

## COUNCIL ASSESSMENT REPORT

### SYDNEY CENTRAL CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSCC-411 - DA 980/2023/JP
<b>PROPOSAL</b>	Indoor Recreation Facility
<b>ADDRESS</b>	<p>Lot 9 DP 28135, 24 Showground Road Castle Hill</p> <p>Lot 8 DP 28135, 26 Showground Road Castle Hill</p> <p>Lot 26 DP 28896, 5-5A Kentwell Avenue Castle Hill</p> <p>Lot 27 DP 28896, 3 Kentwell Avenue Castle Hill</p> <p>Lot 28 DP 28896, 1 Kentwell Avenue Castle Hill</p> <p>Lot 30 DP 28896, 4 Kentwell Avenue Castle Hill</p> <p>Lot 2 DP 1201722, 2-2A Kentwell Avenue Castle Hill</p> <p>Lots 1-8 DP 135596, 8-22 Showground Road, Castle Hill</p> <p>Lots 12-13 DP 2496, Showground Road, Castle Hill</p> <p>Council Road, Kentwell Avenue Castle Hill</p>
<b>APPLICANT</b>	QIC Limited
<b>OWNER</b>	QIC Ltd
<b>DA LODGEMENT DATE</b>	09 December 2022
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19 and Schedule 6 of SEPP Planning Systems 2021
<b>CIV</b>	\$29,872,958.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Clause 4.3 Height of LEP 2019
<b>KEY SEPP/LEP</b>	LEP 2019
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	One
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<p>Statement of Environmental Effects – Ethos Urban</p> <p>Clause 4.6 Variation Request – Ethos Urban</p>

	<p>Architectural Plans – Clarke Hopkins Clarke</p> <p>Architectural Design Report – Clarke Hopkins Clarke</p> <p>Construction Environmental Management Plan – Clarke Hopkins Clarke</p> <p>Landscape Design Report - Aspect Studios</p> <p>Traffic Impact Assessment - Stantec</p> <p>Arboricultural Development Impact Assessment Report – Birds Tree Consultancy</p> <p>Structural Statement – BG &amp; E</p> <p>Stormwater Management Report – BG &amp; E</p> <p>Concept Engineering Plans – BG &amp; E</p> <p>Plan of Management – Woodward Sydney</p> <p>Tunnel Geotechnical Monitoring Plan and Risk Assessment – Douglas Partners</p> <p>Sydney Metro Geotechnical Impact Assessment - Douglas Partners</p> <p>Detailed Site (Contamination) Investigation - Douglas Partners</p> <p>Geotechnical Investigation - Douglas Partners</p> <p>Fire Safety Report - Warrington Fire</p> <p>Infrastructure Report – ADP Consulting Engineering</p> <p>ESD Report – ADP Consulting Engineering</p> <p>Thermal Comfort Study – ADP Consulting Engineering</p> <p>Construction Noise and Vibration Management Plan – ADP Consulting Engineering</p> <p>Noise Impact Assessment Acoustic Report - ADP Consulting Engineering</p> <p>Access Capability Statement and DDA Assessment – Philip Chun Building Compliance</p> <p>BCA Assessment - Philip Chun Building Compliance</p> <p>Waste Management Plan – SLR Consulting</p> <p>Cost Summary Report – WT Partnership</p>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	NA
<b>RECOMMENDATION</b>	Approval subject to conditions
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes

<b>SCHEDULED MEETING DATE</b>	Electronic
<b>PLAN VERSION</b>	NA
<b>PREPARED BY</b>	Kristine McKenzie – Principal Coordinator
<b>CONFLICT OF INTEREST DECLARATION</b>	None Declared
<b>DATE OF REPORT</b>	29 April 2024

## EXECUTIVE SUMMARY

The proposal is for the construction of an indoor recreation facility with a gross floor area of 6115m<sup>2</sup> which includes a skate bowl, trampolines and cheer space, climbing gym, indoor bike ramp, gym, merchandise outlet and two food and beverage tenancies (licenced). Basement parking is provided with 104 parking spaces.

The proposed works also include the reconstruction and re-opening of Kentwell Avenue at its southern intersection with Showground Road which is currently closed to traffic due to the significant level change associated with the Showground Road upgrade works including a modified signal design, realignment of the southern part of Kentwell Avenue and construction of a new road access into the broader QIC owned site which will provide direct vehicle access to the recreation facility. In addition, the closure of Kentwell Avenue mid-way is proposed which occurs due to level differences between the existing and proposed road works.

The proposal includes a Clause 4.6 variation request to height. The majority of the site has a 28 metre height limit, with a 7 metre height limit on the western edge of the site (See LEP height map in Attachment G). The maximum height of the proposed recreation facility is 20.93 metres. This is a variation of 299% to the LEP height standard within that part of the site which is subject to the 7 metre height limit. The building encroaches approximately 5.6 metres into the lower height area but it is considered that a reasonable interface is provided to development west of Kentwell Avenue. The Clause 4.6 has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard in this instance. The consistent height of the building across the site provides for a functional recreational facility and does not result in unreasonable overshadowing or privacy impacts.

One submission was received to the proposal which principally raised issues related to construction impacts, acoustic impacts and traffic and parking impacts. A number of conditions have been recommended in respect to these matters which will ensure that the construction works are undertaken in an appropriate manner and that the recreation facility will be operated in a way which will not unreasonably impact on adjoining or nearby properties.

The proposal is recommended for approval subject to conditions.

## **1. THE SITE AND LOCALITY**

The site is located at the corner of Kentwell Avenue and Showground Road and includes properties to both the east and west of the constructed signalised intersection. The site to the east was previously used for residential purposes however the dwellings have been demolished and the site is currently vacant. The site to the west contains a building and was formerly part of the Wesley Uniting Church site.

The locality is currently predominantly characterised by single dwellings however the subject site and immediate area has been identified in Council's Draft Precinct Plan for the Castle Hill Strategic Centre as a 'focus area for change' given its location in close proximity to the Castle Hill Town Centre and transport links.

The subject site is located at the Kentwell Avenue/Showground Road intersection. The signalised intersection has been constructed as part of previous upgrade works undertaken by Transport for NSW on Showground Road. The intersection is currently closed to traffic due to the significant level change between Kentwell Avenue and Showground Road associated with the Showground Road upgrade works.

## **2. THE PROPOSAL AND BACKGROUND**

### **2.1 The Proposal**

The application is for the demolition of existing structures and construction of an indoor recreation facility which includes the following:

- 6115m<sup>2</sup> of GFA which includes a skate bowl, trampolines and cheer space, climbing gym, indoor bike ramp, gym, merchandise outlet and two food and beverage tenancies (licenced).
- Basement parking with 104 parking spaces (including four accessible spaces), 30 bicycle spaces (internal and external to the building) and two motorcycle spaces.
- Signage zones.

The proposed hours of operation are 6am – 10pm seven days per week and closed on Public Holidays. In addition, consent is sought for hours of operation of 6am – 12 midnight for special events for a maximum of 12 times per year.

The indoor recreational facility is expected to accommodate a maximum capacity of 400 people per session, being approximately 200 participants and 200 spectators. To accommodate this, 12 staff members are expected to service the venue during regular trading, with an estimated 30 staff members during peak periods. A total of six sessions (2 hours each session) will operate daily.

The proposed works also include the reconstruction and re-opening of Kentwell Avenue at its southern intersection with Showground Road which is currently closed to traffic due to the significant level change associated with the Showground Road upgrade works including a modified signal design, realignment of the southern part of Kentwell Avenue and construction of a new road access into the broader QIC owned site which will provide direct vehicle access to the recreation facility. In addition, a closure of Kentwell Avenue mid-way is proposed which occurs due to level differences between the existing and proposed road works. The proposed new road will be partly a public road and partly a private road.



## 2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 22 May 2022. The Development Application was lodged on 09 December 2022.

The applicant was requested to provide additional information on 15 December 2022, 16 February 2023, 07 July 2023, 11 August 2023, 13 December 2023, 11 January 2024, 31 January 2024,

Additional information was received from the applicant on 21 December 2022, 03 April 2023, 19 April 2023, 21 April 2023, 22 May 2023, 27 November 2023, 15 February 2024, 22 February 2024, 01 March 2024, 08 March 2024, 15 March 2024 and 27 March 2024.

## 2.3 Site History

On 21 October 2022 Planning Proposal 3/2023/PLP was lodged by QIC for a parcel of land including the subject site. The Planning Proposal included the following land:



The Planning Proposal sought to facilitate a high-density mixed-use development comprising up to 1,410 dwellings, 16,200m<sup>2</sup> of commercial floor space and 6,100 m<sup>2</sup> of retail floor space (892 jobs) within a built form of up to 28 storeys. The planning proposal also proposed a 3,500m<sup>2</sup> publicly accessible local park located centrally within the site.

The Planning Proposal was considered by the Local Planning Panel (LPP) on 19 July 2023. Council's Officers report recommended that the Planning Proposal not proceed to Gateway Determination. The LPP supported this recommendation.

On 26 September 2023, Council resolved to progress the planning proposal to Gateway Determination with amendments. Council's resolution included a reduced incentive FSR of 3.5:1 on the majority of the site and 1.9:1 on the land west of Kentwell Avenue. The resolution also included a local provision to cap residential dwellings at 1,236 (rather than

1,410) and require future development to include a minimum of 16,200m<sup>2</sup> of office floor space and 6,100m<sup>2</sup> of retail floor space.

Council's resolution sought to allow the following built form outcomes to be achieved:

- Appropriate building heights fronting Kentwell Avenue (rather than 12 storeys);
- Maximum residential tower floor plates of 750m<sup>2</sup> GFA (rather than 1,150m<sup>2</sup>);
- Maximum podium building length of 50m (rather than 107m);
- Maximum tower length of 40m (rather than 56m);
- Minimum residential tower setback above podium of 5m (rather than 2m);
- Setback to terrace style units of 3m (rather than 0m);
- Increased setbacks to townhouses from Showground Road (rather than 3m);
- Increased rear setbacks to the adjacent heritage building (rather than 3m); and
- Adequate solar access to the proposed communal open space.

Since Council's resolution, the Proponent has noted their dissatisfaction with the resolution and has submitted a request for a rezoning review with the Department. Council Officers briefed the Sydney Central City Planning Panel regarding the rezoning review on 04 April 2024. The rezoning review has yet to be determined.

### **3. STATUTORY CONSIDERATIONS**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

#### **3.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021; and
- Local Environmental Plan 2019.

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in the following table and considered in more detail below.

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 3 of Schedule 6.	Y
Resilience and Hazards SEPP	Clause 4.6 Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory.	Y
Biodiversity and Conservation SEPP	Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments.	Y
Transport and Infrastructure SEPP	Clause 2.122 – Traffic generating development.	Y
	Clause 2.98 – Development adjacent to rail corridors	Y
LEP 2019	<ul style="list-style-type: none"> <li>• Clause 4.1 – Lot size.</li> <li>• Clause 4.3 – Height of Buildings</li> <li>• Clause 4.4 – Floor Space Ratio</li> <li>• Clause 6.3 - Servicing</li> <li>• Clause 7.2 – Earthworks</li> </ul>	NA N NA Y Y

#### State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 3 of Schedule 6 of the SEPP as the proposal is development for *Council related development over \$5 million* with a CIV of \$29,872,958.00. Accordingly, the Sydney Central City Planning Panel is the determining authority for the application.

#### State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 have been considered in the assessment of the development application. Clause 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and 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.

A Detailed Site Contamination Investigation by Douglas Partners has been submitted which has concluded as follows:

*Based on the results of this investigation, it is considered that the site can be rendered suitable for the proposed commercial development (as required).*

The report also includes recommendations.

The report has been reviewed by Council's Senior Environmental Health Officer who has advised as follows:

The Validation Report prepared by EI Australia has been reviewed. The report demonstrates that validation for asbestos removal is provided for part of 'Site B' however the remainder of the site requires full remediation and validation. The area requiring remediation and validation includes the subject site. As such a condition has been recommended to require remediation (if required) and validation for the area of the development (See Condition 75).

In this regard, it is considered that the site is suitable for the proposed development.

#### SEPP Biodiversity and Conservation

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River Catchment by ensuring that the impacts of future land uses are considered in a regional context.

Through stormwater mitigation and erosion and sediment measures, the development is unlikely to have detrimental impacts on the health of the environment of the Hawkesbury and Nepean River Catchment.

#### 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.

In accordance with Clause 2.122 of the SEPP, developments listed in Schedule 3 must be referred Transport for NSW prior to the determining of a development application and consider any matters raised, the accessibility of the site, traffic safety, road congestion or parking implications of the development. An assessment of the traffic, access, parking and road network is provided in the Traffic and Parking Report.

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 commercial premises exceed 2,500m<sup>2</sup> gross floor area and where the site has access to a road that connects to a Classified Road within 90 metres or where the site has 50 or more parking spaces and where the site has access to a road that connects to a Classified road within 90 metres. The proposal is for gross floor area of 6115m<sup>2</sup>, there are 104 parking spaces proposed and the access driveway is located approximately 45 metres from the intersection with Showground Road.

The Development Application was referred to Transport for NSW for review. Transport for NSW raised no objection to the proposal.

The potential for traffic safety and road congestion of the development have been satisfactorily addressed and satisfies Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

#### The Hills Local Environmental Plan 2019

The site is zoned part MU1 Mixed Use (formerly B4 Mixed Use) and part R3 Medium Density Residential. The works are defined in LEP 2019 as follows:

***recreation facility (indoor)*** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink

*or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.*

And

**road** means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

The proposed indoor recreation facility is located on land zoned B4 Mixed Use and is a permissible use in the zone.

The proposed road is located on land zoned both B4 Mixed Use and R3 Medium Density Residential and is permissible in both zones.

#### **a. Objectives of the Zone**

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage leisure and entertainment facilities in the major centres that generate activity throughout the day and evening.*
- *To provide for high density housing that is integrated with civic spaces.*

The proposal is considered to be satisfactory in regard to the objectives in that the proposal is a compatible land use to future development of the immediate surrounding area and provides a leisure facility which will promote both passive and active recreation uses within the site and immediate area. The proposal is also located within a reasonable distance to the Metro station and a number of bus stops are located in close proximity to the site.

The proposal is considered to be satisfactory in regard to the objectives of the zone.

#### **b. LEP Development Standards**

LEP STANDARD	REQUIRED	PROVIDED	COMPLIES
FSR	1.9:1	0.25:1	Yes
Minimum Lot Size	600m <sup>2</sup>	There is no subdivision proposed.	NA
Height of Building	7m and 28m	Maximum height 20.93m.	No – Clause 4.6 variation request submitted.
Land Reservation Acquisition	Not identified	NA	NA

#### **i. Clause 4.6 Variation**

Clause 4.6(3) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions Under Clause 4.6(3) are:

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

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

The subject site has a height limit of 7 metres and 28 metres. The maximum height of the proposed recreation facility is 20.93 metres. This is a variation of 299% to the LEP height standard within that part of the site which is subject to the 7 metre height limit.

The applicant has requested a variation to the LEP control and has submitted a Clause 4.6 variation request which concluded as follows:

*The assessment above demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of The Hills Sydney LEP 2019 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.*

*This Clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the maximum height development standard, the proposed height variation:*

- *Is consistent with the objectives of the development standard as the non-compliant element will continue to be consistent with the existing and future planned nature of adjoining development and the overall streetscape, and will not result in any adverse impacts with respect to overshadowing, visual impact or privacy;*
- *Is minor and relates only to a small encroachment of the building floorplate of approximately 150.15m<sup>2</sup> 3.4% of the total building envelope) and accordingly will be largely imperceptible against a backdrop of an otherwise compliant 20.93 metre high building;*
- *Will support the delivery of a high-quality and unique recreational facility that will provide amenity and new recreational opportunities for the community of Castle Hill and the wider Hills Shire;*
- *Will not result in any adverse built form impacts, and will contribute to the delivery of a high-quality building that demonstrates design excellence that is consistent with the designated role of Castle Hill as a Strategic Centre;*
- *Will not impact on any significant view lines and vistas from the public domain; and*
- *Will promote the orderly and efficient use of land, in accordance with the objects of the Act.*

*The development as proposed maximises a gateway site and is consistent with the metropolitan and district plans as well as Council's Local Strategic Planning Statement. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of The Hills LEP 2019.*

**Comment:**

As shown in Attachments F and G the proposed variation is only for a small portion of the building.

Clause 4.3 of LEP 2019 contains the following objectives:

#### *4.3 Height of buildings*

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

*(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*

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

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The existing height limits were imposed on the subject site as a translation of proposed heights for the subject precinct area under DA 297/2008/HA which proposed an expansion of the shopping centre across the precinct.

These objectives relate to the provision of a satisfactory bulk, scale and character of the development when considered in conjunction to the existing and future development of the surrounding area. The proposal does not conflict with the zone objectives and is consistent with the underlying objectives of the development standard given that the proposed scale, height and design outcome is compatible with the future development of the remainder of the Precinct which currently has a height limit of 7 metres along part of the Kentwell Avenue frontage, 19 metres along part of the Castle Street frontage and 23 metres along part of the Showground Road and Pennant Street frontage.

In addition, the current LEP height limits for land opposite include a 20 metre height limit for land at the south-eastern corner of Cheriton Avenue/Showground Road and 7 metres at the south-western corner of Cheriton Avenue/Showground Road and on the western side of Kentwell Avenue.

The proposed indoor recreation facility will provide a modern built form which will complement the future character of the precinct and will be consistent with the character of future development. The proposal also provides spatial separation to existing residential and other land uses due to the existing form of Showground Road (seven traffic lanes) and the proposed realignment of the Kentwell Avenue road form.

Due to the location of the works there will not be an unreasonable impact on privacy to adjoining property owners or shadow impacts. The proposed development is considered to be compatible with the desired future development of the Castle Hill Town Centre.

Further to the above, DCP Part B Section 6 – Business also states that for development not in the B2 Local Centre zone, the maximum height of buildings shall be 2 storeys. The proposed building has a height of three storeys with basement below, noting that some levels are part/mezzanine levels and some levels have an extended ceiling height for activities such as climbing/bouldering and at some points the basement carparking is at grade.

As such the proposal is considered to be appropriate having regard to the relevant objectives.

Clause 4.6 of LEP 2019 states in part as follows:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that –*

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

Comment: The height limit currently applied under LEP 2019 is considered to be unreasonable and unnecessary. The height limit was applied to the site as a direct translation from a previous DA on the site. whilst it is acknowledged that the height limits provide a transition of height towards Kentwell Avenue, the height limit does not reflect the importance of the site as a 'strategic centre' as identified within 'A Plan for Growing Sydney'.

*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Comment: There are sufficient planning grounds to justify the proposed height. These planning grounds include the current height under LEP 2019 applying to the immediate area, the importance of the site in a local and regional context and the provision of a desired land use on the site.

On the basis of the above comments, the proposed variation to the height is considered reasonable, will not result in an adverse impact on amenity and will provide an additional service to residents and customers.

Accordingly, the proposed height is considered satisfactory and can be supported.

### **3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no proposed instruments which have been the subject of public consultation under the Environmental Planning and Assessment Act 1979 that are relevant to the proposal.

### **3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

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

Part B Section 6 - Business  
Part C Section 1 – Parking  
Part C Section 3 – Landscaping

The proposed development achieves compliance with the relevant requirements of the above DCPs except for the following:

#### **a. Setbacks**

The DCP has a site specific precinct plan which requires an 8 metre setback to Kentwell Avenue. In addition, the DCP requires a 6m setback if opposite or adjacent to Residential, Special Uses or Open Space zones and this area can only be used for landscaping and



screening purposes or protection of ecological communities. Further, the DCP requires that for buildings greater than two storeys or 8 metres in height, the remaining storeys are to be setback within a building height plane of 45° starting from a height of 8 metres.

In regard to the proposed setbacks, whilst the proposal does not include the subdivision of land to create the 'development site', the applicant has provided an indicative future subdivision boundary as outlined below.

As such the following setbacks apply:

Kentwell Avenue:

8 metre setback required

Nil setback at north-western corner

Minimum 600mm (new boundary)

14.443 – 16.403m (existing boundary)

Internal Road:

6 metre setback required

1.04m (new boundary)

Showground Road:

6 metre setback required

1.735 - 2.448 metres (new boundary)

5.028 – 5.663 metres (existing boundary)

Eastern (side setback):

3.450m (new boundary)

The objectives of the DCP are:

1. *To provide an attractive streetscape and substantial areas for landscaping and screen planting*
2. *To ensure adequate sight distance is available for vehicles entering and leaving the site.*
3. *To minimise overshadowing of adjoining properties.*
4. *To protect privacy and amenity of any adjoining land uses.*
5. *To provide a desirable and aesthetically pleasing working environment.*
6. *To ensure endangered ecological communities are protected.*

The applicant has submitted the following as justification:

*In this regard, Clause 5 in Part A of the Hills DCP 2012 states the following:*

*“An applicant may request a variation to any development control, provided that the outcomes/objectives of the specific development control and the relevant Section/s of the Development Control Plan as a whole can still be achieved. The applicant must provide a written statement as part of their development application (for instance within the Statement of Environmental Effects) to support any request for a variation to the Development Control Plan.”*

*The proposal fulfills the objectives of the development control, being those contained in Clause 2.5 of Part B Section 6, due to the following:*

- *The proposal will provide an attractive streetscape with significant landscaping, including substantive street trees and screening planting.*
- *The proposal will maintain adequate sight lines along Showground Road and Kentwell Avenue for vehicles accessing the site, as discussed in the Traffic Impact Assessment prepared by Stantec.*
- *The proposal will not give rise to any adverse overshadowing impacts upon existing or future development surrounding the site.*
- *The proposal will not result in any adverse privacy or amenity impacts to other properties along the Showground Road or Kentwell Avenue frontages.*
- *The proposal will create a desirable and aesthetically appealing urban environment that is compatible with the surrounding area by demonstrating a unique and high-quality architectural design that supports the transition in zones and land use along the approach into the Castle Hill strategic centre.*
- *The proposal will not result in any adverse impacts on any endangered ecological communities.*

*Further, the proposed development is consistent with the overarching objectives Part B Section 6 of The Hills DCP as outlined below.*

**Table 9 The Hills DCP 2012 Part B Section 6 – Objectives Objective**

*1. To promote a distinctive and high quality employment environment attractive to a range of business and commercial developments.*

The proposed development will contribute to the business and commercial environment of Castle Hill by facilitating employment and leisure land uses, consistent with the strategic intention for Castle Hill to be a transit-oriented mixed use centre. The site forms part of Castle Hill strategic centre which is identified throughout the hierarchy of strategic planning documents as an important and unique centre within The Hills, and the proposed development makes an important contribution in delivering a building that supports this identity and transition in built form character to reflect the centre's strategic importance.

*2. To provide opportunities for a range of commercial, business and retail development which will contribute to the economic, employment and social growth of the area.*

The proposed development adds to the variety of land uses in Castle Hill by providing a unique recreational and sporting facility, and will encourage increased economic stimulation within an existing retail centre, whilst facilitating valuable social community interaction as a recreation facility.

*3. To encourage innovative and imaginative design with particular emphasis on the integration of buildings and landscaped areas which incorporate the principles of Ecologically Sustainable Development.*

The built form has been thoughtfully designed by CHC, whilst the landscape design has been well-integrated by Aspect Studios and the principles of ESD are effectively incorporated into the design (see ESD Report). The landscape design includes substantial new planting of vegetation that will create a green urban environment, enable the development of suitably-sized trees that are compatible with

an urban environment, and provide screening and cooling to buildings and the public domain.

*4. To provide a range of locational and development opportunities to suit a variety of business needs within a flexible employment zone.*

The site is located in the B4 Mixed Use zone, intended to accommodate a variety of employment-generating land uses. The proposed recreation facility is consistent with this objective and will make a significant positive contribution to the amenity of the centre and meet the needs of the community by providing employment opportunities and recreational services.

N/A

*5. To provide for the conservation of Bella Vista Farm Park and the protection of significant views to and from the Park.*

*6. To ensure that the Shire is served by an efficient transport system for the movement of people and goods and to provide for integration with existing and future transport systems operating in the region.*

The site is in a location that is well served by public transport and which is consistent with the principles of transit-oriented development.

#### **Comment:**

The location of the proposed building at the corner of the QIC development site will provide a focal point for entry to the precinct. The design is modern in character and the proposed setbacks will be appropriately landscaped with a mix of trees, shrubs, ground covers, grasses and climbing plants. The proposal includes the removal of a number of existing trees on the site to facilitate the proposed works, including the road construction, however replacement tree planting will be undertaken including within the road reserve, central median and cul-de-sac head.

The proposed design, materials and colours and landscape planting will result in a reasonable streetscape outcome which is in keeping with the desired modern character of the area. The external design of the building includes a saw tooth metal roof and a mix of external materials including brick, profiled metal cladding and concrete panels in grey and earth tones.

The site is bounded by existing or future roads on three sides and as such the proposed setbacks will not unreasonably impact on adjoining properties in regard to bulk and scale, shadow impacts or privacy and amenity.

The proposed setbacks will also not impact on sight distances for vehicles entering either the reconstructed section of Kentwell Avenue or the driveway entry to the building. In this regard the reconstructed section of Kentwell Avenue will be consistent with previous designs endorsed by Transport for NSW and incorporating the constructed signals.

The proposed variations to setbacks can be supported in this instance.

#### **b. Car Parking and Bicycle Parking**

DCP Part C Section 1 – Parking does not contain a specific requirement for an indoor recreation facility but provides the following rates for similar uses:

Gymnasium/Fitness Centre	1 space per 25m <sup>2</sup> of GFA
Tennis/Squash Courts	3 spaces per court plus 1 space per 5 seats where spectator seating/galleries are provided
Other Recreation Facility	Submit parking study to substantiate proposed car parking provisions

Bicycle parking is required at a rate of 1 per 4 employees plus one per 200m<sup>2</sup> GFA. Based on a maximum of 30 employees at peak times and a GFA of 6115m<sup>2</sup>, 39 (38.075) bicycle spaces are required.

Disabled spaces are required at a rate of 3% of the total required car parking.

The proposal also refers to a maximum capacity of 400 people per session, approximately 200 participants and 200 spectators.

The proposal is for 6115m<sup>2</sup> of GFA which includes a skate bowl, trampolines and cheer space, climbing gym, indoor bike ramp, gym, merchandise outlet and two food and beverage tenancies (licenced).

Based on the fitness centre rate of 1 space per 25m<sup>2</sup> of GFA, a total of 245 (244.6) spaces are required.

Parking for 104 vehicles (including four accessible spaces) is provided in the basement, 30 bicycle spaces (comprising 10 within the basement parking and 20 external to the building) and two motorcycle spaces.

The applicant has submitted justification for the variation and a summary from the applicant is:

*Based on the discussions and analysis presented above, we retain the view that the proposed car parking provision of 104 on-site car spaces, which equates to a rate of 1.8 car spaces per 100sqm, can be expected to be sufficient for the proposed development.*

*Moreover, whilst we understand that Council's holds the view that the on-street car spaces along the internal access road cannot be counted as part of the available development supply (as the road may ultimately become a Council road), we note that the additional 15-20 car parking spaces provided on this access road provide an additional buffer that will likely exist in some format for the foreseeable future. Accordingly, we are confident that sufficient car parking will be provided to meet the anticipated demands of the proposed development.*

*Notwithstanding our view that the proposed car parking supply is sufficient, we note that Stantec recommends that a Green Travel Plan is required as a Condition of Consent to ensure that the car parking demands are minimized as far as practicable. The recommendation as outlined in our TIA is reproduced as follows:*

*"... it is nevertheless recommended that a Green Travel Plan (GTP) is prepared for the proposed development to encourage sustainable transport modes as far as practicable and thus reduce car parking demands. Amongst other actions, this GTP could include a recommendation that the availability of car parking at the site be advertised on the centre's website such that patrons are aware of this provision prior to making their decision to travel*

*to the site. (Indeed, best practice would be to provide real-time parking information about the availability of car parking at the site)."*

*In this context, we consider that sufficient information has been provided to Council to confirm that the proposed car parking provision is appropriate.*

**Comment:**

The objective of the DCP is:

*To provide sufficient parking that is convenient for the use of residents, employees and visitors of the development.*

The proposal provides safe and convenient parking for patrons of the centre. The proposal also includes pay parking with Licence Plate Recognition and boom gates to control access to the parking area. The use of a pay parking system will also likely reduce longer stays within the carparking area.

The RMS Guide to Traffic Generating Development 2002 has been reviewed however it contains parking rates for recreational facilities with specific reference to squash courts, tennis courts, bowling alleys and bowling greens which are not comparable uses. The Guide also refers to parking for gymnasiums and refers to a minimum provision of 4.5 spaces per 100m<sup>2</sup> GFA and a maximum provision of 7.5 spaces per 100m<sup>2</sup> GFA for Metropolitan Sub-Regional areas. This would equate to a requirement for 276 – 459 spaces.

The site is located approximately 780m from the Castle Hill Metro Station and bus interchange where public transport is available. Bus stops are also located along Showground Road within walking distance from the site.

The proposal incorporates a variety of activities within the building and it is acknowledged that the component uses will be operated concurrently. This may result in some usage patterns where multiple areas of the building are used by the same patrons. This would assist in reducing parking for the development.

The applicant has also provided a modal split based on assumed travel patterns which indicate that around 50% of patrons who attend the site will travel by private vehicle and park on the site, with the remaining 50% using alternate travel arrangements. The applicant has also indicated that based on travel patterns, the average car occupancy is likely to be 2.5 person per car. These travel patterns will assist in reducing parking for the recreation centre.

The proposal parking is considered satisfactory in that it has an efficient design and layout.

As such the proposed parking provision is considered satisfactory.

### **3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

There are no current planning agreements entered into and there are no draft planning agreements being proposed for the site.

### **3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations**

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. There are no relevant matters in regard to the subject application.

### **3.6 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **3.7 Section 4.15(1)(c) - Suitability of the site**

The site has been zoned for a mixed use development outcome. The proposal is a suitable development for the site consistent with the zone objectives.

The proposal will provide for a recreation use which will provides an additional facility for residents, responds to the site characteristics and is considered to be a suitable development for the proposed lot.

### **3.8 Section 4.15(1)(d) - Public Submissions**

One submission was received to the proposal. This submission is considered in Section 5 of this report.

### **3.9 Section 4.15(1)(e) - Public interest**

The development provides a new recreation facility for residents within the immediate and broader area. The site is within an area which is serviced by public transports links including the Sydney Metro and bus services. On balance the proposal is consistent with the public interest.

## **4. Draft Precinct Plan for Castle Hill Strategic Centre**

The Draft Precinct Plan for the Castle Hill Strategic Centre was placed on public exhibition from 1 May 2023 to 31 July 2023. The Draft Precinct Plan includes sections addressing connectivity, land use, density and built form considerations.

The site is identified as a 'focus area for change' and the site is partly located in two areas as follows:

Focus Area 6 – Kentwell Avenue – area located to the east of Kentwell Avenue; and  
Focus Area 7 – Worthing Avenue – area located to the west of Kentwell Avenue.

The proposed building is located within Focus Area 6 – Kentwell Avenue. The Draft Precinct Plan states:

*A new private Indoor Sports Centre is envisaged at the corner of Showground Road and Kentwell Avenue, which will provide sporting opportunities including a skate bowl and climbing wall. It will act as a key destination extending from the emerging entertainment district, with potential for additional commercial growth in the longer term (beyond the 2036/2041 horizon).*

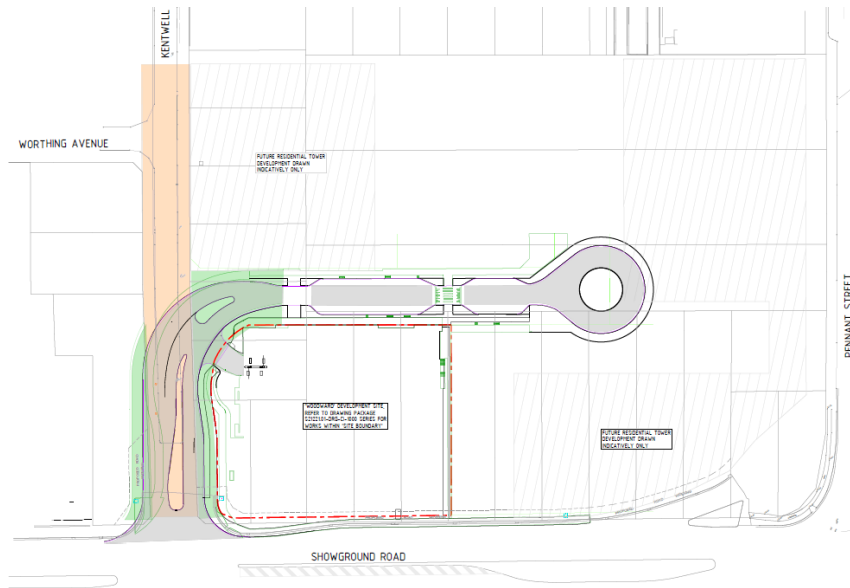
The proposal is consistent with the strategic vision for future development of the precinct.

## **5. Road Works**

The proposed works also include the reconstruction and re-opening of Kentwell Avenue at its southern intersection with Showground Road which is currently closed to traffic due to the significant level change associated with the Showground Road upgrade works including a modified signal design, realignment of the southern part of Kentwell Avenue and construction of a new road access and associated cul-de-sac head into the broader QIC owned site which will provide direct vehicle access to the recreation facility.

The applicant has proposed that the new road from Showground Road will be partially dedicated to Council and partially a private road. As shown on the plan below, the existing road reserve is shown in orange which does not fully align with the proposed road works due to the need to widen the new section of road at the Showground Road intersection to align with the constructed signalised intersection. The area shown in green below is the area proposed to be dedicated to Council and this includes part of the existing road reserve, the constructed traffic signal detectors and part of the new road. The area shown in grey will be a private road and will include two traffic calming devices (raised thresholds) and on-street parking bays. No Stopping signs will also be installed along the extent of the public road to the first threshold to ensure sight distance is maintained. As the eastern section of the proposed road will be private road, the road will also incorporate a 40km per hour speed limit to further assist in ensuring that sight distance to the vehicle entry point to the centre is satisfactory.

In the future there is potential that the currently proposed private section of road may be dedicated as a public road. In usual circumstances, a public road would not be subject to a reduced speed limit of 40 km per hour and contain raised thresholds. Should the road be later dedicated to Council, upgrade works may be required to be undertaken by the owner at that time and as such a condition has been recommended which requires that works be undertaken to upgrade the private road and also that a 19 metre wide road reserve be provided to cater for any adjustments required to the road.



## 6. REFERRALS AND SUBMISSIONS

### 6.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Sydney Metro	Clause 2.98 of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal is above the rail corridor.  Concurrence has been granted.	Y
<b>Referral/Consultation Agencies</b>			
Transport for NSW	Clause 2.122 - traffic generating development in Schedule 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal exceeds the trigger gross floor area, the site has access to a road that connects to a Classified Road within 90 metres and the site has 50 or more parking spaces and where the site has access to a road that connects to a Classified Road within 90 metres. A condition has been recommended.	Y



Endeavour Energy	Clause 2.48 Determination of development applications of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal includes a substation. A condition has been recommended.	Y
Sydney Water	Clause 2.161 Development permitted with consent of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal requires connection to Sydney Water's sewer and water supply system. Conditions have been recommended.	Y
Castle Hill Police	Referral undertaken in accordance with the requirements of the "Safer by Design Guidelines" and the Protocol between The Hills Shire Council and Castle Hill Police.	Comments have been provided regarding construction and on-going requirements. A condition has been recommended.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act) - NA</b>			

## 6.2 Council Referrals (internal)

The development application has been referred to various Council officers for technical review as outlined below.

Officer	Comments	Resolved
Engineering	Council's Senior Subdivision Engineer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Traffic	Council's Senior Traffic Engineer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Fire Safety	Council's Principal Co-ordinator Fire Safety has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Health	Council's Senior Environmental Health Officer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Waste	Council's Resource Recovery Project Officer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Landscape	Council's Senior Landscape Officer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y

Contributions	Council's Senior Forward Planner has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
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### 6.3 Community Consultation

The proposal was notified in accordance with the DCP from 20 December 2022 until 27 January 2023 which included an extended period over Christmas. On submission was received which is summarised below.

Issue	Council Comments
The SEE refers to a long term plan, including links to Castle Towers, parks, pedestrian links etc. No time frame for these links is given. For an indeterminate period, the development will stand alone, with access only to Showground Road.	The proposal refers to potential future links which are subject to separate applications. The proposal will have direct vehicle access to Showground Road and pedestrian access to local footpath connections on Showground Road.
The reference to Shine Chinese Community School as part of the Church site is incorrect. This church and school is at least 1 km further west, at 131-135 Showground Road.	It is acknowledged that the reference to the school is incorrect.
There is no reference to the Wesley Pre-School that operates on the church property. Access to the Pre-School is typically gained from Worthing Avenue and Kentwell Avenue, and concern is raised at the potential construction noise and construction vehicle access along these local streets during the hours of operation of the Pre-School.	The existing pre-school has vehicle access from either Worthing Avenue (primary entry) or Showground Road and the pre-school location has been considered in the assessment of the proposal. The submitted acoustic reports consider the Wesley Preschool which is considered as a non-residential receiver (classrooms/educational institution). A condition has been recommended in regard construction noise and compliance with the <i>Interim Construction Noise Guideline</i> however given the location of the pre-school and subject site, it is not considered that there an unreasonable impact from construction vehicles (See Condition 87).
It is difficult to see how the design "complements the overall visual character of the area" or will have a comparable built form to future high quality medium/high density residential construction. The articulated roof, while it may be practical, does not relate to future	The proposal is a modern design which is in keeping with the desired future character of the Castle Hill Strategic Centre area and the Focus Areas identified within the Castle Hill Strategic Centre Draft Precinct Plan.

residential development. The predominant use of metal cladding does not reflect accepted residential construction preferences.	
Provision for pedestrian movement (access to and around the development) is a concern - all footpaths lead to the development and there is no option to enter Kentwell Avenue from the access road.	The proposal does not include access to the existing (northern) section of Kentwell Avenue.
The Accessibility Report deals with access issues relating to the structure but does not address accessibility in the public domain.	The proposal will be required to comply with the requirements of the BCA which includes access requirements to the public road frontages.
Part of the site is subject to a height restriction of 7m. Part of the structure encroaches on this restriction. As the restriction was imposed as a transition zone when the 28m building height along Kentwell Avenue was anticipated, it no longer appears relevant and serves no real purpose. The proposed variation to the development standard is considered to be reasonable in the circumstances.	The proposed variation to the LEP height limit has been addressed above and is satisfactory. In this regard, the majority of the site has a 28 metre height limit, with a 7 metre height limit on the western edge of the site (See LEP Height Map in Attachment G). The building encroaches approximately 5.6 metres into the lower height area but it is considered that a reasonable interface is provided to development west of Kentwell Avenue. The consistent height of the building across the site provides for a functional recreational facility and does not result in unreasonable overshadowing or privacy impacts.
The Construction Noise and Vibration Management Plan does not identify the (Heritage) cottage on the church property as a noise receiver. This building is used for administrative and counselling activities associated with the work of the church. It is closer to the site than the church buildings, which are identified. A 45dB noise limit should be the target.	A condition has been recommended which requires operational noise limits included in the Construction Noise and Vibration Plan which will also apply to the heritage cottage, as well as require community notification and complaint handling management (See Condition 110).
The use of non-compliant machinery should be carefully managed to limit unacceptable noise.	This is not a matter for consideration with the Development Application. Notwithstanding this, conditions have been recommended regarding noise emissions during construction (See Conditions 30, 31 and 87).
Details of a noise monitoring plan for the Pre-School (outdoor	Construction is limited to Monday to Saturday with no works on Sunday and

activities are regular), Sunday worship (where windows are open to manage COVID-related concerns) as well as the other regular activities in the church buildings and adjacent cottage, are requested.	Public Holidays. During operation of the recreation centre the activities will be required to comply with the project specific noise criteria, which specifically outlines the church as 38 dBA $L_{eq(15 \text{ min})}$ when in use (internal) and the preschool classroom as 33 dBA $L_{eq(15 \text{ min})}$ during the noisiest 1-hour period (internal). Further, a condition is recommended to require an acoustic compliance report within 3 months of the operation commencing. The external activity areas of the church and preschool is included in this condition (See Conditions 76, 110 and 117.
Parking for construction workers has not been addressed. There is limited on-street parking at present. All parking should be contained on QIC land.	A condition has been recommended which requires that construction parking be contained on the subject site (See Condition 88).
The Stormwater Management Report acknowledges the feasibility of a link from the access road to Kentwell Avenue, but this does form part of the DA. This should be further considered, if initially only for pedestrian purposes.	A vehicle link between the northern (existing) and southern (proposed) parts of Kentwell Avenue is not supported (See Condition 5).
The DA does not address the impact on the local road network. The Pre-school generates traffic in Worthing Avenue and Kentwell Avenue. Parking in Kentwell Avenue restricts movement (only one traffic lane is possible at times). The Development can be expected to increase demand for on-street parking in Kentwell and Worthing Avenues, notwithstanding access issues. This will increase on weekends. Consideration should be given to extending the existing parking restrictions on both sides of Kentwell Avenue to reflect the increased usage on Saturday and Sunday.	Council's Senior Traffic Engineer has reviewed the proposal and raised no objection in respect to local traffic impacts. Vehicle access will be from Showground Road with no vehicle access to Kentwell Avenue. The adequacy of parking has been addressed in Section 3 above and the parking provided for the development is considered appropriate. On-street parking conditions will be monitored after the facility is operative. If on-street is a concern at that time, the existing parking restrictions can be reviewed and changed through the Local Traffic Committee subject to community consultation and Council approval.
The Proponent says there will be no detrimental impact on the Showground/Kentwell intersection. The absence of detailed proposals for the remainder of the site means that the long term effect of the	The proposal has been reviewed by Transport for NSW who have raised no objection in respect to the Showground Road/Kentwell Avenue intersection. In this regard the intersection was constructed to cater for the retail expansion of the Castle

proposed alterations cannot be assessed.	Towers shopping centre. As such the capacity of the intersection is adequate for the proposed application. Any future DAs for works within the precinct will be assessed separately.
The Traffic Report observes that Consent 864/2015/JP (and amendments) is active. The proposed form of the access road will render some conditions irrelevant or inappropriate. Action should be taken to address this.	It is acknowledged that some works under DA 864/2015/JP have been undertaken. The subject application amends some details of the intersection design and as such supersedes the previous application.
The Traffic Impact Report notes that a parking study should inform the parking demand. However, Council's contention that the rate for gymnasiums should be considered has merit, and in this case, could be tested by a sensitivity analysis to confirm the conclusions reached regarding parking adequacy. Similarly, the assumed mode splits and vehicular occupancy rates are not justified in the report. These should be tested.	The adequacy of parking has been addressed in Section 3 above and the parking provided for the development is considered appropriate.
The lack of pedestrian links to the commercial part of Castle Towers is a concern, given that the number of spaces relies on this assumption.	There is an existing footpath along Showground Road and Pennant Street which provides pedestrian access between the subject site and Castle Towers.
The SIDRA analysis should be reviewed to ensure that the steep grades on the access road are taken into account for vehicles exiting the development. Further, the basis for the origin and destination split (70/30) is not clear. Sensitivity analysis would increase confidence in the conclusion.	The proposal has been reviewed by Transport for NSW who have raised no objection to the proposal.

## 7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported. The proposal includes a Clause 4.6 variation request to height. The Clause 4.6 request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard in this instance.

It is considered that the key issues outlined above have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at Attachment A.

## **8. RECOMMENDATION**

That the Development Application be approved subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Locality Plan
- Attachment C: Aerial Photograph
- Attachment D: Architectural Plans
- Attachment E: Proposed Height Plan
- Attachment F: LEP Height Limit Plan
- Attachment G: Clause 4.6 Request

## ATTACHMENT A: DRAFT CONDITIONS OF CONSENT

### GENERAL MATTERS

#### **1. Development in Accordance with Submitted Plans**

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

#### **REFERENCED PLANS AND DOCUMENTS**

DRAWING NO.	DESCRIPTION	DATE
DA000	Cover Sheet	24.11.2023
DA100	Site & Location Plan	24.11.2023
DA101	Existing Site Conditions	24.11.2023
DA102	Demolition Plan	24.11.2023
DA103	Proposed Site Plan	24.11.2023
DA104	Staging Plan	24.11.2023
DA105	Proposed Site Setbacks	24.11.2023
DA200	Basement Plan	25.03.2024
DA201	Ground Floor Plan	24.11.2023
DA202	Level 1 Mezzanine Plan	24.11.2023
DA203	Level 2 Mezzanine Plan	24.11.2023
DA204	Roof Plan	24.11.2023
DA205	F & B Tenancy 01	24.11.2023
DA206	F & B Tenancy 02	24.11.2023
DA400	Elevations 1	25.03.2024
DA401	Elevations 2	25.03.2024
DA450	Sections 1	24.11.2023
DA451	Sections 2	24.11.2023
DA510	Shadow Diagrams	24.11.2023
DA800	Artist Impression 1	25.03.2024
DA801	Artist Impression 2	24.11.2023
DA802	Artist Impression 3	24.11.2023
DA803	Artist Impression 4	24.11.2023
SK001	Corner Impression	25.03.2024
DA500	Material Palette	24.11.2023
C1 – 1010	General Arrangement Plan	25.03.2024
L001	Landscape Plan	8/12/2023 Rev. I

L002	Planting Plan	8/12/2023 Rev. I
L003	Tree Retention and Removal Plan	8/12/2023 Rev. D
L004	Deep Soil Plan	8/12/2023 Rev. D
B1830	Survey Plan Sheets 1 -5	

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

## **2. Provision of Parking, Bicycle and Motorcycle Spaces**

The development is required to be provided with:

- a. 104 vehicles (including four accessible spaces) within the basement;
- b. 30 bicycle spaces (comprising 10 within the basement parking and 20 external to the building); and
- c. two motorcycle spaces within the basement.

These car parking spaces shall be available for off street parking at all times.

## **3. Gross Floor Area**

The gross floor area of the development is limited to 6115m<sup>2</sup>.

## **4. Vehicle and Pedestrian Access to Be Maintained**

Vehicle and pedestrian access is to be maintained at all times to Lot 30 DP 28896, No. 4 Kentwell Avenue at all times during the construction period.

## **5. No Vehicle Access permitted between the Northern and Southern Parts of Kentwell Avenue**

No vehicle access is permitted between the northern and southern parts of Kentwell Avenue.

## **6. Pay Parking**

Pay parking is permitted within the basement parking area. The pricing strategy must provide a four hour free period for patrons and either a free or reduced parking rate for staff and tenants.

## **7. Future Dedication of New Road**

Should the new road be dedicated to Council in the future, the owner will be required to undertake any rectification works as specified by Council prior to the dedication.

## **8. No Land Subdivision**

No land subdivision is approved under the subject Development Application with the exception of minor subdivision works to create the approved public road and road reserve. A separate Development Application is required for land subdivision.

## **9. Separate Application for Signs**

No signage is approved under the subject Development Application. A separate application is to be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.

## **10. Tree Removal**

Approval is granted for the removal of trees as indicated in the Tree Retention and Removal Plan prepared by Aspect Studios Rev D dated 8/12/23.

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



### **11. Planting Requirements**

All trees planted as part of the approved landscape plan pursuant to Condition 1 of this consent are to be pot sizes as indicated on the plant schedule. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers and ornamental grasses are to be minimum 150mm pot sizes. Any species that need substituting requires confirmation from Council.

### **12. Subdivision Concept Plan (Public Road & Kentwell Road Widening)**

The extent of creation of new public road & Kentwell Road widening component of the development must be carried out generally in accordance with the General Arrangement Plan Project No. S21221.00 Drawing No. CI-1010 Revision 5 dated 25/03/2024 prepared by BG&E Survey Office except where amended by other conditions of consent.

Note:

The final subdivision plan must be prepared by a registered surveyor.

The final dimensions of the road widening of Kentwell Avenue must be reflective to the Work As Executed plans accepted by council for the subdivision works.

### **13. Protection of Public Infrastructure**

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

### **14. Structures Adjacent to Piped Drainage Easements**

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

### **15. Requirements for Council Drainage Easements**

No works are permitted within existing or proposed public drainage easements unless approved by Council. Where works are permitted, the following requirements must be adhered to:

- Provision for overland flow and access for earthmoving equipment must be maintained.
- The existing ground levels must not be altered. No overland flow is to be diverted out of the easement.
- No fill, stockpiles, building materials or sheds can be placed within the easement.
- Open style fencing must be used. New or replacement fencing must be approved by Council.

### **16. Vehicular Access and Parking**

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps are required, with their design and construction complying with:

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2

- DCP Part C Section 1 – Parking
- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- The proposed driveway location at the corner is approved subject to the development maintaining the traffic speed of 40km/h within the private road to ensure the sight distance.
- The building design around the bicycle parking area must provide adequate opening as shown on the architectural drawings DA800 and SK001 dated 25/03/2024 to avoid visual obstructions recommended by the traffic report.
- Installation of adequate traffic signs relating 40km/h within the development site.
- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site. In rural areas, all driveways and car parking areas must provide for a formed all weather finish.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

#### **17. Vehicular Crossing Request**

The driveway requires the lodgement of a separate vehicular crossing request accompanied by the applicable fee as per Council's Schedule of Fees and Charges. The vehicular crossing request must be lodged before an Occupation Certificate is issued. The vehicular crossing request must nominate a contractor and be accompanied by a copy of their current public liability insurance policy. Do not lodge the vehicular crossing request until the contractor is known and the driveway is going to be constructed.

#### **18. Excavation/ Anchoring Near Boundaries**

Earthworks near the property boundary must be carried out in a way so as to not cause an impact on adjoining public or private assets. Where anchoring is proposed to support excavation near the property boundary, the following requirements apply:

- Written owner's consent for works on adjoining land must be obtained.
- For works adjacent to a road, anchoring that extends into the footpath verge is not permitted, except where expressly approved otherwise by Council, or Transport for NSW in the case of a classified road.
- Where anchoring within public land is permitted, a bond must be submitted to ensure their removal once works are complete. The value of this bond must relate to the cost of their removal and must be confirmed by Council in writing before payment.
- All anchors must be temporary. Once works are complete, all loads must be removed from the anchors.
- A plan must be prepared, along with all accompanying structural detail and certification, identifying the location and number of anchors proposed.
- The anchors must be located clear of existing and proposed services.

Details demonstrating compliance with the above must be submitted to the Principal Certifier and included as part of any Construction Certificate or Occupation Certificate issued.

### **19. Security Bond Requirements**

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

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

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

### **20. Subdivision Certificate Preliminary Review**

Prior to the submission of a Subdivision Certificate application a draft copy of the final plan, administration sheet and Section 88B instrument (where included) must be submitted in order to establish that all conditions have been complied with.

Street addresses for the lots within this subdivision will be allocated as part of this preliminary check process, for inclusion on the administration sheet.

### **21. Street Trees**

Street trees must be provided for the section of Kentwell Avenue fronting the development site and the private road within the site spaced between 7m and 10m apart. The location of street trees must be considerate of driveways, services, drainage pits and sight lines at intersections.

No trees on the private road within the sight distance zone shall be permitted between the driveway and the first traffic median identified in the traffic report.

The species and size of street trees must comply with the requirements of Council. This includes a street tree masterplan where one exists (check Council's website for details). A street tree planting plan demonstrating compliance with the above must be submitted for written approval before any street trees are planted.

The establishment of street tree planting is included in the maintenance bond required to be paid. Alternatively, street trees can be planted by Council subject to payment of the applicable fee as per Council's Schedule of Fees and Charges.

### **22. Process for Council Endorsement of Legal Documentation**

Where an encumbrance on the title of the property is required to be released or amended and Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges. Sufficient time should be allowed for the preparation of a report and the execution of the documents by Council.

### **23. Road Opening Permit**

Should the subdivision/ development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

#### **24. Subdivision Works Approval**

Before any works are carried out a Subdivision Works Certificate must be obtained and a Principal Certifier appointed. The plans and accompanying information submitted with the Subdivision Works Certificate must comply with the conditions included with this consent.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

#### **25. Construction Certificate**

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

#### **26. Building Work to be in Accordance with BCA**

All building work must be carried out in accordance with the provisions of the Building Code of Australia as referenced by Section 69 of the Environmental Planning and Assessment Regulation 2021.

#### **27. Contamination**

Any new information, that may come to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council's Manager – Environment and Health.

#### **28. Acoustic Requirements**

The recommendations of the *Noise Impact Assessment Acoustic Report* (Prepared by ADP Consulting, referenced as SYD2014 dated 23 March 2023 Revision 03), in particular Section 7.1:

- All external glazed doors and windows to remain closed after 6pm.
- All glazed doors and windows to the north to remain closed at all times.
- External wall, roof/ceiling and glazing/ door constructions to follow the recommendation presented in Section 5.1.
- Music in the gym during night-time period (6am – 7am) should not exceed 85dB(A) L10.
- The pickup zone to the north cannot be used during night-time period (10pm – 7am).
- Deliveries to the site shall occur during daytime period only.
- Disposal of bottle/ waste should be done prior to 10pm, unless done within an internal area.

#### **29. Retention of Trees**

All trees not specifically identified on the approved plans for removal are to be retained with remedial work to be carried out in accordance with the Tree Protection Plan prepared by Birds Tree Consultancy dated 30/10/23.

#### **30. Control of early morning noise from trucks**

Trucks associated with the construction of the site that will be waiting to be loaded must not be brought to the site prior to 7am.

#### **31. Control of Noise from Trucks**

The number of trucks waiting to remove fill from the site must be managed to minimise disturbance to the neighbourhood. No more than one truck is permitted to be waiting in any of the streets adjacent to the development site.

### **32. Secure Properties and Maintain Vegetation**

The houses that are currently located on the development site are to be made secure so that the public cannot access the house or dump rubbish on the land. The vegetation (excluding live trees, live shrubs and plants under cultivation) on the properties is to be maintained and controlled so that the properties do not become overgrown and thus creating an unsafe and / or unhealthy environment.

### **33. Imported 'Waste Derived' Fill Material**

The only waste derived fill material that may be received at the development site is:

- virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); or
- any other waste-derived material the subject of a resource recovery exemption under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifier on request.

### **34. Adherence to Waste Management Plan**

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

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

[www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

### **35. Access and Loading for Waste Collection**

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2 for the standard 8.8m long Medium Rigid Vehicle (minimum 3.5m clear vertical clearance exception). The following requirements must also be satisfied.

- All manoeuvring areas for waste collection vehicles must have a minimum clear vertical clearance of 3.5m. Any nearby areas where the clear headroom is less than 3.5m must have flexible striker bars and warning signs as per Australian Standard 2890.1 to warn waste collection contractors of the low headroom area.
- All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading and traffic circulation is appropriately controlled.
- Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
- The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three point turn).
- The designated waste service bay must allow additional space servicing of bins (wheeling bulk bins to the back of the waste collection vehicle for rear load collection).

- The loading area must have a sufficient level of lighting and have appropriate signage such as “waste collection loading zone”, “keep clear at all times” and “no parking at any time”.
- Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of medium sized vehicles, remote access or alternative solution which ensures there is no requirement for waste collection contractors to exit the cab.

### **36. Waste and Recycling Collection Contract**

There must be a contract in place with a licenced contractor for the removal and lawful disposal of all waste generated on site. Written evidence of a valid and current collection and disposal contract must be held on site at all times and produced in a legible form to any authorised officer of the Council who asks to see it.

### **37. Management of Construction and/or Demolition Waste**

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

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

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

### **38. Disposal of Surplus Excavated Material**

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

### **39. Construction of Waste Storage Area**

The waste storage area must be designed and constructed in accordance with the following requirements.

- The waste storage area must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins associated with the development.
- The layout of the waste storage area must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the waste storage area must be constructed of brickwork.

- The floor of the waste storage area must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).
- The waste storage area must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors.
- All doors of the waste storage area, when fully opened, must be flush with the outside wall(s) and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.
- The waste storage area must be adequately ventilated (mechanically if located within the building footprint). Vented waste storage areas should not be connected to the same ventilation system supplying air to the Indoor Recreation Facility.
- The waste storage area must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the waste storage area, it is not to conflict with the space designated for the placement of bins.
- The waste storage area must be provided with internal lighting such as automatic sensor lights.
- The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance is this grade to be exceeded. It is to allow the safe and efficient servicing of bins.
- The waste storage area must have appropriate signage (EPA approved designs can be found on the NSW EPA website) mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation
- Finishes and colours of the waste storage area are to complement the design of the development.

#### **Example Bin Measurements (mm)**

240L: 735 (d) 580 (w) 1080 (h) 660L: 850 (d) 1370 (w) 1250 (h) 1100L: 1245 (d) 1370 (w) 1470 (h)

#### **40. Endeavour Energy Requirement**

Applicants will need to submit an appropriate application based on the maximum demand for electricity for connection of load to Endeavour Energy.

#### **41. Police Requirements**

The following is required by the NSW Police:

- Fencing is required to be vertical style to stop unauthorised access, with spaces left between vertical elements to limit physical access.
- Materials chosen should have regard to the potential for graffiti.
- It is recommended that during the construction phase security sensor lights be used, that security guards monitor the site and that CCTV be used.
- Paint the basement white to reflect light and install park smarter signage.

- v. Police recommend the use of CCTV at entry/exit points to the carpark, within the carparking area and common areas. Police also suggest the use of height stickers on entry/exit doors.
- vi. Signage is to be erected to ensure that vehicle and pedestrian entry/exit points to the development are visible in order to limit access. The signage should also include details of what security treatment has been implemented.
- vii. Vegetation is to be maintained at all times to allow natural surveillance and reduce opportunities for concealment.
- viii. Lighting is to be utilised within the site in accordance with Australian Standards.
- ix. All public access points are to be clearly marked.
- x. Police suggest the use of security guards on the site outside of hours of operation.

#### **42. Transport for NSW Requirements**

- a. The Applicant shall obtain TfNSW approval under section 87 (4) of the *Roads Act, 1993* for the Traffic Control Signal (TCS) alteration on the Kentwell Avenue leg at the intersection of Showground Road/Ketwell Avenue/Cheriton Avenue shall be designed to meet TfNSW requirements. The TCS plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.
- b. The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements (available on [www.rms.nsw.gov.au](http://www.rms.nsw.gov.au)). The certified copies of the TCS design and civil design plans shall be submitted to TfNSW for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Please send all documentation to [Development.Sydney@transport.nsw.gov.au](mailto:Development.Sydney@transport.nsw.gov.au). TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer will be required to enter a Works Authorisation Deed (WAD) for the abovementioned works.
- c. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au).
- d. A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.
- e. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.
- f. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by



TfNSW. Please send all documentation to  
development.sydney@transport.nsw.gov.au

- g. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- h. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the above work, and as required by the various public utility authorities and/or their agents.
- i. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on the surrounding classified network during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.
- j. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

#### **43. Sydney Metro Requirements**

Compliance with the requirements of Sydney Metro as outlined in their letter dated 15 February 2023 Reference SM-23-00018995 as shown at Attachment A to this consent.

### **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### **44. Onsite Stormwater Detention – Hawkesbury River Catchment Area**

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters for the site storage requirement and permissible site discharge.

The drawings listed below, form part of the set of stormwater concept Project Ref: S21221.01 prepared by BG&E Consultants are for development application purposes only and is not to be used for construction.

Drawing No.	Description	Revision and Date
CI-0000	Locality Plan Drawing Index	Rev C – 02/11/2023
CI-0200	Stormwater Management Plan	Rev E – 02/11/2023
CI-0300	Catchment Plan	Rev D – 02/11/2023
CI-0340	OSD Plan, Sections & Details	Rev D – 02/11/2023

The detailed design must reflect the stormwater concept plan and the following necessary changes:

- a) The works outside recreation centre are to be referenced in Subdivision Works approval.
- b) The earthworks, particularly the batter along the northern side of curved part of Kentwell Avenue shown on the Amended Stormwater Concept Plan must be revised to reflect the Subdivision Works drawings.

- c) The combined underground OSD tank and WSUD chamber must be reflective to the final road stormwater design on street network.

Water sensitive urban design elements are to be located with the OSD tank as shown on the plans and information submitted with the application.

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

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

All model parameters and data outputs are to be provided.

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

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

#### **45. Works on Adjoining Land**

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate or Subdivision Works Certificate is issued.

#### **46. Security Bond – Road Pavement and Public Asset Protection**

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$110,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the road frontage of the subject site plus an additional 50m on either side (108.5m – Worthing Avenue and Kentwell Avenue) multiplied by the width of the road (8.5m).

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

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

#### **47. Security Bond – External Works**

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction,

completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The bond amount must be confirmed with Council prior to payment. The tendered value of the work must be provided for checking so the bond amount can be confirmed.

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

The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.

#### **48. Engineering Works**

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

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

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

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

The set of Concept Subdivision Works engineering plans prepared by BG&E Consultants Cover Sheet drawing S21221.00 drawing CI-0000 Revision E is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

##### **a) TfNSW Approval**

A copy of the approved construction drawings and associated documents relating to Intersection design of Showground Road and Kentwell Avenue must be provided to Council.

The subdivision works drawings must be reflective to the TfNSW approval.

##### **b) Full Width Road Construction**

The full width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath verge/ Parking/ Carriageway / Parking/ Footpath) (m)
Private road	Road Type: Access Road 3.5m/ 3m/ 6m/ 2.3m/ 3.5m (18.3m) Pavement Design: Access Road (Design Guidelines Section 3.12)

The total width of 18m wide road shown on the set of Subdivision Works drawings must be amended to reflect the total width of 18.3m in accordance with the 'Typical Cross-section' forms part of the Landscape package Revision K dated 7/11/2023. Details provided above.

Except where a modified kerb treatment is required (such as for roadside bio-retention swales) roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

The shared cycle and pedestrian path must be amended to be a minimum of 2.5m wide.

A two-way cross fall with a crown in the middle of the carriageway is to be provided.

With respect to private roads, the intersection needs to delineate the public road from the private road using a gutter crossing rather than kerb returns, pavement threshold treatment or similar.

Note:

Should the road be later dedicated to Council in future, upgrade works will be required to be undertaken by the owner at that time to comply with relevant council's design and construction standards.

The upgrade will also require widening the road reserve to a minimum 19 metre wide unless varied standards apply according to the DCP.

All roads if dedicated to council they can only be approved, inspected, and certified by Council.

### **c) Kentwell Avenue Upgrade Works - Full Width Road Reconstruction**

The southern side of Kentwell Avenue must be reconstructed to a full width road standard. The full width road design must be generally in accordance with the set of subdivision works concept drawing no. S21221.00 drawing no. CI-0010 Revision G 25/03/2024.

However, the design must reflect to the TfNSW construction approval referred to in the item (a) above.

Except where a modified kerb treatment is required (such as for roadside bio-retention swales) roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

The shared cycle and pedestrian path must be amended to be a minimum of 2.5m wide.

Except where a one-way cross fall is required (such as for roadside bio-retention swales) all roads are to have a two-way cross fall with a crown in the middle of the carriageway.

The existing drainage pipe within southern part of Kentwell Avenue must be removed with the reconstruction works.

### **d) Turning Head**

A temporary turning head is required at the eastern end of the private road potentially extending into the residue parcel of Site B to be created upon the new public and private roads.

The temporary turning head at the end of private road must be designed to provide a diameter of 19m measured from the edge of pavement.

### **e) Signage and Line Marking Requirements/ Plan**

A signage and line marking plan must be submitted with the detailed design. This plan needs to address street name signs and posts, regulatory signs and posts (such as no parking or give way signs), directional signs and posts (such as chevron signs), speed limit signs and posts and line marking, where required.

Thermoplastic line marking must be used for any permanent works. Any temporary line marking must be removed with a grinder once it is no longer required, it cannot be painted over.

Details for all signage and line-marking must be submitted to Council's Construction Engineer for checking prior to works commencing. For existing public roads, signs and line marking may require separate/ specific approval from the Local Traffic Committee.

Street name signs and posts must be provided in accordance with the above documents and Council's Standard Drawing 37. With respect to street name signs specifically, all private roads must include a second sign underneath which reads "private road".

#### **f) Driveway Requirements**

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's Driveway Specifications.

The proposed driveway/s must be built to Council's heavy duty standard.

On high level sites a grated drain must be provided on the driveway at the property boundary.

#### **g) Footpath Verge Formation**

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

#### **h) Concrete Cycleway/ Shared Path**

A 2.5m wide concrete cycleway/ shared path, including access ramps at all intersections, must be provided on the eastern side of Kentwell Avenue and southern side of private road.

#### **i) Disused Layback/ Driveway Removal**

All disused laybacks and driveways must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.

#### **j) Service Conduits**

Service conduits to the proposed development and the residue lot, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown on the engineering drawings.

#### **k) Earthworks/ Site Regrading**

Earthworks and retaining walls are limited to those locations and heights shown on the concept subdivision works plan prepared by BG&E Consultants. Where earthworks are not shown on the approved plan the topsoil within lots must not be disturbed. Retaining walls between lots must be located on the high side lot that is being retained, save the need for easements for support on the low side lot adjacent.

#### **l) Stormwater Drainage – Pipe Extension**

Street drainage network shown on the Subdivision works must incorporate adequate new kerb inlet pits, and the street drainage to be extended from the existing pit downstream. The pipe extension must be located under the proposed kerb alignment.

The street drainage must include adequate inlet pits on Kentwell Avenue for catering any overland flow from Showground Road entering Kentwell Avenue.

#### **m) Stormwater Drainage – Temporary Works**

Grassed swale drains or temporary piped drainage must be installed to intercept, control and redirect surface stormwater runoff from upstream undeveloped properties.

#### **49. Section 7.12 Contribution**

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$328,900.32** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

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

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

As per Council's exhibited Fees and Charges effective from 1 July 2022, **Council will no longer accept payments by cash or by cheque.** Payments will be accepted via Debit or Credit Card or Direct Debit from a bank account.

#### **50. Building Plan Approval**

The approved plans must be submitted to the Sydney Water **Tap in™** online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The **Tap in™** service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's **Tap in™** online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

Sydney Water recommends developers apply for Building Plan approval early as in some instances the initial assessment will identify that an Out of Scope Building Plan Approval will be required.

#### **51. Erosion & Sediment Control Plan**

Submission of an Erosion and Sediment Control Plan to the Principal Certifier, including details of:

- a) Allotment boundaries
- b) Location of the adjoining roads
- c) Contours
- d) Existing vegetation
- e) Existing site drainage
- f) Critical natural areas

- g) Location of stockpiles
- h) Erosion control practices
- i) Sediment control practices
- j) Outline of a maintenance program for the erosion and sediment controls

(NOTE: For guidance on the preparation of the Plan refer to 'Managing Urban Stormwater Soils & Construction' produced by the NSW Department of Housing).

## **52. Acoustic treatment of ramps and reverberation control**

Treatment recommendations for vibration isolation of the ramps from the building structure (required to prevent structure borne noise), and treatments for reverberation time control, shall be prepared by the acoustic consultant and included in construction plans.

## **PRIOR TO WORK COMMENCING ON THE SITE**

### **53. Details and Signage - Principal Contractor and Principal Certifier**

#### **Details**

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

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

#### **Signage**

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

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

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

### **54. Management of Building Sites**

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

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

### **55. Consultation with Service Authorities**

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

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

#### **56. Approved Temporary Closet**

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

#### **57. Tree Protection Fencing**

Prior to any works commencing on site (including demolition) Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. The location of fencing shall be as per the Tree Protection Plan prepared by Birds Tree Consultancy dated 30/10/23.

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

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

The location of tree protection fencing can only be altered by the Project Arborist. The temporary relocation or removal of tree protection fencing to undertake works within the TPZs of trees to be retained is strictly to be undertaken under supervision of the Project Arborist.

#### **58. Tree Protection Signage**

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

#### **59. Mulching within Tree Protection Zone**

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

#### **60. Trenching within Tree Protection Zone**

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

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

#### **61. Property Condition Report – Public Assets**

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

- Planned construction access and delivery routes; and



- Dated photographic evidence of the condition of all public assets.

## **62. Traffic Control Plan**

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

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

## **63. Erection of Signage – Supervision of Subdivision Work**

In accordance with the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- The name, address and telephone number of the Principal Certifier (Council);
- The name and telephone number (including after hours) of the person responsible for carrying out the works;
- That unauthorised entry to the work site is prohibited.

This signage must be maintained while the subdivision work is being carried out and must be removed upon completion.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

## **64. Contractors Details**

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

## **65. Erosion and Sediment Control/ Soil and Water Management**

The approved ESCP or SWMP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

## **66. Pavement Design**

A pavement design based on Austroads (A Guide to the Structural Design of Road Pavements) and prepared by a geotechnical engineer must be submitted to Council for approval before the commencement of any pavement works.

The pavement design must be based on sampling and testing by a NATA accredited laboratory of the in-situ sub-grade material and existing pavement material. Details of the pavement design and all tests results, including design California Bearing Ratio values for the subgrade and design traffic loadings, are to be provided.

## **67. Engagement of a Project Arborist**

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

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

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

#### **68. Erosion and Sedimentation Controls**

Erosion and sedimentation controls shall be in place prior to the commencement of site works and maintained throughout construction activities, until the site is landscaped and/or suitably revegetated. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

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

#### **69. Stabilised Access Point**

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

#### **70. Site Water Management Plan**

A Site Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction" (Blue Book)* produced by the NSW Department of Housing. The plan is to be kept on site at all times and made available upon request.

#### **71. Erosion & Sediment Control Plan Kept on Site**

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

#### **72. Demolition Works and Asbestos Management**

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

#### **73. Discontinuation of Domestic Waste Services**

Council provides a domestic waste service to the property subject to this Development Application. This service must be cancelled prior to demolition of the existing dwelling or where the site ceases to be occupied during works, whichever comes first. You will continue to be charged where this is not done. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council. To satisfy this condition, the Principal Certifying Authority must contact Council on (02) 9843 0310 at the required time mentioned above to arrange for the service to be discontinued and for any bins to be removed from the property by Council.

#### **74. Waste Management Details Required**

Prior to the commencement of works, the location of waste disposal and recycling for all construction and/ or demolition waste materials (bricks, concrete, timber and so on) must be

submitted to and approved by the Principal Certifying Authority. Alternatively, details of an appropriately licensed skip bin hire company or site clean company can be provided where the company is engaged to undertake all works during construction of the development (collection, transportation and disposal).

#### **75. Validation report and clearance certificate**

A validation report for the footprint of the indoor recreation centre development and associated roadworks that are part of this consent, shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following:

- The degree of contamination originally present;
- The type of remediation that has been completed;
- A Clearance Certificate in accordance with Clause 474 of the Work Health and Safety Regulation 2017 for any asbestos removal works; and
- A statement which clearly confirms that the land is suitable for the proposed use.

### **DURING CONSTRUCTION**

#### **76. Hours of Work**

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

Monday to Saturday - 7.00am to 5.00pm;

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

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

#### **77. Roof Water Drainage**

Gutter and downpipes to be provided and connected to an approved drainage system upon installation of the roof covering.

#### **78. Standard of Works**

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

#### **79. Critical Stage Inspections – Subdivision Works**

The subdivision works must be inspected by Council in accordance with the schedule included in Council's Works Specification Subdivisions/ Developments. A minimum of 24 hour's notice is required for inspections. No works are to commence until the first inspection has been carried out.

#### **80. Stockpiles**

Stockpiles of topsoil, sand, aggregate or other material capable of being moved by water shall be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

#### **81. Mechanical Ventilation in Food Premises**

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

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

AS1668.1:2015 – *The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings*; and

AS1668.2:2012 – *The use of ventilation and air-conditioning in buildings PART 2: mechanical ventilation in buildings*.

## **82. Dust Control**

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

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

## **83. Project Arborist**

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

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

## **84. Construction and Fit-out of Food Premises**

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

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

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

## **85. Critical Stage Inspections and Inspections Nominated by the Principal Certifier**

Section 6.6 of the Environmental Planning and Assessment Act 1979 requires critical stage inspections to be carried out for building work as prescribed by Section 61 of the Environmental Planning and Assessment (Development Certification and fire Safety)

Regulation 2021. Prior to allowing building works to commence the Principal Certifier must give notice of these inspections pursuant to Section 58 of the Environmental Planning and Assessment (Development Certification and fire Safety) Regulation 2021.

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

#### **86. Rock Breaking Noise**

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.

#### **87. Construction Noise**

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*.

#### **88. Parking during Construction Works**

During construction works, all vehicles associated with the construction site are to be parked on the subject site. Vehicles are not permitted to be parked on Showground Road, Kentwell Avenue or other local reads.

### **PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE**

#### **89. Landscaping Prior to Issue of any Occupation Certificate**

The landscaping of the site shall be carried out in accordance with the relevant "Planting Requirements" Condition of the subject Development Consent prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plans by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

#### **90. Property Condition Report – Public Assets**

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

#### **91. Consolidation of Allotments**

All allotments included in this consent must be consolidated into a single allotment before an Occupation Certificate is issued unless the consolidation forms part of the subdivision creating public and private roads, and a residue lot. A copy of the registered plan must be submitted to Council.

#### **92. Pump System Certification**

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a hydraulic engineer.

### **93. Registration of Subdivision**

The registration of the subdivision component relating to Kentwell Road widening and creation of public road shown on the subdivision concept approved under this Development Consent must be completed by the applicant, prior to an Occupation Certificate being issued.

### **94. Completion of Subdivision Works/ Satisfactory Final Inspection**

A Subdivision Certificate cannot be issued prior to the completion of all subdivision works covered by this consent. A satisfactory final inspection by Council's Construction Engineer is required.

### **95. Compliance with Transport for NSW Requirements**

A letter from Transport for NSW must be submitted confirming that all relevant works have been completed in accordance with their requirements.

### **96. Subdivision Works – Submission Requirements**

Once the subdivision works are complete the following documentation (where relevant/ required) must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments and submitted to Council's Construction Engineer for written approval:

- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- Pavement Density Results
- Street Name/ Regulatory Signage Plan
- Pavement Certification
- Public Asset Creation Summary
- Concrete Core Test Results
- Site Fill Results
- Structural Certification

The works as executed plan must be prepared by a civil engineer or registered surveyor. A copy of the approved detailed design must underlay the works as executed plan so clearly show any differences between the design and constructed works. The notation/ terminology used must be clear and consistent too. For bonded/ outstanding work the works as executed plan must reflect the actual work completed. Depending on the nature and scope of the bonded/ outstanding work a further works as executed plan may be required later, when that work is completed.

All piped stormwater drainage systems and ancillary structures which will become public assets must be inspected by CCTV. A copy of the actual recording must be submitted electronically for checking.

A template public asset creation summary is available on Council's website and must be used.

### **97. Performance/ Maintenance Security Bond**

A performance/ maintenance bond of 5% of the total cost of the subdivision works is required to be submitted to Council. The bond will be held for a minimum defect liability period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

### **98. Confirmation of Pipe Locations**

A letter from a registered surveyor must be provided with the works as executed plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

### **99. Section 73 Compliance Certificate**

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

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

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

### **100. Final Plan and Section 88B Instrument**

The final plan and Section 88B Instrument must provide for the following. Council's standard recitals must be used.

#### **a) Dedication – New Road**

The dedication of the proposed public road between existing Kentwell Avenue and the first Traffic median shown on the approved subdivision concept must be included on the final plan in accordance with the undertaking submitted relating to dedication dated 15 April 2024.

#### **b) Dedication – Road Widening (Kentwell Avenue)**

The dedication of the proposed road widening must be included on the final plan in accordance with the undertaking submitted relating to dedication dated 15 April 2024.

#### **c) Easement – Batter/ Support**

An easement for batter/ support to the northern side of proposed new public road must be provided within lot adjacent using the "easement for batter/ support of public road" terms included in the standard recitals.

#### **d) Easement – Public Stormwater Drainage**

Drainage easements must be created over the stormwater drainage pipelines and structures which convey public stormwater runoff, in accordance with the requirements of Council. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

#### **e) Restriction – Rainwater Tanks**

The development must be burdened with a restriction using the "rainwater tanks" terms included in the standard recitals.

#### **f) Covenant – Onsite Waste Collection**

The site must be burdened with a positive covenant relating to onsite waste collection using the "onsite waste collection" terms included in the standard recitals.

#### **g) Restriction/ Covenant – Onsite Stormwater Detention**

The lot where the building is located must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.

#### **h) Restriction/ Covenant – Water Sensitive Urban Design**

The lot where the building is located must be burdened with a restriction and a positive covenant that refers to the WSUD elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.

#### **101. Subdivision Certificate Application**

When submitted, the Subdivision Certificate application must include:

- One copy of the final plan.
- The original administration sheet and Section 88B instrument.
- All certificates and supplementary information required by this consent.
- An AutoCAD copy of final plan (GDA2020/ MGA Zone 56).

#### **102. Maximum Capacity Signage to be Displayed in the Premises**

Pursuant to Section 73 of the Environmental Planning and Assessment Regulation 2021, a sign must be displayed in a prominent position in the building, stating the maximum number of persons, as specified in the development consent, that are permitted in the building. The following signage is ready for use and shall be displayed in a prominent position in the building:



### **Maximum Capacity of Venue**

**Pursuant to Development Consent No. 980/2023/JP, the maximum number of patrons and staff that are permitted in the building is as follows:**

- **400 patrons**
- **30 staff**

Note:

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

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

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

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

**Owner/Manager's Name:**

**Tel:**

**Mob:**

### **103. Section 72 - Entertainment Venues**

Pursuant to Section 72 of the Environmental Planning and Assessment Regulation 2021, the following conditions are prescribed:

(1) The requirements specified in this section are conditions of development consent for the use of a building as an entertainment venue.

(2) During a stage performance at an entertainment venue, there must be at least 1 suitably trained person in attendance in the stage area at all times for the purpose of operating, if necessary, a proscenium safety curtain, drencher system and smoke exhaust system.

(3) If a proscenium safety curtain is installed at an entertainment venue, there must be no obstruction to the opening or closing of the curtain and the curtain must be operable at all times.

(4) When a film is being screened at an entertainment venue, there must be at least 1 person in attendance at the entertainment venue who is trained in—

(a) the operation of the projectors being used, and

(b) the use of the fire fighting equipment in the room in which the projectors are installed (the projection room).

(5) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the Building Code of Australia, the person required by subsection (4) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.

(6) A member of the public must not be present in the projection suite during the screening of a film.

(7) An entertainment venue must not screen a nitrate film.

(8) An emergency evacuation plan must be prepared, maintained and implemented for a building, other than a temporary structure, used as an entertainment venue.

(9) The emergency evacuation plan must specify the following—

(a) the location of all exits, and fire protection and safety equipment, for the part of the building used as an entertainment venue,

(b) the number of fire safety officers that must be present during performances,

(c) how the audience will be evacuated from the building if there is a fire or other emergency.

(10) A fire safety officer appointed to be present during a performance must have appropriate training in evacuating persons from the building if there is a fire or other emergency.

(11) In this section—

exit has the same meaning as in the Building Code of Australia.

#### **104. Food shop registration requirements**

Prior to the issue of any Occupation Certificate, the food businesses shall be registered with The Hills Shire Council. To register with Council please complete and submit the 'registration of food business' form for each premises which is available on Council's website.

#### **105. Regulated Systems**

To ensure that adequate provision is made for ventilation of the building any mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provisions of:

- a) Australian/New Zealand Standard AS/NZS 1668.1:1998 – The use of ventilation and air conditioning in buildings – fire and smoke control in multi-compartment buildings;
- b) Australian Standard AS 1668.2 – 2002 - The use of ventilation and air conditioning in buildings – ventilation design for indoor air contaminant control;
- c) Australian/New Zealand Standard AS/NZS 3666.1:2011 – Air handling and water systems of buildings – Microbial control – Design, installation and commissioning;
- d) Australian/New Zealand Standard AS/NZS 3666.2:2011 – Air handling and water systems of buildings - Microbial Control - Operation and maintenance;
- e) Australian/New Zealand Standard AS/NZS 3666.2:2011 – Air handling and water systems of buildings - Microbial Control – Performance based maintenance of cooling water systems; and
- f) Public Health Regulation 2012.

The regulated system is to be registered with Council by submitting an Application for Registration of Regulated Water Cooling/Warm Water Systems, available on Council's website [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au) prior to commissioning.

#### **106. Acoustic Compliance Report**

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in report titled *Noise Impact Assessment Acoustic Report* (Prepared by ADP Consulting, referenced as SYD2014 dated 23 March 2023 revision 03). Certification is to be provided.

#### **107. Food Premises Final Inspection**

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

#### **108. Green Travel Plan**

A Green Travel Plan (GTP) is required prior to the issue of a final occupation certificate, and should consider the following matters in its preparation:

- a. objectives and modes share targets (i.e., site and land use specific),
- b. measurable and achievable and timeframes for implementation to define the direction and purpose of the GTP.
- c. specific tools and actions to help achieve the objectives and mode share targets.
- d. measures to promote and support the implementation of the plan, including financial and human resource requirements, roles and responsibilities for relevant employees involved in the implementation of the GTP.
- e. quantification and analysis of staff shift times and numbers on the Site and analysis of workforce residential post code data to properly understand public transport and

- car parking demand and develop effective strategies in response, as well as help to inform service planning considerations.
- f. consideration of a staff travel survey and workforce data analysis to inform likely staff travel patterns and resultant travel plan strategies to / from the subject site.
  - g. strategies for promoting higher mode share targets for alternate transport use, particularly amongst day shift and administrative staff.
  - h. identification of a responsible party (or Committee) for the ongoing implementation of the GTP and its initiatives.
  - i. confirmation of extent and nature of end of trip facilities and bike parking, including their location, and how they will be promoted to staff.
  - j. encourages the use of carpooling through the implementation of a carpooling scheme for staff.
  - k. considers the potential for fleet bikes to be used for travel within the site and its surrounds.
  - l. identification of a communications strategy for conveying GTP information to staff, and visitors, including for the Travel Access Guide.
  - m. consideration of car parking management strategies that may be required to encourage sustainable transport use / mode share targets (such as pricing, prioritisation for those that carpool, use of wait lists, etc);
  - n. a detailed action plan comprising specific tasks needed to complete the proposed actions, the person/s responsible for completion of the task, completion date and anticipated costs.
  - o. an implementation checklist to achieve the proposed initiatives.
  - p. alternative actions to undertake where targets are not achieved.
  - q. the set-up of a steering group or committee of relevant internal and external stakeholders to inform future targets and the ongoing monitoring and revision of the GTP for five years; and
  - r. details regarding the methodology and monitoring/review program to measure the effectiveness of the objectives and mode share targets of the GTP, including the frequency of monitoring and the requirement for travel surveys to identify travel behaviours of users of the development.
  - s. TfNSW would welcome further discussions with the proponent relevant to the GTP preparation and can be contacted directly at [development.ctmp@transport.nsw.gov.au](mailto:development.ctmp@transport.nsw.gov.au)

## THE USE OF THE SITE

### **109. Grease Trap (Food Premises)**

Sydney Water shall be contacted with regards to grease trap requirements.

### **110. Operational Noise Level Limits**

The Operational Noise Limits for the Development shall be in accordance with the Project Specific Noise Criteria as outlined in Tables 11, 12 and 13 of the *Noise Impact Assessment Acoustic Report* (Prepared by ADP Consulting, referenced as SYD2014 dated 23 March 2023 Revision 03), and as outlined below. Residential zones are as defined by the acoustic report Section 1.4.

Receiver Type	Location of measurement	Time Period	Project Specific Noise Criteria dBA Leq (15minute)
Residential Zone 1	Residential property boundary	Day	49

		Evening	47
		Night	42
Residential Zone 2	Residential property boundary	Day	58
		Evening	53
		Night	47
Non-residential receivers	Commercial property boundary	When in use	63
	Places of Worship	When in use (internal)	38
	Classrooms/educational institutions, Library, Police Station	Noisiest 1-hour period (internal)	33
	Passive recreation areas	When in use	48

Day is defined as Monday to Saturday 7:00am to 6:00pm; 8:00am to 6:00pm Sundays and Public Holidays, Evening is 6:00pm to 10:00pm and Night is the remaining periods.

#### **111. Noise to Surrounding Area**

There shall be no amplified music or speakers external to the building.

#### **112. Operation of Regulated Water Cooling/Warm Water Systems**

Any regulated systems must be operated in accordance with *AS/NZS 3666:2011 Air handling and water systems of buildings – Microbial Control – Operation and Maintenance*.

#### **113. Lighting**

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

#### **114. Hours of operation for waste collection, delivery / dispatch of goods**

Deliveries of goods to and from the loading dock and the servicing of the premises by waste vehicles/garbage trucks is restricted to between 7:00am to 6:00pm, seven days per week.

#### **115. Compliance with Plan of Management**

The Plan of Management prepared by Woodward Sydney dated March 2023 and submitted as part of the Development Application is to be complied with as part of this approval. In the case of inconsistencies, these conditions apply. The Plan of Management is to be amended to be consistent with the conditions of consent where required.

#### **116. Offensive Noise - Acoustic Report**

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

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

#### **117. Final Acoustic Report**

Within three months from the issue of an Occupation Certificate, an acoustical compliance assessment is to be carried out by an appropriately qualified person, in accordance with the NSW EPA's - Industrial Noise Policy and submitted to Council's Manager - Environment and Health for consideration.

This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the activities does not give rise to "offensive noise" as defined under the *Protection of the Environment Operation Act 1997*. The report is to include the heritage cottage, and the external activity areas of the educational institution/place of worship located at Receiver R6, 30 Showground Rd Castle Hill.

#### **118. Waste and Recycling Management**

To ensure the adequate storage and collection of waste from the use of the premises, all garbage and recyclable materials emanating from the premises must be stored in the designated waste storage area(s), which must include provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. All waste storage areas must be screened from view from any adjoining residential property or public place. Waste storage area(s) must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.

#### **119. Hours of Operation and Special Events**

The approved hours of operation of the development are as follows:

- Recreation Centre (excluding Gym): 7:00am to 10:00pm 7 days per week.
- Gym: 6:00am to 10:00pm 7 days per week.
- Public Holidays: closed.

Special events are permitted to be held a maximum of 12 times per year between the hours of 6am – midnight. The owner/operator is required to keep a log of the special events which is to be provided to Council upon request.

#### **120. Maximum patron capacity**

The maximum patron capacity is approved as follows:

- Up to 15 persons and one staff member in the gym between the hours of 6:00am and 7:00am.
- Up to 400 patrons and 30 staff members at any one time between the hours of 7:00am and 10:00pm.

**121. Waste and Recycling Collection**

All waste generated on the site must be removed at regular intervals. The collection of waste and recycling must not cause nuisance or interfere with the amenity of the surrounding area. Garbage and recycling must not be placed on public property for collection without the previous written approval of Council. Waste collection vehicles servicing the development are not permitted to reverse in or out of the site.



SM-23-00018995

15 February 2023

Kristine McKenzie  
Council Assessing Officer  
The Hills Shire Council  
Via ePlanning Portal

Dear Sir/Madam

**State Environmental Planning Policy (Transport and Infrastructure) 2021  
Development Application - 980/2023/JP  
24-26 Showground Road, Castle Hill**

Sydney Metro refers to Development Application 980/2023/JP (DA) submitted by QIC Limited (Applicant) that has been referred to Sydney Metro via the NSW Planning Portal on 19 December 2022 in accordance with section 2.99 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (T&ISEPP).

Transport for NSW (TfNSW) has delegated its rail authority functions in relation to the Sydney Metro - City & Southwest and Metro North West Line rail corridors to Sydney Metro. Therefore, Sydney Metro is the relevant rail authority for the Metro North West Line rail corridor for the purpose of the T&ISEPP.

**Assessment requirements under the T&ISEPP**

Sydney Metro has reviewed the DA documents that were uploaded onto the NSW ePlanning Portal on 12 and 14 November 2022 and 25 January 2023.

Sydney Metro has assessed the development proposed by the DA in accordance with the requirements of section 2.99(4) of the T&ISEPP.

In this regard, Sydney Metro has taken into account:

- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
  - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
  - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
- (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

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Sydney Metro  
Level 43, 680 George Street, Sydney NSW 2000 | PO Box K859, Haymarket NSW 1240  
T 02 8265 9400 | sydneymetro.info | ABN 12 354 063 515



**Concurrence granted subject to conditions**

Sydney Metro has taken the above matters into consideration and has decided to grant its concurrence to the development proposed in the DA, subject to the consent authority imposing the conditions at *Attachment A*.

Should the consent authority determine not to impose the conditions provided in Attachment A in the form provided, then concurrence from Sydney Metro has not been granted to the DA.

The consent authority is also advised that Sydney Metro's concurrence is not to be amended, replaced or superseded by any concurrence which may be issued by any other authority, without further agreement from Sydney Metro.

**Next steps**

If, at any point, the DA is amended prior to the consent authority's determination, please ensure that the amended DA and any new or amended supporting documents are provided to Sydney Metro for further assessment. Any amendments to the DA may alter the impacts of the proposed development on the Metro North West Line rail corridor assessed by Sydney Metro, so Sydney Metro may need to amend (or refuse) its concurrence.

Sydney Metro would be grateful if a copy of the Notice of Determination and any conditions of consent for the DA are forwarded to Sydney Metro should the consent authority determine to grant consent to the DA.

In the event that the proposed development is the subject of a Land and Environment Court appeal, the consent authority's attention is also drawn to section 8.12 of the *Environmental Planning and Assessment Act 1979* which requires the consent authority to give notice of that appeal to a concurrence authority.

Sydney Metro thanks Council for its assistance.

Please contact Peter Bourke Senior Manager Corridor Protection or Jennifer Nguyen Corridor Protection Planner via email [sydneymetrocorridorprotection@transport.nsw.gov.au](mailto:sydneymetrocorridorprotection@transport.nsw.gov.au) should you have any further enquiries on this matter.

Yours sincerely



**Stephen Scott**  
Executive Director  
Northwest Operations  
Development Application - 980/2023/JF  
24-26 Showground Road, Castle Hill

## Attachment A

### 1 Prior to issue of a Construction Certificate

#### Engineering

1.1 All excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings, measures and recommendations detailed in the following documents:

- (a) Report on Geotechnical Investigation Proposed Indoor Sports & Recreational Facility (Ref. R.002.Rev2) Revision 2 prepared by Douglas Partners dated 24 January 2023, including the appended documentation.
- (b) Report on Sydney Metro Geotechnical Impact Assessment Woodward Project (Ref. R.002.Rev0) Revision 0 prepared by Douglas Partners dated 05 April 2022, including but not limited to the appended documentation:
  - (i) Dwg. CT-BGE-DR-ST-SB-SK100 prepared by BG&E dated 12 July 2021.
  - (ii) Dwg. CT-BGE-DR-ST-SB-SK101 prepared by BG&E dated 12 July 2021.
  - (iii) Flac Model Geometry Stage 2 Section Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (iv) Rock Mass Displacement (m) Case 1 – Stages 1 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (v) Maximum and Minimum Principal Stress (Pa) Case 1 – Stages 0 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (vi) Linear Axial (N), Moment (Nm) and Shear (N) Case 1 – Stages 0, 1 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (vii) Rock Mass Displacement (m) Case 2 – Stages 1 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (viii) Maximum and Minimum Principal Stress (Pa) Case 2 – Stages 0 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
  - (ix) Linear Axial (N), Moment (Nm) and Shear (N) Case 1 – Stages 0, 1 and 2 Woodward Project Revision 0 prepared by Douglas Partners dated 4 April 2022.
- (c) Tunnel Geotechnical Monitoring Plan and Risk Assessment Proposed Mixed Use Development Woodward Project (Ref. R.003.Rev0) Revision 0 prepared by Douglas Partners dated 05 April 2021.

subject to any amendments to those documents required by Sydney Metro in accordance with this consent.

The Certifier must not issue a Construction Certificate for the development until the Certifier has confirmed which documents (including the versions of those documents) apply to the development and the Certifier has confirmed in writing to Sydney Metro that the construction drawings and specifications comply with those documents. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

Prior to the commencement of works, the Certifier must provide written verification to Sydney Metro that this condition has been complied with.

#### **Rail Corridor:**

- 1.2 All structures must be designed, constructed and maintained so as to allow for the future operation and demolition of any part of the development without damaging or otherwise interfering with the Metro North West Line rail corridor or rail operations. Where any part of the development is to be retained because its demolition would damage or otherwise interfere with the Metro North West Line rail corridor or rail operations, that part of the development must have a minimum design life of 100 years.

#### **Survey and services**

- 1.3 Prior to the issue of a Construction Certificate:
- (a) the Applicant must provide Sydney Metro with an accurate survey of the development and its location relative to the rail corridor boundary and any rail infrastructure. The survey is to be undertaken by a registered surveyor, to the satisfaction of Sydney Metro; and
- 1.4 Prior to the issue of a Construction Certificate, the Applicant must undertake a services search to establish the existence and location of any rail services and provide the results of the search to Sydney Metro. A services search must be based on current and not expired information and include information obtained through the Dial Before You Dig service. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the development site, the Applicant must discuss with Sydney Metro whether the services are to be relocated or incorporated within the development site.

#### **Noise & Vibration**

- 1.5 The development must:
- (a) *comply with State Environmental Planning Policy (Transport and Infrastructure) 2021 and the NSW Department of Planning & Environment's document titled "Development Near Rail Corridors and Busy Roads - Interim Guideline" (2008) and the Sydney Metro Underground Corridor Protection Guidelines (available from [www.sydneymetro.info](http://www.sydneymetro.info));*
  - (b) *be designed, constructed and maintained so as to avoid damage or other interference which may occur as a result of air-borne noise, ground-borne noise and vibration effects that may emanate from the rail corridor during rail construction and operations; and*



- (c) *not have any noise or vibration impacts on the rail corridor or rail infrastructure.*

1.6 The Applicant must:

- (a) *prepare an acoustic assessment report which confirms compliance with each of the matters outlined in condition 1.5; and*
- (b) *incorporate as part of the development all the measures recommended in the acoustic assessment report; and*
- (c) *not have any noise or vibration impacts on the rail corridor or rail infrastructure.*

*A copy of the acoustic assessment report is to be provided to Sydney Metro for review and endorsement and Council prior to a Construction Certificate being issued by the Certifier. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied. The Certifier must ensure that the recommendations of the acoustic assessment report are incorporated in the construction drawings and documentation prior to issuing a Construction Certificate for the development.*

**Electrolysis**

- 1.7 Prior to the issue of a Construction Certificate, the Applicant is to engage an electrolysis expert to prepare a report on the electrolysis risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the electrolysis report to control that risk. A copy of the electrolysis report is to be provided to Sydney Metro for review and endorsement. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.

Prior to issuing a Construction Certificate for the development, the Certifier must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation.

**Construction**

- 1.8 No work is permitted within the rail corridor, or any easements which benefit Sydney Metro, at any time, unless the prior approval of, or an Agreement with, Sydney Metro has been obtained by the Applicant. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.
- 1.9 No rock anchors, rock bolts, ground anchors or rock ties, piles, foundations, rock pillars, transfer structures, basement walls, slabs, columns, beams, cut rock faces, are to be installed in the rail corridor, Sydney Metro property or easements unless the Applicant has obtained prior written consent from Sydney Metro for any proposed use of rock anchors. The Certifier must not issue a Construction Certificate for the development until it has received written confirmation from Sydney Metro that this condition has been satisfied.
- 1.10 Prior to the issuing of a Construction Certificate, the following information must be submitted to Sydney Metro for review and endorsement:
- (a) Demolition, excavation and construction methodology and staging.

The Certifier must not issue a Construction Certificate for the development until it has received written confirmation from Sydney Metro that this condition has been satisfied.

- 1.11 Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements for the proposed works are to be submitted to Sydney Metro for review and endorsement regarding impacts on the rail corridor. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.
- 1.12 If required by Sydney Metro, a tunnel monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Metro for review and endorsement prior to the issuing of a Construction Certificate. The Certifier must not issue a Construction Certificate until written confirmation has been received from Sydney Metro that this condition has been satisfied.
- 1.13 Prior to the issuing of a Construction Certificate, the Applicant must submit to Sydney Metro a plan showing all craneage, including crane pad foundation loads, and other aerial operations for the development and must comply with all Sydney Metro requirements. If required by Sydney Metro, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Metro requirements. The Certifier must not issue a Construction Certificate for the development until written confirmation has been received from the Sydney Metro that this condition has been satisfied.
- 1.14 If required by Sydney Metro, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Metro's Corridor Protection Team to determine the need for public liability insurance cover and the level of insurance required. If insurance cover is deemed necessary, the Applicant must obtain insurance for the sum determined by Sydney Metro and such insurance shall not contain any exclusion in relation to works on or near the rail corridor or rail infrastructure and must be maintained for the period specified by Sydney Metro. Prior to issuing a Construction Certificate for the development, the Certifier must witness written proof of any insurance required by Sydney Metro in accordance with this condition, including the written advice of Sydney Metro to the Applicant regarding the level of insurance required.

Reason: construction of the proposed development presents a risk of potential damage to the Metro North West Line rail corridor which is not in the public interest. This risk of damage to public infrastructure must be appropriately managed and mitigated.

- 1.15 If required by Sydney Metro, prior to the issue of a Construction Certificate the Applicant must contact the Sydney Metro Corridor Protection Team to determine the need for the lodgement of a bond or bank guarantee for the duration of the works and the sum of any required bond or bank guarantee. Prior to issuing a Construction Certificate for the development, the Certifier must witness written confirmation from Sydney Metro that the Applicant has lodged any bond or bank guarantee required by this condition.

Reason: construction of the proposed development presents a risk of potential damage to the Metro North West Line rail corridor which is not in the public interest. This risk of damage to public infrastructure must be appropriately managed and

mitigated.

**Drainage**

- 1.16 The Applicant must ensure that all drainage from the development is adequately disposed of and managed and must ensure that no drainage is discharged into the railway corridor unless prior written approval has been obtained from Sydney Metro. The Certifier must not to issue a Construction Certificate or Occupation Certificate for the development unless this condition has been satisfied.

**Documentation**

- 1.17 Copies of any certificates, drawings, approvals or documents endorsed by, given to or issued by Sydney Metro must be submitted to Council for its records prior to the issue of any Construction Certificate.

**2 During construction**

**Supervision**

- 2.1 Unless advised by Sydney Metro in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects and who holds current professional indemnity insurance.

**Consultation**

- 2.2 The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Metro in writing), who:
- (a) *oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Metro;*
  - (b) *acts as the authorised representative of the Applicant; and*
  - (c) *is available (or has a delegate notified in writing to Sydney Metro that is available) on a 7 day a week basis to liaise with the representative of Sydney Metro as notified to the Applicant.*
- 2.3 Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Metro in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Metro in relation to the works.
- 2.4 Where a condition of consent requires consultation with Sydney Metro, the Applicant shall forward all requests and/or documentation to the relevant Sydney Metro interface team.

**Drainage**

- 2.5 The Applicant must ensure that all existing and future drainage works on the development site will be directed into the appropriate local council or approved drainage system.
- 2.6 The Applicant must ensure that during works no water collects on or near the railway corridor. Should water be allowed to pond adjacent to rail infrastructure facilities and service is interrupted, the Applicant shall be liable for any Sydney Metro expenditure involved with restoring or maintaining alternative services.



### **Inspections**

- 2.7 If required by Sydney Metro, the Applicant must give Sydney Metro written notice at least 5 business days before any of the following events occur within 25 metres of the rail corridor:
- (a) *site investigations;*
  - (b) *foundation, pile and anchor set out;*
  - (c) *set out of any other structures below ground surface level or structures which will transfer any load or bearing;*
  - (d) *foundation, pile and anchor excavation;*
  - (e) *other excavation;*
  - (f) *surveying of foundation, pile and anchor excavation and surveying of as-built excavations;*
  - (g) *other concreting; or*
  - (h) *any other event that Sydney Metro has notified to the Applicant in writing*
- so that Sydney Metro may inspect the carrying out or completion of those works on the development site.*
- 2.8 If required by Sydney Metro, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Metro, a joint inspection of the rail infrastructure and property in the vicinity of the development is to be carried out by representatives from Sydney Metro and the Applicant and a dilapidation survey prepared. The dilapidation survey(s) will establish the extent of any existing damage and enable any deterioration during construction to be observed and rectified at the Applicant's cost. The submission of a detailed dilapidation report by the Applicant for review and approval by Sydney Metro will be required within 10 days following the undertaking of any joint inspection, unless otherwise notified by Sydney Metro in writing.

## **3 Prior to the issue of an Occupation Certificate**

### **Noise and Vibration**

- 3.1 Prior to the issue of an Occupation Certificate, an acoustic assessment report must be prepared and submitted to the Certifying Authority, Council and Sydney Metro certifying that the completed development meets the requirements of:
- (a) State Environmental Planning Policy (Transport and Infrastructure) 2021;
  - (b) the Department of Planning, Infrastructure and Environment's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines"; and
  - (c) any other noise and vibration requirements imposed by this consent.

The acoustic report must demonstrate testing of external and internal noise levels for the completed development and ensure that external noise levels are representative of the typical maximum levels that may occur at the development and internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

#### **Documentation**

- 3.2 Prior to the issue of an Occupation Certificate, the Applicant is to submit as-built drawings to Sydney Metro and Council. The as-built drawings are to be endorsed by a registered surveyor confirming that there has been no encroachment into the rail corridor or Sydney Metro easements, unless agreed to by Sydney Metro in writing. The Certifier must not issue an Occupation Certificate until written confirmation has been received from Sydney Metro that this condition has been satisfied.
- 3.3 Copies of any certificates, drawings, approvals or documents endorsed by, given to or issued by Sydney Metro must be submitted to Council for its records prior to the issue of any Occupation Certificate.

#### **Inspections**

- 3.4 If required by Sydney Metro, prior to the issue of an Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the development is to be carried out by representatives from Sydney Metro and the Applicant and a dilapidation survey prepared. The dilapidation survey will establish the extent of any existing damage and enable any deterioration during operation of the development to be observed. The Certifier is not to issue an Occupation Certificate for the development until written confirmation has been received from Sydney Metro that this condition has been satisfied.
- 3.5 At any time during the use and occupation of the development, Sydney Metro may also require a joint inspection of the rail infrastructure and property in the vicinity of the development by representatives from Sydney Metro and the Applicant and a dilapidation survey prepared. Any such dilapidation survey will establish the extent of any damage or deterioration during operation of the development to be observed and rectified at the Applicant's cost.

### **4 General**

#### **Inspections**

- 4.1 At any time during the construction of the development, Sydney Metro and persons authorised by those entities may give reasonable notice to the Applicant or the Applicant's principal contractor that Sydney Metro or persons authorised by that entity seek to:
- (a) inspect the development site and all works and structures that may impact on the rail corridor, including at specified "hold points" in the construction of the development; and
  - (b) attend on-site meetings with the Applicant and its contractors,

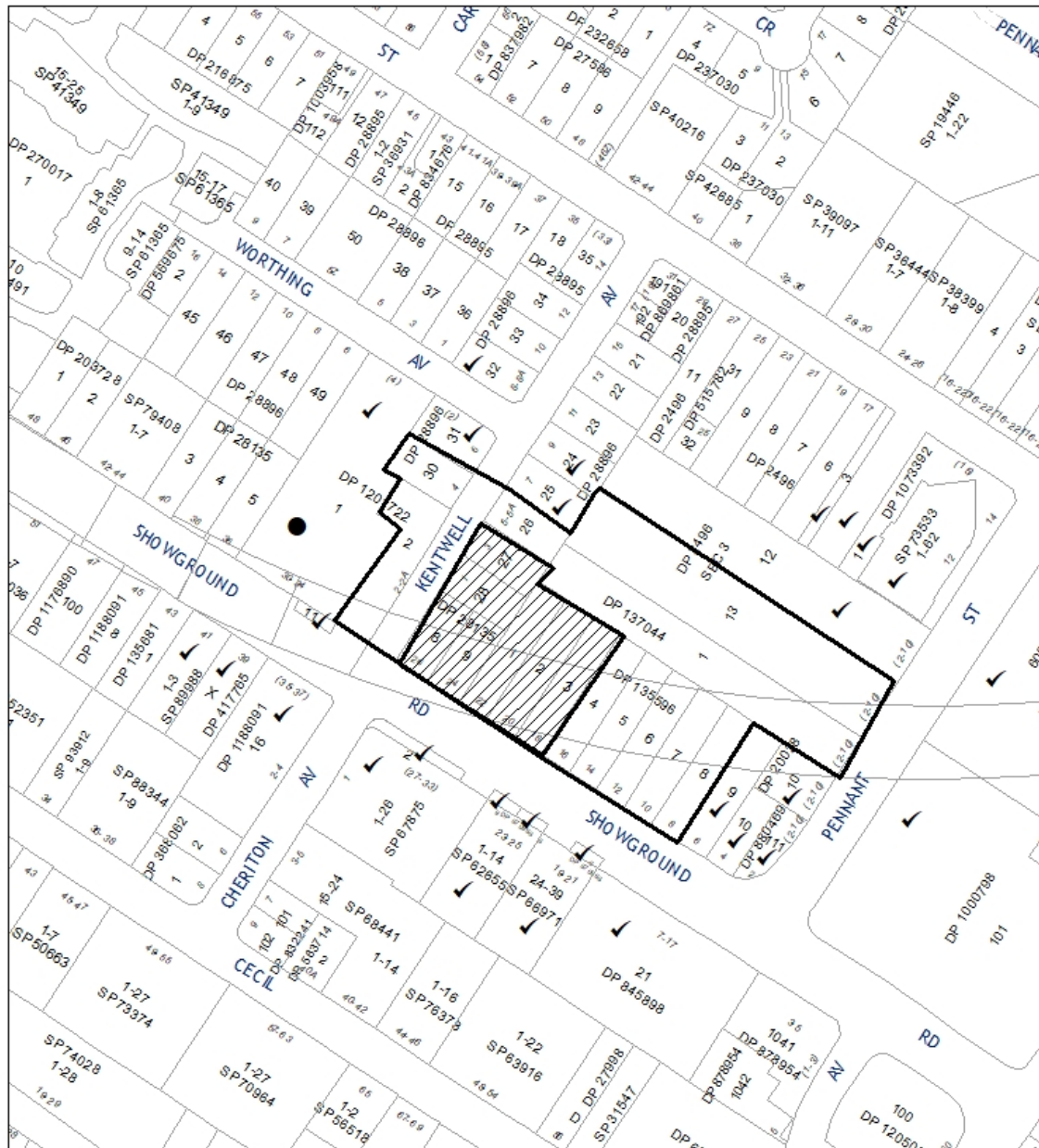


to enable Sydney Metro to determine whether the development has been or is being constructed and maintained in accordance with all approved plans and this development consent.

Other

- 4.2 Any conditions or other requirements imposed by Sydney Metro part of its approval/endorsement of any documents provided by the Applicant to Sydney Metro in accordance with these conditions of consent must also be complied with by the Applicant when implementing any approved/endorsed documents, plans, reports during the construction and operation of the development (as applicable).
- 4.3 Where a condition of consent requires Sydney Metro endorsement or approval, the Certifier must not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates by the Certifier dealing with specific works and compliance conditions can only occur subject to written confirmation from Sydney Metro.
- 4.4 All reasonable Sydney Metro costs associated with review of plans, designs and legal must be borne by the applicant.

## ATTACHMENT B: LOCALITY PLAN



- ☐ SUBJECT SITE
- ☒ DEVELOPMENT SITE
- ✓ PROPERTIES NOTIFIED INCLUDING ALL PROPERTIES  
WITHIN THE STRATA PLANS AND THE HILLS DISTRICT HISTORICAL SOCIETY
- SUBMISSION RECEIVED

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

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## ATTACHMENT C: AERIAL PHOTOGRAPH



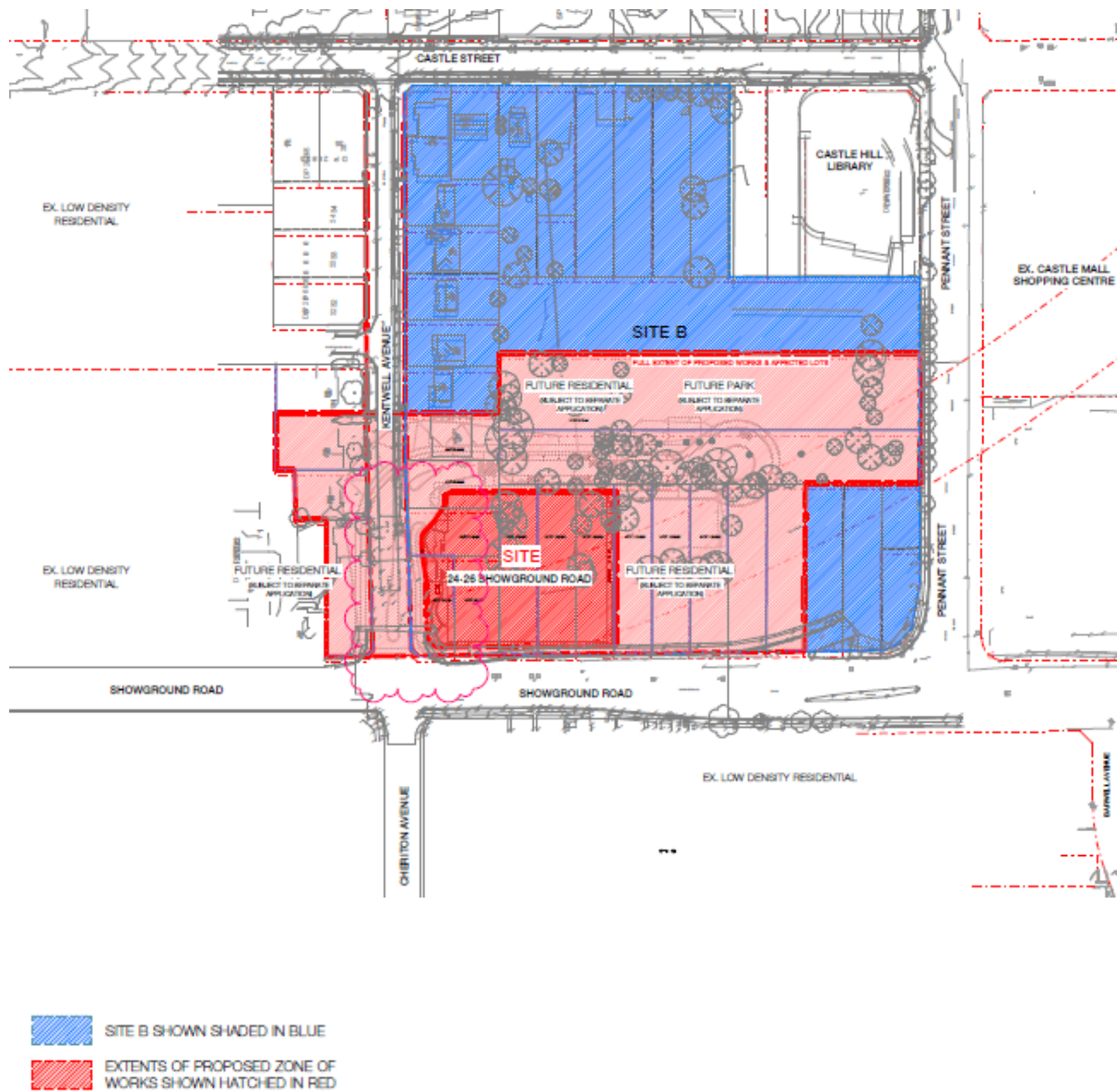
- ☐ SUBJECT SITE
- ☒ DEVELOPMENT SITE

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

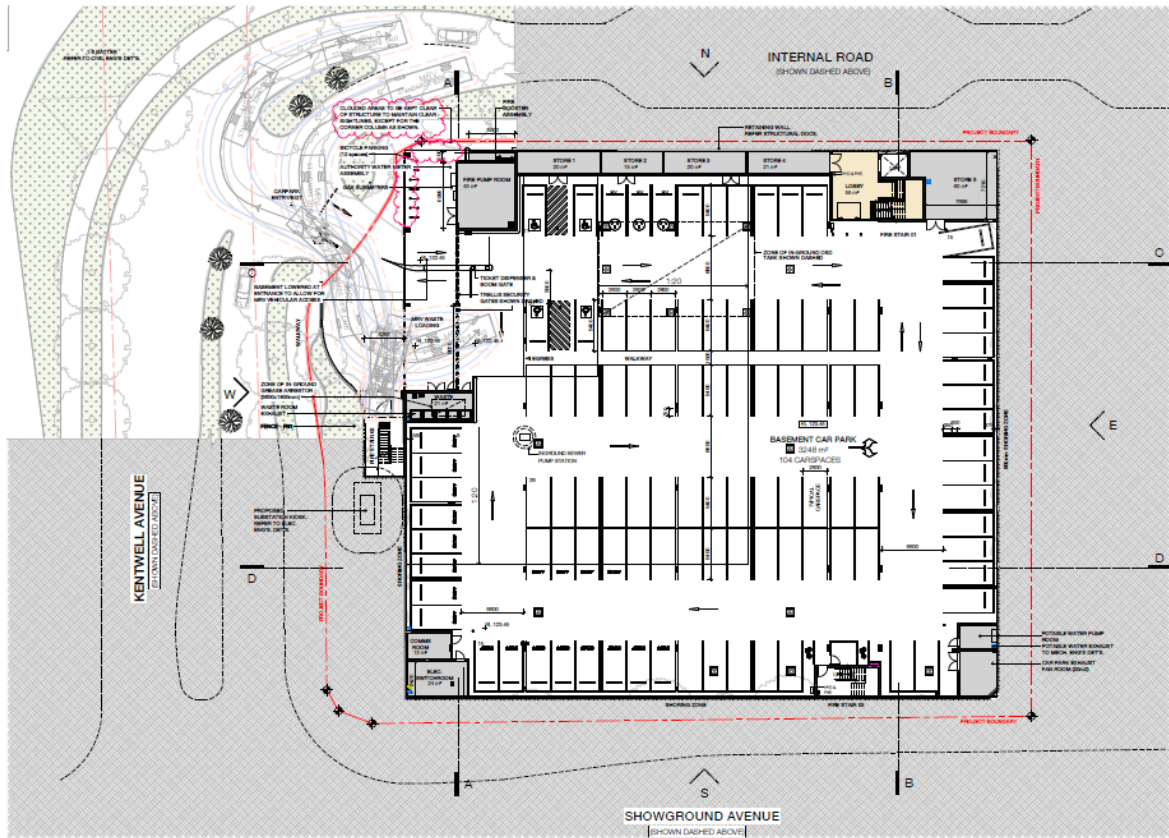
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## ATTACHMENT D: ARCHITECTURAL PLANS

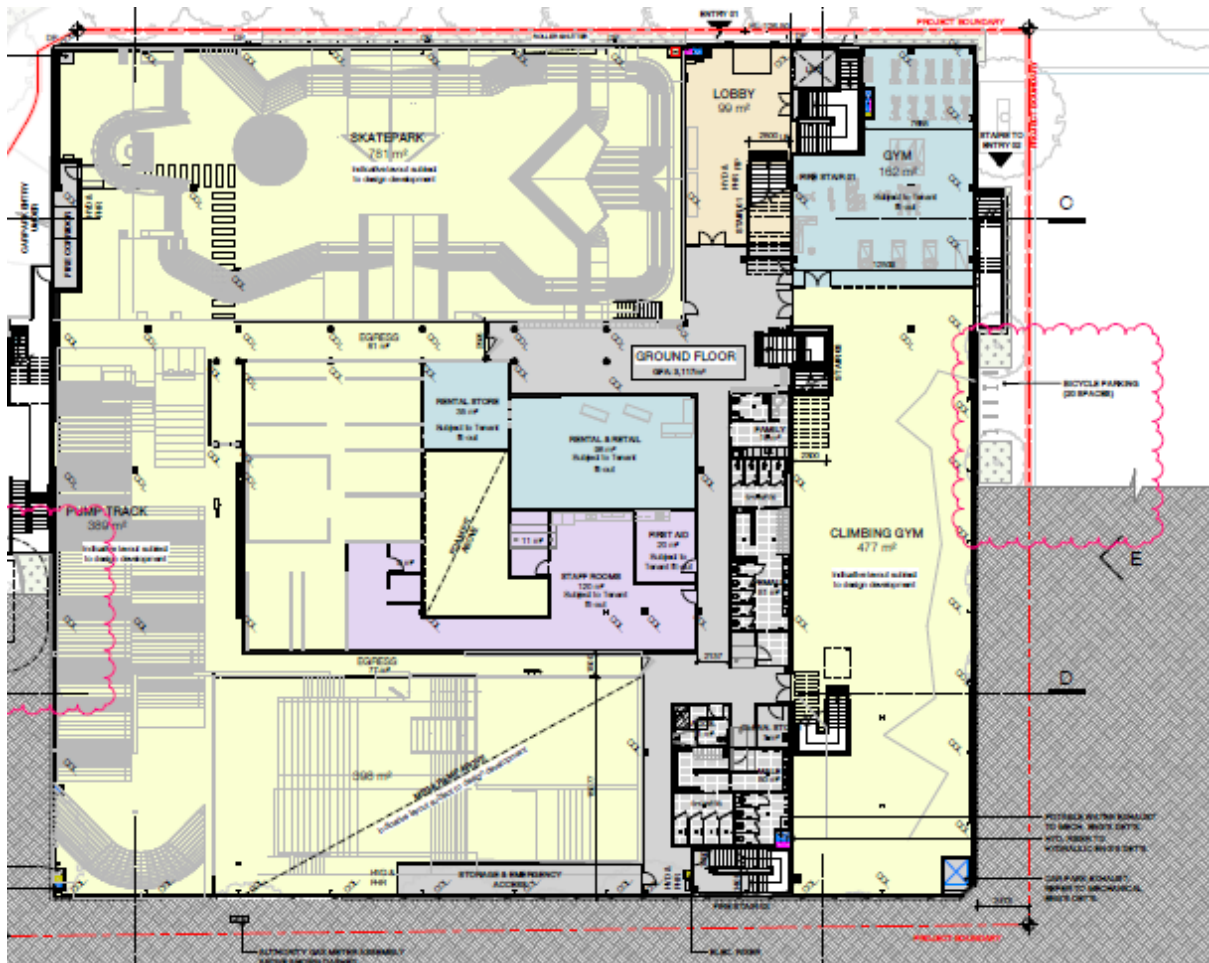




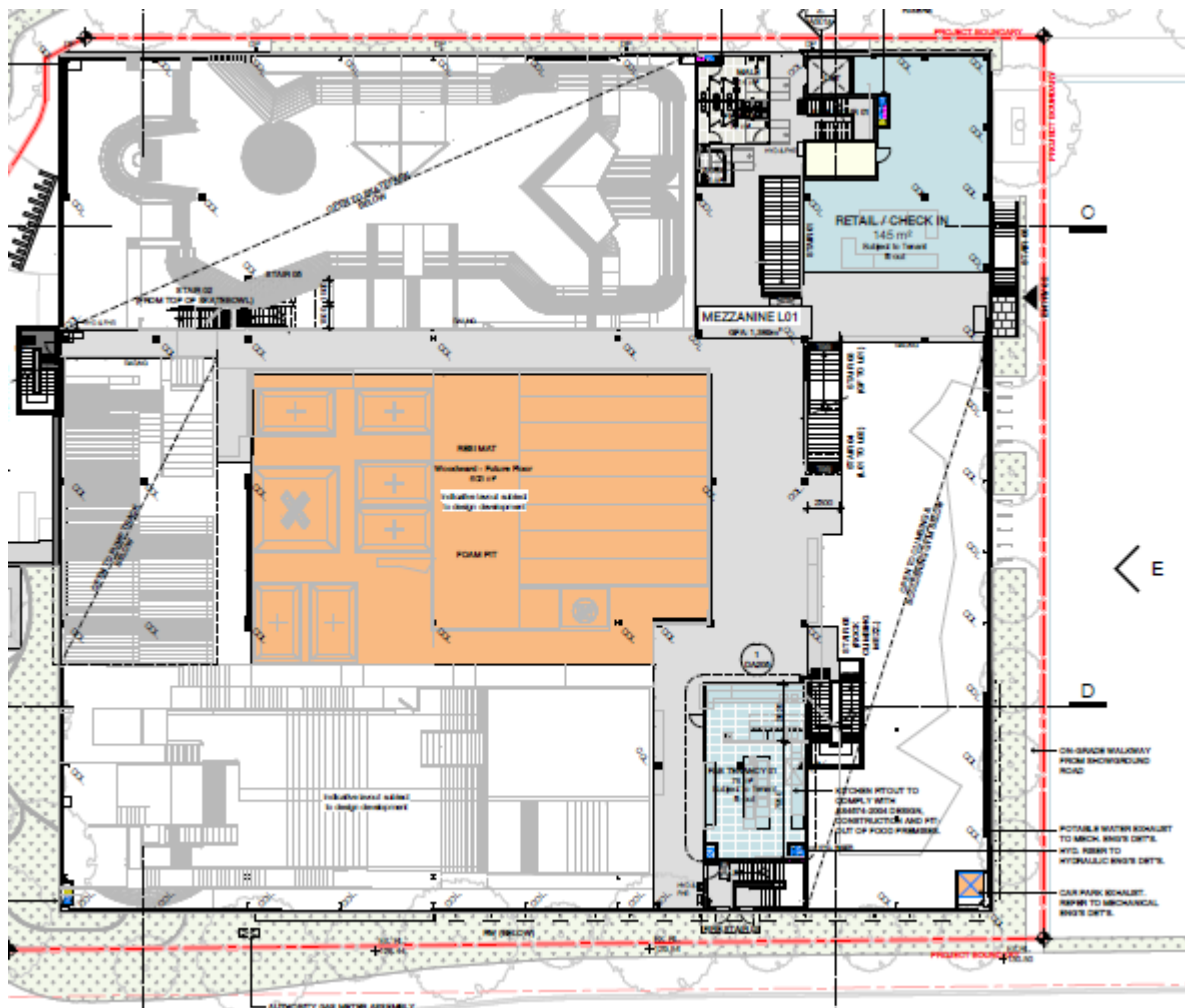




## Basement Plan

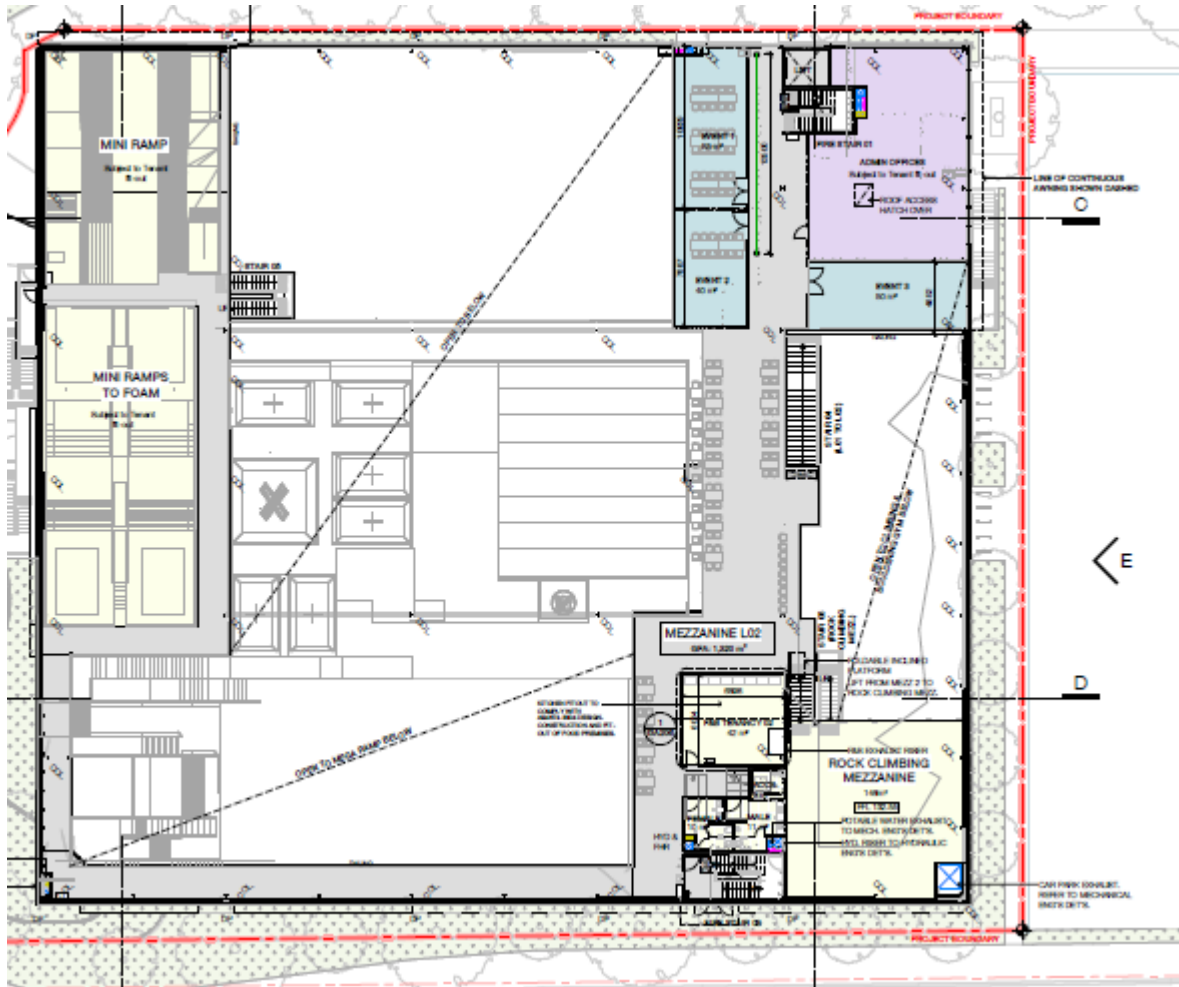


Ground Floor Plan

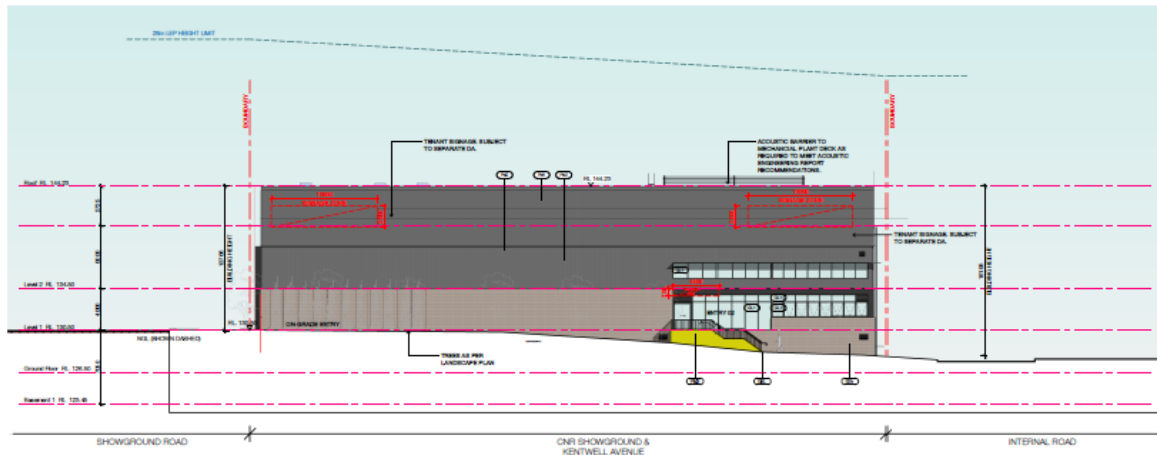


**Level 1 Mezzanine Plan**

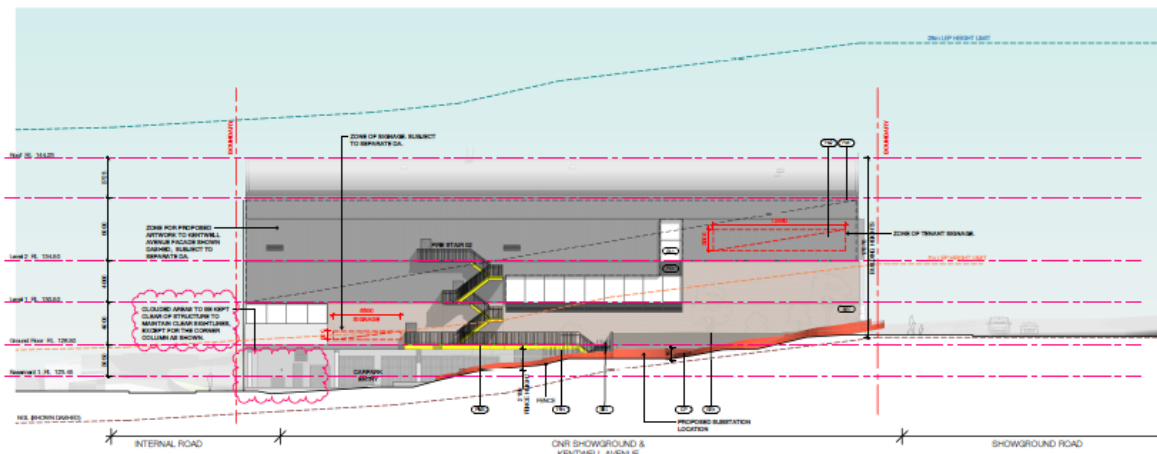




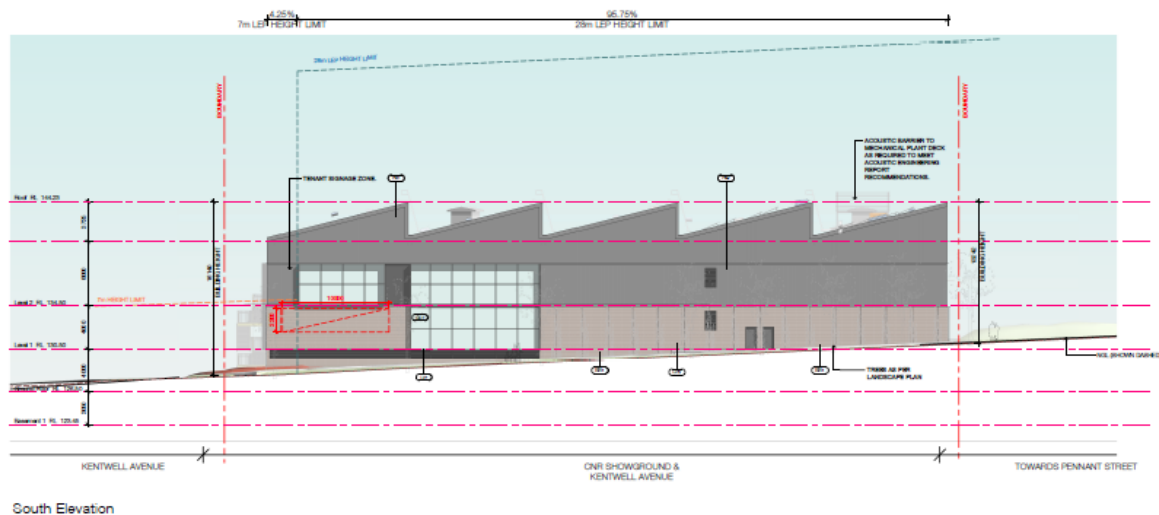
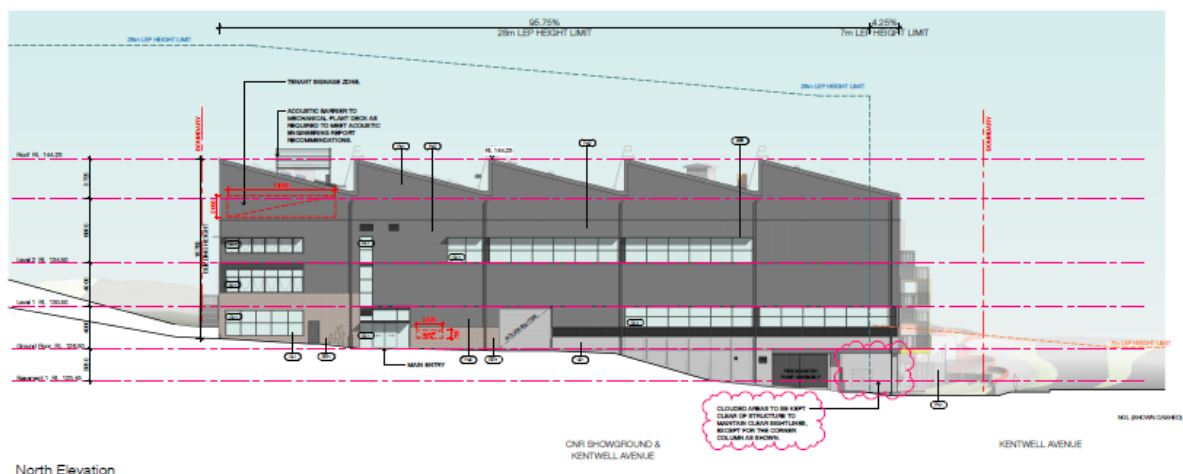
**Level 2 Mezzanine Plan**



East Elevation



West Elevation



## ATTACHMENT E: PERSPECTIVES



VIEW FROM INTERNAL ROAD TOWARDS NORTHERN FACADE



VIEW FROM INTERNAL ROAD TOWARDS ENTRY



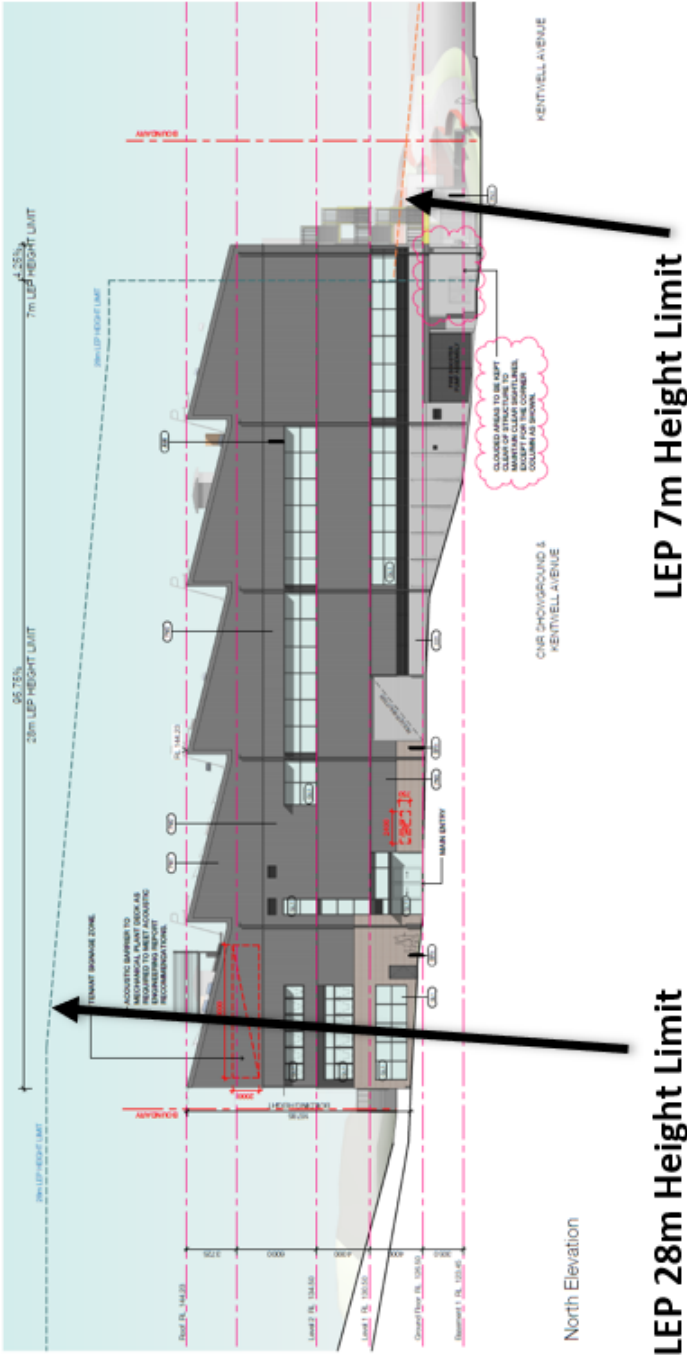


VIEW FROM SHOWGROUND ROAD TOWARDS SOUTHERN FACADE

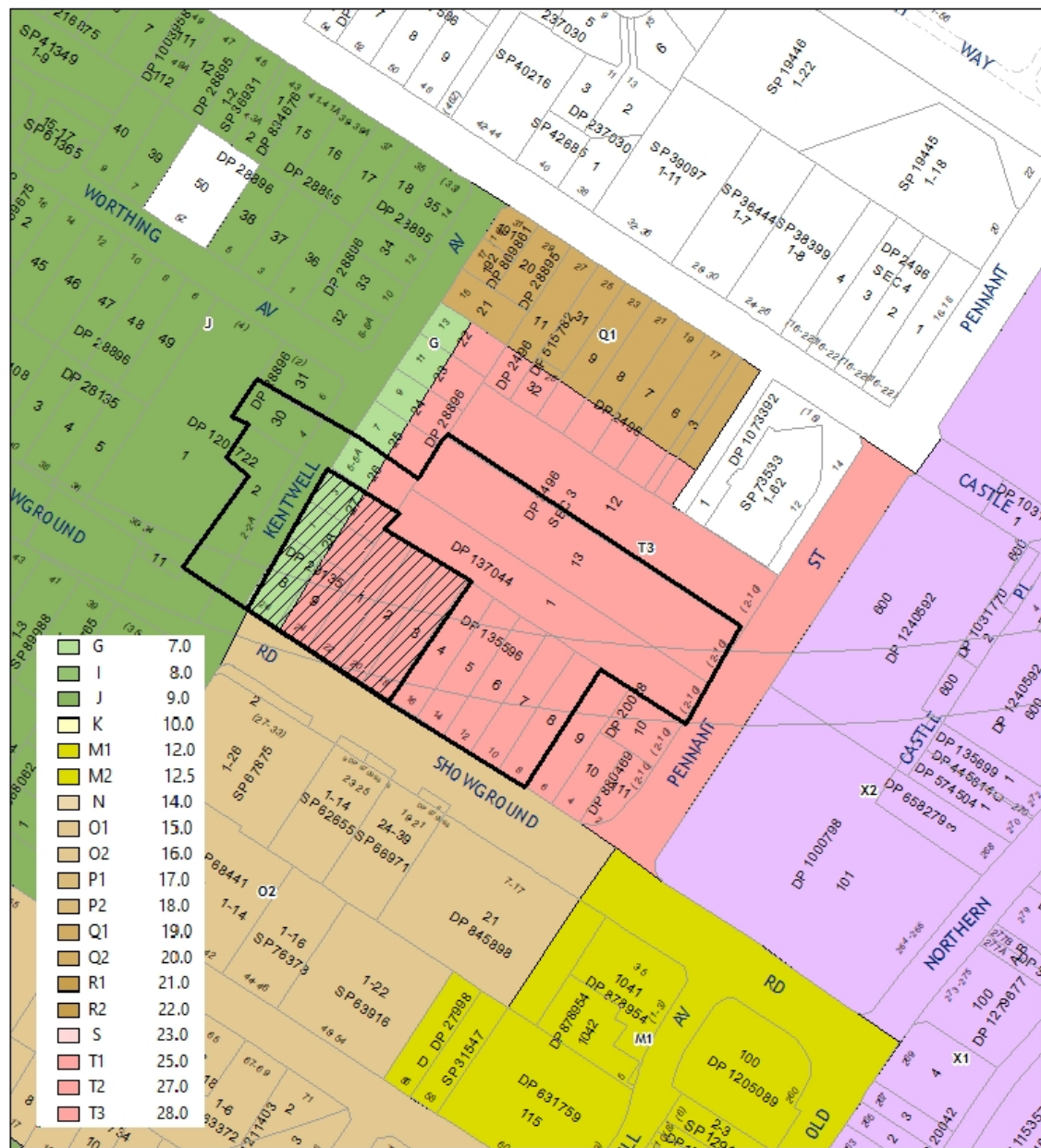


VIEW FROM KENTWELL AVENUE

ATTACHMENT F: PROPOSED HEIGHT PLAN



## ATTACHMENT G: LEP HEIGHT LIMIT PLAN



SUBJECT SITE


DEVELOPMENT SITE

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**


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# Clause 4.6 Variation Request – Height

24-26 Showground Road, Castle Hill  
Woodward Indoor Sports and Recreational Facility  
Development Application



Prepared by Ethos Urban  
Submitted to The Hills Shire Council on behalf of QJC  
31 October 2022 | 14209



*Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.*

*We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.*

*We pay our respects to their Elders past, present and emerging.*

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# 1. Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of QIC (the Applicant). It is submitted to The Hills Shire Council (Council) in support of a development application (DA) for an indoor sports and recreational facility (the proposal) known as "Woodward" at 24-26 Showground Road, Castle Hill (the site).

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

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that 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.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130.

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

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 4.0**);
- demonstrates that the proposed variation is in the public interest (**Section 4.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 4.0**).

Therefore, the DA may be approved with the variations proposed in accordance with the flexibility allowed under Clause 4.6 of the Hills LEP 2019.

## 2. Development Standard to be Varied

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.3 of the Hills LEP. Clause 4.3 states as follows:

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

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

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

"Building height" is defined to mean:-

*"(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."*

"Ground level (existing)" is defined to mean:-

*"the existing level of the site at any point".*

"Ground level (existing)" is detailed (by contour levels) on the survey plan in **Appendix B** of the SEE.

As illustrated in the extract at **Figure 1** below, the site is mapped with a maximum building height of 28m and 7m.

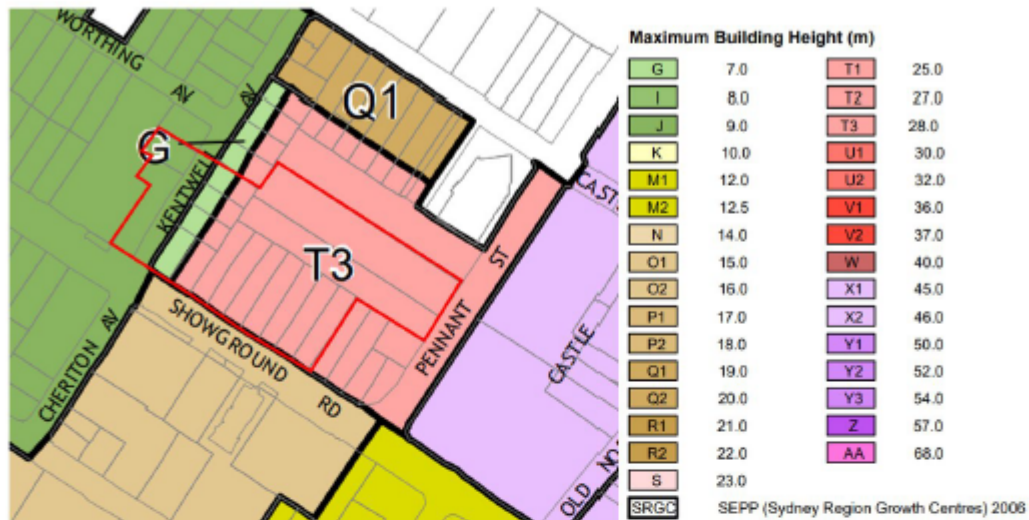


Figure 1 Extract of Height of Buildings Map (site identified in red)

Source: The Hills LEP 2019 with mark-up by Ethos Urban



### 3. Exceptions to Development Standards (Clause 4.6)

Clause 4.6 of the LEP permits consent to be granted for development even though the development would contravene a development standard imposed by the LEP. Clause 4.6 of the LEP relevantly states:-

*"(1) The objectives of this clause are as follows:*

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

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

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

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

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

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

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

Accordingly, Clause 4.6 can be used to vary (to the extent required) the 7m maximum building height development standard in Clause 4.3 of the LEP which applies to the relevant part of the site.

## 4. Nature of Variation Sought

The proposal seeks a maximum building height of 20.93 metres. As mentioned above, the site is subject to a maximum building height of 7m along the western boundary, with the remaining area of the site subject to a maximum building height of 28m. Overall, the vast majority of the building footprint complies with the applicable height standard (as shown in **Figure 2**).

The proposed variation arises from a small encroachment of the building floor plat, which is predominately located on land to which a 28 metre height limit applies, into the south-western corner of the site to which a lower 7 metre height limit applies. This encroachment relates to only 150.15m<sup>2</sup>, being only 3.4% of the proposed building floorplate. As a result, this encroachment gives rise to variation of up to 13.93 metres to the mapped maximum building height of 7 metres.

As illustrated in **Figure 3** and **Figure 4**, the proposed variation does not contain recreational floor space, it is exclusively related to providing suitable clearance space for the proposed trampoline and associated activities that is required to meet safety standards. A large element of the building that gives rise to the variation relates to the external staircase for fire emergency egress. The external staircase is discrete in nature and does not rise to the full 20.93m height.

Further, the remainder of the proposed building envelope (96.4% of the building floorplate) is lower than the maximum permitted building height of 28 metres by some 7.4 metres, being a reduction of 26.4% below the maximum permitted height. The proposed sawtooth roof also means that the average roof level is substantially lower than the maximum ridge height of 20.6 metres, with articulation to break up the overall mass of the building and provide an appropriate built form which will create a key gateway building for Site B.



Figure 2 Indicative plan showing extent of non-compliance with height control (red outline)

Source: CHC

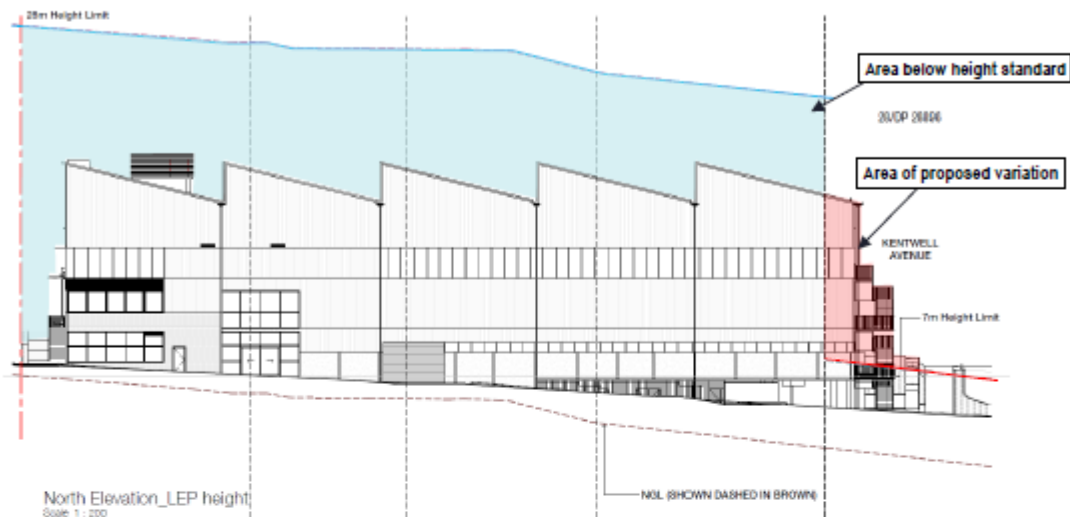


Figure 3 Indicative height plan diagram from the proposed internal road (Maximum building height – northern elevation)

Source: CHC

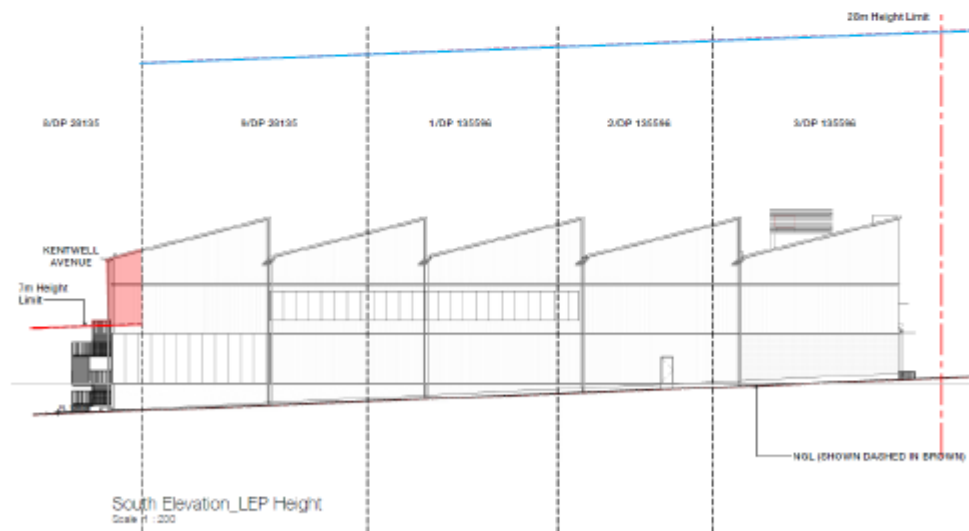


Figure 4 Indicative height plan diagram from Showground Road (Maximum building height – southern elevation)

Source: CHC



## 5. Justification for Contravention of the Development Standard

Clause 4.6(3) of the LEP provides that:

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

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

Further, clause 4.6(4) of the LEP provides that:

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

- (a) the consent authority is satisfied that—*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Maskovich v Waverley Council* [2016] NSWLEC 1015.
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1118; and
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130.

The relevant matters set out in Clause 4.6 of The Hills LEP 2019, with respect to the building height development standard, are each addressed below including with regard to these decisions.

### 5.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which compliance to a development standard had been shown to be unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all five of these methods in a particular circumstance.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62] *Initial Action* at [16]).

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

In this instance, the **First Method** is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

### 5.1.1 The underlying objectives or purposes of the development standard

The objectives of the building height development standard contained in clause 4.3 of the LEP 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 of adjoining properties and open space areas.*

The proposal is assessed against the objectives for the height of buildings development standard below.

#### **(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape**

The proposed development, including the aspect of the proposed building that seeks to vary the 7m building height standard, is highly compatible with the existing and future character of adjoining development and the overall streetscape. In accordance with the wording of this objective of the development standard, consideration must be given to the 'overall' streetscape which encompasses a broader area than only that to which the 7m height limit applies, and must holistically consider the broader streetscape which encompasses a number of height limits and changing ground levels.

As shown in the extract of The Hills LEP 2019 Building Heights Map in **Figure 8**, the site is located with an area of varied building heights that includes taller building heights permitted immediately adjacent to the area of the proposed variation in every direction. The narrow strip of land subject to the lower 7 metre development standard is an anomaly positioned in immediate vicinity to land that is subject to 9m, 10m, 19m and 28m building height limits.

The site is located at a transition in zones where the maximum building height stipulated under The Hills LEP 2019 incrementally increasing from 16m to the west of the site, 19 metres to the north, and the 28m standard that applies to the majority of Site B, before increasing further to a current maximum building height of 46m at the Castle Towers Shopping Centre and surrounding sites. Taller building heights again are permitted in the Castle Hill centre for residential buildings. Further, both the Site B and adjoining sites are envisioned for significant uplift and increased density to support the growth of the Castle Hill Strategic Centre as identified in The Hills Local Strategic Planning Statement (LSPS). Therefore, the proposed variation is compatible with the overall strategic priority for the Castle Hill area and as a result will be compatible with the height of adjoining development and the overall streetscape.

Importantly, the narrow banding of the 7m height zone to the 28m height zone, combined with the steep level changes along the Kentwell Avenue frontage (as shown in **Figure 6** and **Figure 7**), means that buildings that are compliant with the 28m will continue to dictate the character of the Kentwell Avenue streetscape irrespective of the 7m zone. As seen in the renders and architectural drawings, the compliant aspect of the proposed building will be the main visual element within the streetscape and the area of proposed variation will be largely imperceptible in terms of a departure from the character of the overall streetscape compared to a fully-compliant scheme.

Taller buildings are also permitted within Castle Hill for residential purposes and which form a visual backdrop to the site. The proposed building, including the varying elements, form part of this transition and will be an important gateway building on Showground Road that is consistent with the commencement of the B4 Mixed Use zone in the approach towards the Castle Hill strategic centre. The proposed variation will be discernible against the surrounding compliant building elements.

Therefore, the proposed variation is considered to be compatible with the existing and permitted future streetscape of the area. The proposed height variation plays an important role in delivering an appropriate built form that is compatible with the overall streetscape that supports the transition in building height up to the Castle Hill Strategic Centre.

The following section sets out how the proposed development is compatible with specific adjoining development and streetscapes. Overall, the proposal delivers an appropriate building height that is consistent with this existing building height, through presenting a sympathetic built form. Through skilful design the proposed sawtooth roof design also breaks up the mass to provide articulation and provide a complementing height form fronting Showground Road.

#### **Cheriton Avenue**

Key views and vistas along Cheriton Avenue approaching the site are consistent with the maximum building height of 16m. As shown in **Figure 9**, the proposed variation is very minor and will not result in any adverse impacts that give rise to an incompatible streetscape. Therefore, the proposed building height variation is compatible with the permitted building heights along Cheriton Avenue.

#### **Showground Road**

Noting the evident transitional zone the site lies within, sight lines along Showground Road approaching the site demonstrate a gradual increase in built form toward Castle Towers Shopping Centre. These varied height limits surrounding the site are as follows:

- **North:** existing low density residential dwellings with opportunity to be redeveloped to building heights of 19m in accordance with The Hills LEP 2019. The area north of the site is also identified for medium-high density residential development in The Hills LSPS.
- **East:** existing Castle Towers Shopping Centre comprising a height of 23m with future development potential for building heights up to 48m in accordance with The Hills LEP 2019. Beyond the shopping centre are two newly constructed 20 and 21 storey high-rise residential apartment buildings located at 299-301 Old Northern Road, Castle Hill reflecting the changing density in the area
- **South:** existing low density residential dwellings with development potential for new building heights of 16m in accordance with The Hills LEP 2019.
- **West:** existing low density residential dwellings including Wesley Castle Hill Uniting Church. Land located to the west of the site have development potential for building heights up to 9m in accordance with The Hills LEP 2019.

Therefore, the proposed building height variation is imperceptible in streetscape character given the taller building heights to the west and east of the 7m building height maximum zone. **Figure 9** also illustrates that the proposed variation when viewed from Showground Road is considered minor and does not adversely impact the overall streetscape.

#### **Kentwell Avenue**

Kentwell Avenue is subject to a mix of building heights between 9m and 19m. Despite the narrow strip of land subject to a building height of 7m, the remaining land on Site B is subject to a maximum building height of 28m. Therefore, as any future development is likely to take advantage of this increased height, the proposed variation is in keeping with the future streetscape of the area.

Notably, the site and surrounding area naturally falls from high points along Showground Road and Pennant Street in the south/south-east to low points in the north/north-west along Kentwell Avenue as shown in **Figure 9**. Given the natural slope of the land, existing development located directly across Showground Road to the south of the site



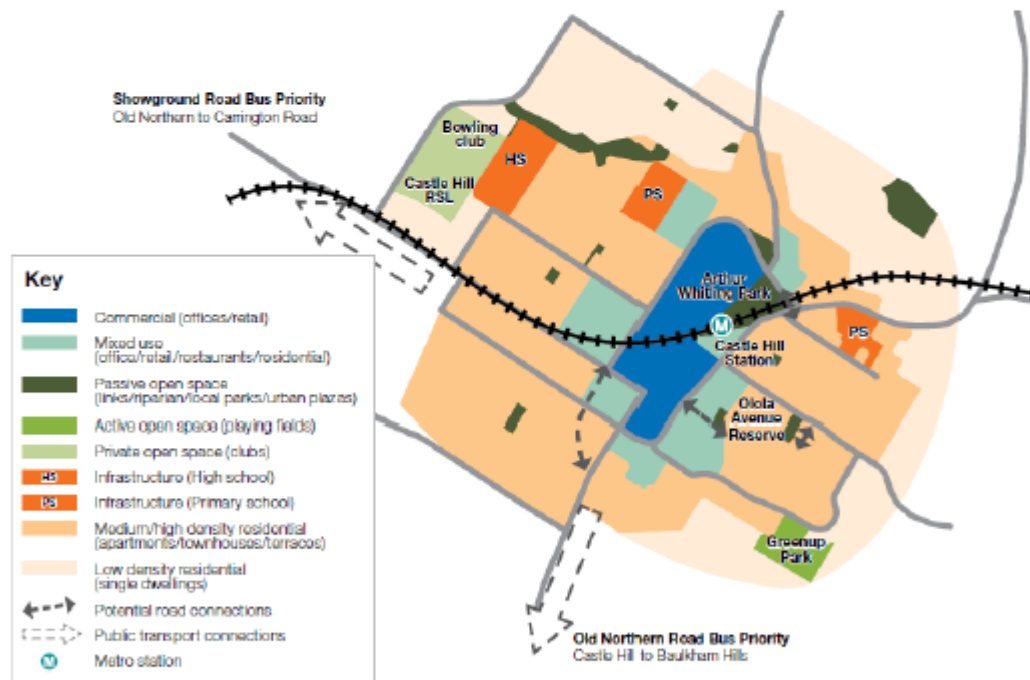
comprise a tall built form appearance at street level. The area subject to the 28 metre height standard is sited on land which is already naturally higher than land along Kentwell Avenue that is subject to the 7 metre standard, and accordingly permits buildings that are substantially taller than the 21 metre difference between the numerical controls indicates.

#### Strategic context

The Castle Hill Strategic Centre is undergoing significant change and growth. With the recent opening of the Castle Hill Metro Station in May 2019, significant investment for residential, retail, commercial and recreational development in line with Council's vision for an attractive metropolitan hub has recently been delivered and planned. This growth has occurred over various heights with tall building heights concentrated around the centre with recent development comprising high density residential buildings.

Aligning with Council's vision for Castle Hill to become the Shire's CBD and major strategic centre, the area is expected to experience significant uplift in the future. The future streetscape character identified under the LSPS indicated that land for the north of Kentwell Avenue will comprise "medium/high density residential apartments/townhouses/terraces" as shown in **Figure 5**. Therefore, the future character of the overall streetscape and built form on both sides of Kentwell Avenue is intended to be significantly higher than permitted by current development standards.

Notably, this growth will extend overtime to QIC's landholding known as 'Site B'. The masterplan for this area is expected to result in increased employment and residential densities to support the growing population overtime. The site will act as a gateway site for the desired future character of the Castle Hill Centre.



**Figure 5 Castle Hill Strategic Centre - Structure Plan**

Source: The Hills LSPS



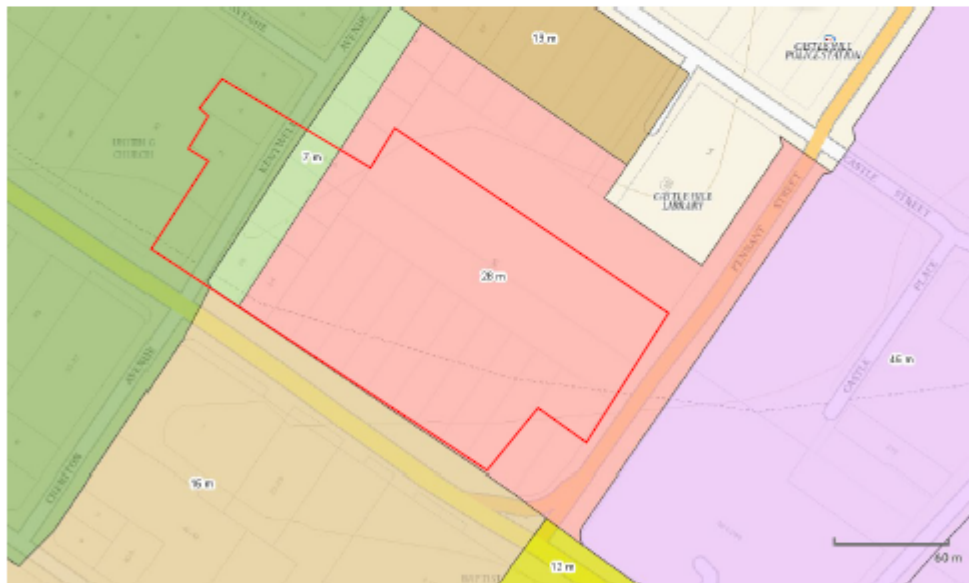
**Figure 6 View of site and immediate surrounds from Kentwell Avenue (looking south)**

Source: Ethos Urban



**Figure 7 View of western edge of the site and Showground road from west**

Source: Ethos Urban



**Figure 8 Transitional building heights surrounding the site under The Hills LEP 2019**

Source: The Hills LEP Maximum Building Height Map 024



Figure 9 Artistic impression from Showground road (variation highlighted in red)

Source: CHC

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

#### **Overshadowing**

Overshadowing diagrams have been prepared by CHC and forms part of the Architectural Plans attached at **Appendix A**.

The shadow diagrams presented at **Figure 10** are captured on 21 June, being mid-winter as the worst- case scenario. In this regard, during the winter solstice, the proposed building height variation does not generate significant overshadowing impacts as:

- The shadow cast by the non-compliant component of the building envelope does not give rise to any additional overshadowing beyond what is already being cast by the compliant part of the proposed building at a height of 28m at 12pm and 3pm in June;
- The shadow cast by the proposed variation in building height is insignificant when compared to the shadow cast by the permissible building envelope height within the 28m maximum building height zone; and
- The shadow cast by the proposed development falls entirely within the site and therefore has no impact upon surrounding development.

#### **Visual impact**

The proposed variation does not detrimentally impact the visual appearance of the overall design of the Woodward Sports and Recreational facility. The proposed materials of the non-compliant component of the building are consistent with the overall materiality of the development and therefore is in keeping with the visual streetscape when viewed from Showground Road, Kentwell Avenue and broader sight lines.

## Privacy

The proposed variation does not result in a loss of privacy for the surrounding development as:

- **To the north:** the existing residential property located at 5-5A Kentwell Avenue is being demolished as part of the scope of works. Therefore the next closest development located at 1 Kentwell Avenue is located at a considerable distance whereby the proposed variation will result in negligible privacy impacts
- **To the east:** There is no existing development located to the east where the proposed variation would result in adverse impacts
- **To the south:** The proposed variation will not detrimentally impact any privacy or views of existing development across Showground Road to the south given the significant separation.
- **To the west:** The nearest development to the west namely being the existing Wesley Castle Hill Community Church and Shine Chinese Community School is located approximately 55m from the proposed facility and therefore will not result in adverse privacy impacts.

Therefore, the low-scale nature of the proposal will not result in any adverse overshadowing, visual impact or loss of privacy upon the surrounding residential dwellings. Additionally, the proposal has been designed in accordance with the overall Castle Green masterplan for Site B. This achieves an overall holistic design approach to ensure high amenity for the future users of the area.

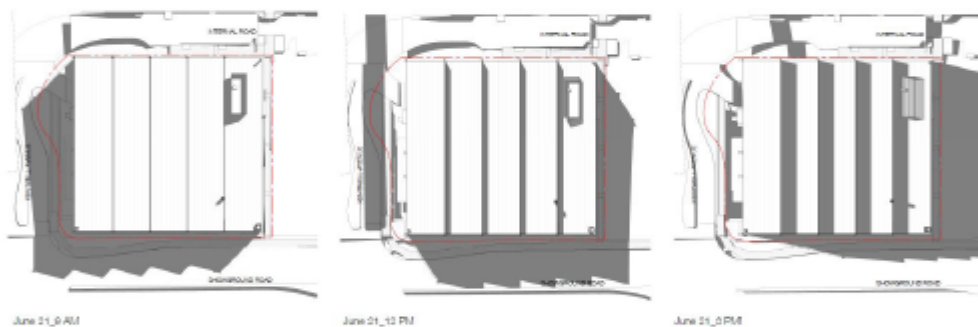


Figure 10 Extent of additional overshadowing (June 21)

Source: CHC

## 5.2 Clause 4.6(3)(b) Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the The Hills LEP 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 a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.



There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. The non-compliance with the standard results in a minor building floor plate encroachment and is required in order to provide safety height clearances for the proposed use. It is emphasised that majority of the proposed building envelope (96.4%) is consistent with the maximum building height.

The contravention of the development standard will not modify the existing maximum height of the proposed building. As such, the proposed non-compliance will achieve a better planning outcome than a complying scheme by delivering a consistent built form when viewed from the street frontage, and a consistent internal capacity for the proposed recreational use. Compliance with the 7m height standard will not result in the public benefit in that any changes to environmental impacts would be negligible, and the building would have less capacity with an irregular built form to serve its purpose as an indoor recreation facility.

Additionally, the non-compliance will not set an unreasonable precedent or standard in the context of the site or its surrounds, given the specific nature of the site and the negligible portion of the site which is subject to a maximum height limit of 7m.

### **5.3 Clause 4.6(4)(a)(ii): 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**

*Initial Action* establishes that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this Clause 4.6 variation request that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

#### **5.3.1 Consistency with the objectives of the development standard**

The proposed development is consistent with the objectives of the maximum building height development standard, for the reasons discussed in **Section 4.0** of this report.

#### **5.3.2 Consistency with the B4 – Mixed Use Zone**

**"To provide a mixture of compatible land uses."**

The proposal will contribute to the diversity of compatible land uses envisioned for the Castle Hill Strategic Centre through providing a new indoor sports and recreational facility that will foster social cohesion and community wellbeing. Specifically, the proposal will deliver significant community benefits as:

- It will be the first of its kind in delivering a high performing premium sports facility that offers unique and specialised activities including trampolining, cheer, bouldering and skating.
- It will diversify and improve the sport and recreational offering in The Hills LGA.
- It will attract a broad range of people and provide increased participation for all abilities.
- It will contribute to accommodating the growing demand for sporting and recreational facilities, specifically responding to the desire for a skate park within the Castle Hill area.
- It will promote physical activity and healthy lifestyles for overall positive community wellbeing.
- It will create a recreational environment for social gathering and community cohesion.
- It will contribute to achieving the vision for increased accessibility of recreational facilities to meet the changing sporting needs of the community.



**"To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling."**

The site is located approximately 700m south-west to the Castle Hill Metro Station and bus interchange. The proposal provides a new indoor sporting facility with high levels of access to transport infrastructure, as opposed to locating in other areas where public transport access is not as high, and other less sustainable forms of transport are becoming more desirable.

The proposed variation also supports improved vehicular access to and from the site from the reconfigured Kentwell Avenue. The proposed variation will provide pedestrian emergency egress and public domain improvements along Showground Road to support active transport.

**"To encourage leisure and entertainment facilities in the major centres that generate activity throughout the day and evening."**

The proposed variation to the mapped maximum building height pursuant of The Hills LEP 2019 will contribute to the delivery of a new indoor sports and recreational facility in the heart of the Castle Hill Strategic Centre which will serve the needs of the local and wider community. The proposed variation allows for the expansion of indoor recreational sporting opportunity within the LGA. It will provide high level amenity to support Woodward and will also provide a new facility of high quality community space in Castle Hill. The proposal will generate significant increased activity in the area throughout the day to support the vision of the Castle Hill as a genuine mixed use strategic centre. The proposed Woodward Sports and Recreational Facility will contribute to the overall vision for the Castle Hill Strategic centre as a genuine diverse mixed-use hub, serving as the Shire's CBD.

The proposed building defines a new standard for recreational development, setting a benchmark for future development in the Castle Hill Centre.

**"To provide for high density housing that is integrated with civic spaces."**

No residential development is proposed as part of this development application.

## 6. Conclusion

The assessment above demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of The Hills Sydney LEP 2019 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.

This Clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the maximum height development standard, the proposed height variation:

- Is consistent with the objectives of the development standard as the non-compliant element will continue to be consistent with the existing and future planned nature of adjoining development and the overall streetscape, and will not result in any adverse impacts with respect to overshadowing, visual impact or privacy;
- Is minor and relates only to a small encroachment of the building floorplate of approximately 150.15m<sup>2</sup> (3.4% of the total building envelope) and accordingly will be largely imperceptible against a backdrop of an otherwise compliant 20.93 metre high building;
- Will support the delivery of a high-quality and unique recreational facility that will provide amenity and new recreational opportunities for the community of Castle Hill and the wider Hills Shire;
- Will not result in any adverse built form impacts, and will contribute to the delivery of a high-quality building that demonstrates design excellence that is consistent with the designated role of Castle Hill as a Strategic Centre;
- Will not impact on any significant view lines and vistas from the public domain; and
- Will promote the orderly and efficient use of land, in accordance with the objects of the Act.

The development as proposed maximises a gateway site and is consistent with the metropolitan and district plans as well as Council's Local Strategic Planning Statement. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of The Hills LEP 2019.