

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-472 - DA 59/2024/JP
PROPOSAL	Demolition of Existing Structures and Construction of a Residential Flat Building Containing of 148 Units
ADDRESS	17-23 Fishburn Crescent Castle Hill 23-27 Chapman Avenue Castle Hill
APPLICANT	Archidrome Pty Ltd
OWNERS	Mr T Gavellas, Mrs D Gavellas, Mr C Efstathios, Miss A Gavellas, Mr C N Gavellas, Mrs S Peharda, Mr A Ghaffar, Ms D Ansari, Mr D Wyatt, Mrs F Wyatt, Mrs X Di, Mr Y Guo, Mr N Emanouel, Mrs H Emanouel and Ms L Lee, Ms M Lee
DA LODGEMENT DATE	14 July 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19 and Schedule 6 of SEPP Planning Systems 2021
CIV	\$62,648,550.00 (excluding GST)
CLAUSE 4.6 REQUESTS	The Hills LEP 2019 Clause 4.3 Height of Buildings R4 High Density Residential zone
KEY SEPP/LEP	The Hills LEP 2019
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Two submissions Land owners consent not provided for eastern lot indicated in concept sketches. Construction management of traffic, noise and dust.
DOCUMENTS SUBMITTED FOR CONSIDERATION	Statement of Environmental Effects – Miletic-Mieler Development Consultants Pty Ltd Clause 4.6 Variation Request – Miletic-Mieler Development Consultants Pty Ltd Architectural Plans – Archidrome Design Verification Statement – Archidrome (Tarun Chadha)

	Urban Design Report - Archidrome Civil and Hydraulic Engineering Plans – C & M Consulting Engineers Landscape Plans – Site Image Landscape Architects Survey Plan – East Coast Positioning Surveyors Arboricultural Impact Assessment and Tree Specification Report – Horticultural Resources Consulting Group Traffic and Parking Impact Report – TEF Consulting Waste Management Plan – Dickens Solutions BCA Assessment Report – Jensen Hughes BASIX Certificate and NatHERS report – SLR Consulting Australia Ltd Acoustic Assessment Report – Acoustic Logic Access Report – Vista Access Architects Capital Investment Value Report – Hugh B. Gage Pty Ltd
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	Electronic
PLAN VERSION	N/A
PREPARED BY	Cynthia Dugan – Principal Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	26 March 2024

EXECUTIVE SUMMARY

The Development Application seeks consent for the demolition of existing structures and construction of an eight (8) storey residential flat building comprising 148 units, a café, gymnasium, multipurpose room and two levels of basement parking and associated drainage, landscaping and road works.

The residential flat building is permissible in the R4 High Density zone and is located within the Showground Station Precinct under Part 9 of the Hills LEP 2019. The development application has been assessed under the relevant provision of 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 (Housing) 2021, The Hills LEP 2019 (LEP 2019) and The Hills Development Control Plan 2012.

The proposal does not meet several provisions under LEP 2019 regarding permissibility of a food and drink premises within a R4 High Density Residential zone, Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio, Clause 9.3 Minimum Building Setbacks, Clause 9.5 Design Excellence and Clause 9.7 Residential development yield on certain land within the Showground Precinct. These non-compliances are summarised below:

- *Permissibility* – The proposal includes a ‘café’ which is defined as a ‘food and drink premises’ under The Hills LEP 2019. ‘Food and drink premises’ are a type of retail and commercial premises which are prohibited within the R4 High Density Residential zone.
- *Floor Space Ratio* - The proposal does not meet the minimum site area or unit size and mix provisions required under Clause 9.7 of LEP 2019 to utilise the incentive FSR. The proposal seeks a variation to the base FSR applicable to the land which is a variation of 38% to Clause 4.4 of the LEP 2019. No Clause 4.6 written submission has been provided to vary the FSR standards. The development does not meet the objectives of the standard.
- *Height* - Clause 4.3 Height of Buildings development standard permits a maximum height of 27m for the site. The maximum height and variation proposed is 30.35m (12.4%). The Applicant’s Clause 4.6 written request has not demonstrated that sufficient environmental planning grounds have been provided to justify the contravention and as such, development consent cannot be granted to the Development Application.
- *Design Excellence* - The proposal does not satisfy Clause 9.5 of LEP 2019 regarding design excellence. The Applicant has not addressed the concerns raised by the Design Review Panel with regards to excessive bulk and scale, lack of architectural diversity, lack of integration with urban design and architectural character of the area, inadequate provision of landscaping and inadequate setbacks. In this regard, development consent must not be granted to the development.
- *Front Setbacks* – The proposal does not satisfy Clause 9.3 of LEP 2019 which prohibits development unless the front building setback is equal to or greater than the distance shown on the Building Setback Map which is 10m. A pergola for the communal open space and portions of the roof of the residential flat building are located within 10m of the front property boundary on Fishburn Crescent. Therefore, development consent must not be granted to the development.

The proposal does not meet several design principles and Apartment Design Criteria under SEPP (Housing) 2021. These issues are summarised below:

- *Design Principles* - The proposal does not satisfy the design principles regarding context and neighbourhood, built form and scale, landscape, amenity and aesthetics. It cannot be concluded the proposal will provide for a built form outcome that would be appropriate in bulk and scale or provide for an appropriate landscaping, amenity and aesthetics or a consistent streetscape presentation.
- *Apartment Design Guide* - The proposal has been assessed against the design criteria of the Apartment Design Guide (ADG). Insufficient information has been provided to demonstrate that satisfactory residential amenity will be provided to the future occupants of the development with respect to deep soil provision, solar access to apartments, apartment layouts, common circulation and spaces and building separation and visual privacy.

The application has not demonstrated that the proposal satisfies the provisions for stormwater and water quality for the Hawkesbury and Nepean Catchment under Chapter 6 of the SEPP (Biodiversity and Conservation) 2021. The proposal has not demonstrated that the development will have a neutral or beneficial effect on the quality of water entering a waterway, that the development will increase the amount of stormwater run-off from a site, or incorporate appropriate on-site stormwater retention, infiltration or re-use. In this regard, development consent must not be granted to development.

The proposal does not meet several precinct specific development controls under the Hills DCP 2012. These issues are summarised below:

- *Precinct Specific DCP Controls* - The proposal has been assessed against the precinct specific controls for the Showground Precinct under Part D Section 19 of The Hills DCP. The proposal does not satisfy the controls relating to setbacks, building lengths, residential uses on ground level, open space and landscaping and integrated water management. As a result, the proposal does not ensure consistency with the built form and character envisaged within the Showground Station Precinct and it cannot be determined that appropriate amenity or environmental outcomes are provided for future residents or adjoining properties.

The proposal has not provided adequate information to make a complete assessment of the development application regarding environmental impacts relating to tree management, landscaping, flooding and stormwater management. The proposal does not satisfy the development controls for residential development under the Hills DCP.

The application is not considered to be in the public interest as the proposal has not demonstrated a satisfactory design, planning and environmental outcome suitable for the site.

The application was notified for 14 days, with one submission being received during the notification period. The submission raised concerns relating to lack of street parking and construction management including traffic, noise and dust. An additional submission was received after the notification period from an adjoining eastern neighbour at No. 21 Chapman Avenue indicating that they do not consent to any development on their land. These issues are considered further in this report.

Following a detailed assessment of the proposal, pursuant to Section 4.15(1) and 4.16(1)(b) of the *EP&A Act*, DA 59/2024/JP is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

The site is legally described as Lots 129, 130, 131, 132, 133, 134 and 135 in DP 250610, 17, 19, 21 and 23 Fishburn Crescent and 23, 25 and 27 Chapman Avenue, Castle Hill. The site comprises of 7 existing residential lots with a total site area of 6,610.7m². The site is bounded by Fishburn Crescent to the north and Chapman Avenue to the southwest and residential properties to the southeastern boundary. The site comprises a 110.915m southern frontage to Chapman Avenue, 121.075m north-western frontage to Fishburn Crescent; and 81.69m side boundary to the southeast. The site has a fall of approximately 3m from north to south and approximately 2m from east to west.

The site is located in the Showground Station Precinct under LEP 2019 and was rezoned from R2 Low Density to R4 High Density by the NSW Government on 15 December 2017.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

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

- Demolition of existing structures, tree removal and construction of an 8 storey residential flat building over a two-level basement carpark accommodating 337 car spaces.
- A total of 148 units comprising 20 x 3-bedroom + study units, 14 x 3 bedroom units, 45 2 bedroom + study units, 48 x 2 bedroom units and 21 x 1 bedroom units.
- Communal open space areas are proposed at ground and roof levels.
- Internal communal facilities including ancillary gym, multi-purpose room and communal café.
- Associated road works, retaining walls, fencing, drainage and landscaping.

The building exceeds the maximum height standard of 27m with a maximum height of 30.35m proposed, resulting in a variation of 3.35m or 12.4%.

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

Whilst the gross floor area proposed exceeds the Floor Space Ratio (FSR) permitted under the development standard, a Clause 4.6 written submission was not submitted with the Development Application.

2.2 Background

The Applicant elected not to arrange a pre-lodgement meeting prior to the lodgement of the application.

A chronology of the Development Application since lodgement is outlined below including the Panel's involvement with the application:

Chronology of the DA

Date	Event
14 July 2023	DA lodged.
20 July 2023 – 10 August 2023	Notification of the application.
24 July 2023	Council staff requested the Development Application is withdrawn as the proposal seeks to utilise the incentive FSR under Clause 9.7 of the LEP 2019 despite not comprising a minimum site area of at least 10,000m ² . Whilst documentation was submitted with the Development Application noting that there is potential for a

	future “Stage 2” development on eight adjoining lots to the east, owner’s consent has not been provided for these lots and did not form part of the application.
31 July 2023	Council staff requested clarification on several matters including the traffic generation rates used in the traffic report, unit numbering, and the number of bedrooms for each unit to calculate development contributions.
2 August 2023	A meeting was held with Council staff and the Applicant to discuss the non-compliance to Clause 9.7 of the LEP 2019.
4 August 2023	Council staff requested further information to address waste management concerns as the design of the development does not provide for adequate storage or operational space for the required waste facilities.
11 August 2023	Council staff requested further information to address engineering concerns including a draft subdivision plan, civil engineering drawings, insufficient stormwater details including OSD design and insufficient car parking layout and driveway profiles. Flood impact assessment and associated TUFLOW pre and post flood modelling was also requested as the development fronts a sag point along Chapman Avenue and therefore the finished floor levels of the units and driveway access would need to comply with the relevant flood planning levels.
13 October 2023	Council staff provided the following advice to the Applicant: <i>“Upon further review, it is noted that the development application has been under assessment for 91 days. The Hills Shire Council are part of the Faster Regionally Significant DA Pilot program where the NSW Department of Planning requires regionally significant DAs to be determined by the Sydney Central City Planning Panel within 250 days. As there are several other outstanding items including engineering, waste management, landscaping issues and a review by the Design Review Panel to meet Clause 9.5 Design Excellence, it is unlikely a favourable determination can be recommended within the 250 days (by 20 March 2024)”.</i>
16 October 2023	The Applicant provided a response to Council staff indicating that they would be acquiring four eastern lots including 22 and 25 Fishburn Crescent and 21 and 22 Chapman Avenue and were <i>“confident of updating plans with a concept DA by the end of this month with the RFI matters resolved e.g. waste management, and landscaping issues”.</i>
24 October 2023	Council staff provided further correspondence to the Applicant as follows: <i>“As previously noted in my email dated 13 October 2023, the Sydney Central City Planning Panel may likely request the referral of the Development Application (DA) and Council Assessment</i>

	<p><i>Report for determination by 20 March 2024. As we have not yet received the response to the requests for additional information sent to you from 24 July 2023, a review has not yet been undertaken by the Design Review Panel and the amended DA appears to alter the DA from a Built Form Application to a Concept DA under Division 4.4 of the EP& A Act 1979 (contrary to what was lodged on the NSW Planning Portal), it is unlikely we would resolve all the issues by that timeframe. It is therefore unlikely that Council staff will be in a position to recommend a favourable determination by 20 March 2024. Note also that an amended DA would require an additional charge of 25% of the original fee in accordance with the Schedule of Fees and Charges and will need to be renotified”.</i></p>
25 October 2023	<p>Invoice issued to the Applicant for an amended Development Application.</p>
1 November 2023	<p>Amended plans and associated documentation were sent by the Applicant to Council staff to be reviewed as part of the Design Review Panel Package over 11 existing residential lots (with the inclusion of 25, 27 Fishburn Crescent and 19 and 21 Chapman Avenue). The Applicant submitted a letter indicating that the DA had been amended to be “a <i>Stage 1 and 2 Concept and Detailed Development Application under Division 4.4 of the Environmental Planning and Assessment Act 1979 to comply with the 10,000m² site area requirement</i>”. However, an amendment to the DA was not formally made on the NSW Planning Portal. Amended plans and associated documentation including a revised Statement of Environmental Effects were not provided to detail any changes to the application.</p> <p>The Applicant also uploaded a “consolidated RFI Response” on the NSW Planning Portal, however supporting documentation including a revised landscape plan, arborist report, stormwater and engineering/civil plans, flood impact assessment and flood modelling were not provided.</p>
11 November 2023	<p>A briefing was held with the Sydney Central City Planning Panel (The Panel). The Panel noted the following:</p> <ul style="list-style-type: none"> • <i>The panel queried whether a pre-lodgement meeting was held. Council advised that there was not a pre-lodgement meeting for this application.</i> • <i>The panel noted that the applicant needs to clarify within their application that Clause 9.7 of The Hills Local Environmental Plan 2019 does not in the current circumstances apply.</i> • <i>The panel noted inconsistencies between landscaping and proposed plans (with relation to building heights)</i> • <i>The panel targets determination of RSDAs within 250 days. The chair recommends that the applicant focus their efforts on expediting amendments or providing additional information required by Council to allow them to complete their assessment without delay.</i>

23 January 2024	Email received from the Applicant requesting a meeting to discuss <i>“a shift away from the bonus 40% approximate FSR under Clause 9.7 and instead propose utilising the affordable housing provision of a 30% bonus, plus requesting for a 10% FSR increase via a Clause 4.6 Variation”</i> .
24 January 2024	Meeting held between Council staff and the Applicant regarding the potential for an amendment to the development application to include an affordable housing component. Council staff recommended a new Development Application be lodged as the amendments would result in substantial changes, re-referrals would be required to internal and external agencies and a further Design Excellence Panel review would be required. It was advised that any amendment to a development application would need to be requested on the NSW Planning Portal. It was also noted that the consent authority could reject the application for an amendment under Section 38 of the Environmental Planning and Assessment Regulation 2021.
13 February 2024	Council staff advised the Applicant the Development Application was listed for referral to the SCCPP on 21 March 2024 however if the application was withdrawn, a refund of 50% of the development application fees would be provided.
15 February 2024	Council Management staff briefed the SCCPP Panel Chair regarding the development application. The Panel chair requested a Council Assessment Report and recommendation for determination by 31 March 2024 unless the application was withdrawn. This was reiterated to the Applicant. The Applicant verbally indicated the Development Application would likely be withdrawn subject to a 50% refund and confirmation by his client.
4 March 2024	The Applicant was advised that if the DA is not withdrawn by 6 March 2024, Council staff would start preparing a report to the Panel and a refund of DA fees would no longer be available.
6 March 2024	Letter received from Applicant requesting an extension of time to provide additional information and to amend the application to include an affordable housing component. This letter was also sent to the SCCPP.

3. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

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

The following Environmental Planning Instruments are relevant to this application:

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

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

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6.	Y
Resilience and Hazards SEPP	Clause 4.6 Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory.	Y
Biodiversity and Conservation SEPP	Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments.	N
SEPP (Housing)	Chapter 4 Design of residential apartment development and Schedule 9 – Design Principles. The proposal is contrary to the design quality principles and the proposal is consistent/contrary to the ADG requirements for deep soil, solar access, apartment layout, building separation/visual privacy and common circulation and spaces.	N
BASIX SEPP	Clause 6 – BASIX Certificate required to accompany development application	Y
LEP 2019	<ul style="list-style-type: none"> • Clause 4.1 – Lot size. 	NA

	<ul style="list-style-type: none"> • Clause 4.3 – Height of Buildings 	N
	<ul style="list-style-type: none"> • Clause 4.4 – Floor Space Ratio 	N
	<ul style="list-style-type: none"> • Clause 6.3 - Servicing 	Y
	<ul style="list-style-type: none"> • Clause 7.2 – Earthworks 	Y
	<ul style="list-style-type: none"> • Clause 9.1 – Minimum lot sizes for residential flat buildings and shop top housing 	Y
	<ul style="list-style-type: none"> • Clause 9.2 – Site area of proposed development includes dedicated land 	Y
	<ul style="list-style-type: none"> • Clause 9.3 – Minimum building setbacks 	Y
	<ul style="list-style-type: none"> • Clause 9.4 Development requiring the preparation of a development control plan 	Y
	<ul style="list-style-type: none"> • Clause 9.5 Design excellence 	N
	<ul style="list-style-type: none"> • Clause 9.7 – Residential development yield on certain land 	N

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 2 of Schedule 6 of the SEPP as the proposal is development for *General development over \$30 million* with a CIV of \$62,648,550. Accordingly, the Sydney Central City Planning Panel is the determining authority for the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

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. The submitted Statement of Environmental Effects indicates that subject site has been used in the past for low density residential purposes and the development proposal is not considered to be affected by site contamination and is unlikely to result in adverse impacts to human health or the environment. The development application has been reviewed by Council's Senior Environmental Health Officer who raised no objections to the proposal and recommended conditions should consent be granted to the application. In this regard, it has been demonstrated that the site is suitable for the proposed development.

SEPP (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. It has not been demonstrated that the proposed development has been designed in accordance with the requirements of Chapter 6, Part 6.2, Section 6.6. In particular, the proposal has not demonstrated that the development will have a neutral or beneficial effect on the quality of water entering a waterway, that the development will increase the amount of stormwater run-off from a site, or whether the development will incorporate appropriate on-site stormwater retention, infiltration or re-use. In this regard, development consent must not be granted to development. Refer section 4.2 for further discussion on outstanding concerns raised by Council's Engineering section.

The Hills Local Environmental Plan 2019 (LEP 2019)

a) Zoning and Permissibility

The subject site is zoned R4 High Density Residential under the LEP 2019. The development proposes residential flat buildings, food and drink premises and indoor recreational facility which are defined in the LEP as follows:

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

Note—

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

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note—

*Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.*

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

The proposed 'residential flat building' is a permissible land use within the R4 High Density Residential zone. A recreation facility (indoor) is prohibited in the R4 High Density Residential zone. However, as this land use would be used exclusively for residents of the principal purpose, being a residential flat building, this is considered an ancillary use.

A food and drink premises is a type of retail and commercial premises which is prohibited in the R4 High Density Residential zone. The food and drink premises is located in front of the entrance to the residential flat building. Patrons would not only be limited to future residents of the principal purpose. The food and drink premises is considered an independent, dominant use in its own right and therefore not an ancillary use. Therefore, the proposal does not satisfy LEP 2019 regarding permissibility.

b) Objectives of the Zone

The objectives of the R4 High Density Residential zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage high density residential development in locations that are close to population centres and public transport routes.

The proposal has not demonstrated that the development would provide for a suitable outcome that meets the zone objectives.

c) *Development Standards*

The following addresses the principal development standards of the LEP 2019 relevant to the subject proposal:

LEP STANDARD/ PROVISION	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.3 – Height of Buildings	27 metres	30.35m (12.4%)	No. Refer to height of buildings discussion below.
Clause 4.4 – Floor Space Ratio	1.9:1	2.62:1	No. Refer to FSR discussion below.
Clause 9.1 Minimum Lot Sizes for Residential Flat Buildings and Shop Top Housing	Residential flat building with a height of 11 metres or more – R4 High Density Residential – 3,600m ²	6,610.7m ²	Yes
Clause 9.2 Site Area of Proposed Development includes dedicated land	Land dedication for road widening and open space included as part of the site area for the purpose of calculating FSR.	Land dedication required along Chapman Avenue. This area is included in the site area for the FSR calculation.	Yes
Clause 9.3 Minimum Building Setbacks	Front Building Setbacks to be equal to, or greater than, the distances shown for the land on the Building Setbacks Map.	10m front building setback along Fishburn Crescent identified on mapping instrument.	No. Refer to Building Setbacks discussion below.
Clause 9.5 Design Excellence	Development consent must not be granted unless the development exhibits design excellence.	Response not provided to Design Review Panel comments.	No. Refer to Design Excellence discussion below.

Clause 9.7. Residential Development Yield on Certain Land	If the development is on a lot that has an area of 10,000m ² within the Showground Precinct and provides a specific mix, family friendly unit sizes and parking, the following incentivised Floor Space Ratio can be applied as identified on the FSR Mapping instrument: 2.7:1	The plans do not meet the minimum site area provisions required to apply the incentive clause or demonstrate that the unit mix and sizes meet the provisions. 2.62: 1	No. Refer to FSR discussion below.
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i) Compliance with Height

Clause 4.3 of the LEP 2019 comprises a maximum Height of Buildings standard of 27m for the site. The development proposes a maximum height of 30.35m which is a variation of 3.35m or 12.4% to the standard.

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

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

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

The written submission has not demonstrated that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case and does not provide sufficient environmental grounds to justify contravening the standard for the following reasons:

- Whilst a height envelope analysis (not to scale) has been submitted outlining the exceedances to the height standard, the plans and elevations do not include the relative levels (RLs) for the rooftop fire stairs and pergolas. It cannot be concluded that the extent of the height variation being sought under the Clause 4.6 written submission matches that of the proposed development.
- The written submission indicates that despite the height variation, the proposal is *“unlikely to result in any significant environmental impacts but assists in achieving a higher quality building design and yield that is entirely consistent with the density projections for this site and the desired future character of the locality”*.

Environmental impacts relating to flooding, stormwater management, tree management and waste management have not been adequately addressed to

ensure that the development will result in an appropriate environmental planning outcome. The proposal does not exhibit design excellence in accordance with Clause 9.5 of the LEP 2019. The proposal does not meet the FSR development standards under the LEP 2019 which determines the yield available to the site. Refer section ii) and iii) below.

- The written submission indicates that despite the height variation, *“the proposal represents an appropriate increase and replenishment of the available housing stock with an excellent level of onsite amenity that is wholly in keeping with the desired future character of the locality and design excellence criteria of the Showground Precinct”*.

As above, the proposal has not demonstrated that it exhibits design excellence in accordance with Clause 9.5 of the LEP 2019. The proposal is also inconsistent with several development controls in the Showground Precinct DCP. These controls were adopted to establish the desired future character of the area. In this regard, the proposal is not in keeping with the desired future character of the area.

- The written submission indicates that to *“require strict compliance would result in a building form that provides less amenity for future occupants than an otherwise fully compliant scheme”*.

The proposal is not a fully compliant scheme as it does not comply with several development standards under the LEP 2019, design principles and ADG design criteria under the SEPP (Housing) 2021 and is inconsistent with several development controls under the Showground Precinct DCP. The proposal has not demonstrated that the variation to the height standard provides better amenity compared to that of a fully compliant scheme.

- The written submission has not demonstrated that despite the variation to the height standard, the development is in the public interest.

ii) Compliance with Floor Space Ratio

Clause 4.4 of the LEP comprises a maximum FSR (base) development standard of 1.9:1 for the subject site. The proposed development comprises a FSR of 2.62:1 which exceeds the FSR (base) development standard by 38%.

Whilst the Applicant seeks to utilise the maximum incentive FSR provisions of 2.7:1 under Clause 9.7, the proposal does not meet minimum site area provision to apply this Clause. Clause 9.7 (1) prescribes the following:

(1) This clause applies to development that involves the erection of one or more buildings containing dwellings on a lot within the Showground Station Precinct but only if—

*(a) the site of the development has an area of at least 10,000 square metres,
or*

(b) the site satisfies one of the following and the consent authority is satisfied that development of the site under this clause will promote the orderly development of the precinct—

(i) the site has an area less than 10,000 square metres only because of the creation of roads,

(ii) the site is isolated and it is not practicable to aggregate lots to achieve a site area of 10,000 square metres because of the existing lot configuration,

(iii) the whole of the rear boundary of the site adjoins land zoned RE1 Public Recreation and the site has a depth of no more than 45 metres from that boundary to the road frontage of the site,

(iv) the site comprises lots 41, 42, 43, 44, 45, 46 and 47, DP 259525.

In addition, the proposal does not meet the unit mix and size provisions under this Clause. Clause 9.7 (2) prescribes the following:

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

(a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and

(b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings, and

(c) at least 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110 square metres, and

(d) at least 40% of all 3 bedroom dwellings contained in the development will have a minimum internal floor area of 135 square metres, and

(e) the following minimum number of car parking spaces are to be provided on the site of the proposed development—

(i) for each dwelling—1 car parking space,

(ii) for every 5 dwellings—1 car parking space, in addition to the car parking space required for the individual dwelling.

Whilst the unit mix described in the Applicant's Statement of Environmental Effects indicates compliance with the above provisions, this is not demonstrated in the plans or associated documentation. The submitted plans indicate that less than 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110m². It is noted that five units labelled as "Design Type C9 and C12" are 2 bedroom units containing study rooms which are capable of being used as bedrooms. These units have therefore been counted as 3 bedroom units.

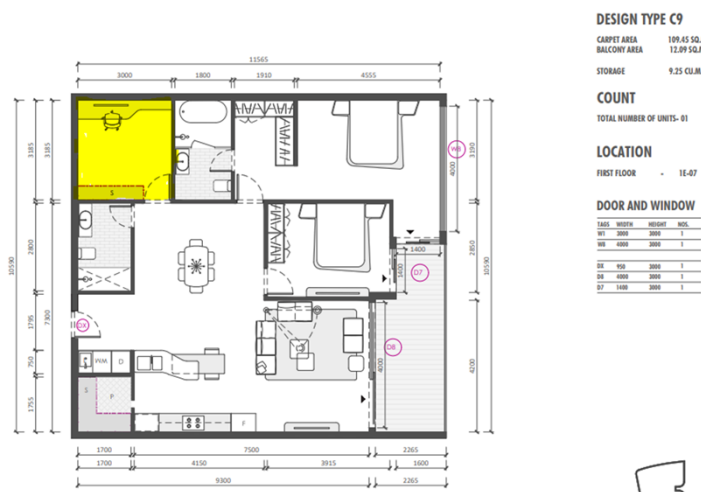


Figure 1: Type C9 2 bedroom units with study highlighted in yellow.

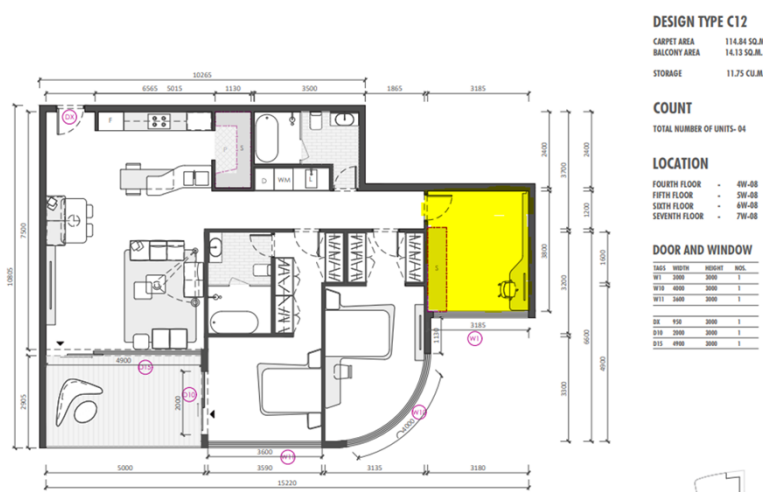


Figure 2: Type C12 2 bedroom units with study highlighted in yellow.

The following table demonstrates the non-compliance to Clause 9.7(2):

Apartment Mix	LEP Development Standard	Proposal	Compliance
One bedroom dwellings	25% to the nearest whole number of dwellings (Maximum)	14% (21 of 148 units)	Yes
Three or more bedroom dwellings	20% to the nearest whole number of dwellings (Minimum)	26% (39 of 148 units)	Yes
Apartment Diversity	LEP Development Standard	Proposal	Compliance
Minimum internal floor area of 2 Bedroom dwellings is 110m ²	≥40%	37.5% (33 of 88 units)	No

Minimum internal floor area of 3 Bedroom dwellings is 135m ²	≥40%	46% (18 of 39 units)	Yes
Parking Type	LEP Development Standard	Proposal	Compliance
1, 2, 3 & 4 Bedroom	1 car space per dwelling and 1 space per 5 units	148 resident spaces and 30 visitor spaces required. Therefore 178 spaces required. 214 car spaces provided on the amended plans (excluding tandem spaces).	Yes

The proposal does not comply with Clause 9.7(1) or (2) and therefore the FSR (incentive) cannot be applied to the development.

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

iii) Compliance with Design Excellence

Clause 9.5 of LEP 2019 includes the following:

- (3) *Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*
- (4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:*
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
 - (c) *whether the development detrimentally impacts on view corridors,*
 - (d) *whether the development detrimentally impacts on any land protected by solar access controls established in the development control plan referred to in clause 9.4,*
 - (e) *the requirements of the development control plan referred to in clause 9.4,*
 - (f) *how the development addresses the following matters:*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*

- (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *the impact on any special character area,*
 - (xii) *achieving appropriate interfaces at ground level between the building and the public domain,*
 - (xiii) *excellence and integration of landscape design.*
- (5) *In addition, development consent must not be granted to development to which this clause applies unless:*
- (a) *if the development is in respect of a building that is, or will be, higher than 21 metres or 6 storeys (or both) but not higher than 66 metres or 20 storeys (or both):*
 - (i) *a design review panel reviews the development, and*
 - (ii) *the consent authority takes into account the findings of the design review panel, or*

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

The Design Review Panel (DRP) reviewed the application on 22 November 2023 and concluded the proposal did not exhibit design excellence. Refer Attachment M. In summary, the DRP raised the following key concerns in relation to subclause (4)(a)-(f):

- There is a lack of integration with the urban design and architectural character of the area.
- There is a lack of diversity in architectural treatment of built form.
- The development results in excessive bulk, scale and massing. In particular, the single architectural treatment proposed for all building facades accentuates the bulk and scale of the development and does not integrate convincingly with surrounding development.
- Inadequate provision of landscaping.
- Encroachments to setbacks are not supported.
- There is lack of accessibility for persons with a disability.

- There is inadequate landscape and public/private domain design.
- SEPP 65 Design Principles have not been adequately addressed.
- Deep soil, solar access, unit layout, design of balconies are not in accordance with the ADG design criteria.
- The density is excessive and has resulted in setback encroachments and ADG non-compliances which do not result in acceptable design quality outcomes.

As the above concerns have not been satisfactorily addressed and the Applicant has not responded to the findings of the DRP, it cannot be concluded that the development exhibits design excellence and therefore development consent must not be granted in accordance with the Clause.

iv) Compliance with Minimum Building Setbacks

Clause 9.3 for the LEP 2019 prescribes the following:

Development consent must not be granted to development on land within the Showground Station Precinct unless the front building setback of any building resulting from the development is equal to, or greater than, the distance shown for the land on the [Building Setback Map](#).

LEP 2019 defines the building setback as follows:

building line or setback means the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and—

- (a) a building wall, or
 - (b) the outside face of any balcony, deck or the like, or
 - (c) the supporting posts of a carport or verandah roof,
- whichever distance is the shortest.

A pergola and portions of the roof of the residential flat building are located within 10m of the front property boundary on Fishburn Crescent. In accordance with the Clause, development consent must not be granted to the development.

State Environmental Planning Policy (Housing) 2021

On 14 December 2023, the Minister for Planning and Public Spaces amended the SEPP (Housing) under SEPP Amendment (Housing) 2023 and repealed SEPP 65 under Clause 3 but did not include a savings and transitional provision with respect to its repeal. Chapter 4 Design or Residential Apartment Development and Schedule 9 design principles were inserted in the SEPP (Housing), as well as a Schedule 7A (8) which prescribes that SEPP Amendment (Housing) 2023 does not apply to a development application made but not finally determined before the commencement date. However, Schedule 7A(2) General savings provision was not amended and states that the SEPP (Housing) applies to a development application that was made, but not yet determined on or before the commencement date of the SEPP (Housing) which was 26 November 2021.

Despite this, Section 4.15 (1)(a) requires that a consent authority is to take into consideration matters that apply to the land to which the development application relates. In this regard, the SEPP (Housing) applies to all land in the state after the commencement date. Section 4.15(1)(e) also stipulates that a matter for consideration in determining a development application is whether the proposal is in the public interest. It is in the public interest to consider the design objectives under the Apartment Design Guide and principles regarding the design of residential flat buildings so that there is consistency in relation to design amenity.

Such design objectives and principles are in Chapter 4 and Schedule 9 of the SEPP (Housing). It is appropriate to use them even if only as an indication of principles. This is also consistent with object (g) of the Environmental Planning and Assessment Act 1979 which aims to promote good design and amenity of the built environment.

In this regard, as the development application was made on 14 July 2023, an assessment has been undertaken against Chapter 4 and Schedule 9 under the SEPP (Housing) as follows:

a) Design Quality Principles

Clause 147, Chapter 4 and Schedule 9 of SEPP (Housing) prescribes that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design principles. The development has not demonstrated that adequate regard has been given to the following design principles:

v) *Design Principle 1: Context and neighbourhood character*

The development application is inconsistent with Design Principle 1: Context and neighbourhood character because the built form would not be appropriate in scale or provide an attractive streetscape presentation and landscaped setting as within the Showground Station precinct.

vi) *Design Principle 2: Built form and scale*

The development application is inconsistent with Design Quality Principle 2: Built form and scale because the proposal results in a bulk and scale which is excessive when viewed from Chapman Avenue.

vii) *Design Principle 6: Amenity*

The proposed development is inconsistent with Design Quality Principle 6: Amenity because the proposed development does not demonstrate that the design achieves appropriate amenity for future residents or neighbours. In particular, the amenity requirements under the Apartment Design Guide for deep soil, solar access, unit layout, design of balconies has not been assessed as satisfactory.

viii) *Design Principle 9: Aesthetics*

The proposed development is inconsistent with Design Quality Principle 9: Aesthetics because the design of the proposal presents as large, bulky and homogenous. The development application does not exhibit design excellence.

b) Apartment Design Guide

In accordance with Clause 147, Chapter 4 of SEPP (Housing), a consent authority in determining a Development Application for a residential apartment development is to take into consideration the Apartment Design Guide (ADG). The development has not demonstrated adequate regard has been given to the objectives of the following:

i) *Deep soil*

The ADG recommends that for a site greater than 1,500m², at least 15% of the site is provided for deep soil and deep soil zones are to have minimum dimensions of 6m.

Objective 3E-1 Deep soil zones of the ADG which prescribes the following:

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Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

The submitted documentation lodged with the development application incorrectly calculates the deep soil for the development and includes the buildings, services, below ground OSD and impervious surfaces including car parks, driveways and roof areas. Whilst the Applicant has provided a response with a recalculation of the deep soil in accordance with the ADG, an updated landscape plan has not been provided to confirm this can be achieved. It cannot be determined the objective of the design criteria is satisfied.

ii) Solar and daylight access

The ADG design criteria requires that at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.

Objective 4A Solar and daylight access of the ADG prescribes the following:

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

Whilst the Applicant submits that 72% of apartments (107 units) would achieve the above criteria, the design review panel were not convinced that a number of units included in this calculation would comply. In particular, concern was raised regarding units facing the inner courtyard located in the inner bend of the “horse shoe” plan on a number of levels. The design review panel recommended sun eye diagrams at half hourly interval between 9am and 3pm midwinter be provided to confirm this. This has not been provided.

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

iii) Apartment Size and Layout

Objective 4D-1 Apartment size and layout of the ADG prescribes the following:

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

The layout of some of the apartments are not well organised and do not provide a high standard of amenity. “Snorkel” bedrooms with long study arms do not provide appropriate solar access or amenity for the main portion of the bedroom. Refer Apartment Design Types B, B5, B6, C2. Enclosed habitable rooms do not include windows for solar access. Refer Apartment Design Types C9 and E5. Long, narrow entrance corridors (up to 1m wide and 6m in length) result in poor utilisation of space. Refer Apartment Design Type C10, D and E5. The design and uses of open balconies/circulation areas in the inner bend of the “horseshoe” plan requires further clarity.

In this regard, the proposal does not meet Objective 4D-1 of the ADG.

iv) Common circulation and spaces

Objective 4F-1 Common circulation and spaces of the ADG prescribes the following:

- *Common circulation spaces achieve good amenity and properly service the number of apartments*

The DRP notes that “*the length of a number of internal corridors seems excessive, up to 40m in some levels*” and “*the number of lobbies appear to be all linked in one central arrival space. This may not be adequate for day-to-day operations of an apartment building*”. A response to these concerns was not provided.

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

v) Building Separation/Visual Privacy

The design criteria under Section 3F-1 of the ADG requires that the minimum building separation for habitable rooms, is 12m for 4 storeys and 18m for 5-8 storeys.

Objective 3F Visual privacy prescribes:

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

The development application has not demonstrated that sufficient visual privacy has been provided internally, between the units facing into the courtyard. The internal building separation between the eastern and western wings of the building result in a variation to habitable room windows/balconies on Levels 4 to 7 where only 12m is provided (18m required).

The DRP raised internal building separation as a concern to be addressed. A response to the DRP concerns has not been provided. In this regard, the development application has not demonstrated that sufficient building separation and visual privacy has been provided to meet objective of 3F-1 of the ADG.

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

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

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

The following Development Control Plan is relevant to this application:

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

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

a) Setbacks

The DCP requires a minimum 10m front setback to Fishburn Crescent and 7.5m front setback to Chapman Avenue and balconies and basement parking are not to protrude into the setback areas.

The relevant objectives of the Setbacks control are as follows:

- *To provide strong definition to the public domain and create a consistent streetscape.*
- *To set taller building elements back from the street to reduce building scale and bulk and enable adequate sunlight access to the public domain.*
- *To provide articulation zones to complement building mass and emphasise key design elements such as entrance points and response to environmental conditions including solar access, noise, privacy and views.*
- *To facilitate a landscaped streetscape that can accommodate larger trees.*

The proposal includes encroachments to the 10m front setback along Fishburn Crescent. This is prohibition in accordance with Clause 9.3 of LEP 2019 which is discussed under Section 3.1 of this report.

The proposal also includes balconies which encroach within the upper level setback areas fronting Fishburn Crescent and basement encroachments up to 2m from Fishburn Crescent and 0.5m from the front property boundary post land dedication along Chapman Avenue. The encroachment of the car park basement and lower ground courtyards adversely impacts on the aesthetic, environmental and landscape qualities of the street frontage. In this regard, the proposal does not meet the objectives of the Setbacks control.

b) Built Form Design - Maximum Building Length

The DCP requires that buildings are to have a maximum length of 65m and where a building has a length greater than 40m, it shall have the appearance of two distinct building elements with individual architectural expression and features. The building fronting Chapman Avenue has a maximum length of 91m exceeding the control by 26m. The building has not been designed with a significant recess or projection or appearance of two distinct building elements with individual architectural expression and features.

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

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

A variation to the built form character controls cannot be supported as the development fails to achieve design excellence as required by Clause 9.5 of LEP 2019 and it cannot be concluded that the development creates a positive streetscape or achieves a high-quality architectural design.

c) Residential Uses in Ground Level

The DCP requires that higher density development with residential ground an lower floor uses is to adopt a two storey terrace house appearance to present a fine grain articulation to the

street frontage, are to have individual gates and entrances accessed directly from the street and are to be elevated from the street level by a minimum of 300mm and a maximum of 600mm.

The proposal does not provide for a two storey terrace house appearance on the lower floors facing Chapman Avenue and ground floor units facing Fishburn Crescent and Chapman Avenue do not have individual gates and entrances accessed directly from the street. The plans and elevations indicate that a number of ground floor units are up to 3m higher than the street level on Chapman Avenue.

The relevant objectives of the control are as follows:

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

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

d) Open Space and Landscaping

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

The relevant objectives of the control are as follows:

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

The proposal has not demonstrated compliance with this control. The Statement of Environmental Effects indicates that the proposal complies with this control however no landscape area calculation diagram was submitted. The landscape plan has not been prepared in accordance with Part C Section 3 Landscaping of the DCP. The Design Review Panel also provided the following comment:

“The Panel is concerned with the extent of established tree removal adjoining and within the public domain. All established trees should be retained where practicable and described by an arborist report. A significant portion of the street frontage is taken up by hard paving surfaces and services, which is not in keeping with the desired future character of the precinct. The significant length of ramping on the south-west frontage as a result of the large level difference between Chapman Avenue and the ground level apartments and entry, compromises the landscape frontage and potential canopy tree planting. The Panel

recommends that a significantly higher quantum of large, high canopy peripheral trees be provided around the edges of the site”.

In this regard, it cannot be concluded that the proposal achieves the objectives of this control.

e) Integrated Water Management

The DCP requires that all developments within the Precinct are required to be provided with a Stormwater Management Plan that considers sustainable water management practices and minimal development impact, stormwater runoff must be treated on the development site before it discharges to a public drainage system and water quality MUSIC modelling is to be provided.

The objective of the Integrated Water Management control is to:

- *To control stormwater runoff and discharge impacts on adjoining properties and into natural drainage systems before, during and after construction.*
- *To ensure that proposed development does not adversely affect the operation capacity of the downstream stormwater system.*
- *To encourage and create an urban form where risks to life and property, as a result of either minor or major flooding, are minimised.*
- *Maximise opportunities for a best practice Water Sensitive Urban Design approach at the individual lot, overall development and regional scales.*
- *To reduce the impacts typically associated with urbanisation on receiving waterways, including a reduction in streamflow erosion potential and pollutant loads.*

The Stormwater Plan provided with the application does not satisfy the above controls. A MUSIC model has not been provided with the Development Application. In this regard, it cannot be concluded that the proposal meets the above objectives.

f) Development Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Contribution Plan 19 Showground Station Precinct*

This Contributions Plan has been considered. The unit mix indicated in the Statement of Environmental Effects and submitted floor plans are inconsistent. An accurate calculation of the contributions cannot be made.

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

Whilst emails have been received by the Applicant requesting an amendment to the development application to include an affordable housing component, this request has not been made on the NSW Planning Portal in accordance with Section 37 of the Regulation. In

this regard, the consent authority has not had the opportunity to approve or reject an application for an amendment. Notwithstanding, it is considered that the amendment would not be minor and would likely be rejected under section 38 of the Regulation.

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

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above. Insufficient information has been provided to determine that the development would not result detrimental impacts to the environment.

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

The proposal results in a development that does not exhibit design excellence and is excessive in bulk and scale. Insufficient information has been provided to determine whether the development can be made suitable for the site.

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

Two submissions were received for the development application. The submission is considered in Section 4 of this report.

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

The development proposal is not in the public interest as the development does not exhibit design excellence, does not provide appropriate amenity for future occupants of the site or adjoining properties, results in an overdevelopment of the site and inadequate information has been provided to ensure there are no detrimental environmental impacts.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

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

Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) N/A			
Referral/Consultation Agencies			
Castle Hill Police	Referral undertaken in accordance with the requirements of the "Safer by Design Guidelines" and the Protocol between The Hills Shire Council and Castle Hill Police.	Comments have been provided regarding construction and on-going requirements. Conditions have been recommended should the application be approved.	Y

4.2 Council Referrals

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

Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Engineering Officer reviewed the proposal and raised the following concerns:</p> <ul style="list-style-type: none"> • A subdivision and civil plans have not been provided to detail the works proposed in the public domain and quantify the land dedication proposed. • The OSD has not been designed to achieve stormwater runoff discharge control to the Hawkesbury River catchment requirements. • No MUSIC model has been provided. • The driveway location is not supported as it fronts a sag point. A flood impact study must be provided to determine the flood levels at this location. The finished floor levels of units and driveway access will need to comply with the flood planning levels. • The basement car park design including basement aisle widths, grade of car parking spaces has not demonstrated compliance with safety provisions under AS2890.1. 	No, these issues have not been adequately addressed by the Applicant.
Landscape	<p>Council's Landscape Assessment Officer reviewed the proposal and raised the following concerns:</p> <ul style="list-style-type: none"> • Insufficient details provided in Arborist Report. • Inadequate tree management plan tree locations are inconsistent with the survey plan. • The only tree proposed to be retained on the neighbouring property has not been surveyed. • Inadequate information provided regarding landscaping levels to allow assessment of potential boundary interface issues. • Landscaping plans are inconsistent with stormwater plans and civil engineering plans. • Street trees are inconsistent with the Public Domain Plan. 	No, these issues have not been adequately addressed by the Applicant. An updated landscape plan or Arborist report has not been provided.

Waste	Council's Resource Recovery Officer reviewed the proposal and raised the following concerns: <ul style="list-style-type: none"> Waste facilities have not been designed to have adequate storage and operational space for the whole site and only includes vehicular access and loading facilities for the standard MRV vehicle. The development must provide vehicular access and loading facilities for the standard HRV vehicle. 	No, these issues have not been adequately addressed by the Applicant. An updated Waste Management Plan has not been provided.
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised concern regarding the vehicle trip generation calculation and SIDRA analysis as the traffic generation rate per unit was utilised rather than the rate per car space to assess the worst case scenario.	No, this issue has not been adequately addressed by the Applicant. An updated Traffic report or SIDRA analysis has not been provided.
Environmental Health	Council's Environmental Health Officer reviewed the proposal. No objections were raised and conditions have been recommended should the application be approved.	Yes
Contributions	Council's Development Contributions Officer reviewed the proposal and requested the Applicant indicate the number of bedrooms for each apartment unit on the floor plans to determine the contributions to be levied under Contributions Plan 19.	No, this issue has not been adequately addressed by the Applicant.
Land and Spatial Information	Council's Land and Spatial Information Team reviewed the proposal. To determine the street addresses and unit numbering as required by the Geographical Names Board, a full set of property numbering plans were requested.	No, this issue has not been adequately addressed by the Applicant.

4.3 Community Consultation

The proposal was notified in accordance with the DCP from 20 July 2023 until 10 August 2023. The notification included the following:

- Notification letters sent to adjoining and adjacent properties;
- Notification on the Council's website.

The Council received one submission, objecting to the proposal during the notification period. An additional submission was received outside the notification period. The issues raised in these submissions are considered in the below table.

Community Submissions

Issue	Council Comments
Construction management of traffic, noise and dust.	Council's Traffic and Environmental Health sections have reviewed the proposal. Should the development application be approved, this issue could be addressed with appropriate conditions of development consent to mitigate any traffic, noise, and dust impacts during construction. However, the proposal is recommended for refusal.
Landowner at No. 21 Chapman Avenue submits letter indicating that no owners consent is provided for the subject development application.	The development application includes a concept diagram indicating 21 Chapman Avenue would be constructed as "Stage 2" of the development. In addition, the documents submitted with the Design Review Panel Package includes a letter indicating that the DA had been amended to " <i>a Stage 1 and 2 Concept and Detailed Development Application under Division 4.4 of the Environmental Planning and Assessment Act 1979 to comply with the 10,000m² site area requirement</i> ". However, an amendment to the DA was not formally made on the NSW Planning Portal as required under Section 37 of the Regulations. In this regard, the assessment of the development application subject to this report only relates to the built form proposed on 17-23 Fishburn Crescent and 23-27 Chapman Avenue Castle Hill.
Incentive Floor Space Ratio cannot be applied to the development application as owners consent from 21 Chapman Avenue not provided.	The incentive FSR cannot be applied to the development application as the proposal does not meet the minimum site area, unit mix and size provisions under Clause 9.7 of the LEP 2019. This is discussed in detail under section 3.1 of this report.

5. CONCLUSION

This Development Application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

The proposal does not meet several provisions and development standards under LEP 2019 regarding permissibility of a food and drink premises within a R4 High Density Residential zone, Clause 9.3 Minimum Building Setbacks, Clause 9.5 Design Excellence, Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio and Clause 9.7 Residential development yield on certain land within the Showground Precinct. The Applicant's Clause 4.6 written request to vary the height of buildings standard has not demonstrated that sufficient environmental planning grounds have been provided to justify the contravention.

The proposal does not meet several design principles and Apartment Design Criteria under SEPP (Housing) 2021 and does not meet several precinct specific development controls under the Hills DCP 2012.

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Insufficient information has been provided to make a complete assessment of the environmental impacts resulting from the development. It has not been demonstrated that the proposal satisfies the provisions for stormwater and water quality for the Hawkesbury and Nepean Catchment under Chapter 6 of the SEPP (Biodiversity and Conservation) 2021.

The application is not considered to be in the public interest as the proposal has not demonstrated a satisfactory design, planning and environmental outcome suitable for the site.

It is considered that the issues as outlined in the report have not been resolved satisfactorily and the proposal is recommended for refusal. Refer **Attachment A**.

6. RECOMMENDATION

That the Development Application 59/2024/JP for Demolition of Existing Structures and Construction of a Residential Flat Building Containing of 148 Units at 17-23 Fishburn Crescent and 23-27 Chapman Avenue Castle Hill be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Reasons for refusal
- Attachment B: Locality Plan
- Attachment C: Aerial Map
- Attachment D: Zoning Map
- Attachment E: Height of Buildings Map
- Attachment F: Floor Space Ratio Maps
- Attachment G: Building Setbacks Map
- Attachment H: Site Plan
- Attachment I: Elevations
- Attachment J: Floor Plans
- Attachment K: Landscaping Plans
- Attachment L: Clause 4.6 Request
- Attachment M: Design Review Panel Report

ATTACHMENT A – REASONS FOR REFUSAL

The Development Application be refused on the following reasons:

1. The Applicant's written request seeking to justify the contravention of the development standard to Clause 4.3 Height of Buildings standard does not adequately address Clause 4.6(3)(b) or (4)(a). Therefore, development consent must not be granted to the development.

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

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

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

3. The application does not satisfy the provisions under Clause 9.5 Design Excellence of the Hills LEP 2019. Therefore, development consent must not be granted to the development.

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

4. The application does not satisfy the provisions under Clause 9.3 Minimum Building Setbacks of the Hills LEP 2019. Therefore, development consent must not be granted to the development.

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

5. Insufficient information has been provided to make a complete assessment of the environmental impacts resulting from the development. It has not been demonstrated that the proposal satisfies the provisions for stormwater and water quality for the Hawkesbury and Nepean Catchment under Chapter 6 of the SEPP (Biodiversity and Conservation) 2021.

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

6. The proposal does not satisfy the design principles contained within Chapter 4 and Schedule 9 of the SEPP (Housing) 2021 with respect to context and neighbourhood character, built form and scale, amenity, and aesthetics.

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

7. The proposal has not demonstrated that sufficient residential amenity will be provided to the future occupants of the development in accordance with the design criteria of the Apartment Design Guide under Chapter 4 and Schedule 9 of the SEPP (Housing) 2021.

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

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

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

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

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

10. The development is not suitable for the site as the bulk and scale is inconsistent with the built environment of the precinct and the proposal has not demonstrated a satisfactory design, planning and environmental outcome will be provided.

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

11. The proposal is not in the public interest due to its departure from the provisions under The Hills LEP 2019 and the proposal has not demonstrated a satisfactory environmental planning outcome will be provided.

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

ATTACHMENT B - LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSION RECEIVED

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT C – AERIAL MAP



SUBJECT SITE

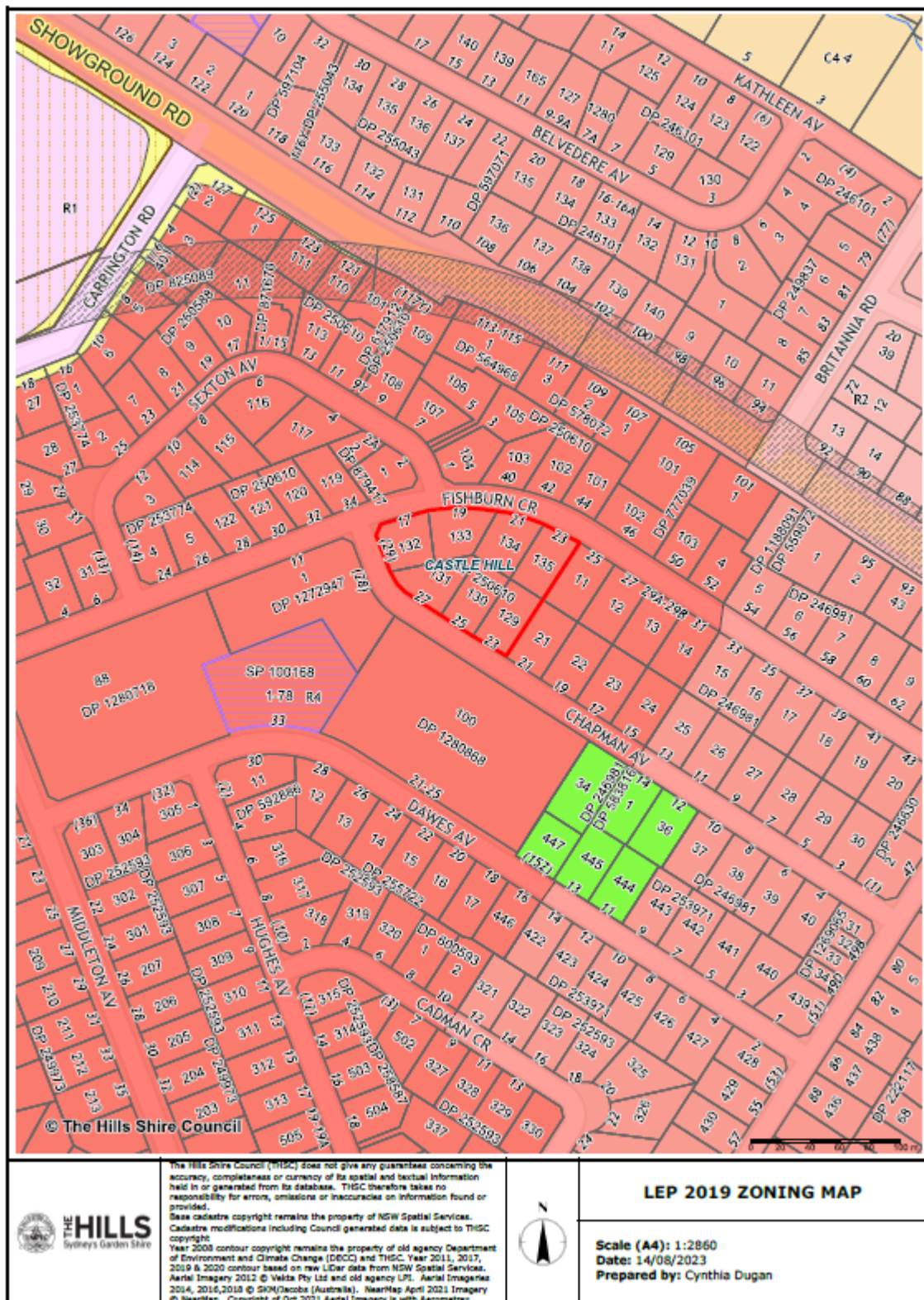
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

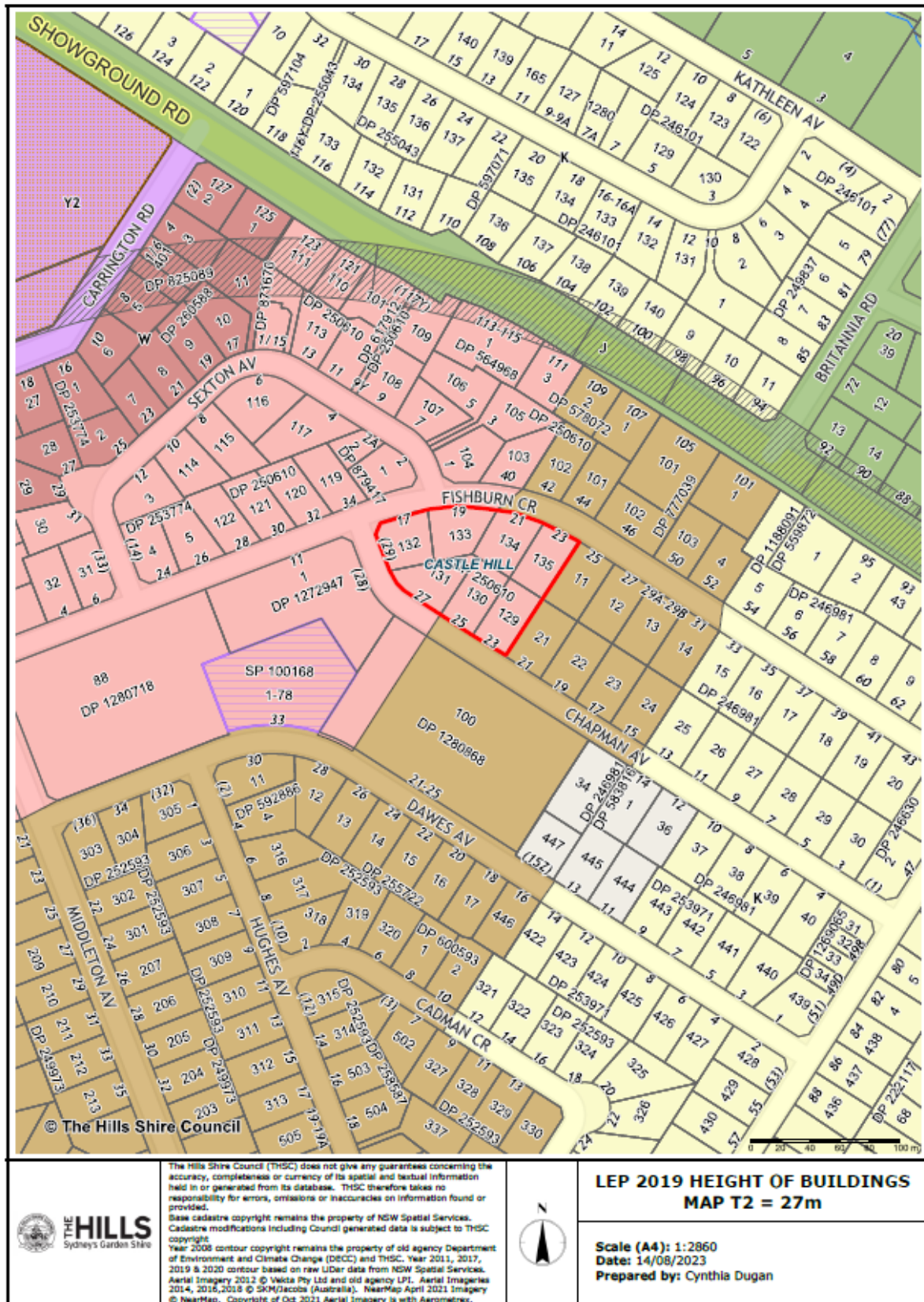
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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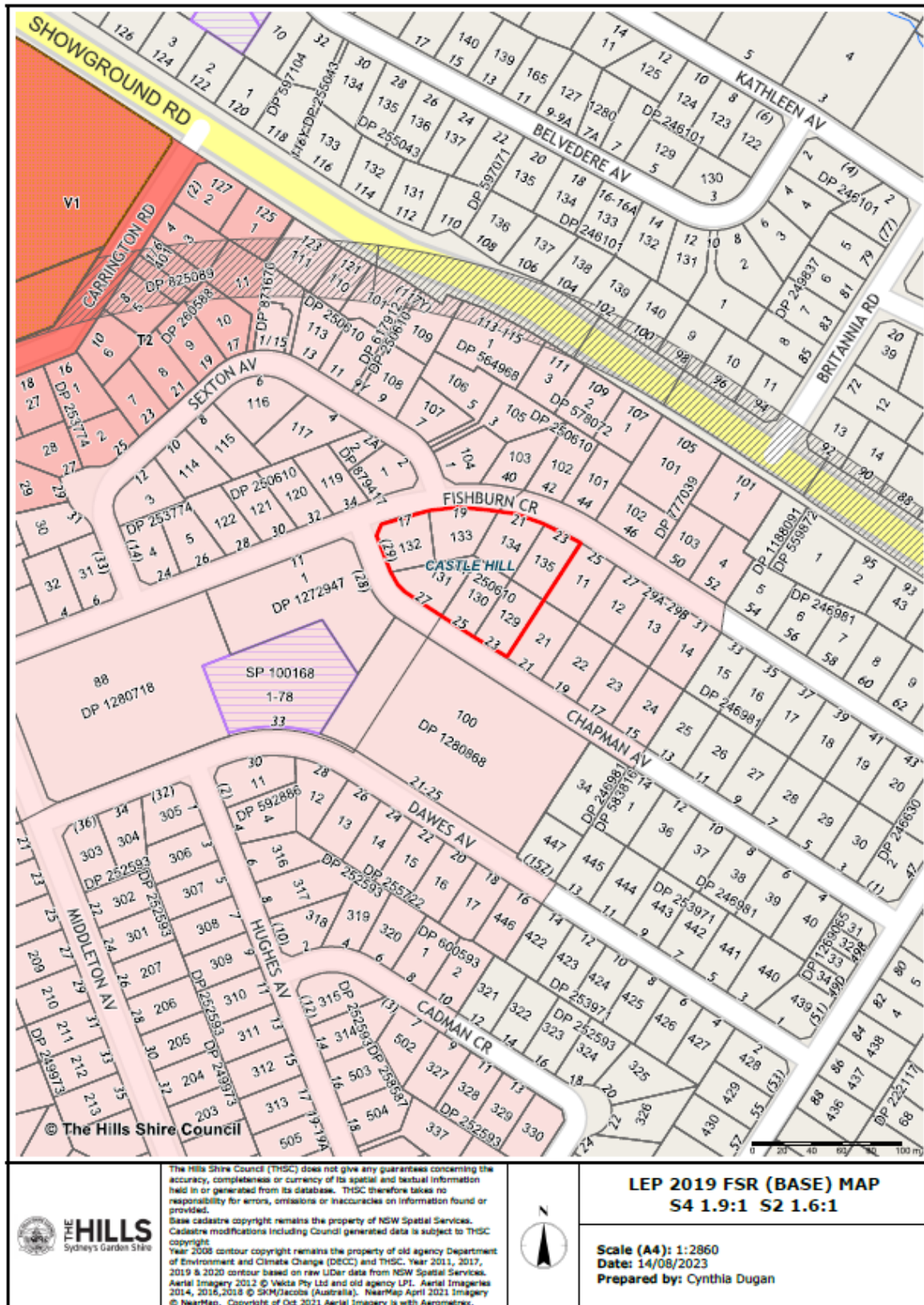
ATTACHMENT D – ZONING MAP

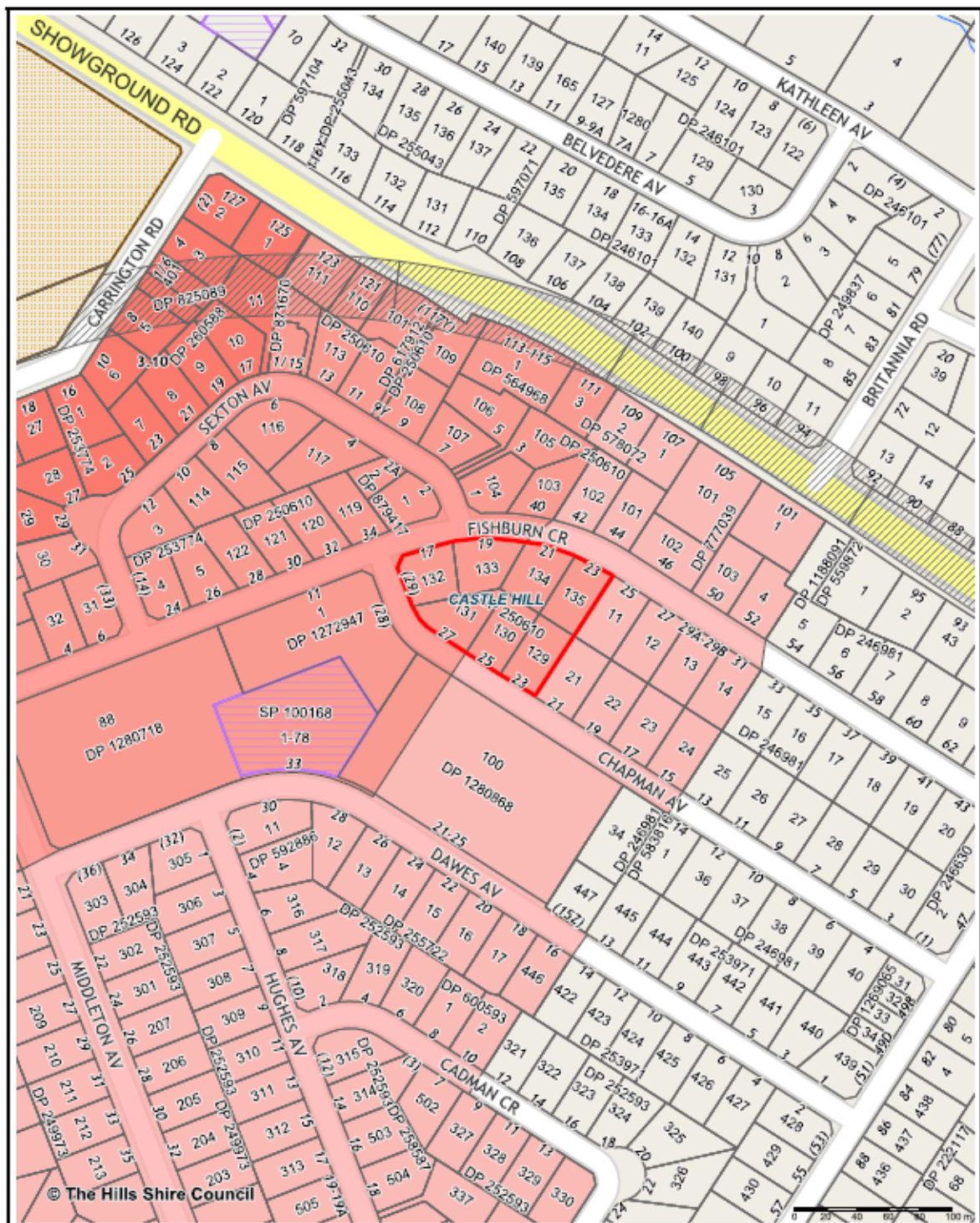


ATTACHMENT E – HEIGHT OF BUILDINGS MAP



ATTACHMENT F – FLOOR SPACE RATIO MAPS





The Hills Shire Council (THSC) does not give any guarantee concerning the accuracy, completeness or currency of its spatial and textual information held in or generated from its database. THSC therefore takes no responsibility for errors, omissions or inaccuracies on information found or provided.

Base cadastre copyright remains the property of NSW Spatial Services. Cadastre modifications including Council generated data is subject to THSC copyright.

Year 2008 contour copyright remains the property of old agency Department of Environment and Climate Change (DECC) and THSC. Year 2011, 2017, 2019 & 2020 contour based on raw LiDAR data from NSW Spatial Services.

Aerial Imagery 2012 © Velica Pty Ltd and old agency LPI. Aerial Imageries 2014, 2016, 2018 © SKM/Jacobs (Australia). NearMap April 2021 Imagery © NearMap. Copyright of Oct 2021 Aerial Imagery is with Aerometrix.



LEP 2019 FSR (INCENTIVE) U2 2.7:1 T4 2.3:1

Scale (A4): 1:2860

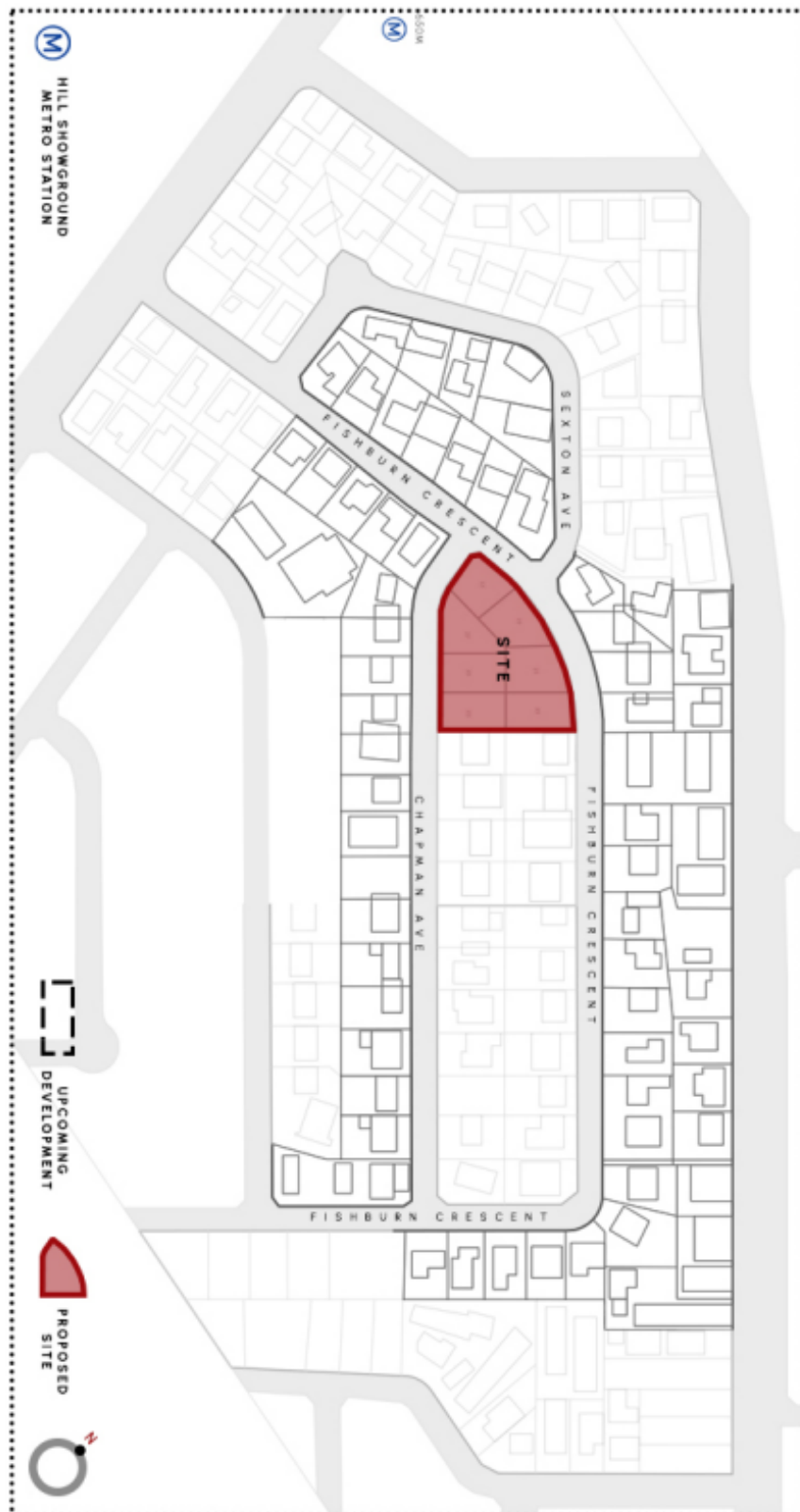
Date: 14/06/2023

Prepared by: Cynthia Dugan

ATTACHMENT G – BUILDING SETBACKS MAP



ATTACHMENT H - SITE PLAN



ATTACHMENT I – ELEVATIONS

NOTE
SCALE OF TREES ARE DEPICTED IN ACCORDANCE AND IN
COMMUNICATION WITH THE LANDSCAPE CONSULTANTS.

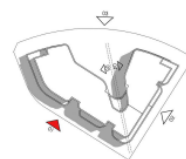
THESE ARE ACHIEVABLE SIZE ON ROOFTOP AND ON THE
SURROUNDING LANDSCAPE.



ELEVATION 01 (FACING CHAPMAN AVE)



ELEVATION 01 (FACING CHAPMAN AVE)



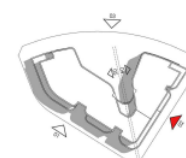
KEY PLAN
SCALE: 1:1000



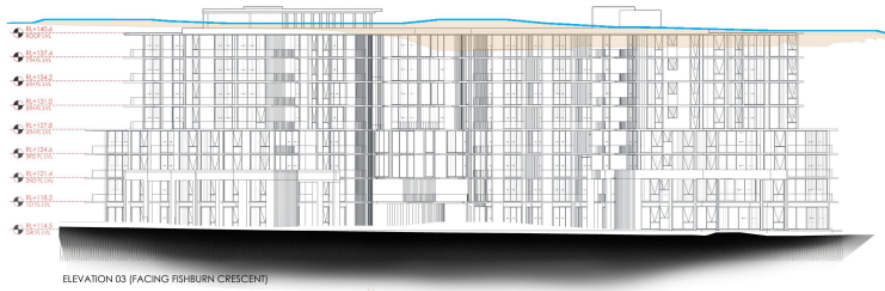
ELEVATION 02



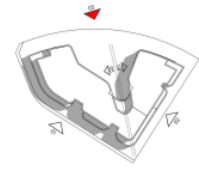
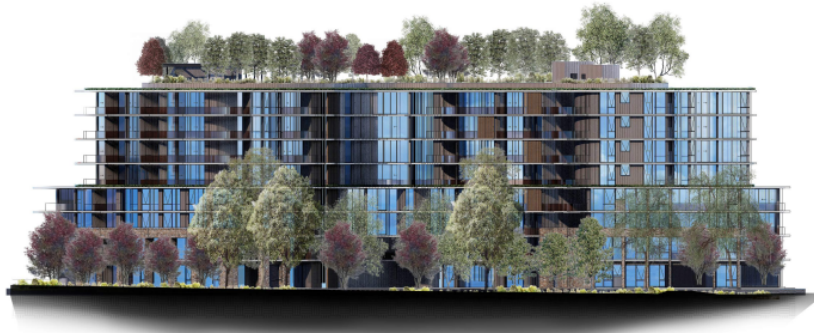
ELEVATION 02



KEY PLAN
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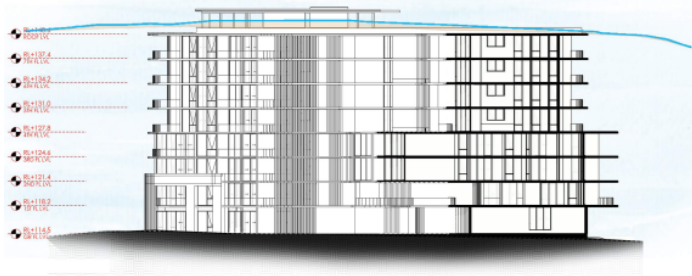


ELEVATION 03 (FACING FISHBURN CRESCENT)

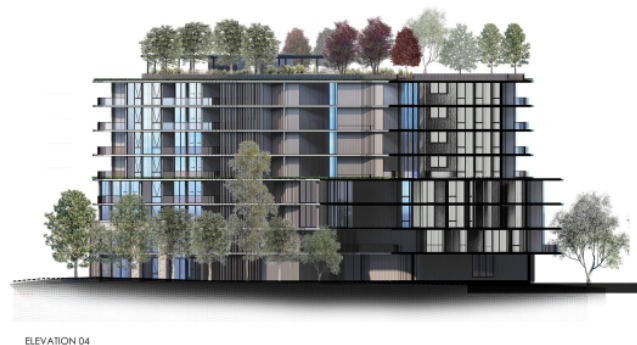


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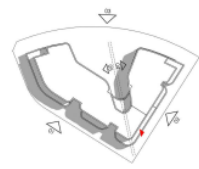
THESE ARE ACHIEVABLE SIZE ON ROOFTOP AND ON THE SURROUNDING LANDSCAPE.



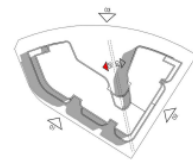
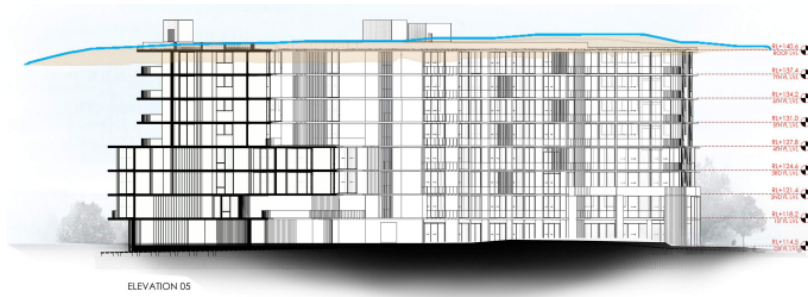
ELEVATION 04



ELEVATION 04

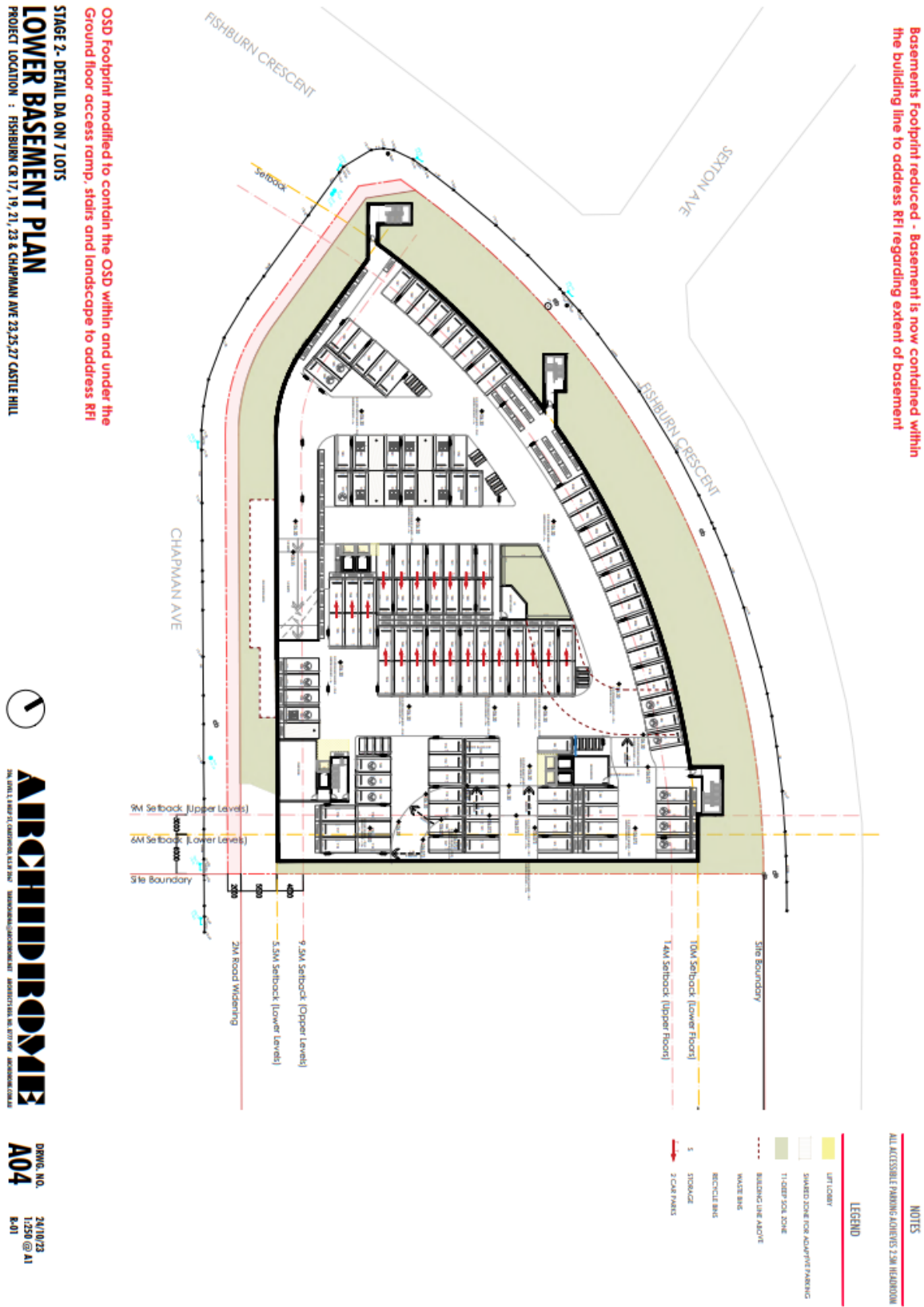


KEY PLAN
SCALE: 1:1000



KEY PLAN
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ATTACHMENT J – FLOOR PLANS



[illegible]

STAGE 2- DETAIL DA ON 7 LOTS

PROJECT LOCATION : FISHBURN CR 17, 19, 21, 23 & CHAPMAN AVE 23,25,27 CASTLE HILL

ARCHIVED
DOI: 10.1002/1097-4644(200205)14:5<511::AID-JCCE511>3.0.CO;2-1
J Child Psychol Psychiatr 2002; 43(5): 511-517
© 2002 Association for Child and Adolescent Mental Health.

DRWG. NO. 2010.2923
A08 1:200 @ A1
R-01

STAGE 2- DETAIL DA ON 7 LOTS
FIRST FLOOR PLAN
PROJECT LOCATION : FISHBURN CR 17, 19, 21, 23 & CHAPMAN AVE 23,25,27 CASTLE HILL



DWG. NO. **A09**
DATE: 04/09/23
SCALE: 1:200 @ A1
P.01



KEY PLAN AND NOTES ADDED TO ADDRESS RTI REGARDING NUMBER OF BEDROOMS, COMMON ROOMS AND NON-RESIDENTIAL METHUEN/DOY

NOTES

THE SPENT POSTIONS HIGHLIGHTED IN THE KEY PLAN ARE PRESENT IN THE KEY PLAN. THEIR SPENTIONS ARE PRESENT SPECIFICALLY ON THE TOP FLOOR (ENTRANCE FLOOR) AND NOT ON ANY OTHER FLOOR.

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FOR THE OF EACH FLOOR REFER TO SECTION SHEET NO. 17 AND 18

LOWERS PROVIDED FOR PRIVATE IN LOWER FLOORS FOR WINDOWS AND BALCONIES PLACED FACING EACH OTHER WITHIN A 1.2M DISTANCE.

SET PLAN

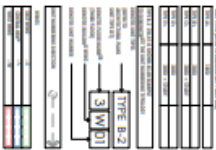
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LEGEND

TYPE	DESCRIPTION
TYPE C/8 <td>COMMON ROOM</td>	COMMON ROOM
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TYPE C/10 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/11 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/12 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/13 <td>COMMON ROOM</td>	COMMON ROOM
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TYPE C/97 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/98 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/99 <td>COMMON ROOM</td>	COMMON ROOM
TYPE C/100 <td>COMMON ROOM</td>	COMMON ROOM



A1 K-01



FOURTH FLOOR PLAN

ARCHITECTURE

R-01



THE SKILLIGHT POSITIONS HIGHLIGHTED IN THE PLAN ARE REPRESENTATIVE ONLY

THESE SKYLIGHTS ARE PRESENT SPECIFICALLY ON THE TOP FLOOR (SEVENTH FLOOR) AND NOT ON ANY OTHER FLOORS.

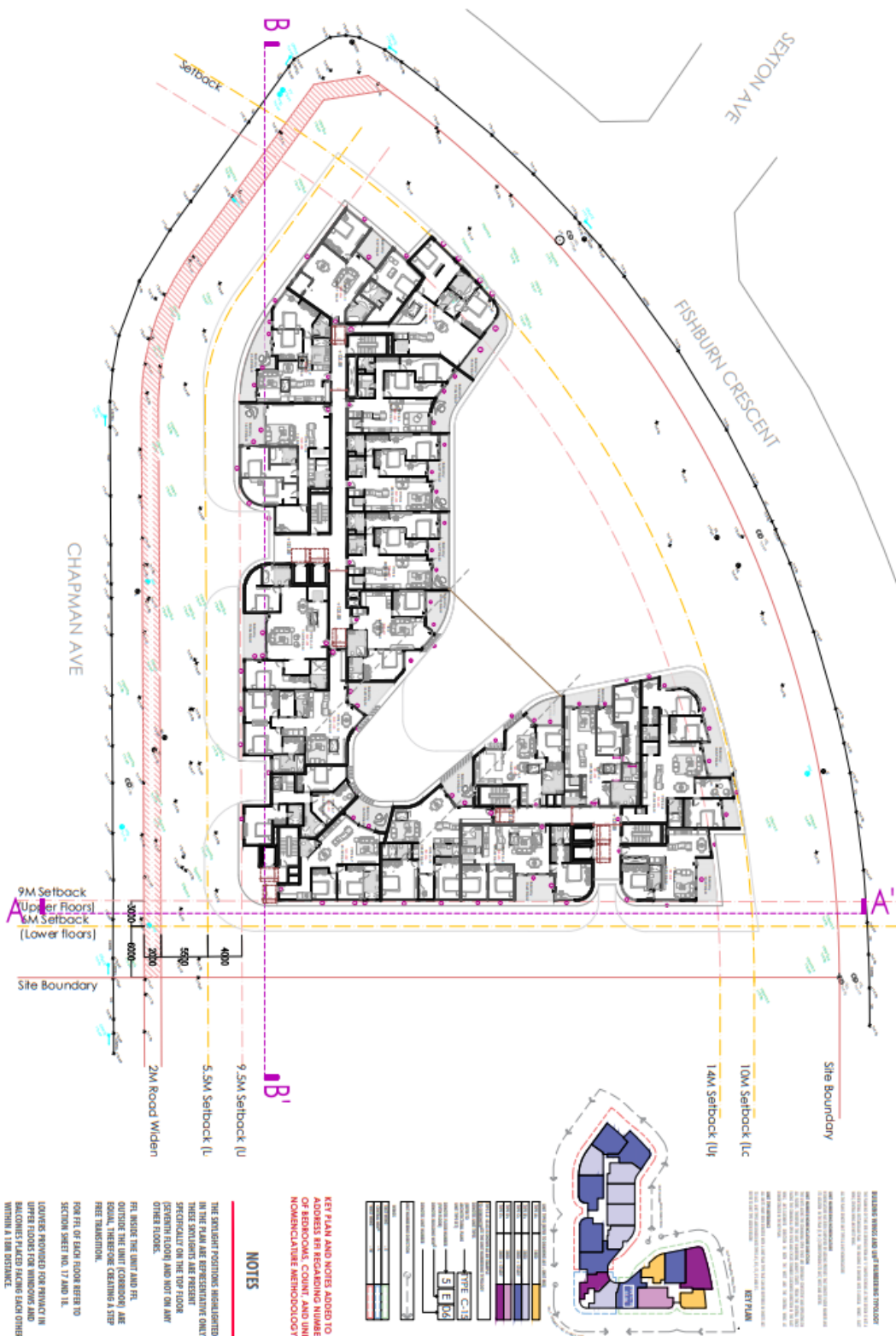
FFL INSIDE THE UNIT AND FFL OUTSIDE THE UNIT (CORRIDOR) ARE EQUAL, THEREFORE CREATING A STEP FREE TRANSITION.

FOR FTL OF EACH FLOOR REFER TO SECTION SHEET NO. 17 AND 18.

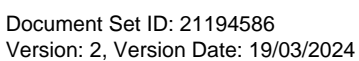
STAGE 2- DETAIL DA ON 7 LOTS
FIFTH FLOOR
PROJECT LOCATION : FISHBUR



DRUG. NO. 04/09/23
A13 1:200 @ A1
R-01



DRWG. NO. **A14**
04/09/23
1:200 @ A1
R-01





ROOF PLAN

STAGE 2 - DETAILED DA ON 7 LOTS
PROJECT LOCATION : FISHBURN CR 17, 19, 21, 23 & CHAPMAN AVE 23,25,27 CASTLE HILL

ATTACHMENT K – LANDSCAPING PLANS



REFER THE LANDSCAPE PACKAGE FOR THE PLANTATION DETAILS OF THE ROOF.

ROOF PLAN - COHERENCE WITH LANDSCAPE STAGE 2 - DETAILED DA ON 7 LOTS
PROJECT LOCATION : FISHERBURN CR 17, 19, 21, 23 & CHAPMAN AVE 23,25,27 CASTLE HILL

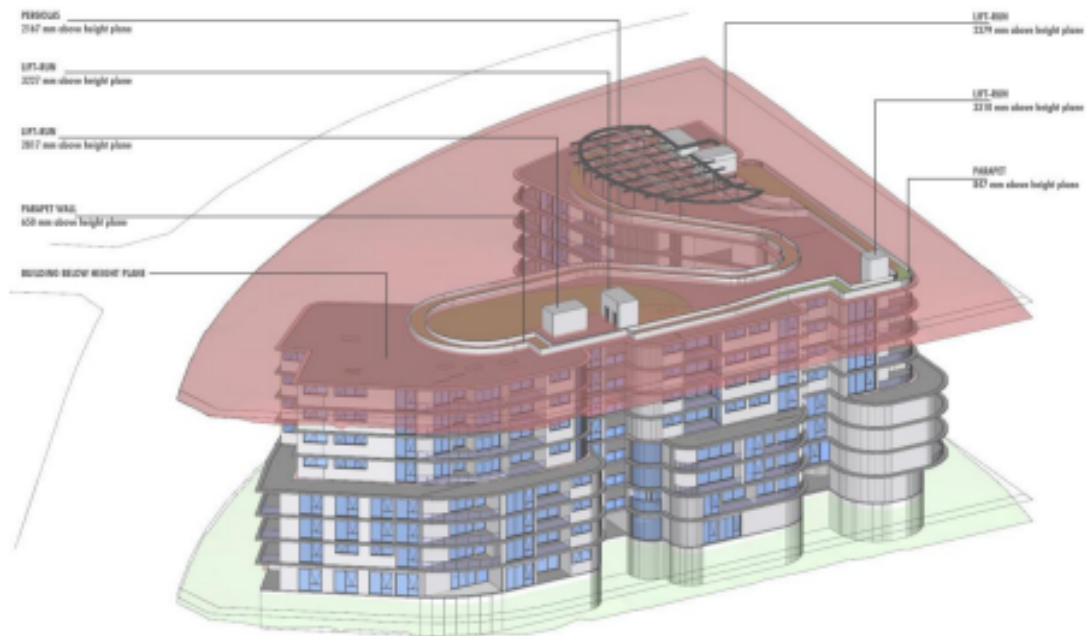


ARCHIDROME
200, 10th St., Philadelphia, PA 19106 | info@archidrome.com | ARCHITECTS: 800.467.7700 | archidrome.com

DRWG. NO. 10/01/23
A16.1 1:200 @ A1
R-00

ATTACHMENT L – CLAUSE 4.6 REQUEST TO VARY HEIGHT STANDARD

APPENDIX B – Clause 4.6 request



This results in a variation of up to 3.35m or 12.4% at the highest point to the lift overrun.

Accordingly, this Clause 4.6 request to vary the maximum height of building development standard has been prepared having regard to *Four2Five Pty Ltd v Ashfield Council [2015]* and *Wehbe v Pittwater Council 120071*. In this regard, it is noted that Wehbe sets out five ways of demonstrating that compliance is unreasonable or unnecessary, one of which is that the objectives of the standard are achieved. Noting the requirements of Clause 4.6 as opposed to SEPP No. 1, it is also necessary to demonstrate that there are sufficient environmental planning grounds to justify contravening the standard and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone.

It is contended that compliance with the maximum height of building standard is unreasonable and unnecessary in the circumstances of the case as the objectives of the standards are achieved nonetheless as follows:

1. The variation is a result of the cross-falls over the site which results in the eastern side of the building being higher than the western side of the building relative to the existing (natural) ground level.
2. The variations are relatively minor at 12.4% for the lift overrun, 8% for the pergola and less than 3.1% for portions of rooftop parapet, which relate to a small portion of the overall building over a site area of 6610.7sqm.
3. The majority of the rooftop encroaching elements would be virtually imperceptible as viewed from the street as they are well setback from the street and/or screened by perimeter rooftop planting in 1m deep planters and the proposed development would still be entirely consistent with the 8-storey built form anticipated for the locality.
4. The encroachments relate to the provision of rooftop open space and increased amenity for future occupants and minor rooftop parapet containing landscaped planter boxes, which result

in a better planning outcome than an otherwise compliant proposal without rooftop shading devices, covered communal space and reduced landscaped planter boxes.

5. The proposal does not result in additional yield or developable areas given all units are wholly contained below the 27m height limit up to the majority of the rooftop parapet. The proposal is otherwise fully compliant with the relevant built form controls and is not an overdevelopment of the site.
6. There are no adverse visual bulk impacts given the majority of the rooftop elements will not be visible from the street and landscaped planter boxes will shield the rooftop communal open space from public view.
7. There are no adverse amenity or solar access impacts within the proposed development or on adjoining properties. The design of the proposed development has ensured that privacy and solar access is achieved generally in accordance with the requirements of SEPP 65 and the Apartment Design Guide.
8. The proposed development for residential flat building is permissible in the R4 zone and consistent with the objectives of the zone. The proposed development achieves the objectives of the development standard and facilitates a better planning outcome on the site.

2.0 The Hills LEP 2019

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) states the objectives of the clause as follows:

“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

The proposal is considered to be compatible with these objectives and a response to the objectives is contained within this submission.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

(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.

The height of building development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Applicant’s Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

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

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

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

The proposed development does not comply with the building height development standard. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written variation request.

2.4 Subclause 4.6(4) – Consent Authority’s Satisfaction

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

“(a) the consent authority is satisfied that:

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

(b) the concurrence of the Director-General has been obtained.”

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the Director General must consider:

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

(b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.”

It is contended that the proposed development is a form of development that is most appropriate for this R4 high density residential site as it will have minimal, if any, detrimental impacts on the surrounding amenity or the long term development potential of the neighbouring lands. As part of any consideration of this matter the Director-General can accept that the variation of the building height standard is a local matter, given the minor extent and overall compliance with the requirements of SEPP 65.

2.5 The Nature of the Variation

Clause 4.3 of The Hills LEP 2019 provides that:

4.3 Height of buildings

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

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

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

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

The height of building map provides a maximum height of 27m. The proposed development seeks to provide a height generally less than 27m with the exception of rooftop encroachments with a height of up to 30.35m for the lift overruns.

At worst, the proposal results in a 12.3% variation of the 27m standard or equivalent to a 3.35m variation as it relates to a small component of rooftop lift overrun and communal open space roof elements.

It is argued in this request that this variation is unlikely to result in any significant environmental impacts but does assist in achieving a higher quality building design and a yield that is entirely consistent with the density projections for this site and the desired future character of the locality. To require strict compliance would result in a building form that provides less amenity for future occupants than an otherwise fully compliant scheme. In this way the underlying objectives of the development standard are achieved by the proposal to an equivalent or better degree than a development that complied with the standard and strict compliance would be unreasonable or unnecessary in these circumstances.

Further, the proposal represents an appropriate increase and replenishment of the available housing stock with an excellent level of onsite amenity that is wholly in keeping with the desired future character of the locality and design excellence criteria of the Showground Precinct, noting the need to provide housing choice and affordability for a growing population in close proximity to local train and bus services, major regional road networks, access to areas of employment, educational facilities, entertainment and open space.

2.6 The Objectives of the Development Standard

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

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

The proposed development is considered to be generally consistent with the above objectives as:

1. The variation is a result of the 3m cross-fall over the site which results in the north-western corner of the building being higher than the south-eastern corner of the building relative to the existing (natural) ground level.
2. The variations are relatively minor at 12.4% for the lift overrun, 8% for the pergola and less than 3.1% for portions of rooftop parapet, which relate to a small portion of the overall building over a site area of 6610.7sqm.
3. The majority of the rooftop encroaching elements would be virtually imperceptible as viewed from the street as they are well setback from the street and/or screened by perimeter rooftop planting in 1m deep planters and the proposed development would still be entirely consistent with the 8-storey built form anticipated for the locality.
4. The encroachments relate to the provision of rooftop open space and increased amenity for future occupants and minor rooftop parapet containing landscaped planter boxes, which result in a better planning outcome than an otherwise compliant proposal without rooftop shading devices, covered communal space and reduced landscaped planter boxes.
5. The proposal does not result in additional yield or developable areas given all units are wholly contained below the 27m height limit up to the majority of the rooftop parapet. The proposal is otherwise fully compliant with the relevant built form controls and is not an overdevelopment of the site.
6. There are no adverse visual bulk impacts given the majority of the rooftop elements will not be visible from the street and landscaped planter boxes will shield the rooftop communal open space from public view.
7. There are no adverse amenity or solar access impacts within the proposed development or on adjoining properties. The design of the proposed development has ensured that privacy and solar access is achieved generally in accordance with the requirements of SEPP 65 and the Apartment Design Guide.
8. The proposed development for residential flat building is permissible in the R4 zone and consistent with the objectives of the zone. The proposed development achieves the objectives of the development standard and facilitates a better planning outcome on the site.

In this regard, it is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. Further, the subject site is considered suitable for the proposed development.

Further, the proposal represents an appropriate increase and replenishment of the available housing stock with an excellent level of onsite amenity that is wholly in keeping with the desired future character of the locality and design excellence criteria of the Showground Precinct, noting the need

to provide housing choice and affordability for a growing population in close proximity to local train and bus services, major regional road networks, access to areas of employment, educational facilities, entertainment and open space.

2.7 The Objectives of the Zone

The land use table states the objectives of the Zone as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

It is considered that the proposal is consistent with the objectives of these controls and is generally compliant with the DCP. In this regard, it is noted that the proposal represents a carefully considered design outcome having regard to the constraints of the existing streetscape and the desired future character of the streetscape. Overall the proposal provides a residential flat building development with active uses at the ground floor, and residential above, which is entirely in keeping with the objectives of the zone and the desired future character of the locality. The design of the proposal has had regard to maximising amenity and streetscape appearance, while minimising any potential adverse amenity and streetscape impacts.

The proposal seeks to provide for the housing needs of the community within a high density residential environment within a mixed use development, whilst being sympathetic and compatible with the existing and desired future character of the locality and streetscape. The proposal will cater for the expected traffic generation through off-street parking and will be adequately serviced in accordance with authority requirements. The proposed development has been designed to satisfactorily address any potential adverse impacts and is located in an area well serviced by public transport, roads, employment and entertainment areas, educational facilities and open space.

2.8 The Grounds of the Objection

The proposed variation to the development standard has been considered in light of the abovementioned objectives and potential environmental impacts and hence, strict compliance with the Building Height Control in this particular instance is considered to be unreasonable and unnecessary for the following reasons:

1. The variation is a result of the 3m cross-fall over the site which results in the north-western corner of the building being higher than the south-eastern corner of the building relative to the existing (natural) ground level.

2. The variations are relatively minor at 12.4% for the lift overrun, 8% for the pergola and less than 3.1% for portions of rooftop parapet, which relate to a small portion of the overall building over a site area of 6610.7sqm.
3. The majority of the rooftop encroaching elements would be virtually imperceptible as viewed from the street as they are well setback from the street and/or screened by perimeter rooftop planting in 1m deep planters and the proposed development would still be entirely consistent with the 8-storey built form anticipated for the locality.
4. The encroachments relate to the provision of rooftop open space and increased amenity for future occupants and minor rooftop parapet containing landscaped planter boxes, which result in a better planning outcome than an otherwise compliant proposal without rooftop shading devices, covered communal space and reduced landscaped planter boxes.
5. The proposal does not result in additional yield or developable areas given all units are wholly contained below the 27m height limit up to the majority of the rooftop parapet. The proposal is otherwise fully compliant with the relevant built form controls and is not an overdevelopment of the site.
6. There are no adverse visual bulk impacts given the majority of the rooftop elements will not be visible from the street and landscaped planter boxes will shield the rooftop communal open space from public view.
7. There are no adverse amenity or solar access impacts within the proposed development or on adjoining properties. The design of the proposed development has ensured that privacy and solar access is achieved generally in accordance with the requirements of SEPP 65 and the Apartment Design Guide.
8. The proposed development for residential flat building is permissible in the R4 zone and consistent with the objectives of the zone. The proposed development achieves the objectives of the development standard and facilitates a better planning outcome on the site.
9. Further, the proposal represents an appropriate increase and replenishment of the available housing stock with an excellent level of onsite amenity that is wholly in keeping with the desired future character of the locality and design excellence criteria of the Showground Precinct, noting the need to provide housing choice and affordability for a growing population in close proximity to local train and bus services, major regional road networks, access to areas of employment, educational facilities, entertainment and open space.

2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the LEP also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”

The breach of height of building limit is not a matter of state or regional significance.

“(b) the public benefit of maintaining the development standard,”

There is a public benefit in allowing the development to proceed. The proposed development would be consistent with anticipated development for the site, comparable in character with the scale of new built form for this locality, provides a high quality design outcome and would result in an appropriate housing yield and mix of land uses for this site.

“(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.”

Approval will result in a better planning outcome and would be in the public interest.

3.0 Conclusion and Recommendations

The proposed development has been assessed against the relevant statutory provisions of clause 4.6 and this written request has provided justification that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of this particular case.

Accordingly, the justification within this written request is considered to be well founded.

ATTACHMENT M – DESIGN REVIEW PANEL REPORT

DESIGN REVIEW PANEL	
DESIGN ADVISORY MEETING REPORT – 22 nd November 2023	
Item 4.1	11.00am – 12.35pm
DA Number	DA 59/2024/JP
DA officer	Cynthia Dugan
Applicant	Tarun Chadha
Planner	Eltin Miletic Development Consultants Pty Ltd
Property Address	17 – 23 Fishburn Avenue, 23 – 27 Chapman Avenue, Castle Hill
Proposal	<div></div> <p>A development block comprising 148 residential apartments over structured basement carparking.</p>
Design review	First review DA
Background	The site is known to Panel members
Applicant representative address to the design review panel	Tarun Chadha Registration number: 8777
Key Issues	Summary of key issues discussed: <ul style="list-style-type: none">• Non-compliance with statutory controls.• Non-compliance with development controls.• Lack of retention of existing trees and deep soil.• Lack of appreciation of intended future character and existing context.
Panel Location	Online meeting hosted by THSC
Panel Members	Chairperson – Tony Caro Panel Member - Stephen Pearse Panel Member - Steven Hammond
Declaration of Interest	None
Councillors	None present
Council Staff	Cynthia Dugan, Paul Osborne, Kate Clinton, Myone Webber, Marika hahn, Megan Munari

Other attendees	Tarun Chadha – Architect Eltin Miletic - Development Consultants PTY Ltd
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GENERAL

The Hills Shire Council is committed to achieving design excellence in the built environment and ensuring new developments exhibit the highest standard of architectural, urban and landscape design. The Hills Shire Design Review Panel (The Panel) is an Independent Advisory Panel, approved by the Government Architect, that provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in consideration of development applications.

Note: The Design Review Panel does not determine or endorse applications. The Design Review Panel provides independent design advice to applicants and council officers.

SUBJECT SITE BACKGROUND SUMMARY

The subject site for DA59/2024/JP as submitted on the Planning Portal is located in the Showground Planned Precinct.



Location plan (THSC)

SUMMARY OF PROCEDURAL MATTERS DISCUSSED AT THE MEETING 22/11/24

- The Panel was presented with DA59/2024/JP for a single built form development.
- The Applicant stated that the application was also incorporating additional lots to the south of the site that they had owner's consent for.
- The Panel noted that this was not evident in the submitted DA application and that the verbal statements provided by the applicant did not validate this contention.
- The Panel noted that Council's DA officer had requested the application be withdrawn.
- The Panel stated that they were unable to consider the amended DA documentation as anything other than a pre-DA for a Concept Development application as the application had not been made and the submitted documentation was incomplete and unclear.

The planning officer responsible for DA 59/2024/JP has issued the following statement that confirms what was advised during the Panel meeting by the officer.

"The Development Application was lodged on 14 July 2023 for a built form Development Application over 7 existing lots.

Whilst amended plans indicating a future concept development application were submitted as part of the Design Review Panel package, the Applicant has not formally applied to the consent authority for an amendment to Development Application 59/2024/JP. Whilst an invoice for an amendment to the DA fee was sent to the Applicant, this has not been paid. It is noted that any amendment of development application must be made on the NSW Planning Portal and meet the requirements under section 37 of the Environmental Planning and Assessment Regulation 2021. Section 38 of the Environmental Planning and Assessment Regulation 2021 stipulates that the consent authority, may through the NSW planning portal, approve or reject an application for an amendment to a development application submitted under section 37. This has not occurred prior to the Design Review Panel."

The Panel reiterates advice provided at the meeting that its comments in regard to any potential larger amalgamated site are provided to assist the applicant in preparing a concept scheme (Master Plan/Stage 1 DA), or a revised DA submission. As noted, neither have been submitted in the approved form as required by Council and relevant legislation.

DOCUMENTATION

The Design Review Panel reviewed the following drawings issued to Council by the applicant:

ADG Compliance checklist, no date, no listed author

Architectural Design Statement, submitted by Applicant

Floor Plans, 08/02/23, by Archidrome

Full Set of Plans, 10/02/23, by Archidrome

SEPP 65 Assessment, no date, no listed author

Statement of Environmental Effects, May 2023, MMDC Pty Ltd

Stage 2 Pre-DA Concept Plans – provided by applicant for DRP meeting 22/11/23

001 DRAWING LIST

01 ARCHITECTURAL DESIGN REPORT

02 Consolidated RFI Responses

PART A - COVER, STAGING, SITE ANALYSIS, EXPLORATION

PART B - MASTER PLANS AND SECTIONS

PART C - ELEVATIONS, HEIGHT ANALYSIS, MATERIAL SCHEDULE, VIEWS

PART C.1- Stage 2 Concept _Concept Plans, elevations, height analysis, shadow analysis, views

PART D - SHADOW ANALYSIS

PART E - TYPICAL UNIT PLANS

PART F - DOOR AND WINDOW SCHEDULE

PART G - ADG Compliance report

PANEL COMMENT

DA 59/2024/JP – 17 – 23 Fishburn Avenue, 23 – 27 Chapman Avenue, Castle Hill

The Panel commenced at 9.30am.

The Panel comment comprises two sections. The first section addresses DA 59/2024/JP, the second section addresses the proposed expanded site and comprises advice on expectations for a Concept

Development application. The Panel recommends this report is provided to the determination authority without amendment.

Section 1. DA59/2024/JP

1. Precinct planning, appreciation and response to context

- The submitted documents do not adequately demonstrate how the proposal integrates with the urban design and architectural character of other new or proposed development in the immediate surrounds of the site, the wider urban and environmental context of the new Showground Precinct, or how it contributes to maintaining the garden character of The Shire.
- The submitted documents do not demonstrate that the existing landscape/ trees have been appropriately assessed and considered within the development of the site layouts. The panel considers the review and retention of significant landscape within the Hills precinct to be a major benefit in the development of the areas character and environmental performance. It also has the significant potential to enhance the public domain, COS and apartment aspects/outlook.

2. Site planning and built form strategy

Bulk, Scale and Massing

- The single architectural treatment proposed for all building facades accentuates the bulk and scale of the development and does not integrate convincingly with surrounding development.
- The maximum façade lengths set out in the DCP should be reviewed, and the design revised to satisfy this objective.
- The buildings maximum length needs to comply with the intent of the DCP control.

Site Coverage/ Landscaped Open Space

- Site coverage, landscaped open space, Communal Open Space, and Deep Soil Zone (DSZ) provisions are to be provided to the Council's Landscape and DA Officers satisfaction. The minimum requirements in the ADG (e.g. 6m width and no paving or structures being present) should be adhered to with regards to calculating the DSZ. Proposed retaining walls will also compromise the DSZ with the intrusion of footings into planting areas, resulting in inadequate soil for planting large trees.
- Likewise minimum ADG requirements in calculating COS will result in not all landscaped areas being able to be included as COS.

3. Compliance

Height

- The Panel does not generally support LEP height non-compliance. On sloping sites or in other specific circumstances consideration is given to minor exceedance for roof access elements and shading devices serving roof top communal open space, provided that such elements are not seen from the surrounding public domain or impact on the amenity of adjacent development.
- It is noted that the proposal exceeds the permissible height by up to 12%.

Density

- Compliance with the LEP FSR controls is required. If the incentivised FSR provisions in LEP cl.9.7 are sought by the Applicant, compliance must be confirmed to Council's satisfaction.
- The site area of 6,600sqm does not meet the minimum 10,000 sqm cl.9.7 requirement.
- The proposed density is therefore too high for the site being non-compliant by 38%. This has resulted in setback encroachments and ADG non-compliances that are not supported by the Panel, as these do not result in acceptable design quality outcomes.

Setbacks

- All ADG minimum separations and DCP boundary setbacks should be complied with (including basements and balconies)

- The encroachment of the car park basement and lower ground courts into the setback zone adversely impacts on the aesthetic, environmental and landscape qualities of the street frontage.
- Services and items such as OSD tanks should be incorporated into the building fabric and not encroach into setback areas. Refer to Council fact sheets for design guidance. OSD tanks should be located within the basement carpark or under driveways slabs.
- Setbacks should only be used for driveway access where there is no possible alternative. This site has no evident constraints that would preclude a driveway entry that is incorporated into the building envelope as per DCP requirements.

Apartment Mix and Building Design

- Each residential development block must be able to be accessed directly from the immediately adjacent street frontage by the mobility impaired, such as a person in a wheelchair or on crutches.
- The extensive ramping to Chapman Avenue adversely impacts upon activation and visual appearance of the street frontage. The Panel recommends an alternative solution be found such as a lift, and that no ramping should occur in the setback zone, which is to be reserved for deep soil landscaping.
- The extensive ramping is not in keeping with the future intended character of the precinct, which is identified in the DCP as being a fine-grained street for this precinct.

4. Landscape Design

- The Panel notes a Landscape Architect did not present the landscape strategy and advises that for all future applications a Landscape Architect/ Designer if not already engaged is engaged and presents at all Panel meetings.

Public Domain

- The Panel is concerned with the extent of established tree removal adjoining and within the public domain. All established trees should be retained where practicable and described by an arborist report.
- Refer to ADG guidelines for medium to large tree provision requirements in deep soil zones as it appears these requirements are not met.
- A significant proportion of the street frontage is taken up by hard paving surfaces and services, which is not in keeping with the desired future character of the precinct. The significant length of ramping on the south-west frontage as a result of the large level difference between Chapman Ave and the ground level apartments and entry, compromises the landscape frontage and potential canopy tree planting.
- The Panel recommends that a significantly higher quantum of large, high canopy peripheral trees be provided around the edges of the site, to meet the requirements of a high density residential environment in a strong, verdant landscape setting.
- There should be a stronger presence of mature trees and concomitant deep soil provision in this setback zone to ensure that the development is sited within a landscape setting of canopied trees.
- Ensure that street tree planting is incorporated to Fishburn Crescent in accordance with the DCP.
- The proposal is not consistent with The Hills garden landscape character setting.
- The lack of deep soil for significant tree planting on south in the public domain adjacent the new laneway
- Basement car parking is outside of building footprint and encroaches upon landscape areas suitable for deep soil provision.
- Whilst supportive of the provision of a 'pocket park' facing Fishburn Crescent, it's resolution and delivery will require development to ensure that the space is well connected to the street and welcoming to the public. It is noted that on the 3D renders that the space appears to be open to the public, however on the preliminary landscape plans it is shown fenced and gated. The intent of the space needs to be clarified. Particular items to address are:
-views from the street into the park area

- interface and adequate privacy to the facing residences
- confirmation of fencing and any site security
- The fire escapes (as shown below) that exit into the setback zone are not acceptable as they adversely impact upon the public domain and presence of the built form to the street, as well as compromising landscape area and deep soil opportunities. The carpark design should be modified, and the fire stairs are to be incorporated into the building envelope. The basement car park is not to encroach upon the setback zone. This is a poor design outcome that presents CPTED issues and is not reflective of design excellence.



Applicant provided Ground Floor Plan

Private Domain

- For a proposal of this size, high quality communal open space design is essential, in keeping with the place-making principles of generous and quality places outlined in the DCP.
- The public domain and adjoining deep soil zones require more substantive tree planting.
- The upper level communal open space provision would benefit from the provision of shading devices and reduction of wide areas of pavement
- The landscape architect/ designer is to confirm that the trees illustrated will be delivered and will survive.

5. SEPP 65 items to be clarified or revised:

SEPP 65 Design Principles

Principles 1-7 & 9 have not been adequately addressed

Apartment Design Guide

ADG compliance is not adequately demonstrated in a number of key areas. The Panel recommends that additional information be provided to demonstrate that the development is meeting the objectives and design criteria in many parts of the ADG. Specific items as noted at the meeting were:

- Building separation internally and to boundaries, specifically the reduced setbacks between facing wings across communal open space and on the south elevation facing new lane.
- Cross privacy between units facing into the courtyard and those facing across façade indents to Chapman and the new laneway.
- Calculation of deep soil provision
- Adequacy of common facilities for this size development

- Solar access compliance to ADG definition to be confirmed specifically in units facing into the inner courtyard, specifically in the inner bend of the horseshoe plan on a number of levels.
- The adequacy of snorkel bedrooms with long study arm refer type C2.
- The length of a number of internal corridors seems excessive, up to 40 metres at some levels.
- The design and uses of open balconies/circulation areas is unclear specifically in the inner bend of the horseshoe plan on a number of levels.
- The plans indicate up to 12 units to a lobby which appears to be a different to what is described elsewhere in the documents and in the SEE.
- Ensure exposed windows are adequately shaded.
- Access provisions in event of a lift being out of service.

The building currently has a number of lobbies which appear to be all linked to one central arrival space. This may not be adequate for day to day operations of an apartment building. Clarification is needed for address for deliveries, mail, visitors etc.

6. Sustainability and Environmental amenity

- Although not discussed at the meeting, achieving a high level of environmental sustainability and amenity in an increasingly denser and hotter western Sydney is a key challenge for the Showground precinct. For example, a 40% tree canopy for sites in urban renewal areas is targeted by the GSC (Central City District Plan, Planning Priority C16).
- The Showground Precinct LEP and DCP make numerous references to the need for ESD principles to guide the design of new developments. This fundamental requirement for achieving design excellence has not been adequately addressed in the design submission..
- Beyond satisfying ADG requirements, the Panel recommends that this proposal is reviewed by the applicant with a sustainability engineer and a report prepared that demonstrates how an appropriate suite of passive and active environmental strategies have been integrated into the design of the scheme

7. Architecture and Aesthetics

- The single architectural treatment proposed for all building facades accentuates the bulk and scale of the development. For a development of this size a more varied approach is recommended. Façade designs should respond to orientation and the character of landscape, public domain and built form interfaces. The Panel advises the applicant to review the site specific DCP for this precinct and adhere to the controls specified.
- The use of stone as a quality material is a valuable addition to the context , however as shown on current elevations it could appear as thin façade of inadequate proportions overall. Stone has the potential to be a significant element of the overall concept (façade and COS) and as outlined above the material selection, detail and scale of application is to be considered in the provision of a more varied façade approach and proportioning.
- A more diverse architectural approach should be considered for some of the built form, to break down the overall perception of the development's size and to introduce variety, fine grain and human scale into the precinct.
- All utility services elements in the public domain are to be suitably screened and integrated into the building fabric. Detailing of services screening to be a DA condition or prior to consent subject to DA officer requirement.
- Encroachment into the street setback by built form at both the basement level and by circulation elements is unacceptable and compromises the aesthetics of street address.

8. Documentation

- The Panel advises the applicant to ensure that all future documentation is in the **approved form** as specified under section 24 *Environmental Planning and Assessment Regulation 2021*.
- This includes providing an accurate survey and that all the trees to be removed are identified correctly. Note this is a stated requirement in the approved form.
- Sun Eye diagrams at ½ hourly intervals between the hours of 9am and 3pm.

- Cross sections at all street interfaces at a scale of 1:20

PANEL CONCLUSION

The Panel advises that it does not support application DA 59/2024/JP in its current form for the reasons set out in this report and it is yet to demonstrate the requirements of design excellence.

Section 2. Panel Advice pre-DA proposal for a Concept Masterplan



Location plan (THSC)

As noted in the introduction, the applicant has also submitted preliminary material based on a larger, yet to be amalgamated site. This material does not meet Councils requirements for consideration as a DA for multiple reasons, as noted by the DA Officer. The following Panel comments are therefore provided as informal advice only, to assist the applicant in preparation of any future application for an expanded site.

- The Panel considers that the proposed addition of a separate perimeter development block on the enlarged site is unlikely to offer an optimised overall design outcome.
- The Panel advises that the applicant must demonstrate that the design for enlarged site has been considered holistically, and strongly recommends that the applicant explore other options to arrive at the best solution. These would need to be presented at the next meeting as a concept scheme, prior to submission of a formal DA.
- The design of a concept masterplan must demonstrate that the minimum requirements of ADG Parts 3 & 4 are able to be complied with, in order to achieve design excellence. The Panel notes the built form arrangement as presented (square "donut" plan) is unlikely to achieve the required ADG design objectives and criteria. Beyond this, the amalgamated site offers design opportunities that would not be available to two separate developments, and a higher design quality outcome through amalgamation should be sought.
- The applicant must consider Design with Country principles, and demonstrate in the revised proposal an understanding of the site context, existing vegetation, topography, and desired future character as defined in the DCP.
- Retention of mature trees is vital to the character of the precinct and provides it with a valuable, well established landscape setting. Retention of existing trees within the site has not been properly explored, and all existing significant trees within the road reserve and setbacks should be retained. All tree removal must be supported by an arborist report and sign off by Council's landscape officer prior to the next meeting.

- Should any site options be investigated that include new laneways and cross site links that they be designed to meet ADG specifically for separation, privacy, solar and that deep soil be incorporated to achieve significant tree plantings.
- With respect to documentation, the documentation is to be clear and set out in an approved form as specified under section 24 *Environmental Planning and Assessment Regulation 2021*.
- In addition, the Applicant is to provide:
 - Sun Eye diagrams at ½ hourly intervals between the hours of 9am and 3pm.
 - Cross sections at all street interfaces at a scale of 1:20 demonstrating how the development achieves appropriate interfaces at ground level between the building and the public domain. This includes interfaces to private common open space areas and public cross site links.

PANEL CONCLUSION

It is recommended that the Applicant addresses the issues identified in this report and presents a revised application to the Panel once master planning and alternate options have been explored. The Panel advises that the documentation is prepared in the approved form and that a logical and clear presentation that clearly demonstrates the design intent is presented at the next meeting.

The proposal does not meet the requirements of the design excellence clause. To further assist the applicant the DA Officers advice of key issues for both the submitted DA site and the expanded site is provided as follows:

- Clarification on the type of Development Application being proposed. The amending documentation suggests a Concept DA under Division 4.4 of the EP&A Act and Stage 1 Detailed Application will be proposed under the Amended DA.
- Owners consent has not yet been submitted for 25, 27 Fishburn Crescent and 19 and 21 Chapman Avenue.
- Compliance with Clause 9.7 housing diversity local provision.
- Amended documentation in the "DRP Package" only details compliance with Stage 1 of the development and does not clarify compliance with the ADG design criteria for the total development including Stage 2.
- Height – non-compliance with LEP 2019
- Building setbacks – non-compliance with DCP 2012 for front podium setback.
- Façade length – non-compliance with DCP 2012.
- Potential Building Separation variations to ADG.