

DATE OF DETERMINATION	14 February 2023
DATE OF PANEL DECISION	14 February 2023
PANEL MEMBERS	Abigail Goldberg (Chair), David Ryan, Cynthia Dugan, Megan Munari
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 16 December 2022.

MATTER DETERMINED

PPSSCC-386 – The Hills Shire – 343/2023/JP – Lot 103 and 106 Mount Carmel Drive, Box Hill – Mixed use development including retail and commercial tenancies, detached carparking structure and at-grade parking.

PANEL CONSIDERATION AND DECISION

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

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of State Environmental Planning Policy (Precincts – Central River City) 2021, Appendix 10 The Hills Growth Centres Precinct Plan (the SEPP), the Panel is **not** satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the SEPP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of buildings) of the SEPP and the objectives for development in the B7 zone; and

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined in the Council Assessment Report.

1. The Applicant's written request seeking to justify the contravention of the development standard to Clause 4.3 Height of Buildings standard does not adequately address Clause 4.6(3) and the consent authority is not satisfied in terms of Clause 4.6(4)(a), and therefore development consent cannot be granted to the Development Application.

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

2. Consent cannot be granted because the proposal does not demonstrate how there is sufficient supply of water, supply of electricity or the management of sewage as required by Clause 6.1 of the Precinct Plan.

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

3. The proposal does not comply with the required amount of unencumbered outdoor play space that has been provided for the centre based child care facility and it is not compliant with SEPP (Transport and

Infrastructure) 2021. As a consequence, development consent cannot be granted without the concurrence of the Regulatory Authority pursuant Section 3.22 of SEPP (Transport and Infrastructure) 2021).
(Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979)

4. The bulk and scale of the development is excessive, resulting in inadequate landscaping and amenity and a failure to adequately mitigate the urban heat island effect; the particulars of which are:

- a) The proposal does not comply with the site coverage and landscaped area controls within the Box Hill DCP 2018. Specifically, the site coverage is exceeded and there is a shortfall in the amount of landscaped area.
- b) The proposal does not comply with the deep soil planting requirements of the Box Hill DCP 2018. Specifically, the requirement for a minimum deep soil planting area of 20m by 20m has not been provided.
- c) The proposal does not comply with the built form character of Clause 6.2.1 of the Box Hill DCP 2018. Specifically, the setback to Mount Carmel Drive is under the minimum 5m as required by the DCP.

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

5. The proposal does not comply with the car parking requirements of Clause 8.1.4 of the Box Hill DCP 2018 and the Hills DCP Part C Section 1 Parking. Specifically inadequate number of car parking is provided and not all car parking is located on the site that generates the demand as required by the DCP.

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

6. The proposal has not provided sufficient information to enable a proper assessment of the development and the impacts of the development are unable to be determined.





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

7. The site is not suitable for the development as the proposal is an overdevelopment of the site and is not in the public interest.

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

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 David Ryan
 Cynthia Dugan	 Megan Munari

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-386 – The Hills Shire – 343/2023/JP
2	PROPOSED DEVELOPMENT	Mixed use development including retail and commercial tenancies, detached carparking structure and at-grade parking.
3	STREET ADDRESS	Lot 103 and 106 Mount Carmel Drive, Box Hill
4	APPLICANT/OWNER	ARTAZAN PROPERTY GROUP (NSW) PTY LTD/ Mogul Stud Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 SEPP (Precincts – Central River City) 2021 SEPP (Transport and Infrastructure) 2021 SEPP (Biodiversity and Conservation) 2021 SEPP (Industry and Employment) 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Box Hill Growth Centre Precincts Development Control Plan 2018 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 16 December 2022 List any clause 4.6 variation requests here: <ul style="list-style-type: none"> Height of Buildings Variation Written submissions during public exhibition: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick-off Briefing: 30 November 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Megan Munari, Cynthia Dugan <u>Council assessment staff</u>: Robert Buckham, Kristine McKenzie, Paul Osbourne, Cameron McKenzie, Isaac Camilleri <u>Secretariat</u>: Sharon Edwards and Alex Richard Briefing: 9 February 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Megan Munari, Cynthia Dugan <u>Council assessment staff</u>: Robert Buckham, Paul Osbourne, Isaac Camilleri <u>Secretariat</u>: Sung Pak and Jordan Clarkson
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A