

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-398
DA Number	672/2023/JP
LGA	Hills Shire Council
Proposed Development	Residential Flat Building Development containing 315 units.
Street Address	16-30 Dawes Avenue, 2-10 Cadman Crescent and 4-8 Hughes Avenue, Castle Hill
Applicant	Place Studio Au Pty Ltd
Consultant/s	Town Planners: BMA Urban Architects: Place Studio Access: Accessible Building Solutions BCA: J² BCA Consulting Geotechnical: CEC Geotechnical Traffic: CJP Consulting Engineers Acoustic: SLR Landscape: Zenith Landscape Design QS: Property and Building Assessments Surveyors: Azimuth Surveyors Stormwater Plans: Telford Civil BASIX: Gradwell Consulting Arborist: Jacksons Nature Works
Date of DA lodgement	11 October 2022
Number of Submissions	One
Recommendation	Refusal
Regional Development Criteria Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021	CIV exceeding \$30 million (\$72,657,523.32 excluding GST)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (BASIX) 2004 • State Environmental Planning Policy 65 – Apartment Design of Residential Development • The Hills Local Environmental Plan 2019 • The Hills Development Control Plan 2012 • Part B Section 2 – Residential • Part B Section 5 – Residential Flat Building • Part B Section 6 – Business • Part C Section 1 – Parking • Part C Section 3 – Landscaping • Part D Section 19 – Showground Station Precinct
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Clause 4.6 written submission • Plans
Clause 4.6 requests	<ul style="list-style-type: none"> • The Hills Local Environmental Plan 2019

	<ul style="list-style-type: none"> • Clause 4.3 Height of Building • R4 High Density Residential zone
Summary of key submissions	<ul style="list-style-type: none"> • Density concerns • Height concerns • Building separation and open space concerns • Overshadowing to neighbouring properties • Traffic and parking • A public park should be provided between the R4/R3 interface
Report prepared by	Cynthia Dugan
Conflict of Interest Declaration	None declared
Report date	13 April 2023

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **NA**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

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

EXECUTIVE SUMMARY

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

- The proposal does not meet several development standards under The Hills Local Environmental Plan 2019 including Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio, Clause 9.7 Residential development yield on certain land within the Showground Precinct and Clause 9.5 Design Excellence.
- Clause 4.3 Height of Buildings development standard permits a maximum height of 21m for the site. The Applicant's Clause 4.6 written request seeking to justify the contravention of Clause 4.3 of the LEP does not adequately address Clause 4.6(3)(b) or (4)(a) and as such, development consent cannot be granted to the Development Application. The maximum height and variation proposed is 23.78m (13.2%) for Building A, 23.15m (10.2%) for Building B, 23.28m (10.9%) for Building C, 23.73m (13%) for Building D, 23.99m (14.2%) for Building E, 24.14m (15%) for Building F, 24.82m (18.2%) for Building G and 24.4m (16.2%) for Building H. The written submission has not demonstrated that sufficient environmental planning grounds have been provided to justify the contravention.
- The Development Application comprises a FSR of 2.22:1 which does not comply with the FSR (base) development standard of 1.6:1 under Clause 4.4 of the LEP. Whilst the proposal seeks to utilise the incentive FSR under Clause 9.7 of the LEP, the application has not demonstrated compliance with the unit mix and size requirements under the Clause. In this regard, the incentive FSR of 2.3:1 cannot be applied. The Applicant has not provided a Clause 4.6 written request to vary the FSR standards under Clause 4.4 or Clause 9.7 of the LEP.
- The proposal does not satisfy Clause 9.5 of The Hills LEP 2019 regarding design excellence. The Applicant has not provided sufficient information for the proposal to be reviewed by the Design Review Panel and the proposal has not satisfied the other matters for consideration under the Clause. In this regard, development consent must not be granted to the development.
- Insufficient information has been provided to conclude that there is no contamination on the land as required under Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. In this regard, the consent authority must not consent to the carrying out of any development on land.
- Insufficient information has been provided for the consent authority to consider whether there is sufficient vehicular and pedestrian sight distance for the development to assess the potential for traffic safety and road congestion of the development under Clause 2.122 of SEPP (Transport and Infrastructure) 2021.
- The proposal has been assessed against the requirements of SEPP 65 Design Quality of Residential Apartments. The proposal does not satisfy the design quality principles about context and neighbourhood, built form and scale, landscape, amenity and aesthetics. It cannot be concluded the proposal will provide for built forms that would be appropriate in bulk and scale or provide for an appropriate landscaping, amenity and aesthetics or a consistent streetscape presentation. A sensitive transition between the high density and medium density zones has not been demonstrated.
- The proposal has been assessed against the design criteria of the Apartment Design Guide (ADG). Insufficient information has been provided to demonstrate that satisfactory residential amenity will be provided to the future occupants of the

development with respect to solar access to the principal communal open space, building separation and visual privacy and amenity.

- The proposal has been assessed against the precinct specific controls for the Showground Precinct under Part D Section 19 of The Hills DCP. The proposal does not satisfy the controls relating to building lengths, residential uses on ground level, open space and landscaping, integrated water management and acoustics which ensure consistency with the built form and character envisaged within the Showground Station Precinct.
- The application is not considered to be in the public interest as the proposal has not demonstrated a satisfactory design and planning outcome suitable for the site.
- The application is subject to a Class 1 Appeal in the Land and Environment Court.

The application is recommended for refusal.

BACKGROUND

The Applicant elected not to proceed with a pre-DA meeting prior to lodgement of the Development Application.

On 11 October 2022, Development Application No. 672/2023/JP was lodged. The development application was notified from 19 October 2022 until 9 November 2022. One submission was received following the notification period.

On 25 October 2022, an email was sent to the Applicant advising the development application was tentatively scheduled for review by Council's Design Review Panel on 23 November 2022 and that all required information including a presentation is to be submitted 3 weeks prior to the meeting.

On 25 October 2022, an email was received from the Applicant confirming that all the required information would be submitted before the required deadline.

On 1 November 2022, an email was received from the Applicant requesting the development application be postponed to the next Design Review Panel meeting as more time was required to prepare the presentation.

On 1 November 2022, an email was sent to the Applicant advising the development application could be postponed to the next meeting however this would be in February 2023 as there were no Design Review Panel meetings scheduled in December 2022 or January 2023.

On 11 November 2022, a request for additional information letter was issued to the Applicant on the NSW Planning Portal relating to planning, traffic, contamination, acoustic, landscaping matters. This letter noted that as the Applicant sought to postpone the review by the Design Review Panel.

On 15 November 2022, an email was received by the Applicant indicating that no further material or amendments to the application will be provided but will rather await the complete feedback from Council's departments, and the outcome of the design review panel in February 2023.

On 18 November 2022, a further request for additional information letter was sent to the Applicant regarding waste management concerns.

On 21 November 2022, an email was received from the Applicant confirming receipt of the additional information letter regarding waste management concerns. The correspondence also advised that any further questions will be directed to the assessing officer.

On 14 December 2022, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Respondent's refusal of the Development Application.

The first directions hearing was held on 27 January 2023. The Court directs that a Section 34 conciliation conference is arranged for 24 May 2023 and that Council file and serve their Statement of Facts and Contentions by 7 February 2023 and the Applicant file and serve its Statement of Facts and Contentions by 14 February. If no agreement is reached after the conciliation conference, the proceedings are listed for a second directions hearing on 31 May 2023.

On 7 February 2023, Council's Statement of Facts and Contentions was filed with the Land and Environment Court.

DETAILS AND SUBMISSIONS

Zoning:	R4 High Density Residential
Area:	15,696.93m ²
Existing Development:	Existing detached dwelling houses
Section 7.11 Contribution:	\$4,227,485.01
Exhibition:	Not required
Notice Adj Owners:	Yes, 14 days
Number Advised:	153
Submissions Received:	One

PROPOSAL

The proposed development as described in the Applicant's Statement of Environmental Effects seeks consent for the following:

- Demolition of existing residential dwellings and associated structures on the site.
- Construction of 8 x seven storey residential flat buildings comprising 315 dwellings with a unit mix of 44 x 1 bedroom units, 190 x 2 bedroom units and 81 x 3 bedroom units.
- Construction of four basement levels including two mezzanine basement levels comprising 515 residential and 62 visitor spaces, 205 bicycle spaces, 31 motorcycle spaces, loading facilities and residential storage.

All 8 buildings exceed the height standard of 21m with a maximum height of 24.82m proposed for the development which results in a variation to the height standard by 3.82m or 18%.

A Clause 4.6 Variation to the height development standard has been submitted with the Development Application.

ISSUES FOR CONSIDERATION

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

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

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

The proposed development has a Capital Investment Value of \$72,657,523.32 (excluding GST) and therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

2. Compliance with State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment. Clause 4.6 of the SEPP states:

- 1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A Preliminary Site Investigation Report and Geotechnical Investigation has been submitted with the Development Application. The report has been reviewed by Council's Environmental Health Officer who has raised objections to the proposal as the report is inadequate as it only assesses four of the 16 properties within the site. It cannot be concluded that the entire site is not contaminated.

The proposal does not meet the requirements under Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Therefore, the consent authority must not consent to the carrying out of any development on the land on these grounds.

3. State Environmental Planning Policy (Transport and Infrastructure) 2021

This Policy aims to facilitate the delivery of infrastructure and identify matters to be considered in the assessment of development adjacent to particular types of infrastructure development. Specifically the SEPP contains provisions relating to traffic generating development.

Traffic generating development

Clause 2.122 'Traffic-generating development' of the SEPP states:-

- (1) *This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:*
 - (a) *new premises of the relevant size or capacity, or*
 - (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*
- (2) *In this clause, relevant size or capacity means:*
 - (a) *in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
 - (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*
- (3) *A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has:*

- (a) given written notice of the intention to carry out the development to RMS in relation to the development, and*
- (b) taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*

(4) Before determining a development application for development to which this clause applies, the consent authority must:

- (a) give written notice of the application to the RMS within 7 days after the application is made, and*
- (b) take into consideration:*
 - (i) any submission that the RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RMS advises that it will not be making a submission), and*
 - (ii) the accessibility of the site concerned, including:*
 - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) any potential traffic safety, road congestion or parking implications of the development.*

(5) The consent authority must give the TfNSW a copy of the determination of the application within 7 days after the determination is made.

The proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP. The SEPP requires development to be referred to Transport for NSW where residential accommodation exceeds 300 dwellings. The proposal results in 315 dwellings.

The Development Application was referred to Transport for NSW for review. Transport for NSW raises no objection to the proposal and provides the following comment:

- 1. TfNSW is concerned with the prospect of cumulative traffic impacts on the surrounding road network due to developments exceeding the minimum car parking rates outlined by The Hills Development Control Plan (DCP). TfNSW notes the proximity of the development to the Hills Showground Metro Station and recommends the reduction of the number of car parking spaces to be consistent with the minimum parking rates as outlined by The Hills DCP.*
- 2. Council should be satisfied that the additional traffic as a result of the proposed development can be accommodated within the nearby road network.*
- 3. Access to the site, car parking and manoeuvring areas are to be in accordance with the relevant standards and to the satisfaction of Council.*
- 4. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.*
- 5. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control*

should be submitted to Council for determination prior to the issue of a construction certificate.

TfNSW comments have been considered with reference to the provisions under the LEP. Clause 9.7 of the LEP and the DCP requires a minimum of 315 car spaces for residents, 63 car spaces for visitors for the development. In this regard, a minimum of 378 car spaces are required under Council's controls. 577 car spaces including 515 residential car spaces and 62 visitor car spaces are provided. Refer to Section 5 for further discussion regarding non-compliance with the parking controls.

Council's Traffic section has reviewed the proposal and notes the following:

Traffic Generation

According to TfNSW technical direction TDT2013/04 Guide to Traffic Generating Developments Updated Traffic Surveys, the following rates are applicable:

High density residential flat dwellings

AM Peak = 0.19 vehicle trips per unit

PM Peak = 0.15 vehicle trips per unit

Based on the above trip rate, the proposed development (315 units) is expected to generate 60 vehicle trips in the AM peak hour and 47 vehicle trips in the PM peak hour.

The existing development of 16 existing residential dwellings generates approximately 16 vehicle trips in the peak hour according to the TfNSW guide. Therefore, the net increase in traffic movements from the proposed development represents an additional 41 vehicle trips in the AM peak hour and 31 vehicle trips in the PM peak hour.

The trips generated from the proposed development is not expected to have unacceptable traffic implications on the surrounding road network and intersections.

Need for Traffic Improvements in the Locality

Outlined in The Hills Section 7.12 Contributions Plan (CP) No.19 – Showground Station Precinct, details a number of major improvements in the development of areas within and around Showground Precinct. As the proposed development is located within the Showground station precinct, Section 7.12 contributions are payable under this plan.

Traffic egress/ingress to arterial/sub-arterial roads

The primary outbound traffic is expected to travel from Hughes Avenue onto Dawes Avenue and turn right onto Middleton Avenue and left onto Carrington Road then proceed to the west to join Victoria Avenue (sub-arterial) or east to join Showgounrd Road (arterial). Alternatively, the outbound traffic is expected to travel south along Hughes Avenue and turn onto Parsonage Road to join Old Northern Road (arterial). The primary inbound traffic is expected to travel from Carrington Road onto Middleton Avenue then turn left onto Dawes Avenue and right onto Hugues Avenue to enter the site.

Sight distance and other safety issues

Access to the development is proposed to occur via a 11 wide two-way driveway off Hughes Avenue. There is however no mentions of vehicular sight distance or pedestrian sight distance and whether it complies with the requirements of AS2890.1-2004 and AS2890.2:2018. The applicant will need to ensure that the 2.5m pedestrian sight triangle as per AS2890.1.2004 can be achieved.

Parking

It is noticed that the 579 car parking spaces are proposed which exceeds the minimum DCP requirement by a large margin. However, the proposed provision only provides 62 visitor parking spaces which is 1 space short of the DCP requirement of 63 spaces.

Access and Circulation

It is noticed that the swept path submitted for the HRV exiting the driveway is encroaching the central median.

The development will have minimal impacts in terms of its traffic generation potential on the local road network, however insufficient information has been provided to determine whether there is sufficient vehicular and pedestrian sight distance for the development. In this regard, the potential for traffic safety and road congestion of the development has not been satisfactorily addressed under Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

4. Compliance with The Hills Local Environmental Plan 2019

a) Permissibility

The subject site is zoned R4 High Density Residential, SP2 Infrastructure and RE1 Public Recreation under The Hills LEP 2019. The development proposes residential flat buildings which is defined in the LEP as follows:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Note—

*Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.*

The proposed ‘residential flat buildings’ are permissible land uses within the R4 High Residential zone. The proposal satisfies LEP 2019 regarding permissibility.

b) Development Standards

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

DEVELOPMENT STANDARD/ PROVISION	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.3 – Height of Buildings	21 metres	Building A – 23.78m (13.2%) Building B – 23.15m (10.2%) Building C – 23.28m (10.9%) Building D – 23.73m (13%) Building E – 23.99m (14.2%) Building F – 24.14m (15%) Building G – 24.82m (18.2%) Building H – 24.4m (16.2%)	No. A Clause 4.6 written submission has been provided. Refer below for further discussion.
Clause 4.4 – Floor Space Ratio	1.6:1	2.22:1	No. A Clause 4.6 written submission has not been provided to vary the standard and the proposal does not meet the unit mix provisions to apply the incentive FSR under Clause 9.7 of

			LEP 2019. Refer to detailed discussion below.
Clause 9.1 Minimum Lot Sizes for Residential Flat Buildings and Shop Top Housing	Residential flat building with a height of 11 metres or more – R4 High Density Residential – 3,600m ²	15,696.93m ²	Yes
Clause 9.2 Site Area of Proposed Development includes dedicated land	Land dedication for road widening and open space included as part of the site area for the purpose of calculating FSR.	No land dedication identified for the subject site.	N/A
Clause 9.3 Minimum Building Setbacks	Front Building Setbacks to be equal to, or greater than, the distances shown for the land on the Building Setbacks Map.	No front building setback identified on mapping instrument.	N/A
Clause 9.5 Design Excellence	Development consent must not be granted unless the development exhibits design excellence.	Details not provided for referral to Design Review Panel.	No. Refer to discussion below.
Clause 9.7. Residential Development Yield on Certain Land	If the development is on a lot that has an area of 10,000m ² within the Showground Precinct and provides a specific mix, family friendly unit sizes and parking, the following incentivised Floor Space Ratio can be applied as identified on the FSR Mapping instrument: 2.3:1	The plans do not demonstrate that the unit mix and sizes meet the provisions. 2.22: 1	No. Refer to discussion below.

Clause Maximum Number Dwellings	9.8 of	Development Consent must not be granted to development that results in more than 5,000 dwellings on land within the Showground Precinct	315 units proposed under the subject Development Application. If this application is approved, the total number of dwellings approved within the Showground Precinct would be 2,901 excluding DA 488/2021/JP currently being considered by the SCCPP or 3,357 units including DA 488/2021/JP.	Yes.
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i) Compliance with Height

Clause 4.3 of the LEP comprises a maximum Height of Buildings standard of 21m for the site. The development proposes the following variations to the standard:

Building A – 23.78m (13.2%)
 Building B – 23.15m (10.2%)
 Building C – 23.28m (10.9%)
 Building D – 23.73m (13%)
 Building E – 23.99m (14.2%)
 Building F – 24.14m (15%)
 Building G – 24.82m (18.2%)
 Building H – 24.4m (16.2%)

Clause 4.6(3)(b) of THLEP 2019 requires that *development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating –*

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

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

The development does not provide sufficient environmental grounds to justify contravening the height standard for the following reasons:

- The written submission purports that the proposal complies with the FSR for the site however the unit mix and size provisions are not satisfied under Clause 9.7 of THLEP as outlined in section ii) below. In this regard, the development does not comply with the FSR standards.
- The written submission purports that as the development is on a corner allotment, *“the proposed development reinforces and adds strength to this prominent position”* and *“given the emerging scale of the built environment, a compliant design would not appropriately reinforce the site’s prominence”*. Contrary to this, a built form outcome complying with the height standard could be designed to reinforce the corner site location.
- The objective of the Height of Building standard has not been met in that the proposal would not be compatible with that of future adjoining R3 medium density development as it does not minimise the impact of overshadowing on adjoining properties. The submitted shadow diagram indicates that the exceedance in height of Building B results in further overshadowing impact to adjoining south eastern properties.

- The design is not considered to meet design excellence in accordance with Clause 9.5 of THLEP 2019. Refer further discussion below in section iii).

ii) Compliance with Floor Space Ratio

Clause 4.4 of the LEP comprises a maximum FSR (base) development standard of 1.6:1 for the subject site. The proposed development exceeds the FSR (base) development standard by 38.9% or 9,781.57m².

Whilst the Applicant seeks to utilise the maximum incentive FSR provisions of 2.3:1 under Clause 9.7, the proposal does not meet the unit mix and size provisions to apply this Clause. Clause 9.7 Residential Development Yield on Certain Land of TLEP 2019 states the following:

(2) Despite clause 4.4, the consent authority may consent to development to which this clause applies with a floor space ratio that does not exceed the increased floor space ratio identified on the [Floor Space Ratio Incentive Map](#), if the consent authority is satisfied that—

- (a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and*
- (b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings, and*
- (c) at least 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110 square metres, and*
- (d) at least 40% of all 3 bedroom dwellings contained in the development will have a minimum internal floor area of 135 square metres, and*
- (e) the following minimum number of car parking spaces are to be provided on the site of the proposed development—*
 - (i) for each dwelling—1 car parking space,*
 - (ii) for every 5 dwellings—1 car parking space, in addition to the car parking space required for the individual dwelling.*

Whilst the unit mix proposed as described in the Applicant's Statement of Environmental Effects is 44 x 1 bedroom units, 190 x 2 bedroom units and 81 x 3 bedroom units, the plans submitted with the development application indicate the unit mix proposed is 44 x 1 bedroom units, 187 x 2 bedroom units and 79 x 3 bedroom units and 5 x 4 bedroom units.

The unit schedule and Statement incorrectly includes Units D-G05, D-105, D-205, D-305 as larger 3 bedroom units despite the plans indicating these are 4 bedroom units. Further, the unit schedule and Statement incorrectly includes Units D-405, D-505 and D-605 as larger 2 bedroom units despite the plans indicating these are 3 bedroom units. Refer figure below for the typical unit layout for Units D-405, D-505 and D-605 which are identified as larger 2 bedroom units:

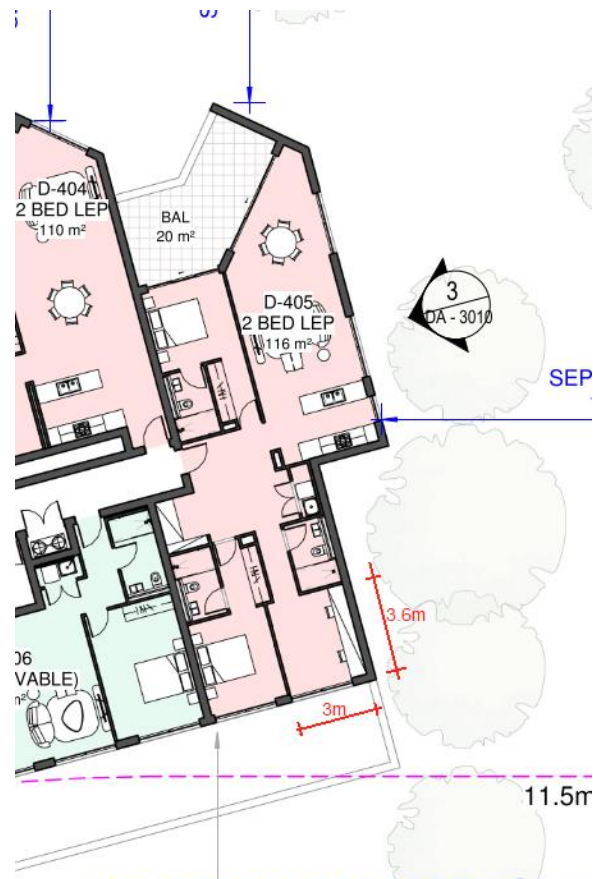


Figure 1: Typical Floor Plan of Unit D-405, D-505, D-605

The plans submitted with the development application indicate that less than 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110m². Refer to the below table:

Apartment Mix	LEP Development Standard	Proposal	Compliance
One bedroom dwellings	25% to the nearest whole number of dwellings (Maximum)	14% (44 of 315 units)	Yes
Three or more bedroom dwellings	20% to the nearest whole number of dwellings (Minimum)	26.7% (84 of 315 units)	Yes

Apartment Diversity	LEP Development Standard	Proposal	Compliance
Minimum internal floor area of 2 Bedroom dwellings is 110m²	≥40%	39% (73 of 187 units)	No

Minimum internal floor area of 3 Bedroom dwellings is 135m ²	≥40%	48.8% (41 of 84 units)	Yes
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Parking Type	LEP Development Standard	Proposal	Compliance
1, 2, 3 & 4 Bedroom	1 car space per dwelling and 1 space per 5 units	315 resident spaces and 63 visitor spaces required. 538 car spaces provided.	Yes

The proposal does not comply with Clause 9.7(2)(c) and therefore the FSR (incentive) cannot be applied to the development.

No Clause 4.6 written submission has been provided to vary the FSR development standards. In this regard, the Development Application should be refused.

iii) Design Excellence

Clause 9.5 of LEP 2019 states the following:

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

- (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *the impact on any special character area,*
 - (xii) *achieving appropriate interfaces at ground level between the building and the public domain,*
 - (xiii) *excellence and integration of landscape design.*
- (5) *In addition, development consent must not be granted to development to which this clause applies unless:*
- (a) *if the development is in respect of a building that is, or will be, higher than 21 metres or 6 storeys (or both) but not higher than 66 metres or 20 storeys (or both):*
 - (i) *a design review panel reviews the development, and*
 - (ii) *the consent authority takes into account the findings of the design review panel, or*
 - (b) *if the development is in respect of a building that is, or will be, higher than 66 metres or 20 storeys (or both):*
 - (i) *an architectural design competition is held in relation to the development, and*
 - (ii) *the consent authority takes into account the results of the architectural design competition.*
- (6) *Subclause (5) (b) does not apply if:*
- (a) *the NSW Government Architect certifies in writing that an architectural design competition need not be held but that a design review panel should instead review the development, and*
 - (b) *a design review panel reviews the development, and*
 - (c) *the consent authority takes into account the findings of the design review panel.*

As the proposed residential flat building exceeds 21 metres and 6 storeys, but is not higher than 66 metres or 20 storeys, the proposal is required to be reviewed by a design review panel, and the consent authority is required to take into account the findings of the design review panel.

The proposal has not been subject to a review by the design review panel as required by Clause 9.5(5)(a)(i) as insufficient information has been provided for the application to be referred to Council's Design Review Panel. Refer to background section.

With regard to the matters listed under subclause (4)(a) – (f), the following concerns are raised:

- The relationship of the development with the adjoining south eastern site is not considered to be successfully resolved with the likely future context. The six to seven storey height of Building H interfacing a three storey zone to the south east results in detrimental amenity impacts to the adjoining property and does not provide an appropriate transition to the lower density zone.
- The development also results in detrimental environmental impacts in terms of overshadowing to adjoining south eastern properties.
- The 3m building separation between Buildings A and B and lack of articulation for approximately 20m façade lengths for 7 storeys results in poor amenity outcomes for pedestrians within the site.

- The development comprises subterranean units fronting Dawes Avenue, Cadman Crescent and Hughes Avenue, which results in poor amenity outcomes and inappropriate interfaces at ground level between the building and the public domain.
- Insufficient information has been provided to determine whether the development would result in high quality landscaping outcomes.
- Excessive walling is proposed throughout the streetscape. The development does not comply with Section 6.6 of Part D Section 19 Showground Station Precinct DCP which requires that ground floor residential fences are to be no more than 1.2m in height with a minimum 50% transparency.

As the above concerns have not been satisfactorily addressed and the consent authority cannot take into account the findings of the design review panel, it cannot be concluded that the development exhibits design excellence and therefore development consent must not be granted.

5. Compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The required Design Verification Statement was prepared by James Alexander-Hatziplis Architect and Managing Director of Place Studio (registration number 10535).

a) Design Quality Principles

Clause 30 of SEPP 65 prescribes that development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to the design quality principles. The development has not demonstrated that adequate regard has been given to the following design quality principles:

i) Design Quality Principle 1: Context and neighbourhood character

The development application is inconsistent with Design Quality Principle 1: Context and neighbourhood character because the built form would not be appropriate in scale or provide an attractive streetscape presentation and landscaped setting as envisaged at the interface of a lower residential zone in the Showground Station precinct.

ii) Design Quality Principle 2: Built form and scale

The development application is inconsistent with Design Quality Principle 2: Built form and scale because the proposal results in a bulk and scale which is an inappropriate transition between the high density and medium density zones.

iii) Design Quality Principle 6: Amenity

The proposed development is inconsistent with Design Quality Principle 6: Amenity because the proposed development does not demonstrate that the design achieves appropriate amenity for future residents or neighbours. In particular, the amenity requirements under the Apartment Design Guide for solar access to units and principal communal open space, visual and acoustic privacy, apartment and balcony sizes has not been assessed as satisfactory.

iv) Design Quality Principle 9: Aesthetics

The proposed development is inconsistent with Design Quality Principle 9: Aesthetics because the design of the proposal is not compatible with the lower scale development envisaged to the east as it presents as large, bulky and homogenous. The development application does not meet the design excellence clause. Refer section 4b)iii).

b) Apartment Design Guide

In accordance with Clause 30(2) of SEPP 65, a consent authority in determining a Development Application for a residential flat building is to take into consideration the Apartment Design

Guide. The development has not demonstrated adequate regard has been given to the objectives of the following:

i) Solar and daylight access

Communal Open Space

The development application has not demonstrated sufficient solar access and residential amenity can be provided to the principal usable communal open space for future occupants of the site. This does not meet the Objective 3D-1 Communal Open Space of the ADG which prescribes the following:

- *An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping*

The ADG design criteria requires that developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June. It is considered that the principal useable part of the communal open space is the centrally located courtyard at ground level. Only approximately 3% of the principal useable part of the ground floor communal open space will receive a minimum of 2 hours of solar access between 9am and 3pm on 21 June. In this regard, the development application has not demonstrated sufficient solar access and residential amenity can be provided to the principal usable communal open space for future occupants of the site in accordance with Objective 3D-1 Communal Open Space of the ADG.

Apartment Design

The development application has not demonstrated sufficient solar access can be achieved for future built forms between 9am – 3pm midwinter. This does not meet Objective 4A Solar and daylight access of the ADG which prescribes the following:

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

The ADG design criteria requires that at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter. Whilst the solar access compliance table indicates the development would achieve two hours solar access for 70% (220 of 315) apartments, the submitted 3D Sun Views indicate that the proposed development will achieve two hours solar access for 69.5% (119 of 315) of apartments between 9am and 3pm midwinter. The Applicant has not identified this variation to the design criteria.

In this regard, the development application has not demonstrated sufficient solar access and residential amenity can be provided to meet the objective under 4A-1 of the ADG.

ii) Building Separation/Visual Privacy

The development application has not demonstrated that sufficient visual privacy has been provided between Buildings A and G and C and H. This does not meet Objective 3F Visual privacy which prescribes:

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

The design criteria under Section 3F-1 of the ADG requires that the minimum building separation for habitable rooms, is 12m (6m to boundary) for 4 storeys, 18m (9m to boundary) for 5-8 storeys and 24m (12m to boundary) for above 9 storeys.

The building separation between Buildings A and G is 9m result in the following variations:

- Levels G to 3 - Minimum 7m (habitable to habitable/balcony where 12m is required)
- Levels 4 to 6 - Minimum 7m (habitable to habitable/balcony where 18m is required).

The building separation between Buildings C and H result in the following variations:

- Levels 1 to 3 - Minimum 9m (habitable to habitable/balcony where 12m is required)
- Levels 4 to 6 - Minimum 13.4m (habitable to habitable/balcony where 18m is required).

The design of Buildings A and G and C and H have not been designed to provide appropriate visual mitigation measures to ameliorate overlooking impacts between habitable rooms and balconies.

The design guidance under Section 3F-1 of the ADG also prescribes that adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and visual privacy. Part 3F-1 5, supported by Figure 3F.5, also recommends the provision of an additional 3m building separation when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (i.e. where the site is on a zone transition boundary).

The upper levels (Levels 4 – 6) of the rear portion of Building H are setback 9m from the eastern boundary with the R3 Medium Density zone where a 12m setback is required. The proposed building separation is unsatisfactory, resulting in poor internal amenity and visual privacy for the proposed apartments. The limited separation also results in an unsatisfactory transition to the adjoining R3 Medium Density Residential zone.

In this regard, the development application has not demonstrated that sufficient building separation and visual privacy has been provided to meet objective of 3F-1 of the ADG.

iii) Apartment Size and Layout

The development application has not provided a high quality standard of amenity as a number of three bedroom units do not meet the minimum internal area requirements under Section 4D Apartment size and layout. Objective 4D-1 Apartment size and layout of the ADG prescribes the following:

- *The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity*

The design criteria under this objective requires that for three bedroom units, a minimum internal area of 90m² is required and additional bathrooms increase the minimum internal areas by 5m² each. Units CG05, C105, C205 and C305 comprise additional bathrooms and minimum internal areas of 93m² which does not comply with this design criteria. Many open layouts have a habitable room depth greater than 8m from a window (e.g. C-G04, C-G03, B-G03), contrary to Part 4D-2 2 of the Apartment Design Guide. In this regard, it cannot be concluded that the proposal meets Objective 4D-1.

6. Compliance with DCP 2012

The proposal has been assessed against the following provisions of DCP 2012:

- Part B Section 2 – Residential
- Part B Section 5 – Residential Flat Buildings
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping
- Part D Section 19 – Showground Station Precinct

The proposed development achieves compliance with the relevant requirements of the above DCPs except for the following built form character controls under Part D Section 19 Showground Station Precinct:

a) Built Form Design - Maximum Building Length

The DCP requires that buildings are to have a maximum length of 65m and where a building has a length greater than 40m, it shall have the appearance of two distinct building elements with individual architectural expression and features. Proposed Building DE has a maximum building length of 69.5m exceeding the control by 4.5m and proposed Building FG has a maximum building length of 66.2m which exceeds the control by 1.2m. Building BC, DE, FG and GH comprise building lengths greater than 40m however have not been designed with a significant recess or projection or appearance of two distinct building elements with individual architectural expression and features.

The relevant objectives of the Built Form Design control are as follows:

- *To ensure development creates a positive streetscape and achieves a high quality architectural design that promotes commercial, retail and business activity.*
- *To ensure that towers:*
 - *Include slender design so as to not overwhelm in bulk and scale;*
 - *Allow for solar access to units within the development and on adjoining sites;*
 - *Create an open, attractive and direct skyline;*
 - *Create small, fast moving shadows;*
 - *Allow for view corridors between nearby towers.*
- *Roof design and roof features are provided which integrate telecommunications, service structures, lift motor rooms and mechanical plants, contributing to an attractive and interesting skyline of the precinct.*

A variation to the built form character controls cannot be supported as the development fails to achieve design excellence as required by Clause 9.5 of LEP 2019 and it cannot be concluded that the development creates a positive streetscape or achieves a high quality architectural design. Refer Section 4iii) for further discussion regarding design excellence.

b) Residential Uses in Ground Level

The DCP requires that higher density development with residential ground and lower floor uses is to adopt a two storey terrace house appearance to present a fine grain articulation to the street frontage, are to have individual gates and entrances accessed directly from the street and are to be elevated from the street level by a minimum of 300mm and a maximum of 600mm.

The proposal does not provide for a two storey terrace house appearance on the lower floors, Units DG01, DG06, FG01, HG02 and HG03 facing Cadman Crescent and Units HG06 and HG08 facing Dawes Avenue do not have individual gates and entrances accessed directly from the street. No relative levels (RLs) are indicated on the submitted floor plans, however the elevations for Dawes Ave, Cadman Crescent and Hughes indicate that a number of ground floor residential apartments are lower than street level.

The relevant objectives of the control are as follows:

- *To provide residential activation to streets.*
- *To provide for residential identity and legibility.*
- *Encourage the provision of housing for a diversity of dwelling types and users.*
- *To introduce a fine grain built form and architectural diversity within a street block and/or building development.*

The built form proposed for ground level residential units do not provide for fine grain articulation to the street frontages. The proposal has not demonstrated that sufficient amenity has been provided to the subterranean courtyards. The development results in a design that is excessive in bulk and scale which lacks fine grain-built form and architectural diversity within the streetscape.

c) Open Space and Landscaping

The DCP requires that a minimum of 50% of the site area (excluding building footprint, roads, access driveways and parking) shall be landscaped. Terraces and patios within 1m of natural ground level shall be included in the calculation of landscaped open space. Landscaped areas are to have a minimum width of 2m. Areas less than 2m in width will be excluded from the calculation of landscaped area. Landscape design is to be integrated with water and stormwater management.

The relevant objectives of the control are as follows:

- *Maximum opportunities for landscaping, including the retention and/or planting of trees within deep soil areas to ensure a high level of amenity.*
- *To ensure development sites have sufficient space for landscaping that will complement the building form and enhance the landscape character of the street.*

The proposal has not demonstrated compliance with this control. The Statement of Environmental Effects indicates that the proposal complies with this control however no landscape area calculation or diagram has been submitted with the application. It is noted that insufficient levels have been indicated on the plans to demonstrate whether the ground level terraces and patios can be included in the calculation of landscaped open space. The landscape plan has not been prepared in accordance with Part C Section 3 Landscaping of the DCP which requires details including surface finishes, existing/proposed levels, levels provided to all areas of hard surface, top and bottom of wall heights for retaining walls, detailed planting plan indicating a mix of trees, shrubs and groundcovers and appropriate plant selection and pot sizes. In this regard, it cannot be concluded that the proposal achieves the objectives of this control.

d) Integrated Water Management

The DCP requires that all developments within the Precinct are required to be provided with water quality modelling which utilises the latest version of MUSIC and is in line with the Draft NSW MUSIC Modelling Guidelines, Sydney Metropolitan Catchment Management Authority, 2010.

The objective of the Integrated Water Management control is to:

- *Maximise opportunities for a best practice Waster Sensitive Urban Design approach at the individual lot, overall development and regional scales.*
- *To reduce the impacts typically associated with urbanisation on receiving waterways, including a reduction in streamflow erosion potential and pollutant loads.*

A MUSIC model has not been provided with the Development Application. In this regard, it cannot be concluded that the proposal meets the above objectives.

e) Acoustic

The DCP requires site planning, building orientation and interior layout should be used as tools to lessen noise intrusion as far as possible and Applicants are to indicate measures undertaken to mitigate the impact of noise upon adjacent residents and that a Noise Impact Assessment is to be prepared by a suitably qualified consultant.

The objective of the control is as follows:

- *To ensure the amenity of future residents and workers by appropriately responding to noise impacts.*

The submitted Acoustic Report is inadequate as it does not address acoustic impacts for mechanical plants for the development and does not provide a construction noise management plan. In this regard, it cannot be concluded that the development ensures the amenity of future residents and workers by appropriately responding to noise impacts.

f) Car Parking

The DCP requires a minimum parking rate of 1 space per unit and 1 visitor space per 5 units. For 315 unit, 315 resident spaces and 63 visitor spaces is required. The proposal provides for 515 residential and 62 visitor spaces.

The objectives of the control is:

- *To provide sufficient parking spaces for development while encouraging public transport use.*
- *To ensure that car parking is appropriately located.*

Whilst the proposal does not meet the car parking control for visitors spaces, the proposal provides for 200 additional residential spaces. Reallocating one of these spaces for use by visitors would achieve the minimum car parking requirements under the DCP.

7. Issues Raised in Submissions

ISSUE/OBJECTION	COMMENT
Density	The proposal does not meet the meet the FSR development standards under Clause 4.4 or 9.7 of the LEP. Refusal is recommended.
Car Parking will not be sufficient and result in more cars parking on the street.	The DCP requires a minimum parking provision of 1 space per unit and 1 space per 5 units for visitors. In accordance with this rate, 441 car spaces are required for the development. The proposal provides 579 car spaces which exceeds the DCP control by 138 spaces. It is noted that only 62 visitors' spaces are provided where 63 spaces are required under the DCP. Whilst the proposal currently results in a shortfall of 1 visitors space, one of the residential spaces could be reallocated to ensure full compliance with this control. It is considered that if development consent was granted to the proposal, sufficient parking could be provided on site.
Overshadowing to adjoining properties.	The proposal has not demonstrated an appropriate interface has been provided to the southern boundary which transitions from an R4 High Density Residential zone to R3 Medium Density Residential zone. Refusal is recommended.
Height of buildings along the southern boundary.	Whilst a Clause 4.6 written submission has been provided to vary Clause 4.3 Height of Buildings development standard of the LEP, this is not considered to be well founded. Refusal is recommended.
Insufficient setbacks to adjoining southern neighbours.	The proposal does not meet the building separation or visual privacy objectives under the Apartment Design Guide. Refusal is recommended.
A new park should be constructed along the southern boundary.	There is no legislative requirement to enforce this. Sufficient landscaping must be provided and the buildings should be designed to ensure an appropriate interface at the southern boundary which has not been currently demonstrated with the proposal. Refusal is recommended.

8. EXTERNAL REFERRALS

The application was externally referred to the following agencies:

- Transport for NSW (TfNSW)
- Endeavour Energy,
- Sydney Water, and
- NSW Police.

Relevant comments are provided below:

TRANSPORT FOR NSW COMMENTS

The application was referred to the Transport for NSW (TfNSW) as the proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP (Transport and Infrastructure) 2021. The submission received by TfNSW has been discussed in detail in Section 3 above.

ENDEAVOUR ENERGY COMMENTS

The application was referred to Endeavour Energy. No objections were raised to the proposal.

SYDNEY WATER COMMENTS

The application was referred to the Sydney Water due to the proximity to Sydney Water assets. No objections were raised to the proposal.

NSW POLICE COMMENTS

The application was referred to the NSW Police. No objections were raised to the proposal.

9. INTERNAL REFERRALS

The application was referred to the following sections of Council:

- Engineering,
- Traffic,
- Resource Recovery,
- Landscaping/Tree Management,
- Environmental Health,
- Forward Planning (Contributions) and
- Land Information Systems,

Relevant comments are provided below:

ENGINEERING

Council's Senior Engineer has raised concerns to the proposal. Insufficient information has been provided to allow a complete assessment of the development application with regard to water quality modelling and stormwater management.

A MUSIC model has not been submitted with the development application to determine whether the proposal would maximise opportunities for a best practice Water Sensitive Urban Design approach at the individual lot, overall development and regional scales or reduce the impacts typically associated with urbanisation on receiving waterways, including a reduction in streamflow erosion potential and pollutant loads.

The On-Site Detention has not been designed in accordance with the On-Site Stormwater Detention R3, of the Handbook Upper Parramatta River Catchment Trust and is required to be discharged independent of downstream drainage. Refer figures below. Note Options (b) and (c) are not supported.

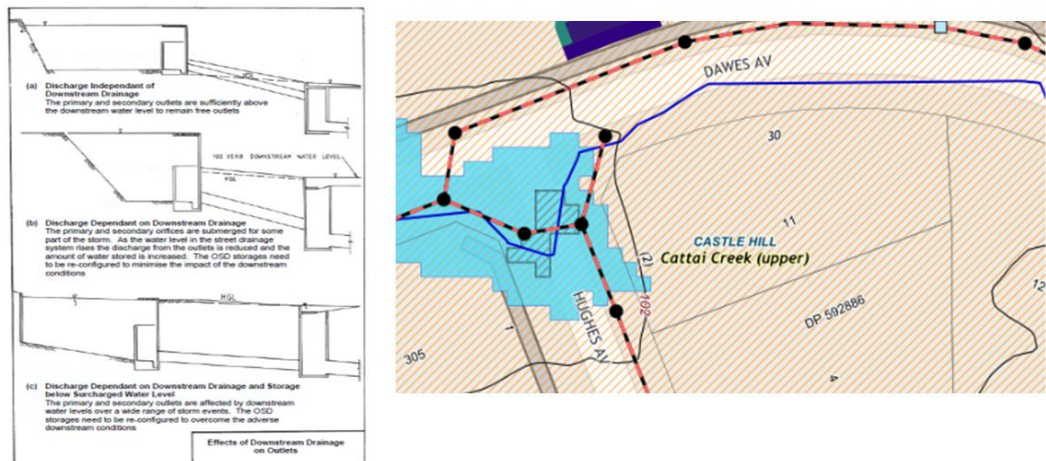


Figure 6.3 of the On-Site Detention R3 of the Upper River Catchment Trust and Council's mapping indicating stormwater drainage assets.

The submitted OSD design and calculation is incorrect as the site's slope is less than 6% requiring a site storage volume of 396m³/ha with a permissible discharge of 92l/s/ha.

TRAFFIC

Council's Senior Traffic Engineer has raised concerns to the proposal. Insufficient information has been provided to allow a complete assessment of the Development Application with regard to sight distances. The Development Application has not demonstrated compliance with AS 2890.2.2004 with regard to achieving sufficient vehicular and pedestrian sight distance. The submitted plans indicate that the 2.5m sight triangle requirement will be affected by surrounding vegetation.

RESOURCE RECOVERY

Council's Resource Recovery Officer has raised concerns to the proposal. Insufficient information has been provided to allow a complete assessment of the Development Application with regard to waste management to ensure that it is undertaken in a safe, healthy and clean manner. In particular, the following information has not been provided:

- The development application has not demonstrated that the bin collection point is appropriately sized to accommodate the minimum number of bins required at the development, including bins for the future introduction of a food recycling service, given a state-wide government mandate. 18 x 1100L garbage bins, 35 x 1100L recycling bins and 20 x 240L FOGO bins are required for the development.
- The development application does not demonstrate that bins can be safely and conveniently relocated to and from the bin storage rooms for collection purposes. The design requires large quantities of bins to be transported up trafficable basement ramps. A goods hoist has not been incorporated into the design to ensure the safe and convenient relocation of bins for collection purposes.
- The waste management plan does not propose compaction of garbage at the chute termination points. Developments with 250 or more apartments must propose automated garbage compaction at a 2:1 ratio at all chute termination points. This will half the number of 1100L garbage bins required for the development.
- An additional door with a minimum clear floor width of 1.5m is required to the central bin room to ensure appropriate access by caretakers. Provision of the extra door will significantly reduce the bin carting path to transport bins from the chute termination rooms to the central bin collection room. The current bin carting path is not functional.
- The development application does not include adequate space on residential levels for waste unsuitable for chute disposal. This will result in unacceptable items being

disposed of in the chutes causing blockages and ongoing maintenance issues which is not considered best practice design.

- The submitted swept path diagrams indicate that a 1m wide concrete kerb located between the vehicular entry and exit off Hughes Avenue would impact simultaneous movements of a Heavy Rigid Vehicles (HRV) and B99 vehicle entering and exiting the driveway. This would result in vehicular safety impacts for waste collection for the Council and its Contractor for the site.
- (b) The submitted swept path diagrams indicate that inadequate space has been allocated onsite for truck manoeuvring as there is a conflict between a HRV and the wall of the central bin collection room when a waste collection vehicle enters the site and reverses into the waste loading bay. This would result in safety impacts for waste collection for the Council and its Contractor for the site.

LANDSCAPING/TREE MANAGEMENT

Council's Senior Landscape Assessment Officer has raised concerns to the proposal. Insufficient information has been provided to allow a complete assessment of the development application with regard to tree management and landscaping. In particular, the following information has not been provided to allow an assessment of impacts to trees in accordance with AS 4970:2009 Protection of Trees on Development Sites:

- Surveyed tree locations for trees 3, 4, 12, 16, 17, 18, 20, 22, 23, 24, 25, 29, 32, 36, 37, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 68, 69, 77, 79, 80, and 81 whose locations are approximate.
- Individual Tree Protection Zone encroachments are to be provided for all trees in accordance with AS 4970:2009 Protection of Trees on Development Sites to be retained, and a discussion of the encroaching works.
- Accurate and clear levels details within side setbacks adjacent neighbouring properties to allow an assessment of the height of existing retaining walls, and the levels at which the neighbouring trees are located. This will allow an assessment of level changes proposed on existing boundaries and potential impacts on trees.
- An assessment of stormwater impacts by the consulting Arborist. Amendments to the stormwater are to be undertaken in consultation with the consulting arborist.
- A Tree Protection Plan or Tree Management Plan which includes tree protection for all trees, including for neighbouring trees to protect the canopy of neighbouring trees.
- Construction method/s proposed for the for the basement, to inform the expected extent of excavation required by the consulting arborist.

The following information has not been provided with regards to landscaping:

- The Landscape plans provided are not sufficiently detailed in accordance with provisions of THDCP part C Section 3 – Landscaping, such as the following which must be provided:
 - i. Surface finishes, proposed levels, and existing levels (including existing contours past the site boundary).
 - ii. RLs provided to all areas of hard surface, such as along paths and at the top and bottom of ramps.
 - iii. Top of Wall (TOW) heights and existing levels for all proposed retaining walls and raised planting beds. Wall height is to provide sufficient soil depth where planting is on slab. Wall finish and materiality is to be specified.
 - iv. Fully detailed planting plans indicating individual species locations (or areas of mass planting of individual species) on plan and in planting schedule including name, size and quantities
 - v. Use a mix of trees, shrubs and groundcovers
 - vi. Appropriate plant selection for the aspect and solar access
 - vii. Fencing details for the site, clearly showing the location, height and type of proposed fencing are to be provided to landscape plans.
 - viii. Garden edging to all beds, including to street boundaries
 - ix. Landscape screening to electrical substations and services

- x. Pot sizes in accordance with eh DCP e.g. Trees in minimum 75L pot size
- A Landscape Area Calculation and Diagram has not been provided to allow an assessment of achieved landscaping. Sufficient levels have not been provided to demonstrate that hard surfaced POS terraces are within 1m of N.G.L and can be counted as landscaped area. Areas less than 2m in width will be excluded from the calculation of landscaped area.
- Proposed OSD and Underground Rainwater Tank are located within deep soil setbacks, within street frontages affecting available landscape planting. This infrastructure has not been designed to allow for adequate planting depth over, and levels suggest that pits would be buried under soil.

ENVIRONMENTAL HEALTH

Council's Senior Environmental Health Officer has raised concerns to the proposal. Insufficient information has been provided to allow a complete assessment of the Development Application with regard to site contamination and acoustic impacts. The submitted Contamination Report supporting the development application is inadequate as the report only assessed four of the 16 properties subject to the development application. In this regard, this does not satisfy the provisions under Section 4.6 of The State Environmental Planning Policy (Resilience and Hazards) 2021. The submitted Acoustic Report supporting the development application is inadequate as it does not address acoustic impacts for mechanical plants for the development and does not provide a construction noise management plan.

CONCLUSION

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

Insufficient information has been provided to conclude that there is no contamination on the land as required under Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Insufficient information has been provided to determine whether there is sufficient vehicular and pedestrian sight distance for the development to assess the potential for traffic safety and road congestion of the development under Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

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

The proposal has not been reviewed by the Design Review Panel and it is considered that the proposal does not exhibit design excellence in accordance with Clause 9.5 of the LEP and is inconsistent with the desired future character of the Showground Station Precinct.

Accordingly refusal of the application is recommended.

IMPACTS:

Financial

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

The Hills Future - Community Strategic Plan

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

RECOMMENDATION

The Development Application be refused for the following reasons:

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)(b) or (4)(a) and development consent cannot be granted to the Development Application.

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

2. The proposal does not comply with the Floor Space Ratio (FSR) development standards under Clause 4.4 or Clause 9.7 of the Hills LEP 2019. No Clause 4.6 written submission has been provided to vary the FSR development standards.

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

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

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

4. Insufficient information has been provided to conclude that there is no contamination on the land as required under Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. In this regard, the consent authority must not consent to the carrying out of any development on land.

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

5. Insufficient information has been provided for the consent authority to consider whether there is sufficient vehicular and pedestrian sight distance for the development to assess the potential for traffic safety and road congestion of the development under Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

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

6. The proposal does not satisfy the design quality principles contained within Clause 28 and 30 of the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development with respect to context and neighbourhood character, built form and scale, amenity, and aesthetics.

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

7. The proposal has not demonstrated that sufficient residential amenity will be provided to the future occupants of the development in accordance with the design criteria of the Apartment Design Guide under Clause 28 and 30 of SEPP 65 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

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

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

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

9. The applicant has not submitted information requested to properly assess engineering, waste management, traffic, environmental health, tree management and landscaping concerns raised by Council staff.

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

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

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

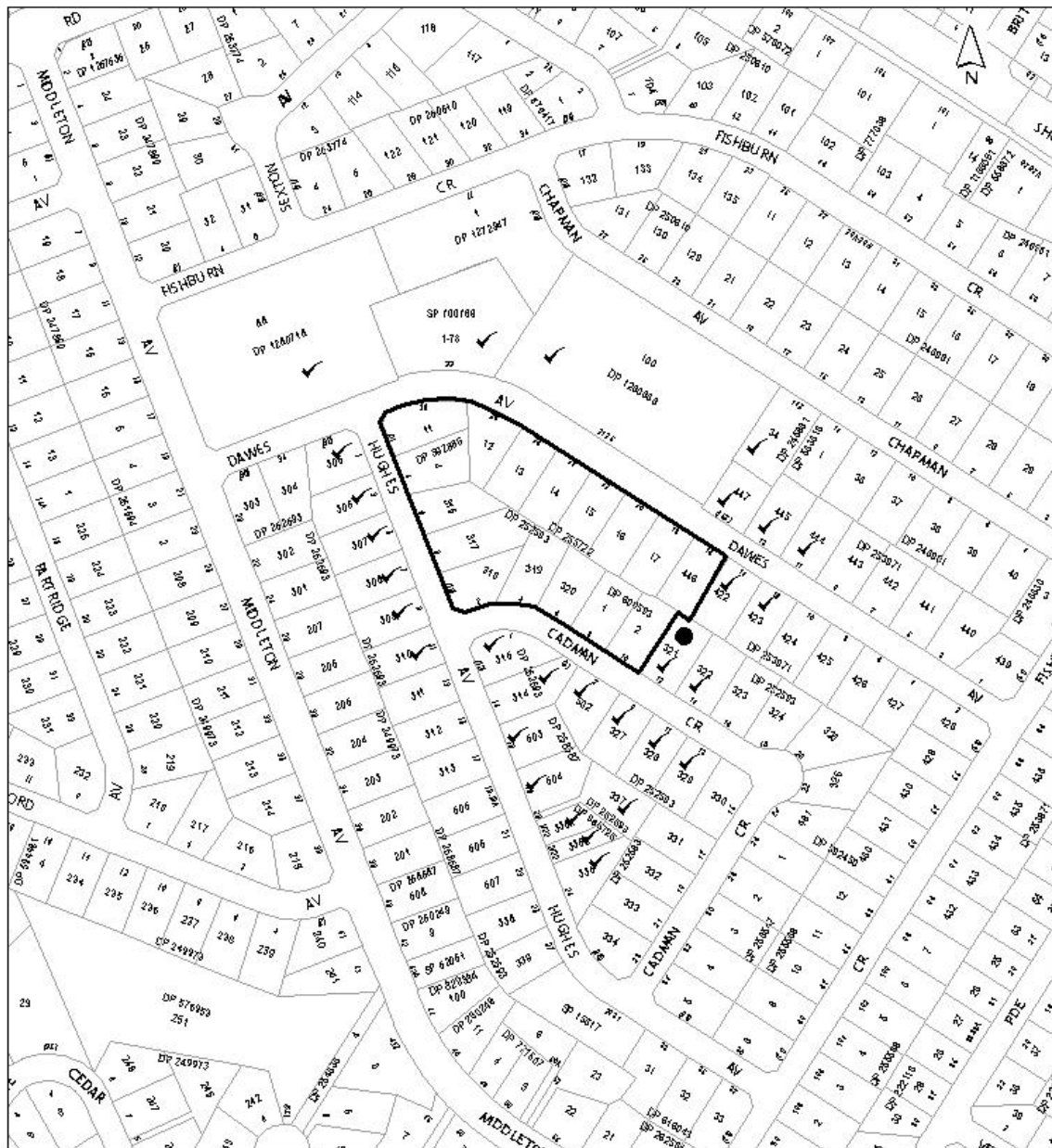
11. The proposal is not in the public interest due to its departure from the requirements of development standards under The Hills LEP 2019.

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

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. LEP 2019 Zoning Map
4. LEP 2019 Height of Buildings Map
5. LEP 2019 FSR (Base) Map
6. LEP 2019 FSR (Incentive) Map
7. Site Plan
8. Elevations
9. Shadow Diagrams
10. Landscape Plans
11. Clause 4.6 Written Submission (Height of Buildings)
12. Perspectives

ATTACHMENT 1 – LOCALITY PLAN



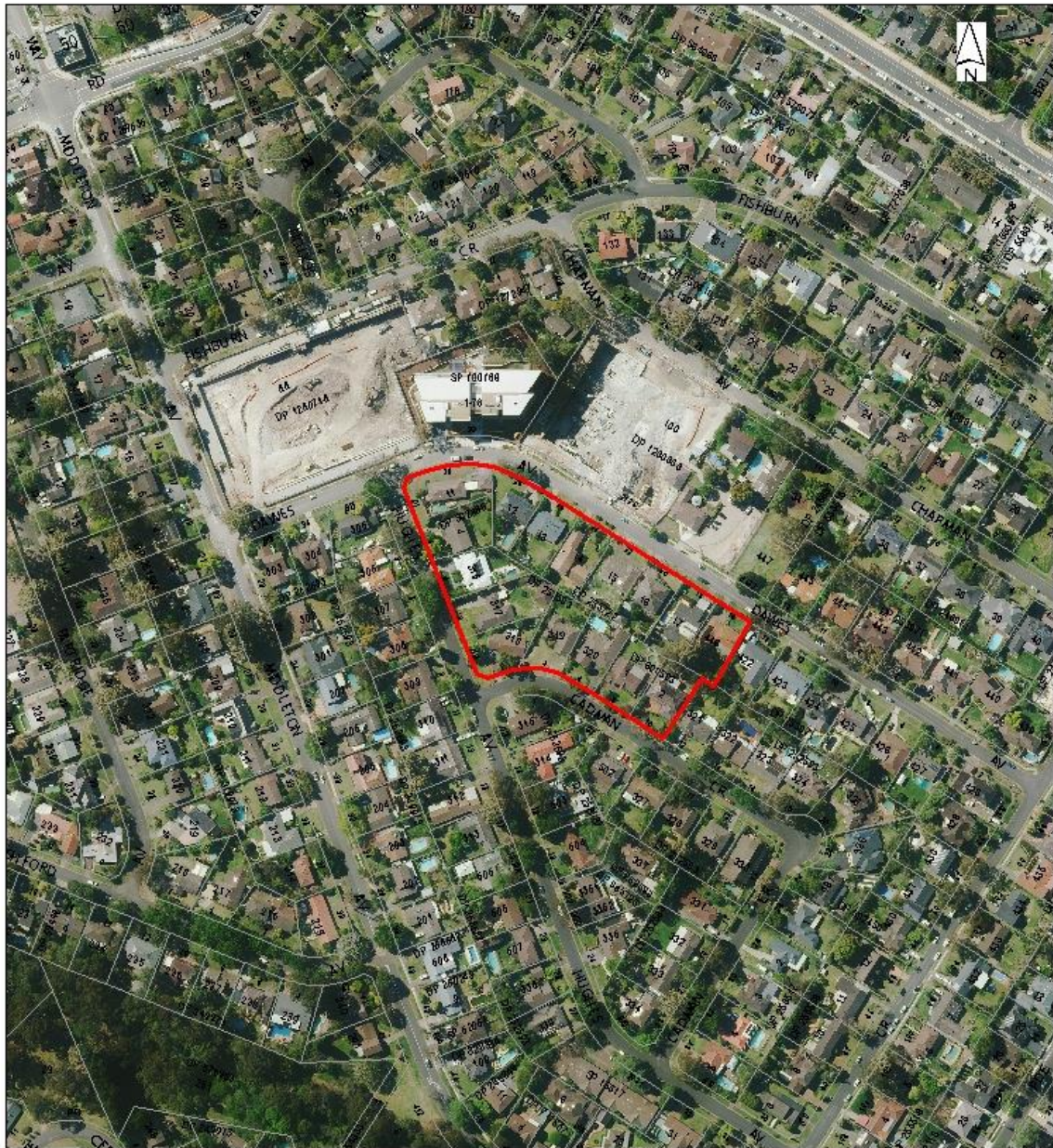
- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSION RECEIVED


THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT 2 – AERIAL MAP



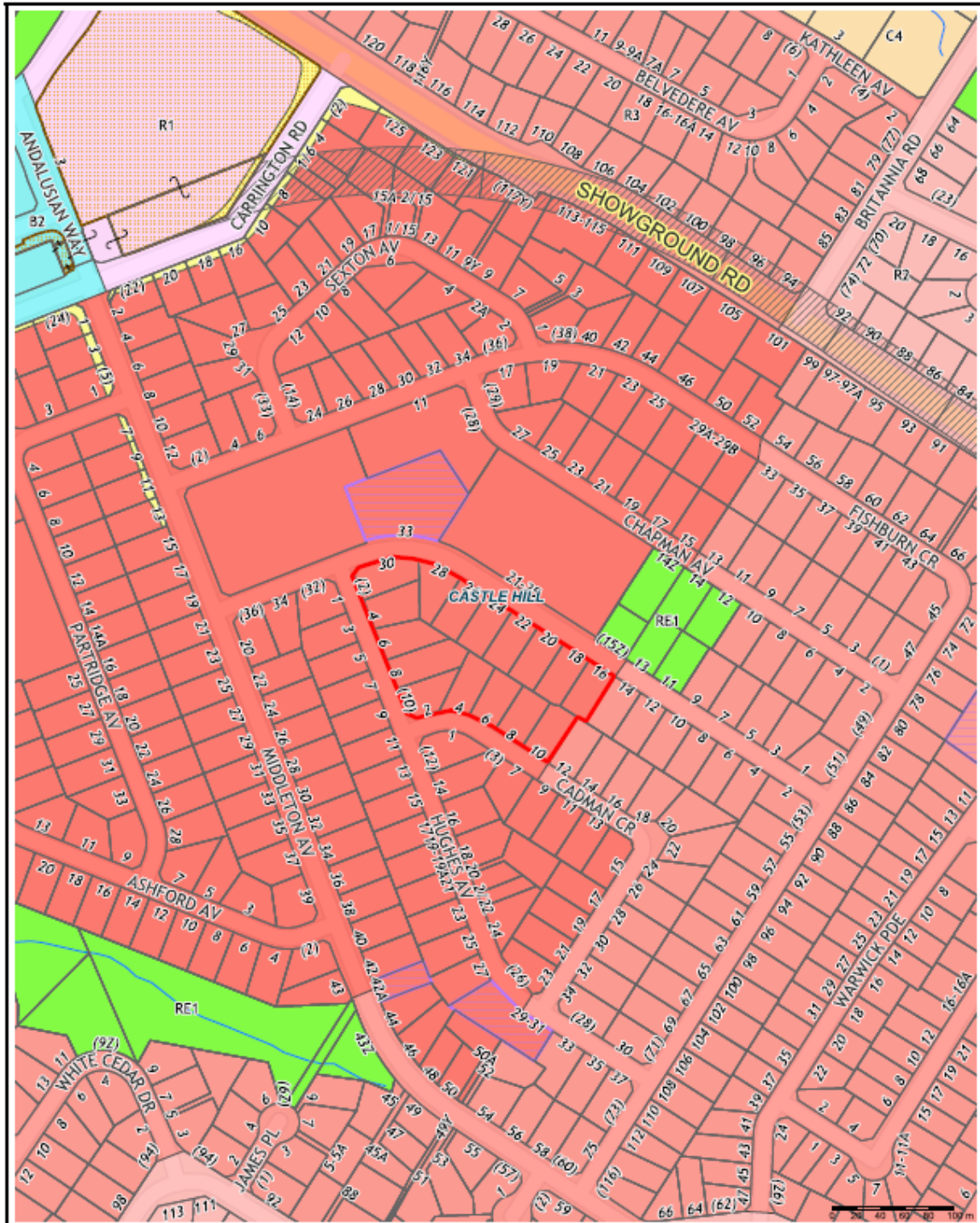
 SUBJECT SITE

THE HILLS
Sydney's Garden Shire

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ATTACHMENT 3 – LEP 2019 ZONING MAP



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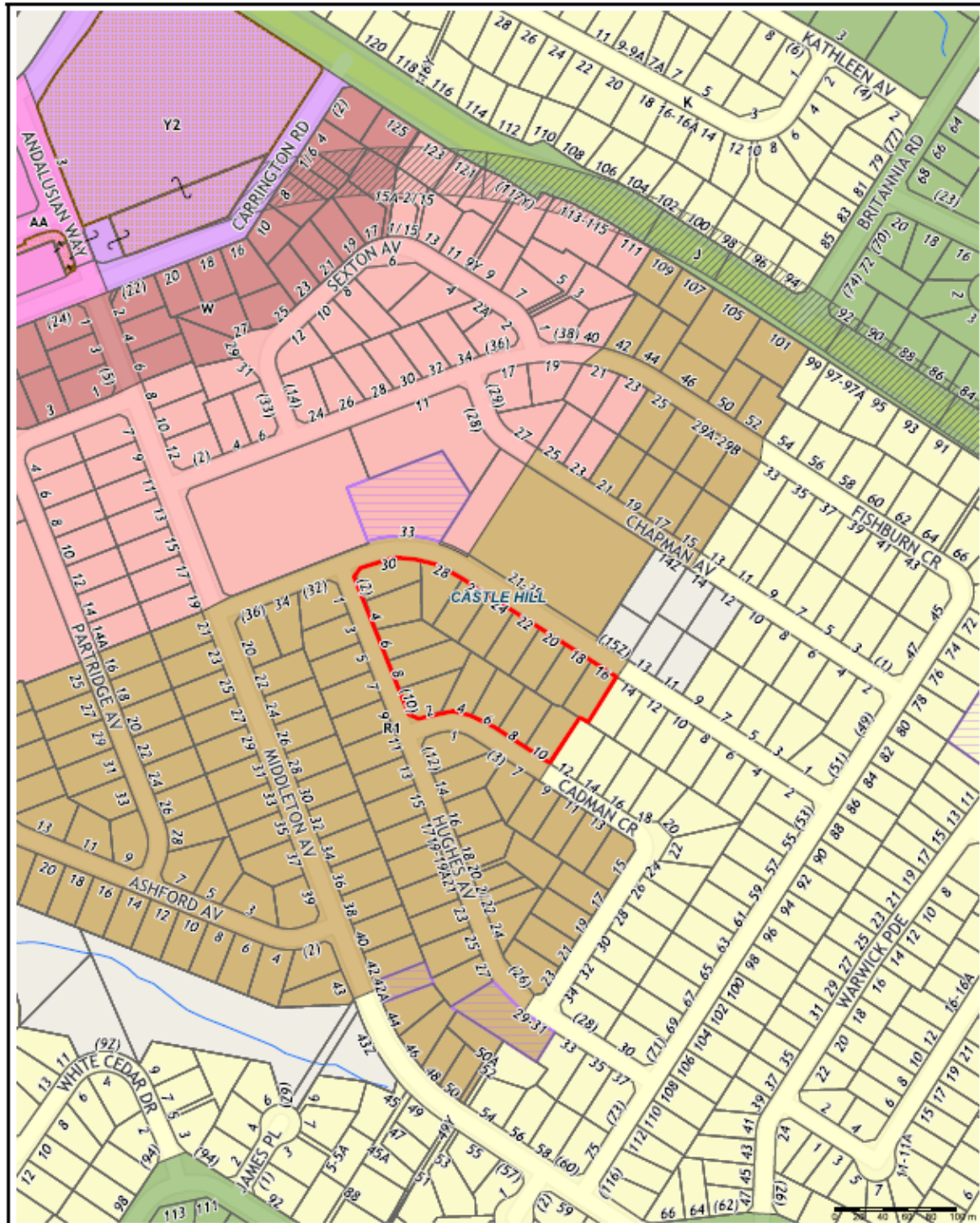
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LEP 2019 ZONING MAP

Scale (A4): 1:3804
Date: 22/02/2023
Prepared by: Cynthia Dugan

ATTACHMENT 4 – LEP 2019 HEIGHT OF BUILDINGS MAP



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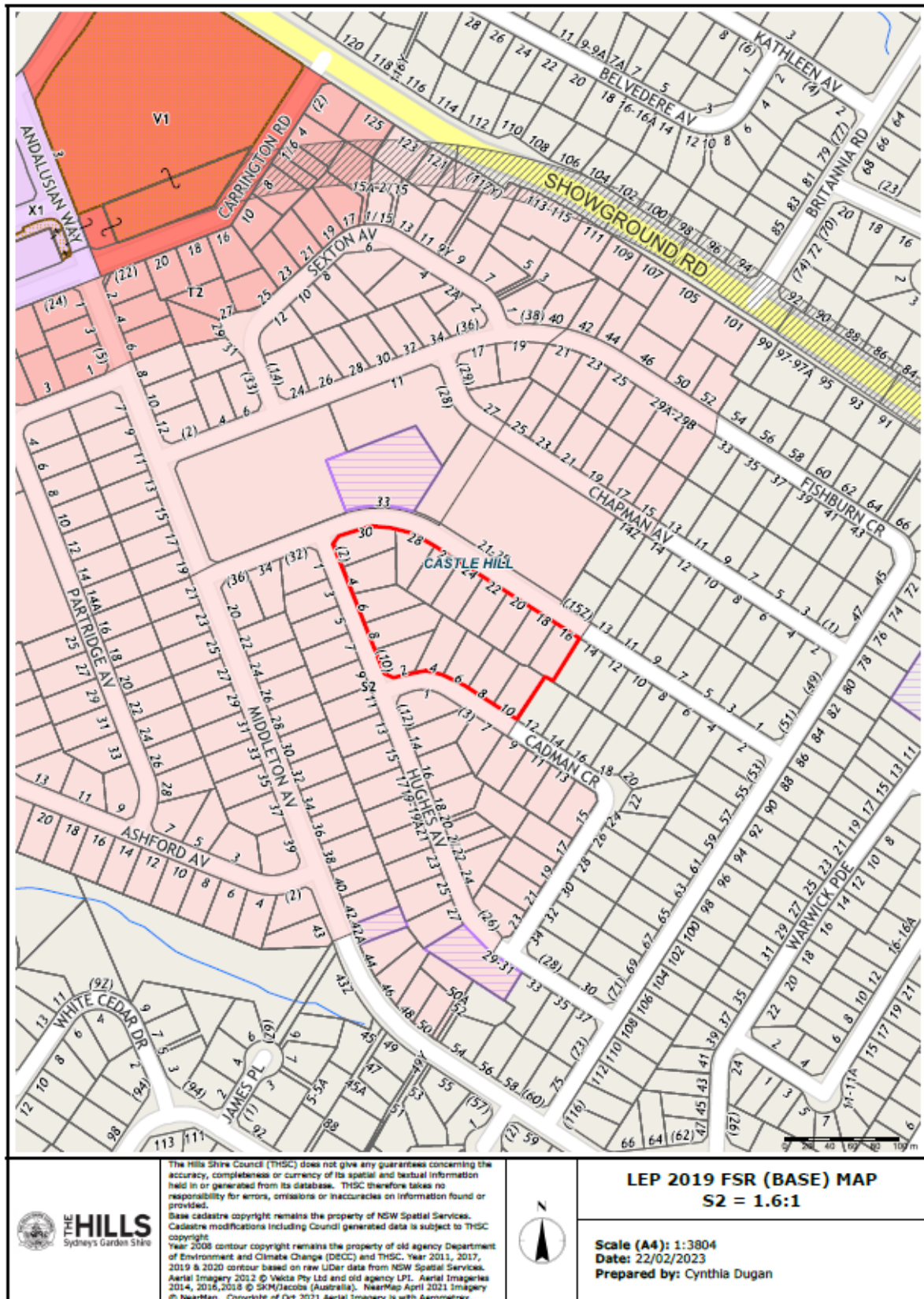
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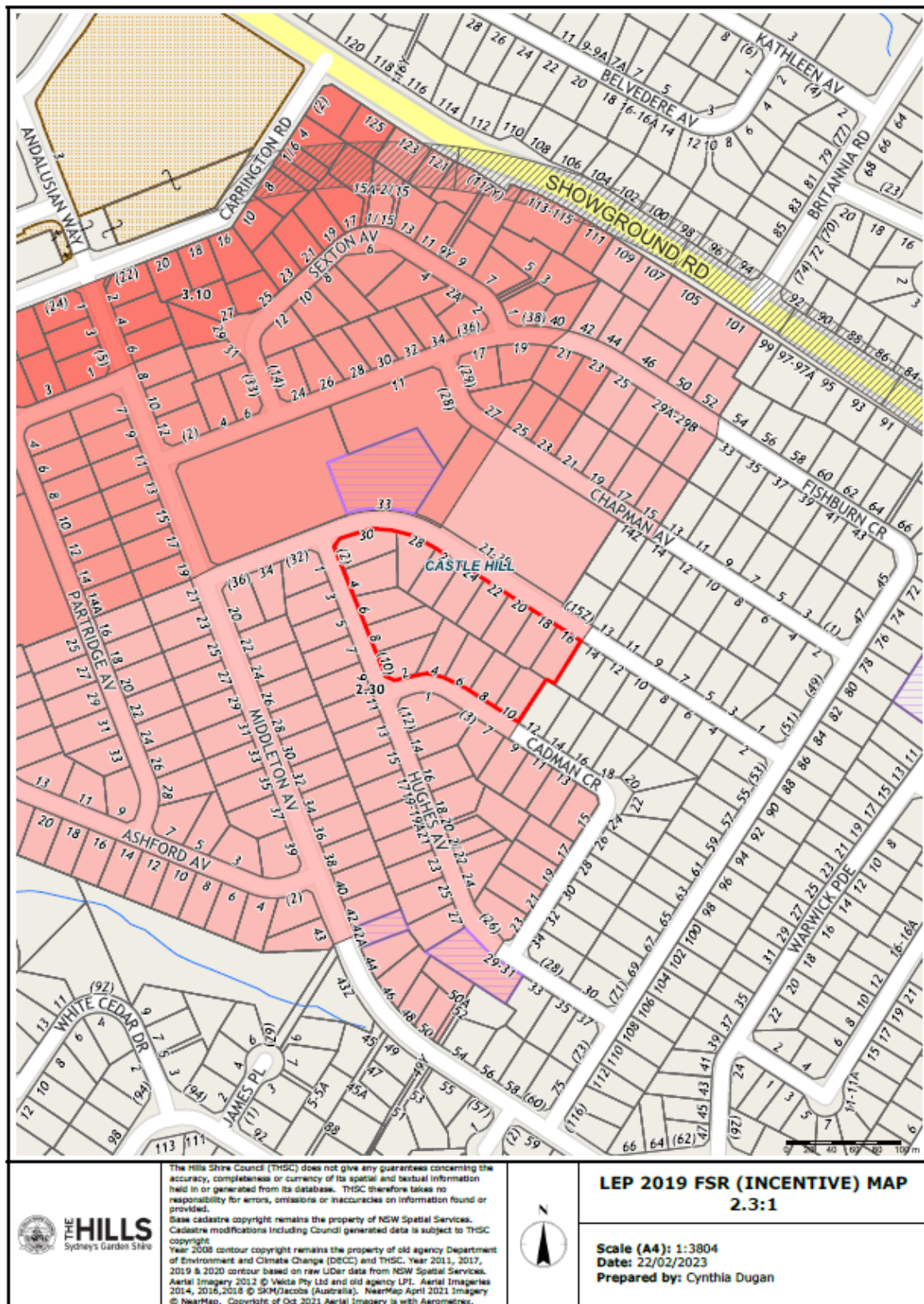
LEP 2019 HEIGHT OF BUILDINGS MAP R1 = 21M (MAX)

Scale (A4): 1:3804
Date: 22/02/2023
Prepared by: Cynthia Dugan

ATTACHMENT 5 – LEP 2019 FLOOR SPACE RATIO (BASE) MAP



ATTACHMENT 6 – LEP 2019 FLOOR SPACE RATIO (INCENTIVE) MAP



ATTACHMENT 7 – SITE PLAN

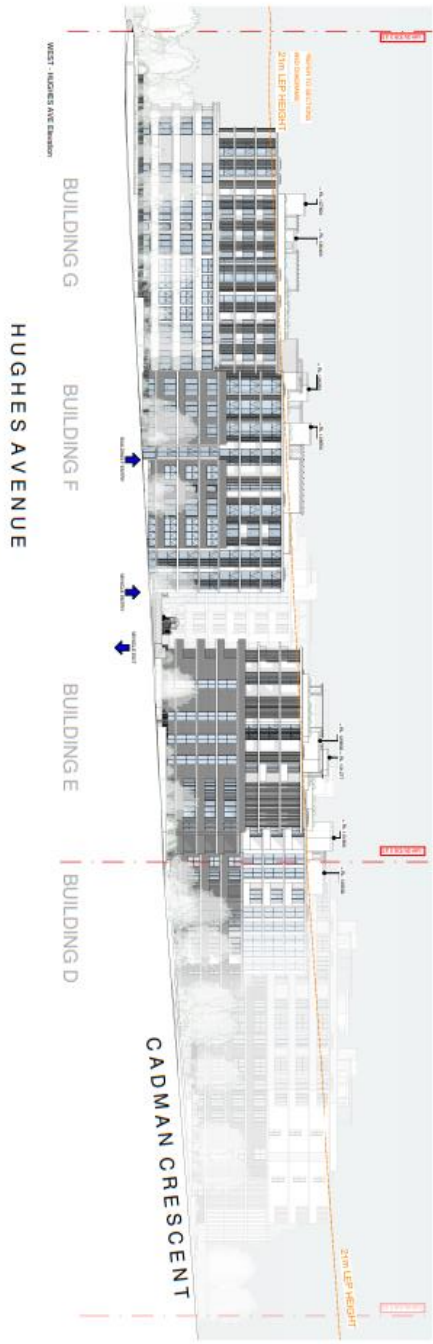


ATTACHMENT 8 – ELEVATIONS

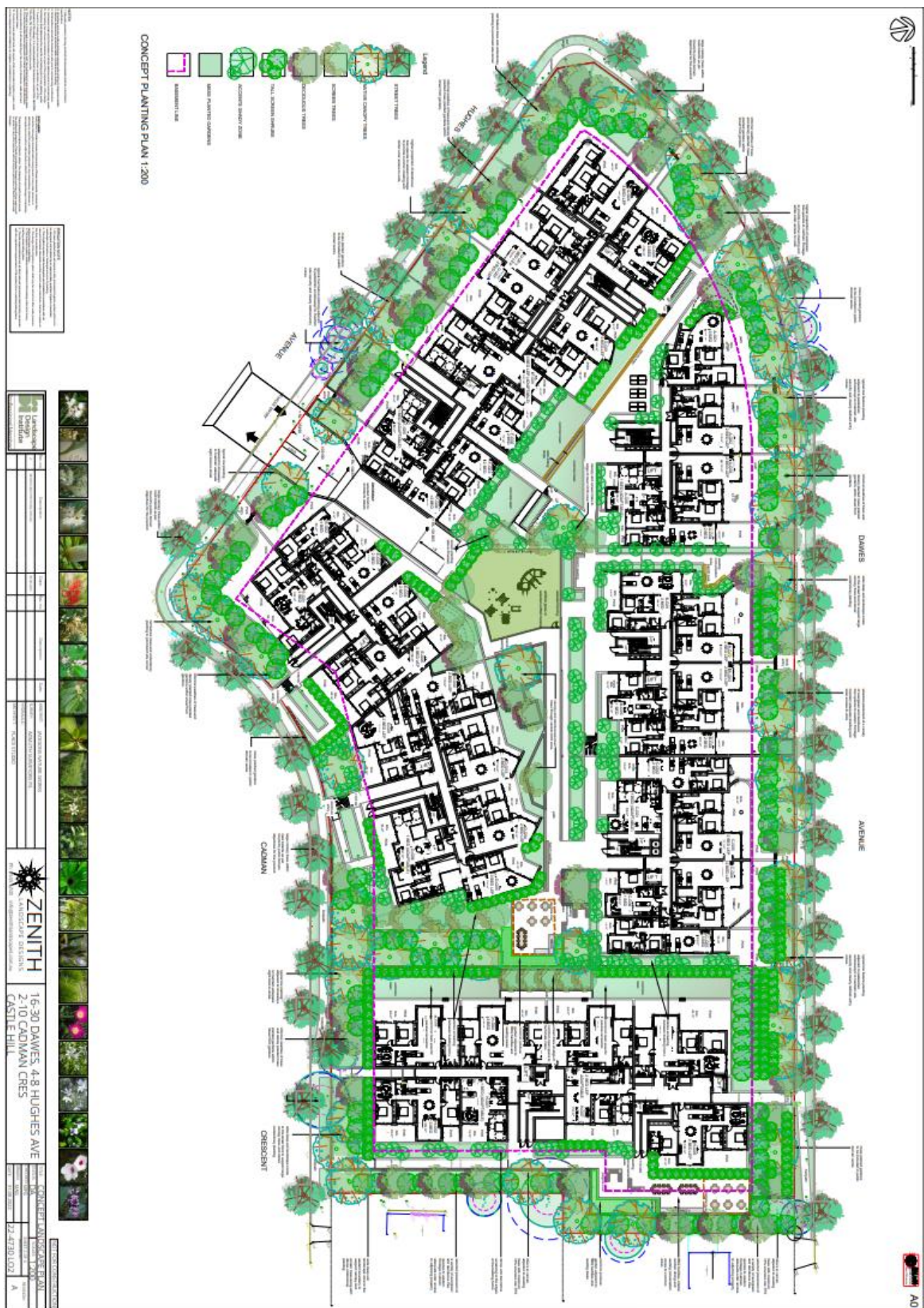


PROJECT INFORMATION		SUBMITTER INFORMATION		SUBMISSION INFORMATION	
PROJECT NAME	SEASIDE NORTH - DAWES AVE	PROJECT NUMBER	DA - 2000	DATE	1
PROJECT ADDRESS	DAWES AVE	PROJECT LOCATION	DAWES AVE	PROJECT TYPE	PLCE
PROJECT CONTACT	DAWES AVE	PROJECT CONTACT	DAWES AVE	PROJECT CONTACT	DAWES AVE
PROJECT CONTACT	DAWES AVE	PROJECT CONTACT	DAWES AVE	PROJECT CONTACT	DAWES AVE

DEVELOPMENT APPLICATION



ATTACHMENT 10 – LANDSCAPE PLANS





Appendix A:

Clause 4.6 Variation Statement (cl 4.3 Height)

Prepared by: BMA Urban

BMAURBAN

1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared by BMA Urban on behalf of Place Studio. It is submitted in support of a Development Application (DA) for a residential flat building at 16-30 Dawes Avenue, 2-10 Cadman Crescent and 4-8 Hughes Avenue, Castle Hill.

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the HLEP 2019. Clause 4.3 prescribes a numerical building height limit of 21m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Hills Local Environmental Plan 2021* (HLEP 2019) enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standards relating to **"height of buildings"** in accordance with Clause 4.6 of the *Hills Local Environmental Plan 2019* (HLEP 2019).

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed (in the above judgment):

The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

On the 'Five Part Test' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

That, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

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

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the HLEP 2019 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- Summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**);
- demonstrates that the proposed variation is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (**Part 4**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 4**); and
- Provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exception to a Development Standard should be read in conjunction with the architectural plan detail prepared by Place Studio

2. VARIATION OF HEIGHT OF BUILDING'S STANDARD

2.1 DEVELOPMENT STANDARD

Clause 4.3(2) of HLEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 21 metres as illustrated in **Figure 2**.

The objectives of clause 4.3 as set out in clause 4.3(1) of the HLEP are:

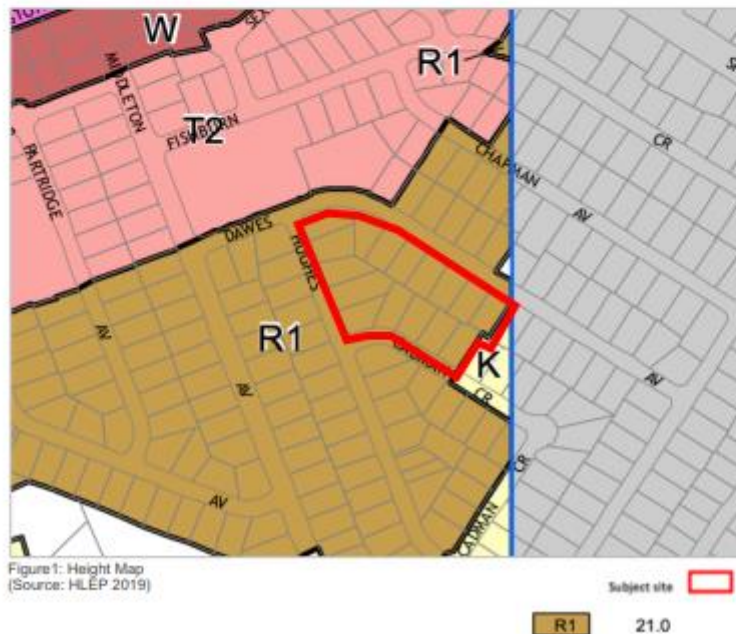
- (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

The definition of building height under clause 4.3 of HLEP is:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.



2.1 VARIATION TO HEIGHT OF BUILDING STANDARD

The proposed variations to building height across the development are reflected in Figure 2 (Height Overlay) and are individually itemised in the table below.

Building	Location	Maximum proposed height	Variation range across the nominated location
Building A	Roof Level	Building A- 23.78m (lift overrun)	250mm (landscape planter perimeter) to 2.78m (lift overrun)
Building B	Roof Level	Building B- 23.15m (lift overrun)	250mm (landscape planter perimeter) to 2.15m (lift overrun)
Building C	Roof Level	Building C- 23.28m (Lift overrun)	350mm (landscape planter perimeter) to 2.28m (lift overrun)
Building D	Roof Level	Building D- 23.73m (Lift Overrun)	260mm (landscape planter perimeter) to 2.73m (lift overrun)
Building E	Roof Level	Building E- 23.99m (Lift Overrun)	400mm (landscape planter perimeter) to 2.99m (lift overrun)
Building F	Roof Level	Building F- 24.14m (Lift Overrun)	110mm (landscape planter) to 3.14m (lift overrun)
Building G	Roof Level	Building G- 24.82m (Lift Overrun)	770mm (landscape planter perimeter) to 3.82m (lift overrun)
Building H	Roof Level	Building H- 24.4m (Lift Overrun)	400mm (landscape planter perimeter) to 3.4m (lift overrun)

3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of HLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of HLEP are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- *(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

- *(d) the public benefit of maintaining the development standard, and*
- *(e) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of building prescribed for the site in Clause 4.3 of HLEP is unreasonable, and there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building standard be varied.

4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building standard in accordance with Clause 4.3 of HLEP.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSW Land and Environment Court. The following sections of the report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

4.1. ABILITY TO VARY THE STANDARD

The height of building prescribed by Clause 4.3 of HLEP is a development standard capable of being varied under clause 4.6(2) of HLEP. The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of BLEP.

4.2 CONSIDERATION

4.2.1 Clause 4.6 (3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]).

• *The objectives of the standard are achieved notwithstanding non-compliance with the standard* (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of HLEP are detailed in the **Table** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,	<p>The underlying purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting building height will appropriately respond to both the existing and future context in a controlled manner. The proposal demonstrates that the building will visually adapt with that of neighbouring buildings both current and future and that the resulting height breach has been appropriately sited and or integrated into the built form envelope, reducing its visual prominence from both neighbouring properties and the public domain.</p> <p>The height breaching elements do not adversely influence the development density or land use intensity noting that the proposed development seeks the provision of 34,896.66m² of calculable GFA, inclusive of applicable bonus, equating to an FSR of 2.22:1 and compliant with the 2.23:1 requirement. In this regard, therefore, there is no identifiable nexus between the height variation and the extent of density afforded to the land noting the FSR incentivised rate the proposed development is subject to.</p> <p>A large proportion of the proposed variation is related to rooftop plant and equipment, including lift overruns. These elements have been designed to sit centrally within each roof plate, thus reducing the overall visual impact of the height exceedance. As a result, these elements have been provided with a horizontal offset from the top of the parapet line and have been treated to ensure that they are not readily apparent from the surrounding streetscape or from the ground level within the site. This lack of perceptible volume is affirmed in Figures 3 to 6 below this table.</p> <p>Given the siting, scale and relationship the breaching elements will have with neighbouring properties and the public domain, the development is not inconsistent with that anticipated to result by way of a compliant scheme. The scale, nature and aspect of the site and in turn breach, enable the proposed building to visually integrate with that of neighbouring building's both current and future serving as an affirmation of the objective and not that of a building that abandons height controls.</p>

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

Overshadowing

A shadow analysis illustrating the extent of shadow cast by way of the proposed development on 21 June (Winter Solstice) has been prepared by Place Studio and is extracted below at **Figure 7** below.

This analysis makes reference to the extent of additional overshadowing that will be cast by the height breaching elements over that of a height compliant development. As observed, the extent of additional impact (marked in purple) will not adversely impact the development internally or proximate neighbouring properties to a level outside of that deemed to outweigh the benefits likely to be achieved from the provision of rooftop communal spaces across each building rooftop.

Visual Impact

The height breaching elements/components of the building are of a siting, scale and aspect where they will not identify as visually dominant nor jarring to the contextual character. Reference is again made to **Figures 3 through to 6** below which demonstrate the extent of visual impact, or lack thereof, resulting from the breaching elements which will be contained wholly within the

As observed, the defined recess of each of these breaching elements away from the edges of each roof plate ensures that it will not be readily perceived from the public domains and or neighbouring properties.

Privacy

In terms of privacy as a general observation, the proposed apartment layout and orientation has been carefully arranged within the parameters set by the DCP to ensure appropriate privacy is achieved within the site and between existing surrounding buildings.

Privacy between the proposed dwellings and open spaces both private and communal within the site is achieved by appropriate building separation, offsetting principal windows of apartments and through landscaping and privacy screening.

With respect to privacy where specifically related to the breaching element/s of the building, this is mitigated through the siting of the communal spaces atop each building where a distinct recess is observed away from the roof plate peripheries. This outcome will ensure that no discernible impacts to the extent of privacy

afforded to neighbouring properties or future residents alike will occur.

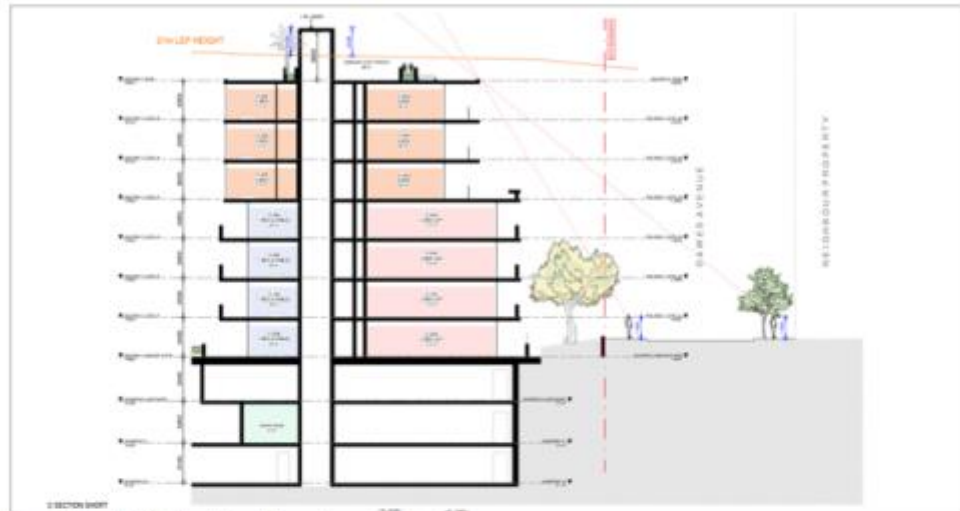


Figure 3: Visual identification of breach (Dawes Avenue-short section)
Source: Place Studio

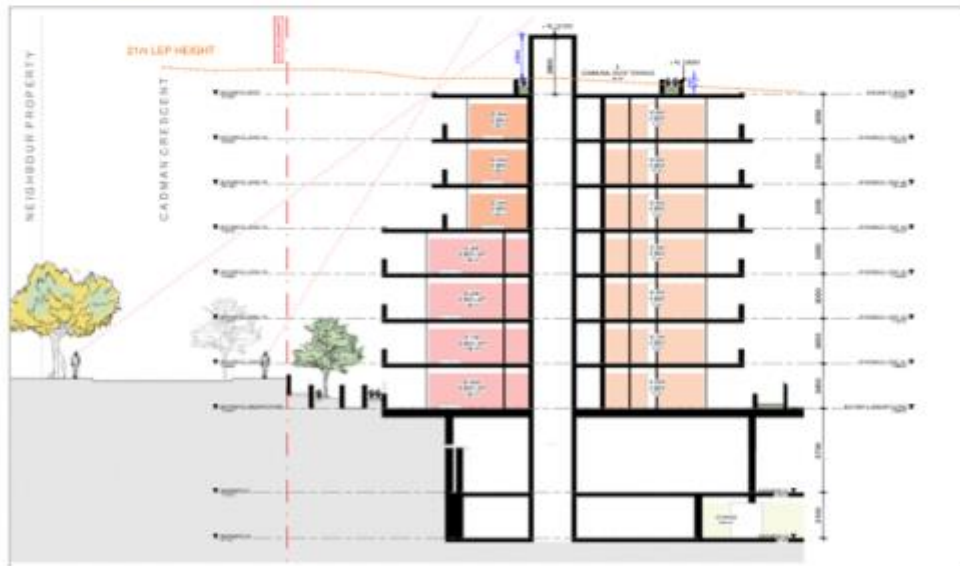


Figure 4: Visual identification of breach (Cadman Crescent-short section)
Source: Place Studio



Figure 5: Visual identification of breach (Hughes Avenue-short section)
Source: Place Studio

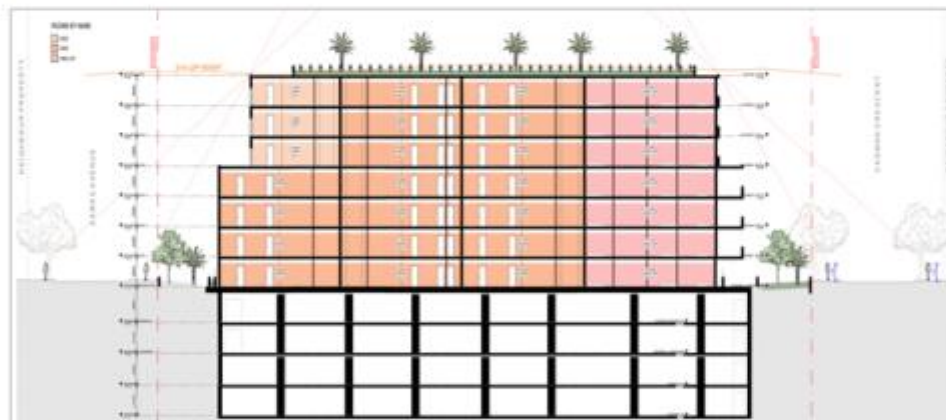


Figure 6: Visual identification of breach (Dawes Avenue and Cadman Crescent - long section)
Source: Place Studio

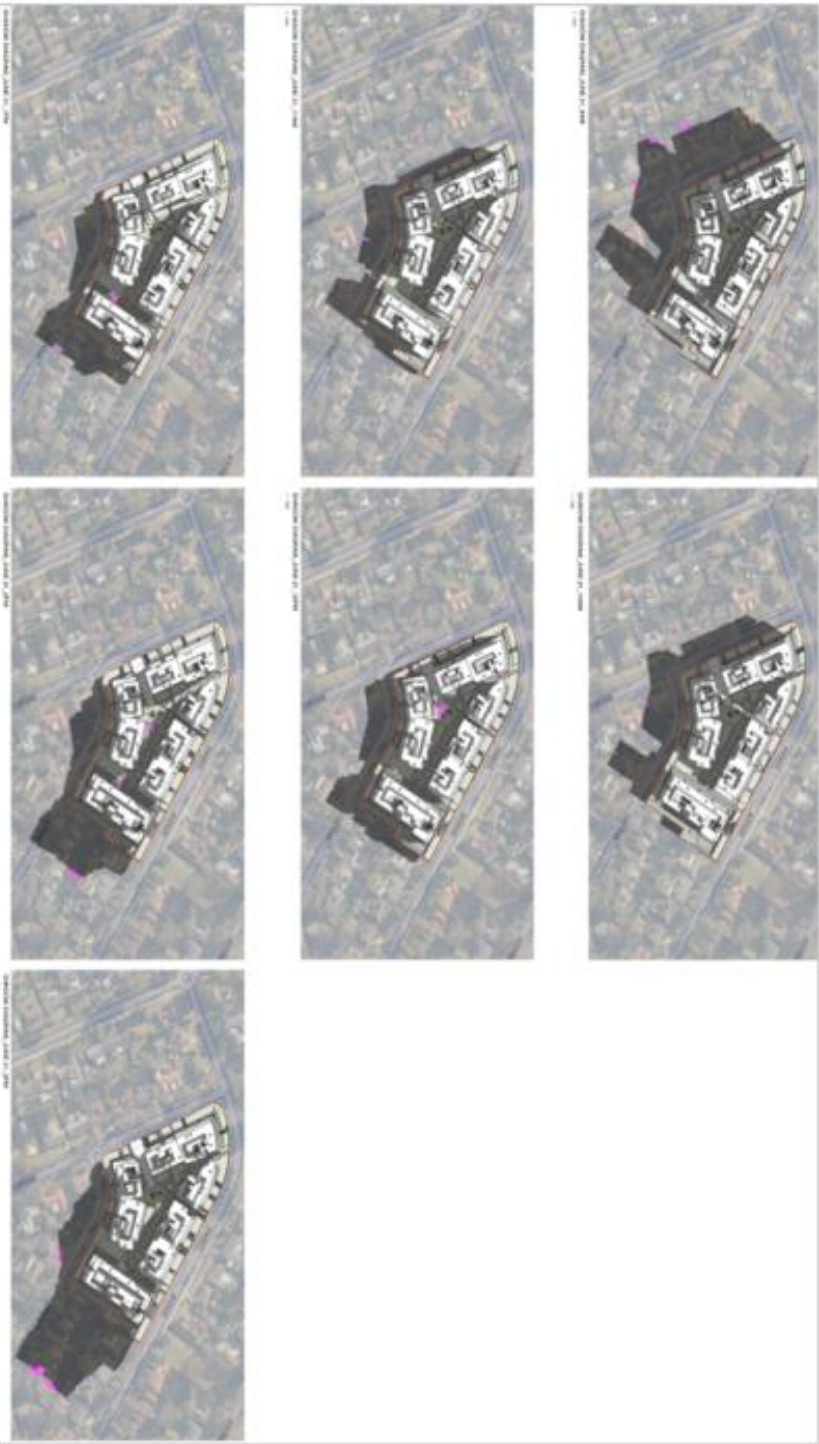


Figure 7: Shadow diagram
Source: Place Studio

• *The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43] as applied in Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24])*

The breach primarily relates to the provision of a high quality communal open space across each building, serviced by way of communal seating, bbq, landscaping and year-round weather protection.

If the proposed building was to be fully compliant with the building height, access to the communal spaces, balustrading, landscaping and weather protection would be compromised. This would result in a loss of amenity for residents and does not reflect the design criteria of Part 3D Communal and Public Open Space of the Apartment Design Guide. Compliance in the circumstances is therefore unreasonable.

Furthermore, our interpretation of the controls is that the Base FSR is consistent with the Height of Building development standard and DCP storeys control, however the instrument does not consider the incentivised FSR in any revised / incentivised Height of Buildings control and therefore the maximum building height does not correspond with the FSR. Therefore, the building height control does not accurately reflect the permissible incentivised maximum floor space ratio.

As such, the proposed FSR for the site is compliant however, the maximum building height standards do not correspond with applicable incentivised floor space ratios. Therefore, it is considered that compliance with the development standard would thwart the achievement of the objectives for FSR incentives.

4.3 Clause 4.6 (3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the HLEP 2019, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

"That there are sufficient environmental planning grounds to justify contravening the development standard".

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118).

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposed development for residential flat buildings is permissible and is consistent with the objectives of the Height of Building control contained in HLEP 2019;
- The Proposal complies with the Floor Space Ratio control for the Site. However, the Height of Building standard does not reflect the incentivised maximum Floor Space Ratio control. Therefore, it is considered that compliance with the development standard would hinder the achievement of the objectives for both the R4- High Density Residential Zone and the 4.3- Height of Building standard;
- The height variation relates largely to the provision of communal open spaces atop each building roof plate, inclusive of access to these spaces.

- The topography is a unique constraint which affects the site and results in a design that exceeds the numerical height limit. The steep 11.97m site slope from east to west across the site results in an inevitable variation to the extent of exceedance of the building height standard;
- The proposal is of a high-architectural quality that will make a great contribution to the development of the Showground Precinct and provide a high level of amenity for its occupants, and will achieve Design Excellence to contribute to the built-form within the Showground Station precinct;
- The Proposal will not result in the generation of an unreasonable extent of amenity impacts beyond that of a compliant scheme;
- The proposal provides for a high-density development foreshadowed for the north-west of Sydney, nearby to future transport corridors, that will contribute to the vitality and strength of the Showground Station Precinct.
- All other requirements relating to height and land use are consistent;
- The proposed FSR inclusive of the incentive is 2.22:1 across the site which generates a gross floor area of 34,896.66m². This FSR is compliant with the maximum FSR applicable to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA) outside of that prescribed to the development on the land; and
- The lift shafts which breach the height serve to provide equitable access to the rooftop communal spaces;

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance to the maximum height of buildings in this instance.

The Objects of the Act under S1.3 are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of this Act and how this proposal responds to the object are as follows:

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	This object is not relevant to this application.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council.

(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development
(g) to promote good design and amenity of the built environment,	<p>The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.</p> <p>The subject site is a corner allotment. The proposed development reinforces and adds strength to this prominent position. Given the emerging scale of the built environment, a compliant design would not appropriately reinforce the site's prominence.</p>
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants. Furthermore, the breach supports the location of the rooftop communal open spaces, which in turn, reduces the impact of the new population on existing resources. As important, outdoor amenity encourages relaxation which has a direct bearing on the physical and mental health of future building occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	This application will be neighbour notified in accordance with Council's DCP provisions.

Based on the above, the consent authority can be satisfied that there the proposed development remains consistent with the Objects of the Act despite the height non-compliance.

4.3.1 Clause 4.6 (4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.3.2. Clause 4.6 (4)(a)(ii) - Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In Part 4.1.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R4 – High Density Residential Zoning:

Objective	Comment
• To provide for the housing needs of the community within a high density residential environment.	The proposed development is envisaged within the R4- High Density Residential zone as demonstrated through its permissibility. The proposal seeks the provision of three hundred and fifteen (315) apartments in a high density residential flat building setting.
• To provide a variety of housing types within a high density residential environment.	The proposal seeks the provision of a variety of housing types and configurations designed in response to the FSR incentivised provisions found in cl.9.7 (2) (a)-(d) of the HELP.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This objective is not relevant to the proposed development.
• To encourage high density residential development in locations that are close to population centres and public transport routes.	The proposal will provide high density residential development in proximity to (550m) from Showground Station) inclusive of a number of proximate bus routes.

The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

4.3.3. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed minor non-compliance with the height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

4.3.4. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the building height development standard and the land use zoning objectives. As such, there is no public benefit in maintaining the development standard given the substantial activation throughout the development.

4.3.5. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of the clause 4.6 Request and prior to granting concurrence, should it be required.

5. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of HLEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- Compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of building standard and the R4-High Density Residential Zoning.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of building standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

ATTACHMENT 12 – PERSPECTIVES



