

17 July 2012

Laura Locke  
Team Leader - Development Assessment  
Hurstville City Council  
PO Box 205  
Hurstville BC NSW 1481

Dear Laura

**RE: RESPONSE TO JOINT REGIONAL PLANNING PANEL REPORT  
SECTION 96(2) APPLICATION DA-2011/21 REV03 FOR MODIFICATIONS TO APPROVED MIXED USE  
DEVELOPMENT (EAST QUARTER, STAGE 2) - JOINT REGIONAL PLANNING PANEL REFERENCE NO.  
2012SYE035  
93 FOREST ROAD, HURSTVILLE (LOT 2, DP 270611)**

We are writing with regards to the abovementioned site and the Section 96(2) Modification Application lodged with Hurstville City Council (Council) on 5 April 2012. This letter serves to respond to your assessment report to be considered by the Sydney East Joint Regional Planning Panel (JRPP) at its meeting on 18 July 2012 and the further negotiations with Council Officers (yourself and Tina Christy, Development Assessment Manager) during the meeting held at Hurstville City Council Offices on 16 July 2012.

Please find enclosed with this letter the following:

- Annexure 1 - Revised Project Statistics Schedule prepared by Kann Finch.
- Annexure 2 - Letter dated 13 July 2012 prepared by Colin Biggers & Paisley (CBP).
- Annexure 3 - Approved & Proposed Mixed Use Developments Map prepared by Milestone (AUST) Pty Ltd.

## **1. Revised Proposal**

Further to our meeting yesterday, you indicated that you would be able to support an amended proposal if it addressed the submission from the Stage 1 Building D Level 12 resident concerning view loss, and that you would make a recommendation to the JRPP Panel at the 10:00am briefing to that effect. As we had discussed, following review of your assessment report, our designers had already been instructed to explore our options.

Accordingly, we would like to offer an amended proposal which could be conditioned in a determination, to delete 2 x typical residential floors from Building B. By doing so, the height of Building B would be reduced by 6m, and thereby maintaining the city skyline views of Stage 1 Building D Level 12. (Please refer Section 3 for detailed analysis).

This reduction in height, would result in: -

- a reduction of 18 apartments from the scheme originally proposed,
- a reduction of 0.05:1 from the scheme originally proposed,
- a reduction of 1,458m<sup>2</sup> from the scheme originally proposed.

## 2. Proposed Built Form (Height & Floor Space Ratio)

With regard to the legislative and approval framework applicable to this application, the proposed height and FSR is able to be considered on its merits as follows:

- A higher density can easily be accommodated on a large island site (28,447m<sup>2</sup>) which is unconstrained and where minimal environmental impacts can be appropriately managed. The proposal results in minimal environmental impacts in relation to traffic generation, solar access and amenity impacts to the public plaza and privacy impacts for both the site itself and surrounding properties.
- The proposed modifications to the approved building heights have been coordinated to respect the built form, and bulk and scale of the buildings within Stage 1 and 3 of the overarching East Quarter approval.
- The proposal meets the objectives of the B4 Mixed Use Zone and Clauses 4.3 and 4.4 of the draft LEP 2011 in relation to maximum building height and FSR.
- The proposed increased density on the site through additional residential units is consistent with NSW Government policy to deliver new housing in existing centres close to public transport and local services.
- In terms of development comparative density, we highlight that a submission was lodged in February 2010 in response to the Draft LEP2011 outlining justification for an FSR of 3.5:1 across the site. Notwithstanding our current approval at an FSR of 2.63:1 across the site, the Draft DCP No. 2 currently on exhibition continues outlining an FSR of only 2.5:1 across the site.

We have also compiled an analysis of surrounding "Approved and Proposed Mixed Use Developments" (refer Annexure 1 attached), which demonstrates that despite being an island site with excellent access, East Quarter appears to be under zoned in comparison to other sites with FSR ranging from 4.0:1 to 6.78:1. Specifically we highlight the Planning Assessment Committee's recent approval of 21-35 Treacy St which was approved at 6.78:1 and 105 Forest Road which was jointly approved by Council and the L&E Court at 4.18:1.

- In relation to building heights, the proposed heights are consistent with heights achieved at the western gateway of Hurstville Centre. A taller marker building is warranted at the axis on the Forest Road alignment. Views into the site on approach from Forest Road is an important function of the required heights as well as being required to take advantage of views and opportunities for increased density for a large infill site along the railway line. The proposed heights of Building A, B and E present an articulated form of an appropriate scale when viewed from the public urban square on the site, the CBD and from northern elevations from Forest Road.
- Provision of an overall high quality architectural design which demonstrates design excellence and provides significant community assets including the public urban square, open space and design improvement to the subject site and adjoining public footways. Further the proposed development will incorporate the adjoining Kempt Field resource into the urban structure of Hurstville (Stage 3).
- The modified development will provide a high quality urban form for all buildings whilst maintaining satisfactory sky exposure and daylight to public areas including the public plaza as well as existing buildings.

As identified in the SEE report the key intention of the proposed built form is to respect the bulk and scale of buildings in Stage 1 and 3 and provide an appropriate transition in heights across the site.

## 3. View Impact & Reduction of Building Height

As discussed at our meeting on 16 July 2012, the height of Building B is proposed to be reduced by the removal of two typical residential floors resulting in an 11 storey building with a maximum building height of RL 96.40 This proposed revision reinstates the height of Building B previously approved by the JRPP in 2011 for the Stage 2 DA (DA-2011/21).

The RLs of Building D and Building B as approved by the JRPP in 2011 and the reduced height of Building B via deletion of two floors are summarised by **Table 1** below.

**Table 1: Building Heights – Building B and D of East Quarter Site**

<b>Building Level</b>	<b>STAGE 1 – BUILDING D “AS-BUILT” (Floor / Parapet Level)</b>	<b>STAGE 2 – BUILDING B DA-2011/21 JRPP Approved” (Floor / Parapet Level)</b>	<b>STAGE 2 – BUILDING B “DA-2011/21 s.96 (Rev03) – Deletion of 2 floors” (Floor / Parapet Level)</b>
Level 12	RL 96.90 / RL103.90	N/A	N/A
Level 11	RL 93.75	RL 92.70 / RL96.40	RL 92.70 / RL96.40
Level 10	RL 90.60	RL 89.70	RL 89.70

Table 1 above confirms the floor level of the units on Level 12 of Building D will be 0.5m above the parapet of Building B. On this basis, the height reduction of Building B will resolve the view impact issue raised in the submission received by Council during the public notification period from the owner of a unit on Level 12 of Building D (Stage 1) of the East Quarter site.

The proposed deletion of two floors from Building B resolves view impact of the affected unit and therefore view impact from Level 12 is not a matter for refusal of the Section 96(2) application.

Table 1 also confirms that the floor level of the units on Level 11 of Building D (at RL93.75) is 2.65m lower than the current approved parapet height of RL96.40; and therefore view impact from Level 11 is also not a matter for refusal of the Section 96(2) application.

#### **4. Commercial Floor Space**

The modified proposal includes a total of 1,027.3m<sup>2</sup> commercial office floor area (a reduction of 697.5m<sup>2</sup> from the approved DA-2011/21). The proposed commercial floor area and mix of uses within the proposed development reflect the current market demand and is consistent with the strategic planning framework. There is no requirement under the draft LEP 2011 to provide a certain percentage of commercial floor space in a mixed use development. The report prepared by Urbis dated 23 March 2011 and submitted with the original DA (DA-2011/21) provides support for the approved 1,500m<sup>2</sup> of commercial office space under the Stage 2 DA (DA-2011/21). However the Urbis report clearly states commercial office space in the East Quarter site will still face the following difficulties:

- *“If jobs continued to grow on the same trajectory to that which is forecasted by TDC for the period 2006 to 2036, it could take till 2041 for all of the existing vacant office space in Hurstville to be fully absorbed.*
- *The Hurstville office market has experienced a significant increase in vacancy and decline in rents since 2008, affecting the viability of new office development.*
- *Due to the location of East Quarter on the CBD fringe, any new commercial space will be inherently faced with locational disadvantages that would reduce its appeal in sales and leasing.*
- *The introduction of 1,500sq.m. of commercial space will face the locational and supply/demand difficulties outlined in this assessment.”*

With respect to the Voluntary Planning Agreement, we clarify that the dedication of 527m<sup>2</sup> commercial floor space for community uses was not agreed. The total 1,027.3m<sup>2</sup> of commercial office floor space proposed as part of the Section 96(2) will be available for lease or purchase to the open market. Therefore this matter is not a relevant consideration of the Section 96(2) application.

In light of the conclusions in Urbis’ report, the commitments included in the registered VPA and the inherent difficulties faced by leasing commercial office space in Hurstville Centre, we consider the reduction of commercial office space is an acceptable planning outcome for the site.

#### **5. Disabled Access/Premises Standards**

Refer to the enclosed letter prepared by CBP Lawyers dated 13 July 2012. This advice concludes that BCA 2010 is the applicable version for the project and the Premises Standards do not apply. This advice also highlights, that whilst the new Premises Standard to not apply, we are still compliant with BCA2010 and the Disability Access provisions reference therein.

## 6. Balconies

Milestone supports your assessment that the site specific DCP No.2 development controls requiring balconies to be located at the rear of the site, to have "French balcony" design to Forest Road and permitted to extend 450mm beyond the building envelope are not applicable given the proposed balcony design of the development has been accepted by Council and the JRPP as part of the previous DA approval for the site.

The balconies proposed as part of the current Section 96(2) application are the same dimensions as those approved by the JRPP in the original development application (DA-2011/21). We consider the balconies as proposed provide sufficient open space for passive recreation for the future occupants and it is unreasonable that the proposed balconies should be required to be amended given the proposed balcony layout is identical to the balconies approved previously by Council and the JRPP.

## CONCLUSION

In terms of the issues raised in Council's Assessment Report, this submission in conjunction with the SEE report that accompanied the Section 96(2) application dated 4 April 2012 will have minimal adverse environmental effects. In light of the benefits of the proposed development and the absence of any adverse environmental impacts including view loss, we have no hesitation in recommending that the modified development can be approved.

Please do not hesitate to contact the undersigned should you require clarification of this matter.

Yours sincerely

**Milestone (AUST) Pty Limited**



**Lisa Bella Esposito**

Director

*Encl.*

Cc      *JRPP*  
         *Deputy Mayor Con Hindi*  
         *Councillor Phillip Sansom*

## **ANNEXURE 1**

**REVISED PROJECT STATISTICS SCHEDULE PREPARED BY KANN FINCH**

East Quarter - Project Statistics Schedule - DA-2011-21-S96 (Rev 03) March 2012 (Mod July 2012 Bldg B as approved)

UPDATED 17 July 2012																																						
STAGE 2	Building		1B		2B		3B		Building apartment total		Solar Access+ 3hr winter		South Facing		xflow		Kitchen natural vent		ground floor entry		adaptable apartments		Retail Gross letable Area (for carparking calculations)		Commercial Gross Floor Area		FSA / GFA per Geostrata verification		Visitor Parking Required Proposed @1/4 apartments		Resident Parking Required @ 1/1Bed, 1/2Bed, 2/3Bed		Retail Parking Required @ 1 per 27.5m2		Commercial Parking Required @ 1 per 55.0m2		TOTAL PARKING REQUIRED	
	A	50		76		2		128	122	0	66	22	0	12	622.2 m2		500.0 m2		13,055.4 m2		32	130	23	9	194													
	B	42		39		4		85	70	2	39	16	0	11	774.7 m2				8,381.5 m2		21	89	28	0	138													
	E	16		50		17		83	63	0	67	34	0	16	505.0 m2		527.3 m2		9,309.2 m2		21	100	18	10	149													
	108		165		23		296		255		2		172		72		0		39		1,901.9 m2		1,027.3 m2		30,746.1 m2		74		319		70		19		482			
	Mix	36.49%		55.74%		7.77%																																
	APARTMENT TOTAL					296																																

AS APPROVED 2003-DA-1046																			Child Care Gross letable Area (for carparking calculations)			Commercial Gross Floor Area			FSA / GFA				@ 1/10				@ 1/1Bed, 1/2Bed, 2/3Bed				@ 1 per 27.5m2				@ 1 per 55.0m2				TOTAL PARKING REQUIRED	
STAGE 3	Building	1B		2B		3B		Building apartment total		Solar Access+ 3hr winter		South Facing		xflow		Kitchen natural vent		ground floor entry		adaptable apartments																										
	F	53		83		26		162	118	35	90	37	7	16	649.0 m2			0.0 m2			18,803.0 m2			16	188	24	0	228																		
	X	32		67		16		115	71	2	82	12	29	9	0.0 m2			131.3 m2			12,461.2 m2			12	131	0	2	143																		
	85		150		42		277		189		37		172		49		36		25		649.0 m2			131.3 m2			31,264.2 m2			28	319	24	3	374												
	Mix	30.69%		54.15%		15.16%																																								
	APARTMENT TOTAL				277																																									

FLOOR SPACE ANALYSIS				
	Site area	FSA	FSR	Notes
Stage 1	6115.3	16747	2.74 :1	As approved
Stage 2	8404.4	30,746.1	3.66 :1	This application only
Stage 3	13927.3	31,264.2	2.24 :1	As approved
Total Site	28447	78757.3	2.77 :1	

Project Statistics Stage 2		Development Stats	RFDC Rules of Thumb
Winter Solar Access		86%	70%
South Facing		1%	10%
X Flow		58%	60%
Kitchen Nat Vent		24%	25%
Ground floor entry		0%	-
Adaptable Apartment		13%	10%

PARKING SCHEDULE	
TOTAL PARKING REQUIRED STAGE 2 & STAGE 3	856
Stage 2 parking - PROPOSED	
Level B4	146
Level B3	163
Level B2	174
Level B1	155
On grade parking (approved)	5
Total Stage 2 parking	643
Spaces reserved for Stage 3 per approved S96 applications	
	161

Stage 3 parking - per 2003 -DA-1046 S96 (Rev 15)	
Level B3	0
Level B2	133
Level B1	139
Total Stage 3 parking	272

## **ANNEXURE 2**

**LETTER DATED 13 JULY 2012 PREPARED BY COLIN BIGGERS & PAISLEY (CBP)**

13 July 2012

Mr Colin Sim  
East Quarter Hurstville Pty Limited  
B1005 "Vantage East Quarter"  
1 Jack Brabham Drive  
HURSTVILLE NSW 2220

By email: colinsim@eastquarter.com.au

Dear Sirs

**East Quarter Hurstville Pty Limited**  
**JRPP No. 2012SYE035**  
**DA No. 11/DA-21 REV03**  
**Section 96(2) modification to Stage 2**

We refer to the above modification application relating to Stage 2 of the East Quarter development, currently before the JRPP, and to the issue of whether the "Premises Standards" should apply, as recommended in the Council officer's report prepared for the Panel.

In summary, we do not entirely understand the reasoning process underpinning the officer's recommendation that the Premises Standard should apply. In our view, the Premises Standards do not apply to the current application. We make the following brief observations regarding the matter:

- The "Standards" or the "Premises Standards" - formally known as the *Disability (Access to Premises — Buildings) Standards 2010* - were introduced by the Commonwealth on 15 March 2010. The Premises Standards, in the form of an access code, were ultimately adopted in BCA 2011. That version of the BCA came into effect on 1 May 2011.
- As you are aware, the applicable version of the BCA for any given development is the version in force as at the date the application for the construction certificate is made (section 98(3) of the EPA Act). The Stage 2 construction certificates for the East Quarter project were applied for prior to 1 May 2011. Therefore, BCA 2010 is the applicable version for the project. On that basis, the Premises Standards do not apply.
- The foregoing is also consistent with the terms of the Premises Standards themselves. For example, section 2.1(1) of the Premises Standards provide that the Premises Standards apply to a "new building" or the new part of a building. For the purposes of the Premises Standards, a development is considered a "new building" if an "application for approval for its construction is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located." It follows, again, that an application for approval of a building that pre-dates 1 May 2011 does not constitute a "new building" for the purposes of the Premises Standards and, consequently, the Premises Standards do not apply to Stage 2 of the East Quarter project.



- Can an application to amend a construction certificate, arising as a consequence of an amended development approval, be made without invoking the provisions of the current version of the BCA and, as a consequence, the Premises Standards? In our view, nothing prevents the beneficiary of a construction certificate from applying to the PCA to modify the construction certificate. The process of modification does not, in our view, constitute an application to apply for a construction certificate under section 98(3) of the EPA Act. Rather, it constitutes an application to modify an existing construction certificate.

The above conclusion does not exclude the obligation to address the important issue of access and accessibility. On the contrary, what it means is that the applicable disability and access standards for the Stage 2 works are those set out in BCA 2010 and related provisions set out in the Hurstville DCPs, as addressed in the applicant's Access and Adaptable Housing Statement of Compliance, prepared by Accessible Building Solutions.

If you have any questions in relation to the foregoing commentary, please do not hesitate to contact us.

Yours faithfully



**Anthony Perkins**

Partner

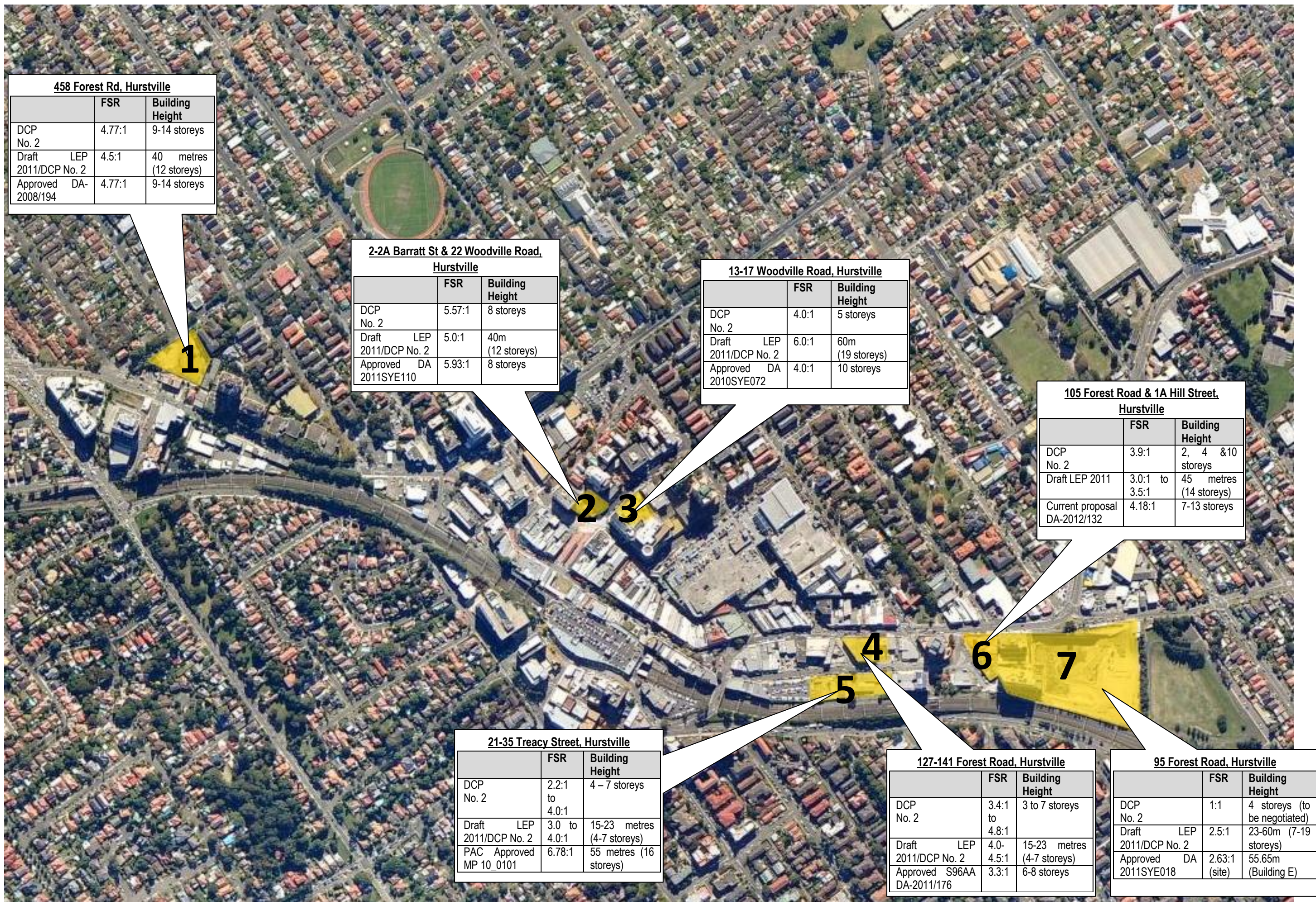
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## **ANNEXURE 3**

**APPROVED & PROPOSED MIXED USE DEVELOPMENTS MAP PREPARED BY MILESTONE  
(AUST) PTY LTD**





458 Forest Rd, Hurstville		
	FSR	Building Height
DCP No. 2	4.77:1	9-14 storeys
Draft LEP 2011/DCP No. 2	4.5:1	40 metres (12 storeys)
Approved DA-2008/194	4.77:1	9-14 storeys

2-2A Barratt St & 22 Woodville Road, Hurstville		
	FSR	Building Height
DCP No. 2	5.57:1	8 storeys
Draft LEP 2011/DCP No. 2	5.0:1	40m (12 storeys)
Approved DA 2011SYE110	5.93:1	8 storeys

13-17 Woodville Road, Hurstville		
	FSR	Building Height
DCP No. 2	4.0:1	5 storeys
Draft LEP 2011/DCP No. 2	6.0:1	60m (19 storeys)
Approved DA 2010SYE072	4.0:1	10 storeys

105 Forest Road & 1A Hill Street, Hurstville		
	FSR	Building Height
DCP No. 2	3.9:1	2, 4 & 10 storeys
Draft LEP 2011	3.0:1 to 3.5:1	45 metres (14 storeys)
Current proposal DA-2012/132	4.18:1	7-13 storeys

21-35 Treacy Street, Hurstville		
	FSR	Building Height
DCP No. 2	2.2:1 to 4.0:1	4 – 7 storeys
Draft LEP 2011/DCP No. 2	3.0 to 4.0:1	15-23 metres (4-7 storeys)
PAC Approved MP 10_0101	6.78:1	55 metres (16 storeys)

127-141 Forest Road, Hurstville		
	FSR	Building Height
DCP No. 2	3.4:1 to 4.8:1	3 to 7 storeys
Draft LEP 2011/DCP No. 2	4.0-4.5:1	15-23 metres (4-7 storeys)
Approved S96AA DA-2011/176	3.3:1	6-8 storeys

95 Forest Road, Hurstville		
	FSR	Building Height
DCP No. 2	1:1	4 storeys (to be negotiated)
Draft LEP 2011/DCP No. 2	2.5:1	23-60m (7-19 storeys)
Approved DA 2011SYE018	2.63:1 (site)	55.65m (Building E)