

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-358
DA Number	DA 318/2021/JP/A
LGA	The Hills Shire Council
Proposed Development	Section 4.55 (2) Modification to an Approved Residential Flat Building Comprising 33 Units under the Provisions of SEPP Housing 2021 (formerly SEPP Affordable Rental Housing 2009)
Street Address	1-28/40 Civic Way Rouse Hill
Applicant	Creative Planning Solutions
Consultants	Creative Planning Solutions Concise Certification Stanton Dahl Architects Holmes Fire LP Blackett Maguire + Goldsmith
Date of DA lodgement	17 May 2022
Number of Submissions	Nil
Recommendation	Approval subject to amended conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV \$9,957,370
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP Planning Systems 2021 • SEPP Resilience and Hazards 2021 • SEPP Housing 2021 • Draft Design and Place 2021 • SREP 20 – Hawkesbury Nepean River • Apartment Design Guidelines • LEP 2019 • DCP Part D Section 6 – Rouse Hill Regional Centre • DCP Part B Section 5 – Residential Flat Buildings
List all documents submitted with this report for the Panel's consideration	Nil
Clause 4.6 requests	Nil
Summary of key submissions	No submissions received.
Report prepared by	Kristine McKenzie – Principal Co-ordinator
Report date	Electronic Determination

<p>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?</p>	Yes
<p>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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i></p>	Yes
<p>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?</p>	NA
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i></p>	NA
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	Yes

EXECUTIVE SUMMARY

Development Application 318/2018/JP was approved on 5 May 2021 by the Sydney Central City Planning Panel. The application was for an apartment development under the provisions of SEPP Affordable Rental Housing 2009. The building will contain 33 units and will be owned and operated by Link Wentworth (formerly Wentworth Community Housing). The site currently contains an existing affordable rental housing development in the form of an apartment building and the proposed building would form a second building on the site but connected at the basement level.

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

- The proposed modification seeks to amend Condition 7 which requires upgrade works to be undertaken to the existing building in accordance with Clause 94 of the Environmental Planning and Assessment Regulations (now Clause 64). The proposal also includes the construction of a fire wall in the basement and an additional fire egress from the basement to address fire safety. The basement link between the buildings has also been redesigned to facilitate the proposed fire egress arrangements.
- The proposed modification to Condition 7 as requested by the applicant is not supported however a revised condition has been discussed with the applicant and is detailed within the body of this report.
- The proposal includes a further variation to the provision of common open space. The variation is supported on the basis that the further variation is minor and there is adequate open space areas within close proximity to the site.
- There are no changes proposed to the apartment layout and design or the built form of the approved development. The proposed at-grade changes are minor and will not adversely impact on streetscape.

The proposed modification to the plans is supported. The proposed modification to Condition 7 as requested by the applicant is not supported however a revised condition has been discussed with the applicant and is detailed within the body of this report.

BACKGROUND

The site forms part of the Rouse Hill Regional Centre and is subject to an approved Masterplan which sets broad parameters for the development of the Regional Centre as a whole and is also subject to a Precinct Plan and supporting Design Guidelines which provide further detail regarding the development of the precinct. A site specific DCP for Rouse Hill Regional Centre is also in place.

On 15 May 2014 Development Application 586/2014/JP was approved for a residential flat building to be used for affordable housing under SEPP Affordable Rental Housing by the then Joint Regional Planning Panel (JRPP). The development contained 28 apartments and has been constructed. The existing building has four levels over an under-croft basement containing 32 car parking spaces. Vehicle access to and from the basement is via a single driveway off Civic Way at the northern end of the building.

On 20 November 2014 Section 96(1A) Modification Application 586/2014/JP/A was lodged to delete Condition 24 in regard to Section 94 Contributions. In support the applicant provided a

detailed review of the proposal having regard to public benefit, unreasonableness of the contribution and overall impact of exemption on funding. On 03 February 2015 Modification Application 586/2014/JP/A was refused by the Development Assessment Unit on the basis that the proposed development intensified the use of existing infrastructure in the area and added to the demand for public amenities and services. As such it was considered reasonable that Section 94 contributions be levied on the development.

Development Application 318/2018/JP was approved on 5 May 2021 by the Sydney Central City Planning Panel (SCCPP). The application was for an apartment development under the provisions of SEPP Affordable Rental Housing 2009. The building will contain 33 units and will be owned and operated by Link Wentworth (formerly Wentworth Community Housing).

Development Application 318/2018/JP includes Condition 7 as follows:

7. Clause 94 Upgrading

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20).*
- ii. The existing premises is to be provided with an automatic fire suppression system, appropriate to EP1.4 of the BCA.*
- iii. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:*
 - a. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system*
 - b. The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.*
 - c. A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.*
 - d. The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.*
- iv. The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.*

It is noted that at the time of determination of the application that the Planning Panel amended Condition 7.

The subject modification application was lodged on 17 May 2022.

Additional information was requested from the applicant on 27 May 2022, 28 July 2022 and 11 August 2022. Additional information was received from the applicant on 28 June 2022, 5 August 2022 and 31 August 2022. In addition, meetings have been held with the applicant on 29 June 2022 and 16 August 2022 to discuss the proposal. A further meeting was held on 21 October 2022.

The SCCPP Kick Off Briefing was held on 30 June 2022. It is noted that the Chair/Panel stated as follows:

The Chair stated that the fire safety issue is of primary importance and must be mitigated and addressed to Council's satisfaction.

DETAILS AND SUBMISSIONS

Owner:	Link Wentworth Housing Limited
Zoning:	B4 Mixed Use
Area:	3050m ²
Existing Development:	SEPP Affordable Rental Housing Development
Section 94 Contribution	\$238,601.84
Exhibition:	Not required
Notice Adj Owners:	Yes, 14 days
Number Advised:	Eight
Submissions Received:	Nil

PROPOSAL

Development Application 318/2018/JP was approved on 5 May 2021 by the Sydney Central City Planning Panel. The application was for an apartment development under the provisions of SEPP Affordable Rental Housing 2009. The building will contain 33 units and will be owned and operated by Link Wentworth (formerly Wentworth Community Housing). The site currently contains an existing affordable rental housing development in the form of an apartment building and the proposed building will be joined at the basement level and will form one building.

The proposed Modification Application seeks to amend Condition 7 which requires upgrade works to be undertaken to the existing building in accordance with Clause 94 of the Environmental Planning and Assessment Regulations (now Clause 64). The applicant has proposed to construct a separating fire wall in the basement and an additional fire egress from the basement to address fire safety. The basement link between the buildings has also been redesigned to facilitate the proposed fire egress arrangements. In addition, some at-grade works are proposed around the proposed fire stair.

Condition 7 currently states as follows:

7. Clause 94 Upgrading

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- ii. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20).*
- ii. The existing premises is to be provided with an automatic fire suppression system, appropriate to EP1.4 of the BCA.*
- iii. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:*
 - b. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system*

- b. *The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.*
 - c. *A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.*
 - d. *The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.*
- iv. *The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.*

ISSUES FOR CONSIDERATION

1. SEPP Planning Systems 2021

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

6 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.*

In addition to the above, the 'Instructions on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consents' states as follows:

*A council is **not** to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:*

- *proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or*
- *proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or*
- *meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.*

In regard to the above, as Condition 7 was amended by the Panel and the modification application has been made under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, the application is required to be determined by a Regional Planning Panel.

2. Compliance with SEPP Housing 2021

The proposed modifications to the design of the basement area and the addition of the fire stair have resulted in the following changes to the proposal's compliance with SEPP Housing

2021. In this regard it may be noted that the original Development Application was assessed under the provisions of SEPP Affordable Rental Housing 2009. SEPP Housing came into effect on 1 March 2022 and consolidates a number of previous SEPPs.

In regard to the proposed modification application, the following applies where applicable to the proposed amendments which principally relate to changes to landscape works.

Part 2, Division 1 Infill Affordable Housing:

a. Clause 17 Floor Space Ratio

The SEPP limits the floor space ratio (FSR) to a maximum of the permissible FSR for residential accommodation on the land plus an additional FSR dependent on whether at least 50% of the gross floor area will be used for affordable housing. In this instance the approved proposal is for all units, ie 100% of units, will be used for affordable housing. There is no FSR applicable to the site under LEP 2019. As such a merit based assessment is required. The approved FSR is 1.267:1 and the proposed FSR is 1.268 ie: an increase in GFA of 6m². The proposed FSR is considered satisfactory.

b. Clause 18: Non-discretionary development standards

Standards that cannot be used to refuse consent				
Criteria	Requirement	Approved	Proposed	Complies
Landscaped area	In the case of a development application made by a social housing provider - at least 35m ² of landscaped area per dwelling is provided.	Based on a total of 61 dwellings (28 x existing and 33 x proposed), a landscaped area of 2135m ² is required. The approved landscape area is 1065.6m ² .	1072.56m ²	No, however the proposed landscape area has been increased and as such is considered satisfactory.
Deep soil zones	There is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and	The approved deep soil area is 420.55m ² which is 13.8% of the site.	451.92m ² which is 14.8% of the site.	No, however the proposed landscape area has been increased and as such is considered satisfactory.
	Each area forming part of the deep soil zone has a minimum dimension of 3 metres, and	Each area of the deep soil zone above has a minimum dimension of 3 metres.	The dimensions of deep soil zones are 3m or greater.	Yes
	If practicable, at least two-thirds of the deep soil zone is located at the rear of the site area.	The deep soil zone is located towards the rear and between the buildings.	No change to location of deep soil zone.	Yes

Note: increases to landscape area and deep soil zones are due to the revised landscape works around the proposed egress stairs from the basement, the existing substation and landscape works between columns being included in the calculations.

3. Assessment under the Apartment Design Guidelines and DCP Part D Section 6 – Rouse Hill Regional Centre

Provision	Clause	Design Criteria	Compliance
Apartment Design Guidelines			
Communal open space	25% of the site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	The original approval had a common open space area of 504.45m ² which has been reduced under the current proposal to 500.41m ² .	No - see comments below.
Deep Soil Zone	7% of site area. On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m ² and 15% for sites greater than 1500m ² .	A deep soil 451.92m ² (14.8%) of the site has been approved. There is no change to the approved deep soil zone.	Yes
DCP Part D Section 6 – Rouse Hill Regional Centre			
Common Open Space	A minimum 10m ² of open space per dwelling (including courtyards, gardens and balconies) is to be provided, with minimum dimensions of 4 metres on ground level and podium levels, 3 metres for balcony and roof terraces.	Based on the provision of a total of 61 units, a common open space area of 610m ² is required. The original approval had a common open space area of 504.45m ² which has been reduced under the current proposal to 500.41m ² .	No - see comments below.

a. Common Open Space

The ADG requires that 25% of the site be provided as common open space, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter. The site has an area of 3050m² and as such a common open space area of 1525m² is required.

The DCP requires that a minimum 10m² of open space per dwelling (including courtyards, gardens and balconies) is to be provided, with minimum dimensions of 4 metres on ground level and podium levels, 3 metres for balcony and roof terraces. Based on the provision of a total of 61 units, a common open space area of 610m² is required.

The proposal provides a ground level area of 401.51m² and a roof top area of 98.9m², being a combined common open spaces area of 500.41m².

The applicant has submitted the following as justification:

Clause 3.1.17(b) of The Hills Development Control Plan, Part D Section 6, states that a minimum of 10m² of open space per dwelling unit (including courtyards, gardens and balconies) is to be provided. The completed development, inclusive of both the existing and proposed building, would accommodate 61 apartments, meaning that compliance with this control would require 610m² of common open space. The controls also states that the minimum dimensions are to be 4m at ground and podium levels and 3 metres for balcony and roof terraces.

The approved development provides two (2) communal open spaces having a total area of 500.41m², including a ground floor landscaped communal open space at the rear of the site (401.51m²) and a rooftop communal open space (98.90m²) with panoramic views of the precinct to the east, west and south. The communal open spaces, including the rooftop, will be accessible to residents of both the existing building on the site, as well as the proposed building. The approved communal open space falls below the required 610m² of common open space but meets the dimensional requirements of the control.

The proposed modification seeks to reduce this area to be 500.41m². As discussed earlier in this correspondence, the reduction in communal open space is primarily associated with the relocation of a sewer line outside of the area of a future easement associated with a padmount substation. There is insufficient fall or soil depth to accommodate the sewer line within the planter that is approved to be located to the north-west of the easement. Accounting for this change has reduced the area of the planter that is able to be included in the calculation of communal open space.

CPS had previously provided commentary in support of the approved non-compliance. This commentary noted that the existing communal open space provided for the existing Link Wentworth building is largely unused by existing residents due to its limited functionality, comprising of turf landscaping with minimal privacy or opportunities for seating and passive recreation, as seen within the image below.



The approved development provides for substantially improved communal open spaces which allow for genuine passive recreation opportunities for residents including seating areas, BBQ facilities, gathering areas and a well-designed landscaped setting, offering privacy from the public domain. The communal open space has been carefully designed to be user-specific, following consultation/engagement with residents of the existing Link Wentworth building, so as to identify desired facilities and infrastructure for the communal open space areas. The new rooftop communal open space will additionally provide a new alternative area for passive recreation for existing and future residents not currently provided. The rooftop communal open space has been designed to optimise panoramic views of the Rouse Hill Regional Centre to the east, west and south, which include views to the natural vegetation/riparian corridor within Tribunal No. 3, rather than north facing towards the rooftop of the Rouse Hill Town Centre.

The reduction in communal open space is associated with a planter located between the front setback area and the circular seating. This area would not have been able to be occupied by residents but was able to be included within the calculation of communal open space, noting that the remaining area of the planter can continue to be included within that calculation. The design amendment is necessary to account for the sewer line that is unable to pass through the easement. The surface of an easement around a padmount substation can only be finished with material that can be easily removed and restored, and the sewer line shown within the development application is of a shallow depth and is therefore not consistent with this requirement.

The changes to the included area of communal open space will not reduce the occupiable/trafficable area of communal open space, and the area between the north-western extent of the easement and the planter will remain a deep soil and landscaped area. The merits of the communal open space that were evident within the development application remain applicable to the modification application.

In consideration of the above, the proposed variations to the communal open spaces are acceptable, noting that the development will provide spaces that are functional to the needs of existing and future residents.

Comment:

The development is opposite the open space area along Tributary 3 and in close proximity to Council's Iron Bark Ridge Park and Caddies Creek recreation area. As such there is adequate area available for open space activities. In addition, the proposal provides adequate private open space for residents in either the form of balconies and courtyards. There is adequate area on site for landscape planting and the proposal will achieve an attractive streetscape outcome.

4. Fire Safety

When lodged the modification application initially requested the deletion of Condition 7. The applicant subsequently requested to amend Condition 7 in additional information received on 28 June 2022 and then requested further amendment to Condition 7 in additional information received on 31 August 2022.

The proposed modification to Condition 7 as requested by the applicant is not supported however a revised condition has been discussed with the applicant and is detailed below.

Condition 7 currently states as follows:

7. Clause 94 Upgrading

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20).*
- ii. The existing premises is to be provided with an automatic fire suppression system, appropriate to EP1.4 of the BCA.*
- iv. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:
 - a. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system*
 - b. The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.*
 - c. A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.*
 - d. The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.**
- iv. The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.*

The applicant now proposes to amend Condition 7 as follows:

7. Clause 94 Upgrading

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20), and if applicable, the existing premises is to be provided with an automatic fire suppression system, appropriate to EP1.4 of the BCA.*
- ii. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:
 - a. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system*
 - b. The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.*
 - c. A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.*
 - d. The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.**
- iii. The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.*

As detailed in the background above, a meeting was held with the applicant on 16 August 2022 specifically to discuss fire safety and as part of the additional information subsequently submitted by the applicant on 31 August 2022 a letter from Holmes Fire LP and a letter from Blackett Maguire + Goldsmith was submitted to further support the applicant request to amend Condition 7.

The following comments have been provided by Council's Fire Safety Co-ordinator which responds to each of the letters submitted:

With respect to the comments from Creative Planning Solutions:

The following comment was made in the letter:

"The area of disagreement appears to centre on whether a performance solution which omits sprinklers is achievable. Council have indicated its position that a performance solution is possible, which may either result in the partial or complete omission of sprinklers from the existing building".

This is a new concept that has been introduced by the Applicant, the Accredited Certifier and the Registered Certifier – Fire Safety. All parties have introduced the notion of the omission of fire sprinklers. The omission of automatic fire suppression has not at any stage entered the narrative and it is unclear why this has even been raised as an issue as there is no conflict whatsoever - this concept has not been considered at any stage and Council staff's position has been erroneously represented. Council's position has been the "provision" of suppression, whereas the applicant is suggesting our view is "omission", which is not the case at all.

The performance requirements for automatic fire suppression are as follows :

EP1.4 Automatic fire suppression systems

An automatic fire suppression system must be installed to the degree necessary to control the development and spread of fire appropriate to—

- (a) the size of the fire compartment; and*
- (b) the function or use of the building; and*
- (c) the fire hazard; and*
- (d) the height of the building."*

The condition imposed states a sprinkler system must be provided (not omitted) to the existing building, appropriate to the performance requirements of the BCA, which allows for circumstances where a building may be fully sprinklered building, partially protected or no sprinklers at all.

With respect to the comments from Blackett Maguire + Goldsmith:

The following comments were made in the letter:

"It is the opinion of BM+G as the Registered Certifier who have a vast experience in approving residential developments, that there could be no justifiable Performance Solution that could be approved to demonstrate compliance with Performance Requirement EP1.4 for the omission of sprinklers within a residential building which has a rise in storeys of 4 or more. Furthermore, and based on years of experience with dealing with FRSNW, it is our opinion that FRNSW would not endorse any Performance Solution to omit sprinklers from a residential building required by Clause E1.5 to be provided with sprinklers.

Having regard to the current wording of DA Condition No. 7 (ii), it is the opinion of BM+G that no Performance Solution could be prepared that would be approved by a Registered Certifier and subsequently FRNSW in order to omit sprinklers from the existing residential building.

Whilst it is considered that a Performance Solution could not be prepared to omit sprinklers from the existing building, by virtue of complying with one of the available options presented in the BCA Report prepared by BCA Vision, the buildings are permitted to be separated by a fire wall and assessed as separated buildings in accordance with Parts C, D & E of the BCA as referenced in the DA Condition and thus with the installation of a fire wall, no assessment is required to be undertaken on the existing building”.

Again, the concept of omission of sprinklers has entered the narrative, which is contrary to what the condition states. Section 64 (formerly Clause 94) of the EP & A Regulation gives Council the power to impose a condition where extensive building works are being undertaken to an existing building (more than 50% of the volume) and to require an existing building to be brought into partial or total conformity with the BCA. The condition was imposed to provide a suppression system “to the degree necessary”, not to look at the omission of a system which may or may not be required to be installed in an existing building. In my view, the thought process in relation to this is in reverse - the logic should not be to do a performance solution to omit fire suppression, rather, to provide suppression to the degree necessary.

It has not been tested whether FRNSW would not accept a performance solution to upgrade a building with a suppression system “to the degree necessary”, the extent to be determined at Construction Certificate stage and considered via a Fire Engineering Brief Questionnaire (FEBQ).

A review of FRNSW’s position on “fire sprinklers in class 2 and 3 buildings” from the FRNSW web site states:

*“FRNSW does not support the deletion of any required automatic fire sprinkler system in any **new** Class 2 and 3 building. Automatic fire sprinklers provide superior protection and saving of life and property”.*

FRNSW’s position is quite clear for new buildings and a fire suppression system is required to be provided to the new building under the DTS provisions, however, they do not state their position in relation to existing buildings. They are obliged to consider a performance solution, addressing EP1.4 of the BCA for upgrading of an existing building under the powers afforded to a Local Authority under section 64 of the EP & A Regs. The performance solution would not be for the deletion of suppression, it would for the provision of suppression” to the degree necessary”, to whatever concept that is put forward (partial, total or no suppression at all).

As the building will be joined to form one building at the basement level, if a registered certifier is satisfied that a fire wall (and protection of openings passing through the wall) is sufficient to control the development and spread of fire and the buildings can be treated as separate buildings, then the Registered Certifier can make this decision.

In relation to Holmes Fire LP comments:

The following comment was made in the letter:

“BCA Clause E1.5 and Table E1.5 require the provision of a sprinkler system throughout a residential building, including any part of another class, if the building has a rise of 4 or more. On this basis that the existing building has a rise of at least four and is not provided with an automatic fire suppression, it is not considered practicable to provide a performance solution for the omission of sprinkler protection retrospectively”.

This is a DTS assessment of requirements for automatic suppression. The narrative then goes on to suggest a performance solution is not practicable, that is not able to be undertaken, for the omission of sprinkler suppression retrospectively. A performance solution is a method of complying with the performance requirements other than by a DTS solution and is based on addressing whether a proposal meets the performance requirements, not on omitting specific measures in a building.

“Additionally, based on the design of the existing building, there is no possible performance solution that could be prepared by a competent fire engineer to justify the deletion of a sprinkler system to meet the BCA performance requirements”.

The concept of “deletion of sprinklers” (which is akin to omission) has been commented on previously as it has been raised in each set of correspondence.

Performance requirement EP1.4 states:

An automatic fire suppression system must be installed to the degree necessary to control the development and spread of fire appropriate to—

- (a) the size of the fire compartment; and*
- (b) the function or use of the building; and*
- (c) the fire hazard; and*
- (d) the height of the building.”*

With consideration to the residential use and height of the building being at least four storeys, a valid performance solution could not be prepared to demonstrate control of fire development and spread. Compliance with the performance requirements is a requirement for new developments, but is generally not achievable for existing buildings”

The performance requirements have not changed since the performance-based version of the BCA was first introduced in 1996 and the original building when built (circa 2016) was required to comply with the same performance requirements which are around today. Section 64 of the EPA & Regs permits Consent Authorities to impose conditions relating to the upgrading of buildings partially or totally to the BCA. As the legislative framework permits existing buildings to be upgraded, there is an expectation that a building can be brought into some level of conformity to comply with the performance requirements, whether this be a DTS solution, performance solution or a combination of both.

Review of modified condition proposed by Creative Planning Solutions:

Clause 94 Upgrading

Under Clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20), and if applicable, ~~the~~ existing premises is to be provided with an automatic fire suppression system, appropriate to EP1.4 of the BCA.*

The proposed modified condition has been reviewed and the extent of the modification includes the merging of two conditions into one and a conjunction to allow for the insertion of “*if applicable*”. Having considered the modified condition I am of the view that the condition loses its effect as the provision of suppression to the “degree necessary” to the existing

building will not even be a consideration, as the applicant has expressed their views on this matter and do not support consideration of the provision of any suppression whatsoever in the existing building. The term “*if applicable*” is subjective and does not provide any context or direction as to who is conferred the responsibility of the determination of the applicability, and on this basis, I am not supportive of this modification.

I note that Blackett Maguire + Goldsmiths view in relation to the building being separated at basement level via a fire wall as the buildings can be treated as separate buildings for the purposes of Parts C,D E of the BCA (which is different to the building holistically under the EP & A regulation), so as suggested previously, the following proposed condition was put forward by Council staff as part of the recommended conditions of consent in the original SCCPP report to assist in addressing this matter:

“As the proposed building works relate to an extension of more than 50% of the volume of the existing building, a Registered Certifier is to review the existing premises and determine if there are sufficient elements to control the development & spread of fire. If in the opinion of the registered certifier that the provisions are insufficient, the building is to be provided with an automatic fire suppression system, to the degree necessary, appropriate to EP1.4 of the BCA”.

Conclusion of Comments Regarding the Applicant’s Revised Condition:

All of the views put forward have been considered and commentary provided as to why the modified condition is not supported.

Further, the current condition may assist a registered certifier to determine that when provisions for the development and spread of fire are not satisfactory, then this is the trigger for the provision of a suppression system to the ‘degree necessary’, meaning that if in their opinion they are satisfactory, then they can make the call as to what is required to be provided in the building.

Finally, if all correspondence points to suppression being required and there being no other way to address this matter, as considerable additions are to be undertaken to the existing building, then may be it is appropriate that suppression be provided, to the degree necessary, to the existing building in the interests of public safety to as they provide “*superior protection and saving of life and property*”.

Meeting Held with the Applicant 21 October 2022

Following a request from the applicant, a further meeting was held on 21 October with the applicant and representatives from Link Wentworth and the following comments are provided from Council’s Fire Safety Co-ordinator:

Under BCA 2019 for Class 2 buildings with a rise in storeys of more than 4 storeys, sprinklers must be provided throughout the building. As the new building will link the existing apartment building via the basement and the more than 50% of the volume of the existing building is being built, Council may ask for the existing building to be upgraded partially or fully to the current BCA requirements. The revised condition has been recommended to allow for compliance with the performance requirements, meaning the applicant has an option to utilise the ‘deemed to satisfy’ provisions (DTS provisions) or ‘performance requirements’ (or a combination of both). By conditioning to the performance requirements, this relates to providing a sprinkler system to the degree necessary’, which may result in a partial or fully protected sprinklered building or none at all. This would be matter for the Registered Certifier and the person acting upon the consent to consider at Construction Certificate stage.

On the basis of the above and the request from the applicant, the following condition is recommended (additional wording underlined):

7. Clause 94 Upgrading

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20).*
- ii. The existing premises is to be provided with an automatic fire suppression system, to the degree necessary, appropriate to EP1.4 of the BCA.*
- iii. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:*
 - a. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system*
 - b. The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.*
 - c. A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.*
 - d. The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.*
- iv. The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.*

CONCLUSION

The Modification Application has been assessed against the relevant heads of consideration under Sections 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979, SEPP Housing 2021, Apartment Design Guidelines, Local Environmental Plan 2019 and The Hills Development Control Plan 2012. The proposed variation to common open spaces is considered satisfactory given the site location in close proximity to open space areas. There were no submissions received to the proposal.

The modification application is recommended for approval.

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 changes to landscape works are considered satisfactory in regard to The Hills Future Community Strategic plan and the development will continue to provide affordable housing and housing diversity within the Shire. However, the proposed modification to Condition 7 is unsatisfactory and is not supported due to concerns regarding fire safety.

RECOMMENDATION

The Modification Application be determined as follows and subject to the following conditions:

- The proposed modification to Condition 7 as requested by the applicant is not supported however a revised condition has been discussed with the applicant and is detailed within the body of this report.
- The proposal includes a further variation to the provision of common open space. The variation is supported on the basis that the further variation is minor and there is adequate open space areas within close proximity to the site.
- There are no changes proposed to the apartment layout and design or the built form of the approved development. The proposed at-grade changes are minor and will not adversely impact on streetscape.
- The proposed modification to the plans is supported. The proposed modification to Condition 7 as requested by the applicant is not supported however a revised condition has been discussed with the applicant and is detailed within the body of this report.

1. Condition 1 be deleted and replaced with:

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, as amended under 318/2021/JP/A, stamped and returned with this consent except where amended by other conditions of consent.

REFERENCED PLANS AND DOCUMENTS – 318/2021/JP

DRAWING NO.	DESCRIPTION	DATE
DA00	Cover Sheet & Location Plan	4/12/20 Rev. B
DA01	Site & Block Analysis Plan	03/12/20 Rev. B
DA02	Building Envelope and Massing Diagrams	03/12/20 Rev. B
DA03	Demolition Plan	03/12/20 Rev. B
DA04	Site & External Works Plan	03/12/20 Rev. B
DA05	Development Data	03/12/20 Rev. B
DA06	Basement Floor Plan	03/12/20 Rev. B
DA07	Level 1 Floor Plan	03/12/20 Rev. B
DA08	Level 2 Floor Plan	03/12/20 Rev. B
DA09	Level 3 Floor Plan	03/12/20 Rev. B
DA10	Level 4 Floor Plan	03/12/20 Rev. B
DA11	Level 5 Floor Plan	03/12/20 Rev. B
DA12	Level 6 Floor Plan	03/12/20 Rev. B
DA13	Level 7 Floor Plan	03/12/20 Rev. B
DA14	Roof Plan	03/12/20 Rev. B

DA15	Elevations (Sheet 1)	03/12/20 Rev. B
DA16	Elevations (Sheet 2)	03/12/20 Rev. B
DA17	Elevations (Sheet 3)	03/12/20 Rev. B
DA18	Elevations (Sheet 4)	03/12/20 Rev. B
DA19	Sections (Sheet 1)	03/12/20 Rev. B
DA20	Sections (Sheet 2)	03/12/20 Rev. B
DA21	Shadow Diagrams (Sheet 1)	03/12/20 Rev. B
DA22	Shadow Diagrams (Sheet 2)	03/12/20 Rev. B
DA23	Shadow Diagrams (Sheet 3)	03/12/20 Rev. B
DA24	Shadow Diagrams (Sheet 4)	03/12/20 Rev. B
DA25	ADG Diagrams (Sheet 1)	03/12/20 Rev. B
DA26	ADG Diagrams (Sheet 2)	03/12/20 Rev. B
DA27	ADG Diagrams (Sheet 3)	03/12/20 Rev. B
DA27	Common Open Space Diagrams	03/12/20 Rev. B
DA29	Materials and Finishes	03/12/20 Rev. B
L01	Landscape Plan – Ground Floor	03.12.20 Rev. 4
L02	Landscape Plan – Rooftop & Details	03.12.20 Rev. 4
B04728-1	Survey Plan Sheet 1 of 2	19/06/20
B04728-2	Survey Plan Sheet 2 of 2	19/06/20
---	Street/Unit Numbering Plans (for unit numbering purposes only)	---

REFERENCED PLANS AND DOCUMENTS – 318/2021/JP/A

DRAWING NO.	DESCRIPTION	DATE
DA04	Site & External Works Plan	12/08/22 Rev. E
DA05	Development Data	12/08/22 Rev. E
DA06	Basement Floor Plan	05/04/22 Rev. C
DA26	ADG Diagrams (Sheet 2)	12/08/22 Rev. E

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. Condition 7 be deleted and replaced with:

7. Clause 94 Upgrading

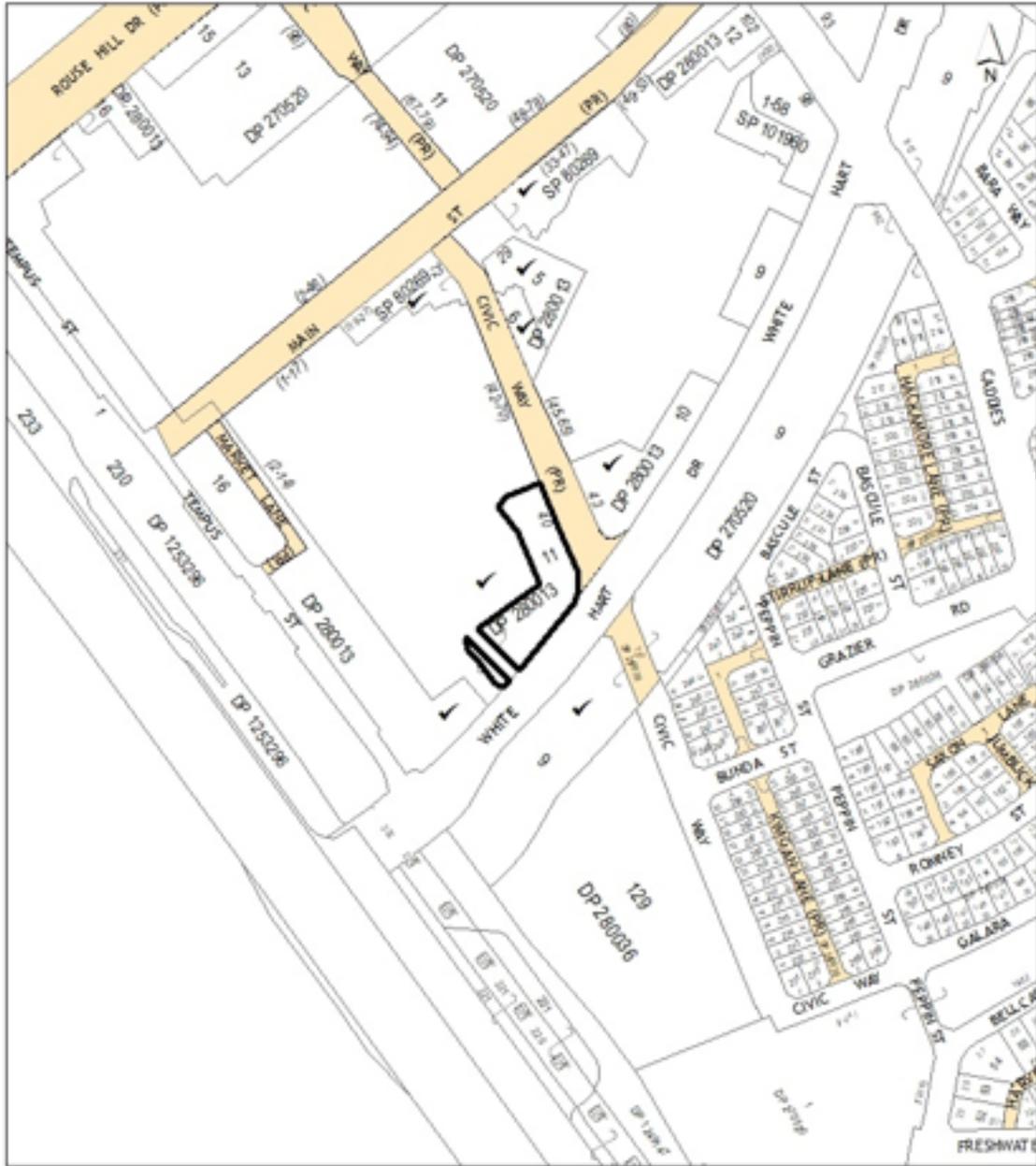
Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. The existing premises is to be upgraded in accordance with the recommendations in BCA design compliance report by BCA Vision Pty Ltd (report No. P20102, revision 2, dated 13/08/20).
- ii. The existing premises is to be provided with an automatic fire suppression system, to the degree necessary, appropriate to EP1.4 of the BCA.
- iii. The existing hydrants system is to be upgraded to ensure system performance, appropriate to EP1.3 of the BCA:
 - a. The existing booster system is to be provided with a thrust block and anchor in order to provide adequate reaction to forces imposed on the system
 - b. The existing block plan is to be upgraded to reflect modifications to the system incorporated for the new units.
 - c. A structural engineer is to review the existing masonry hydrant booster radiant heat barrier and determine the structural capacity of the wall.
 - d. The hydrant pipework supports in the existing carpark are to be provided with an adequate fire resistance level to prevent early collapse when exposed to fire.
- iv. The service penetrations in the existing switch room in the carpark are to be protected appropriate to CP8 of the BCA.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Approved Site Plan
4. Proposed Site Plan
5. Approved Basement Plan
6. Proposed Basement Plan

ATTACHMENT 1 – LOCALITY PLAN



- SUBJECT SITE
- PROPERTIES NOTIFIED

THE HILLS
Sydney's Garden Shire

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ATTACHMENT 2 – AERIAL PHOTOGRAPH



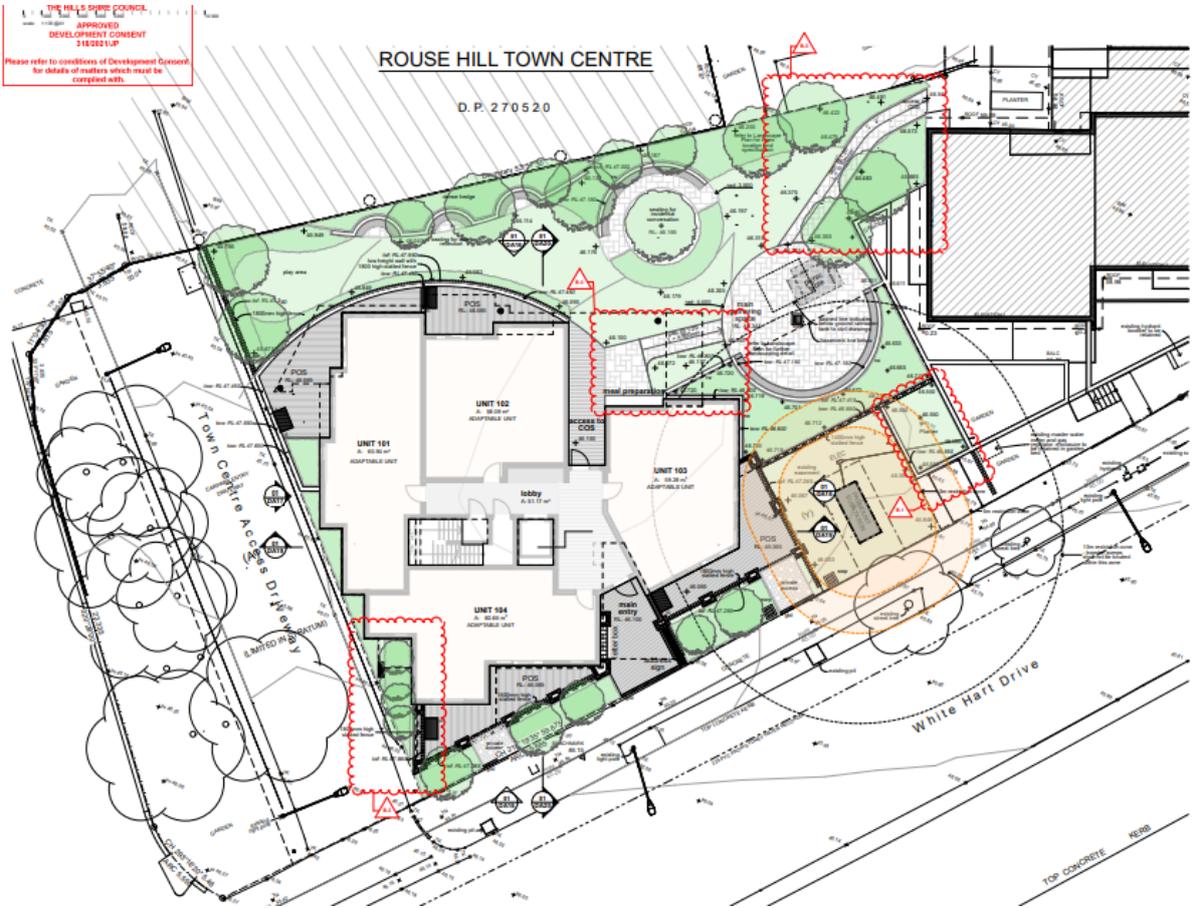
 SUBJECT SITE

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

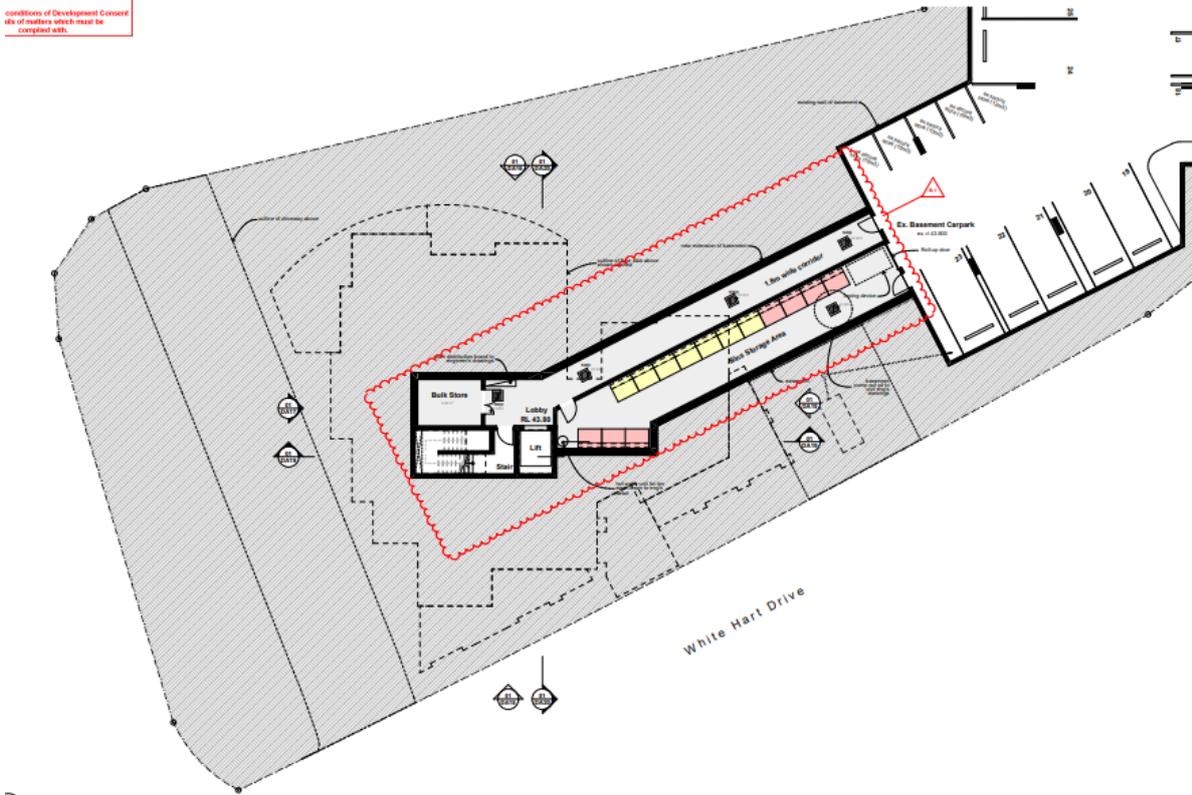
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ATTACHMENT 3 – APPROVED SITE PLAN



ATTACHMENT 5 – APPROVED BASEMENT PLAN

APPROVED DEVELOPMENT CONSENT 18/0221/UP
conditions of Development Consent 16 of matters which must be complied with.



ATTACHMENT 6 - PROPOSED BASEMENT PLAN

