

# JRPP PLANNING REPORT

<b>JRPP NOS.:</b>	2009SYW018
<b>DA NOS.:</b>	562/2010/JP
<b>APPLICANT:</b>	ATM & CPA PROJECTS PTY LTD
<b>PROPOSAL:</b>	DA 562/2010/JP - CONSTRUCTION OF A STAGED 18 STOREY MIXED USE DEVELOPMENT CONTAINING 105 RESIDENTIAL UNITS, 148 SQM OF RETAIL SPACE & 173 BASEMENT PARKING SPACES
<b>PROPERTY:</b>	LOTS 1, 2 & 3 DP 398482, LOT 5 DP 8001 & LOT B DP 90046, NOS 2-8 JAMES STREET, CARLINGFORD
<b>LODGEMENT DATE:</b>	12 OCTOBER 2009
<b>REPORT BY:</b>	DEVELOPMENT ASSESSMENT CO-ORDINATOR CLARO PATAG THE HILLS SHIRE COUNCIL
<b>RECOMMENDATION:</b>	APPROVAL

## EXECUTIVE SUMMARY

On 24 March 2011, a status report on the subject Development Application was considered by the Joint Regional Planning Panel (JRPP) (refer Attachment AAA1) with a recommendation to defer the determination of the subject Development Application pending the issue of RailCorp's concurrence and adoption by Council of the Carlingford Precinct Public Domain Plan and Key Sites Voluntary Planning Agreements.

On 25 March 2011, RailCorp has granted its concurrence in accordance with clause 86(1) of the State Environmental Planning Policy (Infrastructure) 2007 subject to conditions.

On 12 April 2011, Council considered a report on the draft Carlingford Precinct Public Domain Plan and it was resolved that the plan be adopted.

On 8 June 2011, a status report on three (3) Development Applications including this application was considered by the Joint Regional Planning Panel (JRPP) (refer Attachment AAAA1) with a recommendation to defer the determination of the subject Development Application pending the adoption by Council of the Key Sites Voluntary Planning Agreements.

On 12 July 2011, Council considered a report on the Key Sites Voluntary Planning Agreements (VPAs) which were publicly exhibited between 10 May 2011 and 10 June 2011. It was resolved that the VPAs be adopted. The finalisation of the Voluntary Planning Agreements for the four key sites, namely Key Sites 3, 4 (subject site), 6 and

17) within the Carlingford Precinct represent the next major step to implement Council's urban renewal strategy for the Precinct. It also provides certainty for Council and the developer as to the timing of payment, works and land to be provided within the Precinct. It should be noted that the provision related to the undergrounding of the 132kV double circuit powerlines has been deleted from the draft VPAs and is recommended as a condition of deferred commencement, both agreed by Council and the developer. The deferred commencement condition does not apply to the subject site and it only applies to Key Sites 3, 6 and 17 which are affected by the electricity transmission easement.

The proposed development complies with the key site built form controls and conforms to the development pattern established in the key sites Block 4: 2-12 James Street as provided in the BHDCP Part E Section 22 – Carlingford Precinct. Refer to Attachment A1 for the previous assessment report submitted to JRPP on 25 May 2010.

It is recommended that the Development Application be approved subject to conditions.

## **ISSUES FOR CONSIDERATION**

### **1. Voluntary Planning Agreements**

As noted in the Executive Summary, Council resolved at its meeting on 12 July 2011 to adopt the Voluntary Planning Agreements (VPAs) for the four (4) key sites in the Carlingford Precinct, known as Key Site Nos. 3, 4, 6 and 17. The subject development site forms part of Key Site No. 4 which also includes Nos. 10 and 12 James Street, Carlingford. A separate Development Application for a 16-storey mixed use development has been lodged for No. 12 James Street (i.e. DA 561/2010/HB), which is currently under assessment and to be determined by Council as its capital investment value is under \$10 million. A concept proposal for No. 10 James Street has been discussed at a prelodgement meeting held with Council staff on 22 October 2010. This proposal is by another developer.

To support the proposed developments within the 4 key sites, the developer has offered a package of land dedication for local open space, traffic facilities and embellishment of open space as works-in-kind and monetary contributions towards the upgrade of open space, traffic, water management, community and library facilities.

The VPAs, in their totality, specifies contributions by the Developer of \$14,369,606 for the following:

*a. Dedication of 9,902m<sup>2</sup> of open space valued at \$7,678,917 comprising:*

- 1,510m<sup>2</sup> of Key Site 3 (Nos. 8, 8A, 10 and 13 Thallon Street) for linear open space;
- 2,563m<sup>2</sup> of Key Site 6 (Nos. 5, 5A, 5B, 7A and 7 Thallon Street) for linear open space;
- 3,741m<sup>2</sup> of Key Site 17 (Nos. 253 Pennant Hills Road and 26-28 Shirley Street) for Linear open space; and
- 2,088m<sup>2</sup> of Key Site 17 (Nos. 14-16 Shirley Street) for passive open space.

The open space will be dedicated prior to the issue of any Strata Subdivision Certificate.

*b. Infrastructure items to be provided as works-in-kind to the value of \$1,734,049 comprising:*

- Roundabout at the intersection of Boundary Road and Post Office Street;
- Roundabout at the intersection of Young Road and Post Office Street; and

- Open space embellishment of CPLOS1, CPLOS2, and CPLOS3, as identified in the Carlingford Precinct Contribution Plan.

Prior to the issue of any Construction Certificate, the Developer will provide Council with security to the value of the works-in-kind. Completion of the works-in-kind is to be provided prior to the issue of any Strata Subdivision Certificate.

*c. Payment of \$4,956,640 in monetary contributions to contribute to:*

- Signalisation of the Jenkins Road and Post Office Street intersection;
- Upgrade of the Jenkins Road and Pennant Hills Road intersection;
- Upgrade to stormwater management facilities;
- Open space embellishment of CPOS1; and
- Expansion of Carlingford Library and new Community Centre.

The payment of monetary contributions will occur on a pro rata basis prior to each respective Construction Certificate for each development.

The above works and obligations of each Key Site are outlined in the table below.

Item		Key Site 3 (Jenkins/Thallon)	Key Site 4 (James)	Key Site 6 (Thallon)	Key Site 17 (Shirley)	Totals
	Site Area	11,386	4,827	7,747	23,446	<b>47,406</b>
	%	24.02%	10.18%	16.34%	49.46%	<b>100%</b>
	Dwg Yield	408	183	175	453	<b>1,219</b>
	%	33.47%	15.01%	14.36%	37.16%	<b>100%</b>
<b>Works-in-Kind</b>		\$618,251	\$0	\$373,690	\$742,108	<b>\$1,734,049</b>
<b>Cash Contribution</b>		\$2,149,540	\$964,132	\$921,984	\$920,984	<b>\$4,956,640</b>
<b>Land Dedication</b>		\$785,044	\$0	\$1,332,055	\$5,561,817	<b>\$7,678,917</b>
<b>TOTAL VALUE</b>		<b>\$3,552,836</b>	<b>\$964,132</b>	<b>\$2,627,730</b>	<b>\$7,224,909</b>	<b>\$14,369,606</b>

As a result of the adoption of the VPAs, the requirements specified in the VPA for the subject site will be incorporated as conditions of consent including works identified in the Carlingford Precinct Public Domain Plan reported to and adopted by Council on 12 April 2011.

## CONCLUSION

The subject 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, 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, and is considered satisfactory.

It is recommended that the subject Development Application be approved subject to conditions.

## IMPACTS:

### Financial

The Voluntary Planning Agreements (VPAs) for the major key sites have been publicly exhibited and were reported to and adopted by Council on 12 July 2011. Works

identified in the VPAs will be conditioned in any consent including works identified in the Carlingford Precinct Public Domain Plan, in lieu of the Section 94 contribution requirements.

### **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 the subject Development Application be approved subject to the following conditions:

## **GENERAL MATTERS & ADVICE**

### **1. Development in Accordance with Submitted Plans**

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

#### REFERENCED PLANS AND DOCUMENTS

<b>DRAWING NO.</b>	<b>DESCRIPTION</b>	<b>REVISION</b>	<b>DATE</b>
DA00	Drawing List, Context Plan, BASIX Commitments	C	30/11/2010
DA02	Basement 03	B	26/03/2010
DA03	Basement 02	B	26/03/2010
DA04	Basement 01	B	26/03/2010
DA05	L1 Floor Plan	B	26/03/2010
DA06	L2 Floor Plan	B	26/03/2010
DA07	L3-4 Typical Floor Plan	A	14/07/2009
DA08	L5-6 Typical Floor Plan	A	14/07/2009
DA09	L7 Floor Plan	A	14/07/2009
DA10	L8-18 Typical Floor Plan	A	14/07/2009
DA11	Roof Plan	A	14/07/2009
DA12	Section A-A	B	12/01/2010
DA13	North Elevation	B	26/03/2010
DA14	West Elevation	A	14/07/2009
DA15	South Elevation	A	14/07/2009
DA16	East Elevation	A	14/07/2009
DA17	Shadow Diagrams: June 21 <sup>st</sup> : Plans	A	14/07/2009
DA18	Shadow Diagrams: North Elevation of No. 1 Jenkins Rd	A	14/07/2009
DA19	External Finishes	A	14/07/2009

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

### **2. Compliance with the Voluntary Planning Agreement**

#### **a. Voluntary Planning Agreement**

Pursuant to Section 80A (1) of the Environmental Planning and Assessment Act 1979, the Planning Agreement offered by Carling Developments Pty Ltd and Merc Projects Pty Ltd in connection with this development application (a copy of which is attached) **must be executed within 14 days after the date of this**

**determination.**

**b. Monetary Contributions**

Pursuant to the offer by the applicant to enter into a Voluntary Planning Agreement as governed by Subdivision 2 Division 6 of Part 4 of the Act, that the Voluntary Planning Agreement applying to Lots 1-3 DP 398482, Lot 5 DP 8001, Lot B DP 90046, Lot 1 DP 32469 and Lot 1 DP 120826, known as Key Site 4 at Nos. 2-8 James Street (subject site), No. 10 James Street, and No. 12 James Street, Carlingford, be signed under company seal and that payment of Monetary Contributions of **\$964,132.00** be made **prior to the issue of a Construction Certificate.**

**3. Compliance with Carlingford Public Domain Plan**

A detailed Public Domain Plan must be prepared by a suitable qualified professional in accordance with the Carlingford Precinct Public Domain Plan and must be lodged with and approved by Council **prior to a Construction Certificate** being issued for any new building work (including internal refurbishments).

**4. Construction Certificate**

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

**5. Provision of Parking Spaces**

The provision and maintenance thereafter of 173 off-street car parking spaces and 4 motorcycle spaces.

**6. External Finishes & Materials**

External finishes and materials shall be in accordance with the details submitted with the development application and approved with this consent.

**7. No Stopping Restrictions**

The applicant shall provide a full time No Stopping restrictions at their expense on the southern side of James Street for the full frontage of Nos. 2-8 James Street.

**8. Building Work to be in Accordance with BCA**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**9. Compliance with the NSW RTA Requirements**

Compliance with the requirements of the NSW Roads and Traffic Authority attached as Appendix "A" to this consent and dated 30/November 2009.

**10. Compliance with the NSW Police Requirements**

Compliance with the requirements of the NSW Police attached as Appendix "B" to this consent and dated 26 October 2009, in terms of the relevant Crime Prevention through Environmental Design (CPTED) factors such as surveillance, access control and territorial reinforcement with the exception of traffic matters outlined in the letter which are addressed separately as separate conditions in this consent.

**11. Compliance with NSW Transport/RailCorp Requirements**

Compliance with the requirements of the NSW Transport/RailCorp attached as Appendix "C" to this consent and dated 25 March 2011.

**12. Street Trees**

Street trees must be provided along the sites James Street and Jenkins Road frontage complying with the Carlingford Precinct Public Domain Plan.

**13. Separate Application for Strata Subdivision**

A separate application must be submitted for any proposed strata titled subdivision of the approved development.

#### **14. Protection of Public Infrastructure**

Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.

#### **15. Vehicular Access and Parking**

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps is required, with their design and construction complying with:

- a) AS/ NZS 2890.1:2004
- b) AS/ NZS 2890.6:2009
- c) AS 2890.2:2002
- d) DCP Part D Section 1 – Parking
- e) Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- i. All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- ii. All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- iii. In urban areas, all driveways and car parking areas must be concrete or bitumen. The pavement design must consider the largest design service vehicle expected to enter the site.
- iv. All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

#### **16. Gutter and Footpath Crossing Application**

Each driveway requires the lodgement of a separate gutter and footpath crossing application, accompanied by the current fee as prescribed by Council's Schedule of Fees and Charges.

#### **17. Minor Engineering Works**

The design and construction of the engineering works listed below must be provided for in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

Any variance from these documents requires separate approval from Council.

Works on existing public roads or any other land under the care and control of Council must be approved and inspected by Council in accordance with the Roads Act 1993 or the Local Government Act 1993.

##### **i. Driveway Requirements**

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's driveway specifications which can be found on Council's website: <http://www.thehills.nsw.gov.au/>

The proposed driveway must be built to Council's heavy duty standard.

The driveway must be 6m wide at the boundary splayed to 7m wide at the kerb. The driveway must be a minimum of 6m wide for the first 6m into the site, measured from the boundary. On high level sites a grated drain must be provided on the driveway at the property boundary.

A separate driveway application fee is payable as per Council's Schedule of Fees and Charges.

#### **ii. Disused Layback/ Driveway Removal**

All disused laybacks and driveways in James Street and Jenkins Road must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.

#### **iii. Concrete Footpath Paving/ Cycleway**

A concrete footpath paving/ cycleway, including access ramps at all intersections, must be provided across the James Street frontage of the development site transitioning into the existing footpath adjacent in accordance with Council's standard footpath detail and the above documents.

A separate minor engineering works application and inspection fee is payable as per Council's Schedule of Fees and Charges.

Where required by Council, the existing concrete footpath paving in Jenkins Street fronting the development site must be repaired or replaced.

The width and alignment of the concrete footpath paving/ cycleway is at the discretion of Council and must comply with the Carlingford DCP.

#### **iv. Footpath Verge Formation**

The grading, trimming, topsoiling and turfing of the James Street and Jenkins Road footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

#### **18. Public Liability Insurance**

All contractors working in the road reserve must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. A copy of this insurance must be submitted to Council prior to works commencing in the road reserve.

#### **19. Dedication of Splay Corner/ Road Widening**

An Occupation Certificate must not be issued until a 4m by 4m splay corner has been created and dedicated at the corner of James Street/ Jenkins Road, at no cost to Council. This will require the submission of a separate development application or Subdivision Certificate application to Council based on the exempt development provisions of the Codes SEPP.

#### **20. Numbering**

The responsibility for property numbering is vested solely in Council.

The **property** and **mailing** addresses for this development will be: -

#### **Residential units**

Units 1-105/2-8 James Street  
CARLINGFORD NSW 2118

## Retail Space

Suites 201 -  
2-8 James Street  
CARLINGFORD NSW 2118

Suite numbers for the retail space is to commence from the number 201 and then sequentially as per number of suites created.

Clear and accurate external directional signage is to be erected on site at driveway entry points, basement parking area, lift area, on all access doors and on buildings. It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed, in the event of an emergency.

## **21. Australia Post Mail Box Requirements**

Australia post requires there be one (1) single group of cluster mail boxes. Should more than one (1) cluster be required, contact Australia Post for their approval. The number of mail boxes to be provided is to be equal to the number of units/suites plus one (1) for the Manager/Strata Manager. Mail boxes are to have a minimum internal dimension of 230mm wide x 160mm High x 330mm long and are to be provided with an opening of 230mm x 30mm for the reception of mail.

## **22. Surplus Excavated Material**

The disposal / landfill of surplus excavated material, other than to a DECC licensed facility, is not permitted without formal approval from Council prior to the commencement of works. Any unauthorized disposal of waste, which includes excavated material, is a breach of the *Protection of the Environment Operations Act 1997* and subject to substantial penalties. Unless Council approves an alternate site, then all surplus excavated material must be disposed of at a licensed waste facility. Copies of actual weighbridge receipts verifying recycling/disposal must be kept and presented to Council when required.

## **23. Imported 'waste derived' fill material**

1. The only waste derived fill material that may be received at the development site is:
  - a. virgin excavated natural material (within the meaning of the *Protection of the Environment Operations Act 1997*); or
  - b. any other waste-derived material the subject of a resource recovery exemption under clause 51A of the *Protection of the Environment Operations (Waste) Regulation 2005* that is permitted to be used as fill material.
2. Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority on request.

NOTE: The application of waste-derived material to land is an activity that may require a licence under the *Protection of the Environment Operations Act 1997* (PEO Act). However, a licence is not required by the occupier of the land if the only material applied to land is virgin excavated natural material or waste-derived material that is the subject of a **resource recovery exemption** under clause 51A of the *Protection of the Environment Operations (Waste) Regulation 2005*.

**Resource recovery exemptions** are available on Department of Environment and Climate Change's website at: <http://www.environment.nsw.gov.au/waste/>



**Definition of 'virgin excavated natural material' within the meaning of the POEO Act:**

Natural material (such as clay, gravel, sand, soil or rock fines) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues (as a result of industrial, commercial, mining or agricultural activities), and that does not contain any sulfidic ores or any other waste.

**Definition of 'waste' within the meaning of the POEO (Waste) Regulation:**

In relation to substances that are applied to land, the application to land by:

- (a) spraying, spreading or depositing on the land, or
  - (i) ploughing, injecting or mixing into the land, or
  - (ii) filling, raising, reclaiming or contouring the land,
- (b) in relation to substances that are used as fuel, all circumstances.

See Clause 3B of the Regulation for exemptions.

**24. Dust Control**

The following measures must be taken to control the emission of dust:

- dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work;
- all dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system;
- all stockpiles of materials that are likely to generate dust must be kept damp or covered.

**25. Sound Level Output**

The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provision of the Protection of the Environment Operation Act 1997. The sound level output shall not exceed 5 dB(A) above the ambient background level at the closest neighbour's boundary.

**26. Contamination**

Any new information, which comes to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council.

**27. Stockpiles**

Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water, to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

**28. Acoustic Requirements**

The recommendations of the Acoustic Assessment and Report prepared by Renzo Tonin & Associates, referenced as TE370-01F01 (REV 2), dated 25 June 2010 and submitted as part of the Development Application are to be implemented as part of this approval. In particular: the recommendations for glazing treatments to specific facades of the building as listed in Table 7 of the report.

**29. Protection of Internal Noise Levels**

An acoustic statement is required to be submitted prior to the issue of the Construction Certificate ensuring the following is achieved:

- a) The LA<sub>eq</sub> (15hr) internal noise level with windows and external façade doors closed shall not be greater than 35 dB(A) for sleeping areas and 40 dB(A) for living areas.

**30. Tree Removal**

Approval is granted for the removal of trees numbered 1- 4, 6-11, 13-15 as per Arboricultural Impact Assessment prepared by Redgum Horticultural and dated 8 July 2009.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

### **31. Planting Requirements**

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m<sup>2</sup>.

### **32. Tree/s to be retained**

To maintain the treed environment of the Shire, trees numbered 5, 12, and 16- 20 as per Arboricultural Impact Assessment are to be retained.

## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

### **33. Detailed Geotechnical Report**

Before a Construction Certificate is issued, a detailed geotechnical report must be prepared and submitted in order to satisfy Clause 4.37 of the Carlingford DCP. The report must consider the geotechnical report prepared by D Katauskas submitted with the application along with the additional advice contained in a letter from D Katauskas dated 24 December 2009. This report must outline all construction stage requirements relating to the proposed excavation works along with any remedial actions necessary post construction. The report must specifically address the impacts, if any, of these works on adjoining properties, including the need for owner's consent where these works encroach beyond the property boundary.

### **34. Onsite Stormwater Detention – Upper Parramatta River Catchment Area/ Water Sensitive Urban Design**

#### **1. Onsite Stormwater Detention**

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The stormwater concept plan prepared by Eclipse Consulting Engineers Pty Ltd listed below is for DA purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and the following necessary changes:

- a) The design must be amended so as to accommodate the localised road widening necessary at the intersection of James Street/ Jenkins Road referred to elsewhere in this consent.

<b>Drawing:</b>	<b>Ref:</b>	<b>Revision:</b>	<b>Dated:</b>
General Notes	C01	B	11 May 2010
Roof Drainage Plan	C02	B	11 May 2010
Level 1 Stormwater Drainage Plan	C03	C	17 February 2011
OSD and Drainage Details Sheet	C04	B	11 May 2010
Basement Stormwater Drainage Plan	C05	B	11 May 2010

Comprehensive design plans showing full construction details must be prepared by an accredited OSD designer and submitted with:

- A completed OSD Drainage Design Summary Sheet;

- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes;
- A completed OSD Detailed Design Checklist;
- A maintenance schedule.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:

- i. A completed application form;
- ii. Four copies of the design plans and specifications;
- iii. Payment of the applicable application and inspection fees.

## 2. Water Sensitive Urban Design

Water sensitive urban design elements, consisting in this instance of a landscaped roof terrace, bio-retention swales, rainwater reuse tank, "hydrofilter HF1000 unit" and enviropods in surface inlet pits, are to be located generally in accordance with the plans and information submitted with the application and listed above.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must demonstrate a reduction in annual average pollution export loads from the development site in line with the following NSW Department of Environment, Climate Change and Water environmental targets:

- 90% reduction in the annual average load of gross pollutants.
- 85% reduction in the annual average load of total suspended solids.
- 65% reduction in the annual average load of total phosphorous.
- 45% reduction in the annual average load of total nitrogen.

All model parameters and data outputs are to be provided with the design.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to, the following:

- Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tech.htm>; and
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>.

## **35. Basement Car Park and Subsurface Drainage**

The stormwater pump-out system must provide for the following:

- a) A holding tank sized to store the run-off from a 12 hour 1 in 100 year ARI storm event;
- b) A alternating two pump system capable of emptying the holding tank at either the Permissible Site Discharge rate or the rate of inflow for a 5 hour 1 in 5 year ARI storm event, whichever is lower;
- c) An alarm system to alert a pump failure;
- d) 100mm freeboard to all nearby parking spaces;

- e) The system must be connected to the Onsite Stormwater Detention system before being discharged to the street, under gravity.

All relevant plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming the design complies with the above requirements.

### **36. Works on Adjoining Land**

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

### **37. Draft Legal Documents**

Where an encumbrance on title is required to be created as part of this consent, draft copies of all legal documents must be submitted to Council for checking before a Construction Certificate is issued.

### **38. Security Bond – Pavement and Public Asset Protection**

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$57,240.00 is required to be submitted to Council to guarantee the protection of the adjacent road pavement and public assets during construction works. The above amount is calculated at the rate of \$30.00 per square metre based on the public road frontage of the subject site (112m) plus an additional 50m on either side (212m) and the width of the road measured from face of kerb on both sides (9m), or \$10,000.00, whichever is the greater.

The bond must be lodged with Council prior to the issue of a Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these remaining costs.

### **39. Security Bond – External Works**

In accordance with Section 80A(6)(b) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works, or \$10,000.00, whichever is the greater.

The bond must be lodged with Council prior to the issue of any Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being completed to Council's satisfaction.

### **40. Bank Guarantee Requirements**

Should a bank guarantee be the proposed method of submitting a security bond it must:

- a) Have no expiry date;
- b) Be forwarded direct from the issuing bank with a cover letter that refers to Development Consent DA 562/2010/JF;
- c) Specifically reference the items and amounts being guaranteed. If a single bank guarantee is submitted for multiple items it must be itemised.

Should it become necessary for Council to uplift the bank guarantee, notice in writing will be forwarded to the applicant fourteen days prior to such action being taken. No bank guarantee will be accepted that has been issued directly by the applicant.

#### **41. Notice of Requirements**

The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

#### **42. Rooftop Exhausts, air-conditioning and ventilation plant**

A qualified acoustic consultant shall be engaged to assess the expected noise from proposed rooftop exhausts, air conditioning and ventilation plant in detail at the design stage, and submit a report to Council including recommendations for noise amelioration treatment where necessary.

### **PRIOR TO ANY WORK COMMENCING ON SITE**

#### **43. Compliance with Energy Australia's Requirements**

As the presence of the in-service power lines pose a possible safety risk for construction workers and construction activity has the potential to place the security of the electrical network at risk, the following information shall be provided to Energy Australia for consideration and approval prior to any commencement of works on site as outlined in their letter dated 21/01/2011:

- Restrictions on the use of cranes and other such moveable construction plant near power lines;
- The erection of structures within the existing easements and other activities which are prohibited within the easement or near in-service power lines; and
- Safe work method statements for review by Energy Australia prior to site works commencing. Such safety procedures should be included in the Construction Safety and Environmental Management Plan.

#### **44. Management of Building Sites – Builder's Details**

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

#### **45. Notification**

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with Form 7 of the Regulation.

#### **46. Principal Certifying Authority**

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

#### **47. Approved Temporary Closet**

An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

#### **48. Stabilised Access Point**

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in

accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

#### **49. Builder and PCA Details Required**

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

#### **50. Erosion and Sedimentation Controls – Major Works**

Erosion and sedimentation control devices are to be provided in accordance with Council's "Works Specification - Subdivisions/Developments" (August 1997). All devices are to be established prior to the commencement of engineering works and maintained for a minimum period of six (6) months after the completion of all works. Periodic maintenance of the erosion and sedimentation control devices is to be undertaken to ensure their effectiveness.

On completion of works all land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.

#### **51. Site Water Management Plan**

A Site Water Management Plan is to be submitted to Council for approval. The plan is required to be site specific and be in accordance with "Managing Urban Stormwater - Soils and Construction" (The Blue Book) produced by the NSW Department of Housing.

#### **52. Erosion & Sediment Control Plan Kept on Site**

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and made available to Council officers on request.

#### **53. Landscape Bond**

To ensure the public amenity of the streetscape a landscape bond in the amount of \$20,000.00 is to be lodged with Council prior to the issue of the Construction Certificate. It shall be refunded 6 months following the issue of the Final Occupation Certificate and the submission to Council of certification from a qualified Landscape Architect or Council's Tree Management Team, that the works have been carried out in accordance with the approved landscape plan.

#### **54. Protection of Existing Trees**

The trees that are to be retained are to be protected during all works with 1.8m high chainwire fencing and strictly in accordance with details provided in Arboricultural Impact Assessment prepared by Redgum Horticultural and dated 8 July 2009.

#### **55. Traffic Control Plan**

A Traffic Control Plan is required to be prepared in strict compliance with the requirements of AS 1742.3 and the current RTA Traffic Control and Work Sites Manual and submitted to Council for approval. The person preparing the plan must have the relevant RTA accreditation to do so. Where amendments to the approved plan are required, they must be submitted to Council for approval prior to being implemented.

#### **56. Separate OSD Detailed Design Approval**

No work is to commence until a detailed design for the OSD system has been approved by either Council or an accredited certifier.

#### **57. Pre-Construction Public Infrastructure Dilapidation Report**

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. The report shall include:

- a) Designated construction access and delivery routes; and
- b) Photographic evidence of the condition of all public assets. The report shall clearly identify the date of recording.

## **DURING CONSTRUCTION**

### **58. Compliance with BASIX Certificate**

Under clause 97A of the Environmental Planning and Assessment Regulation 2000 it is a condition of this development consent that all commitments listed in BASIX Certificate No. 264672M\_02 dated 31 October 2010 be complied with.

### **59. Hours of Work**

Work on the project to be limited to the following hours: -

Monday to Saturday - 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act, in the event that the building operations cause noise to emanate from the property on Sunday or Public Holidays or otherwise than between the hours detailed above.

### **60. Survey Report**

Survey Certificate to be submitted to the Principal Certifying Authority at footings and/or formwork stage. The certificate shall indicate the location of the building in relation to all boundaries, and shall confirm the floor level prior to any work proceeding on the building.

### **61. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority**

Section 109E(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

**NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.**

### **62. Stormwater Management**

All existing stormwater pits to the site will be covered with geofabric sediment fencing to prevent sediment runoff into the stormwater system. To prevent sediment contamination the filters will be regularly inspected and replaced during the duration of the works.

## **PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION CERTIFICATE**

### **63. Completion of Engineering Works**

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

### **64. Post Construction Public Infrastructure Dilapidation Report**

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any

damage to public assets in the direct vicinity of the development site and the means of rectification for the approval of Council.

#### **65. Creation and Registration of Restrictions and Positive Covenants**

##### **a) Creation of Restrictions and Positive Covenants**

The submission to Council of all necessary documentation together with payment of the endorsement fee prescribed in Council's Schedule of Fees and Charges to create the following over the title of the property. The wording must nominate The Hills Shire Council as the authority to release, vary or modify each restriction or positive covenant.

##### **i. Restricting Development – OSD Modification**

A restriction as to user restricting development over or the varying of any finished levels and layout of the constructed onsite stormwater detention system.

##### **ii. Positive Covenant – OSD Maintenance**

A positive covenant must be created to ensure the ongoing maintenance of the constructed onsite stormwater detention system.

##### **iii. Restricting Development – WSUD Modification**

A restriction as to user restricting development over or varying of the finished levels and layout of the constructed rain gardens, swales, vegetated buffers, pit inserts and rainwater pods and associated components.

##### **iv. Positive Covenant – WSUD Maintenance**

A positive covenant must be created to ensure the ongoing maintenance of the constructed rain gardens, swales, vegetated buffers, pit inserts and rainwater pods and associated components.

##### **v. Positive Covenant – Stormwater Pump Maintenance**

A positive covenant must be created to ensure the ongoing maintenance of the constructed stormwater pump-out system at the expense of the property owner.

##### **b) Registration of Request Documents**

The request documents endorsed by Council must be registered and a copy of the registered documents submitted to Council before an Occupation Certificate is issued.

#### **66. Consolidation of Allotments**

All allotments included in this consent must be consolidated into a single allotment before an Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

#### **67. Pump System Certification**

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a suitably qualified hydraulic engineer.

#### **68. OSD System Certification**

The Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA) prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:

- a) Works as executed plans prepared on a copy of the approved plans;
- b) A certificate from a suitably accredited engineer or surveyor verifying that the constructed OSD system will function hydraulically;
- c) A certificate of structural adequacy from a suitably accredited structural engineer verifying that the structures associated with the constructed OSD system are



structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

#### **69. Water Sensitive Urban Design Certification**

The water sensitive urban design elements present on site must be included with the OSD certification. Additionally, a data sheet that includes WAE detail, design costs, construction costs, initial maintenance costs per element and a maintenance schedule must be included.

For the purposes of complying with the above a WSUD treatment system is considered to include all functional elements of the system as well as any landscaped areas directly surrounding the system.

#### **70. Section 73 Certificate**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Development and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) and then refer to Water Servicing Co-ordinator under "Developing Your Land" or telephone 13 20 92 for assistance.

#### **71. Provision of Electricity Services**

Submission of a compliance certificate from the relevant provider confirming satisfactory arrangements have been made for the provision of electricity services (including undergrounding of services where appropriate).

#### **72. Provision of Telecommunications Services**

The submission of a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.

#### **73. Acoustic Compliance Report**

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components used and certify to Council as to their correct installation and that the required criteria's have been met.

#### **74. Landscaping Prior to Issue of Occupation Certificate**

The landscaping of the site being carried out prior to issue of the Occupation Certificate (within each stage if applicable) in accordance with the approved plan. All landscaping is to be maintained at all times in accordance with BHDGP Part D, Section 3 – Landscaping.

### **THE USE OF THE SITE**

#### **75. Lighting**

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 The Control of Obtrusive Effects of Outdoor Lighting*.

#### **76. Offensive Noise - Acoustic Report**

The proposed use of the premises and/or machinery equipment installed must not create offensive noise so as to interfere with the amenity of the neighbouring properties. Should an offensive noise complaint be received and verified by Council an acoustic

assessment is to be undertaken (by an accredited Acoustic Engineer), and an acoustic report is to be submitted to Council for review of the reports recommendations. Any noise attenuation recommendations must be implemented.

## **ATTACHMENTS**

AAAA1.           Copy of Previous Report to JRPP Meeting of 8 June 2011

**ATTACHMENT AAAA1 – COPY OF PREVIOUS REPORTS TO JRPP MEETING OF 8 JUNE 2011**

## **JRPP STATUS REPORT**

<b>JRPP NOS.:</b>	2009SYW018 2009SYW031 2010SYW001
<b>DA NOS.:</b>	562/2010/JP 895/2010/JP 943/2010/JP
<b>APPLICANT:</b>	DA 562/2010/JP – ATM & CPA PROJECTS PTY LTD DA 895/2010/JP - CARLING DEVELOPMENTS PTY LTD DA 943/2010/JP – STAMFORD HOUSE 88 PTY LTD
<b>PROPOSAL:</b>	DA 562/2010/JP – CONSTRUCTION OF A STAGED 18 STOREY MIXED USE DEVELOPMENT CONTAINING 105 RESIDENTIAL UNITS, 148 SQM OF RETAIL SPACE & 173 BASEMENT PARKING SPACES  DA 895/2010/JP - CONSTRUCTION OF 18-STOREY MIXED USE DEVELOPMENT CONTAINING 408 RESIDENTIAL UNITS, 799 SQM OF RETAIL SPACE & 735 BASEMANT PARKING SPACES  DA 943/2010/JP - CONSTRUCTION OF A 4-18 STOREY MIXED USE DEVELOPMENT CONTAINING 183 RESIDENTIAL UNITS, 407.9SQM OF RETAIL SPACE & 304 BASEMENT PARKING SPACES
<b>PROPERTY:</b>	2-8 JAMES STREET, 7-13 JENKINS ROAD & 2-14 THALLON STREET and 1-7A THALLON STREET, CARLINGFORD
<b>LODGEMENT DATES:</b>	DA 562/2010/JP – 12 OCTOBER 2009 DA 895/2010/JP – 14 DECEMBER 2009 DA 943/2010/JP – 22 DECEMBER 2009
<b>REPORT BY:</b>	DEVELOPMENT ASSESSMENT CO-ORDINATOR CLARO PATAG THE HILLS SHIRE COUNCIL
<b>RECOMMENDATION:</b>	DEFERRAL

### **EXECUTIVE SUMMARY**

On 24 March 2011, a status report on each of the subject Development Applications was considered by the Joint Regional Planning Panel (JRPP) (refer Attachment AAA1) with a recommendation to defer the determination of the subject Development Application pending the adoption by Council of the Carlingford Precinct Public Domain Plan and Key Sites Voluntary Planning Agreements.

Council considered a report on the draft Carlingford Precinct Public Domain Plan on 12 April 2011 and it was resolved that the plan be adopted.

The Key Sites Voluntary Planning Agreements (VPAs) are currently on public exhibition (between 10 May 2011 and 10 June 2011) and a report on the outcome of the exhibited VPAs is likely to be considered by Council in late June.

It is recommended that the determination of the subject Development Applications be further deferred pending the adoption of the Key Sites Voluntary Planning Agreements.

## **ISSUES FOR CONSIDERATION**

### **1. Status of the Carlingford Precinct Public Domain Plan and Voluntary Planning Agreement**

As noted in the Executive Summary, the Carlingford Precinct Public Domain Plan which is referred to in Section 3.6 (Structure Plan – Public Domain) of the Carlingford Precinct DCP was publicly exhibited from 15 February 2011 to 18 March 2011. Council considered a report on the draft plan on 12 April 2011 and it was resolved that the plan be adopted. The plan represents the long term vision for the upgrade of the public realm in the Carlingford Precinct and will be implemented via conditions of consent for future development.

On 22 February 2011, Council resolved at its meeting to exhibit four separate draft Voluntary Planning Agreements (VPAs). The draft VPAs relate to five (5) development applications lodged on (4) separate sites in the Carlingford Precinct, known as Key Site Nos. 3, 4, 6 and 17.

The Voluntary Planning Agreements (VPAs) are currently on exhibition (exhibition period between 10 May 2011 and 10 June 2011) and is likely to be reported to Council in late June 2011. The VPA will need to be determined prior to the determination of the subject Development Applications.

## **CONCLUSION**

The Development Applications have been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Baulkham Hills Local Environmental Plan 2005, 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 are considered satisfactory.

It is recommended that determination of the subject Development Applications be further deferred pending adoption of the Key Site Voluntary Planning Agreements.

A report to Council on the adoption of the VPAs is likely to occur in late June.

## **IMPACTS:**

### **Financial**

The draft VPAs for the major key sites are currently on exhibition at the time of writing this report (between 10 May 2011 and 10 June 2011) and upon adoption of the draft VPAs by Council, the Development Applications may be determined.

**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 Applications be deferred pending the adoption by Council of the Key Sites Voluntary Planning Agreements.

**ATTACHMENTS**

AAA1. Copy of Previous Reports to JRPP Meeting of 24 March 2011

**ATTACHMENT AAA1 – PREVIOUS REPORTS TO JRPP MEETING OF 24/03/11**

**JRPP STATUS REPORT**

<b>JRPP NO:</b>	2009SYW018
<b>DA NO:</b>	562/2010/JP
<b>PROPOSED DEVELOPMENT:</b>	STAGED EIGHTEEN (18) STOREY MIXED USE DEVELOPMENT CONTAINING 105 RESIDENTIAL UNITS, 148SQM OF RETAIL SPACE & 173 BASEMENT PARKING SPACES
<b>SUBJECT SITE:</b>	LOTS 1, 2 & 3 DP 398482, LOT 5 DP 8001 & LOT B DP 90046, NOS. 2-8 JAMES STREET, CARLINGFORD
<b>APPLICANT:</b>	ATM & CPA PROJECTS PTY LTD
<b>LODGEMENT DATE:</b>	12 OCTOBER 2009
<b>REPORT BY:</b>	DEVELOPMENT ASSESSMENT CO-ORDINATOR CLARO PATAG THE HILLS SHIRE COUNCIL
<b>RECOMMENDATION:</b>	DEFERRAL

**EXECUTIVE SUMMARY**

The Development Application is for the construction of an eighteen (18) storey mixed use development in two stages comprising a total of 105 residential apartment units and a 148m<sup>2</sup> retail floor space at the ground floor level. One hundred seventy three (173) off-street car parking spaces are proposed.

Initially, the proposal was accompanied by a SEPP 1 objection to the required 54m building height limit in the then draft Local Environmental Plan for the Carlingford Precinct. As indicated in the first status report to the Joint Regional Planning Panel on 25 May 2010, the foreshadowed SEPP 1 objection was considered to be supportable as the 300mm encroachment was only due to a small depression in the topography of the site at the north-eastern corner. Amendments were subsequently made to the adopted draft LEP which included an increase in the building height on the key sites including the subject site from 54m to 57m, and as a result made the proposed development fully compliant. In this regard the SEPP 1 objection previously lodged is no longer required.

The proposed development fully complies with the key site built form controls and conforms to the development pattern established in the key sites Block 4 (2-12) James Street as provided in the BHDGP Part E Section 22 – Carlingford Precinct.

On 23 September 2010, a second status report on the subject Development Application was considered by the Joint Regional Planning Panel (JRPP) (refer Attachment AA1). A previous report was submitted to the JRPP on 25 May 2010 which included an assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, SEPP 65, BHLEP 2005, Draft Local Environmental Plan –

Carlingford Precinct, BHDCP Part C Section 7 – Apartment Buildings and draft BHDCP Part E Section 22 – Carlingford Precinct. In the previous status report to JRPP, it was recommended that the determination of the subject Development Application be deferred pending the gazettal of the draft LEP and enforcement of the adopted Development Control Plan for the Carlingford Precinct.

The draft BHLEP 2005 (Amendment No. 20) – Carlingford Precinct was gazetted on 3 March 2011 and the associated draft Development Control Plan and draft Contributions Plan came into force on 15 March 2011.

It is recommended that the determination of the subject Development Application be deferred pending the issue of RailCorp's concurrence and adoption by Council of the Carlingford Precinct Public Domain Plan and Key Sites Voluntary Planning Agreements. A report to Council recommending that the draft Carlingford Precinct Public Domain Plan be adopted is scheduled on 12 April 2011 and a report on the adoption of the VPAs is likely to occur in late May.

#### BACKGROUND

#### MANDATORY REQUIREMENTS

Owner:	ATM & CPA Projects Pty Ltd and HJ & BC La'Porte	1.	BHLEP 2005 (Amendment No. 20 – <u>Carlingford Precinct</u> ) - Permissible with consent
Zoning:	Residential 2(a1)	2.	SEPP (Major Development) 2005 - Complies
Area:	2,992.8m <sup>2</sup>	3.	SEPP No. 65 – <u>Design Quality of Residential Flat Development</u> - Complies
Existing Development:	Dwellings on 2-6 James Street with No. 8 James Street being vacant.	4.	SEPP (Infrastructure) 2007 - Complies
Capital Investment Value	\$22.8 million	5.	SEPP 1 <u>Development Standards</u> - Satisfactory
Political Donation Disclosure	Yes	6.	BHDCP Part E Section 22 – <u>Carlingford Precinct</u> – Variation, refer Attachment AA1 – Previous Report.
		7.	<u>Section 79C (EP&amp;A Act)</u> – Satisfactory
		8.	<u>Section 94 Contribution</u> – to be determined as part of the VPA.

#### SUBMISSIONS

#### REASONS 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**

**23/09/2010**

The Joint Regional Planning Panel (JRPP) considered a status report on the subject proposal and resolved the following:-

*The Development Application be deferred to the date of the first Joint Regional Planning Panel meeting in 2011. The next report is to address the following:-*

- *Provide advice from Energy Australia on the appropriateness of the proposed development giving consideration to its intensity and proximity to the substation and transmission lines; and*
- *A detailed assessment of all planning and design matters*

**29/09/2010**

Minutes of the JRPP Meeting held on 23/9/10 received by Council.

**30/09/2010**

Letter prepared and sent to Integral Energy Australia seeking comments regarding the proposed development in accordance with the JRPP resolution.

**14/10/2010**

Letter sent to the applicant requesting further engineering information in relation to BASIX Certificate, stormwater drainage (MUSIC model), ramp/driveway sections and geotechnical issues.

**22/10/2010**

Payment of concurrence fee via \$250 cheque forwarded to RailCorp as required under the provisions of Clause 86 of the State Environmental Planning Policy (Infrastructure) 2007.

**09/11/2010**

A report on the outcomes of the exhibition of the draft Local Environmental Plan, draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct and draft Section 94 Contributions Plan No. 14 – Carlingford Precinct was considered by Council. See details of the Council Resolution below under the heading "Status of the Draft Planning Control Instruments and Voluntary Planning Agreements".

**17/11/2010**

Council wrote to the Department of Planning's Regional Director, Sydney West Region pursuant to section 58 of the Environmental Planning and Assessment Act 1979, advising that Council considered a further report on the planning proposal for the Carlingford Precinct and response to issues raised as a result of the public exhibition process. A copy of the planning proposal was attached in the letter which according to the Department of Planning's letter dated 30 June 2010 will be finalised by the end of December 2010.

**24/11/2010**

Electronic copy of the drainage MUSIC model submitted by the applicant.

**25/11/2010**

Letter received from RailCorp requesting the applicant to submit additional information in order for RailCorp to finalise its assessment of the proposal as part of the concurrence process.



Copy of RailCorp's letter was subsequently forwarded to the applicant.

<b>29/11/2010</b>	Council wrote to the Director General Department of Planning advising that Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct was adopted by Council at its meeting of 9 November 2010 and noted that the plan will come into force after the Local Environmental Plan for the Carlingford Precinct is published on the NSW Legislation website.
<b>30/11/2010</b>	Letter received from the applicant advising that the additional information requested by RailCorp has been forwarded directly to them.
<b>30/11/2010</b>	RailCorp advised the applicant directly by email that there are outstanding items in their letter that were not addressed in the submitted additional information.
<b>30/11/2010</b>	Additional information submitted by the applicant in relation to BASIX Certificate, MUSIC (drainage) model, and driveway/parking arrangements.
<b>01/12/2010</b>	Additional information submitted by the applicant to RailCorp.
<b>02/12/2010</b>	Letter sent to Integral Energy advising that the JRPP resolution of 23/9/10 has been discussed with Energy Australia's representative. Energy Australia has advised they can provide comments on the appropriateness of the proposal in terms of its intensity and proximity to the transmission lines only, and that the other comments sought by JRPP in terms of the substation should be addressed by Integral Energy being the owner of the nearby substation.
<b>10/12/2010</b>	Letter sent to Energy Australia following up their comments as required in the JRPP resolution.
<b>10/12/2010</b>	Letter sent to the applicant raising outstanding engineering issues in response to the flood study submitted by the applicant's consultant dated 16/11/2010.
<b>14/12/2010</b>	Council considered a report on the draft Voluntary Planning Agreements (VPAs) providing the payment of monetary contributions works in kind and land dedication for key sites within the Carlingford Precinct.
<b>14/12/2010</b>	Council considered a report on the draft Carlingford Precinct Public Domain Plan and resolved that the plan be publicly exhibited for a period of 28 days.
<b>11/01/2011</b>	Letter sent to the applicant requesting submission of revised drainage design and revised MUSIC (drainage) model.
<b>14/01/2011</b>	Letter sent to JRPP (via email) advising the status of Development Applications within the Carlingford Precinct including the subject proposal.
<b>19/01/2011</b>	Letter received from Energy Australia indicating that a response

will be forwarded within the week.

<b>19/01/2011</b>	Additional information relating to revised Music (drainage) model and stormwater management submitted by the applicant.
<b>24/01/2011</b>	Letter to the applicant advising that the submitted additional engineering information relating to stormwater management and drainage model are still not satisfactory and should be reviewed.
<b>24/01/2011</b>	Letter received from Energy Australia providing their "in-principle" approval to the development subject to conditions prior to commencement of works.
<b>03/02/2011</b>	Letter received from RailCorp raising outstanding issues to the documentation submitted by the applicant.
<b>07/02/2011</b>	Letter sent by the applicant directly to RailCorp in response to their issues. Copy of response forwarded to Council.
<b>17/02/2011</b>	Letter received from the applicant in response to outstanding engineering issues relating to stormwater management and drainage model.
<b>22/02/2011</b>	Council considered a further report on the draft Voluntary Planning Agreements (VPAs) providing the payment of monetary contributions works in kind and land dedication for key sites within the Carlingford Precinct. See details below under the heading "Status of the Draft Planning Control Instruments and Voluntary Planning Agreements".
<b>01/03/2011</b>	Letter received from the Director General, NSW Planning dated 27/02/2011 advising that as a delegate of the Minister for Planning he has made the amendments to Baulkham Hills Local Environmental Plan (LEP) 2005 regarding the Carlingford Precinct.
<b>03/03/2011</b>	Baulkham Hills Local Environmental Plan 2005 (Amendment No.20) in respect to the Carlingford Precinct gazetted.
<b>10/03/2011</b>	Letter received from Integral Energy advising that the electromagnetic field (EMF) report for the Carlingford Transmission Substation located on the corner of Jenkins Road and Pennant Hills Road has indicated that the magnetic field levels are well below the allowable limit for continuous public exposure of 1000 milligauss.

## **ISSUES FOR CONSIDERATION**

### **2. Status of the Draft Planning Control Instruments and Voluntary Planning Agreement**

As noted in the above History table, a report on the outcomes of the exhibition of the draft Local Environmental Plan, draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct and draft Section 94 Contributions Plan No. 14 –

Carlingford Precinct was considered by Council on 9 November 2010. Council resolved the following:

- 1. The draft Local Environmental Plan, draft Baulkham Hills Development Control Plan Part E Section 22 – Carlingford Precinct and draft Section 94 Contributions Plan No. 14 – Carlingford Precinct be adopted. Commencement of the draft DCP and draft Contributions Plan shall occur following notification of the draft Local Environmental Plan, and*
- 2. The planning proposal for the Carlingford Precinct be forwarded to the Department of Planning for finalisation.*

Pursuant to Section 58 of the Environmental Planning and Assessment Act 1979, Council wrote to the Department of Planning's Regional Director, Sydney West Region advising that Council considered a further report on the planning proposal for the Carlingford Precinct in response to issues raised as a result of the public exhibition process. A copy of the planning proposal was enclosed which satisfied the deadline set by the Department of Planning in accordance with their letter dated 30 June 2010.

It was also noted in the Council's letter that this Development Application including the other three (3) development applications within the Precinct (895/2010/JP, 943/2010/JP and 1286/2010/JP) have been scheduled for determination at the Joint Regional Planning Panel's first meeting this year.

On 14 December 2010, Council considered a further report on the draft Voluntary Planning Agreements providing the payment of monetary contributions works in kind and land dedication for key sites within the Carlingford Precinct. The report also dealt with matters arising from the Section 58 submission of the draft LEP to the Department of Planning in relation to satisfactory arrangements for the undergrounding of the 132Kv double circuit powerlines. Notwithstanding Council's resolution to adopt the recommendation as put, a further report dated 22 February 2011 was considered to address concerns raised by the applicant. Council resolved the following:

*Council rescind the resolution of the Ordinary Meeting of Council on 14 December 2010 in relation to Item 24 – Key Sites Voluntary Planning Agreements – Carlingford and replace instead the recommendations 1, 2 and 3 as printed in tonight's Business Paper on Pages 234 & 235, which reads:*

- 1. Council delegate to the General Manager authority to authorise the exhibition of the Draft Voluntary Planning Agreements and Explanatory Notes as provided in Attachment 2 for 28 days in accordance with the EP&A Act 1979 subject to the following amendments as recommended by Council's Lawyer being agreed to and made by the applicant:*
  - a) Costs associated with the operation of the draft VPAs be drafted to provide for the payment of legal costs on an indemnity basis.*
  - b) Legal and other costs for the preparation of the planning agreements be fixed as a lump sum and the draft VPAs provide for payment of this as a monetary contribution on the date of the planning agreement.*
  - c) Provisions related to security for monetary contributions may be addressed as a condition of development consent for each stage prior to the issuing of a Construction Certificate.*
  - d) Council agree to defer provision of a bank guarantee for works in kind until the issue of the Construction Certificate for each site.*

- e) *Council may consider agreeing to easements that have little impact on the land being used as open space.*
  - f) *In respect to land to be dedicated to Council that the draft VPAs provide:*
    - *a requirement for the developer to provide a survey plan for the caveats as required by the Office of Land & Property Information; and*
    - *an ability of Council to lodge a caveat over the entire property prior to registration of the planning agreements.*
  - g) *The limitation of the use of payments to the works specified in Schedule 2 only be rejected.*
  - h) *The original drafting of Clause 8 be reinstated to resolve concerns regarding amendments that that confuse the date for completion of works-in-kind.*
  - i) *Provisions related to the undergrounding of the 132kV double circuit powerlines be deleted and instead addressed as a condition of deferred commencement.*
2. *The Developer be advised that in the opinion of Council, adequate arrangements for the undergrounding of the existing 132kV double circuit powerlines may be addressed as conditions of development consent with the following parts:*
- a) *Deferred commencement condition requiring the Energy Australia design contract to be signed prior to the consent becoming active;*
  - b) *A condition of consent that requires the Energy Australia Construction Contract to be signed prior to the issuing of a Construction Certificate; and*
  - c) *A condition of consent requiring the 132kV double circuit powerlines to be undergrounded prior to the approval of the Strata Subdivision Certificate or Occupation Certificate, whichever occurs first.*
3. *Council advise the JRPP that it has no objection to the issuing of an Operational Consent for key site (4) (James Street), subject to Gazettal of the Carlingford LEP.*

Exhibition of the draft Key Site VPAs will occur upon receipt of an updated set of plans from the applicant and confirmation to the satisfaction of the General Manager that the terms of Council's resolution have been complied with. As the subject development application is not responsible for the undergrounding of the 132Kv double circuit powerlines, an active consent may be issued upon adoption of the VPAs by Council.

On 3 March 2011, Baulkham Hills Local Environmental Plan 2005 (Amendment No.20) in respect to the Carlingford Precinct was gazetted. The associated draft Development Control Plan and draft Contributions Plan came into force on 15 March 2011.

The draft Carlingford Precinct Public Domain Plan which is referred to in Section 3.6 (Structure Plan – Public Domain) of the Carlingford Precinct DCP was publicly exhibited from 15 February 2011 to 18 March 2011. The draft plan represents the long term vision for the upgrade of the public realm in the Carlingford Precinct and will be implemented via conditions of consent for future development. A report to Council recommending that the plan be adopted is scheduled on 12 April 2011.

## **2. JRPP RESOLUTION**

On 23 September 2010, the Joint Regional Planning Panel (JRPP) considered a report on the subject proposal and resolved the following:-

*The Development Application be deferred to the date of the first Joint Regional Planning Panel meeting in 2011. The next report is to address the following:-*

- *Provide advice from Energy Australia on the appropriateness of the proposed development giving consideration to its intensity and proximity to the substation and transmission lines; and*
- *A detailed assessment of all planning and design matters*

In compliance with point 1 of the above resolution, the proposal was referred to Integral Energy, being the responsible agency for the substation and to Energy Australia being responsible for the transmission lines.

Energy Australia in its letter dated 21 January 2011 provided its strong support and approval 'in principle' to the proposal subject to further information being provided by the applicant for its consideration, to address safety risk for construction workers and security risk of any construction activity on the electrical network. The timeframe for submitting this requirement has been clarified with Energy Australia and it was advised that this can be addressed as a condition of consent prior to commencement of works.

Integral Energy have advised on 10 March 2011 that a report prepared on the electromagnetic field (EMF) impact of the Carlingford Transmission Substation located on the corner of Jenkins Road and Pennant Hills Road has indicated that the magnetic field levels are well below the allowable limit for continuous public exposure of 1000 milligauss.

With regards to point 2 of the resolution, a detailed assessment of all planning and design matters has already been undertaken and can be found in the first status report submitted to JRPP on 25 May 2010 (refer to Attachment AA1). It should be noted that a SEPP 1 objection with regards to the proposal's non-compliance with the building height control in the then draft LEP was addressed in the initial report to JRPP. The draft LEP initially restricted the building height on the subject site to 54m and the proposal exceeds this height limit by 300mm due to a small depression in the topography of the site at the north-eastern corner. Amendments to the draft LEP were subsequently made which included an increase in building height from 54m to 57m, and as a result made the proposed development fully compliant. In this regard the SEPP 1 objection previously addressed in the initial report to JRPP is no longer required. The proposed development fully complies with the key site built form controls and conforms to the development pattern established in the key sites Block 4 (2-12) James Street as provided in the BHDGP Part E Section 22 – Carlingford Precinct.

## **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 and State Environmental Planning Policy (Infrastructure) 2007, and is considered satisfactory.

It is recommended that determination of the subject Development Application be deferred pending the resolution of the following matters:

- i). RailCorp's concurrence pursuant to the provisions of the State Environmental Planning Policy (Infrastructure) 2007
- ii). Adoption of Carlingford Precinct Public Domain Plan and draft Key Site Voluntary Planning Agreements.

A report to Council recommending that the draft Carlingford Precinct Public Domain Plan be adopted is scheduled on 12 April 2011 and a report on the adoption of the VPAs is likely to occur in late May.

#### **IMPACTS:**

##### **Financial**

Exhibition of the draft VPAs for the major key sites will occur from the 22 March 2011 to 22 April 2011. Upon adoption of the draft Carlingford Precinct Public Domain Plan and draft VPAs by Council, the Development Application may be determined.

##### **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 issue of RailCorp's concurrence and adoption by Council of the Carlingford Precinct Public Domain Plan and Key Sites Voluntary Planning Agreements.

#### **ATTACHMENTS**

AA1. Copy of Previous Status Report to JRPP Meeting of 23 September 2010

## JRPP PLANNING REPORT

<b>JRPP NO:</b>	2009SYW018
<b>DA NO:</b>	DA 562/2010/JP
<b>APPLICANT:</b>	ATM & CPA PROJECTS PTY LTD
<b>PROPOSAL:</b>	STAGED EIGHTEEN (18) STOREY MIXED USE DEVELOPMENT COMPRISING 105 RESIDENTIAL UNITS, 148M <sup>2</sup> OF RETAIL SPACE & 173 BASEMENT CAR PARKING SPACES
<b>PROPERTY:</b>	LOT 1 DP 398482, 2-8 JAMES STREET, CARLINGFORD
<b>LODGEMENT DATE:</b>	12 OCTOBER 2009
<b>REPORT BY:</b>	CLARO PATAG DEVELOPMENT ASSESSMENT CO-ORDINATOR THE HILLS SHIRE COUNCIL
<b>RECOMMENDATION:</b>	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 <sup>2</sup>	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&amp;A Act)</u> – Satisfactory
			<u>Section 94 Contribution</u> – 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:
- 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*
  - 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.*
  - 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.*
  - 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.*
  - 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 BHDGP 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

<b>JRPP NO:</b>	2009SYW018
<b>DA NO:</b>	562/2010/JP
<b>APPLICANT:</b>	ATM & CPA Projects Pty Ltd
<b>PROPOSED DEVELOPMENT:</b>	Eighteen (18) Storey Mixed Use Development Containing 105 Residential Apartment Units, 148m <sup>2</sup> of Ground Floor Retail Space & 173 Basement Parking Spaces
<b>PROPERTY</b>	Nos. 2-8 James Street, Carlingford (Lots 1, 2 & 3 DP 398482, Lot 5 DP 8001 and Lot B DP 90046)
<b>LODGEMENT DATE:</b>	12 October 2009
<b>REPORT BY:</b>	Claro Patag - Development Assessment Coordinator The Hills Shire Council
<b>RECOMMENDATION:</b>	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>BHDCP Part C Section 7 Apartment Buildings</u> - Variation, see report.
Zoning:	Currently Residential 2(a1) and proposed to be rezoned to Residential 2(a4)	3.	<u>Draft BHDCP Part E Section 22 – Carlingford Precinct</u> – Variation required – see report.
Area:	2,992.8m <sup>2</sup>	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&amp;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

<b>29/09/2005</b>	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.
<b>06/03/2006</b>	DA 682/2006/HB withdrawn by applicant due to one of the property owners' withdrawing consent to lodge the application.
<b>19/05/2009</b>	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.
<b>05/06/2009</b>	Pre-lodgement meeting held with applicant to discuss concept proposal for the site together with three other apartment proposals within the vicinity.
<b>12/10/2009</b>	Subject Development Application lodged.
<b>16/10/2009</b>	Subject Development Application referred to Joint Regional Planning Panel.
<b>04/11/2009</b>	Letter to applicant requesting additional information relating to noise and vibration.
<b>20/11/2009</b>	Letter to applicant requesting additional information relating to RailCorp's requirements, NSW Police requirements, waste management, detailed landscape plan and arborist report.
<b>24/11/2009</b>	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>
<b>26/11/2009</b>	Briefing held with the Joint Regional Planning Panel in Parramatta.
<b>02/12/2009</b>	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 2,992.8m<sup>2</sup>.

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, 799m<sup>2</sup> 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, 92m<sup>2</sup> 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 148m<sup>2</sup>
- 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 BHDCP 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 BHDGP Part C Section 7 – Apartment Buildings

The proposed development has been assessed against the relevant development standards and objectives of BHDGP 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.)	BHDGP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
3.1 Site Requirements	Min. lot size 4000m <sup>2</sup> Min. frontage – 30m	2,992.8m <sup>2</sup> 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 <sup>2</sup>	Ground level - 898m <sup>2</sup> Rooftop - 363m <sup>2</sup> Total = 1,261m <sup>2</sup>	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 <sup>2</sup>	60m <sup>2</sup> - 72m <sup>2</sup>	No.

<b>DEVELOPMENT STANDARD (CLAUSE NO.)</b>	<b>BHDCP REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
and Design	2 bedroom – 110m <sup>2</sup> 3 bedroom – 135m <sup>2</sup>	90m <sup>2</sup> – 95m <sup>2</sup> 110m <sup>2</sup> – 130m <sup>2</sup>	No. No.
3.13 Open Space	Private: Ground level – 4m x 3m (min)  Above ground – min. 10m <sup>2</sup> with min. depth 2.5m  Common: 20m <sup>2</sup> per dwelling @105 dwellings = 2,100m <sup>2</sup>	>min. provided (>25m <sup>2</sup> – 228m <sup>2</sup> )  >min. provided  Total common area = 1,170m <sup>2</sup>	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 <sup>2</sup> retail floor area (per BHDCP Part D Section 1 – Parking) @148m <sup>2</sup> = 8 spaces  Total requirement = 257 parking spaces	      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 <sup>3</sup> with an area 5m <sup>2</sup> and dimension 2 metres	A total of 1,080m <sup>3</sup> of central storage areas provided within the basement car park levels, i.e. 10.28m <sup>3</sup> 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 &gt;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 148m<sup>2</sup> 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 148m<sup>2</sup> 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 148m<sup>2</sup> 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	3 resident spaces	Yes.
	1 space per 2 bedroom unit @ 54 x 2 bedroom = 54 spaces	54 resident spaces	Yes.
	1.3 spaces per 3 bedroom unit @ 48 x 3 bedroom = 62.4 spaces	66 resident spaces	Yes.



	<p>2 visitor spaces per 5 units @ 105 units = 42 spaces</p> <p>1 space per 18.5m<sup>2</sup> of retail floor space @148m<sup>2</sup> – 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 <sup>2</sup> .	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 BHDCP 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 17m<sup>2</sup> 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 <sup>2</sup> , but the latter was only given a floor space ratio of 3:1 because it does not have the required 4500m <sup>2</sup> , 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**

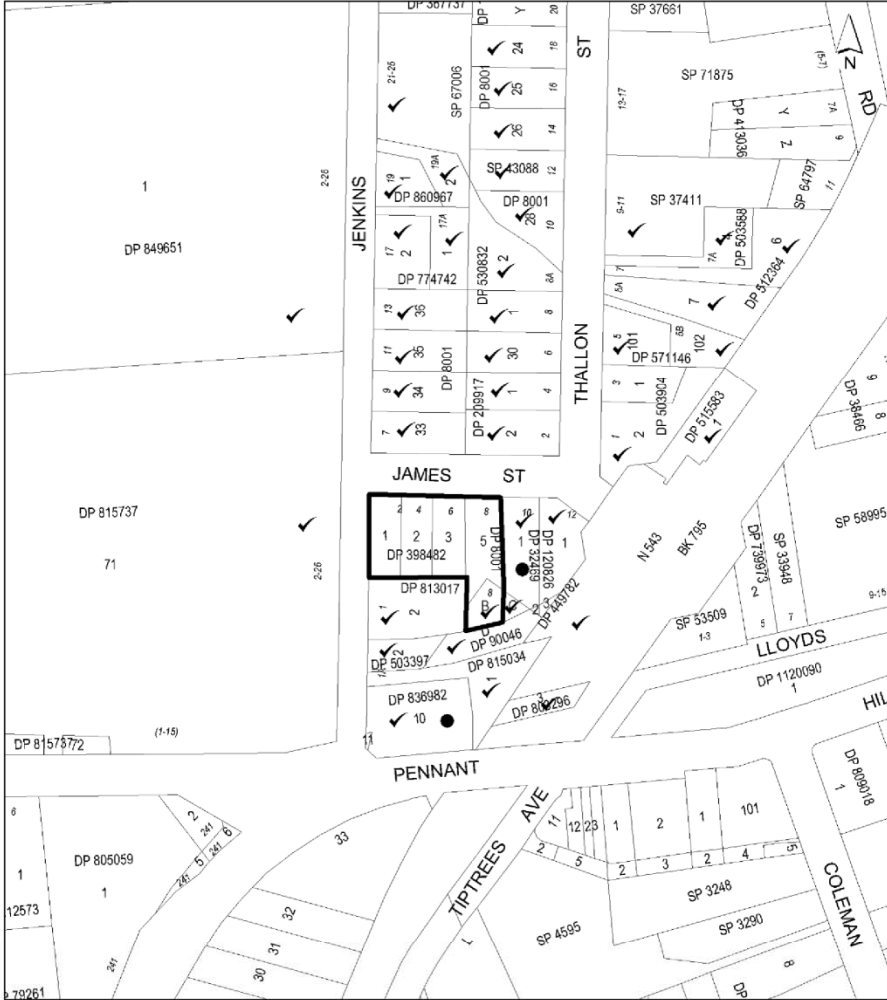
That determination of the subject Development Application be deferred pending the resolution of outstanding matters and notification of the making of draft BHLEP – Carlingford Precinct and commencement of the draft BHDCP Part E Section 22 – Carlingford Precinct.

#### **ATTACHMENTS**

1. Locality Plan
2. Aerial Photo
3. Ground Floor/Site Plan
4. Typical Floor Plan (1<sup>st</sup> to 5<sup>th</sup> Floor)
5. Typical Floor Plan (6<sup>th</sup> to 18<sup>th</sup> 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



## ATTACHMENT 1 – LOCALITY PLAN



□

## SUBJECT SITE

✓

**PROPERTIES NOTIFIED  
(NOTE: RTA, RAILCORP &  
PARRAMATTA CITY COUNCIL  
ALSO NOTIFIED)**

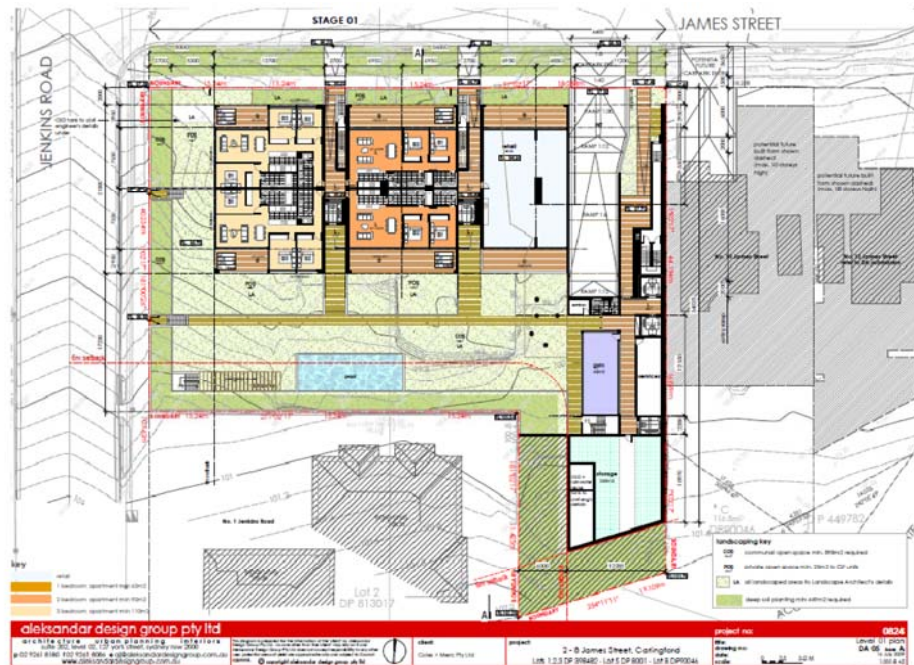
## OBJECTIONS

( NOTE: ONE OBJECTION RECEIVED  
OUTSIDE THE SCOPE OF MAP)

ATTACHMENT 2 – AERIAL PHOTOGRAPH



### ATTACHMENT 3 – GROUND FLOOR/SITE PLAN



Architectural site plan for Stage 01 and Stage 02 of a residential development. The plan shows a large rectangular building footprint divided into multiple units, with a central courtyard area. The building is situated between Jenkins Road to the west and James Street to the east. The plan includes detailed dimensions, setbacks, and a legend for unit types: 1 bedroom apartment (orange), 2 bedroom apartment (yellow), and 3 bedroom apartment (light yellow). The plan also shows existing structures, including a 'potential future building' and a 'potential future building' (200 sqm). The plan is labeled 'STAGE 01' and 'STAGE 02'.

[illegible]



ATTACHMENT 6 – NORTH ELEVATION (JAMES STREET ELEVATION)



ATTACHMENT 7 – SOUTH ELEVATION



**SCHEDULE OF EXTERNAL FINISHES**

FINISH	LOCATION
1. EXTERIOR WALLS	ALL EXTERIOR WALLS
2. ROOFING	ALL ROOFING
3. FLOORING	ALL FLOORING
4. CEILING	ALL CEILING
5. PAINT	ALL PAINT
6. GLASS	ALL GLASS
7. METAL	ALL METAL
8. WOOD	ALL WOOD
9. STONE	ALL STONE
10. BRICK	ALL BRICK
11. CONCRETE	ALL CONCRETE
12. ASPHALT	ALL ASPHALT
13. GRAVEL	ALL GRAVEL
14. SAND	ALL SAND
15. DIRT	ALL DIRT
16. PLANTING	ALL PLANTING
17. LANDSCAPE	ALL LANDSCAPE
18. FURNITURE	ALL FURNITURE
19. LIGHTING	ALL LIGHTING
20. SIGNAGE	ALL SIGNAGE

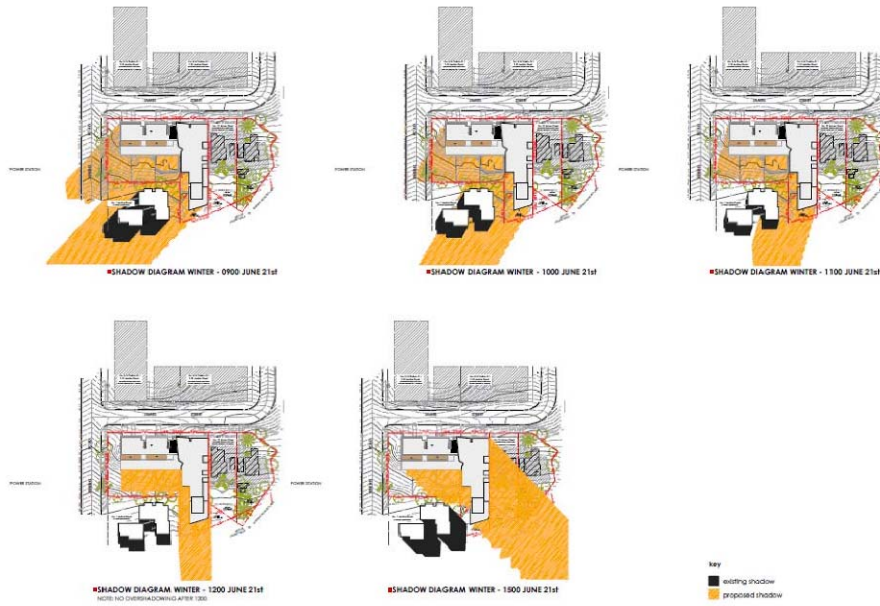
**2-8 JAMES ST. WEST ELEVATION**

**1 JENKINS RD**

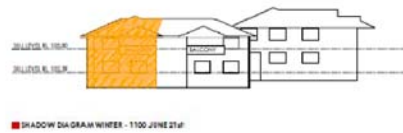
ATTACHMENT 9 – EAST ELEVATION



## ATTACHMENT 10 – SHADOW DIAGRAMS



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





**ATTACHMENT 12 - PERSPECTIVE**



Fig 14 Conceptual Built Form

Controls:  
Block 4  
2-12 James St  
1:1000 @A4

**Legend**

- [Orange dashed line] Site Boundary
- [Red dashed line] Site setback
- [Blue dashed line] Railway Easement
- [Grey rectangle] Tower Element
- [Light grey rectangle] Podium

**Fig 15 Dimensional Built Form Controls:**  
 Block 4  
 2-12 James St  
 1:1000 @A4

Fig 15 Dimensional Built Form  
Controls :  
Block 4  
2-12 James St  
1:1000 @A4



## ATTACHMENT 14 – STRUCTURE PLAN – PUBLIC DOMAIN



**ATTACHMENT 15 – ILLUSTRATIVE MASTERPLAN**



**ATTACHMENT 16 – ISOMETRIC VIEW OF FUTURE CARLINGFORD PRECINCT**





NOTE: APPROXIMATE UNDERGROUND SERVICES ONLY

JAMES

AREA OF NON-COMPLIANCE WITH 54m HEIGHT LIMIT

LOT 1 613.2m² DP398482

LOT 2 613.2m² DP398482

LOT 3 613.2m² DP398482

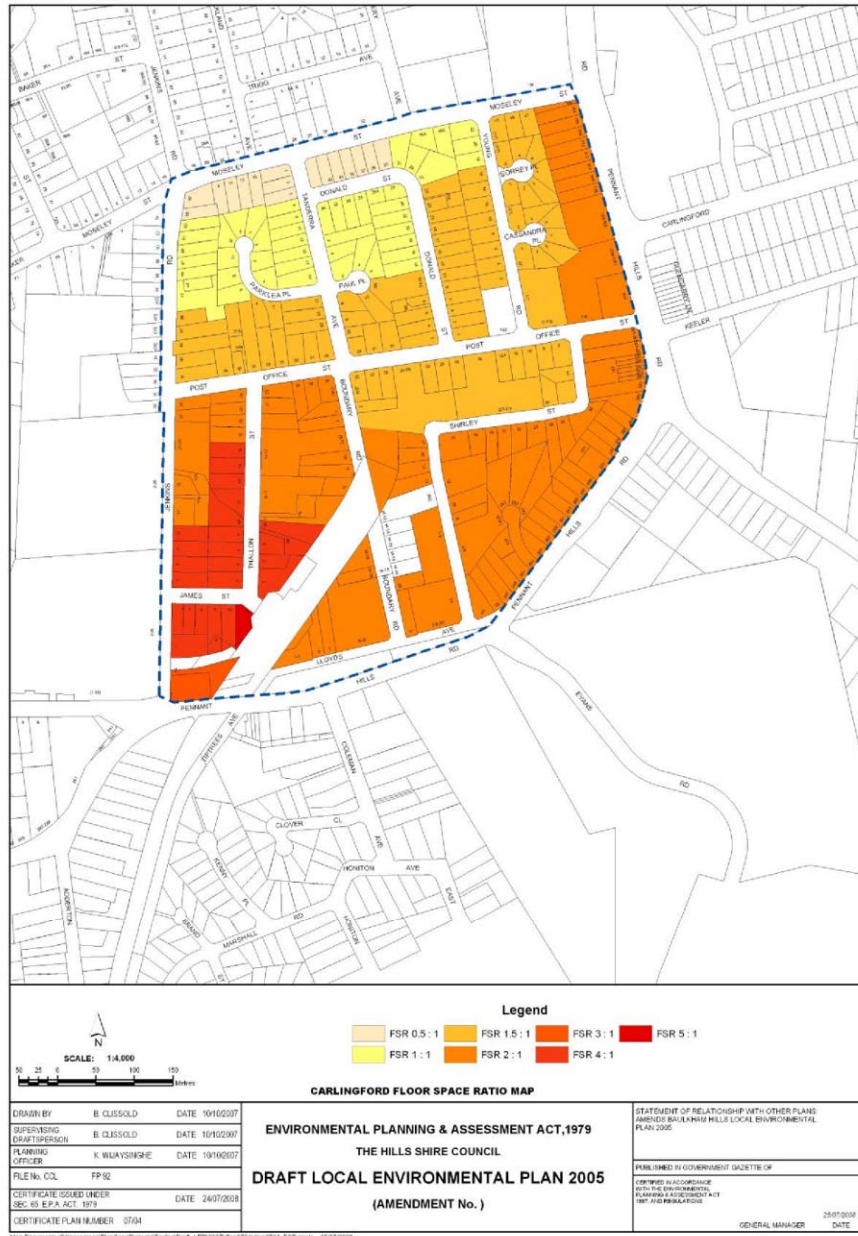
LOT 4 613.2m² DP398482

LOT 5 815.1m² DP8301

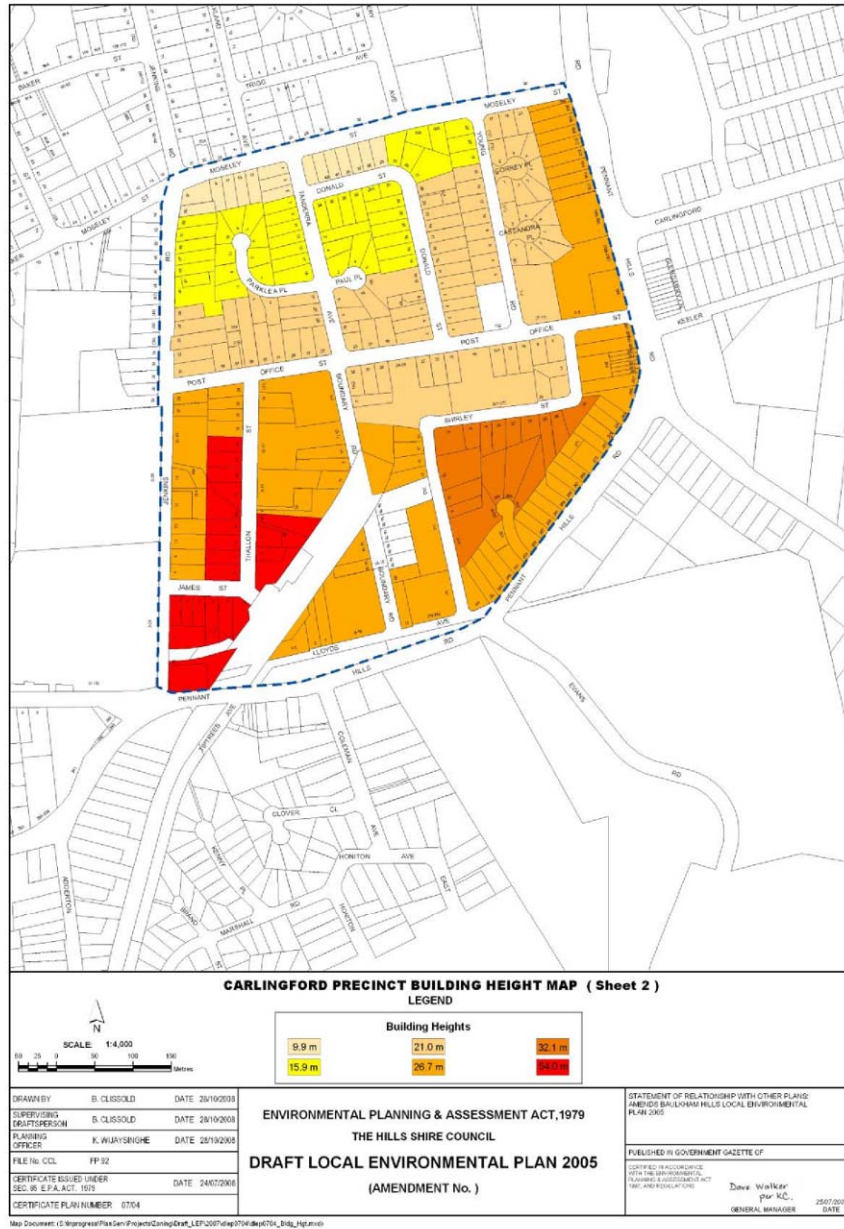
SEWER LAMP HOLE LOCATOR & PLOTTED BY SURVEY ON 10/10/2015. INVERT MEASURED. DIFFICULT TO OBTAIN MAIN PIPE SIZE, APPARENTLY LARGER THAN THE 150 DIA. SIZE.

Source: Michael Myer Surveyors Pty Ltd

## ATTACHMENT 18 – FLOOR SPACE RATIO MAP



## ATTACHMENT 19 – BUILDING HEIGHT MAP



**ATTACHMENT A2 – COPY OF CORRESPONDENCE  
FROM JRPP DATED 7 JULY 2010**



**Joint Regional  
Planning Panels**

7 July 2010

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

DEG. 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 6 weeks from the date of this letter:

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

PANEL SECRETARY  
Level 13, 387 George Street SYDNEY NSW 2000  
GPO Box 3415, SYDNEY NSW 2001  
Tel: 02 9093 2101  
Fax: 02 9293 9635  
Email: jpp@jpp.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
562/2010/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



ATTACHMENT A3 – COPY OF DEPARTMENT OF  
PLANNING'S LETTER DATED 30 JUNE 2010



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)