

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>PPSSCC-311</b>
<b>DA Number</b>	<b>866/2022/JP</b>
<b>LGA</b>	<b>The Hills Shire Council</b>
<b>Proposed Development</b>	Demolition of Existing Structures and Construction of Four Residential Flat Buildings and Terrace Dwellings comprising a total of 118 units and basement car parking
<b>Street Address</b>	2 – 22 Larool Crescent and 44 – 50 Carramarr Road Castle Hill, Lots 5 – 14 DP 232658 and Lots 17 – 19 DP 237030
<b>Applicant/Owner</b>	Castle Larool Dm Pty Ltd/ Mr KD Y Cao, Mr Z Elkass, Mrs E Elkass, Mr W Liu, Mr J Banicevic, Mrs E L Banicevic, Mrs H J Griffiths, Mr W Z Ye, Ms F Jiang, Mr Z Liu, C & W Pty Ltd, Mr R B Potter, Mrs T M Potter, Mrs S N Flanders, Mrs D M Flanders, Mr N Siafakas, Ms R A Schirripa, Mr A E Farlow, Mrs T M Farlow, Mr G Xiao and Mr N B Kong.
<b>Consultant/s</b>	Mecone – Planner PTW – Architects Site Image – Landscape Architects Newton Fisher Group – Cost Summary Varga Traffic Planning – Traffic and Parking Assessment Australis Tree Management – Arborist PKA Acoustic Consulting – Acoustic Report AED Group – BCA Compliance Report EI Australia – Preliminary Site Investigation and Geotechnical Report ACOR Consultants – Flood Impact Assessment LTS – Survey Plans
<b>Date of DA lodgement</b>	30 November 2021
<b>Number of Submissions</b>	Five
<b>Recommendation</b>	Deferral
<b>Regional Development Criteria - Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021</b>	CIV exceeding \$30 million (\$51,865,000)
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)</li> <li>• The Hills Local Environmental Plan 2019</li> <li>• The Hills Development Control Plan 2012 <ul style="list-style-type: none"> <li>• Part B Section 2 – Residential</li> <li>• Part B Section 5 – Residential Flat Building</li> <li>• Part B Section 10 – Medium Density Residential (Terraces)</li> <li>• Part C Section 1 – Parking</li> <li>• Part C Section 3 – Landscaping</li> <li>• Part D Section 20 – Castle Hill North</li> </ul> </li> </ul>
<b>List all documents submitted with this report for the Panel's</b>	<ul style="list-style-type: none"> <li>• Plans</li> <li>• Clause 4.6</li> </ul>

<b>consideration</b>	
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>• The Hills Local Environmental Plan 2019 (LEP)</li> <li>• Clause 7.11A Development on certain land within the Castle Hill North Precinct</li> <li>• R4 High Density Residential</li> </ul>
<b>Report prepared by</b>	Cynthia Dugan - Principal Coordinator Development Assessment
<b>Report date</b>	1 December 2022 (Electronic Determination)

#### **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? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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

#### **Conditions**

Have draft conditions been provided to the applicant for comment? **No**

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

- The proposal comprises a mixed-use residential development with four residential flat buildings and multi dwelling terrace housing comprising a total of 118 units and basement car parking within the Castle Hill North Precinct which has recently been rezoned for higher density development. When the Castle Hill North Precinct was rezoned, it was acknowledged that a number of overland flowpaths were present within the Precinct which would be a considerable constraint to future development between Les Shore Place and Larool Crescent, and from Carramarr Road to Castle Street and that upgrades and enlargement to the stormwater drainage system would be required to ease the impacts of overland flowpaths on affected land. It was also acknowledged that sensitive management of the remnant flows through innovative design would be required to reduce identified hazards. It was envisaged that the delivery of these upgrades and management of the remnant flows would be realised by the developer, should they develop the land prior to Council undertaking a precinct wide investigation on the actual upgrades required for the Precinct. Council's Waterways Team are currently undertaken investigations on the drainage upgrades required for the Precinct.
- The proposal has not demonstrated compliance with the flood planning provisions under Clause 5.21 of The Hills LEP 2019. The site is identified as flood prone land as an overland flow path exists along the south-eastern corner of the site. The current plans include this overland flow path through a portion of the eastern building in the south-eastern corner. The Applicant has not provided the required information to ensure that the development is compatible with the flood function and behaviour on the land, will not adversely affect flood behaviour in a way that results in detrimental increase in the potential flood affection of other properties or incorporated appropriate measures to manage risk to life in the event of a flood. In this regard, the Clause prohibits development consent to be granted to development on the land. Notwithstanding, the Applicant is seeking to address this outstanding issue with the submission of flood modelling and revised flood impact assessment. Should the flood impact assessment demonstrate that the above is satisfied and minimal changes are made to revised plans, the application can ultimately be recommended for approval.
- The proposal does not comply with the maximum three storey heights along frontages required for a bonus Floor Space Ratio to be applied under Clause 7.11A of the LEP. Under Clause 4.4 of the LEP, the site is subject to a FSR (base) standard of 1:1 however, Clause 7.11 of the LEP permits an incentive FSR of 1.2:1 if the relevant subclause provisions regarding unit mix, sizes and car parking are met. An additional 20% of the incentive FSR is also permitted under Clause 7.11A of the LEP as the land is identified as "Area K" on the Key Site Map if the buildings fronting Larool Crescent and Carramar Road does not exceed three storeys in height and pedestrian links are provided within the site. The proposal results in five storey residential flat buildings with three storey terrace edges along the frontages which does not technically comply with this Clause. The Applicant has submitted a Clause 4.6 written submission to vary this standard. Subject to the flood planning provision being satisfied and all engineering and landscaping issues are resolved, the written submission is considered well founded, compliance with the standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify the variation.
- The proposal has been assessed under the provisions of SEPP No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. The proposal results in variations to the design criteria with respect to building separation, solar access, natural cross ventilation, communal open space and ground level private open space depth. Whilst these variations could be supported as sufficient privacy mitigation measures have been implemented and appropriate residential amenity is

provided, a complete assessment of the application cannot be made unless the flood planning provisions are satisfied, all engineering and landscaping issues are resolved, and minimal changes are made to the development.

- The proposal has been assessed under the provisions of The Hills DCP 2012. The proposal has not demonstrated that the objectives under the integrated water management controls under Part C Section 6 Flood Controlled Land and Part D Section 20 Castle Hill North of the DCP have been achieved. Variations have also been identified with respect to the Precinct Specific Controls including road upgrade works, site coverage, landscaping, building length and ground level unit design. A complete assessment of the application cannot be made unless the flood planning provisions are satisfied, and all engineering and landscaping issues are resolved.
- The application was notified for 14 days and five submissions were received during the notification period. The concerns raised primarily relate to traffic congestion, insufficient street parking, setbacks, height, decrease in land values, privacy and noise impacts. Subject to the engineering and landscaping matters being resolved, the above concerns do not warrant refusal of the application.

Given the proposal is generally satisfactory except for the matters raised in relation to flood planning as the Applicant is working to identify the actual drainage system upgrades to mitigate flooding not realised when the precinct was rezoned and that other engineering and landscaping matters will follow the resolution of the flooding issues, it is considered appropriate to defer determination of the development application, to allow the Applicant to respond to the issues raised and enable continued assessment by Council staff.

## BACKGROUND

### Castle Hill North Precinct

The subject site falls within the Castle Hill North Precinct which was identified for higher density residential development in the 2013 Sydney Metro Northwest (formerly North West Rail) Urban Renewal Corridor strategy which was prepared by the Department of Planning and Environment (DPE).

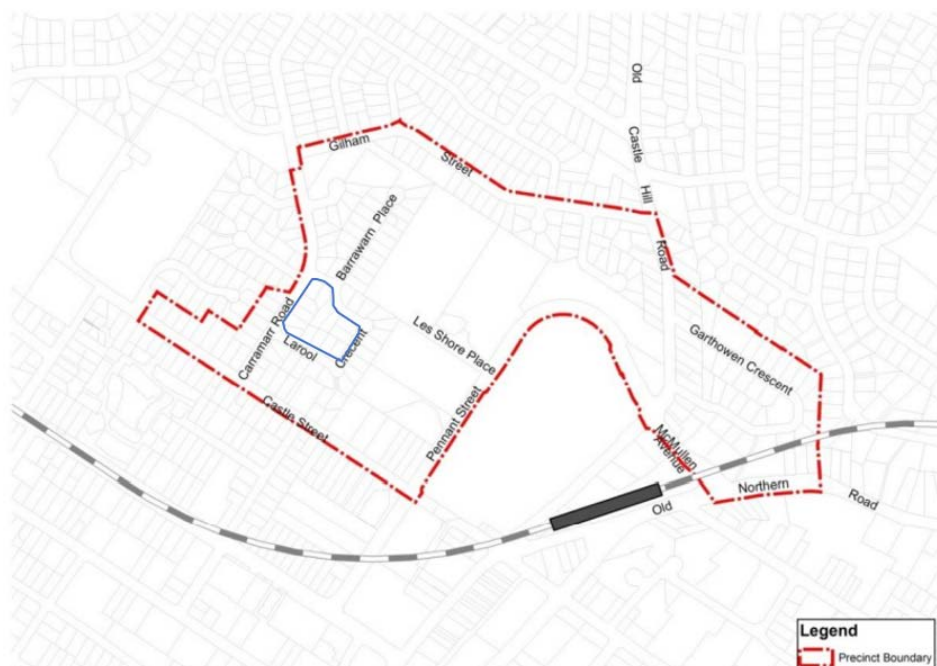


Figure 1 – Castle Hill North Precinct (Location of Subject Site Shaded in Blue)



Council originally submitted a planning proposal for the Castle Hill North Precinct to the Department of Planning and Environment (DPE) for finalisation in November 2018 and at this time, also adopted an associated Development Control Plan (DCP) for the Precinct and amendments to the existing Parking DCP, both of which took effect in line with the gazettal of the planning proposal. Council was unable to exercise its delegation to finalise the planning proposal, due to outstanding State Government agency objections from Transport for NSW and Land and Housing Corporation. Accordingly, the Minister was ultimately responsible for the final determination.

It is noted that the proponent had previously lodged a planning proposal (12/2018/PLP) for this site on 23 February 2018 seeking amendments to planning controls to facilitate higher density development (more than the standards exhibited as part of the Castle Hill North Planning Proposal). However, in response to concerns raised by Council, the proponent subsequently amended the proposal to generally align with the proposed standards within the Castle Hill North Planning Proposal (with a slight alteration to the required unit mix requirements).

The Castle Hill North planning proposal envisaged the site to be developed as five storey residential flat buildings with three storey “terrace edges” and applied the following Floor Space Ratio potential for the site:

- Base FSR (FSR 1:1) – 10,051m<sup>2</sup> Gross Floor Area – 100 dwellings;
- Incentive FSR (FSR 1.2:1) – 12,061m<sup>2</sup> Gross Floor Area – 120 dwellings;
- 20% GFA Bonus for inclusion of a through site pedestrian link and concentration of development within the centre of the site (FSR 1.44:1) – 14,473m<sup>2</sup> Gross Floor Area – 144 dwellings

The Development Application seeks consent for 118 dwellings which is below the residential yield envisaged on the site under the planning proposal.

On 17 July 2020, the DPE gazetted amendments to the Hills LEP for Council’s planning proposal for the Castle Hill North Precinct Planning Proposal (16/2016/PLP) as part of ‘tranche three’ of the Government’s Planning System Acceleration Program.

To ensure consistency with the amendments to the planning proposal made by the DPE, at its meeting of 24 November 2020, Council resolved to adopt draft amendments to Part D Section 20 – Castle Hill North of The Hills DCP. The amendments to the precinct specific DCP controls came into force on 18 December 2020.

#### Pre-lodgement Meetings

Two pre-lodgement meetings (34/2022/PRE and 46/2022/PRE) were held on 10 September 2021 and 1 October 2021 for the development proposal. Pre-lodgement notes were issued to the Applicant for both meetings identifying that the development is subject to flooding and the flood risk precincts and extents will need to be accurately delineated based on site specific flood level information to be obtained from Council’s Waterways section and detailed ground survey of the site. This, together with a pre and post development flood model and a flood compliance/impact report demonstrating how the proposal will meet the relevant requirements of Part C - Section 6 – Flooding Controlled Land of Council’s DCP 2012 was requested to be submitted with the Development Application.

#### The Development Application

Development Application 866/2022/JP was lodged on 30 November 2021.

A kick-off briefing to the SCCPP was held on 21 December 2021.

A further briefing to the SCCPP was held on 17 March 2022. The Panel noted the following:

*The Panel has no concluded position on the disputed issue of the compliance of the proposed development with Clause 7.11A(3)(g)(i). However, if the applicant proceeds with the currently proposed building heights, the Panel considers that it would be prudent for the applicant to submit a ‘without prejudice’ Clause 4.6 variation request. Without offering any opinion at this stage on the merits of the proposed building form and FSR, if such a request is properly formulated, this would alleviate any procedural concerns if the Panel is ultimately minded to grant consent to the application.*

*In relation to the DCP variations identified by Council, the Panel would require considerable justification to be provided before it would be willing to support any such variations.*

The Applicant has provided a Clause 4.6 written submission to vary Clause 7.11A of the LEP and provided further justification for variations to the DCP.

#### Waste and Landscaping Concerns

On 17 December 2021, a request for additional information letter was sent to the Applicant regarding waste management concerns. On 25 January 2022, amended plans were received addressing previous waste management concerns. On 8 March 2022, further information was requested regarding landscaping matters.

Amended landscape plans were submitted on 5 May 2022. However, not all matters had been satisfactorily addressed. A further request regarding landscaping concerns was sent to the Applicant on 2 June 2022. Amended landscaping plans were provided by the Applicant on 27 June 2022.

On 24 June 2022, further information was requested from Council's Resource Recovery Team regarding outstanding waste management concerns. A response to the outstanding waste management concerns was provided on 30 June 2022.

#### Planning and Engineering Concerns

A request for additional information letter was sent to the Applicant on 25 March 2022 regarding planning and engineering matters. The engineering matters included flooding, civil works, stormwater management, vehicular access and carparking and circulation concerns. With regards to flooding matters, it was considered that the submitted flood investigation report was incomplete. It had been identified that the proposal did not include any flood mitigation measures associated with the development and that the proposed design would cause a significant impact on the existing flood behaviour (depth, velocity, and risk) in the locality and the upstream and downstream. In this regard, it was requested that the application be redesigned and address the relevant provisions under Section 5.21 Flood Planning of the LEP and THDCP Part C - Section 6 – Flooding Controlled Land. This was to include amended flood documentation incorporating an amended flood study, architectural plans, flood models (DRAINS and TUFLOW) including pre and post development scenarios and revised flood report.

A letter was sent to the Applicant on 19 May 2022 requested all outstanding information regarding planning and engineering matters be submitted within 14 days. A response to this letter was provided on 1 June 2022. Additional engineering and flood documentation was submitted on 9 June 2022 and 20 July 2022.

On 11 August 2022, further information was requested regarding engineering concerns that had not been previously addressed. Civil Engineering drawings detailing the upgrade works including road reformation, cycle path etc. required on existing Carramarr Road and Larool Crescent fronting the development in accordance with the section 4.1 of THSC DCP Part D Section 20 – Castle Hill North had not been provided. It was also identified that the building footprint was still proposed within the flood flow path and the amended architectural drawings

and other documentation had still not considered the flood hazard relating to the site. Further, an amended flood study and impact assessment report addressing the LEP and DCP requirements had still not been provided. In addition, the latest stormwater plans had not been updated to reflect the flooding aspects of the site and the locality as the OSD design is constrained by the existing flood hazard and the risks in the locality as the drainage outlets from the OSDs are controlled by the flood behaviour on Larool Crescent. Council's engineer concluded as follows: *As previously advised the current design form of the development is not considerate to the existing local flood behaviour in the vicinity of the development and over the downstream behaviours, hence a redesign compliant to the LEP and DCP is recommended.*

On 16 August 2022, a meeting was held between Council staff and the Applicant to discuss the outstanding Engineering issues. The Applicant was again advised to submit amended Architectural, Landscape and Civil engineering drawings detailing the flood flow path, OSD locations, cross-sections and RLs on the sections etc. and require adequate details (RLs and inlet capacity) to ensure the consistency. An addendum to the flood report reflecting the amended design and associated soft copies of models was also requested.

On 24 August 2022, Council's Waterways comments were provided to the Applicant. Further flood modelling was requested including TUFLOW and DRAINS hydraulic files and Stormwater Quality Modelling including a MUSIC model. A flood study report consistent with revised architectural drawings/stormwater plans was also requested.

A meeting was held between Council staff and the Applicant on 9 September 2022 to discuss the outstanding Waterways information.

TUFLOW and DRAINS modelling files were received by Council staff on 4 and 7 November 2022. However, a flood impact assessment, revised civil, architectural and stormwater plans had not been provided.

A further email regarding the outstanding information required to assess the flooding impacts of the proposal was sent to the Applicant on 10 and 15 November 2022. On 21 November 2022, Council's Waterways comments were sent to the Applicant requesting further amendments to the DRAINS and TUFLOW flood models and again requested the submission of updated stormwater plans, architectural drawings, flood impact assessment and a site-specific flood emergency response plan.

## DETAILS AND SUBMISSIONS

Owner:	Castle Larool Dm Pty Ltd/ Mr KD Y Cao, Mr Z Elkass, Mrs E Elkass, Mr W Liu, Mr J Banicevic, Mrs E L Banicevic, Mrs H J Griffiths, Mr W Z Ye, Ms F Jiang, Mr Z Liu, C & W Pty Ltd, Mr R B Potter, Mrs T M Potter, Mrs S N Flanders, Mrs D M Flanders, Mr N Siafakas, Ms R A Schirripa, Mr A E Farlow, Mrs T M Farlow, Mr G Xiao and Mr N B Kong.
Zoning:	R4 High Density Residential
Area:	10,125m <sup>2</sup>
Existing Development:	13 dwellings
Section 7.11 Contribution	\$2,885,906.41
Exhibition:	Not required
Notice Adj Owners:	Yes
Number Advised:	45
Submissions Received:	5

## PROPOSAL

The proposed development seeks consent for the following works:

- Construction of a mixed use residential development comprising 3 x 5 storey terrace edge residential flat buildings and 6 x 3 storey townhouses.
- The total number of dwellings proposed is 118. The dwelling mix proposed is 3 x 1 bedroom units, 47 x 2 bedroom units, 62 x 3 bedroom units and 6 x 4 bedroom units.
- A total Gross Floor Area of 14,579.3m<sup>2</sup> is proposed.
- 151 residential car parking spaces are proposed within a basement level.
- A central communal open space area and pedestrian through site link is proposed.
- Combined driveway access is proposed off Larool Crescent in the south western corner of the site.

## STRATEGIC PLANNING FRAMEWORK

### a. Sydney Region Plan – A Metropolis of Three Cities

The Greater Sydney Region Plan, *A Metropolis of Three Cities* has been prepared by the NSW State Government to set a 40 year vision and established a 20 year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters.

The Plan sets a new strategy and actions to land use and transport patterns. The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). To achieve this, the Plan seeks to develop a network of 34 strategic centres, one of which is Castle Hill, and incorporates the subject site. The Plan aims to ensure economic corridors are better connected and more competitive.

The subject site is located within walking distance of the Castle Hill Station. A key objective within the Greater Sydney Region Plan which is relevant to the subject Development Application is 'Objective 10 Greater housing supply'. The Greater Sydney Region Plan highlights that providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. The Plan also notes that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. To achieve this objective, planning authorities will need to ensure that a consistent supply of housing is delivered to meet the forecast demand created by the growing population. The proposed development is consistent with this objective as it will assist in maximising housing supply within a Precinct which will have direct access to high frequency public transport services.

The Plan also seeks to reduce exposure to natural and urban hazards such as flooding (Objective 37). To achieve this, the Plan includes strategies to avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing urban areas most exposed to hazards. The Plan also notes that District Plans will set out more detailed planning principles for addressing flood risk.

Subject to resolution of the flood planning matters, the development proposal would be consistent with the Sydney Region Plan.

### b. Central City District Plan

The Plan is a guide for implementing the Sydney Region Plan at a district level and is a bridge between regional and local planning.

Planning Priority C5 seeks to provide housing supply, choice and affordability and ensure access to jobs, services and public transport. The proposed development will assist in

increasing housing supply within the strategic centre of Castle Hill that benefits from nearby employment, services and public transport. The delivery of high-density residential development within walking distance of the Castle Hill Metro Station and major bus interchange will facilitate an increase in the choice of housing and support employment growth in Castle Hill as a strategic centre.

Planning Priority C20 seeks to adapt the impacts of urban and natural hazards and climate change with the objectives for people and places to adapt to future stresses and reduce their exposure to natural and urban hazards. The Plan notes that flood constraints exist in the areas in the district which are undergoing significant growth and redevelopment and recommends that planning for growth in flood-prone areas, must recognise the exceptional risk to public safety and consider appropriate design measures to strengthen the resilience of buildings and the public domain in a flood event. Planning principles including avoiding intensification and new urban development on land below the current one in 100 chance per year flood event, applying flood related development controls on land between the one in 100 chance per year flood level and the probable maximum flood (PMF) level, provide less intensive development in areas of higher risk, avoiding alterations to flood storage capacity of the floodplain and flood behaviour through filling and excavation and applying more flood-compatible building techniques for greater resilience to flooding.

Subject to resolution of the flood planning and engineering matters, the development proposal would be consistent with the Central City District Plan.

### **c. 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.

Planning Priority 8 seeks to plan for a diversity of housing with access to jobs and services. It is envisaged that the Castle Hill North Precinct would provide approximately 3,300 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 118 dwellings to the emerging precinct.

Planning Priority 20 seeks to prepare residents for environmental and urban risks and hazards. Risks associated with flooding include property inundation and health impacts associated with flood waters. The Hills contains approximately 6,450 lots with the potential to be affected by flood. Councils are required to undertake floodplain risk management studies for all flood-prone land within their local government area and adopt and implement floodplain risk management plans to address existing, future, and continuing flood risk. As the community grows in precincts such as Castle Hill North, the demand on the stormwater network increases. As the subject site is already identified as a food-controlled lot, flood planning and effective functioning of drainage systems for water capture and storage is a critical consideration in the assessment of the Development Application.

Subject to resolution of the flood planning and engineering matters, the proposal would be consistent with the outcomes planned under the Hills Local Strategic Planning Statement.

## **ISSUES FOR CONSIDERATION**

### **1. State Environmental Planning Policy (Planning Systems) 2021**

Part 2.4 and Schedule 6 of SEPP (Planning Systems) 2021 provides the following referral requirements to a Joint Regional Planning Panel:-

*Development that has a capital investment value of more than \$30 million.*

The proposed development has a capital investment value of \$51,865,000 (excluding GST) thereby requiring referral to, and determination by, a Regional Planning Panel.

In accordance with this requirement the application was referred to, and listed with, the Sydney Central City Planning Panel for determination.

## **2. State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 of This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment. Clause 4.6 of the SEPP states:

*1) A consent authority must not consent to the carrying out of any development on land 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:**

A Preliminary Site Investigation has been undertaken by EI Australia. The investigation found that the site has been continuously used for low density residential purposes since 1968 and prior to this the land was used for farming (grazing) purposes. The site was free of statutory notices and licensing agreements issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997. Visual and olfactory evidence of contamination was not encountered on any part of the site. The Conceptual Site Model to appraise the potential for contamination on the site, concluded the potential for soil and groundwater contamination was low and that the site was deemed suitable for the proposed residential development.

Council's Environmental Health Section reviewed the proposal and recommended the following be provided prior to the commencement of any works:

1. Hazardous Materials Survey is to be undertaken prior to the commencement of any demolition works;
2. Following demolition and removal of associated wastes, an inspection of the exposed surface is to be undertaken by a suitably qualified environmental consultant;
3. Compliance with the NSW EPA's Waste Classification Guidelines for all soil material designated for off-site disposal.

In this regard, if consent was granted to the development application, a condition could be imposed in the development consent to ensure that the site is suitable for the proposed development relating to land contamination and the provisions of SEPP (Resilience and Hazards) 2021.

## **3. Compliance with State Environmental Planning Policy (BASIX) 2004**

State Environmental Planning Policy (BASIX) 2004 applies to the proposed development and aims to reduce the consumption of mains-supplied water, reduce emissions of greenhouse gases and improve the thermal performance of the building.

A BASIX assessment has been undertaken and indicates that the development will achieve the required targets for water reduction, energy reduction and measures for thermal performance. If development consent was granted to the application, the commitments as detailed in the amended BASIX Certificates could be imposed as a condition of consent.

#### 4. The Hills Local Environmental Plan 2019

##### a. Permissibility

The land is zoned R4 High Density Residential under Local Environmental Plan 2019. The proposal comprises uses defined as follows:

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

**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

The proposed uses are permitted within the R4 High Density Residential zone under the provisions of LEP 2019.

##### b. Development Standards

The following addresses the principal development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum Lot Size	4,000m <sup>2</sup> - residential flat buildings in R4 High Density Residential 1,800m <sup>2</sup> - Multi dwelling housing in R4 High Density Residential  Therefore 5,800m <sup>2</sup> for both residential land uses.	The site comprises an area of 10,125m <sup>2</sup> which is more than the combined minimum lot size required for both residential land uses.	Yes
4.3 Height	The site is not subject to a maximum height standard	20.2m (maximum)	N/A
4.4 Floor Space Ratio	1:1 (base FSR)	N/A	N/A – The proposal seeks to utilise the incentive floor space ratio provision under Clause 7.11 and the bonus floor space ratio provision under Clause 7.11A. Refer to discussion below.
Clause 4.6 – Exceptions to Development Standards	Exceptions will be considered subject to appropriate assessment.	A variation to Clause 7.11A is proposed and is addressed below.	Yes, refer to discussion below.



7.11 Development on certain land within the Sydney Metro Northwest Urban Renewal Corridor	An incentive Floor Space Ratio (FSR) of 1.2:1 can be applied if the development provides a specific mix, family friendly unit sizes and parking.	The proposal provides the required unit mix and sizes and parking in accordance with the Clause.	Yes, refer below for further discussion.
7.11A Development on certain land within the Castle Hill North Precinct	A 20% bonus Floor Space Ratio (resulting in a maximum FSR of 1.44:1 for the site) can be applied if (g) in relation to land identified as “Area K” on the <a href="#">Key Sites Map</a> — buildings on the land will not exceed three storeys along the Larool Crescent and Carramarr Road frontages, and pedestrian links will be provided through the land to facilitate access between Barrawarn Place and Larool Crescent Reserve.	The proposal results in five storey residential flat buildings with three storey terrace edges along the frontages which does not technically comply with this Clause. The Applicant has submitted a Clause 4.6 written submission to vary this standard.	Yes, refer below to further discussion.

**i) Floor Space Ratio**

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

Despite Clause 4.4, an incentive Floor Space Ratio can be applied to the development as the site is located in “Area B” of the Floor Space Ratio Mapping instrument and if the development provides a specific mix, family friendly unit sizes and parking.

The following table demonstrates compliance with this development standard.

<b>Apartment Mix</b>	<b>LEP Standard</b>	<b>Development</b>	<b>Proposal</b>	<b>Compliance</b>
One bedroom dwellings	25% to the nearest whole number of dwellings (Maximum)		2.5% (3 of 118 units)	Yes
Three or more bedroom dwellings	20% to the nearest whole number of dwellings (Minimum)		57.6% (68 of 118 units)	Yes

<b>Apartment Diversity</b>	<b>LEP Standard</b>	<b>Development</b>	<b>Proposal</b>	<b>Compliance</b>
Minimum internal	≥40%		40.4% (19 of 47 units)	Yes

floor area of 2 Bedroom dwellings is 110m <sup>2</sup>			
Minimum internal floor area of 3 Bedroom dwellings is 135m <sup>2</sup>	≥40%	45.6% (31 of 68 units)	Yes

Parking Type	LEP Development Standard	Proposal	Compliance
1, 2, 3 & 4 Bedroom	<p>The following maximum number of car parking spaces are to be provided for the development:</p> <p>0.5 car spaces for each 1 bedroom unit (1.5 spaces required)</p> <p>0.8 car spaces for each 2 bedroom unit (37.6 spaces required)</p> <p>1.3 car spaces for each 3 or more bedroom unit (88.4 spaces required)</p> <p>1 space per 5 units for visitors (23.6 spaces required)</p> <p>Maximum permissible parking: 151.1 spaces</p>	151 car parking spaces provided	Yes

The proposal complies with Council's local housing mix and diversity provision under Clause 7.11. Therefore, the incentive Floor Space Ratio of 1.2:1 or maximum Gross Floor Area (GFA) of 12,150m<sup>2</sup> can be applied to the proposed development.

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

As the site is also identified as "Area K" in the mapping instrument, an additional 20% bonus FSR is permitted above the incentive FSR of 1.2:1, subject to the relevant subclause provisions under Clause 7.11A(3)(g)(i) being met.

Clause 7.11A(3)(g)(i) of the LEP states the following:

*"buildings on the land will not exceed three storeys along the Larool Crescent and Carramarr Road frontages, and pedestrian links will be provided through the land to facilitate access between Barrawarn Place and Larool Crescent Reserve".*

The proposal comprises five storey buildings with three storey terrace edge elements along the Larool Crescent and Carramarr Road frontages which does not technically comply with the standard. Legal advice was lodged with the development application indicating that the proposal complies with this standard. Refer Attachment 17.

Council staff do not agree with the above advice and requested the Applicant to provide a Clause 4.6 written submission to vary the development standard. In the Council Briefing minutes dated 17 March 2022, the Panel noted the following:

*The Panel has no concluded position on the disputed issue of the compliance of the proposed development with Clause 7.11A(3)(g)(i). However, if the applicant proceeds with the currently proposed building heights, the Panel considers that it would be prudent for the applicant to submit a ‘without prejudice’ Clause 4.6 variation request.*

In response, the Applicant has provided a Clause 4.6 written submission to vary Clause 7.11A which is provided at Attachment 16.

#### Clause 4.6 written submission

Clause 4.6 allows consent to be granted for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 – Exceptions to Development Standards states:

(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) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.2 or 6.3,

(cb) clause 7.11,

(cc) clause 7.15.

In determining the appropriateness of the variation request, several factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. They include:

- The proposed departure to the standard still meets the objective of the control under Clause 7.11A. As such, strict application of the standard is unreasonable and unnecessary in the circumstances.
- The wording of Clause 7.11A(3)(g)(i) was drafted in a way that did not reflect Council's desired outcome for the site. This is evidenced in a review of Council's assessment reports in relation to the rezoning of the Castle Hill North Precinct which articulates the intention for "Area K" to incorporate three storey terrace address along the frontages, but not limit the height of buildings to three storeys.
- The proposed building form is consistent with the Castle Hill North Precinct DCP Structure Plan, noting the site as 3 – 5 storey high density residential with a terrace edge.
- The proposed development is compliant with the floor space ratio controls for the site.
- If the intent was to limit the buildings to three storeys, it would undermine the ability to utilise the incentive FSR established under Clause 7.11A., thereby undermining the intention of the control
- Upper-level apartments are setback an additional 5m, minimising the visual impact and scale of development across the frontages.
- The terrace edge component is three storeys and has been designed to respect the character and scale of surrounding development, with terraces having direct street address and highly articulated frontages.
- The proposal does not give rise to any unreasonable or unacceptable overshadowing impacts, with shadows cast between 9am and 3pm generally limited to the front setbacks of adjoining residential dwellings.
- The proposed form is in keeping with the desired future character of the area.

Pursuant to Clause 4.6(2) of LEP 2019, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. Clause 7.11A is not expressly excluded and thus the clause can be applied in this instance.

Pursuant to Clause 4.6(4)(a) of LEP 2019, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of Clause 4.6(3). The application is supported by a detailed submission addressing the provisions of Clause 4.6 of LEP 2019 (refer to Attachment 16). The submission is considered regarding the criteria of Clause 4.6(3) of the LEP, as follows:

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

In accordance with the NSW LEC findings in the matter of *Wehbe v Pittwater Council*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The objectives of Clause 7.11A Development on certain land within the Castle Hill North Precinct are:

- (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.*

The objectives of the R4 High Density Residential zone are as follows:

- *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 proposal includes the amalgamation of the entire block bound by Larool Crescent and Carramarr Road and prevents fragmentation or isolation of land. The proposal includes a pedestrian link and a continuous built form and design which would result in a consistent street edge.

The proposal provides for 118 dwellings including a combination of apartments and townhouse units within a new high density Precinct which is within the Castle Hill strategic centre and within walking distance to Castle Hill Metro and the Castle Hill Bus Interchange.

The applicant's written submission has satisfactorily demonstrated that the proposal will achieve consistency with the objectives of the development standard and the zone, and as such strict compliance is considered to be unreasonable and unnecessary in the circumstances of this application.

- *That there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's submission indicates that the wording of Clause 7.11A(3)(g)(i) was drafted in a way that did not reflect Council's desired outcome for the site. This is evidenced by an inconsistency with the Structure Plan in the site specific DCP that envisages the site as being developed as a 3 – 5 storey high density residential development with a terrace edge.

Further, the proposal complies with the maximum floor space ratio standards for the site and the upper level elements above the three storey terrace edge have been setback an additional 5m, minimising the visual impact when viewed from the street and does not result in detrimental overshadowing impacts to adjoining properties.

It is considered that the applicant's justification for non-compliance satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the maximum building height development standard. It is considered that the applicant's written request has satisfactorily addressed the requirements under Clause 4.6(3) of LEP 2019.

Under the provisions of Clause 4.6(4) of LEP 2019, consent must not be granted to a proposal that contravenes a development standard unless that proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out. The Clause 4.6 written submission has demonstrated that the objectives of the standard are achieved as addressed above.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant's Clause 4.6 Variation Request, it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 7.11A Development on certain land within the Castle Hill North Precinct and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

Pursuant to Clause 4.6(4)(b) of LEP 2019, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS18-003 (dated 21 February 2018) issued by the NSW Department of Planning, the Secretary's concurrence may be assumed in this instance as the application relates to a development standard within an EPI that adopts Clause 4.6 of the Standard Instrument. In this regard, if development consent was granted to the application, it is taken that the concurrence of the Secretary has been obtained.

Subject to the support of the Clause 4.6 written submission, the incentive and bonus FSR provisions can be applied under Clause 7.11 and 7.11A of the LEP. This permits a maximum FSR of 1.44:1 or maximum GFA of 14,580m<sup>2</sup> for the site. In accordance with the LEP definition, the proposed development provides a total Gross Floor Area of 14,580m<sup>2</sup> which results in a Floor Space Ratio of 1.44:1 for the subject site.

## **ii. Flood Planning**

Clause 5.21 Flood Planning of the LEP prescribes the following:

*(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*

- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
  - (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
  - (b) the intended design and scale of buildings resulting from the development,*
  - (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
  - (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*
- (4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.*

The objectives of Clause 5.21 are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

The Development Application has not demonstrated that the following flood planning provisions under this Clause have been satisfied:

- (2)(a) is compatible with the flood function and behaviour on the land*

The site is identified as flood prone land as an overland flow path exists along the south-eastern corner of the site. The current plans include this overland flow path through a portion of the eastern building in the south-eastern corner. Refer figure below which reflects the submitted flood extent to date (noting the flood model upon which this plan relates has not been accepted by Council staff).



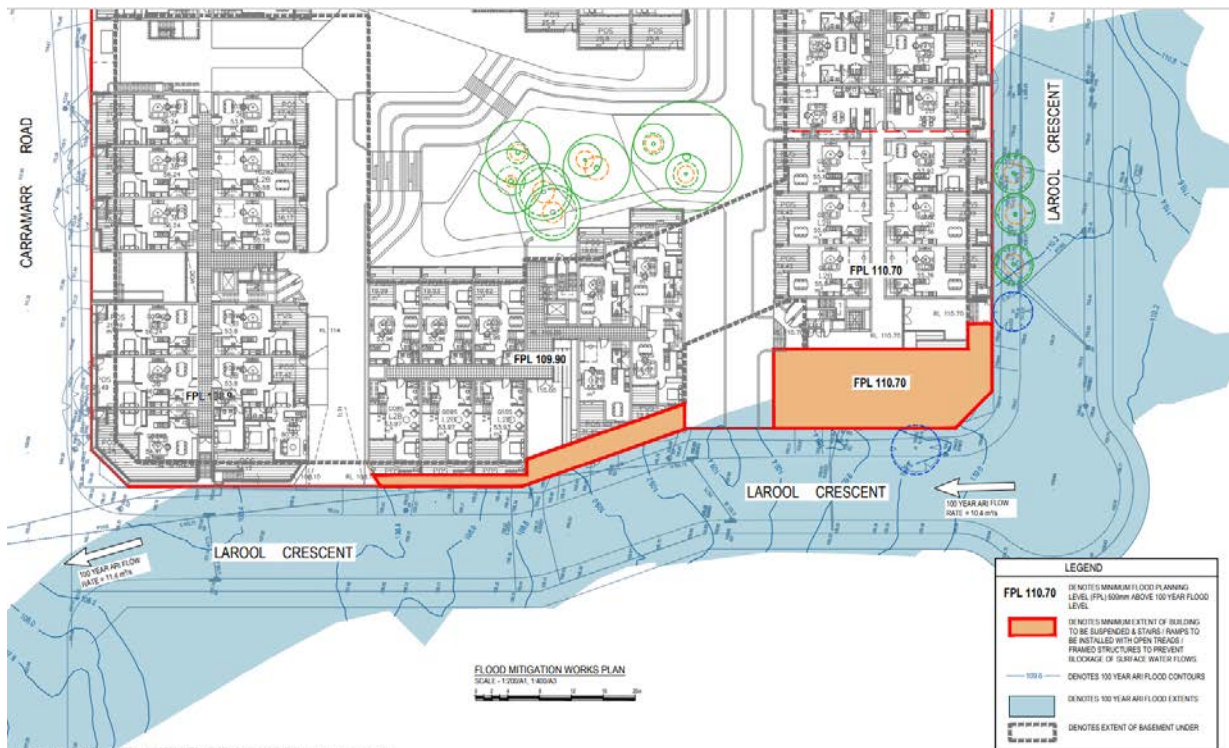


Figure 2 – Submitted Flood Mitigation Works Plan

The Applicant has provided a flood model on 4 November 2022 proposing upsizing of the street drainage on Larool Crescent to mitigate flooding impacts to the development. If the flood no longer extends into this part of the site, the above design will change. However, Council's Waterways and Engineering sections have determined this flood modelling to be insufficient. In this regard, it cannot be concluded that the development will not result in detrimental impacts to the flood function and behaviour on the land.

*(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affection of other development or properties*

As above, insufficient information has been provided to determine that the proposed development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affection of other downstream development or properties.

*(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood*

As above, the current plans include an overland flow path through a portion of the building in the south-eastern corner. If the flood no longer extends into this part of the site, the above design will change. Further, the floor level and driveway crest will need to be set according to the flood planning level which is still unresolved. An updated flood impact assessment is yet to be provided to address the risk associated with the driveway location, which is made better by any reduction in the flood extent. However, the reduction in the flood extent is yet to be quantified and cannot be determined with the information provided to date.

*(d) incorporates appropriate measures to manage risk to life in the event of a flood*

As above, an updated flood impact assessment is yet to be provided to address the risk associated and appropriate measures to manage risk to life in the event of a flood.

- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Insufficient information has been provided to determine the above. However, if satisfactory flood modelling and subsequent flood impact assessments are provided, it is envisaged that the above can be determined and appropriately conditioned in the consent, should development consent be granted to the application.

- 3(a) the impact of the development on projected changes to flood behaviour as a result of climate change*

As above, insufficient flood modelling has been provided to determine if the development will impact flood behaviour because of climate change.

- (b) the intended design and scale of buildings resulting from the development*

As above, the current plans include the overland flow path through a portion of the south-eastern corner of the eastern building. Any building within the existing overland flow path would impact the flood behaviour of impacts already existing on site. The design and scale of building may change because of the findings of the flood modelling however the flood extents have not yet been quantified.

- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood*

As above, a flood impact assessment cannot be provided until the flood extent is quantified. In this regard, an assessment against whether the risk of development incorporates sufficient measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood cannot be determined.

- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

As above, the redesign of the development cannot be contemplated until the flood extent is quantified. In this regard, an assessment against the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding cannot be made from the information submitted to date.

The Applicant has not provided the required information to ensure that the development would minimise the flood risk to life and property associated with the residential development or allow for development that is compatible with the flood function and behaviour on the land or avoid adverse or cumulative impacts on flood behaviour and the environment. Further, a revised flood impact assessment based on appropriate flood modelling has not been provided to demonstrate that safe occupation and efficient evacuation of people in the event of a flood can be provided. As previously requested by Council staff, the architectural, landscape and civil engineering drawings have not been amended to detail the flood flow path, OSD locations, cross-sections, or adequate details (RLs and inlet capacity) to ensure consistency. In this regard, the provisions in the Clause are not satisfied and development consent must not be granted to the development.

### **c. Other Provisions**

The proposal has been considered against the relevant provisions of LEP 2019. Specific regard has been given to Clauses:

- 2.7 Demolition

- 5.9 Preservation of trees or vegetation;
- 6.2 Public utility infrastructure and;
- 7.2 Earthworks

The proposal has been considered against these provisions. Subject to the findings of the flood modelling and submission of further plans, a reassessment against Clause 7.2 Earthworks would be required. If development consent was granted to the application, recommended conditions could be provided to satisfy each of the standards and objectives relating to the other clauses.

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

### a. Design Quality Principles

In accordance with Clause 30(2) of the SEPP, a consent authority in determining a Development Application for a residential flat building is to take into consideration the design quality principles. The required Design Verification Statement was prepared by Simon Parsons, registration number 6098 and Lewis Pang, registration number 10170 of PTW Architects. The Development Application has been assessed against the relevant design quality principles contained within the SEPP and is considered satisfactory, however the impacts of an amended design to satisfy the flood planning and engineering matters may require reassessment of these principles.

### b. Apartment Design Guide

The following table is an assessment of the proposal against the Design Criteria provided in the Apartment Design Guide as required under Clause 30(2) of the SEPP. If an amended design is required to satisfy the flood planning and engineering matters, certain design criteria may require reassessment.

Clause	Design Criteria	Compliance
<b>Siting</b>		
Communal open space	25% of the site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	No. Approximately 2,187m <sup>2</sup> communal open space is provided. This equates to 21.6% of the site area. Refer discussion below.  The submitted solar access diagrams indicate that the centrally located principal usable part of the communal open space area of approximately 1,425m <sup>2</sup> will receive at least 50% direct sunlight for 2 hours during midwinter.
Deep Soil Zone	7% of site area. Design Guidance: On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m <sup>2</sup> and 15% for sites greater than 1500m <sup>2</sup> .	Yes. 13% or 1,318m <sup>2</sup> of the development area is provided with deep soil zones as defined within the ADG. Given the provision of a pedestrian link of approximately 836m <sup>2</sup> through the site, the design guidance cannot be met.
Separation	For habitable rooms and balconies, 12m for 4 storeys, 18m for 5-8 storeys and	No. Predominantly complies except for variations below:  Building West 2 – Building South:

	24m for 9+ storeys.	9m (4 storeys)  Building West 1 – Town house: 7m (up to 3 storeys)  Refer below for further discussion.
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Yes. The visual privacy of the development has been duly considered with the placement of windows and balconies. Privacy screens/louvres have been incorporated to minimise direct overlooking of units facing balconies. The proposed development is considered to afford a reasonable degree of privacy for future residents and adjoining properties.
Car parking	Car parking to be provided based on proximity to public transport in metropolitan Sydney. For sites within 800m of a railway station or light rail stop, the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is:  Metropolitan Sub-Regional Centres:  0.6 spaces per 1 bedroom unit. (1.8) 0.9 spaces per 2 bedroom unit. (42.3) 1.40 spaces per 3 bedroom unit. (86.8) 1 space per 5 units (visitor parking). (22.4)	N/A. The site is located within 800m walking distance of the future Norwest Station. 153.3 spaces would be required utilising the RMS rate.  However, 151 spaces are provided which complies with the maximum rate permitted under Clause 7.11 of the LEP.
<b>Designing the Building</b>		
Solar and daylight access	1. 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 midwinter.  2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	No. The proposed development will achieve two hours solar access for 69.6% (78 of 112) of apartments between 9am and 3pm mid-winter. Refer discussion below.  Yes. 5.9% or 7 units will receive no direct solar access between 9am and 3pm midwinter.
Natural ventilation	1. At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For	No. 59.8% (67 of 112) of apartments achieve compliance. Refer discussion below.

	<p>buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.</p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>Overall depth of all cross-through apartments are less than 18m when measured glass line to glass line.</p>
Ceiling heights	<p>For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. 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. 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>Yes. Floor to ceiling height approx. 3 metres for all apartments.</p> <p>N/A</p>
Apartment size	<p>1. Apartments are required to have the following internal size:</p> <p>Studio – 35m<sup>2</sup> 1 bedroom – 50m<sup>2</sup> 2 bedroom – 70m<sup>2</sup> 3 bedroom – 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Yes.</p> <p>1 bedroom 53.94m<sup>2</sup> – 60.73m<sup>2</sup> 2 bedroom 75.68m<sup>2</sup> -112.35m<sup>2</sup> 3 bedroom 96.61m<sup>2</sup> – 148.79m<sup>2</sup></p> <p>Where additional bathrooms are proposed, an additional 5m<sup>2</sup> has been provided.</p> <p>No four bedroom units in residential flat buildings proposed.</p> <p>All habitable rooms would have windows greater than 10% of the floor area of the dwelling.</p>

Apartment layout	<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> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow layouts.</p>	<p>Yes.</p> <p>All rooms comply.</p> <p>All cross-through apartments comply.</p>
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m<sup>2</sup> with no minimum depth</p> <p>1 bedroom – 8m<sup>2</sup> with a minimum depth of 2m</p> <p>2 bedroom – 10m<sup>2</sup> with a minimum depth of 2m</p> <p>3 bedroom – 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	<p>Yes, all primary balconies in proposed 1 bedroom, 2 bedroom and 3 bedroom units achieve compliance with the minimum area criteria.</p> <p>No. Whilst ground level units achieve the required area criteria, all units fronting Carramarr Road and Larool Avenue do not achieve the minimum depth of 3m.</p>
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight. However, design guidance permits no more than 12 units provided off a circulation core on a single level.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Yes. Complies with design guidance as a maximum 10 units provided off a circulation core on a single level.</p> <p>N/A</p>
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m<sup>3</sup></p> <p>1 bedroom – 6m<sup>3</sup></p> <p>2 bedroom – 8m<sup>3</sup></p> <p>3+ bedrooms – 10m<sup>3</sup></p> <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Yes, proposal is capable of achieving compliance and can be conditioned if consent is granted to the application.</p> <p>Yes, the apartment layouts could provide for this.</p>
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment	<p>Yes.</p> <p>The apartment mix accords with</p>

	configurations to support diverse household types and stages of life.	Clause 7.11 of The Hills LEP 2019 and is considered satisfactory.
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#### **i. Communal Open Space**

The Apartment Design Guide requires that at least 25% of the site is to be provided with communal open space, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter. The site only provides for approximately 2,187m<sup>2</sup> communal open space which equates to 21.6% of the site area and does not comply with this control. However, the submitted solar access diagrams indicate that the principal usable part of the centrally located communal open space area of 1,425m<sup>2</sup> will receive at least 50% direct sunlight for 2 hours during midwinter.

The Applicant has provided the following justification for the variation:

*Council's DCP requires a minimum of 10m<sup>2</sup> of communal open space per dwelling, resulting in a minimum requirement of 1,180m<sup>2</sup>...Whilst the proposal doesn't comply with the ADG requirement of 25%, the proposal does comply with the minimum required by the Castle Hill North DCP which has been prepared based on site specific requirements and is therefore considered suitable in this instance.*

The relevant objective of the design criteria is as follows:

- *An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping*

#### **Comment:**

The residential development proposal comprises residential flat buildings as well as six attached terraces to the north of the site. The Apartment Design Guide (ADG) provides design guidance for apartments rather than for terraces. Council's precinct specific DCP provides controls for terraces and does not require communal open space for this land use. Instead, to cater for recreational needs of building occupants and to provide a high level of amenity for residents, the DCP requires a minimum of 16m<sup>2</sup> ground level private open space (POS) for each dwelling with a minimum dimension of 3m. Further, the proposal complies with the minimum area control of 1,120m<sup>2</sup> in the precinct specific DCP for communal open space area for the residential flat buildings. In this regard, if the land area for the terraces (approximately 1,159m<sup>2</sup>) was excluded from the "site area", 24.4% of the "site area" would be provided as communal open space for the 112 apartments within the residential flat building component of the development.

The ADG also provides guidance that facilities within the communal open space areas are to cater for a range of age groups and suggests the incorporation of seating for individuals or groups, barbeque areas, play areas, and swimming pools. Further, the site is constrained by the provision of a pedestrian through site link to provide accessibility for the new precinct. This link has an area of approximately 836m<sup>2</sup>. The ADG indicates that *some communal open space is accessible and usable by the general public*. In this regard, the landscape design of the communal open space and through-site link could be redesigned to better achieve the outcomes envisaged under the ADG.

Subject to the redesign of the communal open space areas to be more consistent with the design guidance in the Apartment Design Guide, the variation to the communal open space control could be supported.



## ii. Building Separation

The Apartment Design Guide requires that for habitable rooms and balconies, a 12m separation is required for 4 storeys, 18m for 5-8 storeys and 24m for 9+ storeys. The proposal does not comply with internal building separation as identified in the above table.

The Applicant has not identified any variations and instead indicates that “*all buildings are separated by at least 9 metres*”.

The relevant objective of the design criteria is as follows:

- *Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*

### Comment:

The development generally complies with the building separation criteria with the exception of the below circumstances:



Figure 3: Level 3 Floor Plan – Building West 2 and Building South



Figure 4: Level 2 Floor Plan – Building West 1 and Townhouses

If consent was granted to the application, it is considered that appropriate privacy mitigation measures could be conditioned to ensure reasonable levels of visual privacy is maintained. In this regard, the objective of the design criteria can be achieved.

### iii. Solar Access

The Apartment Design Guide requires that the living rooms and private open spaces of at least 70% of apartments in a building are to receive at minimum of 2 hours direct sunlight between 9am and 3pm at midwinter. The proposal results in 69.6% (78 of 112) of apartments between 9am and 3pm mid-winter.

The Applicant has provided the following justification for the variation:

*The decision to locate townhouses along the northern site boundary increases the amenity of the central open spaces but at the same time worsens the solar access percentage as these for solar access perfectly located residences have to be excluded from the count. The development would be capable of achieving a minimum of 70% if the townhouse product would be added to the solar access count or if the townhouses would be replaced with a residential flat building.*

The relevant objective of the design criteria is as follows:

- *To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space*

### Comment:

Whilst a shortfall of 0.4% of units (5 units) do not meet the solar access design criteria, it is considered that in contrast to a residential flat building to the north of the site, the three storey townhouse typologies is an appropriate design response to the site as this would optimise solar access to the central communal open space area and provide sufficient solar access to north facing apartments within the southern residential flat building. If the townhouses were

included in the solar access calculation, the residential development would achieve 71.2% (84 of 118) units. The overall design optimises the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. It is considered that despite the minor numerical non-compliance, the design could achieve sufficient solar access for most residents. In this regard, the objective of the design criteria can be achieved.

#### **iv. Natural Ventilation**

The Apartment Design Guide requires that at least 60% of apartments are naturally cross ventilated in the building. The development results in 59.8% of apartments being naturally cross ventilated.

The Applicant has provided the following justification for the variation:

*The development would be capable of achieving a minimum of 61.9% if the townhouse product would be added to the cross ventilation count or if the townhouses would be replaced with a residential flat building.*

The relevant objective of the design criteria is as follows:

- *The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.*

#### **Comment:**

Whilst a shortfall of 0.2% of units (4 units) do not meet the cross-ventilation design criteria for the building has been designed to provide a comfortable indoor environment for future occupants through the unique design of the building. Air flow to single aspect units are maximised with appropriate apartment depths. It is noted that over 60% of the total dwellings in the residential development would be naturally cross ventilated. It is considered that despite the minor numerical non-compliance, a comfortable indoor environment is provided for most residents. In this regard, the objective of the design criteria can be achieved.

#### **v. Minimum Depth of Ground Level Private Open Space**

The Apartment Design Guide requires that the ground level private open space areas are to be provided with a minimum of 15m<sup>2</sup> with a minimum depth of 3m. Despite all ground level units achieving the required private open space area, all units fronting Carramarr Road and Larool Avenue do not achieve the minimum depth of 3m.

The Applicant has not identified this as a variation.

The relevant objective of the design criteria is as follows:

- *Apartments provide appropriately sized private open space and balconies to enhance residential amenity*

#### **Comment:**

##### Units fronting Carramarr Road

The original proposal provided compliant areas and minimum depths for private open space areas within units fronting Carramarr Road. However, the design did not achieve a high level of visual amenity as retaining walls up to 1.5m in height were required to achieve the level front courtyards. See comparison below:



Figure 5: Comparison of Units fronting Carramarr Road Left: Original plans Right: Amended plans



Figure 6: Perspective indicating retaining walls on the Carramarr Road frontage with original proposal.

To provide a more suitable visual amenity outcome and respond to the human scale of the streetscape, the proposal has been amended to provide more landscaping at street level to screen the retaining walls. Refer typical section below. This has resulted in a reduced depth to portions of private open space areas.

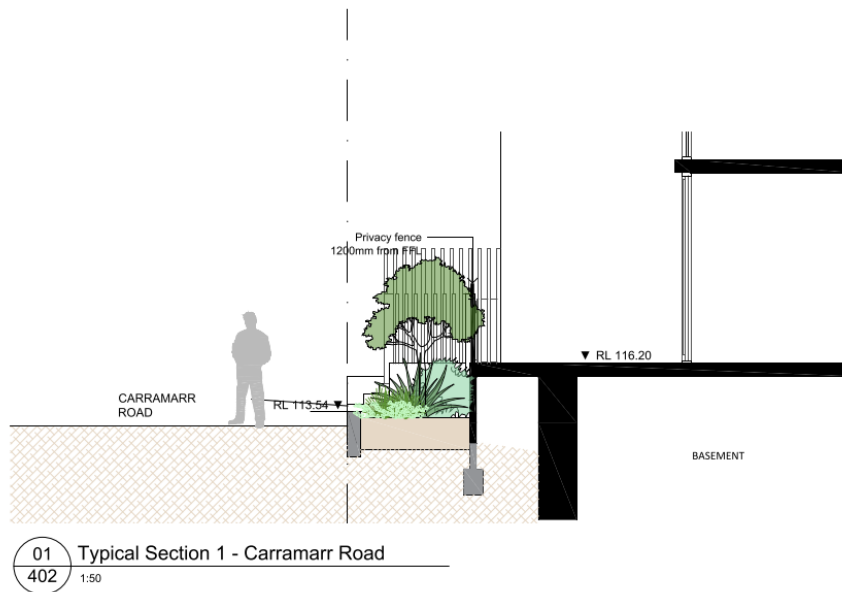


Figure 7: Section of private courtyard within Carramarr Road frontage

It is considered that despite the variation, residents of the ground level units would still have reasonable levels of amenity within the front courtyards fronting Carramarr Road, as well as utilise the communal open space are located within the development site.

#### Units fronting Larool Avenue (South and East)

The levels for the units in the southern and eastern buildings along the Larool Crescent east and south frontage are unresolved and insufficient landscaping has been provided to ensure appropriate visual amenity is maintained. In this regard, a further reduction in the front private courtyard spaces may be required subject to the findings of the flood modelling and flood impact assessment. This design criteria will require reassessment once the flood planning and engineering issues are resolved.

### **6. Compliance with The Hills Development Control Plan 2012**

The proposal has been assessed against the relevant provisions of The Hills Development Control Plan 2012 including the following sections:

- Part D Section 20 Castle Hill North
- Part B Section 2 Residential
- Part B Section 5 Residential Flat Building
- Part B Section 10 Medium Density Residential (Terraces)
- Part C Section 1 Parking
- Part C Section 3 Landscaping

Some standards such as density, number of storeys, unit mix, sizes and parking are superseded by the site-specific provisions in the LEP under Clause 7.11 and 7.11A. In the event of any inconsistency between Part D Section 20 Castle Hill North and any other Section of the DCP, the provisions of the site-specific Section shall prevail to the extent of the inconsistency.

It is noted that insufficient information has been provided to make a complete assessment of the application. An assessment against the plans and documentation submitted to date for the development application achieves compliance with the relevant requirements of the development controls except for the controls highlighted in the below table:

DEVELOPMENT CONTROL	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part D Section 20 Castle Hill North Precinct and Part C Section 6 Flood Controlled Land – Integrated Water Management			
Flood Management	<p>New developments are to ensure that flood planning levels, flood risk management provisions and landscaping (vegetation species and associated structures) are compatible with flood risk and designed to withstand temporary flood inundation in areas designated for detention basins.</p> <p>Any site that is identified as a Flood Control Lot is to comply with Part C Section 6 – Flood Controlled Land, of the DCP.</p> <p>Part C Section 6 – Flood Controlled Land of the DCP have general controls and land use specific controls for flood planning in residential developments.</p>	The flood planning levels, flood risk management provisions and compatibility of landscaping for the development cannot be determined until the flood extent is quantified which can only be provided once the flood modelling is completed to the satisfaction of Council's Waterways and Engineering sections.	No, cannot complete assessment as subject to updated flood modelling and impact assessment being provided. Refer discussion below.
Stormwater Management	<p>A Stormwater Management Plan is to be prepared for each development application to include consideration of various sustainable practices including stormwater harvesting and re-use and water conservation.</p> <p>All Stormwater drainage designs are to comply with the most up to date revision of Council's Design Guidelines Subdivision/Developments (September 2011) and Contributions Plan No.17 – Castle Hill North Precinct, or an appropriate alternative approved by Council.</p>	Whilst a Stormwater Management Plan has been provided, this will need to be updated subject to the findings of the flood study. Insufficient information has been provided to ensure these controls are satisfied.	No, cannot complete assessment as subject to updated stormwater plans being provided. Refer discussion below.
Water Sensitive Urban Design (WSUD)	<p>WSUD is to be adopted throughout all development, incorporating water quality management objectives and attenuation of runoff to acceptable levels following development.</p> <p>WSUD infrastructure elements are to be designed and constructed in accordance with relevant publications.</p>	Stormwater plans including WSUD and OSD have been provided however this may need to be updated pending the findings from the flood study.	No, cannot complete assessment as subject to updated flood modelling and impact assessment being provided.

	On-site detention is to be provided in accordance with Section 4.22 of Council's Design Guidelines Subdivision / Developments		Refer discussion below.
Part D Section 20 Castle Hill North Precinct – Residential Flat Buildings			
Movement Network and Design - Road Upgrades required (Street network and profiles)	The street network is to be consistent with the 'Indicative Street Network and Hierarchy' within Figure 15 and Street profiles are to be consistent with the street profiles in Figures 17-21 and the cycleway network is to be generally consistent with the 'Existing and Proposed Cycleway Network' map in Figure 16.	Plans have not been provided to demonstrate this can be achieved.	No. Refer discussion below.
Site Coverage	The site coverage of future development shall not exceed 50% of the site area (excluding land to be dedicated or acquired or a public purpose).  <b>Note:</b> Determination of site cover includes driveways, footpaths and other impervious surfaces.	Maximum Permitted: 5,062.5m <sup>2</sup> (50%)  Proposed: 5,575m <sup>2</sup> (55%)	No. Refer to discussion below.
Landscaping	A minimum of 50% of the site area (excluding building footprint, roads, access driveways and parking) shall be landscaped. Terraces and patios within 1m of natural ground level shall be included in the calculation of landscaped open space.	Minimum Required: 5,062.5m <sup>2</sup> (50%)  Proposed: 2,316m <sup>2</sup> (22.9%)	No. Refer to discussion below.
	Landscape design is to be integrated with water and stormwater management	Landscape plans will require revision subject to amended flood impact assessment, stormwater, civil and architectural plans.	No, refer discussion below regarding flood management.
Built Form Design	Buildings are to have a maximum length of 65m. Where a building has a length greater than 30m it is to be separated into at least two parts by a significant recess or projection.	The building length of Building E is maintained to 68m.	No, however façade is separated by a significant recess. Refer discussion below.
Residential Uses on Ground and First Floors	Ground floor residential apartments are to be elevated from the street level by a minimum of 300mm and a maximum of 600mm.	The proposed ground floor units of Buildings W1, W2, S and E elevated < 300mm or >600mm as measured from	No, however could be supported provided pending satisfactory flood study and sufficient



		the adjacent street level.	landscaping is provided.
	Soft landscaping to the front of the terrace is to be a minimum of 40% of the setback area, contiguous, and a minimum of 2m in any direction	The units fronting Larool Crescent (east) do not comply with this control.	No, refer to discussion below.
<b>Part D Section 20 Castle Hill North Precinct – Terrace Housing</b>			
<b>Building Setbacks</b>	Buildings are required to comply with Figure 31 Street setbacks Map and Table 6 Setbacks – Terrace Housing 4m to front building line for the third storey	<4m setback to front building line for third storey	No, however terraces form part of a mixed use residential development and the 1 <sup>st</sup> and 2 <sup>nd</sup> storey are setback 9m from front property boundary which exceeds the 3m setback provision. Refer discussion below.
<b>Storage</b>	For strata developments, a minimum of 10m <sup>3</sup> storage space is to be provided for each dwelling in either a lockable garage or a basement. Storage areas shall have a minimum base of 5m <sup>2</sup> and minimum width of 2m	No storage indicated on plans or schedule provided.	No, however capable of achieving compliance and can be conditioned if consent is granted to the application.

#### **a. Integrated Water Management**

##### Flood Management

The Castle Hill North Precinct specific controls require that any site identified as a flood control lot is required to comply with Part C Section 6 – Flood Controlled Land of the DCP and that new developments are to ensure that flood planning levels, flood risk management provisions and landscaping (vegetation species and associated structures) are compatible with flood risk and designed to withstand temporary flood inundation in areas designated for detention basins.

Part C Section 6 – Flood Controlled Land aims to provide development controls to manage flood risks associated with development by managing the risk to human life and damage to property caused by flooding through controlling development on land affected by potential floods and ensuring new developments do not exacerbate flooding on other properties or result in unreasonable impacts on the amenity and character of the area, streetscape or relationship of the building to the street and the environment and ecology. This section of the DCP provides general and land use specific controls for residential development include the following:

### General Controls

- The flood impact of the development is to be considered to ensure that the development will not increase flood effects elsewhere, having regard to loss of flood storage, changes in flood levels and velocities cause by alterations to the flood conveyance and the cumulative impact of multiple potential developments in the floodplain.

### Residential Controls

- No development is to occur in a floodway area, a flow path or a high hazard area generated by flooding up to FPL2, unless justified by a site specific assessment.
- Habitable floor levels are to be no lower than FPL3.
- Non-habitable floor levels to be equal to or greater than FPL3 where possible, or otherwise no lower than FPL1 unless justified by a site specific assessment.
- A restriction is to be placed on the title of the land, pursuant to S.88B of the Conveyancing Act, where the lowest habitable floor area is elevated above finished ground level, confirming that the under-croft area is not to be enclosed, where Council considers this may potentially occur.
- All structures to have flood compatible building components below FPL3.
- Applicant to demonstrate that the structure can withstand the forces of floodwater, debris and buoyancy up to and including FPL3, or FPL4 if required to satisfy evacuation criteria (i.e. use as a refuge area). An engineer's report may be required.
- Where the level of the driveway providing access between the road and parking space is lower than 0.3m below FPL2, the following condition must be satisfied - when the flood levels reach FPL2, the depth of inundation on the driveway shall not exceed: — the depth at the road; or the depth at the car parking space. A lesser standard may be accepted for single detached dwelling houses where it can be demonstrated that risk to human life would not be compromised.
- All service conduits located below FPL3 are to be made fully flood compatible and suitable for continuous underwater immersion. Conduits are to be self-draining if subject to flooding.
- A Site Flood Emergency Response Plan is required when elements of the development, including vehicular and pedestrian access are below FPL3.

### Fencing

- Fencing within a floodway or a flowpath must be of an open style that will not impede the flow of floodwaters.

### Filling Controls

- Filling on flood controlled land is not permitted unless a report from a suitably qualified civil engineer is submitted to Council that certifies that the development will not increase flood affectation elsewhere, or Council otherwise determines that a report is not required.
- Filling of floodway areas or land that conveys an existing overland flow path is not permitted.
- Filling of individual sites in isolation, without consideration of the cumulative effects is not permitted. A case by case decision making approach cannot take into account the cumulative impact of flooding behaviour, and associated risks, caused by individual developments. Any proposal to fill a site must be accompanied by an analysis of the effect on flood levels of similar filling of developable sites in the area.

## Comment:

The site specific assessment and submitted engineering reports are insufficient to determine that the above controls have been met. The development proposal results in a residential development located within an existing overland flow path and incorporates habitable and non-habitable flood levels within the floodway area. In particular, the vehicular access to the proposed development is in a high hazard flood area. Refer figure below. The vehicle movements in the floodway could potentially increase the flood impacts on the properties in the locality including on the western side of Carramarr Road and southern side of Larool Crescent.

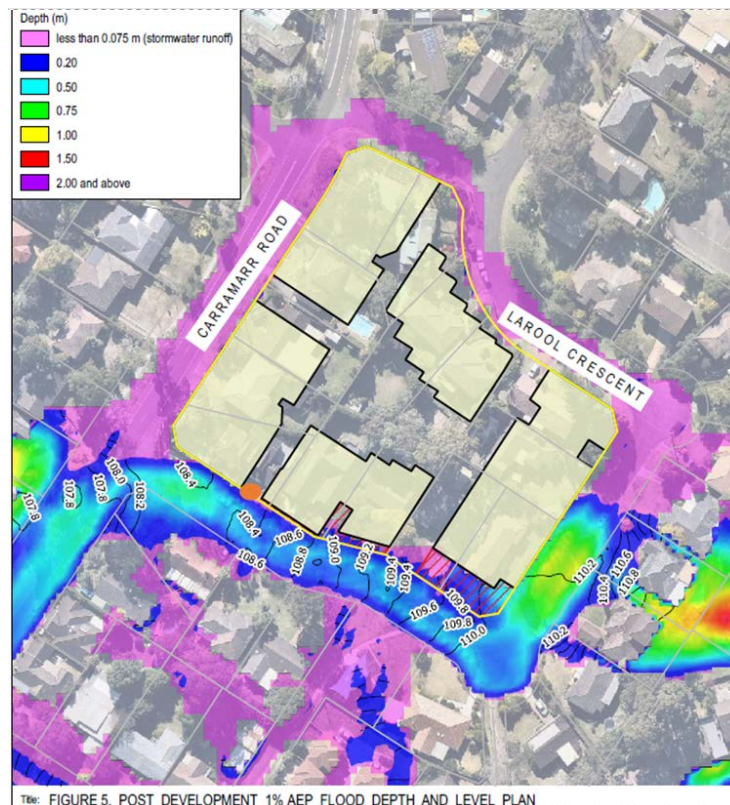


Figure 8: Diagram from Applicant's original flood report with orange dot indicating location of vehicular access to the development.

The flood model upon which the planning levels have been derived have not been accepted by Council staff. In this regard, it cannot be determined that the proposed floor levels and driveway crest are suitable until the flood planning level and extent of flooding is quantified.

In addition, retaining walls and associated fill are proposed within the floodway which may affect the flood behaviour. The architectural, landscape and civil engineering drawings have not been amended to detail the flood flow path, OSD locations, cross-sections, or adequate details (RLs and inlet capacity) to ensure consistency. The submitted flood modelling and flood impact assessment have not demonstrated that the development will not increase flood effects elsewhere, having regard to loss of flood storage and changes in flood levels and velocities caused by alterations to the flood conveyance. Refer also to Section 4bii. regarding the flood planning provision under Clause 5.21 of the LEP.

## Stormwater Management and Water Sensitive Urban Design

The DCP requires a Stormwater Management Plan to be prepared for each development application which demonstrate that stormwater drainage designs comply with the most up to date revision of Council's Design Guidelines Subdivision/Developments (September 2011)

and Contributions Plan No.17 – Castle Hill North Precinct, or an appropriate alternative approved by Council.

The relevant objectives of these controls are:

- *To adopt best practice techniques for stormwater quality management,*
- *To minimise flooding and reduce the effects of stormwater pollution on waterways and*
- *To ensure an integrated approach to water management using water sensitive urban design (WSUD) principles.*

**Comment:**

Council's Engineer reviewed the submitted stormwater plans and found that the information provided to date is insufficient. To meet Council's Design Guidelines Subdivision/Developments, the following design amendments are required on the current Onsite Stormwater Detention Systems 1 & 2 shown on the set of Revision E drawings:

1. OSD storages must be located at practical suitable locations, at the lowest part of each sub-catchments to collect stormwater runoff from most of the site.
2. The proposal to bypass central courtyard area is not supported as the uncontrolled discharge is not accounted in the permissible site discharge. Also, the area is not unable to be drained via the OSD 2.
3. The location of the OSD 1 is impractical for the stormwater runoff from the sub-catchments shown in pink and green on the catchment plan drawing C14 revision E. The OSD 1 must be redesigned to cater the Town Houses (TH) and the Western Building 1 (BW1), whilst the OSD 2 must be redesigned to cater for the Buildings West 2 (BW 2), South (BS), Central (courtyard) and the East (BE).
4. The OSD storages must be accessible externally by the public officers at emergency times; the OSD 1 does not comply with this requirement. Furthermore, the suspended culvert system under the ground flow (drawing C11) designed to convey the overflow from the OSD will not be supported.
5. The OSD 1 tank must be redesigned to be shallow, and the outlet must be directed to Carramarr Road. This will require improvement of street drainage by extending the connection to an existing downstream pipe in the vicinity of the intersection of Carramarr Road and Larool Crescent.
6. Both OSD designs, are not considerate to the submerged outlets due to flooding. The amended OSD design shall be redesigned to consider the submerged outlet design calculation using the Hawkesbury River Catchment requirements.

If the above is amended and the flood planning controls are satisfactorily addressed, the proposal could achieve best practice techniques for stormwater quality management, minimise flooding and reduce the effects of stormwater pollution and ensure an integrated approach to water management. Therefore, the objectives of the control could be met.

**b. Movement Network and Design – Road Upgrade Works in the Castle Hill North Precinct**

The DCP requires that the street network is to be consistent with the 'Indicative Street Network and Hierarchy' within Figure 15, street profiles are to be consistent with the street profiles in Figures 17-21 and the cycleway network is to be generally consistent with the 'Existing and Proposed Cycleway Network' map in Figure 16. Figures 15, 16, 19 and 20 are provided below:

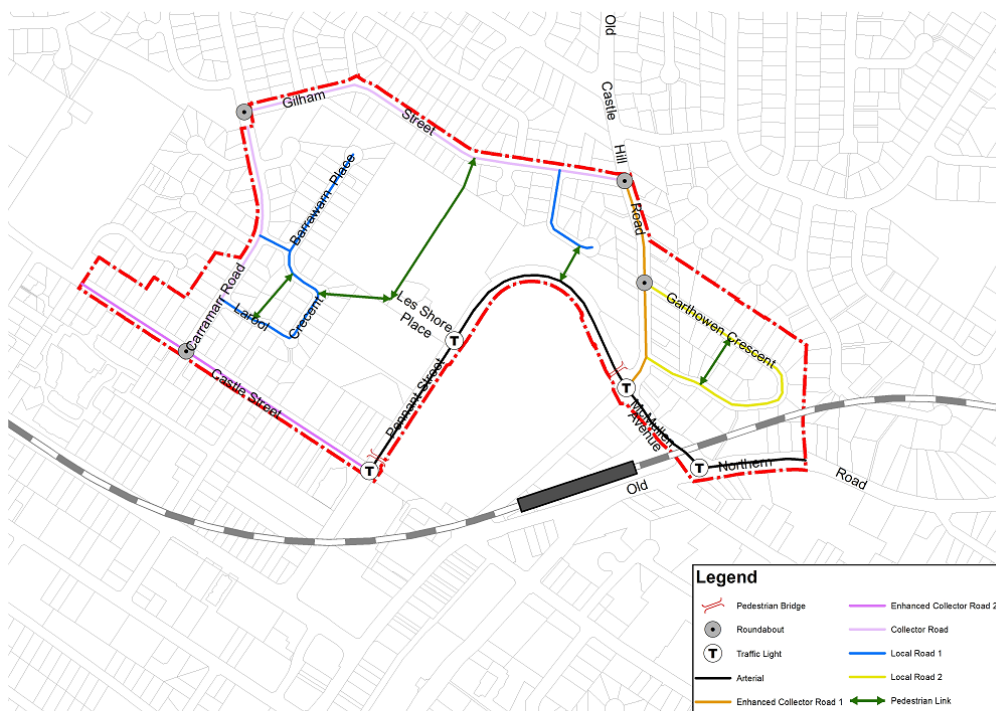


Figure 15 Indicative Street Network and Hierarchy

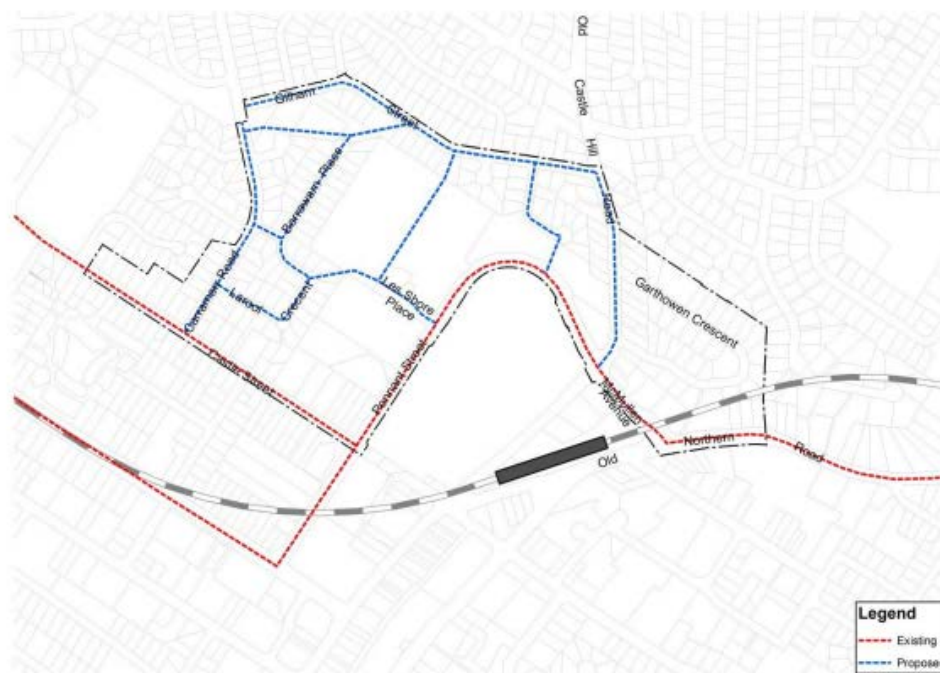
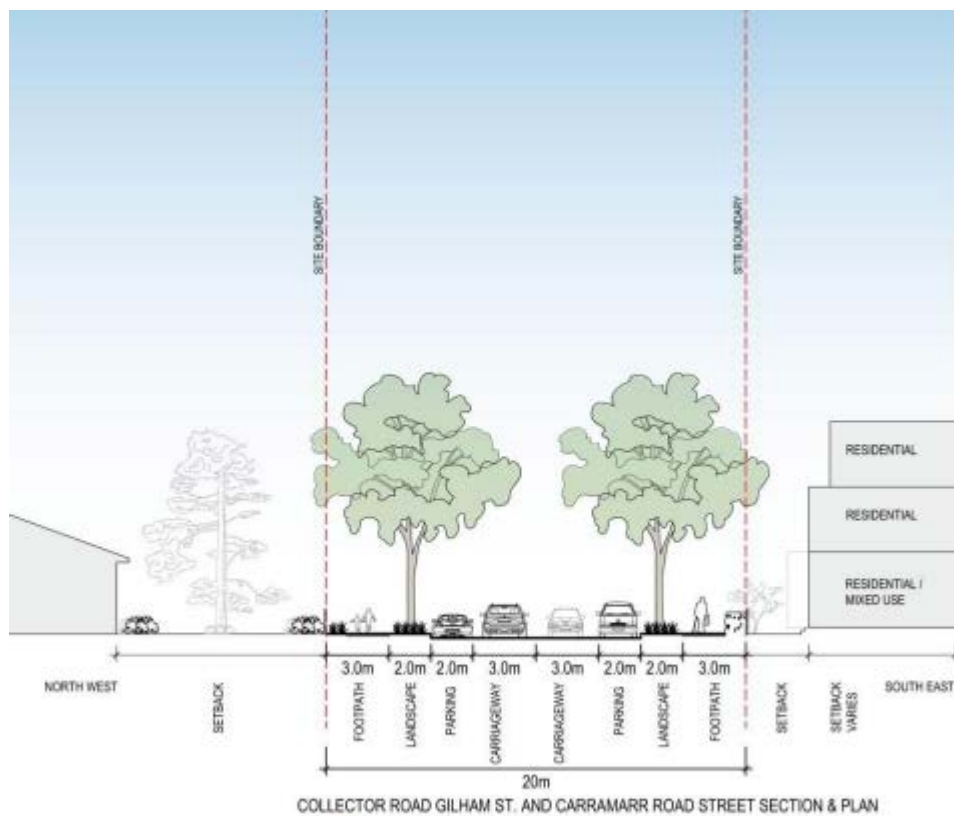


Figure 16 Existing and Proposed Cycleway Network



COLLECTOR ROAD GILHAM ST. AND CARRAMARR ROAD STREET SECTION & PLAN

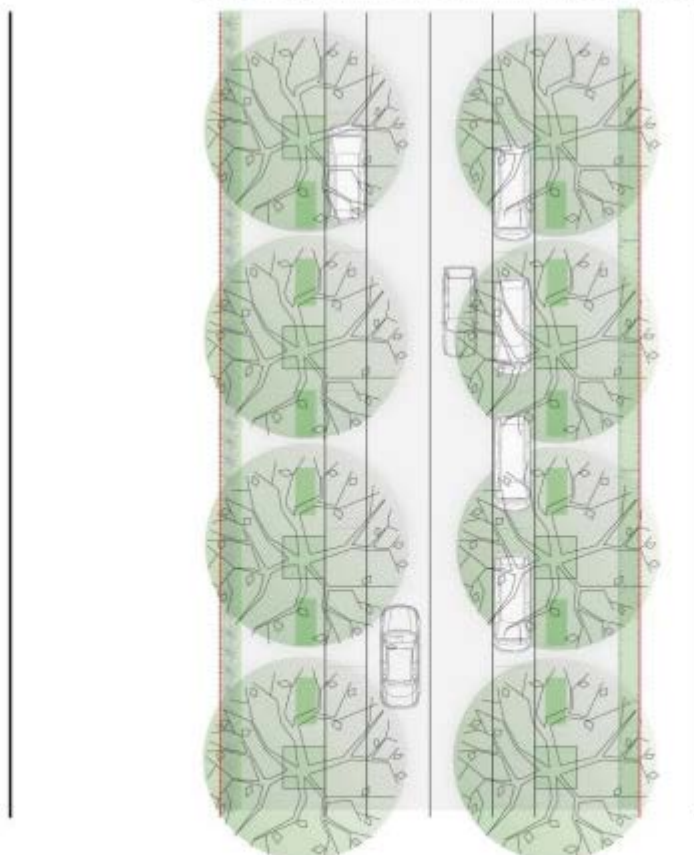
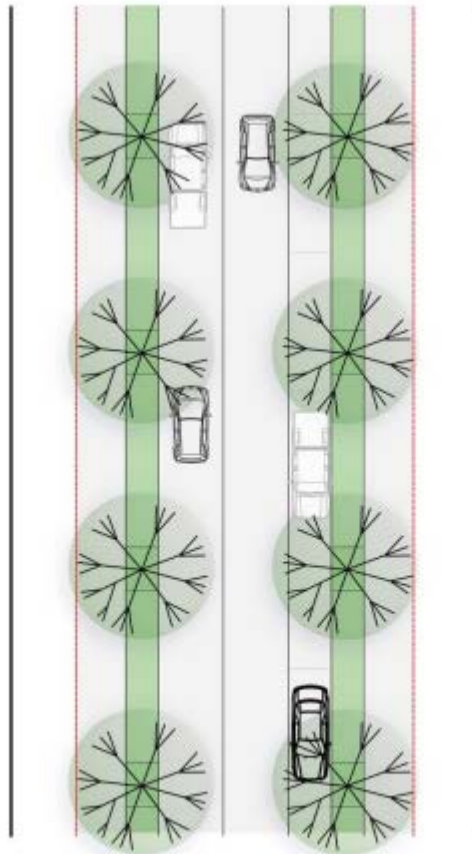
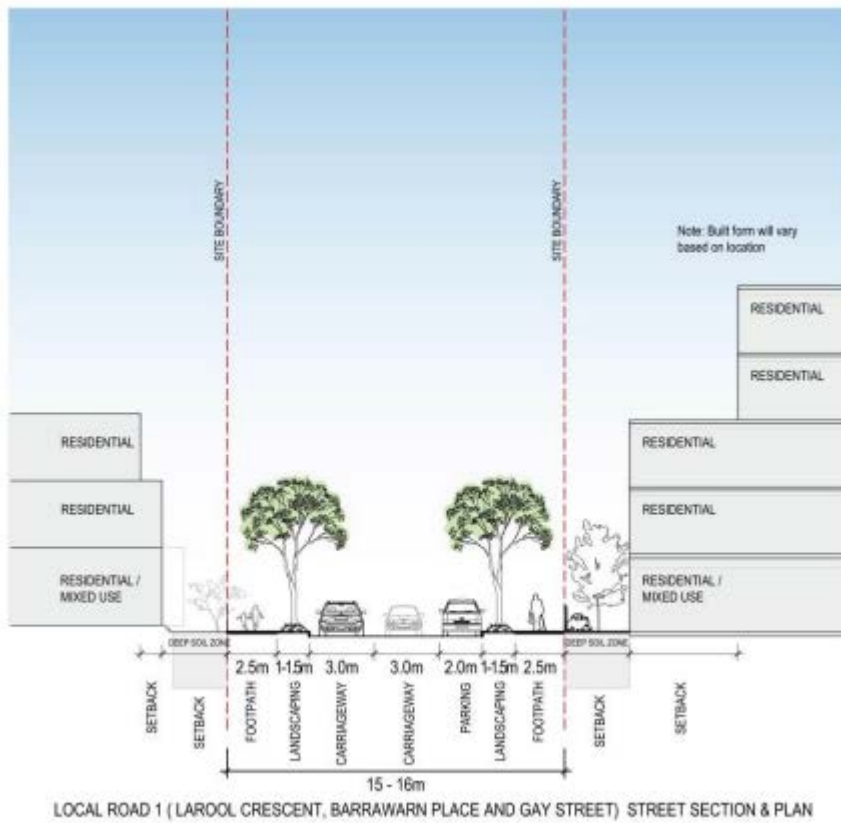


Figure 19 Collector Road (Gilham Street and Carramarr Road)





**Figure 20 Local Road 1 (Larool Crescent, Barrawarn Place and Gay Street)**

The DCP also states as follows:

- *Public domain including footpaths and street trees on all streets (excluding Castle Street and Old Castle Hill Road) are to be provided by developers in accordance with the Castle Hill North Public Domain Plan, and dedicated to Council at no cost.*
- *Despite any other provision of this Development Control Plan, where a local road or proposed local road is shown in this Development Control Plan on an allotment or allotments to which a development application relates and the applicable contributions plan does not require or authorise a monetary contribution towards the acquisition of that land or the construction of the road or associated asset relocation, water management devices, footpaths, street tree planting, traffic management devices and treatment, the development should include the dedication of that part of the allotment identified as local road or proposed local road to the Council free of cost together with the construction of the road and associated asset relocation, water management devices, footpaths, street tree planting, traffic management devices and treatment.*

Despite Council's Engineers requests, the Applicant has not provided civil engineering drawings that demonstrate consistency with this control in the DCP. If these plans were provided to ensure consistency with the above, the application could be conditioned to comply.

### **c. Residential Flat Buildings in the Castle Hill North Precinct**

#### **i) Site Coverage and Landscaping**

The DCP requires site coverage of future development not to exceed 50% of the site area (excluding land to be dedicated or acquired for a public purpose) and that a minimum of 50% of the site area (excluding building footprint, roads, access driveways and parking) is be landscaped.

In accordance with the DCP definitions, the proposal results in a site coverage of 55% or 5,575m<sup>2</sup> or 22.9% (2,315.79m<sup>2</sup>) landscaped open space.

The Applicant has provided the following justification for the variation:

#### *Site Coverage*

*The proposed development seeks consent for a development with a site coverage of 5,575m<sup>2</sup>, or 55% of the total site area. This represents a minor variation of 5%. Whilst the proposal slightly exceeds the maximum site coverage, the development provides a suitable outcome through balancing compliance with the objectives of the R4 zone, a high-quality landscaped outcome and provision of a through site public pedestrian link which is excluded from a site coverage calculation. It is worth noting if the through site pedestrian link was not provided, the development would be compliant with the maximum site coverage permitted. Further to the above, the calculation includes all elevated pathways and the area above the basement entry which will be landscaped. On this basis, the proposed development achieves the overall intent of the control through minimising the visible footprint of the development and maximising the opportunities for open space and landscaping on the site.*

#### *Landscaping*

*The proposed development provides a total of 2,939m<sup>2</sup> of the site as landscaped area, equating to 29.03% of the total site area. Whilst the proposal does not comply with the minimum of 50%, the proposal provides a suitable landscaped outcome through the provision of a high quality landscaped central courtyard for residents, as well as a landscaped streetscape with street trees, shrubs and low-level planting to minimise the built form appearance at street level. Further to the above, compliance with the minimum landscaped area would likely be achieved in the event the pedestrian link would not be required. Provision of the pedestrian link accounts for a large area of land within the site that cannot be included*



as landscaped area. It is considered the development achieves the overall intent of the landscaped area through provision of a high-quality landscaped development from the A total of 2,245.23m<sup>2</sup> of the site is provided as communal open space, which equates to 19m<sup>2</sup> per dwelling. All communal open space is located at ground level. The proposal complies with the minimum communal open space area.

The relevant objectives of the controls are as follows:

### Site Coverage

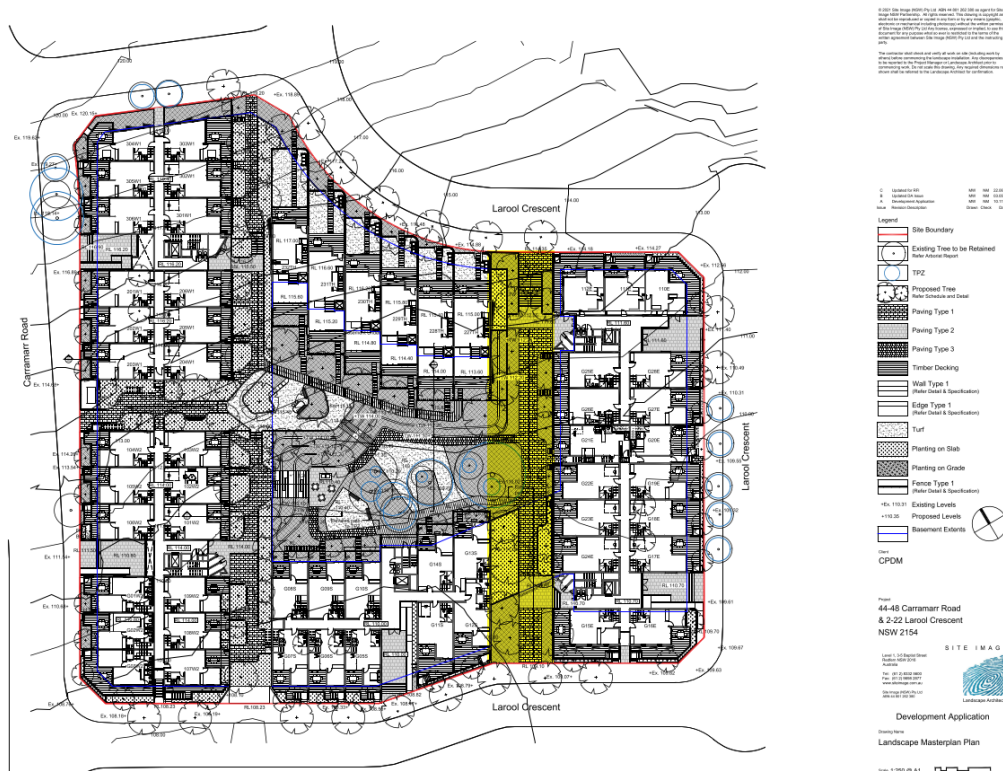
- To provide sufficient space for landscaping that will complement the building form and enhance the landscape character of the street.

### Landscaping

- To maximise opportunities for landscaping, including the retention and/or planting of trees within deep soil areas to ensure a high level of amenity.
- To assist with the management of water quality.
- To provide communal open space for the enjoyment of residents.
- 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.
- To ensure development sites have sufficient space for landscaping that will complement the building form and enhance the landscape character of the street.

### Comment:

The DCP requires the provision of a through site pedestrian links within the site to enhance connectivity and walkability for the new precinct. The proposed pedestrian link comprises an approximate area of 836m<sup>2</sup> which is 8.3% of the site area. Refer to figure below. This has been included in the site coverage and excluded from the landscape open space calculation.



As discussed in Section 5 of the report, the ADG indicates that *some communal open space is accessible and usable by the general public*. In this regard, the landscape design of the communal open space and through-site link could be redesigned to better achieve the outcomes envisaged under the Apartment Design Guide and provide sufficient landscape to meet the objectives of the site coverage control.

It is also noted that one of the objectives of the landscaping control is *to assist with the management of water quality*. As discussed under the flood planning controls above, new developments are to ensure that landscaping (vegetation species and associated structures) is compatible with flood risk and designed to withstand temporary flood inundation in areas designated for detention basins. Updated landscaping plans are required to be consistent with revised stormwater plans to address the concerns raised in Section 6b.

Subject to the redesign of the communal open space areas to be more consistent with the design guidance in the Apartment Design Guide and to meet the provisions of the flood planning provision and integrated water management controls, the variation to the landscape open space and site coverage control could be supported.

## **ii) Built Form Design**

The DCP requires buildings to have a maximum length of 65m. Where a building has a length greater than 30m it is to be separated into at least two parts by a significant recess or projection. The eastern building comprises a maximum length of 68m and does not comply with this control.

The Applicant has provided the following justification for the variation:

*The DCP states that a maximum length of a building is 40m or where a building exceeds 40m it is to have an appearance of 2 distinct building elements with individual architectural expression and features. In response to Council's comments, the Architectural Plans have been updated to reduce the appearance of the length of Building E by creating a break in the façade of the building and use of an open void style feature. The amended design gives the appearance of two separate buildings when viewed from various points along Larool Crescent, as illustrated below.*



*The built form has been split into two distinct elements with a break in the building to meet the objectives of the control. Architectural plans have been updated to include details of the northern elevation of BW1 – refer to extract below.*



The relevant objectives of the control are:

- *To ensure development creates a positive streetscape and achieves a high quality architectural design.*

**Comment:**

Despite the variation of 3m to the maximum building length, the eastern building has been amended to provide a more defined indentation to distinguish the two facades as highlighted in the below plans, elevation, and above perspective. It is considered that the amended design is well articulated, breaks up the mass of the building into two forms and the use three storey framing elements on the bottom levels juxtaposed with contrasting external finishes and colours provides a positive streetscape outcome and achieves a high-quality architectural design. In this regard, the variation can be supported in this instance.

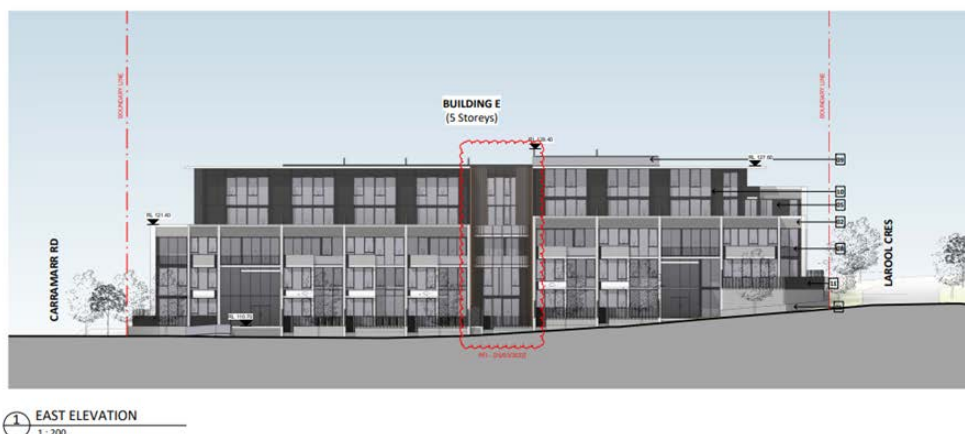


Figure 10: Elevation indicating revised indent to eastern building.



Figure 11: Plan indicating revised indent to eastern building.

### iii) Residential Uses on Ground Level

The DCP requires ground floor residential apartments be elevated from the street level by a minimum of 300mm and a maximum of 600mm. The proposal results in the ground floor units of the western buildings (W1, W2), southern and eastern buildings elevated 600mm above the adjacent street level.

The DCP also requires soft landscaping to the front of the terrace is to be a minimum of 40% of the setback area, contiguous, and a minimum of 2m in any direction. This has not been provided for ground level apartments within the southern and eastern buildings and to the Unit G03 in the western 2 building.

The relevant objectives of the control are:

- To provide residential activation to streets.
- To introduce a fine grain-built form and architectural diversity within a street block and/or building development.

#### Comment:

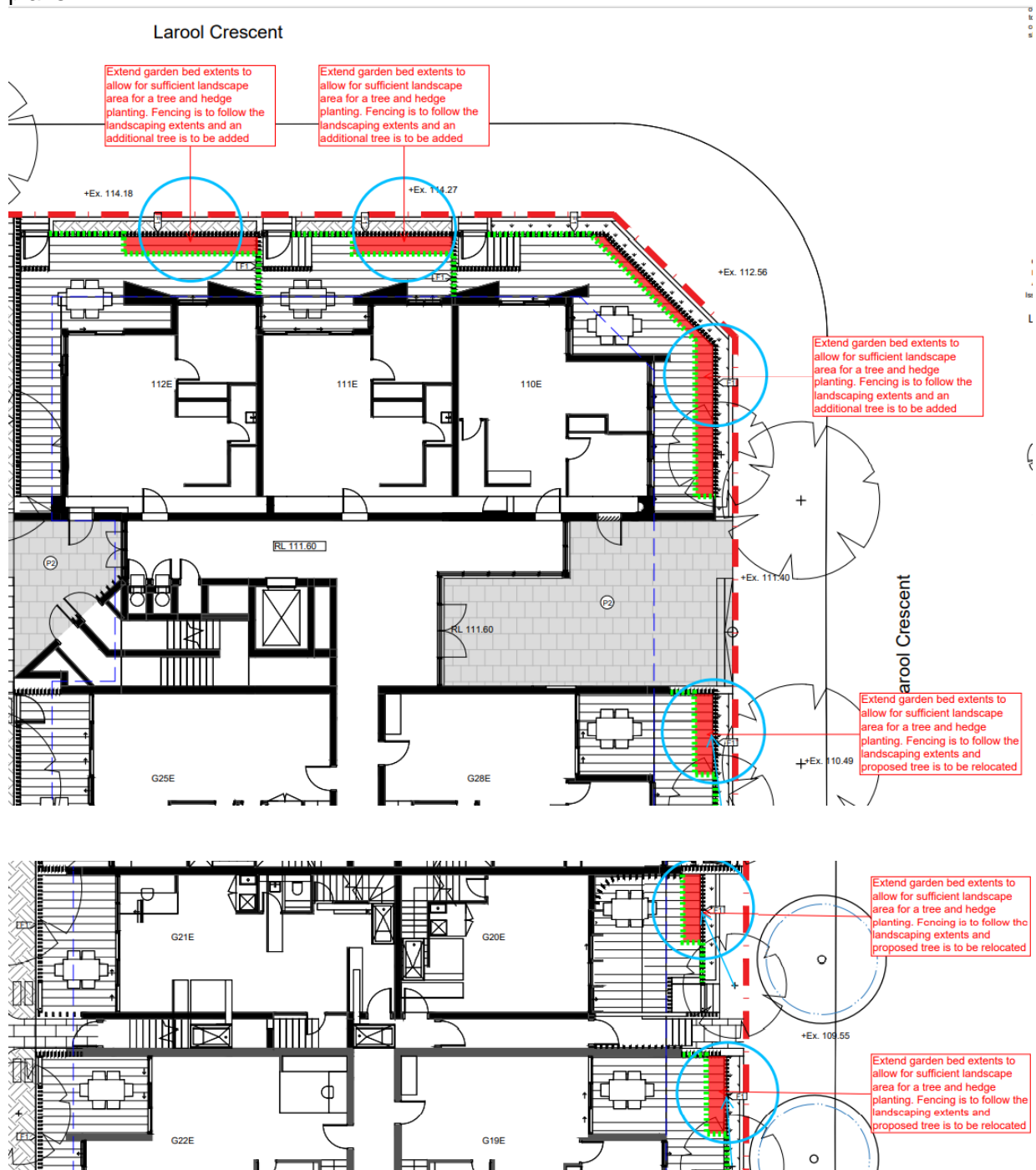
Given the site fronts four streets, a key consideration of the development is the architectural treatment of the buildings at its interface to the streets. The desired future character of the area under the DCP envisages *terrace edge streetscapes characterised by 'tree lined streets with soft landscape treatments within the front setback areas of terraces to soften the interface of the built form with the public realm'*.

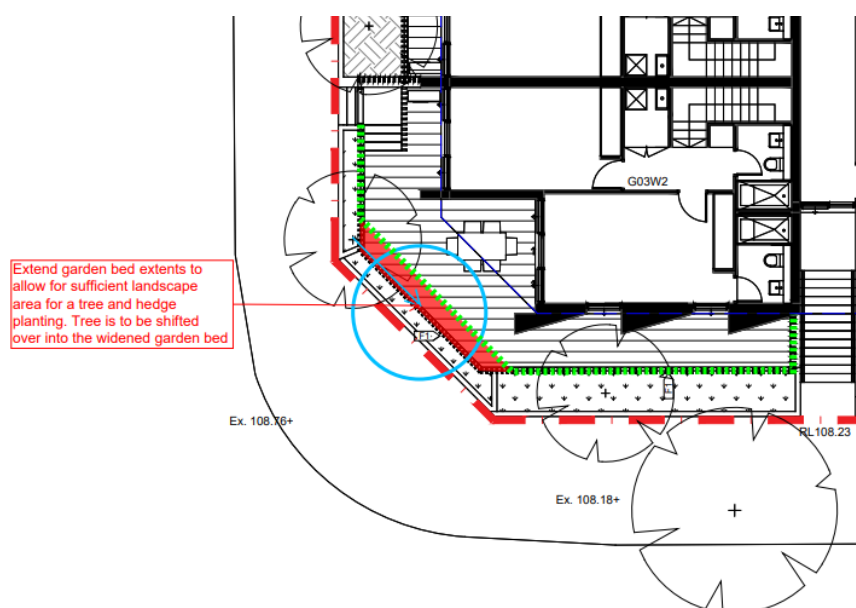
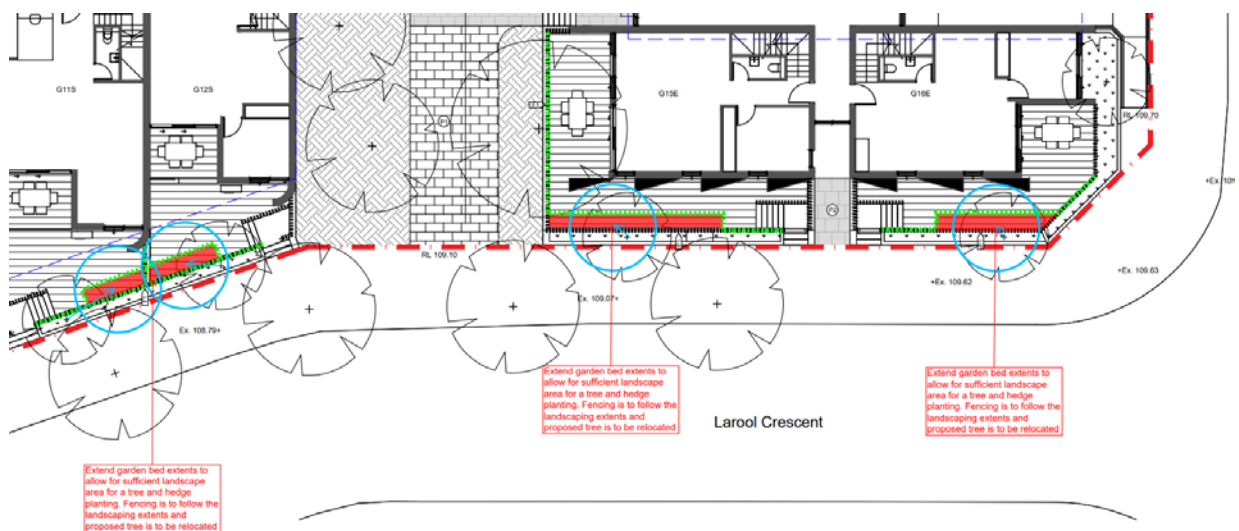
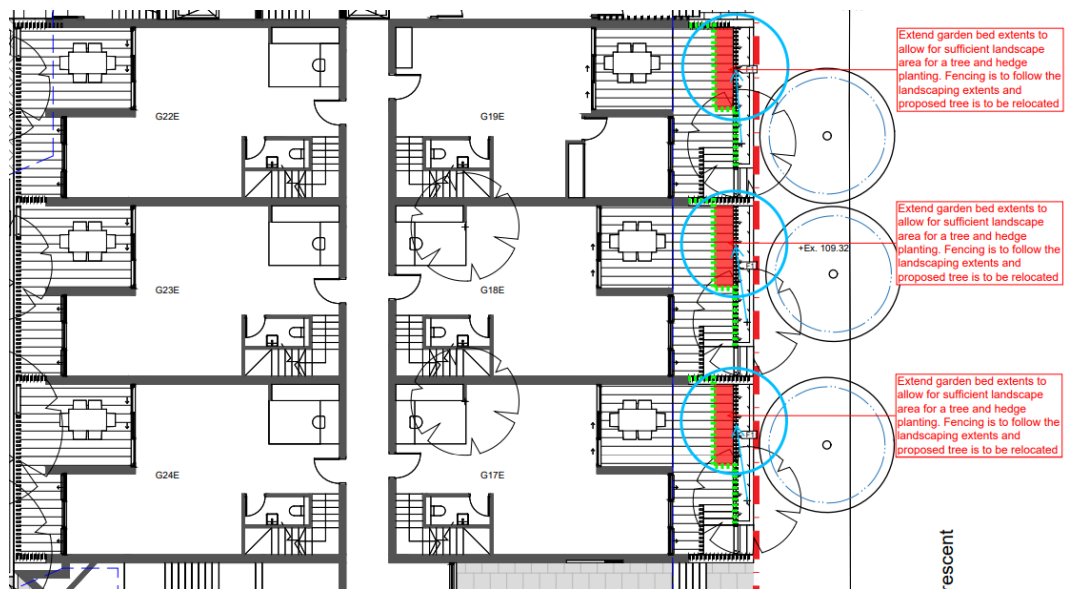
The original proposal as lodged included brick retaining walls up to 3m in height abutting the front property boundaries which is inconsistent with this character statement. To respond to concerns raised by Council staff, the application has been amended to include a tiered planter



box arrangement and more landscaping at street level to screen the retaining walls. Whilst this provides some improvement to soften the interface of the built form, further landscaping is required to achieve the objectives of the control and meet the desired future character statement.

Council's Landscape Assessment Officer recommends further hedges and groundcovers be provided within the front courtyards facing Larool Crescent south and east and in Unit G03 located in the western building. The additional landscaping is marked in red in the below plans.





It is noted that eastern and south facing units may be impacted by flooding. In this regard, further assessment to this control is required once the flooding provisions are satisfied and

consistent, amended civil engineering, stormwater, landscaping, and architectural plans are submitted.

#### **d. Terraces in the Castle Hill North Precinct**

##### **i) Building Setbacks**

The DCP requires buildings to comply with Figure 31 Street setbacks Map and Table 6 Setbacks – Terrace Housing which requires a 3m front setback and a 4m setback to the front building line for the third storey. Due to the irregular shape of the northern boundary, the proposal provides an 8m to 18m front setback and further 2m setback to the front building line for the third storey.

The relevant objectives of the control are:

- *Developments contribute to an attractive and diverse neighbourhood that is characterised by tree-lined streets, high quality landscaping and innovative building design.*
- *To provide strong definition to the public domain and create a consistent streetscape.*
- *To alleviate impacts on amenity including privacy, solar access, acoustic control and natural ventilation within the development and adjoining neighbours.*

##### **Comment:**

It is considered that strict compliance with the setback for terraces is not suitable for the mixed-use residential development which is on a separate consolidated “island” site. Whilst the structure plan in the DCP envisages all buildings on the site to be developed as 3 to 5 storey residential flat building, the three storey terrace typology along the northern frontage is an appropriate design response to the site, providing a well-articulated façade and a large quantum of high-quality landscaping. In contrast to a five-storey residential flat building, the three storey terraces would optimise solar access to the central communal open space area and provide improved amenity outcomes for north facing apartments in the southern residential flat buildings. The variation to this control is supported in this instance.

#### **7. Issues Raised in Submissions**

<b>ISSUE/OBJECTION</b>	<b>COMMENT</b>
<b>Traffic and Parking</b>	
If the development is approved, existing traffic congestion will worsen on Carramarr Road and Castle Street.	<p>A Traffic Report was submitted with the application and reviewed by Council's Senior Traffic Engineer who noted the following:</p> <p><i>The Roads and Traffic Authority Guide to Traffic Generating Developments 2002 indicates that the proposed development may generate 22 AM peak hour movements. Because of its location within walking distance of the Castle Hill Metro, even if there is a significant number of additional trips generated by this project, the change from 14 existing houses to 118 units should be accommodated within the existing road network. In this regard, no objections are raised.</i></p>

ISSUE/OBJECTION	COMMENT
The road widening on Castle Street should occur before this development is approved.	Whilst this would be ideal, fragmented land ownership within the Castle Hill North Precinct does not permit any control of the timing and delivery of developments.
Council and the roads authorities have not done enough to supply the infrastructure to cope with this increase in traffic. They let developments build right up to the boundaries with no thought to widen any of the roads.	<p>The site is located within a strategic centre as identified under the NSW Government's Sydney Region Plan. The traffic and infrastructure impacts for the Castle Hill North Precinct was considered at the planning proposal stage.</p> <p>It is noted that Section 4.1 Movement Network and Design of Part D Section 20 Castle Hill North Precinct and Contributions Plan No. 17 Castle Hill North details the infrastructure works required and funding mechanism to facilitate road network upgrades to cater for the anticipated growth in the Castle Hill North Precinct.</p>
Insufficient street parking will be available if the development is approved.	The proposal complies with the maximum parking provisions permitted under Clause 7.11 of The Hills LEP and Council's DCP. The proposal is consistent with the aims of the Sydney Region Plan and Central City Plan which is underpinned by the principles of transit-oriented development.
Street access may be blocked for long periods of time during the building process.	If development consent is granted to the application, a standard condition of development consent would require the submission of a Traffic Control Plan and Construction Management Plan to ensure that the traffic of construction vehicles are effectively managed.
<b>Height and Setbacks</b>	
The proposed height limit for most of the buildings in the development exceeds the height designated in the current zoning for Larool Crescent. Does this set a precedent for future development applications for land zoned R4 in this area?	The site does not contain a maximum height standard under Clause 4.3 of the LEP. The Castle Hill North Precinct was rezoned by the Department of Planning and Environment without a maximum height standard. The DCP provides a guide on the maximum number of storeys envisaged under the structure plan. The subject site is envisaged to be 3-5 storeys. The proposal is consistent with the structure plan.
The 3m front setback for the residential buildings is too close to the neighbours opposite and would result in noise impacts and overshadowing concerns.	The proposal complies with the site specific DCP front setback control of 3m. The proposal also complies with the solar access controls under the DCP. Noise concerns are address in the below section.
<b>Terraces</b>	
Permissibility within the zone streetscape impacts and setback for terraces which should be 10 meters to street frontage, and 3m to front building line.	The site is located within an R4 High Density zone under The Hills LEP 2019. Multi dwelling housing is permitted in the zone with development consent. The



ISSUE/OBJECTION	COMMENT
	proposal is a unique mixed use residential development that comprises multi dwelling housing in the form of terraces and residential flat buildings. The setbacks provided for the terraces are more than the requirements under the DCP.
<b>Privacy</b>	
The DA proposes, a 5-storey flat building to be constructed in the north corner of the development site, which is only metres away from 35 Larool Crescent and will without any doubt overlook our yard and dwelling house. If the DA is to proceed, we will be deprived of the adequate level of privacy we are entitled to living at our family home. This is utterly unacceptable.	<p>3-5 storey residential flat buildings are envisaged on the site under the Castle Hill North structure plan. The structure plan also envisages that the developments to the north of Larool Crescent (north) and east of Barrawarn Road would be redeveloped as three storey terraces.</p> <p>The built form directly facing 35 Larool Crescent comprises 3 storey terrace housing that is set back approximately 12m - 18m from the front property boundary. This setback is further than the existing dwellings on the site. The residential flat building on the north western corner of the site has been designed with angled blade elements that frame views and redirects views away from adjoining properties.</p>
<b>Noise and Air Pollution</b>	
With an increase in density and traffic, concern is raised regarding noise impacts from significantly more cars passing through Larool Crescent. The situation will be made even worse if a pedestrian link is to be established directly facing 35 Larool Crescent.	<p>An acoustic report was submitted with the application and reviewed by Council's Environmental Health Officer. Council's Environmental Health Team raised no objection to the proposal, and should consent be granted to the application, recommended conditions of development consent requiring ventilation systems / basement carpark exhaust be treated to minimise noise so that the noise is not more than 5dB above the background noise level when measured at the boundary of any neighbouring premises or at the window or balcony of any unit within the site.</p> <p>It is noted that the location of the pedestrian link is consistent with the indicative network and hierarchy map under the site specific DCP for the Castle Hill North Precinct. If consent is granted to the application, a condition requiring an acoustic assessment be provided should any offensive noise complaint be received and verified by Council staff could also be imposed in the development consent.</p>
Will the noise levels be over the maximum levels after construction?	Council's Environmental Health section have raised no objection to the proposal, subject to recommended conditions to mitigate noise impacts if consent was

ISSUE/OBJECTION	COMMENT
	granted to the application.
During the demolition and construction stage, there is likely to be construction noise, vibration, and potential damage to dwelling structures suffered by neighbouring properties.	If development consent was granted to the application, any potential damage to adjoining properties could be mitigated by a condition requiring the submission of a property conditions report for adjoining properties.
While the development application says any hazardous material will be removed according to appropriate guidelines, lot of the houses to be removed are older and will most likely have hazardous material such as asbestos. As neighbours will we be notified as to when date/time that hazardous material will be removed will be happening during the demolition process?  What reassurances will we have that is been done properly, does someone from the council have to oversee it etc or do we just have to trust this is been done properly?	If the development was to be approved, conditions in the development consent would be implemented requiring that: <ul style="list-style-type: none"> <li>• Prior to the commencement of any demolition works involving asbestos containing materials, all adjoining neighbours and Council must be given a minimum five days written notification of works.</li> <li>• Asbestos removal can only be removed by a licenced asbestos removalist.</li> </ul>
Decrease in land value of adjoining properties.	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and there is no evidence to substantiate this view.
Why does this development have to be grey? I realise this is beyond your remit but I am tired of all the grey buildings being erected in The Hills. The area is coming to have a "Soviet sameness".	The proposal incorporates a range of colours and finishes which is considered consistent with the desired future character of the area.

## 8. External Referrals

The Development Application was referred to the following external agencies:

- Sydney Water
- Endeavour Energy

No objections were raised to the proposal subject to conditions if consent was granted to the application.

## 9. Internal Referrals

The Development Application was referred to the following sections of Council:

- Engineering and Waterways
- Traffic
- Tree Management/Landscaping
- Resource Recovery
- Environmental Health
- Land and Spatial Information
- Developer Contributions

The following objections were raised:

## **ENGINEERING AND WATERWAYS COMMENTS**

Council's Engineering and Waterways sections raise objections to the proposal as insufficient information has been provided to make a complete assessment of the application regarding flooding, stormwater drainage and road upgrade works as detailed below:

- Civil works: Civil Engineering drawings detailing the upgrade works including road reformation, cycle path etc. on existing Carramarr Road and Larool Crescent fronting the development in accordance with the Section 4.1 of THSC DCP Part D Section 20 – Castle Hill North have not been provided.
- Flooding: Amended architectural drawings and other documentation are not considerate to the flood hazard relating to the site and have not been addressed as requested. Furthermore, an amended flood study and impact assessment report addressing the LEP and DCP requirements are still lacking for review.
- Stormwater Management: Assessment of amended set of Stormwater Plans Revision E dated 01/06/2022 is withheld as the On-Site Detention design is constrained by the existing flood hazard and the risks in the locality as the drainage outlets from the OSDs are controlled by the flood behaviour on Larool Crescent, which is yet to be addressed as per the items above.
- Vehicular Access, Carpark and Circulation: Due to the flood behaviour and the potential impacts and risks, concern is still raised regarding the location of the vehicular access from Larool Crescent. This has not been satisfactorily addressed.

Council's Senior Engineer concluded as follows:

*"The current design form of the development is not considerate to the existing local flood behaviour in the vicinity of the development and over the downstream behaviours, hence a redesign compliant to the LEP and DCP is recommended".*

Refer to detailed discussion under the Background heading of this report and Section 4b(ii) LEP 2019 Clause 5.21 Flood Planning and non-compliances with THDCP Integrated Water Management controls under Section 6a.

## **TREE MANAGEMENT/LANDSCAPING COMMENTS**

Concerns regarding insufficient landscaping for the proposal were raised by Council's Landscape Assessment Officer. In particular, concern was raised regarding the lack of landscaping provided within the street frontages. Whilst the application has been amended to include more landscaping at street level, Council's Landscape Assessment Officer recommends further hedges and groundcovers be provided within the front courtyards facing Larool Crescent south and east and in Unit G03 located in the western building. The additional landscaping is marked in red in the plans provided under Section 6b(iii). of the report.

It is noted that eastern and south facing units may be impacted by flooding. Further assessment by Council's Landscape Assessment Officer is required once the flooding provisions are satisfied and consistent, amended civil engineering, stormwater, landscaping, and architectural plans are submitted.

## **CONCLUSION**

The site is identified as flood prone land as an overland flow path exists along the south-eastern corner of the site. The current plans include this overland flow path through a portion of the eastern building in the south-eastern corner. The application has not provided sufficient information to demonstrate compliance with the flood planning provisions under Clause 5.21 of The Hills LEP 2019. In this regard, the Clause prohibits development consent to be granted to development on the land.

Notwithstanding, the Applicant is seeking to address this outstanding issue with the submission of flood modelling and revised flood impact assessment. Should the flood impact assessment demonstrate that the above is satisfied and all engineering and landscaping matters are resolved, the application can ultimately be recommended for approval.

## **IMPACTS:**

### **Financial**

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

### **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.

## **RECOMMENDATION**

Given the proposal is generally satisfactory except for the matters raised in relation to flood planning, engineering and landscaping, it is considered appropriate to defer determination of the development application until the end of the first quarter in 2023, to allow the Applicant to respond to the issues raised and enable continued assessment by Council staff. A report for determination of the application will be prepared for the April 2023 meeting of the Panel.

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Map
3. LEP 2019 Zoning Map
4. LEP 2019 Clause 4.4 FSR (Base) Map
5. LEP 2019 Clause 7.11 FSR (Incentive) Map
6. LEP 2019 Clause 7.11A FSR (Bonus) Map
7. Council's Flood Control Layers and Urban Flow Path
8. THDCP Part D Section 20 Castle Hill North Structure Plan
9. Site Plan
10. Floor Plans
11. Elevations
12. Landscape Plans
13. Shadow Diagrams
14. Finishes Schedule
15. Perspectives
16. Clause 4.6 Written Submission
17. Applicant's Legal Submission regarding Clause 7.11A of the LEP

## ATTACHMENT 1 – LOCALITY PLAN



□ SUBJECT SITE

✓ PROPERTIES NOTIFIED

● SUBMISSIONS RECEIVED

NOTE: 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 – SITE PLAN



SUBJECT SITE

**THE HILLS**  
Sydney's Garden Shire

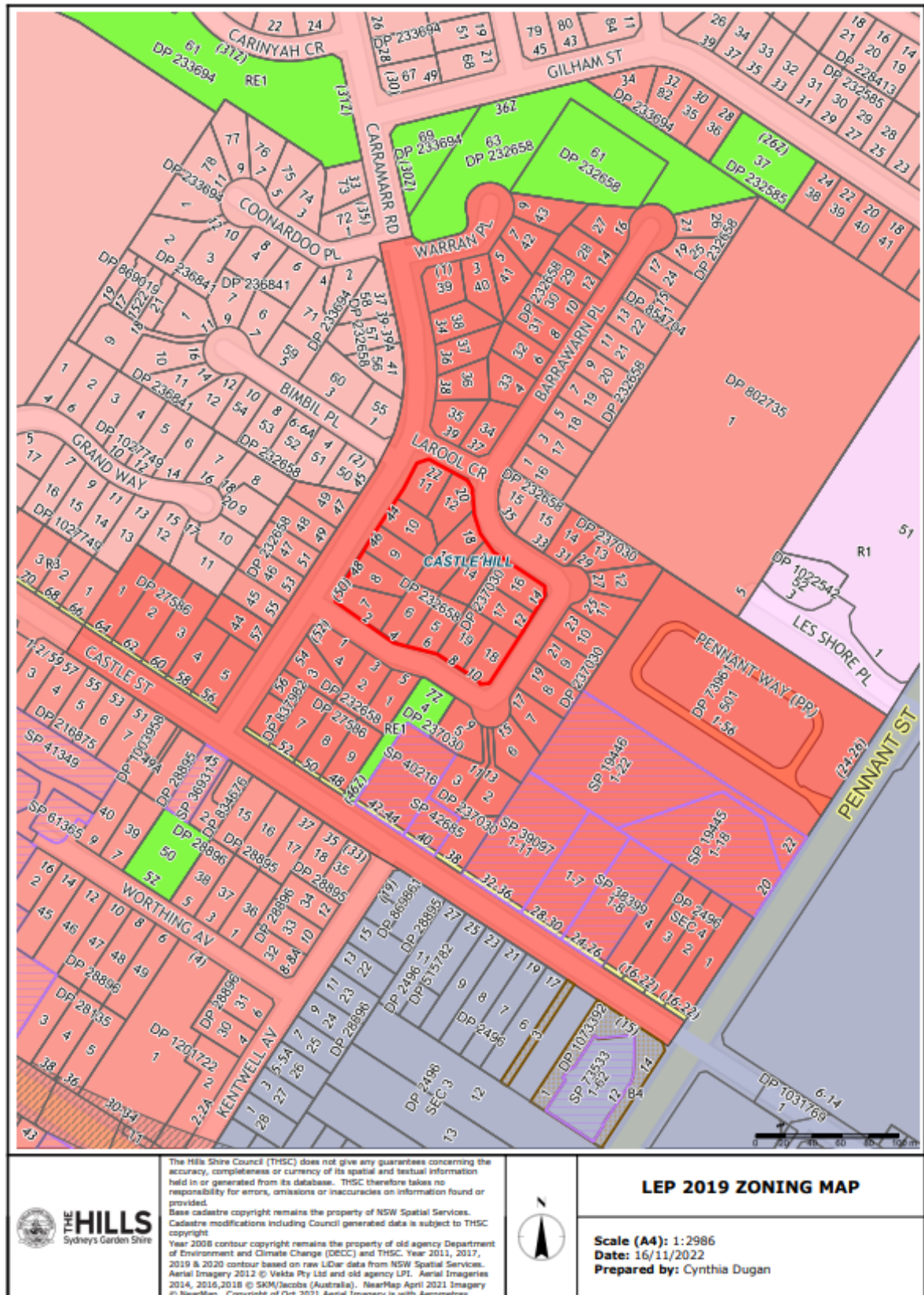
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# ATTACHMENT 3 – LEP 2019 ZONING MAP



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Scale (A4): 1:2986  
Date: 16/11/2022  
Prepared by: Cynthia Dugan





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Year 2008 contour copyright remains the property of old agency Department of Environment and Climate Change (DECC) and THSC. Year 2011, 2017, 2019 & 2020 contour based on raw LIDAR data from NSW Spatial Services.

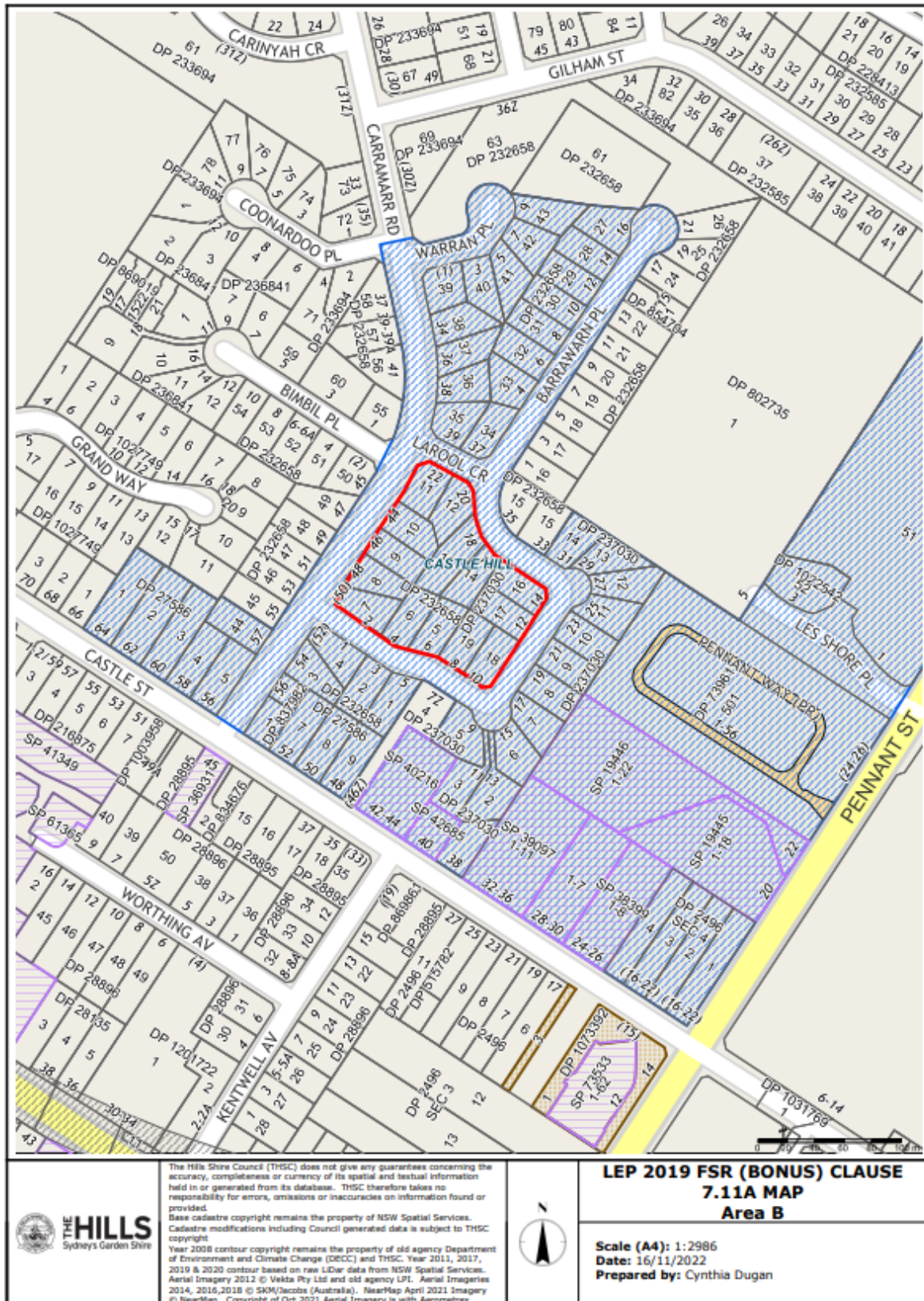
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2014, 2016, 2018 & 2020 by SKM/Jacobs (Australia). NearMap April 2021 Imagery © NearMap. Copyright of Oct 2021 Aerial Imagery is with Aerotrak.



Scale (A4): 1:2986  
Date: 16/11/2022  
Prepared by: Cynthia Dugan

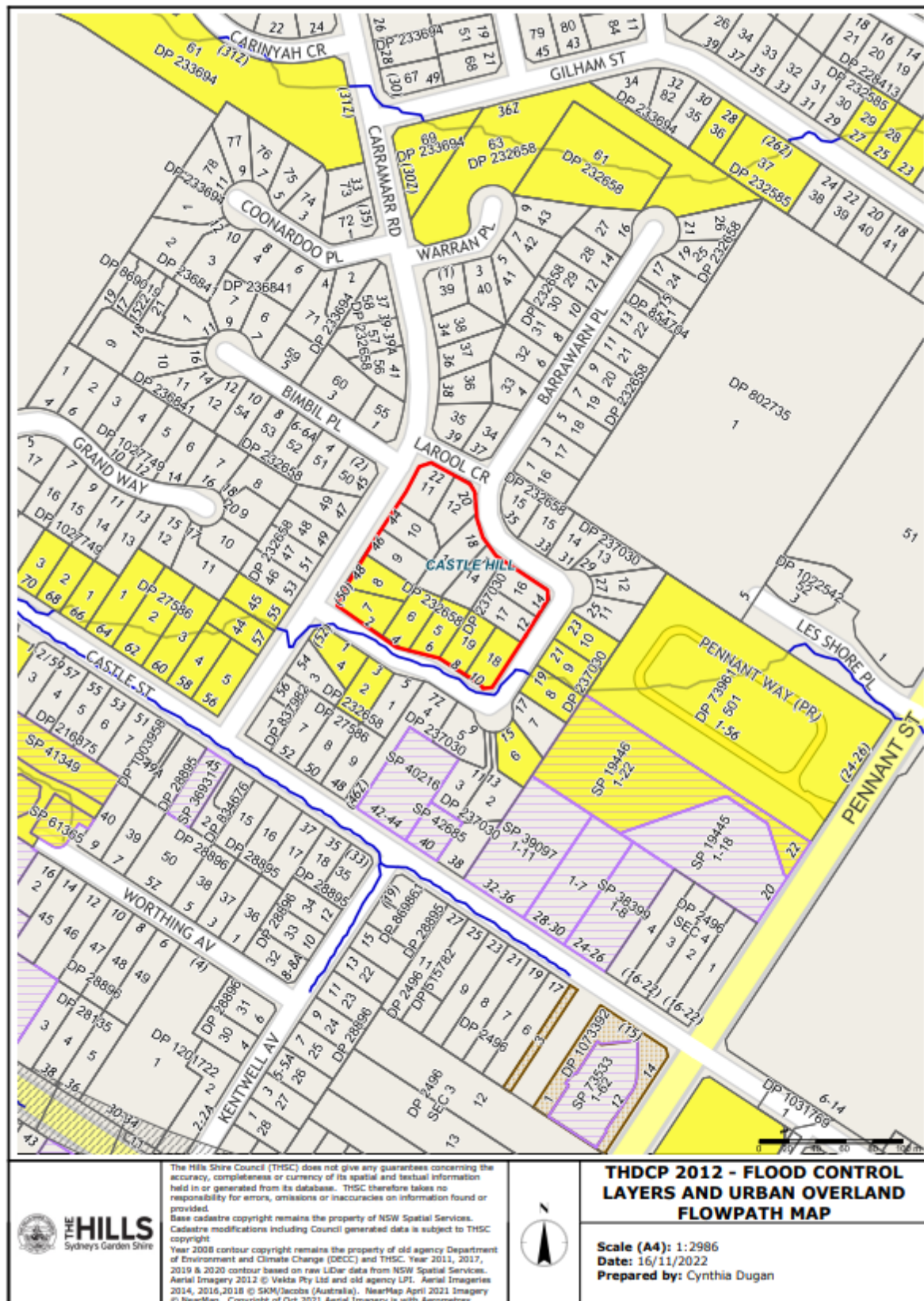


# ATTACHMENT 6 – LEP 2019 CLAUSE 7.11A FSR (BONUS) MAP





# ATTACHMENT 7 – THDCP 2012 FLOOD CONTROL LAYERS AND URBAN OVERLAND FLOW PATH MAP



## ATTACHMENT 8 – THDCP 2012 PART D SECTION 20 CASTLE HILL NORTH STRUCTURE PLAN

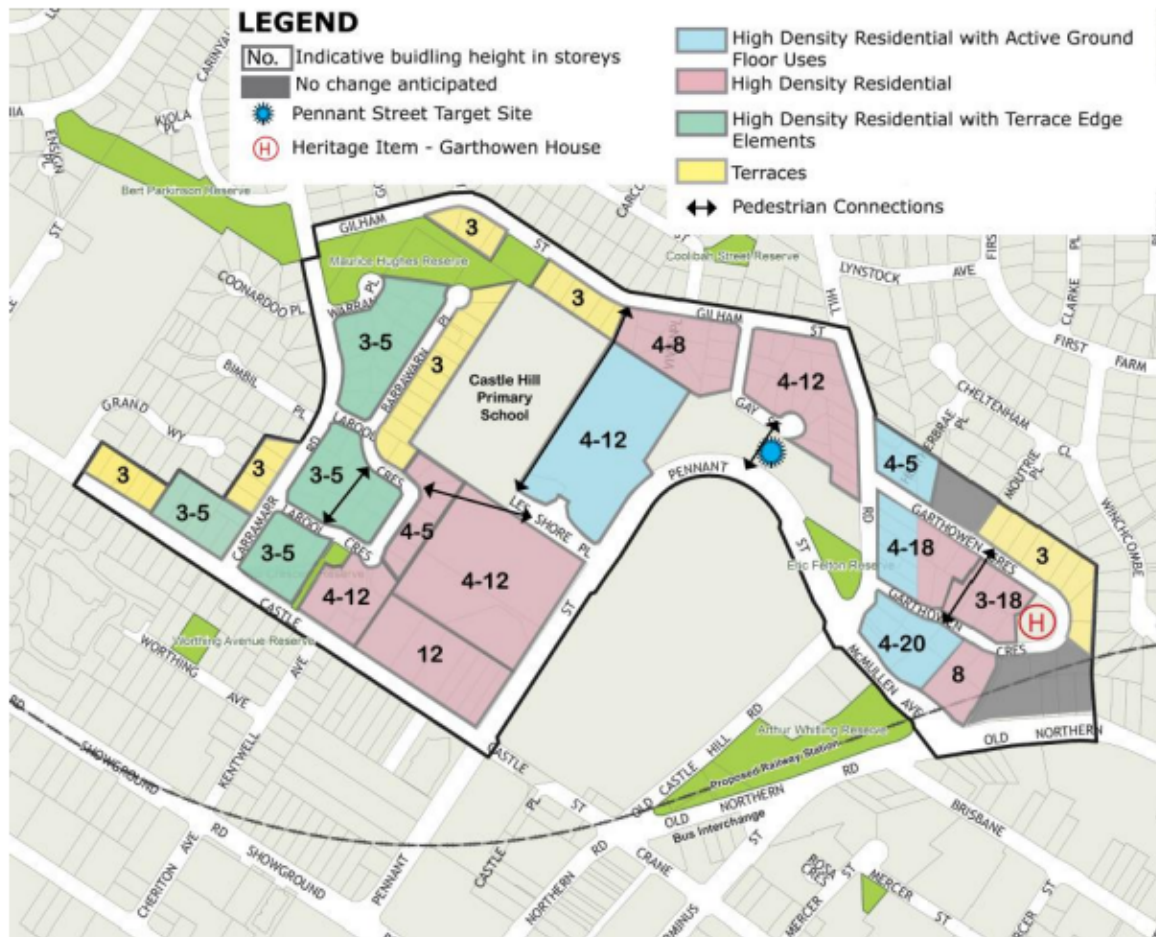


Figure 14 Castle Hill North Structure Plan



ATTACHMENT 9 – SITE PLAN



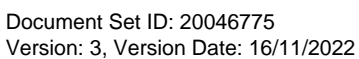
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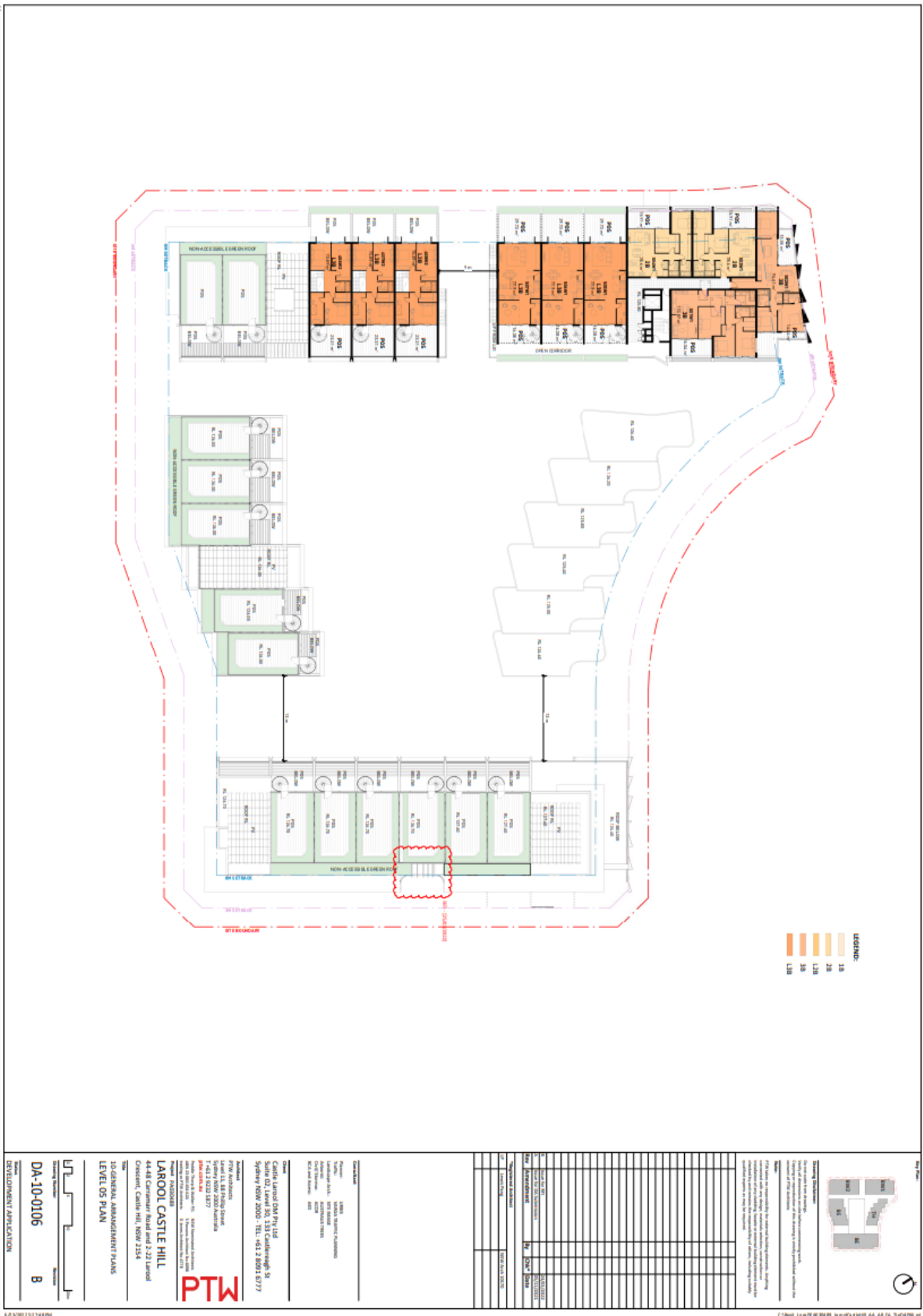


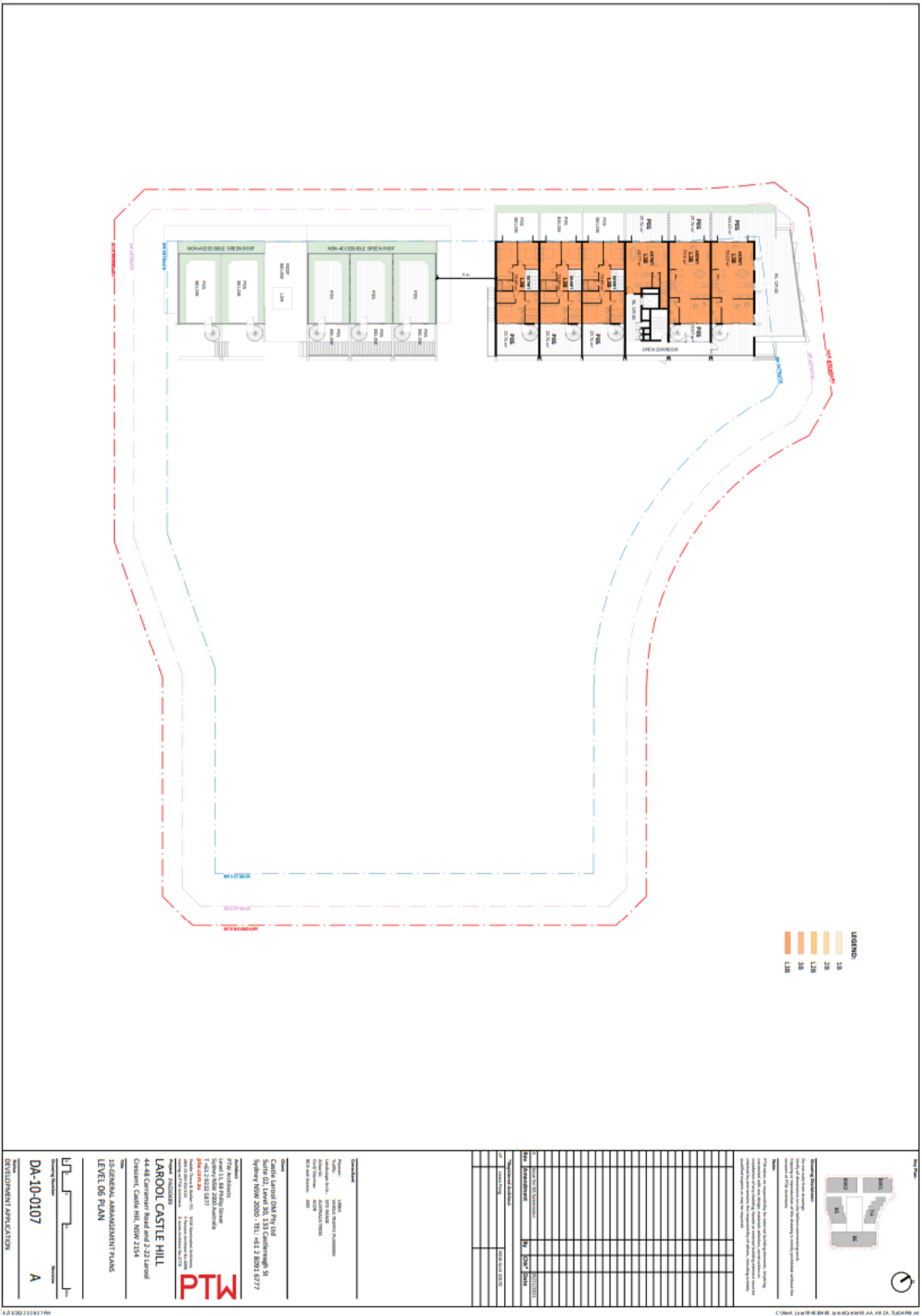










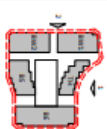






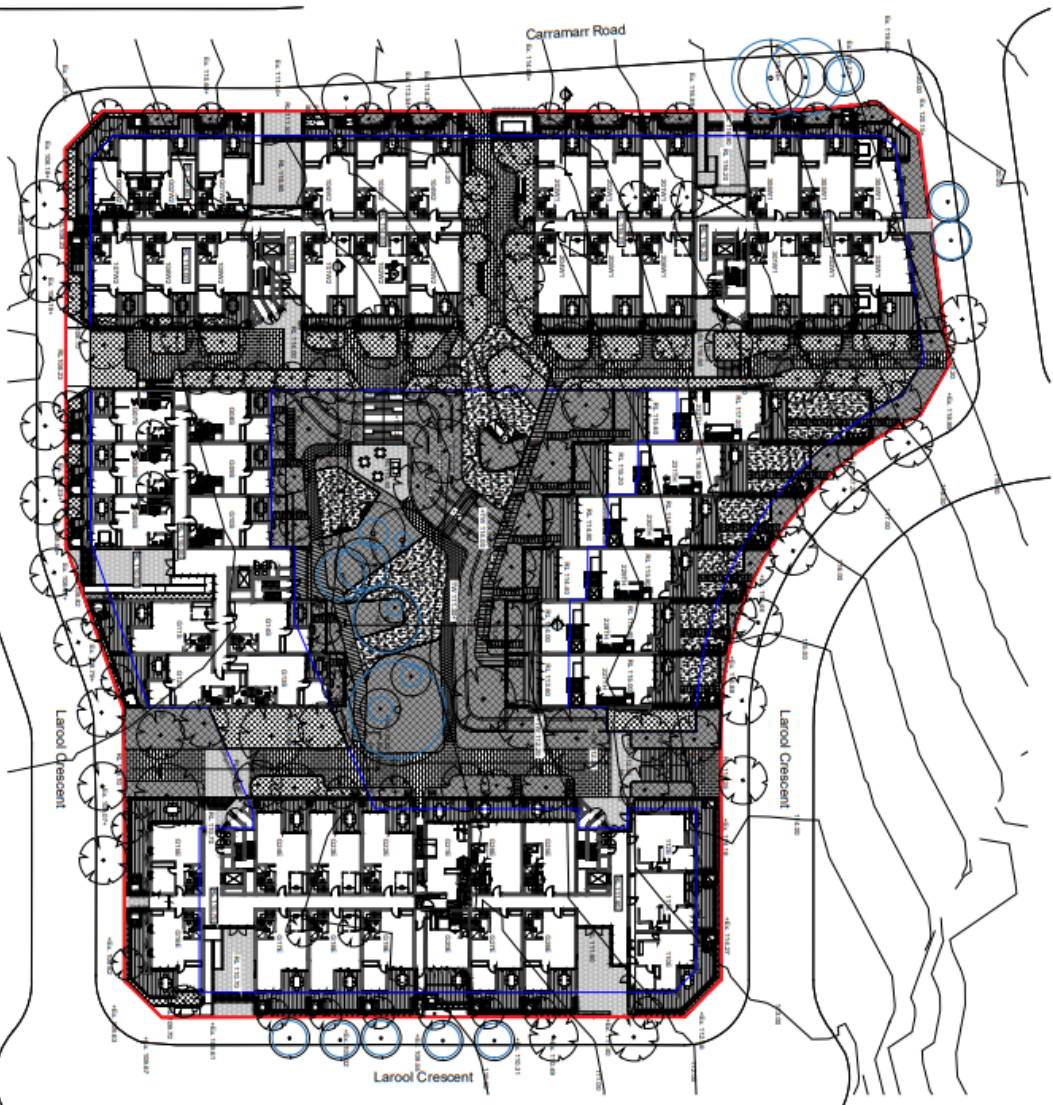


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ATTACHMENT 12 – LANDSCAPE PLANS

NOT FOR CONSTRUCTION



CPDM

Legend

- Site Boundary
- Existing Tree to be Retained
- Proposed Tree
- Paving Type 1
- Paving Type 2
- Paving Type 3
- Turf
- Planting on Site
- Planting on Grade
- Existing Lawn
- Proposed Lawn
- Staircase Easement

Scale: 1:200 @ A1

SS21-47185

200 C

Development Application

Landscape Masterplan

Site Image

44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Project: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Client: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Design: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Drawn: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Check: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Approved: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Date: 44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154

Scale: 1:200 @ A1

SS21-47185

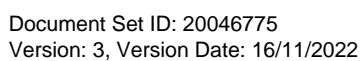
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Development Application

Landscape Masterplan

Site Image

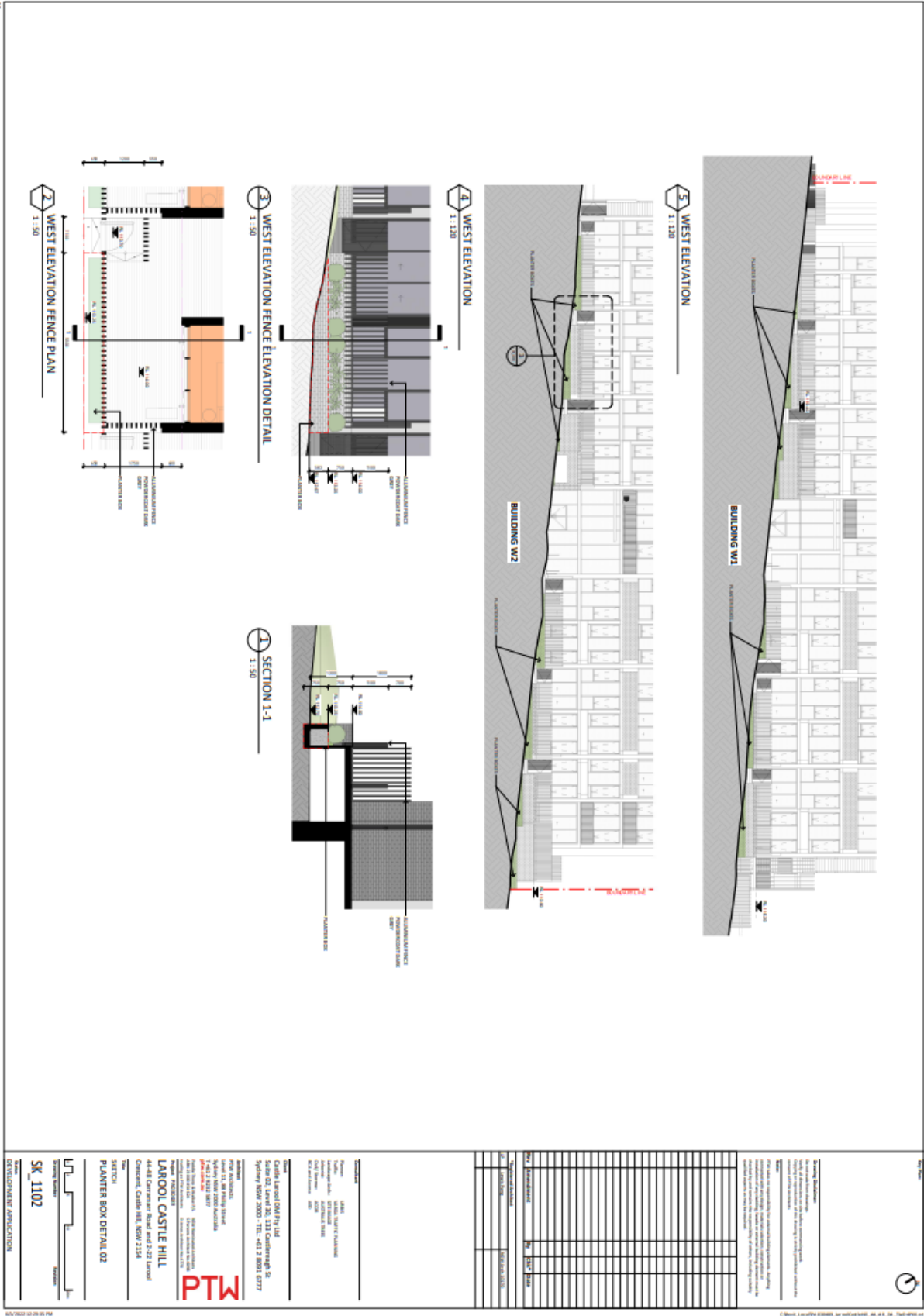
44-48 Carramarr Road & 2-22 Larool Crescent NSW 2154



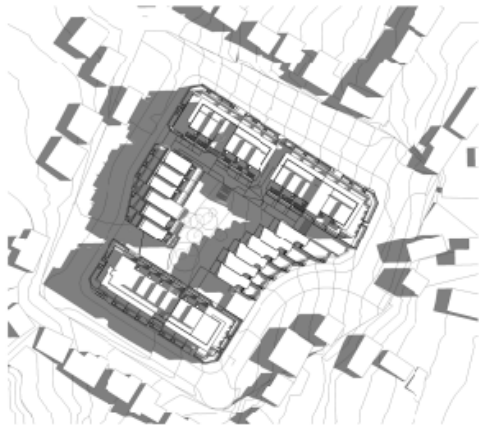








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SHADOW DIAGRAM\_June21\_1200



SHADOW DIAGRAM\_June21\_1300



SHADOW DIAGRAM\_June21\_1400



SHADOW DIAGRAM\_June21\_1500

**DA-60-101**

**A**

**DEVELOPMENT APPLICATION**

**PTW**

**La Trobe Crescent/Castle Hill**

44-48 Carpenter Road and 2-22 Lynton Crescent, Castle Hill, NSW 2124

**65 SOLAR ACCESS**

**SHADOW DIAGRAMS (PLANS) 02**

**DA-60-101**

**A**

**DEVELOPMENT APPLICATION**

**Project:** LA TROBE CREST/CASTLE HILL

**Location:** 44-48 CARPENTER ROAD AND 2-22 LYNTON CRESCENT, CASTLE HILL, NSW 2124

**Site Area:** 10,000 SQM

**Site Zoning:** R20

**Site Use:** RESIDENTIAL

**Site Description:** The site is a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM. The site is located on a corner of Carpenter Road and Lynton Crescent, Castle Hill, NSW 2124.

**Site Plan:** The site plan shows the layout of the 10 lots, with the proposed development shown in grey. The site is bounded by Carpenter Road to the north, Lynton Crescent to the east, and a private road to the south and west.

**Site Photos:** The site photos show the current state of the site, which is mostly vacant land. The site is surrounded by residential development.

**Site History:** The site has been owned by the same family for over 50 years. It has been used as a residential development for many years.

**Site Access:** The site is accessed via a private road from Carpenter Road. There is a proposed new access point from Lynton Crescent.

**Site Easements:** There are no easements over the site.

**Site Constraints:** The site is subject to a number of constraints, including a flood overlay, a bushfire overlay, and a heritage overlay.

**Site Potential:** The site has the potential to be developed as a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM.

**Site Value:** The site is valued at approximately \$1,000,000.

**Site Use:** The site is currently used as a residential development.

**Site Zoning:** The site is zoned R20, which allows for residential development.

**Site Description:** The site is a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM. The site is located on a corner of Carpenter Road and Lynton Crescent, Castle Hill, NSW 2124.

**Site Plan:** The site plan shows the layout of the 10 lots, with the proposed development shown in grey. The site is bounded by Carpenter Road to the north, Lynton Crescent to the east, and a private road to the south and west.

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**Site Easements:** There are no easements over the site.

**Site Constraints:** The site is subject to a number of constraints, including a flood overlay, a bushfire overlay, and a heritage overlay.

**Site Potential:** The site has the potential to be developed as a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM.

**Site Value:** The site is valued at approximately \$1,000,000.

**Site Use:** The site is currently used as a residential development.

**Site Zoning:** The site is zoned R20, which allows for residential development.

**Site Description:** The site is a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM. The site is located on a corner of Carpenter Road and Lynton Crescent, Castle Hill, NSW 2124.

**Site Plan:** The site plan shows the layout of the 10 lots, with the proposed development shown in grey. The site is bounded by Carpenter Road to the north, Lynton Crescent to the east, and a private road to the south and west.

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**Site Access:** The site is accessed via a private road from Carpenter Road. There is a proposed new access point from Lynton Crescent.

**Site Easements:** There are no easements over the site.

**Site Constraints:** The site is subject to a number of constraints, including a flood overlay, a bushfire overlay, and a heritage overlay.

**Site Potential:** The site has the potential to be developed as a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM.

**Site Value:** The site is valued at approximately \$1,000,000.

**Site Use:** The site is currently used as a residential development.

**Site Zoning:** The site is zoned R20, which allows for residential development.

**Site Plan:** The site plan shows the layout of the 10 lots, with the proposed development shown in grey. The site is bounded by Carpenter Road to the north, Lynton Crescent to the east, and a private road to the south and west.

**Site Photos:** The site photos show the current state of the site, which is mostly vacant land. The site is surrounded by residential development.

**Site History:** The site has been owned by the same family for over 50 years. It has been used as a residential development for many years.

**Site Access:** The site is accessed via a private road from Carpenter Road. There is a proposed new access point from Lynton Crescent.

**Site Easements:** There are no easements over the site.

**Site Constraints:** The site is subject to a number of constraints, including a flood overlay, a bushfire overlay, and a heritage overlay.

**Site Potential:** The site has the potential to be developed as a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM.

**Site Value:** The site is valued at approximately \$1,000,000.

**Site Use:** The site is currently used as a residential development.

**Site Zoning:** The site is zoned R20, which allows for residential development.

**Site Description:** The site is a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM. The site is located on a corner of Carpenter Road and Lynton Crescent, Castle Hill, NSW 2124.

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**Site Easements:** There are no easements over the site.

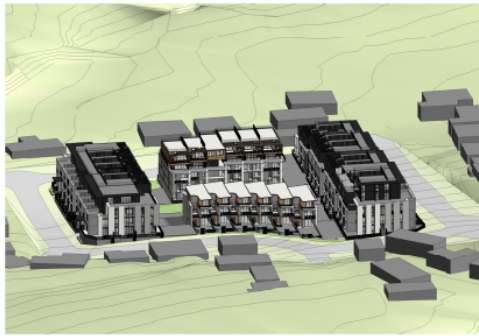
**Site Constraints:** The site is subject to a number of constraints, including a flood overlay, a bushfire overlay, and a heritage overlay.

**Site Potential:** The site has the potential to be developed as a residential development consisting of 10 lots, each with a minimum area of 1,000 SQM.

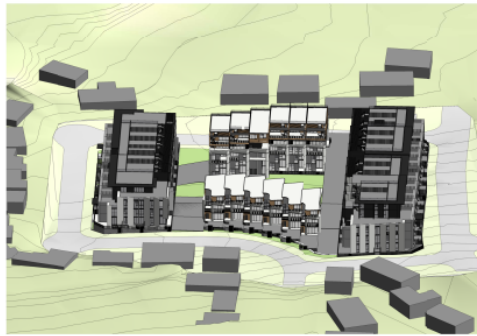
**Site Value:** The site is valued at approximately \$1,000,000.

**Site Use:** The site is currently used as a residential development.

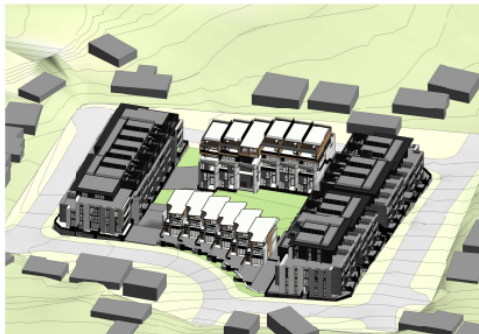
**Site Zoning:** The site is zoned R20, which allows for residential development.



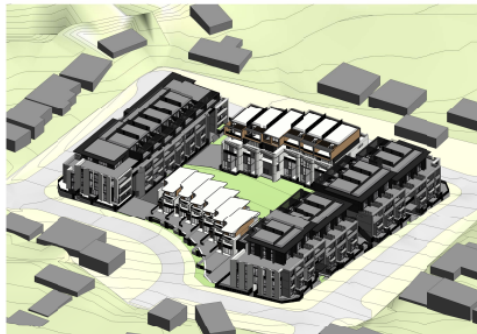
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SOLA\_21Jun1000



SOLA\_21Jun1100



SOLA\_21Jun1200

DA-60-200

PTW

Larool Crescent/Castle Hill  
44-48 Carramar Road and 2-22 Larool  
Crescent, Castle Hill, NSW 2124

60-SOLAR ACCESS  
SOLAR SUN EYE VIEWS 01

DA-60-200

A

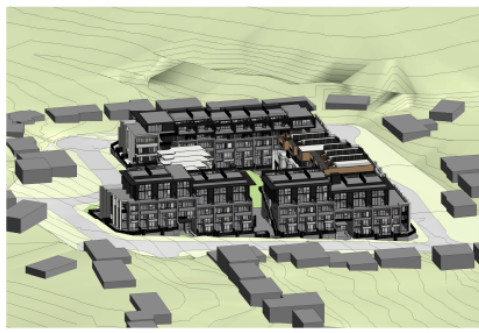
DEVELOPMENT APPLICATION



SOLA\_21Jun1300



SOLA\_21Jun1400



SOLA\_21Jun1500

DA-60-201

PTW

Larool Crescent/Castle Hill  
44-48 Carramar Road and 2-22 Larool  
Crescent, Castle Hill, NSW 2124

60-SOLAR ACCESS  
SOLAR SUN EYE VIEWS 02

DA-60-201

A

DEVELOPMENT APPLICATION

## ATTACHMENT 14 – FINISHES SCHEDULE

01. LIGHT GREY BRICK

02. PRECAST CONCRETE

03. TIMBER PLANK CLADDING

04. TIMBER CLADDING

05. PAINTED DARK GREY

06. PAINTED LIGHT GREY

07. POWER COATED DARK GREY

08. ALUMINUM SLATS BALUSTRADE POWDERCOAT DARK GREY

09. GLASS BALUSTRADE

10. CLEAR GLASS

11. ALUMINUM FENCE POWDERCOAT DARK GREY

12. ALUMINUM FNS POWDER COATED DARK GREY

13. ALUMINUM FNS POWDER COATED LIGHT GREY

14. ALUMINUM CLADDING POWDER COATED DARK GREY



## ATTACHMENT 15 – PERSPECTIVES



VIEW OF EAST BUILDING FROM LAROOL CRESCENT



VIEW OF TERRACES FROM LAROOL CRESCENT





INTERNAL VIEW FRONTING CARRAMARR ROAD



INTERNAL VIEW OF BUILDING FROM COMMUNAL OPEN SPACE AREA

## 2-22 Larool Crescent & 44-50 Carramarr Road, Castle Hill

Without prejudice clause 4.6 variation request to clause 7.11A of The Hills Local Environmental Plan 2019

On behalf of  
Castle Larool DM Pty Ltd  
May 2022



## Project Director

Adam Coburn

## Contributors

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Revision	Revision Date	Status	Authorised
A	26/05/22	Final	Adam Coburn

\* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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## 1 Introduction

This without prejudice clause 4.6 variation request (clause 4.6) accompanies a Development Application (DA) submitted to The Hills Shire Council (Council) for the demolition of existing structures and construction of four residential flat buildings and terrace dwellings comprising a total of 118 apartments and basement parking at 2-22 Larool Crescent and 44-50 Carramarr Road, Castle Hill (the site).

In Council's letter dated 25 March 2022, it notes Council staff sought advice from the Panel with respect to the interpretation of clause 7.11A of The Hills Local Environmental Plan 2019 (LEP). The Panel's response to Council's request for advice is as follows:

*The Panel has no concluded position on the disputed issue of the compliance of the proposed development with Clause 7.11A(3)(g)(i). However, if the applicant proceeds with the currently proposed building heights, the Panel considers that it would be prudent for the applicant to submit a 'without prejudice' Clause 4.6 variation request. Without offering any opinion at this stage on the merits of the proposed building form and FSR, if such a request is properly formulated, this would alleviate any procedural concerns if the Panel is ultimately minded to grant consent to the application.*

In this regard, Council advised the applicant to submit a 'without prejudice' clause 4.6 variation request to alleviate any procedural concerns regarding compliance with clause 7.11A(3)(g)(i). It is noted legal advice was submitted as part of the DA, prepared by Dentons. This clause 4.6 should be read in conjunction with the advice from Dentons.

The clause 4.6 variation request seeks to vary development on certain land within the Castle Hill North Precinct, which applies to the site under clause 7.11A(3)(g)(i) of the THLEP 2019.

Clause 7.11A(3)(g)(i) of the LEP states the following:

*(g) in relation to land identified as "Area K" on the Key Sites Map—  
(i) buildings on the land will not exceed three storeys along the Larool Crescent and Carramarr Road frontages, and*

In our view, the wording of the clause 7.11A(3)(g)(i) was drafted in a way that did not reflect Council's desired outcome for the site. This is evidenced in our review of Council's assessment reports in relation to the rezoning of Castle Hill North Precinct, which clearly articulates the intention for Area K was to incorporate a three storey terrace address along the frontages, but not to limit the height of buildings itself to three storeys.

It is important to note that if the intention was to limit the height of development to three storeys across the entire site, it would undermine the ability to utilise the incentive FSR established in clause 7.11A.

Furthermore, the site is zoned R4 High Density Residential, which provides planning objectives to provide housing needs and types within a high density residential environment. If the intent of clause 7.11A(3)(g)(i) was to limit development to three storeys, this would represent a clear inconsistency with the objectives of the zone, particularly as the site is eligible for additional floor space under clause 7.11A.

The proposed development aligns with the typology and storeys contained in the Castle Hill North Development Control Plan (DCP) and accompanying Structure Plan. It identifies the site as containing 'High Density Residential with Terrace Edge Elements'.

Specifically, page 8-9 of the DCP notes the following:





*Note: Residential flat buildings with a 'terrace edge' are to address this section in terms of streetscape appearance. All units within the development are also to address the development controls for high density development within Section 5.*

The above note suggests that terrace edge components are contemplated in high density typologies such as residential flat buildings. This is further reinforced by upper level setbacks contained on the site, allowing for additional storeys that are set back an additional 5m. This preserves the integrity of the terrace edge interface along the frontage, whilst allowing for additional height that is appropriately set back.

It is important to note the principles which underpin the Castle Hill North DCP are:

- Housing diversity;
- Transit oriented development;
- Infrastructure and open space; and
- Place making.

The proposal is entirely consistent with vision and supporting principles of the Castle Hill North DCP. It provides a form of high-density development that includes a range of housing choices and diversity to cater for different living needs, expectations and household budgets.

The above reasons suggest there has been a misalignment between Council's envisaged controls for the site and the subsequent drafting of the clause.

Nonetheless, the variation will enable the delivery of a medium to high-density residential development, that is consistent with the outcomes of the Castle Hill North Precinct, is compatible with the surrounding area and will not generate any unreasonable environmental effects.

The following sections of this report provide an assessment of the request to vary the height standard of clause 7.11A(3)(g)(i) of THLEP 2019. Consideration has been given to the following matters within this assessment:

- *Varying Development Standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011; and
- Relevant planning principles and judgements issued by the Land and Environment Court.

## 2 Exceptions to Development Standards

Clause 4.6 of the THLEP 2019 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are as follows:

- (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.*

Clause 4.6 enables a variation to any development standard to be approved on consideration of a written request from the applicant that justifies the contravention in accordance with clause 4.6.

Clause 4.6 provides flexibility in the application of planning provisions by allowing a Consent Authority to support a DA for approval, even where it does not comply with certain development standards where it can be shown that flexibility in the circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) and (4) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- Compliance with the development standard is **unreasonable or unnecessary in the circumstances** of the case, and
- 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. (Emphasis added)

A further judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

Accordingly, this clause 4.6 variation request is set out using the relevant principles established by the Court. Clause 4.6 of the THLEP 2019 reads as follows:

### 4.6 Exceptions to development standards

- (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) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
  - (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (caa) clause 5.5,
  - (cab) (Repealed)
  - (ca) clause 6.2 or 6.3,
  - (cb) clause 7.11,
  - (cc) clause 7.15.

(Emphasis added)

Clause 7.11A is not excluded by the application of clause 4.6(8) and therefore can be varied under clause 4.6. The proposed variation has been assessed against the objectives of the zone and development standard in Section 6 and Section 7.



The assessment of the proposed variation has been undertaken in accordance with the requirements of the THLEP 2019 and clause 4.6(3) in the assessment in Section 5 and Section 6.

This clause 4.6 variation has been prepared as a written request seeking to justify contravention of the following provisions under the THLEP 2019:

**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.
- (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—publicly accessible common open space with a width of at least 5 metres will be provided along the eastern boundary of the land adjacent to Larool Crescent Reserve,
  - (d) in relation to land identified as "Area H" on the Key Sites Map—publicly accessible common open space with a width of at least 5 metres will be provided along the western boundary of the land adjacent to Larool Crescent Reserve,
  - (e) in relation to land identified as "Area I" on the Key Sites Map—the development will include active street frontages on Pennant Street,
  - (f) in relation to land identified as "Area J" on the Key Sites Map—pedestrian links will be provided through the land to connect Larool Crescent to Les Shore Place,
  - (g) in relation to land identified as "Area K" on the Key Sites Map—**
    - (i) buildings on the land will not exceed three storeys along the Larool Crescent and Carramarr Road frontages, and**
    - (ii) pedestrian links will be provided through the land to facilitate access between Barrowan Place and Larool Crescent Reserve,
  - (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.

(Emphasis added)

### 3 Extent of Variation to the development standard

In accordance with clause 7.11A(3)(g)(i) of THLEP 2019, the development is to provide the following:

- Three storeys along the Larool Crescent and Carramarr Road frontages

The clause essentially establishes a storey limit to part of the buildings that front the Larool Crescent and Carramarr Road frontage.

The proposed development provides a three storey terrace edge along all street frontages, followed by an additional two storeys that are set back an additional 5m (8m total from the street). Refer to **Figures 1 and 2**.



Figure 1 – South Elevation (Source: PTW)



Figure 2 – Section 04 (Source: PTW)

It is noted the development is consistent with the Castle Hill North DCP and accompanying Structure Plan, which identifies the site as being 'high density residential with terrace edge elements'. In this regard, it clearly indicates that the desired future character of the site is to include a 3-5 storey building. Refer to **Figure 3**.





Figure 3 – Castle Hill North Structure Plan [Source: THDCP 2020]

#### 4 Clause 4.6 (3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe V Pittwater [2007] NSW LEC 827 (Wehbe)* a five-part test was established in which a variation to a development standard is unreasonable or unnecessary as per clause 4.6(3A). The five tests established in *Wehbe* are (emphasis added):

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;*
5. *The zoning of the 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.*  
(Emphasis added)

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary.

This objection is based on the **first test**, which is addressed further below.

## 5 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The **first test** of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard.

Variation to clause 7.11A(3)(g)(i) of THLEP 2019 is proposed. Notwithstanding, the objective of the standards are achieved as outlined below.

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

#### **(a) to promote development that prevents the fragmentation of land,**

The proposed development represents the amalgamation of an entire block bound by Larool Crescent and Carramarr Road. There are no isolated or fragmented lots produced as a consequence of the development.

The consolidated nature of the development ensures the built form and design can be achieved in a manner that respects surrounding residential development and presents an appropriate streetscape presentation.

As such, objective (a) is satisfied.

#### **(b) to ensure the provision of quality public domain and improved pedestrian and cycle connections within local or strategic centres,**

The proposed development provides a publicly accessible through-site-link, consistent with the requirements of the DCP. The through-site-link is approximately 12-13m wide and promotes high quality public connections within strategic centres.

As such, objective (b) is satisfied.

#### **(c) to facilitate development that is sympathetic to the character of heritage items.**

The proposed development is not situated adjacent to or near any heritage item of local or State significance.

As such, objective (c) is satisfied.

In accordance with Wehbe Test 1, it is clearly demonstrated that the proposed development meets the objectives of the control under clause 7.11A. As such, strict application of the standard is unreasonable and unnecessary in the circumstances.

## 6 Clause 4.6 (3)(b) Sufficient environmental planning ground to justify contravening the development standard

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

In the case of the subject development, there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposed building form is consistent with the DCP Structure Plan, noting the site as high density residential with a terrace edge;
- To the point above, upper-level apartments are setback an additional 5m, minimising the visual impact and scale of development across the frontages;
- The terrace edge component is three storeys and has been designed to respect the character and scale of surrounding development, with terraces having direct street address and highly articulated frontages;
- The proposal does not give rise to any unreasonable or unacceptable overshadowing impacts, with shadows cast between 9am and 3pm generally limited to the front setbacks of adjoining residential dwellings;
- The proposed form is in keeping with the desired future character of the area;
- If the intention of clause 7.11A(3)(g)(i) was to limit development across the site to three storeys, development would be unable to utilise the incentive floor space ratio controls set out in clause 7.11A, thereby undermining the intention of the control; and
- The proposed development is compliant with the maximum height (storeys) and floor space ratio controls for the site.

Furthermore, as demonstrated in **Section 5** of this report, the proposal demonstrates compliance with the objectives of the standard in that:

- It ensures land is developed in a consolidated and amalgamated manner, minimising land fragmentation and isolated sites;
- It promotes improved publicly accessible pedestrian connections in strategic centres; and
- It ensure appropriate transition of height and form to nearby existing residential areas.

The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

Therefore, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance, as, amongst other reasons listed above, the development will deliver one of the key objectives of the EP&A Act, will promote the delivery of a residential dwelling that will complement the desired future character of the area, while providing improved amenity in the locality.

In addition, it is noted that the proposed development will still produce a contextually appropriate development outcome consistent with the objectives of the development standards.



## 7 Clause 4.6 (4a)(ii) Public Interest

Clause 4.6(4a)(ii) requires that the consent authority consider whether 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.

Preston CJ in *Initial Action* (Para [27]) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.*

*If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As detailed above the proposed development will be consistent with the objectives of the zone standards as discussed in detail below.

### Consistency with R4 High Density Residential Zone

Further, it is considered that the proposal will remain consistent with the objectives of the R4 High Density Residential Zone as summarised below:

- **To provide for the housing needs of the community within a high density residential environment.**

The proposal provides a range of housing options for the community within a high density residential context. The development proposes terrace edge apartments and townhouses along all boundaries with apartments situated across the upper levels. The diverse forms of housing provided on site will meet a range of housing needs and accommodate more so for the needs of larger households.

As such, the proposal is consistent with this objective.

- **To provide a variety of housing types within a high density residential environment.**

The proposal provides a greater mix of townhouse and larger bedroom products to meet the housing needs of the community, with 53% of products being three-bedroom and 5% being townhouses. The varied housing types provide housing choice for different demographics, living needs and household budgets.

Furthermore, apartment have been designed in accordance with Council's mix and size requirements, which are larger than those set out in the Apartment Design Guide.

As such, the proposal is consistent with this objective.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

The proposal provides for a residential development in tandem with a range of residential facilities including communal open space for passive recreation, and publicly accessible through-site-links. These uses will comfortably meet the day to day needs of residents.

No alternative land uses have been proposed to retain the residential nature of the area and to avoid uses that could generate amenity concerns or compete with nearby local and strategic centres.

As such, the proposal is consistent with this objective.

- ***To encourage high density residential development in locations that are close to population centres and public transport routes.***

The proposal provides high density residential development is suitable locations to public transport and population centres. The proposal is located approximately 320m of Castle Hill Towers Shopping Centre and is 600m north west of Castle Hill Metro Station. In this regard, the site benefits from excellent proximity to a range of public transport options, shops, and services. Furthermore, the site is within the nucleus of Castle Hill North Strategic Centre, as nominated in the Greater Sydney Region Plan and Central City District Plan.

As such, the proposal is consistent with this objective.

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the proposed change of use is to be carried out.

Accordingly, the Council can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

## 8 Clause 4.6(5) Grounds for Consideration

In deciding whether to grant concurrence, subclause 4.6(5) requires that the Secretary 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 Secretary before granting concurrence.*

The proposal has been assessed against the relative criteria below:

### **Would non-compliance raise any matter of significance for State or regional planning?**

The non-compliance is minor, specific to the circumstances of the site and proposed development and does not raise any matter of significance for State or regional environmental planning.

### **Is there a public benefit of maintaining the development standard?**

There is no public benefit associated with maintaining strict compliance with the development standard in this instance. Doing so would undermine the objectives of the R4 zone, the vision and principles set out in the Castle Hill North DCP and accompanying Structure Plan.

### **Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

## 9 Conclusion

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development in particular circumstances.

This clause 4.6 variation is necessary to provide the required flexibility in the height development standard to enable the development of the proposed residential tower. The request concludes that strict compliance with the numerical standard of the height control is unnecessary and unreasonable, and satisfies the tests under clause 4.6 for the following reasons:

- Strict compliance with the THLEP 2019 clause 7.11A standard would be unreasonable and unnecessary in the circumstances as the objectives of the standard are achieved notwithstanding non-compliance (clause 4.6(3)(a) and Wehbe test 1);
- There are sufficient environmental planning grounds to justify the minor contravention of the development standard. Specifically:
  - The proposed building form is consistent with the DCP Structure Plan, noting the site as high density residential with a terrace edge;
  - The terrace edge component is three storeys and has been designed to respect the character and scale of surrounding development, with terraces having direct street address and highly articulated frontages;
  - The proposal does not give rise to any unreasonable or unacceptable overshadowing impacts, with shadows cast between 9am and 3pm generally limited to the front setbacks of adjoining residential dwellings;
- The matters required to be demonstrated by sub-clause (3) are adequately addressed (clause 4.6(4)(a)(ii));
- The proposal is in the public interest (clause 4.6(4)(a)(iii)) because it will deliver a high-quality design that is compatible with the character of the area and:
  - the proposed development will be consistent with objectives relating to the development standard; and
  - the proposal is consistent with the objectives stated in the THLEP 2019 Land Use Table for the R4 High Density Residential Zone. There would be no public benefit in maintaining strict compliance with the development standard;
- The variation aligns with Council's DCP for Castle Hill North and accompanying Structure Plan; and
- The proposed development is appropriate for its context, with upper levels above three storeys sufficiently setback to respect the character of the streetscape.

Overall, the objectives of clause 4.6(1) are to provide an appropriate degree of flexibility to achieve a better outcome for and from development. Strict compliance with the maximum height standard would prevent the proposed development proceeding and delivering the benefits and enhancements described. The proposal will have minimal impacts of the community and is compatible with the local character of the area.

The relevant tests under clause 4.6 are satisfied and there are sufficient environmental planning grounds to justify the minor non-compliance with the height standard.



## ATTACHMENT 17 – APPLICANT’S LEGAL SUBMISSION REGARDING CLAUSE 7.11A

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30 September 2021

The Proper Officer  
The Hills Shire Council  
3 Columbia Court  
Norwest NSW 2153

Our ref: S Leung/41049531

Dear Sir/Madam

### **2-20 Larool Crescent and 44-50 Carramarr Road, Castle Hill Clause 7.11A of the LEP**

We act for Castle Larool DM Pty Ltd, the owner of 2-20 Larool Crescent and 44-50 Carramarr Road, Castle Hill (Site).

As you know, our client has prepared a concept design for the construction of a multi-dwelling development, which will include a part 3 and part 5 storey building on the Site. The part of the building that is 3 storeys will have a terrace interface to Larool Crescent and Carramarr Road and the part 5 storey part of the building is setback away from the street frontage.

We understand that Council has asked our client to provide confirmation with respect to the interpretation of clause 7.11A(3)(g)(i) The Hills Local Environmental Plan 2019 (LEP), and in particular the meaning of the requirement in that clause, that Council be satisfied that buildings will not exceed three storeys 'along the Larool Crescent and Carramarr Road frontages'.

In short, we advise that the clause operates to effectively require buildings on the road frontages only to be not more than 3 storeys, and that buildings which are stepped (with additional setbacks for additional storeys) would conform with the clause (such that Council could be relevantly satisfied).

### **Relevant Legislative Provisions**

1. Under the LEP, the Site is zoned R4 High Density Residential. Multi-dwelling housing is permissible with consent in the zone.
2. The Site is identified as Area K on the Key Sites Map (CL2-024). The Site is also within the Castle Hill North Precinct, as such, clause 7.11A of the LEP applies. The Site/Area K is comprised of numerous lots, which are wholly bounded by Larool Crescent and Carramarr Road.
3. Clause 7.11A provides that:

Siroto ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► Larrain Rencoret ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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"(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 K" ... on the Key Sites Map.

(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—

...

(g) in relation to land identified as "Area K" on the Key Sites Map—

- (i) buildings on the land will not exceed three storeys along the Larool Crescent and Carramarr Road frontages,...

#### Interpretation of clause 7.11A(3)(g)(i) of the LEP

4. The clause applies to 'buildings on the land'. This includes part of a building:
  - a. The LEP adopts the same definition for 'building' that is found under the *Environmental Planning and Assessment Act 1979*. Under the Act, 'building' includes "part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993."
  - b. Accordingly we advise that clause 7.11A(3)(g)(i) must be read to include the meaning that only the part of the building on the land that addresses Larool Crescent and Carramarr Road frontages will not exceed three storeys.
  - c. On that basis, in order to benefit from the additional 20% FSR under clause 7.11A(3)(g)(i), the proposal does not need to be limited to being no more than 3 storeys across the whole of the Site.
5. The clause effectively applies a storey limit to (parts of) buildings 'along the Larool Crescent and Carramarr Road frontages'. 'Frontage' is the part of the land that abuts the road:
  - a. Although 'frontage' has not been defined under the LEP, the Court has considered the meaning of that word.
  - b. In *Langford v Copmanhurst Shire Council* [1994] NSWLEC 38, there was a dispute about whether the subject site has a road frontage when the subject site abutted a right of way that connects the subject site to the road. Pearlman J determined that the ordinary meaning of frontage should be applied. That is, frontage refers to a "piece or parcel of land which has as its characteristic the fact that it abuts on a river or a stretch of water or a road. It is not the right-of-way itself that is the frontage of lot 30; it is that part of the land comprised in lot 30 which has the characteristic of abutting on a road."
  - c. Her Honour goes on to say that 'frontage' means a piece of land which has a common boundary with a road, or a piece of water, or a river.

6. In our opinion the same meaning of frontage should be applied when interpreting clause 7.11A(3)(g)(i). That is, the part of the Site which has the characteristic of being along or abutting Larool Crescent and Carramarr Road should have a building or part of a building that does not exceed three storeys.
7. Our client's concept design accommodates the three storey requirement under clause 7.11A(3)(g)(i) so that the parts of the building that address Larool Crescent and Carramarr Road will be 3 storeys.
8. Setback behind the part 3 storey building will be the part of the building that will be 5 storeys. That part of the Site, being further into the site, cannot be said to be the part of the Site with a 'frontage' to those roads and so the three storey limit under clause 7.11A(3)(g)(i) does not apply.
9. In our opinion Council can clearly be satisfied that the proposed concept design meets the requirement under clause 7.11A(3)(g)(i) and the concept design accordingly attracts the benefit of the additional 20% FSR.

#### Council's Development Control Plan (DCP)

10. Furthermore this interpretation of clause 7.11A(3)(g)(i) is consistent with and supported by the Council's DCP.
11. Part D Section 20 of the DCP, which deals with the Castle Hill North Precinct, includes a Structure Plan that demonstrates the desired character of that Precinct. The Structure Plan (see below) clearly indicates that the desired future character of the Site is to include a 3-5 storey building for High Density Residential with Terrace Edge Elements.



Figure 14 Castle Hill North Structure Plan

12. Figure 31 (see below) of the Part D Section 20 of the Council's DCP illustrates the desired street setbacks in the Precinct. That Figure shows that any terrace development on the Site is to be three storeys and setback 3m from the street. Any additional storeys above the third storey are to be setback 5m.



Figure 31 Street Setbacks

13. On that basis it is clear that the Council's desired character of this Site envisages development similar to what our client has proposed in their concept design, being development that addresses the road frontages as a 3 storey building but may include additional storeys setback away from the road frontage.
14. In addition, this interpretation of clause 7.11A is also consistent with the Council's assessment report titled "Post Exhibition – Planning Proposal – Castle Hill North Precinct (16/2016/PLP)" dated 27 November 2018, which included the Council's comments on the request to rezone the Site from Zone R2 Low Density Residential to Zone R4.
15. Initially the Council had proposed that the height of the development on the Site be concentrated to the central part of the Site. However, following exhibition of the planning proposal, the Council's planner instead recommended that the "proposed development incorporates a three storey terrace address along the Larool Crescent and Carramarr Road frontages".

In our opinion a design which includes a three storey building component on the street frontages with a five storey building component setback from the street frontage clearly complies with the requirements clause 7.11A(3). The fact that this is consistent with the DCP also lends weight to this interpretation being the intended and planned outcome. Council can clearly be satisfied that the concept design meets the requirements of the clause.

Please let contact us on the number above if you wish to discuss this further.

Yours sincerely

Jodie Wauchope  
**Partner**  
 Dentons Australia