

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-566 DA 1525/2024/JP
PROPOSAL	Amending Concept Development Application for a Seniors Housing Development and a Neighbourhood Shop
ADDRESS	7-23 Cadman Crescent & 18-24 Hughes Avenue Castle Hill
APPLICANT	Levande Pty Ltd
OWNER	Levande Pty Ltd
DA LODGEMENT DATE	14 June 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2.20 and Schedule 6 of the SEPP (Planning Systems) 2021
CIV	\$139,722,748.71(excluding GST)
CLAUSE 4.6 REQUESTS	SEPP (Housing) 2021 - Part 5, Division 3, Section 87(2)(c) Maximum building height to achieve additional floor space ratios SEPP (Housing) 2021 - Schedule 4, Part 1, Section 4, Subsection 2(c) Car parking
KEY SEPP/LEP	SEPP (Housing) 2021 and The Hills LEP 2019
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	Statement of Environmental Effects – Ethos Urban Survey Plan – Survplan Architectural Plans – Chrofi Architects Landscape Plan – Turf Design Studio Urban Design Report – Chrofi Architects Traffic and Transport Impact Assessment – JMT Consulting BCA/NCC Assessment Report – Credwell Accessibility Report – Purple Apple Access

	Arboricultural Impact Assessment Report – Earthscape Horticulture Stormwater Concept Design – JHA Engineers BASIX Certificate – Credwell Clause 4.6 Variation Request – Car Parking – Ethos Urban Clause 4.6 Variation Request – Building Height – Ethos Urban Court Orders – Land and Environment Court
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	Electronic Determination
PREPARED BY	Cynthia Dugan – Principal Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	30 April 2025

EXECUTIVE SUMMARY

The Amending Concept Development Application is for a seniors housing development and a neighbourhood shop. The application seeks to modify an Amending Concept Development Application 1110/2022/JP approved by the Land and Environment Court on 17 March 2023. The original Concept Development Application 1262/2019/JP was approved by the Sydney Central City Planning Panel on 20 February 2020.

The Concept Development Application is made under Section 4.22 of the Environmental Planning and Assessment Act 1979. The Development Application seeks to amend the land use from a residential flat building development comprising 242 units to a seniors housing development for 217 independent living units. The application includes amendments to the building envelopes, reduced basement levels, introduction of a porte cochere to be accessed from Hughes Avenue, a wellness clubhouse in Buildings A and B and the relocation of a neighbourhood shop. No built form is included as part of the subject Development Application however a separate Development Application for built form has been lodged under 110/2025/JP. This application is referred concurrently to the SCCPP for determination.

Seniors housing development is permitted in the R4 High Density Residential zone under the SEPP (Housing) 2021. The Development Application seeks to utilise the additional floor space ratio (FSR) and height provisions for seniors housing under Section 87 of the SEPP (Housing) 2021 which allows for an additional 15% of the maximum permissible FSR if the additional floor space is for the purposes of independent living units and the development will result in a maximum building height of not more than 3.8m above the maximum permissible building height. As The Hills LEP 2019 provides a maximum incentive FSR of 2.3:1 under

Clause 9.7 and a maximum height of 21m under Clause 4.3, this results in a maximum permissible FSR of 2.645:1 and maximum permissible height of 24.8m for the site. The proposal provides for a maximum FSR of 2.376:1 which complies with the FSR standard. The development also meets the unit mix, size and car parking provisions under Clause 9.7 of the Hills LEP 2019.

The application seeks to vary the maximum building height standard under Section 87(2)(c) of the SEPP (Housing) 2021. The proposed maximum heights of 25.8m for Building A and 26.3m for Building B exceed the height limit of 24.8m by a maximum of 1m (4%) and 1.5m (6%) respectively. The Applicant submits that the further variation to the SEPP (Housing) 2021 height standard for Buildings A and B is required to accommodate lift overruns and mechanical plants. A well-founded Clause 4.6 written submission has been provided with the application. It is considered strict compliance is unreasonable and unnecessary in this instance and there are sufficient environmental planning grounds to justify contravening the development standard, as the variation relates to upper-level service elements which are setback and recessive and would not impact the visual amenity when viewed from the streetscape. In this regard, the variation can be supported.

The application also seeks to vary a development standard for car parking accessibility and usability under Schedule 4 of The SEPP (Housing) 2021. Section 85 of the SEPP requires that development consent must not be granted for independent living units unless the development complies with the relevant standards specified in Schedule 4. Schedule 4, Part 1, Section 4, Subsection 2(c) requires that if parking spaces for a Class 1, 2 or 3 building under the Building Code of Australia is provided in a common area for use by occupants who are seniors or people with a disability and for a group of 8 or more parking spaces, at least 15% of the parking spaces must comply with AS/NZS 2890.6 and at least 50% of the parking spaces must be at least 3.2m wide and have a level service with a maximum gradient of 1:40 in any direction. The application proposes that 40% (130 of 322 spaces) of the Class 2 buildings would comply with AS/NZS 2890.6 and 28% (91 of 322 spaces) would be at least 3.2m wide and have a maximum gradient of 1:40. This results in a 22% variation to the 3.2m wide car parking standard. A well-founded Clause 4.6 written submission has been provided with the application. It is considered strict compliance is unreasonable and unnecessary in this instance and there are sufficient environmental planning grounds to justify contravening the development standard, as the variation only relates to car parking spaces that are provided in surplus of the minimum non-discretionary standard under Section 108(k) of the SEPP. The Clause 4.6 submission demonstrates that despite the variation, the proposal would still provide for accessibility and usable car parking for future occupants of the seniors housing development. In this regard, the variation can be supported.

With the exception of the above, the proposal demonstrates compliance with the SEPP (Housing) 2021. In particular, the development complies with Section 93 of the SEPP as the application has demonstrated that residents will have adequate access to facilities and services by frequent bus services located 250m – 300m from the site on Middleton Ave. The proposal also complies with all other provisions under Chapter 3, Part 5 Housing for Seniors and People with a Disability, including the non-discretionary development standards under Division 7, Chapter 4 Design of Residential Apartment Development, Schedule 4, Part 2 Additional Standards for independent living units and Schedule 8 Design Principles for Seniors Housing.

The proposal complies with The Hills LEP 2019. The proposal has been reviewed by Council's Design Advisory Panel (DAP) and the Amending Concept Development Application satisfies the provisions under Clause 9.5 Design Excellence of The Hills LEP 2019. The DAP made recommendations to the built form of the development which is considered in the Council Assessment Report under Development Application 110/2025/JP.

The proposal does not result in further variations to the relevant controls under The Hills DCP 2012 compared to the Court Approved Concept Development Application.

No submissions were received following the notification period.

The proposal is recommended for approval subject to conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

The site is irregular in shape, comprises 14 residential lots and has a total area of 12,405.8m². The site slopes to the southern corner and is bounded by Cadman Crescent to the north and east, and Hughes Avenue to the south-west. The site is located approximately 530m from the Showground Metro Station.

The site is within the Showground Precinct which is one of four Precincts identified by the NSW Government to be planned as part of its 'Planned Precinct Program' along the Sydney Metro Northwest corridor. Under the Hills LEP 2019, the subject site is zoned R4 High Density Residential, comprises a maximum height of 21m (6 storeys) and directly interfaces land zoned R3 Medium Density Residential to the northeast and southeast. The current improvements on site include one and two storey dwelling houses on each residential lot.

The properties to the northwest and west of the site are zoned R4 High Density Residential and comprises of 1-2 storey dwelling houses. The properties to the northeast, east and south are zoned R3 Medium Density Residential and are characterised by 1-2 storey dwelling houses. Further north and west of the site, a number of residential flat buildings are currently under construction within the emerging precinct.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The Amending Concept Development Application seeks approval for the following modifications to the Court approved Amending Concept Development Consent 1110/2022/JP:

- Replacement of approved detailed drawings with concept envelope drawings;
- Change of approved land use from residential flat building to seniors housing, comprising independent living units and ancillary services including a wellness clubhouse on the ground floor of Buildings A and B;
- Reduction of approved residential units from 242 to 217 and change of unit typology mix;
- Increase in approved building envelope heights of between 370mm – 710mm across Buildings A, B, D, and E, largely to accommodate lift overruns and rooftop plant;
- Reconfiguration of approved basement design, including deletion of a basement level;
- Introduction of a porte cochere to be accessed from Hughes Avenue;
- Replacement of approved ground floor residential units with a wellness clubhouse in Buildings A and B; and
- Associated amendments to approved landscaping and stormwater design.

The key development statistics of the original approved Concept DA, the Court approved amending DA and the proposed amending DA are detailed in the table below:

	Original SCCPP Approved DA 1262/2019/JP	Court Approved Amending Concept DA 1110/2022/JP	Proposed Amending Concept DA 1525/2024/JP
Site Area	12,403.8m ²	12,403.8m ²	12,403.8m ²
Land Use	Residential Flat Buildings	Residential Flat Buildings and Neighbourhood Shop	Seniors Housing Development (Independent Living Units and Wellness Centre)
Maximum height	Building A 7 storeys (23.6m) Building B 7 storeys (23.15m) Building C 3 storeys (14.8m) Building D 7 storeys (23.8m) Building E 7 storeys (22.69m)	Building A 7 storeys (25.11m) Building B 7 storeys (25.59m) Building C 4-5 storeys (20.7m) Building D 6 storeys (25.3m) Building E 7 storeys (24.23m)	Building A 8 storeys (25.8m) Building B 7-8 storeys (26.3m) Building C 4-5 storeys (19.5m) Building D 7 storeys (24.65m) Building E 7 storeys (24.6m)
Number of apartments	1 bedroom – 57 2 bedroom – 125 3 bedroom – 27 4 bedroom – 19 Total 228 (residential apartments)	1 bedroom – 54 2 bedroom – 128 3 bedroom – 60 Total 242 (residential apartments)	1 bedroom – 11 2 bedroom – 125 3 bedroom – 81 Total 217 (independent living units)
Gross Floor Area	26,112m ²	27,104m ²	29,473m ²
Floor Space Ratio	2.1:1	2.185:1	2.376:1
Communal Open space	4,469m ² (36%)	4,857m ² (39%)	3,134m ² (25%)
Car Parking Spaces	Residential: 248 Visitor: 59 Total: 310	Residential: 301 Visitor: 51 Retail: 4 Total: 356	Residential (Independent Living Units): 308 Visitor: 4 Retail: 5 Total: 322

2.2 Background and Site History

On 20 February 2020, the Sydney Central City Planning Panel (SCCPP) approved 1262/2019/JP for a Concept Development Application for a residential flat building development comprising 228 apartments, basement car parking and associated landscaping. The development was supported with a Clause 4.6 written submission to vary the maximum height LEP standard by 13.57%.

On 23 July 2020, Section 4.55(2) Modification Application to 1262/2019/JP/A was lodged to remove condition 3 in the development consent which required a dwelling cap of 228 dwellings and instead propose either a gross floor area cap of 28,589m² reflective of 264 dwellings submitted as part of the modification, or an upper dwelling limit of 315 dwellings. Other changes sought included an increase in the height of Building C from 3 to 5 storeys; apartment connectors between Buildings A-B and D-E; amendments to building envelopes to provide improved articulation; provide new rooftop communal open space areas; and increase the site's landscaped area. This application was refused by the Sydney Central City Planning Panel (SCCPP) on 15 November 2021. The main grounds for refusal related to the modifications not resulting in a development that would be substantially the same as originally approved. The application also did not meet the design excellence provision under Clause 9.5 of the LEP and did not provide appropriate residential amenity as required under the Apartment Design Guide and SEPP 65.

On 25 January 2022, Development Application 1110/2022/JP was lodged for an Amending Concept DA to 1262/2019/JP. The development sought to remove condition 3 in the development consent which required a dwelling cap of 228 dwellings and instead propose a gross floor area cap of 27,834m² reflective of 255 dwellings. The application also sought to alter the approved building envelopes to enable additional building height, allow an addition of 60m² retail space and increase the communal open space area. A built form Development Application was also lodged on the same date under Development Application 1112/2022/JP. On 16 June 2022, a Class 1 Appeal was filed with the Land and Environment Court against the deemed refusal of DA 1110/2022/JP (No 174486 of 2022) and DA 1112/2022/JP (No 174536 of 2022). Both Development Applications were refused by the Sydney Central City Planning Panel on 11 July 2022. However, the Land and Environment Court approved both Development Applications on 17 March 2023 with a maximum of 242 dwellings. Refer Attachment G for the Court Orders.

On 30 November 2023, prelodgment meeting (31/2024/PRE) was held with the Applicant who proposed to lodge a Modification Application to amend the Court approved development consent from residential flat buildings to seniors housing comprising independent living units. As there would be a substantial change to the land use from residential flat buildings to seniors housing and would include alterations to the FSR, unit sizes, unit mix and design for accessibility, Council staff advised the Applicant that a new Development Application would be required as it was unlikely the changes would result in a development that is substantially the same as required under Section 4.56 of the Environmental Planning and Assessment Act 1979.

A further pre-lodgement meeting (70/2024/PRE) was held on 19 April 2024. The Applicant proposed to lodge a Section 4.56 Modification Application or an Amending Development Application to the Court Approved DAs and indicated that the development would operate as a 'retirement village' under the Retirement Villages Act 1999. As the Act states 'retired person as a person who has reached the age of 55 years or has retired from full-time employment', the land use would remain as a 'residential flat building'. Council staff advised that if the land use were to remain as a residential flat building, the design of the development should reflect this and that the proposed determination pathway of both the Concept and built form development applications would not be supported as the development is unlikely to meet the

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'substantially the same' test. It was recommended that a new Development Application for both the concept and built form development is lodged and the previous development consents are surrendered.

The subject Amending Concept Development Application was lodged on 14 June 2024. At lodgement, the Applicant indicated that a built form Development Application for the subject site would be lodged imminently and amended plans would be submitted with the subject Amending Concept Development Application. The Applicant requested that the notification of the Development Application be delayed until these amended plans were submitted. Amended plans for the subject Development Application was submitted on 10 July 2024. The Development Application was notified from 16 July 2024 to 6 August 2024. No submissions were received.

The built form Development Application 110/2025/JP was lodged on 1 August 2024.

A letter was sent to the Applicant on 5 August 2024 requesting additional information regarding waste management, landscaping and planning matters. A further request to provide additional information regarding engineering issues was sent on 7 August 2023. A submission was received from Sydney Water requesting their Wastewater assets to be indicated on the architectural plans. This was forwarded to the Applicant on 23 August 2024. Amended plans were provided on 26 August 2024.

Council staff briefed the Sydney Central City Planning Panel on 5 September 2024. The Panel noted the following:

- The panel queried if consideration had been given to care facilities available to residents to assist with aging in place. The applicant advised it does have partnerships with wellbeing coordinators/consultants as well as aged care providers and will continue to navigate to further support residents.*
- The panel targets determination of RSDAs within 250 days. The chair recommends that the applicant expedite their efforts to facilitate amendments or additional information required by Council to allow them to complete their assessment. The panel will determine development in the form it is presented at or prior to 250 days*

The application was reviewed by the Design Advisory Panel on 11 September 2024.

A further request for additional information was sent to the Applicant on 12 November 2024 regarding planning matters.

A response to the outstanding engineering issues were provided on 6 December 2024.

An amended Clause 4.6 written submission to Part 1 of Schedule 4 of the Housing SEPP was provided on 19 December 2024.

Further information was requested regarding outstanding engineering matters on 30 January 2025. A response was provided from the Applicant on 6 February 2025.

On 1 April 2025, Council staff requested the Applicant provide legal advice to confirm that the height requirement for the additional floor space ratio under Clause 85 of the SEPP (Housing) and carparking provisions under Schedule 4 of SEPP (Housing) 2021 could be varied under Clause 4.6 of the LEP.

On 7 April 2025, Council staff requested the Applicant provide an updated Clause 4.6 written submission to ensure that the car parking variation under Schedule 4 of the SEPP (Housing) 2021 reflected what was proposed on the submitted plans.

On 9 April 2025, revised basement car parking plans were submitted amending the number of parking spaces for the development. Legal advice was also provided to address planning concerns regarding the Clause 4.6 written submissions. Refer Attachment U.

On 11 April 2025, revised Clause 4.6 submissions were provided to vary the height and carparking standards under Part 5, Division 3, Section 87, 2(c) and Schedule 4 of SEPP (Housing) 2021. Refer Attachment T.

3. STATUTORY CONSIDERATIONS

3.1 Concept Development Applications under the Environmental Planning and Assessment Act 1979

The Amending Concept Development Application is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. Section 4.22 of the Act States;

4.22 Concept development applications

- (1) *For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
 - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.
- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

4.23 Concept development applications as alternative to DCP required by environmental planning instruments (cf previous s 83C)

- (1) *An environmental planning instrument cannot require the making of a concept development application before development is carried out.*
- (2) *However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.*

Note—

Section 3.44(5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

- (3) *Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.*

4.24 Status of concept development applications and consents (cf previous s 83D)

- (1) *The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.*
- (2) *While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*
- (3) *Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.*

Note.

See section 4.53(2) which prevents a reduction in the 5-year period of a development consent.

The Applicant has requested the subject Development Application be considered as an amending Concept Development Application. There is no built form proposed as part of the subject Development Application. The built form Development Application 110/2025/JP is referred concurrently to the Panel.

It is noted that the Land and Environment Court approved an amending Concept Development Application on 17 March 2023. Refer Attachment G for Court Orders. In this regard, the Applicant has lodged an Amending Development Application to seek development consent for additional changes to the approved amending Concept Development Application.

It is considered that the subject Development Application satisfies the matters of consideration under Section 4.15 of the Act as identified throughout this report. The relevant environmental planning instruments including The Hills Local Environmental 2019, SEPP (Housing) 2021, The Apartment Design Guide, The Hills Development Control Plan 2012 and the likely impacts of the development including environmental, natural and built and social and economic impacts, the suitability of the site, any submissions made during the notification period and consideration of the public interest has been assessed.

To ensure Section 4.24(2) is satisfied and the determination of the subject Concept Development Application and built form Development Application can be made, condition 1A has been recommended in the development consent requiring ‘a notice of modification’ as referred to in Section 4.17(5) of the Environmental Planning and Assessment Act 1979 be prepared in accordance with Clause 67 of the Environmental Planning and Assessment Regulations 2021 and delivered to the consent authority (the Land and Environment Court) modifying Concept Development Consent 1110/2022/JP. This is consistent with the approach taken in the Court ruling to amend the original Concept Development Application 1262/2019/JP under the Amending Concept Development Application 1110/2022/JP. It is noted that the consistency of the built form Development Application to the subject Concept Development Application is addressed under the Council Assessment Report for the built form application.

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

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.

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 (Sustainable Buildings) 2022;
- State Environmental Planning Policy (Housing) 2021; and
- The Hills Local Environmental Plan 2019.

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

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	Section 2.20 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 will be considered in the built form Development Application. No conditions required for the subject Concept DA.	Y
Biodiversity and Conservation SEPP	Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments. No conditions required for the subject Concept DA.	Y
Sustainable Buildings	Chapter 2 contains standards for residential development. This will be assessed under the built form Development Application. No conditions required for the subject Concept DA.	Y
Housing SEPP	Chapter 3, Part 5 Housing for Seniors and People with a Disability, including the non-discretionary development standards under Division 7	N, Clause 4.6 submission provided for Division 3, Section 87, 2 (c) building height. Refer discussion below.
	Chapter 4 Design of Residential Apartment Development	Y
	Schedule 4, Part 2 Additional Standards for independent living units	N, Clause 4.6 submission provided for car parking. Refer discussion below.
	Schedule 8 Design Principles for Seniors Housing.	Y
LEP 2019	<ul style="list-style-type: none"> • Clause 4.1 – Lot size • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio 	Y N SEPP (Housing provisions apply)
	<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 9.4 – Development requiring the preparation of a development control plan • Clause 9.5 – Design Excellence • Clause 9.7 – Residential development yield on certain land 	Y Y N/A SEPP (Housing provisions apply)
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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 2.20 of the SEPP, the concept development application is a regionally significant development as it satisfies the criteria in Schedule 6 as the proposal is development that has an estimated development cost of more than \$30 million. Accordingly, the Sydney Central City Planning Panel is the consent authority for the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 have been considered in the assessment of the Development Application. Clause 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

No built form is proposed as part of the subject Concept Development Application. A Detailed Site Contamination Investigation has been submitted with the built form Development Application. Subject to conditions being recommended in the built form DA, it is considered that the site will be suitable for the proposed development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

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

State Environmental Planning Policy (Sustainable Buildings) 2022

As this Development Application is for an Amending Concept Development Application, a BASIX Certificate was not required to be submitted. However, as a built form Development Application has also been lodged, a BASIX Certificate was included as part of the subject Development Application which demonstrates the proposal achieves the targets for energy, water use and thermal comfort for residential development.

State Environmental Planning Policy (Housing) 2021

Seniors housing is permitted in land within a R4 High Density Residential zone under Section 81 of the SEPP. The development complies with Section 93 of the SEPP as the application has demonstrated that residents will have adequate access to facilities and services by frequent bus services located 250m – 300m from the site on Middleton Ave. This bus service will take the residents to a place that has adequate access to facilities.

To satisfy the provisions under Section 88 Restriction on occupation of seniors housing and Clause 86 of the Environmental Planning and Assessment Regulation 2021, condition 11 has been recommended in the Development Consent requiring a restriction on Title to ensure all occupants for the development are seniors or people who have a disability, people who live in the same household with seniors or people who have a disability, staff employed to assist in the administration and provision of services in the seniors housing development.

Section 95 of Division 5 requires that the design of seniors housing is to consider the Seniors Housing Design Guide published by the Department in December 2023. The Applicant has provided an Urban Design Report demonstrating that adequate consideration has been given to the design principles set out in Schedule 8 of the SEPP.

As required under Clause 147 of Chapter 4 of the SEPP and Clause 29 of the Environmental Planning and Assessment Regulation 2021, a Design Verification Statement prepared by Tai Ropiha, Director at CHROFI (registration number 6568) was submitted with the application. It is assessed that the Concept Development Application achieves the design principles under Schedule 9 'Design Principles for Residential Apartment Development' and the Apartment Design Guide (ADG).

The proposal complies with all other provisions under SEPP (Housing) 2021 with the exception of the following:

a. Division 3 Development Standards- Maximum Building Height

The application seeks to vary the maximum building height standard under Section 87(2)(c) of the SEPP (Housing) 2021. Section 87 prescribes as follows:

87 Additional floor space ratios

(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—

(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under Chapter 5 or another environmental planning instrument, or

(b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.

(2) Development consent may be granted for development to which this section applies if—

(a) the site area of the development is at least 1,500m², and

(b) the development will result in a building with the maximum permissible floor space ratio plus—

(i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or

(ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or

(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the

additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and

(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

As The Hills LEP 2019 provides a maximum incentive FSR of 2.3:1 under Clause 9.7 and a maximum height of 21m under Clause 4.3, this results in a maximum permissible FSR of 2.645:1 and maximum permissible height of 24.8m for the site. The proposal provides for a maximum FSR of 2.376:1 which complies with this standard and meets the unit mix, size and car parking provisions under Clause 9.7 of The Hills LEP 2019. However, the proposed maximum heights of 25.8m for Building A and 26.3m for Building B exceed the height limit of 24.8m by a maximum of 1m (4%) and 1.5m (6%) respectively. The Applicant has provided a Clause 4.6 Variation which is provided at Attachment S. Legal advice has also been provided at Attachment U which details the appropriateness of utilising Clause 4.6 of the Hills LEP 2019 to vary this development standard.

Clause 4.6 allows consent to be granted for development even though the development contravenes a development standard imposed by any environmental planning instrument. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Clause 4.6 of the Hills LEP 2019 is provided below:

4.6 Exceptions to development standards

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

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

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

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

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

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

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

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(cab) (Repealed)

(ca) clause 6.3,

(cb) clause 7.11,

(cc) clause 7.15.

In determining the appropriateness of the variation request, a number of factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. They include:

- It provides an increase in seniors housing that responds to the modern day standards and requirements for aged care and changing demographics and population growth;
- The lift overruns and plant are centrally positioned on the rooftop of Building A and Building B. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential properties when compared to the approved Concept DA (1110/2022/JP);
- The proposed height exceedance will be compatible with the surrounding context and character of the locality, including with the existing character and desired future character of the Hills Showground Station Precinct;
- The magnitude of the exceedance approved under the current Concept DA has significantly reduced as a result of the development afforded an additional 3.8m height under section 87(2)(c) of the Housing SEPP.
- The proposed development has an appropriate built form response to the significant topographical change of the site.
- The proposed variation is restricted to lift overruns and plant only, which are centrally located within the centre of the floorplates associated with Building A and Building B.

- *The proposed development does not result in significant environmental impacts with regards to overshadowing when compared to the approved Concept DA (1110/2022/JP), in fact the extent of overshadowing created is reduced.*
- *The proposed height variation does not preclude compliance with the FSR standard under THLEP 2019 and s87(2)(b)(i) of the Housing SEPP.*

The extent of the height variation is summarised in the table below:

LEC Approved Amending Concept DA 1110/2022/JP	Extent of Variation to 21m height Standard under Clause 4.3 of THLEP 2019	Proposed Amending Concept DA	Extent of Variation to 24.8m maximum height standard under Section 87(2)(c) of SEPP (Housing) 2021	Difference in height of approved and proposed
Building A 7 storeys (25.11m)	3.24m or 14.4%	25.8m	1m or 4%	+0.69m
Building B 7 storeys (25.59m)	4.59m or 21.9%	26.3m	1.5m or 6%	+0.71m

An assessment against the provisions of Clause 4.6(3) is provided below:

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

In accordance with the NSW LEC findings in the matter of *Wehbe v Pittwater Council*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. Whilst there are no specific objectives contained within Section 87 of the SEPP, the purpose of the provision can be derived from section 3(b), (c), (d) and (f) Principles of Policy of the Housing SEPP which are:

- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planning infrastructure and services.*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality.*

The height exceedance is only for an additional 0.69m for Building A and 0.71m for Building B compared to the Court Approved Concept DA for a residential flat building development under 1110/2022/JP. It is noted that the Court Approval was supported with a variation to the

21m maximum LEP height standard of 4.11m (19.6%) for Building A, 4.59m (21.9%) for Building B, 4.3m (20.5%) for Building D and 3.23m (15.4%) for Building E. The Applicant submits that the further variation to the SEPP (Housing) 2021 height standard for Buildings A and B is required to accommodate lift overruns and mechanical plants which will not be visible from the streetscape. These elements are non-habitable and are not included in the gross floor area utilised to calculate the FSR. The proposal results in a FSR of 2.376:1 which is below the maximum 2.645:1 permitted under Section 87 of the SEPP. The proposal meets the unit mix, size and car parking provisions under Clause 9.7 of The Hills LEP 2019. Strict compliance with the 24.8m height provision would require the loss of an entire storey of the independent living units and the Principal of Policy to incentive seniors housing would not be achieved.

Despite the height variation, the proposal is consistent with the planning framework established under the Court approval, has been designed to reflect and enhance its locality being in the Showground Station Precinct and will not cause adverse impacts on the amenity of adjoining properties with respect to overshadowing, privacy, view loss and perceived bulk and scale when viewed from the street. The Applicant's written submission has satisfactorily demonstrated that the proposal will achieve consistency with the Principles of Policy of the development standard, and as such strict compliance is considered to be unreasonable and unnecessary in the circumstances of this application.

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

The Applicant's submission states that there are sufficient environmental planning grounds to justify contravening the development standard as the site has a 11m from the southern corner to the north eastern corner. Despite the falling topography of the site, the seniors housing development complies with the FSR and apart from the lift overruns and mechanical plants on Buildings A and B, complies with the maximum height standard under the Housing SEPP. These lift overruns and plants only occupy 12.5% and 8.7% of the surface area of the roof of Building A and Building B respectively.

Shadow diagrams have also been provided with the application that demonstrate that adjoining properties to the west, south west and south east of the site would receive at least 4 hours direct solar access. A comparative analysis to the Court Approved Residential Flat Building development has also been submitted which demonstrates that there is an overall reduction in the overshadowing impacts to adjoining properties. Refer Attachment Q.

The building envelopes approved under the Court Approval also only accommodated 1m for the rooftop plant, equipment and lift overruns which is not feasible. Therefore, an addition of 0.69m for Building A and 0.71m for Building B is required to accommodate the lift overruns and planting equipment.

It is considered that the applicant's justification for non-compliance satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the maximum building height development standard. It is considered that the applicant's written request has satisfactorily addressed the requirements under Clause 4.6(3) of LEP 2019.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant's Clause 4.6 Variation Request, it is considered that the variation can be supported as:

- The Applicant's request is well founded;

- The proposed variation results in a development that is consistent with the objectives of the standard and relevant Principles of Policy under SEPP (Housing) 2021;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention.

b. Development Standards under Schedule 4 – Car Parking

The application seeks to vary a development standard concerning car parking accessibility and usability for independent living units under Schedule 4, Part 1, Section 4, Subsection 2(c) of The SEPP (Housing) 2021. Section 85 of the SEPP requires the following:

85 Development standards for hostels and independent living units

- (1) *Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.*

Schedule 4, Part 1, Section 4, Subsection 2(c) requires the following:

4 Car parking

- (2) *If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—*
- (c) *for a group of 8 or more parking spaces—*
- (i) *at least 15% of the parking spaces must comply with AS/NZS 2890.6, and*
 - (ii) *at least 50% of the parking spaces must—*
 - (A) *comply with AS/NZS 2890.6, or*
 - (B) *be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.*

The application proposes that 40% (130 of 322 spaces) of the Class 2 buildings would comply with AS/NZS 2890.6 and 28% (91 of 322 spaces) would be at least 3.2m wide and have a maximum gradient of 1:40. This results in a 22% variation to the 3.2m wide car parking standard.

The Applicant has provided a Clause 4.6 Variation which is provided at Attachment T. Legal advice has also been provided which details the appropriateness of utilising Clause 4.6 of the Hills LEP 2019 to vary this development standard. This is provided at Attachment U.

In determining the appropriateness of the variation request, a number of factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. They include:

- *The underlying objectives or purposes of the standard are achieved.*
- *The lack of a reasonable evidence base in practice for the new 50% wider parking space standard (Schedule 4 Part 1).*
- *The recent introduction of this additional requirement for 50% of car parking spaces was not publicly exhibited and has not included any sufficient or reasonable evidence base for this change.*
- *Full compliance with the development standard would be economically prohibitive for the proposed development.*
- *Only spaces additional to the minimum non-discretionary standard for car parking generation (Section 108(2)(k)) do not comply with Schedule 4 Part 1. Strict compliance*

with Schedule 4 Part 1 is therefore considered unreasonable for these spaces additional to the minimum required for ILU' under the Housing SEPP.

- The proposal provides a suitable parking solution that balances social, environmental and economic objectives that underpin the planning for new development.*
- The proposed spaces are well designed and will be safe and suitable for the proposed users.*

An assessment against the provisions under Clause 4.6(3) is provided below:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

In accordance with the NSW LEC findings in the matter of *Wehbe v Pittwater Council*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

Whilst there are no stated objectives in Section 85 or Schedule 4 of the SEPP (Housing) 2021, the Applicant submits that the stated objectives of the development standard are inferred and relate to ensuring that access to car parking reflects the resident mobility profile and the design and functionality of the independent living units. The purpose of the provision can also be derived from section 3(b) and (c) Principles of Policy of the Housing SEPP which are:

- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*

The proposal complies with the non-discretionary development standards under Section 108(2)(k) of the SEPP (Housing) 2021 which requires at least 0.5 parking spaces for each bedroom. 515 bedrooms are proposed for the seniors housing development which would require 258 parking spaces. 308 residents spaces are provided which would exceed this requirement by 50 spaces. Only the additional spaces do not comply with Schedule 4 Part 1. Reference was made in the Clause 4.6 written submission to data derived for resident mobility needs in a similar seniors housing development at a development known as 'Cardinal Freeman Village' in Ashfield which is owned and operated by the Applicant, Levande. The data provided indicates that there were only 7 users out of 320 units that required a wheelchair or mobility scooter and that these residents did not drive. Three of the users share a unit with a resident who drives, whilst others utilise the village bus, private transport or visiting family members drive them. It is reasonable to base the anticipated mobility needs of future residents of the subject development on this precedent. Strict compliance with Schedule 4 Part 1 is therefore considered unreasonable for these spaces as the proposal demonstrates that sufficient car parking is provided for the seniors housing development.

The Applicant's written submission has satisfactorily demonstrated that the proposal will achieve consistency with the objectives of the building height development standard, and as such strict compliance is considered to be unreasonable and unnecessary in the circumstances of this application.

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

The Applicant's submission states that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed development is capable of accommodating the accessibility needs of residents of the future development. Under NCC 2022 Volume 1 – BCA Class 2-9 Buildings Part D4 D6 Accessible carparking, a minimum provision of accessible parking for different building classes is required. Whilst there is no specific rate for Class 2 buildings, each other class of building has a rate of accessible parking bays no greater than 2% of proposed parking. This is significantly lower than the additional provision required under Schedule 4.

Full compliance with the development standard would require an additional 70 spaces be provided to meet the 3.2m wide standard. This would require substantial excavation for an additional basement level which the Applicant claims would be economically prohibitive for the development. It is noted that the development standard was introduced to the SEPP (Housing) 2021 on 14 December 2023 as part of a suite of change made to the SEPP that were largely unrelated to the Seniors Housing provisions. The amendment to this standard for an additional 50% of car parking spaces to be 3.2m wide was not exhibited prior to the making of the instrument. Based on the precedent provided for a similarly sized seniors housing development in Ashfield, it is considered that compliance with the accessible parking provided to meet the non-discretionary development standard under Clause 108(k)(2) of the SEPP (Housing) 2021 is considered suitable for the development and the additional provision for wider car parking spaces can be varied in this instance..

It is considered that the Applicant's justification for non-compliance satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the car parking development standard. It is considered that the Applicant's written request has satisfactorily addressed the requirements under Clause 4.6(3) of LEP 2019.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant's Clause 4.6 Variation Request, it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of the standard and relevant Principles of Policy under SEPP (Housing) 2021;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention.

The Hills Local Environmental Plan 2019

The subject site is zoned R4 High Density Residential under LEP 2019. Seniors housing is 'residential accommodation' which is prohibited in the zone under LEP 2019. However, 'seniors housing' is permitted in land within a R4 High Density Residential zone under Section 81, Part 5 of the SEPP (Housing) 2021.

The proposed 'neighbourhood shop' is permissible with consent under LEP 2019. Clause 5.4(7) of LEP 2019 requires that the retail floor area of a 'neighbourhood shop' must not exceed 100m². The neighbourhood shop comprises a retail floor area of 85m² which complies with this provision.

a. 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 is consistent with the stated objectives of the zone, in that the proposal will provide for housing needs of the aged community, and provide a variety of housing types within a high density residential environment. The 'neighbourhood shop' would provide a service to meet the day to day needs of the residents. As such, the proposal is satisfactory in respect to the LEP 2019 zone objectives.

b. The Hills LEP 2019 Development Standard/Local Provisions

LEP STANDARD/ PROVISION	REQUIRED	PROVIDED	COMPLIES
4.3 Height of Buildings	21m	Building A - 25.8m (25.11m approved under 1110/2022/JP) Building B - 26.3m (25.59m approved under 1110/2022/JP) Building C - 19.5m (20.7m approved under 1110/2022/JP) Building D - 24.65m (25.3m approved under 1110/2022/JP) Building E - 24.6m (24.23m approved under 1110/2022/JP)	N/A – additional 3.8m height standard applied under Part 5, Division 3, Section 87, 2(c) of SEPP (Housing) 2021. Refer discussion below.
4.4 FSR (Base)	1.6:1	2.376:1	N/A – Clause 9.7 of the LEP and Section 87 of the Housing SEPP applied.
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment	A variation to Section 87 and Schedule 4 of SEPP (Housing) 2021 has been submitted with the application.	Yes – refer discussion in Section 3.2.
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	12,403.8m ²	Yes
9.2 Site Area of Proposed Development includes dedicated land	Road dedication included as part of the site area for the purpose of calculating FSR.	Land dedication area of approximately 530m ² included in FSR calculation.	Yes

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	Cadman Crescent and Hughes Ave is not identified with front setbacks in the mapping instrument.	N/A
Clause 9.5 Design Excellence	Development consent must not be granted unless the development exhibits design excellence	Proposal referred to Design Advisory Panel.	Yes, refer discussion below.
Clause 9.7 Residential development yield on certain land for FSR (Incentive)	2.3:1 subject to the lot having an area of 10,000m ² within the Showground Precinct and provides a specific mix, family friendly unit sizes and parking.	2.376:1	N/A – additional FSR applied under Section 87 of the Housing SEPP. However, compliance with the unit mix, size and car provisions required under this Clause. Refer discussion below.

Further discussion on relevant provisions is provided below.

i. Height of Buildings

Clause 4.3 of LEP 2019 limits the height of the development site to a maximum 21 metres. However, the proposal also seeks to utilise Part 5, Division 3, Section 87, 2(c) of SEPP (Housing) 2021 which allows for an additional 15% of the maximum permissible floor space ratio if the additional floor space is for the purposes of independent living units and the development will result in a maximum building height of not more than 3.8m above the maximum permissible building height. This results in a maximum permissible height of 24.8m for the site.

The proposal seeks a maximum height of 25.8m (variation of 1m or 4%) for Building A and 26.3m (variation of 1.5m or 6%) for Building B. Legal Advice is provided in Attachment U indicating that a Clause 4.6 written submission is only required under Clause 87 of SEPP (Housing) 2021. The Clause 4.6 written submission for Clause 87 is addressed under Section 3.2 above.

ii. Floor Space Ratio

The site is subject to a base FSR of 1.6:1 under Clause 4.4 and an incentive FSR of 2.3:1 under Clause 9.7 of The Hills LEP 2019. However, the proposal also seeks to utilise Section 87 of SEPP (Housing) 2021 which allows for an additional 15% of the maximum permissible floor space ratio if the additional floor space is for the purposes of independent living units. In this regard, a maximum FSR of 2.645:1 is permitted for the site. This is subject to the proposal demonstrating compliance with the unit mix, size and car parking provisions under Clause 9.7. The below table demonstrates compliance with the unit mix, size and car parking provisions under the Clause:

APARTMENT MIX	REQUIRED	PROPOSED	COMPLIANCE
Maximum of 25% of dwellings (to the nearest whole number of dwellings) to be studio or 1 bedroom dwellings	Maximum 54 dwellings to be studio or 1 bedroom dwellings	10 x 1 bedroom dwellings are proposed.	Yes
Minimum 20% of dwellings (to the nearest whole number of dwellings) to be 3 or more bedroom dwellings	Minimum 44 dwellings to be 3 or more bedroom dwellings	91 x 3 bedroom dwellings are proposed.	Yes
Minimum 40% of 2 bedroom dwellings will have a minimum internal floor area of 110m ²	Minimum 47 dwellings to have a minimum internal floor area of 110m ²	47 or 40.5% of the 2 bedroom dwellings have a minimum internal floor area of 110m ² .	Yes
Minimum 40% of 3 bedroom dwellings will have a minimum internal floor area of 135m ²	Minimum 37 dwellings to have a minimum internal floor area of 135m ²	37 or 40.7% of 3 bedroom dwellings are proposed.	Yes
Minimum 1 parking space per dwelling, minimum 1 visitor car parking space for every 5 dwellings	217 dwellings proposed, minimum 261 spaces required.	284 car parking spaces provided.	Yes

The proposal provides for a maximum FSR of 2.376:1 which complies with the FSR development standards under Clause 9.7 of the LEP and Section 87 of the SEPP (Housing) 2021.

iii. Design Excellence

Clause 9.5 of the LEP states the following:

- (1) *The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.*
- (2) *This clause applies to development involving the erection of a new building or external alterations to an existing building on land within the Showground Station Precinct.*
- (3) *Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*
- (4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:*
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*

- (c) *whether the development detrimentally impacts on view corridors,*
- (d) *whether the development detrimentally impacts on any land protected by solar access controls established in the development control plan referred to in clause 9.4,*
- (e) *the requirements of the development control plan referred to in clause 9.4,*
- (f) *how the development addresses the following matters:*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*
 - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *the impact on any special character area,*
 - (xii) *achieving appropriate interfaces at ground level between the building and the public domain,*
 - (xiii) *excellence and integration of landscape design.*
- (5) *In addition, development consent must not be granted to development to which this clause applies unless:*
 - (a) *if the development is in respect of a building that is, or will be, higher than 21 metres or 6 storeys (or both) but not higher than 66 metres or 20 storeys (or both):*
 - (i) *a design review panel reviews the development, and*
 - (ii) *the consent authority takes into account the findings of the design review panel,*
or
 - (b) *if the development is in respect of a building that is, or will be, higher than 66 metres or 20 storeys (or both):*
 - (i) *an architectural design competition is held in relation to the development, and*
 - (ii) *the consent authority takes into account the results of the architectural design competition.*
- (6) *Subclause (5) (b) does not apply if:*

- (a) *the NSW Government Architect certifies in writing that an architectural design competition need not be held but that a design review panel should instead review the development, and*
- (b) *a design review panel reviews the development, and*
- (c) *the consent authority takes into account the findings of the design review panel.*

As the proposed seniors housing development 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.

Comment:

The design excellence of the proposal was considered at a Design Advisory Panel meeting held on 11 September 2024. At the end of the meeting, the Design Advisory Panel concluded that:

“The Panel thanks the Applicant for the presentation, and notes that the Court approved Applications, (1110/2022/JP and 1112/2022/JP); and the Applications 110/2025/JP and 1525/2024/JP are presented as amendments to those Court approvals. On this basis the Panel acknowledges that the Court was satisfied that the requirements of Design Excellence had been met and notes that the application is an improvement on the Court approved Development Applications. If the Council Officer is satisfied that the Applicant has addressed the issues raised by the Panel the applications need not return to the Panel.”

The Design Advisory Panel made a number of recommendations to the built form of the development. Refer Attachment V for Design Advisory Panel meeting report. A response to these concerns is addressed in the Council Assessment Report for DA 110/2025/JP.

With regard to Clause 9.5(4)(a), the Concept Development Application will ensure that the standard of design, building materials, building type and location is consistent with the streetscape character of existing development and desired future character of the Showground Station Precinct.

With regard to Clause 9.5(4)(b), the high level of architectural design will be assessed under the built form Development Application to ensure that the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain.

With regard to Clause 9.5(4)(c), the proposal will not detrimentally impact any view corridors.

With regard to Clause 9.5(4)(d), whilst this will be assessed under the built form application, the shadow diagrams submitted with the subject application indicate that there will be no impact on adjoining properties in terms of overshadowing.

With regard to Clause 9.5(4)(e), the proposed development has been assessed against the relevant development control plans.

With regard to Clause 9.5(4)(f), the application addresses the relevant matters in other sections of this report.

With regard to Clause 9.5(4)(g), the findings of Council's Design Advisory Panel have been considered as above.

In this regard, the proposal satisfies the provisions of Clause 9.5 of LEP 2019.

3.3 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.

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

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

Part D Section 19 Showground Station Precinct,
Part B Section 5 Residential Flat Buildings,
Part B Section 6 Business
Part C Section 1 Parking and
Part C Section 3 Landscaping.

The Court approved Concept Development Application under 1110/2022/JP achieved compliance with the relevant requirements of The Hills Development Control Plan except for site specific Showground Precinct controls relating to the structure plan, front and upper level setbacks and maximum façade/building length. The proposed Amending Concept Development Application seeks to retain the front setbacks approved under this Development Consent and reduces the maximum façade/building lengths for all buildings. No further variations are proposed under the subject application.

3.5 Section 4.15(1)(a)(iiia) – 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.

3.6 Section 4.15(1)(a)(iv) - Provisions of Regulations

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

3.7 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.

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

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

The site is located within the Showground Station Precinct which is in the Norwest Service Centre Sub Precinct of the Norwest Strategic centre. The amending Concept Development Application is similar to the built form outcomes approved under the Development Consent 1110/2022/JP by the LEC and consistent with the built form envisaged within the emerging Assessment Report: PPSCC-566 DA 1525/2024/JP

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precinct. The proposed seniors housing development is suitable for the site and is consistent with the zone objectives.

The proposal will provide for a seniors housing development that will provide for diverse housing within the locality. The design of the building responds to the site characteristics and provides for sufficient amenity to residential properties as envisaged. In this regard, the development is considered suitable for the site.

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

No submissions were received following the notification period.

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

The development will provide diverse housing and services for senior residents within the locality. The site is located within an area which is serviced by the Sydney Metro. On balance, the proposal is consistent with the public interest.

4. Precinct Plan for Norwest Strategic Centre

The Precinct Plan for the Norwest Strategic Centre was adopted by Council on 9 July 2024. The Precinct Plan includes sections addressing connectivity, land use, density and built form considerations.

The development is located within the Showground Residential area in the Norwest Service Centre Sub Precinct of the Norwest Strategic centre. This precinct is envisaged to become an attractive and well-connected neighbourhood with diverse housing and employment opportunities. The development will contribute to the desired future character of the precinct which is to be a vibrant, safe and desirable place to live and work, valued for convenient access to the station, shops, cafes, Castle Hill Showground and supported by new road connections, pathways and quality landscaped surrounds. The development is consistent with the aims and objectives of the Precinct Plan.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The Development Application is only for a Concept Development Application and was notified to Sydney Water and Endeavour Energy. No objections were raised subject to conditions recommended for the built form Development Application.

5.2 Council Referrals (internal)

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

Officer	Comments	Resolved
Engineering	Council's Senior Subdivision Engineer has reviewed the submitted plans and information. Initial concerns were raised regarding the proposed street profile design being inconsistent with Council's	Y

	technical specifications and further details required for the concept stormwater management design. Swept path diagrams were also requested to be submitted demonstrating the largest service vehicle can service the site and allow a B99 vehicle to pass each other for all entry and exit manoeuvres. Further information was submitted from the Applicant and conditions have been recommended for the application.	
Health	Council's Senior Environmental Health Officer has reviewed the submitted plans and information. As no built form is proposed as part of the subject Concept application, no conditions are required. Conditions are recommended for the built form Development Application under 110/2025/JP.	Y
Waste	Council's Resource Recovery Project Officer has reviewed the submitted plans and information. As no built form is proposed as part of the subject Concept application, no conditions are required. Conditions are recommended for the built form Development Application under 110/2025/JP.	Y
Tree Management/ Landscape	Council's Senior Landscape Officer has reviewed the submitted plans and information. As no built form is proposed as part of the subject Concept application, no conditions are required. Conditions are recommended for the built form Development Application under 110/2025/JP.	Y

5.3 Community Consultation

The proposal was notified in accordance with the DCP/Council's Community Participation Plan from 16 July 2024 until 6 August 2024. No submissions were received following the notification period.

6. CONCLUSION

This Development Application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The Applicant's Clause 4.6 written requests to vary Part 5, Division 3, Section 87(2)(c) Maximum Height to permit additional FSR and Schedule 4, Part 1, Section 4, Subsection 2(c) Car Parking of The SEPP (Housing) 2021 can be supported as they adequately justify the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variation can be supported as compliance with the standards are unreasonable or unnecessary in this instance and there are sufficient environmental planning grounds to justify the contravention. The development is consistent with the objectives of the standard.

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 and 4.22 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Sustainable Buildings) 2022, The Hills Local Environmental Plan 2019, and The Hills Development Control Plan 2012 and is considered satisfactory.

Approval is recommended subject to draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Amending Concept Development Application 1525/2024/JP for a Seniors Housing Development at 7-23 Cadman Crescent & 18-24 Hughes Avenue Castle Hill be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Locality Plan
- Attachment C: Aerial Map
- Attachment D: LEP Zoning Map
- Attachment E: LEP Height of Buildings Map
- Attachment F: LEP Floor Space Ratio (Incentive) Map
- Attachment G: Court Orders for DA 1110/2022/JP
- Attachment H: LEC approved plans
- Attachment I: Site Plan
- Attachment J: Land Dedication and Setbacks Plan
- Attachment K: Proposed Building Height and Envelopes Plan
- Attachment L: Envelope Comparison Plan (Approved and Proposed)
- Attachment M: Site Access Diagram
- Attachment N: Basement Plans
- Attachment O: Proposed Elevations and Section
- Attachment P: Proposed Landscape Area Calculations
- Attachment Q: Shadow Diagrams
- Attachment R: Height Plane Diagram
- Attachment S: Clause 4.6 Request for Height
- Attachment T: Clause 4.6 Request for Car Parking
- Attachment U: Legal advice regarding Clause 4.6 submissions
- Attachment V: Design Advisory Panel Meeting Report

ATTACHMENT A – DRAFT CONDITIONS OF DEVELOPMENT CONSENT

1A.	<p>Modification to Concept Development Consent No. 1110/2022/JP</p> <p>A 'notice of modification' as referred to in Section 4.17(5) of the Environmental Planning and Assessment Act 1979 prepared in accordance with Clause 67 of the Environmental Planning and Assessment Regulations 2021 must be delivered to the consent authority (the Land and Environment Court) modifying Concept Development Consent 1110/2022/JP by amending the land use to seniors housing and a neighbourhood shop, amending the dwelling cap from 242 units to 217 independent living units, provision of a port cochere fronting Hughes Ave and a wellness clubhouse within Buildings A and B, reducing the car parking spaces from 356 spaces to 322 spaces and minor amendments to the building envelopes.</p> <p>Condition reason: To modify an existing development consent.</p>
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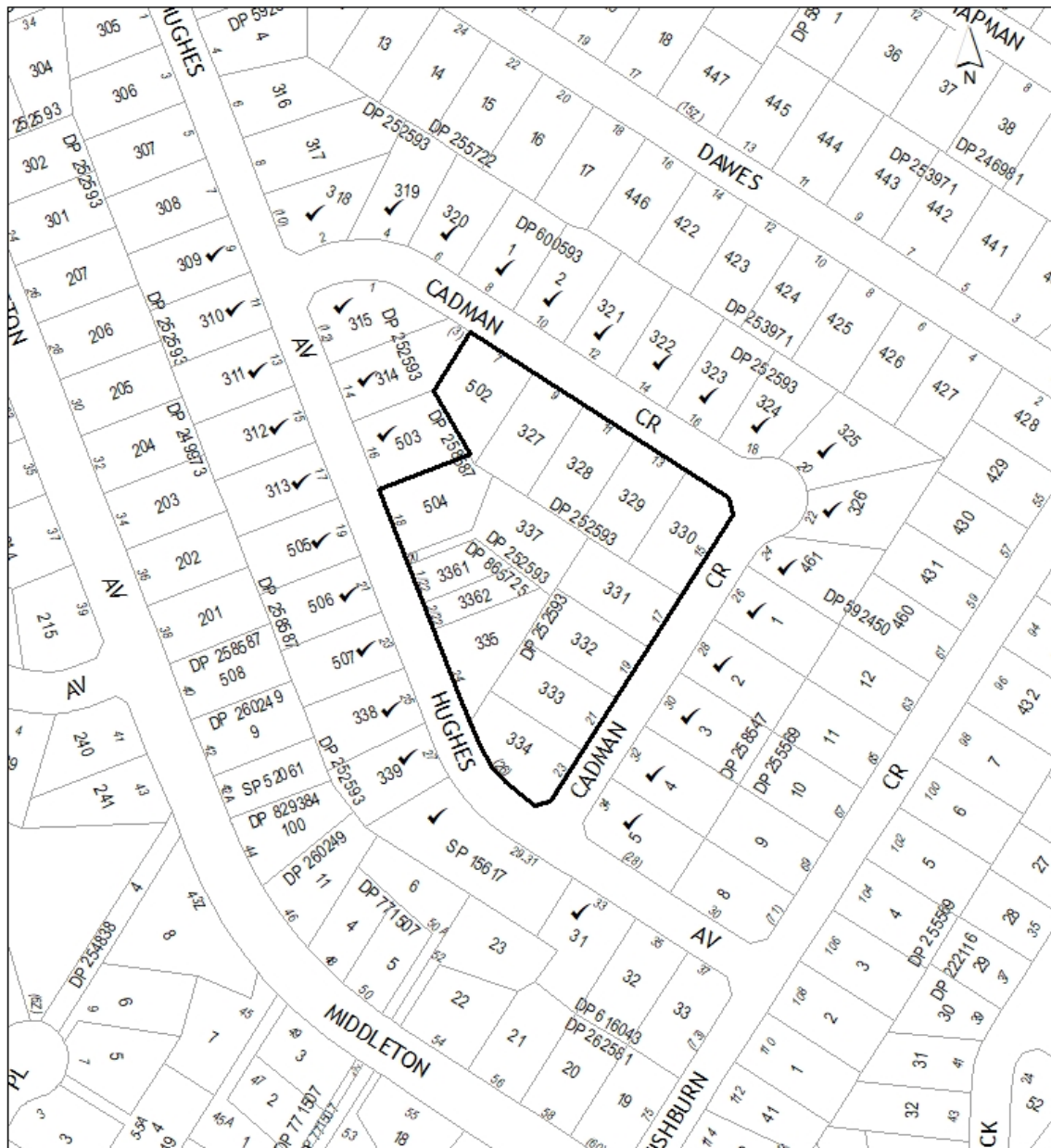
The conditions imposed on Concept Development Consent No. 1110/2022/JP are to be replaced with the following:

1.	<div>Approved Plans and Supporting Documentation</div> <div>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</div> <table><tr><th colspan="5">Approved plans</th></tr><tr><th>Plan number</th><th>Revision number</th><th>Plan title</th><th>Drawn by</th><th>Date of plan</th></tr><tr><td>A-CDA-001</td><td>04</td><td>Cover Page</td><td>CHROFI</td><td>21/01/2025</td></tr><tr><td>A-CDA-002</td><td>03</td><td>Land Dedication and Setbacks</td><td>CHROFI</td><td>21/01/2025</td></tr><tr><td>A-CDA-003</td><td>03</td><td>Site Plan</td><td>CHROFI</td><td>21/01/2025</td></tr><tr><td>A-CDA-005</td><td>03</td><td>Building Height and Envelope Plan</td><td>CHROFI</td><td>10/01/2025</td></tr><tr><td>A-CDA-301</td><td>03</td><td>Building Elevations 1</td><td>CHROFI</td><td>10/01/2025</td></tr><tr><td>A-CDA-302</td><td>03</td><td>Building Elevations 1</td><td>CHROFI</td><td>10/01/2025</td></tr><tr><td>A-CDA-401</td><td>03</td><td>Building Sections</td><td>CHROFI</td><td>10/01/2025</td></tr><tr><td>A-CDA-501</td><td>04</td><td>Area, Mix & Compliance Summary</td><td>CHROFI</td><td>21/01/2025A</td></tr><tr><td>A-CDA-505</td><td>03</td><td>Landscape, Deep Soil & COS Area</td><td>CHROFI</td><td>10/01/2025</td></tr></table> <div>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</div> <div>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</div>	Approved plans					Plan number	Revision number	Plan title	Drawn by	Date of plan	A-CDA-001	04	Cover Page	CHROFI	21/01/2025	A-CDA-002	03	Land Dedication and Setbacks	CHROFI	21/01/2025	A-CDA-003	03	Site Plan	CHROFI	21/01/2025	A-CDA-005	03	Building Height and Envelope Plan	CHROFI	10/01/2025	A-CDA-301	03	Building Elevations 1	CHROFI	10/01/2025	A-CDA-302	03	Building Elevations 1	CHROFI	10/01/2025	A-CDA-401	03	Building Sections	CHROFI	10/01/2025	A-CDA-501	04	Area, Mix & Compliance Summary	CHROFI	21/01/2025A	A-CDA-505	03	Landscape, Deep Soil & COS Area	CHROFI	10/01/2025
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A-CDA-005	03	Building Height and Envelope Plan	CHROFI	10/01/2025																																																				
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A-CDA-505	03	Landscape, Deep Soil & COS Area	CHROFI	10/01/2025																																																				
2.	<div>Determination of Future Development Applications</div> <div>Approval is granted for the proposed Concept Development Application in accordance with the plans and details provided with the application to provide guidance for future development of the site. In accordance with Section 4.22(1) of the Environmental Planning and Assessment Act 1979, all development under the concept development application shall be subject of future</div>																																																							

	<p>development application(s). The determination of future development application(s) are to be generally consistent with the terms of the subject development consent.</p> <p>Condition reason: To ensure future development applications are lodged for the built form of the development and are generally consistent with the concept development application. .</p>
3.	<p>Dwelling Yield</p> <p>The maximum dwelling yield for the site is not to exceed 217 independent living units.</p> <p>Condition reason: To ensure the development is suitable for the site and appropriate amenity is provided for future residents.</p>
4.	<p>Land Dedication</p> <p>2m land dedication is required for road widening purposes along Cadman Crescent east and north in accordance with Figure 10 within Council DCP Part D Section 19 Showground Station Precinct. The verge shall be reconstructed in accordance with Council's Showground Precinct – Verge Treatments Sheets 1-4. No private infrastructure is permissible within the dedicated road reserve. This is required to be conditioned in the first built form Development Application lodged for the site.</p> <p>Condition reason: To ensure adequate infrastructure and amenity is provided in the public domain within an emerging Precinct.</p>
5.	<p>Subdivision Works</p> <p>A subdivision works concept plan relating to the indented parking bays and associated public domain works must be prepared and submitted in support of any future built form Development Application.</p> <p>Condition reason: To ensure adequate infrastructure and sufficient amenity is provided within the public domain.</p>
6.	<p>Onsite Detention</p> <p>Any future built form application shall incorporate onsite detention in accordance with the Upper Parramatta River Catchment Trust Onsite Detention Handbook either 3rd or 4th Edition and Council's Design Guidelines Subdivision/Development.</p> <p>Condition reason: To ensure future built form development applications provide adequate stormwater drainage.</p>
7.	<p>Vehicular Access and Car Parking</p> <p>Vehicular Access to the basement carpark is to be provided via a single driveway on Hughes Avenue. The driveway is to be setback at least 6m from the tangent point at the intersection between Cadman Crescent/Hughes Avenue.</p> <p>Any future built form application shall demonstrate compliance with AS2890.1, AS2890.2 & AS2890.6. In particular, the following is required to be demonstrated:</p> <ul style="list-style-type: none"> • Vehicles entering and exiting the development in a forward direction • Compliant parking modules and access roadways • Any speciality vehicles can access required areas <p>Condition reason: To ensure future built form development applications provide safe vehicular access and movement for road users and future occupants of the development. .</p>
8.	<p>Section 7.11 Contributions</p>

	<p>All future built form Development Applications must be levied in accordance with Contributions Plan No. 19 Showground Station Precinct and Section 7.11 of the Environmental Planning and Assessment Act 1979.</p> <p>Condition reason: To provide for the increased demand for public amenities and services resulting from the development.</p>
9.	<p>Water Sensitive Urban Design (WSUD)</p> <p>Any built form application shall incorporate Water Sensitive Urban Design Measures (WSUD) and shall adhere to the water quality targets below:</p> <ul style="list-style-type: none"> • 90% reduction in the annual average load of gross pollutants • 85% reduction in the annual average load of total suspended solids • 65% reduction in the annual average load of total phosphorous • 45% reduction in the annual average load of total nitrogen. <p>MUSIC model and catchment plan shall be submitted with the development application</p> <p>Condition reason: To ensure water quality targets are met</p>
10.	<p>Vehicular access</p> <p>Any built form application shall demonstrate compliance with AS2890.1, AS2890.2 & AS2890.6 especially with regards to:</p> <ul style="list-style-type: none"> • Vehicles entering and exiting the development in a forward direction • compliant parking modules and access roadways • any speciality vehicles can access required areas <p>Condition reason: To ensure proper vehicular access and parking is provided for the development.</p>
11.	<p>Compliance with SEPP (Housing) 2021</p> <p>Before the issue of an occupation certificate of any future built form development consent, a restriction must be registered, in accordance with the Conveyancing Act 1919, section 88E, against the title of the property relating to the development detailing the following:</p> <p>Only the following persons may occupy the seniors housing accommodation:</p> <ul style="list-style-type: none"> (a) seniors or people who have a disability, (b) people who live in the same household with seniors or people who have a disability, (c) staff employed to assist in the administration and provision of services to the accommodation. <p>Condition reason: To ensure the development is carried out in accordance with Section 88 of the SEPP (Housing) 2021 and Clause 86 of the Environmental Planning and Assessment Regulation 2021.</p>

ATTACHMENT B – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED


THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT C – AERIAL MAP



 SUBJECT SITE

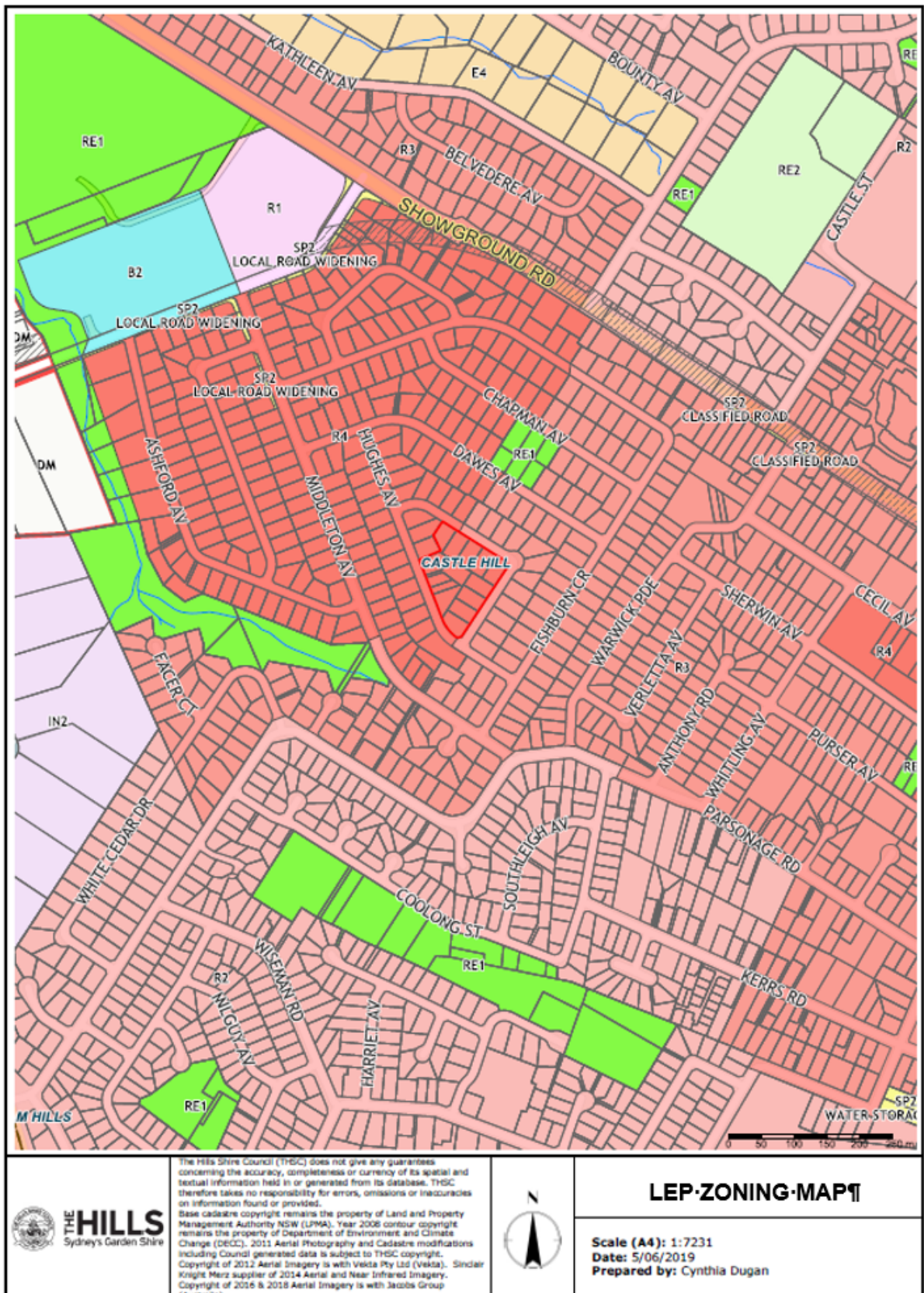
THE HILLS
Sydney's Garden Shire

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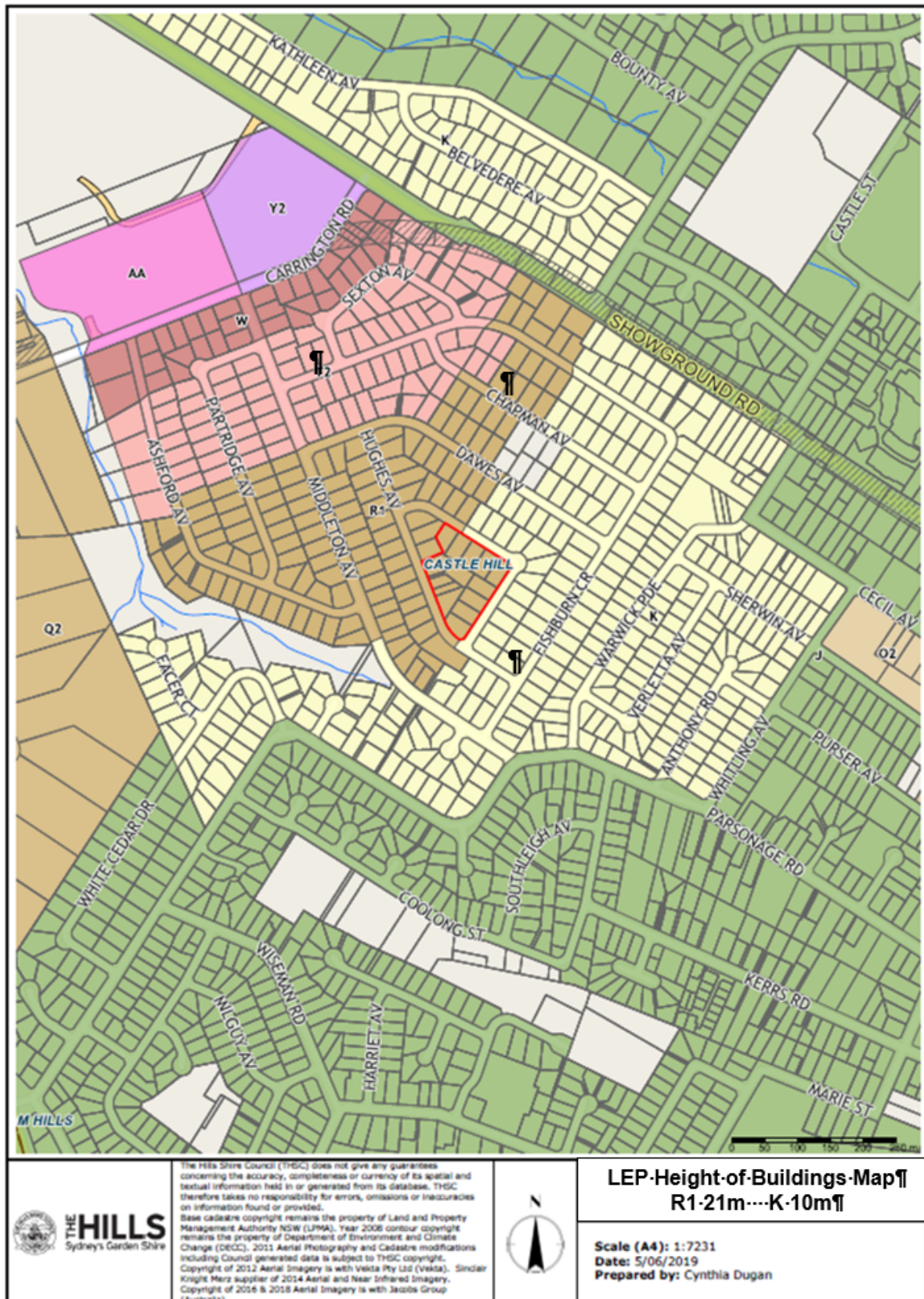
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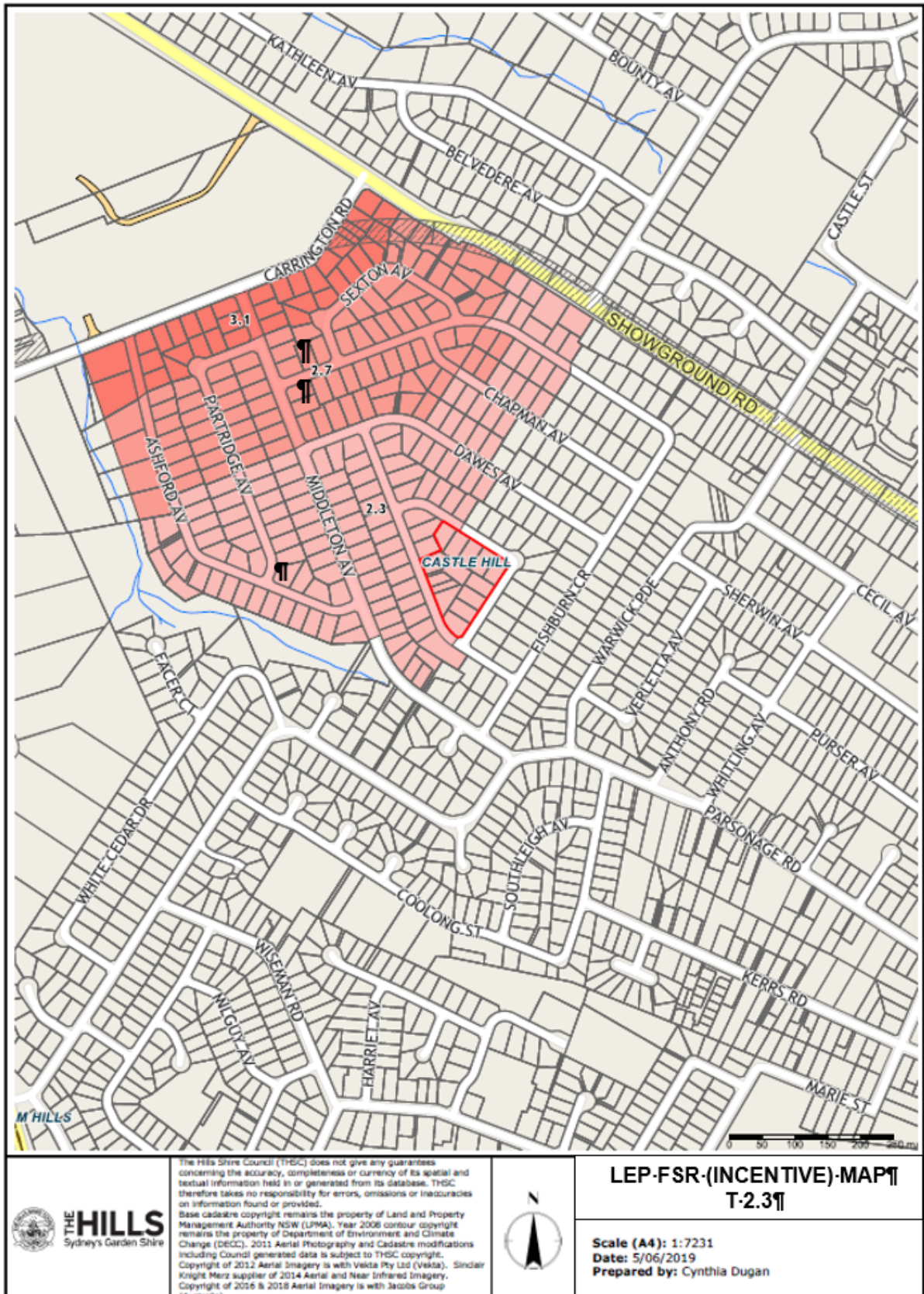
ATTACHMENT D – LEP 2019 ZONING MAP



ATTACHMENT E – LEP 2019 HEIGHT OF BUILDINGS MAP

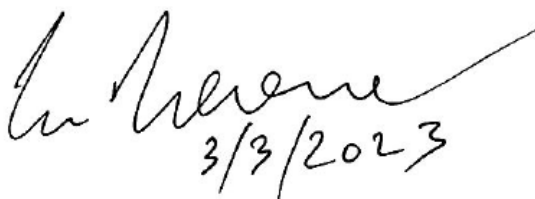


ATTACHMENT F – LEP 2019 FLOOR SPACE RATIO (INCENTIVE) MAP



**ATTACHMENT G – COURT ORDERS FOR DEVELOPMENT CONSENT
1110/2022/JP**

Form 43 (version 3)
UCPR 36.11


3/3/2023

ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Class	1
Registry	Sydney
Case number	2022/00174486

TITLE OF PROCEEDINGS

Applicant	CASTLE HILL PANORAMA ACN 620 357 306
Respondent	THE HILLS SHIRE COUNCIL ABN 25 034 494 656

DATE OF #JUDGMENT #ORDER

Date made or given
Date entered

TERMS OF ORDER MADE BY THE COURT

By consent of the parties, the Court orders that:

- 1 Leave is granted to the Applicant to rely on the amended plans and documents contained in Exhibit A.
- 2 The appeal is upheld.
- 3 Development consent is granted to Development Application 1110/2022/JP to amend Concept Development Consent No. 1262/2019/JP as granted by the Sydney Central City Planning Panel on 20 February 2020 for the construction of 5x residential flat buildings, by increasing the dwelling cap from 228 to 242, amending the unit mix to 54 x 1 bedroom, 128 x 2 bedroom and 60 x 3 bedroom units, increasing the height of Building C from 4 storeys to 5 storeys, increasing car parking from 310 spaces to 356 spaces, provision of a neighbourhood shop on the lower ground floor of Building D, and minor amendments to communal open space and building envelopes to allow for plant and lift overruns, on the land at 7, 9, 11, 13, 15, 17, 19, 21 and 23 Cadman Crescent and 18, 20, 1/22, 2/22 and 24 Hughes Avenue, Castle Hill, subject to the conditions set out in Annexure "A".

- 4 Pursuant to section 8.15(3) of the Environmental Planning and Assessment Act 1979 the Applicant pay the Respondent's costs thrown away as a result of the amendment of the application for development consent, as agreed or assessed.
- 5 Exhibits 3, 4, 5, 6, 7, 8, A, B, C, D, E, F, G, H, J and K are returned.
- 6 **The Court NOTES that:** The following Order was made on 23 February 2023, in relation to these proceedings: "(1) Additional costs of the Respondent as a consequence of the vacated Hearing date are payable by the Applicant."

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

In Name
Judge
3/3/2023

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	Castle Hill Panorama Pty Ltd, Applicant
Legal representative	Paul William Jayne, SWS Lawyers
Legal representative reference	2228
Contact name and telephone	Koreen Partridge, (02) 4040 9640
Contact email	k.partridge@swslawyers.com.au

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: 1110/2022/JP

Development: Amend Concept Development Consent No. 1262/2019/JP as granted by the Sydney Central City Planning Panel on 20 February 2020 for the construction of 5x residential flat buildings, by increasing the dwelling cap from 228 to 242, amending the unit mix to 54 x 1 bedroom, 128 x 2 bedroom and 60 x 3 bedroom units, increasing the height of Building C from 4 storeys to 5 storeys, increasing car parking from 310 spaces to 356 spaces, provision of a neighbourhood shop on the lower ground floor of Building D, and minor amendments to communal open space and building envelopes to allow for plant and lift overruns.

Site: 7, 9, 11, 13, 15, 17, 19, 21 and 23 Cadman Crescent and 18, 20, 1/22, 2/22 and 24 Hughes Avenue, Castle Hill.
 Lot 502 DP258587;
 Lot 504 DP258587;
 Lot 327 DP 252593;
 Lot 337 DP 252593;
 Lot 328 DP252593;
 Lot 329 DP 252593;
 Lot 330 DP 252593;
 Lot 331 DP 252593;
 Lot 332 DP 252593;
 Lot 333 DP 252593;
 Lot 334 DP 252593;
 Lot 3361 DP 865725;
 Lot 3362 DP 865725; and
 Lot 335 DP 252593.

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of Determination: ***

Date from which consent takes effect: Date of determination

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the application for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land know as 8 Raymond Court and 7, 9, 11, 13, 15, 17, 19, 21 and 23 Cadman Crescent and 18, 20, 1/22, 2/22 and 24 Hughes Avenue, Castle Hill.
- (d) Any reference in this document to a "consent" means a "development consent" defined in the *Environmental Planning and Assessment Act 1979*.
- (e) Any reference to the "Council" means The Hills Shire Council.

GENERAL MATTERS

1. Modification of Concept Development Consent No. 1262/2019/JP

A 'notice of modification' as referred to in section 4.17(5) of the Environmental Planning and Assessment Act 1979 prepared in accordance clause 97 of the Environmental Planning and Assessment Act Regulations 2000 must be delivered to the consent authority (the Sydney Central City Planning Panel) modifying Concept Development Consent No. 1262/2019/JP by increasing the dwelling cap from 228 to 242, amending the unit mix to 54x 1 bedroom, 128x 2 bedroom and 60x 3 bedroom units, increasing the height of Building C from 4 storeys to 5 storeys, increasing car parking from 310 spaces to 356 spaces, provision of a neighbourhood shop on the lower ground floor of Building D, and minor amendments to communal open space and building envelopes to allow for plant and lift overruns.

The conditions imposed on Concept Development Consent No. 1262/2019/JP are to be replaced with the following:

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the approved plans and details submitted to Council, as amended in red, stamped and returned with this consent.

REFERENCED PLANS AND DOCUMENTS

ARCHITECTURAL PLANS				
DRAWING NO.	DESCRIPTION	REV	PREPARED BY	DATE
DA 0000	Cover Page	H	MHN Design Union	15.02.2023
DA 1004	Land Dedications and Setbacks	H	MHN Design Union	10.02.2023
DA 1005	Building Height and Envelope Plan	H	MHN Design Union	10.02.2023
DA 3001	Elevations East & South (Cadman Cresc. E & Hughes	H	MHN Design Union	10.02.2023

	Ave)			
DA 3002	Elevation North (Cadman Cres. N)	H	MHN Design Union	10.02.2023
DA 3101	Elevation South & North (Building A+B & D+E)	H	MHN Design Union	10.02.2023
DA 3102	Elevation West (Building C)	H	MHN Design Union	10.02.2023
DA 4001	Building A	H	MHN Design Union	10.02.2023
DA 4002	Building B	H	MHN Design Union	10.02.2023
DA 4003	Building C	H	MHN Design Union	10.02.2023
DA 4004	Building D	H	MHN Design Union	10.02.2023
DA 4005	Building E	H	MHN Design Union	10.02.2023
DA 5001	Sections A +B	H	MHN Design Union	10.02.2023
DA 5002	Sections C +D	H	MHN Design Union	10.02.2023
DA 7201	Landscape, Deep Soil & COS Area	H	MHN Design Union	10.02.2023

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

2. Determination of Future Development Applications

Approval is granted for the proposed Concept Development Application in accordance with the plans and details provided with the application to provide guidance for future development of the site. In accordance with section 4.22(1) of the Environmental Planning and Assessment Act all development under the concept development application shall be subject of future development application(s). The determination of future development application(s) are to be generally consistent with the terms of the subject development consent.

3. Dwelling Yield

The maximum dwelling yield for the site is not to exceed 242 units.

4. Land Dedication

2m land dedication is required for road widening purposes along Cadman Crescent east and north in accordance with Figure 10 with Council DCP Part D Section 19. No land dedication is required along Hughes Avenue. This is required to be conditioned in the first built form Development Application lodged for the site.

5. Subdivision Works

A subdivision works concept plan relating to the indented parking bays and associated public domain works must be prepared and submitted in support of any future built form Development Application.

6. Accessible Units

10% of all dwellings units are to be adaptable or accessible.

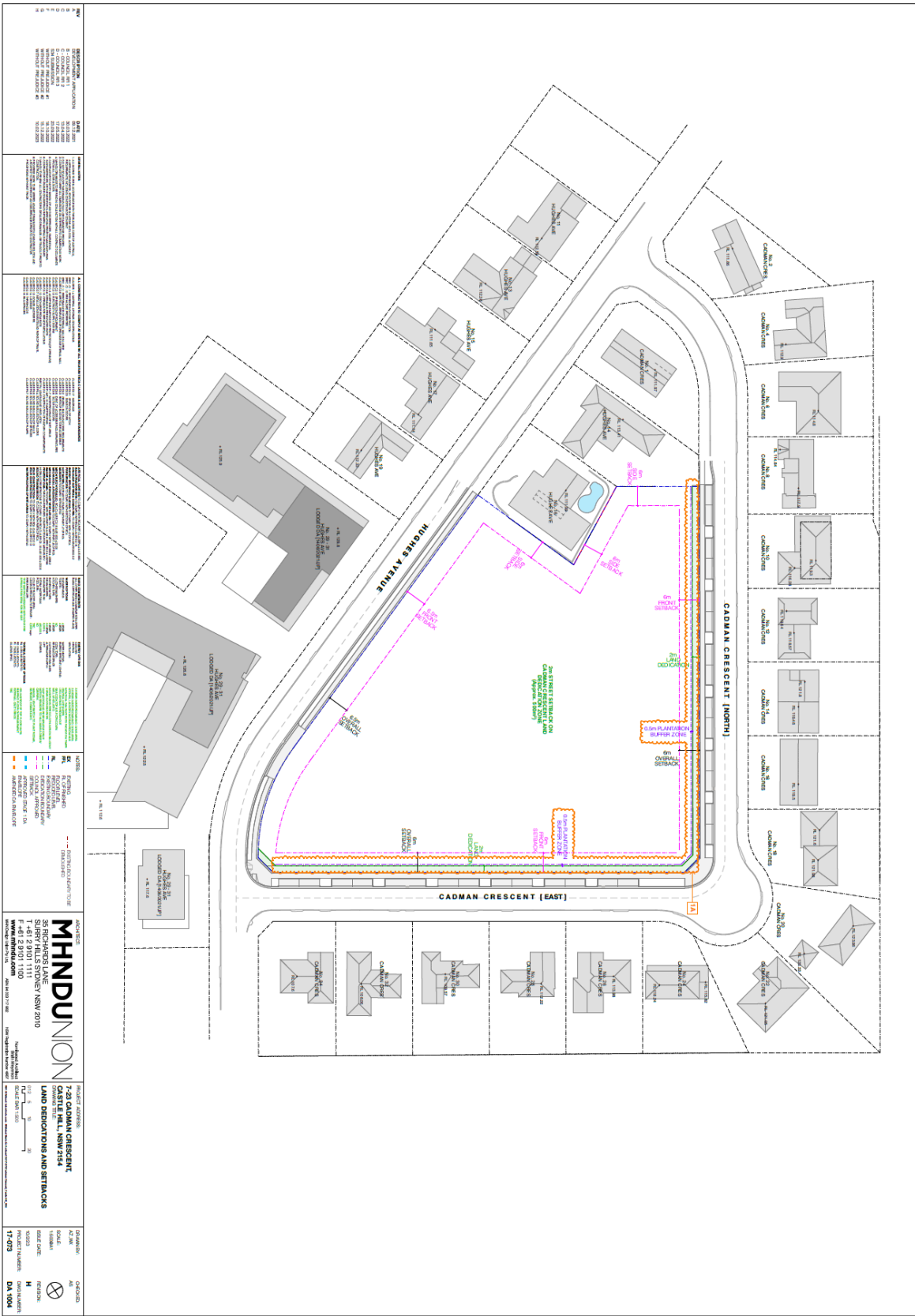
7. Vehicular Access and Car Parking

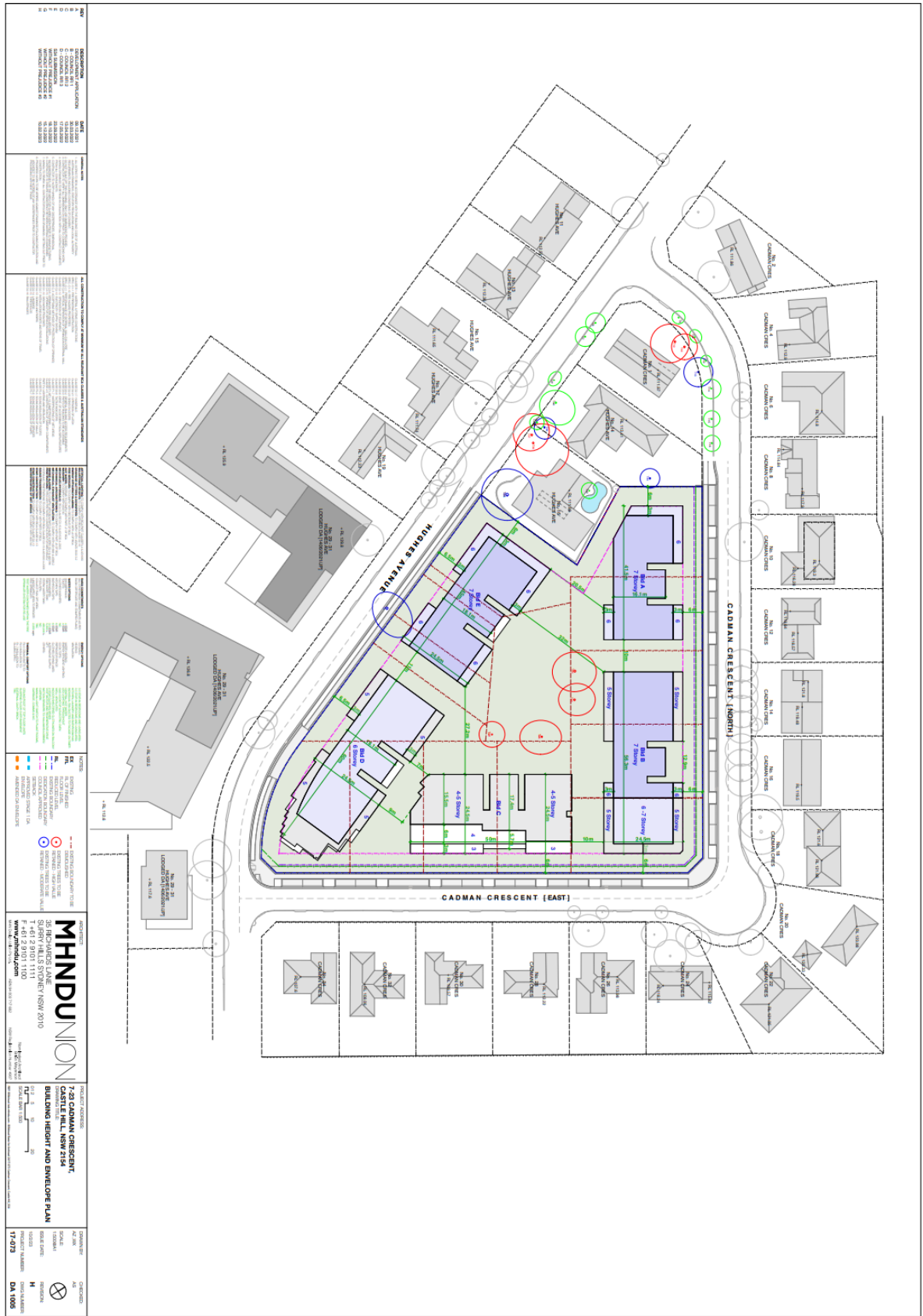
Vehicular Access for the entire development is to be provided via a single driveway on Hughes Avenue. The driveway is to be setback at least 6m from the tangent point at the intersection between Cadman Crescent/Hughes Avenue.

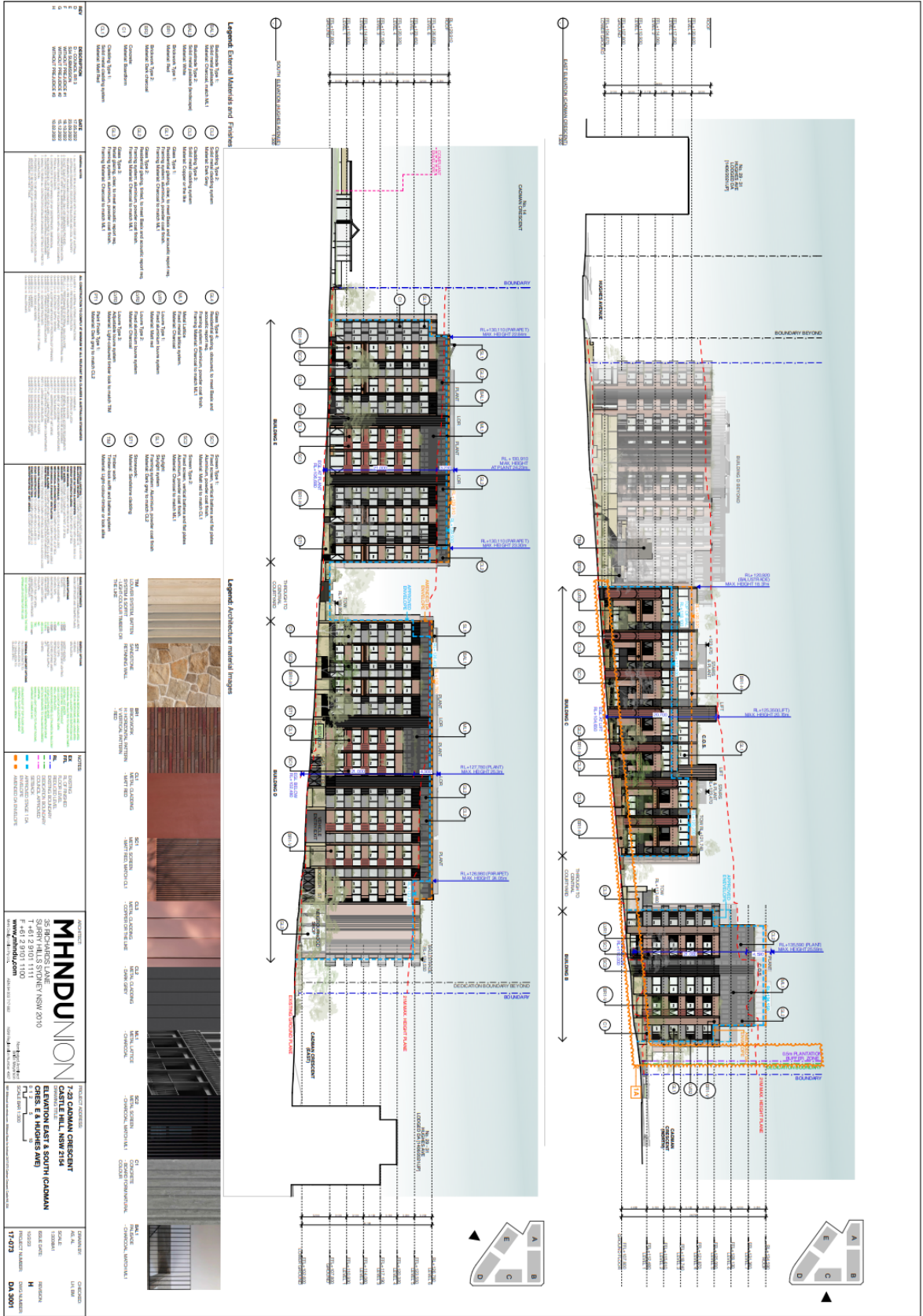
8. Section 7.11 Contributions

All future built form Development Applications must be levied in accordance with Contributions Plan No. 19 Showground Station Precinct and Section 7.11 of the Environmental Planning and Assessment Act 1979, to provide for the increased demand for public amenities and services resulting from the development.

ATTACHMENT H – LEC APPROVED PLANS









Legend

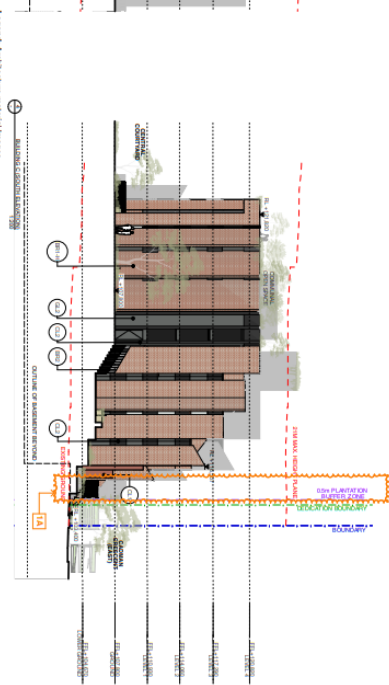
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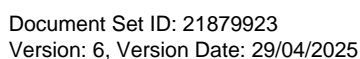
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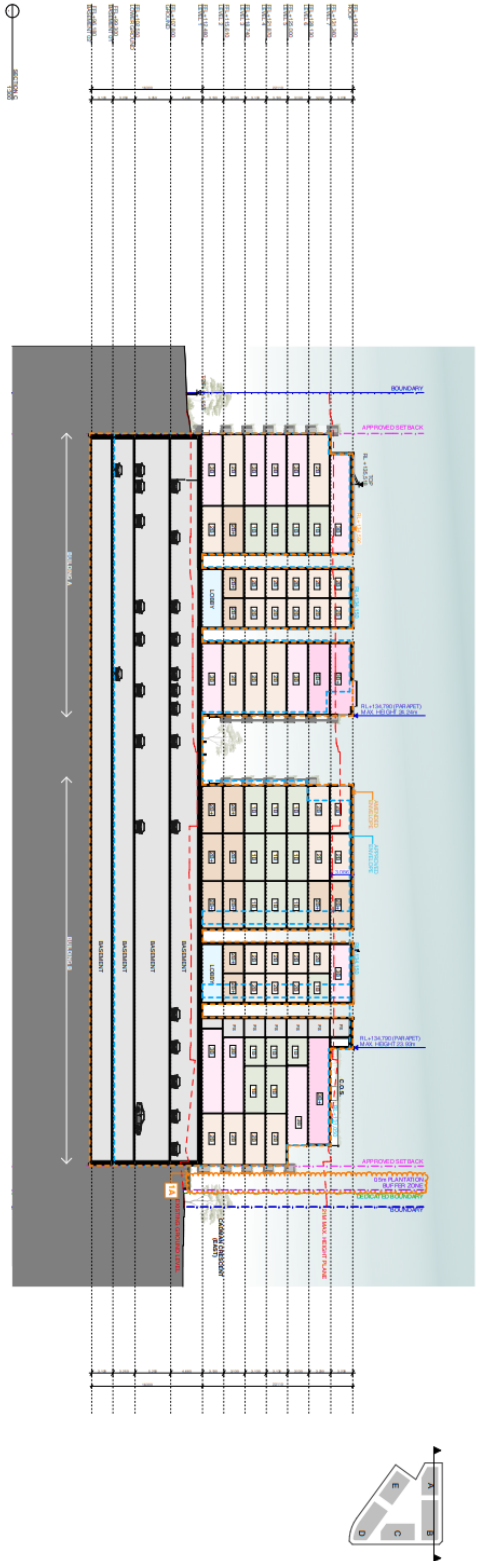
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NO.	DATE	DESCRIPTION
1	10/10/2024	ISSUED FOR TENDER
2	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
3	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
4	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
5	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
6	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
7	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
8	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
9	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN
10	10/10/2024	REVISIONS TO BE MADE TO THE DESIGN

NOTES
1. ALL WORK TO BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND STANDARDS OF THE NSW GOVERNMENT.
2. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
3. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
4. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
5. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
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8. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
9. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.
10. THE DESIGNER IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHER CONSULTANTS.

LEGEND
1. EXISTING BUILDING
2. EXISTING ROADS
3. EXISTING UTILITIES
4. EXISTING LANDSCAPE
5. EXISTING SERVICES
6. EXISTING UTILITIES
7. EXISTING LANDSCAPE
8. EXISTING SERVICES
9. EXISTING UTILITIES
10. EXISTING LANDSCAPE
11. EXISTING SERVICES
12. EXISTING UTILITIES
13. EXISTING LANDSCAPE
14. EXISTING SERVICES
15. EXISTING UTILITIES
16. EXISTING LANDSCAPE
17. EXISTING SERVICES
18. EXISTING UTILITIES
19. EXISTING LANDSCAPE
20. EXISTING SERVICES

PROJECT INFORMATION
PROJECT NAME:
CLIENT:
DESIGNER:
DATE:
SCALE:
SECTION:
PROJECT NUMBER:
PROJECT LOCATION:
PROJECT CONTACT:
PROJECT PHONE:
PROJECT EMAIL:
PROJECT WEBSITE:

OWNER:
DESIGNER:
DATE:
SCALE:
SECTION:
PROJECT NUMBER:
PROJECT LOCATION:
PROJECT CONTACT:
PROJECT PHONE:
PROJECT EMAIL:
PROJECT WEBSITE:




LANDSCAPE AREA	1777
SITE AREA	12,407
REQUIRED LANDSCAPED AREA (DOF)	Min. 6,203 (50%)
PROPOSED (INCL. PERMEABLE SURFACE)	777
GROUND LANDSCAPE AREA	6,123 (49.3%)
ROOF TOP LANDSCAPE	317 (2.6%)
PROPOSED TOTAL	6,440 (51.9%)

SITE COVERAGE	
MAX. SITE COVERAGE AREA (DOF)	Max. 6,203 (50%)
PROPOSED	5,588 (45.0%)
BUILDING FOOTPRINT	631 (5.0%)
IMPERVIOUS SURFACE	6,219 m ² (50.0%)
PROPOSED TO TOTAL	

NOTES

DEEP SOIL AREA	
SITE AREA	12.407 (m ²)
REQUIRED DEEP SOIL AREA (AOC)	Min. 990 (7%)
PROPOSED	
THIN DEEP SOIL	1,940 (15.6%)
POST EXCAVATION	645 (5.2%)
BOYERWALK	488 (3.8%)
TOTAL DEEP SOIL AREA INCLUDING FERTILIZABLE SURFACE	3,063 (24.6%)

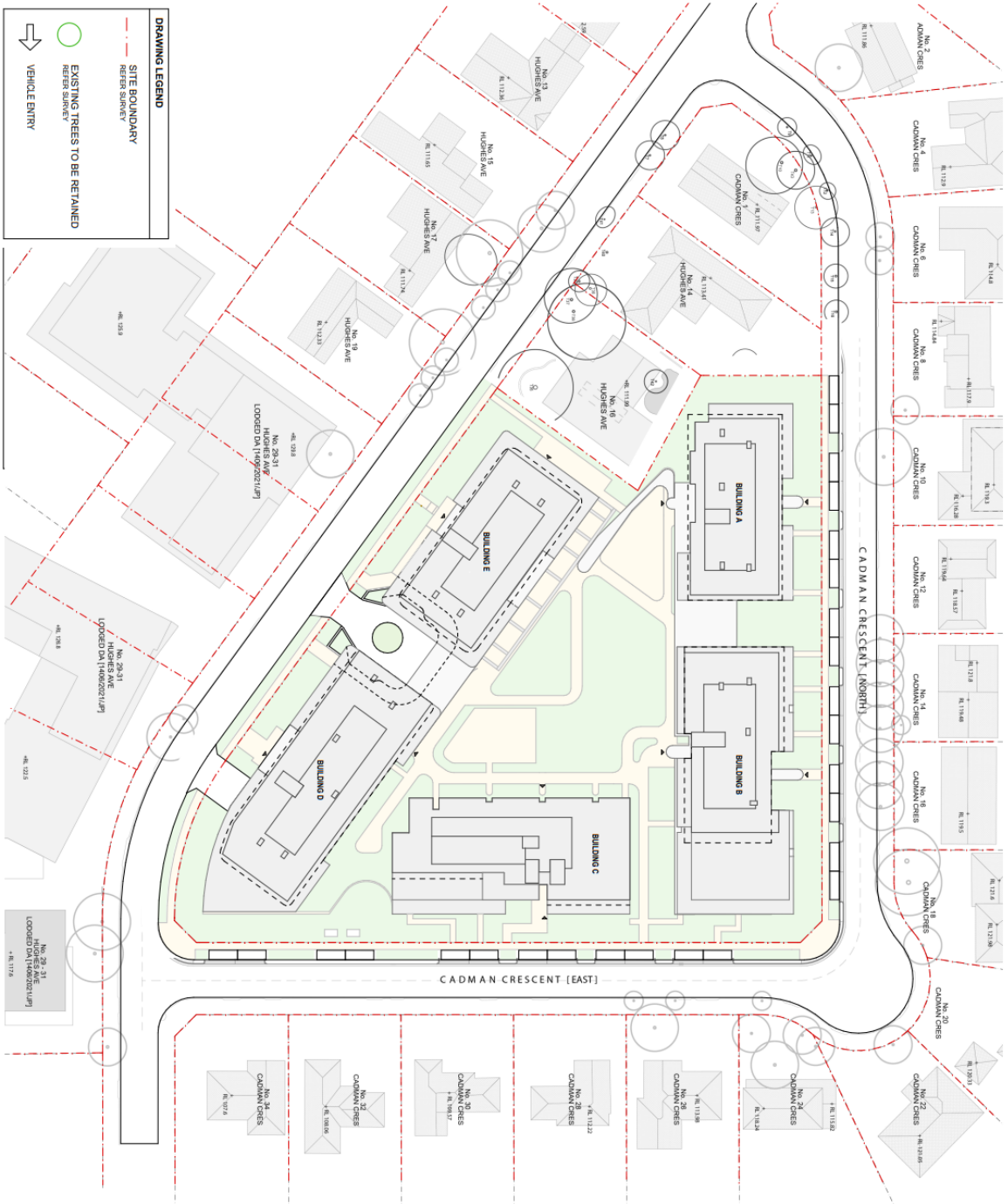
NOTES

COMMUNAL OPEN SPACE AREA		(m ²)
SITE AREA		12,407
REQUIRED COS (M ²)		Mn. 3,102 (65%)
PROPOSED		m ²
GROUND		2,514
GROUND SHADE (PANEL)		1,546 61% of COS, 400 (mg 20%)
ROOF		887 (7.1%)
PROPOSED TOTAL		4,407 m ² (35% of site)





NOTES



ATTACHMENT I – SITE PLAN

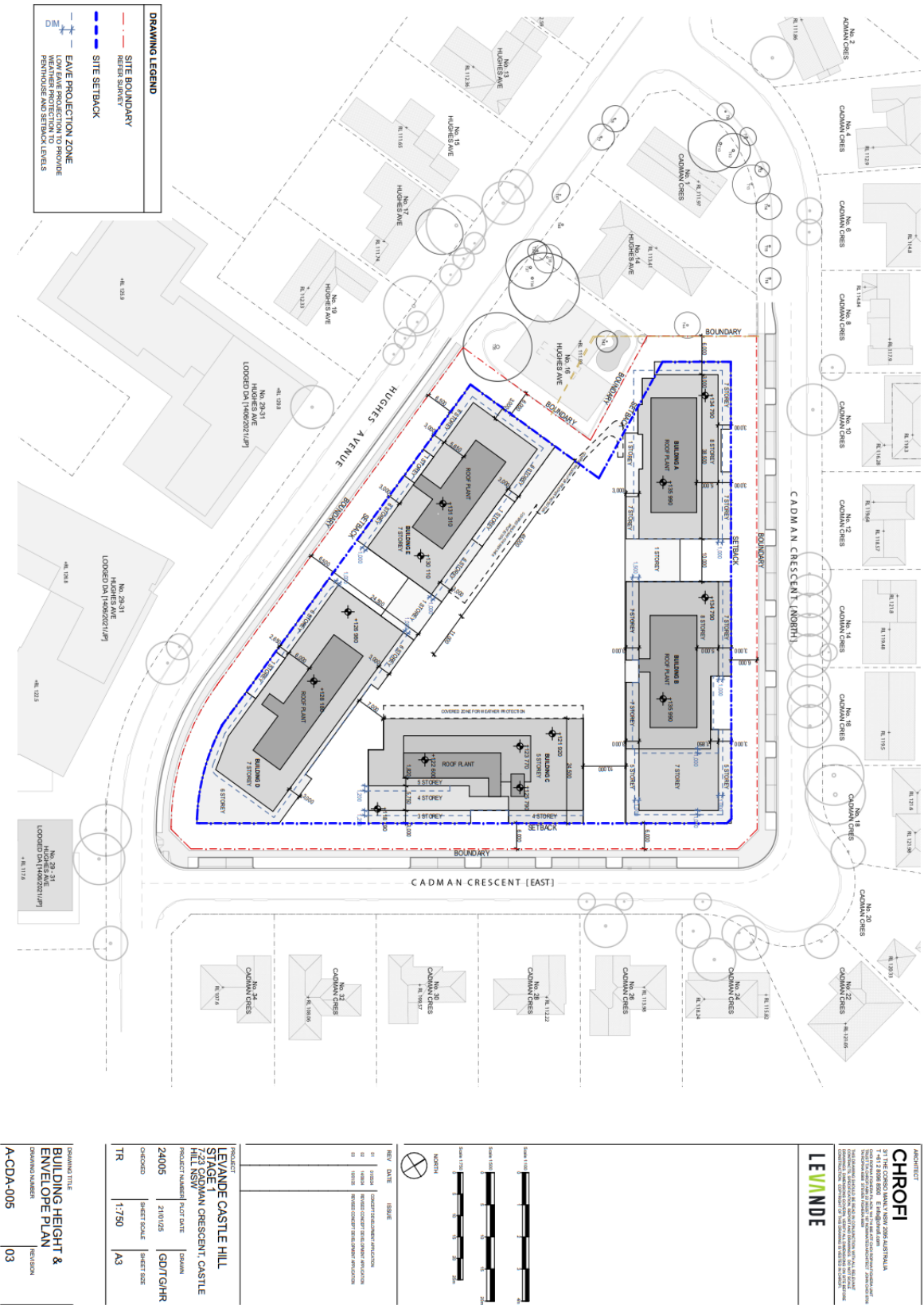
[illegible]

[illegible]

DRAWING LEGEND	
	SITE BOUNDARY
	REFER SURVEY
	SITE SETBACK
	2M DEDICATION

[illegible]

ATTACHMENT K – PROPOSED BUILDING HEIGHT AND ENVELOPES PLAN



The site plan illustrates the proposed development at 1000221147, located along Hughes Avenue and Cadman Crescent (East). The plan shows three main building footprints, each with a red dashed line indicating the approved envelope and a blue dashed line indicating the site setback. The buildings are situated on a triangular lot. Surrounding context includes existing buildings on Hughes Avenue (Nos. 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235, 237, 239, 241, 243, 245, 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 293, 295, 297, 299, 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 323, 325, 327, 329, 331, 333, 335, 337, 339, 341, 343, 345, 347, 349, 351, 353, 355, 357, 359, 361, 363, 365, 367, 369, 371, 373, 375, 377, 379, 381, 383, 385, 387, 389, 391, 393, 395, 397, 399, 401, 403, 405, 407, 409, 411, 413, 415, 417, 419, 421, 423, 425, 427, 429, 431, 433, 435, 437, 439, 441, 443, 445, 447, 449, 451, 453, 455, 457, 459, 461, 463, 465, 467, 469, 471, 473, 475, 477, 479, 481, 483, 485, 487, 489, 491, 493, 495, 497, 499, 501, 503, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, 531, 533, 535, 537, 539, 541, 543, 545, 547, 549, 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571, 573, 575, 577, 579, 581, 583, 585, 587, 589, 591, 593, 595, 597, 599, 601, 603, 605, 607, 609, 611, 613, 615, 617, 619, 621, 623, 625, 627, 629, 631, 633, 635, 637, 639, 641, 643, 645, 647, 649, 651, 653, 655, 657, 659, 661, 663, 665, 667, 669, 671, 673, 675, 677, 679, 681, 683, 685, 687, 689, 691, 693, 695, 697, 699, 701, 703, 705, 707, 709, 711, 713, 715, 717, 719, 721, 723, 725, 727, 729, 731, 733, 735, 737, 739, 741, 743, 745, 747, 749, 751, 753, 755, 757, 759, 761, 763, 765, 767, 769, 771, 773, 775, 777, 779, 781, 783, 785, 787, 789, 791, 793, 795, 797, 799, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 845, 847, 849, 851, 853, 855, 857, 859, 861, 863, 865, 867, 869, 871, 873, 875, 877, 879, 881, 883, 885, 887, 889, 891, 893, 895, 897, 899, 901, 903, 905, 907, 909, 911, 913, 915, 917, 919, 921, 923, 925, 927, 929, 931, 933, 935, 937, 939, 941, 943, 945, 947, 949, 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 971, 973, 975, 977, 979, 981, 983, 985, 987, 989, 991, 993, 995, 997, 999, 1001, 1003, 1005, 1007, 1009, 1011, 1013, 1015, 1017, 1019, 1021, 1023, 1025, 1027, 1029, 1031, 1033, 1035, 1037, 1039, 1041, 1043, 1045, 1047, 1049, 1051, 1053, 1055, 1057, 1059, 1061, 1063, 1065, 1067, 1069, 1071, 1073, 1075, 1077, 1079, 1081, 1083, 1085, 1087, 1089, 1091, 1093, 1095, 1097, 1099, 1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, 1119, 1121, 1123, 1125, 1127, 1129, 1131, 1133, 1135, 1137, 1139, 1141, 1143, 1145, 1147, 1149, 1151, 1153, 1155, 1157, 1159, 1161, 1163, 1165, 1167, 1169, 1171, 1173, 1175, 1177, 1179, 1181, 1183, 1185, 1187, 1189, 1191, 1193, 1195, 1197, 1199, 1201, 1203, 1205, 1207, 1209, 1211, 1213, 1215, 1217, 1219, 1221, 1223, 1225, 1227, 1229, 1231, 1233, 1235, 1237, 1239, 1241, 1243, 1245, 1247, 1249, 1251, 1253, 1255, 1257, 1259, 1261, 1263, 1265, 1267, 1269, 1271, 1273, 1275, 1277, 1279, 1281, 1283, 1285, 1287, 1289, 1291, 1293, 1295, 1297, 1299, 1301, 1303, 1305, 1307, 1309, 1311, 1313, 1315, 1317, 1319, 1321, 1323, 1325, 1327, 1329, 1331, 1333, 1335, 1337, 1339, 1341, 1343, 1345, 1347, 1349, 1351, 1353, 1355, 1357, 1359, 1361, 1363, 1365, 1367, 1369, 1371, 1373, 1375, 1377, 1379, 1381, 1383, 1385, 1387, 1389, 1391, 1393, 1395, 1397, 1399, 1401, 1403, 1405, 1407, 1409, 1411, 1413, 1415, 1417, 1419, 1421, 1423, 1425, 1427, 1429, 1431, 1433, 1435, 1437, 1439, 1441, 1443, 1445, 1447, 1449, 1451, 1453, 1455, 1457, 1459, 1461, 1463, 1465, 1467, 1469, 1471, 1473, 1475, 1477, 1479, 1481, 1483, 1485, 1487, 1489, 1491, 1493, 1495, 1497, 1499, 1501, 1503, 1505, 1507, 1509, 1511, 1513, 1515, 1517, 15

DRAWING LEGEND

- SITE BOUNDARY
- REFER SURVEY
- SITE SETBACK
- APPROVED ENVELOPE
- REFER APPROVED DA
- ✈ EAVE PROJECTION ZONE
- ✈ LOW EAVE PROJECTION TO PROVIDE WEATHER PROTECTION TO PERIMETERS AND SETBACK LEVELS
- ✈ DIM

[illegible]

ATTACHMENT M – SITE ACCESS DIAGRAM



REV	DATE	ISSUE
01	01/04/04	CONCEPT DEVELOPMENT APPLICATION
02	04/04/04	REVISED CONCEPT DEVELOPMENT APPLICATION
03	09/01/05	REVISED CONCEPT DEVELOPMENT APPLICATION

PROJECT		LEVANDE CASTLE HILL	
STAGE 1		7-23 CADMAN CRESCENT, CASTLE HILL NSW	
PROJECT NUMBER	24005	PLOT DATE	21/01/25
CHECKED		SHEET SCALE	
TR		SHEET SIZE	A3
		DRAWN	GD/TG/HF

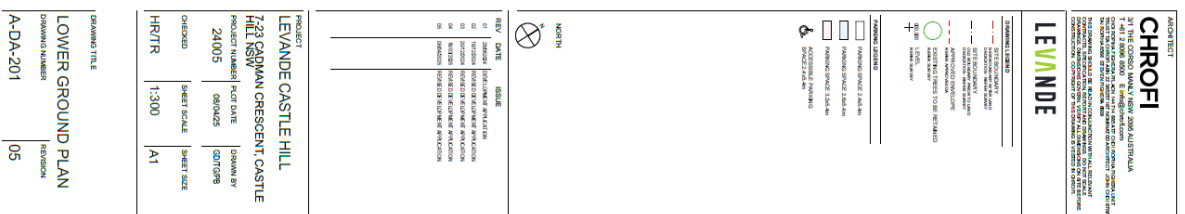
DRAWING TITLE
SITE ACCESS DIAGRAM

DRAWING NUMBER
A-CDA-004

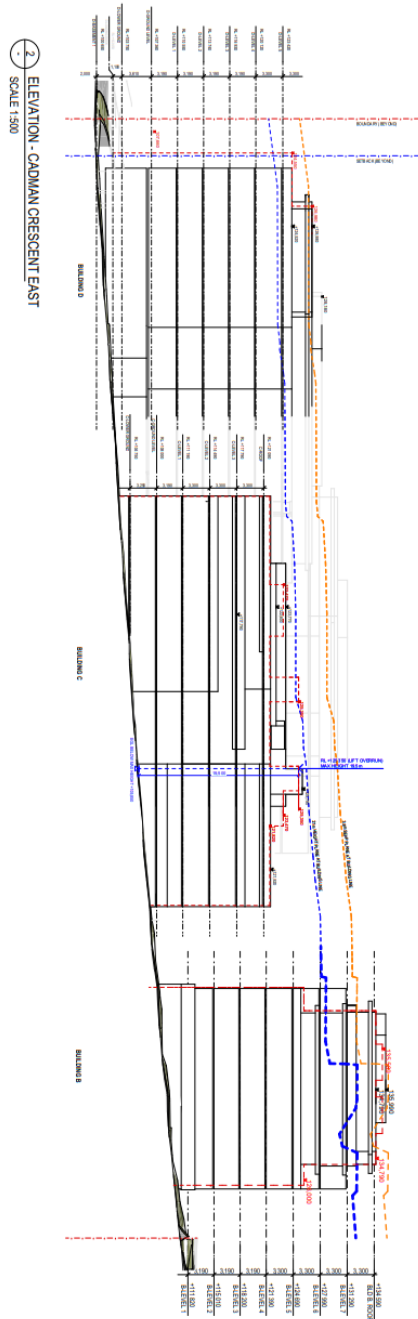
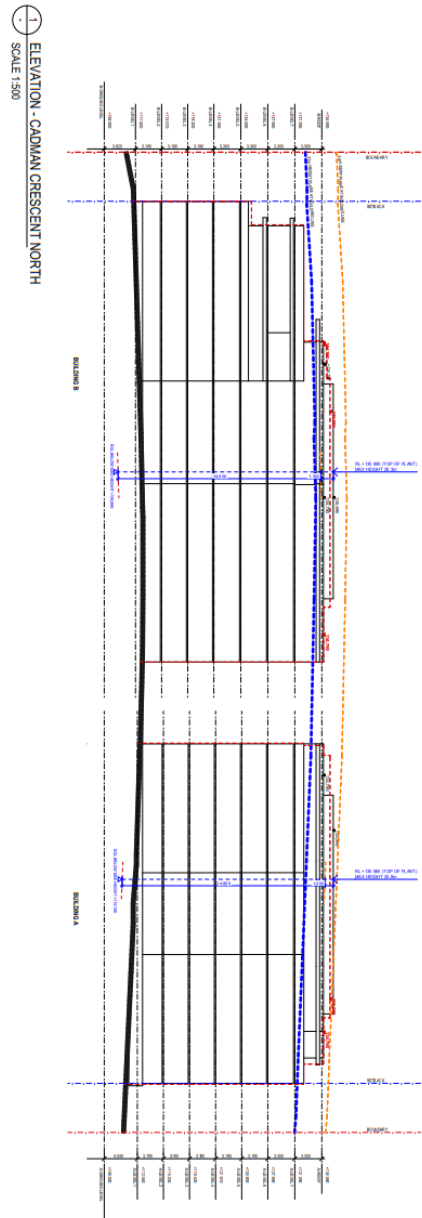
REVISION
03

[illegible]

Document Set ID: 21879923
Version: 6, Version Date: 29/04/2025



ATTACHMENT O – PROPOSED ELEVATIONS AND SECTION



DRAWING LEGEND

	APPROVED DA ENVELOPE
	21m HEIGHT LIMIT
	3.8m SEPP HEIGHT ALLOWANCE

[illegible]



Figure 1 shows three vertical bar charts representing scales. Each chart has a vertical axis with numerical markers at 0, 50, and 100. The bars are divided into black and white segments. Scale 1 (100) has a black segment from 0 to 50 and a white segment from 50 to 100. Scale 2 (100) has a black segment from 0 to 25 and a white segment from 25 to 100. Scale 3 (750) has a black segment from 0 to 25 and a white segment from 25 to 750.

DRAWING TITLE	
BUILDING SECTIONS	
DRAWING NUMBER	REVISION
A-CDA-401	03

DCP - SINGULAR LARGE PARCEL
ADG - PRINCIPAL USABLE PART
SECONDARY PARCEL

Developments achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter)

June (mid winter)

The ADG definition of principle usable part of communal open space is: *A consolidated part of the communal open space that is designed as the primary focus of recreational activity and social interaction.*

The designated principal usable part of the communal open space includes the community lawn and deck. These spaces are the most accessible and activated areas, sitting adjacent to the main internal community space and site reception.

Over 50% of the designate space receives solar access for 2 hours in midwinter between 9am and 3pm. [refer to drawings A-DA-619]

Section 5.4 Control 10 from the Showgrounds Precinct site specific DCP

A minimum of 25% of the required communal open space must be located at ground level in a singular large parcel.

The central courtyard is the main large parcel of communal open space, it is at ground level and is accessible from all buildings.

The required communal open space are of 60% is achieved in the Courtyard with an area at approx 1900m2.

ARCHITECT

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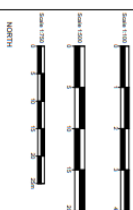
CHROFI ARCHITECTS HAS BEEN THE LEAD ARCHITECTURAL FIRM FOR THE NEW 2005 AUSTRALIA. THE FIRM HAS A LONG HISTORY OF WORKING WITH THE AUSTRALIAN GOVERNMENT AND HAS BEEN A KEY PLAYER IN THE DEVELOPMENT OF THE AUSTRALIAN ARCHITECTURAL SCENE SINCE 1970. CHROFI ARCHITECTS HAS A LONG HISTORY OF WORKING WITH THE AUSTRALIAN GOVERNMENT AND HAS BEEN A KEY PLAYER IN THE DEVELOPMENT OF THE AUSTRALIAN ARCHITECTURAL SCENE SINCE 1970.

THIS PARTNER'S INVOLVEMENT IN THE CONSTRUCTION WITHIN THE AUSTRALIAN ARCHITECTURAL SCENE HAS BEEN A KEY PLAYER IN THE DEVELOPMENT OF THE AUSTRALIAN ARCHITECTURAL SCENE SINCE 1970.

CONTRACTS, INCLUDING THE DESIGN AND CONSTRUCTION OF THE AUSTRALIAN ARCHITECTURAL SCENE SINCE 1970.

CONSTRUCTION OF THE AUSTRALIAN ARCHITECTURAL SCENE SINCE 1970.

LEVIVANDE



01	010504	CONCEPT DEVELOPMENT APPLICATION
02	020504	REVISED CONCEPT DEVELOPMENT APPLICATION
03	030505	REVISED CONCEPT DEVELOPMENT APPLICATION

LEVANDE CASTLE HILL
STAGE 4

7-23 CADMAN CRESCENT, CASTLE
HILL NSW

[illegible]

CHECKED	SHEET SCALE	SHEET SIZE
---------	-------------	------------

TR	A3
----	----

Age Group	2005 (%)	2007 (%)
18-29	85	80
30-49	75	70
50-69	65	60
70+	55	50

DRAWING TITLE	LANDSCAPE, DEEP SOIL & COS AREA
DRAWING NUMBER	A-CDA-505
REVISION	03

ATTACHMENT Q – SHADOW DIAGRAMS



OVERSHADOWING IN MIDWINTER

% APPROXIMATE CHANGE IN OVERSHADOWED AREA OUTSIDE THE PROPOSED SCHEME OVERSHADOWED AREA

SITE BOUNDARY

APPROVED SCHEME SHADOW

PROPOSED MASSING SHADOW

PROPOSED SHADOW EXCEEDS APPROVED SHADOW

NEIGHBOURING BOUNDARIES AND HOMES

9AM

0% CHANGE

10AM

2% REDUCTION

11AM

4% REDUCTION

12PM

4% REDUCTION

1PM

5% REDUCTION

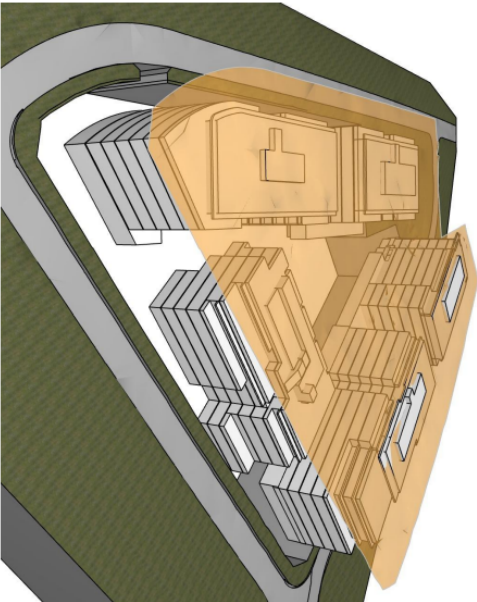
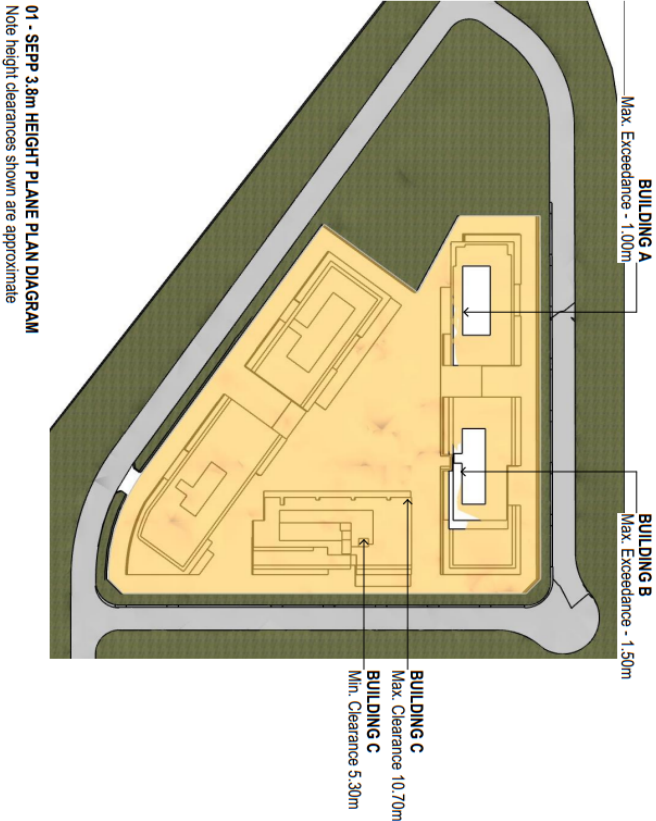
2PM

2% REDUCTION

3PM

2% REDUCTION

ATTACHMENT R – HEIGHT PLANE DIAGRAM



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CHROFI is a registered architect and interior design firm, providing a full range of architectural and interior design services to its clients. CHROFI is a member of the Australian Institute of Architects and the Australian Institute of Interior Designers.	
LEVANDE	

PROJECT	LEVANDE CASTLE HILL
STAGE	STAGE 1 - PRELIMINARY DESIGN
LOCATION	322 KILMAN CRESCENT, CASTLE HILL NSW
PROJECT NUMBER	PLOT DATE
24005	21/07/25
CHECKED	GD/THR
TR	A3

DATE	ISSUE
10/07/25	1. PRELIMINARY DESIGN
10/07/25	2. PRELIMINARY DESIGN
10/07/25	3. PRELIMINARY DESIGN

Scale 1:100	0 10 20 30 40 50 60 70 80 90 100
Scale 1:500	0 10 20 30 40 50 60 70 80 90 100
Scale 1:1000	0 10 20 30 40 50 60 70 80 90 100
NORTH	

DRAWING TITLE	
HEIGHT PLANE DIAGRAM	
DRAWING NUMBER	REVISION
A-CDA-507	03

Clause 4.6 Variation Request

Building height

7-23 Cadman Crescent & 18-24 Hughes Avenue, Castle Hill

Submitted to The Hills Shire Council
on behalf of Levande Pty Ltd



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'




Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

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

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

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

Contact:		Daniel West Director	dwest@ethosurban.com 0411 570 394
This document has been prepared by:		This document has been reviewed by:	
			
Alysha Tse	17 May 2024	Daniel West	17 May 2024
Version No.	Date of issue	Prepared by	Approved by
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2.0 (DRAFT)	16/05/2024	AT	DW
3.0 (FINAL)	27/05/2024	AT	DW
4.0 (FINAL – UPDATED)	10/04/2015	SK	DW
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 Ethos Urban Pty Ltd ABN 13 615 087 931 Sydney NSW Melbourne VIC Brisbane QLD ethosurban.com			

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1.0 Introduction

1.1 Overview

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Levande Pty Ltd. It is submitted to The Hills Shire Council (the Council) in support of an amending concept development application (DA) to amend the approved residential flat building development (DA 1110/2022/JP) which was granted by the NSW Land and Environment Court to seniors housing development at 7-23 Cadman Crescent & 18-24 Hughes Avenue, Castle Hill.

The clause 4.6 variation request relates to the building height development standard in Section 87(2)(c) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). Section 87 is located in Chapter 3, Part 5, Division 3 of the Housing SEPP under the heading 'Division 3 Development standards'. This clause 4.6 variation request should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated May 2024.

Clause 4.6 of *The Hills Local Environmental Plan 2019* (THLEP 2019) enables the Hills Shire Council to grant consent for development even though the development contravenes the development standard imposed by the THLEP 2019 or any other environmental planning instrument, such as in this case the Housing SEPP.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clauses 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the building height is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). It is also supported by Architectural Plans prepared by CHROFI (**Appendix A**).

The extent of the building height variation relates to the minor intrusions of the proposed lift overruns and plant. This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard in s87(2)(c) of the Housing SEPP:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances, as the objectives of the standard are achieved notwithstanding the non-compliance in that:
 - It provides an increase in seniors housing that responds to the modern day standards and requirements for aged care and the changing demographics and population growth;
 - The lift overruns and plant are centrally positioned on the rooftop of Building A and Building B. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential developments when compared to the approved Concept DA (DA1110/2022/JP).
 - The proposed height exceedance will be compatible with the surrounding context and character of the locality, including with the existing character and desired future character of the Hills Showground Station Precinct as per The Hills Development Control Plan 2012.
 - The magnitude of the exceedance approved under the current Concept DA has significantly reduced as a result of the development being afforded an additional 3.8m height under section 87(2)(c) of the Housing SEPP.
- The request demonstrates that there are sufficient environmental planning grounds to vary the standard in this instance because:

- The proposed development has an appropriate built form response to the significant topographical change of the site.
- The proposed variation is restricted to lift overruns and plant only, which are located within the centre of the floorplates associated with the Building A and Building B.
- The proposed development does not result in any significant environmental impacts with regards to overshadowing when compared to the approved Concept DA (DA1110/2022/JP), in fact the extent of overshadowing is reduced.
- The proposed height variation does not preclude compliance with the floor space ratio (FSR) standard under the THLEP 2019 and s87(2)(b)(i) of the Housing SEPP.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the THLEP 2019.

1.2 Legal Guidance

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

This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

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

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill within the Hills Shire Local Government Area. The site is owned by Levande Pty Ltd, comprises 14 lots and is legally described as shown in **Table 1** below. The composition of the lots within the site is illustrated in **Figure 1**. The site is irregular in shape and has a total area of approximately 12,405.8m². The site has 3 frontages and is bounded by Cadman Crescent to the north and east, and Hughes Avenue to the south and west. An aerial photo of the site is shown at **Figure 2**.



Figure 1 Site Composition

Source: SIXmaps, edited by Ethos Urban

Table 1 *Lots and DP of the Subject Site*

Address	Lot and DP
18 Hughes Avenue	Lot 504 DP 258587
20 Hughes Avenue	Lot 337 DP 252593
1/22 Hughes Avenue	Lot 3361 DP 865725
2/22 Hughes Avenue	Lot 3362 DP 865725
24 Hughes Avenue	Lot 335 DP 252593
23 Cadman Crescent	Lot 334 DP 232593
21 Cadman Crescent	Lot 333 DP252593
19 Cadman Crescent	Lot 332 DP252593
17 Cadman Crescent	Lot 331 DP252593
15 Cadman Crescent	Lot 330 DP252593
13 Cadman Crescent	Lot 329 DP252593
11 Cadman Crescent	Lot 328 DP252593
9 Cadman Crescent	Lot 327 DP252593
7 Cadman Crescent	Lot 502 DP258587



Figure 2 *Site Aerial*

2.2 Description of the Proposed Development

Section 4.17 of the EP&A Act provides that a condition of development consent may be imposed if it requires the modification of a consent granted in relation to the land to which the development application relates.

In this regard, this Amending Concept DA seeks concept approval for the following amendments to the development consent to DA 1110/2022/JP:

- Replacement of approved detailed drawings with concept envelope drawings;
- Change of approved land use from residential flat building to seniors housing, comprising independent living units and ancillary services;
- Reduction of approved residential units from 242 to 217 and change of unit typology mix;
- Increase in approved building envelope heights of between 370mm – 710mm across Buildings A, B, D, and E, largely to accommodate lift overruns and rooftop plant;
- Reconfiguration of approved basement design, including deletion of a basement level and introduction of a loading turntable;
- Introduction of a porte cochere to be accessed from Hughes Avenue;

- Replacement of approved ground floor residential units with a wellness clubhouse in Buildings A and B; and
- Associated amendments to approved landscaping and stormwater design.

Architectural concept drawings and landscape plans illustrating the proposed development are included at **Appendices C and E** respectively.

2.3 Numerical Overview

The key numerical development information is summarised in **Table 2**.

Table 2 *Key development information*

Component	Proposal	
Site area	Total	12,405.8 m ²
GFA*	Total	28,650 m ²
FSR	2.3:1	
Building Heights	Building A:	25.8m
	Building B:	26.3m
	Building C:	19.5m
	Building D:	24.65m
	Building E:	24.6m
Apartment Mix	1 bedroom:	10 units
	2 bedrooms:	116 units
	3 bedrooms:	91 units
	Total:	217 units
Car Parking Spaces	Total:	322 spaces

* Calculated in accordance with Section 82 of the Housing SEPP as follows:

- gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from another building, measured at a height of 1.4m above the floor—
- (a) excluding the following—
- (i) columns, fin walls, sun control devices and elements, projections or works outside the general lines of the internal face of an external wall,
 - (ii) cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts,
 - (iii) car parking and internal access to the car parking,
 - (iv) space for the loading and unloading of goods, including access to the space,
 - (v) areas for common vertical circulation, including lifts and stairs,
 - (vi) storage, vehicular access, garbage and services within the basement,
 - (vii) for a residential care facility—floor space used for service activities provided by the facility within the basement,
 - (viii) terraces and balconies with outer walls less than 1.4m high,
 - (ix) voids above a floor at the level of a storey or storey above, and
- (b) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling.

2.4 Comparison to DA 1110/2022/JP Approved Scheme

The project team have made a concerted effort to maintain as much consistency as possible with the approved building envelope under DA 1110/2022/JP. As shown in **Figure 3** below, the proposed building envelope (blue) is largely consistent with the approved building envelope (red)



Figure 3 Building Envelope Comparison: Approved v Proposed

Source: CHROFI

A comparison of the key metrics of the proposed scheme compared to the previously approved scheme is provided in **Table 3** below.

Table 3 *Metric changes*

Component	Approved DA 1110/2022/JP	Proposed
Total residential units	242	217
Total GFA	27,104.00m ²	28,650 m ²
Total FSR	2.18:1	2.3:1
Total car parking	356	322
Building A height	25.11m	25.8m
Building B height	25.59m	26.30m
Building C height	20.7m	19.50m
Building D height	25.3m	24.65m
Building E height	24.23m	24.6m

3.0 Development Standard to be Varied

3.1 Part 5, Division 3, Section 87, Subsection 2(c)

The development standard that is sought to be varied as part of this application is section 87(2)(c) of the Housing SEPP. Section 87 is located within Part 5, Division 3 of the Housing SEPP under the heading 'Division 3 Development Standards'. Section 87(2)(c) permits for certain development an additional 3.8m of building height above the 'maximum permissible building height'. "Maximum permissible building height" is defined in the Dictionary of the Housing SEPP as follows:

***"maximum permissible building height"** means the maximum building height permitted on the land under an environmental planning instrument, other than this Policy, or a development control plan"*

Under the THLEP 2019, the site is subject to a maximum building height of 21m. Section 87(2)(c) therefore permits a maximum building height of 24.8m.

Section 87 is reproduced in its entirety below (**emphasis added**).

- (1) *This section applies to development for the purposes of seniors housing on land to which this Part applies if—*
- (a) *development for the purposes of a residential flat building or shop top housing is permitted on the land under Chapter 5 or another environmental planning instrument, or*
 - (b) *the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.*
- (2) *Development consent may be granted for development to which this Section applies if –*
- (a) *the site area of the development is at least 1,500m², and*
 - (b) *the development will result in a building with the maximum permissible floor space ratio plus –*
 - (i) *for development involving independent living units – an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*
 - (ii) *for development involving a residential care facility – an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or,*
 - (iii) *for development involving independent living units and residential care facilities – an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and*
 - (c) ***the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.***

Section 87 applies to the proposed development as residential flat buildings are a permissible form of development in the R4 High Density Residential zone under THLEP 2019. It is noted that the site area of the development is in excess of 1,500m², therefore the development complies with the development standard in section 87(2)(a).

3.2 Extent and Nature of the Variation Sought

The proposed development for the purposes of seniors housing, comprising independent living units (ILUs), is made pursuant to the Housing SEPP which permits an additional building height of 3.8m above the maximum permissible height under the THLEP (s87(2)(c)). As outlined in **Section 2.2** and illustrated in the Architectural Plans, the proposal is divided into five buildings, being Building A, B, C, D and E. Refer to **Figure 4**.

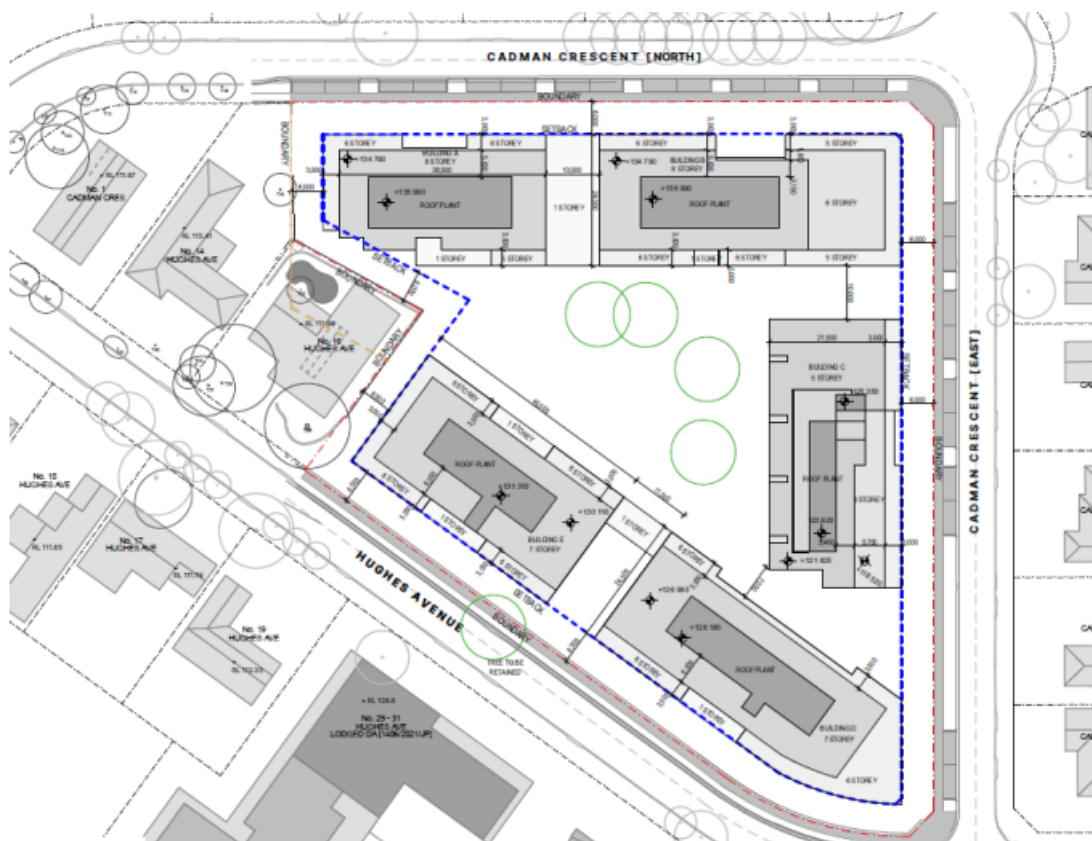


Figure 4 Proposed building layout and envelopes

Source: CHROFI

Table 4 below provides a summary of the approved and proposed building envelope heights which are intended to accommodate the seniors housing. The proposed building envelopes are generally compliant with the maximum building height standard which is 24.8m. The proposed variations relate to building envelopes A and B only. It is noted all approved and proposed building heights shown in **Table 4** has been calculated from existing ground level.

Table 4 Summary of Height Changes

Building	DA1110/2022/ JP LEP 2019 Height	DA1110/2022/ JP Approved height	DA1110/2022/ JP Approved variation	Amending DA LEP 2019 Height + SEPP bonus	Amending DA Proposed Envelope Height	Proposed Amending DA maximum variation	Difference in height of approved maximum height and proposed height
Building A	21m	25.11m	3.24m (14.4%)	24.8m	25.8m	1m (4%)	+0.69m
Building B	21m	25.59m	4.59m (21.9%)	24.8m	26.3m	1.5m (6%)	+0.71m
Building C	21m	20.7m	-	24.8m	19.5m	-	-1.2m
Building D	21m	25.3m	4.3m (20.5%)	24.8m	24.65	-	-0.65m
Building E	21m	24.23m	3.23m (15.4%)	24.8m	24.6m	-	+0.37m

The proposal departs from the maximum building height control under section 87(2)(c) by 1.5m at its maximum point. This exceedance is limited to the lift overruns and plant in localised areas of Building A and B. The exceedances range from 1m located at Building A to 1.5m located at Building B or between 4% to 6% above the

24.8m building height standard. It is further noted that the lift overruns and plant are isolated to the central, rooftop portion of the envelopes. These exceedances will not adversely impact surrounding amenity in terms of overshadowing or visual impact and will ensure equitable access can be achieved to the upper most levels of the buildings for the senior and disabled residents who will be housed by the development.

Figure 5 & Figure 6 below demonstrates the 24.8m height plane and where the proposal only results in a minor non-compliance to the building height control – ranging from 1m at Building A to 1.5m for Building B. The variation comprises just lift overruns and plant which are directly attributable to the sloping nature of the natural ground level and variability within the site. Importantly, no part of the proposed buildings themselves exceed the newly established 24.8m height standard (except for the lift overruns and plant which is limited to 12.5% and 8.7% of the surface area of the roof of Building A and Building B, respectively as shown below at **Figure 5 & Figure 6**).

It is noted the proposed building envelopes under this amending Concept DA contain only marginal increases from the approved building heights under DA1110/2022/JP and only for Buildings A, B & E. Furthermore, the extent of variation to Buildings A and B has been substantially reduced as a result of the additional height permitted under section 87(2)(c) and Building E has been brought into compliance.

Additionally, Buildings C and D are proposed to be reduced in overall height by 650mm and 3700mm respectively.



Figure 5 SEPP 3.8m Height Plane Diagram (plan view)

Source: CHROFI

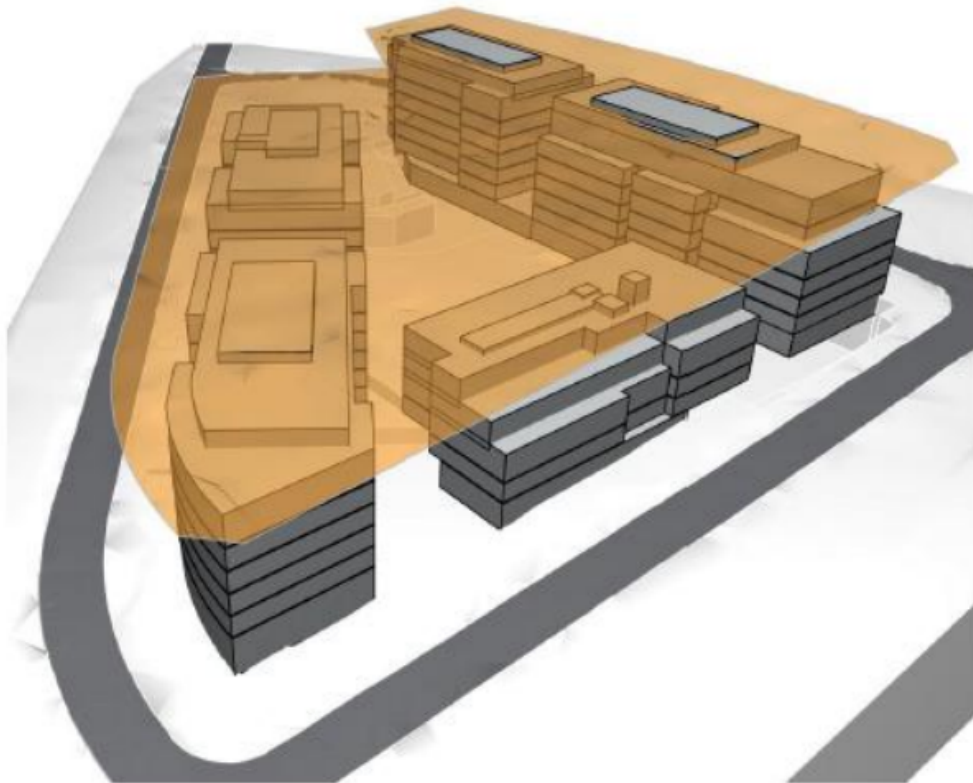


Figure 6 SEPP 3.8m Height Plane 3D View Diagram

Source: CHROFI

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the THLEP 2019 provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*);
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The relevant matters contained in clause 4.6 of the THLEP 2019, with respect to the building height development standard in section 87(2)(c), are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

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

As the language used in subclause 4.6(3)(a) of the THLEP 2019 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the building height development standard in Section 87(2)(c) of the Housing SEPP pursuant to the First Method.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)

There are no specific objectives contained within Part 5 or Section 87 of the Housing SEPP, however the underlying purpose of the provision is implied in the section itself. Namely, to incentivise seniors housing in zones where residential flat buildings or shop top housing is permitted where sites are 1,500m² or greater. This is achieved via differing and more generous FSR standards applying to ILUs (15%), RCF (20%) or ILUs + RCF (25%). In order for a development to utilise the applicable FSR standards, a building height development standard is provided allowing an additional 3.8m (or 1 storey) above the 'maximum permissible building height' (as defined in the Housing SEPP).

This is consistent with section 3(b) and (d) Principles of Policy of the Housing SEPP that state:

- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.*

The underlying purpose of section 87 and section 3(b) and (d) is achieved notwithstanding the building height exceedance, as follows:

- The proposed development utilises the more generous FSR and building height development standards pursuant to section 87 which is intended to incentivise seniors housing for the purposes of ILUs. The proposal is consistent with the purpose of the Policy given that the additional GFA that is afforded by s87 has been entirely accommodated within the 24.8m height standard. Therefore, the underlying purpose of the standard is achieved notwithstanding the exceedance in building height relates only to the proposed lift overrun and plant in localised areas of Buildings A and B;
- The heights for Building A (25.11m) and Building B (25.59) were previously deemed acceptable and approved under the Concept DA (DA1110/2022/JP). The proposal is seeking approval for an additional 0.69m and 0.71m for Buildings A and B, respectively to accommodate the proposed lift overruns and plant. It is noted strict compliance with section 87(2)(c) would result in the loss of an entire storey of the proposed ILUs in Buildings A and B which are otherwise entirely below the 24.8m height standard and approved building heights. This would mean the underlying purpose of section 87 to incentivise seniors housing is not reasonably achieved and also is contrary to section 3(b) & (d) Principle of Policy.
- The exceedance is restricted to a marginal increase of 0.69m and 0.71m in height from the approved building heights of Building A and Building B, respectively in order to feasibly accommodate the proposed lift overruns and plant from an engineering perspective. The proposed lift overruns and plant occupy only 12.5% and 8.7% of the surface area of the roof of Building A and Building B, respectively and adjustments proposed to the approved building envelopes to accommodate independent living units, adverse amenity impacts upon adjoining properties and the locality in terms of overshadowing, visual privacy, views, built form and density are minimised and reduced. Specifically, the overshadowing impacts of the proposal have been reduced when compared to the approved scheme pursuant to DA1110/2022/JP. Therefore, the proposed height variation will not create any additional overshadowing impacts; and
- Further, as the exceedance is restricted to discreet lift overruns and plant, it does not relate to increased density on the site above what is contemplated by section 87 of the Housing SEPP and the approved Concept DA, as no ILUs or related internal floor space exceeds the 24.8m height standard or the approved building heights for Building A and Building B. Indeed, substantial parts of the proposed development (such as the proposed building envelopes containing future habitable space) are located below the 24.8m height standard of the Housing SEPP and 25.11m and 25.59m approved building heights under the Concept DA (DA1110/2022/JP). This is notable on a site with such a significant fall in topography from the southern corner to the north-eastern corner of over 11m and reflective of the appropriateness of the scale of the proposed development.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the THLEP 2019 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development are the proposed lift overruns and plant at Building A and Building B envelopes that result in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify contravention of the maximum building height development standard in this specific instance, as described below.

4.2.1 Reduction on variation that was previously deemed appropriate

Council has previously approved greater variations to the maximum height development standard for the site. The previous Stage 1 Concept DA (I262/2019/JP) was approved by the Sydney Central City Planning Panel (SCCPP) with a maximum building height of 23.85m, which is 2.85m above the 21m LEP height limit, representing a 13.6% variation.

Furthermore, the development consent to DA1110/2022/JP was approved by the NSW Land and Environmental Court on 17 March 2023. The development was approved with a maximum height of 25.59m (21.9%), which is a greater variation than one previously sought in the original Stage 1 Concept DA and the current amending DA application that is subject of this variation request.

The current proposal has a maximum height of 26.3m at its highest point (Building B pant and lift overrun). While the proposed maximum height is marginally taller than that currently approved (additional 0.71m), the extent of the variation is less than that currently approved as the proposal is eligible for an additional 3.8m building height bonus pursuant to section 87(2)(c) of the Housing SEPP. As a result, the maximum building height the proposal is subject to is 24.8m instead of the prescribed 21m THLEP 2019 height limit.

It is noted the approved Concept DA sought variations to Buildings A, B, D and E. As a result of the newly established maximum building height of 24.8m, the proposal has reduced the height of Building D, making it compliant with the height standard, and the proposed height of Building E despite marginally increasing in height to accommodate plant, has also been made compliant with the height standard. The proposal seeks to increase building heights for Building A and Building B which are related to the lift overruns and plant, and whilst this area is marginally increasing in height, the proposal has consolidated and reduced the length of these components when compared to the approved Concept DA (DA1110/2022/JP).

The building envelopes approved pursuant to DA 1110/2022/JP allow for rooftop plant, equipment, and lift overruns with a height of 1 metre. Unfortunately, a lift overrun height of 1 metre is not feasible from an engineering perspective and thus the building envelopes are proposed to be increased in height by a maximum of 0.71m at Building B. The rooftop plant height of Building C is sufficient as approved, and thus will not need to be modified.

Given that the consent authority has previously deemed height variations of this scale and greater appropriate, the proposed variation to section 87(2)(c) of the Housing SEPP ought to be deemed acceptable.

4.2.2 Substantive compliance with other built form controls

When measured to the top of parapet from existing ground level, the proposal presents a range of heights which sit below the 24.8m height limit (refer back to **Figure 6**). It is also noted that the proposed variation to the height does not hinder compliance with the maximum 2.3:1 floor space control in accordance with Clause 9.6 of the THLEP 2019. Additionally, the proposal is afforded a 15% FSR bonus under section 87(b)(i), making the total allowable FSR for the site 2.645:1. The proposal does not seek to utilise the additional 0.345 of FSR as it can be accommodated within the base FSR of 2.3:1. As such, notwithstanding the height variation resulting from the lift overruns and plant, the proposed development remains consistent with the bulk and scale envisaged through the development standards under section 87 of the Housing SEPP and THLEP 2019. The proposed variation

therefore does not contribute to a development outcome that is inconsistent with built form capacity afforded to the site under the planning controls.

It follows that the variation of the development standard in this instance:

- Is not significant or material.
- Continues to ensure that the overall height of the development is appropriate for the site and its context.
- Does not generate any direct adverse visual or overshadowing related impacts.

4.2.3 Falling topography of site

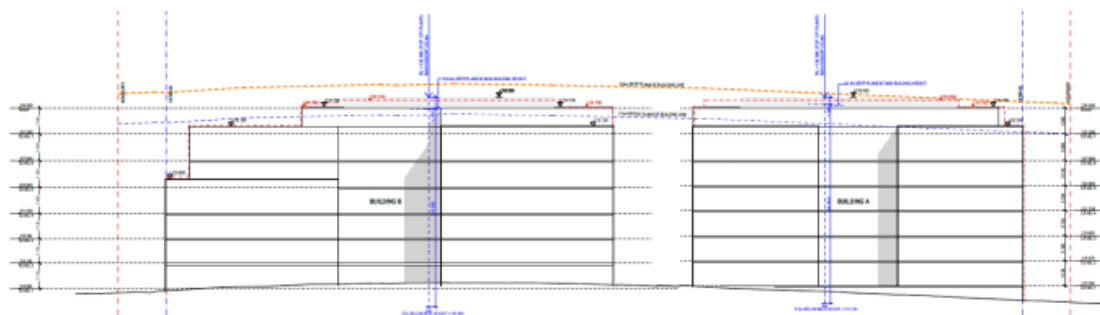
The site has a 11m fall in elevation from the southern corner to the north-eastern corner, and moderately slopes from east-west. Despite this significant fall in topography, the proposed development complies with the 24.8m maximum building height standard of section 87(2)(c) of the Housing SEPP and is consistent with approved building heights under the Concept DA (DA1110/2022/JP) (except for lift overruns/plant). This means that almost all the proposed development is considerably below the 24.8m maximum building height standard and approved building heights under the Concept DA, specifically all internal habitable space of the building envelopes and plant located on the rooftop of Buildings C, D and E. This demonstrates that the exceedance to the maximum building height development standard of section 87 does not result in built form or scale that exceeds what is intended under the Housing SEPP.

However, given the varied ground levels across the site, this has necessitated some minor height exceedances in localised areas which are limited to the lift overruns and plant located at the rooftop of Buildings A and B. It is noted the heights for Building A (25.11m) and Building B (25.59) were previously deemed acceptable and approved under the Concept DA (DA1110/2022/JP) and the proposal is seeking a marginal increase to accommodate the proposed lift overruns and plant. Strict compliance with the 24.8m maximum building height development standard could result in adverse design outcomes with the removal of an entire ILU storey likely necessary. Accordingly, the minor variations proposed are considered appropriate in this context, would be largely imperceptible from the public domain and are not considered to give rise to any adverse amenity impacts upon adjoining properties or the public domain.

Indeed, section 84 of the Housing SEPP permits an additional 2m of building height above the 9.5m building height development standard for servicing equipment where it is limited to 20% of the surface area of the roof. Whilst this provision does not apply to the subject site, it suggests that there is a reasonable basis for allowing additional building height for services such as stair and lift overruns.

The proposed development proposes lift overruns and plant that exceed the 24.8m maximum building height development standard between 1m and 1.5m and which occupy 12.5% and 8.7% of the surface area of the roof of Building A and Building B, respectively. Accordingly, the variation sought with this clause 4.6 variation request would not be classified as a maximum building height exceedance in (for example) a R2 Low Density Residential zone where section 84 would apply, and therefore a clause 4.6 variation request would not be necessary.

The falling topography of the site and corresponding compliance with building height is clearly shown in **Figure 7** below.



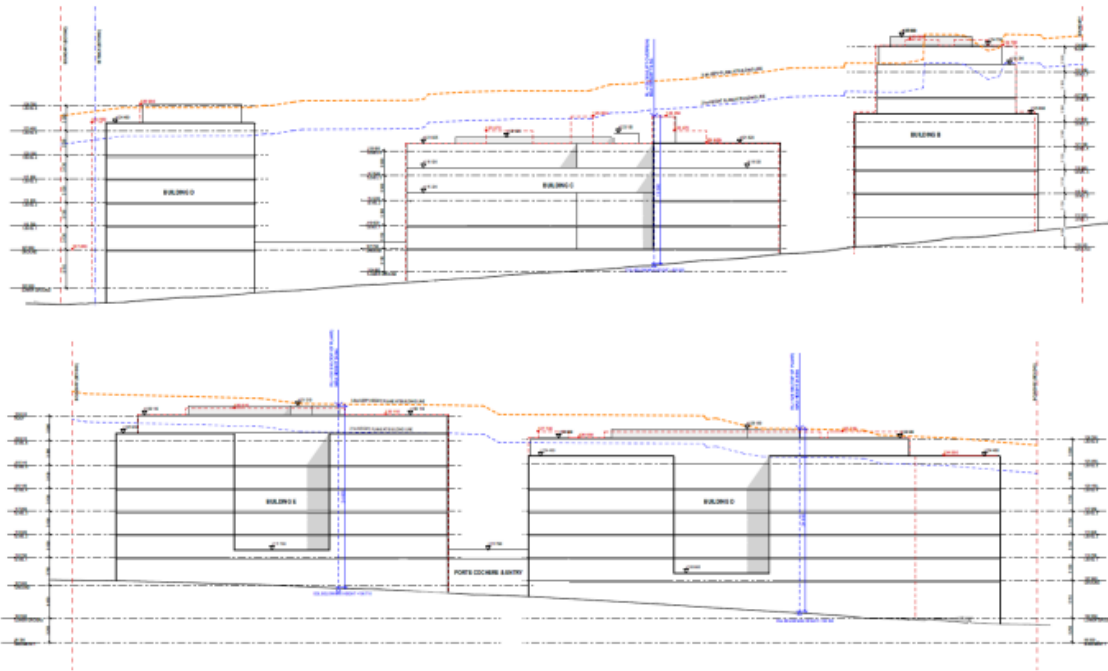


Figure 7 Elevations indicating building height and built form transition

Source: CHROFI

4.2.4 Overshadowing

The proposed height exceedances related to the lift overruns and plant in localised areas of Building A and B are minor in nature and will not result in adverse overshadowing impacts or any other impacts to the amenity of surrounding buildings or public domain.

An overshadowing analysis has been undertaken by CHROFI and included at **Appendix C**. The overshadowing analysis was completed to demonstrate the potential impact of the proposed development on adjoining properties. The overshadowing analysis provides a comparison of the shadows cast by the approved design versus the proposed scheme.

The analysis demonstrates that these residences to the west and south-west of the site are subject to overshadowing between 9am and 10am, and residences to the south-east of the site are subject to overshadowing between 2pm and 3pm.

From 11am, the landscaped open space of the residencies to the west and south-west of the subject site are free from overshadowing from the development and therefore achieve a minimum of 4 hours of direct solar access. Additionally, before 1pm, the landscaped open space of the residencies to the south-east of the subject site are not subject to overshadowing, and therefore a minimum of 4 hours of direct solar access is achieved.

When comparing the shadows cast by the proposed development to those cast by the development approved by the development consent to DA 1110/2022/JP, the difference in totality is negligible (see **Appendix Error! Reference source not found.**). Because adjustments have been made to the overall building envelope to accommodate independent living units, the overshadowing impacts of the development are marginally different (reduced) compared to those of the approved scheme pursuant to DA 1110/2022/JP. In this regard, the quantified difference in overshadowing between the two designs is as follows:

Table 5 Changes to overshadowing impacts

Time of day	Change in overshadowing
9am	2.3% reduction
10am	5.3% reduction
11am	10.4% reduction
12pm	13.3% reduction
1pm	9.1% reduction
2pm	5.6% reduction
3pm	4.7% reduction

Therefore, the overshadowing impacts created by the proposal ought to be considered minor and acceptable and, in any case, are not a result of the proposed height variation as shown in **Figure 8**.



Figure 8 Overshadowing analysis at the winter solstice (9am to 3pm)

Source: CHROFI

4.2.5 Conclusion on clause 4.6(3)(b)

For the reasons outlined in the table above, there are sufficient environmental planning grounds to justify the contravention of the maximum building height development standard, as:

- There is a reduction in the extent of the variation previously deemed acceptable by the consent authority under DA/1110/2022/JP, despite the marginal increase in height of 0.71m to feasibly accommodate the proposed plant from an engineering perspective.
- The proposed height variation does not preclude compliance with the floor space ratio (FSR) standard under the THLEP 2019 and s87(2)(b)(i) of the Housing SEPP.
- The proposed development has an appropriate built form response to the significant topographical change of the site.
- The proposed development does not result in any significant environmental impacts with regards to overshadowing when compared to the previous scheme and compliant scheme.
- The proposed variation is restricted to lift overruns and plant only, which are centrally located within the centre of the floorplates associated with the Building A and Building B.

5.0 Conclusion

The assessment above demonstrates that compliance with the maximum building height development standard contained in section 87(2)(c) of the Housing SEPP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

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

- Compliance with the development standard is unreasonable and unnecessary in the circumstances, as the objectives of the standard are achieved notwithstanding the non-compliance in that:
 - It provides an increase in seniors housing that responds to the modern day standards and requirements for aged care and the changing demographics and population growth;
 - The lift overruns and plant are centrally positioned on the rooftop of Building A and Building B. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential developments when compared to the approved Concept DA (DA1110/2022/JP).
 - The proposed height exceedance will be compatible with the surrounding context and character of the locality, including with the existing character and desired future character of the Hills Showground Station Precinct as per The Hills Development Control Plan 2012.
 - The magnitude of the exceedance approved under the current Concept DA has significantly reduced as a result of the development afforded an additional 3.8m height under section 87(2)(c) of the Housing SEPP.
- The request demonstrates that there are sufficient environmental planning grounds to vary the standard in this instance because:
 - The proposed development has an appropriate built form response to the significant topographical change of the site.
 - The proposed variation is restricted to lift overruns and plant only, which are centrally located within the centre of the floorplates associated with Building A and Building B.
 - The proposed development does not result in any significant environmental impacts with regards to overshadowing when compared to the approved Concept DA (DA1110/2022/JP), in fact the extent of overshadowing created is reduced.
 - The proposed height variation does not preclude compliance with the floor space ratio (FSR) standard under the THLEP 2019 and s87(2)(b)(i) of the Housing SEPP.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the THLEP 2019 and may grant development consent notwithstanding the contravention of the maximum building height development standard under section 87(2)(c) of the Housing SEPP.

Clause 4.6 Variation Request

Amending Concept Development Application

7-23 Cadman Crescent & 18-24 Hughes Avenue, Castle Hill

Submitted to The Hills Shire Council
on behalf of Levande Ptd Ltd



Prepared by Ethos Urban

11 April 2025 | 2240064

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'Gura Bulga'
Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'
Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Country. Representing Victoria.



'Gadalung Djarri'
Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

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

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

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

1.1 Overview

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the applicant for the subject development application, Levande Ptd Ltd (Levande). It is submitted to The Hills Shire Council (Council) in support of a development application (DA) for a seniors housing comprising independent living units (ILUs) on land at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill (the site).

This Clause 4.6 variation request relates to the accessible car parking development standard in Schedule 4, Part 1, Section 4, Subsection 2(c) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 24 May 2024.

Part 1 of Schedule 4 of the Housing SEPP relates to 'Standards concerning accessibility and usability for hostels and independent living units (ILU),

Section 85 of the Housing SEPP provides the following:

"(1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4."

In this regard, Schedule 4, Part 1, Section 4(2)(c) of the Housing SEPP specifies the following development standard:

(2) If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

(c) for a group of 8 or more parking spaces—

(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and

(ii) at least 50% of the parking spaces must—

(A) comply with AS/NZS 2890.6, or

(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

That is, at least 15% of the total provided car parking spaces for ILUs should be compliant with the requirements of AS2890.6, with a further 35% of spaces to either be compliant with AS2890.6 or be 3.2m in width. This development standard was introduced as an amendment to the Housing SEPP on 14th December 2023 as part of a suite of changes made to the Housing SEPP that were largely unrelated to the Housing SEPP's Seniors Housing provisions.

In this regard, the development proposes a total of 322 car parking spaces which exceeds the minimum number required by Section 108(2)(k) of the Housing SEPP by 64 spaces (the minimum number of car parking spaces required by Section 108(2)(k) of the Housing SEPP based on the proposed apartment mix is 258 spaces).

The proposed development provides 130 residential car parking spaces to be compliant with either AS2890.6 or as 3.2m wide. This is equal to 50% of the minimum car parking provision and it comprises:

- 39 spaces for residents as fully accessible, designed in accordance with AS2890.6 (equivalent to 15% of the minimum 258 spaces required); and
- 91 spaces for residents as 3.2m wide (equivalent to 35% of the minimum 258 spaces required).

The extent to which this Clause 4.6 variation request seeks to vary the development standard specified in Schedule 4, Part 1, Section 4(2)(c) of the Housing SEPP is limited to the parking spaces provided above the minimum spaces required under Section 108(2)(k) of the Housing SEPP. The variation is equal to 20% which is further discussed at section 3.2.

Clause 4.6 of *The Hills Local Environmental Plan 2019* (THLEP 2019) enables the consent authority to grant consent for a development even though that development contravenes a development standard imposed by an environmental planning instrument, such as the Housing SEPP, in this case. The clause aims to provide an

appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

The *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

This document demonstrates that compliance with the car parking development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

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

The proposed development demonstrates in summary that:

- **Compliance with the development standard is unreasonable and unnecessary in the circumstances, as:**
 - The underlying objectives or purposes of the standard are achieved.
 - The lack of a reasonable evidence base in practice for the new 50% wider parking space standard (Schedule 4 Part 1).
 - The recent introduction of this additional requirement for 50% of car parking spaces was not publicly exhibited and has not included any sufficient or reasonable evidence base for the change.

Notwithstanding this, the proposal achieves compliance with Schedule 4 Part 1 for the minimum car parking spaces required under the non-discretionary standards of 108(2)(k) of the Housing SEPP.

- Accordingly, only spaces additional to the minimum non-discretionary standard for car parking generation (Section 108(2)(k)) do not comply with Schedule 4 Part 1. Strict compliance with Schedule 4 Part 1 is therefore considered unreasonable for these spaces additional to the minimum required for ILUs under the Housing SEPP.
- **There are sufficient environmental grounds to justify contriving the standards, as:**
 - The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new development.
 - The proposed spaces are well designed and will be safe and suitable to the proposed users.
 - Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time, subject to a separate, future Detailed DA.
 - The non-compliance relates to additional car parking spaces provided in addition to the minimum car parking spaces required under the Housing SEPP.

These matters are discussed in detail in **Section 4.0** of this Report. The discussion demonstrates that the accessible car parking standards in the Housing SEPP are unreasonable and unnecessary for ensuring that independent living seniors have suitable accessible parking arrangements to meet their needs.

Further, aligning with the Clause 4.6 objectives, the proposed operational arrangements will provide for more flexible and effective use of the accessible spaces over time. Additionally, a village bus or shuttle service will provide for enhanced accessibility for all the future seniors village residents. These measures will thus achieve more flexible and better accessibility outcomes than what would have been achieved with strict compliance with the parking standard.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the THLEP 2019.

1.2 Legal Guidance

The NSW Land and Environment Court (NSWLEC) has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the NSWLEC in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 151;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

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

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The site is legally described as shown in **Table 1** below and is owned by Levande. The site is irregular in shape and has a total area of approximately 12,430m². The site has 3 frontages and is bounded by Cadman Crescent to the north and east and Hughes Avenue to the south and west. Existing developments on the site comprises of a mix of low density 1-2 storey dwelling houses. As the site is bound primarily by public roads, the only adjoining developments to the site are three low density dwelling houses to the north of the site. The site is not identified as an item of heritage significance and is not located within the heritage conservation area. The site is easily accessible to pedestrians and vehicles as it is bound by Cadman Crescent and Hughes Avenue, both of which are public access roads.

Table 1 Lots and DP of the Subject Site

Address	Lot and DP
18 Hughes Avenue	Lot 504 DP 258587
20 Hughes Avenue	Lot 337 DP 252593
1/22 Hughes Avenue	Lot 3361 DP 865725
2/22 Hughes Avenue	Lot 3362 DP 865725
24 Hughes Avenue	Lot 335 DP 252593
23 Cadman Crescent	Lot 334 DP 232593
21 Cadman Crescent	Lot 333 DP252593
19 Cadman Crescent	Lot 332 DP252593
17 Cadman Crescent	Lot 331 DP252593
15 Cadman Crescent	Lot 330 DP252593
13 Cadman Crescent	Lot 329 DP252593
11 Cadman Crescent	Lot 328 DP252593
9 Cadman Crescent	Lot 327 DP252593
7 Cadman Crescent	Lot 502 DP258587



Figure 1 Site aerial

Source: Nearmaps / Ethos Urban

2.2 Description of the Proposed Development

Section 4.17 of the EP&A Act provides that a condition of development consent may be imposed if it requires the modification of a consent granted in relation to the land to which the development application relates.

In this regard, this Amending DA seeks concept approval for the following amendments to the development consent to DA 1110/2022/JP:

- Replacement of approved detailed drawings with concept envelope drawings;
- Increase in approved building envelope heights of between 0.37m – 0.71m across Buildings A, B, and E;
- Change of approved land use from residential flat building to seniors housing, comprising independent living units and ancillary services;
- Reduction of approved residential units from 242 to 217;
- Reconfiguration of approved basement design, including introduction of a loading turntable;
- Introduction of a porte cochere to be accessed from Hughes Avenue;
- Replacement of approved ground floor residential units with a wellness clubhouse in Building B;
- Associated amendments to approved landscaping and stormwater design.

Architectural concept drawings and landscape plans illustrating the proposed development are included at **Appendices C and E** respectively.

2.3 Numerical Overview

A numerical overview of the apartment mix and car parking provision is provided in **Table 2**.

Table 2 Key development information

Component	Proposal	
Apartment Mix	1 bedroom:	10
	2 bedrooms:	units
	3 bedrooms:	116
	Total units:	units
	Total bedrooms:	91
		units
Car Parking Spaces		217
		515
	Total:	322 spaces

A comparison of the key relevant metrics of the proposed scheme compared to the previously approved scheme is provided in Error! Reference source not found. below.

Table 3 Metric changes

Component	Approved DA 1110/2022/JP	Proposed
Total residential units	242	209
Total GFA	27,104m²	28, 650m²
Total FSR	2.18:1	2.3:1
Total car parking	356	332

2.4 Comparison to DA 1110/2022/JP Approved Scheme

The project team have made a concerted effort to maintain as much consistency as possible with the approved building envelope under DA 1110/2022/JP. As shown in **Figure 2** below, the proposed building envelope (blue) is largely consistent with the approved building envelope (red)

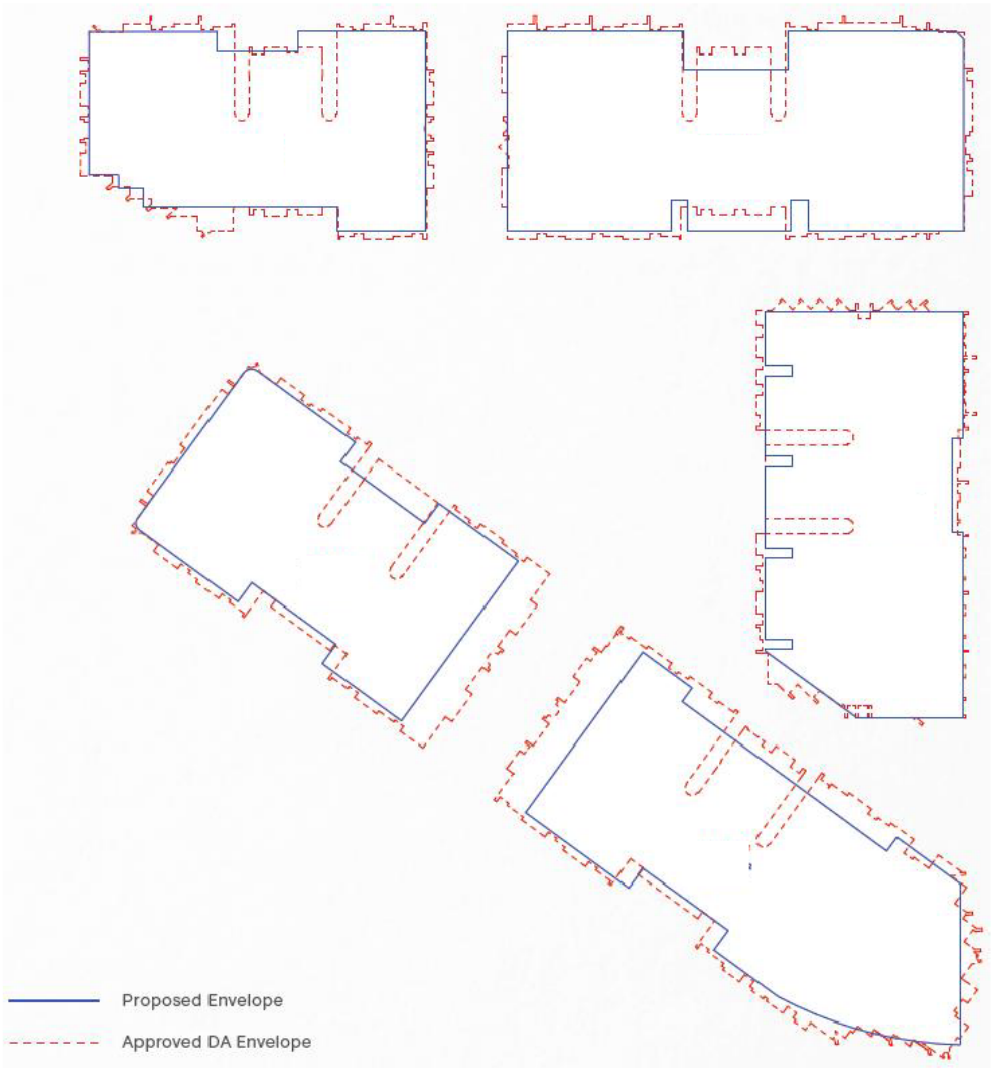


Figure 2 Building Envelope Comparison: Approved v Proposed

Source: Chrofi

3.0 Development Standard to be Varied

3.1 Schedule 4, Part 1, Section 4, Subsection 2(c)

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Schedule 4, Part 1, Section 4, Subsection 2(c) of the Housing SEPP. Subsection 2(c) outlines the development standards for car parking for all hostels and ILU developments.

It states that for developments requiring 8 or more parking spaces provided in a common area for use by occupants:

- (i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and
- (ii) 50% of parking spaces to comply with AS/NZS 2890.6 or be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

The Housing SEPP requires the spaces to comply with Commonwealth Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards). AS/NZS 2890.6 prescribes the requirements for the provision of off-street parking facilities for people with disabilities during new building works and is referenced in the BCA and Premises Standards. The standards are as follows:

- Angled parking spaces are to be 2400mm wide x 5400mm long.
 - A 2400mm wide x 5400mm long shared area is to be provided on one side of accessible angle parking space.
- Parallel parking spaces are to be not less than 3200mm wide x 7800mm long.
 - A shared area adjacent to the non-trafficked side of the dedicated parallel parking space is to be not less than 1600mm wide by 7800 mm long.
- The car parking areas are to comprise a firm plane surface with a gradient not exceeding 1:40 in any direction (or 1:33 if a bitumen surface and the area is outdoors).

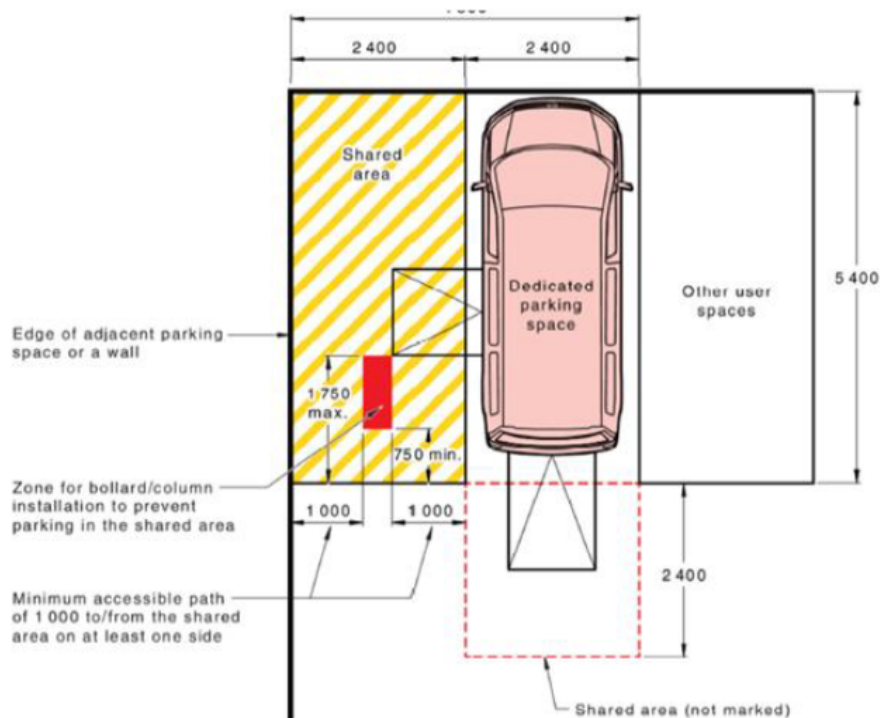


Figure 3 Illustration of the AS/NZS 2890.6 Parallel Parking standard

Source: Equal Access

3.2 Proposed Car Parking Provision

The proposed variation is limited to the car parking spaces provided in addition to the minimum required under the Housing SEPP.

The proposal provides **332** car parking spaces, consisting of the following:

- **308** x ILU resident spaces:
 - **130** x of the ILU resident spaces are wider (3.2 metres wide or comply with AS/NZS 2890).
 - **178** x of the ILU resident spaces are standard dimensions of 2.4-2.6 metres and 5.4 metres long.

Spaces in other parts of the site (which are subject to separate standards) include:

- **5** x spaces for use by residential visitors;
- **5** x spaces for use by retail visitors;
- **4** x spaces for use by staff;

As shown in **Table 5**Error! Reference source not found. below, the minimum required car parking spaces under the Housing SEPP are compliant with Schedule 4, Part 1, Section 4(2)(c).

The extent to which the proposed car parking provision is not compliant with Schedule 4, Part 1, Section 4(2)(c) is only limited to those parking spaces provided beyond the minimum required in Section 108(2)(k) of the Housing SEPP, whereby those additional spaces will be of standard dimensions. The variation is equal to 20%. This has been calculated by dividing the total number of accessible residential car parking spaces provided (130) by the minimum number of accessible residential car parking spaces required by the SEPP (162), based on the total residential car parking provision (322). The calculations are represented in **Table 5** below.

Table 4 Calculation of Accessible Car Parking Variance

Quantity	Units	Min parking required by the Housing SEPP	Parking Proposed to be Provided
1B	10	5	
2B	66	66	
2B+	48	48	
2B+P	2	2	
3B	91	136.5	
	217	258	308

Type	Section 108(2)(k) Min @ 258 spaces	Section 108(2)(k) Min @ 308 Spaces	Provided Residential Car Parking Spaces	Variance
3.2m wide	91 (35%)	108	91	
AS2890.6 compliant	39 (15%)	46	39	
Total Accessible	130	154	130	16%
Standard Spaces	128	154	178	14%
	258	308	308	

3.3 Is the Planning Control a Development Standard?

Section 85(1) of the Housing SEPP (emphasis underlined) states that:

"development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4".

Under Schedule 4, Part 1, Section 4 Subsection 2(c), standards are provided for car parking as follows:

(2) If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

(c) for a group of 8 or more parking spaces—

*(i) **at least 15% of the parking spaces must comply with AS/NZS 2890.6, and***

*(ii) **at least 50% of the parking spaces must—***

*(A) **comply with AS/NZS 2890.6, or***

*(B) **be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.***

As detailed above, consent must not be granted to a development for the purposes of an ILU unless it complies with the relevant standards specified in Schedule 4. Under Schedule 4, Part 1, Section 4, Subsection 2(c) of the Housing SEPP, the development standards are prescribed for car parking.

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the THLEP provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:
- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - there are sufficient environmental planning grounds to justify the contravention of the development standard.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSWLEC in:

- Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
- Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
- Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

The relevant matters contained in the Housing SEPP, with respect to the car parking development standard, relevant to independent living units (ILUs), are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the NSWLEC provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as being unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

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

As the language used in subclause 4.6(3)(a) of the THLEP is essentially the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the car parking development standard, pursuant to the **First Method**.

The availability of the first method was re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34], the Chief Judge held that 'establishing that the development would not cause

environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary’.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

There are no stated objectives in Part 5 or Section 85 or Schedule 4 of the Housing SEPP, being those parts of the Housing SEPP that are specifically related to the Seniors Housing provision and related to the accessible car parking provision. As such, the objectives of the development standards are to be inferred.

Part 1 of the Schedule 4 of the Housing SEPP. Schedule 4 is titled “Standards applying to hostels and independent living units”.

Schedule 4, Part 1, Section 4 Subsection 2(c) states the following (**emphasis added**):

(2) If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

(c) for a group of 8 or more parking spaces—

(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and

(ii) at least 50% of the parking spaces must—

(A) comply with AS/NZS 2890.6, or

(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

The inferred objective of the development standards contained in Schedule 4, Part 1, section 4, subsection 2(c) of the Housing SEPP is to ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs.

The proposed development is compliant with this development standard to the extent that it is applied to the minimum number of car parking spaces required by section 108(2)(k), demonstrating that it achieves the above inferred objective by satisfying the minimum number of accessible parking spaces required for the intended use of the development.

Furthermore, reference can be made to the principles specified in section 3 of the Housing SEPP, in particular, principles (b) and (c) as follows:

(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

(c) ensuring new housing development provides residents with a reasonable level of amenity,

These principles are consistent with the inferred objective specified above, that the Housing SEPP is arguably designed to encourage development of housing for vulnerable members of the community, including seniors, while maintaining reasonable amenity through, amongst other things, car parking that reflects the resident mobility profile and the design and functionality of ILUs.

4.1.2 Inferred Objective of Subsection 2(c)(i) and (ii): to ensure that access to car parking reflects the resident mobility profile and the design and functionality of independent living units.

The proposal provides **332** car parking spaces, consisting of the following:

- 308 x ILU resident spaces:
 - **130** of the ILU resident spaces are wider (3.2 metres wide or comply with AS/NZS 2890).
 - **178** of the ILU resident spaces are standard dimensions of 2.4-2.6 metres and 5.4 metres long.

Spaces in other parts of the site (which are subject to separate standards) include:

- **5** x spaces for use by residential visitors (1 of which complies with AS/NZS 2890).
- **5** x spaces for use by retail visitors (1 of which complies with AS/NZS 2890).
- **4** x spaces for use by staff (1 of which complies with AS/NZS 2890).

The proposed development will provide 130 car spaces that are compliant with AS2890.6 or 3.2m wide, provided across Basement Level 1 and Lower Ground Level. This equates to 50% of the minimum required car parking spaces under the Housing SEPP. The additional 178 car parking spaces provided includes the remainder of the required car parking spaces (128), in addition to the supplementary car parking spaces (64) proposed to be provided.

As the development provides a compliant number of accessible spaces in accordance with the Housing SEPP, it can be inferred that the proposed car parking will reflect the resident mobility profile and the design and functionality of ILUs.

As Preston CJ said in *Wehbe* at [43], “development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

It would therefore be considered unreasonable and onerous to require car parking spaces in excess of the minimum non-discretionary standard of section 108(k) to also achieve compliance with Schedule 4 Part 1. Strict compliance would also lead to a significant increase in the size of the basement, which is both unnecessary and unreasonable.

With respect to the proposed design of the surplus parking spaces, this is proposed to comprise 74 standard-sized car parking spaces. Reducing the number of surplus parking spaces in order to comply with the accessibility car parking provisions of Schedule 4 Part 1 (4) is not considered necessary due to a lack of demand for accessible parking spaces based on the anticipated residents of the proposed development. By way of precedent, reference is made to the comparable development known as “Cardinal Freeman Village”, owned and operated by Levande in Ashfield, which provides the following in relation to resident mobility needs, as at May 2024:

Table 5 Resident mobility needs

Mobility usage	Number of users	% of total units (based on 320 units)
Wheelchair	5	1.56%
Mobility scooter	2	0.63%
Total	7	2.19%

Furthermore, none of the residents of Cardinal Freeman Village who use a mobility scooter or wheelchair personally drive. Three of the residents share a unit with another resident who drives, whilst others utilise the village bus, private transport, or visiting family members to drive them.

Based on the above precedent, these metrics can be relied upon for the anticipated mobility needs of future residents of the subject proposed development. To provide a reduced number of surplus car parking spaces in order to comply with the requirements of Schedule 4 Part 1 is considered unnecessary on account of a lack of reasonable evidence base for resident demand of these additional accessible spaces.

4.1.3 The recent introduction of an additional 50% requirement for wider car spaces (3.2 metres) has not included a reasonable evidence base for the change

The recent Housing SEPP amendment (14th Dec 2023) replaced the exhibited EIE standard. The recent changes also introduced a new standard for wider spaces which was not mentioned in the previous EIE (Nov 2022 or July 2020).

The now gazetted standard requires 50% of spaces to be a minimum 3.2m wide (rather than the standard 2.4m). There is a lack of evidence base to justify this requirement for meeting the needs of ILU residents and is therefore superfluous.

4.1.4 The proposal achieves compliance with the Housing SEPP requirements for the minimum required car parking spaces, which remains an acceptable evidence-based measure, consistent with the Housing SEPP EIE (2022-2023)

An Accessibility Statement has been prepared as part of the Concept DA documentation. Purple Apple Access was engaged by the Applicant to provide access consulting in early 2024, with the pre-DA drawings provided in

April 2024. The Statement confirms that the proposed development is capable of accommodating the needs of the residents of the future development.

Further, under BCA Volume 1 Part D4D6, a minimum compliance for provision of accessible parking for different building classes is required. Whilst it has no accessible parking requirements for a Class 2 building, each class of building has a rate of accessible parking bays no greater than 2% of proposed parking to which both the exhibited changes and gazetted SEPP changes significantly exceed.

4.1.5 Full compliance with Schedule 4, Part 1, Section 4 Subsection 2(c) of the Housing SEPP would be economically prohibitive for the proposed development

To provide 50% of the supplementary 64 residential car parking spaces compliant with Schedule 4 Part 1, significant additional underground excavation and parking space allocation would be required. To develop this would result in significant financial feasibility implications on the development, rendering the project economically unviable. In this scenario, the Applicant would likely not proceed with the proposed development, failing to contribute to the housing stock of ILUs in Sydney's north-west. This scenario would be contrary to principles (b) and (c) in section 3 of the Housing SEPP as it would discourage developments for the purpose of seniors housing despite reasonable amenity being provided in accordance with section 108(2)(k) of the Housing SEPP.

4.1.6 Conclusion on Clause 6.6(3)(a)

Compliance with the development standard is unreasonable and unnecessary in the circumstances, as:

- The underlying objectives or purposes of the standard are achieved.
- Lack of a reasonable evidence base for the new 15% fully accessible parking space standard. Specifically, the recent Housing SEPP increase from a 10% to 15% fully accessible car parking spaces requirement has not included any sufficient nor reasonable evidence base for the change.
- Lack of a sound evidence base for the new 50% wider parking space standard. Specifically, the recent introduction of an additional 50% requirement for wider car parking spaces has not included any sufficient nor reasonable evidence base for the change.
- Notwithstanding the above, the proposal achieves the minimum required accessible car parking spaces for 50% of the required car parking spaces under section 108(2)(k) of Housing SEPP (i.e. 0.5 spaces per bedroom).

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the THLEP 2019 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance, the relevant aspect of the development is the proposed number of accessible spaces that results in non-compliance with the development standard.

There are sufficient environmental planning grounds to justify contravention of the car parking development standard in this specific instance, as described below.

4.2.1 The proposed variation is consistent with the Objectives/Principles of Housing SEPP 2021

The principles of the State Environmental Planning Policy (Housing) 2021 are as follows—

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors, and people with a disability,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) *mitigating the loss of existing affordable rental housing.*

The proposed variation to the subject development standard is consistent with the relevant principles of the Housing SEPP as follows:

- (b) – The proposed standard variation is consistent with this principle as it seeks to eliminate additional construction costs associated with a larger basement carpark, which would be economically prohibitive and render the development financial unfeasible, resulting in the development not being delivered. By eliminating these costs, the proposed development is more financially feasible and is able to contribute to housing stock for seniors as vulnerable members of the community.
- (c) – As discussed throughout this report, the anticipated demands for car parking for the proposed development will be consistent with those of comparable seniors housing developments, where the need for accessible parking spaces is no greater than 2.19% of the total residential units proposed. As such, the provision of 50% of the surplus 109 car parking spaces as standard dimensions will not interfere with the ability for the development to provide a reasonable level of amenity for residents, as the needs of the residents will already be met. In this regard, the basic premise of the development standard required under Schedule 4 Part 1 (4) of the Housing SEPP is met for the minimum number of parking spaces required under section 108(2)(k) of the Housing SEPP, therefore satisfying the needs to the future residents.
- (e) – To provide 50% of the surplus 109 parking spaces as accessible spaces is unnecessary and would trigger the need for additional subterranean excavation and paved area within the basement carpark. By avoiding this scenario, the proposed variation seeks to reduce the impacts on the natural environment and any subsequent climate impacts.

4.2.2 The Proposal is consistent with the R4 zone objectives of The Hills LEP 2019

Under the HLEP 2019, the following objectives in the R4 High Density Residential zones include:

- *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 key LEP objectives for this zone are to provide high density housing which meets the needs of the community. The proposed seniors housing comprising independent living units is permissible under the TTHLEP 2019, providing an opportunity for the community to age in place, living independently whilst benefiting from shared amenities, social activities, and support services.

4.2.3 The Proposal Will Meet the Needs of the Likely Demographics of new Residents

Levande recognises that many future residents of this proposed development will be drawn from its 10km locality, as is the experience with seniors housing providers.

The general demographic of The Hills Shire LGA indicates a community that, while aging, is not predominantly in need of extensive accessible parking facilities. In this regard, the percent of Cardinal Freeman Village in Ashfield indicates that a maximum of 2.19% of residential units involve use of a wheelchair or mobility scooter. As such, to provide a reduced number of surplus car parking spaces in order to ensure compliance Schedule 4 Part 1 (4) would be unnecessary on account of a lack of reasonable evidence base for demand of these additional accessible spaces.

Furthermore, it is in the Applicant's commercial interests to meet the demand that has been modelled for, so as not to exclude clientele who would be residents of the development but for the accessible car parking shortfall.

Nevertheless, the proposed development will provide 130 wider car parking spaces which comply with Schedule 4, Part 1, Section 4(2)(c) and cater to the needs of future residents and visitors.

The development's objective is to provide a place not only for residents to live; but a place to thrive. The inclusion of health and wellness facilities, such as clubhouse spaces, comprising of social space, wellness health club,

wellness studio, alongside a neighbourhood shop, is a testament to Levande's commitment to promoting an active lifestyle.

In November 2023, the Retirement Living Council commissioned a report from the PCA titled the Better Housing for Better Health Report: The Care and Cost Effectiveness of retirement living Report of which on a summary of the findings are published. Additionally, in December 2023, PCA also published the Shared care: Delivering greater home care efficiencies for consumers, providers, and government. The findings of both reports indicate that seniors living in villages tend to have better health and live well longer compared to the general population. The report states:

'residents are up to 15 per cent more active when living in a retirement village' and 'residents are 20 per cent less likely to require hospitalisation when living in a retirement village'.

This suggests a lower necessity for accessible parking spaces, as the future residents are generally likely to be more mobile and active. Further the Better Housing for Better Health report found that 'residents can see delayed entry into aged care when living in a retirement village'. Therefore, seniors living in villages have better health outcomes, leading more active lives. As such this standard for parking should be applied more flexibility to this proposal which seeks to attract residents seeks to live an active and healthy lifestyle.

4.2.4 The proposed car spaces are well designed, safe and suitable to the proposed users

The proposed design provides for the accessible spaces to be well located within the parking areas for ease of access to users when driving and when accessing the building from car park lifts.

As noted in the Australian Institute of Architects (Institute) submission to the Housing SEPP EIE from 2022, "whilst there are clear cases where car parking is vital and necessary... (the Institute) also understand that mandating large numbers of car park spaces to development is counter to both principles of sustainability and affordability".

4.2.5 Conclusion on Clause 4.6(3)(b)

For the reasons outlined above, there are sufficient environmental planning grounds to justify the contravention of the private car accommodation development standards, as:

- The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new seniors housing development, including consistency with the objectives of the R4 Zone.
- The proposal will meet the needs of the likely demographics of new residents.
- The proposed spaces are well designed, safe, and suitable to the intended users.

5.0 Conclusion

The assessment above demonstrates that compliance with Schedule 4 Car Parking development standard in the Housing SEPP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the proposed contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms.

This Clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the car parking development standard, the proposed development demonstrates:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances, as:
 - The underlying objectives or purposes of the standard are achieved.
 - The lack of a reasonable evidence base in practice for the new 50% wider parking space standard (Schedule 4 Part 1).
 - The recent introduction of this additional requirement for 50% of car parking spaces was not publicly exhibited and has not included any sufficient or reasonable evidence base for the change.
 - Full compliance with the development standard would be economically prohibitive for the proposed development.

Notwithstanding this, the proposal achieves compliance with Schedule 4 Part 1 for the minimum car parking spaces required under the non-discretionary standards of 108(2)(k) of the Housing SEPP.

- Accordingly, only spaces additional to the minimum non-discretionary standard for car parking generation (Section 108(2)(k)) do not comply with Schedule 4 Part 1. Strict compliance with Schedule 4 Part 1 is therefore considered unreasonable for these spaces additional to the minimum required for ILUs under the Housing SEPP.
- There are sufficient environmental grounds to justify contravening the standards, as:
 - The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new development.
 - The proposed spaces are well designed and will be safe and suitable to the proposed users.
 - Proposed operational management measures will provide for more flexible and improved use of the accessible car spaces to ensure resident needs are met as they change over time, subject to a separate, future Detailed DA.
 - The non-compliance relates to additional car parking spaces provided in addition to the minimum car parking spaces required under the Housing SEPP.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in Clause 4.6(3) of the THLEP 2019 and may grant development consent notwithstanding the contravention of the car parking development standard within the Housing SEPP.

ATTACHMENT U – LEGAL ADVICE REGARDING CLAUSE 4.6 SUBMISSIONS



HERBERT
SMITH
FREEHILLS

Scott Forbes
Senior Development Manager
Levande
scott.forbes@levande.com.au

8 April 2025
Matter 82780205
By Email

Dear Scott

Confidential and Privileged

Castle Hill amending development application 1525/2024/JP Legal advice on clause 4.6 Variation Requests

We refer to:

- the amending development application to a concept approval for the development of independent living units (ILUs) at 7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill (**Land**) (**Proposed Development**), with reference 1525/2024/JP (**DA**), currently being assessed by The Hills Shire Council (**Council**);
- the amended Statement of Environmental Effects for the DA, dated 9 July 2024 (**SEE**); and
- the variation requests submitted to Council with the DA in accordance with *The Hills Local Environmental Plan 2019* (NSW) (**HLEP**) cl 4.6 (**Variation Requests**):
 - dated 9 July 2024 in relation to maximum building height for the DA under the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**) (**Height Variation Request**); and
 - dated 18 December 2024 in relation to car parking requirements under the Housing SEPP (**Carpark Variation Request**).

1 Executive summary

We have been asked to consider the following questions:

- (a) in addition to the Height Variation Request, whether a separate Variation Request is required to vary the height of buildings standard contained in HLEP cl 4.3; and
- (b) whether it is legally open to Council to accept the Carpark Variation Request, with reference to the requirements of Housing SEPP s 85(1) and sch 4 cl 4(2)(c).

Height Variation Request

In relation to the first question, our view is that it is unnecessary for Levande to submit a Variation Request in relation to the height of buildings standard contained in HLEP cl 4.3.

While the height of buildings standard in HLEP cl 4.3 is referred to by the height of buildings standard in the Housing SEPP, the two standards cannot operate simultaneously. Rather, as the Housing SEPP prevails over any inconsistent environmental planning instrument, the Housing SEPP height of building standard is the operative standard for the DA, and is the only standard which requires a Variation Request.



Our more detailed reasons for our response to the first question are set out at section 2 below.

Carpark Variation Request

In relation to the second question, Housing SEPP s 85(1) and sch 4 cl 4(2)(c) are appropriately characterised as imposing a development standard in relation to the carparking aspect of the Proposed Development, rather than as a prohibition on the development of ILUs that are non-compliant with the relevant carparking standard. It follows that it is legally open to Council to accept the Carpark Variation Request.

Our more detailed reasons for our response to the second question are set out at section 3 below.

2 HLEP Height of buildings standard

The Height Variation Request seeks to exceed the maximum building height development standard set out in Housing SEPP s 87(2)(c). While the proposed height of the development also exceeds the height development standard in the HLEP, it is proper that the Variation Request does not address the HLEP. The development standard in the Housing SEPP prevails to the extent of inconsistency with the HLEP and provides the operative development standard for the DA in relation to building height.

Housing SEPP s 87(2)(c) provides that:

Development consent may be granted for development to which this section applies if—

[...]

(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

The applicable maximum permissible building height for the DA is set by HLEP cl 4.3(2), which provides that "*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 Buildings Map sets a maximum building height of 21m for the Land.

Applying Housing SEPP s 87(2)(c), the development standard for building height is 24.8m, being 3.8m above 21m.

While Housing SEPP s 87(2)(c) requires reference to HLEP cl 4.3(2) and the HLEP Height of Buildings Map, the HLEP development standard does not operate concurrently with the SEPP. Rather, Housing SEPP s 87(2)(c) creates a distinct development standard (setting a maximum height of 24.8m) which is inconsistent with the HLEP standard (which sets a maximum height of 21m). By operation of Housing SEPP s 8(1), which is extracted below, the Housing SEPP standard prevails:

Unless otherwise specified in this Policy, if there is an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

It follows that the only applicable height development standard for the DA is Housing SEPP s 87(2)(c). Therefore, a Variation Request is only required for Housing SEPP s 87(2)(c). Levande's Height Variation Request is appropriate in the circumstances.

3 Carpark Variation Request

The Carpark Variation Request seeks to vary the accessible car parking requirement contained within sch 4 cl 4(2)(c) of the Housing SEPP, which provides:

If parking spaces associated with a class 1, 2 or 3 building under the Building Code of Australia are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—

[...]

(c) for a group of 8 or more parking spaces—



- (i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and
- (ii) at least 50% of the parking spaces must—
 - (A) comply with AS/NZS 2890.6, or
 - (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.

Schedule 4 is enlivened by Housing SEPP s 85(1). Section 85(1) provides:

Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.

The Carpark Variation Request was submitted in accordance with HLEP cl 4.6(2), which 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.

It follows that HLEP cl 4.6(2) may only apply to a provision properly construed as a development standard.

For the reasons set out below, in our view, Housing SEPP s 85(1) (and Schedule 4) provide development standards capable of variation under HLEP cl 4.6(2). Those provisions should not be interpreted as prohibiting development for the purposes of hostels or ILUs unless such development complies with the requirements in Housing SEPP sch 4 (such that HLEP cl 4.6(2) is not enlivened).

3.1 The Poynting Test

The test for whether a provision imposes a development standard or a prohibition is derived from *Strathfield Municipal Council v Poynting* (2001) 116 LGERA 319 (**Poynting**), which, as set out in *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* [2016] NSWLEC 153 (**Principal Healthcare**) at [36]), is well understood as requiring, in the circumstances:

- (a) a consideration of whether the Proposed Development is prohibited under any circumstances pursuant to the applicable provision (being Housing SEPP s 85(1)) when it is read both in context and as a whole; and
- (b) if it is not so prohibited, a consideration of whether the provision (Housing SEPP s 85(1)) relevantly specifies a requirement or fixes a standard in relation to an aspect of the Proposed Development.

3.2 Step one – Housing SEPP s 85(1) does not prohibit the development under any circumstances

The first step of the *Poynting* test requires a consideration of whether the Proposed Development is prohibited under any circumstances pursuant to Housing SEPP s 85(1) when it is read in context, and as a whole.

While, when the provision is read in isolation it may be interpreted as a prohibition by the presence of the words "Development consent must not be granted...", this is not determinative and the provision must be read in context: *Poynting* at [126]; *Principal Healthcare* at [48]. In *Canterbury Bankstown Council v Dib* [2022] NSWLEC 79 (**Dib**) at [67], Preston CJ said:

Development standards can be drafted in different ways. A provision may be drafted with language that appears regulatory or prohibitory, but the substance, however drafted, may be the same. As Giles JA observed in *Strathfield Municipal Council v Poynting* at [93]: "Care must be taken lest form govern rather than substance."



Section 85(1) in context

(a) **The principles of the Housing SEPP – to facilitate certain housing development**

The principles of the Housing SEPP are set out at s 3, and relevantly include:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

(b) **The Proposed Development – s 81 permits development with consent; s 85(1) imposes standards**

To determine whether s 85(1) prohibits the Proposed Development under any circumstances, it is necessary to define the Proposed Development and identify the basis upon which it may be lawfully developed: *Australian Unity Funds Management Ltd in its capacity as Responsible Entity of Australian Unity Healthcare Property Trust v Boston Nepean Pty Ltd & Penrith City Council* [2023] NSWLEC 49 (*Australian Unity*) at [99]; *Dib* at [51].

With reference to section 5.2.1 of the SEE, the Proposed Development is for the purpose of ILUs as a type of seniors housing on land to which Part 5 of the Housing SEPP applies (being land zoned R4), as set out in clause 79 of the Housing SEPP.

The Housing SEPP s 81 provides that:

Development for the purposes of seniors housing may be carried out with development consent—

- (a) on land to which this Part applies, or
- (b) on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.

In the context of Chapter 3 Part 5 of the Housing SEPP, s 81 is the provision which permits development of seniors housing (including ILUs), and therefore the Proposed Development, with consent.

By contrast, Housing SEPP s 85(1) does not permit or prohibit development. Rather, it regulates the circumstances in which a consent authority may not grant consent to a development for the purposes of ILUs or a hostel under Housing SEPP s 81: *Dib* at [62] – [63].

This interpretation is consistent with the principles of the Housing SEPP, as it is the interpretation that better enables the development of diverse housing types, including housing to meet the needs of seniors and people with a disability.

It follows that the Land may be developed, with consent, for the purpose of ILUs under Housing SEPP s 81(a) and the Proposed Development cannot be said to be prohibited under any circumstances by s 85(1).

3.3 **Step two – Housing SEPP s 85(1) specifies requirements and fixes standards in relation to an aspect of the Proposed Development**

The second step of the *Poynting* test requires consideration of whether Housing SEPP s 85(1) relevantly specifies a requirement or fixes a standard in relation to an aspect of the Proposed Development.

Development standards are relevantly defined in the *Environmental Planning and Assessment Act 1979* (NSW) (*EP&A Act*) s 1.4 as:



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

[...]

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles...

In *Principal Healthcare* at [57], it was considered necessary to consider whether the following elements of the definition of a development standard were established:

- (a) the provision of the instrument or regulation must be in relation to the carrying out of development;
- (b) the provision must specify requirements or fix standards in respect of any aspect of that development; and
- (c) these requirements or standards include, but are not limited to, aspects (a) to (o) of the definition of 'development standards' in the EP&A Act.

With reference to each of these elements:

- (a) Housing SEPP s 85(1) and sch 4 cl 4(2)(c) clearly relate to the carrying out of the Proposed Development. Housing SEPP s 85(1) relates to the carrying out of development for the purposes of a hostel or an ILU, and the requirements in sch 4 cl 4(2)(c) apply accordingly.
- (b) Housing SEPP s 85(1) is expressed as applying 'relevant standards specified in Schedule 4'. Housing SEPP sch 4(2)(c) specifies requirements and standards in relation to accessible car parking aspects of the Proposed Development.
- (c) Housing SEPP sch 4(2)(c) specifies requirements set out in aspect (g) of the definition of 'development standards' set out above, being the provision of facilities for the parking of vehicles.

It follows that, in our view, Housing SEPP s 85(1) and sch 4(2)(c) fall within the EP&A Act definition of development standards.

Moreover, in *Dib* at [68], Preston CJ specifically referred to clause 30(1) of the former *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) as a provision which specifies requirements or fixes standards. That chapeau to that clause was drafted very similarly to Housing SEPP s 85(1), as can be compared below:

ARH SEPP cl 30(1)

A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following...

Housing SEPP s 85(1)

Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.

Additionally, Housing SEPP s 85(1) specifically refers to the contents of Schedule 4 as 'standards', the heading to s 85(1) is "*Development standards for hostels and independent living units*", the heading to Schedule 4 Part 1 is "*Standards applying to hostels and independent living units*", and Schedule 4 Part 1 cl 1 provides that "*The standards set out in this Part apply to any seniors housing that consists of hostels or independent living units.*" While not determinative, the consistent reference to 'standards' provides further indicia that s 85(1) specifies requirements and fixes standards in relation to an aspect of the Proposed Development.



Given that the provision falls within the EP&A Act definition of development standards, similar provisions have been considered to be development standards by the Courts, and the provisions themselves use the terminology of 'standards', our view is that Housing SEPP s 85(1) and sch 4(2)(c) are appropriately characterised as specifying requirements and fixing standards in relation to the carparking aspect of the Proposed Development. It follows that our view is the second step of the *Poynting* test is satisfied.

3.4 Conclusion

For the reasons set out above, applying the *Poynting* test, our view is that Housing SEPP s 85(1) and sch 4 cl 4(2)(c) apply to the Proposed Development as development standards, rather than as a prohibition on the development of ILUs which exceed the standards in Schedule 4.

It follows that the development standard in Housing SEPP sch 4 cl 4(2)(c) may be lawfully varied by Council pursuant to HLEP cl 4.6, as requested by Levande through the Carpark Variation Request.

4 Conclusion

For the reasons set out above, our view is that:

- (a) it is unnecessary for Levande to submit a Variation Request in relation to the height of buildings standard contained in HLEP cl 4.3; and
- (b) it is legally open to Council to accept the Carpark Variation Request.

If you have any questions in relation to the contents of this letter of advice, please let us know.

Yours sincerely


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ATTACHMENT V – DESIGN ADVISORY PANEL REPORT

DESIGN ADVISORY PANEL DESIGN ADVISORY PANEL MEETING REPORT 11th SEPTEMBER 2024

Item 3.1	10:30am – 12:10pm
DA Number	DA: 110/2025/JP and 1525/2024/JP
DA officer	Cynthia Dugan
Applicant	Levande
Planner	Daniel West, Ethos Urban
Property Address	7-23 Cadman Crescent and 18-24 Hughes Avenue, Castle Hill
Proposal	 <p>Seniors Housing in the form of residential flat development comprising five residential blocks over structured basement car parking.</p>
Design review	First review DA (previously reviewed by Panel members as residential apartment development). The court approved DAs 1110/2022/JP and 1112/2022/JP (March 2023) are being resubmitted as Seniors Housing through the amended DA pathway.
Background	The site has been inspected by all Panel members
Applicant representative address to the Design Advisory Panel	Architect name: Tai Ropiha (CHROFI) Registration number: 6568
Key Issues	<p>Summary of key issues discussed:</p> <ul style="list-style-type: none"> • Response to existing and future context • Resident amenity and visual privacy • Street activation • Porte Cochere
Panel Location	Hybrid meeting hosted by The Hills
Panel Members (in attendance)	<p>Chairperson – Tony Caro</p> <p>Panel Member – Elisabeth Peet</p> <p>Panel Member – Matthew Taylor</p>
Declaration of Interest	None
Councillors	None present
Council Staff	Paul Osborne, Cynthia Dugan, Marika Hahn, Megan Munari, Ryan Fehon

Other attendees	Tai Ropiha – Chrofi, Mike Horne – Turf, Landscape Architect Daniel West, Ethos Urban Yarra Booth, Ethos Urban Calum Ross - Levande, Head of Development Megan McBride - Levande, Development Manager Scott Forbes - Levande, Senior Development Manager Jody Mather – Levande, Designer Josh Milston – Traffic Engineer, JMT
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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 Advisory Panel (The Panel) is an Independent Advisory Panel, approved by the NSW 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.

The application is subject to the Hills Local Environmental Plan Clause 9.5 Design Excellence. The objective of the design excellence clause is to deliver the highest standard of architectural and urban design.

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

INTRODUCTION

The Applicant is the new owner of the site and is presenting an amending Concept DA and Built form DA, primarily to change the land use from residential apartments to seniors living utilising the Housing SEPP (2021) and the 02 March 2023 Land and Environment Court approved built form envelope.

DOCUMENTATION

The Design Advisory Panel reviewed the following documents issued to Council by the Applicant:

- *DAP Presentation Castle Hill Retirement Village*, dated 10/04/24, by Levande, Chrofi, Turf, and Ethos Urban.

PANEL COMMENT

The Panel commenced at 10.30am with introductions and a presentation by the Applicant followed by Panel questions and comment.

1. Response to Context

- The Panel questions the removal of well-established street trees noting they seemed to be endemic and provided an established cultural landscape setting.
- The Panel considers that retention of well-established native street trees within street corridors is a vital contextual requirement within the precinct, and strongly advocates for the retention of all such existing trees as well as within development sites where possible.
- The Panel supports the retention of deep soil and existing established trees in the central area of the site.
- The Panel recommends the design team undertake a review of recent development and public domain landscape settings that will maintain the verdant identity of the Garden Shire in a new, high density setting. This includes materiality, built form massing, public domain treatments, street activation and integration of required street utility services into the architecture.

Clause 8.6, 9.5 Design Excellence
<i>4(c) Does the development detrimentally impact upon view corridors?</i>
<i>4(d) Whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,</i>
<i>4 f(iii) How does the development address the heritage issues and streetscape constraints?</i>
<i>4 f(xi) how does the development address impact on any special character area?</i>

2. Site Planning and Built Form Strategy

- The Panel considers that although the Porte Cochere is not consistent with the current access strategy utilised across the precinct, it is appropriate for seniors housing and has been designed to minimise the impact of the changed land use upon the street frontage in a sensitive manner.
- Relocation of the pool from the courtyard to within the building envelope is an improvement on the Court-approved scheme, however the upper deck is compromised by the location of ventilation shaft. The Panel recommends that it is preferable for carpark ventilation shafts to exhaust at roof level. An alternative location for the ventilation shafts would improve the visual amenity of the common open space.
- The Panel supports the revised location of the pool and wellness centre at a lower level with aspect onto a sunken garden that provides good residential amenity.
- The Panel is satisfied that equitable access throughout the site has been achieved despite the challenging topography.

Clause 8.6, 9.5 Design Excellence
<i>4 f i) How does the development address the suitability of the land for development?</i>
<i>4 f(iv) How does 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?</i>
<i>4 f(ix) How does the development address the pedestrian, cycle, vehicular and service access, circulation and requirements?</i>

Bulk, Scale and Massing

- The bulk and scale of built form between development blocks A and B is out of character with the other blocks that are clearly articulated. The Panel recommends breaking up this façade into smaller discrete volumes (as per DCP controls) to mitigate the bulk and scale of this portion of the development.
- The horizontal spandrel banding of Buildings D and E tends to emphasise what is already a fairly long frontage to Hughes Avenue. The Panel recommends introducing articulation to break down its apparent length. Consideration could also be given to recessing the glass line behind the spandrel line to introduce shadow lines to the façade.
- The Panel recommends that apartments at street level have direct entry to the footpath where practicable, to encourage street activation and provide a sense of individual identity for residents.
- The Panel recommends reviewing the proportions of the brick podium in relation to the residential floors above as the upper levels are tending to overwhelm the podium (apparent in views of the Porte Cochere) which could be due in part to the lighter colour of the upper levels with gives them more visual prominence, or due to their overhang. Consideration could be given to recessing the residential façade line behind the podium line to give it more prominence in the composition.

Clause 8.6, 9.5 Design Excellence
<i>4(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain?</i>
<i>4 f(v) Does the development successfully resolve and integrate the bulk, massing and modulation of proposed buildings?</i>
<i>4 f(x) Does the development address the impact on and any proposed improvements to the public domain?</i>

Site Coverage/ Landscaped Open Space.

- The site retains the site coverage exhibited in the Court approved documents.

Height

- The building envelopes remain consistent with the Court approved documents.

Density

- The density is permissible under the Housing SEPP 2021.

Setbacks

- The setbacks adopt the Court approved documents.

Apartment Mix and Building Design

- Apartment mix is based on current market demands and aims to encourage single dwelling downsizers to move to an apartment setting.
- The Panel supports the communal facilities, which are located to encourage use and interaction amongst residents.
- The Panel recommends that outdoor deck locations will require additional shading.

Clause 8.6, 9.5 Design Excellence
<i>4 (e) the requirements of any development control plan that is referred to in clause 8.6, 9.5</i>
<i>4 f(vi) Does the development comply with street frontage heights?</i>
<i>4 f(ii) How does the development address the existing and proposed uses and use mix? (Refer to LEP/DCP requirements)</i>
<i>Any relevant strategic documents / policies</i>

Landscape Design

- The Panel recommends additional tree planting provision to compensate for inevitable tree losses during the construction phase.
- The Panel notes that the trees retained are both of an evergreen and deciduous character that will enhance year-round use of the central open space, with the capacity for the provision of shade in summer and sun access in winter.
- The Panel recommends that the applicant investigate the values of Country to the site by consulting with local representatives of Dharug peoples for their input into the design of place.
- The Panel noted that the Applicant proposes, as part of their overall philosophy of care, activities that include understanding local customs and approach to landscape.

Clause 8.6, 9.5 Design Excellence
<i>4 f (xiii) the excellence and integration of landscape design</i>

Public Domain

- Public Domain design and materials to be as per the requirements specified in Council's Public Domain Plan.

Streetscape

- Nominated tree species must comply with the Public Domain; however the Panel notes the existing streetscape comprised Brushboxes that provide a shaded street and recommends that that this tree species also be considered.

Private Domain

- The Panel notes the private domain is largely in keeping with the Court approved documents.

3. SEPP 65 items to be clarified or revised:

Apartment Design Guide

ADG compliance is to be clearly documented and demonstrated to the satisfaction of Council's assessment officer.

4. Sustainability and Environmental amenity

- The Panel reinforced the need for external solar shading devices to all exposed windows.
- The Panel recommends that maximum building length controls and ADG building separation controls between development blocks should be compliant, to facilitate air ingress and movement within internal courtyard areas.
- The Panel recommends that replacement trees and understorey vegetation species should be endemic to the Cattai Creek landscape setting, noting that cultural planting can form part of the endemic Cattai Creek vegetation as an appropriate cross-cultural response.
- The Panel recommends that privacy concerns raised during the meeting for development block C as a result of the adjacent ramping must be addressed through provision of further detail of levels and screening.

Clause 8.6, 9.5 Design Excellence
<i>4 f(vii) How does the development address environmental impacts such as sustainable design, overshadowing, wind and reflectivity?</i>
<i>4 f(viii) How does the development address the achievement of the principles of ecologically sustainable development?</i>

5. Architecture and Aesthetics

- The Panel is generally supportive of the architectural character and materials proposed by the design team. It is noted that subtle differences in materials, textures and colour are proposed, and this will be important to achieving a diverse and well-scaled environment.
- The Panel recommends that street front utility service elements are integrated into building fabric and landscape as per THSC DCP. Refer to the following council facts sheets for design guidance:

https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact_sheet_-_building_design_site_facilities_-_mail_boxes_in_medium_and_high_density_development.pdf

https://www.thehills.nsw.gov.au/files/sharedassets/public/ecm-website-documents/page-documents/fact-sheets-guides/fact_sheet_-_building_design_site_facilities_-_services.pdf

Clause 8.6, 9.5 Design Excellence
<i>4(a) Will a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved?</i>

4 f(xii) Does the development achieve appropriate interfaces at the ground level between the building and the public domain?

6. Documentation

- To aid Council Officers in assessment the Panel recommends that the Applicant presents documentation in the format endorsed by Council made available on Council's website.
- [Public Domain Plan Submission Requirements](#) (note the provision of a Public Domain Plan is a drawing requirement listed in the Design Advisory Panel Submission Requirements)

Note: further information may be required by the Development Assessment team to aid with their assessment of the development.

PANEL CONCLUSION

The Panel thanks the Applicant for the presentation, and notes that the Court approved Applications, (1110/2022/JP and 1112/2022/JP); and the Applications 10/2025/JP and 1525/2024/JP are presented as amendments to those Court approvals. On this basis the Panel acknowledges that the Court was satisfied that the requirements of Design Excellence had been met and notes that the application is an improvement on the Court approved Development Applications. If the Council Officer is satisfied that the Applicant has addressed the issues raised by the Panel the applications need not return to the Panel.