

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-109
DA Number	1611/2020/JP
LGA	The Hills Shire Council
Proposed Development	Construction of a 13 storey (Building A) and 18 storey (Building B) Residential Flat Buildings Comprising 196 Apartment Units Over Four (4) Levels of Basement Car Parking Containing 236 Car Parking Spaces
Street Address	Nos. 6-12 and 16-20 Garthowen Crescent, Castle Hill
Applicant/Owner	Sam Kassis c/ Kim Pearce (Turner)
Consultant/s	Town Planner: Caladines Town Planning Pty Ltd Architect: Turner Access: Design Confidence Pty Limited Arboriculture: Australis Tree Management BASIX and Wind Assessment: Windtech Consultants Pty Ltd Contamination: Geotechnique Pty Ltd Dust Management: Barker Ryan Stewart Heritage Consultant: Archnex Designs Landscape Architect: Arcadia Landscape Architecture Quantity Surveyor: QPC & C Pty Limited Stormwater: Quantum Engineers Traffic: Varga Traffic Planning Pty Ltd Public Domain and Civil Works: SGC Consulting Engineers Acoustic: Acoustic Logic Waste Management: Elephants Foot Recycling Solutions Geotechnical Engineer: JKGeotechnics Surveyor: LTS Lockley BCA: McKenzie Group
Date of DA lodgement	22 June 2020
Number of Submissions	Forty-one (41)
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV exceeding \$30 million
List of all relevant s4.15(1)(a) matters	LEP 2019 SEPP (State and Regional Development) 2011 SEPP 55 – Remediation of Land SEPP 65 – Design Quality of Residential Apartment Development SEPP (Infrastructure) 2007 Apartment Design Guidelines SEPP Building Sustainability Index: BASIX 2004 DCP 2012 Part D Section 20 – Castle Hill North Precinct DCP 2012 Part C Section 3 – Landscaping
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural and landscaping plans • Clause 4.6 variation written request • Copies of residents' submissions

Clause 4.6 requests	Building height variation
Summary of key submissions	<ul style="list-style-type: none"> • Traffic • Inappropriate building height • Loss of significant trees • Density • Contradiction to the Castle Hill North Precinct Plan • Impact on adjacent heritage item (Garthowen House) • Solar access • Noise impact • Oversupply of high rise apartments • Loss of views • Property devaluation
Report prepared by	Claro Patag Specialist Planner
Report date	18 March 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

The Development Application is for the demolition of six (6) dwelling houses, an attached dual occupancy, other ancillary structures on the land and the removal of 30 trees in order to facilitate the construction of a 13 storey (Building A) and 18 storey (Building B) residential towers, connected by a common podium, containing 196 apartments over four (4) levels of basement car parking that contain 236 spaces, as well as car wash bay, bicycle and motorbike parking and waste holding rooms.

The proposal also includes the provision of both communal and private open space areas, and extensive native landscaping throughout the site.

The key issues that need to be considered by the Panel in respect of this application are:

- Whether Clause 6.2 of The Hills Local Environmental Plan 2019 applies to the subject Development Application. A letter was sent to the Department of Planning Industry and Environment (DPIE) on 22 January 2021 regarding this matter (refer Attachment 16). Clause 6.2 requires that development consent cannot be granted unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure. Despite the intention of the clause to apply to future redevelopment on the site, Council officers are of the view that the wording of the clause would not enable it to be applied in this instance. The clause is specific in that *'Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area'* unless satisfactory arrangements are made. The Development Application does not involve subdivision of either land or strata units, rather it only includes lot consolidation which is not defined as subdivision under the Environmental Planning and Assessment Act 1979 and would not trigger the application of Clause 6.2. Preliminary advice from Department officers has suggested that Clause 6.2 could simply be applied as part of a subsequent development application for strata subdivision. However, it is noted that strata subdivisions can be undertaken as complying development under SEPP (Exempt and Complying Development Codes) 2008. This planning pathway would omit any requirement for developments to address Clause 6.2 under the LEP and therefore developments may proceed without consideration of whether satisfactory arrangements have been made with respect to State infrastructure.

In any event, even though the clause is not considered to apply, Council officers are of the view that an appropriate item exists in Council's relevant contributions plan, which sets out an amount for contributions which is mirrored in the applicant's Voluntary Planning Agreement (15/2019/VPA) which deals with regional traffic impacts expected out of this development. The VPA for the site would contribute towards the provision of local public transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection).

Based on these circumstances, it is considered that the Development Application is able to be determined. No response from the DPIE to Council's letter has been received at the time of writing this report.

- This application is accompanied by a written request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2019. Due to the topography of the land that falls 8.5m from the north-east to the south-west, a small corner portion of the roof area of Building B encroaches above the 57m building height control prescribed in LEP 2019 by a maximum of 860mm which represents a 1.51% variation to the LEP standard. This minor encroachment will not be visible from the street, will cast no additional shadow, does not deny loss of views nor

create discernible visual bulk and scale to the building. The proposed building form outcome is considered to respond appropriately to the desired future character envisaged in the Castle Hill North Precinct which will reflect a modern urban character. Notwithstanding this minor non-compliance, the proposed development satisfies the objectives of both the zone and of the building height standard. It is considered that full compliance with the building height standard is unreasonable or unnecessary in the circumstances of the case and as such the variation is satisfactory and can be supported.

- The application complies with the incentivised FSR of 2.5:1 (where the development complies with Clause 7.11A of The Hills LEP 2019), which seeks to promote development that prevents the fragmentation or isolation of land, ensure the provision of quality public domain and improved pedestrian and cycle connections within local or strategic centres, and facilitate development that is sympathetic to the character of heritage items. A bonus FSR of 20% (0.5:1) applies to the site where site outcomes are delivered, including amalgamation of properties, 7.5m setback to Garthowen Crescent, a through site link, sensitive response to the heritage item (Garthowen Crescent) and a through site vehicular link at basement level is provided. The proposed development demonstrates that all of the above controls have been satisfied, and therefore the proposed FSR of 2.99:1 complies.
- The application was referred to Council's Design Excellence Panel. The Panel provided qualified support of the proposal. The Applicant has addressed the concerns raised by the Design Excellence Panel to the satisfaction of Council officers. It is considered that the proposal exhibits design excellence in accordance with Clause 7.7 of The Hills Local Environmental Plan 2019.
- The application was notified for a period of 14 days. Forty-one (41) submissions were received during the notification period. The concerns raised relate to traffic congestion, need for a precinct-wide traffic modelling for the entire Castle Hill Precinct, inappropriate building height, loss of significant trees which form a significant part of the streetscape, density, contradiction to the Castle Hill North Precinct Plan, impact on adjacent "Garthowen House", validity of the submitted traffic study, loss of sunlight, noise impact, oversupply of high rise apartments, impact on the adjoining heritage item, loss of views and property devaluation. These issues have been addressed in the report and do not warrant refusal of the application.

The Development Application is recommended for approval subject to conditions.

BACKGROUND

The site is located within the Castle Hill North Precinct which is one of four Precincts identified by the NSW Government to be planned as part of its 'Planned Precinct Program' along the Sydney Metro Northwest corridor. Attachment 5 identifies the location and boundaries of the Castle Hill North Precinct.

The Castle Hill North Precinct Plan was adopted by Council in November 2015, which sets out a structure plan to guide future residential growth on the northern edge of the Castle Hill Business Centre. The Precinct Plan recommended that amendments be made to Council's LEP and DCP 2012 and to the Castle Hill development contributions plan to facilitate the type of development that is envisaged within the northern precinct of Castle Hill. Consequently, a Planning Proposal (16/2016/PLP) was prepared by Council and lodged with the Department of Planning Industry and Environment.

On 17 July 2020, the Department finalised and gazetted the Planning Proposal as part of 'Tranche 3' of the Government's Planning System Acceleration Program. The Planning Proposal involved a number of amendments to The Hills LEP 2019 which include the rezoning

the land in the Castle Hill North Precinct from R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and SP2 Infrastructure (Public Administration Building) to R1 General Residential, R3 Medium Density Residential, R4 High Density Residential and SP2 Infrastructure (Local Road Widening). Other amendments include but not limited to the following: application of a minimum lot size of 1,800m² across the precinct, removal of the height of buildings for certain land proposed to be zoned R1 General Residential and R4 High Density Residential, maximum height of buildings of 10 metres for land proposed to be zoned R3 Medium Density Residential, a 'base' floor space ratio ranging from 1:1 to 1.1:1 and an 'incentivised' floor space ratio ranging from 1.2:1 to 4.8:1 for certain land zoned R1 General Residential and R4 High Density Residential, identification of certain land within the precinct as specific areas on the Key Sites Map and identification of the Castle Hill North Precinct on the Urban Release Area Map.

Associated amendments to The Hills DCP 2012 (i.e. Part C Section 1 – Parking and Part D Section 20 – Castle Hill North) also came into force on the same date the Planning Proposal was gazetted. The adoption of the amendments to DCP 2012 Part D Section 20 – Castle Hill North resulted in the repeal of the subject site's specific DCP known as DCP 2012 Part D Section 24 – 6-12 and 16-20 Garthowen Crescent, which was the subject of a separate Planning Proposal (24/2016/PLP) lodged with Council on 12 May 2016. The amendments to Part D Section 20 – Castle Hill North incorporated the development controls previously prescribed in Part D Section 24.

The Planning Proposal for the site (24/2016/PLP) initially sought the following:

- rezone the land from R3 Medium Density Residential to R4 High Density Residential. ;
- increase the maximum building height from 9m to 68m (16-20 storeys);
- introduce an FSR control of 4.5:1 over properties 6-12 and 16-20 Garthowen Crescent, Castle Hill.

On 13 October 2017, the Department of Planning and Environment issued a Gateway Determination Notice subject to submission of updated reports on urban design, transport and access and heritage impact assessment. The Gateway determination was altered on a number of occasions, in particular on 7 February 2018 subject to conditions including an amendment to the Planning Proposal to clarify that the maximum FSR of 3:1 for the site is achieved by a number of mechanisms which include a base FSR of 1:1 is to apply to the site, an incentivised FSR of 2.5:1 and include a local provision to specify key site outcomes that enable the site to achieve a 20% bonus floor space incentive (0.5:1).

On 28 May 2019, Council considered a report on the Planning Proposal, draft Development Control Plan (DCP) and draft Voluntary Planning Agreement for the subject land, following the public exhibition of the Planning Proposal. Council resolved to enter into the VPA, adopt the DCP and forward the planning proposal to the Department of Planning, Industry and Environment for finalisation, following the adoption of draft Contributions Plan No.17 – Castle Hill North Precinct. The VPA for the site (refer Attachment 15) would contribute towards the provision of local public transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection).

The Planning Proposal was notified on the NSW Legislation Website on 18 June 2020. A new section of The Hills DCP 2012 (Part D Section 24) also came into force on this date, however, as noted above this part and section of DCP 2012 has been repealed as a result of the adoption of the amendments to DCP 2012 Part D Section 20 – Castle Hill North, which incorporated the development controls previously prescribed in the subject site's specific DCP within Part D Section 20 – Castle Hill North as part of the amendments. The amendments bring into effect changes that will facilitate a high density residential flat building development

on the site accommodating approximately 185 units in two (2) towers, with maximum heights of 13 and 18 storeys.

The site's Planning Proposal effectuated the following relevant amendments to LEP 2019:

- Rezoned the land from R3 Medium Density Residential to R4 High Density Residential;
- Increased the site's building height control from 9 metres to 57 metres;
- Introduced a floor space ratio (FSR) control of 3:1 for the site inclusive of an incentivized FSR of 2.5:1 and a local 20% bonus FSR (0.5:1) to developments that achieve Key Site outcomes;
- Site is shown on the FSR Map as "Area A";
- Identified the site as "Area L" on the Key Sites Map; and
- Changed the minimum lot size for the site from 700m² to 1800m².

On 22 October 2019, a meeting with Council's Design Excellence Panel (DEP) was held with the applicant presenting their concept proposal. A second meeting was held with the DEP on 11 December 2019 with the applicant presenting an amended scheme in response to the Panel's comments raised in the first meeting.

A pre-DA meeting was held with Council staff on 6 March 2020.

The subject Development Application was lodged on 22 June 2020. The application was notified to adjoining and surrounding property owners for 22 days between 30 June 2020 and 21 July 2020. A total of forty-one (41) submissions were received during the notification period. Issues raised in the submissions include but are not limited to the following: traffic congestion, need for a precinct-wide traffic modelling for the entire Castle Hill Precinct, inappropriate building height, loss of significant trees which form a significant part of the streetscape, density, contradiction to the Castle Hill North Precinct Plan, impact on adjacent "Garthowen House", validity of the submitted traffic study, loss of sunlight, noise impact, oversupply of high rise apartments, does not preserve and complement the heritage value of the adjoining heritage item, loss of views and property devaluation.

A letter was sent to the applicant on 14 July 2020 requesting additional information relating to acoustics, dust management, water management and waste management.

An email was sent to the applicant's town planning consultant on 1 July 2020 advising that the application was referred to Sydney Metro. Sydney Metro responded that concurrence is not triggered under Clause 85 or 86 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) as the site is not adjacent or within 25m of the Sydney Metro Northwest rail corridor. However, due to the deep basement excavation, Sydney Metro requested written confirmation that there will be no ground anchors installed within the 2nd reserve of the rail corridor. Response was received from the applicant's architect advising that based on the proposed design and advice from their geotech engineers there is no need for rock anchors to be used in locations that would involve reducing the distance of the proposal from the Metro tunnel and therefore, no rock anchors would need to be installed within the 2nd reserve of the tunnel.

Further letter was sent to the applicant by email on 28 July 2020 forwarding engineering comments and request for additional information. Additional information regarding stormwater drainage and dust management were received from the applicant on 3 August 2020.

On 12 August 2020, the proposed development was presented and discussed at the Design Excellence Panel meeting. It should be noted that pre-DA concepts were presented to the DEP on 22 October 2019 and 11 December 2019. The DEP raised no objection to the proposal noting that the proposal has progressed to a well-designed residential development that minimises its impacts given the density proposed and is capable of achieving design

excellence. The DEP advised that the proposal does not need to return to the Panel for further review subject to the remaining design matters being comprehensively addressed to the satisfaction of the DA assessing officer.

An email was sent to the applicant on 12 August 2020 forwarding landscaping comments and requesting additional information in relation to landscaping calculations, deep soil planting, OSD integration with landscaping, details of planter beds, walls and fences and updated arborist report.

On 20 August 2020, a briefing was held with the SCCPP.

Further correspondence was sent to the applicant on 27 August 2020 raising further comments from Council's Environmental Health, Subdivision Engineering and Resource Recovery teams as a result of review of the submitted additional information.

Email sent to the applicant on 9 September 2020 advising that the submitted acoustic response was unsatisfactory and that the previous comments remain.

Email sent to the applicant on 8 October 2020 following up previous requests for additional information regarding environmental health, engineering, landscaping and waste management.

Correspondence dated 9 November 2020 was received from the applicant outlining the additional engineering, environmental health, waste management and landscaping information submitted on 6 November 2020.

Email sent to the applicant on 20 November 2020 forwarding further engineering comments in response to submitted additional engineering information. An email in response to this request was received on 24 November 2020 advising that a short report addressing the issue relating to the 17.5m road reserve is being prepared and that they have clarified the driveway entry grade.

On 8 December 2020, a letter was received from the applicant's town planning consultant in response to addressing Clause 6.2 provisions in LEP 2019. Response sent to the applicant's town planning consultant on 18 December 2020 advising that Clause 6.2 of LEP 2019 applies to the subject application. It was indicated that Council's Forward Planning Team will seek further advice from the Department in relation to this matter. A letter was sent to the Department in this regard on 22 January 2021.

Comments received from Transport for NSW on 22 December 2020 requesting SIDRA modelling of the Pennant Street/Old Castle Hill Road/ McMullen Avenue and Old Northern Road/ McMullen Avenue intersections and advising that the traffic and transport study should identify appropriate parking controls for the future development to encourage the use of public and active transport.

Email sent to the applicant on 12 January 2021 requesting the submission of revised civil drawings showing the 17.5m road reserve and any changes to the basement architectural plans to ensure works are wholly contained within the new property boundary. Additional information submitted by the applicant on 18 January 2021.

Further landscaping comments and request for further information was forwarded to the applicant on 20 January 2021 and followed up by email on 28 January 2021.

An email was sent to the applicant on 1 February 2021 seeking clarification regarding car space widths in Basement 2 and 3 in terms of compliance with the Australian Standards.

A follow-up email was sent to the applicant on 9 February 2021 in relation to outstanding landscaping and tree information. Additional engineering and landscaping information was received on 10 February 2021. Further landscaping comments as a result of review of submitted additional information were forwarded to the applicant on 15 February 2021. Updated landscaping plans and arborist report were received on 19 February 2021. Outstanding matters have been resolved, however there remain areas requiring further detail to address privacy and overlooking and neighbouring tree impacts.

A meeting was held with the applicant on 24 February 2021 to discuss the outstanding landscaping matters. Amended plans were submitted on 26 February 2021 and were still considered unsatisfactory as outlined in an email to the applicant on 2 March 2021. Further amended plans were submitted on 3 March 2021.

The proposal is recommended for approval subject to conditions.

DETAILS AND SUBMISSIONS

Owners:	Old Diamond Pty Ltd The Owners Strata Plan No. 40627
Zoning:	R4 High Density Residential
Area:	6,063m ²
Existing Development:	Dwelling houses, dual occupancy and ancillary structures
Section 7.11 Contribution	Subject to VPA
Exhibition:	Not required
Notice Adj Owners:	14 days
Number Advised:	260
Submissions Received:	41

PROPOSAL

The Development Application is for the demolition of six (6) dwelling houses, an attached dual occupancy (2 dwellings), other structures on the land and the removal of 30 trees in order to facilitate the construction of a 13 storey (Building A) and 18 storey (Building B) residential towers, connected by a common podium, containing 196 apartments over four (4) levels of basement car parking that contain 236 spaces, as well as car wash bay, bicycle and motor bike parking and waste holding rooms.

The proposal also involves the provision of both communal and private open space areas, and extensive native landscaping throughout the site.

Due to the topography of the land, a small corner portion of the roof area of Building B encroaches above the 57m building height control. A Clause 4.6 variation request seeking to justify the non-compliance with the height standard control accompanies the Development Application.

In accordance with DCP 2012 Part D Section 20 Castle Hill North Precinct, a 1.5m wide strip of land along the street frontage of 16-20 Garthowen Crescent (northern loop road) is to be dedicated free of cost to Council for local road widening.

The total number of units is 196 apartments with the following unit mix:

- 18 studios
- 31 x 1 bedroom
- 107 x 2 bedroom
- 40 x 3 bedroom

The following is a detailed design layout of the proposal:

- All units within each tower are accessible from the 4 basement car parking levels via lifts and stairwells;
- The 196 units comply with the choice and unit sizes prescribed by Clause 7.11 of THLEP 2019. Some units are 2 levels, while some of the units have studies;
- Both towers are slender in design and are connected with a shared podium which provides for courtyard and terrace style apartments, which the DCP seeks to promote;
- Within the 4 basement car park levels, provision is made for 236 car spaces, including 196 resident spaces and 40 visitor spaces located within basement 3 as well as 34 accessible spaces (resident and visitor). A car wash bay is proposed;
- A roller security door denies visitors from moving beyond Basement 3;
- Vehicular access into the basement car park is via a security roller door;
- Each basement car parking level is also provided with lockable storage cages and bicycle and or motor bike bays;
- Vehicles will be able to enter and leave the basement car park via both the northern and southern loop roads of Garthowen Crescent;
- Basement 3 provides the developments common garbage holding room that will be serviced by a Council private contractor. A waste collection area is also provided in Basement 3, next to the Garbage and Bulky Goods holding rooms. Tower A and Tower B are provided for their own separate bin holding rooms;
- Garbage chutes are provided on each level of both towers;
- A part time caretaker will be employed by the Body Corporate to maintain and supervise the on-going maintenance of both towers and common property areas, including garbage rooms;
- Landscaped gardens, retention of many existing large trees, communal open space and pedestrian pathways;
- Deep soil zones around the perimeter of the site, in particular, the interface between the heritage item and the proposal;
- Level 3 is provided with an outdoor communal open space that provides for seating, landscape plantings, BBQ/communal dining facilities, paved walkways, private seating nooks, etc.;
- Lobbies and lifts to be accessed by electronic swipe key cards;
- Accessible ramps designed in accordance with AS are proposed throughout the complex;
- A small water feature is provided within the large communal open space area next to the heritage item;
- All units are provided with living/dining areas, amenity rooms, kitchens, laundry and bedrooms meeting or exceeding areas of the Apartment Design Guide;
- Stormwater to be captured and contained within rainwater tanks (separate to on-site detention). The water contained within these tanks will be used to water the gardens throughout the site;
- In accordance with Council's site specific DCP, a through-site link is proposed along the western side of the site and dedicated to Council, allowing residents living along the northern loop roads, easy access between one side of Garthowen Crescent to the other. This public amenity strip will be provided with directional signage, well-lit in the evening with low level lighting and provided with non-slip paving. Residents within this precinct are likely to use this pathway and be able to walk through Strang Pathway off Garthowen Crescent to access the lights at Old Northern Road and McMillan Avenue, which in turn will allow convenient access to the Castle Hill Metro Station and Castle Hill Bus Interchange and Castle Towers;
- Large communal open space provision including meandering pathways through a well-defined landscape setting;
- Because of the 8.5m fall in the land from north-east (RL145.5) to south-west (RL137.0), Tower B has a modest parapet encroachment of 0.860m or 1.51% above

the 57m height control, proposing 57.86m over a small corner, triangular shaped roof portion of the building. As noted above, a written request to vary the building height control accompanies the application (refer Attachment 14).

CONCILIATION CONFERENCE

Forty-one (41) submissions were received during the notification period. If more than ten (10) individual submissions are received during the notification period, Council will normally host a conciliation conference chaired by the Mayor or the Mayor's nominee. Due to Covid-19 restrictions, a conciliation conference was not held.

ISSUES FOR CONSIDERATION

1. State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 (1) of the SEPP (State and Regional Development) 2011 states that development specified in Schedule 7 is declared to be regionally significant development for the purposes of the Act, i.e.:

***“2 General development over \$30 million
Development that has a capital investment value of more than \$30 million.”***

The proposed development has a Capital Investment Value of \$62,982,623.00 thereby requiring referral to, and determination by a regional planning panel as provided under Section 4.5(b) in the Environmental Planning and Assessment Act, 1979. In accordance with this requirement the application is referred to the Sydney Central City Planning Panel (SCCPP) in this case for determination.

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

Clause 50(1A) of the Environmental Planning and Assessment Regulation 2004 requires the following:

“(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.”

Comment:

The required Design Verification Statement was prepared by Stephen Cox of Turner, an architect registered under the Architects Act 2003 (Registration No. 6391) and submitted with the application, confirming that he directed the DA design and documentation of the proposed development and that the following design quality principles set out in Part 2 of State Environmental Planning Policy No. 65-Design Quality of Residential Flat Development are achieved for the residential development.

a). Design Quality Principles

The Development Application has been assessed against the relevant design quality principles contained within SEPP 65 as follows:

Principle 1: Context and neighbourhood character

The site is located within 400m of the new Castle Hill Metro Station and public bus interchange. The site is also within 300m of the multi-level Castle Towers shopping centre.

The site adjoins low density housing to the west, which has been rezoned to R4 High Density Residential which is part of the Castle Hill North Precinct. This will also allow similar types of high rise residential development on these sites.

To the north east of the site and within the visual catchment is a new, multi-storey residential flat building that was constructed within the last 3 years. Adjoining the site on the eastern boundary is a low rise heritage building which is currently being used as a childcare centre.

The predominant character of the neighbourhood consists of low density housing however is in transition to a high density residential development as a result of the proposal and the changes envisaged as part of the North Castle Hill Precinct plan.

By integrating and responding to the unique features of the locality the proposed development will provide a high quality and well-designed building and public realm which will provide good amenity for the resident population and the visitors to the site.

Principle 2: Built form and scale

The proposal is consistent with the requirements of The Hills LEP 2019, and is appropriately designed by modulation of the built form, compliant setbacks and stepping in scale to minimise the perceived scale and breaks between buildings. The interface between the development and the public domain has been duly considered with appropriate landscaping and façade treatments to ensure a high level of amenity is provided. The scale of the proposed development will not create adverse impacts on the surrounding properties in terms of loss of solar access, loss of privacy or visual impacts. The building has been designed to be in keeping with the desired scale and building form envisaged for this precinct.

The building responds to the site's topography, in which it has a cross fall of approximately 8.5m from north-east to south-west. The architectural expression of the towers ensures each will readily fit within the evolving character of Castle Hill as a major business centre with high rise residential on the outer areas of the centre.

Principle 3: Density

The subject proposal provides for 196 dwellings for the site. The proposal complies with the FSR and height provisions under LEP 2019. The density is consistent with the site's strategic location and the surrounding character of adjoining development as Council's strategic vision for the Castle Hill North Precinct is to locate highest density development closest to the station and local centre and reduce the densities further from the station. In this regard, the proposal is appropriate for the site and future Castle Hill North Precinct.

Principle 4: Sustainability

The proposal achieves natural ventilation and solar access required by the Apartment Design Guide. The proposal includes a BASIX certificate which provides the required targets for energy and water commitments. The commitments proposed will minimise the dependency on energy resources in heating and cooling. The achievement of these commitments would contribute significantly to the reduction of energy consumption, resulting in a lower use of valuable resources, the reduction of costs and thus a more sustainable development.

The proposed development achieves the minimum provision for solar access with 81% and 78 of apartments in Building A and Building B achieved. In terms of cross ventilation, 66% of units are cross ventilated in Building A, while 63% is achieved for Building B, which will reduce the heat load in both buildings.

Principle 5: Landscape

The building setbacks provide a landscape zone which acts as a buffer between the public and private domains, and softens the building edge.

A landscaped through-site link is proposed along the western side boundary of the site and is softened through the provision of a quality landscaping.

A large communal open space is provided at street level and occupies the deep soil zone towards the north eastern frontage of the site. The design includes landscaped front gardens dedicated at each individual ground level apartment which will provide good amenity for residents.

Principle 6: Amenity

The site is located in close proximity to public transport, shopping and local amenities. Each proposed towers is designed to maximise visual and acoustic privacy to future residents, ensuring existing neighbouring properties maintain a quality level of residential environment. The number of units with access to natural ventilation and solar access has been maximised.

The design of the development demonstrates adequate separation between buildings and neighbouring properties.

Landscaped gardens are proposed throughout the development and plantings will assist in minimising any potential overlooking at ground level towards the childcare centre to the east.

The Acoustic Report submitted with the application details a number of measures which will be implemented to ensure that the occupants of the development are not adversely affected by noise.

Principle 7: Safety

Safety is enhanced within the proposed development with the design of pedestrian entry points separate to vehicular access points. Pathways leading to each building from both loop roads of Garthowen Crescent are clearly visible and will be well-lit of an evening to improve safety and ease of access. CCTV is proposed to enhance safety at various access points to the site. Suitable security gates and fencing are proposed to enhance residential safety.

In addition, passive surveillance to the street is enhanced through the placement of windows and balconies overlooking these areas.

The NSW Police have reviewed the Development Application and accompanying Crime Prevention through Environmental Design Assessment Report prepared by Barker Ryan Stewart Pty Ltd dated April 2020. No objection is raised to the proposal subject to compliance with the recommendations outlined in the CPTED Assessment Report (refer recommended Condition No. 36).

Principle 8: Housing diversity and social interaction

The proposed development provides for a diverse mix of studio, 1, 2 and 3 bedroom apartments that vary in size, design and layout. Provision is made for 20 adaptable units, which is in keeping with Council's DCP and market expectations for the area. The apartments cater to a large diversity of people and house hold types with stair cases and lifts and common areas, providing opportunities for social interaction within and between each building.

Principle 9: Aesthetic

The proposed buildings are of high quality residential design with appropriate scale and articulation. The design reflects a modern approach with flat roofing forms ensuring an interesting and attractive new addition to the streetscape.

The development is a good example of the type of density and capacity envisioned by the new LEP controls for this northern precinct of Castle Hill, the development presents high levels of amenity, generous areas of open space and above standard levels of living and environmental performance for future occupants. In addition, the development achieves an appropriate fit

with the evolving character of the precinct and provides a sensitive response to the existing surrounding residential development and the heritage item.

The proposed density achieves a balanced streetscape, appropriate built form outcomes and high amenity for public domain open spaces.

Landscaping takes a central role in the design of the building, not only at the base, but also at the upper levels. This reflects the existing verdant character of the neighbourhood and surrounding public spaces.

b). Apartment Design Guide

In accordance with Clause 30(2) of SEPP 65, a consent authority in determining a Development Application for a residential flat building is to take into consideration the Apartment Design Guide. The following table is an assessment of the proposal against the Design Criteria provided in the Apartment Design Guide.

Clause	SEPP 65 Requirements – ADG Design Criteria	Proposed Development	Compliance
Siting			
Communal open space	25% of the site, with a minimum of 50% direct sunlight to the principal usable part of the communal open space for 2 hours midwinter.	33% of site area is provided as communal open space. The proposal contains a number of communal and outdoor spaces to enhance the amenity of residents and visitors to the site. The proposal achieves the percentage requirements for communal open spaces receiving more than 2 hours of midwinter sun.	Yes
Deep Soil Zone	7% of site area. On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1,500m ² and 15% for sites greater than 1,500m ² .	Deep soil zones are provided throughout the development. The percentage of deep soil is 19.4% of the site area (i.e. excluding the road dedication of the Garthowen north road).	Yes
Separation and Visual Privacy	Minimum separation distances for buildings: Up to 4 storeys - 6-12m Up to 8 storeys – 9-18m	Separation distances between buildings and to neighbouring properties are greater than the ADG requirements.	Yes
Carparking	For development on the following locations: • on sites that are	The amount of off-street parking provision exceeds the required	Yes

	<p>within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</p> <ul style="list-style-type: none"> on land zoned, and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>Car park design and access is safe and secure.</p> <p>Visual and environmental impacts of underground car parking is minimised.</p>	<p>number of parking spaces.</p> <p>Car park access is secured at appropriate levels for amenity and residential uses.</p> <p>Visitor parking is provided in a designated area of the carpark at Basement Level 3, the first parking level from the carpark entrance on Garthowen South.</p> <p>Car parking areas are not visible from the public domain.</p> <p>The loading, resident and visitor car parking is located below ground in basement carparks.</p>	
Designing the Building			
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm mid-winter.	81.1% of the apartments will achieve the recommended solar access requirements.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Less than 15% of apartments receive no-direct sunlight between 9am and 3pm mid-winter across the precinct.	Yes
Natural ventilation	At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is	64.8% of apartments will be naturally cross-ventilated. Natural cross-ventilation is proposed by corner	Yes

	only deemed to be cross ventilated if the balconies cannot be fully enclosed.	or cross-through strategy to the living area and bedrooms.	
Ceiling heights	<p>For habitable rooms – 2.7m.</p> <p>For non-habitable rooms – 2.4m.</p> <p>For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where it's area does not exceed 50% of the apartment area.</p> <p>For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope.</p> <p>If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.</p>	<p>A minimum floor-to-floor height of 3.1m is used to allow the ADG recommendation of 2.7m ceiling height to generally be achieved in living, dining and bedroom areas.</p> <p>A reduced ceiling height of 2.4m is proposed in non-habitable rooms for mechanical services.</p> <p>Ceilings in kitchen areas (typically located at the rear of the living areas) are proposed at a minimum of 2.4m high where required to allow the integration of hydraulic services for island benches and for the incorporation of air conditioning units in apartments.</p>	Yes
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m² 1 bedroom – 50m² 2 bedroom – 70m² 3 bedroom – 90m²</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	<p>Apartment sizes comply with the LEP.</p> <p>A range of apartment typologies are provided including apartments with studies, 2-storey apartments, street-accessed apartments, adding to the flexibility and affordability of the development.</p> <p>The unit sizes range as follows:</p> <p>Studios (18) range between 40-42m²; 1 bedroom units (31) range between 50-51m²; 2 bedroom units (107) range between 75-111m²; and 3 bedroom units (40)</p>	Yes

		range between 95-136m ² .	
Environmental Performance of Apartments	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	All habitable rooms proposed comply with the maximum allowed depth.	Yes
Apartment Layouts	<p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	<p>All master bedrooms comply with the minimum required area.</p> <p>Bedrooms meet the minimum 3m dimension.</p> <p>Living/dining rooms meet the minimum required dimensions.</p>	Yes
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m² with no minimum depth 1 bedroom – 8m² with a minimum depth of 2m 2 bedroom – 10m² with a minimum depth of 2m 3 bedroom – 12m² with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m² with a minimum depth of 3m is required.</p>	All apartments comply with the required balcony areas and dimensions.	Yes
Storage	Storage is to be provided as follows:	Minimum storage areas per unit type provided.	Yes

	Studio – 4m ³ 1 bedroom – 6m ³ 2 bedroom – 8m ³ 3+ bedrooms – 10m ³ At least 50% of the required storage is to be located within the apartment.		
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	The proposal includes a variety of apartment types including 15.8% 1 bedroom units, 54.6% 2 bedroom units and 20.4% 3 bedroom units. The apartment mix is appropriate taking into consideration the distances to shops and transport, the scale of the proposed development and the current demand for this type of housing.	Yes

As outlined above, the proposal complies with the requirements of SEPP 65 and ADG.

3. Compliance with SEPP No. 55 – Remediation of Land

Under the provisions of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), where a development application is made concerning land that is contaminated, the consent authority must not grant consent unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Comment:

Council's Environmental Health Coordinator has reviewed the Preliminary Site Investigation prepared by Geotechnique Pty Ltd, report number 14622/1-AA dated 25 March 2020. The investigation concludes that a Stage 2 detailed site investigation after the demolition/removal of the existing site features is required to address the potential contaminants, and if any contaminants are identified the site can be made suitable for the proposed use following successful remediation and validation.

Accordingly, relevant conditions are recommended in any approval (refer Condition Nos. 25, 84 and 105).

4. Compliance with The Hills Local Environmental Plan 2019

(i) Permissibility

The site is zoned R4 High Density Residential under the provisions of LEP 2019. The proposed development is defined as a residential flat building as follows:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The proposal is permissible with consent in R4 zone.

(ii) Compliance with The Hills LEP 2019 – Zone Objectives

The site is zoned R4 High Density Residential under the provisions of Local Environmental Plan 2019. The objectives of the zone are:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage high density residential development in locations that are close to population centres and public transport routes.

The development site is located on the outer edge of the Castle Hill business centre, within approximately 400m or a 5 minute walk of Castle Hill Metro Station and Castle Towers Shopping Centre which contains numerous shops and commercial premises.

Regular bus services operate along Old Castle Hill Road, Pennant Street, McMullen Avenue and Old Northern Road. These public transport services and proximity to the subject site will ensure that future residents of this new residential complex will place less reliance on the use of motor vehicles and more emphasis on walking or use of public transport to these services and other business centres including the Sydney CBD.

Large areas of open space, churches, primary and secondary schools are sited within the surrounding area. Clearly, these fundamental services promote increased densities.

The proposed development promotes housing choice and is in keeping with the height, bulk and scale of other new residential flat buildings evolving within the visual catchment of the site.

Given the above comments, it is considered that the proposal satisfies the objectives of the R4 High Density Residential zone.

(iii) The Hills LEP 2019 - Development Standards

The proposed development is subject to the principal development standards of the LEP as shown in the following table.

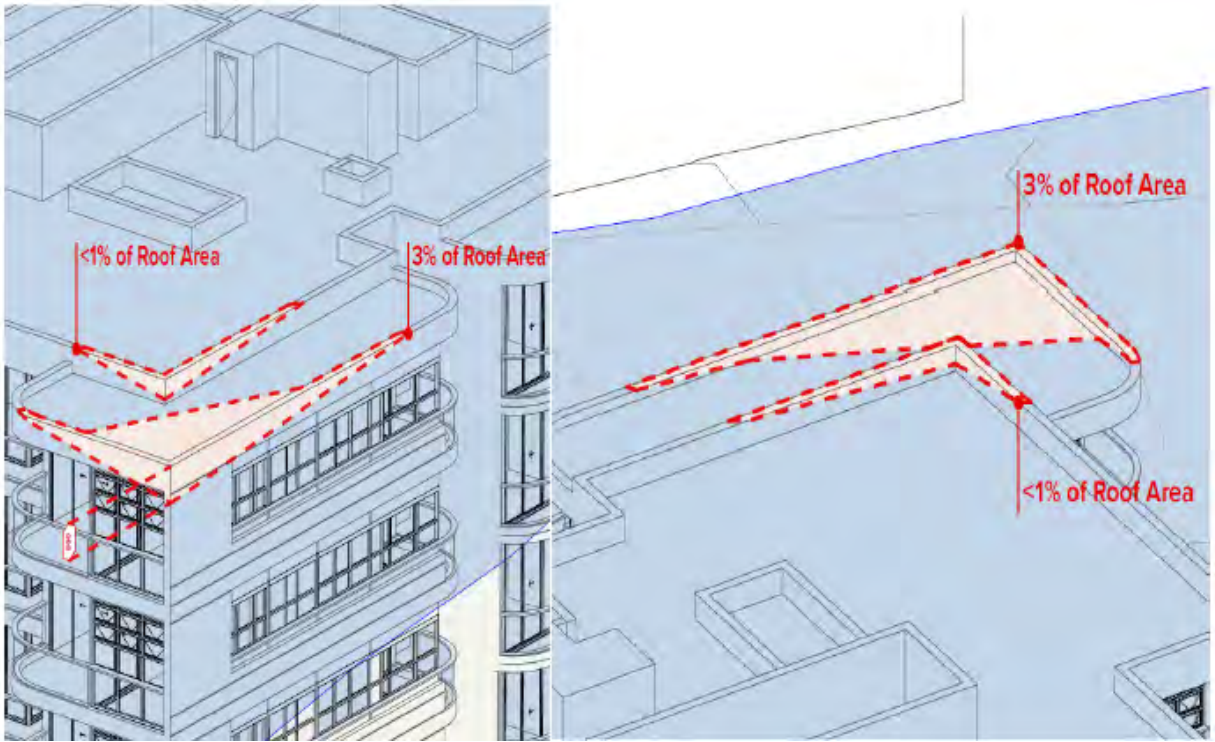
CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for residential flat buildings in R4 Zone	4,000m ²	6,063m ²	Yes
4.3 Height of buildings	57m	57.86m	No, see comments below
4.4 Floor space ratio	3:1	2.99:1	Yes

a) Height of Buildings Standard

LEP 2019 sets a height limit of 57 metres for the subject site.

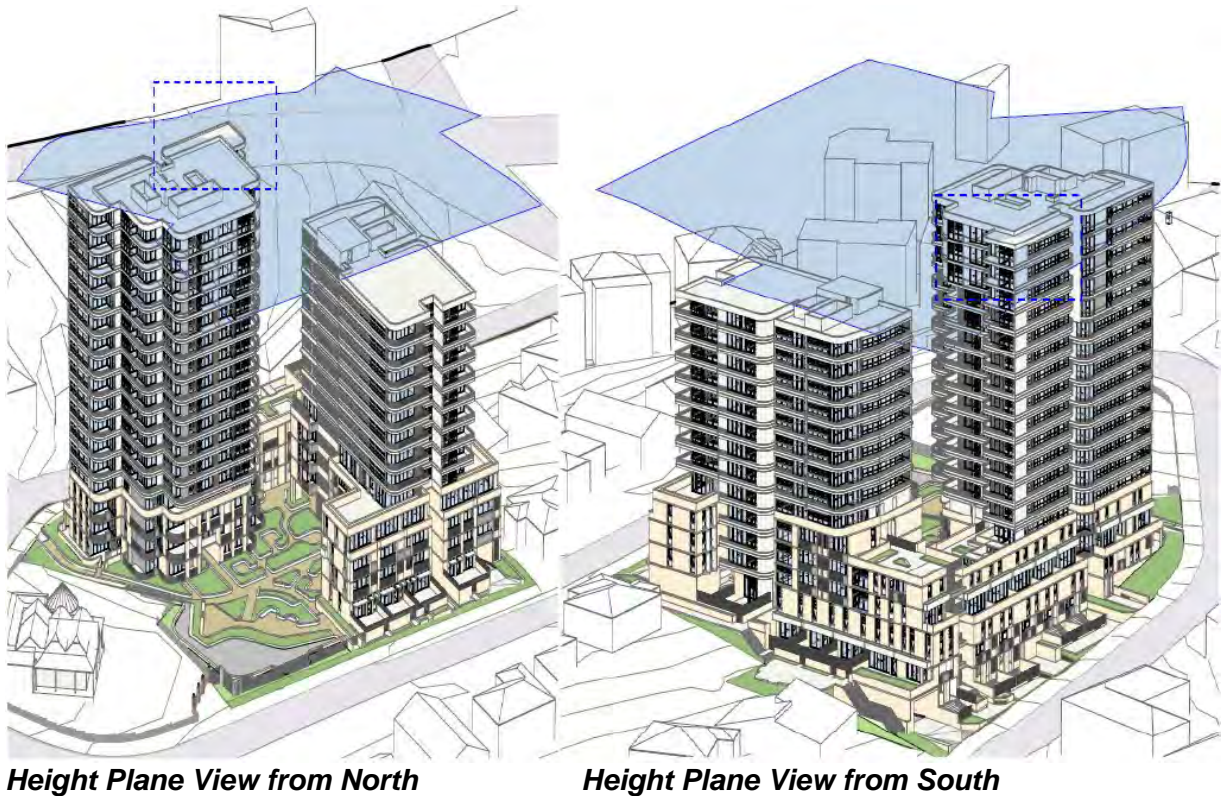
The corner edge of the roof and parapet of Tower Building B marginally extends above the 57m building height control by 860mm or 1.51%. The encroachment is generally triangular in shape and covers a very small portion of the building's roof and parapet, directly above unit B15.05.

Due to the site's irregular shape and topography that falls steeply away from north-east to the south-west by approximately 8.5m, the proposed design reflects a maximum building height of between 57m and 57.860m. Refer to figures below which show the areas of the roof that extend above the height control.



Height Plane View from South

Height Plane View from North



The applicant has submitted a detailed Clause 4.6 variation which included the following justification in support to their objection that strict compliance with the building height development standard is unreasonable or unnecessary in this particular circumstance:

- The proposed development is permissible in R4 High Density Residential zone and satisfies the zone and building height objectives;
- The variation proposed of 860mm or 1.51% above the 57m building height standard of Building B in a small triangular shaped area of the top floor is minor in the context of the buildings overall height, length and setbacks from both street frontages, ensuring that portion of the building above the standard is largely not visible from either the public or private domains;
- The increase in building height has no impact on maintaining the site's FSR of 2.99:1;
- The flexible application of this clause will enable a better planning outcome to be achieved for this site that will not generate any unreasonable environmental impacts;
- The proposed increase in building height has had due regard to the siting of the building without identifying any amenity impacts such as loss of solar access to the development site or neighbouring properties;
- The development will make a positive contribution to the transitional character of this neighbourhood;
- The proposal provides an architecturally sound development that is well articulated and modulated, and therefore presents well to both street frontages and will compliment the streetscape and as a result is in the public interest;
- The design is consistent with the underlying objectives of the building height development standard;
- The design satisfies the Land and Environment Court's test judgments for a well-founded objection to vary a development standard;
- The minor increase to the building height control does not undermine or inconsistent with the objects contained in Section 1.3 of the Environmental Planning & Assessment Act 1979;
- The proposal is consistent with all strategic planning studies including structure plans, in terms of providing housing in the right locations, such as better use of public

transport (Castle Hill Metro Station and bus interchange), economics and employment within the Castle Hill business centre;

- The test in achieving the orderly and economic use of land is to achieve a better planning outcome with no adverse impacts being generated, which the proposal clearly complies with and the public interest test as it allows for the orderly and economic use of the land in an older residential neighbourhood, which is transitioning to a modern, well designed high density residential development that will enhance the streetscape and envisaged character of this neighbourhood.

Attachment 14 contains the Clause 4.6 Variation request from the applicant.

Comment:

LEP 2019 limits the height for the site to 57 metres. The proposed height is a maximum 57.86m to Building B. This represents a maximum 1.51% variation to the LEP standard.

The objectives of Clause 4.3 are as follows:

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

The objectives of Clause 4.6 of LEP 2019 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

Due to the topography of the land that falls 8.5m from the north-east to the south-west, a small corner portion of the roof area of Building B encroaches above the 57m building height control prescribed in LEP 2019 by a maximum of 860mm which represents a 1.51% variation to the LEP standard. This minor encroachment will not be visible from the street, will cast no additional shadow, does not deny loss of views nor create discernible visual bulk and scale to the building. The applicant has submitted a Clause 4.6 variation request which has been reviewed and is considered satisfactory.

The shadow impact from the development is considered reasonable given the form of the development. The separation to adjoining future development will reduce the potential for overlooking and privacy impacts.

The urban form is considered to be appropriate for the area and the development of a residential nature. The proposal incorporates a variety of finishes and colours and will result in

an appropriate urban outcome. The use of taller, slender structures results in an improved urban form.

The site is situated within the Castle Hill North Precinct which will be subject to redevelopment in the future as envisaged in the subject precinct's plan. The site is in close proximity to the North West Rail Link, the bus transit centre, Castle Towers Shopping Centre and other retail and commercial uses within the Castle Hill precinct. The site has a high level of access to existing and future public transport and to retail/commercial services.

Clause 4.6(3) of LEP 2019 states:

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

Comment: The height limit currently applied under LEP 2019 is considered to be unreasonable and unnecessary as outlined above. The proposal has a high level of access to the existing rail station, existing bus transit centre and existing retail and commercial uses and is appropriately located to support a higher density form of development. The proposed building form outcome is considered to respond appropriately to the desired future character of the area which will reflect a modern urban character.

Notwithstanding this minor non-compliance with the building height control, the proposed development satisfies the objectives of both the zone and of the building height standard.

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

Comment: There are sufficient planning grounds to justify the proposed height. These planning grounds include the current height under LEP 2019 applying to the immediate area, the importance of the site in a local and regional context and the location of the works on the site.

Clause 4.6 (4) of LEP 2019 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: The applicant has adequately addressed the matters required to be addressed by subclause (3).

(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 detailed above, the proposal is an appropriate outcome in regard to public interest and is consistent with the objectives of the R4 High Density Residential zone.

(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 Environment.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- The applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R4 High Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

On the basis of the above comments, the proposed variation to the height is considered reasonable, will not result in an adverse impact on amenity of adjoining properties nor add visual bulk and scale to the development.

Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

It is also noted that in accordance with the Departments Circular PS 08-003 that Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument or a similar clause.

(iv) Clause 7.7 Design Excellence

Pursuant to Clause 7.7 of LEP 2012, the proposed development is required to be reviewed by Council's Design Excellence Panel (DEP), as it involves the erection of a new building or external alterations to an existing building with a height of 25 metres or more. This clause was included into The Hills Local Environmental Plan 2012 on 17 November 2017 and Council has since convened a Panel which commenced on 22 February 2018.

The proposed development was presented and discussed at the DEP meeting held on 12 August 2020. Pre-DA concepts were presented to the DEP on 22 October 2019 and 11 December 2019. The DEP raised no objection to the proposal noting that the proposal has progressed to a well-designed residential development that minimises its impacts given the density proposed and is capable of achieving design excellence. The DEP advised that the proposal does not need to return to the Panel for further review subject to the remaining design matters being comprehensively addressed to the satisfaction of the DA assessing officer.

In view of above foregoing, the proposed development is considered satisfactory in regard to LEP 2019.

(v) Part 6 Urban Release Areas

The site is identified as within an 'Urban Release Area' as shown on the CL2 map. As such, the Development Application is subject to a satisfactory arrangements clause under Part 6 of the LEP 2019, i.e.:

6.1 Definitions

In this Part—

designated State public infrastructure means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds—

- (a) State and regional roads,
- (b) bus interchanges and bus lanes,
- (c) land required for regional open space,
- (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

public utility infrastructure, in relation to an urban release area, includes infrastructure for any of the following—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage.

urban release area means an area of land shown hatched and marked “Urban Release Area” on the Urban Release Area Map (refer to figure below).

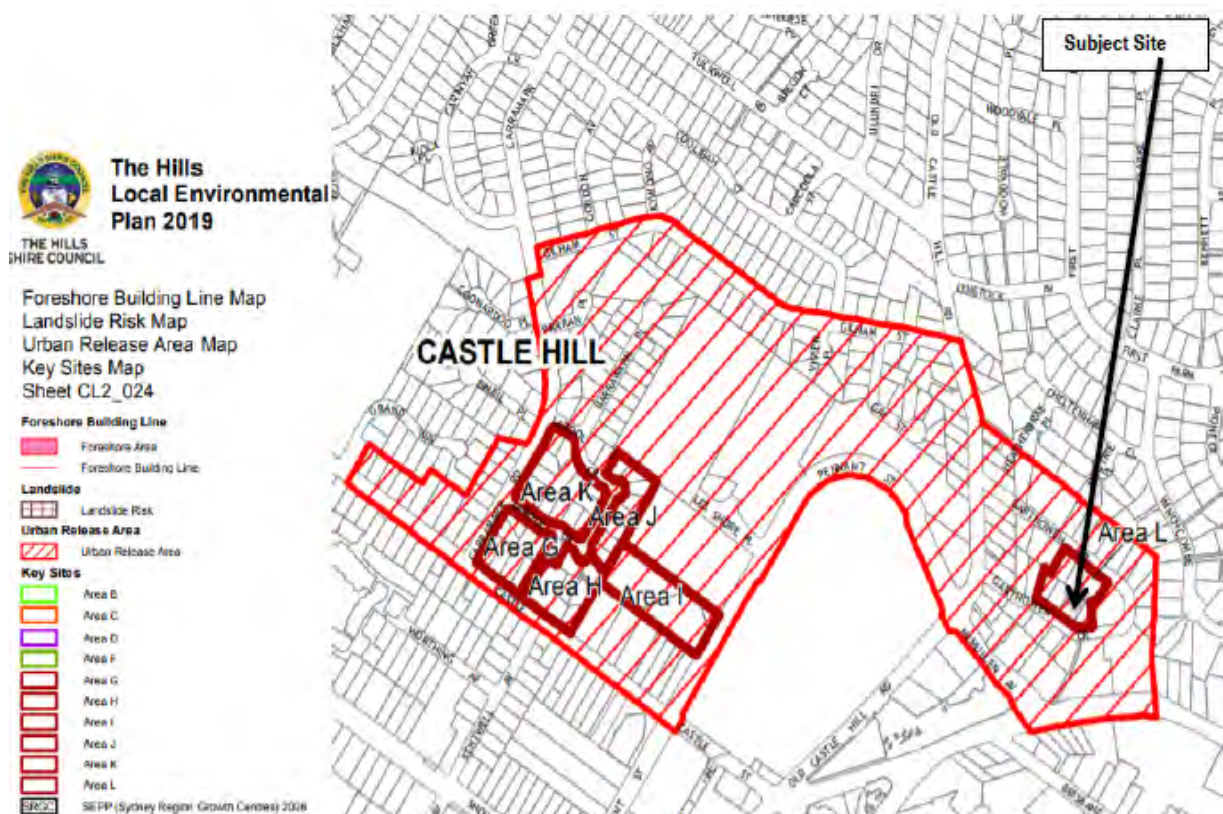


Figure 1

Source: THLEP 2019

Comment:

The subject site is located within a well-established residential neighbourhood of Castle Hill, however it has received an uplift in development potential as a result of Amendment No.6 to LEP 2019. The subject site is afforded all forms of public utility infrastructure such as that set out in this clause. While it is acknowledged that the population density for this site as a result of the proposal will increase from 8 dwellings to 196 residential apartments, the existing public utility infrastructure will be augmented to satisfy the demand generated by the proposed

increase in density. A written evidence of satisfactory compliance of this augmentation will be required as a condition in any approval.

6.2 Arrangements for designated State public infrastructure

- (1) *The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.*
- (2) *Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than –*
 - (a) *in relation to land shown as “Existing Urban Release” on the Urban Release Area Map - 40 hectares, or*
 - (b) *in any other case—the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.*
- (3) *Subclause (2) does not apply to –*
 - (a) *any lot identified in the certificate as a residue lot, or*
 - (b) *any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or*
 - (c) *any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or*
 - (d) *a subdivision for the purpose only of rectifying an encroachment on any existing lot.*
- (4) *This clause does not apply to a development application to carry out development on land in an urban release area if all or any part of the land to which the application applies in a special contributions area (as defined by section 7.1 of the Act).*

Comment:

Designated State Public Infrastructure is defined under Clause 6.1 of Part 6. In response to this clause, reference is made to Council's business paper of 10 December 2019 (pages 24-25), in which this issue was raised and suitably addressed, referencing to draft CP17. It should be noted that a Voluntary Planning Agreement (VPA) for the subject site was endorsed by Council.

The proposal does not seek to subdivide the land into smaller lots to that previously permitted on the land before the land became part of the urban release land. Amendment No. 6 of LEP 2019 (subject site) came into effect on 18 June 2020 before the site became part of an Urban Release Area.

The proposed development seeks to consolidate all lots within the proposed development, not subdivide lots into smaller lots, as they were immediately before the land became part of an “urban release area”.

The subject application does not seek consent to:

- (i) create a residue lot;

- (ii) create a lot that was proposed to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose create a lot reserve or dedicate land for a public road. Whilst dedication of land is for proposed road widening, it does not form part of a separate lot;
- (iii) Create a subdivision to rectify and to encroach on any existing lot; (iv) The site does not form part of a special contributions area as defined by Section 7.1 of the EP&A Act 1979

On reviewing the definition of subdivision under Section 6.2 of the EP&A Act 1979, the meaning of subdivision does not include the consolidation of lots. See Section 6.2 of the EP&A Act, 1979 below

6.2 Meaning of “Subdivision” of Land

(cf previous s 4B)

- (1) *For the purposes of this Act, subdivision of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:*
 - (a) *by conveyance, transfer or partition, or*
 - (b) *by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.*
- (2) *Without limiting subsection (1), **subdivision** of land includes the procuring of the registration in the office of the Registrar-General of:*
 - (a) *a plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919, or*
 - (b) *a strata plan or a strata plan of subdivision within the meaning of the Strata Schemes Development Act 2015.*

Note—

The definition of plan of subdivision in section 195 of the Conveyancing Act 1919 extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the Community Land Development Act 1989. (3) However, subdivision of land does not include:

- (a) *a lease (of any duration) of a building or part of a building, or*
- (b) *the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or*
- (c) *the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or*
- (d) *a division of land effected by means of a transaction referred to in section 23G of the Conveyancing Act 1919, or*
- (e) *the procuring of the registration in the office of the Registrar-General of—*
 - (i) *a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the Conveyancing Act 1919, or*
 - (ii) *a strata plan of consolidation or a building alteration plan within the meaning of the Strata Schemes Development Act 2015.*

6.3 Public utility infrastructure

- (1) *Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the*

proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure. 6.4 Relationship between Part and remainder of Plan A provision of this Part prevails over any other provision of this Plan to the extent of any inconsistency.

6.4 Relationship between Part and remainder of Plan

A provision of this Part prevails over any other provision of this Plan to the extent of any inconsistency.

Comment:

As noted above, the subject site is located within a well-established residential neighbourhood of Castle Hill. It is afforded all forms of public utility infrastructure such as that set out in this clause. While it is acknowledged that the population density for this site as a result of the proposal will increase, existing public utility infrastructure will be augmented to satisfy the demand generated by the proposed increase in density. In this regard, Clauses 6.3 and 6.4 mentioned above are not relevant considerations in the assessment of this application. There is an appropriate item that exists in Council's relevant contributions plan, which sets out an amount for contributions which is mirrored in the applicant's Voluntary Planning Agreement (15/2019/VPA) which deals with regional traffic impacts expected out of this development. The VPA for the site would contribute towards the provision of local public transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection).

7.11 Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor

(1) The objectives of this clause are as follows—

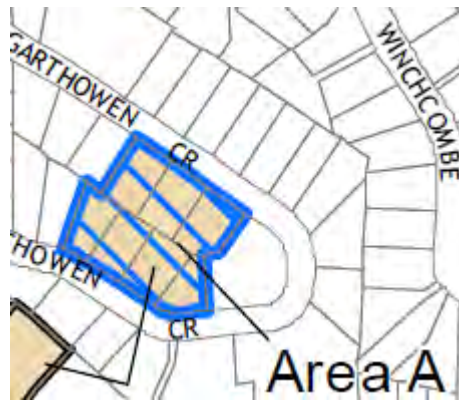
(a) to support the provision of increased housing around train stations forming part of the Sydney Metro Northwest at densities compatible with the future character of the surrounding area,

(b) to ensure the provision of a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets,

(c) to promote development that accommodates the needs of larger households, consistent with the demographics and family household structures of The Hills Shire.

(2) This clause applies to development that involves the erection of one or more buildings that contain dwellings on land identified as "Area A" or "Area B" on the Floor Space Ratio Map.

Comment: The site is identified as "Area A" (see extract/screenshot of FSR Map below).



(3) Despite clause 4.4, the consent authority may consent to development on land to which this clause applies with a floor space ratio that does not exceed the increased floor space ratio identified on the Floor Space Ratio Incentive Map, if the consent authority is satisfied that—

(a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and

Comment:

There are 49 studios and 1 bedroom dwellings combined or 25% of the total number of dwellings.

(b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings, and

Comment:

There are 40 x 3 bedroom dwellings or 20.4% of the total number of dwellings.

(c) at least 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110 square metres, and

Comment:

43 of the 107 x 2 bedroom units (or 40.18%) have a minimum internal floor area of 110m².

(d) at least 40% of all 3 bedroom dwellings contained in the development will have a minimum internal floor area of 135 square metres, and

Comment:

16 of the 40 x 3 bedroom units (or 40%) have a minimum internal floor area of 135m².

(e) if the development is on land identified as “Area A” on the Floor Space Ratio Map, the following minimum number of car parking spaces are to be provided for the development—

(i) for each dwelling—1 car parking space,

Comment: A total of 196 dwellings is proposed and 197 car parking spaces (including 20 accessible spaces) are provided.

(ii) for every 5 dwellings—1 car parking space, in addition to the car parking space required for the individual dwelling, and

Comment: 40 visitor parking spaces are required and 40 visitor parking spaces (including 2 accessible spaces) are provided.

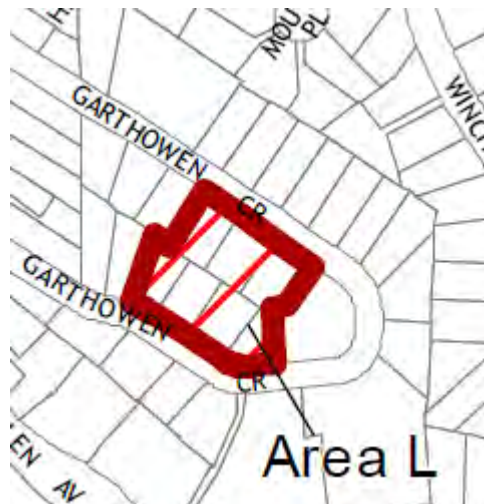
7.11A Development on certain land within the Castle Hill North Precinct

(1) The objectives of this clause are as follows—

- (a) to promote development that prevents the fragmentation or isolation of land,
- (b) to ensure the provision of quality public domain and improved pedestrian and cycle connections within local or strategic centres,
- (c) to facilitate development that is sympathetic to the character of heritage items.

(2) This clause applies to land identified as “Area G”, “Area H”, “Area I”, “Area J”, “Area K” or “Area L” on the Key Sites Map.

Comment: The site is identified as “Area L” on the Key Sites Map (see extract/screenshot of Key Sites Map below).



(3) Despite clause 4.4, the consent authority may consent to development on land to which this clause applies with a floor space ratio that exceeds the increased floor space ratio identified on the Floor Space Ratio Incentive Map by up to 20%, if the consent authority is satisfied of the following—

- (a) all lots comprising the land are amalgamated into a single lot,
- (b) the requirements of clause 7.11(3) have been met,
- (c) in relation to land identified as “Area G” on the Key Sites Map - N/A
- (d) in relation to land identified as “Area H” on the Key Sites Map - N/A
- (e) in relation to land identified as “Area I” on the Key Sites Map – N/A
- (f) in relation to land identified as “Area J” on the Key Sites Map – N/A
- (g) in relation to land identified as “Area K” on the Key Sites Map – N/A
- (h) in relation to land identified as “Area L” on the Key Sites Map -
 - (i) buildings on the land will be setback from Garthowen Crescent by at least 7.5 metres, and
 - (ii) pedestrian links will be provided through the land to connect the northern and southern frontages to Garthowen Crescent, and
 - (iii) one basement parking area will be provided on the land, including access roads through the land that will enable residents to enter into and exit from the northern and southern frontages to Garthowen Crescent, and
 - (iv) buildings on the land will not overshadow or detract from the heritage value of Garthowen and a ground level common open space will be provided between Garthowen and those buildings.

Comment:

Bonus FSR of 20% (0.5:1) where site outcomes are delivered, including amalgamation of properties, 7.5m setback to Garthowen Crescent, a through site link, sensitive response to the heritage item (Garthowen Crescent) and a through site vehicular link at basement level is provided. Because the proposed development demonstrates that all of the above controls have been satisfied, an FSR of 3:1 is applicable and the design response as proposed has been achieved at 2.99:1. In this regard, the proposal satisfies Clause 7.11A of LEP 2019.

5. Compliance with DCP 2012

The proposed development has been assessed against the relevant development controls under Part D Section 20 Castle Hill North Precinct of The Hills Development Control Plan 2012 and Part B Section 5 Residential Flat Buildings.

The proposed development achieves compliance with the relevant requirements of the development controls with the exception of the following:

DCP 2012 Part D Section 20 – Castle Hill North Precinct

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
5.1 Site requirements			
Min. lot size	4,000m ²	6,063m ²	Yes
Min. road frontage	30m	75.895m (North) 91.325m (South)	Yes
Min. site depth	40m	75m-77m	Yes
Max. site coverage	50% of the site area	41%	Yes
Isolation of lots and orderly development	22 Garthowen Crescent (to the west of the site) is likely to be isolated.	Addressed by the applicant in the SEE (refer discussion below)	Satisfactory. The site specific DCP does not include this site. No. 22 Garthowen Crescent has the ability to amalgamate with adjoining properties to the west or south.
5.2 Setbacks (Building and Upper Level)	Buildings to comply with Figure 31 Street Setbacks map (refer to diagram below) and Table 2 Building Setbacks. Underground car parking shall not intrude into the primary setback. Front Setbacks (street level) per Figure 31:	The 4 levels of basement car parking encroach into the primary setback to the north at 1.9m.	Variation, see comments below.

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>Garthowen North: 7m Garthowen South: 5m</p> <p>Incentive Clause 7.11A(3)(h)li of LEP 2019 overrides the above DCP front setback controls, i.e. setback to Garthowen Crescent shall be at least 7.5 metres.</p> <p>Front setbacks (upper level): Where upper level setbacks are not specified on Figure 31 the following upper level setbacks shall be applied:</p> <ul style="list-style-type: none"> - For all buildings, on a street reservation equal to or greater than 20m in width (Old Castle Hill Road and Castle Street), all storeys above the 6th storey shall be setback 6m behind the front building line. - For all buildings on a street reservation less than 20m in width, all storeys above the 4th storey shall be set back 6m behind the front building line. <p>Where land is dedicated to Council for road widening at no costs, the setback shall be measured from the existing property boundary.</p>	<p>9m – Garthowen North 7.5m – Garthowen South</p> <p>N/A</p> <p>Each floor up to Level 3 (4th storey) in Building A facing north is set back 9m from the street boundary. Level 4 (5th storey) to Level 12 (13th storey) are set back between 10.14m and 12.5m measured to the face of the building. The prescribed 6m setback behind the front building line is therefore not complied with or achieved.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Variation, see comments below.</p>

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>Rear setback – 8m or to comply with SEPP 65 whichever is the greater</p> <p>Side setback – 6m or to comply with SEPP 65 whichever is the greater</p> <p>Balconies – shall not protrude into the setback areas</p>		
<p>5.3 Open Space and Landscaping</p>	<p>Landscaped open space – min. 50% of site area; minimum width of 2m.</p> <p>Roof gardens and planting on structures – merit consideration</p> <p>Communal open space – min. 10m² per dwelling, i.e. 1960m²</p> <p>25% of required open space located at ground level in a singular large parcel, i.e. 490m²</p>	<p>49.3% (2,973.77m²)</p> <p>258m² at Level 3</p> <p>2,265m²</p> <p>1,070m²</p>	<p>Variation, see comments below.</p> <p>Satisfactory</p> <p>Yes</p> <p>Yes</p>
<p>5.4 Built Form Design</p> <p><u>General:</u> Length of façade along each frontage</p> <p>Building Length</p> <p><u>Apartment Mix</u></p>	<p>Max. 40m</p> <p>65m</p> <p>25% of the total number of dwellings are to be studio or 1 bedroom dwellings, or both, i.e. 49 dwellings</p>	<p><u>North frontage:</u> Podium - 37.8m Tower - 20.78m</p> <p><u>South frontage:</u> Podium – 7m, 32.4m & 39.7m</p> <p>South – 65m West – 56.4m North – 37.8m</p> <p>18 studios + 31 x 1 bedroom = 49 dwellings</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	At least 20 % of the total number of dwellings are to be 3 or more bedroom dwellings, i.e. 40 dwellings	40 x 3 bedroom dwellings	Yes
<u>Podium Design</u>	Podium heights shall frame on-site open space. Podium facades shall avoid blank, featureless walls by patterning high quality architectural elements such as window bays, canopies and fenestration.	Satisfactory Satisfactory	Yes Yes
<u>Tower Form and Design</u>	Tower floor plats (floors above the 8 th storey) is limited to 750m ² gross floor area per storey	All floors above 8 th storey have GFA between 503m ² to 596m ²	Yes
<u>Roof Design and Features</u>	Where building height creates an identifiable protrusion in the skyline the following are provided : - a signature cap strengthening the building's identity as a landmark, and - decorative lighting that highlights key architectural features Roof features design to generate an interesting skyline and enhance views from adjoining developments and surrounding areas.	Roof treatments have been integrated with the building design and materials to compliment the architectural aesthetic.	Yes
5.5 Active Street Frontage	Required for ground floor non-residential uses	N/A	N/A

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
5.6 Streetscape and Public Domain Interface	<ul style="list-style-type: none"> - Buildings shall address any shared open space and adjacent public areas to increase natural surveillance - Residential developments to address the primary street frontage. - Siting and design of dwellings to take advantage of any views to open space, public reserves and bushland. - Blank courtyard walls along boundaries shared with open space or reserves to be avoided. - Building entries to be readily apparent from the street and clearly visible from inside the dwelling to improve casual; surveillance - Lighting to be provided for safety at night for all public and semi-public entry ways. - Ensure the design and layout of any building adjoining landscaped spaces or pathways provides natural surveillance. 	Satisfactory	Yes
5.7 Residential Uses on Ground and First Floors	<ul style="list-style-type: none"> - Adopt a two storey terrace house appearance to present a fine grain articulation to the street frontage, - Ground floor units to have individual gates and entrances accessed directly from the street. 	Satisfactory	Yes

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	- Ground floor apartments to be elevated from the street level by a minimum of 300mm and a maximum of 600mm.		
5.8 Solar Access and Overshadowing	Minimum 2 hours direct sunlight to the principal usable part of the communal open space between 9am and 3pm at midwinter.	Satisfactory	Yes
5.9 Adaptable Housing	10% of total number of dwellings or 20 dwellings	20 dwellings	Yes
5.10 Noise	To comply with the noise criteria specified in Table 3	Satisfactory - addressed in the acoustic report submitted with the DA	Yes
5.11 Wind	Buildings 8 or more storeys in height (or over 25 metres) require wind tunnel testing.	Satisfactory - addressed in the wind report submitted with the DA	Yes
5.11 Parking Rates and Access	<u>Car Parking</u> Min 1 resident space per unit, i.e. 196 spaces, plus min, 1 visitor space per 5 units, i.e. 40 spaces, total of 236 spaces	196 resident spaces plus 40 visitor spaces = 236 spaces	Yes
	<u>Bicycle Parking</u> 1 resident space per 3 apartments, plus 1 visitor space per 12 apartments, i.e. total of 83 spaces	88 bicycle spaces and 24 motorbike spaces	Yes

a) Setbacks (Building and Upper Level)

Front Setbacks (street level):

Table 2 under Clause 5.2 of the DCP requires that front setbacks (street level) shall be in accordance with Figure 31 Street Setbacks (see below), and that underground car parking shall not intrude into the primary setback.

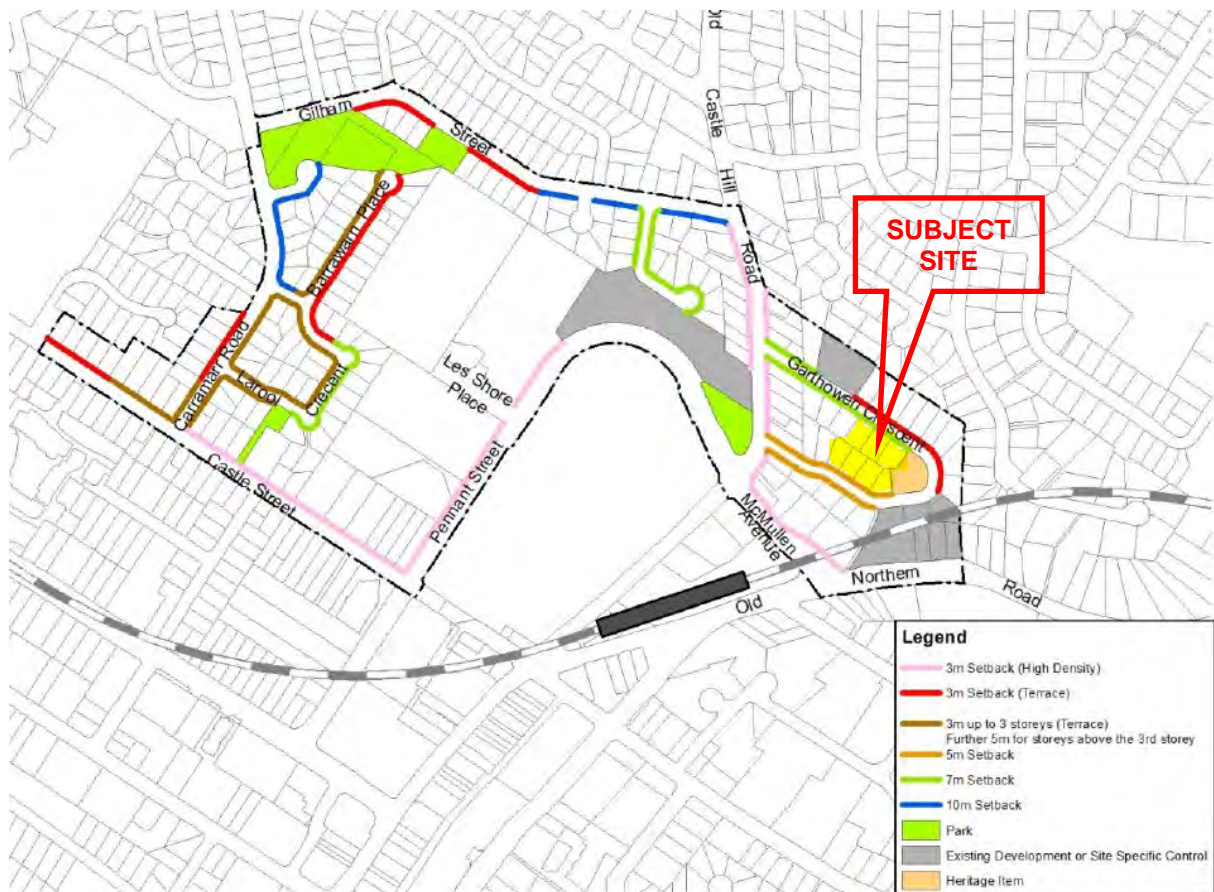


Figure 31 Street Setbacks

The primary setbacks to Garthowen Crescent North and South are 7m and 5m respectively. The 4 levels of basement car parking comply with the primary setback to the south but not with the primary setback to the north providing a setback of 1.9m, a deficiency of 5.1m.

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

“It is noted that the proposal provides 4 levels of basement car parking, some of which encroaches into the northern Garthowen Crescent loop roads front building setback. No basement car parking encroaches into the southern loop road building setback of Garthowen Crescent.”

The objective behind the DCP control is to not permit the intrusion of basement car parking into the front setback is to “facilitate a landscaped streetscape that can accommodate larger trees”.

We believe the objective of this DCP control is met because the proposed basement car parking is mostly provided below the footprint of the building and generous landscaping inclusive of passive open space areas are readily available to enhance the developments presentation to the street and surrounding areas. See Landscape Plans accompanying the application that identify the species of landscaping being provided within the front setback. This design response was first mooted as part of the Planning Proposal (PP) approved by Council and the Department of Planning Industry and Environment.

Council’s Design Excellence Panel also reviewed the design response now proposed and it is not unreasonable to say that they too formed the view that the location of the car park within the front setback was acceptable.

Finally, we note the ADG does not prohibit car parking in a basement from encroaching into the front building setback. Provided good planting on a structure is generous, large screen trees can be provided as that now proposed, and cars cannot be seen from the street, the outcome of softening the buildings interface is achieved.

Comment:

The encroachment of the underground car parking levels onto the primary setback to the northern side of Garthowen Crescent is considered acceptable as they are not visible from the street being fully underground and it does not impact upon the amenity of the streetscape. The applicant's justification is well founded and satisfies the relevant objectives of the setback control. Satisfactory landscaping within the front setback area is provided which enhances the streetscape and surrounding areas. The variation is considered satisfactory in this regard.

Front Setbacks (upper level):

The DCP requires that for all buildings on a street reservation less than 20m in width, all storeys above the 4th storey shall be setback 6m behind the front building line. This means that all storeys above the 4th storey shall be set back 13m (i.e. 7m plus 6m) from the street boundary.

Each floor up to Level 03 (4th storey) of Building A which fronts the northern loop of Garthowen Crescent is set back 9m from the street boundary, with Level 04 (5th storey) to Level 12 (13th storey) being set back between 10.14m and 12.5m. Building B on the other hand, which fronts the southern loop of Garthowen Crescent is to be set back 5m from the street at ground floor level and a further 6m above the 4th storey, therefore a total of 11m building setback above the 4th storey is required.

The prescribed 6m setback behind the front building line for all storeys above the 4th storey is therefore not achieved in both Building A and Building B.

The applicant has provided the following justification to this upper level setback variation:

"The prescribed 6m setback behind the front building line is therefore not achieved and in our view would be unable to be achieved without substantially reducing the buildings overall height and incentive FSR as set out under the THLEP 2019.

We understand the objectives of stepping the building back on land within this Castle Hill North Precinct however the development site was subject to detailed master planning approach as a result of the submitted Planning Proposal that up-zoned the land. Notwithstanding the non-compliance with this control, the objectives of this control are still satisfied because:

- *Building A continues to step away from the Garthowen Crescent northern loop road;*
- *The site is a key site identified by Council's controls because of its substantial size, topography, irregular shape and interface with Garthowen House;*
- *The site is afforded two (2) street frontages, which allows both buildings to be well separated;*
- *The proposal provides for two (2) separate towers that are well separated and articulated and will sit within a dense landscaped setting;*
- *Both buildings are well articulated in form and scale and offer building forms that are well setback from the street and aesthetically pleasing when viewed from the surrounding environment;*
- *The articulated design and separate building forms of 13 and 18 storeys allows good solar access into and through the site;*
- *A strong vista or view corridor is established between both buildings;*

- *In comparison to the large site area of over 6000m², each buildings floor plate above level 3 is relatively small;*
- *Both proposed buildings offer a strong presentation to their respective street frontages to achieve the desired future character of this evolving, high density residential neighbourhood and*
- *The proposed development is able to provide generous landscaping throughout the site, including the retention of a number of existing trees, and a large passive recreational area on the interface with Garthowen House;*

The design of the proposed development is unable to comply with this policy control because Clause 7.11A (3) (h) (i) of THLEP 2019 “Development on Certain Land within the Castle Hill North Precinct” requires the building to be setback at least 7.5m from Garthowen Crescent. See Clause 7.11A (h) below:

(h) in relation to land identified as “Area L” on the Key Sites Map:

(i) buildings on the land will be setback from Garthowen Crescent by at least 7.5 metres, and

(ii) pedestrian links will be provided through the land to connect the northern and southern frontages to Garthowen Crescent, and

(iii) one basement parking area will be provided on the land, including access roads through the land that will enable residents to enter into and exit from the northern and southern frontages to Garthowen Crescent, and

(iv) buildings on the land will not overshadow or detract from the heritage value of Garthowen and a ground level common open space will be provided between Garthowen and those buildings.

The development site is located within Area L on the Key Sites Map and in order to achieve the 20% incentivised FSR up lift, the building fronting Garthowen Crescent must be setback at least 7.5m from the street.

The proposal complies with this control as it provides setbacks of 7.5m to 10m. Because Clause 7.11A (3) (h) is a statutory planning control, contained within THLEP 2019, its development standard prevails over the DCP control.”

Comment:

The variation to the required 6m setback behind the front building line for all storeys above the 4th storey in both buildings satisfies the relevant objectives of the setback control. It provides articulation to the buildings and adequate building separation, alleviates amenity impacts in terms of privacy, solar access and natural ventilation and provides visual interest to the streetscape.

Whilst the proposal does not comply with the DCP control, the design of the building still provides the desired stepping effect that the DCP objectives seek to achieve for the site. The variation is considered acceptable in this regard.

b). Landscaped Area

Clause 5.3 of the DCP requires the provision of 50% of the site area (excluding building footprint, roads, access driveways and parking) for landscaping. The proposed development provides 49.3% or 2,973.77m², a shortfall 0.7% or 42.23m².

The applicant has addressed this minor variation to the required amount of landscaping as follows:

“During the assessment of this DA, a number of minor modifications have been made to the outdoor design of the proposed development. As a result, the landscaped area has been slightly reduced in size by 0.7% or 42.23m². We say the variation sought is not unreasonable

for a development of this scale and still meets the objectives of the control for the following reasons:

The proposed landscape design offers future residents with a diversity of spaces and activities for their leisure that are aesthetically pleasing and very functional. The design as proposed will deliver opportunities for communal gatherings and passive retreats whilst ensuring good surveillance over the private and public domains.

A number of both good sized and mature trees are able to be retained with generous areas of deep soil provided around the boundaries of the site, in particular, the east and western sides of the site to assist with the management of water quality and recycling.

The outdoor open space provides for sheltered areas, lush lawns, some partly shaded by groups of trees, BBQ areas, paths, seating, raised planters and ornamental grasses that provide an attractive softness to the building edges and boundaries.

The area on the interface with Garthowen House is a quality feature of the development to promote both active and passive open space that are generously landscaped and looked over by residents of the units above.”

Comment:

The objectives of this control are as follows:

- a. *To maximise opportunities for landscaping, including the retention and/or planting of trees within deep soil areas to ensure a high level of amenity.*
- b. *To assist with the management of water quality.*
- c. *To provide communal open space for the enjoyment of residents.*
- d. *Communal open spaces:*
 - *Are accessible, usable and safe;*
 - *Enhance the attractiveness of the development;*
 - *Provide opportunities for social interaction; and*
 - *Create pleasantly shaded outdoor areas.*
- e. *To ensure development sites have sufficient space for landscaping that will complement the building form and enhance the landscape character of the street.*

The variation to the required landscaping provision is considered minor and satisfies the objectives of the control. It is considered that the overall amount of landscaping proposed will enhance the landscape character of the street and attractiveness of the development for the enjoyment of future residents. The variation is supported in this regard.

6. Issues Raised in Submissions

The Development Application was notified to adjoining and surrounding properties for 14 days and 41 submissions were received. The issues raised in the submissions are summarised and addressed in the table below:

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>Garthowen Crescent is not suitable to carry the large volume of traffic this development will bring. The street is already dangerous when two cars are passing. The development will also mean existing properties are surrounded by high rise which</p>	<p>Council’s Traffic Engineer has assessed the application and accompanying traffic impact assessment report.</p> <p>It should be noted that the northern side of the Garthowen Crescent frontage is dedicated as SP2 and will be constructed</p>	<p>Issued addressed.</p>

<p>will affect their value if they are to remain low-density zoned.</p>	<p>and widened as part of the development. Recent adoption of amendments to the DCP 2012 for Castle Hill North Precinct will see the applicant undertake carriageway widening of 2m (road reserve total width 17.5m) in order to meet the requirements of lane widths, parking provision and footpath widths. This upgrade is expected to easily accommodate any increase in traffic along Garthowen Crescent.</p> <p>No objection is raised on traffic grounds.</p> <p>The site is situated within the Castle Hill North Precinct Plan which was adopted by Council in November 2015, which sets out a structure plan to guide future residential growth on the northern edge of the Castle Hill Business Centre. As a result, a Planning Proposal (16/2016/PLP) was prepared by Council and lodged with the Department of Planning Industry and Environment. The Department finalised and gazetted the Planning Proposal on 17 July 2020 as part of 'Tranche 3' of the Government's Planning System Acceleration Program.</p>	
<p>High density is totally unsuitable for this street even allowing for the increased public transport facilities, there is never enough parking allowed with this type of development.</p>	<p>The site is zoned R4 High Density Residential which permits this form of development subject to Council's consent. The proposal complies with Council's density and off-street parking requirements for residents and visitors.</p> <p>The site was rezoned from R3 Medium Density Residential to R4 High Density Residential for this form of development under Planning Proposal 24/2016/PLP.</p>	<p>Issue addressed.</p>
<p>A structure, similar in height to the existing 5-storey Northpoint Rise development, would be</p>	<p>The proposed number of storeys complies with the Castle Hill North Precinct DCP as illustrated</p>	<p>Issue addressed.</p>

<p>more appropriate next to the historic Garthowen House.</p>	<p>in Figure 14 Castle Hill North Structure Plan. The impact on the adjacent heritage item (Garthowen House) has been assessed by Council's Heritage Officer and no objection is raised on heritage grounds.</p>	
<p>Higher structures should be located at the lower end of Garthowen Crescent (ie near Old Castle Hill Road) and lower high-rise at the top of the Crescent near Garthowen House to maintain a 'balance' across the area.</p>	<p>The proposed development has been designed generally in accordance with the Castle Hill North DCP as illustrated in Figure 30 - Indicative Layout Plan for development adjoining the heritage item.</p>	<p>Issue addressed.</p>
<p>Development would depend on a Castle Hill Traffic Management Study being completed first. Objectors are concerned that they have only seen mention of Council appropriating the nature strip along part of Garthowen Crescent to widen that section of road and construction of a roundabout on Old Castle Hill Road. No mention of how the huge number of vehicles expected to be housed in the massive, oversized complex of Skyview will impact traffic flows around a couple of access streets, before the impact of another 200 cars from the proposed 18+13 storey development is considered.</p>	<p>Completion of a precinct-wide traffic and transport study was an issue raised by RMS during the exhibition of the Planning Proposal. Council considered that the concerns of RMS would be satisfied through the payment of monetary contributions under the local Voluntary Planning Agreement for the site which would contribute towards the provision of transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection). In recognition of this, at its meeting of 10 December 2019 Council resolved to progress the planning proposal to the Department for finalisation.</p> <p>The increasing traffic has been considered in the development of the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. Further consideration towards traffic improvements stipulated by Council's DCP includes;</p> <p>- Future road widening at Castle</p>	<p>Issue addressed.</p>

	<p>Street, Old Castle Hill Road and Garthowen Crescent.</p> <ul style="list-style-type: none"> - Future intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. <p>Council has also entered into a VPA agreement with the applicant which includes a monetary contribution toward the upgrade of local road infrastructure within the Castle Hill North precinct.</p>	
<p>Garthowen Crescent is a small, suburban street, where an 18-storey and 13- storey complex will be completely out of character for the area. It is simply too tall and too large. This location is remote from the Castle Hill CBD where construction of such a height would be more appropriate.</p>	<p>The precinct is in transition with the proposed development being consistent with the desired future character of the neighbourhood as envisaged in the Planning Proposal and DCP for the Castle Hill North Precinct. The proposed number of storeys is consistent with the building height control within the site specific DCP.</p>	<p>Issue addressed.</p>
<p>Garthowen Crescent is narrow and is already dangerous to navigate around. The roads barely cope with the additional traffic that the tower near the station has created, not to mention the significant additional traffic that the other towers yet to be occupied will create.</p>	<p>Council's Traffic Engineer has assessed the proposal and accompanying traffic impact assessment report.</p> <p>Garthowen Crescent is approximately 8m wide which is similar to a number of streets in The Hills LGA.</p> <p>Garthowen Crescent is a local, loop road and mainly used by the local residents. It is unlikely that the traffic volume on Garthowen Crescent will exceed its environmental capacity.</p> <p>It should be noted that the northern side of Garthowen Crescent frontage is dedicated as SP2 and will be constructed and widened as part of the</p>	<p>Issue addressed.</p>

	<p>development. Recent adoption of amendments to the DCP 2012 for Castle Hill North Precinct will see the applicant undertake carriageway widening of 2m (road reserve 17.5m) in order to meet the requirements of lane widths, parking provision and footpath widths. This upgrade is expected to easily accommodate any increase in traffic along Garthowen Crescent.</p> <p>No objection is raised on traffic grounds.</p>	
<p>The height of the buildings will impact on the solar access of the neighbourhood.</p>	<p>Shadow diagrams show that all shadow cast by the proposed development will not cause adverse impacts on surrounding properties. Achievement of solar access to surrounding properties is reasonable and within acceptable standards in the DCP.</p>	<p>Issue addressed.</p>
<p>Damage to the health of children. The phenomenal levels of dust, debris and detritus that will be raised during construction will, no matter how many precautions are taken, blow into the lungs of the 30-50 young children who daily attend child care.</p>	<p>A Dust Management Plan accompanied the application and has been assessed by Council's Environmental Health Officer and considered satisfactory. A condition is recommended in any approval that the Dust Management Plan submitted with the application is to be implemented for the duration of the demolition and construction of the subject development.</p>	<p>Issue addressed. Refer recommended Condition No. 83.</p>
<p>Already, it is difficult during day hours to turn both ways out of Garthowen Crescent. Adding some 200 residences will further compound this problem, and add to the local build up for pollution which, in addition to the damage caused by construction, will have health impacts on the kids in child care and all local residences.</p>	<p>The proposed development has been designed in accordance with the scheme lodged with the Planning Proposal which has been finalised and determined by the Department of Planning Industry and Environment.</p> <p>The traffic impact to be generated by the development has been assessed by Council's Traffic Engineer and no objection is raised on traffic grounds.</p> <p>Submission of a Construction Traffic Management Plan will be required as a condition in any</p>	<p>Issue addressed. Refer Recommended Condition No. 56.</p>

	approval to protect the safety and amenity of the neighbourhood during construction.	
Quiet, suburban streets are no place for skyscrapers. These should be built in commercial zones near Castle Towers, not in simple suburbia. They will dwarf the free-standing homes in the vicinity, add noise and nuisance without contributing to the character of the street, and ultimately destroy the fabric of the community.	The site and surrounding properties have been rezoned to R4 High Density Residential which permits this development. The precinct is in transition with the proposed development being consistent with the desired future character of the neighbourhood as envisaged in the Planning Proposal and DCP for the Castle Hill North Precinct.	Issue addressed.
Of the two sets of high-rise in Castle Hill, the one which was completed has had many structural issues, leaking and flooding, and is still not fully occupied. The other one is yet to be completed, by the same shoddy developer as the first towers and now this proposal. What is the evidence that these apartments are currently required, given the first set are still empty, and why should an application by a substandard developer be accepted? Further, what is their financial position, given that they are likely to fund this development by the sales of their as-yet incomplete project, the success of which can in no way be guaranteed?	The structural issues of those high rise buildings are not relevant in the assessment of this application. A standard condition will be imposed in any approval requiring compliance with the Building Code of Australia.	Issue addressed.
The Traffic Plan is non-existent as required under Legislation and the Traffic Plan referred to was an original Plan from 2014 and updated again in 2017 when the applicable Zoning was totally different. Any Traffic Plan submitted must be integrated with other potential high density developments in Garthowen Crescent.	This concern was also raised by RMS during the exhibition of the Planning Proposal. However, Council considered that this concern would be satisfied through the payment of monetary contributions under the local Voluntary Planning Agreement for the site which would contribute towards the provision of transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen	Issue addressed.

	<p>Avenue and Old Northern Road intersection).</p> <p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Future road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Future intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. 	
<p>The priority is for completion of infrastructure works in respect of the neighbourhood surrounding the development proposed. The related VPA was based on assumptions and unfinalised documents.</p>	<p>The Voluntary Planning Agreement for the site would contribute towards the provision of transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection).</p>	<p>Issue addressed.</p>
<p>Require certain development sites to be assessed by a design excellence panel to achieve quality built form outcomes. Does this apply to Garthowen Crescent Development? How and when are 'certain sites' chosen for assessment?</p> <p>How do existing developments demonstrate "quality built form outcomes", and how/when has this been published? What about Council's initial Zoning Plan limiting building heights?</p>	<p>The proposed development has been referred to the Design Excellence Panel and amendments to the design have been made in response to the issues raised by the Panel. The Panel at its meeting on 12 August 2020 indicated its support to the proposal and considers that it is capable of achieving design excellence, subject to the outstanding design issues being comprehensively addressed by the applicant. The plans have been subsequently amended which addressed the Panel's</p>	<p>Issue addressed.</p>

<p>The traffic report does not consider the local road network, only Garthowen Crescent. Recommendations in the 'Brown Report' - land dedication at the eastern end of Garthowen Crescent, allowing the widening of the road carriageway by 2m-3m This is not reflected in site plans.</p>	<p>concerns.</p> <p>Amended site plan submitted showing the proposed road widening on the northern loop of Garthowen Crescent (refer Attachment 7).</p> <p>Council's Traffic Engineer has assessed the application and accompanying traffic report and provided the following comments:</p> <p>Footpath will eventually be provided on both sides of Garthowen Crescent.</p> <p>The Traffic report undertaken by the applicant has identified appropriate improvements to be made within the vicinity of the site, such as a new roundabout at the intersection of Garthowen Crescent (north) and Old Castle Hill Road, provision of an additional lane on the Old Castle Hill Road south approach and consideration to restricting access at the Garthowen Crescent (south) and Old Castle Hill Road intersection to left in/left out only through the provision of a median island.</p> <p>It should be noted that the northern side of Garthowen Crescent frontage is dedicated as SP2 and will be constructed and widened as part of the development. Recent adoption of amendments to the DCP 2012 for Castle Hill North Precinct will see the applicant undertake carriageway widening of 2m (road reserve 17.5m) in order to meet the requirements of lane widths, parking provision and footpath widths.</p> <p>No objection is raised on traffic grounds.</p>	<p>Issue addressed.</p>
<p>There is nothing in the demolition and construction phase document/s to acknowledge the need to</p>	<p>A construction traffic management plan will be required as a condition in any approval.</p>	<p>Issue addressed. Refer recommended Condition No. 56.</p>

<p>ensure free and complete access for emergency vehicles - a serious potential problem with the movement of many large "construction vehicles", eg cement trucks.</p>		
<p>There has to be consideration of the cumulative effects of adjacent traffic movements. Council has yet to undertake/finalise a wider scale Traffic Management Study.</p>	<p>Council's Traffic Engineer has assessed the application and accompanying traffic impact assessment report.</p> <p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area as a result of high density developments in the area. This includes considerations towards;</p> <ul style="list-style-type: none"> - Future road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Future Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. <p>No objection is raised on traffic grounds.</p>	<p>Issue addressed.</p>
<p>Undergrounding of power lines to improve the appearance and liveability of the Precinct and to facilitate increased space within road reserves to install public domain improvements. Where is this acknowledged in the Development Application?</p>	<p>Undergrounding of the existing electrical services fronting the site and removal of all redundant poles and cables will be conditioned in any approval.</p>	<p>Issue addressed. Refer recommended Condition No. 91.</p>
<p>No evidence of a Stormwater Management Plan in documents sighted even though referenced in the SEE document.</p>	<p>Stormwater plans submitted with the application including further amendments are viewable in Council's DA tracking system.</p>	<p>Issue addressed.</p>
<p>Development does not visually</p>	<p>The proposed development is</p>	<p>Issue addressed.</p>

<p>integrate with the surrounding environment. Apart from Northpoint & Northpoint Rise developments no other buildings in street are more than 2 storeys in height.</p>	<p>consistent with the desired future character of the neighbourhood as envisaged in the Planning Proposal and DCP for the Castle Hill North Precinct. The proposed number of storeys is consistent with the building height control within the site specific DCP.</p>	
<p>Heritage curtilage is a way of legally defining a boundary wherein a homeowner or resident can expect reasonable levels of privacy - but there is no definition of Privacy in the DCP or the proposal. So how does development demonstrate this requirement is satisfied? Apartment Design Guide Part 3 – Siting the Development – provides, inter alia, that “Visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked.” The proposal clearly fails this Guide.</p>	<p>Council’s Heritage Officer has assessed the application and accompanying heritage report. No objection is raised on heritage grounds.</p> <p>The proposed development is set back adequately from all boundaries to prevent loss of privacy to neighbouring properties including the adjacent heritage item. The proposed towers are well set back from the Garthowen House to ensure it does not impact upon the heritage significance of the item.</p>	Issue addressed.
<p>Development on sites within the vicinity of Garthowen House shall be designed to ensure that building elements, which interface the western boundary of the heritage site, have a maximum height of (4) four storeys or no more than 13.5m in height whichever is the lesser. The proposal fails as 18 storey tower is adjacent to the named boundary.</p>	<p>The proposal has been designed in accordance with the Castle Hill North Structure Plan which allows 3-18 storeys on the subject site.</p>	Issue addressed.
<p>Development to the west of the heritage item shall incorporate a transition of height and density, with the lower scale elements located closest to the heritage site. The proposal fails as ‘Public space’ abuts only part of north western boundary.</p>	<p>Appropriate building height transition is proposed in accordance with the Castle Hill North Structure Plan.</p>	Issue addressed.
<p>Acoustic Report not included in documents on Council website.</p>	<p>The acoustic report is available in Council’s DA tracking system.</p>	Issue addressed.
<p>Basix Certificate not in DA tracker - addressed in the SEE documents but only in point</p>	<p>The BASIX report is available in Council’s DA tracking system.</p>	Issue addressed.

form.		
<p>The DCP anticipates the site will provide up to 185 dwellings. The application indicates an increase to 196 dwellings. Anomalies in unit numbers.</p> <p>The Castle Hill North Precinct Plan suggests the ideal catchment area for access to public transport nodes, therefore high-rise development, is within 400 metres. This site is beyond the 400 metre catchment.</p>	<p>The proposed development has been designed having regard to the Planning Proposal for the subject site which sought to enable a high density residential flat building development accommodating approximately 185 units in two (2) towers, with maximum heights of 13 and 18 storeys. In order to facilitate this outcome, the proposal sought to amend LEP 2012 (now THLEP 2019) which included an incentivised FSR of 2.5:1 (subject to compliance with CI 7.12); and a local provision to enable a 20% floor space ratio bonus equivalent to 0.5:1 (bringing the maximum achievable FSR for the site to 3:1), where the development achieves the following:</p> <ul style="list-style-type: none"> a) The amalgamation of all seven (7) lots & Strata titled Duplex; b) Provision of a 7.5 metre setback to Garthowen Crescent; c) A sensitive response to the adjoining 'Garthowen House' heritage item; d) Provision of a through site link with public right of carriage; and e) Provision of a consolidated basement parking area which provides through-site vehicular access for residents. <p>The proposed development meets the above criteria and the FSR of the proposed 196 dwellings complies with incentivised FSR for the site.</p>	Issue addressed.
<p>The Castle Hill North Precinct Plan suggests "Character should build from existing townhouse and Northpoint developments, as well as respecting the heritage item Garthowen House". Castle Hill</p>	<p>The proposed development has been designed in accordance with the Castle Hill North Structure Plan depicted in the Castle Hill North Precinct DCP, and satisfies the relevant provisions to have regard to the</p>	Issue addressed.

North Precinct Plan guidelines ignored.	adjacent heritage item in terms of building separation.	
The transition from the Skyview development to the future townhouse type developments planned for the northern and eastern sides of Garthowen Crescent would be compromised by the 18 storey building in the currently planned position.	The proposed development complies with the building height limit imposed on the site.	Issue addressed.
The proposed development dominates the heritage site detracting from the setting and obstructing views to the west and south. The proposed buildings dominate the heritage site in both height and bulk.	The proposed buildings will not overshadow or detract from the heritage value of Garthowen and a ground level common open space will be provided between Garthowen and those buildings. The siting and height of buildings is generally in accordance with the Castle Hill North Structure Plan.	Issue addressed.
The buildings are “bulky” not slender and not in keeping with the character of Garthowen Crescent or Garthowen House.	Council’s Heritage Officer has assessed the application and no objection is raised on heritage grounds.	Issue addressed.
Shadow Diagrams show some parts of the Northpoint complex, 9-11 Garthowen Crescent may only get around 3 hours of sunlight between 9am and 3pm on 21 June.	The building form has been arranged to ensure a high level of solar access is received by the proposed apartments, whilst maintaining reasonable solar access to surrounding residential properties. The 2 towers are well separated at upper levels and varying heights (13 & 18 storeys) which assist in the amount of shadow being cast. The overshadowing predominantly falls towards the south and south-west over Garthowen Crescent, the nature strip and the front building setback of properties on the southern side of Garthowen Crescent. Mid-winter shadow diagrams are shown in Attachment 11.	Issue addressed.
Traffic flow and numbers in the Precinct have changed over the	The increasing traffic has been considered in the DCP – Section	Issue addressed.

<p>last few years. The Report does not appear to fully cater for the future developments in the remainder of the Garthowen Crescent site, Old Castle Hill Road, McMullen Avenue or the northern side of Garthowen Crescent. There also seems to be a lack of regard of the approximately 1,000 units with the associated 1,200 resident vehicles in the Skyview development.</p> <p>Additionally a traffic study being conducted by a committee is currently being conducted but has been delayed due to the Coronavirus situation with drastically changed traffic patterns and therefore inaccurate data. Residents' information indicates this survey and report will not be completed until the end of 2020.</p> <p>Proper Infrastructure Planning should be a pivotal part in the overall planning and assessment process as to the suitability of a particular site for development.</p>	<p>20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. <p>Under Council's 'Contributions Plan No.17 Castle Hill North', Council has been able to provide an administrative framework for developers in which contributions may be collected and expended to address the needs of the incoming population of the Castle Hill North.</p> <p>With regard to this Development Application, the applicant has entered a VPA agreement with Council, documenting the planning benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within the Castle Hill North precinct.</p>	
<p>The proposal meets the zoning height requirement but fails to meet the 4 storey height restriction for development within the vicinity of a heritage building (Garthowen House).</p>	<p>The height (in storeys) of the proposed tower buildings (Buildings A and B) is in accordance with Figure 30 in the Castle Hill North Precinct DCP, which is an indicative layout plan for the development site adjoining the heritage item (refer</p>	<p>Issue addressed.</p>

	<p>Attachment 6).</p> <p>The development controls for the subject site have been consolidated into the Castle Hill North Precinct DCP section and the standalone site-specific section for this site has been repealed.</p>	
<p>It will not comply with Section 2.2 development principles (place making) in the DCP as there is no existing high rise development in the street. In other words it would be "out of place" with the Garthowen Crescent aesthetic.</p>	<p>The proposal has been designed in accordance with the site specific DCP controls which has been repealed and incorporated into the broader Castle Hill North Precinct DCP.</p>	<p>Issue addressed.</p>
<p>Reviewed the existing LEP for the area, and Council's proposed new LEP currently on exhibition. Both existing and draft LEP's impose a 9 metre height limit on the above sites. The development proposed in the DA clearly exceeds this height limit by a massive amount.</p>	<p>The subject site has been rezoned to R4 High Density Residential and is subject to a 57m building height limit.</p>	<p>Issue addressed.</p>
<p>Traffic report indicates an increase of 29.3 vehicles per hour in the morning and a 21.2 vehicles in the evening. It would be hard to justify these figures with the increase in vehicle flow, it would be far more than this especially around Garthowen Crescent and Old Castle Hill Road once construction is completed.</p>	<p>Garthowen Crescent is a local loop road and mainly used by the local residents. It is unlikely that the traffic volume on Garthowen Crescent will exceed its environmental capacity.</p>	<p>Issue addressed.</p>
<p>Traffic flow and numbers in the McMullen Avenue/Old Castle Hill Road Precinct have changed in the past couple of years particularly with the completion of the Metro Station and will be soon affected further when the one thousand or so units in the Skyview development is completed and occupied. The current traffic assessment is based on 2017 reports and needs re-assessment prior to any</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments 	<p>Issue addressed.</p>

<p>development being considered for Garthowen Cres.</p>	<p>including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road.</p> <p>- Intersection realignment at Old Northern Road/McMullen Avenue.</p> <p>Under Council's 'Contributions Plan No.17 Castle Hill North' the applicant has entered a VPA agreement with Council, documenting the planning benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within the Castle Hill North precinct.</p>	
<p>In line with the North Precinct Plan, State Planning has not approved Council's earlier 4-10 storey proposal or this 13-18 storey proposal. As they are waiting for a major traffic study to be undertaken. It would appear Council is looking for an approval before proper assessment has been completed. This application should be deferred until further information is available and then presented to residents.</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <p>- Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent.</p> <p>- Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road.</p> <p>- Intersection realignment at Old Northern Road/McMullen Avenue.</p> <p>Under Council's 'Contributions Plan No.17 Castle Hill North' the applicant has entered a VPA agreement with Council, documenting the planning</p>	<p>Issue addressed.</p>

	benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within the Castle Hill North Precinct.	
The development will create shadowing, wind tunnels and massive traffic increase. The infrastructure e.g. shopping centre, schools, public transport and roads will not cope with additional high rise development.	The proposed high density residential development is permissible with consent in the R4 High Density Residential zone. The proposal responds well to its transitional neighbourhood context and proximity to the Castle Hill business centre and new public transport, all within 400m or a short 5 minute walk of the site.	Issue addressed.
Residents want a more balanced development, with the excesses of the current proposal shaved back to something more in line with the Council's own, comprehensive and well considered amendments to LEP 2012 (making reference to Planning Proposal 16/2016/PLP).	The Planning Proposal (16/2016/PLP) sought to implement changes to land zoning and development standards to facilitate increased residential densities within the Castle Hill North Precinct. The development controls prepared in support of the proposal seek to regulate future built form and ensure high quality development outcomes that reflect the intended character for the Precinct as a highly liveable transit centre.	Issue addressed.
Residents currently enjoy extensive district views as well as a quiet environment. The large complex under construction at Pennant Street has already removed a significant part of the outlook. The construction of an 18 and 13 storey complex will reduce it by even more, as well as adding considerable noise pollution. For the neighbours in the two double storey buildings, the impact will be even worse. Although the Council's Design Excellence Panel has forced the developer to change the original	The proposed development has been designed in accordance with specific controls adopted for the site which are now incorporated into the broader Castle Hill North Precinct DCP. The overshadowing predominantly falls towards the south and south-west over Garthowen Crescent, the nature strip and the front building setback of properties on the southern side of Garthowen Crescent. Mid-winter shadow diagrams are shown in Attachment 11.	Issue addressed.

<p>design, they will be overshadowed by a large, dominating structure and will experience much greater noise pollution.</p>		
<p>Sub clause (b) of Part C Section 4 of the DCP requires that "New structures proposed on land adjoining a heritage building should be of similar scale and proportion to the heritage building". That would clearly not be the case if the development proposal is approved.</p>	<p>Council's Heritage Officer has assessed the application and no objection is raised on heritage grounds.</p> <p>The proposed apartment towers are well set back from the heritage item to ensure it does not impact upon the heritage significance of the item.</p> <p>The proposed number of storeys is in accordance with the Castle Hill North Structure Plan.</p>	<p>Issue addressed.</p>
<p>Genuine consideration should be given to residents' concerns in relation to amenity and traffic issues. A scaling down of the proposal by 30-40% is considered appropriate.</p>	<p>The proposal has been designed in accordance with the height and built form envisaged in the site specific DCP controls and incentivised floor space ratio control prescribed in LEP 2019.</p>	<p>Issue addressed.</p>
<p>Garthowen Crescent is already a difficult area to get out for some time now particularly during peak hours. This is due to high traffic volumes on Old Castle Hill Road at these times which makes it hard to take a left hand turn near Pennant Street/McMullen Avenue intersection (southern end of Garthowen Crescent) due to traffic stopped at the signalised intersection and a non-stop flow of traffic on Old Castle Hill Road from the right and turn right at the other end (northern) again due to almost nonstop traffic on Old castle Hill Road in both directions at times.</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North.</p> <p>Traffic improvements have been identified in Council's DCP to improve the traffic in the area and this includes;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. 	<p>Issue addressed.</p>
<p>The provision of a roundabout as proposed at T-junction at the northern end of Garthowen</p>	<p>Traffic lights within such short distance is not supported as it could have a significant impact</p>	<p>Issue addressed.</p>

<p>Crescent will not work given the increased demand from turning traffic following additional dwellings on Garthowen Crescent. Traffic signals integrated with Pennant Street/McMullen Avenue intersection signals would be required at both ends of Garthowen Crescent.</p>	<p>on the Level of Service at both intersections.</p>	
<p>It would be highly desirable that Garthowen Crescent be converted to one way two-lane street from the southern end at Old Castle Hill Road to the northern end, controlled by new traffic signals and the existing piecemeal footpaths are completed for the entire length of Garthowen Crescent.</p>	<p>The traffic volume in Garthowen Crescent is relatively low with it being a loop road and at this stage there is insufficient evidence/justification for Council to consider a one-way arrangement.</p> <p>It should be noted that a one-way arrangement would be subject to an extensive community consultation process in which residents are in favour for, TFNSW approval and approval from the Local Traffic Committee.</p>	<p>Issue addressed.</p>
<p>Widening of Garthowen Crescent is proposed to allow parking on both sides. This will only work if current timed parking is maintained. Otherwise all parking will be taken up by commuters from early in the mornings with no parking left for service vehicles and any visitors.</p>	<p>The proposal complies with the parking requirements prescribed in the Castle Hill North Precinct DCP. The car parking rates for this precinct and other areas in close proximity to Metro Stations are subject to separate controls under LEP 2019.</p>	<p>Issue addressed.</p>
<p>Existing public schools which are already at capacity are to be increased in size by way of additional facilities (for more than 20 times the current number of dwellings). Not only will this make the schools much more congested and cramped, additional playing fields are proposed only in Glenhaven and not nearby. All of this would have implications for residents of Garthowen Crescent with school going children.</p> <p>An objective of the DCP is to ensure that future development</p>	<p>The site and surrounding properties within the precinct has been rezoned to R4 High Density Residential which aims to enable other land uses that provide facilities or services to meet the day to day needs of residents and encourage high density residential development in locations that are close to population centres and public transport routes.</p>	<p>Issue addressed.</p>

<p>provides sensitive interfaces and transitions to existing and future residential buildings. The proposed high rise development does not satisfy this objective in relation to the existing and future medium density developments.</p>		
<p>The proposed external facade of the new buildings is at odds with the character of the heritage building.</p>	<p>Council's Heritage Officer has assessed the application and no objection is raised on heritage grounds.</p>	<p>Issue addressed.</p>
<p>The original submission for this development was for two buildings, one of eight storeys and thirteen storeys respectively which was acceptable and now five storeys have been added to each building, which is unacceptable.</p>	<p>The proposal has been designed in accordance with the built form envisaged in the site specific DCP.</p>	<p>Issue addressed.</p>
<p>As stated in the Planning Proposal detailed in The Hills Shire Council ordinary meeting of Council on the 28 May 2019 the development is not contained within the 400 metres from the Metro Station "The site, known as 6-12 & 16-20 Garthowen Crescent, Castle Hill comprises seven (7) residential lots (Lots 23, 24, 25, 28, 29 and 30 in DP 222257 and SP 40627). It is located in the north eastern portion of the Castle Hill North Precinct and is approximately 420 metres walking distance from Castle Towers Shopping Centre and the entrance to the Castle Hill Railway Station." This is contrary to the key goal of transit oriented developments (TOD) envisaged in the Castle Hill North Precinct Plan.</p>	<p>The proposal has been designed generally in accordance with the scheme submitted with the Planning Proposal for the site, which has been adopted by Council. The site specific DCP has been repealed but the specific controls have been incorporated into the broader Castle Hill North Precinct DCP.</p> <p>The site and surrounding properties within the precinct has been rezoned to R4 High Density Residential which aims to enable other land uses that provide facilities or services to meet the day to day needs of residents and encourage high density residential development in locations that are close to population centres and public transport routes.</p>	<p>Issue addressed.</p>
<p>The Castle Hill North Precinct Plan states that "Character should build from existing townhouse and Northpoint developments, as well as respecting the heritage item Garthowen House". This development clearly ignores the</p>	<p>The site specific DCP controls have been repealed but incorporated into the broader Castle Hill North Precinct DCP.</p>	<p>Issue addressed</p>

<p>guidelines outlined in the Castle Hill North Precinct Plan.</p>		
<p>Shadow diagrams indicate that some parts of the Northpoint complex, 9-11 Garthowen Crescent may only get around 3 hours of sunlight between 9am and 3pm during the winter solstice.</p>	<p>Shadow diagrams show that all shadow cast by the proposed development will not cause adverse impacts on surrounding properties. Achievement of solar access to surrounding properties is reasonable and within acceptable standards in the DCP.</p>	<p>Issue addressed.</p>
<p>As outlined in the Child Care Planning Guideline 2017, the objective is to protect the privacy and security of children attending the facility. To this end open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces. Balconies of the eighteen (18) storey building directly overlook the child care centre and compromise the privacy and potential security of children attending the Kinda-Mindi Early Learning Centre.</p>	<p>Adequate setbacks and building separation are proposed to ensure privacy of adjacent child care centre is maintained which is assisted by dense landscaping within the communal open space area.</p>	<p>Issue addressed.</p>
<p>Concerns raised regarding the applicant's justification on the breach in building height, which suggests that it is a direct result of the site's 8.5m fall from the northern side of the site to the southern.</p>	<p>The clause 4.6 variation request has been assessed and is considered satisfactory having regard to the relevant case laws. This has been addressed in detail in Section 4 above.</p>	<p>Issue addressed.</p>
<p>The traffic report does not appear to consider the future developments that will take place in Garthowen Crescent site, Old Castle Hill Road, or McMullen Avenue. There also seems to be a lack of consideration for the impact of the 923 units in the five (5) tower Skyview development behind Castle Towers and the associated 1,100 plus vehicles in the development.</p> <p>Council, with the assistance of the State Government, is conducting traffic studies at Showground, Bella Vista,</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill 	<p>Issue addressed.</p>

<p>Norwest and Castle Hill station precincts.</p> <p>Mayor Byrne has stated that “This study will look into how these precincts can be better utilised so that residents can capitalise on this new public transport route, as well as ensuring that the right infrastructure is planned to accommodate growth and development. We want to ensure the Metro generates lasting economic, social and environmental benefits for the region for years to come.”</p> <p>Baulkham Hills State Liberal MP David Elliott welcomed the allocation of funds towards the study and said he is delighted the State Government is working collaboratively with Council to ensure there are necessary provisions to accommodate for balanced urban growth through efficient and safe infrastructure at Showground, Bella Vista, Norwest and Castle Hill station precincts.</p> <p>Member for Castle Hill and the Parliamentary Secretary to the Premier and Western Sydney, Ray Williams MP said he was pleased the NSW Government, Transport for NSW and Council are all collaborating together in the delivery of traffic modelling for the Castle Hill, Showground, Norwest and Bella Vista Station Precincts.</p> <p>It would be a fool hardy move on Council's part to continue to approve major high-rise infrastructure prior to the release of the traffic study. If major high-rise infrastructure continues to be approved prior to the release of the report, then the State Government should be questioning why they have contributed \$1.5 million to a</p>	<p>Road and Garthowen Crescent/ Old Castle Hill Road.</p> <p>- Intersection realignment at Old Northern Road/McMullen Avenue.</p> <p>Under Council’s ‘Contributions Plan No.17 Castle Hill North’ the applicant has entered a VPA agreement with Council, documenting the planning benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within the Castle Hill North precinct.</p>	
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<p>traffic report that is seemingly not required.</p> <p>Asbestos fibres were used widely in building materials before the mid-1980s. The existing houses (6-12, 12A & 16-20 Garthowen Crescent, Castle Hill) will all potentially contain asbestos fibres. In the Baker, Ryan and Stewart, Dust Management Plan there is no mention of asbestos fibre removal/control prior to or during demolition of existing buildings.</p>		
<p>The Castle Hill North Precinct Plan prescribes a Density Plan for the development site in Garthowen Crescent as limited to either 96 dwellings per hectare, or 192 dwellings per hectares for neighbouring lots. On further examination, there is a major inconsistency with the Plan as per the following points:</p> <ul style="list-style-type: none"> • The site area is 0.6063 hectares which according to the Density Plan would either translate to 58 dwellings or 116 dwellings for the site. • The proposed development is for 196 dwellings and therefore exceeds the Plan by at least 40%. <p>The development is excessive compared to the Precinct Plan and should be rejected and as a minimum rescaled in density and height.</p>	<p>The proposed density expressed in floor space ratio complies with Clause 7.11 of LEP 2019.</p>	<p>Issue addressed/</p>
<p>The Density Plan in the Castle Hill North Precinct Plan envisages increased densities in proximity to the station and the core of the major centre. The highest densities identified are within 400 metres of the new rail station. The subject site is in excess of 400 metres from the new rail station.</p> <p>This proposal is for a high-density residential building and</p>	<p>The development site is subject to incentivised FSR as per clause 7.11 of LEP 2019. The proposed density expressed in floor space ratio complies with Clause 7.11.</p>	<p>Issue addressed.</p>

<p>is therefore not compliant with Precinct Plan.</p>		
<p>The proposal for an 18 and 14 storey building is completely out-of-character with other medium density developments in Garthowen Crescent which are up to 5 storeys and stepped back from the street in excess of 10- 20 metres from the street frontage. The proposed construction will dominate the streetscape and cannot be a model of “transitioning” or “characterised by moderate height buildings”.</p>	<p>The proposed development has been designed in accordance with indicative layout plan envisaged in the Castle Hill North Precinct DCP as shown in Attachment 6.</p>	<p>Issue addressed.</p>
<p>The traffic plans submitted in support of the DA are insufficient in that they reference outdated traffic data and modelling from 2017 and have a primary focus on parking spaces and traffic flow along a loop road being Garthowen Crescent.</p> <p>This DA should not be further considered until a more comprehensive traffic study is completed.</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. <p>Under Council’s ‘Contributions Plan No.17 Castle Hill North’ the applicant has entered a VPA agreement with Council, documenting the planning benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within</p>	<p>Issue addressed.</p>

	the Castle Hill North Precinct.	
This submission and as we understand a number of other individual submissions demand that local residents' concerns can be addressed through a conciliation conference with the Applicant and Council representatives.	Due to Covid-19 restrictions, a conciliation conference was not held. However, to facilitate a proactive resident's request, a meeting was held between Council officers and three residents on 3 December 2020 to discuss their concerns.	Issue addressed.
No reference is made anywhere in this development application, to the provision of cycleways and cycle paths, although it is cited as a justification for this development that residents will be able to cycle and walk to the various amenities provided in this town precinct. Cycling on footpaths is illegal and cycling on the roads in this part of Castle Hill is dangerous.	The proposed development provides all requisite pedestrian, cycle and service vehicle requirements as shown on the site analysis within the landscape design report submitted with the application.	Issue addressed.
The proposed road widening of Garthowen Crescent, as shown in the Garthowen Crescent Land Dedication Plan does not show road widening around the curve fronting Garthowen House (Heritage Item), which is currently the most dangerous section of the Crescent.	The site plan has been amended which shows road widening in on the northern side of Garthowen Crescent which tapers around the curve fronting Garthowen Crescent. Refer Attachment 7.	Issue addressed.
The DCP requires that underground powerlines and telecommunication cables should be laid underground along the whole of Garthowen Crescent, not just "the Precinct", to allow for future development.	Council requires underground electricity reticulation and telecommunications for all urban development. Council will require as a condition of any development consent that any existing aboveground electricity reticulation service be relocated underground with the exception of main transmission lines. The undergrounding of the power lines shall be at no cost to Council.	Issue addressed. Refer recommended Condition Nos. 91 and 92.
The objectives of this development can be better met by locating the proposed towers on the lower side of the development site and siting the proposed 5 storey structure, with appropriate setback, to adjoin the Heritage Item,	The proposed development is in accordance with the indicative layout plan envisaged in the Castle Hill North Precinct DCP. The proposed apartment towers are well set back from the heritage item ensure it does not	Issue addressed.

<p>Garthowen House. This change in the site structure is more in keeping with Garthowen Crescent's low to medium density residential character and will better protect the heritage values of Garthowen House.</p>	<p>impact upon the heritage significance of the item.</p>	
<p>Suggests a reduction in the overall height of the building once a traffic study has been conducted in a formal manner. They do not want another Chatswood or Homebush, full of high rise, they want the garden suburb to remain.</p>	<p>The proposed development is in accordance with the indicative layout plan envisaged in the Castle Hill North Precinct DCP.</p>	<p>Issue addressed.</p>
<p>The majority of residences in Garthowen Crescent are single storey, or double storey townhouses. Allowing development of such huge high rises to tower over single dwellings will have a significant impact on the aesthetics of the street, not to mention the impact of a minimum of an additional 200 vehicles in and out of the street each day.</p>	<p>The subject site and surrounding properties have been rezoned to R4 High Density Residential. This was a result of Council's Planning Proposal which sought changes to land zoning and development standards to facilitate increased residential densities within the Castle Hill North Precinct. The development controls prepared in support of the proposal sought to regulate future built form and ensure high quality development outcomes that reflect the intended character for the Precinct as a highly liveable transit centre.</p>	<p>Issue addressed.</p>
<p>With 7 towers already at the end of the street and the second phase Top Place High Rise soon to be built, Garthowen Crescent is fast becoming surrounded by enormous towers, obviously affecting light to existing dwellings and with views changing from blue skies, to a "mass of bricks'. It makes no sense to re-zone half of the Crescent as high density, allowing residential flats of 18 storeys, to completely surround existing single and double storey dwellings. Surely to blend in with the existing residences, it would be better to build at a height no greater than Northpoint. Alternatively, re-</p>	<p>The subject site and surrounding properties which comprise the Castle Hill North Precinct have been rezoned to R4 High Density Residential via Planning Proposal for the broader precinct.</p>	<p>Issue addressed.</p>

<p>zone the entire Crescent as high density so that developers can move in, purchase their properties and enable residents who never signed up to live in 'flat city', to be able to move out.</p>		
<p>The Arborist's report states/recommends removal of existing trees on the nature strip fronting the development, and retention of trees on the Garthowen House property. However assurance must be provided to ensure no root damage to trees on the Garthowen House site during excavation and construction of the proposed four level underground car parking.</p>	<p>Council's Landscape Assessment Officer has assessed the application and accompanying arborist report (as amended) and no objection is raised to the proposal subject to conditions.</p>	<p>Issue addressed. Refer recommended Condition Nos. 31, 67, 68, 71, 86 and 107.</p>
<p>There are currently a number of tall mature trees along the southern site boundary and on the eastern site boundary adjoining Garthowen House. These trees form a significant part of the streetscape and in turn would serve to soften the visual impact of the proposed high rise development. In considering the proposed development, the Design Excellence Panel has noted that 'the existing tree canopy should be retained and enhanced wherever possible' and that 'high canopy trees should be provided within setback areas'.</p> <p>The DA proposes that Tree No. 38 <i>Corymbia citriodora</i> (Lemon-scented Gum) be removed. This is a mature 15 metre high tree located within the setback area on the southern loop section of Garthowen Crescent. It is a native tree protected by Council, with an estimated life expectancy of 40+ years and an 'A' rating (suitable for retention). The replacement tree proposed in the DA is <i>Cupaniopsis anacardioides</i> (Tuckeroo) would reach just 8 metres high at maturity in some years time.</p>	<p>Council's Landscape Assessment Officer has assessed the application and accompanying arborist report (as amended). No objection is raised to the removal of Tree 38. It is noted that that the applicant has expressed desire to retain Tree 38. It is recommended as a condition in any approval that an additional Arborist advice should be sought if retention for Tree 38 is to be undertaken due to major encroachment proposed by pedestrian paths within the Tree Protection Zone.</p>	<p>Issue addressed. Refer recommended Condition No. 29.</p>

<p>It is recommended that approval for the removal of Tree no. 38 not be granted; and that the streetscape value of other boundary trees currently proposed for removal be re-considered.</p>		
<p>The proximity of the 18 storey tower to the one storey Garthowen House and its immediate surrounds does not satisfy the requirements of the Castle Hill North Precinct Plan. A more sensitive approach would have been to locate the tower on the western end of the site, thereby providing a more tapered development towards the heritage area. In its present form, the development will visually dominate and dwarf the heritage area.</p>	<p>The proposed development has been designed in accordance with the indicate layout plan shown in Figure 30 in the Castle Hill North Precinct DCP (refer Attachment 6).</p>	<p>Issue addressed.</p>
<p>A number of mature trees on the Garthowen House site provide a significant contribution to its heritage value. Some of these are at clear risk from the proposed development construction activities. An example is Tree No. 14 (Trident Maple). The Arborist Report (p.26) notes that there will be a 24% encroachment of its Tree Protection Zone (TPZ), a major encroachment requiring significant procedures to try to avoid root system disturbances and keep the tree viable. Other trees on the heritage site are noted as requiring careful exposure of root systems in order to determine if they may be pruned or need to be preserved, depending on the root diameters. An example is Tree No. 26 (Evergreen Ash), for which the Arborist Report recommends hand excavation within its root zones, selective pruning of roots as needed and other precautionary measures.</p> <p>These two examples point to</p>	<p>Council's Landscape Assessment Officer has assessed the application and accompanying arborist report (as amended) and no objection is raised to the proposal subject to conditions including protection of trees (Trees 25-32) on the adjoining heritage property.</p>	<p>Issue addressed. Refer Condition No. 31.</p>

<p>the significant and unnecessary risks to the heritage value of the Garthowen House site posed by the proposed development.</p> <p>The DA be rejected in its present form, as it does not meet the Council requirement for a design approach that preserves and complements the heritage value of the adjoining heritage item.</p>		
<p>On street parking slots will be greatly impacted as most high rise resident have single car parking. They will then occupy on street parking spaces making delivery or visitor parking on street difficult to the current residents.</p>	<p>The proposal complies with the parking requirements prescribed in the Caste Hill North Precinct DCP and LEP 2019 (clause 7.11(3)).</p>	<p>Issue addressed.</p>
<p>Council does not have delegation to approve the Development Application due to outstanding public authority objections. Transport for NSW and RMS have requested that the Planning Proposal not proceed until traffic modelling has been prepared by Council for the entire Castle Hill Precinct. Results of modelling analysis are not expected to be received prior to end of 2020.</p> <p>Evidence must be provided that the realignment of the McMullen Avenue and Old Northern Road intersection will not adversely impact performance of the regional road network.</p> <p>Evidence must be provided that the realignment of the McMullen Avenue, Pennant Street and Old Castle Hill Road intersection will not adversely impact performance of the regional road network.</p> <p>Recommendation: Defer review and approval of DA until completion of traffic modelling has been prepared by Council for the entire Castle Hill</p>	<p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent.</p> <p>Under Council’s ‘Contributions Plan No.17 Castle Hill North’ the applicant has entered a VPA agreement with Council, documenting the planning benefits and how their proposal would address the demands created by development for new public infrastructure, amenities and services. A monetary contribution will be made by the applicant toward the upgrade of local road infrastructure within the Castle Hill North precinct.</p>	<p>Issue addressed.</p>

Precinct.		
<p>The 6-storey Northpoint Rise building was required to be 65 metres distance from Garthowen House. The proposed 18-storey building would only be 40 metres from Garthowen House which will be out of character by scale and bulk with Garthowen House. Redesign of the proposed development should be consistent with conditions applied to approval of Northpoint Rise.</p> <p>The proposed 18-storey building will completely over-shadow the 2-storey Northpoint buildings fronting Garthowen Crescent where the 4-storey building was also required to be 65 metres distance from Garthowen House.</p> <p>Recommendation: Increase height of Northern building to 18-storey and reduce height of Southern building to 4-storey.</p>	<p>The siting of the development and the setbacks of the two buildings to the boundary with 14 Garthowen Crescent (heritage item) comply with the setback controls prescribed in Section 4.8 (7b & c) in the Castle Hill North Precinct DCP, i.e.:</p> <p>Control 7a requires a minimum setback of 6 meters to the boundary with 14 Garthowen Crescent for building fronting the southern side of Garthowen Crescent (Building B).</p> <p>Control 7b requires a minimum setback of 35 metres to the boundary with 14 Garthowen Crescent for building fronting the northern side of Garthowen Crescent (Building A).</p>	Issue addressed.
<p>The noise during construction and loss of permanent sunshine to the Day Care Centre will have a huge impact on the children attending each day.</p>	<p>A condition will be imposed in any approval regarding construction noise.</p>	Issue addressed. Refer recommended Condition Nos. 80 and 85.
<p>Particularly worried about the dust issues with excavation works on the adjoining heritage property. They had to repeatedly make complaints about the dust issues during excavation, to the workers, whilst walking past the 5 Towers development opposite Castle Towers. It was hard to breathe whilst walking past that development when the wind was blowing from the west. For people with asthma it was a unsafe situation.</p>	<p>A dust control condition will be imposed in any approval.</p>	Issue addressed. Refer recommended Condition No. 83.
<p>There is a sharp bend just outside the Day Care Centre and on many occasions. The</p>	<p>Garthowen Crescent is approximately 8m wide which is similar to a number of streets in</p>	Issue addressed.

<p>objector almost had a head-on with cars coming around the corner at speed. Garthowen Crescent is too narrow for high rise buildings. Occupants will be trapped by traffic build up each end of Garthowen Crescent.</p>	<p>The Hills LGA.</p> <p>The increasing traffic has been considered in the DCP – Section 20 Castle Hill North. As such, traffic improvements have been identified to improve the traffic in the area and this includes Garthowen Crescent. This includes considerations towards;</p> <ul style="list-style-type: none"> - Road widening at Castle Street, Old Castle Hill Road and Garthowen Crescent. - Intersection treatments including roundabouts at Carramarr Road/ Castle Street, Gilham Street/ Carramarr Road, Gilham Street/ Old Castle Hill Road and Garthowen Crescent/ Old Castle Hill Road. - Intersection realignment at Old Northern Road/McMullen Avenue. <p>The proposed roundabouts on Old Castle Hill Road will help to reduce speed along this section of the road and provide turning opportunities.</p>	
<p>As with the 196 apartments proposed for Garthowen Crescent it is assumed by the developer that there will only be 1 vehicle per apartment, ie, there is planning for 196 resident parking spaces and 39 visitor spaces, satisfying the minimum statutory car parking requirements, but that is an unlikely figure in the "real" world. Where in Garthowen Cres, will the overflow of unit car owners park?</p> <p>In the Northpoint and Northpoint Rise apartment complexes, each apartment has garage parking for a minimum of 2 vehicles, some with 3 or 4.</p>	<p>The proposal complies with the parking requirements prescribed in the Castle Hill North Precinct DCP and LEP 2019 (for development on certain land within the Sydney Metro Northwest Urban Renewal Corridor under clause 7.11(3)), which has a lower parking rate than the parking rates that applied to nearby apartment complexes mentioned in the submission.</p>	<p>Issue addressed.</p>

7. Internal Referrals

The application was referred to the following sections of Council:

- Subdivision Engineering
- Environment and Health
- Resource Recovery
- Traffic
- Tree Management/Landscaping
- Land Information Systems
- Section 7.12 Contributions

No objection is raised to the proposal subject to conditions. Relevant comments are also provided below:

TRAFFIC MANAGEMENT COMMENTS

Council's Traffic Engineer has assessed the application and accompanying traffic impact assessment report and the following comments are provided:

Traffic Impact

i) Existing Traffic Environment

- *This application proposes to demolition of existing structures and construction of a 13 and 18 storey residential flat building containing 196 units with basement car parking.*
- *The relevant section of Garthowen Crescent is a local road under the jurisdiction of council. The southern end of Garthowen is approximately 50m from a major signaled intersection (Old Castle hill Road/McMullen Avenue/Pennant Street).*
- *The sign-posted speed at Garthowen crescent is 50kph.*
- *A traffic impact statement has been prepared by the Applicant's traffic consultant, Varga Traffic Planning.*
- *The Applicant's traffic consultant stated that:*
 - *A traffic report was prepared in June 2017 by John Coady Consulting Pty Ltd that examined the traffic and parking implications of an uplift to the residential density on the subject site (being some 268 residential units with approximately 289 car parking spaces).*
 - *An update to the traffic report was subsequently undertaken by Colston Budd Rogers & Kafes Pty Ltd in December 2017 to assess the traffic effects of the planning proposal (reduced from 268 residential units to 200 residential units). The planning proposal is currently with Department of Planning, Industry and Environment, however is yet to be finalized.*
 - *The site is currently subject to a Planning Proposal (24/2016/PLP) to rezone the site from R3 Medium Density Residential to R4 High Density Residential as well as increase the minimum lot size, maximum building height and maximum floor space ratio to facilitate a high density residential development. The Planning Proposal is currently with the Department of Planning, Industry and Environment, however is yet to be gazetted.*

- *The applicant's traffic consultant also referred to a previous report prepared by Brown Consulting which assessed the traffic effects of some 4,200 dwellings in the Castle Hill North Precinct and identified appropriate road network improvements in order to accommodate the expected increase in traffic. In the vicinity of the proposed development, those network improvements included:*
 - *A new roundabout at the intersection of Garthowen Crescent (north) and Old Castle Hill Road.*
 - *Land dedication at the eastern end of Garthowen Crescent, allowing the widening of the road carriageway by 2m-3m.*
 - *Restricting access at the Garthowen Crescent (south) and Old Castle Hills Road to left in/left-out only.*
 - *Provision of an additional lane on the Old Castle Hill Road south approach.*

ii) Proposed Development - Traffic Generation

Based on the Roads and Traffic Authority Guide to Traffic Generating Developments 2002 and RMS Technical Direction (TDT 2013/04a), the following traffic generation rates which are applicable to the development proposal:

High Density Residential Flat Dwellings

AM: 0.19 peak hour vehicle trips per unit

PM: 0.15 peak hour vehicle trips per unit

Based on the traffic report provided by the applicant, the total traffic generated from the proposed development will be 37 and 29 vph during the morning and afternoon peak hour respectively.

The report also suggested that the traffic generated from the existing dwelling should be considered in the calculation. Based on the RMS guideline, the traffic generated from the existing properties is listed below:

Low Density Residential Dwellings

AM: 0.95 peak hour vehicle trips per dwelling

PM: 0.99 peak hour vehicle trips per dwelling

In accordance to the applicant's traffic report, the net increase of traffic generated from the proposed development will be 30 and 22 vph during morning and afternoon peak hours respectively.

The traffic pattern in this area has been changed dramatically since the opening of Sydney Metro in 2019, therefore the report prepared by John Coady Consulting Pty Ltd and Colston Budd Rogers & Kafes Pty Ltd in 2017 cannot be used to predicate the traffic impact from the proposed development on the local road network. Considering the traffic studies for the precinct were undertaken recently, SIDRA model for this development is not required.

A network SIDRA model shall be provided in Old Castle Hill Road at the intersection of Pennant Street and both ends of Gathowen Crescent.

iii) Cumulative Impact in Locality

- Table 4.6 of the 'Guide to Traffic Generating Developments' (Oct 2002) specifies maximum environmental capacity against one of the key parameters which affect the safety in a local road, being speed. For a local access way the maximum speed, being measured as the 85th percentile speed, is taken as 25kph and the maximum environmental capacity as 100 vehicles per hour. For a local street the maximum speed is taken as 40 kph and the desirable environmental capacity is taken as 200 vehicles per hour, and the maximum as 300 vehicles per hour.
- The sign posted speed in Gathowen Crescent is 50 kph, therefore should be considered to have the environmental capacity of a Collector Street at 500 vehicles per hour.
- The estimated existing vph in Gathowen Crescent is less than 100 as there are less than 50 dwellings and one child care centre in the street. The additional 30 vph from the proposed development will not exceed the environmental capacity.

iv) Parking

No comment is made on access and circulation as it is a matter for the Subdivisions Team to comment on. Based on the traffic report, the applicant proposed 235 parking spaces, detail calculation is summarized in the table below.

				Total parking spaces required
The Hills DCP 2012	1 space per 1 bedroom unit	2 space per 2 or 3 bedroom unit	2 visitor spaces per 5 units	422
RMS Guidelines	0.4 space per 1 bedroom unit	0.7 space per 2 bedroom unit 1.2 space per 3 bedroom unit	1 visitor space per 7 units	171
The Hills LEP 2019	1 space per dwelling, plus 1 space per 5 dwellings in addition to the car parking space required for the individual dwelling			236
DCP 2012 - Castle Hill North Precinct	1 space per unit		1 visitor space per 5 units	236

Table 1 Parking Requirement

No objection is raised to the proposal on traffic grounds. No conditions were recommended.

LANDSCAPING/TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the proposal subject to conditions.

WASTE MANAGEMENT COMMENTS

Council's Resource Recovery Coordinator has assessed the application and provided the following comments:

The proposal is for an 18 storey and 13 storey high RFB with 196 units over two building cores. Core A has 86 units and Core B has 110 units. There are two dual chute systems which discharge garbage and recycling into two garbage rooms in Basement 3. Each room has a 3-bin 1100 litre linear track system for both garbage (compacted) and recycling (2 systems in total per room).

Garbage is collected weekly in 11 x 1100 litre bins and recycling is collected fortnightly in 22 x 1100 litre bins. Bins are collected from a garbage holding room in Basement 3. The loading area is suitable for the standard 8.8m long MRV (3.5m clear headroom). The garbage room also holds 27 x 1100 litre 'multi-purpose bins' i.e. the bins from the bin cupboards adjacent to the chute openings. Council is not to provide these bins. These multi-purpose bins should be purchased by the Owners Corporation.

The 9 units in Basement 1 and the 3 units in Basement 2 have chute openings in the carpark areas near the Building A lift core. All other units have chute openings in residential corridors.

No objection is raised to the proposal subject to conditions:

HERITAGE COMMENTS

The application was referred to Council's Heritage Officer for comment as the subject site adjoins "Garthowen", a local heritage item listed in Schedule 5 of The Hills Local Environmental Plan 2019.

The following comments are provided:

Landscaping

- *The proposed works include fencing and planting of trees along the eastern boundary, which would provide screening between the subject site and Garthowen House.*
- *The proposed provision of a large communal open space in the north eastern portion of the site adjoining Garthowen House is considered to provide adequate spatial separation of approximately 35 metres between the heritage item and the proposed Building A.*

Built Form

- *The proposed design would reduce the visual impact of the development at the interface with 'Garthowen House' through minimising site coverage and increasing upper level setbacks.*
- *Whilst the development will have maximum of 18 storeys, it is considered that the development outcome will be suitable when viewed in the context of the Castle Hill North Precinct. The proposed development is considered to facilitate a reasonable level of increased density whilst maintaining an appropriate relationship between the subject site and Garthowen House.*
- *It is considered that there is adequate separation between the Garthowen House and the proposed buildings (35 metres from Building A and 6 metres from Building B) in which the building heights would not adversely detract the heritage significance of Garthowen House.*
- *Associated shadow diagrams indicate overshadowing of Garthowen House from 2:00pm. Impact from overshadowing is consistent with Part D Section 24 of The Hills DCP, and is considered minor.*

Materials and Finishes

- *The proposed external colours and finishes consist of neutral tones which are sympathetic to existing built-form situated on and around Garthowen Crescent. It is considered unlikely that the proposed colours and finishes would detract the heritage significance of the adjoining heritage item.*

Visual Amenity

- *The proposed development would facilitate a more accessible visual curtilage in terms of views both to-and-from Garthowen House.*
- *The proposed built form is consistent with the strategic planning and emerging character of the area.*

Construction Impacts

- *Given the close proximity of the proposed building to Garthowen House, it is considered there is potential for construction related impacts to the heritage building. A structural integrity report and dilapidation reports prior to and following construction should be required.*

Conclusion

The proposed works is consistent with the associated planning proposal, site specific DCP and emerging character of the area. The proposal is unlikely to substantially impact the significance of the heritage item and is considered appropriate from a heritage perspective. No objection is raised subject to conditions.

TRANSPORT FOR NEW SOUTH WALES (ROADS & MARITIME) COMMENTS

The application has been referred to Transport for New South Wales (Roads and Maritime Services) in accordance with the State Environmental Planning Policy (Infrastructure) 2007. The following comments were provided:

“TfNSW has reviewed the submitted application and has the following comments for Council’s consideration in the determination of the application:

1. A strategic traffic study should be provided for the proposed development to consider the impacts of the development on the surrounding road network and key intersections. The assessment should consider the impacts of other known planning proposals and major development applications in the area. In this regard, the ultimate development year plus 10 years growth should be considered in the network analysis. The assessment should include SIDRA modelling for at least the following intersections (but not limited to):

- *Pennant Street/Old Castle Hill Road/ McMullen Avenue*
- *Old Northern Road/ McMullen Avenue*

2. The traffic and transport study should identify appropriate parking controls for the future development to encourage the use of public and active transport. Council may wish to consider requiring appropriate maximum parking controls to be identified in any DCP or LEP provisions for the site.”

Council’s Manager Infrastructure and Transport Planning has advised that the TfNSW requirements are onerous for an individual applicant as Council is undertaking the Station Precinct modelling with their staff in the Project Control Group.

NSW POLICE COMMENTS

The application has been referred to the NSW Police and no objection is raised to the proposal. The Police have reviewed the documents submitted with the application including the Crime Prevention Through Environmental Design Assessment report prepared by Barker Ryan Stewart Pty Ltd dated April 2020. The Police have advised that the CPTED report is extremely thorough and covers all points that would otherwise have been raised by Police. Significant consideration is given to crime prevention within the design of the development and Police support the comments provided in the CPTED report and that the recommendations be reinforced accordingly (refer recommended Condition No. 36).

SYDNEY METRO

The Development Application was referred to Sydney Metro pursuant to Clause 86 of SEPP (Infrastructure) 2007. Sydney Metro has advised by email dated 30 June 2020 that concurrence is not triggered under Clause 85 or 86 of the SEPP (Infrastructure) 2007 as the site is not adjacent or within 25m of the Sydney Metro Northwest rail corridor. However, due to the deep basement excavation, Sydney Metro required a written confirmation from the applicant that there will be no ground anchors installed within the second reserve of the rail corridor. A letter was received from the applicant dated 1 July 2020 advising that based on the proposed design and advice from their geotechnical engineers, there is no need for rock anchors to be used in locations that would involve reducing the distance of the proposal from the Metro tunnel. Therefore, no rock anchors would need to be installed within the second reserve of the tunnel.

CONCLUSION

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP 65, SEPP 55, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered satisfactory.

The variation to the LEP height control is addressed in the report and considered satisfactory.

In relation to the Clause 4.6 Variation request, it is considered that the applicant's request is well founded, and the proposed variations result in a development that is consistent with the relevant objectives, and strict compliance with the height development standard is unreasonable and unnecessary in this instance as outlined in this report. It is considered that there are sufficient environmental grounds to justify the contravention to the height standard and the development is in the public interest as it is consistent with the objectives of the standard and R4 high density zone objectives.

The variations to the DCP with respect to the building setbacks for the underground parking levels and upper levels and landscaping provision have been assessed on merit and are considered satisfactory.

It is considered that the proposal exhibits design excellence, provides a built form which strengthens the neighbourhood's sense of identity, and visual appearance, maintains an appropriate scale to the strategically envisaged street frontages without adverse overshadowing or causing amenity impacts on surrounding properties, provides a development that is consistent with the objectives of the adopted Castle Hill North Precinct Plan and associated regional and structure plans for this precinct, provides an opportunity for high densities in a transitional residential neighbourhood, which will reduce pressure for the rezoning of land in low density areas for higher density purposes, provides high quality residential apartments which will afford a high level of amenity to future occupants, does not create adverse environmental impacts on adjoining properties and is an innovative and appropriate response to the desired future character of the locality.

Forty-one submissions were received during the notification period and issues and concerns raised have been addressed in the body of the report and do not warrant refusal of the application.

Accordingly approval subject to conditions is recommended.

IMPACTS:

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The Hills Future Community Strategic Plan

The proposed development is consistent with the planning principles, vision and objectives outlined within “Hills 2026 – Looking Towards the Future” as the proposed development provides for satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

The Hills Local Strategic Planning Statement

The Hills Future 2036 Local Strategic Planning Statement was made on 6 March 2020. The proposal has been considered against the outcomes planned within the Local Planning Strategic Planning Statement and Implementation Plan. In particular, Planning Priority 8 seeks to plan for a diversity of housing with access to jobs and services. It is envisaged that the Castle Hill Station Precinct would provide approximately 6,500 additional dwellings by 2036. The Castle Hill North Precinct provides for a housing diversity clause under The Hills LEP which promotes family friendly dwellings within the Precinct. The proposal meets this housing diversity clause by providing larger apartment sizes and mix and would provide for an additional 196 dwellings to the emerging precinct. In this regard, the proposal is considered to be consistent with the outcomes planned under The Hills Local Strategic Planning Statement.

RECOMMENDATION

The Development Application be approved for the reasons listed below and subject to the following conditions:

- The Clause 4.6 Variation request is considered to be well founded, and the proposed variation results in a development that is consistent with the relevant objectives, and compliance with the standard is unreasonable and unnecessary in this instance, and the proposal results in a better planning outcome as outlined in the report.
- The site is considered suitable for the development.
- The proposal adequately satisfies the relevant state and local planning provisions.
- The proposal will have no unacceptable impacts on the built or natural environments.
- The proposal is in the public interest,

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

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

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	REVISION	DATE
DA-010-011	Siteworks – Site Plan	05	10/02/2021
DA-051-001	Existing / Demolition Plans – Site Plan	04	28/10/2020
DA-110-005	GA Plans – Basement 4	06	13/01/2021
DA-110-006	GA Plans – Basement 3	08	10/02/2021
DA-110-007	GA Plans – Basement 2	08	19/02/2021
DA-110-008	GA Plans – Basement 1	09	19/02/2021
DA-110-009	GA Plans – Ground Level	10	19/02/2021
DA-110-010	GA Plans – Level 01	06	28/10/2020
DA-110-020	GA Plans – Level 02	06	28/10/2020

DA-110-030	GA Plans – Level 03	06	28/10/2020
DA-110-040	GA Plans – Level 04	06	28/10/2020
DA-110-050	GA Plans – Level 05-11	06	28/10/2020
DA-110-120	GA Plans – Level 12	06	28/10/2020
DA-110-130	GA Plans – Level 13	06	28/10/2020
DA-110-140	GA Plans – Level 14-16	06	28/10/2020
DA-110-170	GA Plans – Level 17 Roof	05	28/10/2020
DA-770-101	GFA Diagrams – Basement 02 to Level 03	04	10/02/2021
DA-770-020	GFA Diagrams – Level 04 to Level 16	04	10/02/2021
DA-210-010	GA Elevations – North Elevation	04	28/08/2020
DA-210-020	GA Elevations – South Elevation	04	28/08/2020
DA-210--030	GA Elevations – East Elevation	05	28/10/2020
DA-210--040	GA Elevations – West Elevation	05	28/01/2021
DA-310-010	GA Sections – Section North/South	03	27/04/2020
DA-310-020	GA Sections – Section West/East	03	27/04/2020
DA-310-030	GA Sections – Large Scale Section 01	03	27/04/2020
DA-310-050	GA Sections – Large Scale Section 03	07	28/01/2021
DA-310-060	GA Sections – Large Scale Section 04	03	24/04/2020
DA-310-070	GA Sections – Large Scale Section 05	03	24/04/2020
DA-310--080	GA Sections – Large Scale Section 06	03	24/04/2020
DA-830-010	Materials & Finishes Board - Materials	03	24/04/2020
000	Cover Sheet – Landscape Plans	H	Feb 2021
101 to 104	Landscape Masterplans	H	Feb 2021
105 to 107	Tree Retention and Removal Plans	H	Feb 2021
301 to 309	Hardworks Plans	H	Feb 2021
400	Planting Schedule	H	Feb 2021
401 to 417	Softworks Plans	H	Feb 2021
601 & 602	Landscape Details	H	Feb 2021
603	Landscape Specification	H	Feb 2021
-	Landscape Development Application – Design Report (35 pages)	-	Feb 2021
DA-910-001	3D Views – Garthowen North	03	24/04/2020
DA-910-002	3D Views –Garthowen South	03	24/04/2020

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

2. Construction Certificate

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or a Registered Certifier.

Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

3. Building Work to be in Accordance with BCA

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

4. Provision of Parking Spaces

The development is required to be provided with 196 resident parking spaces and 40 visitor parking spaces, a total of 236 off-street parking spaces. These car parking spaces shall be available for off street parking at all times.

5. External Finishes

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

6. Planning Agreement

The obligations in the Planning Agreement between Garth Diamond Pty Ltd, Old Diamond Pty Ltd and The Hills Shire Council dated 19 December 2019 (Planning Agreement) must be performed in accordance with the terms of the Planning Agreement including but not limited to, the payment of monetary contributions identified in Schedule 1 of the Planning Agreement. The payment will contribute towards the provision of local public infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (i.e. upgrade of the McMullen Avenue and Old Northern Road intersection).

7. Property Numbering and Cluster Mail Boxes for Multi Dwelling Housing, Residential Flat Buildings, Mixed Use Development, Commercial Developments and Industrial Developments

The responsibility for property numbering is vested solely in Council under the *Local Government Act 1993*.

The main property address is **18 Garthowen Crescent, Castle Hill.**

The secondary property address is **8 Garthowen Crescent, Castle Hill**

Approved unit numbering is as per plans marked up within consent documentation; and as follows:

Level	Unit Number	Property Address	Unit Number	Property Address
Basement	B01-B03	8 Garthowen Cres		
Lower Ground	LG01-LG09	8 Garthowen Cres		
Ground	G01-G14	8 Garthowen Cres	G15-G20	18 Garthowen Cres
One	101-110	18 Garthowen Cres	111-117	8 Garthowen Cres
Two	201-210	18 Garthowen Cres	211-215	8 Garthowen Cres
Three	301-305	18 Garthowen Cres	306-311	8 Garthowen Cres
Four	401-405	18 Garthowen Cres	406-412	8 Garthowen Cres
Five	501-505	18 Garthowen Cres	506-512	8 Garthowen Cres
Six	601-605	18 Garthowen Cres	606-612	8 Garthowen Cres
Seven	701-705	18 Garthowen Cres	706-712	8 Garthowen Cres
Eight	801-805	18 Garthowen Cres	806-812	8 Garthowen Cres
Nine	901-905	18 Garthowen Cres	906-912	8 Garthowen Cres
Ten	1001-1005	18 Garthowen Cres	1006-1012	8 Garthowen Cres
Eleven	1101-1105	18 Garthowen Cres	1106-1112	8 Garthowen Cres
Twelve	1201-1205	18 Garthowen Cres	1206-1211	8 Garthowen Cres
Thirteen	1301-1306	8 Garthowen Cres		
Fourteen	1401-1406	8 Garthowen Cres		
Fifteen	1501-1506	8 Garthowen Cres		
Sixteen	1601-1606	8 Garthowen Cres		

These addresses shall be used for all correspondence, legal property transactions and shown on the final registered Deposited Plan/Strata Plan lodged with Land Registry Services NSW as required.

Under no circumstances can unit numbering be repeated or skipped throughout the development regardless of the building name or number.

Approved numbers, unless otherwise approved by Council in writing, are to be displayed clearly on all door entrances including stairwells, lift and lobby entry doors.

External directional signage is to be erected on site at driveway entry points and on buildings to ensure that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination easily & quickly.

Mail Boxes

One cluster mail box for Units addressed to 18 Garthowen Crescent are to be located in Building A Lobby as shown on plans submitted marked as DA-110-009 Rev 03. An additional mail box for the proprietors of the development is to be provided in this cluster.

A second cluster mail box is to be located within Building B Lobby for units addressed to 8 Garthowen Crescent as per plans submitted as DA-110-008 Rev 03.

Written approval from Australia Post is to be provided to Land Information Section that they will deliver mail to both Lobby Mail boxes.

Strata Developments

All approved developments that require subdivision under a Strata Plan, must submit a copy of the final strata plan to Council's Land Information Section before it is registered for the approval and allocation of final property and unit numbering. This applies regardless of whether the PCA is Council or not.

It is required that Lot numbers within the proposed strata plan are not duplicated and all run sequentially within the same level, commencing from the lowest level upwards to the highest level within the development.

Please call 9843 0555 or email a copy of the final strata plan before it is registered at Land Registry Services NSW to council@thehills.nsw.gov.au for the approval of final Property and Unit numbering with corresponding Lot Numbers now required to be included within the registered Strata Administration sheet.

Under no circumstances is the Strata Plan to be lodged with Land Registry Services NSW before Council has approved all final addressing.

8. Road Opening Permit

Should the development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

9. Separate Application for Strata Subdivision

The strata title subdivision of the development is not included. A separate development application or complying development certificate application is required.

10. Protection of Public Infrastructure

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for

inspecting the public infrastructure for compliance with this condition before an Occupation Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

11. Vehicular Access and Parking

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

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2
- DCP Part C Section 1 – Parking
- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

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

12. Vehicular Crossing Request

Each driveway requires the lodgement of a separate vehicular crossing request accompanied by the applicable fee as per Council's Schedule of Fees and Charges. The vehicular crossing request must be lodged before an Occupation Certificate is issued. The vehicular crossing request must nominate a contractor and be accompanied by a copy of their current public liability insurance policy. Do not lodge the vehicular crossing request until the contractor is known and the driveway is going to be constructed.

13. Minor Engineering Works

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Works within an existing or proposed public road, or works within an existing or proposed public reserve can only be approved, inspected and certified by Council. The application form for a minor engineering works approval is available on Council's website and the application and inspection fees payable are included in Council's Schedule of Fees and Charges.

a) Driveway Requirements

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's Driveway Specifications.

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

Specifically, unless additional driveway crossings are clearly shown on the approved plans, only one driveway crossing is approved/ permitted.

A separate vehicular crossing request fee is payable as per Council's Schedule of Fees and Charges.

b) Disused Layback/ Driveway Removal

All disused laybacks and driveways must be removed and replaced with kerb and gutter together with the restoration and turfing of the adjoining footpath verge area. Specifically, this includes the removal of any existing laybacks, regardless of whether they were in use beforehand or not.

c) Site Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

With respect to the landscape batter adjacent to the communal open space area and lot 22 DP222257, the stormwater runoff is to be appropriately captured at the bottom of the batter via pits, pipes and/or swales and directed to a legal form of discharge.

14. Excavation/ Anchoring Near Boundaries

Earthworks near the property boundary must be carried out in a way so as to not cause an impact on adjoining public or private assets. Where anchoring is proposed to support excavation near the property boundary, the following requirements apply:

- Written owner's consent for works on adjoining land must be obtained.
- For works adjacent to a road, anchoring that extends into the footpath verge is not permitted, except where expressly approved otherwise by Council, or Transport for NSW in the case of a classified road.
- Where anchoring within public land is permitted, a bond must be submitted to ensure their removal once works are complete. The value of this bond must relate to the cost of their removal and must be confirmed by Council in writing before payment.
- All anchors must be temporary. Once works are complete, all loads must be removed from the anchors.
- A plan must be prepared, along with all accompanying structural detail and certification, identifying the location and number of anchors proposed.
- The anchors must be located clear of existing and proposed services.

Details demonstrating compliance with the above must be submitted to the Principal Certifier and included as part of any Construction Certificate or Occupation Certificate issued.

15. Management of Construction and Demolition Waste

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place.

Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/sorting station that will sort the waste on their premises for recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

16. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on site. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

17. Commencement of Domestic Waste Service

A domestic waste service must be commenced with Council and its Contractor. The service must be arranged no earlier than two days prior to occupancy and no later than seven days after occupancy of the development. All requirements of Council's domestic waste management service must be complied with at all times. Contact Council's Resource Recovery Team on (02) 9843 0310 to commence a domestic waste service.

18. Provision of Kitchen Waste Storage Cupboard

Waste storage facility must be provided in each unit/dwelling to enable source separation of recyclable material from residual garbage. Each unit/dwelling must have a waste storage cupboard provided in the kitchen with at least 2 removable indoor bins with a minimum capacity of 15 litres each. The bins provided should allow convenient transportation of waste from the kitchen to the main household bins or waste disposal point. The Principal Certifying Authority must visually confirm in person, or receive photographic evidence validating this requirement, prior to the issue of any Occupation Certificate.

19. Construction of Garbage Rooms

The garbage room for Building A and the garbage room for Building B must be designed and constructed in accordance with the following requirements. The areas must provide minimum storage facility for 1 x 3-bin 1100 litre bin linear track system with a compactor for the garbage and 1 x 3-bin 1100 litre bin linear track system for recycling.

- The garbage rooms must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins and associated waste infrastructure as specified above.
- The layout of the garbage rooms must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the garbage rooms must be constructed of brickwork.
- The floor of the garbage rooms must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).
- The garbage rooms must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors (preferred).
- The garbage rooms must have a resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors.
- All doors of the garbage rooms, when fully opened, must be flush with the outside wall(s) and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.
- The garbage rooms must be adequately ventilated (mechanically if located within the building footprint). Vented waste storage areas should not be connected to the same ventilation system supplying air to the units.

- The garbage rooms must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the garbage rooms, it is not to conflict with the space designated for the placement of bins.
- The garbage rooms must be provided with internal lighting such as automatic sensor lights.
- The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance is this grade to be exceeded. It is to allow the safe and efficient servicing of bins.
- The garbage rooms must have appropriate signage (Council approved designs available on the Council website) mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation
- Finishes and colours of the garbage rooms are to complement the design of the development.

Example Bin Measurements (mm)

1100L: 1245 (d) 1370 (w) 1470 (h)

20. Construction of Garbage Holding Room

The garbage holding room must be designed and constructed in accordance with the following requirements. The area must provide minimum storage facility for 11 x 1100 litre garbage bins, 22 x 1100 litre recycling bins and 27 x 240 litre multi-purpose bins.

- The garbage holding room must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins as specified above.
- The layout of the garbage holding room must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the garbage holding room must be constructed of brickwork.
- The floor of the garbage holding room must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).
- The garbage holding room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors (preferred). The waste servicing door must be supplied with a lock through Council's Waste Management Master Key System 'P3520'. See condition titled 'Installation of Master Key System to Waste Collection Room' for further details.
- The garbage holding room must have a caretaker access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors. The resident access door must be separate to the waste servicing door.
- All doors of the garbage holding room, when fully opened, must be flush with the outside wall(s) and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.
- The garbage holding room must be adequately ventilated (mechanically if located within the building footprint). Vented waste storage areas should not be connected to the same ventilation system supplying air to the units.
- The garbage holding room must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the garbage holding room, it is not to conflict with the space designated for the placement of bins.
- The garbage holding room must be provided with internal lighting such as automatic sensor lights.
- The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance is this grade to be exceeded. It is to allow the safe and efficient servicing of bins.

- The garbage holding room must have appropriate signage (Council approved designs available on the Council website) mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation
- Finishes and colours of the garbage holding room are to complement the design of the development.

Example Bin Measurements (mm)

240L: 735 (d) 580 (w) 1080 (h)

1100L: 1245 (d) 1370 (w) 1470 (h)

21. Access and Loading for Waste Collection

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2-2002 for the standard 8.8m long Medium Rigid Vehicle (minimum 3.5m clear vertical clearance exception). The following requirements must also be satisfied.

- All manoeuvring areas for waste collection vehicles must have a minimum clear vertical clearance of 3.5m. Any nearby areas where the clear headroom is less than 3.5m must have flexible striker bars and warning signs as per Australian Standard 2890.1 to warn waste collection contractors of the low headroom area.
- All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading and traffic circulation is appropriately controlled.
- Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
- The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three point turn).
- The designated waste service bay must allow additional space servicing of bins (wheeling bulk bins to the back of the waste collection vehicle for rear load collection).
- The loading area must have a sufficient level of lighting and have appropriate signage such as “waste collection loading zone”, “keep clear at all times” and “no parking at any time”.
- Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of medium vehicles, remote access or alternative solution which ensures there is no requirement for waste collection contractors to exit the cab. Copies of scan cards or remotes must be provided to Council upon the commencement of waste services.

22. Communal Composting Areas

An area shall be incorporated in the landscape design of the development for communal composting. Whilst the operation of such a facility will depend upon the attitudes of occupants and their Owners Corporation, the potential to compost should exist.

23. Provision of Waste Chute Systems

The development must incorporate 2 x twin chute systems which allow separate chute disposal of both garbage and recycling. Chute openings must be provided on every residential floor. The waste chutes must terminate in one of the two basement garbage rooms. Garbage must discharge into 1100 litre bins housed on a 3-bin linear track system with compactor (2:1 compaction ratio) and recyclables must discharge into 1100 litre bins housed on 3-bin linear track system. The waste chute systems must be maintained in accordance with manufactory standards.

24. Provision of Bin Cupboards

A separate bin cupboard must be provided next to chute openings on every residential floor to allow for the disposal of items unsuitable for chute disposal or a third waste stream. The

cupboards must be sized to store at least a single 240 litre bin. The dimensions of a 240 litre bin are 735mm deep, 580mm wide and 1080mm high.

25. Contamination

Any new information, that may come to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council's Manager – Environment and Health.

26. Acoustic Requirements

The recommendations of the Acoustic Assessment and Report prepared by Acoustic Logic Pty Ltd, referenced as 20200233.1/1509A/R2/AZ, dated 15 September 2020 and submitted as part of the Development Application are to be implemented as part of this approval.

During construction respite periods from noise shall be provided in accordance with the recommendations of the report or as determined through consultation with the adjacent childcare centre.

27. Secure Properties and Maintain Vegetation

The houses that are currently located on the development site are to be made secure so that the public cannot access the house or dump rubbish on the land. The vegetation (excluding live trees, live shrubs and plants under cultivation) on the properties is to be maintained and controlled so that the properties do not become overgrown and thus creating an unsafe and / or unhealthy environment.

28. Ventilation for Basement Carpark

The basement car park is to be provided with ventilation in accordance with Australian / New Zealand Standard AS/NZS 1668.2 2012.

Certification of compliance shall be submitted to the Certifying Authority.

The exhaust from the basement carpark shall be positioned so as to not cause a nuisance due to odour or noise to an occupier of any residential premises.

29. Tree Removal

Approval is granted for the removal of thirty-seven (37) trees numbered 1-12, 15-24, 33, 35, 36, 38-44, and 48-52 as located in the Arboricultural Impact Assessment prepared by Australis Tree Management dated 19/02/21.

It is noted that the applicant has expressed desire to retain tree 38 - *Corymbia citriodora* (Lemon-Scented Gum). Additional Arborist advice should be sought if retention of tree 38 is to be undertaken due to major encroachment proposed by pedestrian paths within the Tree Protection Zone.

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

30. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 100L litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers and climbers are to be minimum 150mm pot size.

For all planting on slab and planter boxes the following minimum soil depths must be achieved:

- 1.2m for large trees or 800mm for small trees;
- 650mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and not the overall depth of the planter

Planter box heights and planting depth over slab is to be in accordance with the approved amended Landscape Plan as required by this consent.

Additional dense planting is to be provided against the alfresco POS areas where proposed concrete bleachers style stairs are to be removed of dwellings A.GL2.01, A.GL.2.02, A.GL.2.03, B.G.04 and B.G.05. The planting must soften views of the wall from the street.

31. Retention of Trees

All trees not specifically identified on the approved plans for removal are to be retained with remedial work to be carried out in accordance with the Arboricultural Impact Assessment prepared by Australis Tree Management dated 19/02/21 and the following additional requirements:

- The existing timber retaining wall to the eastern boundary as located on Council RFIs South-East Landscape Area plan prepared by Turner dated 03/03/21 must be retained to protect neighbouring trees numbered 25-32. The retaining wall is not to be removed, and any new fencing, incorporated into the existing wall to minimise disturbance to roots.
- Works occurring with the TPZs of 25-32 such as fencing, pedestrian path, and filling to the boundary adjacent the trees are to be undertaken strictly under supervision by the project arborist.

32. Tree Removal on Public Land

Approval is granted for the removal of one (1) tree numbered 36 in the Arboricultural Impact Assessment prepared by Australis Tree Management dated 19/02/21 located on the existing Council nature strip that will be impacted by works associated with the development.

All tree works must be undertaken by the owner/applicant at their cost. Prior to any works commencing on site, the owner/applicant must provide the following details to The Hills Shire Council's Manager – Environment & Health:

- Time and date of when the tree works will occur;
- Full details of the contractor who will be undertaking tree works (Minimum AQF level 3 Arborist);
- Current copy of the contractors Public Liability Insurance (Minimum \$10,000,000).

Note: The owner/applicant is to keep a photographic record pre and post tree removal works of the tree and surrounding Council infrastructure (e.g. concrete footpath, kerb & gutter) and provide these to Council upon request. The grass verge must be reinstated with any holes filled to existing natural ground level.

33. Replacement Planting Requirements

If tree 38 - *Corymbia citriodora* (Lemon-Scented Gum) is removed, one (1) 200L pot size replacement tree from the following list is to be planted within 2m of the location of where the tree was removed.

<i>Angophora costata</i>	Smooth barked Apple
<i>Eucalyptus paniculata</i>	Grey Ironbark
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus resinifera</i>	Red Mahogany
<i>Eucalyptus tereticornis</i>	Forest Red Gum

34. Irrigation

An automatic watering system to be installed as a minimum to all common areas. Details including backflow prevention device, location of irrigation lines and sprinklers, and control

details are to be communicated to Council or Private Certifier prior to issue of the construction certificate.

35. Landscaping to POS Areas

Concrete bleacher style stairs within the POS areas of A.GL.2.01, A.GL.2.02, A.GL.2.03, B.G.04 and B.G.05 are to be removed and dense planting to soften the walls from the street provided.

36. CPTED Report Recommendations

Compliance with the recommendations outlined in the Crime Prevention through Environmental Design Assessment Report prepared by Barker Ryan Stewart Pty Ltd dated April 2020 in relation to CPTED principles on surveillance, access control, territorial reinforcement and space management.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

37. Planning Agreement

Written evidence is to be submitted to Council prior to the issue of a Construction Certificate, demonstrating that the relevant obligations of the Planning Agreement have been satisfied including the payment of monetary contributions identified in Schedule 1 of the Planning Agreement.

38. Design Verification

Prior to the release of the Construction Certificate design verification is required from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in SEPP65.

39. Internal Pavement Structural Design Certification

Prior to a Construction Certificate being issued, a Certified Practising Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded 8.8m long medium rigid vehicle waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

40. Erosion & Sediment Control Plan

Submission of an Erosion and Sediment Control Plan to the Principal Certifier, including details of:

- a) Allotment boundaries
- b) Location of the adjoining roads
- c) Contours
- d) Existing vegetation
- e) Existing site drainage
- f) Critical natural areas
- g) Location of stockpiles
- h) Erosion control practices
- i) Sediment control practices
- j) Outline of a maintenance program for the erosion and sediment controls

(NOTE: For guidance on the preparation of the Plan refer to 'Managing Urban Stormwater Soils & Construction' produced by the NSW Department of Housing).

41. Additional Acoustic Assessment

Prior to the issue of a Construction Certificate a detailed acoustic review shall be undertaken and submitted to the Certifying Authority. The assessment shall be of the plant and equipment once selected to confirm the compliance with the Acoustic Assessment submitted for the determination of the Development Application.

42. Erosion and Sediment Control/ Soil and Water Management Plan

The detailed design must be accompanied by an Erosion and Sediment Control Plan (ESCP) prepared in accordance with the Blue Book and Council's Works Specification Subdivision/ Developments.

An ESCP must include the following standard measures along with notes relating to stabilisation and maintenance:

- Sediment fencing.
- Barrier fencing and no-go zones.
- Stabilised access.
- Waste receptacles.
- Stockpile site/s.

43. Onsite Stormwater Detention – Hawkesbury River Catchment Area

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters for the site storage requirement and permissible site discharge.

The stormwater concept plan prepared by Quantum Engineers Drawing Revision H dated 25 February 2021 is for development application purposes only and is not to be used for construction. The detailed design must reflect the stormwater concept plan and the following necessary changes:

- a) The weep holes within the Discharge Control Pit (DCP) are to be removed. The base of the DCP is to be concrete benched to the invert of the orifice plate.

Water sensitive urban design elements, consisting of pit inserts and stormfilter cartridges, are to be located generally in accordance with the plans and information submitted with the application.

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

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

All model parameters and data outputs are to be provided.

The design and construction of the stormwater management system must be approved by either Council or an accredited certifier. A Compliance Certificate certifying the detailed design of the stormwater management system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate:

- Design/ construction plans prepared by a hydraulic engineer.
- A completed OSD Drainage Design Summary Sheet.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.

- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

44. Stormwater Pump/ Basement Car Park Requirements

The stormwater pump-out system must be designed and constructed in accordance with AS/ NZS 3500.3:2015 – Plumbing and Drainage – Stormwater drainage. The system must be connected to a junction pit before runoff is discharged to the street (or other point of legal discharge) along with the remaining site runoff, under gravity. Where Onsite Stormwater Detention is required, the system must be connected to that Onsite Stormwater Detention system. All plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming compliance with the above requirements.

45. Works on Adjoining Land

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

46. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$398,560.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the full length of Garthowen Crescent (530m) multiplied by the width of the road (8m).

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these costs.

47. Security Bond – External Works

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The bond amount must be confirmed with Council prior to payment. The tendered value of the work must be provided for checking so the bond amount can be confirmed.

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.

48. Engineering Works

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Engineering works can be classified as either "subdivision works" or "building works".

Works within an existing or proposed public road, or works within an existing or proposed public reserve can only be approved, inspected and certified by Council.

Depending on the development type and nature and location of the work the required certificate or approval type will differ. The application form covering these certificates or

approvals is available on Council's website and the application fees payable are included in Council's Schedule of Fees and Charges.

The concept engineering plan prepared by SGC Revision B dated 18 January 2021 is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

a) Partial Width Road Construction

The partial width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Garthowen Crescent	Road Type: Local Road 2 3.4m/ 10.2m/ 3.9m Pavement Design: Access/ Local Road (Design Guidelines Section 3.12)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

Where partial width construction exists opposite, the completed road must comply with the overall requirements outlines in the table above. Where partial width construction does not exist opposite, you will be responsible for the formation of the footpath verge, kerb and gutter and the extension of the road carriageway and the completed road must comply with the overall requirements outlines in the table above.

Any requirements relating to partial width road construction from the relevant section of Council's DCP must also be complied with. All works must be carried out in accordance with the submitted traffic safety statement.

Except where a modified kerb treatment is required (such as for roadside bio-retention swales) roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

Except where a one-way cross fall is required (such as for roadside bio-retention swales) all roads are to have a two-way cross fall with a crown in the middle of the carriageway.

b) Signage and Line Marking Requirements/ Plan

A signage and line marking plan must be submitted with the detailed design. This plan needs to address street name signs and posts, regulatory signs and posts (such as no parking or give way signs), directional signs and posts (such as chevron signs), speed limit signs and posts and line marking, where required.

Thermoplastic line marking must be used for any permanent works. Any temporary line marking must be removed with a grinder once it is no longer required, it cannot be painted over.

Details for all signage and line-marking must be submitted to Council's Construction Engineer for checking prior to works commencing. For existing public roads, signs and line marking may require separate/ specific approval from the Local Traffic Committee.

Street name signs and posts must be provided in accordance with the above documents and Council's Standard Drawing 37. With respect to street name signs specifically, all private roads must include a second sign underneath which reads "private road".

c) Footpath Verge Formation

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

d) Concrete Footpath

A 2.5m wide concrete footpath, including access ramps at all intersections, must be provided on Garthowen Crescent across both frontages in accordance with the DCP and the Public Domain Plan for Castle Hill North.

e) Disused Layback/ Driveway Removal

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

f) Earthworks/ Site Regrading

Earthworks and retaining walls are limited to those locations and heights shown on the approved plans. Where earthworks are not shown on the approved plan the topsoil within lots must not be disturbed. Retaining walls between lots must be located on the high side lot that is being retained, save the need for easements for support on the low side lot adjacent.

49. Amended Landscape Plan

An amended Landscape Plan and Landscape Report is to be submitted to the satisfaction of Council's Manager - Environment and Health subject to the following amendments:

- a) Reflect the levels, existing retaining wall, proposed retaining walls, existing trees (including canopies) and notes indicated on Council RFIs South-East Landscape Area plan drawing number DA-850-004 prepared by Turner dated 03/03/21.
- b) Reflect the levels, retaining wall levels, proposed levels, and proposed indicated on Council RFIs North Landscape Section plan drawing number DA-850-003 prepared by Turner dated 03/03/21.
- c) Reflect the levels, depth of planting and location of OSD as indicated on Council RFIs OSD Tank Landscape Section plan drawing number DA-850-002 prepared by Turner dated 03/03/21.

All retaining walls and levels must be consistent between landscape and architectural plans.

PRIOR TO WORK COMMENCING ON THE SITE

50. Adjoining Property Dilapidation Report

A dilapidation report must be prepared and submitted by a structural engineer recording the condition of any adjoining structures within the likely zone of influence from any excavation, dewatering or construction induced vibration, particularly on the following properties:

- 14 Garthowen Crescent (Lot 2 DP 533390)
- 4 Garthowen Crescent (Lot 22 DP 222257)
- 22 Garthowen Crescent (Lot 31 DP 222257)

51. Sydney Water Building Plan Approval

A building plan approval must be obtained from Sydney Water Tap in™ to ensure that the approved development will not impact Sydney Water infrastructure.

A copy of the building plan approval and receipt from Sydney Water Tap in™ (if not already provided) must be submitted to the Principal Certifying Authority upon request prior to works commencing.

Please refer to the website <http://www.sydneywater.com.au/tapin/index.htm>, Sydney Water Tap in™, or telephone 13 20 92.

52. Management of Building Sites – Builder’s Details

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

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

53. Details and Signage - Principal Contractor and Principal Certifying Authority

Details

Prior to work commencing, submit to the Principal Certifying Authority (PCA) notification in writing of the principal contractor’s (builder) name, address, phone number, email address and licence number.

No later than two days before work commences, Council is to have received written details of the PCA in accordance with Clause 103 of the Environmental Planning and Assessment Regulations 2000.

Signage

A sign is to be erected in accordance with Clause 98A(2) of the Environmental Planning and Assessment Regulations 2000. The sign is to be erected in a prominent position and show –

- a) the name, address and phone number of the PCA for the work,
- b) the name and out of working hours contact phone number of the principal contractor/person responsible for the work.

The sign must state that unauthorised entry to the work site is prohibited.

54. Approved Temporary Closet

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

55. Stabilised Access Point

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

56. Construction Traffic Management Plan

A Construction Traffic Management Plan is required to be prepared and submitted to Council for approval. The person preparing the plan must have the relevant accreditation to do so. Where amendments to the plan are made, they must be submitted to Council before being implemented.

A plan that includes full (detour) or partial (temporary traffic signals) width road closure requires separate specific approval from Council. Sufficient time should be allowed for this to occur.

57. Pavement Design

A pavement design based on Austroads (A Guide to the Structural Design of Road Pavements) and prepared by a geotechnical engineer must be submitted to Council for approval before the commencement of any pavement works.

The pavement design must be based on sampling and testing by a NATA accredited laboratory of the in-situ sub-grade material and existing pavement material. Details of the pavement design and all tests results, including design California Bearing Ratio values for the subgrade and design traffic loadings, are to be provided.

58. Separate OSD Detailed Design Approval

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

59. Property Condition Report – Public Assets

A property condition report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. This includes, but is not limited to, the road fronting the site along with any access route used by heavy vehicles. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

- Planned construction access and delivery routes; and
- Dated photographic evidence of the condition of all public assets.

60. Demolition Works and Asbestos Management

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials offsite are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Asbestos removal must be carried out in accordance with the SafeWork NSW, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

61. Discontinuation of Domestic Waste Services

Council provides a domestic waste service to the properties subject to this Development Application. This service must be cancelled prior to demolition of the existing dwellings or where the sites cease to be occupied during works, whichever comes first. You will continue to be charged where this is not done. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council. To satisfy this condition, the Principal Certifying Authority must contact Council on (02) 9843 0310 at the required time mentioned above to arrange for the service to be discontinued and for any bins to be removed from the property by Council.

62. Construction and Demolition Waste Management Plan Required

Prior to the commencement of works, a Waste Management Plan for the construction and/ or demolition phases of the development must be submitted to and approved by the Principal Certifying Authority. The plan should be prepared in accordance with The Hills Development Control Plan 2012 Appendix A. The plan must comply with the waste minimisation requirements in the relevant Development Control Plan. All requirements of the approved plan must be implemented during the construction and/ or demolition phases of the development.

63. Erosion and Sedimentation Controls

Erosion and sedimentation controls shall be in place prior to the commencement of site works and maintained throughout construction activities, until the site is landscaped and/or suitably revegetated. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

This will include, but not be limited to a stabilised access point and appropriately locating stockpiles of topsoil, sand, aggregate or other material capable of being moved by water being stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

64. Soil and Water Management Plan

A Soil and Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction"* (*Blue Book*) produced by the NSW Department of Housing. The plan is to be kept on site at all times and made available upon request.

The plan is to include a plan of management for the treatment and discharge of water accumulated in open excavations. Water containing suspended solids greater than 50 mg/L shall not be discharged to the stormwater system.

65. Erosion & Sediment Control Plan Kept on Site

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

66. Notification of Asbestos Removal

Prior to commencement of any demolition works involving asbestos containing materials, all adjoining neighbours and Council must be given a minimum five days written notification of the works.

67. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. The location of fencing shall be in accordance with the Tree Protection Plan and Specifications prepared by Australis Tree Management dated 19/02/21.

The erection of a minimum 1.8m chain-wire fence to delineate the TPZ is to stop the following occurring:

- Stockpiling of materials within TPZ;
- Placement of fill within TPZ;
- Parking of vehicles within the TPZ;
- Compaction of soil within the TPZ;
- Cement washout and other chemical or fuel contaminants within TPZ; and
- Damage to tree crown.

Tree Protection Fencing must be certified by the Project Arborist prior to any work commencing, and can only be relocated or removed under supervision of the Project Arborist.

68. Tree Protection Signage

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with AS1319). Access to this area can only be authorised by the project arborist or site manager.

69. Mulching within Tree Protection Zone

Prior to any works commencing on site all areas within the Tree Protection Zone are to be mulched with composted leaf mulch to a depth of 100mm.

70. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

71. Engagement of a Project Arborist

Prior to works commencing, a Project Arborist (minimum AQF Level 5) is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health:

- a) Name:
- b) Qualification/s:
- c) Telephone number/s:
- d) Email:

If the Project Arborist is replaced, Council is to be notified in writing of the reason for the change and the details of the new Project Arborist provided within 7 days.

DURING CONSTRUCTION

72. Hours of Work

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

Monday to Saturday - 7.00am to 5.00pm;

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

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

Any variation sought to the hours of work above, for exceptional circumstances, will require the approval of Council's Manager Regulatory Services. Should approval for works beyond the hours specified above be granted, written notification must be provided to neighbouring properties at least 48 hours in advance of work commencing.

73. Survey Report and Site Sketch

A survey report and site sketch signed and dated (including contact details) by the registered land surveyor may be requested by the Principal Certifier during construction. The survey shall confirm the location of the building/structure in relation to all boundaries and/or levels. As of September 2018 the validity of surveys has been restricted by legislation to 2 years after issue.

74. Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 1093622M dated 27 April 2020 is to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate. A Section 4.55 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 4.55 Application **will** be required for a BASIX Certificate with a new number.

75. Critical Stage Inspections and Inspections Nominated by the Principal Certifier

Section 6.6 of the Environmental Planning and Assessment Act 1979 requires critical stage inspections to be carried out for building work as prescribed by Clause 162A of the Environmental Planning and Assessment Regulation 2000. Prior to allowing building works to commence the Principal Certifier must give notice of these inspections pursuant to Clause 103A of the Environmental Planning and Assessment Regulation 2000.

An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspection or other inspection required by the Principal Certifier is not carried out. Inspections can only be carried out by the Principal Certifier unless agreed to by the Principal Certifier beforehand and subject to that person being a registered certifier.

76. Standard of Works

All work must be carried out in accordance with Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works, including public utility relocation, must incur no cost to Council.

77. Working Hours

All work must be restricted to between the hours of 7:00am and 5:00pm, Monday to Saturday. No work can occur outside the hours specified above on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff. Requests to carry out roadworks on existing public roads during the night in order to avoid local traffic impacts will also be considered based on the circumstances of the site and must be approved in writing by Council's Manager – Subdivision and Development Certification.

78. Aboriginal Archaeological Sites or Relics

If, during activities involving earthworks and soil disturbance, any evidence of an Aboriginal archaeological site or relic is found, all works on the site are to cease and Heritage NSW (Department of Premier and Cabinet) must be notified immediately.

79. European Sites or Relics

If, during the earthworks, any evidence of a European archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage be contacted immediately. All relics are to be retained in situ unless otherwise directed by the Office of Environment and Heritage.

80. Construction Noise

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*.

Notification of particularly noisy construction activities shall be provided to the adjacent childcare centre prior to the commencement of the activities.

Opportunity and contact details shall be provided to the childcare centre to allow feedback and complaints from the childcare centre to the site supervisor or project manager in regards to construction noise which shall be given reasonable consideration. Whenever possible there should be consideration to achieve a negotiated outcome of the concerns of the childcare centre in regards to noise and noise minimisation.

81. Stockpiles

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

82. Asbestos Removal

Asbestos containing material, whether bonded or friable, shall be removed by a licenced asbestos removalist. A signed contract between the removalist and the person having the benefit of the development application is to be provided to the Principle Certifying Authority, identifying the quantity and type of asbestos being removed. Details of the landfill site that may lawfully receive the asbestos is to be included in the contract.

Once the materials have been removed and delivered to the landfill site, receipts verifying the quantity received by the site are to be provided to the Principle Certifying Authority.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

83. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises.

The Dust Management Plan prepared by Barker Ryan Stewart dated 29 July 2020 is to be implemented for the duration of the demolition and construction of the subject development.

There is to be continual visual monitoring by the supervisor.

Any evidence of dust shall be recorded.

Immediate remedial action must be taken.

84. Further contamination assessment

A contamination assessment of the soils shall be carried out in areas that were inaccessible at the time of the initial contamination assessment. A copy of the assessment shall be submitted to Council's Manager – Environment & Health.

85. Construction Noise

A temporary acoustic barrier shall be provided to protect against excessive noise to the adjacent childcare centre. The location shall be immediately adjacent to the boundary between the subject site and the childcare site unless repositioning the temporary boundary is recommended by a suitably qualified acoustic consultant to provide better or more efficient noise attenuation and protection for the childcare centre.

The repositioning of the temporary barrier must be the subject of a written acoustic statement and provided to the Council prior to the construction of the barrier.

86. Project Arborist

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites. Works occurring within the TPZs of 25-32 such as any fencing, pedestrian path, and filling to the boundary adjacent the trees are to be undertaken strictly under supervision by the project arborist.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the PCA within 14 days of completion of the works.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

87. Design Verification Certificate

Prior to the release of the Occupation Certificate design verification is required from a qualified designer to confirm that the development has been constructed in accordance with approved plans and details and has satisfied the design quality principles consistent with that approval.

88. Compliance with Critical Stage Inspections and Inspections Nominated by the PCA

Section 6.5 of the Environmental Planning and Assessment Act 1979 requires critical stage inspections to be carried out for building work as prescribed by Clause 162A of the Environmental Planning and Assessment Regulation 2000. Prior to allowing building works to

commence the PCA must give notice of these inspections pursuant to Clause 103A of the Environmental Planning and Assessment Regulation 2000.

An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspection or other inspection required by the PCA is not carried out. Inspections can only be carried out by the PCA unless agreed to by the PCA beforehand and subject to that person being an accredited certifier.

89. Adjoining Property Dilapidation Report Post Construction

Before an Occupation Certificate is issued, an updated dilapidation report must be prepared and submitted to Council. The updated report must identify any damage to adjoining properties identified in Condition No. 50 and the means of rectification for the approval of Council.

90. Section 73 Compliance Certificate

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. The certificate must refer to this development consent and all of the lots created.

Sydney Water's guidelines provide for assumed concurrence for the strata subdivision of a development approved by an earlier consent covered by a compliance certificate.

The only other exception to this is for services other than potable water supply, in which case the requirements of Flow Systems/ Box Hill Water as a network operator under the Water Industry Competition Act 2006 would apply. A separate certificate of compliance would need to be issued for those works.

91. Provision of Electrical Services

Submission of a notification of arrangement certificate confirming satisfactory arrangements have been made for the provision of electrical services. This must include the under-grounding of the existing electrical services fronting the site and removal of all redundant poles and cables, unless otherwise approved by Council in writing. The certificate must refer to this development consent and all of the lots created.

92. Provision of Telecommunication Services

The developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

The installation of fibre-ready facilities to all individual lots and/ or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and

The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/ or premises in a real estate development project demonstrated through an agreement with a carrier.

Real estate development project has the meanings given in Section 372Q of the Telecommunications Act 1978 (Cth).

For small developments, NBN Co will issue a Provisioning of Telecommunications Services – Confirmation of Final Payment. For medium and large developments, NBN Co will issue a Certificate of Practical Completion of Developers Activities.

For non-fibre ready facilities, either an agreement advice or network infrastructure letter must be issued by Telstra confirming satisfactory arrangements have been made for the provision of telecommunication services. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council.

A copy of the works as executed (WAE) plans for the telecommunications infrastructure must also be submitted.

93. Completion of Engineering Works

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

94. Property Condition Report – Public Assets

Before an Occupation Certificate is issued, an updated property condition report must be prepared and submitted to Council. The updated report must identify any damage to public assets and the means of rectification for the approval of Council.

95. Public Road/ Road Widening Dedication

An Occupation Certificate must not be issued until the proposed public roads/ road widening have been dedicated in accordance with the undertaking submitted relating to dedication.

96. Pump System Certification

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

97. Stormwater Management Certification

The stormwater management system must be completed to the satisfaction of the Principal Certifier prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the stormwater management system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- For Onsite Stormwater Detention (OSD) systems, a certificate of hydraulic compliance (Form B.11) from a hydraulic engineer verifying that the constructed OSD system will function hydraulically;
- For OSD systems, a certificate of structural adequacy from a structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime;
- Records of inspections; and
- An approved operations and maintenance plan.

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

98. Creation of Restrictions/ Positive Covenants

Before an Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via dealing/ request document or Section 88B instrument associated with a plan. Council's standard recitals must be used for the terms:

a) Restriction/ Positive Covenant – Onsite Stormwater Detention

The subject site must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.

b) Restriction/ Positive Covenant – Water Sensitive Urban Design

The subject site must be burdened with a positive covenant that refers to the water sensitive urban design elements referred to earlier in this consent using the "water sensitive urban design elements" terms included in the standard recitals.

c) Positive Covenant – Stormwater Pump

The subject site must be burdened with a restriction and a positive using the "basement stormwater pump system" terms included in the standard recitals.

d) Positive Covenant – Onsite Waste Collection

The subject site must be burdened with a positive covenant relating to onsite waste collection using the "onsite waste collection" terms included in the standard recitals.

99. Internal Pavement Construction

Prior to any Occupation Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a 8.8m long medium rigid vehicle waste collection vehicle when fully laden (i.e. 28 tonnes gross vehicle mass).

100. Final Inspection of Waste Storage and Collection Design

Prior to any Occupation Certificate being issued, a final inspection of the waste storage areas and associated management facilities must be undertaken by Council's Resource Recovery Project Officer. This is to ensure compliance with Council's design specifications and that necessary arrangements are in place for domestic waste collection by Council and its Domestic Waste Collection Contractor. The time for the inspection should be arranged at least 48 hours prior to any suggested appointment time.

101. Provision of Signage for Garbage Holding Room and Garbage Rooms

Prior to any Occupation Certificate being issued, a complete full set of English and traditional Chinese waste education signage (garbage, recycling and no dumping) must be installed in a visible location on every internal wall of all waste storage areas. Additionally, one set of English and Chinese garbage and recycling signage must be provided above every chute opening on every floor. The signage must meet the minimum specifications below and must be designed in accordance with Council's approved artwork. Waste signage artwork can be downloaded from Council's website; www.thehills.nsw.gov.au.

- Flat size: 330mm wide x 440mm high
- Finished size: 330mm wide x 440mm high. Round corners, portrait
- Material: Aluminium / polyethylene composite sheet 3.0mm, white (alupanel)
- Colours: Printed 4 colour process one side, UV ink
- Finishing: Over laminated gloss clear. Profile cut with radius corners and holes.

102. Domestic Waste Collection Risk Assessment

Prior to any Occupation Certificate being issued, a risk assessment must be undertaken on site by Council's Coordinator Resource Recovery. The time for the assessment must be arranged when clear unobstructed circulation in and out of the site is available for Council's Domestic Waste Contractor to perform a mock collection run at the site.

103. Installation of Master Key System to Garbage Holding Room

The door/s servicing the garbage holding room must be supplied with a lock through Council's Waste Management Master Key System 'P3520'. Waste servicing room doors are doors used by waste collectors to access bins for collection purposes. Installation of the locking system is to be completed prior to the issue of any Occupation Certificate. The Master Key lock is to be installed through Council's contractor at the cost of the developer. Please contact Council's Resource Recovery Project Officer to make the necessary arrangements.

104. Clearance Certificate

On completion of the asbestos removal works a Clearance Certificate in accordance with Clause 474 of the Work Health and Safety Regulation 2017 shall be provided to the Principal Certifier.

105. Validation report

Should soil contamination be found during the development the contamination must be remediated and a validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following:

- The degree of contamination originally present;
- The type of remediation that has been completed; and
- A statement which clearly confirms that the land is suitable for the proposed use.

Note: Contaminated soil and/or soil for which the contamination status is unknown and/or waste (including but not limited to concrete / bricks / demolition material) is prohibited from being buried, capped, contained or similar onsite (including under public or private roads and land which will become public).

Any inconsistencies between the accepted RAP and this condition, this condition takes precedence.

106. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

107. Project Arborist Certification

The Project Arborist is to provide evidence of all site visits and arborist supervision of any works with the TPZ of trees, including photographs of tree protection fencing, and works supervised.

Any changes in tree health or potential damage to trees during construction are to be documented and discussed, and any ongoing tree management recommendations provided. The above certification is to be submitted to Council's Manager – Environment and Health prior to the issue of Occupation Certificate.

USE OF THE SITE

108. Waste and Recycling Management

To ensure the adequate storage and collection of waste from the occupation of the premises, all garbage and recyclable materials emanating from the premises must be stored in the designated waste storage area(s), which must include provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. A caretaker must be appointed to manage waste operations on site including undertaking all instructions issued by Council to enable waste collection. Waste storage areas must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.

109. Lighting

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

110. Offensive Noise

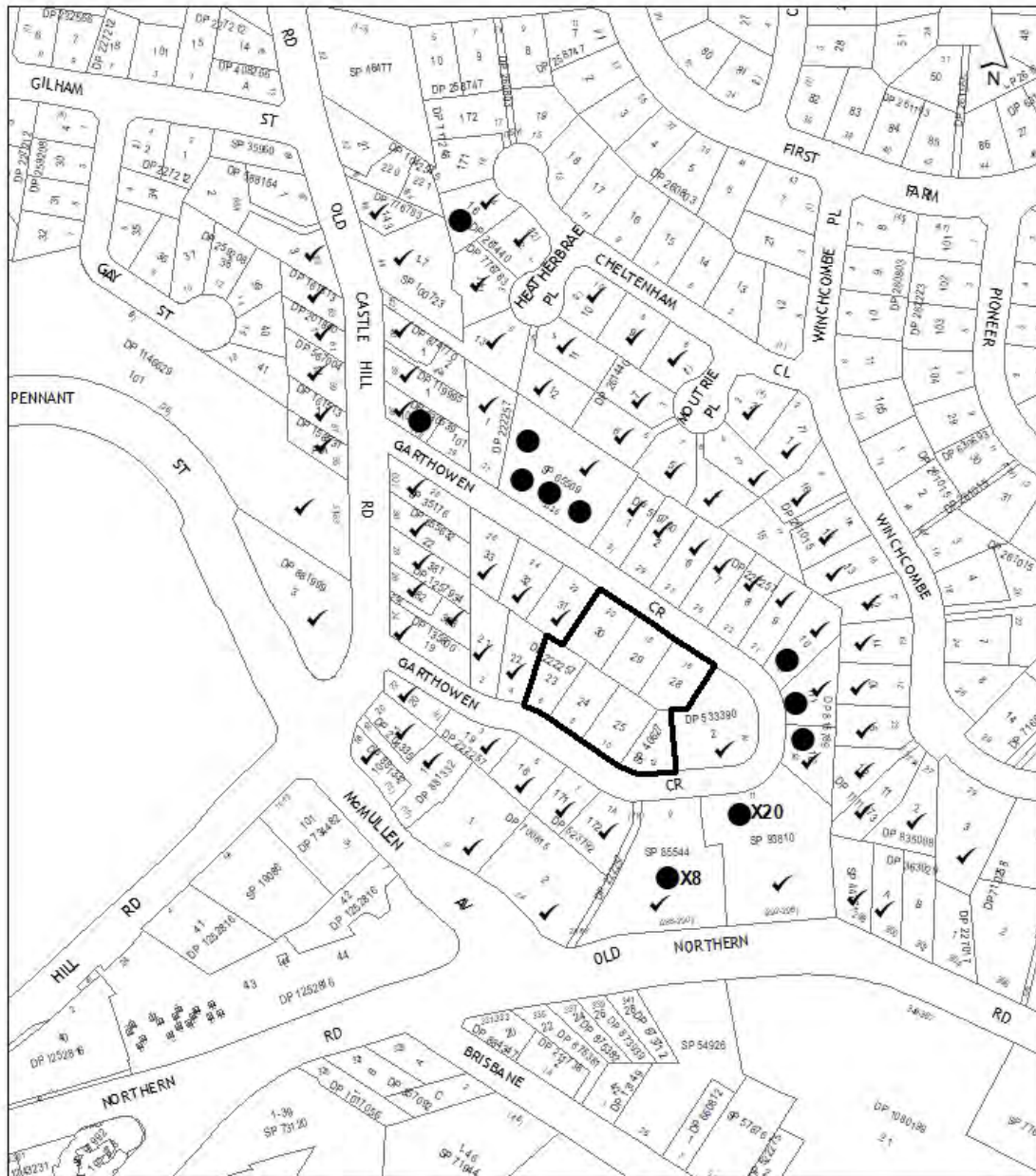
The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provisions of the *Protection of the Environment Operation Act 1997*.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. LEP 2019 Zoning Map
4. LEP 2019 Building Height Map
5. Castle Hill North precinct – Urban Release Area Map
6. Indicative Layout Plan Per Figure 30 in the Castle Hill North Precinct DCP

7. Site Plan
8. Basement Parking Plans (2 pages)
9. Floor Plans (5 pages)
10. Elevations/Sections (6 pages)
11. Mid-Winter Shadow Diagrams
12. Landscape Masterplan
13. 3D Views
14. Clause 4.6 Written Request (17 pages)
15. Voluntary Planning Agreement (15 pages)
16. Letter to the Department of Planning Industry and Environment (3 pages)

ATTACHMENT 1 – LOCALITY PLAN



- SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

NOTE: HILLS DISTRICT HISTORICAL SOCIETY ALSO NOTIFIED

ONE SUBMISSION RECEIVED OFF THE SCOPE OF THIS MAP


THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT 2 – AERIAL PHOTOGRAPH



 SUBJECT SITE

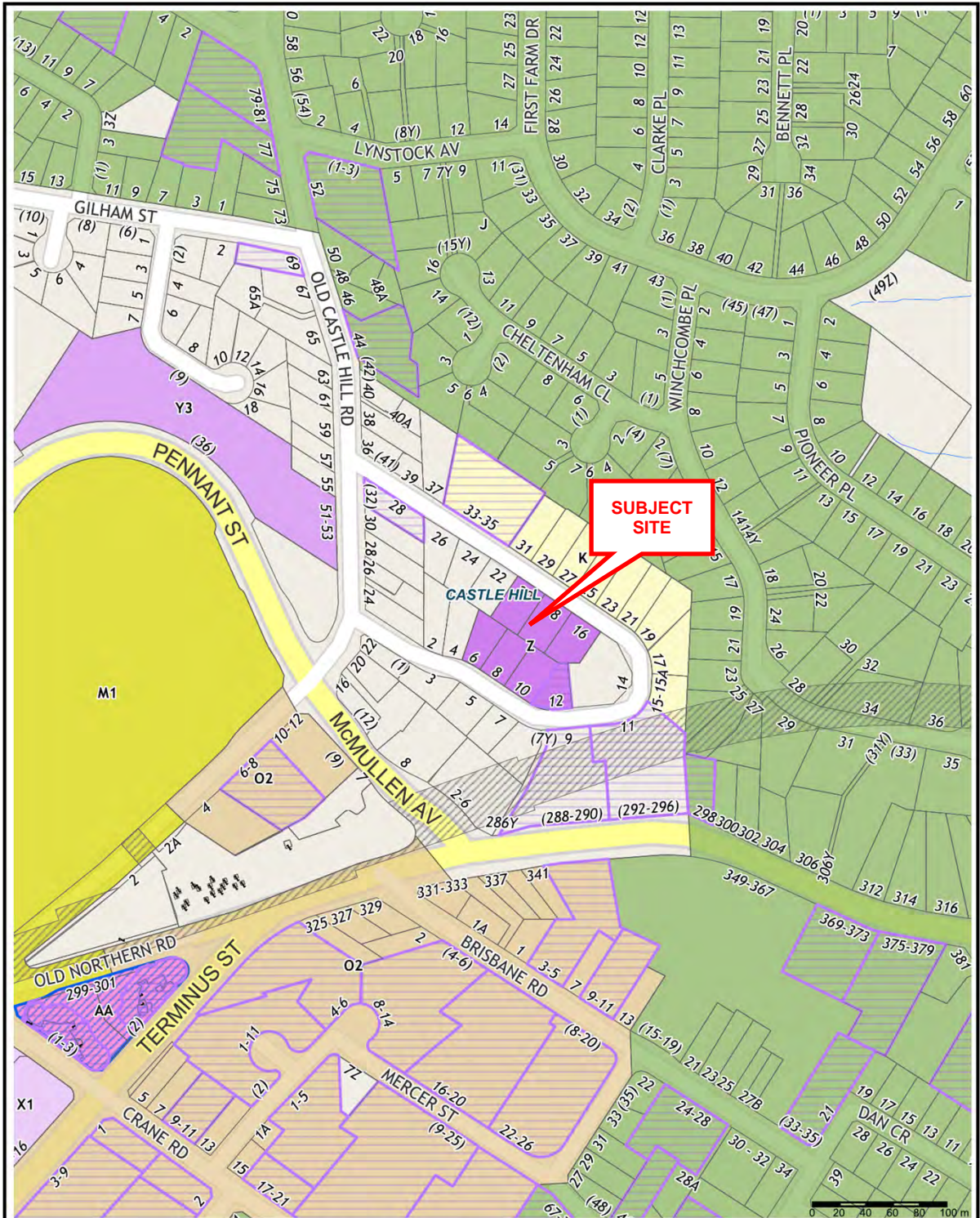
THE HILLS
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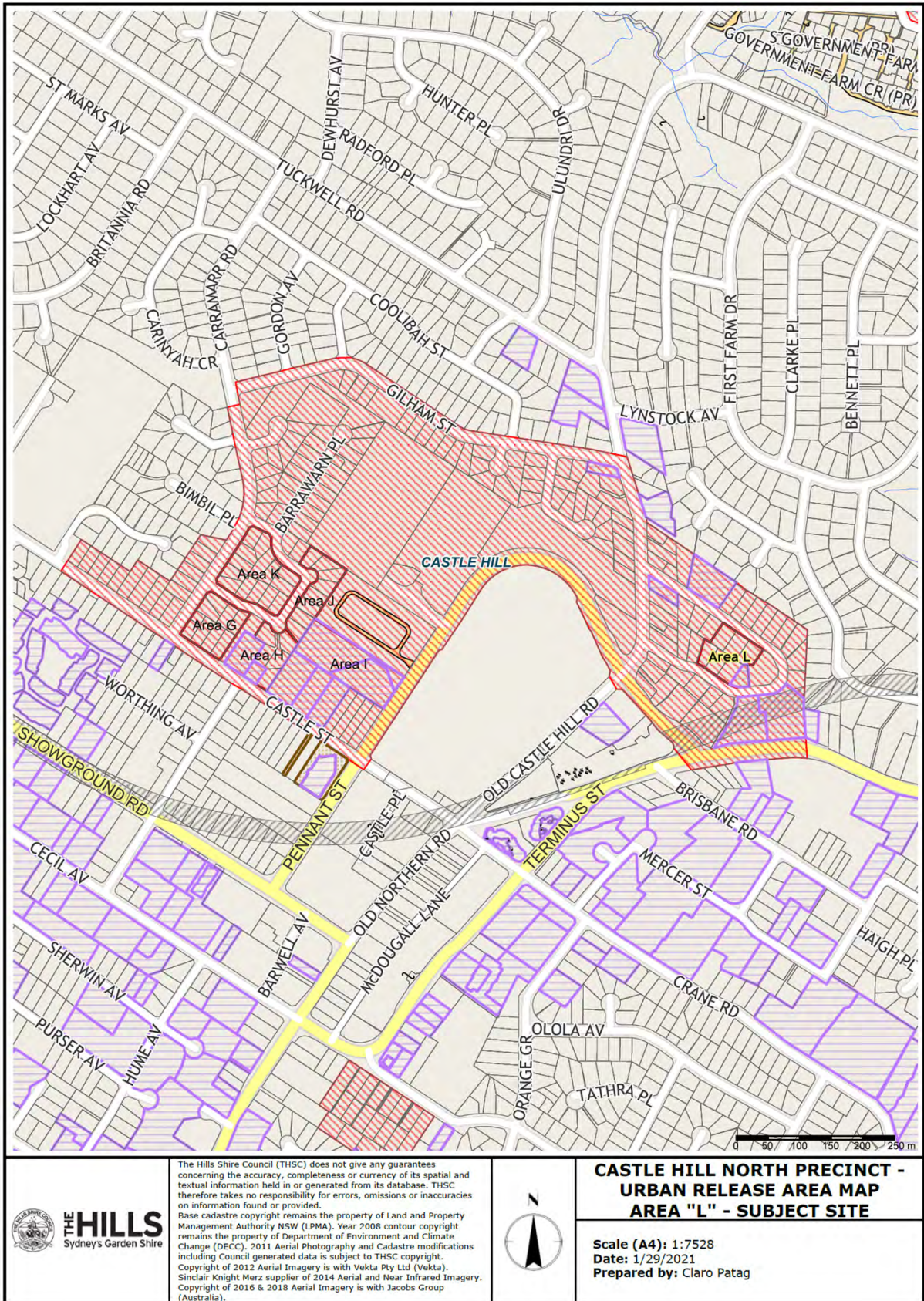
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ATTACHMENT 4 – LEP 2019 BUILDING HEIGHT MAP



 <p>THE HILLS Sydney's Garden Shire</p>	<p>The Hills Shire Council (THSC) does not give any guarantees concerning the accuracy, completeness or currency of its spatial and textual information held in or generated from its database. THSC therefore takes no responsibility for errors, omissions or inaccuracies on information found or provided.</p> <p>Base cadastre copyright remains the property of Land and Property Management Authority NSW (LPM). Year 2008 contour copyright remains the property of Department of Environment and Climate Change (DECC). 2011 Aerial Photography and Cadastre modifications including Council generated data is subject to THSC copyright. Copyright of 2012 Aerial Imagery is with Vekta Pty Ltd (Vekta). Sinclair Knight Merz supplier of 2014 Aerial and Near Infrared Imagery. Copyright of 2016 & 2018 Aerial Imagery is with Jacobs Group (Australia).</p>		<p align="center">BUILDING HEIGHT MAP Z = 57 metres</p> <p>Scale (A4): 1:3855 Date: 1/29/2021 Prepared by: Claro Patag</p>
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ATTACHMENT 5 – CASTLE HILL NORTH PRECINCT - URBAN RELEASE AREA MAP



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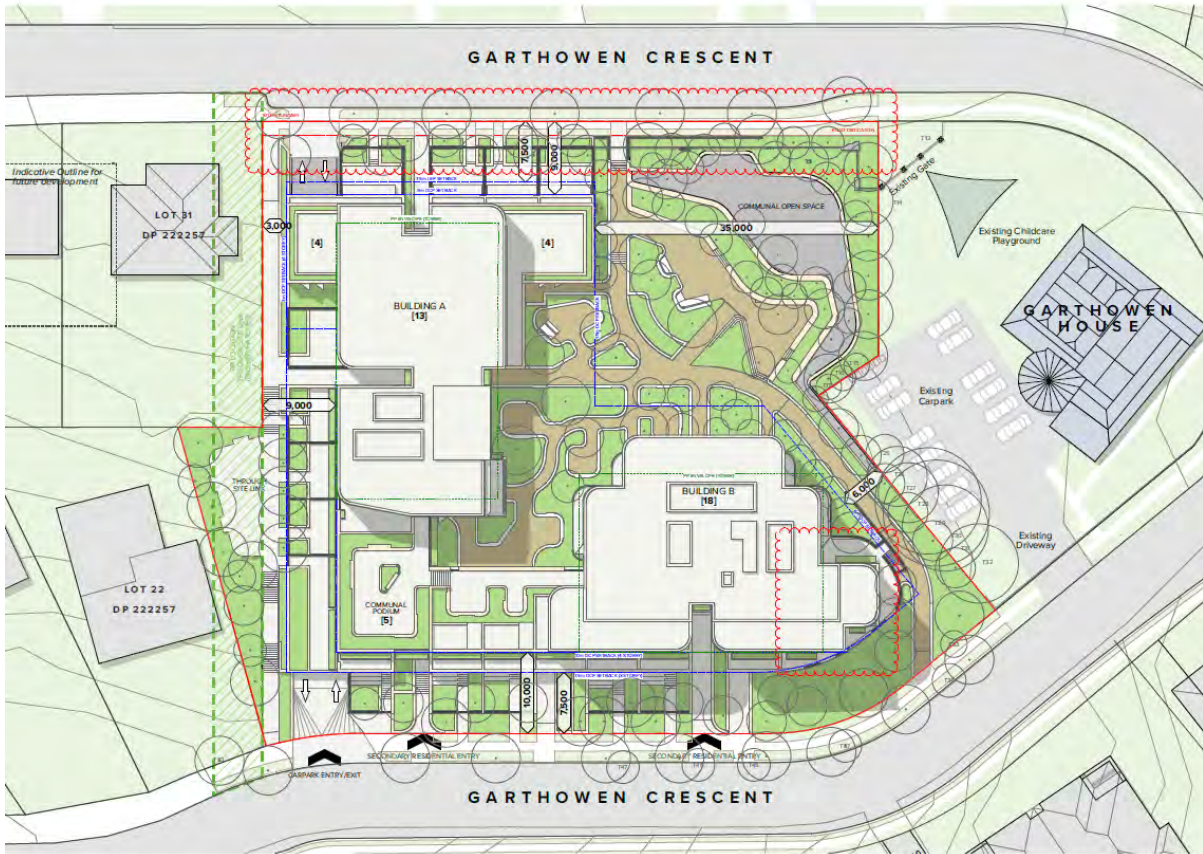
Copyright of 2012 Aerial Imagery is with Vekta Pty Ltd (Vekta). Sinclair Knight Merz supplier of 2014 Aerial and Near Infrared Imagery. Copyright of 2016 & 2018 Aerial Imagery is with Jacobs Group (Australia).



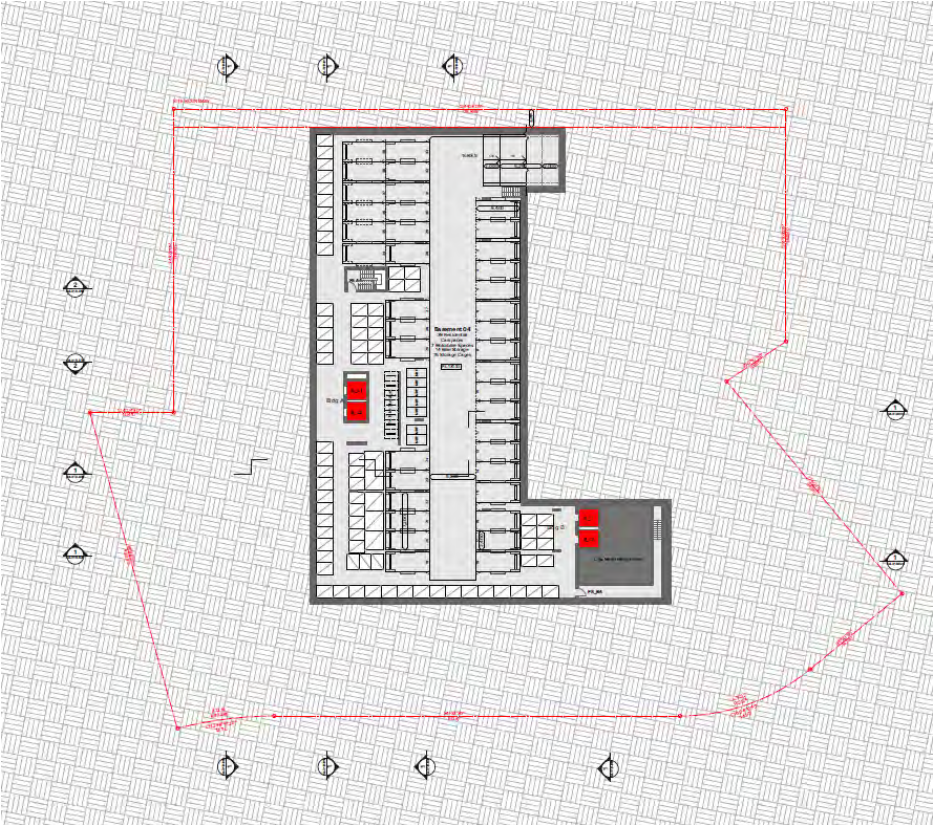
CASTLE HILL NORTH PRECINCT - URBAN RELEASE AREA MAP
AREA "L" - SUBJECT SITE

Scale (A4): 1:7528
 Date: 1/29/2021
 Prepared by: Claro Patag

ATTACHMENT 7 – SITE PLAN



ATTACHMENT 8 - BASEMENT PARKING PLANS (2 PAGES)



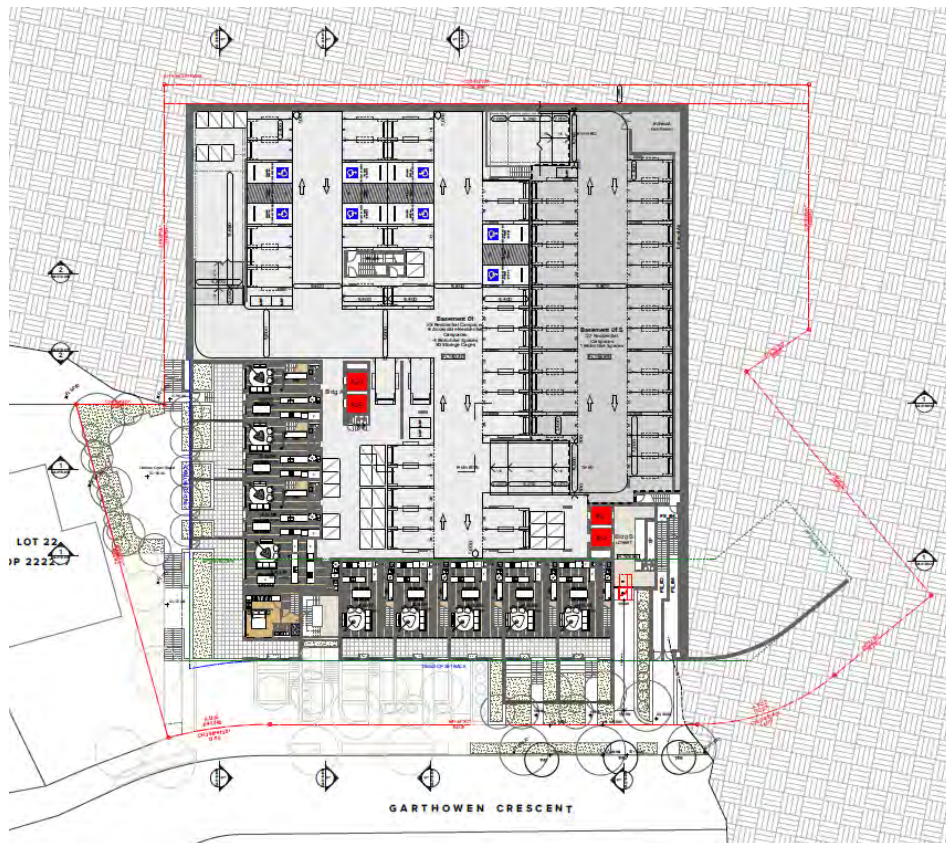
BASEMENT 4



BASEMENT 3



BASEMENT 2

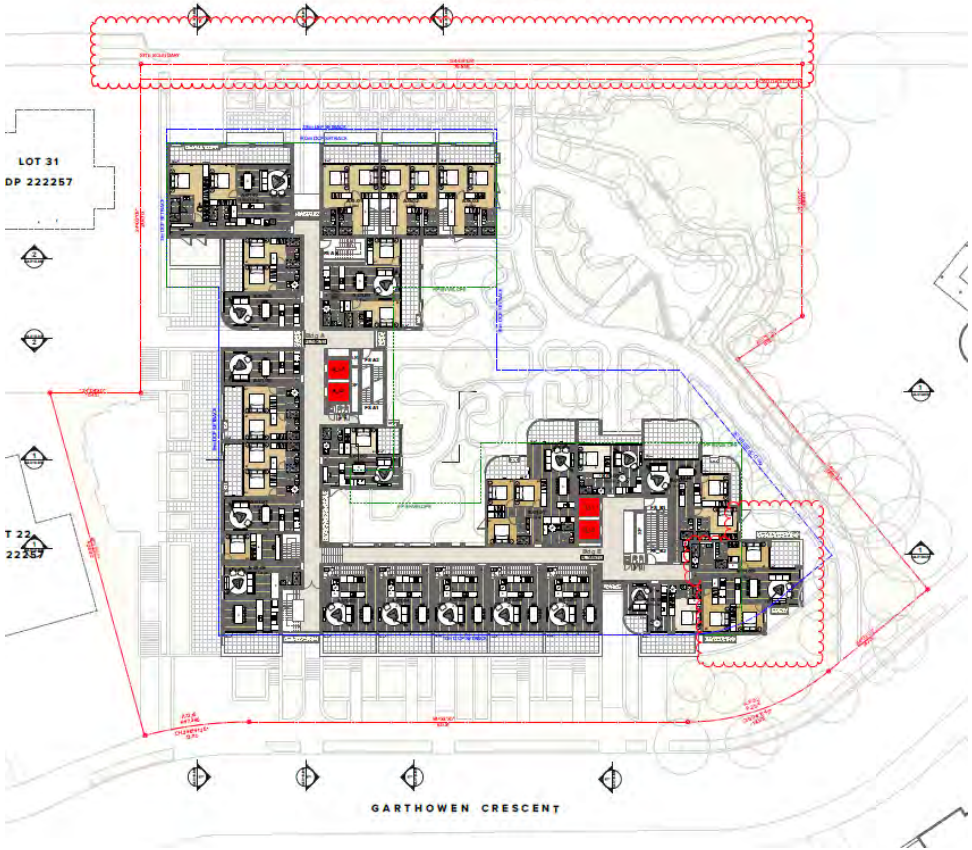


BASEMENT 1

ATTACHMENT 9 – FLOOR PLANS (5 PAGES)



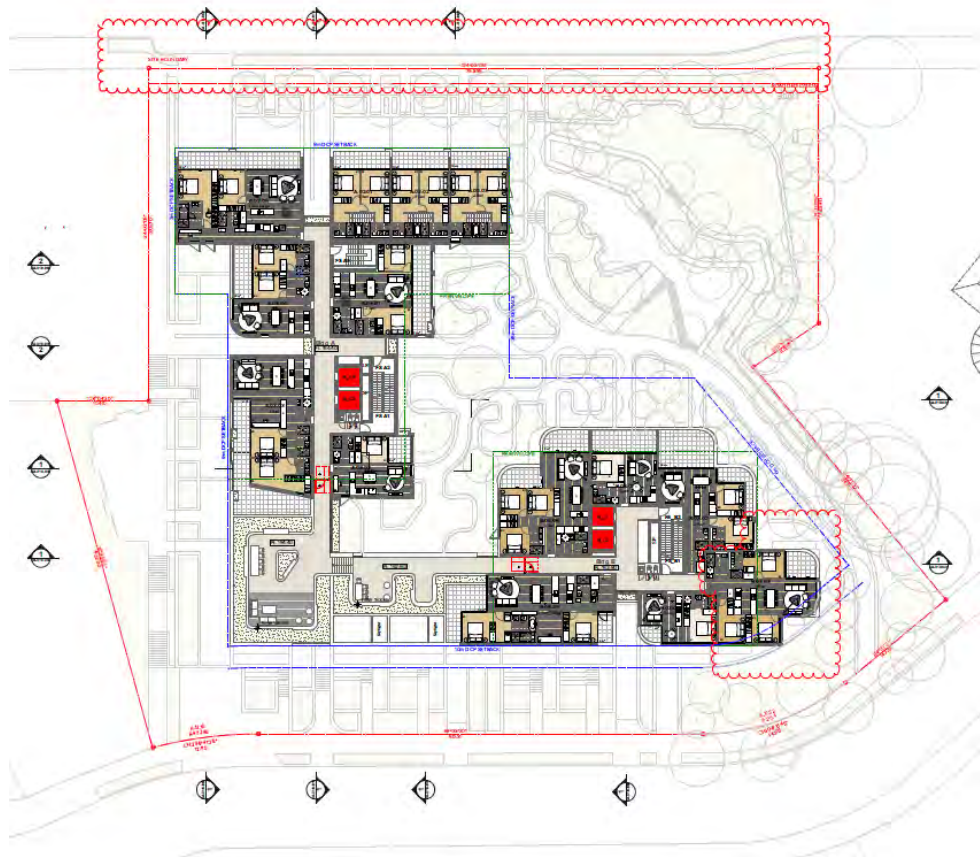
GROUND LEVEL
GARTHOWEN CRESCENT



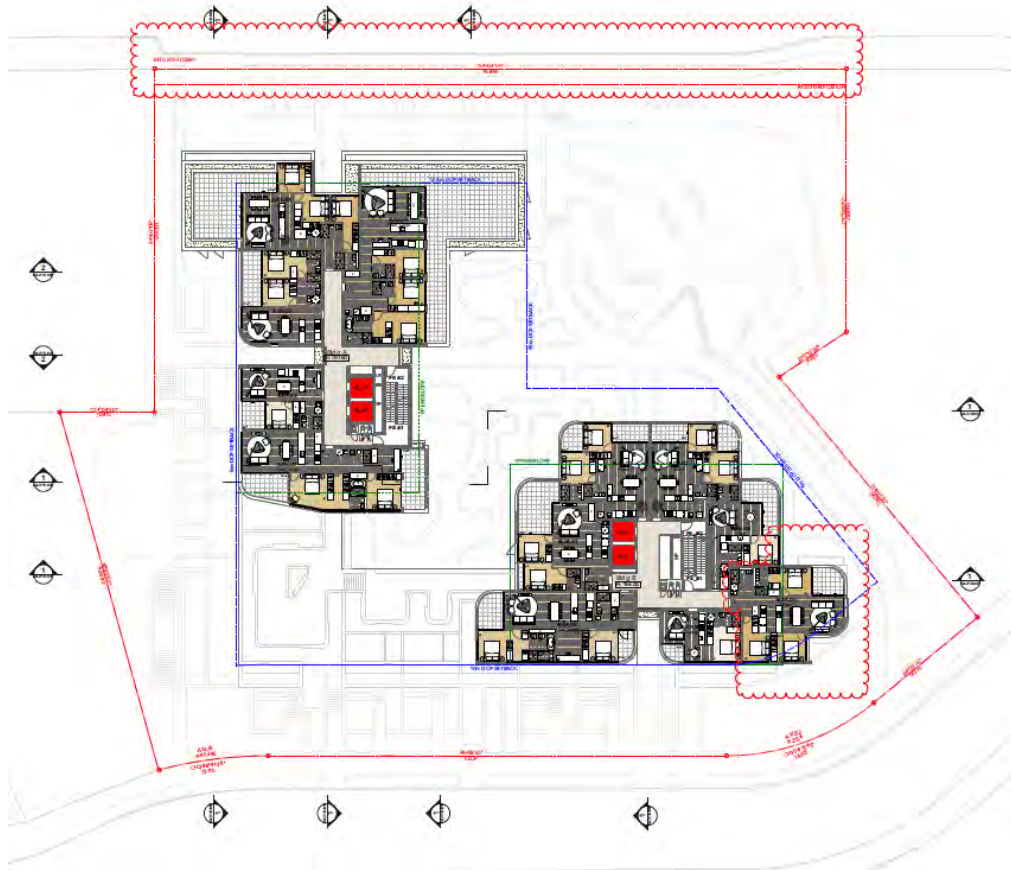
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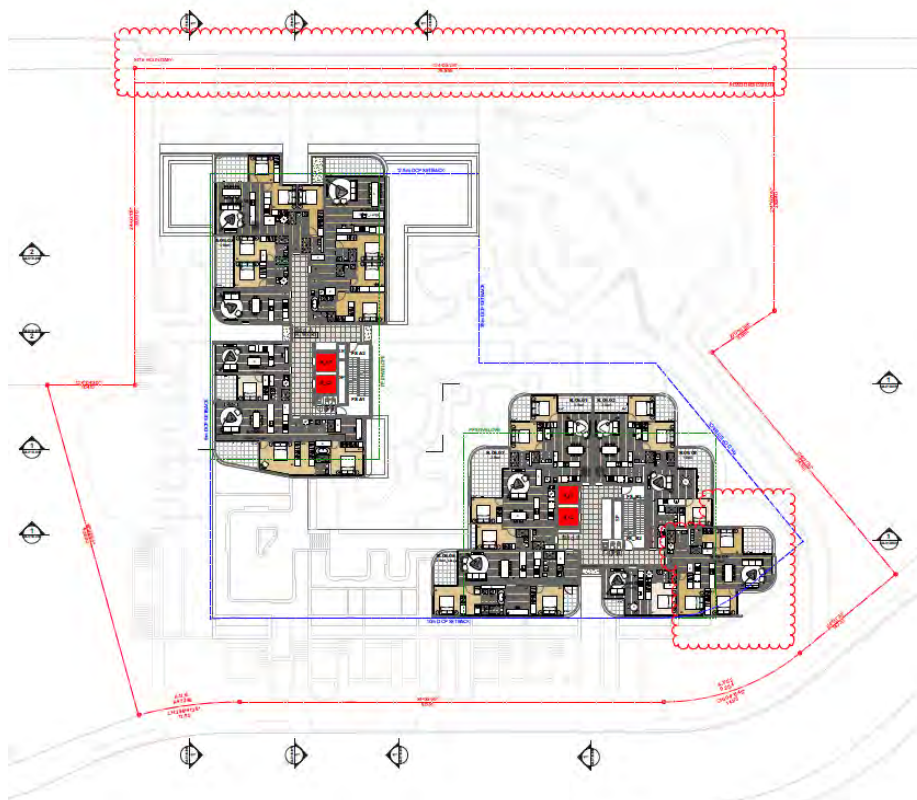
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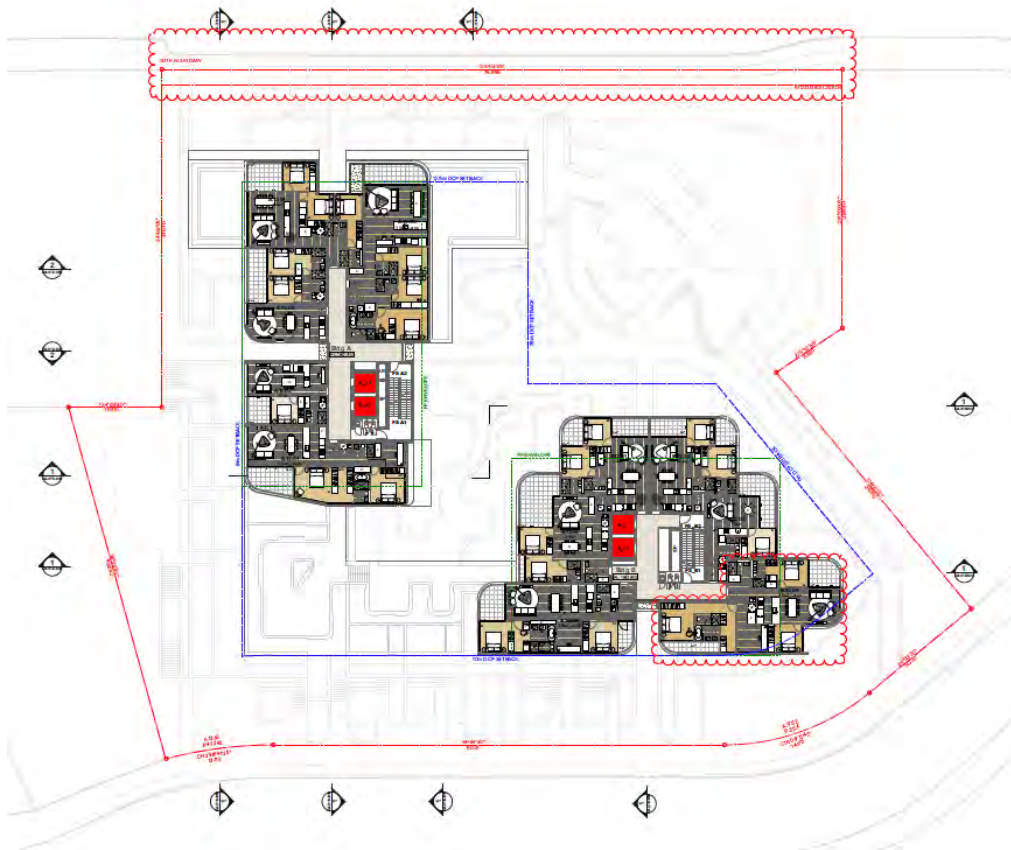
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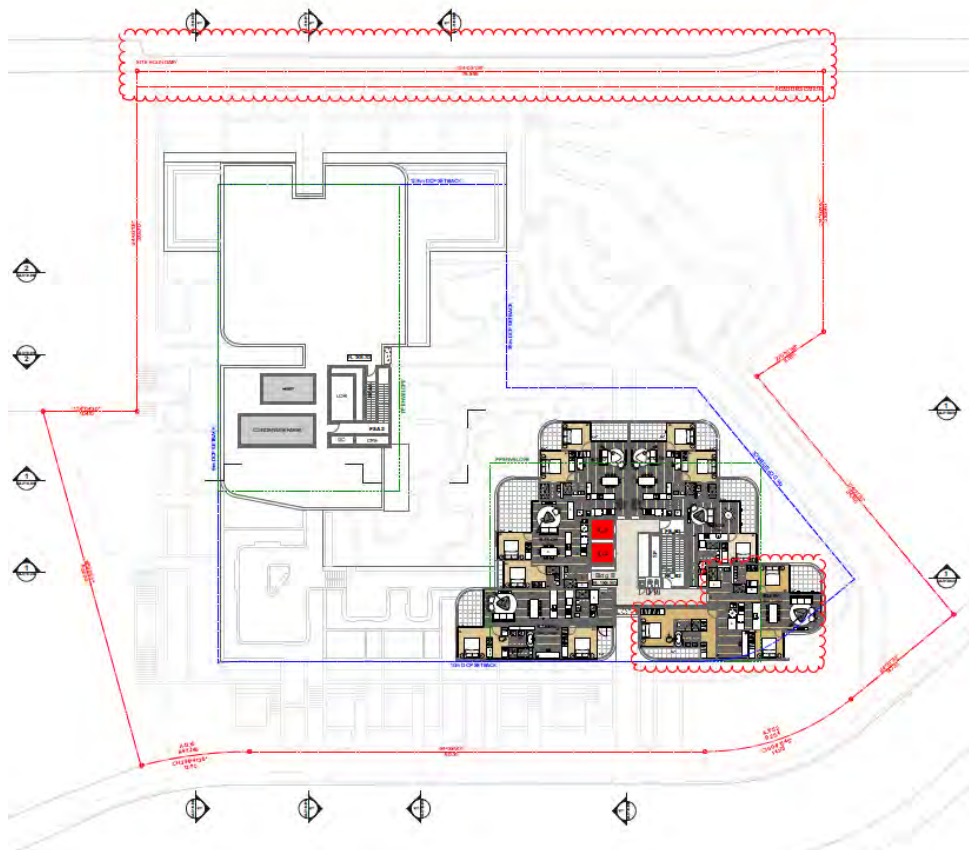
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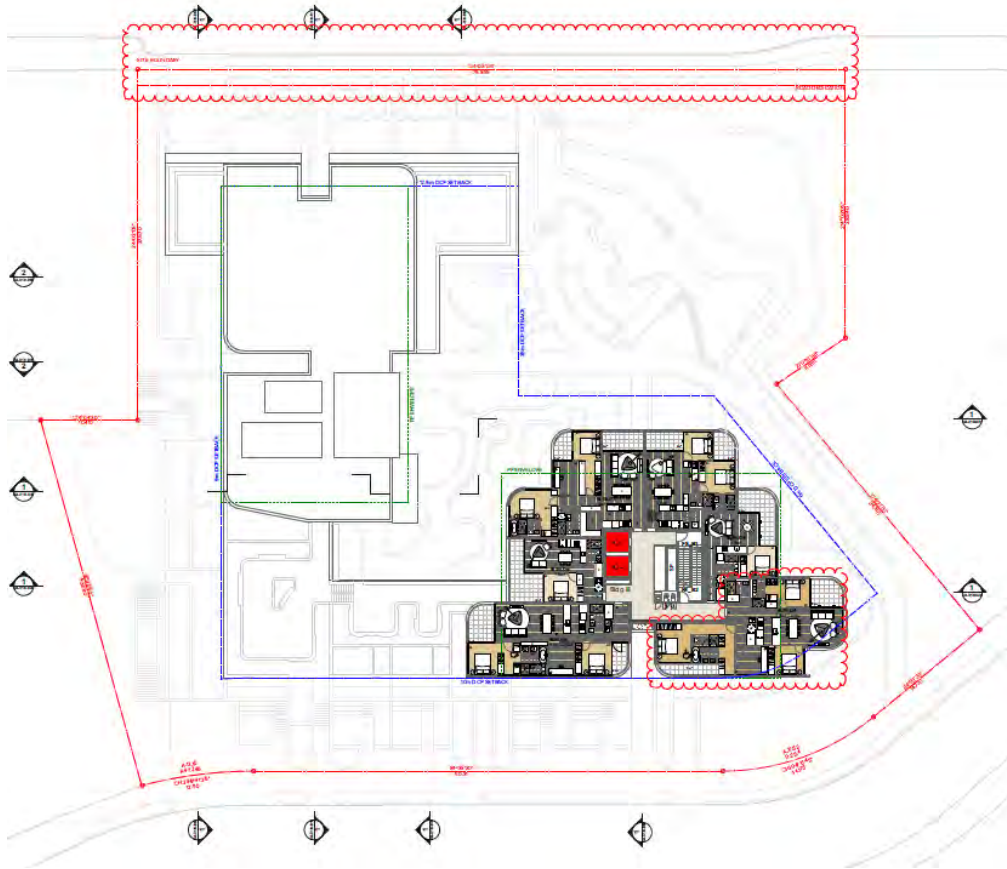
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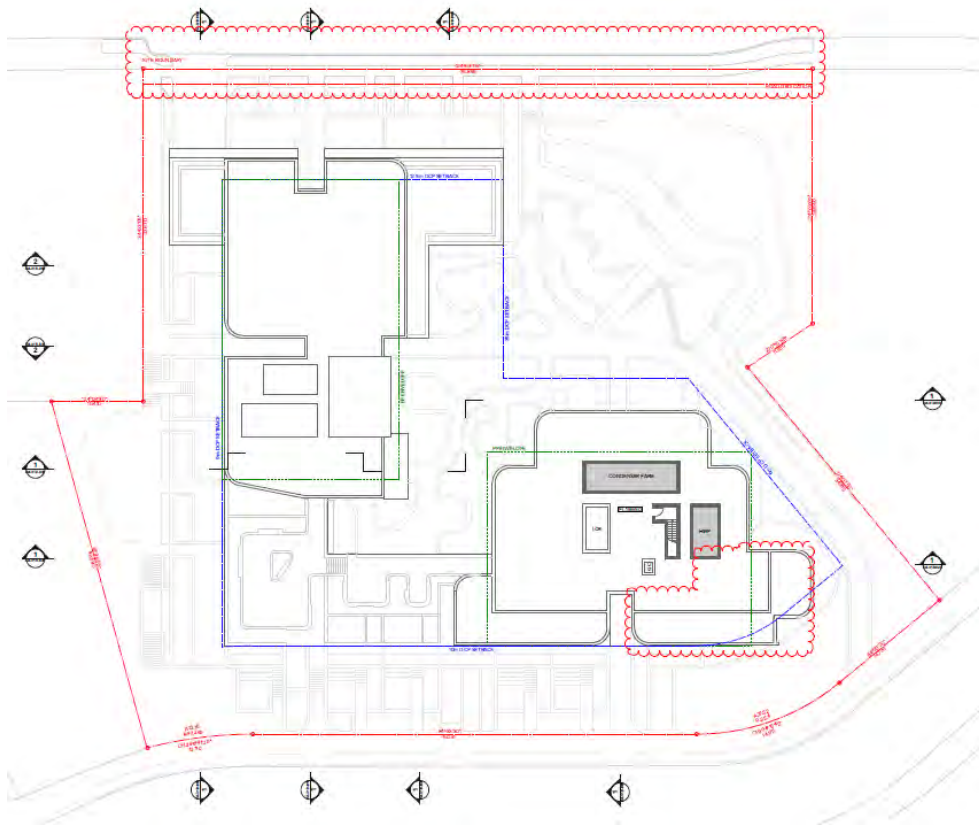
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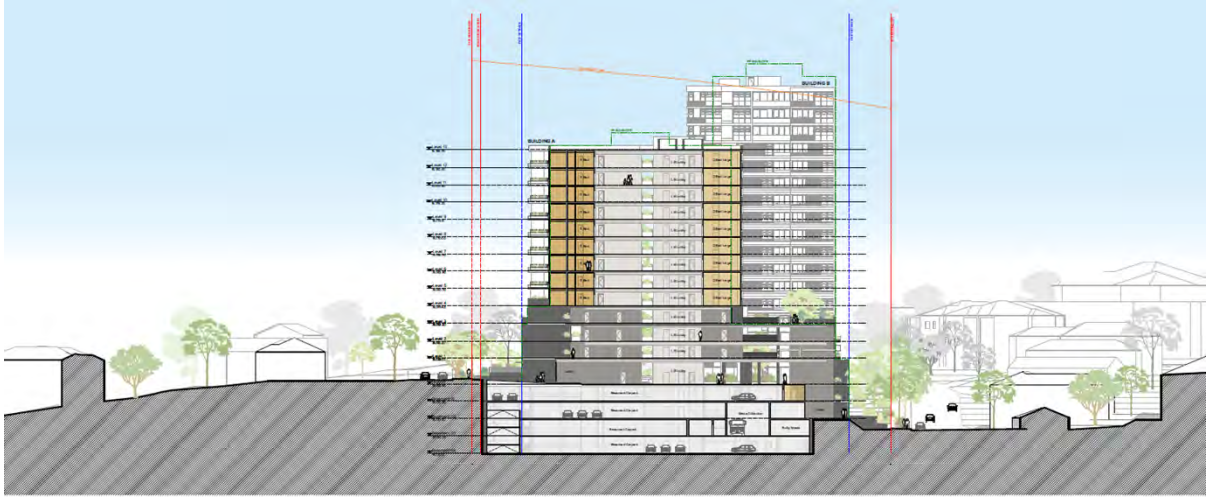
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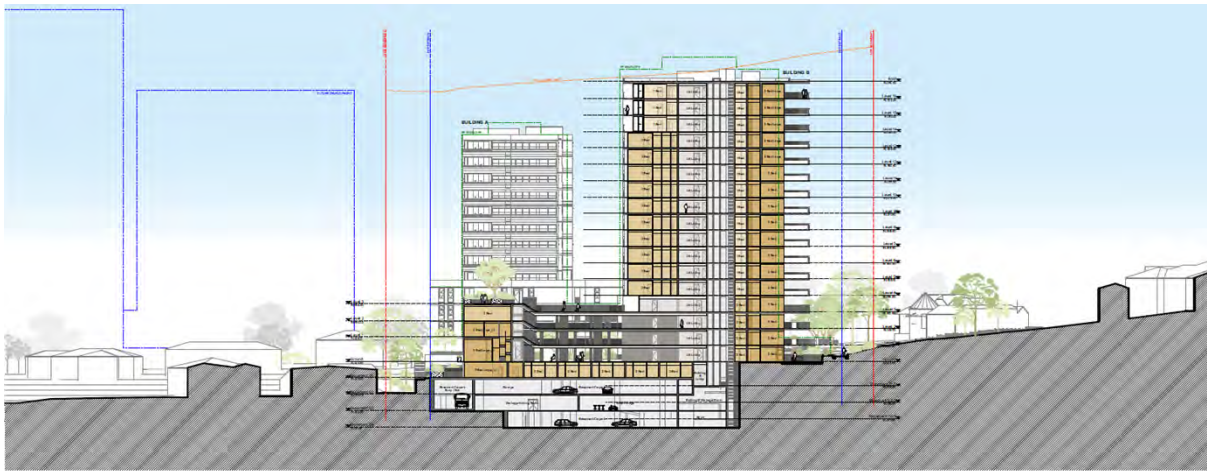
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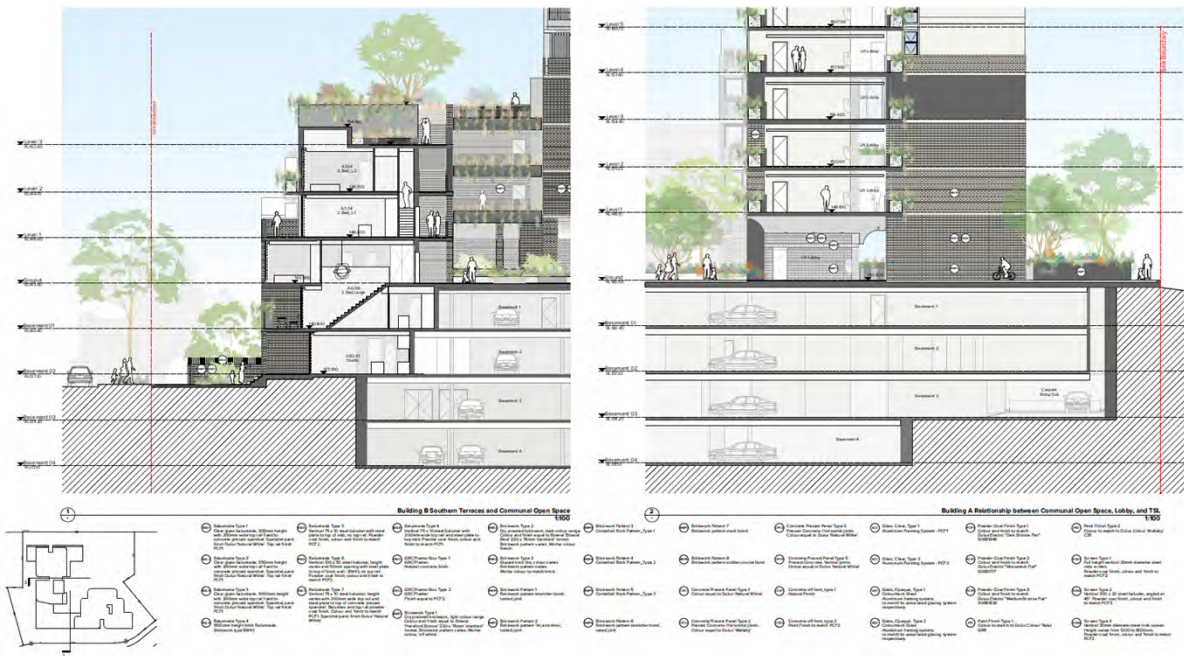
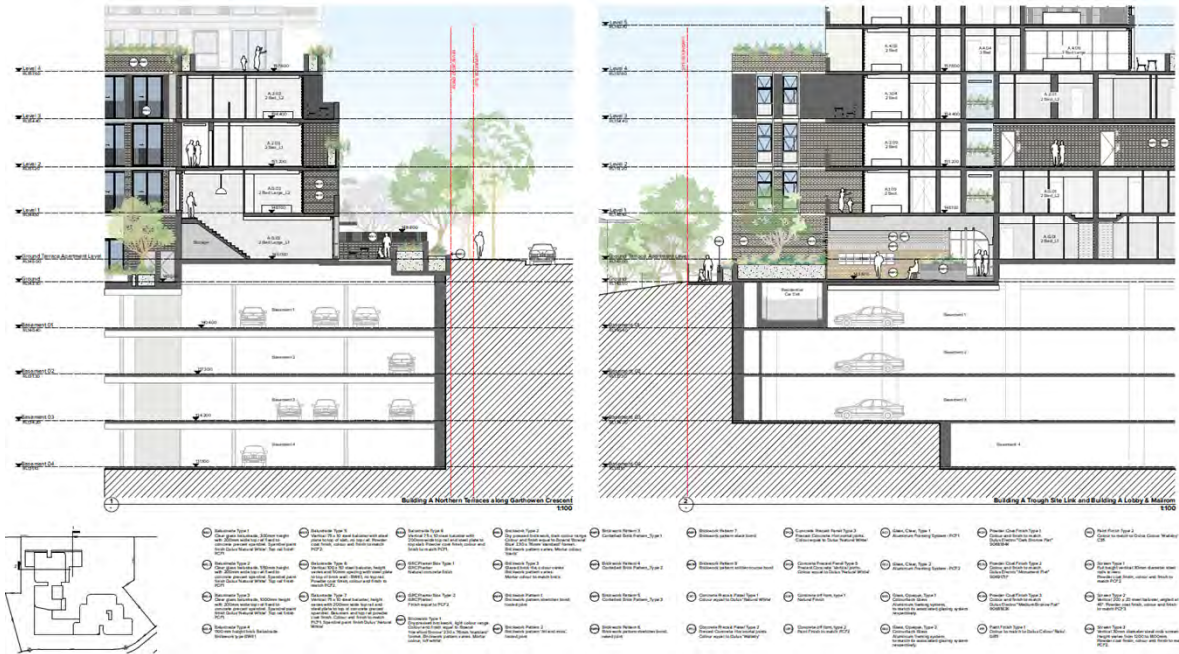
LEVEL 17 ROOF



SECTION NORTH/SOUTH



SECTION WEST/EAST



ATTACHMENT 11- MID-WINTER SHADOW DIAGRAMS



Winter Solstice_9am Shadow



Winter Solstice_10am Shadow



Winter Solstice_11am Shadow



Winter Solstice_12pm Shadow



Winter Solstice_1pm Shadow



Winter Solstice_2pm Shadow



Winter Solstice_3pm Shadow

ATTACHMENT 13 – 3D VIEWS



3D VIEWS – GARTHOWEN NORTH



3D VIEWS - GARTHOWEN SOUTH



**Clause 4.6 Exceptions to Development Standards
The Hills Local Environmental Plan 2019
Clause 4.3 Height of Buildings
Proposed 13 and 18 Storey High Rise Residential Apartment Buildings
6-12 and 16-20 Garthowen Crescent, Castle Hill**

1.0 Introduction

This written request has been prepared by Allan Caladine, Consultant Town Planner on behalf of Garth Diamond Pty Ltd & Old Diamond Pty Ltd in support of a Development Application (DA) that seeks consent to demolish all existing structures on the land and removal of trees to facilitate the construction of two (2) high density residential towers of 13 and 18 storey's in height over basement car parking at 6-12 & 16-20 Garthowen Crescent Castle Hill.

This written request is made pursuant to Clause 4.6 "Exceptions to Development Standards" as set out under The Hills Local Environmental Plan (THLEP) 2019.

The request seeks to vary the sites 57m building height control by a maximum of 860mm or 1.51% to increase the height to a maximum of 57.860m. The areas of departure involve two (2) small 'triangular' shaped parapet and roof area on the corner of Building B (18 storey tower), directly above unit B.15.05.

These variations are extremely minor and are a direct result of the slope of the land that falls by 8.5m (RL145.5 to RL137.0) from the north-eastern corner of the site to the south-western corner of the site and do not generate any adverse environmental impacts that would cause loss of amenity upon surrounding properties as well as the public domain.

This written request seeks to demonstrate that compliance with the maximum building height standard governing the subject site is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 of THLEP 2019 requires a consent authority to be satisfied of three matters before granting consent to a development that contravenes a development standard, these being:

- *that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard;*
- *that 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.*

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

2.0 Definition of Development Standards

The definition of development standard set out under Section 1.4 of the Environmental Planning and Assessment Act 1979 states:

"means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a. *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- b. *the proportion or percentage of the area of a site which a building or work may occupy,*
- c. *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- d. *the cubic content or floor space of a building,*
- e. *the intensity or density of the use of any land, building or work,*
- f. *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- g. *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- h. *the volume, nature and type of traffic generated by the development,*
- i. *road patterns,*
- j. *drainage,*
- k. *the carrying out of earthworks,*
- l. *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- m. *the provision of services, facilities and amenities demanded by development,*
- n. *the emission of pollution and means for its prevention or control or mitigation, and*
- o. *such other matters as may be prescribed".*

Comment

Clause 4.3 "Height of Buildings" and Clause 4.6 "Exceptions to Development Standards" are contained within THLEP 2019, which is a statutory planning instrument and as such the building height control is a development standard.

3.0 Varying Development Standards: A Guide August 2011

In accordance with the notification given under Clause 12 of Circular B1 states that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard..."

In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unreasonable and unnecessary"

Comment

On demonstrating that the development standard is unreasonable or unnecessary in the circumstances of the case, The Hills Shire Council may assume the Planning Secretary's concurrence to the objection pursuant to Clause 4.6 Exceptions to Development Standards of the THLEP 2019.

Planning Secretary's Concurrence

The Secretary's Concurrence has notified metropolitan councils that arrangements for the Planning Secretary's concurrence can be assumed in respect of any environmental planning instrument that adopts clause 4.6 of the Standard Instrument or a similar clause providing for exceptions to development standards. It is considered that The Hills Shire Council enjoys a similar delegation.

4.0 Land and Environment Court Judgments

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
4. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015
7. *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191
8. *Ex Gratia P/L v Dungog Council* (NSWLEC 148)
9. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC
10. *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191
11. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

Comment

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the noncompliance sought. In addition, Preston CJ ruled that cl4.6 does not directly or indirectly

establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. It is considered that the design and fit of the development in this context is reasonable and whether the proposed development complies with the height control or as proposed does not, no unacceptable environmental impacts arise.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

The proposed development in terms of bulk and scale is compatible with that of the desired future, envisaged development to the west and south, as identified in the controls shown in the Castle Hill North Precinct Plan amendment to THLEP 2019. This is also the case in satisfying the controls within the Site Specific DCP (SSDCP).

The developments design embraces and enhances the envisaged streetscape for both loop roads along Garthowen Crescent, minimizing environmental impacts of overshadowing, view loss, overlooking of adjoining properties and open spaces to satisfy the SSDCP controls as well as those contained within SEPP 65 and its companion ADG.

The variation to the height control sought is not unreasonable, it seeks only to ensure a quality development is provided that is consistent with the sites zoning and fits within its desired future character as envisaged by a number of planning studies, including structure plans for development in this Castle Hill precinct, the site specific planning proposal and the statutory LEP and policy controls for this site.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH").

In Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(iii)).*

For the first of the above matters, Preston CJ made it clear, in *Initial Action* at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed those matters."

5.0 Clause 4.6 Exceptions to Development Standards - The Hills LEP 2019

In addressing the relevant objectives in Clause 4.6, to achieve a variation to the Building Height standard, the following specific clauses must be met:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standard;
- 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.

See zoning of land objectives, building height objectives, Clause 4.6 Objectives and commentary on public interest grounds below:

4.1 Zoning of Land

The development site is zoned R4 High Density Residential under THLEP 2019 and the proposed high rise residential development is permissible with consent of Council. See extract of zone map at **Figure 1** and zone objectives below.

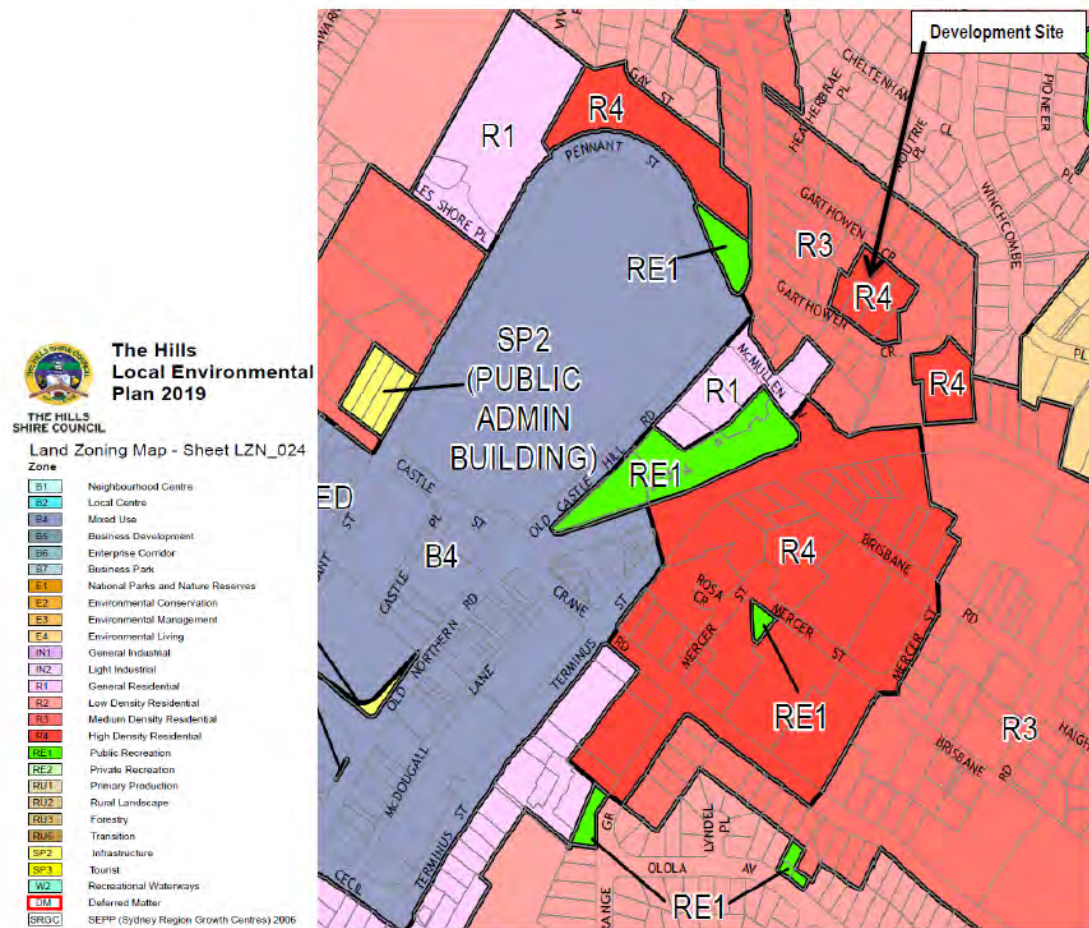


Figure 1
Source: THLEP 2019 – Land Zoning Map

Zone R4 High Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

Comment

The design of the proposed development is a well-considered solution to the unique characteristics of this transitional neighbourhood, including built form, outlook and a natural landscaped setting, in a residential neighbourhood that has constraints in topography and is the reason why the proposal sits marginally above the building height control for the site.

As mentioned previously, the site has an overall fall of 8.5m from north-east to south-west.

The irregular shape of the development site and surrounding transitional context also assists in justifying a variation to the height control that applies to the site as the proposal offers a balanced urban planning solution for the streetscape in order to deliver an appropriate response in scale with existing high density towers up to 21 storeys (299-309 Old Northern Road opposite Castle Hill Metro and bus interchange) and the 4 high rise residential apartment buildings under construction at 51-53 Old Castle Hill Road, Castle Hill, both developments being within the visual catchment of the site. See photos of these high rise towers at **Figures 20, 21 and 25** of the SEE. Another high density residential development is located diagonally opposite the heritage item known as Garthowen House, east of the development site.

Provision is made in the development for a variety of apartment types and sizes (studios, 1 bedroom, 2 bedroom and 3 bedroom units, some with studies), with some two level designs, while there are a number of larger apartments that exceed SEPP 65 Standards in order to provide quality accommodation for a range of demographics and household budgets.

The proposal is consistent with all strategic environmental planning policies in terms of providing housing in the right location, allowing better use of public transport (Castle Hill Metro Station and bus interchange), Castle Towers Shopping Centre, all within 400m or 5minute walk of the development site.

Accordingly, it is for the reasons set out above, that The Hills Shire Council as the consent authority can be satisfied that the proposed high rise apartment development including the increase in building height is consistent with the R4 High Density Residential zone objectives.

4.3 Height of Buildings

The objectives contained within clause 4.3 of THLEP 2019 are set out below and an extract from the height of building map is provided at **Figure 2**.

As previously mentioned, the site is subject to a building height control of 57m. The proposal seeks consent to permit a small portion of the roof area of building B to extend up to 57.860m.

Figure 3 is an extract from Turner Architects plans that demonstrates those parts of the top floor that extend above the height control. The LEP objectives for Height of Buildings is set out and addressed below:

4.3 Height of Buildings

(1) The objectives of this clause are as follows—

- (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,
 - (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

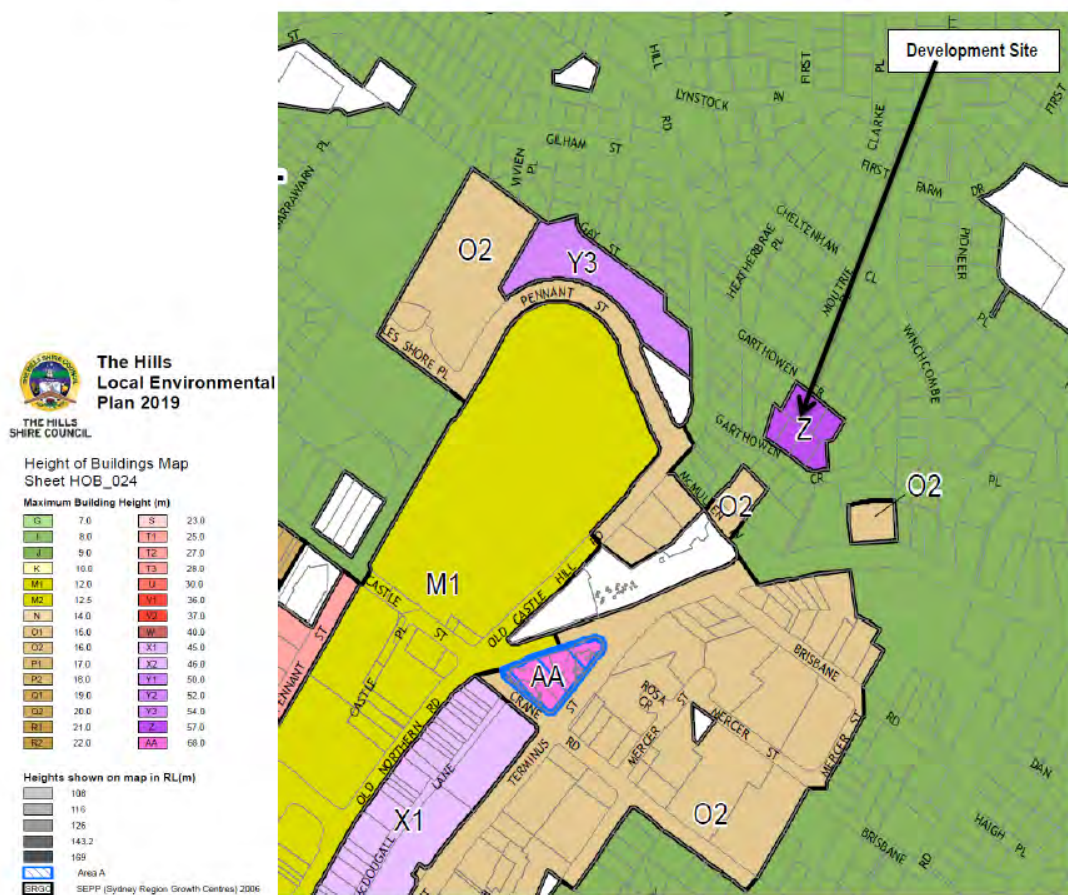


Figure 2
Source: THLEP 2019 – Height of Buildings Map

Comment

The corner edge of the roof and parapet of Tower Building B marginally extends above the 57m building height control by 860mm or 1.51%. The encroachment is generally triangular in shape and covers a very small portion of the building's roof and parapet, directly above unit B15.05.

Due to the site's irregular shape and topography that falls steeply away from north-east to the south-west by approximately 8.5m, the proposed design reflects a maximum building height of between 57m and 57.860m. See areas of the roof that extend above the height control at **Figure3**.

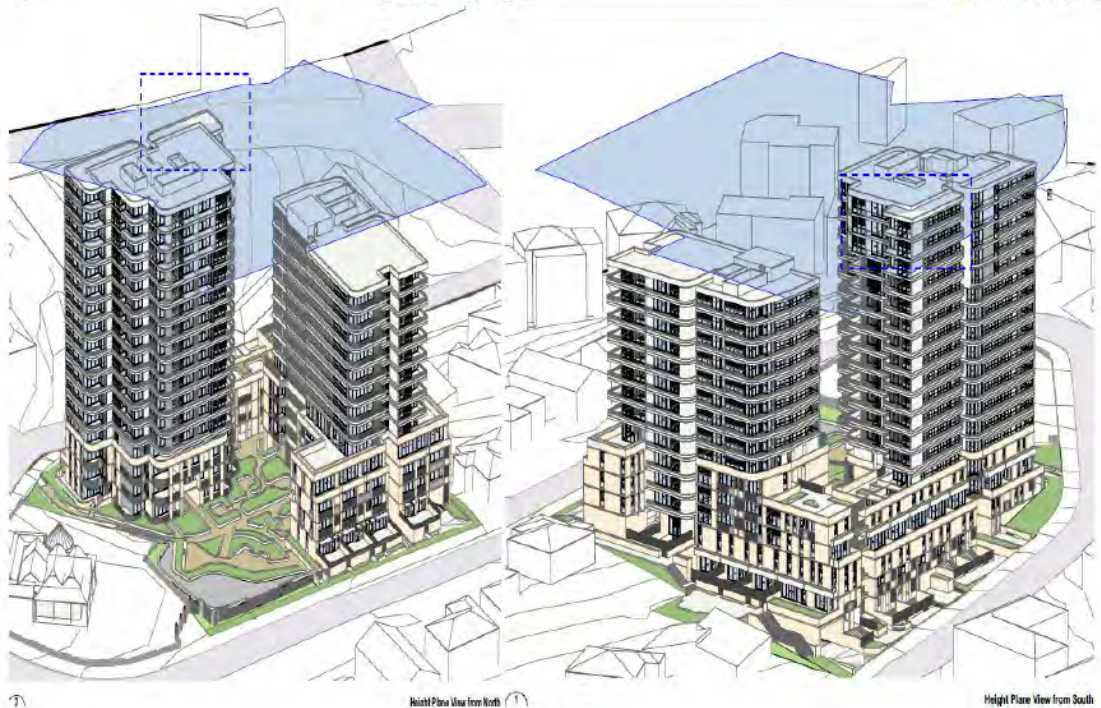


Figure 3
Source: Turner Architects

There is no material shadow impact on properties to the north, south, east and west of the site at any critical time of the day during the Winter Solstice. All receive adequate solar access to satisfy or exceed ADG and SSDCP controls. See shadow diagrams accompanying

the DA submission. The shadow cast is within the realm of what was expected by rezoning this site to permit this type of high rise residential development. Also, the additional shadow generated by the minor increase in building height falls upon the shadow. Further, the SSDCP also reinforces this two tower design.

The proposal forms part of an emerging built environment that will establish a high density residential character for this part of the Castle Hill North precinct. The proposed architectural design exhibits a high quality urban design response to compliment the streetscape and transitional character of the neighbourhood and satisfies the building height objectives prescribed by Clause 4.3.

It is for the reasons set out above that the proposed development is consistent with the objectives of the Building Height Standard.

4.6 Exceptions to Development Standards – The Hills LEP 2019

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause:*
- (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.*
- (4) 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*
 - (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*
 - (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

- (6)
- (7)
- (8).....

Comment

Clause 4.6 of THLEP 2019 replaces *State Environmental Planning Policy 1* (SEPP 1) in The Hills Shire LGA. SEPP 1 previously gave the decision maker jurisdiction to grant development consent to a DA notwithstanding contravention of the development standard contained in an environmental planning instrument.

In dealing with “unreasonable or unnecessary” Preston CJ identifies and validates the 5 options available to the applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary test* under Cl. 4.6(3)(a). These options are also addressed later in this submission. Preston CJ states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 - Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above, the Clause 4.6 variation request identifies the first method identified in *Wehbe*:

*“Ways of establishing that compliance is unreasonable or unnecessary [42] An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard:** (emphasis added)*

This clause 4.6 written request responds to the matters required to be demonstrated by sub-clause 4.6(3) (a) (b) and 4.6(4) (ii), namely:

- that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case.
- that there are sufficient environmental planning grounds to justify contravening the development standard.
- the proposed development will be in the public interest because it is consistent with the objectives of the height standard and the objectives of the sites zone

Having considered the above, full compliance with the building height control is unreasonable or unnecessary in these circumstances this case because the objectives of the development standard are achieved notwithstanding a minor variation to the numerical standard is proposed. There are as previously mentioned, sufficient environmental planning grounds to justify contravention of the height standard.

In dealing with the height control it is necessary to identify the purpose of the height control and then progress to dealing with the specific height objectives.

Regardless of the height variation sought, the visual fit of the proposed 18 storey residential tower (Building B) is acceptable and appropriate for this site as this neighbourhood is in transition with new high rise tower buildings, both built and under construction within view of the development site. Other high rise developments to the west and south will occur in due course as a result of other future amendments to THLEP 2019. These are currently with the Department awaiting gazettal and respond to the strategic planning studies carried out over a number of years for this precinct. Therefore, it is appropriate to say that this precinct is in transition, with the proposal being consistent with the desired future character of this neighbourhood as adopted by NSW Department of Planning Industry and Environment and Council.

The encroachment above the height control and the variation sought is extremely minor (maximum of 860mm). As mentioned previously, the subject areas are triangular in shape and located over a very small portion of the buildings parapet and roof area, specifically above unit B.15.05.

When considered in this context the building height of this top floor is predominantly below the 57m height control.

The physical projection of the building form will not be clearly visible from the street or public domain or would impact upon the streetscape. These proposed minor encroachments will be compatible with the transitional type of building form that will in due course characterise this neighbourhood precinct. These encroaching parapets and roof areas will not degrade the quality of the proposed building form of tower B, impact upon the transitional streetscape or effect the positive contribution that both residential towers will have on the visual aesthetics in the immediate and broader catchments.

Based on the proposed location of the encroachments the additional 860mm or 1.51% departure from the standard does not adversely impact on views of neighbouring or surrounding properties. This includes the local heritage item next door at 14 Garthowen Crescent, which the proposal is well setback from.

Further, based on the available views to the north, the increased height will not unreasonably obstruct any significant view, outlook or natural or manmade feature. The impact on views at this upper 18th storey is non-existent and can only be said that this type of development has been envisaged by Council in this precinct for a number of years.

The development promotes the sharing of views with the proposal consisting of two (2) tower buildings of 13 and 18 storey's in height, well separated at upper levels to promote views and introduce an appropriate vista through the development. This design approach in our view achieves design excellence as the buildings will readily fit into a transitional neighbourhood context that will substantially change building heights and FSR controls in this neighbourhood.

The additional height proposed is considered acceptable due to the fact that this variation occurs on the edge of the top floor of Building B, which does not generate any adverse amenity impacts.

The shadow diagrams establish that the extent of solar access available to private open space and the public domain are within acceptable limits expected for high rise infill development, within an identified low density residential neighbourhood about to undergo substantial change in building form.

All shadow cast by the proposed development does not cause adverse impacts on surrounding properties. Achievement of solar access to surrounding properties is reasonable

and within acceptable standards achievable for this form of high rise development. The shadow cast by the departure falls onto shadow cast by the lower levels of the building.

Having regards to the above comments, there are sufficient environmental planning grounds to justify contravening the development standard prescribed by 4.6 (3) (b) of THLEP 2019.

The development complies with the stated objectives of the zone and the development standard seeking to be varied. The development will provide additional apartments in an area identified as being suitable for high density residential apartments, ensuring that the development is consistent with the desired future character of the area. Further, there are no unreasonable environmental impacts as a result of the variation.

The breach of the standard is extremely minor, which has been discussed at length throughout this submission.

Given the above, there is no public interest in maintaining strict application of the height of building standard in this instance. The public interest is best served by the proposed development complying with the objectives of the building height standard, through the provision of quality urban design outcomes, that will enhance the character of this transitional neighbourhood and offer quality additional apartments, located on the edge of a major business centre, within 400m of the Castle Hill Metro and Castle Towers.

6.0 Section 1.3 Objects of the Environmental Planning and Assessment Act 1979

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Comment

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under s1.3 in order to demonstrate that grounds exist to warrant a variation to height.

The proposed 18 storey tower of which a small portion of the top floor extends marginally above the height control, is still able to satisfy the objects under s1.3 EP&A Act 1979. The architectural plans prepared by Turner Architects demonstrate the development:

- offers better and proper management of the States land resources by providing a more efficient use of the land, allowing the top floor of Building B to achieve excellent cross ventilation and readily available access to natural light. Further, the proposed portions of the roof and parapets that exceed the height do not block or interrupt views.
- that the location of the proposed amenities protects the environment in the same manner as a development which complies with the standard. The net impact on the environment attributable to the additional height is acceptable in the circumstances. This has been discussed in detail previously in this submission;
- as articulated elsewhere in this written submission, the additional 860mm or 1.51% of increased building height preserves has no impact on native vegetation values of the local area, although it can be said that the development will introduce greater numbers of native vegetation that will better survive and enhance this neighbourhood;
- promotes a requirement to achieve "*good design and amenity*". This proposal better achieves the objective than one which strictly complies with a numeric standard. As discussed above the proposed location of the development achieves an efficient design response satisfying the "*good design and amenity*" objective.
- deal with health and safety and as such the consent authority can be satisfied that the natural light, excellent cross ventilation general air flows and views from the top floor achieve the required health and safety objectives as well offering a quality living environment for future residents.
- Having regard to the above, the proposal reasonably satisfies objective (c) which is to promote the orderly and economic use of the land.

There is no longer a specific legal requirement to prove that the non-compliant outcome achieves a better planning outcome. Regardless, the proposal and specifically the additional 860mm associated with the increased height on the top floor of Building B satisfies the objects of the Environmental Planning and Assessment Act 1979 by achieving a better planning outcome when compared to a hypothetical scheme that fully complied with the height control.

Based on the above, the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant approval of the requested variation.

In the present circumstances the positive planning benefits are considered sufficient in its own right to justify the small variation to the height control.

Additionally, there is a clear lack of adverse amenity impacts arising from the proposal as it will not result in any adverse increase in bulk and scale, overshadowing or overlooking. The minor height projection also does not have any negative flow on planning impacts in terms of view loss; impact on streetscape; or impact on character values. The transitional character in this neighbourhood has already commenced with new high rise development located within the visual catchment of the site. The impacts that arise from the variation whilst extremely negligible are nevertheless considered acceptable under the above circumstances.

We have formed the view that there is no public interest objective in maintaining strict compliance with the development standard in this instance given the departure from the height control is extremely minor and it can be demonstrated that it will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environmental planning outcome.

The departure from the height control allows for the orderly and economic use of the land and no public disadvantages have been identified as it has been demonstrated that any environmental or other impacts associated with the development such as over shadowing, overlooking, view loss and an increase in building bulk and scale is not unreasonable and will generally not be noticed when viewed by the average person in its transitional context.

7.0 Land and Environment Courts Assessment

Winten Property Group Ltd v North Sydney Council (2001) NSWLEC 24

Justice Lloyd's Questions - Winten Property Group v North Sydney Council 2001

Justice Lloyd raised in this case, five questions that must be considered in the assessment of a SEPP 1 Objection, in the subject application, it relates to Clause 4.6 of THLEP 2019 because SEPP 1 does not apply to this planning instrument.

Question 1

Is the Planning Control in Question a Development Standard?

Environmental Planning Instrument

The standard is contained within an Environmental Planning Instrument (THLEP 2019) that was prepared in accordance with the provisions contained within the Environmental Planning & Assessment Act 1979 and therefore the control is a development standard that controls the height of buildings in the Hills Shire LGA.

Question 2

What is the Underlying Object or Purpose of The Standard?

As mentioned previously in this request to vary the building height standard, the Department of Planning Circular B1, numerical requirements may be departed from if the purpose behind the control is achieved and the locality objectives of the relevant planning instruments are satisfied.

The underlying object of the height standard is to:

- Ensure buildings are of a height and scale to fit within their context;
- Ensure buildings do not unreasonably increase adverse amenity impacts, such as overlooking and overshadowing;
- Protect views;
- Ensure heritage items and conservation areas are not impacted upon;
- Respect the existing and transitional character that a neighbourhood may be undergoing;
- To allow for building transitions;
- The public interest is maintained.

It is for the reasons mentioned in this written request, that the proposal achieves the underlying objectives and purposes of the height standard.

Question 3

Is compliance with the development standard consistent with the aims of the policy, and in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 1.3 of the Environmental Planning & Assessment Act 1979.

Comment

This issue in itself would hinder the attainment of the Environmental Planning & Assessment Act 1979 objects, which seeks to promote the orderly and economic use and development of land.

The Objects of the Act have been addressed previously in this written request.

Question 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Comment

Compliance with the development standard is deemed to be unreasonable or unnecessary in the circumstances of this case because the departure sought does not generate any amenity impacts upon the built and natural environments that would not be in the public interest.

Notwithstanding the non-compliance with the building height control, the proposed development will perform favourably in relation to the objectives of both the zone and of the building height standard.

In particular, the generic intent behind the height standard is to control the scale of new development and not to unreasonably increase amenity impacts such as bulk and scale, overlooking, overshadowing and view loss. These planning issues have already been addressed in this submission as well as the SEE and are deemed to be acceptable.

Question 5: Is the objection well founded?

In the decision (*Wehbe v Pittwater Council [2007] NSW LEC 827*) Chief Justice Preston expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These are:

- 1) *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3) *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4) *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*
- 5) *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be*

unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

We are of the view that the objection is well founded because:

- The additional height increase above the standard is minor and casts shadow upon the shadow cast by the built form below. Therefore, no amenity impacts are generated;
- The proposed building form responds to Council's LEP controls in that provision is made for a contemporary building design that is complimentary to the height of buildings control objectives afforded to future development on the subject site;
- The departure sought will have no unreasonable impacts upon the amenity of neighbours in this precinct and
- The proposed building design is in the public interest as it promotes a quality built form that will engage in responding to greater social and economic benefits in the provision of quality high rise residential towers in a transitional neighbourhood that has excellent views of the immediate and broader catchments, including Parramatta CBD, Chatswood CBD, Sydney CBD and the Blue Mountains.

8.0 Conclusion

It is considered that the objection to the strict application of the building height development standard is unreasonable or unnecessary in this particular circumstance and the use of Clause 4.6 prescribed under THLEP 2019 to vary the building height control is appropriate because:

- The proposed development is permissible in the sites R4 High Density Residential zone and satisfies the zone and building height objectives;
- The variation proposed of 860mm or 1.51% above the 57m building height standard of Building B in a small triangular shaped area of the top floor is minor in the context of the buildings overall height, length and setbacks from both street frontages, ensuring that portion of the building above the standard is largely not visible from either the public or private domains;
- The increase in building height has no impact on maintaining the sites FSR of 3:1;
- The flexible application of this clause will enable a better planning outcome to be achieved for this site that will not generate any unreasonable environmental impacts;
- The proposed increase in building height has had due regard to the siting of the building without identifying any amenity impacts such as loss of solar access to the development site or neighbouring properties;
- The development will make a positive contribution to the transitional character of this neighbourhood;
- The proposal provides an architecturally sound development that is well articulated and modulated, and therefore presents well to both street frontages and will compliment the streetscape and as a result is in the public interest;
- The design is consistent with the underlying objectives of the building height development standard;

- The design satisfies the Land and Environment Court's test judgments for a well-founded objection to vary a development standard;
- The minor increase to the building height control does not undermine or inconsistent with the objects contained in Section 1.3 of the Environmental Planning & Assessment Act 1979:
- the proposal is consistent with all strategic planning studies including structure plans, in terms of providing housing in the right locations, such as better use of public transport (Castle Hill Metro Station and bus interchange), economics and employment within the Castle Hill business centre;
- the test in achieving the orderly and economic use of land is to achieve a better planning outcome with no adverse impacts being generated, which the proposal clearly complies with and the public interest test as it allows for the orderly and economic use of the land in an older residential neighbourhood, which is transitioning to a modern, well designed high density residential development that will enhance the streetscape and envisaged character of this neighbourhood.

The combined effect of these assessments confirms that the flexible application of the height standard is appropriate in this instance, the written request is well founded and that full compliance with the height standard would be unreasonable or unnecessary in the circumstances of this application.

The development standard is a local planning matter because it is contained within the THLEP 2019 and the variation of such standard will have no adverse impacts upon State or regional significance as a consequence of varying the development standard as proposed by this application.

Accordingly, in view of the above reasons it is in our opinion that the standard is unreasonable or unnecessary in the circumstances of the case and as such the height variation sought is in the public interest and warrants approval.

Yours sincerely,



Allan Caladine
Town Planning Consultant
28 May 2020

ALLAN CALADINE 
Town Planner MPlA

1 Lynbrook Court Castle Hill
NSW 2154

[T] (02) 9659 7211
[F] (02) 9659 7244
[M] 041 359 7295
[E] caladines@optusnet.com.au

Local Government Specialist
ABN 91 096 903 347

VOLUNTARY PLANNING AGREEMENT

THE HILLS SHIRE COUNCIL

AND

GARTH DIAMOND PTY LTD A.C.N. 603 431 072

AND

OLD DIAMOND PTY LTD A.C.N. 608 687 145



REGENCY LAWYERS
PO Box 394
Parramatta NSW 2124
Ph: 02 9633 9800
Fax: 02 9633 9833
Ref: JE:132446

**Planning Agreement
Summary Sheet**

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
	Developer	Name
Address		C/- Regency Lawyers 110 Harris Street, Parramatta NSW 2150
Telephone		02 9633 9800
Facsimile		02 9633 9833
Email		jack@regencylawyers.com.au
Representative		Sam Kassis
Land	6 Garthowen Crescent, Castle Hill NSW 2154 (Lot 23 in DP 222257)	
	8 Garthowen Crescent, Castle Hill NSW 2154 (Lot 24 in DP 222257)	
	10 Garthowen Crescent, Castle Hill NSW 2154 (Lot 25 in DP222257)	
	12A Garthowen Crescent, Castle Hill NSW 2154 (Lot 2 on SP 40627)	
	12 Garthowen Crescent, Castle Hill NSW 2154 (Lot 1 on SP 40627)	
	16 Garthowen Crescent, Castle Hill NSW 2154 (Lot 28 in DP 222257)	
	18 Garthowen Crescent, Castle Hill NSW 2154 (Lot 29 in DP 222257)	
	20 Garthowen Crescent, Castle Hill NSW 2154 (Lot 30 in DP 222257)	

Development Application	Not Yet Submitted
Instrument Change	The amendment of The Hills Local Environmental Plan 2012, as it relates to the Land, generally in accordance with the Planning Proposal.
Planning Proposal	24/2016/PLP
Dedication Land	Not Applicable
Works	Not Applicable
Monetary Contributions	See Schedule 1
Security Amount	Not Applicable

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Planning Agreement

Dated 16th December 2019

Parties

The Hills Shire Council ABN 25 034 494 656 of 3 Columbia Court, Norwest, NSW 2153 (Council)

GARTH DIAMOND PTY LTD A.C.N. 603 431 072 and OLD DIAMOND PTY LTD A.C.N. 608 687 145 C)- Regency Lawyers 110 Harris Street, Parramatta NSW 2150 (Developer)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (Act) for the Proposed Development.
- B. The Developer will be the registered proprietor of the Land.
- C. Through lodgement of the Planning Proposal, the Developer has made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for Development Consent.
- D. The Developer acknowledges that if the Development Consent is granted and the Proposed Development carried out it is likely to increase the demand for the provision of public facilities.
- E. As a consequence of the matters set out above, the Developer has offered to provide the Development Contributions on, and subject to, the terms set out in this document if the Instrument Change occurs.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are defined and explained in clause 18 of this document.

2. Planning agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of **Section 7.4** of the Act.

3. Application of this document

This document is made in respect of the Instrument Change and applies to the Land.

4. No restriction on Council's Powers

This document or anything done under this document:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and

- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

5. Operation of this document

- 5.1 Subject to clause 5.2, this document operates from the date it is executed by both Parties.
- 5.2 The Parties acknowledge that the Developer is not bound to provide the Development Contributions unless, and until, Council grants the Development Consent.

6. Monetary Contributions

6.1 Payment

The Developer must pay the Monetary Contributions by the times specified in **Schedule 1**. Payment of the Monetary Contributions may be made by cheque or bank transfer to Council's nominated bank account. **The Monetary Contributions are subject to Council providing a credit/rebate for the existing 8 dwellings/lots.**

6.2 Annual Increases

On each anniversary of the date of this document the Monetary Contributions applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the ABS Producer Price Index (Non-Residential Building Construction for NSW) #3020 most recently published prior to the relevant anniversary. The increased Monetary Contributions will be the Monetary Contributions in the subsequent 12 months.

6.3 Public Purpose

The Council will use reasonable endeavours to apply the Monetary Contributions towards public purposes.

7. Application of Section 7.11 and Section 7.12 of the EPAA

- 7.1 This document excludes the application of s.7.11 and s.7.12 of the Act to any Dwellings forming part of the Proposed Development.

8. Termination

8.1 Instrument Change

This document will terminate in the event that the Instrument Change does not occur.

8.2 Bankruptcy & Insolvency

Council may terminate this document by notice in writing to that effect to the Developer if:

- (a) Any company officer of the Developer becomes subject of bankruptcy proceedings or becomes a bankrupt.
- (b) The Developer becomes subject of external administration or insolvency proceedings.

9. Consequences

- 9.1 On the date of termination or rescission of this document, subject to the following subparagraphs each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.
- 9.2 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

10. Private Certifiers

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this document to the private certifier.

11. Notices

- 11.1 Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 11.2 Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.
- 11.3 Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

12. Breach Notice and Rectification

- 12.1 If the Developer is, in the opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- 12.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of written notification of the breach.
- 12.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council in remedying the breach.

13. Dispute resolution

13.1 Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

13.2 No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

13.3 Notice of disputes (Dispute Notice)

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

13.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

13.5 Assistance to the Expert (the Expert)

- (a) Once the Expert has been appointed (the Expert), the Parties must:
 - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
 - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

13.6 Expert's decision

- (a) The decision of the Expert must:
 - (i) be in writing and give reasons; and

- (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

13.7 Expert's costs

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- (b) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

13.8 Continual performance

Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.

14. Registration of document on Title

14.1 Acknowledgement

The Developer acknowledges that Council intends to register this document under section 7.6 of the Act on the Lands and on registration by the Registrar-General the document will be binding on and enforceable against the owners of the Lands from time to time as if each owner for the time being had entered into this document.

14.2 Consents to Registration

This document must be registered on the title of the Land by the Developer as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land.

14.3 Release from Registration

Council will at the request of the Developer release part of the Land from registration of this document where the Development Contributions have been made and no other money is owing to Council under this document. The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this document.

14.4 Registration Expenses

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this document and the subsequent removal of registration, on an indemnity basis.

15. Costs

15.1 The Developer is to pay to the Council, the Council's legal and any other costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this document within 7 days of a written demand by the Council for such payment.

15.2 It is noted that this is Council's standard practice and would not be waived or varied in this instance.

16. GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

17. General

17.1 Assignment

- (a) A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.
- (b) In the event that the Developer enters into a contract for the sale of the Land, the Developer (as vendor) shall disclose to the purchaser the existence of this document.

17.2 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

17.3 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

17.4 **Third parties**

This document confers rights only upon a person expressed to be a party, and not upon any other person.

17.5 **Pre-contractual negotiation**

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

17.6 **Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

17.7 **Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

17.8 **Waivers**

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

17.9 **Remedies**

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

17.10 **Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

17.11 **Party acting as trustee**

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right

and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

17.12 Representations and warranties

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under the document and that entry into this document will not result in the breach of any law.

17.13 Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

18. Definitions and interpretation

In this document unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979* (NSW)

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Construction Certificate has the same meaning as in the Act;

Development Consent means a development consent for the Proposed Development.

Development Contributions means payment of the Monetary Contributions in accordance with this document.

Dispute Notice means written notice provided by a Party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.

Dwellings means a separate residential dwelling constructed on the Land (and which for the purpose of clarity includes detached and attached dwellings).

- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

Schedule 1 – Monetary Contributions

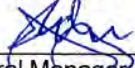
CONTRIBUTION TYPE	Public Purpose	CONTRIBUTION VALUE \$	TIMING OF PAYMENTS
Dwelling Monetary Contribution Payment	Local public infrastructure	For any Dwellings: \$24,699.75 for every 1 bedroom Dwelling. \$26,152.88 for every 2 bedroom Dwelling. \$36,323.17 for every 3 bedroom Dwelling. \$45,040.73 for every four-bedroom Dwelling. The above rates are subject to Council providing credits/rebate for the existing 8 dwellings/lots at the rate of \$46,493.65 per dwelling.	Prior to the issue of a Construction Certificate with respect to the relevant Dwelling.

Execution Page

Executed as agreement

Dated 19 December 2019


The common seal of **The Hills Shire Council** was affixed under a resolution passed by council on 10 DECEMBER 2019 in the presence of:


General Manager

MICHAEL EXUM
Print Name


Witness


NICHOLAS CARLTON
Print Name


Mayor

MICHELLE BYRNE
Print Name



Executed by **Garth Diamond Pty Limited** in accordance with s127 of the *Corporations Act 2001* (Cth):



Secretary/Director

SAM KASSIS
Print name


Director

SAM KASSIS
Print name

Executed by **Old Diamond Pty Limited** in accordance with s127 of the *Corporations Act 2001* (Cth):


Secretary/Director

SAM KASSIS
Print name


Director

SAM KASSIS
Print name

ATTACHMENT 16 – LETTER TO THE DEPARTMENT OF PLANNING INDUSTRY & ENVIRONMENT (3 PAGES)



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

22 January 2021

Catherine Van Laeren
Executive Director, Central River City and Western Parkland City
NSW Department of Planning Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Ms Van Laeren

SATISFACTORY ARRANGEMENTS FOR DA1611/2020/JP – 6-12 AND 16-20 GARTHOWEN CRESCENT, CASTLE HILL

I am writing to with respect to the application of Clause 6.2 of The Hills LEP 2019 to the above development application. Our view is that this clause does not apply in this instance as the trigger, being the subdivision of the site, does not form part of the development application under assessment.

Development Application DA1611/2020/JP

A development application for redevelopment of the site was formally lodged on 18 June 2020. The application seeks consent for the demolition of existing structures, consolidation of lots, and construction of a 13 and 18 storey residential flat building development, containing 196 units. This is generally consistent with the intended development outcome sought through the LEP amendment which rezoned the land for high density development.

Planning Proposal 24/2016/PLP

The land was rezoned for high density development on 18 June 2020 (Amendment No. 6 of LEP 2019). During the exhibition of the planning proposal, the RMS lodged a submission which raised concerns that a precinct-wide traffic and transport study has not yet been completed to assess the cumulative impacts on traffic and transport infrastructure and identify any necessary road transport upgrades and travel demand management measures required to support development uplift within the Castle Hill Precinct.

Despite the above position, the RMS suggested that if Council supported the planning proposal prior to the completion of the broader precinct-wide traffic study, Council and the Department should be satisfied that a suitable mechanism is in place to ensure that developer contributions are obtained for the provision of regional transport infrastructure required to support development uplift in the Castle Hill Precinct.

As part of its review of submissions, Council considered that the concerns of RMS would be satisfied through the payment of monetary contributions under the local Voluntary Planning Agreement for the site (15/2019/VPA) which would contribute towards the provision of transport infrastructure under the Castle Hill North Contribution Plan which includes an apportioned cost for a regional road infrastructure item (being the upgrade of the McMullen Avenue and Old Northern Road intersection). In recognition of this, at its meeting of 10 December 2019 Council resolved to progress the planning proposal to the Department for finalisation.

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On 22 May 2020 the State Government announced the planning proposal as part of Tranche 2 of the Planning System Acceleration Program which sought to inject investment into the NSW economy and keep people in jobs during the COVID-19 pandemic. The determination deadline for these projects was 18 June 2020.

As part of the finalisation of the LEP amendment, the Department identified the site on the Urban Release Area Map which triggers the need to comply with Clause 6.2 of the LEP (extract included as Attachment 1). This clause requires that development consent cannot be granted unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.

Despite the intention of the clause to apply to future redevelopment on the site, we are of the view that the wording of the clause would not enable it to be applied in this instance. The clause is specific in that *'Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area'* unless satisfactory arrangements are made. The development application under assessment does not involve subdivision of either land or strata units. Rather it only includes lot consolidation which is not defined as subdivision under the *Environmental Planning and Assessment Act 1979* and would not trigger the application of Clause 6.2.

Preliminary advice from Department officers has suggested that Clause 6.2 could simply be applied as part of a subsequent development application for strata subdivision. However, it is noted that strata subdivisions can be undertaken as complying development under SEPP (Exempt and Complying Development Codes) 2008. This planning pathway would omit any requirement for developments to address Clause 6.2 under the LEP and therefore developments may proceed without consideration of whether satisfactory arrangements have been made with respect to State infrastructure.

In any event, even though the clause is not considered to apply, Council officers are of the view that an appropriate item exists in Council's relevant contributions plan, which sets out an amount for contributions which is mirrored in the applicant's VPA which deals with regional traffic impacts expected out of this development.

Based on these circumstances Council officers propose to recommend to the Sydney Central City Planning Panel that the matter is able to be determined. The development application is tentatively scheduled to be reported to the Sydney Central City Planning Panel meeting of 18 February 2021.

Delaying determination of the application pending the finalisation of the precinct-wide traffic study for the Castle Hill Strategic Centre, which is unlikely to be completed until mid-2021, is not considered to be reasonable as the site formed part of the State Government Acceleration Program, and until such time as the construction commences the stimulus to the economy will not be realised.

If you have any queries in relation to this matter please contact Nicholas Carlton, Manager Forward Planning on 9843 0416.

Yours faithfully



David Reynolds
GROUP MANAGER – SHIRE STRATEGY, TRANSFORMATION & SOLUTIONS

6.2 Arrangements for designated State public infrastructure

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than—
 - (a) in relation to land shown as “Existing Urban Release” on the [Urban Release Area Map](#)—40 hectares, or
 - (b) in any other case—the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area,unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (3) Subclause (2) does not apply to—
 - (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or
 - (c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or
 - (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) This clause does not apply to a development application to carry out development on land in an urban release area if all or any part of the land to which the application applies is a special contributions area (as defined by section 7.1 of the Act).