COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-315
DA Number	DA 861/2022/JP
LGA	The Hills Shire Council
Proposed Development	Apartment Precinct for 252 dwellings contained in 4 residential flat buildings. Basement car parking for 465 vehicles, associated earthworks and landscaping.
Street Address	Lot 61 DP 737386 No. 55 Coonara Avenue West Pennant Hills
Applicant	Mecone Pty Ltd
Consultant/s	Planning - Mecone Architect - Mirvac Design Landscaping - Turf Design Studio Visual Impact - Richard Lamb & Associates Photomontages - Arterra Traffic – PTC Consultants Survey - Craig and Rhodes Geotechnical - Douglas Partners Bushfire - Building Code & Bushfire Hazard Solutions Ecologist - Keystone Ecological Arborist - Footprint Green Vegetation Management - Cumberland Ecology Acoustic - Acoustic Logic Construction Noise and Vibration Management Plan - Acoustic Logic Construction Traffic Management Plan -PTC Consultants European Heritage - Maxim Aboriginal Heritage - McCardle Cultural Heritage Operational Waste Management Plan - Elephant's Foot Construction Waste Management Plan - Mirvac Environmental - JBS&G Site Audit Report - Senversa Stormwater Engineer - Northrop Civil Engineer - Northrop CPTED - Mecone Access - ABE Consulting BCA - City Plan Services BASIX - Efficient Living Shoring Walls - Van der Meer Consulting
Date of DA lodgement	30 November 2021
Number of Submissions	687
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV exceeding $30 million ($150,042,400)
List of all relevant s4.15(1)(a) matters	• 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 No. 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • The Hills Local Environmental Plan 2019 • Apartment Design Guide • DCP 20212 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	• Clause 4.6 variation request • Submissions • Site Specific Design Guidelines • Voluntary Planning Agreement (as executed)
Clause 4.6 requests	• The Hills LEP 2019 Clause 4.3 Height of Buildings • Clause 4.6 written submission • R4 High Density Residential Zone
Summary of key submissions	• building height • non-compliant parking rates • building separation
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? *e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*	**Yes**
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	**Yes**
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*	**Not Applicable**
Conditions Have draft conditions been provided to the applicant for comment? *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*	**Yes**

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 proposed development seeks consent for the construction of four residential flat buildings containing a total of 252 units with a mix of 38 x 1 bedroom units, 136 x 2 bedroom units, 71 x 3 bedroom units and 7 x 4 bedroom units and 456 car spaces within the basement. Associated earthworks, landscaping, and communal open space is proposed.

- The two separate Development Applications were lodged concurrently with the Apartment Precinct 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 860/2022/JP – The Concept/Civil DA is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. The concept master plans 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.

- 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 variation to building height of the Apartment Building Precinct was considered as part of DA 860/2022/JP which was 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 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 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.

- Variations to the DCP parking rates were considered as part of 860/2022/JP.

- A variation to the building separation controls within the Apartment Design Guide (ADG) is proposed. It is considered the building separation variation is acceptable in this instance as adequate privacy mitigation measures have been implemented in the design to ensure overlooking impacts occur to residents within the development and an acceptable level of residential amenity is provided to each unit.

- The site, and the subject application is subject to the Voluntary Planning Agreement (VPA) and relevant conditions of consent have been recommended.

- The application was notified on two occasions and in total 687 submissions to the proposal were received. The bulk of the concerns related to the concept plan (DA 860/2022/JP) which have been addressed in that report. The concerns raised specific to the subject DA related to building height, DCP parking variation, deep soil landscaping and Apartment Design Guide non-compliance to building separation, 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

The full background of the Planning Proposal 1/2018/PLP is discussed in further detail in the SCCPP report for 860/2022/JP.

Planning Proposal Design Progression – Apartment Precinct

Clause 7.15 (6) of LEP 2019 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 houses in the R3 Medium Density Residential zone and 400 apartments in the R4 High Density Residential zone that was envisioned under the planning proposal.

The applicant is seeking approval for 417 dwellings (under DA 860/2022/JP) which includes 252 apartments, which is a significant reduction from the 400 apartments envisaged.

The masterplan submitted as part of the Planning Proposal included 9 separate building. The current proposal seeks approval for 4 separate apartment buildings. Refer comparison below provided in Figure 1.

Figure 1: Comparison between plan submitted as part of the planning proposal (left), and the proposed layout of the apartment precinct (right). Source – Mirvac Design

The applicant has advised that:

This significant reduction in yield enables superior design outcomes with a better urban design outcome, more sympathetic transition to the forest, 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.

The Apartments Precinct has been designed with a diverse and contextual architectural expression that responds to the natural landscape character of the site. While the building form, scale and height will complement the existing suburban neighbourhood. The architectural language, material selection and colours palettes seek to embrace the natural richness of the surrounding native forest.

The location of the Apartments Precinct has been carefully considered with regard to maximising amenity to optimise Apartment Design Guide guidelines, and proximity of the nearby forest. Locating the apartments away from the forest edge will assist in minimising potential noise, light spill and overshadowing impacts on the forest's flora and fauna. The interface of the apartments has been sensitively designed with highly articulated facades fronting the public domain and surrounding land uses.

The Apartments Precinct is set back from Coonara Avenue sits on lower topography within the south eastern portion of the site. Its location ensures the proposed apartment buildings will not create any impact on neighbouring properties or surrounding locations.

The design of the Apartments Precinct intentionally ensures there are no adverse visual, privacy or overshadowing impacts to surroundings and the Apartments Precinct and building lengths are aligned with a north-south axis in order to maximise orientation for solar access to private and communal spaces, while also providing adequate cross ventilation.

The position of apartment buildings is also informed by the site's specific topography with buildings gently stepping with the natural fall of the site rather than across the steepest part of the site. This enables level changes to be better managed, creating an activated ground plane with courtyard apartments, generous arrival lobbies and precinct gardens.

The Draft THDCP Part D Section 19 which specifically related to the redevelopment of 55 Coonara Avenue and 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. 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.

VOLUNTARY PLANNING AGREEMENT

The Voluntary Planning Agreement (VPA) is discussed in further detail in the SCCPP report for 860/2022/JP.

As execution of the VPA is imminent, a condition of consent has been recommended for the VPA payment.

DEVELOPMENT APPLICATION BACKGROUND

The subject Development Application was lodged on 30 November 2021 for the Apartment Precinct for 252 dwellings contained in four residential flat buildings, basement car parking, associated earthworks and landscaping. The proposal was placed on exhibition between 15 December 2021 to 7 February 2022.

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 dated 23 December 2021.

Council officers briefed the SCCPP on 17 March 2022 (in addition to DAs 859/2022/JP and 860/2022/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 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 issued 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.

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

The amended application was re-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 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 staff raised in the letter dated 5 August 2022.

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, 687 submissions to the subject application have been received.

DETAILS AND SUBMISSIONS

Owner:	Mirvac Projects (Retail & Commercial) Pty Ltd
Zoning:	R3 Medium Density Residential, R4 High Density Residential (location of subject DA) and C2 Environmental Conservation
Area:	Existing site area is 258,700m², future Apartment Precinct site will be (12,545m²)
Existing Development:	Former IBM Business Park (currently being demolished under DA 585/2021/JP)
Section 7.12 Contribution and VPA:	$1,547,088.00 + VPA $1,205,741.63 Total: $2,752,829.63
Exhibition:	Yes, 61 days
Notice Adj Owners:	Yes, on two occasions
Number Advised:	695
Submissions Received:	687

PROPOSAL

The proposed development seeks consent for the construction of four residential flat buildings containing a total of 252 units with a mix of 38 x 1 bedroom units, 136 x 2 bedroom units, 71 x 3 bedroom units and 7 x 4 bedroom units and 456 car spaces within the basement.

The car parking provided on the site with be over three basement car park levels which are split car park levels due to the fall of the site. A total of 456 spaces are provided, with 405 resident spaces, 51 visitor space, 2 service vehicles spaces, 2 car wash bats, 6 motorcycle spaces and 16 dedicated bicycle spaces. On-site loading dock and waste management facilities are also located in the basement.

Vehicular access will be provided to the car park via a single driveway and ramp off the southern perimeter road.

As part of the residential flat building development, a Northern Pocket Park, Southern Pocket Park, H South Park, Green Link, and various pedestrian connection/landscaped spaces will be provided.

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 walking distance of Cherrybrook Metro Station.

A key objective within the Greater Sydney Region Plan which is relevant to the subject Development Application is 'Objective 10 Greater housing supply'. The Greater Sydney Region Plan highlights that providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. The Plan also notes that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. To achieve this objective, planning authorities will need to ensure that a consistent supply of housing is delivered to meet the forecast demand created by the growing population.

The proposed development is considered to be consistent with this objective as it will assist in maximising housing supply within a Precinct which will located in close proximity to high frequency public transport services.

Central City District Plan

The site is located within the "Central City District" of the 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 proposal also includes publicly accessible spaces. 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 28 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.

DA 860/2022/JP which is the application that seeks consent for the removal of vegetation provides a full assessment in relation to the BC Act, including a recommended condition of consent for offsets.

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 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.

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

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.*

The proposed development has a Capital Investment Value of $150,042,400 and therefore requires referral to, and determination by a Regional Planning Panel.

In accordance with the requirements the application was referred to, and listed with, the Sydney Central City Planning Panel.

4. Compliance with State Environment 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.*

Council's Environmental Health Officer has reviewed the relevant documentation relating to site conditions and contamination. The Site Suitability Assessment and Detailed Site Contamination Investigation prepared by JBS & G Australia concludes that the site does not represent an unacceptable risk to human or ecological receptors when considered against the adopted site criteria and therefore deemed the site suitable for the proposed residential redevelopment without the requirement for additional investigation and/or management. A Site Audit Report (SAR) and Site Audit Statement letter prepared by the Site Auditor Senversa was also provided with the application which concluded that the site is suitable for the purposes of 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.

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

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

A BASIX assessment has been undertaken and indicates that the development will achieve the required targets for water reduction, energy reduction and measures for thermal performance. The commitments as detailed in the BASIX Certificate are imposed as a condition of consent. Refer condition 78.

6. Compliance with SEPP No. 65 – Design Quality of Residential Apartment Development

The required Design Verification Statement was prepared by Andrew La, registration number 11416 of Mirvac Design Pty Ltd.

a. Design Quality Principles

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

Principle 1: Context and neighbourhood character

The site is 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, in which 400 units were envisaged for the site with a maximum height of 22 metres. The application seeks approval for 252 units. The Apartment Precinct sits within R4 zoned land that enables high density residential uses. The proposal is compatible with the desired context and neighbourhood character of the Cherrybrook Metro precinct, which is located less than 800 metres from the site. The future desired character for residential areas are to be green and walkable, reinforcing the garden shire character and lifestyle, provide a lifestyle alternative to the traditional suburban context, focused highly on an appropriate scale and an attractive environment for pedestrians. The proposal responds to the desired future character the area with a building design and public realm that provides good amenity for the residents and visitors to the site. The Apartment Precinct provides a sensitive interface with the surrounding context and bushland setting. The siting of the precinct informs the scale, architecture, material selection and colour palettes of the proposed apartment buildings. The Apartment Precinct will contribute to the transformation of the site into a family-friendly residential community that respects and celebrates the unique bushland character.

Principle 2: Built form and scale

The proposed building envelopes are consistent with recommended building lengths and depths in Council's DCP and the ADG. Buildings are generally 50 metres in length and on average are approximately 24 metres wide. Buildings will have sufficient separation distances. The development is to have adequate street setbacks to accommodate deep soil planting zones around the buildings to provide a higher level of amenity and privacy to residents. The façades of each apartment building is suitability articulated with a range of materials and colours with more neutral tones, in keeping with its locality and close proximity to the Cumberland State Forest. The top floors setback to further reduce the visual bulk and scale of buildings. The street setbacks, podium level setback and varying typologies of built form provide an appealing scale to pedestrians. The interface between the development and the public open space area has been duly considered with appropriate setbacks and façade treatments to ensure a high level of amenity is provided.

Principle 3: Density

The subject proposal provides for 252 dwellings for the Apartment Precinct, which is within R4 high density residential zoned land. The total yield and density of the Apartment Precinct has been reduced by over one third of what was envisaged as part of the rezoning. While 400

apartments are permitted within the R4 zoned land, 252 apartments are proposed and low scale housing in order to maximise residential amenity and achieve a better urban design. The reduction in density increases the area of public open space and enables large landscaped outdoor spaces and more view corridors between buildings to the forest.

The density is consistent with the site's strategic location and the surrounding character of adjoining development as strategic vision for State's Cherrybrook Station Precinct is to locate highest density development closest to the station. In this regard, the proposal is appropriate for the site and the Cherrybrook Station Precinct, is located less than 800 metres away.

Principle 4: Sustainability

The design achieves natural ventilation and solar access as required by the Apartment Design Guide. The proposal includes a BASIX certificate which provides the required targets for energy and water commitments. The commitments proposed will minimise the dependency on energy resources in heating and cooling. The achievement of these commitments would contribute significantly to the reduction of energy consumption, resulting in a lower use of valuable resources, the reduction of costs and thus a more sustainable development. Furthermore, to achieve a greater environmentally sustainable outcome for the proposed development, the provision of gas services across the masterplan have been removed and replaced with an all-electric infrastructure arrangement.

Principle 5: Landscape

The landscape plan indicates a comprehensive design for both private and public domains. The landscaping of the development has formed an integral element to the overall design of the Apartment Precinct, and the wider site. The common open space areas are located on the site and have been designed with sufficient solar access and high levels of amenity with the provision of lawn breakout areas, informal nature play experiences, and flexible seating areas. The apartment precinct is provided with various common open space area including the Greenlink, and Pocket Parks. Overall, the development will provide 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. The proposal provides for deep soil to 15% of the apartment precinct site area. Where possible, setbacks are provided with high quality landscaping along the street frontages. Future residents and the public may access and enjoy the communal areas. Universal access to AS1428 has been incorporated into communal spaces where possible, connecting walkways and building entries. Overall, it is considered the proposal results in a unique and high quality landscape outcome for the site.

Principle 6: Amenity

The building design has been developed to provide for the amenity of the occupants as well as the public domain. The multitude of landscaped open spaces, orientation of the buildings, views, and unit layouts ensure that adequate amenity is provided to future residents of the site. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All units are designed with appropriate room dimensions and incorporate balconies accessible from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas. Storage areas and laundries have been provided for each unit. The proposal would provide convenient and safe access to lifts connecting the basement and all other levels.

Principle 7: Safety

The development has been designed with safety and security concerns in mind. Apartment buildings are designed with an overall 360-degree outlook with secondary lobbies and through-site links, traversing the Apartment Precinct providing excellent pedestrian activation of the public domain. Well considered streets and public spaces throughout the precinct
allow for clear sight lines to achieve passive surveillance of the community. The common open spaces are within direct view of occupants to allow passive surveillance. Open spaces are

designed to provide attractive areas for recreation and entertainment purposes. These open spaces are accessible to all residents and visitors whilst maintaining a degree of security. Private spaces and courtyards are clearly defined and screened. Lighting is also a key strategy to optimising safety, and will be balanced with respect to minimising impacts to local wildlife. Pedestrian links and outdoor spaces will be discretely but well-lit to deliver a level of safety appropriate for the precinct that is also sensitive to the natural environment

Principle 8: Housing diversity and social interaction

The location of this development provides dwellings within a precinct that will provide in the future, a range of support services. The application includes 38 x 1 bedroom units, 136 x 2 bedroom units, 71 x 3 bedroom units and 7 x 4 bedroom units, where 54% of the units are two bedroom units and 31% of the units are three and four bedroom units, which provide for larger, family friendly unit sizes, or smaller units for downsizers, singles and smaller families. Many of the units exceed the ADG minimum size requirements. Within the Apartment Precinct, communal spaces and open garden areas encourage social interaction and gathering between residents. There is also approximately ten hectares of remnant forest on the overall site that is proposed to be dedicated to the Stated Government as public open space. Residents will also benefit from a range of different public open spaces and pocket parks that provide shaded lawns, lookout platforms, seating, barbeques and landscaped gardens. Open spaces have been designed to cater to the needs of a wide range of age groups, supporting a family friendly community.

Principle 9: Aesthetic

The proposed buildings provide a visually interesting and modern built form with a variety of buildings elements. The built form is well integrated with the landscape open areas. The architectural vision in the Apartment Precinct has "*been inspired by the idea of tree-house living, capturing views and breezes from within the tree tops. Apartment buildings are anchored in the landscape by heavy, stone-clad two-storey plinths that harmonise with the scale of surrounding housing. Above the two-storey plinths, built form massing is broken down into a series of smaller elements with a seemingly random pattern that echoes the organic order of nature. Expressed boxed elements are inspired by the idea of birds nests.*"

The architectural palette provides for a selection of natural and man-made materials in colours and textures complementary to the native forest. The architecture will have a contemporary, yet relaxed and heavily articulated aesthetic seeking to compliment the surrounding natural environment. In this regard, the aesthetics of the proposal is appropriate for the site.

b. Apartment Design Guide

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

Clause	**Design Criteria**	**Compliance**
Siting		
Communal open space	25% of the site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	Yes Required 25%: 3,136m Provided: 3,137m² 50% of POS is 1,568.5m² with 65% of the POS receiving minimum 2 hours sun in mid -winter.
Deep Soil Zone	7% of site area. On some	Yes.

	sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m^2 and 15% for sites greater than 1500m^2.	1,889m² or 15% of the development site area is deep soil zones as defined within the ADG.
Separation	For habitable rooms, 12m (6m to boundary) for 4 storeys, 18m (9m to boundary) for 5-8 storeys and 24m (12m to boundary) for 9+ storeys	No. Refer to discussion below. Variation to the building separation between balconies and habitable room windows or balconies occurs to the following units: Between Building D and C D/406 to C/311 (balcony to balcony) - 15.3m fixed privacy screen provided D/505 to C/411 (balcony to balcony) - 16.8m fixed privacy screen provided D/605 to C/508 (balcony to balcony) 15.3m – fixed privacy screen provided Between Building C and B C/306 to B/110 - Balcony to bedroom 16.3m – fixed privacy screen provided C/406 to B/210 - Balcony to bedroom 17.8m – fixed privacy screen provided C/503 to B/310 - Balcony to bedroom 16.3m – fixed privacy screen provided C/603- B/410 - Balcony to bedroom 16.3m – fixed privacy screen provided 15.3m to 17.8m provided to some units as described above where 18m required for 5-8 storeys
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Yes. The visual privacy of the development has been considered with the placement of windows and balconies. Screening devices and blade walls set at oblique angles, full height privacy screens and louvres have been incorporated to minimise direct overlooking. The proposed development is considered to afford a reasonable degree of privacy for future residents.
Car parking	Car parking to be provided based on proximity to public transport in metropolitan Sydney. For sites within	The site is within 800m of Cherrybrook Metro Station 38 x 1 bedroom

	800m of a railway station or light rail stop, the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is: Metropolitan Sub-Regional Centres: 0.6 spaces per 1 bedroom unit. 22.8 0.9 spaces per 2 bedroom unit. 122.4 1.40 spaces per 3 bedroom unit. 99.4 + 9.8 1 space per 5 units (visitor parking). 50.4	136 x 2 bedroom 71 x 3 bedroom 7 x 4 bedroom Required: Residential - 255 spaces Visitor – 51 Provided: Residential: 405 Visitor – 51 Yes, complies.
Designing the Building		
Solar and daylight access	1. Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter. 2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Yes. The proposed development will achieve two hours solar access for 71.4% (180 of 252) of apartments between 9am and 3pm midwinter. Yes. There are 7.5% (19 of 252) of apartments that will not receive any solar access between 9am and 3pm midwinter.
Natural ventilation	1. At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed. 2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes. A total of 63.8% (161 of 252) of units in first nine storeys will meet the cross ventilation requirements or can be naturally ventilated. Yes. The maximum overall depth is 18 metres for a cross through apartment, measured glass line to glass line.
Ceiling heights	For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where it's area does not exceed 50% of the apartment area. For attic spaces – 1/8m at the	Yes. Floor to ceiling height at least 2.7 metres for all apartments. NA.

	edge of the room with a 30^0 minimum ceiling slope. If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.	 N/A.
Apartment size	1. Apartments are required to have the following internal size: Studio – $35m^2$ 1 bedroom – $50m^2$ 2 bedroom – $70m^2$ 3 bedroom – $90m^2$ The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by $5m^2$ each. A fourth bedroom and further additional bedrooms increase the minimum internal area by $12m^2$ each. 2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Yes. 1 bedroom $55m^2$ - $75m^2$ 2 bedroom $80m^2$ - $105m^2$ 3 bedroom $110m^2$ - $145m^2$ 4 bedroom $165m^2$ - $180m^2$ Where additional bathrooms are proposed, an additional $5m^2$ has been provided. 4 bedroom units to be minimum $102m^2$, 4 bedroom units have floor areas of $165m^2$ - $180m^2$ All habitable rooms have windows greater than 10% of the floor area of the dwelling.
Apartment layout	Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height. In open plan layouts the maximum habitable room depth is 8m from a window. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow layouts.	Yes Yes Yes
Balcony area	The primary balcony is to be: Studio – $4m^2$ with no minimum depth 1 bedroom – $8m^2$ with a minimum depth of 2m 2 bedroom – $10m^2$ with a minimum depth of 2m	Yes, all balcony sizes and depths comply

	3 bedroom – 12m^2 with a minimum depth of 2.4m For units at ground or podium levels, a private open space area of 15m^2 with a minimum depth of 3m is required.	 Ground level apartments have larger terraces of 15m² with a minimum depth of 3m
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight. However, where the design criteria is not achieved, no more than 12 apartments should be provided off a circulation core on a single level. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Yes. Maximum of 6 units provided off a circulation core.
Storage	Storage is to be provided as follows: Studio – 4m^3 1 bedroom – 6m^3 2 bedroom – 8m^3 3+ bedrooms – 10m^3 At least 50% of the required storage is to be located within the apartment.	Yes. Each unit contains 50% of the required storage within the apartment, with many of the units exceeding the minimum storage requirement.
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	Yes. 252 units 38 x 1 bedroom (15%) 136 x 2 bedroom (54%) 71 x 3 bedroom (28%) 7 x 4 bedroom (3%)

i. Building Separation

The Apartment Design Guide provides the following objectives relating to building separation:

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

The ADG requires that habitable rooms provide a 12m building separation (6m to property boundary) for 4 storeys, 18m (9m to property boundary) for 5-8 storeys and 24m (12m to property boundary) for over 9 storeys.

The proposal complies with the internal building separation design criteria of the ADG for the majority of units with the exception of the separation distance of balconies and habitable room/balconies between some upper level units between Buildings D and C and Buildings C and B where 18 metre building separation is required.

The proposal results in a 15.3 -16.8m internal building separation between Building D and C for units D/406 to C/311, D/505 to C/411 and D/605 to C/508. Between these units however fixed privacy screen provided to prevent overlooking, refer Figure 2 below as an example.

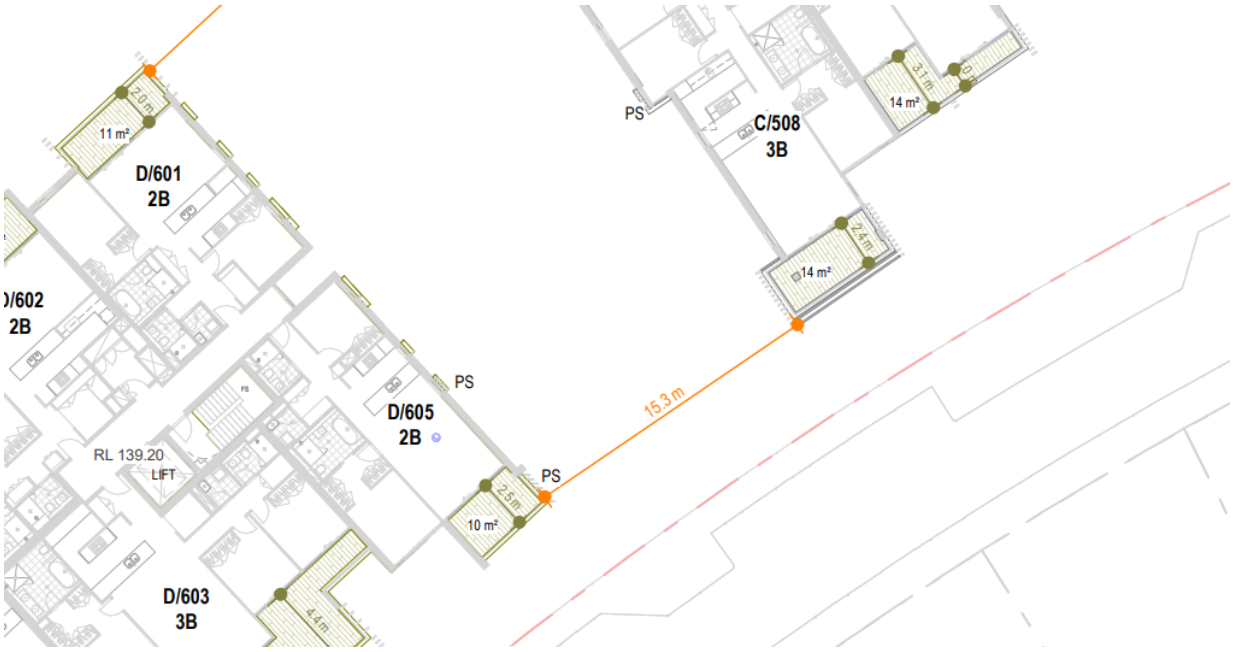


Figure 2: 15.3mSeparation between unit D/605 and C/508

The proposal results in a 16.3m to 17.8m internal building separation between Building C and B for units C/306 to B/110, C/406 to B/210, C/503 to B/310, C/603- B/410. Again, between these units fixed privacy screen are provided to prevent overlooking, refer figure 3 below as an example.

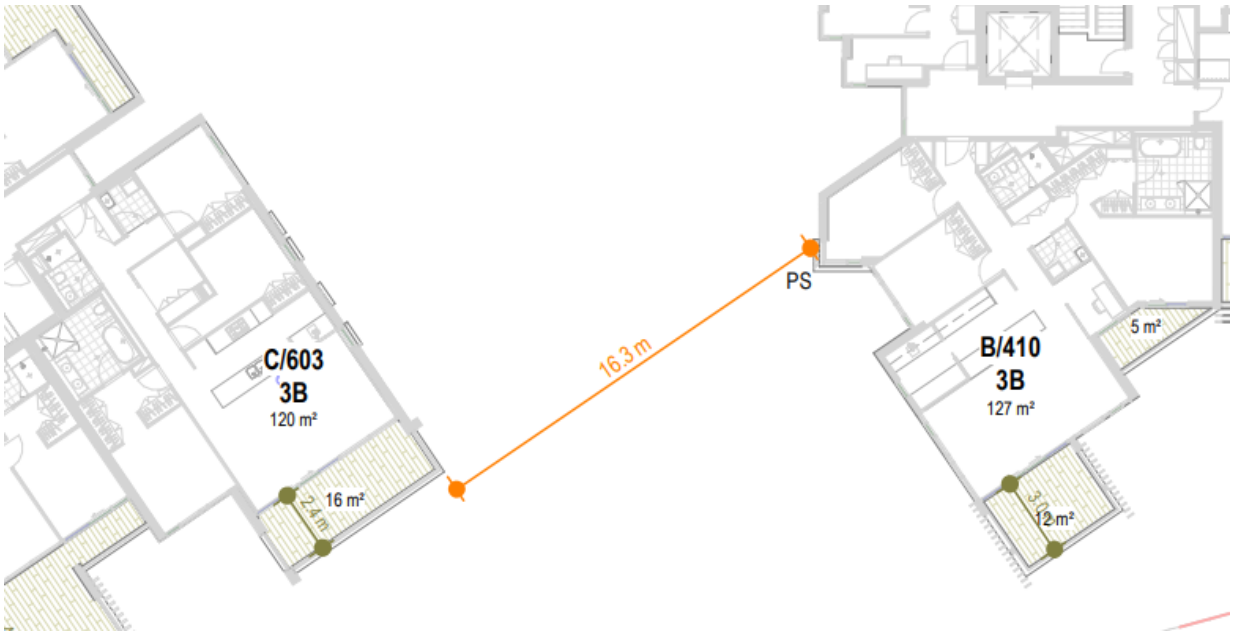


Figure 3: 16.3m separation between unit C/603 and B/410

The applicant has provided the following comment which comes in the form of independent advice from Dr Michael Zanardo of Studio Zanardo in relation to building separation:

> *1. 1 BACKGROUND*
> *I have been engaged by Mirvac to undertake an independent peer review specifically in response to Item 3 'Apartment Design Guide' of The Hills Shire Council Request for*

Additional Information dated 23 March 2022 in relation to the above development application.

1.2 AUTHOR QUALIFICATION

I am the director of Studio Zanardo, an independent and collaborative design consultancy established in 2007 specialising in urban design and the design of housing. I am a registered architect in New South Wales (NSW ARB 8273). I hold a Bachelor of Arts in Architecture and a Bachelor of Architecture (Hons 1) from the University of Technology Sydney. I also hold a Doctor of Philosophy from the School of Architecture, Design and Planning at the University of Sydney. Between 2011 and 2013, I was the lead architectural consultant to the NSW Department of Planning and Infrastructure for its review of the SEPP 65 Residential Flat Design Code, now the Apartment Design Guide. In 2014, following the exhibition of the draft Apartment Design Guide, I assisted the City of Sydney with the preparation of its submission to the Department. In 2015, I assisted the Government Architects Office with its peer review of the Apartment Design Guide prior to its publication. Recently, I have been engaged by the Government Architect NSW and Department of Planning, Industry and Environment to again assist with revisions to a revised Apartment Design Guide under the (now abandoned) SEPP Design and Place. I am a member of the City of Sydney Design Advisory Panel Residential Subcommittee, the Ku-ring-gai Urban Design Consultants Panel and the Inner West Architectural Excellence and Design Review Panel providing SEPP 65 and Apartment Design Guide advice to those Councils. I have chaired and been a panelist for a number of design excellence competitions for residential flat buildings and act an as urban design expert witness in the NSW Land and Environment Court on residential apartment development matters.

1.3 REQUEST FOR INFORMATION

The Hills Shire Council Request for Additional Information dated 23 March 2022 includes the following request at Item 3 to be addressed:

> *'Despite being identified as being compliant, a review has found that the proposal does not meet the required building separation distances required in Part 2F of the Apartment Design Guide (ADG) for building separation. For example, separate distances as low as 15.3 metres are proposed between the balconies of Building C and D. Any non-compliances with the ADG needs to be identified and suitably justified' (p8)*
>
> *1.4 PART 2 AND PART 3 OF THE APARTMENT DESIGN GUIDE*
>
> *The purpose of Part 2 of the Apartment Design Guide is to:*
>
> > *'explain the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls' (ADG p10 and p27).*
>
> *In other words, the intention of Part 2 is to inform the composition of development controls. It is not intended that Part 2 be used in the assessment of development applications. Conversely, the purpose of Part 3 of the Apartment Design Guide is to:*
>
> > *'provide guidance on the design and configuration of apartment development at a site scale. Objectives, design criteria and design guidance outline how to relate to the immediate context, consider the interface to neighbours and the public domain, achieve quality open spaces and maximise residential amenity. It is to be used during the design process and in the preparation and assessment of development applications' (ADG p10 and p43).*
>
> *Whilst Part 2F 'Building separation' and Part 3F 'Visual privacy' cover similar thematic ground, Part 3F is properly the part to be used for assessment of building separation because it contains the objectives, design criteria and design guidance that become*

the focus of assessment. Therefore the following review has been made with reference Part 3F and not Part 2F as described in the Request for Information.

1.5 ACHIEVING THE OBJECTIVES OF THE APARTMENT DESIGN GUIDE
The 'How to use this guide' section of the Apartment Design Guide advises that:

> *'The key to working with Parts 3 and 4 is that a development needs to demonstrate how it meets the objective and design criteria. The design criteria set a clear measurable benchmark for how the objective can be practically achieved. If it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective and the design guidance can be used to assist in this.' (ADG p11)*

Therefore the following review will focus on the relevant objectives, design criteria and design guidance contained within Part 3F 'Visual Privacy'.

2.0 PEER REVIEW

2.1 OBJECTIVE 3F-1
Objective 3F-1 is the objective relevant to building separation. It states:

> *'Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy' (ADG p63)*

Design criteria 3F-1 1 states:

> *'Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries area as follows:*

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

> *Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)' (ADG p63)*

Figure 3F.2 (as referenced) shows:

Figure 3F.2 Any one development will have a variety of visual privacy conditions to be accommodated. Section A (Figure 3F.4) shows separation distances between apartments within the same site

[ADG p62]

Design guidance 3F-1 7 states:

> *'No separation is required between blank walls' (ADG p63)*

2.2 INTERPRETATION

Strictly read, Objective 3F-1 appears to only relate to building separation distances between buildings on different sites. However, the note accompanying Design criteria 3F-1 1, the content of Figure 3F.2 and common sense suggest that the same level of building separation is also required between buildings on the same site, which is the case in this instance.

The focus of the objective is to achieve 'visual privacy'. The introductory text to Part 3F advises:

> 'Visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked' (ADG p62)

Therefore visual privacy can be described as the ability to protect from being seen when within a privately-owned space. This is a straightforward concept, involving simply looking in a straight line from one place towards another.

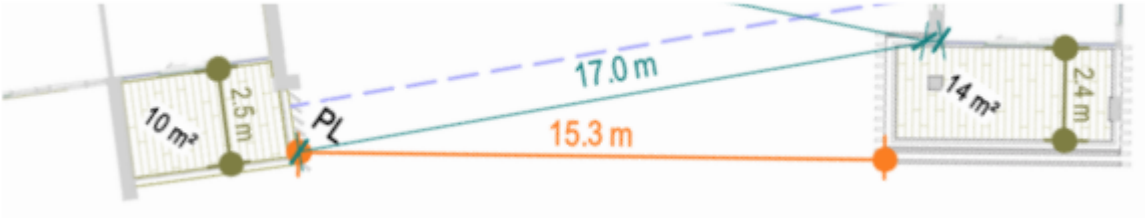
Design criteria 3F-1 1 seeks to provide certain building separations, measured linearly in metres, beyond which distance looking from one place towards another is considered far enough away as to not unreasonably impinge on visual privacy.

Item 3 of the Request for Information identifies that 'separation distances as low as 15.3m metres are proposed between the balconies of Building C and D.' As this dimension exceeds the minimum 12m required for buildings up to 4 storeys, it is assumed that this issue relates specifically to the fifth storey and storeys above.

Design criteria 3F-1 1 requires that habitable rooms and balconies on the fifth to eighth floors require 9m of building separation. The accompanying note directs to 'combine required building separations' between buildings on the same site. Application of this note requires that habitable rooms or balconies of different units should have a minimum

combined required building separation distance of 18m (9m + 9m). This is similar to the arrangement illustrated centrally in Figure 3F.2 across the courtyard ('H' to 'H').

Council appears to be implicitly raising the concern that the building separation is less than 18m. However, close inspection of the drawings in this location indicate that the corner balcony of the unit of Building D includes a privacy screen element (noted 'PL').



The arrangement and geometry of this privacy screen is such that it prevents a person on the balcony of either unit from being seen by a person on the balcony of the other unit. The privacy screen, from the viewpoint of the opposing balcony, can therefore effectively be considered a 'blank wall' for the purposes of visual privacy.

Design guidance 3F-1 7 advises that 'no separation is required between blank walls'. Therefore combining the required building separations in this instance would result in a minimum building separation of 9m (9m + 0m). This is similar to the arrangement illustrated to the lower right of Figure 3F.2 between buildings ('H' to 'blank').

If this reasoning is applied to all relationships between Buildings A, B, C and D for the fifth storey and above, it appears that a privacy screen element has been effectively incorporated in all situations where the building separation is less than 18m. This ensures that reasonable levels of visual privacy will be achieved across all situations of building separation.

Further, it is worthy note that all screened balcony openings and habitable room windows appear to be 'secondary' to the space they serve. In all instances, an alternative 'primary' balcony opening or 'primary' habitable room window provides an alternative orientation that is not screened and is completely unobstructed for uncompromised outlook, light and air. In this way, balcony openings and habitable room windows with privacy screens can be seen to be providing only additional amenity to buildings, but are doing so without effecting the visual privacy of neighbouring buildings.

3.1 COMPLIANCE
I believe the design approach taken by Mirvac is supportable and that their interpretation and application of the building separation design criteria is correct. In my opinion, the proposal satisfies Design criteria 3F-1 1, as informed by Design guidance of Part 3F-1 7, and therefore satisfactorily meets Objective 3F-1. With respect to building separation, I do not believe that there are 'non-compliances with the ADG which need to be identified and suitably justified'. In my opinion, the building separation is 'compliant' and acceptable as proposed.

3.2 RECOMMENDATIONS
Should Council wish to have additional certainty with respect to the design approach, they may wish to ensure that all instances of privacy screens are clearly highlighted and notated on the plans and elevations. Further, it may be beneficial to require that a detail of the privacy screen be provided at a greater scale to ensure that the depth and spacing of the privacy screens will be effective and that the blades will be fixed and at an angle which guarantees visual privacy in all instances

Comment: This variation to the internal building separation only occurs to 7 out of 252 units which equates to 2.7% of the units. Fixed privacy louvres are provided to either the balconies or bedroom windows which prevent direct overlooking. As stated above, the privacy screens with fixed louvres can effectively be considered a 'blank' wall for the purposes of overlooking and privacy impacts. It is considered that despite the variation to internal building separation for the upper levels, the proposed development is considered to provide for a reasonable degree of privacy for future residents. The proposal still provides for a development that is consistent with the desired outcome of the R4 High Density Residential zone, and assists in providing residential amenity, natural ventilation and solar access, and provides for suitable areas for communal open spaces, deep soil zones and landscaping.

In this regard, a variation to the ADG can be supported.

7. The Hills Local Environmental Plan 2019

a. Permissibility

The subject site (subject to this development application for residential flat buildings) is zoned R4 High Density Residential. The proposed residential flat buildings are located in the R4 High Density Residential zoned land and is permissible with consent. The proposal satisfies LEP 2019 in this regard.

b. Zone Objectives

The objectives of the R4 High Density Residential zone are:

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

The proposal is consistent with the stated objectives of the zone in that the proposed residential flat buildings will provide for housing needs of the community and provide a variety of housing types within a high density residential environment. The proposal is satisfactory in respect to the LEP 2019 objectives.

c. LEP 2019 – Development Standards

The following addresses the relevant principal development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1 Minimum Lot Size	1,800m²	Subdivision proposed under DA 1414/2022/ZB. The residential flat building will occupy a lot greater than 1,800m². (Proposed lot	Yes

		6 – 1.254ha)	
4.3 Building Height	The R4 zoned portion of the site is subject to a maximum height of 22m.	Building A: 26.4m Building B: 27.1m Building C: 24.9m Building D: 26.6m.	No. Refer Clause 4.6 Variation as attachment 8.
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	Refer below		Yes
Schedule 1 Additional Permitted Uses Clause 17	Use of certain land at 55 Coonara Avenue – Items 24 and 25. 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”—	The uses for those items will be subject to a separate (future DA).	Yes

	(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.		

Variation to Clause 4.3 Height of Buildings

Clause 4.3 of LEP 2019 limits the height of the development site (R4 zoned portion of the site) to 22 metres.

The variation to building height of the Apartment Building Precinct was considered as part of DA 860/2022/JP which was accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2019. 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 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 8.

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.*

- *<u>Retention of the Perimeter Road</u> - 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.*
- *<u>Re-allocation of massing away from the forest edge</u> - 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.*
- *<u>Amenity</u> –*
    - *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.*
- *<u>Site topography</u> - 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.*

<u>Comment:</u>

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%)

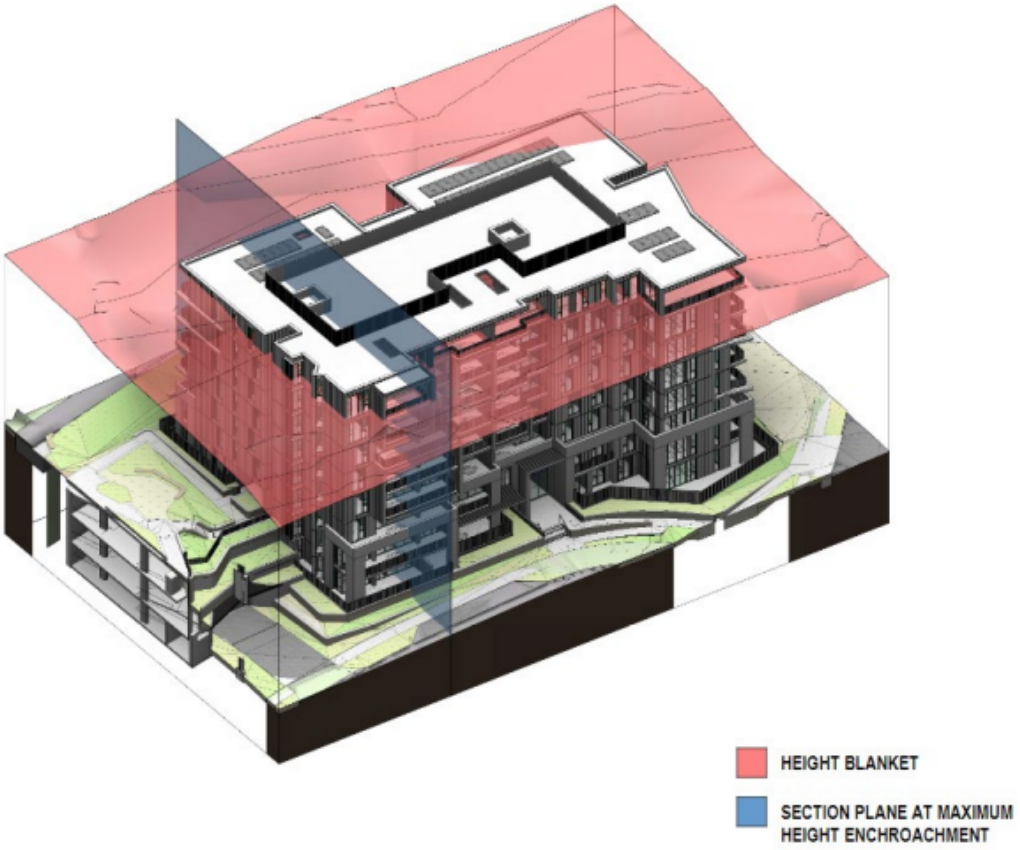


Figure 5 22m Height blanket of Building A (Source: Mirvac Design)

Figure 4: Applicant's 22m Height Blanket diagram of Building A

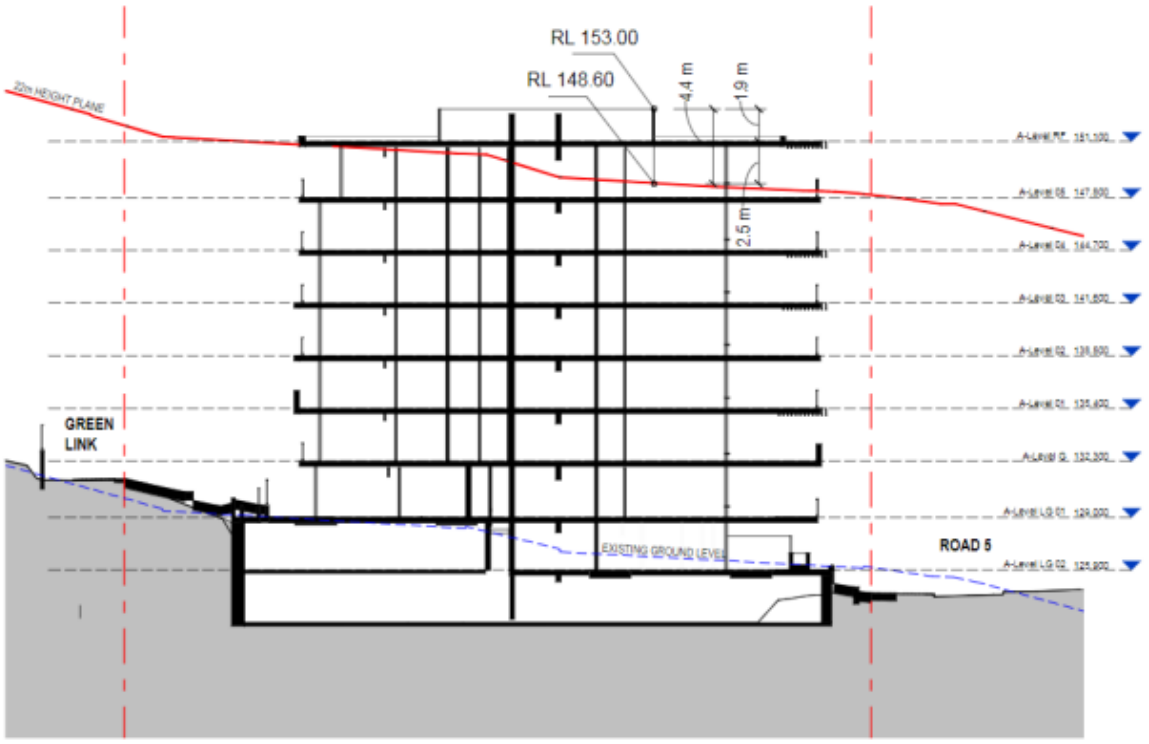


Figure 4 South Section of Building A showing the extent of height contravention (4.4m) (Source: Mirvac Design)

Figure 5: Applicant's section of Building A showing extent of height contravention

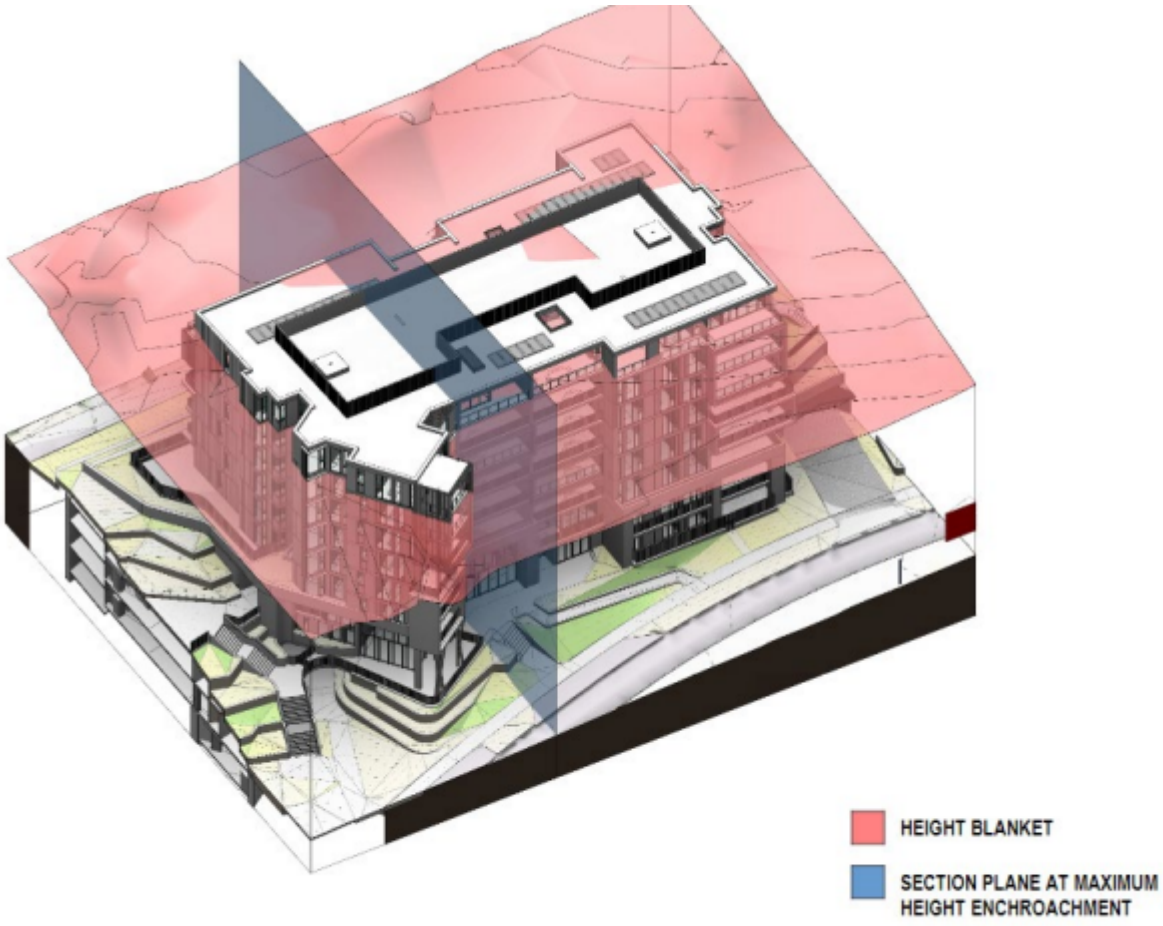


Figure 7 22m Height blanket of Building B (Source: Mirvac Design)

Figure 6: Applicant's 22m Height Blanket diagram of Building B

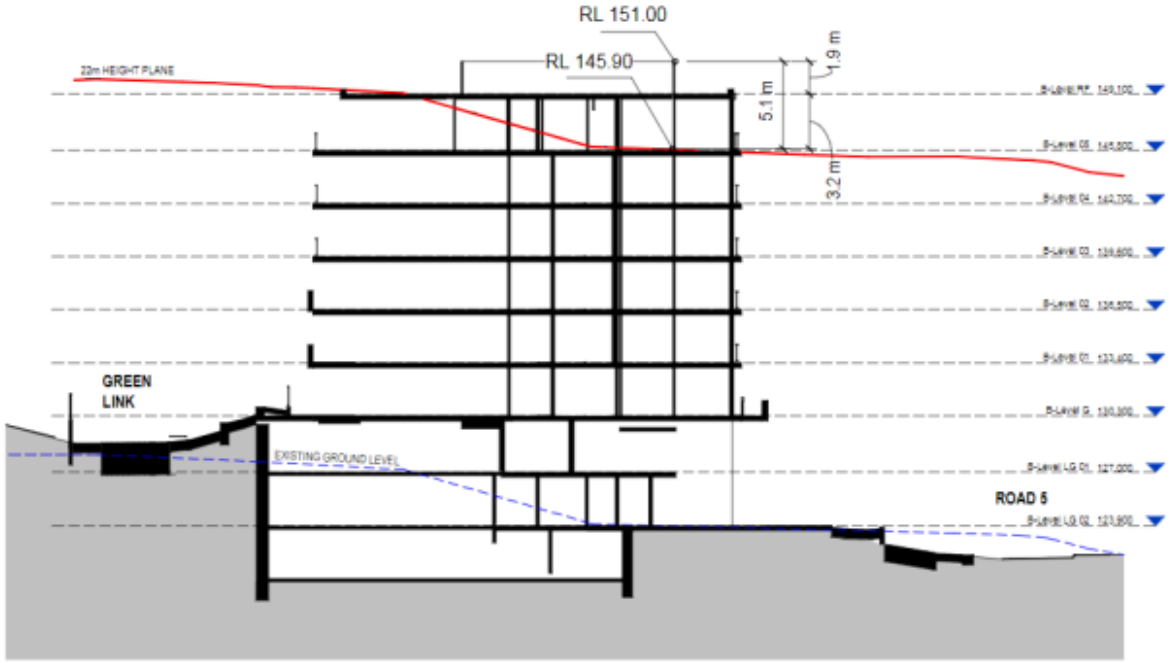


Figure 6 South Section of Building B showing the extent of height contravention (5.1m) (Source: Mirvac Design)

Figure 7: Applicant's section of Building B showing extent of height contravention

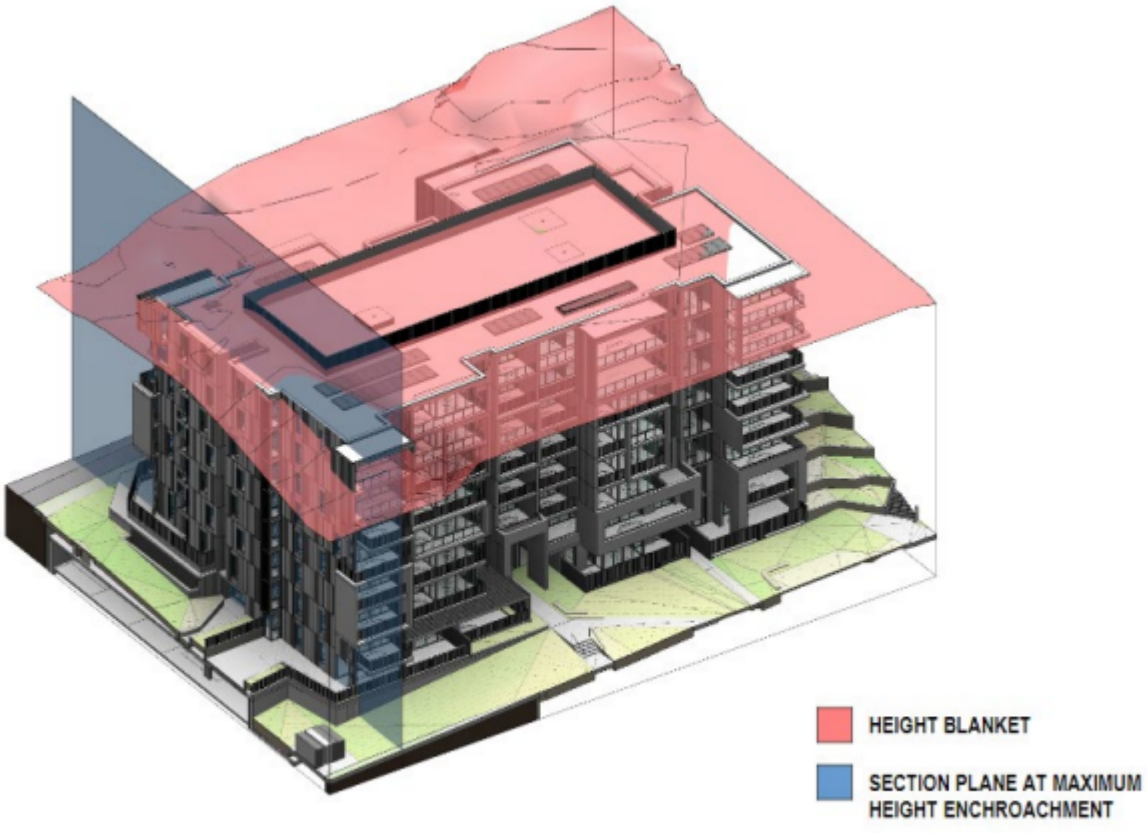


Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

Figure 8: Applicant's 22m Height Blanket diagram of Building C

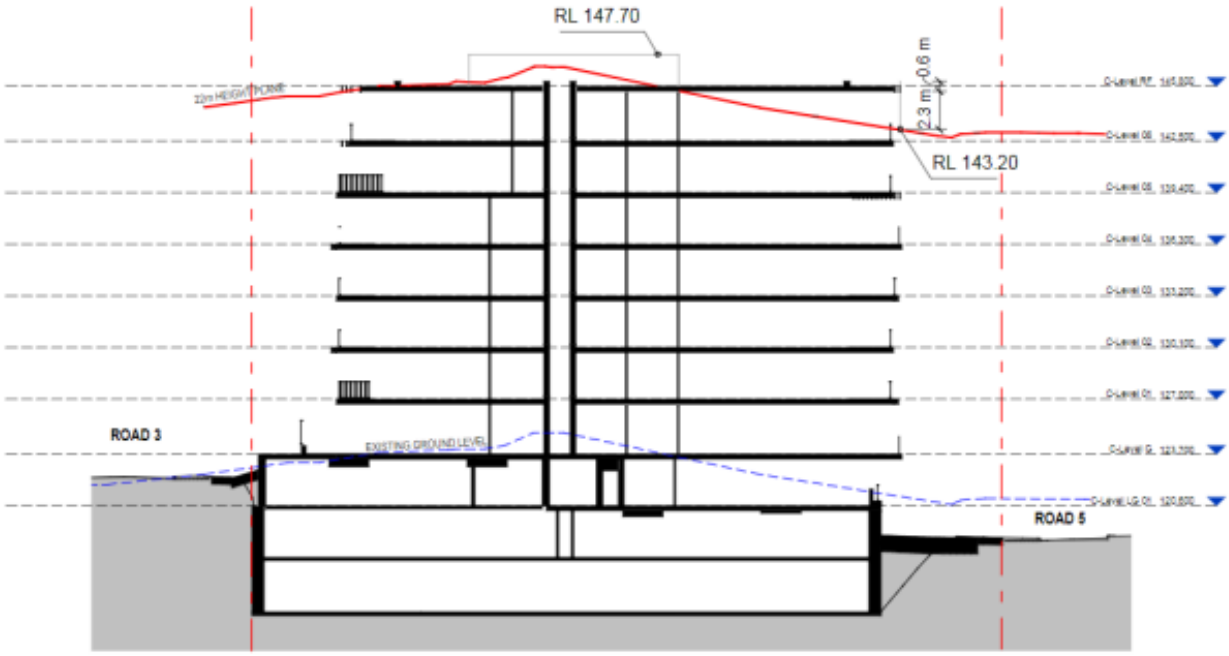


Figure 8 South Section of Building C showing the extent of height contravention (2.9m) (Source: Mirvac Design)

Figure 9: Applicant's section of Building C showing extent of height contravention

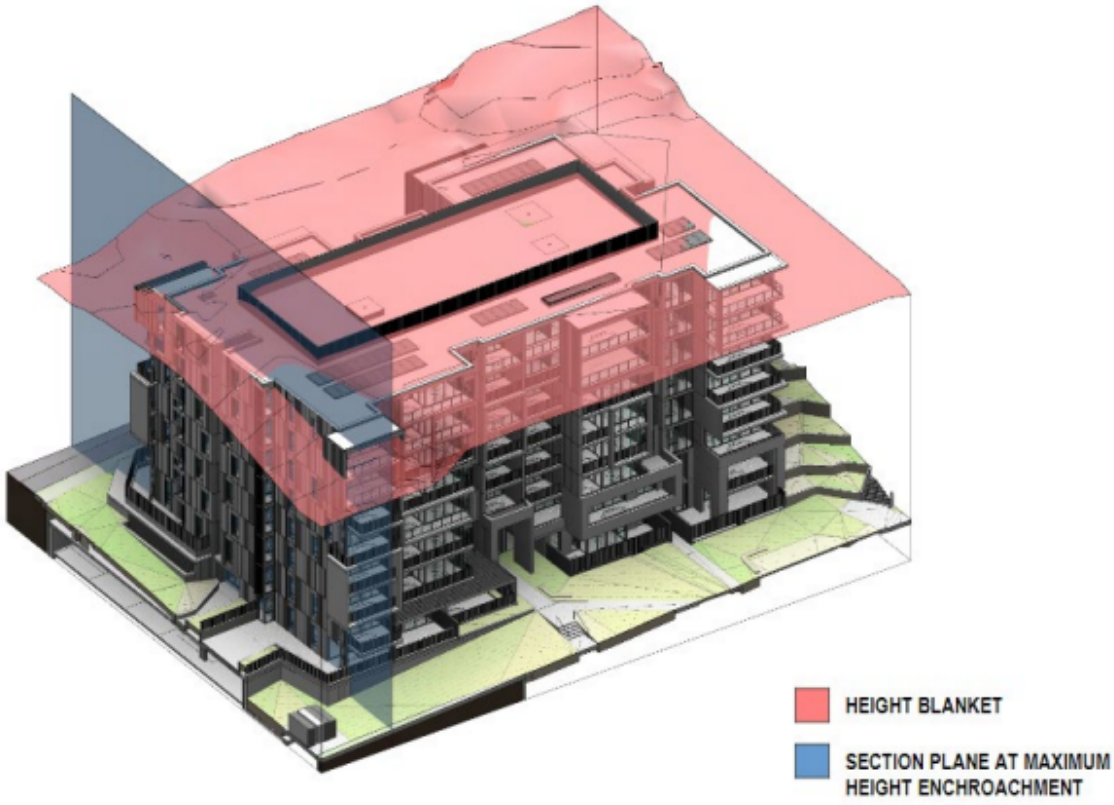


Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

Figure 10: Applicant's 22m Height Blanket diagram of Building D

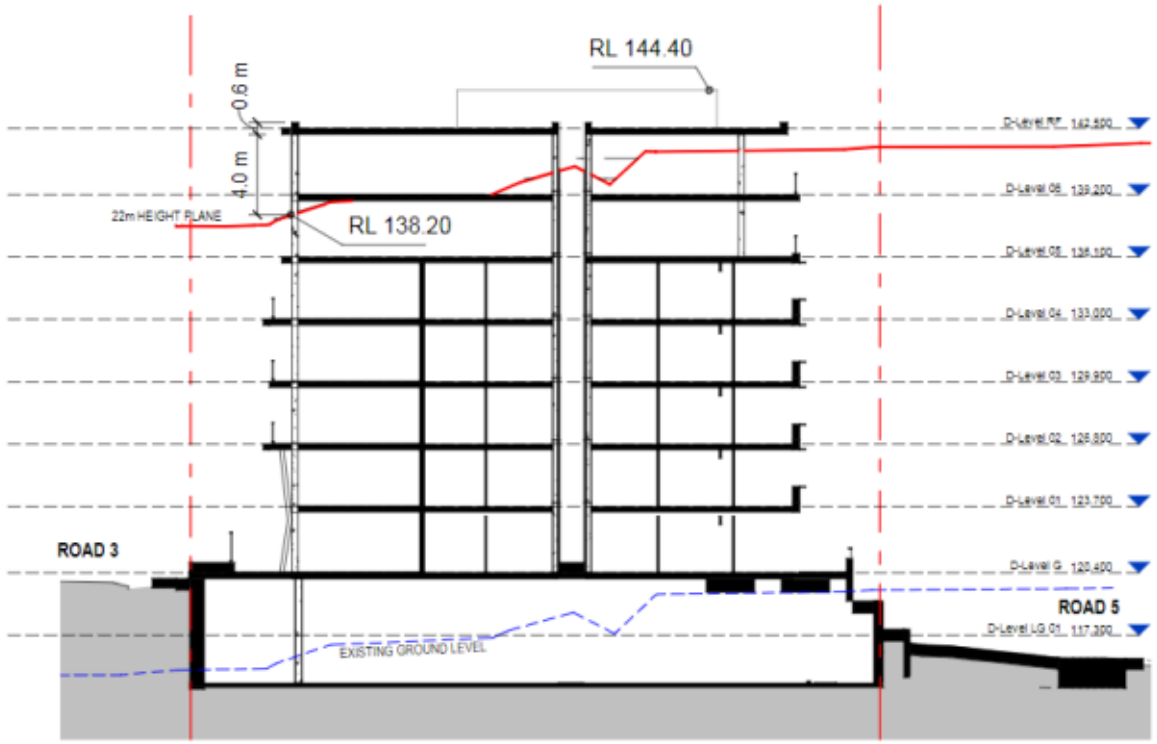


Figure 10 South Section of Building D showing the extent of height contravention (4.6m) (Source: Mirvac Design)

Figure 11: 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 and 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 provide 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 (formally 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.

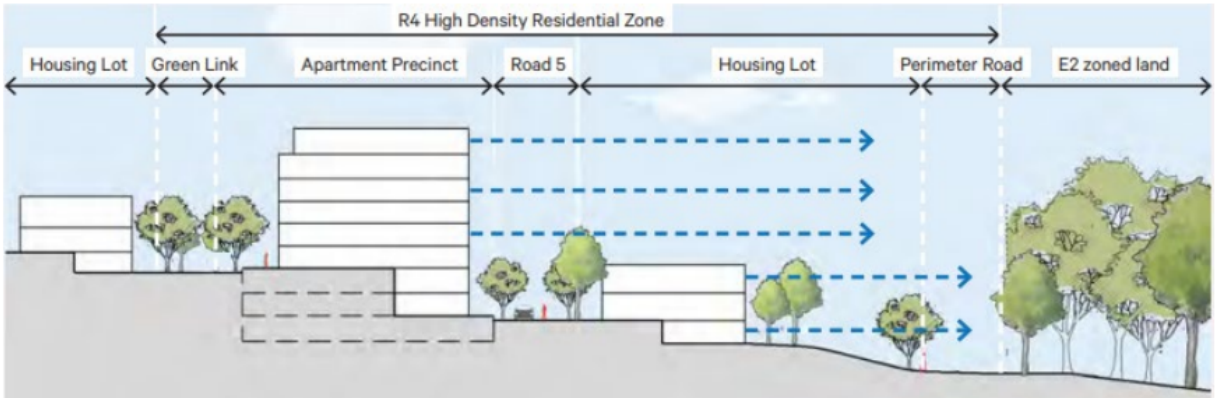


Figure 12: Proposed built form transition to C2 Zoned land Source: Mirvac Design

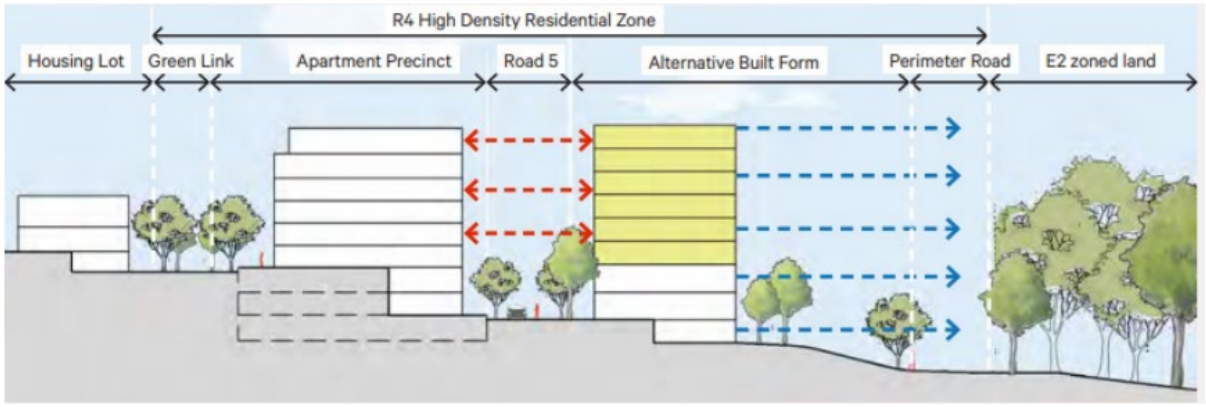


Figure 13: Alternative built form consistent with Planning Proposal and transition to C2 Zoned land Source: Mirvac Design

The applicant has argued the use of extrapolated ground levels, as identified in Bettar vs Council of the City of Sydney 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 14: Shadow Diagrams at 9am on 21 June showing a compliant vs non-compliant (shown purple) development. Source: Mirvac Design

Figure 15: Shadow Diagrams at 12pm on 21 June showing a compliant vs non-compliant (shown purple) development. Source: Mirvac Design

Figure 16: 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 "Jiwah' 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.

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.

As part of 860/2022/JP, the 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.

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: Bulk earthworks for the proposal forms part of the works for DA 860/2022/JP. Further earthworks are proposed to facilitate the construction of the Apartment Precinct which includes cut and fill to establish design levels for the proposed buildings, as well as basement parking. Erosion and sediment control measures including sediment basins will be implemented during the bulk earthworks stage of construction. These measures will ensure the proposed earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses and any significant features of the surrounding land. The earthworks proposed have been designed in accordance with the relevant Australian standards. Detailed engineering drawings will be provided at Construction Certificate stage and be certified by a suitably qualified engineer in the form of a compliance certificate. The proposed earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, therefore being consistent with the objective above.

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.

Comment: The design excellence of the proposal was considered at two Design Excellence Panel meetings convened by Council staff and held on 10 May 2021 (prior to lodgment of the Development Application) and 8 December 2021. The meeting minutes of the Design Excellence Panel are included as Attachments as part of DA 860/2022/JP. At the latest Design Excellence Panel meeting, the Panel provided various comments in relation to context/character, urban structure, density, landscape design and streetscape.

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 provided some advice in relation 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 following recommendations were made by the Design Excellence Panel:

> *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.*

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. Note – no minimum lot size required for residential flat buildings.

(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, noting that the concept application (DA 860/2022/JP) 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 managed to ensure no adverse flood risks are 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, or to downstream properties within the locality. Stormwater management has been satisfactorily addressed and the proposal will not result in any adverse stormwater impacts.

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

Comment: Overall, the proposal seeks approval for 417 dwellings on the site, which is less than the 600 permitted (DA 860/2022/JP). The subject application seeks approval for 252 units as part of the Apartment Precinct.

8. 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 and as a consequence of that document not being adopted. 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 housing development.

An assessment of the proposed Apartment Precinct 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 manner which responds to environmental constraints. b. To protect remnant forest areas. c. To encourage a variety of housing types and densities. d. To promote economically viable development. e. To provide an appropriate and suitable built form urban response to the Site.	The proposed development is consistent with the objectives outlined with respect to the vision and character of the site.	Yes
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	A minimum of 167 of the	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	on the land are to be 3-bedroom dwellings (or larger).	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 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/central 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.	Considered	Yes
	High quality landscaping is to be provided for all street reserves, including landscaped verges, public spaces and communal areas.	Considered	Yes
	Native street trees are to be provided within the landscaped verges.	Considered	Yes
	Street trees are to be sited in	Considered	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	consideration of driveways and infrastructure and to allow adequate site lines in proximity to intersections.		
	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	Yes
3.3 Access	Future development on the site shall be publicly accessible from Coonara Avenue	Noted	Yes
	Waste collection is to be undertaken from the rear laneway, where applicable.	Satisfactory	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
	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.	On-site waste collection is from the basement of the development.	Yes
	Driveway crossover width shall be designed in consideration of the streetscape and landscaping.	Provided.	Yes
3.4 Vegetation	Future development on the	Approval of the VMP	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	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.	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	
3.5 Parking Residential Flat Buildings	1 bed – 1 space 2 bed – 1.5 spaces 3 bed – 2 spaces 4 bed – 3 spaces 1 visitor space per 5 dwellings. Visitor parking is to be provided through a combination of basement parking and on-street parking.	38 x 1 bed = 38 136 x 2 bed = 204 71 x 3 bed = 142 7 x 4 bed = 21 Total = 405 Visitor – 51 spaces	Yes, provided: Residential: 405 Visitor: 51 (basement and on-street) Yes, complies
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.	Road 3 (front) – 3m, except from ground level terraces. Top level 5m Road 5 (rear) – 3m or greater except for ground level terraces. Top level 5m Green link – min 3 metre	Yes
	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).	Top storey fronting Road 3 has a minimum setback of 5 metres.	Yes
	No basement setback	A small portion of the basement has a nil setback. Satisfactory outcome overall, as some planting can be provided.	Yes
	Ground floor and podium level terraces may extend into the 3m setback zone by 2m.	Satisfactory, some units have minor extensions into the setback zone.	Yes
	Building articulation elements; sunshading, architectural features, privacy screens and other non-habitable elements, may extend into the 3m setback zone by 2m.	Articulation elements, sun shading, architectural features provided where necessary.	Yes
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	47%	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	area, including common open space above basement car park provided the area is suitably landscaped.		
	Private (ground level) open space shall be provided within 1m of the finished ground level surrounding, where possible and may be included as part of the minimum landscape area requirements	Provided	Yes
	Private (ground level) open space areas shall be enclosed with a wall/fence or landscape screen to provide for separation and privacy.	Provided	Yes
	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 Development Application.	N/A
	The minimum area of common open space provided across the masterplan is to be equivalent to the rate of 20m² per dwelling.	A minimum of 20 x 417 = 8,430m² (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.	Satisfactory	Yes
	Ground floor and podium level terraces may extend 2m beyond the 50m maximum linear length	Satisfactory	Yes
	Building articulation elements;	Satisfactory	Yes

DEVELOPMENT STANDARD	GUIDELINE REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	sunshading, architectural features, privacy screens and other non-habitable elements, may extend 2m beyond the 50m maximum linear length.		
5.4 Building design and streetscape	Where possible, all ground floor dwellings should have their own entry at ground level.	Provided where possible.	Yes
5.5 Fencing	Fences shall be constructed from a suitable high quality, durable material	Satisfactory	Yes
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)	The following mix is provided: 252 units = 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	Satisfactory	Yes
	The intercom shall be located to allow space for turning to ensure queuing does not adversely affect traffic or pedestrian movement on the street.	Suitably located.	Yes
	Providing the intercom is located to allow free movement of traffic around the stationary vehicle, no turning area is required.	Suitably located.	N/A
	Fire exits from the car parking areas must be designed to be compliant with BCA.	To comply with BCA – conditioned	Yes
5.8 Pedestrian / bicycle links	A location for bicycle standing is provided close to the main entry of the building.	Provided.	Yes
	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	Appropriate pedestrian links provided	Yes

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

9. 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 (full assessment of this DCP is provided below)
- 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

Parking – Residential Flat Buildings

The Site Specific Design Guideline residential flat building parking rate does not comply with the 2 bedroom parking rate, and the visitor parking rate. A full justification for the con-compliance with the parking rate for residential flat buildings is part of the concept application, DA 861/2022/JP, as the concept DA sought approval for site wide parking rates for the development(s).

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

Part B Section 5 – Residential Flat Buildings

An assessment of Council's THDCP – Part B Section 5 Residential Flat Buildings is provided below:

DEVELOPMENT STANDARD (CLAUSE NO.)	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
1.1 Permissible Zones	R1 General Residential, R4 High Density Residential, B2 Local Centre, B4 Mixed Use	R4 High Density Residential zone, with site area greater than 12,000sqm.	Yes
3.1 Site Requirements	The minimum lot size for residential flat buildings is specified in Clause 4.1A of The Hills Local Environmental Plan 2012, as follows: **Within:** R1 General Residential – 4,000m^2 R4 High Density Residential – 4,000m^2 B2 Local Centre – 4,000m^2 B4 Mixed use – 4,000m^2 Min. road frontage – 30m	Site Area: 12,545m^2 >30m	Yes Yes
3.3 Setbacks – Building Zones	Where trees are located within the 10 front setback, 8m rear setback and 6m side setback, the building zone boundaries will be set so that all buildings are 5m from the trees or clear of the drip line of the trees whichever is the greater distance. Front (one street frontage) - 10m Front (two street frontages):	3m and 5m minimum from internal (private) roads Located more than 100 metres from Coonara Avenue and more than 60 metres from side boundary (to Cumberland	Compliant with Site Specific Design Guidelines which is considered appropriate for the site.

	Primary frontage – 10m Secondary frontage – 6m Side – 6m Rear – 8m	State Forest)	
3.4 Building Heights	Refer to building height maps of The Hills Local Environmental Plan 2012. No buildings shall contain more than 4 storeys above natural ground level.	The R4 zoned portion of the site is subject to a maximum height of 22m. Building A: 26.4m Building B: 27.1m Building C: 24.9m Building D: 26.6m.	No – refer above.
3.5 Building Separation and Treatment	12m	16m plus	Yes
3.6 Landscaped Area	50% of site area	In a calculation of the total site area, achieves greater than 50%, and for the Apartment Precinct, achieves 47%	Yes
3.7 Building Length	Max. 50m	50m	Yes
3.8 Building Design and Streetscape	Must refer to Council's "Multi-Unit Housing: Urban Design Guidelines 2002" Designs must be in harmony in terms of form, mass, colour and structure with existing and likely future development in the street. Siting and design to ensure clear definition of street edge and reinforce street corners. Building lines together with landscaping treatments should distinguish the public and private realms. Must not be repetitive in design and incorporate harmonious design variations such as verandas, entrances, facades, etc.	Satisfactory, and the development has achieved 'Design Excellence' as per above.	Yes
3.9 Urban Design Guidelines	Demonstrate conformity with "Baulkham Hills Multi Unit Housing – Urban Design	Satisfactory	Yes

	Guidelines 2002"		
3.10 Density	150-175 persons per hectare	439 persons per hectare (when calculated for the Apartment Precinct area only), noting that the R4 High Density Residential zoned land extends beyond the proposed Apartment Precinct.	No, however 252 apartments are proposed which is much less than the 400 envisaged as part of the planning proposal.
3.11 Unit Layout and Design	1 bedroom – 75m^2 2 bedroom – 110m^2 3 bedroom – 135m^2	1 bed – 55 - 75sqm 2 bed – 80-105sqm 3 bed – 110-145sqm 4 bed – 165-180sqm	No, but complies with ADG
	Mix (a) No more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments. (b) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.	38 x 1 bedroom (15%) 71 x 3 bedroom (28%) 7 x 4 bedroom (3%)	Yes Yes Yes
3.12 Building Materials	Must comply with the Local Government Act, 1993, Local Government regulations and Building Code of Australia Reflect and complement the existing character and streetscape. Choice of materials to consider both their environmental and economic costs. Use graffiti resistant materials in areas accessible by the general public and communal areas within the development. Use colours that are visually pleasing and reflect the predominant colours in the area.	Satisfactory	Yes

	Avoid materials and colours with excessive glare. Avoid materials that are likely to contribute to poor internal air quality. Select materials that will minimise the long-term environmental impact over the whole life of the development. Preference to materials derived from renewable sources or are sustainable and generate lower environmental cost, recycled material/s with low embodied energy, better lifecycle costs and durability.		
3.13 Open Space	Private: Ground level – 4m x 3m (min) Above ground – min. 10m^2 with min. depth 2.5m Common open space 20m² per dwellings.	Min depth of 3m and 15sqm 1 Bedroom – 8 m2, 2m depth • 2 Bedroom – 10 m2, 2m depth • 3 Bedroom – 12 m2, 2.4m depth 252 x 20m² = 5,040m²	Yes Complies with ADG Various open spaces provided with the development. 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.
3.14 Solar Access	Adjoining buildings / open space	Compliant with	Yes

	areas – 4 hours between 9am and 3pm on 21 June Common open space – 4 hours between 9am and 3pm on 21 June	ADG	
3.15 Ventilation	- Consider prevailing breezes in relation to building orientation, window design and internal circulation. - Place windows to allow for cross ventilation i.e. on opposite sides of the building rather than adjacent walls where possible. These windows are to be lockable in a partly open position. - Promote air circulation and consider the installation of fans, roof vents, louvered windows and high-level windows to aid air circulation. - Provide security screen doors at unit entries. - Minimise air gaps by incorporating door and window seals.	Compliant with ADG requirements	Yes
3.16 Lighting	- Lighting to be in accordance with the Building Code of Australia. - Adequate lighting to ensure the security and safety of residents and visitors. - Maximise the use of natural lighting through window placement and skylights. - In common areas lights are to be time switched and energy efficient fitting should be used. - Motion detectors are to be used for unit entries, lobbies and outdoor security. - Incorporate dimmers, motion detectors, and automatic turn-off switches where appropriate. - Provide separate switches for special purpose lights.	Satisfactory	yes
3.19 Car parking	<u>Rate per unit & visitor parking:</u> 1 space per 1 BR 2 spaces per 2 or 3 BR Visitor – 2 spaces per 5 dwellings	38 x 1 bedroom 136 x 2 bedroom 71 x 3 bedroom	No – refer above.

	<u>Parking Dimension:</u> - Lockable single garages min. dimension – 5.5 metres x 3 metres (exclusive of storage) - Lockable double garages min. dimension – 5.5 metres x 5.4 metres (exclusive of storage) - Visitor parking dimensions – 5.5 metres x 2.6 metres <u>Manoeuvring and Ramps:</u> - First 6 metres of the driveway inside the property boundary to be a maximum of 5% - Ramp grades to comply with Australian Standard 2890.1 - Manoeuvring in accordance with Australian Standard 2890.1	7 x 4 bedroom Required: Res - 38 + 428 = 466 spaces Visitor – 101 Provided: Res: 413 Visitor – 51 . Compliant manoeuvring and ramps provided.	
3.20 Storage	$10m^3$ with an area $5m^2$ and dimension 2 metres	Complies with ADG	Yes
3.21 Access and Adaptability	Lift provided if greater than 2 storeys Accessible housing: 5% in a development >20 units	Lifts provided Accessible – 13 units required Provided: 26 adaptable dwellings with 26 accessible parking spaces and 4 accessible visitor spaces	Yes
3.23 Privacy – Visual and Acoustic	- Minimise direct overlooking of main internal living areas and private open space of dwellings both within and adjoining the development through building design, window locations and sizes, landscaping and screening devices (refer to section 3.13 Open Space). - Consider the location of potential noise sources within the development such as common open space, service areas, driveways, and road frontage, and provide appropriate measures to protect acoustic privacy such as careful location of noise-sensitive rooms (bedrooms, main living areas) and double glazed windows. - Dwellings adjoining arterial roads to be designed to	Satisfactory	yes

	acceptable internal noise levels, based on AS 3671 – Road Traffic Noise Intrusion Guidelines.		
3.24 Services	- Development consent not to be granted until satisfactory arrangements are made with relevant authorities for the provision of services. - Pump out sewage management systems not acceptable for apartment building developments. - Site services and facilities (such as letterboxes, clothes drying facilities and garbage facility compounds shall be designed so as: - To provide safe and convenient access by residents and the service authority; and - Visually integrated with the development and have regard to the amenity of adjoining development and streetscape. - All electricity and telephone services on site must be underground. - Laundries shall be provided to each dwelling.	Satisfactory, appropriate conditions provided.	Yes
3.25 Waste Management – Storage and Facilities	- Waste collection and separation facilities to be provided for each dwelling. Each dwelling should have a waste storage cupboard in the kitchen capable of holding at least a single days waste, and sufficient to enable separation of recyclable material. - Adequate storage for waste materials must be provided on site and any such waste must be removed at regular intervals and not less frequently than once per week for garbage and fortnightly for recycling. - Screen views of waste and storage facility from any adjoining property or public place while ensuring there is some natural surveillance from within the development to minimise vandalism and other anti-social	Satisfactory, appropriate conditions provided.	Yes

	activity. - Waste storage areas to be kept clean, tidy and free from offensive odours at all times.		

10. Issues Raised in Submissions

The application was notified on two occasions. A total of 687 submission have been received with some of the objectors providing multiple submissions.

NOTE: The submission table below only relates to matters raised in relation to the subject application for the Apartment Precinct development. Submissions in relation to the concept master plan have been addressed under the SCCPP report for DA 860/2022/JP.

A summary of the submissions is provided below:

ISSUE/OBJECTION	COMMENT	OUTCOME
The Hills Shire Council has previously rejected 8 storeys on the site.	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 provided for the R4 High Density Zone. The applicant has submitted a Clause 4.6 variation which has been considered as part of this application (as well as the concept DA 860/2022/JP).	Issue addressed.
The applicant has not demonstrated that sufficient environmental planning grounds to justify contravening the height of building standards.	The applicant has submitted a Clause 4.6 variation which has been considered as part of this application which has been well founded and supportable in this instance.	Issue addressed.
The development does not comply with the building separation distances as required by the ADG.	A full assessment is provided in Section 6 above.	Issue addressed.
The apartments do not comply with the NCC fire regulations including fire control centres, emergency lift, travel distances, etc.	The development is required to comply with the Building Code of Australia. A condition of consent has been recommended ensuring compliance with the BCA.	Issue addressed. See Condition no. 16
The apartments must have green roofs, which will have a cooling effect on the solar panels and improve their performance.	The applicant was requested to explore the opportunity to provide green roofs, however much of the roof is covered in plant or solar panels which significantly reduces the opportunity for planting on the roof.	Issue addressed.
The apartment building have a poor amenity outcome including, solar access, amenity, visual impacts/overlooking, ventilation,	The development achieves compliance with relevant AGD requirements.	Issue addressed.
The proposal is to provide a report on Compliance with Council's Residential Flat Building DCP, Part B Section 5.	As part of the application, the applicant has provided an assessment of the DCP. Council's assessment is	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	also provided above.	
The number of resident and visitor car parking spaces provided per unit is inadequate.	A non-compliance with parking rates is proposed, and suitable justification has been provided. The non-compliance to parking is supported, and the parking rate for the site has been endorsed as part of the Site Specific Design Guidelines.	Issue addressed.
There is no affordable housing. Eliminating the studio apartments, reducing the number of one bedroom apartments then including four bedroom units top floor penthouses might be more profitable but it makes the dwellings even less affordable for Hills Shire residents	There is no legislative requirement for the applicant to provide affordable housing. It is noted that the development has a mix of unit types from 1 to 4 bedrooms, with configurations to suit a variety of household types.	Issue addressed.
Deep soil landscaping should be increased from the minimum 15% required by the SEPP.	The proposal achieves the ADG target 15% deep soil provision within the apartment precinct. There is no statutory requirement to exceed the recommendations of the ADG.	Issue addressed.
Apartment yield is reduced because of the APZ are not allowed to impact on the E2 zones and because Mirvac has chosen to build an increased number of larger apartments.	The apartment yield has been reduced from what was envisaged with the planning proposal, after more detailed design considerations were undertaken. This process confirmed four buildings within the apartment precinct was a more appropriate design outcome that provided an improved and sympathetic transition to the surrounding forest, reduced from the original planning proposal of nine (9) buildings. Low scale housing has been introduced within the R4 High Density Residential zone to ensure a more sympathetic transition towards the forest areas (subject to a future DA). The reduced yield provides an improved outcome, with respect to solar access, areas of communal open space, etc. The apartment sizes comply with ADG requirements.	Issue addressed.
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 (refer Condition no. 46) 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 adjacent to the forest.	Issue addressed.

11. External Referrals

The application was referred to the following external authorities who provide comment:

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 - NRAR

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 11)

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. 3.

12. Internal Referrals

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.

LANDSCAPE COMMENTS

No objection is raised to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the proposal subject to conditions.

WASTE MANAGEMENT COMMENTS

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 INFORMATIONS 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 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 variation 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 building height standard is 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
	Architectural Plans		
DA-00-0000	Cover Sheet	A	17.09.2021
DA-00-0001	Yield Schedule	B	12.04.2022
DA-00-1002	Site Analysis	A	17.09.2021
DA-00-1003	Site Analysis	A	17.09.2021
DA-00-1004	Site Plan	A	17.09.2021
DA-00-1005	Site Plan Setbacks and APZ	A	17.09.2021
DA-00-1010	Loading Dock	B	12.04.2022
DA-00-1011	Building D – Lower Ground 1	B	12.04.2022
DA-00-1012	Building C – Lower Ground 1 / Building D – Ground	B	12.04.2022
DA-00-1013	Building B - Lower Ground 2 / Building C - Ground /Building D - Level 01	B	12.04.2022
DA-00-1014	Building A - Lower Ground 2 / Building B - Lower Ground 1 /Building C - Level 01 /Building D - Level 02	B	12.04.2022
DA-00-1015	Building A - Lower Ground 1 /Building B - Ground /Building C - Level 02 /Building D - Level 03	B	12.04.2022
DA-00-1016	Building A - Ground /Building B - Level 01 /Building C - Level 03 /Building D - Level 04	B	12.04.2022
DA-00-1017	Building A - Level 01 /Building B - Level 02 /Building C - Level 04	B	12.04.2022

	/Building D - Level 05		
DA-00-1018	Building A - Level 02 /Building B - Level 03 /Building C - Level 05 /Building D - Level 06	B	12.04.2022
DA-00-1019	Building A - Level 03 /Building B - Level 04 /Building C - Level 06 /Building D - Roof	B	12.04.2022
DA-00-1020	Building A - Level 04 /Building B - Level 05 /Building C - Roof	B	12.04.2022
DA-00-1021	Building A - Level 05 / Building B - Roof	B	12.04.2022
DA-00-1022	Roof Plan	B	12.04.2022
DA-00-1030	Long Elevation	B	12.04.2022
DA-00-1031	Building A Elevations	A	17.09.2021
DA-00-1032	Building B Elevations	A	17.09.2021
DA-00-1033	Building C Elevations	A	17.09.2021
DA-00-1034	Building D Elevations	A	17.09.2021
DA-00- 1037	Short Sections	B	12.04.2022
DA-00- 1038	Long Sections	B	12.04.2022
DA-00- 1046	External Finishes	A	17.09.2021
DA-00- 1047	Fencing Details	A	17.09.2021
DA-00-1070	Storage Schedule	A	17.09.2021
DA-00-1071	Storage Schedule	A	17.09.2021
DA-00-1072	Storage Plan – Loading Dock	A	17.09.2021
DA-00-1073	Storage Plan - Building D - Lower Ground 1	A	17.09.2021
DA-00-1074	Storage Plan - Building C - Lower Ground 1 / Building D - Ground	A	17.09.2021
DA-00-1075	Storage Plan - Building B - Lower Ground 2 /Building C - Ground / Building D - Level 01	A	17.09.2021
DA-00-1076	Storage Plan - Building A - Lower Ground 2 / Building B - Lower Ground 1 /Building C - Level 01 /Building D - Level 02	A	17.09.2021
DA-00-1077	Storage Plan - Building A - Lower Ground 1/ Building B - Ground / Building C - Level 02 / Building D - Level 03	A	17.09.2021
DA-00-1078	Storage Plan - Building A - Ground / Building B - Level 01 / Building C - Level 03 / Building D - Level 04	A	17.09.2021

DA-00-1079	Storage Plan - Building A - Level 01 / Building B - Level 02 / Building C - Level 04 / Building D - Level 05	A	17.09.2021
DA-00-1080	Storage Plan - Building A - Level 02 / Building B - Level 03 / Building C - Level 05 / Building D - Level 06	A	17.09.2021
DA-00-1081	Storage Plan - Building A - Level 03 / Building B - Level 04 / Building C - Level 06 / Building D - Roof	A	17.09.2021
DA-00-1082	Storage Plan - Building A - Level 04 / Building B - Level 05 / Building C - Roof	A	17.09.2021
DA-00-1083	Storage Plan - Building A - Level 05 / Building B - Roof	A	17.09.2021
DA-00-1101	Building A - Adaptable Apartments	A	17.09.2021
DA-00-1102	Building B - Adaptable Apartments	A	17.09.2021
DA-00-1103	Building C - Adaptable Apartments	A	17.09.2021
DA-00-1104	Building D - Adaptable Apartments	A	17.09.2021
DA-00-1105	Loading Dock Driveway Section	B	12.04.2022
DA-00-1106	Entry Driveway Section	B	12.04.2022
DA-00-1107	Internal Ramps Sections	A	17.09.2021
DRAWING NO.	**DESCRIPTION**	**REVISION**	**DATE**
DA00-1005 & DA 00-1010 – DA 00-1021	Street/Unit Numbering Plans (13 Pages – for numbering purposes only)	A	17.09.2021
Civil Engineering Works			
C-APT-8200	Cover Sheet, Drawing Schedule and Locality Plan	P2	06.09.2021
C-APT-8201	Specifications	P2	06.09.2021
C-APT-8203	General Arrangement Plan	P2	06.09.2021
C-APT-8204	Concept Sediment and Erosion Control Details	P2	06.09.2021
C-APT-8205	Sediment and Erosion Control Details	P2	06.09.2021
C-APT-8207	Bulk Earthworks Cut and Fill Plan	P2	06.09.2021
C-APT-8208	Bulk Earthworks Cut and Fill Sections	P2	06.09.2021
C-APT-8212	Siteworks and Stormwater Management Plan – Sheet 01	P2	06.09.2021
C-APT-8213	Siteworks and Stormwater Management Plan – Sheet 02	P2	06.09.2021
C-APT-8215	Typical Sections	P2	06.09.2021

C-APT-8219	Stormwater Catchment Plan	P2	06.09.2021
172528	Civil Engineering Assessment Report	2	11.10.2021
Shoring Wall Drawings			
SK-02-00	SHORING PLAN - OVERALL	C	01.09.2021
SK-02-10	SHORING ELEVATIONS - SHEET 1	A	13.07.2021
SK-02-15	SHORING SECTIONS - SHEET 1	A	13.07.2021

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

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

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

4. Compliance with Department of Planning and Environment – Water Requirements
Compliance with the requirements of the Department of Planning and Environment – Water attached as an Appendix to this consent and dated 5 August 2022.

5. Planting Requirements
All trees planted as part of the approved landscape plan are to be minimum 100 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers and ornamental grasses are to be minimum 140mm pot size.

Lawn is to be a sterile hybrid turf variety.

All planting on podium or over stormwater infrastructure are to achieve the minimum soil depths:

- 1.2m for large trees or 800mm for small trees;
- 500-600mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

6. Provision of Parking Spaces
The development is required to be provided with car parking spaces for 456 vehicles (405 residents and 51 visitors), 2 service vehicles, 2 car wash bays, 6 motorcycles and 16 dedicated bicycle spaces located in basement carpark and on-street.

7. Separate Application for Strata Subdivision
The strata title subdivision of the development is not included. A separate development application or complying development certificate application is required.

8. 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.

9. Structures Adjacent to Piped Drainage Easements

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

10. Requirements for Council Drainage Easements

No works are permitted within existing or proposed public drainage easements unless approved by Council. Where works are permitted, the following requirements must be adhered to:

- Provision for overland flow and access for earthmoving equipment must be maintained.
- The existing ground levels must not be altered. No overland flow is to be diverted out of the easement.
- No fill, stockpiles, building materials or sheds can be placed within the easement.
- Open style fencing must be used. New or replacement fencing must be approved by Council.

11. Vehicular Access and Parking

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

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

Where conflict exists the Australian Standard must be used.

The following must be provided:

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

12. Flood Control System

properties in the locality from flood risks during all storm events, and throughout the subject development. 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 throughout the development, necessary flood control system (respective Onsite Stormwater Detention

Systems) and/ or alternative equivalent 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 integrated Onsite Stormwater Detention and Water Sensitive Urban Design systems 3 and 4 shown on the Stormwater Catchment Plan – OSD drawing C-MP-8372 and the Stormwater Catchment Plan – WSUD drawing C-MP-8373 Revision P dated 16/09/2022 form part of the Conceptual Master Plan Stage 01 Civil Works prepared by Northrop (pursuant to the DA 860/2022/JP) cater the Southern precinct and the Apartment precinct, the subject development.

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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 Mirvac, dated 7 June 2022, for noise and vibration controls referenced in Section 9 of the above report.

19. 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.

20. 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 7am. 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.

21. Provision of Kitchen Waste Storage Cupboard

Waste storage facility must be provided in each unit/dwelling to enable source separation of recyclable material and food waste from residual garbage. Each unit/dwelling must have a waste storage cupboard provided in the kitchen with at least 3 removable indoor bins with a minimum capacity of 15 litres each. The bins provided should allow convenient transportation of waste from the kitchen to the main household bins or waste disposal point. The Principal Certifying Authority must visually confirm in person, or receive photographic evidence validating this requirement, prior to the issue of any Occupation Certificate.

22. Adherence to Waste Management Plan

All requirements of the Waste Management Plan submitted as part of the Development Application must be implemented except where contrary to other conditions of consent. The information submitted regarding construction and demolition wastes can change provided that the same or a greater level of reuse and recycling is achieved as detailed in the plan. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

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

www.wastelocate.epa.nsw.gov.au.

23. Access and Loading for Waste Collection

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2-2002 for the standard 12.5m long Heavy Rigid Vehicle (minimum 4.5m clear vertical clearance). The following requirements must also be satisfied.

- All manoeuvring areas for waste collection vehicles must have a minimum clear vertical clearance of 4.5m. Any nearby areas where the clear headroom is less than 4.5m must have flexible striker bars and warning signs as per Australian Standard 2890.1 to warn waste collection contractors of the low headroom area.
- All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading, and traffic circulation is appropriately controlled.
- Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
- The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three point turn).
- The designated waste service bay must allow additional space servicing of bins (wheeling bulk bins to the back of the waste collection vehicle for rear load collection).
- The loading area must have a sufficient level of lighting and have appropriate signage such as “waste collection loading zone”, “keep clear at all times” and “no parking at any time”.
- Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of heavy vehicles, remote access or alternative solution which ensures there is no requirement for waste collection contractors to exit the cab. Copies of scan cards or remotes must be provided to Council upon the commencement of waste services.

24. Communal Composting Areas

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

25. Management of Construction and/or Demolition Waste

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

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

recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

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

26. Provision of Waste Chute System

The development must incorporate dual waste chute systems for garbage and recycling. Chute openings must be provided on every residential floor within the building corridors. The waste chutes must terminate into the waste storage rooms. Garbage must discharge into 1100 bins with compactor (2:1 compaction ratio) and recyclables must discharge into 1100 litre bins. The waste chute system must be maintained in accordance with manufactory standards.

27. Provision of Bin Cupboards

A separate bin cupboard must be provided next to chute openings on every residential floor to allow for the disposal of items unsuitable for chute disposal or a third waste stream. The cupboards must be sized to store at least a single 240 litre bin. The dimensions of a 240 litre bin are 735mm deep, 580mm wide and 1080mm high.

28. 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.

29. Commencement of Domestic Waste Service

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

30. Construction of Waste Holding Room and Waste Chute Rooms

All waste storage areas must be designed and constructed in accordance with the following requirements. The waste holding room must provide minimum storage facility for 14 x 1100 litre garbage and 14 x 1100 litre recycle bins. The waste chute rooms must provide minimum storage facility for one dual chute system (one garbage and one recycle chute) and compactor for garbage.

- The waste holding rooms must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins and associated waste infrastructure as specified above.
- The layout of the waste holding rooms must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the waste holding rooms must be constructed of brickwork or blockwork.
- The floor of the waste holding rooms must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).
- The waste holding rooms must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors (preferred). The waste servicing door must be supplied with a

lock through Council's Waste Management Master Key System 'P3520'. See condition titled 'Installation of Master Key System to Waste Collection Room' for further details.

- The waste chute rooms located on each residential level must have a resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors.
- All doors of the waste holding rooms, when fully opened, must be flush with the outside walls and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.
- The waste holding rooms must be adequately ventilated (mechanically if located within the building footprint). Vented waste storage areas should not be connected to the same ventilation system supplying air to the units.
- The waste holding rooms must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the waste holding rooms, it is not to conflict with the space designated for the placement of bins.
- The waste holding rooms must be provided with internal lighting such as automatic sensor lights.
- The maximum grade acceptable for manually handling bins for collection purposes is 5%. Under no circumstance is this grade to be exceeded. It is to allow the safe and efficient servicing of bins.
- The waste storage areas must have appropriate signage (Council approved designs) mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation
- Finishes and colours of the waste storage areas are to complement the design of the development.

Example Bin Measurements (mm)

240L: 735 (d) 580 (w) 1080 (h) 1100L: 1245 (d) 1370 (w) 1470 (h)

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 property addresses for this development are:

Building A: 1 future road name 5

Building B: 3 future road name 5

Building C: 5 future road name 5

Building D: 7 future road name 5

Approved unit numbering is as per plans submitted marked as DWG No: DA 00-1005, DA 00-1010 –DA 00-1021, Rev: A, Dated 17.09.2021 and marked up as 'Numbering Plans' by Council's Land Information Team within consent documentation; and as follows:

LEVEL	BUILDING A	BUILDING B	BUILDING C	BUILDING D
GROUND	G01-G04	G05	G06-G09	G10-G12
ONE	101-108	109-110	111-117	118-125
TWO	201-210	211-218	219-228	229-238

THREE	301-310	311-319	320-329	330-339
FOUR	401-410	411-419	420-429	430-439
FIVE	501-510	511-519	520-529	530-539
SIX	601-610	611-619	620-626	627-633
SEVEN	701-707	708-713	714-720	721-727

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

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

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

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

Mail Boxes

Australia Post requires cluster mail boxes within a foyer to be as close to the footpath or road as possible.

Locations as provided on plans DWG No: DA 00-1011-1013, Rev: A, Dated: 17.09.2021 are to be approved by Australia Post for mail delivery. Plans are to be provided to Gregory Dimmock at the Seven Hills Delivery Centre via email Gregory.dimmock@auspost.com.au or phone 02 9674 4027. Australia Post approval is required to be provided to Council.

Cluster mail boxes are to be located as shown on plans submitted marked as DA 00-1011-1013, Rev: A, Dated: 17.09.2021 and marked up as 'Numbering Plan' by Council's Land Information Team within consent documentation. Cluster mail boxes are to be located within the site on the public footpath boundary within easy reach from a public road for the postal delivery officer.

The number of mail boxes to be provided is to be equal to the number of units plus one (1) for the proprietors of the development and be as per Australia Post size requirements. The proprietors additional mail box is to be located within the cluster located at **Building A: 1 future road name 5.**

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. 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. See 'Prior to the Issue of Construction Certificate' Section for further details.

33. Services Screening
All services and service provision visible from the street, public domain and nearby taller buildings are required to be carefully and substantially screened in a manner to match the aesthetic of the approved development.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

34. Notice of Requirements
The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

35. Flood Control System - Stormwater Management (Apartment Precinct)
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 is to ensure no additional runoff generated from the site 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 proposed OSD 3 and OSD 4 shown on the Concept Stormwater Catchment Plan – OSD drawing C-MP-8372 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 must reflect the 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:

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

All model parameters and data outputs are to be provided.

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

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.

36. Stormwater Pump/ Basement Car Park Requirements

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

37. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of $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 Construction Certificate is issued.

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

38. Engineering Works

The design 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.

All the engineering design works for the subject development must be referred to the set of Master Plan Stage 01 Civil Works prepared by Northrop drawing C-MP-8200 Revision 5 dated 16/09/2022 approved under the DA 860/2022/JP.

The design of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

a) Full Width Road Construction (Private Roads)

The full width construction of the roads listed below is required unless they are provided under the Master Plan DA 860/2022/JP and/or DA 859/2022/JP, including footpath paving, indented carpark and other ancillary work to make this construction effective:

Road Name	Formation: (Footpath/ Carriageway/ Footpath) (Total width m)
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 (R5-2)	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)
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

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

The works listed above are required to provide access to the development and relate to the subject development unless they have been completed under other approvals either Master Plan DA 860/2022/JP and/or DA 859/2022/JP.

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.

b) 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.

A turning head is required at the northern end of P1- Perimeter Road and/or the western end of Laneway 1.

c) Street Lighting

The development is required to provide street lighting in the vicinity of the development, specifically at the entrances of the private road intersections. Street lights will also be required in the vicinity of the required access ramps, subject to the approval of the Local Traffic Committee.

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

d) 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".

e) 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.

f) Concrete Footpath

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided across frontage of the site unless provided under separate approvals. 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.

g) 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.

h) 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 on the engineering drawings.

i) 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 required to be provided.

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

39. Earth Works and Retaining Structures

The design 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 detailed design and construction of Earth Works and Retaining Structures must be reflective to the Stage 01 Civil Works drawings C-MP-8290, C-MP-8291, C-MP-8292 and C-MP-8293 form part of Conceptual Master Plan development consent DA 860/2022/JP and outlined in condition 1, they are approved for development application purposes only and is not to be used for construction.

Detailed design and construction drawings must be endorsed by the geotechnical engineer confirming the design compliance of a detailed Geotechnical Report.

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 to the recommendation of the detailed Geotechnical report required.

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 Certification

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

40. Construction Management Plan & Documentation

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 Risk Management measures
- Stormwater Management Plan
- 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)

41. Landscape Plan

An amended Landscape Plan (to scale) for the landscaping of the site is to be prepared by a suitably qualified landscape architect or landscape designer and submitted to the satisfaction of Council's Manager - Environment and Health.

The plan must contain:

a) site boundaries and dimensions surveyed;

b) north point, and scale (1:200 desirable);

c) existing and proposed levels;

d) Tope of Wall (TOW) levels for all retaining walls;

e) a schedule of proposed planting, including botanical names, common names, quantities, pot size, expected mature height and staking requirements; and

f) a legend and schedule of landscape materials for all retaining walls, garden edging, and landscape surfaces; and

g) permeable surfaces as permeable pavers or porous poured surfaces provided within deep soil zones. Surfaces which compact such as decomposed granite are not considered permeable; and

h) planting of majority species from the nearest native vegetation community (Blue Gum High Forest or Sydney Turpentine Ironbark Forest); and

i) plant species selection considerate of aspect and overshadowing; and

j) minimum plant pot sizes as per condition 5 of this consent.

k) detail of soil depths over basements, OSD and planter boxes. These depths must comply with ADG minimum soil depth requirements; and

l) minimal use of large mixes, or mass plantings i.e. adequate diversity of planting;

m) a landscape level resolution between the Green Link and Superlot 5 rear Private Open Space areas which results in no retaining walls when viewed from the Green Link being higher being higher than 1m (terracing and/or battering may be required); and

n) planter boxes to private terraces and balconies pursuant to condition 47 of this consent.

42. 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).

43. 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 **$1,547,088.00** 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.

44. Internal Pavement Structural Design Certification

Prior to a Construction Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded 12.5m long heavy rigid waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

45. 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.

As specified in Schedule 2 of the Planning Agreement, the following monetary contributions must be paid to Council:-

Contribution	**Timing of Payment**	**Purpose: *'Apartments Precinct'***	**Total Contribution**
Dwelling Contribution	Prior to or concurrent with the issue of the first Construction Certificate.	60% of Total Dwelling Yield (252 Dwellings)	$1,205,741.63

The contributions above are applicable at the time this consent was issued. In accordance with the provisions of the Voluntary Planning Agreement, contributions are indexed annually and will be updated at the time of payment.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0555.

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.

46. Bird Strike Mitigation Plan

A Bird Strike Mitigation Plan (BSMP) is required to be prepared by a suitably qualified ecologist and submitted to the Principal Certifying Authority (PCA). The BSMP shall include but may not be limited to assessing the risk of bird strike into windows of the proposed residential flat buildings adjacent to the forest. The report must identify potential areas of concern and bird species most vulnerable and make recommendations as to design solutions that may be applied to minimise bird strikes into windows. The solutions shall consider materials to be used (e.g anti reflective windows, no glazing for balcony balustrades etc.) that shall be documented into the final design and material specifications.

47. Balcony and Terrace Planting

All Private Open Space balconies and terraces of over 50m2 in area are to be provided with in-built masonry planter boxes. These planter boxes are to be located and sized as to provide resident amenity. Detail drawings of typical planter boxes, soils, irrigation, and waterproofing are to be provided.

Balcony and Terrace Planting is to be provided in amended Landscape Plan pursuant to Condition 41 of this consent to be submitted to the satisfaction of Council's Manager - Environment and Health.

48. Irrigation

An automatic watering system is to be installed as a minimum to all common areas. Details including backflow prevention device, location of irrigation lines and sprinklers/drippers, and control details are to be communicated to Council or Private Certifier prior to issue of the construction certificate.

PRIOR TO WORK COMMENCING ON THE SITE

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. Completion of Flood Control System (Interim/Permanent OSD Basin)

No construction activity or earth works is to commence until the interim flood control system or permanent OSD 3 and OSD 4 catering for the Apartment precinct catchment (the subject development) is completed to ensure the downstream flood behaviour is not adversely affected.

Documentation required must be provided to the Principal Certifying Authority prior to commencement of other activities.

55. 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.

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 Subdivision Work

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. Consultation with Service Authorities

Applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.

Applicants are advised to consult with the relevant electricity authority with respect to electricity supply and connection points to the site, or any other electrical infrastructure located in close proximity to the proposed works. Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

63. 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.

64. 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).

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

DURING CONSTRUCTION

72. 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.

73. Critical Stage Inspections – Civil Works

The Civil works 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.

74. Documentation – Civil works

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.

75. Site Inspection –Earth Works

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 to the Construction Certificate.

76. 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.

77. 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.

78. Compliance with BASIX Certificate

Under Section 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 1226283M_03 is to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

79. 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.

80. 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.

81. 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.

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 suitability 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 for review.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

86. Section 73 Certificate must be submitted to the Principal Certifier before the issuing of an Occupation Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.

The Section 73 Certificate must be submitted to the Principal Certifier before occupation of the development/release of the plan of subdivision.

87. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan pursuant to condition 41 of this consent by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

88. 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.

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

90. Completion of Engineering Works
An Occupation Certificate must not be issued for a relevant stage of the works prior to the completion of all engineering works covered by this consent relevant to that stage, in accordance with this consent.

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

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

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

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

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

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

a) Restriction – Bedroom Numbers

The subject site must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

b) Restriction/ Positive Covenant – Onsite Stormwater Detention

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

c) Restriction/ Positive Covenant – Water Sensitive Urban Design

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

d) Positive Covenant – Stormwater Pump

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

e) Positive Covenant – Onsite Waste Collection

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

95. Completion of Civil Works/ Satisfactory Final Inspection

An Occupation Certificate cannot be issued for a relevant stage of the works prior to the completion of all Civil Works relevant to that stage covered by this consent. A satisfactory final inspection by Council’s Construction Engineer is required.

96. Civil Works – Submission Requirements

Once the Civil works 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:

- Stormwater Management (Flood control measures) certification
- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- 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.

97. 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.

98. Internal Pavement Construction

Prior to any Occupation Certificate being issued for a relevant change, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement for

that stage has been constructed in accordance to the approved plans, and is suitable for use by a 12.5m long waste collection vehicle when fully laden (i.e. 28 tonnes gross vehicle mass).

99. Final Inspection of Waste Storage Areas

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

100. Provision of Signage for Waste Storage Areas

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

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

101. Domestic Waste Collection Risk Assessment

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

102. Waste Chute System Installation Compliance Certificate

Prior to any Occupation Certificate being issued, a letter of compliance must be submitted to and approved by the Principal Certifying Authority. The letter must be prepared by the equipment supplier/installer confirming that the Council approved waste chute system, including all associated infrastructure, has been installed to manufacture standards and is fully operational and satisfies all relevant legislative requirements and Australian standards.

103. Installation of Master Key System to Waste Collection Room

Before the issue of an Occupation Certificate, the site project manager must organise with Council's contractor to install a lock box fitted with Council's Waste Management Master Key System 'P3520'. The lock box shall store keys to provide Council's Contractor access into the waste holding room. The lock box fitted with Council's Master Key system is to be installed through Council's contractor at the cost of developer. Please contact Council's Resource Recovery Assessment Officer to organise the installation.

104. Waste Tug and Trailer

Prior to the issue of an Occupation Certificate, a ride-on waste tug and trailer attachment must be purchased at the cost of the developer and provided at the site. The tug and trolley must be handed over into the ownership of the Owners Corporation. The tug or trailer must be sized to hold at least 4 x 1100L bins. The ride-on tug must be capable of towing the trailer and full bins over all ramps and slopes between the waste storage areas and the designated collection point. A dedicated parking space, separate to residential and visitor spaces must also be provided to store the waste tug and trailer when not in use. Contact the Resource Recovery Department at Council should further clarification be needed.

105. Insect and Odour Control

Before the issue of an occupation certificate, Council's Resource Recovery Assessment Officer must be satisfied with the installation of an insect control system provided in the waste holding or collection rooms. The equipment installed must be an ultraviolet fly trap with a UV lamp of at least 20W or higher or similar. The fly trap should be an electric-grid style and mounted to an internal wall or attached to the ceiling. In addition, an adequate air deodoriser must be installed to help prevent offensive odours.

106. Residential Apartment Noise Attenuation – compliance

A AAAC 5 Star Certificate must be submitted by a qualified member of the Association of Australasian Acoustical Consultants (AAAC) demonstrating that the construction of the building including internal walls and floors ensures that all sound producing plant, equipment, machinery, mechanical ventilation system or refrigeration systems as well as noise generated between residential units has sufficient acoustical attenuation. Details of compliance must be submitted to the Principal Certifying Authority before the issue of any Occupation Certificate.

THE USE OF THE SITE

107. Waste and Recycling Management

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

108. Waste Tug and Trailer Use

Waste tug and trailer movements will be restricted to the lot boundaries of the development site. Under no circumstance is the waste tug and trailer be permitted to travel outside of the site onto surrounding private roads.

ATTACHMENTS

1. Locality Plan
2. Aerial Photography
3. Zoning Plan
4. Building Height Map
5. Site Plans
6. Elevations
7. Sections
8. Clause 4.6 Written Submission
9. RFS Comments
10. The Department of Planning and Environment – Water - GTAs

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

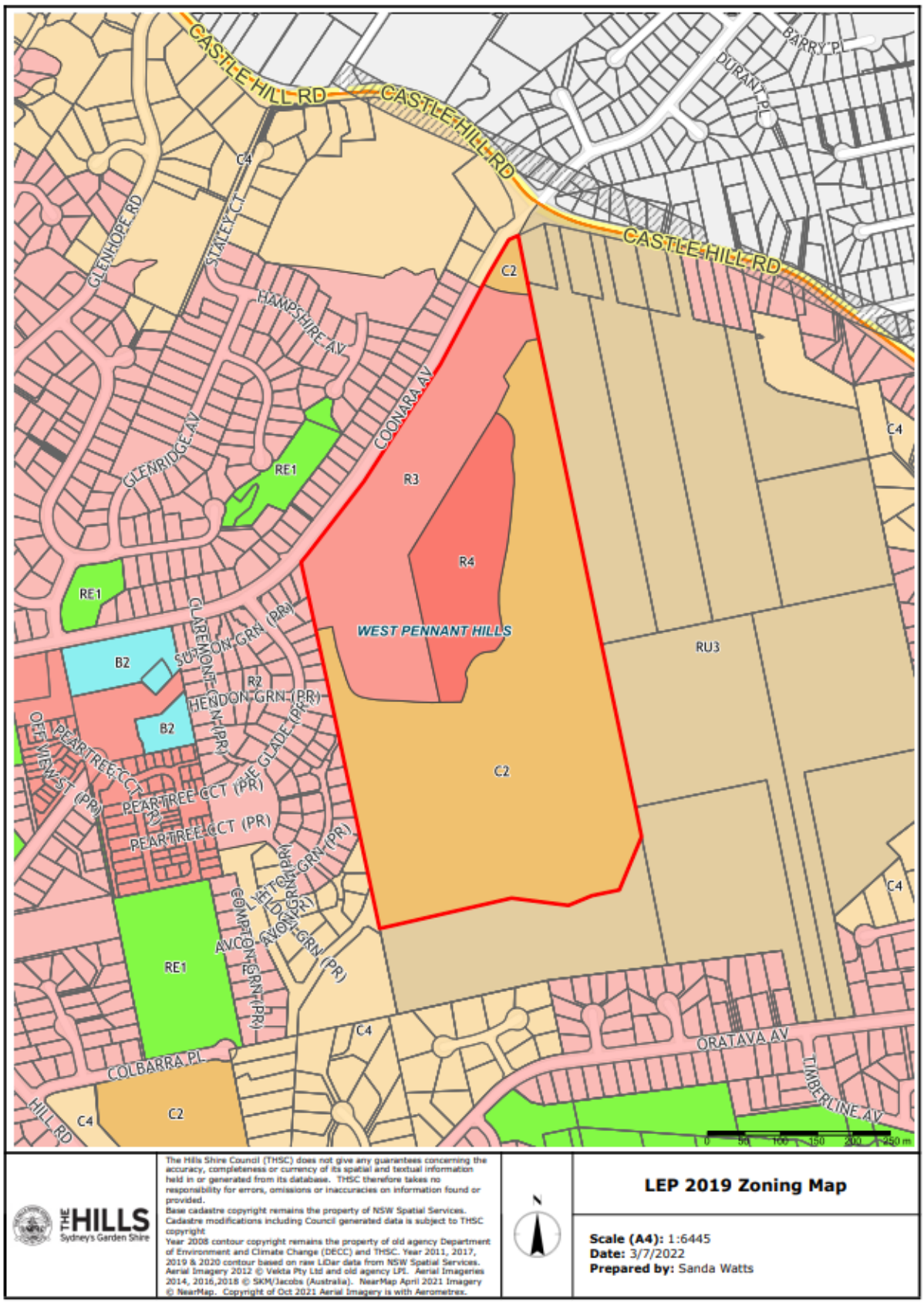
THE HILLS SHIRE COUNCIL

ATTACHMENT 2 – AERIAL MAP

SUBJECT SITE

THE HILLS SHIRE COUNCIL

ATTACHMENT 3 – ZONING MAP



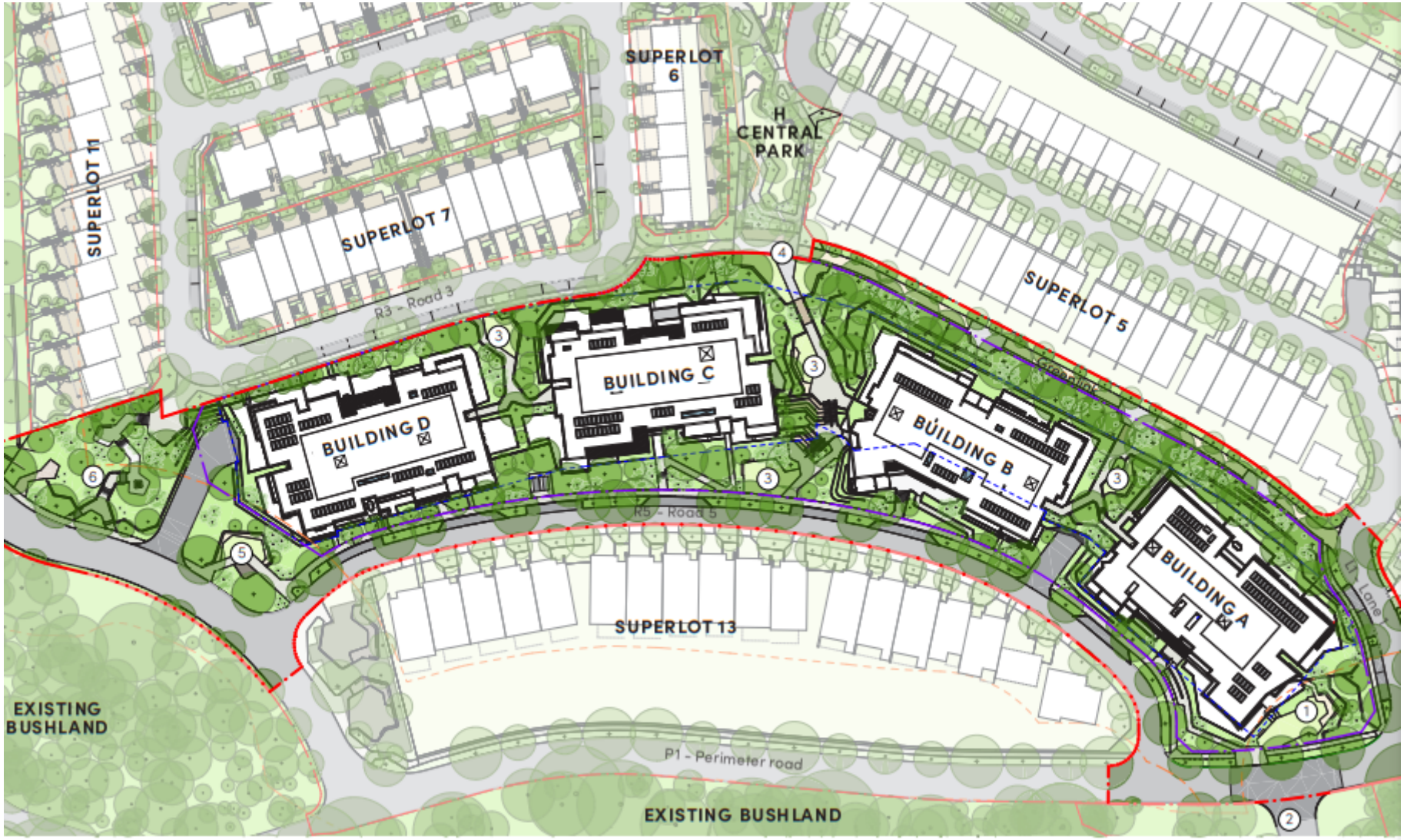
ATTACHMENT 4 – BUILDING HEIGHT MAP

THE HILLS Sydney's Garden Shire

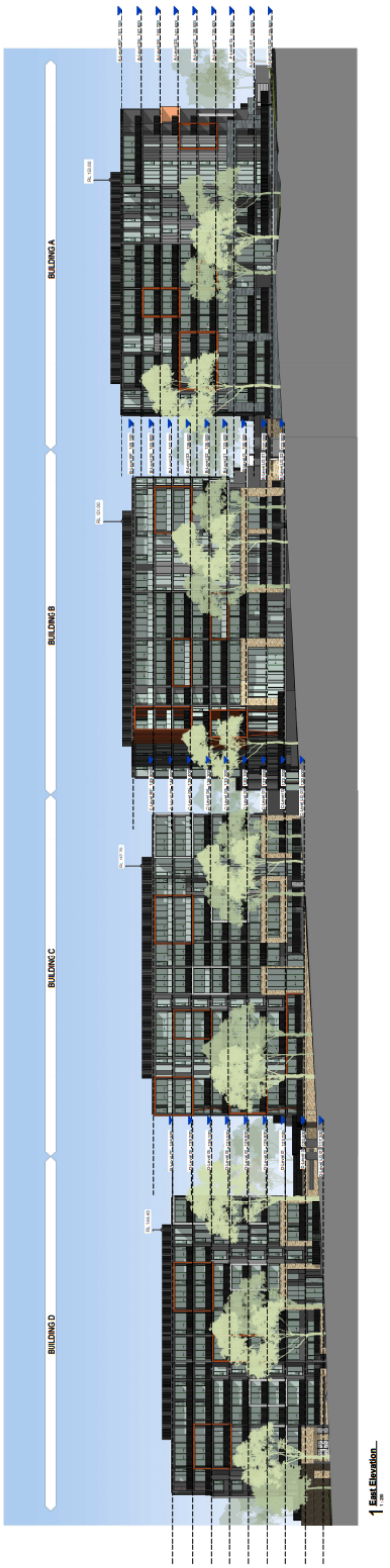
LEP 2019 Maximum Height of Buildings

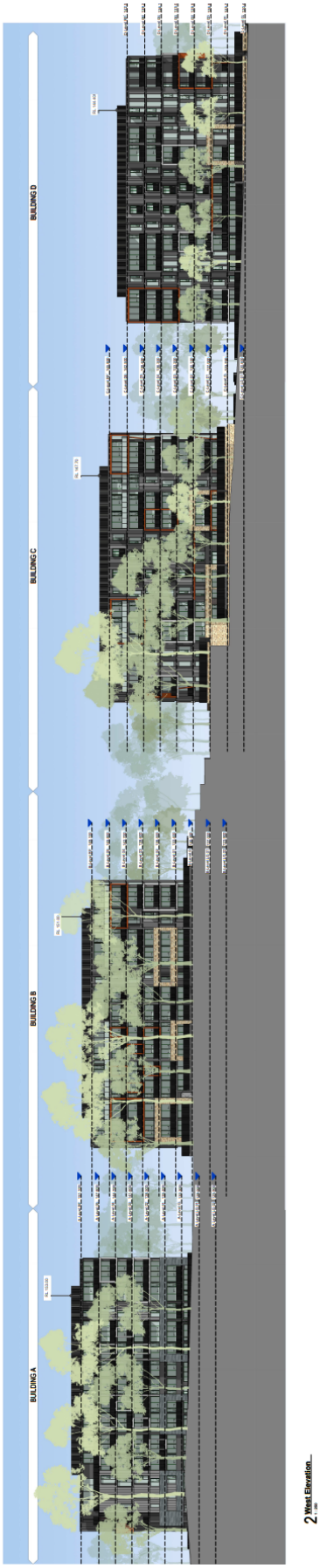
Scale (A4): 1:6445
Date: 3/7/2022
Prepared by: Sanda Watts

ATTACHMENT 5 – SITE PLAN

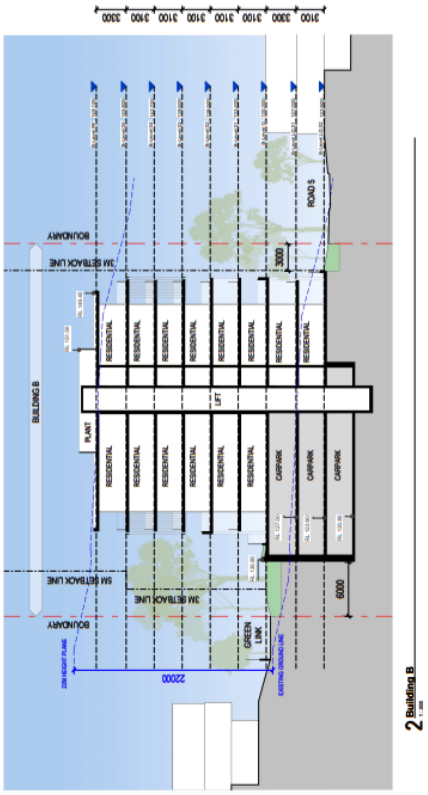


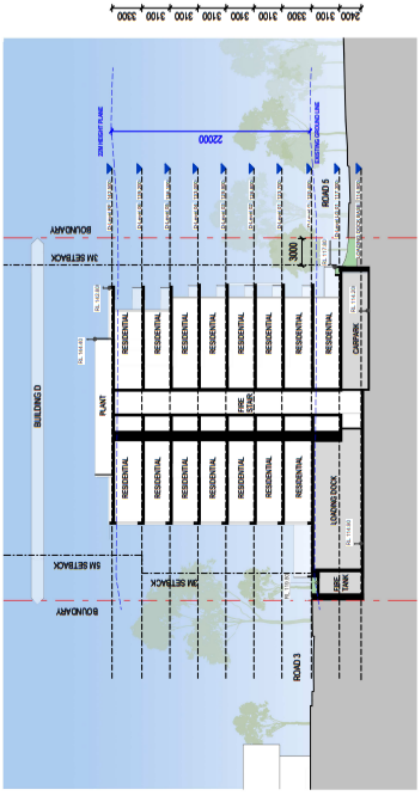
ATTACHMENT 6 – ELEVATIONS

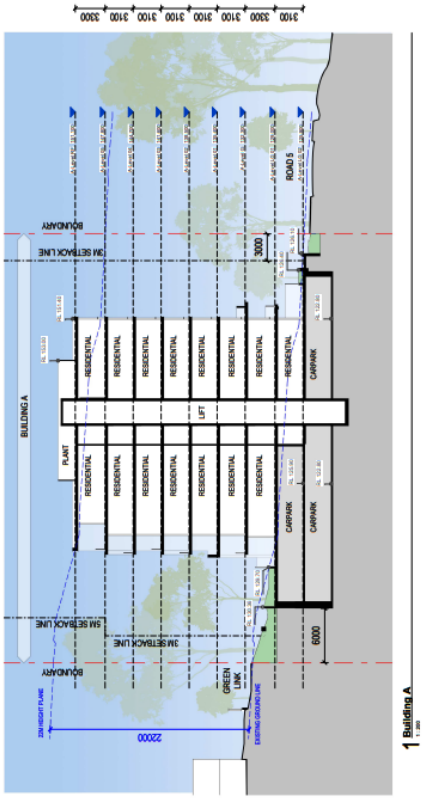


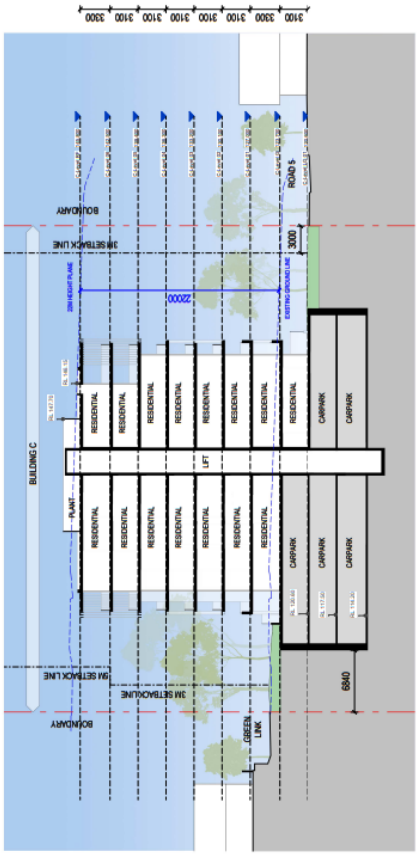


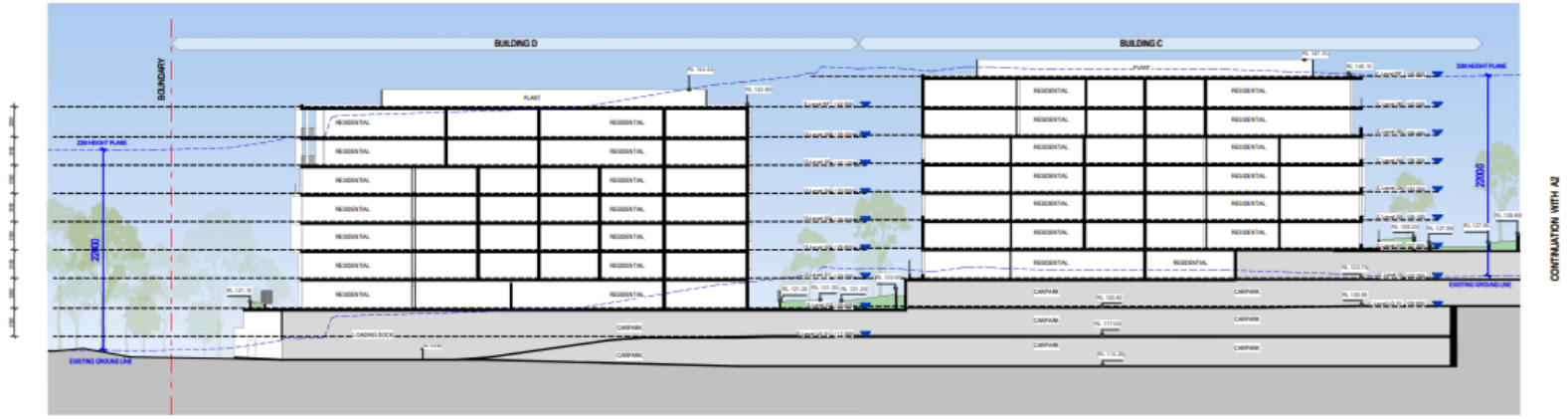
ATTACHMENT 7 – SECTIONS



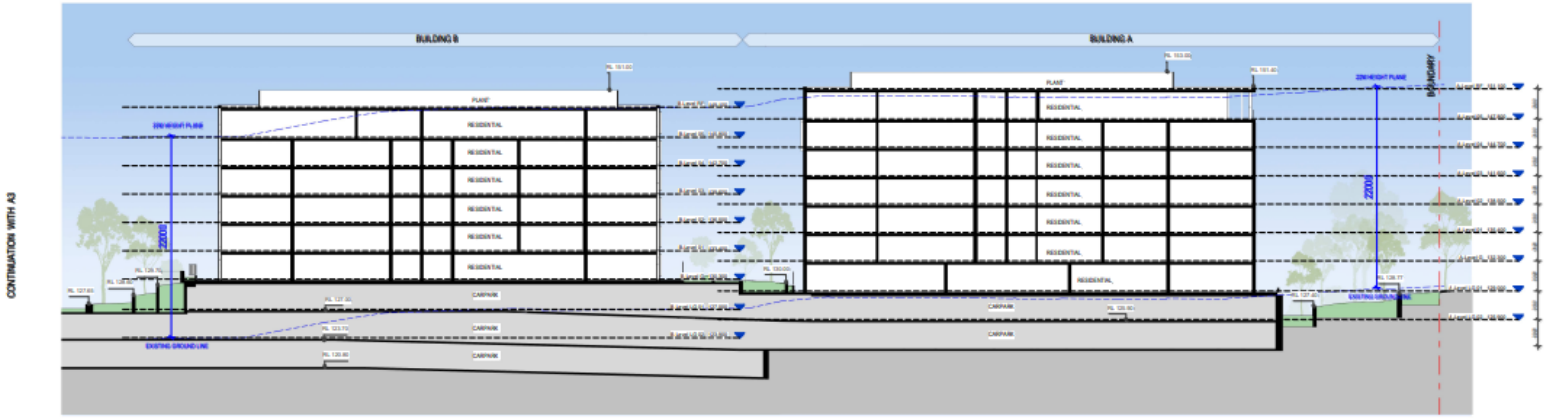




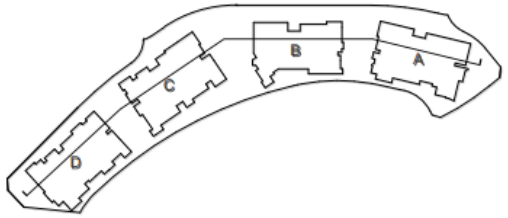




1 **Building C and D Long Section**
1 : 200



2 **Building A and B Long Section**
1 : 200



55 Coonara Avenue, West Pennant Hills

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

On behalf of
Mirvac
October 2021

mecone

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.

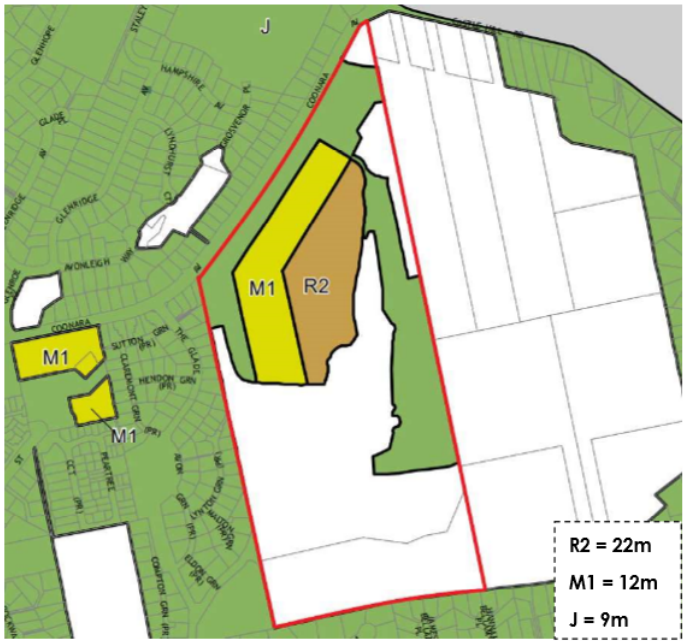

Figure 1 Height of buildings map (Source: NSW Legislation)

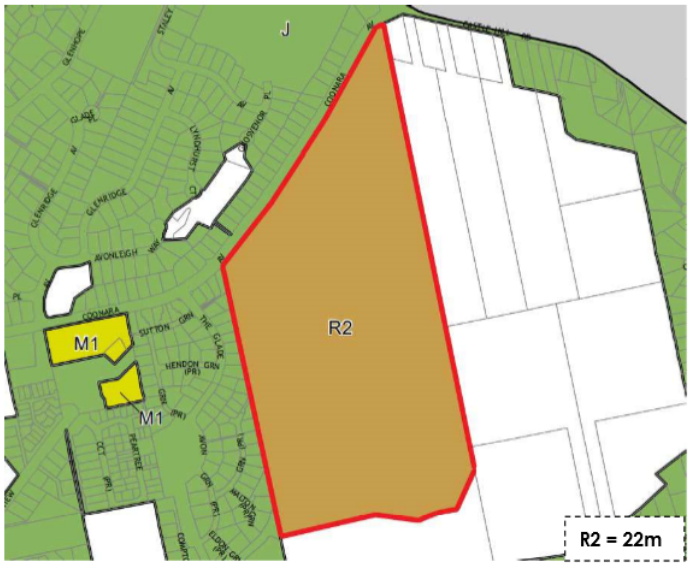

Figure 2 Repealed height of buildings map showing a maximum 22m height limit (Source: NSW Legislation)

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.

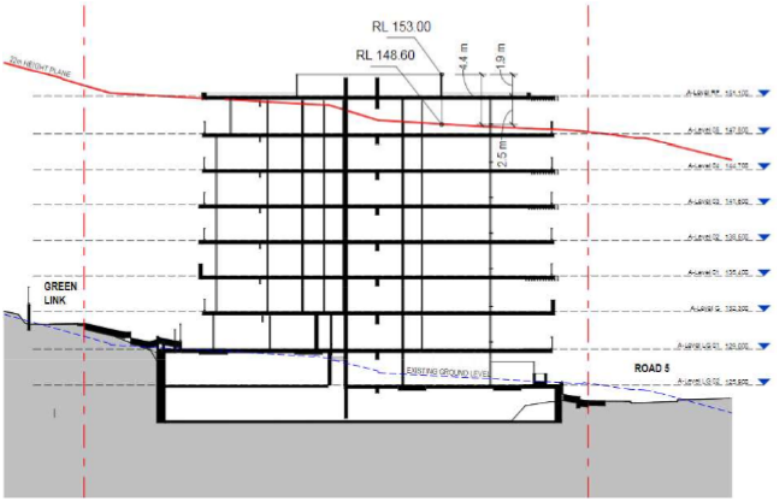

Figure 4 South Section of Building A showing the extent of height contravention (4.4m) (Source: Mirvac Design)

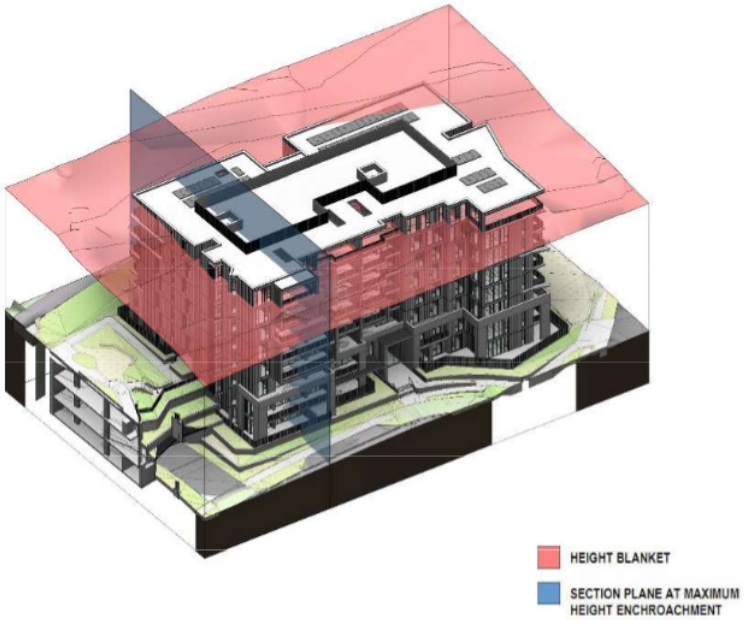

Figure 5 22m Height blanket of Building A (Source: Mirvac Design)

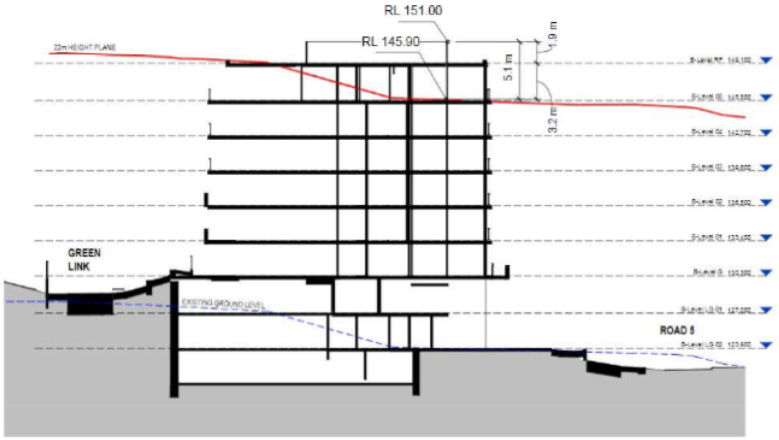

Figure 6 South Section of Building B showing the extent of height contravention (5.1m) (Source: Mirvac Design)

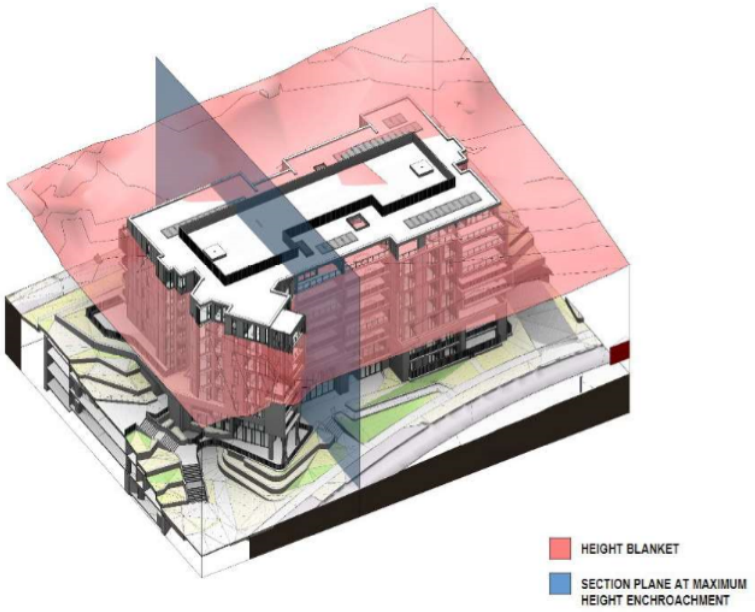

Figure 7 22m Height blanket of Building B (Source: Mirvac Design)

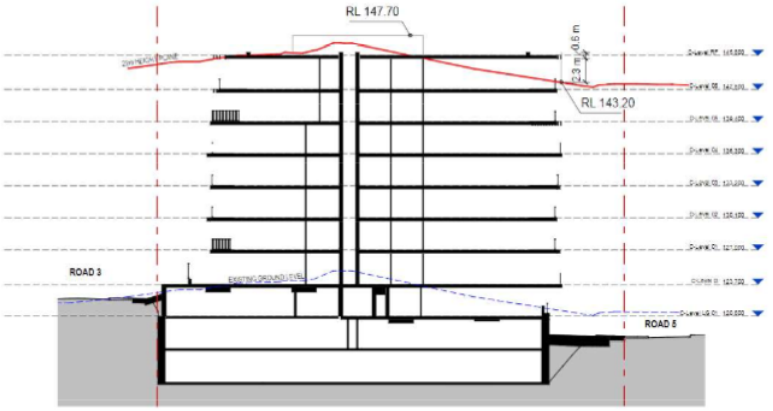

Figure 8 South Section of Building C showing the extent of height contravention (2.9m) (Source: Mirvac Design)

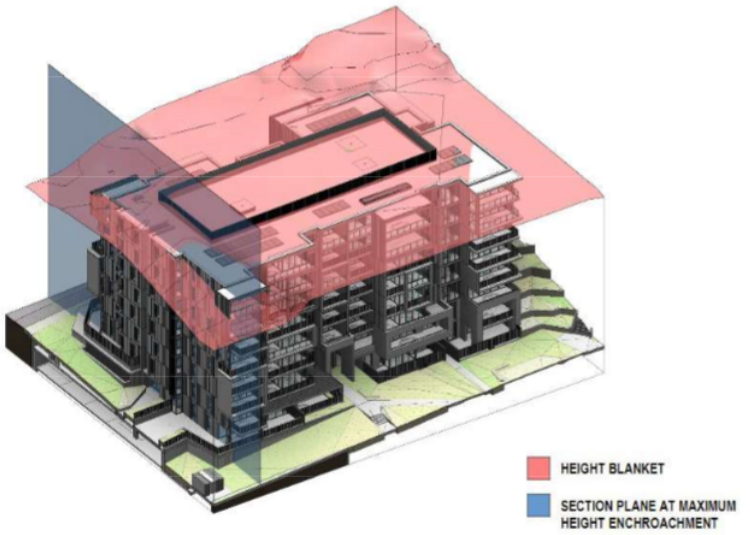

Figure 9 22m Height blanket of Building C (Source: Mirvac Design)

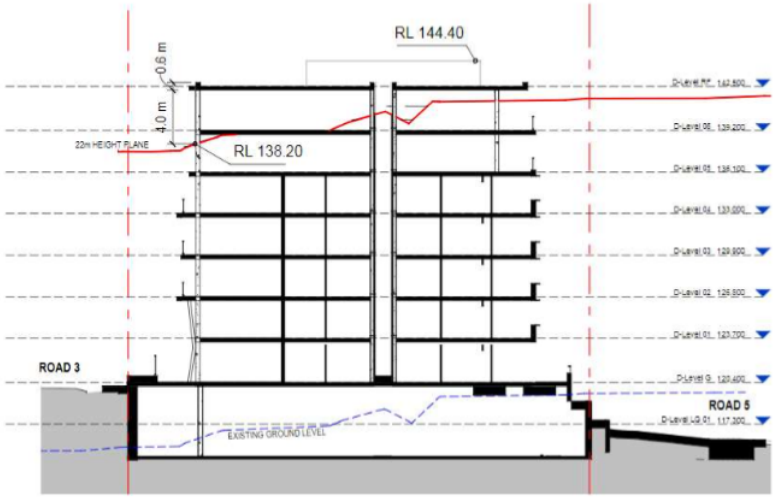

Figure 10 South Section of Building D showing the extent of height contravention (4.6m) (Source: Mirvac Design)

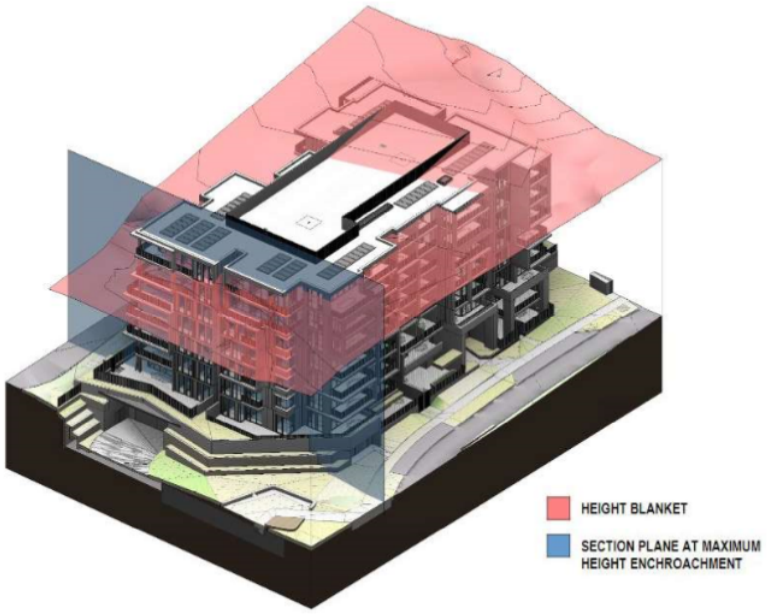

Figure 11 22m Height blanket of Building D (Source: Mirvac Design)

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 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 I n 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)

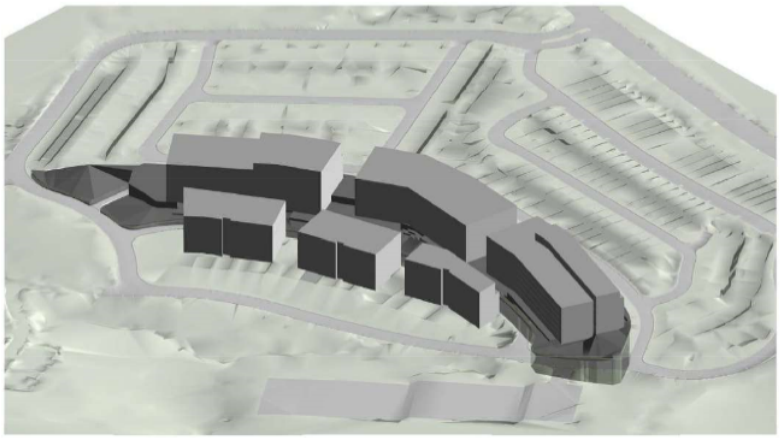

Figure 13 An alternate scheme showing bulk and scale of six (6) apartment buildings within the 22m height standard (Source: Mirvac Design)

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.

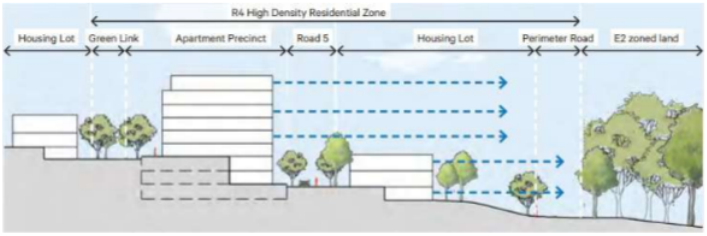

Figure 14. Proposed built form transition to E2 land (Source: Mirvac Design)

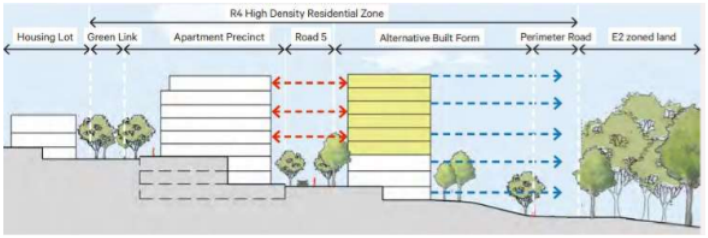

Figure 15. Alternate built form interface with E2 land as permissible (Source: Mirvac Design)

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.

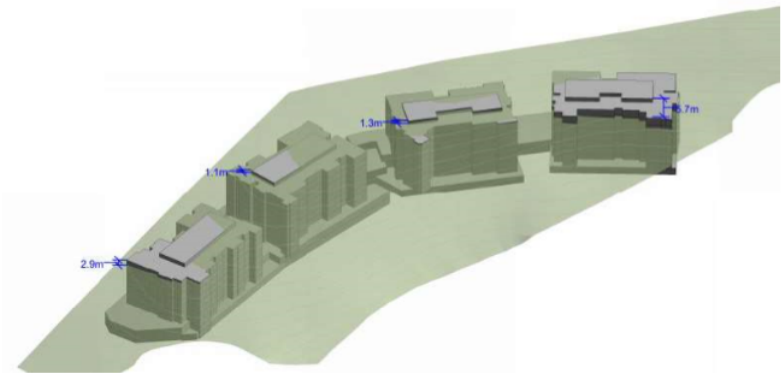

Figure 20. Proposed building heights, as measured from site levels pre-existing IBM development (Source: Mirvac Design)

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**.

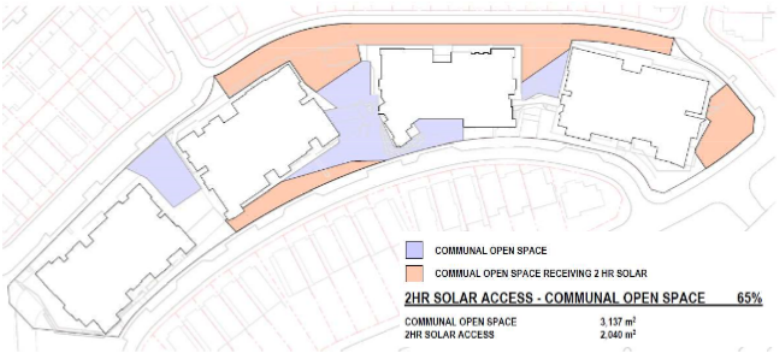

Figure 21 Proposed solar access to areas of COS (Source: Mirvac Design)

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 dep 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.

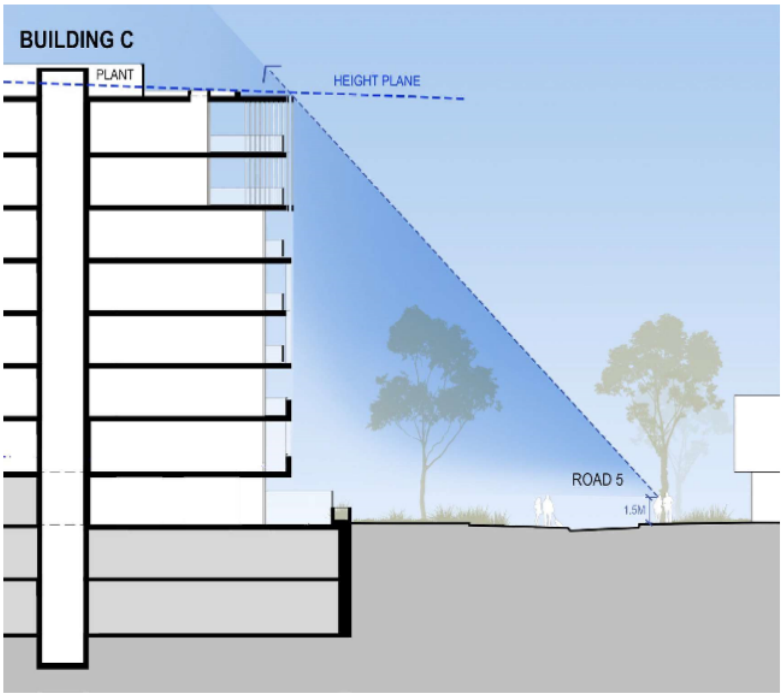

Figure 38 Cone of vision diagram demonstrating the roof plant on Building C being setback and not being visible from Road 5 (Source: Mirvac Design)

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

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

richard lamb & associates

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

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rla
richard lamb & associates

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 with 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 be 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

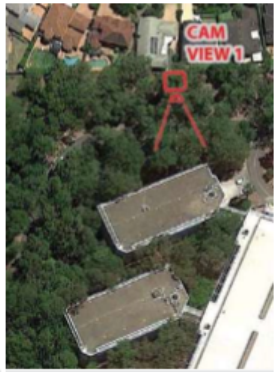
LOCATION 01 - WESTERN BOUNDARY

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 124.564m

INFORMATION

VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 1

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

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 2

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

FOCAL LENGTH: 24MM
CAM RL: 133.50m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage location 3

55 COONARA AVE WEST PENNANT HILLS

LOCATION 04- COONARA AVENUE - SITE ENTRY SOUTH

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 132.838m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage view 4

55 COONARA AVE WEST PENNANT HILLS

LOCATION 05 - COONARA AVENUE - SITE ENTRY NORTH

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 145.363m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 5

55 COONARA AVE WEST PENNANT HILLS

LOCATION 6 - EAST VIEW FROM COONARA AVENUE

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 160.913m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 6

55 COONARA AVE WEST PENNANT HILLS

LOCATION 7 - SOUTH VIEW FROM CASTLE HILL ROAD AND COONARA AVENUE INTERSECTION

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 180.782m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 7

55 COONARA AVE WEST PENNANT HILLS

LOCATION 8 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 119.443m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 8

55 COONARA AVE WEST PENNANT HILLS

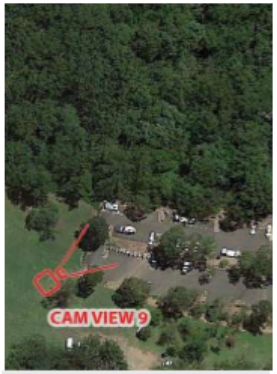
LOCATION 9 - VIEW FROM WITHIN 55 COONARA AVENUE SITE - PROPOSED OPEN CLEARING AREA

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 122.48m

INFORMATION

VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

Photomontage position 9

ARTERRA INTERACTIVE AI.

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 experinence 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 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

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

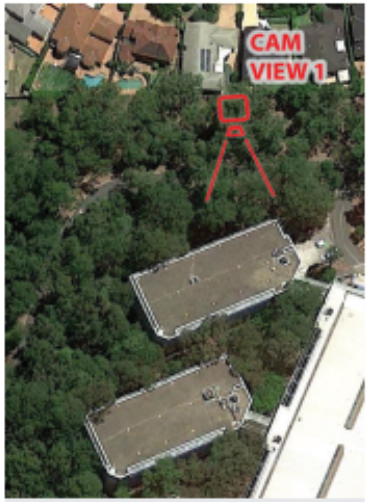
LOCATION 01 - WESTERN BOUNDARY

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 124.564m

INFORMATION

VIEW LOCATION MASTERPLAN



VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

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

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

FOCAL LENGTH: 24MM
CAM RL: 133.50m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 04- COONARA AVENUE - SITE ENTRY SOUTH

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 132.838m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 05 - COONARA AVENUE - SITE ENTRY NORTH

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 145.363m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

55 COONARA AVE WEST PENNANT HILLS

LOCATION 6 - EAST VIEW FROM COONARA AVENUE

EXISTING CONDITIONS

FOCAL LENGTH: 24MM
CAM RL: 160.913m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

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

FOCAL LENGTH: 24MM
CAM RL: 180.782m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

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

FOCAL LENGTH: 24MM
CAM RL: 119.443m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

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

FOCAL LENGTH: 24MM
CAM RL: 122.48m

INFORMATION

VIEW LOCATION MASTERPLAN

VIEW LOCATION CURRENT

PROPOSED ENVELOPE WITH 22M HEIGHT PLANE SHOWN IN RED

SURVEY OVERLAY PROPOSED HOUSES PROPOSED APARTMENTS

NSW GOVERNMENT

NSW RURAL FIRE SERVICE

The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

Your reference: 861/2022/JP (CNR-32689)
Our reference: DA20211215005514-CL55-1

ATTENTION: Sanda Watts

Date: Monday 1 August 2022

Dear Sir/Madam,

Development Application
s4.14 – Other – 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:

General Conditions

1. A Bush Fire Emergency Management and Evacuation Plan must be prepared in accordance with Table 6.8d of *Planning for Bush Fire Protection 2019* and be consistent with the NSW RFS document: *A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan*.

Asset Protection Zones
The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

2. From the start of building works, the property must be managed as an inner protection area (IPA) between building A and the precinct boundary to the north east and south east. The IPA must comprise:

- Minimal fine fuel at ground level;
- Grass mowed or grazed;
- Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
- Trees and shrubs located far enough from buildings so that they will not ignite the building;
- Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
- Minimal plant species that keep dead material or drop large quantities of ground fuel;

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

- Tree canopy cover not more than 15%;
- Tree canopies not located within 2 metres of the building;
- Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building; and,
- Lower limbs of trees removed up to a height of 2 metres above the ground.

Construction Standards
The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities. To achieve this, the following conditions shall apply:

3. Roofing and all construction facing northeast and southeast on Apartment A and roofing and construction facing east and south of Apartment D must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *'Planning for Bush Fire Protection 2019.*

4. All construction facing southwest and northwest on Apartment A and construction facing north and west of Apartment D must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019.*

5. All construction on Apartments B and C must comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019.*

Water and Utility Services
The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

6. 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.

Landscaping Assessment
The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

7. Before the start of building works, a Vegetation Management Plan (VMP) that can be legally and practically enforced for the life of the development must be produced for the management of the entire site outside of the IPA specified in Condition 2 above. 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,

Kalpana Varghese
Supervisor Development Assessment & Plan
Built & Natural Environment

ATTACHMENT 10 - The 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-2022-10406 (IDAS-2021-10476)
Your ref: 861/2022/JP

5 August 2022

The General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

Attention: Sanda Watts

Uploaded to the ePlanning Portal

Dear Sir/Madam

Re: IDAS-2022-10406 (IDAS-2021-10476) - Section 4.55 Modification Referral – General Terms of Approval
Dev Ref: 861/2022/JP
Description: Construction of 4 residential buildings, car park, on site amenities, landscaping, retaining walls, hard and soft landscape works and north south linear park.
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

For

Department of Planning and Environment

Jeremy Morice
Manager Licensing & Approvals
Licensing and Approvals
Department of Planning and Environment—Water

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

Contact: Department of Planning and Environment—Water
Phone: 1800 633 362
Email: waterlicensing.servicedesk@dpie.nsw.gov.au

Our ref: IDAS2021-101476
Your ref: DA861/2022/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: IDAS2021-101476 - Controlled Activity Approval
Dev Ref: DA861/2022/JP
Description: Construction of 4 residential buildings, car park, on site amenities, landscaping, retaining walls, hard and soft landscape works and north south linear park.
Location: 55 COONARA AVENUE, WEST PENNANT HILLS - Lot 61/ DP737386

I refer to your recent referral regarding an integrated Development Application (DA) proposed for the above location. Attached, please find 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, Department of Planning and Environment—Water 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.

  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

General Terms of Approval

for proposed development requiring approval under s89, 90 or 91 of the Water Management Act 2000

Reference Number:	IDAS2021-101476
Issue date of GTA:	13 April 2022
Type of Approval:	Controlled Activity
Location of work/activity:	55 COONARA AVENUE, WEST PENNANT HILLS - Lot 61/ DP737386
Waterfront Land:	No name creek
DA Number:	DA861/2022/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-G002	A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents relating to Development Application DA861/2022/JP provided by Council to Department of Planning and Environment—Water. 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.

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 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/

Department of Planning and Environment—Water requests that Council provide a copy of this letter to the development consent holder.

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