

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-347
DA Number	DA 1237/2022/JP
LGA	The Hills Shire Council
Proposed Development	Demolition of Existing Buildings and Structures, Construction of a Two Storey Building (Block D) and Covered Outdoor Learning Area and Associated Works for a High School.
Street Address	Gilroy College High School & St Gabriels School, 29-37 Marie Street, Castle Hill
Applicant	Vincent Long – C/- DFP Planning Pty Ltd
Consultant/s	Andrew Starr and Associates Heritage Consultants Arc Traffic and Transport Banksia EnviroSciences Design Confidence DFP Planning Inview Design Mark Bury Consulting MSL Consulting Engineers Rodney Stevens Acoustics Stanton Dahl Architects Vince Morgan Surveyors Vista Access Architects Wilde and Woollard
Date of DA lodgement	22 February 2022
Number of Submissions	Nil
Recommendation	Approval subject to conditions
Regional Development Criteria (Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021)	CIV exceeding \$5 million (\$18,583,000 excluding GST) for educational establishments
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 • State Environmental Planning Policy (Resilience and Hazards) 2021 • The Hills Local Environmental Plan 2019 • DCP 2012 Part B Section 2 – Residential • DCP 2012 Part C Section 3 – Landscaping; and • DCP 2012 Part C Section 4 – Heritage
List all documents submitted with this report for the Panel's consideration	• Architectural Plans • Clause 4.6
Clause 4.6 requests	• The Hills Local Environmental Plan 2019 (LEP) • The Hills Clause 4.3 Height of Buildings • R2 Low Density Residential

Summary of key submissions	N/A
Report prepared by	Madison Morris – Senior Town Planner
Report date	22 August 2022 Electronic Determination

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

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

- The application is made prior to 1 March 2022 under the provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017. The proposal has given due consideration to the design quality principles under Schedule 4 of the SEPP. This assessment has found the proposal to be consistent with the design principles. The development has demonstrated consistency with the existing streetscape and residential character of the locality and zone objectives.
- This application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. The proposal seeks consent for a maximum building height of 11.14m for Block D and 9.3m for the covered outdoor learning area, which represents a variation of 24% (2.14m) and 3% (300mm) respectively. The accompanying Clause 4.6 request to vary a development standard is considered to be well-founded and strict compliance is unreasonable and unnecessary in this instance and the variation can be supported.
- The site is identified as being an item of environmental heritage pursuant to Schedule 5 of LEP 2019. The applicant has provided a Heritage Impact Assessment prepared by Andres Starr and Associates with the application which outlines the extent of the impact on the heritage item. It is not expected these works will result in any adverse heritage impacts on the item or impact the established curtilage. The proposed works do not detrimentally affect the heritage significance of the heritage item and can be supported.
- A variation is proposed to the DCP control for building setbacks. The front setback control is 10m. The proposed setback varies between 6m at the southern end and 10.6m at the northern end. This is considered satisfactory because the proposal provides for a high quality design outcome that protects the amenity of adjoining residents and maintains the established streetscape character of Marie Street.
- The Development Application was notified to adjoining properties for 14 days. No submissions were received during the notification period.
- The applicant is disputing Conditions 18, 65 and 66 relating to outstanding fire safety matters. Additional documentation has been provided to demonstrate the particulars of the conditions have already been satisfied. Council's Fire Safety officer has reviewed the information submitted, and final fire safety certificate issued for the hall, advising the particulars were not included and remain outstanding.
- The Development Application is recommended for approval subject to conditions of consent.

BACKGROUND

Development Application 1451/2019/JP for demolition of existing classroom facilities, construction of a multi-storey classroom building and associated works was approved by the Sydney Central City Planning Panel on 12 December 2019. The application specifically related to Block G within the north western corner and carpark to the north of the site. The application was approved with a maximum building height of 13.5m, which represents a variation of 50% (4.5m) to the height of buildings development standard. The application was approved for the construction of a new car park for 123 car parking spaces and an increase in student numbers from 1,209 to 1,380 and increase in staff numbers from 80 to 100.

The subject Development Application was lodged on 22 February 2022. The application was notified to adjoining properties for 14 days. No submissions were received during the notification period.

A request for additional information letter was sent to the applicant on 2 May 2022 which required matters relating to heritage, stormwater, fire safety and environmental health be addressed. The main issues related to the submission of a Heritage Impact Statement, total catchment area for stormwater, acoustic assessment for use of the covered outdoor learning area, and BCA compliance.

The Sydney Central City Planning Panel was briefed on 5 May 2022. No concerns were raised with the development.

The applicant responded to the request for information on 6 June 2022. The additional information submitted satisfactorily addressed the above mentioned issues.

DETAILS AND SUBMISSIONS

Owner:	Trustees Roman Catholic Church Diocese Parramatta
Zoning:	R2 Low Density Residential
Area:	110,678 m ²
Existing Development:	Educational Establishment ("Gilroy College")
Section 7.12 Contribution	\$204,413.00
Exhibition:	N/A
Notice Adj Owners:	Yes, 14 days
Number Advised:	78
Submissions Received:	Nil

PROPOSAL

The Development Application seeks consent for the following:

- Demolition of existing Block D and Block E located on the western boundary of the site;
- Construction of a new two storey building (to be called Block D) which will contain specialist science, technology, engineering and maths (STEM) classrooms;
- Construction of a new canteen;
- Construction of a new covered outdoor learning area over one of the existing sports courts;
- Resurfacing of two existing sports courts; and
- Landscaping and associated works to create a new plaza linking the development with existing buildings on site.

No change is proposed to the previously approved staff and student numbers or car parking arrangements.

STRATEGIC PLANNING FRAMEWORK

1. 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.

A key objective within the Greater Sydney Region Plan which is relevant to the subject Development Application is 'Objective 6 Services and infrastructure meet communities' changing needs'. The Greater Sydney Region Plan highlights that changing demographics will

affect the types and distribution of services and infrastructure required in neighbourhoods and cities. The Plan also estimates an extra 270,000 students will need to be accommodated in government and non-government schools in Greater Sydney by 2036.

To achieve this objective, innovations such as contemporary design, flexible learning spaces and more efficient use of land will be essential responses to growth and changing demand. The proposed development is considered to be consistent with this objective as the new building has been designed to provide flexible learning space with more efficient land use. The development proposal is considered to be consistent with the aims of the Sydney Regional Plan.

2. Central City District Plan

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

The relevant Planning Priority of the Central City District Plan is Priority C3 which seeks to provide services and social infrastructure to meet peoples changing needs. The proposed development will assist in responding to the growth and changing demands through shared spaces and flexible learning spaces as well as help support inclusive and vibrant neighbourhoods. The proposal creates an opportunity for increased shared use and more flexible use of outdoor facilities through upgrades to the COLA which will support better access to and use of infrastructure. The development proposal is considered to be consistent with the Central City District Plan.

3. Local Strategic Planning Statement - Hills Future 2036

The Plan sets planning priorities and corresponding actions that will provide for more housing, jobs, parks and services for the growing population. The Plan is supported by six strategies which provide a guide to planning in The Hills. The relevant strategy of the Local Strategic Planning Statement is the Productivity and Centres Strategy which establishes the basis for strategic planning of employment lands and centres in the Shire. Located in the strategic centre of Castle Hill, the proposal will provide for social infrastructure to meet the demands of the high growth area. The proposal will assist in the creation of jobs both within the construction and education industries in line with the projected population growth, and in a location near transport infrastructure and other employment areas of the Castle Hill strategic centre. The development proposal is considered to be consistent with the Local Strategic Planning Statement.

ISSUES FOR CONSIDERATION

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

Part 2.4 and Schedule 6 of SEPP (Planning Systems) 2021 specifies the referral requirements for regionally significant development.

5 Private infrastructure and community facilities over \$5 million

Development that has a capital investment value of more than \$5 million for any of the following purposes—

(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,

*(b) affordable housing, child care centres, community facilities, correctional centres, **educational establishments**, group homes, health services facilities or places of public worship.*

The proposed development for an educational establishment has a Capital Investment Value of \$18,583,000 excluding GST and therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

2. Compliance with State Environment Planning Policy (Transport and Infrastructure) 2021

In accordance with Schedule 9 of SEPP (Transport and Infrastructure) 2021, Chapter 3 educational establishments and child care facilities does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of Chapter 3. In accordance with subclause (2), the application was lodged on 22 February 2022 and not finally determined prior to 1 March 2022 has been assessed with the regulatory requirements in relation to the former SEPP (Educational Establishments and Child Care Centres) 2017. Refer to Part 3 below.

3. Compliance with State Environment Planning Policy (Educational Establishments and Child Care Facilities) 2017

Clause 35 Schools – development permitted with consent of SEPP (Educational Establishments and Child Care Facilities) 2017 stipulates the following:

(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration:

- (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4, and*
- (b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

In accordance with the SEPP, the following design quality principles are to be considered:

Principle 1—context, built form and landscape

- Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.*
- Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.*
- School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and located and designed to minimise the development's visual impact on those qualities and that natural environment.*

The application includes an extensive, detailed landscape design that integrates with the school setting, and complements the existing landscape and residential zone. Further to this, the proposal has been designed to respond to and enhance the existing setting, landscape and heritage of the site. Block D has been designed to ensure a sympathetic scheme in relation to the existing school, including maintaining the spatial organisation of buildings and proposed heights responding to the topography whilst ensuring sight lines to the heritage item are preserved. The buildings have been designed taking into account the site conditions, including topography, orientation and climate.

The supporting landscape design has taken into account the design of the built form, whilst positively contributing to the on-site amenity, improving the existing streetscape amenity and character, including mitigating any impacts on neighbouring residential properties. Existing

landscaping to Marie Street will be retained and further embellished to ensure that the proposal will be sympathetic to the existing landscape setting, whilst the built form will be adequately screened from the public domain and adjoining residential dwellings. The subject site, including school buildings and surrounding grounds are not identified as being located within a scenic protection area. Overall, the design responds to and enhances the existing setting of the school within a residential area.

Principle 2—sustainable, efficient and durable

- *Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.*
- *Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.*

The proposal provides for a high-quality educational environment for students and staff. The design of the development has considered the environmental, social and economic outcomes, whilst minimising the consumption of energy, water and other resources. The design maximises solar access with a north and west facing building, while also ensuring appropriate design methods are implemented to provide shade. The new block provides upgraded and improved learning spaces for students with natural light and ventilation provided to all learning spaces. A 99KVA solar panel system is also provided on other buildings on the site, which will help minimise the school's environmental impact. Overall, the buildings have been designed to ensure a sustainable, efficient and durable outcome for the school.

Principle 3—accessible and inclusive

- *School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.*
- *Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.*

The proposal seeks to actively improve the existing accessibility and the overall sense of inclusiveness with the provision of improved transition between levels. Improved accessibility is provided across the sloping site with new ramps and stairways that create easy and logical paths of travel. The proposed new plaza connects Block D and the COLA with the existing buildings and transitions seamlessly between the outdoor play areas. Accessible compliant amenities are also provided for students, staff and visitors of the school. The proposal has demonstrated compliance with the above through the Access Report.

Principle 4—health and safety

- *Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.*

The health of students and staff has been considered by providing large learning and outdoor play areas, both covered and uncovered. Improved ventilation and natural light has been incorporated into the design by taking advantage of the northern aspect. Passive surveillance has been improved with the new proposal providing a safe and secure school environment and public domain for those attending or visiting the school grounds. Increased openness within the plaza provides for a welcoming and accessible environment. Overall, the proposal provides for a significantly improved outcome for students and staff with regards to health and safety.

Principle 5—amenity

- *Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.*
- *Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.*
- *Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.*

The school will provide upgraded, high-quality spaces that will deliver pleasant and engaging areas for students and staff for the purposes of educational, informal and community activities. The proposal includes additional large, expansive learning areas and informal outdoor areas that have considered the amenity of the adjacent development and wider neighbourhood. The location of Block D and landscaping will provide buffering from the main outdoor play areas to adjacent residential properties along Marie Street and local neighbourhood. The new plaza and COLA will create a defined recreational area suitable for outdoor learning and play spaces.

The subject site is located adjacent to Old Northern Road; however, vehicular and pedestrian access is via Marie Street which is not proposed for amendment under this application. Nevertheless, the proposal provides for a high level of acoustic amenity for students, teachers and visitors.

The school seeks to provide appropriate indoor and outdoor learning and play spaces, which will receive sufficient solar access, natural ventilation, privacy, storage and service areas. Mechanical ventilation is suitably located on the roof spaces for an improved acoustic environment. Overall, the proposal provides for suitable amenity to students and staff, as well as the public.

Principle 6—whole of life, flexible and adaptive

- *School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.*

The school seeks consent for upgrade works which aim to deliver buildings with a high environmental performance, ease of adaption and maximising multi-use facilities. The proposed materials provide structure within the outer footprint for longevity and flexibility internally for future adaptive use.

Principle 7—aesthetics

- *School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.*
- *The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.*

As previously noted, the proposed building has been designed to relate to the existing setting of the site within the education and residential landscape. The built form responds to the existing context and is consistent with the desired future character of the school as approved under the previous upgrade applications. The design continues to positively contribute to the site and surrounding neighbourhood with the visual impact of the built form being sympathetic to the locality through positioning, materiality, and landscaping.

Overall, the proposal has satisfactorily demonstrated compliance with regards to the above design principles and will enable the use of the proposed facilities for the benefit of the community.

4. Compliance with State Environment Planning Policy (Resilience and Hazards) 2021

Chapter 4 of this policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. In accordance with Clause 4.6 of the SEPP, the consent authority must not grant 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.*

The site has been used as a school for more than 100 years and is unlikely to have been involved in any activities that would have contaminated the site such that it would now be unsuitable for the proposed development.

The applicant has provided a Hazardous Materials Inspection & Management Report, prepared by Banksia Envirosience which concluded the subject site is suitable for the intended land use subject to compliance with the recommendations of the report. The report has been reviewed by Council's Environmental Health Officer who raised no concerns regarding the findings. Accordingly, the proposal is consistent with the requirements of SEPP (Resilience and Hazards) 2021 subject to conditions of consent (Refer to Condition 58).

5. Compliance with The Hills Local Environmental Plan 2019

a) Permissibility

The site is zoned R2 Low Density Residential under LEP 2019. Development for the purpose of educational establishments are permitted with consent. The proposal satisfies LEP 2019 in this regard.

b) Zone Objectives

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing low density residential character of the area.*

The proposal is considered to be consistent with the stated objectives of the zone, in that the proposal will deliver a land use which provides facilities to service the day to day needs of residents whilst maintaining the low density residential character of the area. The proposal satisfies LEP 2019 in this regard.

c) Development Standards

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

DEVELOPMENT STANDARD	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.3 Height of Buildings	Maximum 9m	Block D = 11.14m Covered Outdoor Learning Area = 9.3m	No; refer to discussion below
Clause 4.6 Exceptions to Development Standards	Exceptions will be considered subject to appropriate assessment	A variation to Clause 4.3 Height of Buildings is proposed and is addressed below.	Yes, refer to discussion below.
Clause 5.10 Heritage Conservation	A heritage management document to be prepared to assess the extent which carrying out the works would affect the heritage significant of the heritage item.	Heritage Impact Assessment submitted and is addressed below.	Yes, refer to discussion below.

i. Variation to Building Height

Clause 4.3 of LEP 2019 limits the height of the development site to 9 metres. The proposal seeks consent for a maximum building height of 11.14m for Block D and 9.3m for the COLA, which represents a variation of 24% (2.14m) and 3% (300mm) respectively. The applicant has provided a Clause 4.6 Variation which is provided at Attachment 15.

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

Clause 4.6 – Exceptions to Development Standards states:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

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

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

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

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

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

(a) a development standard for complying development,

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

(c) clause 5.4,

(ca) clause 6.2 or 6.3,

(cb) clause 7.11.

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 extent of the variation is minor, up to 2.14 metres and is limited to a small rise skimming above the prescribed maximum building height for the top-most elements of the proposed roof;*
- The variation arises from the design response to the site's terrain, floor to ceiling heights, roof pitch, desire to provide natural light and ventilation, placement of plant equipment out of view from the street and integration with outdoor learning and play spaces internal to the site;*

- The extent of the roof form which breaches the building height development standard is located behind the front building line and is not visible from the public domain;
- The environmental amenity impacts of the proposal are either minor such that the proposal will not impact surrounding private or public land; and
- The characteristics and design requirements cannot be modified any further to reduce the building height without compromising the aesthetic and functional qualities of the proposed built form.

Comment:

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

Building	Maximum LEP height	Maximum height to top of roof
Block D	9m	11.4m
COLA	9m	9.3m

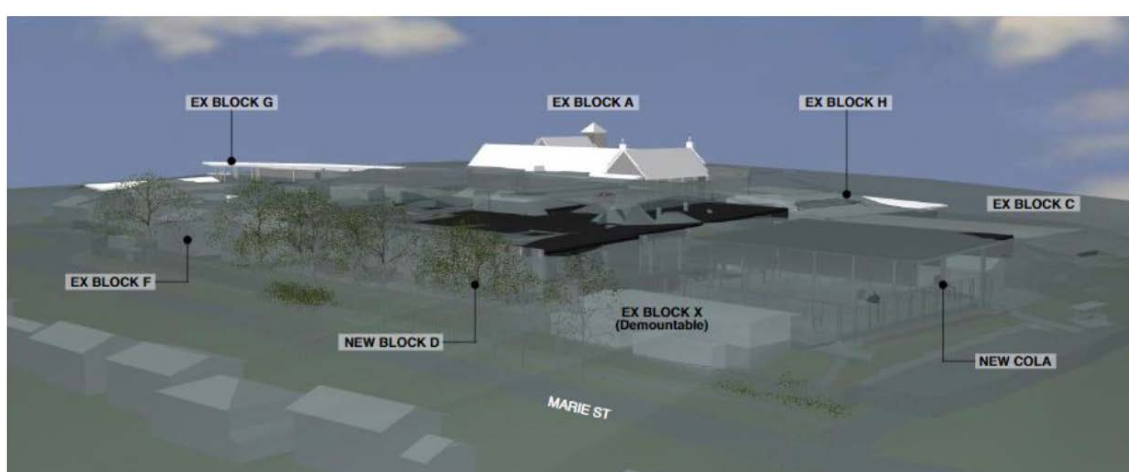


Figure 1: Applicant's Height Plane Diagram including Exceedance to Height Standard.

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

The proposed departure to the building height development standard is limited to the roof form of Block D and southern corner of the COLA and will not cause adverse impacts on the amenity of adjoining properties with respect to overshadowing, privacy, view loss and perceived bulk and scale.

The built form responds to the existing context and is consistent with the desired future character of the school as approved under the previous upgrade applications. The building presents as two storeys when viewed from Marie Street, with the height exceedance setback from the front façade. The height exceedance has negligible impacts on the streetscape presentation being centrally located and at the rear of the building. Block D (RL 144.8) remains of comparable size and scale to the approved Block G (RL 147.5) located to the north, and significantly lower in height than Block A, the heritage item, (RL 156.1) being 11.3m lower. In addition, Block D is situated on the site with the same setbacks as the existing two storey buildings of Block E and Block F to be demolished. Adjoining properties achieve adequate solar access as result of the

separation distances and site orientation. The building form and massing is considered appropriate in this context given compliance with the development controls for solar access and overshadowing.

The site has a cross fall from east to west through the school towards Marie Street. The development has been designed to respond to the topography ensuring the buildings are appropriately addressed when viewed from the public domain. The COLA structure has been designed that majority of the roof form complies with the height limit having exception to the south eastern corner located over the steepest slope. Block D has been designed that a limited portion of the roof form is above the 9m height limit to improve natural ventilation and solar access internally to the building. No additional storeys or floor area are proposed within the area of the height exceedance.

The development has been designed to consider the low density context of the immediate locality and provide a built form outcome which responds to the residential zoning. Notwithstanding the building height non-compliance, the height and scale of the proposed development will remain consistent with the approved built form. The design maintains the modernised elements of the new buildings along Marie Street. Landscaping and the use of complementary colours and materials soften the built form and maintain the existing streetscape character.

The variations to the height standard are considered negligible when viewed from the public domain. In this regard, there are sufficient environmental planning grounds to justify the contravention.

The applicant has adequately demonstrated that the proposed development is in the public interest and is consistent with the objectives of Clause 4.3 Height of Buildings and the R2 Low Density Residential zone. The variation to building height will not create buildings of excessive height, bulk or scale nor will it cause undue impacts upon the amenity of adjoining residential properties. A variation to the building height in this instance is considered to be satisfactory and can be supported.

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

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Buildings and the R2 Low Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

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

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

ii. Heritage Conservation

The objectives of Clause 5.10 are as follows:

- (a) to conserve the environmental heritage of The Hills,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Council's heritage inventory sheet No. 153 states the following with respect to the heritage item:

"The main building (now Gilroy College) is built of a dry pressed face brick, with gabled slate roof. This is a post 1922 addition to the original house. Other additions to the south. Arched brickwork tower and gables dominate building forms. Picturesque setting on well treed ridge. Two large Norfolk Island pines symmetrical about front entrance. Large Bunya pines to garden and along driveway and two in Maree Street. Major trees surround building and line the driveway (no longer in use)."

In addition, the following is noted with regards to the item's significance:

"Evidence of successive 19th and 20th century subdivisions of early land grants along Old Northern Road."

The heritage significance of the item relates to Block A, located to the east of proposed works (Refer to Attachment 6). No work is proposed to the heritage item, with works within the curtilage limited to landscaping and paving. It is not expected these works will result in any adverse heritage impacts on the item or impact the established curtilage.

Primary views along northern Marie Street which are considered the most significant views will be retained. Views to and from Block A internally within the site will not be impacted by the proposed works, nor will they impede important views of the item from the public domain. It is noted increased setbacks are provided between the heritage item and Block D when compared to the existing buildings, improving the existing view corridor glimpses throughout the site.

The bulk and scale of the building does not compete with Block A and is unlikely to undermine its heritage significance. The height of Block D is significantly lower than Block A being 11.3m lower. In addition, proposed colours and finishes are appropriate in the context of the site. The proposal satisfactorily conserves the heritage significance of the heritage item including the curtilage, setting and views.

The applicant has provided a Heritage Impact Assessment prepared by Andres Starr and Associates with the application which outlines the extent of the impact on the heritage item. Council's Heritage team reviewed the proposal and submitted report and raised no objections to the proposal. It is considered the proposed works do not detrimentally affect the heritage significance of the heritage item.

6. Compliance with The Hills Development Control Plan 2012

The Hills DCP 2012 does not provide specific controls which relate directly to educational establishments. Notwithstanding, a merit assessment against the applicable controls has been undertaken to ensure a consistent character with the streetscape and wider locality. The proposed development has been assessed against the relevant controls under Part B Section 2 Residential, Part C Section 3 Landscaping and Part C Section 4 Heritage of The Hills Development Control Plan 2012.

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

DEVELOPMENT CONTROL	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Building Setbacks	Front setback = 10m	6m at the southern end and 10.6m at the northern end.	No, refer to discussion below.

i. Building Setbacks

The DCP requires a primary road frontage setback of 10m in the low density residential area. The proposal provides a setback to Marie Street of 6m at the southern end and 10.6m at the northern end.

The DCP provides the following objectives relating to the control:

- (i) To provide setbacks that complements the streetscape and protects the privacy and sunlight to adjacent dwellings in accordance with ESD Objective 7.*
- (ii) To ensure that new development is sensitive to the landscape setting, site constraints and established character of the street and locality.*
- (iii) To ensure that the appearance of new development is of a high visual quality and enhances the streetscape.*

Comment:

Whilst the proposal does not meet the numerical compliance of the setback control, the setbacks proposed are in keeping with the existing streetscape and considered supportable.

The setbacks proposed are consistent with the established setback provided by other buildings approved for the school adjoining Marie Street. The encroachment to the southern portion is due to the angled boundary line which follows Marie Street. Block D is situated on the site with the same setbacks as the existing two storey buildings of Block E and Block F to be demolished and considered appropriate in this context given compliance with the development controls for solar access and overshadowing. Privacy and sunlight are maintained to adjoining properties by virtue of the separation distances and site orientation.

The development has been designed to respond to the topography of the site and improve the landscape setting when viewed from the public domain. The building has been designed to improve outdoor play area internally to the site and create separation between the new building and the heritage item, whilst also preserving the streetscape character. Additional landscaping is proposed to Marie Street complimenting the existing landscaped setting of the area. When viewed from the street, the building provides a bulk and scale that is consistent with the two storey character of the residential area, with high quality materials and finishes incorporated into the architectural design to enhance the streetscape.

In this regard, the variation is considered satisfactory.

7. Issues Raised in Submissions

The Development Application as notified to adjoining properties for 14 days. No submissions were received during the notification period.

8. External Referrals

The application was not referred to external agencies.

9. Internal Referrals

The application was referred to the following sections of Council:

FIRE SAFETY COMMENTS

No objections to the proposal subject to conditions. Condition 18 relates to upgrade works required under Clause 94A of the Environmental Planning and Assessment Regulations 2000. Specifically, fire compartment sizes, travel distances, and works to the school hall which remain outstanding from Development Application 1451/2019/JP. Conditions 65 and 66 provide context to the specifics in Condition 18 c) (i) and (ii).

The applicant is disputing Conditions 18, 65 and 66 relating to outstanding fire safety matters and submitted additional documentation to demonstrate the particulars of the conditions have already been satisfied. Council's Fire Safety officer has reviewed the information submitted, and final fire safety certificate issued for the hall, advising the particulars were not included and remain outstanding.

FORWARD PLANNING (SECTION 7.12 CONTRIBUTIONS) COMMENTS

No objections to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objections to the proposal subject to conditions.

HERITAGE COMMENTS

No objections to the proposal subject to conditions.

SUBDIVISION ENGINEERING COMMENTS

No objections to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

No objections to the proposal subject to conditions. Additional planting of two trees and ground covers are conditioned to the southwestern corner of the sports courts for additional embellishment when viewed from the street (Refer to Condition 4).

WASTE MANAGEMENT COMMENTS

No objections to the proposal subject to conditions.

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP (Transport and Infrastructure) 2021, SEPP (Educational Establishments and Child Care Facilities) 2017, SEPP (Resilience and Hazards) 2021, LEP 2019 and The Hills Development Control Plan 2012, and is considered satisfactory.

The variation to the LEP Height of Buildings control is addressed in the report and considered satisfactory. In relation to the Clause 4.6 variation request, it is considered that the Applicant's request is well founded, and the proposed variations result in a development that is consistent with the relevant objectives, and compliance with the standard is unreasonable and unnecessary in this instance as outlined in this report. It is considered that there are sufficient environmental grounds to justify the contravention to the height standard and the development is in the public interest as it is consistent with the objectives of the standard and R2 Low Density Residential zone.

The proposal has demonstrated works will not result in any adverse heritage impacts on the item or impact the established curtilage. It is considered the proposed works do not detrimentally affect the heritage significant of the heritage item and are supported.

The variation to the DCP with respect to building setbacks has been assessed on merit and addressed in the report. The variation is considered supportable.

Accordingly, the proposal is recommended for approval subject to conditions.

IMPACTS:

Financial

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

The Hills Future - Community Strategic Plan

The proposed development is consistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

RECOMMENDATION

The Development Application be approved subject to the reasons listed below and subject to the following conditions.

Clause 4.3 of LEP 2019 prescribes a maximum height of 9m for the subject site. The proposed development exceeds the maximum building height by 24% (2.14m) for Block D and 3% (300mm) for the COLA. The variation to the development standard can be supported for the following reasons:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R2 Low Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

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: -

- Location of additional planting and two trees as per the planting requirements condition (Condition 4)

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	REVISION	DATE
DA02	Campus Plan Existing	01	09/12/2021
DA03	Campus Plan Proposed	01	09/12/2021

DA05	Demolition Plan	01	09/12/2021
DA06	Block D Level 1 Floor Plan	02	31/05/2022
DA07	Block D Level 2 Floor Plan	02	31/05/2022
DA08	Block D Upper Level 2 Floor Plan	02	31/05/2022
DA09	Block D & COLA Roof Plan	02	31/05/2022
DA10	Campus Elevations Proposed	01	09/12/2021
DA11	Block D Elevations	01	09/12/2022
DA12	Block D Sections	02	31/05/2022
DA13	Overall External Works Plan	01	09/12/2022
DA14	Level 1 External Works Plan – North	01	09/12/2022
DA15	Level 1 External Works Plan – South	01	09/12/2022
DA16	Level 2 External Works Plan	01	09/12/2022
DA27	Materials and Finishes	01	09/12/2022
L01	Landscape Plan	2	30/11/2021
L02	Landscape Plan – Plaza	1	26/11/2021
L03	Landscape Plan – Marie Street	1	26/11/2021
L04	Landscape Plan – Basketball Courts and Details	2	30/11/2021
UFD-07698-C-101	SD204 Level 2 Block Plan	1C	08/11/2021
UFD-07698-C-201	SD204 Level 2 Block Plan Elevations A, B and C	1C	08/11/2021
UFD-07698-C-101	SD204 Level 2 Block Plan Elevations D, E and F	1C	08/11/2021

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

2. External Finishes

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

3. Tree Removal

Approval is granted for the removal of Tree 1 as indicated on the approved Landscape Plans prepared by Inview Design Revision 2 dated 30/11/21.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

4. Planting Requirements

All trees planted as part of the approved landscape plan are to be planted in pot size as indicated on Landscape Plans prepared by Inview Design Revision 2 dated 30/11/21. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers and ornamental grasses are to be minimum 150mm pot sizes.

The species *Raphiolepis indica* 'Oriental Pearl' that are shown on landscape plans, are to be added onto the plant schedule.

The turf embankment indicated in blue on marked up plans is to be substituted with landscape planting, with the planting to improve the streetscape outcome. Blue areas are to include a mix of shrubs and groundcovers, planted at minimum 1m centres, with shrubs at 200mm pot sizes and groundcovers and grasses at 150mm pot sizes.

Additional proposed trees to be chosen from the species below (minimum 75L pot sizes):

- Backhousia citriodora
- Elaeocarpus reticulatus
- Lophostemon confertus
- Tristaniopsis laurina 'Luscious'
- Waterhousia floribunda

5. Protection of Existing Vegetation

Any excavated material not used in the construction of the subject works is to be removed from the site and under no circumstances is to be deposited in bushland areas.

6. Protection of Public Infrastructure

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

7. Minor Engineering Works

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

Works within an existing or proposed public road, or works within an existing or proposed public reserve can only be approved, inspected and certified by Council. The application form for a minor engineering works approval is available on Council's website and the application and inspection fees payable are included in Council's Schedule of Fees and Charges.

a) Concrete Footpath

A 1.2 wide concrete footpath, including access ramps at all intersections, must be provided on one side of Freeman Avenue in accordance with the recommendation of the Transport Assessment report dated 3/11/2021.

8. Construction Certificate

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

9. Demolition Notification

Both Council and any adjoining properties must be notified in writing five days before demolition works commence.

10. Building Work to be in Accordance with BCA

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

11. Acoustic Requirements

The recommendations of the Noise Impact Assessment for Gilroy Catholic College Stage 2 prepared by Rodney Stevens Acoustics referenced as 210090R1 Revision 3, dated 25 May 2022 and submitted as part of the Development Application are to be implemented as part of this consent. In particular: Section 6: Analysis and design.

12. Retention of Trees

All trees not specifically identified on the approved plans for removal are to be retained with remedial work to be carried out in accordance with the Arborist report prepared by Mark Bury Consulting dated 16th April 2021.

13. Adherence to Waste Management Plan

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

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

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

14. Contaminated Waste

The generation, storage, transport, treatment or disposal of hazardous, industrial or Group A liquid waste must be in accordance with the requirements of the Protection of the Environment Operations Act, 1997 and the NSW Department of Environment and Climate Change and Water (DECCW) waste tracking requirements. For further information, contact the Environment Line on 131 555.

15. Management of Construction and/or Demolition Waste

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

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

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

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

16. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on site. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

17. Section 7.12 Contribution

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$204,413.00** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

In accordance with the Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020, the contribution is to be paid before the issue of the first Occupation Certificate in respect of any building work to which this consent relates. However, if no Construction Certificate in respect of the erection of a building to which the consent relates has been issued on or before 25 September 2022, the contribution is to be paid before the issue of the first Construction Certificate after that date for any such building.

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

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

18. Clause 94 – Consent Authority may Require Buildings to be Upgraded

Pursuant to Clause 94 of the Environmental Planning & Assessment Regulation 2000, the following upgrades must be undertaken with the construction certificate works and must be completed prior to an occupation certificate being issued:

- a) A review of fire compartment sizes is to be undertaken to ensure the general floor area limitations are not exceeded, appropriate for the type of construction that exists in the building and the relevant classifications. If required, the existing buildings must be upgraded to have elements to be capable of maintaining structural stability during a fire and to avoid the spread of fire appropriate to CP1 & CP2 of the BCA.
- b) A review of travel distances to exits and distances between alternative exits is to be undertaken to ensure conditions in any evacuation route will remain tenable appropriate to DP4 & EP2.2 of the BCA.
- c) The following upgrade works are to be undertaken on the existing school hall which is considered to be an *entertainment venue*:
 - i. Evacuation plans are to be provided to the premises and is to be added as an essential fire safety measure on the fire safety schedule
 - ii. Maximum capacity signage is to be provided to the premises and is to be added as an essential fire safety measure on the fire safety schedule

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

19. Stormwater Management – Upper Parramatta River Catchment Area

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The stormwater concept plan prepared by MSL Consulting Engineers, project No. 20349 drawings no. C02 – C07 included, Revision J, dated: 18/05/22 is for development application purposes only and is not to be used for construction. The detailed design must reflect the stormwater concept plan and the following necessary changes:

- a) Contributing catchment plan draining to the OSD shall be revised to include the surface runoff, proposed building/structures and any other existing adjacent building/structure that drain to the OSD, noting that the location of the existing crust on the site. These requirements shall be clearly shown on the construction drawing prior to the issue of any construction certificate
- b) The HED chamber, height and the orifices shall be redesigned and recalculated as per UPRCT requirements. These requirements shall be clearly shown on the construction drawing prior to the issue of any construction certificate
- c) Two orifices will need to be adopted/designed as UPRCT requirements. These requirements shall be clearly shown on the construction drawing prior to the issue of any construction certificate
- d) Separate catchment shall be provided for the MSUIC model and correct node shall be used (i.e. roof instead of mix) and correct catchment size/areas. These requirements shall be clearly shown on the construction drawing prior to the issue of any construction certificate
- e) OSD size and shape shall be revised to comply with the requirements above.

Water sensitive urban design elements, consisting of filters and OceanGuards, are to be located generally in accordance with the plans and information submitted with the application.

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

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

All model parameters and data outputs are to be provided (including points (d) and (e) above)

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

- Design/ construction plans prepared by a hydraulic engineer.
- A completed OSD Drainage Design Summary Sheet.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

20. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$103,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the road frontage of the subject site plus an additional 50m on either side (200m) multiplied by the width of the road (5.5m).

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

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

21. Engineering Works

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

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

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

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

The concept engineering plan prepared by MSL Consulting Engineers, project No. 20349 drawings no. C02 – C07 included, Revision J, dated: 18/05/22 is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

a) Site Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to connecting to the internal drainage pit within the site.

b) Concrete Footpath

A 1.2 wide concrete footpath, including access ramps at all intersections, must be provided on one side of Freeman Avenue in accordance with the recommendation of the Transport Assessment report dated 3/11/2021.

c) Service Conduits

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

22. Security Bond Requirements

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

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

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

23. Erosion and Sediment Control/ Soil and Water Management Plan

The detailed design must be accompanied by an Erosion and Sediment Control Plan (ESCP) or a Soil and Water Management Plan (SWMP) prepared in accordance with the Blue Book and Council's Works Specification Subdivision/ Developments.

A SWMP is required where the overall extent of disturbed area is greater than 2,500 square metres, otherwise an ESCP is required.

An ESCP must include the following standard measures along with notes relating to stabilisation and maintenance:

- Sediment fencing.
- Barrier fencing and no-go zones.
- Stabilised access.
- Waste receptacles.
- Stockpile site/s.

A SWMP requires both drawings and accompanying commentary (including calculations) addressing erosion controls, sediment controls, maintenance notes, stabilisation requirements and standard drawings from the Blue Book.

An SWMP is required for this development.

24. Construction Management Plan

A construction management plan must be submitted demonstrating how the potential for conflict between resident and construction traffic is to be minimised and managed throughout all stages of the development. The construction management plan must be submitted before a Construction Certificate is issued and complied with for the duration of works.

PRIOR TO WORK COMMENCING ON THE SITE

25. Protection of Existing Trees

The trees 2 - 19 that are to be retained are to be protected during all works strictly in accordance with AS4970- 2009 Protection of Trees on Development Sites.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

26. Sydney Water Building Plan Approval

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

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

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

27. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in placed within the site to protect existing street trees 2-19. The location of fencing shall be a) As per Tree Protection Plan as per Arborist report for project or b) Tree Protection Zone (TPZ) as calculated under AS4970 (2009) Protection of trees on development sites c) A minimum of 3m radius from trunk.

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

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

28. Tree Protection Signage

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with AS1319). Access to this area can only be authorised by the project arborist or site manager.

29. Mulching within Tree Protection Zone

Prior to any works commencing on site all areas within the Tree Protection Zone are to be mulched with composted leaf mulch to a depth of 100mm.

30. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

31. Separate OSD Detailed Design Approval

No work is to commence until a detailed design for the Onsite Stormwater Detention system has been approved by either Council or an accredited certifier.

32. Property Condition Report – Public Assets

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

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

33. Traffic Control Plan

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

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

34. Contractors Details

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

35. Management of Building Sites

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

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

36. Consultation with Service Authorities

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

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

37. Approved Temporary Closet

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

38. Stabilised Access Point

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

39. Details and Signage - Principal Contractor and Principal Certifier

Details

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

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

Signage

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

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

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

40. Notification of Asbestos Removal

Prior to commencement of any demolition works involving asbestos containing materials, all adjoining neighbours, Council and WorkCover NSW must be given a minimum five days written notification of the works.

41. Engagement of a Project Arborist

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

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

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

42. Erosion and Sedimentation Controls/ Soil and Water Management

The approved ESCP or SWMP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. Erosion and sedimentation controls shall be in place until the site is landscaped and/or suitably revegetated. The approved ESCP or SWMP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

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

43. Erosion & Sediment Control Plan Kept on Site

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

44. Demolition Works and Asbestos Management

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

45. Waste Management Details Required

Prior to the commencement of works, the location of waste disposal and recycling for all construction and/ or demolition waste materials (bricks, concrete, timber and so on) must be submitted to and approved by the Principal Certifying Authority. Alternatively, details of an appropriately licensed skip bin hire company or site clean company can be provided where the company is engaged to undertake all works during construction of the development (collection, transportation and disposal).

DURING CONSTRUCTION

46. Standard of Works

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

47. Hours of Work

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

Monday to Saturday - 7.00am to 5.00pm;

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

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

48. Survey Report and Site Sketch

A survey report and site sketch signed and dated (including contact details) by the registered land surveyor may be requested by the Principal Certifier during construction. The survey shall confirm the location of the building/structure in relation to all boundaries and/or levels. As of September 2018 the validity of surveys has been restricted by legislation to 2 years after issue.

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

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

An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspection or other inspection required by the Principal Certifier is not carried out. Inspections can only be carried out by the Principal Certifier unless agreed to by the Principal Certifier beforehand and subject to that person being a registered certifier.

50. Mechanical ventilation in Food Premises

Exhaust hoods are to be of a stainless steel construction with an internal 50mm x 50mm gutter and unscrewable drainage plug at one corner. They are to have removable grease filters for cleaning.

Documentation shall be submitted to the certifying authority that the ventilation system has been installed and is operating in accordance with:

- i. *AS1668.1:2015 – The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings; and*
- ii. *AS1668.2:2012 – The use of ventilation and air-conditioning in buildings PART 2: mechanical ventilation in buildings.*

51. European Sites or Relics

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

52. Asbestos Removal

Any asbestos containing material, whether bonded or friable, shall be removed by a licenced asbestos removalist. A signed contract between the removalist and the person having the benefit of the development application is to be provided to the Principle Certifying Authority, identifying the quantity and type of asbestos being removed. Details of the landfill site that may lawfully receive the asbestos is to be included in the contract.

Once the materials have been removed and delivered to the landfill site, receipts verifying the quantity received by the site are to be provided to the Principal Certifying Authority.

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

53. Dust Control

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

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

54. Project Arborist

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

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the PCA within 14 days of completion of the works.

55. Construction and Fit-out of Food Premises

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all work involving construction or fitting out of the premises shall comply with the requirements of *Australian Standard AS 4674-2004 – Design, construction and fit-out of food premises* and the provisions of the Food Standards Code (Australia). This includes, but is not limited to:

- The intersection of floors with walls and exposed plinths in food preparation, storage and servery areas are to be coved.
- All walls are to be solid construction. Solid construction is defined as brick, concrete blocks, autoclaved aerated concrete or preformed panels that are filled with suitable material.
- Pipes and conduits adjacent to walls are to be set a minimum of 25mm off wall face with brackets. Pipes and conduits entering floors, walls or ceilings are to be fitted with a flange and all gaps fully sealed.
- Hand wash basins:
 - o Must be provided, not obstructed and accessible at bench height and no further than 5 metres from any place where open food is handled or prepared; and
 - o Must be fitted with a tap that operates hands free with a permanent supply of warm running potable water delivered through a single outlet.

Note: Copies of AS 4674-2004 may be obtained from www.saiglobal.com by visiting the website: www.saiglobal.com and copies of the Food Safety Standards Code (Australia) may be obtained from Food Standards Australia New Zealand by visiting the following website www.foodstandards.gov.au.

56. Contamination

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works are to cease, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The report is to be submitted to Council's Manager – Environment and Health for review prior to works recommencing on site.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

57. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved Landscape Plans prepared by Inview Design Revision 2 dated 30/11/21 by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

58. Completion of Engineering Works

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

59. Property Condition Report – Public Assets

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

60. Stormwater Management Certification

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

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

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

61. Creation of Restrictions/ Positive Covenants

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

a) Restriction/ Positive Covenant – Onsite Stormwater Detention

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

b) Restriction/ Positive Covenant – Water Sensitive Urban Design

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

62. Section 73 Compliance Certificate

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. The certificate must refer to this development consent and all of the lots created.

Sydney Water's guidelines provide for assumed concurrence for the strata subdivision of a development approved by an earlier consent covered by a compliance certificate.

The only other exception to this is for services other than potable water supply, in which case the requirements of Flow Systems/ Box Hill Water as a network operator under the Water Industry Competition Act 2006 would apply. A separate certificate of compliance would need to be issued for those works.

63. Maximum Capacity Signage to be Displayed in the Premises

With effect from 26 January 2010, it is a Prescribed Condition under Clause 98D of the Environmental Planning and Assessment Regulation 2000 that Entertainment Venues, Function Centres, Pubs, Registered Clubs and Restaurant shall have a Maximum Capacity Signage on display. The following signage is ready for use and shall be displayed in a prominent position in the building:

Maximum Capacity of Venue

Pursuant to Development Consent No.1237/2022/JP, the maximum number of persons that are permitted in the school hall is 900.

Note:

1. The approved method to calculate that the authorised capacity is not exceeded is by the issue of numbered tickets to patrons upon admission, together with regular head counts at intervals during the hours of operation; or
2. The approved method to calculate that the authorized capacity is not exceeded is by a counting device accurately indicating numbers of patrons "IN" and "OUT" of the premises during high peak periods. These details are to be kept in a logbook and updated at the end of trading on each day. The logbook is to be available for inspection upon request by the Consent Authority or other licensing authorities.

The name, address and telephone number of the council area in which the building is located:

**The Hills Shire Council
3 Columbia Ct
NORWEST NSW 2153
Tel: 9843 0555**

The name and business telephone number of an owner or manager of the building (to be completed by owner or manager):

Owner/Manager's Name:

Tel:

Mob:

64. Retaining Walls

All retaining walls shown on the approved plans shall be completed prior to the issue of a "Whole" Occupation Certificate.

65. Acoustic Compliance Report

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in Section 6 of the Noise impact Assessment for Gilroy Catholic College Stage 2 prepared by Rodney Stevens Acoustics referenced as 210090R1 Revision 3 and dated 25 May 2022. Written certification is to be provided to Council's Manager – Environment and Health.

66. Food Premises Final Inspection

Prior to the issue of any Occupation Certificate, the food premises shall be inspected by an Authorised Officer of The Hills Shire Council under the Food Act 2003, to determine compliance with the Food Act 2003, Food Safety Standards and Australian Standard 4674:2004: Design Construction and Fit-out of Food Premises.

THE USE OF THE SITE

67. Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 Control of Obtrusive Effects of Outdoor Lighting*.

68. Offensive Noise - Acoustic Report

The use of the premises and/or machinery equipment installed must not create offensive noise so as to interfere with the amenity of the neighbouring properties.

Should an offensive noise complaint be received and verified by Council staff, an acoustic assessment is to be undertaken (by an appropriately qualified consultant) and an acoustic report is to be submitted to Council's Manager – Environment and Health for review. Any noise attenuation measures directed by Council's Manager - Environment and Health must be implemented.

69. Acoustic – Public Address System

Noise associated with the operation of the school public address system, school bell or other equipment on the subject site, must not exceed 5db(A) above the ambient background noise level when measured at the property boundary.

70. Number of Staff and Students

The maximum number of staff and students are limited to 100 Staff and 1,380 Students as approved under 1451/2019/JP.

ATTACHMENTS

1. Locality Plan
2. Aerial Map
3. LEP 2019 Zoning Map
4. LEP 2019 Height of Buildings Map
5. LEP 2019 Heritage Map
6. Site Plan
7. Floor Plans
8. Street Elevations
9. Building Elevations
10. Sections
11. Shadow Diagrams
12. Materials and Finishes
13. Landscape Plans
14. 9m Height Plane
15. Clause 4.6 Written Submission

ATTACHMENT 1 – LOCALITY PLAN



SUBJECT SITE



PROPERTIES NOTIFIED

HILLS DISTRICT HISTORICAL SOCIETY ALSO NOTIFIED



THE HILLS SHIRE COUNCIL

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

BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.

ATTACHMENT 2 – AERIAL MAP



SUBJECT SITE

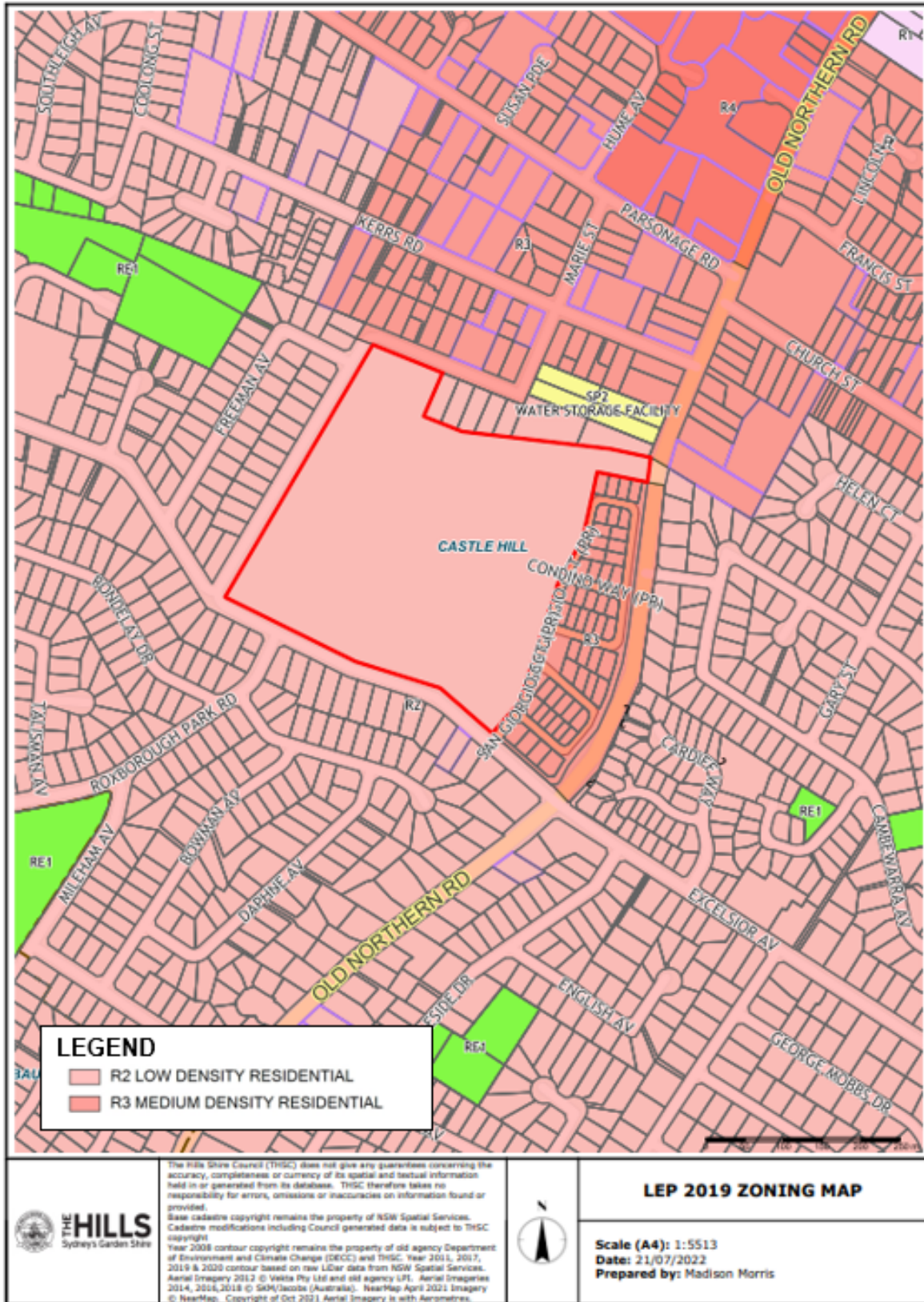
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

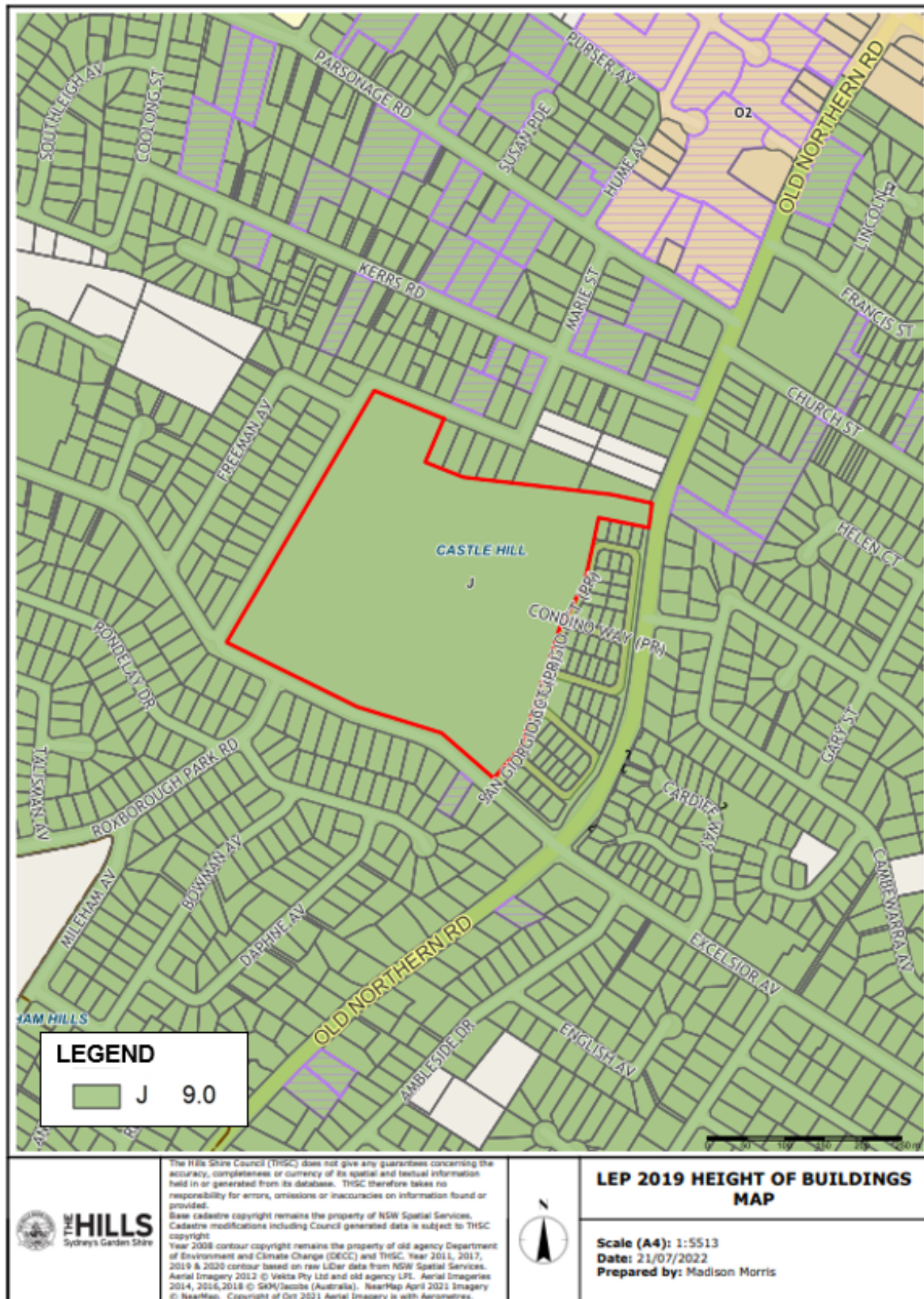
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE, COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.

ATTACHMENT 3 – LEP 2019 ZONING MAP



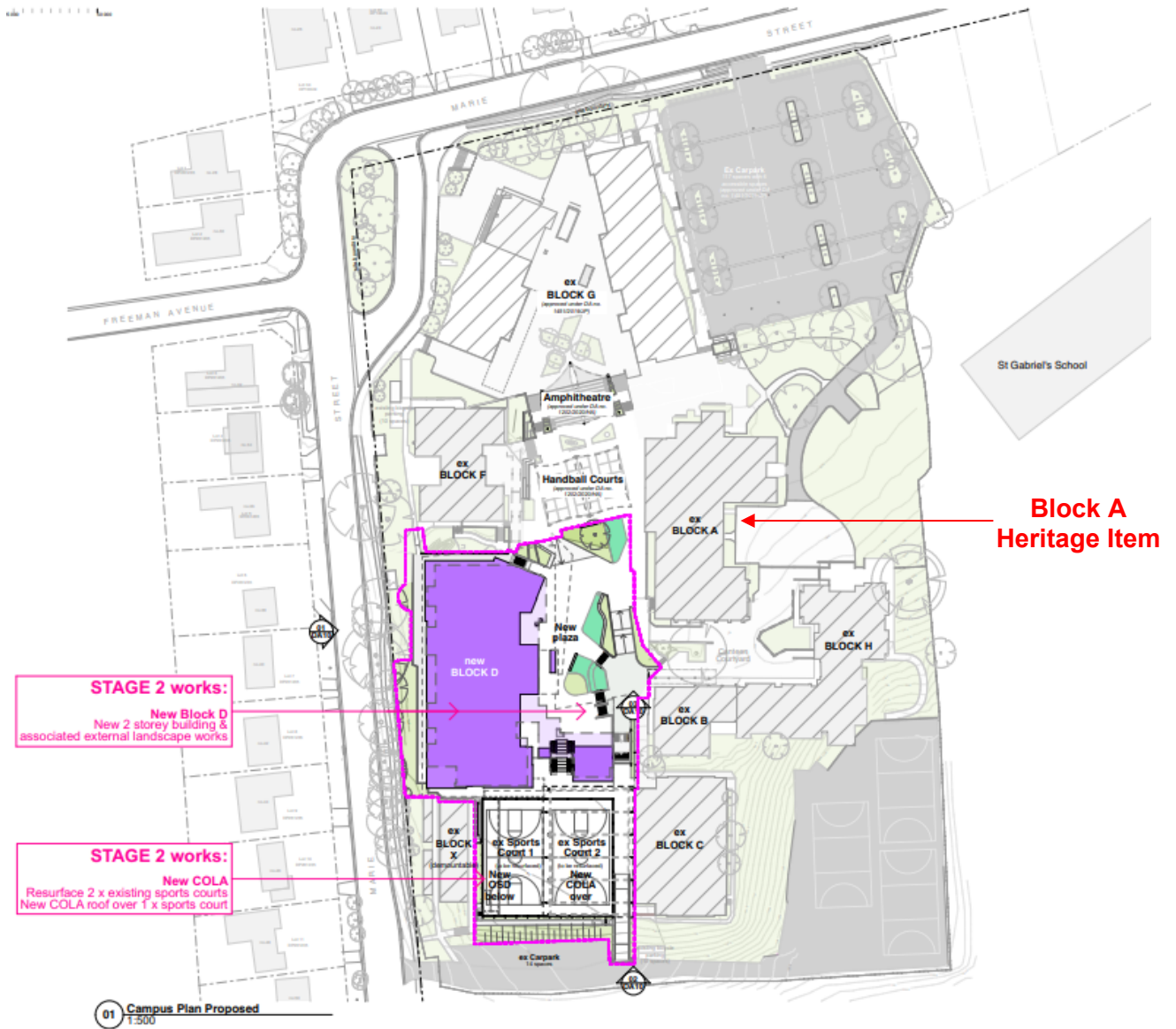
ATTACHMENT 4 – LEP 2019 HEIGHT OF BUILDINGS MAP



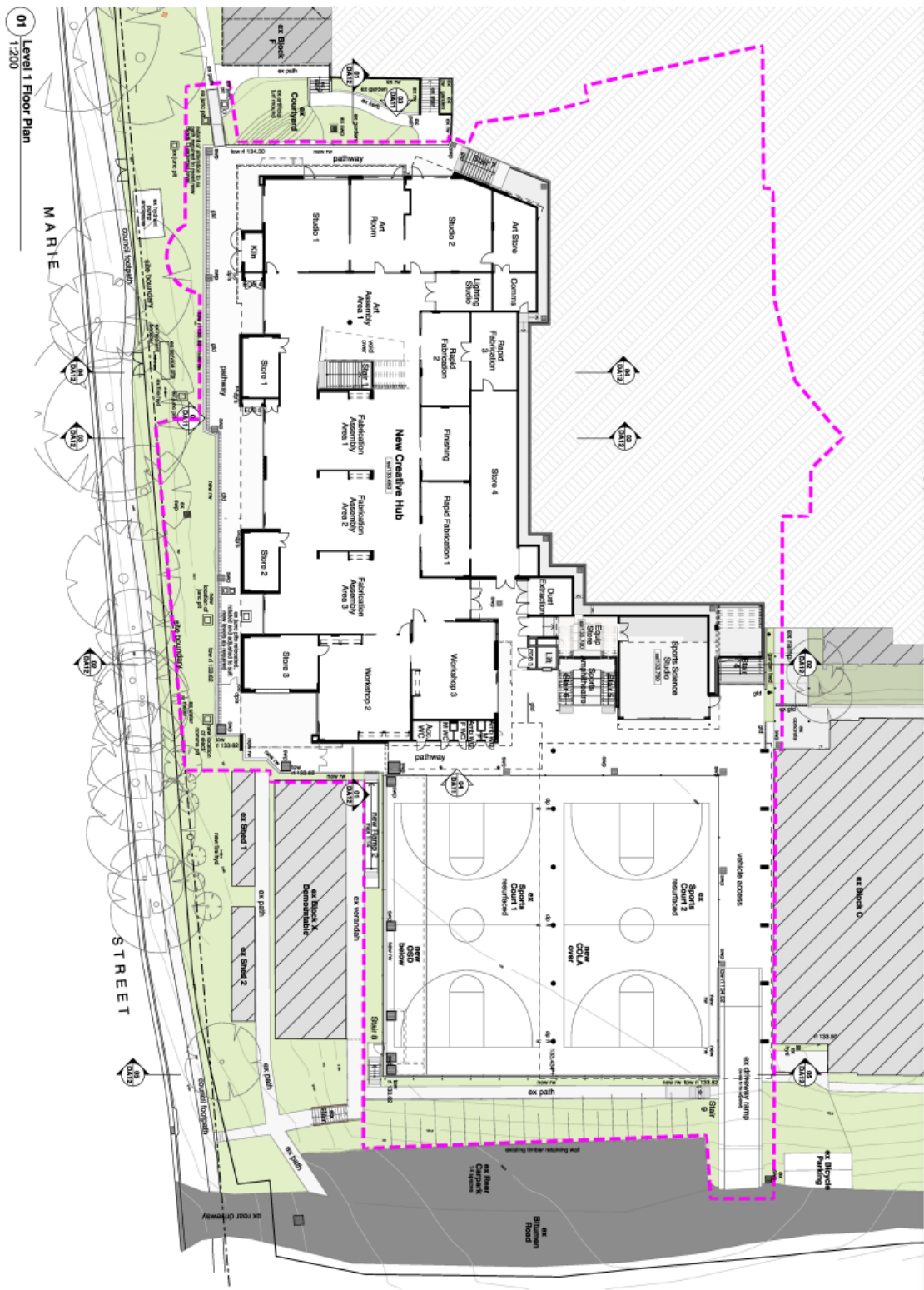
ATTACHMENT 5 – LEP 2019 HERITAGE MAP

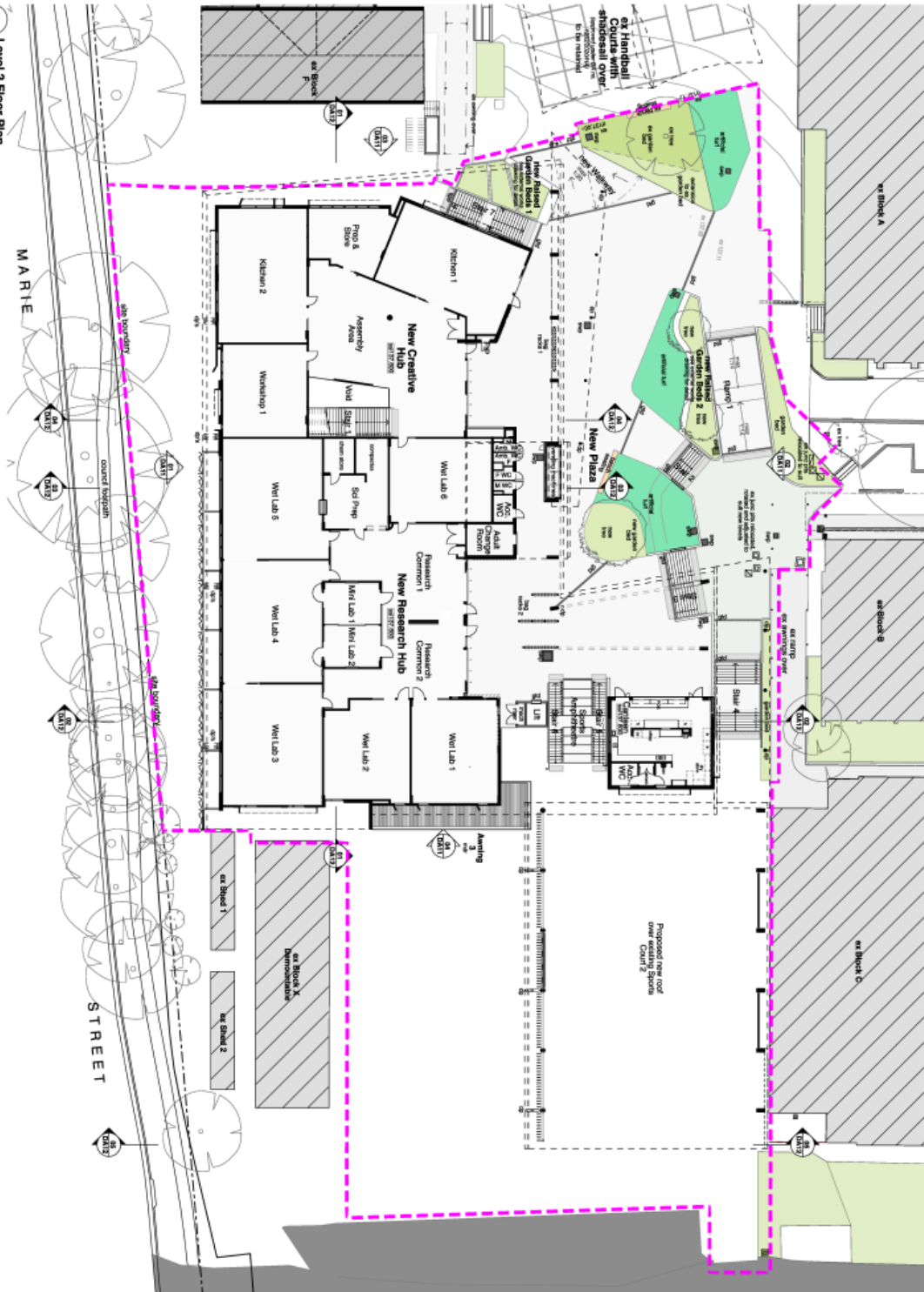


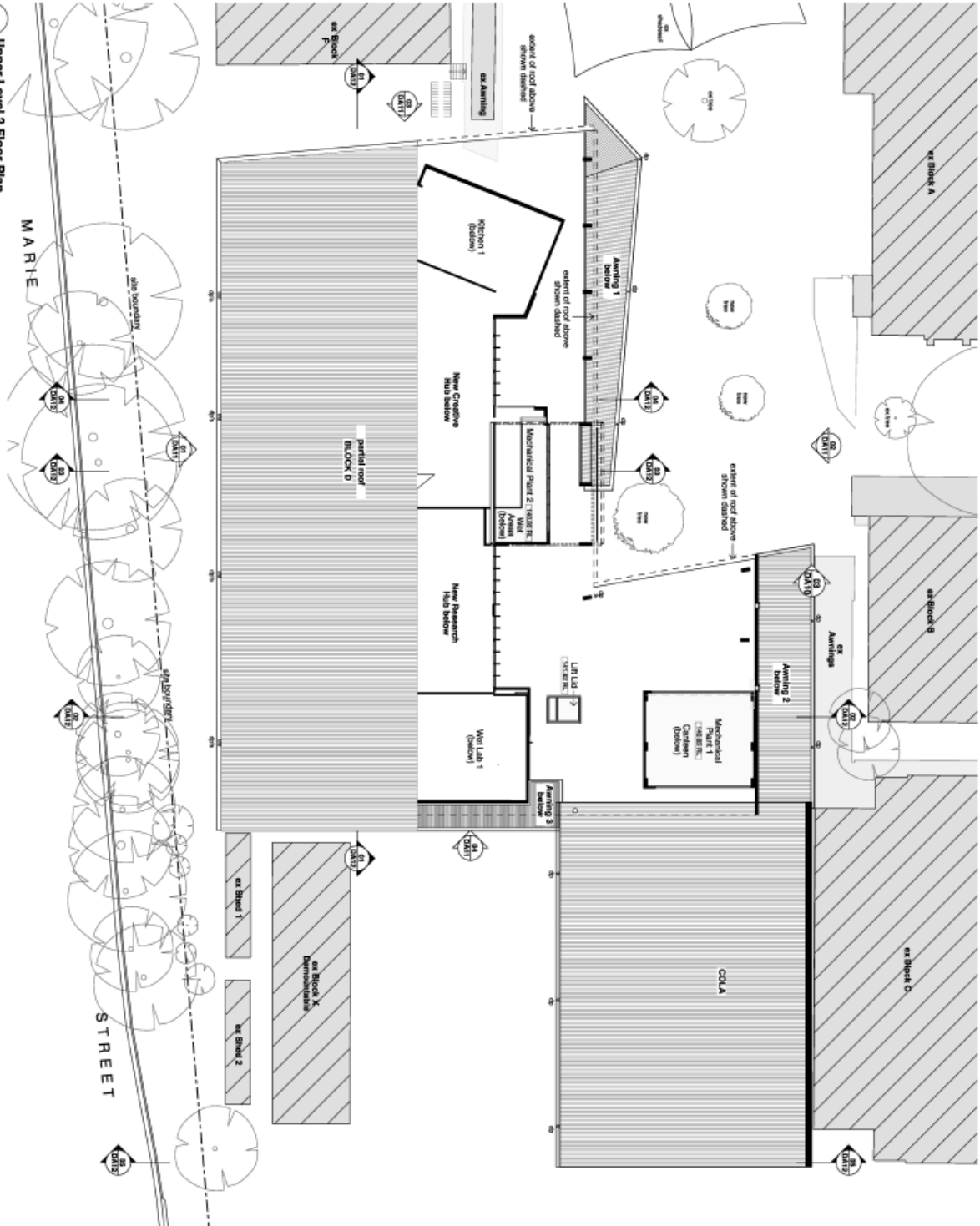
ATTACHMENT 6 – SITE PLAN



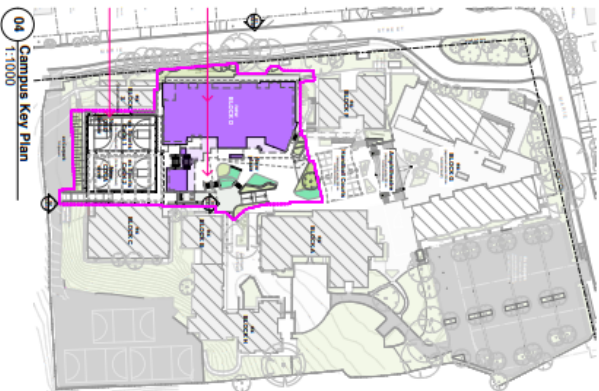
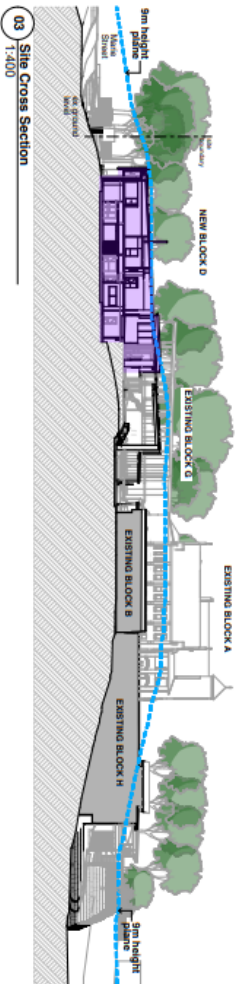
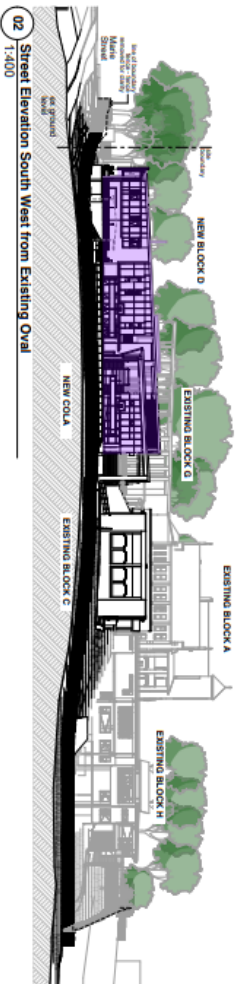
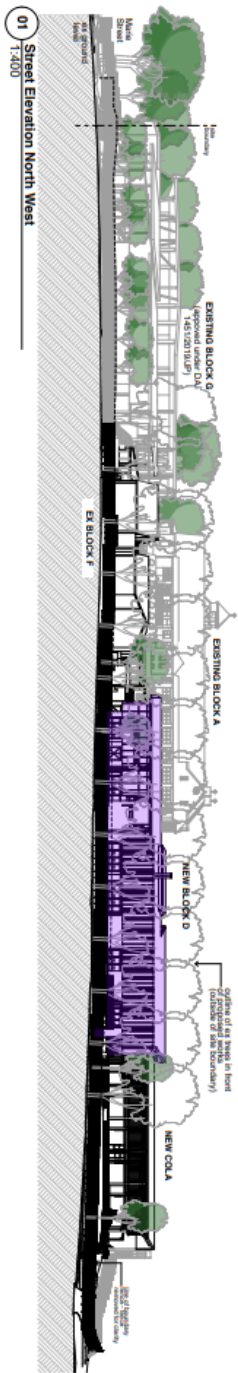
ATTACHMENT 7 – FLOOR PLANS



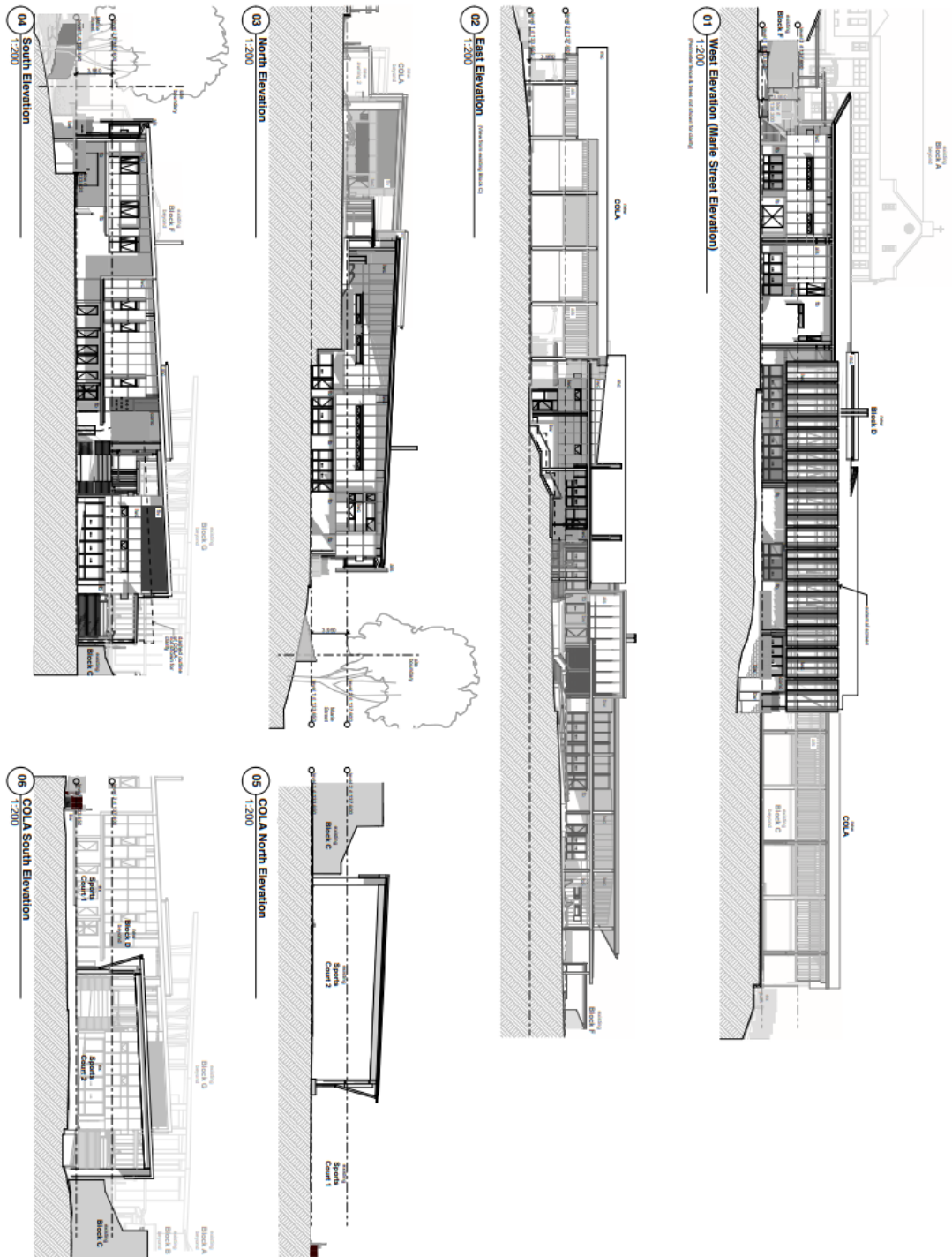




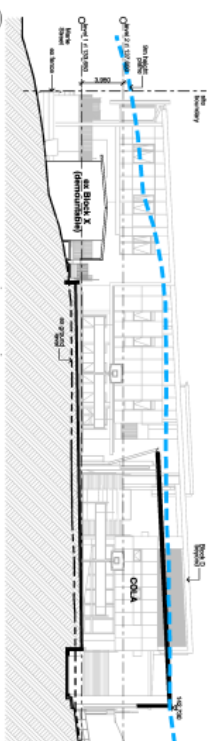
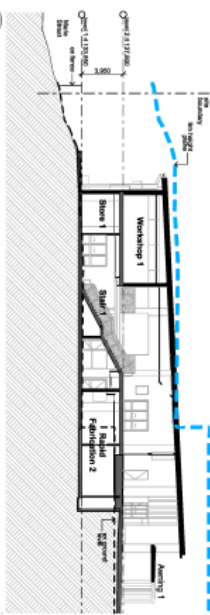
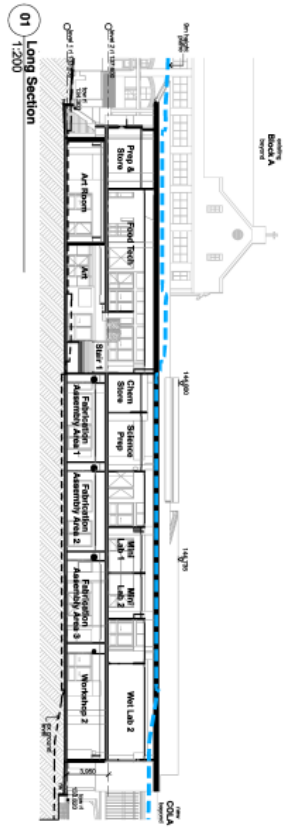
ATTACHMENT 8 – STREET ELEVATIONS



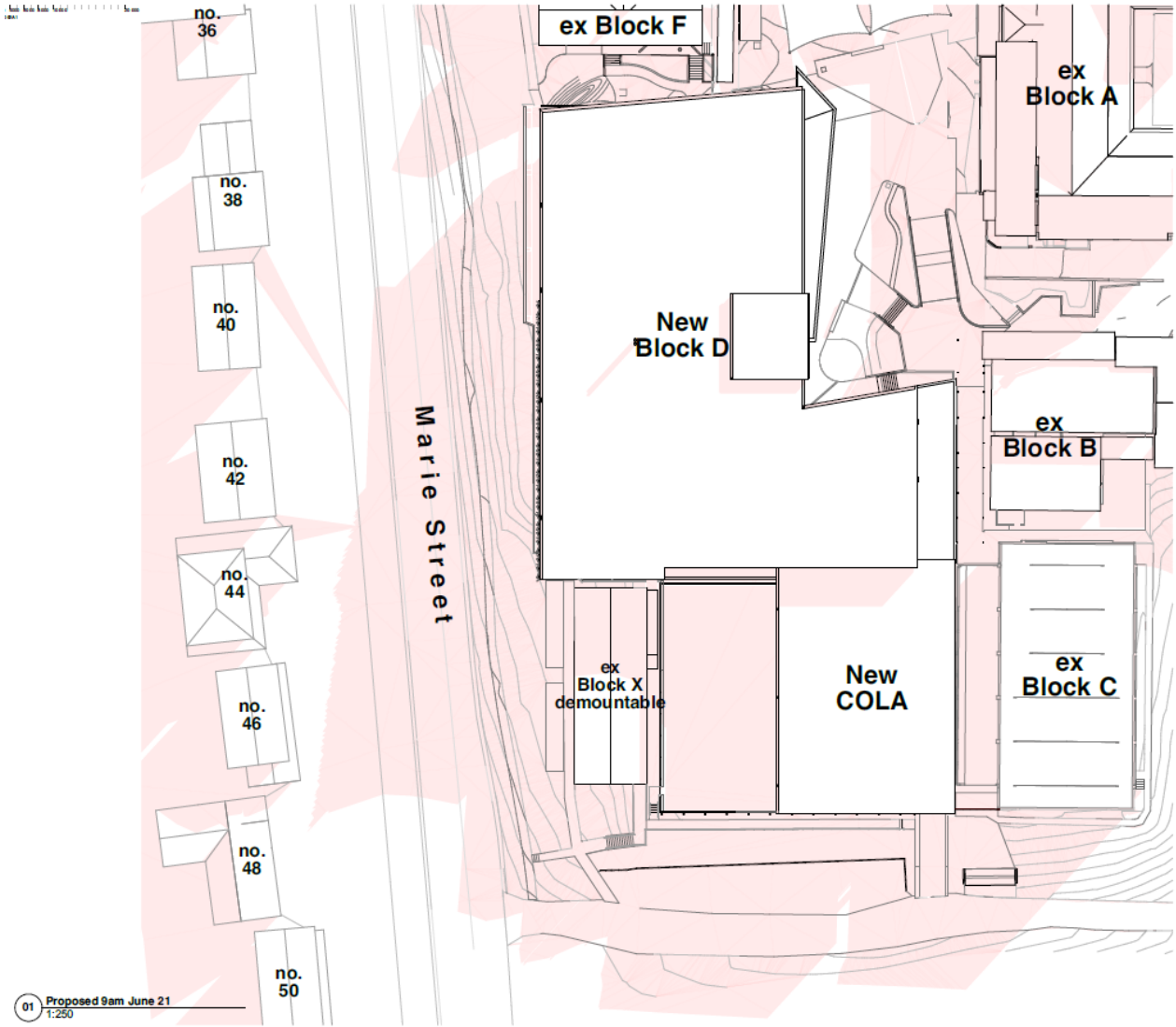
ATTACHMENT 9 – BUILDING ELEVATIONS



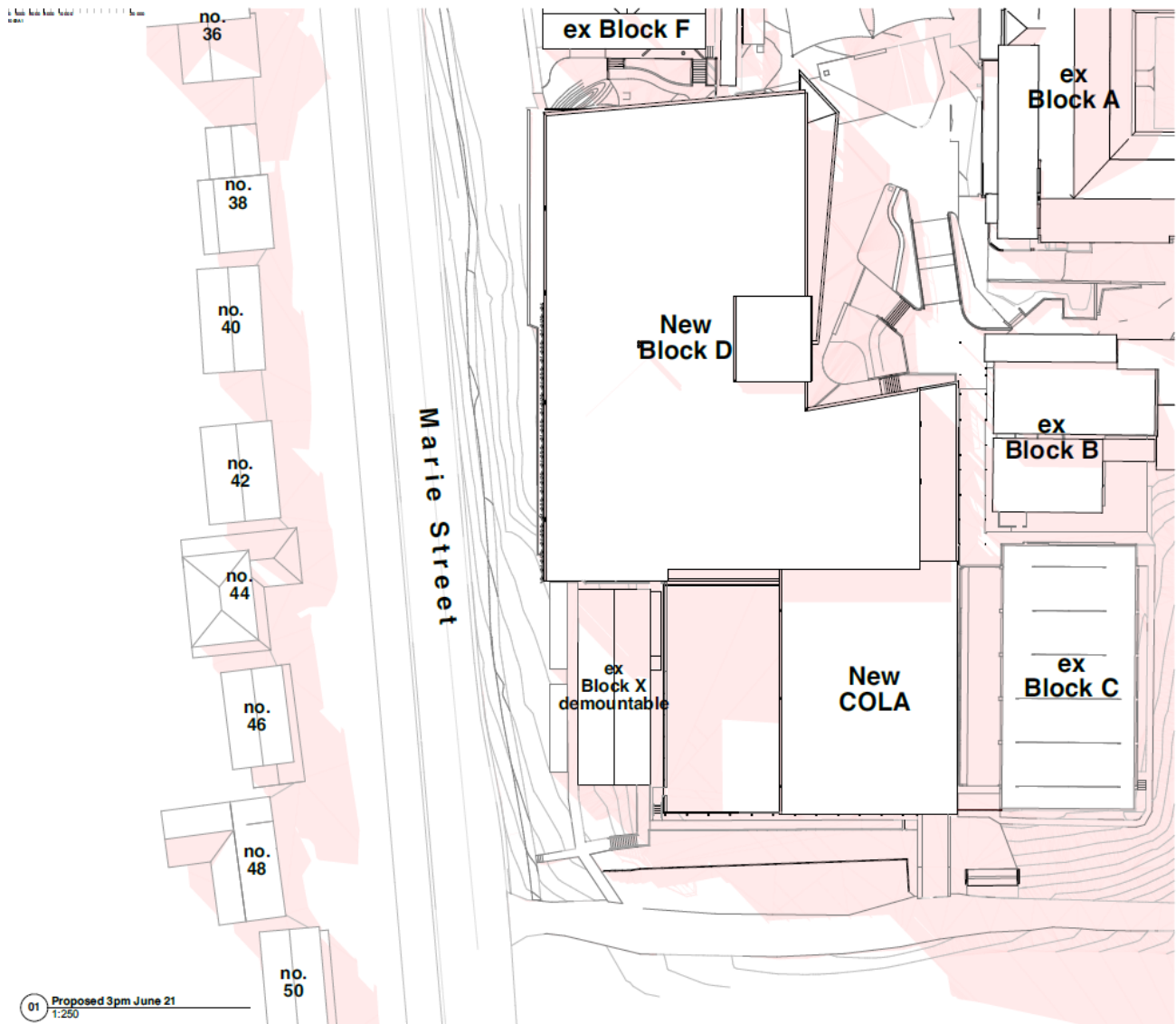
ATTACHMENT 10 - SECTIONS



ATTACHMENT 11 – SHADOW DIAGRAMS



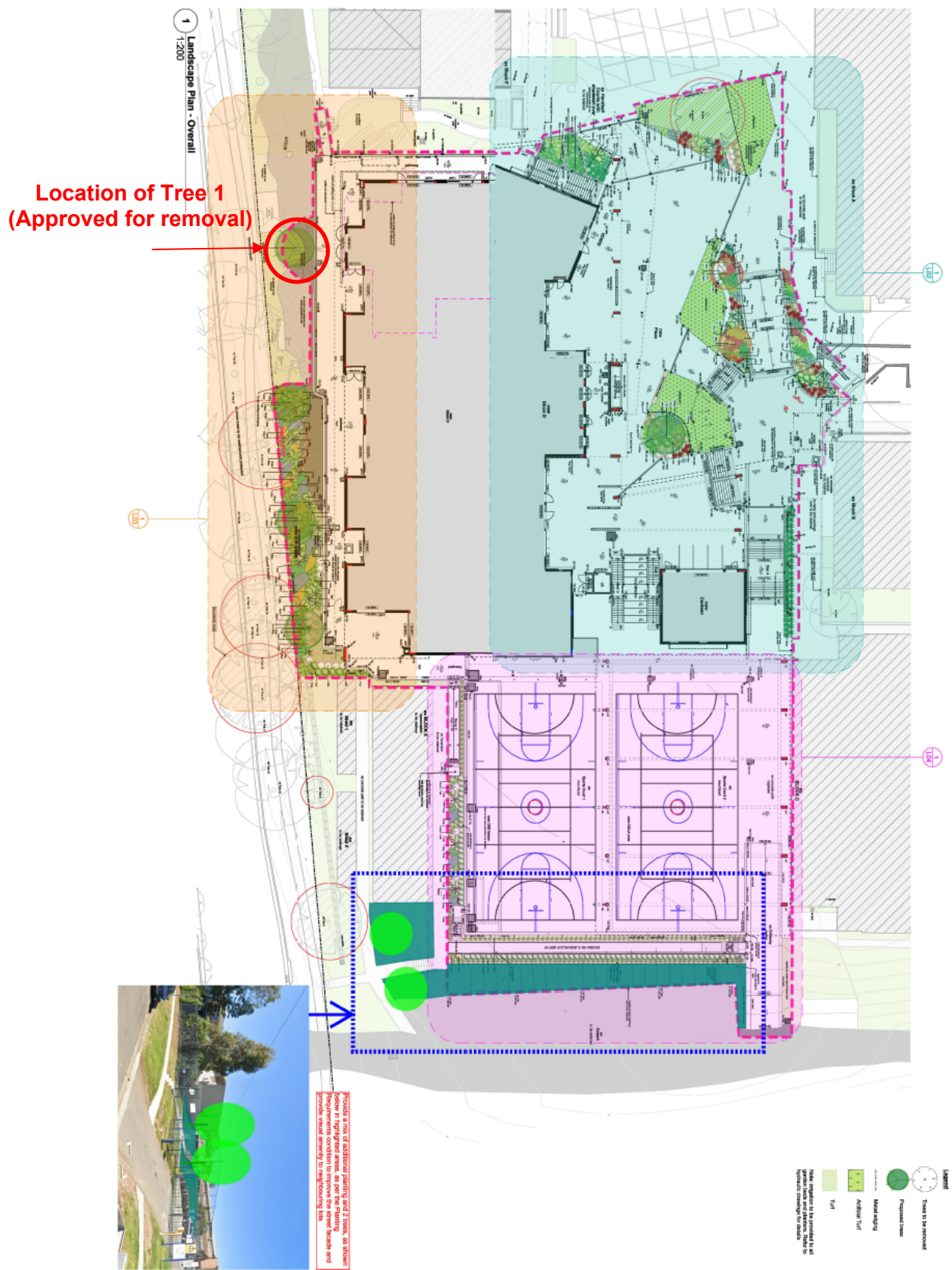




ATTACHMENT 12 – MATERIALS AND FINISHES



ATTACHMENT 13 – LANDSCAPE PLANS

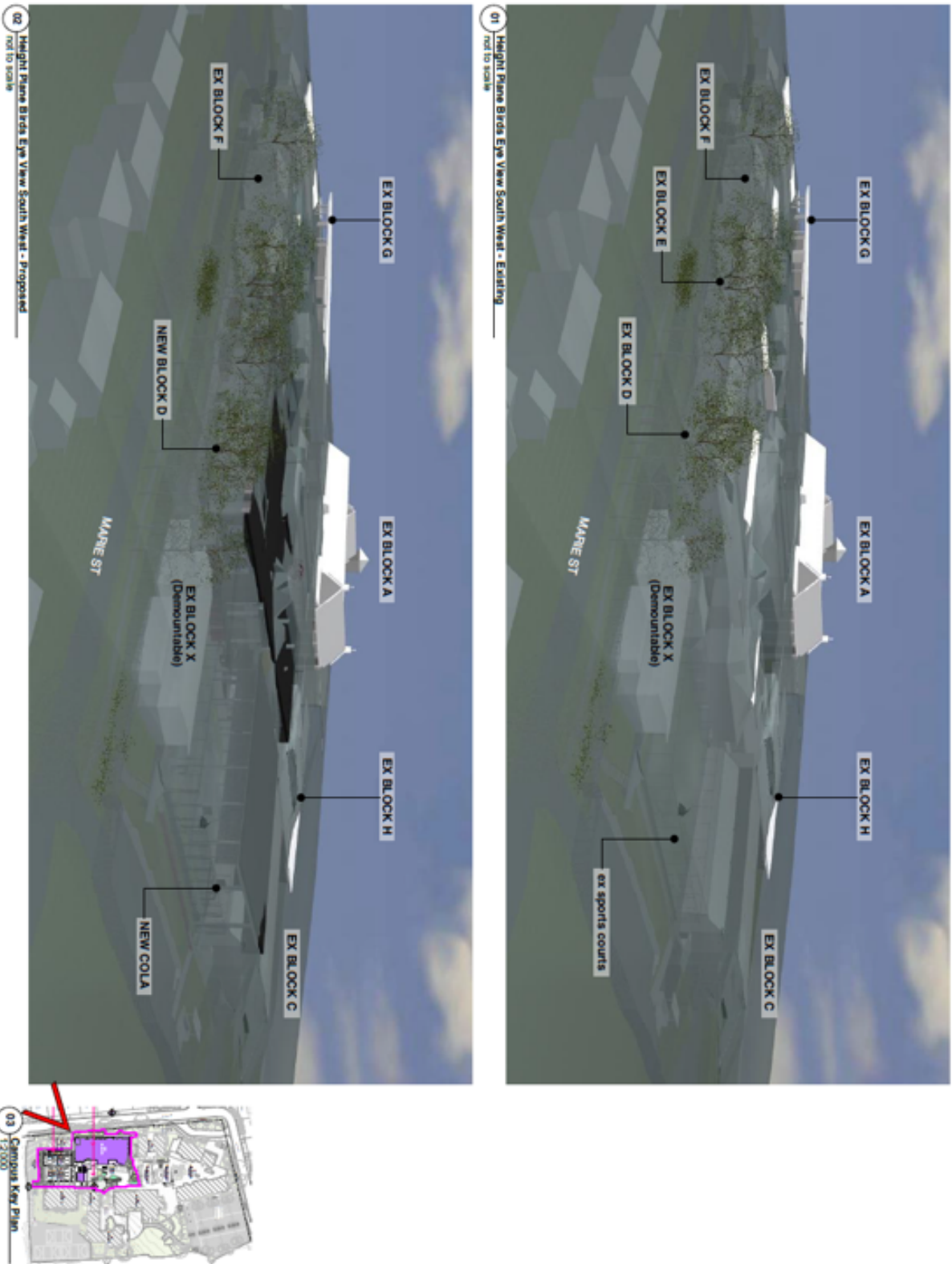


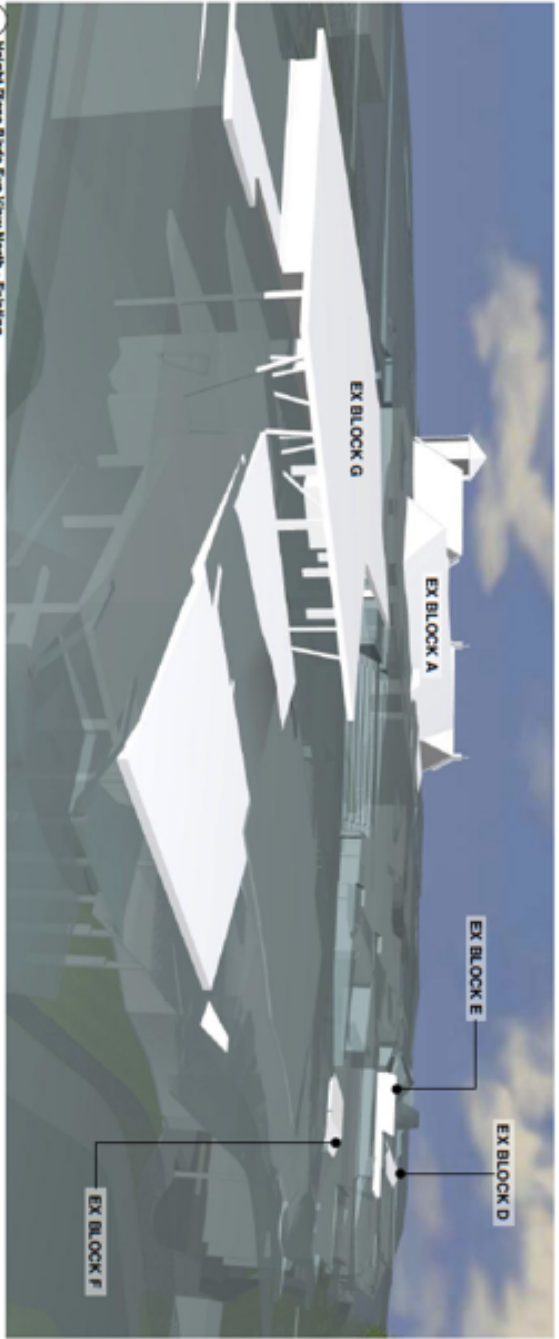






ATTACHMENT 14 – 9M HEIGHT PLANE





ATTACHMENT 15 – CLAUSE 4.6 WRITTEN SUBMISSION

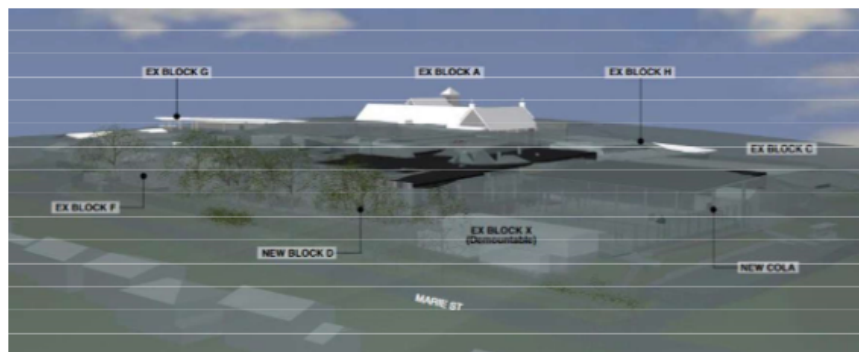


Clause 4.6 Variation Request to the Height of Building Development Standard under Clause 4.3 of The HILLS LEP 2019

Alterations and Additions to Existing Educational Establishment

Gilroy Catholic College Stage 2 Works - New Two-Storey Specialist
Building, Amenities and Associated External Works (Block D)

Marie Street, Castle Hill



Prepared for: Catholic Education Diocese of Parramatta
December 2021

PO Box 230 Pennant Hills NSW 1715 | P 02 9980 6933 | www.dfpplanning.com.au

Printed: 22 December 2021
File Name: 20413E Gilroy Catholic College – Stage 2/Reports/20413E.C14.6.docx
Project Manager: Piers Hemphill
Client: Catholic Education Diocese of Parramatta
Project Number: 20413E

Document Control

Version	Prepared By	Reviewed By	Issued To	Date
Draft	P. Hemphill	S. Earp	APP + Stanton Dahl	16 December 2021
Final	P. Hemphill	APP	Council	22 December 2021

11 Dartford Road, Thornleigh NSW 2120
PO Box 230, Pennant Hills NSW 1715

P: 02 9980 6933
www.dfpplanning.com.au

DFP Planning Pty Limited
ACN 002 263 998

Contents

1	Introduction	1
1.1	Commission	1
1.2	Material Relied Upon	1
2	The Relevant LEP Provisions	2
2.1	The Hills Local Environmental Plan 2019	2
2.1.1	Clauses 2.2-2.3 – Zoning and Permissibility	2
2.1.2	Clause 4.3 – Building Height	2
2.1.3	Clause 4.6 – Exceptions to Development Standards	2
3	The Nature of the Variation	4
4	Case Law	7
4.1	Introduction	7
4.2	Winten Developments Pty Ltd v North Sydney Council [2001]	7
4.3	Wehbe v Pittwater Council [2007]	7
4.4	Four2Five Pty Ltd v Ashfield Council [2015]	8
4.5	Randwick City Council v Micaul Holdings Pty Ltd [2016]	8
4.6	Moskovich v Waverley Council [2016]	8
4.7	Initial Action Pty Ltd v Woollahra Municipal Council [2018]	9
4.8	Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018]	9
4.9	Summary of the Case Law Methodology and Tests	9
5	Assessment of the Variation	11
5.1	Step 1 - Is the planning control a development standard?	11
5.2	Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?	11
5.2.1	Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case	11
5.2.2	Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard	12
5.3	Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest <u>because</u> it is consistent with the objectives of the development standard and the objectives of the zone?	13
5.4	Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained	14
5.5	Step 5 - Clause 4.6(5) - Concurrence Considerations	14
5.6	Step 6 - Clause 4.6(4) – Statement of Satisfaction	14
6	Conclusion	15

Contents

Figures

Figure 1	Section of southern elevation (Source: Stanton Dahl Architects)	4
Figure 2	Long section from Marie Street (Source: Stanton Dahl Architects)	4
Figure 3	Birds eye view of height plane from Marie Street (Source: Stanton Dahl Architects)	5
Figure 4	Shadow diagram – 9am, 21 June (Source: Stanton Dahl Architects)	5
Figure 5	COLA penetrating 9m height plane by 300mm (Source: Stanton Dahl Architects)	6

Tables

Table 1	Assessment against the objectives of the height of buildings development standard	11
Table 2	Assessment against the objectives of the R2 Low Density Residential Zone	13

1 Introduction

1.1 Commission

DFP has been commissioned by Catholic Education Diocese of Parramatta (CEDP) to prepare a written request ("Variation Request") pursuant to cl4.6 of *The Hills Local Environmental Plan 2019* (the LEP) for the proposed alterations and additions development at Gilroy Catholic College, Marie Street, Castle Hill.

The Proposal is described in detail in **Section 4** of the Statement of Environmental Effects (SEE) and comprises:

- Demolition of existing 'Block D' and 'Block E';
- Construction of a new two (2) storey building (to be called 'Block D') which will contain specialist STEM classrooms;
- Construction of a new COLA over one of the existing sports courts;
- The resurfacing of two (2) existing sports courts; and
- Landscaping to create a high quality play space which better addresses the topographic transition across the site.

The Proposal exceeds the height of building development standard under cl4.3 of the LEP having a maximum height of 11.14 metres above the existing ground level. This exceeds the maximum height of building development standard of nine (9) metres by 2.14 metres, which is equivalent to a variation of 24%.

Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out and there are sufficient environmental planning grounds to justify the contravention in this instance including the minimal extent of the variation and the absence of any discernible environmental impacts associated with the variation.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the height of building development standard.

1.2 Material Relied Upon

This Variation Request has been prepared by DFP based on the Architectural Drawings prepared by Stanton Dahl Architects and other supporting drawings and reports which accompany the SEE report prepared DFP.

This Variation Request should be read in conjunction with the detailed environmental planning assessment contained in the SEE and documents submitted with this development application.

2 The Relevant LEP Provisions

2.1 The Hills Local Environmental Plan 2019

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of LEP Sheet LZN_024 provide that the site is zoned R2 Low Density Residential (R2 Zone) and the Land Use Table specifies the objectives of this zone as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing low density residential character of the area.*

The proposed development being for the purpose of an educational establishment is permissible with development consent in the R2 Zone pursuant to the LEP. The proposal upgrades school facilities located on site in a similar bulk and scale to the existing development to meet the daily needs of residents and to maintain the existing low density residential character of the area.

2.1.2 Clause 4.3 – Building Height

Clause 4.3 of the LEP sets out the height of buildings development standard as follows:

- (1) *the objectives of this clause are as follows-*
- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
 - (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.*

The Height of Buildings Map designates a maximum building height of nine (9) metres for the site.

The LEP defines **building height** (or **height of building**) as:

- (a) *in relation to the height of a building in metres- the vertical distance from ground level (existing) to the highest point of the building, or*
 - (b) *in relation to the RL of a building- the vertical distance from the Australian Height Datum to the highest point of the building,*
- Including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives or that the consent authority be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development".

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

2 The Relevant LEP Provisions

- (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.*

The height of building development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the Height of Buildings development standard pursuant to cl4.3 of the LEP however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in **Section 5.2.1**.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in **Section 5.2.2**.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and **Section 5.4** addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

3 The Nature of the Variation

The proposed development requires a variation to the height of buildings development standard under clause 4.3 of The Hills LEP 2019. The proposed specialist research and creative hub (Block D) has a maximum height of 11.14 metres and the proposed COLA has a maximum height of 9.30 metres.

The Block D roof exceeds the height limit by up to 2.14 metres, which is the equivalent to a variation of nearly 24%. The maximum extent of the height variation sought is demonstrated in **Figure 1**. The non-compliance is the result of the sloping terrain, floor to ceiling heights, roof pitch, desire to provide natural light and ventilation, and integration with outdoor learning and play spaces internal to the site. Despite the numerical calculation, the non-compliance is considered minor.

The structure would remain below the tree line and historic 'Block A' which sits on the hilltop, typical of this early twentieth century Romanesque building (**Figure 2**).

The proposed roof design presents a small rise skimming above the prescribed maximum building height (**Figure 3**). The variation arises due to the characteristics of the site (including topography and floor levels) and the design requirements of the built form necessitated by the placement of mechanical plant equipment so that it is not visible from the street. The design provides for natural light and ventilation within the building and the non-compliance is not observed from the public realm as it is set back behind the western roofline.

The environmental amenity impacts of the proposed non-compliance are minor and will not impact amenity within the school grounds nor to surrounding private or public land. The requested variation does not result in any overshadowing of any neighbouring property after 9am (on 21 June) as demonstrated in **Figure 4**.

The characteristics and design requirements cannot be modified any further to reduce the building height without compromising the aesthetic and functional qualities of the proposed built form. Building placement, design, proportioning and layout are all consistent with standard classroom design and do not in themselves contribute to an excessive breach of the building height development standard.



Figure 1 Section of southern elevation (Source: Stanton Dahl Architects)

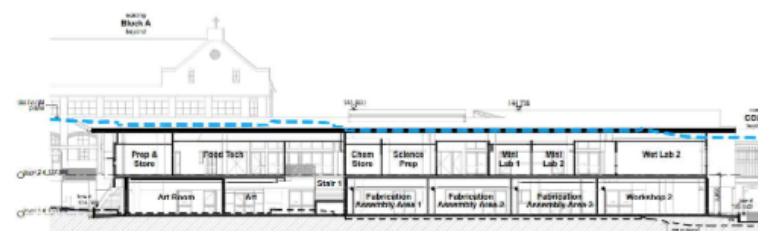


Figure 2 Long section from Marie Street (Source: Stanton Dahl Architects)

3 The Nature of the Variation

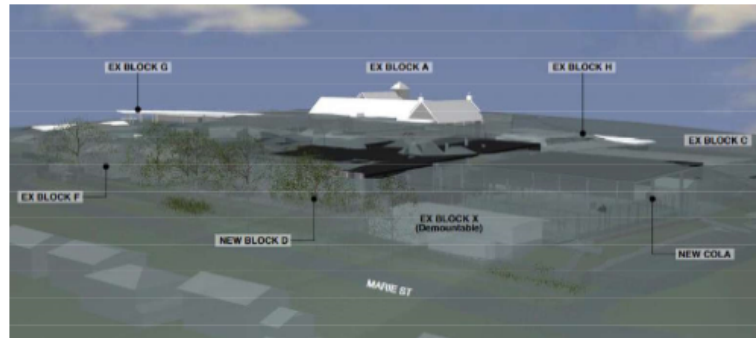


Figure 3 Birds eye view of height plane from Marie Street (Source: Stanton Dahl Architects)



Figure 4 Shadow diagram – 9am, 21 June (Source: Stanton Dahl Architects)

The COLA exceeds the height plane by 300mm in its south-eastern corner as a result of the pitch of the roof structure, as shown in Figure 5.

3 The Nature of the Variation

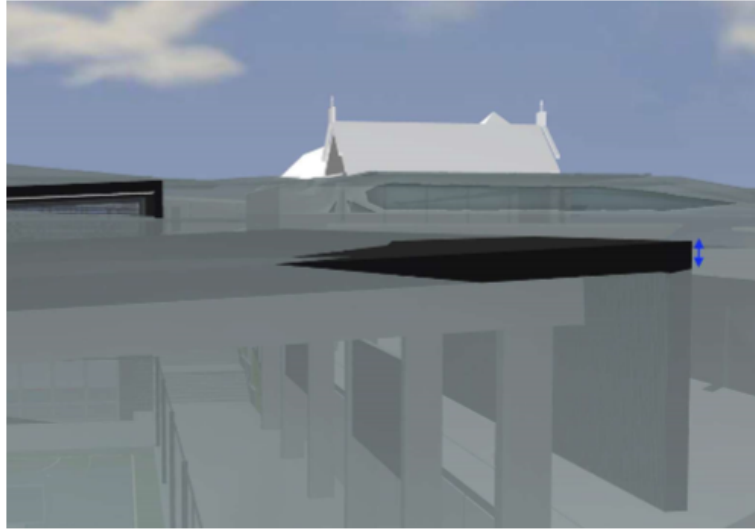


Figure 5 COLA penetrating 9m height plane by 300mm (Source: Stanton Dahl Architects)

4 Case Law

4.1 Introduction

The proposed variation to the development standard has been considered in light of the methodology established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key judgments regarding variations under the former SEPP 1 and cl4.6 of the *Standard Instrument – Principal Local Environmental Plan (SILEP)*.

4.2 Winten Developments Pty Ltd v North Sydney Council [2001]

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* ("Winten") the LEC established a '5-part test' for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1st 'test' continues to be relevant and is a precondition for the application of cl4.6 – see **Section 5.1**.

The 2nd 'test' is required to be demonstrated under cl4.6(4)(a)(iii) – see **Section 5.2.1**.

The 3rd 'test' was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that "environmental planning grounds" as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see **Section 5.2.2**.

The 4th 'test' is required to be demonstrated under cl4.6(3)(a) - see **Section 5.2.1**.

The 5th 'test' is analogous to cl4.6(4)(a) – see **Section 5.3**.

4.3 Wehbe v Pittwater Council [2007]

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* ("Wehbe") where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?

4 Case Law

5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

4.4 Four2Five Pty Ltd v Ashfield Council [2015]

In the Judgment of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ("Four2Five") Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are "sufficient environmental planning grounds" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation to the building height development standard in this circumstance are detailed in the SEE, supported by the Architectural Plans and Architectural Design Statement. Section 5.2.2 of this variation request includes a summary of these environmental planning grounds.

4.5 Randwick City Council v Micaul Holdings Pty Ltd [2016]

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 ("Micaul") Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objection adequately addresses the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the 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 as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

4.6 Moskovich v Waverley Council [2016]

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council* [2016] NSWLEC 1015 ("Moskovich") outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in Wehbe (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii)

4 Case Law

are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl4.6 with minor areas of differing interpretation.

4.7 Initial Action Pty Ltd v Woollahra Municipal Council [2018]

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

4.8 Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018]

The Judgment of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 ('Al Maha') makes it clear that a consent authority or the Court must, in determining a development application subject to request under cl4.6, clearly enunciate that it has satisfied itself of the matters in of cl4.6(4).

In the case of a consent authority, this might be by way of a statement in the reasons for approval authored by the consent authority or alternatively, a statement in the Orders or Judgment of the Court.

4.9 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4 Case Law

3. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning, Industry and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.
6. Step 6 – In determining the development application, has the consent authority or the Court clearly enunciated that it is has formed the necessary opinions of satisfaction under cl 4.6(4) of the LEP.

5 Assessment of the Variation

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The height of buildings control in c14.3 of the Sutherland Shire LEP 2015 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- ...
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

The height of buildings development standard is not expressly excluded from the operation of c14.6 and accordingly, consent may be granted.

5.2 Step 2 – Pursuant to c14.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the Height of Building development standard is unreasonable or unnecessary, this written request relies upon the 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant. These aspects are discussed in the following paragraphs.

The underlying objectives or purpose of the standard

Table 1 provides an assessment of the proposed development against the objectives of the height of buildings development standard under c14.3 of The Hills LEP 2019.

Table 1 Assessment against the objectives of the height of buildings development standard

Objective	Assessment
(a) <i>to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,</i>	The extent of the variation the subject of this assessment is limited to a small portion of the upper roof structure, set back in a podium style behind the forward most roof element. The variation results from the site's terrain, floor to ceiling heights, roof pitch and desire to provide natural light and ventilation. The new Block D remains of a comparable size and nature with the two (2) Blocks it proposes to replace and other development across the school site. Being limited to two (2) storeys, being articulated in its design and being screened by mature trees along the site's road frontage, the development sits comfortably within the established streetscape and landscape character. Further, the new Block D is designed to be compatible with the bulk, scale and design of the approved Block G, which now forms part of the streetscape.
(b) <i>to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.</i>	The Architectural Plans provide detailed shadow diagrams which confirm that all overshadowing generated by the proposed structures, including the overshadowing generated by the portion of the roof that is above the maximum building height development standard, will maintain reasonable daylight access to all buildings on site. The proposal does not generate any overshadowing of adjoining properties after 9am.

5 Assessment of the Variation

Table 1 Assessment against the objectives of the height of buildings development standard

Objective	Assessment
	The proposed Block D is consistent in placement and scale to the existing Blocks D and E which it will replace. The new Block D will provide a greater setback to the heritage fabric of Block A, improving views to this heritage item. The Block has been designed to maximise privacy to adjacent dwellings. No notable views or vistas are impacted in a negative way. The extent of the roof above the building height development standard does not allow for any additional storeys to the building that would impact privacy to adjacent properties. No windows are located above the maximum building height plane.

5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the height of buildings development standard in this circumstance are detailed in the SEE, supported by the Architectural Plans and Architectural Design Statement and include:

- **Topography:** The topography of the land is sloping and falls east to west with the school sitting above Marie Street. The proposed height of the building is a response to the natural change in topography of the site such that it retains the predominant two-storey character along Marie Street frontage whilst being regarded as single storey when relating internally to the existing Block A administration block, which is of local heritage significance.

In order to maintain a consistent floor level across the building to maximise accessibility, the proposed floor level has been designed to match the external levels and this then sets the RLs for each floor of the building. The building has almost entirely been accommodated under the maximum building height plane but an element of the roof structure penetrates the plane in order to accommodate natural light and ventilation through the building. There is no other way to reduce height in response to the topography of the land without compromising amenity and functionality within the building, or increasing the amount of earthwork and disrupting accessibility.

- **Floor Levels:** The proposal provides for improved accessibility and integration into outdoor learning and recreation spaces. Level 2 of the proposed building has been designed to integrate into the new Plaza with covered access provided all along the north-eastern front of the building and up to the new Canteen to foster informal and social gathering spaces. The siting of the Sports Amphitheatre will enable improved supervision and ventilation through the campus, enabling improved social outcomes for the school community. This integration would be compromised if the building were to be set any lower in order to achieve a compliant building height.
- **Roof Form and Pitch:** The roof form has adopted a long single pitch of a gentle gradient. Design requirements of the built form necessitated by accommodation of improved natural light and ventilation have guided the roof design. Mechanical plants have been located within roof spaces for better acoustic environment within the school

5 Assessment of the Variation

and the residential neighbourhood, whilst being serviceable as the building is single storey when accessed from the school's new Plaza.

- Siting and Impacts on Adjoining Properties:** The proposal is located on the site to maintain the same setback as the blocks it will replace. It is similar in bulk and scale as other development across the school. Being limited to two (2) storeys, articulated in its design and screened by mature trees along the site's road frontage, the development sits comfortably within the established streetscape and landscape character. The proposal does not generate any overshadowing of adjoining properties or the public domain. The extent of the roof form which breaches the building height development standard is located behind the front building line and is not visible from the public domain. It will not result in any direct impacts on adjoining public or private land, and will not be readily discernible when viewed from within the school.

In addition to the above grounds, in Micaul and Initial Action, Preston CJ clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in **Section 5.2.1**, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or view loss.

In summary, the site conditions and form of development contribute to the contravention of the height of buildings development standard and notwithstanding the contravention, the proposal minimises significant adverse amenity impacts.

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in **Section 5.2.1**, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the R2 Low Density Residential Zone within which the development is to be carried out.

Table 2 provides an assessment of the proposed development against the objectives of the R2 Zone expressed in the Land Use Table to cl2.3 of The Hills LEP 2019.

Table 2 Assessment against the objectives of the R2 Low Density Residential Zone	
Objective	Assessment
<i>To provide for the housing needs of the community.</i>	The proposed development of a STEM classroom block is a related use to the operation of the site for an educational establishment that will provide for the ongoing sustainability of the school.
<i>To provide for a variety of housing types and densities.</i>	Schools are fundamental infrastructure to support residential functions in areas with family demographics such as greater Castle Hill.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development is consistent with the existing use of a school and will have a wide range of benefits to the school and surrounding community.
<i>To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.</i>	The proposed development is consistent with the existing use of a school and will not result in changes to access to the site or student and staff numbers. The proposed works are consistent in siting, scale and character to the buildings it will replace and other development across the site. It has been designed to prevent any unreasonable impacts on adjacent residential development and the streetscape more generally.

5 Assessment of the Variation

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the height of buildings development standard under The Hills LEP 2019 and the objectives of the R2 Low Density Residential zone.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the (then) Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

The conditions of the Notice identify that for "*development that contravenes a numerical development standard by more than 10%*", concurrence may not be assumed by a delegate of the consent authority. As the extent of the variation to the building height development standard is greater than 10%, Council may not assume the concurrence of the Department.

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that 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.*

Accordingly, the proposed contravention of the building height development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed alterations and additions for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the building height development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the consent authority.

5.6 Step 6 - Clause 4.6(4) – Statement of Satisfaction

This is a matter for the consent authority or the Court to address in its written reasons for determining the subject development application.

6 Conclusion

The proposed development contravenes the height of buildings development standard under cl4.3 of The Hills LEP 2019.

The height of buildings control under cl 4.3 of The Hills LEP 2019 is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary in this instance, for the following reasons:

Notwithstanding the contravention of the height of buildings development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of The Hills LEP 2019 and is consistent with the relevant objectives of the R2 Low Density Residential Zone; and

Notwithstanding the contravention of the height of buildings development standard, the proposed building height will not result in any apparent adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity (such as overshadowing, bulk and scale) of the locality will be minimised to a suitable level.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the height of buildings development standard including:

- The extent of the variation is minor, up to 2.14 metres and is limited to a small rise skimming above the prescribed maximum building height for the top-most elements of the proposed roof;
- The variation arises from the design response to the site's terrain, floor to ceiling heights, roof pitch, desire to provide natural light and ventilation, placement of plant equipment out of view from the street and integration with outdoor learning and play spaces internal to the site;
- The extent of the roof form which breaches the building height development standard is located behind the front building line and is not visible from the public domain;
- The environmental amenity impacts of the proposal are either minor such that the proposal will not impact surrounding private or public land; and
- The characteristics and design requirements cannot be modified any further to reduce the building height without compromising the aesthetic and functional qualities of the proposed built form.

Accordingly, this written request can be relied upon by the consent authority when documenting that it has formed the necessary opinions of satisfaction under cl4.6(4) of the LEP.

The consent authority can be satisfied that contravention of the development standard does raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

