

JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	2015SYW088
DA Number	1410/2015/JP
Local Government Area	THE HILLS SHIRE COUNCIL
Proposed Development	SHOP TOP HOUSING
Street Address	LOT 101 DP 1170464 - WINSTON HILLS SHOPPING CENTRE, 180-192 CAROLINE CHISHOLM DRIVE, WINSTON HILLS
Applicant/Owner	GLENDINNING MINTO & ASSOCIATES
Number of Submissions	In excess of 500.
Regional Development Criteria (Schedule 4A of the Act)	CIV over \$20 million.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development State Environmental Planning Policy (State and Regional Development) 2011 The Hills Local Environment Plan 2012 List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) <ul style="list-style-type: none"> -Nil List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> DCP 2012 Part B Section 6 – Business DCP 2012 Part C Section 1 – Parking DCP 2012 Part C Section 3 – Landscaping DCP 2012 Part B Section 5 – Residential Flat Buildings List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv) <ul style="list-style-type: none"> -Nil List any coastal zone management plan: s79C(1)(a)(v) <ul style="list-style-type: none"> - Nil List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <ul style="list-style-type: none"> - Environmental Planning and Assessment Act Regulation 2000

List all documents submitted with this report for the panel's consideration	Plans and supporting documentation submitted with the application.
Recommendation	Refusal
Report by	DEVELOPMENT ASSESSMENT CO-ORDINATOR CLARO PATAG

EXECUTIVE SUMMARY

The Development Application is for a 4-storey shop top housing development comprising one level of car parking for residents containing 137 spaces and three levels of residential flat units containing a total of 102 dwellings above Winston Hills Mall shopping centre.

The proposed development does not satisfy the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development in respect of the design quality principles. The proposed design does not respond to nor contribute to overall context of the neighbourhood and streetscape in terms of character, scale, bulk and height. The proposal does not satisfy the Residential Flat Design Code in terms of building height, building depth, building separation, deep soil zone and communal open space.

The subject site is zoned B2 Local Centre under the provisions of The Hills Local Environmental Plan 2012. The proposal is considered to be an overdevelopment of the site as it is beyond the scale envisaged in B2 Local Centre Zone. The proposal is also considered to be inconsistent with Council's Centres Direction 2009. The Centres Direction categorises the site as a "Stand Alone Centre" which has a typology of an internalised retail centre layout and design which serves local residents' weekly shopping needs subject to height and floor space ratio being reflective of the character of the surrounding residential area.

The proposal does not meet the intent of shop top housing as defined in the LEP as the residential component does not sit above the ground floor retail or commercial part of the shopping centre. Shop top housing is defined in LEP 2012 as "*one or more dwellings located above ground floor retail premises or business premises*". The residential floor levels are located directly above the proposed ground floor car parking level which sits on top of the subterranean retail premises occupied by an Aldi Supermarket and other shops within the shopping centre. The development does not provide for active frontages with retail uses which is typically characteristic and required in shop top housing development at street level.

The proposal exceeds the LEP maximum building height of 12 metres allowed for the site. The justification provided by the applicant under clause 4.6 of LEP 2012 is not supported as it is considered that strict compliance with the building height standard is considered reasonable and necessary having regard to the objectives and land uses for the adjoining R2 Low Density Residential zone.

The development is predominantly a residential flat building which does not integrate with the existing shopping centre or the one and two storey residences that surround the site. The proposal is incompatible with the existing character of the area. The immediate vicinity (which is within the Parramatta Local Government Area) is predominantly characterised by one and two storey residential dwellings to the south, east and west. The area to the north of the site which is separated by the M2 Motorway (which is within The Hills Shire Local Government Area) is zoned as R2 Low Density Residential.

The proposed development does not comply with The Hills Development Control Plan Part B Section 6 – Business in terms of setbacks, building height or car parking provisions.

The proposal does not comply with the required 6 metre front setback being opposite R2 Low Density Residential zone. Insufficient landscaping is proposed to be provided as a result of the reduced setbacks.

The proposal exceeds the maximum 3 storeys allowed in the B2 Local Centre zone. The protrusion outside the building height plane is not supported as it contributes to the bulk of the building and exacerbates the non-compliance with the LEP height limit and the maximum number of storeys allowed in the B2 zone.

The proposal does not comply with the required minimum car parking provision of 192 parking spaces. Only 137 parking spaces for the use of future residents are proposed. In addition, visitor parking are proposed to be accommodated within the shopping centre's basement car parking area which is currently time restricted and secured by boom gates. The visitor car parking arrangement is considered impractical.

The proposal does not satisfy The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings in terms of unit mix and size. One bedroom units are more than 25% of the dwelling yield and three bedroom units are less than 10%. The proposal also does not comply with the apartment unit size in the Type 2 Size Category for 2 and 3 bedroom units as there are 15 x 2 bedroom units and 2 x 3 bedroom units more than the maximum 30% allowed in the Type 2 size category.

The proposal was notified to surrounding properties and advertised in the local newspaper and a total of four hundred seventy two (472) submissions were received which included three petitions. A resident action group was formed in response to the development and they conducted a survey amongst the residents in the locality. Around 470 survey forms were received by Council raising similar issues and concerns outlined in the individual submissions and petitions. The issues raised in the submissions include traffic and parking, insufficient infrastructure and services, non-compliance with building height, floor space ratio, inappropriate zoning, inaccurate photomontages, character and construction related issues.

A Class 1 appeal has been lodged in the NSW Land and Environment Court against the deemed refusal of the application.

The application is recommended for refusal.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	Starby Pty Ltd	1.	<u>LEP 2012</u> – Permissible with consent.
Zoning:	B2 Local Centre	2.	<u>The Hills DCP 2012 Part B Section 6 - Business</u> – Variation, see Report.
Area:	4.29 hectares	3.	<u>Section 79C (EP&A Act)</u> – Unsatisfactory, see Report.
Existing Development:	Winston Hills Mall Shopping Centre	4.	<u>Section 94 Contribution</u> – \$207,143.07

SUBMISSIONS

REASONS FOR REFERRAL TO JRPP

1. Exhibition:	Yes, 14 days.	1.	Capital Investment Value (CIV) exceeds \$20 million.
2. Notice Adj Owners:	Yes, 14 days.		
3. Number Advised:	Seventy three (73)		
4. Submissions Received:	395 submissions received during the exhibition period and a further 77		

	<p>submissions after the exhibition period, a total of 472. The submissions included three petitions. A separate survey was conducted by a resident action group and approximately 470 survey forms were completed and forwarded to Council.</p>		
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HISTORY

20/09/1995

Development Application for alterations and additions to the Winston Hills Shopping Centre approved (DA 95/118).

28/08/2007

DA No. 1432/2007/HA for Car Park Boom Gates refused by Council.

22/02/2008

Class 1 Appeal (Proceedings No: 10844 of 2007) against Council's refusal of DA No. 1432/2007/HA upheld by the Land and Environment Court. The Court's consent required an overall parking provision of 1,116 parking spaces on site.

07/04/2009

Development Consent No. 929/2009/HA issued for alterations and additions to Coles and Liquorland within the existing shopping centre. The Development Consent required an overall parking provision of 1,130 parking spaces on site.

13/10/2009

Development Consent No. 1029/2009/HA granted by Council's Development Assessment Unit (DAU) for alterations and additions to Winston Hills Mall for a new supermarket, mini-major and specialty shops with associated basement car parking. The Development Consent required an overall parking provision of 1,265 parking spaces.

Council's DAU granted Development Consent to DA 1030/2009/HA for the occupation of the new additional retail floor area created under DA 1029/2009/HA for an Aldi Supermarket.

10/08/2010

DA 1029/2009/HA/B for modification of the existing development consent for extension of the shopping centre approved by Council's Development Assessment Unit. The parking condition was amended as a result of the modification which required an overall parking provision of 1,273 parking spaces, which contained a surplus of 22 spaces.

The modification included the following works:

- Replacement of the existing approved metal deck roof with a reinforced concrete slab.
- Provision of an amended entry/exit off Langdon Road.

- Removal of additional trees (Trees No. 2 & 37)
- Minor modification of proposed basement levels.

17/08/2010

DA 1029/2009/HA/A for modification of the existing development consent for extension of the shopping centre approved by Council's Development Assessment Unit. The parking condition was amended as a result of the modification which required an overall parking provision of 1,271 parking spaces, which contained a surplus of 20 spaces.

The modification included the following works:

- Relocation of the proposed electricity transformer kiosk
- Relocation of the proposed electricity switch room
- Removal of additional trees in order to accommodate the relocated electricity transformer kiosk.
- As a consequence of the proposed revised electricity switch room location, two (2) existing car parking spaces were lost.

12/05/2015

Subject Development Application (**1410/2015/JP**) lodged.

**25/05/2015
10/06/2015**

to Subject Development Application notified and exhibited for public comments.

05/06/2015

Letter sent to the applicant requesting additional information in relation to security access, waste management, non-compliance with unit mix and size as prescribed in Council's Apartment Buildings DCP and clarification on proposed building height variation.

10/06/2015

Email sent to the applicant attaching a copy of letter sent on 05/06/2015 and advising that that the request to vary the 12m building height limit in LEP 2012 and the maximum 3 storey limit within the B2 Local Centre zone in DCP 2012 Part B Section 6 - Business is unlikely to be supported. The applicant was requested to reduce the residential levels to 2 storeys. Also reiterated the advice provided at the prelodgement meeting that the proposal is beyond the scale envisaged in B2 Local Centre zone and suggested that the proposal be reduced to reflect the B2 zone having regard to the predominantly low density residential uses situated within the Parramatta Local Government Area.

15/06/2015

Letter received from the applicant in response to Council's letter dated 05/06/2015 accompanied by amended plans. The amended plans include elevation drawings showing the extent of the building height variation, internal reconfiguration of 5 residential units to demonstrate that study rooms are no longer capable of being converted into bedrooms and waste collection arrangement.

E-mail sent to the applicant acknowledging the receipt of additional information and reiterating previous advice that the request to vary the 12 metre height limit in LEP 2012 and maximum 3 storey limit in the Business DCP is unlikely to be supported. The applicant was advised that more than 450 submissions have been received during the notification period.

18/06/2015

E-mail sent to the applicant advising that the response to Council's letter dated 05/06/2015 requesting to review the

proposed unit mix and size was unsatisfactory as the calculations provided were incorrect.

26/06/2015

E-mail sent to the applicant in response to the submitted additional information relating to security access. The applicant was advised that reliance of visitor parking within the shopping centre's existing car park is unlikely to be supported as it would result to a shortfall in the overall parking provision for the shopping centre. Concern was also raised with the applicant as to how the visitors will be accommodated and allowed 24-hour access to the car park without being charged due to time restrictions.

The applicant was also requested to submit a complete copy of the acoustic report as there were missing pages in the report submitted with the application.

The applicant was advised that given the number of submissions received, a Conciliation Conference will be arranged.

29/06/2015

Class 1 application lodged with the Land and Environment Court.

08/07/2015

Applicant requested to participate in the Conciliation Conference process.

09/07/2015

Email received from the applicant advising they will not participate in a Conciliation Conference given that the matter is now subject to an appeal before the Land and Environment Court.

PROPOSAL

The proposal is for a 4-storey shop top housing development comprising one level of car parking for residents containing 137 parking spaces and three levels of residential accommodation containing a total of 102 units being 53 x 1 bedroom units, 45 x 2 bedroom units and 4 x 3 bedroom units above Winston Hills Mall shopping centre. Entry to the residential car park is proposed off Langdon Road and egress from the development is via Caroline Chisholm Drive. It is proposed to provide visitor parking within the shopping centre's retail car parking area.

The site is zoned B2 Local Centre. The proposal is defined under LEP 2012 as 'shop top housing' which is a permissible use in the zone.

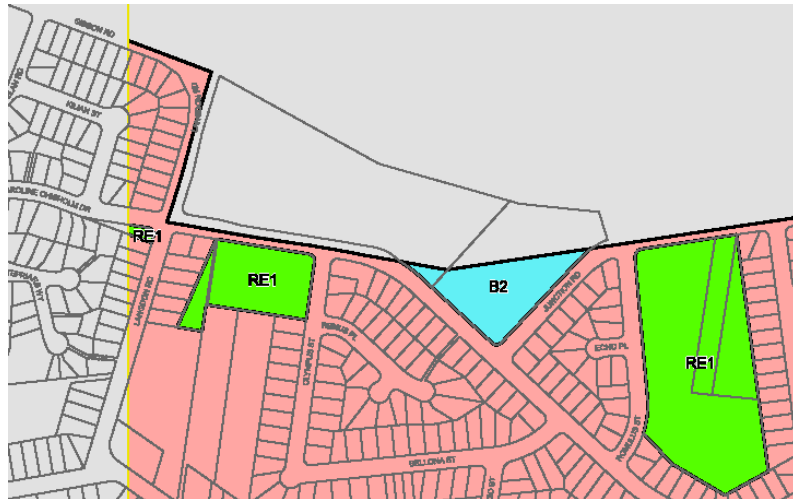
The site is currently occupied by Winston Hills Mall shopping centre located at the corner of Langdon Road and Caroline Chisholm Drive and bounded by M2 to the north. The site is at the edge of The Hills and Parramatta LGA boundaries (refer Attachment 3 – Zoning Map).

The Development Application is accompanied by a written justification to vary the building height standard in The Hills Local Environmental Plan 2012.

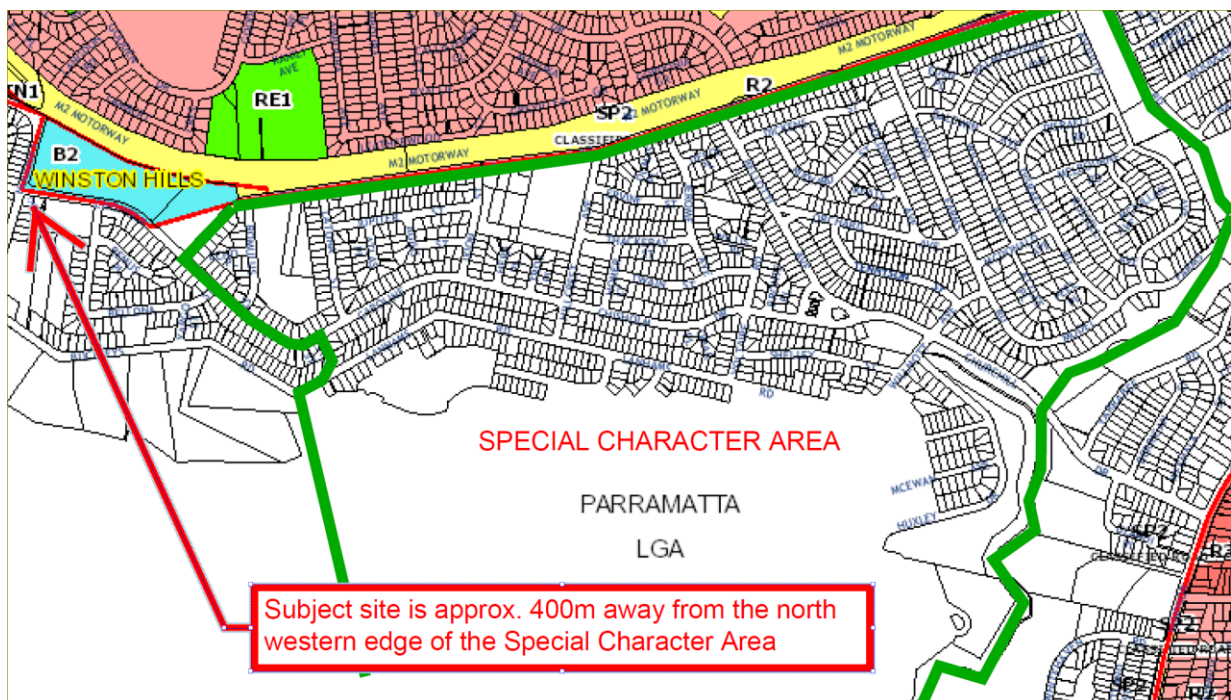
ISSUES FOR CONSIDERATION

1. Local Context

The subject site is situated within the suburb of Winston Hills on the border of The Hills Shire and Parramatta Local Government Areas. The site is zoned B2 Local Centre under the provisions of The Hills Local Environmental Plan 2012. Immediately to the south and west of the site (on the opposite side of Caroline Chisholm Drive and Langdon Road respectively) is an area situated within the Parramatta Local Government Area which is predominantly zoned R2 Low Density Residential under the provisions of Parramatta Local Environmental Plan 2011 (refer to zoning map below).



Approximately 400m to the south east of the development site is the north western edge of an area within the suburb of Winston Hills identified as a Special Character Area within the Parramatta Development Control Plan 2011. Refer to map below with the Special Character Area boundary highlighted in green.



The Parramatta DCP 2011 describes Special Character Areas as well defined precincts that have been identified as having a special character and level of residential amenity that

should be preserved. These areas were generally built over a relatively short period of time and have retained a consistency of design, materials and scale. Special Character Areas can be attributed to built form and also to subdivision pattern. Below is an extract of the statement of significance of this Special Character Area in Winston Hills as described on page 175 of the Parramatta DCP 2011.

"Statement of Significance

This large development was the most important subdivision of its time. The land was acquired by Hooker-Rex and developed as the Model Farm Estate; a complete neighbourhood development. It was one of the last releases of land zoned as Green Belt, providing one of the last greenfields development areas. A number of the original farmhouses remain, incorporated in the subdivision plan. It was opened in 1965 as Winston Hills. The subdivision plan is characterised by curvilinear street designs, gully parklands, wider and less deep allotments than traditional subdivision patterns. House construction is 'wide-fronted' with low, horizontal lines. This appearance is created by a number factors including the siting of houses across the allotments, garages integrated with the house, simple low-pitched roofs with ridges parallel to the street, overhanging eaves or verandahs, and window and door detailing. Most homes are of brick construction with tiled roofs. There is a mixture of single, split level and two-storey homes, and wall finishes include face brick, painted brick and cement rendering. There are additions on some houses, in both brick and lightweight construction."

There are specific design controls within the Special Character Area that apply to additions to existing dwelling houses and new dwelling houses (see extract of these controls below).

"Design Controls

Additions to existing dwelling houses

C.1 Additions must be designed to protect the amenity of neighbours and generally compliment the architectural character of the original dwelling house.

C.2 Second storey additions to existing single storey dwelling houses should be positioned to the rear of the existing house where a consistent single storey scale is a predominant streetscape element.

New dwelling houses

C.3 New dwelling houses must be compatible with existing houses in the streetscape so that they do not dominate or stand out in marked contrast to existing dwellings.

C.4 Setbacks must be consistent with neighbouring buildings.

C.5 Dwelling houses should be 'wide-fronted' across the site. Overly complex roof forms should be avoided.

Development not consistent with the existing character of the area:

C.6 additions to the front of houses

C.7 front fences

C.8 loss of open character in front yards

C.9 second storey additions that are not designed in a manner that minimises the visual impact on the predominant streetscape scale"

Comment:

The primary objective of the B2 Local Centre Zone is to provide a range of uses that serve the needs of people who live and work in and visit the local area.

The proposal is considered to be an overdevelopment of the site as it is beyond the scale envisaged in B2 Local Centre Zone. The proposal is also inconsistent with Council's Centres Direction 2009. The Centres Direction categorises the site as a Stand Alone Centre which has a typology of an internalised retail centre layout and design which serves local residents' weekly shopping needs subject to height and floor space ratio being reflective of the character of the surrounding residential area.

A shop top housing development of this size and scale does not integrate with the surrounding residential development and is not considered a desirable and appropriate development of the site. The proposal is considered to be incompatible with the planning objectives and land uses for the adjoining predominantly R2 Low Density Residential zone within the Parramatta Local Government Area.

In respect to the Special Character Area in Winston Hills which is situated south east of the proposed development, the development controls do not apply, instead the controls provide an insight into the predominant character of the locality.

2. Compliance with The Hills Local Environment Plan 2012

The objectives of the B2 Local Centre zone in LEP 2012 are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

The following LEP statutory provisions are relevant to this application:

Shop Top Housing Definition

LEP 2012 defines Shop Top Housing as follows:

"One or more dwellings located above ground floor retail premises or business premises"

Comment:

The proposal does not meet the definition of shop top housing. The residential component of the proposal does not sit directly above the retail component. As stated above, a shop top housing development is defined in LEP 2012 as *"one or more dwellings located above ground floor retail premises or business premises"*. The three residential floor levels are directly located above the ground floor car parking area which sits on top of the subterranean retail premises currently occupied by an Aldi Supermarket and other shops within the shopping centre (refer to section diagram below). The development does not provide for active ground level street frontages which are typical characteristics of shop top housing development.



In *Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121*, Canterbury City Council successfully argued that the part of the development proposed that contained 'residential accommodation' on the ground floor level of the building could not be characterised as 'shop top housing'.

The subject proposal does not contain residential units on the ground floor, instead a car parking facility for residents, which is ancillary to the development. Being ancillary to the residential accommodation it is considered that the proposal should not be characterised as 'shop top housing'. As noted above the development does not provide for active ground level street frontages which are typical characteristics of shop top housing development.

In *Arco Iris Trading Pty Ltd v North Sydney Council [2015] NSWLEC 1113*, the proposed dwelling was entirely above the level of car parking which constitutes part of the commercial premises, and by virtue of its non-exclusion from the definition of such premises, it satisfied the test of shop top housing set by Sheahan J in *Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121* notwithstanding the fact that it was not entirely above the immediately adjacent retail premises.

In contrast, the subject proposal has three residential levels above the ground floor level car parking area for residents which sits on top of the subterranean retail premises. In this regard, it is considered that the proposal fails the test of shop top housing.

Building Height

Clause 4.3 (2) of LEP 2012 requires that the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map which is restricted to 12 metres. The LEP sets the following objectives with regards to height of buildings:

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape.*
- (b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The application seeks a variation to this building height standard by 1.689 metres or 14%.

Clause 4.6 (3) of the LEP states the following:

"Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard."*

The Development Application is accompanied by a written request from the applicant that seeks to justify the contravention of the development standard as follows:

"It is my opinion that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *The proposal satisfies the objectives of Clause 4.3 of the LEP in that:*
 - *The subject site comprises a large isolated site which is separated from adjoining lands by perimeter roads comprising of Langdon Road to the west, Caroline Chisholm Drive to the south and the M2 Motorway to the north. The site is adjoined by the Winston Hills Tavern to the east. The zoning of the site and the applicable height controls are different to all of the adjoining/surrounding lands. It is therefore my opinion that it was always intended that the site would present differently both in terms of use and scale to those surrounding lands.*
 - *In terms of potential amenity impacts arising from the proposal it is noted that:*
 - *The proposal will not result in any unreasonable overshadowing of adjoining properties.*
 - *The proposal as a result of the separation distances (in excess of 22m) provided to the adjoining residential properties will not in my opinion result in any unreasonable loss of privacy (both visual and acoustic).*
 - *Whilst the proposal will result in a change in the current outlook of a number of the nearby residential properties it is submitted that the proposal will not result in the loss of any iconic views and the proposal provides for an architecturally designed built form which is generally consistent with the intent of the applicable planning controls.*
- *The provision fails to recognise the unique site circumstances of this property which include:*
 - *The large isolated nature of the site and the confinement of the built form to the south western corner resulting in an outcome whereby the proposal does not interface with the remaining site boundaries.*
 - *The sloping nature of the adjoining footpaths and road reserves which fall away in opposing directions from the intersection of Langdon Road and Caroline Chisholm Drive and the inter-relationship of these levels with the site and its existing development.*
 - *In this regard the levels of the subject site have been significantly altered over time resulting in the current circumstance whereby the portion of the site the subject of this application contains a subterranean carpark and shopping centre the roof of which presents as a concrete slab at approximately footpath level.*
 - *It is noted that this slab which forms the ground level upon which the proposal is to be built is located both below and above the existing footpath levels as a result of the existing slope of the adjoining road reserve.*
- *The proposal has been designed to respond to the underlying objective of the provision by stepping back the upper level of the southern elevation of Block B so as to provide for general compliance where the building interfaces with the public domain.*

Further to the above it is considered that:

- *There are no unreasonable impacts resulting from the non-compliance particularly in relation to overshadowing, a loss of privacy and visual impact.*

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case."

Comment:

The exceedance to the maximum allowable building height limit in LEP 2012 by 14% is exacerbated by the fact that the proposal also departs from the maximum number of storeys allowed in B2 Local Centre zone as prescribed in The Hills DCP 2012 Part B Section 6 – Business. The overall height of the development will detrimentally impact upon the streetscape and surrounding development as the houses on the southern side of Caroline Chisholm Drive and on the western side of Langdon Road are predominantly single and two storey, hence the proposal will be imposing in terms of bulk and scale when viewed from these properties. It should be noted that the area to the north of the site which is separated by the M2 Motorway is zoned R2 Low Density Residential.

The provisions under Clause 5.3 in LEP 2012 are relevant to this development being adjacent to a residential zone which is under the jurisdiction of Parramatta City Council. As discussed in Section 1 above, the area adjoining and surrounding the site is predominantly zoned R2 Low Density Residential under the provisions of Parramatta Local Environmental Plan 2011. The objective of Clause 5.3 in LEP 2012 is to provide flexibility where the investigation of the a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 20 metres. The area zoned R2 Low Density Residential zone immediately to the south and west of the site is within 20 metres.

The proposal is considered to be an overdevelopment of the site as it is beyond the scale envisaged in B2 Local Centre Zone. The proposal is also not consistent with Council's Centres Direction 2009. The Centres Direction categorises the site as a Stand Alone Centre which has a typology of an internalised retail centre layout and design which serves local residents' weekly shopping needs subject to height and floor space ratio being reflective of the character of the surrounding residential area.

A four storey development on top of the shopping centre does not integrate with the surrounding residential development or the overall streetscape and the proposed apartments are not of a size and composition which are compatible with the character of the area. A development of this size and scale is not considered a desirable and appropriate development of the site and is considered to be incompatible with the planning objectives and land uses for the adjoining R2 Low Density Residential zone.

A three storey development would be more appropriate for this location and would complement and integrate with adjoining and surrounding development. Reducing the proposal to three storeys would result in full compliance with the LEP building height limit and better integration with the surrounding development and the overall streetscape.

Having regard to the objectives of the building height standard and the provisions under clause 5.3 of LEP 2012, it is considered that strict compliance with the LEP building height standard is considered reasonable and necessary given the circumstances of the case and the objectives and land uses for the adjoining R2 Low Density Residential zone as discussed above.

Floor Space Ratio

Clause 4.4(2) of the LEP prescribes a maximum floor space ratio (FSR) of 1:1 for the subject site. The subject site has a total land area of 42,907m². The existing floor area of the shopping centre is 28,721.4m² or an equivalent FSR of 0.67:1. The proposed development will create an additional floor area of 10,363.2m², resulting in an overall floor area of 39,084.6m² or FSR of 0.91:1.

Comment:

Despite the proposal's compliance with the maximum allowable FSR for the site, it is not the type of development envisaged in Council's Centres Direction that will promote the site as a Stand Alone Centre. It is considered that the additional 0.24:1 to the existing FSR and concentration of this additional floor area on this corner section of the site is not a good urban design outcome as the resultant bulk and scale is not reflective of the character of the surrounding residential area. To allow a residential development of this size will significantly change the image of the shopping centre and consequently lose the opportunity to be developed to its maximum potential as a local employment generator contrary to the objectives of the B2 Local Centre zone.

3. Compliance with the Hills Development Control Plan Part B Section 6 – Business

The proposal has been assessed against the provisions of DCP 2012 and the following non-compliance has been identified:

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
2.5 Setbacks	(b) For buildings greater than two storeys or 8 metres in height, the remaining storeys are to be set back within a building height plane of 45° starting from a height of 8 metres.	The parapet of the building protrudes outside the prescribed building height plane.	No. Reducing the development to a compliant 3 storey building will eliminate this building height plane/envelope variation. The non-compliance with the required setback and integration with the existing streetscape would be required to be addressed.
	(c) Where any proposed development is opposite or adjacent to Residential, Special Purpose or Recreation zones, the building shall be set back a minimum of 6 metres, or as specified on the precinct plan maps contained in Appendix A to this section. This area is to be used exclusively for landscaping and screening purposes or for the protection of endangered ecological	Varies from 3.2 metres up to 6 metres	No, however the extent of landscaping and screen planting is considered satisfactory as it would soften the impact of the development and enhance the streetscape.

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	communities present on a site.		
2.6 Building Height	(b) The maximum height of buildings within the B2 Local Centre Zone shall be 3 storeys.	The proposed development is 4 storeys.	No. The bulk and scale of the proposed building is not compatible with the surrounding development or the overall streetscape.
2.16 Car Parking	<p>Per DCP 2012 Part C Section 1 - Parking, the following rates apply:</p> <p>1 car parking space per 1 bedroom unit;</p> <p>2 car parking spaces per 2 bedroom unit;</p> <p>2 visitor car parking spaces per 5 units; and</p> <p>1 car parking space per 18.5m² of gross floor area for shops.</p> <p>Total number of parking spaces required: 192 parking spaces</p>	<p>137 resident parking spaces are proposed.</p> <p>Visitor parking spaces to be accommodated within the shopping centre's car parking area. Winston Hills Mall is currently provided with a total of 1,271 parking spaces, with a surplus of 20 spaces.</p>	No. The applicant has relied on the RMS recommended parking rates and average vehicle ownership census. The proposed variation to Council's parking variation is not supported in this instance.

a) Setbacks

Clause 2.5 (b) of DCP 2012 Part B Section 6 – Business requires that for buildings greater than two storeys or 8 metres in height, the remaining storeys are to be set back within a building height plane of 45° starting from a height of 8 metres. Sub-clause (c) also requires that the building is to be set back 6 metres where it is opposite or adjacent to a Residential zone.

The relevant objectives of the setback standard are as follows:

- (i) To provide an attractive streetscape and substantial areas for landscaping and screen planting.
- (ii) To ensure adequate sight distance is available for vehicles entering and leaving the site.
- (iii) To minimise overshadowing of adjoining properties.
- (iv) To protect privacy and amenity of any adjoining land uses.
- (v) To provide a desirable and aesthetically pleasing working environment.
- (vi) To ensure endangered ecological communities are protected.

It is proposed to vary the required 6 metre setback and the building height plane. The proposal is provided with varying building setbacks from the street frontages which range between 3.2 to 6 metres. In its current form it is considered that the setbacks combined with the proposed built form does not adequately address or seek to provide articulation to the streetscape which is typical of shop top housing.

The parapet of the building protrudes outside the building height plane as it is not adequately set back and as a result of the proposal's non-compliance with the maximum 3 storeys allowed in B2 Local Centre zone.

The applicant has provided the following justification addressing the setback variation:

"It is advised that the reduced setbacks are required primarily for structural reasons having regard to the location of the load bearing external walls of the existing building located upon the site and the need for the upper level walls to correspond with their location.

The area comprising the proposed setback zone is to be treated as a landscape zone in accordance with the requirements of this section of the DCP.

Notwithstanding the non-compliance with the prescriptive requirements of this section of the DCP it is submitted that the proposal satisfies the objectives of this section of the DCP noting that:

- The proposal does provide for an attractive streetscape with substantial areas for landscaping and screen planting.*
- The proposal is provided with adequate sight distances for vehicles entering and leaving the site.*
- The proposal will not result in any unreasonable overshadowing of adjoining properties.*
- The proposal as a result of setback distances to the residential properties located opposite will not result in any unreasonable overlooking or loss of privacy.*

The proposed building setbacks are therefore considered to be acceptable in the circumstances of this case."

Comment:

It is considered that the development is predominantly a residential flat building not shop top housing and by residential flat building standards the amount of landscaping provided within the front setback area is insufficient as it would normally be required to provide a minimum setback of 6 metres to both street frontages as the development is opposite R2 Low Density Residential zone. This setback area is to be used exclusively for landscaping and screening purposes.

The variation to the required setback is considered inadequate as it does not satisfy the objectives of the standard. In addition, the protrusion outside the building height plane is not supported as it contributes to the bulkiness of the building and exacerbates the non-compliance with the LEP height limit and the maximum number of storeys allowed in B2 Local Centre zone. As advised during the prelodgement meeting held with the applicant, the proposed development is beyond the scale envisaged in the Business DCP for the B2 Local Centre zone. In this regard, the proposed variation to the required setback within the building height plane is not supported for reasons outlined in item (b) below.

b) Building Height

Clause 2.6 (b) of DCP 2012 Part B Section 6 – Business states that the maximum height of buildings within the B2 Local centre zone shall be 3 storeys or as specified on the precinct plan maps contained in Appendix A of this section of the DCP.

The proposed development is four storeys in height which does not comply with the above control.

The relevant objectives of this building height standard are:

- (i) To ensure that building heights respond to the existing landform of the neighbourhood, including ridgelines and drainage depressions.*
- (ii) To protect privacy and amenity of surrounding allotments and residential development in accordance with Council's ESD objective 7.*

The applicant has provided the following justification for the variation:

"The issue of building height has primarily been dealt with in response to Clause 4.3 & 4.6 of the LEP.

In addition to the matters discussed within those responses it is noted that this section of the DCP does seek to set a maximum limit of 3 storeys. Such a control would appear to be at odds with the LEP and which prescribes a maximum building height of 12m.

In circumstances where an inconsistency arises it would be normal to defer to the LEP."

Comment:

The number of storeys proposed is not compatible with surrounding development and will adversely impact upon the amenity of the surrounding properties and streetscape. The existing dwellings on the southern side of Caroline Chisholm Drive and on the western side of Langdon Road are generally single and two storeys in height and the bulk and scale of a four storey development will be imposing when viewed from these properties.

The proposed development is not considered to respond to the topography of the site but rather attempts to provide for as many residential flat units as possible on top of the ground floor car park.

The intent of the LEP and DCP controls is to allow a three storey shop top housing development to be constructed on the site which will satisfy the needs of the local community without adverse impact on surrounding properties or the locality. A three storey shop top housing development is more appropriate in the B2 Local Centre zone and for this location and would complement and integrate with surrounding development in the area. As discussed in Section 2 of this report, the proposal does not satisfy the LEP zone objectives or the definition of shop top housing. Reducing the residential component of the proposed development by one storey would provide a development which would better integrate with surrounding development and the overall streetscape and satisfies the DCP objectives and control. In addition, any such shop top housing development should be respectful of the existing character of the area and provide for appropriate activation at the street frontages. The proposed development does not provide for such activation, nor does it respectfully have regard to the character of the area.

The proposal in its current form is not compatible with surrounding residential development and the overall streetscape and the bulk and scale will adversely impact the amenity of the surrounding properties.

The development presents as a four storey residential flat building which does not integrate with the existing shopping centre or the one and two storey residential development that surrounds the site.

The proposed variation to building height is not supported in this regard.

c) Car Parking

Clause 2.16 of the Business DCP refers to the applicable standards in DCP 2012 Part C Section 1 – Parking, which contains the following parking requirements for the development proposed:

- 1 car parking space per 1 bedroom unit;
- 2 car parking spaces per 2 bedroom unit;
- 2 visitor car parking spaces per 5 units; and
- 1 motorcycle parking space for every 50 car parking spaces or part thereof.

The objective of this clause of the DCP is:

- (i) *To provide sufficient parking that is convenient for the use of residents, employees and visitors of the development.*

A total of 192 parking spaces are required based on the above parking rates (i.e. 151 resident and 41 visitor parking spaces). The proposal provides a total of 137 parking spaces for the exclusive use of residents, nil visitor and motorcycle parking spaces. The proposal is deficient by 55 parking spaces.

The applicant has provided the following justification to the car parking variation:

The proposed development scale produces a total parking requirement of 197 spaces according to The Hills Shire DCP. The development makes provision for 137 spaces, representing a numeric shortfall of 60 spaces. In comparison, the RMS also provides minimum parking requirements for high density residential flat buildings in their 'Guide to Traffic Generating Developments'. For Metropolitan Sub-regional Centres, minimum parking rates are as follows:

- 0.6 spaces per 1 bedroom unit*
- 0.9 spaces per 2 bedroom unit*
- 1.40 spaces per 3 bedroom unit*
- 1 space per 5 units (visitor parking)*

The proposed development scale produces a total parking requirement of 116 spaces according to RMS' guide for parking requirements. The planned provision of 137 spaces is therefore in excess of the RMS requirement and represents a surplus of 21 spaces. There is a large difference between the parking provision requirements based on both the DCP and RMS parking rates, and as such, a study was completed on vehicle ownership in the surrounding areas.

The RMS parking rates are based on parking accumulation and demand surveys of existing dwellings, though covering a variety of locations and range of public transport accessibilities throughout New South Wales. It is possible though to conduct similar surveys using census data from 2011 and refining the survey area to be a singular postcode, suburb or LGA. The study in Table 6 has been completed of the subject site to arrive at an average parking demand. To supply parking above this demand would decrease public transport use and to supply below this would force car drivers to park on-street.

TABLE 6: VEHICLE OWNERSHIP

Scale	LGA – The Hills Shire	Postcode - 2153	Suburb – Winston Hills
1 bed	0.95	0.42	0.40
2 bed	1.28	1.13	0.52
3 bed	1.53	1.57	N/A
Total	123.2 (124)	96.1 (97)	N/A

Given the large disparity between census data, The Hills Shire car ownership was adopted. This results in a car ownership of 124 vehicles for the proposed development, and represents the worst rate for vehicle ownership in the surrounding area.

A comparison of the DCP, RMS and census data parking requirements is shown in Table 7 below.

TABLE 7: PARKING REQUIREMENT COMPARISON

Rate	DCP	RMS	Census Average	Development Provision
Total Parking Requirement	197 x	116 ✓	124 ✓	137

The proposed car park is for 137 residential spaces only. From the table above, it is evident that whilst the development provision does not meet Council's parking requirements, the proposed parking supply is in excess of both the RMS requirement and the average vehicle ownership of residents across the Hills Shire LGA.

As there is an abundance of car parking in the Winston Hills Mall car park as outlined in Section 2.5, visitor spaces will be assigned spaces in this car park. Therefore, the DCP requirement for 156 resident car spaces applies to the development, with the 137 car space provision representing a shortfall of 19 spaces. However, concessions can be made given the RMS parking requirement rate for both residents and visitors, as well as the average vehicle ownership in The Hills Shire LGA."

Comment:

The proposal does not comply with the required minimum car parking provision based on the above parking rates. The proposal is required to provide 151 resident parking spaces and 41 visitor parking spaces, a total of 192 parking spaces and 4 motorcycle parking spaces. It is proposed to provide a total of 137 parking spaces for the exclusive use of future residents. There are no motorcycle parking spaces proposed. It is proposed to accommodate visitors parking within the basement level of the shopping centre's existing car parking area which is currently time restricted and secured by boom gates. The visitor car parking arrangement is considered impractical and not workable. The shopping centre currently has a surplus of 20 parking spaces (based on the previous development consent for the extension of the shopping centre which included the creation of the Aldi Supermarket tenancy) and to accommodate visitor parking within the existing retail car parking area will result in a shortfall of 35 parking spaces overall.

In *Stockland Development Pty Ltd v Manly Council* [2004] NSWLE 472 revised – 01/10/2004 McClellan CJ held in par 87 also quoting *North Sydney Council v Ligon 302 Pty Ltd* (1995) 87 LGERA 435 and in the later decision *North Sydney Council v Ligon 302 Pty Ltd (No 2)* (1996) 93 LGERA 23 that:

"87...A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.

A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied."

The current Parking DCP was adopted by Council on 24 August 2004. Since the DCP's adoption, the car parking rate for residential flat buildings as outlined above has been consistently applied across the local government area.

New development should provide sufficient car parking to accommodate the vehicles of residents and visitors. On this basis, it is considered that the application proposes

insufficient on-site car parking to adequately serve the development to the detriment of visitors to the development (who will be relying on the existing car parking facilities within the shopping centre) and will impact on the amenity of shopkeepers and patrons of the shopping centre as it will result to a shortfall of 35 spaces overall for the shopping centre. One hundred ninety two (192) car spaces and four motorcycle parking spaces would need to be provided on site to adequately cater for the parking demand generated by the development.

Given that insufficient provision has been made for car parking on-site, the extent of reliance on on-street parking is likely to increase, adversely affecting the local road network and existing uses in the area. Additionally, vehicles parking in and using Caroline Chisholm Drive, Langdon Road and surrounding residential streets will impact upon the amenity of residential landowners and upon the safety of pedestrians. Furthermore the lack of parking on-site will lead to difficulty for residents and visitors of the development to find convenient parking, to the detriment of staff and patrons of the shopping centre.

Despite the justification provided by the applicant, on balance, it is considered that the application proposes a significant unjustified variation to Council's parking rates and should not be supported.

4. Compliance with Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings

The proposed development has been assessed against the relevant development standards and objectives of The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings and the following variations have been identified.

The proposal does not satisfy the apartment unit mix standards prescribed under clause 3.11 of Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings, which require that no more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments and no less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms. The one bedroom units comprise 52% and the three bedroom units comprise 4% of the proposed yield.

In terms of unit size, the proposal does not comply with Type 2 Size Category for the 2 and 3 bedroom units, as shown in the table below:

Apartment Size Category	Apartment Size (30 or more units)	DCP Maximum (%)	Proposed Units (Number)	Proposed Units (%)	Compliance
1 Bedroom					
Type 1	50m ²	30%	15	28%	Yes
Type 2	65m ²	30%	7	13%	Yes
Type 3	75m ²		31	58%	N/A
Total (1 Bedroom)			53		
2 Bedroom					
Type 1	70m ²	30%	9	20%	Yes
Type 2	90m ²	30%	28	62%	No
Type 3	110m ²		8	18%	N/A
Total (2 Bedroom)			45		
3 Bedroom					
Type 1	95m ²	30%	0	0%	Yes

Type 2	120m ²	30%	3	75%	No
Type 3	135m ²		1	25%	N/A
Total (3 Bedroom)					

5. Compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)

Clause 31(2) of the SEPP 65 provides the following:

"If a development application or an application for the modification of a development consent has been made before the notification on the NSW legislation website of the making of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3) and the application has not been finally determined before the commencement of that amendment, the application must be determined as if the amendment had not commenced."

As the application was lodged prior to the amendments to SEPP 65, the proposal has been assessed against the previous SEPP. Clause 3 of the previous SEPP 65 defines a residential flat building as follows:

Residential flat building means a building that comprises or includes:

- a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a class 1a building or a class 1b building under the Building Code of Australia.*

The proposed development meets the definition of a residential flat building and as such the provisions of SEPP 65 are applicable to the proposed development.

SEPP 65 requires any development application for residential flat development to be assessed against the 10 principles contained in clauses 9-18 of the previous SEPP 65 and the matters contained in the Residential Flat Design Code (RFDC).

A Statement of Environmental Effects was prepared by Glendinning Minto & Associates Pty Ltd and addressed SEPP 65 as follows:

SEPP No.65 is a State Government policy which applies to residential flat buildings having a height greater than 3 storeys and containing 4 or more units and as such applies to the proposal. The primary aim of the policy is to ensure that there is an improvement in the design quality of residential flat development. This is proposed to be primarily achieved by ensuring that in cases where the policy applies that buildings are designed by registered architects and that any design has regard to 10 design quality principles.

An architectural statement addressing each of the 10 design principles has been prepared by the architect and is included as an appendix to this report together with a design verification statement in accordance with the requirements of the SEPP.

In order to achieve compliance with the design quality principles as contained within the SEPP the Government has produced a Residential Flat Design Code. This document provides useful information (rules of thumb) as to ways of satisfying the design principles of the SEPP.

An assessment of the proposal against the requirements of the Residential Flat Design Code has also been undertaken by the architects and is also included as an Appendix to

this report. It is my opinion that the proposal achieves appropriate compliance with its requirements.

It is therefore my opinion that the proposal satisfies the requirements of SEPP No.65 and the Residential Flat Design Code.

The Development 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:

i) Principle 1 - Context

Good design responds to and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

Comment:

As noted in Section 1 above, the proposal is considered to be an overdevelopment of the site as it is beyond the scale envisaged in B2 Local Centre Zone. The proposal is also inconsistent with Council's Centres Direction 2009. The Centres Direction categorises the site as a Stand Alone Centre which has a typology of an internalised retail centre layout and design which serves local residents' weekly shopping needs subject to height and floor space ratio being reflective of the character of the surrounding residential area.

The size and scale of this development does not integrate with the surrounding residential development and is not considered a desirable and appropriate development of the site. The proposal is considered to be incompatible with the planning objectives and land uses for the adjoining predominantly R2 Low Density Residential zone within the Parramatta Local Government Area which is predominantly characterised by one and two storey dwellings.

The proposed development is not considered to be consistent with adjoining and surrounding development and the overall streetscape and does not respond or contribute to the quality or identity of the locality. The proposal does not have regard to the Special Character Area immediately to the south east of the site being identified in the Parramatta DCP 2011 as a well defined precinct that has a special character and level of residential amenity that should be preserved.

ii) Principle 2 - Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

Comment:

As detailed in this report, the proposed development exceeds the maximum number of storeys permitted by the DCP and does not meet the LEP zone objectives or definition of shop top housing. As a result, the bulk and scale of the development is not a good fit and appropriate for the street and does not complement or integrate with surrounding development.

iii) Principle 3 - Built Form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

As detailed in this report, the proposed development does not comply with the maximum number of storeys permitted by the DCP and does not meet the LEP zone objectives or definition of shop top housing. As noted in Principle 1: Context, the size and scale of this development does not integrate with the surrounding residential development and is not considered a desirable and appropriate development of the site. The proposal is considered to be incompatible with the planning objectives and land uses for the adjoining predominantly R2 Low Density Residential zone within the Parramatta Local Government Area which is predominantly characterised by one and two storey dwellings.

iv) Principle 4 – Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

Comment:

Despite the proposal's compliance with the maximum allowable FSR for the site, it is not the type of development envisaged in Council's Centres Direction that will promote the site as a "Stand Alone Centre". It is considered that the additional 0.24:1 to the existing FSR and concentration of this additional floor area on this corner section of the site is not a good urban design outcome as the resultant bulk and scale is not reflective of the character of the surrounding residential area. To allow a residential development of this size will significantly change the image of the shopping centre and consequently lose the opportunity to be developed to its maximum potential as a local employment generator contrary to the objectives of the B2 Local Centre zone.

v) Principle 5 - Resource, Energy and Water Efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

Comment:

A BASIX Certificate was submitted with the application as required. Good solar access and natural ventilation is achieved in accordance with the requirements of the RFDC. Roof and wall construction will employ thermal insulation to ensure energy efficiency. Energy efficient appliances and water fixtures will be used within apartments as indicated in the BASIX report. Solar cell panels will be located on each apartment building roof to provide solar energy back to each building and the overall development.

vi) Principle 6 - Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

Comment:

It is considered that the development is predominantly a residential flat building not shop top housing and by residential flat building standards the amount of landscaping provided within the front setback area is insufficient as it would normally be required to provide a minimum setback of 6 metres to both street frontages as the development is opposite R2 Low Density Residential zone. This setback area is to be used exclusively for landscaping and screening purposes.

In addition, as the proposal is located above a fully developed retail shopping centre on a roof slab consequently the site does not offer any potential for additional deep soil planting.

vii) Principle 7 - Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

Comment:

The visual and acoustic amenity of future residents would be adversely affected by the presence of the existing loading dock located on the north western corner of the site.

The lack of parking on site will be not only be to the detriment of future residents and visitors of the development but also to the staff and patrons of the shopping centre. Access by visitors to the shopping centre's car parking area within the basement level is considered unsatisfactory and impractical as this parking facility is time restricted and secured by boom gates.

viii) Principle 8 - Safety and Security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

Comment:

The proposed development provides a clear delineation between private open spaces of the residential apartment levels which are located above the public domain at street level. Access for residents to the apartment levels above will be restricted by security measures from the street entry to the carpark and from the retail and residential lifts connecting those levels. However, it is considered that visitor parking arrangement and access is considered unsatisfactory and impractical as this parking facility is time restricted and secured by boom gates, and therefore the safety and security of visitors will be compromised.

ix) Principle 9 - Social Dimensions

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

Comment:

The proposal provides a variety of apartments which include 1 bed, 2 bed and 3 bed accommodation. However, it does not satisfy the apartment unit mix standards prescribed in Council's Residential Flat Buildings DCP, which require that no more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments and no less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms. The one bedroom units comprise 52% and the three bedroom units comprise 4% of the proposed yield.

In terms of unit size, the proposal does not comply with Type 2 Size Category for the 2 and 3 bedroom units as prescribed in the DCP.

x) Principle 10 - Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

Comment:

The proposal's non-compliance with building height, setbacks, deep soil zone, etc. will not be aesthetically pleasing and interesting in that these variations do not contribute in the enhancement of the streetscape.

SEPP 65 - Residential Flat Design Code Compliance Table

The relevant rules of thumb of the Residential Flat Design Code are addressed below:

Primary Controls Part 1 - Local Context	Guideline	Compliance
Building Height	Where there is an existing floor space ratio (FSR), test height controls against it to	The site is allowed a maximum floor space ratio of 1:1. The proposal will result in an overall

	<p>ensure a good fit.</p> <p>Test heights against the number of storeys and the minimum ceiling heights required for the desired building use.</p>	<p>FSR of 0.91:1 which is compliant, however despite this FSR compliance it is considered that the proposed building height is not a good fit as it is not proportionately distributed across the site. The resultant bulk and scale is not compatible with surrounding development and will adversely impact upon the amenity of the surrounding properties and streetscape. The proposal exceeds the maximum permitted building height of 12 metres by 1.689 metres or 14% and the maximum number of storeys allowed in B2 zone by one storey. The variation to LEP and DCP building height standards is not supported.</p>
Building Depth	<p>An apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory daylighting and natural ventilation are to be achieved.</p>	<p>No, as portions of the apartment buildings are greater than 18m in depth due to the layout of apartments on both sides of the central corridor.</p>
Building Separation	<p>Design and test building separation controls in plan and section.</p> <p>Up to 4 storey: 12m between habitable rooms/balconies; 9m between habitable/balconies and non-habitable rooms; 6m between non-habitable rooms.</p>	<p>Complies. The building separation is more than 12m.</p>
Street Setbacks	<p>Identify the desired streetscape character, the common setback of buildings in the street, the accommodation of street tree planting and the height of buildings and daylight access controls.</p> <p>Test street setbacks with building envelopes and street sections.</p> <p>Test controls for their impact on the scale, proportion and</p>	<p>No. The proposed variation to the required 6m setback is not supported as the amount of landscaping is compromised due to reduced setbacks. The building is provided with varying setbacks from 3.2 to 6 metres.</p> <p>In terms of the building envelope, the protrusion of the parapet of the building outside the building height plane is not supported as it exacerbates the proposal's non-compliance with the LEP and DCP building height</p>

	shape of building facades.	standards.
Side and Rear Setbacks	Relate side setbacks to existing streetscape patterns.	The proposed buildings virtually have no side or rear setbacks being on a corner allotment and due to the location above the existing shopping centre.
Floor Space Ratio	Test the desired built form outcome against proposed floor space ratio to ensure consistency with building height – building footprint and three dimensional building envelope open space requirements.	As noted above, despite the proposal's compliance with maximum allowable FSR, it is considered that the proposed building height is not a good fit as it is not proportionately distributed across the site. The resultant bulk and scale is not compatible with surrounding development and will adversely impact upon the amenity of the surrounding properties and streetscape.
Part 2 – Site Design		
Site Configuration		
Deep Soil Zones	A minimum of 25% of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	The proposal does not comply as it is located above a fully developed retail shopping centre on a roof slab. Consequently the site does not offer any potential for additional deep soil planting.
Open Space	The area of communal open space required should generally be at least between 25 and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%. Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of	Communal open space areas are provided within the central courtyard separating the 2 apartment buildings at podium level. Ground floor podium level apartments incorporate private landscaped terraced areas all of which are >4m in width. Upper floor apartments all have private open space in the form of balconies.

	<p>increased private open space and/or in a contribution to public open space.</p> <p>The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m²; the minimum preferred dimension in one direction is 4 metres. (see Balconies for other private open space requirements).</p>	
Planting on Structures	<p>In terms of deep soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes:</p> <p>Large trees such as figs (canopy diameter of up to 16m at maturity) – minimum soil volume 150 cubic metres – minimum soil depth 1.3m – minimum soil area 10mx 10m area or equivalent.</p> <p>Medium trees (8m canopy diameter at maturity) – minimum soil volume 35 cubic metres – minimum soil depth 1m – approximate soil area 6m x 6m or equivalent.</p> <p>Small trees (4m canopy diameter at maturity) – minimum soil volume 9 cubic metres – minimum soil depth 800mm – approximate soil area 3.5m x 3.5m or equivalent.</p> <p>Shrubs – minimum soil depths 500- 600mm.</p> <p>Ground cover – minimum soil depths 300- 450mm.</p>	<p>Landscaping plan submitted with the application indicates that the podium courtyard will preserve long-term planting growth. Nevertheless, the proposal's non-compliance with the required deep soil planting is not supported as it will require high maintenance to ensure its sustainability.</p>

	<p>Turf – minimum soil depths 100-300mm.</p> <p>Any subsurface drainage requirements are in addition to the minimum soil depths.</p>	
Site Amenity		
Visual privacy	Refer to building separation minimum standard.	Apartment and building layout has ensured that there visual privacy issues between apartments are minimised. However, the visual amenity of some units would be detrimentally impacted due the location of these units overlooking the loading dock area on the north western corner of the site adjacent to the vehicular access ramp to the shopping centre off Langdon Road.
Site Access		
Pedestrian Access	<p>Identify the access requirements from the street or car parking area to the apartment entrance. Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum.</p> <p>Provide barrier free access to at least 20% of dwellings in the development.</p>	Pedestrian access is provided from Langdon Road with lift access from the car park to each floor available.
Vehicle Access	<p>Generally limit the width of driveways to a maximum of six metres.</p> <p>Locate vehicle entries away from main pedestrian entries and on secondary frontages.</p>	Vehicle access to the residential carpark level is controlled through a separate entry from Langdon Road and exit onto Caroline Chisholm Drive. These entry and exit points are located at different parts of the site and are separate from retail parking access points.
Part 3 – Building Design		
Building Configuration		
Apartment Layout	<p>Single-aspect apartments should be limited in depth to 8 metres from a window.</p> <p>The back of a kitchen should be no more than 8 metres from a window.</p>	All kitchens are located a maximum of 8-9m from a window ensuring reasonable ventilation and natural light. Apartment depth is generally limited to a maximum of 8-9m throughout.

	Buildings not meeting the minimum standards listed above, must demonstrate how satisfactory daylighting and natural ventilation can be achieved, particularly in relation to habitable rooms (see Daylight Access and Natural Ventilation).	Living rooms and bedrooms generally are orientated to north, east or west aspects. All apartments have private open space directly adjacent to living areas with all habitable rooms positioned on the external face of buildings.
Apartment Mix	<p>If council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability:</p> <p>(apartment size is only one factor influencing affordability)</p> <ul style="list-style-type: none"> - 1 bedroom apartment 50m² - 2 bedroom apartment 70m² - 3 bedroom apartment 95m² 	<p>Apartment mix includes 1 bed, 1 bed + study, 2 bed, 2 bed + study and 3 bed accommodation.</p> <p>The proposal does not satisfy the apartment unit mix standards prescribed in Council's Residential Flat Buildings DCP, which require that no more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments and no less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms. The one bedroom units comprise 52% and the three bedroom units comprise 4%.</p> <p>In terms of unit size, the proposal does not comply with Type 2 Size Category for the 2 and 3 bedroom units.</p>
Balconies	<p>Provide primary balconies for all apartments with a minimum depth of 2 metres. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind-cannot be satisfactorily mitigated with design solutions.</p> <p>Require scale plans of balcony with furniture layout to confirm adequate, useable space when an alternate balcony depth is proposed.</p>	Provided.
Ceiling Heights	The following recommended dimensions are measured	Ceiling heights of 2.7m are provided to all habitable rooms.

	<p>from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired.</p> <p>In mixed use buildings: 3.3 metre minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use.</p> <p>In residential flat buildings or other residential floors in mixed use buildings:</p> <ul style="list-style-type: none"> - in general, 2.7 metre minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted. 	
Internal Circulation	<p>In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight. Exceptions may be allowed:</p> <ul style="list-style-type: none"> - for adaptive reuse buildings - where developments can demonstrate the achievement of the desired streetscape character and entry response - where developments can demonstrate a high level of amenity for common lobbies, corridors and units, (cross over, dual aspect apartments). 	Internal circulation lobbies have generous width of 2m or more and will be well ventilated and illuminated.
Storage	<p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> - 1 bedroom units 6m³ - 2 bedroom units 8m³ 	Storage in the apartment is suitably sized and located for convenient day to day access. In addition, some apartments are provided with further lockup storage at basement level. Storage for apartments complies with minimum requirements with over 50% located internally to apartments and the remainder in secure storage areas within the basements.

Building Amenity		
Daylight Access	<p>Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.</p> <p>Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).</p>	70% of apartments achieve 3 hours direct sunlight between 9am and 3pm in mid-winter into habitable rooms, with 92% of apartments achieving more than 3 hours direct sunlight to private open space.
Natural Ventilation	<p>Building depths, which support natural ventilation typically range from 10 to 18 metres.</p> <p>60% of residential units should be naturally cross ventilated.</p> <p>25% of kitchens within a development should have access to natural ventilation.</p>	<p>Building depths are greater than recommended, however 33% of apartments are dual aspect corner apartments and some centrally located apartments are heavily articulated to provide more than one aspect. 38% of single aspect apartments have depths of <8.3m.</p> <p>60% of all apartments have natural cross ventilation, which conforms to the minimum RFDC requirement.</p>
Building Performance		
Waste Management	Supply waste management plan as part of the development application submission as per the NSW Waste Board.	A waste management plan was submitted with the application and is considered satisfactory.
Water Conservation	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos-cement roofs. Normal guttering is sufficient for water collections provided	Rainwater is harvested on site for use in irrigation of landscaping. Landscaping design will incorporate native vegetation with lower water demand. 3-star water fixtures and 3.5-star appliances will be

	that it is kept clear of leaves and debris.	installed to conserve water usage on site.
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6. Issues Raised in Submissions

The application has been exhibited and notified to adjoining property owners and received 395 submissions at the closing date of the exhibition and a further 77 submissions after the exhibition period, a total of 472 submissions including three petitions. A separate survey was conducted by a resident action group and around 470 survey forms were completed and forwarded to Council raising similar issues and concerns outlined in the individual submissions and petitions. Issues raised in the submissions generally relate to the extent of notification, traffic and parking, insufficient infrastructure and services, non-compliance with building height, floor space ratio, inappropriate zoning, inaccurate photomontages, out of character, and construction related issues.

ISSUE/OBJECTION	COMMENT	OUTCOME
Residents received insufficient notification. Affected streets were not notified. The notification and advertising period is inadequate and unacceptable.	Council's adopted notification policy is to notify landowners whose property adjoins the subject site and those directly opposite only. Notwithstanding this, 73 nearby property owners were advised of the proposal and an advertisement was placed in two local newspapers and a sign placed on the corner of the site.	Issue addressed.
Proposed parking provision is insufficient for a scheme of this size. The shopping centre staff already park in the surrounding streets as they are not allowed to park in the existing car park which will result in more people parking in the adjacent streets.	The proposal does not comply with Council's parking requirements as discussed in Section 2 above. The traffic and parking assessment report submitted with the application suggests that the proposed parking supply is in excess of both the RMS requirement and the average vehicle ownership of residents across the Hills Shire LGA. The variation to Council's car parking requirements by 55 spaces (which is partly due to non-provision of visitor parking within the proposal and relying upon the shopping centre's existing car parking facility) is not supported as it will result in a shortfall of 35 parking spaces overall for the shopping centre.	Issue warrants refusal of the application. See reasons for refusal.
Locating visitor parking in the public car park is unacceptable and inappropriate given the car park is locked outside of trading hours.	As discussed in Section 2, reliance on the shopping centre car park for visitors parking is impractical. It would be inconvenient for the use of visitors of the development and would affect shopkeepers, staff and patrons of the shopping	Issue warrants refusal of the application. See reasons for refusal.

ISSUE/OBJECTION	COMMENT	OUTCOME
	centre as a result of the shortfall in overall parking provision.	
Traffic report is flawed as it was only conducted over two days. The survey of vacant spaces in the car park on the weekend is incorrect.	Council's Principal Traffic and Transport Coordinator has assessed the application and raised no objection to the proposal on traffic grounds.	Issue addressed.
Proposed vehicular entry off Langdon Road will be a hazard.	<p>Council's Principal Traffic and Transport Coordinator has assessed the application and accompanying traffic assessment report. Issues relating to access and environmental capacity of surrounding road network were taken into consideration in the assessment and are considered satisfactory. No objection is raised on traffic grounds.</p> <p>Council's Subdivision Engineer however raised concerns regarding access to the car parking area. The proposed car parking area at the ground level is for the use of future residents only and that visitors are to be accommodated within the shopping centre's car parking area at the basement. A dedicated turning bay will be required if this application is to be approved to ensure vehicles can exit in a forward direction.</p>	Issue addressed.
Surrounding roads are narrow with no capacity for additional vehicular traffic.	Council's Principal Traffic and Transport Coordinator has assessed the application and accompanying traffic assessment report. Issues relating to access and environmental capacity of surrounding road network were taken into consideration in the assessment and are considered satisfactory. No objection is raised on traffic grounds.	Issue addressed.
Increased traffic will be a safety risk to local children given proximity to the park and schools.	The proposal has been reviewed by Council's Principal Traffic and Transport Co-ordinator who advised that the anticipated traffic generated by the proposed development is satisfactory and no objection raised on traffic grounds.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
Heavy vehicle access to the shopping centre has never been complied with.	This issue is not a matter for consideration in this application as it relates to the existing delivery operations within the shopping centre. Vehicular access to the site will be separate from the existing loading dock access in the shopping centre.	Issue addressed.
Increased noise from traffic.	<p>If the application were recommended for approval, a condition of consent would be imposed addressing this matter to ensure the impact on the road network and adjoining properties is managed.</p> <p>For the reasons detailed in this report however the Development Application is recommended for refusal.</p>	Issue addressed. However, the application is recommended for refusal.
Existing public infrastructure and facilities are inadequate to cater for a development of this size. Local schools are at capacity. Public transport is poor and infrequent and local road network is already congested.	<p>The proposal is a permissible development in the zone and if this application is to be approved the applicant will be required to pay monetary contributions in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979 to provide for the increased demand for public amenities and services resulting from the development.</p> <p>However, for the reasons detailed in this report the Development Application is recommended for refusal.</p>	Issue addressed.
<p>A four storey building is out of character with the surrounding area. The flood gates will be open to more similar developments and the character of Winston Hills will be lost forever.</p> <p>The proposal does not comply with the building height requirements.</p>	The proposal in its current form is not supported and for the reasons detailed in this report which include non-compliance with Council's building height control the Development Application is recommended for refusal.	Issue warrants refusal of the application. See reasons for refusal.
The proposal does not comply with the floor space ratio requirement.	The proposal will result in an overall floor space ratio of 0.91:1 which complies with the maximum floor space ratio allowed on this site of 1:1.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>The proposed development does not fit the intent of shop top housing. It fits the definition of a residential flat building which requires the site to be rezoned to R4 to allow it.</p>	<p>As discussed in the report, the proposal does not meet the intent of shop top housing as defined in the LEP as the residential component does not sit truly above the ground floor retail or commercial part of the shopping centre.</p> <p>For the reasons detailed in this report which include this issue on shop top housing definition the Development Application is recommended for refusal.</p> <p>Notwithstanding the above, a residential flat building is permissible with consent in the B2 Local Centre zone and rezoning to R4 is not necessary in this regard.</p>	<p>Issue warrants refusal of the application. See reasons for refusal.</p>
<p>The photomontages are inaccurate. The colour palette is not acceptable.</p>	<p>The photomontages and proposed colours and finishes are considered satisfactory for assessment purposes.</p>	<p>Issue addressed.</p>
<p>Adjoining residential properties will be overshadowed.</p>	<p>Shadow diagrams during mid-winter show that residential properties on the southern side of Caroline Chisholm Drive will not be overshadowed.</p>	<p>Issue addressed.</p>
<p>Concerns regarding construction hours which have previously occurred past midnight and caused nuisance to the surrounding residents.</p>	<p>If this application is to be approved, Council's standard construction hours will be imposed and any breach to this condition will be dealt with accordingly.</p> <p>However, for the reasons detailed in this report the Development Application is recommended for refusal.</p>	<p>Issue addressed.</p>
<p>The proposal will affect TV receptions.</p>	<p>The impact of the development on surrounding properties in regards to this matter has no sufficient basis to support this claim.</p>	<p>Issue addressed.</p>
<p>Increase in air pollution.</p>	<p>The impact of the development in regard to this matter has no sufficient basis to support this claim.</p>	<p>Issue addressed.</p>
<p>Residents are at a disadvantage given the</p>	<p>The determination of this application will be based on the</p>	<p>Issue warrants refusal of the application. See</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
Parramatta and The Hills LGA boundary issue.	<p>zoning of the property and the legal obligations under the Environmental Planning and Assessment Act 1979. Given the location of this development on the border of Parramatta Local Government Area, the zoning of the surrounding properties within the Parramatta LGA has been taken into consideration in the assessment of this application.</p> <p>For the reasons detailed in this report which include the issue of compatibility with the existing character of surrounding properties within the Parramatta LGA the Development Application is recommended for refusal.</p>	reasons for refusal.
The area is declared by the State Government as a special character area where duplexes are the highest form of residential development allowed.	<p>To the south east of the site is an area within the suburb of Winston Hills identified as a Special Character Area within the Parramatta Development Control Plan 2011.</p> <p>The Parramatta DCP 2011 describes Special Character Areas as well defined precincts that have been identified as having a special character and level of residential amenity that should be preserved. These areas were generally built over a relatively short period of time and have retained a consistency of design, materials and scale. Special Character Areas can be attributed to built form and also to subdivision pattern.</p> <p>There are specific design controls within the Special Character Area that apply to additions to existing dwelling houses and new dwelling houses.</p> <p>Having regard to the above, it is considered that the design controls that apply to the Special Character Area in this part of Winston Hills are not relevant in the assessment of this</p>	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	application.	

FIRE SAFETY COMMENTS

The proposal has been assessed by Council's Fire Safety Officer with respect to clause 94 of the Environmental Planning and Assessment Regulation 2000. It is noted that the proposed units will be sited over the newest part of the shopping centre and have no connection with the shopping centre. Upgrading to the existing building will not be considered in this application and that further upgrading can be assessed with additions/alterations to the shopping centre or via a fire safety upgrade order if required in the future. No objection is raised to the proposal subject to conditions.

SUBDIVISION ENGINEERING COMMENTS

The proposal has been assessed by Council's Subdivision Engineer. Additional information has been requested from the applicant to address the security door issue in the event that people (i.e. visitors of occupants within the development) cannot gain access to the car parking area. If this is the case, vehicles are to turn around within the property boundary and not be expected to reverse into the street, and that a dedicated turning bay will be required. The applicant advised that visitor parking will be provided within the existing retail car parking in the basement level. No engineering conditions were recommended as this visitor parking arrangement is not supported from a planning point of view.

TRAFFIC MANAGEMENT COMMENTS

No objection is raised to the proposal on traffic grounds.

TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the proposal subject to conditions.

RESOURCE RECOVERY COMMENTS

No objection is raised to the proposal subject to conditions.

NSW POLICE COMMENTS

No objection is raised to the proposal.

CONCLUSION

The application has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Local Environmental Plan 2012 and The Hills Development Control Plan 2012 and is considered unsatisfactory.

The proposal is considered unsatisfactory as it does not satisfy the provisions of the State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development in respect of the design quality principles. The proposed design does not respond to and contribute to overall context of the neighbourhood and streetscape in terms of character, scale, bulk and height. The proposal does not satisfy the Residential Flat Design Code in terms of building height, building depth, building separation, deep soil zone and communal open space.

The proposal is considered unsatisfactory as it exceeds the maximum allowable height limit of 12 metres required in LEP 2012. The applicant's justification to vary the LEP building height is not supported as it is considered that strict compliance with the building

height standard is considered reasonable and necessary having regard to the objectives and land uses for the adjoining R2 Low Density Residential zone.

In addition the proposed development is considered to be inconsistent with the objectives of the zone and does not meet the intent of shop top housing as defined in the LEP. The development does not provide for active frontages such as retail uses which is required in shop top housing development at street level.

The proposal is considered unsatisfactory with regard to DCP 2012 Part B Section 6 – Business and Part C Section 1 – Parking in relation to non-compliances with the maximum number of storeys, setbacks, building height plane, landscaping and parking provision.

The proposal was notified to adjoining properties and more than 500 submissions were received. The issues raised in the submissions include traffic and parking, insufficient infrastructure and services, non-compliance with building height, floor space ratio, inappropriate zoning, inaccurate photomontages, character and construction related issues.

Accordingly, the application is recommended for refusal

IMPACTS:

Financial

Costs will be incurred as the applicant has lodged an appeal with the NSW Land and Environment Court.

The Hills Future - Community Strategic Plan

The social and environmental impacts have been identified and addressed in the report. The proposal conflicts with the development objectives of the LEP and Business and Parking DCP. It is considered unsatisfactory with regard to The Hills Future Community Strategic Plan.

RECOMMENDATION

The Development Application be refused on the following grounds:

1. The proposal does not satisfy the definition of shop top housing nor the objectives of the B2 Local Centre zone as provided in The Hills Local Environmental Plan 2012 and R2 Low Density Residential zone as provided in the Parramatta Local Environmental Plan 2011.

The residential component of the proposal does not sit truly above the retail component. Shop top housing is defined in LEP 2012 as “*one or more dwellings located above ground floor retail premises or business premises*”. The three residential floor levels are directly located above the ground floor/podium residential car parking level which sits on top of the subterranean retail premises.

The proposal does not integrate with the surrounding residential development or the overall streetscape. The size and scale of the proposed development is not considered a desirable and appropriate development of the site and is considered to be incompatible with the planning objectives and land uses for the adjoining predominantly R2 Low Density Residential zone within the Parramatta Local Government Area.

(Section 79C(a)(i) & (iii) and (b) of the Environmental Planning and Assessment Act 1979).

2. The development does not comply with the building height requirements of LEP 2012 and DCP 2012 Part B Section 6 – Business. The proposal does not satisfy the objectives of the Local Centre or Clause 4.3 of the LEP.

The proposed four storey development exceeds the three storey building maximum permitted by DCP 2012 Part B Section 6 – Business. The maximum building height proposed exceeds the 12 metre height limit prescribed in The Hills LEP 2012 for the site by 1.689 metres.

The bulk and scale of the proposed building is not compatible with the surrounding development and the overall streetscape. The development is a residential flat building and not a shop top housing development as it does not integrate with the existing shopping centre or seek to activate the street frontages with retail uses. (Section 79C(1)(a)(i & iii)) and (b) of the *Environmental Planning and Assessment Act 1979*).

3. The proposed development is not provided with sufficient car parking within the site as required by DCP 2012 Part C Section 1 – Parking and the proposal does not satisfy the objectives of the DCP. The parking proposed will not meet the demand generated by the proposed development and will result in an unreasonable impact on the surrounding road network, public car parking facilities and safety of road users. (Section 79C(a)(iii) of the *Environmental Planning and Assessment Act 1979*).
4. The proposed development does not comply with the building height plane as required by DCP 2012 Part B Section 6 – Business. The setback to the top floor level will not provide an attractive streetscape and are not in keeping with neighbouring residential development. (Section 79C(a)(iii) of the *Environmental Planning and Assessment Act 1979*).
5. The proposed development does not satisfy the unit mix and size controls prescribed in Council's DCP for Residential Flat Buildings. (Section 79C(a)(iii) of the *Environmental Planning and Assessment Act 1979*).
6. The proposal does not comply with the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. The proposal does not fully satisfy the Residential Flat Design Code in terms of building height, building depth, deep soil zone and communal open space. (Section 79C(a)(i) of the *Environmental Planning and Assessment Act 1979*).

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Zoning Map
4. Ground Floor Car Park Plan
5. Level 1 (Podium) Floor Plan
6. Level 2 Floor Plan
7. Level 3 Floor Plan
8. Elevations
9. Sections
10. Landscaping Plans
11. Shadow Diagrams (3 pages)
12. Perspectives (3 pages)

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED

NOTE : 472 SUBMISSIONS RECEIVED
FOR THIS DEVELOPMENT

RMS AND PARRAMATTA CITY COUNCIL
ALSO NOTIFIED

THE HILLS
Sydney's Garden Shire

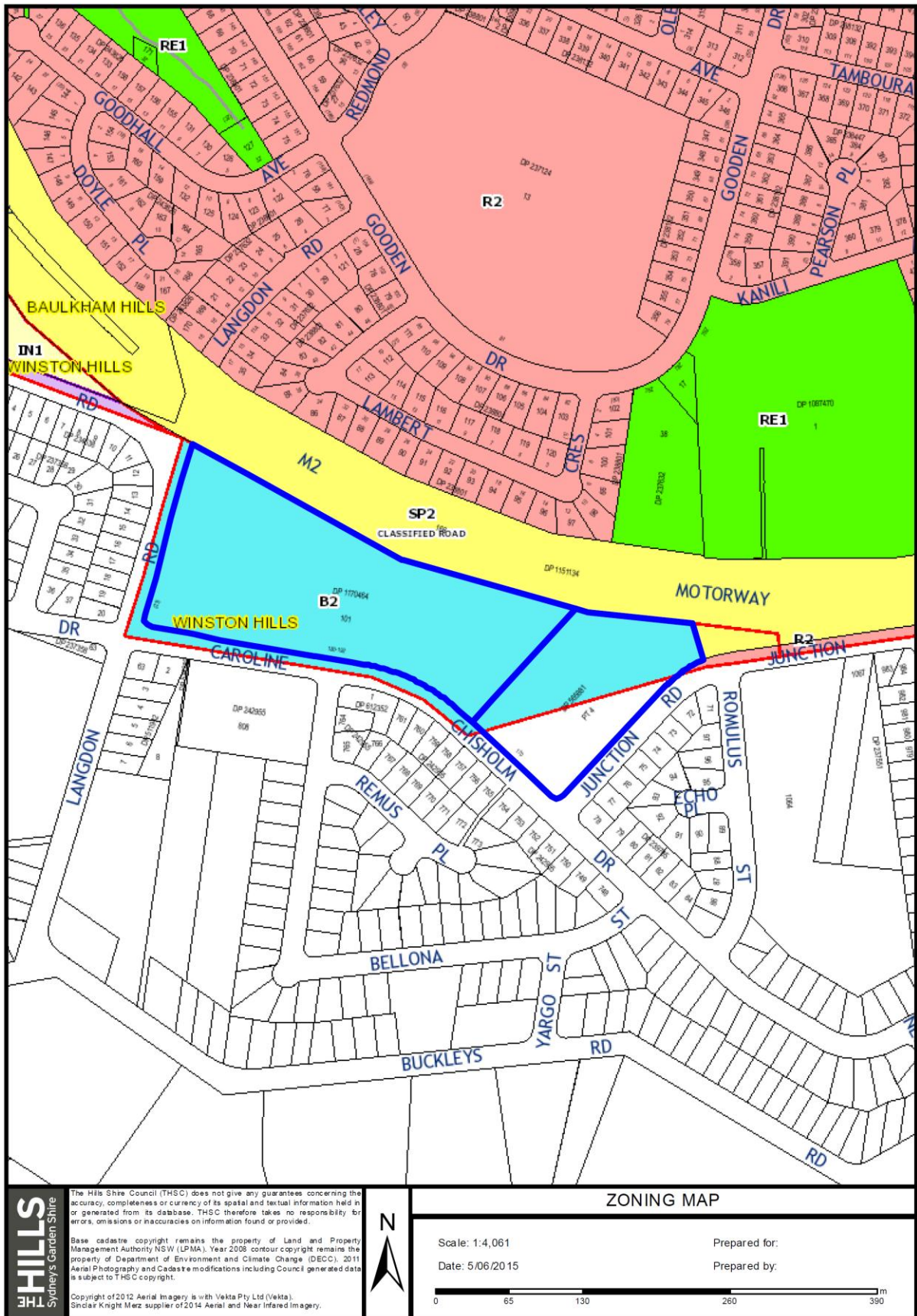
THE HILLS SHIRE COUNCIL

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BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.

ATTACHMENT 2 – AERIAL PHOTOGRAPH



ATTACHMENT 3 – ZONING MAP



ATTACHMENT 4 – GROUND FLOOR CAR PARK PLAN



ATTACHMENT 5 – LEVEL 1 (PODIUM) FLOOR PLAN



ATTACHMENT 6 – LEVEL 2 FLOOR PLAN



ATTACHMENT 7 – LEVEL 3 FLOOR PLAN



ATTACHMENT 8 – ELEVATIONS



WEST ELEVATION – LANGDON ROAD



SOUTH ELEVATION – CAROLINE CHISHOLM DRIVE



EAST ELEVATION

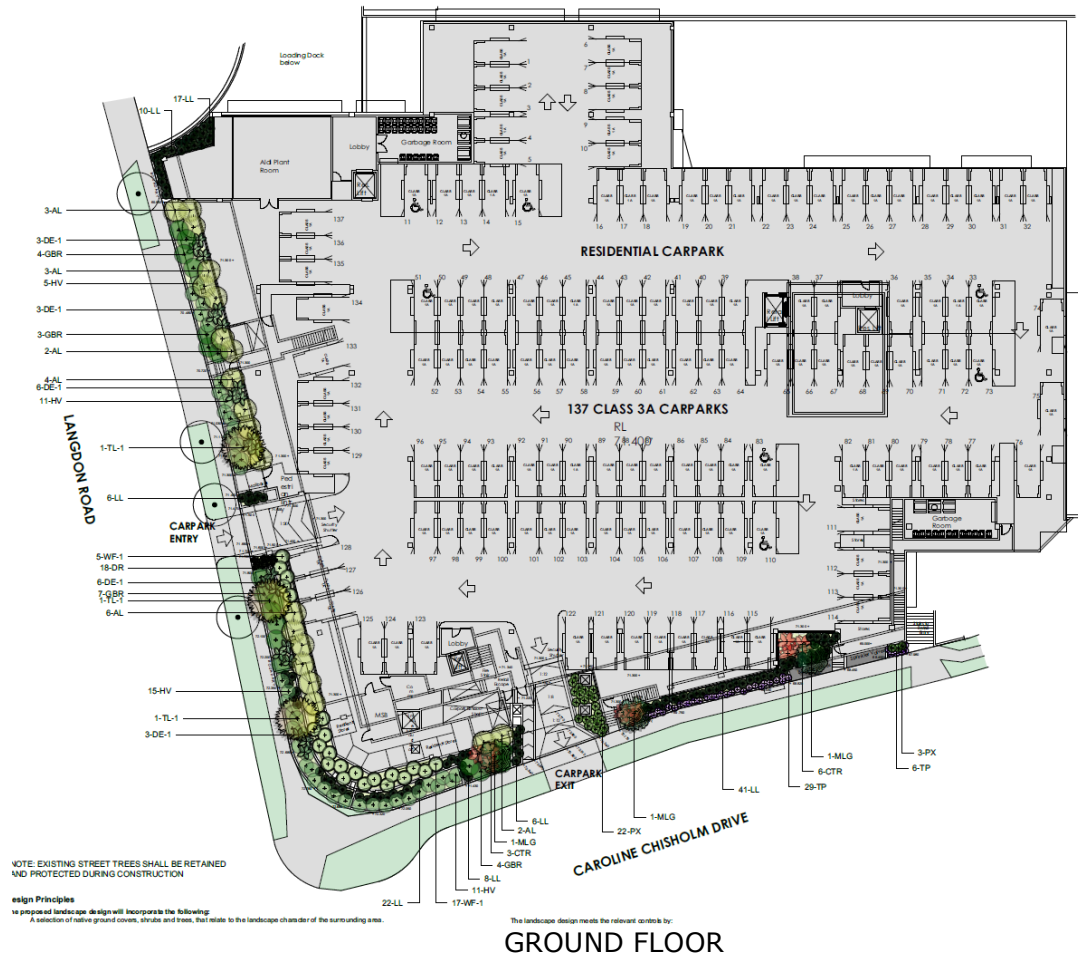


NORTH ELEVATION

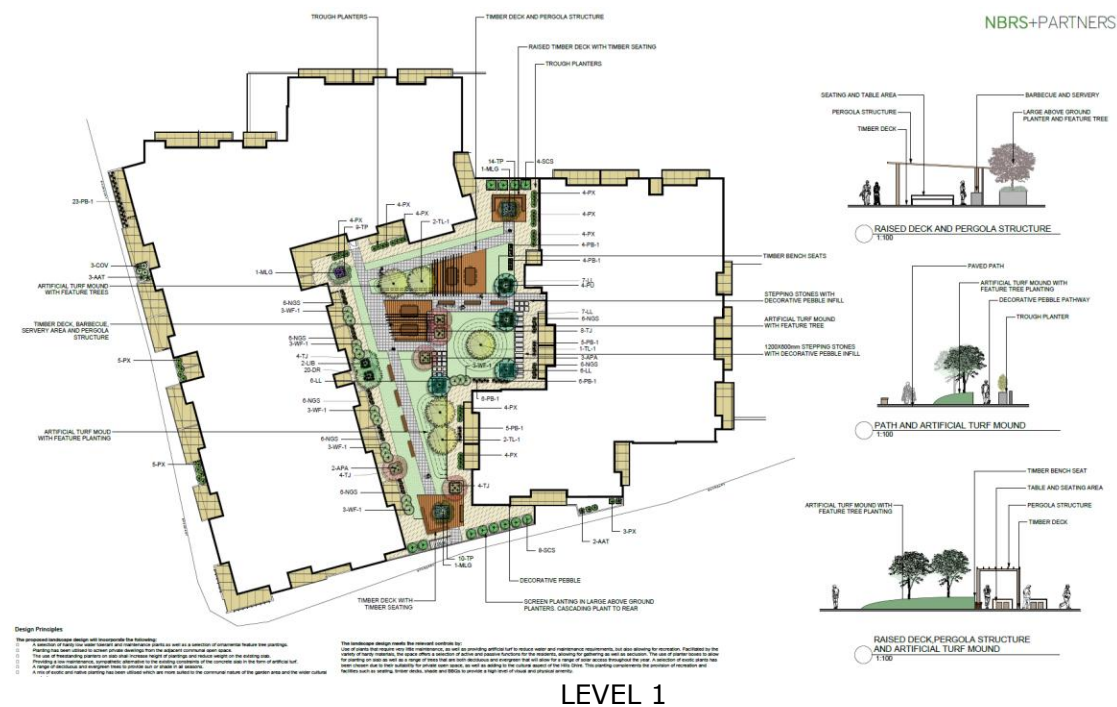
ATTACHMENT 9 – SECTIONS



ATTACHMENT 10 – LANDSCAPING PLANS



GROUND FLOOR

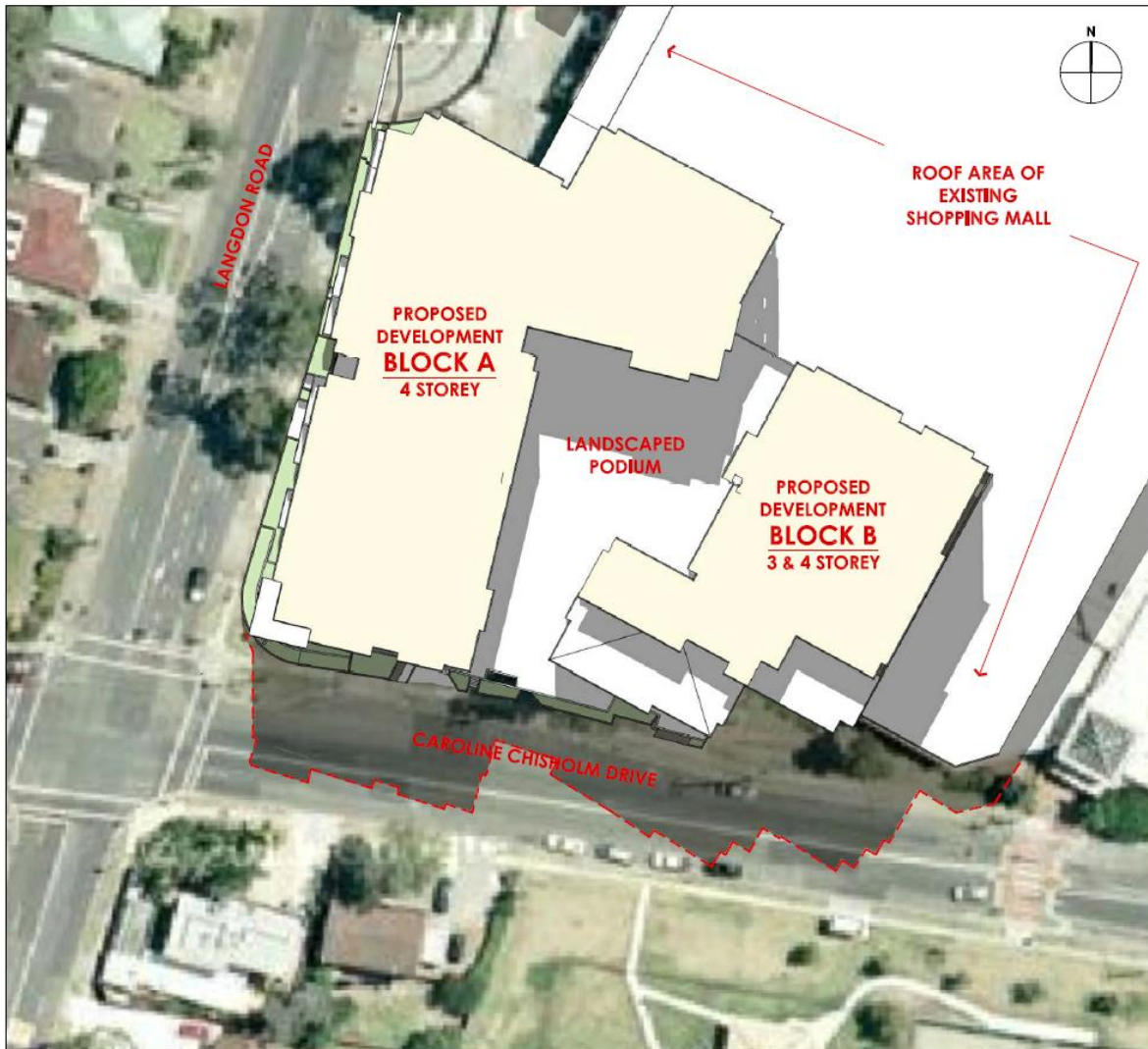


ATTACHMENT 11 – SHADOW DIAGRAMS (3 PAGES)

1 of 3



SHADOW DIAGRAM – MID WINTER – 9AM



21 JUNE 12NOON - PROPOSED CONDITIONS
1 : 500 0 10 20m

SHADOW DIAGRAM – MID WINTER – NOON



SHADOW DIAGRAM – MID WINTER – 3PM

ATTACHMENT 12 – PERSPECTIVES (3 PAGES)

1 of 3



BEFORE (VIEW FROM CAROLINE CHISHOLM DRIVE)



AFTER



BEFORE (VIEW FROM CORNER OF CAROLINE CHISHOLM DRIVE & LANGDON ROAD)



AFTER



BEFORE (VIEW FROM LANGDON ROAD)



AFTER