and is appropriate given the proximity of the site to Bella Vista Metro Station.

THE HILLS LOCAL ENVIRONMENTAL PLAN 2019

The planning proposal seeks to amend The Hills LEP 2019 as follows:

Controls	NWRL Corridor Strategy (2013)	Current Controls (Planned Precinct) (2017)	Original Planning Proposal (2018)	Development Consent 172/2021/JP	Current Planning Proposal (2021)
Zone	B7 Business Park	No change	No change	No change	No change
Height	4-6 storeys	RL116 (11 storeys)	RL133.45 (14 Storeys)	RL116 (to top of parapet) (11 storeys)	RL116 (11 storeys)
FSR	2:1 – 4:1	2:1	3.45:1	2:1	2.7:1
Jobs	680 – 1,360	680	1,173	680	918
Parking	Not Specified	753 (1 space per 25m ²)	880 spaces (1 space per 40m ²)	753 (1 space per 25m ²)	676 spaces (1 space per 40m ²)

Table 1

Comparison of current controls, strategic framework and proposed LEP amendments

Note: The site was not included Council's The Hills Corridor Strategy (2015) as the land along Lexington Drive was heavily constrained by strata title developments and was subject to the State Governments precinct planning process at that time.

Note: Car parking calculations include a number of different rates applicable to the different uses within the commercial building as per the Hills DCP 2012.

REPORT

The purpose of this report is to present the subject planning proposal to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.

1. THE SITE AND BACKGROUND

The subject site has an area of 1.02 hectares and is currently vacant. The land has a fall of approximately 8m from the north-east to the south-west of the site, towards Lexington Drive. The land is located approximately 500m walking distance from the Bella Vista Metro Station (refer to the figure below). The site is located within the Bella Vista Station Precinct and the Sydney Metro Northwest tunnel is located directly beneath the land.

The Government's precinct planning for the Bella Vista Station Precinct (through the Planned Precinct Program) was completed in 2017. At this time, the site was subject to an increase in FSR from 1:1 to 2:1.



Figure 1
Site Locality and Proximity to Bella Vista Station

The planning proposal was first lodged in July 2018 and was previously considered by the Local Planning Panel on 19 September 2018. No advice was given by the Panel at this time. The Proposal was subsequently placed on hold in December 2018, at the Proponent's request. In January 2021, the Proponent submitted a revised proposal which is the subject of this report.

A Development Application for the site was approved by the Sydney Central City Planning Panel on 9 June 2021, for an 11 storey commercial development with a total gross floor area of 20,400m² (FSR of 2:1) comprising 16,500m² of commercial floor space as well as food and drink premises, an indoor recreation facility, serviced apartments and 753 car spaces, as depicted below. The application was approved under the current planning framework and complies with the relevant development standards currently applicable to the land (including the maximum building height of RL116 metres, maximum FSR of 2:1 and required parking rate of 1 space per 25m² of commercial GFA).

**Figure 2**

Approved built form Development Consent 172/2021/JP

2. DESCRIPTION OF THE CURRENT PLANNING PROPOSAL (JAN 2021)

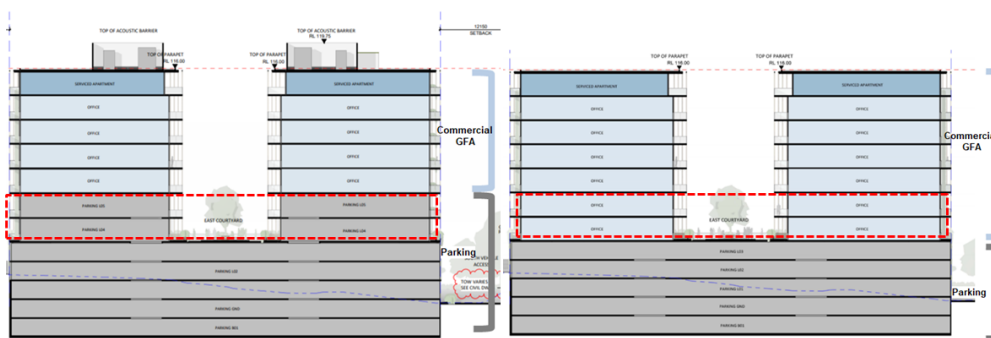
The current planning proposal application seeks to make two changes to the applicable planning framework:

1. Reduce the car parking rate applicable to the site under Council's DCP from 1 parking per 25m² of GFA to Council's established Commercial Centres rate of 1 car parking space per 40m² of GFA; and
2. Increase the maximum floor space ratio applicable to the site under LEP 2019 from 2:1 to 2.7:1.

In combination, these amendments would enable the Proponent to preserve the recently approved building envelope (DA 172/2021/JP) however convert two levels of approved above ground car parking into additional office space instead, as shown in Figure 4 below.

**Figure 3**

Proposed development concept, 21-23 Lexington Drive, Bella Vista

**Figure 4**Development Consent (left) and Planning Proposal Concept (right)
Floors to be converted from parking to commercial space outlined in red

A comparison between the outcomes recently approved under the Development Consent (DA 172/2021/JP) and those sought through the planning proposal is provided in the table below.

	DA Approval (DA172/2021/JP)	Planning Proposal (2021)	Proposed changes
Zone	B7 Business Park	B7 Business Park	No change
Building Height	RL116 (11 storeys)	RL116 (11 storeys)	No change
FSR	2:1 (20,400m ² GFA)	2.7:1 (27,540m ² GFA)	+ 0.7:1 (7,140m ² GFA)
Jobs	680	918	+ 238 jobs
Parking spaces	753	676	- 77 spaces

Table 2

Comparison table between approved DA172/2021/JP to Planning Proposal

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As detailed in the table above, the proposal would facilitate an additional 7,140m² of gross floor area (GFA) (approximately 238 jobs), with a corresponding reduction in the number of required parking spaces on the site from 753 to 676. It is noted that a portion of the commercial yield within both the approved and proposed development includes food and drink premises and serviced apartments. Parking rates for these components of the development are calculated in accordance with the respective DCP controls for these uses, rather than the general commercial parking rate.

3. MATTERS FOR CONSIDERATION

The planning proposal requires consideration of the following matters:

- a) Strategic context;
- b) Built form and density;
- c) Car parking; and
- d) Traffic impact and infrastructure demand.

a) Strategic context

A discussion on consistency with the strategic planning framework is provided below.

- Greater Sydney Region Plan

The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). To achieve this, the Plan seeks to develop a network of 34 strategic centres, one of which is Norwest Business Park, which extends into Bella Vista and incorporates the subject site.

The Plan advocates investment and business activity in centres, particularly strategic centres identified for delivering the 30-minute city. Strategic centres should facilitate high levels of private sector investment, co-location of a wide mix of land uses, include areas identified for commercial use, and where appropriate, commercial cores (Objective 22). Norwest Business Park is identified within the Plan as one of nine (9) commercial office precincts that are essential for growing jobs and productivity to enhance Sydney's global economic competitiveness. The planning proposal would facilitate additional jobs and a choice of modern office space close to where people live, in a location that has good access to services and the future Bella Vista Rail Station. The planning proposal is generally consistent with the relevant objectives of the Greater Sydney Region Plan.

- Central City District Plan

The Central City District Plan requires integration of land use planning and transport to facilitate walkable 30-minute cities amongst the 34 strategic centres identified. Norwest, being within the Sydney Metro Northwest Rail Corridor, is identified for growth that enables efficient access to jobs, services and a wide range of other uses through reduced travel times (Planning Priority C9). The site is located approximately 500m walking distance from the Bella Vista Railway Station and increased commercial floor space and reduced parking rates (and as a result, traffic generation) on the site would support the objectives of the plan.

The Plan also encourages growth in investment, business opportunities and jobs in strategic centres. Norwest is identified as a strategic centre that has the opportunity to develop into a more diversified, specialised centre with higher employment densities (Planning Priority C10). The District Plan emphasises the role that the built form of development in business

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parks has to play in creating places with high amenity and vibrancy, while maintaining their function as an employment precinct. The planning proposal would result in the creation of more jobs and enhance economic and business opportunities within the business park. The planning proposal is generally consistent with the Central City District Plan.

- Ministerial Direction 1.1 Business and Industrial Zones

This Direction seeks to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified centres. A planning proposal must retain the areas and locations of existing business zones and not reduce the total potential floor space area for employment uses and related public services in business zones. The planning proposal does not include a reduction in business zoned land. In contrast, the planning proposal would increase the potential for commercial floor space on the site and is therefore consistent with this Ministerial Direction.

- Ministerial Direction 3.4 Integrating Land Use and Transport

The objectives of this Direction are to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- a) Improve access to housing, jobs and services by walking, cycling and public transport;
- b) Increase the choice of available transport and reduce dependence on cars;
- c) Reduce travel demand including the number of trips generated by development and the distances travelled, especially by car;
- d) Support the efficient and viable operation of public transport services; and
- e) Provide for the efficient movement of freight.

The location of increased employment opportunities in close proximity to the future Sydney Metro Northwest (Bella Vista Station) will support job creation in Norwest Business Park. The proposed reduction in the parking rate applicable to the site (to reflect Council's existing Commercial Centres rate) will encourage utilisation of the Sydney Metro Northwest and reduce the number of vehicle trips generated by the development. The planning proposal is consistent with this Ministerial Direction.

- Ministerial Direction 5.9 North West Rail Link Corridor Strategy

This Direction promotes transit-oriented development and balanced growth around the eight train stations of the Sydney Metro Northwest. A planning proposal must be consistent with the structure plans, growth projections and proposed future character of the station precincts.

The planning proposal seeks to increase the applicable floor space ratio from 2:1 to 2.7:1, which remains within the FSR range identified in the North West Rail Link Corridor Strategy for commercial development within a station precinct (2:1 to 4:1).

While the planning proposal is consistent with this Ministerial Direction, it is important to note that the North West Rail Link Corridor Strategy was prepared in 2013. The strategic planning process for this area has since progressed by way of the Government's Planned Precinct program and the completion of precinct planning for the Bella Vista Precinct in 2017. This more recent planning work takes precedence over the original outcomes and vision detailed within the North West Rail Link Corridor Strategy.

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- Corridor Strategies and Precinct Planning

The Bella Vista Station Structure Plan within the Government's North West Rail Link Corridor Strategy (2013) anticipates that the Business Park area of the precinct (including the subject site) could accommodate 4-6 storey commercial offices on sites that are carefully designed to integrate into the surrounds. It is noted that the anticipated height ranges in the Government's corridor strategy were less than what could already be achieved under the planning controls that applied to the land at that time.

The site was not included Council's The Hills Corridor Strategy (2015) as the land along Lexington Drive was heavily constrained by strata title developments and this land was subject to the State Government's precinct planning process at this time.

Critically, both the North West Rail Link Corridor Strategy and The Hills Corridor Strategy were higher-level strategic planning documents, intended to be superseded by more detailed precinct planning work. Accordingly, while these documents provide useful context, the Bella Vista Precinct (including the subject site) has since been subject to detailed precinct planning work completed by Government in 2017, through the Planned Precinct program.

- Bella Vista Station Precinct Plan

On 1 December 2017, the Department of Planning and Environment completed the precinct planning for the Bella Vista Station Precinct, culminating in amendments to Council's LEP with respect to the Precinct including an increase in the floor space ratio applicable to land along Lexington Drive (including the subject site) from 1:1 to 2:1. The Precinct Planning retained the B7 Business Park zoning applicable to the site and, despite increasing the permissible density, did not make any change to the maximum height of building limit which remained RL 116m.

- The Hills Local Strategic Planning Statement

Council's Local Strategic Planning Statement: Hills Future 2036 (LSPS) outlines the Shire's 20-year vision for land use planning, population, housing, economic growth and environmental management. Planning Priority 1 in the LSPS supports employment-generating development in targeted locations to suit the skills of residents. Planning Priority 2 promotes the development of strategic centres to realise their full potential. The site is located within the Norwest Innovation sub-precinct of the Norwest Strategic Centre and the strong employment outcome sought through the proposal is generally consistent with the LSPS.

Further, the LSPS identifies that the Shire has historically had high levels of car ownership and usage, due to limited public transport options and long distances from key employment areas of Sydney. Planning Priority 12 identifies that future growth should influence travel behaviour to promote sustainable choices. The proposed reduced parking rates, on a site within walking distance to Bella Vista station, is consistent with the priorities of the LSPS.

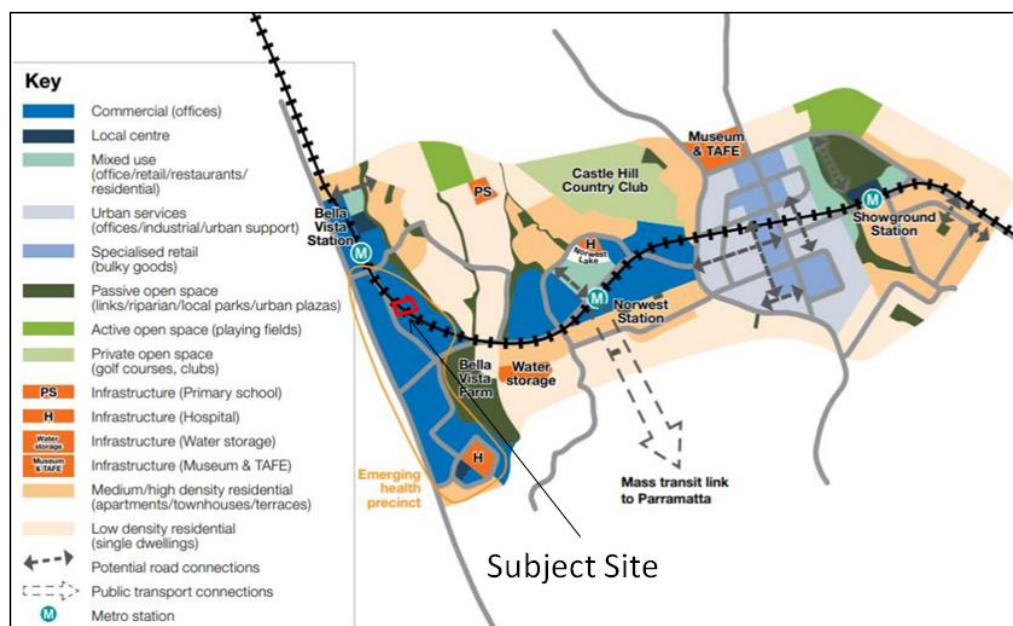


Figure 5
Norwest Strategic Centre – Structure plan

b) Built form and density

In addition to relevant strategic factors (such as proximity to a public transport node), it is important for the determination of appropriate densities (FSR) and heights for any site to have regard to the individual characteristics of each site. Even in instances where two sites may be located similar distance from a transport node, the ultimate density and height appropriate for each site would nonetheless be influenced by other factors such as the size of the site (undersized, standard or master-planned), topography, environmental constraints, proximity to sensitive uses (for example low density residential development) and existing built form and approvals.

Uniquely, the built form and building envelope proposed by this planning proposal has already been approved, by way of Development Consent granted in June 2021 (DA 172/2021/JP). As a result of the rail corridor running beneath the north-eastern half of the site, there is limited scope for excavation of basement parking to occur and it was therefore necessary for the approved development to accommodate a greater share of the required on-site car parking in above-ground parking levels within the building envelope. Despite this constraint, the approved development application was able to demonstrate compliance with the maximum floor space ratio and height controls for the site applicable under LEP 2019 as well as the required parking provisions under the DCP.

While the site is vacant, the currently approved development outcome for the site can reasonably be viewed as the “baseline” development scenario for the purposes of assessing this planning proposal. The planning proposal does not seek to amend the applicable maximum height of buildings and would not result in any change to the height, built form or building envelope which is already permitted under the current controls and which has already been approved under the current Development Consent. Accordingly, in comparison

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to the “baseline” development scenario, the planning proposal would not result in any impacts in terms of amenity, bulk, scale, visual impact or overshadowing. This means that a number of site-specific considerations, which would typically be the subject of in-depth discussion in the assessment of a planning proposal, are not issues of concern for this particular proposal.

The planning proposal would permit an increased density of development on the site, by replacing two approved floors of above ground car parking with additional office space, equivalent to an FSR increase of 0.7:1 (approximately 7,140m² of commercial floor space and 238 additional jobs). Having regard to the unique factors relevant to this individual site, the proposed FSR increase is considered to be supportable for the following reasons:

- The opportunity to increase employment capacity on the site, within 500m walking distance of Bella Vista Station is positive, especially noting that this increased employment capacity can be accommodated without any built form impacts or change in the bulk, scale or height of the approved building envelope. In comparison to the development already approved for the land, there are no adverse site-specific outcomes that would arise from the proposal;
- The site is located within the Commercial Office Precinct of the Norwest Strategic Centre. The proposal is entirely consistent with the objectives of the B7 Business Park Zone and does not seek to introduce any residential uses on the site. The proposal would assist in reinforcing and protecting the role of strategically identified employment lands within Norwest and will promote the long term commercial viability of the Precinct;
- The site is the only site on Lexington Drive that remains undeveloped and is uniquely placed to capitalise on the opening of the metro with a new building, without needing to demolish or displace existing businesses. It is a short-term opportunity site for delivery of new jobs within the Norwest Strategic Centre and is also in singular ownership, which provides a greater level of certainty that the outcomes being sought would be delivered. The proposed uplift has been presented by the Proponent as a feasible development outcome which will enable the uplift to be achieved on the site; and
- The proposal would result in an overall decrease in traffic generation associated with development on the site. Irrespective of the increased development yield on the site (0.7:1), the proposed application of Council's existing Commercial Centres rate to the land would result in an overall reduction in the number of parking spaces within the development and consequently, a reduction in the likely peak hour trip generation from the development. The proposed parking rates are discussed further below.

c) Car parking

The planning proposal is accompanied by a proposed amendment to the Hills DCP to apply Council's existing Commercial Centres parking rate of 1 car parking space per 40m² of commercial GFA, in comparison to the rate currently applicable to this site of 1 car parking space per 25m² of commercial GFA.

The existing Development Consent includes 753 car parking spaces for a development with an FSR of 2:1 (it is noted that this incorporates some parking associated with serviced apartments, which has a rate of 1 car parking space per guest room and 1 per 2 employees). In comparison, if Council's Commercial Centres parking rate was applied to the proposed development (with an FSR of 2.7:1), the total number of parking spaces required would be approximately 676.

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The existing development consent accommodates 629 spaces within the first 5 parking levels within the development. Through minor internal re-design of the layout of these parking levels to accommodate up to 47 additional spaces, and depending on the mix of commercial uses proposed within the additional commercial floor space, it would be possible for the development to provide the reduced total of approximately 676 spaces within 5 of the 7 planned parking levels within the approved building envelope. This would then negate the need for the remaining 2 above ground parking levels, which could be converted to commercial space. Council Officers have requested the Proponent submit additional information (for example, a revised plan) demonstrating that the required number of total parking spaces, compliant with the proposed DCP controls, can be achieved within the proposed development. It is recommended that this be provided before the matter is reported to Council for determination.

The application of Council's existing Commercial Centres parking rate to the site is considered reasonable. This reduced rate was established prior to the opening of the Sydney Metro Northwest and has been applied to the centres of Castle Hill, Rouse Hill and Baulkham Hills in recognition of the availability of bus services to and from these centres at that time. While the Commercial Centres rate has not been revisited following the opening of the Sydney Metro Northwest and does not currently apply to the Norwest Strategic Centre, the opening of the Sydney Metro Northwest provides strong justification for the extension of this rate (or application of lower rates) to land within walking distance of Metro stations.

The Proponent has submitted that the application of the Commercial Centres rate is appropriate, on the following grounds:

- *The proximity of the site to the station and other transport options.*
- *The current Hills DCP parking rate is not considered sustainable for future development in Norwest with the proposed vision for Norwest being a strategic centre and does not encourage a mode shift towards more sustainable modes of travel – noting the specific recommendation in the station precinct finalisation report to move toward a rate of 1:40m² GFA.*
- *Consistency with the RMS guidelines and the general direction established for other similar precincts.*

It is acknowledged that the parking rate currently applicable to the Norwest Precinct (1 space per 25m² of GFA) is broadly equivalent to 1 space for every employee within a development, which assumes that nearly 100% of workers will access the site using private vehicle and 0% of workers will utilise public transport. Accordingly, the continued application of this rate would fail to take into account any change to the travel behaviour of workers as a result of the site now being located within 500 metres walking distance of high frequency public transport.

For reference, Council has resolved to apply lower parking rates of 1 space per 60m² of commercial GFA to other sites within the Norwest Strategic Centre as part of site-specific planning proposals for Norwest Station Site, 2-4 Burbank Place, 34-46 Brookhollow Avenue and 14-16 Brookhollow Avenue.

The Proponent has not sought a reduction in parking rates to this same extent but rather has proposed application of Council's existing Commercial Centres Rate (1 space per 40m² of commercial GFA), identifying that this is an alternative and lower rate which already applies

LOCAL PLANNING PANEL MEETING 18 AUGUST, 2021**THE HILLS SHIRE**

to a number of other centres within The Shire. The application of this reduced rate is considered reasonable at this time.

It is recommended that if Council were to proceed with this reduced parking rate, it should be expressed as a minimum parking rate, which would result in the requirement for 676 spaces to be provided in association with the proposal. Parking requirements are currently specified as minimum rates within Council's DCP and are not mandated through primary controls contained within Council's LEP. When specified as minimum parking rates, individual developers would continue to have discretion to provide parking at a higher rate on any individual site, in response to market demands or the requirements of any specific tenants.

It is noted that separate to this planning proposal, a broader review of parking rates within Council's Centres is currently underway in accordance with Action 12.1 of Council's LSPS. Regional traffic modelling for Castle Hill, Showground, Norwest and Bella Vista Precincts is also underway and expected to near completion in late-2021. The progression of this additional work will provide an evidence base for Council to determine the most appropriate parking rates and policies within its centres. It is anticipated that if the planning proposal progresses to Gateway Determination and public exhibition, this evidence base would be available to Council at the time of making a decision with respect to the finalisation of the proposal and as such, the final parking rate could be reconsidered at this time.

d) Traffic impact and infrastructure demand

The Proponent has submitted a Strategic Transport Review in support of the proposal. The Study calculated that the proposed development would generate 332 AM peak trips and 252 PM peak trips. In comparison, the approved Development Application outcome would generate 361 trips in the AM peak and 272 trips in the PM peak, when calculated using the same methodology in the Strategic Transport Review provided with the planning proposal. Although the Development Consent provides less commercial floor space, the current car parking rate provides for significantly more car parking spaces and therefore greater potential for peak hour trip generation to and from the site.

Despite the proposed increase in density, the planning proposal would not result in any increase in traffic generated from the site, as a result of the proposed application of Council's reduced Commercial Centres parking rate. As the proposed development would contain less parking spaces on-site than the approved development, vehicular demand to and from the site is anticipated to ultimately be less than that which has already been approved under the current controls.

The site is located within the Norwest Innovation sub-precinct of the Norwest Strategic Centre. Council recently adopted a draft Section 7.12 Contributions Plan for this sub-precinct. This draft Plan is currently being reviewed by the Department of Planning, Industry and Environment, with Council seeking approval to levy a contribution of 2.8% of the cost of development to fund new and upgraded infrastructure necessary to service the precinct.

Council has previously relied on VPAs in association with a number of other site specific planning proposals, as a means to have in place an appropriate contributions mechanism where the proposal was in advance of the completion of detailed precinct planning and associated update of the contributions planning framework. However, within the Norwest Innovation Sub-Precinct, Council's planning has now progressed to the point where the uplift in development associated with the Sydney Metro Northwest has now been considered, planned and catered for within this draft Norwest Innovation Section 7.12 Contributions Plan.

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The draft Norwest Innovation Section 7.12 Contributions Plan includes road upgrade works to Lexington Drive, contributions to traffic signals for Lexington Drive/Norwest Boulevard and intersection expansions at Lexington/Irvine and Woolworths Way and Lexington/Meridian Place. It also includes additional public domain works, pedestrian and cycle connections and passive open space for future workers within the Precinct.

This plan was not in force at the time the existing Development Consent was issued and as such, contributions have been imposed on the approved development under the Shire-wide Section 7.12 Contributions Plan (1% of the cost of development). However, following the finalisation of the draft Norwest Innovation Section 7.12 Contributions Plan, any new Development Consents would include conditions levying for contributions under the new contributions plan that applies.

Accordingly, it is expected that if approved, the proposed development would contribute towards these works through contributions levied under this new plan (once in force), at a rate of 2.8% of the cost of development. Once a Contributions Plan has been prepared and adopted for a Precinct which addresses the infrastructure requirements associated with the development of that Precinct, it is fair and reasonable for development within to be levied under this Contributions Plan. It is considered that the new draft Norwest Innovation Precinct Section 7.12 Contributions Plan is therefore appropriate to cater for the local infrastructure demand likely to be generated by this proposal, especially noting that the outcome would result in lower traffic generation in comparison to the currently approved development.

IMPACTS**Financial**

The planning proposal has no impact on Council's budget or forward estimates. It is anticipated that should the proposal proceed, the contributions framework that will be in place under the Norwest Innovation Precinct Section 7.12 Contributions Plan will be sufficient to levy development for a proportionate contribution towards new and upgraded local infrastructure.

Strategic Plan – The Hills Future

The Hills Future aims to manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations. The planning proposal seeks to provide for additional employment opportunities, consistent with the Strategic Plan. The scale and built form of the development is consistent with what has been approved via Development Consent and is appropriate given the location of the site within the Norwest Strategic Centre and specialised employment precinct.

RECOMMENDATION

1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.
2. Council Officers prepare amendments to The Hills DCP 2012 to reduce the parking rate applicable to the land to 1 space per 40m² of commercial gross floor area.
3. Prior to the application being reported to Council, the Proponent submit additional information demonstrating the ability to achieve compliance with the proposed parking rates under the DCP following the conversion of the two above ground parking levels to commercial space.

ATTACHMENTS

1. Revised Planning Proposal Report
2. Architectural Plans
3. Landscape Design Report
4. Traffic and Parking Assessment
5. Strategic Transport Review
6. Market Demand Analysis

LOCAL PLANNING PANEL – THE HILLS SHIRE COUNCIL**DETERMINATION OF THE LOCAL PLANNING PANEL ON 18 AUGUST 2021****PRESENT:**

Pamela Soon	Chair
Glennys James	Expert
Chris Young	Expert
Ken Willimott	Community Representative

DECLARATIONS OF INTEREST:

In relation to Item 2 Mr Young declared that the proponent's Traffic and Parking Assessment report was approved by a previous colleague which Mr Young has not had any contact with for approximately 3 years. This is a separate professional engagement to which does not represent a significant conflict of interest under the LPP Code of Conduct and he is still able to consider and advise on the matter.

COUNCIL STAFF:

The Panel were briefed by the following Council Staff on 18 August 2021:

David Reynolds	-	Group Manager – Shire Strategy, Transformation & Solutions
Nicholas Carlton	-	Manager – Forward Planning
Megan Munari	-	Principal Coordinator, Forward Planning

**ITEM 1: LOCAL PLANNING PANEL – PLANNING PROPOSAL – CASTLE
RIDGE RESORT, 346-350 OLD NORTHERN ROAD, CASTLE HILL -
LOCAL PLANNING PANEL (1/2021/PLP)**

COUNCIL OFFICER'S RECOMMENDATION:

The planning proposal not proceed to Gateway Determination.

PANEL'S ADVICE:

The planning proposal should not proceed to Gateway Determination on the basis that:

- a) The proposal has not sufficiently justified the scale of uplift sought in an area outside of the walking catchment of Castle Hill Town Centre on land that is not strategically identified for uplift. There is limited strategic justification for permitting uplift on this land and the proposal could set an undesirable precedent for the density, scale and character of development in infill and environmentally sensitive areas of Castle Hill. In this regard, the proposal is inconsistent with Planning Priorities 6, 7 and 8 of the Hills Future Local Strategic Planning Statement;
- b) The height, scale, density and character of the proposed development is inconsistent with the objectives of the E4 Environmental Living Zone and the character of the locality;
- c) The development exceeds the capacity of the site, as evidenced by the range of site specific issues detailed within this report (character, height, interface and visual impacts), the inability for the proposal to comply with baseline development standards within Council's DCP (in particular, the extent of cut and fill permitted and minimum setback distances);
- d) The proposal has not satisfactorily resolved traffic and access arrangements to the point where increased yield and associated traffic generation is supportable at this location. The other public infrastructure contributions proposed by the Proponent are inadequate to support the proposal; and
- e) Council is already well placed to meeting the housing needs of senior residents, with sufficient opportunities available to provide new seniors housing developments in more appropriate locations than the subject site.

VOTING:

Unanimous

**ITEM 2: LOCAL PLANNING PANEL – PLANNING PROPOSAL – 21-23
LEXINGTON DRIVE, BELLA VISTA - LOCAL PLANNING PANEL
(1/2019/PLP)**

COUNCIL OFFICER'S RECOMMENDATION:

The planning proposal proceed to Gateway Determination.

PANEL'S ADVICE:

1. The planning proposal applicable to land at 21-23 Lexington Drive Bella Vista (Lot 7081 DP 1037626) to increase the maximum floor space ratio from 2:1 to 2.7:1 proceed to Gateway Determination.
2. Council Officers prepare amendments to The Hills DCP 2012 to reduce the parking rate applicable to the land to 1 space per 40m² of commercial gross floor area.
3. Prior to the application being reported to Council, the Proponent submit additional information demonstrating the ability to achieve compliance with the proposed parking rates under the DCP following the conversion of the two above ground parking levels to commercial space.

VOTING:

For – 3 (Pamela Soon, Glennys James & Ken Willimott)

Against – 1 (Chris Young)

MEMO

To: Kayla Atkins, Nicholas Carlton – Hills Shire Council.

From: Simon Wilkes, Urbis.

Email: swilkes@urbis.com.au

Date: 18 August 2021

Subject: Planning Proposal for 21-23 Lexington Drive, Bella Vista

Dear Kayla and Nicholas,

We understand that the planning proposal for 21-23 Lexington Drive, Bella Vista is being considered by the Local Planning Panel and that additional information may assist – in terms of (a) the intended parking provision for future development, and (b) future contribution plans.

Expected parking for future development.

A preliminary breakdown is provided in the table below.

PARKING BREAKDOWN		
	RECOMMENDED CONTROL	PROPOSED
FOOD & BEVERAGE	1 per 40m ² GFA (20 spaces)	20 spaces
OFFICE + LOBBY	1 per 40m ² GFA (590 spaces)	590 spaces (542 + 6 carshare spaces at an allowance of 8 per carshare space)
GYMNASIUM	1 per 40m ² GFA (7 spaces)	7 spaces
SERVICED APARTMENTS	1 per apartment (58 spaces) plus 1 per 2 staff (2 spaces) = 60 spaces total	60 spaces
SUBTOTAL	677 spaces	677 spaces
SERVICE VEHICLES	5 spaces total	5 spaces (incl. 2 in Loading Dock)
TOTAL	682 spaces	682 spaces
BICYCLE	44 spaces	44 spaces
MOTORCYCLE	1 per 50 parking spaces (14 spaces)	16 spaces (2 above control)
CAR SHARE SPACES	-	6 spaces
ELECTRIC VEHICLE CHARGING BAYS	-	5 spaces (+ infrastructure for all)
ACCESSIBLE	2% of parking provision (16 spaces)	16 spaces

The proposed provision, including the approach to car-sharing and facilitating a desired travel mode-shift, is consistent with:

- The direction and recommendations set out in the *Hills Shire Integrated Transport Strategy*,
- An appropriate level of equivalent parking bays for car-sharing spaces at 1:8,
- An overall design approach to minimise potential impacts on the road network, and
- A design approach to have no other environmental impact, with the overall built form remain unchanged from that already approved.

Contribution Plans

The additional floorspace is intended to be achieved through a S4.55 modification. Any future contribution liability would be determined in accordance with the relevant statutory provisions set out in the Act and any relevant/operative contribution plan.

We trust that this additional information assists with Council's consideration of the Planning Proposal at this time. Should you require any additional information or wish to discuss this matter further, please do not hesitate to let us know.



Simon Wilkes

Cc. Capital Corporation

ATTACHMENT 4

**THE HILLS SHIRE COUNCIL, CAPITAL PROJECTS
CORPORATION PTY LIMITED "DEVELOPER"**

The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest BC 2153 Phone (02) 9843 0555

PRELIMINARY DRAFT – Sept 2021.

**Planning Agreement
Summary Sheet**

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
Developer	Name	Capital Projects Corporation Pty Limited ACN 056 361 007
	Address	Level 1, 1 Jamison Street, Sydney, NSW 2000
	Telephone	02 90554589
	Email	rdecarvalho@capcorp.com.au
	Representative	Richard de Carvalho
Land		Lot 7081 in DP 1037626 known as 21-23 Lexington Drive, Bella Vista
Instrument Change		Amendment to The Hills Local Environmental Plan 2019 as it relates to the Land.
Planning Proposal		Planning Proposal 1/2019/PLP
Dedication Land		Not applicable
Works		Not applicable
Monetary Contributions		See Schedule 1
Security Amount		nil

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Planning Agreement

Dated

Parties

The Hills Shire Council ABN 25 034 494 656 of 3 Columbia Court, Norwest, NSW 2153 (**Council**)

Capital Projects Corporation Limited ACN 056 361 007 of Level 1, 1 Jamison Street, Sydney New South Wales 2000 (**Developer**)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. The Developer is the registered proprietor of the Land.
- C. The Developer has obtained development consent in relation to the Land ("The Existing DA")
- D. The Developer has lodged the Planning Proposal with Council in respect of the Land seeking the Instrument Change so as to enable Development Application(s) to be made in relation to the Land.
- E. Upon approval of the Planning Proposal, the Developer proposes to lodge Development Application(s) in respect of the Land.
- F. The Developer has offered to make Development Contributions in the nature of Monetary Contributions if the Instrument Change occurs on the terms 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 7.1, Part 7** of the Act.

3. Application of this document

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

4. No restriction on Council's Powers

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and

- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

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

5. Operation of this Agreement

5.1 This Agreement operates from the date it is executed by both parties.

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

6. Monetary Contributions

6.1 Payment

- (a) The Developer must pay the Monetary Contributions in accordance with Schedule 1 of this Agreement and any other provision of this Agreement relating to Monetary Contributions on or before the date for payment specified in Column 2 of Schedule 1 of this Agreement.
- (b) Payment of the Monetary Contributions may be made by bank cheque in favour of Council or electronic funds bank transfer to Council's nominated bank account.
- (c) A Monetary Contribution will be taken to have been made when Council notifies the Developer in writing that the bank cheque has been received and cleared funds have been deposited in Council's nominated bank account.

6.2 Public Purpose

- (a) The Monetary Contributions are required for the funding of the construction of, or improvements to local infrastructure and the public domain in the vicinity of the Land, as determined by the General Manager of Council from time to time and Council will apply the Monetary Contributions for those purposes.
- (b) Despite the description and location of works specified in Column 1 of Schedule 1 of this Agreement, Council may at its full discretion apply the Monetary Contributions towards another public purpose specified in this Agreement or a public purpose (including but not limited to works or land acquisition) it deems appropriate to service new development within the Precinct if Council reasonably considers that the public interest would be better served by applying the Monetary Contributions towards that other purpose rather than the purpose so specified.

7. Application of s7.11 and s7.12 of the Act

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

8. Termination

This Agreement will terminate in the event that the Instrument Change as it relates to the Land does not occur.

9. Consequences

9.1 On the date of termination or rescission of this Agreement, subject to the following subparagraph each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.

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

10. Private Certifiers

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

11. Notices

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

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

11.3 Any notice is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two (2) Business Days after it is posted;
- (c) if it is sent by email, at the time it is sent.

11.4 If any notice is delivered on a day that is not a business day, or if on a business day, after 5.00pm on that day on the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

12. Breach Notice and Rectification

12.1 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**).

12.2 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 a Breach Notice.

12.3 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 Council in remedying the breach.

13. Dispute resolution

13.1 Disputes

If a party claims that a dispute has arisen under this document (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 13.1.

13.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

13.3 Negotiation

The nominated representative must:

- a) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
- b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

13.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 13.5.

13.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- a) the parties must agree to the terms of reference of the mediation within 3 business days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- b) the Mediator will be agreed between the parties, or failing agreement within 3 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) the Mediator appointed pursuant to this clause 13.5 must:

- i. have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- g) the parties must convene and attend the mediation within 21 days of the date of the Dispute Notice;
- h) in relation to costs and expenses:
 - i. each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

13.6 Litigation

If the dispute is not finally resolved in accordance with this clause 13, either party is at liberty to litigate the dispute.

13.7 Continual performance

Each Party must continue to perform its obligations under this Agreement while any dispute is being determined under this clause.

14. Enforcement

14.1 Restriction on the issue of Certificates

In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligation to pay Monetary Contributions under this Agreement must be satisfied prior to the issue of any Occupation Certificate for any Development Consent for the Proposed Development or any part of the Proposed Development if such an Occupation Certificate is required.

14.2 General Enforcement

- (a) This Agreement may be otherwise enforced by either Party in any court of competent jurisdiction.

- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - i. a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - ii. the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

15. Registration of Agreement on Title

15.1 Registration of this Agreement

- (a) The Developer agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act within thirty (30 days) of execution of this Agreement.
- (b) The Developer will promptly after the execution of this Agreement take all practical steps, and otherwise do anything that Council reasonably requires to procure:
 - i. the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land.
 - ii. an acceptance of the terms of this Agreement and an acknowledgement in writing from an existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the Land as mortgagee in possession;
 - iii. the execution of any documents; and
 - iv. the production of the relevant duplicate certificates of title.
- (c) The Developer will take all practical steps, and otherwise do anything that Council reasonably requires:
 - i. to procure the lodgment of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - ii. to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.

15.2 Release from Registration

Council will at the request of the Developer release the Land from registration of this document if it is terminated in accordance with clause 8 or when the Monetary Contributions have been received by Council and no other money is owing to Council

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

15.3 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 Agreement and the subsequent removal of registration.

16. Costs

The Developer is to pay to Council, the Council's costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this Agreement within 7 days of a written demand by Council for such payment.

17. 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.

18. General

18.1 Assignment

- (a) A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.
- (b) In the event that the Developer enters into a contract for the sale of the Land the subject of the Proposed Development, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

18.2 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.

18.3 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

18.4 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 Remedies

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

18.10 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.

18.11 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.

18.12 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.

18.13 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.

19. Definitions and interpretation

In this document unless the context otherwise requires:

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

Agreement means this Planning Agreement.

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

Development Application means any development application made under Part 4 of the Act or application under s4.55 of the Act for the modification of the Existing DA for the Proposed Development.

Development Consent means any development consent granted by the Council under section 4.16 of the Act for the Proposed Development.

Development Contributions means the Monetary Contributions.

Existing DA means development consent 172/2021JP as determined by the Sydney Central City Planning Panel on 9 June 2021 approving a Mixed Use Development including Commercial Office Floor Space and Serviced Apartments – totalling 20,400m² of Gross Floor Area.

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.

Instrument Change means amendment to The Hills Local Environmental Plan 2019 as it relates to the Land as a result of the Planning Proposal application number 1/2019/PLP resulting in an increase in Floor Space Ratio from 2.0:1 to 2.7:1.

Land means Lot 7081 in DP 1037626 known as 21-23 Lexington Drive, Bella Vista

Monetary Contributions means a monetary contribution to be made by the Developer pursuant to clause 6 of this Agreement and identified as payable to Council in Schedule 1 of this Agreement.

Occupation Certificate means the same thing as in the Act.

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

Planning Proposal means planning proposal 1/2019/PLP

Precinct means:

- a) upon the adoption of a Contributions Plan under the Act for the area within which the Land is located, the area to which that Plan applies and any area of land in the general vicinity of such area;
- b) prior to the adoption of any Contribution Plan of the nature referred to in (a) above, the area in the general vicinity of the Land but within the Norwest Innovation Precinct and within which Council proposes to provide public amenities and/or public services.

Proposed Development means any redevelopment of the Land incorporating the outcomes sought to be facilitated by the Planning Proposal and the Instrument Change allowing any portion of Gross Floor Area over and above the 20,400m² approved in the Existing DA.

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

19.1 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.

Schedule 1 – Monetary Contributions

Column 1	Column 2	Column 3
Public Purpose	Timing of Payment	Amount of Payment
Local infrastructure and public domain improvements within the Precinct and its vicinity.	Prior to grant of an Occupation Certificate for each Development Consent for the Proposed Development	<p>2.8% of the estimated construction cost for any portion of Gross Floor area over and above the 20,400m² approved in the Existing DA, that is contained in the Proposed Development.</p> <p>The proposed cost of carrying out the Proposed Development shall be calculated in accordance with clause 25J of the Regulation, and indexed between the date of the grant of each Development Consent and the date of payment of the Monetary Contribution in accordance with the Consumer Price Index (All Groups – Sydney).</p>

Execution Page

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

General Manager

Mayor

Print Name

Print Name

Witness

Print Name

Executed by Capital Projects Corporation Pty
Limited ACN 056 361 007 in accordance with
s127 of the *Corporations Act 2001* (Cth):

Secretary/Director

Director

Print name

Print name