

**DETERMINATION AND STATEMENT OF REASONS**  
SYDNEY CENTRAL CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	1 April 2021
<b>PANEL MEMBERS</b>	Abigail Goldberg (Chair), David Ryan, Susan Budd and Mark Colburt
<b>APOLOGIES</b>	Gabrielle Morrish
<b>DECLARATIONS OF INTEREST</b>	Chandi Saba declared a conflict and advised that she was involved with the VPA in this matter. Stewart Seale advised that he was Manager Forward Planning at the time of discussions with the developer and submission of planning proposal and assessment and will not sit on the Panel.

Public meeting held by public teleconference on 18 March 2021, opened at 10.30am and closed at 11.25am.

Subsequent to this, the Panel adjourned to enable consideration of a late submission as well as the response of the applicant to this submission; in addition to administrative advice from the Department of Planning Information and Environment which was outstanding at the time of the public meeting.

The Panel met via teleconference on 29 March 2021 to determine the matter.

**MATTER DETERMINED**

PPSSCC-109 - 1611/2020/JP - The Hills Shire, 6-12 & 16-20 Garthowen Crescent, Castle Hill, construction of a 13 storey (Building A) and an 18 storey (Building B) Residential Flat Building comprising together 196 apartment units over four (4) levels of basement car parking containing 236 car parking spaces (as described in Schedule 1).

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings as well as the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned following the public meeting to enable deliberation of the matter and to formulate a resolution.

**Application to vary a development standard**

Following consideration of a written request from the applicant, made under cl 4.6 (3) of The Hills Local Environmental Plan 2019 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP;
- b) the cl 4.6 (3) request relates to a minor breach only of the building height control;
- c) the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the R4 High Density Residential zone; and
- d) the concurrence of the Secretary has been assumed.

### **Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to conditions as proposed by Council with the changes to Condition 84 and the addition of Condition 84A to provide greater certainty relative to site remediation, should this be required.

The decision was **unanimous**.

### **REASONS FOR THE DECISION**

- The Department of Planning Industry and Environment has confirmed in correspondence dated 25 March 2021 that there is no requirement for satisfactory arrangements for designated State public infrastructure to be in place before Council issues consent. The Department notes in this correspondence that Council and the applicant have entered into a Voluntary Planning Agreement (15/2019/VPA) that addresses regional traffic impacts expected out of this development, and outlines contributions towards the provision of local public transport infrastructure under the Castle Hill North Contribution Plan, and includes an apportioned cost for the upgrade of McMullen Avenue and Old Northern Road, which are regional road infrastructure items.
- The site is considered suitable for the development.
- The design response to the adjoining heritage item, Garthowen House, is considered to be appropriate.
- The built form, urban design and landscaping proposals are regarded as satisfactory for the site and its context.
- Traffic, car parking and vehicular access are regarded as having been adequately addressed for the site, noting that regional traffic planning is ongoing.
- The proposal is regarded as adequately satisfying the relevant state and local planning provisions.
- The Clause 4.6 variation request is considered to be related to a minor variation only of the height control, with the proposed variation enabling a development consistent with the relevant planning objectives. Compliance with the standard is regarded by the Panel as unreasonable and unnecessary in this instance.
- The proposal is considered to be a well-designed response to the planning controls for the site which is identified as a key site in the Castle Hill North Precinct (an urban release area).
- The proposal is considered to have no unacceptable impacts on the built or natural environments.
- The proposal is regarded as being in the public interest.

### **CONDITIONS**

The development application was approved subject to the conditions listed in the Council Assessment Report, with the changes to Condition 84 and the addition of Condition 84A to read as follows -

#### **84. Further Contamination Assessment**

A Detailed Site Investigation shall be carried out and a report submitted to Council's Manager- Environment and Health.

#### **84A. Remediation Action Plan**

Should the Detailed Site Investigation recommend remediation, a Remediation Action Plan (RAP) will be prepared and submitted to Council's Manager- Environment and Health, and remediation undertaken in accordance with the RAP.

### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel notes that there were 41 written submissions received during the public exhibition, and one late submission dated 17 March 2021 on behalf of several residents of 9 and 11 – 13 Garthowen Crescent, Castle Hill.





Submissions addressed issues of:

- Traffic, car parking and vehicular access

- Inappropriate building height
- Loss of significant trees
- Density and built form
- Setbacks
- Dedication for road widening
- Contradiction of the Castle Hill North Precinct Plan
- Contradiction of clause 6.3 of The Hills Local Environmental Plan
- Impact on adjacent heritage item (Garthowen House)
- Solar access
- Noise impact
- Oversupply of high-rise apartments
- Loss of views
- The Voluntary Planning Agreement (VPA) related to the site
- Property devaluation

The Panel has carefully considered the issues raised by submitters and believes that where possible they are addressed by the conditions recommended by Council.

The Panel believes the issues do not warrant refusal of the application, which is generally compliant with the applicable zoning and planning controls and objectives.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 Susan Budd
 David Ryan	 Mark Colburt

SCHEDULE 1		
1	<b>PANEL REF – LGA – DA NO.</b>	PPSSCC-109 - 1611/2020/JP - The Hills Shire
2	<b>PROPOSED DEVELOPMENT</b>	Construction of a 13 storey (Building A) and an 18 storey (Building B) Residential Flat Building comprising together 196 apartment units over four (4) levels of basement car parking containing 236 car parking spaces
3	<b>STREET ADDRESS</b>	6-12 & 16-20 Garthowen Crescent, Castle Hill
4	<b>APPLICANT/OWNER</b>	Sam Kassis c/ Kim Pearce (Turner)
5	<b>TYPE OF REGIONAL DEVELOPMENT</b>	Capital Investment Value over \$30 million
6	<b>RELEVANT MANDATORY CONSIDERATIONS</b>	<ul style="list-style-type: none"> <li>• Environmental planning instruments:</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No 55 – Remediation of Land</li> <li>• SEPP 65 – Design Quality of Residential Apartment Development</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP Building Sustainability Index: BASIX 2004</li> <li>• The Hills Local Environmental Plan 2019</li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans:</li> </ul>

		<ul style="list-style-type: none"> <li>• DCP 2012 Part D Section 20 – Castle Hill North Precinct</li> <li>• DCP 2012 Part C Section 3 – Landscaping</li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: [Nil]</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Council assessment report: March 2021</li> <li>• Applicant’s architectural and landscaping plans</li> <li>• Applicant’s Clause 4.6 variation written request</li> <li>• Written submissions received during the public exhibition: 41</li> <li>• Late submission received prior to the public meeting from PDK Urban Planners: 1</li> <li>• Department of Planning, Industry &amp; Environment letter dated 25 March 2021 regarding the interpretation and application of Clause 6.2 arrangements for designated State public infrastructure (Clause 6.2) of the Hills Local Environmental Plan 2019 (the LEP)</li> <li>• Applicant’s response to PDK submission (dated variously 24 and 25 March 2021)</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ In support – Nil</li> <li>○ In objection – Paul Kapetas of PDK Planners on behalf of several residents of Garthowen Crescent</li> <li>○ On behalf of the applicant – Stephen Cox, Chris Palmer and Annabel Spillane</li> <li>○ On behalf of The Hills Shire Council - Cameron McKenzie – Group Manager Development and Compliance, Paul Osborne – Manager Development Assessment Claro Patag – Specialist Planner, Myone Webber – Landscape Assessment Officer, Rodney Paritt – Principal Coordinator – Traffic and Roads Management.</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Site inspection: Site inspections have been curtailed due to COVID-19. Where relevant, Panel members undertook site inspection individually.</li> <li>• Final briefing to discuss council’s recommendation, 18 March 2021 (teleconference) <ul style="list-style-type: none"> <li><b>Attendees:</b> <ul style="list-style-type: none"> <li>○ <u>Panel</u>: Abigail Goldberg (Chair), David Ryan, Susan Budd and Mark Colburt</li> <li>○ <u>Council assessment staff</u>: Cameron McKenzie, Paul Osborne and Claro Patag</li> </ul> </li> <li><b>Points discussed:</b> <ul style="list-style-type: none"> <li>• Outstanding response from Department of Planning, Industry &amp; Environment regarding the interpretation and application of Clause 6.2 arrangements for designated State public infrastructure (Clause 6.2) of the Hills Local Environmental Plan 2019 (the LEP)</li> <li>• Heritage in relation to Garthowen House</li> <li>• Traffic, car parking and vehicular access</li> <li>• Urban design, including setbacks, built form, landscaping and density</li> </ul> </li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Dedication for road widening</li> <li>• Clause 6.3 of the Hills Local Environmental Plan regarding land in an urban release area</li> <li>• Elements of the Voluntary Planning Agreement (VPA).</li> </ul> <ul style="list-style-type: none"> <li>• Panel discussion and determination, 29 March 2021, addressing material listed at item 7.  <b>Attendees:</b> <ul style="list-style-type: none"> <li>○ <u>Panel members:</u> Abigail Goldberg (Chair), David Ryan, Susan Budd and Mark Colburt</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Approval subject to conditions in Council Assessment Report March 2021.
<b>10</b>	<b>DRAFT CONDITIONS</b>	As listed in Council Assessment Report dated March 2021.