

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-471 - DA 1880/2023/JP
PROPOSAL	Amending Development Application to the approved application (1057/2021/JP) for the redevelopment of an existing community facility, including demolition of day program building, additions to Ross House, restoration of Box Hill House and Nelson Hall, and construction of a Disability Support Centre.
ADDRESS	Lot 99 DP 1292085, 10-32 Terry Road, Box Hill
APPLICANT	McCall Gardens Community Foundation Limited
OWNER	McCall Gardens Community Foundation Limited
DA LODGEMENT DATE	28 June 2023
APPLICATION TYPE	Development Application – Integrated
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of the Planning Systems SEPP; Private Infrastructure and Community Facilities with a CIV of more than \$5 million
CIV	\$24,178,843.00 (excluding GST)
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • SEPP State Environmental Planning Policy (Precincts – Central River City) 2021 • Clause 4.3 Height of Buildings • RE2 Private Recreation and R2 Low Density Residential
KEY SEPP/LEP	SEPP State Environmental Planning Policy (Precincts – Central River City) 2021
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	None received
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architect: Mostyn Copper Town Planner: EMM/Ethos Urban Heritage: EMM Landscape Architect: Durie Design Engineering: Indesco Traffic: Amber Trees: Australis

	Accessibility: MGAC Acoustic: Renzo Tonin and Associates Geotechnical: Fortify Geotech
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval subject to conditions.
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	Electronic
PLAN VERSION	N/A
PREPARED BY	Robert Buckham – Principal Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	11 December 2023

EXECUTIVE SUMMARY

The subject Development Application seeks to amend an approved development application, DA 1057/2021/JP for the redevelopment of existing community facility including the demolition of day program building, additions to Ross House, restoration of Box Hill House and Nelson Hall and construction of a Disability Support Centre.

The key issues that need to be considered by the Panel are:

- The proposed variation to Building Height (maximum building height has been reduced from 15.35m as approved under DA 1057/2021/JP to 13.55m in the subject application); and
- The impact on the existing heritage buildings on site.

The development proposal seeks to vary the 8.5 metre maximum building height development control that applies to the subject site. Under development application 1057/2021/JP a maximum building height of 15.35m was approved for the development, the amended proposal seeks to reduce the building height to a maximum of 13.55m. This amounts to a variation of 59.4% to the building height control (reduced from 80.6% under approval 1057/2021/JP). To support the proposal the application is accompanied by a written request to vary a development standard pursuant to Clause 4.6 of SEPP (Precincts – Central River City) 2021.

The proposed variation to the height has been considered in context with the future surrounding development, future streetscape and future character of the area. It is considered that the proposal demonstrates that the variation is acceptable and will not have any

detrimental visual impacts on the locality or on the heritage items located within the site. Overall, the Clause 4.6 is considered supportable and in this instance strict compliance with the development standard is considered unreasonable and unnecessary.

The amended development continues to respect and is sympathetic towards the heritage significance of items located on the site and will result in a positive heritage outcome for the site. As outlined in this report, the proposed development will not have any significant adverse impact on the amenity of the surrounding area and will continue to facilitate positive heritage conservation outcomes through siting of the proposed development and through conservation works to Box Hill House and Nelson Hall.

The public was notified of the development for 28 days between 14 July 2023 and 21 August 2023. No submissions were received against or in support of the development throughout this time.

The proposal is defined as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act 1979 as the proposal requires approval from NSW Heritage under Section 58 of the Heritage Act 1977. General Terms of Approval have been issued.

Following an assessment of the relevant planning controls and potential impacts of the development as outlined in this report, the amending development application is recommended for approval subject to conditions.

1. THE SITE AND LOCALITY

The subject site is known as Lot 99 DP 1292085, Nos. 10 - 32 Terry Road, Box Hill. The site is located on the western side of Terry Road, approximately 550m north of Windsor Road. The site is immediately west of the future Box Hill Town Centre located at the corner of Terry Road and Masons Road. The subject site is irregularly shaped with an area of 47,438m².

Box Hill House is an item of State heritage significance. The part of the site where the proposed development is to occur is zoned part R2 Low Density Residential, part R4 High Density Residential and part RE2 Private Recreation.

McCall Gardens has operated from the site since 1956 for the purposes of a residential care service for intellectually disabled men. Until recently men were residing on the site. Operations have expanded considerably to include new buildings and built improvements as well as permanent staff operating from within Box Hill House. The site today still accommodates the head office and a range of community participation venues.

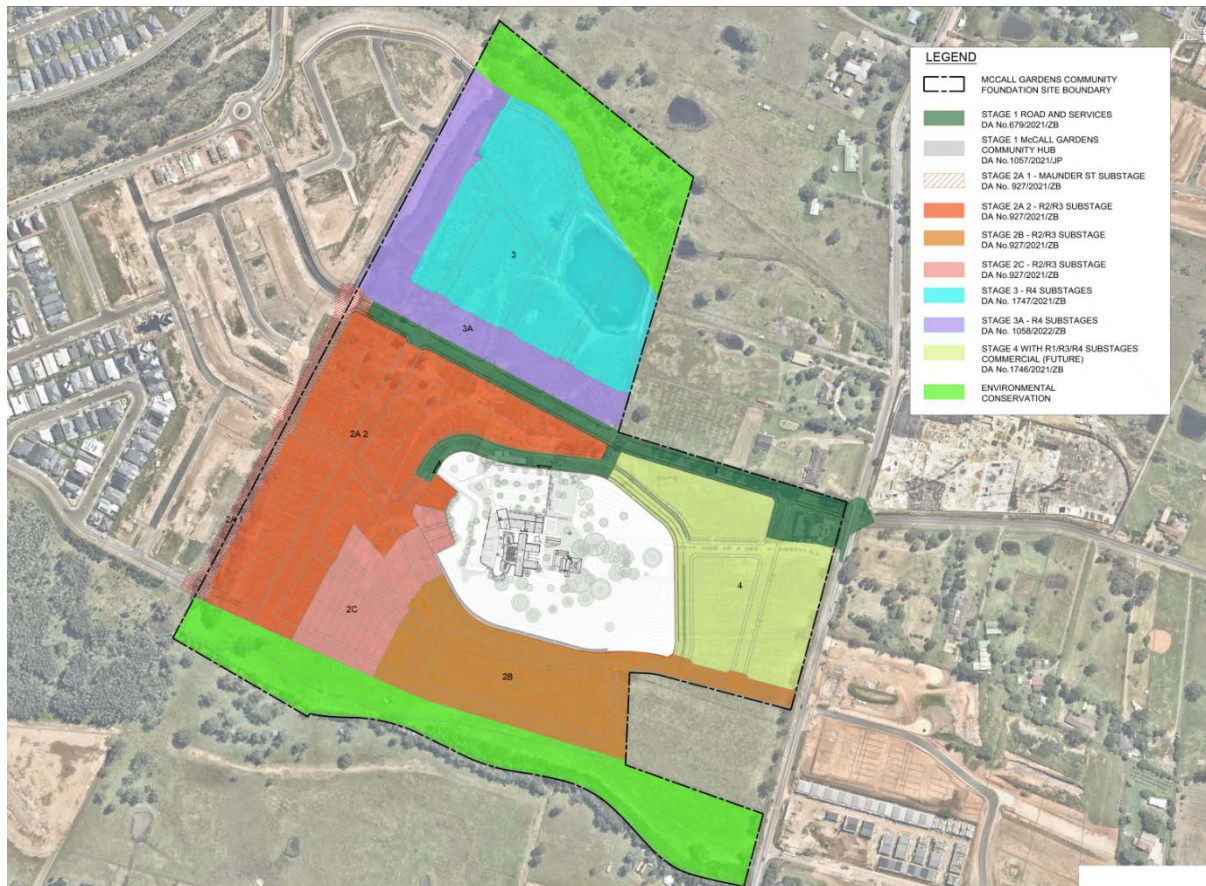
On 24 April 2020, the Sydney Central City Planning Panel determined DA 1331/2017/JPZ by approving a staged concept masterplan for the subject site under Division 4.4 of the EP&A Act. The concept masterplan establishes a road pattern and heritage curtilage and guides the staged creation of the residential development. The conditions of consent approved under DA 1331/2017/JPZ were the subject of an appeal in the NSW Land and Environment Court. On 4 December 2020, the Land and Environment Court handed down a judgement issuing a Court Order, under a Section 34 Agreement.

The proposed McCall Community Hub development remains consistent with the latest updated Staged Concept Masterplan as approved by the Court.

Development Consent 679/2021/ZB was issued under Delegated Authority on 18 March 2022. The consent provides for road construction including part of Gardiner Drive and Mezzomo

Street that will provide vehicular access to the development as the existing access from Terry Road will be removed.

Staging of the existing site is outlined in the figure below. A number of applications have been determined or are under assessment to facilitate the subdivision works on the remainder of the site. The subject development is proposed to be situated on the centrally located irregular shaped lot as indicated in white in the figure below.



2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development proposal can be summarised as the amending development application for DA 1057/2021/JP which approved the redevelopment of existing community facility including the demolition of day program building, additions to Ross House, restoration of Box Hill House and Nelson Hall and construction of a disability support centre.

The proposed amendments to the development include:

- A reduction of the maximum building height from 15.35m above existing ground level (as approved under DA 1057/2021/JP) to 13.55m above existing ground level.
- Alterations to site excavation and earthworks increasing overall cut from 2,780m³ to 4,938m³ and reducing overall fill from 9,390m³ to 7,841m³.
- Alterations and additions to Ross House and the construction of a new two storey Community Hub (previously known as the Disability Support Centre) including the following amendments:

- The relocation of the proposed swimming pool from the western wing of the building to the Northern wing of the building,
- The relocation of rooms from the northern wing to the western wing,
- New roof design,
- Skylight,
- Deletion of redundant set of egress stairs,
- And several other internal reconfigurations.
- Relocation of the café from Ross House to the northern wing of the proposed two storey Community Hub.
- An increase in the number of car spaces from 115 as approved under DA 1057/2021/JP to 136 which includes 14 accessible spaces, 8 van spaces, and 1 ambulance space.
- 3 motorcycle spaces and bicycle parking in addition to the proposed 136 vehicle spaces.
- Altered landscaping with an increase in proposed planting from 109 trees to 197 new trees.
- Minor alterations to Nelson Hall including a new stairway for access and new timber framed awning to match historic photo record.
- Changes to Box Hill House including the reconfiguration of surrounding pedestrian paths and reinstatement of the original verandah.
- A reduction in the removal of trees from the site from 25 trees to 24 trees.

The uses remain consistent with the approved uses with the exception of the use of Nelson Hall which will accommodate a community and meeting space combined with the museum use. The proposed hours of operation of the proposed facility are also increasing and will primarily operate from 7am to 7pm seven days a week. The following table provides a summary of the proposed operation of the various facilities and services located within the development:

Use	Persons	Day	Hours
<u>McCall Administration and Community Participation Programs (CPP)</u> Administration Support for McCall Gardens in providing disability support for individuals with disability in the Hawkesbury, Hills and Blacktown LGA. Centre based community participation support programs and community based support programs. <ul style="list-style-type: none"> • Assistance with Daily Life (Core); • Assistance with Social and Community Participation (Core); • Improved Daily Living Skills (Capacity Building); • Improved Learning (Capacity Building); and • Increased Social and Community Participation (Capacity Building) 	Staff – 25 Visitors/Clients – 50 Guardians/Carers – 50 Support Staff - 8	Monday to Sunday:	7am – 7pm
<u>Allied Health and Consulting Suites</u>	Staff – 30	Monday to	7am – 7pm

Allied health professionals provide a broad range of diagnostic, technical, therapeutic and direct health services to improve the health and wellbeing of clients supported by McCall Gardens	Visitors/Clients – 30 Guardians/Carers – 20	Sunday:	
<u>School Leavers Employment Supports (SLES)</u> SLES is a program for NDIS participants leaving school to help you prepare for the workforce The SLES program is set up to support you in a way that ensures your individual support needs and unique skill sets are recognised. We tailor a package of living skills, job site training, foundation skills, personal development and pre-employment training all designed to help you build your ability and confidence to meet your employment goals.	Staff – 3 Visitors/Clients – 40 Guardians/Carers – 20	Monday to Sunday:	7am – 7pm
<u>Hydrotherapy and Learn to Swim</u> The Facility is intended to host a number of programs lead by qualified staff that teach skills for life, from beginners right through to the elderly. Programs include Hydrotherapy, Aqua Aerobics, Learn to Swim & Squad	Staff – 10 Visitors/Clients – 60 Guardians/Carers – 40	Monday to Sunday:	6am – 9pm
<u>Cafe</u> The café provides food and beverages primarily for staff and Clients/ Visitors during opening hours of the McCalls Community Hub. The Café is also used to teach basic food preparation skills	Staff – 6 Patrons/Seats – 180	Monday to Sunday:	6am – 10pm
<u>Box Hill House</u> Like Minded Organization to McCall Gardens	Staff/Visitors - 25	Monday to Sunday:	7am – 7pm
<u>Nelson Hall</u> Meeting Room and Museum and archive of McCall Gardens	Staff/Visitors - 10	Monday to Sunday:	7am – 7pm

According to the applicant, the amendments are proposed to “*improve internal and external circulation and the overall user experience in and around Ross House and the proposed Community Hub building. The proposed changes to carparking will allow for more car parking, and a greater diversity of parking facilities on the site, and the proposed changes to Nelson Hall and Box Hill House will further the conservation of these heritage elements on the site.*”

The applicant proposes, pending approval of the development the subject of this application, the surrender of DA 1057/2021/JP as a condition of development consent, pursuant to Section 4.17(5) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

2.2 Background

Development Application 1057/2021/JP was approved by the Sydney Central City Planning Panel on 2 September 2022. An amending development application to this approval was lodged with Council on 28 June 2023. The Regional Planning Panel was briefed on this application on 10 August 2023.

Additional information was requested on 8 September 2023 in relation to tree management and landscaping matters. An amended Landscape Plan, Arborist Report, Concept Engineering Plan, and Tree Protection Plan was submitted on 25 September 2023 in response to Council's request. The amended documentation was reviewed by Council and outstanding issues surrounding unresolved tree impacts and insufficient landscaping remained. In this regard, further additional information was requested from the applicant 19 October 2023. A response was provided 7 November 2023.

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 discussed below.

It is noted that the proposal is considered to be:

- Integrated Development (s4.46)

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 (Industry and Employment) 2021;*
- *State Environmental Planning Policy (Precincts – Central River City) 2021;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in Table 1 and considered in more detail below.

Table 1: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Planning Systems) 2021	<ul style="list-style-type: none"> Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 5 of Schedule 6. 	Yes
SEPP (Resilience and Hazards) 2021	<ul style="list-style-type: none"> Clause 4.6 - Contamination and remediation was considered as part of a separate application DA 1331/2017/JPZ/A which approved remedial and associated works at the overall site. Additionally, a Remediation Action Plan was prepared for the site. In this regard, the proposal will remain satisfactory subject to conditions. 	Yes
SEPP (Biodiversity and Conservation) 2021	<ul style="list-style-type: none"> Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments. 	Yes
Industry and Employment SEPP	<ul style="list-style-type: none"> Chapter 3 – Advertising and signage 	Yes
SEPP (Precincts – Central River City) 2021	<ul style="list-style-type: none"> Clause 4.3 – Height of buildings Clause 6.1 – Servicing 	No, height variation sought.

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 5(b) of Schedule 6 of the SEPP as the proposal is development for a community facility with a CIV of more than \$5 million. 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.

Contamination and remediation of the subject site has been considered under separate development application DA 1331/2017/JPZ/A which, among other things, approved remedial and associated works at the overall larger site.

In addition to this, a Detailed Site Investigation (DSI) and Remediation Action Plan (RAP) was prepared and approved as part of DA 1057/2021/JP. Five areas requiring remediation were identified in the DSI with three of these areas being located in the subject site for the proposed Community Hub. The three areas located within the subject site were:

- *Remediation Area 3: A localised hot spot of lead impact was found around DSI test pit location TP77. A fragment of asbestos containing material (ACM) was also observed in this location. The volume of impacted material in this area was estimated to be 7.5 m3.*
- *Remediation Area 4: An underground storage tank (UST) and associated underground infrastructure historically used to store fuel is present in the central area of the site, requiring removal as part of the remediation works. No impacted soil was identified in this area during the DSI, although there is considered to be the potential for minor amounts of impacted soil to be present immediately surrounding the infrastructure.*
- *Remediation Area 6: A fragment of ACM was observed on the site surface near the main building complex (in DSI sampling location HA32). This impact was surficial and associated with weathering of the site buildings.*

The proposed amendments to the design of the development do not interfere with the strategy for remediation of contaminated land as prescribed in the Remediation Action Plan previously submitted.

Council's Environmental Health Team has considered the matter and the recommendations for remediation adopted under DA 1057/2021/JP remain satisfactory, the conditions previously imposed for contamination are to be carried over in this consent. Following satisfactory remediation of the site the site can be made suitable for its intended use and is thus consistent with SEPP (Resilience and Hazards) 2021.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

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. In this regard, the development is satisfactory and consistent with the objectives of SEPP (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and Signage of State Environmental Planning Policy (Industry and Employment) 2021 applies to the proposal since signage zones are proposed in the form of flush wall signs and under awning signs. Future signage of the site will be subject to future separate approval and will be required to be further assessed against the Industry and Employment SEPP.

Section 3.1 Aims and Objectives of Chapter 3 states:

- (a) *to ensure that signage (including advertising)—*
 - (i) *is compatible with the desired amenity and visual character of an area, and*
 - (ii) *provides effective communication in suitable locations, and*

- (iii) is of high quality design and finish, and
- (b) to regulate signage (but not content) under Part 4 of the Act, and
- (c) to provide time-limited consents for the display of certain advertisements, and
- (d) to regulate the display of advertisements in transport corridors, and
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

The proposed signage zones have been assessed against the Assessment Criteria outlined in Schedule 5 of the SEPP and considered satisfactory.

State Environmental Planning Policy (Precincts – Central River City) 2021

a. Permissibility

The proposed development is pursuant to the provisions outlined within SEPP (Precincts – Central River City) 2021.

The subject site is zoned part R2 Low Density Residential, part R4 High Density Residential and part RE2 Private Recreation. The development is defined as a 'community facility'. Community Facilities are permitted with consent in the R2 and RE2 zone.

community facility means a building or place—

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

The proposal meets this definition as it is owned and operated by a non-profit community organisation (registered charity) that provides a range of services to people with a disability including community programs. The proposed development will provide for upgrades to facilities that are used for the physical, social, cultural and intellectual development of the community.

b. Development Standards

The SEPP contains the following relevant controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in Table 2 below.

Table 2: Consideration of the SEPP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	8.5 metres	13.55 metres	No, height variation sought.

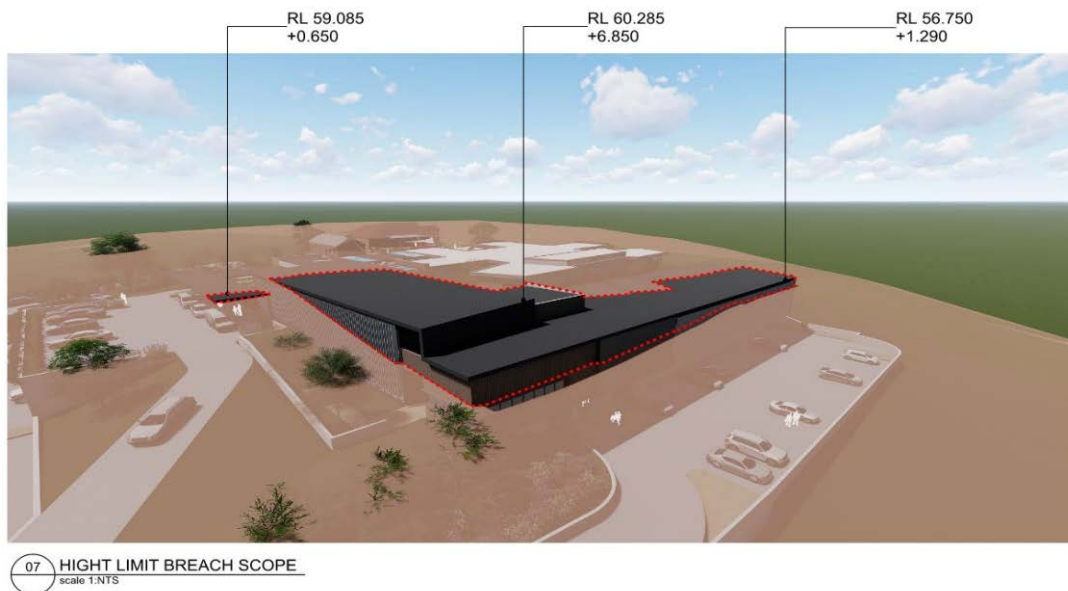
c. Variation to Building Height

Clause 4.3 of Appendix 10 of SEPP (Precincts – Central River City) 2021 prescribes a maximum height of buildings development standard for part of the site affected by the proposed development of 8.5m. The building has a maximum height of 13.55m above the

existing ground level. Therefore, the proposed development exceeds the maximum height of buildings development standard by 5.05m, which is equivalent to a variation of 59.4%.

Note that a maximum height of 15.35m was approved under DA 1057/2021/JP and thus an improvement in terms of compliance with the height standard has been achieved with a reduction of 1.8 metres.

For comparison, height limit breach diagrams are provided below which depict what was approved under DA 1057/2021/JP to what is proposed under the subject application.



Extent of height non-compliance as approved under DA 1057/2021/JP.



Extent of height non-compliance presently proposed.

Clause 4.6 Exceptions to Development Standards 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 to 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*
 - b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- 4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- 5) *(Repealed)*
- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- 7) *(Repealed)*
- 8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - a) *a development standard for complying development,*
 - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (cab) *(Repealed)*
 - (ca) *clause 6.3,*
 - (cb) *clause 7.11,*
 - (cc) *clause 7.15.*

To support the development proposal the applicant has submitted a Clause 4.6 Variation Request which can be summarised as follows:

- The revised design retains a two-storey expression for the northern wing of the development and a single-storey expression for the western wing of the development with an overall lower height of buildings compared to DA 1057/2021/JP;

- A horizontal design emphasis is to be adopted in the form of landscape batters and terracing to the northern carpark which further reduces the perceived scale and bulk of the development;
- The amended development is unlikely to result in any adverse amenity impacts including acoustic impacts, overshadowing and overlooking;
- The proposal will continue to facilitate positive heritage conservation outcomes through siting of the proposed development and facilitation of conservation works to Box Hill House and Nelson Hall.

Comment:

The objectives of Clause 4.3 Height of Building of State Environmental Planning Policy (Precincts – Central River City) 2021 are as follows:

- (a) to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,*
- (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- (c) to facilitate higher density development in and around commercial centres and major transport routes.*

In line with the original approval (DA 1057/2021/JP), the bulk and scale of the proposal is considered to be appropriate and compatible with the intended character of the area given the planning controls in place. The proposed variation to the height has been reviewed in context with the future surrounding development, future streetscape and character of the area. It is considered that the proposal has sufficiently demonstrated that variation to the height control will not impart any detrimental visual impacts within the locality or on the heritage items situated within the site.

The applicant's Clause 4.6 Variation request is well founded and the proposal is consistent with the objectives of Clause 4.3 as outlined above despite not strictly complying with the applicable height control for the site. Strict compliance with the height standard would be unnecessary and unreasonable in this instance, particularly as a higher development was previously determined to be appropriate for the site under development application 1057/2021/JP.

Considering the above, the amended height of the proposal remains satisfactory, supportable, and will potentially result in a better outcome compared to what has been approved under development application 1057/2021/JP.

d. Heritage

The site is identified on the State Heritage Register and under Schedule 5 of Appendix 10 of SEPP (Precincts – Central River City) 2021. Accordingly pursuant to the requirements of clauses 5.10(4) and 5.10(6) of Appendix 10 of SEPP (Precincts – Central River City) 2021, a Heritage Impact Statement (HIS) has been prepared by EMM Consulting that provides an assessment of the impacts of the proposed development on the significance of the heritage item. The HIS includes an assessment against the relevant provisions of SEPP (Precincts – Central River City) 2021.

In line with the development approved under DA 1057/2021/JP, the proposal will continue facilitate the conservation and ongoing maintenance of Box Hill House, Nelson Hall and Ross House including significant restoration and reconstruction of Box Hill House and Nelson Hall.

The works have been assessed against the policies outlined in the Conservation Management Plans endorsed by Heritage NSW in the General Terms of Approval. The proposed development respects the heritage significance of the State heritage item and will result in a positive heritage outcome for the site. As outlined in this report, the proposed development will not have any significant adverse impact on the amenity of the surrounding area.

The development and uses will ensure the conservation and ongoing maintenance of Box Hill House, Nelson Hall and Ross House whilst providing a range community programmes and services for the community.

e. Public Utility Infrastructure

Clause 6.1(1) states the following:

- (1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.*

Clause 6.1 of the SEPP defines public utility infrastructure as any of the following:

- the supply of water,
- the supply of electricity,
- the disposal and management of sewage.

As established under approval DA 1507/2021/JP the proposal is satisfactory in regards to the provisions of Clause 6.1 of the SEPP.

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 of relevance to the proposal.

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

The following Development Control Plans are relevant to this application:

- The Box Hill Growth Centre Precincts Development Control Plan 2018
- The Hills Development Control Plan 2012
 - Part C Section 1 – Parking
 - Part C Section 3 - Landscaping

Note that under the Parking DCP – Part C Section 1 a specific appropriate parking rate for the type of development proposed is not identified. Previously, under development application 1057/2021/JP a total of 118 car spaces was to be provided and this was deemed appropriate. The amended design proposed for an increase to the number of car spaces provided with 136 car spaces proposed which includes 14 accessible spaces, 8 van spaces, and 1 ambulance space. In addition to this, 3 motorcycle spaces and approximately 8 bicycle spaces are proposed. To support the amending application, the applicant has submitted an updated Traffic Management Report which discloses that the site is anticipated to generate a demand of approximately 112 spaces. Given that 136 car spaces are proposed and this is an increase from what was previously proposed despite use of the site remaining broadly the same, the number of spaces proposed is considered appropriate for the development.

Landscaped Plans have been submitted as part of the proposal. They have been reviewed by Council staff and have been amended to satisfy the controls outlined in Part C Section 3 of the Hills DCP.

The Box Hill Growth Precincts DCP 2018 applies and guides development on the site. The most significant and/or relevant development controls are summarised in the table provided below.

DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
<p>2.2 Indicative Layout Plan</p> <p>All development is to be undertaken generally in accordance with the Indicative Layout Plan subject to compliance with the objectives and development controls set out in this DCP.</p>	<p>The amended proposal remains generally consistent with the Indicative Layout Plan (ILP) for Box Hill. The proposed development includes restoration and conservation works to Box Hill House, Nelson Hall and Ross House.</p>	Yes
<p>7.1 Stormwater Management</p> <p>All development proposals are to provide for integrated stormwater management measures in accordance with the publication "Box Hill and Box Hill Industrial Precincts - Water Cycle Management Strategy Report"</p>	<p>Stormwater Management measures have been incorporated to manage stormwater runoff associated with the proposal.</p>	Yes
<p>7.3 European Heritage</p> <p>Development on land within 50 metres of a heritage site is not to detract from the identified significance of the place, its setting, nor obstruct important views to and from the site.</p> <p>New structures proposed on land adjoining a heritage building should be of similar scale and proportions to the heritage building.</p> <p>Where development is proposed within 50 metres of a heritage site, the following matters must be taken into consideration:</p> <ul style="list-style-type: none"> - the character, siting, bulk, height and external appearance of the development; - the visual relationship between the proposed development and the heritage site; 	<p>Box Hill House is identified as an item on State Heritage Register. A detailed assessment of the impacts of the proposed development on the heritage significance of the item has been conducted to support the application.</p>	Yes

DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
<ul style="list-style-type: none"> - the potential for overshadowing of the heritage site; - the colours and textures of materials proposed to be used in the development; - the landscaping and fencing of the proposed development; - the location of car parking spaces and access ways into the development; - the impact of any proposed advertising signs or structures; - the maintenance of the existing streetscape, where the particular streetscape has particular significance to the heritage site; - the impact the proposed use would have on the amenity of the heritage site; and - the effect the construction phase will have on a heritage building. 		
7.4 Bush Fire Hazard Management	The development is located more than 140m from the bush fire hazard. This area is to be maintained as an Inner Protection Area in perpetuity. The proposed McCall Community Hub will meet the relevant requirements under Planning for Bushfire Protection 2019 and Australian Standard AS 3959: 2009. Approval has also been granted by the RFS.	Yes
7.5 Tree and Bushland Protection	A total of 24 trees are proposed to be removed from the site to facilitate the development. All other trees on site are to be retained. This is a reduction from the 25 trees proposed to be removed under DA 1057/2021/JP.	Yes
7.6 Contamination Management	Contamination management has been considered and adequately addressed under associated DA	Yes

DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>1991/2017/JPZ/A which, among other things, approved remedial and associated works at the overall site.</p> <p>In addition to this, a DSI and RAP was prepared and approved as part of DA 1057/2021/JP. Condition to adhere to the recommendations outlined in these reports is to be carried over with this application. These reports adequately address SEPP (Resilience and Hazards) 2021 and Section 7.6 of the DCP.</p>	
<p>7.9 Cut and Fill</p> <p>Fill will only be permitted in the designated areas shown in Figure 51 and Section 7 of this DCP for the floodplain</p> <p>A cut and fill works shall be in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specification Subdivisions/ Developments</p> <p>Embankment batters and retaining walls are to be landscaped to reduce erosion and provide a suitable screen. They should be vegetated preferably with native ground covers and small native trees with mature height of up to 10 m.</p>	<p>To accommodate the development 4,938m³ of cut and 7841m³ of fill is proposed. For context, 2,780m³ of cut and 9,390m³ of fill was previously proposed under DA 1057/2021/JP. The impacts associated with the earthworks have been considered in the assessment and are deemed satisfactory.</p>	Yes
<p>8.1.7 Box Hill House</p> <p>Development within the Box Hill House State Heritage Register curtilage should be in accordance with the requirements of the NSW Heritage Act 1977 and will require concurrent approval of the Heritage Council. Additionally, development should take into account the heritage provisions of the Growth Centres SEPP.</p> <p>Development within the State Heritage Register curtilage and the Precinct Plan Control Area (Figure 70) should be accompanied by a Heritage Impact Statement as described in Table 2 to address the significance of the</p>	<p>A HIS has been prepared by a suitably qualified heritage consultant that assesses the impacts of the development on the State significance of the item.</p> <p>The proposed development will provide an overall positive heritage outcome resulting in the conservation of the heritage item that is Box Hill House</p>	Yes

DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
<p>House. The following matters must be considered in the Heritage Impact Statement: - The character, siting, bulk, height and external appearance of the development; - The visual relationship between the proposed development and Box Hill House; - The colours and textures of materials proposed to be used in the development; - The landscaping and fencing of the proposed development; - The location of car parking spaces and access ways into the development; - The impact of any proposed advertising signs or structures; and - The impact the proposed use would have on the amenity of Box Hill House.</p> <p>Development within the Precinct Plan Control Area should respect the character of Box Hill House in accordance with the general principles of the height limitations in Figure 71 and the Height of Buildings map in the Growth Centres SEPP.</p> <p>The visual impact of structures within the Precinct Plan Control Area should be minimised through appropriate siting, landscaping and use of materials. Roof and wall colours are to be selected from the colour pallet in Appendix C. Prior to development within the Precinct Plan Control Area, archival recording should be undertaken to capture the current views and landscape setting. The recording must be in accordance with the guidelines issued by Heritage Branch, Department of Planning & Infrastructure How to prepare archival records (Heritage Office 1998) and Photographic Recording of Heritage Items using Film or Digital Capture (Heritage Office 2006).</p>	<p>General Terms of Approval have been provided by Heritage NSW.</p>	

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, comprising the following:

- If demolition of a building proposed - provisions of AS 2601;

This provision has been considered and addressed in the draft conditions.

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

The proposed development is not anticipated to impart any adverse environmental impacts on the surrounding natural and built environments and is expected to provide a net benefit in terms of social and economic outcomes resulting from the developments construction. Once complete the development will provide employment opportunities, key services, and overall be of a significant benefit to residents of the Hills Shire Local Government Area, and particularly for those living with disabilities.

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

The suitability of the site has previously been established under approved development application DA 1057/2021/JP and masterplan consent. In sum, the amendments proposed as part of the subject application do not alter any of the benefits and site suitability previously determined. The Community Hub is compatible and not a significant departure from the historical use of the site as a residential facility for individuals living with disabilities, overall, at a larger scale, the site is suitable for a Community Hub centrally located within the overall site.

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

The public was notified of the development between 14 July 2023 and 21 August 2023. No submissions were received against or in support of the development throughout this time.

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

The development is in the public's interest and will facilitate positive social and economic outcomes for communities that reside within the Hills Shire Local Government Area. Overall, the development will deliver a social good in that the facilities and services created by the development encourage and enhance inclusion, wellbeing, community participation, and social connection for all members of the public regardless of age, ability, or gender.

3.10 Section 4.24 Concept Approval

The DA remains consistent with Masterplan 1331/2017/JPZ (as modified), as it provides for the development contemplated by the masterplan.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application is classified as integrated development and requires concurrence or approval pursuant to:

- Heritage Act 1977 (Section 58).

Heritage Act 1977

The Heritage Act 1977 contains provisions relating to the protection of items of heritage significance. Section 58 of the Heritage Act requires that approval from the Heritage Council

of NSW is obtained prior to undertaking any development likely to have an impact on an item listed on the State Heritage Register. The site encompasses a designated area listed on the NSW State Heritage Register known as 'Box Hill House' in Grounds of McCall Gardens listed as item 00613.

General Terms of Approval were issued by Heritage NSW and are included as Attachment K.

4.2 Community Consultation

The proposal was placed on public exhibition between 21 July and 21 August 2023. No submissions against the amending development application were received throughout this period.

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 and the key issues identified in this report, it is considered that the application can be supported.

It is recommended that the applicant's Clause 4.6 written request to vary State Environmental Planning Policy (Precincts – Central River City) 2021 development standard at Clause 4.3 be supported as it adequately justifies the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variation can be supported as compliance with the standard is unreasonable or unnecessary in this instance and the proposal results in better environmental planning outcomes as outlined in this report. The development is consistent with the objectives of the standards and the objectives for development within the zone.

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Precincts – Central River City) 2021, and The Box Hill Growth Centre Precinct Development Control Plan 2018 and is considered satisfactory.

Approval is recommended subject to conditions, refer to Attachment A.

6. RECOMMENDATION

That the Development Application DA No 1880/2023/JP for an Amending Development Application for the Redevelopment of McCall Gardens Community Facility 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 State Environmental Planning Policy (Precincts – Central River City) 2021 development standard at Clause 4.3 be supported as it adequately justifies the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variation can be supported as compliance with the standard is unreasonable or unnecessary in this instance

and the proposal results in acceptable 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 Map
- Attachment D: SEPP Zoning Map
- Attachment E: SEPP Height of Buildings Map
- Attachment F: Site Plan
- Attachment G: Floor Plans
- Attachment H: Elevations / Perspectives
- Attachment I: Landscaping Plans
- Attachment J: Clause 4.6 Variation Request - Height
- Attachment K: Heritage NSW General Terms of Approval

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

JOB No.	DRAWING NO.	DESCRIPTION SHEET	REVISION	DATE
20650	DA-A-000	Cover Page	B	26/05/2023
20650	DA-A-025	Staging Plan	B	26/05/2023
20650	DA-A-030	Site Demolition Plan	B	26/05/2023
20650	DA-A-031	Nelson Hall Modification Plan	B	26/05/2023
20650	DA-A-032	Box Hill House Demolition Plan	B	26/05/2023
20650	DA-A-033	Box Hill House Proposed Plan	B	26/05/2023
20650	DA-A-034	Box Hill House Proposed Elevation	B	26/05/2023
20650	DA-A-035	Box Hill House Proposed Work	B	26/05/2023
20650	DA-A-036	Ross House Lower Ground Demolition	B	26/05/2023
20650	DA-A-037	Ross House Upper Ground Demolition	B	26/05/2023
20650	DA-A-038	Ross House Demolition Elevation	B	26/05/2023
20650	DA-A-040	Ground Disturbance Plan	B	26/05/2023
20650	DA-A-050	Site Plan	B	26/05/2023
20650	DA-A-055	Surface Parking Details	B	26/05/2023
20650	DA-A-099	Basement Plan	B	26/05/2023
20650	DA-A-100	Lower Ground Plan	B	26/05/2023
20650	DA-A-101	Upper Ground Plan	B	26/05/2023
20650	DA-A-102	Roof Plan	B	26/05/2023
20650	DA-A-150	Detail Plans Sheet 1	B	26/05/2023
20650	DA-A-151	Detail Plans Sheet 2	B	26/05/2023
20650	DA-A-152	Detail Plans Sheet 3	B	26/05/2023
20650	DA-A-153	Detail Plans Sheet 4	B	26/05/2023
20650	DA-A-154	Detail Plans Sheet 5	B	26/05/2023
20650	DA-A-200	Elevations Sheet 1	B	26/05/2023
20650	DA-A-250	Sections Sheet 1	B	26/05/2023
20650	DA-A1000	External Finishes	B	26/05/2023

1423	L-00 – L-25	Landscape Package	F	03/11/2023
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No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

2. Compliance with Department of Heritage NSW Requirements

Compliance with the requirements of Heritage NSW attached as Appendix A to this consent and dated 29 August 2023.

3. Tree Removal

Approval is granted for the removal of twenty-four (24) trees numbered and identified as 1, 3, 5, and 40-60 on the Tree Protection Plan prepared by Australis dated 18/09/23.

All other trees are to remain and are to be protected during all works.

4. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be minimum 140mm pot size.

Any additional planting species to supplement existing gardens surrounding Box Hill House where notated on approved plans are must utilise species which are reflective of the age of the dwelling as per THDCP Part C Section 4 – Heritage Clause 3.7. Gardens, Landscaping and Fencing.

5. 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 recommendations within the Arboricultural Impact Assessment prepared by Australis Version 9 Dated 18/09/23 including the following additional requirements:

- The section of existing hard surface driveway to be removed within the Tree Protection Zone (TPZ) of Tree 23 - *Eucalyptus tereticornis* must be undertaken using hand tools only and be directly supervised by the Project Arborist.
- The raised timber boardwalk location indicated in the Arboricultural Impact Assessment and Tree protection Plan are superseded by the location approved on the landscape plan. The relocation of tree protection fencing, and the excavation for piers for the boardwalk during construction must be directly supervised by the Project Arborist. TPZ fencing must be reinstated to the approved location immediately after construction of the path and viewing platform is complete.

6. Provision of Parking Spaces

The development is required to be provided with Carparking for up to 136 vehicles; 8 community van parking spaces. These car parking spaces shall be available for off street parking at all times during business hours.

7. Separate application for signs

A separate application is to be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.

8. Protection of Public Infrastructure

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

9. 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:

- Vehicular Access to the development will not be allowed from Terry Road, it must be from the Mezzomo Street that is subject to completion under the preceding DA 679/2021/ZB.
- The driveway profiles must be confirmed the consistency of the Mezzomo Street.
- Following completion of the Development, the proposed use of existing driveways in their current condition will not be supported.
- 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.

10. Security Bond Requirements

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

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

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

11. 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.

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.

13. Acoustic Requirements

The recommendations found in the Acoustic Assessment and Report prepared by Renzo Tonin & Associates, referenced as TN011-01F01 Acoustic Assessment for An Amending Development Application (r2) and dated 6 June 2023 and submitted as part of the Development Application are to be implemented as part of this approval.

14. Contamination Assessment & Site Remediation

The relevant recommendations of the Combined Stage 1 and 2 Detailed Site Investigation and Report prepared by WSP Parsons Brinckerhoff, referenced as Project No. 2270171A-CLM-REP-002 RevC.docx, dated December 2016 and the Remediation Action Plan prepared by WSP Parsons Brinckerhoff, referenced as Project No. 2270171A-CLM-REP-003 RevD, dated August 2018 and submitted as part of the Development Application are to be implemented as part of this approval.

There is to be no disposal of contaminated soil, soil for which the contamination status is unknown or waste materials on land or under roads either private or roads that will become public land under the control of Council.

Any inconsistencies between the accepted RAP and this condition, this condition takes precedence.

15. 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.

16. 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.
- 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".

17. Commercial Waste and Recycling Collection Contract

There must be a contract in place with a licenced contractor for the removal and lawful disposal of all commercial waste generated on site, prior to the issue of an Occupation Certificate. 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.

18. 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.

19. Construction of Waste Storage Area

The waste storage area must be designed and constructed in accordance with the following requirements. The area must provide minimum storage facility for 3 x 1100 litre garbage and 3 x 1100 litre recycle bins.

- The waste storage area must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins as specified above.
- The layout of the waste storage area must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the waste storage area must be constructed of brickwork.
- The floor of the waste storage area must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).

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

Example Bin Measurements (mm)

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

20. Section 64 – Consent Authority may Require Buildings to be Upgraded

Pursuant to Section 64 of the Environmental Planning & Assessment Regulation 2021, the following upgrades must be undertaken with the construction certificate works and must be completed prior to an occupation certificate being issued:

Ross House

- i. The existing building is to be upgraded to resist load & actions to which it may reasonably be subjected appropriate to B1P1 & B1P2 of the BCA.
- ii. Existing glazing in the premises is to be upgraded so as to be suitable to avoid injury to occupants in accordance with B1P3 of the BCA.
- iii. Existing building elements are to be upgraded to be capable of maintaining structural stability during a fire and to avoid fire spread, appropriate to C1P1 & C1P2 of the BCA.
- iv. The existing hose reel system is to be upgraded, appropriate to E1P1 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.

- v. Emergency lighting is to be upgraded to provide a safe level of illumination during an emergency appropriate to E4P1 of the BCA.
- vi. Exit signage is to be upgraded to facilitate evacuation appropriate to E4P2 of the BCA.
- vii. A fire hydrant system is to be provided to satisfy the needs of the fire brigade appropriate to E1P3 of the BCA.
- viii. The existing premises is to be upgraded to ensure the affected parts are accessible, have accessways and have suitable facilities, appropriate to D1P1, D1P2, D1P8 and F4P1 of the BCA.
- ix. Existing stairways are to be upgraded to provide safe movement and adequate egress in the building appropriate to D1P2, D1P4 & E2P2 of the BCA.
- x. A review of enclosures under existing stairways is to be undertaken to ensure the enclosing walls, doors and ceilings have the appropriate elements to restrict fire spread and permit safe egress appropriate to C1P2, D1P4 & E2P2 of the BCA.
- xi. Required balustrades and handrails are to be upgraded appropriate to D1P2, D1P3 & E2P2 of the BCA.
- xii. A review of smoke hazard management is to be undertaken to determine if any systems are required to be installed to ensure conditions in any evacuation route will remain tenable appropriate to E2P2 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 C1P8 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 D1P4 and E2P2 of the BCA.
- xv. Existing openings in external walls between storeys are to be protected to the degree necessary in order to restrict fire spread, appropriate to C1P2 of the BCA.
- xvi. Existing external walls are to be reviewed and are to be upgraded where combustible elements are present, appropriate to C1P1 & C1P2 of the BCA.
- xvii. Electricity meters, electrical distribution boards or ducts in a path of travel to an exit are to be protected by non-combustible construction or fire protective covering, with doorways or openings suitably smoke sealed, appropriate to C1P2 of the BCA.

Nelson Hall

- i. The existing slab and external walls are to be upgraded to ensure the prevention of ground moisture rising through the slab, provision of a damp proof course to prevent moisture rising through walls, prevention of surface water entering the building & prevention of water penetrating the external walls, appropriate to F1P2, F3P1 & F1P4 of the BCA.
- ii. Existing stairways are to be upgraded to provide safe movement and adequate egress in the building appropriate to D1P2, D1P4 & EP2.2 of the BCA.
- iii. Required balustrades and handrails are to be upgraded appropriate to D1P2, D1P3 & E2P2 of the BCA.
- iv. Existing door latches to required exits are to be upgraded in accordance with the D3D26 of the BCA

21. Irrigation

A smart automatic watering system is to be installed to garden and lawn areas as identified on the Irrigation Plan prepared by Durie Design Revision F dated 03/11/23. 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

22. Surrender of Development Consent DA 1057/2021/JP dated September 2022

In accordance with Section 4.17(1)(b) and Section 4.17(5) of the Environmental Planning and Assessment Act, 1979, a notice of surrender of Development Consent DA 1057/2021/JP must be provided to Council in accordance with Clause 67 of the Environmental Planning and Assessment Regulation 2021, prior to the issue of any Construction Certificate for this consent.

23. Special Infrastructure Contribution – Growth Centres

A special infrastructure contribution is to be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011, as in force when this consent becomes operative.

Information about the special infrastructure contribution can be found on the Department of Planning and Environment website:

<http://www.planning.nsw.gov.au/>

Please contact the Department of Planning and Environment regarding arrangements for the making of a payment.

24. Section 7.11 Contribution

The following monetary contributions must be paid to Council in accordance with Section 7.11 of the Environmental Planning and Assessment Act, 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments comprise of the following: -

<i>Development Category</i>	<i>Rate per m² of Floor Space</i>	<i>Total Floor Space 3,445.98 m²</i>	<i>TOTAL \$7.11</i>
Transport Facilities - Land	\$ 13.32	\$ 45,901.05	\$ 45,901.05
Transport Facilities - Capital	\$ 76.56	\$ 263,811.05	\$ 263,811.05
Administration	\$ 1.14	\$ 3,927.99	\$ 3,927.99
Water Management - Land (KCP)	\$ 13.96	\$ 48,117.02	\$ 48,117.02
Water Management - Capital (KCP)	\$ 14.90	\$ 51,350.18	\$ 51,350.18
Total	\$ 119.88	\$ 413,107.30	\$ 413,107.30

The contributions above are applicable at the time this consent was issued. Please be aware that Section 7.11 contributions are periodically indexed and will be updated at the time of payment, in accordance with the provisions of the applicable plan. A reference to the 'applicable plan' within this condition refers to the Contributions Plan in force at the time this consent was issued.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0555.

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

This condition has been imposed in accordance with Contributions Plan No 15.

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.

25. Notice of Requirements

The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

26. Engineering Works

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

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

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

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

The Concept Civil Engineering Design prepared by Indesco dated November 2023 is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

a) Stormwater Management – Temporary Management

The development relies on a Temporary Onsite Detention and Treatment basin to be constructed at the north-eastern corner of the site pursuant to the DA 679/2021/ZB/B.

Stormwater from the development must be directed to the above basin as shown on the post development catchment plan 7748-DA drawing no. 140 Revision I attached to the civil concept plan.

Should neither the Temporary Basin from DA 679/2021/ZB, or the Regional Basin be completed prior to OC for this consent, then suitable alternate temporary stormwater treatment / detention options can be constructed subject to Council's agreement in writing.

b) Footpath Verge Formation

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

c) Service Conduits

Service conduits to each of the proposed new lots, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown on the engineering drawings.

d) Stormwater Drainage

Tail out drains over adjoining properties are required to be provided, where necessary, of sufficient length and width to dissipate stormwater flows to an acceptable level from the end of all stormwater outlets.

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

e) Water Sensitive Urban Design Elements

Water sensitive urban design elements including rainwater tanks and treatment measures are to be located generally in accordance with the civil plans and information submitted with the application.

Detailed plans for the water sensitive urban design elements must be submitted prior to the relevant Construction Certificate, 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.

27. 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).

PRIOR TO WORK COMMENCING ON THE SITE

28. 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:

- Name:
- Qualification/s:
- Telephone number/s:
- 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.

29. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. In order of precedence the location of fencing shall be a) As per the Tree Protection Plan as per the Tree Management Plan prepared by Australis dated 18/09/23.

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

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

The tree protection fencing is only to be removed or relocated under direction of the Project Arborist. Tree Protection Fencing must be reinstated immediately after works within the TPZ are completed to ensure ongoing protection.

30. Tree Protection Signage

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

31. Mulching within Tree Protection Zone

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

32. Trenching within Tree Protection Zone

Any trenching and excavation for installation of drainage, sewerage, irrigation or any other services, and/or for construction of any ancillary structures or hard surfaces shall not occur within the Tree Protection Zone (TPZ) of any tree(s) identified for retention unless under supervision and certification of a suitably qualified AQF Level 5 Project Arborist.

Certification of supervision by a Project Arborist must be provided to the Certifying Authority (Council) within 14 days of completion of trenching works.

The installation of the stormwater drainage system and/or the construction of any ancillary structures within the TPZ of tree(s) to be retained shall be carried out by adopting sensitive construction methods under the supervision of a Project Arborist.

Demolition or earth works within the Tree Protection Zone of tree(s) identified for retention shall be carried out so as to avoid damage to the tree roots. Manual excavation shall be carried out under the supervision of the Project Arborist.

Where roots within the Tree Protection Zone are exposed by excavation, temporary root protection should be installed to prevent them drying out. This may include jute mesh or hessian sheeting as multiple layers over exposed roots and excavated soil profile,

extending to the full depth of the root zone. Root protection sheeting should be pegged in place and kept moist during the period that the root zone is exposed.

Root pruning should be avoided, however where necessary, all cuts shall be clean cuts made with sharp tools such as secateurs, pruners, handsaws, chainsaws or specialised root pruning equipment. Where possible, the roots to be pruned should be located and exposed using minimally destructive techniques such as hand-digging, compressed air or water-jetting, or non-destructive techniques.

No roots larger than 40mm diameter to be cut without Arborist advice and supervision. All root pruning must be done in accordance with Section 9 of Australia Standard 4373-2007 Pruning of Amenity Trees.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. Notification of Asbestos Removal

Prior to commencement of any demolition works involving asbestos containing materials, all adjoining neighbours, Council and WorkCover NSW must be given a minimum five days written notification of the works.

40. 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.

41. 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.

42. Soil and Water Management Plan

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

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.

43. 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.

DURING CONSTRUCTION

44. 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.

45. 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.

46. 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.

47. Stockpiles

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

48. Asbestos Removal

Any asbestos containing material, whether bonded or friable, shall be removed by a licenced asbestos removalist. A signed contract between the removalist and the person having the benefit of the development application is to be provided to the Principle Certifying Authority, identifying the quantity and type of asbestos being removed. Details of the landfill site that may lawfully receive the asbestos is to be included in the contract.

Once the materials have been removed and delivered to the landfill site, receipts verifying the quantity received by the site are to be provided to the Principal Certifying Authority.

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.

49. 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.

50. 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.

51. 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 by visiting the website: 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.

52. Construction Noise

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

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

53. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan (pursuant to Condition 27 of this consent) 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.

54. 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 and then refer to Water Servicing Co-ordinator under "Developing Your Land" or telephone 13 20 92 for assistance.

55. Provision of Electricity Services

Submission of a compliance certificate from the relevant service provider confirming satisfactory arrangements have been made for the provision of electricity services. This includes undergrounding of existing and proposed services where directed by Council or the relevant service provider.

56. Provision of Telecommunications Services

The submission of a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.

57. Completion of Engineering Works

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

58. Property Condition Report – Public Assets

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

59. Stormwater Management Certification

The stormwater management system must be completed to the satisfaction of the Principal Certifier prior to the issuing of an 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;
- 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.

60. Creation of Restrictions/ Positive Covenants

Before an 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 – Restricted Access

The subject site must be burdened with a restriction precluding access to Terry Road using the “restricted access” 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.

61. Registration of Preceding Subdivision

An Occupation Certificate cannot be issued for this development before the preceding subdivision pursuant to Development Consent DA 679/2021/ZB/B has been registered.

62. Validation report

A validation report shall be submitted to Council’s Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following:

- The degree of contamination originally present;
- The type of remediation that has been completed; and
- A statement which clearly confirms that the land is suitable for the proposed use.

63. Food shop registration requirements

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

64. Acoustic Compliance Report

The acoustic consultant shall inspect the installation of the required noise suppressant components and other physical noise attenuation recommendations in the report prepared by Renzo Tonin & Associates, referenced as TN011-01F01 Acoustic Assessment for An Amending Development Application (r2) and dated 6 June 2023. Certification is to be provided to the certifying authority prior to the issue of an Occupation Certificate.

65. Clearance Certificate

On completion of the asbestos removal works a Clearance Certificate in accordance with Clause 474 of the Work Health and Safety Regulation 2017 shall be provided to the Principal Certifier.

66. Public Pool/Spa Registration

The premise is to be registered with Council by completing and submitting a *Registration of Public Swimming and Spa Pools*, available on Council’s website www.thehills.nsw.gov.au.

THE USE OF THE SITE

67. Schedule of Uses (Hours of Operation)

Activities are to be carried out in accordance with the following schedule:

Use	Persons	Day	Hours
McCall Administration and Community Participation Programs (CPP) Administration Support for McCall Gardens in providing disability support for individuals with disability	Staff – 25 Visitors/Clients – 50 Guardians/Carers – 50	Monday to Sunday:	7am – 7pm

<p>in the Hawkesbury, Hills and Blacktown LGA.</p> <p>Centre based community participation support programs and community based support programs.</p> <ul style="list-style-type: none"> • Assistance with Daily Life (Core); • Assistance with Social and Community Participation (Core); • Improved Daily Living Skills (Capacity Building); • Improved Learning (Capacity Building); and • Increased Social and Community Participation (Capacity Building) 	Support Staff - 8		
<p><u>Allied Health and Consulting Suites</u></p> <p>Allied health professionals provide a broad range of diagnostic, technical, therapeutic and direct health services to improve the health and wellbeing of clients supported by McCall Gardens</p>	<p>Staff – 30</p> <p>Visitors/Clients – 30</p> <p>Guardians/Carers – 20</p>	Monday to Sunday:	7am – 7pm
<p><u>School Leavers Employment Supports (SLES)</u></p> <p>SLES is a program for NDIS participants leaving school to help you prepare for the workforce</p> <p>The SLES program is set up to support you in a way that ensures your individual support needs and unique skill sets are recognised. We tailor a package of living skills, job site training, foundation skills, personal development and pre-employment training all designed to help you build your ability and confidence to meet your employment goals.</p>	<p>Staff – 3</p> <p>Visitors/Clients – 40</p> <p>Guardians/Carers – 20</p>	Monday to Sunday:	7am – 7pm
<p><u>Hydrotherapy and Learn to Swim</u></p> <p>The Facility is intended to host a number of programs lead by qualified staff that teach skills for life, from beginners right through to the elderly. Programs include Hydrotherapy, Aqua Aerobics, Learn to Swim & Squad</p>	<p>Staff – 10</p> <p>Visitors/Clients – 60</p> <p>Guardians/Carers – 40</p>	Monday to Sunday:	6am – 9pm
<p><u>Cafe</u></p> <p>The café provides food and beverages primarily for staff and Clients/ Visitors during opening hours of the McCalls Community Hub. The Café is also used to teach basic food preparation skills</p>	<p>Staff – 6</p> <p>Patrons/Seats – 180</p>	Monday to Sunday:	6am – 10pm
<u>Box Hill House</u>	Staff/Visitors - 25	Monday to Sunday:	7am – 7pm

Like Minded Organization to McCall Gardens			
<u>Nelson Hall</u> Meeting Room and Museum and archive of McCall Gardens	Staff/Visitors - 10	Monday to Sunday:	7am – 7pm

Any alteration to the above hours of operation will require the further approval of Council.

68. Offensive Noise

The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provisions of the *Protection of the Environment Operation Act 1997*.

69. 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*.

70. Hours of operation for waste collection, delivery / dispatch of goods

The collection of waste and the delivery of goods shall be restricted to the following times;

Monday to Saturday – 7.00am to 8.00pm

Sunday and public holidays – 8.00am – 8.00pm

71. 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, 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. Under no circumstances should waste storage containers be stored in locations that restrict access to any of the car parking spaces provided onsite. A caretaker must be appointed to manage waste operations on site including undertaking all instructions issued by Council to enable waste collection. Waste storage area must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.

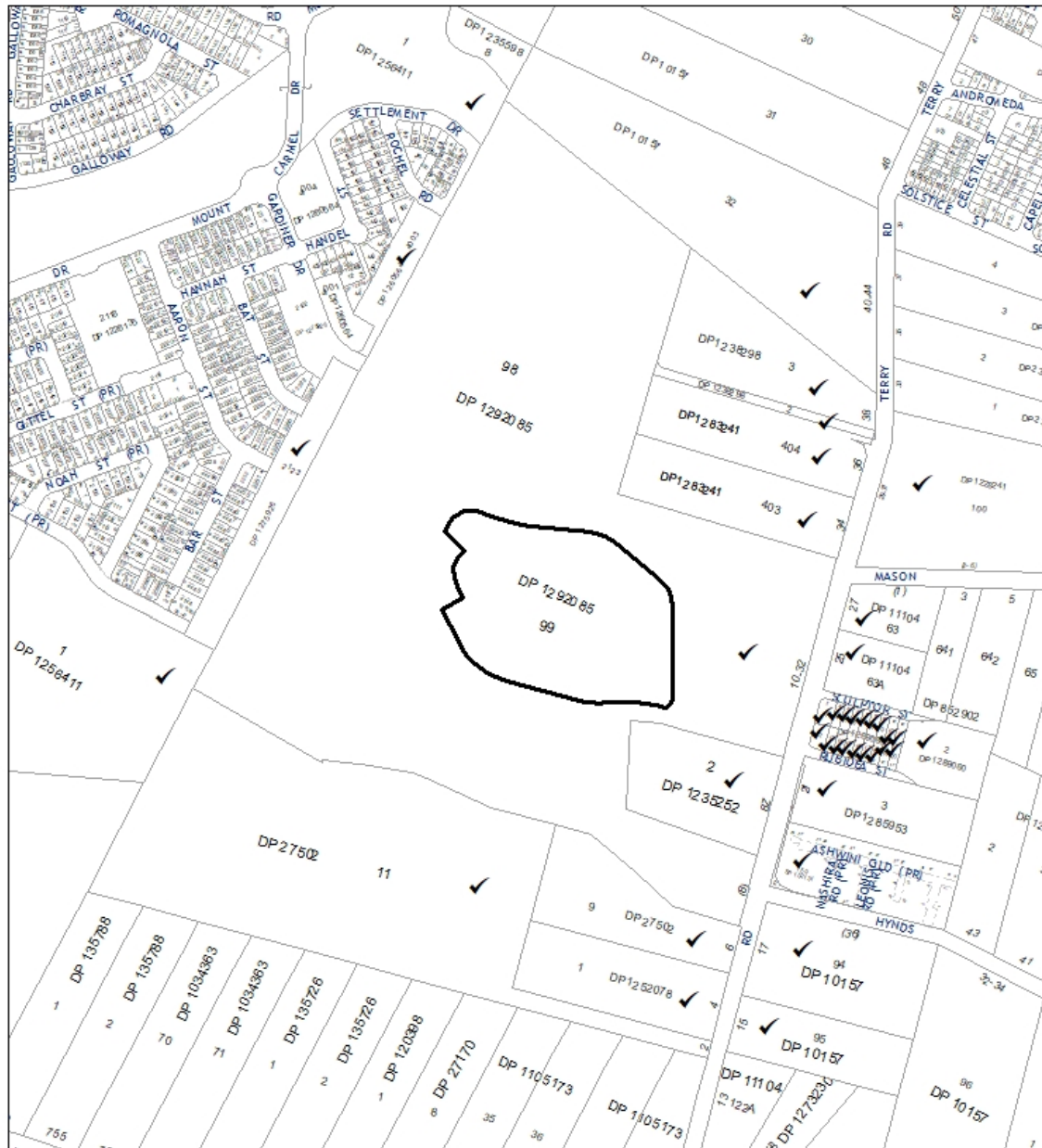
72. Waste and Recycling Collection

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.

73. Operation of a Commercial Swimming Pool

The swimming pool shall be 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.

ATTACHMENT B – LOCALITY PLAN



SUBJECT SITE



PROPERTIES 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 MAP



 SUBJECT SITE

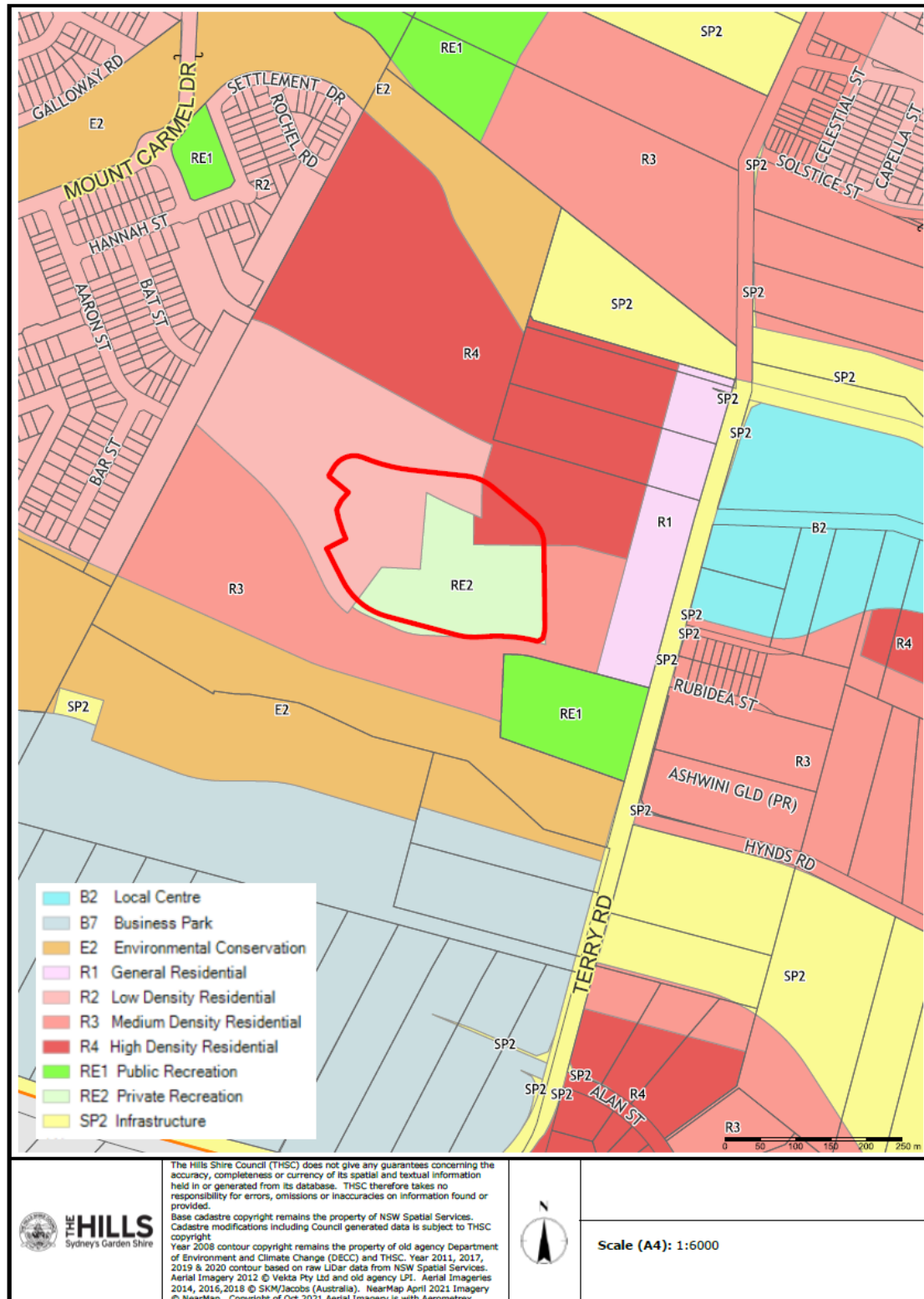
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

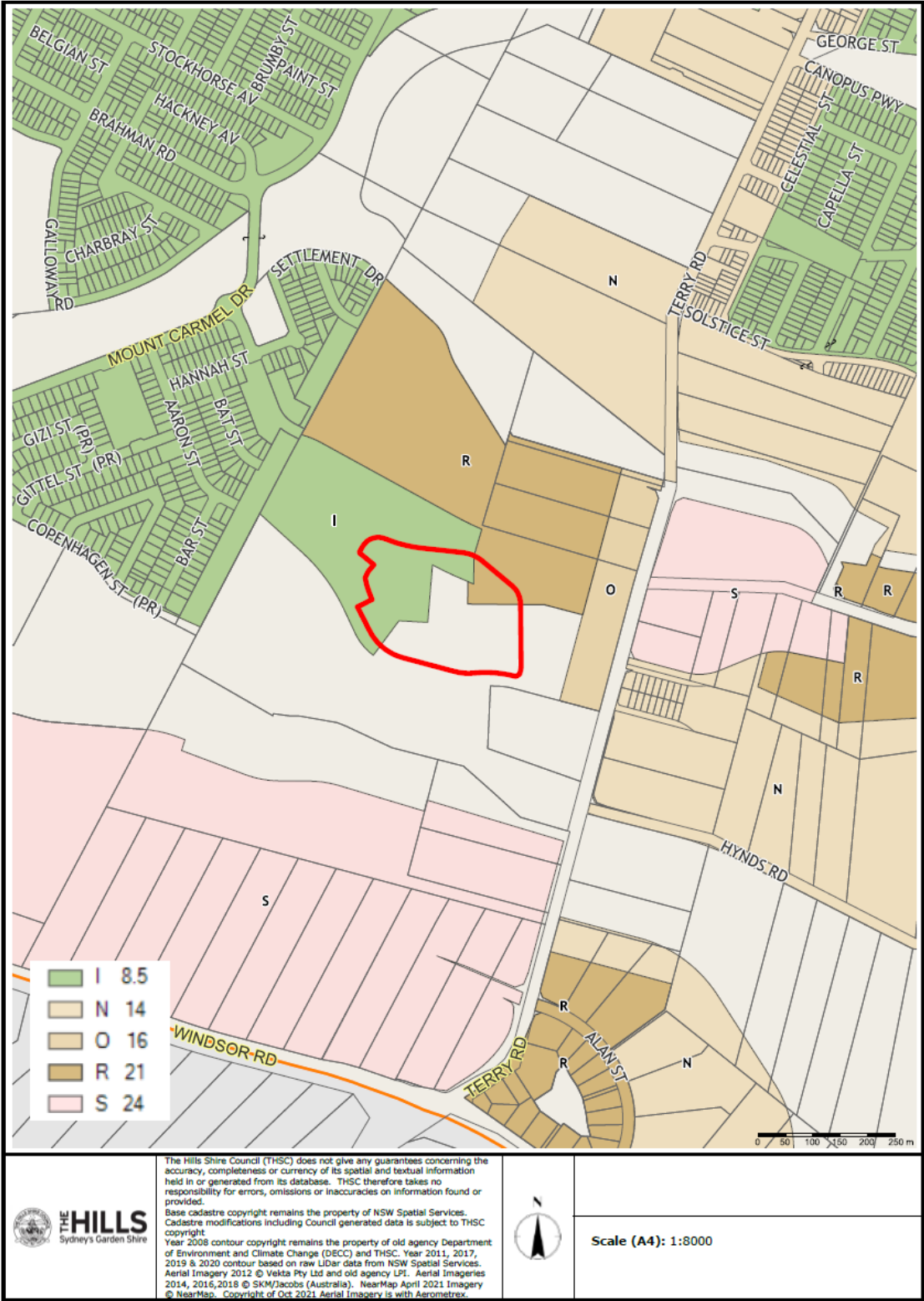
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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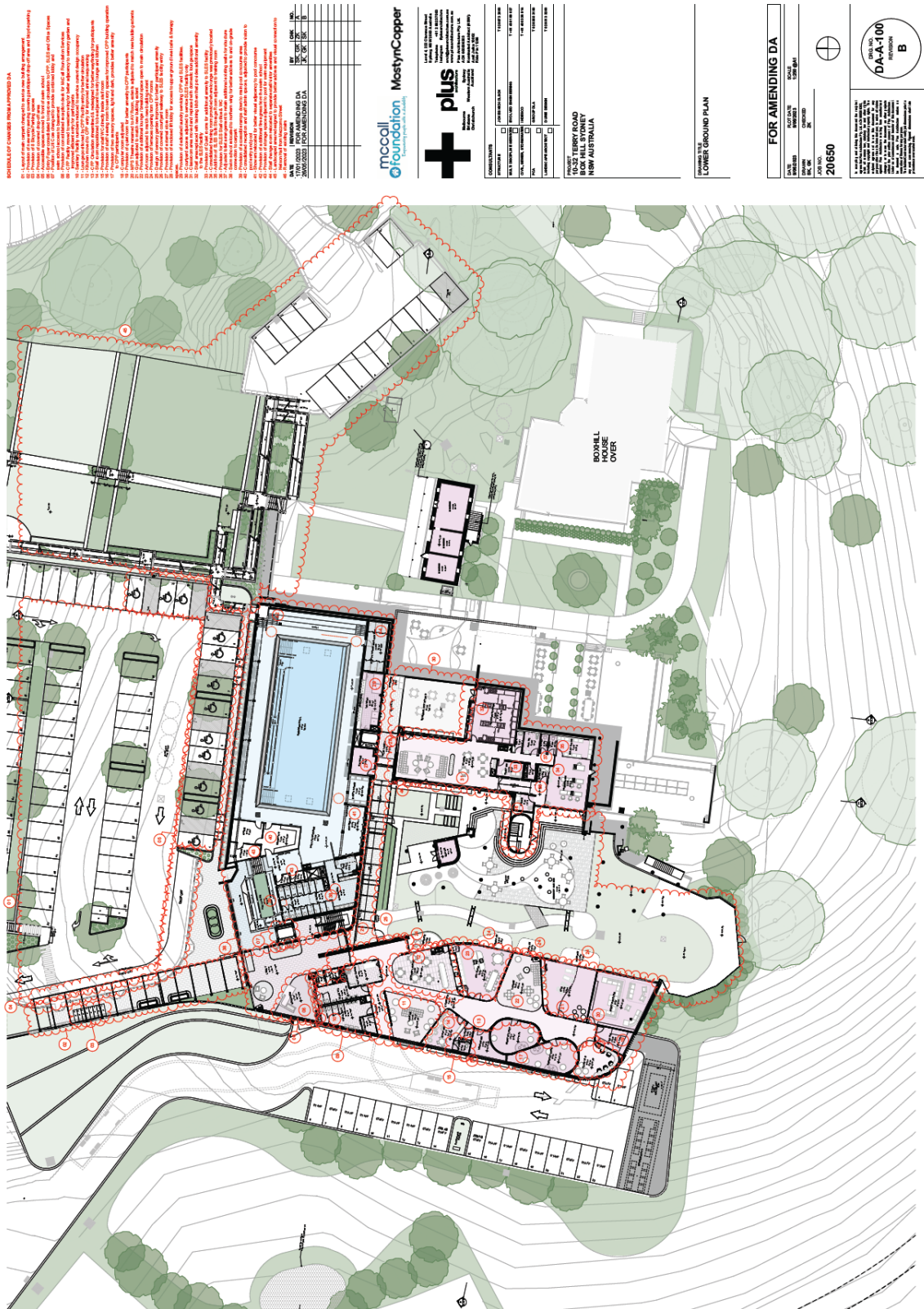
ATTACHMENT D – SEPP ZONING MAP



ATTACHMENT E – SEPP HEIGHT MAP



ATTACHMENT G – FLOOR PLANS



[illegible][illegible]

COMMON TAXES			
STATEMENT	<input type="checkbox"/>	JANUS INVESTORS	1-1-2017 TO 31-12-2017
STATEMENT OF FINANCIAL POSITION	<input type="checkbox"/>	ROYAL BANK (1000-100000)	1-1-2017 TO 31-12-2017
STATEMENT OF INCOME	<input type="checkbox"/>	FINANCIAL	1-1-2017 TO 31-12-2017
STATEMENT OF CASH FLOWS	<input type="checkbox"/>	FINANCIAL	1-1-2017 TO 31-12-2017
STATEMENT OF EQUITY	<input type="checkbox"/>	FINANCIAL	1-1-2017 TO 31-12-2017

FREQUENCY
10-32 TERRY ROAD
BOX HILL SYDNEY
NSW AUSTRALIA

CRATING TITLE
UPPER GROUND PLAN

FOR AMENDING DA

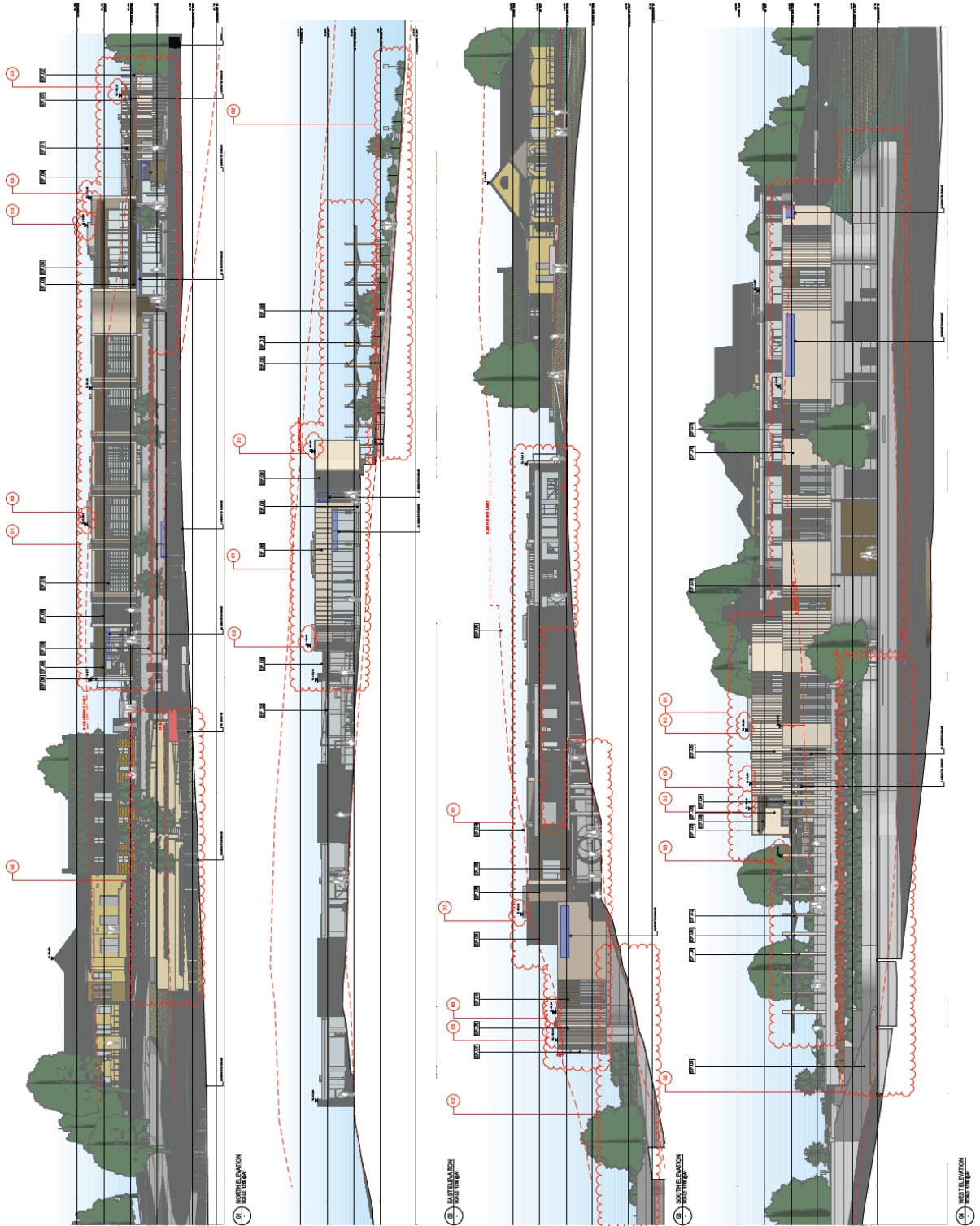
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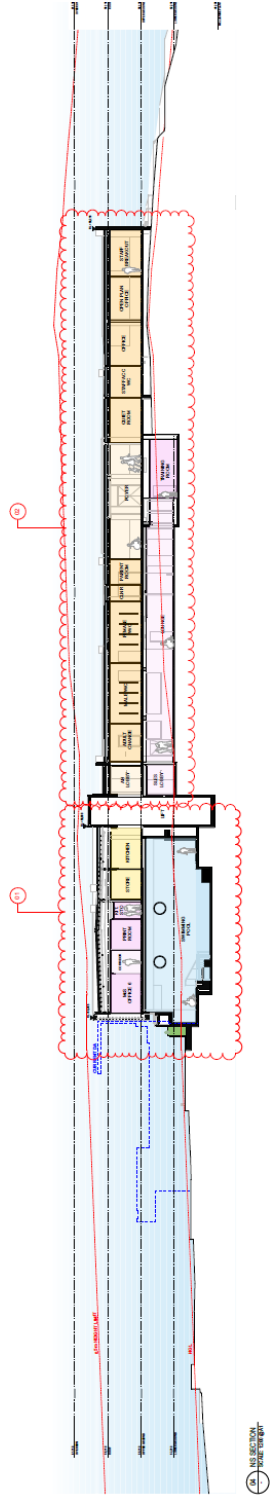
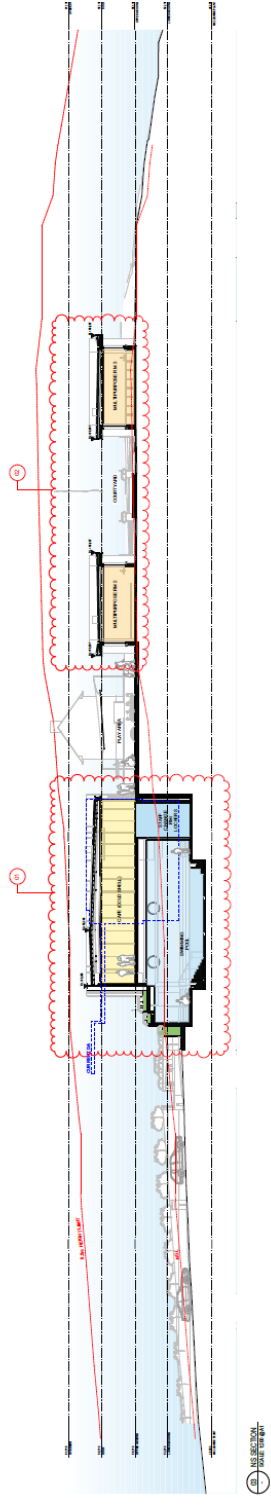
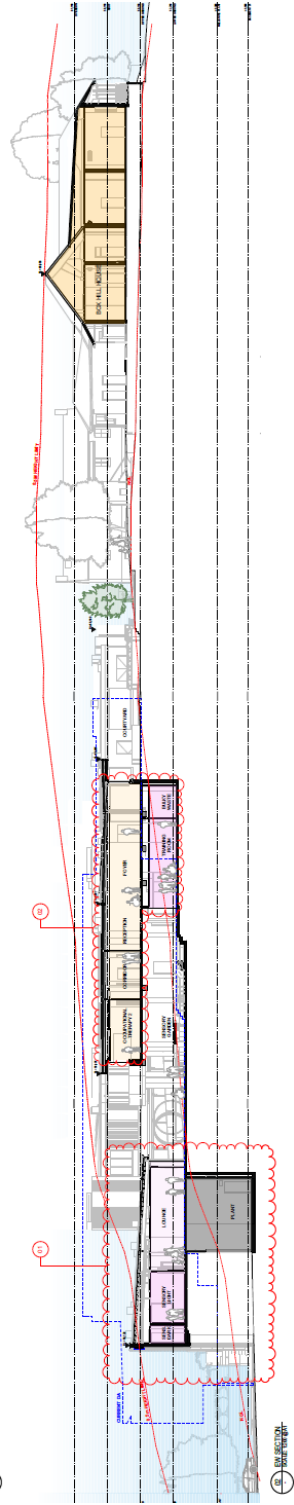
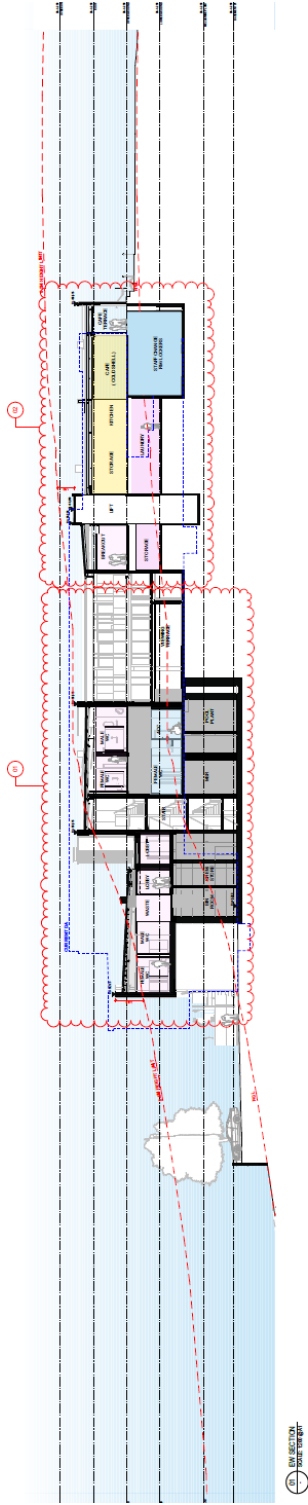


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ATTACHMENT H – ELEVATION AND SECTIONS





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McCall Gardens Community Hub Amending Development Application Request for Section 4.6 Exemption

Prepared for McCall Gardens Community Foundation

June 2023

McCall Gardens Community Hub Amending Development Application

Request for Section 4.6 Exemption

McCall Gardens Community Foundation

E220431 RP2

June 2023

Version	Date	Prepared by	Approved by	Comments
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This report has been prepared in accordance with the brief provided by McCall Gardens Community Foundation and has relied upon the information collected at the time and under the conditions specified in the report. All findings, conclusions or recommendations contained in the report are based on the aforementioned circumstances. The report is for the use of McCall Gardens Community Foundation and no responsibility will be taken for its use by other parties. McCall Gardens Community Foundation may, at its discretion, use the report to inform regulators and the public.

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TABLE OF CONTENTS

1	Introduction	1
1.1	Background	1
1.2	Purpose of this section 4.6 variation request	2
1.3	The approach to this section 4.6 variation request	3
1.4	The applicant	4
2	The proposed variation	5
3	Section 4.6 enabling provisions	8
3.1	Section 4.6(2)	9
3.2	Section 4.6(3)	9
3.3	Section 4.6(4)	9
4	Compliance is unreasonable or unnecessary	10
4.1	Visual impact	10
4.2	Amenity (solar access and open space)	10
5	Sufficient environmental planning grounds	12
5.1	Alternative options considered	12
5.2	Environmental planning grounds	12
6	Concurrence of the Secretary	16
7	Conclusion	17

Appendices

Appendix A	Neighbouring view analysis
Appendix B	Shadow diagrams

Tables

Table 5.1	Assessment against objectives for building height development standard	14
Table 5.2	Assessment against objectives for R2 land zone	15

Figures

Figure 1.1	Locality plan	2
Figure 2.1	Height of buildings map	5
Figure 2.2	Height plane exceedance perspective	6
Figure 2.3	Height exceedances – comparative	7

1 Introduction

McCall Gardens Community Foundation Limited requests a variation to a development standard pursuant to Section 4.6 of *The Hills Growth Centre Precincts Plan*, which forms Appendix 10 to the State Environmental Planning Policy (Precincts – Central River City) 2021 ('the Central River City SEPP'). The request relates to an amending development application for development located at 10–32 Terry Road, Box Hill Sydney New South Wales (NSW) 2765 as outlined in this report.

1.1 Background

McCall Gardens is an established community facility at Box Hill, Sydney NSW, which provides specialist facilities and services to persons with a disability. It provides obvious and important social benefits, being a particularly relevant environmental planning ground that may be relied upon in the context of a clause 4.6 variation request, or even generally: *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 at [100–102]. The Box Hill facility has operated for several decades on a substantial site of approximately 35.66 hectares located at 10–32 Terry Road, Box Hill NSW 2765 (Lot 1 in DP 1235252) ('the overall site').

There is a cluster of buildings in the central area of the overall site – referred to as the Community Hub and comprising an area of approximately 4.74 hectares (see Figure 1.1) – which is the subject of an amending development application. The Community Hub land is referred to as 'the subject site'.

The consent the subject of the amending development application is DA 1057/2021/JP which provides for the:

- redevelopment of the existing community facility, including the demolition of Day Program building
- additions to Ross House
- restoration of Box Hill House and Nelson Hall
- construction of a Disability Support Centre.

The DA was approved by Sydney Central City Planning Panel on 4 September 2022.

The amending development application proposes a range of revisions to the design and layout of structures and facilities as authorised under DA 1057/2021/JP.

The site is located within the North-West Growth Centre and is subject to Chapter 3 of the State Environmental Planning Policy (Precincts – Central River City) 2021 ('the Central River City SEPP') which provides for the coordinated development in the north-west region of Sydney. The subject land is also within the area mapped under *The Hills Growth Centres Precincts Plan 2013* applies. The Department of Planning and Environment (DPE) published the Box Hill Growth Centre Precincts Development Control Plan in 2018.

The subject site is also listed on the NSW State Heritage Register (SHR) (#00613) as 'Box Hill House in the Grounds of McCall Gardens' and is a place of State heritage significance, comprising of Nelson Hall (c1820) Box Hill House (c1896) and Ross House (1958–83), as well as the associated landscape setting. As part of the approved DA a Section 60 application was submitted to the Heritage Council of NSW under the *Heritage Act 1977*, which was approved by Heritage NSW in 2021.

When the original approval was made under DA 1057/2021/JP, it was also accompanied by a request for a variation to a development standard pursuant to clause 4.6 of Appendix 11 to the (former) State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The building height variation requested (dfp, 2021) was for a maximum height of 15.35 m, relative to a prescribed height limit of 8.5 m (meaning an exceedance of 6.85 m). The consent authority accepted the variation as requested.

EMM Consulting Pty Ltd (EMM) has prepared a Statement of Environmental Effects (SEE) for the amending development application.

An assessment of the impacts of the proposed development on the heritage significance of the subject site and its built and landscaped elements is also addressed in a Statement of Heritage Impact (SoHI) prepared by EMM.



Figure 1.1 Locality plan

Source: Multimaps

Note: Overall site identified by a yellow polygon; Subject site identified by red polygon.

1.2 Purpose of this section 4.6 variation request

EMM has been engaged by McCall Gardens Community Foundation Limited to prepare the request for an exemption from a development standard pursuant to section 4.6 of the Hills Growth Centre Precincts Plan, which forms Appendix 10 to the State Environmental Planning Policy (Precincts – Central River City) 2021 ('the Central River City SEPP').

The request relates to Part 4, Principal development standards, Section 4.3 of Appendix 10 of the Central River City SEPP. According to the Height of Buildings map, the prescribed height limit for the subject site is 8.5 metres (m).

The proposed design and layout revisions in the amending development application propose a maximum building height of 13.55 m (RL 59.960) which is associated with the top of the lift overrun. This represents an exceedance of 5.05 m. As previously stated, an exceedance of 6.85 m was previously supported pursuant to DA 1057/2021/JP.

Notwithstanding the contravention of the development standard, the proposed design and layout revisions in the amending development application are consistent with the objectives of the development standard and the zone within which the development is to be carried out. As outlined in this report there are also sufficient environmental planning grounds to justify the development standard exceedance with respect to this proposed development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of section 4.6 of Appendix 10 of the Central River City SEPP so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the height of buildings development standard.

1.3 The approach to this section 4.6 variation request

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:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
3. *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191
4. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
5. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action)
6. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation)
7. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha)
8. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511
9. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386
10. *Moskovich v Waverley Council* [2016] NSWLEC 1015
11. *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

Section 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]: 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.
- 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.

It is important to note at the outset that clause 4.6 of a LEP "is as much a part of [the LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome." (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]).

In Initial Action Chief Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]).
- There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]).
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

These comments of Chief Justice Preston are particularly pertinent in this case as this Section 4.6 request shows that there are no adverse amenity or design impacts due to non-compliance with the height of buildings development standard.

1.4 The applicant

The applicant is McCall Gardens Community Foundation Limited.

The address of the applicant is 10–32 Terry Road, Box Hill NSW 2765.

McCall Gardens Community Foundation Limited (Foundation) is a registered National Disability Insurance Agency (NDIA) provider offering Specialist Disability Accommodation (SDA) and other accommodation and community participation premises for a range of people with disability.

2 The proposed variation

Section 4.3 of the Hills Growth Centre Precincts Plan, which forms Appendix 10 to the Central River City SEPP, prescribes a maximum height of buildings on the subject site at 8.5 m. The development standard states:

4.3 Height of buildings

- (1) The objectives of this section are as follows—
 - (a) to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,
 - (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,
 - (c) to facilitate higher density development in and around commercial centres and major transport routes.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The proposed development does not comply with the 8.5 m height of buildings development standard having a maximum height of 13.55 m (RL 59.960) which is associated with the top of the lift overrun. Therefore, the proposed development exceeds the maximum height of buildings development standard by 5.05 m.

The height of building map is provided in Figure 2.1, with the extent of the proposed variation exceedance illustrated in Figure 2.2.

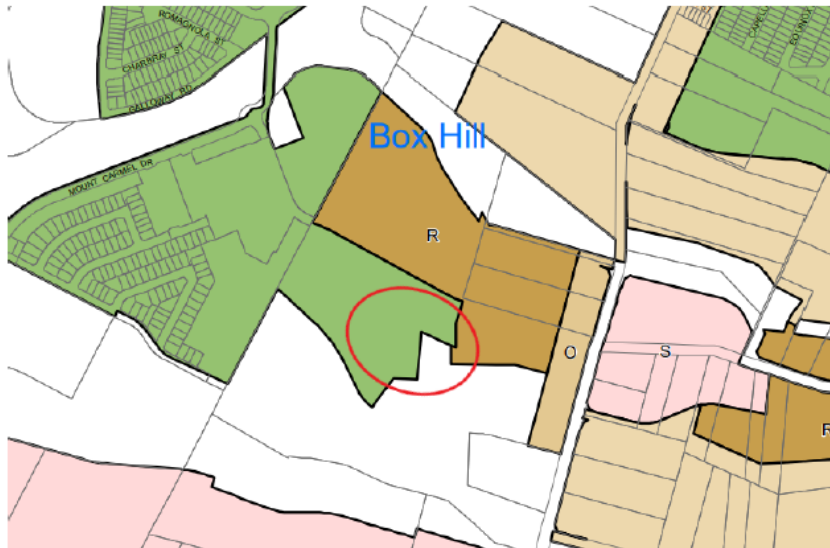


Figure 2.1 Height of buildings map

Source: Central River City SEPP; Map HOB_008 (adapted by EMM)

Note: Green shading = 8.5m; location of subject site generally within the red circle.

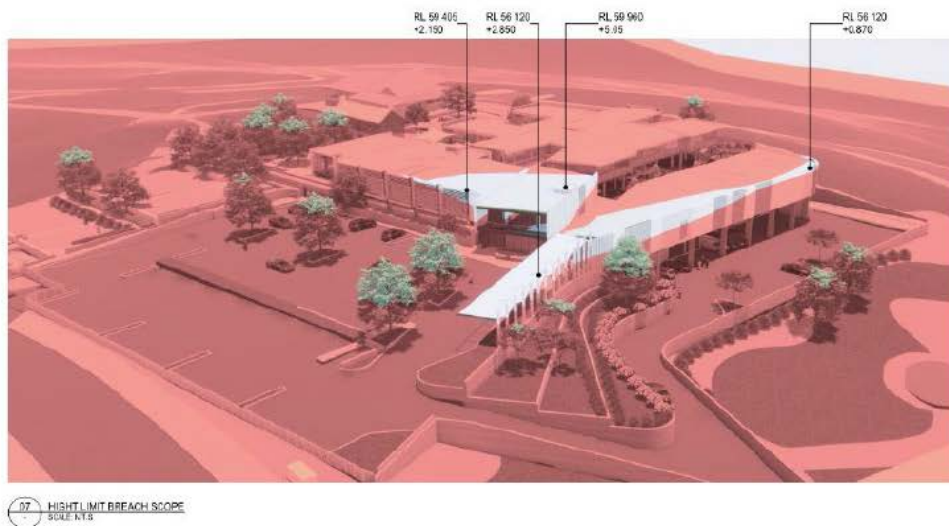


Figure 2.2 Height plane exceedance perspective

Source: Plus Architecture

Given this request for exemption to a development standard accompanies an amending development application a comparison of the exceedances incorporated in the approved DA relative to the exceedances proposed under the current amending DA is considered warranted (refer Figure 2.3). That said, it is readily accepted that the required legal comparison is against the 8.5 m development standard itself.

In terms of the comparative exercise, it is noted that some exceedances are reduced, and others increased. Given the revisions apply to various aspects of design (not just building height) and also improve outcomes for mass, bulk, shape and design it is not considered appropriate to strictly compare DA 1057/2021/JP and the current proposal on a 'like for like' basis, however the result, on balance, represent a reasonably consistent performance outcome in terms of building form, with the previous exceedances being overall **greater than** those that are now proposed.

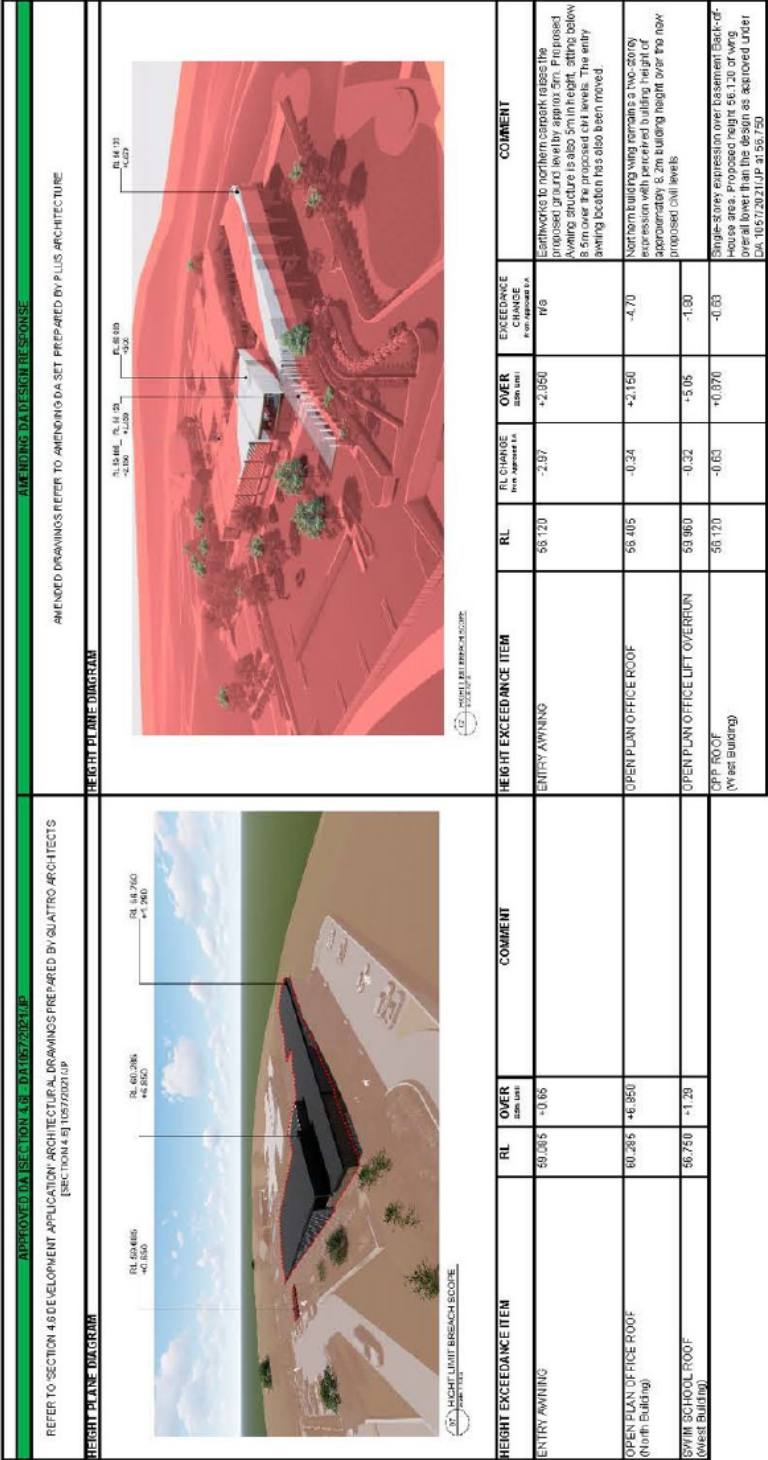


Figure 2.3 Height exceedances – comparative

Source: Plus Architecture

3 Section 4.6 enabling provisions

Section 4.6(1) of Appendix 10 to the Central River City SEPP notes that the provisions relating to exceptions to development standards have the following objective:

The objectives of this section 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.

Further, Section 4.6(2) provides that:

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

The requirements on the consent authority are stated at Section 4.6(3) and 4.6(4):

- (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 subsection (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.

3.1 Section 4.6(2)

The height of buildings control in Section 4.3 of Appendix 10 is a development standard, defined in Section 1.4 of the *Environment Planning and Assessment Act 1979* (EP&A Act) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

The height of buildings development standard is not expressly excluded from the operation of Section 4.6.

3.2 Section 4.6(3)

Section 4.6(3) relates to the making of a written request to justify an exception to a development standard.

This report and the information herein constitute a written request for the purposes of section 4.6(3).

Section 4.6(3) also states that request must demonstrate:

- (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.

3.3 Section 4.6(4)

This section requires the consent authority to be satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subsection (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,

Subsection 4.6(4)(b) further requires that the concurrence of the Planning Secretary has been obtained.

The information responding to these heads of consideration is provided in the following sections of this written request.

4 Compliance is unreasonable or unnecessary

Subsection 4.6(3)(a) of Appendix 10 to the Central River City SEPP requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The relevant case law for this matter is *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 through which Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard. In addition, this is reinforced in Preston's earlier decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 where it was stated that one means of demonstrating that compliance with a development standard is unreasonable is to demonstrate that **the objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe Test No. 1)**.

Consistent with this methodology in *Wehbe Test No 1*, It is considered that the potential adverse impacts of the proposed development (and of the eight breach specifically) can be appropriately mitigated or minimised. The consistency of the proposed revisions with the objectives of the building height development control are examined below.

4.1 Visual impact

The amended design retains the two-storey expression of the north building wing and single-storey expression of the west wing of the approved DA 1057/2021/JP, **with overall lower heights of buildings**.

The heights of the amended building designs are sympathetic to the existing heritage items on the site.

The amended design considers the ridge-line of existing heritage item Nelson Hall as the defining height scale for the site, and all proposed massing sits below. This ensures that from the northern approach to the site, the new amending design remains visually recessive and secondary to the heritage items Nelson Hall and Box Hill House.

A horizontal design language is proposed in the form of landscape batters and terracing to the northern carpark that aims to further reduce the perceived scale of the amending design from a two-storey expression at the northern wing, to a single-storey 'pavilion', that appears sitting atop a contemporary landscaped terrace.

The contribution of the height exceedance elements to the viewshed is illustrated in the Neighbouring View Analysis (Plus Architecture) which is provided at Appendix A to this Request.

It is noted that the viewshed from the north-west of the subject site (shown as Perspective 1 in Appendix A) affords the viewer – assuming a 1.6 m high eye level – with a more substantial line of sight to those elements of the building which exceed the 8.5 m height plane. The contribution of those elements to the viewshed is, however, not the dominant visual element in the perspective and remains well integrated to the overall built form.

The three other perspectives from surrounding viewpoints register a negligible or nil visual effect associated with the building elements above the 8.5 m height plane.

4.2 Amenity (solar access and open space)

The amending DA is designed to ensure generous and year-long access to direct solar access and daylight to each of the distinct programs.

The northern wing consisting of the swim-school and open-plan office spaces is positioned at an east-west alignment to ensure the longest and main frontages of these spaces are north-facing, enjoying day-long access to direct sunlight.

The eastern elevation of the north wing frames the heritage courtyard in front of Nelson Hall and is where the new café location is proposed. Its proximity to heritage listed Nelson Hall both activates and contributes to the amenity and community-focused design of the lawn terraces terminating at Nelson Hall.

The western wing containing the CPP space is aligned to a north-south orientation such that its main west-facing frontage enjoys afternoon sunlight and expansive western views. The adjacent sensory garden to its east also shares the same north-south alignment and enjoys good solar access. The wing is positioned near parallel to the western façade of Ross House and takes advantage of the sites' sloping topography. The single-storey expression sits below the ground-level of Ross House and ensures that the proposed Allied Health spaces inside Ross House are not overshadowed by the amending design.

Shadow diagrams prepared by Plus Architects (provided at Appendix B) identify that the proposed revisions to design do not impact solar access for any of the planned future residential development. Shadow diagrams have been prepared to demonstrate the effect of the height exceedance. It is noted that the shadow resulting from the height exceedance is negligible and impacts are generally limited to shadow over the roof and service carpark at 9:00 am on the winter solstice. Refer to the Shadow Diagrams at Appendix B to this Request.

In the circumstances outlined above, and having regard to the fact that the overall height is lowered, as is the extent of height above the 8.5m height plane (when compared to the existing approved scheme for the Site), it is clear that strict compliance would be unreasonable in the extreme, and unnecessary, given that the objectives of the height standard are met in any event (as addressed further below).

5 Sufficient environmental planning grounds

Subsection 4.6(3)(b) of Appendix 10 to the Central River City SEPP requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant case law with respect to Subsection 4.6(3)(b) is *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 through which Pearson C found that there is an onus on the applicant to demonstrate, through the written request, that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

5.1 Alternative options considered

The request for exemption arises from an amending DA whereby, if approved, the development authorised under DA 1057/2021/JP would be subject to certain revisions in design and layout.

The primary option would be to retain the design and layout unchanged, and simply implement the development as authorised under DA 1057/2021/JP.

5.2 Environmental planning grounds

5.2.1 Social Benefit

Firstly, and as a general overarching consideration, the proposal (notwithstanding the height breach) provides obvious and important social benefits, being a particularly relevant environmental planning ground that may be relied upon in the context of a clause 4.6 variation request, or even generally: *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 at [100–102].

5.2.2 Heritage

The objects of the EP&A Act include:

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

Sustainable management of heritage buildings includes adaptive reuse. One of the objects of the *Heritage Act 1977* (Heritage Act) is to encourage the adaptive reuse of items of State heritage significance (Section 3(e)).

A Heritage Impact Assessment (HIS) was prepared for the subject site pursuant to DA 1057/2021/JP to address the requirements of the Heritage Act and the endorsed Conservation Management Plan (CMP). An addendum to the HIS was prepared in September 2021 following the receipt and implementation of comments from Council and Heritage NSW as delegate for the Heritage Council of NSW.

The HIS and addendum concluded that the:

- project offers a substantial positive heritage outcome which will support the ongoing conservation of the State-listed heritage item and the viable continuation of a significant historic use

(Mackay Strategic 2021, p.5).

The proposed design and layout revisions do not include amendments to the works to the heritage significant built elements of the subject site, being Box Hill House, Nelson Hall and Ross House. The findings and recommendations of the HIS and addendum in relation to the works to these three built elements remain relevant.

A SoHI (EMM 2023) has been prepared to assess the proposed design and layout revisions and indicates the amended design enhances the approved DA design in terms of the massing and reduction in the bulk of the proposed McCall Community Hub. Through a variation in heights, use of materials, fenestration, openings and elements such as pergolas, the overall bulk of the new building will be reduced. As a result, the proposed McCall Community Hub will have the appearance of a new intervention without reducing the visual prominence or appeal of the built heritage elements.

The SoHI concludes that the proposed design and layout revisions would not result in additional heritage impacts but would provide increased interpretive opportunities. Further, the modifications would not obscure or unduly intrude into views towards the heritage items.

5.2.3 Accessibility

The objects of the EP&A Act include two relevant matters:

- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The principles of good design and amenity for the users of the built form translate to the suitability of design at the Community Hub for the range of users which will include people with a disability.

The principle of protecting the health and safety of occupants of built structures is also relevant for the same reasons.

The needs of the different user groups underpinned the revised design and informed an all-inclusive, accessible design outcome. Equitable and dignified wheelchair access has been provided to all spaces via ramps and vertical transportation. They are designed such that they become primary to the subject site and integrated into the sloped, terracing language of the landscape and façade design.

5.2.4 Topography

The existing buildings are located at the knoll of the Box Hill locality and are centrally positioned within the overall McCall Gardens.

Given the low and undulating topography of the precinct, these buildings – whether added to or retained without further adaptation – will remain the dominant items in views in an arc from the north-west through north, east and south to the south-west.

The new additions have been sited to take advantage of the topography surrounding the existing heritage items. They allow the amending design to be positioned around existing Ross House such that no overshadowing to Ross House' east and western facades occur. The northern wing is sited such that it visually sits lower than the ridgeline of Nelson Hall, becoming secondary in nature and sympathetic to existing Nelson Hall and Box Hill House.

It is noted that this is a **site-specific factor** and therefore is a valid consideration in terms of establishing 'sufficient environmental planning grounds': *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

5.2.5 Amenity

The objects of the EP&A Act include:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources

i Solar access

Shadow diagrams prepared by Plus Architects (provided at Appendix B to this Request) identify that the proposed revisions to design do not impact solar access for any of the planned future residential development. All shadowing is limited to within the subject site.

ii Privacy

Privacy between different user groups within the amending design, as well as to adjoining lots, has been considered. Assessing the use-cases of each space, proposed compositions of walls achieve acoustic performances that allow the Community Participation Programs (CPP) facilities, swim school, café and open plan office spaces to be acoustically insulated from each other.

Placement of windows and siting of the new massing allow each wing of the amending design to look outwards towards the north and west, rather than inwards and into each other.

The overall scale of the site allows generous separation between the amending design and any adjoining future developments. The entirety of the north-east, east and southern approaches to the site are retained as landscape, with trees and vegetation that further enhance visual privacy between the amending design and its neighbours.

Table 5.1 Assessment against objectives for building height development standard

Objective	Assessment
To establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct.	<p>This objective is a neutral objective in that it relates to how height limits are set, in a strategic planning sense. It is therefore not strictly relevant to this Section 4.6 request, as held in <i>Baron Corporation</i>.</p> <p>In any case, the 8.5 m height of buildings development standard has been established with regard to the R2 Low Density Residential zoning of this part of the subject site. It is noted that the subject site also includes land zoned RE2 Private Recreation and R4 High Density Residential. The land zoned R4 has a building height limit of 21 m, and the land zoned RE2 does not have a specified maximum for height of buildings. The subject site is therefore at the cusp of different building height controls, and also supports existing buildings such as Box Hill House which retains its landmark presence on the knoll of Box Hill.</p> <p>The height of buildings provisions closely reflect the land zoning under the Box Hill Growth Centre Precincts Plan. The land zoning provides for community facilities to be permitted with consent, and there are established buildings within the subject site that more reliably set the physical context within which building height should be considered.</p>
To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space.	<p>Visual impact has been assessed and is supported by a Neighbouring View Analysis (refer to Appendix A). The visual effect of the building elements above the 8.5 m height plane is only perceived by people in the public spaces to the north-west of the subject site. From that viewpoint, the elements above the 8.5 m height plane remain integrated with the overall built form and do not dominate the viewshed.</p> <p>Shadow diagrams prepared by Plus Architects (refer to Appendix B) identify that the proposed revisions to design do not impact solar access for any of the planned future residential development. Provision of large, landscaped batters and earthwork ensure reasonable privacy maintained by adjoining new developments, and assist to minimise visual impact. Height overall has been reduced from the already-approved scheme, further assisting to meet these objectives.</p>
To facilitate higher density development in and around commercial centres and major transport routes.	<p>This site is not adjacent to a commercial centre or major transport route. This objective is therefore not strictly relevant, as per <i>Baron Corporation</i>.</p>

Table 5.2 **Assessment against objectives for R2 land zone**

Objective	Assessment
To provide for the housing needs of the community within a low density residential environment.	Not a relevant objective in this case as housing is not proposed.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed design and layout revisions to the Community Hub at McCall Gardens provides a range of facilities that serve the needs of disabled persons. The proposed development will significantly add to, and improve, the facilities capacity to perform this valuable community service, and plainly provides valuable facilities and services to meet the day to day needs of residents.
To allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.	Not a relevant objective in this case as housing is not proposed.
To support the well-being of the community, by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low density residential environment.	The proposed design and layout revisions to the Community Hub at McCall Gardens provide a range of facilities that serve the needs of disabled persons in the community. The design revisions improve the facilities to perform this valuable community service. The proposed development is separated from future residential development and would not create any adverse amenity impacts. There is also an obvious social benefit provided by the proposal.

6 Concurrence of the Secretary

Subsection 4.6(4)(b) of Appendix 10 to the Central River City SEPP requires the concurrence of the Secretary with respect to the exemption of the relevant development standard.

Planning Circular PS 18-003 Variations to Development Standards, issued on 21 February 2018,

All consent authorities may assume the Secretary's concurrence under:

- Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or
- State Environmental Planning Policy No 1 – Development Standards.

There are conditions attached to this assumed concurrence, notably:

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council.

The Appendix 10 of the Central River City SEPP adopts clause 4.6 of the Standard Instrument and therefore, that prerequisite of PS 18-003 is met.

The concurrence of the Secretary may therefore be required depending on the consent authority undertaking the determination.

The advice from The Hills Shire Council is that the amending development application will be determined by the Sydney Central City Planning Panel and therefore (if that is the case) the concurrence of the Secretary will not be required.

7 Conclusion

The objectives of section 4.6 of the Hills Growth Precincts Plan provide for flexibility and for design to achieve a superior outcome notwithstanding a technical non-compliance with a prescribed development control.

This request demonstrates that the development, if amended in line with the proposed variations in design and layout, would not cause environmental harm and is consistent with the objectives of the development standard.

Further, the request demonstrates that there are sufficient environmental planning grounds such that compliance with the development standard is unreasonable or unnecessary.

Favourable consideration of this request by the consent authority will enable the Community Hub at the McCall Gardens facility to achieve an optimal outcome for facility users and the broader community. It will also provide critically valuable social benefits to the community, in particular to persons with a disability.

ATTACHMENT K – NSW HERITAGE GENERAL TERMS OF APPROVAL

Department of Planning and Environment



HMS ID: 3268
Your ref: CNR-57494 1880/2023/JP

Robert Buckham
Principal Coordinator Development Assessment
The Hills Shire Council
PO BOX 7064
NORWEST NSW 2153
By email: rbuckham@thehills.nsw.gov.au

Dear Mr Buckham

HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL Integrated Development Application

Address: 10 Terry Road BOX HILL NSW 2765
SHR item: Box Hill House in grounds of McCall gardens, SHR no. 00613
Proposal: Amending Development Application to the approved development (1057/2021/JP) for the redevelopment of an existing community facility, including demolition of day program building, additions to Ross House, restoration of Box Hill House and Nelson Hall, and construction of a Disability Support Centre

IDA application no: HMS ID 3268

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application. In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted:

APPROVED DEVELOPMENT

1. All work shall comply with the information contained within:
 - a) Architectural drawings, prepared by Plus Architecture, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: McCall Community Hub			
DA-A-000	Cover Page	26/05/2023	B
DA-A-020	Site Analysis Plan	26/05/2023	B
DA-A-025	Staging Plan	26/05/2023	B
DA-A-026	Area Plan	26/05/2023	B

DA-A-027	Neighbouring Lot Analysis	26/05/2023	B
DA-A-030	Demolition Site Plan	26/05/2023	B
DA-A-031	Nelson Hall Modification Plan	26/05/2023	B
DA-A-032	Box Hill House Demolition Plan	26/05/2023	B
DA-A-033	Box Hill House Proposed Plan	26/05/2023	B
DA-A-034	Box Hill House Proposed Elevations Plan	26/05/2023	B
DA-A-035	Box Hill House Proposed Works	26/05/2023	B
DA-A-036	Ross House Lower Ground Demolition Plan	26/05/2023	B
DA-A-037	Ross House Upper Ground Demolition Plan	26/05/2023	B
DA-A-038	Ross House Demolition Elevations	26/05/2023	B
DA-A-040	Ground Disturbance Plan	26/05/2023	B
DA-A-050	Site Plan	26/05/2023	B
DA-A-055	Surface Parking Details	26/05/2023	B
DA-A-099	Basement Plan	26/05/2023	B
DA-A-100	Lower Ground Plan	26/05/2023	B
DA-A-101	Upper Ground Plan	26/05/2023	B
DA-A-102	Roof Plan	26/05/2023	B
DA-A-150	Detail Plans - Sheet 1	26/05/2023	B
DA-A-151	Detail Plans - Sheet 2	26/05/2023	B
DA-A-152	Detail Plans - Sheet 3	26/05/2023	B
DA-A-153	Detail Plans - Sheet 4	26/05/2023	B
DA-A-154	Detail Plans - Sheet 5	26/05/2023	B
DA-A-200	Elevations - Sheet 1	26/05/2023	B
DA-A-250	Sections - Sheet 1	26/05/2023	B
DA-A-400	3d Perspective Views - Sheet 1	26/05/2023	B
DA-A-401	3d Perspective Views - Sheet 2	26/05/2023	B
DA-A-402	3d Perspective Views - Sheet 3	26/05/2023	B
DA-A-1000	External Finishes	26/05/2023	B

b) Landscape drawings, prepared by Durie Design, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: McCall Community Hub			
L-00	Title Page	08/06/23	D
L-01	Landscape Master Plan	08/06/23	D
L-02	Existing Trees Plan	08/06/23	D
L-03	Lower Ground Landscape Plan	08/06/23	D
L-04	Carpark Area Landscape Plan	08/06/23	D
L-05	Lawn Terrace Landscape Plan	08/06/23	D

L-06	Courtyard Garden Landscape Plan	08/06/23	D
L-07	Sensory Garden Landscape Plan	08/06/23	D
L-08	Cultural Walk and Lookout	08/06/23	D
L-09	Upper Ground Landscape Plan	08/06/23	D
L-10	Planting Schedule	08/06/23	D
L-11	Planting Schedule	08/06/23	D
L-12	Typical Details & Landscape Notes	08/06/23	D
L-13	Irrigation Plan	08/06/23	D

- c) Statement of Heritage Impact for McCall Community Hub, prepared by EMM, dated 8 June 2023, and the Recommendations at Section 8.
- d) 'McCall Community Gardens Amending Development Application: Historical archaeological assessment addendum,' prepared by EMM Consulting, dated 19 January 2023.

EXCEPT AS AMENDED by the conditions of this approval:

DETAILS TO BE SUBMITTED FOR APPROVAL

2. The following information is to be submitted with the s60 application for approval by the Heritage Council of NSW (or delegate):
 - a) Detailed drawings of all roof replacement/repair work at Box Hill House and Nelson Hall, including profiles, materials and finishes of the roof and rainwater goods.
 - b) Detailed drawings of the ceiling work at Nelson Hall, including the reinforcement structure.
 - c) Detailed drawings of the fit out and services at Box Hill House and Nelson Hall.
 - d) Colour scheme to exterior timber elements to be repainted to demonstrate that a sympathetic and historically appropriate scheme will be used.
 - e) Revised landscape plan to show how the historic access road will be terminated at the eastern end at the junction with the new road.
 - f) Revised architectural plans to delete the intrusive carpark along the historic access drive.
 - g) Details of the cultural walk and viewing platform, to form part of a Heritage Interpretation Plan.
 - h) Revised landscape plan to show the retention of memorials to former residents in their original location, or if necessary, relocated to an appropriate location within the grounds and buildings.
 - i) Details of a sympathetic surface treatment to the historic access driveway and circular driveway (if proposed to be changed).

Reason: The details were not supplied with the application. The assessment and management of these details are essential to obtain a good heritage outcome.

HERITAGE CONSULTANT

3. A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the

