

JRPP PLANNING REPORT

JRPP NO:	2009SYW018
DA NO:	DA 562/2010/JP
APPLICANT:	ATM & CPA PROJECTS PTY LTD
PROPOSAL:	STAGED EIGHTEEN (18) STOREY MIXED USE DEVELOPMENT COMPRISING 105 RESIDENTIAL UNITS, 148M ² OF RETAIL SPACE & 173 BASEMENT CAR PARKING SPACES
PROPERTY:	LOT 1 DP 398482, 2-8 JAMES STREET, CARLINGFORD
LODGEMENT DATE:	12 OCTOBER 2009
REPORT BY:	CLARO PATAG DEVELOPMENT ASSESSMENT CO-ORDINATOR THE HILLS SHIRE COUNCIL
RECOMMENDATION:	DEFERRAL

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	ATM & CPA Projects Pty Ltd and HJ & BC La'Porte	1.	<u>LEP 2005</u> - Prohibited (Permissible in the Draft LEP.)
Zoning:	Residential 2(a1)t	2.	<u>SEPP (Major Development) 2005</u> - Complies
Area:	2,992.8m ²	3.	<u>SEPP No. 65 - Design Quality of Residential Flat Development</u> - Complies
Existing Development:	Three dwelling houses.	4.	<u>SEPP (Infrastructure) 2007</u> - Complies
Capital Investment Value	\$22.8 million	5.	<u>SEPP 1 Development Standards</u> - Satisfactory
		6.	<u>BHDCP Part C Section 7 Apartment Buildings-</u> Variation, refer Attachment A1 - Previous Report.
		7.	<u>Draft BHDCP Part E Section 22 - Carlingford Precinct</u> - Variation, refer Attachment A1 - Previous Report.
		8.	<u>Section 79C (EP&A Act)</u> - Satisfactory
			Section 94 Contribution - to be determined as part of the VPA.

SUBMISSIONS**REASON FOR REFERRAL TO JRPP**

1. Exhibition:	Yes, 15 days.	1.	Capital Investment Value in excess of \$10 million pursuant to SEPP (Major Development) 2005.
2. Notice Adj Owners:	Yes, 20 days.		
3. Number Advised:	One hundred and eleven (111).		
4. Submissions Received:	Three (3).		

HISTORY

- 25/05/2010** Status report submitted to the Joint Regional Planning Panel. (History prior to this date in previous Report – see Attachment A1)
- 28/05/2010** Additional information received from the applicant relating to acoustic and vibration, cumulative shadow impacts, details in relation to parking and driveway gradients, amended landscape plans and garbage collection arrangement.
- 17/06/2010** Amended architectural and stormwater drainage plans received from the applicant.
- 22/06/2010** Council considered a report on the draft LEP, DCP and Section 94 Contributions Plan for the Carlingford Precinct and resolved that:
- 1. The draft Local Environmental Plan, draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford precinct, draft Section 94 Contributions Plan No. 14 – Carlingford Precinct and draft Planning Agreements and Explanatory Notes be exhibited for a minimum period of 28 days in accordance with the Environmental Planning and Assessment Act 1979; and*
 - 2. The applicant be requested to modify the draft Voluntary Planning Agreement to address the identified funding gap when compared to the Draft Section 94 Plan.*
 - 3. The applicant modify the Voluntary Planning Agreement to clearly identify the route of the undergrounding of the 132kv high voltage powerlines and it is not to include any towers, switch yards and the like in any of the development sites within the precinct.*
 - 4. Once amended to the satisfaction of the General Manager, the matter be brought back to Council to seek authorisation to publicly exhibit the draft Voluntary Planning Agreement.*
 - 5. The General Manager write to the NSW Premier and NSW Transport Minister requesting urgent State Government funding and priority to improving train service levels to Carlingford and commence construction of the Carlingford to Epping Rail link as a priority.*

07/07/2010	The Joint Regional Planning Panel instructed Council to request the applicant to withdraw the subject Development Application and to make a further application when consideration of the planning control instruments relating to development of the precinct is far more advanced, and should the applicant not agree to withdrawal it was requested that the application be submitted to the Panel for determination within four weeks.
13/07/2010 to 13/08/2010	Draft LEP, DCP and Contributions Plan for the Carlingford Precinct re-exhibited. Upon a further report to Council addressing submissions received, the Draft LEP will be forwarded to the Department of Planning for publication/gazettal.
29/07/2010	Further letter sent to the applicant requesting the withdrawal of the subject Development Application.
09/08/2010	Electromagnetic field study received from the applicant.
13/08/2010	Letter received from the applicant's planning consultant requesting that the subject Development Application not be determined until the draft LEP is gazetted. This response was based on a letter from the Department of Planning to Council dated 30 June 2010 (see Attachment A3) advising that the draft LEP must be published prior to 31 December 2010 and that the final version of the plan be made available to the Department at least 6 weeks prior to the projected publication date.

Background

On 25 May 2010, a status report on the subject Development Application was submitted to the Joint Regional Planning Panel (JRPP) (refer Attachment A1). This report included an assessment against the heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, SEPP 65, BHLEP 2005, proposed Draft Local Environmental Plan – Carlingford Precinct, BHDCP Part C Section 7 – Apartment Buildings and BHDCP Part E Section 22 – Carlingford Precinct. The report concludes that the proposal is considered satisfactory under the provisions of the draft LEP and underlying DCP. It was indicated to the JRPP that the proposal is prohibited in the current zone and at odds with the current DCP, hence it was advised that it is not appropriate to determine the Development Application until the draft LEP is gazetted.

The status report also provided an assessment of the foreshadowed SEPP 1 objection to the required 54m building height limit in the draft Local Environmental Plan and it is considered to be supportable as the 300mm encroachment is only due to a small depression in the topography of the site at the north-eastern corner. The variation does not result in any amenity impacts on adjoining properties in terms of shadowing, loss of privacy or overlooking.

It was recommended that the determination of the subject Development Application be deferred pending adoption of the draft VPA and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft Carlingford Precinct DCP.

Joint Regional Planning Panel's Advice

The Joint Regional Planning Panel in its letter dated 7 July 2010 (refer Attachment A2) instructed Council to request the applicant to withdraw the subject Development

Application and to make a further application when consideration of the planning instruments relating to development of the precinct is far more advanced, otherwise it was requested that a report on the subject Development Application be submitted to JRPP for determination within four weeks. Subsequently, Council sent a letter to the applicant to this effect.

Applicant's Response

In response, the applicant requested that the subject Development Application not be determined until the draft LEP is gazetted, relying upon the provisions under clause 72J of the Environmental Planning and Assessment Act, 1979 which allows a Development Application to be lodged subject to an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended. This is exactly the situation that relates to the subject Development Application and accordingly the delay in determining this application pending gazettal of the draft LEP is anticipated in the Act by virtue of clause 72J. It should be noted that the applicant and Council's Strategic Planning staff have been working closely to amend the existing LEP to enable the Development Application (and the other Development Applications within the Carlingford Precinct) to proceed. It should also be noted that the draft Section 94 Contributions Plan for the Carlingford Precinct was required to be re-exhibited together with the draft LEP and draft DCP as the proposed rate per unit exceeds the \$20,000 per unit threshold directed by the Minister. The draft LEP proposes to remove areas of public open space so as to reduce the Section 94 contributions. The draft LEP, DCP and Section 94 plan came off exhibition on 13 August 2010.

Status of the Draft Planning Control Instruments and Voluntary Planning Agreement

Council considered on 22 June 2010 a report on proposed amendments to the draft LEP, DCP, Contributions Plan and four separate Voluntary Planning Agreements (VPAs) for the Carlingford Precinct. Council resolved to exhibit the amended plans with the exception of the VPAs. These VPAs were excluded to enable the applicant to modify the Agreements to address an identified funding gap of \$4.8 Million when compared to the Draft Contributions Plan.

As noted above, the exhibition of the draft plans concluded on 13 August 2010 and resulted in eleven (11) submissions being received. A further report to Council is likely to be scheduled in October 2010 to enable Council to consider submissions to the plans.

Council have been advised by the Department of Planning that the draft LEP must be published prior to 31 December 2010 and that the final version of the plan be made available to the Department at least 6 weeks prior to the projected publication date. Subsequently it is intended to finalise the draft LEP as soon as possible being no later than 1 November 2010.

CONCLUSION

The Development Application has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Baulkham Hills Local Environmental Plan 2005, draft Baulkham Hills Local Environmental Plan, Baulkham Hills Development Control Plan, draft Baulkham Hills Development Control Plan, State Environmental Planning Policy (Major Development) 2005, State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No. 1 – Development Standards, and is considered satisfactory, with the exception of the retail component's prohibition in the current BHLEP 2005.

It was previously recommended to the Joint Regional Planning Panel that determination of the subject Development Application be deferred pending the resolution of outstanding matters and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft BHDCP Part E Section 22 – Carlingford Precinct. Due to the uncertainty of the finalisation of the relevant planning instruments that are to be relied upon for the determination of this matter, the JRPP has instructed Council in writing to request the applicant to withdraw the Development Application, otherwise it was requested that a report on the matter be submitted to JRPP for determination.

The applicant has declined to withdraw the Development Application relying upon the provisions under clause 72J of the Environmental Planning and Assessment Act 1979, which states:

Nothing in this Act prevents:

(a) the making of a development application to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended, or

(b) the consideration by a consent authority of such a development application, subject to this Division.”

Given that the Department of Planning has advised that the draft LEP must be published by the end of this year, it is assumed that the JRPP now has a clear timeframe for the determination of this Development Application and it is recommended the application be deferred. However, if the JRPP feels this Development Application must be finalised now, it could only be refused given part of this development is prohibited in the current LEP. This issue cannot be dealt with by condition of consent.

IMPACTS:

Financial

The applicant is required to demonstrate to Council that satisfactory arrangements have been made with Energy Australia for funding and undergrounding of the 132kV power lines with no cost to Council.

Council is currently engaged with the applicant to resolve an identified funding gap of \$4.8 Million when compared to the draft Contributions Plan. In relation to the undergrounding of the 132kV power lines, representations have been made to the Minister for Planning seeking support to address the rising cost of works as estimated by Energy Australia which have the potential to jeopardise the redevelopment of the Carlingford Precinct in the manner envisaged.

Notwithstanding this issue, the amended VPAs will be reported to Council concurrently with the exhibited LEP, DCP and Contributions Plan in October 2010. Exhibition and adoption of the VPAs may occur concurrently with the submission of the draft LEP to the Director-General for finalisation.

Hills 2026

The proposal responds to the revitalisation of the Carlingford Precinct which is an integral component of Council's Residential Direction and response to the State Governments Draft North West Sub-regional Strategy. The proposal provides a good mix of housing which is an environmentally sustainable form of residential development and would protect and enhance the character of the locality and the Shire as a whole.

RECOMMENDATION

That determination of the subject Development Application be deferred pending the resolution of outstanding matters and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft BHDCP Part E Section 22 – Carlingford Precinct, draft Contributions Plan No. 14 Carlingford Precinct and Voluntary Planning Agreements.

ATTACHMENTS

- A1. Copy of Status Report to JRPP
- A2. Copy of correspondence from JRPP dated 7 July 2010
- A3. Copy of Department of Planning's letter dated 30 June 2010

JRPP STATUS REPORT

JRPP NO:	2009SYW018
DA NO:	562/2010/JP
APPLICANT:	ATM & CPA Projects Pty Ltd
PROPOSED DEVELOPMENT:	Eighteen (18) Storey Mixed Use Development Containing 105 Residential Apartment Units, 148m ² of Ground Floor Retail Space & 173 Basement Parking Spaces
PROPERTY	Nos. 2-8 James Street, Carlingford (Lots 1, 2 & 3 DP 398482, Lot 5 DP 8001 and Lot B DP 90046)
LODGEMENT DATE:	12 October 2009
REPORT BY:	Claro Patag - Development Assessment Coordinator The Hills Shire Council
RECOMMENDATION:	Deferral for continued assessment pending notification of the making of the draft Local Environmental Plan, commencement of the Carlingford Precinct Development Control Plan and approval and adoption by Council of a Voluntary Planning Agreement for the development.

BACKGROUND

MANDATORY REQUIREMENTS

Applicant:	ATM & CPA Projects Pty Ltd	1.	<u>LEP 2005</u> – Prohibited (Permissible in the Draft LEP.)
Owner:	ATM & CPA Projects Pty Ltd	2.	<u>BHDCCP Part C Section 7 Apartment Buildings- Variation</u> , see report.
Zoning:	Currently Residential 2(a1) and proposed to be rezoned to Residential 2(a4)	3.	<u>Draft BHDCCP Part E Section 22 – Carlingford Precinct – Variation</u> required – see report.
Area:	2,992.8m ²	4.	<u>SEPP (Major Development) 2005</u> - Complies
Existing Development:	Three dwelling houses.	5.	<u>SEPP (Infrastructure) 2007</u> - Complies
Capital Investment Value	\$22,800,000.00	6.	<u>SEPP 1 Development Standards</u> - Satisfactory
Political Donation Disclosure	Yes.	7.	<u>Section 79C (EP&A Act)</u> – Satisfactory
		8.	<u>Section 94 Contribution</u> – to be determined as part of the VPA.

SUBMISSIONS JRPP

REASONS FOR REFERRAL TO

1. Exhibition:	Yes, 14 days.	1.	Capital Investment Value in excess
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			of \$10 million pursuant to SEPP (Major Development) 2005.
2. Notice Adj Owners:	Yes, 20 days.		
3. Number Advised:	One hundred and eleven (111).		
4. Submissions Received:	Three (3).		

HISTORY

29/09/2005	DA 682/2006/HB for demolition of the existing structures and construction of two (2) 4-storey apartment buildings comprising 44 units and basement parking for 92 cars lodged.
06/03/2006	DA 682/2006/HB withdrawn by applicant due to one of the property owners' withdrawing consent to lodge the application.
19/05/2009	Council resolved to adopt the Draft Local Environmental Plan (Draft LEP) for the Carlingford Precinct and the Draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct.
05/06/2009	Pre-lodgement meeting held with applicant to discuss concept proposal for the site together with three other apartment proposals within the vicinity.
12/10/2009	Subject Development Application lodged.
16/10/2009	Subject Development Application referred to Joint Regional Planning Panel.
04/11/2009	Letter to applicant requesting additional information relating to noise and vibration.
20/11/2009	Letter to applicant requesting additional information relating to RailCorp's requirements, NSW Police requirements, waste management, detailed landscape plan and arborist report.
24/11/2009	Matter referred to the Department of Planning pursuant to the provisions of the draft sub-clause of BHLEP 2005 amendment in relation to the Carlingford Precinct which provides that <i>"Development consent must not be granted for any development on land to which this clause applies unless the Director General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated state public infrastructure in relation to that land."</i>
26/11/2009	Briefing held with the Joint Regional Planning Panel in Parramatta.
02/12/2009	Letter to applicant requesting additional information relating to drainage, parking, driveways and geotechnical issues raised by Council's Subdivision Control Section including the submission of a study on the impact of the adjacent electricity station upon the amenity of future occupants as raised by JRPP during

the briefing held on 26/11/09.

03/03/2010

Letter sent to the applicant requesting the withdrawal of the subject Development Application due to uncertainty of the draft LEP gazettal and determination timeframe raised by JRPP.

04/03/2010

Response received from the applicant's town planning consultant advising they are not withdrawing the subject application and request Council to undertake a merit assessment of the application based on the draft planning controls and that the final determination of the application be held in abeyance until the draft LEP is gazetted as contemplated by Clause 72J of the EP & A Act.

22/04/2010

Briefing held at Council's Administration Building at the request of JRPP to discuss status of the application.

Background

Council, at its meeting of 19 May 2009, considered a report on the Carlingford Precinct and resolved to adopt the Draft Local Environmental Plan (Draft LEP) for the Carlingford Precinct and the Draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct upon notification of the Draft LEP.

A further recommendation was made in relation to endorsing the Draft Section 94 Contribution Plan No. 14 – Carlingford Precinct. Council resolved to support the recommendation as indicated above.

This proposal together with three other apartment proposals within the Carlingford Precinct by the same developer were the subject of a pre-lodgement meeting held with Council staff on 5 June 2009, where it was advised that a positive determination of the proposed development could occur until notification of the Draft LEP for the Carlingford Precinct. The proposed development contains retail floor space on the ground floor, which is prohibited in the current zone. The applicant has requested that this application be assessed against the Draft LEP and DCP for Carlingford Precinct but not determined until the Draft LEP for Carlingford Precinct is notified, anticipating that at that time the new DCP for the Carlingford Precinct will come into force.

The applicant is currently negotiating a Voluntary Planning Agreement (draft VPA) with Council to satisfy Council's resolution in relation to the gazettal of the draft LEP. Should Council support this plan, the draft Contributions Plan must be amended to reduce the total value of works in order to ensure that the remainder of development in the Precinct is not required to contribute disproportionately to the provision of infrastructure as a result of the VPA.

Accordingly, amendments to the draft LEP and DCP are necessary to address land to be dedicated by the agreement and other consequent amendments. Consideration of the proposed amendments by Council is expected to occur concurrently with the draft VPA in June 2010.

Subject Site and Surrounds

Site Description & Zoning

The subject site known as Nos. 2-8 James Street, Carlingford (Lot 1 DP 398482, Lot 2 DP 398482, Lot 3 DP 398482, Lot 5 DP 8001, Lot B DP 90046) has a total site area of 2,992.8m².

The subject site is irregularly shaped and comprises four existing residential allotments. The lot at No. 8 James Street is longer than the lots at Nos. 2-6 James Street, which accounts for the irregular elongated shape of the subject site. See Attachment 1.

The subject site generally slopes from the rear (south) down to the front (north) by 5.46m. The highest point on the site is located at the southernmost section of No. 8 James Street, whilst the lowest point is on the northern boundary at No. 4 James Street.

The subject site is currently zoned Residential 2(a1) under the provisions of Baulkham Hills Local Environmental Plan 2005 and proposed to be rezoned to Residential 2(a4) under the draft amendments to BHLEP 2005. The proposal is permissible in the draft LEP subject to floor space ratio and building height control prescriptions. The proposal has been designed in accordance with draft BHDCP Part E Section 22 – Carlingford Precinct which will automatically be in force upon gazettal of the draft LEP, however it does not comply with the following numerical standards under BHDCP Part C Section 7 – Apartment Building, which is the current DCP for apartment buildings within the Shire, i.e. site area, density, building height, building length, setbacks, landscaping, unit sizes and parking.

The amendments to BHLEP 2005 also include a provision which states "*Development consent must not be granted for any development on land to which this clause applies unless the Director General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated state public infrastructure in relation to that land.*"

Council has referred the matter to the Director General pursuant to the above draft provision and it was advised that until the LEP is made, the applicant is entitled to have the Development Application processed and determined without reference to the "*satisfactory arrangements*" clause.

Surrounding Development

The rear of No. 8 James Street along its southern boundary adjoins a car park and driveway which services the Carlingford Automotive Mechanical Repairs and provides vehicular access to the Carlingford Stock and Feed Shop at No. 1 Thallon Street.

A two-storey apartment building at 1 Jenkins Road adjoins Nos. 2-6 James Street to the south. This development contains 10 dwellings and is setback at its closest point approximately 6 metres from the southern boundary of the subject site. Immediately to the rear of No. 2 James Street is the car parking area associated with the apartment building at No. 1 Jenkins Road. This property is owned by the Department of Housing.

To the north of the subject site is a single storey dwelling house located at No. 7 Jenkins Road and a vacant block known as No. 2 Thallon Street. These 2 properties together with 9 adjoining properties (i.e. Nos. 9-13 Jenkins Road and Nos. 4-14 Thallon Street) are subject of a separate Development Application (DA 895/2010/JP) for an eighteen (18) storey mixed use development consisting of 408 residential apartment units, 799m² ground floor retail space and 735 basement parking spaces.

Adjoining the subject site to the east is No. 10 James Street which contains a single storey weatherboard dwelling.

At the eastern end of James Street, public access is available through to Carlingford Railway Station. This access is via a footpath through a public landscaped area directly adjoining No. 12 James Street which is the subject of a separate development application for a 16-storey mixed use development consisting of 40 residential apartment

units, 92m² ground floor retail space and 70 basement parking spaces (DA 561/2010/HB).

There is an existing electricity substation on the western side of Jenkins Road directly opposite No. 2 James Street and the Department of Housing's apartment building at 1 Jenkins Road.

Jenkins Road, James Street and Thallon Street are located within the Southern Carlingford Precinct which is identified for high density residential development as envisaged by the Baulkham Hills Draft DCP Part E Section 22. This proposed development represents the transition from one and two storey dwelling houses to high-density residential units.

Proposal

The proposal is to demolish the existing buildings on site and construct a mixed use development in 2 stages which consists of the following components:

- 3 x 1 bedroom units
- 54 x 2 bedroom units
- 48 x 3 bedroom units
- Retail space at ground level of 148m²
- 3 basement parking levels providing 173 parking spaces.

The staging is proposed as follows:

Stage 1

- Construction of all three basement levels
- Construction of all proposed works at ground level including the retail shop and basement car park entry
- Construction of part of the 6 storey podium level to the west of the basement parking area

Stage 2

- Construction of the remaining part of the 6 storey podium level above and to the east of the car park entry and the tower from Level 7 to Level 18.

The applicant has indicated that this staging programme will enable the release of units for sale over a staggered timeframe and will bring forward the period when the first units are available for sale to the public, compared to if the entire development was constructed in one stage.

All communal open space area will be available with Stage 1 including the facilities, i.e. swimming pool, BBQ area, gymnasium, storage areas.

ISSUES FOR CONSIDERATION

1. Baulkham Hills Local Environmental Plan 2005

The proposal is currently prohibited under the provisions of Residential 2(a1) zone as it is defined as shop-top housing in the current Local Environmental Plan. However, the shop-top housing proposal would be permissible upon gazettal of the draft Baulkham Hills LEP – Carlingford Precinct that proposed the rezoning of the land from Residential 2(a1) to Residential 2(a4). The proposal is permissible in the draft LEP subject to compliance with floor space ratio and building height controls (see Attachments 18 & 19). The proposal has been designed in accordance with draft BHDGP Part E Section 22 –

Carlingford Precinct which will automatically come into force upon gazettal of the draft LEP.

The proposal does not comply with the 54m building height limit prescribed under Clause 60(4)(b) of the draft LEP, hence a SEPP 1 objection has been submitted by the applicant foreshadowing the proposal's non-compliance with this draft statutory requirement. The SEPP 1 Objection is discussed later in this report.

The proposal is currently prohibited in the Residential 2(a1) zone as it is defined as shop-top housing. However, the shop-top housing proposal will be permissible on gazettal of the draft Baulkham Hills LEP – Carlingford Precinct. As such the Development Application will be permissible with consent on gazettal of the draft Baulkham Hills LEP 2005.

The proposal does not comply with the 54m building height limit prescribed under Clause 60(4)(b) of the draft LEP, hence a SEPP 1 objection has been submitted by the applicant together with the subject application foreshadowing the proposal's non-compliance with this draft statutory requirement. The SEPP 1 Objection is discussed later in this report.

2. Status of draft Local Environmental Plan – Carlingford Precinct

Council considered a report on a draft Local Environmental Plan, draft Development Control Plan and draft Section 94 Contributions Plan ("the Carlingford Precinct Plan") on 19 May 2009 and resolved that:

1. *Council adopt the Draft Local Environmental Plan as per Attachment 1 and issue a Section 69 report to the Director General for gazettal subject to:*
 - a. *Endorsement of the Draft Section 94 Contributions Plan No.14 – Carlingford Precinct by the Minister for Planning in accordance with the Direction issued to Council's under S94E of the EP&A Act; and*
 - b. *the major land owner demonstrating to Council that satisfactory arrangements have been made with Energy Australia for funding and undergrounding of the 132kV power lines.*
2. *Council adopt Draft Baulkham Hills Development Control Plan, Part E Section 22 – Carlingford Precinct as per Attachment 2 with its commencement to occur upon gazettal of the Draft LEP.*
3. *Council endorse Draft Section 94 Contributions Plan No.14 – Carlingford Precinct as per Attachment 3 for further review by the Department of Planning's Developer Contributions Review Panel and endorsement by the Minister for Planning in accordance with the Direction issued to Council's under S94E of the EP&A Act.*
4. *Council request the State government increase the frequency of the direct train service from Carlingford to the City and increase all other public transport services to and from the Carlingford precinct in line with the proposed increase in dwellings.*

Actions required to address Council's resolution outlined above are well advanced and summarised below:

Draft Section 94 Contributions Plan

The adopted Draft Contributions Plan No.14 ("the Draft CP") was referred to the Department of Planning's Developer Contributions Review Panel for review on 2 March

2009. The Department did not consider the Draft CP in its first round of assessments concluded in July 2009.

On 30 July 2009, Council received an expression interest to enter into a Voluntary Planning Agreement (VPA) on behalf of five separate companies ("the developers") who control key sites within the Carlingford Precinct. Given that the VPA offer relates to approximately 55% of the anticipated development (1129 dwellings) within the Precinct, submission of a revised Draft CP to the Department was deferred pending agreement on the general terms of the VPA.

The developers lodged a draft VPA on 14 April 2010 supported by a report entitled '*Energy Australia 132kv double circuit Under-grounding at Carlingford*' ("the Energy Australia Report") prepared by Parsons Brinkerhoff to, in part, satisfy Council's resolution item 1(b). The report identifies the preferred route, method of construction and cost estimate. The report does not commit the Developers to delivery of this work.

The draft VPA is currently under legal review by Council's lawyer with the findings to be presented to Council on 1 June 2010. An important element of the review involves consideration of whether under grounding of the 132kv power represents a material public benefit to be referenced by the VPA. If so, the Minister's consent would be required for inclusion of the work as additional key community infrastructure prior to making the plan.

Finally, the value of works proposed by the draft VPA is \$13.1 Million. Should Council support this plan, the Draft CP must be amended to reduce the total value of works in order to ensure that the remainder of development in the Precinct is not required to contribute disproportionately to the provision of infrastructure as a result of the VPA.

Draft Local Environmental Plan and Development Control Plan

Pursuant to the draft VPA proposal, amendments to the Draft LEP and DCP are necessary to address the following matters:

- Land to be dedicated by the draft VPA; and
- Development controls to address works deleted from the draft Contributions Plan and

A range of other transport management facilities will be required by Council to be undertaken directly by the developer as conditions of consent under section 80A(1)(f) of the EP&A Act, the demand for which is considered to be generated entirely by the

The consideration of the proposed amendments by Council is expected to occur concurrently with the Draft VPA in June 2010.

Upon exhibition and consideration of submissions to the draft VPA, LEP, DCP and Contributions Plan, a Section 69 report recommending the making of the Draft LEP will be submitted to the Department. Council is committed to the timely completion of this process which represents a key element of Council's Residential Direction.

It should be noted that amendments to the draft planning controls for the Precinct as a result of the draft VPA are anticipated to result in the removal of public domain works such as street lighting and landscaping from the draft Contributions Plan in order to reduce the overall cost of the plan. The removal of these works from the draft Contributions Plan will trigger an amendment to section 3.6 of the draft DCP to require the provision of works within the public domain as a condition of development consent.

Should Council support this plan, the draft Contributions Plan must be amended to reduce the total value of works in order to ensure that the remainder of development in

the Precinct is not required to contribute disproportionately to the provision of infrastructure as a result of the VPA.

Accordingly, amendments to the draft LEP and DCP are necessary to address land to be dedicated by the agreement and other consequent amendments to the draft DCP. Consideration of the proposed amendments by Council is expected to occur concurrently with the Draft VPA in June 2010.

3. Compliance with BHDCP Part C Section 7 – Apartment Buildings

The proposed development has been assessed against the relevant development standards and objectives of BHDCP Part C Section 7 – Apartment Buildings (Council's current DCP for apartment buildings) and the table below shows the extent of the proposal's performance against the current development standards:

DEVELOPMENT STANDARD (CLAUSE NO.)	BHDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
3.1 Site Requirements	Min. lot size 4000m ² Min. frontage – 30m	2,992.8m ² 61.3m	No. Yes.
3.3 Setbacks – Building Zone	Front (two street frontages) Primary frontage – 10m (James Street) Secondary frontage – 6m (Jenkins Road) Side – 6m Rear – 8m	6m 8m 6m (west side) nil (east side) 6m	No. Yes. Yes. No. No.
3.4 Building Heights (per storey)	13 metres eaves 16 metres ridgeline	54.3m to ridgeline	No.
3.5 Building Separation and Treatment	12 metre building separation	Abuts No. 10 James Street.	No
3.6 Landscaped Area	50% of site area = 1,496.4m ²	Ground level - 898m ² Rooftop - 363m ² Total = 1,261m ²	No.
3.7 Building Length	max. 50 metres	56m	No.
3.9 Urban Design Guidelines	Demonstrate conformity with "Baulkham Hills Multi Unit Housing – Urban Design Guidelines 2002"	In conformity with the Guidelines in terms of desire future character of the area as envisaged in the Draft DCP for Carlingford Precinct.	Yes.
3.10 Density	150-175 persons per hectare	824.98 persons per hectare	No.
3.11 Unit Layout	1 bedroom – 75m ²	60m ² - 72m ²	No.

DEVELOPMENT STANDARD (CLAUSE NO.)	BHDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
and Design	2 bedroom – 110m ² 3 bedroom – 135m ²	90m ² – 95m ² 110m ² – 130m ²	No. No.
3.13 Open Space	Private: Ground level – 4m x 3m (min) Above ground – min. 10m ² with min. depth 2.5m Common: 20m ² per dwelling @105 dwellings = 2,100m ²	>min. provided (>25m ² – 228m ²) >min. provided Total common area = 1,170m ²	Yes. Yes. No.
3.14 Solar Access	Adjoining buildings & / open space areas – four hours between 9am & 3pm on 21 June Common open space – four hours between 9am & 3pm on 21 June	Adjoining properties will receive more than four hours between 9am-3pm during mid-winter.	Yes.
3.19 Car parking	Rate per unit & visitor parking: 1 space per 1 BR @ 3 x 1 bedroom = 3 spaces 2 spaces per 2 or 3 BR @ 54 x 2 bedroom = 108 spaces @ 48 x 3 bedroom = 96 spaces Total = 207 spaces Visitor – 2 spaces per 5 dwellings @105 dwellings = 42 spaces 1 space per 18.5m ² retail floor area (per BHDCP Part D Section 1 – Parking) @148m ² = 8 spaces Total requirement = 257 parkingspaces	123 resident spaces 42 visitor spaces 8 retail spaces Total provision = 173 parking spaces	No. Yes. Yes. No.

DEVELOPMENT STANDARD (CLAUSE NO.)	BHDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
3.20 Storage	10m ³ with an area 5m ² and dimension 2 metres	A total of 1,080m ³ of central storage areas provided within the basement car park levels, i.e. 10.28m ³ per unit.	Yes. Not determined in terms of dimensions.
3.21 Adaptability, Pedestrian Access & Safety	<p>➤ Lift provided if greater than 2 storeys</p> <p>Accessible housing: ➤ 5% in a development >20 units, i.e. total of 6 units</p>	<p>Provided.</p> <p>6 adaptable Class B units.</p>	<p>Yes</p> <p>Yes.</p>

The proposal does not comply with the current development standards that generally apply to apartment buildings within the Shire in terms of site area, setbacks, building height, building separation, landscaped area, building length, density, unit size, common open space and parking. It has been designed in accordance with the draft LEP and draft DCP for Carlingford Precinct and lodged on the basis that the assessment of the application can be made against the provisions of these draft instruments and that its determination be held in abeyance until the draft LEP is gazetted.

4. Compliance with Draft BHDCP Part E Section 22 – Carlingford Precinct

The proposed development has been assessed against the relevant development standards and objectives of Draft BHDCP Part E Section 22 – Carlingford Precinct as follows:

Clause 2.2 Key Site

The subject site sits within Block 4 which is identified as a key site. Clause 2.2 indicates that the key sites comprise large land holdings that are mainly under single ownership and are in locations critical to the establishment of a village centre. The key sites are suitable for buildings containing a relatively large number of units and as a result development of a substantial size and complexity can be delivered promptly. The DCP indicates that the key sites will be a catalyst for the redevelopment of the Southern Precinct near Carlingford railway station.

Clause 3.3 Desired Future Character Statements

Section 3.3.1 – Southern Precinct provides the Desired Future Character for the Southern Precinct which contains the subject site. The Desired Future Character statement identifies the following key points:

- The character will be largely determined by the development of landmark buildings on the key sites
- Creating street orientated village built forms
- Create a civic plaza link to the railway station
- Buildings on key sites on the south side of the Precinct have been placed to provide a transition in building scale and to provide natural ventilation, solar

- access, outlook from apartments and year round sunlight to communal open spaces
- Streetscapes are to be resident and visitor friendly in an urban landscape setting
- The landscape works in the public realm help to define the character of the area.

The proposed development is considered to be consistent with the desired future character for the Southern Precinct as the development forms a transition in height from Jenkins Road up to that part of the site that is closest to the railway station. The slender tower element is at the eastern end of the site, which is closest to the railway station and conforms with the dimensional built form controls as shown on Figure 15 under Section 5.2 Block 4 2-12 James Street. See Attachment 13.

The 148m² of retail/commercial floor space located on the ground floor directly addressing James Street will assist in creating a village setting in close proximity to Carlingford Railway Station.

Clause 3.5 Structure Plan (Open Space Strategy)

The principle of providing quality residential open space areas is relevant to this development application. The development proposal is consistent with this principle as it is considered that the open space provided on the ground level will enhance the quality of the setting of the development as it provides a private landscaped area that is accessible to all units and contains a pergola and swimming pool. Furthermore, a gym is located adjacent to the rear communal open space area. As such, the communal open space provides opportunities for both passive and active recreation. Solar access to the rear communal open space is available in the afternoon period at the winter solstice.

The landscaping features along the front and side boundaries (i.e. James Street and Jenkins Road frontages) ensures that at street level there is a significant amount of site landscaping visible to the public domain which will soften the built appearance of the development.

Clause 3.6 Structure Plan (Public Domain)

Figure 6 Structure Plan – Public Domain indicates that in the vicinity of the intersection of James Street and Thallon Street a town square/civic plaza should be provided. The proposed development is consistent with Figure 6 Structure Plan – Public Domain (Attachment 14) as the development proposal provides 148m² of retail/commercial space at the eastern end of the subject site which is close to the intersection of Thallon Street and James Street.

Clause 3.7 Structure Plan (Indicative Building Height and FSR)

The principle that building heights should increase the closer a site is to the Carlingford Railway Station is relevant to this application. The proposed development complies with the floor space ratio requirement of 4:1 applicable to Block 4 (2-12 James Street). The proposal is a maximum of 54.3 metres in height. As such the proposed development is consistent with the principle that building heights and density should increase at locations close to Carlingford Railway Station.

Clause 3.8 Illustrative Masterplan

The development proposal is consistent with Figure 8 Illustrative Masterplan (Attachment 15) in that:

- It is consistent with the intention that high-rise development is to be concentrated in the low ground close to the train station.
- The proposed development provides 148m² of commercial/retail space on the ground floor, which is located on a pedestrian route to Carlingford Railway Station.

- The tower component of the development is slender in form and is orientated north/south so as to minimise overshadowing to the south.
- The tower is considered to be an iconic building in terms of the DCP and is located at a gateway to the Carlingford Railway Station.

Clause 4 Precinct and Built Form Controls

Clause 4 states

*"the following development controls apply to development across the Precinct **with the exception of the key sites** (see Figure 3 – Key Sites)."*

The subject site is located within Block 4 being 2-12 James Street, which is listed as a key site and as such, Section 4 of the DCP does not apply.

Clause 5 Key Site Built Form Controls

The subject site is located within Block 4: 2-12 James Street. Clause 5.2.1 Development Controls provides the following design criteria.

Development Parameter	Development Controls	Proposal	Compliance
Building Height	54 metres	54.3 metres	No, see SEPP 1 Objection.
FSR	4:1	4:1	Yes.
Building Site Coverage	55%	max 52.8%	Yes.
Vehicular Access and Circulation	Refer to Figure 14	1 vehicular access point is proposed which is on the site currently known as 8 James Street. The appropriateness of the location of the vehicular access point has been addressed in the Traffic Report submitted with the proposal.	Yes.
Car parking requirements	0.8 spaces per 1 bedroom unit @ 3 x 1 bedroom = 2.4 spaces 1 space per 2 bedroom unit @ 54 x 2 bedroom = 54 spaces 1.3 spaces per 3 bedroom unit @ 48 x 3 bedroom = 62.4 spaces	3 resident spaces 54 resident spaces 66 resident spaces	Yes. Yes. Yes.

	<p>2 visitor spaces per 5 units @ 105 units = 42 spaces</p> <p>1 space per 18.5m² of retail floor space @148m² – 8 spaces</p> <p>Total number of parking spaces required = 169 spaces</p>	<p>42 visitor spaces</p> <p>8 retail spaces</p> <p>Total number of spaces provided = 173 spaces plus 4 motorcycle spaces</p>	<p>Yes.</p> <p>Yes.</p> <p>Yes.</p>
Distribution of uses within the building	Retail and commercial uses limited to ground floor	Retail/commercial space is provided on ground floor with total floor area of 148m ² .	Yes.
SEPP 65 Compliance Statement	Required	<p>A Design Verification Statement has been submitted with the DA.</p> <p>The provisions of SEPP 65 have been assessed against the residential flat building design code under the Heading 5.1.1 – State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings contained within the SEE submitted with the application.</p>	Yes.
Deep Soil Planting	15% of total site area.	16.4%	Yes.

Building Height

Despite the above development controls, the Draft DCP provides the following design principles:

- *Using the above urban design principles, Nos. 2-8 James Street to achieve an 18 storey tower. Its placement minimises overshadowing of adjacent buildings and open spaces to the north.*
- *The 6-storey podium height on No. 8 James Street provides street frontage development in a form and scale comfortable for civic life of the village centre and to allow for ground floor active uses.*

- *The 4-storey built form of No. 2-6 James Street is to maintain sufficient solar access to the existing low-rise building adjacent to the south.*

The development proposal provides a 6-storey podium level across the width of the site from 2-8 James Street. The 18-storey tower is located at the eastern end of the site. The shadow diagrams indicate that the 6-storey podium level does not overshadow the 2 storey residential flat buildings located at 1 Jenkins Street after 10:00am on 21 June. By 11:00am at the 21 June, the shadows cast by this 6-storey podium component of the development sit within the subject site. It is therefore considered appropriate for the podium level to be 6 storeys in height. See Attachment 10.

The last bullet point above indicates the reason why a 4 storey built form between 2-6 James Street should be considered, that is to maintain sufficient solar access to the existing low-rise building to the south (1 Jenkins Street) as demonstrated in the shadow diagrams.

The location of the 18 storey tower component of the development at the eastern end of the site ensures that the 2 storey apartment building located at 1 Jenkins Road receives solar access to the entire building between 12 noon and 3:00pm on 21 June.

In view of the above, it is considered that the proposed building height arrangement for this development is acceptable.

Building Setbacks from Boundaries

Figure 15 – Dimensional Built Form (Attachment 13) also provides the site-specific setback controls for the site. The development proposal complies with the setback controls indicated in Figure 15 as follows:

- An 8m setback from Jenkins Road is provided.
- A 17.2m rear setback to the northern boundary of 1 Jenkins Road significantly exceeds the 6m setback requirement.
- A 6m setback to the eastern boundary of 1 Jenkins Road is provided which complies with the 6m setback requirement.
- A 6m setback to the southern boundary adjoining the access road and car parking area adjacent to the mechanical repair station complies with the minimum 6m setback.
- The setback to balconies of the tower component is 2m which complies with the 6m maximum setback from James Street.

The development proposal complies with the minimum and maximum setback requirements.

Development Pattern for Key Site Block 4

It is proposed to construct the development proposal in two stages. A separate development application (DA 561/2010/HB) has been submitted by the applicant for the construction of a mixed use development on No. 12 James Street, and No. 10 James Street does not form part of the redevelopment phase of James Street at the present time. No. 10 James Street has the following specific design principle in the draft DCP:

"Using the above urban design principles, No. 10 James Street can achieve its nominated FSR limit within 10 storeys due to its relatively smaller lot size."

The above principle perceives that No. 10 James Street can be developed in its own right which is demonstrated in Figure 15 in the Draft DCP which sets the dimensional built form controls for Block 4 (2-12 James Street) as shown on Attachment 13. Figure 15 shows an indicative building footprint for No. 10 James Street, which includes a 10-storey apartment building, which sits on a 6-storey podium. A conceptual plan has been

submitted by the applicant, which demonstrates how a 10-storey development can be accommodated on No. 10 James Street. It is proposed to maintain a nil side setback at the eastern boundary of the proposed development to enable the future development on No. 10 James Street to abut it. This will provide a solid built edge along James Street as envisaged in the built form controls for this street block.

As this development proposal is a 2 stage development, it is likely that the redevelopment of Block 4 would occur in a number of stages in any event. It is envisaged that the lodgement of this development application together with the proposal for No. 12 James Street will act as a catalyst for the development of No. 10 James Street.

The eastern wall of the proposed development, which is generally on the boundary of No. 10 James Street, contains 3 articulation zones at the podium levels. At the upper levels further articulation along the eastern boundary is provided by the inclusion of a second void which is approximately 12.5m long and 3.3m wide and is located approximately 30m from the front boundary. As such the eastern elevation is modulated at the upper levels above the future 10-storey development at No. 10 James Street. This level of modulation will be visible above 6 storeys until such time as 10 James Street is redeveloped.

It is therefore considered that the development of Block 4 in the following stages does not prevent the built form outcomes contained within the draft DCP for Carlingford Precinct from being achieved.

5. SEPP 1 Objection

A written SEPP objection to the building height prescription under Clause 60(4)(b) of the draft Local Environmental Plan accompanied the proposal.

Clause 6 of SEPP 1 states:

"Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained) therefore the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection."

The proposed development exceeds the building height development standard of 54m (as indicated on the Carlingford Precinct Height Map referenced under Clause 60(4)(b) in the draft LEP) by 300mm. The applicant in his SEPP 1 objection argues that strict compliance with this standard is considered to be unreasonable and unnecessary for the following reasons:

- 1. The proposal is consistent with the objectives of the height development standard.*
- 2. The exceedance of the 54 metres height limit by 30 cm represents a 0.6 percent non compliance and as can be see from Figure 1 the extent of this exceedance is very small when compared to the site area of the total development proposal.*
- 3. The extent of the non compliance will not be visually discernable from street level or from surrounding properties and once the site is landscaped the mixed use development proposal will be consistent with the desired future character of the area provided for in clause 60 of the Baulkham Hills LEP 2005 and the Baulkham Hills DCP – Carlingford Precinct.*

4. *The exceedance of the 54 metres by 30 cm will not result in any adverse overshadowing impacts on surrounding properties or the public domain. As discussed, the shadow diagrams attached at Appendix D of the SEE indicate that all adjoining properties will receive a minimum of 3 hours direct sun at the winter solstice.*

5. *The exceedance of the height limit does not interfere with any views from neighbouring properties.*

6. *The development proposal does not result in any adverse visual or acoustic privacy impacts to neighbouring properties.*

7. *The development proposal is considered to demonstrate good urban design; it is not excessive in terms of bulk and scale and provides a positive contribution to the desired future streetscape of the Carlingford Precinct. This has been achieved by the compartmentalisation of the development proposal and the slender nature of the apartment tower component.*

Comment:

The SEPP 1 objection is considered supportable in that it demonstrates that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. It would be unreasonable to delete one whole storey on the upper floor of the apartment tower in order to prevent a 300mm non-compliance with the building height control for the extent of the development. As noted in the applicant's SEPP 1 objection, the variation is due to the topography of the land and once site landscaping is provided the non-compliance will not be visually discernable from James Street or surrounding properties. As the minor encroachment of the 54m height limit by 300mm does not result in adverse solar access or adverse privacy impacts on adjoining development it is considered appropriate for the height limit to be exceeded in the circumstances of this case. Accordingly, the objection is considered well substantiated.

6. Urban Design

The application has been assessed having regard to the design quality principles outlined in SEPP 65 and Urban Design Guidelines adopted by Council on 4 September 2001. The merits of the application in terms of urban design and the relationship to the site constraints are:

- The proposed development fits within the context of the site and responds to the site conditions. The proposal will integrate with the desired future character of the area as envisaged in the Draft LEP 2005 and draft BHDGP Part E Section 22 – Carlingford Precinct. There are other Development Applications within the vicinity of the site (DA 561/2010/HB for 12 James Street, DA 943/2010/JP for 1–7A Thallon Street and DA 895/2010/JP for 2–14 Thallon Street and 7–13 Jenkins Road) which are also mixed use developments (apartment buildings with retail uses at ground floor level) in buildings up to 18 storeys in height in accordance with the Draft LEP 2005 and the Draft Baulkham Hills DCP Part E Section 22 – Carlingford Precinct. These applications are currently under consideration with DA 895/2010/JP and DA 943/2010/JP being the subject of separate status reports to the Panel. As such, the desired future character of this area will be transformed from low density detached dwellings to high density residential buildings with ground floor retail and commercial uses. It is considered that the proposed mixed use development is consistent with the desired future character of the locality.
- The scale and height of the proposed development is appropriate within the context of the desired future character of the area. Adjoining properties to the south of the site will still receive the required minimum solar access during mid-winter despite the proposed height of the building. Appropriate setbacks are

provided to reduce overlooking of adjacent private open space areas and improve privacy. The proposal is consistent with the development form provided in the draft DCP and has been designed in such a way the perception of bulk and scale is reduced by the use of white horizontal features, glass balustrades and wide balconies. The proposed setbacks are in accordance with the Draft DCP. The buildings are well articulated to reduce the impact of the proposal on the streetscape. The 18 storey tower is slender in its presentation to James Street and whilst it will be a visual focal point, it will not dominate James Street as it represents less than one third of the James Street frontage of the development. The Draft DCP indicates that No. 10 James Street which adjoins the site to the east, shall be 10 storeys in height, whilst No. 12 James Street can be developed to 54 metres which is approximately 17 storeys. As such, the proposed built form along James Street has been predetermined by the DCP – Carlingford Precinct. It is considered that the proposed extensive site landscaping will soften the street level and ensure that the development is set within an attractive landscaped setting. It is considered that the proposed development will have a positive impact on the streetscape.

- The proposal recognises the growth patterns of the Shire, the proximity of the site to the Carlingford Rail Station and the increase amenity for residents having good access to services and transport options. It is considered that the proposal provides an appropriate residential density when considered against the provisions of the Draft DCP for Carlingford Precinct. All units are provided with balconies and all have access to the ground level communal open space, which includes a swimming pool, gym, and landscaped open space, and all units have access to the roof terrace on Level 6. The unit sizes are considered appropriate to provide a high quality level of amenity to the occupants. The basement car parking provides slightly more than the minimum requirement for car parking and as such, it is considered that given the controls within the Draft DCP for Carlingford Precinct that the proposed density of 105 units can be accommodated on the site.
- The proposed development meets the code's requirements for resource, energy and water efficiency as well as Council's ESD objectives. Passive solar design principles have been incorporated through reasonable solar access and natural ventilation of units with a high level of thermal massing provided by the multi-unit buildings. A BASIX Certificate has been prepared for the development proposal, which indicates compliance with the required water, thermal comfort and energy ratings have been achieved.
- The development proposal complies with the deep soil landscape requirements contained within the Draft DCP for Carlingford Precinct. The Landscape Plan indicates that these deep soil zones will be heavily landscaped with a large variety of trees, shrubs and groundcovers. The Landscape Plan has been cross-referenced with the BASIX Certificate to ensure that proposed site landscaping is low maintenance and has a low water demand. The proposal is considered resource and energy efficient as it provides deep-root planting zones, passive solar design, low maintenance and quality communal open spaces.
- The proposal provides a high level of amenity for all the units including layout, visual privacy, natural ventilation, solar access, private open space and ground floor unit amenity. The proposed units are considered to have a high degree of amenity given that the 72.4% of units are cross ventilated and 94% of units will receive a minimum of 3 hours of solar access. All units have access to at least one private balcony that is at least 17m² in area. The development has been designed to maximise the number of units that have a northern orientation. All units have access to ground level communal open space which includes a swimming pool, pergola and gym.
- The locality has good access to public transport, educational facilities and retail and commercial services. The proposal provides alternate housing opportunities in the locality.

- Aesthetically, the design of the proposed development has been driven by a number of criteria which generally attempt to reduce the visual bulk and scale of the development by the use of colours, building materials and compartmentalisation of the architectural design of the proposed development. It is considered that the proposed development is well articulated by the use of strong horizontal and vertical design lines and provision of wide open balconies. The proposed site landscaping will ensure that the development is set within a heavily landscaped setting which will soften the built form at the lower levels.

7. Issues Raised in Submissions

The proposal was notified to adjoining and surrounding properties (111 in total including strata unit owners in existing apartment buildings in the immediate vicinity of the site) between 22 October and 10 November 2009, and received three (3) submissions. Even though the development site is not located on the boundary between the Shire and adjoining local government area, the proposal was notified to Parramatta City Council due to its visual bulk and scale. It is noted that Parramatta City Council was also notified during the exhibition of the draft LEP and DCP.

The following issues and concerns were raised by residents in their submissions:

ISSUE/OBJECTION	COMMENT	OUTCOME
Proposal will generate an additional amount of traffic to the already congested area. The original planning of the area never envisaged this development to occur.	The Carlingford Precinct Plan Traffic Report (May 2008) prepared by Council's Transport consultant concludes that traffic generated by the proposed development can be accommodated within the local road network if recommended traffic improvements are implemented.	
Proposed building height is out of character.	The proposal fits in with the desired future character for the Carlingford Precinct as envisaged in the draft Local Environmental Plan and Development Control Plan for the precinct.	
Adjoining property owners indicated they have been previously approached by the developer but negotiation failed. They indicated they are still willing to sell their property to be included as part of any future development, and they have no desire to remain on their property with high rise developments immediately adjacent. Their privacy, natural lighting and general amenity would be greatly affected by the proposed scale of this development.	It is considered that the proposed development does not prevent No. 10 James Street from being developed as the BHDGP Part E Section 22 provides specific site controls for development on No. 10 James Street that is substantially different to the development form proposed for Nos. 2 – 8 James Street and No. 12 James Street. As such, it is possible to construct No. 10 James Street in isolation and still comply with the design criteria provided in the DCP. The potential development form of No. 10 James Street has been shown indicatively on the architectural plans (see Attachments 4, 5 & 9).	
The affected neighbour does	It would be difficult to maintain the existing amenity of the adjoining	

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>not believe that this application and the other apartment proposal at 12 James Street adequately demonstrate that their property at 10 James Street can be developed to realise its full development potential in accordance with the DCP.</p>	<p>property (No. 10 James Street) in terms of solar access given the cumulative shadow impact from the other development proposals on the opposite side of James Street (DA 895/2010/JP) and on 1-7A Thallon Street (DA 943/2010/JP). In terms of privacy and overlooking, the eastern wall of the proposed development which generally abuts the boundary of No. 10 James Street contains 3 articulation zones at the podium levels which provide some form of relief to restrict direct overlooking onto No. James Street. The first is located 14.5 metres from the front boundary which is a void area approximately 3.3 x 3.5 metres in area. The second is a balcony which is 4.2 metres long by 2 metres wide which is located approximately 40 metres from the front boundary and the third articulation zone is another boundary which is 3.3 metres by 4.2 metres located approximately 52 metres from the front boundary. At the upper levels further articulation along the eastern boundary is provided by the inclusion of a second void which is approximately 12.5 metres long and 3.3 metres wide and is located approximately 30 metres from the front boundary. As such the eastern elevation is modulated at the upper levels above the future 10 storey development at 10 James Street. This level of modulation will be visible above 6 storeys until such time as 10 James Street is redeveloped.</p>	
<p>Cited a precedence related to recent Court decisions for similar developments relating to isolation, i.e. Melissa Grech v Auburn Council [2004] NSWLEC 40 and Cornerstone Property group Pty Ltd v Warringah Council [2004] NSWLEC 189, where a property was isolated by a proposed development and that property cannot satisfy the minimum lot requirements. The objectors do not believe that the subject application</p>	<p>BHDCP Part E Section 22 provides specific site controls for development on No. 10 James Street that is substantially different to the development form proposed for Nos. 2 – 8 James Street and No. 12 James Street. As such, it is possible to construct No. 10 James Street in isolation and still comply with the design criteria provided in the DCP. It demonstrates that 10 James Street can be developed in its own right as demonstrated in Attachment 13 which shows an indicative building footprint for No. 10 James Street which includes a 10 storey apartment building which</p>	

ISSUE/OBJECTION	COMMENT	OUTCOME
adequately addresses the negotiations or the consequence of developing the subject site and No. 12 James Street separately. Council must be convinced that No. 10 James Street can achieve its full development potential should this application and the other apartment proposal at 12 James Street be approved.	sits on a 6 storey podium. Attachments 4 & 5 indicate how a 10 storey development can be accommodated on No. 10 James Street. It proposes a zero metre side setback at the eastern boundary of the proposed development at 8 James Street to enable the future development on 10 James Street to abut it. This will provide a solid built edge along James Street as is envisaged in the built form controls for this street block.	
The subject site and the site on the corner of Pennant Hills Road and Jenkins Road are both approximately 3,000m ² , but the latter was only given a floor space ratio of 3:1 because it does not have the required 4500m ² , nonetheless no objection is raised to the proposed density but merely making an observation.	This is not a matter for consideration in this application as this has been dealt with during the preparation of the draft Local Environmental Plan which has already been considered and adopted by Council on 19 May 2009.	
In regards to 12 James Street, the writer did not find any material regarding the concessions for the developer and questioned if there has been a cost-benefit analysis prepared to determine if the estimated benefit would outweigh the cost required to remove the high voltage powerlines running along the State Rail easement. Such analysis has not been required in the Precinct Plan but is equally important. Overall, the writer sees merits of the proposed development.	The applicant is currently negotiating a Voluntary Planning Agreement (VPA) with Council to satisfy Council's resolution in relation to the gazettal of the draft LEP and it is assumed that part of their preparation of the VPA will include a cost-benefit analysis.	

The above issues will be assessed in a further report to the Panel.

SUBDIVISION ENGINEERING COMMENTS

Additional engineering information has been requested from the applicant to address a number of outstanding issues relating to drainage, parking and geotechnical issues. These matters remain outstanding.

TRAFFIC MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

Additional information has been requested from the applicant requiring submission of detailed arborist report and detailed landscape plan showing the locations and quantities of the proposed species. The applicant has to date not submitted this requested additional information.

ENVIRONMENTAL HEALTH & SUSTAINABILITY COMMENTS

Additional information has been requested from the applicant to address noise and vibration from the nearby railway line which is still outstanding.

WASTE MANAGEMENT COMMENTS

Additional waste management information has been requested from the applicant which is still outstanding.

FORWARD PLANNING COMMENTS

A Voluntary Planning Agreement is currently being negotiated with applicant to satisfy Council's resolution in relation to the gazettal of the draft LEP.

ROADS & TRAFFIC AUTHORITY COMMENTS

No objection is raised by RTA's Sydney Regional Advisory Committee subject to conditions.

NSW POLICE COMMENTS

The NSW Police have reviewed the development application and outlined a number of Crime Prevention Through Environmental Design (CPTED) factors that should be considered in this development in relation to surveillance, access control, territorial reinforcement, and other matters relating to use of security sensor lights during construction, installation of alarm system in garages and storage areas, and concerns regarding traffic to be generated by this development.

CONCLUSION

The proposal has been assessed against the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, SEPP 65, BHLEP 2005, proposed Draft Local Environmental Plan – Carlingford Precinct, BHDCP Part C Section 7 – Apartment Buildings and BHDCP Part E Section 22 – Carlingford Precinct, and is considered satisfactory under the provisions of the draft LEP and underlying DCP. Clearly however, the proposal is prohibited in the current zone and at odds with the current DCP. It is not appropriate to determine the Development Application until the making of the draft LEP is notified.

The foreshadowed SEPP 1 objection to the required 54m building height limit in the draft Local Environmental Plan is supported as the 300mm encroachment is only due to a small depression in the topography of the site at the north-eastern corner and is considered acceptable as the variation does not result in any amenity impacts on adjoining properties in terms of shadowing, loss of privacy or overlooking.

The proposed development conforms with the development pattern established in the key sites Block 4 (2-12 James Street) as provided in the draft BHDCP – Carlingford Precinct. The proposal has been designed to ensure that No. 10 James Street can be developed in full compliance with the draft DCP for Carlingford Precinct. It is noted that the draft Carlingford Precinct DCP does not provide a consolidation pattern for James Street nor does it require that the entire block be developed in one stage. The development controls provided in the draft DCP are site specific with No. 10 James Street being provided with significantly different built form controls to those located on Nos. 2-8 James Street and 12 James Street. It would not be in the public interest to

sterilise development of Nos. 2-8 James Street as No. 10 James Street can be redeveloped in accordance with the draft DCP in its own right and redevelopment of the subject site may provide a catalyst to redevelopment of No. 10 James Street.

Overall, the proposal is considered supportable in terms of its impact on the natural and built environment and will not pose any detrimental social or economic impacts. In this regard, it is recommended that determination of the subject Development Application be deferred pending adoption of the draft VPA and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft Carlingford Precinct DCP.

IMPACTS:

Financial

The applicant is required to demonstrate to Council that satisfactory arrangements have been made with Energy Australia for funding and undergrounding of the 132kV power lines with no cost to Council.

A draft Voluntary Planning Agreement (draft VPA) has been submitted by the applicant that outlines proposed works in kind, monetary contributions and land dedication in lieu of contributions pursuant to draft Contributions Plan No.14 – Carlingford Precinct. The draft VPA is currently under legal review and will require exhibition and adoption by Council prior to commencement.

Hills 2026

The proposal responds to the revitalisation of the Carlingford Precinct which is an integral component of Council's Residential Direction and response to the State Governments Draft North West Sub-regional Strategy. The proposal provides a good mix of housing which is an environmentally sustainable form of residential development and would protect and enhance the character of the locality and the Shire as a whole.

RECOMMENDATION

That determination of the subject Development Application be deferred pending the resolution of outstanding matters and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft BHDGP Part E Section 22 – Carlingford Precinct.

ATTACHMENTS

1. Locality Plan
2. Aerial Photo
3. Ground Floor/Site Plan
4. Typical Floor Plan (1st to 5th Floor)
5. Typical Floor Plan (6th to 18th Floor)
6. North Elevation (James Street Elevation)
7. South Elevation
8. West Elevation (Jenkins Road Elevation)
9. East Elevation
10. Shadow Diagrams
11. Shadow Elevations
12. Perspective
13. Built Form Control Map (Draft Carlingford DCP)
14. Structure Plan – Public Domain
15. Illustrative Masterplan
16. Isometric View of Future Carlingford Precinct
17. Area of Non-Compliance with 54m Height Limit
18. Floor Space Ratio Map
19. Building Height Map

This is a detailed plat map of a portion of the City of St. Louis, Missouri. The map shows various lots, streets, and property boundaries. Key features include:

- Streets:** JENNIFER, PENNANT, TREETOPS AVE, COLEMAN, and LLOYDS.
- Lots:** Numerous lots are numbered and identified with DP (Deed Plat) numbers. A specific lot, DP 813017, is highlighted with a thick black border.
- Waterway:** A river or waterway is shown on the left side of the map.
- Other Labels:** The map includes labels for 'LLOYDS', 'TREETOPS AVE', and 'COLEMAN'.

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ATTACHMENT 2 – AERIAL PHOTOGRAPH



ATTACHMENT 3 – GROUND FLOOR/SITE PLAN



ATTACHMENT 4 – TYPICAL FLOOR PLAN (1ST TO 5TH FLOOR)



ATTACHMENT 5 – TYPICAL FLOOR PLAN (6TH – 18TH FLOOR)



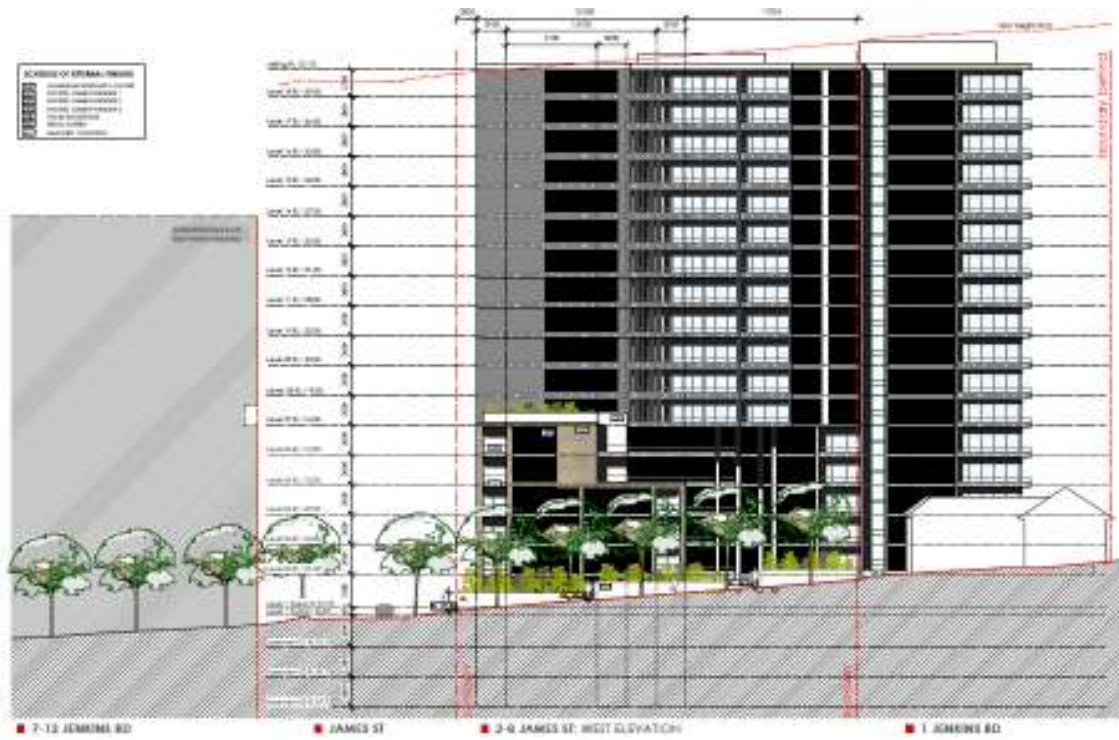
ATTACHMENT 6 – NORTH ELEVATION (JAMES STREET ELEVATION)



ATTACHMENT 7 – SOUTH ELEVATION



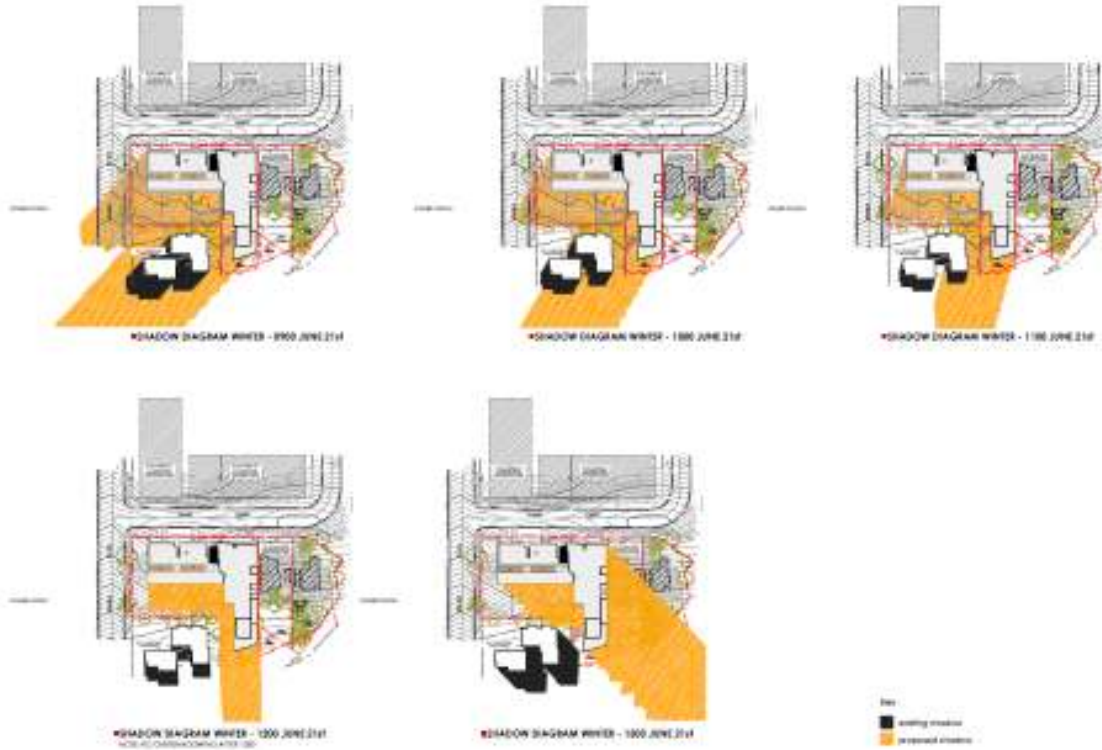
ATTACHMENT 8 – WEST ELEVATION (JENKINS ROAD ELEVATION)



ATTACHMENT 9 – EAST ELEVATION



ATTACHMENT 10 – SHADOW DIAGRAMS



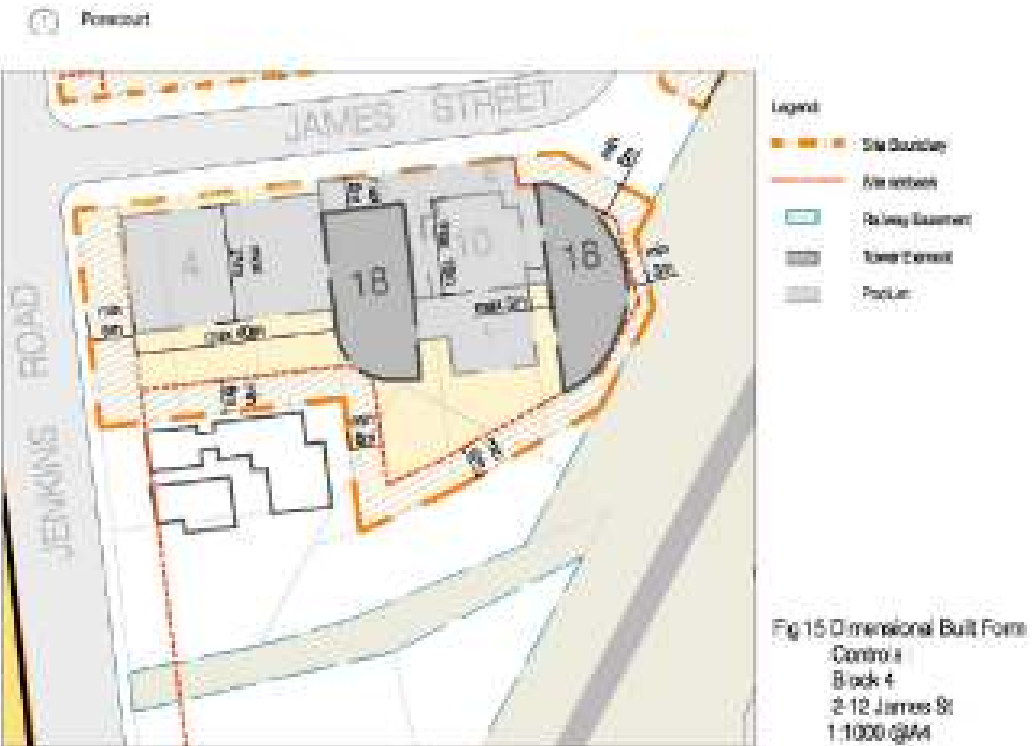
ATTACHMENT 11 – SHADOW ELEVATIONS (IMPACT ONTO IMMEDIATE ADJOINING DEPT. OF HOUSING UNITS TO THE SOUTH)



ATTACHMENT 12 - PERSPECTIVE



ATTACHMENT 13 - BUILT FORM CONTROL MAP (DRAFT CARLINGFORD DCP)



ATTACHMENT 14 – STRUCTURE PLAN – PUBLIC DOMAIN



ATTACHMENT 15 – ILLUSTRATIVE MASTERPLAN



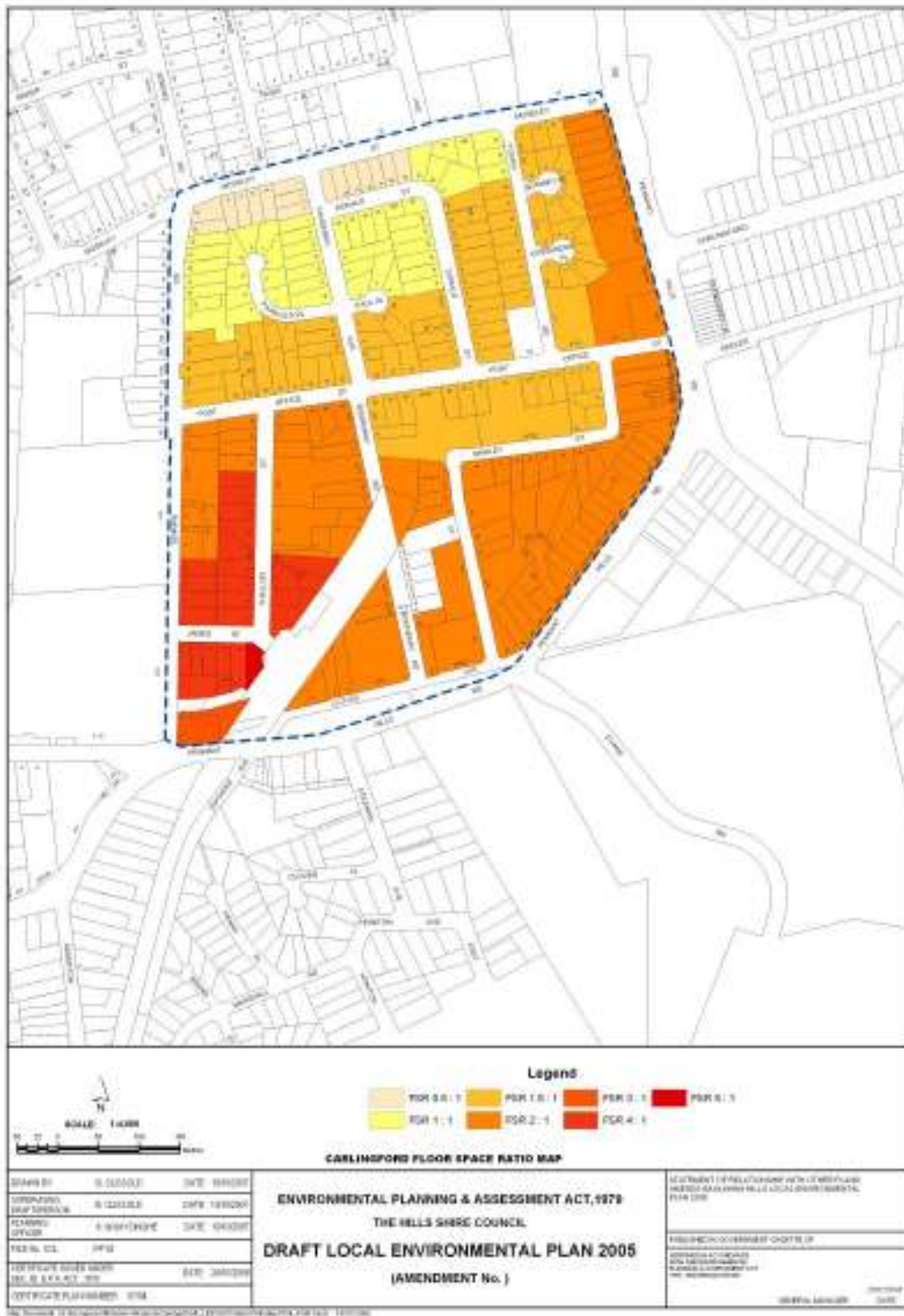
ATTACHMENT 16 – ISOMETRIC VIEW OF FUTURE CARLINGFORD PRECINCT



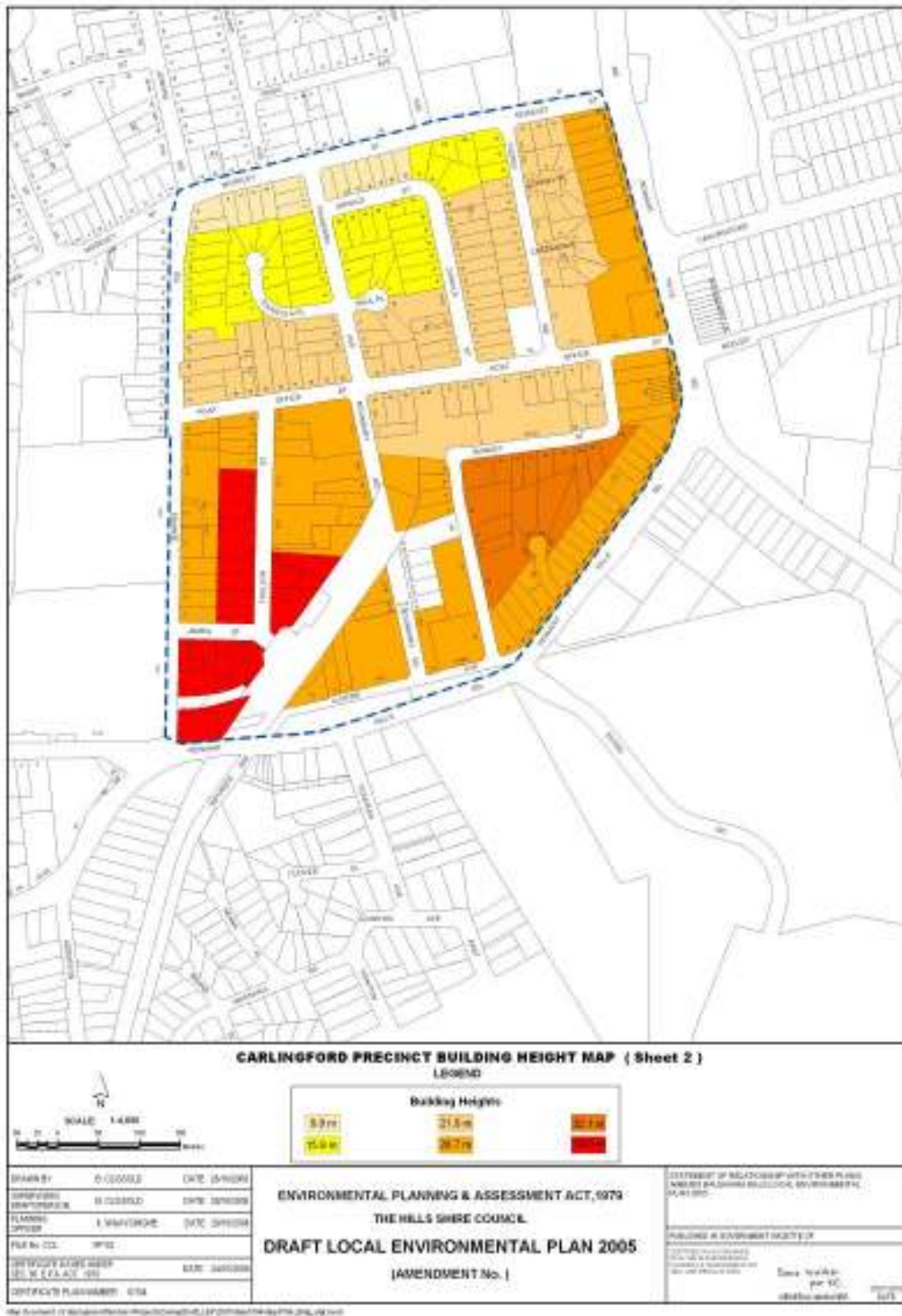
ATTACHMENT 17 – AREA OF NON-COMPLIANCE WITH 54M HEIGHT LIMIT



ATTACHMENT 18 – FLOOR SPACE RATIO MAP



ATTACHMENT 19 – BUILDING HEIGHT MAP





Joint Regional Planning Panels

7 July 2010

Mr Dave Walker
General Manager
The Hills Shire Council
PO Box 75
CASTLE HILL NSW 1765

DOB. No.:
BOX No.:
6 - JUL 2010
THE HILLS SHIRE COUNCIL

Dear Mr Walker

Development Applications Referred to The Joint Regional Planning Panel (Sydney West Region)

I have recently carried out a review of all applications, which have been lodged with the Sydney West JRPP over the past year and have not as yet been determined. Some of these applications were lodged in 2009 and have still not been determined.

As a result of this review, I would appreciate it if you would arrange for the completion of the planning report for the following applications and submit the matter to the JRPP for determination within 8 weeks from the date of this letter:

DA No.	Project Title	DA Lodgement Date
993/2010JP (2010SYW005)	Proposed Amended Central Residential Precinct within the Norwest Town Centre, Baulkham Hills	7 Jan 2010
562/2010JP (2010SYW001)	4-18 storey mixed use development, Thallon Street, Carlingford	22 Dec 2009
853/2010JP (2009SYW029)	Bulky goods warehouse, Rouse Hill	8 Dec 2009
891/2010JP (2009SYW028)	Bulky goods retail development, Castle Hill	14 Dec 2009
318/2010JP (2009SYW009)	Warehouse development, Rouse Hill	27 Aug 2009
280/2010JP (2009SYW006)	Seniors living development, Glenhaven	20 Aug 2009

The planning report should be prepared on the basis of the available information which has to date been submitted for the application. If there are major matters outstanding which cannot be dealt with by way of conditions then the report should acknowledge this as part of the recommendations.

I have decided to take this action as it would appear that the specified time limits for dealing with these major applications have not been met and further, the information accompanying the applications will, in many cases, be out of date and in need of substantial revision. I have received updates from the planning staff in relation to the applications and have formed the view that a point has been reached where they should now be determined by the panel. In some cases changes required since submission are such that a new application would be appropriate. It may be, in some cases that the applicant will decide to withdraw the application rather than have it determined by the JRPP.

NAME: SECRETARAT
Level 13, 301 George Street SYDNEY NSW 2000
GPO Box 3415, SYDNEY NSW 2000
Tel: 02 9080 3100
Fax: 02 9299 9926
Email: paper@sydwestjpp.nsw.gov.au

With regard to those applications proposing mixed use development in the Carlingford Precinct as follows:

DA No.	Project Title	DA Lodgement Date
582/2010/JP (2009SYW018)	18 storey mixed use development, James St, Carlingford	12 Oct 2009
895/2010/JP (2009SYW031)	18 storey mixed use development, Thallon St & Jenkins Rd, Carlingford	14 Dec 2009
943/2010/JP (2010SYW01)	4-18 storey mixed use development, Carlingford	22 Dec 2009

I note that at the time the progress report was prepared the proposed planning control documents relevant to these proposals had yet to be adopted by Council for the purpose of public exhibition.

That applied to the draft DCP, LEP, Voluntary Planning Agreement and Contributions Plan.

As the processing of the planning documents that are to be relied on for the assessment and determination of these applications is yet to reach public exhibition stage, an unacceptably protracted delay in determining the applications will occur.

Given this delay, it is requested that these applicants be requested to withdraw the applications and make further application when consideration of the planning control instruments relating to development of the precinct is far more advanced. Should any of the applicants not agree to withdrawal it is requested that that application be submitted to the Panel for determination within 4 weeks of the date of this letter.

I would appreciate it if you could contact Ms Carol Pereira-Crouch, JRPP Secretariat and advise her of the proposed date for the submission of the reports on these matters.

Thank you for your help in dealing with these matters.

Yours sincerely



Janet Thomson
Chair, Sydney West Region



Planning

Mr Dave Walker
General Manager
The Hills Shire Council
PO Box 75
CASTLE HILL NSW 1765

DOC. No.:
BOX No.:
- 5 JUL 2010
THE HILLS SHIRE COUNCIL

Dear Mr Walker,

Re: Draft Baulkham Hills Local Environmental Plan 2005 (Carlingford Precinct).

I refer to the letter from the Hills Shire Council ("the Council") to the Department, dated 21 June 2010, requesting a Gateway Determination under section 56 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") for the draft Baulkham Hills Local Environmental Plan 2005 – Amendment (Carlingford Precinct) ("draft LEP").

I am writing to notify you that I have determined (as the delegate of the Director-General) under clause 12(2) of the *Environmental Planning and Assessment Regulation 2000* that the former LEP plan-making provisions cease to apply to the draft LEP. The current provisions of Part 3 of the EP&A Act now apply.

Furthermore I have, as the delegate for the Minister for Planning, determined under clause 122 (2) of Schedule 6 to the EP&A Act to dispense with all the conditions precedent up to section 58 of the EP&A Act for the making of this draft LEP. Given that the draft LEP has already been exhibited, the draft LEP may now be submitted to the Director-General for finalisation.

Given the time taken to date on the LEP, Council should set clear requirements for any further information required from the proponent and or public agencies and set a timeframe for receipt and consideration of any such documentation.

As part of this determination Council must ensure that the draft LEP can be published within 6 months of the week following the date of this letter. Council's request for the Department to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Felicity Moylan of the Sydney West Office of the Department on (02) 9873 8574.

Yours sincerely,


30/6/10
Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
(as delegate of the Minister and the Director-General)