

Tuesday, 15 May 2012

Chairperson
Sydney East Region
Joint Regional Planning Panel
GPO Box 39
SYDNEY NSW 2001

Dear Chairperson and Panel Members,

RE: Submission from applicant
Ppty: 7 Centennial Ave, Lane Cove
JRPP REF#: 2012SYE008
LGA: Lane Cove Council
DA #: 233/2011

Thank you for the opportunity to make this submission in response to the Lane Cove Council ("Council") Assessment Report ("Report") for our Development Application at 7 Centennial Ave, Lane Cove.

We feel that while working together with Council to resolve all outstanding issues we simply ran out of time before the Council's deadline to submit the Assessment Report. We believe that at the time of the writing of the Assessment Report, all issues were resolved except for the endorsement of the Rural Fire Service ("RFS").

Confirmation of this timing issue is found in the letter by Lane Cove Council General Manager to the JRPP on 8th May 2012 requesting a postponement of the meeting following months of discussions between Hyecorp and Council, while the final issue (RFS) was being resolved. We understand this request was rejected due to public notice being made regarding the meeting. We agree with the GM's statement that *"if not for this outstanding issue the application might be recommended for approval subject to draft conditions."*

Today, since the writing of the Assessment Report, however, the RFS issue has now **also** been resolved (dealt with later in this letter).

We have carefully read the Report. Although the conclusion on page 20 and 21 states five reasons for refusal, if one carefully reads the body of the report in detail, it is fair to say that the only reasons for refusal that were not dealt with prior to the time of the writing of the Report are reasons 1 (RFS) and 2 (Asset Protection Zone).

The Assessment Report deals with the other issues in great length:

Reason 3 (height) is dealt with on pages 15-16 and 20 of the Assessment Report with Council stating that our contravention of height standard request pursuant to clause 4.6 of the LEP is considered *"well founded and supported"*. We worked closely on this matter with Council not only *before* we lodged our DA but also *during* the assessment process and we are glad Council has agreed to the contravention of the height standard and believes the 4.6 submission was well founded and supported.

Reason 4 (SEPP65) was also an issue of timing. Since the last letter from Councils consultant (20 April 2012), Hyecorp, through a submission made to Council on 27 April 2012, has addressed all SEPP65 issues. This included the removal of lower ground apartments as well as supplying Council with an apartment by apartment 3D analysis confirming solar access compliance.

Reason 5 (Roads and Maritime Service) was also an issue of timing. The assessment was referred to the RMS on 16 April 2012 and it made it on the RMS agenda for 9 May 2012 – *after* the Assessment Report was published on the JRPP website. The RMS has since met (on 9 May 2012) and endorsed the application, resolving the issue.

Notwithstanding the above, to ensure the Panel has all available information, we have addressed each of the five reasons mentioned above in detail below.

We believe that once the entire Assessment Report is read in detail it is clear that the only matter that Council believes was outstanding at the time of writing the Report was the RFS/APZ issue – and we now believe that this issue has been resolved.

Kind Regards



Stephen Abolakian
Hyecorp Property Group

RFS/APZ

CONCLUSION 1: *The Rural Fire Service has not endorsed the development proposal, and the development in its current form fail to meet the requirements of Planning for Bushfire Protection 2006; and*

CONCLUSION 2: *The proposal includes Council land as an Asset Protection Zone (APZ). There is no agreement between the applicant and Council to use Council land, as part of Asset Protection Zone and Council does not have a plan of management for the APZ.*

Both above conclusions relate to the APZ from the western boundary of our site.

The original application had an APZ starting from the road reserve at the west of our site. Hyecorp learnt late in the process that the road reserve encroached into the bush reserve of Batten Reserve.

Hyecorp acknowledges that this is not acceptable to Council (Conclusion 2 above, Assessment Report Attachment 2).

The RFS, in letter dated 27 April 2012 (Assessment Report Attachment 3 Part 1) gave Hyecorp three options in dealing with this issue:

- (1) *Increase separation distance from the hazard by increasing the front setback; or*
- (2) *Arrange for an easement with Council under Section 88B of the Conveyancing Act 1919 to provide for a restriction on the land owned by Council to the west to create an easement on their land to form part of the required Asset Protection Zone.*
- (3) *Obtain a Plan of Management from Council stating that a portion of the land owned by Council to the west is to be managed in perpetuity as part of the Asset Protection Zone required for the development.*
 - Letter from RFS to Council dated 27 April 2012 (Assessment Report Attachment 3 Part 1)

Hyecorp has chosen option 1 and now (since the writing of the Assessment Report) increased the setback from the western boundary considerably to ensure that **no part of the APZ falls within the bush reserve.**

This has meant plans being modified in the time between the Assessment Report being published on the JRPP's website and the date of the Panel Meeting. The changes are simply to increase the setback of Block A from the western boundary. It has meant the reduction in floor space however no change to the total number of apartments or compliance calculations.

We respectfully request that the JRPP consider these amended plans. As foreshadowed in the GMs letter to the JRPP, they are for the resolution of a fundamental factor in the assessment of this application.

Although the formal endorsement and draft conditions of consent were not available at the time of writing of this letter, given our verbal discussions with Council and the RFS we are confident that the RFS will provide its endorsement by the time of the JRPP meeting on Thursday evening. We understand that the endorsement will be forwarded to the Panel shortly.

Given the above, the RFS and APZ issues in conclusion 1 and 2 of the Assessment Report, have now been completely resolved.

Building Height

CONCLUSION 3: *The proposed development seeks an exception to the building height standard of the Lane Cove Local Environmental Plan in Block C and the variation is significant. While Blocks A and B comply with the overall building height requirement, the existing ground has been excavated and lowered to create a new ground level lower than the existing ground level to accommodate more dwellings.*

Summary:

1. A small part of the site has been substantially excavated as it was formerly used as a quarry (18.7% of the total site area)
2. The LEP defines the height limit as being from the *existing* ground level
3. To comply with the LEP, this means that we would have to use the bottom of the excavated quarry area as our ground level – with the ground level on the *remainder* of the site being up to 8m above the quarry ground level.
4. This would result in an extremely poor planning outcome
5. As a result, we have applied the *natural* ground level on the ‘quarry’ section of the site. We engaged a geomorphologist to ascertain what the natural landform looked like.
6. This means that we have now used a consistent and accurate ground level across the whole site, applying the original topography of the land. This allows the orderly development of the site
7. Given the LEP defines the height limit as being from the existing ground level, usage of natural ground level results in a technical non-compliance and hence a statement pursuant to clause 4.6 of the LEP must be submitted. We believe that clause 4.6 was incorporated in the LEP for the very purpose of allowing flexibility to the LEP in situations exactly like the one faced in the quarry.
8. The use of the natural ground level on the small man-altered part of the site will result in a much better planning outcome.

First and foremost it is important to note – as agreed above - that Block A and Block B both comply with the height limit. It is only the ground ‘underneath’ Block C (approximately 18.7% of the total site area) that we have used the natural ground level instead of the existing ground level (when the natural ground level is applied, then Block C *also* complies with the height limit).

The land underneath and around Block C (lots 11a, 11b and 13 Centennial Ave) was previously used as a sandstone quarry. As a result this area of the site, approximately 1,527m² (18.7%) is effectively a wedge cut out of a site with an otherwise consistent and natural topography.

The situation faced in the quarry is a peculiar one, not seen elsewhere in the precinct. It is a unique site constraint and clearly a result of industrial activity carried out on the site previously.

The below images show very clearly how unnatural the quarry part of the site is and highlights the issues faced in design and planning when adopting the LEP definition of 'existing' ground level.

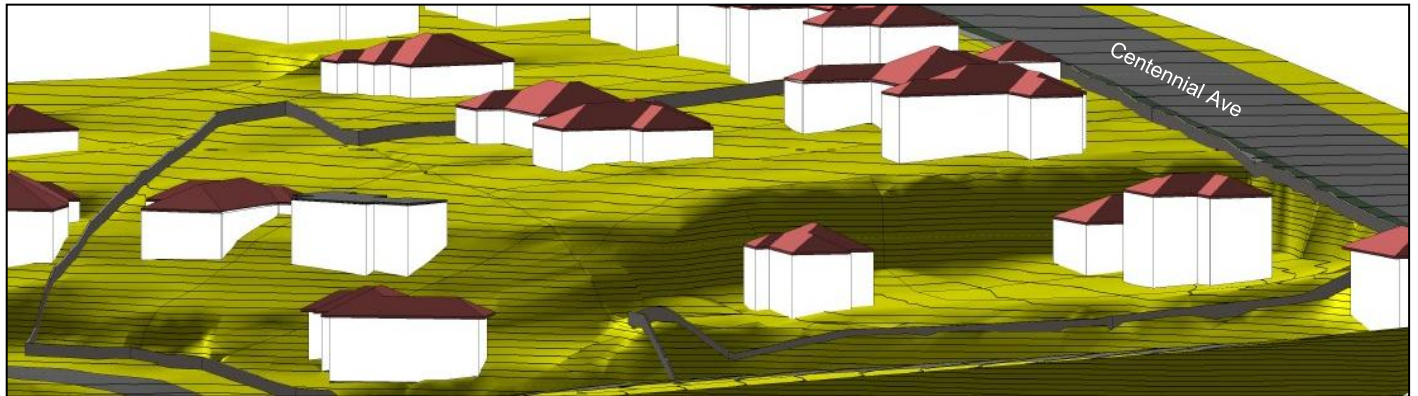


Figure 1: shows the quarry when looking at the site from the south.

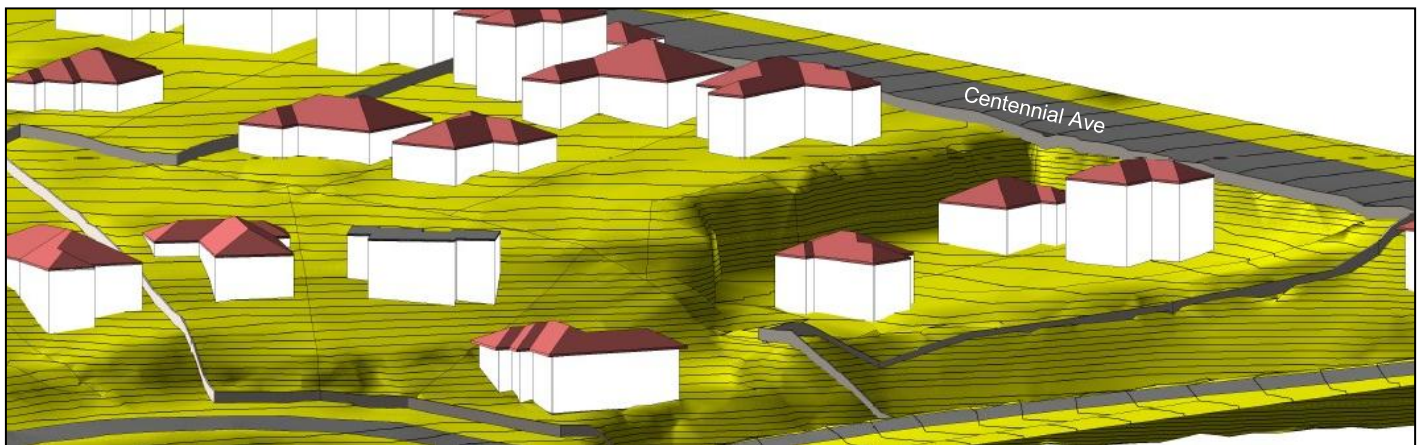


Figure 2: shows the quarry when looking at the site from the south-west

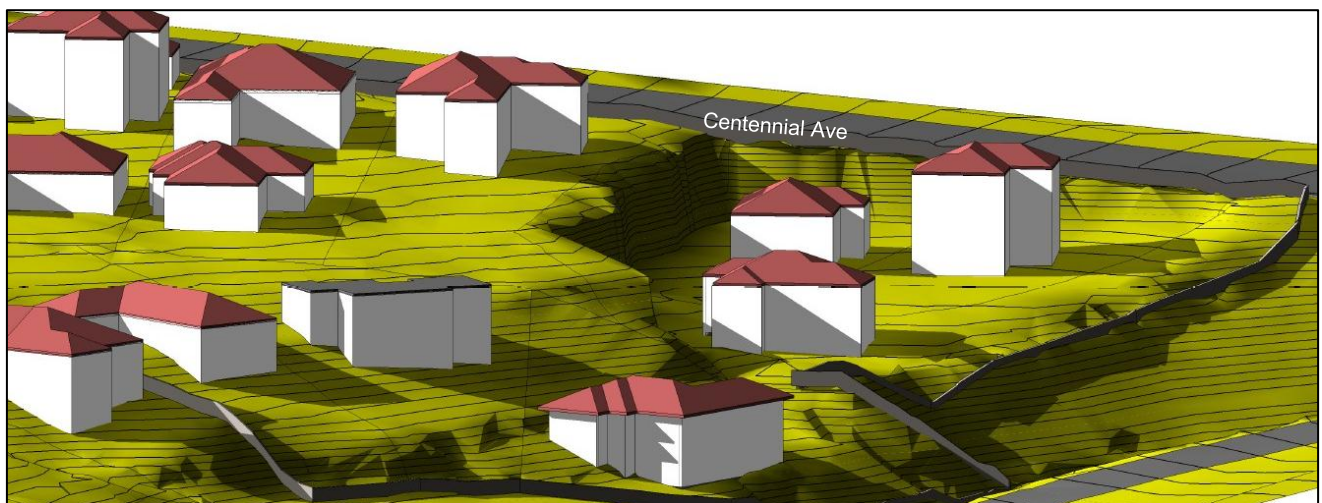


Figure 3: shows the quarry when looking at the site from the west

Block C of our proposal sits within the deep hole shown above. If we applied the LEP definition of the existing ground level, then the height plane would follow the ground level and the design would have reflected an awkward sheer drop in this height plane.

We did not simply guess where the natural ground levels would have been before the quarry excavation. We engaged a geomorphologist to conduct an assessment of the natural ground level. The assessment, conducted by Strategic Environmental and Engineering Consulting (SEEC), which determined a number of factors that suggest the shape and nature of landscape at the site before quarrying took place, was submitted as part of the development application.

Hyecorp has conceded that the proposed development does not comply with the height limit (only) for Block C. For this reason, as part of the application we have submitted a statement pursuant to clause 4.6 of the Lane Cove LEP requesting a contravention of the height standard in the LEP. We believe clause 4.6 in the LEP was inserted to deal with scenarios **exactly** like the quarry situation we face in this application.

Although not referred to in the conclusion of the Assessment Report, the remainder of the Report has a detailed assessment of the height breach and the 4.6 objection – the conclusion of this assessment is that the cl 4.6 “*request is considered to be well founded and supported*” by Council (top of page 5).

The height issue is also dealt with in detail on pages 15 and 16 of the report and concludes with the sentence “*Given that the breach of the overall height limit would not have an adverse impact upon the amenity of the adjoining developments, the submission is considered to be well founded and supported.*”

The earlier parts of this section of the Assessment Report highlight at least 8 reasons submitted by Council as to why the use of the natural ground level is a **better planning outcome**.

The reasons supported by Council being:

- (1) *The dwelling on the lower level (RL48) of Building C, facing towards 15 Centennial Avenue, would improve the visual appearance of the building to the adjoining property and the reserve.*
- (2) *The car park level on RL 48 of Building C is proposed on a level above the existing ground level.*
- (3) *Compliance with the 12m height limit measured from the existing ground level would result in the Building C being 3 storeys lower than the Building B. Building C would be in an incompatible height with Building B.*
- (4) *Compliance with the building height standard would compromise solar access to the dwellings in Building C.*
- (5) *The building elements which exceed the height standard would not have any additional overshadowing to the site and the property to the south at 15 Centennial Avenue.*
- (6) *The proposed Building C has adequate setback (10m) to its southern boundary adjacent to 15 Centennial Avenue.*
- (7) *The contravention of the height standards would not have an adverse impact on the existing views from the residences on the eastern side of Centennial Avenue.*
- (8) *An appropriate degree of flexibility in applying to the building height standard is considered reasonable.*

- Council Assessment Report, page 15-16

One small example of why using the natural ground level is a better planning outcome, can clearly be seen when assessing what the eastern elevation (facing Centennial Ave) would look like if we used the existing ground level as required in the LEP.

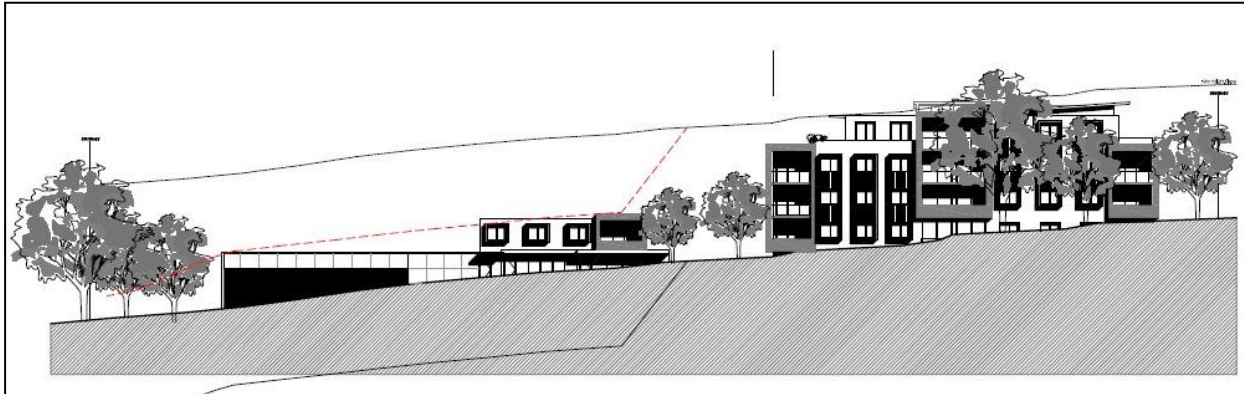


Figure 4: shows the awkwardness of a design for Block C if the existing ground level was applied as the ground level. The red dotted line is what the height plan (maximum height limit) would look like if the existing ground level was taken to be the ground level.

It is clear that Block C (on the left) is completely disproportionate to Block B (on the right). This is because Centennial Ave has a ground level consistent with the existing ground level 'under' Block B however, hidden behind the Street, the land underneath Block C is between 6 to 8 m below ground due to the quarrying activities.

The above Figure 4 should then be compared to the eastern elevation of our proposal:



Figure 5: eastern elevation of our proposal when using the natural ground level as the ground level.

Figure 5, which is the eastern elevation of our proposal along Centennial Ave when adopting the natural ground level, shows a design much more in keeping with the future desired character of the street and a much better planning outcome.

By adopting the natural ground level, we have been able to comply with clause 4.3(1)(c) of the Lane Cove LEP, which is 'to relate development to topography' along Centennial Ave, resulting in a much better planning outcome.

Further, the Panel should note that if the existing ground level was adopted, the developability of lots 11a-13 Centennial Ave, especially while complying with the amenity provisions of the RFDC, would effectively be diminished – sterilizing the developability of those lands.

In its Assessment Report, Council has considered the above facts and is supportive of the contravention of the height standard. We ask the Panel to accept ours and Council's submission and also agree that the usage of the natural ground level is a much better planning outcome than using the existing ground level in this situation.

NB, the Panel should also be reminded that the contravention of the height only applies to the small part of the site where Block C lies. For the remainder of the site we have kept to the LEP definition of existing ground level

SEPP65

CONCLUSION 4: The proposal has not been endorsed by Council's consulting architect with regards to good design principles of the SEPP 65. Provision of privacy screens would not satisfy the prescriptive measure of separation between buildings.

Council, as part of its Assessment Report, has provided two letters (Attachment 4 Part 1 and 2) from Council's SEPP65 consultant.

Following the first letter dated 31 January 2012, Hyecorp made substantial changes to its design in response to the comments by Council's consultant.

Most issues were resolved except for a few remaining issues again raised in the consultants second letter.

The second, most recent of these two, letters is dated 20 April 2012 (received by Hyecorp 24 April 2012). Following and in response to this final letter, Hyecorp made several and significant changes to its application. These amendments were submitted to Council on Friday 27 April 2012

The changes made in the Friday 27 April submission by Hyecorp addressed all the issues.

- We deleted all ground floor apartments on the bottom level of Block B on the northern elevation to remove the lower ground apartments – which we also understand initially bothered members of the JRPP.
- We made changes to address the building separation issues
- We submitted an apartment-by-apartment analysis of the solar access compliance.

Hyecorp made these amendments in response to the final letter from Council's consultant and Council has accepted these amendments.

Council on pages 12-14 has carefully 'dissected' each SEPP65 principle and it is clear the proposal – following the final amendments – has now addressed and complies with all of the principles.

The only issue that can be discussed is the provision of privacy screens on the upper most floor of Block A on the eastern elevation (facing Block B). On this elevation, following Council's advice, Hyecorp has provided privacy screens to ensure visual and acoustic amenity is provided and therefore satisfy the objectives of the building separation requirement.

Hyecorp would like to advise the JRPP that if Panel members are of the opinion that this is not acceptable, Hyecorp will look at redesigning this small section of Block A to provide this separation. However we have not done so as it was agreed between Hyecorp and Council that the area in question is so minor that increased setbacks on the upper level of Block A to provide numerical compliance would impact the amenity of this upper level of Block A¹.

¹ This level of Block A is a very small level. This is because further west the height plane drops suddenly.

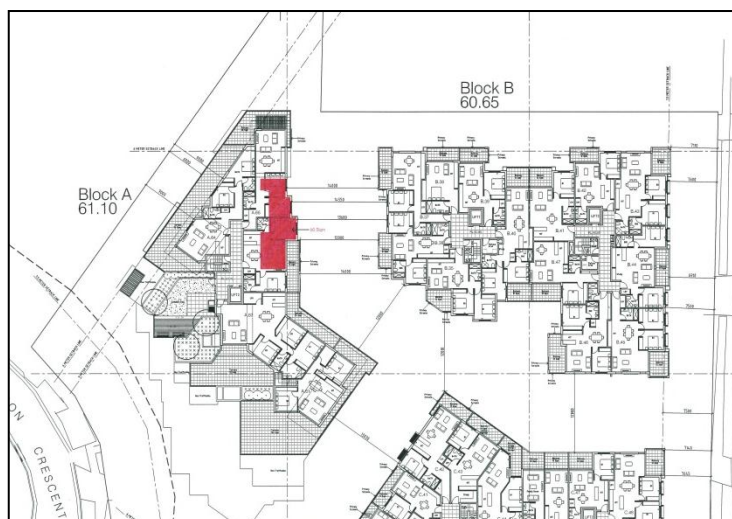


Fig 6: area highlighted in red shows the portion of the uppermost level of Block A that is 14-16m from Block B, not the numerically prescribed 18m

The image above shows the minor area in question. As you can see the area of the uppermost level of Block A (shaded in red) is very minor. This area is 14-16m from Block B.

Finally the Panel should be reminded that our proposed development complies with the three main amenity provisions of the Residential Flat Design Code and DCP – Solar Access, Natural Ventilation, and single-sided, south-facing apartments:

Amenity Provision	Required	Provided	Comments
Solar Access (apartments with ≥ 3 hr sun between 9am-3pm on June 21)	130.2 (70%)	131 <u>COMPLIES</u>	If the DCP definition is considered (where bedrooms are included as living areas) solar compliance increases substantially. Also these compliance figures are <i>after</i> the consideration of <u>future development</u> to the north of our site. ²
Cross Ventilation	111.6 (60%)	114 <u>COMPLIES</u>	Hyecorp believes this number is substantially higher as indicated in its original submission. However the conservative approach by Council still complies
Single-sided south-facing apartments	No more than 18.6 (10%)	6 <u>COMPLIES</u>	Well below the maximum amount permissible.

² See Appendix 1 of this letter

Roads and Maritime Service

CONCLUSION 5: *The comments from Roads and Maritime Services have not been received.*

At the time of writing the Assessment Report the Roads and Maritime Service (“**RMS**”) had not yet met to discuss the proposal.

The Sydney Regional Development Advisory Committee (“**Committee**”) met on Wednesday 9 May 2012. Hyecorp and Council representatives were present at the meeting.

The Committee did not raise any material issues with the application.

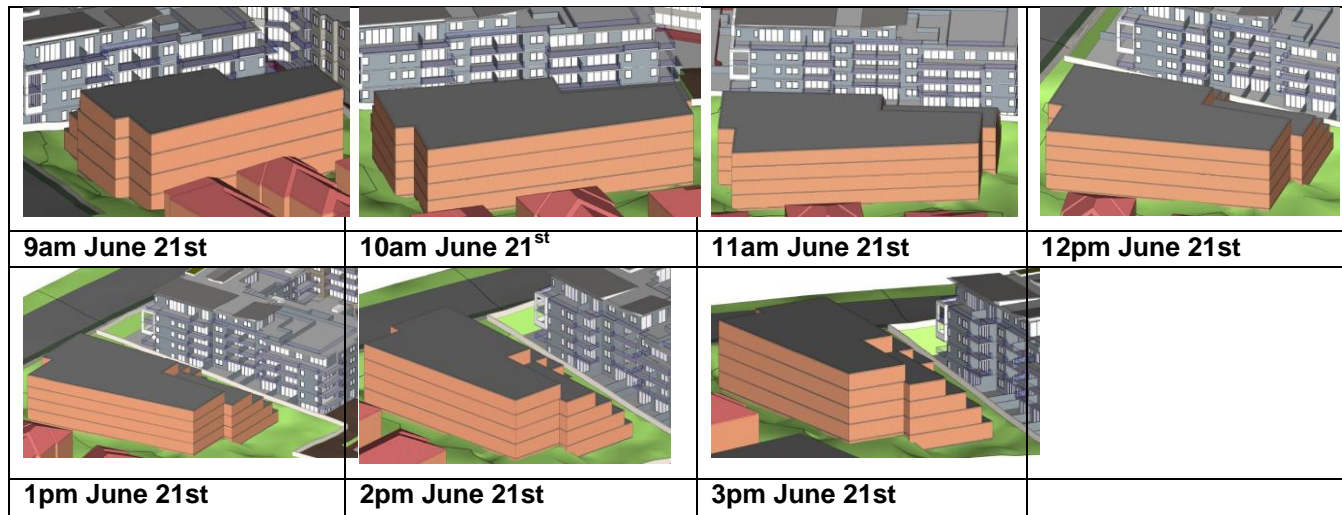
We understand Council will incorporate the Committee’s advice as part of its draft conditions of consent should the JRPP approve application.

We believe this matter has now been resolved.

Appendix 1 – Views from the Sun after consideration of potential future block to the north

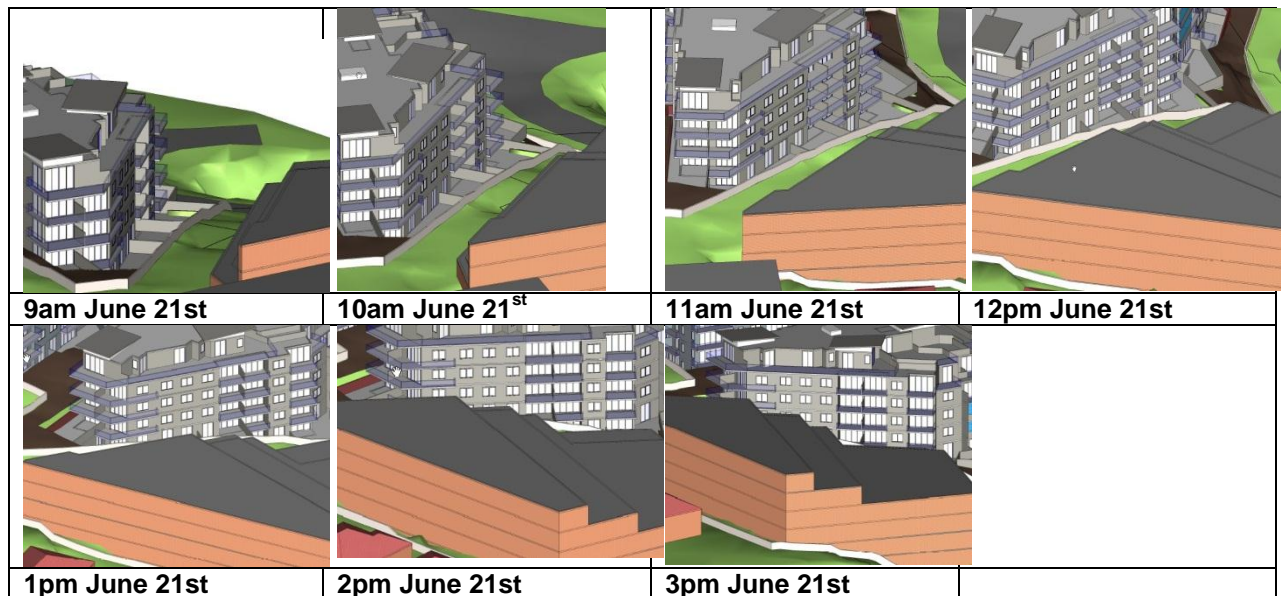
The below diagrams show the potential future developments that may occur to the north and north-west of our site. These potential future developments have been taken into consideration when calculating our solar compliance calculations.

Potential Future Block 1 – north of Block B.



The above concept site is based on the three remaining properties to the north of our proposed Block B with a site area of 2,510m² and achieves a Floor Space Ratio of 1.86:1.

Potential Future Block 2 – north-west of Block A



The above concept site is based on the four remaining properties to the north-west of our proposed Block A with a site area of 4,055m² and achieves a Floor Space Ratio of 1.91:1.

These concepts comply with all the major provisions of the LEP and DCP. The above figures show one of an infinite number of blocks that can be developed to the north and north west of our site without compromising the solar access compliance of our development. Hyecorp takes the view that such building forms are the proper interpretation of the solar access and overshadowing controls applied to the prospective development of those sites.