

## JOINT REGIONAL PLANNING PANEL (Sydney West)

JRPP No	<b>2015SYW182</b>
DA Number	<b>608/2016/JP</b>
Local Government Area	<b>CITY OF PARRAMATTA COUNCIL</b>
Proposed Development	<b>DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A MIXED USE DEVELOPMENT CONTAINING 53 RESIDENTIAL FLAT UNITS AND 128 SQUARE METRES OF GROUND FLOOR RETAIL SPACE</b>
Street Address	<b>LOT 1 DP 135802, NO. 794 PENNANT HILLS ROAD, CARLINGFORD</b>
Applicant/Owner	<b>LATERAL ESTATE PTY LTD / COLES GROUP PROPERTY DEVELOPMENTS LTD.</b>
Number of Submissions	<b>SIX</b>
Regional Development Criteria (Schedule 4A of the Act)	CIV over \$20 million – General Development
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> <li>- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</li> <li>- State Environmental Planning Policy (State and Regional Development) 2011</li> <li>- The Hills Local Environment Plan 2012</li> </ul> </li> <li>• 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"> <li>- Nil</li> </ul> </li> <li>• List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> <li>- DCP 2012 Part D Section 12 – Carlingford Precinct</li> <li>- DCP 2012 Part C Section 1 – Parking</li> <li>- DCP 2012 Part C Section 3 – Landscaping</li> <li>- DCP 2012 Part B Section 5 – Residential Flat Buildings</li> </ul> </li> <li>• 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"> <li>- Nil</li> </ul> </li> <li>• List any coastal zone management plan: s79C(1)(a)(v) <ul style="list-style-type: none"> <li>- Nil</li> </ul> </li> <li>• List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92,</li> </ul>



	93, 94, 94A, 288 - Environmental Planning and Assessment Act Regulation 2000
Does the DA require Special Infrastructure Contributions conditions (s94EF)?	No.
List all documents submitted with this report for the panel's consideration	Copy of submissions
Recommendation	Refusal
Report by	Development Assessment Coordinator  Claro Patag
Report date	29 June 2016

## EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and the construction of a nine storey residential flat building containing 53 units (comprising 12 x 1 bedroom, 35 x 2 bedroom and 6 x 3 bedroom units) with two retail tenancies at the ground floor with a total floor area of 128m<sup>2</sup>.

The proposal includes three basement car parking levels containing parking for 77 vehicles, with vehicular access via a two-way driveway from Post Office Street.

The application seeks a variation to the minimum site area prescribed under clause 4.1A(2) which sets a minimum lot size of 4,000m<sup>2</sup> for residential flat buildings on land within the B2 Local Centre zone. The proposal comprises a site area of 2,128m<sup>2</sup> which represents a 46.8% variation. The variation is supported as it generally satisfies the essential elements of the desired future character envisaged in both the LEP 2012 and DCP 2012 for the site.

The application also seeks a variation to the LEP's maximum allowed floor space ratio (FSR) of 1.99:1 proposing a FSR of 2.17:1 or 397.28m<sup>2</sup> over the maximum allowable gross floor area which represents a 9.4% variation. The applicant has provided a written justification to this variation under clause 4.6 of the LEP. The proposed FSR is considered inappropriate to the context and circumstances of the site. The variation will result in a development that will be inconsistent with the planned residential density in the Carlingford Precinct and will adversely impact upon the amenity of adjoining development.

The application has been assessed against the design quality principles outlined in SEPP 65 and is considered unsatisfactory in terms of Principles 1, 2, 3 and 8 in relation to the context of the site, built form and scale, density and housing diversity.

The proposal has been assessed against the requirements of DCP 2012 Part D Section 12- Carlingford Precinct and Part B Section 5- Residential Flat Buildings and variations are sought to DCP standards in relation to apartment sizes, basement car park setbacks, building separation, building depth, balcony size, solar access, car parking and vehicular access driveway location.



The proposed variation to building depth, apartment size, car parking, balcony size and solar access is considered acceptable as it is consistent with the requirements of the Apartment Design Guide of SEPP 65.

The proposal is generally compliant with the DCP's building separation controls with the exception of Level 4 (5<sup>th</sup> storey) where the separation is 6m (increasing to 9 and 18m for the upper levels) to the northern and western boundaries. Given that the neighbouring building does not extend vertically at this level, the setback complies with the objectives of the control in terms of visual and acoustic privacy, overshadowing and solar access. With a compliant 10 metre setback provided to both street frontages, the proposed setbacks to the northern and western boundaries are constrained but will still achieve a maximum building separation distance of approximately 12 metres, leaving an appropriate building envelope for the development.

The setbacks proposed to the basement levels do not comply with the required 10m setback to Pennant Hills Road and Post Office Street and with the required 4.5m setback to side boundaries. The objective of the 10m setback control is to create a green edge along Pennant Hills Road to allow for street tree planting, future footpath widening and bus shelters. It is considered that inappropriate distribution of deep soil planting is proposed to be provided around the site with minimal deep soil zone being provided within the Pennant Hills Road setback area which is exacerbated by excessive site coverage resulting in an inappropriate balance of open space surrounding the building.

The proposed vehicular access driveway location is not centrally located and is less than 10m from the side boundary. A written justification to support a variation to this control has been addressed in the traffic report submitted with the application which concludes that the proposed location is the most appropriate location as it is consistent with the current location and is the most remote from Pennant Hills Road.

Eight (8) submissions have been received during the notification and exhibition period and concerns have been raised in relation to the site area, traffic, parking, poor design and land use mix, gross over residential development, bulk, scale and height, overshadowing, loss of privacy, solar access, non-compliance with FSR, site cover, amalgamation plan, building separation, landscaping, balcony sizes, over-estimated capital investment value and non-compliance with the objectives of the B2 Local Centre zone. The submissions are addressed in the report and issues raised in the submissions relating to floor space ratio, bulk and scale and overdevelopment are sufficient grounds to warrant refusal of the application.

The Development Application is recommended for refusal.

## BACKGROUND

## MANDATORY REQUIREMENTS

Owner:	Lateral Estate Pty Limited c/ Benjy Levy	1.	<u>Section 79C (EP&amp;A Act)</u> - Satisfactory
Zoning:	B2 Local Centre	2.	SEPP (State & Regional Development) 2011 - Satisfactory
Area:	2,128m <sup>2</sup>	3.	SEPP 65 - Design Quality of Residential Apartment Development - Complies
Existing Development:	First Choice Liquor Outlet	4.	<u>LEP 2012</u> - Permissible with consent.
			<u>The Hills DCP 2012 - Part D Section 12 - Carlingford Precinct</u> - Variation - see Report
			<u>Section 94 Contribution</u> - \$709,457.43 if this application is to be approved.



**SUBMISSIONS****REASONS FOR REFERRAL TO JRPP**

1. Exhibition:	Yes, 14 days	1.	CIV exceeds \$20 million
2. Notice Adj Owners:	Yes, 14 days.		
3. Number Advised:	103		
4. Submissions Received:	Eight (8)		

**HISTORY****13/03/2012**

Development Consent No. 276/2012/HA for construction of a First Choice Liquor outlet comprising a total retail floor area of 1,029m<sup>2</sup> granted by Council's Development Assessment Unit.

**03/11/2015 to  
18/1/2016**

Subject application notified and advertised in local newspaper.

**19/11/2015**

Letter sent to the applicant raising concerns regarding the extent of the site area variation, outstanding engineering and environmental health issues and issues raised in the submissions.

**24/11/2015**

Letter sent to the applicant requesting to amend the plans to show amended unit numbering.

**26/11/2015**

Briefing held with JRPP.

**18/12/2015**

Additional information received from the applicant in response to the letter sent by Council staff dated 19/11/2015.

**04/01/2016**

Letter sent to the applicant raising outstanding issues as a result of review of the submitted additional engineering information. It was requested that a meeting be held with the applicant's engineering consultant to discuss the issues and concerns identified in the assessment.

**20/01/2016**

Further letter sent to the applicant regarding landscaping comments as a result of review of the submitted amended landscaping plans.

**02/02/2016**

Revised landscaping plans submitted by the applicant.

**03/02/2016**

Meeting held with the applicant to discuss outstanding engineering and landscaping issues.

**22/02/2016**

Preliminary and revised architectural, stormwater and revised survey drawings submitted by the applicant.

**04/03/2016**

Letter sent to the applicant raising further concerns in response to submitted revised landscaping plans.

**07/03/2016**

Letter sent to the applicant raising further concerns in response to submitted additional engineering information.

**29/03/2016**

Letter received from the applicant in response to outstanding matter raised in letters from Council staff dated 04/03/2016 and 07/03/2016.



- 26/04/2016** Letter sent to the applicant forwarding engineering comments as a result of the review of additional information received on 29/03/2016.
- 05/05/2016** Meeting held with applicant to discuss outstanding drainage engineering issues raised in Council's letter dated 26/04/2016.
- 12/05/2016** Additional information received from the applicant in response to the letter from Council staff dated 26/04/2016 and outstanding engineering issues discussed with Council officers on 05/05/2016.
- 12/05/2016** The NSW Government announced that 19 new Councils have been created. The subject site is now located within the new City of Parramatta Local Government Area.

## **THE SITE**

The subject site is within the Northern Precinct of Carlingford and is located on the corner of Pennant Hills Road and Post Office Street which is approximately 650 metres walking distance from Carlingford Railway Station.

The land area of the development site is 2,128m<sup>2</sup> which falls steeply from east to west away from Pennant Hills Road. The site falls from RL 124.29 at the north eastern corners to RL 120.03 at the south western corner or approximately 4 metres.

There is currently a trapped low point located approximately mid-block on Pennant Hills Road. A kerb inlet pit is located within the road corridor to catch the stormwater runoff from the road. This inlet is then connected to a line which runs through the site along its northern boundary discharging mid-block along the western boundary into the adjacent residential development. This drainage line sits within a Council easement which allows stormwater in excess of the pipe drainage capacity to be conveyed overland to the residential development.

The site is currently occupied by a First Choice Liquor Store with access from both Pennant Hills Road and Post Office Street. A 2 and 3 storey multi-unit residential complex (SP 53403) with associated basement parking comprising 5 residential flat buildings containing 36 units and a row of 14 townhouses on a L-shaped allotment adjoins the northern and western boundaries of the development site (see Attachments 1 and 2).

## **PROPOSAL**

The Development Application is for the demolition of the existing First Choice Liquor store and construction of a nine (9) storey building comprising a residential flat development containing 53 apartment units over ground floor retail/commercial premises with a floor area of 128m<sup>2</sup>.

The proposal includes three (3) basement car parking levels with vehicle access via a two-way driveway from Post Office Street, providing on-site parking for 77 cars.

Landscaping and passive seating spaces are proposed between the Pennant Hills Road footpath and the ground level forecourt to, and adjacent to, the proposed retail space and for the ground level communal open space that will be available for future residents.

The proposal seeks a variation to the minimum required lot size of 4,000m<sup>2</sup> for residential flat development in B2 Local Centre zone and maximum allowed floor space ratio (FSR) of 1.99:1. The variation to the minimum lot size requirement is supported by a written statement addressing the criteria outlined in Clause 4.1A(3) of LEP 2012. The variation to



the maximum allowed FSR is accompanied by a written justification addressing the provisions under Clause 4.6 of LEP 2012.

## **ISSUES FOR CONSIDERATION**

### **1. SEPP (State and Regional Development) 2011**

Clause 20 of SEPP (State and Regional Development) 2011 and Schedule 4A of the Environmental Planning and Assessment Act, 1979 provides the following referral requirements to a Joint Regional Planning Panel:-

*Development that has a capital investment value of more than \$20 million.*

The proposed development has a capital investment value of \$20,645,556 thereby requiring referral to, and determination by, a Joint Regional Planning Panel. In accordance with this requirement the application was referred to, and listed with, the JRPP for determination.

### **2. Compliance with the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development**

The Development Application was lodged on 15 October 2015. The direction from the Department of Planning and Environment is as follows:

*"For apartment development applications lodged from 19 June 2015 and determined after 17 July 2015, the Apartment Design Guide, along with the changes to SEPP 65 applies."*

Having regard to the above, the application is therefore subject to the relevant design criteria contained within the Apartment Design Guide.

Clause 6A of SEPP 65 provides that development control plans cannot be inconsistent with the Apartment Design Guide and applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

Clause 6A(2) states that if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect. On this basis, the standards pertaining to apartment size, balcony size prescribed in The Hills Development Control Plan 2012 are overridden by the SEPP in this case. Notwithstanding sub-clause 2, the applicant has provided justification for the proposed variation to apartment and balcony size which is addressed in Section 5 of this report.

Clause 30(1) of the SEPP provides the following:

*"If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:*



- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Based on the above design criteria, as the car parking provision is greater than the minimum amount of car parking specified in Part 3J of the ADG, this standard cannot be used as a ground for refusal.

Further, as the proposal complies with the minimum internal area requirements specified in Part 4D of the ADG, similarly with car parking this standard cannot be used as a ground for refusal.

### **SEPP 65 Principles**

The Development Application has been assessed having regard to the design quality principles outlined in SEPP 65. The merits of the application in terms of urban design and the relationship to the site constraints are:

#### **Principle 1: Context and Neighbourhood Character**

*'Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.'*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.'*

#### **Comment:**

The site is a corner allotment with a total site area of 2,128m<sup>2</sup>. It is located on the corner of Post Office Street (a local road) and Pennant Hills Road (an arterial road). It is zoned B2 Local Centre under the provisions of The Hills Local Environmental Plan 2012.

The site is located within the Carlingford Precinct, identified in The Hills Development Control Plan 2012 as an area of population growth. The precinct contains a mix of older dwellings along with newer multi dwelling and apartment developments. The precinct is also bordered by retail and commercial development to the east. It is serviced by rail via Carlingford Station which is within 650m walking distance. The site is within 150m of Carlingford Court located on the eastern side of Pennant Hills Road which is an established shopping centre within the Hornsby Shire Local Government Area.

The site is currently occupied by a retail liquor store (First Choice Liquor) which was approved by The Hills Shire Council in 2012. It has a total retail floor area of 1,029m<sup>2</sup> which is 8 times larger than the floor area of the retail component of this proposed development. A significantly reduced retail floor area conflicts with the intent and objectives of the B2 Local Centre zone as the proposal is predominantly a residential development which is not the principal use envisaged in the B2 zone. The retail/commercial component which is proposed to be located approximately 3m below the street level does not reinforce the site's location as a corner block nor does the current proposal seek to activate the street frontages. Such a mixed use development with a minimal commercial component does not effectively respond to the context of the site or enhance the identity of the immediate area particularly the subject site being an established corner commercial site for many years. A mixed use development with proportionate residential and commercial components would be more responsive and



compatible with the existing and future character of the Carlingford Precinct. The proposed development in its current form seeks to benefit from purporting to be a mixed use development whilst not providing a reasonable mix of commercial and residential floor spaces contrary to the intent of the B2 zone.

### **Principle 2: Built Form and Scale**

*'Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.'*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation 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:

The scale of the proposed development has taken into consideration the relevant controls in the LEP and DCP such as height and setbacks but not the maximum allowable density in this part of the Carlingford Precinct.

The mass of the building is divided into two parts. The lower part provides a relationship with the existing strata titled apartment building to the north, while the upper levels are recessed to provide an increased setback reducing visual bulk.

The retail/commercial component is located approximately 3m below the street level and is accessible from the street through a series of steps. It does not physically provide an active frontage (when compared with the existing First Choice Liquor Store) and does not reinforce its corner location which the site has been known for and established for many years. The proposal does not provide a bulk and scale proportionate to the size of the lot which results in a non-compliant floor space ratio that is inconsistent with the planned residential density for this part of the Carlingford Precinct.

### **Principle 3: Density**

*'Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.'*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.'*

#### Comment:

The proposed development exceeds the maximum density expressed in floor space ratio which is inconsistent with the planned residential density for the area. The non-compliance with the FSR is a direct result of excessive site coverage which is not proportionate to the size of the land. The proposed density is not appropriate to the site and its context. The proposed mixed use development attempts to circumvent compliance with the relevant standards for residential flat buildings in particular the required communal open space at ground level.

### **Principle 4: Sustainability**

*'Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.'*



Comment:

The proposed development provides satisfactory natural cross ventilation and solar access for the amenity of future residents and incorporates the use of energy efficient materials and designs.

Waste management facilities are provided for retail and residential waste, including facilities for recycling. Collection is available on site in the loading bay. Access to a waste chute is provided for residential waste management with recycling collected in a cupboard on each level.

All dwellings are BASIX certified to at least the minimum requirement.

**Principle 5: Landscape**

*'Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.'*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.'*

Comment:

The landscaping provision is a combination of deep soil and planter box-style planting. It could achieve a much better outcome if the basement car parking level is set back further from the Pennant Hills Road frontage to provide a wider deep soil zone. The deep soil zone provided is not evenly distributed around the site to achieve the desired outcome.

Planters at staggered levels are provided to the perimeter of the retail level area which softens the impact of the change in level from the street footpaths. A strip of planting along the western boundary also provides visual amenity to the adjoining property to the west by screening the loading dock located within the subject site.

The main communal open space for residents is provided at the ground floor level which is accessed by ramping and contains seating, a BBQ area and is softened by perimeter planting. A corner pocket of deep soil planting provides visual privacy to adjoining development.

**Principle 6: Amenity**

*'Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.'*

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

Comment:

Visual privacy is provided between the proposed development and the adjoining multi-unit residential development through adequate separation. The upper levels of the development look over the roof of the adjoining residential flat building.

The level of solar access achieved is considered satisfactory given the orientation of the site resulting in predominantly east-west facing facades.



The living areas and private open space of 70% of apartments will receive 2 or more hours of solar access. The living areas and private open space of 91% of apartments will receive 1 hour 45 minutes of solar access. 60% of apartments are cross ventilated.

Room sizes are of a good size with a good outlook. Private open space areas meet minimum requirements of the ADG and are configured to be functional and conducive to recreational use. All are accessed from living areas.

Storage is provided within the unit and in basement cages

Loggias have been provided on the lower level units that have a frontage to Pennant Hills Road improving the quality of residential space and providing a noise barrier from the road.

### **Principle 7: Safety**

*'Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.'*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.'*

#### Comment:

The development ensures casual surveillance of the streetscape and publicly accessible areas of the site by means of the retail tenancy and private open spaces oriented towards these areas.

A visual connection is provided from the street to the commercial space and residential entry.

The main residential entry faces the main road and is highlighted by an enlarged architectural awning element and glazed doors, making a clear entry point.

Lift cores, whilst shared between the residents and staff of the retail tenancy will be electronically secured per level to ensure privacy and safety of residents.

### **Principle 8: Housing Diversity and Social Interaction**

*'Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.'*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.'*

#### Comment:

The proposed development will assist in realising the precinct's growing demand for residential accommodation within good proximity to transport and retail/commercial hubs. It is considered that a less dominant residential component compliant with the FSR control would be proportionate to the communal open space areas proposed and would provide better amenity for future residents.

A good variety of apartment types and styles is provided with a mix of 1, 2 and 3 bedroom apartments. Housing choice is therefore provided for which responds to general market needs. 6% of apartments are adaptable which exceeds the minimum requirement. Over 11 % of the apartments are 3 bedroom and suitable for larger family units.



The apartments have good access to views and sunlight.

### **Principle 9: Aesthetics**

*'Good design achieves a built form that has good proportions and a balanced composition of elements reflecting the internal layout and structure. Good design uses a variety of material colours and textures.'*

*'The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.'*

#### Comment:

The building is divided vertically into two parts. The lower half represented in a white precast concrete responds with alignment in scale to the apartment complex to the north. The upper half is separated from the lower half by a single and predominantly glazed level.

Built elements responding to the streetscape include loggias to the eastern lower levels of the apartments that can be enclosed to protect against the high-volume traffic impacts of Pennant Hills Road and to provide an outdoor space for the benefit of the residents.

The brise-soleil blades (sun-shading features) are positioned to control solar access – providing shading in summer and solar access in winter. The varied blades create pockets of light and shade further enhancing the façades on all elevations. This variation in pattern reduces visual repetition.

In addition, coloured glazed panels reference the red/yellow/orange foliage of the local street trees (designated for Post Office Street in the Carlingford Precinct masterplan) which provide visual interest.

The awning at the base of the building provides an anchor and shelter to the commercial use on the ground floor. It stretches up and over the residential entry providing a marker along the streetscape.

### **3. Compliance with The Hills Local Environmental Plan 2012**

The subject site is zoned B2 Local Centre under the provisions of The Hills Local Environmental Plan 2012 (LEP 2012). Refer Attachment 3 – Zoning Map.

The proposed development is defined as a mixed use development which is a building or place comprising 2 or more different land uses, which is permissible with consent in the B2 Local Centre zone. The proposed development comprises a 9-storey building containing 53 residential flat units with 2 retail tenancies with a combined floor area of 128m<sup>2</sup> at the ground floor level. The following objectives of the B2 Local Centre zone are:

- *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 retail/commercial component at the ground floor level will be predominately for the convenience of future residents of the development. It is noted that the proposed retail floor area is much less than the existing First Choice Liquor Store which has a total floor area of 1,029m<sup>2</sup>. A significantly reduced retail floor area of 128m<sup>2</sup> is contrary to the intent and objectives of the B2 Local Centre zone as the proposal is predominantly a residential use which is not the desired dominant use in the B2 zone. The provision of a very small retail/commercial component within the development which is proposed to be located approximately 3m below the street level does not afford the opportunity to reinforce the site's corner location and activate the street frontages.



The proposal will provide a limited number of jobs associated with the retail/commercial component of the development.

The amount of off-street car parking provision satisfies the Apartment Design Guide based on the parking rates set out in the RMS Guide to Traffic Generating Developments. The RMS Guide aims to maximise the use of public transport which is in close proximity. The Carlingford Rail Station is approximately 650m walking distance from the development, and there are numerous high frequency bus services which utilise Pennant Hills Road and Carlingford Road. Additionally, walking and cycling will be maximised given the close proximity of Carlingford Court comprising banks, specialist medical services, a gym, supermarkets, electrical appliance stores, food stores and other specialty shops.

Notwithstanding the proposed development's permissibility in the B2 zone, it fails to comply with the prescribed floor space ratio requirement for the site.

#### **4. Compliance with LEP 2012 (LEP Mapping Restrictions)**

The proposal has been assessed against the LEP 2012 Map Sheets as follows:-

<b>LEP 2012 MAPPING - DEVELOPMENT STANDARDS</b>			
<b>STANDARD</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>COMPLIANCE</b>
Floor Space Ratio	1.99:1	2.17:1	No
Allotment Size	4,000m <sup>2</sup>	2,128m <sup>2</sup>	No
Building Height	27m	Max. 27m	Yes

##### **4.1 Floor Space Ratio**

The proposal seeks a variation to the LEP's maximum floor space ratio (FSR) of 1.99:1 proposing a FSR of 2.17:1 or 397.28m<sup>2</sup> over the maximum allowable gross floor area which represents a 9.4% variation (refer Attachment 4 – Floor Space Ratio Map).

The objectives of the floor space ratio (FSR) standard under Clause 4.4 are as follows:

*(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development.*

*(b) to provide for a built form that is compatible with the role of town and major centres.*

Clause 4.6(3) of LEP 2012 reads as follows:

*(3) 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 applicant has lodged the following request pursuant to clause 4.6 of LEP 2012 which seeks to justify the contravention of the FSR standard:



*The objectives of the standard and the zone objectives are achieved despite non-compliance with the standard. There are no significant adverse impacts arising from the variation. However, these facts, in themselves are not enough to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.*

*This request seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons that go beyond mere consistency with the development standard or the mere absence of significant adverse impacts.*

*Having regard to all of the above, strict compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of this case for the reasons set out below:*

- *Strict compliance with the FSR control will inevitably have the following consequences:*
  - *reduced amenity for some apartments on Levels 1-3 (arising from the use of unenclosed balconies rather than the loggias along the Pennant Hills Road frontage);*
  - *there will be no ground floor retail/business premises; and*
  - *the site will be developed with two less apartments than otherwise proposed.*
- *Each of these consequences carries a social, economic and environmental cost and would lead to a suboptimal environmental planning outcome (in comparison with the proposed development).*
- *The reduction in apartment amenity would thwart the achievement of an objective of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (clause 2(3)(d)) which is 'to maximise amenity, safety and security for the benefit of its occupants and the wider community'.*

*Normally this objective is tempered by other SEPP 65 objectives, namely clause 2(3)(f) and clause 2(3)(g), which respectively are 'to contribute to the provision of a variety of dwelling types to meet population growth' and 'to support housing affordability'. In the absence of a variation on floor space ratio, a decision to have loggias instead of unenclosed balconies would come at the expense of dwelling numbers in the unit (impacting on housing supply and reducing housing choice and undermining other objectives of SEPP 65). However, the proposed variation enables the loggias to be provided, without any impact on housing supply and housing choice (therefore maximising amenity without detracting from other SEPP 65 goals).*

- *Reducing apartment numbers by two would undermine clause 1.2(d) of THLEP 2012 which is 'to provide for balanced urban growth through **efficient** and safe **transport infrastructure, a range of housing options**, and a built environment that is compatible with the cultural and natural heritage of The Hills (bold added)'. It is unreasonable to deny a variation which would promote a more efficient use of transport infrastructure and promote housing choice in circumstances where the variation can occur without significant adverse impacts.*
- *Omitting the ground floor retail/business premises would mean that the development would not contribute to the achievement of the relevant B2 zone objective to the same extent (that is, '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'). In circumstances where there is no requirement to provide retail/business premises on the ground floor under THLEP 2012, and where the provision of those premises is not commercial in its own right, it is unreasonable to require that provision at the expense of dwellings. For completeness, such a requirement is also unnecessary, given that the additional dwellings come with no significant adverse impact.*
- *Requiring strict compliance with the FSR standard will impose burdens on the applicant, future occupiers of the development, and the wider community and this burden will be*



*disproportionate to the consequences attributable to the proposed development. (As per Botany Bay City Council v Saab Corp [2011] NSWCA 308, Court of Appeal said, in an analogous context<sup>1</sup>, that a requirement may be unreasonable when 'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development' (at paragraph 15)).*

- *In relation to the loggias (in circumstances where the adverse consequences attributable to replacing what would otherwise be balconies with loggias would be non-existent or negligible) the burden would be imposed on:*
  - **the applicant**, as some apartments in the development would have reduced amenity, and therefore of a lower value when sold; and
  - **the future occupiers of the development**, as some apartments in the development would have reduced amenity.
- *In relation to the omission of the ground floor retail/business premises (in circumstances where the adverse consequences attributable to providing such premises without reducing dwelling supply on the site are non-existent or negligible), the burden would be imposed on the community as there would not be the same opportunity for street edge activation.*
- *The maximum FSR of 1.99: 1 applies to the blocks fronting Pennant Hills Road between Post Office Road and Moseley Street. It can be inferred that the FSR has been set with regard to how these buildings are perceived from Pennant Hills Road. The ground floor of the proposed development will not be visible from Pennant Hills Road (due to the topography of the site). The same cannot be said of most, if not all, of the other nearby parcels of land subject to the same FSR control. That is, the perceived bulk of the proposed building, as viewed from Pennant Hills Road, is moderated by the fact that ground floor will not be visible.*

**Comment:**

The applicant has advised that the eastern side of Pennant Hills Road which is subject to Hornsby Local Environmental Plan 2013 permits shop top housing. Provided that the site includes a non-residential use with an FSR 0.5:1, there is no FSR limit on shop top housing erected above that use. Any development that does not include shop top housing is limited to a floor space ratio of 0.5:1. The applicant anticipates that the land will be re-developed (to a height of 17.5 metres) for shop top housing, with a ground floor non-residential use. The height control for that land allows for buildings of up to 17.5 metres in height (compared with 27 metres for the subject site).

In this context, the applicant argues that the variation to the FSR will not result in the proposal being out of scale with its future neighbours and has provided the diagram below to detail the likely future built forms within the immediate vicinity, accompanied with a written request to vary the FSR standard.



Figure 4: View of proposed development in the context of desired future development - looking west across Pennant Hills Road.



The site is surrounded by land zoned for high density residential development and/or mixed use opportunities. The existing built form on all of the adjacent sites pre-dates and falls well short of the intensity of development envisaged by LEP 2012 and Carlingford Precinct DCP. It is noted that the immediate locality is an area in transition and in the context of the FSR objective, the anticipated future surrounding development is considered to be the most appropriate reference point in this case.

The land immediately adjoining the site to the north and west has the same potential height and FSR, while the site opposite on the southern side of Post Office Street, has the opportunity for 2.3:1 FSR and a height of between 28 to 33 metres.

The bulk and scale of a development is controlled by building height, setbacks and FSR. Notwithstanding the proposal's compliance with the LEP height control of 27 metres and the equivalent 9 storey DCP standard, it is considered that the exceedance in the maximum allowable FSR and non-compliance with the minimum front setback requirement would be inappropriate to the overall context of the site and would be inconsistent with the planned residential density in the area. The proposal does not comply with the maximum allowable site cover of 35% and minimum front setback requirement of 10m to Pennant Hills Road. The basement car park has a minimal setback of 2m to Pennant Hills Road. The variation to the maximum site cover and marginal setback provision to Pennant Hills Road results in an inadequate open space and deep soil zone provision within the site. Such significant variations would set as an undesirable precedent in this part of the Carlingford Precinct and does not satisfy the objectives of the FSR standard.

In addition, it should be noted that the desired future development diagram provided by the applicant does not take into consideration the potential of the adjoining site with a compliant FSR, instead it would appear that the built form has been modelled to concentrate the floor space at each of the boundaries adjoining the site which is unlikely to occur if this adjoining site gets redeveloped, with lower buildings but compliant FSR across the site.

#### **Case Law:**

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, the decision indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6, (and 4.6(3)(a) in particular).

Further, the requirement in clause 4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

Commissioner Pearson was satisfied that the mixed use development proposed was, despite the breach of the relevant development standard, in the public interest within the meaning of clause 4.6(4)(a)(ii) because it was consistent with the objectives of the particular standard and the objectives for development within the zone.

However, Pain J upheld Commissioner's Pearson's decision that the objection further needed to justify under clause 4.6(3)(a) that the development standard was unreasonable or unnecessary on grounds other than that the development achieved the objectives of the development standard.

This was because consistency with objectives of the standard and the zone in which the development was proposed to be carried out were already a separate matter that the consent authority was required to be satisfied of under cl4.6(4)(a)(ii): at [34].



Pain J found no error in the exercise of the Commissioner's discretion in finding that the environmental planning grounds relied upon by the Applicant were insufficient for the purposes of justifying the objection under clause 4.6(3)(b).

In that regard, the Applicant had relied upon:

- The Commissioner found at [60] that to accept such matters as 'sufficient' would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land which was an objective of the EPA Act (s5(a)(ii)) public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre;
- access to areas of employment, educational facilities, entertainment and open space;
- provision of increased employment opportunities through the ground floor retail/business space; and
- an increase in the available housing stock.

However, Commissioner Pearson had held that these were not matters particular to the circumstances of the proposed development – but merely grounds that would apply to any similar development for mixed use development on the site or in the vicinity and therefore assumed to be an environmental planning ground counting or weighing against the objection.

Comment:

The applicant has not adequately addressed the matters required to be addressed under subclause (3) as the environmental planning grounds provided are not sufficient to justify contravening the development standard. The proposal in its current form has a resultant FSR which would be inconsistent with the planned residential density in this northern part of the Carlingford Precinct. The variation to the FSR standard is exacerbated by the non-compliance with the maximum site coverage and setback to Pennant Hills Road which impacts on the existing amenity of the adjoining multi-unit development. The communal open space provision is constrained by excessive building site coverage which provides an inappropriate balance of open space areas surrounding the building which should serve as a buffer to the adjoining development. A compliant site coverage and proportionate mixed use would assist in achieving a compliant FSR and providing a more appropriate built form for the site which would be in keeping with the site area and surrounding development. The proposed FSR fails to satisfy the objectives of this standard in both the LEP 2012 and Carlingford Precinct DCP as it results in excessive site coverage and inappropriate built form and scale. The variation is not supported.

Clause 4.6 (4) of LEP 2012 states:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: As stated above, the applicant has not adequately addressed the matters required to be addressed under subclause (3) as the environmental planning grounds provided are not sufficient to justify contravening the development standard. The variation to the FSR standard is exacerbated by the non-compliance with the maximum site coverage and setback to Pennant Hills Road which impacts on the existing amenity of the adjoining multi-unit development. The communal open space provision is constrained by excessive building site coverage which provides an inappropriate balance of open space areas surrounding the building which should serve as a buffer to the adjoining



development. The proposed FSR fails to satisfy the objective of this standard in the Carlingford Precinct DCP as it results in excessive site coverage and inappropriate built form and scale.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Comment: As noted above, a non-compliant FSR would be an inappropriate development outcome and is inconsistent with the objectives of the standard and B2 zone. The bulk and scale of the future surrounding development in this northern part of the Carlingford Precinct is predicated on the basis of maximum allowed FSR and building height. A yield in excess of the maximum density allowed will not be in the public interest.

- (b) *the concurrence of the Director-General has been obtained.*

Comment: Council has assumed concurrence under the provisions of Circular PS 08-003 issued by the Department of Planning and Infrastructure.

In view of the above, it is considered that the variation to the FSR standard does not satisfy Clause 4.6 of LEP 2012.

#### **4.2 Allotment Size**

Clause 4.1A(2) of LEP 2012 requires a minimum lot size of 4,000m<sup>2</sup> for residential flat buildings on land within the B2 Local Centre zone as a means of achieving this objective. The proposal comprises a site area of 2,128m<sup>2</sup> which is below the minimum lot size requirement. However, it is noted that within the Hills Development Control Plan Part D Section 12 - Carlingford Precinct, there is no expectation that the site or its neighbouring sites should be amalgamated in order to achieve larger development sites.

The clause allows Council to consider development for residential flat buildings on lots less than the minimum 4,000m<sup>2</sup> if it is satisfied of certain matters as set out in Clause 4.1A(3), as follows:

- (a) *the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height, and*
- (b) *the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and*
- (c) *the dwellings are designed to minimise energy needs and utilise passive solar design principles, and*
- (d) *significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.*

The objective of Clause 4.1A is to achieve planned residential density in certain zones.

The applicant has provided the following statement addressing Clause 4.1A(3):

- *The immediately adjoining land and structures are located on a single large "L" shaped lot that surrounds the subject site to the north and west. It is known as 3-5 Post Office Street and has frontage to Post Office Street and Pennant Hills Road. The title of the land is SP 53403. On the L shaped site are 6 buildings comprising apartments and townhouses. When viewed from Post Office Street there are 2 and 4 storey buildings. When viewed from Pennant Hills Road the scale is 3 storeys;*



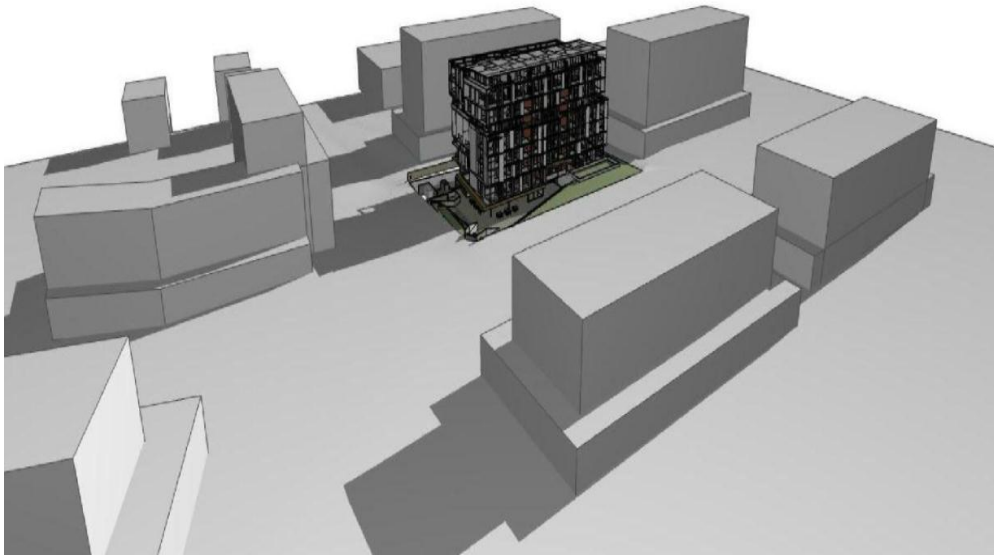
- *The adjoining land, described above, is zoned R4 High Density Residential and has the same maximum building height (27m) and FSR (1.99:1) as the subject site;*
- *We assess the gross floor area (GFA) of the existing adjoining buildings to be approximately 4,430m<sup>2</sup> and an estimated FSR of 0.81:1 (site area 5,496m<sup>2</sup>);*
- *Both the building heights and building form(s) on the adjoining site are significantly lower than that anticipated in the current planning controls;*
- *Opposite the site to the south on Post Office Street is a large box Bunnings Warehouse store with at-grade car park. The building and car park are located on a site of approximately 2,695m<sup>2</sup>;*
- *We estimate the FSR of the Bunnings site to be approximately 0.53: 1 and the building height to be approximately 14.8m;*
- *The Bunnings site is zoned B2, has a maximum building height of 28m and FSR of 2.3:1, under THLEP 2012. The Hills Development Control Plan 2012 (THDCP 2012), Part D Section 12 'Carlingford Precinct' assumes the Bunnings site will be re-developed and amalgamated with neighbouring sites;*
- *As detailed above, the present buildings on the adjoining site and the Bunnings site opposite are significantly lower in height and the form of development significantly lower in density, than that envisaged by the contemporary planning controls for the sites and location;*
- *The intent of the Clause is clear in seeking to ensure that the planned development under THLEP 2012 is achieved. The planned residential densities, on the adjoining and opposite sites will be at a height, form and scale compatible with the subject proposal;*
- *An alternative way of expressing this, is that the proposed development will be compatible with adjoining structures in terms of their elevation to the street and building height, notwithstanding that the subject site is less than 4,000m<sup>2</sup>;*
- *There is compliance with the requirements of the Apartment Design Guide in relation to acoustic and visual privacy;*
- *There is compliance with the solar access requirements of the Apartment Design Guide; and*
- *The site has no existing vegetation but the development will be complemented by extensive ground level landscaping including on the north and west site boundaries that adjoin existing residential development.*

**Comment:**

An assessment of the proposed built form envisaged in LEP 2012 and the Carlingford Precinct DCP has been submitted by the applicant to better understand the likely future context in which the development will be located. The 3D image shown below indicates that the development will be compatible with planned adjoining structures in terms of their elevation to the street and building height, with the applicant citing a case law in "Project Venture v Pittwater Council [2005] NSWLEC 191". The question asked in this Court proceeding was:

*"Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*





The diagram above provided by the applicant does not take into consideration the potential of the adjoining site with a compliant FSR, and as stated earlier it would appear that the built form has been modelled to concentrate the floor space at each of the boundaries adjoining the site which is unlikely to occur if this adjoining site gets redeveloped, with lower buildings but compliant FSR across the site.

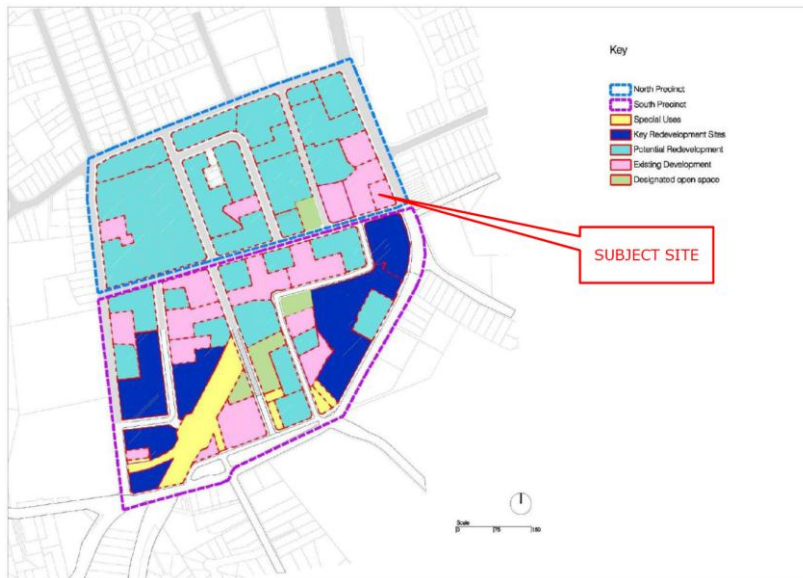
It would be more appropriate if the density expressed in floor space ratio is reduced to be consistent with the planned residential density for this northern part of the Carlingford Precinct. In addition a compliant front setback should be provided to enable adequate deep soil zone planting along Pennant Hills Road.

Subject to FSR reduction and setback compliance, the proposed variation to the minimum lot size requirement is considered supportable in this regard.

## **5. Compliance with DCP 2012 Part D Section 12 – Carlingford Precinct.**

The Carlingford Precinct DCP contains a specific set of controls for the locality. The site is situated within the south east corner of the Northern Precinct of the Carlingford Precinct. It is not identified as a 'key site', however it is directly opposite one of the key sites known as "Block 16: Bunnings Site" at the corner of Pennant Hills Road and Post Office Street. It is noted that there is no expectation that the subject site and its immediate neighbouring properties have to be amalgamated in order to achieve larger development sites as illustrated in the Potential Site Amalgamation Guide Plan within the DCP (see diagram below).





The subject site is required to provide a minimum 10m setback to Pennant Hills Road and Post Office Street as shown in Figure 9 of the DCP (see diagram below).



The proposal has been assessed against the DCP's Precinct-Wide Built Form Controls and seeks a variation to floor space ratio, apartment size, setbacks, building separation, building depth, balcony size, solar access, car parking and vehicular access driveway location, as shown in the following table.

DEVELOPMENT STANDARD	DCP 2012 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
4.1 Floor Space Ratio	Must not exceed 1.99:1 as specified in the Floor Space Ratio Map of The Hills LEP 2012.	2.17:1	No. This variation is discussed in Section 4.1 above.
4.3 Site Coverage	Building site coverage shall not exceed 35% of site	41%	No, see comment below.



DEVELOPMENT STANDARD	DCP 2012 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>area.</p> <p>“Building” for the purpose of this control is defined as the building footprint to the outside of the external walls excluding underground parking structures no more than 1.2m above ground and where roof of the parking structure is a private or communal open space.</p>		
4.6 Apartment Size	<p>Clause 3.11 of DCP 2012 Part B Section 5 – Residential Flat Buildings applies, i.e:</p> <p><b>Type 1</b>  1 bedroom - 50m<sup>2</sup>  2 bedroom – 70m<sup>2</sup>  3 or more bedrooms – 95m<sup>2</sup></p> <p><b>Type 2</b>  1 bedroom – 65m<sup>2</sup>  2 bedroom – 90m<sup>2</sup>  3 or more bedrooms – 120m<sup>2</sup></p> <p><b>Type 3</b>  1 bedroom – 75m<sup>2</sup>  2 bedroom – 110m<sup>2</sup>  3 or more bedrooms – 135m<sup>2</sup></p> <p>Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.</p> <p>Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.</p>	<p>All 1 bedroom, 2 bedroom and 3 bedroom units (100%) fall under Type 1 category.</p> <p>There are no Type 2 units</p>	<p>No, see comment below.</p> <p>No, see comment below.</p>



<b>DEVELOPMENT STANDARD</b>	<b>DCP 2012 REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
	All remaining apartments are to comply with the Type 3 apartment sizes.	Not relevant.	Not relevant.
4.7 Setbacks	<p>Minimum 10m front setback to Pennant Hills Road and Post Office Street.</p> <p>Minimum side setback of 4.5m to walls and 6m to windows from ground floor to fourth storey, and 6 metres for walls and windows above the fourth storey</p> <p>In general, no part of a building or above ground structure may encroach into a setback zone. Exceptions are access to underground parking structures.</p>	<p>Protrusion of 500-600mm within the 10m setback to the façade of the eastern wing fronting Post Office Street.</p> <p>The basement car park levels do not comply as follows:</p> <p>Pennant Hills Rd.: 2m Post Office St: 4.4m - 5.4m Northern Side - 5.4m Western Side - 2.9 - 6.4m</p>	No, see comment below.
4.8 Building Separation and Treatment	<p>Buildings up to 4 storeys</p> <ul style="list-style-type: none"> <li>- 12 metres between habitable rooms/balconies;</li> <li>- 9 metres between habitable/balconies and non-habitable rooms; and</li> <li>- 6 metres between non-habitable rooms.</li> </ul> <p>Buildings from 5 to 8 storeys</p> <ul style="list-style-type: none"> <li>- 18 metres between habitable rooms/balconies;</li> <li>- 12 metres between habitable rooms/balconies and non-habitable rooms; and</li> <li>- 9 metres between</li> </ul>	<p>The site adjoins 3-storey apartment buildings to the northern and western boundaries which have minimal boundary setbacks of 3-4m.</p> <p>The lower floors of the proposed apartment building (Ground floor to Level 3) are set back 6-7m to the west and 6m to the north which would easily achieve a separation of between 9-10m.</p> <p>The setback to the upper floors from fifth storey up (Levels 4-8) increases to 9m (northern and western sides) with the topmost</p>	No, see comment below.



<b>DEVELOPMENT STANDARD</b>	<b>DCP 2012 REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
	<p>non-habitable rooms.</p> <p>Buildings 9 storeys and above</p> <ul style="list-style-type: none"> <li>- 24 metres between habitable rooms/balconies;</li> <li>- 18 metres between habitable rooms/balconies and non-habitable rooms; and</li> <li>- 12 metres between non-habitable rooms.</li> </ul>	<p>floor (Level 8) being further recessed from 18 to 21m to the western boundary.</p>	
4.9 Building Depth	<p>18 metres from glass line to glass line is appropriate.</p> <p>Depths wider than 18 metres from glass line to glass line must demonstrate satisfactory daylight and natural ventilation.</p>	<p>Depth east to west – varies from 20m (northern end of the building) to 23m (southern end of the building).</p>	No, see
4.12 Balconies	<p>(a) Provide primary balconies for all apartments with a minimum depth of 2 metres.</p> <p>Developments which seek to vary the minimum standards must demonstrate that negative impacts from noise and wind cannot be satisfactorily mitigated with design solutions.</p> <p>(b) The minimum area for a balcony is 10m<sup>2</sup></p>	<p>8m<sup>2</sup> to all 1 bedroom apartments</p>	No, see comment below.
4.13 Solar Access	<p>(a) Adjoining residential buildings to receive at least 4 hours sunlight between 9am-3pm on 21 June.</p> <p>(b) Living rooms and</p>	<p>(a) Adjacent residential building would be shadowed by the proposed development in part from 9am to 11.30am. Sun is available to the eastern facade in part from 9am,</p>	No, see comment below.



DEVELOPMENT STANDARD	DCP 2012 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	private open spaces for at least 70 percent of apartments should receive minimum 4 hours direct sunlight between 9 am and 3 pm on 21 June.	with full sun from 11.15 to 12.15pm. After 12.15pm, the eaves on the adjoining building shade any windows due to the eastern orientation of the wall.  (b) The applicant has not provided the number of apartments to receive four hours of direct sunlight basically relying upon clause 6A of SEPP 65 that the DCP provisions are of no effect.	
4.14 Car Parking Provision	Residents: 1BR unit – 1 space 2BR unit – 2 spaces 3BR unit – 2 spaces  Visitors: 2 spaces per 5 apartments  Commercial: 1 per 18.5m <sup>2</sup>  Residents: 12 x 1 BR = 12 spaces 35 x 2BR = 70 spaces 6 x 3BR = 12 spaces  Visitors = 22 spaces  Retail/Commercial @128m <sup>2</sup> = 7 spaces  Total Required = 123 spaces	Residents – 59 spaces Visitors – 11 spaces Retail/Commercial – 7 spaces  Total Provided = 77 spaces (shortfall of 46 spaces)	No, see comment below.
Vehicular Access (per DCP 2012 Part B Section 5 – Residential Flat Buildings)	The driveway shall be centrally located within the development and be a minimum of 10 metres from any side boundary or street.	The proposed driveway is not centrally located and set back 3.5m from the western boundary.	No, see comment below.



## **5.1 Site Coverage**

Clause 4.3 of the Carlingford Precinct DCP requires that building site coverage shall not exceed 35% of site area. The applicant's calculation indicates a compliant site coverage, however assessment of the proposal shows that the proposed building site coverage exceeds 35%. The calculated site coverage is approximately 41%.

The objectives of the site coverage standard are:

- (i) *To ensure an appropriate balance of open space surrounding buildings within their site area, reflecting the different scales of development appropriate in the north and south of the precinct;*
- (ii) *To provide solar access; and*
- (iii) *To control building bulk by working in conjunction with the FSR and height limits that help differentiate the desired future character appropriate in the north and south of the Precinct.*

### **Comment:**

It is considered that the exceedance in the maximum allowable building site coverage adversely impacts on the amenity of adjoining development with limited open space being provided which should serve as a buffer to the adjoining property. The excessive site coverage contributes to a non-compliant density resulting in an inappropriate built form and scale which is not in keeping with the site area and surrounding existing and likely future development. The variation is not supported.

## **5.2 Apartment Mix and Size**

Clause 3.11 of the Council's Residential Flat Building DCP requires the following in relation to apartment mix and size:

### **Apartment Mix**

- (a) No more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments.
- (b) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.

The following is proposed:

There are 12 x 1 bedroom units (23% of the total) and there are 6 x 3 bedroom units (11% of the total). The proposal complies in regard to apartment mix.

### **Minimum Internal Floor Area**

The table under clause 3.11(d) prescribes the minimum internal floor area for each unit (excluding common passageways, car parking spaces and balconies) in a residential flat development containing 30 or more units, which shall not be less than the following:

<b>Apartment Size Category</b>	<b>Apartment Size</b>
Type 1	
1 bedroom	50m <sup>2</sup>
2 bedroom	70m <sup>2</sup>
3 or more bedrooms	95m <sup>2</sup>
Type 2	
1 bedroom	65m <sup>2</sup>
2 bedroom	90m <sup>2</sup>
3 or more bedrooms	120m <sup>2</sup>
Type 3	
1 bedroom	75m <sup>2</sup>



2 bedroom	110m <sup>2</sup>
3 or more bedrooms	135m <sup>2</sup>

- Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- All remaining apartments are to comply with the Type 3 apartment sizes.

The table below details the unit size of each unit and their DCP typology as follows:

Unit No.	No. of Beds	Size (m <sup>2</sup> )	DCP Typology
<b>Level 1</b>			
101	2	78	1
102	1	55	1
103	1	50	1
104	2	77	1
105	1	50	1
106	2	81	1
107	2	76	1
108	3	95	1
<b>Level 2</b>			
201	2	78	1
202	1	55	1
203	1	50	1
204	2	77	1
205	1	50	1
206	2	81	1
207	2	76	1
208	3	95	1
<b>Level 3</b>			
301	2	78	1
302	1	55	1
303	1	50	1
304	2	77	1
305	1	50	1
306	2	81	1
307	2	76	1
308	3	95	1
<b>Level 4</b>			
401	2	78	1
402	1	55	1
403	1	50	1
404	2	77	1
405	1	50	1
406	2	81	1
407	2	76	1
408	3	95	1
<b>Level 5</b>			
501	2	75	1
502	2	75	1
503	2	75	1



504	2	81	1
505	2	76	1
506	3	95	1
Level 6			
601	2	77	1
602	2	75	1
603	2	75	1
604	2	81	1
605	2	76	1
606	3	98	1
Level 7			
701	2	77	1
702	2	75	1
703	2	75	1
704 (2 levels)	2	78	1
705 (2 levels)	2	75	1
706 (2 levels)	2	75	1
707 (2 levels)	2	75	1
708 (2 levels)	2	75	1
709 (2 levels)	2	85	1

In summary, the proposed apartment sizes are:

Unit Type	Size	No. of Units	Type	%
1 bedroom	50m <sup>2</sup> - <65m <sup>2</sup>	12	Type 1	100%
	65m <sup>2</sup> -- <75m <sup>2</sup>	0	Type 2	0%
	75m <sup>2</sup> and above	0	Type 3	0%
2 bedroom	70m <sup>2</sup> - <90m <sup>2</sup>	35	Type 1	100%
	90m <sup>2</sup> - <110m <sup>2</sup>	0	Type 2	0%
	110m <sup>2</sup> and above	0	Type 3	0%
3 bedroom	95m <sup>2</sup> - <120m <sup>2</sup>	6	Type 1	100%
	120m <sup>2</sup> - <135m <sup>2</sup>	0	Type 2	0%
	135m <sup>2</sup> and above	0	Type 3	0%

All 1 bedroom, 2 bedroom and 3 bedroom units fall under Type 1 category and therefore exceed the 30% maximum allowed in this category.

The applicant has provided the following justification to this apartment size category variation:

*"Pursuant to Clause 6A of SEPP 65, Council's DCP controls have no effect.*

*Notwithstanding, the unit layouts/apartments are compliant with the objectives of the DCP as follows:*

- *Being efficient and functional in their design*
- *Providing a high level of amenity*
- *Catering for a range of different housing types*
- *Being affordable*
- *Maximising environmental performance*

*All apartment sizes are compliant with the minimum apartment sizes within the Apartment Design Guide and pursuant with Clause 30 of SEPP 65 cannot be used as a means to refuse this application.*



*We have also engaged the services of AE Design Partnership, (independent urban designers, planners and architects) to carry out a thorough assessment of each apartment type against the objectives of Council's DCP and objectives and design criteria set out in the Apartment Design Guide.*

*Their assessment concludes that each apartment type is consistent with the objectives set out in Section 3.11 of Council's DCP.*

*Their assessment also concludes that the apartments satisfy the objectives of Apartment size and layout in the ADG, providing functional and well organised spaces, high residential amenity, high environmental performance and flexibility."*

**Comment:**

The proposal complies with the Apartment Design Guide and therefore cannot be refused on the basis of unit size. The proposed development will assist in realising the precinct's growing demand for residential accommodation within good proximity to transport and retail/commercial hubs.

A diversity of apartment types and styles is provided, with a mix of 1, 2 and 3 bedroom apartments, single and two storey element. Housing choice is therefore provided for which responds to general market needs with 6% of apartments being nominated as adaptable units which exceeds the minimum requirement. Over 11% of the apartments are 3 bedroom and suitable for larger family units.

The variation to Council's apartment size standards is supported in this regard.

**5.3 Building Setback**

The DCP requires a minimum 10m setback to Pennant Hills Road and Post Office Street and minimum side setbacks of 4.5m to walls and 6m to windows from ground floor to fourth storey, and 6 metres for walls and windows above the fourth storey.

The basement car park levels do not comply with the setback requirements as follows:

Pennant Hills Road: 2m  
Post Office Street: 4.4m - 5.4m  
Northern Side – 5.4m  
Western Side – 2.9 – 6.4m

The objectives of the 10 metre setback standard are as follows:

- (i) To reinforce the north south and east west axes in the Precinct; and*
- (ii) To create a green edge along Pennant Hills Road to allow for street tree planting, future footpath widening and bus shelters.*

The objectives of the side setback standards are as follows:

- (i) To minimise the impact of development on light, air, sun, privacy, views and outlook for neighbouring properties, including future buildings;*
- (ii) To retain or create a rhythm or pattern of development that positively defines the streetscape so that space is not just what is left over around the building form;*
- (iii) To allow modulation of end walls for structures higher than 4 storeys.*

**Comment:**

The objective of the 10m setback control is to provide an adequate setback along Pennant Hills Road to allow for street tree planting and growth. The facades of the building are generally set back 10m in compliance with this control with the exception of a minor protrusion to the facade of the eastern wing of the building fronting Post Office Street due



to the irregular shape of the lot. The encroachment provides articulation to the building and reinforces the site's corner location.

The application is supported by an arborist report which indicates that the basement car park setbacks and proposed planter boxes and soil depths will support and sustain both street tree and on-site tree species. One tree was found to be unsuitable and is proposed to be replaced with more appropriate plantings as depicted in the landscape plans. It is noted that the amount of deep soil zone provided satisfies the numerical standard in both the Apartment Design Guide and DCP but it is not evenly distributed within the site to provide an appropriate design outcome. It would achieve a better design outcome with a wider deep soil zone with a compliant 10m setback provided along Pennant Hills Road.

The setback to the northern and western side boundaries is considered satisfactory as it does not impact on visual or acoustic privacy, overshadowing of living areas of adjoining properties.

The landscape plans have been assessed by Council's Landscape Assessment Officer and is considered satisfactory.

The proposed variation is supported in this regard.

#### **5.4 Building Separation**

The proposal is generally compliant with the numerical controls with the exception of the fifth storey component (Level 4) where the setback is generally 6m from the northern and western boundaries which achieves a 9-10 metre separation with adjoining buildings (rather than 12m).

The applicant has provided the following justification to this variation:

*The site can be considered to be an 'in fill' development in the sense that both immediately adjoining properties have existing medium density development constructed upon them, both with minimal boundary setbacks of approximately 3 metres. Therefore the ability to achieve the building separation distances required by the DCP is limited, with the greater burden falling onto the development site.*

*With 10 metre setbacks provided to both street frontages, as required, setbacks to the northern and western boundaries have been set at 6 metres (increasing to 9 and 18 metres for the upper levels) in order to achieve a maximum building separation distance of approximately 12 metres, leaving an appropriate building envelope for the development.*

#### **Comment:**

The objectives of the building separation standards are as follows:

- (i) To ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings;*
- (ii) To provide visual and acoustic privacy for existing and new residents;*
- (iii) To control overshadowing of adjacent properties and private or shared open space;*
- (iv) To allow for the provision of open space of an appropriate size and proportion for recreational activities for building occupants; and*
- (v) To provide deep soil zones for stormwater management and tree planting.*

Given that there are no existing neighbouring buildings at this level, the setback of 6m to the fifth storey which increases to 18m on the upper levels satisfies the objectives of the control as it provides visual and acoustic privacy.

Due to the orientation of the building being general east-west, the majority of the shadow cast by the proposed development would be over the adjacent road. The neighbouring apartment building would be shaded by the proposed development in part from 9am to



11.30am. Due to the topography and orientation, reducing the height of the development would not reduce the impacts of shadow on the adjoining development unless the height was reduced to only 3 or 4 storeys.

It is considered that any future redevelopment of the adjoining site to achieve its maximum potential as envisaged in both the LEP and DCP should have regard to the above objectives to satisfy these building separation requirements. The variation is supported in this regard.

### **5.5 Building Depth**

The depth of the proposed building (east to west) is 20 metres at the northern end, increasing to 23 metres at the southern end of the building.

The objectives of the building depth standard are:

- (i) To ensure that the scale of the development is consistent with the existing or desired future context;*
- (ii) To provide adequate amenity for building occupants in terms of solar access and natural ventilation; and*
- (iii) To provide for dual aspect apartments.*

The applicant has provided the following justification to this variation:

*The depth of the proposed building (east to west) is 20 metres at the northern end, increasing to 23 metres at the southern end of the building. The Architectural Design Report prepared by Smith & Tzannes confirms compliance with the objectives and design criteria of achieving solar access and ventilation.*

*The level of solar access achieved is considered exceptional given the orientation of the site resulting in predominantly east- west facing facades. The orientation of the western facade that is parallel to the boundary is such that unless this facade was not parallel to the boundary it cannot receive more than 1 hour 45 minutes of solar access. The design has achieved:*

- apartments receiving good natural daylight to living and bedroom areas*
- living areas and private open space of 70% of apartments receive 2 or more hours of solar access*
- living areas and private open space of 91 % of apartments receive 1 hour 45 minutes of solar access*

### **Comment:**

The variation to building depth is considered satisfactory as it will not impact on the amenity of future occupants in terms of solar access and natural ventilation. Notwithstanding this minor variation, the proposal satisfies the objectives of the standard. It is noted that 70% of apartments will receive a minimum of 2 hours direct sunlight between 9 am and 3pm at midwinter. The variation is supported in this regard.

### **5.6 Balcony Size**

All balconies are compliant with the required minimum depth of 2 metres, however the 6 x 1 bedroom apartments have balconies with a floor area of 8m<sup>2</sup> only which is 2m<sup>2</sup> deficient of the DCP minimum requirement of 10m<sup>2</sup>.

The objectives of the balcony standard are:

- (i) To provide all apartments with private open space;*
- (ii) To ensure balconies are functional and responsive to the environment thereby promoting the enjoyment of outdoor living for apartment residents;*
- (iii) To ensure that balconies are integrated into the overall architectural form and detail of residential flat buildings; and*



(iv) *To contribute to the safety and liveliness of the street by allowing for casual surveillance.*

**Comment:**

The proposed variation to the required minimum balcony size is considered satisfactory as it provides the required minimum depth of 2m which is appropriate for 1 bedroom (and even for 2 bedroom apartments as noted in the Apartment Design Guide), in that it could still fit a table and 2-4 chairs which is functional. The ADG requires a minimum balcony area of 8m<sup>2</sup>. Clause 6A of SEPP 65 states that these DCP provisions have no effect, given this inconsistency. The variation is supported in this regard.

**5.7 Solar Access**

The DCP requires that adjoining residential buildings and living rooms and private open spaces for at least 70 percent of apartments within the development should receive a minimum of four hours direct sunlight between 9 am and 3 pm during midwinter.

Plans show that adjacent residential building would be shadowed by the proposed development in part from 9am to 11.30am. Sun is available to the eastern facade in part from 9am, with full sun from 11.15 to 12.15pm. After 12.15pm, the eaves on the adjoining building shade any windows due to the eastern orientation of the wall.

Within the development, the applicant has not provided the number of apartments to receive four hours of sunlight relying upon clause 6A of SEPP 65 which states that the DCP provisions are of no effect.

**Comment:**

The applicant has provided the following justification to address the above variation:

*"Due to the orientation of the building being general east-west, the majority of the shadow cast by the proposed development is over the adjacent road. The adjacent residential building would be shadowed by the proposed development in part from 9am to 11.30am. Due to the topography and orientation reducing the height of the development would not reduce the impacts of shadow on the adjoining development (unless the height was reduced to only 3 or 4 storeys). Sunlight is available to the eastern façade in part from 9am, with full sun from 11.15 to 12:15pm. After 12:15 the eaves on the adjoining building shade any windows due to the eastern orientation of the wall. Living rooms are located on the western side of these buildings and are not affected by the proposed development."*

**Comment:**

The proposal satisfies the design criteria of the Apartment Design Guide as 70% of apartments would receive a minimum of 2 hours direct sunlight between 9 am and 3pm during midwinter (both adjoining buildings and apartments within the development). Clause 6A of the SEPP provides that DCPs cannot be inconsistent with the Apartment Design Guide and applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG which include solar and daylight access. The variation is supported in this regard.

**5.8 Car Parking**

The proposal does not comply with Council's parking requirements . The total number of off-street car parking spaces proposed is deficient by 46 spaces.

The applicant has provided the following justification to the proposed departure from Council's car parking requirements:

*"Car parking is provided well in excess of the requirements of the SEPP 65- Apartment Design Guide."*



*Car parking numbers have been carefully considered having regard to the proximity of the development to Carlingford Station, bus routes and Carlingford Court.*

*Pursuant to Clause 30 of SEPP 65, as car parking is provided in excess of RMS Guidelines it cannot be used as a means to refuse this application."*

The objectives of the car parking standards are as follows:

- (i) To ensure that all car parking demands generated by the development are accommodated on the development site;*
- (ii) To minimise car dependency for commuting and recreational transport use and to promote alternative means of transport including public transport, bicycling, and walking;*
- (iii) To provide adequate car parking for building users and visitors, depending on building type and proximity to public transport; and*
- (iv) To integrate the location and design of car parking with the design of the site and the building.*

**Comment:**

The proposed development makes provision for a total of 77 off-street parking spaces, comprising 59 resident parking spaces, 11 visitor parking spaces and 7 retail parking spaces.

The applicant has provided a written justification relying upon the parking rate that applies to apartment developments within 800 metres of a railway station based on the design criteria outlined in the Apartment Design Guide. It is noted that parking provision cannot be used as a ground for refusal if a development complies with the parking rates as set out in the RTA Guidelines for Traffic Generating Developments. The changes to SEPP 65 were notified on the NSW legislation website on 19 June 2015, which commenced four weeks after this date on 17 July 2015. The direction from the Department of Environment and Planning is that for apartment development applications lodged after 19 June 2015 and determined after 17 July 2015, the Apartment Design Guide, along with the changes to SEPP 65 will apply.

As the subject site is located 650 metres walking distance from the Carlingford Railway Station, the parking rates identified under the RMS Guidelines are applicable and therefore the proposed 77 off-street parking spaces are considered to satisfy the parking demands for the proposed development. Using the RMS guide, a minimum of 48 resident parking spaces, 11 visitor parking spaces and 9 retail parking spaces, a total of 68 parking spaces will be required. The proposal would result in a surplus of 9 parking spaces when assessed under the RTA Guidelines. In this regard, no objection is raised to the proposed variation to Council's parking requirements.

**5.9 Vehicular Access**

The proposed driveway off Post Office Street is not centrally located and set back 3.5m from the western boundary. The proposal does not comply with the driveway location standard prescribed in DCP 2012 Part B Section 5 – Residential Flat Buildings which requires that it shall be centrally located and set back a minimum of 10m from any side boundary or street.

The objectives of this standard are:

- (i) To ensure that vehicles may enter and exit residential flat building developments in a safe and efficient manner in accordance with Council's ESD objective 7.*
- (ii) To maintain the performance of roads that provides an arterial or sub-arterial function in accordance with Council's ESD objective 7.*

The applicant has provided the following statement in support of the proposed location of the vehicular access driveway:



*"We attach a letter from Transport and Traffic Planning Associates addressing the location of the vehicle access driveway.*

*The proposed location of the driveway is the most appropriate location as it is consistent with the current location and is the most remote from the very busy Pennant Hills Road.*

*Applicant's traffic consultant's statement:*

*There is nothing in AS2890.1 in relation to proximity of driveway to the site boundary (nor any other Council DCP in Sydney that I know of). AS2890.1 does however emphasise the need for driveways to be located away from intersections and it is apparent to me that the existing driveway is located adjacent to the western side boundary for this reason. Maintaining the site access through this existing driveway is in my view the optimum outcome from a traffic perspective.*

*Turning paths are attached indicating that there are no problems with this access."*

**Comment:**

Council's Principal Coordinator – Road & Transport has assessed the application and advised that whilst the proposed location of the combined entry/egress adjacent to the western boundary of the site is not ideal, it is in a similar position to the previously approved First Choice driveway servicing ten times the traffic generation with no incidents of traffic conflicts recorded by Council.

It is noted that the proposal would allow vehicles to enter and exit the building in a safe and efficient manner. No objection is raised to the proposal from a traffic viewpoint.

The variation to the driveway setback and location requirement is considered acceptable in this regard.

## **6. Issues Raised in Submissions**

The application was notified to adjoining property owners for 14 days and advertised in the local newspaper. Eight (8) submissions were received during the notification and exhibition period. Issues raised in the submissions are addressed in the table below.

<b>ISSUE/OBJECTION</b>	<b>COMMENT</b>	<b>OUTCOME</b>
The proposal is a very bulky and oversized residential development on a small block of land: 2,128m <sup>2</sup> which is zoned for B2 Local Centre. The site should be used as a retail or commercial centre. The minimum land size for residential flat building is 4,000m <sup>2</sup> and the DA is far below this requirement.	<p>The proposed development is permissible in B2 Local Centre zone.</p> <p>The application is accompanied by a written justification addressing the variation to the minimum site area requirement. This variation is addressed in Section 4.2 of the report and satisfies the relevant criteria outlined in Clause 4.1A (3) of LEP 2012.</p> <p>A more appropriate mixed use development for the site is a proportionate residential and commercial component which will satisfy the intent and objectives of the B2 zone.</p>	Issue warrants refusal of the application.



ISSUE/OBJECTION	COMMENT	OUTCOME
<p>The proposal will create a lot of traffic problems and impact on-street parking on Post Office Street as the DA has greatly under-provided for car parking spaces and will force occupiers to rely on the low frequent services of the Carlingford Train Line (one hour frequency during non-peak hours) going to City/CBD.</p> <p>The traffic congestion at the Post Office Street/Pennant Hills Road intersection will get worse as a result of this development.</p>	<p>The application is accompanied by a traffic report which confirms that:</p> <ul style="list-style-type: none"> <li>- the proposed vehicle arrangements will be suitable and appropriate</li> <li>- there will not be any unsatisfactory traffic implications</li> <li>- the proposed parking provision will be adequate and appropriate having regard to SEPP 65 (and the RMS guidelines) as well as the objectives of Council's LEP and DCP.</li> </ul> <p>Council's Principal Coordinator – Road &amp; Transport has assessed the application and no objection is raised from a traffic viewpoint.</p>	<p>Issue addressed.</p>
<p>The proposal will cause expected increase in traffic accidents and traffic jams as the proposal vehicular entry is right opposite the car entry of Bunnings Hardware Store, both of these entries are also very close to the junction of Post Office Sf. and Pennant Hills Road where there is often a long queue of cars on Post Office Street (a narrow street) waiting for turning right to Pennant Hills Rd. and often many car come into Post Office St from Pennant Hills Road.</p>	<p>The traffic movements are expected to be in the order of 9-11 vehicle trips per hour at peak which is considerably less than the existing use and approval granted previously by Council for use a liquor retail outlet.</p>	<p>Issue addressed.</p>
<p>The proposal is unsightly and will be finished in inferior building materials which is not in conformity with the neighbouring properties.</p>	<p>A design verification statement prepared by the applicant's architect has been submitted as part of this application which addressed Principle 9 – Aesthetics of SEPP 65. It is considered that design of the development responds to the future local context and achieves a built form envisaged in the DCP. The proposed materials, colours and textures are considered satisfactory and will have a positive contribution to the streetscape.</p>	<p>Issue addressed.</p>



<b>ISSUE/OBJECTION</b>	<b>COMMENT</b>	<b>OUTCOME</b>
The proposal will intrude on the privacy, amenity and sunlight of the adjoining properties due to non-compliance with building separation, setbacks and the excessive bulk of the scale of the proposal.	Privacy, amenity, sunlight, and building separation been addressed in the report and is considered satisfactory. In terms of bulk and scale, it would be more appropriate if the density is significantly reduced to bring it into compliance with the maximum allowed floor space ratio.	Issue addressed.
The floor space ratio of the proposal is excessive and exceeds the permitted FSR permitted by Council.	The variation to the maximum floor space ratio has been addressed in the report and is not supported.	Issue warrants refusal of the application. See reasons for refusal.
The proposal is nearly 90% a residential development which is totally against the intent of the B2 Local Centre zoning.	The proposed mixed use is permissible within the zone. If this application is recommended for approval, it will require the deletion of at least 5 x 2 bedroom Type 1 units to bring it into compliance with the density control expressed in floor space ratio. As noted above, a more appropriate mixed use development for the site is a proportionate residential and commercial component which would satisfy the intent and objectives of the B2 zone.	Issue warrants refusal of the application. See reasons for refusal.
Based on Council's DCP, the proposal requires 122 car parking spaces and only 77 are proposed, indicating that this is an over-development.	The proposal complies with the Apartment Design Guide which refers to the RMS Guide to Traffic Generating Development. As the proposal complies with the ADG requirements, it cannot be used as a ground for refusal.	Issue addressed.
Insufficient transport and road infrastructure and inadequate schools to cater for new children in the area.	If this application is to be approved, a condition of consent will be imposed which will require the applicant 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.	Issue addressed. However, the application is recommended for refusal.
Poor public transport options in the area. Carlingford Railway Station does not provide a high frequency train service.	The Parramatta-Epping Railway Link is proposed by the NSW Government which would likely improve public transport in the area.	Issue addressed.



ISSUE/OBJECTION	COMMENT	OUTCOME
No space for burying or disposing of compostable waste is provided onsite, and Council does not have a compostables service in this area. By adding actual composting facilities, this building could become much more sustainable.	Council's Resource Recovery Project Officer has assessed the proposal including the Waste Management Plan submitted with the application. No objection is raised subject to conditions if this application is to be approved.	Issue addressed. See Issue addressed. However, the application is recommended for refusal.

### **SUBDIVISION ENGINEERING COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

### **TRAFFIC MANAGEMENT COMMENTS**

Council's Principal Coordinator - Road & Transport has assessed the application and accompanying traffic report and advised that he concurs with the findings of the applicant's traffic consultant that based on the RMS Technical Direction rates the proposed 53 unit residential development is expected to generate around 10% (i.e. 9-11 trips) of the peak hour trips generated by the previously approved First Choice Liquor development.

The proposed new combined entry/egress is to be located adjacent to the western boundary of the site. Whilst the proposed location is not ideal, it is in a similar position to the previously approved First Choice driveway servicing ten times the traffic generation with no incidents of traffic conflicts recorded by Council.

No objection is raised to the proposal from a traffic viewpoint.

### **TREE MANAGEMENT/LANDSCAPING COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

### **HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

### **RESOURCE RECOVERY COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

### **TRAFFIC COMMENTS**

Council's Principal Coordinator Road and Transport has assessed the application and concurs with the findings of accompanying traffic report. The proposed development is expected to generate around 10% (i.e. 9-11 trips) of the peak hour trips generated by the previously approved First Choice Liquor development.

The proposed new combined entry/egress is to be located adjacent to the western boundary of the site. Whilst the proposed location is not ideal, it is in a similar position to the previously approved First Choice driveway servicing ten times the traffic generation with no incidents of traffic conflicts recorded by Council.

No objection is raised to the proposal from a traffic viewpoint.



## **ROADS & TRAFFIC AUTHORITY COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

## **NSW POLICE COMMENTS**

No objection is raised to the proposal subject to conditions if this application is recommended for approval.

## **CONCLUSION**

The application has been assessed against Section 79C of the Environmental Planning and Assessment Act 1979, Local Environment Plan 2012 and Development Control Plan 2012 Part D Section 12- Carlingford Precinct and Part C Section 1- Parking.

The Development Application is accompanied by a written objection to the minimum site area and maximum FSR requirements addressing Clause 4.1A(3) and Clause 4.6 of Local Environment Plan 2012 respectively. The variation to the minimum site area is supported as it satisfies the relevant criteria outlined under clause 4.1A(3) of LEP 2012 in respect to compatibility with adjoining structures in terms of its elevation to the street and building height, acceptable acoustic and visual privacy, energy efficiency and use of passive solar design principles and adequate landscaping.

The Clause 4.6 request to vary the FSR control is not supported as it does not provide sufficient planning grounds to justify the variation in the circumstances of this site where the variation would result in a development of the site where it will be out of context with the immediate surrounding development.

The application has been assessed against the design quality principles outlined in SEPP 65 and is considered unsatisfactory in terms of Principles 1, 2, 3 and 8 in relation to the context of the site, built form and scale, density and housing diversity.

The application has also been assessed against the requirements of DCP 2012 Part D Section 12- Carlingford Precinct and variations have been identified in relation to FSR, apartment sizes, basement car park setback, building separation, building depth, balcony size, solar access, car parking and vehicular access driveway location. Justification has been provided by the applicant and is considered satisfactory with the exception of the basement car park setback which results in the provision of minimal deep soil zone within the setback area along Pennant Hills Road. In terms of variation to the car parking provision and apartment size, these standards cannot be used as grounds for refusal as they are consistent with the requirements set out in SEPP 65 Apartment Design Guide.

The application was notified for 14 days and placed on exhibition for public comments and received 8 submissions. The issues are addressed in the body of the report and warrant refusal of the application on the basis of excessive floor space ratio.

The application is recommended for refusal.

## **IMPACTS:**

### **Financial**

Costs will be incurred should the applicant lodge 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 Carlingford Precinct 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 Principles 1, 2, 3 and 8 of the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development in terms of context of the site, built form and scale, density and housing diversity.  
(Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
2. The proposed mixed use does not satisfy the intent and objectives of the B2 Local Centre zone as it comprises a disproportionate residential and commercial component. The dominance of the residential component loses the opportunity to reinforce the corner location of the site which has been an established commercial site which is replicated and depicted in LEP 2012.  
(Section 79C(1)(a)(i) & (iii) of the Environmental Planning and Assessment Act 1979).
3. The proposal exceeds the maximum permissible floor space ratio prescribed in The Hills Local Environmental Plan 2012 and Development Control Plan 2012 Part D Section 12 – Carlingford Precinct. The request to vary the FSR control under Clause 4.6 does not find sufficient planning grounds to justify the variation in the circumstances of this site where the variation would result in a development of the site where it will be out of context with the immediate surrounding development.  
(Section 79C(1)(a)(i) & (iii) of the Environmental Planning and Assessment Act 1979).
4. The proposal does not satisfy the objectives of the FSR standard in LEP 2012 as it will be inconsistent with the planned residential density in this northern part of the Carlingford Precinct which will result in an inappropriate bulk and scale and will impact on the existing and future built environment envisaged in the precinct.  
(Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979).
5. The proposal does not satisfy the site coverage control of the Carlingford Precinct DCP and does not provide sufficient open space around the buildings.  
(Section 79C(1)(a)(iii) of the Environment Planning and Assessment Act 1979).
6. The proposal is not in the public interest as the proposed variation to FSR standard would set as an undesirable precedent for future potential development of immediate surrounding properties within the Carlingford Precinct. This variation to the FSR standard is one of the major issues raised in the residents' submissions.  
(Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979).

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Photograph
3. Zoning Map
4. Floor Space Ratio Map
5. Building Height Map
6. Site Plan
7. Basement Level C3 Plan
8. Basement Level C2 Plan
9. Basement Level C1 Plan
10. Ground Floor Plan
11. Level 1 Floor Plan
12. Level 2 Floor Plan
13. Level 3 Floor Plan
14. Level 4 Floor Plan
15. Level 5 Floor Plan
16. Level 6 Floor Plan



17. Level 7 Floor Plan
18. Level 8 Floor Plan
19. Roof Plan
20. Elevations (2 pages)
21. Sections
22. Existing & Proposed Shadows – 9am Mid-winter
23. Existing & Proposed Shadows – 12pm Mid-winter
24. Existing & Proposed Shadows – 3pm Mid-winter
25. Hourly View from Sun at Mid-winter
26. Perspectives



## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

NOTE: TWO SUBMISSIONS RECEIVED  
OUTSIDE THE SCOPE OF THIS MAP

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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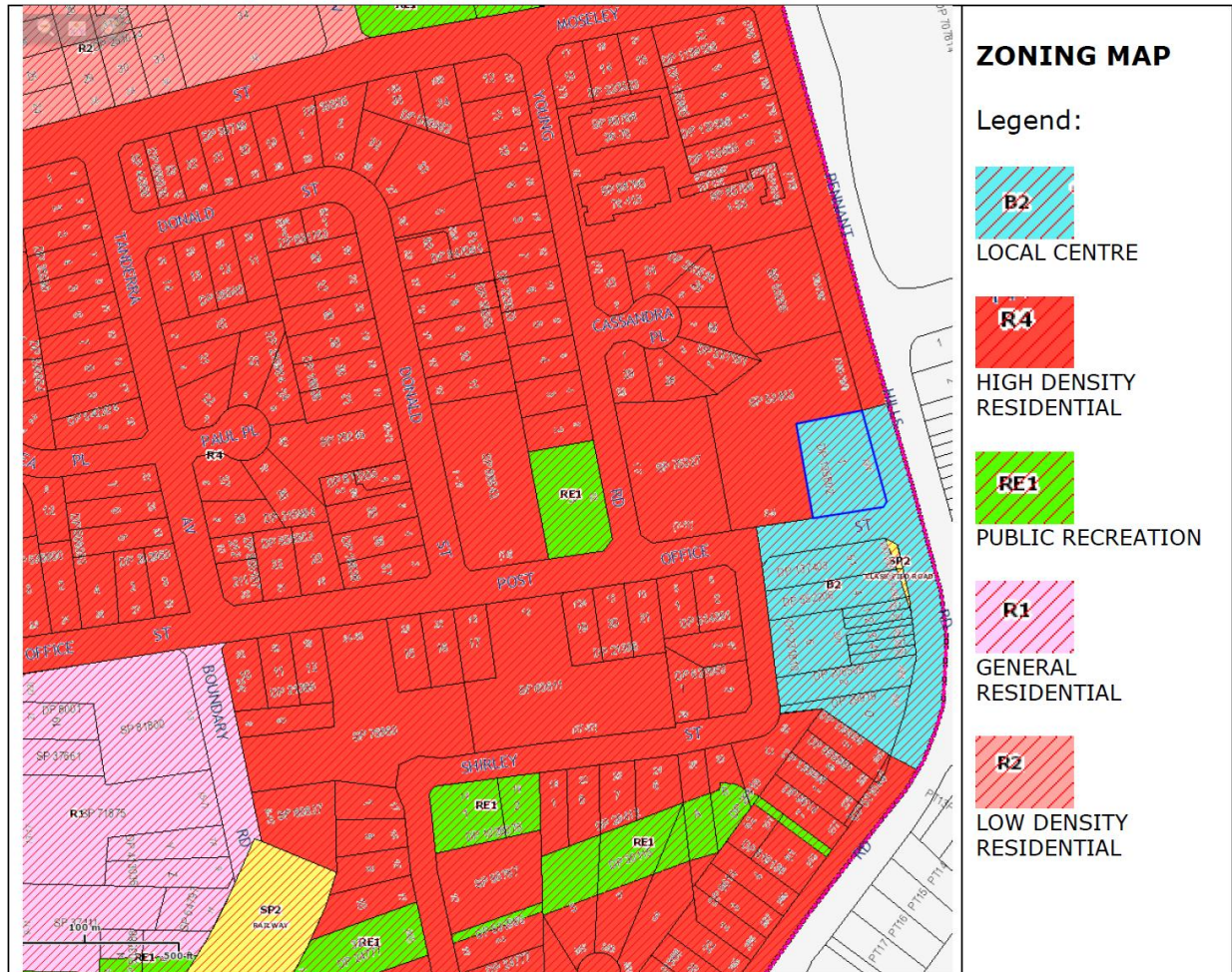


## ATTACHMENT 2 – AERIAL PHOTOGRAPH





## ATTACHMENT 3 – ZONING MAP



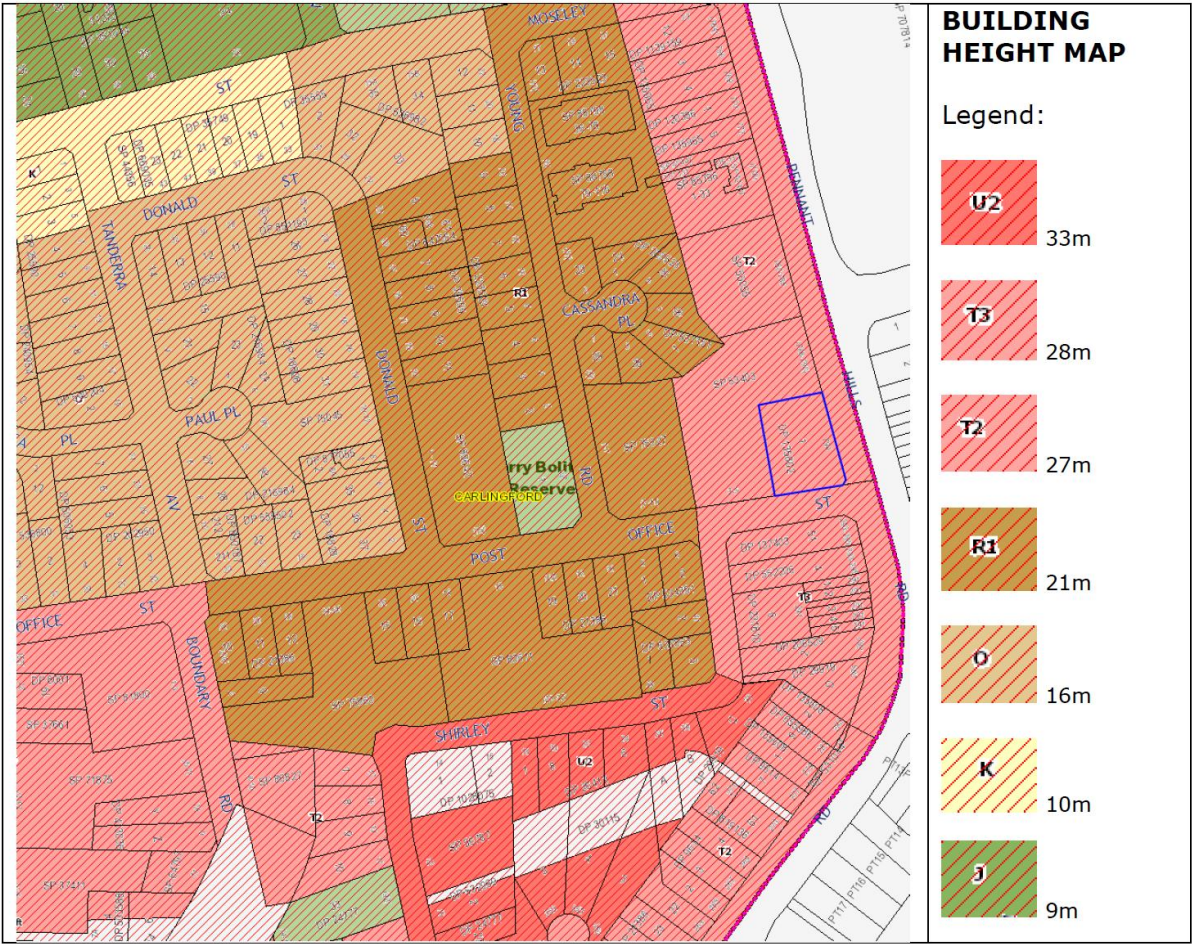


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ATTACHMENT 5 – BUILDING HEIGHT MAP



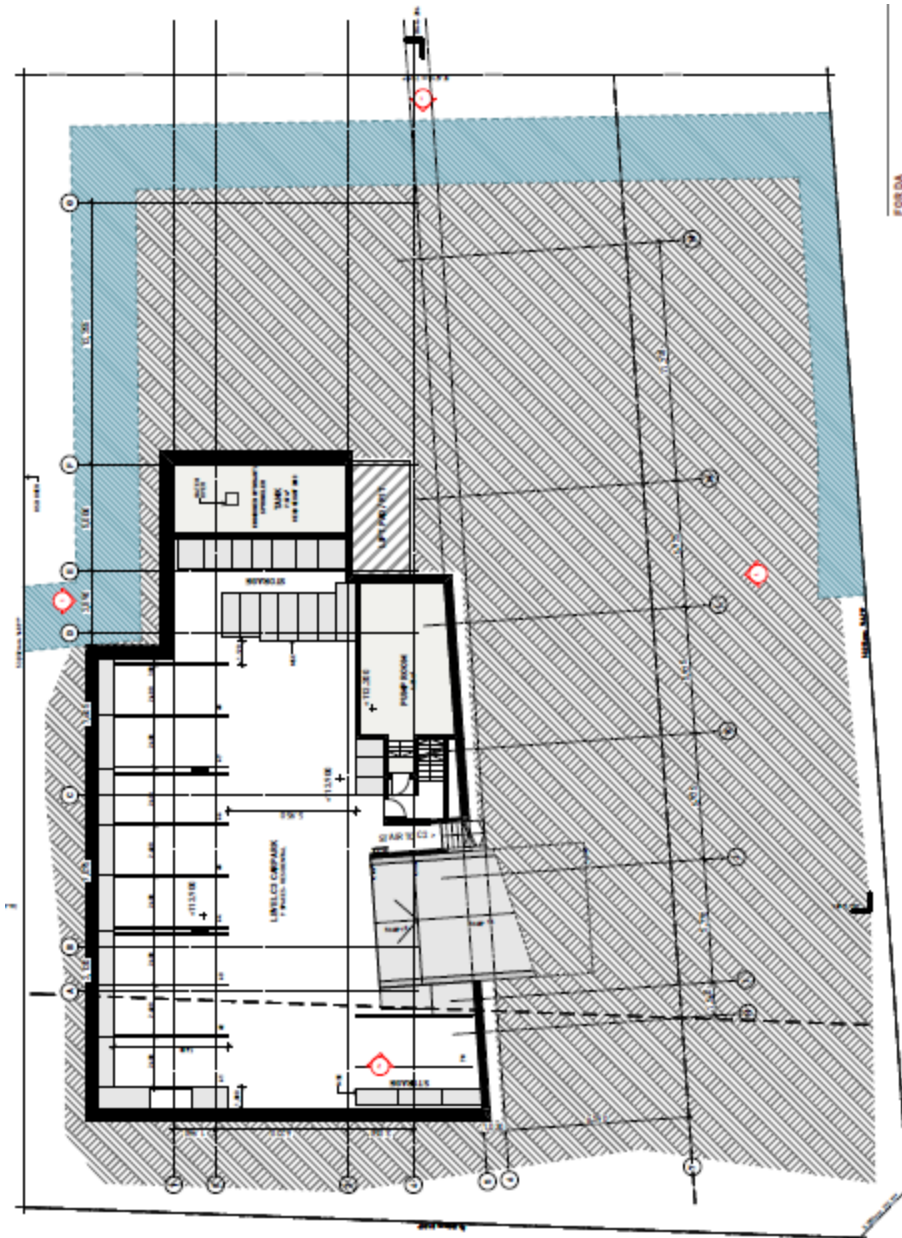


## ATTACHMENT 6 – SITE PLAN





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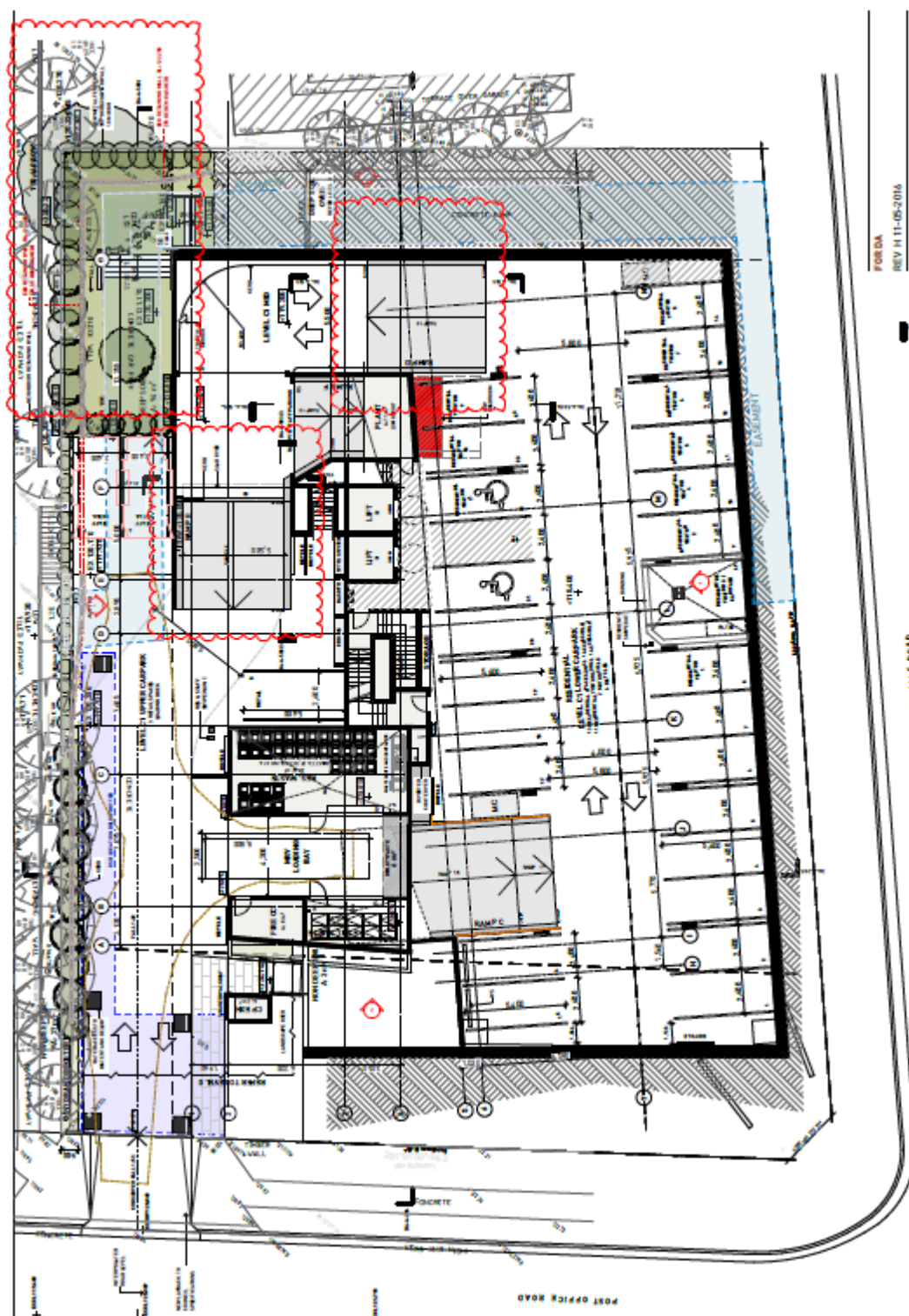


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## ATTACHMENT 9 – BASEMENT LEVEL C1 PLAN

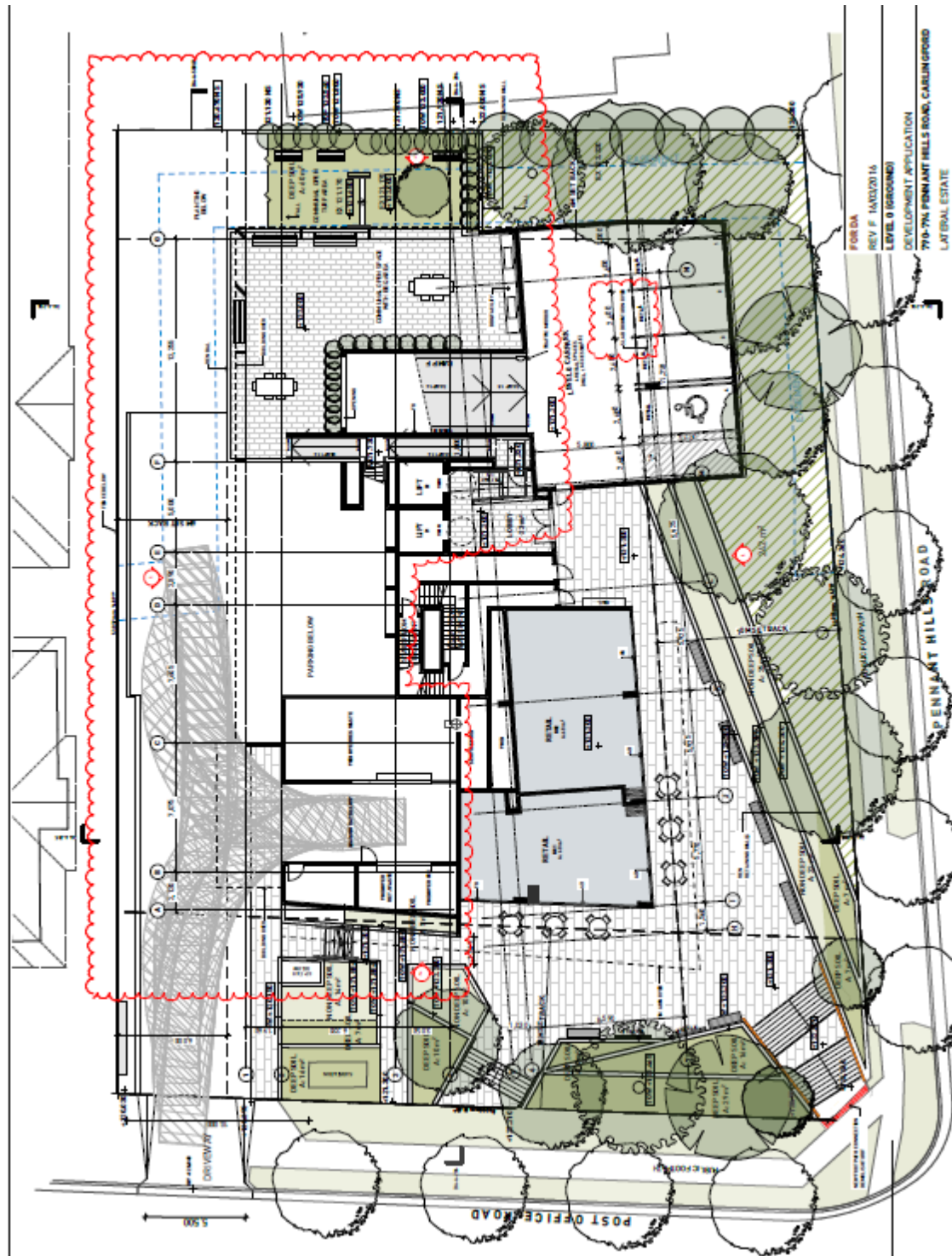


FOR DA  
REV H 11-05-2016  
LEVEL C1  
DEVELOPMENT APPLICATION

PENNANT HILLS ROAD



# ATTACHMENT 10 – GROUND FLOOR PLAN





# ATTACHMENT 11 – LEVEL 1 FLOOR PLAN



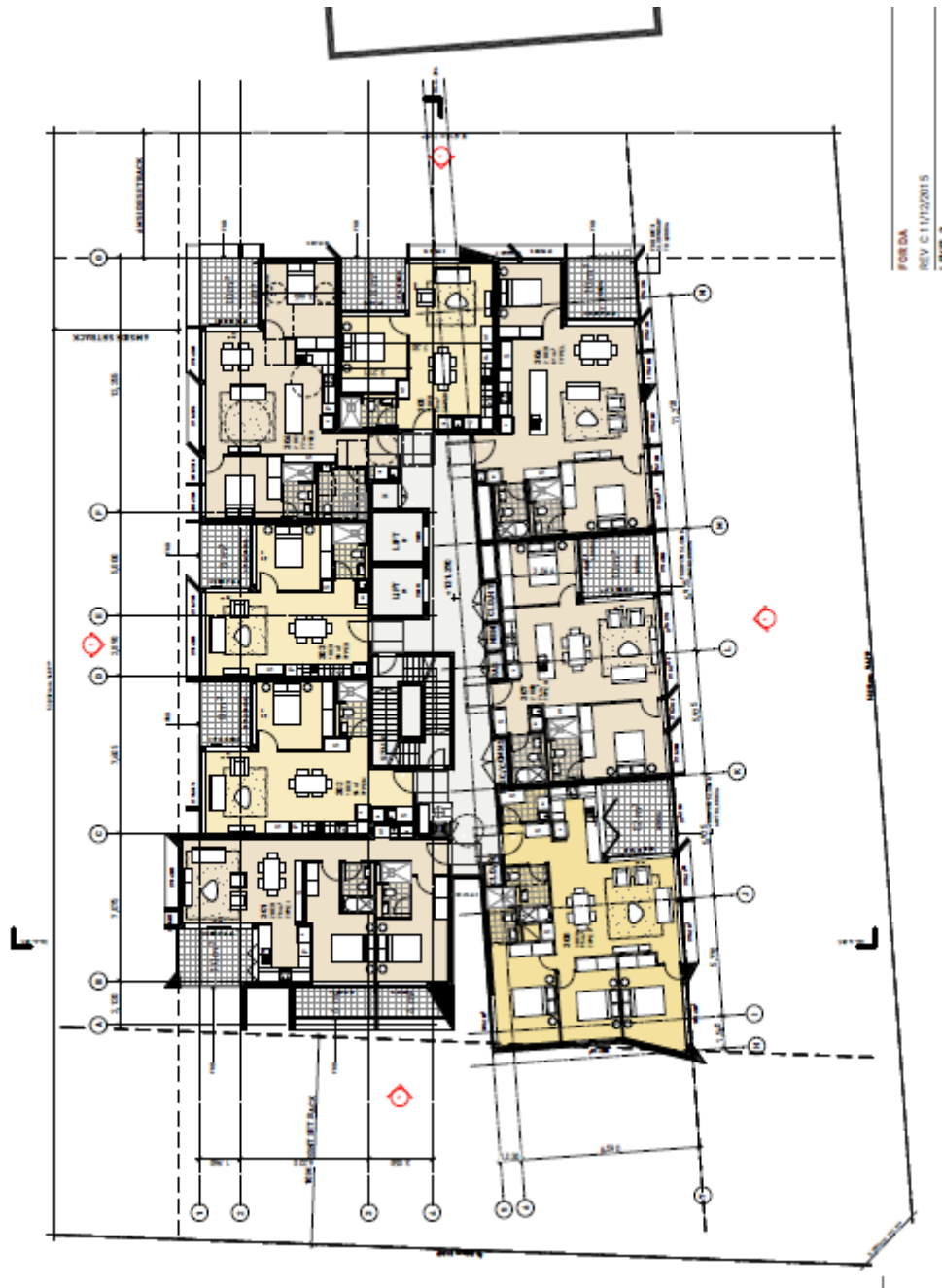


## ATTACHMENT 12 – LEVEL 2 FLOOR PLAN





## ATTACHMENT 13 – LEVEL 3 FLOOR PLAN





## ATTACHMENT 14 – LEVEL 4 FLOOR PLAN



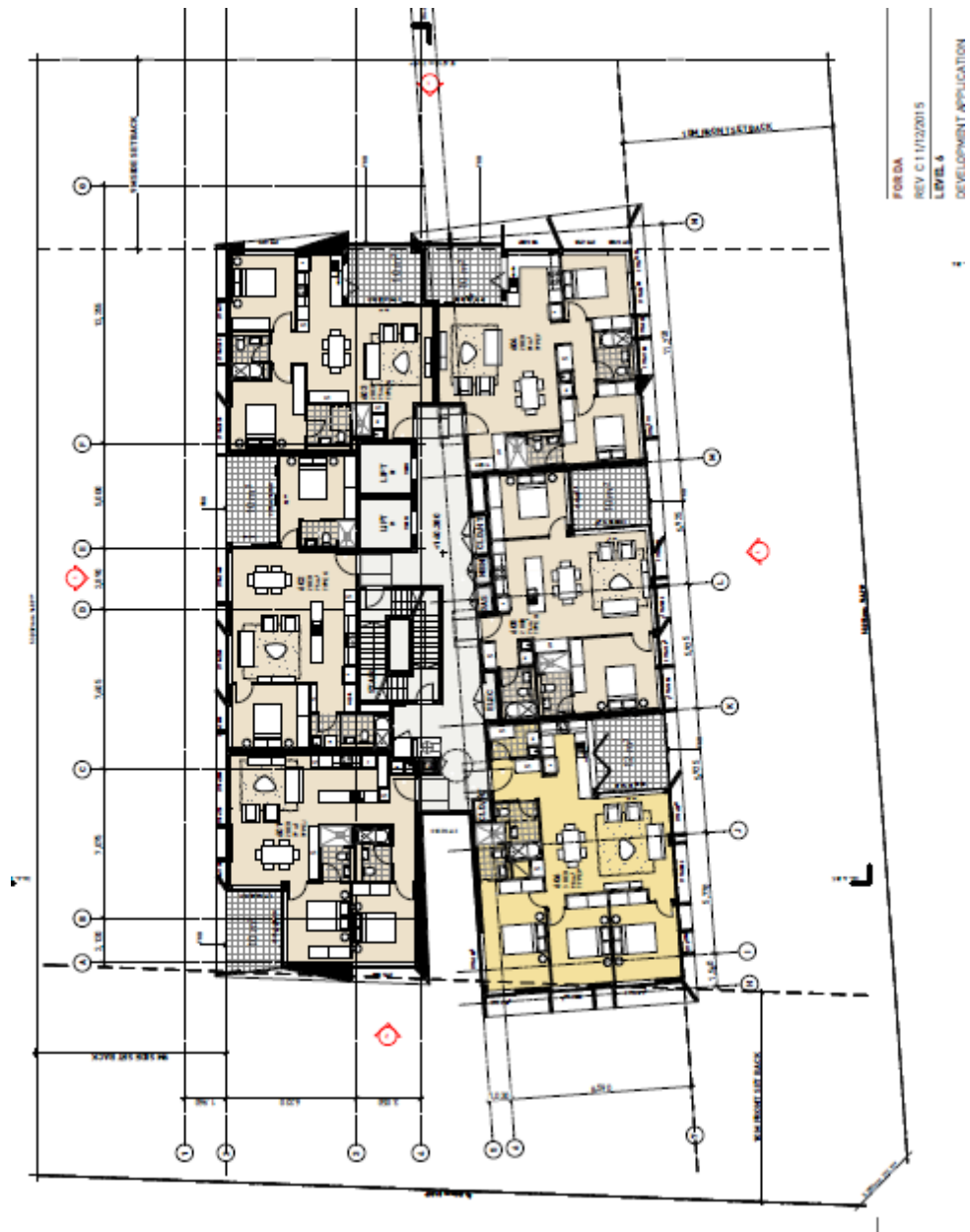


## ATTACHMENT 15 – LEVEL 5 FLOOR PLAN





## ATTACHMENT 16 – LEVEL 6 FLOOR PLAN



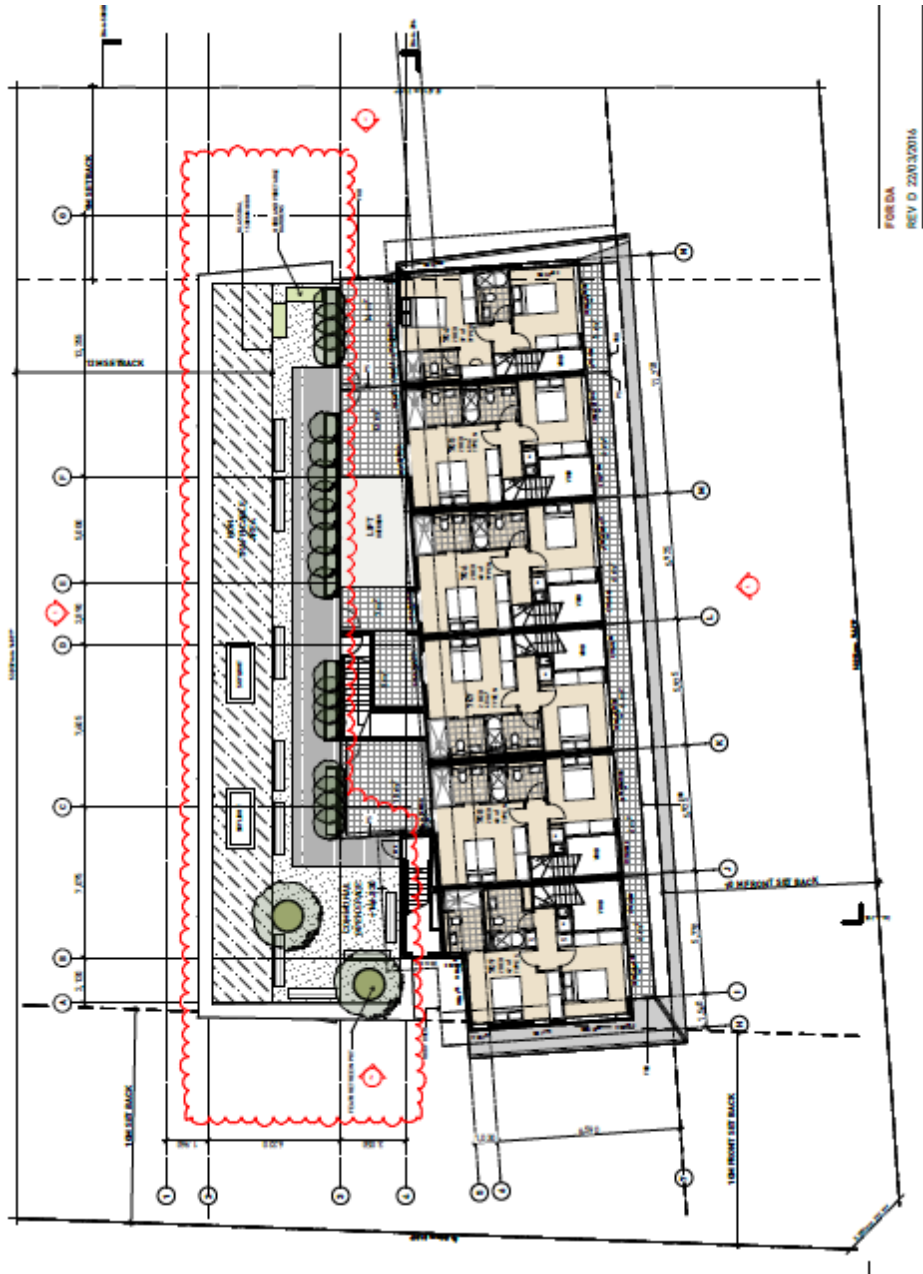


## ATTACHMENT 17 – LEVEL 7 FLOOR PLAN





## ATTACHMENT 18 – LEVEL 8 FLOOR PLAN

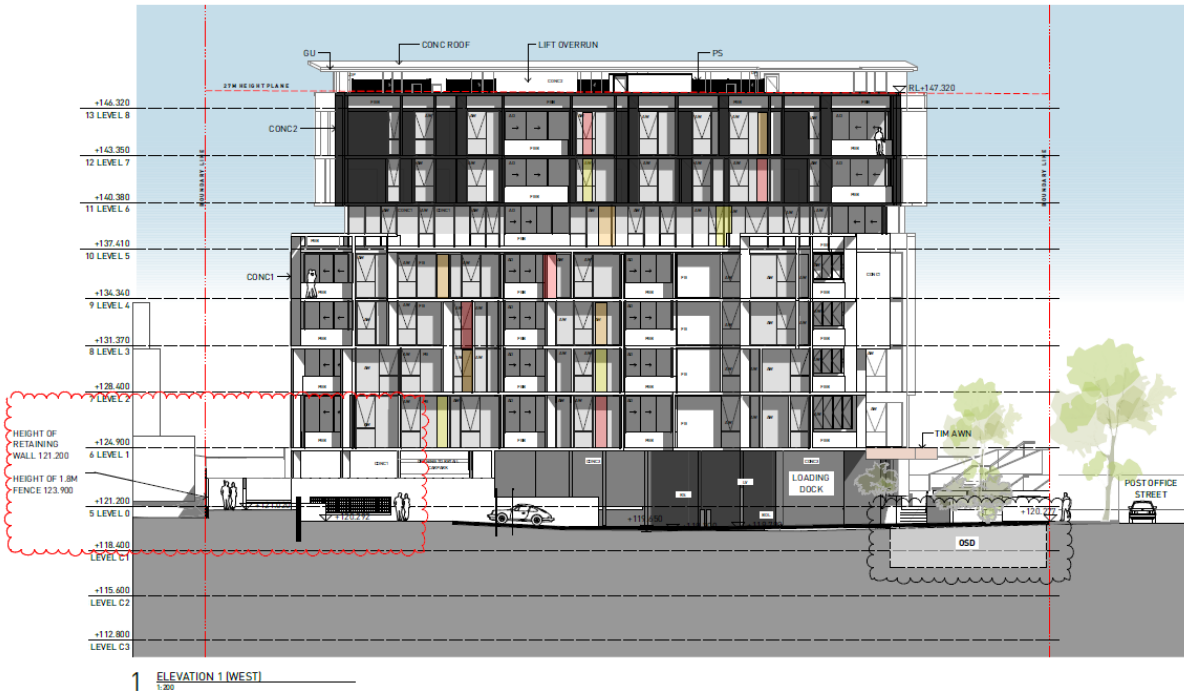




[illegible]



## ATTACHMENT 20 – ELEVATIONS (2 PAGES)

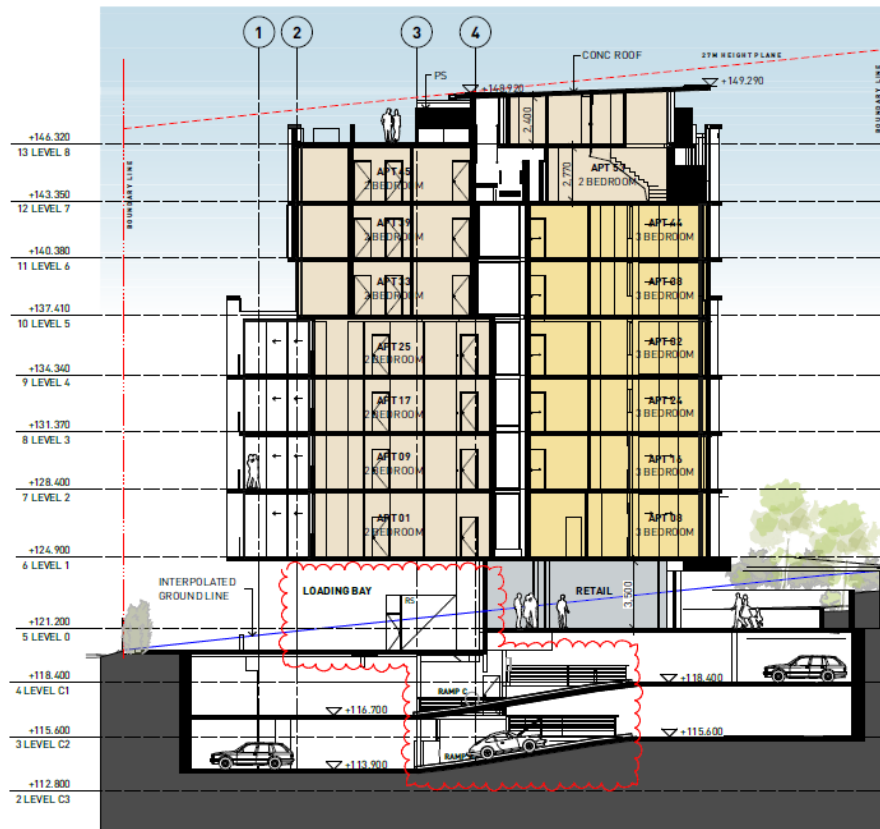




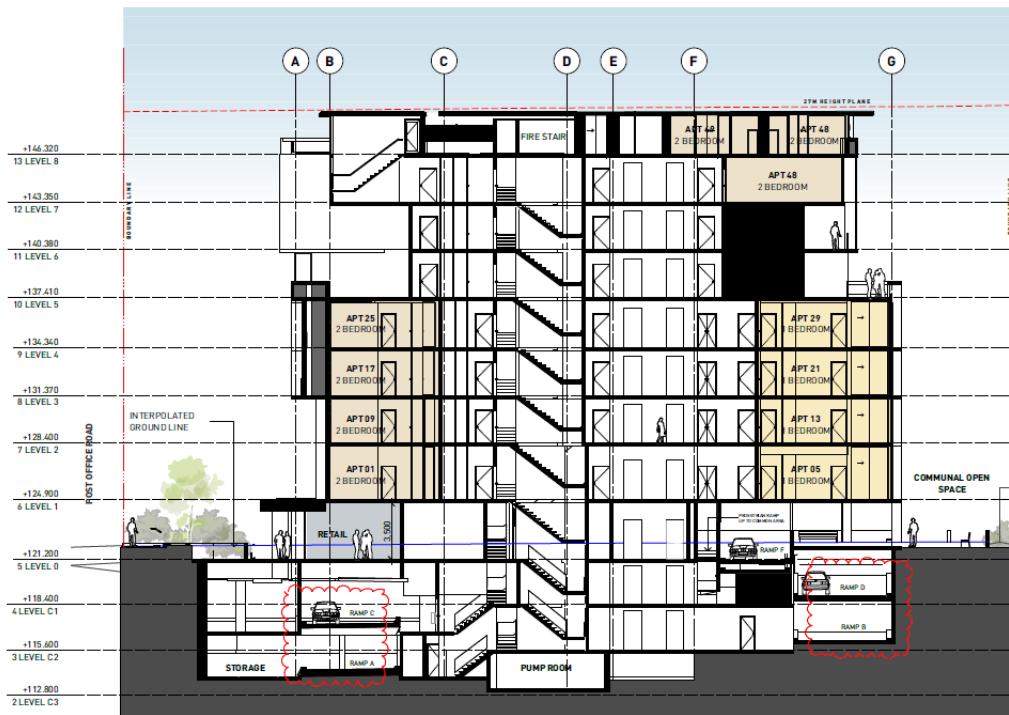




## ATTACHMENT 21 – SECTIONS



1 SECTION  
1:200

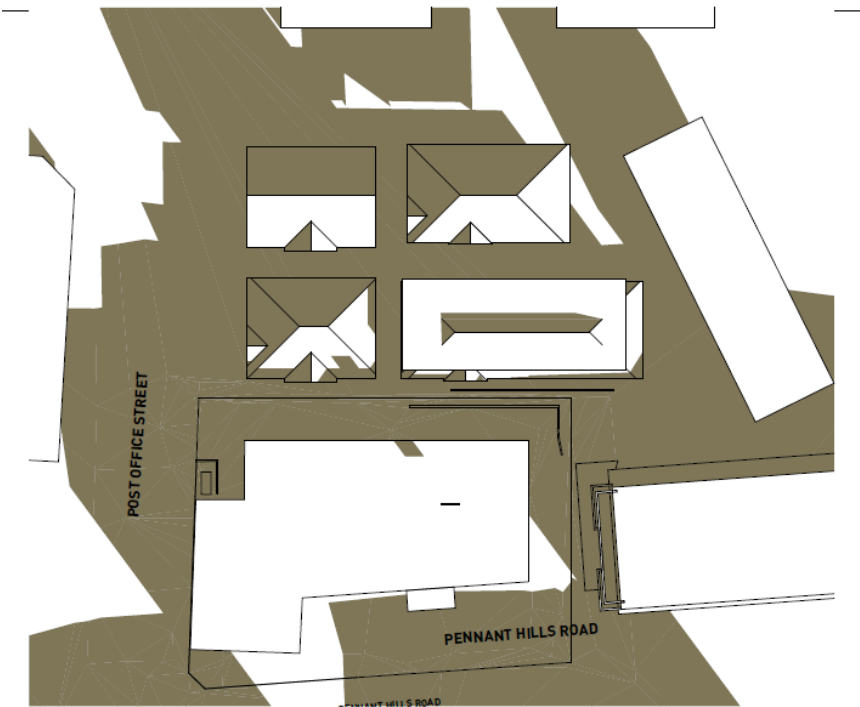


1 SECTION  
1:200

FOR DA  
REV D 14/03/2016

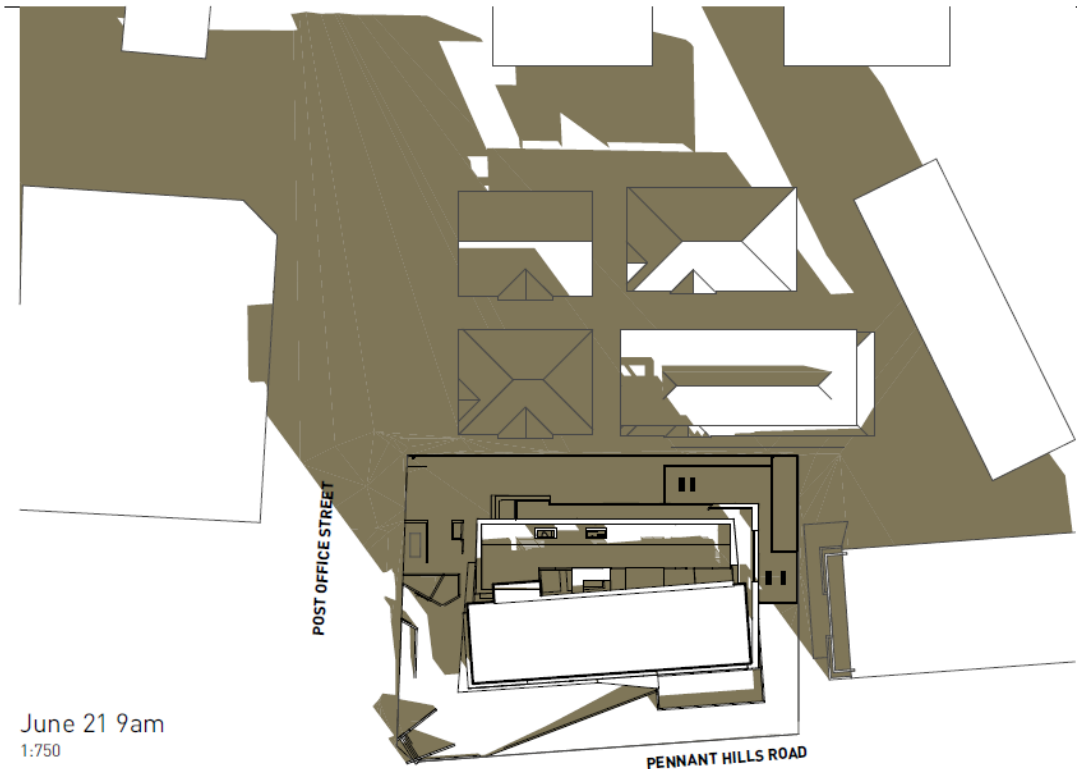


**ATTACHMENT 22 – EXISTING & PROPOSED SHADOWS – 9AM MID-WINTER**



June 21 9am  
1:750

EXISTING 9AM SHADOWS

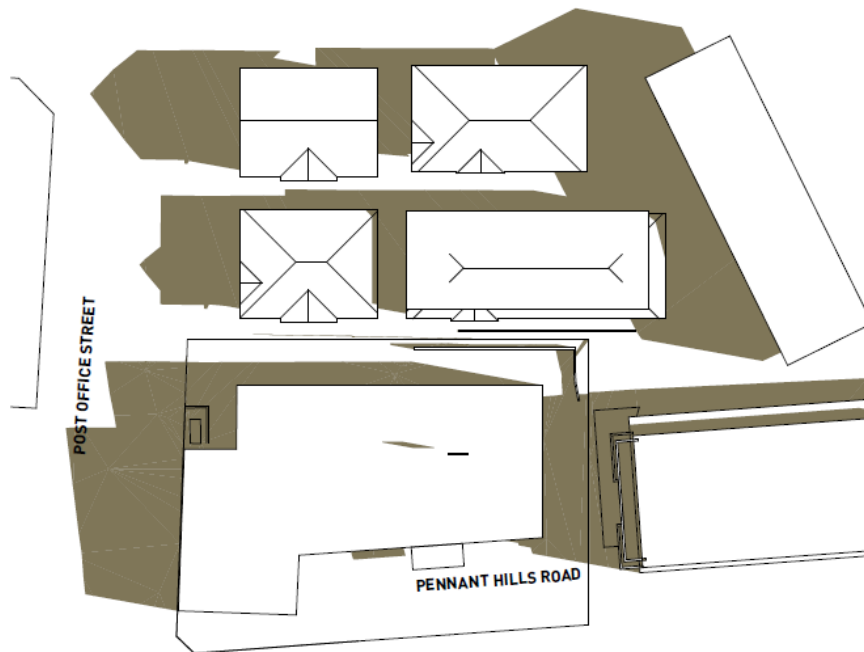


June 21 9am  
1:750

PROPOSED 9AM SHADOWS

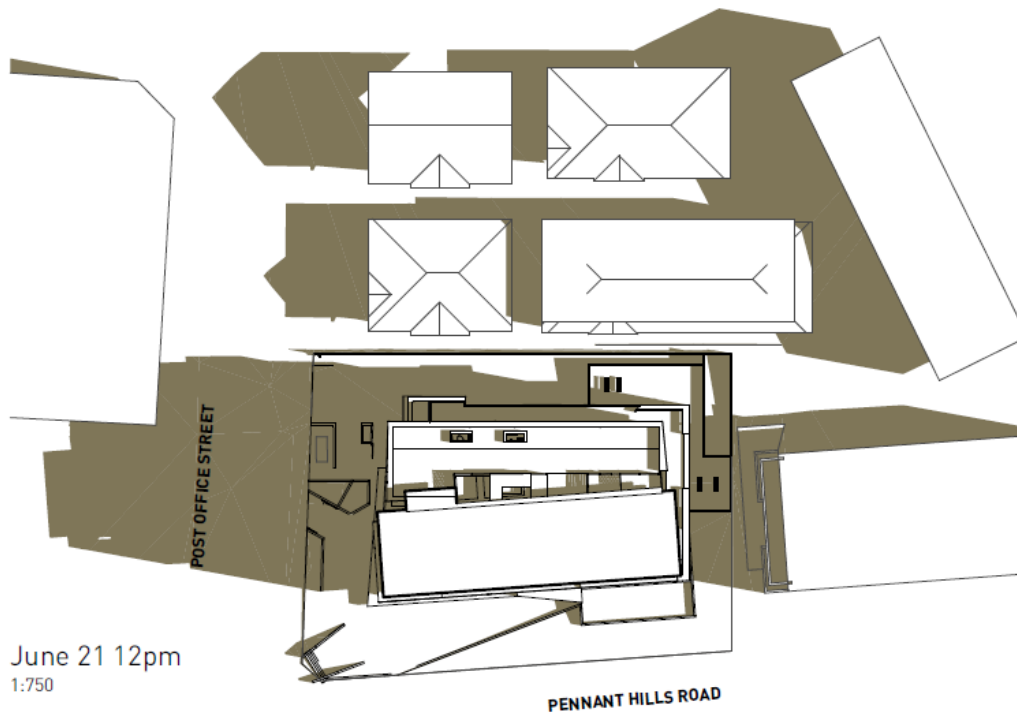


**ATTACHMENT 23 – EXISTING & PROPOSED SHADOWS – 12PM MID-WINTER**



June 21 12pm  
1:750

**EXISTING 12PM SHADOWS**

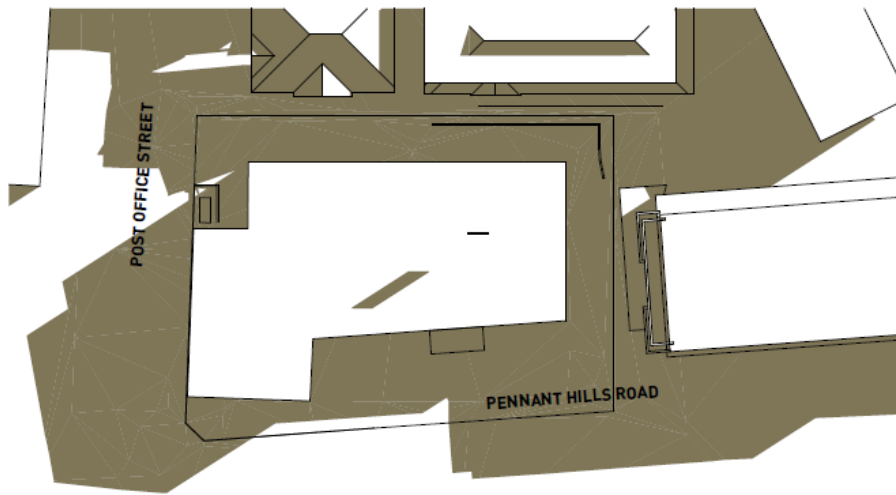


June 21 12pm  
1:750

**PROPOSED 12PM SHADOWS**

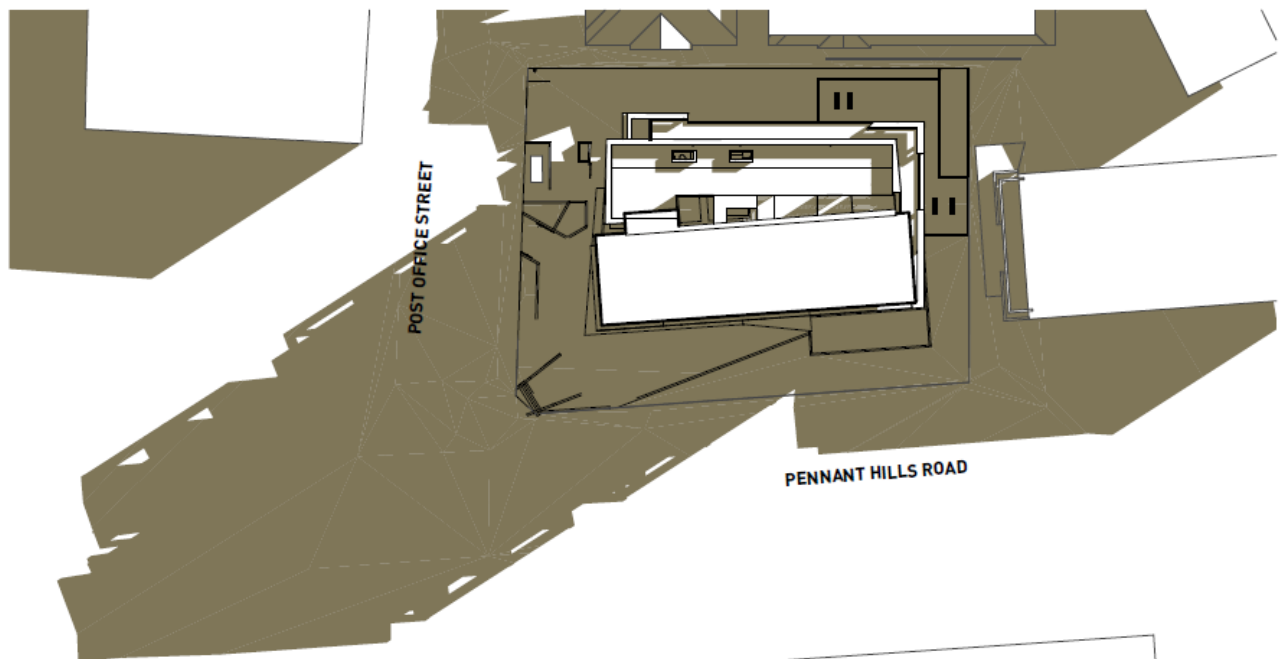


## ATTACHMENT 24 – EXISTING & PROPOSED SHADOWS – 3PM MID-WINTER



June 21 3pm

EXISTING 3PM SHADOWS



June 21 3pm

PROPOSED 3PM SHADOWS



## ATTACHMENT 25 – HOURLY VIEW FROM SUN AT MID-WINTER



1 VIEW FROM SUN - June - 09:00  
1.148.06



2 VIEW FROM SUN - June - 10:00  
1.139.48



3 VIEW FROM SUN - June - 11:00  
1.260.86



4 VIEW FROM SUN - June - 12:00  
1.179.27

MORNING



1 VIEW FROM SUN - June - 13:00  
1.182.43



2 VIEW FROM SUN - June - 14:00  
1.176.32



3 VIEW FROM SUN - June - 15:00  
1.243.82

AFTERNOON



## ATTACHMENT 26 – PERSPECTIVES

