

## COUNCIL ASSESSMENT REPORT

### SYDNEY CENTRAL CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSCC-435 - DA 1431/2023/JP
<b>PROPOSAL</b>	Alterations and Additions to Castle Towers Shopping Centre Including an Office Tower and Hotel Tower
<b>ADDRESS</b>	Lot 100 DP 1252620, Lot 1 and Part Lot C DP 411711 and Works over the Public Footpath, Castle Towers Shopping Centre and Adjoining Footpath, 6-14 Castle Street, Castle Hill
<b>APPLICANT</b>	Ethos Urban/QIC Limited
<b>OWNERS</b>	QIC Ltd and The Hills Shire Council
<b>DA LODGEMENT DATE</b>	31 March 2023
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19 and Schedule 6 of SEPP Planning Systems 2021
<b>ESTIMATED DEVELOPMENT COST</b>	\$608,128,000 (excluding GST)
<b>CLAUSE 4.6 REQUEST</b>	Yes
<b>KEY SEPP/LEP</b>	LEP 2019
<b>TOTAL &amp; UNIQUE SUBMISSIONS</b>	Six - first notification period Two - second notification period
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Statement of Environmental Effects – Ethos Urban Clause 4.6 Variation Request – Ethos Urban Hotel Plans – Woods Bagot Retail Plans – Clarke Hopkins Clarke Commercial Plans – BVN Architects Civil Plans – BG & E Stormwater Report – BG & E Survey Plans – Project Surveyors Retail Architectural Design Report – Clarke Hopkins Clarke

	<p>Commercial Design Report – BVN Architects</p> <p>Hotel Design Report – Woods Bagot</p> <p>Landscape Plans – Aspect Studios</p> <p>Landscape Design Report – Aspect Studios</p> <p>Arboricultural Assessment Report – Birds Tree Consultancy</p> <p>Economic Impact Assessment – Ethos Urban</p> <p>View Loss Assessment – Ethos Urban</p> <p>Fire Engineering Review – Warrington Fire</p> <p>Structural Statement – BG &amp; E</p> <p>Return Services Briefs – ADP Consulting Engineering</p> <p>Acoustic Impact Assessments (Hotel, Commercial and Retail) – ADP Consulting Engineers</p> <p>Construction Noise &amp; Vibration Report – ADP Consulting Engineers</p> <p>Building Services &amp; Sustainability Schematic Design Report – ADP Consulting Engineering</p> <p>Plan of Management – Hatamoto</p> <p>Waste Management Plans (Commercial, Retail and Hotel) – SLR</p> <p>Transport Impact Assessment - Stantec</p> <p>Preliminary Construction Traffic Management Plan – Stantec</p> <p>Quantity Surveyors Report – WT Partnership</p> <p>Building Access and DDA Assessment – Philip Chun Building Compliance</p> <p>Capability Statement Certification and BCA Assessment – Philip Chun Building Compliance</p> <p>Wind Impact Assessment – VIPAC Engineers</p> <p>Contamination Assessment – Douglas Partners</p> <p>Sydney Metro Impact Assessment – Douglas Partners</p> <p>Geotechnical Investigation – Douglas Partners</p> <p>Construction Environmental Management Plan – Clarke Hopkins Clarke</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>PREPARED BY</b>	Kristine McKenzie – Principal Co-Ordinator
<b>CONFLICT OF INTEREST DECLARATION</b>	None Declared
<b>DATE OF REPORT</b>	31 July 2024

## EXECUTIVE SUMMARY

The proposal is for alterations and additions to the Castle Towers shopping centre, a hotel tower and a commercial office tower. In broad terms the retail expansion includes internal alterations and retail refurbishment works including reconfiguration of existing floor areas and new amenities, carparking reconfiguration and modifications to loading docks and upgrades to services and plant. The commercial office tower comprises a GFA of 18,293m<sup>2</sup> and includes some food and beverage/retail tenancies. The hotel tower comprises 210 hotel rooms, restaurant, entertainment venue, function rooms, gym, sky pool and associated pool bar and sauna and also includes ground floor tenancies for retail/café/restaurant uses.

The proposal includes a Clause 4.6 variation request to height. The site has a 46 metre height limit. The maximum height of the proposal is 55.6 metres for the commercial building and 57 metres for the hotel. This is a maximum variation of 23.9% to the LEP height standard. 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 height of the two buildings is considered reasonable given the location of the site within a Town Centre location, the need for additional retail and commercial uses within the area and given that the proposed works do not result in unreasonable overshadowing or privacy impacts. The site is also subject to an FSR of 1.9:1 under LEP 2019. The proposed FSR is 1.71:1 which complies with the development standard.

Six submissions were received to the original notification period and two submissions were received to the second notification/exhibition period. The submissions principally raised issues related to construction impacts, acoustic impacts, traffic and parking impacts, height and loss of views and the status of other development within the area. In regard to the submissions, the key issue raised relates to height and view loss. The applicant has provided a view loss assessment and an addendum report. The Land and Environment Court established a Planning Principle in regard to views in *Tenacity Consulting v Warringah* (2004) which set principles for consideration. The proposed works have been considered having regard to the principles and it is considered that on the basis of the height proposed under the current application and potential height for the site under the Castle Hill Precinct Plan and having regard to the view assessment, the impacts are reasonable.

The proposal includes variations to the DCP in regard to setbacks for buildings exceeding two storeys, building height plane, setbacks opposite open space, loading dock provision and parking. In regard to setbacks, the DCP states that single and two storey development fronting a public road may utilise a zero setback however the proposal is for works which exceed two storeys in height, the DCP requires that buildings greater than two storey in height be set back in accordance with a building height plane which is exceeded and that if works are opposite an open space zone that they be set back 6m and that this area be used for landscaping purposes only. The DCP also requires the provision of loading docks to cater

for new works however the proposal seeks to rely on the existing docks. The proposal also does not provide additional parking to cater for the proposed works and results in a loss of parking across the site of 204 spaces. The proposed setbacks are considered satisfactory in regard to the design and built form of the development and the existing loading docks are adequate to cater for the proposed works. The proposed parking is considered satisfactory having regard to the provisions of the Draft DCP rates which have been recently exhibited and given the location of the site in close proximity to the Metro and bus interchange. The proposed variations to the DCP are considered reasonable given the proposed built form, the context of the site in a Town Centre location and the design of the proposal. The application has also been considered having regard to Clause 7.7 of LEP 2019 in respect to Design Excellence and the proposed works are considered satisfactory.

A number of conditions have been recommended requiring construction works to be undertaken in an appropriate manner and that the works will be operated in a way which will not unreasonably impact on adjoining or nearby properties. In regard to traffic and parking, the proposal does not seek to increase parking on site therefore it encourages modal shift for trips to the centre. View loss has also been assessed having regard to the Land and Environment Court principles and is considered satisfactory. Whilst not relevant to the current application, issues relating to construction of other developments has been reviewed and it is noted that Council was not the Principal Certifier for those development.

The proposal is recommended for approval subject to conditions.

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

The site is part of the existing Castle Towers shopping centre. The existing shopping centre includes a variety of shops, food premises and commercial premises including banks, medical services and other ancillary services. The centre also contains a restaurant piazza and two cinema complexes.

The Castle Towers shopping centre is bound by Pennant Street, Old Castle Hill Road, Old Northern Road and Showground Road. Castle Street runs in an east-west direction through the site with a pedestrian link sitting above the street and linking the northern and southern parts of the site. The site also includes a link under Old Castle Hill Road to the Metro.

The proposed works are located on the Castle Street and Old Castle Hill Road frontages of the site.

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

### **2.1 Background to the DA**

A pre-lodgement meeting was held prior to the lodgement of the applicant on 22 April 2022. The Development Application was lodged on 31 March 2023.

The applicant was requested to provide additional information on 05 July 2023, 10 July 2023, 16 October 2023, 16 February 2024, 24 May 2024 and 20 June 2024.

Additional information was received from the applicant on 09 August 2023, 31 August 2023, 06 October 2023, 18 December 2023, 23 February 2024, 28 February 2024, 01 March 2024, 25 March 2024, 17 April 2024, 16 May 2024, 30 May 2024, 31 May 2024, 24 June 2024 and 16 July 2024.



In addition, the Development Application was considered by the Design Excellence Panel (DEP) on 10 May 2023 and 13 September 2023.

## **2.2 Site History**

On 27 September 2016 the Stage 3 expansion of Castle Towers Shopping Centre was approved as a Deferred Commencement consent by the then Joint Regional Planning Panel (now Sydney Central City Planning Panel) (DA 864/2015/JP). The Deferred Commencement consent condition required an agreement to be entered into between the owner and Transport for NSW. The operative consent was subsequently issued on 31 July 2018.

The approved works included significant demolition, reconstruction and expansion works which would result in a total gross floor area of 238,575m<sup>2</sup>, a total of 7996 car spaces and creation of a 'Heritage Square' around the heritage building fronting Main Street. The original application included the demolition of the piazza buildings and the construction works were not staged.

The applicant has subsequently amended the DA on two occasions. Modification Application 864/2015/JP/A was approved on 26 March 2018 under Delegated Authority and allowed additional bulk excavation work to enable the future construction of the B4 basement level.

Modification Application 864/2015/JP/A was approved on 21 February 2019 by the SCCPP and allowed the development to be constructed in two stages (with Stage 1 being undertaken in two phases) and design changes. The applicant has advised that Phase 1 of Stage 1 of the works has been constructed which principally relates to works associated with the new food court on the lower level. The applicant has further advised that no further works are proposed to be undertaken in regard to 864/2015/JP. A condition has been recommended which requires that no further works be constructed to ensure that development on the site remains appropriate (See Condition 4).

## **2.3 The Proposal**

The proposal is for alterations and additions to the Castle Towers shopping centre, a hotel tower and a commercial office tower.

The existing Castle Towers shopping centre is located on land bound by Old Northern Road, Old Castle Hill Road, Pennant Street and Showground Road. The centre is dissected in an east-west direction by Castle Street which is a public road. An overhead walkway sits about Castle Street which links the northern and southern parts of the shopping centre. The proposed works are located in the area of the shopping centre which is fronted by Old Castle Hill Road, Castle Street and Pennant Street (within the northern part of the shopping centre). Attachments B, C and D show the location of the proposed works.

The proposed works include the following:

### Alterations and Additions to Existing Retail Centre:

- Internal alterations and retail refurbishment works including reconfiguration of existing floor areas and new amenities;
- Demolition works to facilitate new parking, retail tenancies, commercial and retail towers and associated works;
- Expansion of the Level 1 car park, carparking reconfiguration and modifications to Loading Dock 2;

- Upgrades to services and plant;
- Reconstruction of the Level 4 roof to provide a 715m<sup>2</sup> landscaped plaza;
- Public domain improvements including relocation of pedestrian access to new entry point on Castle Street; and
- Increase in retail Gross Floor Area (GFA) of 1948m<sup>2</sup> and Gross Leasable Floor Area (GLFA) of 411m<sup>2</sup>.

#### Commercial Office Tower:

- 55.6m (12 storey of office uses and 3 storey of basement) commercial tower with a GFA of 19,147m<sup>2</sup>;
- Food and beverage/retail tenancies with a GFA of 854m<sup>2</sup>; and
- Basement bicycle storage room, 146 bicycle parking spaces and end of trip facilities.

#### Hotel Tower:

- 57m (17 storey of hotel use and 4 storey basement) hotel tower;
- 210 hotel rooms and a GFA of 13,799m<sup>2</sup>;
- Restaurant, entertainment venue, function rooms, gym, sky pool and associated pool bar and sauna; and
- Retail/café/restaurant uses.

In addition to the above, the GFA of the following component uses is proposed:

Commercial tower – retail/restaurant use 801m<sup>2</sup> GFA

Hotel tower – retail/restaurant use 1388m<sup>2</sup> GFA

Function centre – 934m<sup>2</sup> GFA

Entertainment facility – 1792m<sup>2</sup> GFA

There is no staging or signage proposed as part of the application.

Two locations for public art have been proposed, one on level 3 and one on level 4.

The proposal seeks consent for retail hours of operation as follows:

Monday, Tuesday, Wednesday, Friday and Saturday: 9:00am – 5:30pm

Thursday: 9:00am – 9:00pm

Sunday: 10:00am – 5:00pm

Nominated food and drink premises: Monday – Sunday: 7:00am – 11:30pm

The hotel building and commercial building will operate 24 hours, seven days a week.

The following comparison applies:

Provision	Existing	Proposed	Total
Site Area	108,973.35m <sup>2</sup>	No change	No change
Gross Floor Area	151,443m <sup>2</sup>	33,894m <sup>2</sup>	186, 337m <sup>2</sup>
FSR	1.39:1	1.71:1	1.71:1
Height	24.15m	57m – hotel tower	57m – hotel tower (maximum height)

		55.6m – commercial office tower	
<b>Parking</b>	4759 spaces	Loss of 201 spaces	4555 spaces

The proposal also includes changes to the existing car park entry off Old Castle Hill Road to convert the parking area for use by the hotel with the driveway providing a direct connection to the proposed hotel port-cochere.

### 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.

**Table 1: Summary of Applicable State Environmental Planning Policies**  
(Preconditions in **bold**)

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
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> <li>• Clause 7.7 – Design Excellence</li> </ul>	NA N Y 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 *general development over \$30 million* with an estimated development cost of \$608,128,000. 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 Site Contamination Investigation has been submitted which has concluded as follows:

*Based on the information presented in this report it is considered that the site is suitable for the proposed development, being a continued commercial land use.....*

The report also includes recommendations.

The report has been reviewed by Council's Environmental Health Co-ordinator who has advised that the recommendations of the Update to Contamination Assessment are to be implemented. A condition has been recommended to this effect (See Condition 26).

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 Transport Impact Statement.

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 10,000m<sup>2</sup> gross floor area, shops which exceed 2000m<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 overall of 186,337m<sup>2</sup> and there are 4555 parking spaces proposed.

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.

### LEP 2019

#### a. Permissibility

The subject site is zoned MU1 Mixed Use (formerly B4 Mixed Use). The proposed development is defined in LEP 2019 as a commercial development and a hotel or motel accommodation as follows:

***Commercial premises means any of the following:***

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises*

and;

***hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that***

- (a) *comprises rooms or self-contained suites, and*

- (b) *may provide meals to guests or the general public and facilities for the parking of guests' vehicles,*

*but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.*

**Note—**

*Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.*

A commercial premise and a hotel are permissible uses in the MU1 Mixed Use zone.

b. Development Standards

Under LEP 2019, the following development standards apply under the LEP maps:

Standard	LEP Requirement	Proposed	Complies
Floor Space Ratio	1.9:1	1.71:1	Yes
Minimum Lot Size	600m <sup>2</sup>	There is no subdivision proposed.	NA
Height	46 metres	The proposed works have a maximum height of 57m.	No

i. **Clause 4.6 Variation**

Clause 4.6(4) 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 include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

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 46 metres. The maximum height of the hotel building is 57 metres, noting that the commercial building also exceeds the LEP limit with a height of 55.6 metres. The proposed variation to the LEP height standard for the hotel is 23.9%.

The applicant has submitted a detailed Clause 4.6 Variation Request which has 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. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.*

*This Clause 4.6 variation 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;*
- 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;*
- does not raise any matters of State and regional planning significance;*
- 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 Shire LEP 2019.*

Attachments H and I show the LEP height limit and the height variation and Attachment K is the applicant's Clause 4.6 request.

**Comment:**

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.*

In respect to the background to height controls, Council at its Ordinary Meeting on 26 November 2019 considered a report regarding the comprehensive review of The Hills LEP (FP250) which stated as follows in respect to Castle Towers:

*It is proposed to amend maximum height and floor space ratio mapping for Castle Hill to reflect the approval for Stage 3 expansion of Castle Towers (864/15/JP/B). The current mapped maximum floor space ratio is 1:1 and the maximum height is 12 metres. The proposed maximum floor space ratio is 1.9:1 and the maximum height is 46 metres.*

*Existing buildings on the Castle Towers development site exceed the current maximum floor space ratio and height controls, requiring considerable regulatory process and cost for even minor changes to the shopping centre. The approved Stage 3 development has a maximum*

*floor space ratio of 1.86:1 and a maximum height of 46 metres. Amending the LEP to reflect the existing development consent brings the controls for this site up to date and recognises the role and function of the centre, pending further detailed planning.*

Council's Principal Coordinator Forward Planning has advised that the current height controls for Castle Towers were implemented following the adoption of the Local Strategic Planning Statement (LSPS) as part of the comprehensive review of the LEP. The controls applied sought to reflect the approvals in place at the time, being DA 864/2015/JP/B. These controls came into force on 16 July 2021.

Further, Planning Proposal 13/2016/PLP was lodged on 21 December 2015. The planning proposal seeks to increase the applicable floor space ratio on the site to 2.7:1 and increase the maximum building height to 42 metres. In addition to this, it seeks to create a site specific provision to disregard the maximum building height and floor space ratio for residential accommodation, tourist and visitor accommodation and office premises and allow buildings up to 90 metres in height for these purposes, subject to a site specific Development Control Plan being adopted by Council. A preliminary assessment was undertaken and identified that the proposal lacks sufficient information to be progressed. Council officers had requested revised information however this has not been forthcoming from the Proponent. This Planning Proposal has not been determined to date.

The proposed height of the development is considered appropriate given the location of the proposed works and the future desired character of the Castle Hill Town Centre. The proposed works are located on the existing shopping centre site. The proposed works are separated by the existing road carriageway and the site is considered to be discrete in its location.

It is also noted that Council has adopted LEP height limits for other sites within the immediate area which have comparable heights and which include:

Terminus Street Precinct adopted a height of 45 metres.

Pennant Street Target Site adopted a height of 54 metres.

Garthowen Crescent Target Site adopted a height of 57 metres.

Crane Road Precinct adopted a height of 68 metres.

Given the location of the works, the orientation of the site and the separation across local roads, there will be a minimal impact to adjoining residential properties in respect to overshadowing and privacy. Specifically in regard to shadow impacts, it is acknowledged that there will be some shadow impact to an existing apartment development located at No. 299 – 301 Old Northern Road, Castle Hill. The applicant has submitted shadow impact diagrams which indicate that any shadow impacts are not unreasonable.

In regard to visual impacts to adjoining properties, the applicant has provided a visual impact assessment which is addressed below.

The proposed works will provide a modern built form which will complement the future character of the Town Centre and will be consistent with the desired character of future development within the Town Centre and the broader precinct.

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, while considerate of existing lower scale development within the Town Centre, 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.

#### Adopted Precinct Plan for Castle Hill Strategic Centre

On 11 June 2024 Council at its Ordinary Meeting resolved to adopt a Precinct Plan for the Castle Hill Strategic Centre. The Precinct Plan *'sets a vision and framework for the for the long-term growth of the Castle Hill Strategic Centre over the next 20 years and reinforces the Centre as a vibrant regional destination for housing, retail, employment and entertainment'*.

The Adopted Precinct Plan for Castle Hill Strategic Centre includes a Structure Plan which refers to built form which indicates the Castle Towers site as follows:

Land to the north of Castle Street – 8 - 30 storey height.

Land to the south of Castle Street – 8 - 20 storey height.

In regard to the above, it is not envisaged that all tower elements at Castle Towers will be 20 or 30 storeys in height, with some lower built form elements incorporated in future to allow for transitions in building heights.

Any future uplift for Castle Towers would be facilitated through a landowner-initiated Planning Proposal and would be required to include appropriate modelling and other documentation to support any increase in height beyond the current LEP 2019 limits.

The Precinct Plan also states that *'Taller buildings are to be located in close proximity to the Metro Station and will be slender with a high standard of architectural design distinctly marking the heart of the Strategic Centre'*.

Attachment I shows the Adopted Precinct Plan heights.

The proposed height of the development is considered to be consistent with the adopted Precinct Plan in regard to height and structure in respect to providing additional retail, commercial and a hotel use within a centrally location within close proximity the Metro and bus station.

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 the development will provide additional services and facilities to residents and customers.

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

**c. Design Excellence – Clause 7.7 of LEP 2019**

Clause 7.7 of the LEP specifies an objective to deliver the highest standard of architectural and urban design and applies to development involving the erection of a new building or external alterations to an existing building if the building has a height of 25 metres or more. The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. It is noted that only the apartment development triggers the need for consideration by the DEP.

In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,
- (c) whether the development detrimentally impacts on view corridors,
- (d) whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,
- (e) the requirements of any development control plan to the extent that it is relevant to the proposed development,
- (f) how the development addresses the following matters:
  - (i) the suitability of the land for development,
  - (ii) existing and proposed uses and use mix,
  - (iii) heritage issues and streetscape constraints,
  - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
  - (v) bulk, massing and modulation of buildings,
  - (vi) street frontage heights,
  - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
  - (viii) the achievement of the principles of ecologically sustainable development,
  - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
  - (x) the impact on, and any proposed improvements to, the public domain,
  - (xi) the configuration and design of public access areas, recreation areas and communal open space on the site and whether that design incorporates exemplary and innovative treatments,
- (g) the findings of a panel of 3 or more persons that has been convened by the consent authority for the purposes of reviewing the design excellence of the development proposal.

**Comment:**

The application was considered by the DEP on 10 May 2023 and 13 September 2023. At the second meeting the Panel concluded as follows:

*The Panel commends the Applicant on the care with which the design changes have been investigated. Generally, the project is a considered design solution for a challenging site.*

*The changes and refinements to the Castle Street frontage largely resolve the issues which were discussed at the last meeting. The engagement of a wayfinding consultant is supported as the site has a complicated circulation pattern. The changes to the office tower are supported. The Panel appreciates the study undertaken by BVN on the southern side and accept the decision that the original selection is acceptable, noting that some of the other options are also valid.*

*The changes to the entry and Hotel porte-cochere are supported. It is critical that the selection of plant material and material for the planter boxes must be able to withstand wind and other environmental conditions and be robust and enduring.*

*The Panel continues to be mindful of the reliance on dense planting to create verdant landscaped facades, the ongoing maintenance of which will require considerable dedication and ongoing commitment from operators of the office block and hotel.*

*The Panel recommends that the Applicant review the site challenges and prepare a landscape maintenance strategy, to ensure that planted facades and balconies remain green all year round. A fall-back strategy should be provided in anticipation of plant failures, maintenance costs and challenging weather conditions.*

*The key public domain principles are supported however the Panel recommends continuing dialogue with Council to resolve details relating to planting, materiality, lighting and signage during detailed design phase.*

*The Panel is satisfied that, subject to the design recommendations contained in this advice, the proposal meets the requirements of design excellence.*

The key matters raised by the Panel in regard to Clause 7.7 of LEP 2019 include:

- Need for buildings to address street frontages.
- Further consideration is required to ensure that the pedestrian environment is appropriate given the scale of the buildings.
- Need for a wayfinding strategy.
- Wind testing effects are required to be addressed.
- Adequacy of articulation and variation to facades to reduce the perception of bulk.
- Screening along the western façade of the office tower to improve occupant amenity.
- Visual impact of the ramp to the hotel porte-cochere.
- Complexity of the hotel roof layout, facade and pool shape in regard to maintenance.
- Need for consideration of any solar impacts to the adjacent residential building.
- Review of landscape selection is required to ensure that the external appearance is achieved and need for ongoing maintenance and replacement of planting.

The proposal was not required to be considered at a further DEP meeting.

In response to the above, the applicant provided additional plans and information to respond to the matters raised including an updated ADG compliance report, landscape report and urban design report. The following comments address the key comments raised by the DEP:

- The proposed building works provide an appropriate streetscape outcome and adequately address both Castle Street and Old Castle Hill Road.

- The design of the buildings ensures that a suitable pedestrian environment is achieved.
- A wayfinding strategy will be required to be prepared by the applicant to ensure that customers/visitors are able to appropriately way find.
- A wind impact assessment has been submitted which addresses wind conditions to ensure that comfort is maintained.
- The external design of the new works provides a variety of articulation through the use of varied materials, colours and finishes to reduce bulk.
- A thermal assessment has been undertaken of the office tower to confirm that sustainability and thermal comfort targets are achieved.
- Design updates have been undertaken to the ramp including upgrade to materials, addition of a suspended metal ceiling, feature lighting and the addition of landscape planting.
- The applicant has advised that the hotel façade and design is desired and will result in a high quality design.
- Solar access to the Atmosphere buildings opposite has been reviewed and the buildings will continue to achieve a reasonable level of solar access.
- Amendments to plant selection has been undertaken and the proposed planting is considered to be satisfactory and will achieve the desired outcome subject to maintenance.

The other matters required to be addressed under Clause 7.7 have been assessed as satisfactory by the Design Excellence Panel or addressed in other sections of this report. It is considered that the proposal exhibits design excellence and satisfies Clause 7.7 of the LEP.

### **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:

<b>DCP Criteria</b>	<b>Required</b>	<b>Provided</b>	<b>Complies</b>
Setbacks	Single and two storey retail / commercial development located along a public road may utilise a zero setback, other than in those site specific areas specified on the precinct plan maps.	The site is bound by public roads and propose a nil setback however the works exceed two storeys in height.	No, however the proposed setbacks are considered appropriate given the Town Centre location.

	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.	The proposed works do not follow the required building height plane.	No, however the proposed setbacks are considered appropriate given the Town Centre location.
	6m setback if opposite or adjacent to Residential, Special Uses or Open Space zones or as specified on the precinct plan maps in Appendix A. This area can only be used for landscaping and screening purposes or protection of ecological communities.	The proposed new works are generally opposite other MU1 Mixed Use land with the exception of the land diagonally across Old Castle Hill Road which is zoned RE1 Public Recreation.	No, however the proposed setbacks are considered appropriate given the Town Centre location.
Loading Docks	<p>Not visible from public domain and must provide buffer landscaping treatments.</p> <p>Not visible from adjoining residential areas.</p> <p>Loading docks are not to transmit excessive noise.</p> <p>The number of required loading docks for certain development types is outlined within THDCP Part C, Section 1 – Parking. For all other development, a minimum of 1 loading dock space is required.</p>	There are no additional loading docks proposed to cater for the additional retail or commercial floor areas. The commercial building will utilise loading dock 4.	No, however the existing loading docks are adequate to cater for the proposed works.
Car Parking	<p>Parking Required using Minimum Catchment Rate = 3460 spaces</p> <p>Parking Required using Maximum Catchment Rate = 6116 spaces</p>	There are 4555 spaces proposed which meets the minimum required parking.	See comments below in regard to parking provision.

#### a. Setbacks

The DCP states that single and two storey retail / commercial development located along a public road may utilise a zero setback, other than in those site specific areas specified on the precinct plan maps, 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 and that a 6m setback is required for sites if opposite or adjacent to Residential, Special Uses or Open Space zones or as specified on the precinct plan maps.

The site is bound by public roads and proposes a nil setback however the works exceed two storeys in height, the proposed works do not follow the required building height plane and the proposed works are generally opposite other MU1 Mixed Use land with the exception of the land diagonally across Old Castle Hill Road which is zoned RE1 Public Recreation.

The applicant has provided the following as justification:

*Section 2.5 of Part 6 – Business of The Hills DCP 2012 requires a 45° setback above 8m. As demonstrated in the Architectural Plans there are instances where the proposed development does not comply with the setback provisions of the DCP. Specifically, the retail refurbishment, commercial tower and hotel building have a nil street setback to Castle Street and Old Castle Hill Road.*

*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 existing DCP setbacks provisions pre-date the recent Hills LEP 2019 amendment increasing the maximum height of buildings on various sites within the Castle Hill strategic centre. Therefore, the applicable setback controls are considered outdated and do not realistically reflect appropriate built form outcomes that can be achieved with the permissible height of taller buildings.*

*.... Castle Hill is a major strategic centre and the largest centre in The Hills LGA. Although currently characterised by relatively low scale commercial and residential development, the development of the Sydney Metro has opened up major opportunities for increased densities, as detailed in Council’s Castle Hill North Precinct Plan, Council’s LSPS. The strategic centre is envisioned to be the ‘CBD’ of The Hills Shire, expected to provide new leisure, entertainment, retail and employment opportunities, including key office space to support the future population.*

*The DCP setback controls are more relevant to smaller centres with a B2 Local Centre zoning (or similar). These centres are better suited to small-scale development with a height of 2-4 storeys where the 45° height plane control would only apply to the topmost floors of the building, as opposed to the majority of the building, as is the case for Castle Towers Shopping Centre.*

*Ultimately, complying with the DCP setback requirement will result in a worse built form outcome, limiting the potential for the future development of the site as a genuine strategic centre. Development built to the zone boundary does not adversely impact adjoining development and achieves an appropriate bulk and scale that maintains an appropriate streetscape character.*

*Part 6 Clause 2.5(c) of the DCP requires that “where any proposed development is opposite or adjacent to Residential, Special Purpose or Recreation zones, the building shall be setback a minimum of 6 metres, or as specified on the precinct plan maps contained in Appendix A to this Section. This area is to be used exclusively for landscaping and*

screening purposes or for the protection of endangered ecological communities present on a site”.

*Whilst the south-eastern boundary on the site is located opposite land zoned RE1 Public Recreation, the proposed redevelopment of this part of the site for the purpose of the retail podium and hotel tower utilises the existing nil setback along Old Castle Hill Road for the Castle Towers Shopping Centre in its current built form. Maintaining the existing nil setback will not give rise to any additional impacts on the streetscape of Old Castle Hill Road, will not adversely impact adjoining development, and will not threatening any ecological communities on the site. Furthermore, the land zoned RE1 Public Recreation is largely occupied by the Castle Hill transport interchange comprising the railway station, Sydney Metro station, and bus stops. As such, the nil setback is not imposing any adverse amenity impacts on significant public domain or green spaces. In this regard, the proposal still meets the objectives of the setback controls in the DCP and is therefore acceptable despite the non-compliance.*

*Part 6 Clause 2.6(c) of the DCP requires that “for development not in the B2 Local Centre zone, the maximum height of buildings shall be 2 storeys”.*

*This DCP provision pre-dates the recent amendment to Clause 4.3 of The Hills LEP 2019, increasing the maximum height of buildings on various sites within the Castle Hill strategic centre. Therefore, the subject building height control is considered outdated and does not accurately reflect appropriate built form outcomes that can be achieved with the permissible height of taller buildings. This particular DCP control is designed to correspond with the superseded building height standard under Clause 4.3 of the LEP. In addition, the non-compliance with the 2-storey height limit does not prevent the proposal from demonstrating consistency with the objectives of the building height development controls in Clause 2.6 of the DCP. To maintain compliance with the 2-storey height limit would fail to reflect Council’s strategic intent for Castle Hill (that is, to grow Castle Hill into the premier strategic centre of The Hills Shire, which is expected to provide a true mixed-use precinct in accordance with Council’s LSPS and Castle Hill North Precinct Plan).*

*Having regard to the above, it is considered that the DCP requirements have been abandoned by previous approvals, have been superseded by subsequent increases to building heights set out under The Hills Local Environmental Plan, and are inconsistent with Council’s objectives for the centre as set out in the LSPS and Draft Castle Hill Precinct Plan. Despite the variation, the proposed development will result in acceptable impacts and facilitate development that is consistent with the desired planning outcomes for the Castle Hill centre.*

#### **Comment:**

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 location of the proposed works around the corner of Castle Street and Pennant Street will provide a focal point for entry to the shopping centre. The design of the proposed works are modern in character and are in keeping with the desired existing and future character of the Castle Hill Town Centre.

The proposed design, materials and colours of the works will result in a reasonable streetscape outcome which is in keeping with the immediate area which has been subject over recent years to higher forms of development with a modern external appearance. The external design of the buildings include:

Retail Expansion: painted concrete, exposed aggregate concrete and texture concrete panels finishes in grey and cream tones.

Commercial Tower: curtain wall glazing, porcelain cladding and concrete finishes in grey and natural wood.

Hotel Tower: breeze blocks, metal cladding, pigmented concrete and metal finishes in pink/orange tones.

The site is bounded by existing roads 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 variations to setbacks can be supported in this instance.

#### **b. Loading Docks**

The DCP requires that, based on floor area, the commercial buildings be provided with four loading docks and the additional retail floor area be provided with four additional loading docks. There are no additional loading docks proposed to cater for the additional floor areas. The commercial building will utilise loading dock 4 and the retail area will utilise the existing loading docks.

#### **Comment:**

The objectives of the DCP are:

*To ensure that adequate areas are set aside on site to allow for the safe and efficient manoeuvring of delivery and service vehicles.*

(ii) *To ensure that loading facilities required in association with developments do not detract from the amenity of nearby public spaces and residential land uses.*

(iii) *To ensure no interference is caused to off-street car parking arrangements.*

The proposal provides adequate loading docks which are distributed through the centre and are accessible for all existing and proposed works. The docks are located in centralised positions to ensure that distances to shops are kept to a minimum where required.

The dock locations are separate to carparking locations and as such there will be no conflict between the two uses. The docks are easily located for deliveries. The docks are also multi-use and as such are available for various forms of delivery.

On this basis the proposed number of docks proposed is considered adequate for the development.



### c. Carparking

The proposal seeks to increase retail floor area and to construct a commercial tower and a hotel tower. The applicant has not proposed to provide any additional car parking spaces to cater for the proposed works. The proposed works result in a loss of 204 parking spaces.

The Parking DCP contains the following relevant rates:

Retail – 1 space per 18.5m<sup>2</sup> GLFA

Commercial (office) – 1 space per 40m<sup>2</sup> GFA

Hotel – as per the following:

Rooms - 1 space per guest room plus 1 space per two employees, in addition to any space generated by a public bar or restaurant.

Function Centre - 1 space per 3 seats or 15 spaces per 100m<sup>2</sup> GFA, whichever is the greater.

Entertainment Facility - 1 space per 5 seats or 1 space per 10m<sup>2</sup> of non-fixed seating floor space.

Council has adopted the Precinct Plan for the Castle Hill Strategic Centre which proposes alternate rates for retail and commercial uses as detailed below. The Draft DCP rates have been publicly exhibited between the 16 June 2024 to 10 July 2024 and it is anticipated that a report will be considered by Council on 13 August 2024.

Retail - Minimum Inner Walkable Catchment - 1 space per 60m<sup>2</sup> GFA

Retail - Maximum Inner Walkable Catchment - 1 space per 30m<sup>2</sup> GFA

Office - Minimum Inner Walkable Catchment - 1 space per 100m<sup>2</sup> GFA

Office - Maximum Inner Walkable Catchment - 1 space per 75m<sup>2</sup> GFA

The applicant submitted traffic and parking advice to support the proposed parking which outlined the following key points:

- *The rates do not have sufficient regard to the site's location directly adjacent to Castle Hill metro station (which commenced operations after the DCP rates were formulated), which has improved public transport accessibility to the precinct and reduced car reliance.*
- *The rates do not have regard to the extent to which car parking at the Centre, and increasingly in the surrounding area, is controlled and managed. The extent of this control and management acts to constrain the available car parking supply, particularly long-term car parking, and thus reduce car parking demand.*
- *The retail rates are inconsistent with the empirical/ surveyed car parking data identified earlier in this report. This data indicates that the rate of retail car parking demand at the Centre has reduced over the past 5+ years, principally due to the combination of the above factors.*
- *The rates do not have regard to the extent to which car parking demands at the Centre vary across the week. By way of example, peak retail demands occur on a Saturday at lunchtime when there is no office car parking demand and low hotel car parking demand. The sharing of the available car parking supply for multiple land uses, which generate demands at different times of the day and/or day of the week, allows for the total supply to be less than the cumulative demand of each individual land use.*

- The DCP rates align with the 'predict and provide' approach to car parking. The Austroads Guide to Parking Management Part 11 describes this approach as a technique which readily interprets a 'parking problem' as an issue of 'inadequate supply'. Over the past decade, the 'predict and provide' approach has been steadily replaced by a range of travel demand management techniques which challenge historical travel behaviours and encourage mode change away (reversing the trend) from private motor vehicle travel, particularly during road network peak hours. For the future development in Castle Hill, it is considered appropriate, if not necessary to curtail rising traffic congestion, to adopt a reduced car parking rate approach to encourage travel by sustainable transport modes (walking, cycling and public transport) and minimise, as far as practical, travel by private motor vehicle. It is understood that this approach aligns with the likely recommendations of the precinct wide transport study currently being completed for TfNSW and Council for Castle Hill.

The report proposes alternate parking rates as follows:

Use	Description	Size	Parking rate		Parking demand	
			Weekday	Weekend	Weekday	Weekend
Retail	Retail	+411sqm GLFA	3.5 spaces per 100sqm GLFA	3.7 spaces per 100sqm GLFA	14	15
Commercial	Office	+18,343sqm GFA	1 space per 100sqm GFA	N/A	183	0
Hotel	Rooms	210 rooms	1 space per 4 rooms	1 space per 4 rooms	53	53
	Function centre	934sqm GFA	1 per 100sqm GFA	1 per 100sqm GFA	9	9
	Retail	1,388sqm GFA	3.5 spaces per 100sqm GLFA	3.7 spaces per 100sqm GLFA	49	51
	Entertainment	1,792sqm GFA	1 per 100sqm GFA	1 per 100sqm GFA	18	18
Total					326	146

The report also assesses the overall parking requirement of the centre as a whole and detailed the following demand:

**Table 7: Total post development daytime car parking demand**

Use	Description	Size	Parking rate		Parking demand	
			Weekday	Weekend	Weekday	Weekend
Retail	Retail	120,119sqm GLFA [1]	3.5 spaces per 100sqm GLFA	3.7 spaces per 100sqm GLFA	4,204	4,444
Commercial	Office	+18,343sqm GFA	1 space per 100sqm GFA	N/A	183	0
Hotel	Rooms	210 rooms	1 space per 4 rooms	1 space per 4 rooms	53	53

Use	Description	Size	Parking rate		Parking demand	
			Weekday	Weekend	Weekday	Weekend
	Function centre	934sqm GFA	1 per 100sqm GFA	1 per 100sqm GFA	9	9
	Retail	1,388sqm GFA	3.5 spaces per 100sqm GLFA	3.7 spaces per 100sqm GLFA	49	51
	Entertainment	1,792sqm GFA	1 per 100sqm GFA	1 per 100sqm GFA	18	18
Total					4,516	4,575

[1] Calculated as 119,708 sqm (existing floor area) plus 411 sqm (this DA per Table 3 of this report).

Based on the above, 4555 spaces are provided on site and 4575 are required based on the proposed rates. The analysis states:

- *The proposed car parking supply is expected to be sufficient to meet the peak weekday car parking demands (i.e., 4,555 car space supply – 4,516 car space demand = 39 car space surplus).*
- *The proposed car parking supply is expected to result in a “theoretical” car parking shortfall of 20 car spaces on weekends (i.e., 4,555 car space supply – 4,575 car space demand = 20 car space shortfall).*

The following comments were provided by the applicant as justification for the parking:

- It is based on an assessment which adopts a high level of conservatism. Most notably, the retail car parking rate for the Saturday is based on the demand recorded on the Saturday immediately after the peak Black Friday sales day. As outlined in Table 2 earlier in this report, this Saturday had the highest patronage of any day in December. In our view, the demand recorded on this day is one of the most conservative Saturdays of the year.*
- The Saturday retail car parking rate of 3.7 car spaces per 100sqm includes a “buffer” of 5% above the predicted Saturday demand. The actual demand on this day is expected to be closer to 3.5 car spaces per 100sqm (as outlined in Section 2.5.2 of this report) and thus the buffer equals a rate of 0.2 car spaces per 100sqm. For 120,119sqm GLFA, this buffer equals 240 car spaces. As such, the shortfall of 20 car spaces is “theoretical” only and would not result in off-site car parking demand.*  
  
*Rather, it will simply reduce the available buffer to 210 car spaces. This reduction can also only be expected for a few hours during the day on a Saturday.*
- The Saturday retail car parking rate of 3.7 car spaces per 100sqm GLFA sits near the top of the rate range outlined in Council’s Draft Precinct Plan i.e., equal to rates of approximately 2.0 car spaces per 100sqm GLFA (minimum) to 4.0 car spaces per 100sqm GLFA (maximum). If a lesser rate were adopted, the shortfall would not be generated.*

*In the context of the above discussion, the proposed car parking provision is considered appropriate for the proposed development, noting that the approach to constraining the car parking provision to mitigate traffic impacts and encourage mode share change is also consistent with the recommendations of Council’s Draft Precinct Plan.*

*Finally, whilst car parking for the proposed development is to be accommodated solely within Site A car parking areas, it is noted that the Centre still benefits from overflow car parking available within Site C. The inclusion of the 514 car spaces provided on Site C in the above*

*car parking assessment would result in a post-development car parking supply would equal 5,069 car spaces and the resultant weekend retail car parking rate would equal 4.11 car spaces per 100sqm GLA. Whilst the permanent allocation of all the car parking spaces on Site C is not proposed for the proposed development, this comparison highlights that the “effective retail car parking provision” at the Centre will remain in alignment with the previously approved rate of 4.13 car spaces per 100sqm GLA for the foreseeable future i.e., pending the redevelopment of Site C. This overflow car park effectively provides a contingency for QIC to manage its car parking in the foreseeable future to deal with any unexpected peak car parking events.*

Given the extent of the proposed works, use of the existing parking for the additional floor area/uses and given the proposed changes to parking rates under the Precinct Plan, the existing and proposed works have been reviewed.

The following table is a parking assessment using the Precinct Plan rates instead of the DCP rates and also recalculates the existing centre and proposed works. It may be noted that the Draft DCP rates have been publicly exhibited between the 16 June 2024 to 10 July 2024 and it is anticipated that a report will be considered by Council on 13 August 2024.

Use	Specific Details	DRAFT DCP (Precinct Plan Parking Rate)	Area	DCP Parking Requirement
Existing Shopping Centre	Retail - Minimum Inner Walkable Catchment	1 space per 60m <sup>2</sup> GFA	151,443m <sup>2</sup>	2525 spaces
	Retail - Maximum Inner Walkable Catchment	1 space per 30m <sup>2</sup> GFA	151,443m <sup>2</sup>	5049 spaces
Proposed Retail	Retail - Minimum Inner Walkable Catchment	1 space per 60m <sup>2</sup> GFA	1948m <sup>2</sup>	33 spaces
	Retail - Maximum Inner Walkable Catchment	1 space per 30m <sup>2</sup> GFA	1948m <sup>2</sup>	65 spaces
Proposed Commercial Tower	Office - Minimum Inner Walkable Catchment	1 space per 100m <sup>2</sup> GFA	19,147m <sup>2</sup>	192 spaces
	Office - Maximum Inner Walkable Catchment	1 space per 75m <sup>2</sup> GFA	19,147m <sup>2</sup>	256 spaces
	Retail/Restaurants - Minimum Inner Walkable Catchment	1 space per 60m <sup>2</sup> GFA	801m <sup>2</sup>	14 spaces
	Retail/Restaurants - Maximum Inner Walkable Catchment	1 space per 30m <sup>2</sup> GFA	801m <sup>2</sup>	27 spaces
Proposed Hotel Tower	Rooms	1 space per guest room plus 1 space per two	210 rooms and 42 staff	231 spaces

		employees, in addition to any space generated by a public bar or restaurant.		
	Function Centre	1 space per 3 seats or 15 spaces per 100m <sup>2</sup> GFA, whichever is the greater.	934m <sup>2</sup> and 220 seats (parking calculated using GFA)	141 spaces
	Entertainment Facility	1 space per 5 seats or 1 space per 10m <sup>2</sup> of non-fixed seating floor space.	1792m <sup>2</sup> GFA and 1500 persons maximum capacity. (parking calculated using maximum capacity)	300 spaces
	Retail/Restaurants - Minimum Inner Walkable Catchment	1 space per 60m <sup>2</sup> GFA	1388m <sup>2</sup>	24 spaces
	Retail/Restaurants - Maximum Inner Walkable Catchment	1 space per 30m <sup>2</sup> GFA	1388m <sup>2</sup>	47 spaces
				Parking Required using Minimum Catchment Rate = 3460 spaces
				Parking Required using Maximum Catchment Rate = 6116 spaces

There are currently 4759 spaces on the site and 204 will be lost due to the proposed works, resulting in 4555 spaces remaining. The proposed parking of 4555 spaces meets the required parking using the Minimum Catchment Rate as detailed above.

Council's Senior Traffic Engineer has reviewed the proposal and as advised as follows:

*It is acknowledged that the proposed development does not provide additional car parking spaces on the basis that the existing parking provision has sufficient capacity to cater for the anticipated parking demand and the overall parking rate is generally in line with the rates stipulated in the draft Castle Hill Precinct Plan. It is expected that the proposed parking*

*arrangement will assist in limiting the traffic generation from the proposed development and maintaining the road network capacity.*

*There may be instances where future patrons to the proposed development would attempt to park on the surrounding local roads. Similar situation is experienced with the existing staff and commuter parking within the surrounding roads which is being dealt with by the existing parking restrictions implemented as part of the Sydney Metro Parking Management Strategy.*

*Regional traffic modelling has identified a number of transport infrastructure and pedestrian access improvements in the vicinity of the site. Most of the proposed improvements including the provision of roundabouts, road widenings and pedestrian bridges have been included in the current Contribution Plan No.9 - Castle Hill Town Centre and Contribution Plan No.17 – Castle Hill North. The remaining proposals including the Castle Street/Pennant Street signalised intersection upgrade and additional pedestrian bridges across Terminus Street, Crane Road, Kentwell Avenue and Castle Street are being proposed in the new Contribution Plan for the draft Castle Hill Precinct Plan.*

*Considering the above, no objection is raised with the proposal from a traffic impact perspective.*

In addition to the above the site is serviced by the Metro and the bus station which are both located directly opposite the site, noting that the Metro has an existing underground link directly into the central area of the shopping centre.

The proposed parking is considered to be adequate to cater for the proposed works and the proposed variation is considered satisfactory in this instance.

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

There have been no 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. The proposal includes demolition works and fire safety upgrade works.

### **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 additional retail facilities and a new commercial tower and hotel tower which respond 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**

Six submissions were received during the first notification period and two submissions were received during the second notification period. These submissions are considered in Section 4.3 of this report.

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

The development will provide for additional retail facilities and a new commercial tower and hotel tower for use 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. View Loss Assessment**

The applicant was requested to provide a view loss assessment (VLA) given the proposed height of the commercial tower and the hotel tower and the potential impacts to adjoining properties, in particular loss of views towards the Blue Mountains and the surrounding urban area for the residents in the Atmosphere building located at 299-301 Old Northern Road. In this regard the impact on views was noted in some submissions received during the two notification periods.

The VLA included a three stage process which considered visual analysis, view loss and visual loss assessment.

In regard to contact with residents, the applicant has advised that the following process was followed:

- *The applicant contacted the building manager of the Atmosphere building with a list of apartments to which access was desired.*
- *The apartments identified by the applicant comprised those necessary to present a selection of the most affected and representative views to inform the view loss assessment.*
- *Without advising the applicant, the building manager also arranged access to some other units on the day that our surveyor and VIA team were attending. It was not necessary to obtain additional surveyed photographs from these additional apartments because they were either already able to be adequately assessed using imagery taken from the selected apartments, or because the proposed development would not be visible from these apartments.*
- *Due to time and budget constraints, and the fact that these were not considered to be required for assessment purposes, photographs were not taken from the 'extra' apartments to which the building manager had arranged access.*
- *We consider the View Loss Assessment provided to Council to be an accurate and representative assessment of the nature of view impacts experienced from apartments within the Atmosphere building.*
- *Due to the confusion on the day arising from the building manager arranging access to the additional apartments, one apartment owner was upset that their specific views*

*were not being assessed. For goodwill, QIC engaged Ethos Urban to undertake an additional assessment of this specific view, which was subsequently provided to Council.*

In respect to the above, during the second notification period a submission was received which raised concerns that the objector's unit had not been included in the VLA. In response, the applicant provided an addendum to the VLA to address the additional unit.

The Land and Environment Court established a planning principle in regard to views in *Tenacity Consulting v Warringah* (2004) where Senior Commissioner Roseth stated as follows:

*25 The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*

*26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

*27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

*28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

*29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The applicant has reviewed the above Court Principle and applied the above criteria to the assessment. The applicant has identified that view loss will not occur to view towards the city based on the location of the proposed works however has reviewed the impacts on loss of views of the Blue Mountains. The VLA included site inspections and subsequent assessment



from various units within the Atmosphere buildings (both Buildings A and B) and the VLA stated the following in regard to methodology:

*Virtual Ideas and CMS Surveyors undertook photography and survey work at each identified viewpoint. This provides the base for their production of photomontages in accordance with the LEC planning principle. The following view states have been produced for each viewpoint:*

- *Photograph of the existing viewing condition.*
- *Photomontage from the same viewpoint with the proposed envelope in solid white. The envelope includes articulation where necessary to accurately reflect the extent of occlusion. This includes rooftop awnings and fencing structure that extends above the rooftop to enclose the proposed sports court. The proposed envelope is provided by the architect. The photomontage also includes:*
  - *Envelope model of the existing LEP height limit shown in green dashed line.*
  - *Proposed 30-storey height limit under the Draft Castle Hill Precinct Plan shown in a yellow dashed line.*

*Each view is taken oriented towards the most significant outlook. That is, rather than assessing viewing that is directly perpendicular to the window or private open space, the more desirable orientation is assessed, an oblique angle from the assessed façade. Further, views are taken from private open spaces rather than internal space where available. For example, the view is taken from a balcony off a bedroom, rather than through the bedroom window. In this manner, the greatest extent of the desirable view is assessed.*

The report assesses the extent of view loss for the units and has concluded as follows:

*With respect to the view loss assessment:*

- *The view loss analysis has concluded that views from the Atmosphere Apartments (299-301 Old Northern Road) will experience either no view loss, or a moderate/moderate to low qualitative extent of view loss.*
- *Existing affected views are mostly dominated by back of house and car park and servicing areas of the Castle Towers Shopping Centre.*
- *Some apartments have moderate value views, which include distant viewing of the Blue Mountains ridgeline at the horizon, beyond the foreground car parking views.*
- *The proposed development will result in a partial loss of some apartment's distant viewing of the Blue Mountains. An assessment of these impacts in the context of Tenacity yields a moderate or a moderate-low view loss impact, due to the foreground of the existing view being dominated by low-value building elements, and with existing tall apartment buildings to the north of the site partially obstructing the continuous ridgeline of the mountains under the existing condition.*
- *Any development up to the compliant LEP height limit would result in view loss, including a loss of views to the Blue Mountains ridgeline for most levels of the subject buildings. While the proposed development does not comply with the current LEP height limit, the exceedance is not significant and a bulk of the view loss impacts are caused by the compliant portion of the development and these impacts could arise from any compliant development proposal.*
- *The Draft Castle Hills Structure Plan indicates a vision for the site to accommodate significantly higher densities and taller built form, including buildings of heights up to 30-storeys in height. The proposed development is notably lower than this new proposed maximum height and is therefore considered to be commensurate with Council's long-term vision for the site, with regard to density and height.*

- *Tenacity does not provide that anyone has a proprietary right to retain all, or part of the views enjoyed from their land. The Court specifically acknowledges that entire loss of a view in some cases (although a severe or devastating view loss) could be reasonable in the circumstances.*
- *Given the existing and draft future planning controls that apply to the site, as well as the increasingly urbanised built form of the Castle Hill Strategic Centre, the partial retention of views where practical demonstrates the principle of “view sharing”.*
- *On balance, the proposal presents a reasonable view loss to the properties at 299-301 Old Northern Road, having regard to the design of the proposed buildings, their location in the Castle Hill Strategic Centre and the planning controls which apply to the subject site. Taking into consideration the project in its totality and assessment of photomontages, the development proposed is reasonable in terms of view loss. On this basis, it is the conclusion of this view loss assessment that the extent of view loss is insufficient in its own right to warrant redesign or refusal of the proposal on merit grounds.*

In regard to the above, it is acknowledged that the proposed works exceed the LEP 2019 as outlined in Section 3.1 and that the proposed works will be visible from the surrounding area. The proposed Court Principles are addressed below:

*Principle 1: The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment: The views towards the Blue Mountains are not water views and are not iconic views. The views are across the rooftops of the various existing retail and commercial uses and are not considered to be whole views. The partial views which remain towards the west are considered reasonable.

*Principle 2: The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment: The apartments within the Atmosphere buildings have various viewpoints given the design, location and aspect of the apartments. As the buildings have frontages to three streets, being Old Northern Road, Crane Road and Terminus Street, views have been taken from different points depending on the unit layout. The assessment includes consideration of whether views are sitting or standing views and the context of the view.

*Principle 3: The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment: The assessment has considered the context of the view and has views from balcony areas which are generally highly accessible and used by residents of apartment

development. The report has concluded that *'The view loss analysis has concluded that views from the Atmosphere Apartments (299-301 Old Northern Road) will experience either no view loss, or a moderate/moderate to low qualitative extent of view loss'*.

*Principle 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment: It is acknowledged that the proposed works exceed the LEP 2019 as outlined in Section 3.1.

It is also noted that the Atmosphere buildings exceeded the LEP 2012 height limit when approved. In this regard LEP 2012 had a height limit of 16 metre and 45 metres for the site at the time of lodgement of the DA however subsequent to the lodgement of the DA, the LEP was amended to 68 metres for the whole site. The approved maximum heights were:

Block A – 69 metres (Lift Overrun)

Block B – 69.7 metres (Lift Overrun)

The proposed heights for the Atmosphere buildings were considered satisfactory despite the non-compliance with the LEP provisions.

The distance between the subject site and the Atmosphere development is approximately 52 metres.

Further to the above, it is noted that the Adopted Precinct Plan for Castle Hill Strategic Centre includes a Structure Plan which refers to built form which indicates the Castle Towers site as follows:

Land to the north of Castle Street – 8- 30 storey height.

Land to the south of Castle Street – 8-20 storey height.

Any future uplift for Castle Towers would be facilitated through a landowner- initiated Planning Proposal and would be required to include appropriate modelling and other documentation to support any increase in height beyond the current LEP 2019 limits.

Attachment I shows the Adopted Precinct Plan heights.

On the basis of the above comments, the proposed height and anticipated height for the site, the proposal view assessment is considered satisfactory and adequately addresses the Court Principles and can be supported.

## 4 REFERRALS AND SUBMISSIONS

### 4.1 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 in Table 5.

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

**Table 2: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Sydney Metro	Clause 2.99 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	Comments have been provided requiring the applicant to prepare a Green Travel Plan. 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 site currently contains a number of substations and some asset planning may be required to ensure continued supply. 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.	The Castle Hill Police were advised of the application however have not provided any comments.	NA
<b>Integrated Development (S 4.46 of the EP&amp;A Act) NA</b>			

## 4.2 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

## 4.3 Community Consultation

At the time of lodgement, the proposal was notified in accordance with Council's DCP from 11 April 2023 to 03 May 2023. Subsequent to the lodgement, the applicant identified that works were proposed on public land and as such Council's Conflict of Interest Policy was relevant. The Policy requires that DAs, in this instance where Council is a landowner, that the DA be exhibited on Council's website. The DA was exhibited and renotified from 16 October 2023 to 15 November 2023.

A total of six unique submissions were received during the first notification period and two submissions were received during the second notification period. The issues raised in the submissions have been summarised below.

Issue	Council Comments
<b>First Notification Period</b>	
Request that the development not be approved.	The proposal has been reviewed and for the reasons outlined in the report, has been recommended for approval. The determination of the application is subject to the Sydney Central City Planning Panel.
<p>Management of additional traffic from the development.</p> <p>Increase the traffic.</p> <p>Pennant Street and Castle Street currently have excessive traffic now. Two vehicles cannot pass down Castle Street as cars are parked on both sides down the entire street.</p> <p>Existing traffic congestion in Castle Hill and around Castle Towers.</p> <p>Increase in traffic in the area from the Skyview and Garthowen Crescent developments which are currently under construction.</p> <p>Increased traffic noise.</p> <p>Impact to vehicle access to the Atmosphere development.</p> <p>Question of whether the traffic flow documentation in the DA accurately reflects the future traffic position.</p>	<p>The proposal does not include any additional car parking spaces and as such there is no increase in traffic proposed. The proposal will encourage modal shift for trips to the centre.</p> <p>The existing parking which occurs in local streets, including Castle Street, is a combination of staff parking from various retail/commercial uses within the Town Centre and commuter parking. On-street parking in the locality is in accordance with the Sydney Metro Parking Management Strategy and includes time restricted parking which is regularly monitored by Council's Parking Officers.</p> <p>Council's Senior Traffic Engineer and Transport for NSW have both reviewed the application and have raised no objection to the proposal and have raised no concerns with the quality of the information submitted. This is on the basis that additional parking is not provided, that the location is well serviced by the Metro and bus transport and given that the site is identified as Town Centre location.</p> <p>Regional traffic modelling has identified a number of transport infrastructure and pedestrian access improvements in the vicinity of the site. Most of the proposed improvements including the provision of roundabouts, road widenings and pedestrian bridges have been included in the current Contribution Plan No.9 - Castle Hill Town Centre and Contribution Plan No.17 – Castle Hill North. The remaining proposals including the Castle Street/Pennant Street signalised intersection upgrade and additional pedestrian bridges across Terminus Street, Crane Road, Kentwell Avenue and Castle Street are being proposed in the new</p>

	<p>Contribution Plan for the Castle Hill Precinct Plan.</p> <p>Driveway access to the Atmosphere development was considered during the assessment of that DA and was considered satisfactory. The proposed works under the subject application will not change vehicle access arrangements to the Atmosphere development.</p>
Loss of views and privacy due to the proposal.	The proposed height and view assessment are addressed in Sections 3.1 and 4. Given the location of the proposed works, there will be no unreasonable loss of privacy to residents opposite.
<p>Air conditioning noise from the mall is already very loud.</p> <p>Windows cannot be opened in residential apartments due to noise.</p> <p>Impact on living environment due to noise.</p> <p>A complaint has already been lodged with Council regarding the air conditioning noise/ventilation/exhaust units in Old Castle Hill Road directly opposite Atmosphere.</p> <p>Excessive and unbearable noise from the rooftop exhaust systems of Castle Towers. We understand that the Council is in the process of managing this issue although we still await any improvement.</p> <p>Request that Council explain how they are going to mitigate against excessive air conditioning noise in the new development.</p>	<p>There have been no recent complaints in respect to noise impacts from Castle Mall however complaints have been previously received regarding noise impacts from the air conditioning system and ventilation system at Castle Towers and this was investigated by Council's Health and Environment Team. The issue has now been rectified. There have been no further complaints from residents.</p> <p>A number of conditions have been imposed on the subject application in respect to acoustic compliance (See Conditions 25, 51, 95, 100, 101 and 105).</p>
The Council is already under scrutiny with the Skyview apartments.	<p>The Skyview development was approved by the then Joint Regional Planning Panel on 20 April 2017 (DA 1946/2016/JP). The current status of the Skyview development is as follows:</p> <ul style="list-style-type: none"> <li>In June 2023, Council staff issued a notice on intention to give a fire safety order for blocks C, D and E of the development (unoccupied parts under construction), seeking works to make the buildings safe during construction.</li> </ul>

	<ul style="list-style-type: none"> <li>• In August 2023, Council staff issued Orders seeking auditing of Blocks A and B and part of the carpark (occupied parts of the development).</li> <li>• Around the same time the NSW Building Commissioner issued a draft Building Work Rectification Order on blocks A and B, as well as Blocks C, D and E (buildings under construction).</li> <li>• Following discussion between Council staff and the Building Commissioner, Council's orders were put on hold whilst the Building Commissioner's Orders were being considered (given that two sets of Orders were not necessary).</li> <li>• The Building Commissioner still has carriage of the rectification works at this development and it is likely that Council will revoke our Orders.</li> </ul> <p>It is noted that Council was not the Principal Certifier for this development.</p>
<p>The Atmosphere development has a large number of defects, no final occupation certificate, and no fire safety statement nearly five years after construction was completed. We would appreciate some level of comfort by hearing from the Council how they plan to meet their obligation to ensure the upgrade works meet all necessary standards.</p> <p>The defect legal proceedings are still in progress with no resolution in sight, there is still no Fire Safety Certificate, no Occupation Certificate and is rejected by local insurers for building insurance.</p>	<p>The Atmosphere development was approved by the then Joint Regional Planning Panel on 205 February 2015 (DA 636/2014/JP). The current status of the Atmosphere development is as follows:</p> <ul style="list-style-type: none"> <li>• Council staff issued a Fire Safety Order to the Owners Corporation on 3/8/23 seeking auditing of essential fire safety measures in the building, to determine the extent of defects/non compliances in the building.</li> <li>• Around the same time, the NSW Building Commissioner issued Building Work Rectification Orders (BWRO) on the Developer to undertake defects repairs</li> <li>• Council staff did not seek enforcement of the Fire Safety Order as the NSW Building Commissioner advised he had carriage of the matter.</li> <li>• On 7/5/24, Council staff met with the Building Commissioner who advised he would not be pursuing the BWRO any further and asked Council to take control of this matter</li> <li>• Council staff are currently in negotiations with the Owner's Corporation to rationalise the scope of auditing in the building and a modified Fire Safety Order is expected to be issued in the near future.</li> </ul>



	It is noted that Council was not the Principal Certifier for this development.
We have concerns about the Council's ability to monitor, manage and ensure the proposal meets all the minimum required standards for a development of this size.	A condition of consent has been recommended requiring works to be undertaken in accordance with the BCA. Compliance with conditions of consent and management of the works will be a matter for the Principal Certifier.
Disruption from the building works.	It is acknowledged that there will be some disruption during construction works. Conditions have been recommended in regard to hours of works, dust impacts and requiring a traffic control plan during construction works (See Conditions 57, 73 and 77).
The fact that the NSW Government is investigating corruption at The Hills Shire Council is a big concern for me and I have no faith in any decision making made by Council until the investigation is completed.	The application will be determined by the Sydney Central City Planning Panel who are an Independent Panel.
<p>Height of the proposed development and this exceeds the maximum permitted height. This will result in impacts on views. Impact on property values due to the height and views.</p> <p>Council has allowed other height variations in the area, including the Atmosphere and Skyview developments. This is creating a precedent. Can Council explain the process they undertake to assess the request to exceed the maximum permissible height and what benefits that creates to the Atmosphere residents who will have their current views interrupted.</p> <p>The proposal should be amended to be compliant with the height limit.</p>	<p>Under the Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulations, 2021 and LEP 2019, an applicant may seek to vary an LEP standard subject to the provisions of Clause 4.6 of LEP 2019. The proposed variation to height has been addressed in Section 3.1 above and is considered satisfactory.</p> <p>The impact on views has been addressed above in Section 4 and is considered reasonable given the scale of development proposed and the desired built form outcomes for the Town Centre.</p>
<b>Second Notification Period</b>	
A resident requested that their unit be included in the View Loss Assessment, however it was not included in the initial assessment due to a miscommunication. Other units may also be impacted which were not included in the assessment.	The applicant provided an addendum report for the subject unit which included an assessment which concluded that views may still be obtained to the mountains from the apartment. The methodology for the report and assessment of units is outlined in Section 4.

<p>Concern that the view assessment was undertaken by a company paid for by the developer.</p> <p>There are issues with the Atmosphere development and the only consolation is the views.</p> <p>The height should be reduced as its more important for private residents to have views rather than hotel guests.</p>	
<p>The Atmosphere development was certified by a certifier engaged by the developer and now after five years, we have no fire and safety certificate and no occupation certificate. The estimated price from a fire engineer for the fire &amp; safety rectifications was at 7-10 million. And we are also paying sky high premiums for building insurance from the overseas markets as insurance is rejected by the local market.</p>	<p>The current status of the Atmosphere development is detailed above.</p>
<p>Please advise the estimate time for this hotel construction to be completed? How many levels of this proposed hotel construction? Will it build on top of Castle Tower or build next to it?</p>	<p>The applicant has advised that the anticipated timeframe for construction for the development as a whole is approximately three years. The proposed hotel tower will have a height of 57m and 17 storeys and will effectively be built atop the existing shopping centre.</p>

## 5 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.

## 6 RECOMMENDATION

That the Development Application be approved pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 subject to the draft conditions of consent attached to this report at Attachment A.

It is recommended that the applicant's Clause 4.6 written request to vary The Hills LEP 2019 development standard in regard to height be supported as the applicant has adequately justified the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the height variation can be supported as compliance with the standards are unreasonable or unnecessary in this instance and the proposal results in better environmental planning outcomes as outlined in this report.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Locality Plan
- Attachment C: Aerial Photograph
- Attachment D: Location of Works
- Attachment E: Floor Plans – Retail
- Attachment F: Floor Plans – Hotel
- Attachment G: Floor Plans – Commercial
- Attachment H: LEP Height Limit Plan
- Attachment I: Adopted Precinct Plan Height Map
- Attachment J: Proposed Height Plans
- Attachment K: Perspectives
- Attachment L: 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
DA-0000	Hotel Cover Sheet	16/09/22 Rev. A
DA-0001	Hotel Drawing List + Location Map	16/09/22 Rev. A
DA-0002	Hotel Site Axo Drawing	16/09/22 Rev. A
DA0003	Hotel Project Summary	18/07/23 Rev. B
DA-0010	Hotel Site Plan	16/09/22 Rev. A
DA22B1	Hotel Basement Level 01 (Mall Level L3)	18/07/23 Rev. B
DA22B2	Hotel Basement Level 02 (Green Carpark Level L2A)	18/07/23 Rev. B
DA22B3	Hotel Basement Level 03 (L2)	18/07/23 Rev. B
DA22B4	Hotel Basement Level 04 (L1A)	18/07/23 Rev. B
DA2200	Hotel Ground Floor (L3A)	18/07/23 Rev. B
DA-2201	Hotel Level 01 – Porte-Cochere (L4)	16/09/22 Rev. A
DA-2202	Hotel Level 02 – Functions (L4A)	16/09/22 Rev. A
DA-2203	Hotel Level 03	16/09/22 Rev. A
DA-2204	Hotel Level 04	16/09/22 Rev. A
DA-2205	Hotel Level 05	16/09/22 Rev. A
DA-2206	Hotel Level 06, 08, 10, 12	16/09/22 Rev. A
DA-2207	Hotel Level 07, 09, 11	16/09/22 Rev. A
DA-2208	Hotel Level 13 – Typical Suites/Pool Plant	16/09/22 Rev. A
DA-2209	Hotel Level 14 – Sky Bar/Pool/Suites	16/09/22 Rev. A
DA-2210	Hotel Level 15 – Penthouse Suite	16/09/22 Rev. A
DA-2211	Hotel Roof	16/09/22 Rev. A
DA-3201	Hotel North Elevation	16/09/22 Rev. A
DA-3202	Hotel South Elevation	16/09/22 Rev. A
DA-3203	Hotel East Elevation	16/09/22 Rev. A
DA-3204	Hotel West Elevation	16/09/22 Rev. A
DA-3301	Hotel Section A-A	16/09/22 Rev. A
DA-3302	Hotel Section B-B	16/09/22 Rev. A
DA6402	Hotel GFA Diagrams	18/07/23 Rev. B

DA-7005	Height Plane Diagrams	16/09/22 Rev. A
DA-7006	Height Plane Diagrams Overall 1	04/07/22 Rev. A
DA-7007	Height Plane Diagrams Overall 2	16/09/22 Rev. A
DA-8001	Hotel View from Old Castle Hill Road	16/09/22 Rev. A
DA-8002	Hotel View from Plaza	16/09/22 Rev. A
DA-A10-AA-00	Commercial Cover Sheet	10/11/2022 Issue C
DA-A10-AA-01	Commercial Perspectives	10/11/2022 Issue C
DA-B10-01-00	Commercial General Arrangement Plan – Basement Level 03	10/11/2022 Issue C
DA-B10-02-00	Commercial General Arrangement Plan – Basement Level 02	10/11/2022 Issue C
DA-B10-03-00	Commercial General Arrangement Plan – Basement Level 01	10/11/2022 Issue C
DA-B10-04-00	Commercial General Arrangement Plan – Level 00	10/11/2022 Issue C
DA-B10-05-00	Commercial General Arrangement Plan Level 01	10/11/2022 Issue C
DA-B10-06-00	Commercial General Arrangement Plan – Level 02	10/11/2022 Issue C
DA-B10-07-00	Commercial General Arrangement Plan – Level 03	10/11/2022 Issue C
DA-B10-08-00	Commercial General Arrangement Plan – Level 04	10/11/2022 Issue C
DA-B10-09-00	Commercial General arrangement Plan – Level 05	10/11/2022 Issue C
DA-B10-10-00	Commercial General Arrangement Plan - Level 06	10/11/2022 Issue C
DA-B10-11-00	Commercial General Arrangement Plan – Level 07	10/11/2022 Issue C
DA-B10-12-00	Commercial General Arrangement Plan – Level 08	10/11/2022 Issue C
DA-B10-13-00	Commercial General Arrangement Plan – Level 09	10/11/2022 Issue C
DA-B10-14-00	Commercial General Arrangement Plan – Level 10	10/11/2022 Issue C
DA-B10-15-00	Commercial General Arrangement Plan – Level 11	10/11/2022 Issue C
DA-B10-16-00	Commercial General Arrangement Plan – Level 12	10/11/2022 Issue C
DA-B10-17-00	General Arrangement Plan – Roof Level	10/11/2022 Issue C
DA-C10-AA-01	Commercial Elevations - North	10/11/2022 Issue C

DA-C10-AA-02	Commercial Elevations - South	10/11/2022 Issue C
DA-C10-AA-03	Commercial Elevations – East and West	10/11/2022 Issue C
DA-C10-AA-04	Commercial Proposed Materials	10/11/2022 Issue C
DA-D10-A-01	Commercial Sections – Sheet 1	10/11/2022 Issue C
DA-D10-AA-02	Commercial Sections – Sheet 2	10/11/2022 Issue C
DA-U10-AA-02	Commercial Area Plan (NLA + GLAR)	10/11/2022 Issue C
DA-U10-AA-03	Commercial Area Plan (GFA)	10/11/2022 Issue C
---	Extended Hours Tenancy Plans (5 sheet) DA-U10-04-01 Issue A DA-U10-05-01 Issue A DA0936.2 a DA-2200-2 Revision A DA-2201-1 Revision A	---
DA0000	Retail Cover Sheet	21.07.2012 Rev. e
DA0001	Retail Location & Existing Site Plan	16.11.2022 Rev. c
DA0002	Retail Existing Site Analysis Plan	16.11.2022 Rev. c
DA0003	Retail Scope & Proposed Site Plan	21.07.2023 Rev. d
DA0004	Retail Proposed roof Plan - Overall	21.07.2023 Rev. d
DA0005	Retail 3D Axonometric Views	21.07.2023 Rev. d
DA0006	Retail Masterplan – Public Realm & Movement	21.07.2023 Rev. d
DA0007	Retail Masterplan - Elevations	21.07.2023 Rev. d
DA0100	Retail Existing Floor Plan – B2	21.07.2023 Rev. d
DA0101	Retail Existing Floor Plan – B1	21.07.2023 Rev. c
DA0102	Retail Existing Floor Plan – L1	21.07.2023 Rev. c
DA0103	Retail Existing Floor Plan – L1A	21.07.2023 Rev. d
DA0104	Retail Existing Floor Plan – L2	21.07.2023 Rev. c
DA0105	Retail Existing Floor Plan – L2A	21.07.2023 Rev. c
DA0106	Retail Existing Floor Plan – L3	21.07.2023 Rev. c
DA0107	Retail Existing Floor Plan – L3A	21.07.2023 Rev. c
DA0108	Retail Existing Floor Plan – L4	21.07.2023 Rev. d
DA0109	Retail Existing Floor Plan – L4A	21.07.2023 Rev. d
DA0120	Retail Existing Roof Plan	21.07.2023 Rev. d
DA0200	Retail Proposed GA Floor Plan – B2 Overall	21.07.2023 Rev. e
DA0200.1	Retail Proposed GA Floor Plan – B2 West	21.07.2023 Rev. e
DA0201	Retail Proposed GA Floor Plan – B1 Overall	21.07.2023 Rev. e
DA0201.1	Retail Proposed GA Floor Plan – B1 West	21.07.2023 Rev. e
DA0202	Retail GA Floor Plan – L1 Overall	21.07.2023 Rev. d
DA0202.1	Retail Proposed GA Floor Plan – L1 West	21.07.2023 Rev. e

DA0202.2	Retail GA Floor Plan – L1 East Village	21.07.2023 Rev. e
DA0203	Retail Proposed GA Floor Plan – L1A Overall	21.07.2023 Rev. d
DA02023.2	Retail Proposed GA Floor Plan – L1A East Village	21.07.2023 Rev. d
DA0204	Retail Proposed GA Floor Plan – L2 Overall	21.07.2023 Rev. d
DA0204.1	Retail Proposed GA Floor Plan – L2 West	21.07.2023 Rev. e
DA0204.2	Retail Proposed GA Floor Plan – L2 East Village	21.07.2023 Rev. d
DA0205	Retail Proposed GA Floor Plan - L2A Overall	21.07.2023 Rev. d
DA0205.2	Retail Proposed GA Floor Plan – L2A East Village	21.07.2023 Rev. d
DA0206	Retail Proposed GA Floor Plan – L3 Overall	21.07.2023 Rev. d
DA206.1	Retail Proposed GA Floor Plan – L3 West	21.07.2023 Rev. e
DA0206.2	Retail Proposed GA Floor Plan – L3 East Village	21.07.2023 Rev. d
DA0207	Retail Proposed GA Floor Plan – L3A Overall	21.07.2023 Rev. d
DA0207.2	Retail Proposed GA Floor Plan – L3A East Village	21.07.2023 Rev. d
DA0208	Retail Proposed GA Floor Plan – L4 Overall	21.07.2023 Rev. d
DA0208.1	Retail Proposed GA Floor Plan – L4 West	21.07.2023 Rev. e
DA0208.2	Retail Proposed GA Floor Plan – L4 East Village	21.07.2023 Rev. e
DA0209	Retail Proposed GA Floor Plan – L4A Overall	21.07.2023 Rev. d
DA0209.2	Retail Proposed GA Floor Plan – L4A East Village	21.07.2023 Rev. d
DA0220	Retail Proposed Roof Plan - Overall	21.07.2023 Rev. c
DA0220.1	Retail Proposed Roof Plan - West	21.07.2023 Rev. d
DA0220.2	Retail Proposed Roof Plan – East Village	21.07.2023 Rev. c
DA0410	Retail Proposed Elevations	21.07.2023 Rev. d
DA0411	Retail Proposed Elevations	21.07.2023 Rev. d
DA0412	Retail Proposed Elevations	21.07.2023 Rev. c
DA0450	Retail Proposed Sections	21.07.2023 Rev. c
DA0700	Retail Existing GFA Plans	21.07.2023 Rev. d
DA0710	Retail Proposed GFA Plans	21.07.2023 Rev. d
DA0740	Retail Existing GLA Plans	21.07.2023 Rev. a
DA0750	Retail Proposed GLA Plans	21.07.2023 Rev. a
DA0800.1	Shadow Diagrams	21.07.2023 Rev. d
DA0800.2	Shadow Diagrams	21.07.2023 Rev. a
DA0801.1	Shadow Diagrams	21.07.2023 Rev. d
DA0801.2	Shadow Diagrams	21.07.2023 Rev. a

DA0802.1	Shadow Diagrams	21.07.2023 Rev. e
DA0802.2	Shadow Diagrams	21.07.2023 Rev. a
DA0803.1	Shadow Diagrams	21.07.2023 Rev. e
DA0803.2	Shadow Diagrams	21.07.2023 Rev. a
DA0805.1	Shadow Diagrams	21.07.2023 Rev. d
DA0805.2	Shadow Diagrams	21.07.2023 Rev. a
LA-363	Planting Schedule Commercial	08/05/2024 Rev. E
LA-331	Planting Schedule Hotel	08/05/2024 Rev. F
LA-303	Planting Plan Entry Garden	08/05/2024 Rev. F
LA-303	Planting Plan Entry Garden	08/05/2024 Rev. F
LA-304	Planting Plan Old Castle Hill Rd	08/05/2024 Rev. F
LA-305	Planting plan Old Castle Hill Rd	08/05/2024 Rev. E
LA-306	Planting Plan Sunken Garden	08/05/2024 Rev. F
LA-307	Planting Plan Laneway	08/05/2024 Rev. B
LA-308	Planting Plan Roof Terrace	08/05/2024 Rev. E
LA-309	Planting Plan Roof Terrace	08/05/2024 Rev. E
LA-313	Planting Schedule East Village	08/05/2024 Rev. G
LA-321	Planting Plan Hotel – Level 1	08/05/2024 Rev. F
LA-321	Planting Plan Hotel – Level 1	08/05/2024 Rev. F
LA-323	Planting Plan WB Hotel – Level 3	08/05/2024 Rev. F
LA-324	Planting Plan Hotel – Level 4	08/05/2024 Rev. F
LA-325	Planting Plan Hotel – Level 5	08/05/2024 Rev. F
LA-326	Planting Plan Hotel – Level 6, 8, 10, 12	08/05/2024 Rev. F
LA-327	Planting Plan Hotel – Level 7, 9, 11	08/05/2024 Rev. F
LA-328	Planting Plan Hotel – Level 13	08/05/2024 Rev. F
LA-329	Planting Plan Hotel – Level 14	08/05/2024 Rev. F
LA-330	Planting Plan Hotel – Level 15	08/05/2024 Rev. F
LA-351	Planting Plan Commercial – Level 2	08/05/2024 Rev. D
LA-352	Planting Plan Commercial – Level 3	08/05/2024 Rev. D
LA-353	Planting plan Commercial – Level 4	08/05/2024 Rev. D
LA-354	Planting Plan Commercial – Level 5	08/05/2024 Rev. D
LA-355	Planting Plan Commercial – Level 6	08/05/2024 Rev. D
LA-356	Planting Plan Commercial – Level 7	08/05/2024 Rev. D
LA-357	Planting Plan Commercial – Level 8	08/05/2024 Rev. D
LA-358	Planting Plan Commercial – Level 9	08/05/2024 Rev. D
LA-359	Planting Plan Commercial – Level 10	08/05/2024 Rev. D



LA-360	Planting Plan Commercial – Level 11	08/05/2024 Rev. D
LA-361	Planting Plan Commercial - Level 12	08/05/2024 Rev. D
LA-362	Planting Plan Commercial - Roof	08/05/2024 Rev. D
LA-501	Typical Softworks Details	08/05/2024 Rev. D
LA-502	Typical Softworks Details	08/05/2024 Rev. D
LA-503	Typical Softworks Details	08/05/2024 Rev. E
LA-601	Softworks Sections	08/05/2024 Rev. A
LA-602	Softworks Sections	08/05/2024 Rev. A
B3840-Oct2019	Site Survey Plans (14 pages)	25.10.2019
----	Street Numbering Plan (2 pages – street numbering only)	----

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

## **2. Limit on Floor Areas and Size**

The following limits on Gross Floor Area (GFA) and size apply:

Retail Shopping Centre: 186,337m<sup>2</sup> GFA (comprising an existing GFA of 151,443m<sup>2</sup> and a proposed GFA of 33,894m<sup>2</sup>)

Commercial Tower: 19, 147m<sup>2</sup> GFA

Hotel Tower: 210 rooms and 13,799m<sup>2</sup> GFA

Function centre – 934m<sup>2</sup> GFA

Entertainment venue – 1792m<sup>2</sup> GFA

Retail/Restaurants – 1388m<sup>2</sup> GFA

## **3. Parking Provision**

The provision and maintenance thereafter of a total of 4555 spaces on Site A. Of the spaces provided, 183 spaces in the purple carpark can be allocated for use by the commercial tower and 53 spaces for use by the hotel tower.

## **4. No Further Works to be Constructed under DA 864/2015/JP**

No further works as approved by Development Application 864/2015/JP (as amended) are permitted to be undertaken. In this regard the works described as Phase 1A works have been completed. No further works are permitted without the prior consent of Council.

## **5. No Approval for Staging**

This consent does not grant any approval for the staging of the Retail, Commercial and Hotel components of the works. This does not preclude the ability to obtain Construction Certificates and Certificates of Occupancy in stages in accordance with the construction programme and sequencing of procurement and construction of the works. The sequencing of works is permitted to ensure the on-going operation of the centre.

Should staging of the Retail, Commercial and Hotel components of the works be proposed, a further application is to be submitted to Council detailing the proposed staging and demonstrating that adequate parking is available at all times in accordance with Council requirements.

## **6. External Finishes**

External finishes and colours shall be generally in accordance with the details submitted with the development application and approved with this consent.

## **7. Separate application for advertising and signage**

A separate application is to be submitted to, and approved by, Council prior to the erection of any advertisements or signage, except where the signage does not require development consent or exempt development under another relevant planning instrument.

## **8. Permanent Kiosks**

Approval is granted for a total of five permanent kiosks within the retail expansion area. The permanent kiosks and any associated seating area are limited to the area shown on the approved plans. The total area of the kiosks is to be included in the total approved gross leasable floor area.

The final location of the kiosks are to have regard to pedestrian circulation, use by those with trolleys and prams, access for the mobility impaired and safe egress during emergencies.

Any additional kiosks or the increase in size of the approved kiosks require the further Development Consent of Council.

## **9. Outdoor Dining – Separate development applications required**

A separate development application is required for any outdoor dining. Each outdoor dining application is to be submitted to Council with a detailed noise management plan, details of the exact number of seats and a site plan showing the location of all tables and chairs.

## **10. Use of the Commercial Building**

The commercial building is limited to use as business premises or office premises only, except where a use is specifically identified within the approved plans.

## **11. Use of Level 4 Roof Open Air Plaza**

The open air plaza on the Level 4 roof is only to be used in conjunction with the commercial building (including the retail tenancies on Level 1) and is only permitted to be used for landscaping, casual seating and as a thoroughfare. The hours of use of the open air plaza are limited to 9am – 6pm Monday to Friday. A further development application is required for the use of the open air plaza for any use outside of these hours of operation or for use for any events.

## **12. 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.

## **13. 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.

## **14. Section 64 - Consent Authority may require upgrade of building**

Pursuant to Section 64 of the Environmental Planning & Assessment Regulation 2021, the following upgrades must be undertaken with the Construction Certificate works for the areas of retained building to which the Construction Certificate will apply and must be completed prior to an occupation certificate being issued:

- i. The existing building is to be upgraded to resist load & actions to which it may reasonably be subjected appropriate to BP1.1 & BP1.2 of the BCA.

- ii. Existing building elements are to be upgraded to be capable of maintaining structural stability during a fire, appropriate to CP1 of the BCA. Existing unprotected building elements and beams/columns that are protected with vermiculite fire protection are to be reviewed and upgraded where required.
- iii. The existing hose reel system is to be upgraded, appropriate to EP1.1 of the BCA, to ensure the following:
  - a. Hose reels are sited at locations which are at appropriate distances to required exits, which will allow occupants to safely undertake initial attack on a fire.
  - b. Coverage to the premises is adequate, taking into consideration the location of reels and the storeys they serve.
  - c. Pressures and flows for the system are brought into conformity with current standards.
- iv. The existing hydrant system is to be upgraded, appropriate to EP1.3 of the BCA, to ensure the following:
  - a. Hydrant coverage to all parts of the building is sufficient
  - b. Pressures and flows are adequate
  - c. Landing valves are sited in suitable locations in fire isolated exits
  - d. Landing valves are provided with sufficient clearance to enable use by fire-fighters
- v. Emergency lighting is to be upgraded to provide a safe level of illumination to every room or space used by the public during an emergency appropriate to EP4.1 of the BCA.
- vi. Exit signage is to be upgraded to facilitate evacuation appropriate to EP4.2 of the BCA.
- vii. The existing automatic fire suppression is to be upgraded, appropriate to EP1.4 of the BCA.
- viii. The existing premises is to be upgraded to ensure the building is accessible, has accessways and suitable facilities, appropriate to DP1, DP2, DP8 and FP2.1 of the BCA.
- ix. Existing stairways are to be upgraded to provide safe movement and adequate egress in the building appropriate to DP2, DP4 & EP2.2 of the BCA.
- x. Required balustrades and handrails are to be upgraded appropriate to DP2, DP3 & EP2.2 of the BCA.
- xi. Existing doorway thresholds are to be upgraded to provide for safe movement and egress, appropriate to DP2, DP4 & EP2.2 of the BCA.
- xii. A review of smoke hazard management is to be undertaken to determine if any systems are required to be upgraded to ensure conditions in any evacuation route will remain tenable appropriate to EP2.2 of the BCA.
- xiii. Existing penetrations through building elements which are required to have a fire resistance level with respect to integrity or insulation are to be upgraded and protected appropriate to CP8 of the BCA.
- xiv. A review of arrangements for egress is to be undertaken to ensure occupants evacuate safely, with sufficient exits being provided, adequate widths of paths of travel, adequate widths through doorways, and connection to a public road, appropriate to DP4 and EP2.2 of the BCA.

- xv. Portable fire extinguishers are to be upgraded to restrict fire spread, appropriate to EP1.2 of the BCA
- xvi. Existing non permitted service penetrations in fire isolated exits are to be upgraded to ensure tenable conditions will be maintained in an exit, appropriate to CP8 & EP2.2 of the BCA.
- xvii. A review of separation of classifications in the same storey and between storeys is to be undertaken to determine if any elements are required to maintain structural stability in a fire and to avoid fire spread, appropriate to CP1 & CP2 of the BCA.
- xviii. A review of perimeter vehicular access is to be undertaken to allow for adequate fire brigade operations & intervention, appropriate to CP9 of the BCA.
- xix. Existing fire isolated exits are to be upgraded, appropriate to DP7, FP3.1& EP2.2 to ensure the following:
  - a. Adequate ceiling heights for occupant evacuation
  - b. Exits discharge into areas which are open for occupant safety
  - c. Connection to a public road or open space
- xx. Suitable sanitary facilities are to be provided for the premises appropriate to FP2.1 of the BCA. In this regard, sufficient urinals, pans, washbasins and adult change facilities are to be provided for the number persons accommodated.

### **15. Tree Removal**

Approval is granted for the removal of two (2) trees numbered 6-7 as detailed in the Arboricultural Development Impact Assessment Report prepared by Birds Tree Consultancy Rev B dated 11/12/23.

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.

### **16. Planting Requirements**

All trees planted as part of the approved landscape plan pursuant to Condition 1 of this consent are to be in pot sizes as per the approved plans. 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.

For all planting on slab and planter boxes allow the following minimum soil depths:

- 1.2m for large trees or 800mm for small trees;
- 650mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and not the overall depth of the planter.

The varieties of Westringia, Melaleuca, Grevillea, Hardenbergia, Prostanthera and Leptospermum that are proposed in the planter boxes with a southern aspect are to be substituted with shade tolerant species.

### **17. 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 22/04/24.

### **18. Protection of Existing Vegetation**

Any excavated material not used in the construction of the subject works is to be removed from the site and under no circumstances is to be deposited in bushland areas.

### **19. 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. Public infrastructure is to be inspected by a suitably qualified person for compliance with this condition before an Occupation Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

### **20. 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:

- 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.
- A plan of management shall be in place for loading dock 9. This is to ensure an MRV vehicle can enter/ exit without conflict with other service vehicles and is to be overseen by the centre's operational management team.

### **21. Vehicular Crossing Request**

Each 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 contactor is known and the driveway is going to be constructed.

## **22. Minor 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.

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. The application form for a minor engineering works approval is available on Council's website and the application and inspection fees payable are included in Council's Schedule of Fees and Charges.

### **a) 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.

Specifically, unless additional driveway crossings are clearly shown on the approved plans, only one driveway crossing is approved/ permitted.

A separate vehicular crossing request fee is payable as per Council's Schedule of Fees and Charges.

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

All disused laybacks and driveways must be removed and replaced with kerb and gutter together with the restoration and turfing of the adjoining footpath verge area. Specifically, this includes the removal of any existing laybacks, regardless of whether they were in use beforehand or not.

### **c) Site Stormwater Drainage**

The entire site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

## **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. Demolition Notification**

Both Council and any adjoining properties must be notified in writing five days before demolition works commence.

## **25. Acoustic Requirements**

The recommendations of the Environmental Noise Impact Assessment for the CT East Villate Hotel prepared by ADP Consulting Pty Ltd, referenced as SYD2016 Revision G dated 21 July 2023 and the recommendations of the Castle Hill East Village Commercial Tower prepared by ADP Consulting Pty Ltd, referenced as SYD2015 Revision 04 dated 21 July 2023 and the Environmental Noise Impact Assessment prepared by ADP Consulting Pty Ltd, referenced as

SYD1770 Revision 03 and dated 21 July 2023 which were submitted as part of the Development Application are to be implemented as part of this approval.

## **26. Contamination Assessment & Site Remediation**

The recommendations of the report titled Update to Contamination Assessment prepared by Douglas Partners Pty Ltd, referenced as 84335.11, dated October 2022 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- Undertake another round of groundwater monitoring to determine current groundwater quality, including PFAS analysis, and implementation of any recommendations made based on the results of the testing;
- Development of an “unexpected finds” protocol to be incorporated into the construction environmental management plan(s) (CEMP) for implementation during excavation and earthworks;
- Removal of any grease traps and any associated infrastructure. Validation of the resulting excavation in the vicinity of in-ground grease traps; and
- Additional inspection / investigation during redevelopment in areas of the site not currently accessible (e.g. beneath existing buildings) to increase the sampling density to conform with the relevant sampling density guidelines.
- A waste classification is required to be conducted on all materials to be disposed off-site. Based on the results obtained the fill may be classifiable as general solid waste and the underlying natural material be classifiable as virgin excavated natural material (VENM).
- A hazardous building materials survey is to be undertaken on any site structures prior to their demolition.

## **27. 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.

## **28. 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.

## **29. 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).

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

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2-2002 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.
- The turntable dimensions must be suitable for use by an 8.8m long medium rigid vehicle (dimensions as per Australian Standard 2890.2) and must be able to withstand the loads imposed by a 28-tonne gross vehicle mass. The turntable must be maintained in accordance with manufactory standards.
- 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.

### **31. 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.

### **32. 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).

### **33. 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.

### **34. Construction of Waste Storage Area(s)**

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

- The waste storage area(s) must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins associated with the development(s).
- The layout of the waste storage area(s) 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(s) must be constructed of brickwork.
- The floor of the waste storage area(s) 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(s) 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(s), 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(s) 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 units.
- The waste storage area(s) 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(s), it is not to conflict with the space designated for the placement of bins.
- The waste storage area(s) 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(s) 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(s) 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)

#### **35. Property Numbering**

The responsibility for property numbering is vested solely in Council under the *Local Government Act 1993*.

There are three major functions to this development. The overall addressing for each varies.

**The overall property address for each major function of this development is: -**

**Castle Towers Shopping Centre – Castle Towers, 6 – 14 Castle Street, Castle Hill NSW 2154**

**(Alternate Addressing – Castle Towers, 5 Old Castle Hill Road, Castle Hill NSW 2154**  
*This alternative address is renumbered as part of this DA 1431/2023/JP.*

**Alternative Addressing Castle Towers, Pennant Street, Castle Hill NSW 2154)**

**Commercial Tower – 1 Old Castle Hill Road, Castle Hill NSW 2154**

**(Alternate Addressing 2 – 4 Castle Street, Castle Hill NSW 2154)**

**Hotel Tower – 3 Old Castle Hill Road, Castle Hill NSW 2154**

These addresses shall be used for all correspondence, legal property transactions and shown on the final registered Deposited Plan/Strata Plan lodged with Land Registry Services NSW as required.

Under no circumstances can unit numbering be repeated or skipped throughout the development regardless of the building name or number.

Approved numbers, unless otherwise approved by Council in writing, are to be displayed clearly on all door entrances including stairwells, lift and lobby entry doors.

External directional signage is to be erected on site at driveway entry points and on buildings to ensure that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination easily & quickly.

#### **Mailboxes**

**Castle Towers Shopping Centre** - Mailboxes are to remain as current; no change is sought in this application.

**Commercial Tower** – Concierge in office lobby to receive mail and deliveries during business hours. After hours all deliveries to be received at the Hotel Tower's 24hr concierge.

**Hotel Tower** – 24hr Hotel concierge in lobby to be provided for all mail and delivery purposes. Hotel concierge to also receive all deliveries made after hours for Commercial Tower.

Parking for Postal officer motorcycle/walk buggy is to be provided in a safe location that is viewable from lobby to ensure the security of mail located on the vehicle.

Locations as provided on plans General Arrangement Plan – Level 00, DWG No CT-BVN-DR-AR-Z3-DA-U10-04-01, Issue A; 07/12/2023 & DA-2201-2, Castle Towers Hotel Woods Bagot, Level 01 Porte Cochere, Issue A; 16/9/2022 are to be approved by Australia Post for mail delivery. Plans are to be provided to Gregory Dimmock at the Seven Hills Delivery Centre via email [Gregory.dimmock@auspost.com.au](mailto:Gregory.dimmock@auspost.com.au) or phone 02 9674 4027. Australia Post approval is required to be provided to Council.

### **Signage**

Signage for all developments to be clear at main entrances to assist with navigation.

### **36. Compliance with Recommendations of Wind Impact Assessment**

The recommendations contained within Wind Impact Assessment prepared by Vipac and dated 14 November 2022 are to be incorporated into the design of the development. This includes validation of wind amelioration features by a Wind Tunnel Test.

### **37. Endeavour Energy Requirements**

Endeavour Energy requirements are required to be met in accordance with the letter dated 6/04/2023 and the following:

- a. Asset planning is required. Applicants should not assume adequate supply is
- b. immediately available to facilitate their proposed development.
- c. An application must be made for an asset relocation / removal to determine possible solutions to the
- d. developer's requirements.
- e. Preference is for no activities to occur in easements and they must adhere to minimum safety requirements.
- f. Access to the electricity infrastructure may be required at any time particularly in the event of an emergency.
- g. Applicants will need to submit an appropriate application based on the maximum demand for electricity for connection of load.
- h. Electricity infrastructure without an easement is deemed to be lawful for all purposes under Section 53 'Protection of certain electricity works' of the *Electricity Supply Act 1995* (NSW).

### **38. Sydney Metro Requirements**

Compliance with the requirements of Sydney Metro as outlined in their letter dated 22 September 2023 Reference SM-23-00478030 as shown at Attachment A to this consent.

### **39. Sydney Water Tree Planting Requirements**

Certain tree species placed in close proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Sydney Water requires that all proposed or removed trees and vegetation included within the proposal adhere to the specifications and requirements within Section 46 of the Sydney Water Act (1994) and Diagram 5 – Planting Trees within our Technical guidelines – Building over and adjacent to pipe assets. Please note these guidelines include more examples of potential activities impacting our assets which may also apply to your development.

If any tree planting proposed breaches our policy, Sydney Water may need to issue an order to remove every tree breaching the act, or directly remove every tree breaching the Act and bill the developer or Council for their removal.

### **40. Irrigation**

An automatic watering system to be installed as a minimum to all common areas and rooftop planters. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or Private Certifier prior to issue of the relevant construction certificate.

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

### **41. 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 stormwater concept plan prepared by BG&E Drawing S8810, S8811, S8820 and S8821 Revision B dated 02/08/2023 is for development application purposes only and is not to be used for construction. The detailed design must reflect the stormwater concept plan.

Water sensitive urban design elements, consisting of stormfilter chambers, are to be located generally in accordance with 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.

### **42. Stormwater Pump/ Basement Car Park Requirements**

The stormwater pump-out system must be designed and constructed in accordance with AS/ NZS 3500.3:2015 – Plumbing and Drainage – Stormwater drainage. The system must be connected to a junction pit before runoff is discharged to the street (or other point of legal discharge) along with the remaining site runoff, under gravity. Where Onsite Stormwater Detention is required, the system must be connected to that Onsite Stormwater Detention system. All plans, calculations, hydraulic details and manufacturer specifications for the pump

must be submitted with certification from the designer confirming compliance with the above requirements.

#### **43. 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 \$385,770.00 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 multiplied by the width of the road (Castle Street 167m only and 11m wide and Old Castle Hill Road 117 + 50m and half width road only 6.5m).

The bond must be lodged with Council before any 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.

#### **44. 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).

#### **45. Section 7.12 Contribution**

Before the issuing of any Construction Certificate, a contribution of **\$6,689,408.00** must be paid to Council. This amount may be adjusted at the time of payment.

The contributions levy has been calculated in accordance with 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%

Prior to payment, it is advised to phone or email Council to confirm the amount. Payments will be accepted via Debit or Credit Card. Cash payments will not be accepted. This condition has been imposed in accordance with Section 7.12 of the Environmental Planning and Assessment Act 1979 and The Hills Section 7.12 Contributions Plan.

#### **46. Way Finding Strategy**

Prior to the issue of the first Construction Certificate, a way finding strategy is required to be prepared and submitted to the Principal Certifying Authority. The strategy is to detail way finding from the surrounding streets, through and out of the shopping centre and between the office tower and hotel tower.

#### **47. Public Domain Works**

The public domain works to be provided along the frontage of Castle Street and Old Castle Hill Road (along both of the Zone 3 frontages) shall be in accordance with the vision established for the public realm within the Castle Hill Town Centre. A schedule of materials, colours, finishes and location of public domain improvements including (but not limited to) landscape works, paving, irrigation for watering of street trees, bins, seating and banner poles shall be submitted to the Manager Infrastructure and Transport Planning for endorsement prior to the issue of a Construction Certificate. This includes the following specific requirements:

- Removal of the Plane trees located along the Old Castle Hill frontage (adjacent to David Jones) and replacement with Queensland Brush Box.
- The pavers used are match the existing pavers used in Old Northern Road/Main Street.
- Smart poles and ground lighting are to be installed along the full length of the frontage of Old Castle Hill Road (to the former Eric Felton Street). This includes connection to three phase power. The smart pole street lighting columns are to replace the existing Endeavour Energy street lights in Old Castle Hill Road. They are to match the style of smart poles used in the Old Northern Road Main Street precinct and are to be separately metered with Council being responsible for the ongoing maintenance and operation of the smart poles.
- CCTV is to be installed along the full length of the frontage of Old Castle Hill Road. The system must be compatible with the existing CCTV system in the Old Northern Road Main Street precinct and once installed, managed by Council.

#### **48. Shopping Trolley Management**

A geospatial fenced trolley containment system is required to be installed within the proposed and existing centre. All new trolleys are to be fitted with a wheel lock that is enabled before leaving a geospatial area (no access to public land). Details are to be submitted to the PCA prior to issue of the relevant Construction Certificate.

#### **49. Public Art**

The design and installation of two public artworks is required on the site. The final locations and designs of the public artworks is to be endorsed by Council's Group Manager – Planning and Environment prior to issue of the Construction Certificate.

#### **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 Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*

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-tapin/index.htm>

### **Out of Scope Building Plan Approval**

Sydney Water will need to undertake a detailed review of building plans:

i. That affect or are likely to affect any of the following:

- Wastewater pipes larger than 300mm in size
- Pressure wastewater pipes
- Drinking water or recycled water pipes
- Our property boundary
- An easement in our favour
- Stormwater infrastructure within 10m of the property boundary.

ii. Where the building plan includes:

- Construction of a retaining wall over, or within the zone of influence of our assets
- Excavation of a basement or building over, or adjacent to, one of our assets
- Dewatering – removing water from solid material or soil.

The detailed review is to ensure that:

- our assets will not be damaged during, or because of the construction of the development
- we can access our assets for operation and maintenance
- your building will be protected if we need to work on our assets in the future.

The developer will be required to pay Sydney Water for the costs associated with the detailed review.

### **51. Acoustic Requirements for the assessment of plant and equipment**

Before the issue of the relevant construction certificate, detailed plans and specifications are to be submitted to the certifier that identifies locations and assesses the mechanical plant and equipment and confirms that the equipment will meet the criteria established in the acoustic assessments submitted with the Development Application.

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

### **52. Protection of Existing Trees**

The trees that are to be retained are to be protected during all works strictly in accordance with the Tree Protection Plan prepared by Birds Tree Consultancy dated 22/04/24 with the following Tree Protection measures in place:

- Trunk and branch protection is to be installed to the trunk and branches adjacent to the proposed works for Trees 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.
- No mechanical or vehicle access is permitted within the Tree Protection Zones (TPZ) of Trees 13, 14, 16 and 17.
- All mechanical and vehicle access is to be excluded from the TPZ of Tree 12.
- Storage of materials, mixing of materials, vehicle parking, disposal of liquids, machinery repairs and refuelling, site office and sheds, and the lighting of fires, stockpiling of soil, rubble or any debris shall not be carried out within the TPZ of existing trees.

- All tree protection works shall be carried out before demolition, excavation, grading and site works commence. Tree protection works shall be inspected and approved by the Project Arborist prior to construction works commencing.
- A sign is to be erected indicating the trees are protected.
- The installation of services within the tree protection zone is not to be undertaken without prior consent from Council.

### **53. Sydney Water Building Plan Approval**

A building plan approval must be obtained from Sydney Water Tap in™ to ensure that the approved development will not impact Sydney Water infrastructure.

A copy of the building plan approval and receipt from Sydney Water Tap in™ (if not already provided) must be submitted to the Principal Certifier upon request prior to works commencing.

Please refer to the website <http://www.sydneywater.com.au/tapin/index.htm>, Sydney Water Tap in™, or telephone 13 20 92.

### **54. 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.

### **55. Separate OSD Detailed Design Approval**

No work is to commence until a detailed design for the Onsite Stormwater Detention system has been approved by either Council or an accredited certifier.

### **56. 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.

### **57. 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.

### **58. 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.

#### **59. 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.

#### **60. 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. The controls shall be in accordance 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).

#### **61. 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).

#### **62. 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.

#### **63. 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.

#### **64. 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.

#### **65. 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.

#### **66. Soil and Water Management Plan**

A Soil and Water Management Plan is to be prepared and implemented. 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.

The plan is to include a plan of management for the treatment and discharge of water accumulated in open excavations. Water containing suspended solids greater than 50 mg/L shall not be discharged to the stormwater system.

#### **67. 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.

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

Council provides a waste service to Lot D and Part Lot C DP 411711. This service must be cancelled prior to demolition of the existing works on these lots. You will continue to be charged where this is not done. No bins provided as part of the 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 Certifying Authority must contact Council on (02) 9843 0310 to arrange for the service to be discontinued and for any bins to be removed from the property by Council.

#### **69. 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).

#### **70. Protection of Tree Canopy and Ground Protection within TPZ**

Care shall be taken when operating excavation machineries, cranes and similar equipment near trees to avoid damage to tree canopies (foliage and branches). Under no circumstances shall branches be torn-off by construction equipment. Where there is potential conflict between tree canopy and construction activities, the advice of a Project Arborist must be sought.

In the event of any tree becoming damaged for any reason during the construction period a Project Arborist shall be engaged to inspect and provide advice on any remedial action to minimise any adverse impact. Such remedial action shall be implemented as soon as practicable and certified by the Project Arborist.

The removal of a small portion of the crown (foliage and branches) is generally tolerable provided that the extent of pruning required is within 10% of the total foliage volume of the tree and the removal of branches does not create large wounds or disfigure the natural form and habit of the tree. All pruning cuts must be undertaken in accordance with the Australian Standard of Pruning of Amenity Tree (AS 4373-2007).

If any construction access or works is required within the TPZ of any tree (s) identified for retention ground protection measures shall be required.

Ground protection shall include temporary access for machinery, vehicular and foot traffic within the TPZ of trees on the site and/or on adjoining Council site (s).

The measures may include a permeable membrane such as geo-textile fabric beneath a layer of mulch or crushed rock below rumble boards as per Clause 4.5.3 Ground protection AS4970-2009 Protection of trees on development sites.

### **DURING CONSTRUCTION**

#### **71. Management of Construction Activities**

- a. Activities are to be managed during the construction period to ensure that impacts on adjoining roads and properties are minimised. This includes management of workers and construction vehicles.
- b. Parking of workers vehicles associated with the construction works can occur within the existing parking area at Lot 51 Les Shore Place and on the development site. When the proposed parking areas have been constructed and an Occupation Certificate issued, where safe, these parking areas are required to be utilised for parking of workers and construction vehicles.
- c. The use of the site as a 'depot' for construction vehicles and storage of materials is permitted on the development site. These activities are to be undertaken in a manner to ensure that the amenity of residential properties is protected.

#### **72. 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.

#### **73. 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.

Any variation sought to the hours of work above, for exceptional circumstances, will require the approval of Council's Manager Regulatory Services. Should approval for works beyond the hours specified above be granted, written notification must be provided to neighbouring properties at least 48 hours in advance of work commencing.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads, those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff

#### **74. Survey Report and Site Sketch**

A survey report and site sketch signed and dated (including contact details) by the registered land surveyor may be requested by the Principal Certifier during construction. The survey shall confirm the location of the building/structure in relation to all boundaries and/or levels. As of September 2018 the validity of surveys has been restricted by legislation to 2 years after issue.

#### **75. Roof Water Drainage**

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

#### **76. 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.

#### **77. 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.

#### **78. 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.

#### **79. 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).

#### **80. Construction Noise Management Plan**

A construction noise management plan shall be developed in accordance with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*. This plan shall be implemented for the duration of construction.

#### **81. Construction Environmental Management Plan**

The Construction Environmental Management Plan Prepared by Clarke Hopkins Clarke dated February 2023 shall be implemented during the course of the construction.

During construction, protection shall be provided to any adjacent stormwater drains to which runoff from the construction may flow. No sediment from concrete cutting, tile cutting and the like is permitted to enter the stormwater drains. A management plan shall be developed to protect any building waste or debris or sediment from entering the stormwater.

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

#### **82. 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 mode 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)

### **83. Shopping Trolley Management Plan**

A Shopping Trolley Management Plan shall be implemented to ensure the effective management of shopping trolley collection. The operator shall:-

- Install a geospatial fenced trolley containment plan. All new trolleys are to be fitted with a wheel lock that is enabled before leaving a geospatial area (no access to public land).
- Provide to The Hills Shire Council a list of contacts for the store or centre management;
- Ensure that all trolleys are easily identifiable by Council staff;
- Ensure that trolley collection services are sufficiently resourced to enable collection within agreed timeframes and at all times, including after hours;
- Ensure that trolleys reported as posing risk or nuisance are collected immediately on notification;
- Ensure that all trolleys reported are collected within the time frame agreed by Council;
- Inform customers (through clearly visible signage and other means) that trolleys should not be removed from the premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet/complex;
- Provide suitable, well signed trolley bays at exit points; and
- Provide to Council, on request, an up to date map showing usual trolley collection routes and schedules.

### **84. Consolidation of Site A Allotments**

All allotments which are part of 'Site A' must be consolidated into a single allotment before any Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

#### **85. 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.

#### **86. Section 73 Certificate**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Development and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) and then refer to Water Servicing Co-ordinator under "Developing Your Land" or telephone 13 20 92 for assistance.

#### **87. Completion of Engineering Works**

A relevant Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

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

Before any 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.

#### **89. 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.

#### **90. Stormwater Management Certification**

The stormwater management system must be completed to the satisfaction of the Principal Certifier prior to the issuing of the relevant Occupation Certificate. The following documentation is required to be submitted upon completion of the stormwater management system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- For Onsite Stormwater Detention (OSD) systems, a certificate of hydraulic compliance (Form B.11) from a hydraulic engineer verifying that the constructed OSD system will function hydraulically;
- For OSD systems, a certificate of structural adequacy from a structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime;
- Records of inspections; and
- An approved operations and maintenance plan.

Where Council is not the Principal Certifier a copy of the above documentation must be submitted to Council.

#### **91. Creation of Restrictions/ Positive Covenants**

Before the relevant Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via dealing/ request document or Section 88B instrument associated with a plan. Council's standard recitals must be used for the terms:

**a) Restriction/ Positive Covenant – Onsite Stormwater Detention**

The subject site must be burdened with a restriction and a positive covenant using the “onsite stormwater detention systems” terms included in the standard recitals.

**b) Restriction/ Positive Covenant – Water Sensitive Urban Design**

The subject site must be burdened with a positive covenant that refers to the water sensitive urban design elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.

**c) Positive Covenant – Stormwater Pump**

The subject site must be burdened with a positive using the “basement stormwater pump system” terms included in the standard recitals.

**92. Maximum Capacity Signage to be Displayed in the Premises**

**Section 73 - Maximum Capacity Signage**

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.



### Maximum Capacity of Venue

**Pursuant to Development Consent No.1431/2923/JP , the maximum number of patrons and staff that are permitted in the building are as follows:**

**Entertainment venue:**

- Main floor                      1200
- Viewing zone mezzanine    300
- Total                              1500
  
- Basement 1 restaurant      320
  
- Level 2 restaurant and  
function room                      620
  
- Level 1 bar / restaurant      380
  
- Level 14 Sky Bar                185

**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:**

### **93. 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.

### **94. Regulated Systems**

To ensure that adequate provision is made for ventilation of the building all 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.

#### **95. Acoustic Compliance Report**

The acoustic consultant shall inspect the installation of required noise suppressant components as recommended in the Environmental Noise Impact Assessments submitted with the development application confirming compliance with the recommendations.

#### **96. Turntable Installation Compliance Certificate**

Prior to the relevant Occupation Certificate being issued, a letter of compliance must be submitted to and approved by the Principal Certifying Authority. The letter must be prepared by the equipment supplier/installer confirming that the Council approved waste turntable, including all associated infrastructure, has been installed to manufacture standards and is fully operational and satisfies all relevant legislative requirements and Australian standards.

#### **97. Certification of no cross contamination of sewage to stormwater**

Prior to the issue of the relevant Occupation Certificate certification is to be provided by a suitably qualified person that no cross connections of sewer or wastewater is discharged to the stormwater.

#### **98. Goods Lift Installation Compliance Certificate**

Before the issue of the relevant Occupation Certificate, a letter of compliance must be submitted to and approved by the Principal Certifying Authority. The letter must be prepared by the equipment supplier/installer confirming that the goods lift has been installed to comply with AS1418.8.

### **THE USE OF THE SITE**

#### **99. 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*.

#### **100. Final Acoustic Report**

Within three months from the issue of any relevant Occupation Certificate, an acoustical compliance assessment is to be carried out by an appropriately qualified person, in accordance with the NSW EPA's – Noise Policy for Industry 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*.

#### **101. 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.

#### **102. 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.

#### **103. 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.

#### **104. Hours of Operation**

The following hours of operation are permitted:

##### General Shopping Centre and General Retail Tenancies within the Commercial and Hotel Tower:

Monday, Tuesday, Wednesday, Friday and Saturday: 9:00am – 5:30pm  
Thursday: 9:00am – 9:00pm  
Sunday: 10:00am – 5:00pm

Café/Restaurant/Retail Tenancies within the Hotel and Commercial Buildings: 7am – 11.30pm (only those tenancies shown highlighted on plans DA-U10-04-01 Issue A, DA-U10-05-01 Issue A, DA0936.2 a, DA-2200-2 Revision A and DA-2201-1 Revision A).

General Hotel: 24/7 operations

Basement Restaurant: 7am – 11.30pm

Commercial Building: 24/7 operations

Cleaning and occasional access is permitted outside of the above hours of operation subject to compliance with noise limits.

Any alteration to the approved hours of operation will require the further consent of Council.

#### **105. Acoustic – Maintenance**

All approved acoustic attenuation measures installed as part of the development are to be maintained at all times in a manner that is consistent with the approved acoustic reports and

the consent so that the noise attenuation effectiveness is maintained. This includes but is not limited to:

- Sound barriers;
- Vibration isolated car park ramps, stormwater grates and metal speed bumps;
- Vibration isolated car park roller doors;
- Mechanical plant acoustic barriers.

An independent assessment is to be undertaken on sound barriers other than masonry barriers as timber and other materials may warp or be damaged.

The independent assessment is to be undertaken every five years with a report kept on site for review by Council officers in the event of complaints relating to noise.

#### **106. Registration and Operation of a Commercial Swimming Pool**

The swimming pool shall be designed and operated in accordance with the *Public Health Act 2010*, Part 3, Division 3 Control of Public Swimming Pools and Spa Pools and the *Public Health Regulation 2012*, Part 3 Control of Public Swimming Pools and Spa Pools.

Prior to the operation of the pool the pool is to be registered with the Council.



Kristine McKenzie  
The Hills Shire Council  
ePlanning Portal

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State Environmental Planning Policy (Transport and Infrastructure) 2021 22 September 2023  
Development Application - 1431/2023/JP  
6-14 Castle Street, Castle Hill

Dear Kristine McKenzie,

Sydney Metro refers to Development Application 1431/2023/JP (DA) submitted by QIC Ltd (Applicant) that has been referred to Sydney Metro via the NSW Planning Portal on 05 April 2023, 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 Metro North West Line rail corridor 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 Planning Portal on 24 February 2023 and 08 August 2023, and via email on 23 June 2023 and 17 July 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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Level 43, 680 George Street, Sydney NSW 2000  
PO Box K659, Haymarket NSW 1240

sydneymetro.info  
ABN 12 354 063 515  
SM-23-00478030

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**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.

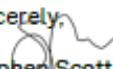
Sydney Metro would be grateful if a copy of the Notice of Determination and any conditions of consent for the DA are forwarded to Sydney Metro should the consent authority determine to grant consent to the DA.

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.

Sincerely,

  
**Stephen Scott**  
Executive Director  
Northwest Operations  
Development Application - 1431/2023/JIP  
6-14 Castle Street, Castle Hill

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## 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 Sydney Metro Impact Assessment Castle Towers Zone 3 Upgrade Ref. 73982.05.R.006.Rev2 (Revision 2) prepared by Douglas Partners dated 03 August 2023, including but not limited to the following appended documentation:
- i. Dwg no. CT-BGE-DR-ST-SB-SK102 prepared by BG&E dated 25 March 2022.
  - ii. Dwg no. CT-BGE-DR-ST-SB-SK103 prepared by BG&E dated 25 March 2022.
  - iii. Dwg no. CT-BGE-DR-ST-SB-SK104 prepared by BG&E dated 25 March 2022.
  - iv. Dwg no. HSK-037-Z3-SK Page 1 of 3 (Revision B) prepared by BGT&E dated 05 August 2022.
  - v. Dwg no. HSK-037-Z3-SK Page 2 of 3 (Revision B) prepared by BGT&E dated 05 August 2022.
  - vi. Dwg no. HSK-037-Z3-SK Page 3 of 3 (Revision B) prepared by BGT&E dated 05 August 2022.
  - vii. Plan View – Stage 0 FLAC Analysis Castle Towers Zone 3 Upgrade Sheet No. 1 prepared by Douglas Partners dated 21 October 2022.
  - viii. Plan View – Stage 0 FLAC Analysis Castle Towers Zone 3 Upgrade Sheet No. 2 prepared by Douglas Partners dated 21 October 2022.
  - ix. Displacement in Rock After Excavation Section through the East Mall (Stage 1) Castle Towers Zone 3 Upgrade Sheet No. 3 prepared by Douglas Partners dated 21 October 2022.
  - x. Displacement in Rock After Excavation Section through the East Mall (Stage 2) Castle Towers Zone 3 Upgrade Sheet No. 4 prepared by Douglas Partners dated 21 October 2022.
  - xi. Displacement of Line After Excavation Plan View (Stage 1) Castle Towers Zone 3 Upgrade Sheet No. 5 prepared by Douglas Partners dated 21 October 2022.
  - xii. Displacement of Line After Excavation Plan View (Stage 2) Castle Towers Zone 3 Upgrade Sheet No. 6 prepared by Douglas Partners dated 21 October 2022.
  - xiii. Displacement of Line After Excavation Isometric View of East Mall looking SSW (Stage 1) Castle Towers Zone 3 Upgrade Sheet No. 7 prepared by Douglas Partners dated 21 October 2022.
  - xiv. Displacement of Line After Excavation Isometric View of East Mall looking SSW (Stage 2) Castle Towers Zone 3 Upgrade Sheet No. 8 prepared by Douglas Partners dated 21 October 2022.
  - xv. Maximum Principal Stress S1 in Rock Section – After Tunnel Completion (Stage 0) Castle Towers Zone 3 Upgrade Sheet No. 9 prepared by Douglas Partners dated 21 October 2022.
  - xvi. Maximum Principal Stress S1 in Rock Section – After Excavation (Stage 1) Castle Towers Zone 3 Upgrade Sheet No. 10 prepared by Douglas Partners dated 21 October 2022.
  - xvii. Maximum Principal Stress S1 in Rock Section – After Loading (Stage 2) Castle Towers Zone 3 Upgrade Sheet No. 11 prepared by Douglas Partners dated 21 October 2022.

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- xviii. Minimum Principal Stress S3 in Rock Section – After Tunnel Completion (Stage 0) Castle Towers Zone 3 Upgrade No. 12 prepared by Douglas Partners dated 21 October 2022.
- xix. Minimum Principal Stress S3 in Rock Section – After Excavation (Stage 1) Castle Towers Zone 3 Upgrade No. 13 prepared by Douglas Partners dated 21 October 2022.
- xx. Minimum Principal Stress S3 in Rock Section – After Loading (Stage 2) Castle Towers Zone 3 Upgrade No. 14 prepared by Douglas Partners dated 21 October 2022.
- xxi. Maximum Principal Stress S1 in Liner After Tunnel Completion (Stage 0) Castle Towers Zone 3 Upgrade No. 15 prepared by Douglas Partners dated 21 October 2022.
- xxii. Maximum Principal Stress S1 in Liner After Excavation (Stage 1) Castle Towers Zone 3 Upgrade No. 16 prepared by Douglas Partners dated 21 October 2022.
- xxiii. Maximum Principal Stress S1 in Liner After Loading (Stage 2) Castle Towers Zone 3 Upgrade No. 17 prepared by Douglas Partners dated 21 October 2022.
- xxiv. Minimum Principal Stress S3 in Line After Tunnel Completion (Stage 0) Castle Towers Zone 3 Upgrade No. 18 prepared by Douglas Partners dated 21 October 2022.
- xxv. Minimum Principal Stress S3 in Liner After Excavation (Stage 1) Castle Towers Zone 3 Upgrade No. 19 prepared by Douglas Partners dated 21 October 2022.
- xxvi. Minimum Principal Stress S3 in Liner After Loading (Stage 2) Castle Towers Zone 3 Upgrade No. 20 prepared by Douglas Partners dated 21 October 2022.
- xxvii. Axial Forces in Lining After Tunnel Completion Isometric View looking South-West (Stage 0) Castle Towers Zone 3 Upgrade No. 21 prepared by Douglas Partners dated 21 October 2022.
- xxviii. Axial Forces in Lining After Excavation Isometric View looking South-West (Stage 1A) Castle Towers Zone 3 Upgrade No. 22 prepared by Douglas Partners dated 21 October 2022.
- xxix. Axial Forces in Lining After Loading Isometric View looking South-West (Stage 1B) Castle Towers Zone 3 Upgrade No. 23 prepared by Douglas Partners dated 21 October 2022.
- xxx. Shear Forces in Lining After Tunnel Completion Isometric View looking South-West (Stage 0) Castle Towers Zone 3 Upgrade No. 24 prepared by Douglas Partners dated 21 October 2022.
- xxxi. Shear Forces in Lining After Excavation Isometric View looking South-West (Stage 1A) Castle Towers Zone 3 Upgrade No. 25 prepared by Douglas Partners dated 21 October 2022.
- xxxii. Shear Forces in Lining After Loading Isometric View looking South-West (Stage 1B) Castle Towers Zone 3 Upgrade No. 26 prepared by Douglas Partners dated 21 October 2022.
- xxxiii. Bending Moments in Lining After Tunnel Completion Isometric View looking South-West (Stage 0) Castle Towers Zone 3 Upgrade No. 27 prepared by Douglas Partners dated 21 October 2022.
- xxxiv. Bending Moments in Lining After Excavation Isometric View looking South-West (Stage 1A) Castle Towers Zone 3 Upgrade No. 28 prepared by Douglas Partners dated 21 October 2022.
- xxxv. Bending Moments in Lining After Loading Isometric View looking South-West (Stage 1B) Castle Towers Zone 3 Upgrade No. 29 prepared by Douglas Partners dated 21 October 2022.

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- xxxvi. Capacity Plots after Loading (Stage 2) Along the Tunnel Alignment Castle Towers Zone 3 Upgrade – East Mall No. 30 prepared by Douglas Partners dated 21 October 2022.
- xxxvii. Capacity Plots after Loading (Stage 2) Perpendicular to the Tunnel (Cross-Section) Castle Towers Zone 3 Upgrade – East Mall No. 30 prepared by Douglas Partners dated 21 October 2022.
- (b) Report on Geotechnical Investigation Castle Towers Zone 3 Ref. 84335.11.R.007.Rev2 (Revision 02) prepared by Douglas Partners dated 03 August 2023, including the appended documentation.
- (c) Castle Towers Zone 3 Upgrade Development Application - Structural Statement Ref. S21170 prepared by BG&E dated 28 July 2023.

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
  - (b) a registered surveyor shall peg-out the common property boundary between the development site and the rail corridor and any Sydney Metro easements to ensure that there is no encroachment by the development. A copy of the survey report indicating the location of pegs must be provided to Sydney Metro prior to the commencement of works.
- 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

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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) update the acoustic assessment report CT East Village Hotel Environmental Impact Assessment Ref. SYD2016 (Revision F) prepared by ADP Consulting dated 13 July 2023 to include detailed investigation for the entertainment space;
- (b) ensure the acoustic assessment report is compliant with each of the matters outlined in condition 1.5; and
- (c) incorporate as part of the development all the measures recommended in the acoustic assessment report; and
- (d) 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 the Certifier and Council prior to a Construction Certificate being issued by the Certifier. 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 The Applicant must incorporate as part of the development all the measures recommended in the electrolysis report Electrolysis Risk Assessment Ref. W23525/NSW-P100156 Revision 0 prepared by Corrosion Control Engineering dated 21 June 2023. A copy of the electrolysis report is to be provided to the Certifier and Council prior to a Construction Certificate being issued by the Certifier. The Certifier must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to issuing a Construction Certificate for the development.

#### 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

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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) Machinery to be used during excavation/construction; and
- (b) 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 If required by Sydney Metro, 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 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.

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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.

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### 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.

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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

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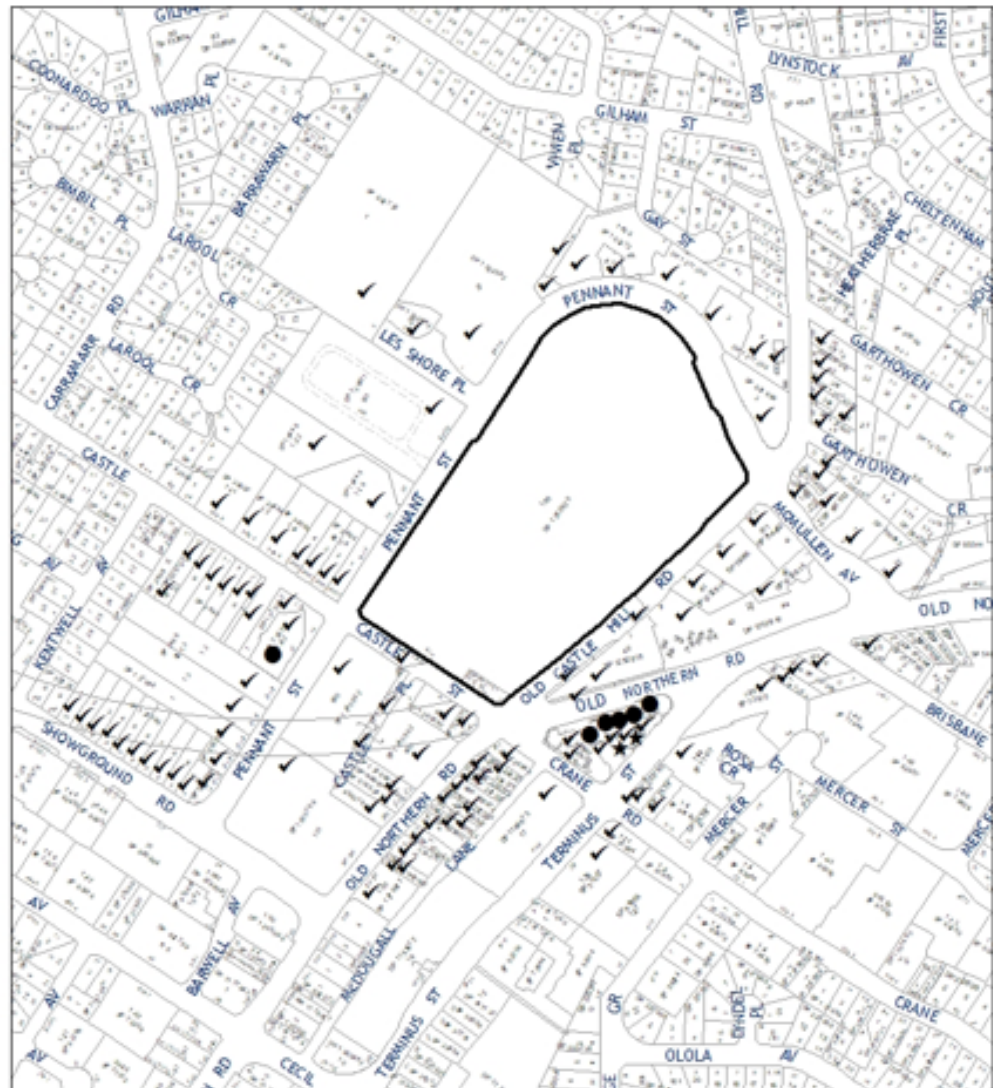
approved/endorsed documents, plans, reports during the construction and operation of the development (as applicable).

- 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.

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## ATTACHMENT B: LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED FIRST AND SECOND NOTIFICATION PERIOD
- SUBMISSIONS RECEIVED FIRST NOTIFICATION PERIOD
- ★ SUBMISSIONS RECEIVED SECOND NOTIFICATION PERIOD

ALL PROPERTIES WITHIN SP'S NOTIFIED

HILLS DISTRICT HISTORICAL SOCIETY NOTIFIED

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE  
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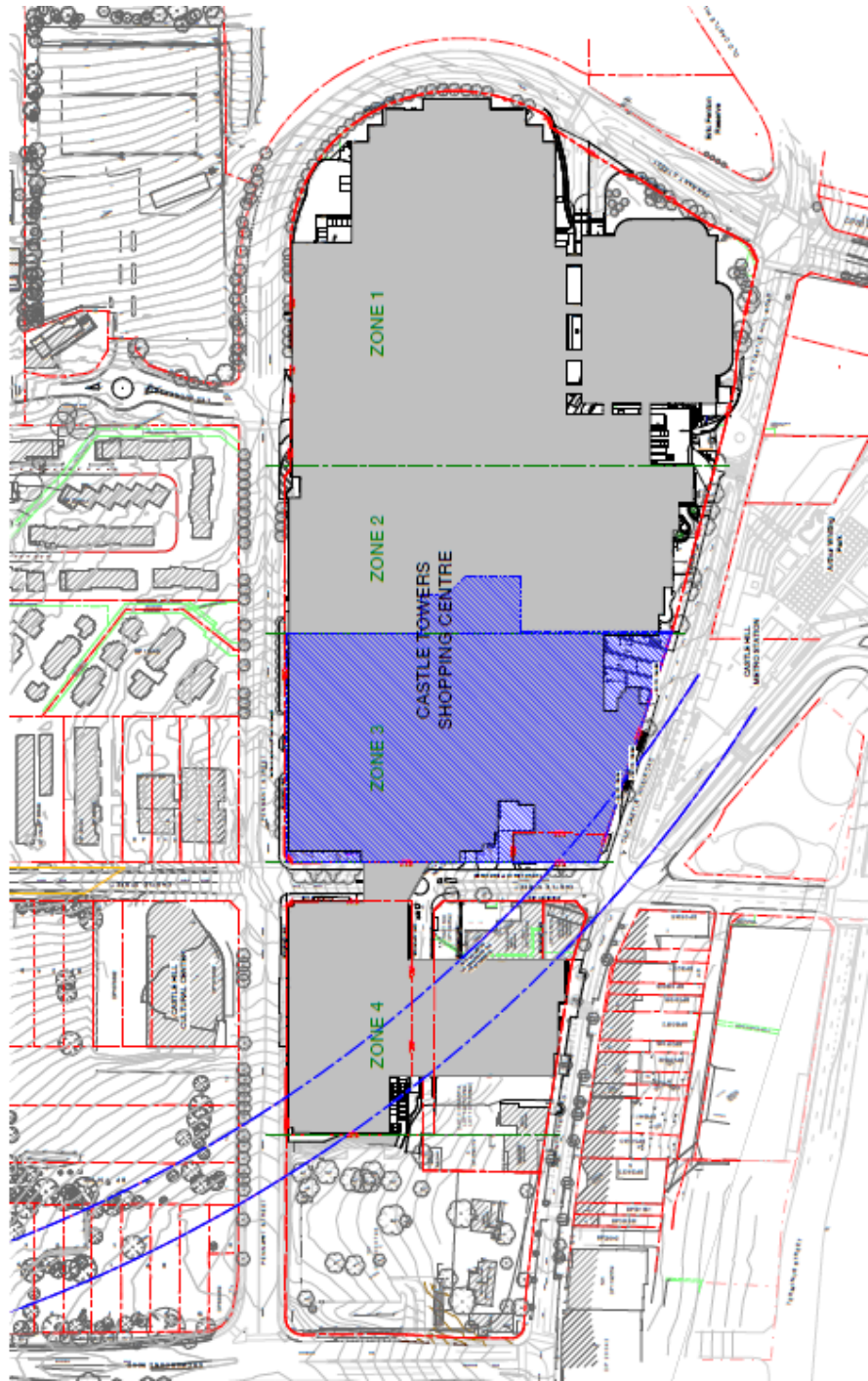
## ATTACHMENT C: AERIAL PHOTOGRAPH

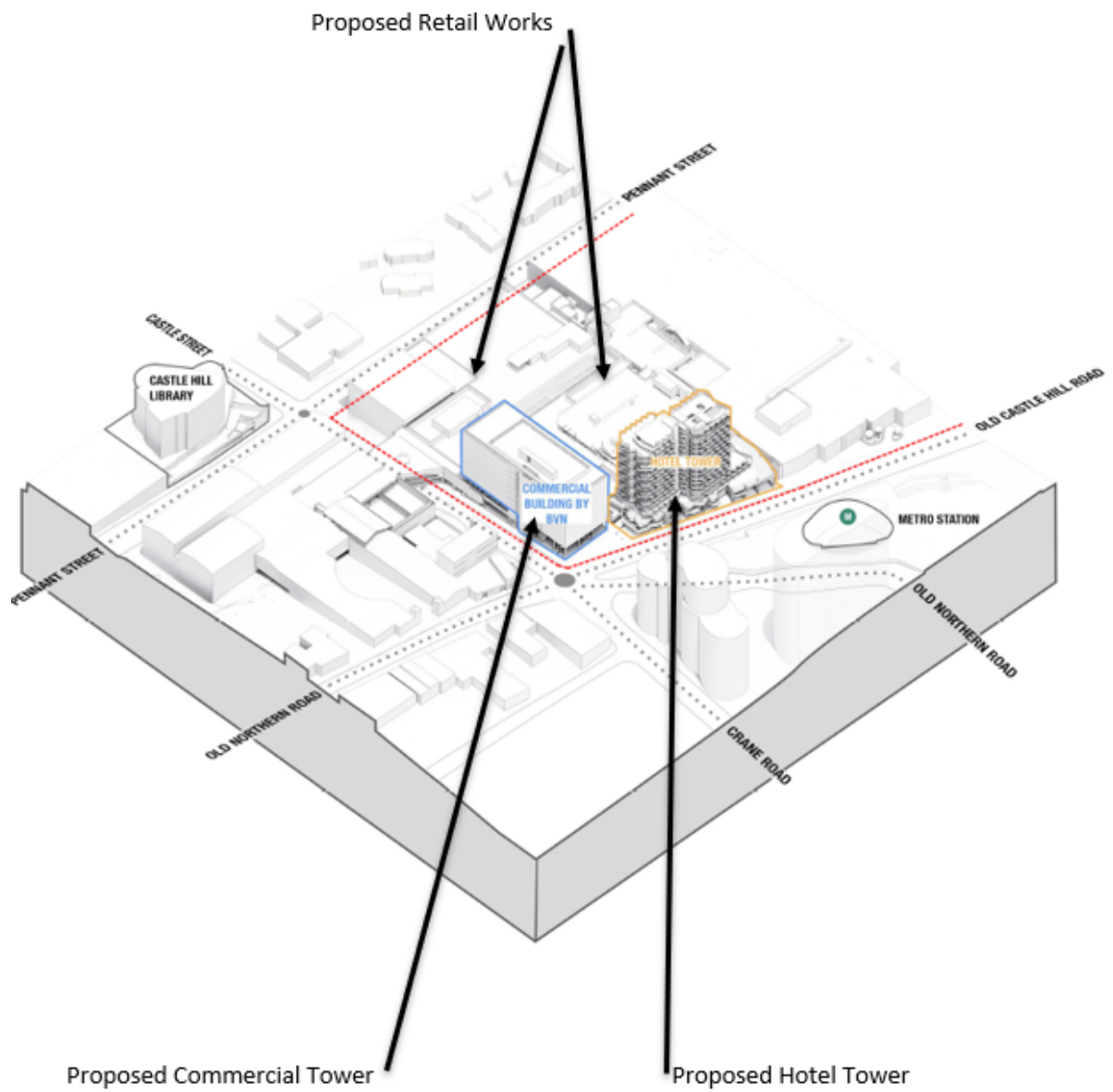


 SUBJECT SITE

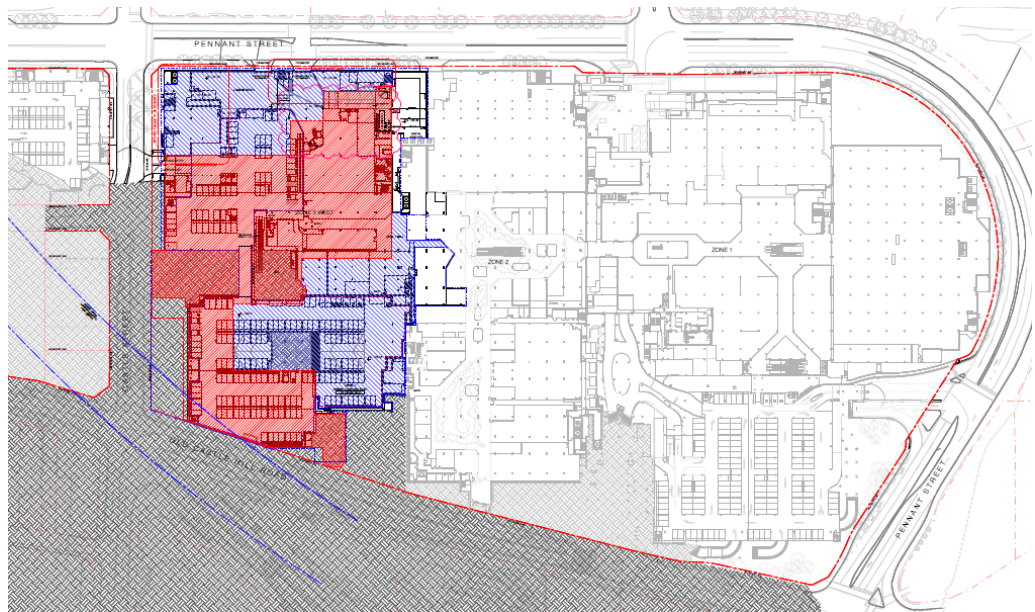


## ATTACHMENT D – LOCATION OF WORKS





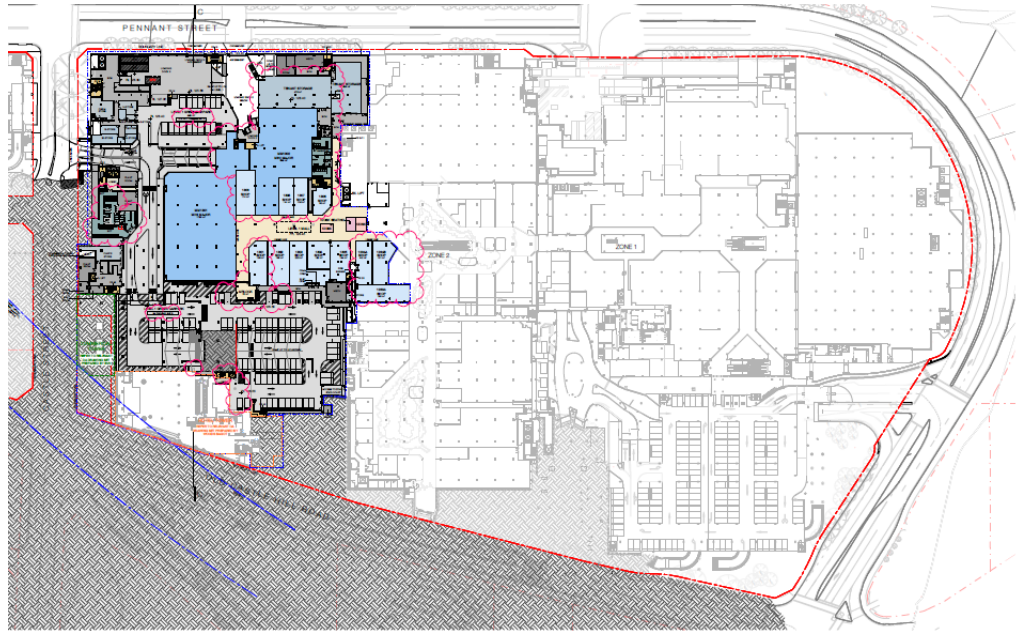
## ATTACHMENT E: FLOOR PLANS – RETAIL



### Graphic Legend

	BOUNDARY LINE
	METRO LINE
	SCOPE LINE
	DEMOLITION WORKS
	SUBJECT TO INTERIOR MODIFICATIONS
	CARPARK TO BE RECONFIGURED
	STRUCTURAL REINFORCEMENT

### Typical Demolition Plan – Level 1



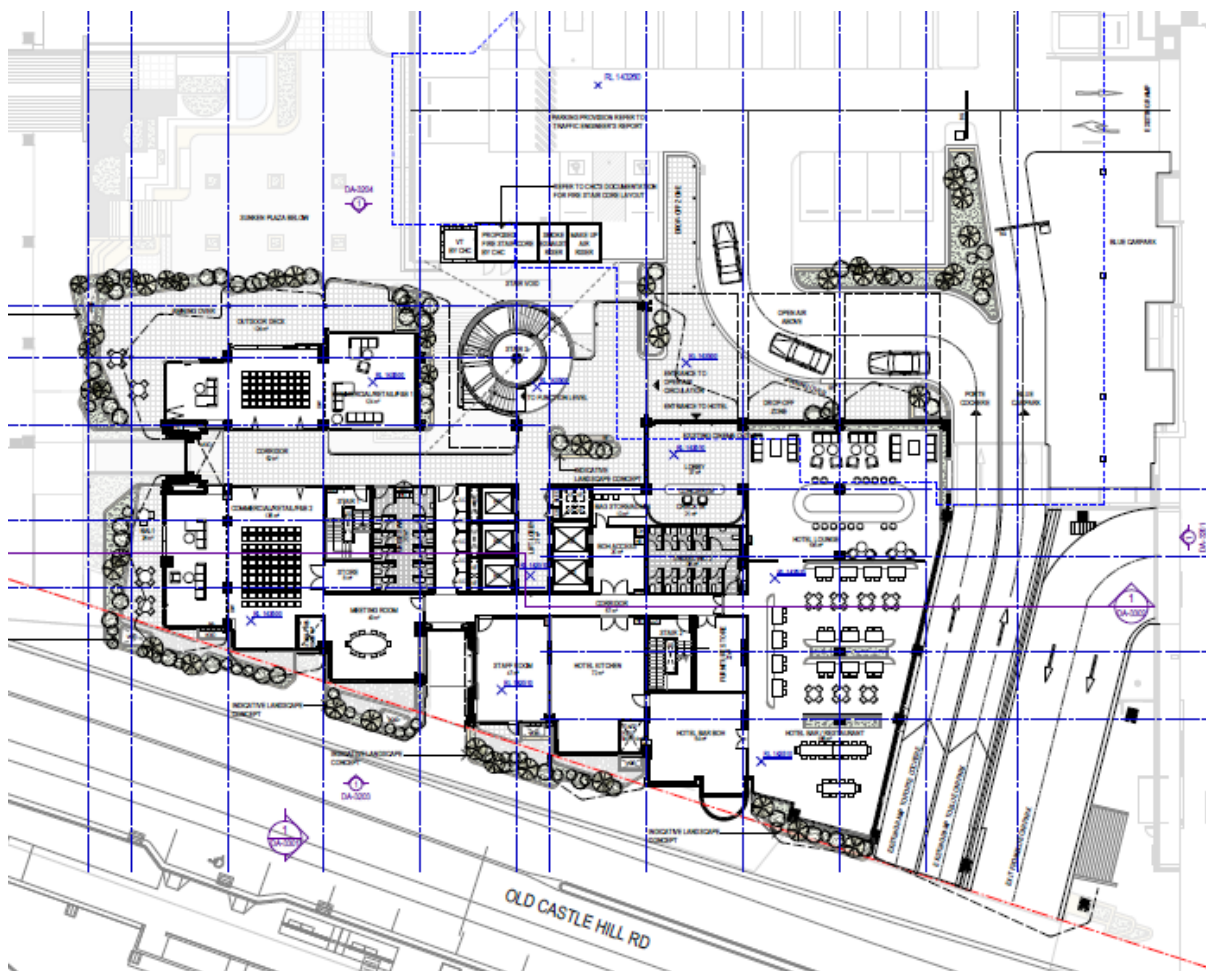
#### LEGEND

AMENITIES	LOADING DOCK	TENANT STORAGE
BOH	MAJOR	VT
CARPARK	MALL	
CIRCULATION	MINI MAJOR	
F&B	PLANT	
FOOD RETAIL	SERVICES	
KIOSK	SPECIALTY	
LICENSED SEATING	STORAGE	

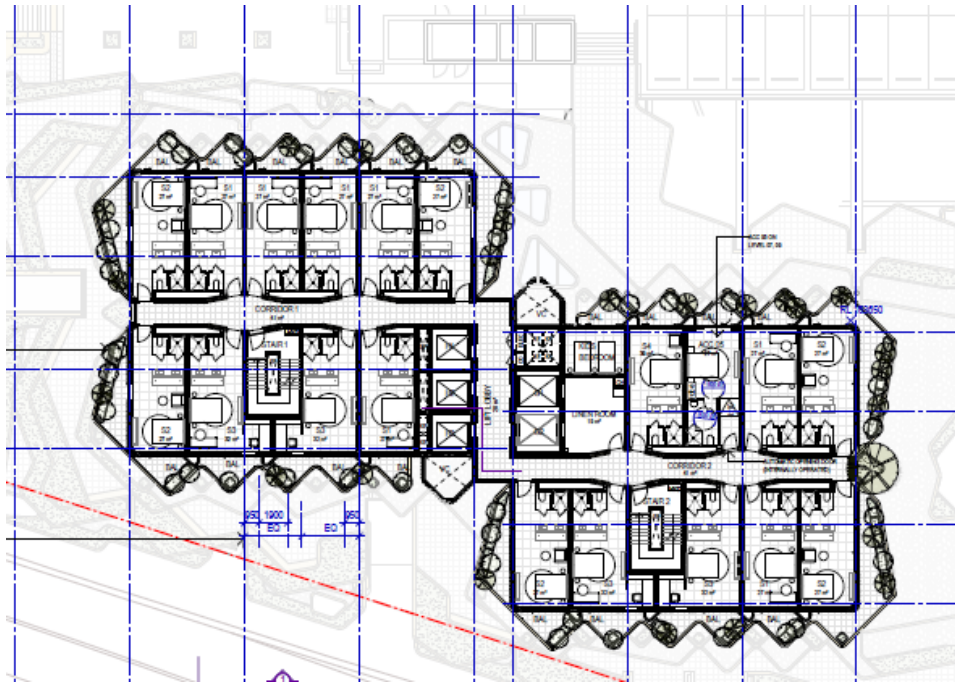
### Typical Proposed Floor Plan – Level 1



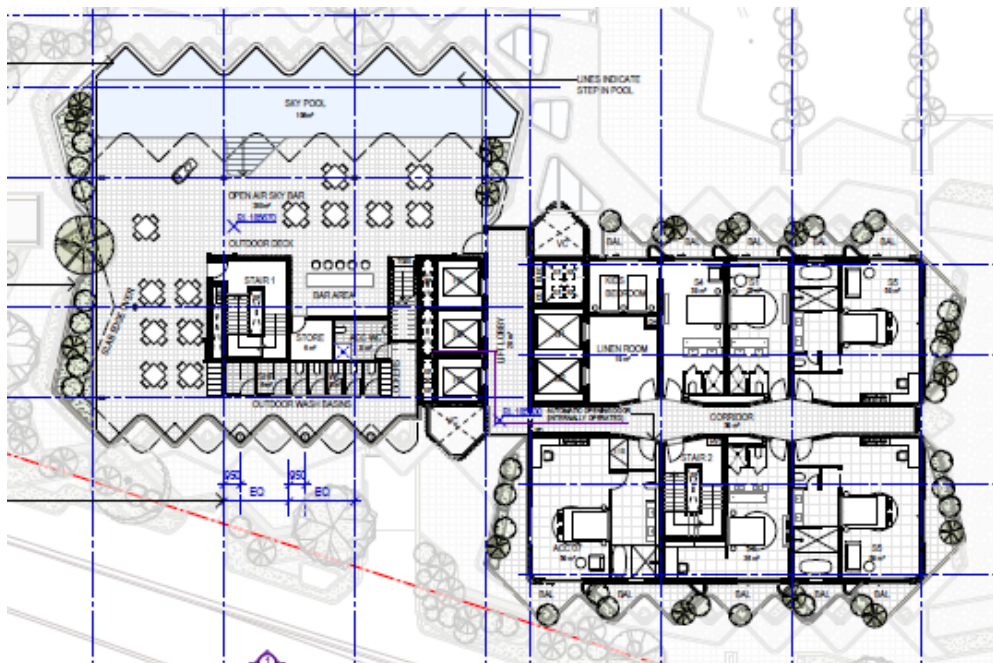
## ATTACHMENT F: FLOOR PLANS – HOTEL



## Hotel Level 01



**Hotel Typical Level (Levels 07, 09, 11)**



**Level 14 – Sky Bar, Pool and Suites**



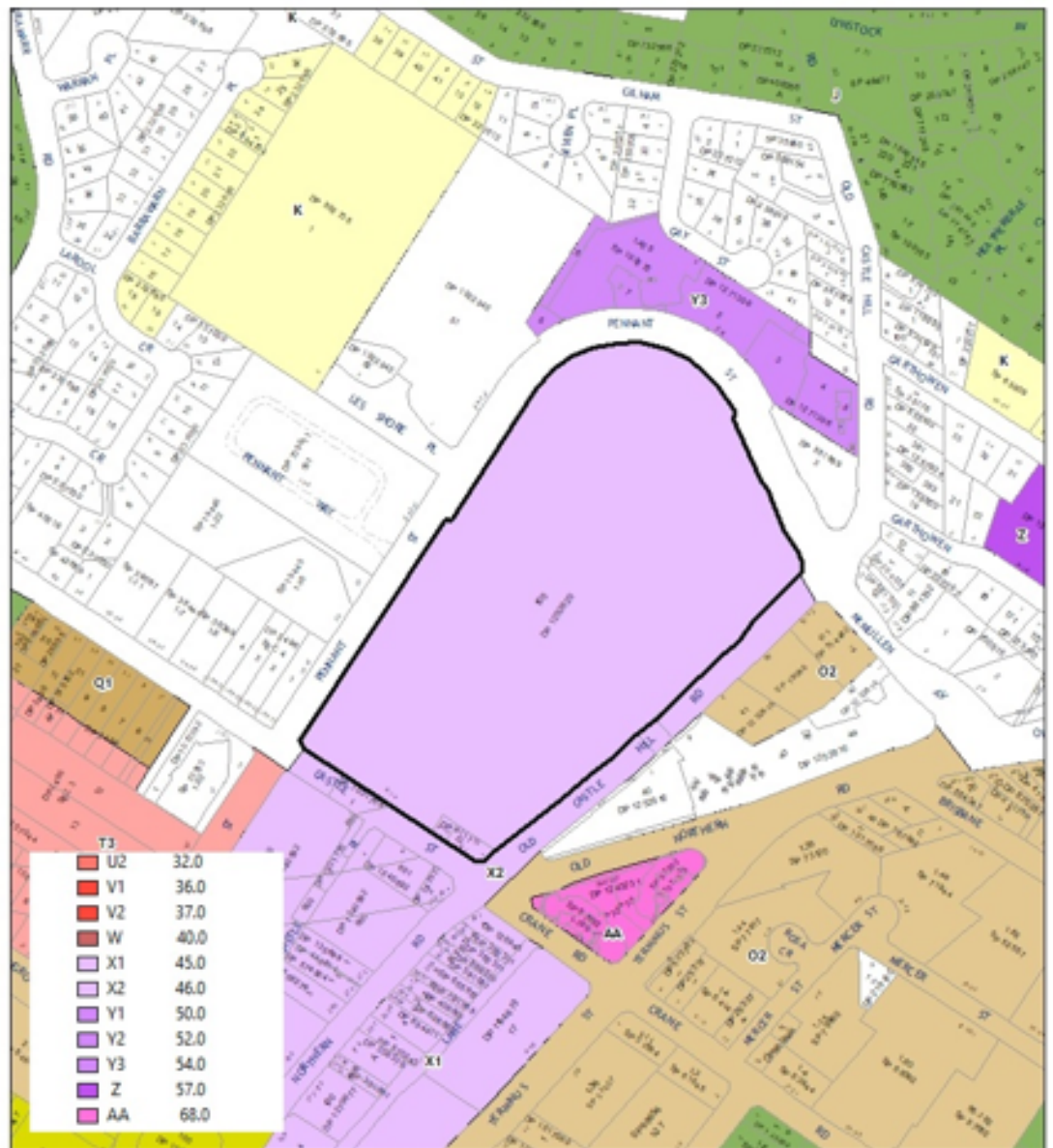
Architectural floor plan of the first floor of a building. The plan is oriented with Castle Street to the left and Old Castle Hill Road at the bottom. A grid system (A-H) is used for reference. Key areas include:

- RETAIL BELOW** (multiple locations)
- OFFICE LOBBY**
- STAIRS**
- EOT LOBBY**
- LOADING DOCK BELOW**
- ENTRANCE OF BUILDING UNDER**
- ENTRANCE TO LANDSCAPE AND EXISTING DRIVEWAY**
- ENTRANCE TO WOODS & HILL CHURCH**

A red dashed line runs diagonally across the plan. The plan also shows various structural elements, including walls, doors, and stairs.

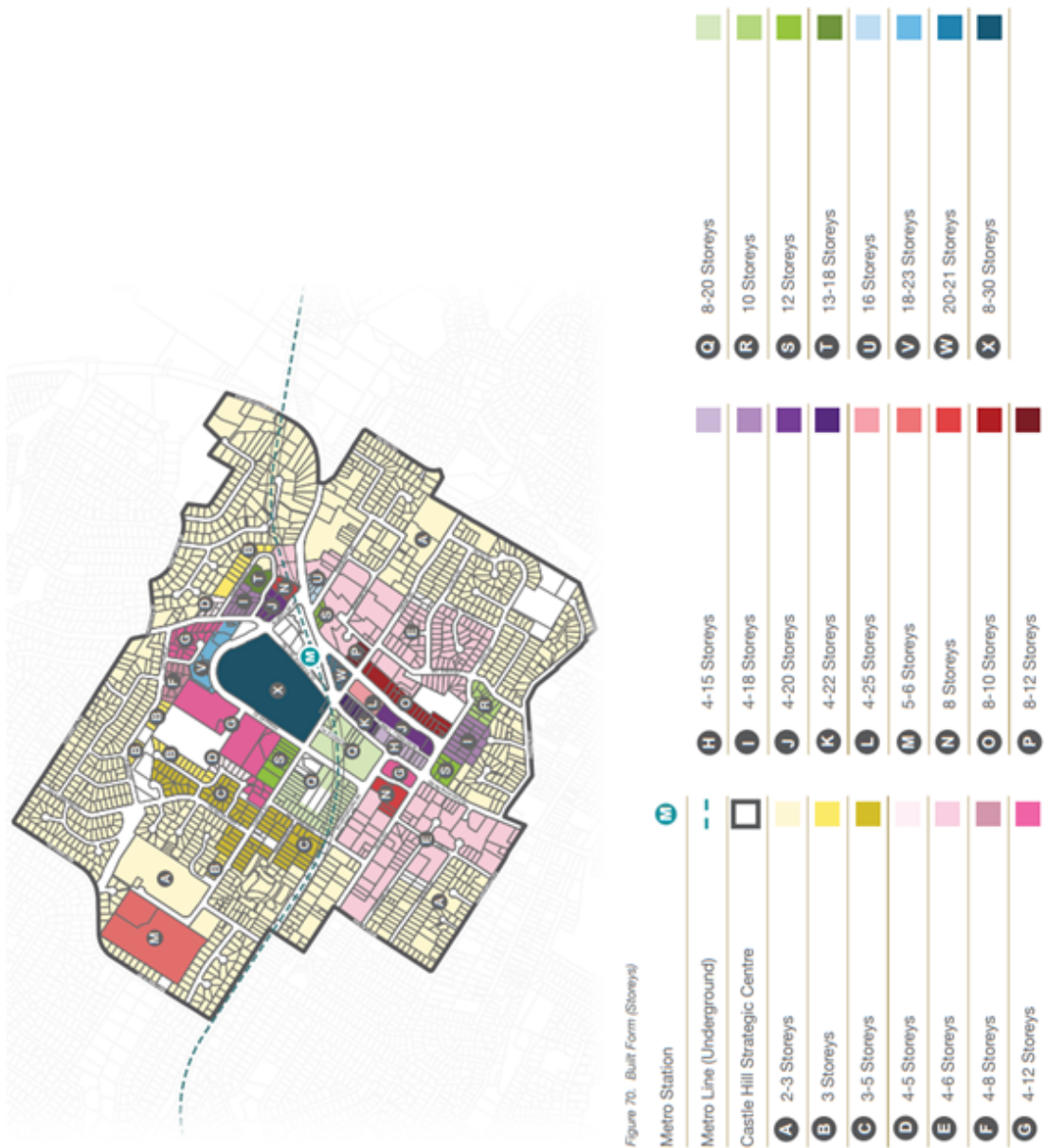
Document Set ID: 21320670  
Version: 25, Version Date: 31/07/2024

## ATTACHMENT H: LEP HEIGHT LIMIT PLAN



 SUBJECT SITE

ATTACHMENT I: ADOPTED PRECINCT PLAN HEIGHT MAP



## ATTACHMENT J: PROPOSED HEIGHT PLANS

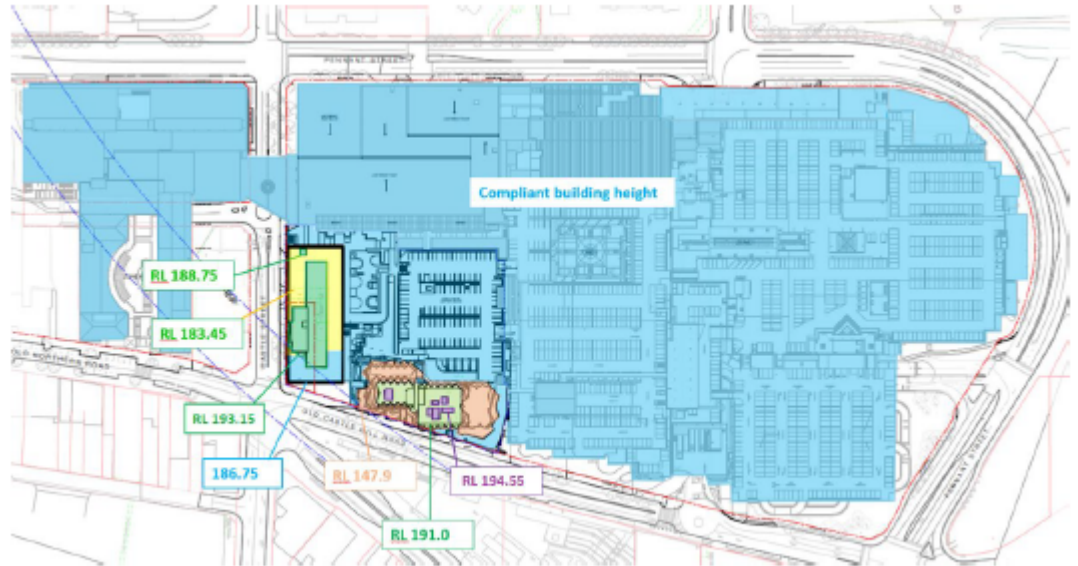


Figure 2 Indicative maximum building heights, heights (Relative Levels)

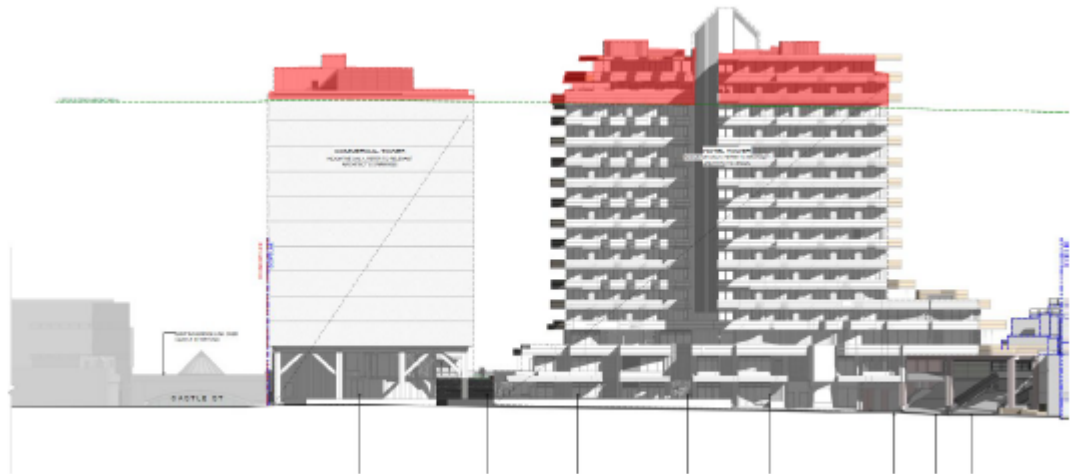
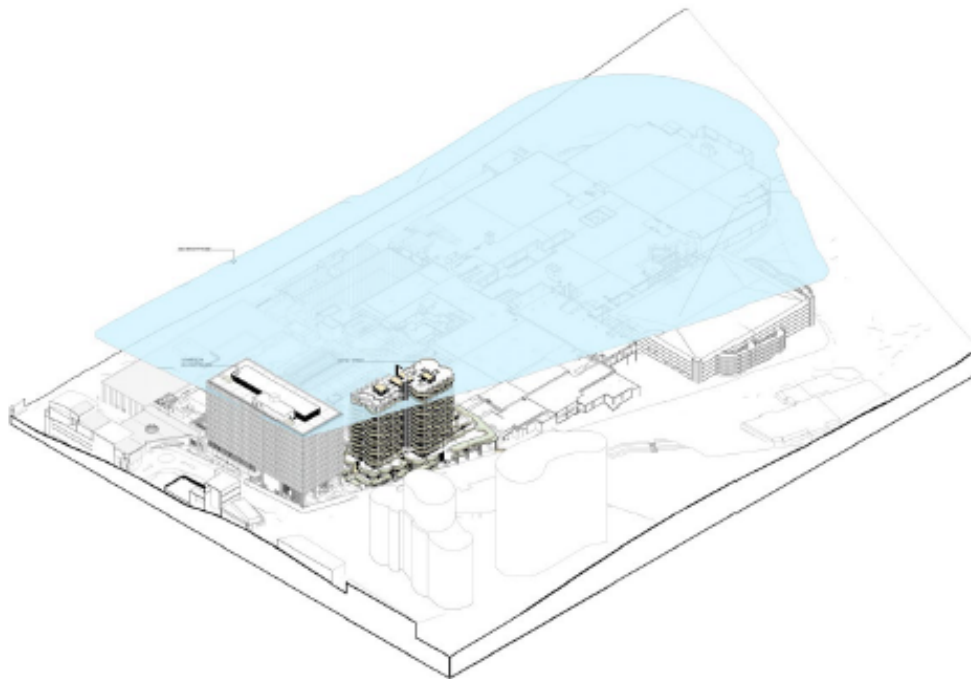
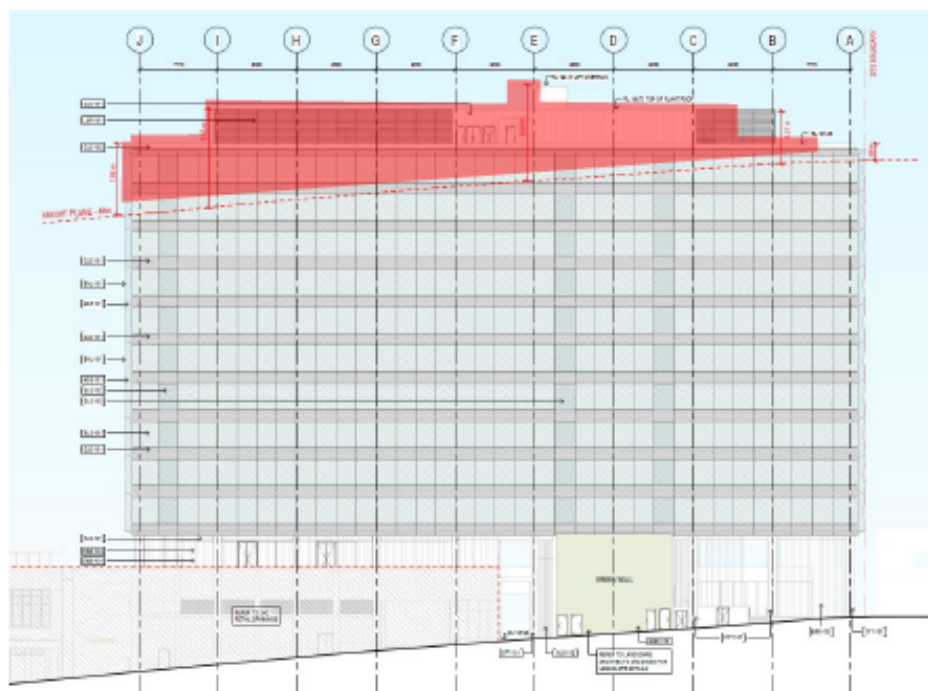


Figure 3 Old Castle Hill Road elevation



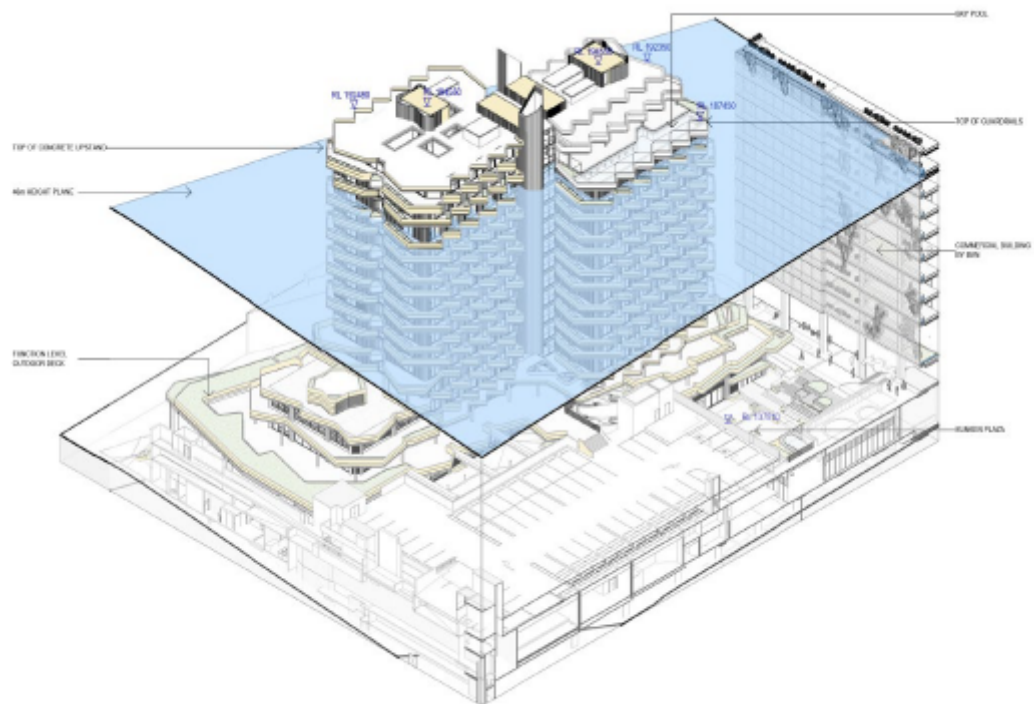
**Figure 4 Height plane diagram**

Source: Woods Bagot



**Figure 5 Height plane diagram of proposed commercial development showing the extent of non-compliance with the LEP height limit control, east elevation (red)**





**Figure 6 Height plane diagram of proposed hotel development showing the extent of non-compliance with the LEP height limit control**

## ATTACHMENT K: PERSPECTIVES

### Hotel





## Commercial





## Clause 4.6 Variation – Height

Castle Towers Shopping Centre – Retail refurbishment, commercial and visitor accommodation



Prepared by Ethos Urban  
Prepared for Q/C Limited  
28 July 2023 | 14208

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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Version No.	Date of issue	Approved by	
1.0	11/2/2023	MO	
2.0	11/7/2023	MO	
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 Ethos Urban Pty Ltd   ABN 13 615 087 931   173 Sussex Street Sydney NSW 2000 (Gadigal Land)   +61 2 9956 6962   ethosurban.com			

25 July 2023 | Clause 4.6 Variation Request | 6-14 Castle Street, Castle Hill | 2

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## 1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of QIC. It is submitted to The Hills Shire Council (**the Council**) in support of a development application (DA) for the integrated retail refurbishment, commercial and visitor accommodation of the Castle Towers Shopping Centre.

Clause 4.6 of The Hills Local Environmental Plan 2019 (**the 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.

This Clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This Clause 4.6 variation request demonstrates that, notwithstanding the variation from the development standard, the proposed development:

- Achieves the objectives of the height of buildings development standard;
- Achieves the objectives of the B4 Mixed Use zone;
- Building height is considered suitable given the site's unique location within the commercial core of The Hills Strategic Centre;
- Delivers premium grade commercial floorspace aligned with the identified need in the Castle Hill area;
- Contributes new commercial and hotel offerings to achieve the strategic vision for Castle Hill as a genuine mixed use strategic centre and "CBD" of the Shire;
- Is not located in the vicinity of any items of heritage and will not impact on the understanding of heritage items located away from the Site;
- Results in a superior planning outcome for the Site and provides enhanced amenity including a new public plaza and improvements to the public domain;

- Has high sustainability goals and strives to achieve ESD targets above the standard industry mark;
- Is below the permissible maximum floor space ratio, demonstrating that it is at a desirable intensity for the site; and
- Is in the public interest in light of the numerous positive social, design and economic impacts it will deliver for the site.

This Clause 4.6 variation request demonstrates that compliance with the height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of The Hills Shire LEP.

In addition, the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the height control and the B4 Mixed Use zone. In this regard, the proposal will contribute to the local community by providing premium commercial floorspace, new visitor and tourist accommodation, revitalised public domain including a new public plaza, refurbished retail space. Overall, the proposal is seen to be in the public interest.

This report should be read in conjunction with the architectural plans prepared by CHC, BVN and Woods Bagot and supporting consultants' reports.

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**).



## 2.0 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 below, the site is mapped with a maximum building height of 46m.

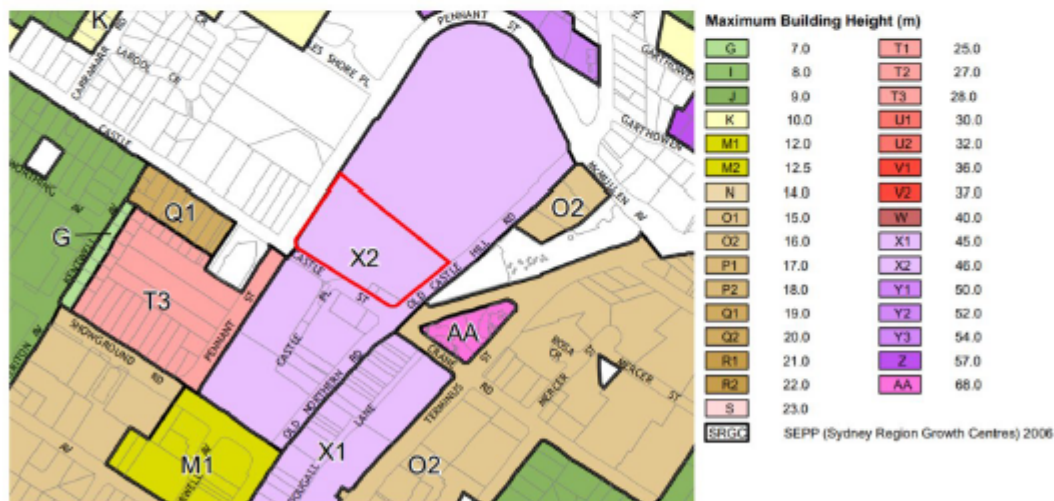


Figure 1 Extract of Height of Building Map (indicative site boundary identified in red)

Source: The Hills LEP 2019 with additions

### 3.0 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 46m maximum building height development standard in Clause 4.3 of the LEP which applies to the relevant part of the site.

## 4.0 Nature of Variation sought

The proposal is for an integrated retail refurbishment incorporating delivery of a new commercial building and new tourist and visitor accommodation building above the retail podium. The proposed commercial building and new visitor accommodation building both partially exceed the maximum building height of 46m for the site. The proposed retail refurbishment has a maximum height of less than 46m, complying with the maximum building height stipulated under The Hills LEP 2019. **Figure 2** illustrates that the majority of the site, being the 4-storey retail shopping centre, is compliant with the maximum building height.

The maximum building height proposed for each building and the variation sought is set out in **Table 1**. The proposed height variation does not apply evenly across the entirety of the roof area of the proposed buildings, but rather is exclusive to isolated components of the development. **Figure 2** and **Figure 3** outlines the proposed height variation of each development.

**Table 1 Proposed maximum building height**

Building	Existing NGL	Maximum Height	Height variation
Commercial building	RL 137.55	RL 193.15	0.69m – 9.60m
Hotel building	RL 137.55	RL 194.55	6.1m – 11.0m

Importantly, the topography of the site is significantly varied and impacts the overall building height. The landform is highest along Old Northern Road, on the south-eastern portion of the site (RL 139). It slopes downwards towards the north and west, with the lowest point being on the north-western side of the site, at the intersection between Pennant Street and Les Shore Place (RL 117). Therefore, the natural slope of the land typically restricts the design of proposed buildings.

At its highest point, the commercial building will have a height of RL 193.15, which is 55.6m above the existing natural ground level. Given the natural slope of the land, the proposed building results in a maximum height variation of 9.6m from the standard. As shown in **Figure 5**, the typical nature of the departure from the maximum building height limit under the LEP for the commercial building relates exclusively to the plant room and lift overrun. The total building height variation is 0.69m – 9.6m above the height limit resulting in a total height exceedance of 1.5% - 20.8%. However, the majority of the overall building height (79.2%) remains below the maximum LEP height building limit these maximum variations/exceedances are minor.

With regard to the hotel building, when measuring the building height in accordance with the standard definition (i.e. the top of the lift overrun), the hotel building has a maximum height of RL 194.55 above an existing natural ground level of RL 137.55. This represents a maximum height variation of 11m from the 46m standard. **Figure 6** shows the height of the proposed development in elevation. Similarly, the proposed height variation for the building relates to exceedances associated with levels 15 and 16 as well as several isolated plant structures on the roof, the lift overrun and vertical chimneys. The proposed height variation being 6.1m – 11.0m results in a total height exceedance of 13.2% - 23.9%. The majority of the building height (approximately 83.9%) is compliant with the maximum building height standard. Irrespective of the additional levels exceeding the height limit, the variation largely relates to plant machinery and the lift overrun.

Notably, the proposed hotel building includes two vertical chimneys that exceed the maximum building height limit by 12m. However, chimneys do not contribute to the overall height of buildings as defined under The Hills LEP 2019:

**building height** (or height of building) means—

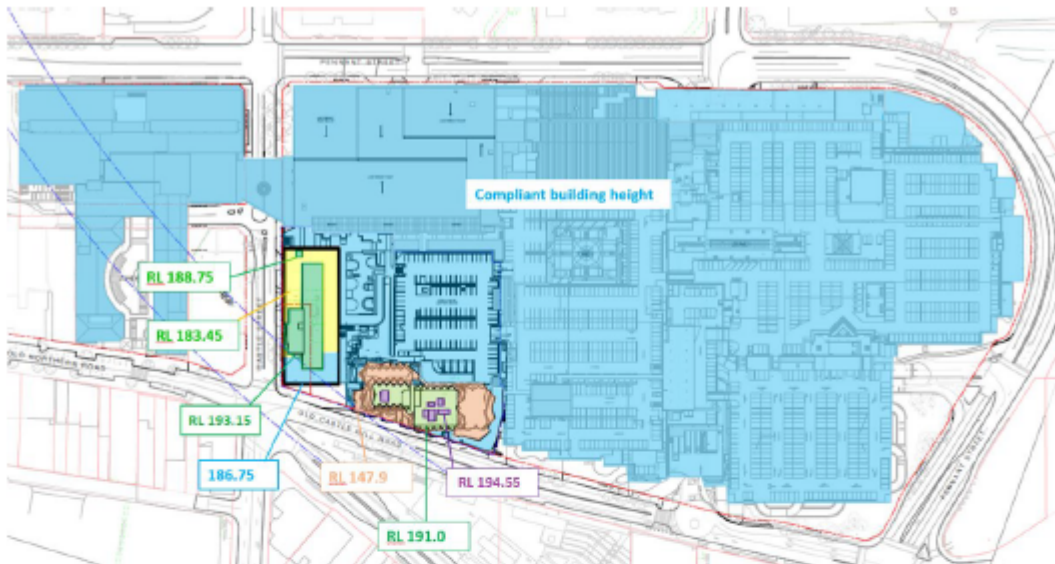
- in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

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

The proposed vertical chimneys are also integral to delivering a high performing sustainable building through:

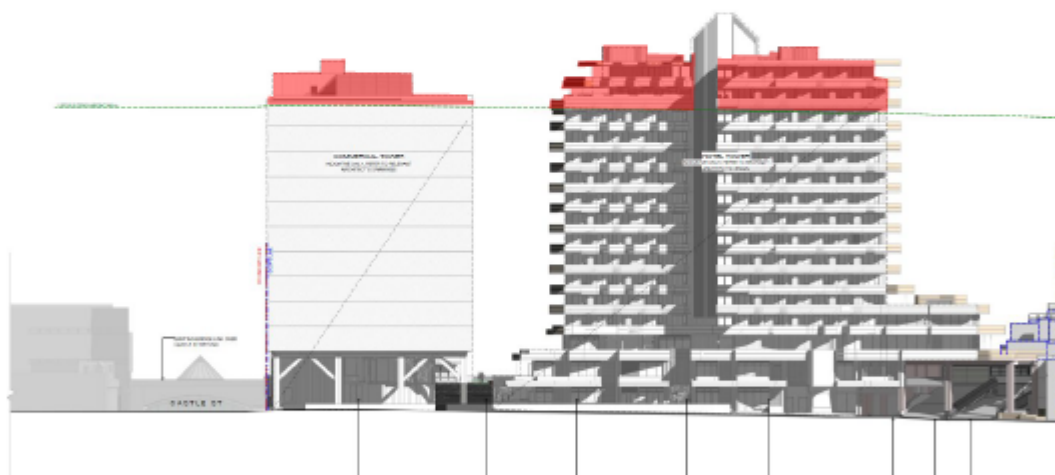
- Optimising natural ventilation
- Provides adaptive thermal comfort
- Additional cross ventilation for more free cooling
- Does not rely on windows to be open





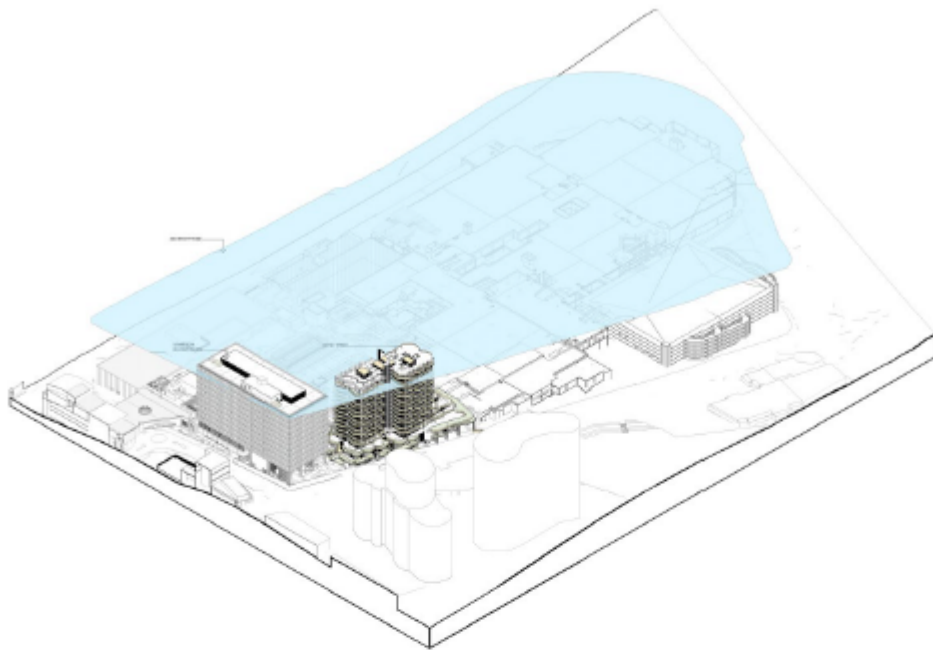
**Figure 2 Indicative maximum building heights, heights (Relative Levels)**

Source: CHC



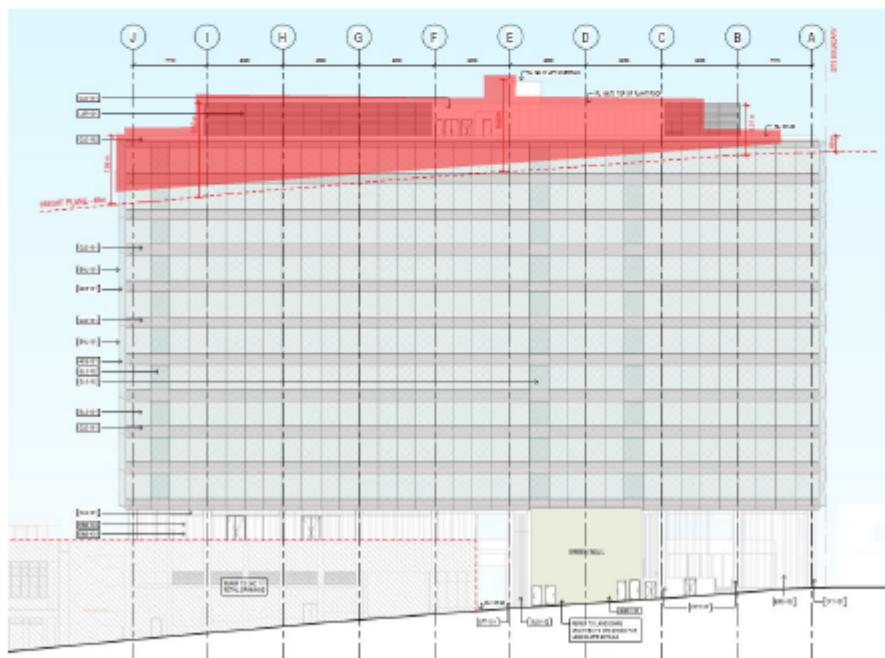
**Figure 3 Old Castle Hill Road elevation**

Source: CHC



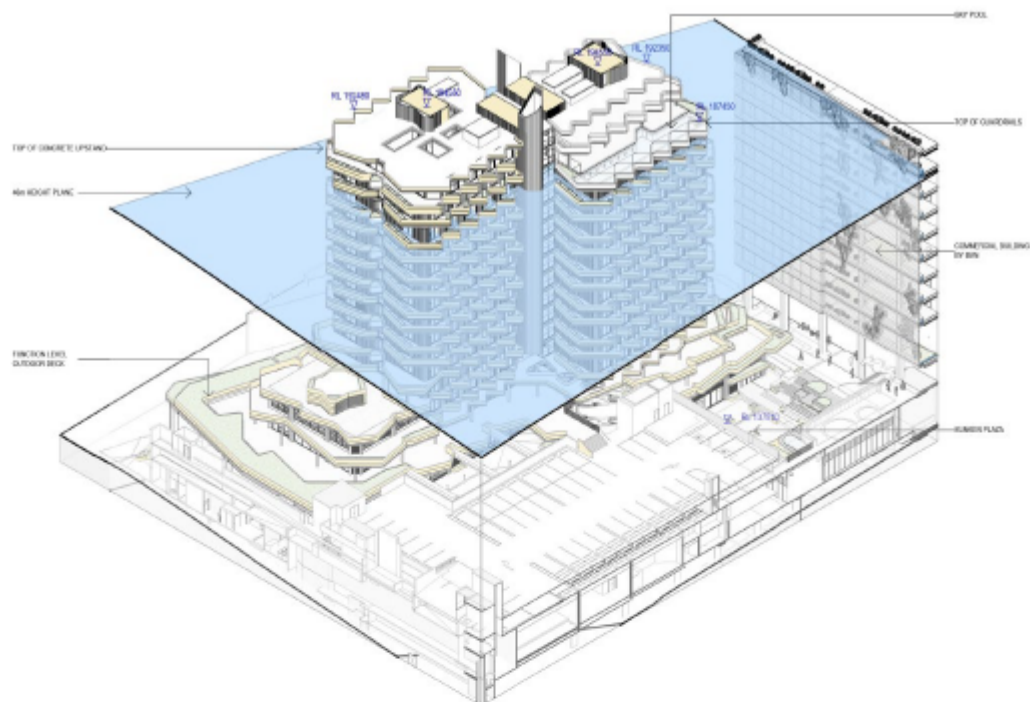
**Figure 4 Height plane diagram**

Source: Woods Bagot



**Figure 5 Height plane diagram of proposed commercial development showing the extent of non-compliance with the LEP height limit control, east elevation (red)**

Source: BVN



**Figure 6 Height plane diagram of proposed hotel development showing the extent of non-compliance with the LEP height limit control**

Source: Woods Bagot

## 5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the LEP provides that:

### 4.6 Exceptions to development standards

*(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 118; and
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130.

The relevant matters contained in Clause 4.6 of the LEP, 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

Clause 4.6(3) of the LEP provides that:

### 4.6 Exceptions to development standards

(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—

- (c) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (d) 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—

- (c) the consent authority is satisfied that—
  - (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (iv) 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
- (d) 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 118; and
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130.

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

## 5.2 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 a variation to a development standard had been shown as 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 of the ways.

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.

### 5.2.1 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:

- to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape*
- 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.

- to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape***

#### Relationship with Adjoining Development

**Figure 7** shows the interface between the existing centre and existing development on Old Northern Road and Old Castle Hill road on the eastern boundary of the site. As shown, the build form directly adjacent to the centre is the recently constructed residential towers known as 'Atmosphere' located at 299-301 Old Northern Road, Castle Hill. Beyond this, built form is characterised by low-scale 2-3 storey residential development.



**Figure 7 Old Northern Road**

Source: Nearmaps

The highest component of the proposed hotel development (above existing ground level) occurs immediately opposite the 'Atmosphere' residential development across Old Northern Road and Old Castle Hill Road where the proposed tower is located in Zone 3. At this point, there are varying roof levels that relate to visitor accommodation floor space, of which the maximum height in real terms is RL191 at the building parapet and RL194.550 for the lift overrun.

Importantly, the hotel has been specifically designed with a varied height form consisting of a 16-storeys (RL191.95) building along the street Old Castle Hill Street easter frontage, dropping down to 14-storeys (RL 185.65) as it moves to the south- west frontage at the corner of Old Castle Hill Road and Castle Street. The building has also been designed with a recessed façade to help modulate the building appearance to reduce its overall visual massing when viewed from the street.

The highest component of the proposed commercial building (above existing ground level) comprises majority of the proposed plant room RL190.15 and lift overrun RL193.15. It is highlighted that these elements of the building are significantly setback from the street and are modest in design. Substantive landscape planning and greening located along the facades have been integrated within the design to soften the overall visual appearance of the building for the public.

Overall, the commercial and hotel scheme has been designed to deliver a well-scaled and visually interesting built form. The particular areas of height exceedance have modulation and articulation, including changes and variety of materials to reduce bulk and scale to provide good visual amenity.

**Figure 8** shows the future relationship between the northernmost component of the centre and the adjacent area known as the 'Pennant Street Target Site' located at 51-53 Old Castle Hill Road, Castle Hill. It is an indicative photomontage submitted to Council with a Development Application for the development of this site for 920 apartments across five residential flat buildings up to 76.8 metres in height. This montage illustrates the significant change intended for the future character of this site. The DA is approved and the buildings currently under construction (refer to **Figure 9** to **Figure 11**).



**Figure 8 Photomontage of the residential development under construction on the Pennant Street Target Site**

Source: Krikis Taylor Architects, Development Application DA-1946/2016/JP





**Figure 9 Pennant Street Target Site**

Source: Nearmaps



**Figure 10 Construction at the Pennant Street Target Site, viewed from the South (on Pennant Street)**

Source: GoogleMaps





**Figure 11 Construction at the Pennant Street Target Site, viewed from the East (on Pennant Street)**

Source: GoogleMaps

Overall:

- the proposal delivers a compatible built form that is consistent with the existing and future adjoining development of the site.
- where the proposed development does increase in height, this height increase is sympathetic to the locality and has been designed appropriately.
- a high proportion of the proposed height variation of the development relates exclusively to plant and the lift overrun.

#### **Overall character of Streetscape**

The streetscape surrounding Castle Towers can be characterised as follows:

- **Castle Street:** local street environment with a predominant vehicular character associated with vehicle entry and access points to the shopping centre. There are lower levels of pedestrian traffic.
- **Old Northern Road and Old Castle Hill Road:** Highly pedestrianised environment with a 'Main Street' atmosphere, incorporating activated frontages, public transport and a future park.

In relation to Castle Street, Old Northern Road, and Old Castle Hill Road, the proposed development has been designed to be experienced at a pedestrian level. As a result, both the hotel and commercial façade incorporate detailed design and visually interesting design that substantially improve the character of the streetscape when compared to the existing centre. Largely blank facades in the existing development have been replaced with concrete and tensile green walls to create a softer more natural streetscape with a stainless steel mesh layer to create architectural interest on the commercial building. The hotel building will contribute to revitalising the existing centre through utilising pigmented concrete with brick and rammed earth articulated facades with substantial plant features to create visual interest. Notably, the proposed building will be in direct view for large numbers of people travelling from the metro and Castle Mall Shopping Centre, thus has been intentionally designed to create a visually pleasant pedestrian experience. The proposed Castle Street and Old Castle Hill Road is shown at **Figure 12** and **Figure 13**.



*Figure 12 Proposed commercial building and hotel on corner of Castle Street and Old Castle Hill Road*

Source: BVN



*Figure 13 Proposed hotel building on Old Northern Road*

Source: Woods Bagot



Overall, the proposed development the development will significantly improve the visual appearance of the centre through inviting and high quality design and the architectural quality of the building. The proposal will revitalise the ageing shopping centre with new landmark buildings that will appropriately concentrate activity along Old Northern Road and Old Castle Hill Road. Refer to the Architectural Design Reports appended at **Appendix D, Appendix E, and Appendix F** for further detail.

Furthermore, the site is surrounded by key developments including Atmosphere, Pennant Street Target Site and The Castle Grand building, which are generally the tallest existing buildings in Castle Hill. Buildings generally decrease in height/step down as one moves further away from the centre.

The proposed development, whilst exceeding the maximum building height, has been designed in detail to respond to the strategic centre context of the immediate surroundings. The site is considered the heart of the commercial core of the Castle Hill Strategic Centre, with surrounding development increasing in height towards the site.

Castle Hill is identified as a Strategic Centre within the Greater Sydney Region Plan. Strategic centres are defined as 'priority locations for employment, retail, housing, services and mixed-uses'. The Region Plan says that:

*Strategic centres vary in size, location and mix of activities. They enable access to a wide range of goods, services and jobs.*

*Strategic centres are expected to accommodate high levels of private sector investment, enabling them to grow and evolve. They will become increasingly important parts of the region's structure.*

These types of centres include Chatswood, Bondi Junction, Sydney Olympic Park, Hurstville, Norwest, Burwood, Bankstown, Blacktown and Hornsby. The 12m LEP height limit that applies is significantly lower than that of comparable Strategic Centres and large regional shopping centres within Sydney. Overall, the proposed height is considered to be entirely appropriate for a major shopping and town centre in close proximity to a new Metro Station.

Further, The Hills LSPS identifies Castle Hill as a key strategic centre and the future 'CBD' of The Hills Shire. The Castle Hill Structure plan nominates a commercial core within Castle Hill Central which is expected to support a mix of 'retail, business, office, leisure, entertainment, hotel, administration and community uses.' Notably the Castle Hill strategic centre is expected to grow significantly and supports tall buildings:

*Development within and surrounding the centre will incorporate a variety of building heights, including some distinctive or landmark heights.*

The proposed development directly aligns with the LSPS vision by not only delivering a mix of desired compatible land uses but by also delivering an articulated and robust design scheme that holds its own distinct character and identity. The proposed commercial and visitor accommodation buildings encapsulate robust materials which are integral parts of an ecologically sustainable approach, leading the path for design excellent and high quality design for the centre. The highly contextual and unique design of the two buildings will provide a significant contribution to the Castle Hill skyline, providing a landmark of the strategic centre.

Notably, a reduction in building height to the proposed commercial and accommodation buildings for a compliant scheme would result in a significantly bulkier and overbearing scale. The likely building mass of a height compliant development would likely adversely impact the existing streetscape and adjoining development.

## Summary

The proposed development meets Objective (a) of Clause 4.3(1) for the following reasons:

- The height of the proposed development is consistent with strategic objectives for Castle Hill Town Centre and the height of existing and future surrounding development.
- The centre has been designed to integrate with current surrounding development, such as 'Atmosphere' through the use of setbacks and stepping of the built form.
- the proposed development will significantly improve the existing façade and pedestrian visual experience.

The existing and contrasting streetscape characters along Castle Street, Old Northern Road and Old Castle Hill road have been maintained through the respective use of macro-scale architecture and activated frontages.

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

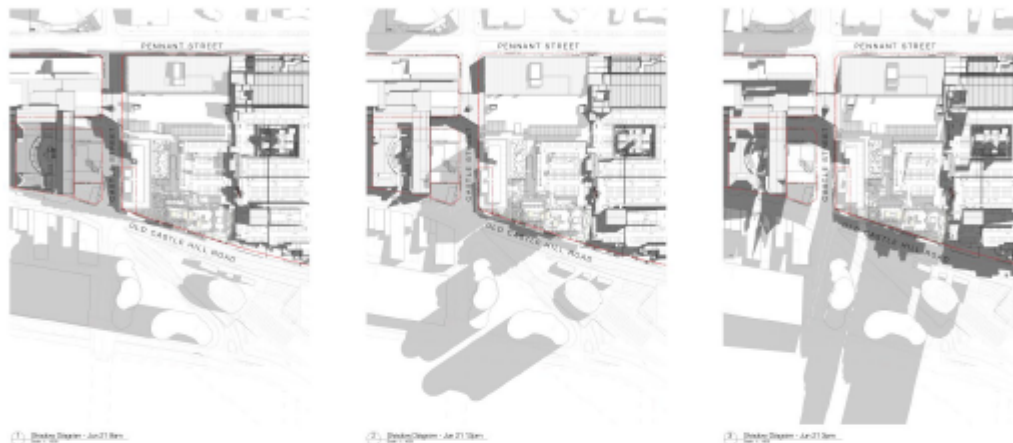
## Overshadowing

The proposed development will result in overshadowing impacts predominantly cast within the road reserve and 'Atmosphere' residential buildings located at 299-303 Old Northern Road, Castle Hill. Shadow diagrams have been prepared by CHC and are included in the Architectural Plans included at **Appendix A**. The diagrams illustrate the

shadow cast by the proposed development during the winter solstice (between 9am and 3pm), being the time of the year where there is the greatest potential for overshadowing.

The overshadowing diagrams have examined the shadow cast by the proposed development compared to the shadow produced by a compliant built form under The Hills LEP 2019. As shown in **Figure 14**, the diagrams illustrates that the additional shadow cast by the proposed variation to the standard is extremely minor. The additional shadow cast by the proposed height variation does not result in a substantially greater shadow than what is already permitted.

The proposed development will not result in any adverse overshadowing impacts upon any surrounding public open spaces. Notably, the proposed shadow cast from the proposed commercial and hotel building will not result in any overshadowing upon the nearest open space being Arthur Whitling Park located north of the Castle Hill Metro.



**Figure 14 Shadow diagrams**

Source: CHC

#### Visual Impact

Overall, the proposed development will significantly improve the visual appearance of the existing centre, especially taking into account the improvements to the façade design and unique architectural contribution it will deliver for the Castle Hill Strategic Centre. Importantly, the development will represent a benchmark for high quality development in Castle Hill.

It is considered that the proposed visual impact as a result of the development will enhance the existing streetscape, preserving the character and amenity of Castle Hill. The proposed development viewed at various vantage points around the centre will be largely visible, however is appropriately setback with reasonable building separation to provide visual relief and not present an overbearing street appearance.

#### Privacy

Overall, the proposed development is surrounded on all sides by roads, commercial development or open space. The exception to this is high-density residential developments, located to the east across Old Northern Road and to the north across Pennant Street.

The proposed commercial tower is adequately separated 6.9m from the proposed hotel building above the podium.

However, surrounding development, when accounting for the significant street separation on all sides of Castle Towers Shopping Centre, remains a substantial distance from Castle Towers Shopping Centre and well beyond the minimum separation distances between residential apartments recommended under the Apartment Design Guide. The proposed development is not expected to result in any significant privacy impacts.

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

Clause 4.6(3)(b) of the The Hills Shire 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 proposed deviation of the standard predominantly relates to plant and lift overrun components of the commercial building and marginal building exceedances for the hotel, notwithstanding the valuable contribution it will make to the overall streetscape and skyline. The proposed building height variation is considered appropriate with the existing and planned future context of the Castle Hill Strategic Centre, ultimately resulting in a better built form outcome, that a compliant development.

It is emphasised that the majority of the building envelope is consistent with the maximum building height, and the proposed vertical chimneys are excluded in the definition of building height.

There is a well-established vision in the applicable strategic planning documents at a State and local level that the desired future character of Castle Hill involves a significant expansion of the Castle Towers Shopping Centre commensurate with that proposed under this Development Application.

As demonstrated in this statement, the proposed development is acceptable in terms of visual impact, overshadowing and privacy. Despite the scale of the development, the environmental impacts are relatively small, with the benefits of the development heavily outweighing any marginal drawbacks.

Importantly, it is noted that the proposed development will result in a significant improvement to amenity in Castle Hill Town Centre, with the provision of the commercial and hotel development, new sunken plaza and a range of additional shopping, entertainment and dining opportunities. Further, the proposed development will allow Castle Towers to remain competitive on a regional level with other major shopping centres that have expanded or are proposed to expand.

Overall, given the relative absence of significant environmental impacts, and the substantial benefits to activity, vibrancy and economic activity, there environmental planning grounds to justify the variation to the development standard are considered to be more than adequate.

#### **5.4 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**

In *Initial Action* it is established 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 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.

##### **5.4.1 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.

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

The proposed development will meet all the relevant zone objectives satisfactorily. Specifically, the following as noted:

###### ***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 desired commercial office space and hotel accommodation that will contribute to the diversity mix of land uses in the area. Specifically, the proposal will deliver significant public benefits as:



- It will be the first premium office building and first hotel in the Castle Hill area, paving the standard for commercial and hotel development in the strategic centre – setting a benchmark for future development.
- It will contribute to delivering a diverse mix of land uses including retail, business, leisure, entertainment, dining, private recreation and publicly accessible open space within the central precinct of Castle Hill that are compatible with the surrounding land uses and the intended future role and character of this centre.
- It will increase local employment opportunities through the creation of additional office floorspace and expanded retail offer.
- It will contribute towards achieving the vision for the Castle Hill Strategic Centre by supporting business activities and ensuring adequate capacity for new office and hotel accommodation in Castle Hill.

***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 Castle Towers Shopping Centre directly adjoins Castle Hill Metro Station and include strong pedestrian linkages (including the recent underground pedestrian tunnel) to the station and bus interchange area that will encourage patrons of the centre to utilise public transport. The Castle Hill Metro Station provides direct services between Rouse Hill and Chatswood and under Stage 2 will also provide high frequency services to Bankstown, via the Sydney CBD. In addition, the proposed upgrades will create a more amenable pedestrian environment within the centre and adjoining land that will encourage walking within the town centre, with additional activation and casual surveillance of key public areas. Bicycle facilities are provided within the proposed development to meet expected demand and support increased cycling.

***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 revitalised shopping centre forming the core of the Castle Hill Strategic Centre which will serve the needs of the local and wider community.

The proposed development includes major leisure and entertainment components within the identified strategic centre. In particular, the proposed range of retail, business, leisure and entertainment uses will provide activation throughout the day and evening. This will ensure that there is a wide range of activity within the centre throughout the day and evenings consistent with the intended character of Castle Hill as a designated strategic centre. The proposed improvements to the centre and associated public domain improvements around the site will create a high-amenity retail, leisure and business precinct that will support existing and planned residential development within the town centre. 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.

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

No residential development is proposed as part of this application.

Notably, it is considered that strict compliance with the height of building control would result in an outcome that is antithetical to the attainment of the objectives of the zone, as it would unreasonably constrain the development of the Castle Hill Strategic Centre and result in a built form that whilst compliant, would result in increased adverse impacts. Accordingly, the consent authority can be reasonably satisfied that this written request has adequately addressed the matters in Clause 4.6(3) and that the proposed development would 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.

## 5.5 Conclusion on Clause 4.6(4)(a)(ii)

The proposed development is in the public interest because it is consistent with the objectives of the development standard and the zone. In particular, we note that:

- The proposal provides a mixture of compatible uses that are commensurate with the status afforded the Castle Hill Town Centre under the Greater Sydney Region Plan, the Central City District Plan, The Hills Corridor Strategy and The Hills Local Strategic Planning Statement;

- The proposal integrates a range of suitable business, retail and other development in a highly-accessible location so as to maximise public transport patronage and encourage walking and cycling;
- The proposal directly delivers leisure and entertainment facilities that generate activity throughout the day and evening;
- Provides for buildings that are compatible with heights adjoining development and the overall streetscape; and
- Has been designed in such a way as to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

## 5.6 Other matters for consideration

Under Clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

*(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.*

These matters are addressed in detail below.

### 5.6.1 Clause 4.6(5)(a): Whether a contravention of the development standard raises any matter of significance for State or regional environmental planning

The expansion of Castle Towers Shopping Centre has regional significance. Castle Towers is identified as a strategic centre in the Greater Sydney Region Plan, and is the main hub for the north-western region of Sydney. The proposed development reinforces strategic planning objectives for the region by allowing Castle Towers Shopping Centre to fulfil its role and to effectively compete with other higher-order retail centres in Sydney.

The proposed development is fully consistent with the key outcomes and intent of the Greater Sydney Region Plan, in that it:

- will result in significant economic growth and support the creation of a significant number of new construction and operational jobs;
- supports Castle Hill's liveability and its ongoing role as north-western Sydney's major strategic centre; and
- will integrate with the Castle Hill Metro Station, resulting in better connections with other areas in the region.

Furthermore, the NSW Government's North West Rail Link Corridor Strategy notes that within Castle Hill:

*Castle Hill will remain the major retailing hub for the North West in to the foreseeable future. It is anticipated that expansion of retail offerings within the Centre will occur in line with projected population growth in the catchment. There is the opportunity to integrate expanded retail uses with community and cultural facilities which could address pedestrian streets, plazas and squares.*

This should be interpreted as a direct reference to the Castle Towers Shopping Centre, which is the major retail centre within Castle Hill and which has the greatest potential to expand in line with population growth by virtue of the consolidated land holdings around the existing centre. Furthermore, this strategic intent cannot be achieved within the existing, outdated development standards that apply to the Castle Towers site under The Hills LEP 2019.

The proposed development will not result in any negative consequences for State or regional environmental planning.

### 5.6.2 Clause 4.6(5)(b): The public benefit of maintain the development standard

There would be no public benefit in maintaining the development standard in this instance. Maintaining the development standard would result in a worse public outcome by unnecessarily hindering Castle Towers Shopping Centre's ability to fulfil the clearly-stated strategic objectives for the Castle Hill Town Centre and the ability to meet retail demand in north-western Sydney, and would preclude the provision of a range of substantial public amenity



improvements to the centre and Castle Hill. Some of the key public benefits of the proposed development and consequent variation from the development standard include:

- Provision of additional development envelope to meet the commercial and visitor accommodation needs of the local and regional population growth, commensurate with the centre's designation as a strategic centre under the Greater Sydney Region Plan;
- Providing a range of dining, entertainment, leisure and event spaces, both internal and external, that positively contribute to the social and cultural wellbeing of the community; and
- The delivery of significant new public spaces and public domain upgrades within and in the immediate vicinity of the site and activation of these spaces.

In some circumstances, it may be in the public benefit for development controls to be strictly applied, for example if an undesirable precedent is likely to be set if a development standard is varied. This site is unique and unlikely to create an undesirable precedent in that:

- It is the largest consolidated land parcel within the Castle Hill Town Centre, with a substantial existing retail presence and a clearly articulated strategic intent for that retail function to continue and expand on the site to meet projected population growth and increased accessibility arising from the forthcoming completion of the Sydney Metro Northwest; and
- There is a well-established vision in the applicable strategic planning documents at a State and local level that the desired future character of Castle Hill involves a significant expansion of the Castle Towers Shopping Centre commensurate with that proposed under this Development Application.

The site's circumstances, the key public benefits and the clear strategic planning intent for this site represent exceptional circumstances that warrant the variation of the building height control to allow for the delivery of significant public benefits. It is therefore considered to be in the public interest for the variation to the development standard be supported in this case.

**5.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.**

None.

## 6.0 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. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This Clause 4.6 variation 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;
- 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;
- does not raise any matters of State and regional planning significance;
- 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 Shire LEP 2019.