

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-314
DA Number	DA 860/2022/JP
LGA	The Hills Shire Council
Proposed Development	Concept Master Plan Development Application for 417 dwellings (165 dwelling houses and 252 apartments) and associated internal road and superlot arrangement, and civil works including tree removal, earthworks and road construction.
Street Address	Lot 61 DP 737386 No. 55 Coonara Avenue West Pennant Hills
Applicant	Mecone Pty Ltd
Consultants	Planning - Mecone Urban Design / Architect - Mirvac Design Traffic - PTC Survey - Craig and Rhodes Geotechnical - Douglas Partners Bushfire - Building Code & Bushfire Hazard Solutions Ecologist - Keystone Ecological Landscaping Turf Design Studio Arborist - Footprint Green Vegetation Management - Cumberland Ecology Construction Noise and Vibration Management Plan - Acoustic Logic Construction Traffic Management Plan - PTC European Heritage - Maxim Aboriginal Archaeological Due Diligence - McCardle Cultural Heritage Contamination - JBS&G Waste - Mirvac Site Auditor - Senversa Stormwater Engineer - Northrop Civil Engineer - Northrop Visual - Richard Lamb & Associates (RLA) Accessibility - ABE Consulting Geotechnical – Douglas Partners Acoustic – Acoustic Logic Legal Advice – Addisons Lawyers – Legal Advice Sustainability - Cundall
Date of DA lodgement	30 November 2021
Number of Submissions	744
Recommendation	Approval
Regional Development Criteria (Section 2.20 and Schedule 6 of the SEPP (Planning Systems) 2021)	CIV exceeding \$30 million (\$319,917,503.00)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Section 4.15 (EP&A Act) • Biodiversity Conservation Act 2016 • Water Management Act 2000 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development • The Hills Local Environmental Plan 2019 • Apartment Design Guide • DCP 2012 Part B Section 5 – Residential Flat Buildings • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 3 – Landscaping • DCP 2012 Part C Section 4 – Heritage • DCP 2012 Part C Section 6 – Flood Controlled Land • Section 7.12 Contribution • Voluntary Planning Agreement (VPA)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Clause 4.6 variation request • Submissions • Site Specific Design Guidelines • Voluntary Planning Agreement (as executed)
Clause 4.6 requests	<ul style="list-style-type: none"> • The Hills LEP 2019 Clause 4.3 Height of Buildings • Clause 4.6 written submission • R4 High Density Residential
Summary of key submissions	<ul style="list-style-type: none"> • environmental concerns, tree removal, impacts on flora and fauna • bulk and scale, height of development, inconsistency with strategic planning documents
Report prepared by	Sanda Watts – Development Assessment Coordinator
Report date	27 October 2022

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)? **No**
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? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

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

- The site is subject to a Planning Proposal which was approved by the Department of Planning, Industry and Environment to rezone the site from B7 Business Park to part R3 Medium Density Residential, part R4 High Density and part C2 Environmental Conservation zone. As part of the re-zoning, a maximum of 600 dwellings were permitted on the site. Maximum height limits of 9, 12 and 22 metres were also introduced, as well as minimum lot sizes of 86m² (attached or semi-detached dwellings) and 180m² for detached dwellings.
- The Concept/Civil DA is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act, 1979. The concept master plan seeks approval for 417 dwellings (165 dwelling houses and 252 apartments) and associated internal road and superlot arrangement, and civil works including tree removal, earthworks and new road construction.
- Two separate built form Development Applications were lodged concurrently with the concept DA, being:
 - DA 859/2022/JP – Southern Housing Precinct for the construction of 60 integrated attached and detached dwellings, and associated subdivision, and civil and landscape works.
 - DA 861/2022/JP - Apartment Precinct for 252 dwellings contained in four residential flat buildings, basement car parking for 456 vehicles, associated earthworks and landscaping.
- In addition to the three applications above, a subdivision application (DA 1414/2022/ZB) was lodged with Council for the subdivision of the site into 5 lots to facilitate future development on the site. Three of the five lots (which are zoned C2 Environmental Conservation) are to be dedicated to Forestry Corporation NSW. This application is listed for determination by the Local Planning Panel on 19 October 2022. The dedication of this land, which is a total of 10.282 hectares is subject to a State Voluntary Planning Agreement. As part of 1414/2022/ZB there is a condition of consent requiring, prior to the issue of a Subdivision Certificate, the lots are to be dedicated to Forestry Corporation NSW. As any subdivision registration must occur in sequence, this means the land must be dedicated before any subsequent subdivisions relating to built-form applications occur.
- The Biodiversity Assessment Report (BDAR) was reviewed by Council's Senior Biodiversity Officer who raised concerns with the proposed impacts to the Powerful Owl and disagreed with the classification of some vegetation proposed for removal. Modifications to the design were requested to better protect Blue Gum High Forest (BGHF) and roosting habitat for the Powerful Owl. Council staff are supportive of the amended proposal, however it was determined that there will be a requirement to have additional offsets above those contained within the BDAR. To offset the loss of biodiversity from the site from the development, it is recommended that ecosystem and species credits are to be retired prior to any clearing of vegetation. Council's Senior Biodiversity Officer has reviewed all information and inspected the site and concluded that the current development will not result in a Serious and Irreversible Impact on Blue Gum High Forest or the Large-eared Pied Bat (*Chalinolobus dwyeri*).
- As the concept application seeks approval for the building envelopes for the residential flat buildings, this application is accompanied by a request to vary Clause 4.3 Building Height

development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. Clause 4.3 of LEP 2019 limits the height of the development site (R4 zoned portion of the site) to 22 metres. The proposed maximum building heights of apartment buildings A, B, C and D are 26.4m, 27.1m, 24.9m and 26.6m respectively. This represents a variation of 4.4m (20%), 5.1m (23.2%), 2.9m (13.2%) and 4.6m (20.9%) to the height standard. These figures are based on the measurement of building heights from adjacent and/or interpolated ground levels. A Clause 4.6 written submission has been prepared and submitted with the application. It is considered that strict compliance with the development standard is unreasonable and unnecessary in this instance and the variation can be supported. Overall, the proposed building height for the residential flat building does not result in any significant adverse impacts and provides for a high quality building outcome for future residents and provides for an appropriate relationship to development within the site, as well as the interface to the neighbouring bushland.

- The application was referred to Council's Design Excellence Panel. The Panel made a number of recommendations to ensure the proposal can be considered to exhibit design excellence as part of separate/future built form applications. The Applicant has addressed the comments raised by the Design Excellence Panel to the satisfaction of Council officers. It is considered that the proposal exhibits design excellence in accordance with Clause 7.7 of The Hills Local Environmental Plan.
- The application is defined as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act, 1979. The proposal requires approval under the provisions of the Water Management Act 2000. The proposal was referred to the Department of Planning and Environment—Water and General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000 (WM Act) have been provided.
- The proposal seeks to vary parking rates in Council's DCP Part C Section 1 Parking, and adopt parking rates stipulated in the Site-Specific Guideline. This departure is supportable in this instance, as the site is within 800 metres from the Cherrybrook Metro Station.
- Mirvac Projects (Retail and Commercial) Pty Ltd submitted a VPA offer in association with residential development on the site, which proposes that the Developer will make monetary contributions to Council, of \$2 million towards the provision of active open space, in addition to the contributions levied under the Shire-Wide Section 7.12 Contributions Plan, at a rate of 1% of the cost of development. Accordingly, the VPA offer provides additional public benefits to Council and the community in the form of a \$2 million monetary contribution towards future active open space. At its meeting on 27 September 2022, Council resolved to enter into the Agreement and the Agreement is now imminent. The combination of Council's Section 7.12 Contributions Plan, the additional monetary contribution under the VPA and the outcomes intended to be delivered on-site by the Developer are considered to be sufficient to address the local infrastructure demand associated with the development.
- The application was notified on two occasions, and in total 744 submissions to the proposal were received. The bulk of the concerns relate to environmental impacts being tree removal and impacts to the flora and fauna on the site, as well as the appropriateness of the development on the site, bulk and scale, and non-compliance with the maximum height limit on the site. These issues have been satisfactorily addressed and do not warrant refusal of the application.

The application is recommended for approval subject to conditions.

PLANNING PROPOSAL BACKGROUND

Planning Proposal 1/2018/PLP was reported to Council on 25 July 2017. The following resolution was made by Council;

- *A planning proposal be forwarded to the Department of Planning and Environment for a Gateway Determination to amend Schedule 1 Additional Permitted Uses of LEP 2012 to facilitate a medium to high density residential development incorporating a maximum of 600 dwellings at 55 Coonara Avenue, West Pennant Hills.*
- *Council proceed with discussion with the Proponent to prepare a draft Voluntary Planning Agreement which secures the delivery of the proposed public road access, public open space, community facility room and a sports field as identified in the development concept and resolves how the Proponent will address the increased demand for local infrastructure generated by the proposed increase in residential density.*
- *Following the preparation of the draft Voluntary Planning Agreement, and prior to any public exhibition of the planning proposal, a report on the draft Voluntary Planning Agreement be submitted to Council for consideration.*
- *Draft The Hills Development Control Plan Part B Section 2 – as detailed in Attachment 1 (ECM Document No.16017113), be exhibited concurrently with the planning proposal.*

On 28 July 2017, pursuant to Section 3.34 (previously section 56) of the Environmental Planning and Assessment Act, Council gave notification to The Department of Planning and Environment to request determination by the minister through the Gateway process.

On 31 October 2017 Council received correspondence from NSW Planning and Environment advising that Gateway determination had been received. The Deputy Secretary advised the following;

- *Council to remove references to amend Schedule 1- Additional Permitted Uses*
- *Amend the planning proposal to rezone the land from B7 Business Park to Park to R4 High Density Residential, RE1 Public Recreation, RU3 Forestry, and appropriate environmental management zones (such as E4 Environmental Living, E3 Environmental Management, and E2 Environmental Conservation), in accordance with Part 2 of The Hills Local Environmental Plan 2012;*
- *Amend the planning proposal to seek amendments to the minimum lot size map, floor space ratio map, and height of buildings map, in accordance with the Hills Local Environmental Plan 2012;*
- *Update the planning proposal to provide more information regarding community benefits associated with the proposal, including the identification of traffic and transport accessibility improvement options for the Cherrybrook precinct and additional supporting information for local infrastructure to be provided, and updated supporting studies as identified in Council's report dated 25 July 2017;*
- *Update the Explanation of Provisions to include a satisfactory arrangements provision for contributions to State public infrastructure;*
- *Refer the planning proposal and its accompanying Ecological Assessment to the Rural Fire Service and update in accordance with any comments received;*
- *Update the planning proposal as required to ensure the following matters are addressed:*
 - 1. ecological values (flora and fauna);*
 - 2. the use of appropriate land use zones;*
 - 3. investigation of infrastructure and traffic considerations; and*
- *Submit the updated planning proposal to the Department for endorsement.*

Planning Proposal 1/2018/PLP was reported to Council on 26 November 2019. The following resolution was made by Council;

- *The planning proposal for land at 55 Coonara Avenue, West Pennant Hills not progress to finalisation. Council write to the Minister for Planning and Public Spaces and request that the Minister determine that the planning proposal not proceed.*
- *Draft The Hills DCP Part D Section 22 – 55 Coonara Avenue, West Pennant Hills (Attachment 4) not be adopted.*
- *The draft Voluntary Planning Agreement (Attachment 5) not be entered into.*

On 28 April 2020, the NSW Government announced a new Planning System Acceleration Program to redirect resources within the Department of Planning, Industry and Environment to accelerate the assessment and determination of projects that inject investment into the NSW economy. On 22 May 2020, the planning proposal was determined to be “fast tracked” under tranche two of this Program.

The Hills LEP 2019 (Amendment No. 14) was made by the Minister’s delegate on 17 June 2020 and was notified on the NSW Legislation website on 18 June 2020. The instrument rezoned the subject site from B7 Business Park to part R3 Medium Density Residential, part R4 High Density Residential and part E2 Environmental Conservation (note: E2 Environmental Conservation is now known as C2 Environmental Conservation), increased the maximum height of buildings, minimum lot sizes and additional permitted uses on the land. In addition, the instrument was amended as follows:

1) Clause 4.6 - Exceptions to development standards

Inserting the following after clause 4.6(8)(cb) –
(cc) *clause 7.15.*

2) Clause 7.15 - Development at 55 Coonara Avenue, West Pennant Hills

Inserting the following after clause 7.14 -

7.15 Development at 55 Coonara Avenue, West Pennant Hills

- (1) *This clause applies to land at 55 Coonara Avenue, West Pennant Hills, being Lot 61, DP 737386 (the **subject land**).*
- (2) *Development consent may be granted to a single development application for development on the subject land in Zone R3 Medium Density Residential or Zone R4 High Density Residential that is both of the following—*
 - a) *the subdivision of land into 2 or more lots,*
 - b) *the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—*
 - i. *for the erection of a dwelling house—180 square metres, or*
 - ii. *for the erection of an attached dwelling or a semi-detached dwelling—86 square metres.*
- (3) *Development consent must not be granted to development on the subject land unless the building setback of any building resulting from the development is equal to, or greater than, 11 metres from Coonara Avenue, West Pennant Hills.*
- (4) *Clause 7.7 (other than clause 7.7(4)(g)) extends to development on the subject land involving the erection of a new building, or external alterations to an existing building, of any height.*
- (5) *Development consent must not be granted to development on the subject land unless the consent authority is satisfied that the development—*
 - a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

- b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
 - c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*
- (6) Development consent must not be granted to development that results in more than 600 dwellings on the subject land.*

3) Schedule 1 Additional permitted uses

Inserting the following after clause 16 –

- (1) This clause applies to certain land at 55 Coonara Avenue, West Pennant Hills, being parts of Lot 61, DP 737386, that is in Zone E2 Environmental Conservation, shown as “Item 23” and “Item 24” on the Additional Permitted Uses Map.*
- (2) Development for the purposes of recreation areas or recreation facilities (indoor) is permitted with development consent on the land shown as “Item 23”.*
- (3) Development for the following purposes is permitted with development consent on the land shown as “Item 24”—*
 - a) building identification signs,*
 - b) kiosks,*
 - c) recreation areas,*
 - d) restaurants or cafes, but only if the gross floor area of any restaurant or cafe on the land does not exceed 50 square metres.*

The Finalisation Report prepared by the Department Planning, Industry and Environment provided the following recommendation:

It is recommended that the Minister’s delegate as the local plan-making authority determine to make the LEP under clause 3.36(2)(a) of the Act because it:

- o Enables a more appropriate zoning for the site that reflects its modification for existing development and the extensive environmental values of its remnant bushland.*
- o Will secure the protection of the forested areas and Powerful Owl habitat on site through an E2 Environmental Conservation zoning;*
- o Adequately responds to matters raised in advice from public authorities and public submissions;*
- o Gives effect to the Central City District Plan in accordance with section 3.8 of the Environmental Planning and Assessment Act 1979;*
- o Inconsistencies with Section 9.1 Direction 6.3 Site Specific Provisions are of minor significance and justified; and*
- o Is consistent with other relevant Section 9.1 Directions and State Environmental Planning Policies.*

Planning Proposal Design Progression

As identified above, Clause 7.15 (6) states that:

Development consent must not be granted to development that results in more than 600 dwellings on the subject land.

The figure of 600 dwellings is notionally based on 200 dwellings in the R3 Medium Density Zone and 400 apartments in the R4 High Density Residential Zone that was envisioned under the planning proposal. The minimum lot sizes for the dwellings was 86m² and a total of 980 car parks were to be provided within the site (refer figure 1 below).

The concept masterplan seeks approval for a total of 417 dwellings, being 165 dwellings (both attached and detached) and 252 apartments (refer figure 2 below).



Figure 1: Concept Plan for 600 dwellings Source: Mirvac



Figure 2: Current concept for 165 dwellings and 252 apartments

The Draft THDCP Part D Section 19 which specifically related to the redevelopment of 55 Coonara Avenue was exhibited with the Planning Proposal from 30 April 2019 to 31 May 2019.

As the Planning Proposal was not endorsed by Council on 26 November 2019, the draft DCP relating to the site was not adopted, nor was it adopted when the rezoning was approved by the Department. The applicant has advised that *“there are some site specific inconsistencies that arise from the rezoning of the site as they relate to THDCP 2012. To address the inconsistencies within THDCP 2012 which are applicable to the subject site as a result of the rezoning, this application is supported by Site Specific Design Guidelines. The Site Specific Design Guidelines are intended to act in place of a site specific DCP and provides a series of objectives and controls that guide future development of the site consistent with the Concept DA including detailed civil works”*.

The Site Specific Design Guidelines are taken into consideration as part of the subject application. The Site Specific Design Guideline is generally in accordance with the draft DCP that was submitted with the Planning Proposal, with many of the set guidelines amended from the draft DCP including an increase in minimum lot widths, and an increase in parking rates.

VOLUNTARY PLANNING AGREEMENT

As discussed above, the subject site was the subject of a planning proposal lodged in 2018, as well as an associated draft Voluntary Planning Agreement which would have obliged the developer to construct a new playing field on the site and dedicate the land to Council. In late-2019, Council resolved not to proceed with the planning proposal and not to enter into the draft Voluntary Planning Agreement.

However, contrary to Council's decision, the Department of Planning and Environment (DPE) determined to finalise the planning proposal, permitting up to 600 residential dwellings on the site formerly used for employment-only purposes. The Department finalised the proposal without any infrastructure solution or mechanism in place to address the additional demand for local infrastructure that would be generated by the development and identified in their finalisation material, that contributions would be payable under The Hills Section 7.12 Contributions Plan (1% of the cost of development), which currently applies to the site but does not contemplate the new development outcome.

Council typically negotiates VPAs with developers as part of the rezoning process to ensure that an appropriate contributions mechanism is in place before any rezoning of land occurs. However, in this instance, the rezoning phase has already been completed by the Department of Planning and Environment. In finalising the rezoning, the Department did not ensure that there was any contributions mechanism in place beyond the existing Section 7.12 Contributions Plan. This had placed Council and the community in a situation that lead to an infrastructure shortfall as a result of this development.

The Developer made a VPA offer to Council as part of the Development Applications phase, to provide additional infrastructure to support the proposed development, beyond the minimum contributions otherwise payable under the existing Section 7.12 Contributions Plan.

Mirvac Projects (Retail and Commercial) Pty Ltd submitted a VPA offer in association with the Development Applications, which proposes that the Developer make monetary contributions to Council, with a total value of \$5.1 million, comprising:

1. Contributions at a rate of 1% of the estimated cost of development; and
2. A \$2 million monetary contribution towards the provision of active open space.

Council considered a report on the Draft VPA at the Ordinary Meeting of 22 March 2022 and resolved as follows:

- 1. The draft Voluntary Planning Agreement offer be accepted, in principle, and be subject to legal review at the cost of the Applicant, prior to public exhibition.*
- 2. The draft Voluntary Planning Agreement be updated, as required, prior to public exhibition to incorporate the recommendations of the legal review.*
- 3. The draft Voluntary Planning Agreement be publicly exhibited for at least 28 days, in accordance with the Environmental Planning and Assessment Act 1979.*
- 4. Council consider a further report on the outcomes of the public exhibition of the Voluntary Planning Agreement.*

The draft Voluntary Planning Agreement went on public exhibition from 18 July 2022 to 15 August 2022. During the public exhibition period five submissions were received. One submission was in support of the draft VPA and four objected to the draft VPA. Some of the matters raised in the submissions related to development outcomes on the site, rather than the public benefit offer and draft VPA which was the subject of the public exhibition period.

The VPA was consideration by Council on 27 September 2022 with the report recommending that “*Council enter into the Voluntary Planning Agreement in association with the development at 55 Coonara Avenue, West Pennant Hills (Attachment 1) and authorise Council’s Common Seal to be affixed to the Voluntary Planning Agreement.*” At this meeting Council resolved to enter into an agreement to execute the VPA.

At the time of writing this report, the VPA was in the final stages, and execution of the VPA is imminent. Relevant conditions of consent have been recommended as part of DA 859/2022/JP and 861//2022/JP for VPA payment.

It is considered that the combination of Council’s Section 7.12 Contributions Plan, the additional monetary contribution under the VPA, and the outcomes intended to be delivered on-site by the Developer are considered to be sufficient to address the local infrastructure demand associated with the development.

DEMOLITION DEVELOPMENT APPLICATION

DA 585/2021/HC for the demolition of existing buildings and ancillary structures, and associated tree removal (1,253 trees) was approved by the Local Planning Panel (LPP) on 15 September 2021. The DA was determined by the LPP as it attracted more than 10 submissions (a total of 545 submission were received). The demolition works have commenced.

DEVELOPMENT APPLICATION BACKGROUND

The subject Development Application was lodged on 30 November 2021 for the Concept Master Plan for 418 dwellings (166 dwelling houses and 252 apartments) and associated internal road and superlot arrangement, and civil works including tree removal, earthworks and new road construction. The proposal was placed on exhibition between 15 December 2021 to 7 February 2022. Overall, a total of 744 submissions were received.

The proposal was considered by the Design Excellence Panel on 8 December 2021. It is noted that the Panel previously reviewed the concept plans for this development at the pre-lodgement stage on 10 May 2021. The Panel made a number of design recommendations for the proposal. The Panel concluded that if the Applicant addresses the matters identified in the report to the satisfaction of the assessing officer, the project need not return to the Panel for further consideration.

On 23 December 2021 a 'Stop The Clock' letter was issued to the applicant requesting additional information regarding waste management and landscape details. On 28 January 2022, the applicant requested to 're-start the clock'. On 3 February 2022 the applicant provided a response to the letter from Council staff dated 23 December 2021.

Council officers briefed the Sydney Central City Planning Panel (SCCPP) on 17 March 2022 (in addition to DAs 859/2022/JP and 861/2022/JP).

A further request for information was sent to the applicant on 13 March 2022 requesting additional information on engineering and flooding matters, landscape matters, tree management details and amendment of the Site Specific Guidelines. On 28 March 2022 a further letter was sent to the applicant requesting further details in relation to ecology matters including proximity of the development to Powerful Owl breeding and roosting habitat, classification of vegetation, vegetation removal and biodiversity assessment method and offsetting.

On 19 April 2022, the applicant provided a response to the matters raised in the submissions. On 22 April and 9 June 2022 the applicant provided a response to the issues raised from Council staff and provided amended details and plans. This response also included a detailed response to the matters raised by Design Excellence Panel. On 21 June 2022 the amended BDAR was submitted.

In response to the matters raised by Council staff and the Design Excellence Panel the proposal was amended to provide for 417 dwellings (165 dwellings and 252 apartments), a reduction of one dwelling from the original application.

The amended application was notified for 21 days from 28 June 2022 to 19 July 2022. Further submissions were received during/after the second notification period.

On 5 August 2022 Council staff issued a further request for information in relation to ecology matters, tree management matters, landscape comments and engineering matters, and a requested updated cost of works.

On 12 August 2022 the applicant provided a response to the engineering matters raised. On 16 August the applicant provided a response to the remaining outstanding issues Council raised in the letter dated 5 August 2022.

On 17 August 2022 Council staff received an ecology response to the matters raised by Council (it should be noted that this was to be reviewed in conjunction with the amended BDAR received in June).

On 19 August 2022 an updated cost summary report was provided.

On 26 August 2022 Council staff provided a further letter to the applicant regarding the remaining outstanding matters including tree matters, ecology, traffic (sight distance), landscape comments and engineering matters.

The applicant provided updated arboricultural impact assessment details on 2 September 2022. On 9 September 2022 an updated vegetation management plan and ecology details were provided, as well as outstanding engineering details. The applicant provided a response to the sight distance and landscape comments on 13 September 2022.

In total, 744 submissions to the application have been received.

DETAILS AND SUBMISSIONS

Owner:	Mirvac Projects (Retail & Commercial)
Zoning:	R3 Medium Density Residential, R4 High Density Residential and C2 Environmental Conservation
Area:	Existing site area is 258,700m ² , or 25.87ha
Existing Development:	Former IBM Business Park (currently being demolished under DA 585/2021/JP)
Section 7.12 Contribution	\$347,175.40 and VPA (payment for built form applications)
Exhibition:	Yes, 61 days (includes Christmas exclusion period)
Notice Adj Owners:	Yes, on two occasions
Number Advised:	695
Submissions Received:	744

PROPOSAL

The Concept Development Application is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act, 1979. Section 4.22 of the Act States;

4.22 Concept development applications

- (1) *For the purposes of this Act, a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
 - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

The subject application seeks consent for the following:

Concept masterplan

Consent is sought for a Concept Master Plan as illustrated on the Concept Plan Approval Drawings which includes the following:

- 417 dwellings (165 dwelling houses and 252 apartments)
- Internal road and superlot arrangement
- Publicly accessible open space areas
- 11m LEP setback to Coonara Avenue
- Through site green link
- Asset Protection Zone
- Distribution of land uses (Housing Precinct and Apartments Precinct)
- Apartments Precinct building envelopes for Buildings A, B, C and D (including extent of basements)
- Housing Precincts developable areas
- Vehicular and pedestrian access points to apartment buildings
- Tree removal (1,877 trees) and tree replacement strategy (2,600 trees)

Tree Removal

A total of 1,877 trees to be removed which are generally within the perimeter road, within the developable area and the APZ areas. A total of 2,600 replacement trees are proposed, which includes 1,260 in the developable area and 1,340 in the within the area identified as Item 24 in THLEP 2019 (which is to be the subject of a future DA).

Civil Works

Consent is sought for the detailed design of the *Stage 01 Civil Works* as illustrated on the Civil Works Drawings prepared by Northrop including:

- Demolition of existing hardstand and redundant services
- Tree removal in line with the Concept Masterplan tree removal strategy
- Sediment and erosion control
- Bulk earthworks
- New roads
- Siteworks and servicing including stormwater management, drainage, water quality treatment, sewer, gas, electricity, communications and potable water
- Piling and retaining walls.
- Installation and servicing of temporary site facilities

The Application also seeks approval for the following:

- Site Specific Design Guidelines (which are intended to act as a site specific DCP)
- Vegetation Management Plan
- Site wide parking ratios/rates.

Site Wide Parking Ratio

The proposed site wide parking for the residential component of the development is as follows:

Housing

- Dwelling Houses – 2 spaces per dwelling
- Visitors – 40 spaces

Apartments

- 1 Bed – 1 space per dwelling
- 2 Bed – 1.5 spaces per dwelling
- 3 Bed – 2 spaces per dwelling
- 4 Bed or more - 3 spaces per dwelling
- Visitors – 1 space per 5 dwellings

Subdivision of the site (DA 1414/2022/ZB) and the detailed design of dwelling houses (housing south – 859/2022/JP) and apartment buildings (DA861/2022/JP), as well as any future uses of Item 23 and Item 24 (as detailed with the additional permitted uses map of LEP 2019) will be the subject of separate DAs.

FUTURE APPLICATIONS

Future Development Application(s) will also to be lodged for the remaining dwellings on the site, being '*Housing Central and Housing North*' (refer figure 3). These remaining housing precincts will cater for a maximum of 105 dwellings (of the 417 dwellings).



Figure 3 – Housing Precinct arrangement - Source: Turf Design Studio)

Future Proposed Recreational Areas and Facilities

The Additional Permitted Uses Map of the LEP identified “Item 23” and “Item 24” on the site. Item 23 permits development for the purposes of recreation areas or recreation facilities (indoor) and Item 24 permits kiosks, recreation areas, restaurants or cafes, but only if the gross floor area of any restaurant or cafe on the land does not exceed 50 square metres.

Both Items 23 and 24 will be subject to future Development Application(s). The applicant has advised that the Item 24 is proposed to be the ‘Jiwah’ proposal, a future indigenous cultural space and bush regeneration area, a conceptual/indication plan is shown below in Figure 4. Item 23 is to be a future community facility/recreational area.



Figure 4 – Design Concept for 'Jiwah' area – future Indigenous Interpretation Area / outdoor recreational facility
(Source: Mirvac Design)

STRATEGIC CONTEXT

Greater 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 to boost Greater Sydney's liveability, productivity and sustainability by spreading the benefits of growth. 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). The subject site is located within 800m of the Cherrybrook Metro Station which opened on 26 May 2019.

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 considered to be consistent with this objective as it will assist in maximising housing supply within the Cherrybrook Station Precinct which will have direct access to high frequency public transport services.

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. The plan requires integration of land use planning and transport to facilitate walkable 30-minute cities amongst the 34 strategic centres identified.

The relevant Planning Priority of the Central City District Plan is Priority C5 which 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 in a location which will have access to high frequency public transport services. The development proposal is considered to be consistent with the Central City District Plan.

Cherrybrook Station Precinct

The 2013 North West Rail Link Cherrybrook Station Structure Plan identified the site as a significant site subject to further consideration and collaboration with stakeholders, to determine its likely role in the future. The Cherrybrook Station Structure Plan was released as part of the North West Rail Link Corridor Strategy, which guides development of land around the eight Sydney Metro Northwest stations.

Three separate (but related) plans were exhibited for public comment from 22 July to 28 August 2022, being:

- The Cherrybrook Precinct Place Strategy, exhibited by the Department, which will help guide the development of the wider Cherrybrook Precinct and inform future rezoning.
- Landcom is exhibiting a rezoning proposal for the Cherrybrook Station State Significant Precinct (SSP), which covers government-owned land next to the metro station.
- The Department is also exhibiting an amendment to State Environmental Planning Policy (SEPP) Planning Systems, to enable the Cherrybrook Station government land to be listed as a State Significant Development (SSD) site.

The subject site is located within the area mapped as the Cherrybrook Station Precinct Draft Place Strategy. The Strategy will enable up to 3,200 homes, 140 new jobs, 2.37ha of extra open space and new walking and cycling paths. Land around the existing Cherrybrook Metro Station has been recommended to be re-zoned medium density residential and have a maximum building height of 5 storeys. The Plan does not provide for recommended building heights, FSR or minimum lot sizes for the subject site, as the site is located outside of the mapped area for these controls.

Local Strategic Planning Statement – Hills Future 2036

The Plan sets planning priorities and corresponding actions that will provide for more housing, jobs, parks and services for the growing population. The Plan is supported by six strategies which provide a guide to planning in The Hills. The relevant strategy of the Local Strategic Planning Statement is the Productivity and Centres Strategy which establishes the basis for strategic planning of employment lands and centres in the Shire.

Located in Cherrybrook Metro Station Precinct, the proposal will provide for variety of housing types and associated open space to assist in the growth of area in close proximity to public transport. The proposal will assist in the creation of jobs both within the construction and education industries in line with the projected population growth, and in a location near transport infrastructure and other employment areas of the Castle Hill and Norwest strategic centres. The development proposal is considered to be consistent with the Local Strategic Planning Statement.

ISSUES FOR CONSIDERATION

1. Biodiversity Conservation Act, 2016

The Biodiversity Conservation Act, 2016 (BC Act) and Biodiversity Conservation (BC) Regulation 2017 establishes the requirements for the protection of biodiversity, outlines the

requirements for the regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities.

The BC Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme (BOS) will be triggered, and thus the necessity for the preparation of a Biodiversity Development Assessment Report (BDAR).

The thresholds are:

1. Whether the impacts occur on an area mapped on the Biodiversity Values map published by the (then) Chief Executive of the NSW Office of Environment and Heritage; and
2. Whether the amount of native vegetation being cleared exceeds a threshold area, which in the case of the subject site is 0.25 hectares.

The BDAR is required as a result of both triggers, as more than 0.25 hectares of vegetation clearing is proposed, and some of the area of the proposed works is mapped as High Biodiversity Value.

An (amended) Biodiversity Development Assessment Report (BDAR) prepared by Keystone Ecological dated 16 June 2022 was submitted with the application that concluded:

The development footprint is located in an area that is mapped as containing areas of high biodiversity value and is in fact the trigger for the Biodiversity Offset Scheme. These mapped polygons are defined as representing entities whose loss has the potential to bring about a Serious and Irreversible Impact (SAIL), presumably being Blue Gum High Forest as is shown in identical polygons in the OEH mapping (see Figure 9). The investigations undertaken for this BDAR have demonstrated that this mapping is in error. The mix of Australian native trees planted in the 1980's does not represent an occurrence of Blue Gum High Forest. The area in question is made up of planted native vegetation in a highly modified excavated environment, and its floristic composition cannot be reasonably assigned to any natural PCT.

The proposal is unlikely to result in a SAIL for BGHF, largely due to the small scale of the loss of habitat and the high value nature of the existing surrounding vegetation. Its loss is not considered serious or irreversible, and can be offset adequately in accordance with the BAM-C.

The proposal is unlikely to result in a SAIL for Chalinolobus dwyeri, largely due to the small scale of the loss of habitat and the high value nature of the existing surrounding vegetation. Its loss is not considered serious or irreversible, and can be offset adequately in accordance with the BAM-C.

Overall, the impacts to this vegetation have been avoided and minimised. These very small scale impacts are unavoidable and not sufficient to trigger a significant adverse impact, or a Serious and Irreversible Impact (SAIL).

To mitigate potential impacts to native vegetation and threatened species and their habitats, a number of ameliorative measures are to be implemented as part of the proposed works.

Ecosystem Credits:

No nett loss will be achieved for impacts to the following PCTs in accordance with the BAM if the following Ecosystem Credits are retired:

- *Removal and modification of 0.08 hectares of PCT 1237 Blue Gum high forest (Not TEC) will require the retirement of 2 Ecosystem Credits*

- *Removal and modification of 0.22 hectare of PCT 1237 – BGHF (CEEC) will require the retirement of 6 Ecosystem Credits*

Species Credits:

No nett loss will be achieved for impacts to the habitat of the following candidate species in accordance with the BAM if the following Species Credits are retired:

- *Cercartetus nanus Eastern Pygmy Possum – 7 Species Credits*
- *Chalinolobus dwyeri Large-eared Pied Bat – 10 Species Credits*
- *Myotis macropus Southern Myotis – 7 Species Credits*
- *Ninox strenua Powerful Owl – 2 Species Credits*
- *Pommerhelix duralensis Dural Land Snail – 7 Species Credits*

The original BDAR (Keystone Ecological, November 2021) was reviewed by Council's Senior Biodiversity Officer who raised concerns with the potential impacts to the Powerful Owl and disagreement on the classification of some vegetation proposed for removal. Modifications to the design were requested to better protect BGHF and roosting habitat for the Powerful Owl.

An updated BDAR prepared by Keystone Ecological dated 16 June 2022 was submitted to Council.

The updated BDAR was reviewed by Council's Senior Biodiversity Officer. The revised report included design modifications to the proposed development that allowed for additional areas that were identified as BGHF by Council staff and Powerful Owl Roosting habitat to be retained. It is acknowledged that some additional trees would need to be removed but this would be within an area not considered to be BGHF and would achieve an overall better biodiversity outcome compared to the original master plan. The revised BDAR did not fully address Council concerns regarding some of the classification of the vegetation and proposed offsetting within the report.

In addition to the BDAR, the applicant submitted a supplementary letter to Council prepared by Keystone Ecological dated 16 June 2022. This letter acknowledged that there remained a disagreement with Council staff regarding the classification of some of the vegetation. The letter contained three possible scenarios regarding impacts to BGHF.

Of the three scenarios outlined within the Keystone letter, scenario 3 is the one that most closely aligned with Council's assessment of vegetation on the subject site, however Council staff maintain there are additional small areas of vegetation proposed for removal that are required to be offset in accordance with the Biodiversity Assessment Method and have calculated offsets using appropriate benchmarks set out in the legislation. A condition has been recommended setting offsets in accordance with these benchmarks to be applied to the development consent.

Imposing credits as condition of consent

In accordance with Section 7.13 (4) of the NSW Biodiversity Conservation Act

"The consent authority may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the consent authority determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development. The consent authority must give reasons for a decision to reduce or increase the number of biodiversity credits."

Council staff have recommended that the development can be recommended for approval, however there will be a requirement to have additional offsets above those contained within

the BDAR and supplementary letter to reflect the impact the development will have on the biodiversity values.

To offset the loss of biodiversity from the site from the development, it is recommended that ecosystem and species credits are to be retired prior to any clearing of vegetation. Details of the offset obligations are provided in recommended condition No. 45.

In accordance with Section 7.16(2) of the NSW Biodiversity Conservation Act, the consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values. Council's Senior Biodiversity Officer has reviewed all information and inspected the site and concluded that the current development will not result in a Serious and Irreversible Impact on Blue Gum High Forest or the Large-eared Pied Bat (*Chalinolobus dwyeri*).

A comprehensive background, review and final resolution of Council's Internal Ecology referral, and the decision for the imposition of biodiversity credits is provided in Section 15.

2. Water Management Act, 2000

The application is defined as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act, 1979. The proposal requires approval under the provisions of the Water Management Act, 2000. The Department of Planning and Environment - Water raised no objections and provided General Terms of Approval dated 13 April 2022 (refer Attachment 14). The Department of Planning and Environment - Water was advised of amendments to the proposal. A response received dated 5 August 2022 advised that "*previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary*".

3. Compliance with State Environmental Planning Policy (Planning Systems) 2021

Section 2.20 Concept development application of SEPP (Planning Systems) 2021 specifies:

If—

(a) development specified in Schedule 6 is described in that Schedule by reference to a minimum capital investment value, other minimum size or other aspect of the development, and

(b) development the subject of a concept development application under Part 4 of the Act is development so specified,

any part of the development that is the subject of a separate development application is development specified in Schedule 6, but only if that part of the development exceeds the minimum value or size or other aspect specified in that Schedule for the development

Schedule 6, subclause 2 of SEPP (Planning Systems) 2021 specifies the referral requirements for regionally significant development.

2 General development over \$30 million

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

With respect to Section 2.20 and Schedule 6, the proposed development has a Capital Investment Value of \$319,917,503.00 and therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

4. State Environmental Planning Policy (Transport and Infrastructure) 2021

Traffic Generating Development

Clause 2.122 'Traffic-generating development' of the SEPP states:-

(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:

- (a) new premises of the relevant size or capacity, or*
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

(2) In this clause, relevant size or capacity means:

- (a) in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
- (b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*

(3) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has:

- (a) given written notice of the intention to carry out the development to RMS in relation to the development, and*
- (b) taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*

(4) Before determining a development application for development to which this clause applies, the consent authority must:

- (a) give written notice of the application to the RMS within 7 days after the application is made, and*
- (b) take into consideration:*

(i) any submission that the RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RMS advises that it will not be making a submission), and

(ii) the accessibility of the site concerned, including:

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development.

(5) The consent authority must give the TfNSW a copy of the determination of the application within 7 days after the determination is made.

Comment:

The proposal is categorised as traffic generating development pursuant to Section 2.122 and Schedule 3 of the SEPP. The SEPP requires development to be referred to Transport for NSW where a residential accommodation includes more than 300 dwellings. The proposed concept development will result in 417 dwellings on the site.

The Development Application was referred to Transport for NSW for review. Transport for NSW raised no objection to the proposal and have provided the following comment:

Reference is made to Council's correspondence dated 6 April 2022 requesting amendment to the correspondence issued by Transport for NSW (TfNSW) dated 30 March 2022 for this development application.

TfNSW has considered Council's request and has agreed to reissue the comments without reference to AUSTRALODS on the basis that the development is to be serviced by private roads.

TfNSW has reviewed the submitted application and provides the reissued comments for the consideration of Council in the determination of the development application:

- 1. It is noted that the correspondence issued by TfNSW dated 10 September 2019 for planning proposal of the site, required consideration of the provision of a signalised pedestrian phase on the western leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue.*
TfNSW provided advice dated 1 March 2022 (Attached) to the proponent that it does not require the provision of a signalised pedestrian phase on the western leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue signalised intersection. TfNSW confirms this advice.
- 2. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.*

The amended proposal was also referred to TfNSW and a response received on 21 July 2022 advised that *"TfNSW has reviewed the submitted application and notes there is no change to the approved access arrangement or increase in dwelling numbers on site. TfNSW raises no objection to the application as it is unlikely to have significant impact on the State road network. TfNSW reiterates its previous advice dated 19 April 2022."*

As recommended by TfNSW, a Construction Pedestrian Traffic Management Plan (CPTMP) has been included as a condition of consent (refer condition no. 48)

A Traffic Impact Assessment was submitted with the application which has concluded that:

In summary, extensive analysis was undertaken during the rezoning process including Council peer review and RMS approval. There is no doubt that the approved rezoning permitting 600 dwellings significantly reduces traffic generation as compared to the existing buildings used at full capacity. Mirvac is proposing to develop only 417 dwellings, being much less than 600, which additionally materially reduces traffic generation. Parking numbers have been carefully balanced and the road network has been appropriately designed. Accordingly, the proposal is suitable from a transport and traffic perspective and is capable of being supported.

Council's Traffic Section has reviewed the Development Application in relation to traffic generation, need for traffic improvements, parking, sight distances and other safety issues. Council's Traffic Section concludes that the development will have marginal impacts in terms of its traffic generation potential on the local road network, and sufficient parking has been provided for the development and confirmed that there are no objections to this development from a traffic perspective. Further traffic comments are provided in Section 15.

In this regard, the potential for traffic safety and road congestion of the development have been satisfactorily addressed and satisfies Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

Stormwater Infrastructure Works

The proposal includes stormwater infrastructure works located within the C2 Environmental Conservation Zone. Clause 2.138 of the SEPP (Transport and Infrastructure) 2021, states:

development for the purposes of a stormwater management system may be carried out by any person with consent on any land.

The SEPP defines 'stormwater management system' as:

- (a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*
- (b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*
- (c) stormwater reuse schemes.*

The proposed works include the repurposing and reuse of the existing stormwater infrastructure, being OSD 4 within the C2 zoned land which is permissible with consent.

5. 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.*

A Detailed Site Investigation (DSI) and accompanying letter, prepared by JBS & G and a Site Audit Report and accompanying letter prepared by Seversa was submitted with the application which identified the potential of contamination on the site and whether or not the proposed future uses are suitable on the land.

The DSI concluded that *“there is no contamination on the site that represents an unacceptable risk to human or ecological receptors when considered against the most conservative land use as per NEPC 2013 – Residential with accessible soils and the site is suitable for the proposed [future] redevelopment for mixed land use including residential (townhouses and apartments buildings ranging from 2 storeys to 6 storeys) and recreational/open space land use.”* The Site Audit Report also confirmed that based on the information presented in JBS&G reports and observations made on site, and following the Decision-Making Process for Assessing Urban Redevelopment Sites in NSW EPA (2017) Guidelines for the NSW Site Auditor Scheme, the Auditor concludes that the site is suitable for the purposes of (future) residential with gardens and accessible soil. A condition of consent has been recommended in relation to contamination and ground conditions (refer to condition no. 85).

In this regard, it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP Resilience and Hazards.

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

Details regarding compliance with SEPP 65 have been assessed and addressed in detail under DA 861/2022/JP, which includes the Design Verification Statement prepared by Andrew La, registration number 11416 of Mirvac Design Pty Ltd.

7. Compliance with SEPP (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (BASIX) 2004 does not apply to the proposed development as the residential component of the development is in concept stage only. Future built form DAs will be subject to SEPP BASIX 2004.

8. The Hills Local Environmental Plan 2019

(i) Permissibility

The site has multiple zones being C2 Environmental Conservation, R3 Medium Density Residential and R4 High Density Residential under The Hills Local Environmental Plan 2019.

ZONE	PROPOSED WORKS / DEVELOPMENT	PERMISSIBLE
C2 Environmental Conservation	Roads Stormwater Works	Yes Also permissible under the SEPP Transport and Infrastructure 2021 – refer above.

R3 Medium Density	Attached and Detached Dwellings	Yes
R4 High Density	Attached dwellings and Residential Flat Buildings	Yes

(ii) Compliance with LEP 2019 – Zone Objectives

The site is zoned part C2 Environmental Conservation under The Hills Local Environmental Plan 2019. The objectives of the zone are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The proposal is considered to be consistent with the stated objectives of the zone in that the proposal will seek to maintain the C2 Environmental Conservation zoned land. As identified above the applicant is seeking to dedicate some of the C2 Environmental Conservation zoned land to Forestry Corporation NSW.

The site is zoned part R3 Medium Density Residential under The Hills Local Environmental Plan 2019. The objectives of the zone are:

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

The proposal is considered to be consistent with the stated objectives of the zone in that the proposal will allow medium density development within the site, consisting of a variety of housing types, being attached, semi-detached and detached dwellings to meet the housing and facility needs of the community. The concept master plan also includes various common open spaces and park lands for the residents to use. The development will be in close proximity to population centres and public transport routes.

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

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

The proposal is considered to be consistent with the stated objectives of the zone, in that the proposal will allow high density development within the site, consisting of a variety of unit type, being a mix of one, two, three and four bedroom units, to meet the varying housing needs of the community. The concept master plan also includes various common open spaces and park lands for the residents to use. The development will be in close proximity to population centres and public transport routes.

(iii) The Hills LEP 2019 - Development Standards

The following addresses the principal development standards of the LEP relevant to the subject proposal:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
2.7 Demolition	Refer below	Refer below	Yes
4.1 Minimum Lot Size	700m ² , 1,800m ² , 6,000m ² and 2ha.	No subdivision proposed under subject application. Subdivision proposed under DA 1414/2022/ZB.	N/A
4.3 Building Height	The R3 zoned portion of the site is subject to a maximum height of 9m and 12m The R4 zoned portion of the site is subject to a maximum height of 22m.	N/A – will be addressed in built form applications Building A: 26.4m Building B: 27.1m Building C: 24.9m Building D: 26.6m.	No, refer to discussion below.
4.4 Floor Space Ratio	Not applicable to the site.	N/A	N/A.
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	A variation to Clause 4.3 Height of Buildings is proposed and addressed below.	Yes, refer to discussion below.
5.10 Heritage	The site is located on land adjoining a heritage item (Clause 5.10 (5)(c)), being the Local Item A26, archaeological site - site Cumberland State Forest, Bellamy Quarry and Sawpit located to the east of the site.	A Heritage Impact Statement has been provided with the application which addresses the impact of the proposal on the adjoining heritage item.	Yes
5.21 Flood Planning	Refer below		Yes
7.2 Earthworks	Refer below		Yes
7.7 Design Excellence	Development consent must not be granted unless the development exhibits design excellence.	Proposal referred to Design Excellence Panel. The proposal has addressed concerns raised by the Panel.	Yes, refer to discussion below.
7.15 Development at 55 Coonara Avenue, West			

Pennant Hills			
Schedule 1 Additional Permitted Uses Clause 17	<p>Use of certain land at 55 Coonara Avenue – Items 24 and 25.</p> <p>2) Development for the purposes of recreation areas or recreation facilities (indoor) is permitted with development consent on the land shown as “Item 23”.</p> <p>(3) Development for the following purposes is permitted with development consent on the land shown as “Item 24”—</p> <p>(a) building identification signs,</p> <p>(b) kiosks,</p> <p>(c) recreation areas,</p> <p>(d) restaurants or cafes, but only if the gross floor area of any restaurant or cafe on the land does not exceed 50 square metres.</p>	The uses for those items will be subject to a separate (future DA).	Yes

Clause 2.7 Demolition requires development consent

Clause 2.7 prescribes that;

The demolition of a building or work may be carried out only with development consent.

Note—

If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#), as exempt development, the Act enables it to be carried out without development consent

The proposal includes demolition of existing hardstand and redundant services and is consistent with this clause.

Variation to Clause 4.3 Height of Buildings

As the concept application seeks approval for the building envelopes for the residential flat buildings, this application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. Clause 4.3 of LEP 2019 limits the height of the development site (R4 High Density Residential zoned portion of the site) to 22 metres.

The proposed maximum building heights of Buildings A, B, C and D are 26.4m, 27.1m, 24.9m and 26.6m respectively. This represents a variation of 4.4m (20%), 5.1m (23.2%), 2.9m

(13.2%) and 4.6m (20.9%) to the height standard. These figures are based on measurement of building heights from adjacent and/or interpolated ground levels.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 9.

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 Secretary has been obtained.

(5) In deciding whether to grant concurrence, the 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 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,*
 - (ca) *clause 6.2 or 6.3,*
 - (caa) *clause 5.5,*
 - (cab) *(Repealed)*
 - (ca) *clause 6.2 or 6.3,*
 - (cb) *clause 7.11,*
 - (cc) *clause 7.15.*

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

- *Environmental conservation* - *the reduction in developable area and aim to protect EECs on the land has resulted in the re-allocation of massing from the forest edge to offer an improved environmental outcome for the site.*
- *Retention of the Perimeter Road* - *in doing so, results in a significantly improved environmental outcome to minimise further disturbance of the site, as a result of additional earthworks that would be required to relocate the road.*
- *Re-allocation of massing away from the forest edge* - *the re-allocation of massing away from the adjacent forest through the design process, has resulted in the proposed building heights being consolidated and the built form moved from the forest and remove the need for any basement excavation within proximity of the root zone of significant trees located outside the Perimeter Road.*
- *Amenity* –
 - *The design process has led to the reduction in apartment buildings to four (4) buildings, resulting in the proposed scheme, providing a single row of apartment buildings, thereby reducing the constriction of airflow across the site, helping with ventilation to each of the units. The buildings have been purposely orientated to maximise, capture and use prevailing breezes for natural ventilation in habitable rooms, while depths habitable rooms have been considered to support natural ventilation.*
 - *Notwithstanding the height contraventions, the proposed buildings continue to provide 2 hours of solar access to 70% of apartments in each building, in accordance with the Apartment Design Guide. The additional height does not give rise to an unreasonable overshadowing of adjoining housing precincts.*
 - *Providing four (4) buildings offers reduced opportunity for overlooking, in turn substantially improving visual privacy between buildings, thereby offering a superior residential amenity outcome between each building, including areas of private open space, such as balconies to each unit.*

- *Site topography* - The rezoning process did not have the benefit of more detailed design that would normally occur at this stage. As such, the process did not fully take into account the complexity of the site and its undulating and differing topography, which has a north-south fall of approximately 64m, and various areas throughout which are contoured to suit a redundant business park use.
- This request has demonstrated that the proposed development is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out. It is considered that the consent authority 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. The proposed scheme also results in significantly fewer dwellings compared to previously explored schemes and compared to the maximum numbers of dwellings permitted on the site.
- In conclusion, it is considered that the proposed building height contravention presents a superior planning and design outcomes than those alternate options which have been explored through the design process. Further, it is considered that there is no statutory or environmental planning impediment to the granting of a building height contravention in this instance.

Comment:

The specific heights for the proposed buildings are summarised in the below table:

Building	Maximum LEP height	Proposed height (exc. plant and parapets)	Extent of variation	Maximum height (including plant and parapets)	Extent of variation
Building A	22m	24.5m	2.5m	26.4m	4.4m (20%)
Building B	22m	25m	3m	27.1m	5.1m (23.2%)
Building C	22m	24.3m	2.3m	24.9m	2.9m (13.2%)
Building D	22m	26m	4m	26.6m	4.6m (20.9%)

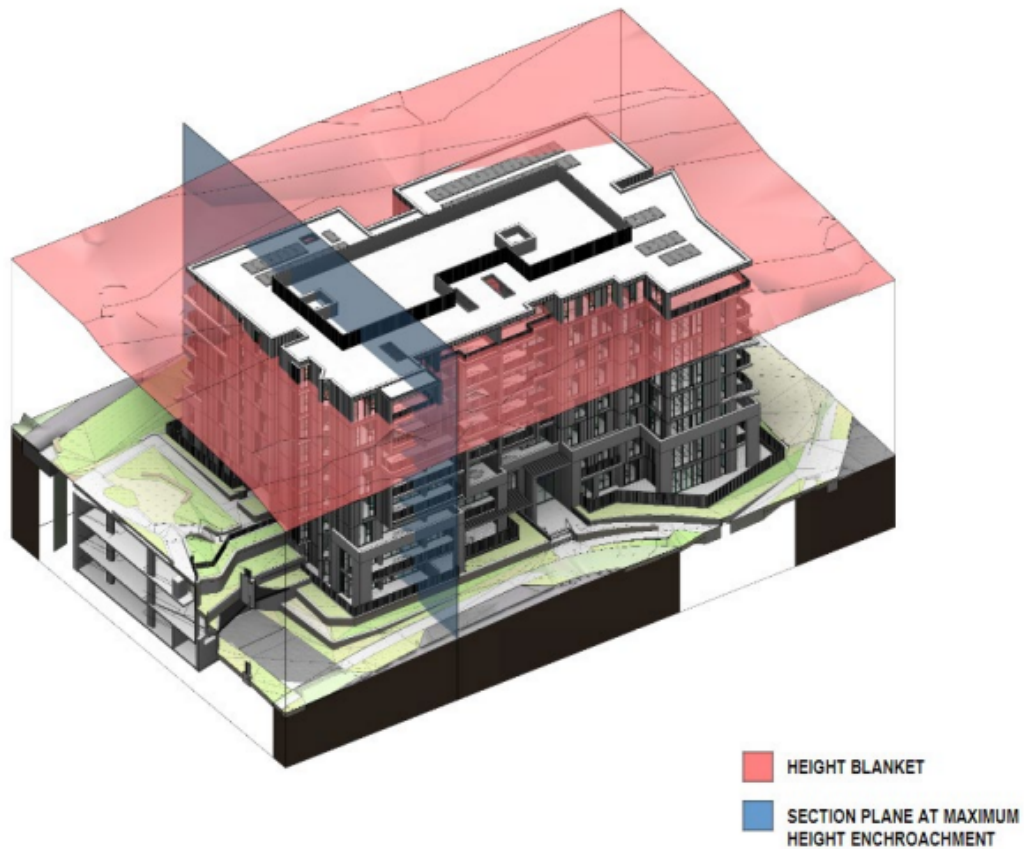


Figure 5 22m Height blanket of Building A (Source: Mirvac Design)

Figure 5: Applicant's 22m Height Blanket diagram of Building A

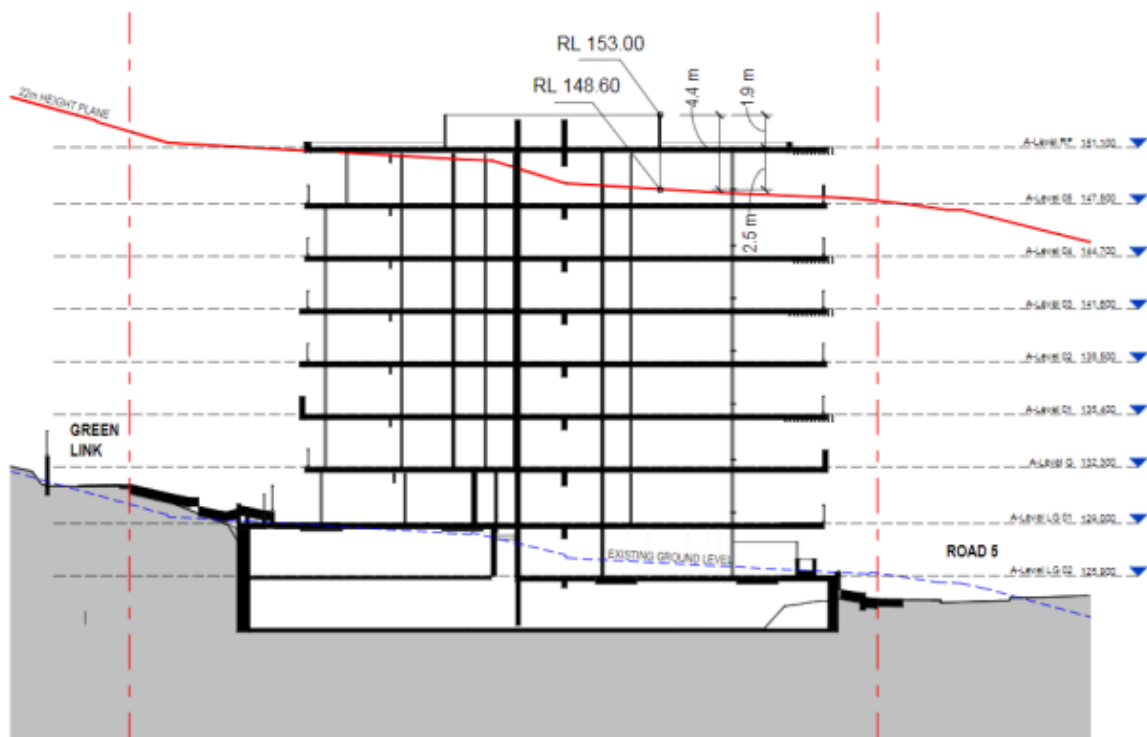


Figure 4 South Section of Building A showing the extent of height contravention (4.4m) (Source: Mirvac Design)

Figure 6: Applicant's section of Building A showing extent of height contravention

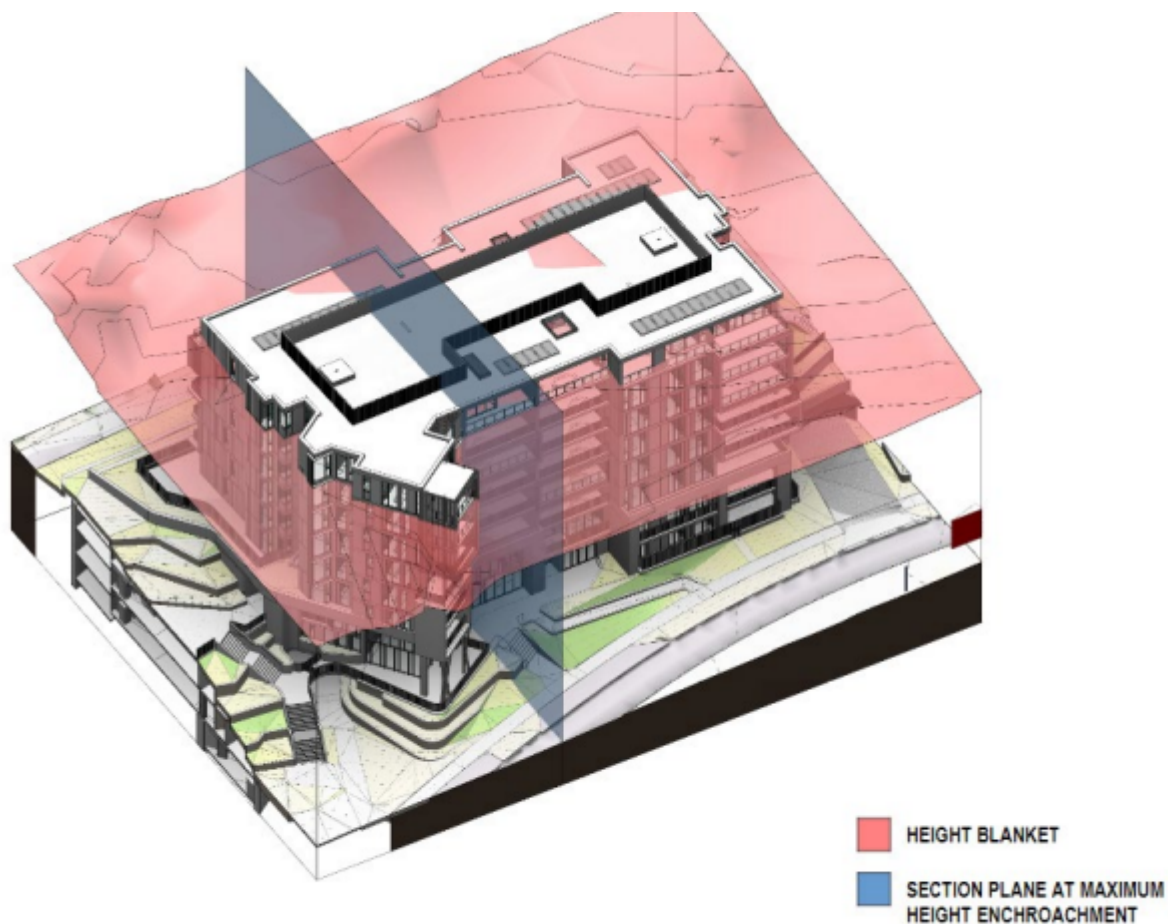


Figure 7 22m Height blanket of Building B (Source: Mirvac Design)

Figure 7: Applicant's 22m Height Blanket diagram of Building B

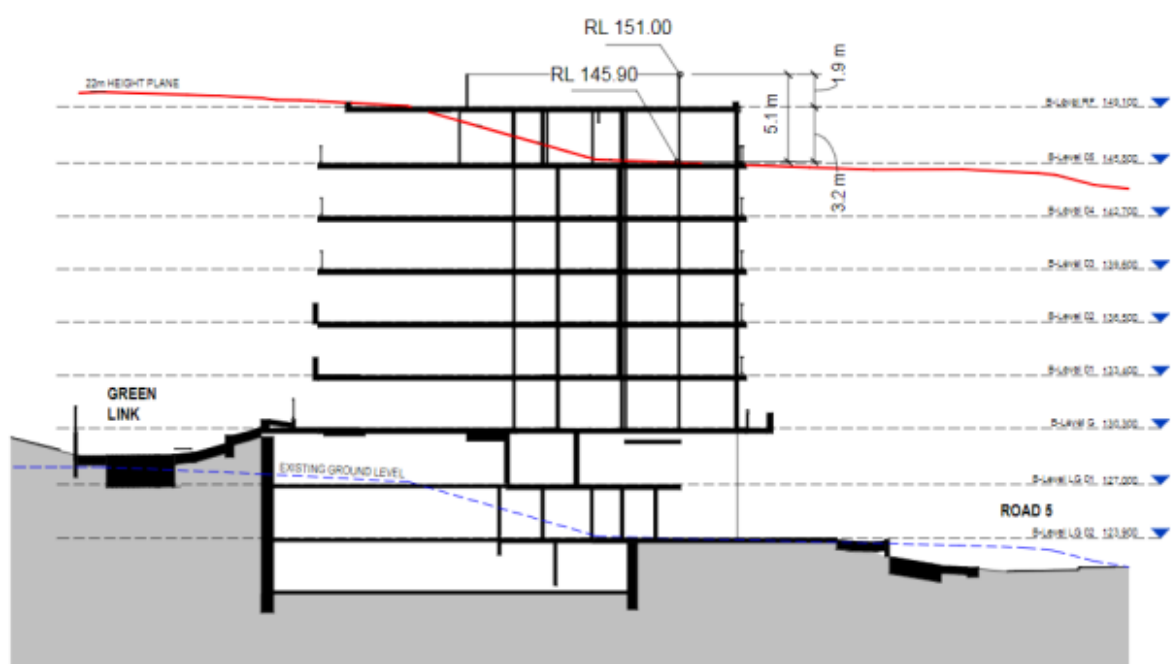


Figure 6 South Section of Building B showing the extent of height contravention (5.1m) (Source: Mirvac Design)

Figure 8: Applicant's section of Building B showing extent of height contravention

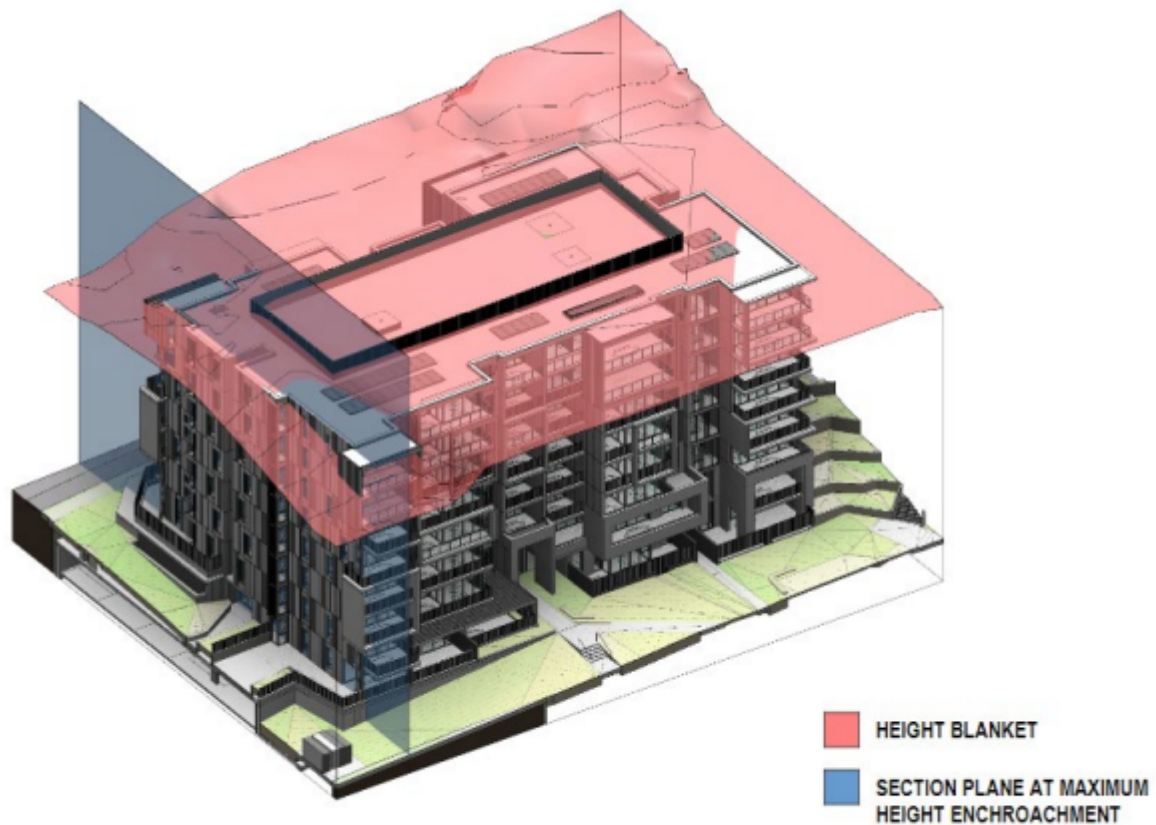


Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

Figure 9: Applicant's 22m Height Blanket diagram of Building C

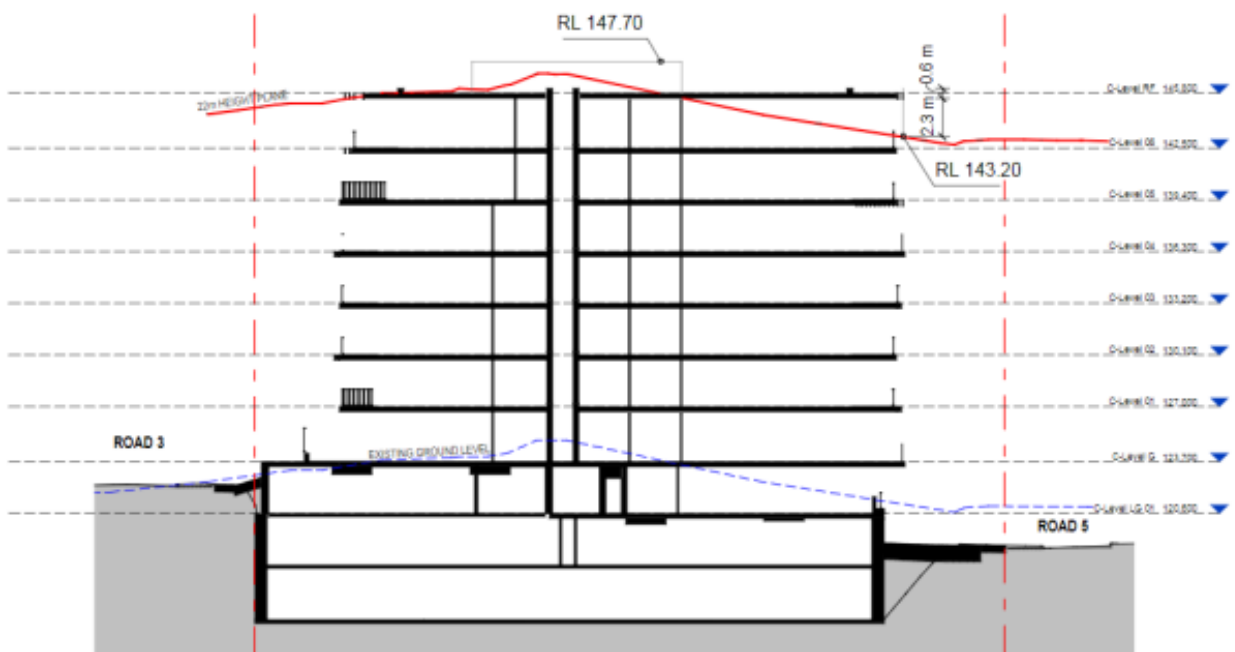


Figure 8 South Section of Building C showing the extent of height contravention (2.9m) (Source: Mirvac Design)

Figure 10: Applicant's section of Building C showing extent of height contravention

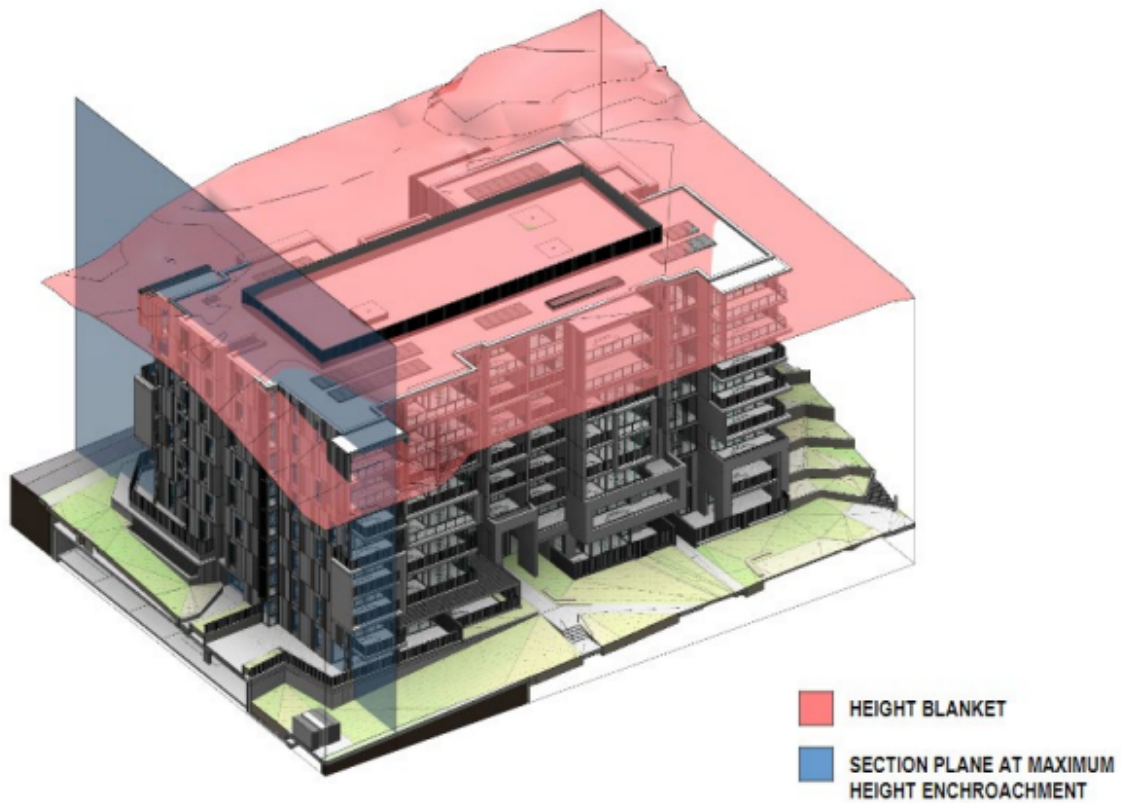


Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

Figure 11: Applicant's 22m Height Blanket diagram of Building D

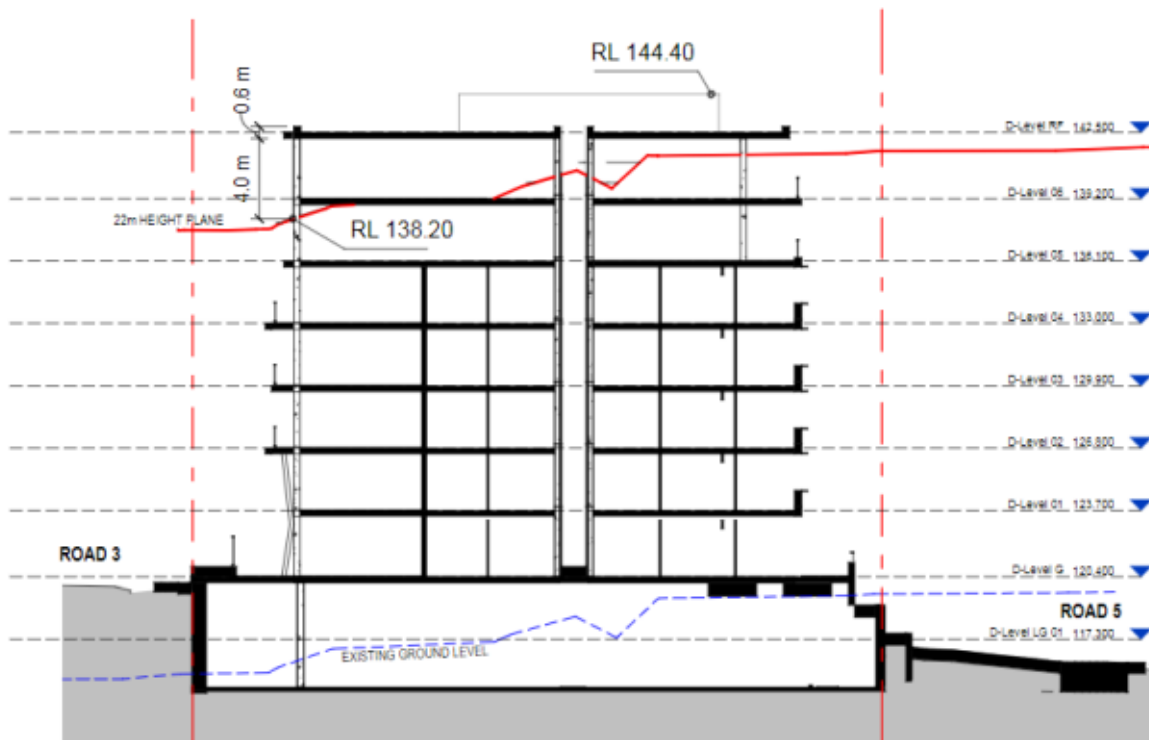


Figure 10 South Section of Building D showing the extent of height contravention (4.6m) (Source: Mirvac Design)

Figure 12: Applicant's section of Building D showing extent of height contravention

The objective of Clause 4.3 'Building Height' is to ensure that the height of buildings is compatible with that of adjoining development and the streetscape. Additionally, the building height development standard aims to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas. As such, the development standard for building height and the development controls for building setbacks, building design, solar access and overshadowing have been considered with respect to the merits of a variation pursuant to Clause 4.6.

The Planning Proposal provided for an apartment precinct with nine (9) buildings, which would provide for up to 400 units. The current applicant seeks approval for 252 units, which is a reduction of 148 units, or 37% reduction in yield. The applicant advised that during the detailed design phase in providing the 9 building scheme resulted in significant Asset Protection Zones which resulted in impacts to the adjoining C2 Environmental Conservation Zone, and the biodiversity values of the site.

The applicant advised that a 6 and 7 building scheme was also investigated which would have provided for maximum yield, however, this scheme also provided undesirable outcomes and impacts and increased bulk and scale when viewed from forest areas, loss of views and outlook from many parts of the site due to accumulation of the building masses, decreased and less valuable connectivity and open spaces, intensity of uses within proximity of the forest, as well as solar access, ventilation and privacy issues. The current four (4) building apartment precinct scheme results in a mix of residential flat buildings and terrace style housing within the R4 zoned land which provides for a transition of built form down to the C2 (formerly E2) zoned land to the east, and results in greater view sharing from both the private and public domain. A comparison of the two schemes is provided below in figures 13 and 14.

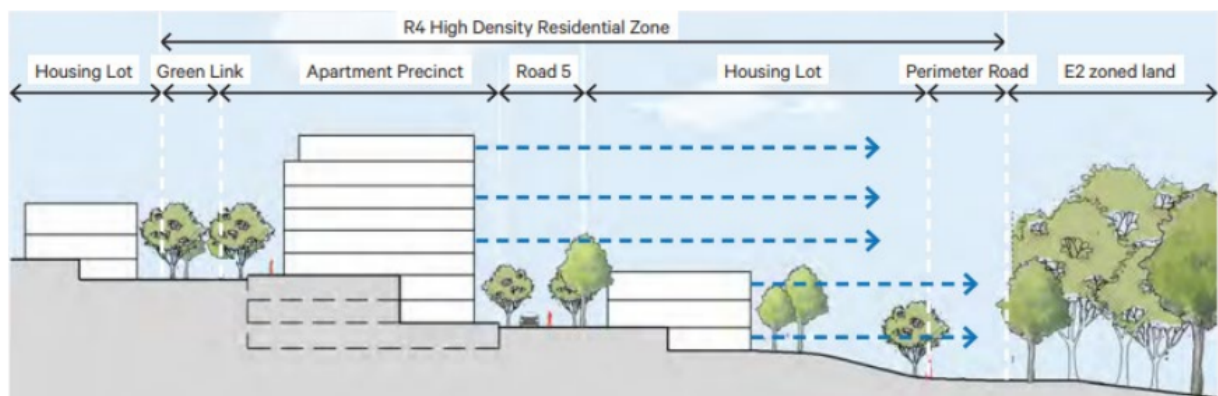


Figure13: Proposed built form transition to C2 Zoned land Source: Mirvac Design

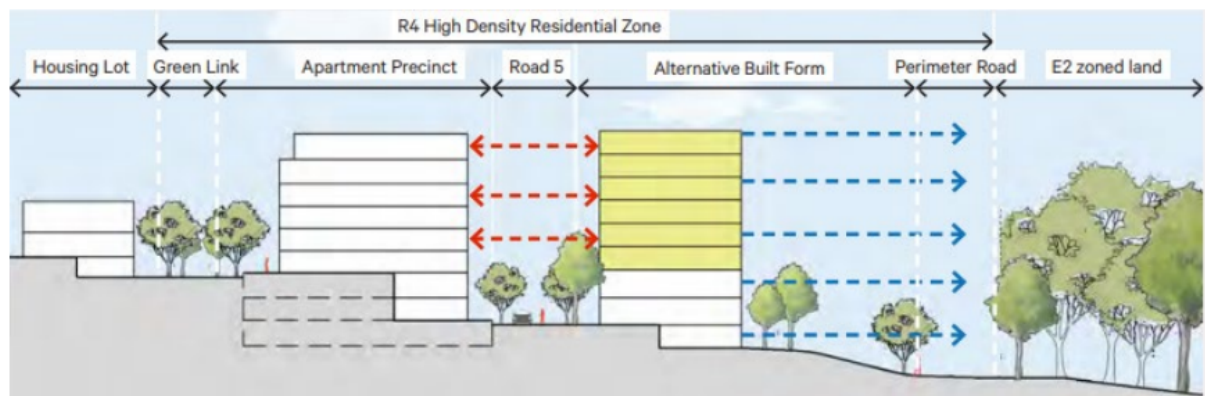


Figure 14: Alternative built form consistent with Planning Proposal and transition to C2 Zoned land Source: Mirvac Design

The applicant has argued the use of extrapolated ground levels, as identified in *Bettar vs Council of the City of Sydney 2014, NSWLEC 1070* in relation to the consideration of “ground level (existing)” and the calculation of building height. The applicant advised that “upon finalisation of the rezoning, further detailed studies and detailed design were undertaken. When the detailed design process occurred, it was found that the topography was significantly more challenging than indicated during the PP stage, particularly with regard to the existing areas of basement excavation and the fall across the R4 portion of the site, in the location of the IBM buildings. Due to the site’s modified topography, we consider the calculation of building height should consider the “existing ground level” of the site prior to excavation that has previously occurred in relation to construction of the existing commercial building, in the location of the proposed Apartments Precinct.”

The applicant’s Clause 4.6 Written Request found it appropriate “to consider and measure the building height from adjacent and/or interpolated ground levels. These levels bear a direct relationship between the height of the development as viewed from neighbouring properties and the height as it relates to the existing and desired future character of the area and therefore considered a more appropriate reference point for assessing whether the objectives of the standard are satisfied. It is considered that the prescriptive building height standard should be considered based on a merit assessment.”

Shadow diagrams

The applicant has provided shadow diagrams which show the additional shadows cast as a result of the breach in height over the 22 metre height limit which is shown purple on the figures below.



Figure 15: Shadow Diagrams at 9am on 21 June showing a compliant vs non-compliant (shown purple) development. Source: Mirvac Design



Figure 16: Shadow Diagrams at 12pm on 21 June showing a compliant vs non-compliant (shown purple) development. Source: Mirvac Design



Figure 17: Shadow Diagrams at 3pm on 21 June showing a compliant vs non-compliant (shown purple) development. Source: Mirvac Design

The shadow diagrams provided above, illustrate the impact of the contravention (highlighted by purple) as being marginal during the winter solstice, and the private and public open spaces of the development receive an acceptable amount of solar access. The apartment building precinct compliance with the relevant solar access provisions of the Apartment Design Guidelines. The future outdoor space/ recreational area “Jawah” to the south-east of the will be unimpacted by the development with respect to overshadowing.

Views

The Clause 4.6 Variation written submission provided by the applicant was supported by a Visual Impact Assessment prepared by Richard Lamb and Associates. The assessment concluded that *“the parts of the buildings that breach of the height plane are either not visible at all or have no significant impact on the views. The apartment buildings would have no substantial exposure to or impact on views from the adjacent private or public domain.”* The apartments buildings are located over 100 metres from Coonara Avenue, and any breach in height will not be discernible from the Coonara Street frontage.

The applicant has adequately demonstrated that the proposed development is in the public interest and is consistent with the objectives of Clause 4.3 ‘Building Height’ and the R4 High Density Residential zone. The variation to building height will not create buildings of excessive height, bulk or scale nor will it cause undue impacts within the development. There will be no adverse overshadowing impacts to any adjoining residential properties, as all shadows for the apartment building precinct fall within the site. A variation to the building height in this instance is considered to be satisfactory and can be supported.

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 4.3 Height of Building 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.
- Strict compliance with the development height standard is considered unreasonable and unnecessary in this instance.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development is well founded. In relation to the ‘five part test’ the objection to the building height is well founded on Part 1 of the test as the objectives of these standards are achieved notwithstanding non-compliance with the standards.

It is also noted that in accordance with the Departments Circular PS 18-003 that Director General’s concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument or a similar clause.

Clause 5.21 - Flood planning

The objectives of this clause are as follows:

- *to minimise the flood risk to life and property associated with the use of land,*
- *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,*
- *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

Comment: Currently, a natural watercourse traversing the site diagonally from east to west conveys stormwater runoff from the upstream catchment and merges with a minor tributary conveying the site, ultimately discharging at the south-western boundary. As a result, the site and properties downstream in the locality are identified as flood control lots.

The subject application seeks approval for the infrastructure works including road and drainage works, earthworks and stormwater management works. The applicant has provided multiple reports and supporting documentation to address flooding and stormwater management measures for the site, to facilitate the future development.

The reports and civil plans provided demonstrate that all the activities are clear of the major overland flow path, and also confirm that the subject development does not change the existing flood behaviour within the subject site, as well as downstream properties within the locality.

To ensure suitable stormwater management, the development relies on four basins to detain the stormwater during demolition/construction activities whilst there are five Onsite Stormwater Detention (OSD) systems respective to modified terrain by the bulk earthworks within the concept plan catchment, and have been incorporated with the development's stormwater management control measures.

When the five OSD systems are completed, there will not be any additional runoff expected to be discharged over the downstream properties pursuant to the concept plan activities. However, the construction timing and the sequence of construction and earth works of each precinct are subject to vary. Therefore, the development is required to ensure completion of adequate Flood Control Measures (detention basin/s) onsite throughout the development (every stage/ phase), to ensure no adverse flood risks caused by the subject development over the downstream properties.

An appropriate condition as part of the application requiring completion of such detention facility prior to commencement related construction activity has been recommended.

The OSD tanks have been designed to incorporate Water Sensitive Urban Design Measures (WSUD) to comply with the achievement of water quality treatment targets. The necessary integrated detention systems shall be issued separate design compliance certificate/s for construction.

Overall, the proposal has demonstrated appropriate and sufficient flood and stormwater measures to ensure no adverse impacts result from the proposal.

Clause 7.2 Earthworks

The relevant objective of this clause is:

- *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land*

Comment: Given the development on the site, significant earthworks are proposed, however these are generally limited to within the perimeter road, with the area zoned R3 Medium Density Residential and R4 High Density Residential. Minimal earthworks are proposed in the vicinity of neighboring properties. Suitable reports and documentation have been provided with the application (Heritage Impact Statement, DSI and Audit Report, Geotechnical Assessment, Civil Engineering Assessment, Aboriginal Archaeological Due Diligence Assessment Report) to ensure that earthworks will not have a detrimental impact and satisfies the objectives of the clause.

Clause 7.7 Design Excellence

Clause 7.7 of the LEP specifies an objective to deliver the highest standard of architectural and urban design and applies to development involving the erection of a new building or external alterations to an existing building if the building has a height of 25 metres or more.

The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development detrimentally impacts on view corridors,*
- (d) *whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,*
- (e) *the requirements of any development control plan to the extent that it is relevant to the proposed development,*
- (f) *how the development addresses the following matters:*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*
 - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *the configuration and design of public access areas, recreation areas and communal open space on the site and whether that design incorporates exemplary and innovative treatments,*

(g) the findings of a panel of 3 or more persons that has been convened by the consent authority for the purposes of reviewing the design excellence of the development proposal.

It should also be noted that Clause 7.15 (4) of the LEP states that:

(4) Clause 7.7 (other than clause 7.7(4)(g)) extends to development on the subject land involving the erection of a new building, or external alterations to an existing building, of any height.

Noting the above clause, any development at 55 Coonara Avenue is to demonstrate design excellence, however not always required to be subject to review of the Design Excellence Panel. In this instance, both the both the concept application and the residential flat building were presented at the DEP meeting, as these two applications proposed development of 25 metres or more.

However, the applicant had the opinion that participation was not required with respect to the Concept DA, however advised that *“Mirvac voluntarily participated in the DEP process as we were seeking to demonstrate our collaborative approach with stakeholders and ensure a high level of design excellence.”*

Comment:

The design excellence of the proposal was considered at two Design Excellence Panel (DEP) meetings convened by Council and held on 10 March 2021 (prior to lodgment of the Development Application) and 8 December 2021. The meeting minutes of the Design Excellence Panel are included at Attachments 11 and 12. At the latest Design Excellence Panel meeting, the Panel provided various comments in relation to context/character, urban structure, density, landscape design and streetscape.

Both the concept application and the residential flat building were present at the DEP meeting, and comments for both applications were merged into one Meeting Report (however a separate Apartment Building Section was provided in the report – refer DA 861/2022/JP report for further details).

The Panel provided some advice in relation some recommendations and to some minor amendments to internal plans and provided details in the notes.

The Panel concluded that, subject to Council’s DA Officer being satisfied that the applicant has addressed issues raised in this report, the project need not return to the Panel for further consideration.

The applicant provided a detailed Urban Design Report/Response after each subsequent meeting which addressed the comments made by the Panel. The last meeting, the applicant provided a detailed Design Excellence Response Report addressing in detail, the comments and recommendations provided by the Panel.

Specifically, the following amendments were made to the development to address the matters raised by the DEP:

- New forest connection - Superlot 11 has been reconfigured with the removal of a house to break the built form and create a direct visual link from Road 4 to the forest.
- Maximising Solar Amenity - Detached housing in Superlot 11 has been re-designed to improve solar amenity with light wells over staircases to bring natural light into living spaces.

- Forest transition - Superlot 13 has been reconfigured and a house has been deleted, to create an softer transition from the forest to the built form, as well as to improve streetscape landscaping and reduce garage frontage.
- Materiality - housing facades (such as those in Superlot 3) have been modified to feature a more natural palette that is sympathetic of the site's bushland character. As an example, in some locations rendered blockwork has been replaced by timberlike cladding to create a softer expression that is more harmonious with the surroundings. More earth toned face brick has also been introduced.
- Building articulation - a number of houses, particularly those on corner lots or adjacent to a new forest link have been refined with a highly articulated facade.

With respect to the apartment building, the following recommendation/comments were provide by the DEP:

The Panel commends the applicant for the revision of the apartment building planning noting the changes made to meet ADG compliance significantly improve the residential amenity for future residents.

- *The height exceedance was considered by the Panel to be not of a great concern from an aesthetic perspective, however this is a matter for Council to resolve as the height exceedance triggers other regulatory processes. The Panel notes a number of storeys are in exceedance of 3.1m floor to floor and recommends that this be reviewed where it occurs, other than for ground floor apartments.*
- *The Panel reiterates that ground floor apartments should be designed to ensure adequate provision of daylight and not be located below the ground level of the adjacent pedestrian paths to prevent overlooking and opportunities for unauthorised entry.*
- *Considered landscape treatments of the public domain surrounding the ground floor apartments that minimise sightlines directly into the apartments and provide a clear delineation of the public and private domain should be able to mitigate these concerns.*
- *The Panel notes the communal open space provision does not satisfy the objectives of the ADG. It is therefore very important that the nearby communal facilities are completed prior to the occupation of the apartment blocks.*
- *The Panel acknowledges the topography is much more challenging than a flat site and this also brings opportunities for a variety of communal open space provision that could be delightful.*
- *The Panel recommends the landscape detail must be resolved to Council landscape officer's requirements prior to determination.*
- *The Panel suggests consideration be given to minimising the basement car park footprint to just a circulation link in this location to enable the provision of deep soil for tall canopy trees that will reinforce the landscape link between the natural forest and urbanised areas.*
- *The Panel noted that consideration of extending the established sightline and pedestrian access into the forest would align with the stated vision statement and establish a visual and physical link with the forest.*

As detailed above, the applicant provided a detailed Design Excellence Panel Response Report addressing in detail, the comments and recommendations provided by the Panel.

With regard to Clause 7.7(4)(a), the design has been amended to ensure that the standard of design, building materials, building type and location is consistent with the context of the site and the surrounding bushland.

With regard to Clause 7.7(4)(b), the high level of architectural design ensures that the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain.

With regard to Clause 7.7(4)(c), the Applicant has adequately demonstrated that there would be negligible impacts to view corridors from both the public domain and internal view corridors have been considered.

With regard to Clause 7.7(4)(d), the proposal results in no significant impact on adjoining properties in terms of overshadowing.

With regard to Clause 7.7(4)(e), the proposed development has been assessed in detail and addressed in this report.

With regard to Clause 7.7(4)(f), subclauses (i) to (xi) the applicant has adequately demonstrated that the development satisfactorily addresses the matters noted in the clause.

With regard to Clause 7.7(4)(g), the findings of Council's Design Excellence Panel have been considered and the concerns raised have been satisfactorily addressed.

In this regard, the proposal satisfies the provisions of Clause 7.7 of LEP 2019.

Clause 7.15 Development at 55 Coonara Avenue, West Pennant Hills

Clause 7.15 specifies the following:

- (1) This clause applies to land at 55 Coonara Avenue, West Pennant Hills, being Lot 61, DP 737386 (the subject land).*

Comment: The subject application relates to the above-mentioned site.

- (2) Development consent may be granted to a single development application for development on the subject land in Zone R3 Medium Density Residential or Zone R4 High Density Residential that is both of the following—*

- (a) the subdivision of land into 2 or more lots,*
- (b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—*
 - (i) for the erection of a dwelling house—180 square metres, or*
 - (ii) for the erection of an attached dwelling or a semi-detached dwelling—86 square metres.*

Comment: the subject application does not seek to vary the minimum lot sizes for the erection of a dwelling house or attached or semi-detached dwelling house being on lots greater than 180m² and 86m² respectively.

- (3) Development consent must not be granted to development on the subject land unless the building setback of any building resulting from the development is equal to, or greater than, 11 metres from Coonara Avenue, West Pennant Hills.*

Comment: The development will comply with the 11 metre building setback from Coonara Avenue, the concept application does not seek to vary this standard.

- (4) Clause 7.7 (other than clause 7.7(4)(g)) extends to development on the subject land involving the erection of a new building, or external alterations to an existing building, of any height.*

Comment: Clause 7.7 has been seen satisfied (refer above).

- (5) *Development consent must not be granted to development on the subject land unless the consent authority is satisfied that the development—*
- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
 - (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
 - (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: On-site detention tanks have been designed and incorporated into the development to ensure stormwater is management, to ensure no adverse flood risks caused by the subject development over the downstream properties, . and to incorporate Water Sensitive Urban Design Measures (WSUD) to comply with the achievement of water quality treatment targets. The reports and civil plans provided with the application confirm that the subject development does not change the existing flood behaviour within the subject site, as well as downstream properties within the locality. Stormwater management has been satisfactorily addressed and the proposal will not result in significant stormwater impacts

- (6) *Development consent must not be granted to development that results in more than 600 dwellings on the subject land.*

Comment: The proposal seeks approval for 417 dwellings on the site, which is less than the 600 permitted.

9. Site Specific Design Guidelines

Draft THDCP Part D Section 19, related to the proposed redevelopment of 55 Coonara Avenue and was exhibited with the Planning Proposal from 30 April 2019 to 31 May 2019. Whilst Council officers recommended the Planning Proposal for approval, the Draft DCP Section was not endorsed by Council on 26 November 2019 (as Council was not supporting the Planning Proposal) and as a consequence of that document not being adopted, THDCP does not contain any controls which relate to dwelling lots of 180m² for detached dwellings or 86m² for an attached dwelling. These are the minimum lot sizes that apply to the site, pursuant to Clause 7.15 of THLEP 2019.

In order to address the lack of relevant development controls within THDCP which are applicable to the site as a result of the rezoning, the DA is supported by Site Specific Design Guidelines. The Site Specific Design Guidelines are intended to act in place of a site specific DCP and provide a series of objectives and controls that will guide future development of the site consistent with this Concept/Civil DA.

An assessment of the proposed masterplan against the controls within the Site-Specific Design Guidelines has been provided in the table below:

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part 2 – Vision and Character			
2.1 Vision and Development Objectives	Objectives a. To accommodate the new residential population, in a	The proposed development is consistent with the	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>manner which responds to environmental constraints.</p> <p>b. To protect remnant forest areas.</p> <p>c. To encourage a variety of housing types and densities.</p> <p>d. To promote economically viable development.</p> <p>e. To provide an appropriate and suitable built form urban response to the Site.</p>	objectives outlined with respect to the vision and character of the site.	
Part 3 - Site Specific Development Control			
3.1 Dwelling Site and Mix	A maximum of 20% of all dwellings on the land are to be 1-bedroom dwellings.	Overall, the development will achieve compliance with the control. Only 38 x 1 bedroom units are provided as part of DA 861/2022/JP, the RFB DA. No single bedroom dwellings are proposed as part of DA 859/2022/JP (southern precinct) 38 of 417 dwellings = 9%	Yes
	At least 40% of all dwellings on the land are to be 3-bedroom dwellings (or larger).	A minimum of 167 of the 418 dwellings are required to achieve compliance with this control. All 60 dwellings of DA 589/2022/JP are 3 bedrooms or more, and 78 of the 252 units (DA 860/2022/JP) are 3 bedroom or larger 60 + 78 = 138 dwellings of the 312 dwellings = 76% of dwellings currently under assessment are 3 bedrooms or larger. more. Compliance with this control will be re-assessed once the DAs have been lodged. Details in the Urban Design Report prepared by the applicant advised that the northern and central housing precincts subject to a separate DA will be a mix of 3, 4 and	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
		5 bedrooms.	
	At least 40% of all 3-bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m2.	All the dwellings in the southern housing precinct achieve compliance with control. Once the housing north/centra precinct are lodged, confirmation of compliance will be re-assessed.	Yes, it is anticipated that all future application will achieve compliance with this control.
3.2 Streetscape and Character	Future development should provide landscaping within the housing lots and apartment development which includes a diversity of local native species at a scale which compliments the built form.	Satisfactory	Yes
	High quality landscaping is to be provided for all street reserves, including landscaped verges, public spaces and communal areas.	Satisfactory	Yes
	Native street trees are to be provided within the landscaped verges.	Satisfactory	Yes
	Street trees are to be sited in consideration of driveways and infrastructure and to allow adequate sight lines in proximity to intersections.	Satisfactory	Yes
	Plant selection is to consider sight lines so as not to obstruct views where vehicular sight lines are required to be maintained	Satisfactory	Yes
	Colours and materials shall be of natural, earthy tones that are compatible with the landscape.	Satisfactory – colours and finishes schedule to be provided with the built form application	Yes
3.3 Access	Future development on the site shall be publicly accessible from Coonara Avenue	Future development will be made publicly accessible.	Yes
	Waste collection is to be undertaken from the rear laneway, where applicable.	Considered	Yes
	Each dwelling requires at least 1.6m clear dedicated space along the kerbside for bin presentation (clear of tree pits and other obstructions).	Considered in built form applications.	N/A

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	No building element (such as eaves, balconies, gutters and the like) shall encroach into the rear laneway reservation area (carriageway plus verge).	Considered in built form applications.	N/A
	Garbage bin storage for the houses is to be screened or concealed from view from the street. For detached or semi-detached dwellings with side access this may be behind fences. For attached dwellings, bin storage may be within a dedicated, screened bin enclosure, which may be located within the building setback.	Considered in built form applications.	N/A
	Apartment garbage loading will be via a basement loading area suitable for access by Councils garbage collection vehicle.	Refer to DA 861/2022/JP	N/A
	Driveway crossover width shall be designed in consideration of the streetscape and landscaping.	Considered in built form applications.	N/A
3.4 Vegetation	Future development on the site should include the provision of a Vegetation Management Plan (VMP) in accordance with Council's Vegetation Management Plan Guidelines, except where the land is to be dedicated to a State Government agency.	Approval of the VMP forms part of DA 860/2022/JP. Dedication of land on the site is not a matter for consideration as part of the subject application	Yes
3.5 Parking Attached and semi-detached dwelling	2 spaces per dwelling. A minimum 40 visitor car parks are to be provided through a combination of on-street parking through the provision on internal roads with a minimum carriageway of 8.1 metres including parking bays	Each dwelling is provided is with either a single or double garage. Where a single garage is provided, a car can be parked within the driveway, therefore each dwelling provided with a minimum of 2 car parking spaces.	Yes
4. Dwelling House Design Controls			
4.2 Building Length	The maximum building length is 50m (block of dwellings).	Considered in built form applications.	N/A
4.3 Lot Dimensions	Lot sizes are to comply with the minimum lot sizes prescribed in the Hills Local Environmental Plan 2019.	Dwellings houses have lots of 180m ² or greater and attached dwellings having lots 86m ² or	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
		greater. (DA 859/2022/JP)	
4.3 Minimum lot dimensions			
2 storey front loaded (detached)	Minimum lot width – 9m Minimum lot depth – 20m	Considered in built form/subdivision applications.	N/A
2 storey front loaded (attached, semi-detached)	Minimum lot width – 5m Minimum lot depth – 20m	Considered in built form applications.	N/A
2 & 3 storey rear loaded (attached)	Minimum lot width – 5.4m Minimum lot depth – 20m	Considered in built form applications.	N/A
3 storey front loaded (attached, semi-detached)	Minimum lot width – 6m Minimum lot depth – 20m	Considered in built form applications.	N/A
4.4 Building Setbacks			
Front Loaded single garage	Front setback – 4m Garage setback – 5.5m Rear setback – 3m	Considered in built form applications.	N/A
Front loaded double garage	Front setback – 2.5m Garage setback – 3.5m Rear setback – 3m	Considered in built form applications.	N/A
Rear loaded single garage	Front setback – 2m Garage setback – 5.5m from rear lane Rear setback – 2m	Considered in built form applications.	N/A
Rear loaded double garage	Front setback – 2m Garage setback – 0.5m from rear lane Rear setback – 2m	Considered in built form applications.	N/A
Articulation Zone	Minor façade elements such as balconies, porches or verandahs may be 1.5m forward of front building line or within the rear setback to provide articulation. On corner blocks the articulation zone may be extended along the secondary frontage for a max of 3m or 25% of façade length with a min. of 1m setback from boundary.	Considered in built form applications.	N/A
Side Setbacks (varies)	0m between dwellings 900mm from detached boundary lines (end of block) and through site links 1.5m from side boundaries fronting roadways and laneways Note: Where lots are irregular in shape, variations to the	Considered in built form applications.	N/A

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	front, garage and rear setbacks may be permitted		
Wall length	The maximum allowable lot wall length is equal to the maximum lot length minus the front and rear articulation setbacks.	Considered in built form applications.	N/A
4.5 Garage design			
Single garage	5.5m x 3m minimum internal dimension Garage door – no more than 2.5m wide	Considered in built form applications.	N/A
Double garage	5.5m x 5.4m minimum internal dimension Garage door – no more than 5m wide	Considered in built form applications.	N/A
4.6 Private Open Space	Each dwelling shall have access to an area of private open space that is directly accessible from primary living area	Considered in built form applications.	N/A
	Private open space shall be fenced to provide protection of wildlife through separation from domestic pets. Variable fence heights are required to respond to the location and interface	Considered in built form applications.	N/A
Minimum area of private open space (total combined area)	Detached – private open space at ground level – 25m ²	Considered in built form applications.	N/A
	Attached, semi-detached Where private open space located at ground level – 15m ² Where secondary private open space is provided and located above ground level – 8m ²	Considered in built form applications.	N/A
4.7 Solar Access	A minimum of 2 hours sunlight between 9 am and 3pm on 21 June, shall be achieved to at least 50% of the required private open space in at least 80% of all dwellings	Considered in built form applications.	N/A
4.8 Landscaped Area	Front setbacks are to maximise any opportunity for soft landscaping, taking into consideration the requirement for any services, including fencing and letterboxes.	Considered in built form applications.	N/A
	A minimum of 80% of dwellings to ensure that a	Considered in built form applications.	N/A

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	minimum 20% of the area forward of the main building line is landscaped area. This landscaped area can include services, fencing, letterboxes and paved steppers.		
	Where lot depth is equal to or greater than 25m in length, the private open space area shall have a minimum softscape landscaping area equivalent to 50% of the minimum ground level private open space area requirement.	Considered in built form applications.	N/A
	Where lot depth is less than 25m in length, the private open space area shall have a minimum softscape landscaping area equivalent to 30% of the minimum ground level private open space area. This may be reduced further where a dwelling's private open space backs directly onto public open space.	Considered in built form applications.	N/A
	Clothes drying device is to be provided within private open space areas	Considered in built form applications.	N/A
	Where practicable, planting to be provided between the driveway and side fence.	Considered in built form applications.	N/A
	Where practicable, front gardens are to include a small tree.	Considered in built form applications.	N/A
	Irregular shaped lot landscape design is generally required to achieve the above, however may be required to be assessed on merit.	Considered in built form applications.	N/A
4.9 Privacy	Private open space areas and habitable rooms of adjacent dwellings should be reasonably protected from overlooking.	Considered in built form applications.	N/A
	Windows of living rooms with direct outlook to any living room of any proposed or existing dwelling within 9 metres should: - Be offset a minimum of 1 metre from the edge of one	Considered in built form applications.	N/A

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>window to the edge of another, or</p> <ul style="list-style-type: none"> - Have a minimum sill height of 1.5m above finished floor level, or - Provide fixed obscure glazing to a height of 1.5 metres above finished floor level. 		
	Where new dwellings adjoin an existing dwelling, screening landscaping with a minimum dimension of 1.5 metres is to be planted along the boundary between the dwellings.	Considered in built form applications.	N/A
5. Residential Flat Building Design Controls			
5.1 Setbacks	Setbacks to Road 3, Road 5, the Perimeter Road and the Green Link are to be a minimum of 3m.	Assessment provided under 861/2022/JP.	N/A
	In addition to providing a minimum 3m setback, the top storey facing Road 3 and the Green Link shall be setback an additional 2m (5m total from boundary).	Assessment provided under 861/2022/JP.	N/A
	No basement setback	Assessment provided under 861/2022/JP.	N/A
	Ground floor and podium level terraces may extend into the 3m setback zone by 2m.	Assessment provided under 861/2022/JP.	N/A
	Building articulation elements; sunshading, architectural features, privacy screens and other non-habitable elements, may extend into the 3m setback zone by 2m.	Assessment provided under 861/2022/JP.	N/A
5.2 Landscape area and Open Space	The landscape area shall be a minimum of 45% of the area of the site. Such areas shall exclude building and driveway area. Terraces and patios will be included in landscape area, including common open space above basement car park provided the area is suitably landscaped.	Assessment provided under 861/2022/JP.	N/A
	Private (ground level) open space shall be provided within 1m of the finished ground level surrounding, where possible and may be included	Assessment provided under 861/2022/JP.	N/A

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	as part of the minimum landscape area requirements		
	Private (ground level) open space areas shall be enclosed with a wall/fence or landscape screen to provide for separation and privacy.	Assessment provided under 861/2022/JP.	N/A
	Provision of recreational areas for the purposes of providing residential amenity are to be considered within the area identified as Item 23 on the Additional Permitted Uses map contained within THLEP 2019.	Subject to a future DA.	N/A
	The minimum area of common open space provided across the masterplan is to be equivalent to the rate of 20m ² per dwelling.	A minimum of 20 x 417 = 8,430m ² (0.843 hectares) of common open space required. The proposal provides for 14 hectares of common open space across the site (or approx. 50% of the site). More formalised common open spaces (pocket parks, future outdoor recreations areas, etc) equates to approximately 3.5 hectares.	Yes
5.3 Building Length	The maximum linear length of any residential flat building is to be 50 metres	Maximum length is 50m	Yes
	Where a building has a length greater than 30m it is to be separated into at least two parts by a recess or projection.	Provided, however a full assessment provided under DA 861/2022/JP	Yes
	Ground floor and podium level terraces may extend 2m beyond the 50m maximum linear length	Provided, however a full assessment provided under DA 861/2022/JP	Yes
	Building articulation elements; sunshading, architectural features, privacy screens and other non-habitable elements, may extend 2m beyond the 50m maximum linear length.	Provided, however a full assessment provided under DA 861/2022/JP	Yes
5.4 Building design and streetscape	Where possible, all ground floor dwellings should have their own entry at ground level.	Provided where possible, however a full assessment provided under DA 861/2022/JP	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
5.5 Fencing	Fences shall be constructed from a suitable high quality, durable material	To be assessed under DA 861/2022/JP	N/A
5.6 Apartment Mix	The mix of apartments on the land are to generally achieve compliance with the following mix: i. 1 bed – 20% (maximum) ii. 2 bed – 60 % (maximum) iii. 3 bed or larger - 20% (minimum)	To be assessed under DA 861/2022/JP, however the following mix is provided: 38 x 1 bed (15%) 136 x 2 bed (54%) 71 x 3 bed (28%) 7 x 4 bed (3%)	Yes, apartment mix achieved.
5.7 Car Parking	Where visitor parking is proposed behind security gates, the access to visitor parking must be maintained through the operation of an intercom system installed in a convenient location	Assessment provided under 861/2022/JP.	N/A
	The intercom shall be located to allow space for turning to ensure queuing does not adversely affect traffic or pedestrian movement on the street.	Assessment provided under 861/2022/JP.	N/A
	Providing the intercom is located to allow free movement of traffic around the stationary vehicle, no turning area is required.	Assessment provided under 861/2022/JP.	N/A
	Fire exits from the car parking areas must be designed to be compliant with BCA.	Assessment provided under 861/2022/JP.	N/A
5.8 Pedestrian / bicycle links	A location for bicycle standing is provided close to the main entry of the building.	Assessment provided under 861/2022/JP.	N/A
	Where it is possible, a direct path of travel through the site shall be provided to increase the connectivity of the area for local pedestrians. The path shall be designed to integrate with the steep topography of the site. The following factors should be considered when identifying the most appropriate location for the link of the pathway:- - The link must be no less than 3m wide. - It should be a visual link through the site linking streets or other public spaces - The link should limit the	Appropriate pedestrian links provided.	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	inclusion of stairs and ramps, where possible. It must have a reasonable gradient in consideration of the site topography.		

Comment: In the absence of an adopted Development Control Plan for the site, and the permitted development on the site (as per Clause 7.15 of the LEP), Council staff have reviewed these guidelines in conjunction with the draft DCP for the site (which was not adopted), and overall, are satisfied with the planning controls provided with this document. It provides for suitable dwelling size and mix, built form provision, amenity considerations, etc, and ensures that orderly development is provided.

10. Compliance with The Hills Shire Development Control Plan 2012

The proposed development has been assessed against the relevant development controls under:

- Part B Section 5 – Residential Flat Buildings (noting a full assessment of this DCP is provided under DA 861/2022/JP)
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping
- Part C Section 4 – Heritage
- Part C Section 6 – Flood Controlled Land

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

DEVELOPMENT STANDARD	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Parking – residential flat building	1 space per 1 bedroom unit 2 spaces per 2 or 3 bedroom unit 2 visitor spaces per 5 units	1 Bed – 1 space per dwelling 2 Bed – 1.5 spaces per dwelling 3 Bed – 2 spaces per dwelling 4 Bed or more - 3 spaces per dwelling Visitors – 1 space per 5 dwellings	No, refer below

a. Parking – Residential Flat Buildings

Part C Section 1 – Parking requires the following parking rates for residential flat buildings:

- 1 Bed – 1 space per unit
- 2 or 3 Bed – 2 spaces per unit
- Visitors – 2 space per 5 dwellings

The proposal, as part of the Site Specific Design Guidelines for the residential flat building are seeking parking rates as follows:

- 1 Bed – 1 space per dwelling

- 2 Bed – 1.5 spaces per dwelling
- 3 Bed – 2 spaces per dwelling
- 4 Bed or more - 3 spaces per dwelling
- Visitors – 1 space per 5 dwellings

The Site Specific Guideline residential flat building parking rate does not comply with the 2 bedroom parking rate, and the visitor parking rate.

The DCP provides the following objective relating to the control:

To provide sufficient parking that is convenient for the use of residents, employees and visitors of the development.

It should also be noted that the Draft Site Specific DCP identified a parking rate of:

Residential flat buildings:

- 1 space per dwelling
- 1 visitor space per 5 dwellings

However, a further control in the draft DCP stated: *“if the dwelling size and mix provisions contained in Section 2.7 are not achieved, car parking rates shall revert to those for multi-dwelling housing and Residential Flat Buildings contained in Part C Section 1 – Car Parking of The Hills Development Control Plan.”*

The applicant has provided the following justification:

Having regard to the fact the site lies within the 800m catchment of the Cherrybrook Metro Station, and the suburb West Pennant Hills also lies within the Sydney Metropolitan Area, reference is made to the Council DCP and GTGD to determine the lesser rate. Further to this, the above rates were also derived with consideration given to the previous general arrangement with Council during the rezoning process...

The ADG which stipulates the following requirements:

For the development in the following locations:

- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, or
- on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre

the minimum car parking requirements for residents and visitors is set out in the Guide to Traffic Generating Development (GTGD) or car parking requirement prescribed by the relevant council, whichever is less.

The GTGD which stipulates:

- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, or
- 2 Bed – 0.9 space per apartment
- 3 Bed or more – 1.4 space per apartment
- Visitor Apartments – 1 space per 5 apartments

The ADG stipulates that the lesser rate of the GTGD and relevant Council be adopted. Although the minimum permissible rate for apartments is the GTGD rates, the nominated parking rates seek to strike the appropriate balance between all of the above to offer more than the minimum, as well as the previous in principle agreed

rates with Council during the rezoning process, to ensure sufficient off-street car parking for future residents of the proposed development.

Comment: The proposed departure from the DCP parking rates and adoption of the parking rates stipulated in the Site-Specific Guideline are supportable in this instance. As the site is within 800 metres from the Cherrybrook Metro Station the ADG permits adoption of the Guide To Traffic Generating Development (GTGD) parking rates (if it lesser than Council rates). The proposed Site Specific Guidelines proposes car parking rates greater than those nominated in GTGD which, in this instance is supportable. The parking rates proposed are also greater than those rates that were negotiated with Council during the planning proposal process.

11. Low-Rise Housing Diversity Guide

The Design Excellence Panel reviewed the pre-lodgement plans for a concept Development Application on 10 March 2021. The Panel recommended adherence to the Low Rise Housing Diversity Design Guide for the small lot housing/medium density component. This was also conveyed in the pre-lodgement meeting for the housing south precinct pre-lodgement meeting on 16 July 2021.

The applicant failed to address the relevant provisions of the Guide as requested by Council, and this was further highlighted to the applicant after the development applications were lodged.

The DEP further made comment in relation to the Low Rise Housing Diversity Guide in their meeting noted, and stated:

The Panel advises AMCORD provides design guidance on lot arrangement and reiterates the advice provided previously, "At a minimum, the Panel recommends adherence with the Low Rise Housing Diversity Guide for the small lot housing component, noting the site has been rezoned without an applicable DCP. A design statement indicating how this has been successfully achieved should be provided to the DA officer as per the guideline recommendation."

The applicant provided legal advice in relation to the application of the Low Rise Housing Diversity Guide with respect to the re-development of the site, which concluded that:

Accordingly, there is no legal requirement to consider the Design Guide because it doesn't apply as per the Regulation and as per the definitions in the Design Guide.

To the extent that the DEP is seeking to apply the Design Guide because there is no applicable DCP, we say:

- a) The DEP shouldn't be using the Design Guide where it clearly doesn't apply to this form of housing; and*
- b) If the DEP is seeking to set an appropriate framework to guide future development of the Site, that can be done through the site specific design guidelines in the Concept DA which the Act recognises as an appropriate method to do so in lieu of a DCP.*

A copy of the Legal Advice prepared by Addisons Lawyers is provided at Attachment 10.

The applicant also provided a presentation and a response which provides an assessment of the proposal against the Hills DCP Part B Section 9 Small Lot Housing (Integrated Housing DCP), the Site Specific Guidelines and the Low Rise Medium Housing Diversity Guide. As part of that assessment the application was amended to increase the minimum lot depth from 15 metres, increased to a minimum of 20 metres (for front loaded detached dwellings) and lot

widths increased from 4 metres to 5.4 metres for 2 and 3 storey rear loaded attached dwellings.

12. The Hills Development Control Plan Part B Section 9 Small Lot Housing (Integrated)

This DCP applies to development for the purposes of front-loaded detached or attached dwellings under Clause 4.1B (small lot housing). The proposal is not seeking approval for small lot housing under Clause 4.1B of the LEP which requires lots to have an area resulting in lot equal or greater to 240m². Subdivision of the attached and detached dwelling of the subject application are pursuant to Clause 7.15(2) of the LEP (specific to 55 Coonara Avenue) which sets a minimum lot size of 180m² for a dwelling house, and 86m² for an attached or semi-detached dwelling.

13. Issues Raised in Submissions

The application was notified on two occasions. The second notification was in response to the submission of amended plans. Some objectors provided multiple submissions. A total of 744 submissions have been received and have been summarised below.

ISSUE/OBJECTION	COMMENT	OUTCOME
Strategic Planning		
The DAs are inconsistent with the 2015 Hills Corridor Strategy.	The Hills Corridor Strategy was adopted on 24 November 2015 which predates the approval of the planning proposal and rezoning of the site which occurred in 2020. The site is not located within the area mapped for high density. Overall, the desired outcome of the Cherrybrook Precinct is for <i>“for increased residential densities within walking distance of the station”</i> . The proposal provides for 417 dwellings within walking distance to the station.	Issue addressed.
The approval of the apartment buildings which result in an exceedance in the maximum height will result in a precedence for future development in the Cherrybrook Station Structure Plan area to exceed the maximum height limit, which is 3-6 storeys.	The site was subject to a site specific re-zoning which was approved by The Department of Planning. Any future development application for apartments buildings within the Cherrybrook Structure Plan will be subject to the planning controls for that area/site.	Issue addressed.
The proposed apartments are 33% to 50% higher than what is permitted for the apartments in the R4 High Density Residential zoned land within the Cherrybrook Station Precinct and should therefore not be approved.	The subject site is located outside the Cherrybrook Precinct identified in the Hills Corridor Strategy with the precinct, therefore not subject to the provisions of the Strategy.	Issue addressed.
Various amendments to the objectives and controls in the Site Specific Design Guidelines are to be made as the current	The Site Specific Design Guidelines (SSDG) are based on the draft site specific DCP	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
Guidelines result in a lack of design excellence.	(that was not adopted as part of the planning proposal approval). The current SSDG have been reviewed by Council staff and amendments have been made, and the SSDG is now endorsed as part of this application. The development was also reviewed by The Design Excellence Panel and deemed satisfactory.	
All of the E2 (Environmental Conservation) zoned land on the site should be dedicated to Forestry Corporation, with dedication to occur prior to demolition/tree removal for improved protection and management reason.	Some areas of the C2 Environmental Conservation zoned (formally known as E2 zoned) land including Items 23 and 24, are a part of the development site which are not included in the area to be dedicated.	Issue addressed.
The tree removal on the site does not support the Hills Environmental Strategy 2019 which seeks to increase tree canopy across the Shire.	Tree removal on the site is necessary to facilitate the development on the site. A total of 1,877 trees to be removed which are generally within the perimeter road, within the developable area and the APZ areas. A total of 2,600 replacement trees are proposed. A condition of consent has been recommended the replacement tree strategy to ensure tree canopy is provided with the development and on the site.	Issue addressed. See Condition No. 5
Objection is raised to the three DA's because of the extent of significant earthworks required. It would be a much better option to repurpose the existing buildings and keep the development footprint to one that minimises the disruption to soil which could be considered as endangered and ecologically significant.	DA 585/2021/HC approved the demolition of the existing buildings on the site. Re-purposing of the former IBM buildings was investigated by the applicant, but deemed unviable. The extent of earthworks proposed is required for a development of this nature. The VMP for the site considers suitable species from local provenance stock which will be used for the revegetation works.	Issued addressed.
The proposals seek to locate medium and high density residential development outside of the walkable catchment of the future Cherrybrook Railway Station. If anyone has tried walking that hill, it is not pleasant or an easy stroll. The gradient is extreme.	The site is within 800 metres of Cherrybrook Metro Station which is the distance normally considered to reflect a 10 minute walk. No gradient restrictions are imposed or considered in the walkable	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	catchment, as it is based on the 800m radius from the station. It is noted that there is a hill from the site up to Castle Hill Road, however, the walk from Castle Hill Road to the station is relatively flat. The walk back from the station to the site would be downhill.	
With the development of the Metro Rail, an overall plan for the area (bounded by Coonara Ave, Castle Hill Rd, Highs Rd, County Drive and Franklin Rd) should be developed by The Hills Shire Council and Hornsby Council. This overall plan would then assist those developers such as Mirvac, Landcom and other private developers that have purchased properties in this area for future development. Hornsby Council in their submissions have supported this overall plan concept. This plan would provide a framework within the developers can proceed with some certainty that Mirvac's submissions should be considered in a wider context for the area and not be seen as a standalone their proposal will be approved.	The comment is noted, as well as all strategic plans for locality, which will be considered in the future strategic planning of the area which guides the future re-development of the area.	Issue addressed.
Bulk and Scale of the Development		
The applicant has made a commercial decision to build larger dwellings that results in a reduction in yield, with the applicant now proposing to breach the apartment height limits by up to 23% in order to mitigate some of that lost yield.	The proposal is seeking approval for 417 dwellings which is less than the 600 permitted on the site as a result of the re-zoning. The applicant has provided a Clause 4.6 submission to vary the maximum height limit which is considered as part of this application and is satisfactory.	Issue addressed.
The height exceedances for the southern housing precinct should not be approved, and if approved should not be a precedent for future DAs.	Much of the exceedance in building height for the southern precinct development is a result of the existing basement levels of the former IBM buildings. A 9 and 12 metre height limit is provided for the R3 Medium Density Residential zoned portion of the site which caters for 2 and 3 storey dwelling houses, which are proposed as part of DA 859/2022/JP and also subject to future DAs for the <i>Housing Central and North Precincts</i> . All future DAs will be assessed for their merit, and any (if any) breaches in height	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	will be considered at that stage.	
The masterplan as part of the re-zoning only had 2-6 storeys. Council has previously rejected 8 storey apartments on the site.	As discussed above, the re-zoning of the site and the height limits imposed have been approved by the Department of Planning. A maximum height limit of 22 metres was set for the R4 High Density Residential zone. The applicant has submitted a Clause 4.6 variation which has been considered as part of this application (as well as the apartment building DA 861/2022/JP).	Issue addressed.
The current for 8 storeys must also be rejected. The applicant should respect the height limit set by the Department and reduced the number of storeys to maybe 5 or less.	Refer to comment above.	Issue addressed.
It is understood that the height was increased to 9 storeys.	As a result of the slope of the land, and depending on the elevation/location, the proposal seeks approval for 6-8 levels of residential accommodations as part of the apartment building development. Nine storeys of residential accommodation is not proposed.	Issue addressed
The Clause 4.6 variation to the development should not be supported.	Refer to comments above.	Issue addressed.
The maximum building height for the R4 High Density Residential zoned land is 22m. These DAs do not comply and seek a height exceedance of 23%, simply in order to increase the apartment dwelling yield.	Refer to comments above. The initial planning proposal scheme sought approval for 400 units within the R4 High Density zoned land. DA 861/2022/JP seeks approval for 252 units. A variation to building height is sought as part of the subject application.	Issued addressed.
The 8 storey towers are not compatible with adjoining development and will result in adverse amenity impacts including overshadowing and overlooking.	As discussed above, the site, and specifically the R4 High Density Residential zoned land has a 22 metre high limit and permits residential flat buildings. Overall, the proposal does not result in any unreasonable adverse amenity impacts.	Issued addressed.
Visual and Amenity Impacts		
The Visual Impact Analysis provided with the DA is incomplete and misleading. The development will result in adverse visual impacts from Coonara Avenue and from the Cumberland State Forest (walking tracks).	The proposal was supported by a visual impact assessment (VIA). The VIA considers views from public and private property and concludes that the parts of the buildings that vary from the	Issued addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	height plane are either not visible at all or have no significant impact on the views, as viewed from Coonara avenue and adjoining sites.	
The former IBM buildings were not visible from the walking tracks, and blended into the landscape of the forest.	The former IBM buildings were constructed in the 1980's and since its construction, vegetation and landscaped gardens within the site have grown and expanded, and provided a mature landscape setting within the former business park. It is acknowledged that vegetation around the former IBM building provided significant screening.	Issued addressed.
The dwellings to the south of the apartment buildings will be overlooked.	Given the nature of the development, there will be some level of overlooking from the residential flat buildings to surrounding dwellings which is a typical outcome in an urban environment. The private open spaces of these dwellings will be located to the south of the dwelling, being furthest away from the units. A more detailed analysis of overlooking amenity impacts will be considered with the future DA(s) of this development.	Issue addressed.
Do not want to have the 'backside' of houses facing Coonara Avenue.	Housing North Precinct (future DA) will be located along the Coonara Road frontage. These dwellings will be accessed from the internal road and will not be accessed (individually) from Coonara Avenue. Clause 7.15 of the LEP requires an 11m building setback requirement from Coonara Avenue. Fences will be provided to these dwellings which will provide privacy, as well the 8 metre landscape buffer required as part of the VMP.	Issue addressed.
Tree Removal / Flora and Fauna		
Identification of the Blue Gum High Forest (BGHF) requires independent assessment as some of the vegetation has been incorrectly described as planted vegetation. The BDAR does not correctly identify BGHF in zone 4a	Council's Senior Biodiversity Officer and Environmental Assessment Officer have both assessed the vegetation on site and assigned them to appropriate plant community types. See comments in	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	Section 15 of this report.	
The development outcome can still be achieved with far less tree loss. Efforts to retain as many of the mature BGHF and STIF species within the developable area must be insisted upon by the Council.	The removal of trees associated with this application is limited to within the perimeter road, developable area and APZ areas. The applicant has advised that with respect to tree removal, the intent is to avoid unnecessary removal of trees. The removal of trees is supported to facilitate a development outcome that is consistent with the site specific planning proposal as approved by the Department of Planning, Industry and Environment to facilitate 600 dwellings.	Issue addressed.
Council must obtain complete details of the applicant's "tree replacement strategy" before it makes recommendation to the SCCPP.	A total of 1,877 trees will be removed and a total of 2,600 replacement trees are proposed, which includes 1,260 in the developable area and 1,340 within the area identified as Item 24 in THLEP 2019. Trees to be planted within the developable area are included on the proposed landscape plans. Proposed weed removal and bushland regeneration works which will include tree planting on land to be dedicated to NSW Forestry require a further DA as the land is zoned C2. A tree replacement strategy condition has been recommended as part of the subject application, to guide future applications (refer condition no. 5).	Issued addressed, refer recommended condition no. 5
The Community Title must have a covenant that prevents site residents from removing trees newly planted by Mirvac in their gardens. Concern that many of the new trees will be planted within 5 metres of an approved structure so residents will be able to remove the trees under the exempt provisions. There must a by-law to protect the trees	Council's Tree Management Guidelines do not provide exemptions for tree removal when they are contrary to conditions of a Development Consent or other approval under the Environmental Planning and Assessment Act, 1979.	Issue addressed.
The removal of 3000 trees will change the micro-climate of the site, and will destroy the few ecosystems left in the metropolitan area which we rely on for our health, including mental health.	The proposal includes the removal of 1,877 trees and replacement planting of 2,600 trees. Whilst it is noted that the proposal will result in some environmental impact, it is considered to be satisfactory on	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	balance in consideration of the areas retained on site and the application of proposed offsets which would be required to facilitate a residential development outcome permitted under the current planning framework as amended by the planning proposal.	
It is not appropriate for an area with high bird life and surrounded by forest to have high rise development. Options that minimise bird-strike such as non-reflective glass must be considered for any development situated alongside mature and protected forest.	A condition of consent has been recommended as part of DA 861/2022/JP for the apartment buildings that requires the preparation of a Bird Strike Management Plan. The recommendations of this plan will need to be taken into consideration in the final design of the residential flat buildings adjacent to the forest.	Issue addressed.
The development will result in the significant loss of essential habitat for fauna – including species such as the Eastern Pygmy Possum, Feathertail Glider, Sugar Glider, numerous species of Threatened and Vulnerable Bats and of course, for the Powerful Owls plus numerous other raptors and parrots species which would all utilise the hollows on this site.	A detailed and comprehensive Fauna Management Plan will be prepared as recommended in Condition no. 44. This will guide the rescue and relocation of fauna. The FMP will also contain a nest box/habitat relocation strategy to provide supplementary habitat for displaced fauna.	Issue addressed.
Replacement trees and shrubs must be Blue Gum High Forest or Sydney Turpentine Ironbark species to avoid other species seeding into the forest. Preference should be given to species that can survive the higher temperatures caused by site clearance and future global warming.	The proposed planting nominated by the applicant is native with the majority of plants being endemic. All future landscape plans provided for the development will be reviewed for their planting suitability, location, species, etc.	Issue addressed.
Any residential development is bound to have an adverse impact on the wildlife in the Cumberland State Forest, reducing the land for foraging and putting pressure on the animals for housing and territory. Things like the height impacting on the bird species, reflective windows causing bird strikes, houses having domestic cats which will further impact on the native wildlife in the Critically Endangered Ecological Communities of Blue Gum high forest and Sydney Turpentine-Ironbark Forest that are on the site.	The Biodiversity Offset Scheme has been developed to result in no net loss to biodiversity. Impacts that cannot be avoided by this development will be offset through the purchase and retirement of biodiversity credits. A condition of consent has been recommended as part of 861/2022/JP that requires the preparation of a Bird Strike Mitigation Plan. The recommendations of this plan will need to be taken into consideration in the final design of the residential flat buildings	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	adjacent to the forest. A condition of consent is also recommended (refer condition nos. 97 and 102) that provides conditions/restrictions for responsible cat ownership.	
The development should not be permitted to remove any Blue Gum High Forest or Sydney-Turpentine Ironbark Forest, regardless of their condition.	The removal of trees associated with this application is limited to within the perimeter road, developable area and APZ areas. The applicant has advised that with respect to tree removal, the intent is to avoid unnecessary removal of trees. The removal of trees is supported to facilitate a development outcome that is consistent with the site specific planning proposal as approved by the Department of Planning, Industry and Environment to facilitate 600 dwellings on the site.	Issue addressed.
There must be no APZs in Critically Endangered Ecologically Communities, regardless of their condition.	The proposal has been amended to reduce APZs within the BGHF. The Asset Protection Zones have been considered as part of the submitted Vegetation Management Plan (VMP), as vegetation management in these areas is critical to ensure the function of the APZs while considering and responding to biodiversity values in these areas. Recommendations in the VMP include the retention of valuable canopy trees and revegetation of understorey planting where appropriate in the context of an APZ. Where practicable, the applicant have set the APZ off the edge of the development footprint and C2 Environmental Conservation zoning to utilise development footprint as the APZ buffer and ensure no unnecessary separation of canopy coverage to create the APZ.	Issue addressed.
Council must assess whether clearing of vegetation will require referral to the <i>"Native Vegetation Panel"</i> .	No referral to the Native Vegetation Panel is required as assessment of the impact has been considered under this DA in which a BDAR has been	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	submitted. The Native Vegetation Panel only considers vegetation clearing that is not part of a Development Application.	
I strongly recommend an independent assessment to be done before any further tree removal occurs and all endangered species should be documented and protected accordingly.	Council's Senior Biodiversity Officer and Environmental Assessment Officer have both assessed the vegetation on site and assigned them to appropriate plant community types. The applicant has submitted an Impact Assessment Report in which an Arborist has considered potential impact to trees to be retained and provided recommendations on how to minimise impact on trees to be retained which are in close proximity to works. Conditions of consent have been recommended (refer Condition No. 14) which require compliance with the Impact Assessment Report and for a project arborist to be present to supervise works.	Issue addressed.
We would also like to see the Cumberland state forest declared a national park as soon as possible, as promised by our respected MP Mr Elliott, together with the forest behind the IBM site, part of which Mirvac wants to gift to the forestry commission	Some of the C2 Environmental Conservation zoned land will be dedicated to Forestry Corporation NSW which ensures high conservation value forest is retained and protected. This will occur prior to the issue of a Subdivision Certificate (as recommended as a condition of consent for DA 1414/2022/ZB). Dedication of the land to create a National Park is not a matter for consideration with this application.	Issue addressed.
The requirements of the APZ inner protection area are incompatible with the requirements of the Powerful Owl roosting habitat.	The development has been amended to allow for a fully vegetated 50m radius buffer around the known roost locations of the Powerful Owl.	Issue addressed.
Yet the sighting of powerful owls, and necessary consequential rearrangement of roads, now is claimed by Mirvac to necessitate further removal of trees. It is absurd to suggest that the sighting of the powerful owls should provide a basis for further destruction of native bird habitat.	It is acknowledged that some additional trees would need to be removed but this would be within an area not considered to be BGHF and would achieve an overall better biodiversity outcome.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
An independent survey must be carried out to find the nesting location before any works commence on the site. The survey should be conducted by, or be supervised by, BirdLife Australia as they were so efficient last time in finding the owls on the site.	The applicant has engaged a qualified owl expert to undertake surveys which were submitted and reviewed as part of the development application and are ongoing.	Issue addressed.
The forest has been known as an unusually rich feeding and breeding territory for Powerful Owls for more than 20 years. They are fairly fussy nesters and require large hollows in secluded big old trees -- a declining resource. The usefulness of the few remaining traditional nesting trees is potentially threatened by disturbance from building and associated development. Attempting to shield nest trees with dense natural or planted understorey would be likely to fail. Powerful Owls require specific secluded areas to nest in, including daytime roost sites nearby.	The development has been designed to include best practice buffer zones to known Powerful Owl nest trees. It has also been amended to provide greater protection for identified roosting habitat in the north east of the site. The Biodiversity Development Assessment Report has considered impacts to the Powerful Owls. The Fauna Management Plan will include a strategy for monitoring owls and their habitat.	Issue addressed.
A Fauna Management Plan should be requested by Council and be submitted to accompany the Development Applications given the quantity of native fauna within the site and the adjacent Cumberland State Forest.	A Fauna Management Plan is required to be completed and submitted to the satisfaction of the Manager Environment & Health as a recommended condition of consent (refer condition no. 44).	Issue addressed.
The landscape plan must only use species from the list of BGHF and STIF that made up the VMP species planting list.	As discussed above, all future landscape plans provided for the development will be reviewed for their planting suitability, location, species, etc.	Issue addressed.
Future residents of the development should be prohibited from having domestic cats, or only be permitted to have indoor cat breeds, and dogs must not be permitted to roam outside off lead.	Conditions of consent will be recommended that include the requirement for responsible pet ownership (refer condition nos. 97 and 102)	Issue addressed.
It is imperative that The Hills Shire Council does make the same misleading statement to the SCCPP with regard to APZ works in the BHMF will have SAIL – and must only provide the facts	Council's Senior Biodiversity Officer has reviewed all the relevant information and inspected the site and has formed an opinion regarding SAIL. This is detailed in Section 15 of this report	Issue addressed.
The three development applications should be referred to the Minister of the Environment to determine where there is a controlled action and for the assessment of SAIL on the CEECs. The previous referral (as part of the demolition DA 585/2021/HC) only accounted for 134m ² , which is likely a large under-estimation of the total area.	In July 2021, the applicant referred details of the proposed development to the Federal Government for consideration under the EPBC Act. In September 2021 it was confirmed by the Federal Government that the proposed works are not considered a	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	<p>controlled action under the Act. The Federal Government referral process is separate to the DA process for which Council is not responsible. The applicant's ecology consultants have undertaken very detailed analysis to justify the position with respect to the classification of vegetation including BGHF. This has necessitated much more detailed analysis than is standard and the applicant is confident in its assessment position. The applicant will separately address and consider any further Federal Government processes.</p>	
Traffic and Parking		
<p>The DAs are inconsistent with the parking provisions of the DCP. Reduced parking for residents and visitors will lead to overflow parking on nearby residential streets and in the carpark of the local shops.</p>	<p>As part of the subject application, the applicant is seeking to apply a parking rate for the development which has been considered by Council staff and deemed satisfactory in this instance. Refer to Section 10 of this report.</p>	<p>Issue addressed.</p>
<p>It is difficult to comprehend that changing a zoning from business to high density residential (417 dwellings) will reduce traffic generation in the LGA. With the workers travelling in the opposite direction to residents of West Pennant Hills.</p>	<p>As discussed above, the site has been re-zoned for residential use for up to 600 dwellings by the Department of Planning. The traffic report prepared by the applicant calculates that the proposed (418 dwellings) generates approximately 205 AM and 198 PM vehicle trips in the peak hours, which the consultants indicate is less than the traffic generated from the existing buildings when operating at full capacity. Travel direction from residents will vary depending on work, school, shopping, etc locations. The applicant has advised that at its peak, the IBM facility would have had up to 3,500 employees on site which would have generated significant traffic generation.</p>	<p>Issue addressed.</p>
<p>Council continues to also ignore the Traffic congestion issues of West Pennant Hills Valley. This high density development will potentially add thousands of vehicle movements daily to the area. Multiple</p>	<p>Council's Traffic Section has reviewed the Development Application in relation to traffic generation, need for traffic improvements, parking, sight</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
movements of residents, their visitors and service vehicles. New residents will soon learn that Castle Hill Road (and Pennant Hills Road) are heavily congested at peak hours, and will take to using various 'rat runs' across the Valley. With only 5 unrestricted entry/exit points for the entire Valley motorists already consistently clog residential streets attempting to beat the bottlenecks. This development will add an unacceptable volume of traffic in the area.	distances and other safety issues. Council's Traffic Section concludes that the development will have marginal impacts in terms of its traffic generation potential on the local road network.	
Other		
Light coloured roofs must be used to reduce urban temperatures.	The colours and finishes for the housing south precinct are neutral and earthy tones. The dark roofs (which also provides for solar panels) are considered appropriate in this instance as dark roofs are less reflective and are more recessive and tend to blend into the background/landscape, and are less intrusive than light coloured roofs.	Issue addressed.
The proposal is not in the public interest.	The proposal has been assessed against relevant planning controls and is deemed in the Pubic Interest pursuant to Clause 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979.	Issue addressed.
The time period for submissions is too short given the amount of documentation to be reviewed.	The proposed notification and advertising period (including the extended Christmas period) was in accordance with relevant Planning legislation and Council's DCP.	Issue addressed.
An additional DA for the excessive earthworks should be submitted.	The concept application includes earthworks (and other physical works) as part of the subject application. The application has been reviewed by Council's Engineer and deemed satisfactory and relevant conditions of consent have been recommend for the proposed bulk earth works.	Issue addressed.
The proposed development plans do not show sufficient stormwater management to adequately compensate for the removal of over 3000 trees situated on a ridgeline, high above existing homes and the proposed development will cause significant issues with flooding for the surrounding district.	As discussed in Section 8 of this report, overall, the proposal has demonstrated appropriate and sufficient flood and stormwater measures to ensure no adverse impacts result from the proposal.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
The dwelling houses in the development should be provided with rainwater tanks greater than the 1,500L tanks stipulated.	The proposal complies with the BASIX requirements.	Issue addressed.
The environmental impact of this decision is a crucial component of the analysis and it is request one of the members of the Hills Planning Panel be a panel member with environmental conservation expertise so that the impacts of this development on threatened species and ecological communities is adequately addressed.	The Sydney Central City Planning Panel (SCCPP) is a State Government appointed Independent Panel which are considered to be highly regarded in their field, and are governed by the Sydney District and Regional Planning Panels Code of Conduct.	Issue addressed.
The development has installed hoarding on the nature strip which is part of council property, The only reason this should be permissible is if it is to protect the roots of the trees on council's nature strip from damage during fence installation	The hoarding is located within the Coonara Avenue road reserve for approximately 110m to protect the trees and roots within the verge. This hoarding formed part of DA 585/2021/HC for the demolition of the existing structures, and associated tree removal.	Issue addressed.
At night it turns extra dark on Coonara Ave as all the lights within the site have been switched off so maybe Council needs to install lights on that side of the road for our own security and safety.	A street lighting condition is recommended as part of this consent.	Issue addressed. Refer condition no. 40.
Submission in Support		
Otherwise, other than the height of the apartment buildings which is objected to, I do understand and acknowledge that we need development and housing in the area to support Sydney's population. The remaining parts of the development are therefore accepted provided that they are aesthetically and sensitively built in a manner as proposed to ensure they do not adversely impact the existing fragile structure and area around this development on both sides.	The development application was accompanied by a Clause 4.6 variation to vary the development height standard which was considered acceptable in this instance.	Issue addressed.
I think the proposed development looks spectacular. It's modern and well landscaped and well designed and provides much needed homes to NSW. I hope the development will provide good walking and cycling routes around the site, open to the general public. I'd like to see new access provided to the beautiful forest in that area. Similarly, I'd like to see a camping site with associated amenities close to the development. With so many new residents, I'd like the site to include a few restaurants and/or drinking establishments. If the only entrance and exit to the site is via Coonara Avenue, then I'm concerned at 400+ cars each day being	No camping is proposed as part of the subject application. Future outdoor facilities will be provided on the site. Additional permitted uses as part of Item 24 of the LEP 2019 include restaurants or cafes (maximum gross floor area of 50m ²), these uses which will be subject to future development applications. The proposal seeks to maintain the existing entrances to the site. Traffic impacts of the proposal have been considered as part of the application (refer	

ISSUE/OBJECTION	COMMENT	OUTCOME
added to the roads at peak hours. I'd like to see other ways to drive in and out of the place other than via Coonara Avenue. The existing IBM site as a BCP Disaster Recovery site never created that much daily traffic.	Section 15).	

14. External Referrals

The application was referred to the following external authorities:

FORESTRY CORPORATION NSW

The development application was referred to Forestry Corporation NSW for comment, and the referral was returned stating that Forestry Corporation does not have a direct interest in the Development and does not need to assess the DA. It is noted as part of DA 1414/2022/ZB, correspondence has been provided by Forestry Corporation NSW and has confirmed acceptance of the dedication of C2 Environmental Conservation Zoned land as specified in the application.

SYDNEY METRO

The development application was referred to Sydney Metro for comment, and the referral was returned stating that the proposed development does not involve excavation work occurring: (i) within, below or above, the Metro North West Line rail line corridor; (ii) within 25m (measured horizontally) of the Metro North West rail line corridor; (iii) within 25m (measured horizontally) of the ground directly below Metro North West Line rail corridor; or (iv) within 25m (measured horizontally) of the ground directly above an underground rail corridor. Sydney Metro has no comments on the DA for the purpose of clauses 45 of 85 of the ISEPP.

TRANSPORT FOR NSW

The development application was referred to the Transport for NSW under Clause 2.122 'Traffic-generating development' of the SEPP Infrastructure and Transport for traffic generating development.

Transport for NSW raised no objection to the proposal and have provided the following comment:

Reference is made to Council's correspondence dated 6 April 2022 requesting amendment to the correspondence issued by Transport for NSW (TfNSW) dated 30 March 2022 for this development application.

TfNSW has considered Council's request and has agreed to reissue the comments without reference to AUSTROADS on the basis that the development is to be serviced by private roads.

TfNSW has reviewed the submitted application and provides the reissued comments for the consideration of Council in the determination of the development application:

- a. *It is noted that the correspondence issued by TfNSW dated 10 September 2019 for planning proposal of the site, required consideration of the provision of a signalised pedestrian phase on the western leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue.*

TfNSW provided advice dated 1 March 2022 (Attached) to the proponent that it does not require the provision of a signalised pedestrian phase on the western

leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue signalised intersection. TfNSW confirms this advice.

- b. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.*

As required above, a condition of consent has been included (refer Condition no. 48) that a Construction Pedestrian Traffic Management Plan to be submitted.

ENDEAVOUR ENERGY COMMENTS

The development application was referred to Endeavour Energy and no objection was raised to the application subject to conditions, noting that as a condition of the Development Application consent Council should request the submission of documentary evidence from Endeavour Energy confirming that satisfactory arrangements have been made for the connection of electricity and the design requirements for the substation, prior to the release of the Construction or Subdivision Certificate / commencement of works. This condition will be included in the built form applications.

SYDNEY WATER COMMENTS

The proposal was referred to Sydney Water. No objections were raised to the proposal. Standard conditions have been imposed.

DEPARTMENT OF PLANNING AND ENVIRONMENT - WATER

The application is classed as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act, 1979. The proposal requires approval under the provisions of the Water Management Act 2000. The proposal was referred to the Department of Planning and Environment—Water and General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000 (WM Act) were provided (refer attachment 14)

NSW RURAL FIRE SERVICE

The application was referred to NSW Rural Fire Service seeking advice in regarding bushfire protection and provided recommended conditions of consent which have been included as condition no. 11.

15. Internal Referrals

ECOLOGY COMMENTS

The Biodiversity Conservation Act, 2016 (BC Act) and Biodiversity Conservation (BC) Regulation 2017 establishes the requirements for the protection of biodiversity, outlines the requirements for the regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities.

The BC Regulation, 2017 sets out threshold levels for when the Biodiversity Offsets Scheme (BOS) will be triggered, and thus the necessity for the preparation of a Biodiversity Development Assessment Report (BDAR).

The thresholds are:

1. Whether the impacts occur on an area mapped on the Biodiversity Values map published by the (then) Chief Executive of the NSW Office of Environment and Heritage; and
2. Whether the amount of native vegetation being cleared exceeds a threshold area. The area clearing threshold for the subject site is 0.25 hectares.

The BDAR is required as a result of both triggers, as more than 0.25 hectares of vegetation clearing is proposed, and the area of the proposed works is mapped as High Biodiversity Value.

A Biodiversity Development Assessment Report (BDAR) prepared by Keystone Ecological dated 29 November 2021 was submitted to Council.

According to the BDAR the impact areas of the 3.15 hectare development footprint that is the subject of this BDAR is made up of hardstand (car parks and roadways), plus:

- 0.06 hectares- VZ2a – No PCT - Detention Basins
- 0.37 hectares - VZ3a – PCT 1237 – Highly Modified Edges (contains BGHF characteristic species but is not CEEC)
- 2.59 hectares – VZ4a – No PCT – Planted Native Vegetation
- 0.01 hectares – VZ5b - PCT 1237 – Blue Gum High Forest (CEEC)
- 0.01 hectares – VZ5c - PCT 1237 – Blue Gum High Forest (CEEC)

Council staff have reviewed the original BDAR and other related documents and did not agree with the vegetation classification for parts of the proposed development area and were of the opinion that there is additional BGHF to that reported within the BDAR.

The BDAR contained a proposal to create an APZ along the northern eastern boundary of the site. Council staff were of the opinion that this would make the sheltered gully line unsuitable as a roost site for the Powerful Owl. In this regard the proposed APZ within this area had not been suitably designed to avoid impacts to the Powerful Owl and Council requested design modifications to protect habitat for this threatened species.

A revised BDAR prepared by Keystone Ecological dated 16 June 2022 was submitted to Council and provided the following information.

The areas impacted by the development footprint that is the subject of this BDAR are made up of hardstand (car parks and roadways), plus:

- 0.06 hectares- VZ2a – No PCT - Detention Basins
- 0.08 hectares - VZ3a – PCT 1237 – Highly Modified Edges (contains BGHF characteristic species but is not CEEC)
- 2.40 hectares – VZ4a – No PCT – Planted Native Vegetation
- 0.20 hectares – VZ5a - PCT 1237 – Blue Gum High Forest (CEEC)
- 0.01 hectares – VZ5b - PCT 1237 – Blue Gum High Forest (CEEC)
- 0.01 hectares – VZ5c - PCT 1237 – Blue Gum High Forest (CEEC)

The applicant has responded to Council staff's request to amend the development layout to reduce impacts to Blue Gum High Forest in the north-east of the site (VZ3a that Council staff maintain is part BGHF), on the boundary of the Cumberland State Forest, and in the vicinity of a known Powerful Owl roosting record. It is acknowledged that the design change would require the removal of additional trees, but it is considered to be an overall better biodiversity outcome as it would mean a reduction in the amount of BGHF to be impacted by the development for the establishment of asset protection zones and provided a suitable fully vegetated buffer between the development and the Powerful Owl roosting habitat.

The revised BDAR did reclassify parts of the vegetation proposed for removal, but it did not recognise all the areas of vegetation that Council staff maintained are consistent with the definition of BGHF. In response to Council staff concerns, the applicant submitted a supplementary letter prepared by Keystone Ecological dated 16 June 2022. This letter acknowledged that Council has the authority to disagree regarding offset requirements and in the interests of rapid resolution of that potential impasse, it contained guidance regarding impacts and offsets for three possible scenarios, ranging from some to all of the vegetation representing BGHF CEEC.

Of the three scenarios outlined within the Keystone letter, scenario 3 is the one that most closely aligns with Council staff's assessment of vegetation on the subject site however there are some small areas where there remains a disagreement. In response to this Council staff have assigned small portions of the site, that comprise of a mosaic of planted and naturally occurring vegetation, to PCT 1237 (BGHF). These areas have been classified by the applicant's Accredited Assessor as Landscaped Garden/Planted Native Vegetation. In accordance with Council staff's assessment, additional offsets are required to more accurately reflect the impact the development will have on the biodiversity values.

Details of additional offsets (above scenario 3) are provided below.

Table 1: Ecosystem Credits

Plant Community Type	Additional Area of Impact (ha)	Additional required	Credits
1237 Blue Gum High Forest	0.2776	9	



Figure1: Areas outlined blue represent areas assigned to PCT 1237 that require additional offsetting.

Table 2: Species Credits

Species	Additional Area of Impact (ha)	Additional Credits required	Credits
Powerful Owl	0.04	2	
Dural Land Snail	0.07	1	



Figure 2: Species Polygons – Blue = Dural Land Snail, Green = Powerful Owl, Pink = Species polygons outside the development area.

Comparison of offsets proposed in BDAR, offsets proposed in Scenario 3 of supplementary letter and Council assessment

Ecosystem credits

	Credits BDAR (June 2022)	Credits Scenario 3	Credits Imposed by Council
Total	8	10	19

Number of species credits

Species	BDAR (June 2022)	Scenario 3 (Keystone June 2022)	Credits Imposed by Council
Eastern pygmy possum	7	9	9
Large eared pied bat	10	11	11
Southern Myotis	7	9	9
Powerful owl	2	2	4
Dural land snail	7	9	10

The concept of serious and irreversible impacts (SAIL) is a central component of the NSW biodiversity offsets scheme. It is fundamentally about protecting threatened species and threatened ecological communities that are most at risk of extinction from potential development impacts or activities.

Section 7.16 of the Biodiversity Conservation Act 2016 (BC Act) requires a decision-maker to determine whether or not any of the residual impacts of a proposed development, activity, biodiversity certification or vegetation clearing on biodiversity values (that is, the impacts that would remain after any proposed avoid or mitigate measures have been taken) are serious and irreversible. Two threatened entities were identified to be at potential risk of serious and irreversible impact, these are Blue Gum High Forest and the Large-eared Pied Bat (*Chalinolobus dwyeri*). Council's Senior Biodiversity Officer has reviewed all information and inspected the site and agrees with the conclusion within the BDAR that the current development will not result in a Serious and Irreversible Impact on the Large-eared Pied Bat (*Chalinolobus dwyeri*) largely due to the small scale of the loss of habitat and the extent of surrounding retained forest and that the loss of habitat can be offset adequately in accordance with the BAM-C.

Council's Senior Biodiversity Officer has also concluded that the proposed development will not result in a Serious and Irreversible Impact on Blue Gum High Forest CEEC. A summary of matters taken into consideration in making this determination are provided below.

The Blue Gum High Forest that will not be avoided by the development is a relatively small area (approximately 0.74 ha) which is comprised of a mosaic of natural regeneration (from soil seed bank and seed rain or dispersal from adjacent areas) along with some planting of species characteristic of the BGHF, some planted non-native species and some established weed species. Council staff will be requiring offset of this area under the Biodiversity Offset Scheme (BOS) with a classification of BGHF moderate condition. In this sense Council staff have required the application of the 'worst case scenario' in terms of arriving at an offset quantum, while acknowledging that the remnant to be removed is not high quality, remnant BGHF. Furthermore, it was considered if the area in question was retained, given its small size and high edge to area ratio, it would be subject to edge effects to the extent that the long-term viability of the remnant would be questionable. The area being cleared does not currently contribute to landscape connectivity to the extent that the loss of such connectivity would limit options for fauna movement within the immediate landscape.

Comparison of offsets proposed in BDAR and offsets proposed in Scenario 3 letter report required by Council

Ecosystem credits

Veg zone	Credits BDAR	Credits Scenario 3	Area (ha) offset BDAR	Area (ha) Offset Scenario 3
3a (not CEEC)	2	1	0.08	0.04
5a	4	7	0.2	0.4
5b	1	1	0.01	0.01
5c	1	1	0.01	0.01
Total	8	10	0.3	0.46

Under the BC Act, a determination of whether an impact is serious and irreversible must be made in accordance with the principles prescribed in section 6.7 of the BC Regulation. The principles have been designed to capture those impacts which are likely to contribute

significantly to the risk of extinction of a threatened species or ecological community in New South Wales. These are impacts that:

- will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline
- will further reduce the population size of the species that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or will further degrade or disrupt an ecological community that is already observed, inferred or reasonably suspected to be severely degraded or disturbed
- impact on the habitat of a species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution
- impact on a species or ecological community that is unlikely to respond to measures to improve habitat and vegetation integrity and is therefore irreplaceable.

Overall, the scale of the loss of the 0.74ha BGHF of mixed condition and origin is small and will not result in increased fragmentation, loss of connectivity or reduced ecological function, particularly when considered in the context of the large BGHF remnant in the Cumberland State Forest to the immediate east of the site.

Criteria for which BGHF were listed as critically endangered ecological community (CEEC)

The NSW Scientific Committee found that Blue Gum High Forest in the Sydney Basin Bioregion was eligible to be listed as a critically endangered ecological community as it is facing an extremely high risk of extinction in New South Wales in the immediate future, as determined in accordance with the following criteria as prescribed by the Threatened Species Conservation Regulation 2002:

Clause 25

The ecological community has undergone, is observed, estimated, inferred or reasonably suspected to have undergone, or is likely to undergo within a time span appropriate to the life cycle and habitat characteristics of its component species:

(a) a very large reduction in geographic distribution.

Clause 26

The ecological community's geographic distribution is estimated or inferred to be:

(b) very highly restricted,

and the nature of its distribution makes it likely that the action of a threatening process could cause it to decline or degrade in extent or ecological function over a time span appropriate to the life cycle and habitat characteristics of the ecological community's component species.

Clause 27

The ecological community has undergone, is observed, estimated, inferred or reasonably suspected to have undergone, or is likely to undergo within a time span appropriate to the life cycle and habitat characteristics of its component species:

- (a) a very large reduction in ecological function,
as indicated by any of the following:
- (b) change in community structure
 - (c) change in species composition

- (f) disruption of ecological processes
- (g) invasion and establishment of exotic species
- (h) degradation of habitat
- (i) fragmentation of habitat

Considering these criteria, the modification or removal of the 0.74ha of modified BGHF approved under this application is not considered to exacerbate or worsen the status of the BGHF CEEC in relation to any of the criteria for which the TEC was listed. Council's Senior Biodiversity Officer has determined that the development will not result in a Serious and Irreversible Impact on Blue Gum High Forest.

A Vegetation Management Plan (VMP) prepared by Cumberland Ecology dated 8 September 2022 was submitted in support of the application. The VMP has been reviewed by Council staff and additional information and amendments are required (see Condition no. 43).

The VMP does not contain performance criteria. This information is required to objectively measure the success or otherwise of the methods employed to achieve the stated aims and objectives of the VMP. Different management zones will require different performance criteria. The VMP does not provide details on how Vegetation Management Zones with different objectives will be delineated. This delineation is important to ensure that Management Zone boundaries are defined so that it is clear where particular management actions stop and start and to prevent accidental clearing of vegetation. For example, where retained vegetation within MZ1 adjoins APZ within MZ4 in the north-east corner of the site. There is also a discrepancy between the APZ boundary shown in the BDAR and that in the VMP (See figure 3) that needs to be corrected.



Figure 3: Orange outline is the BDAR APZ, light green shading is the APZ shown within the VMP.

The VMP gives the impression that it is for a 5-year term only. The VMP has a formal 5-year maintenance period, but the objectives and maintenance actions will remain in perpetuity. The VMP is to be updated to make these requirements clear.

The objectives and actions for Management Zone (MZ) 8 are to be amended to provide guidance for future planting. Once weeds are removed it is likely that additional planting will be required for both screening and aesthetic purposes. The VMP is to include suitable species that can be used for this purpose. In support of the surrounding CEEC communities, species used are to be those from the BGHF and STIF communities. No exotic or cultivar species are to be used within this area.

The VMP is to be amended on Page 35, which states that all existing canopy trees are to be retained, which is not the case. The tree removal plans detail trees to be removed for APZ purposes. The VMP needs to include details to make it clear that unless approved by the development consent no additional trees or pruning (> 10% of the canopy) can be undertaken without additional approval from Council. The requirement for an amended VMP is provided under Condition 43.

SUBDIVISION ENGINEERING COMMENTS

No objection is raised to the proposal subject to conditions.

TRAFFIC MANAGEMENT COMMENTS

Council's Traffic Section concludes that the development will have marginal impacts in terms of its traffic generation potential on the local road network, and sufficient parking has been provided for the development and confirmed that there are no objections to this development from a traffic perspective. The following assessment/comments are provided by Council's traffic Section:

Existing Traffic Environment

- This application proposes to develop with a concept plan proposal provides for the following:
 - A new masterplan for the site, private internal road networks comprising upgrades to the existing perimeter road, as well as new roads and laneway with on-street parking;
 - A total of 417 dwellings configured as:
 - 165 attached and detached houses; all with off-street parking;
 - 252 apartments configured as 4 buildings above a common basement car park; and
 - Private and public open spaces.
- A traffic impact statement has been prepared by **ptc** (dated 30 November 2021). This TIA relies on previous Traffic Study by **Ason Group** (dated 29 April 2018) and also **GTA Group** (dated October 2018).

Proposed Development - Traffic Generation

- The ptc report calculates that the proposed development of 417 dwellings generates approximately 205 AM and 198 PM vehicle trips in the peak hours, which the consultants indicate is less than the traffic generated from the existing buildings when operating at full capacity.
- A significant number of objections have been raised to this proposal. The bulk of these objections center on the appropriateness of this type of project in this area; however that matter was settled when the land was rezoned to R3 and R4. The Government's

opening of the Railway Station at Cherrybrook only strengthens its policy of increased density within walking distance of Transit nodes. In this case shown as 800m by Applicant.

- Perhaps the Applicant does a dis-service by not explicitly spelling out the traffic impacts for this project in 2022, and relying on vague approvals from other submissions; however the fact remains that RMS has indicated its support for a modified submission of 600 units. Like-wise THSC in October 2018 obtained advice from GTA that confirmed ***"additional traffic generated by the proposed development is expected to have marginal impact on the performance of the existing network"***. *Of course it would be preferable if that advice examined the situation in 2032 at full build-out, but that may await further development of the vacant land adjacent to this project.*

Need for Traffic Improvements in the Locality

The Traffic Study suggests a likely overall LOS of "D" in the AM and "C" in the PM based on previous analysis in 2018 at the intersection of Coonara Avenue and Castle Hill Road, and based on 600 dwellings. The currently proposed 417 dwellings will therefore have less impact on the intersection.

Traffic egress/ingress to arterial/sub-arterial roads

Castle Hill Road intersects with Pennant Hills Road has not been analyzed.

Sight distance and other safety issues

An analysis for sight distance for the two access streets off Coonara Avenue for vehicles and pedestrians when entering or exiting the property on the private roadways as required under the Australian and Austroads Standards for vehicles traveling at 50 km/h was provided by the applicant. Pedestrian sight distance along Coonara Avenue for vehicles when entering or exiting the property, in terms of the requirements of AS2890.1-2002 has also been provided. The applicant demonstrates compliance with AS2890.1 sight distance requirements

Parking

Is considered with Council's Engineering comments, however the traffic study states that parking requirements comply with Council's DCP.

Access and Circulation

Is considered with Council's Engineering comments.

Recommendation

There are no objections to the proposal in terms of traffic impact.

TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the proposal subject to conditions.

RESOURCE RECOVERY COMMENTS

No objection is raised to the proposal subject to conditions.

LANDSCAPE COMMENTS

No objection is raised to the proposal subject to conditions.

HERITAGE COMMENTS

No objection is raised to the proposal subject to conditions.

FORWARD PLANNING COMMENTS

No objection is raised to the proposal subject to conditions.

LAND INFORMATION SYSTEMS COMMENTS

No objection is raised to the proposal subject to conditions.

CONCLUSION

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP (Transport and Infrastructure) 2021, SEPP No. 65, SEPP (Resilience and Hazards) 2021, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered satisfactory.

The variations to the LEP Height development standard is addressed in the report and is considered satisfactory. In relation to the Clause 4.6 written submission, it is considered that the Applicant's request is well founded, and the proposed variation results a development that is consistent with the relevant objectives, and compliance with the development standard are unreasonable and unnecessary in this instance, and the proposal results in a desirable urban design and planning outcome as outlined in this report.

The issues raised in the submissions have been addressed in the report and do not warrant refusal of the application.

Accordingly, approval is recommended subject to conditions.

IMPACTS:

Financial

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

Local Strategic Planning Statement – Hills Future 2036

The Plan sets planning priorities and corresponding actions that will provide for more housing, jobs, parks and services for the growing population. The Plan is supported by six strategies which provide a guide to planning in The Hills. The relevant strategy of the Local Strategic Planning Statement is the Productivity and Centres Strategy which establishes the basis for strategic planning of employment lands and centres in the Shire.

Located in Cherrybrook Metro Station Precinct, the proposal will provide for variety of housing types and associated open space to assist in the growth of area in close proximity to public transport. The proposal will assist in the creation of jobs both within the construction and education industries in line with the projected population growth, and in a location near transport infrastructure and other employment areas of the Castle Hill and Norwest strategic centres. The development proposal is considered to be consistent with the Local Strategic Planning Statement.

RECOMMENDATION

The Development Application be approved subject to the following conditions.

- The Applicant's request is well founded;

- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Buildings and the R4 High Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention;
- The site is considered suitable for the development; and
- The proposal is in the public interest.

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

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

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION	DATE
-	Indicative Landscape Concept Plan	-	June 2022
A1.1.1	Concept Plan for Approval	F	16/05/2022
A1.1.2	Housing Precinct Developable Area	F	16/05/2022
A1.2.1	Concept Plan for Approval Extent and Envelope Drawings	F	16/05/2022
A1.2.2	Concept Sections for Approval Extent and Envelope Drawings	F	16/05/2022
-	Road Naming & Street Numbering Plan (1 Page – for numbering purposes only)	-	-

Civil Engineering Drawings

DRAWING NO.	DESCRIPTION	REVISION	DATE
C-MP-8200	COVER SHEET, DRAWING SCHEDULE AND LOCALITY PLAN	P5	16/09/2022
C-MP-8201	SPECIFICATION NOTES - SHEET 01	P4	25/05/2022
C-MP-8202	SPECIFICATION NOTES - SHEET 02	P4	25/05/2022
C-MP-8203	GENERAL ARRANGEMENT PLAN	P5	16/09/2022
C-MP-8204	CIVIL WORKS STAGING PLAN	P5	16/09/2022
C-MP-8205	CONCEPT SEDIMENT AND EROSION CONTROL PLAN - SHEET 01	P5	16/09/2022
C-MP-8206	CONCEPT SEDIMENT AND EROSION CONTROL PLAN - SHEET 02	P5	16/09/2022
C-MP-8207	CONCEPT SEDIMENT AND EROSION CONTROL PLAN - SHEET 03	P5	16/09/2022
C-MP-8208	SEDIMENT AND AND EROSION CONTROL DETAILS - SHEET 01	P4	25/05/2022
C-MP-8209	SEDIMENT AND AND EROSION CONTROL DETAILS - SHEET 02	P4	25/05/2022
C-MP-8211	BULK EARTHWORKS CUT AND FILL PLAN - SHEET 01	P5	16/09/2022

C-MP-8212	BULK EARTHWORKS CUT AND FILL PLAN - SHEET 02	P5	16/09/2022
C-MP-8213	BULK EARTHWORKS CUT AND FILL PLAN - SHEET 03	P5	16/09/2022
C-MP-8214	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 01	P4	25/05/2022
C-MP-8215	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 02	P4	25/05/2022
C-MP-8216	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 03	P4	25/05/2022
C-MP-8217	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 04	P4	25/05/2022
C-MP-8218	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 05	P4	25/05/2022
C-MP-8219	BULK EARTHWORKS CUT AND FILL SECTIONS - SHEET 06	P4	25/05/2022
C-MP-8221	TYPICAL ROAD SECTIONS - SHEET 01	P4	25/05/2022
C-MP-8222	TYPICAL ROAD SECTIONS - SHEET 02	P4	25/05/2022
C-MP-8223	TYPICAL ROAD SECTIONS - SHEET 03	P4	25/05/2022
C-MP-8224	TYPICAL ROAD SECTIONS - SHEET 04	P4	25/05/2022
C-MP-8225	TYPICAL ROAD SECTIONS - SHEET 05	P4	25/05/2022
C-MP-8226	TYPICAL ROAD SECTIONS - SHEET 06	P4	25/05/2022
C-MP-8227	TYPICAL ROAD SECTIONS - SHEET 07	P4	25/05/2022
C-MP-8228	TYPICAL ROAD SECTIONS - SHEET 08	P4	25/05/2022
C-MP-8231	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 01	P6	16/09/2022
C-MP-8232	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 02	P6	16/09/2022
C-MP-8233	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 03	P6	16/09/2022
C-MP-8234	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 04	P6	16/09/2022
C-MP-8235	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 05	P5	12/09/2022
C-MP-8236	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 06	P5	12/09/2022
C-MP-8237	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 07	P5	12/09/2022
C-MP-8238	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 08	P5	12/09/2022
C-MP-8239	SITEWORKS AND STORWATER MANAGEMENT PLAN - SHEET 09	P5	12/09/2022
C-MP-8241	STORMWATER PIT SCHEDULE	P5	16/09/2022

C-MP-8251	STORMWATER LONGTIUDINAL SECTION - SHEET 01	P4	25/05/2022
C-MP-8252	STORMWATER LONGTIUDINAL SECTION - SHEET 02	P4	25/05/2022
C-MP-8253	STORMWATER LONGTIUDINAL SECTION - SHEET 03	P4	25/05/2022
C-MP-8254	STORMWATER LONGTIUDINAL SECTION - SHEET 04	P4	25/05/2022
C-MP-8255	STORMWATER LONGTIUDINAL SECTION - SHEET 05	P5	16/09/2022
C-MP-8256	STORMWATER LONGTIUDINAL SECTION - SHEET 06	P5	16/09/2022
C-MP-8257	STORMWATER LONGTIUDINAL SECTION - SHEET 07	P5	16/09/2022
C-MP-8258	STORMWATER LONGTIUDINAL SECTION - SHEET 08	P5	16/09/2022
C-MP-8259	STORMWATER LONGTIUDINAL SECTION - SHEET 09	P5	16/09/2022
C-MP-8260	STORMWATER LONGTIUDINAL SECTION - SHEET 10	P4	25/05/2022
C-MP-8261	STORMWATER LONGTIUDINAL SECTION - SHEET 11	P4	25/05/2022
C-MP-8262	STORMWATER LONGTIUDINAL SECTION - SHEET 12	P5	16/09/2022
C-MP-8263	STORMWATER LONGTIUDINAL SECTION - SHEET 13	P4	25/05/2022
C-MP-8281	OSD DETAILS SHEET 01	P4	25/05/2022
C-MP-8282	OSD DETAILS SHEET 02	P4	25/05/2022
C-MP-8283	OSD DETAILS SHEET 03	P4	25/05/2022
C-MP-8284	OSD DETAILS SHEET 04	P4	25/05/2022
C-MP-8285	OSD DETAILS SHEET 05	P4	25/05/2022
C-MP-8286	OSD DETAILS SHEET 06	P4	25/05/2022
C-MP-8290	RETAINING WALL GENERAL ARRANGEMENT PLAN	P5	16/09/2022
C-MP-8291	RETAINING WALL ALIGNMENT CONTROL PLAN - SHEET 01	P5	16/09/2022
C-MP-8292	RETAINING WALL ALIGNMENT CONTROL PLAN - SHEET 02	P5	16/09/2022
C-MP-8293	RETAINING WALL ALIGNMENT CONTROL PLAN - SHEET 03	P5	16/09/2022
C-MP-8301	RETAINING WALL ELEVATIONS - SHEET 01	P4	25/05/2022
C-MP-8302	RETAINING WALL ELEVATIONS - SHEET 02	P4	25/05/2022
C-MP-8303	RETAINING WALL ELEVATIONS - SHEET 03	P4	25/05/2022

C-MP-8304	RETAINING WALL ELEVATIONS - SHEET 04	P4	25/05/2022
C-MP-8305	RETAINING WALL ELEVATIONS - SHEET 05	P4	25/05/2022
C-MP-8306	RETAINING WALL ELEVATIONS - SHEET 06	P4	25/05/2022
C-MP-8307	RETAINING WALL ELEVATIONS - SHEET 07	P4	25/05/2022
C-MP-8308	RETAINING WALL ELEVATIONS - SHEET 08	P4	25/05/2022
C-MP-8321	ALIGNMENT CONTROL PLAN - SHEET 01	P5	16/09/2022
C-MP-8322	ALIGNMENT CONTROL PLAN - SHEET 02	P5	16/09/2022
C-MP-8323	ALIGNMENT CONTROL PLAN - SHEET 03	P5	16/09/2022
C-MP-8331	ROAD LONGITUDINAL SECTIONS - SHEET 01	P4	25/05/2022
C-MP-8332	ROAD LONGITUDINAL SECTIONS - SHEET 02	P4	25/05/2022
C-MP-8333	ROAD LONGITUDINAL SECTIONS - SHEET 03	P4	25/05/2022
C-MP-8334	ROAD LONGITUDINAL SECTIONS - SHEET 04	P4	25/05/2022
C-MP-8335	ROAD LONGITUDINAL SECTIONS - SHEET 05	P4	25/05/2022
C-MP-8336	ROAD LONGITUDINAL SECTIONS - SHEET 06	P4	25/05/2022
C-MP-8337	ROAD LONGITUDINAL SECTIONS - SHEET 07	P4	25/05/2022
C-MP-8338	ROAD LONGITUDINAL SECTIONS - SHEET 08	P4	25/05/2022
C-MP-8341	ROAD CROSS SECTIONS - SHEET 01	P4	25/05/2022
C-MP-8342	ROAD CROSS SECTIONS - SHEET 02	P4	25/05/2022
C-MP-8343	ROAD CROSS SECTIONS - SHEET 03	P4	25/05/2022
C-MP-8344	ROAD CROSS SECTIONS - SHEET 04	P4	25/05/2022
C-MP-8345	ROAD CROSS SECTIONS - SHEET 05	P4	25/05/2022
C-MP-8346	ROAD CROSS SECTIONS - SHEET 06	P4	25/05/2022
C-MP-8347	ROAD CROSS SECTIONS - SHEET 07	P4	25/05/2022
C-MP-8348	ROAD CROSS SECTIONS - SHEET 08	P4	25/05/2022
C-MP-8349	ROAD CROSS SECTIONS - SHEET 09	P4	25/05/2022
C-MP-8350	ROAD CROSS SECTIONS - SHEET 10	P4	25/05/2022
C-MP-8351	ROAD CROSS SECTIONS - SHEET 11	P4	25/05/2022
C-MP-8352	ROAD CROSS SECTIONS - SHEET 12	P4	25/05/2022
C-MP-8353	ROAD CROSS SECTIONS - SHEET 13	P4	25/05/2022
C-MP-8354	ROAD CROSS SECTIONS - SHEET 14	P4	25/05/2022
C-MP-8355	ROAD CROSS SECTIONS - SHEET 15	P4	25/05/2022
C-MP-8356	ROAD CROSS SECTIONS - SHEET 16	P4	25/05/2022
C-MP-8371	STORMWATER CATCHMENT PLAN - PITS	P5	16/09/2022
C-MP-8372	STORMWATER CATCHMENT PLAN - OSD	P5	16/09/2022
C-MP-8373	STORMWATER CATCHMENT PLAN - WSUD	P5	16/09/2022
C-MP-8374	RIPARIAN OFFSET PLAN	P5	16/09/2022
C-MP-8376	PAVEMENT, SIGNAGE AND LINEMARKING	P5	16/09/2022

	PLAN - SHEET 01		
C-MP-8377	PAVEMENT, SIGNAGE AND LINEMARKING PLAN - SHEET 02	P5	16/09/2022
C-MP-8378	PAVEMENT, SIGNAGE AND LINEMARKING PLAN - SHEET 03	P5	16/09/2022
C-MP-8381	DETAILS SHEET 01	P4	25/05/2022
C-MP-8382	DETAILS SHEET 02	P4	25/05/2022
C-MP-8383	DETAILS SHEET 03	P4	25/05/2022
C-MP-8384	DETAILS SHEET 04	P4	25/05/2022
C-MP-8385	DETAILS SHEET 05	P4	25/05/2022
C-MP-8386	DETAILS SHEET 06	P4	25/05/2022

Arborist Report

DRAWING NO.	DESCRIPTION	REVISION	DATE
aiadtr3.00	cover sheet & general arrangement plan	12	12/09/2022
aiadtr3.01	tree removal plan - detail sheet 1	12	12/09/2022
aiadtr3.02	tree removal plan - detail sheet 2	12	12/09/2022
aiadtr3.03	tree removal plan - detail sheet 3	12	12/09/2022
aiadtr3.04	tree removal plan - detail sheet 4	12	12/09/2022
aiadtr3.05	tree removal plan - detail sheet 5	12	12/09/2022
aiadtr3.06	tree removal plan - detail sheet 6	12	12/09/2022
aiadtr3.07	tree removal plan - detail sheet 7	12	12/09/2022
aiadtr3.08	tree removal plan - detail sheet 8	12	12/09/2022
aiadtr3.09	tree removal plan - detail sheet 9	12	12/09/2022
aiadtr3.10	tree removal plan - detail sheet 10	12	12/09/2022
aiadtr3.11	tree removal plan - detail sheet 11	12	12/09/2022
atrp3.00	cover sheet & general arrangement plan	12	12/09/2022
atrp3.01	tree retention & tree protection plan - detail sheet 1	12	12/09/2022
atrp3.02	tree retention & tree protection plan - detail sheet 2	12	12/09/2022
atrp3.03	tree retention & tree protection plan - detail sheet 3	12	12/09/2022
atrp3.04	tree retention & tree protection plan - detail sheet 4	12	12/09/2022
atrp3.05	tree retention & tree protection plan - detail sheet 5	12	12/09/2022
atrp3.06	tree retention & tree protection plan - detail sheet 6	12	12/09/2022
atrp3.07	tree retention & tree protection plan - detail sheet 7	12	12/09/2022
atrp3.08	tree retention & tree protection plan - detail sheet 8	12	12/09/2022
atrp3.09	tree retention & tree protection plan - detail sheet 9	12	12/09/2022
atrp3.10	tree retention & tree protection plan - detail sheet 10	12	12/09/2022
atrp3.11	tree retention & tree protection plan - detail sheet	12	12/09/2022

	11		
atrpd3.12	general & specific tree protection measures & specifications - sheet 12	12	12/09/2022
aiacc 3.01	Cover Sheet – sheet 1 of 54	12	12/09/2022
aiacs 2.01	Background – sheet 2 of 54	12	12/09/2022
aiace 3.01	Existing tree cover on site – post demolition, prior to concept plan & detailed civil works – sheet 3 of 54	12	12/09/2022
aiacs 3.01	Scope of concept development application including detailed civil works – sheet 4 of 54	12	12/09/2022
aiacr 3.01	Plan showing the extent of tree removals associated with concept plan, detailed civil works & bushfire APZ – sheet 5 of 54	12	12/09/2022
aiass 3.01	General tree protection measures – specifications – sheet 6 of 54	12	12/09/2022
aiass 3.01	Plan showing the locations of specific work areas – sheet 7 of 54	12	12/09/2022
aiass 3.01	Specific works area A – OSD 4 – sheet 8 of 54	12	12/09/2022
aiass 3.01	Specific works areas B – drainage outlets – sheet 9 of 54	12	12/09/2022
aiass 3.01	Specific works area C – Pedestrian footpath alignment – sheet 10 of 54	12	12/09/2022
aiass 3.01	Specific works area D – removal of bitumen carpark & concrete kerb – sheet 11 of 54	12	12/09/2022
aiass 3.01	Specific work areas E – Kerb removal & replacement – sheet 12 of 54	12	12/09/2022
aiass 3.01	Specific works area F – Installation of drainage – sheet 13 of 54	12	12/09/2022
aiacd 3.01	Summary of tree retention & removal – tree numbers – sheet 14 of 54	12	12/09/2022
aiacd 3.01	Summary of tree retention & removal – tree species – sheet 15 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 16 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 17 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 18 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 19 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 20 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 21 of 54	12	12/09/2022

aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 22 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 23 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 24 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 25 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 26 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 27 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 28 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 29 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 30 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 31 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 32 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 33 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 34 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 35 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 36 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 37 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 38 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 39 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 40 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 41 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 42 of 54	12	12/09/2022
aiact 3.01	Details of trees to be removed for civil works & bushfire APZ – sheet 43 of 54	12	12/09/2022

aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 44 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 45 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 46 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 47 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 48 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 49 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 50 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 51 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 52 of 54	12	12/09/2022
aiact 3.01	Impact assessment on trees to be retained along the interface of civil works – sheet 53 of 54	12	12/09/2022
aiact 3.01	Site photos in context with typical civil works – sheet 54 of 54	12	12/09/2022

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

Conditions Relating to the Concept Plan

2.Compliance with Concept Plan (All Stages)

Approval is granted for the proposed concept plan and subdivision works in accordance with the stamped approved plans referred to under Condition 1 only.

The works approved under the concept plan is limited within the area identified on the Civil Staging Works Plan Job Number 172528 Drawing Number C-MP-8204 Revision P5 dated 16/09/2022. All construction activities must be substantially in accordance with the approved master plan.

Any activities outside this area must be part of separate development approvals.

All stages of work subject to the concept plan will require the submission and approval by the relevant authority of a Development Application as required by the relevant legislation (including the need for concurrence from the relevant/ applicable external authorities).

Note: Separate applications DA 859/2022/JP and DA 861/2022/JP are approved concurrently to the subject application.

3. Determination of Future Development Applications

Approval is granted for the proposed Concept Development Application in accordance with the plans and details provided with the application to provide guidance for future development of the site. In accordance with section 4.22(1) of the Environmental Planning and Assessment Act all development under the concept development application shall be subject of future development application(s). The determination of future development application(s) are to be generally consistent with the terms of the subject development consent.

4. Dwelling Yield

The maximum dwelling yield for the site is 417 dwellings, being:

- 252 units (within a residential flat building precinct); and
- 165 dwelling houses (semi-detached, attached or detached).

5. Tree Replacement Strategy

Tree replacement for all future development applications for the site is to total the following:

- Development footprint (R3 Medium Density zoned land and R4 High Density zoned land) – 1,260 trees
- Area subject to Item 24 THLEP 2019 – 1,340 trees

A total of 2,600 trees are to be planted.

6. Compliance with Site-Specific Design Guidelines

All future development is to comply with the *Site-Specific Design Guidelines*, Revision C, dated 29 April 2022, prepared by Mecone, on behalf of Mirvac, with the exception of Section 4.8 Landscaped Area which is to be pursuant to Condition No. 7 of this consent.

7. Landscaping Requirements

Any future development application for the site (future housing precincts) shall comply with the following controls:

- Front setbacks are to maximise any opportunity for soft landscaping, taking into consideration the requirement for any services, including fencing and letterboxes.
- For dwellings which abut other dwellings on both sides, a minimum landscape area of 15% is to be achieved with no minimum landscape area dimension.
- For dwellings which abut other dwellings on one side only, a minimum landscape area of 20% is to be achieved with a minimum landscape area dimension of 1.5m. For the purpose of calculating landscape area, landscape area is defined as an uncovered part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. This landscaped area can include services (excluding bin storage areas), fencing, water tanks and spaced steppers where they are adequately incorporated into planted landscaping.
- Clothes drying device is to be provided within private open space areas. Clothes drying areas are not to be visible from internal roads or surrounding bushland areas.
- Planting to be provided between the driveway and side fence.
- Front gardens are to include a small tree. Trees are to be incorporated wherever possible to increase canopy coverage.
- Irregular shaped lot landscape design is generally required to achieve the above, however may be required to be assessed on merit.
- Driveway widths are to be minimised wherever possible to maximise landscape area and sufficient planting.
- Bin storage areas are to be located to maximise opportunities for meaningful landscaping.
- Letterboxes are to be incorporated into fencing wherever possible to maximise landscape area.
- Front fencing is to be no higher than 1.2m in height
- Fencing for Private Open Space areas are to be 1.8m high and of solid construction. Open style (such as palisade style) rear fencing may be considered where rear boundaries interface with Communal Open Space areas, or the Perimeter Road.

- 1.8m high fencing on corner lots is not to extend more than 50% of the secondary boundary.
- Corner lot dwellings with split level typologies must be provided with sufficient landscape area between the secondary boundary building footprint to allow the resolution of significant landscape level changes whilst maintaining a positive streetscape outcome.
- Street tree and verge planting forward of all dwelling houses are to be considerate of bin presentation, and collection. Verge planting is to utilise locally native vegetation communities and be of hardy species appropriate for occasional foot traffic.
- Where dwelling housing closely interface with bushland areas, planting is to be considerate of the locally native vegetation communities.

8. Site Wide Parking Rates

The site wide parking rates for the residential component of the development on the site is as follows:

Housing

- Dwelling Houses – 2 spaces per dwelling
- Visitors – 40 spaces

Apartments

- 1 Bed – 1 space per dwelling
- 2 Bed – 1.5 spaces per dwelling
- 3 Bed – 2 spaces per dwelling
- 4 Bed or more - 3 spaces per dwelling
- Visitors – 1 space per 5 dwellings

9. Setback to Coonara Avenue

All dwellings, including pergolas, and vergolas and the like are to be setback minimum of 11 metres from Coonara Avenue.

10. Planning Agreement

The obligations in the Planning Agreement between Mirvac Projects (Retail and Commercial) Pty Ltd and The Hills Shire Council, adopted by Resolution 443 of Council's Ordinary Meeting of 27 September 2022, or any future amendment / variation of this Planning Agreement, must be satisfied in accordance with the terms of the Planning Agreement. This includes its application to Development Applications approved after the issue of development consent for the subject concept development application (860/2022/JP).

Conditions Relating to Physical Works

GENERAL MATTERS

11. Compliance with NSW Rural Fire Service Requirements

Compliance with the requirements of NSW Rural Fire Service attached as an appendix to this consent and dated 1 August 2022.

12. Compliance with Department of Planning and Environment – Water Requirements

Compliance with the requirements of the Department of Planning and Environment – Water, General Terms of Approval, attached as an appendix to this consent and dated 5 August 2022.

13. Compliance with Transport for NSW Requirements

Compliance with the requirements of Transport for NSW attached as an appendix to this consent and dated 19 April 2022.

14. Tree Removal

Approval is granted for the removal of one thousand eight hundred and seventy-seven (1877) trees as per identified in the Arboricultural Impact Assessment – Part 3 prepared by Footprint Green Pty Ltd, dated 12 September 2022 (Rev. 12 – Dwg. No. aiacc 3.01).

All other trees are to remain and are to be protected during all works in accordance with the conditions of this Consent and the Australian Standard (AS4970-2009) Protection of trees on development sites.

Stumps located within the Tree Protection Zone of trees to be retained shall be grubbed-out where required using a mechanical stump grinder (or by hand where less than 150mm in diameter) without damage to the root system of other trees. Where trees to be removed are within the Structural Root Zone (SRZ) of any trees to be retained, consideration shall be given to cutting the stump close to ground level and retaining the root crown intact. Stumps within the Tree Protection Zone of other trees to be retained shall not be removed using excavation equipment or similar.

All work on the trees shall be undertaken by a suitably qualified minimum AQF Level 3 Arborist under the supervision of a suitably qualified AQF Level 5 (or greater) Project Arborist in accordance with Safe Work Australia's Guide to Managing Risks of Tree Trimming and Removal Works. The work shall be undertaken with care to minimize the risk of injury or mortality to fauna and to avoid any damage to the adjacent vegetation.

A suitably qualified Project Ecologist shall be onsite during all tree, vegetation, and habitat removal, to rescue and re-locate any displaced fauna that may be disturbed during this activity.

Documentation relating to the removal of trees located within the TPZ (tree protection zone) of any trees to be retained (including certification of supervision) by a Project Arborist shall be provided to Council as outlined in this Consent and/or upon request by the Consent Authority.

15. Protection of Public Infrastructure

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for inspecting the public infrastructure for compliance with this condition before an Occupation Certificate or Subdivision Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

16. Flood Control Systems

The development is required to ensure the protection of the subject site and downstream properties in the locality from flood risks during all storm events, and throughout the subject development and subsequent future applications. Given this sensitive nature, the construction activities including earth works changing the terrain, road network and stormwater management are to ensure no additional runoff is directed towards downstream properties.

It must be confirmed that prior to commencement of construction or earth works of each stage / phase throughout the development of Master Plan, necessary flood control structures (respective Onsite Stormwater Detention Systems) and/ or alternative temporary detention systems have been in place onsite ensuring the hydraulic compliance intended in the Flood Analysis, the latest response by Northrop dated 05/09/2022 and other references.

The proposed Onsite Stormwater Detention Systems shown on Civil Staging Works Plan C-MP-8204 and associated Stormwater Catchment Plan – OSD C-MP-8372 and Stormwater Catchment Plan – WSUD C-MP-8372 form part of the set of Conceptual Master Plan Civil works project 172528 Revision P5 dated 16/09/2022 are considered for development purposes only.

Separate Compliance Certificates must be approved for the construction of either interim or permanent Flood Control System required.

Copies of work as drawings of such interim flood control systems, and structural certificates and hydraulic compliance certificates issued by respective accredited engineers are to be provided to the Principal Certifying Authority, and a copy of such must be kept on site.

The flood control systems are to be maintained throughout, all phases of the development.

17. Security Bond Requirements

A security bond may be submitted in lieu of a cash bond. The security bond must:

- Be in favour of The Hills Shire Council;
- Be issued by a financial institution or other accredited underwriter approved by, and in a format acceptable to, Council (for example, a bank guarantee or unconditional insurance undertaking);
- Have no expiry date;
- Reference the development application, condition and matter to which it relates;
- Be equal to the amount required to be paid in accordance with the relevant condition;
- Be itemised, if a single security bond is used for multiple items.

Should Council need to uplift the security bond, notice in writing will be forwarded to the applicant 14 days prior.

18. Subdivision Certificate Preliminary Review

Prior to the submission of a Subdivision Certificate application a draft copy of the final plan, administration sheet and Section 88B instrument (where included) must be submitted in order to establish that all conditions have been complied with.

Street addresses for the lots within this subdivision will be allocated as part of this preliminary check process, for inclusion on the administration sheet.

19. Proposed Street Naming

A written application for street naming must be submitted to Council for approval, along with the applicable fee as per Council's Schedule of Fees and Charges. The street names proposed must comply with requirements of the NSW Geographical Names Board and Council.

The application must nominate three suggested names per street, in order of preference, and the source of the names proposed.

20. Street Trees

Street trees must be provided for the internal private roads within the development spaced between 7m and 10m apart and with a minimum of one tree per lot frontage. For corner lots, except with separately approved, there should be one tree on the primary frontage and two trees on the secondary frontage. The location of street trees must be considerate of driveways, services, drainage pits and sight lines at intersections. The species and size of street trees must comply with the requirements of Council. This includes a street tree masterplan where one exists (check Council's website for details). A street tree planting plan demonstrating compliance with the above must be submitted for written approval before any street trees are planted.

The establishment of street tree planting is included in the maintenance bond required to be paid. Alternatively, street trees can be planted by Council subject to payment of the applicable fee as per Council's Schedule of Fees and Charges.

21. Process for Council Endorsement of Legal Documentation

Where an encumbrance on the title of the property is required to be released or amended and Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges. Sufficient time should be allowed for the preparation of a report and the execution of the documents by Council.

22. Road Opening Permit

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

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

23. Subdivision Works Approval

The Civil Works approved under this conceptual master plan development will relate to separate staged subdivision approvals.

Before any works are carried out a Subdivision Works Certificate must be obtained and a Principal Certifier appointed. The plans and accompanying information submitted with the Subdivision Works Certificate must comply with the conditions included with this consent.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

24. Construction Certificate

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or a Registered Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

25. Building Work to be in Accordance with BCA

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

26. Contamination

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

27. Acoustic Requirements

The recommendations of the Acoustic Assessment and Report prepared by Acoustic Logic, referenced as (Project ID20201245.1), dated 7 June 2022 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- a) Noise and vibration controls detailed in sections 10 to 13.
- b) Ecological noise control measures for endangered nesting Powerful Owl species, including -
 - i. Hours of work will be restricted within 100m during the breeding season (March – September) and to commence 1 hour after sunrise (8.00am) and finish before 4.00pm; and
 - ii. Noise monitoring to be established during the breeding period in these areas.
- c) Recommendations detailed in the Construction & Environmental Managed Plan prepared by Mivrac, dated 7 June 2022, for noise and vibration controls referenced in Section 9 of the above report.

28. Retention of Trees

All trees not specifically identified for removal in the Arboricultural Impact Assessment – Part 3 prepared by Footprint Green Pty Ltd, dated 12 September 2022 (Rev. 12 – Dwg. No. aiacc 3.01) shall be retained and protected strictly in accordance with the imposed Conditions of the

subject Development Consent and the Australian Standard (AS4970-2009) Protection of trees on development sites.

No additional vegetation (trees and understorey) shall be removed for the creation of an Asset Protection Zone or otherwise without prior consent from Council.

29. Protection of Existing Trees and Native Vegetation

No additional native vegetation (trees and understorey) is to be removed for the creation of an Asset Protection Zone or otherwise without prior consent of Council.

Vegetation not authorised for removal by this consent shall be protected during construction to ensure that natural vegetation and topography on the subject site is not unnecessarily disturbed.

Any excavated material not used in the construction of the subject works is to be removed from the site to a licensed facility (a site that can lawfully receive waste) and under no circumstances is to be deposited in bushland areas.

30. Control of early morning noise from trucks

Trucks associated with the construction of the site that will be waiting to be loaded must not be brought to the site prior to 7:00am. To protect the amenity of neighbouring residents, construction vehicles are not permitted to queue outside of the site, along Coonara Avenue before 7:00am.

Out of hours deliveries for oversize vehicles where required, are to be managed in accordance with TfNSW approvals.

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

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

The overall property address for this development is: - 55 Coonara Avenue, West Pennant Hills NSW 2125.

Overall approved concept dwelling, apartment site numbering and road naming is as per plans submitted marked as DWG No A2.0.9 Dated June 2022 and marked up as 'Road Naming & Street Numbering Plan' by Council's Land Information Team within consent documentation; and as follows:

Road Reference	Odd Numbers	Even Numbers
ROAD 1	1-9	2-14
ROAD 2	N/A	2-46
ROAD 3	1-7	2-30
ROAD 4	1-21	2-46
ROAD 5	1-13	2-14
ROAD 6	1-7 (Apartment Buildings)	2-34
ROAD 7	1-37	2-52

A total of seven (7) Proposed Road Names are to be provided to Council's Subdivision Team as required for consideration and approval. The road name for Road 1 in the table above, is to be the same one name from start to finish.

The direction of street numbering within each Road is shown on the 'Road Naming & Street Numbering Plan' within consent documentation.

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

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

Approved numbers, unless otherwise approved by Council in writing, are to be displayed to ensure that all addressing signage throughout the complex is clear to assist emergency service providers locate a destination easily & quickly.

Mail Boxes

Australia Post requires mail boxes to be perpendicular to the footpath or road and within easy reach for the postal delivery officer.

The number of mail boxes to be provided is to be equal to the number of dwellings & units plus one (1) for the proprietors of the development and be as per Australia Post size requirements. The proprietor's additional mail box is to be located fronting Coonara Avenue and be addressed as 55 Coonara Avenue, West Pennant Hills.

Strata Developments

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

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

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

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

32. Compliance with Aboriginal Archaeological Due Diligence Assessment

Compliance with recommendation provided in the Aboriginal Archaeological Due Diligence Assessment prepared by McCardle Cultural Heritage Pty Ltd including:

- The persons responsible for the management of onsite works will ensure that all staff, contractors and other involved in construction and other involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulations 2010, under the National Parks and Wildlife Act 1974;
- Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately, a qualified archaeologist contact to assess the site and the Environmental Line contacted if a site is identified.

33. Compliance with Construction and Environment Management Plan

Compliance with the Construction and Environment Management Plan, prepared by Mirvac, dated 7 June 2022 (unless otherwise specified in other conditions of consent).

34. Additional Biodiversity Mitigation Measures

To mitigate the potential impacts before, during and after construction, the development must comply with the mitigation measures outlined in Table 15 of the Biodiversity Development Assessment Report prepared by Keystone Ecological dated 16 June 2022. These measures are in addition to the requirements of the Fauna Management Plan.

35. Waste Management Plan Required

Built form applications must be accompanied by a detailed Waste Management Plan, prepared by a suitably experienced person, addressing all objectives and controls of the waste management section/s in the relevant Development Control Plan. Objective 35 of Planning Priority C19 of the Central City District Plan must also be addressed. All Waste management and collection infrastructure must be indicated on design plans.

36. Disposal of Surplus Excavated Material

The disposal of any material, requiring removal from the site must be in accordance with NSW Waste (2014) Waste Classification guidelines, POEO Act and/or an EPA Exemption. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

37. Flood Control System - Stormwater Management (All Stages)

Flood Control System (Interim and Permanent) and Onsite Stormwater Detention (OSD) are to be provided in accordance with the Flood Analysis submitted with the application to ensure no additional runoff generated by the development is directed over to the downstream properties, which are flood sensitive.

The construction details must be in accordance with the Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The Concept Stormwater Catchment Plan – OSD drawing C-MP-8372 and the Stormwater Catchment Plan – WSUD drawing C-MP-8373 Revision P5 dated 16/09/2022 form part of the Conceptual Master Plan Stage 01 Civil Works prepared by Northrop is for development application purposes only and are not to be used for construction.

The detailed design for every stage must reflect the sub-catchment relating to it and set of documentation listed below also prepared by Northrop submitted with the application:

- Civil Engineering Assessment Report Revision 13 dated 1st June 2022
- Northrop's letter Response to Request for Information dated 10/08/2022
- Addendum for Civil Engineering Assessment Report dated 02/09/2022 and
- Response to Request for Information dated 05/09/2022

The integrated Water sensitive urban design elements are to be located generally in accordance with the Stormwater Catchment Plan – WSUD drawing C-MP-8373 Revision P dated 16/09/2022 and information submitted with the application.

Detailed DRAINS model (consolidated network of all outlets) supporting the drainage network reflecting to every stage used in calculating the flood control system/ the OSD in the analysis.

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

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

All model parameters and data outputs are to be provided.

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

- a) Design/ construction plans prepared by a hydraulic engineer.
- b) Soft copy of DRAINS model (saved with the results) used in the flood analysis.
- c) Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- d) A completed OSD Detailed Design Checklist.
- e) A maintenance schedule.

38. Security Bond – Road Pavement and Public Asset Protection (All Stages)

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$780,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the road frontage of the subject site plus an additional 50m on either side (640m) multiplied by the width of the road (13m).

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

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

39. Security Bond – External Works

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

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

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

40. Engineering Works (All Stages)

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

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

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

Depending on the development type and nature and location of the work the required certificate or approval type will differ. The application form covering these certificates or approvals is available on Council's website and the application fees payable are included in Council's Schedule of Fees and Charges.

The set of Conceptual Master plan named Stage 01 Civil Works illustrate the road and drainage network, stormwater management measures and bulk earth works approved under

this consent. Any works outside the extent of work (outside the blue line) must undergo a separate application process.

The set of drawings form part of the Stage 01 Civil Works prepared by Northrop drawing C-MP-8200 Revision 5 dated 16/09/2022 is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plans and the conditions of consent.

The road network shall be generally in accordance with the General Arrangement Plan Drawing C-MP-8203 of the set of Stage 01 Civil Works.

a) Full Width Road Construction (Private Roads)

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

Road Name	Formation: (Footpath/ Carriageway/ Footpath) (Total width m)
R1 - Road 1	Road Type: Community Road Typical Road Section: Drawing R1 – C-MP-8221 Rev P4 (Footpath/ Parking/ Carriageway/ Footpath) (Total width m) 2m/ 2.1m/ 6m/ 1.6m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R2 - Road 2 (With Parking)	Road Type: Community Road Typical Road Section: Drawing R2-1 – C-MP-8221 Rev P4 (Footpath/ Parking/ Carriageway/ Footpath) (Total width m) 1.8m/ 2.1m/ 6m/ 3.15m (13.05m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R2 - Road 2 (Without Parking)	Road Type: Community Road Typical Road Section: Drawing R2-2 – C-MP-8221 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 2m/ 6m/ 3.6m (11.6m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-1 With Parking)	Road Type: Community Road Typical Road Section: Drawing R3-1 – C-MP-8222 Rev P4 (Footpath/ Carriageway/ Parking/ Footpath) (Total width m) 1.6m/ 6m/ 2.1m/ 2m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-2 Without Parking)	Road Type: Community Road Typical Road Section: Drawing R3-2 – C-MP-8222 Rev P4 (Footpath/ Carriageway Footpath) (Total width m)

	1.6m/ 6m/ 4.1m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-3 With Parking)	Road Type: Community Road Typical Road Section: Drawing R3-3 – C-MP-8223 Rev P4 (Footpath/ Parking/ Carriageway/ Footpath) (Total width m) 2m/ 2.1m/ 6m/ 1.6m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-4 Without Parking)	Road Type: Community Road Typical Road Section: Drawing R3-4 – C-MP-8223 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 1.85m/ 2.25m/ 6m/ 1.6m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-5 With Parking)	Road Type: Community Road Typical Road Section: Drawing R3-5 – C-MP-8223 Rev P4 (Footpath/ Carriageway/ Parking/ Footpath) (Total width m) 1.6m/ 6m/ 2.1m/ 2m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R3 - Road 3 (R3-6 Without Parking)	Road Type: Community Road Typical Road Section: Drawing R3-6 – C-MP-8223 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 1.6m/ 6m/ 4.1m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R4 - Road 4 (R4-1 With Parking)	Road Type: Community Road Typical Road Section: Drawing R4-1 – C-MP-8224 Rev P4 (Footpath/ Carriageway/ Parking/ Footpath) (Total width m) 2m / 2.1m/ 6m/ 1.6m (11.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R4 - Road 4 (R4-2 Without Parking)	Road Type: Community Road Typical Road Section: Drawing R4-2 – C-MP-8224 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 4.1m / 6m/ 1.6m (11.7m) Pavement Design:

	Access Road (Design Guidelines Section 3.12)
R5 - Road 5 (R5-1)	Road Type: Community Road Typical Road Section: Drawing R5-1 – C-MP-8225 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 2m/ 4.0m / 3.7m (9.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
R5 - Road 5 (R5-1)	Road Type: Community Road Typical Road Section: Drawing R5-2 – C-MP-8225 Rev P4 (Footpath/ Carriageway/ Parking/ Footpath) (Total width m) 2m / 4m/ 2.1m/ 1.6m (9.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
L1-0: Laneway 1	Road Type: Community Road Typical Road Section: Drawing L1-0 – C-MP-8225 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 1.5m/ 7.2m (varies) / 2m (10.7m varies) Pavement Design: Access Road (Design Guidelines Section 3.12)
L1-1: Laneway 1	Road Type: Community Road Typical Road Section: Drawing L1-1 – C-MP-8225 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 2m/ 6m/ 2m (10m) Pavement Design: Access Road (Design Guidelines Section 3.12)
L1-2: Laneway 1	Road Type: Community Road Typical Road Section: Drawing L1-2 – C-MP-8225 Rev P4 (Footpath/ Carriageway Footpath) (Total width m) 2m/ 6m (varies) / 2m (10m varies) Pavement Design: Access Road (Design Guidelines Section 3.12)
P1 – Perimeter Road (P1-1 With Parking)	Road Type: Community Road Typical Road Section: Drawing P1-1 – C-MP-8226 Rev P4 (Footpath/ Carriageway/ Parking/ Footpath) (Total width m) 1.6m/ 8m/ 2.1m/ 2m (13.7m) Pavement Design: Access Road (Design Guidelines Section 3.12)
P1 – Perimeter Road	Road Type: Community Road

(P1-2 Without Parking)	<p>Typical Road Section: Drawing P1-2 – C-MP-8226 Rev P4 (Verge/ Carriageway Footpath) (Total width m) 0.45m/ 8m/ 2.1m (10.55m)</p> <p>Pavement Design: Access Road (Design Guidelines Section 3.12)</p>
P1 – Perimeter Road (P1-3 Without Parking)	<p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-3 – C-MP-8227 Rev P4 (Verge/ Carriageway Footpath) (Total width m) 0.45m/ 8m/ 2.1m (10.55m)</p> <p>Pavement Design: Access Road (Design Guidelines Section 3.12)</p>
P1 – Perimeter Road (P1-4 Without Parking)	<p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-4 – C-MP-8227 Rev P4 (Verge/ Carriageway/ Verge) (Total width m) 0.45m/ 8m/ 3.6m (12.05m)</p> <p>Pavement Design: Access Road (Design Guidelines Section 3.12)</p>
P1 – Perimeter Road (P1-5)	<p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-5 – C-MP-8228 Rev P4 (Verge/ Carriageway/ Verge) (Total width m) 2.5m/ 8m/ 2.5m (13m)</p> <p>Pavement Design: Access Road (Design Guidelines Section 3.12)</p>
P1 – Perimeter Road (P1-6)	<p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-6 – C-MP-8228 Rev P4 (Footpath/ Carriageway/ Verge) (Total width m) 3.2m/ 6m/ 3m/ 6m/ 5.6m (23.8m)</p> <p>Pavement Design: Access Road (Design Guidelines Section 3.12)</p>
Greenlink	1.8m/ 3m Footpath (4.8m)

Except where a one-way cross fall is required all roads are to have a two-way cross fall with a crown in the middle of the carriageway.

With respect to private roads, the intersection needs to delineate the public road from the private road using a gutter crossing rather than kerb returns, pavement threshold treatment or similar.

With various staging of the subject development, the road network around each stage is required to be completed.

The R5-Road 05 is restricted for one-way traffic movement only.

b) Street Lighting

The development is required to provide street lighting along Coonara Avenue fronting the site and along the proposed internal roads. With respect to Coonara Avenue specifically, AS1158 Category P2 lighting must be provided which may require additional or upgraded street lights on the opposite/ northern side of Coonara Avenue so as to avoid impacting the existing trees within the footpath verge fronting the site. The detailed design must be subject to a street lighting design brief and Section 138 Roads Act 1993 approval from Council at the detailed design stage.

The installation of street lighting must be completed at the construction of first stage of this master plan.

c) Turning Heads

A cul-de-sac turning head must be provided at the end of all blind/ dead-end roads. The cul-de-sac must have a diameter of minimum 19m measured from the face of kerb.

A turning head is required at the northern end of R2- Road 2.

d) Temporary Turning Heads - Staged Activities

A temporary turning head is required if construction staging of the road network if terminates at the end of any proposed road/s. The cul-de-sac must have a diameter of 19m measured from the edge pavement.

e) Signage and Line Marking Requirements/ Plan

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

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

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

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

f) Footpath Verge Formation

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

The design must take consideration to protect the existing trees within the footpath verge.

g) Concrete Footpath

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided across frontage of the site. The footpath must be provided on the eastern side of E1-Entry driveway and the western side of E2-Entry driveway in order to protect the existing trees between the E1 & E2 driveways.

The construction must be completed with the subject development unless provided under other approvals issued for the site.

h) Disused Layback/ Driveway Removal

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

i) Service Conduits

Service conduits to each of the proposed new lots, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown as part of the engineering drawings.

j) Stormwater Drainage – Public Drainage Extension

The Coonara Avenue Street drainage required under this consent is to be integrated with the internal drainage network through the subject site, along with the development works.

The street drainage extended across the site frontage must incorporate adequate kerb inlet pits, and the pipe extension must be located under the kerb where it can be accommodated without impacting existing trees.

The extension of pipe system must be completed with the construction of stages in accordance with C-MP-8204 P5 of this master plan.

k) Stormwater Drainage – Creek Outlets

Piped stormwater outlets/ connections to a natural watercourse must comply with the requirements of Council, the Natural Resources Access Regulator (even where the receiving waterbody is not a natural watercourse) and Sydney Water, in the case of stormwater management land.

41. Bulk Earth Works and Retaining Structures

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

a) Design and Construction Details

The concept Bulk Earth Works and Retaining Structures drawings C-MP-8290, C-MP-8291, C-MP-8292 and C-MP-8293 form part of the Conceptual Master Plan Stage 01 Civil Works documentation approved under this consent is for development application purposes only and is not to be used for construction.

The detailed design and construction must reflect the concept drawings and the conditions of consent and detailed geotechnical report and design recommendations.

Each phase of the development including design detailing must comply with the recommendations of a detailed Geotechnical Report.

Detailed design and construction drawings should be endorsed by the geotechnical engineer confirming the satisfactory design compliance.

b) Construction Verification Plan

A construction verification plan shall be developed as part of the projects Quality Management Plan (QMP) to confirm that the works are carried out to relevant standards.

The QMP shall include the requirement for the site inspection to be undertaken by a Geotechnical Engineer.

c) Construction Risk Management Plan

A detailed risk management plan shall be prepared to identify hazards, risk level and appropriate controls during the construction process. The plan shall include:

Trigger levels/criteria in relation to monitoring and earthworks control.

Actions and controls to be taken.

Surface and groundwater management and materials management in the event of significant wet weather events.

d) Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to a suitable flood control system and also to be consistent with the recommendations of the detailed civil engineering and Geotechnical engineering reports.

e) Erosion and Sediment Control

Erosion and sedimentation control is to be provided in accordance with Council's "Works Specifications - Subdivisions/Developments" (November 2001). Details are to be shown on the engineering plans and all devices are to be established prior to the commencement of engineering works and maintained for a minimum period of six (6) months after the date of issue of a Subdivision Certificate. Periodic maintenance of the erosion and sedimentation control devices is to be undertaken to ensure their effectiveness.

f) Geotechnical and Structural Certifications

Detailed design and construction documentation required under this consent must be certified by the geotechnical or structural engineer.

42. Construction Management Plan – Major Works (All Stages)

Prior to the issuing of a Subdivision Works Certificate a Construction Management Plan must be submitted to Council's Manager – Subdivision and Development Certification for approval. The Construction Management Plan must specifically address each of the following matters:

- Flood Control Management
- Construction traffic (internal).
- Traffic control (external). This needs to consider road closures and delivery routes with respect to the surrounding road network as separately conditioned.
- Public asset protection.
- Dust management as separately conditioned.
- Sediment and erosion control as separately conditioned.
- Stockpiles.
- Noise; outside of standard work hours for float deliveries will need to have written Transport for NSW approval and Council and affected neighbours must be notified in writing.
- Working hours; including plant warming up and/ or noise above conversation levels before the nominated starting time.
- Tree/ vegetation protection.
- Fauna protection, recovery and relocation (including fauna habitat)

43. Vegetation Management Plan

A Vegetation Management Plan must be prepared strictly in accordance with Council's *Vegetation Management Plan Guideline* (available on Council's website www.thehills.nsw.gov.au). The Plan must be prepared by a suitably qualified bush regenerator or restoration ecologist with a minimum Certificate IV in Conservation Land Management. The Plan must be submitted to Council's Manager – Environment and Health for approval.

The Vegetation Management Plan must include details relating to:

- The rehabilitation and management of native vegetation within the Community Lot/Restricted Development Area.
- The production of an information fact sheet (maximum 1 page double sided) prepared in accordance with Council's *Guidelines for preparing Information Fact Sheet* (available on Council's website).

- The wording and erection of signage at key locations.
- The location and type of fencing required.

44. Fauna Management Plan

A Fauna Management Plan (FMP) is to be prepared and submitted to Council's Manager – Environment & Health for approval. The fauna management plan must contain relevant details for pre-clearance surveys, fauna protection, rescue, relocation and installation of fauna nest boxes and timelines work. The FMP is to include (but not limited to) the following:

- a) Methodology for the identification, numbering and marking of hollow-bearing trees and other habitat features such as active nests or hollow logs proposed to be removed. A system to marking vegetation that does not meet Council's definition of a tree is to be included in the FMP. Details of survey effort and timing must be included.
- b) Targeted surveys for the Powerful Owl roosting and/or nesting within the surrounding forest (including Cumberland State Forest) undertaken by an expert Owl Ecologist in this field. A map showing the location of roosting/nesting owls in relation to clearing/demolition works is to be included. Consultation with Birdlife and other relevant stakeholders is recommended.
- c) Targeted searches and relocation for Dural Land Snail is to be undertaken by an expert Ecologist in this field. The surveys must be undertaken both during the day and at night, particularly during or after rain. Details of survey effort and personnel must be included. Any Dural Land Snails found within the proposed development area are to be relocated to an area of appropriate habitat onsite (preferably E2 Zone area). Relocation is to be undertaken in accordance with the NSW Office of Environment and Heritage's Translocation Operational Policy (May 2019).
- d) Requirements for fauna exclusion fencing where appropriate including a plan to detail locations.
- e) Specific recommendations for the rescue, handling and care of Echidnas that are known to occur within the forest.
- f) A nest box/habitat supplementation strategy for the salvage and relocation of tree hollows/habitat features (e.g. Ring-tailed Possum dreys) or substitution with artificial nest boxes/habitat features where this cannot be achieved. Nest boxes/habitat features are to be installed at the ratio 2:1 for every hollow/habitat feature removed. This is to provide displaced fauna a greater variety of options when seeking new habitat. Nest boxes/habitat features are to be installed prior to vegetation removal following the preclearance survey. Where additional hollows or nests are identified during tree removal an appropriate number of additional nest boxes/habitat features are to be installed. The strategy is to include a map showing the location of installed nest boxes/habitat features and details of nest box/habitat feature type, design and quantity.
- g) Procedures for the rescue and relocation of fauna encountered during the clearing/demolition process, including number and type of personnel required to undertake each task.
- h) Details for the treatment and rehabilitation of any injured fauna including contact information for veterinary surgeries for emergency treatment of injured fauna.
- i) Details for notifying registered wildlife carer organisations following placement of injured fauna into veterinary care.

- j) Protocols for dealing with fauna (e.g. macropods) encountered within constructions zones post vegetation clearing works.
- k) Fauna management induction checklist for the induction of all staff involved in vegetation clearance works.
- l) Details of relevant qualifications and appropriate licences for personnel involved in wildlife rescue and relocation.
- m) The requirement for monthly reports of preclearance fauna surveys and relocation to be provided for the records of The Hills Shire Council.

The pre-clearance surveys, exclusion fencing, fauna relocation and installation of nest boxes (items a-f) are to be undertaken strictly in accordance with the approved plan and implemented in accordance with the approved timelines. Certification by the project Ecologist shall be submitted to Council's Manager – Environment & Health for endorsement two weeks prior to any work commencing.

45. Biodiversity Offsetting Requirements

To offset the loss of biodiversity from the site from the development, the following ecosystem and species credits listed in the tables below must be retired prior to any clearing of vegetation.

The development must purchase and retire credits which may be satisfied by sourcing credits from the Biodiversity Credit market or payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator (The amount payable to discharge an offset obligation will be determined at the time of payment).

Table 1 Ecosystem credit requirement

Impacted plant community type	Number of ecosystem credits	IBRA subregion	Plant community type(s) / species that can be used to offset the impacts from development
PCT 1237 Blue Gum High Forest in the Sydney Basin Bioregion	19	Cumberland, Burragorang, Pittwater, Sydney Cataract, Wollemi and Wyong. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	PCT 1237 (HBT – No)

Table 2 Species Credit Requirement

Species	Number of Species Credits	Offset option	Approved variation species credit species that can be used to offset the impacts from development.	IBRA region
<i>Cercartetus nanus</i> (Eastern Pygmy Possum)	9	Like for like	<i>Cercartetus nanus</i> (Eastern Pygmy Possum)	Any in NSW
<i>Chalinolobus dwyeri</i> / Large eared Pied Bat	11	Like for like	<i>Chalinolobus dwyeri</i> / Large eared Pied Bat	Any in NSW
<i>Myotis macropus</i> / Southern Myotis	9	Like for like	<i>Myotis macropus</i> / Southern Myotis	Any in NSW
<i>Ninox strenua</i> / Powerful Owl	4	Like for like	<i>Ninox strenua</i> / Powerful Owl	Any in NSW
<i>Pommerhelix duralensis</i> / Dural Land Snail	10	Like for like	<i>Pommerhelix duralensis</i> / Dural Land Snail	Any in NSW

A retirement certificate from the NSW Department of Planning, Industry & Environment and/or Statement confirming payment into the Biodiversity Conservation Trust from the Biodiversity Conservation Trust to demonstrate compliance with this condition is to be provided to The Hills Shire Council's Manager – Environment and Health prior to the removal of any vegetation.

46. Erosion & Sediment Control Plan

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

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

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

47. Section 7.12 Contribution

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$347,175.40** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

You are advised that the maximum percentage of the levy for development under section 7.12 of the Act having a proposed construction cost is within the range specified in the table below;

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 %
More than \$200,000	1%

As per Council's exhibited Fees and Charges effective from 1 July 2022, **Council will no longer accept payments by cash or by cheque.** Payments will be accepted via Debit or Credit Card or Direct Debit from a bank account.

48. Construction Pedestrian Traffic Management Plan (CPTMP)

A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Subdivision Works Certificate.

PRIOR TO WORK COMMENCING ON THE SITE

49. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. In order of precedence the location of fencing shall be: a) In accordance with the 'Detail Tree Retention & Tree Protection Plans' prepared by Footprint Green Pty Ltd, dated 12 September 2022 (Rev. 12 – Dwg. No. atrpd 3.00); or b) As per directed by a AQF Level 5 (or greater) Project Arborist; or c) In accordance with the Tree Protection Zone (TPZ) as calculated under AS4970 (2009) Protection of trees on development sites. Note: Any variations to the Standards shall be documented and certified by the Project Arborist.

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

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

Where the provision of the tree protection fencing is in impractical due to its proximity to the proposed development footprint, trunk protection shall be erected around nominated trees to avoid accidental damage. The trunk protection shall consist of a layer of carpet underfelt (or similar) wrapped around the trunk, followed by 1.8m metre lengths of softwood timbers (90 x 45mm in section) aligned vertically and spaced evenly around the trunk at 150mm centres (i.e. with a 50mm gap) and secured together with galvanised hoop strap.

All areas within the root protection zone shall be mulched with composted leaf mulch to a depth of no less than 100mm as outlined in the mulching condition of this Consent.

Documentation relating to the implementation of the subject tree protection measures (including certification of supervision) by a Project Arborist shall be provided to Council as outlined in this Consent and/or upon request by the Consent Authority.

50. Tree Protection Signage

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with Australian Standard – AS1319).

Signs identifying the TPZ shall be placed around the edge of the TPZ and be visible from within the development site.

Access to this area can only be authorised by the Project Arborist or Site Manager. All activities within this area shall be documented by the Project Arborist.

51. Mulching within Tree Protection Zone

Prior to any works commencing on site all areas within the Tree Protection Zone (TPZ) are to be mulched with composted leaf mulch to a depth of 100mm. The material of the mulch shall consist of approximately 75% leaf litter and 25% fine woodchip as certified to Australian Standard (AS 4454-2012) Composts, Soil Conditioner and Mulches.

Mulch shall be spread to cover the entire TPZ of the trees to be retained or to the discretion of an AQF Level 5 Project Arborist and shall be maintained for the duration of the works.

52. Trenching and Excavation within Tree Protection Zone

Any trenching and excavation for installation of drainage, sewerage, irrigation or any other services, and/or for construction of driveways and roads, and/or any ancillary structures shall not occur within the Tree Protection Zone (TPZ) of any trees identified for retention unless under supervision and certification of a suitably qualified AQF Level 5 (or greater) Project Arborist.

Certification of supervision by a Project Arborist must be provided to Council within 14 days of completion of trenching works and/or upon request by the Consent Authority.

The installation of the stormwater drainage system and/or sewerage drainage system, the construction of driveways and roads, and/or the construction of any ancillary structures within the TPZ of trees on site and/or on any adjacent sites identified to be retained shall be carried out by adopting sensitive construction methods under the supervision of the Project Arborist.

The installation of underground services shall be undertaken by adopting non-destructive excavation techniques such as horizontal directional drilling (trust boring) and hydro & vacuum excavation. Where the method of trust boring is selected the directional drilling bore shall be at least 600mm deep and the pilot bore pits for the machinery should be out of the TPZ of any trees to be retained. Note, prior to the adoption of trust boring practice the Project Arborist shall adequately assess the species and dimension of the tree/s to be preserved, the root structure and associated level of tolerance to soil disturbances, topography of the site and condition of the soil. Accordingly, where necessary the minimum depth (600mm) of the directional drilling bore shall be increased.

Demolition, construction, or any form of earth works within the Tree Protection Zone of trees identified for retention shall be carried out so as to avoid damage to the tree roots. Manual excavation shall be carried out under the supervision of the Project Arborist. Manual excavation may include the use of pneumatic and hydraulic tools. Note, mattocks and axes shall not be used.

Where roots within the Tree Protection Zone are exposed by excavation, temporary root protection should be installed to prevent them drying out. This may include jute mesh or hessian sheeting as multiple layers over exposed roots and excavated soil profile, extending to the full depth of the root zone. Root protection sheeting should be pegged in place and kept moist during the period that the root zone is exposed.

Root pruning should be avoided, however where necessary, all cuts shall be clean cuts made with sharp tools such as secateurs, pruners, handsaws, chainsaws or specialised root pruning equipment. Where possible, the roots to be pruned should be located and exposed using minimally destructive techniques such as hand-digging, compressed air or water-jetting, or non-destructive techniques. No roots larger than 40mm in diameter shall be cut without Project Arborist advice and supervision. All root pruning must be done in accordance with Section 9 of Australia Standard 4373-2007 Pruning of Amenity Trees.

53. Completion of Flood Control System (All Stages)

Each stage of the construction activity or earthworks must be supported by the required stormwater management infrastructure detailed on the plans and reports prepared by Northrop and referred to in Condition 1 to ensure there are no nuisance stormwater or flooding impacts downstream.

Documentation required must be provided to the Principal Certifier.

54. Property Condition Report – Public Assets

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

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

55. Dust Management Plan – Major Subdivision Works

A site specific dust management plan must be developed to proactively address the issue of dust during construction. This plan must be submitted to Council's Manager – Subdivision and Development Certification for written approval before works commence. The plan must address/ include the following matters, where relevant:

- Water carts must be used to regularly wet down exposed areas. The number of water carts required on site (at all times, and with additional carts available on demand) must be nominated and justified.
- Additives that can be mixed with the water to aid dust suppression.
- A dust cloth must be installed along the perimeter of the site.
- Where required, a sprinkler/ misting system along the perimeter of the site.
- Dust control at source, such as machine mounted sprinklers, ground mounted water cannons where material is being excavated, loaded and placed and measures to ensure loads are covered.
- Speed control on haul routes.
- Stockpile management such as location, orientation, volume and height to minimise impacts on neighbouring properties. Covering of stockpiles with tarpaulins or vegetation should also be considered where warranted by the duration of the stockpile. Stockpiles expected to be in place for longer than 14 days are considered non-temporary.
- Interim seeding and/ or hydro-mulching of exposed areas as work progresses.
- Final topsoil placement and planting or seeding exposed areas as soon as possible.
- Jute matting of the core riparian zone within any creeks/ riparian corridors.
- Weather forecast systems to predict adverse weather conditions and allow for early action for dust management and to avoid dust generating activities when weather conditions are unfavourable.
- Education of all site personnel on reducing dust.

- Community engagement plan and complaints management system demonstrating how dust complaints will be received, recorded, resolved and responded to.
- How the dust management controls will be monitored, reviewed and revised on a regular basis to ensure their ongoing effectiveness.

56. Traffic Control Plan

A Traffic Control Plan is required to be prepared and approved. The person preparing and approving the plan must have the relevant accreditation to do so. A copy of the approved plan must be submitted to Council before being implemented. Where amendments to the plan are made, they must be submitted to Council before being implemented.

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

57. Erection of Signage – Supervision of Engineering Works

In accordance with the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- The name, address and telephone number of the Principal Certifier (Council);
- The name and telephone number (including after hours) of the person responsible for carrying out the works;
- That unauthorised entry to the work site is prohibited.

This signage must be maintained while the subdivision work is being carried out and must be removed upon completion.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

58. Contractors Details

The contractor carrying out the subdivision works must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

59. Erosion and Sediment Control/ Soil and Water Management

The approved ESCP or SWMP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

60. Pavement Design

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

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

61. Management of Building Sites

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

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number.

62. Details and Signage - Principal Contractor and Principal Certifier

Details

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

Before work commences, details of the Principal Certifier, in accordance with Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, is to be lodged on the NSW Planning portal.

Signage

A sign is to be erected in accordance with Section 70 of the Environmental Planning and Assessment Regulation 2021. The sign is to be erected in a prominent position on the site before the commencement of the work, and show –

- a) the name, address and telephone number of the Principal Certifier,
- b) the name and a telephone number on which the principal contractor/person responsible for the work may be contacted outside working hours.

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

63. Project Ecologist

Prior to any works commencing, a Project Ecologist is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health:

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

If the Project Ecologist is replaced, The Hills Shire Council's Manager – Environment & Health is to be notified in writing of the reason for the change and the details of the new Project Ecologist within 7 days.

64. Engagement of a Project Arborist

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

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

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

65. Erosion and Sedimentation Controls

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

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

66. Site Water Management Plan

A Site Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction" (Blue Book)* produced by the NSW

Department of Housing. The plan is to be kept on site at all times and made available upon request.

67. Erosion & Sediment Control Plan Kept on Site

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

68. Protection of Tree Canopy and Ground Protection within Tree Protection Zone

Care shall be taken when operating cranes, drilling rigs and similar equipment near trees to avoid damage to tree canopies (foliage and branches). Under no circumstances shall branches be torn-off by construction equipment. Where there is potential conflict between tree canopy and construction activities, the advice of the Project Arborist must be sought. Where scaffolding is required, it should be erected outside the TPZ. Where it is essential for scaffolding to be erected within the TPZ, branch removal shall be minimised or avoided. This can be achieved by designing to avoid branches or tying back branches. The ground below the scaffolding shall be protected by boarding such as scaffold board or plywood sheeting. Boarding shall be placed over a layer of mulch and impervious sheeting to prevent soil contamination. The boarding shall be left in place until the scaffolding is removed.

In the event of any tree becoming damaged for any reason during the construction period the Project Arborist shall be engaged to inspect and provide advice on any remedial action to minimise any adverse impact. Such remedial action shall be implemented as soon as practicable and certified by the Project Arborist.

The removal of a small portion of the crown (foliage and branches) is generally tolerable provided that the extent of pruning required is within 10% of the total foliage volume of the tree and the removal of branches does not create large wounds or disfigure the natural form and habit of the tree. All pruning cuts must be undertaken in accordance with the Australian Standard of Pruning of Amenity Tree (AS 4373-2007).

If any construction access or works is required within the TPZ of any tree/s identified for retention ground protection measures shall be required.

Ground protection shall include temporary access for machinery, vehicular and foot traffic within the TPZ of trees on the site and/or on adjoining Council site/s.

The measures may include a permeable membrane such as geo-textile fabric beneath a layer of mulch or crushed rock below rumble boards as per Clause 4.5.3 Ground protection AS4970-2009 Protection of trees on development sites.

Any site activity within the Tree Protection Zone and Structural Root Zone of the tree (s) to be preserved must have elevated protection installed clear of the ground to avoid compaction and damage to roots. Protection may comprise of timber planks or metal decking supported on scaffolding or the like.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of no less than 100mm as outlined in the mulching condition of this Consent.

Documentation relating to the implementation of the subject tree protection measures (including certification of supervision) by a Project Arborist shall be provided to Council as outlined in this Consent and/or upon request by the Consent Authority.

69. Tree Irrigation / Watering Maintenance

The Project Arborist shall regularly monitor the levels of soil moisture within the TPZ of any trees identified to be retained.

Temporary irrigation system or manual watering may be required within the TPZ of the trees to the discretion of the Project Arborist.

Where practicable an above ground irrigation system shall be installed and maintained by a competent individual under direction and supervision of the Project Arborist.

70. Demolition Works and Asbestos Management

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

71. Approved Temporary Closet

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

72. Stabilised Access Point

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

73. Sydney Water Building Plan Approval

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

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

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

DURING CONSTRUCTION

74. Hours of Work

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

Monday to Saturday - 7.00am to 5.00pm;

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

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

75. Standard of Works

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

76. Critical Stage Inspections – Civil Works (All Stages)

The civil works relate to separate subdivision applications must be inspected by Council in accordance with the schedule included in Council's Works Specification Subdivisions/ Developments. A minimum of 24 hour's notice is required for inspections. No works are to commence until the first inspection has been carried out.

77. Documentation – Civil works (All Stages)

A copy of the following certified documents must be kept on site and made available upon request:

- a) Design and Construction Plans (Construction Certificate Documentation)
- b) Construction Management Plans
- c) Construction Verification Plan
- d) Construction Risk Management Plan
- e) Sediment and Erosion Control Plan.
- f) Details of Flood Control Systems provided (Interim/Permanent)
- g) Stormwater Management Documentation & Certifications

78. Site Inspection – Bulk Earth Works (All Stages)

All site works must be carried out under the supervision of suitably qualified geotechnical engineer confirming the works are carried out in accordance with the requirements of Geotechnical Report issued with the Construction Certificate.

79. Stockpiles

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

80. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

81. Tree/Vegetation Removal & Fauna Protection

All tree and vegetation clearance works are to be carried out strictly in accordance with the approved Fauna Management Plan required by this consent unless otherwise approved by Council's Manager – Environment and Health.

The Project Ecologist is to be onsite during all tree, vegetation and habitat removal, to rescue and re-locate any displaced fauna that may be disturbed during this activity. Trees shall be lopped in such a way that the risk of injury or mortality to fauna is minimised, such as top-down lopping, with lopped sections gently lowered to the ground, or by lowering whole trees to the ground with the "grab" attachment of a machine.

Any injured fauna is to be placed into the hands of a wildlife carer or taken to a veterinary clinic for treatment (please note only appropriately vaccinated personnel are to handle bats).

Tree hollows are to be salvaged from trees removed and placed within the bushland areas of the allotment/s. This is to be done by a qualified and experienced arborist, under the direction of the Project Ecologist.

82. Project Arborist

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites.

All tree work on site including removal shall be also supervised by the Project Arborist.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to Council within 14 days of completion of the works and/or upon request by the Consent Authority.

83. Rock Breaking Noise

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.

84. Construction Noise

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

85. Contamination

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works may continue in accordance with the Contaminated Land Management Act 1997 under the guidance of a suitably qualified environmental consultant, however, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The report is to be submitted to Council's Manager – Environment and Health.

86. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

87. Location of Works

The total extent of the development shall be contained wholly within the confines of the allotment boundaries including the footings and any associated drainage lines. A survey report from a registered land surveyor may be required for confirmation of the same.

88. European Sites or Relics

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

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

Section 6.6 of the Environmental Planning and Assessment Act 1979 requires critical stage inspections to be carried out for building work as prescribed by Section 61 of the Environmental Planning and Assessment (Development Certification and fire Safety) Regulation 2021. Prior to allowing building works to commence the Principal Certifier must give notice of these inspections pursuant to Section 58 of the Environmental Planning and Assessment (Development Certification and fire Safety) Regulation 2021.

An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspection or other inspection required by the

Principal Certifier is not carried out. Inspections can only be carried out by the Principal Certifier unless agreed to by the Principal Certifier beforehand and subject to that person being a registered certifier.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

90. Project Arborist Final Certification Prior to Issue of any Occupation Certificate

Prior to the issue of an Occupation Certificate the Project Arborist shall provide final documentary evidence and certification together with photographs of all points of supervision including but not limited to the following hold points:

- a) Prior to installation of tree protection measures;
- b) Prior to and during the tree removal work being carried out;
- c) Following installation of tree protection measures, including ground protection, canopy protection, irrigation maintenance within the TPZ and prior to any works commencing on site (including demolition, earth work and construction);
- d) During all works within the TPZ of any trees to be retained on site and on any adjacent sites;
- e) Monthly inspections by site arborist from commencement of works until completion of works; and
- f) At completion of all works including landscaping (i.e. retaining walls, installation of lighting and irrigation, topdressing, planting, paving, etc.).

Any changes in tree health, condition of growing environment or potential damage to trees during construction shall be documented and discussed, and any ongoing tree management recommendations including any taken remedial action shall be provided. The above certification and documentation shall be submitted to the satisfaction of Council's Manager – Environment and Health prior to the issue of an Occupation Certificate.

Note, documentation relating to the implementation of any required tree protection measures including certification of supervision by the Project Arborist of the tree removal work and any form of work undertaken within the TPZ of trees identified to be retained shall be provided to Council during the stages of the development as described under the relevant conditions of Consent and/or upon request by the Consent Authority.

91. Property Condition Report – Public Assets

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

92. Flood Control and Stormwater Management System/s Certification

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

- Works as executed plans prepared on a copy of the approved plans;
- For Onsite Stormwater Detention (OSD) systems, a certificate of hydraulic compliance (Form B.11) from a hydraulic engineer verifying that the constructed OSD system will function hydraulically;

- For OSD systems, a certificate of structural adequacy from a structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime;
- Records of inspections; and
- An approved operations and maintenance plan.

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

93. Certifications Bulk Earth Works & Retaining Structures (All Stages)

Certifications from Geotechnical and Structural Engineers confirming the works have been completed in accordance with the geotechnical investigation reports and certifications issued for the construction.

94. Civil Works – Submission Requirements (All Stages)

Once the Civil works covered under this master plan development, are complete the following documentation (where relevant/ required) must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments and submitted to Council's Construction Engineer for written approval:

- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- Flood Control System/s
- Pavement Density Results
- Street Name/ Regulatory Signage Plan
- Pavement Certification
- Public Asset Creation Summary
- Concrete Core Test Results
- Site Fill Results
- Structural Certification

The works as executed plan must be prepared by a civil engineer or registered surveyor. A copy of the approved detailed design must underlay the works as executed plan so clearly show any differences between the design and constructed works. The notation/ terminology used must be clear and consistent too. For bonded/ outstanding work the works as executed plan must reflect the actual work completed. Depending on the nature and scope of the bonded/ outstanding work a further works as executed plan may be required later, when that work is completed.

All piped stormwater drainage systems and ancillary structures which will become public assets must be inspected by CCTV. A copy of the actual recording must be submitted electronically for checking.

A template public asset creation summary is available on Council's website and must be used.

95. Performance/ Maintenance Security Bond

A performance/ maintenance bond of 5% of the total cost of the engineering works is required to be submitted to Council. The bond will be held for a minimum defect liability period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

96. Confirmation of Pipe Locations

A letter from a registered surveyor must be provided with the works as executed plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

97. Final Plan and Section 88B Instrument (Separate Approvals)

The final plan and Section 88B Instrument relating to separate subdivision approvals must be reflective to the civil works master plan, and provide for the following. Council's standard recitals must be used.

a) Easement – Public Stormwater Drainage

Drainage easements must be created over all stormwater drainage pipelines and structures which convey public stormwater runoff, in accordance with the requirements of Council. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

b) Easement – Private Stormwater Drainage

Inter-allotment drainage easements must be created to ensure each and every lot is provided with a legal point of discharge. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

c) Restriction – Rainwater Tanks

All residential lots must be burdened with a restriction using the "rainwater tanks" terms included in the standard recitals.

d) Restriction/ Covenant – Onsite Stormwater Detention

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

This also relates to interim flood control system required under this consent.

e) Restriction/ Covenant – Water Sensitive Urban Design

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

f) Restriction / Covenant - Keeping of Domestic Animals

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat or bushland, on the site or on surrounding properties or reserves.

98. Final Plan and 88B Instrument

The final plan and Section 88B Instrument must provide for the following:

Restriction/Positive Covenant – Vegetation Management Plan

The community land (PT.20) covered by the Vegetation Management Plan must be burdened with a restriction and a positive covenant using the "Vegetation Management Plan/Restricted Development Area" terms included in the standard recitals.

Council's standard recitals are available on Council's website (www.thehills.nsw.gov.au) and must be used.

99. Vegetation Management Plan (VMP) Implementation

All performance criteria for the establishment phase of the VMP (first 5 years) must be complied with prior to the issue of a Subdivision Certificate, Occupation Certificate or Certificate of Practical Completion (whichever comes first).

A statement certifying such compliance must be provided by the author of the VMP or an equally qualified and experienced person.

Consideration may be given to early release of a Subdivision Certificate, Occupation Certificate or Certificate of Practical Completion in lieu of this by agreement with Council's Manager – Subdivision and Development Certification, based on alternative arrangements to secure the completion of works.

Such agreement must comply with s6.10(2) or s6.15(2) of the EP&A Act and will be conditional upon there being no circumstances prohibiting the issuing of a Subdivision Certificate, Occupation Certificate or Certificate of Practical Completion contained within s6.10(1) or s6.15(1) of the EP&A Act at the time of any such agreement.

This condition applies to the subdivision work included as part of this development consent as well as any subsequent development consents relating to the future development of the site subject to this masterplan.

100. Biodiversity Compliance

Certification that the following measures have been undertaken shall be submitted to The Hills Shire Council's Manager – Environment & Health:

- a) **Fauna Nest Boxes** – Location plan and photographs of installed nest boxes.
- b) **Tree Removal & Fauna Protection** – Details prepared by the project ecologist demonstrating compliance with the Fauna Management Plan and Tree/Vegetation Removal and Fauna Protection condition/s of this consent.

THE USE OF THE SITE

101. Management of Area Subject to Vegetation Management Plan (VMP)

The areas that are subject to the Vegetation Management Plan (VMP) shall be managed in accordance with the approved VMP in perpetuity by the property owner/s.

102. Keeping of Domestic Animals

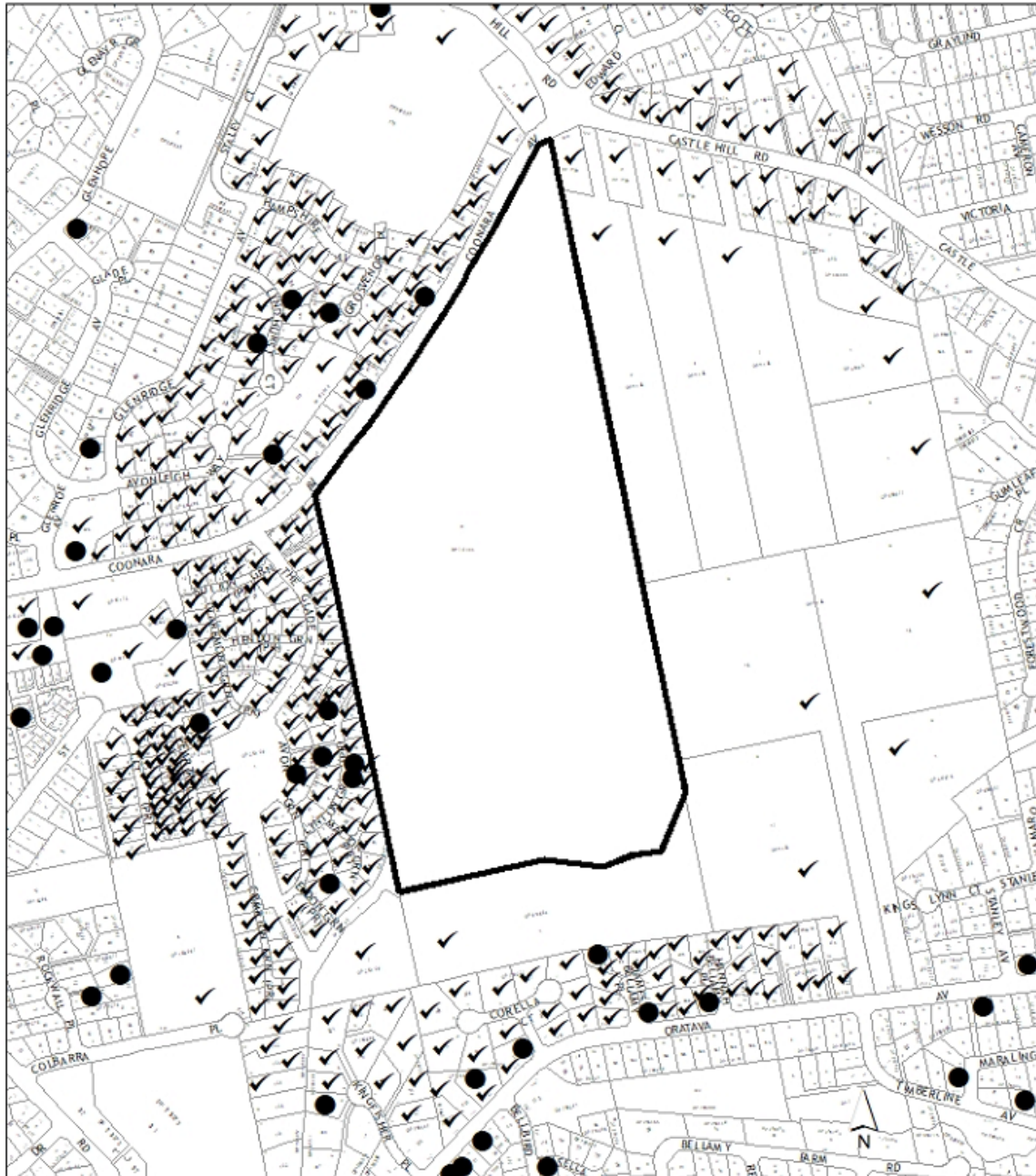
Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

ATTACHMENTS

- 1. Locality Plan
- 2. Aerial Photography
- 3. Zoning Plan
- 4. Building Height Map
- 5. Site Plan/Landscape Concept Plan
- 6. Building Envelope Plan
- 7. Civil Plans and Superlot arrangement
- 8. Subdivision Plan (under DA 1414/2022/ZB)
- 9. Clause 4.6 Written Submissions
- 10. Legal Advice
- 11. Design Excellence Panel Meeting Report - 10/03/2021
- 12. Design Excellence Panel Meeting Report – 08/12/2021
- 13. RFS Comments
- 14. The Department of Planning and Environment - Water
- 15. TFNSW

ATTACHMENT 1 – LOCALITY PLAN



SUBJECT SITE



PROPERTIES NOTIFIED



SUBMISSIONS RECEIVED

**NOTE: THE REMAINDER OF THE
SUBMISSIONS OUTSIDE THE
SCOPE OF THIS MAP**

THE HILLS
Sydney's Garden Shire


THE HILLS SHIRE COUNCIL

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

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ATTACHMENT 2 – AERIAL MAP



 SUBJECT SITE

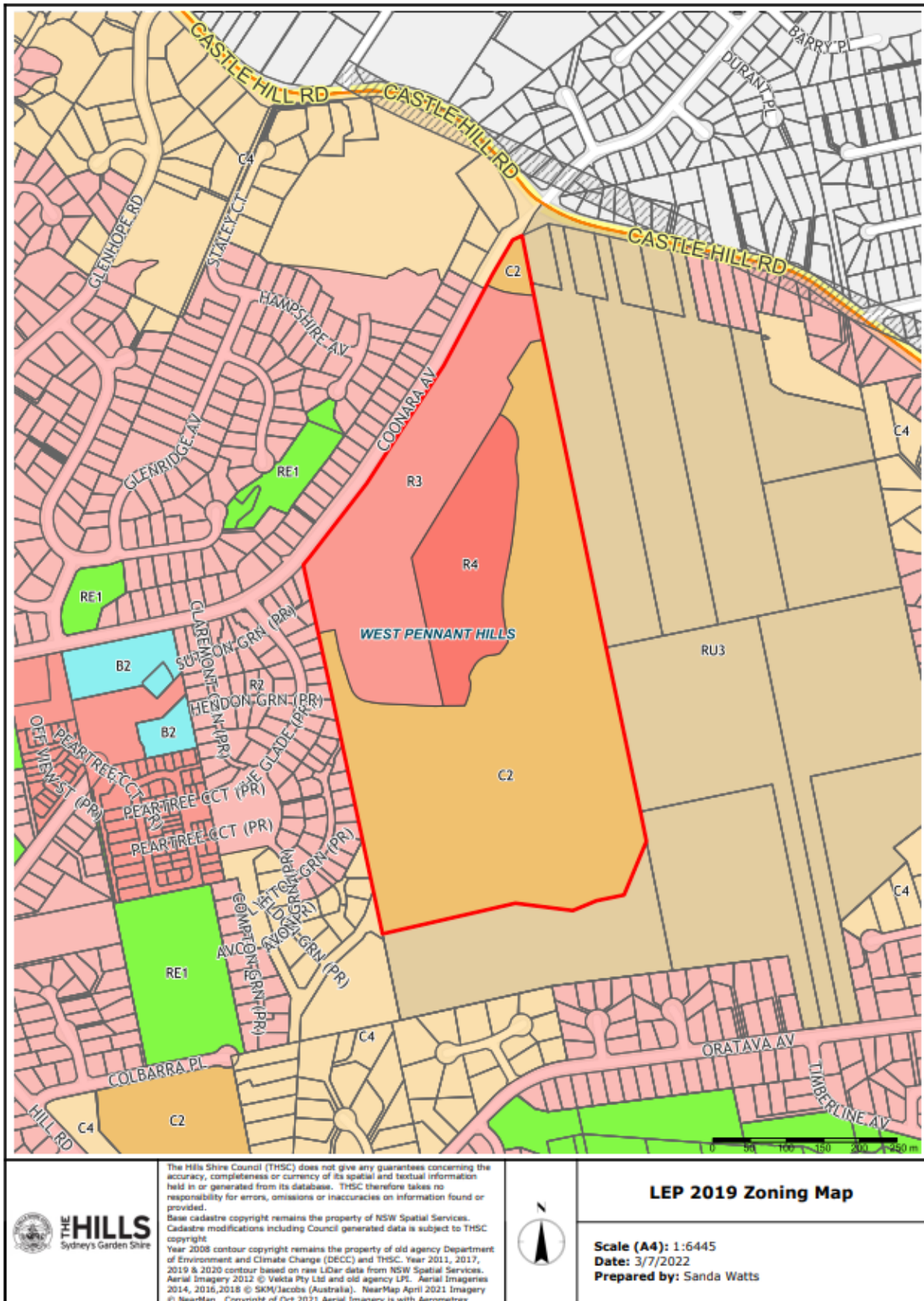
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

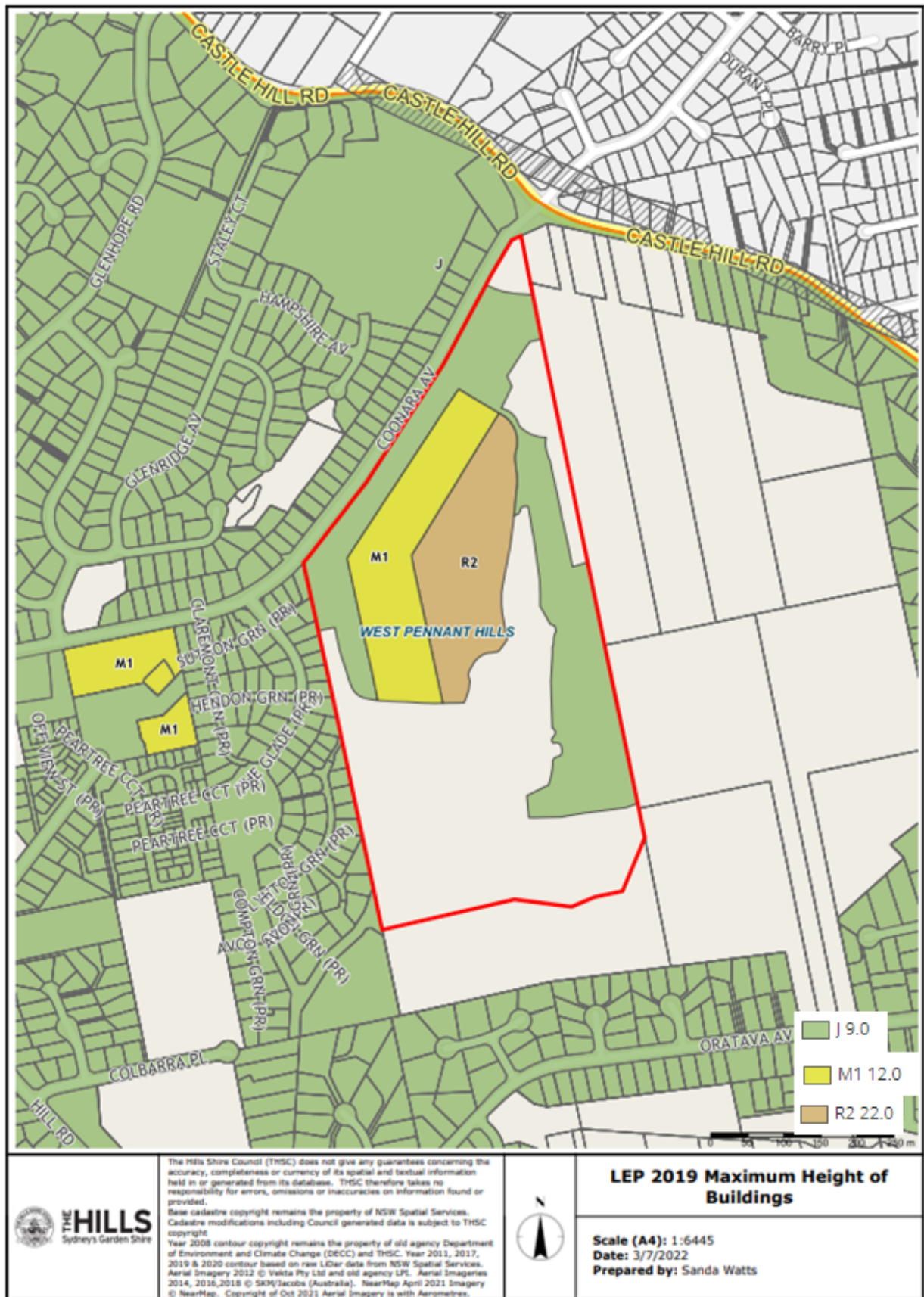
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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ATTACHMENT 3 – ZONING MAP



ATTACHMENT 4 – BUILDING HEIGHT MAP



ATTACHMENT 5 – SITE PLAN / CONCEPT LANDSCAPE PLAN



[illegible]

SCHEDULE OF LAND TO BE ADDED
THE PARTS OF THE PRECINCT
DEVELOPMENT LOTS SHOWN HATCHED
HAVE BEEN ADDED TO THE PRECINCT
SCHEME FROM COMMUNITY
DEVELOPMENT LOT 16

PLAN FORM 5.1A/21 MANAGEMENT STATEMENT

PRECINCT DEVELOPMENT CONTRACT - CONCEPT PLANS
ADDING ADDITIONAL LAND TO THE PRECINCT SCHEME

PRECINCT SUBDIVISION PLANS SHOWING
LAND BEING ADDED TO THE PRECINCT SCHEME
PLAN 2 - ADDS COMMUNITY DEVELOPMENT LOT 16
TO THE PRECINCT SCHEME

TOTAL ADDITIONAL AREA
1404 m²

- [Hatched Box] DENOTES LOT 16 ADDED
- [Dotted Box] DENOTES CURRENT PRECINCT DEVELOPMENT LOTS WITHIN THE PRECINCT SCHEME

PLAN NOT FOR NSW
LRS INVESTIGATION

PRELIMINARY PLAN ONLY LOT
DIMENSIONS AND AREAS SUBJECT
TO SURVEY & REGISTRATION OF
THE FINAL PLAN AT NSW LRS

PROPOSED EASEMENT LOCATIONS ARE INDICATIVE
ONLY & SUBJECT TO DEVELOPMENT CONSENT,
DETAILED DESIGN, CONSTRUCTION SURVEYS &
REGISTRATION OF THE FINAL PLAN AT NSW LRS

PLAN OF
SUBDIVISION OF LOT 61 D.P. 737386

D.P. DRAFT
REVISION NO DATE 14/02/02

ATTACHMENT 9 – CLAUSE 4.6 WRITTEN SUBMISSION

55 Coonara Avenue, West Pennant Hills

Clause 4.6 Written Request– Height of Buildings (Detailed DA - Apartments Precinct)

On behalf of
Mirvac
October 2021



Project Director

Georgia Sedgmen



Dated: 15 October 2021

Project Planner

Hugh Halliwell

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

Contact

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1 Executive Summary

This Clause 4.6 Written Request has been prepared on behalf of Mirvac in support of a Development Application (DA) for the Apartments Precinct at 55 Coonara Avenue, West Pennant Hills. The DA proposes the development of 252 dwellings across four buildings within the portion of the site zoned R4, with a height of buildings standard of 22m as depicted in **Figure 1**.

The subject site has been earmarked for redevelopment since 2020 when it was included in the Planning Assessment Acceleration scheme and successfully rezoned.

This document has been prepared in accordance with the provisions under Clause 4.6 of The Hills Local Environmental Plan 2019 (THLEP 2019).

The height contraventions proposed primarily result from:

- The challenges of working with the existing site levels which were highly modified in the 1980's to enable the development of the former IBM business park.
- Working with fixed points and constraints throughout the overall site such as maintaining existing site entry/exit points noting the significant contravention in RL's across the site.
- Maintaining the existing perimeter road to minimise impact on tree protection zones and to also establish a bushfire Asset Protection Zone (APZ).
- Introducing a new road and footpath network at appropriate gradients to align with the existing perimeter ring road
- Meeting new stormwater management and flooding requirements and introducing new services infrastructure
- Maximising the amount of landscaped and green spaces and seeking to ensure there is as much accessible site access as possible.
- Designing a new earthworks and civil design solution for the site to enable medium and high-density residential uses whilst enhancing environmental conservation zones on a site that has steep, undulating topography.
- The detailed design excellence process enhanced the Concept Plan by reducing massing from the rezoning concept intent, which proposed RFB's throughout the entire R4 High Density Zone including apartment buildings adjoining the forest edge. The enhanced Concept Plan design results in the proposed reduction of RFB's from nine (9) down to four (4), by replacing a significant area of R4 High Density zoned land with lower scale two and three storey housing. A material amount of development yield has been forgone to seek to deliver a superior design outcome, with some of the foregone development yield, incorporated into the now reduced proposal of four (4) RFB's. The overall enhanced Concept Plan creates a superior urban design outcome with greater separation, buffer zones and transition to the forest areas; and
- Designing the RFB's within the Apartments Precinct, in particular noting that the existing topography as the baseline in the Apartments precinct are the levels that are set by the highly modified and bespoke levels to suit the former IBM business park (current improvements), including excavation for the construction of basements, which significantly altered the existing ground level and are now considered "Existing Ground Levels" for the purpose of this DA.

On 10 March 2021 at the request of Council officers, an initial design concept for the site was presented before the Design Excellence Panel (DEP). While there exists no legislative requirement for the development to be presented before the DEP, Mirvac agreed to do so.

The DEP provided feedback on the initial design concept, including building heights. As a result, the overall height of the Apartments Precinct has been significantly reduced by approximately 700mm-900mm across the four buildings. This was achieved by reducing yield, refining the design, reviewing building and basement levels and creating an overall more appropriate design to meet the consistency of the objectives of the height standard.

A detailed response to the DEP has been provided by Mirvac under separate cover, with material changes, enhancements and an overall more superior outcome evident to that initially presented.

It is noted that a Concept DA that includes a detailed first stage comprising civil works (Concept DA) has been concurrently lodged with the Apartments Precinct DA. Aside from setting the overall site wide envelopes and yield, the Concept DA also includes a civil works component of the masterplan, to enable bulk earthworks and proposed new bulk site civil levels, with detailed civil works to be included in each detailed stage DA e.g., this Apartments Precinct.

This written request considers the existing ground level, in accordance with the definition in THLEP 2019. It also identifies the proposed ground level, subject of the Concept DA which are proposed to become the new existing ground levels at the time the apartment buildings within the Apartments Precinct are complete. In this document, we refer to the ground level subject to approval with the Concept DA as the "finished ground levels".

The proposed height of buildings at the maximum point of each building, comprising the plant and equipment areas, compared to the 22m height standard, are as follows:

Proposed Building Height Contraventions				
Building	Proposed height (exc. plant and parapets)	Proposed height (inc. plant and parapets)	Extent of contravention (m)	Extent of contravention (%)
Building A	24.5m	26.4m	4.4m	20%
Building B	25m	27.1m	5.1m	23.18%
Building C	24.3	24.9m	2.9m	13.18%
Building D	26m	26.6m	4.6m	20.9%

Notwithstanding the proposed contraventions above, the objectives of the height standard set out at clause 4.3 of THLEP 2019 and the objectives of the R4 zone are satisfied by providing a well-considered, design excellence-built form response, commensurate with the character anticipated by a high-density residential community, while providing for an appropriate housing typology within a high-

density setting and importantly no environmental, view loss or overshadowing impacts.

The Apartments Precinct has been designed as a contextual response to both the surrounding neighbourhood and the interfaces it has with immediate adjoining properties. The proposal will transform the site of an obsolete business park into a family-friendly residential community that prioritises, protects, respects, and celebrates the unique bushland character of the site.

The residential flat buildings have been designed to ensure that any adverse visual impact associated with the proposed built form above the height standard, has been minimised. The contraventions are negligible in the context and supported by leading NSW view specialists Richard Lamb and Associates (RLA) as being imperceptible. The apartments precinct has retained the significant vegetation setting of the site, where practicable, in addition to providing new landscaping to assist with screening the built form, as viewed from within the site, the public domain and adjoining properties. The reallocation of massing away from the forest to the east provides separation, while visually reducing the built form.

Notwithstanding the contraventions above, the proposed apartments are considered to satisfy the objectives of clause 4.3 and 4.6 of THLEP 2019.

2 Height of Buildings

2.1 Introduction

This Clause 4.6 Written Request has been prepared on behalf of Mirvac (the applicant) to support a development application (DA) for the Apartments Precinct (Subject Site) submitted to The Hills Shire Council (Council) relating to the land at 55 Coonara Avenue, West Pennant Hills (Overall Site).

The Apartments Precinct DA seeks consent for the following:

- 252 apartment dwellings contained in four (4) residential flat buildings.
- On-site resident amenities;
- Car parking spaces for 465 vehicles (413 resident, 51 visitors, 2 service vehicles, 2 car wash bays), 10 motorcycles and 16 dedicated bicycle spaces located in basement carpark and on-street;
- On-site loading dock and waste facilities located in the basement;
- Landscaping of streetscapes, publicly accessible and communal open space including retaining walls, irrigation, hard and softscape works, paths and handrails, lighting, furniture, and planting;
- A north-south linear park as well as a publicly accessible west-east through-site link with pedestrian connections;
- Removal of temporary road pavements and final road embellishment of feature paving areas including parking bays, Perimeter Road 1 and green link to the north between Housing Central Precinct and Apartments Precinct;
- Installation of safety fencing and signage, construction of temporary works, installation of new and modification of existing stormwater erosion and sedimentation protection measures;
- Minor earthworks and shaping of publicly accessible open spaces within defined boundary; and
- Detailed excavation, piling, basement retention and civil works.

This written request has been prepared to support a proposed contravention of the height of buildings standard under clause 4.3 of THLEP 2019. This request is being made pursuant to clause 4.6 of the THLEP 2019.

This Clause 4.6 Written Request has been prepared having regard to the Land and Environment Court judgements in the matters of:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48],
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248,
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118,
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61,
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130,
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

This Clause 4.6 Written Request is supported by a Visual Impact Assessment (VIA), prepared by leading NSW view specialist Richard Lamb & Associates (RLA), dated 20 August 2021. The VIA can be found under **Appendix 1**. This Clause 4.6 Written

Request also relies on photomontages, prepared by Arterra Interactive, dated 10 August 2021. These photomontages can be found under **Appendix 2**.

The Apartments Precinct subject to this Clause 4.6 Written Request is highlighted in **Figure 3** below.

The proposed apartment buildings form part of a Concept Plan that will also incorporate two and three storey houses on an overall site that slopes down to where the apartment buildings are proposed, on a lower portion of the overall site. Additionally, the overall site benefits from heavily vegetated areas including an 11m buffer zone to Coonara Avenue which is to be retained, and extensive mature forest and tree areas. The combination of the above elements minimises the apartment buildings visual impact, as viewed from Coonara Avenue and existing neighbouring residential areas.

Under the enhanced Concept Plan design excellence proposal, the interface with the forest is treated sensitively with two- and three-storey houses located adjoining the forest edge despite the THLEP 2019 height standards allowing significantly greater height up to 22 metres. This enables a better urban design outcome and more sympathetic transition to the forest areas. The façade design of each apartment building is heavily articulated, recessive and broken down in addition to including a range of proposed materials and colours inspired by the natural surrounds serving to sympathetically integrate the new buildings in their R4 High Density zoning.

The buildings have been designed to maximise amenity and ensure any visual impact associated with the built form above the height standard, has been minimised. The separately submitted Concept DA has retained the landscape setting of the site, where practicable, to assist with screening the built form, as viewed from within the site, the public domain and adjoining properties.

3 The Hills Local Environmental Plan 2019

3.1 Clause 4.3 – Height of Buildings

Pursuant to clause 4.3 of THLEP 2019 the maximum building height for development within the R4 zone is 22m (refer to **Figure 1**). The stated objectives of this standard are as follows:

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

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

The maximum height shown for the land on the height of buildings map is provided at **Figure 1** and indicates 9m, 12m and 22m across the Overall Site, with the Apartments Precinct being located within the area identified with a height standard of 22m.

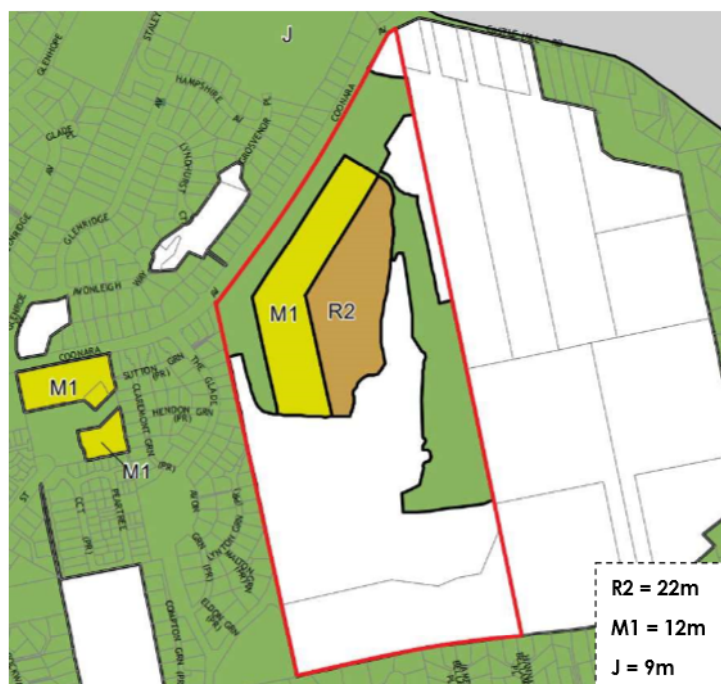


Figure 1 Height of buildings map (Source: NSW Legislation)

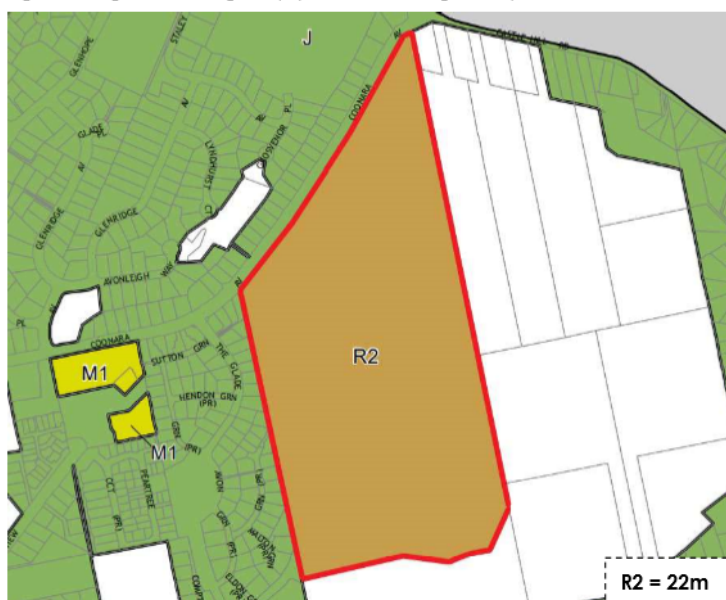


Figure 2 Repealed height of buildings map showing a maximum 22m height limit (Source: NSW Legislation)



Figure 3 Proposed Apartments precinct development (Source: Mirvac Design)

The following figures depict the extent of height contraventions sought in relation to each of the 4 buildings.



Figure 4 South Section of Building A showing the extent of height contravention (4.4m) (Source: Mirvac Design)

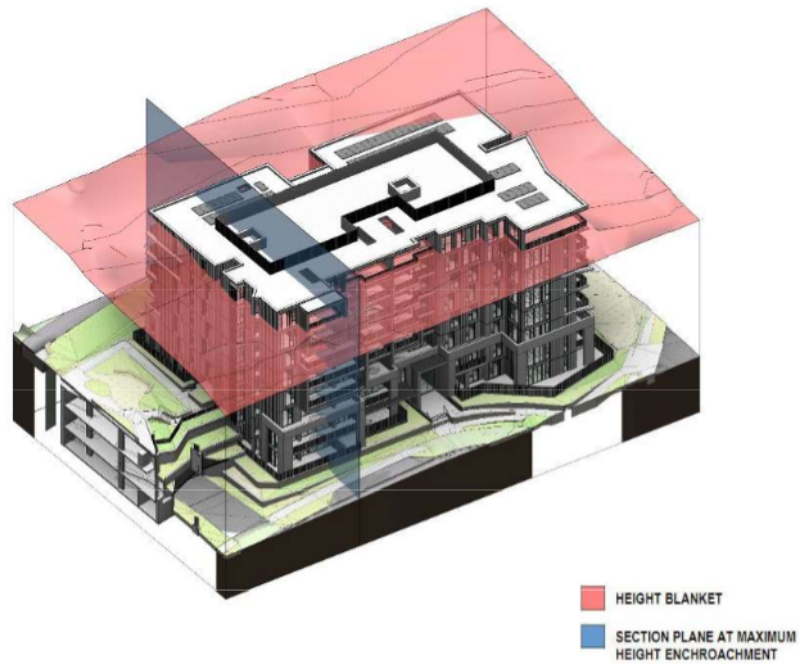


Figure 5 22m Height blanket of Building A (Source: Mirvac Design)

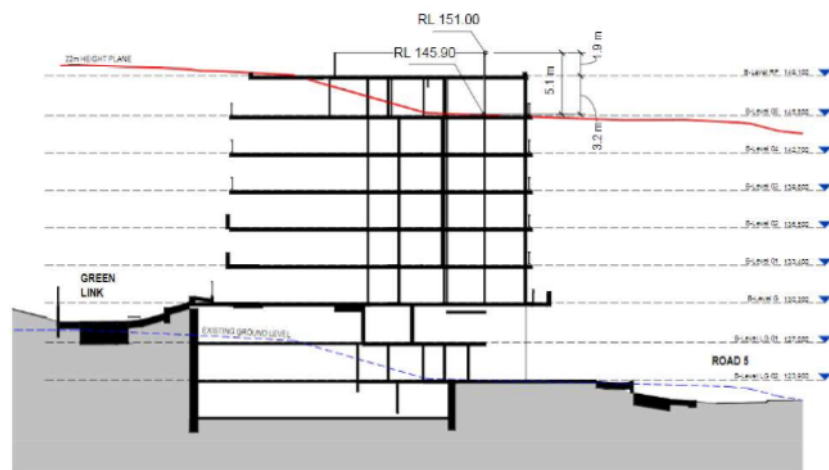


Figure 6 South Section of Building B showing the extent of height contravention (5.1m) (Source: Mirvac Design)

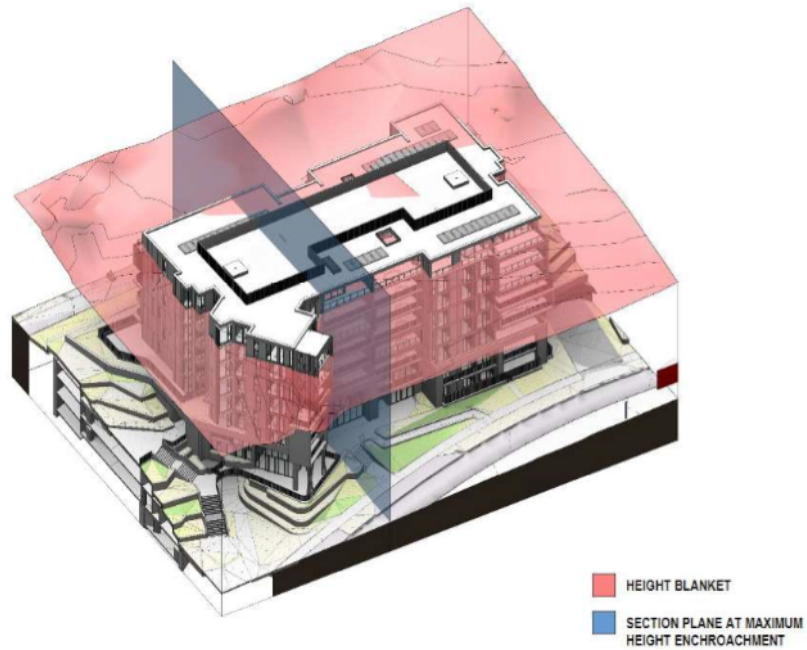


Figure 7 22m Height blanket of Building B (Source: Mirvac Design)

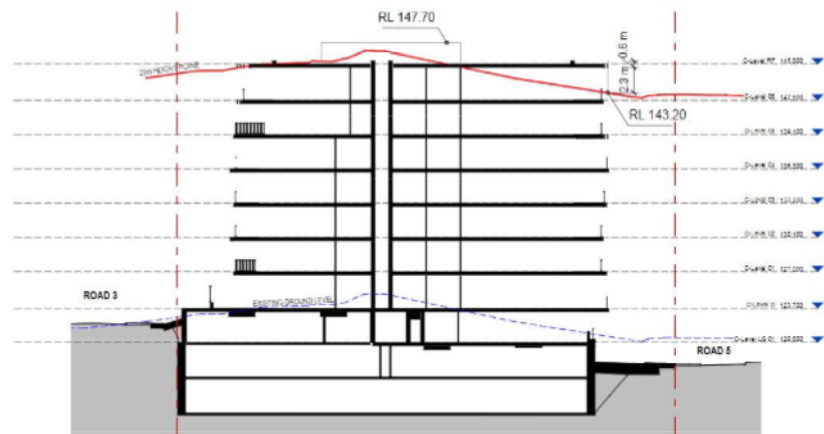


Figure 8 South Section of Building C showing the extent of height contravention (2.9m) (Source: Mirvac Design)

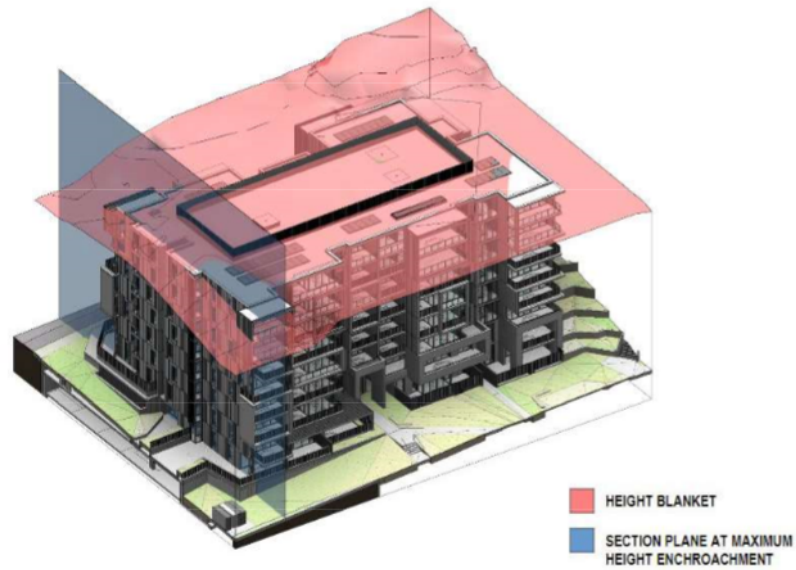


Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

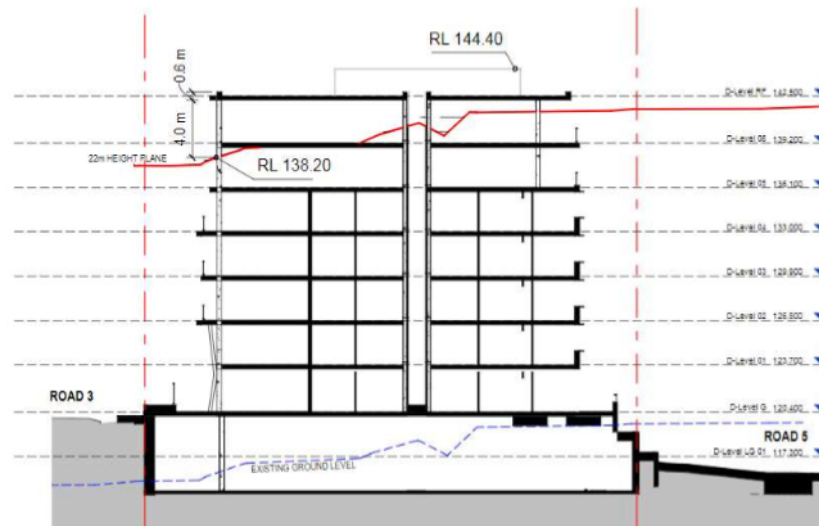


Figure 10 South Section of Building D showing the extent of height contravention (4.6m) (Source: Mirvac Design)

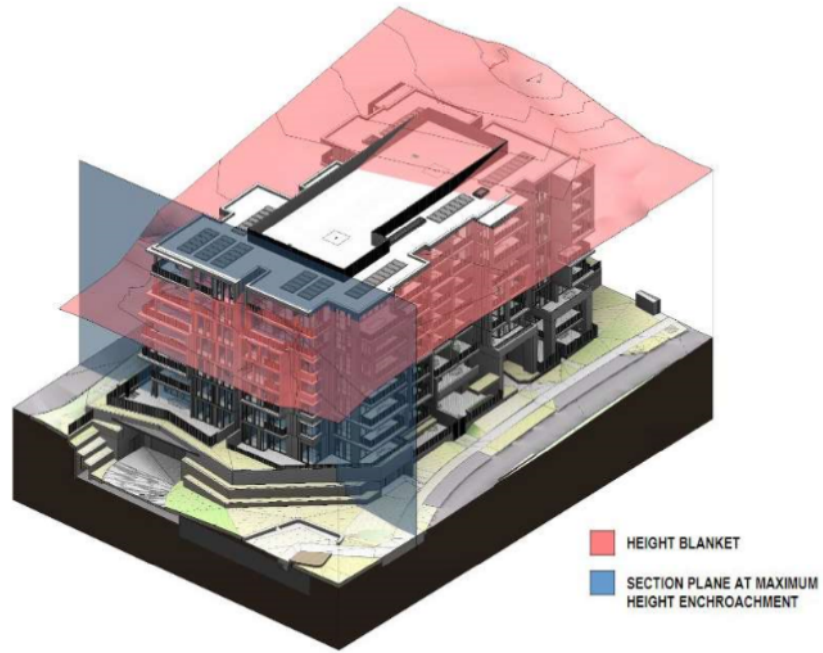


Figure 11 22m Height blanket of Building D (Source: Mirvac Design)

3.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of THLEP 2019 provides:

(1) *The objectives of this clause are:*

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

The decision handed down by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of Initial Action the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in Initial Action is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of THLEP 2019 provides:

- (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.*

This clause applies to the clause 4.3 Height of buildings Development Standard, which is not excluded under the clause.

Clause 4.6(3) of THLEP 2019 provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development proposes a contravention to the height of buildings provision of clause 4.3 of THLEP 2019, which specifies a maximum building height, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of THLEP 2019 provides:

- (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 Director-General has been obtained.*

In Initial Action the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a) (Initial Action at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development 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 (Initial Action at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (Initial Action at [28]).

Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of THLEP 2019 provides:

- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence*

4 Relevant Case Law

In Initial Action, the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (*Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827) continue to apply as follows:

- 1) *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- 2) *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- 3) *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- 4) *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- 5) *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
- 6) *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

- 1) Is clause 4.3 of THLEP 2019 a development standard?
- 2) Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - a) compliance is unreasonable or unnecessary; and
 - b) there are sufficient environmental planning grounds to justify contravening the development standard

- 3) Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
- 4) Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5) Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of THLEP 2019.

5 Design Process

The proposed Apartments Precinct has undergone extensive design analysis and revisions from the original planning proposal scheme, which indicated nine (9) buildings that would provide for up to 400 apartment dwellings. In doing so, it is envisaged that a four building scheme provides an improved level of compatibility with the site and surrounding development, as opposed to additional buildings.

The Planning Proposal scheme originally sought to provide nine (9) buildings however upon further investigation and overlaying development constraints including the E2 zoning which is intended to protect the high biodiversity value of the site, and the resulting Asset Protection Zone, this resulted in a seven (7) apartment buildings scheme within the 22m building height limit (see **Figure 12**). This scheme, along with the medium density part of the site could produce a yield much closer to the maximum 600 permitted by THLEP 2019. However, upon a closer design analysis, it was determined that providing these seven (7) compliant apartments buildings would come at the expense of a development that offered a sympathetic and compatible built form with the environmental and ecological values of the site.

Providing for a development consisting of six (6) or seven (7) buildings would result in several negative impacts including, unsympathetic development which aims to maximise yield, increased bulk and scale when viewed from forest areas, loss of views and outlook from many parts of the site due to accumulation of the building masses, decreased and less valuable connectivity and open spaces, intensity of uses within proximity of the forest, as well as solar access, ventilation and privacy issues. It was also recognised that given the master planned nature of the site, adjoining properties are not in proximity of the buildings as in the case of a single development site immediately abutting existing dwellings. In addition, the topography of the site and extent of mature existing forest areas, screen the Apartments Precinct from view, as viewed from adjoining properties and from Coonara Avenue.

The six (6) and seven (7) building schemes were found to result in an unfavorable urban design outcome and poor interface to the forest areas, resulting in a dense built form, inconsistent with the desired character of the site. They also led to poor amenity outcomes, such as reduced public open spaces, multiple driveway entry and exit points, significant overlooking and privacy issues, excessive building lengths and solar access and natural ventilation impacts. These schemes also prevent sight lines to the forest (refer to **Figure 13**), both from within the site and from beyond it (from each of the two entries off Coonara Avenue). Overall, these schemes were identified as a risk to the site's significance and in achieving a compatible and desirable urban form.

A four (4) building scheme offers a superior outcome in terms of the development's compatibility with the environmental and landscape values of the overall site by providing extensive landscaping, including deep soil zones.



Figure 12. An alternate scheme showing bulk and scale of seven (7) apartment buildings within the 22m height standard (Source: Mirvac Design)

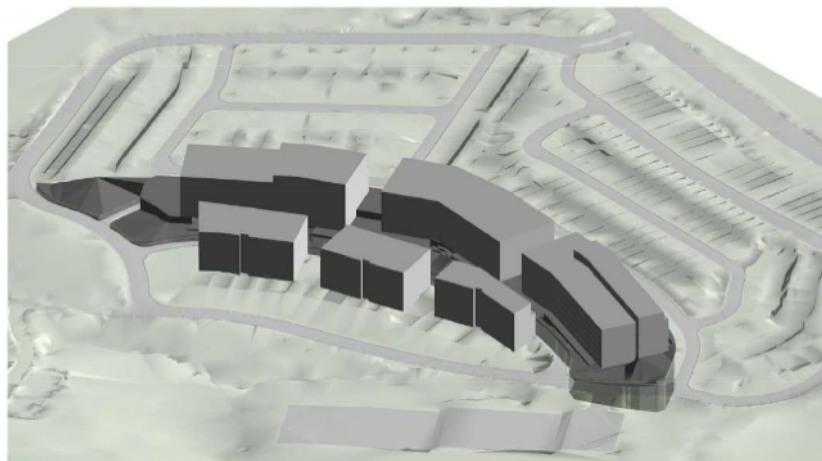


Figure 13 An alternate scheme showing bulk and scale of six (6) apartment buildings within the 22m height standard (Source: Mirvac Design)

Consideration of the various height design options for the apartment precinct within the R4 zoned land indicate that a superior outcome (albeit at a reduced yield accepted by Mirvac) is a four (4) building scheme, as proposed under the Apartments Precinct DA, notwithstanding the resultant height contraventions. By providing a four (4) building scheme that includes 2 and 3 storey housing to the east, rather than 22m height residential apartment buildings in the R4 high density zone, a much-improved urban design outcome that achieves a high-degree of compatibility and design excellence including a more sympathetic relationship to the adjoining forest areas is achieved.

As previously discussed, the built form of each building has been designed to ensure consistency with the site-specific design guidelines and ADG. Proposed setbacks, articulation zones, building separation as well as deep soil zones along the perimeter

of the precinct result in a high-quality streetscape and public domain outcome with opportunities for significant landscaping. Doing so offers an improved pedestrian and residential amenity outcome that is consistent with the aims and objectives of the ADG and site-specific design guidelines. In addition, by providing a four building scheme compared to nine, as proposed under the PP, an improved transition of built form is provided to the east with proposed terraced housing offering an improved relationship and compatibility with one another, as demonstrated by **Figure 14**. It is considered that the proposal is consistent with the objective.

Based on the enhanced Concept Plan design, even with its minor height contraventions, it is considered that replacing low-rise housing in the R4 zone with taller apartment buildings as permitted, would create a less sensitive interface, whereby the scale of built form is not as compatible with adjoining the forest areas. The scale of the apartment buildings would result in an obvious hard edge next to the forest and would result in a poorer urban design outcome when compared to the low 2 and 3 storey housing alternative (refer to **Figure 14** and **Figure 15**). The vision for the precinct is not to compete, but to respect and celebrate the significance of the forest.

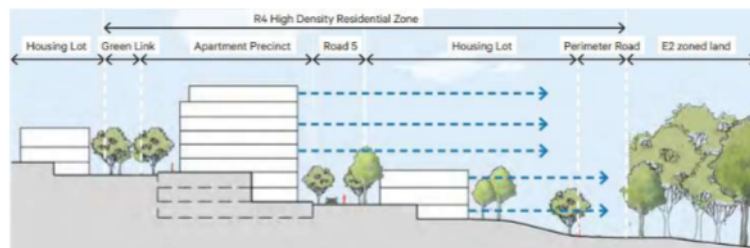


Figure 14. Proposed built form transition to E2 land (Source: Mirvac Design)

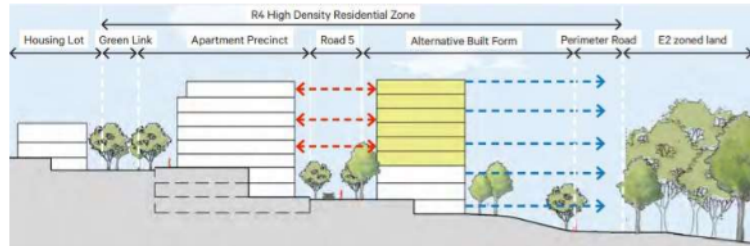


Figure 15. Alternate built form interface with E2 land as permissible (Source: Mirvac Design)

The Apartments Precinct leverages the visual amenity afforded by the locality. Buildings have been deliberately sited and designed in a curved linear arrangement to maximise the bushland outlook (**Figure 16**). The siting of buildings has been purposely arranged to frame a series of views to the forest from public spaces along the Green Link and Road 3. While a deliberate vista is created from the southern entry point through the central linear park to the forest.



Figure 16. Apartment views and outlook (Source: Mirvac Design)

In light of this and notwithstanding the height contraventions proposed by this DA, it is considered that the proposed 4-building design strikes an appropriate balance between providing for a high-quality amenity outcome for prospective residents and relationship to adjoining buildings, whilst also ensuring a high-quality streetscape outcome and positive interface with the adjoining forest. The shifting of building mass away from the adjoining forest (refer to **Figure 14**) will ensure a sympathetic design that responds appropriately to the forest.

6 Written Request

6.1 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The commonly adopted approach, in order for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first way, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding contraventions with the standard.

6.1.1 Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*

Response: The overall site Concept Plan and Apartments Precinct design has undergone extensive analysis, optimisation and enhancement with several revisions now resulting in an optimal overall project and Apartments Precinct outcome. Mirvac has thoroughly considered how to achieve design excellence by balancing

the total number of dwellings on the Overall Site with a considered and refined design response that prioritises ecologically important aspects.

THLEP 2019 permits a maximum of 600 dwellings on the wider site. This was notionally based on 200 houses in the R3 zone, and 400 apartments in the R4 zone. The Apartments Precinct DA however significantly reduces the apartment yield to 252 apartments, equating to a 37% reduction. In lieu of filling the R4 zone fully with apartments, a conscious Concept Plan design decision was made to introduce houses into the R4 zone closer to the forest area. This was seen as a superior design outcome and provides for a more sympathetic transition to the forest areas. Accordingly, in totality over the whole site, Mirvac is seeking approval for 418 dwellings which is significantly lower than the 600 dwellings permitted, some 30% less.

Compared alongside the masterplan submitted as part of the Planning Proposal (refer to **Figure 18** and **19**), the current proposal for the R4 zone significantly reduces density, building mass and the number of apartment buildings, from 9 down to 4 buildings. This significant reduction in yield enables superior design outcomes with increased landscape amenity, improved housing quality and lower traffic volumes. While this solution reduces overall potential yield, it is the result of a design-led process that seeks to create what is argued to be a superior outcome in terms of housing quality in a unique landscape setting.



Figure 17. Streetscape character with Apartment Precinct Building D shown Source: Mirvac Design

The reduction of built form from nine (9) buildings to four (4) buildings through the design process, as noted above in Section 5, offers a built form that is designed to achieve consistency with the Site Specific Guidelines and ADG in relation to building separation, building length and setbacks. In doing so, the design process has resulted in a development that, notwithstanding the height contraventions, is carefully designed to achieve compatibility with adjoining development with the site and adjoining properties. The design of each building with regard to those elements noted above, provide a development that offers a sensitive transition from within the Apartments Precinct to the public domain. **Figure 17** shows a highly articulated and modulated built form, as viewed from Road 3. Deep soil zones are provided along the perimeter of the Apartments Precinct and within the road verge, resulting in a superior landscape outcome with residential and pedestrian amenity provided. This offers a high-quality streetscape and public domain outcome that is consistent with the objective.

The relationship and interface of the Apartments Precinct with the Southern Housing Precinct to the west (refer to **Figure 17**) is sympathetic to one another. The height contravention does not unreasonably impact on the streetscape character and amenity to the Southern Housing Precinct with adequate setback and separation between the two precincts.

The introduction of two and three storey terrace housing to the east results in a desirable outcome and relationship with the forest edge compared to a 6 and 7 building scheme which would result in a hard edge to the forest. This offers a

sympathetic transition of built form from with Apartments Precinct to the adjoining site to the east, which results in a compatible development.



Figure 18. Planning Proposal masterplan
Source: Mirvac Design



Figure 19. Apartments Precinct DA
Source: Mirvac Design

Rather than providing apartment buildings in the eastern portion of the R4 zone, this area proposes two- and three- storey attached dwellings. This deliberate design outcome offers a more considered and sensitive relationship with adjoining properties, specifically the adjoining forest edge. Furthermore, it enables increased views to treetops from the surrounding public domain.

The prescribed building height standard of 22m in the R4 High Density zone was retained from the previous land use zoning which actually permitted a height of 22 metres over the entire 55 Coonara Avenue Site.

Upon finalisation of the rezoning, further detailed studies and detailed design were undertaken. When the detailed design process occurred, it was found that the topography was significantly more challenging than indicated during the PP stage, particularly with regard to the existing areas of basement excavation and the fall across the R4 portion of the site, in the location of the IBM buildings.

Due to the site's modified topography, we consider the calculation of building height should consider the "existing ground level" of the site prior to excavation that has previously occurred in relation to construction of the existing commercial building, in the location of the proposed Apartments Precinct.

In relation to the calculation of building height, the principal case authority which considers the definition of "ground level (existing)" is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. This was subsequently followed in the more recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

Using extrapolated ground levels, as suggest in *Bettar v Council of the City of Sydney*, the proposed buildings result in a consistent building height and overall bulk and scale. This results in a desirable streetscape character and compatibility of buildings with one another within the Apartments Precinct and surrounding development. The alternative to this would result in an inconsistent and fragmented streetscape character that would result in an undesirable urban design outcome. Should the abovementioned case and extrapolated levels not be applied, a significantly stepped design would be required and result in a poor urban design outcome for the site. In this regard, the proposal is considered to satisfy the objective

with regard to providing a compatible building height with adjoining development a desirable streetscape character.

In *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189, the Court followed the rationale adopted in *Bettar*. This confirmed that "ground level (existing)" must relate to the levels of the site, and not to the building presently located on the site, or in this case, not the artificially modified levels of the site as a result of excavation to accommodate the existing buildings on site.

Responding to this, the Court preferred the Council's method to determining the "ground floor (existing)" from which building height should be measured. Council's approach required that the proposed height be measured from the ground level of the site, where known, and from the footpath level at the site boundaries extrapolated across the site, as this would reflect the sloping topography of the land, consistent with the approach adopted in *Bettar*.

Notwithstanding the limited survey information available for the site, the Court was satisfied that there was enough information to determine the "ground level (existing)" for the site based on actual and surveyed levels in the public domain (footpaths), and unmodified levels around the perimeter of the property, which could be extrapolated across the site. In summary, the Court has confirmed that the definition of "ground level (existing)" from which building height should be measured:

- is **not** to be based on the floor levels of an existing building located on a site or artificially modified levels associated with excavation.
- is to be based on the existing surveyed surface of the ground. For sites where access to the ground surface is restricted, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels in the public domain (footpaths) and unmodified levels around the perimeter of the property.

It is critical to understand that the height contraventions are primarily a result of the existing ground level created by the buildings currently on site. Accordingly, the 'existing ground level is not in fact 'natural' ground level in that it is existing but provides an already altered ground level where earth works previously occurred in relation to the construction of the IBM building.

Figure 20 below demonstrates the building height contraventions should the height be measured from the site levels pre-existing IBM development. When measured from these levels, the proposed contraventions are substantially reduced for 3 of the 4 buildings. This clearly demonstrates the significant alteration of the site levels created by the existing development and further confirms the need for the building height to be measured from these earlier levels prior to the existing development.

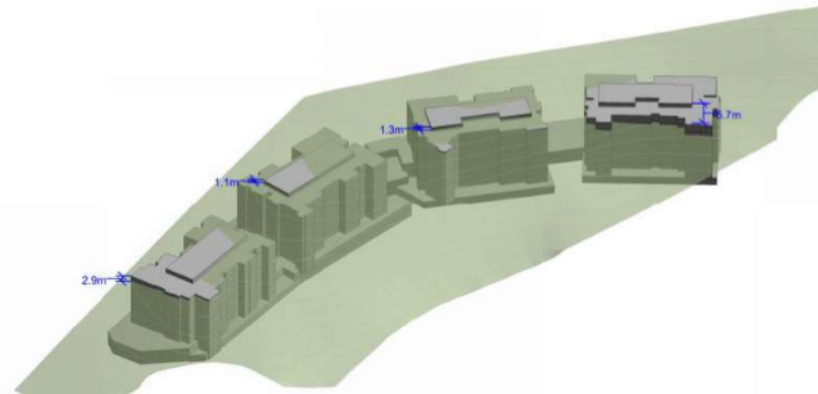


Figure 20. Proposed building heights, as measured from site levels pre-existing IBM development (Source: Mirvac Design)

This Clause 4.6 Written Request finds it appropriate to consider and measure the building height from adjacent and/or interpolated ground levels. These levels bear a direct relationship between the height of the development as viewed from neighbouring properties and the height as it relates to the existing and desired future character of the area and therefore considered a more appropriate reference point for assessing whether the objectives of the standard are satisfied. It is considered that the prescriptive building height standard should be considered based on a merit assessment.

- b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.*

Overshadowing

It can be seen from the half-hourly solar diagrams contained within the supporting architectural plans, including from **Figures 22 – 24**, which provide shadows at 9am, 12pm and 3pm, that the proposal provides sufficient solar access within the site, including apartments and areas of communal open space (COS). **Figure 21** provides confirmation of the solar access received to COS areas within the Apartment Precincts, satisfying ADG requirements of 2 hours minimum solar access.

In addition to this, overshadowing impacts to adjoining land, including the adjacent forest has been carefully considered and minimised, in order to impacts on residential amenity, including areas of open space. **Figures 22 – 24** demonstrate adequate solar access is provided to areas of COS within the apartment precinct, in accordance with the guidelines of Apartment Design Guide.

Particular attention has been given to mitigating the overshadowing impact to areas within the Apartments Precinct, as well as other precincts within the overall site. The proposal has demonstrated sufficient solar access commensurate with a medium and high-density development by satisfying the objectives of the Apartment Design Guideline.

Overshadowing of the terrace housing to the east has been minimised, while housing to the west located in the Housing South and Central precincts will continue to receive sufficient solar access, as seen by **Figures 22 – 24**.

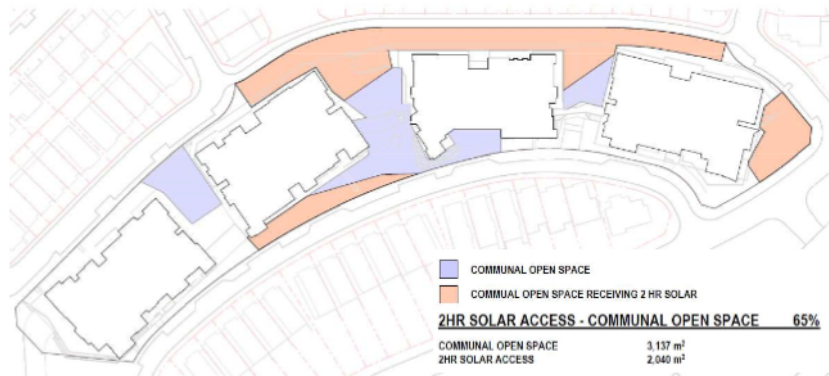


Figure 21 Proposed solar access to areas of COS (Source: Mirvac Design)



Figure 22 Shadow diagram, 9am (Source: Mirvac Design)



Figure 23 Shadow diagram, 12pm (Source: Mirvac Design)



Figure 24 Shadow diagram, 3pm (Source: Mirvac Design)

Mirvac Design has undertaken a detailed analysis of the overshadowing created by a compliant scheme compared to the proposed scheme (refer to **Figures 25 - 27**). The shadow diagrams confirm the impact of the contravention (highlighted by purple) has been minimised because it does not unreasonably impact areas of open space with sufficient solar access provided to all areas of private open space affected by overshadowing caused by the Apartments precinct. Areas of open space to the east and south remain unimpacted by the contravention for the majority of the day until 3pm.



Figure 25 Compliant v non-compliant solar access, 9am (Source: Mirvac Design)



Figure 26 Compliant v non-compliant solar access, 12pm (Source: Mirvac Design)



Figure 27 Compliant v non-compliant solar access, 3pm (Source: Mirvac Design)

Visual Impact

The visual impact has been carefully considered with the proposed Apartments Precinct scheme providing for an appropriate and sympathetic bulk and scale that will respond to the site, adjacent forest and wider surrounding area. The proposal provides for a development with notable less bulk and scale than what is otherwise permissible under the planning standards. This is evident by the design process discussed under Section 5. The approved masterplan envisaged a nine (9) building scheme, including a significant bulk and scale within close proximity to the forest. The design process identified this as a concern, which has been subsequently addressed with a significant reduction in buildings.

The length, articulation and modulation of each building and its response to the streetscape and public domain has been carefully designed and provides for a high-quality design outcome that will reduce the visual impact of the built form. Even though not required by the Apartment Design Guide, all four apartment buildings have been designed to be no greater than 50 metres in length as per The Hills Development Control Plan 2012 (THDCP 2012). In addition to the above, the visual impact of the apartment buildings, including the height contraventions is reduced by the setback from the forest edge (without houses in between) and the significant distance evident from properties along The Glade and Coonara Avenue, which are separated from the Apartments Precinct by R3 zoned land that will incorporate dwelling houses and extensive mature trees and vegetation that will remain along Coonara Avenue.

The photomontages provided in **Figures 30 – 33** have been developed by Arterra Interactive, specialists in 3D visual communication for built environments. The photomontages illustrate the following modelling: proposed building envelopes, 22m height planes, retained and proposed landscaping. The photomontages have been

prepared in accordance with the NSW Land and Environment court "Use of Photomontages" policy document. The locations have been chosen as they provide a snippet of the development across several relevant, prominent locations from adjoining properties and Coonara Avenue, as well as publicly accessible open space within the site. The full suite of locations can be found under **Appendix 2**.



Figure 28 Proposed development envelope, as viewed from adjoining properties along the Glade
Source: Arterra



Figure 29 Proposed development envelope with survey overlay, as viewed from adjoining Properties along the Glade
Source: Arterra

Figure 28 and **29** above show the negligible visual impact of Building D as viewed from the western boundary, particularly those properties along The Glade. As noted, the proposed new housing and apartment buildings will be less visually perceived than the existing office development envelope. The proposed apartment envelopes shown above are shown with the 22m height plane line based on Existing Ground levels shown in red. As can be seen from this perspective, in this instance the extent of building envelope contravention is very minor and imperceptible for the most part. Coupled with the substantial separation of approximately 145m between these properties and the Apartments Precinct, the existing and proposed vegetation shown in **Figure 28** would firmly remove any potential impact as a result of the height contravention with no discernible impact on those properties along The Glade. Based on the views above, Richard Lamb & Associates (RLA) confirm by way of a Visual Impact Assessment (**Appendix 1**):

"The survey overlay shows that the apartment buildings in the Apartments Precinct Site would, if there was no vegetation intervening in the view, be largely hidden by proposed houses in the R3 zone, which are in the foreground of the view. The photomontage on the bottom, left shows a small area of road running away from an intersection that is partly visible below and between some vegetation in the foreground. The proposed apartment buildings would not be visible and therefore the breach of the height plane standard would not be discernible."



Figure 30 Proposed development envelope, as viewed from the southern entrance at Coonara Avenue Source: Arterra



Figure 31 Proposed development envelope with survey overlay, as viewed from the southern entrance at Coonara Avenue Source: Arterra



Figure 32 Proposed development envelope, as viewed from the northern entrance at Coonara Avenue Source: Arterra



Figure 33 Proposed development envelope with survey overlay, as viewed from the northern entrance at Coonara Avenue Source: Arterra

Figures 30-33 above illustrate the Apartments Precinct, as viewed from the southern and northern entrance at Coonara Avenue. Similar to those views in **Figure 28** and **Figure 29**, the location of the apartment buildings to the lower part of the site at the rear offers significant separation of approximately 130m and 100m, respectively from the Coonara Avenue frontage providing visual relief from the built form, including height contraventions, reducing any discernible visual impact associated with bulk and scale of the built form.

RLA in its VIA of the visual impact from the southern entrance in **Figures 30** and **31** confirm:

"The survey overlay shows, that the height plane for this building is either above or similar to the roof level of the building. The photomontage shows that the proposed entry is in a similar location to the existing south entry to the IBM precinct shown in the existing conditions image but is proposed to be widened on the left side of the image. Existing vegetation is retained on both sides. Proposed public domain landscape in the Concept Development Site would block the view of the only apartment building potentially visible from Location 04. Built form above the height plane in the Apartments Precinct Site would have no discernible impact on the view, even if the public domain landscape was not shown as proposed, in the photomontage."

RLA in its VIA of the visual impact from the northern entrance in **Figures 31** and **32** confirm:

"The survey overlay shows that the part of the building above the line, which is zero on the left side, makes no significant contribution to the perceived bulk of the building. The photomontage shows that the proposed entry is in a similar location to the existing north entry to the IBM precinct but is proposed to be widened removing existing vegetation. Proposed public domain landscape in the Concept Development Site would block the view of the only apartment building potentially visible from Location 05. The red line showing the height plane on the building visible in the Apartments Precinct Site shows that the breach of the control would have no discernible impact on the view, even if the public domain landscape was not shown as proposed, in the photomontage."

Based on the above, the visual impact is deemed to be negligible, as viewed from adjoining properties and the public domain along Coonara Avenue. The existing vegetation buffer along Coonara Avenue which is to be maintained via an 11 metre setback buffer, in addition to proposed vegetation within the site, as well as significant separation from areas of possible affect, will prevent any visual impact. In addition to this, the significant level changes across the site, result in the Apartments Precinct being located at the lowest point of the developable area, and substantially below street level along Coonara Avenue, further mitigating visual perceptibility.

Figures 34 and 35 demonstrate the built form of the Apartments Precinct. As can be seen, even without the significant vegetation that is going to be retained in the 11-metre buffer zone along Coonara avenue, the Apartment buildings including the minor height contraventions generally cannot be seen from Coonara Avenue as they are shielded by vegetation and the proposed housing.

RLA in its VIA of the visual impact Coonara Avenue looking south into the northern part of the site in **Figures 34 and 35** confirm:

"The survey overlay shows that the apartments in the R4 zoned land in the Apartments Precinct Site would again be largely hidden by houses in the R3 zoned land that are between the viewer and the Apartments Precinct Site. One apartment building would be visible if there was no vegetation proposed inside the Concept Development Site, a part of which exceeds the height standard. The survey overlay, which ignored visual exposure in the view line, shows that the part of the building above the line would make no significant contribution to the perceived bulk of the building. Retention of vegetation in the buffer on Coonara Road between the road and the houses in the R3 zoned land would block the view of the only apartment building potentially visible from Location 06. Therefore, the breach of the height plane would have no discernible impact on the view."

Based on the above, the visual impact created by the height contravention is indiscernible, as viewed from the public domain along Coonara Avenue. In addition, the visual impact from the height contravention is negligible, as viewed from within the site due to the location of the contravention relative to the edge of the building (refer to **Figure 38**). The existing vegetation along Coonara Avenue, in addition to proposed vegetation within the site, as well as significant separation from areas of observation, will minimise any visual impact. In addition to this, the level changes across the site, result in the Apartments Precinct being located at the lowest point of the developable area, and substantially below street level along Coonara Avenue, further mitigating against any potential perceived visual impact. Furthermore, due to the location of the Apartments Precinct, the visual impact is minimal when viewed from surrounding open spaces areas.



Figure 34 Proposed development envelope, as viewed from Coonara Avenue Source: Arterra



Figure 35 Proposed development envelope, as viewed from Coonara Avenue Source: Arterra

The bulk and scale of the building envelopes have been designed in accordance with SEPP 65 and supporting Apartment Design Guidelines. The dimensions of the buildings, in accordance with the requirements under the THDCP 2012. Consistency with these guides has achieved minimising the bulk and scale from within the precinct and from the Overall Site. To further minimise the visual impact of the building height, each building has been setback from the western boundary by a minimum 5m at the top floor and 3m elsewhere, while a 3m setback is provided to the eastern boundary. The development also demonstrates consistency with the ADG with regard building separation.

These setbacks allow for generous landscaped and deep soil planting areas around buildings and a high-degree of privacy between apartments. The area of deep soil zone is well in excess of the minimum 7% by providing 15% across the Apartments precinct. An additional 2m setback at the top level reduces the visual bulk and scale of the buildings.

The setbacks, in addition to the façade design of each building being heavily articulated, recessive and broken down in addition to a range of proposed materials and colours inspired by the natural surrounds provide for a visually engaging and interesting buildings, whereby the perceived bulk and scale generated by the building height is minimised and sympathetically integrated into their surrounds.

Figures 36 and 37 highlight the well-considered treatment to the facades, in addition to the landscaped setbacks and deep soil zones, which offer visual relief from the buildings. The reduction in buildings from previous schemes, including through the Planning Proposal process, has helped develop Mirvac's vision for the site to provide a design representative of tree top living. The reduced buildings provide further inter-building canopy.



Figure 36 Streetscape render of Central Linear Park looking east towards the Apartments Precinct (Source: Mirvac Design)



Figure 37 Streetscape render of Building A, as viewed from the Green Link (Source: Mirvac Design)

The largest extent to which the building height encroaches beyond the prescribed building height plane is the plant, as shown in cone of vision diagram in **Figure 38**. The diagram clearly demonstrates the plant area on the roof not being visible from Road 5. These areas are centrally located on the roof with setbacks provided to offer a reduced visual impact. The contravention will therefore not be perceived from within the Apartments Precinct, as well as many areas from within the overall site.

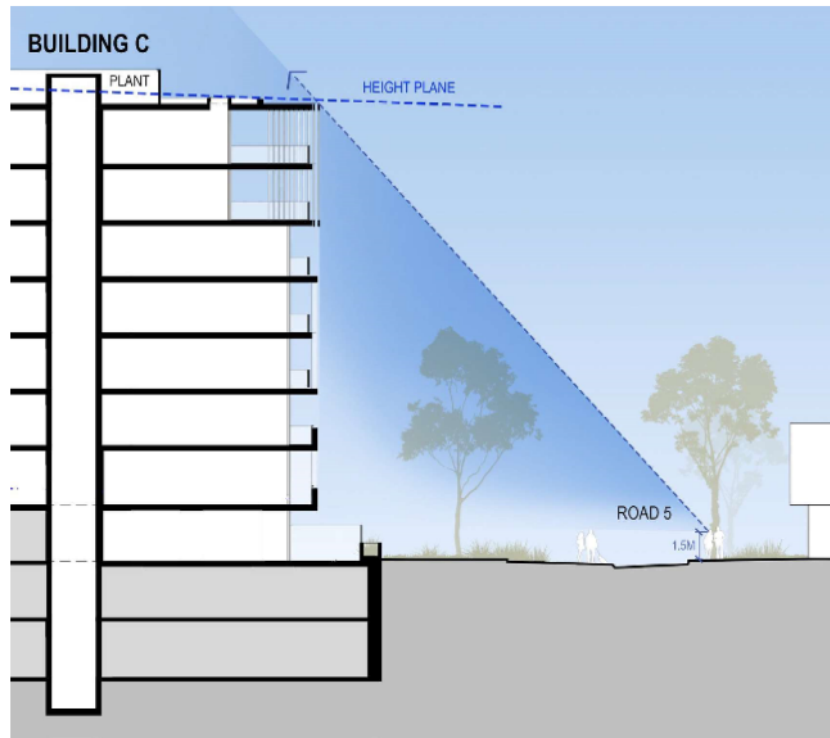


Figure 38 Cone of vision diagram demonstrating the roof plant on Building C being setback and not being visible from Road 5 (Source: Mirvac Design)

Privacy

The proposed scheme will provide for adequate building separation and setbacks consistent with the requirements set out in the Apartment Design Guide. The separation and setback will minimise any direct cross-viewing of buildings/apartments, ensuring a high level of residential amenity is provided to each apartment. The proposal offers a greatly improved privacy outcome compared to earlier schemes, which involved additional buildings. As a result, the buildings offer less opportunity for overlooking between apartments and buildings.

The development has been carefully considered regarding locating and orientating of the building mass to ensure visual privacy is maximised between the buildings on the site and for neighbouring properties, including those properties located along the Glade. Due to the sloping nature of the site, sufficient visual separation distances have been provided to ensure privacy is maintained to buildings within the site, including the terraced housing to the rear. The proposal provides sufficient separation to nearby areas of open space to mitigate any unreasonable privacy impacts.

6.1.2 Consistency with zone objectives

The subject site is zoned R4 – High Density Residential pursuant to The Hills Local Environmental Plan 2019 (THLEP 2019). Residential flat buildings are permissible with consent in the zone. The objectives of this zone are as follows:

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

Response: The Overall site is located within 800m of the Cherrybrook Metro Station, providing a strategic location for a greater mix of housing typologies for the community to take advantage of the site's location in relation to nearby transport infrastructure.

The Hills Local Strategic Planning Statement (LSPS) identifies several planning priorities for shaping growth to 2036 within the Hills LGA, including:

1. **Planning Priority 7** - Plan for new housing in the right locations; and
2. **Planning Priority 8** - Plan for diversity of housing.

The above planning priorities identify a need for housing to be provided within the right locations in the Hills LGA. The priorities are intrinsically linked to the provision of high-density, apartment developments. The planning proposal stage identified the need for high-density living, to take advantage of the site's proximity to the Cherrybrook Station precinct. The planning proposal envisaged high-density living with the zoning, being R4 High Density Residential zone, providing for much needed housing for a community well-served by established infrastructure.

The Apartments Precinct is well supported by the right infrastructure, being located within the Cherrybrook Station precinct, in addition to regular bus services along Coonara Avenue connecting Coonara Shopping Village in the south to Cherrybrook Station to the north. The apartment precinct provides for appropriate housing supply, choice, and affordability, along with access to jobs, services, and public transport.

The proposal is considered to satisfy this objective with regard to the provision of housing needs of the community within a high-density residential environment.

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

Response: The proposal seeks to provide greater variety of housing typologies, in the form of 4 residential flat buildings that will provide greater housing choice for prospective residents in the form a suitable mix, comprising 1-, 2-, 3- and 4-bedrooms units. A four apartment building scheme offers greater flexibility with apartment layout as opposed to a nine building scheme envisaged by the Planning Proposal. The proposed housing types and unit mix within the R4 zone will help to achieve the objective by providing for a high-density residential environment with a suitable mix and diversity of housing. The LSPS identifies the need for 400 apartments to be provided within the Cherrybrook precinct to 2036. The proposal will contribute to achieving this target by providing 252 apartments.

The proposal is found to satisfy the zoning objective by providing a variety of suitable housing types.

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

Response: The development offers several residential amenities, including facilities within Building B, landscapes areas and parks located within the Apartments Precinct. The development is compatible and consistent with the land uses approved in the planning proposal. In addition, there are existing facilities and services located at the Coonara Shopping Village 400m from the site.

The proposal is found to satisfy the zoning objective by providing other land uses 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.

Response: As previously noted, the overall site is strategically located within proximity of existing transport infrastructure with bus routes along Coonara Avenue and Castle Hill Road, in addition to the Cherrybrook Metro Station located within 800m of the overall site. The proposed high-density residential development will take advantage of this along with the existing local commercial centre at Coonara Shopping Village, 400m from the site. It is also noted that the site is located within proximity to a current rezoning proposal being undertaken by Landcom, as part of the Cherrybrook Station State Significant Precinct which is intended to provide for 600 dwellings.

The site and proposed high-density development are well located and close to existing population centres and public transport routes, therefore, consistent with the zone objective.

6.2 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening 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.

25. 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 this regard, it is considered that sufficient environmental planning grounds exist to justify the contravention. The environmental planning grounds are summarised as follows:

- **Environmental conservation**

The zoning approved as part of the Planning Proposal purposely restricted the R3 and R4 zoning to the previously disturbed area comprising the existing IBM buildings and associated carparking areas. Existing undisturbed areas of the site are in E2 zoning protecting land that contains EECs, including threatened species of flora and

fauna. In doing so, the developable area on the land has been significantly reduced from the B7 zone which encompassed the whole site, along with a height of buildings standard which applied a 22m standard across the site in its entirety. The reduction in developable area and aim to protect EECs on the land has resulted in the re-allocation of massing from the forest edge to offer an improved environmental outcome for the site.

- **Perimeter Road**

The proposed Concept Plan includes retention of the existing Perimeter Road. In doing so, results in a significantly improved environmental outcome to minimise further disturbance of the site, as a result of additional earthworks that would be required to relocate the road. The retention of the Perimeter Road minimises further risk to the adjoining E2 land. The result of this Perimeter Road being retained is a further restriction to the available developable land and the decision to consolidate the built form of the apartment precinct.

- **Re-allocation of massing away from the forest edge**

The re-allocation of massing away from the adjacent forest through the design process, as discussed in Section 5, and shown in **Figures 14** and **15**, has resulted in the proposed building heights being consolidated and the built form moved from the forest and remove the need for any basement excavation within proximity of the root zone of significant trees located outside the Perimeter Road. Previous schemes, which had apartment building situated closer to the forest edge, would potentially impact, and reduce extensive landscape buffers that are part of the APZ. The APZ was determined by an offset from the E2 boundary to ensure minimal disturbance to the forest. The compatibility of the development with the adjoining forest offers an improved environmental outcome for the site and E2 zoned land to the east.

- **Amenity**

The design process, as discussed earlier in Section 5, has led to the reduction in apartment buildings to four (4) buildings, resulting in the proposed scheme, providing a single row of apartment buildings, thereby reducing the constriction of airflow across the site, helping with ventilation to each of the units. The buildings have been purposely orientated to maximise, capture and use prevailing breezes for natural ventilation in habitable rooms, while depths habitable rooms have been considered to support natural ventilation.

Furthermore, the buildings have included as many dual and corner apartments, where possible, in order to ensure sufficient ventilation is achieved. The design of each building has been carefully considered to provide for at least 60% of apartments which are naturally cross-ventilated, in accordance with Apartment Design Guide.

Notwithstanding the height contraventions, the proposed buildings continue to provide 2 hours of solar access to 70% of apartments in each building, in accordance with the Apartment Design Guide. The additional height does not give rise to an unreasonable overshadowing of adjoining housing precincts.

Providing four (4) buildings offers reduced opportunity for overlooking, in turn substantially improving visual privacy between buildings, thereby offering a superior residential amenity outcome between each building, including areas of private open space, such as balconies to each unit.

- **Site topography**

The rezoning process did not have the benefit of more detailed design that would normally occur at this stage. As such, the process did not fully take into account the complexity of the site and its undulating and differing topography, which for

example has a north-south fall of approximately 64m, and various areas throughout which are contoured to suit a redundant business park use.

Importantly, when ignoring the existing excavation on the site, the extent of contravention is reduced substantially for three (3) of the four (4) buildings, as demonstrated by **Figure 20**. While the fourth building will not reduce when ignoring the existing site excavation, in order to achieve an appropriate design outcome and compatibility across the entire Apartments Precinct, it is important to provide a consistent building height along with a curved design.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. 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.

There are sufficient environmental planning grounds to justify contravening the development standard.

6.3 Clause 4.6(4)(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R4 High Density Residential zone

The consent authority needs to 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.

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

"The matter in cl 4.6(4)(a)(iii), 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)(iii)."

This request has demonstrated that the proposed development is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

It is considered that the consent authority 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. The proposed scheme also results in significantly fewer dwellings compared to previously explored schemes and compared to the maximum numbers of dwellings permitted on the site.

6.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Contraventions exceeding 10%; and
- Contraventions to non-numerical development standards.

As the contravention exceeds 10% a delegate of Council is unable to assume the Secretary's concurrence, in this instance. However, as the value of the proposal exceeds the nominated amount, the development will be subject to determination by the Sydney Central City Planning Panel.

6.5 Conclusion

Having regard to the Clause 4.6 Written Request provisions, it is considered:

- a) That the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above, compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- g) Concurrence of the Secretary can be assumed by the Planning Panel as the determining authority in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- 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.*

In conclusion, it is considered that the proposed building height contravention presents a superior planning and design outcomes than those alternate options which have been explored through the design process. Further, it is considered that there is no statutory or environmental planning impediment to the granting of a

building height contravention in this instance. As such, the proposal should be approved for those reasons outlined above.

Appendix 1 – Visual Impact Assessment



55 Coonara Avenue West Pennant Hills Lot 61 DP 737386

Development Application to Hills Shire Council

Clause 4.6 request to vary height standard in Apartments Precinct

Visual Assessment of Certified Photomontages

1/134 Military Road, Neutral Bay, NSW 2089 PO Box 1727 Neutral Bay NSW 2089
T 02 99530922 F 02 99538911 E info@richardlamb.com.au W www.richardlamb.com.au



Proposal
Site Address

Report Type

Report prepared for
by Dr. Richard Lamb
Date

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10 September 2021

Lionel Puang
Mirvac Projects Pty Limited
ABN 72 001 069245
Level 28, 200 George Street
Sydney NSW 2000

Dear Lionel,

**55 Coonara Avenue West Pennant Hills Lot 61 DP 737386
Development Application to Hills Shire Council
Clause 4.6 request to vary height standard in Apartments Precinct
Visual Assessment of certified photomontages**

1 Introduction

Richard Lamb and Associates (RLA) have been appointed on behalf of Mirvac, the Applicants for a DA for the Apartments Precinct at 55 Coonara Avenue, West Pennant Hills, the former IBM campus.

RLA are specialist consultants on visual impacts, view loss and view sharing. The author of this advice, Dr Richard Lamb has over 25 years' experience in these fields, having undertaken over 2000 individual consultancies and appeared as an expert witness on visual impact, view sharing and heritage views in the Land and Environment Court of NSW on more than 300 occasions. A summary CV is attached at Appendix 3. A full CV can be viewed or downloaded from the tab on the Home Page of the RLA website at www.richardlamb.com.au.

I have had extensive experience in all aspects of the supervision and preparation of certifiable photomontages over the last 15 years for both private and government clients.

2 The proposed development

This assessment has been prepared in relation to the development application for the Apartments Precinct within the 25.87ha site at 55 Coonara Avenue, West Pennant Hills.

The Apartments Precinct comprises 252 apartments with a mix of 1, 2, 3 and 4 bedroom apartments across 4 residential flat buildings with associated car parking in a shared basement, roads, resident amenities, and landscaping.

In accordance with Section 4.22 of the Environmental Planning and Assessment Act 1979, the development application sets out the proposal for these works, including:

- 252 apartments in a mix of 1, 2, 3 and 4 bedrooms.
- On-site residential amenities including double height lobbies for each building, multi-purpose room and parcel room.
- Private and communal open spaces with associated landscaping.
- Car parking spaces for 465 vehicles (413 resident, 51 visitors, 2 service vehicles, 2 car wash bays), 6 motorcycles and 16 bicycles.
- On-site loading dock and waste facilities in a shared basement.
- Landscaping of streetscapes, public and communal open spaces, including retaining walls, irrigation, hard and soft landscape works, paths and handrails, lighting, furniture, topsoiling, turfing, mulching and planting.
- Removal of temporary road pavements and final road embellishment of feature paving areas including parking bays.

The proposed development will introduce a north-south linear green link as well as publicly accessible west-east through-site links with pedestrian connections.

3 Purpose of this visual assessment

The Apartments Precinct which is called the Apartments Precinct Site in this report comprises four buildings on the part of the Site zoned (R4) high density residential development. It is separated from land zoned R2, low density residential to the north-west across Coonara Avenue, to the west in The Glade and Sutton Green, by land zoned R3 medium density residential and to the east and south, by land zoned E2 Environmental Conservation. A Concept DA including detailed civil works has been prepared for the area including the R3 medium density land and is not the subject of this assessment.

It is noted that under the Concept Plan masterplan design, it has been decided that the best design outcome for the site is to not maximise the apartment type dwellings in the R4 zone. The Masterplan design proposes 2 and 3 storey low scale housing, where larger apartments buildings could be located. This results in only 4 proposed apartment buildings.

The four proposed apartment buildings in the Apartments Precinct Site are not adjacent to a public road or to existing residential development. They are widely separated from these by R3 land that is proposed for medium density housing. However, the buildings seek to exceed the development standard for height of buildings that apply to the R4 zone. There are minor protrusions through the 22m height plane, if the proposed buildings are considered in 3-dimensions. Others with appropriate expertise have quantified the extent of the exceedance (refer to the For Reference Scheme Architectural Documentation Set), and we have relied on that information for our assessment.

The exceedances are minor in nature and primarily caused by the topography on the Apartments Precinct Site which falls significantly from north-west to south-east, leaving parts of the trailing edges of the upper level of the buildings above the height plane.

As there is a proposed breach of the development standard, it has been necessary for the Applicant to prepare a Clause 4.6 request to vary the standard. In relation to objectives of the standard with regard to visual impacts, a critical issue in the first instance is whether the height exceedances lead to significant visual impacts on views. If it doesn't, the proposed buildings, notwithstanding the breach, achieve the objective of the standard. A further issue and one for those with town planning or planning law to address (which we understand has been addressed under separate cover), is whether complying with the standard would be reasonable or necessary, if complying with the standard would be of no effect.

This assessment therefore considers whether the breach of the development standard for height of buildings proposed in the Apartments Precinct DA causes either any significant impact on views in the public or private domain, or an impact in excess of what would be caused by fully compliant buildings.

I have familiarised myself with the DA for the Apartments Precinct. I am also familiar with the site generally, its surrounds, the former IBM campus and the adjacent Cumberland State Forest and nursery that is to its east and I have viewed the Site from external view points.

I have in my possession the Uniform Civil Procedure Rule (the UCPR) 2005 and Part 31 and Schedule 7 of Division 2, Expert Code of Conduct, with which I am familiar, have read and agree to be bound.

As a convention in this report, Coonara Avenue is considered to be north-west of the Apartments Precinct Site and the R2 low density residential development accessed from The Glade and Sutton Green is to its west.

I have considered the bulk, scale and arrangement of the proposed built forms on the Apartments Precinct Site and their potential impacts on views in the visual catchment of the Site.

As an aid to this assessment, photomontages that comply with the Land and Environment Court of NSW practice policy for use of photomontages in evidence have been commissioned from and prepared by Arterra Interactive (Arterra). The photomontages are in Appendix 1 to this advice. The photomontages represent the likely visibility and appearance of the proposed development from a series of representative viewing locations in the visual catchment of the site. I reviewed the locations from which photographs were taken for the purpose of preparing the photomontages to ensure that they are representative of the kinds of view places available in the public domain and that they include examples of close views from the residential private domain. Arterra's methodology for preparation of the photomontages is included in Appendix 2.

2 Visual catchment of the Apartments Precinct buildings

Lot 61 DP 737386, 55 Coonara Avenue West Pennant Hills, of which the Apartments Precinct is a part, is the former IBM campus. 55 Coonara Avenue is south-east of Coonara Avenue, abutting part of the Cumberland State Forest on its east side. The total site is described as the Concept Development Site in this advice.

The Concept Development Site is largely occupied by ground level carparks, a stacked carpark, two large buildings in an L-shaped configuration and five smaller satellite buildings. Vegetation along the site boundaries, among the carparks and in substantial residual vegetated areas largely screens or blocks views of the existing buildings from external view points.

The Apartments Precinct Site is currently occupied primarily by four existing buildings associated with the former IBM campus. Among the existing buildings there is a variable tree canopy of both planted and residual vegetation. The existing buildings that are proposed to be demolished in the Apartments Precinct Site are not visible from external view points in Coonara Avenue north-west of the Site, from adjacent residential streets such as The Glade, Sutton Green and Hendon Green west of the Site, or from more elevated residential streets west and north-west of the site, such as Glenridge Avenue, Lyndhurst Circuit, Staley Circuit or Hampshire Avenue.

The visual catchment of the Apartments Precinct Site compared to the Concept Development Site is therefore very small and is confined to windows of opportunity associated with the proposed north and south entries to the Concept Development Site and views across the back boundaries of residences immediately to the west of the site accessed from The Glade and Sutton Green.

Potential views of the Apartments Precinct buildings would be even more limited, notwithstanding there would be substantial clearing of existing vegetation inside the total Concept Development Site. This is because residual vegetation in the buffer area along Coonara Avenue and built form and new landscaping in the land zoned R3 proposed for medium density housing in the Concept DA including detailed civil works will be likely to significantly screen or totally block views from the external public domain. Built form which is between viewers in Coonara Avenue and also between residences west of the site in the vicinity of The Glade and Sutton Green and the Apartments Precinct Site, will act as a visual buffer to views inward toward the Apartments Precinct Site from the private domain. New and, retained and managed vegetation canopy east and south of the Apartments Precinct Site in E2 zoned land will also block views toward the apartment buildings.

3 Locations for preparation of photomontages

I reviewed locations that had been initially nominated by Arterra for preparation of photomontages, recommended additional locations in the private domain and recommended the deletion of redundant ones in some cases. A final set of nine documented viewing places was determined, which represent the range of viewing opportunities of the Apartments Precinct Site from the public and private domain, including examples of distant and closer view places. The views documented thus represent the full range of view types and compositions that exist in the visual catchment.

The nine camera locations are shown over an aerial image on the Key Plan on the first page of the package of Arterra photomontages in Appendix 1. The key plan and camera locations are also shown over the Key Plan to the Concept Development Site Masterplan on Page 2 of the Arterra photomontages in Appendix 1.

The views were photographed by a professional photographer in a standardised way, as follows:

Photographs used in Appendix 1 were taken in clear daylight conditions with a professional quality digital camera Sony ILCE-7M2 in JPG and RAW format, using Canon lens of 24mm focal length set at 1.6m above ground level. The locations and RLs of the camera used to capture the images were surveyed at the time of photography. The 24mm focal length chosen for the images was in recognition of the large horizontal extent of the Concept Development Site and of the Apartments Precinct Site in many views, which would not have been able to be captured using a lens with a narrower field of view. 24mm is a common focal length for architectural photography.

Arterra, prepared the photomontages representing the proposed development (See Appendix 1).
Arterra provided the description of the method adopted in Appendix 2).

No electronic manipulation was carried out with any of the images.

4 Conventions in the photomontage graphics

After the two key plans, the Arterra photomontages package has each of the four images that is required by the Land and Environment Court of NSW practice direction for photomontages on each page. Each page represents the view from one of the view locations between 1 and 9 on the key plans.

The original photograph used to prepare the photomontages on the page, labelled "Existing conditions", is at the top, left. At top, right is an excerpt from the Key Plan, Showing the surveyed camera location used to capture the existing conditions image.

At bottom, right is the survey overlay, which shows how the 3D models of the Concept DA including detailed civil works, which includes the Apartments Precinct Site buildings, has been matched to the existing conditions image. In the survey overlay image, the wire frame outline of the proposed apartments in the Apartments Precinct Site are shown with a transparent blue fill. The 22m height plane representing the development standard for height of buildings is shown as a red line on the models of the apartment buildings. The wire frame outlines of the proposed houses in the intervening R3 zoned land in the Concept Development Site are shown with a light grey fill.

At bottom, left is the photomontage of the proposed envelopes. The 22m height plane lines on the models of the apartment buildings in the Apartments Precinct Site have been retained on the rendered photomontages as an analytical device that assists in visualising whether the height breach causes significant visual impact.

5 Analysis of photomontages

The following is a brief analysis of each of the photomontages.

Location 1

This view point is on the western boundary of the Concept Development Site. The view represents a typical view from the edge of the Site looking approximately east through the buffer area between the boundary and a perimeter road. In the existing view conditions the foreground is of a managed landscape in the buffer with scattered trees. The survey overlay shows that the apartment buildings in the Apartments Precinct Site would, if there was no vegetation intervening in the view, be largely hidden by proposed houses in the R3 zone, which are in the foreground of the view. The photomontage on the bottom, left shows a small area of road running away from an intersection that is partly visible below and between some vegetation in the foreground. The proposed apartment buildings would not be visible and therefore the breach of the height plane standard would not be discernible.

Location 2

This view is from the alfresco servery to an external deck of a residence in Coonara Avenue adjacent to the south entrance to the Concept Development Site. This location is equivalent to an outdoor living area as a viewing place, which is considered to be a view place of moderate importance in relation to view sharing compared to indoor living or kitchen spaces. In the existing view conditions image, the foreground is of a managed landscape in the R3 zoned land.

The survey overlay shows that the apartment buildings in the Apartments Precinct Site would be largely hidden by proposed houses, which are in the foreground of the view. The existing view would be largely replaced by the presence of housing in the foreground, however that effect would reasonably be anticipated by implementation of the planning controls that apply to the zoning of that land.

The photomontage on the bottom, left, shows block models of the proposed houses. The proposed apartment buildings would be barely visible. The red line indicating the height plane is visible, however the built form above the line is almost imperceptible, does not cause view loss and would have no impact on the view. The view beyond the Concept Development Site, above the apartments in the Apartments Precinct Site would be the side slope of the hill covered by the Cumberland State Forest extending in the background up to Castle Hill Road, steeply above.

Location 3

This view point is also on the western boundary of the Concept Development Site, but in this case is adjacent to a residence accessed from The Glade on Sutton Green. The view represents a typical view from the edge of the Site adjacent to a row of houses in the R3 zone in the western corner of the Concept Development Site. In the existing view conditions the foreground is of a managed landscape with scattered trees looking toward a perimeter road, with existing buildings beyond. The survey overlay shows that the apartment buildings in the Apartments Precinct Site would be hidden by proposed houses in the R3 zone, which are in the foreground of the view. The photomontage on the bottom, left shows block models of the proposed houses. The proposed apartment buildings would not be visible and therefore the breach of the height plane standard would not be discernible.

Location 4

The view is from the footpath of Coonara Avenue, looking south-east into the main southern site entry. The existing view conditions image shows existing vegetation adjacent to the existing southern entry to the former IBM campus. The survey overlay shows that the apartments in the R4 zoned land Apartments Precinct Site would largely be hidden by houses in the R3 zoned land. One apartment building would be visible even if there was no vegetation proposed inside the Concept Development Site. The survey overlay shows, that the height plane for this building is either above or similar to the roof level of the building. The photomontage shows that the proposed entry is in a similar location to the existing south entry to the IBM precinct shown in the existing conditions image but is proposed to be widened on the left side of the image. Existing vegetation is retained on both sides. Proposed public domain landscape in the Concept Development Site would block the view of the only apartment building potentially visible from Location 04. Built form above the height plane in the Apartments Precinct Site would have no discernible impact on the view, even if the public domain landscape was not shown as proposed, in the photomontage.

Location 5

The view is from the footpath of Coonara Avenue, looking east into the northern entry to the Concept Development Site. The existing view conditions image shows existing vegetation adjacent to the existing northern entry to the former IBM campus, on both sides. The survey overlay shows that the apartments in the R4 zoned land Apartments Precinct Site would again be largely hidden by houses in the R3 zoned land. As the ground line is somewhat convex in shape looking into the site from this location, the wire frame models of the houses are somewhat confusing, as in reality the ground surface would block the views of the bases of the houses in reality. One apartment building would be visible if there was no vegetation proposed inside the Concept Development Site. The survey overlay shows that the part of the building above the line, which is zero on the left side, makes no significant contribution to the perceived bulk of the building. The photomontage shows that the proposed entry is in a similar location to the existing north entry to the IBM precinct but is proposed to be widened removing existing vegetation. Proposed public domain landscape in the Concept Development Site would block the view of the only apartment building potentially visible from Location 05. The red line showing the height plane on the building visible in the Apartments Precinct Site shows that the breach of the control would have no discernible impact on the view, even if the public domain landscape was not shown as proposed, in the photomontage.

Location 6

The view is from the footpath of Coonara Avenue, looking south into the northern part of the Concept Development Site. The existing view conditions image shows existing vegetation in the Site and the vegetation buffer to Coonara Avenue. The survey overlay shows that the apartments in the R4 zoned land in the Apartments Precinct Site would again be largely hidden by houses in the R3 zoned land that are between the viewer and the Apartments Precinct Site. One apartment building would be visible if there was no vegetation proposed inside the Concept Development Site, a part of which exceeds the height standard. The survey overlay, which ignored visual exposure in the view line, shows that the part of the building above the line would make no significant contribution to the perceived bulk of the building. Retention of vegetation in the buffer on Coonara Road between the road and the houses in the R3 zoned land would block the view of the only apartment building potentially visible from Location 06. Therefore, the breach of the height plane would have no discernible impact on the view.

Location 7

The view is from close to the intersection of Coonara Avenue and Castle Hill Road looking south and is representative of the view of the Concept Development from the north. The existing view conditions image shows existing vegetation in the E2 zone land between the intersection and the corner of the Site and the vegetation in the buffer to Coonara Avenue, which would be retained. As the topography in the view is convex relative to the camera location, the wire frame models of the nearer part of the proposed houses in the R3 land and the lower levels of the apartments in the Apartments Precinct Site appear to be below ground level in the survey overlay image. These features would be hidden, in reality, by foreground topography. The survey overlay also shows that there is a theoretical line of sight toward the apartment buildings in the Apartments Precinct Site that

would not be blocked by houses in the R3 zoned land that are closer to the view point. However, in reality and as shown in the photomontage, vegetation outside the Concept Development Site and in the buffer retained along Coonara Avenue, would block views of the apartments in the R4 zoned land in the Apartments Precinct Site. As a result, the breach of the height plane would have no discernible impact on the view.

Location 8

The view is from a point adjacent to the west boundary of the Concept Development Site, in an existing ground level carpark, looking north toward the Apartments Precinct Site. The existing view conditions image shows existing vegetation between the carpark and the Site and in the Site itself. The survey overlay image shows the wire frame models of the apartments in blue with a row of attached housing on the right in the R4 zoned land of the Site, that would be in the foreground. Three of the buildings in the Apartments Precinct Site would be partly visible. Part of the envelopes of Building A2 on the right and a corner of Building A4, on the left, that protrude through the height plane, would theoretically be visible. It is noted that the height plane in following the underlying topography, slopes down in the view line toward the camera position from the leading edges of the buildings beyond, which comply with the height plane. As also noted in relation to Location 9 below, if the buildings were modelled to meet the height standard, for example by stepping or sloped form, the height would not appear different, and the compliant building would not block any less view beyond the site than the proposed envelopes. As a result, the breach of the height plane would have no significant impact on the view.

Some smaller wire frame models of houses further north in the R3 zoned land are visible through the wire frame of the apartment model on the left side but these would be behind the apartments in reality and would not be visible. A buffer zone of existing vegetation would be retained between the housing in the foreground and the apartments. As shown in the photomontage, the housing in the foreground and vegetation in the buffer retained behind and above the housing in the foreground would substantially screen the views of the apartments.

Even if the vegetation was ignored, if the buildings that exceed the height plane were compelled to comply, for example by stepping or sloping the areas that currently protrude out of the plane, the buildings would not appear to be lower, less bulky or cause any lesser effect on views beyond the Apartments Precinct Site. A stepped or sloped building form would also be an inconsistent and poor urban design outcome.

Location 9

The view is from a point in E2 zoned land south of the Concept Development Site, in an existing cleared area, looking north toward the Apartments Precinct Site. The existing view conditions image shows existing vegetation between the carpark in the foreground and in the Site itself. The survey overlay image shows a row of attached housing in the R4 zoned land between the camera location and the Apartments Precinct Site, that would be in the foreground. Four buildings in the Apartments Precinct Site would be partly visible. Part of the envelopes of Buildings A1 on the right to A4, on the left, protrude through the height plane and would theoretically be visible. Some smaller wire frame models of houses further north in the R3 zoned land are visible through the wire frame of the apartment model on the left side but these would not be visible. The buffer zone



of existing vegetation referred to in relation to Location 8 above would be retained between the housing in the foreground and the apartments. As shown in the photomontage, the housing in the foreground and vegetation in the buffer retained behind and above the housing in the foreground would substantially screen the views of the apartments. Even if the effect of the vegetation was ignored, the breach of the height plane does not cause significant visual impact, as the plane is generally sloping down toward the viewer, from the edge of the building beyond, which is compliant with the height plane. As a result, the breach of the height plane would have no significant impact on the view.

6 Conclusion

Photomontages were prepared to comply with the Land and Environment Court of NSW practice note for preparation of photomontages used in evidence. The photomontages are representative of the important public and private domain views toward the apartment buildings in the Apartments Precinct Site.

The photomontages were also prepared to analyse the impacts on views caused by partial protrusions of the proposed apartment buildings through the height plane determined by the development standard for heights of buildings in the HELP.

The analysis shows that the parts of the buildings that breach of the height plane are either not visible at all or have no significant impact on the views. The apartment buildings would have no substantial exposure to or impact on views from the adjacent private or public domain.

There is some theoretical potential for a view of the exceeding parts of the buildings B and D from Positions 8 and 9. If the buildings were required to step or be modelled somehow to achieve compliance with the height plane, the apparent bulk of the buildings would not be substantially different. In addition, the parts of the buildings that would then be lower would not block views of any significant items behind, as the leading edges of the buildings behind would be the same apparent height in the view line as currently proposed.

It is also noted that while apartment buildings would be permissible in the R3 zone as well as the R4 zone, the proposed mix of housing types is a visual outcome which is more sympathetic to the forest and provides less visual bulk and scale. Therefore the very minor height exceedances sought for the only four apartment buildings proposed should be taken into account. There is clearly un-used apartment building height/yield in the proposed Apartments Precinct, but the outcome is visually superior, notwithstanding the exceedances.

As a result, requiring compliance with the height plane would not achieve any positive outcome with regard to visual impact and would be unnecessary, as it would be without effect. It would also be unreasonable, as it would lead to an inconsistent precinct and poor urban design outcome, to no purpose or public benefit.

Please do not hesitate to call me if there are any other matters on which I can be of assistance or if you require further clarification of any points,

Sincerely,

Richard Lamb and Associates

September, 2021

55 COONARA AVE WEST PENNANT HILLS
ACCURATE PHOTOMONTAGES - KEY PLAN

- 1 - CAM VIEW 01
- 2 - CAM VIEW 02
- 3 - CAM VIEW 03
- 4 - CAM VIEW 04
- 5 - CAM VIEW 05
- 6 - CAM VIEW 06
- 7 - CAM VIEW 07
- 8 - CAM VIEW 08
- 9 - CAM VIEW 09



Photomontage key plan over existing site

55 COONARA AVE WEST PENNANT HILLS
ACCURATE PHOTOMONTAGES - KEY PLAN - MASTERPLAN

- 1 - CAM VIEW 01
- 2 - CAM VIEW 02
- 3 - CAM VIEW 03
- 4 - CAM VIEW 04
- 5 - CAM VIEW 05
- 6 - CAM VIEW 06
- 7 - CAM VIEW 07
- 8 - CAM VIEW 08
- 9 - CAM VIEW 09



Photomontage key plan over proposed Masterplan

55 COONARA AVE WEST PENNANT HILLS

LOCATION 01 - WESTERN BOUNDARY



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage position 1

FOCAL LENGTH: 24MM
CAM RL: 124.564m
INFORMATION



VIEW LOCATION MASTERPLAN



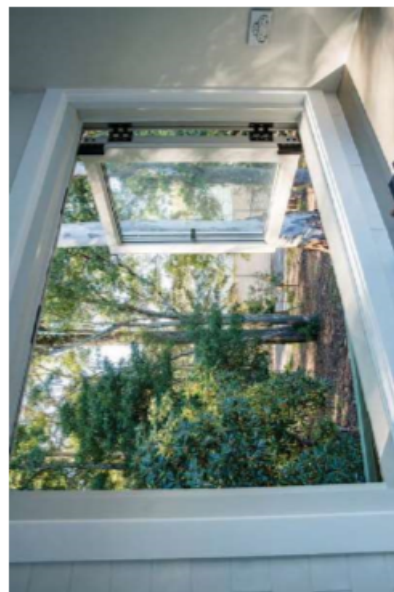
VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 02 - VIEW FROM 53 COONARA AVENUE'S EXTERNAL ALFRESCO SECONDARY OUTDOOR KITCHEN (NOT PRIMARY LIVING ROOM/KITCHEN)



EXISTING CONDITIONS



FOCAL LENGTH: 24MM
CAM RL: 131.633m

INFORMATION

VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage position 2



SURVEY OVERLAY

PROPOSED HOUSES

PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 03 - IMAGE TAKEN FROM EYE LEVEL WITHIN SUBJECT SITE BOUNDARY. DOES NOT CONSIDER VANTAGE POINT BEHIND EXISTING NEIGHBOUR'S BOUNDARY FENCE TO BE RETAINED.



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage location 3

FOCAL LENGTH: 24MM
CAM RL: 133.50m
INFORMATION



VIEW LOCATION MASTERPLAN

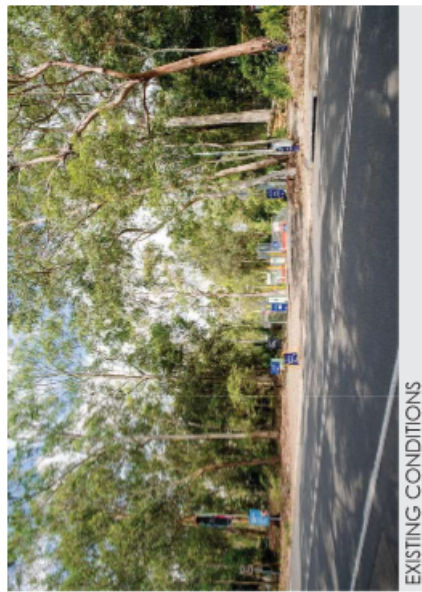


VIEW LOCATION CURRENT

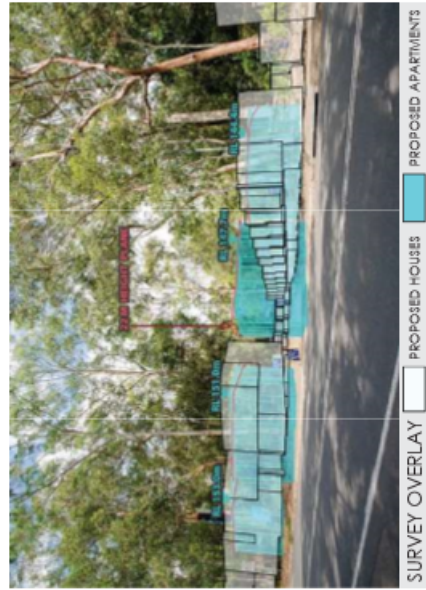


SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS
LOCATION 04- COONARA AVENUE - SITE ENTRY SOUTH



Photomontage view 4



55 COONARA AVE WEST PENNANT HILLS
 LOCATION 05 - COONARA AVENUE - SITE ENTRY NORTH



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage position 5

FOCAL LENGTH: 24MM
 CAM RL: 145.363m
 INFORMATION



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



SURVEY OVERLAY

PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS
LOCATION 6 - EAST VIEW FROM COONARA AVENUE

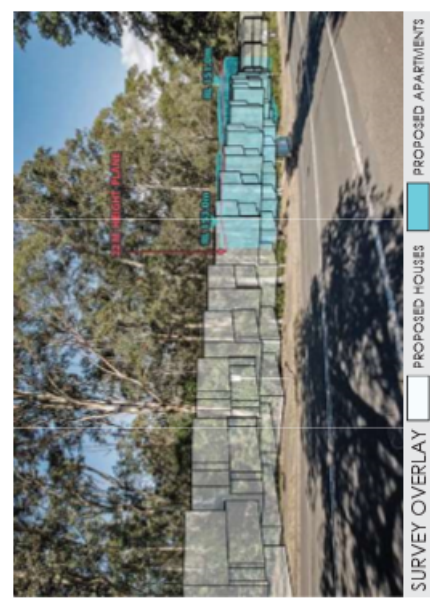


Photomontage position 6



FOCAL LENGTH: 24MM
CAM RL: 160.913m

INFORMATION



55 COONARA AVE WEST PENNANT HILLS

LOCATION 7 - SOUTH VIEW FROM CASTLE HILL ROAD AND COONARA AVENUE INTERSECTION



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage position 7



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

FOCAL LENGTH: 24MM
CAM RL: 180.782m

INFORMATION



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 8 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA



EXISTING CONDITIONS



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

FOCAL LENGTH: 24MM
CAM RL: 119.443m

INFORMATION



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

Photomontage position 8



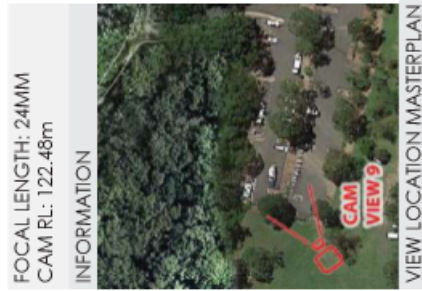
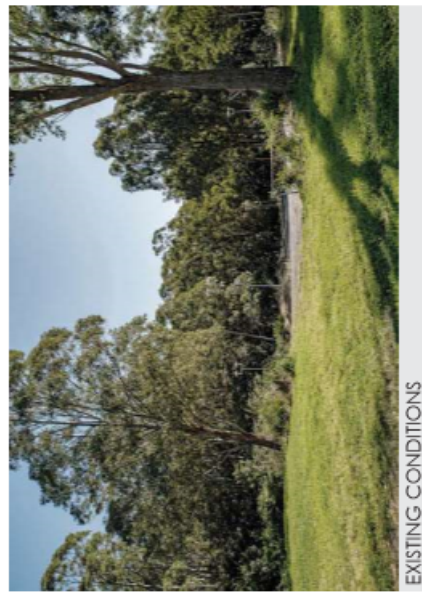
SURVEY OVERLAY

PROPOSED HOUSES

PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 9 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA



FOCAL LENGTH: 24MM
CAM RL: 122.48m

INFORMATION



Photomontage position 9

10 August 2021

To whom it may concern:

Preparation of accurate photomontages for 55 COONARA AVENUE, WEST PENNANT HILLS in NSW Land and Environment Court proceedings.

Anthony MacDonald is the Owner and Managing Director of Arterra Interactive and has twenty (23) years experience working in the Architectural Visualisation industry. Tony employs an experienced team of Architectural 3D modellers and rendering artists to create accurate photomontages under a strict methodology.

Arterra Interactive was engaged by MIRVAC to create accurate photomontages illustrating the following modelling for the above proceedings: compliant building envelopes, proposed building envelopes, proposed Architectural modelling, height planes and proposed landscape.

The photomontages comprise of 2D CAD files, 3D CAD models, existing site survey, survey data capturing the camera locations, and professional photography.

Arterra Interactive has prepared the photomontages attached in accordance with the NSW Land and Environment Court "Use of Photomontages" policy document.

1. Photographs have been taken showing the current and unchanged views (existing photograph), from the same viewing point as that of the photomontage, using the following camera details:
 - a. Type: SONY ILCE-7RM3 (Full frame sensor)
 - b. Lens: Canon 24mm
 - c. Field of view (FOV) of the lens: 73.7 degrees
2. The existing photographs, with survey overlay, are enclosed.
3. A wire frame overlay was produced to show the accuracy in camera matching. A copy of each of the existing photographs with the wire frame lines depicted so as to demonstrate the data from which the photomontage has been constructed is enclosed with this letter. The wire frame overlay represents the existing surveyed elements which correspond with the same elements in the existing photographs.
4. The existing photographs have not been altered.
5. We have not used extreme wide angle lenses, zoomed lenses or stitched photos.

6. We confirm accurate survey data was used to prepare the photomontages. In particular, we confirm that survey data was used:
 - a. For depiction of existing buildings or existing elements as shown in the wire frame; and
 - b. To establish an accurate camera location and RL of the camera.
7. A registered surveyor was employed to prepare the survey information from which the underlying data for the wire frame from which the photomontage was derived was obtained. This person attended the site and surveyed:
 - a. Camera locations and height at ground level; and
 - b. Existing structures and elements on site.
8. The registered surveyor employed is:
Peter Stewart
Registered Land Surveyor - B.Surv (Hons), M.I.S.(NSW)
CRAIG & RHODES

Yours sincerely



Anthony MacDonald
Managing Director
Arterra Interactive
11 Belmore Street
Surry Hills NSW 2010

Summary Curriculum Vitae: Dr Richard Lamb



Summary

- Qualifications
 - Bachelor of Science - First Class Honours, University of New England in 1969
 - Doctor of Philosophy, University of New England in 1975
- Employment history
 - Tutor and teaching fellow – University of New England
 - Lecturer, School of Life Sciences, NSW Institute of Technology (UTS) 1975-1979
 - Senior lecturer in Landscape Architecture, Architecture and Heritage Conservation in the Faculty of Architecture, Design and Planning at the University of Sydney 1980-2009
 - Director of Master of Heritage Conservation Program, University of Sydney, 1998-2006
 - Principal and Director, Richard Lamb and Associates, 1989-2021
- Teaching and research experience
 - visual perception and cognition
 - aesthetic assessment
 - landscape assessment
 - assessment of heritage items and places
 - cultural transformations of environments
 - conservation methods and practices
- Academic supervision
 - Undergraduate honours, dissertations and research reports
 - Master and PhD candidates: heritage conservation and environment/behaviour studies
- Professional capability
 - Consultant specialising in visual and heritage impacts assessment
 - 30 year's experience in teaching and research on environmental assessment and visual impact assessment.
 - Provides professional services, expert advice and landscape and aesthetic assessments in many different contexts
 - Specialist in documentation and analysis of view loss and view sharing
 - Provides expert advice, testimony and evidence to the Land and Environment Court of NSW on visual contentions in various classes of litigation.
 - Secondary specialisation in matters of landscape heritage, heritage impacts and heritage view studies
 - Appearances in over 300 Land and Environment Court of New South Wales cases, submissions to Commissions of Inquiry and the principal consultant for over 1500 individual consultancies concerning view loss, view sharing, visual impacts and landscape heritage

A full CV can be viewed on the Richard Lamb and Associates website at www.richardlamb.com.au

Appendix 2 – Photomontages

55 COONARA AVE WEST PENNANT HILLS

ACCURATE PHOTO MONTAGES - KEY PLAN



- 1 - CAM VIEW 01
- 2 - CAM VIEW 02
- 3 - CAM VIEW 03
- 4 - CAM VIEW 04
- 5 - CAM VIEW 05
- 6 - CAM VIEW 06
- 7 - CAM VIEW 07
- 8 - CAM VIEW 08
- 9 - CAM VIEW 09

55 COONARA AVE WEST PENNANT HILLS ACCURATE PHOTOMONTAGES - KEY PLAN - MASTERPLAN



- 1 - CAM VIEW 01
- 2 - CAM VIEW 02
- 3 - CAM VIEW 03
- 4 - CAM VIEW 04
- 5 - CAM VIEW 05
- 6 - CAM VIEW 06
- 7 - CAM VIEW 07
- 8 - CAM VIEW 08
- 9 - CAM VIEW 09

55 COONARA AVE WEST PENNANT HILLS
LOCATION 01 - WESTERN BOUNDARY



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

FOCAL LENGTH: 24MM
CAM RL: 124.564m

INFORMATION



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 02 - VIEW FROM 53 COONARA AVENUE'S EXTERNAL ALFRESCO SECONDARY OUTDOOR KITCHEN (NOT PRIMARY LIVING ROOM/KITCHEN)



EXISTING CONDITIONS

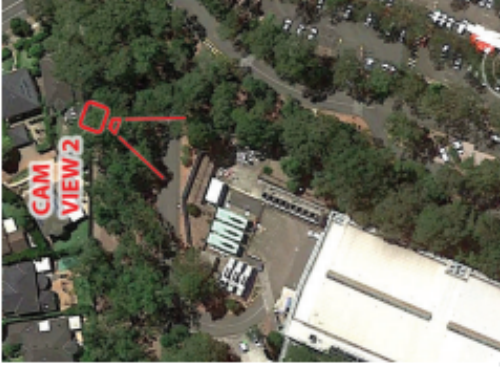


PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

FOCAL LENGTH: 24MM
CAM RL: 131.633m
INFORMATION



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 03 - IMAGE TAKEN FROM EYE LEVEL WITHIN SUBJECT SITE BOUNDARY. DOES NOT CONSIDER VANTAGE POINT BEHIND EXISTING NEIGHBOUR'S BOUNDARY FENCE TO BE RETAINED.



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

FOCAL LENGTH: 24MM
CAM RL: 133.50m
INFORMATION



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS
LOCATION 04- COONARA AVENUE - SITE ENTRY SOUTH



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

FOCAL LENGTH: 24MM
 CAM RL: 132.838m
 INFORMATION



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS LOCATION 05 - COONARA AVENUE - SITE ENTRY NORTH



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED



VIEW LOCATION CURRENT



VIEW LOCATION MASTERPLAN

FOCAL LENGTH: 24MM
CAM RL: 145.363m

INFORMATION



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS
LOCATION 6 - EAST VIEW FROM COONARA AVENUE



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

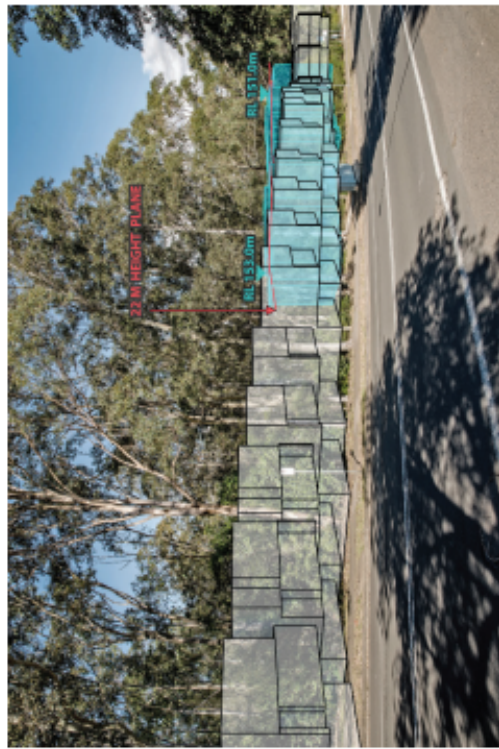


VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

FOCAL LENGTH: 24MM
 CAM RL: 160.913m
 INFORMATION



SURVEY OVERLAY ☐ PROPOSED HOUSES ☐ PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 7 - SOUTH VIEW FROM CASTLE HILL ROAD AND COONARA AVENUE INTERSECTION



EXISTING CONDITIONS



VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

FOCAL LENGTH: 24MM
CAM RL: 180.782m

INFORMATION



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED



SURVEY OVERLAY

PROPOSED HOUSES

PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 8 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED



FOCAL LENGTH: 24MM
CAM RL: 119.443m

INFORMATION



VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 9 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA



EXISTING CONDITIONS



PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED



FOCAL LENGTH: 24MM
CAM RL: 122.48m

INFORMATION

VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT



SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS



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21 February 2022

Our Ref: HEM:MIR004/4004

Adrian Checchin
Development Director
NSW Apartments
Residential Development
Mirvac
Level 28, 200 George Street
SYDNEY NSW 2000

By Email:
adrian.checchin@mirvac.com

Dear Adrian

Application of the Low Rise Housing Design Guide for Development Applications
Property: 55 Coonara Avenue, West Pennant Hills (Site)

1. Introduction

- 1.1 You have asked us to confirm whether the *Low Rise Housing Diversity Design Guide for Development Applications* published by the Department in July 2020 (**Design Guide**) applies to the Housing South development application (DA No. 859/2022/JP) (**DA**) lodged with The Hills Shire Council (**Council**). This appears to be for the reason that there is no applicable Council development control plan (**DCP**) that is relevant for small lot housing as contemplated in the rezoning of the Site effected in June 2020.
- 1.2 The Design Guide does not apply to the DA because the proposed development is for the purposes of dwelling houses and attached dwellings not manor houses or multi dwelling housing (terraces).

2. Requirement to consider the Design Guide

- 2.1 In determining a development application, a consent authority is to take into consideration, amongst other things, the regulations to the extent that they prescribe matters for the purposes of section 4.15(1) of *Environmental Planning and Assessment Act 1979* (**Act**) that apply to the land to which the development application relates: section 4.15(1)(a)(iv) of the Act.
- 2.2 One of those prescribed matters is set out in clause 92(1)(e) of the *Environmental Planning and Assessment Regulation 2000* (**Regulation**) which reads:

(1) *For the purposes of section 4.15(1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application—*

.....

(e) in the case of a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the Low Rise Housing Diversity Design Guide for Development Applications published by the

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Department in July 2020, but only if the consent authority is satisfied that there is not a development control plan that adequately addresses such development.

- 2.3 It is clear from clause 92(1)(e) that the Design Guide is a requirement for consideration only in the case of an application for development for the purposes of a manor house or multi dwelling housing (terraces).
3. **The proposed development is for dwelling houses and attached dwellings not manor houses or multi dwelling housing (terraces) and so the Design Guide does not apply**
- 3.1 The DA is for the construction of 61 attached dwellings and detached dwelling houses, not manor houses or multi dwelling housing (terraces).
- 3.2 The following definitions are relevant for the purposes of characterising the proposed development:
- (a) **"Dwelling house"** is defined in *The Hills Local Environmental Plan 2019 (THLEP 2019)* as:
"means a building containing only one dwelling".
 - (b) **"Attached dwelling"** is defined in THLEP 2019 as:
"means a building containing 3 or more dwellings, where—
(a) each dwelling is attached to another dwelling by a common wall, and
(b) each of the dwellings is on its own lot of land, and
(c) none of the dwellings is located above any part of another dwelling" (emphasis added).
 - (c) **"Manor house"** and **"multi dwelling housing (terraces)"** is each defined in the Regulation as having the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*. Those definitions are:
 - (i) **"Manor house means a residential flat building** containing 3 or 4 dwellings, where—
(a) each dwelling is attached to another dwelling by a common wall or floor, and
(b) at least 1 dwelling is partially or wholly located above another dwelling, and
(c) the building contains no more than 2 storeys (excluding any basement)" (emphasis added); and
 - (ii) **"Multi dwelling housing (terraces) means multi dwelling housing** where all dwellings are attached and face, and are generally aligned along, 1 or more public roads" (emphasis added).
 - (d) **"Residential flat building"** is a relevant form of development that needs to be considered because **"manor house"** is a type of residential flat building. **"Residential flat building"** is not defined in the Regulation, nor the Codes SEPP but it is defined in the *Standard Instrument (Local Environmental Plans) Order 2006 (SI LEP)* (and has the same meaning in THLEP 2019). The definition in the SI LEP is relevant because a word or expression used in the Codes SEPP, which is not

specifically defined in that SEPP, has the same meaning as it has in the SI LEP: clause 1.5(2), Codes SEPP. *“Residential flat building”* is defined in the SI LEP as:

“means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing” (emphasis added).

- (e) *“Multi dwelling housing”* is a form of development that needs to be considered because *“multi dwelling housing (terraces)”* is a type of multi dwelling housing. *“Multi dwelling housing”* is not defined in the Regulation nor the Codes SEPP, but it is defined in the SI LEP¹ (and the THLEP 2019). *“Multi dwelling housing”* is defined in the SI LEP as:

“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” (emphasis added)

- 3.3 The proposed development is correctly characterised in the Statement of Environmental Effects lodged with the DA as for the construction of 61 attached dwellings and detached dwelling houses, and the subdivision of land into individual dwelling lots. Each dwelling will be on its own lot of land and no dwelling is partially or wholly located above another dwelling.
- 3.4 It is an essential component of a manor house that the development comprise a residential flat building. The definition of residential flat building expressly excludes attached dwellings. Further, a building containing only one dwelling house is appropriately characterised as a dwelling house, not a residential flat building which must comprise 3 or more dwellings.
- 3.5 It is an essential component of multi dwelling housing that there be 3 or more dwellings on the one lot of land. That is not the case here. There will be only one dwelling on each lot of land.
- 3.6 Further, the Design Guide makes it clear that it applies to development that contains two or more dwellings.² Its objectives and building envelope controls aim to ensure that manor houses and multi dwelling housing (terraces) are designed to be similar to a large dwelling house.³
- 3.7 The proposed development is appropriately characterised as development for the purposes of attached dwellings and detached dwelling houses, and not manor houses or multi dwelling housing (terraces). Accordingly, the Design Guide does not apply to the DA.

4. A concept DA is a viable alternative to a DCP to set site specific guidelines

- 4.1 To the extent that the underlying reason why the ongoing reference to the Design Guide continues, despite it not being applicable to the DA under the Regulation, is the absence of a DCP addressing small lot housing (less than 240sqm), then we note that associated with the DA is concept development application DA 860/2022/JP for 418 dwellings (166 dwelling houses and 252 apartments) including civil works (**Concept DA**). We note that section 4.23 of the Act specifically permits concept development applications to be used as a means of setting site specific controls for a site in lieu of a requirement for a DCP. Section 4.23 reads:

¹ See paragraph 3.2(d) above.

² see section 1.1, page 2

³ Page 25 (manor houses); section 2.2A, page 57 (building envelope controls for manor houses); section 2.3A, page 78 (building envelope controls for multi dwelling housing (terraces)).

4.23 Concept development applications as alternative to DCP required by environmental planning instruments

(1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.

(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

- 4.2 As per subclause (3), any such Concept DA is to contain the information required to be included in the DCP by the instrument or Regulation. We note that included in the Concept DA are site specific design guidelines which in effect contain the controls you would expect in a DCP.

5. Conclusion

- 5.1 Accordingly, there is no legal requirement to consider the Design Guide because it doesn't apply as per the Regulation and as per the definitions in the Design Guide.

- 5.2 To the extent that the DEP is seeking to apply the Design Guide because there is no applicable DCP, we say:
- (a) The DEP shouldn't be using the Design Guide where it clearly doesn't apply to this form of housing; and
 - (b) If the DEP is seeking to set an appropriate framework to guide future development of the Site, that can be done through the site specific design guidelines in the Concept DA which the Act recognises as an appropriate method to do so in lieu of a DCP.

Yours faithfully



Penny Murray
Partner

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MEETING REPORT DESIGN EXCELLENCE PANEL

Date:

10/03/21

Time:

10.00 am

Location of Meeting:

The Hills Shire Council, Community Meeting Rooms 1+2

Panel Members:

Chairperson – Nicholas Carlton, Manager Forward Planning, THSC
Panel Member – David Reynolds, Group Manager THSC
Panel Member – Rod Simpson, Independent Design Expert
Panel Member – Oi Choong, Independent Design Expert

Councillors:

None Present

Council Staff:

Paul Osborne, Cameron McKenzie, Cynthia Dugan, Marika Hahn, William Attard

Guests:

Emma Ellis – Project Director , Mirvac
Andrew LA – Design Director, Mirvac
David Hirst – Design Manager, Mirvac
Rob Malcolm – Development Manager, Mirvac
Dean Davies, Development Manager, Mirvac
Georgia Sedgmen – Planning, Mecone
Scott Ibbotson – Landscape Architect , Turf

BUSINESS ITEM AND MEETING REPORT

1. Welcome and Opening

The Hills Shire Council is committed to achieving design excellence in the built form environment and ensuring new high-density buildings are of a high quality design. The criteria for a development to achieve design excellence are found in Clause 7.7 'Design Excellence' of Local Environmental Plan 2019.

The Hills Shire Design Excellence Panel (The Panel) is an advisory Panel that provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist the consent authority in its consideration of a development application.

The Panel provides recommendations on the following:

- any development which contains a building with a height of 25 metres or more; or
- any strategic planning matters for which design excellence is relevant.

It is noted that the Design Excellence Panel does not determine or endorse applications. Rather, it is responsible for providing advice to Applicants and the consent authority to assist in the assessment of the Proposal against the design excellence criteria in Clause 7.7 of LEP 2019.


2. Declaration of interest

"Nil"

3. Confirmation of previous minutes

Confirmed by email

4. Presentations

Item 4.1	10.15am – 12.30pm
DA Number	67/2021/PRE
Property Address	55 Coonara Avenue, West Pennant Hills
Proposal	 <p>Residential subdivision comprising 166 small lot attached and detached dwellings and 4 residential development blocks comprising 263 dwellings over structured basement car parking (stated in presentation report).</p>
Applicant representative address to the Panel	Emma Ellis, Andrew La, David Hirst, Scott Ibbotson, Georgia Sedgemen

DOCUMENTATION

The Design Excellence Panel reviewed the following drawings:

- *Architectural Design Report*, dated February 2021, by Mirvac
- *Vision and Architectural Concept*, dated 10th March, by Mirvac
- *View Impact analysis*, provided March 2021, by Mirvac
- *Appendix 1 For Approval Drawings*, provided 05/03/21, by Mirvac
- *Appendix 2 reference Scheme Drawings*, provided 05/03/21, by Mirvac
- *Appendix 3 Draft Design Guideline*, dated 17/02/21, by Mirvac

PANEL COMMENTS

The Panel thanks the applicant for presenting this Pre-DA submission, as it offers an opportunity to discuss design principles and planning strategies prior to undertaking the preparation of a full DA submission. All Panel members are familiar with the site.

Preamble

Design excellence is often summarised as 'the highest standard of architectural, urban and landscape design' and while specific definitions can vary, all generally include references to context, accessibility, public domain, streetscape, massing and sustainability. A design that demonstrates 'design excellence' should by definition exceed compliance with the minimum standards and demonstrate good design and amenity of the built environment. It should provide an outcome that will achieve a level of design quality that is above and beyond the usual.

This proposal is for a site that has significant biodiversity values and aims to create a liveable community. This is not just a matter of scale, but how the development works as an environmental and social system as compared to the environmental 'performance' and 'quality' of a single building.

Existing office development and design approach

The architectural and landscape design of the existing office development displays 'design excellence', having won a number of Australian Institute of Architecture awards and being recognised for its technical achievements and response to a disturbed site. The approach to site planning, ecological protection and restoration, and the landscape and architectural design of the IBM HQ was considered to demonstrate 'design excellence' in its time.

One approach to achieve design excellence for a redevelopment of the site would be to attempt to minimise the modification of the site and adapt the existing structures. This has been demonstrated in the adaptive re-use of many 19thC and early 20thC century warehouses, and late 20thC commercial office buildings including the IBM building at the southern approaches to the Sydney Harbour Bridge, and the conversion and extension of the AMP building in Bridge Street. An approach such as this would result in very significant savings in embodied CO₂ as well as the retention of the tree canopy that will take years to replace.

The Panel has not been made aware of any investigation, analysis or rationale for why such an approach is not possible, however if the Applicant wishes to consider this, an investigation would consider:

1. Realignment of roads to correspond to the alignment of the car parks benching and retention of mature trees and if possible the retention of sandstone walls and steps;
2. Retention of the landscape and mature vegetation between the buildings; and
3. Adaptive re-use of the buildings

Context / Character

1. The Panel noted the applicant is drawing heavily upon the visual amenity afforded by the existing buffer to Coonara Avenue and the adjacent Cumberland State Forest.
2. Although the development footprint will be limited within the loop road, the Panel is concerned that the site will be entirely cleared and re-contoured, eliminating existing green links and habitat corridors. The proposed green links across the site in both the east west and north south directions are not contiguous with the existing Blue Gum High Forest and Cumberland State Forest canopies.
3. The site is unique and it is unclear how the layout takes advantage of the proximity to the Cumberland State Forest. The Panel notes the proposed roads R1, R3 and R6 present as conventional suburban streets and suggests consideration of an alternate alignment that follows the existing car parks which would result in every street terminating in forest vista.
4. The retention of trees and setback from Coonara Avenue is supported.
5. The Panel does not support 'strong entry statements' that were mentioned during the presentation as these may make the development appear like a gated community.
6. The configuration of the entry looks directly at the end elevation of the row of terraces fronting Road 4. A more concerted effort to engage with the forest in accordance with the stated vision for the site is recommended.
7. The Blue Gum High forest is a significant landscape feature. It is acknowledged that the applicant considers this to be the heart of the community. Given the considerable accessibility issues and

conservation constraints, the Panel considers the opportunities for socialising and community activities are limited to within the forest environment and recommends that the proponent undertakes greater attention to place making and community provision within the subject site.

8. The Panel suggested that the consideration of design elements such as landscaped pedestrian cross site links and more centralised public open space provision would further develop a site specific character and social amenity.

Site planning and built form strategy

Investigation of Options

9. The Panel questioned whether the applicant has fully investigated the different development options for the site. The options presented in the design report appeared to demonstrate limited re-arrangements of two typologies, on a street layout that is essentially the same for all three options. All options involve complete removal of existing vegetation and significant cut and fill. Given the uniqueness and environmental qualities of the site, an outcome more sympathetic to the site character and topographical constraints may be a suitable alternative (although it is noted that this was not the form of the proposal presented to the Panel and the proposal essentially seeks to conform with the zone boundaries and concepts established at the point in time when the site was rezoned).
10. The Panel is concerned by the extent of basement car parking proposed for the residential flat buildings that covers the entire lot. The arrangement compromises the extent of groundwater flows and also severely limits the opportunity for deep soil tree planting across the apartment precinct. The Panel recommends that basement car parking be contained to be within the building envelope.
11. The Panel noted the extensive ground works required for this masterplan and that staging of the proposal would result in the site being subject to construction for a number of years. It was not clear when the community amenity outcomes would be delivered.

Urban Grain

12. The urban grain interface for the residential flat buildings is unclear. The Panel considers that a more reasonable and desirable outcome would be for all ground floor apartment to address the street and be able to be entered directly from the street.
13. The façade interface and address to the street is not reflective of an activated street setting with the garages dominating the street frontage in many locations. The Panel considers this to be a poor outcome.
14. The street setbacks in some parts of the subdivision are insufficient to provide a vegetated setback, in particular the residential flat buildings. A key objective of setback controls is to create a generous deep soil perimeter that enables provision of tall canopy trees and generous landscape elements. Further consideration should be given to achieving this outcome to promote a contextual and appropriate landscape response to the existing site condition and location.

Density, Mix and Building Program

15. It is agreed that the proposed masterplan yield is more appropriate than the maximum permissible under the rezoning.

16. However, the concept shows this yield being achieved within essentially two typologies only. Consideration should be given to whether the same yield might be achievable within a more diverse mix of buildings.
17. The proposed height, arrangement and length of the residential flat buildings presents a perception of an overdevelopment of the site. It is advised that this built form arrangement and a greater diversity of typologies and distribution around the site be considered. There may be opportunity to consider utilising clause 5.3 of The Hills LEP to achieve this outcome.

Height and Massing

18. The Panel notes a height limit of 22m applies to the site. The definition of height is in relation to the existing ground level not the 'natural ground level'. Existing ground level below Apt 1 is notated at approximately RL 120. The roof is indicated to be RL 152.2. This would result in an overall height of 32.2m and a 10m height exceedance.

The Panel does not agree with the applicant statement that the height exceedance is minimal. The Visual Impact photomontages clearly demonstrate that it is significant and given the site is being redeveloped as a master planned development under newly gazetted planning controls, exceedance of the height of building standard is considered unwarranted. The Panel recommends adhering to the 22m maximum height limit.

19. The Panel noted the interface between the low rise development and the residential flat buildings provided an unsympathetic transition of scales that did not present as being an appropriate design resolution in this location. In particular it is noted that the lower rise dwellings are south of the residential flat buildings and at a lower elevation.

Apartment Mix and Size

20. The apartments have deep floor plates with double loaded corridors. It is not clear how these would meet ADG criteria.
21. This is a large master planned development site and as such, there is some flexibility at this point in the arrangement and organisation of the apartment blocks. It is unclear why the apartments are orientated north-south when thinner east-west apartments with 'skew' orientated towards the forest would provide a better design outcome.
22. The Panel discourages areas of extensive blank walls overlooking the spaces between development blocks and encourages consideration of opportunities for view lines into the forest and overlooking the public domain.

Small Lot Housing

23. The housing typologies provided are indicative, but are not reflective of the provided draft development guidelines. A closer correlation within the submitted documentation of the final built outcome is recommended.
24. While Council's preference is for designs to comply with Council's Medium Density Residential and Small lot Housing DCP's (Part B Sections 9 and 10 respectively), the Low Rise Housing Diversity Guide does also provide pertinent advice relevant to the small lot housing. The panel does also acknowledge the effort of the applicant in considering their own design principles informed by the earlier work with Council on the then draft DCP for the site which of course ultimately did not proceed to finalisation.

25. At a minimum, the Panel recommends adherence with the Low Rise Housing Diversity Guide for the small lot housing component, noting the site has been rezoned without an applicable DCP. A design statement indicating how this has been successfully achieved should be provided to the DA officer as per the guideline recommendation.

Car parking

26. Detailed consideration should be given to the capacity of the site to accommodate the extent of car parking proposed and the potential impact of on-grade parking on the residential and pedestrian amenity.
27. Basement car parking should be contained wholly with the building footprint. The purpose of this is to retain deep soil planting zones for landscaping and high canopy trees. Any on-grade car parking in the small lot portion of the subdivision should be located over a permeable surface.

Landscape design vision and character

28. The documentation includes an ambitious landscape proposal for the re-vegetation and greening the site following extensive clearing and cut and fill operations. Whilst the Panel supports the landscape vision and objectives, it is concerned that the verdant landscape character shown in the perspectives may not be able to be achieved, given the challenges and scale of revegetation on such a highly engineered site.
29. As addressed elsewhere, the use of extensive slabs and lack of deep soil around the apartment buildings will likely hinder achievement of this vision.
30. Early remediation and revegetation is critical to restoring the existing and proposed verdant landscape character. Appropriate staging should also be considered to ameliorate the adverse visual impacts of the cut fill operations.

Site Coverage/Landscaped Open Space

31. The Panel has concerns about the location, configuration and usability of the landscaped communal open spaces as follows:
- The terraced Central Park drops around 9 metres across its length. Whilst providing a green vista down the site, the level changes constrain access, flexibility and usage capacity of this space. It is not clear if consideration was given to retaining the better quality trees on the site to form the nucleus of this central park,
 - The other pocket parks/communal open spaces are similarly constrained by slopes, including the pocket park to the north of the site,
 - The extensive bush fire buffer zones are essentially re-landscaped linear embankments and 'left over spaces' that require the removal of all existing vegetation, and
 - The open spaces through centre of site are not contiguous with adjacent bushland areas. As noted there are considered to be insufficient through-site links in East-West and North-South directions to allow for pedestrian permeability and connectivity. There is also a need for more direct views and green corridors between the apartments blocks and small lot housing.

Public Domain

32. The Panel noted the limited street access would result in heavy usage of the perimeter road and specific traffic calming measures should be considered along with a speed limit of 30km/hr. This would protect pedestrian safety and amenity.

33. The need to establish accessible gradients was cited as the reason for re-grading the site however there appear to be a number of sections of roads and lanes that do not meet the required gradients (central section of R3, eastern section of R1, northern and south western sections of Perimeter Road). Given the steep topography, the Panel accepts that this may not be possible and consequently the retention of trees and a road layout that follows the contours more closely would be preferable.
34. The Panel recommends the provision of a clear accessible path of travel diagram that covers the subject site and a diagram that clearly indicates safe pedestrian pathways and cycleways from Coonara Avenue and the upper dwellings to the open space.

Private Domain

35. The landscape drawings provided presented minimal landscape provision for private use by residents within the proposed developments and development blocks.
36. All dwellings houses attached and detached should have the provision of soft landscaping at the ground floor level of a size large enough to grow a medium sized tree.

Streetscape

37. The Panel notes the footpaths are narrow for this scale of development and recommends that pavements widths be used in keeping with the Transport for NSW Walking Space Summary. This may require larger verges widths which should then be incorporated into the subdivision plan to provide an amenable and equitable pedestrian environment.
38. The street setbacks in some parts of the subdivision are insufficient to provide a vegetated setback, in particular the residential flat buildings. Application of minimum setbacks detailed in Council's existing DCP for residential flat buildings is strongly recommended.

Facade and Interface

39. Whilst not discussed during the meeting, the Panel notes the façade interface and address to the street is not reflective of an activated street setting, with the garages dominating the street frontage in some locations. The design of the garage and driveway should also be able to accommodate two vehicle movements. This was not able to be determined on the material presented to the panel.

SEPP 65 items to be clarified or revised:

40. Concern is raised that ADG compliance is unable to be achieved with the clearly defined design criteria deemed to be achievable in metropolitan areas. It is noted that the ADG is a minimum standard requirement and it is expected all the objectives and design criteria of the ADG are satisfied and /or exceeded, especially noting the opportunities to do so on a large master planned development site.
41. Design criteria should be considered on a per development block basis as clearly illustrated in the ADG, rather than based on the BCA definition (which is separate regulatory process).
42. It is recommended the following items are reviewed and revised accordingly:
- 3F Visual privacy – revise to achieve minimum compliance and improved urban design outcomes.
 - 4A Solar and daylight access – ADG solar access is to be calculated per building block.

- **4B Natural ventilation** – It should be possible for this master planned development to achieve this without reliance on engineered solutions.

43. Communal open space provision should be clarified and clearly defined in diagrams. It is unclear where communal open space allocation is provided to the individual residential flat buildings as required by the ADG.

Sustainability and Environmental Amenity

44. The Panel noted that the adjacency of the proposed small lot housing to the APZ would result in additional tree removal that could be avoided if an alternate residential typology had been considered.

45. The applicant stated that they predicated the establishment of a 24% tree canopy on the developable area after 15 years. The Panel notes the Greater Sydney Regional Plan sets a target of a 40% tree canopy and this is reinforced by the Premiers priority of Greening our city. The Panel recommends greater effort be applied to re-establishing the tree canopy to match existing coverage, especially noting the existing context and environmental qualities of the site.

46. The Panel noted that careful consideration of the proposed replacement tree species and vegetation selection would need to be undertaken as it is unlikely that endemic species would survive on engineered fill. It is expected that more detail would be provided to demonstrate how the target canopy cover can be achieved. This is to include details relating to the site preparation, soil mixes, drainage, species selection and maintenance.

47. Achievement of some 'design excellence' criteria is usually demonstrated by a series of commitments based on analysis of the proposal in relation to energy and water consumption, total CO₂ in construction and operation (with the aim of achieving net zero), waste management and habitat restoration and greening. The Panel recommends preparation of a comprehensive sustainability report which clearly describes the proposed sustainability measures to be implemented in the redevelopment of this site including urban heat island mitigation measures.

PANEL CONCLUSION

The Panel thanks the applicant for the opportunity to provide input into the design of the scheme at this stage of the design evolution and recommends that the matters identified in this report are considered as part of the formal DA submission.

During the discussion, the Panel suggested that the Applicant may wish to consider alternate site arrangements that require less benching and soil movement, as this could present a more cost efficient and high quality development outcome (although it is acknowledged that this is not the form of the proposal envisaged through the recent rezoning of the site or presented to the Panel for comment). While this would be at the Applicant's discretion, consideration of alternate site arrangements (with associated construction costing including civil and hydraulic considerations) may be a valuable exercise for the Applicant to undertake, prior to proceeding with further detailed design development. While the Panel is appreciative of the complexity of the site and the concerted desire of the Applicant to provide good residential amenity, there is risk that the overall cost of the site preparation and potential for additional hidden costs may impact on the construction timeframe and overall design quality.

ATTACHMENT 12 – DESIGN EXCELLENCE PANEL MEETING REPORT – 08/12/2021



MEETING REPORT DESIGN EXCELLENCE PANEL

Date:	08/12/21	Time:	11.30am
Location of Meeting:	Online meeting hosted by The Hills		
Panel Members:	Chairperson – Nicholas Carlton, Manager Forward Planning, THSC Panel Member – David Reynolds, Group Manager THSC Panel Member – Paul Berkemeier, Independent Design Expert (new) Panel Member – Oi Choong, Independent Design Expert		
Councillors:	None Present		
Council Staff:	Paul Osborne, Cameron McKenzie, Cynthia Dugan, Sanda Watts, Megan Munari, Marika Hahn		
Guests:	Adrian Checchin – Development Director, Mirvac Diana Sarcasmo – General Manager Design, Mirvac Andrew LA – Design Director, Mirvac David Hirst – Design Manager, Mirvac Katrina Torresan – Senior Associate – Urban Design, Mirvac Stuart Allen – Senior Development Manager Dean Davies – Mirvac - Development Manager - Housing Chris Lam – Mirvac - Development Manager - Apartments Alec Tzannes – Design consultant, Tzannes and Associates Georgia Sedgmen – Planning, Mecone Hugh Halliwell – Planning, Mecone Mike Horne – Landscape Architect , Turf Jacob Holman – Landscape Architect , Turf		

BUSINESS ITEM AND MEETING REPORT

1. Welcome and Opening

The Hills Shire Council is committed to achieving design excellence in the built form environment and ensuring new high-density buildings are of a high quality design. The requirements for a development to achieve design excellence are found in Clause 7.7 'Design Excellence' of Local Environmental Plan 2019.

The Hills Shire Design Excellence Panel (The Panel) is an advisory Panel that provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in its consideration for development application.

The Panel provides recommendations on the following:

- any development which contains a building with a height of 25 metres or more; or
- any strategic planning matters for which design excellence is relevant.

The role of the Panel is to evaluate and critique design aspects of proposed development and provide recommendations on whether development exhibits "Design Excellence".

It is noted that the Design Excellence Panel does not determine or endorse applications. Rather, it is responsible for providing advice to Applicants and the consent authority to assist in the assessment of the Proposal against the design excellence criteria in Clause 7.7 of LEP 2019.

2. Declaration of interest

"Nil"

3. Confirmation of previous report

Confirmed by email

4. Presentations

Item 4.1	11.30am – 1.30pm
DA Number	DA 860/2022/JP Concept development Application for 418 dwellings DA 861/2022/JP Construction of four residential flat buildings Planning Portal Reference #: PAN156598 and PAN157480
Property Address	55 Coonara Avenue, West Pennant Hills
Proposal	 Concept Development Application for 418 dwellings, comprising 252 apartments within four development blocks and 166 attached and detached dwelling houses.
Applicant representative address to the Panel	Adrian Checchin – Development Director, Mirvac Diana Sarcasmo – General Manager Design, Mirvac Alec Tzannes – Design consultant, Tzannes and Associates Katrina Torresan – Senior Associate – Urban Design, Mirvac Mike Horne – Landscape Architect, Turf

BACKGROUND

The Design Excellence Panel previously reviewed application pre-DA concept for the site on May 10th 2021.

The Panel reiterates the preamble stated at the previous Design Excellence Panel: *"Design excellence is often summarised as 'the highest standard of architectural, urban and landscape design' and while specific definitions can vary, all generally include references to context, accessibility, public domain, streetscape, massing and sustainability. A design that demonstrates 'design excellence' should by definition exceed compliance with the minimum standards and demonstrate good design and amenity of the built environment. It should provide an outcome that will achieve a level of design*

quality that is above and beyond the usual. This proposal is for a site that has significant biodiversity values and aims to create a liveable community. This is not just a matter of scale, but how the development works as an environmental and social system as compared to the environmental 'performance' and 'quality' of a single building."

DOCUMENTATION

The Design Excellence Panel reviewed the following drawings which were provided for the 8th December 2021 meeting:

For Concept DA 860/2022/JP

PAN156598 - *Clause 4.6 Written Request*, October 2021, by Mecone
PAN156598 - *For Approval Drawings*, 17/09/21, By Mirvac Design
PAN156598 - *NSW ADG Assessment*, received 22/11/21, by Mecone
PAN156598 - *Photomontages*, received 22/11/21, by Unknown
PAN156598 - *Reference Scheme Drawings (Housing)*, 17/09/21, By Mirvac Design
PAN156598 - *Appendix 2 Reference Scheme Drawings (Apartments)*, 17/09/21, By Mirvac Design
PAN156598 - *Site-Specific Design Guidelines*, October 2021, by Mecone
PAN156598 - *Statement of Environmental Effects*, October 2021, by Mecone
PAN156598 - *Urban Design Report*, 24th September 2021, by Mirvac

For Apartment DA 861/2022/JP

PAN157480 - Apartment Precinct - *Clause 4.6 Written Request*, October 2021, by Mecone
PAN157480 - Apartment Precinct - *Architectural Drawings*, 17/09/21, By Mirvac Design
PAN157480 - Apartment Precinct - *Landscape Design Report*, October 2021, by Turf
PAN157480 - Apartment Precinct - *NSW ADG Assessment*, received 22/11/21, by Mecone
PAN157480 - Apartment Precinct - *Part 5 (Apartments) Design Guidelines Assessment*, received 22/11/21, by Mecone
PAN157480 - Apartment Precinct - *SEPP 65 Report*, 17/09/21, By Mirvac Design
PAN157480 - Apartment Precinct - *Site-Specific Design Guidelines*,
PAN157480 - Apartment Precinct - *Statement of Environmental Effects*, October 2021, by Mecone
PAN157480 - Apartment Precinct - *Streetscape Perspectives*, September 2021, by Turf
PAN157480 - Apartment Precinct - *Urban Design Report*, 24th September 2021, by Mirvac

PANEL COMMENT

Council thanks the applicant for their presentation and acknowledges the design amendments made to the apartment building blocks. Comments from the previous pre-DA meeting have not been included in this meeting report, however, these comments remain relevant and the Panel supports all comments made previously. It is recommended that the earlier DEP meeting report regarding this development site be referred to in conjunction with the further comments below by the determination authority.

1. Concept Development Application DA

The previous report highlighted concerns with the site arrangement that will require substantial benching and soil movement and suggested that alternative site arrangements be considered. The Panel notes that the applicant has not made any substantial changes to the site layout.

Context / Character

The Panel noted that the design aspiration and vision narrative expressed in the provided Site Specific Design Guidelines is not fully realised in the site layout and arrangement of built form. The Panel provides the following advice as to how this vision may be realised. There is opportunity to better integrate with the wonderful opportunities afforded by the site and forest surround and the Panel encourages the applicant to consider the following advice:

- Explore additional view corridors/sight lines to the forest areas, in particular opening up vistas from internal roads such as road 4.
- Consider a more bespoke architectural treatment reflective of the location and context for the smaller lot housing. The vision mentions a celebration of the forest. The architectural aesthetic presented is that of generic project homes and not reflective of a bushland context.

The Sydney School of Architecture that predominately occurred on steep bushland sites in St Ives was cited as a useful design reference.

- Provide more diversity in the street moving away from one standard housing lot width and typology to providing a mix of lot widths and housing types per street.
- The site coverage per lot appears to be very dense and urban, more reflective of an inner city context than a bushland setting. A housing typology more suited to the setting should be a consideration.
- A number of lots do not appear to provide sufficient external private open space to grow a tree higher than 3m.
- Provide a more activated street frontage not dominated by garages. A number of street frontages such as R3 south exhibit garages in excess of 50% of the lot frontage width, presenting a walled street frontage comprising garages. This is considered a poor street interface. The applicant may consider reviewing the design guidance offered in the Low Rise Housing Diversity Design Guide.

Urban Structure

Noting that there have only been very minor changes to the overall masterplan structure and road arrangement since the previous DEP meeting in March 2021, the Panel provides the following comment:

- The Panel is unclear if road widths meet Council and resident requirements. Concerns remain with garbage truck accessibility and deliveries such as shopping delivery trucks (noting other small lot housing estates such as Thornton in Penrith have encountered problems once built). The Panel recommends that this issue be further considered by Council's traffic engineers and waste management team as part of the DA assessment.
- Cross site permeability appears to be limited. In keeping with the vision statement in the Site Specific Design Guidelines as well as the recommendation made in the previous DEP report, the Panel recommends that the previous advice be reconsidered.
- The Panel noted that the sense of integration of the natural systems and remnant vegetation is not clearly evident in the site planning. A greater sense of bringing the forest into the site is desirable, moving away from the sense of a cleared site with a dense generic housing product surrounded by a landscape setting that is required to be maintained.
- Previous comments by the Panel regarding the lot arrangement are valid.
- The Panel notes that some of the lots result in quite poor quality residential amenity and urban design. In particular the arrangement and typology of Super lot 11 provides a lot arrangement that results in a southern aspect for living areas and a northern aspect monopolised by a double garages. This provides a poor street frontage comprising a wall of double garages and a light-deprived orientation for the terrace product. The Panel advises the applicant consider an alternative architectural design that provides access to northern light in the winter for occupants both internally and externally and a pedestrian focused public domain.
- The Panel also raised concern with the limited private open space afforded to Superlots S3 and S6 that present a street address monopolised by garages and a very small rear private open space allocation. The site coverage per lot appears to be excessive, and compromises the amount of soft landscape available for each dwelling.
- The Panel advises AMCORD provides design guidance on lot arrangement and reiterates the advice provided previously, *"At a minimum, the Panel recommends adherence with the Low Rise Housing Diversity Guide for the small lot housing component, noting the site has been rezoned without an applicable DCP. A design statement indicating how this has been successfully achieved should be provided to the DA officer as per the guideline recommendation."*

Sustainability and Environmental Amenity

- Refer to previous Panel comment.

2. Apartment buildings

The Panel commends the applicant for the revision of the apartment building planning noting the changes made to meet ADG compliance significantly improve the residential amenity for future residents.

- The height exceedance was considered by the Panel to be not of a great concern from an aesthetic perspective, however this is a matter for Council to resolve as the height exceedance triggers other regulatory processes. The Panel notes a number of storeys are in exceedance of 3.1m floor to floor and recommends that this be reviewed where it occurs, other than for ground floor apartments.
- The Panel reiterates that ground floor apartments should be designed to ensure adequate provision of daylight and not be located below the ground level of the adjacent pedestrian paths to prevent overlooking and opportunities for unauthorised entry.
- Considered landscape treatments of the public domain surrounding the ground floor apartments that minimise sightlines directly into the apartments and provide a clear delineation of the public and private domain should be able to mitigate these concerns.
- The Panel notes the communal open space provision does not satisfy the objectives of the ADG. It is therefore very important that the nearby communal facilities are completed prior to the occupation of the apartment blocks.
- The Panel acknowledges the topography is much more challenging than a flat site and this also brings opportunities for a variety of communal open space provision that could be delightful.
- The Panel recommends the landscape detail must be resolved to Council landscape officer's requirements prior to determination.

The Panel noted that the landscape treatment and detail around the apartment buildings is extremely important to the success of the project. Previously the Panel commented, *"The Panel is concerned by the extent of basement car parking proposed for the residential flat buildings that covers the entire lot. The arrangement compromises the extent of groundwater flows and also severely limits the opportunity for deep soil tree planting across the apartment precinct. The Panel recommends that basement car parking be contained to be within the building envelope"*.

The landscape detail in the area between building blocks B & C as shown below indicate a highly planted landscape treatment. The Panel suggests consideration be given to minimising the basement car park footprint to just a circulation link in this location to enable the provision of deep soil for tall canopy trees that will reinforce the landscape link between the natural forest and urbanised areas.



Circulation linking basements



Extent of landscaping above

Urban Grain

- Previously the Panel commented, *"The façade interface and address to the street is not reflective of an activated street setting with the garages dominating the street frontage in many locations"*. As noted above in comments regarding Superlots S11, S3 and S6, the Panel considers this to be a poor urban design outcome that is easily able to be avoided subject to some design revisions.

Density, Mix and Building Program

- Previously the Panel stated "It is agreed that the proposed masterplan yield is more appropriate than the maximum permissible under the rezoning" (DEP 10/03/21). Notwithstanding, the site coverage per lot is very dense and urban, more reflective of an inner city context than a bushland setting.
- All dwellings are to be accessible from the street frontage at the closest point perpendicular to the main lobby entry for the individual dwellings/building block.

Landscape Design Vision and Character

- Refer to previous Panel comment.
- The Panel is supportive of the landscape vision but is concerned that the narrow lot frontages and street verges and the extensive plantings on slab will limit the planting scale and character, and the experience of "living with the forest". Greater variation in the building typology resulting in the relaxation of the streetscape treatment would assist in overcoming this.
- The Green Link is a positive addition to the plan and its potential as a vital environmental and movement corridor, as well as a social space, should be fully realised.
- The Panel is supportive of the reuse of site sandstone and any appropriate building material that is able to be recycled in the proposed landscape strategy.

Site Coverage/ Landscaped Open Space

- Refer to previous Panel comment.

Public Domain

- The Panel notes that design of the streets and parks is highly challenged by the site topography and site layout. Whilst extensive areas for circulation, planted embankments and detention areas are required, this should not be at the expense of generous, usable areas for resident enjoyment.
- The Panel supports the early delivery of the central park to compensate for the limited 'usable' parkland spaces available in the developed 'upper' half of the site
- The Panel notes that the entire site will be highly disturbed by cut/fill operations. Detailed consideration of the soil profiles and mixes required for the establishment of the planting will be critical to the success of the public domain and landscape setting.

Private Domain

- The landscape drawings provided presented minimal landscape provision for private use by residents within the proposed development. This was previously raised as a concern by the Panel and is reiterated.

Streetscape

- Refer to previous Panel comment.
- As mentioned above, some of the species proposed lack the required 'scale' and canopy character to complement the development. Further consideration of the street tree species and their locations is recommended to realise the 'forest' character envisaged throughout the site
- The Panel supports the proposed raised threshold and paving change at the intersection of the Perimeter Road and R 5

It is important to resolve this landscaped area as the communal open space for each apartment block does not meet the objectives of the ADG, so what is provided must be very high quality in design and application.

The Panel advised that more could be made of circulation elements such as stairs to move away from a utilitarian basic provision and consider the creation of some interesting spaces on the landings.

The Panel noted that consideration of extending the established sightline and pedestrian access into the forest would align with the stated vision statement and establish a visual and physical link with the forest.



Landscaped area between blocks B&C



Potential to extend link shown in orange.

A number of minor tweaks to the internal planning to further improve residential amenity are noted in the following diagrams for consideration overall however the design of the residential apartments has greatly improved and the Panel commends the applicant on making these design changes.

The following matters should be remedied in detail design:

- Convoluted corridors apartments D/207, D/211 repeated on levels 3 & 4.
- Be mindful of the long study space. Will this work in practice? (ref: apartment C/605)
- Studies in many other apartments are generous and could benefit from having separation by joinery units / adjustable units / screens rather than conventional walls. This allows for flexible floor arrangements. For example in units C602 and C603.





PANEL CONCLUSION

The Panel thanks the applicant for the opportunity to provide input into the design of the scheme at this stage of the design evolution and recommends that the matters identified in this report be considered as part of the formal DA submissions.

As advised in the Panel meeting, the Panel does not 'approve' or 'endorse' proposals, but rather is advisory only with a primary focus on design excellence (urban design, landscape character and built form design quality). The comments provided by the Panel are to be considered by the consent authority when determining whether or not the proposal exhibits design excellence under Clause 7.7 of LEP 2019 and other statutory considerations/guidance documents as relevant.

Subject to Council's DA Officer being satisfied that the applicant has addressed issues raised in this report, the project need not return to the panel for further consideration.

ATTACHMENT 13 – RFS COMMENTS



NSW RURAL FIRE SERVICE

The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

Your reference: 860/2022/JP (CNR-32686)
Our reference: DA20211215005519-CL55-1

ATTENTION: Sanda Watts

Date: Monday 1 August 2022

Dear Sir/Madam,

Development Application
s4.14 – Infill – Residential Flat Building
55 COONARA AVENUE WEST PENNANT HILLS 2125, 61//DP737386

I refer to your correspondence dated 20/06/2022 seeking advice regarding bush fire protection for the above Development Application in accordance with Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

Access Requirements

The intent of measure is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

1. Access roads must comply with the following general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
- all roads are through roads;
- where kerb and guttering is provided on perimeter roads, roll top kerbing should be used to the hazard side of the road;
- where access/egress can only be achieved through forest, woodland and heath vegetation, secondary access shall be provided to an alternate point on the existing public road system;
- one way only public access roads are no less than 3.5 metres wide and have designated parking bays with hydrants located outside of these areas to ensure accessibility to reticulated water for fire suppression;

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au

- the capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/causeways are to clearly indicate load rating.
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression;
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning; and
- there is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available.

Perimeter roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- are two-way sealed roads;
- minimum 8 m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- curves of roads have a minimum inner radius of 6m;
- the maximum grade road is 15 degrees and average grade of not more than 10 degrees;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

Non-perimeter roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- minimum 5.5 m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- curves of roads have a minimum inner radius of 6m;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

2. The turning head for proposed Road 2 within the Stage 4 precinct must incorporate a minimum 12 metres outer radius turning circle.

Water and Utility Services

The intent of measure is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

3. The provision of water, electricity and gas must comply with the following in accordance with Table 5.3c of *Planning for Bush Fire Protection 2019*:

- reticulated water is to be provided to the development;
- fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
- hydrants are not located within any road carriageway;
- reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
- fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;
- all above-ground water service pipes are metal, including and up to any taps;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
 - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
 - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.

- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal; polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

General Advice – Consent Authority to Note

Future development of the site for residential land uses or subdivision, will be assessed under the relevant provisions of the *Environmental Planning and Assessment Act 1979*.

Future development applications will need to provide a Vegetation Management Plan (VMP) that can be legally and practically enforced for the life of the development for the management of the residential areas of the site outside of the minimum proposed asset protection zones (IPA or OPA). The VMP must be certified by an accredited bushfire consultant to ensure that landscaping is designed and managed to ensure that the land does not become a bushfire hazard.

For any queries regarding this correspondence, please contact Alastair Patton on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager Planning & Environment Services
Built & Natural Environment

ATTACHMENT 14 – DEPARTMENT OF PLANNING AND ENVIRONMENT - WATER GTAs



Department of Planning and Environment

Contact: Department of Planning and Environment—Water
Phone: 1800 633 362
Email: waterlicensing.servicedesk@dpie.nsw.gov.au

Our ref: IDAS-2022-10414 (IDAS1133781)
Your ref: 860/2022/JP

5 August 2022

The General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

Attention: Sandra Watts

Uploaded to the ePlanning Portal

Dear Sir/Madam

Re: IDAS-2022-10414 (IDAS1133781) - Section 4.55 Modification Referral – General Terms of Approval
Dev Ref: 860/2022/JP
Description: Construction of 418 dwellings and civil engineering works including site clearing, sediment and erosion control measures, bulk earthworks, stormwater and service
Location: Lot 61 DP 737386, 55 Coonara Avenue WEST PENNANT HILLS 2125

The Department of Planning and Environment—Water has reviewed documents for the above application to modify a DA Consent and considers that, for the purposes of the Water Management Act 2000 (WM Act), previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.

Should the proposed development be varied in any way that results in development extending onto land that is waterfront land, or encompassing works that are defined as controlled activities, then the Department of Planning and Environment—Water should be notified.

If you have any questions regarding this correspondence, please use Water Assist to obtain further information or make an enquiry:

<https://www.dpie.nsw.gov.au/water/water-assist>

Yours Sincerely

Kieran Ball

For

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
LOCKED BAG 5022, Parramatta, NSW 2124

www.dpie.nsw.gov.au

Department of Planning and Environment



Jeremy Morice
Manager Licensing & Approvals
Licensing and Approvals
Department of Planning and Environment—Water

Department of Planning and Environment



Contact: Department of Planning and Environment—Water
Phone: 1800 633 362
Email: waterlicensing.servicedesk@dpe.nsw.gov.au

Our ref: IDAS2021-101455
Your ref: DA860/2022/JP

13 April 2022

The Hills Shire Council
3 Columbia Court
Northwest NSW 2153

Attention: Sandra Watts

Uploaded to the ePlanning Portal

Dear Sir/Madam

**Re: IDAS2021-101455 - Integrated Development Referral – General
Terms of Approval**

Dev Ref: DA860/2022/JP

Description: Construction of 418 dwellings and civil engineering works including site clearing, sediment and erosion control measures, bulk earthworks, stormwater and services.

Location: Lot 61/ DP737386

I refer to your recent referral regarding an integrated Development Application (DA) proposed for the above location. Attached, please find the Department of Planning and Environment—Water's General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 4.46 of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, the department requests these GTA be included (in their entirety) in Council's development consent. Please also note the department requests notification:

- if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities (i) in the bed of any river, lake or estuary; (ii) on the banks of any river lake or estuary, (iii) on land within 40 metres of the highest bank of a river lake or estuary; or (iv) any excavation which interferes with an aquifer.

The Department of Planning and Environment—Water will ascertain from the notification if the amended plans require review of or variation/s to the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.

- if Council receives an application under s4.46 of the EPA Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.
- of any legal challenge to the consent.

As the proposed work or activity cannot commence before the applicant applies for and obtains an approval, the department recommends the following condition be included in the development consent:

The attached GTA issued by the Department of Planning and Environment—Water do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to the department for a Controlled Activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity.

A completed application must be submitted to the department together with any required plans, documents, application fee and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Applications for controlled activity approval should be made to the department, by lodgement of a Controlled Activity Approval – New approval application on the NSW Planning Portal at: <https://www.planningportal.nsw.gov.au/>

The Department of Planning and Environment—Water requests that Council provide a copy of this letter to the development consent holder.

The Department of Planning and Environment—Water also requests a copy of the determination for this development application be provided by Council as required under section 4.47(6) the EPA Act.

Yours Sincerely



For
Bryson Lashbrook
Manager
Licensing and Approvals
Department of Planning and Environment—Water



General Terms of Approval

for proposed development requiring approval under s89,
90 or 91 of the Water Management Act 2000

Reference Number:	IDAS2021-101455
Issue date of GTA:	13 April 2022
Type of Approval:	Controlled Activity
Location of work/activity:	Lot 61/ DP737386
Waterfront Land:	No name creek
DA Number:	DA860/2022/JP
LGA:	The Hills Shire Council

The GTA issued by Department of Planning and Environment—Water do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to the Department of Planning and Environment—Water for the relevant approval **after development consent has been issued by Council and **before** the commencement of any work or activity.**

Condition Number	Details
TC-G001	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment—Water, and obtained, for a controlled activity approval under the Water Management Act 2000.
TC-G004	<p>A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA860/2022/JP provided by Council to Department of Planning and Environment—Water.</p> <p>B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Department of Planning and Environment—Water, must be notified in writing to determine if any variations to the GTA will be required.</p>
TC-G005	<p>A. The application for a controlled activity approval must include the following plan(s):</p> <ol style="list-style-type: none">Site plans indicating the demarcation of waterfront land, designated riparian corridors, and identifying any areas of encroachments and offsetsDetailed civil construction plans;Erosion and sediment control plans;Construction detailed drainage plans;Construction stormwater drainage outlet plan;Vegetation management plan;Construction cut and fill cross sections and plan view details of site;Construction detailed bulk earthworks plans; <p>B. The plan(s) must be prepared in accordance with Department of Planning and Environment—Water's guidelines located on the website https://www.nrar.nsw.gov.au/how-to-apply/controlled-activities/guidelines-for-controlled-activities</p>

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by Department of Planning and Environment—Water for integrated development associated with IDAS2021-101455 as provided by Council:

- Statement of Environmental Effects, prepared by Mecone, dated October 2021
- Civil Engineering Drawings, prepared by Northrop, dated 28 September 2021
- Civil Engineering Assessment Report, prepared by Northrop, dated 28 September 2021
- Survey Plan, prepared by Craig and Rhodes, dated 19 April 2018
- Vegetation Management Plan, prepared by Cumberland Ecology, dated 30 September 2021
- Subdivision Plan, prepared by Peter J Stewart, dated 13 August 2021
- Construction and Environmental Management Plan, prepared by Mirvac, dated 13 September 2021
- Bushfire Assessment Report, prepared by Building Code and Bushfire Hazard Solutions Pty Limited, dated 6 October 2021
- Aboriginal Archaeological Due Diligence Assessment, prepared by McCradle Cultural Heritage, dated 30 June 2021
- Biodiversity Assessment Report, prepared by Keystone Ecological, dated 29 November 2021

ATTACHMENT 15 – TfNSW COMMENTS



Transport
for NSW

19 April 2022

TfNSW Reference: SYD22/00284/03
Council Reference: 860/2022/JP
Planning Portal Reference: A-42862

The General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS NSW 2153

Attention: Sanda Watts

Dear Sir/Madam,

CONCEPT DEVELOPMENT APPLICATION CONSISTING OF 418 DWELLINGS AND CIVIL WORKS AT 55 COONARA AVENUE, WEST PENNANT HILLS

Reference is made to Council's correspondence dated 6 April 2022 requesting amendment to the correspondence issued by Transport for NSW (TfNSW) dated 30 March 2022 for this development application.

TfNSW has considered Council's request and has agreed to reissue the comments without reference to AUSTROADS on the basis that the development is to be serviced by private roads.

TfNSW has reviewed the submitted application and provides the reissued comments for the consideration of Council in the determination of the development application:

1. It is noted that the correspondence issued by TfNSW dated 10 September 2019 for planning proposal of the site, required consideration of the provision of a signalised pedestrian phase on the western leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue.

TfNSW provided advice dated 1 March 2022 (Attached) to the proponent that it does not require the provision of a signalised pedestrian phase on the western leg of the Castle Hill Road/Edward Bennett Drive/Coonara Avenue signalised intersection. TfNSW confirms this advice.

2. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

Transport for NSW

27-31 Argyle Street, Parramatta NSW 2150 | PO Box 973, Parramatta CBD NSW 2124
P 131782 | W transport.nsw.gov.au | ABN 18 804 239 602

If you have any further inquiries in relation to this development application Mr Simon Turner would be pleased to take your call on 8265 6363 or e: development.sydney@transport.nsw.gov.au. I hope this has been of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Z. Alamouti', written in a cursive style.

Ms Zhaleh Alamouti
Senior Land Use Planner

Attachment – Previous TfNSW Advice

Simon Turner

From: Simon Turner
Sent: Tuesday, 1 March 2022 4:28 PM
To: 'Adrian Checchin'
Subject: SYD21/01520/02 - 55 Coonara Avenue, West Pennant Hills - TfNSW Response

Adrian,

I refer to the above project and your email dated 1 December 2022 seeking advice on whether the installation of a signalised pedestrian phase on the western leg of the Old Castle Hill Road/Edward Bennett Drive/Coonara Avenue signalised intersection is required. I note the requirement to consider the pedestrian phase arose from the planning proposal for the development of 55 Coonara Avenue (SYD18/00093) in correspondence issued by TfNSW on 10 September 2019.

A meeting was held to discuss this matter and on 19 January 2022 where TfNSW requested that an updated traffic impact assessment revised report be provided to incorporate with and without pedestrian leg scenarios. Further, you were requested to investigate the option for providing a slip lane from Old Castle Hill Road to Coonara Avenue.

TfNSW has reviewed the information provided 22 February 2022 and notes that the information indicates in the PM peak the modelled scenarios perform worse with a crossing without other suitable upgrades at the intersection. Based upon this, TfNSW does not require the installation of a signalised pedestrian phase on the western leg of the Old Castle Hill Road/Edward Bennett Drive/Coonara Avenue signalised intersection.

It is emphasised that the comments provided above are informal and of a Pre-DA nature, they are not to be interpreted as binding upon TfNSW and may change following formal assessment of a submitted development application from the appropriate consent authority.

TfNSW will provide formal comment when a development application is lodged and the application is referred for comment by Council.

Please contact me if you would like to discuss.

Regards,

Simon Turner
Land Use Planner
Planning and Programs
Greater Sydney
Transport for NSW

M 0476 559 807 T (02) 8265 6363 E simon.turner2@transport.nsw.gov.au

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Transport
for NSW