

17 March 2021

The General Manager  
The Hills Shire Council  
3 Columbia Court  
Norwest NSW 2153

**Attention:** Claro Patag - Coordinator Development Assessment

**By Email:** cpatag@thehills.nsw.gov.au

Dear Sir / Madam,

**RE: PPSSCC-109 - Development Application DA 1611/2020/JP- Demolition of existing structures and construction of a 13 and 18 storey Residential Flat Building Development, containing 196 units, basement car parking and associated works – 6-18 Garthowen Crescent, Castle Hill**

PDK Urban Planners Pty Ltd (**PDK**) has been engaged by several of the residents of 9 and 11-13 Garthowen Crescent, Castle Hill (**Clients**) to review Development Application DA 1611/2020/JP (**DA**) which is for the “*Demolition of existing structures and construction of a 13 and 18 storey residential flat building development, containing 196 units, basement car parking and associated works.*” (**Proposal**) on the property known as 6-18 Garthowen Crescent, Castle Hill (**Property**) and to subsequently make this submission to The Hills Shire Council (**Council**) and subsequently to the Sydney Central City Planning Panel (**Panel**).

It should be noted that this submission has been prepared on the basis of a site inspection and a desktop review of the documents provided on Council’s and the Panel’s website as a result of the public exhibition of the DA together with the Assessment Report that has been submitted to the Panel for the determination of the DA. On this basis, PDK makes the following submission on behalf of the Clients.

(a) **Heritage**

Section 4.8 of ‘Part D20 Castle Hill North Precinct’ of *The Hills Development control Plan (DCP)* states (our emphasis in **bold**):

**“Objectives**

**a. To ensure that development within the vicinity of Garthowen House does not impact on the heritage significance of the heritage item.**

**Controls**

- 1. Development in the vicinity of Garthowen House shall have regard to Part C Section 4 – Heritage of this DCP.**
- 2. The curtilage of the heritage item, being the existing allotment boundary of 14 Garthowen Crescent (Lot 2 DP 533390), shall be maintained and protected.*
- 3. Development on sites within the vicinity of Garthowen House shall be designed to ensure that building elements, which interface the western boundary of the**

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**heritage site, have a maximum height of (4) four storeys or no more than 13.5m in height whichever is the lessor (exclusive of building services).**

4. *Development on sites adjoining the heritage item should consider locating landscaped areas and common open space areas between future building elements and the heritage site to assist in providing greater separation between the heritage cottage and future development.*
5. **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.**
6. *Development within the vicinity of the heritage site shall ensure that significant view lines to and from the heritage item are appropriately maintained.*
7. *Development on land at 6-12 and 16-20 Garthowen Crescent, adjoining the heritage item shall ensure a sensitive visual response and relationship to Garthowen House, as demonstrated in Figure 30 – Site Structure Plan below. The development shall incorporate the following:*
  1. *A deep soil communal open space of at least 1,900m<sup>2</sup> directly adjacent to the west of the heritage item;*
  2. *A minimum setback of 6 metres to the boundary with 14 Garthowen Crescent for building fronting the southern side of Garthowen Crescent; and*
  3. *A minimum setback of 35 metres to the boundary with 14 Garthowen Crescent for building fronting the northern side of Garthowen Crescent.”*

The objective of Section 3.5 of Part C4 of the DCP is to:

*To ensure that the development of land in the vicinity of a heritage site is undertaken in a manner that complements the heritage significance of the site.*

In order to achieve such an objective, Section 3.5 specifies a number of development controls including the following controls (our emphasis in **bold**):

**(b) New structures proposed on land adjoining a heritage building should be of similar scale and proportions to the heritage building.**

*(c) Where development is proposed within the vicinity of a heritage site, the following matters must be taken into consideration:-*

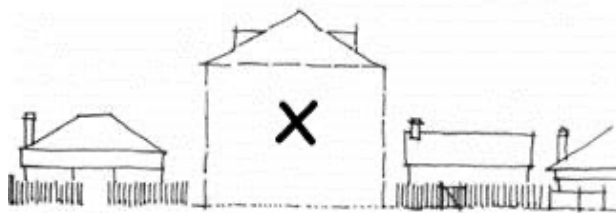
- **the character, siting, bulk, height and external appearance of the development;**
- *the visual relationship between the proposed development and the heritage site;*
- *the potential for overshadowing of the heritage site;*
- *the colours and textures of materials proposed to be used in the development;*
- *the landscaping and fencing of the proposed development;*
- *the location of car parking spaces and access ways into the development;*
- *the impact of any proposed advertising signs or structures;*

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- *the maintenance of the existing streetscape, where the particular streetscape has particular significance to the heritage site;*
  - *the impact the proposed use would have on the amenity of the heritage site; and*
  - *the effect the construction phase will have on the well being of a heritage building.*

Further Section 3.5 of Part C4 of the DCP expressly states in writing and diagrammatically that:

*“New buildings on land adjoining a heritage building should be sympathetic in terms of siting, scale, proportions, materials and colours.”*

In support of such a statement, Section 3,5 of Part C4 of the DCP incorporates the following diagram to further enforce such a statement:



While it is acknowledged that the DCP contains an indicative layout plan for the Proposal (Figure 130 at page 29) and the terms of control 7 reflect that plan, it is respectfully submitted that such a plan and control should not be relied upon for the purpose of determining the DA, as they do not represent a development that satisfies the terms of control 5 nor the relevant requirements of Part C4 of the DCP. In this regard, it is submitted that the provisions of control 5 and those identified above from Part C4, should prevail as to in any inconsistency with the provisions of control 7 and the indicative layout plan. This is because the objectives of control 5 and Part C4 are unambiguous and represent sound planning practices in terms of protecting heritage items.

It is also noted that the Proposal does not satisfy the requirements of control 3 in that Building B does not provided the required building element.

We are of the opinion that at the very least, the Proposal should firstly be amended so that Building B achieves a maximum building height of four (4) storeys. Consideration could then be given to the height of Building A being increased to eighteen (18) storeys. Such an amendment would, in our opinion achieve the objectives of the DCP as to providing for an acceptable transition in height towards the Garthowen House.

#### **(d) Traffic, Car Parking and Vehicular Access**

We are of the view that in the absence of a comprehensive regional road network traffic study and a funded implementation plan for the extensive provision of necessary road network improvements prior to development occurring, the DA should not be approved, This is because in the absence of these road improvements, the impacts of any high density residential development (as contemplated under the Castle Hill North Precinct Structure Plan) on the local road network will be unacceptable.

In support of our traffic and parking concerns, TEF Consulting was commissioned by the Clients to undertake a peer review of the Applicant's traffic and car parking impact report (Refer to **Annexure 1**). In essence, TEF Consulting is of the opinion that further information

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is required to fully ascertain determine the traffic impacts of the Proposal. That information includes, but is not limited to:

- (a) information about the existing traffic flows in Garthowen Crescent and any assessment of the impacts of the additional traffic as a result of the Proposal on that road;
- (b) an assessment, including modelling, of the performance of the key access intersection, including impacts on safety;
- (c) information about the impact of the No Right Turns at the southern intersection of Garthowen Crescent on the properties in Garthowen Crescent;
- (d) an assessment of the adequacy of the street width in combination with existing (not counted) and future traffic flows;
- (e) an assessment of the impacts on the safety of vehicular movements from the adjacent and significant child care centre that operates from Garthowen House;
- (e) a comprehensive assessment of the manoeuvrability within and the adequacy of the loading dock dimensions in the event that waste collection vehicles are larger than 8.8 m in length (which is likely).

**(e) Setbacks**

Part 5.2 of the DCP states that the objectives of the setback requirements are as follows (our emphasis in **bold**):

1. *To provide strong definition to the public domain and create a consistent streetscape.*
2. ***To set taller building elements back from the street to reduce building scale and bulk and enable adequate sunlight access to the public domain.***
3. *To provide articulation zones to complement building mass and emphasise key design elements such as entrance points and respond to environmental conditions including solar access, noise, privacy and views.*
4. *To ensure adequate separation between buildings on different sites to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.*
5. ***To facilitate a landscaped streetscape that can accommodate larger trees.***

It is noted that the Assessment Report to the Panel clearly states that the Proposal does not comply with the upper floor setback requirements of the DCP to both proposed buildings A and B. In support of such a variation, we note that that Applicant has stated (at page 37 of the Assessment Report) that (our emphasis added in **bold**):

*“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.** Further, the Applicant states that the variation should be allowed for a variety of other reasons, including:*

- *Building A continues to step away from the Garthowen Crescent northern loop road;*

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- *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;*
  - *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 our respectful submission, such reasons do not satisfactorily address the objectives nor do they provide sound planning grounds for the variation to the setback controls for the following reasons:

- (a) Compliance with the development standards of the THLEP 2019 that pertain to the Proposal, do not represent a right for an Applicant to maximise the development on a site but rather a privilege. That privilege should only be granted by the consent authority after it has considered the site constraints, the context of the property in light of the existing and future character of the locality and the compliance of the proposal with all relevant planning controls including those of the DCP. The mere statement in this case by the Applicant that strict compliance with the upper floor setback controls would mean that the FSR and height of the building would need to be reduced is not justifiable planning grounds for the variation to the setback controls;
- (b) The Applicant's reasons for the upper floor setback variations predominantly address the objectives of the DCP as they relate to the internal separation between proposed Buildings A and B. They do not satisfactorily address the other objectives. Any variation to a requirement of the DCP should satisfactorily address all of the objectives. To this end, we are of the view that the upper floor setbacks should be strictly applied. Indeed we are of the view that strict compliance with the upper floor setback controls may assist in negating the breach in the height control.

We also note that the Applicant seeks a variation to the primary setback to that part of the basement car parking structure that is to be constructed along the Garthowen Crescent (North) frontage. The basement car parking area is to be setback from such a frontage with a maximum front setback of 1.9 metres instead of the required 7 metres. In this regard, the Applicant states that this variation should be supported for the following reasons:

*"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*

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*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.*

In our respectful submission, we are of the view that the front setback requirement of 7 metres should strictly be provided to the basement car parking structure so as to enable ample deep soil landscaping to provide for trees that will be of a substantial height when fully mature. This will assist in softening the visual impact of proposed buildings when viewed from Garthowen Crescent (North).

We are skeptical that trees that can achieve substantial heights to soften the visual impacts of the building can be accommodated within the proposed reconstituted landscape areas that are currently proposed above the basement structure.

We also question how such a variation to the setback controls assist in satisfying the objectives of Part 4.3 of the DCP in terms of Integrated Water Management. In this regard, the variation will result in minimizing deep soil zones within the site thereby contradicting control 17 of that part of the DCP which states (our emphasis in **bold**):

17. *To minimise the impact of stormwater on the health and amenity of upper Cattai Creek Catchment, stormwater is to be retained on development sites by:*
- *collecting and storing water from roofs and hard surfaces;*
  - ***maximising porous surfaces and deep soil zones;** and*
  - *draining paved surfaces to adjacent vegetation.*

Finally, we note that the Assessment Report does not clarify whether the Proposal complies with any required side and rear setback requirements.

**(f) Bulk, Scale and Height**

It is noted that the Applicant has submitted a cl 4.6 variation request as to the overall height of the proposed development.

The Applicant has stated that the height variation is predominantly as a result of the topography of the site.

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While it is acknowledged that it would appear that the variation only applies to a minor area of Building B, it nevertheless is a departure from the relevant development standard that in our opinion, should not be supported as the variation could be negated if the development complied with the upper floor setback controls. Accordingly, we are of the view that the cl 4.6 variation does not identify sufficient environmental planning grounds to support the variation nor is compliance with the relevant development standard unnecessary or unreasonable in this case.

If however, the Panel was of the mind to support the variation, we would hasten to add that we are still of the opinion that the overall height of the Building B at 57 metres is still excessive when considering the vicinity of Garthowen House. In this regard, the Castle Hill North Structure Plan (as identified at page 10 of the DCP) clearly indicates a proposed height requirement of 3 to 18 storeys for the subject site. When this is read in context with the heritage controls of the DCP as to Garthowen House, it is our opinion that the height of Building B should be reduced to no more than four (4) storeys.

**(g) Dedication for Road Widening**

We respectfully question the power for the relevant consent authority to require the dedication to Council of part of the Subject Site for the purpose of road widening. In the absence of any specific requirement to do so under the voluntary planning agreement or through the mechanism of compulsory acquisition, any condition of consent requiring the dedication would in our opinion, be open to legal challenge as to its validity and enforceability.

**(h) Urban Release Area**

Clause 6.3 of THLEP 2019 states (our emphasis in **bold**):

- (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.***

In this regard, we note that the Assessment Report confirms that the provisions of such a clause are applicable to the proposed development. In doing so, the Assessment Report states (our emphasis in **bold**):

*“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.**”*

We are of the view that the fact that written evidence needs to be provided to substantiate compliance with such a requirement after the consent has been granted is contrary to the

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requirements of this clause and as such the consent authority cannot grant consent until such time that it is satisfied that it indeed can be achieved.

**(i) Voluntary Planning Agreement**

The Assessment Report states on several occasions that:

*“The VPA for the site would contribute towards the provision of local public transport infrastructure under the Castle Hill North Contribution Plan...”*

The relevant VPA provided a public benefit in the form of monetary contributions. However, on review of the VPA, the purpose for which the monetary contributions are to be utilized only specifies (at Schedule 1 of the VPA) as *“Local public infrastructure”*. With respect, this is inconclusive as to the use of such contributions for the provision of road facilities to cater for additional traffic demand within the immediate locality.

We also advise that a random title search of the Property (Refer to **Annexure 2**) has indicated that the VPA may not be registered on title. Further there is no assignment or novation provisions within the VPA. The effect of these deficiencies is that the VPA will not bind any successor as to title. Accordingly, should the Property be on sold without the VPA being registered on the title then the incoming purchaser may not be subject to any obligations under the terms of the VPA. If this were to occur, proposed condition of consent 6 may also be subject to legal challenge.

**(j) Conclusion**

In view of the above, it is considered that the Proposal as submitted warrants refusal for a number of reasons, including but not limited, to the following:

- (k) Further consideration needs to be given to the cumulative impacts of the development and any future development within the immediate locality upon the local and regional road network before any determination of a DA for high density residential development on the Property occurs;
- (ii) The variation request pursuant to cl.4.6 as to the breach in the height development standard contained within THLEP 2019 does not, in our opinion, satisfactorily justify the departure from the relevant standard;
- (iii) It will detract from the heritage importance of Garthowen House due to its height, bulk, scale and setbacks;
- (iv) The Panel cannot be satisfied that the provisions of cl.6.3 (Public utility infrastructure) of TLHEP 2019 have been satisfied and as such, it is precluded from granting consent;
- (v) The Panel, as the consent authority, does not in our opinion, have the power under the relevant provisions of the *Environmental Planning and Assessment Act 1979*, to compel the Applicant to dedicate part of the Property for road widening purposes; and

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(vi) The provision of inadequate setbacks to the upper floor areas of the buildings and to the northern basement car parking structure.

Yours sincerely,



Paul Kapetas

Director

**PDK Urban Planners Pty Ltd**

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**Annexure 1:** Peer Review of Traffic Impact Assessment by TEF Consulting dated 17 March 2021.

**Annexure 2:** Title search for 6 Garthowen Crescent, Castle Hill