SUPPLEMENTARY COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC- 592 DA 101/2025/JP
PROPOSAL	Demolition of the existing retirement village and the construction of a seniors housing development including 229 independent living units, clubhouse and administration, parking and associated works
ADDRESS	Lot 503 DP 1048808, 346-350 Old Northern Road, Castle Hill
APPLICANT	Levande Pty Ltd/FPD Planning
OWNER	Levande Pty Ltd
DA LODGEMENT DATE	23 July 2024
ADDITONAL DOCUMENTS SUBMITTED FOR CONSIDERATION	Cover letter - Levande Flora and Fauna Assessment - Biosis Arboricultural Development Impact Assessment Report – Birds Tree Consultancy Drainage channel survey plan – Australian Locating Services Concept engineering plans for the channel - Northrop Technical Review - Channel at Pioneer Park – DH Water Engineering Peer Review of Proposed Channel improvement Works in Pioneer Park -Sustainability Workshop Bulk earthworks site plan -JN Responsive Engineering DRAINs model -Northrop HEC-RAS modelling of Pioneer Park channel - Northrop Updated owner's consent letter from No. 9 Palisander Place
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	NA
SCHEDULED MEETING DATE	4 December 2025
PREPARED BY	Kristine McKenzie – Principal Coordinator

EXECUTIVE SUMMARY

On 16 October 2025 the Sydney Central City Planning Panel (SCCPP) considered a report on the proposed seniors housing development. The report recommended refusal of the Development Application for reasons primarily relating to the adequacy of information submitted to address potential impacts on biodiversity, trees and impacts on Pioneer Reserve. In this regard the Development Application did not provide adequate information to allow a conclusion to be reached that there will not be a significant impact on Critically Endangered Ecological Community, Blue Gum High Forest or its habitat. Insufficient information was provided in regard to tree and vegetation impacts within proximity to and within the north-western drainage channel in relation to upgrade works in or near the channel, and given the likely significant impact on a Critically Endangered Ecological Community, the absence of a BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016* and as such the proposal was recommended for refusal.

The matter was deferred by the SCCPP on 17 October 2025 for the following reasons:

The Panel considered the matters listed at item 6, the material listed at item 7 and the materials presented at the meetings observed at the site inspection listed at item 8 in Schedule 1.

Council's comprehensive Assessment Report and recommended reasons for refusal, along with the additional expert reports submitted by the Applicant on 15 October 2025, were discussed extensively during the public meeting on 16 October 2025.

The issues that remain unresolved come under the broad headings of ecology, hydrology and arboriculture. The Council is of the view that it is feasible to reach agreement with the Applicant to satisfactory solutions to these issues.

The panel resolved to defer the determination of this applicant to allow time for the Council to properly review the information submitted on 15 October and advise the Applicant on any remaining required information needed to satisfy Council that the application can be supported, subject to conditions. The Council will then provide a Supplementary Assessment Report for Panel determination.

The decision to defer the matter was unanimous.

ACTIONS:
To allow progression of the Development Application to determination:

1. *The Council is to provide the Applicant and the Panel with a summary list of required outstanding information by 17 October 2025.*
2. *The Council and the Applicant are to confer, as necessary, to agree on how best to resolve outstanding issues by 24 October 2025.*
3. *The Applicant is to provide all necessary outstanding information to Council by 7 November 2025 and upload all relevant information to the Planning Portal.*
4. *Council is requested to then provide a Supplementary Assessment Report, and the Panel will convene a Determination Briefing with Council and Applicant on 27 November 2025 to determine the matter.*

On 11 November 2025 and 12 November 2025, the applicant provided additional information including a cover letter, concept engineering details of the drainage channel including modelling, arborist report, flora and fauna assessment, drainage channel survey, bulk earthworks plans, peer review report and technical review of the channel design and an updated letter of owner's consent from the property owner at No. 9 Palisander Place.

The subject site and adjoining properties contain modified and remnant native vegetation identified as the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest. Under the Biodiversity Conservation Act 2016, entry into the Biodiversity Offset Scheme (BOS) is triggered when thresholds or conditions including clearing of native vegetation are met, in this instance where it is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance. The application was accompanied by a *Threatened Species Test of Significance* provided in the Flora and Fauna Report which has been reviewed, however the information provided has not adequately addressed tree and vegetation impacts within proximity to and within the north-western drainage channel, in relation to upgrade works in or near the channel. As such adequate information has not been provided to allow the conclusion to be reached that there will not be a significant impact on Critically Endangered Ecological Community, Blue Gum High Forest or its habitat. Given the likely significant impact on a Critically Endangered Ecological Community, the absence of a BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016*, the application is non-compliant and is recommended for refusal on these grounds.

The application has also not been accompanied by sufficient information in regard to design of the drainage works to reduce the outflow and to ensure that the flow velocity discharged into the channel is reduced to a sub-critical flow to ensure that the channel design has adequately considered the potential for impacts on trees and vegetation and is low maintenance.

The Development Application is recommended for refusal having regard to outstanding ecological and hydrological concerns.

1. BACKGROUND AND RESPONSE TO SCCPP DEFERRAL

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Council's comprehensive Assessment Report and recommended reasons for refusal, along with the additional expert reports submitted by the Applicant on 15 October 2025, were discussed extensively during the public meeting on 16 October 2025.

The issues that remain unresolved come under the broad headings of ecology, hydrology and arboriculture. The Council is of the view that it is feasible to reach agreement with the Applicant to satisfactory solutions to these issues.

The panel resolved to defer the determination of this applicant to allow time for the Council to properly review the information submitted on 15 October and advise the Applicant on any remaining required information needed to satisfy Council that the application can be supported, subject to conditions. The Council will then provide a Supplementary Assessment Report for Panel determination.

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ACTIONS:
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2. *The Council and the Applicant are to confer, as necessary, to agree on how best to resolve outstanding issues by 24 October 2025.*
3. *The Applicant is to provide all necessary outstanding information to Council by 7 November 2025 and upload all relevant information to the Planning Portal.*
4. *Council is requested to then provide a Supplementary Assessment Report, and the Panel will convene a Determination Briefing with Council and Applicant on 27 November 2025 to determine the matter.*

The following addresses each action:

1. *<u>The Council is to provide the Applicant and the Panel with a summary list of required outstanding information by 17 October 2025.</u>*

On 17 October 2025 an email was sent to the applicant and Panel secretariat which outlined the additional information required to be submitted. In broad terms the information included:

a. Details of the channel to meet Council's engineering specifications including a detailed survey, designed to convey the 1 in 20 year flow, provide a defined and consistent flow path, reduce velocity to achieve a sub-critical flow behaviour, provide details of channel lining to reduce erosion, provide works in areas which limit the impacts on trees and vegetation, provide cross and long sections and provide a revised DRAINs model.

b. Following the completion of the channel design, provide an updated flora and fauna report which identifies and assesses the development footprint including consideration of pre-construction, construction and occupation/maintenance phases, on and off site impacts including infrastructure, direct and indirect impacts, frequency and duration of impacts, total impact overall, sensitivity of the receiving environment and the degree of confidence with which impacts are known and understood. It was also advised that the test of significance was required to be based on the footprint and design of the development.

c. Provide an amended arborist report which addresses all impacts caused by the proposed works on the trees located in the channel including details of sensitive construction measures, tree protection zones encroachment percentages and tree protection fencing.

2. The Council and the Applicant are to confer, as necessary, to agree on how best to resolve outstanding issues by 24 October 2025.

Two meetings have been held between the applicant, applicant's consultants and Council staff to address the matters raised in the email dated 17 October 2025. The meetings were held on 22 October 2025 and 29 October 2025. The issue discussed at the meetings principally related to the drainage channel.

Following the second meeting, the applicant sent an email to Council staff on 29 October 2025 outlining the discussions. On 30 October 2025 an email in response was sent to the applicant which clarified/changed some of the comments provided from the applicant.

3. The Applicant is to provide all necessary outstanding information to Council by 7 November 2025 and upload all relevant information to the Planning Portal.

On 7 November 2025, a representative from Levande emailed Council staff advising that the additional information was being prepared and that an extension of time was required until 11 November 2025 to provide information. Following discussion between Council and the SCCPP secretariat, the extension of time was agreed to until 11 November 2025.

In addition, the secretariat agreed to a revised meeting date of 4 December 2025 for consideration of the supplementary report.

The applicant provided additional information on 11 November 2025 and 12 November 2025.

4. Council is requested to then provide a Supplementary Assessment Report, and the Panel will convene a Determination Briefing with Council and Applicant on 27 November 2025 to determine the matter.

As outlined above, the secretariat agreed to a revised meeting date of 4 December 2025 for consideration of the supplementary report. The report is provided for determination by the Panel.

2. ASSESSMENT OF THE ADDITIONAL INFORMATION

The additional information submitted by the applicant included the following:

- Cover letter;
- Flora and Fauna Assessment;
- Arboricultural Development Impact Assessment Report;
- Drainage channel survey plan;
- Concept engineering plans for the channel;
- Technical Review – Channel at Pioneer Park;
- Peer Review of Proposed Channel improvement Works in Pioneer Park;
- Bulk earthworks site plan;
- DRAINs model;
- HEC-RAS modelling of Pioneer Park channel; and
- Updated owner's consent letter from No. 9 Palisander Place.

The additional information has been reviewed and the following comments are provided in regard to engineering, ecology, landscape and parks.

a. Engineering Comments

The proposal has been reviewed by Council's Senior Development Engineer who has raised the following concerns:

Reason for Refusal: *The Development Application has not been accompanied by sufficient information in regard to design of the drainage works to reduce the outflow and to ensure that the flow velocity discharged into the channel is reduced to a sub-critical flow to ensure that the channel design has adequately considered the potential for impacts on trees and vegetation and is low maintenance.*

The Stormwater Management Strategy relating to the development involves three major components including providing a flood channel to convey the existing flood flow path through the site, onsite stormwater detention systems (OSDs) to address the redevelopment of the site runoff, and channel design to convey the outflow through adjoining properties (via future drainage easements).

As the site does not have an escape route for stormwater runoff other than the private property at 9 Palisander Place and public property at Pioneer Reserve for the stormwater conveyance, the intensified current redevelopment is required to provide a safe drainage outlet design, flow path to protect the trees from scouring and hydraulic behaviours of the flow, adequate width of the flow path to facilitate access and for long-term (low) maintenance over the required easement.

Noting the existing constraints along the intended flow path which have been raised with the applicant previously and that Council staff acknowledge some impacts on trees will occur to achieve the required improvement works provided they are supported by a suitable engineering design and also accompanied by ecological assessment and arborist reports identifying the impact and necessary mitigation measures. To date, the applicant has not provided satisfactory information to address the matters raised by Council staff.

The applicant's design does not eliminate the super critical flow behaviour over the channel, which does not comply with the open channel design requirement to protect the environment in accordance with Council's Engineering, Subdivision and Design Guidelines. This is mainly due to the existing slope, existing narrow and non-uniform channel that maintains a high velocity over the channel, and which is considered unhealthy for the treed area in the long-term considering the life span of the development.

Multiple design options and sensitivity analysis to identify the best design had been raised with the applicant at various stages of the assessment of the application.

The latest design also does not extend to the existing formed drainage channel in Pioneer Reserve. In this regard the proposed works are approximately 47 metres from the existing rock lined channel and as such does not provide a link to the existing formed channel.

Multiple engineering consultants have been used to analyse each major stormwater component related to the development. Each aspect as outlined below has been addressed as individual engineering design in isolation. The latest DRAINS model is evident that the three major elements have not been coordinated appropriately to achieve a suitable design solution to the site as follows:

- The Flood Impact Assessment Report prepared by JCO Consultants Version 1 dated 11/06/2025 and accompanying TUFLOW model analysed the design capability of the flood channel design. The proposed flood channel concentrates both pipe flow and overland flow into an amplified pipe of up to 1800mm diameter. The TUFLOW model does not incorporate the existing four OSD systems within the site to obtain the actual pre-development flow rate released over to the adjoining property.
- The current Site Stormwater Management illustrated in Concept Civil Design package Job No. N0220991 Cover Sheet Drawing C0001 Revision 9 dated 29/08/2025 prepared by JN Responsive Engineering relies on conventional Onsite Stormwater Detention (OSD) design requirements to the Upper Parramatta River Catchment Trust OSD Handbook that generally allows 15% bypass from each OSD. The design (sub-catchments or number of OSD storages or bypass) have not been adjusted to identify a site-specific design strategy considering the downstream constraints over the private property (9 Palisander Place) and public property (Council's Pioneer Reserve), where outlet drainage is discharged.
- The Site Works and Stormwater Management Plan that illustrates internal and external channel alignment initially named as 'Creek Works' on the drawing C04.01 Revision 02 dated 27/08/2025, that is revised to be 'Channel Stabilisation' on the drawing C04.01 Revision 07 dated 10/11/2025, both form part of the set of plans Job No. SY 243000 prepared by Northrop Engineers. The non-uniform (irregular) channel formation illustrated in the cross- sections for the external channel proposed within 9 Palisander Place and Pioneer Reserve have not been analysed in the DRAINS model that analyses constant width between each reach of channel as defined.

  The existing and proposed levels used in the DRAINS model are unreliable as they cannot be verified due to lack of detailed survey, importantly at the rear of 9 Palisander Place and within the public reserve in the vicinity.

  In addition, the design details of the latest longitudinal section over the external channel have not been transferred and analysed in the recent DRAINS model.

  The details of OSD systems designed by JN Responsive Engineering have not been appropriately transferred in the DRAINS model, mainly the High Early Discharge Pits, orifice sizes and the OSD storages. The flow resulted in the current model appears to be smaller than the actual flow if the OSD details are appropriately transferred. A higher flow is anticipated as a result of this which will be unsafe over the outlet channel.

- A 'Technical Letter Response' dated 10 November 2025 prepared by DH Water Engineering accompanied by the latest documentation which summarises visual inspection and interpretation of the existing site conditions within Pioneer Park and includes recommendations. The specific design recommendations to control erosion risk within the narrow confined channel of reach R1 and the impact caused by erosion and accumulation of debris of the channel in reach R2 have not been appropriately incorporated into the design.
- The 'Peer Review of Proposed Channel' letter dated 11 November 2025 by 'Sustainability Workshop' has been reviewed. The same letter refers to a HEC-RAS hydraulic model prepared by Northrop Engineers. The HEC-RAS model results do not include long sections of flood depth profiles, cross-sections of the channel or output derived from the model results. The long section of velocity profile confirms that the velocity within the chainage 0-15 (at the lower end of the development site) is

significantly higher resulting in greater than 3m/sec at 5% AEP storm and greater than 4m/sec at 1% AEP storm.

In addition, the peer review report confirms *'… that a blockage could elevate the water level in the creek, and raise it to a point where the bank, if subjected to high velocities, is unstable.'* The consequence of leaving the high velocity not addressed or mitigated appropriately would be a potential threat to the trees in the locality.

The proposal does not include design options to mitigate this concern either by flattening the channel bed within the site and/or equivalent design measures.

In conclusion, the engineering design does not provide a design which increases the storage on the site and as an outcome would reduce the flow velocity in the channel to sub-critical flow behaviour and works to provide a stable channel. The stormwater strategy must be revised to incorporate an additional retarding basin (equivalent to OSD). In addition, the drainage channel must be of an adequate width and depth to contain the 5% AEP, reduce flow velocity to a sub-critical flow and include regrading the lower part of the site (adjoining the stilling basin) to reduce the slope of the channel.

b. Ecology Comments

The proposal has been reviewed by Council's Environmental Assessment Officer who has raised the following concerns:

Reason for refusal: *The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by a Biodiversity Development Assessment Report.*

Clause 7.2 (a) of the *Biodiversity Conservation Act* cites that a development or activity is likely to significantly affect threatened species '*if it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3'*.

The review of the *Threatened Species Test of Significance* provided in the Flora and Fauna Report (*Biosis, V. Final 05, 6 November 2025*), was considered in accordance with the *Threatened Species Test of Significance Guidelines* (NSW, July 2018), issued under Section 7.3(2) of the BC Act.

The data, information and reasoning provided in the *Test of Significance* and supporting information has been considered to determine whether the proposed development or activity '*is likely to significantly affect threatened species or ecological communities, or their habitats*'.

The final development footprint cannot be adequately determined due to gaps in engineering details and design for the drainage channel within Pioneer Place Reserve. Consequently, the information provided in the Flora and Fauna Report (Biosis, 2025) has not assessed the final development footprint required to facilitate the full extent of drainage channel upgrade works to Council's engineering standards, as such the Threatened Species Test of Significance cannot confidently be relied on to conclude that there will not be a significant impact on the CEEC, BGHF or its habitat. In accordance with the *Threatened Species Tests of Guidelines*, where information is lacking, the default assumption is that a significant impact is likely.

The precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If information is not available to conclusively determine that there will not

be a significant impact on a threatened species or ecological community, or its habitat, then it should be assumed that a significant impact is likely.

In accordance with Section 7.3 of the *Biodiversity Conservation Act 2016*, the proposal meets the entry criteria for the Biodiversity Offset Scheme (BOS), as it is likely to significantly impact a threatened ecological community. A BDAR was not submitted to support the application.

Reason for refusal: *The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by sufficient information to address the scope and nature of earthworks and the final development footprint.*

The study area of the proposed development, encompasses both the subject property and the public open space reserve (Pioneer Place Reserve) that contains modified, and remnant native vegetation, verified in the Flora and Fauna Assessment (*Biosis, V. Final 05, 6 November 2025*) as containing the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest (BGHF), as well as planted native vegetation and exotic vegetation.

In accordance with Clause 7.3(1)(b), 7.3(1)(c) and 7.3(1)(e) of the *BC Act*, the following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats—

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity—

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

(c) in relation to the habitat of a threatened species or ecological community—

(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,

(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

According to the *NSW Threatened Species Scientific Committee's Final Determination for Blue Gum High Forest in the Sydney Basin Bioregion,* BGHF is severely fragmented with a highly restricted distribution. Dominant eucalypts in BGHF are long-lived, and structural changes in the community have largely resulted from the extensive removal of large old trees. Remaining stands are highly modified in their understory, and BGHF has experienced a very large reduction in geographic extent over a timeframe relevant to its species life cycles and ecological characteristics. Clearing of native vegetation is listed as a '*Key Threatening Process*' and small-scale clearing associated with residential subdivisions is

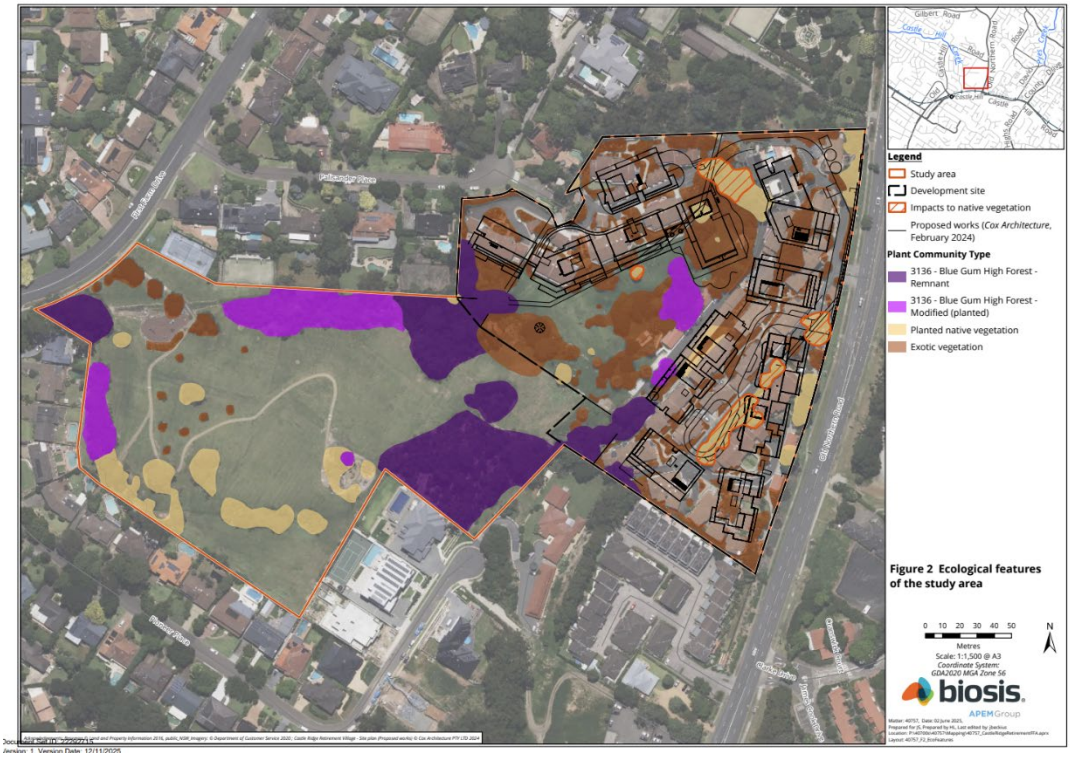
identified in the final determination as a threat to BGHF due to ongoing decline in the extent of the community.

The Flora and Fauna Report (*Biosis, V. Final 05, 6 November 2025*) applied the '*Threatened Species Test of Significance*', to evaluate whether the proposal is likely to significantly affect threatened species or ecological communities or their habitat, a requirement under Section 7.3 of the *Biodiversity Conservation Act 2016* (*BC Act*).

Section 4.5 of the Flora and Fauna Report cites that a significant impact was not likely to result from the project and that '*This conclusion was reached on the basis that the design has been refined to avoid direct impacts to significant ecological features, including the Blue Gum High Forest CEEC'*, which conflicts with Section 5.1 of the Flora and Fauna Report (Biosis, 2025) which identifies that there are proposed impacts on BGHF:

'*Impacts to regenerating understorey species, saplings, and small shrubs within areas of Blue Gum High Forest (BGHF) due to trampling and incidental disturbance associated with access, material handling, machinery movement, and a small area being reduced (0.01ha) to accommodate shot-creting for drainage improvement works……. While minor impacts to regenerating understorey saplings and small shrubs may occur during construction, these impacts are expected to be localised and will not result in significant loss of the community structure.*'

A review of submitted information concludes that the proposed development <u>will</u> directly and indirectly impact on the Critically Endangered Ecological Community, *Blue Gum High Forest* and that these impacts have not been adequately identified and assessed in the Flora and Fauna Report nor detailed within associated mapping within the Flora and Fauna Report (see Figure 2 of the Flora and Fauna Report). It is concluded that impacts on the CEEC, BGHF are likely to be greater than that identified and assessed in the Flora and Fauna Report.



The information gaps present a level of scientific uncertainty regarding the long-term viability of BGHF within the landscape with consideration of a required final development footprint. The areas that lack sufficient information include:

- Inadequate assessment of final location of direct impacts and indirect impacts associated with pre-construction, construction and maintenance phases. The location and extent of direct impacts on BGHF have not been adequately identified based on the final development footprint, including all on-site and off-site impacts.

A review has concluded that key design details remain uncertain including the final extent of the drainage channel upgrade associated earthworks and installation of stormwater infrastructure and that impacts are likely to impact on the CEEC BGHF within the public open space (Pioneer Place Reserve) beyond the development site boundary (indicated in Figure 2 of the Flora and Fauna Report) impacting on native vegetation (including BGHF) proposed to be retained.

It has been identified that the submitted supporting information is inadequate to confidently conclude there will not be a significant impact on the CEEC, BGHF or its habitat, and where information is lacking, per the Guidelines, the default assumption is that a significant impact is likely.

As such the data, information and reasoning provided in the *Test of Significance* presents information gaps and a level of scientific uncertainty regarding the long-term viability of BGHF within the landscape. The areas that lack sufficient information included:

- Unresolved final design and development footprint - key design details remain uncertain, including the final extent of drainage channel upgrade works. These impacts may potentially affect areas containing native vegetation proposed retained native vegetation, including BGHF. The full extent of required stormwater infrastructure, cross-sections, earthworks for drainage outlets, and interfaces with existing natural waterways/reserves, that meet with Council's engineering specifications, have not been fully detailed (discussed in more detail in Engineering comments).

Under the *Biodiversity Conservation Act 2016* (*BC Act*), entry into the Biodiversity Offset Scheme (BOS) is triggered when thresholds or conditions are met including clearing of native vegetation that:

- is carried out in a declared area of outstanding biodiversity value (AOVB)
- exceeds the area clearing threshold,
- impacts vegetation mapped on the Biodiversity Values (BV) Map
- is likely to significantly affect threatened species, ecological communities, or their habitats according to the test of significance.

In accordance with Section 7.3 of the *Biodiversity Conservation Act 2016*, the proposal meets the entry criteria for the Biodiversity Offset Scheme (BOS), as it is likely to significantly impact a threatened ecological community. The application is not supported with the submission of a Biodiversity Development Assessment Report (BDAR).

Reason for refusal: *The Development Application has not been accompanied by sufficient information to address whether the proposed works will have a risk of serious and irreversible impacts to the Critically Endangered Ecological Community, Blue Gum High Forest.*

In accordance with Section 7.3 of the *Biodiversity Conservation Act 2016*, the proposal meets the entry criteria for the Biodiversity Offset Scheme (BOS), as it is likely to significantly impact a threatened ecological community.

The application is not supported with the submission of a finalised Biodiversity Development Assessment Report (BDAR).

The Critically Endangered Ecological Community, Blue Gum High Forest, is an entity at risk of SAII and information about serious and irreversible impacts must be prepared by an accredited assessor using the Biodiversity Assessment Method. The information must be presented to the decision maker in a Biodiversity Development Assessment Report for the proposal.

As described in section 9.1 of the Biodiversity Assessment Method (BAM), the accredited assessor preparing the report is responsible for:

- identifying every potential serious and irreversible impact entity,
- evaluating the nature of the impact on each entity,
- documenting efforts to avoid and minimise impacts on biodiversity in accordance with the assessment criteria.

An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species (including endangered populations) or an ecological community becoming extinct based on the following 4 principles set out in clause 6.7 of the *Biodiversity Conservation Regulation 2017* (NSW):

1. The impact will cause a further decline of a species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline.
2. The impact will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size.
3. The impact is made on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution.
4. The impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

The decision maker is responsible for deciding whether an impact is likely to be serious and irreversible. This decision is to be made in accordance with the principles set out in clause 6.7 of the *Biodiversity Conservation Regulation 2017* and with consideration of the NSW *Guidance to help a decision maker to determine a serious and irreversible impact*, which includes criteria and supporting information to assist with applying these principles.

Section 7.16 of the *BC Act* provides provisions that prohibits consent being granted to development with impacts on biodiversity values that are 'serious and irreversible' as defined in the Act. A Biodiversity Development Assessment Report (BDAR) has not been submitted with the application, as such information about serious and irreversible impacts has not been provided.

<u>Reason for refusal</u>: *The Development Application has not been accompanied by sufficient information to allow consideration of the likely impacts of the proposed development on biodiversity values which are required to be assessed in a Biodiversity Development Assessment Report.*

In accordance with Section 7.3 of the *Biodiversity Conservation Act 2016*, the proposal meets the entry criteria for the Biodiversity Offset Scheme (BOS), as it is likely to significantly impact on a threatened ecological community. A Biodiversity Development Assessment Report was not submitted to support the application.

The review has taken into consideration matters relevant to the development, including the likely impacts of the development on the natural environment with consideration to whether the development is '*likely to significantly affect threatened species, ecological communities and their habitats'*.

The final development footprint has not been identified nor adequately assessed, and the extent of final works is not clear, this lack in clarity is further iterated in documents submitted to support the application:

- The Development Application has not been accompanied by sufficient information regarding the proposed works in the area of the final stormwater drainage design, this is further discussed by the Engineering Team. The full extent of impacts has not been adequately identified and assessed in the Flora and Fauna Report (*Biosis, V. Final 05, 6 November 2025*) nor detailed within associated mapping within the Flora and Fauna Report (see Figure 2 of the Flora and Fauna Report which excludes the drainage channel development footprint from the subject land).

The precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If information is not available to conclusively determine that there will not be a significant impact on a threatened species or ecological community, or its habitat, then it should be assumed that a significant impact is likely. Applying this principle to the current proposal, and without further information, it is concluded that a significant impact on the CEEC BGHF is likely.

Therefore, the application should not proceed and should be refused until further information is made available to support a conclusive assessment.

c. Landscape Comments

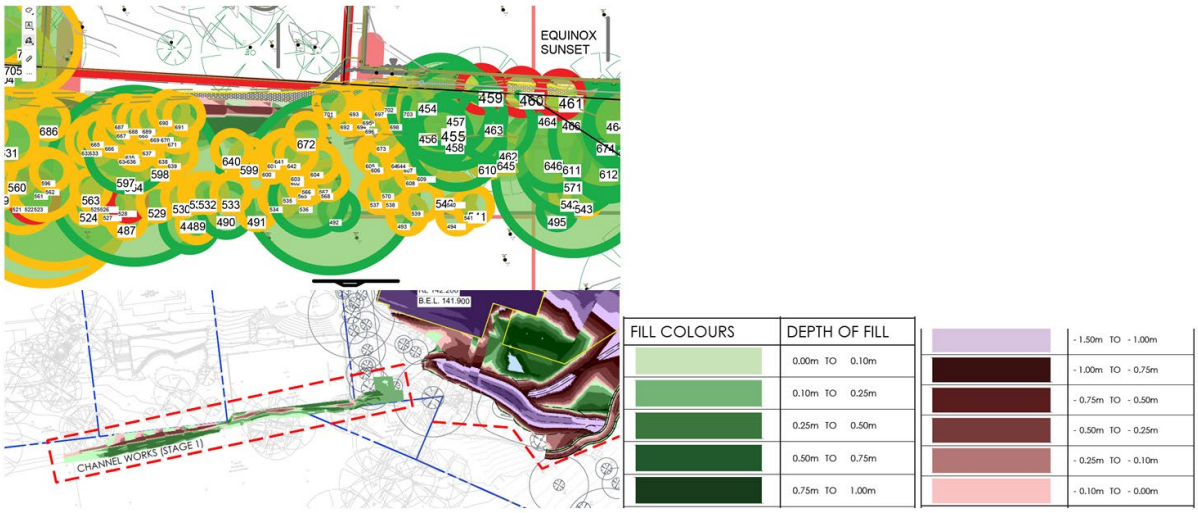
The proposal has been reviewed by Council's Senior Landscape Assessment Officer who has raised the following concerns:

<u>Reason for refusal</u>: The Development Application has not been accompanied by sufficient information in regard to the proposed stormwater works to the channel to determine whether any impacts to trees and vegetation will occur.

Insufficient information has been provided that clearly outlines the proposed stormwater drainage along the channel within Pioneer Place Reserve. Further amendments to the stormwater design are required to adequately resolve stormwater matters which include methods to convey 5% AEP storm safely, the widening of the channel bed to a minimum 1-1.5m and regrading of channel walls. These changes would ultimately affect the level of encroachments to ecologically significant trees.

Overlays within the Arborist report do not clearly demonstrate that trees within the drainage channel are outside of proposed works. The bulk earthworks plans indicate cut and fill between 250-500mm within the structural root zone (SRZ) of trees. While the arborist has overlayed and assessed the plans provided by the engineer, a more detailed plan which clearly show the bulk earthworks and tree protection zone (TPZ) extents is required before it

can be determined that the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest (BGHF), as well as planted native vegetation and exotic vegetation are viable for retention.



d. Parks and Reserves Comments

The proposal has been reviewed by Council's Principal Co-ordinator Open Space and Recreation who has raised the following concerns:

<u>Reason for Refusal:</u> *The Development Application has not been accompanied by sufficient information to address the extent of tree removal or root disturbance required for construction, the proximity of works to significant or protected vegetation, proposed mitigation measures to minimise impacts on existing trees and vegetation or any requirements for compensatory planting or restoration works within Pioneer Place Reserve*.

Comments are made regarding the potential impact on public land within Pioneer Place Reserve as a result of proposed redevelopment works in adjoining Castle Ridge Resort retirement village. It is noted that Pioneer Place Reserve has areas of critically endangered Blue Gum High Forest.

The Applicant has requested that infrastructure be incorporated into open space landscape to disperse the projected increase of stormwater into public land. The proposal to install a Shotcrete drainage channel to distribute water is generally supported for this location. Shotcrete offers a durable and effective method for managing stormwater flows, particularly in areas where erosion control and structural stability are critical. Its application can help in minimising ongoing maintenance requirements and reduce the risk of channel failure, which is especially important in sensitive environments, however the applicant has not fully addressed the issues surrounding the flow rates for the water entering the drainage channel. Additional on-site detention should be considered to ensure that flow rates are reduced to minimise the impact on the drainage channel, reduce the potential for further scouring, and impacts on the critically endangered vegetation community.

Further, given the site's environmental status, the information provided to date has not addressed the following matters particularly regarding the potential arboricultural impacts associated with the installation of the shotcrete channel:

- The extent of tree removal or root disturbance required for construction;
- The proximity of works to significant or protected vegetation;
- Proposed mitigation measures to minimise impacts on existing trees and vegetation;
- Any requirements for compensatory planting or restoration.
- This information is essential to ensure that the proposed works align with Council's environmental objectives and statutory obligations for the protection of significant vegetation.

3. CONCLUSION

This Development Application has been considered in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulations 2021.

The subject site and adjoining properties contain modified and remnant native vegetation identified as the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest. Under the Biodiversity Conservation Act 2016, entry into the Biodiversity Offset Scheme (BOS) is triggered when thresholds or conditions including clearing of native vegetation are met, in this instance where it is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance. The application was accompanied by a *Threatened Species Test of Significance* provided in the Flora and Fauna Report which has been reviewed, however the information provided has not adequately addressed tree and vegetation impacts within proximity to and within the north-western drainage channel, in relation to upgrade works in or near the channel. As such adequate information has not been provided to allow the conclusion to be reached that there will not be a significant impact on Critically Endangered Ecological Community, Blue Gum High Forest or its habitat. Given the likely significant impact on a Critically Endangered Ecological Community, the absence of a BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016*, the application is non-compliant and is recommended for refusal on these grounds.

The application has also not been accompanied by sufficient information in regard to design of the drainage works to reduce the outflow and to ensure that the flow velocity discharged into the channel is reduced to a sub-critical flow to ensure that the channel design has adequately considered the potential for impacts on trees and vegetation and is low maintenance.

Following a thorough assessment of the relevant controls and the key issues identified in this report, it is considered that the application cannot be supported. In this regard the proposal has not been accompanied by adequate information addressing ecology, tree and drainage matters to be satisfied that there will not be an unreasonable impact.

It is considered that the key issues as outlined in Section 2 have not been resolved satisfactorily and the Development Application is recommended for refusal as outlined in Attachment 1.

4. RECOMMENDATION

That the Development Application 101/2025/JP be refused pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at Attachment 1.

The following attachments are provided:

- Attachment 1: Draft reasons for refusal
- Attachment 2: Minutes from SCCPP – Deferral of Development Application on 17 October 2025
- Attachment 3: Previous Council Assessment Report considered on 16 October 2025

ATTACHMENT 1: DRAFT REASONS FOR REFUSAL

1. The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by a Biodiversity Development Assessment Report (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

2. The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by sufficient information to address the scope and nature of earthworks, and the final development footprint (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

3. The Development Application has not been accompanied by sufficient information to address whether the proposed works will have a risk of serious and irreversible impacts to the Critically Endangered Ecological Community, Blue Gum High Forest (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

4. The Development Application has not been accompanied by sufficient information to allow consideration of the likely impacts of the proposed development on biodiversity values which are required to be assessed in a Biodiversity Development Assessment Report (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

5. The Development Application has not been accompanied by sufficient information in regard to the proposed stormwater works for the drainage channel to determine whether any impacts to trees and vegetation will occur (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

6. The Development Application has not been accompanied by sufficient information in regard to design of the drainage works to reduce the outflow and to ensure that the flow velocity discharged into the channel is reduced to a sub-critical flow to ensure that the channel design has adequately considered the potential for impacts on trees and vegetation and is low maintenance (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

7. The Development Application has not been accompanied by sufficient information to address the extent of tree removal or root disturbance required for construction, the proximity of works to significant or protected vegetation, proposed mitigation measures to minimise impacts on existing trees and vegetation or any requirements for compensatory planting or restoration works within Pioneer Place Reserve (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

8. The Development Application has not been accompanied by sufficient information to satisfy the objective of the C4 Environmental Living zone of The Hills LEP 2019 in regard to ensuring that the development does not have an adverse impact on the ecological values of the site and adjoining properties (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

ATTACHMENT 2: MINUTES FROM SCCPP - DEFERRAL OF DEVELOPMENT APPLICATION ON 17 OCTOBER 2025

RECORD OF DEFERRAL
SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DEFERRAL	17 October 2025
DATE OF PANEL MEETING	16 October 2025
PANEL MEMBERS	Brian Kirk (Acting Chair), David Johnson, Scott Barwick
APOLOGIES	None
DECLARATIONS OF INTEREST	The panel chair declared a blanket conflict of interest for all state members, Abigail Goldberg, David Ryan and Steve Murray due to their involvement with the Rezoning Review for the site.

Public meeting held videoconference on 16 October 2025, opened at 1:00pm and closed at 1:50pm.

MATTER DEFERRED
PPSSCC-592 – The Hills Shire – 101/2025/JP – 346-350 Old Northern Road, Castle Hill - Demolition of Existing Structures and Construction of a Seniors Living Development including 229 Independent Living Units, Clubhouse and Administration and Basement Parking.

REASONS FOR DEFERRAL
The Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at the meetings observed at the site inspection listed at item 8 in Schedule 1.

Council's comprehensive Assessment Report and recommended reasons for refusal, along with the additional expert reports submitted by the Applicant on 15 October 2025, were discussed extensively during the public meeting on 16 October 2025.

The issues that remain unresolved come under the broad headings of ecology, hydrology and arboriculture. The Council is of the view that it is feasible to reach agreement with the Applicant on satisfactory solutions to these issues.

The Panel resolved to defer the determination of this application to allow time for the Council to properly review the information submitted on 15 October and advise the Applicant on any remaining required information needed to satisfy Council that the application can be supported, subject to conditions. The Council will then provide a Supplementary Assessment Report for Panel Determination.

The decision to defer the matter was unanimous.

ACTIONS
To allow progression of the Development Application to determination:

1. The Council is to provide the Applicant and the Panel with a summary list of required outstanding information by 17 October 2025.
2. The Council and the Applicant are to confer, as necessary, to agree on how best to resolve outstanding issues by 24 October 2025.
3. The Applicant is to provide all necessary outstanding information to Council by 7 November 2025 and upload all relevant documentation to the Planning Portal.

4. Council is requested to then provide a Supplementary Assessment Report, and the Panel will convene a Determination Briefing with Council and Applicant on 27 November 2025 to determine the matter.

PANEL MEMBERS	
Brian Kirk (Acting Chair)	David Johnson
Scott Barwick	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-592 – The Hills Shire – 101/2025/JP
2	PROPOSED DEVELOPMENT	Demolition of Existing Structures and Construction of a Seniors Living Development including 229 Independent Living Units, Clubhouse and Administration and Basement Parking.
3	STREET ADDRESS	346-350 Old Northern Road, Castle Hill
4	APPLICANT/OWNER	Applicant: File Planning Owner: Levande Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over $30 million

6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments:
		  ○ State Environmental Planning Policy (Resilience and Hazards) 2021
		  ○ State Environmental Planning Policy (Planning Systems) 2021
		  ○ State Environmental Planning Policy (Sustainable Buildings) 2022
		  ○ State Environmental Planning Policy (Transport and Infrastructure) 2021
		  ○ State Environmental Planning Policy (Housing) 2021
		  ○ The Hills Local Environmental Plan 2019
		• Draft environmental planning instruments: Nil
		• Development control plans:
		  ○ The Hills Development Control Plan 2012
		• Planning agreements: Nil
		• Provisions of the *Environmental Planning and Assessment Regulation 2021*: Nil
		• Coastal zone management plan: Nil
		• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality
		• The suitability of the site for the development
		• Any submissions made in accordance with the *Environmental Planning and Assessment Act 1979* or regulations
		• The public interest, including the principles of ecologically sustainable development

7	MATERIAL CONSIDERED BY THE PANEL	• Council assessment report: 2 October 2025
		• Clause 4.6 variation requests: Height of Buildings, Car Parking
		• Written submissions during public exhibition: 24
		• Verbal submissions at the public meeting:
		  ○ Alexandra Saad, Bruce Barr, Sue Witham
		  ○ Council assessment officer – Kristine McKenzie, Paul Osborne, Angelo Berios, Natalie Edmonds, Sophie Kim
		  ○ On behalf of the applicant – Christopher Lam, Calum Ross, Nathan Donn, Anna Johnston, Blair Keenan, Stephanie Edmondson, Rebecca Hogan, Georgia Sedgmen, Matthew Hyde, Gary Kordic, Jake Schwebel, Jake Boydell, Josh Milston, Andrew Jackaman, Andrew Rivett, Luke Meredith
		• Total number of unique submissions received by way of objection: 20

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 5 September 2024
		  ○ Panel members: Cinnamon Dunsford (Chair), Scott Barwick, David Johnson, Jarrod Murphy, Brent Woodhams
		  ○ Council assessment staff: Kristine McKenzie, Paul Osborne, Cameron McKenzie

		○ Applicant representatives: Anna Johnston, Calum Ross, Ramin Jahromi, Rory Brady, Nathan Donn, Michael File, Chris Lam, Megan McBride • Briefing: 31 July 2025 ○ Panel members: Brian Kirk (Chair), Scott Barwick, David Johnson ○ Council assessment staff: Kristine McKenzie, Paul Osborne, Cameron McKenzie ○ Applicant representatives: Calum Ross, Nathan Donn, Chris Lam, Anna Johnston, Blair Keenan • Site Inspection: 25 November 2025 ○ Panel members: Brian Kirk (Chair), Scott Barwick, David Johnson ○ Council assessment staff: Kristine McKenzie, Paul Osborne, Brent Woodhams ○ Applicant representatives: Nathan Donn, Chris Lam • Final briefing to discuss council's recommendation: 16 October 2025 ○ Panel members: Brian Kirk (Chair), Scott Barwick, David Johnson ○ Council assessment staff: Kristine McKenzie, Paul Osborne, Cameron McKenzie
9	**COUNCIL RECOMMENDATION**	Refusal
10	**DRAFT CONDITIONS**	Attached to the council assessment report

ATTACHMENT 3: PREVIOUS COUNCIL ASSESSMENT REPORT CONSIDERED ON 16 OCTOBER 2025

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC- 592 DA 101/2025/JP
PROPOSAL	Demolition of the existing retirement village and the construction of a seniors housing development including 229 independent living units, clubhouse and administration, parking and associated works
ADDRESS	Lot 503 DP 1048808, 346-350 Old Northern Road, Castle Hill
APPLICANT	Levande Pty Ltd/FPD Planning
OWNER	Levande Pty Ltd
DA LODGEMENT DATE	23 July 2024
APPLICATION TYPE	Development Application – Nominated Integrated Development
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19 and Schedule 6 of SEPP Planning Systems
CIV	$237,196,053.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Height, Parking
KEY SEPP/LEP	The Hills LEP 2019
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	First notification period - a total of eleven submissions were received and a petition signed by 13 persons. Of the eleven submissions received, four were in support of the application. Second notification period – a total of four submissions were received, which included one submission in support. It may also be noted that the petition submitted during the first notification period was resubmitted. Third notification period – a total of four submissions were received, which included one submission in support.

DOCUMENTS SUBMITTED FOR CONSIDERATION	Statement of Environmental Effects – FPD Planning Architectural Plans – Cox Architectural Design Report – Cox Landscaping Plans – Arcadia Landscaping Design Report – Arcadia Arboricultural Development Impact Assessment Report – Birds Tree Consultancy Flora and Fauna Assessment – Biosis Visual Impact Assessment – Urbis Transport Impact Assessment and Traffic Management Plan – JMT Consulting Draft Construction Traffic Management Plan Stage 1 Works – JMT Consulting Access Report – Purple Apple Access Noise Impact Assessment – Pulse White Noise Acoustics Preliminary Site Investigation – Prensa Targeted Site Contamination Assessment -Prensa Operational Waste Management Plan - Elephants Foot Consulting Construction and Demolition Waste Management Plan – Elephants Foot Consulting BCA Statement – Design Confidence BASIX Certificate – E-Lab Consulting BASIX Compliance Report – E-Lab Consulting NatHERS Certificate – E-Lab Consulting Ecologically Sustainable Development Report – E-Lab Consulting Infrastructure Report – JHA Services Cost Summary Report – Rider Levett Bucknall OSD Stormwater Concept Plan Submission – Jones Nicholson Consulting Engineers Engineering Plans – JN Responsive Engineering Flood Impact Assessment – JCO Consultants Flood Emergency Response Plan – JN Responsive Engineering Flood Modelling – JCO Consultants Stream Erosion Index Letter – JN Responsive Engineering Updated Preliminary Geotechnical Advice – JK Geotechnics Geotechnical Assessment – JK Geotechnics Preliminary Geotechnical Investigation – JK Geotechnics Groundwater Quality Screening – JK Environments

	Geotechnical and Hydrogeological Investigation – JK Geotechnics Survey Plans – Australian Locating Services Deposited Plans and Title Documents Report – Norton Survey Partners Acid Sulfate Soils Preliminary Assessment – Prensa Peer Review of Geotechnical Reports – Arcadis, SMEC and Earth Consulting Scientists
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	NA
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	NA
SCHEDULED MEETING DATE	16 October 2025
PREPARED BY	Kristine McKenzie – Principal Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	2 October 2025

EXECUTIVE SUMMARY

The proposal is for the demolition of the existing retirement village and the construction of 229 independent living units. The units will be provided within 13 buildings (Buildings A-M) ranging from 3-6 storeys with basement parking with a total of 347 parking spaces. Parking will comprise of 326 resident spaces, 4 staff spaces, 14 visitor spaces and 3 spaces for maintenance vehicles.

A Planning Proposal and site specific DCP and VPA apply to the site. The site is zoned C4 Environmental Living under The Hills LEP 2019 (THLEP). A senior's housing development is generally a prohibited use within the zone however the proposal is permitted as an Additional Permitted Use under THLEP 2019.

The proposal includes two Clause 4.6 variation requests in regard to height and parking. In regard to height, the site is subject to varying heights of 7m, 9m, 15m, 18m, 22m under THLEP 2019. The proposed variations range from 0.39% to 125.6%, noting however that some of the variations relate only to the façade of the building. The Clause 4.6 variation request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard in this instance. The height of the buildings is considered reasonable given that the site is currently used for seniors housing and the identified need to provide a modernised housing outcome, the existing slope and site constraints and given that the proposed works do not result in unreasonable

overshadowing or privacy impacts. The site is also subject to an FSR of 0.83:1 under THLEP 2019. The proposed FSR is 0.828:1 which complies with the development standard.

In regard to parking, based on Clause 108 of SEPP Housing 2021, 266 resident spaces are required. A total of 326 resident spaces are provided. The proposal meets the parking dimension requirements based on the minimum parking requirements however the additional parking spaces do not comply. The Clause 4.6 variation request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard in this instance. The proposed parking is considered satisfactory given that the proposal meets the SEPP Housing 2021 requirements and the parking arrangements for residents and staff are identified and direct.

The proposal includes variations to The Hills DCP Part D Section 27 – 346-350 Old Northern Road, Castle Hill (site specific DCP) in regard to the number of storeys, cut and fill, access, parking design, shadow impacts, setbacks and separation, building design and landscaping. The proposal also includes variations to SEPP Housing 2021 and accompanying requirements in regard to parking, height, density, separation and unit depth. On balance having regard to these matters, the proposal is considered to be satisfactory and the design takes into consideration the slope of the site. A reasonable built form and streetscape outcome will be achieved.

The proposal was notified on one occasion and notified/exhibited on two further occasions. During the first notification period a total of eleven submissions were received and a petition signed by 13 persons. Of the eleven submissions received, four were in support of the application. During the second notification period a total of four submissions were received, which included one submission in support. It may also be noted that the petition submitted during the first notification period was resubmitted. During the third notification period a total of four submissions were received, which included one submission in support. In accordance with Council's process, where more than 10 unique submissions are received during the notification process a Conciliation Conference is required to be held. The Conciliation Conference was held on 15 May 2025. The submissions principally raised concerns with the potential impacts on Palisander Place during the construction works particularly including access by heavy vehicles and tradespersons access, impacts on Palisander Place in regard to traffic from the development and vehicle and pedestrian safety, the design and built form of the development and appropriateness of the development. The letters of support commented on the age of the existing village and need for redevelopment, improved accessibility and provision of common facilities. Similar comments were provided from residents who attended the Conciliation Conference. The proposal has been reviewed having regard to all submissions and it is considered that on balance the majority of comments from property owners could be addressed through the provision of a reasonable built form outcome or conditions.

The subject site and adjoining properties contain modified and remnant native vegetation identified as the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest. Under the Biodiversity Conservation Act 2016, entry into the Biodiversity Offset Scheme (BOS) is triggered when thresholds or conditions including clearing of native vegetation are met, in this instance where it is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance. The application was accompanied by a *Threatened Species Test of Significance* provided in the Flora and Fauna Report which has been reviewed, however the information provided has not adequately addressed impacts on hydrological processes and key design details including the final extent of excavation, earthworks and placement of rock anchors. As such adequate information has not been provided to allow the conclusion to be reached that there will not

be a significant impact on Critically Endangered Ecological Community, Blue Gum High Forest or its habitat.

Further, insufficient information has been provided in regard to tree and vegetation impacts within proximity to and within the north-western drainage channel, in relation to upgrade works in or near the channel.

Given the likely significant impact on a Critically Endangered Ecological Community, the absence of a BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016*, the application is non-compliant and is recommended for refusal on these grounds.

5. THE SITE AND LOCALITY

The site is currently used as a seniors housing development known as Castle Ridge Resort and it contains 113 independent living units. The site has an area of 3.699 hectares (36,990m^2) and has vehicle access to both Old Northern Road to the east and Palisander Place to the west.

To the south and south-west, the site adjoins Pioneer Place Reserve which is zoned as RE1 Public Recreation and is owned by Council.

To the north, west and south of the site, the site adjoins existing residential development.

The site slopes over 14 metres from Old Northern Road to Palisander Place. The site is also mapped as containing geotechnically constrained land.

6. BACKGROUND AND THE PROPOSAL

6.1 Background to the Planning Proposal

May 2016	Planning Proposal (22/2016/PLP) was lodged for a high density seniors living redevelopment comprising 359 independent living units incorporated within nine buildings with heights varying from three to 10 storeys. The proposal was subsequently revised to reduce the yield and heights.
December 2017	Council resolved not to proceed with the planning proposal (22/2016/PLP) due to inconsistencies with the E4 Environmental Living zone objectives, inappropriate density and built form, insufficient strategic justification and potential impact in association with geotechnical constraints, traffic impacts and increased demand for local infrastructure. The Proponent subsequently lodged a rezoning review application.
August 2018	The Sydney Central City Planning Panel considered the rezoning review request lodged by the Proponent and determined that the proposal should not proceed to Gateway Determination.
January 2019	New planning proposal (7/2019/PLP) lodged for a high density seniors living development including 298 dwellings within nine buildings with heights varying from three to six storeys.
April 2019	Planning proposal (7/2019/PLP) considered by The Hills Local Planning Panel. The Panel advised that the proposal is unsatisfactory and should not proceed to Gateway Determination.

May 2019	Council resolved that the proposal should not proceed to Gateway Determination due to insufficient justification of the proposed scale and density at this location, inconsistencies with the E4 Environmental Living zone objectives, potential amenity impacts on adjoining development and open space, and unresolved traffic issues. The Proponent subsequently lodged a rezoning review application.
August 2019	The Sydney Central City Planning Panel considered the rezoning review application lodged by the Proponent and determined that the proposal should not proceed to Gateway Determination on the basis that it does not demonstrate site specific merit.
September 2020	Planning proposal (1/2021/PLP) lodged.
August 2021	The Hills Local Planning Panel considered the proposal and advised that it should not proceed to Gateway Determination.
September 2021	Council considered the proposal and resolved that the planning proposal not proceed to Gateway Determination.
September 2021	The Proponent subsequently lodged a Rezoning Review Application on 17 September 2021, seeking a review of Council's decision by the SCCPP.
February 2022	The SCCPP determined that the Planning Proposal should proceed to Gateway Determination. This determination by the SCCPP overrides Council's previous decision and cannot be appealed or challenged by Council.
March 2022	The Planning Panels Secretariat invited Council to be the Planning Proposal Authority ('PPA') for the proposal and be responsible for carrying out the process for amending the Local Environmental Plan.
March 2022	Council considered this invite and resolved to accept the role of PPA, submit the proposal for a Gateway Determination in accordance with the decision of the SCCPP and consider a further report on the DCP and infrastructure contributions prior to exhibition.
July 2021	Gateway Determination issued by DPE (now DPHI) with conditions relating to amendments to the proposal and timeframes. The Gateway did not delegate plan making powers to Council.
February-March 2023	Public exhibition of the planning proposal, DCP and VPA.
May 2023	Council considered the proposal post-exhibition and resolved that the proposal not proceed to finalisation and to request DPHI to not make the plan.
October 2023	The planning proposal is notified on the NSW Legislation website as DPHI has determined that the planning proposal be made.

2.2 Background to the Development Application

Two pre-lodgement meetings were held on 10 November 2023 and 4 April 2024 prior to lodgement of the application. The Development Application was lodged on 23 July 2024.

The following is the key dates in respect to additional information being requested and submitted:

The applicant was requested to provided information on: 26 July 2024, 14 August 2024, 23 October 2024, 11 November 2024, 1 April 2025, 5 August 2025 and 12 September 2025.

Additional information was received from the applicant on: 31 July 2024, 18 October 2024, 17 October 2024, 20 December 2024, 5 February 2025, 5 March 2025, 6 June 2025, 11 June 2025, 16 June 2025, 17 July 2025, 29 August 2025 and 15 September 2025.

In addition to the above, multiple emails have been exchanged between the applicant and Council staff clarifying matters throughout the assessment process.

Meetings have been held with the applicant on 20 October 2024, 22 November 2024, 19 February 2025, 16 April 2025, 1 May 2025, 7 August 2025 and 13 August 2025.

In addition, a site inspection was also undertaken with the applicant on 14 February 2025.

The Regional Planning Panel has been briefed on the application on three occasions being 5 September 2024, 29 May 2025 and 31 July 2025. On 31 July 2025 the Planning Panel set down a schedule for certain matters to be acted on including the determination of the application on 16 October 2025.

In addition to the briefings, a site inspection was undertaken with the Regional Planning Panel, Council staff and the applicant on 25 November 2024.

Further to the above, a Conciliation Conference was held on 15 May 2025.

2.3.1 The Proposal

The proposal is for the demolition of the existing retirement village and the construction of 229 independent living units. The units will be provided within 13 buildings (Buildings A-M) ranging from 3-6 storeys with basement parking which contains a total of 347 parking spaces. Parking will comprise of 326 resident spaces, 4 staff spaces, 14 visitor spaces and 3 spaces for maintenance vehicles. It may be noted that some buildings are connected.

The proposed works includes the construction of a clubhouse and administration building facilities with an area of 1831m^2.

The works are proposed in three stages comprising:

Stage 1 – 78 units – comprising Buildings A, B, C, D and E which includes the club house and administration area.

Stage 2 – 49 units – comprising Buildings F and G and construction of the Old Northern Road entry including the deceleration lane on Old Northern Road and the pedestrian footpath on Palisander Place (in conjunction with the delivery of the 120th dwelling).

Stage 3 – 102 units – comprising Buildings H, I, J, K L and M.

Each stage of works will include the demolition of existing buildings within that stage.

In regard to the continued operation of the site during the construction works, prior to Stage 1 works commencing, all current residents in the Stage 1 area will relocate to the existing

dwellings in Stages 2 and 3. Once Stage 1 is completed, the existing residents in Stages 2 and 3 will relocate to the new Stage 1 units.

The proposed works include a deceleration lane on Old Northern Road and a footpath on Palisander Place as part of the Voluntary Planning Agreement which relates to the site.

Waste collection will be from Palisander Place.

The proposal includes drainage works on Lot 26 DP 262133 and Lot 33 DP 262389 Pioneer Place Reserve No. 130 36Z Pioneer Place, Castle Hill which is owned by Council. Owner's consent has been provided by the General Manager for lodgement of the Development Application.

In addition, rectification works are also required on Lot 28 DP 262389, No. 9 Palisander Place, Castle Hill. Owner's consent has been provided from the property owner for the lodgement of the Development Application.

7. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

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

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- *State Environmental Planning Policy (Housing) 2021;*
- State Environmental Planning Policy (Sustainable Buildings) 2022; and
- Local Environmental Plan 2019.

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

Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 3 of Schedule 6.	Y
Resilience and Hazards SEPP	Clause 4.6 contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory.	Y
Biodiversity and Conservation SEPP	Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments.	Y
Transport and Infrastructure SEPP	Clause 2.122 – Traffic generating development.	Y
SEPP Housing	Under Clause 79, Part 5 of the SEPP, the SEPP does not apply to land zoned C4 Environmental Living. However, the SEPP provisions have been considered based on the DCP which refers to the need to comply with the SEPP.	N
Sustainable Buildings SEPP	Chapter 2 standards for residential development (BASIX)	Y
THLEP 2019	• Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 6.3 - Servicing • Clause 7.2 – Earthworks • Clause 7.6 - Landslide Risk	N Y Y Y Y

<u>State Environmental Planning Policy (Planning Systems) 2021</u>
State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 3 of Schedule 6 of the SEPP as the proposal is *Council related development over $5 million* with an estimated development cost of $237,196,053.00. Accordingly, the Sydney Central City Planning Panel is the determining authority for the application.

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

A Preliminary Site Investigation has been submitted. The report has been reviewed by Council's Senior Environmental Health Officer who has raised no objection to the report subject to the recommendations of the report being implemented including a further intrusive investigation in the form of a Detailed Site Investigation following demolition of buildings and infrastructure, develop and implement a Remediation Action Plan, develop and implement an Asbestos Management Plan and undertake a destructive building material survey. If the application was supported, a condition could be recommended to this effect.

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

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

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

State Environmental Planning Policy (Transport and Infrastructure) 2021
This Policy aims to facilitate the delivery of infrastructure and identify matters to be considered in the assessment of development adjacent to particular types of infrastructure development.

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

The proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP. The SEPP requires development to be referred to Transport for NSW where the proposal is for residential accommodation for 75 or more dwellings where the site has access to a classified road (Old Northern Road).

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

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

SEPP Housing 2021
Under Clause 79, Part 5 of the SEPP, the SEPP does not apply to land zoned C4 Environmental Living. However, the SEPP provisions have been considered based on the DCP which refers to the need to comply with the SEPP. The proposal has been considered against the provisions of the SEPP and is considered satisfactory.

THLEP 2019

a. Permissibility

The site is zoned C4 Environmental Living under THLEP 2019 (formerly E4 Environmental Living). A senior's housing development is generally a prohibited use within the zone however Schedule 1 Additional Permitted Uses under THLEP 2019 states as follows:

21 Use of certain land at 346–350 Old Northern Road, Castle Hill

(1) This clause applies to Lot 503, DP 1048808, 346–350 Old Northern Road, Castle Hill, identified as "Item 29" on the Additional Permitted Uses Map

(2) Development for the purposes of seniors housing is permitted with development consent.

A seniors housing development is permitted on the site in the C4 Environmental Living zone on the basis of the above clause.

A seniors housing development is defined in THLEP 2019 as follows:

***seniors housing** means a building or place that is –*

(a) a residential care facility, or

(b) a hostel within the meaning of State Environmental Planning Policy (Housing) 2021 Chapter 3, Part 5, or

(c) a group of independent living units, or

(d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),

and that is, or is intended to be, used permanently for -

(e) seniors or people who have a disability, or

(f) people who live in the same household with seniors or people who have a disability, or

(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,

but does not include a hospital.
Note—

*Seniors housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.*

The proposal is for a seniors housing development comprising of independent living units with ancillary clubhouse, administration facilities and associated works which meets the above definition.

The proposal is considered satisfactory having regard to permissibility under THLEP 2019.

b. Development Standards

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

Standard	LEP Requirement	Proposed	Complies
Floor Space Ratio	0.83:1	0.828:1	Yes
Minimum Lot Size	2000m^2	There is no subdivision proposed.	NA
Height	7m, 9m, 15m, 18m, 22m	Height exceeds the LEP requirements from 0.39% -125.6%.	No – Clause 4.6 variation request submitted.
Land Reservation Acquisition	NA	NA	NA
Heritage	NA	NA	NA

Map 2 Landslide Risk	Land identified	Peer review completed in accordance with Council requirements.	Yes – see further comments in Section 7 below.

c. Zone Objectives

The site is zoned C4 Environmental Living under THLEP 2019. The objectives of the zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

As outlined in Section 8, concerns have been raised by Council's Ecology and Landscape Teams in regard to the proposed works and that key information has not been provided to address potential impacts. On this basis the proposal does not adequately satisfy the objective above in ensuring that the proposed development does not have an adverse impact of ecological values.

As such the proposal does not meet the zone objective.

i. <u>Clause 4.6 Variation</u>

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

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

2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

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

The proposed height exceedances are as follows:

Building	**LEP Height Limit**	**Proposed Height Exceedance**	**Variation**
A	9m	1.58m	17.6%
B	18m	0.07m	0.39%
	7m	4.74m	68.1%
	9m	6.86m	76.2%

C	9m	11.3m	125.6%
	15m	5.48m	36.5%
	18m	5.33m	29.6%
	22m	1.32m	6%
D	22m	1.89m	8.6%
	9m	4.86m	54%
E	15m	No exceedance	NA
F	15m	4.09m	27.3%
	9m	4.26m	47.3%
G	15m 22m	No exceedance	NA
H	15m	0.59m	3.9%
I	15m	No exceedance	NA
J	15m	No exceedance	NA
K	9m	1.65m	18.3%
	15m	3.8m	25.3%
L	22m	No exceedance	NA
M	22m	1.02m	4.64%
	7m	7.35m	105%

The applicant has submitted a detailed Clause 4.6 Variation Request which has concluded as follows:

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances.*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

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

Compliance is unreasonable and unnecessary in the circumstances
Compliance with the development standard is unreasonable and unnecessary in the circumstances as the objectives of the standard are met, notwithstanding the variation and therefore compliance is not necessary.

Further, the underlying object or purpose would be defeated or thwarted if compliance was required as the height exceedances are necessary to accommodate the Master Plan which informed the Hills LEP controls and which forms part of the Hills DCP.

Without these exceedances the intent of the Master Plan would be unable to be achieved limiting the number of seniors housing dwellings that could be developed on the site. This would also impact on the supply of seniors housing in the locality as well as having a flow on effect of reducing housing supply of larger dwellings that become available when older residents seek to downsize.

There are sufficient environmental planning grounds to justify the contravention.
There are sufficient environmental planning grounds to justify the contravention.

The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation.

As detailed within this report the exceedances would not result in any significant increased visual and privacy impacts on the surrounding residential areas and overshadowing of adjoining dwellings has been reduced compared to that envisaged under the endorsed master plan.

The height exceedances have resulted from a number of factors and site constraints including the need to accommodate updated NCC requirements, flood planning levels, increased floor to floor heights for the clubhouse facilities and steep and variable topography and to deliver a high level of site accessibility. They do not result in any additional floor space beyond that which is permissible under the Floor Space Ratio (FSR) controls that apply to the site. Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

It may also be noted that the Clause 4.6 variation request addresses the height provisions of the DCP and SEPP Housing 2021 which have been considered as part of the assessment of the development.

Comment:

Clause 4.3 of THLEP 2019 states:

4.3 Height of buildings

(1) The objectives of this clause are as follows—
(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,
(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.
(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

As outlined above, the site is subject to varying LEP height standards across the site. These varying heights in part respond to the slope of the site and have regard to the adjoining low density residential character of the area.

The proposal includes shadow diagrams which indicate shadow impacts on adjoining properties and which demonstrate that the proposed shadow impacts are reasonable.

The proposed buildings also provide a reasonable design outcome in regard to visual impact, with the building set within a landscaped site which has included the retention of a number of mature trees. These existing and proposed landscape works will provide an appropriate landscape setting for the development.

The proposal has been designed to consider the potential loss of privacy impacts to adjoining properties through the use of design measures, setbacks and landscape works and will not unreasonably impact on privacy to adjoining properties and within the site.

It is also noted that the site adjoins Old Northern Road, Palisander Place and Pioneer Reserve which reduces the potential for any adverse impacts on residential properties.

The proposed works will provide a modern built form which will complement the future character of the area. In this regard it is acknowledged that the area is currently

characterised by established housing stock however is an area which is undergoing change as sites are subject to applications for knock down rebuild.

It is also acknowledged that the site characteristics include slope of over 14 metres from Old Northern Road to Palisander Place. The site is also mapped as containing geotechnically constrained land.

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

Clause 4.6 states in part:

(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

Comment: The height limit currently applied under THLEP 2019 is considered to be unreasonable and unnecessary given the circumstances. The height limit, while considerate of existing lower scale development within the area, does not reflect the site characteristics including the existing built form, slope, geotechnical constraints and the future modern character of the area.

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

Comment: There are sufficient planning grounds to justify the proposed height. These planning grounds include that the proposal will not unreasonably impact on overshadowing, privacy or visual impact to adjoining properties and will not result in an unreasonable streetscape outcome.

On the basis of the above comments, the proposed variation to the height is considered reasonable, will not result in an adverse impact on amenity and the development will provide an updated residential built form and facilities for current and future residents.

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

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

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

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

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

Part D Section 27 – 346-350 Old Northern Road, Castle Hill
Part B Section 2 – Residential
Part B Section 5 – Residential Flat Buildings
Part C Section 3 – Landscaping
Part C Section 6 – Flood Controlled Land

The DCP assessment is outlined below in Section 4.

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

The site is subject to Voluntary Planning Agreement 4/2023/VPA.

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

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

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

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

The proposal is considered unsatisfactory as outlined in Attachment A.

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

The proposed use is permitted on the site under Clause 21 of LEP 2021 'Use of certain land at 346-350 Old Northern Road, Castle Hill'. As such the proposed use is considered to be a suitable site for this form of development.

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

The submissions are considered in Section 8 of this report.

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

The development will provide housing and services for senior residents within the locality. On balance, the proposal is consistent with the public interest.

4. Assessment of Relevant Planning Requirements

a. DCP Part D Section 27 – 346-350 Old Northern Road, Castle Hill (site specific DCP)

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

Part B Section 2 – Residential
Part B Section 5 – Residential Flat Buildings

Part C Section 3 – Landscaping
Part C Section 6 – Flood Controlled Land

The site specific DCP states as follows:

The subject site is zoned C4 – Environmental Living and benefits from an additional permitted use on the land of 'seniors housing'. This unique combination of land use planning controls results in ambiguity in terms of the applicable State Environmental Planning Policies that would ordinarily apply to residential flat building developments and seniors housing developments.

It is appropriate that both State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and State Environmental Planning Policy (Housing) 2021 are complied with as this development comprises seniors housing in the form of residential flat buildings.

As such, any future Development Application for this site must demonstrate compliance with State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and State Environmental Planning Policy (Housing) 2021. In particular, the provisions of the Apartment Design Guide and Part 5 (including references to Schedule 4) of State Environmental Planning Policy (Housing) 2021.

In regard to building numbering, it may be noted that during the assessment of the DA the building numbering has changed from that shown in the DCP and some of the planning documents.

The following addresses the proposal's compliance with the DCP requirements except for the following:

DCP Clause	Required	Provided	Complies
Illustrative Master Plan	Development of the site should be generally consistent with the illustrative master plan shown in Figure 2.	The proposed works are not consistent with the Master Plan in regard to number of storeys.	No, however the proposed storeys are considered reasonable, see also comments in regard to height in Clause 4.6 variation request.
Cut and Fill	Excavation in excess of 1 metre is only permitted to facilitate basement car parking and must be supported by the submission of structural engineers details of retaining walls and construction methods with the Development Application.	Excavation works on the site exceed 1m where not in association with the parking areas.	No, however cut and fill works respond to the slope of the site.
	Where plans show an excess of 600mm of filling and, provided that the filling does not exceed 1.5	Fill works on the site exceed 1.5m in order to provide	No, however cut and fill works respond

	metres, a condition of approval will be imposed requiring a concealed dropped edge beam to contain the fill in excess of 600mm. Should the plans show an excess of filling above 1.5 metres, the applicant will be requested to amend the design to reduce the filling required.	building platforms and respond to drainage.	to the slope of the site.
	Embankment batters shall have a maximum slope of 1:6.	The proposed works will include embankment batter slopes in excess of 1:6.	No, however cut and fill works respond to the slope of the site.
Access	With the exception of the primary and secondary entry points, accessways are not permitted within the landscaped boundary setbacks.	The proposal includes a driveway adjoining Buildings F and G which runs parallel to Old Northern Road and a section of driveway which runs parallel to the northern boundary adjacent to Building F.	No, however the proposal is consistent with the vehicle access provisions of the DCP.
Parking and Basement Access	Car parking must be located below ground. Car parking will only be permitted to protrude above ground in limited instances where it adjoins the internal common open space area and does not subsequently cause the maximum LEP height limit to be exceeded. Car parking protruding above ground must be integrated as part of the building or appropriately screened through landscaping. Examples of landscaped screening are provided in Figure 4 below.	The proposed parking includes a mix of parking within basement style parking with some at-grade visitor parking. The basement style parking protrudes in some instances.	No, however the proposed works respond to the slope of the site and are adequately screened.
	The extent of basement area must not exceed 45% of the site and must be located wholly within building footprints to ensure deep soil landscaping on the site and to ensure sufficient water volumes can be provided to support mature tree growth and water filtration.	The proposed basement parking extends outside of the building footprint in some areas.	No, however the basement area provides links between the basements.
Building Heights	Building heights should generally be in accordance with the building heights shown in Figure 5.	The proposed height in part exceeds the DCP	No, however the proposed height is considered

<table>
<tr><td></td><td></td><td>and LEP requirements.</td><td>reasonable, see also comments in regard to height in Clause 4.6 variation request.</td></tr>
<tr><td>Shadow impacts</td><td>Building heights are not to result in any
overshadowing of neighbouring properties.</td><td>Shadow impacts occur to the adjoining properties.</td><td>No, however the proposed works do not result in an unreasonable impact on adjoining properties.</td></tr>
<tr><td>Setbacks and Building Separation</td><td>Setbacks are to be provided in accordance with Table 1.
<table>
<tr><th>Setbacks</th><th>Control</th></tr>
<tr><td>Front Boundary Setback (to Old Northern Road in locations depicted in Figure 6)</td><td>10m*</td></tr>
<tr><td>Rear Boundary Setback (towards Palisander Place in locations depicted in Figure 6)</td><td>8m or to comply with SEPP 65. Whichever is greater</td></tr>
<tr><td>Side Boundary Setbacks</td><td>10m</td></tr>
<tr><td>Balconies</td><td>Balconies not to protrude into setbacks</td></tr>
<tr><td>Upper Level setbacks (in locations depicted in Figure 7)</td><td>5m behind building line or to comply with sightlines in Figure 8
3m where buildings adjoin the central common open space area internal to the site</td></tr>
<tr><td>Basement Parking Setback</td><td>Basements not to protrude into setbacks</td></tr>
</table>
Table 1 Building setbacks
*setback measured from the revised boundary following completion of deceleration la land dedication</td><td>Variations are proposed to building setbacks.</td><td>No, however the built form outcome is satisfactory</td></tr>
<tr><td></td><td>Minimum building separation is to be provided in accordance with the Apartment Design Guide.</td><td>Variations are proposed to separation.</td><td>No, however the built form outcome is satisfactory</td></tr>
<tr><td>Building Design</td><td>Developments are to be stepped so that ground floor does not exceed 1m above natural ground level.</td><td>The ground floor exceeds 1m above natural ground level.</td><td>No, however the design responds to the slope of the site.</td></tr>
<tr><td></td><td>The maximum length of a building shall be no greater than 40m. Buildings should be articulated to manage the appearance of the mass and scale by breaking up buildings components with setback or variation in building heights to appear as two separate buildings.</td><td>Buildings D, E, F and G exceed 40m in width.</td><td>No, however the built from outcome is satisfactory.</td></tr>
<tr><td></td><td>All balconies and windows are to include architectural devices such as shutters and louvres to provide shade and natural ventilation. Windows are to be capable of</td><td>Shading devices are not used on windows where other appropriate design</td><td>No, however the built from outcome is satisfactory</td></tr>
</table>

	being fully opened (e.g. sliding windows).	considerations are available.	
	Subterranean dwellings are only permitted in limited instances where they seek to sleeve car parking zones. In these instances, the dwellings must have at least two frontages sited on the ground plane to ensure sufficient solar access is provided to these dwellings.	Subterranean units are proposed which do not sleeve car parking.	No, however the design responds to the slope of the site.
Open Space and Landscaping	The layout and design of buildings and open spaces shall ensure the retention of 29 significant trees on the site.	The proposal retains 25 significant trees.	No, however the retention of significant trees is reasonable given the proposed works.
	A 10m landscape buffer is required between the development and Old Northern Road to ensure adequate privacy and streetscape amenity. This buffer must be capable of accommodating deep soil planting.	The access driveway is located on the Old Northern Road frontage.	No, however the driveway layout is consistent with the driveway layout in the DCP.

i. Compliance with Masterplan and Building Height

The DCP requires that the proposed development of the site should be generally consistent with the illustrative master plan shown in Figure 2. Building heights should generally be in accordance with the building heights shown in Figure 5.

The applicant has submitted the following justification:

The DCP requires building heights to be 'generally in accordance with the building heights shown at Figure 5'.

The following minor changes in height of storeys occur noting that overall the scheme achieves the requirement to be 'generally consistent'. These exceedances have arising as a result of the refinement of the design through the detailed design process which has been informed by detailed survey data.

- *Building J (previously A) – A small part of the building internal to the site increases from 4 storeys to 6 storeys accounting for the steep topography in this part of the site and allowing for basement sleeving. No LEP height exceedance required.*
- *Building G (previously H) – reconfiguration has slightly increased the area proposed as 6 storeys. This is internal to the site and no LEP height exceedance is required. It is noted that the height in storeys for a number of other buildings fronting Old Northern Road has been reduced.*
- *Building F (Previously I) – reconfiguration of this building has resulted in a slight increase in the area proposed as six storeys. This is internal to the site*

and it is noted that a large part of the building fronting Old Northern Road has reduced from 4 storeys to 3 storeys.

- *Building E (previously K) – The internal part of the building increases from 3 storeys to 4 storeys to account for site topography and allow basement sleeving. This building still presents as 3 storeys to the boundary. No LEP height exceedance required.*

It is noted that the height in storeys has decreased for parts of a number of other buildings notably Building A, C, H and I (previously B, D, L and N). An updated height in storeys diagram is provided as an attachment to this document. It is noted that the exhibited version had a minor error where the frontages of building C & E were shown as 3 storeys rather than 2 storeys and 5 storeys rather than 3 storeys.

Comment:

The objectives of the DCP are:

In regard to compliance with the Masterplan Figure 2.

a. To provide a framework for the future high-quality renewal of the site.
b. To ensure future development maximises open space and provides a sense of openness.
c. To ensure development responds to the site's topography and minimises impact on significant trees and existing vegetation.
d. To minimise potential visual and amenity impacts to surrounding properties and public open space.
e. To prioritise views to parkland and open space.
f. To ensure integration with existing streetscape and character by providing appropriate transitions between existing neighbourhoods and more dense development on the site.

In regard to compliance with the Height Figure 5.

a. To provide variation in building height with the tallest buildings concentrated in the centre of the site.
b. To ensure building heights respond to the site's topography and natural features.
c. To minimise visual impacts from Old Northern Road, adjoining properties and public open space.
d. To ensure a high level of solar amenity to communal and open spaces.
e. To adopt building heights at the street frontage that are compatible in scale with adjacent buildings.

The proposed development is considered satisfactory in regard to the objectives of the DCP in that the proposal provides for the renewal of the site and maximises open space, particularly through the internal area of the site. The design responds to the slope of the site from Old Northern Road to Palisander Place through the use of cut and fill which is balanced where possible across the site. The development considers impacts on existing trees on the site and replacement planting and considers views across the site.

The proposed design considers the constraints on the site in regard to slope, geotechnical constraints and vegetation.

The development also does not result in unreasonable solar access to adjoining properties or to the subject development. The proposed heights are considered reasonable for the scale and form of the development.

The proposed variation to the DCP is considered satisfactory.

ii. Cut and Fill

The DCP seeks to limit on cut and fill works on the site, including limiting excavation to a maximum of 1 metre within setback areas, excavation in excess of 1 metre is only permitted to facilitate basement car parking, where plans show an excess of 600mm of filling and, provided that the filling does not exceed 1.5 metres, a condition of approval will be imposed requiring a concealed dropped edge beam to contain the fill in excess of 600mm. Should the plans show an excess of filling above 1.5 metres, the applicant will be requested to amend the design to reduce the filling required and embankment batters shall have a maximum slope of 1:6. The cut and fill works exceed the DCP requirements and embankment slopes of 1:3 are proposed.

The applicant has submitted the following as justification:

Cut:
There is significant sloping of the existing site which necessitates some cut in excess of 1m to accommodate accessible paths and building footprints.

These areas have been minimised as much as possible within the slope constraints of the site as illustrated in the Civil Cut and Fill Exceedance Plan.

The development seeks to balance the priorities of responding to natural topography while also the needs of the future residents with acknowledgment that this is seniors housing that requires an accessible outcome as a priority to allow for the senior community. In this regard a key principle of the site specific DCP is to: Create a walkable and accessible village that promotes physical and mental wellbeing.

The location of buildings and landscaping has been carefully designed to minimise excavation with buildings stepped into the slope and landscaped terraces gradually stepping to reduce the bulk and scale of retaining structures and minimise visual impacts.

It is noted that this control does not appear to apply to other parts of the Hills LGA and does not take into consideration the complexities of the topography of the site.

The proposed development would achieve the relevant objectives of the DCP:

- *To ensure that development is designed with regard to site conditions and minimise the impact on landform.*
- *To ensure the extent of cut and fill required for development does not detract from the appearance and design.*
- *To ensure development visually integrates with the surrounding environment.*
- *To ensure that cut and fill does not encroach within, or adversely affect the efficiency, integrity, and stability of any open space.*
- *To ensure the important environmental character of the site is retained.*

Fill:
There is significant sloping of the existing site which in some instances necessitates small areas of fill of greater than 1.5m. Filling is also required to achieved flood planning level.

A cut and fill diagram has been prepared which shows the extent of fill which exceeds 1.5m.

These areas have been minimised as much as possible within the slope constraints of the site as illustrated in the Civil Cut and Fill Exceedance Plan. The development seeks to balance the priorities of responding to natural topography while also the needs of the future residents with acknowledgment that this is seniors housing that requires an accessible outcome as a priority to allow for the senior community. In this regard a key principle of the site specific DCP is to: Create a walkable and accessible village that promotes physical and mental wellbeing.

Where fill greater than 1.5m is required these areas will be appropriately terraced and landscaped to minimise impacts as detailed in the Landscape Plans.

The location of buildings has been carefully designed to minimise fill as illustrated in the Architectural Report.

It is noted that this control does not appear to apply elsewhere in Council's DCP and does not take into consideration the complexities of the topography of the site.

The additional diagrams illustrate that the proposed development would achieve the relevant objectives of the DCP including:

- *To ensure that development is designed with regard to site conditions and minimise the impact on landform.*
- *To ensure the extent of cut and fill required for development does not detract from the appearance and design.*
- *To ensure development visually integrates with the surrounding environment.*
- *To ensure that cut and fill does not encroach within, or adversely affect the efficiency, integrity, and stability of any open space.*
- *To ensure the important environmental character of the site is retained.*

<u>Embankment Slopes</u>
Embankment batters of more than 1:6 are needed to accommodate existing topography which features slopes steeper than 1:6.

Additional diagrams have been prepared which illustrate where embankment batters exceed 1:6 (see p33 of the Landscape Report). All embankment batters are less than or equal to 1:3.

The 1:6 control does not appear to be included elsewhere in Council's DCP and batter design will be in accordance with the Council's Subdivision and Engineering specifications as required by 5.1.3(6) of the DCP.

The proposed approach is also consistent with the wider landscape provisions of the Hills DCP set out in Part C, Section 3.6 as follows;

- *All landscaped embankments having a slope of 1:3 or greater shall be reinforced using an approved stabilisation technique to prevent erosion or slumping. Stabilisation techniques may include, but are not limited to the use of dense ground covers erosion control netting, mesh or rock stabilisation.*
- *All turf embankments are to be a maximum grade of one vertical to five horizontal to facilitate mowing with push-type or ride-on mowers.*

The proposed development is fully compliant with these requirements noting that there is no slope steeper than 1:3 and all landscape embankments are to be vegetated with native planting.

Slopes of 1:6 cannot be achieved site-wide. Given the existing steep slopes, accommodating 1:6 across the site would require large retaining walls and significant reprofiling of the landform which is inconsistent with the vision for the site being to minimise the impact to the existing contours and for development to follow the existing landform.

Additional landscape sections have been prepared to landscape show treatment of areas with batters steeper than 1:6 (see p37 of the Landscape Report).

The additional diagrams illustrate that the proposed development would achieve the relevant objectives of the DCP including:

- *To ensure that development is designed with regard to site conditions and minimise the impact on landform.*
- *To ensure the extent of cut and fill required for development does not detract from the appearance and design.*
- *To ensure development visually integrates with the surrounding environment.*
- *To ensure that cut and fill does not encroach within, or adversely affect the efficiency, integrity, and stability of any open space.*
- *To ensure the important environmental character of the site is retained.*

Comment:

The objectives of the DCP are:

a. *To ensure that development is designed with regard to site conditions and minimise the impact on landform.*
b. *To minimise the impact of earthworks on the stormwater regime, salinity and groundwater.*
c. *To ensure the extent of cut and fill required for development does not detract from the appearance and design.*
d. *To ensure development visually integrates with the surrounding environment.*
e. *To minimise the risks and associated impacts of contaminated land and to ensure land is appropriately stabilised and retained.*
f. *To ensure that cut and fill does not encroach within, or adversely affect the efficiency, integrity, and stability of any open space.*
g. *To ensure the important environmental character of the site is retained.*

The site slopes over 14 metres from Old Northern Road to Palisander Place. As such cut and fill works are required across the site to ensure a reasonable built form outcome. The proposed works also include basement parking under the apartments to provide usable and appropriate apartments for the seniors living housing. The proposed cut and fill works have been considered having regard to the required drainage works on the site and built form outcome and are considered to be satisfactory.

The proposed variation to the DCP is considered satisfactory.

iii. Access

The DCP states that with the exception of the primary and secondary entry points, accessways are not permitted within the landscaped boundary setbacks. The proposal includes a driveway adjoining Buildings F and G which runs parallel to Old Northern Road and a section of driveway which runs parallel to the northern boundary adjacent to Building F.

The applicant has submitted the following as justification:

Internal accessways are located within the setbacks in certain locations including within a small part of the setback to Old Northern Road and a small part of the northern boundary setback. These accessway locations are generally consistent with the master plan layout and deep soil diagram in the Hills DCP which show areas within the boundary setbacks where deep soil is not required which aligns with the location of the internal access roads.

The location of these accessways within the boundary setbacks is required to provide access to relevant basement entry points, which physically constrains the ability to provide unencumbered deep soil / landscaping in these areas.

A high-quality landscape treatment will be provided in these areas, including a landscape buffer and boundary fence ensuring effective screening, visual amenity, and a landscaped character consistent with the streetscape and character objectives. Further, there is a significant separation and landscape screening on the adjacent site to the north ensuring impacts on the neighbouring property are negligible.

Further, all landscaping, tree planting, deep soil and canopy cover requirements of the DCP are fully met or in some cases exceeded.

In addition, as detailed within the landscape design report, one of the key approaches to delivery of this project is to enhance accessibility. There must first be an appreciation of the sites topography and then a design which responds to the significant fall and still allow for effective movement through the site. Unlike typical apartment development, this site provides for seniors housing and as such requires the use of stairs to be limited which provides some challenges and means that in some instances, landscape areas are required for vehicular and pedestrian access to ensure an accessible outcome for the future residents. However, the landscape design provides superior and varying communal open space which far exceeds the DCP requirements.

The proposed development achieves the relevant following objective of the DCP:
• To ensure vehicular access and movement network does not impact on streetscape quality, amenity or pedestrian safety.

Comment:

The objectives of the DCP are:

a. To ensure development does not have an unreasonable impact on traffic flows.
b. To ensure vehicular access and movement network does not impact on streetscape quality, amenity or pedestrian safety.
c. To provide safe access to the site.
d. To minimise potential for pedestrian and vehicular conflict through good design.

The proposed vehicle accessways are consistent with Figure 3 of the DCP which relates to vehicular access and movement which shows the location of vehicles access points, low speed shared paths and footpaths within the site. It is noted that the key vehicle access points are from driveway entry points from Old Northern Road and Palisander Place.

The location of the driveways will continue to allow appropriate screen landscape works to be undertaken within the site.

The proposed variation to the DCP is considered satisfactory.

iv. Design of Basement Parking

The DCP states that parking must be located below ground and will only be permitted to protrude above ground in limited instances where it adjoins the internal common open space area and does not subsequently cause the maximum LEP height limit to be exceeded. Car parking protruding above ground must be integrated as part of the building or appropriately screened through landscaping. The DCP also states that the basement must be wholly located within building footprints.

The applicant has submitted the following as justification:

Protrusion:
All car parking will be within basement car parks.

The basement protrudes above ground level in some limited instances to accommodate the slope of the site however is integrated into the design of the site and screened through terraced walls and landscaping. This outcome is unavoidable given the 20m plus fall across the site. The fall across the length of buildings would either result in protruding basements or subterranean units or excessive stepping in building form which creates access issues or excessive use of lifts to accommodate split levels across the length of the building. The proposed arrangement is considered the most appropriate outcome on balance and provides adequate landscape treatment.

Arcadia has prepared diagrams which show locations of basement protrusions, with landscape cross sections showing the integration with the landscape design and screening from the public domain.
The proposed development is able to achieve the relevant objectives of the DCP as follows:

- *To ensure that basement entry points and design do not impact on the quality and function of internal streets, communal spaces and landscaped setbacks.*
- *To ensure basement car parking and access points are integrated with the form and arrangement of buildings on the site.*

Extent of Basement:
The basement is less than 45% of the site as shown in the Architectural Drawings. The area of the basement has been reduced as a result of the reconfiguration to retain Tree 14 and 15. The total basement area is 11,236sqm being 30.4% of the 37,020sqm site area. The basement extent is shown on the Architectural Plan Basement Protuberances.

The development includes two consolidated basements which extend below building footprints. The basements have been located generally below the building footprints but extends beyond the building footprint where necessary to provide a connected basement between buildings. This is consistent with the Hills DCP Vehicular Movement and Access Diagram (Figure 3) which shows two basement access points rather than multiple basement accesses to each building and the Indicative Deep Soil Plan (Figure 9) which shows an indicative consolidated basement.

The extent and location of the basement does not impact on the ability of the development to achieve deep soil and landscaping requirements of the DCP. Locating individual basements under each building would result in the need for extensive excavation and deliver an undesirable outcome with multiple basement accesses for residents, visitors and waste collection across the site reducing pedestrian safety and amenity – this is further demonstrated the drawing at … which shows indicative swept paths to allow for vehicle access per building and additional excavation required to accommodate the basements being wholly within building footprint.

Whilst it is understood the intent of the control is to maximise deep soil zones and minimise environmental impacts as a result of excavation, Council's requirements in relation to waste collection, swept paths and access, as well as Apartment Design Guide requirements relating to vehicular access, parking requirements, and the like all ultimately result in the need for a much greater basement footprint.

Council's Resource Recovery team's minimum requirements in relation to access for Medium Rigid Vehicle, access requirements, and the various pick up location requirements results in the need for the development to be largely designed around a consolidated basement. As a result, the basement footprint reflects the need to balance outcomes and demonstrate compliance with development standards and requirements of other Council sections.

Levande has identified examples of other developments where the basements are not wholly located below the building and have been supported by the Sydney Central City Planning Panel as detailed below.

6 Garthowen Crescent, Castle Hill (1611/2020/JP): Demolition of existing structures and construction of a 13 and 18 storey Residential Flat Building Development, containing 196 units, basement car parking and associated works. This application included construction of a basement occupying the majority of the site, with the exception of areas adjacent to boundaries. A large component of the basement is not contained within the footprint of the built form with a variation to this control being supported in this location.
The diagrams below illustrate the basement extent and the location of the buildings above, which demonstrate the basement is not wholly contained to the footprint of buildings.

Basement extent

Building footprint

Sexton Avenue and Fishburn Crescent, Castle Hill (58/2020/JP): for the construction of seven residential flat buildings between 8 and 9 storeys in height containing 295 dwellings at. The approved development includes the construction of a basement occupying almost the entire site as illustrated below.

Basement extent

Approved building footprint

The proposed approach is also consistent with the relevant objectives of this

section of the Hills DCP as follows:
• To ensure that basement entry points and design do not impact on the quality and function of internal streets, communal spaces and landscaped setbacks.
• To ensure basement car parking and access points are integrated with the form and arrangement of buildings on the site.

Comment:

The objectives of the DCP are:

a. To provide sufficient parking that is convenient for residents and visitors.
b. To ensure that basement entry points and design do not impact on the quality and function of internal streets, communal spaces and landscaped setbacks.
c. To ensure basement car parking and access points are integrated with the form and arrangement of buildings on the site.

The proposed parking meets the objectives of the DCP as the parking is convenient for residents and visitors. The vehicle entry points are also consistent with the DCP. The proposed basement parking protrusions are considered to be set back adequately from the boundary to ensure that impacts do not occur to adjoining property owners. in addition, landscape screen works are proposed within the site boundaries which will further screen the proposed works.

The proposed variation to the DCP is considered satisfactory.

v. Shadow Impact

The DCP states that building heights are not to result in any overshadowing of neighbouring properties. The proposed works result in shadow impacts to adjoining properties to the west and south.

The applicant has submitted the following justification:

This control conflicts with Section 6.2.1 that requires development to demonstrate compliance with the overshadowing provisions in Section 3.14 Part B Section 5 of The Hills DCP. Section 3.14 requires adjoining residential buildings and the major part of their landscaping receive at least four hours of sunlight between 9am and 3pm on 21 June.

The proposal well exceeds the requirements of the Section 3.14 Part B Section 5 of the Hills DCP with all adjacent residential buildings exceeding 4 hours of solar access in midwinter.

Further solar testing has been carried out to assess the impacts to the rear courtyards of the townhouses to the south of the site which is included with the updated Architectural Drawings (DA-85-00 to DA-85-06). This illustrates additional overshadowing of these courtyards as a result of the development will be almost negligible and, in some instances, will be slightly decreased.

The proposed development is able to meet the relevant objective of the DCP as follows:
• To ensure residential apartments have a good level of solar access and residential amenity.

Comment:

The objectives of the DCP are:

a. To provide variation in building height with the tallest buildings concentrated in the centre of the site.
b. To ensure building heights respond to the site's topography and natural features.
c. To minimise visual impacts from Old Northern Road, adjoining properties and public open space.
d. To ensure a high level of solar amenity to communal and open spaces.
e. To adopt building heights at the street frontage that are compatible in scale with adjacent buildings.

The proposed shadow impacts to adjoining properties has been reviewed and the proposal is considered satisfactory. The adjoining properties will continue to receive solar access to more than 50% of the courtyard area for more than 3 hours in midwinter in accordance with the relevant DCP requirements.

The proposed shadow impacts are considered satisfactory.

vi. Setbacks and Separation

The DCP requires that setbacks be provided in accordance with the provisions and that the a minimum building separation be provided in accordance with the Apartment Design Guide.

The applicant has submitted the following justification:

<u>Setbacks:</u>
Buildings have been designed to accommodate the required setbacks in almost all instances. Minor non-compliances occur where they are unavoidable due to the topographic constraints of the site as follows:

- *Building E (previously K) basement - The basement has been reconfigured as part of a previous RFI to achieve greater compliance. A minor exceedance occurs below building K where the basement wall extends into the 10m setback by 1,500mm. The ability to locate this basement wall outside the setback is constrained by a number of factors including:*

- Location of landslip retaining wall and shoring walls
- Medium ridged vehicle ramp length, gradient, and clearance
- Circulation space within the bin room.

- *Building E (previously K) balconies – the balcony at the corner of Building K at level 1 extends into the 10m setback by a maximum of 1,500mm as this slab is aligned to the basement shoring wall under.*
- *Building E (previously K) building – a column on the corner of the building extends marginally into the 10m setback by 622mm.*
- *Building J (previously A) – the corners of the building extend into the southern 10m setback by a maximum of 710mm. Facing Old Northern Road, a small zone by a maximum of 552mm. Suitable landscape screening is provided in these locations.*

The exceedances do not limit the ability to accommodate the deep soil and landscaping requirements of the DCP. There would not be any significant additional impact on adjoining residents.

The proposed development is consistent with the relevant objective of the DCP being:
• To ensure buildings provide an adequate setback to adjoining properties.
• To maintain the existing low density character of the area.

• To ensure the bulk and scale of the development is not perceptible from adjacent properties and the street.
• To provide for landscaped setbacks that enhance the site's parkland setting and screen building bulk.
• To ensure adequate building separation between buildings to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.
• To maintain sufficient visual and acoustic privacy.

Separation:
Building separation complies with the intent of the ADG. This is detailed in the ADG compliance table.

The building separation has been designed according to the ADG and is consistent with the approved master plan. Connected buildings are the same building with minimum separation of 6m being provided. Staggered windows and privacy screens have been provided for added privacy measure where distances are less than the relevant apartment design guideline. The direction of the louvred screen is directed away from adjoining unit.

The NSW Department of Planning ' Seniors Housing Design Guide, November 2023' notes that while high density seniors' developments are assessed against the criteria in the Apartment Design Guide "Some flexibility with the Apartment Design Guide will be required for independent living units developments for seniors housing".

While the ADG provides guidance to inform design, it is not simply a tick box which must be strictly adhered to in any circumstances, much less when seniors housing is concerned, noting the need to balance priorities of ensuring accessibility above all else to ensure the future residents may safely navigate their surrounds without risk of incident.

Building separation is detailed in the Architectural Plans. The plans highlight the following:
- *The separation between buildings generally complies with the approved masterplan*
- *Connected buildings are the same building and minimum separation of 6 metres is provided*
- *Staggered windows have been implemented*
- *Visual privacy screens, frosted windows and high level windows have been implemented to a number of units where separation is less than guideline.*

Where the proposed development is below the minimum building separation distances nominated by the NSW Apartment Design Guide (ADG) under Design Criteria 3F-1 – Visual privacy screens have been proposed to address the potential for overlooking and privacy impacts.

This is appropriate for the following reasons:
- *Fixed louvres have been incorporated to prevent any direct views into habitable rooms or private open spaces of adjoining apartments.*
- *The proposed privacy screens are designed in accordance with best-practice privacy control measures and meet the intent of ADG Objective 3F-1 by providing equivalent or greater privacy protection than a larger separation alone would offer.*
- *View corridors, natural ventilation, and daylight access for adjoining buildings remain uncompromised. The screen treatments allow light and airflow while limiting inter-visibility between units.*
- *Similar approaches have been supported by councils and planning panels in comparable developments, particularly where privacy treatments are demonstrated to be effective, durable, and integrated into the building design.*

Given the above, the use of privacy screening, frosted windows and high level windows as a mitigation measure achieves the objectives of the ADG and the proposed variation should be supported on planning merit.

The proposed development is consistent with the relevant objective of the DCP being:
• To ensure adequate building separation between buildings to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.

Comment:

The DCP objectives are:

a. To ensure buildings provide an adequate setback to adjoining properties.
b. To maintain the existing low density character of the area.
c. To ensure the bulk and scale of the development is not perceptible from adjacent properties and the street.
d. To provide for landscaped setbacks that enhance the site's parkland setting and screen building bulk.
e. To ensure adequate building separation between buildings to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.
f. To maintain sufficient visual and acoustic privacy.

The proposed separation between the buildings is considered reasonable. The design of the units will allow for adequate privacy between buildings with window placement and room locations considered. The offsetting of windows also allows for privacy between buildings. Appropriate solar access and ventilation is also provided between buildings. See also comments below in regard to the ADG.

vii. Ground Floor Level, Length of Buildings and Sleeved Carparking

The DCP requires the developments are to be stepped so that ground floor does not exceed 1m above natural ground level, the maximum length of a building shall be no greater than 40m, shading/ventilation devices must be used on all balconies and windows and subterranean dwellings are only permitted in limited instances where they seek to sleeve car parking zones. In these instances, the dwellings must have at least two frontages sited on the ground plane to ensure sufficient solar access is provided to these dwellings.

The proposal includes floor levels which are more than 1m about natural ground level, seven subterranean units are proposed, being Units B101, B102, E215, E216, FG08, FG09 and H232, design has been used to address shading and ventilation and buildings exceed 40m in length.

The applicant has submitted the following justification:

<u>Ground Floor Level</u>:
Buildings have been designed to follow the topography of the site to maximise direct access to the public domain. All access to the ground floor building entries provides direct access and complies with DDA requirements.

However, as a result of the site topography the ground floor private open space of some ground floor apartments is more than 1m above natural ground level. Accessible pathways to the public domain will be provided via the building lobbies and these private open spaces have a high level of amenity with outlook over the public domain. This level change is unavoidable with the steep topography of the site. Importantly all units are accessible

and the site as a whole has been designed to be accessible to the seniors residents.

…. has prepared a Review of Subterranean Dwellings and Natural Ground Level as part of this RFI which highlights the difference between the ground level and adjacent buildings. The proposed development is able to achieve the relevant objectives of the DCP as follows:

- *To ensure building design is reflective of the landscape setting and environmental features of the site.*
- *To ensure buildings provide the highest residential amenity.*
- *Buildings should contribute to activity and surveillance of streets and open spaces and foster a sense of community.*

Apartments have been located at the lower levels in some parts of the site to sleeve basements and provide improved address to the communal open spaces. In these instances, apartments have been designed to maximise solar access and outlook.

Cox prepared a Review of Subterranean Dwellings as part of this RFI which highlights subterranean dwellings and illustrates their DCP compliance and outlook (Appendix Y).

A number of apartments are considered to be subterranean apartments, however only two to these apartments (B-101 and E-215) do not meet the requirement to have two frontages but are considered acceptable as detailed below.

• B-101 (previously M-2.02): Is considered subterranean, although the adjacent natural ground line is below the balustrade height to the balcony meaning there is no impact the amenity and outlook from the living areas and private open space of the apartment. Further, this apartment achieves more than 2 hours of sunlight in midwinter.

• E-215 (previously K-1.03): This apartment is partially subterranean along the edge of the balcony. No glazed windows or doors are impacted providing an appropriate level of amenity and outlook for this apartment. The balconies above are setback providing significant daylight with this apartment achieving more than 2 hours of sunlight in midwinter.

<u>Building Length:</u>
Building lengths are dimensioned in the Architectural Plans and are generally compliant with this requirement as follows:

- *Building A (previously N): 34.8m*
- *Building B (previously M): 30.9m*
- *Building C (previously L): 32.2m*
- *Building D (previously J): 40.6m*
- *Building E (previously K): 40.1m*
- *Building F (previously I): 44.1m*
- *Building G (previously H): 41.0m*
- *Building H (previously D): 32.0m*
- *Building I (previously B): 32.0m*
- *Building J (previously A): 39.0m*
- *Building K (previously C&E): 39.6m*
- *Building L (previously F): 32.5m*
- *Building M (previously G): 30.7m.*

Minor non-compliances occur of
- *Building D: 0.6m (1.5%)*
- *Building E: 0.1m (0.3%)*
- *Building F: 4.1m (10.3%)*

• Building G: 1.0m (3.0%).

Building D and the long elevation of Building G are internal to the site and would not have any significant impact on visual amenity. The exceedance for building E at 0.1m is extremely minor and would not have any significant impact.

The noncompliance of 4.1m for Building F effects for 2 levels. The building form is the result of maintaining a significant tree and the following actions have been taken to mitigate the visual impact:
• The building steps midway by approximately 3.3m
• 4 balconies along the face ensure maximum articulation
• The building façade reduces in length and sets back above the 2 storey maximum length.
• The long building façade is also not visible from the public domain.

The proposed development is consistent with the relevant objectives of this section of the Hills DCP being: To establish a fine grain built form.

Shading and Ventilation:
All buildings have been designed to comply with minimum ADG solar and cross ventilation requirements. Due to smaller building footprints the percentage of naturally ventilated apartments far exceed the minimum ADG requirements. Covered, deep set balconies and terraces adjacent to living areas have been designed to negate the need for "addition" mechanical shading devices which will require additional maintenance over time, while all balcony and terrace doors are capable of being fully opened. All other operable windows are compliant with BCA requirements.
The proposed development is able to achieve the relevant objectives of the DCP as follows:
• To ensure building design is reflective of the landscape setting and environmental features of the site.
• To ensure buildings provide the highest residential amenity.

Sleeved Car Parking:
An analysis has been prepared to identify any subterranean dwellings within the development. In this regard it is noted that the Hills DCP does not define subterranean dwellings however the Hills DCP, Part B, Section 4, Multi-dwelling housing sets out the following:

> *Developments on sloping sites are to be stepped so that the floor level of habitable rooms does not exceed one metre above or below natural ground level when measured at any point on the ground floor.*

On this basis it is assumed that dwellings with a floor level of more than 1m below natural ground level would be considered subterranean.

Subterranean dwellings in the proposed development are a result of the significant constraints applicable to the site. The fundamental constraint which has informed the placement of dwellings is the intense topography which sees a level change of approximately 36m across the site.

An analysis of potentially subterranean apartments has been prepared by Cox as part of the RFI response submitted on 30 August 2025. This considers seven apartments where the floor level is below the adjacent ground level, however of these only four have floor levels which are more than 1m below the adjacent natural ground level which are therefore considered to be subterranean.

Two of the four subterranean apartments sleeve basement car parking and provide two frontages consistent with the DCP control. Both achieve over 1.15 hours of sunlight in midwinter.

The other two subterranean apartments are a result of the topography within the vicinity of the respective building, noting that the regrading of natural surfaces around these units to lower the adjacent levels is generally not possible due to the overland flow path and considerable flooding potential. The protection of these apartments against water ingress is a priority in the site design.

The two subterranean apartments which do not sleeve basement car parking as required by the DCP control (E-215 and E216) have their private open space sitting below the adjacent natural ground level, however the ground level does not interface with external walls or windows. These apartments continue to achieve a high level of amenity as follows:

• E-215 (previously K-1.03): This apartment is partially subterranean along the edge of the balcony. No glazed windows or doors are impacted providing an appropriate level of amenity and outlook for this apartment. The balconies above are setback providing significant daylight with this apartment achieving more than 2 hours of sunlight in midwinter.
• E-216 (previously M-2.02): Has two frontages with only one frontage along its private open space being subterranean. This along with the setback of balconies above ensures good outlook and natural light with the apartment achieving more than 2 hours of sunlight in midwinter.

The proposed development is able to achieve the relevant objectives of the DCP as follows:
• To ensure buildings provide the highest residential amenity.

Comment:

The objectives of the DCP are:

a. To ensure building design is reflective of the landscape setting and environmental features of the site.
b. To establish a fine grain built form.
c. To ensure buildings provide the highest residential amenity.
d. Buildings should be constructed with high quality materials.
e. Buildings should contribute to activity and surveillance of streets and open spaces and foster a sense of community.

The proposed works are considered to be a reasonable built form outcome for the site given the existing slope of the site and site constraints. The proposed buildings have been set back from the boundary to ensure that the proposed works do not result in unreasonable built from impacts to adjoining properties or within the site.

The proposal will maintain the landscape setting of the site, with additional landscape works proposed on the site. This will maintain the open space feel of the site. The building and site design will allow for activities to occur within the site and allow natural surveillance.

The proposed building widths will not adversely impact on streetscape and will be adequately screened from Old Northern Road.

The proposed variation to the DCP is considered satisfactory.

viii. Tree Retention and Landscape Buffer

The DCP requires the retention of 29 significant trees and a 10m landscape buffer is required between the development and Old Northern Road to ensure adequate privacy and streetscape amenity. This buffer must be capable of accommodating deep soil planting. The proposal retains 25 significant trees and the access driveway is located on the Old Northern Road frontage.

The applicant has submitted the following as justification:

<u>Tree Retention:</u>
It is important to note that the requirement to retain 29 significant trees does not reflect the master plan which forms part of the endorsed site specific development controls.

The Arborist Report which was exhibited alongside the Planning Proposal (Ecological Australia September 2022) and aligns with the endorsed master plan which identified that 22 high retention value trees could be retained. This was not reflected in the site specific development controls.

Since the planning proposal, detailed design has progressed in respect to civil, stormwater and overall services to the site. In progressing this work a number of design workshops were held with the project arborist Bird Trees Consultancies and other relevant consultants to maximise and validate tree retention.

The Arborist Report prepared as part of this original DA set out that 22 High Retention Value trees would be retained consistent with the Arborist Report exhibited with the Planning Proposal.

It is noted that the proposal has been amended to retain three additional high retention value trees (tree 14 and 15 and 159) taking the total to 25 high retention value trees. In addition 51 moderate and 28 low retention value trees will also be retained. An updated Arborist Report has been prepared to support the RFI response.

The proposed landscaping outcome is able to achieve compliance with the DCP by providing a minimum of 150 new trees throughout the site, 45% canopy cover on the central communal open space, 26% canopy cover on the remaining developable areas and the inclusion of native trees and shrubs throughout the development.

It is considered that this satisfactorily addresses the intent of the Hills DCP in relation to tree retention. In this regard the proposed development is able to achieve the relevant objective of the DCP as follows:
• To reinforce the importance of the defining natural and aesthetic character of the site through retention of trees and deep soil areas.

<u>Landscape Buffer:</u>
A 10m setback is provided along Old Northern Road which is largely consistent with the DCP requirement.

The proposed development has been modified to remove all private open space from the 10m setback to maximise compliance with this requirement. This is illustrated in the Architectural Drawings.

It is noted that an internal access road is located along part of the 10m landscape buffer to Old Northern Road. This is consistent with the Hills DCP master plan and the deep soil plan

which shows the deep soil extending along only part of the frontage to Old Northern Road, excluding the location of the internal access road.

The exclusion of deep soil in the affected portion of the buffer is due to required accessway providing vehicle access into relevant basement entry points, which physically constrain the ability to provide unencumbered deep soil in those areas.

Despite the absence of deep soil in this part of the buffer, a high-quality landscape treatment will be provided in this area, including landscape strip and boundary fence ensuring effective screening, visual amenity, and a landscaped character consistent with the streetscape objectives.

The majority of the 10m buffer along Old Northern Road does include deep soil enabling tree retention and tree planting, maintaining continuity with the intent of the DCP. In total, the proposal exceeds the minimum 30% site deep soil area required and meets canopy cover requirements of the DCP.

It is considered that this satisfactorily addresses the intent of the Hills DCP in relation the landscape buffer. In this regard the proposed development is able to achieve the relevant objective of the DCP as follows:
• To reinforce the importance of the defining natural and aesthetic character of the site through retention of trees and deep soil areas.
• To ensure sufficient space for landscaping that will complement buildings and enhance the landscape character of the site.
• To ensure that building bulk is appropriately screened from the public realm.

Comment:

a. To reinforce the importance of the defining natural and aesthetic character of the site through retention of trees and deep soil areas.
b. To ensure sufficient space for landscaping that will complement buildings and enhance the landscape character of the site.
c. To ensure that building bulk is appropriately screened from the public realm.
d. To ensure adequate water management and overland flow.
e. To ensure that private and communal open space areas are functional and meet user needs for privacy, solar access, shade and recreation.

Council's Landscape Officer has reviewed the tree retention and has advised that considering the additional design progression in respect to civil, stormwater and other services, it was agreed that the applicant was to redesign Buildings L and M to reduce impacts to trees 14, 15 and 159 and make them viable for retention. The redesign has occurred as part of the assessment of the application, and this allows for the retention of 25 significant trees for the site. Given the extent of the proposed works on the site, the proposed retention of 25 significant trees is considered satisfactory in this instance.

The proposed driveway entry off Old Northern Road is consistent with the location shown within the DCP and will provide safe, efficient and direct vehicle access to the site. It is also noted that the existing driveway is in a similar location. Adequate landscape screen planting is provided across the Old Northern Road frontage of the site. The proposed landscape areas will provide an appropriate landscape setting for the development.

The proposed variations to the DCP is considered satisfactory.

5. Assessment against SEPP Housing 2021

Clause 79, Part 5 of SEPP Housing 2021 states the land to which the SEPP applies. It does not include land zoned C4 Environmental Living (formerly E4 Environmental Living). As such these provisions of the SEPP do not apply to the site.

However, DCP Part D Section 27 – 346-350 Old Northern Road, Castle Hill (site specific DCP) states:

The subject site is zoned C4 – Environmental Living and benefits from an additional permitted use on the land of 'seniors housing'. This unique combination of land use planning controls results in ambiguity in terms of the applicable State Environmental Planning Policies that would ordinarily apply to residential flat building developments and seniors housing developments.

It is appropriate that both State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and State Environmental Planning Policy (Housing) 2021 are complied with as this development comprises seniors housing in the form of residential flat buildings.

As such, any future Development Application for this site must demonstrate compliance with State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and State Environmental Planning Policy (Housing) 2021. In particular, the provisions of the Apartment Design Guide and Part 5 (including references to Schedule 4) of State Environmental Planning Policy (Housing) 2021.

As such the provisions of the SEPPs have been considered in the design of the development in accordance with the DCP provisions.

Division 1 Land to which this part applies, Clause 81 of the SEPP states:

81 Seniors housing permitted with consent

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.

The proposed seniors housing development is permitted under Schedule 1 Additional Permitted Uses under THLEP 2019.

Division 2 Preliminary, Clause 82 states in part:

82 Definitions

in-fill self-care housing *means seniors housing consisting of at least 2 independent living units and at which none of the following services are provided on the site –*

(a) meals,

(b) cleaning services,

(c) personal care,

(d) nursing care.

The proposed development is for in-fill self-care housing.

Division 3, Development Standards:

Clause 84 Development Standards – general

Development consent must not be granted for development to which this section applies unless –

The proposal complies with the provisions of SEPP Housing 2021 with the exception of the following:

84 Development Standards – general This section applies to development for the purposes of seniors housing involving the erection of a building. Development consent must not be granted for development to which this section applies unless:			
Standard	**Required**	**Provided**	**Complies**
Height	For development on land in a residential zone where residential flat buildings are not permitted:	Residential flat buildings are not permitted in the C4 Environmental Living zone.	See below.
	(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and	The development exceeds 9.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.
	(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and	The development exceeds 9.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.
Servicing Equipment	The servicing equipment must - be fully integrated into the design of the roof or contained and suitably screened from view from public places, and be limited to an area of no more than 20% of the surface area of the roof, and	The development exceeds 9.5m and 11.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m. The design of the servicing equipment is suitably designed and screened.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.

	not result in the building having a height of more than 11.5m.		
97 Design of seniors housing			
(1) In determining a development application for development for the purposes of seniors housing, a consent authority must consider the *Seniors Housing Design Guide*, published by the Department in December 2023.	Clause 4.5, Figure 4.5A, Development standard for a third storey setback in zones where residential flat buildings are not permitted as defined in the SEPP (Housing) 2021 in regard to height 9.5m and height 11.5m for 20% of roof area for service plant.	The development exceeds 9.5m and 11.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m. The design of the servicing equipment is suitably designed and screened.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.
108 Non-discretionary development standards for independent living units – the Act, s 4.15 The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.			
Height	No building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,	The development exceeds 9.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.
Servicing equipment	Servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m— is fully integrated into the design of the roof or contained and suitably screened from view from public places, and is limited to an area of no more than 20% of the surface area of the roof, and	The development exceeds 9.5m and 11.5m, however THLEP 2019 allows heights on the subject site from 7 – 22m. The design of the servicing equipment is suitably designed and screened.	No – see comments above in regard to the Clause 4.6 Variation, Attachments 5 and 12 and Attachment C.

	does not result in the building having a height of more than 11.5m.		
Density	The density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less	The proposed floor space ratio is 0.828:1.	No, however the floor space ratio complies with THLEP 2019.
Schedule 4 Standards concerning accessibility and usability for hostels and independent living units			
Part 1 Standards applying to hostels and independent living units			
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 - (a) for a parking space not in a group -the parking space must comply with AS/NZS 2890.6, (b) for a group of 2–7 parking spaces – (i) at least 1 of the parking spaces must comply with AS/NZS 2890.6, and (ii) 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, (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.	Based on Clause 108 of the SEPP, 266 spaces are required. A total of 326 resident spaces are provided. The proposal meets the parking dimension requirements based on the minimum parking requirements however the additional parking spaces do not comply.	Clause 4.6 variation request submitted – see comments below and Attachment D.
Apartment Design Guide – Key Criteria			
Separation	For habitable rooms and balconies, 12m for up to 4 storeys, 18m for 5-8 storeys and 24m for 9+ storeys.		No, however the built form

		is considered to be satisfactory.
Apartment layout	Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height. In open plan layouts the maximum habitable room depth is 8m from a window.	No, however the built form is considered to be satisfactory.

a. Density

Clause 108 of the SEPP limits the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. The proposed floor space ratio is 0.828:1.

The applicant has provided the following justification:

Clause 108 of the Housing SEPP sets out non-discretionary development standards that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

This includes a non-discretionary FSR standard of 0.5:1.

As mentioned previously the Housing SEPP does not apply to the site. Further, a site specific FSR of 0.83:1 has been established through the Hills DCP. The proposed development is compliant with the 0.83:1 FSR. The 0.5:1 FSR is not considered to be relevant. In any case the 0.5:1 standard is a non-discretionary standard which can be varied.

Comment:

The SEPP states that:

The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

THLEP 2019 limits development on the site to 0.83:1. The proposed FSR is 0.828:1.

As such the proposed density is considered satisfactory.

b. Separation

The ADG requires separation for habitable rooms and balconies, 12m for up to 4 storeys, 18m for 5-8 storeys and 24m for 9+ storeys.

The applicant has provided the following justification:

If we refer to the NSW Department of Planning ' Seniors Housing Design Guide, November 2023' it notes that while high density seniors' developments are assessed against the criteria in the Apartment Design Guide "Some flexibility with the Apartment Design Guide will be required for independent living units developments for seniors housing". While the ADG provides guidance to inform design, it is not simply a tick box which must be strictly adhered to in any circumstances, much less when seniors housing is concerned, as we all understand that seniors housing often requires a balancing of priorities to ensure accessibility above all else to ensure the future residents may safely

navigate their surrounds without risk of incident.

A building separation shown on the architectural plans. The plans highlights the following:
• The separation between buildings generally complied with the approved masterplan.
• Connected buildings are the same building and minimum separation of 6 metres is provided
• Staggered windows have been implemented
• Visual privacy screens, frosted windows and high level windows have been implemented to a number of units if the separation is less than guideline.

The ADG compliance table has been updated in this regard.

Where the proposed development is below the minimum building separation distances nominated by the NSW Apartment Design Guide (ADG) under Design Criteria 3F-1 – Visual Privacy screens have been proposed. Privacy screens address the potential for overlooking and privacy impacts, the proposal incorporates privacy screening in lieu of ADG consistency in regards to the separation distance.

This is appropriate for the following reasons:
- No direct line of sight into private living areas:
- Fixed louvres have been incorporated to prevent any direct views into habitable rooms or private open spaces of adjoining apartments.

- Effective mitigation of visual privacy impacts:
- The proposed privacy screens are designed in accordance with best-practice privacy control measures and meet the intent of ADG Objective 3F-1 by providing equivalent or greater privacy protection than a larger separation alone would offer.

- No unreasonable impact on neighbouring developments:
- View corridors, natural ventilation, and daylight access for adjoining buildings remain uncompromised. The screen treatments allow light and airflow while limiting intervisibility between units.

- Precedents and planning merit:
- Similar approaches have been supported by councils and planning panels in comparable developments, particularly where privacy treatments are demonstrated to be effective, durable, and integrated into the building design.

Given the above, the use of privacy screening, frosted windows and high level windows as a mitigation measure achieves the objectives of the ADG and SEPP 65, and the proposed variation should be supported on planning merit.

Comment:

The proposed separation between the buildings is considered reasonable. The design of the units will allow for adequate privacy between buildings with window placement and room locations considered. The offsetting of windows also allows for privacy between buildings. Appropriate solar access and ventilation is also provided between buildings.

c. Apartment Layout

The ADG states that habitable rooms are limited to a maximum depth of 2.5 x the ceiling height. In open plan layouts the maximum habitable room depth is 8m from a window.

The applicant has submitted the following justification:

13 units (6 unit types) are non-compliant with depths ranging from 9.2 to 9.3m. This non-compliance is a result of providing wider clearances between fixtures to facilitate senior living accessibility circulation requirements. The maximum room depth requirements outlined in the ADG are based on a standard market apartment and do not take into consideration the additional depths and clearances required for Senior Living.

As noted above, the DPHI guidance recommends some flexibility in the application of ADG for seniors housing. This is one such instance where accessibility has been prioritised over standard room depth recommendations for standard apartment design. Where deviation is required for accessibility requirements, it must be favoured in acknowledgment of the future residents as this is not typical apartment development and will only be utilised for seniors housing.

Comment:

The proposal provides adequate light and ventilation to the proposed units. The design allows for adequate circulation internally to the units and an appropriate level of amenity will be achieved.

d. Parking

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

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

2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

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

Based on Clause 108 of SEPP Housing 2021, 266 resident spaces are required. A total of 326 resident spaces are provided.

SEPP Housing 2021 requires that at least 15% of spaces comply with the Australian Standards and that at least 50% of the spaces comply with the Australian Standards or be at least 3.3m wide and have a maximum gradient of 1:40 in any direction.

The proposal meets the parking dimension requirements based on the minimum parking requirements however the additional parking spaces do not comply.

The applicant has submitted a detailed Clause 4.6 Variation Request which has concluded as follows:

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances.*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

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.

When the minimum carparking requirements are considered in isolation the proposal is fully compliant with the accessible carparking requirement. However due to expected parking demand within the facility Levande has elected to provide an additional 60 spaces and a variation is sought to the accessible car parking requirements for this additional portion only. This variation request is supported by empirical evidence on car parking demand provided by Levande gathered in their extensive experience of operating similar facilities.
In summary this variation request demonstrates that the proposed variation meets the requirements of Clause 4.6 as summarised below:

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

- *The relevant principles of the Housing SEPP are met, notwithstanding the variation*
- *The inferred objective of the control (being to ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs) is met notwithstanding the variation.*

The variation to the standard is supported by empirical evidence in the form of demand analysis carried out by Levande for a similar seniors housing development, Cardinal Freeman Village (also owned and operated by Levande) which indicates that actual demand for accessible spaces for seniors ILUs is much lower than required under the Housing SEPP. Cardinal Freeman is similar to the proposed development in terms of accessibility to public transport, built form and unit typology and expected demographics.

Levande are the operator of multiple similar facilities and are the long term owner and operator of the Castle Ridge Retirement Village, as such they are in a unique position to understand the demand for accessible spaces in their facilities.

Notwithstanding the accessible car parking requirement of the Housing SEPP is able to be met if calculated against the minimum number of resident car parking spaces which would be required under the non-discretionary car parking standard in the Housing SEPP.

There are sufficient environmental planning grounds to justify the contravention

- *The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation*
- *The proposed development is consistent with the objectives of the C4 Environmental Living zone notwithstanding the variation*
- *The variation to the development standard would maintain an appropriate level of accessible car parking to meet expected demand of the future residents.*
  - There are sufficient environmental planning grounds to justify the contravention, because: Reducing the total number of resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and

functionally of the ILUs for residents with fewer residents having access to a car space and has the potential to impact on car parking in surrounding streets.
- The provision of additional accessible car parking to meet the Housing SEPP requirement would require a much larger basement resulting in a greater environmental impact and reduced potential for deep soil, tree retention and landscaping.
- There are no additional traffic impacts as a result of the carparking above the minimum required and the overall car parking rate is still well below that of a comparable residential development.
- Greater onsite parking will reduce any pressure for on-street parking in the surrounding area and better service the needs of onsite residents and their visitors who choose private vehicle transport.

Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

Comment:

As outlined above, based on Clause 108 of SEPP Housing 2021, 266 resident spaces are required. A total of 326 resident spaces are provided. The SEPP requires that at least 15% of spaces comply with the Australian Standards and that at least 50% of the spaces comply with the Australian Standards or be at least 3.3m wide and have a maximum gradient of 1:40 in any direction.

The proposal meets the parking dimension requirements based on the minimum parking requirements however the additional parking spaces do not comply with the required dimensions.

The provision of additional resident spaces is considered to be beneficial for the future residents. In this regard, the site location does not allow for parking to occur on Old Northern Road. given the slope of the site and travel distances within the site, there would also be limited use of any on-street parking on Palisander Place.

It is also considered to be beneficial to existing residents within Palisander Place for resident parking to be contained on the site.

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

Clause 4.6 states in part:

(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

Comment: The proposed parking required under Clause 108 of the SEPP has been satisfied and the provision of increased resident spaces is considered to be beneficial given site constraints. The provision of larger additional parking spaces is considered to be unreasonable and unnecessary given the circumstances.

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

Comment: There are sufficient planning grounds to justify the proposed parking. These planning grounds acknowledge the limited available on-street parking, need to minimise impacts on existing residents in Palisander Place and benefit to the provision of additional resident spaces.

On the basis of the above comments, the proposed variation to the parking is considered reasonable, will not result in an adverse impact on amenity and the development will provide an appropriate outcome for future residents.

6. Drainage Works over Adjoining Properties

Stormwater runoff generated from the development site and the flow received from the upstream property is currently conveyed overland to an unformed flowpath (channel) which traverses the downstream private property, No. 9 Palisander Place and Council's Pioneer Reserve at the south-western corner of the site (low point). This is an existing situation which has occurred for many years. No formal drainage easement has been registered on the titles of both No. 9 Palisander Place or over the public reserve to formalise this arrangement.

The development proposed to convey the upstream catchment via an underground drainage pipe system and the site stormwater management includes replacing the existing four OSD facilities with six Onsite Stormwater Detention tanks. The combined outflow is proposed to be conveyed to the same outlet point at the low point of the site, however with a defined and formalised channel over the downstream properties including No.9 Palisander Place and the Pioneer Reserve.

The development proposes to incorporate clearing the impeded channel, regrading works to form the channel and shotcreting the embankments to stabilise the soil. The shotcreting will be designed to prevent ongoing erosion due to the amount of water flow to be conveyed through the channel and the anticipated velocity of the flow. Such improvement works along the channel are to be designed and constructed of the works are to consider impact on the existing trees and the geotechnical aspects in the vicinity.

If the development was supported, the channel would be required to maintain a regular and consistent formation within the reserve. Also, the regrading works proposed on the northern side of the channel will be required to incorporate rock structures to retain the slope consistent with the existing channel downstream within the reserve. If supported, the creation of a lawful point of discharge in the form of Inter Allotment Drainage Easement over No. 9 Palisander Place and the Reserve would also require to be registered.

7. Geotechnical Assessment

Clause 7.6 Landslide Risk of THLEP 2019 states as follows:

(1) The objective of this clause is to ensure that development is commensurate to the underlying geotechnical conditions and to restrict development on unsuitable land.
(2) This clause applies to land identified as "Landslide risk" on the Landslide Risk Map.
(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider whether the development's design is responsive to the constraints of landslide risk, including—
(a) site layout, including access, and
(b) the building's design and construction methods, and
(c) the amount of cut and fill that will be required, and
(d) waste water management, stormwater and drainage across the site, and
(e) the specific geotechnical constraints of the site.
(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—
(a) is designed, sited, constructed and will be managed to avoid any landslide risk and potential adverse impact on the development or on land in the vicinity of the development, and
(b) will appropriately manage waste water, stormwater and drainage across the site so as to not affect the rate, volume and quality of water leaving the land.

The site is affected by geotechnically constrained land as shown in Attachment 7. In accordance with Council's Geotechnical Review Assessment Criteria and the risk level which was nominated as Very High in the submitted geotechnical review, a panel review was required to be undertaken by three panel members. The panel members have provided a joint report which has stated as follows:

The independent peer review panel has reviewed the proposed recommendations outlined in the geotechnical report prepared by JK Geotechnics and subsequent additional information listed in Section 3 of this memorandum, including the Landslide Risk Assessment. The panel is of the view that, subject to the implementation of the recommendations contained within the JK report and the associated additional information in Section 3 above, the existing landslide risk to life and risk to property level can be reduced to low upon completion of the proposed development (refer to report 29235A7let3 dated 8 July 2025). It should be noted that this assessment is based on the current documentation and must be reconfirmed prior to the issue of any Construction Certificate and Occupancy Certificate.

Based on the above, the submitted geotechnical reports submitted by the applicant and the peer review by the panel members, the proposal satisfies THLEP 2019.

8. REFERRALS AND SUBMISSIONS

a. Agency Referrals and Concurrence

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

Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments	Resolved
Concurrence Requirements (s4.13 of EP&A Act) - NA			
Integrated Development (S 4.46 of the EP&A Act)			

Water NSW	Section of the Water Management Act, 2000	General Terms of Approval have been provided for the development.	Y
Referral/Consultation Agencies			
Transport for NSW	Section 2.122 - traffic generating development in Schedule 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021	Comments and a condition was provided.	Y
Endeavour Energy	Section 2.48 Determination of development applications of State Environmental Planning Policy (Transport and Infrastructure) 2021	Comments and a condition was provided.	Y
Sydney Water	Section 2.161 Development permitted with consent of State Environmental Planning Policy (Transport and Infrastructure) 2021	Comments and a condition was provided.	Y
Castle Hill Police	Referral undertaken in accordance with the requirements of the "Safer by Design Guidelines" and the Protocol between The Hills Shire Council and Castle Hill Police.	The Castle Hill Police were advised of the application however have not provided any comments.	NA
Department of Planning and Environment - Water	Referral undertaken under Section 91 of the Water Management Act, 2000.	Advice provided that the drainage channel was not mapped as a creek and that a Controlled Activity Approval was not required.	NA

b. Council Referrals (internal)

The Development Application has been referred to various Council officers for technical review as outlined below.

Officer	Comments	Resolved
Ecology	Council's Environmental Assessment Officer has reviewed the submitted plans and information and does not support the proposal.	N
Landscape	Council's Senior Landscape Assessment Officer has reviewed the submitted plans and information and does not support the proposal	N

Parks and Reserves	Council's Principal Co-ordinator Open Space and Recreation has reviewed the submitted plans and information and does not support the proposal.	N
Health	Council's Senior Environmental Health Officer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Waste	Council's Resource Recovery Co-ordinator has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Waterways	Council's Stormwater Systems Engineer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Contributions	Council's Senior Town Planner has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Fire Safety	Council's Principal Co-ordinator Fire Safety has reviewed the submitted plans and information and raised no objections subject to conditions.	Y
Land Information	Council's Information Management Officer has reviewed the submitted plans and information and raised no objections subject to conditions.	Y

i. Ecology Comments

The proposal has been reviewed by Council's Environmental Assessment Officer who has raised the following concerns:

The study area of the proposed development, encompassing both the subject property and the public open space reserve, contains modified and remnant native vegetation identified as the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest (BGHF) and planted native/exotic vegetation.

According to the NSW Threatened Species Scientific Committee's Final Determination, BGHF is part of the North Coast Wet Sclerophyll Forests vegetation class (Keith 2004) and is severely fragmented with a highly restricted distribution. Dominant eucalypts in BGHF are long-lived, and structural changes in the community have largely resulted from the extensive removal of large old trees. Remaining stands are highly modified in their understory, and BGHF has experienced a very large reduction in geographic extent over a timeframe relevant to its species life cycles and ecological characteristics.

Clearing of native vegetation is listed as a '*Key Threatening Process'* and small-scale clearing associated with residential subdivisions is identified in the final determination as a threat to BGHF due to ongoing decline in the extent of the community.

A Flora and Fauna Report (Biosis, V. Final 04, 2 September 2025) submitted to support the proposed development, applied the '*Threatened Species Test of Significance*', to evaluate whether the proposal is likely to significantly affect threatened species or ecological communities or their habitat, which is a requirement under Section 7.3 of the *Biodiversity*

Conservation Act 2016 (BC Act). The Flora and Fauna report concluded that the proposed works do not trigger entry into the BOS.

Under the *Biodiversity Conservation Act 2016* (BC Act), entry into the Biodiversity Offset Scheme (BOS) is triggered when thresholds or conditions are met including clearing of native vegetation that:

- is carried out in a declared area of outstanding biodiversity value (AOVB)
- exceeds the area clearing threshold,
- impacts vegetation mapped on the Biodiversity Values (BV) Map
- **is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance.**

The review of the *Threatened Species Test of Significance* provided in the Flora and Fauna Report (Biosis, September 2025), was considered in accordance with the *Threatened Species Test of Significance Guidelines (NSW, July 2018),* issued under Section 7.3(2) of the BC Act, *including* consideration of the following:

- *whether the list of threatened species, ecological communities and key threatening processes considered in the assessment were comprehensive and appropriate for the site*
- *whether adequate justification for excluding threatened species and ecological communities from consideration was provided*
- *whether the potential for indirect impacts on areas of outstanding biodiversity value has been evaluated and justified*
- *whether both direct and indirect impacts have been considered when applying the test of significance*
- *whether impacts across the full project life cycle have been considered when applying the test of significance*
- *whether measures proposed to minimise impacts which influence the conclusion of the test of significance have been successfully implemented in similar scenarios for the relevant threatened species or ecological community*
- *whether the conclusions in the application of the test of significance are supported by appropriate data, information and reasoning*
- *the currency, relevance and reliability of data and information relied upon*
- *whether data gaps and other uncertainties are clearly identified or otherwise exist*
- *whether the test of significance has been applied in accordance with these guidelines.*
- *the extent to which the development or activity contributes to the cumulative impacts of existing and planned developments or activities on threatened species, ecological communities, habitats, AOBVs and key threatening processes.*

The data, information and reasoning provided in the test of significance and supporting information was further considered to determine whether a proposed development or activity '*is likely to significantly affect threatened species or ecological communities, or their habitats'* and it has been determined that the information provided is inadequate to confidently conclude there will ***not*** be a significant impact on the CEEC, BGHF or its habitat, and that where information is lacking, per the Guidelines, the default assumption is that a significant impact is likely.

The information gaps present a level of scientific uncertainty regarding the long-term viability of BGHF within the landscape. The areas that lack sufficient information include:

1. Impacts on Hydrological Processes

BGHF typically occurs on fertile soil derived from Wianamatta Shale in sheltered gullies or on upper slopes, particularly where rainfall exceeds 1050 mm per annum. The community is characterised by tall moist forest species (e.g. *Eucalyptus saligna*, *E. pilularis*) and shrub species are typically mesophyllous and more commonly within gullies, species are adapted to moist habitats (e.g. Lilly Pilly (*Acmena smithii*), Sandpaper fig (*Ficus coronata*) etc.), which suggests greater soil moisture availability in those lower or protected locations.

Although BGHF is *not* classified as a Groundwater Dependent Ecosystem (GDE) in the NSW GDE Atlas, activities such as deep excavation intersecting the phreatic surface may alter hydrology processes and reduce soil moisture, particularly in lower elevation zones. These changes have the potential to impact the health and vitality of BGHF.

The *Geotechnical and Hydrogeological Investigation Report* (JK Geotechnics, June 2025), Groundwater Seepage Analysis (Appendix E), indicates that the phreatic surface intersects the soil zone meaning soil moisture in and beyond the study area is likely influenced by groundwater.

The Flora and Fauna Report asserts that root systems of key canopy species are generally limited to the upper 1-3 m soil, and that water uptake is mostly from rainfall infiltration, arguing that vegetation in these areas is unlikely to access groundwater regularly. However, changes to shallow groundwater or seepage patterns may still affect soil moisture in low-lying BGHF patches, an impact not considered or assessed in the Flora and Fauna Report.

2. Unresolved Issues with Final Design and Footprint

Key design details remain uncertain, including the final extent of excavation, earthworks, and placement of rock anchors. These impacts may intersect or occur beyond site boundaries, potentially affecting retained native vegetation, including BGHF.

Stormwater infrastructure, cross-sections, grading plans for drainage outlets, and interfaces with existing natural waterways/reserves have not been fully detailed (discussed in more detail in Tree comments).

The precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If information is not available to conclusively determine that there will not be a significant impact on a threatened species or ecological community, or its habitat, then it should be assumed that a significant impact is likely.

The assessment has identified that, in applying the test of significance, there are unresolved information gaps and uncertainties relating to key aspects of the proposed development.

These include the extent of hydrological changes, the scope and nature of earthworks, the positioning of rock anchoring structures, and the final development footprint, which has not been adequately defined. Given these uncertainties, there is a risk of serious and irreversible impacts to the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest (BGHF). On this basis, the development is considered '*likely to significantly affect'* BGHF and its habitat.

In accordance with Section 7.3 of the *Biodiversity Conservation Act 2016*, the proposal meets the entry criteria for the Biodiversity Offset Scheme (BOS), as it is likely to significantly impact a threatened ecological community. Under Section 7.7(2) of the *BC Act*, any development that is likely to significantly affect threatened species or ecological communities must be supported by a Biodiversity Development Assessment Report (BDAR), prepared by an accredited assessor. No BDAR was submitted with the application.

Furthermore, under Section 7.13(2) of the *BC Act* and consistent with the *Environmental Planning and Assessment Act 1979*, the consent authority is required to consider the likely impacts of the proposed development on biodiversity values as assessed in the BDAR. In the absence of a BDAR, the consent authority is unable to fulfil its statutory obligation to consider these impacts, particularly where a significant effect on a CEEC has been identified.

Given the likely significant impact on a Critically Endangered Ecological Community, the absence of a required BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016*, the application is non-compliant and must be refused on these grounds.

ii. Landscape Comments

The proposal has been reviewed by Council's Senior Landscape Officer who has raised the following concerns:

<u>Trees within proximity to the Still Basin</u>
Insufficient information has been provided that clearly outlines the proposed stormwater drainage where the stilling basin is proposed. Further information in relation to the internal swale, creek channel and existing basin was requested during the meeting with the applicant on 7 August 2025 as specified below:

'The three sketches do not provide any design details of rectification works relating to downstream channel other than an annotation stating, 'shotcrete stabilisation'. The channel design must be detailed adequately similar to the internal diversion channel shown in yellow colour on the sketch SKC02.01. Rev D dated 06/06/2025 below.

The information provided shall include dimensions, existing and proposed levels of the channel, scope of works such as site clearing, construction activities and impact on adjoining properties and trees, to demonstrate conveyance of the ultimate 5% AEP and 1% AEP flows within and along the channel respectively without causing adverse impact to the locality.'

The applicant has provided some additional plans/sections however has not provided a section for Chainage 0.000 and information in relation to the interface between the existing low flow outlet, headwall and proposed upstream of rock-lined outlet of which are in close proximity to high retention value trees which are to be retained.

A finalised stormwater drainage design and detailed sections must be prepared for assessment to ensure that all impacts have been adequately quantified. These are to then be provided to the arborist for their assessment on the impacts to trees.

Trees within the Channel

The Arborist has reviewed the typical sections and the Siteworks and Stormwater Management Plan and has determined that the trees were viable for retention. The Arborist has stated that:

'7.10 This assessment is based on the proposed rock spillway and shotcrete creek channel construction methodology in the vicinity of Tree 93, 94, 95, 96 and Trees 479 to 716 adjacent to the creek channel, to be constructed above existing soil levels where possible and any excavation to be carried out using nondestructive excavation methods such as hand excavation by shovel (no bars, mattocks, picks or mechanized excavation allowed), Air Spade or Vacuum truck operating at less than 1000Psi under the supervision and direction of the Project Arborist. No structural woody roots of existing trees (greater than 20mm) are to be damaged and all stormwater structures are to be installed and constructed without impacting these roots. Where structural woody roots are encountered and exposed, roots are to be wrapped in hessian and geofabric and protected to the satisfaction of the Project Arborist. Based on this
assessment, and this construction methodology, these trees will remain viable to be retained.'

'7.14 The NRZ of Tree 97 is encroached by the proposed rock lined stormwater drainage outlet, the proposed building and landscape retaining wall by a moderate encroachment as defined by AS4970-2025 Protection of Trees on Development Sites. Consideration is made under clause 3.3.4 of these species tolerance to root disturbance and the existence of existing structures providing a physical barrier to root development. This tree will remain viable to be retained on this basis.'

Within Appendix B Downstream Drainage Channel, creek cross sections have been provided. These detail minor cut and fill works. For further clarity, the bulk earthworks plan is to incorporate this information and extend the plan to detail the finalised cut/fill proposed for the drainage channel.

Trees to Northeast corner

Further clarity is required to determine the impacts to trees and the unlabelled swale. Within the Civil Package, there are typical details of swales and the bulk earthworks plan show cut and fill for the swale. The Arborist has assessed impacts to the neighbouring trees and is satisfied these trees are viable for retention.

'7.09 Trees 401, 402, 403, 404, 405, 406, 407, 419, 420, 428, 429, 430, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, and 449 are trees located on adjacent neighbouring properties that have NRZ that extend within the subject site. There are no structures proposed within the NRZ and JN Engineering BULK EARTHWORKS SITE PLAN – C200 – 01 indicates that the proposed levels within the NRZ are proposed to change by between 0 to 250mm. Levels are to be adjusted locally to retain existing soil levels within the NRZ of these trees to protect the viability of these trees to be retained.'

The arborist report has not provided additional information on the impacts to trees 1, 240, 241, 242 and 243 within Section 7.0 Recommendations. This additional information is required to clarify whether these trees are viable for retention.

Rock Anchors and Potential Tree Impacts
Further information from the Geotechnical Engineers is to be provided to allow for a finalised Anchor Concept Design. Within the structural engineering package, the length of the proposed temporary rock anchors has not been determined at this point in time. The plans show a notation that states that:

'The geotechnical report provides limited information regarding the rock level and rock strength. Additional geotechnical investigation is recommended to verify and confirm the parameters in current report which are critical for the design and construction of the proposed anchors.'

As anchors may extend beyond the site boundary, this may affect neighbouring trees and vegetation. A finalised rock anchor design is required to determine the viability of tree and vegetation retention.

iii. Parks and Reserves Comments

The proposal has been reviewed by Council's Principal Co-ordinator Open Space and Recreation who has raised the following concerns:

Comments made regarding the potential impact on public land within Pioneer Place Reserve as a result of proposed redevelopment works in adjoining Castle Ridge Resort retirement village. It is noted that Pioneer Place Reserve has areas of critically endangered Blue Gum High Forest.

The Applicant has requested that infrastructure be incorporated into open space landscape to disperse the projected increase of stormwater into public land. The proposal to install a Shotcrete drainage channel to distribute water is generally supported for this location. Shotcrete offers a durable and effective method for managing stormwater flows, particularly in areas where erosion control and structural stability are critical. Its application can help in minimising ongoing maintenance requirements and reduce the risk of channel failure, which is especially important in sensitive environments.

However, given the site's environmental status, the information provided to date has not addressed the following matters particularly regarding the potential arboricultural impacts associated with the installation of the shotcrete channel:

- The extent of tree removal or root disturbance required for construction;
- The proximity of works to significant or protected vegetation;
- Proposed mitigation measures to minimise impacts on existing trees and vegetation;
- Any requirements for compensatory planting or restoration.
- This information is essential to ensure that the proposed works align with Council's environmental objectives and statutory obligations for the protection of significant vegetation.

iv. Traffic Comments

The proposal has been reviewed by Council's Senior Traffic Engineer who has raised no objection to the proposal subject to conditions relating to ensuring that the design of the pedestrian refuge does not impede bus operations and provision of a new bus shelter, shared path and footpath.

In regard to comments made within submissions and at the Conciliation Conference, the following additional comments were provided:

The proposed development is not expected to result in unacceptable traffic implications on Palisander Place. Palisander Place is a no-through road serving 16 residential dwellings and a retirement village. As outlined in the Traffic Assessment submitted in support of the Planning Proposal, the highest traffic generation in Palisander Place is 32 vehicles in the Saturday peak hour. Given the current proposal represents a 15% reduction in apartment yield compared to the Planning Proposal, additional traffic generation from this proposal is expected to be even lower. The 16 residential dwellings are estimated to generate 12 vehicles per hour. As such, the total peak volume of traffic in Palisander Place is estimated to be less than 44 vehicles per hour.

While the current traffic report does not explicitly address traffic generation specific to Palisander Place, it references the traffic impact assessment included in the original Planning Proposal. The original assessment estimated a net increase of 4 vehicles per hour (vph) during the AM peak, 2 vph during the PM peak, and 7 vph during the Saturday peak, on Palisander Place. Given the current proposal represents a 15% reduction in apartment yield compared to the Planning Proposal, additional traffic generation from this proposal is expected to be even lower.

The traffic report does not appear to make any reference to the village currently operating at a reduced capacity. Regardless, the existing traffic generation based on the recent surveys conducted by the applicant's traffic consultant is generally consistent with the figures documented in the traffic impact assessment prepared for the Planning Proposal. This assessment calculated expected traffic volumes based on the RMS Guide to Traffic Generating Developments, as well as based on traffic surveys of the existing site. The higher of these two figures was used to assess the likely traffic impacts.

An environmental capacity of 200 vehicles per hour is specified in the RMS Guide to Traffic Generating Developments. For context, Roger Avenue in Castle Hill, also a cul-de-sac with a comparable number of residential dwellings and narrower road width, has an environmental capacity of 327 vph according to Council's Residential Development and Traffic Study 2005. The total peak volume of traffic in Palisander Place is estimated to be less than 44 vehicles per hour, and as such well within the environmental capacity of Palisander Place.

Generally, construction related traffic impacts are assessed by Council's Construction Engineers prior to the issue of construction certificate. As a standard requirement, the developer/builder will need to submit a Construction Traffic Management Plan (CTMP) or Traffic Guidance Schemes to address all construction-related traffic matters and ensure minimal disruption to surrounding properties. The CTMP will typically include a construction traffic route plan with swept path diagrams to demonstrate that access is feasible. It is expected that most heavy vehicle access will occur via Old Northern Road. Where necessary, the developer/builder will be required to implement traffic control measures, such as STOP/SLOW, pedestrian diversions to maintain safe and clear access for local residents. While construction crews and tradespeople are encouraged to use on-site parking where possible, an increased demand for on-street parking is anticipated. This is typical for developments of this nature. These impacts are expected to diminish as construction progresses and nears completion.

Palisander Place is approximately 8m wide, which is typical for a local street. With vehicles parked on both sides, the effective travel lane width may narrow to around 4m. This is still considered adequate for construction vehicle access, though it may require opposing traffic to give way. As noted above, the developer/builder will need to address this issue as part of

the CTMP submission. This may include implementing measures such as traffic controllers and/or limiting the size/volume of construction vehicles using Palisander Place.

c. Community Consultation

The proposal has been notified or advertised on three occasions as follows:

i. First notification period - 26 July 2024 – 19 August 2024.

A total of eleven submissions were received and a petition signed by 13 persons. Of the eleven submissions received, four were in support of the application.

ii. Second notification period – 11 September 2024 – 11 October 2024.

During the assessment process, it was identified that the proposal is Nominated Integrated development to Water NSW. As such the proposal was required to be exhibited in accordance with the requirements of the EP and A Act, 1979.

A total of four submissions were received, which included one submission in support. It may also be noted that the petition submitted during the first notification period was resubmitted.

iii. Third notification period – 27 June 2025 – 28 July 2025.

The proposal includes drainage works in Pioneer Reserve which is owned by Council. As such Council's Conflict of Interest Policy is triggered which requires advertising of any DA where land is in Council ownership.

A total of four submissions were received, which included one submission in support.

Issue	Council Comments
First Notification Period	
Trucks entering and leaving Palisander Place during construction.	During the Stage 1 works, construction traffic will access the site from Palisander Place. During the Stage 2 and 3 works, construction traffic will access the site from Old Northern Road
Increased traffic in Palisander Place from the development.	Council's Senior Traffic Engineer has reviewed the proposal and has advised that the proposed development is not expected to result in unacceptable traffic impacts on Palisander Place. See comments above in Section 8(b).
Construction noise, especially for an extended period.	It is acknowledged that some impacts will occur during the construction period. Council's Senior Environmental Health Officer raised no objection to the proposed based on construction noise.
If approved the development will create a precedent for high rise buildings in a C4	The site is zoned C4 Environmental Living under THLEP 2019. A senior's housing development is generally a prohibited use within the zone however Schedule 1 Additional Permitted Uses under THLEP

Environmental Living zone and in the area.	2019 applies to the site and permits the proposed development. See comments above in Section 1.
Traffic safety.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which requires that the developer provides traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian access, residential traffic and construction traffic is appropriately managed.
Increased traffic and parking on Palisander Place raises safety concerns for children, pedestrians, cyclists and retired and senior people. Palisander Place was not designed for heavy traffic. The road has poor sight lines and is narrow. Road crossing hazards for pedestrians and cyclists.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which requires that the developer provides traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian traffic, residential traffic and construction traffic is appropriately managed.
Future residents will have to rely on private transport as the current transport infrastructure does not support the size and scale of the development.	Future residents of the village would be able to access public transport on Old Northern Road and would also have access to a village bus. Should consent have been recommended, a condition may have been recommended which required compliance with the SEPP Housing requirements or that a village bus be provided.
Adequacy of the submitted traffic report. The report does not address the traffic increase in Palisander Place.	The submitted traffic report has been reviewed by Council's Senior Traffic Engineer who has raised no objection to the proposal. See comments above in Section 8(b).
Question of whether the vehicle access at Palisander Place will be upgraded to cater for the increase in traffic.	The existing access to the site will be regraded to ensure that a safe vehicle access point is provided to the development for residents, waste collection vehicles and other persons accessing the site.
Impact on Palisander Place from waste vehicles and delivery vehicles accessing the site.	It is not anticipated that waste or delivery vehicles will impact on Palisander Place given that they will enter into the site for waste collection and deliveries.
Concern that residents and visitors will use Palisander Place for vehicle access as it is closer to parking facilities.	Vehicle access will be available from both Palisander Place and Old Northern Road for residents and visitors.

Adequacy of visitor parking. Visitors may park on Palisander Place if there are no available spaces within the site.	The DCP and SEPP do not contain any specific requirements for visitor parking. There are 14 visitor spaces which is considered reasonable for the development.
Parking currently occurs on Palisander Place from school children and families from a local school.	It is acknowledged that non-resident parking on local streets occurs. This is not a matter for consideration as part of the subject application.
The proposal is contradictory to protecting, managing and restoring areas of high ecological, cultural and aesthetic value given the C4 Environmental Living zone. The proposal does not satisfy the zone objectives and will result in unacceptable noise, environmental and traffic impacts.	Council's Landscape and Ecology Teams have raised concerns with the proposal. See comments in Section 8(b).
The proposed development is substantial in size.	The size of the development and extent of works is acknowledged.
The proposal is inconsistent with the character of the area and should be refused.	The site is currently used as a retirement village and the proposed use is consistent. The proposed works are considered to be satisfactory with the future modern character of the area.
The acoustic report uses a noise classification of suburban. The classification should be rural residential given the zoning of the site.	Council's Senior Environmental Health Officer has reviewed the acoustic report and has advised that the acoustic report has classified the site as suburban residential which is agreed.
Concern regarding noise generation from the development, including traffic noise. There are no mitigation measures proposed, such as an acoustic barrier, to protect the amenity of residents on Palisander Place.	It is acknowledged that some impacts will occur during the construction period. Council's Senior Environmental Health Officer raised no objection to the proposed based on construction noise.
The plans show the retention of some parkland and high-quality landscaping however this will not mitigate impacts to the environment that contravene the zoning and ESD principles.	The proposal includes the provision of an internal landscape area through the centre of the site and the retention of high-quality trees. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).

The tree removal is inconsistent with the zone objectives.	The proposal includes the retention of high-quality trees. The proposal has been reviewed by Council's Senior Landscape Officer who has advised further information is required to demonstrate impact on trees. See comments in Section 8(b).
The damage to the natural environment and existing substantial housing footprint shows how the proponent is prioritising financial and commercial interests over public health and safety and housing interests.	The proposal is a permissible use in the zone under the provisions of THLEP 2019. The proposal is compliant with the required floor space ratio provisions under THLEP 2019. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).
The proposal contravenes the ESD principles of the EP and A Regulations. The removal of trees will create impacts.	The proposal includes the provision of an internal landscape area through the centre of the site and the retention of high-quality trees. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).
The height variation should not be supported to ensure compliance with the zone objectives. There was no due consideration in the report addressing how the height up to the LEP 22m height limit would cause reduced light, open space, and urban encroachment on the natural environment and native habitat during the construction phase and once finalised and occupied. Multi storey buildings are inconsistent with the character of the area.	The proposed height variation has been addressed in Section 4 and is considered satisfactory.
The proposal is better suited to a high-density area rather than a high ecological and biodiverse area.	The proposal is a permissible use in the zone under the provisions of THLEP 2019. The proposal is compliant with the required floor space ratio provisions. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).
Impact on the streetscape of Palisander Place.	The proposed works are considered satisfactory when viewed from Palisander Place, with Building A being the building mainly visible from the street. Appropriate landscape works are proposed to provide landscape screen planting.

Extent of tree removal.	The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer. The extent of tree removal has been reviewed and further information is required to demonstrate impact on trees. See comments in Section 8(b).
The proposal is not in the best interest of current residents and the site is not suitable for the development.	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. The proposed works are considered satisfactory and will not unreasonably impact on residents within the area.
Two vehicle access points to the development are not adequate for the site. This impacts on safety and functionality.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village.
Evacuating residents will be a challenge given the floor space ratio and only one internal road. The proposal does not demonstrate how it would protect vulnerable elderly residents in an emergency. Safety of residents is a concern.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village. Should consent have been recommended, a condition may have been recommended which required the preparation of a flood emergency response plan.
The proposal is not in the public interest.	The proposed development is considered to be unsatisfactory and is contrary to the public interest.
The site is not close to living amenities.	The site is current used as a retirement village and the proposed use will have the same level of access to facilities.
The proposal affects the reputation of The Hills as an environment friendly and beautiful place.	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. The proposal is compliant with the required floor space ratio provisions under THLEP 2019. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).
This project disproportionately benefits the business owner while imposing significant lifestyle disruptions on current residents, both for the aged residents living in Castle Ridge, in moving them from their current home, increasing their living cost, and impacting the neighborhood. It is unjust to	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. The operator has been in consultation with existing residents in regard to the proposal. Consideration of whether to remain in the village is a matter for the existing occupants of the village.

prioritize commercial interests over the well-being and quality of life of the community.	
Vehicle access should be to Old Northern Road, in particular service vehicles and vehicles over three tonnes. This should also apply to the construction phase.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village.
Any increase in heights of the proposed buildings near Palisander Place is opposed as this will impact on environment and general outlook.	The proposed height is considered satisfactory. See comments in Section 4. The proposal will result in a reasonable streetscape outcome.
The existing development blends into the environment quite well however with the removal of 2/3 of the existing trees on site this effect will be lost especially with the proposed building heights.	The proposal includes the provision of an internal landscape area through the centre of the site and the retention of high-quality trees. The proposal has been reviewed by Council's Senior Landscape Officer and Environmental Assessment Officer who have raised concerns with the proposal. See comments in Section 8(b).
Request that the access to Palisander Place be closed for trades during construction and services after construction, with all access from Old Northern Road.	During the Stage 1 works, construction traffic will access the site from Palisander Place. During the Stage 2 and 3 works, construction traffic will access the site from Old Northern Road. Following the completion of works, vehicle access will be from both Palisander Place and Old Northern Road.
Vehicle accidents have occurred in the immediate area due to the current traffic and parking.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which required that the developer provide traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian access, residential traffic and construction traffic is appropriately managed.
There are problems currently at Castle Ridge including the amount of stairs, uneven pathways, age and deterioration of buildings, mould and seepage of water into some garages.	It is acknowledged that the existing village is older.

The proposal is an exciting future for existing residents. The existing village is ageing. Residents have been kept informed about the proposal.	It is acknowledged that some existing residents are supportive of the proposed works.
The proposal will allow residents to move more easily around the site using lifts and passages. Currently residents must use stairs due to the slope of the site which are difficult. Previously residents have been forced to move as they could not negotiate the stairs.	The proposed works would improve pedestrian access across the site via pathways and lifts.
A variety of common facilities will be provided.	The proposal includes a clubhouse comprising gymnasium, indoor pool, village café, health consulting rooms and activity rooms.
The proposal will use sustainable construction methods reducing carbon emissions and reducing maintenance costs.	The proposed works will be constructed using modern methods and appropriate materials. A BASIX Certificate has also been submitted which addresses water, thermal performance and energy scores.
The current village was built in a time when modern engineering methods were not available, there has been much damage over time due to the incessant rain period that caused serious mould and causing many residents to have to shift from their homes for health reasons. This will not be an ongoing issue with the redevelopment of the village.	The proposed works would be constructed using modern methods and appropriate materials.
The village is old and dangerous. All of the log reinforcement walls are rotting and are unsightly.	It is acknowledged that some existing residents are supportive of the proposed works.
Resident is looking forward to a new apartment with access to parkland and gardens.	It is acknowledged that some existing residents are supportive of the proposed works.

The proposal will add to housing diversity and will allow residents to live in the local area as they age.	It is acknowledged that some existing residents are supportive of the proposed works.
The images of the development appear to be in keeping with the character of Castle Hill.	It is acknowledged that some existing residents are supportive of the proposed works.
Second notification period	
Disruption and safety risks due to inadequate arrangements for construction vehicles and tradespeople. Palisander Place is not suitable for heavy traffic associated with a large-scale development.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which required that the developer provide traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian access, residential traffic and construction traffic is appropriately managed.
Recently a property on the street underwent renovations which resulted in disruptions such as blocked vehicle access and damage to cars due to illegally parked trucks. Allowing a larger scale development will likely result in even more severe problems.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which required that the developer provides traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian access, residential traffic and construction traffic is appropriately managed.
Palisander Place is not wide enough for heavy construction traffic.	Council's Senior Development Engineer and Senior Traffic Engineer have reviewed the proposal and have raised no objection to the proposal. See comments above in Section 8(b).
Council must consider alternative vehicle access points to the development to minimise disruption and ensure resident safety. If the DA is approved the responsibility for any resulting accidents, damages or prolonged disruptions would fall on the Council.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village.
The increase in commercial and residential traffic on Palisander Place will impact on driving safety. Palisander Place is a narrow and small road.	Council's Senior Development Engineer and Senior Traffic Engineer have reviewed the proposal and have raised no objection to the proposal. See comments above in Section 8(b).

Near-misses have occurred between cars heading to the aged care centre.	This is matter for Police and is not a consideration with the subject application.
The proposed building height exceeds acceptable limits and it would infringe on the privacy of surrounding residents.	The proposed height variation has been addressed in Section 3 and is considered satisfactory.
Allowing high-rise buildings in a residential area far from living amenities sets a concerning precedent, grant exceptions to zoning and environmental protection regulations for large projects undermines the integrity of our community. It may lead to more applications for high-rise developments in the vicinity, regardless of the zoning, further compromising the privacy and tranquillity of the neighbourhood.	The proposed height variation has been addressed in Section 3 and is considered satisfactory. The proposed use is permissible in the zone under the provisions of THLEP 2019.
This project disproportionately benefits the business owner while imposing significant lifestyle disruptions on current residents, both for the aged residents living in Castle Ridge, in moving them from their current home, increasing their living cost, and impacting the neighborhood. It is unjust to prioritize commercial interests over the well-being and quality of life of the community.	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. The operator has been in consultation with existing residents in regard to the proposal. Consideration of whether to remain in the village is a matter for the existing occupants of the village.
The current village has many stairs which are difficult for residents, wooden reinforcement walls are rotting and outside tiles are chipping and/or cracking. Residents have been promised new and modern buildings with safety features and it will be easier to access around the	It is acknowledged that some existing residents are supportive of the proposed works.

village. Request that Council support the DA as soon as possible.	
Third Notification Period	
Traffic congestion and associated safety risk.	Council's Senior Traffic Engineer have reviewed the proposal and have raised no objection to the proposal. See comments above in Section 8(b).
Near-misses have occurred between cars heading to the aged care centre.	This is matter for Police and is not a consideration with the subject application.
When turning right onto the street, limited visibility has often prevented me from seeing oncoming traffic in time, making it difficult to stop safely. Additional traffic from the proposed development would significantly heighten the risk for all residents in the area.	Council's Senior Traffic Engineer have reviewed the proposal and have raised no objection to the proposal. See comments above in Section 8(b).
The site is located far from essential amenities, making it an unsuitable location for high-density development. The surrounding area is not equipped to support such growth and lacks the necessary infrastructure.	The site is current used as a retirement village and the proposed use will have the same level of access to facilities.
The development would greatly impact the peaceful living environment currently enjoyed by local residents. This is a quiet and tranquil area, and the scale of the proposed development is entirely inconsistent with the character of the neighbourhood. Residents had no expectation that such a high-density project would be introduced here, and its presence would dramatically affect their quality of life.	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. It is acknowledged that there may be some disruptions during construction. Upon completion of the development, it is not anticipated that the proposal will impact on the living environment of the area.
The proposal appears to conflict with the council's current planning principles. Approving the development	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP. As such the proposal is not setting a precedent.

would set a concerning precedent, potentially opening the door to similar high density proposals in areas that are not planned or suited for such changes. This would undermine the integrity of established planning frameworks and negatively impact existing communities.	
The proposal raises concerns about fairness and consistency. Large-scale developments should not be permitted to override local planning guidelines, disrupt established neighbourhoods, or disregard reasonable planning expectations. Doing so would be both unreasonable and inequitable.	The proposal is a permissible use in the zone under the provisions of THLEP 2019 and is subject to a site specific DCP.
I believe the development is also unfair to the current residents of the aged care centre. The increased cost, expense, activity, noise, and disruption would not be in their best interests and could have a negative impact on their wellbeing.	The operator has been in consultation with existing residents in regard to the proposal. Consideration of whether to remain in the village is a matter for the existing occupants of the village.
Comment that resident is not averse to the development of the Castle Hill Resort but to the use of Palisander Place as an entrance.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village.
To have an extensive development in Palisander Place will be catastrophic for the residents and their right to live in a quiet environment will be destroyed for several years together with the unknown after it is completed.	It is acknowledged that there may be some disruptions during construction. Upon completion of the development, it is not anticipated that the proposal will impact on the living environment of the area.

Palisander Place is impacted by the students from Oakhill College parking in First Farm Drive and now into Palisander Place as more are driving cars as the year progresses The students often are driving too fast and it is unsafe for pedestrians.	It is acknowledged that non-resident parking on local streets occurs. This is not a matter for consideration as part of the subject application.
Suggestion to reduce the number of units proposed and to extend Palisander Place into the development where suitable turning circles and space can be provided for trucks to turn and trades vehicles to park within the resort. The development should be self supporting both in construction and beyond and not impact at all on existing residents in the street and surrounds. Question of whether it is possible to create an entrance from Pioneer Reserve in First Farm Drive.	The proposal is under consideration based on the subject application. The proposal includes basement parking which includes a waste collection area and visitor spaces for use by trades visiting the site.
Request that other options for vehicle access be presented to residents.	The provision of two vehicle access points is considered satisfactory to provide appropriate vehicle access to the site. This is consistent with the layout of the existing village.
The planned demolition of existing structures and prolonged construction activities are expected to generate substantial noise and ground vibrations. These disturbances will severely impact the daily lives of nearby residents, especially the elderly, children, and individuals working from home.	It is acknowledged that there may be some disruptions during construction. Upon completion of the development, it is not anticipated that the proposal will impact on the living environment of the area. Council's Senior Environmental Health Officer has raised no objection to the proposed works.
The demolition of old buildings may release hazardous materials such as asbestos, and construction dust will likely	Council's Senior Environmental Health Officer has reviewed the proposal. Should consent have been recommended, conditions regarding asbestos removal signage and an asbestos management plan may have been recommended.

degrade air quality. This poses serious health risks, particularly for residents with respiratory conditions or compromised immune systems.	
The frequent movement of large construction vehicles in and out of the site will likely cause increased congestion on local roads. Additionally, this raises concerns about pedestrian safety, especially in narrow residential streets where children and seniors often walk.	It is not anticipated that the proposal will unreasonably impact on traffic safety. Should consent have been recommended, a condition may have been recommended which required that the developer provides traffic safety controllers in Palisander Place during the Stage 1 works to ensure that pedestrian access, residential traffic and construction traffic is appropriately managed.
Depending on the height and design of the new buildings, there may be a significant reduction in natural sunlight reaching adjacent homes. Furthermore, high-rise structures may compromise the privacy of nearby residents.	The proposed height variation has been addressed in Section 3 and is considered satisfactory.
Prolonged construction noise, dust, and traffic congestion may lower the desirability and market value of nearby homes.	Impacts on property values are not a matter for consideration with the application.
Continuous exposure to construction-related stressors such as noise, air pollution, and general disruption may have long-term impacts on the physical and psychological health of residents.	It is acknowledged that there may be some disruptions during construction. Upon completion of the development, it is not anticipated that the proposal will impact on the living environment of the area. Should consent have been recommended, conditions may have been recommended in regard to mitigating impacts during the construction period.
Request that: A full environmental and traffic impact assessment be conducted. Construction hours be strictly limited. Dust and noise mitigation measures be implemented.	Council's Senior Traffic Engineer have reviewed the proposal and have raised no objection to the proposal. See comments above in Section 8(b).

Residents be kept informed and involved in the planning process.	
The proposal will allow residents to move more easily around the site using lifts and passages. Currently residents must use stairs due to the slope of the site which are difficult. Previously residents have been forced to move as they could not negotiate the stairs.	The proposed works will improve pedestrian access across the site via pathways and lifts.
A variety of common facilities will be provided. This will benefit residents who no longer have driving licences.	The proposal includes a clubhouse comprising gymnasium, indoor pool, village café, health consulting rooms and activity rooms.
The proposal will use sustainable construction methods reducing carbon emissions and reducing maintenance costs.	The proposed works will be constructed using modern methods and appropriate materials. A BASIX Certificate has also been submitted which addresses water, thermal performance and energy scores.
The current village was built in a time when modern engineering methods were not available, there has been much damage over time due to the incessant rain period that caused serious mould and causing many residents to have to shift from their homes for health reasons. This will not be an ongoing issue with the redevelopment of the village.	The proposed works will be constructed using modern methods and appropriate materials.

d. Conciliation Conference

In accordance with Council's process, a Conciliation Conference is required to be held if more than 10 unique submissions are received during the notification period. During the first notification period a total of eleven submissions were received and a petition signed by 13 persons. A Conciliation Conference was held on 15 May 2025.

The key matters raised at the Conciliation Conference include:

- Impacts on Palisander Place during construction works, particularly in regard to heavy vehicle and tradespersons access;
- Impacts on Palisander Place due to increase in traffic from the development and vehicle safety;
- The existing width and design of Palisander Place and appropriateness of the current road for increased traffic including delivery and waste vehicle access;
- Safety and security in the area and potential for an increase in crime;
- One resident from within the existing village spoke in support of the proposal, stating that the existing village is in need of rejuvenation and noting that access around the village is difficult due to the slope.

The matters raised at the Conciliation Conference are addressed in the submissions table.

e. CONCLUSION

This Development Application has been considered in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulations 2021 as outlined in this report.

It is recommended that the applicant's Clause 4.6 written requests to vary The Hills LEP 2019 development standard in regard to height and the SEPP Housing 2021 development standard in regard to parking be supported as the applicant has adequately justified the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the height and parking variations can be supported as compliance with the standards are unreasonable or unnecessary in this instance, in respect to height the proposal results in better environmental planning outcomes and there are sufficient planning grounds to justify varying the development standards as outlined in this report.

The proposal includes variations to The Hills DCP Part D Section 27 – 346-350 Old Northern Road, Castle Hill (site specific DCP) and SEPP Housing 2021. On balance having regard to these matters, the proposal is considered to be satisfactory, the design takes into consideration the slope of the site and a reasonable built form and streetscape outcome will be achieved.

In regard to ecology and tree impacts, the subject site and adjoining properties contain modified and remnant native vegetation identified as the Critically Endangered Ecological Community (CEEC), Blue Gum High Forest. The application was accompanied by a *Threatened Species Test of Significance* provided in the Flora and Fauna Report which has been reviewed, however the information provided has not adequately addressed impacts on hydrological processes and key design details including the final extent of excavation, earthworks and placement of rock anchors. As such adequate information has not been provided to allow the conclusion to be reached that there will not be a significant impact on Critically Endangered Ecological Community, Blue Gum High Forest or its habitat. Further, insufficient information has been provided in regard to tree and vegetation impacts within proximity to and within the north-western drainage channel, in relation to upgrade works in or near the channel. Given the likely significant impact on a Critically Endangered Ecological Community, the absence of a BDAR, and the failure to meet legislative requirements under the *Biodiversity Conservation Act 2016*, the application is not supported.

Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported. In this regard the proposal has not been accompanied by adequate

information addressing ecology and tree matters to be satisfied that there will not be an unreasonable impact.

It is considered that the key issues as outlined in Section 8 have not been resolved satisfactorily and the Development Application is recommended for refusal as outlined in Attachment A.

f. RECOMMENDATION

That the Development Application 101/2025/JP be refused pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Reasons for Refusal
- Attachment B: Architectural Plans
  - Attachment 1 – First Notification
  - Attachment 2 - Second Notification
  - Attachment 3 – Third Notification
  - Attachment 4 – Aerial Photograph
  - Attachment 5 – THLEP 2019 Height Limit Plan
  - Attachment 6 – THLEP 2019 Floor Space Ratio
  - Attachment 7 – Identified Landslide Risk
  - Attachment 8 – Site Plan
  - Attachment 9 – Staging Plan
  - Attachment 10 – Elevations
  - Attachment 11 - Sections
  - Attachment 12 – Height of Buildings
  - Attachment 13 – Perspectives
- Attachment C: Clause 4.6 Request – Height
- Attachment D: Clause 4.6 Request - Parking

9. The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by a Biodiversity Development Assessment Report (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

10. The Development Application does not satisfy the provisions of Clause 7.2 and 7.3 of the Biodiversity and Conservation Act, 2016 as the application has not been accompanied by sufficient information to address the extent of hydrological changes, the scope and nature of earthworks, the positioning of rock anchoring structures, and the final development footprint (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

11. The Development Application has not been accompanied by sufficient information to address whether the proposed works will have a risk of serious and irreversible impacts to the Critically Endangered Ecological Community, Blue Gum High Forest (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

12. The Development Application has not been accompanied by sufficient information to allow consideration of the likely impacts of the proposed development on biodiversity values which are required to be assessed in a Biodiversity Development Assessment Report (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

13. The Development Application has not been accompanied by sufficient information in regard to the proposed works in the area of the proposed stormwater stilling basin in relation to the internal swale, channel and existing basin of the final stormwater drainage design and detailed sections to determine whether any impacts to trees and vegetation will occur (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

14. The Development Application has not been accompanied by sufficient information in regard to the proposed cut and fill works for the drainage channel to determine whether any impacts to trees and vegetation will occur (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

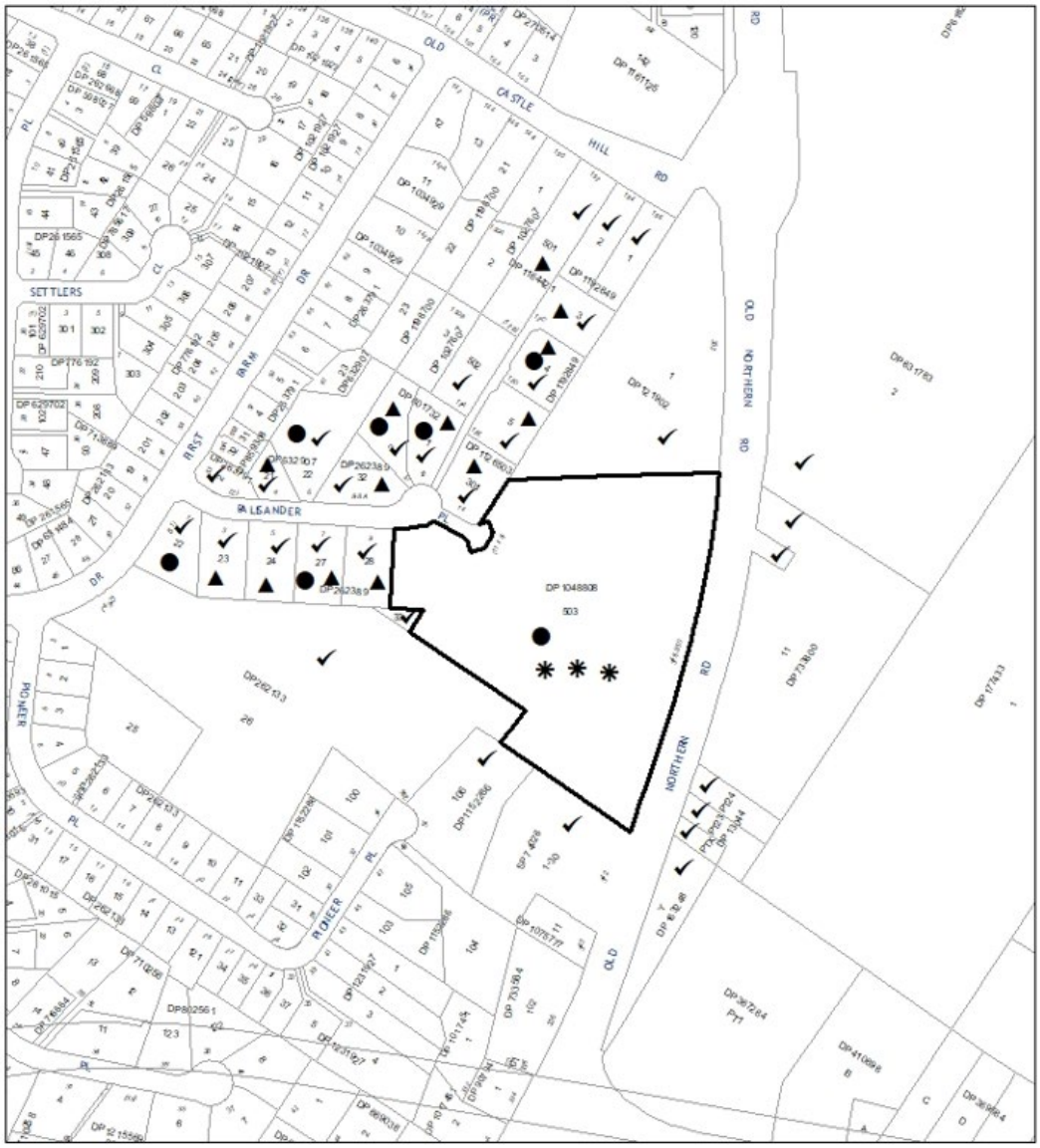
15. The Development Application has not been accompanied by sufficient information in regard to arboricultural impacts, particularly in regard to Trees 1, 240, 241, 242 and 243 and whether these trees are viable for retention (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

16. The Development Application has not been accompanied by sufficient information in regard to the proposed rock anchors and whether this may impact on trees and vegetation both on the subject site and in adjoining properties (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

17. The Development Application has not been accompanied by sufficient information to address the extent of tree removal or root disturbance required for construction, the proximity of works to significant or protected vegetation, proposed mitigation

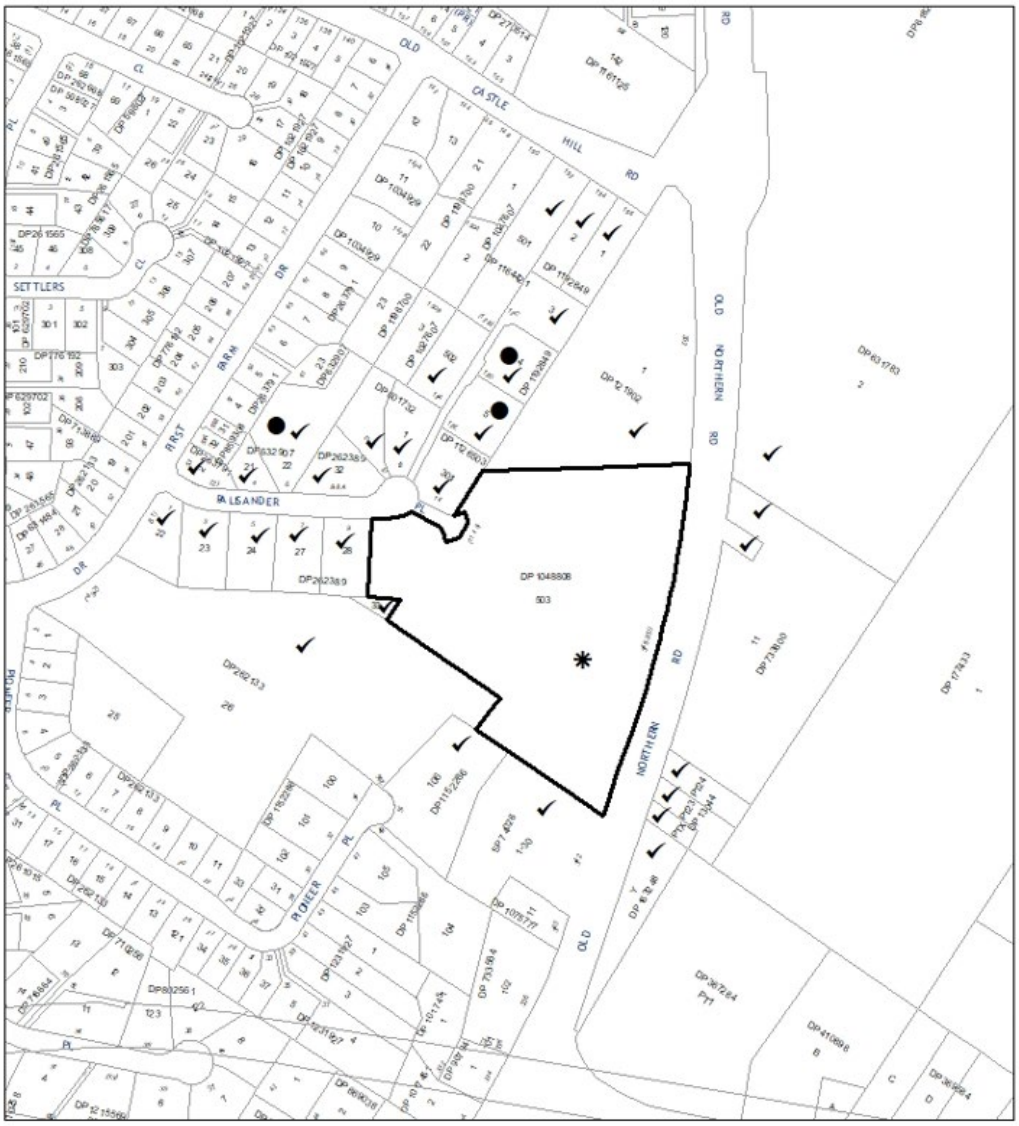
measures to minimise impacts on existing trees and vegetation or any requirements for compensatory planting or restoration works within Pioneer Place Reserve (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).

18. The Development Application has not been accompanied by sufficient information to satisfy the objective of the C4 Environmental Living zone of The Hills LEP 2019 in regard to ensuring that the development does not have an adverse impact on the ecological values of the site and adjoining properties (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).



☐ SUBJECT SITE	✱ SUBMISSIONS RECEIVED IN SUPPORT - ONE LETTER OF SUPPORT OFF THE SCOPE OF MAP
✓ PROPERTIES NOTIFIED	
● SUBMISSIONS RECEIVED FIRST NOTIFICATION PERIOD	THE HILLS DISTRICT HISTORICAL SOCIETY AND HORNSBY SHIRE COUNCIL ALSO NOTIFIED
▲ PERSONS WHO SIGNED PETITION	

ATTACHMENT 2 - LOCALITY PLAN – SECOND NOTIFICATION



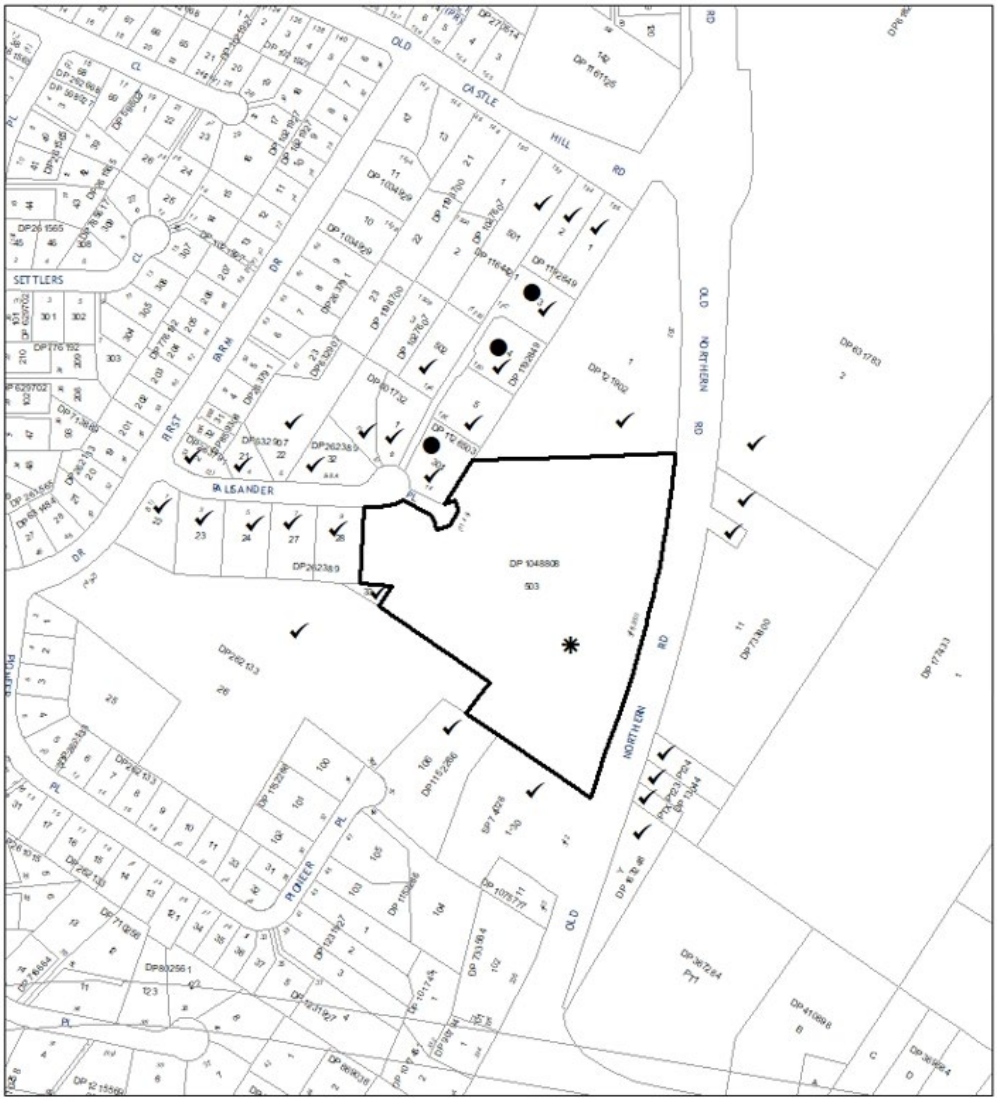
SUBJECT SITE

✱ SUBMISSION RECEIVED IN SUPPORT

✓ PROPERTIES NOTIFIED

● SUBMISSIONS RECEIVED
SECOND NOTIFICATION PERIOD

ATTACHMENT 3 - LOCALITY PLAN – THIRD NOTIFICATION



SUBJECT SITE

PROPERTIES NOTIFIED

SUBMISSIONS RECEIVED
THIRD NOTIFICATION PERIOD

SUBMISSION RECEIVED IN SUPPORT

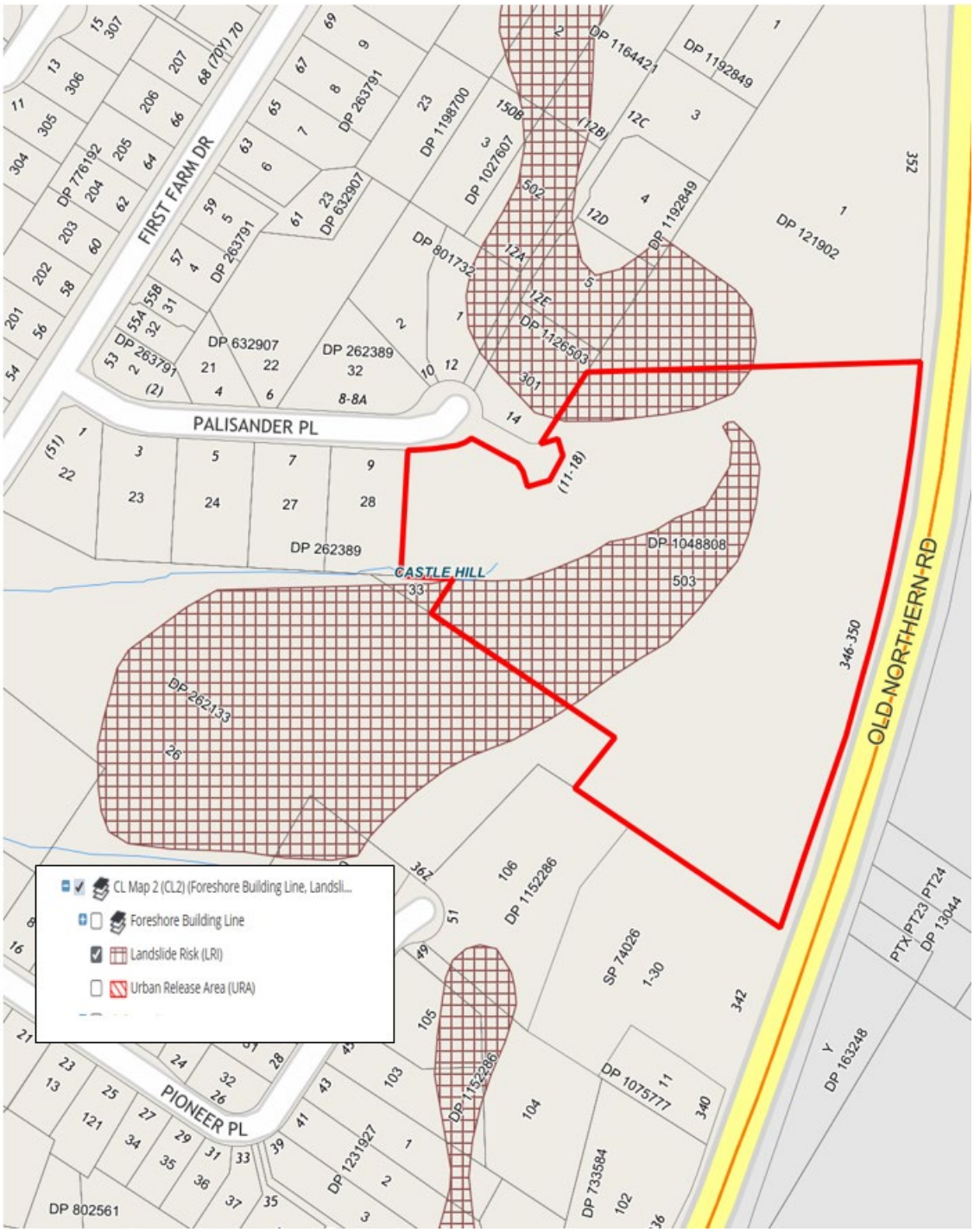
ATTACHMENT 4 – AERIAL PHOTOGRAPH

SUBJECT SITE

ATTACHMENT 5 – THLEP 2019 HEIGHT LIMIT

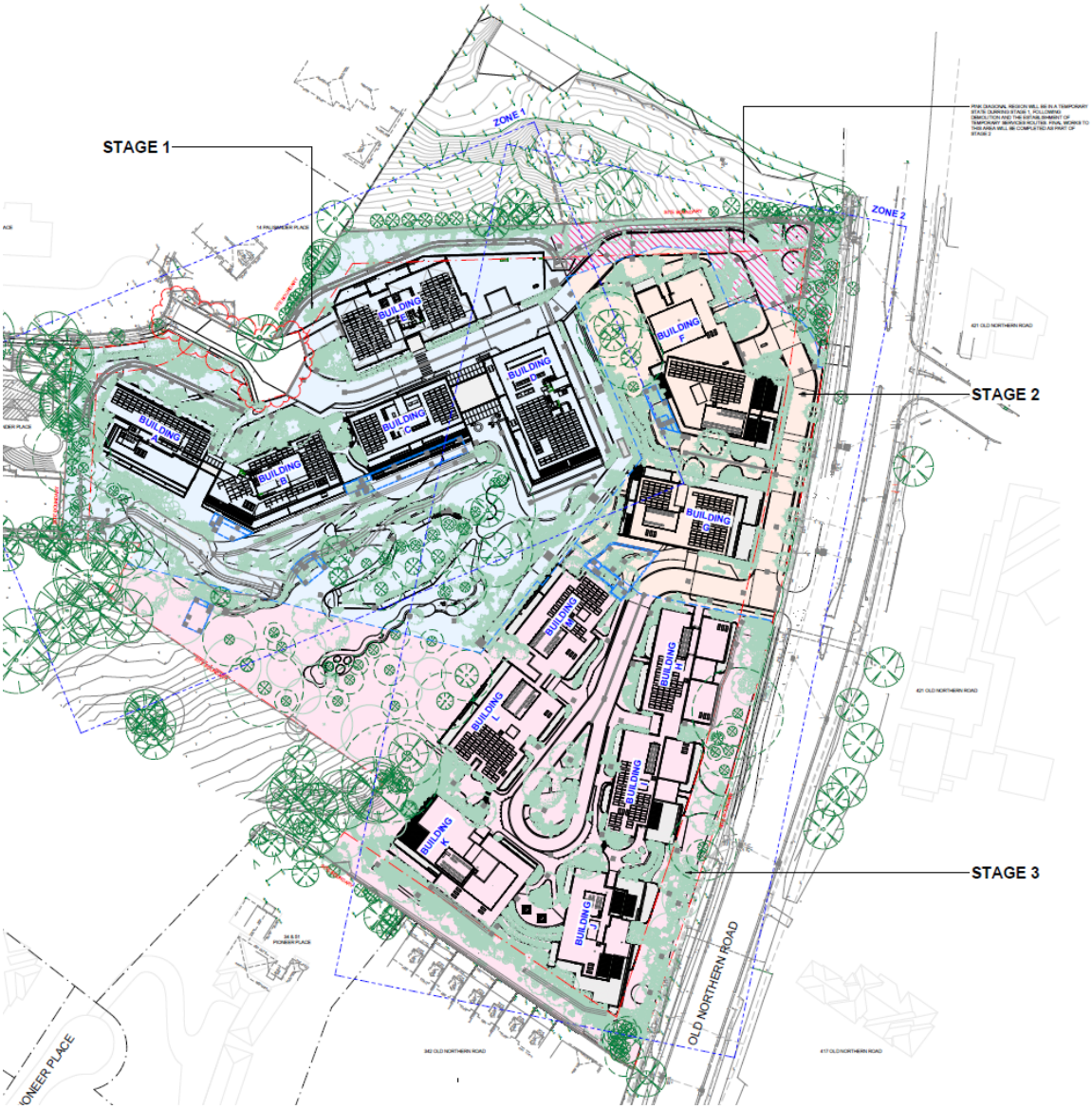
ATTACHMENT 6 – THLEP 2019 FLOOR SPACE RATIO

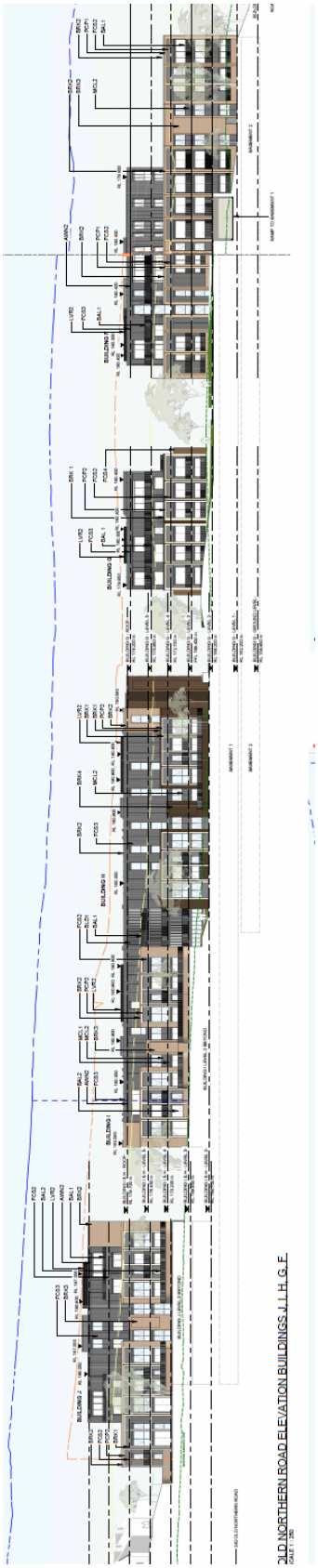
ATTACHMENT 7 – IDENTIFIED LANDSLIDE RISK

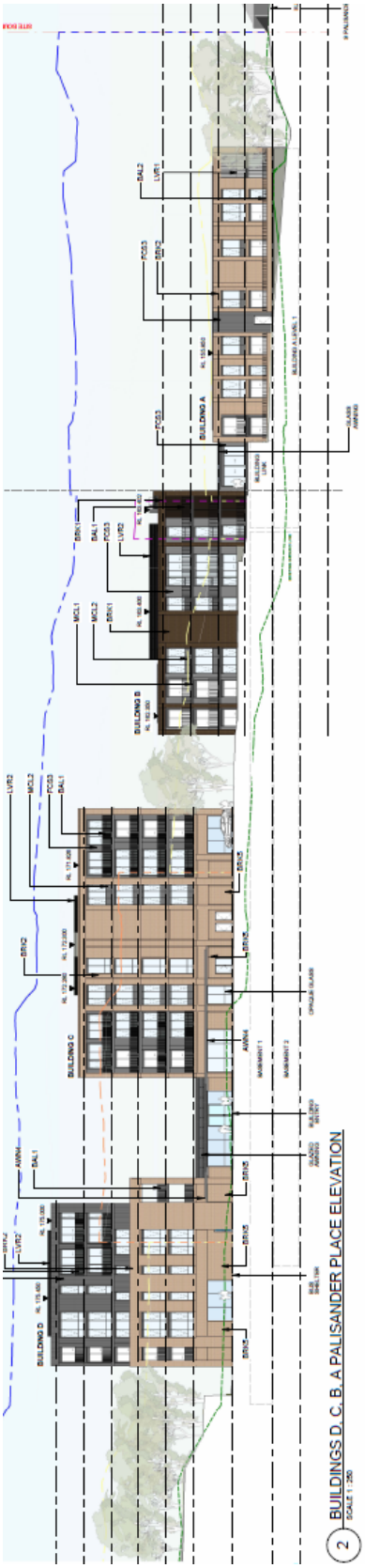


ATTACHMENT 8 – SITE PLAN

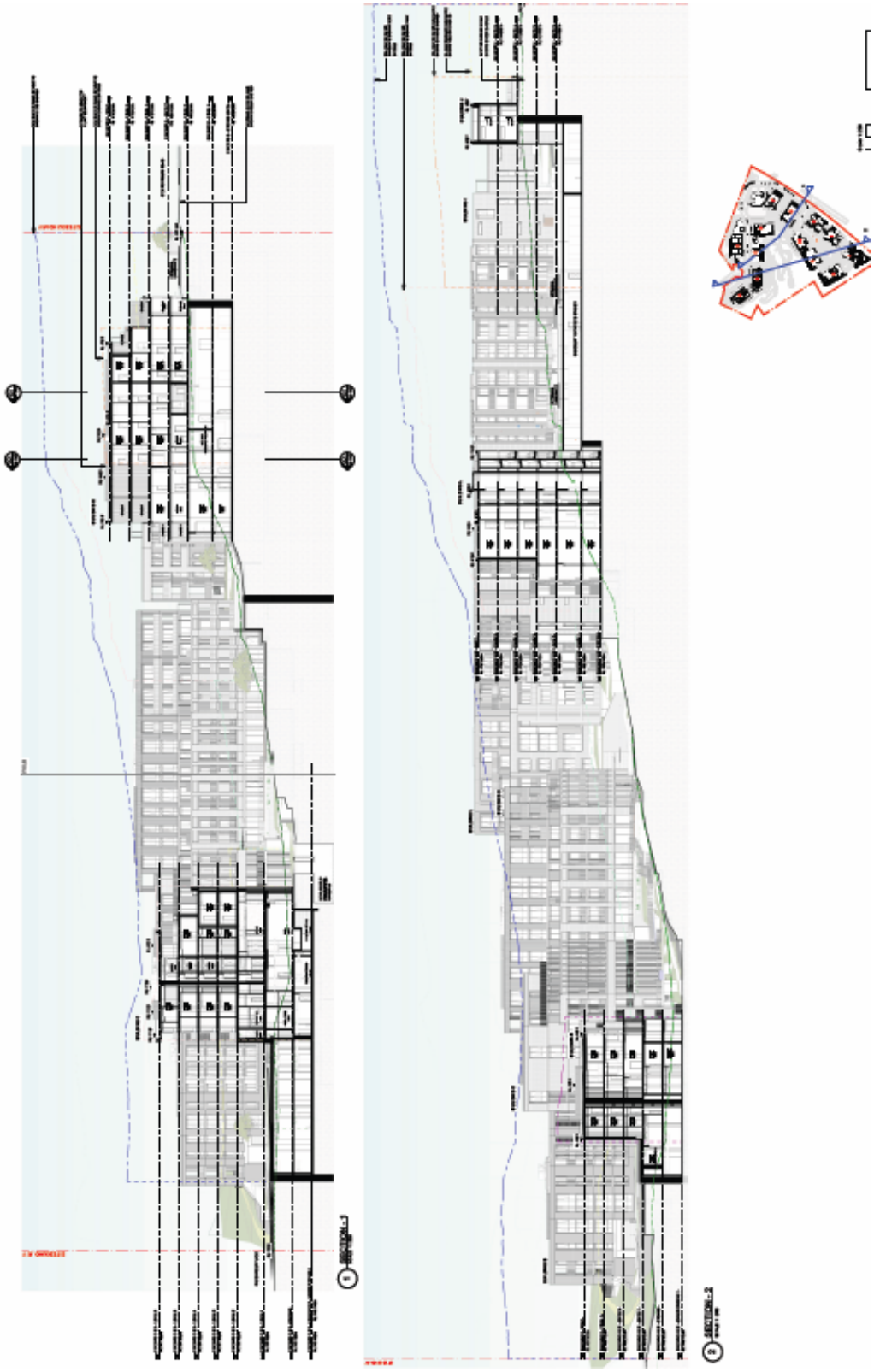
ATTACHMENT 9– STAGING PLAN




2LD NORTHERN ROAD ELEVATION BUILDINGS J, I, H, G, F


BUILDING D
BUILDING C
BUILDING B
BUILDING A
2 BUILDINGS D, C, B, A PALISANDER PLACE ELEVATION
SCALE 1 : 250

ATTACHMENT 11 – SECTIONS



ATTACHMENT 12 – HEIGHT OF BUILDINGS

ATTACHMENT 13 – PERSPECTIVES

ATTACHMENT C: CLAUSE 4.6 REQUEST – HEIGHT

Clause 4.6 Variation Request
Height of Buildings

Castle Ridge Retirement Village

350 Old Northern Road, Castle Hill

Prepared on behalf of: Levande

August 28, 2025

FPDplanning

FPDplanning

Document control

Authors

Reviewed by	Michael File, Director	michael@fpdplanning.com
Prepared by	Anna Johnston, Associate	anna.johnston@fpdplanning.com

Project summary

Prepared on behalf of	Levande
Land to be developed	350 Old Northern Road, Castle Hill
Legal description	Lot 503 DP 1048808
Project description	Renewal of existing retirement village for seniors housing independent living units and associated facilities

FPDplanning

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Executive Summary

Introduction

This report has been prepared to request a variation to the maximum height of buildings controls in connection with a development application for renewal of the Castle Ridge Retirement Village at 350 Old Northern Road, Castle Hill. This report has been updated to respond to the RFIs from Council dated 23 October 2024 and 1 April 2025.

The proposed development is for the staged redevelopment of the existing Castle Ridge Retirement Village including demolition of existing buildings and construction of 229 seniors housing independent living units (ILUs) within a series of buildings ranging from 3-6 storeys.

It is noted that at the request of Council, the building numbering has changed compared to what is identified in the Hills DCP and was included in the initial DA submitted to Council, as detailed in this report.

Clause 4.6 of the *Hills Local Environmental Plan 2019* (Hills LEP) provides flexibility in applying certain development standards to particular development and allows for consent to be granted to development that does not comply with a development standard in the Hills LEP or any other environmental planning instrument.

The Department of Planning, Housing and Industry (DPHI) has issued the *Guide to Varying Development Standards* (November 2023) to assist applicants in applying to vary development standards. This Clause 4.6 variation report has been prepared in accordance with the *Guide to Varying Development Standards.*

Clause 4.3 of the Hills LEP sets out 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.*

Proposed variation

The maximum height of buildings under the Hills LEP ranges from 7m to 22m across the site.

The proposed development is largely compliant with the height of buildings controls, however variations are requested to accommodate the development which was envisaged under the master plan which informed the Hills LEP controls for the site and forms part of the Hills DCP.

The height exceedances have resulted from a lack of flexibility of the height of buildings controls which did not appear to take into consideration adequate allowance for the variable and steep topography and lift overruns and rooftop servicing in some locations along with the following:

- Recent changes to the National Construction Code (NCC) released in 2023 resulting in the need for larger floor to floor heights effecting all buildings
- The need for increased floor to floor heights to accommodate the clubhouse facilities at the ground level of buildings C and D (previously J and L)
- The need to accommodate the flood planning levels for buildings A, B, C, D, F and G (previously H, I, J, L, M and N)
- The alignment of floor levels of Building A (previously N) to align with the floor levels of Building B (previously M) to allow for easy connections to the clubhouse facilities and basement car parking

- The complexity in accommodating the variable and steep topography with a key objective of the detailed design which has informed the proposed development being to minimise cut and fill, to maximise the usability of the communal spaces and to achieve buildings which directly address the internal streets and communal spaces.

There are some small discrepancies when compared to the Clause 4.6 Variation Request submitted with the previous RFI in December 2024 which have resulted from the following:

- The modelled element for the height plane has been updated with the latest available information which has been provided by the civil engineer, noting additional surveys have occurred. This topography constructed by the civil engineer is more accurate than the original architectural one due to the complexity of the existing site topography.
- The current LEP height plane extents have been gathered from ArchGIS to ensure the highest level of accuracy. It is however noted that there are still some misalignments between the nominated LEP site boundary and surveyed site boundary.
- All rooftop servicing that is envisaged to be required has been included on the plans. As the development has not yet progressed through the next detailed design stages, the information available for the rooftop services is indicative only and subject to future designs by the service consultants.
- Design development changes that have been made since the previous submission to address Council's RFI.

The height exceedances are largely located internally to the site and would not have any additional impact on the surrounding area. For variations that front site boundaries the setbacks, built form and landscaping have been designed ensure there would be no significant increased visual and privacy impacts on the surrounding residential areas or public domain. Solar access testing has been carried out that demonstrates that the proposed development will reduce overshadowing on adjoining dwellings compared to that envisaged under the endorsed DCP Master Plan.

A high level of solar access to the communal open space within the subject site is also able to be achieved with 75% of communal areas receiving 4 or more hours of sunlight in midwinter.

The height exceedances do not result in any additional floor space beyond that which is permissible under the Floor Space Ratio (FSR) controls that apply to the site.

Justification

Clause 4.6 of the Hills LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

- To provide an appropriate degree of flexibility in applying certain development standards to particular development.
- To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

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

Compliance is unreasonable and unnecessary in the circumstances

Compliance with the development standard is unreasonable and unnecessary in the circumstances as the objectives of the standard are met, notwithstanding the variation and therefore compliance is not necessary

Further, the underlying object or purpose would be defeated or thwarted if compliance was required as the height exceedances are necessary to accommodate the Master Plan which informed the Hills LEP controls and which forms part of the Hills DCP.

Without these exceedances the intent of the Master Plan would be unable to be achieved limiting the number of seniors housing dwellings that could be developed on the site. This would also impact on the supply of seniors housing in the locality as well as having a flow on effect of reducing housing supply of larger dwellings that become available when older residents seek to downsize.

There are sufficient environmental planning grounds to justify the contravention

There are sufficient environmental planning grounds to justify the contravention.

The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation.

The height exceedances have resulted from a number of factors and site constraints including the need to accommodate updated NCC requirements, flood planning levels, increased floor to floor heights for the clubhouse facilities and steep and variable topography and to deliver a high level of site accessibility. They do not result in any additional floor space beyond that which is permissible under the FSR controls that apply to the site.

As detailed within this report the exceedances would not result in any significant increased visual and privacy impacts on the surrounding residential areas and overshadowing of dwellings has been reduced compared to that envisaged under the endorsed master plan.

Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

1 Introduction

1.1 Overview

This report has been prepared to request a variation to the maximum height of buildings controls in connection with a development application for renewal of the Castle Ridge Retirement Village at 350 Old Northern Road, Castle Hill. This report has been updated to respond to the RFIs from Council dated 23 October 2024 and 1 April 2025.

Clause 4.6 of the *Hills Local Environmental Plan 2019* (Hills LEP) provides flexibility in applying certain development standards to particular development and allows for consent to be granted to development that does not comply with a development standard in the Hills LEP or any other environmental planning instrument.

The Department of Planning, Housing and Industry (DPHI) has issued the *Guide to Varying Development Standards* (November 2023) to assist applicants in applying to vary development standards. This Clause 4.6 variation report has been prepared in accordance with the *Guide to Varying Development Standards*.

Clause 4.6 of the Hills LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

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

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances.*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

This report seeks a variation to the maximum height of buildings controls within the Hills LEP.

2 Site and proposed development

2.1 The site

The subject site comprises 3.7ha of land located at 350 Old Northern Road, Castle Hill (Lot 503 DP1048808). The land is entirely owned by Levande who operate the existing retirement village.

The site has a frontage to Old Northern Road of approximately 260m and to Pioneer Park of approximately 100m. The site is characterized by steep topography with substantial falls of up to 30m from Old Northern Road to the western side of the site.

The existing retirement village was developed in the 1980's and consists of 113 independent living units, a large communal green space in the centre of the site and a small community facility.

Existing development comprises 2-3 storey masonry buildings nestled along the steeply sloping site.

The subject site is zoned C4 Environmental Living under the *Hills Local Environmental Plan 2019* (Hills LEP) and the following built form controls apply:

- Maximum building heights ranging from 7m to 22m
- Maximum floor space ratio of 0.83:1.

Seniors Housing is not permissible within the C4 zone however it is listed as an additional permitted use on the site under Schedule 1 of the Hills LEP.

Figure 1: Subject site (Source: Architectus 2020)

2.2 Proposed development

The proposed development is for the staged redevelopment of the existing Castle Ridge Retirement Village including:

- Demolition of all existing buildings
- Construction of 229 seniors housing independent living units (ILUs) within a series of buildings ranging from 3-6 storeys comprising the following dwelling mix:
  - 13 x 1 bedroom ILUs
  - 129 x 2 bedroom ILUs
  - 87 x 3 bedroom ILUs.
- A Retirement Living Clubhouse and Administration Facilities opening to communal outdoor spaces
- Basement carparking
- Construction of internal roads
- Upgrades to access arrangements from Old Northern Road including provision of a new deceleration land on Old Northern Road
- Associated tree removal and site landscaping including retention and enhanced accessibility to the central communal open space
- Utility and services augmentation as required
- Earthworks and site stabilisation works.

It is noted that, at the request of Council, the building numbering has changed compared to what is identified in the Hills DCP and was included in the initial DA submitted to Council as follows:

Proposed building number	Previous building number (Hills DCP)
Building A	Building N
Building B	Building M
Building C	Building L
Building D	Building J
Building E	Building K
Building F	Building I
Building G	Building H
Building H	Building D
Building I	Building B
Building J	Building A
Building K	Building C&E
Building L	Building F
Building M	Building G

3 Proposed variation

3.1 Development standard proposed to be varied

3.1.1 Hills Local Environmental Plan 2019

This report seeks a variation to the maximum height of buildings controls under the Hills LEP.

Clause 4.3 of the Hills LEP sets out 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 maximum height of buildings under the Hills LEP ranges from 7m to 22m across the site as shown at Figure 2.

Figure 2: Maximum height of buildings map (Source: NSW Spatial Viewer)

The maximum height of buildings provisions of the Hills LEP are development standards for the purposes of Clause 4.6 of the Hills LEP. They are considered to meet the definition of development standards as set out in the *Environmental Planning and Assessment Act 1979* (EP&A Act) which refers to height of buildings requirements – see extract from the definition below.

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

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

Accordingly, these provisions can be varied subject of provisions of Clause 4.6 of the Hills LEP.

The provisions are numerical standard as referenced in the *Guide to Varying Development Standards November 2023* as being standards which use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development.

3.1.2 State Environmental Planning Policy (Housing) 2021

It is noted that the Chapter 2, Part 5 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) also sets out height controls for Seniors Housing, however this part of the Housing SEPP does not apply to the subject site. The Housing SEPP sets out land to which the Part applies which includes relevant zones. The site is zoned C4 Environmental Living. Chapter 2, Part 5 of the Housing SEPP does not apply to this zone.

Notwithstanding, the provisions of the Housing SEPP have been a key consideration in preparing the development application given their relevance to the proposed use.

In this regard, Section 84 of the Housing SEPP sets out the following in relation to height of buildings for development on land in a residential zone where residential flat buildings are not permitted:

(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and

(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and

(iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.

Site specific height controls have been applied through a recent LEP amendment and site specific setbacks and upper level setbacks have been applied through a recent DCP amendment. Accordingly, these provisions are not considered relevant and are not technically applicable.

Notwithstanding the proposed built form presents largely as two storeys to the surrounding interfaces with upper levels set further back in accordance with the requirements of the site specific DCP controls. The proposed side and rear setbacks of 8-10m also significantly exceed the setbacks that would apply to a standard residential development within the E4 zone. In this regard the Hills DCP applies a rear setback of 6m and a side setback of 1.5m.

Accordingly, this height variation request has been considered against the height of buildings controls of the Hills LEP.

3.2 Extent and justification of proposed variation

This report seeks to vary the maximum height of buildings under the Hills LEP in a number of locations across the site.

The proposed development is largely compliant with the height of buildings controls, however variations are requested which are to accommodate the development which was envisaged under the master plan which informed the Hills LEP controls for the site and forms part of the Hills DCP (see Figure 3).

Figure 3: Hills DCP – Castle Ridge Master Plan (Source: Hills DCP)

The height exceedances have resulted from a lack of flexibility of the height of buildings controls which did not appear to take into consideration adequate allowance for the variable and steep topography and lift overruns and rooftop servicing in some locations. This has been exacerbated by a number of other factors which are detailed below.

Insufficient floor to floor heights considered for the Planning Proposal

Changes to the National Construction Code (NCC) were introduced in May 2023 which included changes to the waterproofing and insulation requirements on residential buildings and were released after the development of the Master Plan. This has resulted in minimum floor to floor heights increasing to a typical 3.25m compared to 3.1m which was applied in the Planning Proposal Urban Design Report (prepared in August 2022).

Over a six storey building the increase in floor to floor height results in an almost 1m height increase across the building. This issue applies to all buildings within the site.

The need to accommodate flood planning levels

At the time of the preparation of the Planning Proposal in 2022 the site had been determined not to be affected by flooding and flooding was not raised as a concern by Council. During the DA process it was identified that the site is affected by overland flooding from the local upstream catchment.

The Planning Proposal scheme proposed a number of buildings which were set below the natural ground level. The development application has been designed so that all buildings can achieve the flood planning level which applies to sensitive uses, requiring that habitable floor levels must be no lower than probable maximum flood level or 500mm above the 1% AEP flood level, whichever is higher.

This has resulted in ground floor levels needing to be set higher than was envisaged at the Planning Proposal stage resulting in height exceedances. This applies to Buildings A, B, C, D, F and G (previously H, I, J, L, M and N) which are all effected by flooding.

Increased floor to floor heights for clubhouse facilities

As part of the detailed design the clubhouse facilities were relocated to be within C and D (previously Buildings J and L) to provide a central easily accessible location and to allow direct connections with the central communal open space.

This has resulted in increased floor to floor heights for these buildings at the ground floor impacting on the overall building height.

Alignment of floors across buildings

A key objective of the proposed development is to maximise accessibility across the site for residents. The floor levels across a number of buildings have been aligned to allow for direct connections between the buildings. In particular the floor levels of Building A (previously N) located adjacent to the western boundary have been designed to align with the floor levels of Building B (previously M) to allow for easy connections to the clubhouse facilities and basement car parking. This has resulted in an increase in overall building heigh for Building N requiring a height small exceedance in this location.

Site topography

The site comprises steep and variable topography and a key objective of the detailed design which has informed the proposed development has been to minimise cut and fill, to maximise the usability of the communal spaces and to achieve buildings which directly address the internal streets and communal spaces. This has necessitated stepped building forms with apartment levels manipulated to align with the adjacent public domain. This has resulted in elevated ground floor levels in some locations compared to the Master Plan resulting in increased building heights.

The height exceedances are largely located internally to the site where they would not have any additional impact on the surrounding area. For variations that front site boundaries the setbacks, built form and landscaping have been designed to ensure there would be no significant increase in visual and privacy impacts on the surrounding residential areas or public domain. Solar access testing has been carried out that demonstrates that the proposed development will have reduced overshadowing on adjoining dwellings compared to that envisaged under the endorsed master plan and exceed the solar access requirements of the Hills DCP.

A high level of solar access to the communal open space within the subject site is also able to be achieved with 75% of communal areas receiving four or more hours of sunlight in midwinter as illustrated in Figure 6. The height exceedances do not result in any additional floor space beyond that which is permissible under the Floor Space Ratio (FSR) controls that apply to the site. The height plane diagrams shown at Figure 4 and Figure 5 illustrate where height exceedances would have occurred to achieve the endorsed master plan and the height exceedances that are requested for the proposed development.

There are also extensive areas across the site where the proposed development is well below the maximum height of buildings.

3.2.1 Summary of height exceedances

Table 1 provides a summary of height exceedances, with the exceedance for each building described in detail in Sections 3.2.2 to 3.2.9. Appendix A includes the full set of drawings prepared by Cox to illustrate the height exceedances.

There are some small discrepancies when compared to the Clause 4.6 Variation submitted with the RFI in December 2024 which have resulted from the following:

- The modelled element for the height plane has been updated with the latest available information which has been provided by the civil engineer, noting additional surveys have occurred. This topography constructed by the civil engineer is more accurate than the original architectural one due to the complexity of the existing site topography.
- The current LEP height plane extents have been gathered from ArchGIS to ensure the highest level of accuracy. It is however noted that there are still some misalignments between the nominated LEP site boundary and surveyed site boundary.
- All rooftop servicing that is envisaged to be required has been included on the plans. As the development has not yet progressed through the next detailed design stages, the information available for the rooftop services is indicative only and subject to future designs by the service consultants.
- Design development changes that have been made since the previous submission to address Council's RFI.

A detailed description and justification of each height exceedance is detailed in Section 3.2 below.

Table 1: Summary of height exceedances

Building	Maximum height of buildings	Proposed exceedance	Percentage exceedance	Justification
Building A (previously N)	9m	1.58m	17.6%	• Accommodates updated NCC requirements • Accommodates the flood planning level • Provides for greater accessibility through alignment of floors with adjacent Building B • DCP setback of 8m has been increased to range from 9.3m to 13.3m to accommodate retention of a significant tree, allow for additional landscaping, and mitigate any visual impact. • Maintains solar access to adjoining dwellings.
Building B (previously M)	18m	0.07m	0.39%	• Extremely minor exceedance of the 18m height limit to accommodate five storey building envisaged under the master plan. • Accommodates updated NCC requirements. •

Building	Maximum height of buildings	Proposed exceedance	Percentage exceedance	Justification
	7m	4.77m façade only	68.1%	• Minor exceedance where the façade extends into the adjacent 7m height plane • Applies to a maximum width of 0.48m of the façade only • Internal to the site and therefore would have negligible impact.
	9m	6.86m façade frontage only	76.2%	• A minor exceedance where the façade extends into the adjacent 9m height plane. • Applies to a maximum width of 0.75m of • façade frontage only Internal to the site and therefore would have negligible impact.
Building C (previously L)	9m	11.30m façade only	125.6%	• Minor exceedance where the façade extends into the adjacent 9m height plane • Exceedance applies to façade width of 0.27m only. • Internal to the site and therefore would have negligible impact.
	15m	5.48m façade only	36.5%	• Minor exceedance where the façade extends into the adjacent 15m height plane • Exceedance applies to façade width of 0.18m only. • Internal to the site and therefore would have negligible impact.
	18m	5.33m façade only	29.6%	• Minor exceedance where the façade extends into the adjacent 18m height plane • Exceedance applies to façade with of 0.16m only. • Internal to the site and therefore would have negligible impact.
	22m	1.32m	6.0%	• Accommodates five storey building envisaged by the Hills DCP. • Accommodates greater floor to floor heights at the ground level for the clubhouse facilities • Accommodates updated NCC requirements • Accommodate the flood planning level • Limited to small areas of the roof, parapet and rooftop servicing which are internal to the site and would not result in any impact on the surrounding area.
	22m	1.89m	8.6%	• Accommodates 6 storey building as envisaged under the Hills DCP.

Building	Maximum height of buildings	Proposed exceedance	Percentage exceedance	Justification
Building D (previously J)				• Accommodates greater floor to floor heights at the ground level for the clubhouse facilities • Accommodates updated NCC requirements • Accommodate the flood planning level. • Height exceedance limed to a small part of the roof, parapet and rooftop servicing which is internal to the site and would not result in any impact on the surrounding area.
	9m	4.86m façade only	54.0%	• Minor exceedance where the façade extends into the adjacent 9m height plane • Exceedance applies to façade with of 0.39m only • Internal to the site and therefore would have negligible impact.
Building E (Previously K)	15m	No exceedance	0%	NA
Building F (previously I)	15m	4.09m	27.3%	• Significant transition in the natural ground level through the centre of the building. • Change in height zone from 22m to 15m through the centre of the building • Accommodates 6 storeys envisaged under the Hills DCP • Accommodates the flood planning level • Accommodates updated NCC requirements • Height exceedance largely internal to the site • No significant visual or amenity impact on the surrounding area.
	9m	4.26m to 1.38m building frontage only	47.3%	• Accommodates 3-4 storeys in area envisaged for 4 storeys under the DCP. • Accommodates updated NCC requirements • Accommodates the flood planning level • Street frontage exceedance of 1.91m only with these facades well set back from the main building frontage to Old Northern Road.
Building G (Previously H)	15m / 22m	No exceedance	0%	NA
Building H (previously D)	15m	0.59m parapet and rooftop	3.9%	• Minor exceedance to accommodate rooftop servicing and part of the roof parapet

Building	Maximum height of buildings	Proposed exceedance	Percentage exceedance	Justification
		services only		• Accommodates 4 storey building envisaged under the Hills DCP • Accommodates updated NCC requirements • exceedances are entirely internal to the site and would not be visible from Old Northern Road or any other location within the public domain.
Building I (previously B)	15m	No exceedance	0%	NA
Building J (previously A)	15m	No exceedance	0%	NA
Building K (previously C&E)	9m	1.65m	18.3%	• Accommodates 5 storey building envisaged under the Hills DCP • Minimises cut and fill • Accommodates updated NCC requirements • Design refined compared to the DCP Master Plan to provide increased boundary setbacks • Exceedance largely internal where not visible from the neighbouring property • Reduced overshadowing compared to endorsed DCP master plan • Negligible additional overshadowing of adjacent rear courtyards compared to existing.
	15m	3.8m	25.3%	
Building M (previously G)	22m	1.02m	4.64%	• Minor exceedance to accommodate the roof parapet • Accommodates 6 storey building envisaged under the Hills DCP. • Accommodates updated NCC requirements • Exceedance entirely internal to the site and would not have any significant visual or amenity impact.
	7m	7.35 façade blades only	105%	• Minor exceedance where the façade extends into the adjacent 7m height plane • Façade blades only to a width of 0.37m only.

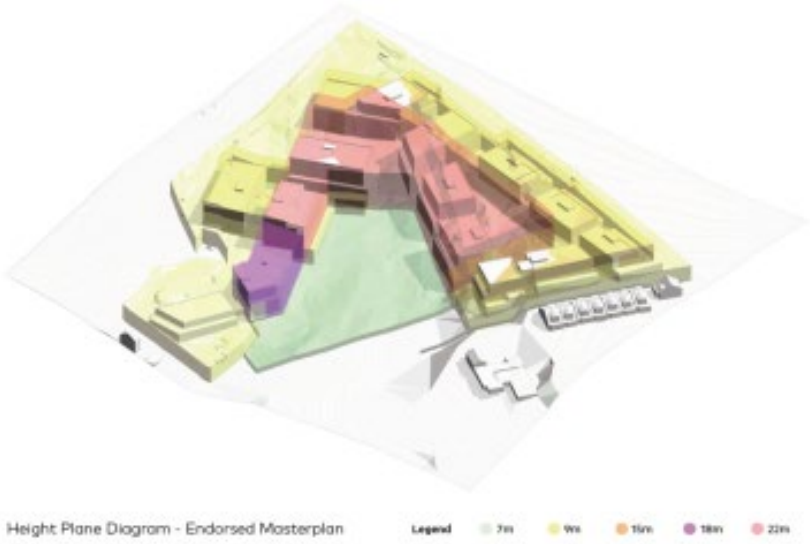


Figure 4: 3D height plane diagram – endorsed master plan (Source: Cox 2024)

Figure 5: 3D height plane diagram – proposed development (Cox drawing DA-99-04)

Figure LEP height plan showing exceedances – proposed development (Cox drawing DA-99-05)

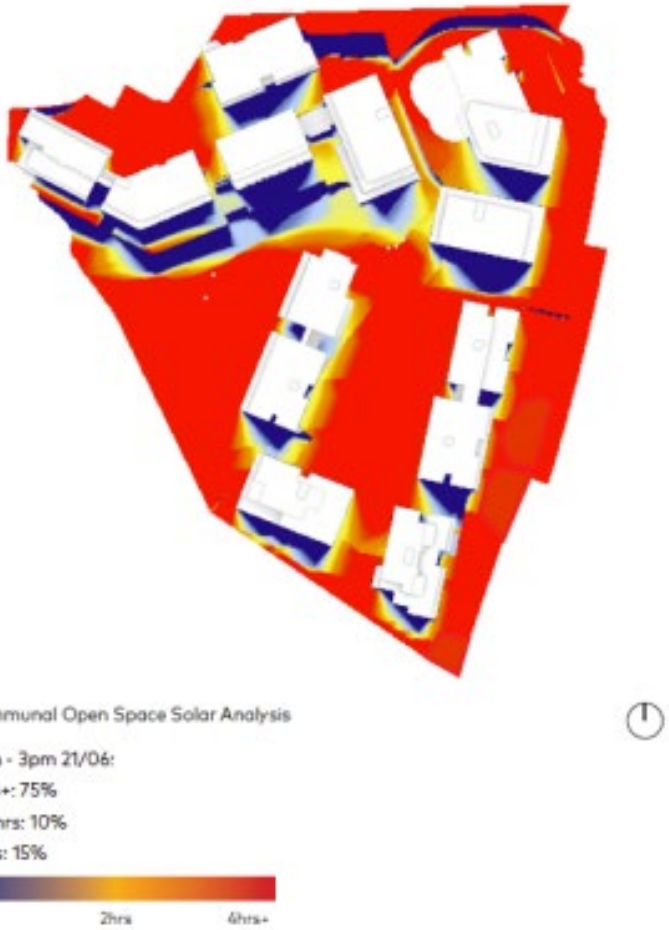


Figure 6: Solar access to public domain (Source: Cox 2024)

3.2.2 Building A (previously N)

- Maximum height of building: 9m
- Proposed height exceedance: Maximum 1.58mm (17.6%)

Building A is located to at the west of the site and is envisaged under the Hills DCP for 3 storeys with two storeys frontages to the communal open space and the existing dwelling to the west. The proposed building accommodates these sensitive interfaces with a stepped building form which follows the slope of the site and provides two storey interfaces at the lower levels.

The height exceedance has arisen due to the need to accommodate the flood planning level, updated NCC requirements and the desire to align floor levels with the adjacent building (Building B) to maximise accessibility for Building A to the basement and clubhouse facilities.

The required setback of 8m has been increased to range from 9.3m to 13.3m to accommodate the retention of a significant tree in this location. This additional setback reduces visual impact to the adjoining neighbour with the retained tree and proposed landscaping screening the future built form.

The exceedance is predominantly internal to the site with a minor exceedance facing the western boundary which will not result in any significant additional impact, particularly noting the proposed landscaping and increased setback in this location.

Overshadowing is limited to the rear part of the adjacent single dwelling lot and fully avoids the dwelling and adjacent pool as shown in Figure 11 noting that overshadowing of the pool in this diagram at 9am is from the existing boundary fence. No overshadowing of this adjacent lot occurs after 10.30am in midwinter with the site achieving more than 4 hours of solar access in midwinter consistent with the Hills DCP.

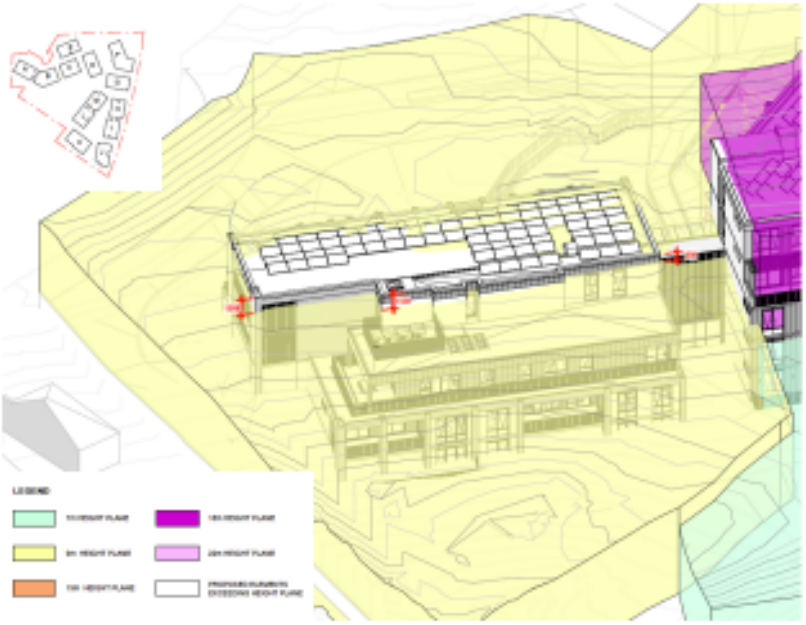


Figure 7: Height plane diagram – Building A (Cox drawing DA-99-05)

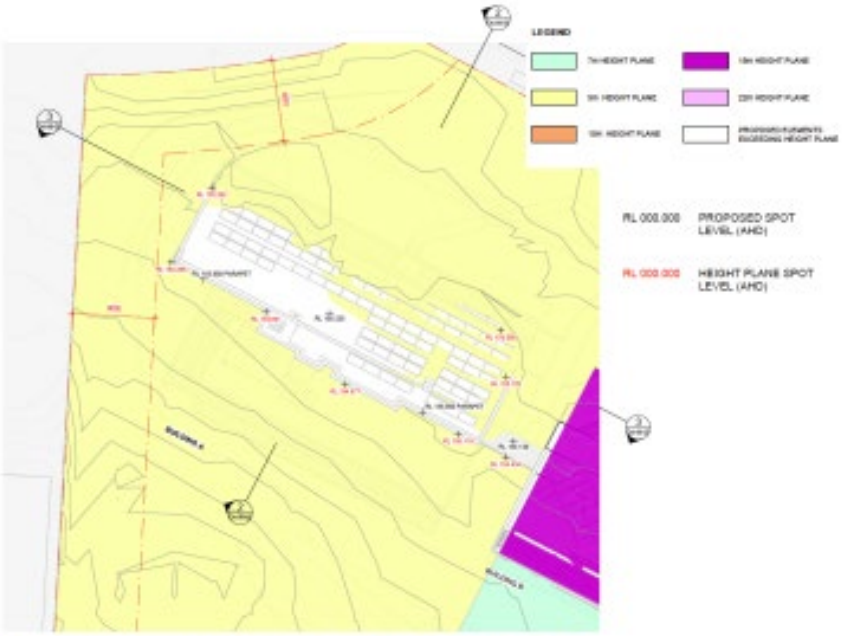


Figure 8: Height exceedance plan – Building A (Cox drawing DA-99-05)

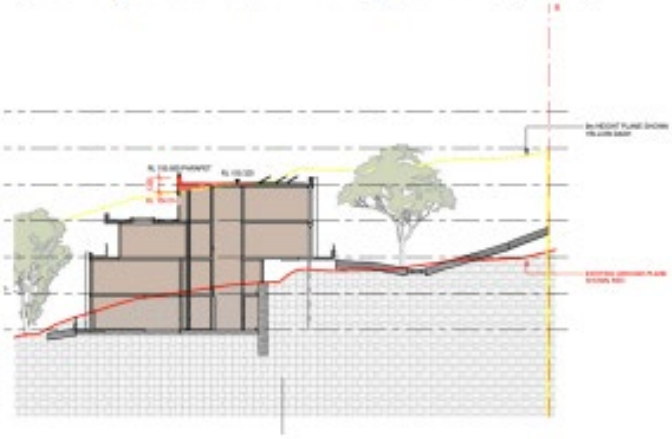


Figure 9: Cross section 2 – Building A (Cox drawing DA-99-05)

Figure 10: Cross section 3 – Building A (Cox drawing DA-99-05)

Figure 11: Building A – midwinter overshadowing 9am (LHS) / 10.30am (RHS) (Cox drawing DA-85-00)

3.2.3 Building B (Previously M)

- Maximum height of buildings: 7m / 9m / 18m
- Proposed height exceedance:
  - 18m height plane: Maximum 0.07m (0.39%)
  - 7m height plane: Maximum 4.77m (68.1% to a maximum width of 0.48m of the façade only)
  - 9m height plane: Maximum 6.86m (76.2% to a maximum width of 0.75m of façade only).

Building B is located towards the west of the site fronting the communal open space.

A minor exceedance is requested in this location where the façade extends marginally into the adjacent 7m and 9m height plane. This applies largely to the façade and façade articulation only, is internal to the site and therefore would have negligible impact.

There is also a very minor exceedance of the 18m height limit in this location to accommodate the five storey building envisaged by the Hills DCP and allow for the increased floor to floor heights required by the updated NCC. This exceedance applies only the parapet of the building and is limited to 0.07m (0.39%) of the 18m height limit which would also have negligible impact.

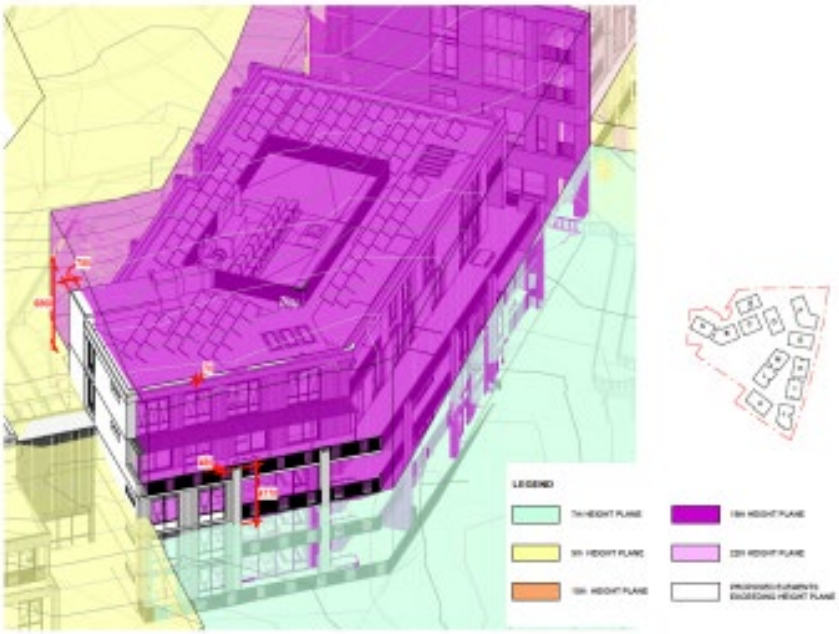


Figure 12: Height plane diagram – Building B (Cox drawing DA-99-06)

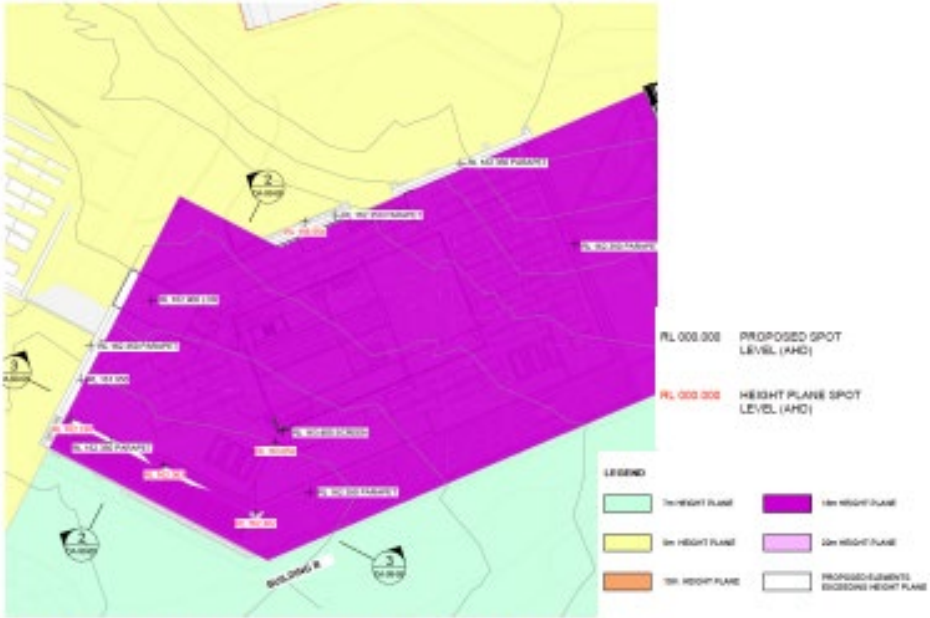


Figure 13: Height exceedance plan – Buildings B (Cox drawing DA-99-06)

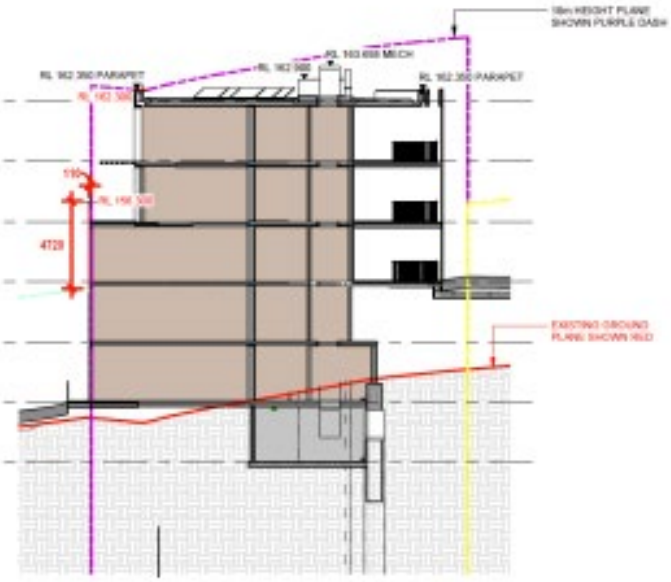


Figure 14: Cross section 2 – Building B (Cox drawing DA-99-06)

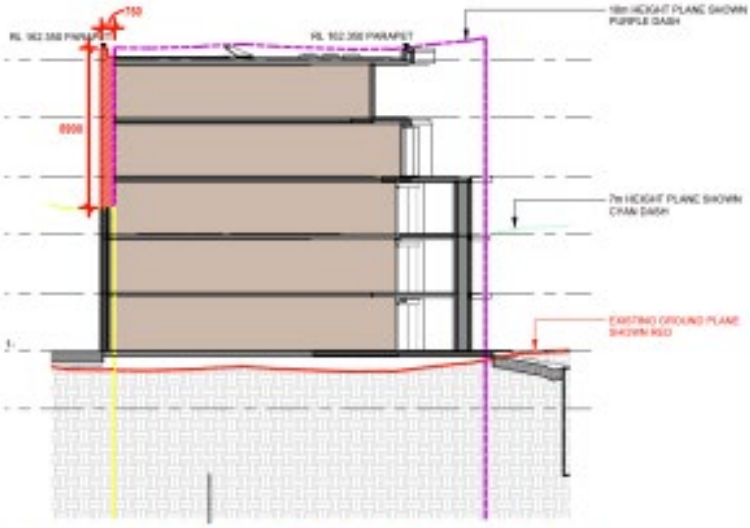


Figure 15: Cross section 3 – Building B (Cox drawing DA-99-06)

3.2.4 Building C (previously L)

- Maximum height of building: 9m / 18m / 22m
- Proposed height exceedance:
  - 9m height plane: Maximum 11.30m (125.6% for maximum width of 0.27m of the façade only)
  - 15m height plane: Maximum 5.48m (36.5% for maximum width of 0.18m of the façade only)
  - 18m height plane: Maximum 5.33m (29.6% for maximum width of 0.16m of the façade only)
  - 22m height plan: Maximum 1.32m (6.0%).

Building C is located centrally to site and is proposed to accommodate a five storey building as envisaged by the Hills DCP with part of the clubhouse facilities located at the ground floor.

The requested minor exceedance of the 22m height plane in this location has arisen from the need to provide greater floor to floor heights at the ground level for the clubhouse and to accommodate the updated NCC requirements for greater floor to floor heights at the upper levels and accommodate the flood planning level. The height exceedance applies to a minor portion of the building and is limited to small parts of the roof, parapet and lift over-run which are internal to the site and would not result in any impact on the surrounding area.

There is also an exceedance of the adjacent 9m, 15m and 18m height planes to the northern and western frontages which apply to the façade width only. These areas are internal to the site and accordingly any impacts would be negligible.

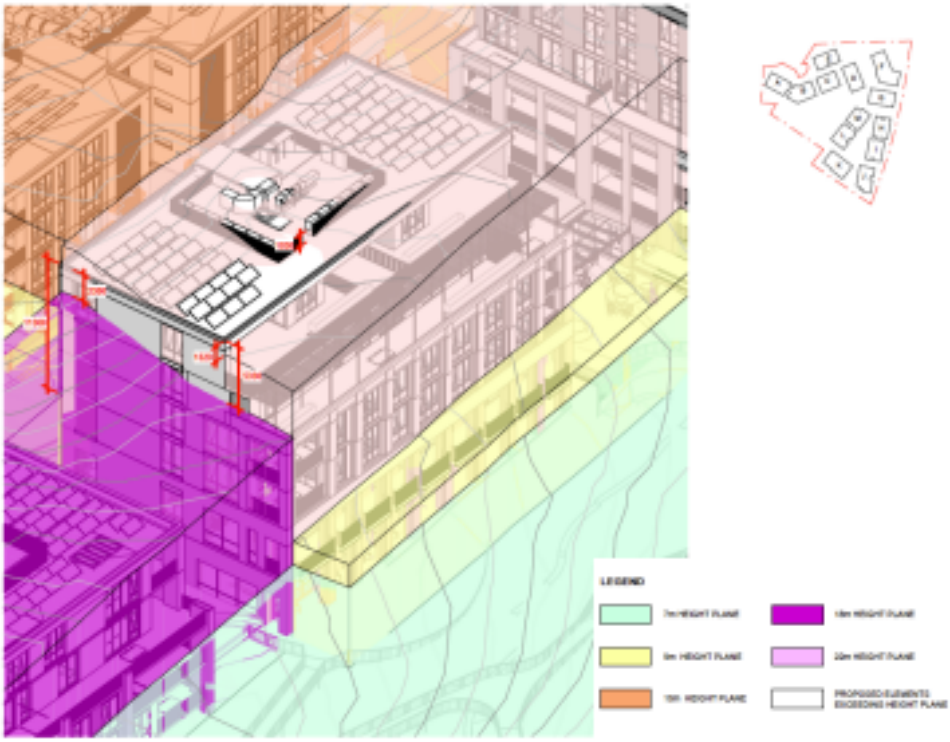


Figure 16: Height plane diagram – Building C (Cox drawing DA-99-07)

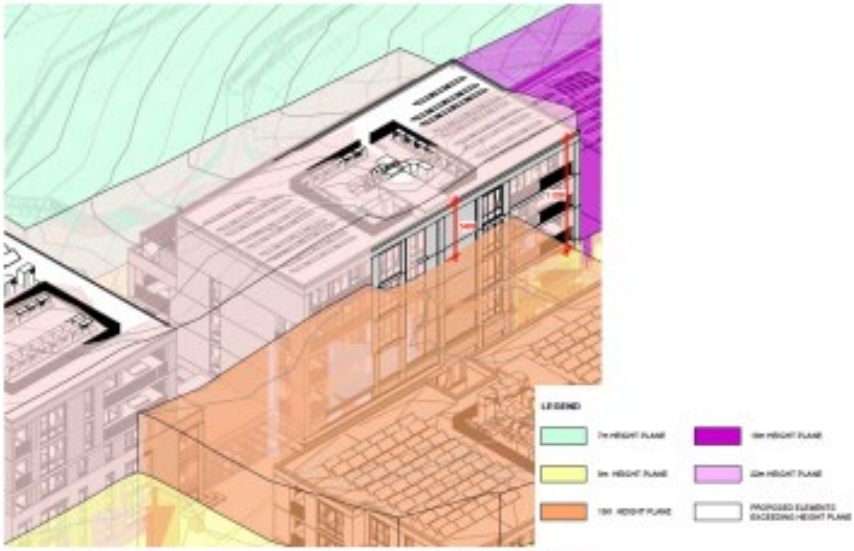


Figure 17: Height plane diagram – Building C (Cox drawing DA-99-07)

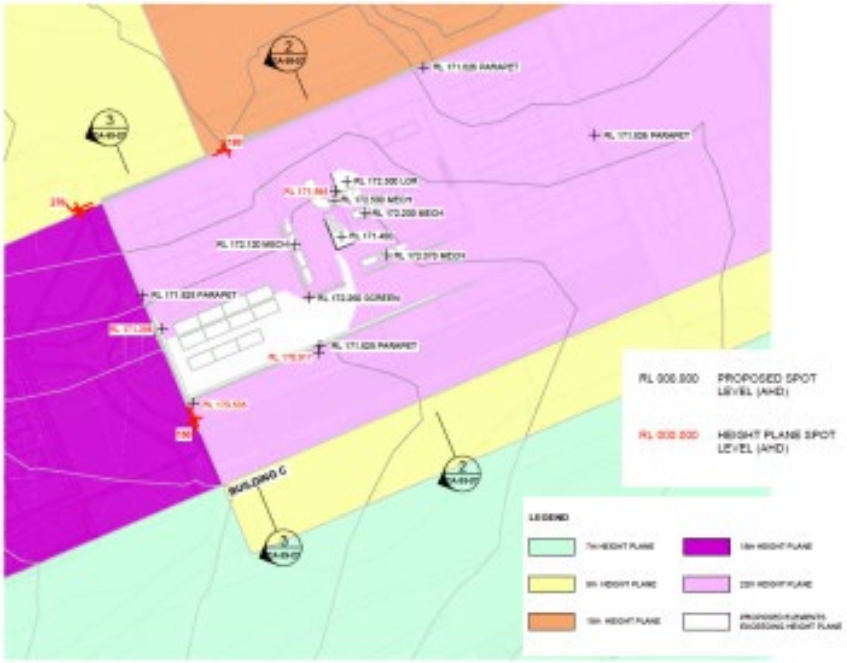


Figure 18: Height exceedance plan – Building C (Cox drawing DA-99-07)

Figure 19: Cross section 2 – Building C (Cox drawing DA-99-07)

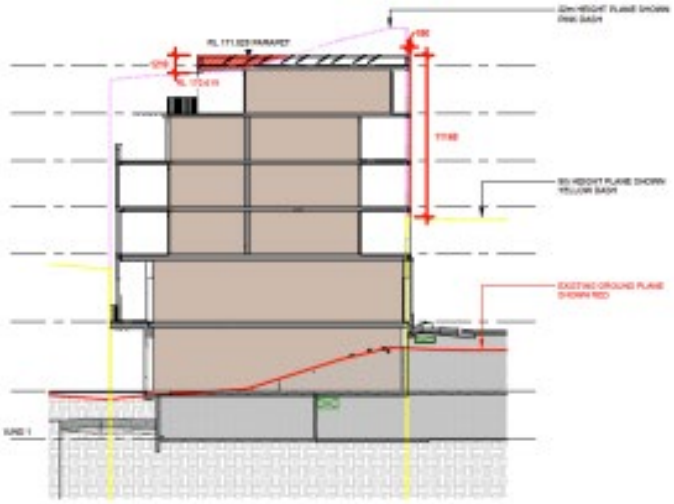


Figure 20: Cross section 3 – Building C (Cox drawing DA-99-07)

3.2.5 Building D (Previously J)

- Maximum height of building: 22m / 9m
- Proposed height exceedance:
  - 22m height plane: Maximum 1.89m (8.6%)
  - 9m height plane: Maximum 4.86m (54.0% for maximum width of 0.39m of the façade only)

Building D is located centrally to site and is proposed to accommodate the clubhouse facilities at the ground floor.

The requested height exceedance is required to achieve a six storey building as envisaged under the Hills DCP. The exceedance has arisen from the need to provide greater floor to floor heights at the ground level for the clubhouse facilities, accommodate the updated NCC requirements for greater floor to floor heights at the upper levels and accommodate the flood planning level. The height exceedance is limed to 1.2m on the internal building frontage and 1.89m for the rooftop servicing. The exceedances are internal to the site and would not result in any impact on the surrounding area.

There is also a minor exceedance into the adjacent 9m height plane with a width of only 0.39m of the façade which would have negligible impact.

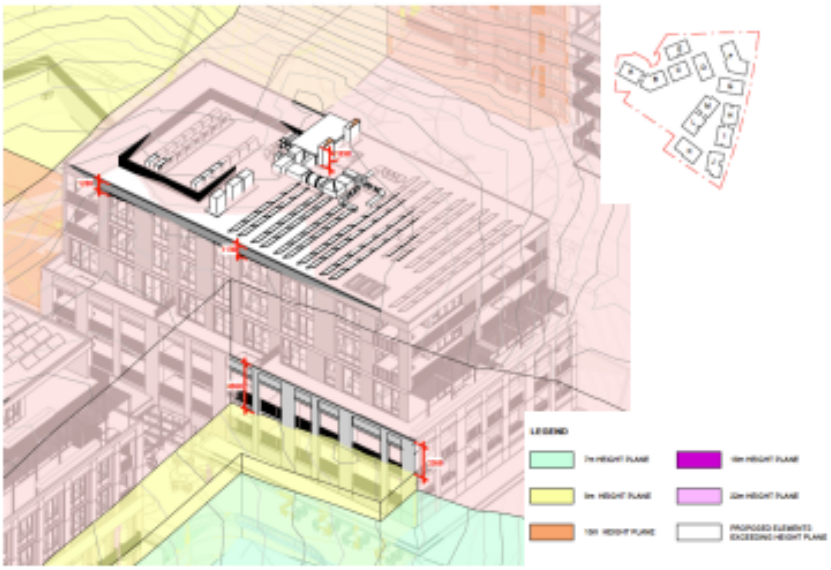


Figure 21: Height plane diagram – Building D (Cox drawing DA-99-08)

Figure 22: Height exceedance plan – Building D (Cox drawing DA-99-08)

Figure 23: Cross section 2 – Building D (Cox drawing DA-99-08)

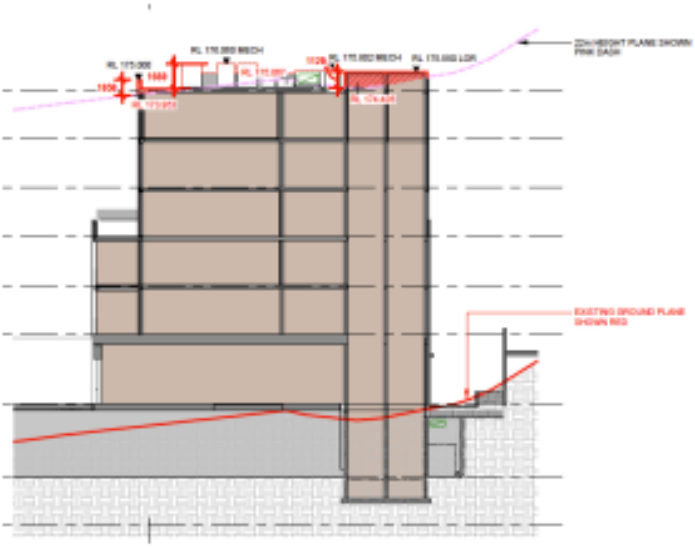


Figure 24: Cross section 3 – Building D (Cox drawing DA-99-08)

3.2.6 Building F (Previously I)

- Maximum height of building: 15m / 9m
- Proposed height exceedance:
  - 15m height control: Maximum 4.09m through centre of building to the lift overrun as shown at Figure 27 (27.3%) / 3.05m at the façade towards the rear of the building (20.3%)
  - 9m height control: Maximum 4.26m (47.3%) limited to a maximum of 1.38m building frontage width only.

Building F is located at the north of the site where there is a significant transition in the natural ground level through the centre of the building.

The height of buildings map changes from 22m to 15m through the centre of the building meaning that the six storeys envisaged under the Hills DCP cannot be achieved without the requested height exceedance. This is exacerbated by the updated NCC requirements for greater floor to floor heights and the need to achieve the flood planning level which also necessitates height exceedances to the three to four storey components of the building along the façade.

The height exceedance is largely internal to the site, with only minor parapet exceedances which would be visible from Old Northern Road with these facades well set back from this frontage behind the main building frontage. Therefore, the proposed variation would not have any significant visual or amenity impact on the surrounding area.

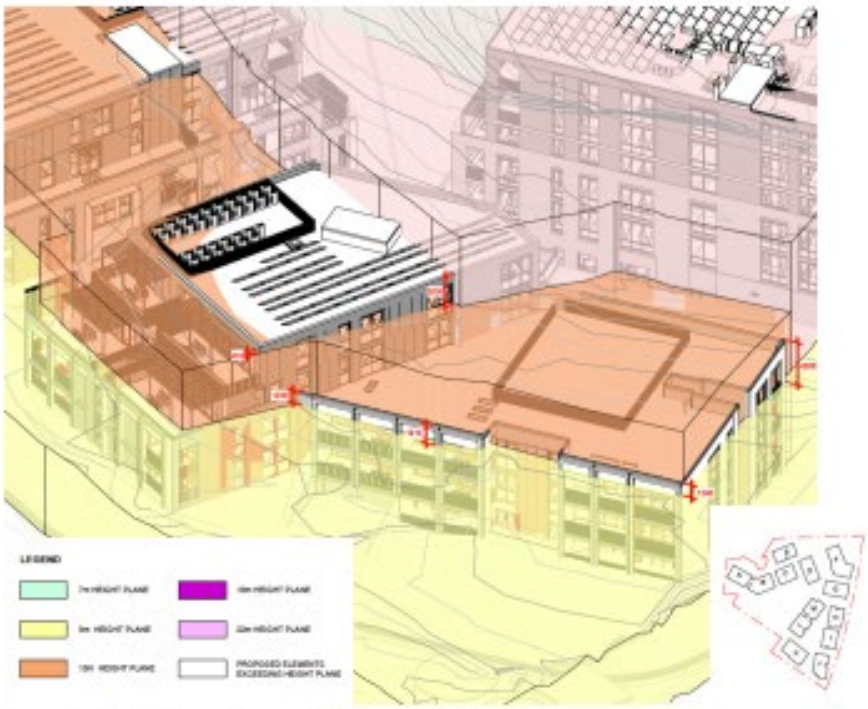


Figure 25: Height plane diagram – Building F (Cox drawing DA-99-09)

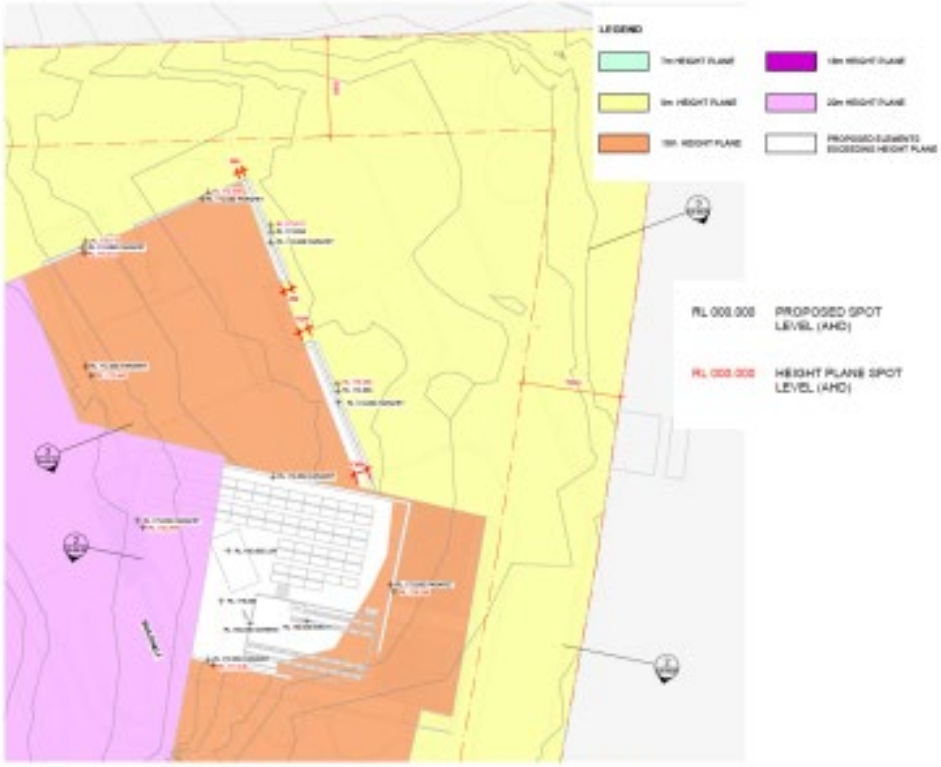


Figure 26: Height exceedance plan – Building F (Cox drawing DA-99-09)

Figure 27: Cross Section 2 – Building F showing maximum exceedance (Cox drawing DA-99-09)

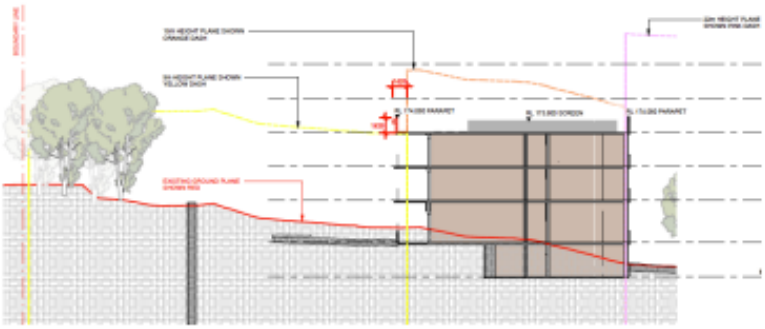


Figure 28: Cross Section 3 – Building F (Cox drawing DA-99-09)

3.2.7 Building H (previously Building D)

- Maximum height of building: 15m
- Proposed height exceedance: Maximum 0.59m (3.9%)

A minor exceedance is requested for Building H located at the east of the site to accommodate lift overruns and part of the roof parapet for the four storey building which is envisaged under the Hills DCP. This has resulted from the updated NCC requirements and a lack of flexibility in the LEP height of buildings map.

An exceedance of up to 0.35m applies to a small part of the parapet of the building and a maximum 0.59m exceedance being for the rooftop servicing which sits centrally on the roof.

The exceedances are entirely internal to the site and would not be visible from Old Northern Road or any other location within the public domain. Accordingly, the exceedances would not result in any significant impact.

Figure 29: Height plane diagram – Building H (Cox drawing DA-99-10)

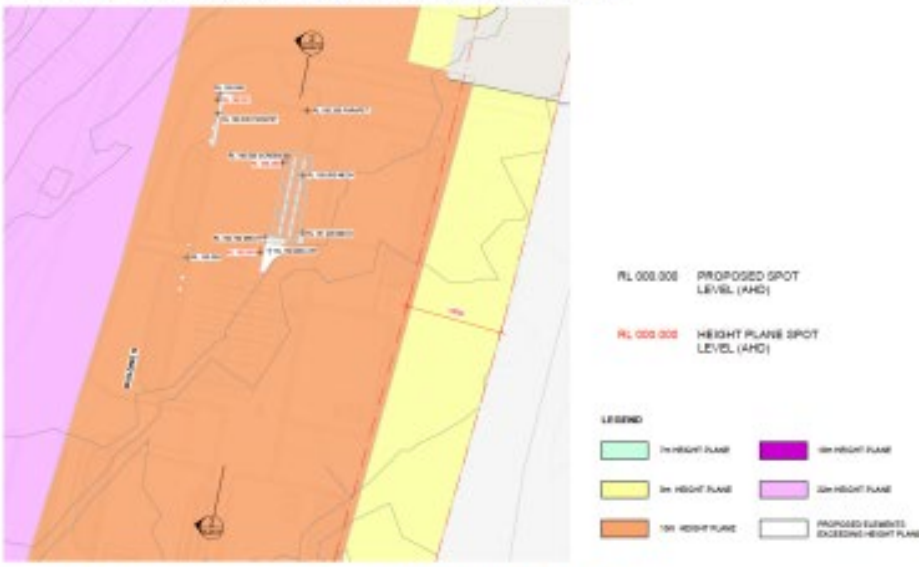


Figure 30: Height exceedance plan – Building H (Cox drawing DA-99-10)

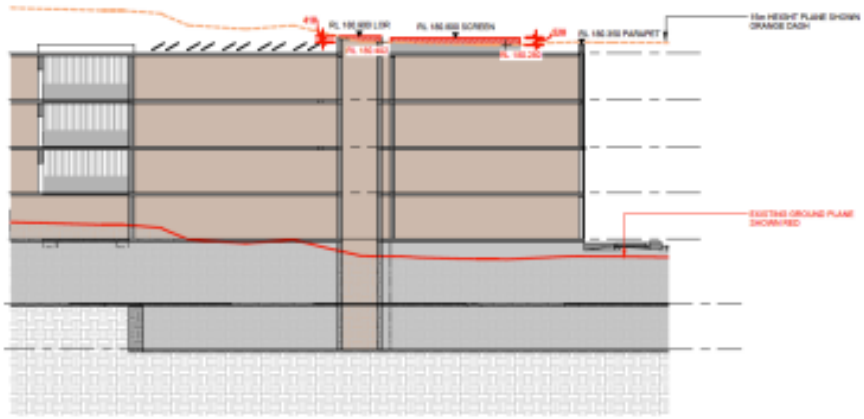


Figure 31: Cross section 2 – Building H (Cox drawing DA-99-10)

3.2.8 Building K (previously C&E)

- Maximum height of building: 9m / 15m
- Proposed height exceedance:
  - 9m height plane: Maximum 1.65m (18.3%)
  - 15m height plane: Maximum 3.80m (25.3%).

Building K is located at the south of the site. A height exceedance is requested to accommodate the five storey building envisaged under the Hills DCP in this location whilst minimising cut and fill and accommodating the updated NCC requirements.

During the detailed design this building has been refined compared to the endorsed Master Plan to provide for greater separation to the adjoining boundary and to provide a more stepped building form which further sets the building bulk back from the boundary interface. Where the height exceedance is located, the boundary setback has been increased from 10m (as required under the Hills DCP) to range from 10.2m to 12.75m, with an increased setback in the location of the height exceedance.

The design changes have resulted in the extent of the building which exceeds the LEP height control to be largely internal to the site and not visible from the neighbouring property. Overall the visual impact to the neighbour would be reduced compared to the endorsed DCP Master Plan given the additional setback and the stepped built form.

The design also minimises overshadowing on adjacent dwellings compared to the endorsed DCP Master Plan with the proposed development minimising impacts before 10.30am and having no impact after 10.30am in midwinter as shown at Figure 36, thereby performing better than the solar access requirement of the Hills DCP of minimum four hours in midwinter.

Further solar testing has been carried out to consider the overshadowing on the rear private open space of the adjacent townhouses which demonstrates there would be negligible additional overshadowing of these rear courtyards compared with the existing situation (as illustrated at Appendix B).

Accordingly, this exceedance would not result in any additional impacts on the surrounding area compared to that envisaged under the Planning Proposal and Hills DCP.

Figure 32: Height plane diagram – Building K (Cox drawing DA-99-11)

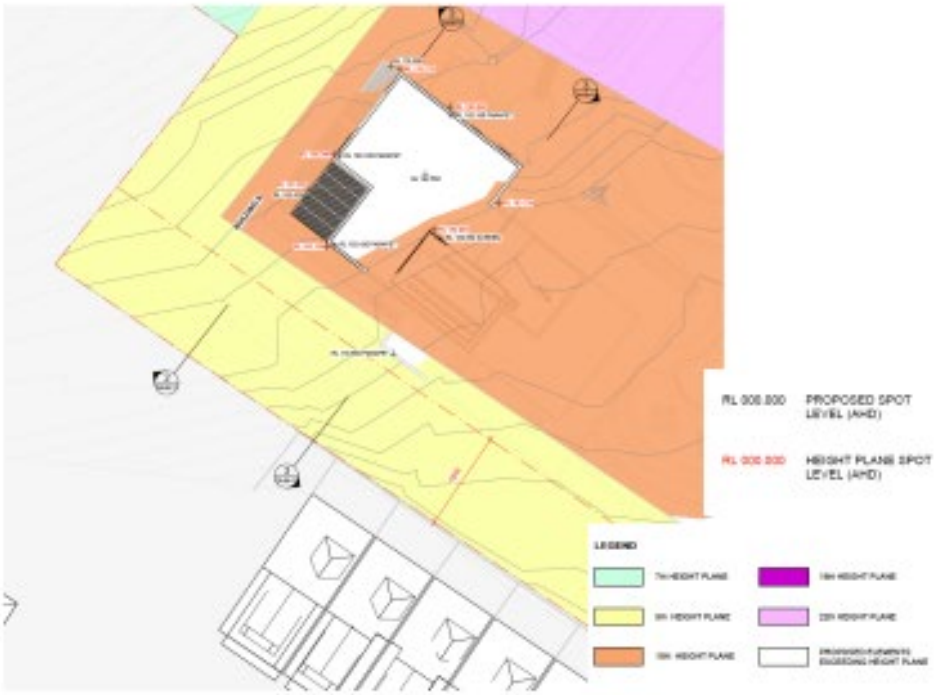


Figure 33: Height exceedance plan – Building K (Cox drawing DA-99-11)

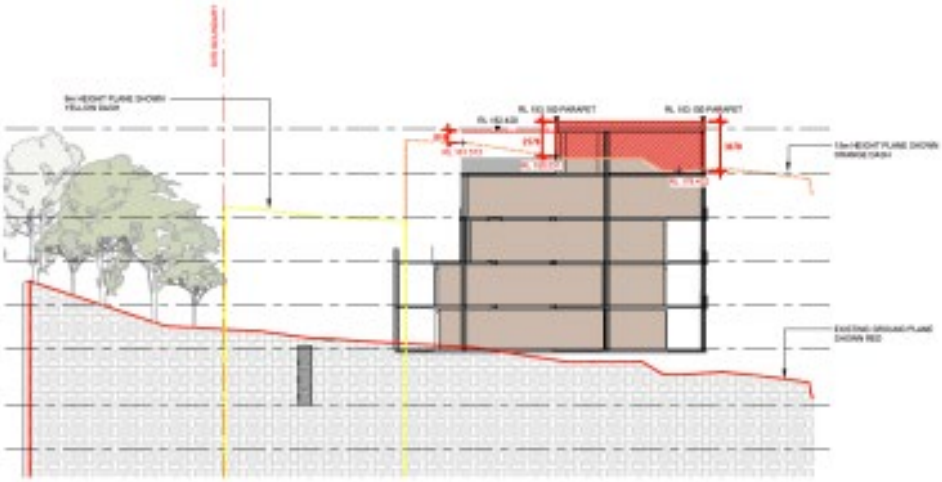


Figure 34: Cross section 2 – Building K (Cox drawing DA-99-11)

Figure 35: Cross section 3 – Building K (Cox drawing DA-99-11)

Figure 36: Buildings K solar analysis (Source: Cox 2024)

3.2.9 Buildings M (previously G)

- Maximum height of building: 22m / 9m
- Proposed height exceedance:
  - 22m height plane: Maximum 1.02m (4.64%)
  - 7m height plane: Maximum 7.35m (105% for façade blades of maximum 0.37m wide only)

Buildings M is located centrally to the site to the east of the central communal open space.

A minor exceedance is requested in this location along the western façade to accommodate the roof parapet of the six storey building envisaged under the Hills DCP. This has resulted from the updated NCC requirements and a lack of flexibility in the LEP height of buildings map.

There is also a minor exceedance to accommodate façade blades where they extend into the adjacent 7m height plane.

The exceedances are entirely internal to the site and would not have any significant visual or amenity impact.

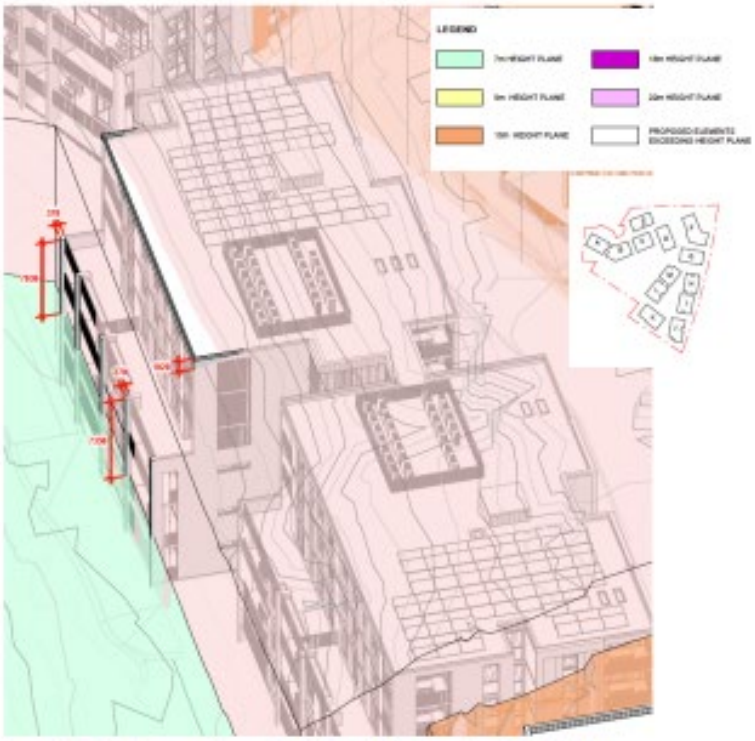


Figure 37: Height exceedance – Buildings M (Cox drawing DA-99-12)

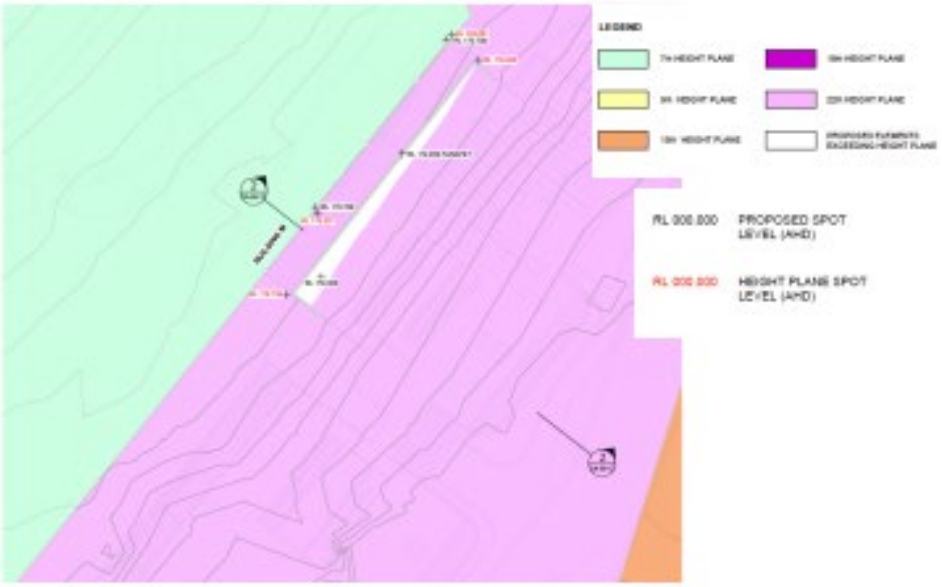


Figure 38: Height exceedance plan – Building M (Cox drawing DA-99-12)

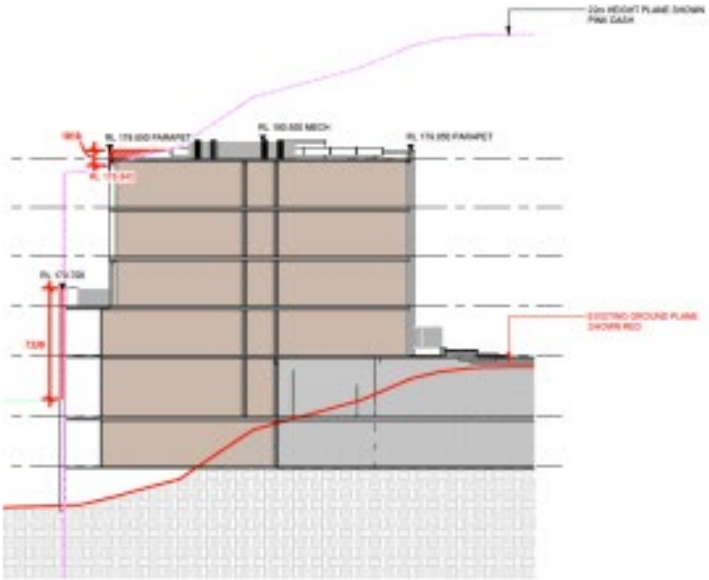


Figure 39: Cross Section 2 – Building M (Cox drawing DA-99-12)

4 Justification of proposed variation

Clause 4.6(3) of the Hills LEP sets out the following:

> ***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.*

The relevant matters in relation to these considerations are detailed below.

4.1 How is compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case?

The Guide to Varying Development Standards (November 2023) has been prepared by DPHI to assist applicants applying to vary development standards. It sets out that there are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded.

The *Guide to Varying Development Standards* also establishes that a Clause 4.6 application is not required to meet all of the tests.

The five-part test was established in *Wehbe v Pittwater Council [2007] NSWLEC 827* and includes the following:

1) The objectives of the standard are achieved notwithstanding non-compliance with the standard
2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3) The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
4) The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.
5) The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Consideration of these tests is provided in Table 2 below.

Table 2: Five ways to demonstrate compliance is unreasonable or unnecessary

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The objectives of Clause 4.3 Height of Buildings can be achieved, as outlined in Table 3, notwithstanding the non-compliance.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	The height exceedances are required to accommodate the master plan which informed the Hills LEP controls and which forms part of the Hills DCP. The height exceedances have resulted from a lack of flexibility of the height of buildings controls which did not appear to take into consideration adequate allowance for the variable and steep topography and lift overruns and rooftop servicing in some locations along with the following: • Recent changes to the NCC released in 2023 resulting in the need for larger floor to floor heights effecting all buildings • The need for increased floor to floor heights to accommodate the clubhouse facilities at the ground level of buildings C and D (previously J and L) • The need to accommodate the flood planning levels for buildings A, B, C, D, F and G. (previously H, I, J, L, M and N) • The alignment of floor levels of Building A (previously N) to align with the floor levels of Building B (previously M) to allow for easy connections to the clubhouse facilities and basement car parking • The complexity in accommodating the variable and steep topography with a key objective of the detailed design which has informed the proposed development being to minimise cut and fill, to maximise the usability of the communal spaces and to achieve buildings which directly address the internal streets and communal spaces. Without these exceedances the intent of the Master Plan would be unable to be achieved limiting the number of seniors housing dwellings that could be developed on the site. This would impact on the supply of seniors housing in the locality as well as having a flow on effect of reducing housing supply of larger dwellings that become available when older residents seek to downsize.
The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.	This test is not applicable in this instance.
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of	This test is not applicable in this instance.

Objective	Consideration
land. That is, the particular parcel of land should not have been included in the zone.	

4.1.1 Satisfaction of the objectives of the development standard

The proposed development is consistent with the objectives of Clause 4.3 Height of Buildings as shown in Table 3 and the objectives for the E4 Environmental Living zone which applies to the site as shown in Table 4.

Table 3: Consideration of Clause 4.3 Height of buildings objectives

Height of building objectives	Consistency
To ensure the height of buildings is compatible with the character of the locality	The proposed development is compatible with the character of the locality. The endorsed Master Plan was developed to respond to the landscape and built form character of the site and surrounds through proposing a series of 3-6 storey buildings which are located to follow the topography of the site with taller building located centrally to minimise visual and amenity impacts on the surrounding area and neighbouring residential properties. The endorsed Master Plan comprises a series of buildings with small floor plates to maintain the village feel of the site and allowing for extensive landscaping and visual connections through the site. The proposed development has resulted from a detailed design process which has identified that to achieve the master plan a number of exceedances would be required to the LEP height controls. The refined design is generally consistent with the master plan and therefore continues to be compatible with the character of the locality. As detailed below the design has been refined to reduce impacts on the surrounding area compared to the endorsed master plan.
To minimise adverse impacts on local amenity	The required height exceedances will not result in any significant increased impact on the surrounding area compared to the master plan. The height exceedances are largely located internally to the site where they would not have any additional impact on the surrounding area. For exceedances that front site boundaries the setbacks, built form and landscaping have been designed ensure there would be no increased visual and privacy impacts on the surrounding residential areas. Solar access testing has been carried out that demonstrates that the proposed development will reduce overshadowing on adjoining dwellings compared to that envisaged under the endorsed master plan and can comply with the Hills DCP requirement of four hours of solar access in midwinter.

Table 4: Consideration of objectives of the C4 Environmental Living zone

B5 zone objectives	Consistency
To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.	The subject site is considered to be located in an area with aesthetic values associated with the leafy landscape character and the village character of the existing development. It has limited ecological values. The endorsed master plan has responded to the aesthetic values of the site through the retention of the existing character as detailed in Table 3 above. The proposed development has resulted from a detailed design process which has identified that to achieve the master plan a number of exceedances would be required to the LEP height controls. The refined design is generally consistent with the master plan and therefore continues to be compatible with the character of the locality. Further, the design has been refined to minimise visual impacts on the surrounding area where possible compared to the endorsed master plan. A Flora and Fauna Assessment has been prepared which has identified small areas of remnant Blue Gum High Forest (BGHF) along with small areas of planted native vegetation associated with BGHF. The Flora and Fauna Assessment highlights that all remnant BGHF would be retained and only small areas of planted native vegetation associated with BGHF would be impacted. It concluded that the proposed development will not have any significant impacts on the ecological values of the site.
To ensure that residential development does not have an adverse effect on those values.	As detailed above the proposed development, including the proposed height exceedances, will not have an adverse impact on the ecological, scientific or aesthetic values

4.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

The *Guide to Varying Development Standards* sets out the following in relation to consideration of environmental planning grounds:

> *The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area.*
>
> *Sufficient environmental planning grounds need to be established by the facts of the request. The request must justify the contravention of the development standard, not simply promote the benefits of the development. The grounds must:*
>
> - *be sufficient to justify the contravention*
> - *focus on the aspect of the development that contravenes the development standard, not the development as a whole.*

Environmental planning grounds may not be sufficient to justify the contravention of a development standard if the variation results in unsatisfactory planning outcomes.

Avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment' one of the objects of the EP&A Act. However, the lack of impact must be specific to the non-compliance to justify the breach.

Other examples of environmental planning grounds include:

- *Responding to flood planning levels*
- *Responding to topography*
- *Achieving equal or* better amenity outcomes (solar access, privacy, views/outlook).

4.2.1 Consistency with objects of the EP&A Act

The proposed contravention of the height of buildings control does not result in any inconsistency with the objects of the EP&A Act as detailed in Table 5 below.

Table 5: Consideration of the objects of the EP&A Act

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	No applicable.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	Not applicable
(c) to promote the orderly and economic use and development of land,	The requested variation promotes the orderly and economic use of the land as it would allow the development of the site to be undertaken consistent with the Master Plan which informed the Hills LEP controls and forms part of the Hills DCP.
(d) to promote the delivery and maintenance of affordable housing,	Not applicable
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	As detailed in Table 4 a Flora and Fauna Assessment has been prepared which concludes that the proposed development will not have any significant impact on ecological values on the site.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable
(g) to promote good design and amenity of the built environment,	The proposed height variation promotes good design and amenity by ensuring the exceedances have been designed to minimised visual impact and avoid any additional overshadowing impact.

Object	Consideration
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The requested variation has arisen from the need to ensure proper construction of buildings including accommodating the flood planning level and the amended requirements of the NCC which results in increased floor to floor heights.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Not applicable
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Not applicable

4.2.2 Consideration of environmental impacts of the variation

A detailed assessment of environmental impacts is provided for each requested height exceedances in Section 3.2.

The height exceedances are largely located internally to the site and would not have any additional impact on the surrounding area. For variations that front site boundaries the setbacks, built form and landscaping have been designed ensure there would be no increased visual and privacy impacts on the surrounding residential areas. Solar access testing has been carried out that demonstrates that the proposed development will reduce overshadowing on adjoining dwellings compared to that envisaged under the endorsed master plan as detailed in Section 3.2 and can comply with the Hills DCP requirement of four hours of solar access in midwinter (Figure 11 and Figure 36).

Further solar testing has been carried out to consider the overshadowing on the rear private open space of the adjacent townhouses which demonstrates there would be negligible additional overshadowing of these rear courtyards compared with the existing situation (Appendix B).

A high level of solar access to the communal open space within the subject site is also able to be achieved with 75% of communal areas receiving 4 or more hours of sunlight in midwinter as detailed in Section 3.2 (Figure 6).

5 Conclusion

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

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

Compliance is unreasonable and unnecessary in the circumstances

Compliance with the development standard is unreasonable and unnecessary in the circumstances as the objectives of the standard are met, notwithstanding the variation and therefore compliance is not necessary

Further, the underlying object or purpose would be defeated or thwarted if compliance was required as the height exceedances are necessary to accommodate the Master Plan which informed the Hills LEP controls and which forms part of the Hills DCP.

Without these exceedances the intent of the Master Plan would be unable to be achieved limiting the number of seniors housing dwellings that could be developed on the site. This would also impact on the supply of seniors housing in the locality as well as having a flow on effect of reducing housing supply of larger dwellings that become available when older residents seek to downsize.

There are sufficient environmental planning grounds to justify the contravention

There are sufficient environmental planning grounds to justify the contravention.

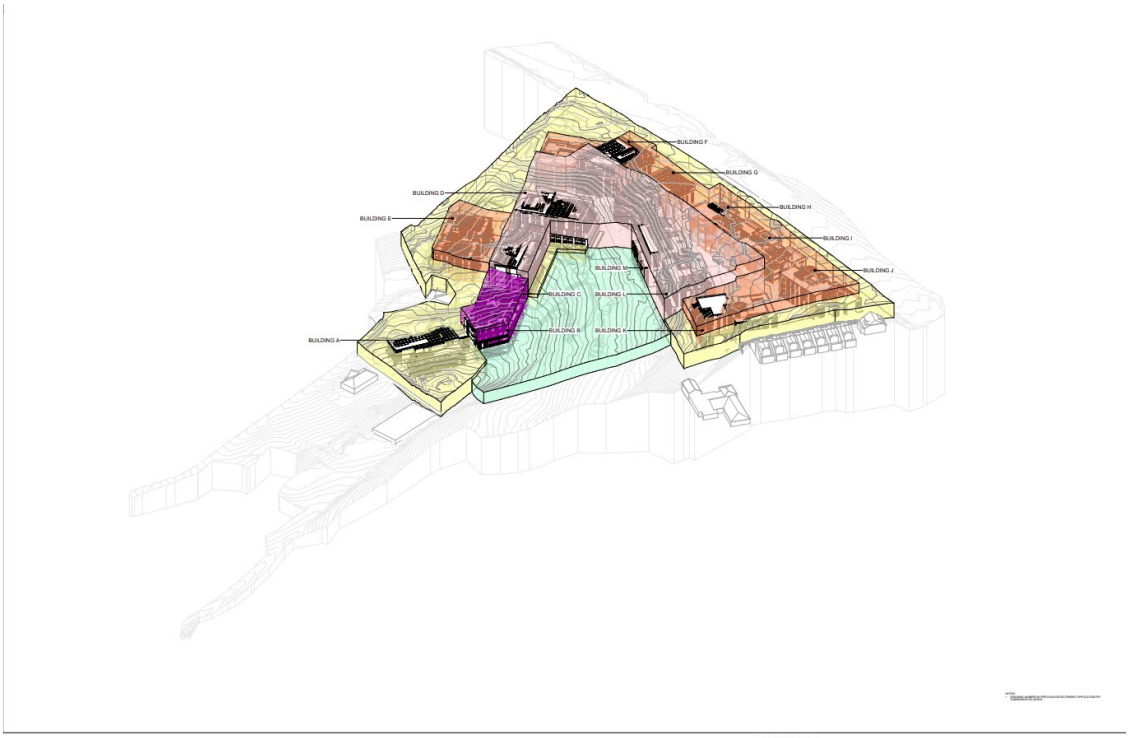
The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation.

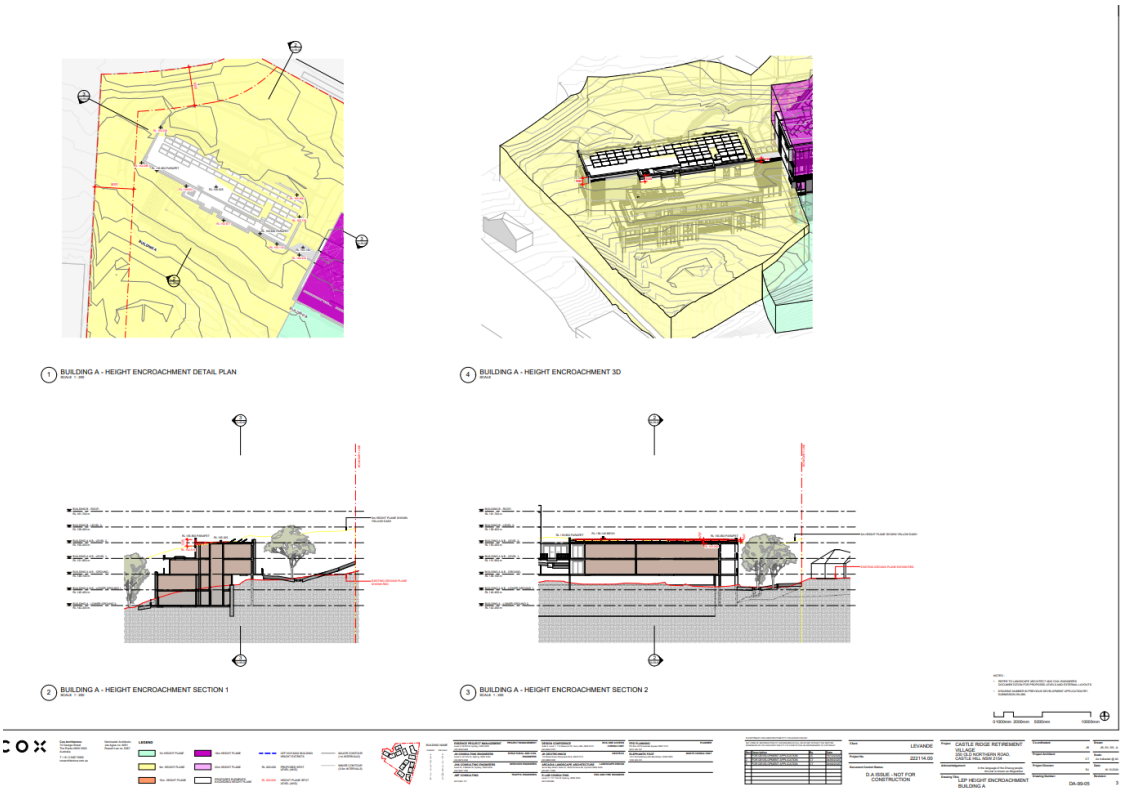
As detailed within this report the exceedances would not result in any significant increased visual and privacy impacts on the surrounding residential areas and overshadowing of adjoining dwellings has been reduced compared to that envisaged under the endorsed master plan.

The height exceedances have resulted from a number of factors and site constraints including the need to accommodate updated NCC requirements, flood planning levels, increased floor to floor heights for the clubhouse facilities and steep and variable topography and to deliver a high level of site accessibility. They do not result in any additional floor space beyond that which is permissible under the Floor Space Ratio (FSR) controls that apply to the site. Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

Appendix A: Height exceedance drawings

PALISANDER PLACE
PIONEER PLACE
OLD NORTHERN ROAD
MAXIMUM HEIGHT OF BUILDINGS - SITE PLAN
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
DA ISSUE NOT FOR CONSTRUCTION
LEP MAXIMUM HEIGHT OF BUILDINGS PLAN
DA-99-03


BUILDING F
BUILDING G
BUILDING D
BUILDING H
BUILDING E
BUILDING I
BUILDING M
BUILDING J
BUILDING C
BUILDING L
BUILDING A
BUILDING B
BUILDING K
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
D.A ISSUE - NOT FOR CONSTRUCTION
LEP MAXIMUM HEIGHT OF BUILDINGS 3D
DA-09-04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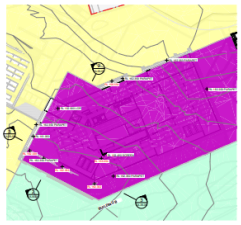
4 BUILDING A - HEIGHT ENCROACHMENT 3D
2 BUILDING A - HEIGHT ENCROACHMENT SECTION 1
3 BUILDING A - HEIGHT ENCROACHMENT SECTION 2
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
D.A ISSUE - NOT FOR CONSTRUCTION
LEP HEIGHT ENCROACHMENT BUILDING A
DA-09-05



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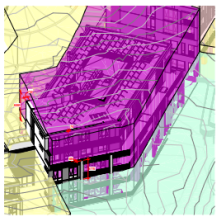
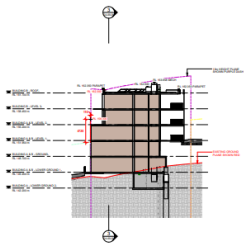
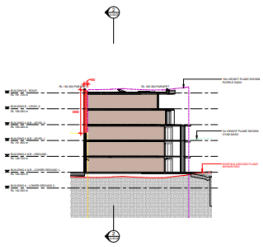


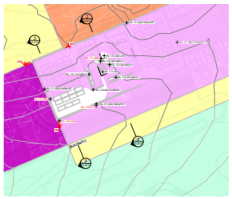
4 BUILDING B - HEIGHT ENCROACHMENT 3D



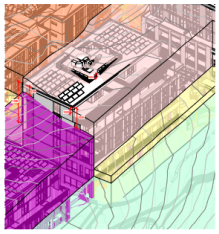
2 BUILDING B - HEIGHT ENCROACHMENT SECTION 1



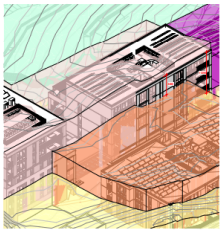
3 BUILDING B - HEIGHT ENCROACHMENT SECTION 2



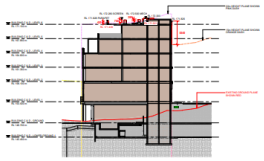
1 BUILDING C - HEIGHT ENCROACHMENT DETAIL PLAN



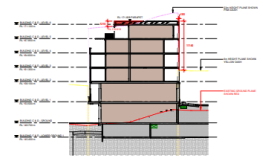
4 BUILDING C - HEIGHT ENCROACHMENT 3D (VIEW 01)



5 BUILDING C - HEIGHT ENCROACHMENT 3D (VIEW 02)



2 BUILDING C - HEIGHT ENCROACHMENT SECTION 1



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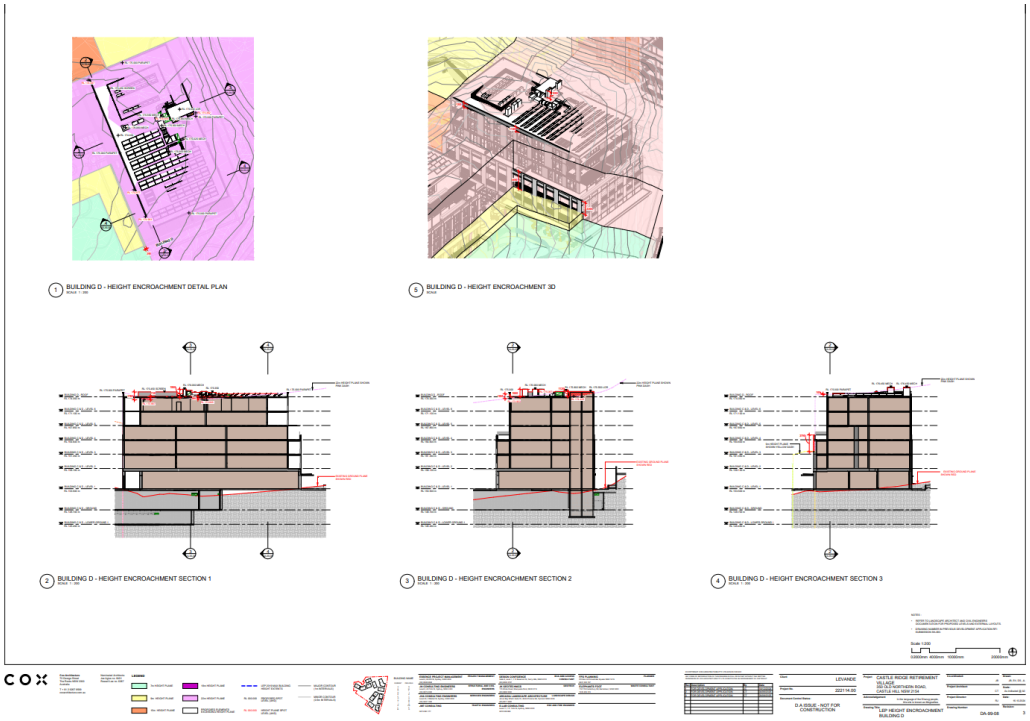
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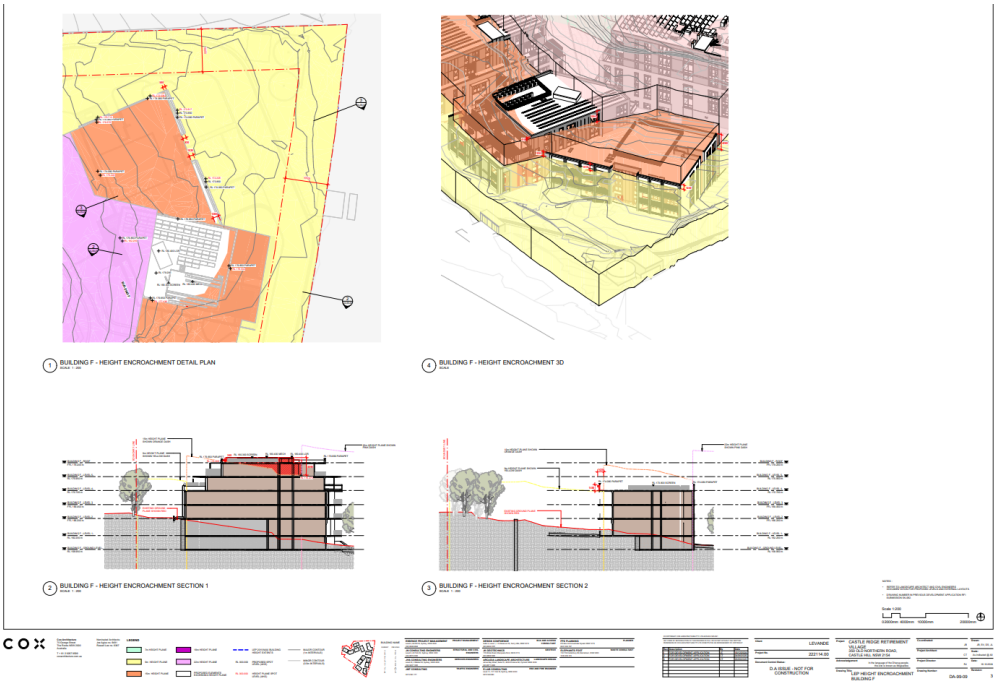
2 BUILDING D - HEIGHT ENCROACHMENT SECTION 1
3 BUILDING D - HEIGHT ENCROACHMENT SECTION 2
4 BUILDING D - HEIGHT ENCROACHMENT SECTION 3
COX
LEGEND
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
CASTLE HILL NSW 2154
DA ISSUE - NOT FOR CONSTRUCTION
LEP HEIGHT ENCROACHMENT BUILDING D
DA-00-05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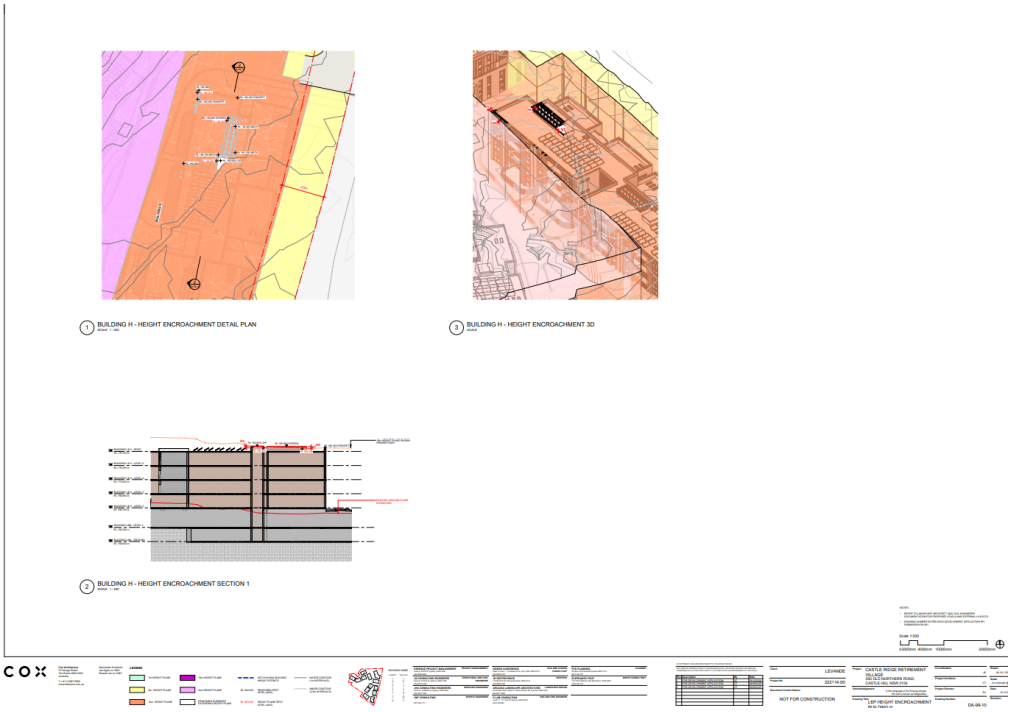
3 BUILDING F - HEIGHT ENCROACHMENT SECTION 2
COX
LEGEND
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
CASTLE HILL NSW 2154
DA ISSUE - NOT FOR CONSTRUCTION
LEP HEIGHT ENCROACHMENT BUILDING F
DA-00-02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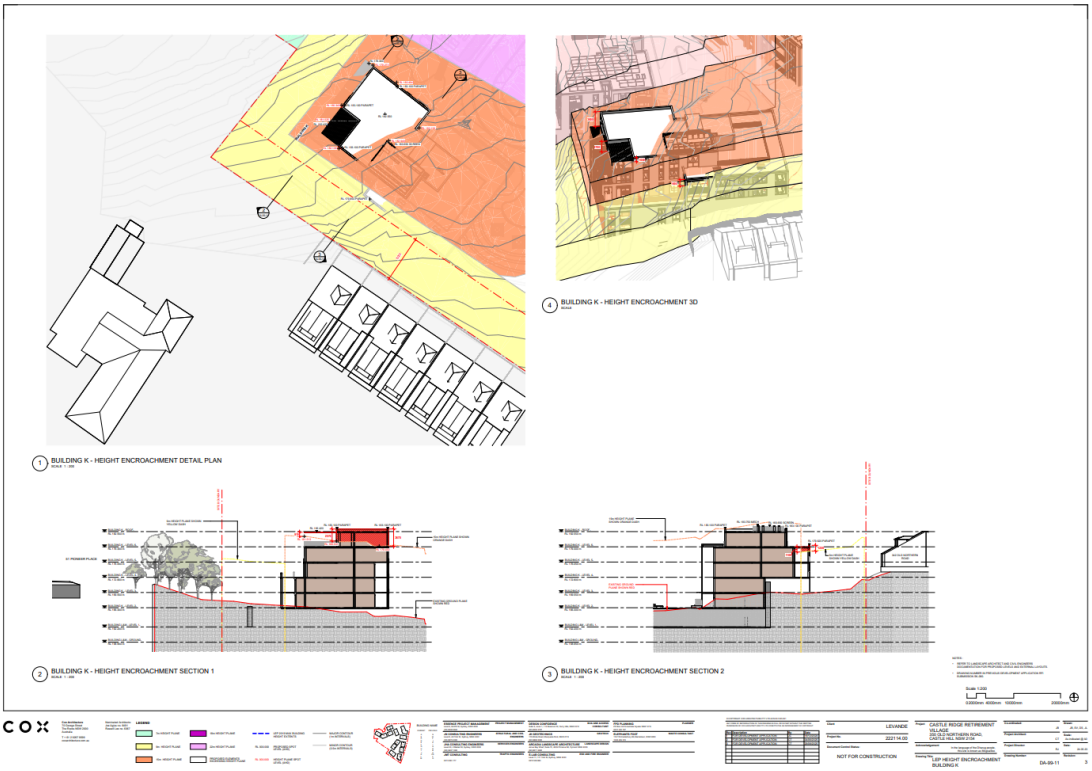
3 BUILDING H - HEIGHT ENCROACHMENT 3D
2 BUILDING H - HEIGHT ENCROACHMENT SECTION 1
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
NOT FOR CONSTRUCTION
LEP HEIGHT ENCROACHMENT
DA-09-10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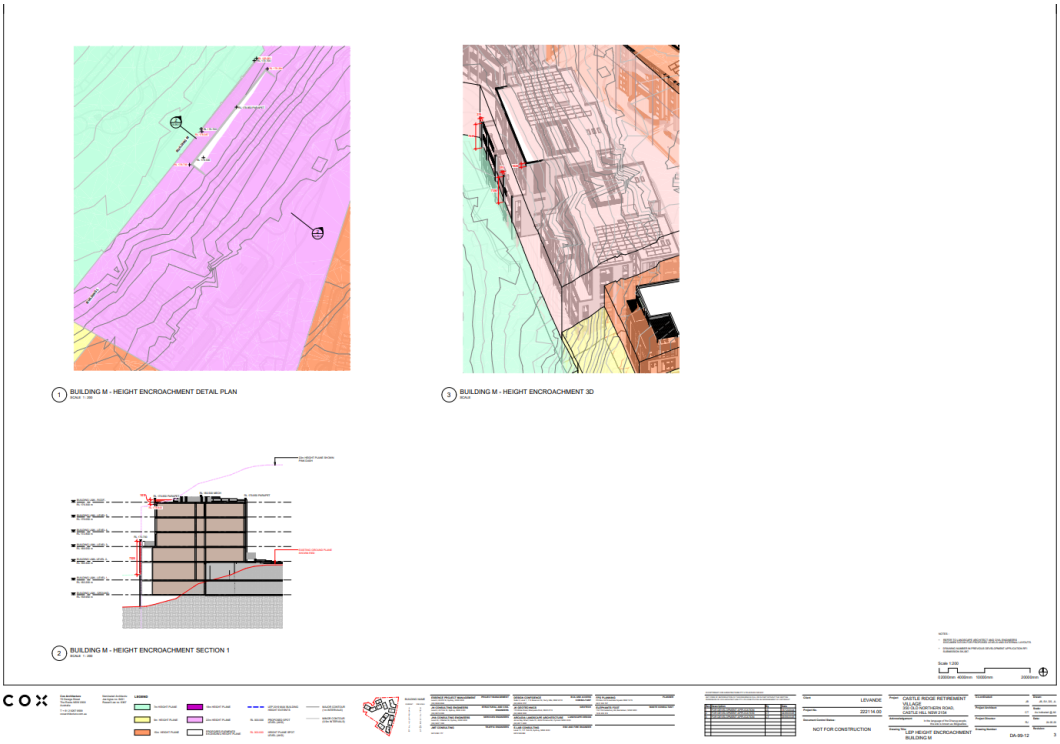
2 BUILDING K - HEIGHT ENCROACHMENT SECTION 1
3 BUILDING K - HEIGHT ENCROACHMENT SECTION 2
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
NOT FOR CONSTRUCTION
LEP HEIGHT ENCROACHMENT
BUILDING K
DA-09-11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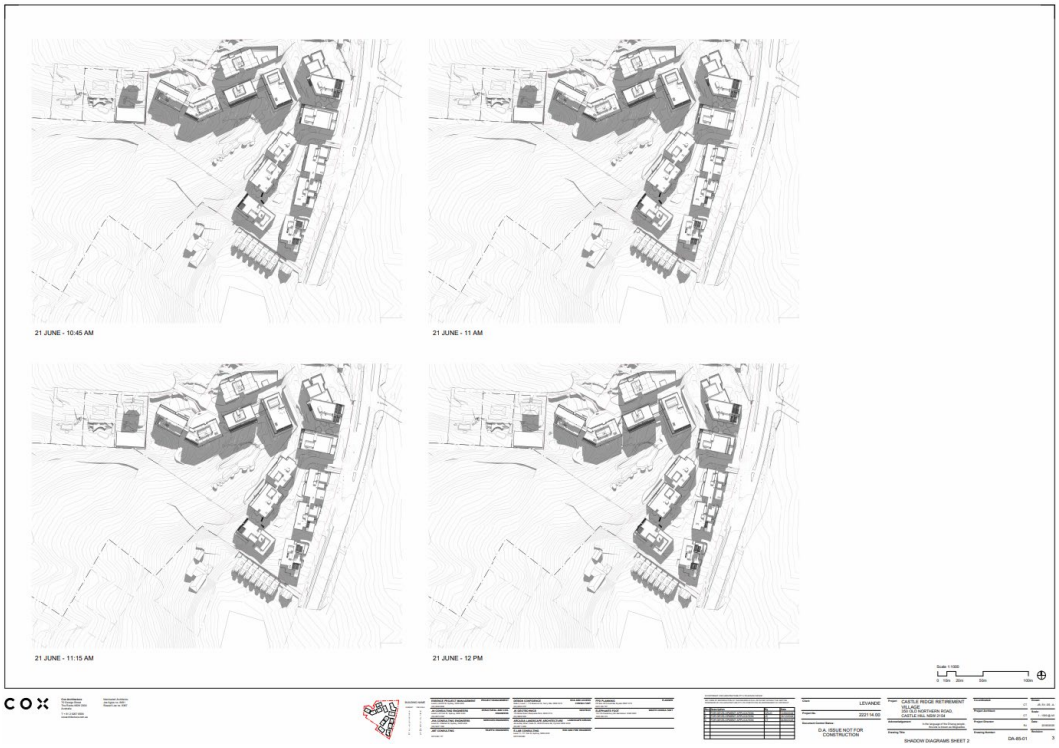
CASTLE RIDGE RETIREMENT VILLAGE
NOT FOR CONSTRUCTION
BUILDING M
DA-99-12

Appendix B: Shadow analysis

21 JUNE - 9 AM
21 JUNE - 10 AM
21 JUNE - 10:15 AM
21 JUNE - 10:30 AM
Scale 1:1000
0 10m 20m 30m 40m
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
(20-25 NORTHERN ROAD, CASTLE HILL, NSW 2154)
2221.14.00
D.A. ISSUE NOT FOR CONSTRUCTION
SHADOW DIAGRAMS SHEET 1
DA-85-00
3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21 JUNE - 11 AM
21 JUNE - 11:15 AM
21 JUNE - 12 PM
Scale 1:1000
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COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
(20-25 NORTHERN ROAD, CASTLE HILL, NSW 2154)
2221.14.00
D.A. ISSUE NOT FOR CONSTRUCTION
SHADOW DIAGRAMS SHEET 2
DA-85-01
3

21 JUNE - 1 PM
21 JUNE - 2 PM
21 JUNE - 3 PM
Scale 1:1000
0 10m 20m 40m 100m
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
342 OLD NORTHERN ROAD, CASTLE HILL NSW 2154
2221.14.SD
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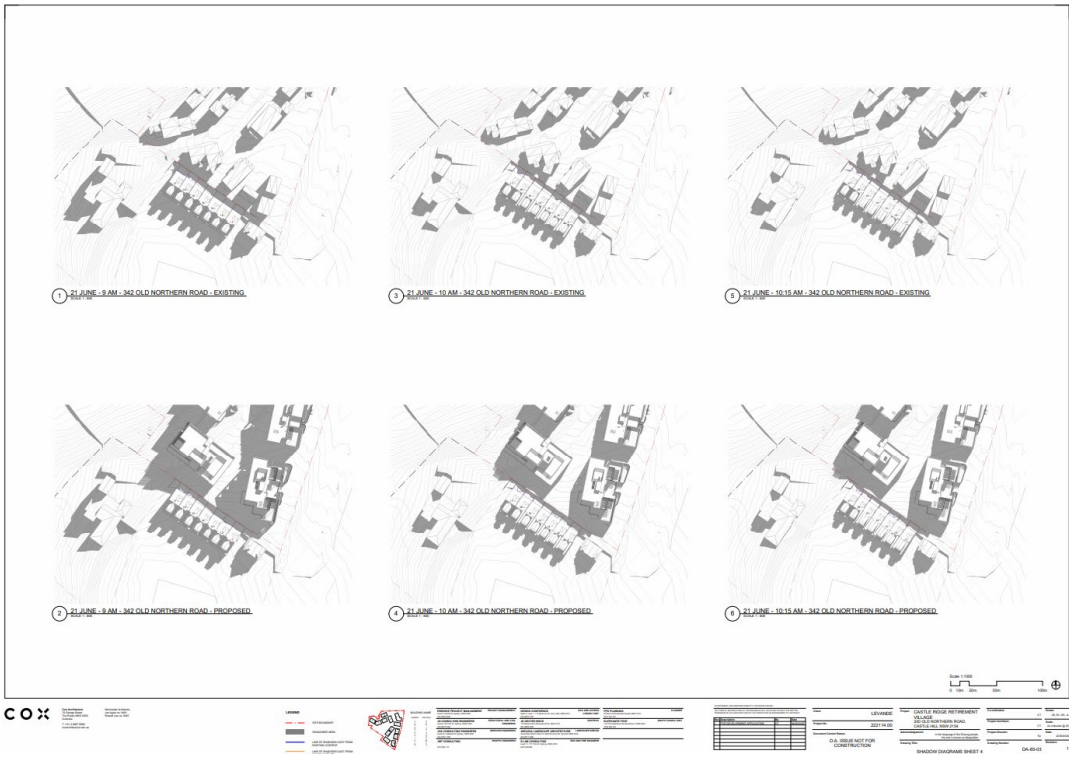
SHADOW DIAGRAMS SHEET 1
DA-SD-02
2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2 21 JUNE - 9 AM - 342 OLD NORTHERN ROAD - PROPOSED
4 21 JUNE - 10 AM - 342 OLD NORTHERN ROAD - PROPOSED
6 21 JUNE - 10:15 AM - 342 OLD NORTHERN ROAD - PROPOSED
Scale 1:1000
0 10m 20m 40m 100m
COX
LEGEND
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
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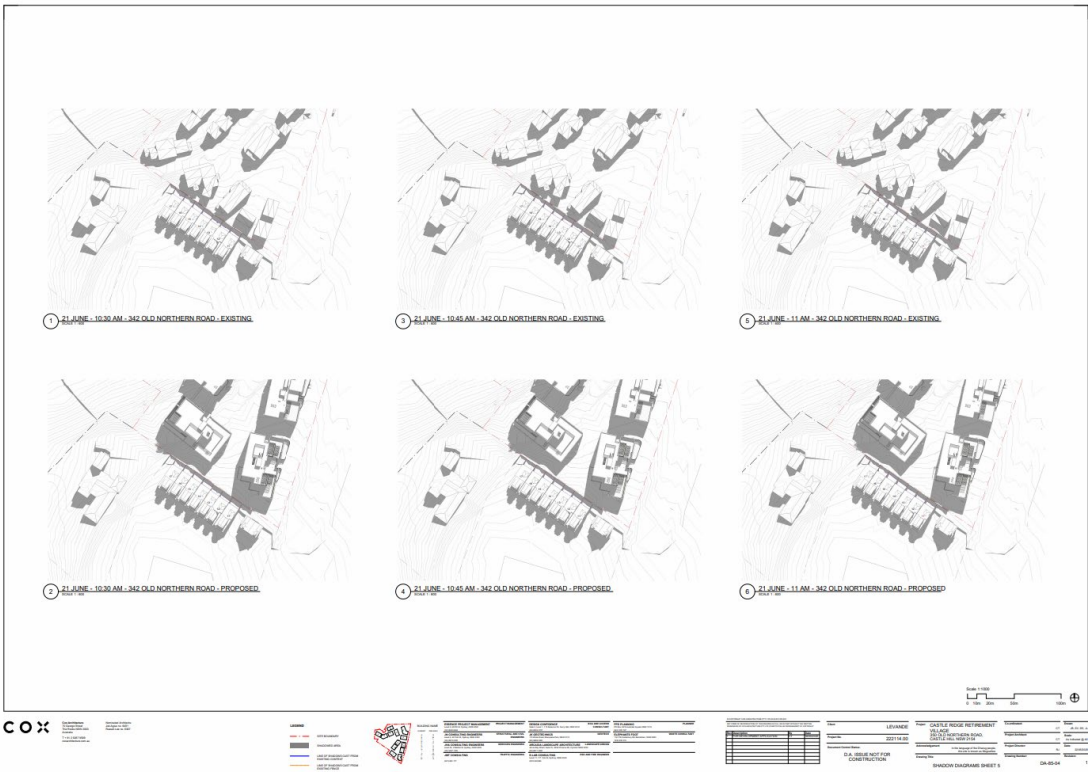
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2 21 JUNE - 10:30 AM - 342 OLD NORTHERN ROAD - PROPOSED
4 21 JUNE - 10:45 AM - 342 OLD NORTHERN ROAD - PROPOSED
6 21 JUNE - 11 AM - 342 OLD NORTHERN ROAD - PROPOSED
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
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SHADOW DIAGRAMS SHEET 5
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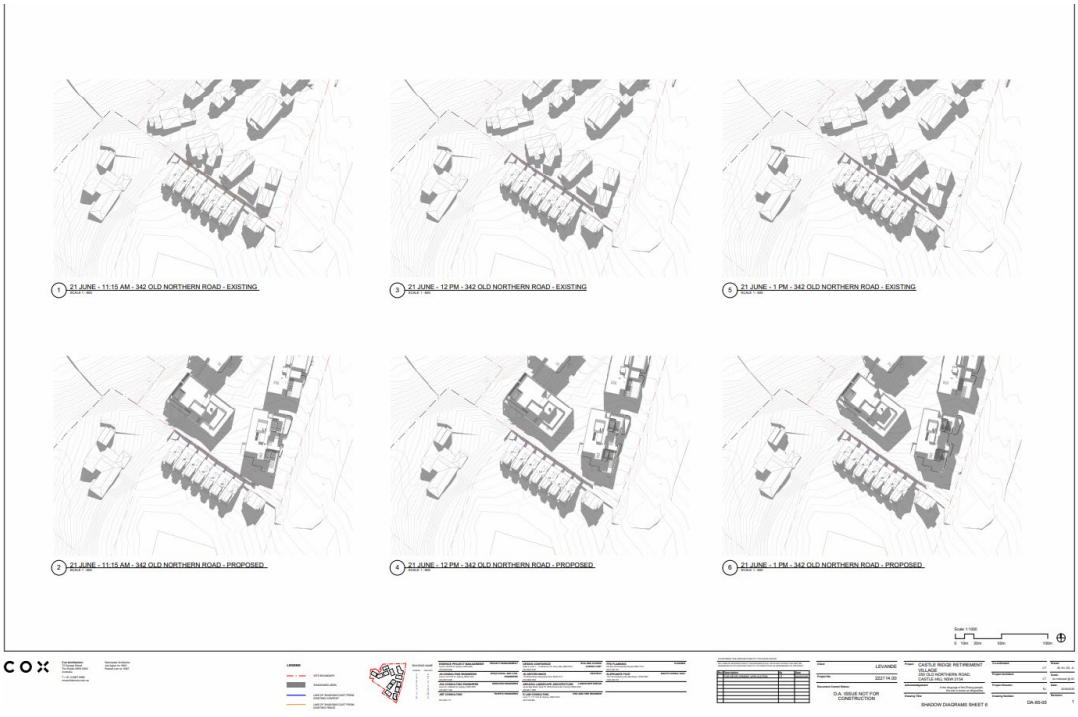
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2 21 JUNE - 11:15 AM - 342 OLD NORTHERN ROAD - PROPOSED
4 21 JUNE - 12 PM - 342 OLD NORTHERN ROAD - PROPOSED
6 21 JUNE - 1 PM - 342 OLD NORTHERN ROAD - PROPOSED
COX
LEVANDE
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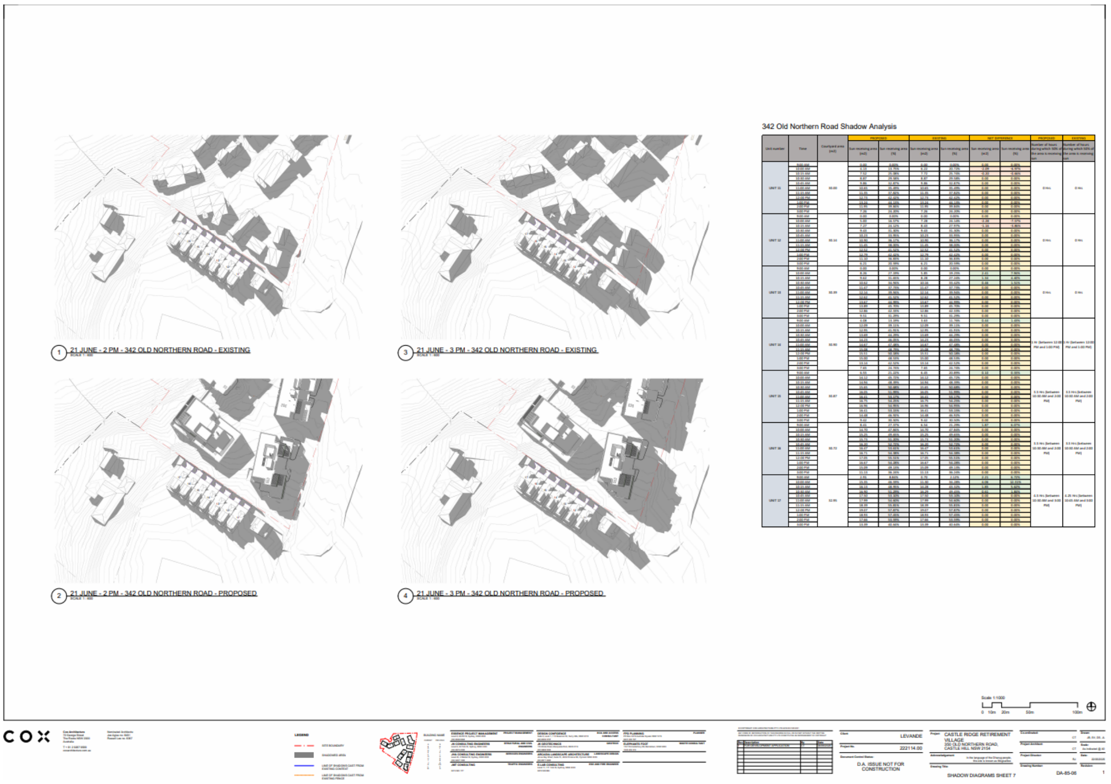
D.A. ISSUE NOT FOR CONSTRUCTION
SHADOW DIAGRAMS SHEET 6
DA-85-05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PROPOSED
EXISTING
NET DIFFERENCE
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21 JUNE - 3 PM - 342 OLD NORTHERN ROAD - EXISTING
21 JUNE - 2 PM - 342 OLD NORTHERN ROAD - PROPOSED
21 JUNE - 3 PM - 342 OLD NORTHERN ROAD - PROPOSED
COX
LEVANDE
CASTLE RIDGE RETIREMENT VILLAGE
D.A. ISSUE NOT FOR CONSTRUCTION
SHADOW DIAGRAMS SHEET 7

Clause 4.6 Variation Request
Accessible Car Parking

Castle Ridge Retirement Village

350 Old Northern Road, Castle Hill

Prepared on behalf of: Levande

December 18, 2024

FPDplanning

FPDplanning

Document control

Authors

Reviewed by	Michael File, Director	michael@fpdplanning.com
Prepared by	Anna Johnston, Associate	anna.johnston@fpdplanning.com

Project summary

Prepared on behalf of	Levande
Land to be developed	350 Old Northern Road, Castle Hill
Legal description	Lot 503 DP 1048808
Project description	Renewal of existing retirement village for seniors housing independent living units and associated facilities

FPDplanning

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Executive Summary

This report has been prepared to request a variation to a development standard in Schedule 4 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) in connection with a development application for renewal of the Castle Ridge Retirement Village at 350 Old Northern Road, Castle Hill.

The proposed development is for the staged redevelopment of the existing Castle Ridge Retirement Village including demolition of existing buildings and construction of 229 seniors housing independent living units (ILUs) within a series of buildings ranging from 3-6 storeys.

Clause 4.6 of the *Hills Local Environmental Plan 2019* (Hills LEP) provides flexibility in applying certain development standards to particular development and allows for consent to be granted to development that does not comply with a development standard in the Hills LEP or any other environmental planning instrument.

The Department of Planning, Housing and Industry (DPHI) has issued the *Guide to Varying Development Standards* (November 2023) to assist applicants in applying to vary development standards. This Clause 4.6 variation report has been prepared in accordance with the *Guide to Varying Development Standards*.

This report seeks a variation to the accessible car parking development standard in the Housing SEPP.

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.*

This development standard was introduced on 14 December 2023 as part of a suite of changes made to the Housing SEPP.

The provision requires at least 15% of the total provided car parking spaces for ILUs within the proposed development to be compliant with AS/NZS 2890.6 and a further 35% to either be compliant with AS/NZS 2890.6 or be 3.2m in width.

When the minimum carparking requirements are considered in isolation the proposal is fully compliant with the accessible carparking requirement however due to expected parking demand within the facility Levande has elected to provide an additional 60 spaces and a variation is sought to the accessible car parking requirements for this additional portion only. This is based on empirical evidence on car parking demand provided by Levande gathered in their extensive experience of operating similar facilities.

Clause 4.6 of the Hills LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

- To provide an appropriate degree of flexibility in applying certain development standards to particular development.
- To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

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 for the following reasons.

Compliance is unreasonable and unnecessary in the circumstances

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

- The relevant principles of the Housing SEPP are met, notwithstanding the variation
- The inferred objective of the control (being to ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs) is met notwithstanding the variation.

The variation to the standard is supported by empirical evidence in the form of demand analysis carried by Levande for a similar seniors housing development, Cardinal Freeman Village (also owned and operated by Levande) which indicates that actual demand for accessible spaces for seniors ILUs is much lower than required under the Housing SEPP. Cardinal Freeman is similar to the proposed development in terms of accessibility to public transport, built form and unit typology and expected demographics.

Levande are the operator of multiple similar facilities and are the long term owner and operator of the Castle Ridge Retirement Village, as such they are in a unique position to understand the demand for accessible spaces in their facilities.

Notwithstanding, the accessible car parking requirement of the Housing SEPP is able to be met if calculated against the minimum number of resident car parking spaces which would be required under the non-discretionary car parking standard in the Housing SEPP.

There are sufficient environmental planning grounds to justify the contravention

- The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation
- The proposed development is consistent with the objectives of the C4 Environmental Living zone notwithstanding the variation
- The variation to the development standard would maintain an appropriate level of accessible car parking to meet expected demand of the future residents.
- Further amending the proposed development to comply with the accessible car parking standards is not recommended as detailed below:
  - Reducing the total number of surplus resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and functionally of the ILUs for residents with fewer residents having access to a car space and has the potential to impact on car parking in surrounding streets.
  - The provision of additional accessible car parking to meet the Housing SEPP requirement would require a much larger basement resulting in a greater environmental impact and reduced potential for deep soil, tree retention and landscaping.
  - There are no additional traffic impacts as a result of the carparking above the minimum and the rate is still well below that of a comparable residential development.
  - Greater onsite parking will reduce any pressure for on-street parking in the surrounding area and better service the needs of onsite residents and their visitors who choose private vehicle transport.

Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.

1 Site and proposed development

1.1 The site

The subject site comprises 3.7ha of land located at 350 Old Northern Road, Castle Hill (Lot 503 DP1048808). The land is entirely owned by Levande who operates the existing retirement village.

The site has a frontage to Old Northern Road of approximately 260m and to Pioneer Park of approximately 100m. The site is characterized by steep topography with substantial falls of up to 30m from Old Northern Road to the western side of the site.

The existing retirement village was developed in the 1980's and consists of 113 independent living units, a large communal green space in the centre of the site and a small community facility.

Existing development comprises 2-3 storey masonry buildings nestled along the steeply sloping site.

The subject site is zoned C4 Environmental Living under the *Hills Local Environmental Plan 2019* (Hills LEP) and the following built form controls apply:

- Maximum building heights ranging from 7m to 22m
- Maximum floor space ratio of 0.83:1.

Seniors Housing is not permissible within the C4 zone however it is listed as an additional permitted use on the site under Schedule 1 of the Hills LEP.

Figure 1: Subject site (Source: Architectus 2020)

1.2 Proposed development

The proposed development is for the staged redevelopment of the existing Castle Ridge Retirement Village including:

- Demolition of all existing buildings
- Construction of 229 seniors housing independent living units (ILUs) within a series of buildings ranging from 3-6 storeys comprising the following dwelling mix:
  - 13 x 1 bedroom ILUs
  - 130 x 2 bedroom ILUs
  - 86 x 3 bedroom ILUs.
- A Retirement Living Clubhouse and Administration Facilities opening to communal outdoor spaces
- Basement carparking providing 347 car parking spaces including 326 resident spaces
- Construction of internal roads
- Upgrades to access arrangements from Old Northern including provision of a new deceleration land on Old Northern Road
- Associated tree removal and site landscaping including retention and enhanced accessibility to the central communal open space
- Utility and services augmentation as required
- Earthworks and site stabilisation works.

1.3 Proposed car parking arrangements

The proposed development includes 326 resident car parking spaces comprising the following:

- Fully accessible (compliant with AS/NZS 2890.6): 40 spaces
- 3.2m wide spaces: 93 spaces
- 2.4m wide standard spaces: 193.

The proposed development includes the following additional spaces:

- Visitor car parking: 14 spaces comprising 13 standard spaces and one accessible space (compliant with AS/NZS 2890.6).
- Staff spaces: 4 standard spaces
- Maintenance vehicle spaces: 3 standard spaces.

The following information has been provided to address the Council Request for Further Information which has sought advice on how parking will be split between units to ensure equitable distribution between compliant parking spaces.

At least one fully accessible resident space will be available per building with remaining spaces allocated on an as needs basis. Other resident car parking spaces will be allocated to residents living above the relevant basement.

As the proposed development will not be strata subdivided car spaces are not tied to individual apartments through a title arrangement. Levande will allocate spaces depending on the request of residents, however Levande has advised that as a minimum the following will be provided with some apartments having a fully accessible space rather than a standard or 3.2m wide space.

- 3 bed apartments: 2 standard spaces
- 2 bed apartments: 1 x 3.2 spaces or 1 x standard space
- 1 bed apartments: 1 standard space

Accordingly, each apartment will have at least one car parking space. The car parking allocation exceeds the minimum requirement of 0.5 parking spaces for each bedroom as prescribed in Housing SEPP.

As described in the Transport Impact Assessment all car parking has been designed in accordance with relevant design standards as follows:

- The car park has been designed in accordance with AS2890.1 with respect to ramp gradients, circulation aisle widths and car space dimensions.
- The accessible car parking spaces have been designed in accordance with AS2890.6.

2 Proposed variation

2.1 Development standard proposed to be varied

This report seeks a variation to the accessible car parking development standard in the Housing SEPP.

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.*

Schedule 4, Part 1, Section 4(2)(c) of the Housing SEPP specifies the following development standard for accessible 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.*

This provision requires at least 15% of the total provided car parking spaces for ILUs within the proposed development to be compliant with AS/NZS 2890.6 and a further 35% to be to either be compliant with AS2890.6 or be 3.2m in width.

AS/NZS 2890.6 prescribes the requirements for the provision of off-street parking facilities for people with disabilities during new building works.

For angled car parking, this requires either:

- A single accessible space of 4.8m (i.e. a standard 2.4m space with an additional 2.4m adjacent space for accessibility)
- Two spaces with a shared 2.4m space for accessibility (total 7.2m or 3.6m per space).

The provisions of Schedule 4, Part 1, Section 4(2)(c) of the Housing SEPP are development standards for the purposes of Clause 4.6 of the Hills LEP. They are considered to meet the definition of development standards as set out in the *Environmental Planning and Assessment Act 1979* (EP&A Act) which refers to car parking requirements – see extract from definition below.

> ***development standards*** *means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—*
>
> *g. the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles*

Accordingly, it is considered that these provisions can be varied under Clause 4.6 of the Hills LEP.

The provisions are numerical standards as referenced in the *Guide to Varying Development Standards November 2023* as being standards which use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development.

2.2 Extent of proposed variation

This report seeks to vary the accessible car parking requirements Schedule 4, Part 1, Section 4(2)(c) of the Housing SEPP by applying the accessible car parking rates only to the minimum required number of resident car spaces rather than the total number of resident car spaces provided.

Section 108(k) of the Housing SEPP sets out non-discretionary development standards for independent living units that, if complied with, prevent the consent authority from requiring more onerous standards. This sets out a requirement for at least 0.5 parking spaces to be provided for each bedroom.

The non-discretionary development standard would require a minimum of 266 car parking spaces to be provided. The proposed development seeks to provide 326 car parking spaces for residents which exceeds this requirement by 60 spaces.

When the minimum carparking requirements are considered in isolation the proposal is fully compliant with the accessible carparking requirement. However due to expected parking demand within the facility Levande has elected to provide an additional 60 spaces and a variation is sought to the accessible car parking requirements for this additional portion only. This is based on empirical evidence on car parking demand provided by Levande gathered in their extensive experience of operating similar facilities.

The 60 additional spaces would be provided as standard 2.4m wide spaces and the majority will form secondary spaces for ILUs. As the project will be a managed retirement village, Levande will have the capability to assign accessible parking spaces on a needs basis and will do so if residents require them. A management plan will be developed closer to the opening of the redevelopment.

As shown in Table 1 below the development would be compliant with the accessible car parking standard set out in Housing SEPP Schedule 4, Part 1, clause 4(2)(c) if assessed against the minimum number of car parking spaces required for residents. Of the total 326 car spaces for residents 12% are compliant with AS/NZS 2890.6 and 29% are 3.2m wide spaces, which does not fully meet the required 15% and 35% respectively.

Table 1: Proposed car parking provision

Type of parking space	Required	Required %	Proposed	Proposed %
Minimum car spaces required under the Housing SEPP for residents				
AS/NZS 2890.6	40	15%	40	15%
3.2m wide spaces	93	35%	93	35%
Standard dimension	133	50%	133	50%
Subtotal	266	-	266	-
Proposed additional car parking spaces for residents				
AS/NZS 2890.6	9	15%	0	0%
3.2m wide spaces	21	35%	0	0%
Standard dimension	30	50%	60	100%
Subtotal	60	-	60	-
Total car parking spaces for residents				
Compliant with AS/NZS 2890.6	50	15%	40	12%
3.2m wide spaces	114	35%	93	29%
Standard dimension	163	50%	193	59%
TOTAL	**326**	**-**	**326**	**-**

3 Justification of proposed variation

Clause 4.6(3) of the Hills LEP sets out the following:

> ***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.*

The relevant matters in relation to these considerations are detailed below.

3.1 How is compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case?

The Guide to Varying Development Standards (November 2023) has been prepared by DPHI to assist applicants applying to vary development standards. It sets out that there are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded.

The *Guide to Varying Development Standards* also establishes that a Clause 4.6 application is not required to meet all of the tests.

The five-part test was established in *Wehbe v Pittwater Council [2007] NSWLEC 827* and includes the following:

1) The objectives of the standard are achieved notwithstanding non-compliance with the standard
2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
4) The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.
5) The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

As detailed below, the proposed variation to the development standard satisfies the first test, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The Housing SEPP includes no stated objectives relating to seniors housing in Chapter 3, Part 5 or specifically in relation to the development standard in question. However, the Housing SEPP includes overarching principles which have been considered and addressed in Section 3.1.1.

Where no objective applies to the development standard, the *Guide to Varying Development Standards November 2023* sets out that:

If a development standard does not have an objective, the written request must establish, through research and an understanding of the background to the standard, the environmental planning outcome the standard is seeking to achieve.

As the standard is read as part of the whole environmental planning instrument, reference to how the instrument addresses similar provisions in other zones, or the zone objectives in which the development is proposed may be necessary.

Accordingly, consideration has been given to an inferred objective in Sections 3.1.2 and 3.1.3.

3.1.1 Consideration of objectives of the Housing SEPP objectives

The Housing SEPP includes no stated objectives relating to seniors housing in Chapter 3, Part 5 or specifically in relation to the development standard in question. However, as detailed below it is considered that the overarching principles of the Housing SEPP are achieved notwithstanding the non-compliance with the standard.

Table 2: Consideration of the objectives of the Housing SEPP

Principle	Consideration
(a) enabling the development of diverse housing types, including purpose-built rental housing,	This principle is not relevant to the clause 4.6 variation request.
(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,	The proposed development seeks to deliver new independent living units to meet the needs of seniors and people with a disability. It is considered that the variation to the accessible car parking requirements would continue to meet the needs of these groups because the proposed development will nevertheless meet the demand for accessible car parking spaces. When the minimum carparking requirements are considered in isolation the proposal is fully compliant with the accessible carparking requirement. Further, the variation is supported by the demand analysis carried out by Levande for Cardinal Freeman village which indicates that actual demand for accessible spaces for seniors living ILUs is much lower than required under the Housing SEPP. This is discussed in further detail in Section 3.1.3.
(c) ensuring new housing development provides residents with a reasonable level of amenity,	It is considered that the variation to the accessible car parking requirements would continue to provide an appropriate level of amenity for future residents by meeting demand for accessible car parking spaces.

Principle	Consideration
	Further, reducing the total number of surplus resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and functionally of the ILUs for residents with fewer residents having access to a car space.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	This principle is not relevant to the clause 4.6 variation request.
(e) minimising adverse climate and environmental impacts of new housing development,	The provision of additional accessible car parking to meet the Housing SEPP requirement would conflict with this objective as a much larger basement would be required resulting in a greater environmental impact and reduced potential for deep soil, tree retention and landscaping.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	This principle is not relevant to the clause 4.6 variation request.
(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,	This principle is not relevant to the clause 4.6 variation request.
(h) mitigating the loss of existing affordable rental housing.	This principle is not relevant to the clause 4.6 variation request.

3.1.2 Identification of inferred objective to the development standard

As noted previously, there is no stated objective which relates directly to the development standard. This section gives consideration to an inferred objective for the purposes of this clause 4.6 variation by establishing the background to the standard and the environmental planning outcome the standard is seeking to achieve.

The standard which is sought to be varied was introduced on 14 December 2023 as an amendment to the Housing SEPP.

The standard was introduced following exhibition of an Explanation of Intended Effect in November 2022 which proposed the following requirement:

> *For resident car parking spaces provided in communal car parks —*
>
> *(i) if 10 or more car parking spaces, not including car parking spaces for employees, are provided—at least 10% of the spaces must comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6.*

The justification for this requirement given in the Explanation of Intended Effect was as follows:

> *Feedback from industry indicates that the current resident car parking design requirements are out-of-date, do not reflect the resident mobility profile or the design and functionality of independent living units.*
>
> *The proposed changes seek to acknowledge resident mobility requirements (i.e., specifying a minimum provision of accessible parking spaces as opposed to all spaces).*

Amendments were subsequently made to the Housing SEPP on 14 December 2023 which applied the current accessible car parking requirement in Schedule 4 being:

> *(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.*

This amended requirement was introduced without any public consultation, explanation or justification for the changes. It is not supported by any express objectives, principles or other forms of direction or guidance as to its application.

Whilst no objective is given for the current development standard, from the Explanation of Intended Effect it can be inferred that the objective is to: *ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs.*

3.1.3 Satisfaction of the inferred objective of the development standard

As set out above it is inferred that the objective of the development standards is as follows:

> *To ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs.*

As detailed in Table 1 of this report it is proposed to provide 326 car parking spaces for residents of which 40 would be compliant with AS/NZS 2890.6 (12%) and another 93 would be 3.2m wide (29%) with the remainder being standard sized spaces.

Whilst the total number of car parking spaces does not meet the required 15% fully accessible and 35% 3.2m wide spaces, this requirement is able to be fully met when calculated against the minimum required 266 spaces under the Housing SEPP.

The application of the accessible car parking requirements to the proposed car parking that will exceed the minimum is not considered necessary due to a lack of demand for accessible parking spaces based on the anticipated residents of the proposed development. In considering demand for accessible car parking reference is made to the comparable development known as "Cardinal Freeman Village", in Ashfield which is also owned and operated by Levande. Cardinal Freeman is similar to the proposed development in terms of accessibility to public transport, built form and unit typology and expected demographics.

Levende has provided advice on residents with mobility issues at Cardinal Freeman Village which is illustrated at Table 3. Based on this information only 2.19% of the total units at Cardinal Freeman Village have residents with mobility issues which would warrant a fully accessible car parking space. Further, none of these residents 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.

Table 3: Cardinal Freeman – 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**

When considered in the context of the demand profile of Cardinal Freeman Village, the proposed development would well exceed the demand for accessible car parking spaces. On this basis it is considered that an overall provision of 12% fully accessible and 29% increased width spaces would more than meet the needs of future residents of the site.

Further, the total number of resident car spaces across the development has been determined with regard for meeting resident demand for car parking and mininising any impacts on car parking in the surrounding streets. Reducing the total number of surplus resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and functionally of the ILUs for residents with fewer residents having access to a car space.

On this basis it is considered that the proposed development meets the inferred objective being to: *ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs.*

3.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

The *Guide to Varying Development Standards November 2023* sets out that:

> *The term 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area. Sufficient environmental planning grounds need to be established by the facts of the request. The request must justify the contravention of the development standard, not simply promote the benefits of the development. The grounds must:*
>
> - *be sufficient to justify the contravention*
> - *focus on the aspect of the development that contravenes the development standard, not the development as a whole.*

There are sufficient environmental planning grounds to justify contravention of the accessible car parking development standard as detailed in the sections below.

3.2.1 Consistency with objects of the EP&A Act

The proposed contravention of the accessible car parking rates is consistent with the objects of the EP&A Act as detailed in Table 4 below.

Table 4: Consideration of the objects of the EP&A Act

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	No applicable.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	Not applicable
(c) to promote the orderly and economic use and development of land,	The proposed variation promotes the orderly and economic use and development of the land by avoiding the need for construction of a significantly larger basement which is not necessary to meet demand for accessible car parking.
(d) to promote the delivery and maintenance of affordable housing,	Not applicable
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed variation supports the protection of the environment by avoiding the need for construction of a significantly larger basement which is not necessary to meet demand for accessible car parking which would result in additional tree removal and reduced potential for landscaping and deep soil.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable
(g) to promote good design and amenity of the built environment,	The proposed development promotes good design and amenity byproviding car parking, including accessible car parking, to meet the demand of the likely future residents. This is detailed in Section 3.1.3.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	Not applicable
(i) to promote the sharing of the responsibility for environmental planning and assessment	Not applicable

Object	Consideration
between the different levels of government in the State,	
(j) to provide increased opportunity for community participation in environmental planning and assessment.	Not applicable

3.2.2 Consistency with principles of the Housing SEPP

The proposed contravention of the accessible car parking rates does not have an impact on consistency with the principles of the Housing SEPP as detailed in Section 3.1.1

3.2.3 Consistency with objectives of the zone

The objectives of the C4 Environmental Living zone are to:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

These objectives are not directly relevant to the provision of accessible parking and the proposed contravention of the accessible car parking rates would not impact on consistency with these objectives.

However, the provision of additional accessible car parking would conflict with these objectives as a much larger basement would be required, reducing potential for deep soil, tree retention and landscaping across the site, which are important aspects of the proposal in maintaining the visual and aesthetic values of the site.

Further, the total number of resident car spaces across the development has been determined with regard for meeting resident demand for car parking and mininising any impacts on car parking in the surrounding streets. Reducing the total number of resident spaces to meet the accessible car parking requirements of the Housing SEPP has potential to generate a greater impact on car parking in the surrounding residential areas, noting that the proposed rate of resident car parking has been based on Levande's experience on demand for car parking across numerous seniors living developments.

3.2.4 Consideration of impacts of the variation

As detailed in Section 3.1.3 the variation to the development standard would maintain an appropriate level of accessible car parking to meet expected demand of the future residents.

- In summary, there are sufficient environmental planning grounds to justify contravening the development standard, because: Reducing the total number of resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and functionally of the ILUs for residents, with fewer residents having access to a car space
- The provision of additional accessible car parking to meet the Housing SEPP development standard would require a much larger basement resulting in a greater environmental impact and reduced potential for deep soil, tree retention and landscaping.
- There are no additional traffic impacts as a result of the carparking above the minimum required and the overall car parking rate is still well below that of a comparable residential development.

- Greater onsite parking will reduce any pressure for on-street parking in the surrounding area and better service the needs of onsite residents and their visitors who choose private vehicle transport.

4 Conclusion

Clause 4.6 of the Hills LEP requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

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.

When the minimum carparking requirements are considered in isolation the proposal is fully compliant with the accessible carparking requirement. However due to expected parking demand within the facility Levande has elected to provide an additional 60 spaces and a variation is sought to the accessible car parking requirements for this additional portion only. This variation request is supported by empirical evidence on car parking demand provided by Levande gathered in their extensive experience of operating similar facilities.

In summary this variation request demonstrates that the proposed variation meets the requirements of Clause 4.6 as summarised below:

Compliance is unreasonable and unnecessary in the circumstances

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

- The relevant principles of the Housing SEPP are met, notwithstanding the variation
- The inferred objective of the control (being to ensure that access to car parking reflects the resident mobility profile and the design and functionality of the ILUs) is met notwithstanding the variation.

The variation to the standard is supported by empirical evidence in the form of demand analysis carried out by Levande for a similar seniors housing development, Cardinal Freeman Village (also owned and operated by Levande) which indicates that actual demand for accessible spaces for seniors ILUs is much lower than required under the Housing SEPP. Cardinal Freeman is similar to the proposed development in terms of accessibility to public transport, built form and unit typology and expected demographics.

Levande are the operator of multiple similar facilities and are the long term owner and operator of the Castle Ridge Retirement Village, as such they are in a unique position to understand the demand for accessible spaces in their facilities.

Notwithstanding the accessible car parking requirement of the Housing SEPP is able to be met if calculated against the minimum number of resident car parking spaces which would be required under the non-discretionary car parking standard in the Housing SEPP.

There are sufficient environmental planning grounds to justify the contravention

- The proposed development is consistent with the objects of the EP&A Act notwithstanding the variation
- The proposed development is consistent with the objectives of the C4 Environmental Living zone notwithstanding the variation
- The variation to the development standard would maintain an appropriate level of accessible car parking to meet expected demand of the future residents.
  - There are sufficient environmental planning grounds to justify the contravention, because:Reducing the total number of resident spaces to meet the accessible car parking requirements of the Housing SEPP would reduce the level of amenity and functionally of the ILUs for residents with fewer residents having access to a car space and has the potential to impact on car parking in surrounding streets.
  - The provision of additional accessible car parking to meet the Housing SEPP requirement would require a much larger basement resulting in a greater environmental impact and reduced potential for deep soil, tree retention and landscaping.
  - There are no additional traffic impacts as a result of the carparking above the minimum required and the overall car parking rate is still well below that of a comparable residential development.
  - Greater onsite parking will reduce any pressure for on-street parking in the surrounding area and better service the needs of onsite residents and their visitors who choose private vehicle transport.

Accordingly, it is considered that the requirements of Clause 4.6 have been satisfied to justify the variation to the development standard.