

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-339
DA Number	DA 1110/2022/JP
LGA	The Hills Shire Council
Proposed Development	Amending Concept Development Application for a Residential Flat Building Development
Street Address	7-23 Cadman Crescent & 18-24 Hughes Avenue Castle Hill
Applicant	Castle Hill Panorama
Consultant/s	Mecone (Planner) InRoads: Group (Traffic Report) MHNDUnion (Architects) Neuron (Engineering Statement) RICQS (Quantity Surveyors) SurvPlan (Building Survey) TurfDesign Studio (Landscape Architects)
Date of DA lodgement	25 January 2022
Number of Submissions	Nil
Recommendation	Refusal
Regional Development Criteria (Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021)	CIV exceeding \$30 million (\$85,490,156 excluding GST) and the development is the subject of a concept development application under Part 4 of the Environmental Planning and Assessment Act, 1979
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 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 2012 Part D Section 19 – Showground Precinct • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 3 – Landscaping • DCP 2012 Part B Section 5 – Residential Flat Buildings • DCP 2012 Part B Section 6 – Business
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans • Clause 4.6 written submission • Design Review Panel Meeting Report • Applicant's response to Design Review Panel Meeting Report
Clause 4.6 requests	<ul style="list-style-type: none"> • The Hills Local Environmental Plan 2019 (LEP) • The Hills Clause 4.3 Height of Buildings • R4 High Density Residential zone
Summary of key submissions	N/A

Report prepared by	Cynthia Dugan – Principal Coordinator Development Assessment
Report date	24 June 2022 (Electronic Determination)

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
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? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

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

- The Amending Concept Development Application is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. No built form is included as part of the subject Development Application however a separate Development Application for built form has been lodged under 1112/2022/JP. Rather than seeking consent for an amending Concept Development Application to permit a gross floor area cap or upper dwelling limit of 255 units, the Applicant seeks to vary the terms of the original development consent directly by “*removal of a dwelling cap and instead propose either a gross floor area cap or upper dwelling limit*”. In this regard, an appropriate modification in accordance with the Environmental Planning and Assessment Act 1979 has not been made and the application is inconsistent with the consent for the approved Concept Development Application under Development Consent 1262/2019/JP.
- The proposal does not satisfy Clause 9.5 of The Hills LEP 2019 with regard to design excellence. The application was reviewed by Council's Design Review Panel (DRP). The DRP has concluded that the proposal does not exhibit design excellence. In particular, concerns are raised regarding design quality, bulk and scale, height, density, building design and communal open space areas. The Applicant provided a response to the DRP report including an Urban Design Review. This response disagrees with the DRP's advice and recommendations however does not address each of the concerns raised by the DRP. It is considered that in accordance with Clause 9.5(5), development consent must not be granted to the subject application as a satisfactory response has not been provided to address the findings of the DRP.
- The application is accompanied by a request to vary Clause 4.3 Height of Buildings under Clause 4.6 of The Hills Local Environmental Plan 2019 (LEP). The maximum height proposed is 26.49m which is an exceedance of up to 5.49m (26.1%) to the maximum 21m height development standard. In contrast the maximum height approved under the original Concept Development 1262/2021/JP was 23.85m which is an exceedance of up to 2.85m (13.57%) to the maximum height standard. The written

submission has not demonstrated that despite the variation, the objectives of the development standard have been met or that sufficient environmental planning grounds have been provided to justify the contravention.

- The proposal has been assessed against the requirements of SEPP 65 Design Quality of Residential Apartments. The proposal does not satisfy the design quality principles with regard to context and neighbourhood, built form and scale, density, landscape, amenity and aesthetics. Without addressing all concerns raised by Council's Design Review Panel, it cannot be concluded the proposal will provide for built forms that would be appropriate in bulk and scale, landscaping, amenity and aesthetics. In particular, a sensitive transition between the high density and medium density zones has not been demonstrated.
- The proposal has been assessed against the design criteria of the Apartment Design Guide (ADG). Insufficient information has been provided to demonstrate that suitable residential amenity will be provided to the future occupants of the development with respect to solar access to the principal communal open space and residential units.
- The proposal has been assessed against the requirements of The Hills DCP 2012 and variations have been identified with respect to front setbacks and building length within the precinct specific DCP under Part D Section 19 Showground Station Precinct. The variations result in an increase in bulk and scale to the approved development and the potential for a built form that would be inconsistent with the streetscape and architectural outcome envisaged within the Showground Precinct.
- The application is not considered to be in the public interest as the proposal has not demonstrated a satisfactory design and planning outcome is suitable for the site.
- The application was notified for 14 days and no submissions were received during the notification period.

The application is recommended for refusal.

BACKGROUND

The site is within the Showground Precinct which is one of four Precincts identified by the NSW Government to be planned as part of its 'Planned Precinct Program' along the Sydney Metro Northwest corridor. Under LEP 2019, the subject site is located within R4 High Density zoned land comprising a maximum height of 21m (6 storeys) and directly interfaces land zoned R3 Medium Density Residential to the north east and south east. The R3 zoned land comprises a maximum height of 10m (3 storeys).

On 20 February 2020, the Sydney Central City Planning Panel (SCCPP) approved 1262/2019/JP for a Concept Development Application for a residential flat building development comprising 228 apartments, basement car parking and associated landscaping. The development was supported with a Clause 4.6 written submission to vary the maximum height standard by 13.57%. The Council officer's report recommended the following conditions, noting the Communal Open Space condition was recommended by Council's Design Review Panel:

3. Dwelling Yield

The maximum dwelling yield for the site is not to exceed 228 units.

4. Communal Open Space

All future development applications for new buildings or works must comply with the following requirements:

- *A minimum of 3,780.1m² (ground level) and 688.78m² (roof level) central communal open space area is to be provided for the entire site.*

- *Community facilities such as children's play areas are to be provided within the communal open space.*

The Panel approved the application subject to condition 3 and 4 being amended as follows –

3. Dwelling Yield

The maximum dwelling yield for the site is not to exceed 228 units and a Floor Space Ratio of 2.1:1.

4. Communal Open Space

All future development applications for new buildings or works must comply with the following requirements:

- *A minimum of 3,780m² (ground level) and 689m² (roof level) central communal open space area is to be provided for the entire site.*
- *Community facilities such as children's play areas are to be provided within the communal open space.*

The approved development comprised of the following:

- A maximum dwelling yield of 228 dwellings for the site;
- Maximum building envelopes;
- Maximum heights ranging from four storeys (Building C) to seven storeys (Buildings A, B, D and E);
- 2m wide land dedication to the Cadman Avenue frontages;
- A maximum 310 car parking spaces (including 3 spaces for service vehicles) across two levels of basement parking; and
- Loading, vehicular and pedestrian access arrangements including vehicular access from Hughes Avenue.

The submitted Statement of Environmental Effects for the subject Amending Concept Development Application includes the following statement with regards to the Applicant's intent of the lodgement of the original Concept DA:

"Although the concept drawings were preliminary in nature and a hypothetical development yield was put forward, a dwelling cap of 288 (228) dwellings was imposed as a condition of a development consent. This was not the intention of the concept DA."

It is noted that the purpose of a Concept Development Application is to establish the building envelopes and framework to inform the assessment of subsequent built form applications. The Concept Development Application is to demonstrate that the site can be developed in its entirety under the proposed framework. In this regard, an assessment against the matters of consideration required under Section 4.15 of the Environmental Planning and Assessment Act 1979 was undertaken to assess the likely impact of the concept proposal. This included an assessment against the relevant environmental planning instruments including The Hills Local Environmental 2019, SEPP 65 - Design Quality of Residential Apartment Development, The Apartment Design Guide, The Hills Development Control Plan 2012, the likely impacts of the development including environmental, natural and built and social and economic impacts, the suitability of the site, any submissions made during the notification period and consideration of the public interest.

The plans and associated documentation submitted with the approved Concept Development Application only demonstrated that 228 dwellings and a maximum Gross Floor Area of 26,112m² and FSR of 2.09:1 could be achieved to comply with the required provisions under the environmental planning instruments and that despite variations to a number of development controls, design excellence could be achieved. In this regard, the Concept Development Application was supported. In addition, Clause 9.8 of The Hills LEP 2019 prohibits the Consent Authority to grant development consent to development that results in more than 5,000

dwelling on land within the Showground Station Precinct. In order to monitor the number of dwellings and provide an “entitlement” for approved Concept development consents within the Showground Station Precinct, a cap on the dwelling yield was included in the development consent.

It is also noted that whilst the proposal excludes three lots from the ‘island’ site, the Approved Concept Development Application demonstrated the proposal does not isolate any properties as these lots are capable of development for permissible uses which would deliver a planning uplift in terms of highest and best use. The Applicant previously provided evidence with the subject application in accordance with the Land and Environment Court’s established Planning Principles for development proposals that would result in an isolated site. It is also noted that the LEP has recently been amended to enable undersized development sites (<10,000m²) within the Showground Precinct to unlock the incentive Floor Space Ratio standards where sites have been isolated. In this regard, under the current LEP standards and controls, the excluded sites can be developed to its full potential, independent of the subject proposal.

On 15 November 2021, the Sydney Central City Planning Panel (SCCPP) refused Section 4.55(2) Modification Application to 1262/2019/JP/A. The Modification Application proposed the following amendments:

- Removal of a dwelling cap of 228 dwellings and instead propose either a gross floor area cap of 28,589m² reflective of 264 dwellings submitted as part of the modification, or an upper dwelling limit of 315 dwellings (refer note below);
- Increase height of Building C from 3 to 5 storeys;
- Establish apartment connectors between Buildings A-B and D-E;
- Amendments to building envelopes to provide improved articulation;
- Provide new rooftop communal open space areas; and
- Increase the site’s landscaped area.

Note: Whilst the application sought the option of “an upper dwelling limit of 315 dwellings”, the plans submitted only indicated 264 dwellings. In this regard, an assessment against the relevant provisions for a maximum dwelling yield of 264 dwellings was undertaken in the assessment report.

The Panel refused the Modification Application for the following reasons:

1. *The proposed modifications to the Concept Development Application does not result in a development that is substantially the same as it differs, both quantitatively and qualitatively from the original approved development and seeks to amend essential components including density, bulk and scale and is incompatible with the surrounding context and streetscape.*

(Section 4.15(1)(a)(i), (iii) and 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979).

2. *The application does not satisfy the provisions under Clause 9.5 Design Excellence of the Hills LEP 2019.*

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

3. *The proposal does not satisfy the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development with respect to context and neighbourhood character, built form and scale, density and amenity resulting in a development that is not substantially the same as originally approved.*

(Section 4.15(1)(a)(i) and 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979).

4. *The proposal does not provide for sufficient solar access and residential amenity to the principal usable communal open space area in accordance with the design criteria of the Apartment Design Guide under Clause 29 SEPP 65 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development. (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).*
5. *The proposal does not provide for the appropriate building lengths and setbacks as required under The Hills DCP 2012. (Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).*
6. *The applicant has not submitted information requested to properly assess the impacts to the built environment including amended plans as detailed in the presentation to the Design Review Panel on 23 June 2021 and vehicle swept paths to the satisfaction of Council's engineers. (Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979).*
7. *The site is not suitable for the development as proposed to be modified and is inconsistent with the built environment of the locality. (Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).*
8. *The proposal is not in the public interest due to the incompatible bulk an scale and its departure from the requirements of design excellence under The Hills LEP 2019 and Part D Section 19 Showground Precinct Development Control Plan. (Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act, 1979).*

On 25 January 2022, the subject Development Application was lodged for an Amending Concept DA to 1262/2019/JP. The development seeks to alter the approved building envelopes to enable additional building height and increase the dwelling yield. A built form Development Application was also lodged on the same date under Development Application 1112/2022/JP. This Development Application is being assessed concurrently with the subject application. Refer to Council Assessment Report DA 1112/2022/JP.

In addition, the Applicant submits the following reason for the Amending Concept DA:

“The project team have now progressed design development and are in a position to lodge a detailed development application (otherwise known as a stage 2 development application) for 255 apartments. As it stands, the detailed development application does not strictly comply with the approved envelopes and yield cap imposed in the stage 1 concept DA. However, design changes have been incorporated into this amending DA and the detailed DA which respond to the design panels feedback. Notably, this includes the removal of proposal apartment connectors to reduce building length and provide enhanced articulation. The detailed DA will be lodged concurrently with this amending DA to enable a holistic review of the proposal based on design merit”.

Council staff briefed the Sydney Central City Planning Panel on 17 March 2022. The Chair noted the reduction in the deep soil zone area and solar access to communal open space compared to the current Concept Application consent and sought clarification of an “amending DA” to the current consent. This is addressed in Section 1 of this report. Council staff noted that the proposal is substantially different from the Concept DA and that the application was scheduled for review by the Design Review Panel on 23 March 2022.

On 23 March 2022, the Design Review Panel (DRP) reviewed the Development Application and concluded that the proposal did not meet the requirements of design excellence. Refer

Attachment 19 for Design Review Panel report. A summary of the DRP recommendations are indicated below:

- *The Panel advises the site planning be reconsidered and revised to better comply with statutory and other controls.*
- *Revise the scheme to comply with the height control controls.*
- *Revise the scheme as required to comply with building setbacks.*
- *Revise the scheme as required to comply with compliant building lengths.*
- *Avoid subterranean units and sunken terraces.*
- *Provide more diversity in the built form and character of various buildings.*
- *Provide updated information demonstrating ADG compliance, in particular building separation, solar access, natural ventilation, balconies and shadowing of ground level*

It is noted that as instructed by the Applicant's solicitors, an independent urban design expert attended this Design Review Panel meeting.

On 3 June 2022, the Applicant provided a response to the DRP report, including an independent urban design review and legal submission detailing how the Stage 2 built form should be assessed. Refer Attachment 20 for the Applicant's response to the DRP report and the independent urban design review. The legal submission has been included in an attachment in the Council Officer's report under DA 1112/2022/JP.

On 16 June 2022, a Class 1 Appeal was filed with the Land and Environment Court against the deemed refusal of DA 1110/2022/JP.

DETAILS AND SUBMISSIONS

Owner:	Mr K Root, Mrs M P Root, Mr C Gao, Galvlad Property Pty Ltd, Mr B Merhi, Mrs S S Merhi, Mr D A Lincoln, Mrs M A Lincoln, Mrs J Berger, Mr VH Chan, Mrs E H Chan, Mr V P Tangonan, Mrs M M Tangonan, Mr L Tao, Ms L Xu, Mrs A Matic, Ms M Stevenson, Mr C M K Fernando, Mrs M A Fernando, Mr R E Beeldman, Mr S W Kim, Mr G S Maiolo and Mrs J J Maiolo
Zoning:	R4 High Density Residential
Area:	12,403.8m ²
Existing Development:	14 dwellings
Section 7.11 Contribution	Contributions to be charged for subsequent Development Applications for built form
Exhibition:	Not required
Notice Adj Owners:	Yes, 14 days
Number Advised:	41
Submissions Received:	Nil

PROPOSAL

The Amending Concept Development Application seeks approval for the following:

- Removal of a dwelling cap of 228 dwellings and instead propose either a gross floor area cap of 27,834m² or an upper dwelling limit of 255 dwellings;
- Increase height of all buildings including two additional floors to Building C from 3 to 5 storeys, and adjustments to building envelopes to allow for plant and lift overruns;
- Amendments to building envelopes to provide further articulation;
- The addition of 60m² retail space located on the lower ground floor of Building D;

- Increase the site's communal open space area and maintain over 50% landscaping; and
- Increase the number of apartments capable of achieving cross ventilation and solar access.

The key development statistics of the approved, refused modified development and proposed amending development are detailed in the table below:

	Approved DA 1262/2019/JF	Refused Modification Application to Concept 1262/2019/JF/A	Proposed Amending Concept DA 1110/2022/JF
Site Area	12,403.8m ²	12,403.8m ²	12,403.8m ²
Maximum height	Building A 7 storeys (23.6m) Building B 7 storeys (23.15m) Building C 3 storeys (14.8m) Building D 7 storeys (23.8m) Building E 7 storeys (22.69m)	Building A 7 storeys (23.6m) Building B 7 storeys (23.15m) Building C 5 storeys (19.3m) Building D 7 storeys (23.8m) Building E 7 storeys (22.69m)	Building A 7 storeys (26.01m) Building B 7 storeys (26.49m) Building C 6 storeys (23.30m) Building D 6 storeys (26.20m) Building E 7 storeys (25.13m)
Number of apartments	1 bedroom – 57 2 bedroom – 125 3 bedroom – 27 4 bedroom – 19 Total 228	1 bedroom – 66 2 bedroom – 145 3 bedroom – 32 4 bedroom – 21 Total 264	1 bedroom – 64 2 bedroom – 83 3 bedroom – 55 4 bedroom – 27 Total 255
Gross Floor Area	26,112m ²	28,589m ²	27,834m ²
Floor Space Ratio	2.1:1	2.3:1	2.24:1
Communal Open space	4,469m ² (36%)	4,931m ² (40%)	4,605m ² (37%)
Car Parking Spaces	Residential: 248 Visitor: 59 Total: 310	Residential: 264 Visitor: 53 Total: 317	Residential: 298 Visitor: 52 Retail: 4 Total: 354

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 400m walking distance of the Showground Station which opened on 26 May 2019.

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

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

The development proposal is consistent with the Greater Sydney Region Plan.

Central City District Plan

The Plan is a guide for implementing the Sydney Region Plan at a district level and is a bridge between regional and local planning. The plan requires integration of land use planning and transport to facilitate walkable 30-minute cities amongst the 34 strategic centres identified.

A relevant Planning Priority of the Central City District Plan is Priority C5 which seeks to provide housing supply, choice and affordability and ensure access to jobs, services and public transport. The proposed development will assist in increasing housing supply in a location which will have access to high frequency public transport services.

The development proposal is consistent with the Central City District Plan.

Local Strategic Planning Statement

The Hills Shire Council's Local Strategic Plan (LSPS) is the framework for the direction of The Hills guides the future next five years. The LSPS was endorsed by Council on 22 October 2019 and was formally made on 6 March 2020. Council's LSPS identifies a significant need to provide diverse housing supply to cater for a broad range of household types and budgets. The strategy aims to deliver the right type of additional housing stock in areas that can be serviced with the right level of infrastructure and assist in creating liveable, walkable neighbourhoods.

The development application is aligned with the objectives of the LSPS Housing Strategy as it provides additional housing to meet the required 38,000 dwellings across the Shire. It also provides housing in a Sydney Metro Station Precinct which is serviced by public transport and will be close to mixed use developments to activate the precinct. The proposal will also meet the LSPS Productivity and Centres Strategy objective of planning for sufficient jobs, targeted to suit the skills of the workforce. The provision of a neighbourhood shop would activate the site, and provide more job opportunities. The site is also located within the Showground Station Precinct. Transit oriented development is encouraged by the LSPS and will provide access to jobs and public transport to a high number of residents. This meets the objectives of the Integrated Transport Strategy to renew established areas around station precincts, create great places and influence travel behaviour to promote sustainable choices.

The proposal is consistent with the aims and objectives of the LSPS.

ISSUES FOR CONSIDERATION

1. Concept Development Applications under the Environmental Planning and Assessment Act 1979

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

4.22 Concept development applications

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

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

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

4.23 Concept development applications as alternative to DCP required by environmental planning instruments (cf previous s 83C)

- (1) *An environmental planning instrument cannot require the making of a concept development application before development is carried out.*
- (2) *However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.*

Note—

Section 3.44(5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

- (3) *Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.*

4.24 Status of concept development applications and consents (cf previous s 83D)

- (1) *The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or*

under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.

- (2) *While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*
- (3) *Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.*

The Applicant has requested the subject Development Application be considered as an amending Concept Development Application. There is no built form proposed as part of the subject Development Application. The Stage 2 built form Development Application is being assessed concurrently under Development Application 1112/2022/JP.

It is noted that the SCCPP refused a Section 4.55(2) Modification Application to the approved Concept Development Application on the grounds that the proposed amendments did not meet the “substantially the same development” test of Section the Environmental Planning and Assessment Act 1979. In this regard, the Applicant has lodged an Amending Development Application to seek development consent for additional changes to the approved Concept Development Application. The Applicant submits the following:

An amending DA is a mechanism which enables an applicant to build on the design principles of an approved development and propose alterations and additions without necessarily demonstrating the proposals are ‘substantially the same’. Approval is sought for this amending DA based on design merit, and the capability of the proposal to facilitate a high-quality design outcome through a subsequent detailed DA.

In *AQC Dartbrook Management Pty Ltd v Minister for Planning and Public Spaces* [2021] NSWCA 112, The Chief Judge, Preston CJ discussed the option of an Amending Development Application as follows:

232 A development application cannot be made to vary the terms of a development consent directly; a development application can only be made seeking consent for the carrying out of development: Gordon & Valich Pty Ltd v City of Sydney Council [2007] NSWLEC 780 at [15], [16]. Nevertheless, the grant of another development consent may have the consequence of effecting a modification of the original development consent in two ways. First, the second development consent may be granted subject to a condition requiring the modification or surrender of the original development consent (under originally s 91(7) and later s 80(1)(b) and (5) and currently s 4.17(5) of the EPA Act). Second, even without a condition requiring modification, the terms in which the second development consent is granted and the carrying out of development in accordance with the second development consent may have the consequence of effecting a variation of the original consent: Gordon & Valich Pty Ltd v City of Sydney Council at [17]; Auburn Municipal Council v Szabo (1971) 67 LGRA 427 at 432-433.

There is nothing to prevent a person having two development consents to carry out development on the same land...The two development consents applying to development on the same land need to be read together to ascertain the development that is authorised to be carried out on the land: Pilkington v Secretary of State for the Environment (1973) 26 P&CR 508 at 512-513; [1974] 1 All ER 283 at 287.

In this regard, the subject Development Application can only be made seeking consent for the carrying out of an amending concept development application which would have the consequence of effecting a modification of the original development consent (subject to

development consent being granted) and a condition requiring the modification or surrender of the original development consent. Alternatively, the terms of the granting of development consent of the amending concept application could vary the original development consent (if consent was granted to the subject application).

The Applicant seeks to vary the terms of the original development consent directly by *“removal of a dwelling cap and instead propose either a gross floor area cap or upper dwelling limit”*. This is inconsistent with the findings of the judgement referred to above. Rather, the Applicant should have sought consent for an amending Concept Development Application to permit a gross floor area cap or upper dwelling limit of 255 units. If development consent was granted to the application, the terms of the granting of development consent of the amending concept application would have varied the terms and conditions including the dwelling cap in the original development consent.

When considering the matters of relevance under Section 4.15 of the Environmental Planning and Assessment Act 1979, an assessment against the relevant environmental planning instruments including The Hills Local Environmental 2019, SEPP 65 - Design Quality of Residential Apartment Development, The Apartment Design Guide, The Hills Development Control Plan 2012 and the likely impacts of the development including environmental, natural and built and social and economic impacts, the suitability of the site, any submissions made during the notification period and consideration of the public interest.

It is considered that the subject Development Application does not satisfy the matters of consideration under Section 4.15 of the Act as identified throughout this report. In particular, the proposal does not meet the design excellence provisions under Clause 9.5 of the LEP. The proposed Concept Development Application has not adequately demonstrated that the site can be developed in its entirety under the proposed framework. Refer to Section 3 and 4 for further discussion regarding an assessment against the relevant development standards under the LEP and controls under the DCP.

Clause 4.24(2) of the Act also prescribes that *“while any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site”*.

The subject Development Application is inconsistent with the consent for the approved Concept Development under 1262/2019/JP with regards to the maximum dwelling yield and floor space ratio, ground level communal open space requirements, building envelopes and height. A neighbourhood shop is also being proposed under the subject application which was not previously included as part of the approved Concept Development for a residential flat building development.

2. Compliance with SEPP (Planning Systems) 2021

Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021 specifies the referral requirements to a Planning Panel:

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

The proposed development has a Capital Investment Value of \$85,490,156 (excluding GST) and the development is the subject of a concept development application under Part 4 of the Act and therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

3. Compliance with The Hills Local Environmental Plan 2019

a. Permissibility

The subject site is zoned R4 High Density Residential under LEP 2019. The proposed 'residential flat building' development and 'neighbourhood shop' is permissible with consent. The proposal satisfies LEP 2019 in this regard.

Clause 5.4(7) of LEP 2019 requires that the retail floor area of a 'neighbourhood shop' must not exceed 100m². The neighbourhood shop comprises a retail floor area of 60m² which complies with this provision.

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 proposal will provide for housing needs of the community, and provide a variety of housing types within a high density residential environment. The 'neighbourhood shop' would provide a service to meet the day to day needs of the residents. As such, the proposal is satisfactory in respect to the LEP 2019 zone objectives.

c. Development Standards

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

CLAUSE	REQUIRED	APPROVED under 1262/2020/JP	PROVIDED	COMPLIES
4.3 Building Height	21 metres	Building A – 23.6m Building B – 23.15m Building C – 13.5m Building D – 23.85m Building E – 22.69m	Building A – 26.01m Building B – 26.49m Building C – 23.30m Building D – 26.20m Building E – 25.13m	No. Refer to discussion below.
4.4 Floor Space Ratio	1.6:1	N/A – as Clause 9.7 applied	2.24:1	No. Refer to discussion below.
9.1 Minimum Lot Sizes for Residential Flat Buildings and	Residential flat building with a height of 11 metres	12,403.8m ²	12,403.8m ²	Yes

Shop Top Housing	of more – R4 High Density Residential – 3,600m ²			
9.2 Site Area of Proposed Development includes dedicated land	Road dedication included as part of the site area for the purpose of calculating FSR.	Land dedication area of approximately 530m ² included in FSR calculation.	Land dedication area of approximately 530m ² included in FSR calculation.	Yes
9.3 Minimum Building Setbacks	Front Building Setbacks to be equal to, or greater than, the distances shown for the land on the Building Setbacks Map	Cadman Crescent and Hughes Ave is not identified with front setbacks in the mapping instrument.	Cadman Crescent and Hughes Ave is not identified with front setbacks in the mapping instrument.	Yes
9.5 Design Excellence	Development consent must not be granted unless the development exhibits design excellence	Approved Concept DA exhibits design excellence in accordance with the Clause.	Proposal referred to Design Review Panel. Concerns raised by the Panel have not been satisfactorily addressed. Response to the DRP report, independent urban design review and legal submission provided by Applicant.	No, refer to discussion below.
9.7 Residential development yield on certain land	If the development is on a lot that has an area of 10,000m ² within the Showground Precinct and provides the following apartment mix, diversity and parking type, an	Site Area: 12,403.8m ²	Site Area: 12,403.8m ²	No, the proposal has not demonstrated that the incentive FSR can be applied or complies with the standard. Refer below for discussion.

	<p>incentive Floor Space Ratio of 2.3:1 can be applied as identified on the FSR mapping instrument.</p> <p>Apartment Mix: One bedroom dwellings (max. 25%)</p> <p>Three or more bedroom dwellings (min. 20%)</p> <p>Apartment Diversity: ≥40% min. internal floor area of 2 bedroom dwellings is 110m² ≥40% min. internal floor area of 3 bedroom dwellings is 135m²</p> <p>Parking Type: 1 space per dwelling and 1 space per 5 units</p>	<p>FSR of 2.1:1 provided</p> <p>57 (25%) 1 bedroom units</p> <p>46 (20.1%) 3 bedroom or more units</p> <p>40% (2 bedroom at least 110m²)</p> <p>41% (3 bedrooms at least 135m²)</p> <p>274 spaces required. 307 spaces provided.</p>	<p>FSR of 2.24:1 provided</p> <p>64 (25%) 1 bedroom units</p> <p>57 (22.4%) 3 bedroom or more units</p> <p>38% (2 bedroom at least 110m²)</p> <p>45.6% (3 bedrooms at least 135m²)</p> <p>306 spaces required. 354 spaces provided.</p>	
9.8 Maximum Number of Dwellings	Development Consent must not be granted to development that results in more than 5,000 dwellings on land within the	228 units approved. The total number of dwellings within the Showground Precinct approved at the time of development concept is 564 units.	An additional 27 units are proposed under the subject application. If this development application was approved, the total number of dwellings within the Showground	Yes

	Showground Precinct		Precinct would be 3,460 units.	
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(i) Variation to Clause 4.3 Height of Buildings

Clause 4.3 of LEP 2019 limits the height of the development site to 21 metres. Proposed Building A has a maximum height of 26.01m, Building B has a maximum height of 26.49m, Building C has a maximum height of 23.30m Building D has a maximum height of 26.20m and Building E has a maximum height of 25.13m which represents a variation of 23.85%, 26.14%, 10.95%, 24.76% and 16.67% respectively, to the height standard.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 18.

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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

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

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

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (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:

- *The built form responds to medium density residential land to the east by stepping the heights of Building B and C. Building B presents as four storeys to Cadman Crescent (east), with a stepped form to levels 5 and 6, and a further step to level 7. Building C presents as three storeys to Cadman Crescent (east), with a step back to level 4 and further step to levels 5 and 6. This approach, in tandem with the compliant height proposed for Building C (excluding plant), produced an ideal built form outcome;*
- *The proposed heights are a natural response to the existing topography of the site, which provides a fall of approximately 12m (four storeys). The topography has informed the location of height across the entire site. If a maximum height was pursued on Building C and on the southern edges of Buildings B and D, it would produce a hard transition and unsympathetically respond to the character of the area;*
- *The proposal redistributes building height and bulk from Building C to the adjoining buildings to improve transition to medium density land to the south. Building C's roof sits under the maximum height limit, reducing the built form along Cadman Crescent (south). The residual*

bulk that could be achieved on Building C has otherwise been relocated to the adjoining buildings, which are located closer to the station and where greater development is anticipated to occur. The redistribution of the building envelope will not result in any unreasonable levels of amenity impacts to adjoining neighbours, having regard to the future quality and character of the area;

- *Upper floors are recessed across all proposed buildings to reduce a hard edge to the building;*
- *The proposed form results in a floor space ratio of 2.24:1, below the bonus FSR provision of 2.3:1 and does not result in an over-development of the site in consideration for the density anticipated by the LEP. This is evident as the proposal meets and exceeds the amenity-based controls, including solar access, cross ventilation, landscaped area, communal open space and deep soil area requirements under the ADG and DCP;*
- *The nature of the site is unique in that it presents a near complete island site, where a bespoke response is required to enable a quality urban design outcome and amenity of residents. In this case, concentrating the buildings on the perimeter of the site, has enabled the retention of significant established trees within a central communal open space area and landscape setbacks. The minor height increase has not resulted in any unacceptable amenity impacts in terms of overshadowing.*
- *Building C shares the greatest interface with the adjoining medium density land to the east. The form of the building reflects the scale of future development in this area, by presenting as a three storey building to Cadman Crescent (east), noting this area has a 10m height control. Substantial setbacks to levels 4,5 and 6 restricts overlooking of future residents to the east.*
- *Notwithstanding the height variation, the proposal is consistent with the objectives of the height standard and R4 High Density zone;*
- *There is no public benefit in maintaining the standard in the circumstances of the case;*
- *There are sufficient environmental planning grounds to justify contravening the standard as the development allows design improvements in the following ways:*
 - *The DA produces an overall FSR of 2.24:1, which has been arrived at from a first principles approach...a key aspect of this approach is the preservation of moderate and high retention value trees along the property boundaries, which significantly improves the building transition and soften edge to adjoining development;*
 - *The additional height to Buildings A, B, D and E are warranted in that it represents a balance between maintaining a sensitive interface with land to the south while distributing greater height to the north west closest to the proposed Metro Station, without having an unreasonable impact upon the public domain and amenity of the adjoining properties;*
 - *The proposed building heights are considered to create a sound planning outcome given they result in an improved urban transition to land zoned for medium density residential uses (including the retention of significant trees around the site boundary that will soften the built form);*
 - *Urban design principles have been utilised to achieve an optimal landscape and amenity outcome for the users of the site, whilst also respecting the amenity and interface of low density residential in the south;*
 - *The proposal is consistent with the objectives of the ADG requirements, as well as the provision of landscape, communal and deep soil zones in accordance with the DCP. The proposal does not produce an overdevelopment of the site and ensures improved amenity can be achieved despite the transfer of additional height to Buildings A, B, D and E.*
 - *The locality is currently undergoing a transition from large detached dwelling houses being replaced with townhouses, medium and density residential flat buildings and shop top housing developments. In recognition of this, the proposal provides reduces bulk to the eastern and southern boundaries, while ensuring taller envelopes are appropriately placed closer to the station;*
 - *The proposal is sufficiently setback from the adjoining neighbours in accordance with the ADG (setback/building separation) requirements; and*

- *Given the above, strict compliance with the height controls would hinder the attainment of the objects of the Act, and would not result in the orderly and economic use and development of land.*

Comment:

A Clause 4.6 written submission was supported for a variation to the maximum height standard of 21m for Buildings A, B, D and E under the Concept Development Application 1262/2019/JP. The subject Amending Concept Development Application seeks to further exceed this maximum height standard by almost double to that which was approved for these buildings and a variation to Building C is also requested. Refer to table below.

Approved Height of DA 1262/2019/JP	Extent of Variation to 21m height limit	Refused Modification Application to Concept 1262/2019/JP/A	Extent of Variation to 21m height limit	Proposed Amending Concept DA 1110/2022/JP	Extent of Variation to 21m height limit
Building A 7 storeys (23.6m)	2.6m or 12.4%	Building A 7 storeys (23.6m)	2.6m or 12.4%	Building A 7 storeys (26.01m)	5.01m or 23.85%
Building B 7 storeys (23.15m)	2.15m or 10.2%	Building B 7 storeys (23.15m)	2.15m or 10.2%	Building B 7 storeys (26.49m)	54.59m or 26.14%
Building C 3 storeys (14.8m)	N/A	Building C 5 storeys (19.3m)	N/A	Building C 6 storeys (23.30m)	2.3m or 10.95%
Building D 7 storeys (23.8m)	2.8m or 13.57%	Building D 7 storeys (23.8m)	2.8m or 13.57%	Building D 6 storeys (26.20m)	5.2m or 24.76%
Building E 7 storeys (22.69m)	2.69m or 8%	Building E 7 storeys (22.69m)	2.69m or 8%	Building E 7 storeys (25.13m)	4.13m or 16.67

A degree of flexibility to the height standard can be considered under the objectives of Clause 4.6, however, the written submission for the subject application has not demonstrated how the extent of the variation to the standard achieves better outcomes for and from development by allowing flexibility in this circumstance. In addition, the written submission has not demonstrated that despite the variation, the objectives of the development standard have been met or that sufficient environmental planning grounds have been provided to justify the 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 overall 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, consistency to the approved planning framework under the Concept Development Consent as well as the development controls under the DCP 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 LEP mapping instrument limits height transitions within the R4 High Density Residential zone from 21m on the subject site to 10m at the north and south eastern interface to the R3 Medium Density Residential zone. Refer Attachment 4 for LEP Height of Buildings Map. Whilst there is a Development Application for a residential flat building development currently under assessment to the south west of the site, no other higher density developments are constructed or proposed directly opposite the site. It is anticipated that any development on the R3 zoned land would be a maximum of 10m in height (3 storeys). In contrast, the proposed development

results in a maximum height of 23.3m for Building C, 26.49m for Building B and 26.01m for Building A. Whilst there are three to six storey podium levels set back 3m from the front façade of each of these buildings, the DRP have noted that this application presents as a “*relatively bulky, imposing and architecturally homogenous addition to the lower scale local context...whilst acknowledging the provision of upper level setbacks in Building C, the transition between the subject scheme and the lower height residential areas is now more visually abrupt...the Panel recommends that height be reduced as the proposal is not considered to be successfully resolved with the likely future context*”.

In this regard, it is considered that the variation to the height exceedance to Building A, B and C results in a more ‘visually abrupt’ transition to the interface of the lower density zoning and will not be compatible with future developments on the adjoining R3 medium density development and the overall streetscape.

The Applicant has indicated that there are sufficient environmental grounds to justify contravening the development standard as the development “*allows design improvements to the existing development*” including increasing the overall FSR of the development based on a first principles approach, distributing the additional height to Buildings A, B, D and E to balance the sensitive interface to land to the south, providing a “bespoke response” to quality urban design for the unique site by concentrating the buildings on the perimeter of the site, to enable the retention of significant established trees within a central communal open space area.

The above reasons are not considered to be sufficient environmental grounds to justify contravening the height standard for the following reasons:

- Increasing the overall FSR of the development based on a first principles approach is not considered to be a design improvement.
- The maximum height of the overall development has been increased by almost double that which was approved under Concept Development Application 1262/2019/JP. In addition, there is now an exceedance to the height standard for Building C. As mentioned above, the objective of the Height of Building standard has not been met in that the proposal is not compatible with adjoining R3 medium density development and the overall streetscape.
- The urban design response is not considered to meet design excellence. Refer to assessment under Clause 9.5 in section 3c(ii) below.
- It has not been demonstrated that the increase in height, as well as reduced building separation between the northern buildings A and B would enable the retention of significant trees.

The Applicant has also indicated that “*strict compliance with the height controls would hinder the attainment of the objects of the Act, and would not result in the orderly and economic use and development of land*”. It is noted that the approved Concept Development Application permitted variations to the height standard which could result in orderly and economic use and development of land. The further variations to the height standard is not supported as the proposal has not demonstrated that the objectives of the standard are met in terms of compatibility with the R3 Medium Density zone and overall streetscape envisaged for the area and sufficient environmental grounds to justify the contravening the height standard has not been demonstrated.

Court cases dealing with applications to vary development standards have resulted in the Land and Environment Court setting out a five part test for consent authorities to consider to determine whether the objection to the development is well founded. In relation to the ‘five part test’, the Applicant has not provided a written request that adequately addressed any of the tests in the ‘five part test’. In particular, the written submission to vary the building height is not well founded on Part 1 of the test as the objectives of the height standard is not achieved. On Part 2 of the test, the Applicant has not demonstrated that the underlying objective or purpose of the development standard is not relevant to the extent of the variations in the development,

such that compliance is unnecessary. On Part 3 of the test, the Applicant has not established that the underlying purpose of the development standard is defeated or thwarted if compliance is required, such that compliance becomes unreasonable. On Part 4 of the test, no development consents have been granted for development directly adjoining the development to render the standard having been 'virtually abandoned or destroyed', or rendering it unnecessary and unreasonable. On Part 5 of the test, the Applicant has not established that the zoning of the area was 'unreasonable or inappropriate' such that the development standard which is appropriate to the zoning is not longer reasonable or necessary.

The variation cannot be supported for the following reasons:

- The Applicant's request is not well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building;
- There are insufficient environmental grounds to justify the contravention; and
- The proposed development will not be in the public interest because it is inconsistent with the objectives of the development standard and insufficient environmental grounds have been provided to justify the contravention.

The Applicant's written request seeking to justify the contravention of the development standard does not adequately address Clause 4.6(3)(b) or (4)(a) and development consent cannot be granted to the Development Application.

(ii) Clause 9.5 – Design Excellence

Clause 9.5 of LEP 2019 states the following:

(1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.

(2) This clause applies to development involving the erection of a new building or external alterations to an existing building on land within the Showground Station Precinct.

(3) Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

(4) 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 in the development control plan referred to in clause 9.4,

(e) the requirements of the development control plan referred to in clause 9.4,

(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 impact on any special character area,*
- (xii) *achieving appropriate interfaces at ground level between the building and the public domain,*
- (xiii) *excellence and integration of landscape design.*

(5) *In addition, development consent must not be granted to development to which this clause applies unless:*

(a) if the development is in respect of a building that is, or will be, higher than 21 metres or 6 storeys (or both) but not higher than 66 metres or 20 storeys (or both):

- (i) a design review panel reviews the development, and*
- (ii) the consent authority takes into account the findings of the design review panel, or*

(b) if the development is in respect of a building that is, or will be, higher than 66 metres or 20 storeys (or both):

- (i) an architectural design competition is held in relation to the development, and*
- (ii) the consent authority takes into account the results of the architectural design competition.*

(6) *Subclause (5) (b) does not apply if:*

- (a) the NSW Government Architect certifies in writing that an architectural design competition need not be held but that a design review panel should instead review the development, and*
- (b) a design review panel reviews the development, and*
- (c) the consent authority takes into account the findings of the design review panel.*

Comment:

In accordance with Clause 9.5(5), as the development will be, higher than 21 metres or 6 storeys, but not higher than 66 metres or 20 storeys, development consent must not be granted to development to which this clause applies unless the development is reviewed by a design review panel and the consent authority is required to take into account the findings of the design review panel.

The Design Review Panel (DRP) considered the design excellence of the Amending Concept Development as well as the subject built form application under DA 1112/2022/JP at a meeting held on 23 March 2022. The minutes to this meeting/DRP report are included at Attachment 19. The DRP concluded that both applications did not exhibit design excellence. It is noted that the DRP is an advisory body that assists the consent authority to assess whether a proposal exhibits design excellence. The DRP Panel members have been endorsed by the Government Architect NSW. A summary of the DRP's design excellence concerns for the subject application are as follows:

Bulk and Scale

- *The revised application now presents a relatively bulky, imposing and architecturally homogenous addition to the lower scale local context to the south and east. Whilst*

acknowledging the provision of upper level setbacks in Building C, the transition between the subject scheme and the lower height residential areas is now more visually abrupt.

- The proposal contains significant departures from the existing statutory controls that define the desired future character of the precinct...the Applicant is advised to review and response to these requirements.*
- The development appears large, bulky, homogenous, particularly when compared to previous submissions. The lack of the required 4m setback at the 4th storey contributes to this.*

Height

- The Panel does not generally support LEP height non-compliance. The proposal exceeds the LEP control by up to 24%. The Panel is not convinced of the merit of this height exceedance.*
- The future character defined by DPE and incorporated into the DCP is for a 6-storey built-form outcome in this part of the precinct, with higher development located closer to the Metro Station. The subject site is within the southern part of the precinct, interfacing a three-storey zone. The Panel recommends that height be reduced as the proposal is not considered to be successfully resolved with the likely future context.*

Density

- The built form is consequently considered to be of a scale, and bulk that is inconsistent with the overall precinct objectives.*
- The Panel is not adverse to the applicant seeking a permissible density, however this should not be at the expense of acceptable urban, environmental and residential design amenity outcomes for the precinct.*

Setbacks

- The proposed development does not comply with the setbacks specified in the DCP. The setback controls is a character setting control put in place to enable achievement of the principles of ecologically sustainable development.*

Building Design

- The Panel does not support apartments that are located below the adjacent public domain be it the street frontage or internal courtyard area. This is for reasons of visual privacy, natural ventilation and solar access.*
- The Panel does not support the approach of a single architectural identity/character for all of these buildings. There is a monolithic quality to the development that is not helped by the height exceedances and a lack of horizontal articulation in the street and internal*

The Applicant provided a response to the DRP report including an Urban Design Review by Frank Stanisic which can be found in Attachment 20. This response disagrees with the DRP's advice and recommendations and does not address each of the concerns raised by the DRP. It is considered that in accordance with Clause 9.5(5), development consent must not be granted to the subject application as a satisfactory response has not been provided to address the findings of the DRP.

With regard to Clause 9.5(4), the matters of consideration are either addressed in other sections of this report or cannot be determined as the information submitted with the application has not addressed all the concerns raised by the DRP.

In this regard, the proposal does not meet the provisions under Clause 9.5 Design Excellence of the LEP and development consent must not be granted to the application.

(iii) Floor Space Ratio

Clause 4.4 Floor Space Ratio of the LEP 2019 prescribes that the maximum floor space ratio for a building on any land within the subject site shall not exceed a Floor Space Ratio of 1.6:1.

Clause 9.7 Residential Development Yield on Certain Land of the LEP 2019 states the following:

- (2) Despite clause 4.4, the consent authority may consent to development to which this clause applies with a floor space ratio that does not exceed the increased floor space ratio identified on the [Floor Space Ratio Incentive Map](#), if the consent authority is satisfied that—*
- (a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and*
 - (b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings, and*
 - (c) at least 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110 square metres, and*
 - (d) at least 40% of all 3 bedroom dwellings contained in the development will have a minimum internal floor area of 135 square metres, and*
 - (e) the following minimum number of car parking spaces are to be provided on the site of the proposed development—*
 - (i) for each dwelling—1 car parking space,*
 - (ii) for every 5 dwellings—1 car parking space, in addition to the car parking space required for the individual dwelling.*






An assessment of these requirements is indicated in the below table:

Apartment Mix	LEP Standard	Development	Proposal	Compliance
One bedroom dwellings	25% to the nearest whole number of dwellings (Maximum)		25% (64 of 255 units)	Yes
Three or more bedroom dwellings	20% to the nearest whole number of dwellings (Minimum)		22.4% (57 of 255 units)	Yes

Apartment Diversity	LEP Standard	Development	Proposal	Compliance
Minimum internal floor area of 2 Bedroom dwellings is 110m ²	≥40%		38% (51 of 134* units) *Refer discussion below	No
Minimum internal floor area of 3 Bedroom dwellings is 135m ²	≥40%		45.6% (26 of 57 units)	Yes

Parking Type	LEP Standard	Development	Proposal	Compliance
1, 2, 3 & 4 Bedroom	1 car space per dwelling and 1 space per 5 units		255 resident spaces and 51 visitor spaces required. 298 resident car spaces and 52 visitor spaces provided.	Yes

The submitted Statement of Environmental Effects and Drawing Number MP 4006 dated 15/12/2021 Revision A diagram indicates 55 out of **138** x 2 bedroom units (39.85%) comprise a minimum internal floor area of 110m². This already does not meet the minimum 40% percentage provisions for larger 2 bedroom units in accordance with Clause 9.7(2)(c). Further, the Apartment Mix table also incorrectly includes Units A307, A407, A507 and B512 as larger 2 bedroom units despite the plans indicating these are 3 bedroom units. Refer figures below:

APARTMENT MIX						
TYPE	MIN. AREA (m ²)	QUANTITY	% CONTROL	% PROPOSED	DCP % CONTROL	% PROPOSED
1B 	50	64	Max. 25%	25%		
2B 	70	83		54%	Min. 40% of 2 Beds	40%
2B+ 	110	55				
3B 	95	27	Min. 20%	21%	Min. 40% of 3 Beds	49%
3B+ 	135	26				
TOTAL		255	COMPLIES		COMPLIES	

NOTE: 10% OF ALL UNITS ARE ACCESSIBLE OR ADAPTABLE AS PER DCP REQUIREMENT.

Figure 1: Applicant's submitted Apartment Mix table in Drawing Number MP 4006 Revision A dated 15/12/2021

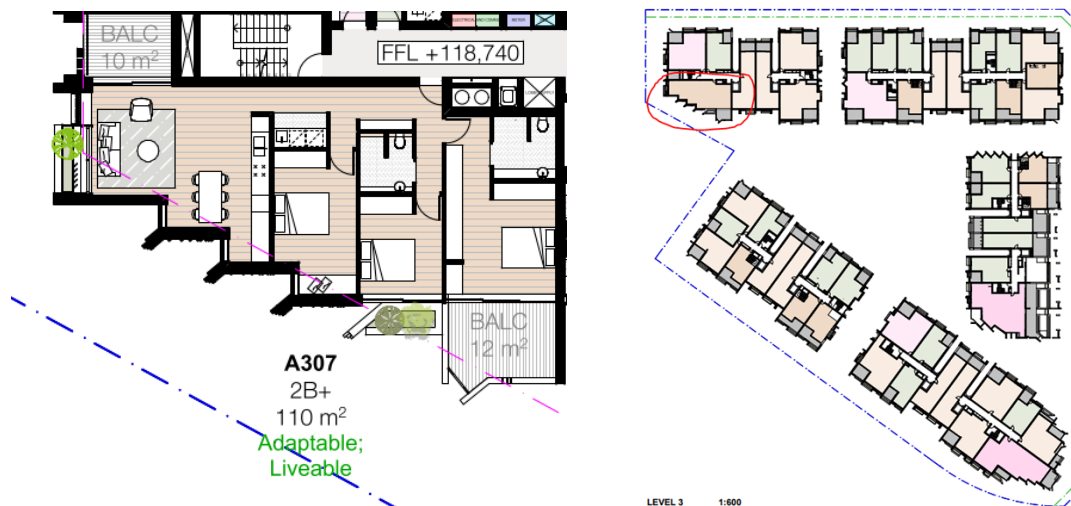


Figure 2: Unit A307 Floor Plan and Apartment mix diagram for Level 3



Figure 3: Unit A407 Floor Plan and Apartment mix diagram for Level 4



Figure 4: Units A507 and B512 Floor Plans and Apartment mix diagram for Level 5

In accordance with the submitted plans, the unit mix proposed is 64 x 1 bedroom units, **134** x 2 bedroom units and 57 x 3 bedroom units.

The proposal does not comply with Clause 9.7(2)(c) as less than 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110m². Therefore, the incentive Floor Space Ratio of 2.3:1 cannot be applied to the proposed development.

The proposal results in a Floor Space Ratio of 2.24:1. The proposed development exceeds the FSR (base) of 1.6:1 by 40.2% or 7,982.8m². No Clause 4.6 written submission has been provided to vary the FSR development standards.

4. Compliance with SEPP (Resilience and Hazards) 2021

This Policy includes Chapter 4 Remediation of Land which 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.

Section 4.6 of the SEPP states:

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

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

A Contamination Report was not submitted with the subject Development Application and land contamination or remediation of land has not been addressed in the Statement of Environmental Effects. However, no built form is included in the subject application. It is noted that the built form Development Application under 1112/2022/JP included the submission of a Detailed Site Investigation (DSI) prepared by EI Australia dated 23 July 2021 which concluded that the site can be made suitable for the proposed development.

In this regard, if consent was granted to the development application, appropriate conditions could be included in the development consent to ensure that the site is suitable for the future built form development with regard to land contamination and the provisions of SEPP (Resilience and Hazards) 2021.

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

As this Development Application is for an Amending Concept Development Application, a BASIX Certificate was not required to be submitted. However, as a built form Development Application has also been lodged, a BASIX Certificate was included as part of the subject Development Application which demonstrates the proposal achieves the targets for energy, water use and thermal comfort for residential development.

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

A Design Verification Statement was not provided with the subject Development Application.

Clause 30(2) of the SEPP states that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles. An assessment against the Design Quality Principles is provided below:

Principle 1: Context and neighbourhood character

The proposal is not compatible with the desired context and neighbourhood character of the Showground Station precinct. The future desired character for residential areas within the precinct are focused highly on an appropriate scale and an attractive environment for pedestrians. The Design Review Panel has considered the application and has concluded that the proposal does not exhibit design excellence. The concerns raised by the DRP have not been satisfactorily addressed. It is considered that the Amending Concept Development Application will not provide a framework to achieve a built form that would be appropriate in scale or an attractive streetscape presentation and landscaped setting as envisaged for the precinct. In this regard, the proposal is not compatible with the desired neighbourhood character of the Showground Station precinct.

Principle 2: Built form and scale

The proposal does not satisfy the provisions under Clause 9.5 Design Excellence of the LEP. Refer to Section 3c(ii) for further discussion. As advised by the DRP, approval of this application would result in future built forms that would be excessive in bulk and scale and the interface between the development and the future built forms on adjoining sites have not been appropriately considered and would not provide an appealing scale to pedestrians or ensure a high level of amenity is provided. In particular, a sensitive transition between the high density and medium density zones approved under the Concept Development Application will not be maintained.

Principle 3: Density

The subject proposal provides for 255 dwellings on the site which is an increase of 27 dwellings to the approved Concept Development Application. When the original concept application was lodged, the applicant initially sought consent for 255 units however reduced the dwelling yield and height of the built form to ensure the proposal met design excellence. The subject application seeks consent to increase the density for the site without satisfactorily achieving the provisions under the design excellence clause of the LEP. Further, the proposal does not achieve compliance to the incentive FSR provisions under Clause 9.7 of the LEP.

Principle 4: Sustainability

The diagrams provided with the application indicate that the design could achieve natural ventilation and solar access between 8am to 4pm during midwinter. These requirements would need to be confirmed with subsequent built form applications.

Principle 5: Landscape

Diagrams have been submitted with the application demonstrating that 10% of the site would be provided with deep soil which complies with the requirements under the Apartment Design Guide. Further, 50% of the site is capable of achieving the required landscaping as required under the DCP controls. The proposed landscaping has the potential to integrate with the overall appearance of the development.

Principle 6: Amenity

The proposal does not demonstrate that the design achieves appropriate amenity for future residents or neighbours. Whilst the proposal includes diagrams that demonstrate that the proposal would achieve the amenity requirements of the Apartment Design Guide, the matters raised by the Design Review Panel have not been adequately addressed and the proposal does not satisfy the provisions under Clause 9.5 of the LEP. It cannot be concluded that appropriate amenity will be provided for future residents or neighbours.

Principle 7: Safety

The development proposal is only for a Concept Application and any safety and security concerns could be addressed by recommended conditions in subsequent built form applications.

Principle 8: Housing diversity and social interaction

The proposal does not comply with the unit mix and sizes under Clause 9.7 of the LEP. Refer Section 3 of this report. The proposal has not demonstrated that a suitable mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets can be achieved for a future built form development.

Principle 9: Aesthetic

The application was reviewed by Council's Design Review Panel (DRP). The DRP concluded that the proposal did not exhibit design excellence. Refer Section 3 for further discussion. The proposal has not been amended to address the concerns raised by the DRP. Instead, a response has been provided by the Applicant which disagrees with the advice provided by the DRP. It cannot be concluded that good aesthetics has been achieved by the design of the built form.

b. Apartment Design Guide

In accordance with Clause 30(2) of SEPP 65, development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the objectives of the Apartment Design Guide for the relevant design criteria. An assessment against the following key criteria is detailed below:

Clause	Design Criteria	Compliance
Siting		
Communal open space	25% of the site, with 50% of the principal usable part of the communal open space area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	No, for solar access requirements. 37% (4,605m ²) of the development site area is proposed for communal open space on the ground floor and roof tops. However, the principal usable part of the communal open space area is considered to be the central ground floor communal courtyard. The proposal achieves only 35% direct sunlight for 2 hours during midwinter. Refer to discussion below.
Deep Soil Zone	7% of site area. On some 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 .	Yes. Approximately 10% of the development site area are 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. The internal building separation between the buildings do not meet the criteria, however building separation between Building B and C, C and D and D and E are consistent with approved Concept DA. However, the building separation between Buildings A and B have been reduced resulting in a further variation as follows: Levels 1 to 4 – Minimum 7m (habitable to habitable where 12m is required) Levels 5 – 8 Minimum 7m (habitable to habitable where 28m is required). Refer to discussion below.
Car parking	Car parking to be provided based on proximity to public	Yes.

	<p>transport in metropolitan Sydney. For sites within 800m of a railway station or light rail stop, the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is:</p> <p>Metropolitan Sub-Regional Centres:</p> <p>0.6 spaces per 1 bedroom unit. 39.6 0.9 spaces per 2 bedroom unit. 130.5 1.40 spaces per 3 bedroom unit. 74.2 1 space per 5 units (visitor parking). 52.8</p>	<p>The site is located within 800m of the Showground Station. Therefore, 287.8 car spaces required. 350 residential and visitor's car spaces provided.</p>
Designing the Building		
Solar and daylight access	<p>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.</p> <p>2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>No. The Applicant submits that the proposed development achieves two hours solar access for 71% (180 of 255) of apartments between 8am and 4pm midwinter. However, the application has not demonstrated that solar access compliance is achieved between 9am – 3pm midwinter. Refer to discussion below.</p> <p>Yes. The diagrams provided indicate that 9% (23 of 255) of apartments will not receive any solar access between 9am and 3pm midwinter.</p>
Natural ventilation	<p>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.</p>	<p>Yes. The diagrams provided indicate a total of 86% (219 of 255) of units achieve the cross ventilation requirements.</p>
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m² 1 bedroom – 50m² 2 bedroom – 70m² 3 bedroom – 90m²</p> <p>The minimum internal areas include only one bathroom.</p>	<p>Yes. The diagrams provided indicate the proposal is capable of achieving compliance.</p>

	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.	
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, however proposal does not meet housing diversity Clause under Clause 9.7 of the LEP.

(i) Communal Open Space

The Apartment Design Guide requires that developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June. It is considered that the principal useable part of the communal open space is the centrally located courtyard at ground level. Only 35% of the principal useable part of the ground floor communal open space will receive a minimum of 2 hours of solar access between 9am and 3pm on 21 June.

The Applicant submits that the development provides for 51% direct sunlight to the principal usable part of the communal open space if the rooftop is included in this calculation.

The relevant objective of the design criteria is to provide an adequate area of communal open space to enhance residential amenity and to provide opportunities for landscaping.

Rooftop communal open space is only provided above Buildings B and C. This is not considered to be equitably accessible by all future occupants of the site. Therefore, this cannot be considered as a principal useable part of communal open space. It is noted that the approved concept application demonstrated that at least 2 hours of solar access would be provided to the principal usable part of the ground level communal open space during midwinter. The subject built form application reduces the building separation between the northern buildings A and B and as a result, reduces the solar access provided for the ground level central communal open space area. It is noted that the high level of amenity provided to the ground level central communal open space was an essential component to the approved concept development. It is considered that the proposed amending application compromises the amenity of the well designed ground level communal open space when compared to the approved ground level communal open space under the approved application.

The Development Application has not demonstrated that sufficient solar access and residential amenity can be provided to the principal usable communal open space for future occupants of the site in accordance with the Communal Open Space design criteria of the ADG.

(ii) Solar Access

The Apartment Design Guide requires that of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.

Whilst the Applicant has provided 3D Sun Views and diagrams indicating that the proposed development could achieve two hours solar access for 71% (180 of 255) of apartments between

8am and 4pm midwinter. The application has not demonstrated that solar access compliance is achieved between 9am – 3pm midwinter.

The Development Application has not demonstrated that sufficient solar access can be provided to future occupants of the site in accordance with the Solar Access design criteria of the ADG.

(iii) Building Separation and Visual Privacy

The Apartment Design Guide requires that the minimum building separation for habitable rooms, is 12m (6m to boundary) for 4 storeys, 18m (9m to boundary) for 5-8 storeys and 24m (12m to boundary) for above 9 storeys. The building separation between Buildings A and B has been reduced compared to the approved Concept DA, resulting in the following variations:

- Levels 1 to 4 - Minimum 7m (habitable to habitable where 12m is required)
- Levels 5 to 8 - Minimum 7m (habitable to habitable where 18m is required).

The Applicant submits that the proposal is consistent with the Apartment Design Guide as follows:

A 6m side setback is provided to the adjoining properties to the west of the site, to enable adequate separation, visual privacy and ADG compliance, should these sites be developed in future. Within the site, the separation distances between buildings are outlined in Part 2F of this table. Visual and acoustic privacy is achieved between buildings, via the following design responses:

- *Metal screening to windows and lightweight louvre systems*
- *Minimal balconies located between buildings*
- *Offsetting windows to adjacent buildings*

The objective of the design criteria is to provide adequate building separation distances to achieve reasonable levels of external and internal visual privacy.

The internal building separation between all buildings proposed do not meet the criteria, however it is considered that appropriate privacy mitigation measures could be designed within the built form to address any overlooking and privacy concerns.

In this regard, if consent was granted to the Concept Application, a subsequent built form application could achieve the objectives of the control.

7. Compliance with The Hills DCP 2012

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

- Part D Section 19 Showground Station Precinct,
- Part B Section 5 Residential Flat Buildings,
- Part B Section 6 Business
- Part C Section 1 Parking and
- Part C Section 3 Landscaping.

The proposed development achieves compliance with the relevant requirements of the development controls with the exception of the controls highlighted in the below table.

DEVELOPMENT CONTROL	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Front Setbacks	<p>7.5m front setback from the existing property boundary to Cadman Crescent and Hughes Ave. Balconies shall not protrude into the setback areas.</p> <p>4m upper level setback for storeys above the 4th storey</p>	<p>6m - Cadman Crescent east and north 6.5m - Hughes Avenue</p> <p>3m - Cadman Crescent north (Building A and B)</p> <p>3m - Cadman Crescent east (Building B)</p> <p>3m for 3 storeys and further 4 to 6m for 7 storeys – Cadman Crescent east (Building C)</p> <p>3m for 5/6 storeys for Buildings D and E - Hughes Avenue</p>	No. Refer to discussion below.
Façade and Building length	<p>On road reserves less than 20m in width, the length of the façade shall not exceed 40m.</p> <p>Buildings are to have a maximum length of 65m. Where a building has a length greater than 30m it is to be separated into at least two parts by a significant recess or projection.</p>	<p>Cadman Crescent and Hughes Ave are both local roads with a road reserve of 17m in width.</p> <p>The proposed façade and building lengths are: Building A – 41.5m Building B – 58.7m Building C – 50m Building D – 60m Building E – 45m</p>	No. Refer to discussion below.

The approved Concept Development Application under 1262/2019/JP achieved compliance with the relevant requirements of The Hills Development Control Plan except for site specific Showground Precinct controls relating to the structure plan, front and upper level setbacks and maximum façade/building length. As the approved development demonstrated that the provisions of design excellence were met, these variations were supported.

The proposed Amending Concept Development Application does not satisfy the provisions under Clause 9.5 Design Excellence however seeks to rely on the setbacks controls approved under Development Consent 1262/20219/JP. Whilst variations to the front setback controls were supported under the approved Concept Development Application, the subject proposal seeks to increase the height and bulk and scale of the building envelopes. The variations to the building length and front setback controls are discussed below.

a. Front and Upper Level Setbacks

The DCP requires that buildings are to provide a 7.5m front setback to Cadman Crescent and Hughes Ave and an upper level setback of 4m behind the building line for four storeys and above. The Amending Concept DA provides for a 6m front setback and 3m upper level setback for four storeys for Building B to Cadman Crescent east, a 6m front setback, 3m upper level setback for four storeys and further 4-6m setback for 7 storeys for Building C to Cadman Crescent east. In addition, a 6m front setback and 3m upper level setback is provided to Cadman Crescent north and a 6.5m front setback and 3m upper level setback is provided to Hughes Avenue. Refer Figure 5 below.

The DCP provides the following objectives relating to the Building Setbacks control:

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

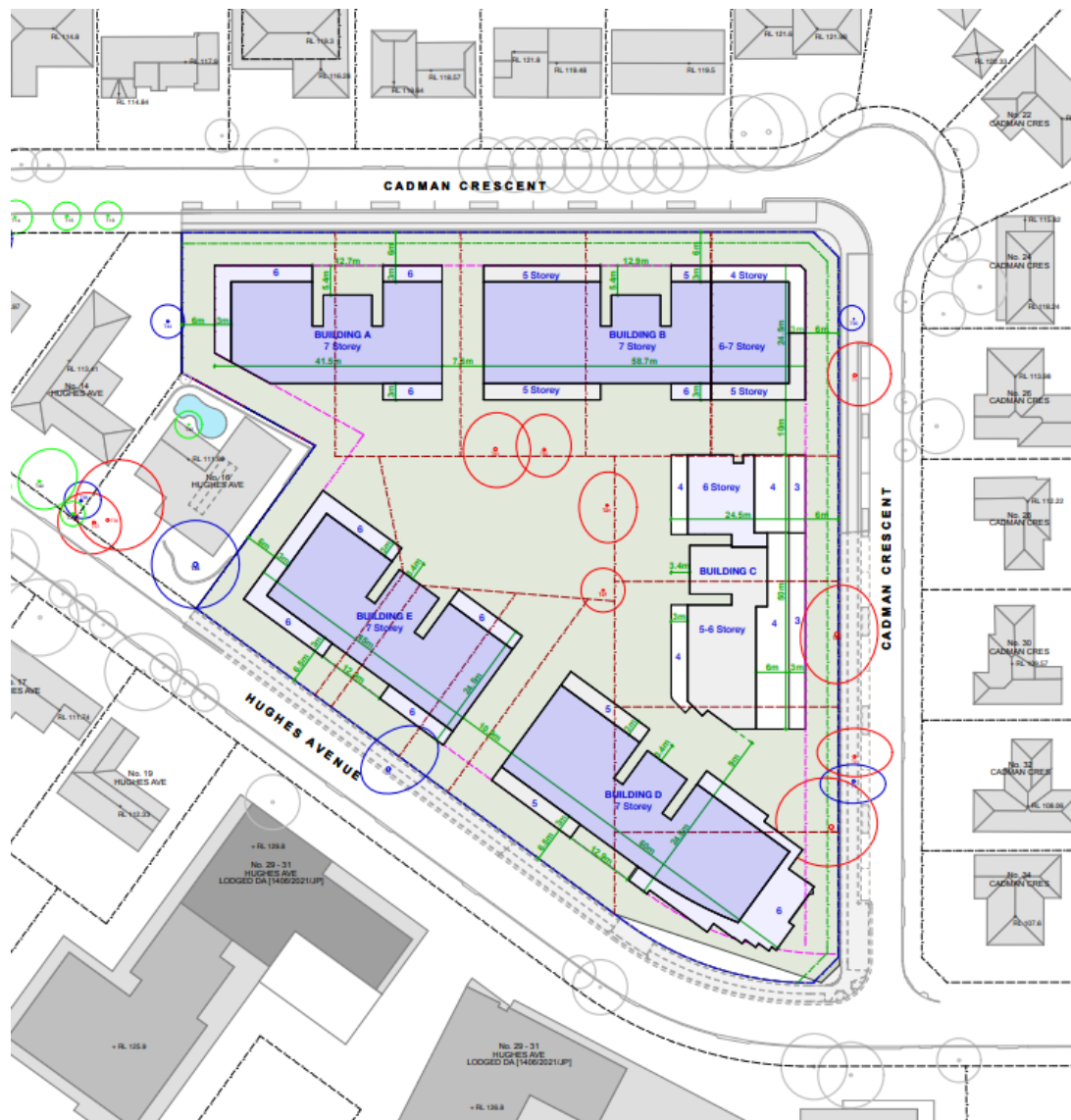
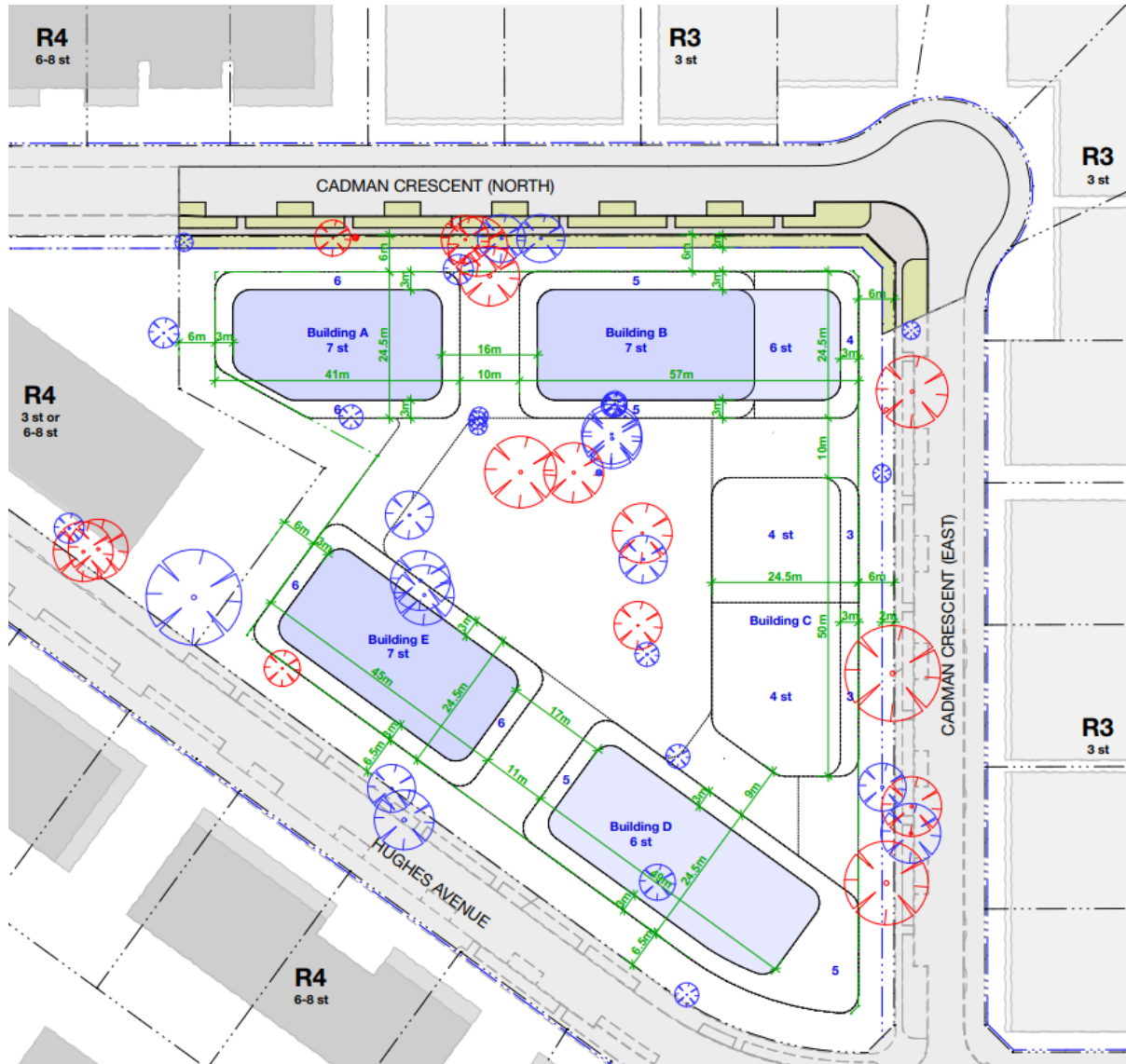


Figure 5: Proposed Building Lengths, Separation and Setbacks

The approved concept application was supported with a variation to the front and upper floor of the building envelopes for blocks A, B and C which encroach within the Cadman Crescent East and North front setback by 1.5m and 1m respectively resulting in a front setback of 6m and upper floor setback of 3m. Refer to Figure 6 below.



The minor reduction to the 7.5m street setback control on Cadman Crescent was supported, due to the lower adjacent heights and density, the irregular shape of the site, and the negligible impact on the internal communal open space. It was assessed that the reduced front setbacks were commensurate with the interface between the differing R4/R3 residential density zones given the maximum three storey height of Building C. It was considered that this building envelope would provide for future built form that has the potential to provide strong definition to the public domain and create a consistent streetscape.

The subject application seeks to increase the building lengths of Buildings A, B and D and height of Building C from three storeys to five storeys and Building D from 6 storeys to 7 storeys. The Design Review Panel (DRP) considered the non-compliance in DCP setback controls for the approved concept application to be reasonable given the scheme's specific configuration and massing and noted that the proposal provided a sensitive interface to the adjacent three storey

medium density residential zone to the south east of the development and high quality landscaped open spaces between all building blocks. However, the following advice has been provided by the DRP for the subject application:

- *The development appears large, bulky, homogenous, particularly when compared to previous submissions. The lack of the required 4m setback at the 4th storey contributes to this.*
- *The future character defined by DPE and incorporated into the DCP is for a 6-storey built-form outcome in this part of the precinct, with higher development located closer to the Metro Station. The subject site is within the southern part of the precinct, interfacing a three-storey zone. The Panel recommends that height be reduced as the proposal is not considered to be successfully resolved with the likely future context.*
- *The proposed development does not comply with the setbacks specified in the DCP. The setback controls is a character setting control put in place to enable achievement of the principles of ecologically sustainable development.*

The changes to the scale and massing of the development generate a different relationship to the streets and the Design Review Panel considers that compliant 7.5m street setbacks should be required along all street interfaces for the subject proposal. The Amending DA increases the bulk and scale of the development, does not demonstrate that a consistent streetscape is provided and results in additional overshadowing to the public domain and frontages for future terrace housing along Cadman Crescent East.

Amended plans were not lodged to address the concerns raised by the DRP. Instead, a response has been provided which disagrees with the findings of the DRP. Refer Attachment 20.

The proposal does not meet the intent of the control and the variation to the front setbacks is not supported.

b. Building Lengths

The DCP requires that buildings are to have a maximum length of 65m. Where a building has a length greater than 30m it is to be separated into at least two parts by a significant recess or projection. When compared to the approved Concept Development Application, the Amending Concept Development Application seeks to increase the building lengths of Building A by 0.5m and Building B by 1.7m.

The Applicant has provided the following justification for the variation:

Most buildings exceed 40m in length, however architectural features such as stepped height, recesses and varied façade treatments present a varied building form. The proposal provides a continued and consistent break-up of the building form to read as a series of smaller forms. This involves three significant indentations to the building forms facing Cadman Crescent North and Hughes Avenue.

The DCP provides the following objective relating to the control:

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

Comment:

It is acknowledged that the Amending Development Application relates to a concept development application with indicative building envelopes and no built form is proposed as part of the application. It is noted that whilst the Approved Concept Development Application did not

comply with the maximum 40m façade lengths required under the DCP. A comparison of the proposed development and approved development are indicated in Figures 5 and 6 above.

It is noted that the proposed development also seeks to increase the height of buildings which interface a lower R3 residential zone. Whilst indentations and articulation have been provided to these facades, the advice provided by the Design Review Panel notes the following:

- *The revised application now presents a relatively bulky, imposing and architecturally homogenous addition to the lower scale local context to the south and east. Whilst acknowledging the provision of upper level setbacks in Building C, the transition between the subject scheme and the lower height residential areas is now more visually abrupt.*
- *The proposal contains significant departures from the existing statutory controls that define the desired future character of the precinct...the Applicant is advised to review and response to these requirements.*

Amended plans were not lodged to address the concerns raised by the DRP. Instead, a response has been provided which disagrees with the findings of the DRP. Refer Attachment 20. In this regard, the concept proposal has not demonstrated the potential to achieve high-quality built form design outcomes.

The proposal does not meet the intent of the control and the variation is not supported.

8. Internal Referrals

The application was referred to following sections of Council:

- Engineering
- Landscape Assessment/Tree Management
- Resource Recovery

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

CONCLUSION

The Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP 65 – Design Quality of Residential Apartment Buildings, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered unsatisfactory.

The proposal does not meet a number of development standards under The Hills Local Environmental Plan including Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio or Clause 9.7 which permits an incentive Floor Space Ratio. A well founded Cause 4.6 written submission to vary any of the development standards has not been provided with the application.

In taking account the findings of the Design Review Panel, it is considered that the proposal does not exhibit design excellence and is inconsistent with the desired future character of the Showground Station Precinct.

Accordingly refusal of the application is recommended.

IMPACTS:

Financial

This matter will have a direct financial impact upon Council's adopted budget as the Applicant has filed a Class 1 Appeal in the NSW Land and Environment Court and Council will have to defend this Appeal.

The Hills Future - Community Strategic Plan

The proposed development is inconsistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development has not demonstrated satisfactory urban growth without adverse environmental or social amenity impacts. A consistent built form has not been provided with respect to the streetscape and general locality.

RECOMMENDATION

The Development Application be refused for the following reasons:

- The Amending Concept Development Application seeks to vary the terms of the original development consent directly by "*removal of a dwelling cap and instead propose either a gross floor area cap or upper dwelling limit*". In this regard, an appropriate modification in accordance with the Environmental Planning and Assessment Act 1979 has not been made and the application is inconsistent with the consent for the approved Concept Development Application under Development Consent 1262/2019/JP.

(Section 4.24(2) of the Environmental Planning and Assessment Act, 1979).

- The application does not satisfy the provisions under Clause 9.5 Design Excellence of the Hills LEP 2019.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The Applicant's written request seeking to justify the contravention of the development standard to Clause 4.3 Height of Buildings standard does not adequately address Clause 4.6(3)(b) or (4)(a) and development consent cannot be granted to the Development Application.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposal does not comply with the Floor Space Ratio (FSR) development standards under Clause 4.4 or Clause 9.7 of the Hills LEP 2019. In particular, the proposal does not meet the incentive FSR provisions under Clause 9.7(2)(c) as less than 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110m². The proposed development exceeds the FSR (base) development standard under Clause 4.4 of 1.6:1 by 40.2% or 7,982.8m². No Clause 4.6 written submission has been provided to vary the FSR development standards.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposal has not demonstrated that adequate regard has been given to the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria as required under Clause 30 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposal does not comply with the built form character controls of Part D Section 19 Showground Station Precinct of The Hills Development Control Plan 2012. In

particular, the development does not comply with the front setback and maximum buildings length controls under the DCP.

(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).

- The site is not suitable for the development as the proposal is inconsistent with the built environment of the locality.

(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).

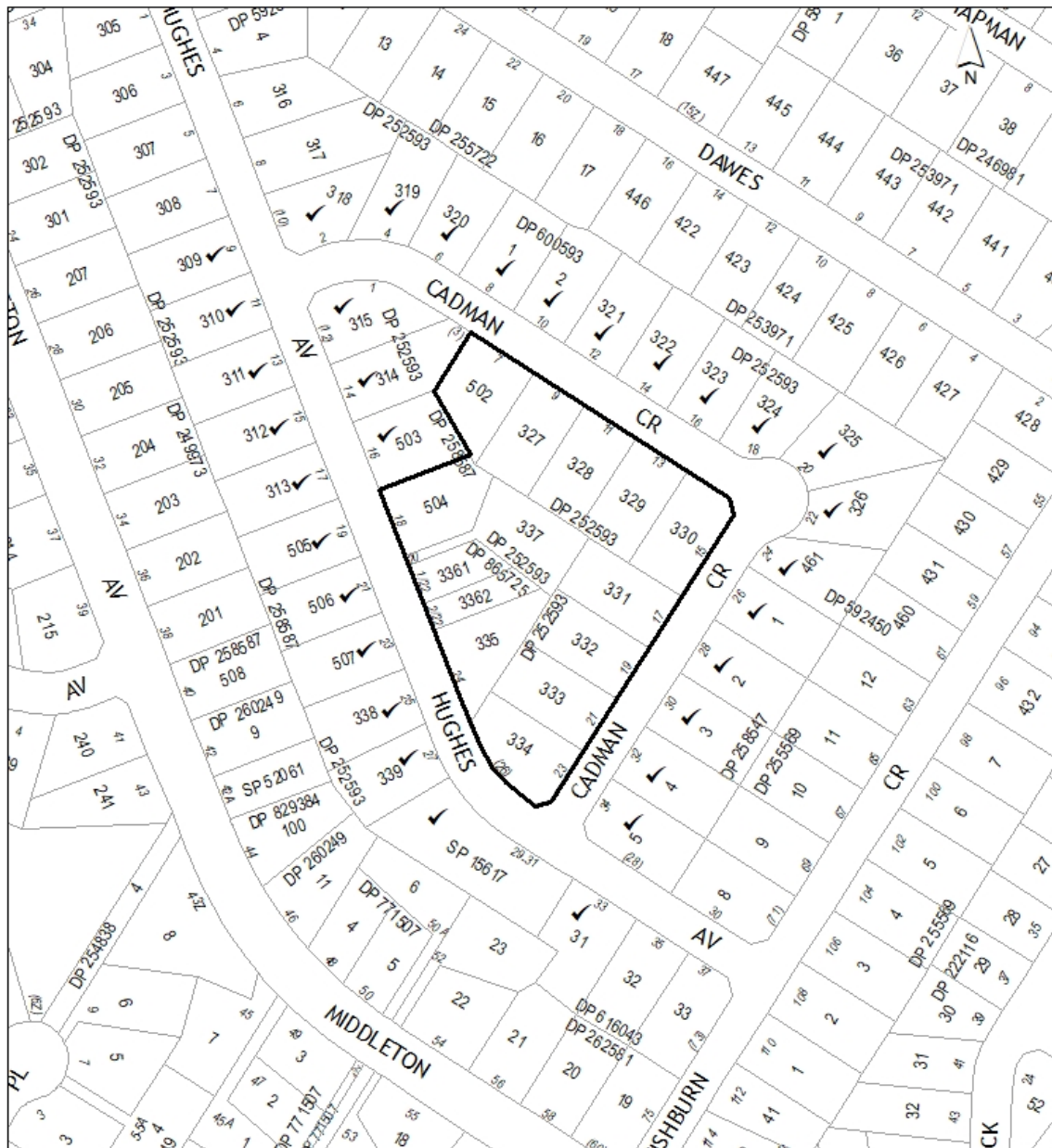
- The proposal is not in the public interest due to the incompatible bulk and scale, and its departure from the requirements of development standards under The Hills LEP 2019 and The Hills DCP 2012.

(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act, 1979).

ATTACHMENTS

1. Locality Plan
2. Aerial Map
3. LEP 2019 Zoning Map
4. LEP 2019 Height of Buildings Map
5. LEP 2019 FSR (Base) Map
6. LEP 2019 FSR (Incentive) Map
7. Site Plan Indicating Proposed Building Envelopes
8. Approved Building Envelopes Under DA 1262/2019/JP
9. Proposed Deep Soil and Communal Open Space Plans
10. Approved Deep Soil and Landscaping Plans under 1262/2019/JP
11. Proposed Street Elevations
12. Approved Street Elevations
13. Proposed Sections
14. Approved Sections under 1262/2019/JP
15. Shadow Diagrams
16. Perspectives
17. Height Plane Diagrams
18. Applicant's Clause 4.6 Written Submission
19. Design Review Panel Minutes/Report
20. Applicant's Response to Design Review Panel Report including Urban Design Review
21. Determination and SCCPP Statement of Reasons for the Decision of Concept DA 1262/2019/JP
22. Notice of Determination of Concept DA 1262/2019/JP
23. Notice of Determination of Section 4.55(2) Modification Application 1262/2019/JP/A

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED


THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT 2 – AERIAL MAP



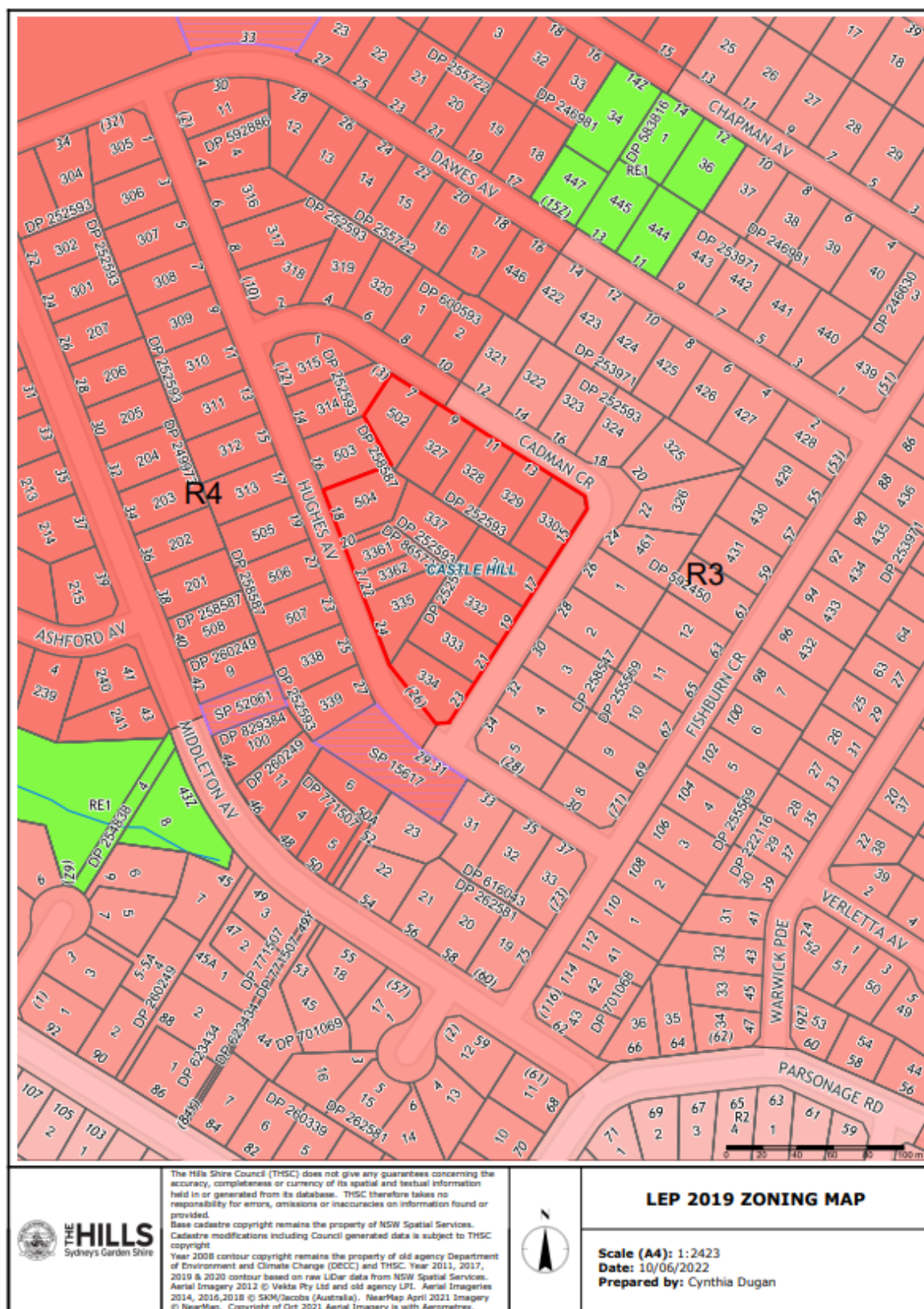
 SUBJECT SITE

THE HILLS
Sydney's Garden Shire

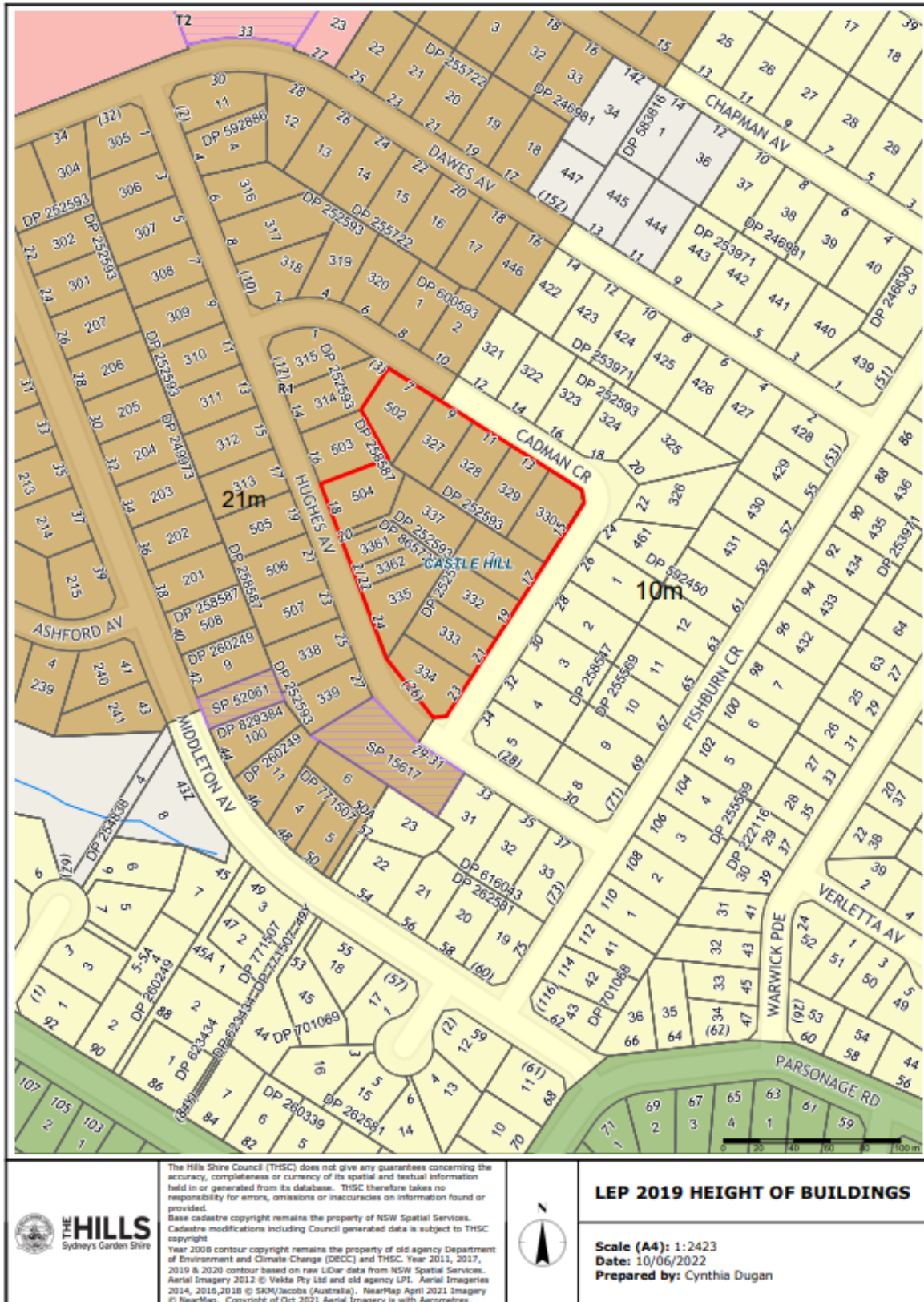
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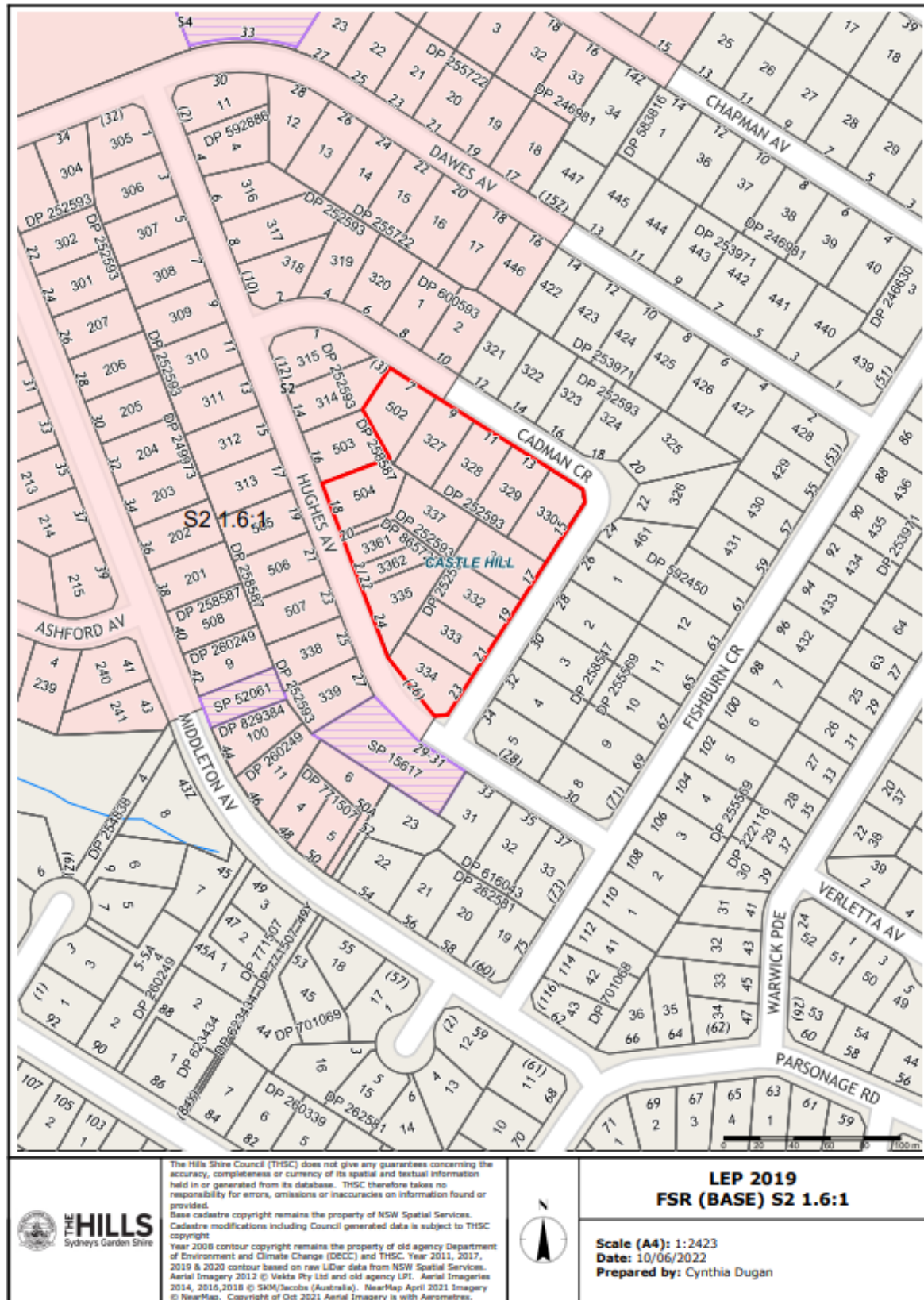
ATTACHMENT 3 – LEP 2019 ZONING MAP



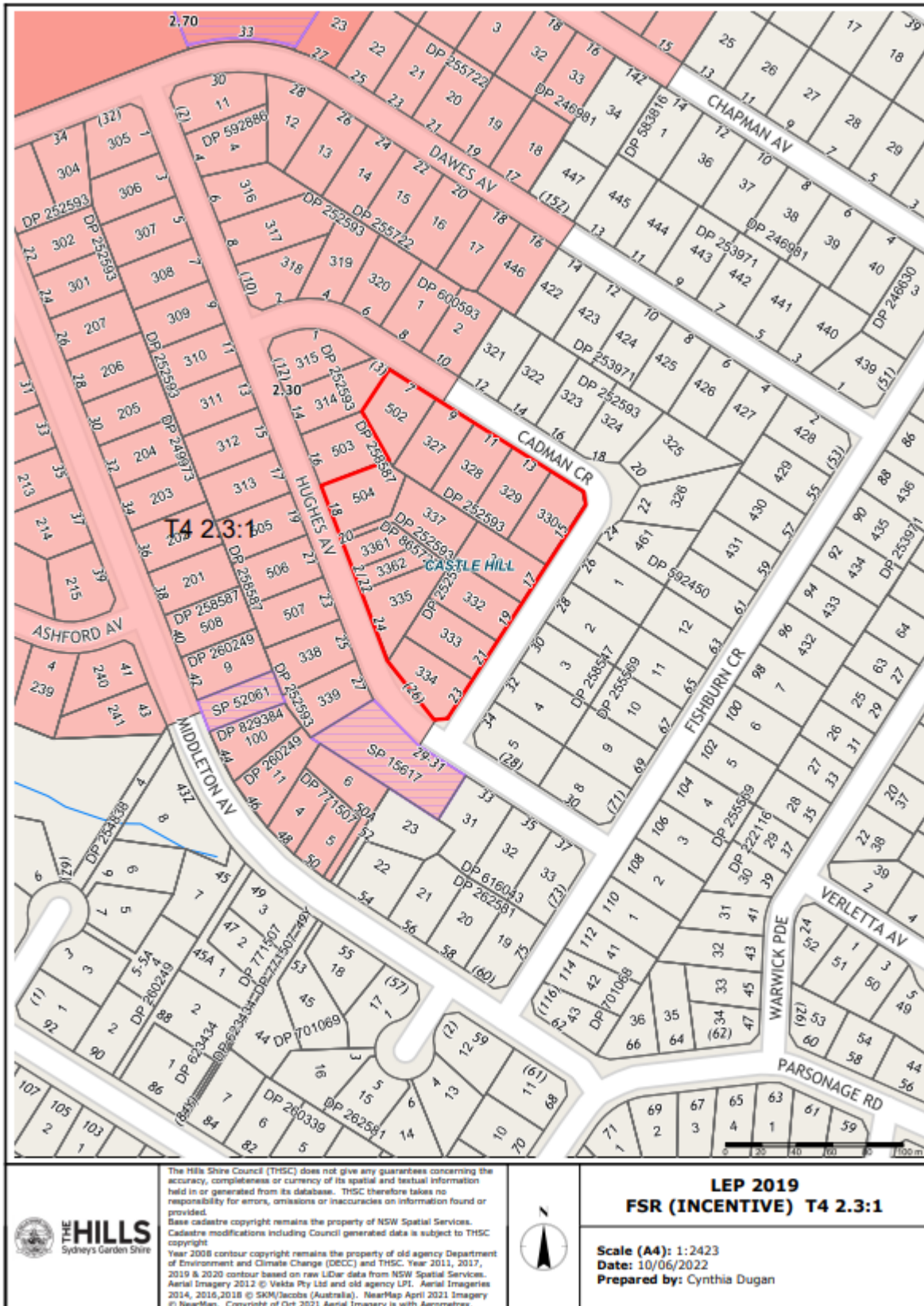
ATTACHMENT 4 – LEP HEIGHT OF BUILDINGS MAP

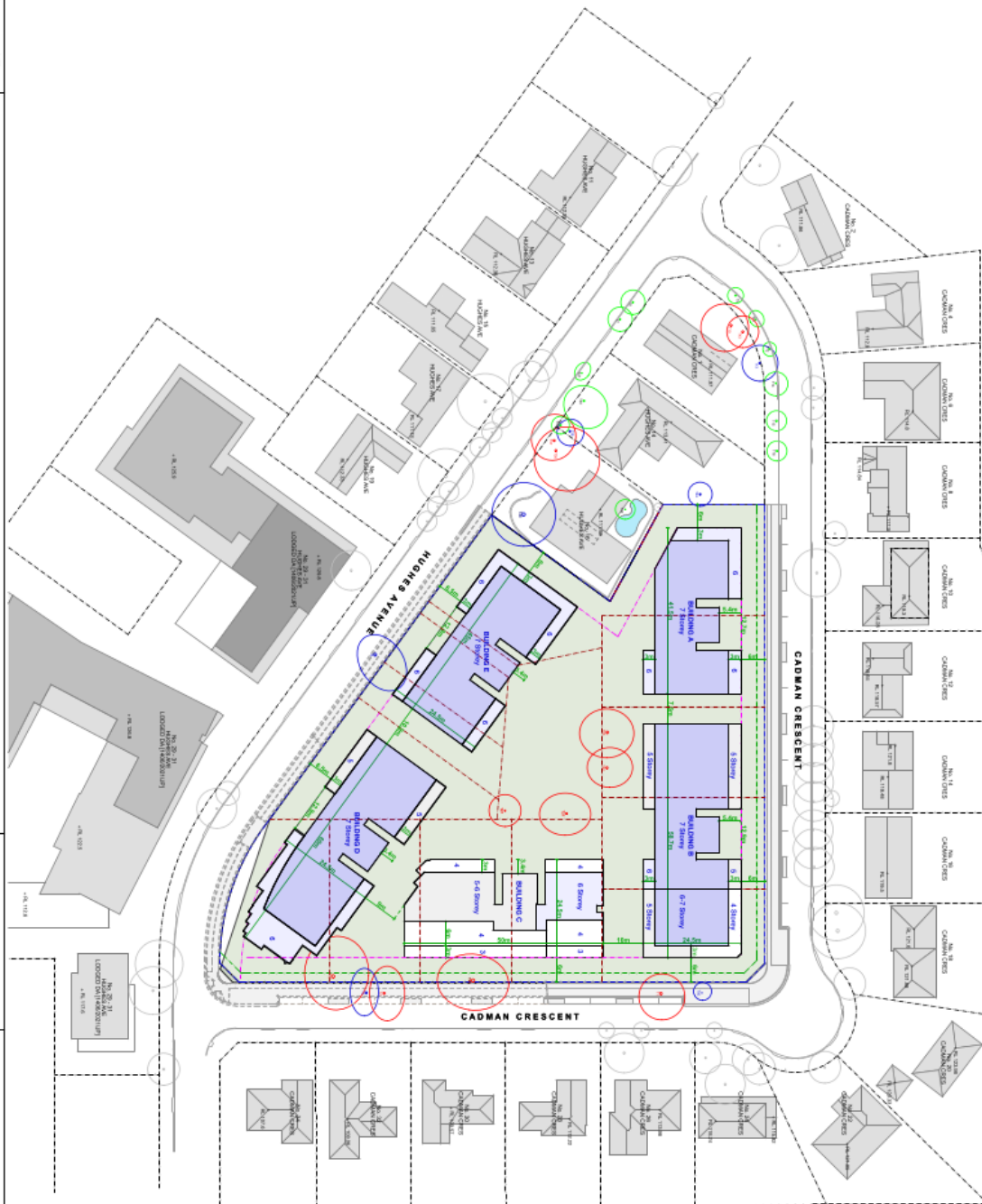


ATTACHMENT 5 – LEP FSR (BASE) MAP



ATTACHMENT 6 – LEP FSR (INCENTIVE) MAP



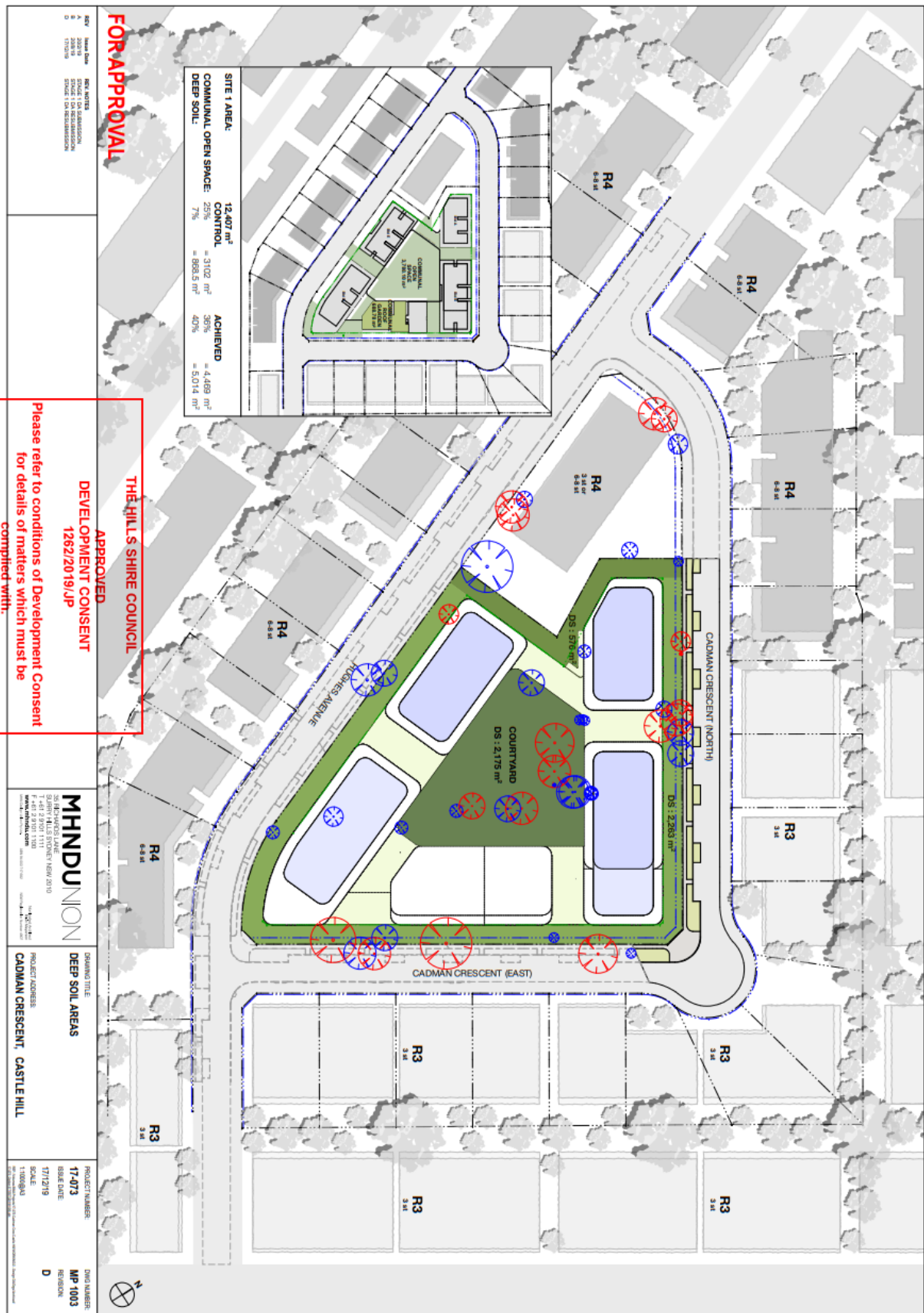
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The site plan illustrates a development bounded by Cadman Crescent (North), Cadman Crescent (East), and Hughes Avenue. It features five buildings: Building A (7 st, 41m), Building B (7 st, 37m), Building C (4 st, 24.5m), Building D (6 st, 44.7m), and Building E (7 st, 49.7m). The plan includes parking spaces, landscaping, and various setbacks. Surrounding areas are labeled R4 (6-8 st) and R3 (3 st). A north arrow is located in the bottom right corner.

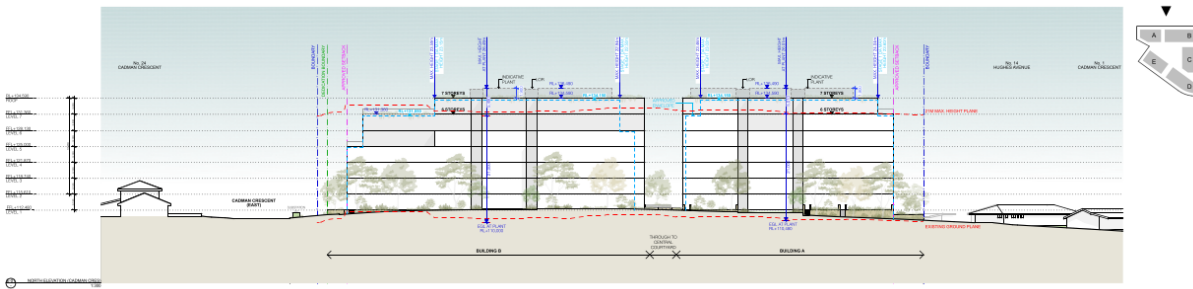
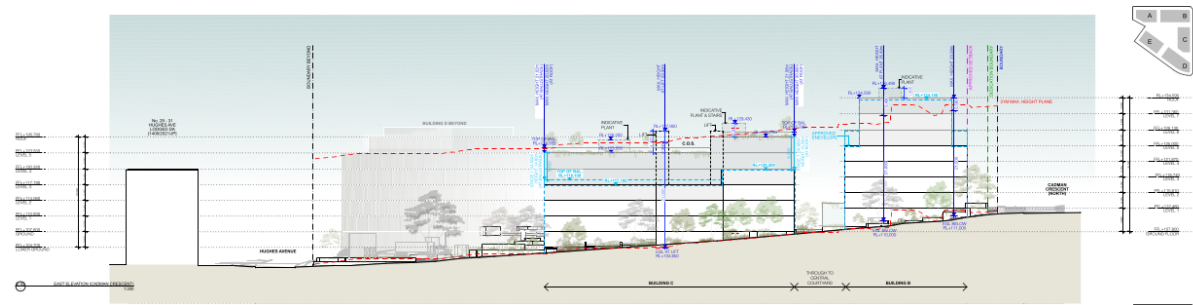
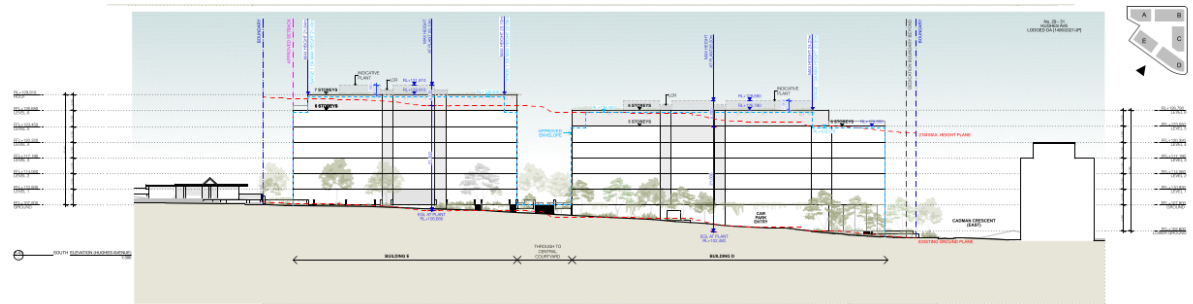
THE HILLS SHIRE COUNCIL
APPROVED
DEVELOPMENT CONSENT
1262/2019/JP

Please refer to conditions of Development Consent for details of matters which must be complied with.

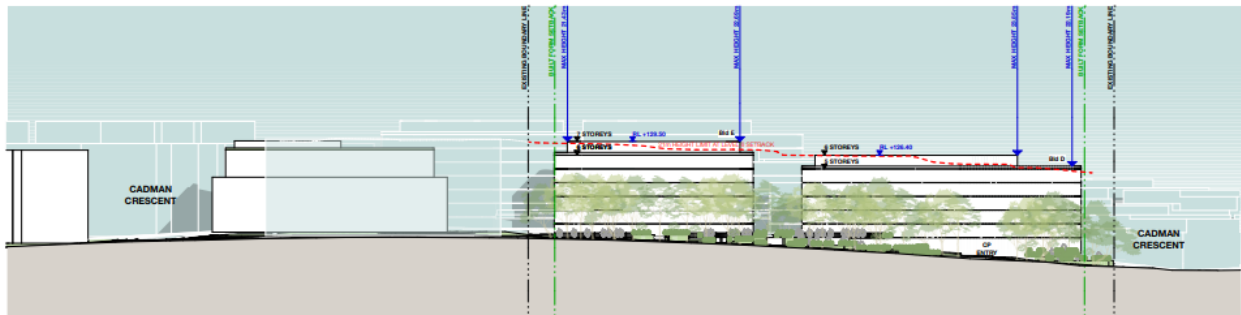
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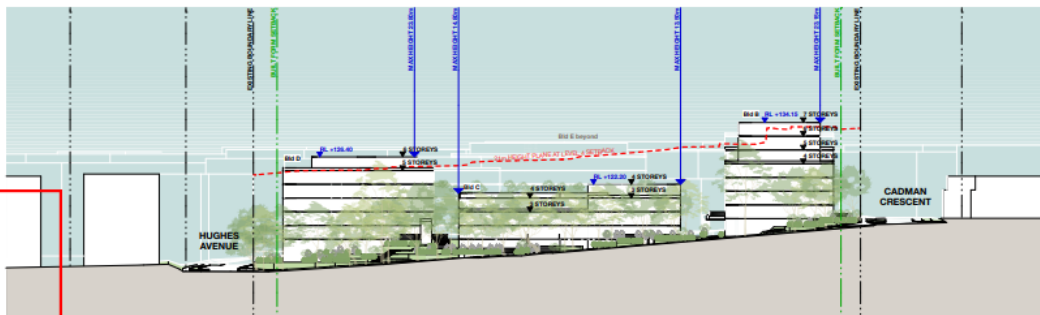
ATTACHMENT 11 – PROPOSED STREET ELEVATIONS



ATTACHMENT 12 – APPROVED STREET ELEVATIONS UNDER DA 1262/2019/JP

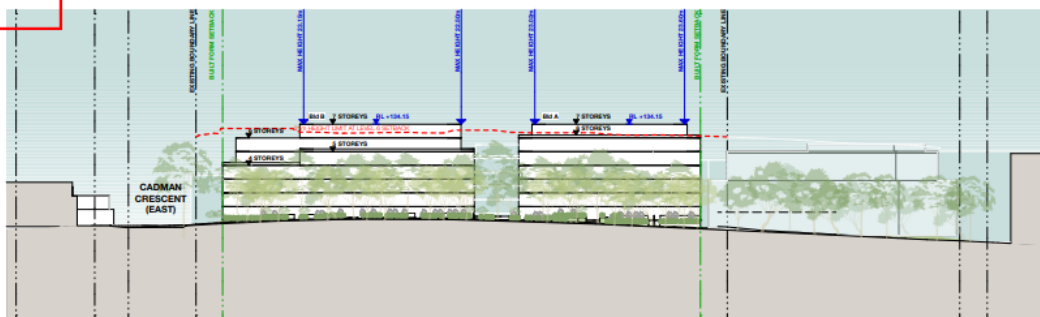


WEST ELEVATION (HUGHES)



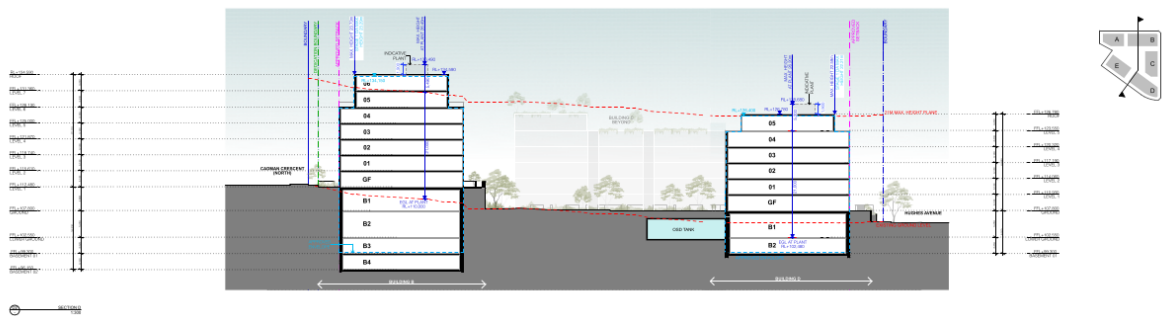
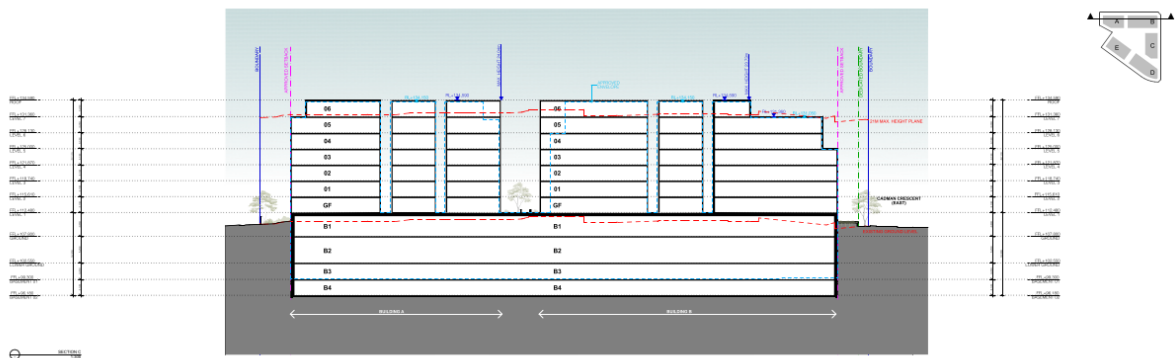
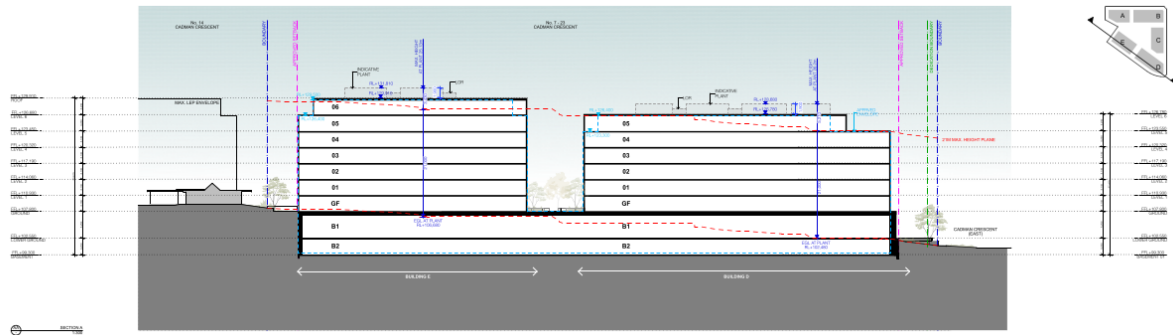
EAST ELEVATION (CADMAN)

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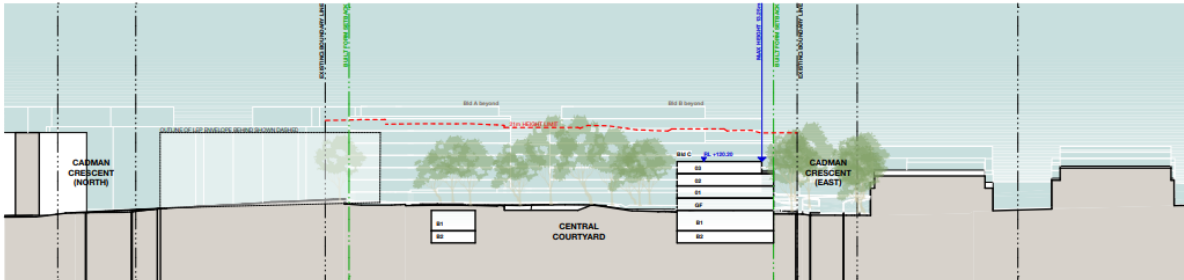


NORTH ELEVATION (CADMAN)

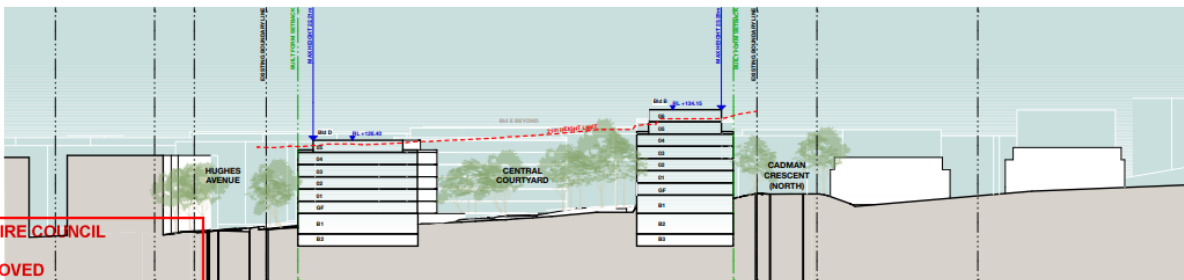
ATTACHMENT 13 – PROPOSED SECTIONS



ATTACHMENT 14 – APPROVED SECTIONS UNDER DA 1262/2019/JP



AA SECTION NORTH FACING

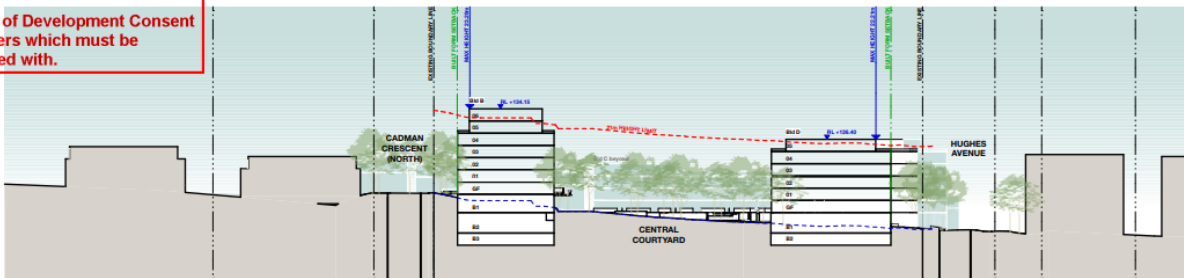


BB SECTION NORTH-WEST FACING

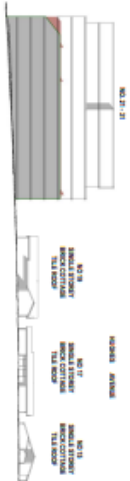
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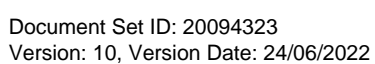
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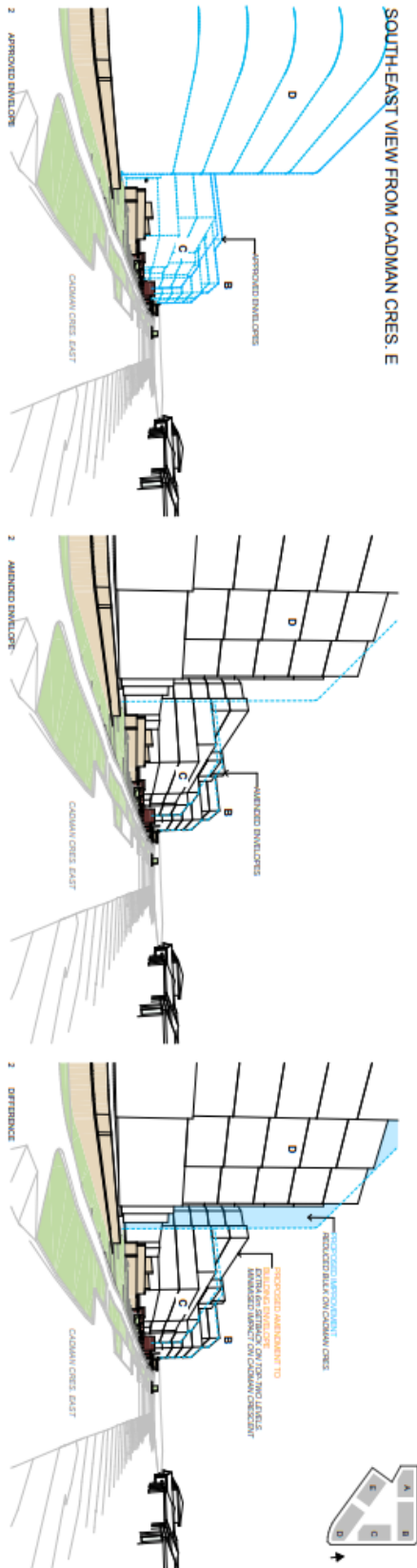
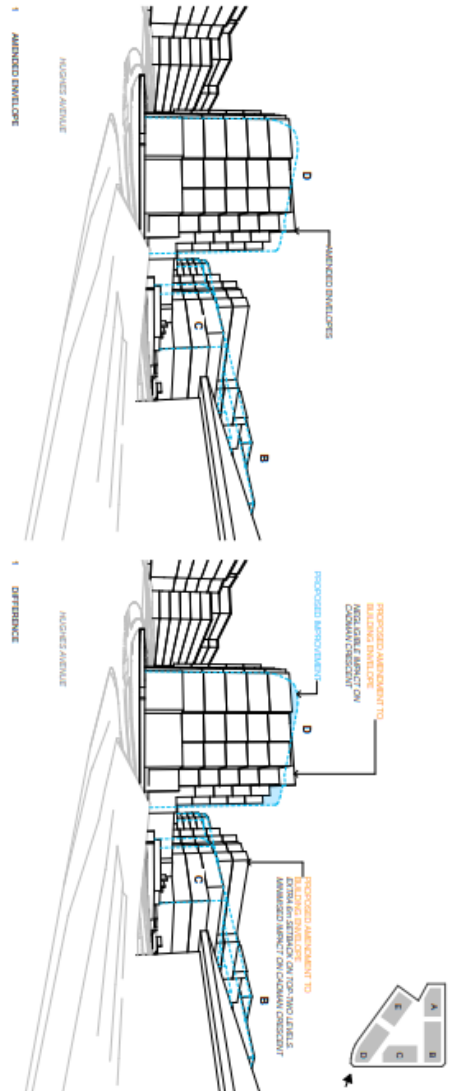
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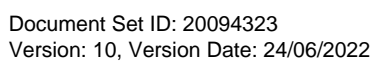




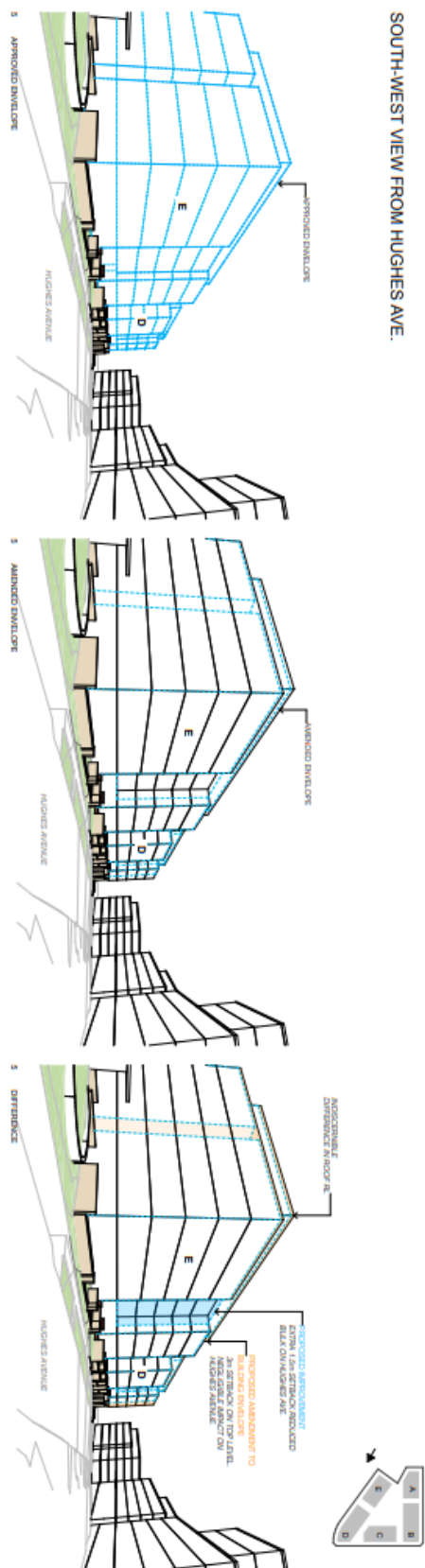
SOUTH-EAST VIEW FROM HUGHES AVE.

PROPOSED DEVELOPMENT

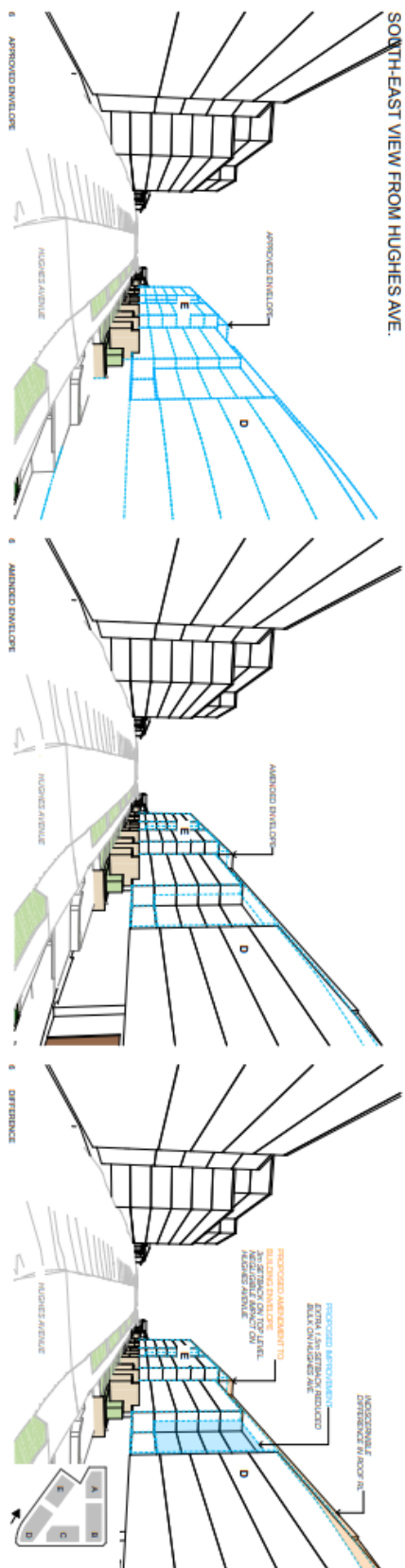
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SOUTH-WEST VIEW FROM HUGHES AVE.

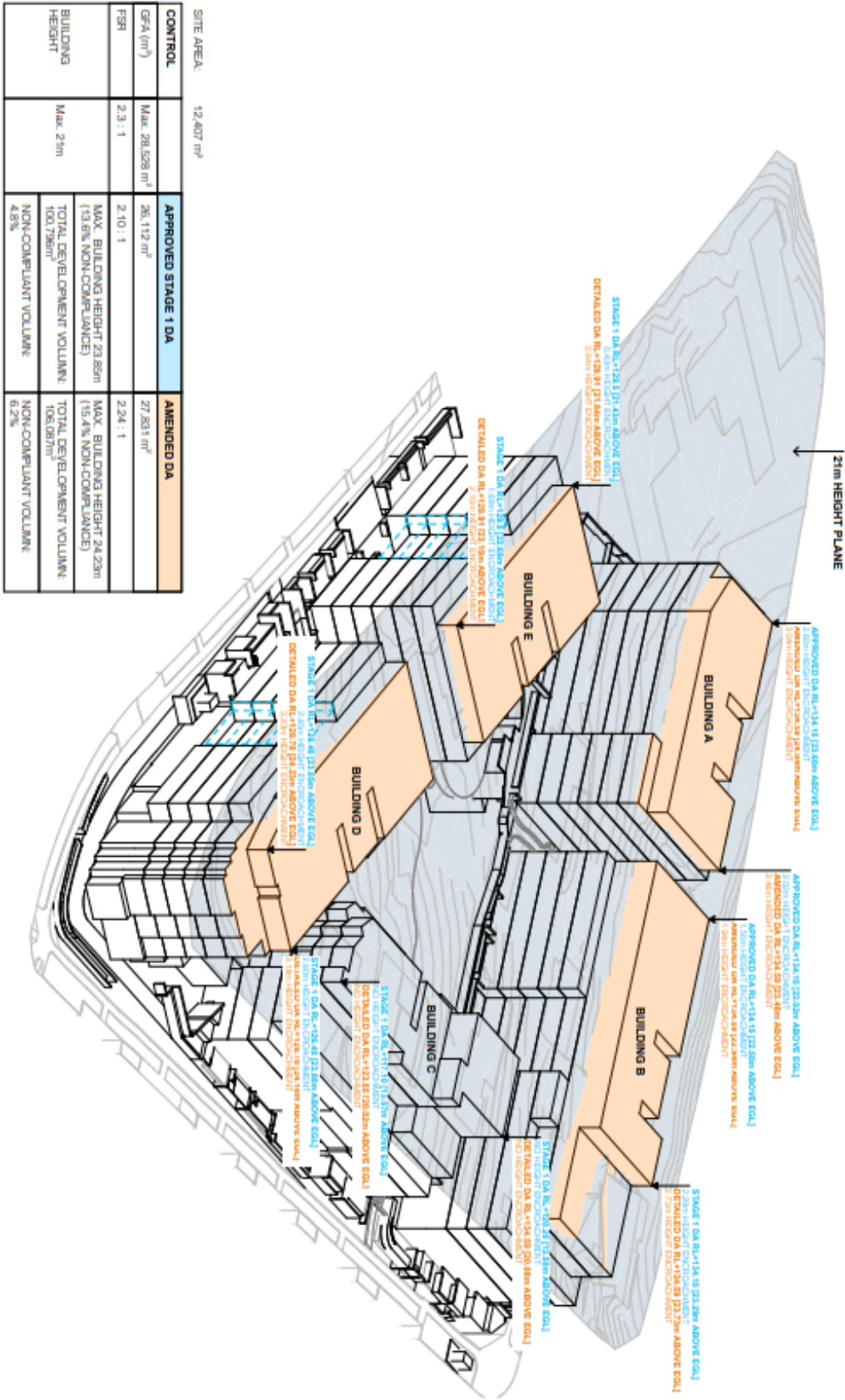


SOUTH-EAST VIEW FROM HUGHES AVE.

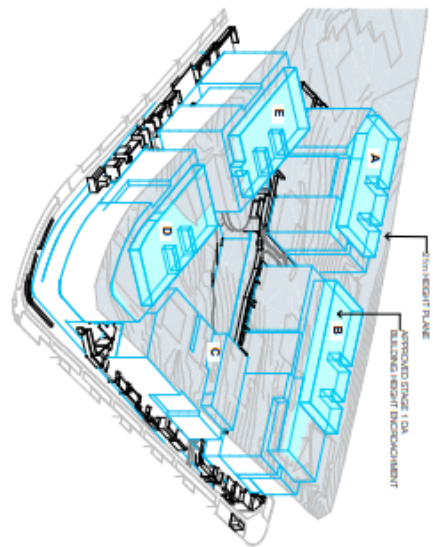


<p>REVISIONS</p> <p>DATE</p> <p>DESCRIPTION</p>	<p>FOR APPROVAL</p>		
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ATTACHMENT 17 – HEIGHT PLANE DIAGRAMS

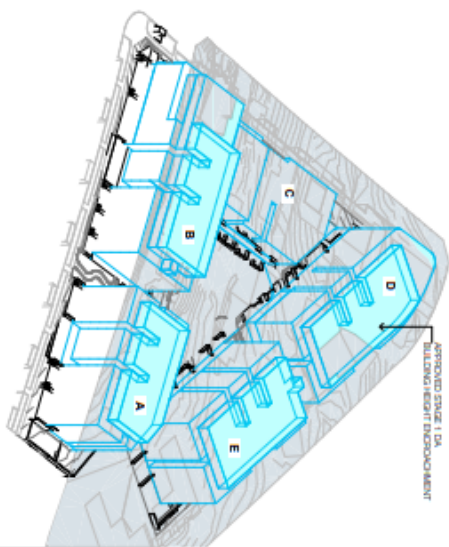


SOUTHEAST VIEW

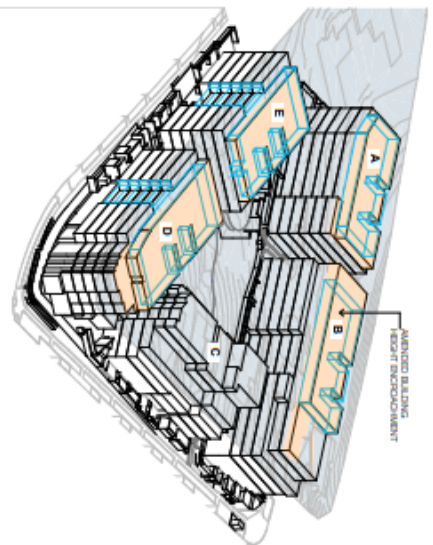


HEIGHT ENVELOPMENT - APPROVED ENVELOPES

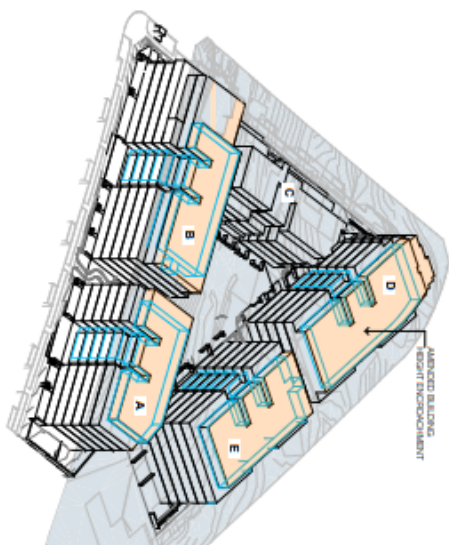
NORTH-WEST VIEW



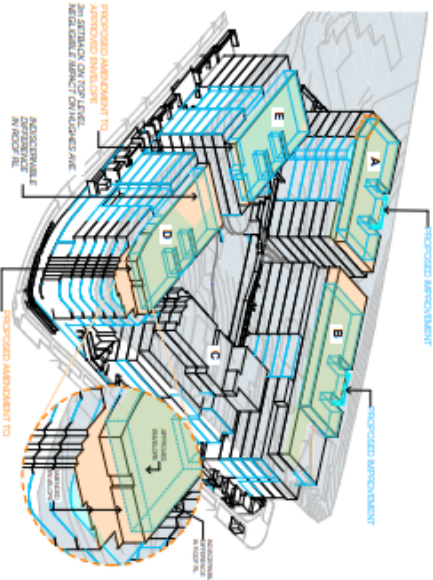
HEIGHT ENVELOPMENT - APPROVED ENVELOPES



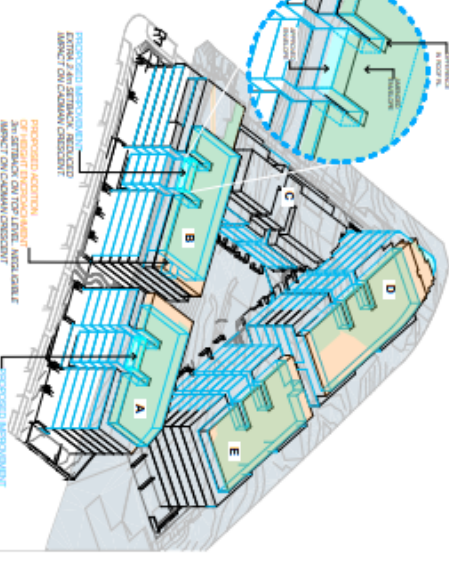
HEIGHT ENVELOPMENT - ALIGNED ENVELOPES



HEIGHT ENVELOPMENT - ALIGNED ENVELOPES



HEIGHT ENVELOPMENT - DIFFERENCE



HEIGHT ENVELOPMENT - DIFFERENCE

7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill

Clause 4.6 Variation to Height of Buildings
Amending DA to Development Application 1262/2019/JP

On behalf of
Castle Hill Panorama Pty Ltd

December 2021



1 Introduction

This Clause 4.6 variation has been prepared by Mecone on behalf of Castle Hill Panorama Pty Ltd in relation to an amending DA to Concept Development Application (DA) 1262/2019/JP at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill.

The DA will facilitate the following:

- Five residential flat buildings;
- Building heights ranging from six to seven storeys
- Land dedications to widen existing streets; and
- Landscaping and public domain treatments to improve the quality and character of the streetscape.

This Clause 4.6 variation relates to the Height of Building control in The Hills Local Environmental Plan (HLEP) 2012. Specifically:

- Clause 4.3 – Height of Buildings.

This DA provides a maximum building height of 26.49m at its greatest (RL 136.490 including plant and parapets on Building B), which represents an additional 5.49m above the permitted height control of 21m.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the HLEP 2012 enables an exception to the height standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. to provide flexibility in the application of the relevant control; and
2. to achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) through the judgment of Justice Lloyd, in

Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Wehbe).

An additional principle was established in the decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five) which was upheld by Pain J on appeal. A further recent judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

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

How these tests and considerations are applied to the assessment of variations under Clause 4.6 of the LEP and other standard LEP instruments has most recently been confirmed in the judgement of Justice Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of HELP 2012 reads as follows:

Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the*

objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

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

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

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

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

(a) a development standard for complying development,

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

(c) clause 5.4,

(ca) clause 6.1 or 6.2,

(cb) clause 7.12.

3 The Development Standard to be varied

The development standard to be varied is Clause 4.3 Height of Buildings (HoB) in HLEP 2012. As identified on the HLEP 2012 HoB Map, the site has a maximum height of buildings of 21m.

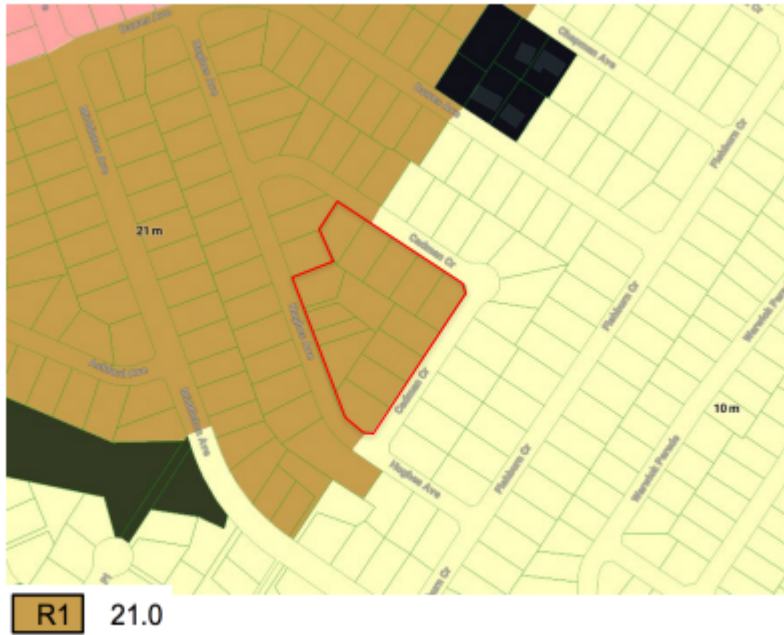


Figure 1: Height of Buildings – Mecone Mosaic
Source: HLEP 2012

4 Extent of Variation to the Development Standard

The proposal is divided into five buildings, including Buildings A, B, C, D and E. Refer to the proposed building layout below.

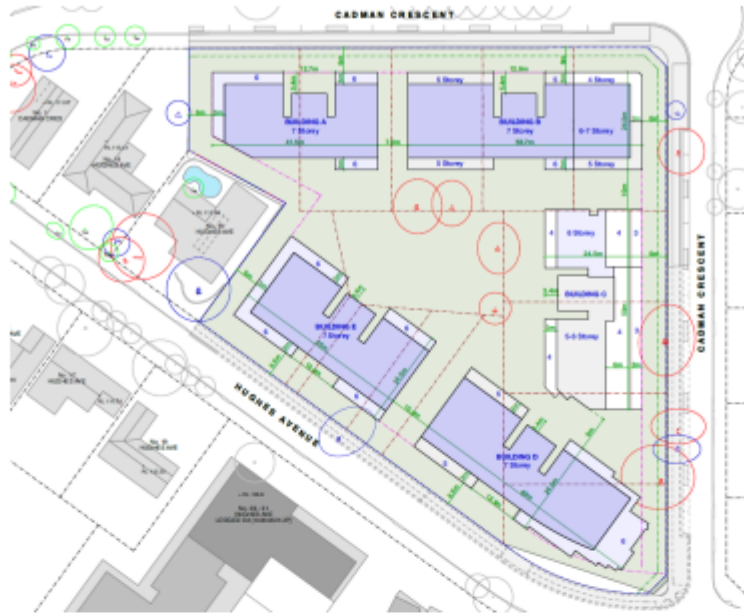


Figure 2: Building Layout

Source: MHNDU

Table 1 below provides a summary of the approved and proposed building envelope which are intended to accommodate habitable floor space. For each building, the maximum height is also shown which will include rooftop plant, parapets, lifts etc. at the highest point above existing ground level.

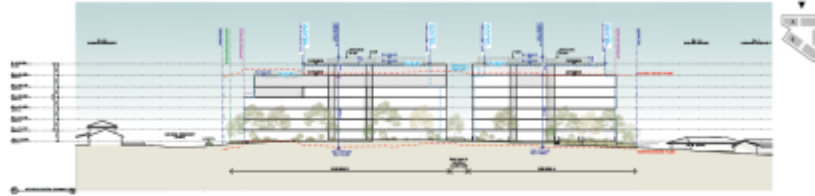
Table 1 - Summary of Height Changes

Building	Stage 1 Approved Envelope Height (m)	Amending DA Proposed Envelope Height (m) (Exc plant, parapet, balustrades, measured from Stage 1 DA EGL)	Difference in Height (measured from Stage 1 EGL)	Amending DA Maximum Building Height (Inc plant, parapets, lifts & balustrades measured from Lowest EGL in that location)	Amending DA Proposed Height of Plant/Lift (measured from top of plant/stair to proposed roof RL)	Extent of contravention at highest point (m)	Extent of contravention at highest point (%)
A	23.60	24.04	+0.44	26.01	1.90	5.01	23.85%
B	23.29	23.73	+0.44	26.49	1.90	5.49	26.14%
C	13.50	20.08	+6.58	23.30	4.40	2.3	10.95%
D	23.85	24.23	+0.38	26.20	1.90	5.2	24.76%
E	22.69	23.10	+0.41	25.13	1.90	4.13	16.67%

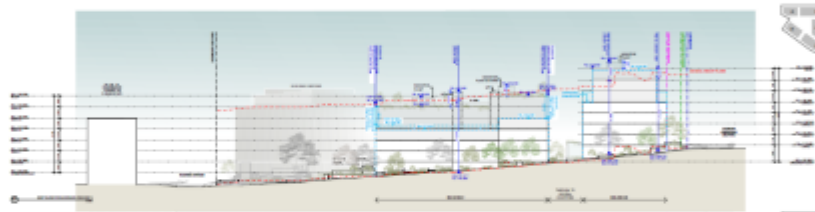
The proposed development exceeds the maximum height control at various locations across the five building envelopes, with the greatest variation of height being Building B 26.49m above existing ground level to the top of plant in that location. This represents a maximum variation of 5.49m or 26.14%.

When considering building envelope heights intended to accommodate habitable floor area, with the exception of Building C, only incremental changes have been applied to each building to accommodate additional slab width and service clearances (see attached Services Engineer Cover Letter).

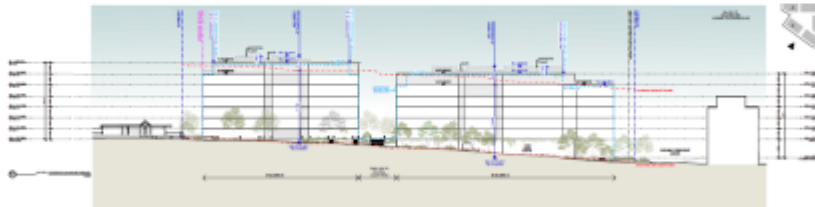
Figures 3-5 below depict the proposed building elevations.



Source: MHNDU



Source: MHNDU



Source: MHNDU

5 Objectives of the Standard

The objectives of the Clause 4.3 Height of Building 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.

6 Objectives of the zone

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

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

7 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the height standard is unreasonable and unnecessary given the following circumstances of this case:

- The built form responds to medium density residential land to the east by stepping the heights of Building B and C. Building B presents as four storeys to Cadman Crescent (east), with a stepped form to levels 5 and 6, and a further step to level 7. Building C presents as three storeys to Cadman Crescent (east), with a step back to level 4 and further step to levels 5 and 6. This approach, in tandem with the compliant height proposed for Building C (excluding plant), produces an ideal built form outcome;
- The proposed heights are a natural response to the existing topography of the site, which provides a fall of approximately 12 metres (four storeys). The topography has informed the location of height across the entire site. If a maximum height was pursued on Building C and on the southern edges of Buildings B and D, it would produce a hard transition and unsympathetically respond to the character of the area;
- The proposal redistributes building height and bulk from Building C to the adjoining buildings to improve transition to medium density land to the south. Building C's roof sits under the maximum height limit, reducing the built form along Cadman Crescent (south). The residual bulk that could be achieved on Building C has otherwise been relocated to the adjoining Buildings, which are located closer to the station and where greater development is anticipated to occur. The redistribution of the building envelope will not result in any unreasonable levels of amenity impacts to adjoining neighbours, having regard to the future quality and character of the area;
- Upper floors are recessed across all proposed buildings to reduce a hard edge to the building;
- The proposed form results in a floor space ratio of 2.24:1, below the bonus FSR provision of 2.3:1 and does not result in an over-development of the site in consideration for the density anticipated by the LEP. This is evident as the proposal meets and exceeds amenity-based controls, including solar access,

cross ventilation, landscape area, communal open space and deep soil area requirements under the ADG and DCP;

- The nature of the site is unique in that it presents a near complete island site, where a bespoke response is required to enable a quality urban design outcome and amenity for residents. In this case, concentrating the buildings on the perimeter of the site, has enabled the retention of significant established trees within a central communal open space area and landscape setbacks. The minor height increase has not resulted in any unacceptable amenity impacts in terms of overshadowing. In this regard, it is considered that the height variation would not create a precedent for the locality;
- Building C shares the greatest interface with the adjoining medium density land to the east. The form of the building reflects the scale of future development in this area, by presenting as a three storey building to Cadman Crescent (east), noting this area has a 10m height control. Substantial setbacks to levels 4, 5 and 6 restricts overlooking of future residents to the east.
- Notwithstanding the height variation the proposal is consistent with the objectives of the height standard and R4 High Density Zone as described below;
- The contravention of the height standard does not raise any matter of State or regional planning significance; and
- There is no public benefit in maintaining the standard in the circumstances of the case as explained below.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a Clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed. On appeal, Leeming JA in *Four2Five vs Ashfield Council* [2015] NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re-stating Pain J and saying:

"matters of consistency with objectives of development standards remain relevant, but not exclusively so."

Further recent findings by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 also found that:

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

There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development allows design improvements to the existing development in the following ways:

- The DA produces an overall FSR of 2.24:1, which has been arrived at from a first principles approach, rather than setting a pre-determined FSR target;

- A key aspect of adopting a first principles approach is the preservation of moderate and high value trees along the property boundaries, which significantly improves the building transition and softened edge to adjoining development;
- The additional height to Buildings A, B, D and E is warranted in that it represents a balance between maintaining a sensitive interface with land to the south while distributing greater height to the north west closest to the proposed Metro Station, without having an unreasonable impact upon the public domain and amenity of the adjoining properties;
- The proposed building heights are considered to create a sound planning outcome given they result in an improved urban transition to land zoned for medium density residential uses (including the retention of significant trees around the site boundary that will soften the built form);
- The size of the site (12,403.8m²) and unique context as an island calls for a bespoke design response, and a flexible application of the height control. Urban design principles have been utilised to achieve an optimal landscape and amenity outcome for the users of the site, whilst also respecting the amenity and interface of low density residential in the south;
- The proposal is consistent with the objectives of the ADG requirements including solar access and cross ventilation, as well as the provision of landscape, communal and deep soil zones in accordance with the DCP. The proposal does not produce an over-development of the site and ensures improved amenity can be achieved despite the transfer of additional height to Buildings A, B, D and E.
- The locality is currently undergoing a transition from large detached dwelling houses being replaced with townhouses, medium and density residential flat buildings and shop top housing developments. In recognition of this, the proposal provides reduces bulk to the eastern and southern boundaries, while ensuring taller envelopes are appropriately placed closer to the station;
- The proposal is sufficiently setback from the adjoining neighbours in accordance with the ADG (setback/building separation) requirements; and
- Given the above, strict compliance with the height controls would hinder the attainment of the objects of the Act, and would not result in the orderly and economic use and development of land.

Clause 4.6(4)(a)(ii) - Is the proposed development 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

In the court case *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Commissioner Pearson stipulates that the consent authority is to be satisfied the proposed development will be in the public interest because it is consistent with:

- a) the objectives of the particular standard, and*
- b) the objectives for development within the zone in which the development is proposed to be carried out.*

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge observed in his judgement at [39] that 4.6(4) of the Standard Instrument does not require the consent authority to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly be satisfied that the applicant's written request has adequately addressed those matters.

The objectives of the development standard and the zone are addressed below under the relevant headings.

a) the objectives of the particular standard

The particular development standard is Clause 4.3 Height of Buildings of HLEP 2012 and the relevant objectives are addressed below:

- a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*

The proposed development provides a height that is compatible with the overall streetscape. Upper level setbacks provided reduce the bulk and scale of the built form, with a highly articulated street frontage, landscaping and mature trees softening the buildings impact to the streetscape.

A bespoke design response has been utilised on the site to produce a form that responds to the function and character of the streetscape and adjoining dwellings. In particular, the site's fall has resulted in a layered profile with opportunity for architectural variation and view sharing to compliment the natural landform.

The development is appropriate to the context in that it will be similar to scale of future surrounding development, particularly as height transitions away from the train station. This has been considered in the building envelope, with heights to the south being well-under the compliant height limit.

The area is undergoing a transition with low density residential dwellings being replaced with high density development. In that regard, the proposal will be compatible with adjoining development, consistent with the future character of the Showground Precinct.

The original concept DA was supported by an Urban Design Peer review, prepared by GMU, which contends the concentration of height to the north east is a better contextual response for the site.

- b) To minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas*

This amending development application builds off the principle's established at concept stage, although minor adjustments have been made as a result of detailed design development which seek to rationalize the efficiency of the site to deliver diverse housing typologies. Despite minor changes since the concept stage, the principles and design response remain and an acceptable amenity is maintained for surrounding users.

Upper level setbacks have been intentionally adopted on the upper storeys of each building form to reduce overshadowing, visual impact and privacy around the site as a whole.

b) the objectives for development within the zone in which the development is proposed to be carried out.

The site falls within the R4 High Density Residential zone, and the relevant objectives are addressed below.

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

The proposed development achieves this objective by providing a series of high density building envelopes across the site, ranging between six and seven storeys.

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

The proposal provides for a generous housing mix and unit sizes to cater for the demands of the local area. No more than 25% of dwellings are 1 bedroom, 40% of 2 bedroom units are greater than 110m², and 49% of 3 bedroom units are over 135m².

- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.

The proposal provides for generous communal open space areas across the site, which will serve as important amenity for the residents. This includes a central courtyard and rooftop open space areas.

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

The proposal is located within Showground Station, which has recently been rezoned to provide a mix of densities within close proximity to Showground Station. The proposal achieves bespoke controls for the site, ensuring high quality residential development in a growing centre.

As discussed above the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the R4 High Density Residential zone.

8 Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

9 Conclusion to variation to height standard

This written request is for an exception to the height standard under clause 4.6 of HLEP 2012. It justifies the contravention to the height standard in the terms required under clause 4.6 of the LEP and in particular demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts. Therefore in the circumstances of the case:

- compliance with the height standard is unreasonable and unnecessary;
- there are sufficient environmental planning grounds for the contravention;
- it is in the public interest in being consistent with the objectives of the height standard and zone; and
- there are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.




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ATTACHMENT 19 – DESIGN REVIEW PANEL MINUTES

DESIGN REVIEW PANEL DESIGN ADVISORY MEETING REPORT

23rd March 2022

Items 4.1 + 4.2	9.00am – 11.45am
DA Number	DA 1110/2022/JP and DA 1112/2022/JP
DA officer	Cynthia Dugan
Applicant	Castle Hill Panorama Pty Ltd
Planner	Mecone
Property Address	7 – 23 Cadman Crescent and 18 – 24 Hughes Ave, Castle Hill
Proposal	 <p>5 residential development blocks comprising 255 dwellings and a small shop over structured basement car parking.</p>
Design review	First review of Development Applications DA 1110/2022/JP and DA 1112/2022/JP.
Background	The site has been inspected by all Panel members with Council officers
Applicant representative address to the design review panel	Name: Amanda Stollery, Project Architect Registration number: 10342
Key Issues	<p>Summary of key issues discussed:</p> <ul style="list-style-type: none"> Excessive bulk and scale Non-compliant setbacks. Building heights. Landscape design and retention of existing trees.
Panel Location	Online meeting hosted by THSC
Panel Members	<p>Chairperson - Tony Caro</p> <p>Panel Member - Paul Berkemeier</p> <p>Panel Member - Jane Irwin</p>
Declaration of Interest	None
Councillors	None present
Council Staff	<p>Paul Osborne – Manager Development Assessment</p> <p>Cynthia Dugan – Principal Coordinator Development Assessment</p> <p>Megan Munari - Principal Coordinator Forward Planning</p> <p>Marika Hahn – Urban Designer</p>

Other attendees	Adam Coburn, Mecone – Planner Erin Crane, Mecone – Planner Liam Hancock, MHNDU – Designer Amanda Stollery, MHNDU – Project Architect (10342) Angela Liu, MHNDU – Designer George Tisseverasinghe, Castle Hill Panorama Pty Ltd Paul Miron, Msquared Capital Matt Coggan – Turf design studio James Le – Turf design studio Frank Stanisic – Urban Design Peer Reviewer
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GENERAL

The Panel thanks the Applicant for the presentation of the Development Applications. The Hills Shire Council is committed to achieving design excellence in the built environment and ensuring new developments exhibit the highest standard of architectural, urban and landscape design. The Hills Shire Design Review Panel (The Panel) is an Independent Advisory Panel, approved by the Government Architect, that provides an opportunity for Applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in consideration of Development Applications.

Note: The Design Review Panel does not determine or endorse applications. The Design Review Panel provides independent design advice to applicants and council officers.

BACKGROUND

The Panel has been requested by the Applicant to review these new Development Applications (DA 1110/2022/JP and DA 1112/2022/JP), with respect to the previously approved Concept Development Application 1262/2019/JP. The Panel notes the Applicant has previously sought approval for the changes to the bulk, scale and density of the approved concept DA 1262/2019/JP via the section 4.55(2) process, however this was refused by the Sydney Central City Planning Panel. The Panel concurs with the decision made by the Planning Determination Authority.

Should the Applicant choose to modify the previous DA approval there are other assessment processes that may be able to be pursued, however the Panel notes that it is only able to provide design advice upon the applications put before them.

BACKGROUND SUMMARY

The Panel acknowledges that the Showground Precinct has been subject to a lengthy master plan process, which has resulted in the key development controls for height, density and setbacks. The Panel notes, and has advised the Applicant at the meeting, that it considers the maximum allowable FSR on this or any site in the precinct is only achievable on the proviso that the objectives of other key controls that apply to the development are achieved. In particular, the need to retain existing landscape and augment it with new plantings to maintain the landscape character of the LGA is of concern to the Panel, for reasons including visual amenity, heat mitigation, substantial provision of shade within the public domain, carbon sequester and the need to maintain flora diversity and fauna habitat.

The Panel also considers that due to the constraints of the existing road and sub-division pattern, relatively narrow street corridors and prescribed minimum DCP setbacks, all new developments must provide for substantial deep soil planting to a minimum of 15% of site area as referred to in the ADG.

The subject site is located in the southern portion of Showground Planned Precinct at the Cadman Crescent interface between the R4 high zone (6 storey) and R3 medium density zone (3 storey).



Location plan (THSC)

DOCUMENTATION

The Design Review Panel reviewed the following drawings issued to Council by the Applicant:

DA 1110/2022/JP + DA 1112/2022/JP

Architectural Plans, *Stage 1 DA Resubmission Rev Varies*, 15/12/21, by MHNDU

Shadow Analysis, 15/12/21, by CAD Draft PL

Statement of Environmental Effects: Amending Concept DA to DA 1262/2019/JP, December 2021, by Mecone

DRP Presentation, Rev A 2022, provided to the Panel 03/03/22, by Applicant team

Architectural Design Report,

Evaluation and Advisory report, dated 21 March 2018, by CBRE

Landscaping Plans, dated December 21 Issue A, by Turf Design Studio

Photomontages, provided 03/03/22, by Applicant source unknown

Plans sets 1-4, dated 9/12/21 Rev A, by MHNDU

Updated DRP presentation, provided March 23/03/22, by Applicant team

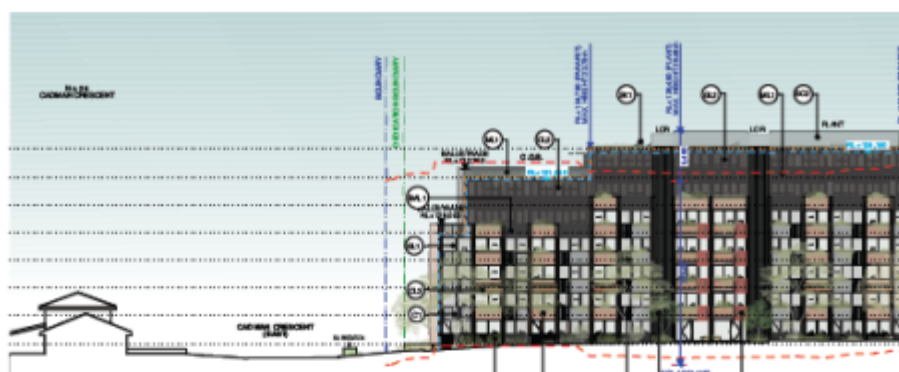
PANEL COMMENT

Amending Concept DA 1110/2022/JP and Built Form DA 1112/2022/JP

The Applicant provided an updated presentation for the DRP meeting on 23/03/22, without prior notice. The new presentation provided did not update the revision number, the page order was changed and new information was included. Unfortunately, the Panel was not provided with time to review the revised presentation. The two applications were presented and considered together at the meeting and are considered together in this Panel Report.

1. Precinct planning, appreciation and response to context

- The subject site is zoned R4 with a DCP-defined character setting and a height limit of 21m/6 storeys. Two street frontages are adjacent to R3 zones (across Cadman Crescent) with a height limit of 10m/3 storeys. The revised application now presents a relatively bulky, imposing and architecturally homogenous addition to the lower scale local context to the south and east. Whilst acknowledging the provision of upper level setbacks in Building C, the transition between the subject scheme and the lower height residential areas is now more visually abrupt (refer diagrams below).



Proposed interface with adjacent R3 zone

- The application is non-compliant with ADG building separation criteria. An example shown below indicates that the distance separation to the adjacent site to the north is incorrect and adversely impacts on the future development of the isolated site.



ADG non-compliance

- The proposal contains significant departures from the existing statutory controls that define the desired future character of the precinct. These are specified in the DCP, LEP and SEPP 65 ADG, and the applicant is advised to review and respond to these requirements.

2. Site planning and built form strategy

Site Planning

- It remains unclear to the Panel whether the proposal is relying on a change to the existing kerb alignment in the street carriageways. The applicant must resolve this separately with Council prior to further design development.
- Improved compliance with statutory controls for maximum built form length and separation between blocks should be reviewed.

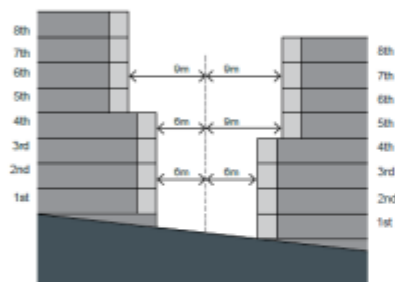
Bulk, Scale and Massing

- The development appears large, bulky and homogenous, particularly when compared to previous submissions. The lack of the required 4m setback at the 4th storey contributes to this.
- The proposed building lengths are not in compliance with the intent of the DCP control.

- The required distance separation between development blocks does not meet the objectives of or comply with the design criteria of the ADG. These should be revised to comply. Given the extent of non-compliance issues demonstrated, a complete review of the ADG by the applicant team is recommended.



ADG Figure 3F-2



ADG Figure 3F-4

Objective 3F-1
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Design criteria

1. 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 are 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)

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

Objective 4F-1

Noise transfer is minimised through the siting of buildings and building layout

Design guidance

Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses (see also section 2F Building separation and section 3F Visual privacy)

ADG Design Criteria

- The pervasive non-compliance with statutory controls results in a perception of overwhelming density, bulk and scale the development presented to the street and the central open space.
- The street interface appears to have walls in excess of 2m in height of substantial length. This is not considered to offer a fine grained and active street frontage.
- The building form, layout and character is generally typical of development across most parts of metropolitan Sydney, and the Panel requests further description identifying how the design has been informed by the locality, climate and context of the Hills district.



Massing provided by applicant

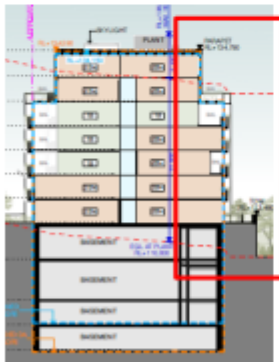
Site Coverage/ Landscaped Open Space

- Final site coverage and landscaped open space, communal open space, and deep soil zone (DSZ) provisions to be provided to Council's Landscape and DA Officers.
- Courtyards that encroach into the front setback must be excluded from landscape area. This is to be resolved with Council's landscape officer. Hard surface courtyard encroachments into street setbacks are generally not supported by the Panel.

3. Compliance

Height

- The Panel does not generally support LEP height non-compliance. The proposal exceeds the LEP control by up to 24%. The Panel is not convinced of the merit of this height exceedance.
- The interface with the internal courtyard shown below demonstrates how the height exceedance detracts from the original character setting and place making of a human scaled fined grained development outcome for this part of the precinct.



Interface to internal courtyard



Elevation of interface to internal courtyard

- The applicant is reminded that the future character defined by DPE and incorporated into the DCP is for a 6-storey built-form outcome in this part of the precinct, with higher development located closer to the Metro Station. The subject site is within the southern part of the precinct, interfacing a three-storey zone.
- The Panel recommends that height be reduced as the proposal is not considered to be successfully resolved with the likely future context.

Density

- Compliance with the LEP FSR controls is required. If the incentivised FSR provisions in LEP cl.9.7 are sought by the applicant, compliance must be confirmed to Councils satisfaction.
- This application presents non-compliances with significant deviation from the controls. The built form is consequently considered to be of a scale, and bulk that is inconsistent with the overall precinct objectives.
- It should be noted that the Panel is not adverse to the applicant seeking a permissible density, however this should not be at the expense of acceptable urban, environmental and residential design amenity outcomes for the precinct.

Setbacks

- The proposed development does not comply with the setbacks specified in the DCP. The setback control is a character setting control put in place to enable achievement of the principles of ecologically sustainable development. This is consistent with the strategic directives of the Greater Sydney Metropolitan Plan **A City in its Landscape: Planning priority C16 Objective 3 - Urban tree Canopy is increased** and directive **Adapting to the impacts of urban and natural hazards and climate change: Planning priority C20 Objectives; 36 People and places adapt to climate change and future shocks and stresses, and 38 Heatwaves and extreme heat are managed.**
- In addition, the ground level courtyards encroach into street setback and fail to meet the DCP intent precluding the ability to plant tall canopy trees with a landscaped understorey.
- The Panel considers that ADG minimum building and boundary separations and DCP setbacks should be complied with (including basements and balconies). The applicant is advised to amend the drawings to achieve compliance.

Apartment Mix and Building Design

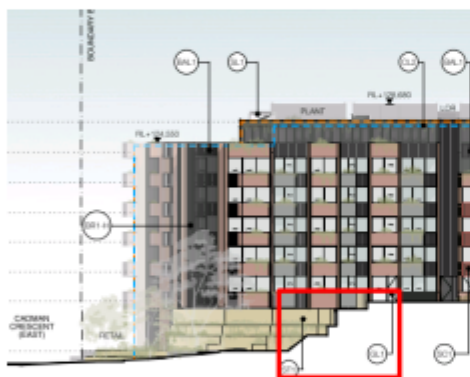
- The Panel does not support apartments that are located below the adjacent public domain be it the street frontage or internal courtyard area. This is for reasons of visual privacy, natural ventilation and solar access
- All BCA fire egress requirements are to be resolved and clearly documented to the satisfaction of council prior to the final DA submission.
- All apartments are to be accessible from a lobby that is directly visible and accessible from the street frontage for that development block.

4. Landscape Design.

- The proposal is not consistent with The Hills garden landscape character setting.
- There should be a stronger presence of mature trees and concomitant deep soil provision in setback zones to ensure that the development is sited within a landscape setting of canopied trees. The setback should be sufficient to accommodate trees that will be large scale at maturity.
- The Panel notes that the reliance on street tree planting by Council to support the statement of achieving a tree canopy of 40% is unrealistic and greater consideration should be made to providing trees within the site boundaries. The required 7.5m primary setback to the street provides sufficient room for tall canopy tree planting to occur in the front setback.
- It is noted that the applicant has not provided a 7.5m street setback. The Panel recommends the applicant follows the controls clearly defined in the DCP.
- The Public Domain documentation is incorrect. The Panel recommends this be revised in consultation with council officers to meet the public domain requirements of the DCP. The Panel notes that this is the first applicant that has demonstrated considerable trouble with following this directive.
- Landscape architectural and engineering drawing sets are to be coordinated and this documentation is to be provide to Council's landscape officer for approval prior to DA submission.
- The stated landscape vision: **• Extending the headwater of Cattai Creek • Re-establishing a diverse native landscape • Connecting with the natural and cultural landscape • Creating a**

Natural Oasis, is not realised as the landscape design appears to rely on retention of existing trees and street tree planting in the council verge to achieve diversity and canopy density.

- The use of endemic tree species and those related to the existing cultural landscape is not evident: this was clearly highlighted in the species selection of decorative palms. The landscape design presented is not closely related to the context, as stated in the vision. A better interpretation of the context of Cattai Creek could demonstrate a better understanding of country, the existing cultural landscape or natural landscape features.
- The Panel recommends that a significantly higher quantum of large, high canopy peripheral trees be provided around the edges of the site, to meet the requirements of a high density residential environment in a strong, verdant landscape setting.
- The Panel notes that privatised courtyard areas encroach into the front setback and should be removed.
- The lift overruns documented are detrimental to the public domain and a more discreet lift with an internalised machine room should be considered
- The southern corner entry to the site at Cadman Crescent and Hughes Avenue is convoluted and results in small passageways of 3m for pedestrians as a result of the balcony encroachments at the ground level and 7m between building facades. The Panel recommends this be widened to comply with ADG distance separation and wind analysis as required be undertaken noting the built form is 6-7 storeys on either side of this opening.
- It is unclear why entry into the central court is not able to be made at ground level from the street and why there is a rise of 5.25m. Using the specified building lengths and stepping slaps would aid in successfully designing to the site topography.



Rise of 5.25m



Narrow passageway of 3m between built form

Private Domain

- For a proposal of this size, high quality communal open space design is essential, in keeping with the place-making principles of generous and quality places outlined in the DCP.
- The Panel supports the proposed genuine deep soil zone within the central courtyard, noting that the deep soil provision has diminished substantially from what had been formerly presented in the previous concept DA to a numeric total that achieves compliance with the ADG.
- The Panel noted that the built form is very close to the proposed retained existing trees which may impact the health and stability of the trees. If the applicant truly intended to retain the trees then the design would ensure that the built form was not located within the tree drip line.
- The panel recommends that provision is allowed for taller growing trees in the courtyard, to make allowance for the potential for existing trees to fail, and ensure that a tall canopy is visible from the street.

- OSD tanks should not be placed in the common open space area - typical locations that other development in the area adopts include under driveways or in the basement.
- The panel commends the intention to make the swimming pool a natural pool, and would encourage the inclusion of habitat planting in association with the pool.

5. SEPP 65 items to be clarified or revised:

The Panel notes that compliance with ADG objectives and design criteria is a minimum requirement to achieve Design Excellence.

Compliance with ADG design objectives and criteria per building block is to be clearly demonstrated.

Apartment Design Guide

The following sections inform site specific statutory controls. The controls were developed with consideration to the SEPP and the ADG as required in legislation as such should be upheld.

2C Building height

2F Building separation

2G Street setbacks

2H Side and rear setbacks

ADG compliance is not adequately demonstrated in many key areas including:

3C Public domain interface

3D Communal and public open space

3F Visual privacy

3G Pedestrian access and entries

4A Solar and daylight access (compliance to be confirmed with planner per development block)

4B Natural ventilation (compliance to be confirmed with planner per development block)

4H Acoustic privacy

4J Noise and pollution

6. Sustainability and Environmental amenity

- The Panel notes that environmental ADG design criteria are required to be met to achieve design excellence.
- The Panel notes a natural pool has been proposed. It was not demonstrated whether or how this would be permissible.

7. Architecture and Aesthetics

- The Panel notes that this is the first time that a drawing set that illustrates an architectural vision and character has been presented for this development.
- The Panel does not support the approach of a single architectural identity/character for all of these buildings. There is a monolithic quality to the development that is not helped by the height exceedances and a lack of horizontal articulation in the street and internal facades. The scheme does not demonstrate a convincing approach to architectural diversity and fine grain.
- The Panel supports the material palette as presented, and recommends that the materials and finishes specified are included in conditions of consent.
- Some material tags are not cross referenced in the schedule such as SC3 and C2. The Panel recommends that all items with a material designation are cross referenced in the Legend. This clarifies what is being proposed.
- Finishes should be identified by brand and/or material, not only by colour- note.

- The Panel is concerned with the internal presentation of the built form to the internal court. The intended character setting of a 6 storey built form outcome is not realised and the bulk and scale of the built form is overwhelming, adversely impacting on the human scale of the internal court area.
- The location of the car parking ventilation shafts is to be clearly identified prior DA assessment. The Panel recommends that the ventilation shaft should not be adjacent to or exhaust into any communal open space area. Typically, the ventilation shaft are incorporated in the building fabric and vent out at roof level.
- The corridors leading to the central court at 14.5m long and 1.7m wide and open to the sky. It is questionable if these would be nice spaces.

- The Panel all utility services elements in the public domain are to be suitably screened and integrated into the building fabric. The locations and manner of detailing is to be shown on DA plans submitted for assessment. Refer to the following fact sheets provided by council for guidance:

[https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact sheet - building design site facilities - services.pdf](https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact%20sheet%20-%20building%20design%20site%20facilities%20-%20services.pdf)

-

- It is noted the courtyards to the Hughes Avenue frontage encroach substantially into the street setback and are not supported. This is not in keeping with the objectives of the DCP and the clearly defined desired future character of the precinct.

SUMMARY OF PANEL RECOMMENDATIONS

- The Panel advises the site planning be reconsidered and revised to better comply with statutory and other controls.
- Revise the scheme to comply with the height control controls.
- Revise the scheme as required to comply with building setbacks.
- Revise the scheme as required to comply with compliant building lengths.
- Avoid subterranean units and sunken terraces.
- Provide more diversity in the built form and character of various buildings.
- Provide updated information demonstrating ADG compliance, in particular building separation, solar access, natural ventilation, balconies and shadowing of ground level

Further information may be required by the Development Assessment team to aid with their assessment of the development.

PANEL CONCLUSION

The Panel does not support the proposal in its current form as the proposal does not meet the requirements of design excellence. It should be noted that the Panels role is advisory only, and the applicant may elect to proceed with the DA assessment as it sees fit.

ATTACHMENT 20 – APPLICANT’S RESPONSE TO DESIGN REVIEW PANEL REPORT INCLUDING URBAN DESIGN REVIEW AND LEGAL SUBMISSION



2 June 2022

Mr Michael Edgar
General Manager
The Hills Shire Council
3 Columbia Court
Baulkham Hills NSW 2153

Attention: Cynthia Dugan – Principal Coordinator Development Assessment

Dear General Manager,

DA 110/2022/JP and DA 1112/2022/JP Response to Design Review Panel Feedback

This letter has been prepared by Mecone on behalf of Castle Hill Panorama Pty Ltd, who is the proponent of land at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill (refer to Figure 1).

Thank you for the opportunity to provide a formal response to the Design Review Panel Design Advisory Meeting Report dated 23 March 2022. Pursuant to *Clause 9.5 of the Hills Local Environmental Plan*, we understand that the consent authority is required to take into account the findings of the Design Review Panel (DRP). Our response to the DRP is as follows:

Acknowledgement of Concept DA Process

The Concept DA (supported by the DRP and approved by the Sydney Central Planning Panel (SCPP) on 20 February 2020) established the approved building envelopes, including bespoke street setbacks which enabled a built form response which prioritised a large central courtyard and the retention of large established trees on site.

The Concept DA was approved pursuant to Division 4.4 of the Environmental Planning and Assessment Act 1979, which notes in 4.23 (2):
...if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

As such, the approved Concept DA must be considered as the appropriate reference point for building envelope controls and setbacks, as an alternative to the DCP. Legal advice, prepared by SWS is provided at Appendix 2 which supports this position.

It is acknowledged that some design amendments have been made since the approved concept DA, as a result of design development and legislative changes. These changes are the reason for a joint submission of an Amending DA (to seek amendments to the



approved concept) in tandem with a Stage 2 Detailed DA. When compared to the approved concept, material design changes within these DAs are limited to:

1. The addition of 2 half floors on Building C

This additional floor space is compliant with the LEP height control and is substantially setback from the street, exceeding the DCP setback requirements.

2. Marginal increases in building heights across all buildings

To accommodate additional slab thicknesses and structural beams as per services engineering advice, resulting in increased heights ranging from 0.38-0.44m to buildings A, B, D and E.

3. Marginal reduction in separation between Buildings A & B

Reduction in building separation between Buildings A and B only, from 10m in the approved concept to 7.6m.

Due to the planning process undertaken, it is disappointing to observe several comments raised by the DRP which are entirely unrelated to the proposed amendments. Despite the Concept Pathway pursued, the DRP have mistakenly raised concern with key design elements which have been previously approved as part of the Concept DA. As such, we ask Council and the SCPP to apply discretion when considering the DRP comments, specifically comments made regarding setback compliance on page 7 and elsewhere throughout the meeting report.

Design Improvements

Notwithstanding the design changes acknowledged above, we emphasise that there are several design improvements which have been made since the approved concept DA, which largely were not acknowledged or commented on by the DRP. These include:

- The inclusion of 60m² complementary retail space on the ground floor of Building D, providing street activation and amenity to site users and surrounding residents
- Increased provision of communal open space, including rooftop communal open space on Buildings B and C
- Increased building articulation to provide visual breaks in building length
- Improved solar access and cross ventilation compliance
- Detailed and resolved architectural plans, finishes schedule and landscaping design package which provides a genuine commitment to design excellence and high-quality features.

Compliance Summary

We note the DRP's assertion that the proposal presents "a pervasive non compliance with statutory controls" (p5 DRP report). With respect to the DRP's experience as design professionals, we strongly refute this comment and urge Council and the SCPP to refer to the detailed compliance assessment tables which were provided with the DAs. We have provided a summary below for reference. Please refer to the respective compliance tables and Statement of Environmental Effects submitted with the DAs for detailed discussion on these matters.



Table 1: Compliance Assessment Executive Summary		
The Hills LEP 2019		
Provision	Control (summary)	Proposed
2.1 Land Use Zone	R4 High Density	Complies Shop top housing is permissible with consent
4.1 Minimum lot size for residential flat buildings	3600m ² for buildings >11m	Complies Lot size is 12407m ²
4.3 Height of Buildings	21m	Variation Proposed Refer to detailed Clause 4.6 Variation Request submitted with DA
4.4 Floor Space Ratio	1.6:1	Complies Proposal seeks incentive FSR under CI 9.7.
5.4 Controls to misc. permissible uses	Neighbourhood shops limited to 100m ²	Complies Retail space is 60m ²
7.10 Residential Development Yield on Certain Land	Additional FSR (2.3:1) permissible if unit mix and parking rates met	Complies Entirely compliant refer to SEE
9.1 Minimum Lot Sizes or Residential Flat Buildings and Shop Top Housing	3600m ² for buildings >11m	Complies Lot size is 12407m ²
9.2 Site Area of Proposed Development Includes Dedicated Land	Site area includes area for dedication	Complies
9.4 Development Requiring the Preparation of a Development Control Plan	Requires the preparation of a DCP for sites >3600m ²	Complies The Hills Shire Council Development Control Plan 2012 Part D Section 19 Showground Station Precinct applies to the land. However, the approved Concept DA is the appropriate reference point for the approved building envelopes and setback response pursuant to Division 4.4 of the Environmental Planning and Assessment Act.
9.5 Design Excellence	Proposal is required to be referred to the Design Excellence Panel.	Complies The proposal has been referred to the design excellence panel and the consent authority is required to take into account the findings of the DRP.
9.7 Residential Development Yield on Certain Land	Incentive FSR 2.3:1	Complies Max FSR 2.24:1 proposed
9.8 Maximum Number of Dwellings	Max 5000 dwellings in Showground Precinct	Complies
Apartment Design Guide		
Provision	Proposed	



Table 1: Compliance Assessment Executive Summary	
Part 2F Adequate Building Separation	<p>Consistent with ADG – Performance Solution Proposed</p> <p>Proposed building separation, up to 7 storeys:</p> <ul style="list-style-type: none"> • 7.6m between A & B • 10m between B & C • 9m between C & D • 11m between D & E <p>Refer to SEPP 65 Compliance Table submitted with DA for detailed discussion on protection of visual and acoustic privacy, and compliance with ventilation and solar controls.</p>
Part 2G Street Setbacks Part 2H Side and Rear Setbacks	<p>Consistent with ADG</p> <p>Bespoke street setbacks adopted on approval of Concept DA. Setbacks to immediately adjoining residential lots enables future separation compliance.</p> <p>Refer to SEPP 65 Compliance Table for detailed discussion.</p>
Part 3B Orientation	<p>Consistent with ADG</p> <p>Overshadowing of adjoining properties is not reduced by more than 20%. Solar access to adjoining properties is greater than 2 hours during mid-winter.</p>
Part 3D Communal Open Space	<p>Consistent with ADG</p> <p>37% (4605m²) of the site is provided as COS. 51% of the principle usable open space receives 2 hours sunlight mid-winter.</p>
Part 3E Deep soil zones	<p>Consistent with ADG</p> <p>The development provides 1161m² of deep soil, 9.4% of the site area as per the minimum 6m ADG dimension. When considering deep soil which does not strictly meet the dimension requirements, a total of 3320m² or 26.8% of the site is deep soil.</p>
Part 3F Visual Privacy	<p>Consistent with ADG</p> <p>6m setback provided to adjoining properties to enable future building separation compliance. Significant design measures have been adopted between buildings to enable visual and acoustic privacy. Refer to SEPP 65 compliance table and SEE for detailed commentary.</p>
Part 3J Bicycle and Car Parking	<p>Consistent with ADG</p> <p>Bicycle and vehicle parking provided in excess of THLEP and DCP requirements.</p>
Part 4A Solar and Daylight Access	<p>Consistent with ADG</p> <p>71% of units achieve 2 hours sunlight mid-winter. Only 8% of units across the entire development receive no direct sunlight between 9am and 3pm mid-winter.</p>
Part 4B Natural Ventilation	<p>Consistent with ADG</p> <p>86% of units achieve natural cross ventilation.</p>
Part 4C Ceiling Heights	<p>Consistent with ADG</p> <p>A minimum of 2.7m ceiling height has been provided to habitable rooms, and 2.4m to non-habitable rooms.</p>
Part 4D Apartment size and layout	<p>Consistent with ADG</p> <p>Fully compliant with minimum ADG unit sizes, as well as specific controls in THLEP.</p>
Part 4E Private open space and balconies	<p>Consistent with ADG</p> <p>Fully compliant with ADG minimum size and dimensions, integrated into the building design.</p>
Part 4F Common Circulation and Spaces	<p>Consistent with ADG</p> <p>No more than 8 units accessed off one services core.</p>



Table 1: Compliance Assessment Executive Summary

Part 4G Storage	Consistent with ADG Fully compliant with storage provisions and no more than 50% located within the basement.
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With the exception of Building Height, the proposal is entirely compliant with THLEP. A detailed 4.6 Variation Request has been submitted with the DA which addresses this matter at length. The proposal is also entirely consistent with the aims of the ADG. Where a minor numerical non-compliance is proposed (separation between internal buildings only), this has been justified at length with performance-based design solutions which protect visual and acoustic privacy. We request that this evidence-based compliance assessment be considered by Council and the SCPP on merit, despite the DRP's comments suggesting pervasive non compliance.

A DCP compliance table has also been submitted with the Detailed DA, which addresses Part D Section 19 – Showground Station. This assessment finds the proposal entirely consistent with the objectives of the DCP. As the approval pathway includes a Concept DA, some numerical non compliances and performance-based solutions are proposed, including street setbacks, the merit of which was established upon approval of the Concept DA as an alternative to a site specific DCP.

Urban Design Peer Review

The proponent has engaged the services of an Urban Designer to undertake a peer review of the scheme, and review the DRP meeting report. A copy of the comments from Frank Stanistic have been provided with the letter at Appendix 1. The report provides thorough responses to the matters raised by the DRP and expert feedback on the appropriate design responses contained within the scheme. The report supports the position that consistency with the principles of the Approved Concept Plan should be the first touchstone which applies in the assessment process, and not the numeric controls within the DCP.


The report concludes that:

The high standard of the urban design in the proposal underpins the thoughtful and this well-crafted approach to architecture in the Showground Precinct. The proposal is a sound foundation for further design development and should be supported by the Hills Shire Council.

Conclusion

We trust this information is of assistance to you and will help inform your recommendations to the SCPP. If you wish to discuss these matters further, please do not hesitate to contact me at (02) 8073 4677 or acoburn@mecone.com.au.

Yours sincerely,



Adam Coburn
NSW Director



Appendix 1: Urban Design Report



Cadman Crescent Castle Hill

Urban Design Review

Application:

Stage 2 DA + Amending Concept DA

Address:

7-23 Cadman Crescent Castle Hill NSW

Client:

Castle Hill Panorama Pty Ltd

Author:

Frank Stanistic, LFRAIA ARB NSW 4480

Issued:

31 May 2022

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Source:

Design Review Panel Presentation Rev. A March 2022, prepared by MHNDUNION and consultant team

1. Purpose of review:

The focus of this Urban Design Review is to address key issues raised by The Hills Design Review Panel in its Design Advisory Meeting Report of 23 March 2022. This report was prepared in response to two Development Applications at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill ("the site") and with respect to the Approved Concept Plan DA (DA 1262/2019/JP):

- Amending Concept DA (DA 1110/2022/JP)
- Stage 2 DA (DA 1112/2022/JP)

The Stage 2 DA is predicated on an approval of the amendments to the Approved Concept Plan DA.

The key urban design issues discussed are excessive bulk and scale, non-compliant setbacks, building height exceedance and lack of diverse character.

The development forms part of the Castle Hill Showground Precinct redevelopment. The area of the subject development site is 12,407sqm. The site is zoned R4 High Density Residential under The Hills LEP 2012 with a maximum 21m HOB (6 storeys), maximum 2.3:1 FSR and base 1.6:1 FSR. A Concept Plan DA was lodged on 20 February 2019 and approved for five residential flat buildings comprising 228 apartments, 2 levels basement parking and associated landscaping.

My perspective encompasses the Approved Concept Plan DA as it is the first touchstone which applies in the assessment process, and not the numeric controls within the DCP. The Approved Concept Plan DA varies the DCP numeric controls relating to street setbacks, secondary setbacks and façade lines. A clause 4.6 Variation Application has been submitted by the applicant for the LEP height non-compliances.

The Stage 2 DA proposes 27,842sqm of residential GFA (2.24:1 FSR), 255 apartments, 357 carparking spaces and reduced setbacks between buildings. The proposed GFA has an additional 1,781sqm compared to the GFA of the Approved Concept Plan DA. The proposed 255 apartments is more than the dwelling cap of 228 granted by the Approved Concept Plan DA.

The Stage 2 DA and Amending Concept DA for the site represents an opportunity, not only to deliver quality development, population and amenity within close proximity to the rail station, but enable an architecturally responsive built form.

This Urban Design Review overlaps in some areas with a review of architectural design, but this is only to be expected for an interwoven and multi-layered urban development such as this. Subsequently, every effort has been made to not to stray from the brief.

The Applicant has reviewed the comments from the Design Review Panel in the Design Advisory Meeting Report of 23 March 2022 and has proposed amendments to the Stage 2 DA, clouded in blue.

This Urban Design Report was based on review of the following documentation:

- Stage 2 DA revision D of 16/5/22 prepared by MHNDUNION.
- Design Advisory Report of 23 March 2022 prepared by The Hills Design Review Panel.
- Design Review Panel Presentation of March 2022 prepared by MHNDUNION and Turf.
- Architecture Design Report - Stage 1 DA, Rev D 17 December 2019, Cadman Crescent, Castle Hill, approved Development Consent 1262/2019/JP prepared by MHNUNION and consultant team.

2. Bulk + scale:

Relationship to adjoining development on Cadman Crescent East

The project provides suitable bulk and scale when viewed from the street and central communal courtyard. The development is neither 'bulky' or 'imposing' with 'reduced amenity in the lower scale local context' as asserted by the Hills Design Review Panel.

The bulk, scale and proposed density (and associated FSR of 2.24:1, an increase of 1,781sqm for the Approved Concept Plan DA) is appropriate for the site and remains below the maximum permissible FSR of 2.3:1.

The proposed additional bulk and scale to Building C on Cadman Crescent East is inconsequential from the public domain, when compared to the Approved Concept Plan DA. The proposed upper two levels of building C are setback 15.3m from the site boundary to address the zoning interface at Cadman Crescent East.

The proposal provides a more graded urban transition between the site and the existing dwellings and future built form in the R3 Medium Density Residential Zone when compared to the Approved Concept Plan DA. The LEP permits a maximum building height of 10m (3 storeys) in the R3 Zone within the compliant envelope, which is interfaced with low rise 4 to 6 storey built form of Building C, below the LEP maximum building height of 21m. The additional setback of 3m at level 2 at the zoning interface is consistent with ADG guidelines. The stepped built form with roof gardens provides improved amenity for residents without being visually intrusive from the public domain when compared to the DCP compliant envelope.

The design of the southern corner entry at Cadman Crescent East and Hughes Avenue is constricted and should be widened to increase building separation and improve the pedestrian access to the central communal courtyard. This redesign would also result in reduced bulk and mass at this key junction.

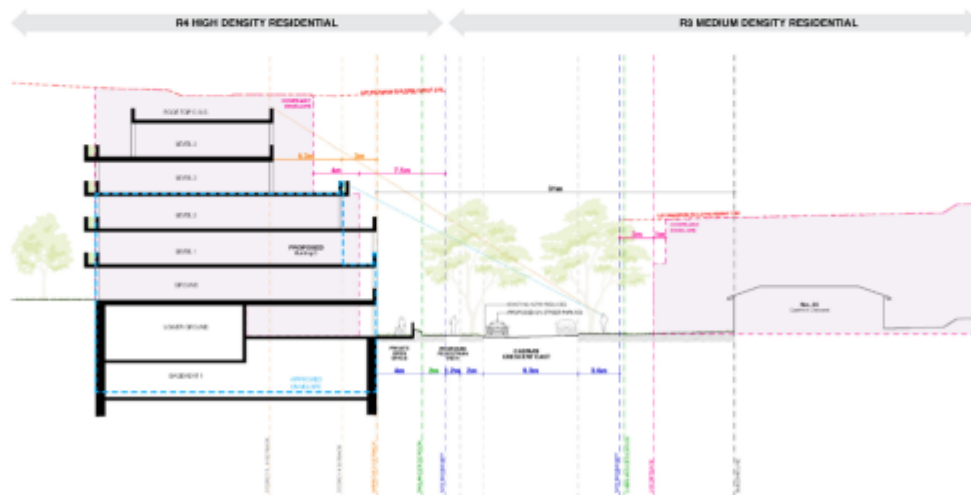
The proposed increase of 27 (12%) to 255 apartments in the Amending Concept DA compared to 228 apartments in the Approved Concept Plan DA is insignificant. The increased population is minimal and supported by the ample communal open space in the form of landscaped open space in the central courtyard and on roof top gardens of building C.

01.03 HEIGHT AND DENSITY

DA1 PRESENTATION REV A | 15

Setback & Street Interface (Cadman Crescent East)

Streetscape Proportions and Zoning Transitions



SADHAN PRESENT SUSTLE HILL | DEVELOPMENT APPLICATION

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Figure 1: Cadman Crescent East - p.15

3. Building separation:

Building separation

The proposed buildings achieve the objective of the ADG in relation to building separation. The building separation distance between Buildings A and B has been reduced from 10m to 7.6m as shown in the Approved Concept Plan DA and this separation has been maintained in the proposed Stage 2 DA.

The façades of the 7 storey facing walls of Buildings A and B are designed to function as non-habitable to non-habitable rooms. Direct sight lines, privacy and overlooking are all carefully considered to ensure that amenity objectives are achieved whilst generally maintaining building separation of 6m between non-habitable rooms up to 4 storeys (approx. 12m height) and 9m between non-habitable rooms up to 8 storeys (25m height). Privacy screening and planters are incorporated into the façade design to maintain privacy and articulation.

The building separation between Buildings A and B has been reduced to provide for larger family apartments that achieve the dwelling mix in the Hills LEP. The reduced building separation is offset with careful consideration of ADG guidelines relating to sight lines, visual and acoustic privacy, overlooking and natural ventilation. Similar strategies are used between the facing walls of Buildings D and E with the 11m building separation.

The reduced separation between Buildings A and B also reduces sunlight into the central courtyard which is the centre piece of the project. It also increases the 'wall effect' of the bounding buildings. This is compensated in part by the roof garden on Building C, which receives sunlight all year round. Building separation between Buildings D and E to the neighbouring isolated sites at 14 Hughes Ave, 16 Hughes Ave and 1 Cadman Crescent do not strictly comply with the ADG, but comply with the Approved Concept Plan DA. ADG objectives are achieved with negligible amenity impacts.

The predominant facade line is set back 6m from the northern boundary at 14 and 16 Hughes Ave. Minor façade elements encroach the 6m setback to achieve objectives of the ADG achieving privacy and mitigating overlooking.

It would be beneficial to prepare an outline concept design complying with the development controls for the R4 Zone to show the impact on the development potential of the neighbouring isolated sites at 14 Hughes Ave, 16 Hughes Ave and 1 Cadman Crescent, due to the reduced boundary setbacks of adjacent Buildings A and E.



Figure 2: Amenity - p.41

Building setbacks

Due to the irregular shape and three street frontages of the island site, strict compliance with the DCP setbacks would unreasonably limit the development potential and reduce the central communal courtyard of the site. The street setbacks comply with the setbacks in the Approved Concept Plan DA.

The primary setbacks have been reduced to 6m from 7.5m on all side boundaries. The 7.5m setback would reduce the size of the central communal courtyard and amenity for residents and is acceptable to Council's DRP. The reduced setback to Hughes Avenue is also considered acceptable subject to suitable planting in the street setback and provision of tall canopy trees.

The 3m setback for the upper two levels of each building that exceeds 5 storeys in the Approved Concept Plan DA is maintained and achieves the desired built form of the site.

Street interface

Street access to ground level apartments is provided with planters along the street to break down the scale and contribute to an active street frontage, while ensuring safety and security.

Use of sandstone offers a fine grain in materiality at street level and emphasises a strong base as a podium. Various types of planting is provided at street level to provide fine grain detail to the street frontage.

The street interface to Hughes Street is not conducive to good design and can be improved by redesigning the elevation and creating an activated street address and fine grain articulation to apartments of building E and reducing the height and length of the 2m high wall.

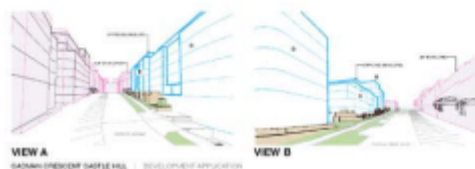
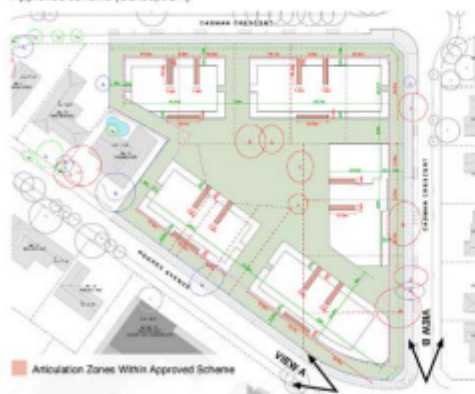
The four apartments on the south part of building D above the carpark can't be accessed directly from Hughes Ave due to safety and change of levels. Alternative access is provided around the corner via the prominent site entrance.

01 02 HEIGHT AND DENSITY

DRP PRESENTATION REV A | 14

Increased Setback & Articulation

Approved scheme (Concept DA)



Proposed scheme (Amended DA & Detailed DA)

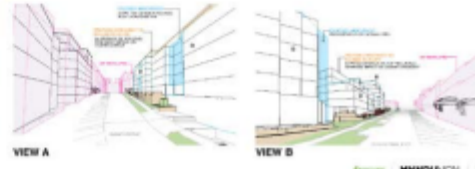


Figure 3: Articulation - p.14

Building length

All buildings comply with the DCP building length requirement in built form design.

The maximum building length is 64m (Building D, including all articulation, building elements). A 3m deep x 13m wide central indentation is provided, along with a tapering edge at the street corner.

The proposed buildings have significant central indentations compared to the envelopes of the Approved Concept Plan DA.

Internal central courtyard

The height of buildings A, B, D and E around the central courtyard generally complies with the heights in the Approved Concept Plan DA, above the LEP 21m HOB.

The bulk and scale of the 4 to 7 storey buildings around the central courtyard is relieved by breaks between Buildings A and B, Buildings D and E, and the lower and stepped height of Building C. The internal presentation of the built form to the internal courtyard maintains a human scale and fine grain.

The central courtyard and roof gardens provide ample open space for increased population on the constrained site. The architectural design has been carefully coordinated with the landscape design to break down the perceived scale and enhance the fine grain quality of elements and spaces at the courtyard interface. The central courtyard creates a strong sense of community, offers excellent amenity to its occupants and outlook from apartments.

The ground level of Buildings A and B in the central courtyard is skilfully designed with a sandstone base wall that screens the basement parking, adds scale to the building walls, encloses the central courtyard and reduces bulk.

010 LANDSCAPE & PUBLIC DOMAIN

001 PROPOSED SECTION A | 26

Central Open Space Section



010 LANDSCAPE & PUBLIC DOMAIN | DEVELOPMENT APPLICATION

001 PROPOSED SECTION A | 26

Figure 4: Central Open Space - p.34

3. Building heights:

The emphasis of the Design Review Panel in its comments to reduce the approved heights from the Approved Concept Plan DA is misplaced and contrary to statutory entitlements. Equally, their concern with minimal height exceedance can undermine the potential benefits for improved resident amenity and design improvement.

The building heights varied from 4 to 7 storeys consistent with the Approved Concept Plan DA. The proposed max. building height for all buildings is 24.23m when measured from the ground plane to the plant areas, while the max. permissible LEP height plane is 21m, resulting in max. height exceedance for Buildings A to E of 15.4% compared to 13.6% in the Approved Concept Plan DA.

The height exceedance of the two half levels of Building C facing Cadman Crescent East in the proposed Stage 1 DA and detailed DA is below the 21m LEP height plane. The proposed building heights to Building C acknowledge the zoning interface and have reduced height and increased setback at Cadman Crescent East adjacent to the R3 Zone.

The height exceedance of Buildings A and B facing Cadman Crescent North in the Approved Concept Plan DA varies from 1.5m to 2.6m above the 21m LEP height plane, increasing to 1.94m to 3.04m in the proposed Amending Concept DA; height exceedance in Buildings D and E facing Hughes Avenue in the Stage 1 DA is 0.43m to 2.85m increasing to 0.84m to 3.23m in the proposed Detailed DA; and no height exceedance in Building C facing Cadman Crescent East.

The height exceedance above the approved height of the Amending Concept DA and Stage 2 DA is 0.44m for Buildings A and B, 0.38m for Building D and 0.41m for Building E. This increase in height is marginal and due to an increase in the floor-to-floor heights for services and results in no additional floor space.

Detailed streetscape studies, massing and analysis of envelope amendments to Hughes Ave, Cadman Crescent East and Cadman Crescent North prepared by the Applicant demonstrate that the proposal has negligible additional visual impact on R3 Zone and will create an improved urban transition. Comparison of the Approved Concept Plan DA and proposed Amending Concept DA show that the envelope amendments have negligible impacts on the public domain.

The height exceedance and lack of horizontal articulation in the street and internal facades is not significant and does not contribute a monolithic quality to the development.

01 02 HEIGHT AND DENSITY

DEVELOPMENT REVIEW | 18

Building Height - Quantitative Analysis

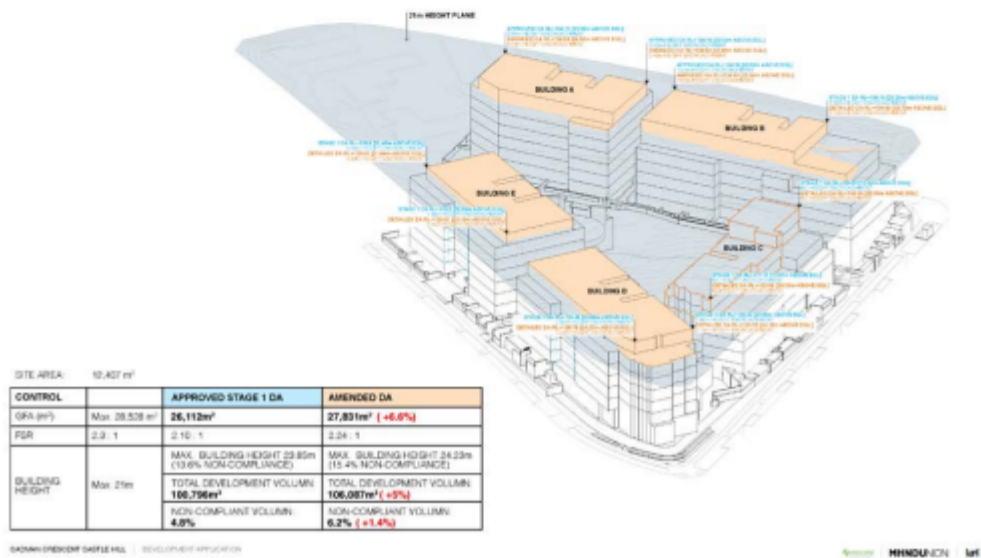


Figure 5: Building Height – p.25

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Castle Hill Panorama Pty Ltd 8 / 11

4. Character:

Diversity

The existing suburban character of wide, heavily landscaped streets, tall established trees, face brick bungalows and tiled roofs is noted by the Applicant. The desired future character is projected to be mid-height, urban scaled buildings with warm coloured elevations, framed walls and screened facades with generous communal open space as detailed in The Hills DCP.

The developed architectural expression of the proposal is in fact more diverse than the future character in the DCP with a coordinated palette of materials, elements and details related to apartment types such as garden terraces, canopy apartments and sky terraces; related to the base, body and sky; and regulated in a vertical spectrum that extends from suburban to urban.

The building aesthetic and material selections are heavily influenced by local characteristics and buildings. Facades are individually designed in response to specific site conditions and individually considered according to location and context to produce a diverse architectural expression. The artist illustrations from the public domain and central communal courtyard project highly modulated and articulated facades with vertical blade walls that are based in brick construction.

The projection of generous overhanging planting on private balconies and roofs is effective in reducing the perception of bulk and scale of the built form but will also be difficult to manage and maintain by occupants.

The prominence of the two lift cores on the roof of Building C contradicts the urban design strategy to underscore the impact of the two new levels from the public domain. While being important architectural elements, the lift overruns increase the bulk and scale of Building C when viewed from the public domain. The relocation of the lifts in the recesses closer to the central courtyard (similar to Buildings A and B) or use of a transit lobby would be more compatible with the broader design intent.

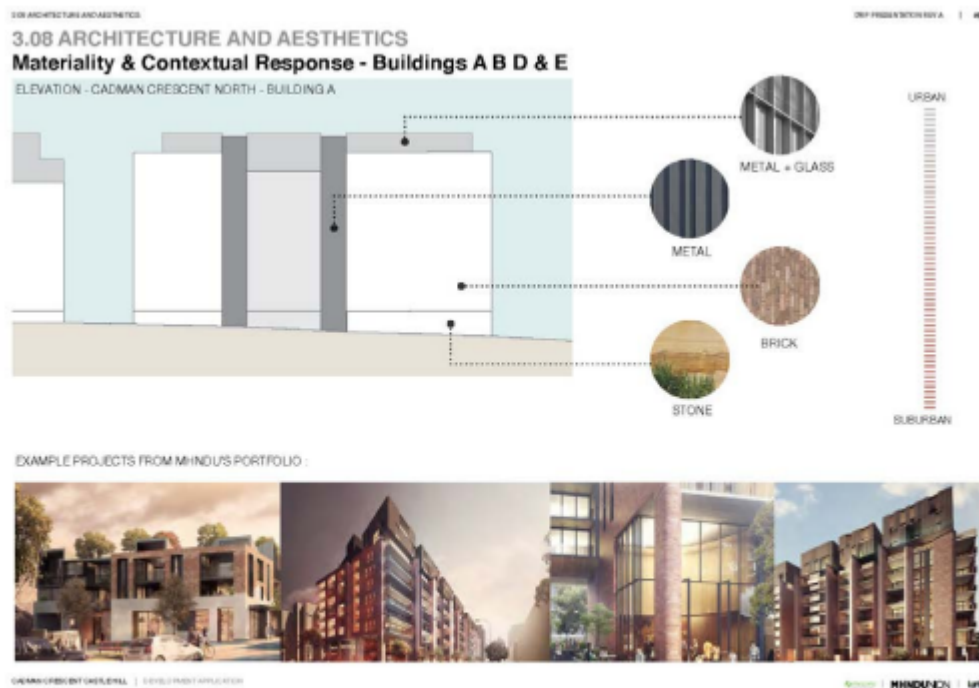


Figure 6: Diversity - p.49

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Materiality

While at first glance the aesthetic appears to be red face brick, the material palette includes sandstone retaining walls, red face brick walls with horizontal and vertical patterns, matt red metal cladding and screening, timber screening and louvres, copper cladding, charcoal brickwork, metal lattice, screening and palisades, and natural off form concrete.

The façade design varies with orientation and context. The built form is predominantly face brick but utilises a diversity of architectural expression to break down the overall perception of the development's size and to introduce variety, fine grain and human scale into the northern end of the precinct.

The comments of the Design Review Panel, in its review of 23 March 2022, refer to the aesthetic as 'imposing' and 'architecturally homogenous' which is at odds with the rich external expression evident in street and courtyard illustrations and elevations. The Panel supports the material palette but does not acknowledge the diversity of expression which is well handled and an effective and distinguishing element of the building design.

Material Palette

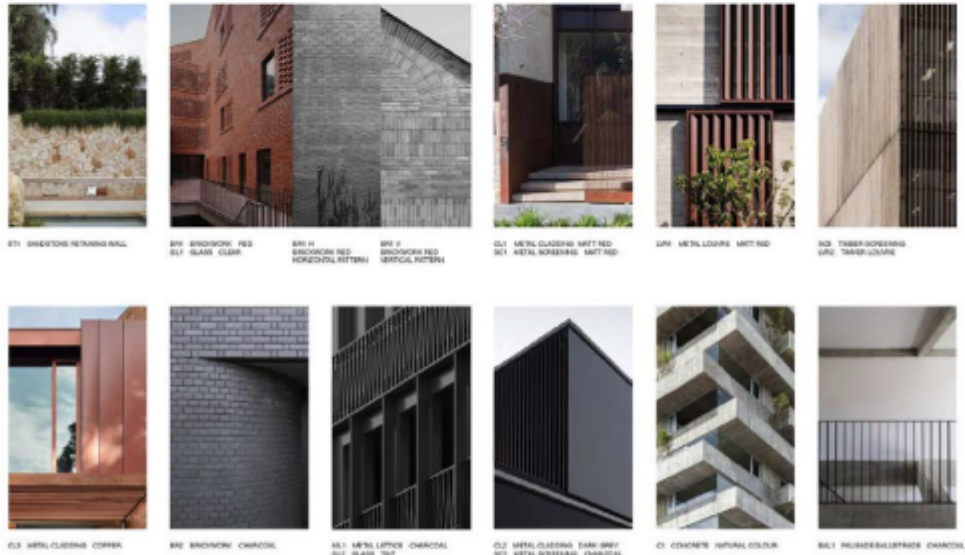


Figure 7: Material Palette - p.48

5. Conclusion:

Through this Urban Design Review, it has become clear that the urban design issues related to bulk and scale, building height and character raised by the Design Advisory Panel in its report of 23 March 2022 have been generally addressed by the applicant. Where strict compliance is not achieved, effective and appropriate design solutions have been offered.

My perspective encompasses the Approved Concept Plan DA as it is the first touchstone that applies in the assessment process, and not the numeric controls of the DCP, when reviewing the Stage 2 DA and Amending Concept DA.

The **bulk and scale** added to **Building C on Cadman Crescent East** by two half levels is inconsequential and the graded and stepped built form improves the transition between the development site and the R3 Medium Density Residential Zone. The reduction in the built form at the south-east corner improves the visual connection and pedestrian access to the central courtyard as well as reducing floor area.

The **bulk and scale** of the buildings around the internal central courtyard is relieved by the breaks between Buildings A and B, Buildings D and E, and the lower height of Building C. The presentation of the built form to the internal central courtyard presents a fine grain, human scaled environment, enveloped by rich layers of softscape and hardscape.

The **building separation** between Buildings A and B has been reduced from 10m to 7.6m to accommodate larger family apartments to achieve the dwelling mix in the LEP. The reduced building separation is offset with careful consideration of ADG guidelines relating to sight lines, visual and acoustic privacy and overlooking. Similar design strategies are used between the facing walls of Buildings D and E.

The side and rear **building setbacks to the neighbouring isolated sites** at 14 Hughes Ave, 16 Hughes Ave and 1 Cadman Crescent have been reduced. An outline concept complying with the development controls for the R4 Zone should be undertaken to test whether the setbacks will detrimentally impact the development potential of the neighbouring sites.

The **street interface** to Hughes Street can be improved by redesigning the elevation and creating an activated street address and fine grain articulation to ground level apartments of building E and reducing the height and length of the 2m high street wall. All buildings comply with the DCP **building length** requirement in the built form design.

The **height exceedances** of roof parapets are due to increased floor to floor heights for service requirements are minor and do not increase the GFA. These exceedances are insignificant when viewed from the public domain and minor when compared to the building heights in the Approved Concept Plan DA, as demonstrated in the Clause 4.6 Variation Application for the new DAs. The increased **building height** of Building C acknowledge the R3 Zoning interface and is below the maximum HOB.

The project architecture demonstrates the effectiveness of a clear and recognisable aesthetic to achieve a balance between **diversity** and integrity of expression. While the built form has predominantly face brick, a wide palette of **materials** and architectural expression is utilised to break down the overall perception of the development's size and introduce variety, fine grain and human scale into the precinct.

The high standard of the urban design in the proposal underpins the thoughtful and this well-crafted approach to architecture in the Showground Precinct. The proposal is a sound foundation for further design development and should be supported by the Hills Shire Council.

ATTACHMENT 21 – DETERMINATION AND STATEMENT OF REASONS FOR CONCEPT DA 1262/2019/JP



Planning
Panels

DETERMINATION AND STATEMENT OF REASONS SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	20 February 2020
PANEL MEMBERS	Abigail Goldberg (Chair), Garry Fielding, David Ryan and Chandi Saba
APOLOGIES	Gabrielle Morrish, Mark Colburt and Stewart Seale
DECLARATIONS OF INTEREST	Nil

Public meeting held at Rydalmere Operations Centre on 20 February 2020, opened at 1.00pm and closed at 2.00pm.

MATTER DETERMINED

2019CCI016 - The Hills Shire – DA1262/2019/JP, 7 - 23 Cadman Crescent and 18 - 24 Hughes Avenue, Castle Hill, Concept Development Application for five residential flat buildings comprising 228 apartments, two levels of basement parking and associated landscaping (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

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

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Hills Local Environmental Plan 2012 (LEP), that has demonstrated that:

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

The Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the R4 zone; and
- the concurrence of the Secretary has been assumed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* with amendments to conditions as detailed below.

The decision was unanimous.

REASONS FOR THE DECISION

- The proposed concept proposal is satisfactory having regard to relevant considerations under Section 4.15.
- The proposed development concept is supported by the Council's DRP.

3. The Panel heard a submission on behalf of the Applicant regarding a proposed change to condition 3 seeking greater flexibility in the maximum number of units. The Panel considered the Applicant's rationale but asserted that the maximum number of 228 dwellings should be retained in the context of the overall dwelling cap for the Precinct. In addition, the Panel amended condition 3 to incorporate the maximum FSR sought, and agreed to by the Design Review Panel.
4. The Panel heard a submission on behalf of the Applicant regarding a proposed change to condition 4 seeking greater flexibility with regard to the quantum of communal open space. The Panel noted the Applicant's rationale but considered that as the quantum had been recommended by Council's Design Review Panel after an extended process, this should be maintained.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments to Condition 3, Condition 4 and Condition 5.

Condition 3 is amended to read as follows –

The maximum dwelling yield for the site is not to exceed 228 units and a Floor Space Ratio of 2.1:1.

Condition 4 Communal Open Space is amended to read as follows -

All future development applications for new buildings or works must comply with the following requirements:

- A minimum of 3,780m² (ground level) and 689m² (roof level) central communal open space area is to be provided for the entire site.
- Community facilities such as children's play areas are to be provided within the communal open space.

Condition 5 is amended to correct administrative details –


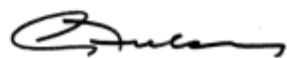
The recommendations of the Preliminary Site Investigation prepared by Douglas Partners, Document Number R.001.Rev 1 Project Number 86559.01 dated 17 January 2019 is to be implemented. Any future built form Development Applications will require the submission of a further Phase 1 Contamination Report including soil sampling, further assessment of past land uses including later historical aerial photographs, historical land tiles and Safe Work NSW records and a more thorough site walkover should undertaken to confirm (or otherwise) that there is an absence of contamination. In addition, a hazardous building materials survey is to be conducted prior to any demolition works.


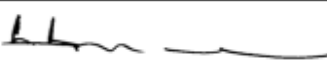
CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Excessive height
- Increase in density
- Increased traffic
- Traffic safety at the bend of Cadman Street and Hughes Avenue
- Developments closer to station
- Overshadowing impacts
- Implications of change of demographics
- Lack of recreational and parkland facilities
- Noise and disruption during construction for local residents.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
	 Garry Fielding

Abigail Goldberg (Chair)	
	
David Ryan	Chandí Saba

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019CCIO16 - The Hills Shire – DA1262/2019/JP
2	PROPOSED DEVELOPMENT	Concept Development Application for five residential flat buildings comprising 228 apartments, two levels of basement parking and associated landscaping
3	STREET ADDRESS	Lot 502 DP 258587, Lot 327 DP 252593, Lot 328 DP 252593, Lot 329 DP 252593, Lot 330 DP 252593, Lot 331 DP 252593, Lot 332 DP 252593, Lot 333 DP 252593, Lot 334 DP 252593, Lot 504 DP 258587, Lot 337 DP 252593, Lot 3361 DP 865725, Lot 3362 DP 865725, Lot 335 DP 252593, 7 - 23 Cadman Crescent and 18 - 24 Hughes Avenue, Castle Hill
4	APPLICANT/OWNER	Castle Hill Panorama Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Mr K Root, Mrs M P Root, Mr C Gao, Galvrad Property Pty Ltd, Mr B Merhi, Mrs S S Merhi, Mr D A Lincoln, Mrs M A Lincoln, Mrs J Berger, Mr VH Chan, Mrs E H Chan, Mr V P Tangonan, Mrs M M Tangonan, Mr L Tao, Ms L Xu, Mrs A Matic, Ms M Stevenson, Mr C M K Fernando, Mrs M A Fernando, Mr R E Beeldman, Mr S W Kim, Mr G S Maiolo and Mrs J J Maiolo
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy No. 55- Remediation of Land State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy – Building Sustainability Index (BASIX) 2004 Apartment Design Guide The Hills Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> DCP 2012 – Part C Section 1 – Parking DCP 2012 – Part C – Section 3 – Landscaping DCP 2012 – Part D Section 19 – Showground Precinct Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan: [Nil] The likely impacts of the development, including environmental impacts

		<p>on the natural and built environment and social and economic impacts in the locality</p> <ul style="list-style-type: none"> • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 20 January 2020 • Clause 4.6 written request • Written submissions during public exhibition: 7 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Wei-Lin Chueh ○ Council assessment officer – Paul Osborne and Cynthia Dugan ○ On behalf of the applicant – Jordan Faeghi
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing – 20 June 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Acting Chair), Peter Brennan, Mary-Lynne Taylor, Chandi Saba and Mark Colburt ○ <u>Council assessment staff</u>: Paul Osborne and Cynthia Dugan • Site inspection: 20 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), Garry Fielding, David Ryan and Chandi Saba ○ <u>Council assessment staff</u>: Paul Osborne and Cynthia Dugan • Final briefing to discuss council's recommendation, 20 February 2020, 12.00pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Abigail Goldberg (Chair), Garry Fielding, David Ryan and Chandi Saba ○ <u>Council assessment staff</u>: Paul Osborne and Cynthia Dugan
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

ATTACHMENT 22 – DEVELOPMENT CONSENT FOR CONCEPT DA 1262/2019/JP



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

4 March 2020

Castle Hill Panorama
C/- MECONE NSW,
Level 2, 3 Horwood Pl,
PARRAMATTA

Ref No.:1262/2019/JP
Sydney Central City Planning Panel: 20 February 2020

Dear Sir/Madam

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Pursuant to Section 4.18(1) of the Environmental Planning and Assessment Act, 1979, notice is hereby given of the determination by Sydney Central City Planning Panel of the Development Application referred to herein.

The Application has been determined by the granting of Consent subject to the conditions referred to in this Notice.

The conditions of the Consent referred to herein are deemed necessary by The Hills Shire Council, pursuant to Part 4, Division 4.3, Section 4.17 of the Environmental Planning and Assessment Act, 1979.

This Consent shall become effective from the endorsed date of Consent.

This Consent shall lapse unless development, the subject of the Consent, is commenced within five (5) years from the endorsed date of Consent or as otherwise provided under Section 4.53 of the Environmental Planning and Assessment Act, 1979 which may vary the above date of the lapsing of the Consent.

Right of Appeal

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six (6) months after receipt of this notice. For development applications lodged before 28 February 2011, the statutory timeframe for appeal is twelve (12) months from the determination date.

APPLICANT

Castle Hill Panorama

OWNER:

Mr K Root, Mrs M P Root, Mr C Gao, Galviad Property Pty Ltd, Mr B Merhi, Mrs S S Merhi, Mr D A Lincoln, Mrs M A Lincoln, Mrs J Berger, Mr VH Chan, Mrs E H Chan, Mr V P Tangonan, Mrs M M Tangonan, Mr L Tao, Ms L Xu, Mrs A Matic, Ms M Stevenson, Mr C M K Fernando, Mrs M A Fernando, Mr R E Beeldman, Mr S W Kim, Mr G S Maiolo and Mrs J J Maiolo

PROPERTY:

Lot 502 DP 258587, Lot 327 DP 252593, Lot 328 DP 252593, Lot 329 DP 252593, Lot 330 DP 252593, Lot 331 DP 252593, Lot 332 DP 252593, Lot 333 DP 252593, Lot 334 DP 252593, Lot 504 DP 258587, Lot 337 DP 252593, Lot 3361 DP 865725, Lot 3362 DP 865725, Lot 335 DP 252593, 7 - 23 Cadman Crescent and 18 - 24 Hughes Avenue, Castle Hill

DEVELOPMENT:

Concept Development Application for five residential flat buildings comprising 228 Apartments, two levels of basement parking and associated landscaping

ENDORSED DATE OF CONSENT:

20 February 2020

CONDITIONS OF CONSENT**GENERAL MATTERS****1. Development in Accordance with Submitted Plans (as amended)**

The development being carried out in accordance with the approved plans and details submitted to Council, as amended in red, stamped and returned with this consent.

The amendments in red include: -

- The indented parking bays within the 2m land dedication for road widening purposes along Cadman Crescent must be amended in accordance with the Showground Precinct - Verge Treatment Details Sheet 01 – Sheet 06 as specified on Council's website.
- No trees have been approved for removal under the subject Development Application.
- The Stage 1 - Architectural Design Report and Landscape Plans are conceptual only and only to be used as a design guide. Detailed designs including layouts of apartments are subject to future built form Development Applications.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP 1001	Masterplan – Land Dedications and Setbacks		D	17/12/2019

MP 1002	Masterplan – Building Envelopes		D	17/12/2019
MP 1003	Deep Soil Areas		D	17/12/2019
MP 1004	Street Elevations		D	17/12/2019
MP 1005	Sections		D	17/12/2019
	Architectural Design Report – Stage 1 DA Cadman Crescent Castle Hill prepared by MHN Design Union		D	17/12/2019
	Landscape Stage 1 DA Report prepared by Turf Design Studio		A	20/12/2019

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. Determination of Future Development Applications

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

3. Dwelling Yield

The maximum dwelling yield for the site is not to exceed 228 units and a Floor Space Ratio of 2.1:1.

4. Communal Open Space

All future development applications for new buildings or works must comply with the following requirements:

- A minimum of 3,780m² (ground level) and 689m² (roof level) central communal open space area is to be provided for the entire site.
- Community facilities such as children's play areas are to be provided within the communal open space.

5. Contamination

The recommendations of the Preliminary Site Investigation prepared by Douglas Partners, Document Number R.001.Rev 1 Project Number 86559.01 dated 17 January 2019 is to be implemented. Any future built form Development Applications will require the submission of a further Phase 1 Contamination Report including soil sampling, further assessment of past land uses including later historical aerial photographs, historical land titles and Safe Work NSW records and a more thorough site walkover should be undertaken to confirm (or otherwise) that there is an absence of contamination. In addition, a hazardous building materials survey is to be conducted prior to any demolition works.

6. Acoustic Requirements

Site specific acoustic assessments are to be submitted for every built form Development Application. The acoustic assessment is to address internal noise levels, mechanical plant and construction noise management.

7. Land Dedication

2m land dedication is required for road widening purposes along Cadman Crescent east and north in accordance with Figure 10 with Council DCP Part D Section 19. No land dedication is required along Hughes Avenue. This is required to be conditioned in the first built form Development Application lodged for the site.

8. Subdivision Works

A subdivision works concept plan relating to the indented parking bays and associated public domain works must be prepared and submitted in support of any future built form Development Application.

9. Stormwater Drainage

Any future Development Application for built form or any works must provide the following:

- Stormwater treatment measures in accordance with Councils Design Guidelines Subdivision/Developments and Showground Precinct DCP and this must be supported with modelling (MUSIC).
- Onsite detention in accordance with Upper Parramatta River Catchment Trust V3 or V4 and The Hills Shire Council Design Guidelines Subdivision/Developments.

10. Accessible Units

10% of all dwellings units are to be adaptable or accessible.

11. Waste Management

All future built form applications must be accompanied by a construction and operational waste management plan. Built form designs are subject to a further detailed assessment. The built form designs must be generally in accordance with the details provided in the Concept Development Application and the following requirements:

- Future waste collection for the site is to be serviced by a 12.5m long Heavy Rigid Vehicle.
- A minimum of 120 litres of garbage capacity per unit per a weekly collection and 60 litres of recycling capacity per unit per a weekly collection would need to be allowed for. Garbage and recyclables will be collected in 1100 litre bins. The measurements of an 1100 litre bin are 1245mm (d), 1370mm (w) and 1470mm (h).
- Twin chutes systems must be proposed to enable chute disposal of garbage and recycling for a development of this height and density. Chute openings must be provided on every residential floor level within building corridors. The chutes must terminate in bin storage rooms located on lower ground (same level as loading dock).
- Bin storage rooms must contain appropriate infrastructure (e.g. linear conveyors and bin carousels) to ensure that there is enough bin capacity at the termination point of all chutes for at least 2 days' worth of garbage and recycling. For a proposal of this scale, garbage must be compacted at the chute termination points at a ratio of 2:1.

12. Vehicular Access and Car Parking

Vehicular Access for the entire development is to be provided via a single driveway on Hughes Avenue. The driveway is to be setback at least 6m from the tangent point at the intersection between Cadman Crescent/Hughes Avenue.

13. Crime Prevention Through Environmental Design

All future built form applications must comply with the recommendations made by the NSW Police in letter dated 28 February 2019 and attached to this development consent (Attachment 1) and in the Crime Prevention Through Environmental Design Report prepared by Mecone submitted with the subject Concept Development Application.

14. Section 7.11 Contributions

All future built form Development Applications must be levied in accordance with Contributions Plan No. 19 Showground Station Precinct and Section 7.11 of the Environmental Planning and Assessment Act 1979, to provide for the increased demand for public amenities and services resulting from the development.

ATTACHMENT 1: DEVELOPMENT ADVISORY NOTES
ATTACHMENT 2: SCCPP DETERMINATION AND STATEMENT OF REASONS
ATTACHMENT 3: NSW POLICE REFERRAL COMMENTS

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objectives of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 are maintained.

Should you require any further information please contact Cynthia Dugan on 9843 0334.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT

ATTACHMENT 1: DEVELOPMENT ADVISORY NOTES

A. COMPLIANCE WITH BUILDING CODE OF AUSTRALIA AND INSURANCE REQUIREMENTS UNDER HOME BUILDING ACT 1989

(refer to Clause 98 of Environmental Planning & Assessment Regulation 2000)

- (1) For the purposes of section 4.17 (11) of the Environmental planning and Assessment Act, 1979 the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
 - (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (2) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

B. NOTIFICATION OF HOME BUILDING ACT 1989 REQUIREMENTS

(refer to Clause 98B Notification of Home Building Act 1989 requirements)

- (1) For the purposes of section 4.17 (11) of the Environmental planning and Assessment Act, 1979 the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.
- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.285 of the Act, to comply with the technical provisions of the State's building laws.

C. EXCAVATIONS AND BACKFILLING

- (1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

- (2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

D. RETAINING WALLS AND DRAINAGE

If the soil conditions require it:

- (1) Retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided as indicated on the plans, and
- (2) adequate provision must be made for drainage.
- (3) A separate Development Application and Construction Certificate Application are required for the retaining walls that are not indicated on the approved plans where such works cannot be carried out under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Structural Engineer's details are required to be submitted to Council as part of the application if the amount to be retained is over 1 m in height.

E. SUPPORT FOR NEIGHBOURING STRUCTURES AND SHORING AND ADEQUACY OF ADJOINING PROPERTY

- (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings and encroaches on the zones of influence of the footings of a building or retaining structure on an adjoining property (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must at the persons own expense:
 - (a) seek advice from a professional structural engineer, and
 - (b) preserve and protect the building, work or retaining structure from damage, and
 - (c) if necessary, must underpin and support the building or retaining structure in an approved manner, and
 - (d) must, at least 7 days before excavating below the level of the base of the footings of a building or retaining structure on an adjoining property, give notice of intention to do so and furnish particulars of the excavation to the owner of the adjoining property.
- (2) The owner of the adjoining property is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining property.
- (3) In this clause, **adjoining property** includes a public road and any other public place.
- (4) The condition referred to above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

F. PROTECTION OF PUBLIC SPACES

- (1) If the work involved in the erection or demolition of a building:
 - (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (b) involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.
- (2) If necessary, a covered walkway is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- (3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (4) Any such hoarding, fence or covered walkway is to be removed when the work has been completed.
- (5) An application shall be lodged and approval is given by Council prior to the erection of any hoarding, fence, covered walkway or site shed on top of the covered walkway.

G. SIGNS TO BE ERECTED ON BUILDING AND DEMOLITION SITES

- (1) For the purposes of section 4.17 (11) of the Act, the requirements of sub clause (2) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.

Note. Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

H. TOILET FACILITIES

- (1) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- (2) Each toilet provided:
 - (a) must be a standard flushing toilet, and
 - (b) must be connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.
- (3) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

I. DRIVEWAYS, FOOTPATHS ROAD AND OTHER PAVEMENT WORKS IN THE FOOTPATH VERGE

- (1) The provision and maintenance of a vehicular access driveway from the property boundary to the kerb and gutter or the edge of road seal is the responsibility of the property owner. However, any work undertaken by private owners within the public road area or footpath verge requires written approval from Council. Where new or replacement driveways and gutter crossings are proposed, the submission of an application for gutter and footpath crossings, accompanied by the current applicable fee as prescribed in Council's Schedule of Fees and Charges, must be submitted to Council.

This process is necessary to ensure the work complies with Australian Standards and Council policies and that all road users, including pedestrians and cyclists are protected both during and after construction. Work in the road reservation without Council approval may be removed if deemed to be a public liability or safety risk.

A copy of the "Footpath Crossing Application" form and Council's specifications relating such works be obtained from Council's website at www.thehills.nsw.gov.au or from Council's Customer Service Centre.

- (2) The removal of all disused driveways and gutter crossings and their replacement with full kerb and gutter together with the restoration and turfing of the adjacent footpath verge area is required.
- (3) Council must be notified in the event of any existing damage to road, pavement, footpaving, kerbing and guttering and street trees prior to the commencement of the work. This notification should include photographic evidence of the existing damage. If Council does not receive notification it will be assumed that no damage existed prior to the work commencing.

Adequate protection must be provided for Council road pavement footpaving, kerbing and guttering and existing street trees prior to commencing and during building operations. Upon completion of the work, any damage to road pavement, footpaving, kerbing and guttering and street trees not previously reported in accordance with (3) above shall be reported to Council and the cost of repair paid for in full prior to final certification of the works. A cost can be obtained from the Restorations Coordinator (ph. 9843 0234).

DRIVEWAY LOCATIONS & LEVELS

Owners and/or applicants are responsible to ensure that proper connection with the roadway can be made whilst maintaining safe levels across the footpath verge and along the driveway. Driveways must also be located a minimum of 6m from kerb returns and splayed corners and are sufficiently clear of street trees, service utility infrastructure such as power poles and drainage structures such as kerb inlet pits. Council's Engineer can be contacted on 9843 0374 to assist with these matters. Driveway gradients must conform to Council's specifications which can be obtained from Council's website at www.thehills.nsw.gov.au or from Council's Customer Service Centre. The level of the garage floor is to be checked prior to pouring of concrete to ensure compliance with Council's requirements.

ROAD OPENINGS

Obtain a Road Opening Permit and pay relevant service restoration fees and charges prior to excavations within the road reserve. The Road Opening permit must be kept on site at all times while work is being carried out in the Road Reserve and must be produced upon request from a Council Officer. If the Permit is not able to be produced to the Council Officer the Works in the public way may be stopped.

Upon completion of excavation works in the public way Council's Restoration Coordinator (ph. 9843 0234) must be advised and the full cost of the final restoration paid prior to final certification. of those works

J. STREET NUMBER

A street number is to be prominently displayed in a conspicuous position on completion of the building.

K. HOUSEHOLD SERVICES

The householder is required to notify Council upon occupancy that the garbage service, which is mandatory, is to be commenced and pay the necessary charges upon receipt of an account.

- (1) No encroachment by any building or structure for private use will be permitted on a public reserve.
- (2) Soil and building materials are not to be deposited on any road, footpath or public reserve.
- (3) Building refuse or materials shall not be burnt on site.
- (4) No vehicular traffic or any drainage work is permitted on any public reserve without the prior approval of Council.

- (5) Council consent is required before the removal of any tree, except those approved by this consent, or that is exempt under the Tree & Bushland Management Provision.
- (6) Applicants are advised to consult with Telstra and Australia Post regarding the installation of telephone conduits and letter boxes respectively.
- (7) Unimpeded access must be available to the utilities supply authorities, during and after building, to the utilities metering equipment.
- (8) 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 receipt from Sydney Water Tap in must be submitted to the Principal Certifying Authority upon request prior to works commencing.
Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm>-Sydney Water Tap in, or telephone 13 20 92.
- (9) Persons with land holdings in areas of the Shire where no water reticulation system is available are to provide an adequate wholesome water supply and are encouraged to provide additional water storage for use during fire fighting operations, for fire fighting purposes. Further information regarding the provision of water storage for fire fighting purposes is available from the Rural Fire Service District Office on 9654 1244
- (10) Roof water connection across footways shall be a 100mm diameter, sewer grade UPVC pipe(s). Connection to kerb shall be made with a rectangular, hot dip galvanised, mild steel weephole shaped to suit the kerb profile and with a capacity equal to a 100mm pipe. The pipe shall be connected to the weephole with a UPVC profile adaptor.

L. DIAL BEFORE YOU DIG

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact *Dial before You Dig* at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW).

If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig Service, an amendment to the development consent (or a new development application) may be necessary. *Individuals* owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets.

It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (*and its authorised contractors*) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's Infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact : Telstra's Network Integrity Team on Phone Number 18008 10443.

M. CONNECTION OF STORMWATER DRAINS

All roof stormwater drains connected to Council's kerb must comply with the levels advised at the street alignment, must cross the footpath at 90° to the kerb line and be connected to existing holes provided in the kerb. Any alternative arrangements must be approved by Council's engineer and must comply with Council's Standard Drawing SD.13 (Roofwater Outlet Connection) a copy of which can be obtained from Council's website at www.thehills.nsw.gov.au.

N. TREE MANAGEMENT PROVISIONS

Clause 5.9 (Preservation of trees or vegetation) of The Hills Local Environmental Plan 2012, requires the preservation of all trees and prohibits the ringbarking, cutting down, topping, lopping or wilful destruction of trees except with the prior approval of Council.

O. INSURANCE REQUIREMENTS

In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract must be in force.

THIS APPROVAL IN NO WAY VARIES COVENANTS, IF ANY, ATTACHING TO THE LAND NOR SHALL PREJUDICE ANY ACTION THAT MAY BE TAKEN BY ANY INTERESTED PARTY IN THIS REGARD.

ATTACHMENT 23 – NOTICE OF DETERMINATION OF SECTION 4.55(2) MODIFICATION TO CONCEPT DA 1262/2019/JP INCLUDING SCCPP STATEMENT OF REASONS



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

18 November, 2021

Castle Hill Panorama
Westfield Tower 2 Level 17 Suite 1702/101 Grafton St
BONDI JUNCTION NSW 2022

Ref No.1262/2019/JP/A
Sydney Central City Planning Panel: 15 November 2021

Dear Sir/Madam

SECTION 4.55 MODIFICATION OF DEVELOPMENT APPLICATION

CONSENT NUMBER: 1262/2019/JP/A

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, notice is hereby given of the determination by Sydney Central City Planning Panel of the Development Application described below:

APPLICANT:	Castle Hill Panorama
OWNER:	Mr K Root and Mrs M P Root and Mr C Gao and Galvlad Property Pty Ltd and Mr B Merhi and Mrs S Merhi and Mr D A Lincoln and Mrs M A Lincoln and Mrs J Berger and Mr V H Chan and Mrs E H Chan and Mr V P Tangonan and Mrs M M Tangonan and Mr L Tao and Ms L Xu and Mrs A Matic and Ms M Stevenson and Mr C M K Fernando and Mrs M A Fernando and Mr R E Beeldman and Mr S W Kim and Mr G S Maiolo and Mrs J J Maiolo
PROPERTY:	Lot 502 DP 258587, Lot 327 DP 252593, Lot 328 DP 252593, Lot 329 DP 252593, Lot 330 DP 252593, Lot 331 DP 252593, Lot 332 DP 252593, Lot 333 DP 252593, Lot 334 DP 252593, Lot 504 DP 258587, Lot 337 DP 252593, Lot 3361 DP 865725, Lot 3362 DP 865725, Lot 335 DP 252593 7 to 23 Cadman Cr. and 18 to 24 Hughes Av. Castle Hill
DEVELOPMENT:	Section 4.55 (2) Modification to an Approved Concept Development Application for Five Residential Buildings Comprising 228 Apartments, Two Levels of Basement Parking and Landscaping

www.thehills.nsw.gov.au | 9843 0555

DECISION:

REFUSAL

ENDORSED DATE OF REFUSAL: 15 November, 2021

The Section 4.55 application for modification of Development Consent Number 1262/2019/JP/A be refused as follows:

1. The proposed modification to the Concept Development Application does not result in a development that is substantially the same as it differs, both quantitatively and qualitatively from the original approved development and seeks to amend essential components including density, bulk and scale and is incompatible with the surrounding context and streetscape.

(Section 4.15(1)(a)(i), (iii) and 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979).
2. The application does not satisfy the provisions under Clause 9.5 Design Excellence of the Hills LEP 2019.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
3. The proposal does not satisfy the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development with respect to context and neighbourhood character, built form and scale, density and amenity resulting in a development that is not substantially the same as originally approved.
(Section 4.15(1)(a)(i) and 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979).
4. The proposal does not provide for sufficient solar access and residential amenity to the principal usable communal open space area in accordance with the design criteria of the Apartment Design Guide under Clause 29 SEPP 65 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
5. The proposal does not provide for the appropriate building lengths and setbacks as required under The Hills DCP 2012.
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
6. The applicant has not submitted information requested to properly assess the impacts to the built environment including amended plans as detailed in the presentation to the Design Review Panel on 23 June 2021 and vehicle swept paths to the satisfaction of Council's engineers.
(Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979).
7. The site is not suitable for the development as proposed to be modified and is inconsistent with the built environment of the locality.
(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).
8. The proposal is not in the public interest due to the incompatible bulk and scale and its departure from the requirements of design excellence under The Hills LEP 2019 and Part D Section 19 Showground Precinct Development Control Plan.
(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act, 1979).

Right of Review

Division 8.2 of the Environmental Planning and Assessment Act 1979 allows an applicant the right to review a determination subject to such a request being made within six

months of the determination date except as amended by the COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020. Division 8.2 does not permit a review of determination in respect of designated development or Crown development (referred to in Division 4.6).

Right of Appeal

Division 8.3 of the Environmental Planning and Assessment Act 1979 allows an applicant who is dissatisfied with the determination of an application by the consent authority the right to appeal to the NSW Land and Environment Court within six months after receipt of this determination except as amended by the COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020.

Should you require any further information please contact Cynthia Dugan on 9843 0334.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT

ATTACHMENT 1: SCCPP DETERMINATION AND STATEMENT OF REASONS FOR THE DECISION

ATTACHMENT 1: SCCPP DETERMINATION AND STATEMENT OF REASONS FOR THE DECISION



Planning
Panels

DETERMINATION AND STATEMENT OF REASONS SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	15 November 2021
DATE OF PANEL DECISION	15 November 2021
PANEL MEMBERS	Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Mark Colburt and Chandi Saba
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 2 November 2021.

MATTER DETERMINED

PPSSCC-122 - DA 1262/2019/JP/A – The Hills Shire, 7-23 Cadman Cres and 18-24 Hughes Ave Castle Hill, Section 4.55 (2) Modification to an Approved Concept Development Application for Five Residential Buildings Comprising 228 Apartments, Two Levels of Basement Parking and Landscaping (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

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

Development application

The panel determined to refuse the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

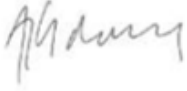




The panel determined to refuse the application for the reasons outlined in the council assessment report.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

- Density concerns
- Height concerns

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 David Ryan
 Roberta Ryan	 Mark Colburt
 Chandi Saba	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-122 - DA 1262/2019/JP/A – The Hills Shire
2	PROPOSED DEVELOPMENT	Section 4.55 (2) Modification to an Approved Concept Development Application for Five Residential Buildings Comprising 228 Apartments, Two Levels of Basement Parking and Landscaping
3	STREET ADDRESS	7-23 Cadman Cres and 18-24 Hughes Ave Castle Hill
4	APPLICANT/OWNER	Castle Hill Panorama
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) modification application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development 2011) State Environmental Planning Policy No. 55 – Remediation of Land 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 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> The Hills Development Control Plan 2012 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: [Nil]

		<ul style="list-style-type: none"> • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: October 2021 • Written submissions during public exhibition: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: Site inspection: Site inspections have been curtailed due to COVID-19. Where relevant, Panel members undertook site inspection individually. • Papers were circulated electronically 2 November 2021.
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A