

# Memo

## Sydney Central City Planning Panel

**Subject:** PPSSCC-374 DA 1801/2022/JP - Demolition of Existing Structures and Construction of a Residential Flat Building Development Containing 100 Apartments including 50 Affordable Housing Units and Stratum Subdivision.

**Site:** 16-18 Partridge Avenue and 21-23 Middleton Avenue Castle Hill, Lot 224 and 2255 DP 249973, and Lot 2 and 3 DP 25169

**Date:** 30 November 2022

**From:** Madison Morris – Senior Town Planner  
The Hills Shire Council

---

The purpose of this memo is to advise the Sydney Central City Planning Panel of Council Officer's recommendation of refusal for the subject Development Application which is currently subject to a Class 1 Appeal with the Land and Environment Court.

### **Background**

Development Application 1801/2022/JP was lodged on 23 May 2022. The proposal is for demolition of existing residential dwellings, lot consolidation, and construction of a part 6 part 7 storey residential flat building comprising 100 units over basement car parking. Pursuant to State Environmental Planning Policy (Housing) 2021, an additional floor space ratio of 0.5:1 is permitted for the development as 50% of the gross floor area is to be used as affordable housing. Land dedication 2m wide and public domain works are proposed to the Partridge Avenue frontage. The application is accompanied by a request to vary development standard Clause 4.3 Height of Buildings of The Hills LEP 2019.

The Sydney Central City Regional Panel was briefed on 21 July 2022. The panel noted the deemed refusal appeal was early in the assessment process and responding to the Panel and Council's request for further information would enable progress. In addition, the Panel noted the Applicant needed to progress the flood modelling.

A Class 1 appeal was filed with the Land and Environment Court on 11 July 2022. A Conciliation Conference was held between the parties on 21 October 2022. Amended plans were submitted in response to the Conciliation Conference discussions. An agreement has not been reached to date.

### **Summary of Issues**

#### **Flood Planning**

The subject site is identified as Flood Controlled Land. Clause 5.21 Flood Planning of The Hills LEP 2019 applies to the development. Documents submitted with the development application do not adequately or accurately assess the existing and potential flood impacts associated with the development. The Flood Risk Management Plan is not based on a site specific Flood Impact Assessment and provides insufficient detail on how the proposed development will not adversely affect flood behaviour or safe occupation and efficient evacuation of people. The consent authority cannot be satisfied as to the matters in clause

5.21(2) of THLEP 2019 based upon the documentation submitted. The development application also fails to comply with the requirements of The Hills DCP 2012 Part C Section 6 – Flood Controlled Land. The proposal is inconsistent with the general objectives in Section 2.1 and fails to satisfy the particulars of sections 2.2, 2.5, 3.1, 3.2 and 4.

### **Design Excellence**

The subject site is located within the Showground Station Precinct and involves erection of a building that is higher than 21 metres. The provision of Clause 9.5 Design Excellence of The Hills LEP 2019 applies to the development. The proposal was reviewed by the Design Review Panel on 24 August 2022, who concluded the design did not exhibit design excellence and cannot be supported (see attachment 2). Development Consent therefore must not be granted.

### **Unit Mix**

The Hills DCP 2012 Part D Section 19 Showground Station Precinct applies to the development. Section 6.4 Built Form Design, Control 12 requires no more than 25% one bedroom units and Control 13 requires at least 20% of units be 3 or more bedrooms. The proposal seeks consent for 27% 1 bedroom and 9% 3 bedroom units. The variation to unit mix does not meet the objectives of accommodating a range of household types and facilitating housing diversity.

### **Insufficient Information**

Insufficient information was submitted with the application in relation to the following matters:

#### **1. SEPP (Housing) 2021 - Affordable Housing Component**

The proposal seeks to utilise 50% of the gross floor area to be used for affordable housing. Division 1 Infill Affordable Housing of the SEPP applies to the development. Specifically, the following cannot be determined:

- Specific unit allocation for use as affordable housing has not been provided. The gross floor area of the affordable housing component cannot be quantified.
- A separate cost summary report has not been submitted to quantify the cost of works for the affordable housing component.
- Details of the registered housing provider were not submitted with the application.

#### **2. SEPP 65 - Design Quality of Residential Apartment Development and Apartment Design Guide**

The proposal includes construction of a new building containing more than 3 storeys and more than 4 dwellings. The development has been assessed against the relevant design quality principles contained within SEPP 65, and in accordance with Clause 30 of the SEPP, the Apartment Design Guide. Specifically, the following issues are raised:

- The development proposes a variation to building separation controls to the northern and southern boundaries which has not been addressed by the applicant. It has not been demonstrated design measures have been incorporated into the development.
- No solar access report was submitted with the application to confirm compliance with the solar access controls.
- The proposal relies on skylights as a 'dual aspect' for natural ventilation and solar access on level 7 to comply with the controls. The design has not been justified.
- A unit schedule or unit numbers on the plans have not been provided to confirm compliance with the minimum unit floor area or POS controls.
- The proposal appears to achieve compliance with the storage requirements however an allocation of the basement storage has not been provided to confirm.

### 3. The Hills DCP 2012 - Part D Section 9 Showground Station Precinct

The subject site is located within the Showground Station Precinct and the site specific DCP applies to the development.

- Section 6.3 Setbacks (Building and Upper Level), Control 1 requires setbacks be provided in accordance with Table 10. Table 10 requires storeys above the 4th storey be setback a minimum of 4m behind the front building line. The proposal seeks consent for 3.5m to the Middleton Road frontage of the building to facilitate balconies and meet minimum POS requirements under the ADG. The applicant has not justified the variation nor demonstrated the proposal is consistent with the built form character of the precinct.

A number of issues are also raised in relation to stormwater, landscaping, tree impacts, waste management, sight distances, and public domain works. Refer to attachment 1 for particulars.

### **Showground Station Precinct Dwelling Cap**

The subject site is located within the Showground Station Precinct and Clause 9.8 Maximum Number of Dwellings of The Hills LEP 2019 applies to the development. Clause 9.8 stipulates development consent must not be granted to development that results in more than 5,000 dwellings on land within the Showground Precinct. 100 units are proposed under the subject Development Application. If this application was approved, the total number of dwellings within the Showground Station Precinct would be 4296 dwellings. DA's 1406/2021/JP and 488/2021/JP are also being considered by the panel for 261 and 772 dwellings respectively.

### **Recommendation**

The Development Application be refused on the following grounds:

1. The proposal has not demonstrated that adequate regard has been given to the flooding affectation of the site and development consent cannot be granted. Specifically, the provisions under Clause 5.21 Flood Planning of The Hills Local Environmental Plan 2019 and Part C Section 6 Flood Controlled Land of the Hills Development Control Plan 2012.

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

2. The proposal does not satisfy the provisions under Clause 9.5 Design Excellence of The Hills Local Environmental Plan 2019 and development consent cannot be granted.

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

3. The proposal does not comply with the unit mix control of Part D Section 19 Showground Station Precinct of The Hills Development Control Plan 2012. Specifically, the proposal does not provide an adequate number of three bedroom units and over supplies one bedroom units.

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

4. Insufficient information has been submitted to demonstrate adequate regard has been given to the design quality principles and the objectives specified in the Apartment Design Guide as required under Clause 30 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development. Specifically, solar access, natural ventilation, private open space and balconies, and circulation spaces and accessible units.

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

5. Insufficient information has been submitted to confirm the application satisfies the particulars of State Environmental Planning Policy (Housing) 2021. Specifically, Clause 16 Development to which Division applies, Clause 17 Floor space ratio, Clause 18 Non-discretionary development standards, Clause 19 Design Requirements, and Clause 21 Must be used for affordable housing for at least 15 years.

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

6. The proposal does not comply with the built form character of Part D Section 19 Showground Station Precinct of The Hills Development Control Plan 2012. Specifically, the upper level front setbacks under the DCP.

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

7. It cannot be satisfied the proposed development is suited to the site as insufficient information has been submitted.

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

8. The proposed development is not in the public interest due to insufficient information and incompatibility with DCP controls.

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



Madison Morris  
**SENIOR TOWN PLANNER**

**Attachments**

1. Statement of Facts and Contentions
2. Design Review Panel Comments

## ATTACHMENT 1 – STATEMENT OF FACTS AND CONTENTIONS



Filed: 1 September 2022 2:37 PM



### Statement of Facts and Contentions

#### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2022/00202323

#### TITLE OF PROCEEDINGS

First Applicant	LANDMARK GROUP AUSTRALIA PTY LIMITED ABN 92144079792
First Respondent	THE HILLS SHIRE COUNCIL ABN 25034494656

#### FILING DETAILS

Filed for	THE HILLS SHIRE COUNCIL, Respondent 1
Legal representative	Adam Joseph Seton
Legal representative reference	
Telephone	02 4626 5077

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Signed SOFC.pdf)

[attach.]

Form A (version 1)

## STATEMENT OF FACTS AND CONTENTIONS

### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2022/00202323

### TITLE OF PROCEEDINGS

Applicant	<b>LANDMARK GROUP AUSTRALIA PTY LIMITED</b>
Respondent	<b>THE HILLS SHIRE COUNCIL</b>

### FILING DETAILS

Filed for	<b>The Hills Shire Council</b> , respondent
Legal representative	Adam Joseph Seton Marsdens Law Group
Legal representative reference	PCN: 21609 Ref: PDH:ANF:443583
Contact name and telephone	Peta Danielle Hudson Tel. (02) 4626 5077
Contact email	aseton@marsdens.net.au

### PART A: FACTS

#### THE PROPOSAL

1. Development Application No. 1801/2022/HA seeks consent for the demolition of existing structures, tree removal and construction of a part 6, part 7 storey residential flat building containing 100 apartments over basement parking with associated landscaping, public domain works and stratum subdivision ("**the development application**").
2. Specific details of the proposed development are as follows:
  - (a) The following unit mix is proposed: 27 x 1 bedroom, 64 x 2 bedroom and 9 x 3 bedroom units.
  - (b) 50% of the units are proposed for use as affordable housing within the meaning of the Environmental Planning and Assessment Act 1979.
  - (c) The residential flat building is segmented into Building 1 and Building 2, each with separate parking, pedestrian access and stairs/lift cores.
  - (d) Parking is provided across 2 basement and the ground floor levels containing a total of 139 car parking spaces (119 residential spaces and 20 visitor spaces) and 41 bicycle parking spaces (including 8 visitor spaces).

- (e) Vehicular access to the site is proposed via a single driveway on Partridge Avenue.
- (f) Communal open space is provided at Level 1 and on the rooftop.
- (g) Several waste storage rooms for waste and recyclables are proposed on the ground level, with a MRV loading dock provided to facilitate collection.
- (h) A 2m wide strip of land along Partridge Avenue is proposed to be dedicated to the Respondent for road widening purposes. Landscaping and other public domain works are also proposed along Partridge Avenue.
- (i) The proposed development includes stratum subdivision with one lot containing Building 1 (with reciprocal rights for Building 2 in respect of the common space on Level 1 with Building 2) and the other lot containing Building 2 (with reciprocal rights for Building 1 in respect of the common space on Level 1 and loading dock and visitor parking at ground level).

#### **THE SITE**

3. The legal property description and addresses are detailed below:

**Property Description:** Lot 224 and 225 DP 249973, and Lot 2 and 3 DP 251694.

**Address:** 16-18 Partridge Avenue and 21-23 Middleton Avenue, Castle Hill.

4. The site comprises four lots with a total site area of 3,789m<sup>2</sup>.
5. The site has a frontage of 45.72m to Partridge Avenue and Middleton Avenue, and a depth of 82.89m.
6. The site has a cross fall from the east (RL 101) to the west (RL 96) of approximately 5m over a distance of 83m.
7. The subject site is currently occupied by four dwelling houses.
8. An aerial photograph depicting the locality with the site outlined in red is provided below at Figure 1:



*Figure 1: Aerial photograph of the subject site outlined in red.*

9. The subject site is within the Showground Station Precinct referred to in Part 9 of The Hills Local Environmental Plan 2019.
10. The northern lots, 16 Partridge Avenue and 21 Middleton Avenue, are impacted by overland flooding during the 1% Annual Exceedance Probability ("AEP", otherwise known as 1 in 100 year) flood event.

#### **THE LOCALITY**

11. The site is located within the Showground Station Precinct, which is one of four Precincts rezoned by the NSW Government as part of its "Planned Precinct Program" along the Sydney Metro Northwest corridor.
12. The new Precinct is forecast to provide for approximately 2,300 new jobs and 9,000 new homes over the next 20 years and seeks to transform an existing low density residential area into an urban centre around the Showground Metro Station.
13. The subject site is located approximately 350m south of the Showground Metro Station.
14. The subject site is located within Zone R4 High Density Residential and is subject to a maximum height of buildings development standard of 21m pursuant to The Hills Local Environmental Plan 2019. The properties to the north of the site are subject to a height of buildings development standard of 27m.



15. The existing character of the surrounding development is predominately low density residential dwellings within established garden settings.
16. The desired future character of the surrounding development is for residential flat buildings up to 6 storeys to the east, west and south, and 8 storeys to the north.
17. The adjoining four lots to the north of the site are impacted by overland flooding during the 1% AEP flood event.

#### **THE STATUTORY CONTROLS**

18. Environmental Planning and Assessment Act 1979.
19. Environmental Planning and Assessment Regulation 2021 ("EP&A Regulation 2021").
20. State Environmental Planning Policy (Planning Systems) 2021 ("SEPP Planning Systems").
  - (a) The development application is to be determined by the Sydney Central City Planning Panel in circumstances where the affordable housing component has a capital investment value greater than \$5 million.
21. State Environmental Planning Policy (Housing) 2021 ("SEPP Housing").
  - (a) The development application includes 50% of the gross floor area of the building to be used as affordable housing. A bonus floor space ratio of 0.5:1 applies to the development.
22. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartments Development ("SEPP 65").
  - (a) Apartment Design Guide ("ADG")
23. State Environmental Planning Policy (Resilience and Hazards) 2021.
24. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
25. The Hills Local Environmental Plan 2019 ("THLEP 2019").
  - (a) The subject site is situated within Zone R4 High Density Residential pursuant to THLEP 2019. An extract from the Land Zoning Map with the subject site outlined in red is provided below at Figure 2:



**Figure 2:** Extract from Land Zoning Map with the subject site outlined in red (LZN\_016).

- (b) Development for the purposes of "residential flat buildings" is permitted with consent in the Zone R4 High Density Residential under THLEP 2019.
- (c) Clause 4.3 of THLEP 2019 permits a maximum height of buildings of 21m on the site. An extract from the Height of Buildings Map with the subject site outlined in red is provided below at Figure 3:



**Figure 3:** Extract from Height of Buildings Map with the subject site outlined in red (HOB\_016).

- (d) Clause 4.4 of THLEP 2019 permits a maximum floor space ratio of 1.6:1 on the site. An extract from the Floor Space Ratio Map with the subject site outlined in red is provided below at Figure 4:



**Figure 4:** Extract from Floor Space Ratio Map with the subject site outlined in red (FSR\_016).

- (e) Subdivision is permissible with consent pursuant to clause 2.6 of THLEP 2019.
- (f) Demolition is permissible with consent pursuant to clause 2.7 of THLEP 2019.
- (g) Clause 4.6 of THLEP 2019 applies to the application to vary clause 4.3 of THLEP 2019.
- (h) The subject site is within the flood planning area and the provisions of clause 5.21 of THLEP 2019 apply.
- (i) The subject site is located within the Showground Station Precinct and the provisions under Part 9 of THLEP 2019 apply.
- (j) Clause 9.1 of THLEP 2019 requires that a residential flat building in Zone R4 with a height of 11 metres or more to have a minimum lot size of 3,600m<sup>2</sup>.
- (k) Clause 9.5 of THLEP 2019 applies to the development and provides that consent must not be granted unless the consent authority considers that the development exhibits design excellence.

26. The Hills Development Control Plan 2012 ("THDCP 2012").

- (a) Part A – Introduction.

- (b) Part B Section 5 – Residential Flat Buildings.
- (c) Part C Section 1 – Parking.
- (d) Part C Section 3 – Landscaping.
- (e) Part C Section 6 – Flood Controlled Land.
- (f) Part D Section 19 – Showground Station Precinct.

27. The Hills Contributions Plan No. 19 Showground Station Precinct.

**ACTIONS OF THE RESPONDENT**

- 28. On 23 May 2022, the development application was lodged with the Respondent.
- 29. The development application was referred externally to Endeavour Energy, Sydney Water and the NSW Police Force.
- 30. On 25 May 2022, Endeavour Energy issued correspondence to the Respondent advising that it has no objection to the development application and providing comments and conditions.
- 31. The development application was notified to adjoining properties between 25 May 2022 and 15 June 2022.
- 32. The development application was re-notified between 21 June 2022 and 12 July 2022 with an amended description. One (1) submission was received in response to the notification periods and raised issues generally relating to construction and shadowing impacts.
- 33. On 16 June 2022, the Respondent issued a "Stop the Clock" letter to the Applicant requesting the submission of additional information in relation to landscaping, waste management and traffic. The letter also requested the submission of a separate quantity surveyor's report relating to the affordable housing component of the development and the payment of a fee and submission of a presentation for the Design Review Panel.
- 34. On 23 June 2022, the Applicant issued correspondence to the Respondent confirming that it would not provide the additional information requested and the "clock" was restarted.
- 35. On 11 July 2022, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Respondent's deemed refusal of the development application.
- 36. On 27 June 2022, Sydney Water issued correspondence to the Respondent providing comments in relation to the development application.
- 37. On 4 August 2022, the Respondent briefed the Sydney Central City Planning Panel in relation to the development application.

## **PART B: CONTENTIONS**

### **FLOOD PLANNING**

1. The development application must be refused because consent authority cannot be satisfied as to the matters in clause 5.21(2) of THLEP 2019. The development application also fails to comply with the requirements of THDCP 2012 Part C Section 6 Flood Controlled Land.

#### **Particulars**

- (a) Clause 5.21 of THLEP 2019 states as follows:

#### ***"5.21 Flood Planning***

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

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

- (2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*

- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- (3) *In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
  - (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
  - (b) *the intended design and scale of buildings resulting from the development,*
  - (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
  - (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion."*
- (b) Section 2.1 of THDCP 2012 Part C Section 6 – Flood Controlled Land specifies the following general objectives in relation to flood controlled land:

**"General Objectives**

- (i) *To ensure the flood risk associated with development, comprising danger to life and damage to property, is minimised and not increased beyond the level acceptable to the community.*
- (ii) *To ensure the proponents of development and the community in general are fully aware of the potential flood hazard and consequent risk associated with the use and development of land within the floodplain;*
- (iii) *To ensure that proposed development does not exacerbate flooding on other properties;*
- (iv) *To minimise the risk to life by ensuring the provision of appropriate evacuation measures are available;*
- (v) *Where permitted, to maximise the potential for buildings to be returned to use as quickly and efficiently as practical, after being affected by flooding; and*
- (vi) *To ensure that the design and siting controls and built form outcomes required to address the flood hazard do not result in unreasonable impacts on the:*

- amenity and character of an area;
  - streetscape and the relationship of the building to the street; and
  - the environment and ecology"
- (c) Section 2.5 of THDCP 2012 Part C Section 6 – Flood Controlled Land contains requirements for residential development on flood prone land, including the following:
- "(a) No development is to occur in a floodway area, a flowpath or a high hazard area (as defined in the FDM) generated by flooding up to FPL2, unless justified by a site specific assessment.
  - (b) Habitable floor levels to be no lower than FPL3.
  - (c) Non-habitable floor levels to be equal to or greater than FPL3 where possible, or otherwise no lower than FPL1 unless justified by a site specific assessment.
  - ...
  - (g) The flood impact of the development to be considered to ensure that the development will not increase flood effects elsewhere, having regard to:
    - loss of flood storage;
    - changes in flood levels and velocities caused by alterations to the flood conveyance, including the effects of fencing styles; and
    - the cumulative impact of multiple potential developments in the floodplain.

An engineer's report may be required.

...

  - (i) Garages or enclosed car parking must be protected from inundation by flood waters up to FPL2. Where 20 or more vehicles are potentially at risk, protection shall be provided to FPL3."
- (d) Sections 3.1 and 3.2 of THDCP 2012 Part C Section 6 – Flood Controlled Land contain requirements relating to fencing and filling, respectively.
- (e) Section 4(e) of THDCP 2012 Part C Section 6 – Flood Controlled Land requires a flood study to be prepared for large scale developments.
- (f) The documents submitted with the development application do not adequately or accurately assess the existing and potential flood impacts associated with the

drainage, stormwater and flood potential of the site and surrounding area and the proposed development.

- (g) Section 4(e) of THDCP 2012 Part C Section 6 – Flood Controlled Land and best practice dictates that a flood study should be undertaken before any Flood Risk Management Plan is developed for the purposes of large scale development.
- (h) The Flood Risk Management Plan submitted with the development application is not based on a site specific Flood Impact Assessment and provides insufficient detail as to how the proposed development will not adversely affect flood behaviour or the safe occupation and efficient evacuation of people.
- (i) The proposed development encroaches into the overland flow over the properties to the north, potentially worsening the flood affectation of those properties.
- (j) The building will block the natural movement of overland flows causing them to back up before being redirected around the building footprint.
- (k) An overland flow management strategy is required to ensure the development does not adversely affect surrounding properties up and down stream of the subject site.
- (l) Actual Flood Planning Levels have not been established for the development as a site specific flood impact assessment has not been undertaken. It has not been demonstrated the habitable floor levels are no lower than FPL3 or the basement is protected up to FPL3 as required pursuant to the controls in section 2.5 of THDCP 2012 Part C Section 6 – Flood Controlled Land.
- (m) The proposed development has not been designed and sited to address the flood hazard of the land. It has not been demonstrated the flood risk associated with the development, including impacts of the proposed development on the subject site and neighbouring sites.
- (n) The consent authority cannot be satisfied as to the matters in clause 5.21(2) of THLEP 2019 based upon the documentation submitted with the development application.
- (o) The proposed development is also inconsistent with the general objectives in section 2.1 of THDCP 2012 Part C Section 6 – Flood Controlled Land and fails to satisfy the particulars of sections 2.2, 2.5, 3.1, 3.2 and 4.

#### **DESIGN EXCELLENCE**

2. The development application must be refused because the proposed development has not been reviewed by a design review panel as required by clause 9.5 of THLEP 2019 and



does demonstrate design excellence because it does not comply with objectives and guidelines of the Apartment Design Guide.

Particulars

- (a) Clause 9.5 of THLEP 2019 provides as follows:

**“9.5 Design excellence**

- (1) *The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.*
- (2) *This clause applies to development involving the erection of a new building or external alterations to an existing building on land within the Showground Station Precinct.*
- (3) *Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*
- (4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*
  - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
  - (b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
  - (c) *whether the development detrimentally impacts on view corridors,*
  - (d) *whether the development detrimentally impacts on any land protected by solar access controls established in the development control plan referred to in clause 9.4,*
  - (e) *the requirements of the development control plan referred to in clause 9.4,*
  - (f) *how the development addresses the following matters—*
    - (i) *the suitability of the land for development,*
    - (ii) *existing and proposed uses and use mix,*
    - (iii) *heritage issues and streetscape constraints,*

- (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - (v) *bulk, massing and modulation of buildings,*
  - (vi) *street frontage heights,*
  - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
  - (viii) *the achievement of the principles of ecologically sustainable development,*
  - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
  - (x) *the impact on, and any proposed improvements to, the public domain,*
  - (xi) *the impact on any special character area,*
  - (xii) *achieving appropriate interfaces at ground level between the building and the public domain,*
  - (xiii) *excellence and integration of landscape design.*
- (5) *In addition, development consent must not be granted to development to which this clause applies unless—*
- (a) *if the development is in respect of a building that is, or will be, higher than 21 metres or 6 storeys (or both) but not higher than 66 metres or 20 storeys (or both)—*
    - (i) *a design review panel reviews the development, and*
    - (ii) *the consent authority takes into account the findings of the design review panel, or*
  - (b) *if the development is in respect of a building that is, or will be, higher than 66 metres or 20 storeys (or both)—*
    - (i) *an architectural design competition is held in relation to the development, and*
    - (ii) *the consent authority takes into account the results of the architectural design competition."*

- (b) The proposed development is for the erection of a new building on land within the Showground Station Precinct and is subject to the application of clause 9.5 of THLEP 2019.
- (c) The proposed development further comprises the erection of a new building with a height in excess of 21 metres and 6 storeys and is therefore subject to clause 9.5(5)(a) of THLEP 2019.
- (d) The proposed development has not yet been reviewed by the Design Excellence Panel as required by clause 9.5(5)(a) of THLEP 2019 and it is therefore not possible for the Court, standing the shoes of the consent authority for the purposes of hearing and determining this appeal, to take into account its findings. There is no power to grant consent to the development application for the purposes of clause 9.5(5) of THLEP 2019 until the Design Review Panel reviews the proposed development.
- (e) Contention 6 sets out concerns in relation to compliance with the objectives and guidelines of the ADG, Contention 7 sets out concerns in relation to proposed setbacks and Contention 9 sets out concerns in relation to landscaping. Having to the matters raised in these Contentions, it has not been demonstrated that the development application demonstrates design excellence in accordance with the matters for consideration in clause 9.5 of THLEP 2019. The development application must be refused.

#### **AFFORDABLE HOUSING**

3. The development application must be refused because insufficient information has been submitted to confirm the in-fill affordable housing provisions under SEPP Housing apply to the development as the gross floor area of the building to be used for the purposes of affordable housing has not been quantified.

#### **Particulars**

- (a) Clause 16(1) of SEPP Housing provides as follows:

#### ***"16 Development to which Division applies***

- (1) *This Division applies to residential development if—*

- (a) *the development is permitted with consent under another environmental planning instrument, and*
- (b) *at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and*

- (c) *for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and*
- (d) *for development on other land—all or part of the development is within 800m walking distance of land within 1 or more of the following zones or an equivalent land use zone—*
  - (i) *Zone B1 Neighbourhood Centre,*
  - (ii) *Zone B2 Local Centre,*
  - (iii) *Zone B4 Mixed Use."*
- (b) Insufficient information has been submitted with the development application to quantify the gross floor area of the affordable housing component of the proposed development. It cannot be confirmed that at least 20% of the gross floor area of the building will be used for affordable housing and that the proposal therefore benefits from the provisions of Division 1 of SEPP Housing (including the floor space ratio bonus in clause 17).

#### **FLOOR SPACE RATIO**

4. The development application must be refused because insufficient information has been submitted to confirm whether at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing, and the additional floor space ratio that applies pursuant to SEPP Housing cannot be determined

#### **Particulars**

- (a) Clause 17(1)(a) of SEPP Housing provides as follows:

#### **"17 Floor Space Ratio**

- (1) *The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of—*
  - (a) *if the maximum permissible floor space ratio is 2.5:1 or less—*
    - (i) *if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or*
    - (ii) *if less than 50% of the gross floor area of the building will be used for affordable housing—Y:1,*  
*where—*

***AH** is the percentage of the gross floor area of the building that is used for affordable housing.*

$$Y = AH \div 100$$

- (b) A maximum floor space ratio of 1.6:1 applies to the subject site pursuant to clause 4.4 of THLEP 2019.
- (c) The maximum additional floor space ratio that would be permitted under clause 17(1)(a)(i) of SEPP Housing (if at least 50% of the gross floor area will be used for affordable housing) is 0.5:1, resulting in a maximum permissible floor space ratio permitted of 2.1:1.
- (d) The proposed development seeks consent for a floor space ratio of 2.098:1 and relies on the additional floor space ratio allowed under clause 17 of SEPP Housing.
- (e) Sufficient information such as a unit schedule or allocation has not been provided on any plans to determine the specific gross floor area to be used as affordable housing.
- (f) It cannot be determined what percentage of the gross floor area of the building resulting from the development will be used for affordable housing and therefore the additional floor space ratio permitted under clause 17 of SEPP Housing. In those circumstances, the development application must be refused because the proposal does not comply with the development standard in clause 4.4 of THLEP 2019 (in circumstances where an objection to compliance with that standard has not been submitted) and it has not been demonstrated that the application complies with clause 17 of SEPP Housing.

#### **APARTMENT MIX**

5. The development application should be refused because the proposed apartment mix does not comply with the requirements of Part D Section 19 – Showground Station Precinct of THDCP 2012. Approval of the application will establish an unacceptable precedent for similar development in the Showground Station Precinct.

#### **Particulars**

- (a) Section 6.4 in Part D Section 19 of THDCP 2012 relevantly states:

#### ***“Objectives***

- b. To provide a mix of residential flat types and sizes to accommodate a range of household types and to facilitate housing diversity*

#### ***Controls***

12. *No more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and*
  13. *At least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings."*
- (b) *The Hills Shire Council Housing Strategy (2019) provides five planning priorities to reflect the planning priorities of the Local Strategic Planning Statement Hills Future 2036. Priority three, "plan for a diversity of housing", includes providing a greater range of apartment types and low rise housing. With larger households remaining the dominant household type, the projected capacity in low and medium density housing will not be able to accommodate all family households and a portion of high density dwelling must be able to accommodate larger households.*
  - (c) *The proposed development seeks consent for 27% one bedroom units and 9% three bedroom units (with no units containing more than three bedrooms).*
  - (d) *The proposed apartment mix does not contribute to the range of household types envisaged within the Showground Station Precinct as set out in section 6.4 in Part D Section 19 of THDCP 2012 and will set an undesirable precedent for future development in the Precinct.*

#### **AMENITY**

6. The development application should be refused because insufficient information has been submitted to demonstrate that the proposed apartments will receive adequate solar access, are sufficiently naturally ventilated, and are provided with appropriate private open space areas in accordance with non-discretionary development standards of SEPP Housing, the objectives/design guidance in the Apartment Design Guide and the controls THDCP 2012.

#### **Particulars**

##### **Solar Access**

- (a) Clause 18(2)(e) of SEPP Housing provides the following non-discretionary development standard:  
*"living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,"*
- (b) In accordance with clause 30(2) of SEPP 65, development consent must not be granted if, in the opinion of the consent authority, the development does not

demonstrate that adequate regard has been given to the objectives of the ADG for the relevant design criteria.

- (c) Objective 4A-1 of the ADG relevantly states as follows:

***“Objective 4A-1***

*To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space*

***Design criteria***

1. *Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas”*

- (d) Section 6.7(4) of THDCP 2019 Part D Section 19 – Showground Station precinct provides as follows:

- “4. *Solar access to future dwellings within the development shall comply with, and where possible exceed, the minimum solar access requirements within the Apartment Design Guide.”*

- (e) The Applicant has provided 3D Sun Views and diagrams which suggest that the proposed development could achieve two hours solar access for 70% (70/100) of apartment living rooms, and that private open spaces receive at least 3 hours direct solar access between 9am and 3pm.
- (f) The use of sky lights to upper level units provide a secondary light source for habitable rooms and it has not been demonstrated that the total area of the northern facing aspect of internal corner units and south west and south east corner units at levels 1 to 5 achieve the minimum solar access provisions.
- (g) Insufficient information has been submitted to demonstrate acceptable solar access in relation to the application. A solar access report has not been submitted to substantiate the solar access calculations provided.

***Natural Ventilation***

- (h) Objective 4B-3 of the ADG relevantly states as follows:

***“Objective 4B – 3***

*The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents*

***Design criteria***

1. *At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building...*

- (i) The Applicant has provided a Natural Ventilation Assessment suggesting the proposed development could achieve 60% (60/100) of apartments being naturally cross ventilated.
- (j) However, it has not been demonstrated that effective cross ventilation is achieved within the proposed development. Insufficient information has been submitted to demonstrate the proposal complies with the following design guidance:

**"Objective 4B-1 Design Guidance**

*The area of unobstructed window openings should be equal to at least 5% of the floor area served*

*Light wells are not the primary air source for habitable rooms"*

**"Objective 4B -2 Design Guidance**

*Natural ventilation to single aspect apartments is achieved with the following design solutions:*

- *courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells."*

**Private Open Space and Balconies**

- (k) Objective 4E-1 of the ADG relevantly states as follows:

**"Objective 4E – 1**

*Apartments provide appropriately sized private open space and balconies to enhance residential amenity*

**Design criteria**

- 1. *All apartments are required to have primary balconies as follows:*

Dwelling type	Minimum area	Minimum depth
Studio apartments	4m <sup>2</sup>	-
1 bedroom apartments	8m <sup>2</sup>	2m
2 bedroom apartments	10m <sup>2</sup>	2m
3+ bedroom apartments	12m <sup>2</sup>	2.4m

*The minimum balcony depth to be counted as contributing to the balcony area is 1m*



2. *For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m"*

- (l) It has not been demonstrated the area of the private open space to all units meets the minimum area and minimum depth dimensions. A unit schedule has not been provided for assessment.

***Circulation Spaces and Accessible Units***

- (m) Common circulation spaces and entrance foyers do not meet the Objectives and Design Guidance of Part 4F-1 and 4F-2 of the Apartment Design Guide.
- (n) Adaptable apartments are restricted to one bedroom accommodation, are above ground level and serviced by a single lift.

**SETBACKS**

7. The development application should be refused because insufficient information has been submitted to demonstrate the upper level setbacks are consistent with the built form envisaged for upper levels in the Showground Station Precinct as set out in THDCP 2012 Part D Section 19 – Showground Station Precinct.

**Particulars**

- (a) The proposal seeks to vary the upper level setback required pursuant to Table 10 in section 6.2 of THDCP 2012 Part D Section 19 – Showground Station Precinct from 4m to 3.5m.
- (b) It has not been demonstrated that the projecting balconies are integrated into the architectural form whilst reducing bulk and scale when viewed from the street.
- (c) Compliance with the setback control in section 6.2 of THDCP 2012 Part D Section 19 – Showground Station Precinct will result in a reduction of available area to balconies, and the proposal will not comply with the minimum area required to balconies on the eastern and western units on floors 5 and 6.

**CAPITAL INVESTMENT VALUE**

8. The development application should be refused because insufficient and inconsistent information has been submitted in relation to the capital investment value of the affordable housing component of the proposed development

**Particulars**

- (a) Section 2.19(1) of SEPP Planning Systems provides as follows:

**"2.19 Declaration of regionally significant development: section 4.5(b)**

- (a) The Arborist Report does not relate to the most recent plans submitted with the development application and does not provide a sufficient assessment of the impacts of the development on trees.
- (b) The trees proposed for removal and retention also differ between the Landscape Plans and Arborist Report.
- (c) The Landscape Plans have not been prepared in accordance with THDCP 2012 Part C Section 3 Landscaping, specifically having regard to the following:
  - (i) Existing contours/levels and levels past the boundary have not been provided to demonstrate the proposal integrates with the adjoining properties;
  - (ii) Planting plans for the roof have not been provided to ensure planting is appropriate; and
  - (iii) Turf types have not been specified.
- (d) Sufficient planting has not been provided to adequately screen the protruding basement to adjoining northern properties.
- (e) Top of wall and bottom of wall heights have not been identified on the submitted plans. It cannot be determined if the minimum soil depth has been provided in accordance with section 3.1(h) of THDCP 2012 Part C Section 3 Landscaping.

#### **PUBLIC DOMAIN WORKS**

10. The development application should be refused because insufficient information has been provided in relation to the design of the land to be dedicated to the Respondent in accordance with the requirements of THDCP 2012.

#### **Particulars**

- (a) Section 4.1(9) of THDCP 2012 Part D Section 19 Showground Station Precinct provides as follows:
 

*"In order to facilitate increased densities along local streets, land identified on the 'Local Street – Land Dedication Plan' (Figure 10) shall be dedicated to Council at no cost. The land to be dedicated shall have a width of 2 metres measured from the existing property boundary. The land dedicated will facilitate intended parking on one side of the local street (refer to road 'Profile 1 – Local Streets')"*
- (b) In accordance with Figure 10, land fronting Partridge Avenue is proposed to be dedicated to the Respondent.

- (c) However, the Civil Plans for the proposed public domain works on Partridge Avenue are inconsistent with the Showground Station Precinct Verge Treatment Details. If the development application is approved, an undesirable precedent will be set that is inconsistent with the controls and the previous approvals within the vicinity.
- (d) Section 4.3(1) of THDCP 2012 Part D Section 19 Showground Station Precinct requires that development applications shall comply with the Showground Precinct Public Domain Plan and demonstrate how high quality elements (driveways, footpaths, street trees, street furniture etc.) will be incorporated into future development. Street trees have not been provided in accordance with the Public Domain Plan.

#### **STORMWATER**

11. The development application should be refused because insufficient information has been provided to demonstrate that the proposed development will adequately control stormwater runoff and that the proposed On Site Detention ("OSD") system will operate efficiently.

#### **Particulars**

- (a) Section 3.17(f) of Part B Section 5 – Residential Flat Buildings of THDCP 2012 requires that the design of drainage systems for residential flat buildings be in accordance with Council's Design Guidelines for Subdivisions/Developments.
- (b) The proposed design is inconsistent with Council's Guidelines as on site detention (OSD) plans submitted with the application indicate Pits 3, 4 and 5 are lower than the TWL within the OSD and will surcharge.
- (c) Section 3.17(h) of Part B Section 5 – Residential Flat Buildings of THDCP 2012 provides as follows:
 

*"(h) On site detention tanks are only permitted in common areas within a proposed development (for example driveways, common open space) and not within private courtyards."*
- (d) The OSD tank/rain water tank and water quality chamber are not suitably located, being underneath the private courtyards of the apartments on the southern elevation of Level 1. This will adversely affect the amenity of the occupants of those apartments.

- (e) Side access to the OSD is not appropriate as the building will be inundated. Overflows are to be directed to a flow path through the development so that buildings are not inundated, nor are flows concentrated on an adjoining property.
- (f) Section 3.17(d) of Part B Section 5 – Residential Flat Buildings of THDCP 2012 requires developments within the Upper Parramatta River Catchment to comply with any requirements of the Sydney Catchment Management Authority. OSD plans are therefore required to be prepared in accordance with the Upper Parramatta River Catchment Trust OSD Handbook.
- (g) The OSD is impacted by "Effects of Downstream Drainage on Outlets", which is not appropriate. If the development outlet is impacted by drowned/submerged conditions, incorrect calculations have been provided for assessment.
- (h) A soft copy of the MUSIC model has not been provided for assessment. It therefore cannot be determined that the water quality modelling has been prepared accordance with section 4.5(8) of THDCP 2012 Part D Section 19 Showground Station Precinct.

#### **SIGHT DISTANCES**

12. The development application should be refused because it has not been demonstrated that sufficient sight distances are available from the basement driveway.

##### **Particulars**

- (a) Obstructions of retaining walls and services occur along both sides of the driveway and encroach within the 2.5m pedestrian sight distance triangle required by AS2890.1 2004. It has not been demonstrated compliance with the Australian Standards can be achieved.

#### **WASTE MANAGEMENT**

13. The development application should be refused because it has not been demonstrated that a sufficient and practicable area is provided for waste storage and collection on site.

##### **Particulars**

- (a) The proposed development incorporates multiple waste and recycling storage rooms, not all of which are adjacent to the loading bay to be used by the waste collection vehicle. This is not practical as it will require the caretaker to wheel bins between the various storage rooms both before and after collection.
- (b) The development should provide a suitably sized single waste collection for all bins required by the development that is located adjacent to the loading bay.

- (c) It has not been demonstrated food organics/garden organics ("**FOGO**") waste collection can be facilitated within the proposed development, noting that the NSW Government has mandated its introduction for all residential households by 2030. The proposed development will need to accommodate at least 4 x 240L bins for FOGO waste.

#### **REGISTERED COMMUNITY HOUSING PROVIDER**

- 14. The development application should be refused because it does not specify the name of the registered community housing provider who is proposed to manage the affordable housing component as required by section 26(1) of the EP&A Regulation 2021.

#### **Particulars**

- (a) Section 26(1) of the EP&A Regulation 2021 provides as follows:

#### **26 Information about affordable housing development**

- (1) *A development application for development to which State Environmental Planning Policy (Housing) 2021, Chapter 2, Part 2, Division 1, 2 or 5 applies must specify the name of the registered community housing provider who will manage—*
  - (a) *for development to which Division 1 applies—the affordable housing component, or*
  - (b) *for development to which Division 2 applies—the boarding house, or*
  - (c) *for development to which Division 5 applies—the dwellings used for affordable housing.*
- (2) *A development application for development for the purposes of boarding houses or co-living housing must be accompanied by a copy of the plan of management.*
- (3) *In this section—*

**affordable housing component** *has the same meaning as in State Environmental Planning Policy (Housing) 2021, section 21(3)."*
- (b) Subject to the matter raised in Contention 3 above, Division 1 of Part 2 of Chapter 2 of SEPP Housing applies to the proposed development.
- (c) The development application was not accompanied by any details of the registered community housing provider whom is proposed to manage the affordable housing component of the development.

**PUBLIC INTEREST**

15. The development application should be refused because it is not in the public interest having regard to the contentions raised above.

**SIGNATURE**

Signature

Name

Capacity

Date of signature


\_\_\_\_\_  
Madison Morris

Senior Town Planner

01/09/2022

## ATTACHMENT 2 – DESIGN REVIEW PANEL COMMENTS

### DESIGN REVIEW PANEL DESIGN ADVISORY MEETING REPORT – 24<sup>th</sup> August 2022

<b>Item 4.2</b>	11.50am – 12.50pm
<b>DA Number</b>	DA 1801/2022/JP
<b>DA officer</b>	Madison Morris
<b>Applicant</b>	Landmark Projects
<b>Planner</b>	Aaron Sutherland
<b>Property Address</b>	21-23 Middleton Avenue & 16-18 Partridge Avenue, Castle Hill
<b>Proposal</b>	 <p>Residential flat development comprising 100 dwelling units over basement car parking.</p>
<b>Design review</b>	First review of DA (Reviewed pre-DA stage 23/02/22)
<b>Background</b>	All Panel members are familiar with the site and surrounding developments.
<b>Applicant representative address to the design review panel</b>	Nick Byrne Registration number: 7806
<b>Key Issues</b>	<p>Summary of key issues discussed:</p> <ul style="list-style-type: none"> <li>• Understanding of context, future neighbours and defined future character</li> <li>• Cross site link and resolution of landscape edges</li> <li>• Bulk and Scale</li> <li>• Compliance with statutory controls</li> <li>• Roof level common open space programming</li> <li>• Apartments below street footpath level.</li> <li>• ADG compliance</li> </ul>
<b>Panel Location</b>	Online zoom meeting hosted by The Hills Shire Council
<b>Panel Members</b>	<p><b>Chairperson</b> – Stephen Pearse</p> <p><b>Panel Member</b> – Paul Berkemeier</p> <p><b>Panel Member</b> – Marc Deuschle</p>
<b>Declaration of Interest</b>	None

<b>Councillors</b>	None present	
<b>Council Staff</b>	Madison Morris Cynthia Dugan Rory Spencer	Marika Hahn Megan Munari
<b>Other attendees</b>	Aaron Sutherland – Sutherland & Associates Planning Adam Martinez – Landmark Group Joseph Scuderi – Landmark Group Unknown - Landmark Group Nick Byrne - DKO Architects David Felicio - DKO Architects Paul Scrivener – Scrivener Landscape Architect	

#### GENERAL

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

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

#### SUBJECT SITE BACKGROUND SUMMARY

The subject site is located in the Showground Planned Precinct to the south of the Hills Showground Metro Station.



Location plan ( THSC)

#### DOCUMENTATION

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

*Arborist Report*, dated April 2022, by Dr Treegood.

*Flood Risk Management Plan*, dated April 2022, Telford Civil

*Architectural Plans*, Rev A 14/04/22, by DKO Architecture Pty Ltd

*SEPP 65 Report*, dated 14/04/22, by DKO Architecture Pty Ltd

*Design Review Panel Presentation*, dated 03/08/22, by DKO Architecture Pty Ltd

*Statement of Environmental Effects*, April 2022, by Sutherland Associates and Planning

*NatHERS Stamped Plans*, Rev A 14/04/22, by DKO Architecture Pty Ltd



## PANEL COMMENT

### DA 1802/2022/JP 21-23 Middleton Avenue & 16-18 Partridge Avenue, Castle Hill, Castle Hill

The Panel commenced at 11.50am

For clarity, the following minutes are based on the Panel's previous minutes dated 23 February 2022 (*repeated below in italics*). New comments do not necessarily supersede previous advice and as such should be read in conjunction with the previous DEP report/minutes. New comments from the meeting on 24 August 2022 are indicated in **blue**.

#### 1. Precinct planning, appreciation and response to context

- *The submitted documents do not adequately demonstrate how the proposal integrates with other new or proposed development in the immediate surrounds of the site, the wider urban and environmental context of the new Showground Precinct, or contribute to maintaining the garden character of The Shire.*

**Comment:** This comment remains relevant.

- *The applicant should provide dimensioned drawings that identify the immediate built context, including either approved adjacent development or building envelopes based on the key controls.*

**New Comment:** The Panel noted that an illustration of the indicative adjacent built form on all boundaries was not provided. This is considered essential to demonstrate solar compliance and must be modelled in all shadow diagrams. Existing approved development in the immediate area provides comparable building envelopes that are likely as a future built form outcome. This is of particular relevance for any new building which may occur on the north boundary especially as a result of amending the thru site link location.

**New Comment:** It is important to indicate significant trees on neighbouring sites so as to adequately assess/address building design.

- *The Panel is interested in the contextual narrative for this proposal and how it translates into the landscape, built form and architecture. A comprehensive analysis of the site and its precinct setting (including landscape, streetscape and existing/future built form), as well as its environmental context (climate) should inform this.*

**Comment:** This comment remains relevant.

#### 2. Site planning and built form strategy

- *The Panel notes that planning issues (such as the location of the adjacent cross site link and overland flow path alignment) described in the DCP need to be resolved directly with Council as these are likely to have an impact on the built form arrangement.*

**Comment:** This comment remains relevant and should be resolved with Council staff prior to any future Panel meetings.

- *The Panel would support an adjustment to the DCP cross-site link indicative location (being a direct extension of the alignment for the approved development to the immediate north-west between Partridge and Ashford Avenues), if this is acceptable to and agreed with Council. This would also require agreement with the land owner to the immediate north, which may prove difficult to achieve. Early resolution of this matter is necessary, as it will impact upon built form outcomes for this site and the development site to the north.*

**Comment:** This comment remains relevant and should be resolved with Council staff prior to any future Panel meetings.

- *Both the ADG and the DCP require main entries to ground floor residential lobbies to be clearly visible from the street frontage. In addition, the DCP requires that all ground level apartments are able to be accessed individually from the street. This is to maintain*

*the desired future character of a TOD precinct; ie. a physically and visually activated, human-scaled street frontage.*

**New Comment:** This comment remains relevant. The Panel strongly encourages compliance with established DCP controls that clearly specify desired future built form outcomes. The Panel noted the below grade apartments are considered to be an unacceptable design outcome. The Panel accepts the location of the side access to lobbies in this instance as the built form/pavilion is a significant marker in the street, however the detail outcome of the approach to the lobby appears minimal and of inadequate amenity and is not supported. More detail is required to describe cover, wall finishes and nature of this arrival experience.

**New Comment:** The use of side entry to the lobbies also creates potential for higher noise and privacy issues to neighbours and this needs to be recognised with landscape and fence design.

#### Bulk, Scale and Massing

- *The preliminary built form presented to the meeting appears quite squat, defensive and monotonous. The diagrams and plans indicate the primary articulation to be an open indent along the northern side boundary, possibly a consequence of the relatively narrow street frontage of this site.*

**Comment:** The design as amended delivers a more refined and detailed architectural response and is supported by the Panel.

- *If the adjacent cross-site link is moved to the north (ie. away from the side boundary), it is likely that a new development to the north will substantially overshadow the proposed open courtyard, which in turn may impact on the amenity of communal open space. This is a further incentive for early resolution of the link alignment.*

**Comment:** This comment remains relevant for resolution of solar impacts on COS and apartments and may impact on privacy provisions relating to any use of this setback zone.

- *Built form and articulation must comply with the DCP controls for façade length and character.*

**Comment:** The façade length at approximately 33 metres is a minor non-compliance and is considered acceptable

#### Site Coverage/ Landscaped Open Space

- *The site coverage is in excess of 50% and the proposal will need to be revised in order to comply. All boundary setbacks must be complied with or exceeded, to ensure landscape and deep soil minimum provisions are met.*

**New Comment:** To be confirmed with Council's Landscape officer

- *The Panel recommends that the carpark access driveway is constrained to within the building envelope and clear of setback zones.*

**New Comment:** The Panel notes the access driveway is now incorporated in the building envelope. This is a positive impact of the streetscape. The Panel recommends the retention of tree 11 by adjusting the carpark setback wall on the north boundary and the turning circle. This would greatly benefit the COS by having an instant canopy cover via the retention of this significant tree.

- *Final site coverage and Landscaped open space, Communal Open Space, and Deep Soil Zone (DSZ) provisions are to be provided to the Council's Landscape and DA Officers satisfaction. The minimum requirements in the ADG (eg. 6m minimum width, and no paving or structures) should be adhered to with regards to calculating the DSZ.*

**Comment:** This comment remains relevant. See also comments in **4. Landscape Design** below.

- *ADG requirements for communal open space provision within setbacks are assessed on merit, however this is not generally supported by the Council or the Panel as these provisions are primarily for passive use and generous deep soil-based landscape.*

**Comment:** The Common Open Space (COS) calculations include several areas which are not regarded as COS as they are not for recreational use. These are the setbacks adjacent to the

driveway on Partridge Ave, the side entry zones from Partridge and Middleton, as well as the front setback areas between boundary and graded (Private Open Space) POS on Middleton.

### 3. Compliance

#### Height

- *The Panel does not generally support LEP height non-compliance. On sloping sites or in other specific circumstances consideration is given to minor exceedance for roof access elements and shading devices serving roof top communal open space, provided that such elements are not seen from the surrounding public domain or impact on the amenity of adjacent development.*

**Comment:** The Panel discussed the accuracy/completeness of drawings as some rooftop elements did not appear to be shown on the elevations and possibly therefore not represented within the perspectives. Applicant is to confirm accuracy of the perspectives and elevations. It was however agreed that, should the perspectives as sighted on the day represent the true visual outcome, then the height intrusion could be acceptable subject to standard clause 4.6 qualifications and application.

#### Density

- *The proposed development density appears to be excessive for this site, as demonstrated by the excessive site coverage, height exceedance, and setback non-compliances.*

**Comment:** This remains an issue and is demonstrated by the items listed above and in addition the inclusion of below grade apartments, side entry lobbies, contorted planning of re-entrant corner units around courtyard, privacy issues and useability issues for POS on courtyard level.

- *Whilst it is noted that the applicant is seeking additional yield through the provision of the new Housing SEPP2021, the Panel advises that this should not be at the expense of design quality and/or residential amenity*

**Comment:** This comment remains relevant as described above and throughout the detail issues raised in this report

- *The Panel assumes that more detailed description and documentation will be provided to demonstrate acceptable design quality and that the GFA sought is achievable.*

**Comment:** This comment remains relevant.

#### Setbacks

- *All ADG minimum separations and DCP boundary setbacks should be complied with (including basements and balconies).*

**Comment:** This comment remains relevant. The north and south elevations include encroachments within the 9 metre setbacks at the upper levels. While the privacy issues are addressed by location of windows the separation to neighbours requirement is not met.

- *Encroachment of the lower ground courtyard areas into the Middleton Avenue and Partridge Avenue setback zones adversely impacts on the aesthetic, environmental and landscape qualities of this street frontage, and potentially compromise the retention of mature trees within the setbacks.*

**Comment:** This comment remains relevant. Please also note POS is problematic as Deep Soil Zone (DSZ), since the long term surfacing cannot be guaranteed to remain permeable. Likewise the inclusion of walls and associated footings negates its ability to be counted as DSZ.

- *RL's of all ground level units, courtyards and adjacent ground levels are required, to provide clarity on amenity impacts.*

**Comment:** The setback zones on Middleton and Partridge are used to step down to a number of below grade apartments. In some cases, to 1650mm below grade. This is not supported. Key apartments of concern are two x 2 bed units on south end to Partridge and two x 2 bed apartments on south end of Middleton.

- Upon resolution of the north side boundary with respect to through site links, overland flow and the driveway, the application will need to fully describe the proposed design within this setback zone and the interface with the neighbour.

**Comment:** This comment remains relevant and should be resolved with Council staff prior to any future Panel meetings.

#### Apartment Mix and Building Design

- The Panel notes that the proposal incorporates affordable rental housing. This is the first application for such in the Showground Precinct, and together with addressing the new Housing SEPP provisions, this project is an opportunity to provide an important exemplar for this typology in the Hills LGA.

**Comment:** No further comment.

- A more detailed description of the approach to and location of rental units should be provided to Council and discussed at the next Panel meeting.

**Comment:** An explanation was provided to the satisfaction of the Panel.

- Street frontage apartments with ground floor levels and courtyards below footpath level are not supported. All existing ground lines are to be shown on sections.

**Comment:** This comment remains relevant. Refer to DCP controls for guidance and previous comments within this report.

- For buildings of this height, the Panel recommends that lift access and distribution be reviewed to ensure that when a single lift is out of operation residents have access to an alternative lift.

**Comment:** This comment remains relevant.

- Each residential development block must be able to be accessed directly from the immediately adjacent street frontage by a mobility impaired person such as a person in a wheelchair or on crutches.

**Comment:** This comment remains relevant. As previously commented subterranean and below grade apartments are not endorsed.

- Adequate and effective built form separation, good visual privacy, good acoustic amenity and ADG solar access compliance will need to be demonstrated at the next meeting.

**New Comment:** The Panel noted that solar compliance was not adequately demonstrated due to the lack of modelling of the adjacent future development to the north as previously requested by the Panel.

**New Comment:** The Panel recommends a diagram including a potential building to the north be provided clearly demonstrating building separation to demonstrate ADG design criteria is satisfied.

- The units plans at internal courtyard corners should be re-configured to ensure cross-privacy with adjacent units. The protruding external corners also create overlooking on other units facing into the courtyard.

**Comment:** This comment remains relevant, particularly where balconies in some instances are 3 metres apart. Apartment bedrooms have very close adjacencies flanked by brick walls leading to questionable acoustic privacy.

**New Comment:** The contortions of the POS and access to lobbies at Level 1 within the COS are not supported. The POS are marginally undersized in some places, however their shape and proximity to the public /communal pathway makes them questionable for their required usage.

**New Comment:** Roof top skylights require more detail to address any visual and acoustic privacy issues which will arise due to adjacency to COS.

#### **4. Landscape Design**

- All significant established trees in the street reserve and within the site should be retained where practicable and described by an arborist report. The arborist report should be provided to the Panel prior to the next Panel meeting.



**Comment:** This comment remains relevant. An arborist's report has now been provided and T11 is shown to be of high value. The Panel strongly recommends this tree to be retained, with only minor alterations to the design required to achieve this.

- *Deep soil provisions need to be satisfied and demonstrated. It should be considered how meaningful communal open space can be co-located with areas of deep soil zones to allow the provision of large canopy trees.*

**New Comment:** While the DSZ is shown to comply numerically, several areas cannot be included in the calculations as they are divided by walls (and footings), paths and paving, steps and the like. DSZ must not be unimpeded by any such structures in order to be counted. The design and calculations should be adjusted to provide a complying DSZ.

- *A significant proportion of the site is taken up by hard paving surfaces and services, which is not in keeping with the desired future character of the precinct. The configuration of entrances from the street reduces deep soil allocation in the southern boundary landscape area.*

**New Comment:** It appears additional planting has been added to the scheme, however DSZ remains a concern as noted above.

- *Consideration of landscaping strategy to incorporate current character of informal plantings of tall canopy trees at the ground plane.*

**New Comment:** The planting plan shows significant new trees are to be added to the scheme which is commended, however the retention of T11 should be prioritised over new substitution planting.

- *Landscape architectural and engineering drawing sets are to be coordinated to ensure services are not located within the soil zone of trees, and do not diminish the overall area of deep soil.*

**Comment:** This comment remains relevant.

- *Basement car parking in the provided drawing set is outside of building footprint and encroaches upon landscape areas suitable for deep soil provision.*

**New Comment:** This has been mostly resolved. The applicant has revised most of the basement car parking to be clear of the setbacks with the exception of the north boundary, it is recommended that further modification occur here to retain tree 11 as noted above.

- *The function of the ground level communal open space is unclear.*

**New Comment:** The Panel noted efforts to activate the communal open space generally. The Panel suggests that demographic analysis of occupants would better inform the most appropriate uses for the spaces.

**New Comment:** The applicant appears to have included key circulation areas giving access to lobbies between POS in the COS area calculations. This is not considered to be suitable for inclusion with COS calculations.

- *Consider flexible uses for the roof areas allocated for communal open space such as play areas, rooftop gardens, shared facilities in addition to BBQ areas. The Panel supports the more informal plantings on the roof level and recommends this be further developed. Consideration needs to be given to future maintenance of rooftop gardens - flexibility is encouraged to ensure that the gardens are carried through to the final stages of building implementation.*

**New Comment:** This comment remains relevant. The Panel noted that the roof top provision did not offer a variety of spaces to cater for the residents. The development is for 100 units and this is the main communal provision provided. The quality and amenity of the COS needs to be reviewed as it is limited in its current form, given the majority of spaces are for sitting only, and are dominated by circulation due to the nature of their layouts. The rooftop should take advantage of district views by engaging the edges as opposed to consistently placing seating in the centre of spaces.

- *Consider opportunities for summer shade on roof top communal open space.*

**Comment:** This comment remains relevant. No shade structures are evident in the provided documentation. Trees could further add to the available shade and would contribute an improved micro-climate.

- *For a proposal of this size, high quality communal open space design is essential, in keeping with the place-making principles of generous and quality places described in the DCP.*

**Comment:** This comment remains relevant.

- *The public domain and adjoining deep soil zones require more substantive tree planting.*

**Comment:** This comment remains relevant to Partridge Avenue. Middleton Avenue appears to have 4 street trees proposed which is appropriate.

- *Private courtyards are not to encroach into the street setback.*

**Comment:** This comment remains relevant. The street setback is for deep soil planting and landscape treatments, not private courtyards.

#### 5. SEPP 65 items to be clarified or revised:

- **SEPP 65 Design Quality Principles (SEPP65)** –a written statement explaining how each of the principles has been addressed should be provided. The author must be the architect assigned to this project, and be present at all Panel meetings.

**Comment:** The Panel recommends that this statement be updated to include neighbouring buildings' impact and responses to comments within this report.

#### Apartment Design Guide

- *All apartments are to comply with SEPP 65 and the objectives and design criteria of the Apartment Design Guide (ADG) as this is a minimum standard provision. Design criteria such as solar access to habitable space and natural ventilation are to be tabulated per individual building, and should not presented as an overall site summary where multiple buildings are envisaged. The drawings presented at the next meeting should clearly demonstrate that the objectives and design criteria of SEPP65 are able to be fully achieved. Note that for solar compliance this means adequate plans illustrating solar penetration achieved to the apartment are to be supplied for any difficult or contentious apartments.*

**Comment:** The Panel recommends that tables be updated to include neighbouring buildings' impact and response to the comments within this report.

- *Note that engineered solutions for cross ventilation are not considered acceptable by Council.*

**Comment:** This comment remains relevant.

- *Internal corridors appear long and lacking in adequate natural light provision.*

**Comment:** Resolved with exception to the two ground main entry lobbies.

- *Ensure balcony shape and proportions are fit for purpose.*

**Comment:** This comment remains relevant.

#### **Specific items to be provided for the next meeting:**

- *Calculation of deep soil provision*

**Comment:** To Council's Landscape officer satisfaction.

- *Solar access to communal open space at ground level*

**New Comment:** This has now been demonstrated, however drawings should be revised to indicate a likely development plotted onto the northern site and impacts thereof.

- *Adequacy of common facilities for this size development*

**Comment:** Refer to comments on COS provision at ground level and rooftop.

- *2 Hour minimum solar access compliance to ADG, to be confirmed with planner*

**Comment:** The Panel noted the solar access diagrams did not demonstrate solar access compliance.

- *South facing unit compliance, to be confirmed with planner*

**Comment:** No further comment.

- *Natural cross ventilation compliance to ADG definition, to be confirmed with planner*

**Comment:** A number of 2 bed apartments on levels 1 and levels 2 to 4 south façade rely upon a single highlight window in close proximity to the living area window and are queried as to effectiveness for cross ventilation. It is recommended that the applicant provide further engineering verification as to how these actually will deliver the required ventilation with respect of ADG code for cross ventilation compliance.

- *Shadow diagrams and sun eye diagrams taken at ½ hourly intervals between the hours of 9am and 3pm.*

**Comment:** Not provided. To be provided with adjacent building blocks modelled.

#### 6. Sustainability and Environmental amenity

- *Beyond satisfying ADG requirements, the Panel recommends that this proposal is reviewed by the applicant with a sustainability engineer and a report prepared that demonstrates how an appropriate suite of passive and active environmental strategies have been integrated into the design of the scheme.*

**Comment:** This comment remains relevant.

- *A sustainable landscape response is encouraged, with a mix of plants that may support ecological systems - low water use, support of insects, birds and small reptiles and mammals. To support long term soil and plant health, water should be restored to the soil wherever possible.*

**New Comment:** This comment has been partially addressed via the provision of a landscape plan. The retention of T11 must be prioritised.

#### 7. Architecture and Aesthetics

- *The Panel accepts that the architectural vision for this submission is preliminary, however it is concerned that the façade design presented is presently driven by a response to orientation only. A more inclusive design approach should be demonstrated, driven by the broader criteria referred to in Section 1 above.*
- *All utility services elements in the public domain are to be suitably screened and integrated into the building fabric. Detailing of services screening to be a DA condition or prior to consent subject to DA officer requirement.*

**New Comment:** Please refer to Council fact sheet on services provision in front setbacks and consider the largely avoidable adverse visual impact services have on the building aesthetic.

[https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact\\_sheet\\_-\\_building\\_design\\_site\\_facilities\\_-\\_services.pdf](https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact_sheet_-_building_design_site_facilities_-_services.pdf)

- *Car park exhausts are to be integrated into the building structure and not expel air into any common open space or public domain area.*

**Comment:** This comment remains relevant.

**New Comment:** Plans are to clearly illustrate where the exhaust locations are located.

- *The Panel requests a statement from the design team describing how their design proposal has considered and responds to the specific social, cultural and environmental character of regional north-western Sydney.*

**New Comment:** The Panel is concerned about the structural adequacy of the corner slabs cantilever and their ability to be implemented as drawn. It is recommended that structural advice be considered early to ensure the integrity of the design as presented. This is particularly important at the carpark entry and unsupported balcony corners.

**New Comment:** The car park entry ramp and resulting scale and material choice as illustrated on DA315 perspective from Partridge Avenue appears harsh. The Panel recommends that some material/colour shift be considered to soften the impact aesthetically of this driveway from the street view and ameliorate any acoustic issues which may arise from the use of hard surfaces.

**New Comment:** The Panel commends the applicant on the refined design development of the façade that has introduced more fine grain elements through articulation of the planar brick elements whilst expressing a refined and simple design aesthetic to the base. The Panel advises that the upper levels would benefit from further consideration of colour, material choice, window

proportion and shading. The upper levels should appear recessive compared to the podium base. Consider colours and tones that minimise impacts of the UHI Effect.

#### 8. Documentation

- Provide a full set of plans, including drawings that describe the adjacent context in plan, section and elevation.

**New Comment:** this issue remains particularly with respect to resolution of through-site link, overland flow, the buildings on northern boundary and southern boundary.

- Provide elevations that include the adjacent building envelopes/ interface with street,

**New Comment:** This information was not provided

- Landscape plans should include future streetscapes in accordance with Council's plans.

**New Comment:** Services provision should not be included in the landscaped area calculation; this includes the substation and the row of elements illustrated facing Partridge Avenue. The services provision take up a third of the building frontage and consideration should be made as to whether this is the best design solution.

- Provide cross site sections (at least two long sections one to cut through driveway).

**New Comment:** Addressed

- Provide adjacency interface sections at a scale of 1:50

**New Comment:** This information has now been provided within landscape drawings, however, may need to be adjusted in light of comments within this report. It is also recommended that details be provided that illustrate how the privacy issues for POS, bedrooms, balconies etc are to be addressed in the re-entrant corners around the ground floor courtyard.

- Existing ground levels and permissible height lines are to be shown in all elevations and sections.

**New Comment:** Addressed

- Provide legible dimensions demonstrating floor to floor heights, setbacks etc.

**New Comment:** The analysis of the courtyard setbacks for internal compliance for noise, privacy etc is inadequate and it is recommended that this be addressed in further documents.

#### SUMMARY OF PANEL RECOMMENDATIONS

- Provide a statement of the schemes design response to its precinct and broader regional context.
- Consider meaning of place with reference to the context of the Showground Precinct and the defined future character specified in the DCP. Demonstrate how the proposed design is reflective of and contributory to the making of place.
- Ensure the building envelope complies with the height controls (minor non GFA elements may be considered as noted in report).
- Revise the building envelope as required to comply with building setbacks.
- Amend basement encroachments from all setbacks and provide more substantial landscaping.
- Avoid subterranean units and sunken terraces.
- Resolve the location of the pedestrian cross-site link and overland flow path.
- Ensure common facilities and related spaces are appropriate to the size of the development.
- Ensure that typical floor access areas are generous with good access to natural light (and ventilation on lower levels).
- Provide more articulation and diversity of architectural expression between lower and upper levels and between development blocks.
- Provide external solar shading to exposed windows.



- *Provide a comprehensive landscape design that addresses deep soil provision, high canopy tree planting and substantial landscape under-storey planting.*
- *Provide a plan that demonstrates how the communal open spaces may be used, with flexible functional spaces, consideration of light and shade and amenity.*
- *Sign off from both the Council Landscape DA officer and relevant Manager of Vegetation works is required for the removal of any trees over 3m in height in the street and building setback areas.*
- *Street front utility service elements are to be integrated into building fabric and landscape to the satisfaction of Council.*
- *Vehicular access should be consolidated and wholly contained within a building footprint.*

**New comment:** A number of above listed items have been resolved. All comments are to be addressed with adequate and clear documentation to the satisfaction of the Council officer.

The following items are added to the summary of panel recommendations:

- Amend encroachment to north boundary setback and retain tree 11.
- Provide additional modification to driveway, to upper metal faced building form, and ground level entry lobbies.
- Address acoustic and visual privacy issues within courtyards.
- Address outstanding ADG issues around solar compliance, COS measurement.
- Provide a more detailed assessment of suitable COS activity areas for this development and demonstrate these within the submitted designs.
- Provide an accurate assessment of DSZ.

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

#### **PANEL CONCLUSION**

The Panel commends the applicant on the improvements to the building façade and the inclusion of the driveway within the built form, however it notes that there are a considerable number of items that remain to be addressed.

The nature and number of these remaining items appears to be a result of attempting to achieve more GFA on the site than is possible whilst meeting the design excellence provisions. Accordingly, the Panel does not support the proposal in its current form as it is yet to meet the requirements of design excellence.

It is recommended that the applicant address the matters identified in this report prior to any future consideration of the Application by the Panel.