

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-601 DA 736/2017/JP/D
PROPOSAL	Section 4.55 (2) Modification to an Approved Concept Masterplan relating to Stage 5
ADDRESS	104 Fairway Drive Norwest
APPLICANT	SH Orchards Pty Ltd
OWNER	SH Orchards Pty Ltd
DA LODGEMENT DATE	26 August 2024
APPLICATION TYPE	Modification Application
REGIONALLY SIGNIFICANT CRITERIA	Section 4.55(2) to an application previously approved by the panel and subject to a departure from a development standard exceeding 10%
CIV	\$488,000,000 (excluding GST)
CLAUSE 4.6 REQUESTS	A Clause 4.6 Exception to Development Standard is not required for a Section 4.55 application, however request to vary Clause 4.3 Building Height and 4.4 Floor Space Ratio addressed in report
KEY SEPP/LEP	LEP 2019, SEPP Housing
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Five
DOCUMENTS SUBMITTED FOR CONSIDERATION	Town Planner: Dowling Urban / Sutherland Planning and Associates Architect: Rothe Lowman
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	NA
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	YES

SCHEDULED MEETING DATE	Electronic
PLAN VERSION	NA
PREPARED BY	Robert Buckham – Principal Co-Ordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	4 June 2025

EXECUTIVE SUMMARY

The proposed 4.55(2) modification to the masterplan application for the site consists of the re-distribution of Stage 5 built form without change to development yield, to achieve a better planning and design outcome for the public domain, apartment amenity and adjoining developments.

- The key issues that need to be considered by the Panel in respect of the modification application are:
 - Whether the development is substantially the same as originally approved.
 - Proposed variations to building height.
 - Matters raised in the submissions.
- The approved masterplan application approved the redistribution of building height and floor space. The masterplan provides indicative details of each of the buildings which is detailed within future Development Applications. The purpose of this application is to amend the masterplan for Stage 5 to facilitate an alternate built form through altered building heights. There is no increase in density proposed. The Stage 5 built form Development Application 237/2025/JP, PPSSCC – 598 has been considered concurrently with this application
- The proposal has a maximum height of 41 metres which is a variation of 23 metres or 127.7% from the 18m height control. The LEP limits the FSR of Stage 5 to 1.5:1. This would equate to an allowable floor space of 16,297.5m² for this site or net FSR of 2.2:1. This is a net figure excluding roads. A floor space of 23,904.4m² is proposed. This is above the GFA of 21,453m² anticipated by the concept development consent. The masterplan site prior to any development catered for a total gross floor area of 138,000m² across all 5 stages. The Stage 5 development when added to the approved four prior stages (confirmed by survey) has a GFA of 135,385.4m², 2,615.6m² less than approved by the masterplan.
- A Clause 4.6 Exception to Development Standard is not required for a Section 4.55 application, however the variation is considered reasonable as the increase in building height and amended built form responds to the context of the locality. These amendments better facilitate the approved density and floor space and result in a more balanced built form that is compatible with that of adjoining development and the overall streetscape. The amendments also minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas, thereby satisfying the objectives of the height standard.

- The application was advertised and notified for a period of 14 days. Five submissions were received. solar access, appropriateness of the height, parking and traffic, and construction impacts.
- The merits of the amendments to building height for Stage 5 are addressed in this report. The amendments result in an approved design outcome that results in an improved bulk and scale that responds to current development and recent approvals in the immediate locality.
- It is considered that the proposed modifications result in an outcome that is substantially the same development as originally approved. The modification application is satisfactory when evaluated against section 4.15 and section 4.55 of the Environmental Planning and Assessment Act 1979.

The Modification Application requires referral to the Regional Planning Panel for determination as the determination of Section 4.55(2) Modification Application includes a variation to a development standard exceeding 10%. The application is recommended for approval subject to conditions.

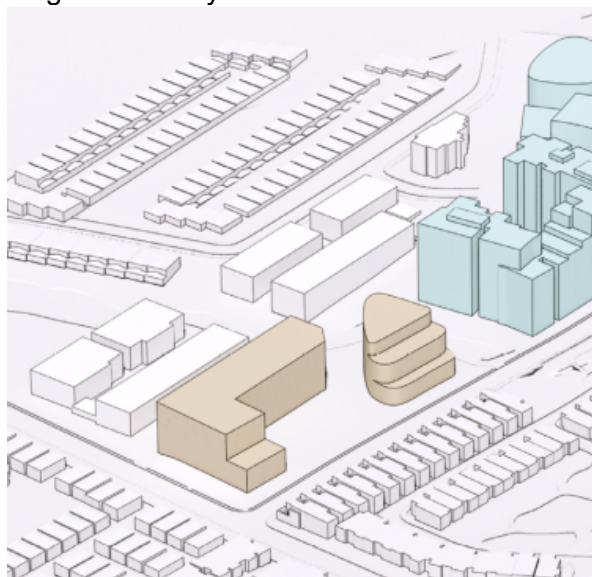
1. THE PROPOSAL AND BACKGROUND

1.1 The Proposal

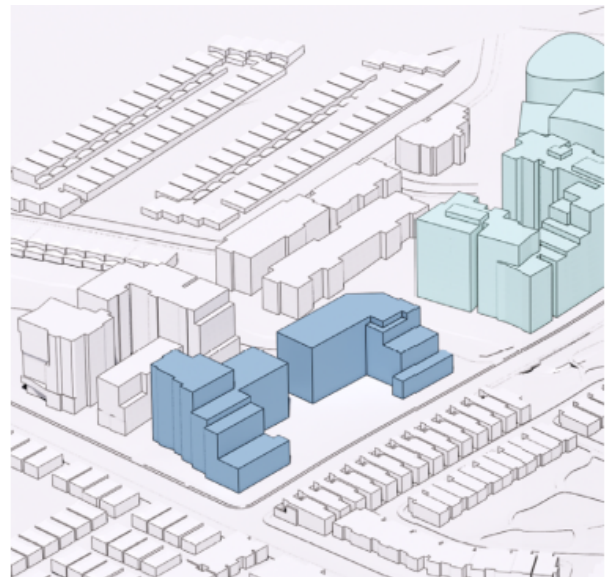
The proposed 4.55(2) modification to the masterplan application for the site consists of the re-distribution of Stage 5 building heights.

The Masterplan application is a concept development application pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979.

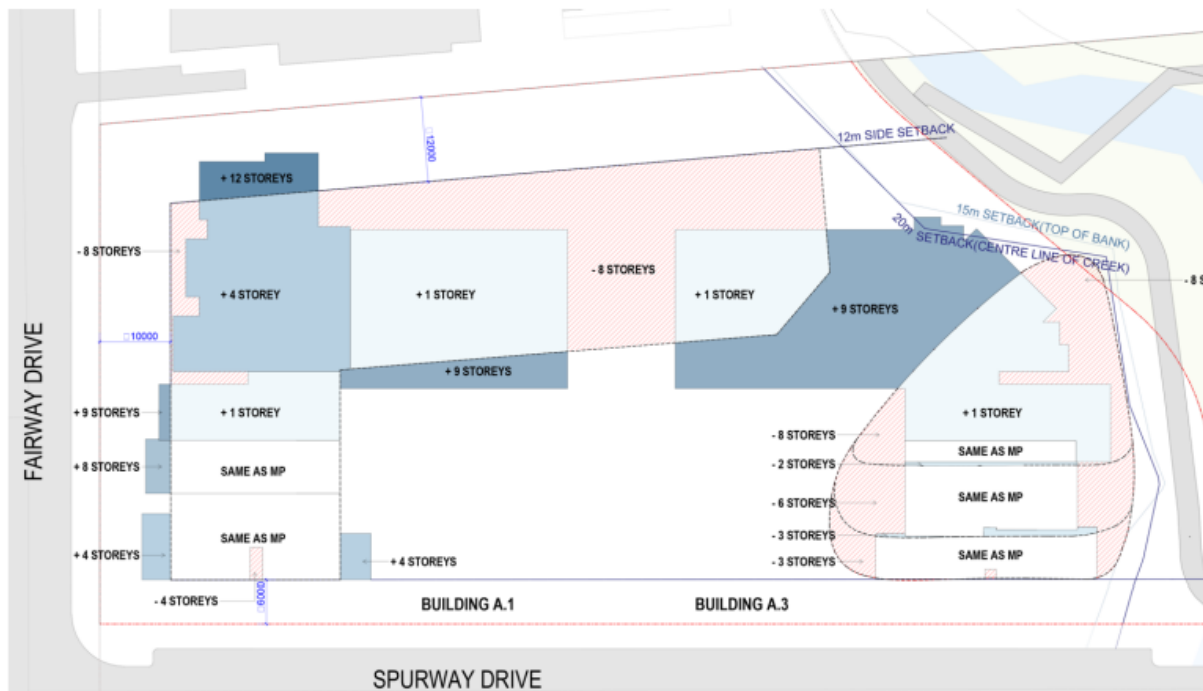
The applicant has provided the following diagrams that detail the changes in built form and heights in storeys.



Approved Masterplan Massing



Proposed Masterplan Massing



Changes to Building Heights

The applicant has stated that the purpose of the modification is *to further adjust building heights within Stage 5 to achieve better planning and design outcomes for the public domain, apartment amenity and adjoining developments. This re-evaluation is informed by the experiences to date in optimising residential amenity in the physical and social context of The Hills as well as responding more appropriately to the change in immediate physical context to since the determination of the Concept Plan.*

The subject modification is required to facilitate the built form development application for stage 5 as it cannot be inconsistent with the consent for the masterplan (concept development application) as required by Division 4.4 - Concept development applications of the Environmental Planning and Assessment Act 1979.

1.2 Background

The approved Concept Masterplan Development Application (736/2017/JP) encompasses 10 buildings with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre building, civil works, internal roads and landscaping over 5 stages. The Masterplan was approved by the Sydney Central City Planning Panel on 11 April 2018.

The site was subject to a site specific Planning Proposal that amended The Hills Local Environmental Plan 2012 (LEP) as follows:

- Increased the maximum building height from 16 metres to heights ranging between 18 metres and 36 metres;
- Applied a maximum floor space ratio ranging from 1.5:1 to 3.2:1;
- Identified the site as “Area B” within the Key Sites Map; and
- Included a new local provision which ensures that future development on the site does not exceed a yield of 1,300 dwellings and that, in order to achieve this yield, development must comply with Council’s standards for apartment mix, apartment size and car parking.

Associated amendments to The Hills Development Control Plan 2012 (Part D Section 7 – Balmoral Road Release Area) also came into force. The amendments included the upgrade

and inclusion of the existing portion of Spurway Drive as a public road to connect to the existing planned local road network within the Balmoral Road Release Area (from Windsor Road to Fairway Drive).

The application approved the redistribution of building height and floor space across the site compared to that identified within the LEP amendment. The masterplan provides indicative details of each of the buildings which will be further detailed within future Development Applications.

A 4.55(1A) Modification (736/2017/JP/A) was approved under delegated authority on 21 January 2020. This modification amended the approved staging of buildings and road construction specifically, it switched Stage 3 and 4, bringing forward the Spurway Drive extension (to Stage 3).

A 4.55(2) Modification (736/2017/JP/B) was approved by the Regional Planning on 8 September 2022. This modification amended the built form of Stage 4.

At 4.55(1A) Modification Application (736/2017/JP/C) was approved by Council's Development Assessment Unit on 7 November 2023 to defer the eastern upgrade of Spurway Drive extension to Windsor Road to coincide with the occupation of Stage 4 construction rather than Stage 3. The construction of the Spurway Drive road link and dedication was originally approved to occur in Stage 4 however was brought forward to Stage 3 under Modification 736/2017/JP/A along with changes to building construction stages. The modification approved to defer the construction back to Stage 4 as originally proposed within the masterplan.

Built form development applications have been approved for the first 4 stages, with stages 1 and 2 completed and stage 3 and 4 under construction.

The subject application was considered by Council's Design Excellence Panel on 13 November 2024. The minutes of the meeting are attached to this report (refer Attachment 8). The subject application was lodged on 2 February 2022. Legal advice was provided by the applicant was provided on 11 March 2022. The matter was briefed to the Panel on 17 March 2022. A built form development application for this stage, stage 4, (2059/2022/JP) was lodged on 06 June 2022 and is currently under assessment.

2. 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.

2.1 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 2 and Clause 5(b) of Schedule 6 of the SEPP as the proposal is development for *general development* with a CIV of more than \$30 million. The development encompassed by the masterplan has a CIV of approximately \$488 million.

Clause 275(2) of the Environmental Planning and Assessment Regulation 2000 states that “A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020.”

The instruction states:

“A council is **not** to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- **meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.**

Note: Clause 275 of the Regulation requires councils to determine all other applications for the modification of development consents under section 4.55(2) of the Act, as well as applications for the modification of development consents under section 4.55(1) and section 4.55(1A) of the Act.

The subject 4.55(2) modification includes a variation to a development standard exceeding 10% given the amended built form proposed under this modification. The original application included a variation to the Building Height standard which was approved over the 10% threshold. The subject modification application seeks to further exceed the building height development standard.

2.2 Section 4.55 of the Environmental Planning and Assessment Act, 1979

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which

consent was originally granted and before that consent as originally granted was modified (if at all), and

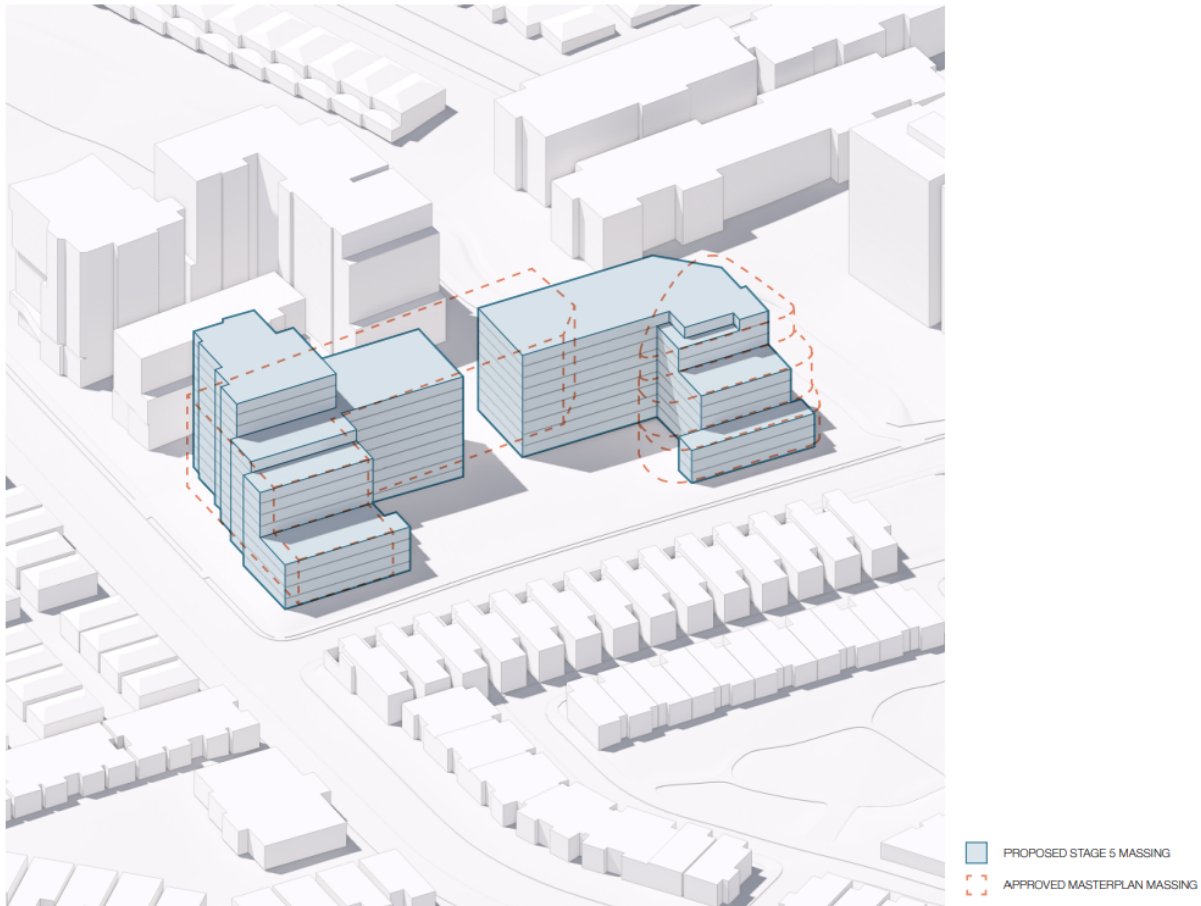
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The modification of the masterplan only relates to stage 5 of the 5-stage development site. The development to be modified remains a residential development with the same density as approved with only amendments to building heights, both increases in height and reduction in height, and minor amendments to building footprints to facilitate the altered built form. The overall development remains a staged residential development for 1300 dwellings.

The image below provides a comparison of the building envelopes of the approved and proposed schemes viewed at aerial level.



In isolation the amendments to Stage 5 as a single development site only would likely be considered outside of the parameters of 'substantially the same'. Given the masterplan relates to four other stages that are not being modified (two have been completed, the other approved and under construction), the amendments are considered to be substantially the same when considered as the whole across the entire masterplan site. It is also considered relevant that the number of units and floor space for this stage is not sought to be modified and remains consistent with the original approval.

The other matters required to be addressed by 4.55(2) where relevant are addressed in this report and it is considered that overall, the nature of the approved development remains unchanged. Accordingly, no objection is raised to the proposal under the provisions of Section 4.55(2) of the EP&A Act, 1979.

2.3 Compliance with The Hills Local Environmental Plan 2019

a. Permissibility

The land is zoned R4 High Density Residential under Local Environmental Plan 2019. The proposal remains a residential flat building which is permissible in the zone.

b. Zone Objectives

The site is zoned R4 High Density Residential under The Hills LEP 2019. The objectives of the zone are:

R4 High Density Residential Objectives

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

The proposal is considered to remain consistent with the stated objectives of the zone, in that the proposal will provide for a land use to meet the needs of the surrounding residents and is also considered to provide an alternative housing option for future residents.

As such the proposal is considered satisfactory in respect to the LEP 2019 objectives.

c. Development Standards

The following table addresses the principal development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.3 Height	18 metres – Approved 30.7 metres	Building A1 – 41 metres Building A2 – 4.7 metres Building A3 - 32.2 metres	No, further variation proposed.
4.4 Floor Space Ratio	The site (10,845m ²) is subject to floor space ratio (FSR) development standards of 1.5:1, and is permitted a maximum Gross Floor Area of 16,297.5m ² which equates to 2.2:1.	Proposed Gross Floor Area 23,904.4m ²	No addressed below.
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	Variations proposed to height are addressed below.	Yes

d. Variation to Height

The proposal has a maximum height of 41 metres which is a variation of 23 metres or 127.7% from the 18m height control.

This modification relates to the redistribution of built form as a result of the proposed changes to the building massing and subsequent amendments to building footprints.

The applicant has submitted a variation request (see Attachment H) and is summarised as providing a better planning and design outcome for the following reasons:

- *The Stage 5 development design is required to respond to a significant change to the immediate context as result of the rezoning of the adjoining site to the immediate north for the higher density development “Moda” which included greater building mass and increased building heights from 4 storeys to 7-12 storeys from which additional shadowing is required to be absorbed on site and building relationships improved.*
- *The revised variations better respond to significant changes in the built form context to the north of the site, while the streetscape is preserved with generous setbacks and mid-winter sunlight.*
- *The limited impact of shadowing on neighbouring development to the south is maintained and planned open space areas on Spurway Drive will provide a landscaped setting to the buildings appropriate to the low rise context to the south of the site.*
- *The proposed adjustment to the approved height variations will result in development that is a more compatible with the character of the surrounding area and provided for improved apartment separation and solar access on site while preserving solar access to townhouses south of the site and providing a coherent composition of building forms when viewed from the public domain.*

It is noted that case law demonstrates that for a Section 4.55 application, a Clause 4.6 Exceptions to Development Standards is not required.

The relevant judgments say that Section 4.55 is a ‘free-standing provision’, meaning that “a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application”. A Section 4.55 consent authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is a broad power to approve, subject to its own stand-alone tests (such as the “substantially the same” test, and a requirement to consider all relevant s.4.15 matters). Section 4.55 does not rely upon having any SEPP 1 objection or Clause 4.6 variation in order to enliven that power to approve.

The Courts have stated that SEPP 1 cannot be used at Section 4.55 stage, as SEPP 1 expressly only applies ‘where a development application is made’, not when a modification application is made. The same would apply to Clause 4.6 variations, which expressly only regulates whether ‘development consent’ may be granted, not whether an existing consent may be modified.

As such, a Clause 4.6 variation has no application to Section 4.55 modifications. This has also been confirmed by the applicant’s legal advice, however a 4.6 variation request has been submitted and provides a detailed justification to support the variation.

The further variation to building height has been proposed to provide a built form outcome that responds to the current site opportunities and constraints whilst retaining the floor space and dwelling yield approved. The development as approved facilitates higher densities close to the Norwest station and centre and the amended built form seeks to improve the bulk and scale and associated impacts that are in place with the current masterplan by responding to a changing local character.

Specifically, the proposal responds to adjoining development sites. When the masterplan was originally approved, adjoining development sites such as ‘Moda’ – No. 100 Fairway Drive, directly to the north of the Stage 5 development site which was rezoned from 4 to 5 storeys to allow for heights of 7 to 12 storeys. In the locality other rezonings have provided controls for buildings up to 26 storeys in height.

The impacts of the increase in height are offset by improved solar access and bulk and scale. The amendments result in greater separation and open space which is provided adjacent to

the boundary with adjoining buildings in excess of that required under the Apartment Design Guideline and DCP.

The applicant has also provided a solar analysis to quantify the amended impact of the development on the southern adjoining development Central Park. Although it is acknowledged that the north facing units currently enjoy uninterrupted solar access throughout the day, the impacts relating to solar access are reasonable.

The objectives of the height standard are as follows;

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

The applicant has responded to both objectives. Specially in response to both objectives the following responses were provided;

- *The revised variations better responds to significant changes in planned built form context from adjoining rezonings, which now includes towers rather than town houses, while the streetscape is better treated with a lower street wall height and greater access to winter sun light.*
- *Reduced shadowing on neighbouring development and planned open space areas will result from a lower street wall created by remassing to two tower forms while improving visual impact from the perception of bulk.*

It is agreed that the amended proposal, particularly the increase in building height and tower-like built form responds to the recent altered context of the locality. These amendments provide opportunities to adjust the built form to better facilitate the approved density and floor space. They result in a more balanced built form that is compatible with that of adjoining development and the overall streetscape and minimises the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas, thereby satisfying the objectives of the height standard.

In view of the above, the variation to building height is considered satisfactory and can be supported in this instance.

e. Variation to Floor Space Ratio

The LEP limits the FSR of the Sekisui development site (all 5 stages) to three ratios being 1.5:1, 2.6:1 and 3.2:1. This would equate to an allowable floor space of 138,000m².

The LEP limits the FSR of Stage 5 S to 1.5:1. This would equate to an allowable floor space of 16,297.5m² for this site or net FSR of 2.2:1. This is a net figure excluding roads. A floor space of 23,904.4m² is proposed. This is above the GFA of 21,453m² anticipated by the concept development consent.

The masterplan site prior to any development catered for a total gross floor area of 138,000m² across all 5 stages. The Stage 5 development when added to the approved four prior stages (confirmed by survey) has a GFA of 135,385.4m², 2,615.6m² less than approved by the masterplan.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment M.

Across the site, floor space ratio is not exceeded however the masterplan approved variations to FSR which are attributed to a redistribution built form on the site. This is further varied under related application 736/2017/JP/D and considered in detail in the Stage 5 Development Application.

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

- The development is consistent with the objectives of the development standard as provided in Clause 4.4(1) of THLEP 2012 as discussed above.
- The scale and mass of the buildings is compatible with the established built form within the immediate context of the site.
- Floor space ratio across the site is not exceeded.
- The redistribution of FSR has allowed tree and vegetation retention to be maximised.

The objectives of the height standard are as follows;

- (a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,*
- (b) to provide for a built form that is compatible with the role of town and major centres.*

The development has been designed to provide a built form outcome that responds to the sites opportunities and constraints. The development facilitates higher densities close to the Norwest station and centre. The floor space ratio variation on this part of the site does not result in any further detrimental impacts on adjoining developments. Significantly it is not proposed to exceed the total number of dwelling permitted across the whole site.

The alternate built form across the site complies with the total floor space permitted on the site and has allowed as part of the masterplan application vegetation including Cumberland Plain Woodland on the site being retained and a public benefit including the linear park and widened Strangers Creek Reserve.

In view of the above, the variation to floor space ratio is considered satisfactory and can be supported in this instance.

f. 7.7 Design Excellence

Clause 7.7 of the LEP specifies an objective to deliver the highest standard of architectural and urban design and applies to development involving the erection of a new building or external alterations to an existing building if the building has a height of 25 metres or more. The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors,*
- (d) whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,*

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

Comment:

When the original masterplan was originally reported to the Design Excellence Panel, the proposal was generally supported noting that the Panel had only recently commenced and the masterplan was close to determination. At the time comments relating to solar access to north facing units of an approved development on the adjacent site will be reduced.

The design excellence of the subject proposal was considered at a Design Excellence Panel meeting convened by Council staff and held on 13 November 2024. The meeting minutes of the Design Excellence Panel which also concurrently considered the built form application for Stage 5.

The comments made to the application included:

The Panel notes the reasoning for modifications to the masterplan and how these reflect changes to projects on adjacent sites. The Panel suggests several refinements to be considered as described above, including:

- *Testing options for adjusting the form and massing, in particular possibly shifting the central wings further to the south;*
- *Refining the architectural expression. Consider more additional facade articulation and richer material palette;*
- *Reviewing the detail of the gallery access design to ensure optimum light, amenity and privacy to apartments;*
- *Reviewing the location of condenser units;*
- *Refining the design of building entrances to increase legibility and sense of arrival;*
- *Review of pool fencing to enhance accessibility and overall functionality of the pool area;*
- *Removal of green roof over basement entry and garbage collection are to accommodate appropriate landscaping;*
- *Review of form and function of the central portion of the site and open lawn area, with the opportunity to explore changes in level, furniture, materiality etc; and*

- *Better cohesion in design between the pool area and central portion of the site;*

The Panel would like to see further information relating to:

- *Location and access arrangements of the pool safety fencing;*
- *Streetscape elevations and renders, showing the relationship with adjacent townhouses and apartment buildings on Fairway Drive and Spurway Drive*

The Design Excellence Panel concluded;

The Panel thanks the Applicant for presenting at the development application and commends the Applicant for a well-presented scheme. The Panel acknowledges the work to date by the Applicant, however, with respect to the scheme as presented, the Panel does not consider that in its current form, the development application demonstrates design excellence. The Panel acknowledges that the scheme has the potential to achieve design excellence, with further refinement of the massing, internal planning, architectural detail, materiality and expression.

In relation to comments above the following comments are provided in response to the matters raised above by the panel;

The context of the site was a key driver in the massing exploration undertaken as part of the concept plan modification. In response to the constructed development to the north, mass was redistributed to rise at the northern boundary and step down towards the townhouses to the south. This creates a smooth transition between the high density at 100 Fairway Drive and the low density on the southern side of Spurway Drive. This move also ensures the townhouses on Central Park Avenue receive generous solar access mid winter. The building forms along Spurway Drive have been setback from the street to create a green buffer between the town houses and the proposed form and minimise the visual impact on the existing neighbours.

The extent of building interfacing with Spurway Drive has been reduced and is at a lower scale to relate to the houses across Fairway Drive. As the form rises along Fairway Drive, the building sets back from the boundary, increasing the separation to the neighbours across the street.

In response to comments from the DAP, a greater degree of contrast has been introduced to the facade colours to create further enhance depth and visual interest.

Thorough massing testing was undertaken to optimise the solar and visual amenity to the dwellings while also ensuring solar access to the neighbouring buildings. The weighted setback to Fairway Drive optimises solar access to the west facing dwellings and the neighbours to the south.

Landscape buffers have been designed between private terraces and communal landscaped areas as shown in the below sections. These zones are non trafficable creating a setback from the communal area with planting designed to screen the private terrace. In addition to this, 1800mm high fences with solid elements to the lower portion have been designed to the private terraces to maintain privacy while providing daylight and outlook

In response to the DAP comments, the design proposes to relocate the visitor bike racks to the southern courtyard, outside each building lobby. The new location is closer to the building entries and aligns with the pedestrian paths. This results in an reduction in hardscape required adjacent to the driveway and increases the extent of planting. This also allows the fire egress doors to be screened from the street.

The private terraces adjacent to the pool are at a higher level than the communal space and also feature 1800mm high fences with solid elements to the lower portion to ensure visual privacy. Terraced landscaping has been designed between the communally accessible spaces to assist in screening the private spaces.

Despite some of the views of the Design Excellence Panel it is considered that Sekisui through the completed developments on their site, that the development outcomes they have provided demonstrate design excellence in architectural design, materials, landscape and detailing. The applicant has addressed and demonstrated compliance with the matters outlined in Clause 7.7 and in particular the bulk, massing and modulation of buildings in this proposal is supported.

Based on the comments provided in response by the Applicant, it is considered that the proposal exhibits design excellence and satisfies Clause 7.7 of the LEP.

2.4. SEPP Housing 2021

In accordance with Section 147 (1) (b) of the Housing SEPP, a consent authority in determining a Modification Application for a residential flat building is to take into consideration the Apartment Design Guide (ADG). The modification has been considered against the ADG for completeness. The proposed modification achieves compliance with the requirements of the ADG as outlined below:

The required Design Verification Statement was prepared by Ben Pomroy (Registration No. 7918) of Rothe Lowman.

Design Quality Principles

The Development Application has been assessed against the relevant design quality principles contained within SEPP Housing as follows:

Principle 1: Context and neighbourhood character

The proposal is compatible with the existing and future context and neighbourhood character of the precinct. The proposal seeks to respond to and contribute to the context of Norwest both in its present state as well as the desired future character.

The locality is comprised of a mixture of existing buildings, low to medium and high density, multi-residential and single dwellings, with the future vision of the area zoned to encourage an increased scale of high density residential development adjacent to the site.

Principle 2: Built form and scale

The proposal provides a more varied built form and allow for increased solar access to adjacent existing buildings on Spurway Drive and additional views from these apartments to the surrounds. The development is appropriately articulated to minimise the perceived scale. Generous setbacks to the existing adjoining northern residential flat building development, separation and variety along the elevations and layering of façade elements, enhance the developments relationship with the public domain. Lower buildings are provided to Spurway Drive improving the street interface.

Principle 3: Density

The subject proposal remains at 1300 dwellings across the development site. The density complies and is appropriate for the site and precinct.

Principle 4: Sustainability

The design foreshadows that the proposal will achieve natural ventilation and solar access as required by the Apartment Design Guidelines.

Principle 5: Landscape

The plans indicate that all open spaces will be appropriately landscaped with native trees and shrubs to provide a high quality finish. The proposed landscaping integrates with the overall appearance of the development.

Principle 6: Amenity

Future building design has been developed to provide for the amenity of the occupants as well as the public domain. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy.

Principle 7: Safety

Open spaces are designed to provide attractive areas for recreation and entertainment purposes. These open spaces are accessible to all residents and visitors whilst maintaining a degree of security. Private spaces are clearly defined and screened.

Principle 8: Housing diversity and social interaction

The location of this development provides dwellings within a precinct that will provide in the future, a range of support services. The development complies with the mix requirements of the LEP.

Principle 9 – Aesthetics

The proposal integrates a number of recesses and projections into the facades of the structure to articulate the overall mass and form into smaller segments. The bulk of the overall building works and height is reduced by the articulation of the facades, creating smaller segments in order to minimise the overall bulk and scale of the development. The design is modern in style and appropriate for the area.

2.5. Compliance with The Hills Development Control Plan 2012

The proposal has been against the relevant provisions of The Hills Development Control Plan 2012 noting that some standards such as density, number of storeys, unit typology and parking are superseded by the site specific provisions in the LEP and approved masterplan. The modified proposal will not lead to any greater non-compliances with Part C Residential Flat Buildings and Part D Section 7 – Balmoral Road Release Area provisions of The Hills Development Control Plan 2012 (DCP) than were approved in the Concept Plan.

3. Community Consultation

The proposal was notified in accordance with the DCP. A total of five unique submissions, were received. The issues raised in these submissions are considered in the Table below.

Table: Community Submissions

ISSUE/OBJECTION	COMMENT
The development will result in ongoing Construction noise, dust, lack of street parking, increased traffic and inconvenience which residents are currently experiencing with other adjoining developments.	It is inevitable that given the scale of development there will be some impact on residential amenity however Council staff regularly inspect and monitor development

	<p>sites in the precinct to ensure construction impacts are minimised.</p> <p>Post lodgement, the Applicant was requested to provide a Preliminary Construction Management Plan for the associated built form Development Application for Stage 5 to consider and address likely impacts associated with construction on adjoining and nearby residents.</p> <p>The Construction Management Plan indicates;</p> <ul style="list-style-type: none"> • Access to the site during construction is intended to be provided to and from Spurway Drive and via on-street work zones • Approach Route 1 via Fairway Drive to the north of the site is intended to form the primary site access until such time as access to and from Spurway Drive and Windsor Road is made available, following which Approach Route 2 (Spurway Drive East) is intended to be utilised as well as a Departure Route via Spurway Drive. • A waiting zone is indicated on Spurway Drive to the east of the site, whilst two loading zones are intended in Spurway Drive adjacent to the site. • Vehicles presenting to the site must be booked-in in advance of the deliver by at least 24 hrs to ensure congestion at the access gates is managed and minimised. • The entry gate will be monitored by Traffic Controllers who will facilitate safe movement of vehicles in accordance with the approved traffic control plan
<p>The proposed uplift, reduction in setback and connecting this apartment block together shows complete contempt for the residents of the Lakes Estate (Central Park Avenue).</p> <p>We have suffered from solar shadowing this winter just past from the most recent stage and now you are proposing to allow this final stage to be higher and closer to us and expect the residents to believe that there will</p>	<p>The impacts and merits of the increase in height for the modification application are addressed in this report.</p> <p>The variation to height is addressed in this report. The impacts and planning and design outcomes that result from the amendments are addressed in this report. It is considered that the amended proposal remains consistent with the height objectives in the LEP.</p>

<p>be no impact on further solar shadowing, excessive noise and a total loss of privacy.</p> <p>All of the proposed variations should have been rejected as inappropriate for suitable amenity of lifestyle due to its significant impact on current residents.</p>	<p>Generally, the increase in height has been offset with greater separation and a similar overshadowing impact, some buildings have also been lowered. The applicant is able lodge a modification application and the merits of the application are addressed in this report.</p>
<p>Currently our TV reception is directed towards Windsor and with the construction of 8-12 story buildings, our reception will be greatly affected. The developer needs to provide an antenna relay/booster on the roof of the 12 storey building to compensate for blocking our signal.</p>	<p>This is not considered a planning matter.</p>
<p>Fairway Drive is already a very busy road. Exiting from No.100 Fairway Drive is highly dangerous because the driver's vision to the right is frequently obstructed.</p> <p>I object to any further development until you address the safety issues for residents. The road really needs to be widened.</p> <p>Even if you put a development at 104 Fairway Drive it should exit to Spurway Drive.</p>	<p>The driveway access to the proposal is located on Fairway Drive generally in the same location as the driveway to the existing Sekisui Display Centre and separated approximately 15 metres from the driveway to 100 Fairway Drive.</p> <p>It is noted that no stopping / no parking zones exist along portions of Fairway Drive adjacent to existing driveways and intersections and these will need to be extended to facilitate safe movements onto Fairway Drive from the development. Parking restrictions will be reviewed by Council's Traffic section as general local traffic safety issues arise as has occurred with the adjacent development at No. 100 Fairway Drive.</p>
<p>Consistent setback has been approved along Spurway Drive. Further relief could be achieved with a 10m setback given The adjoining development is 2 storey.</p>	<p>Unlike the other developments along Spurway Drive, the subject proposal is subject to a 6 metre secondary street setback along Spurway Drive. A 10 metre front setback is required to Fairway Drive where a 6 to 14 metre setback is provided. The variation to the front setback is addressed in detail in this report.</p> <p>The 6 metre Spurway Drive setback is compliant and is considered sufficient for adequate landscaping. The reduced setback will not lead to any detrimental overshadowing or privacy impacts. The matters relating to overshadowing have been addressed in this report.</p>
<p>The shadow analysis submitted with the application, shows the proposal extends</p>	<p>A solar analysis was provided by the applicant. The original proposal nor the</p>

<p>over-shadowing for a longer time period over townhouse development fronting Fairway Drive to the west, and also with similar impact, on a number of townhouses within the Central Park development to the south. The principal source of the increased over-shadowing appears to be the proposed increase in height to Building A.1 in both cases.</p> <p>The proposal also seeks to amend the building bulk, floor plate and height for Building A.3. Based on the shadow analysis these changes would appear to result in over-shadowing and reduced amenity, to the internal open area within the development. In summary, this proposal has potential to impact the local amenity of townhouses adjoining the site, due to the proposed changes to height and building footprint. It is considered that further moderation of the proposed changes could reduce these impacts to an acceptable level.</p>	<p>modified proposal cause any unreasonable shadow impact on adjoining developments in mid-winter at 3pm, or prior which is the relevant criteria for assessment.</p> <p>The variation to height is addressed in this report. The impacts and planning and design outcomes that result from the amendments are addressed in this report. It is considered that the amended proposal remains consistent with the height objectives in the LEP.</p>
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4. CONCLUSION

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

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Planning Systems) 2021, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered satisfactory.

It is considered that the applicant's variations to The Hills LEP 2019 development standards at Clause 4.3 and 4.4 be supported as it adequately justifies the contravention of the development standards. It is considered that the variations can be supported as compliance with the standards are unreasonable or unnecessary in these instances and the proposal results in better environmental planning outcomes as outlined in this report. Furthermore, the development is consistent with the objectives of the standards and the objectives for development within the zone and is therefore in the public interest.

Approval is recommended subject to conditions, refer Attachment A.

5. RECOMMENDATION

That Modification Application DA No 736/2027/JP/D for amendments to the Approved Concept Masterplan relating to Stage 5 – 104 Fairway Drive, Norwest be APPROVED pursuant to the Environmental Planning and Assessment Act 1979 subject to the draft conditions of consent attached to this report at Attachment A.

It is recommended that the applicant's variations to The Hills LEP 2019 development standards at Clause 4.3 and 4.4 be supported as it adequately justifies the contravention of the development standards. It is considered that the variations can be supported as compliance with the standards are unreasonable or unnecessary in these instances and the proposal results in better environmental planning outcomes as outlined in this report. Furthermore, the development is consistent with the objectives of the standards and the objectives for development within the zone and is therefore in the public interest.

The following attachments are provided:

ATTACHMENTS

- A. Draft Conditions of Consent
- B. Locality Plan
- C. Aerial Map
- D. Zoning Map
- E. Height Map
- F. FSR Map
- G. Proposed Plans
- H. Applicant's Variation Request
- I. Development Consent 736/2017/JP
- J. Modification Consent 736/2017/JP/A
- K. Modification Consent 736/2017/JP/B
- L. Modification Consent 736/2017/JP/C

ATTACHMENT A – DRAFT CONDITIONS OF CONSENT

Condition No. 1 be deleted and replaced as follows:

1. Development in accordance with submitted plans

The development being carried out in accordance with the approved plans and details associated with development application 736/2017/JP, 736/2017/JP/A, 736/2017/JP/B and 736/2017/JP/C as amended in red, and as further modified by the following plans approved with Development Consent No. 736/2017/JP/D, except where amended by other conditions of consent.

REFERENCED PLANS 736/2017/JP

The amendments in red include: -

- The 6 metre setback for Building A3 and all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-005	Masterplan Setbacks	-	C	12 December 2017
MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
MP-250-010	North Envelope Elevation – Linear Park	-	C	12 December 2017
MP-250-020	South Envelope Elevation – Spurway Drive	-	C	12 December 2017
MP-250-040	West Envelope Elevation – Fairway Drive	-	C	12 December 2017
MP-350-001	GA Section Envelope Section 01	-	E	12 December 2017
MP810-001	Staging Stage 1	-	D	21 March 2017
MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017
512SL	Landscape Masterplan – 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

REFERENCED PLANS 736/2017/JP/A

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-410-001	Staging Plan	-	B	17 January 2020

REFERENCED PLANS 736/2017/JP/B

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
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MP-000-006	Masterplan Building Envelope	-	F	23 December 2021
MP-250-010	North Envelope Elevation – Linear Park	-	D	23 December 2021
MP-250-020	South Envelope Elevation – Spurway Drive	-	D	23 December 2021
MP-350-001	GA Section Envelope Section 01	-	F	23 December 2021

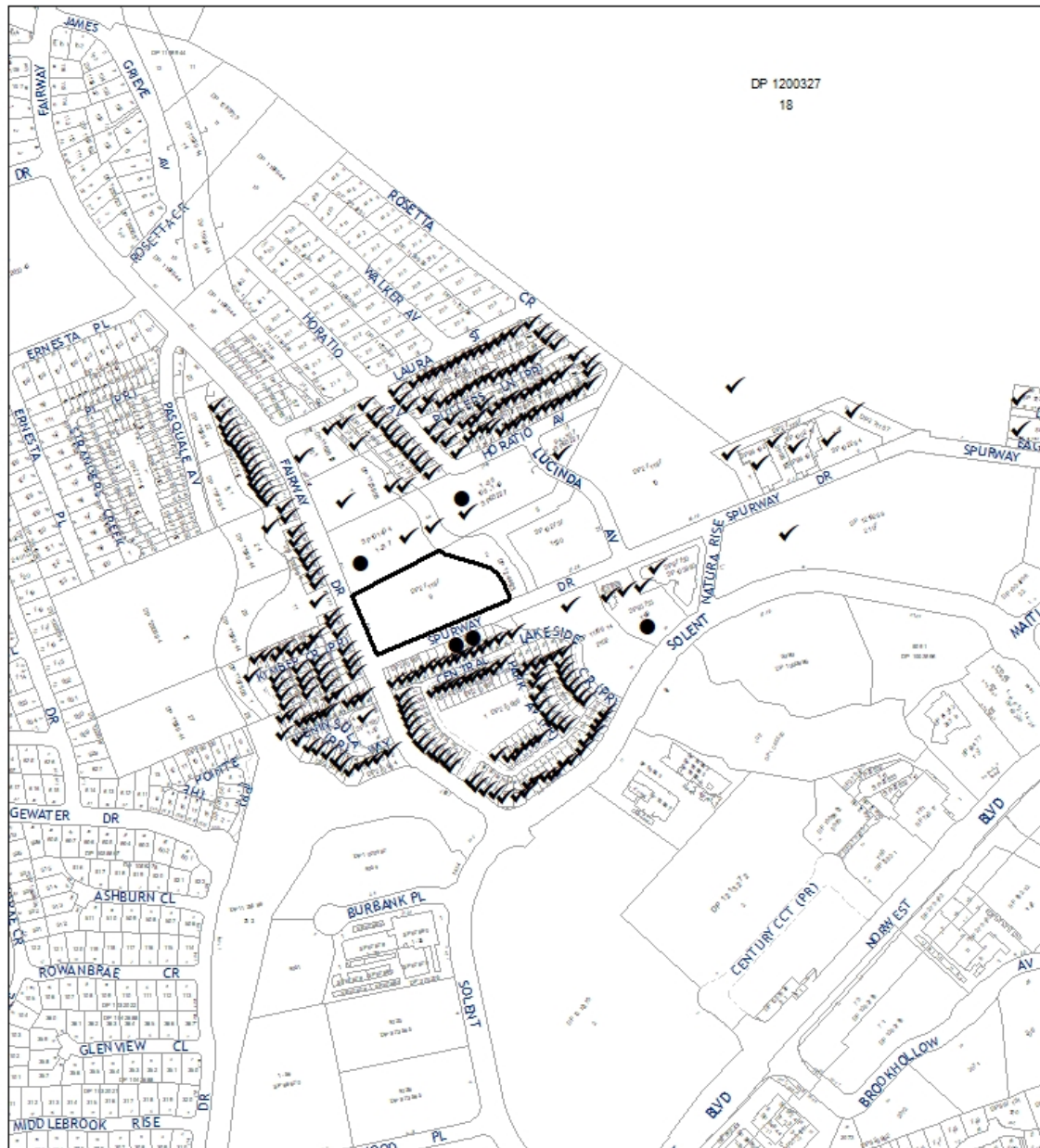
REFERENCED PLANS 736/2017/JP/C

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-410-001	Staging Plan	-	C	10 May 2023

REFERENCED PLANS 736/2017/JP/D

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-006	Masterplan Building Envelope	-	G	30 October 2023
MP-250-010	North Envelope Elevation – Linear Park	-	E	30 October 2023
MP-250-020	South Envelope Elevation – Spurway Drive	-	E	30 October 2023
MP-250-040	West Envelope Elevation – Fairway Drive	-	D	30 October 2023
MP-350-001	GA Section Envelope Section 01	-	G	30 October 2023

ATTACHMENT B – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

**TWO SUBMISSIONS RECEIVED
OUTSIDE SCOPE OF MAP**

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT C – AERIAL PHOTOGRAPH



Imagery © Nearmap HERE



SUBJECT SITE

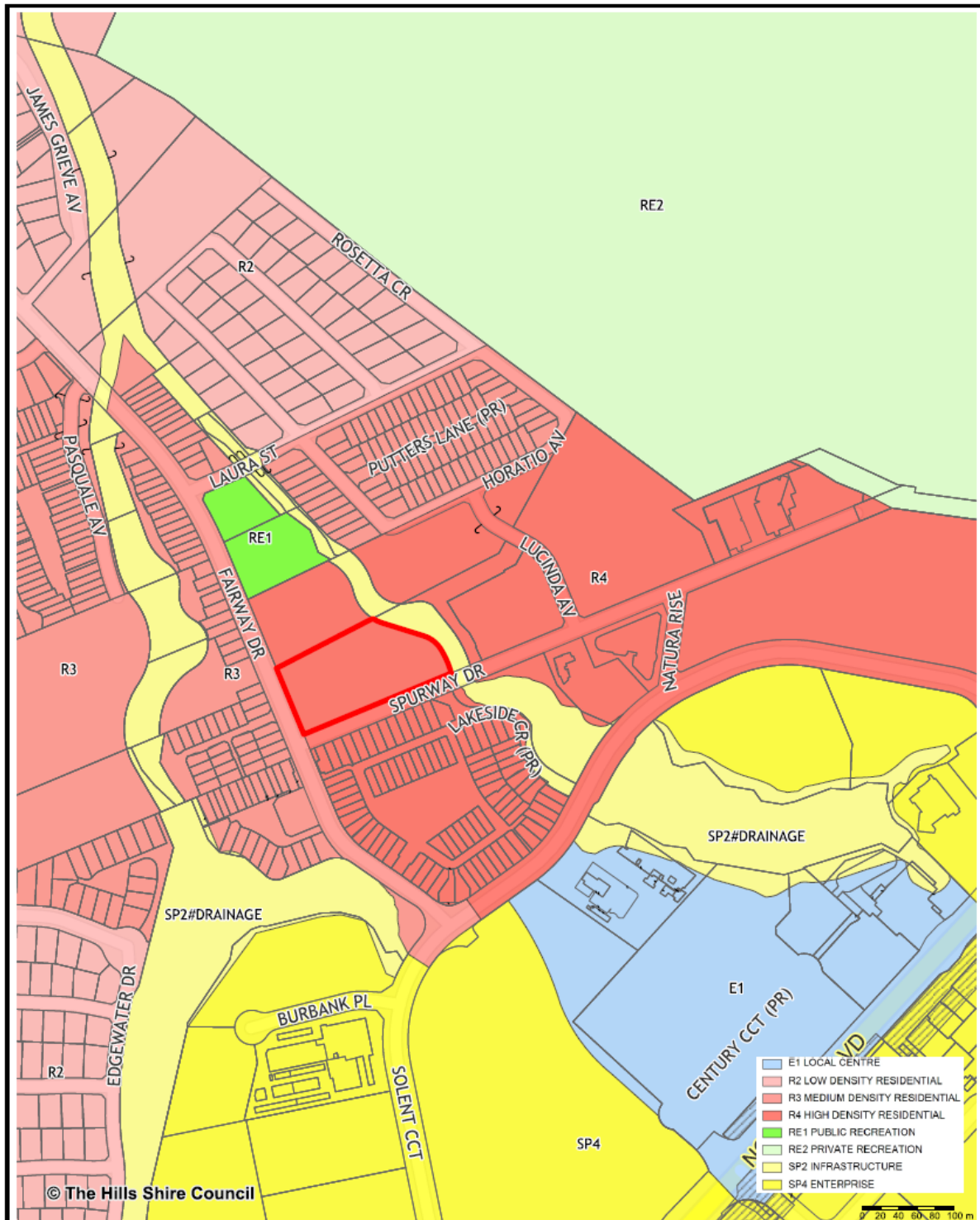
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT D – LEP 2019 ZONING MAP



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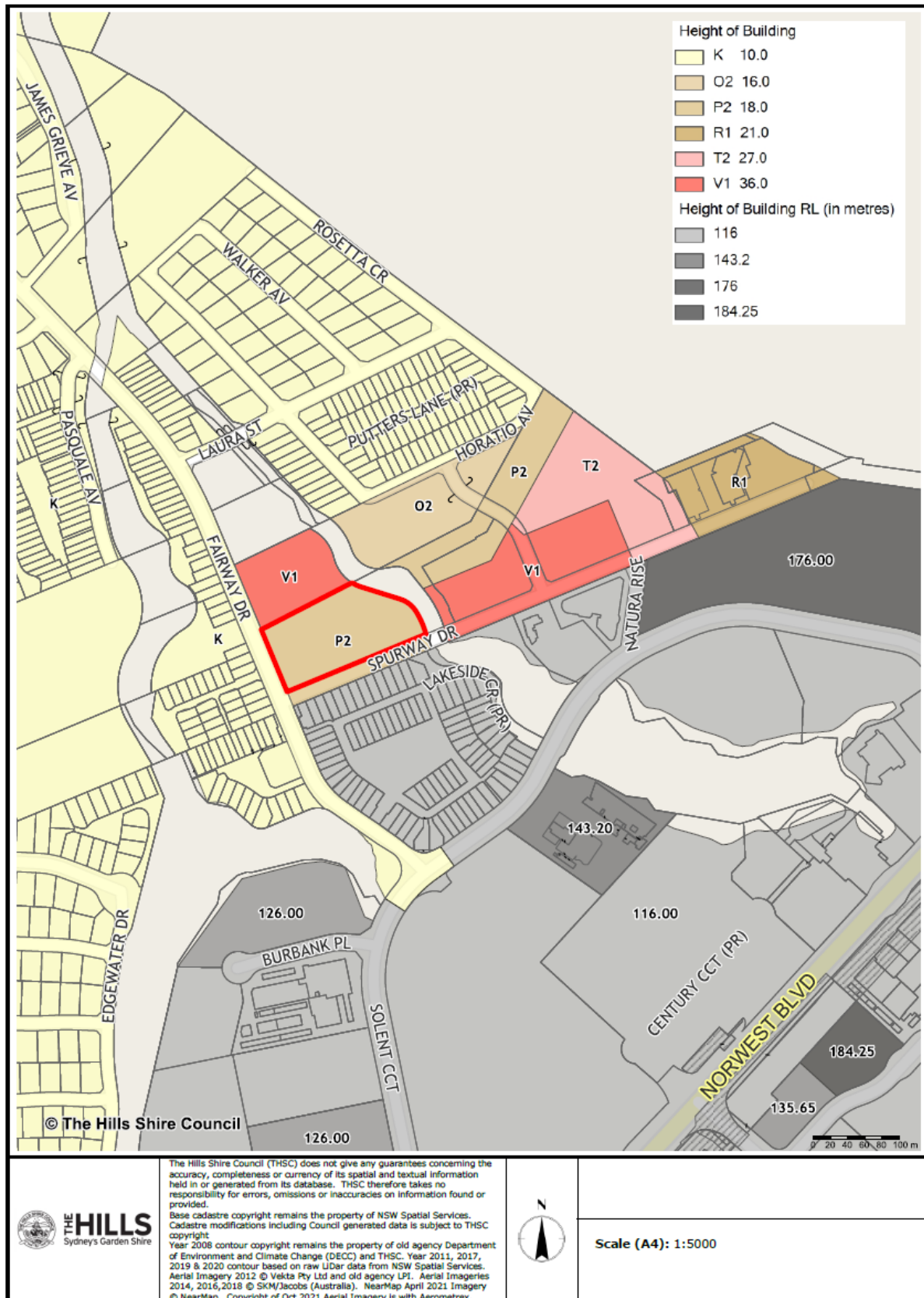
Year 2006 contour copyright remains the property of old agency Department of Environment and Climate Change (DECC) and THSC. Year 2011, 2017, 2019 & 2020 contour based on raw UoB data from NSW Spatial Services.

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

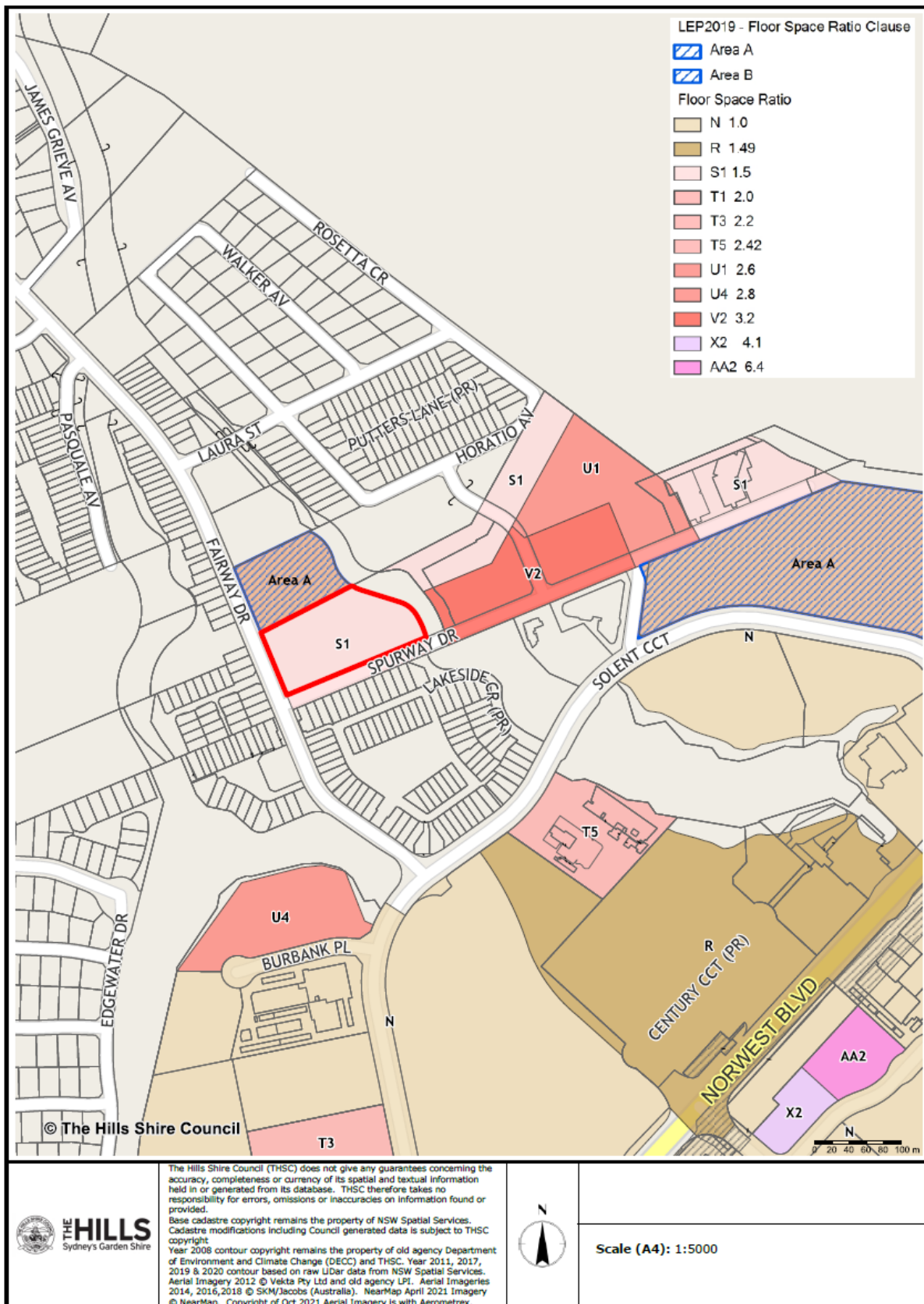


Scale (A4): 1:5000

ATTACHMENT E – LEP 2019 HEIGHT OF BUILDINGS MAP

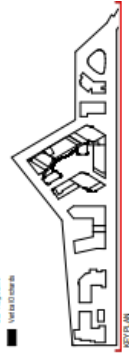


ATTACHMENT F – LEP 2019 FLOOR SPACE RATIO MAP

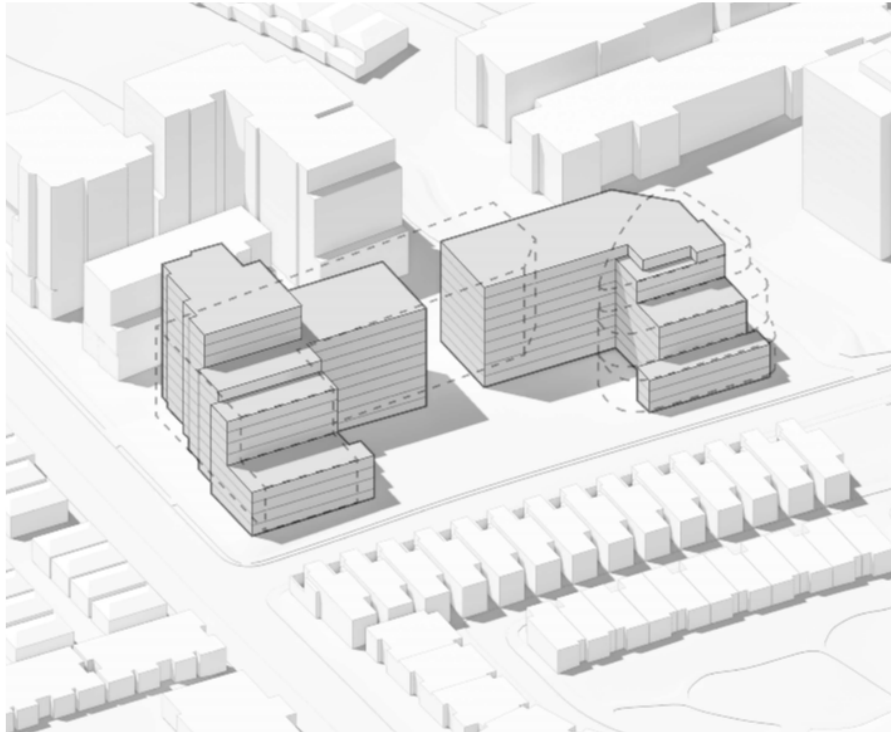


The map illustrates the Norwest Precinct, a planned urban area. Key features include:

- Streets:** Ruttens Lane, Norwest Drive, Strangers Creek, and various residential streets like Ruttens Crescent and Norwest Drive Extension.
- Buildings:** Numerous buildings are shown, many with numbers indicating their type or size. For example, buildings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- Infrastructure:** Bus stops, parks, and other facilities are marked. The map also shows the location of the Norwest Town Centre and the Norwest Business Park.
- Legend:** A legend in the top right corner explains the symbols used for different types of buildings and infrastructure. It includes symbols for residential buildings, commercial buildings, industrial buildings, and other facilities.



ATTACHMENT H - VARIATION REQUEST



Concept Plan Modification D (Stage 5) The Orchards, 104 Fairway Drive Norwest Clause 4.6 Request

Prepared on behalf of Sekisui House

July 2024

dowling urban



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COVER

3D diagram showing the nature of the proposed modification to Stage 5 of the Orchards concept development consent.

This Clause 4.6 Request and Assessment has been prepared by:
Greg Dowling, BAS (Env Pl) M Urb Des (Syd)
Dowling Urban Pty Ltd.

1 Introduction

This report has been prepared to supplement the Statement of Environmental Effects (SEE) for the modification of the Concept Development Consent for The Orchards at 47 Spurway Drive, Norwest to request revised variations to the height development standard under Clause 4.6 of *The Hills Local Environmental Plan 2012* (THLEP 2012).

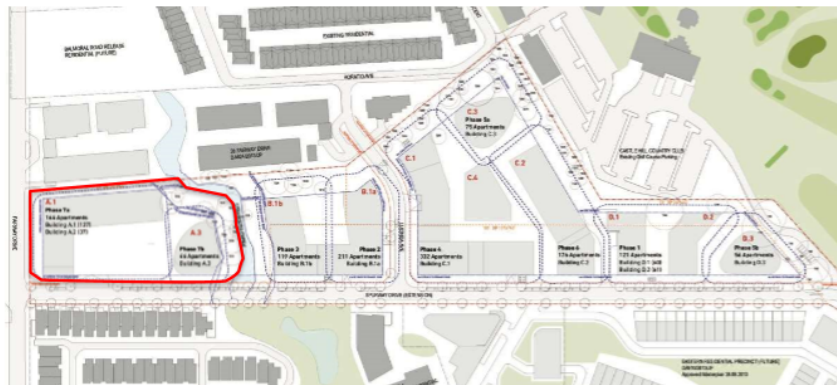
The proposed modification is limited to Stage 5 of the approved concept development and comprises the adjustment of building heights which were previously varied under clause 4.6 when originally granted development consent. Additional background and details are contained within the SEE.

This report assesses the potential impacts that may arise from the proposed variations and makes references to guidance from case law as summarised in addressing the requirements of the *Environmental Planning and Assessment Act 1979*.

1.1 DEVELOPMENT OVERVIEW

An overview of The Orchards masterplan and Concept development consent applying to the land is provided in the SEE accompanying the Section 4.55 Modification Application. The development consent included variations to development standards including the height of buildings as reflected in this report.

In general, the staged development will provide for 1,300 dwellings, with a mix of 1, 2, 3 and 4 bedroom apartments across 10 buildings with associated car parking, public roads, community amenities, publicly accessible parks and landscaping.



Extract from the original Concept Plan showing Stage 5 outlined in red.

The staged development consent for the masterplan (736/2017/JP) provides the framework for the coordinated approvals and construction of subsequent phases of development with staged applications. Stages 1 to 4 of the masterplan have been granted development consent while a development application for Stage 5 which relates to the subject modification has been simultaneously lodged.

1.2 CASE LAW

This request has been prepared under Clause 4.6 of THLEP 2016 to justify the departures from development standards for height of building within clauses 4.3.

The request meets the objectives of clause 4.6(1),

- (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,*

and demonstrates for the purpose of clause 4.6(3) that:

- (a) compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standards.*

Case law (such as *Winten V North Sydney Council*, *Wehbe V Pittwater*, *Four2five V Ashfield Council* etc) provides guidance when considering an exception to development standards as follows:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
 - *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives.*
 - *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;*
 - *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
 - *Has Council by its own actions, abandoned the development standard.*
- Is compliance with the development standard consistent with the aims of Cl 4.6?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

- Are there sufficient environmental planning grounds (specific to the site and particular to the circumstances of the proposed development) to justify contravening the development standard?
- Is the objection well founded whereby Preston J provided five potential ways in which this may be established (*Wehbe v Pittwater Council (2007) NSW LEC 827*) of which the following is relevant in this case
 - *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*

Recent case law (*Micaul Holdings v Randwick City Council*, *Moskovich v Waverley Council* and *Initial Action Pty Ltd v Woollahra Municipal Council* for example) has also established that:

- the written request has to adequately address everything necessary in clause 4.6(3), rather than the consent authority being “satisfied directly”;
- the consent authority must be personally satisfied that development will be “consistent with” the objectives of the zone and the development standard;
- being “consistent with” these objectives is not a requirement to “achieve” them but that development be “compatible” with them or “capable of existing together in harmony”;
- establishing that “compliance with the standard is unreasonable or unnecessary” does not always require that the objectives of the standard are achieved but also that it may not be achieved or would be thwarted by a complying development;
- clarification that while it may be desirable, it is not a requirement to achieve a better environmental planning outcome than a development that complies with the development standard in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Amendments to environmental planning instruments commenced 1 November now require under Clause 4.6(3) that the applicant and consent authority consider the same matters when seeking and determining a variation. The consent authority must then be satisfied that the applicant has demonstrated that matters referred to in that clause.

Further, the consent authority no longer needs to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone; and the Secretary’s concurrence is no longer required. (Department of Planning and Environment published advice.)

This written request reflects the new requirements.

2 Proposed Variation

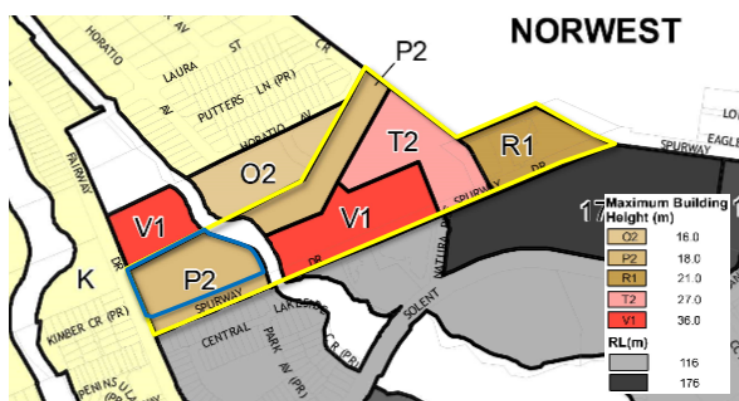
2.1 BACKGROUND

The Modification Application seeks to vary the prescribed development standards within THLEP 2012 relating to Clause 4.3 – Height of buildings for Stage 5 of the Concept Development Consent.

The Height of Buildings development standard contained in Clause 4.3(2) of The Hills LEP 2012 states:

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

The site is subject to height of building development standards ranging from 18 to and 36 metres with Stage 5 of the masterplan subject to a 18 metre height limit.



Extract of THLEP HOB Map with Concept Plan & Stage 5 outline in yellow & blue

In granting development consent to the Concept, variations to the building heights prescribed under THELP 2102 were approved as a result of:

- a need to adjust the heights to accommodate the intended storeys while allowing for contemporary floor to floor heights of 3.1m, lift overruns and roof plant, and the slope of the land; and
- well-reasoned massing and design strategies providing an improved planning and design outcomes consisting of additional and improved open space available to the public; greater retention of significant trees; improved shadowing impacts; and better building relationships to adjoining properties and the context in general.

In terms of the building relationships with adjoining development, the approved Modification B to the Concept Plan significantly altered building heights and

massing to respond to the significantly changed planned future built form context to the immediate south of Stage 4.

In approving Mod B that applied to Stage 4, the consent authority accepted the variation to building heights in response to the transformation of its immediate southern context from planned townhouse to high rise development as a result of the “The Greens” rezoning, and to improve solar access to adjoining developments and the public domain.

Similarly, the purpose of this modification request is to further adjust building heights within Stage 5 to achieve better planning and design outcomes for the public domain, apartment amenity and adjoining developments.

This re-evaluation is informed by the experiences to date in optimising residential amenity in the physical and social context of The Hills as well as responding more appropriately to the change in immediate physical context to since the determination of the Concept Plan.

In this instance, the change in context has arisen from the rezoning of the adjoining site to the immediate north for the resultant high density development “Moda” with increased building heights from 4 storeys to 7-12 storeys.

Additional shadowing resulting from the increased height is required to be absorbed on the Stage 5 site while the diminished relationship between the adjoining buildings to that illustrated within the Concept Plan requires improvement to maintain amenity outcomes.

2.2 DETAILS

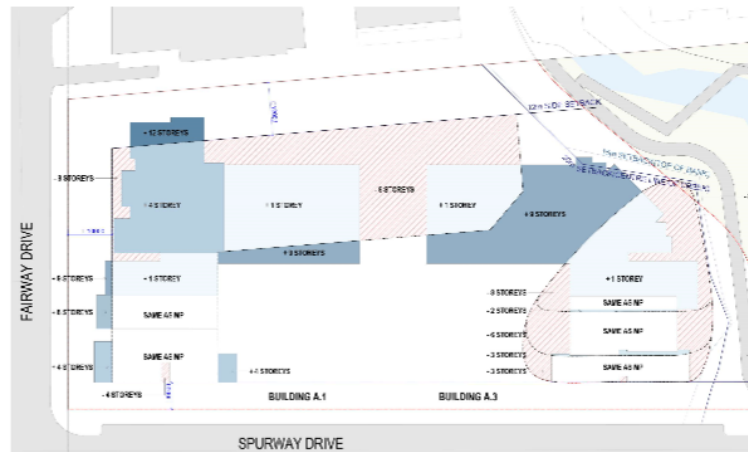
The proposed modification consists of the re-distribution of Stage 5 building heights to form two buildings ranging in height from three to twelve storeys fronting on Spurway and Fairway Drives.

The approved height of building variations as stated in the Concept Plan Planning Report to the Sydney Central City Planning Panel (736/2017/JP 11 Apr 2018) ranged in the order of 20% to 140% across the site as follows.

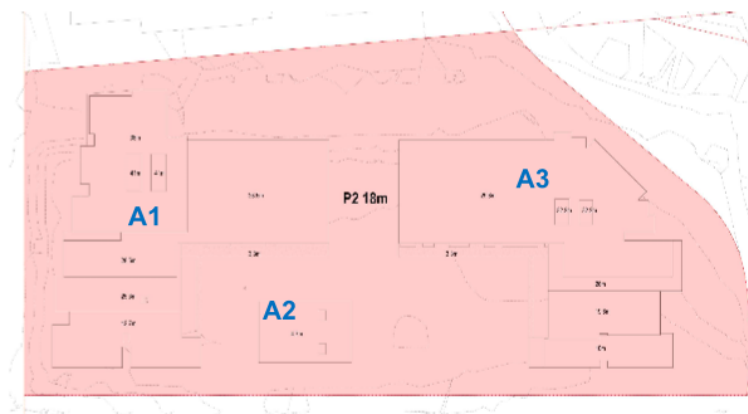
Building	Height Standard	Approved Heights
Building A.1	18 m	29.8 m
Building A.2	18 m	Removed
Building A.3	18 m	30.7 m

Building A.2 was removed through the assessment of the concept plan but is represented by a single story pavilion for community purposes as shown on the plans.

The proposed adjustments to the approved height variations are summarised in the following diagram noting that building envelopes are subject to detailed design in the Stage 5 development application.



The anticipated resultant building heights is shown in the following diagram. These form the basis of the proposed variation to building heights under clause 4.6 as shown on the submitted replacement Concept Plans.

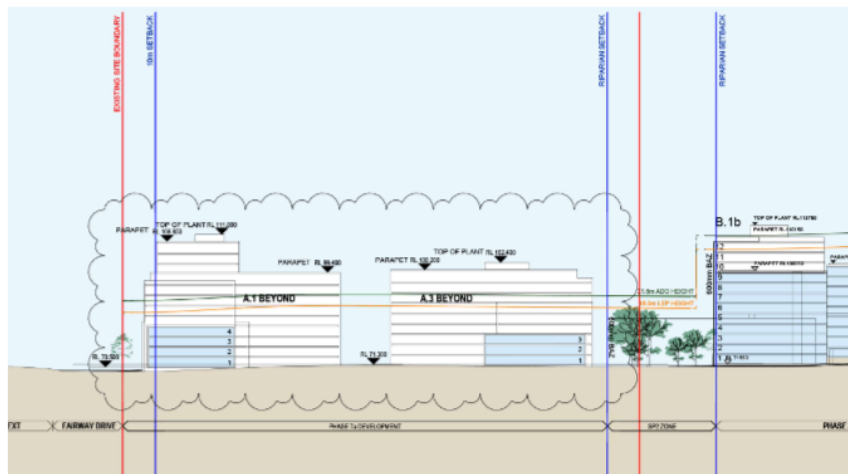


The variations to building height above existing ground level applying to Stage 5 are shown on the submitted replacement stamped plans and summarised in the following table and compared with those originally approved.

Note that the proposed building heights include a 4m allowance for lift overrun and terrain adjustment while the masterplan building references are indicated on the Variation Plan above.

Approved and Proposed Stage 5 Height of Building variations comparison

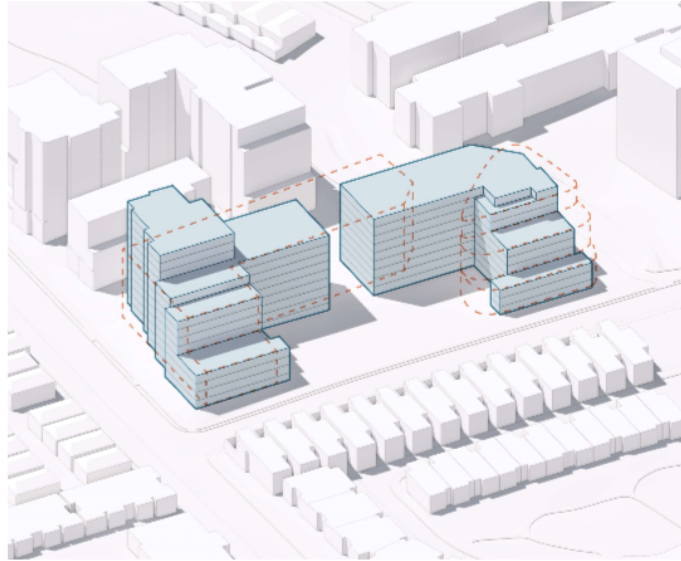
Building	Zone & standard	Approved Height	Proposed Height
Building A1	P2 – 18m	29.8 m	41 m (lift overrun) 38 m (roof top)
Building A2	P2 – 18m	Removed	4.7 m
Building A3	P2 – 18m	30.7 m	32.2 m (lift overrun) 29.2 m (roof top)



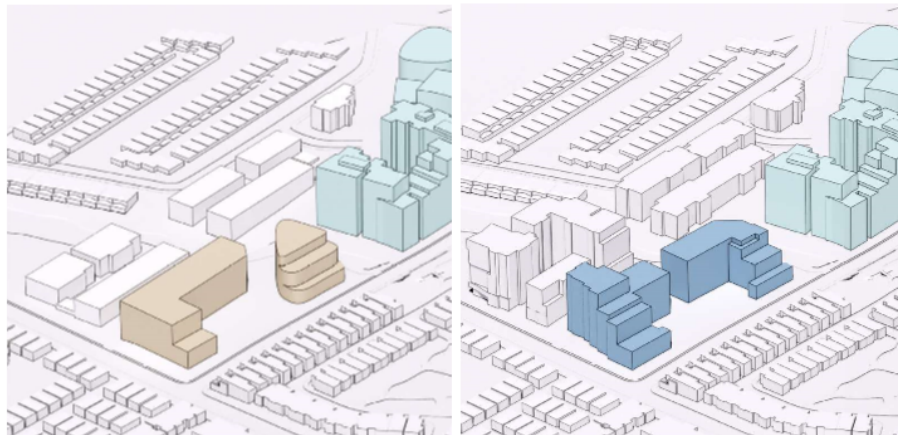
Extract from submitted modification elevation showing maximum heights applying to Stage 5

A Design Report prepared by Rothelowman provides the design rationale and principles for the adjusted built form and scale having particular regard to built and approved physical and landscape context, site permeability and open space, urban form analysis and shadowing impacts.

The improved effect of the building height and massing adjustments is represented in the general massing diagram below which superimposes envelopes formed from the approved and adjusted building heights. A direct comparison of the originally approved and proposed modified envelopes is provided further below.



Above & below: Diagrams showing comparisons of the building envelopes from the approved and proposed buildings heights (L and R below respectively). Source RotheLowman.



The proposed re-massing is demonstrated in the diagrams above showing the effect of the redistribution of floor space from the adjustments to approved height variations heights to the current concept development consent.

3 Clause 4.6 Assessment

3.1 ARE THE PLANNING CONTROLS A DEVELOPMENT STANDARD?

The planning control in Clauses 4.3 relating to maximum height of buildings is a development standard as defined within the *Environmental Planning and Assessment Act 1979* as follows (*EP&A Act, Part 1 Section 4. Definitions*)

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,

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

3.2 ASSESSMENT AGAINST THE PURPOSE/OBJECT OF THE STANDARD

The design strategies within the originally approved Concept Plan reasoned substantial variations to the height standard which in turn allowed for:

- better distribution, site coverage and massing of floor area in order to create a larger setback on the northern boundary for linear open space accessible by the public; and
- improved shadowing, and privacy impacts on adjoining properties and open space areas, as well as overall visual amenity, given the then planned future context of the site.

The objectives of the Height of Building standards under clause 4.3 of THLEP 2102 are considered to be satisfied by the adjusted height variations as follows.

Clause 4.3 Height of Building Objectives

Objective	Response
<i>(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,</i>	The revised variations better responds to significant changes in the built form context to the north of the site, while the streetscape is preserved with generous setbacks and mid-winter sunlight.
<i>(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</i>	The limited impact of shadowing on neighbouring development to the south is maintained and planned open space areas on Spurway Drive will provide a landscaped setting to the buildings appropriate to the low rise context to the south of the site.

The site is also the subject of variable floor space ratios which have been distributed over the site under the respective approved site design strategies. The revised heights will not alter the distribution of floor space across the five stages of development.

Notwithstanding, the exception to the FSR standard for Stage 5 simply represents the FSR applied to a net site area for the stage which excludes dedicated streets, as well as the altered distribution of floor space across the site in accordance with the masterplan design strategies in order to achieve improved planning and design outcomes.

Therefore, the development proposal will not lead to the contravention of the development density anticipated by the THLEP 2019 when considered for the whole Concept Plan site which in turn, reflects the locality's proximity to a wide range of jobs, services, recreational and mass transport opportunities.

The objectives of the floor space ratio standards under clause 4.4 of THLEP 2102 are considered to remain satisfied from changes arising from the adjustments to the height variations as follows.

Clause 4.4 Floor Space Ratio Objectives

Objective	Response
<i>(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,</i>	The revised bulk and scale derived from the adjusted height variations will ensure better compatibility with the scale and character of existing and future surrounding development especially adjacent on Spurway Drive.
<i>(b) to provide for a built form that is compatible with the role of town and major centres.</i>	Overall site FSR remains compliant with the LEP standards and compatible with role of the Norwest Centre.

Clause 7.10 of THLEP 2012 under which development of the site for 1,300 dwellings is permitted also has a relevant objective as follows.

Relevant Clause 7.10 'Residential development yield on certain land' Objective

Objective	Response
<i>(c) to provide opportunities for suitable housing density that is compatible with existing development and the future character of the surrounding area,</i>	The proposed adjustment to the approved height variations will result in development that is a more compatible with the character of the surrounding area and provided for improved apartment separation and solar access on site while preserving solar access to townhouses south of the site and providing a coherent composition of building forms when viewed from the public domain.

Accordingly, the objectives of the height standard are better served by minimising *"the impact of overshadowing, visual impact, and loss of privacy"*, while ensuring *"the height of buildings is compatible with that of"* the 'Moda' development and the overall streetscapes and wider public domain.

The objectives of the zone, as well as for FSR and clause 7.11 as they are effected by the height, are also better served mainly by maintaining responsiveness and compatibility with changes to the planned future context from subsequent rezonings on adjoining properties while minimising impacts and optimising public benefits from development.

Further, as demonstrated by the reasoning for the original approved height variations, adherence to the standards would defeat or thwart the purpose and objectives the zone and standards.

3.3 IS COMPLIANCE CONSISTENT WITH THE REQUIREMENTS OF CL 4.6?

The aims of Clause 4.6 are:

- (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.*

When the development is tested against the underlying objectives of the standard, compliance would not be inconsistent with the aims of the clause because the proposed height is a reflection of a considered design strategy for the entire development parcel that in turn is a response to the characteristics of the site and its context.

It is considered that the variation requested for the proposed modification will provide the better planning and design outcome by responding to the objectives of the zone and height standards as well as the existing and changed planned future context to Stage 5.

In particular, it is considered that the variation will:

- improve mid-winter shadowing and privacy of the north facing apartments near the northern site boundary while preserving solar access to the townhouses to the south of the site;
- more thoughtfully respond to the changed physical context to that originally planned to the north of the site, by utilising building separations, configurations and heights more compatible with adjoining built forms; and
- demonstrate a greater harmony and coherency with the form and scale adjoining developments and help moderate the perception of scale from the

public domain when viewed from the street as well as the locality and adjoining buildings.

3.4 IS COMPLIANCE UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES?

Strict compliance with the height of building provisions of THLEP 2012 is considered unreasonable and unnecessary in the circumstances of the case as it would impede the considered implementation of an accepted design concept and impede the achieving of a better planning and design outcome for the site and its immediate context.

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances based on the following:

- The adjustment to the height variations is consistent with the objectives of the zone, development standard and related provisions of THLEP 2012 as discussed in section 3.2.
- The design strategies which underpinned height and other variations in the original consent is maintained especially to provide a buffer to adjoining development.
- The modified massing will result in better planning and design outcomes as set out in section 3.3 above including improved mid-winter solar access and greater compatibility with the adjoining development and context north of the site.
- The approved density and yield of the site; the overall structure of streets, entrances, open spaces and stormwater drainage; as well as the functioning and servicing of the site will remain substantially unchanged.

3.5 ARE THERE SUFFICIENT GROUNDS TO JUSTIFY CONTRAVENTION?

As discussed above, the adjusted contraventions of the building height standard for Stage 5 responds to the issues identified in the Design Report prepared by RotheLowman architects.

The design of the Stage 5 development required a response to the change in physical context at the site boundary to the north comprising residential apartments with increased height from four up to 12 storeys.

An appropriate response is also required to preserve the restraint on development on the southern boundary to maintain solar access to the adjoining townhouses south of the site.

In the reconsideration of the massing for Stage 5 to respond to the changed context, RotheLowman reviewed the design strategies prepared by Turner to inform the original Concept Plan as approved.

RotheLowman responses are set out in the Design Report and summarised below with reference to Figure 12.

Site Strategy

1. The Proposal has been designed to respond to the conditions of Strangers Creek and the riparian corridor
2. Building A.1 marks the termination of the linear park and takes inspiration from its location next to Strangers Creek

Road Strategy

3. Enhanced pedestrian connectivity with public path adjacent to Strangers Creek connecting to Spurway Drive within the site
4. Communal connection into the site from the Strangers Creek pedestrian bridge to the lagoon pool and amenities

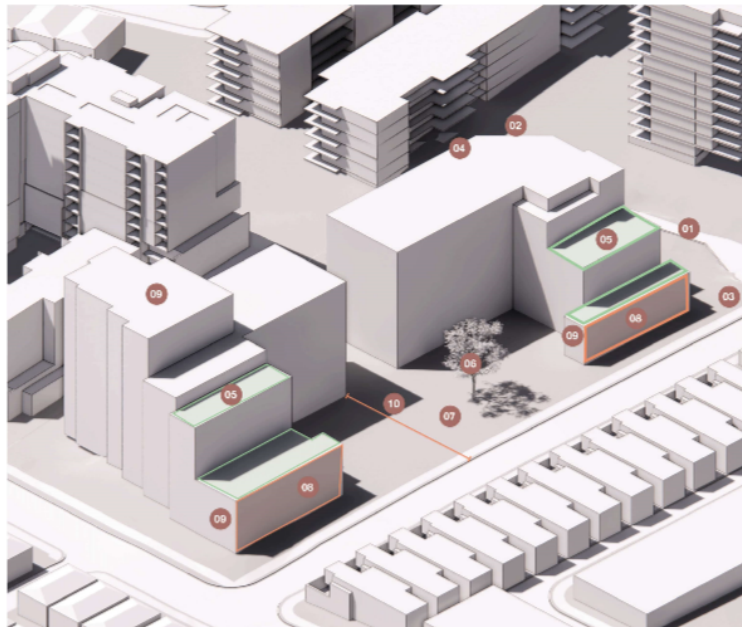


Figure 10: Extract from RotheLowman design report

Setback Strategy

5. Building stepping to the south follows approved concept plan setbacks as building form and height have been refined to minimise overshadowing to adjacent development
6. Variations to setbacks have been carefully considered to ensure placement of building footprints allow the retention and protection of existing significant trees

Building Envelope Strategy

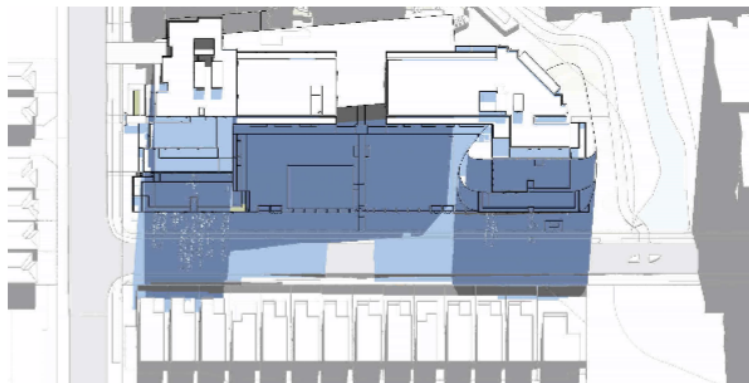
7. Distribution of building forms have been adjusted to provide open space opportunities on the ground plane
8. The extent of building interfacing with Spurway Drive has been adjusted to minimise the visual impact of the development through a reduction in bulk and scale adjacent to existing low rise residential.

Building Height Strategy

9. Minimise adverse impacts on adjacent and adjoining properties by locating lower heights adjacent to existing low rise development and concentrating height adjacent to high density development
10. Increased setbacks adjacent to the existing low rise dwellings to the south have been provided to assist in minimising the perceived scale of the proposal

The likely impact arising from the proposed modification concerns the different relationship with the buildings north of the Stage 5 site, the maintenance of solar access south of the site and the overall visual effect of the resultant re-massing when viewed from the public domain and adjoining developments.

It has been demonstrated by RotheLowman that the net effect of changes to mid-winter overshadowing will maintain the approved outcome for the adjoining townhouses south of Spurway Drive.



Extract of shadow analysis showing existing and proposed shadowing (dark and light blue respectively) (RotheLowman)

3.6 IS THE REQUEST WELL FOUNDED?

This request under clause 4.6 of THLEP 2012 is considered to be well founded for the following reasons.

- The proposed development remains consistent with the objectives of the zone and standard as well as the nature and intent of THLEP 2012 and the concept staged development consent.
- The proposed adjustment to height variations is based on a well-reasoned design strategy, and detailed design and analysis for Stage 5, to achieve better planning and design outcomes appropriate in this location, and provides for an appropriate response to the site and its context.
- The variation is supported by shadow analysis demonstrating maintained mid-winter solar access to the adjoining public domain and existing developments while achieving better improved amenity for the proposed Stage 5 apartments.
- Strict compliance with the height of building controls in the circumstance would result in unnecessary design limitations and a consequent diminished urban outcome for the site and neighbouring development, and tend to defeat or thwart the achievement of those objectives.
- The variation to the height of building standard is consistent with the masterplan approach which allowed for ADG requirements while mitigating shadowing impacts as well as responding to site conditions including for the retention of vegetation and the creation of public access ways and a linear park.

4 Conclusion

The proposed exceptions to the height of building standard contained in The Hills Local Environment Plan 2012 Clause 4.3 Height of Buildings will result in a better planning and design outcome as they will:

- improve mid-winter shadowing and privacy of the north facing apartments near the northern site boundary while preserving solar access to the townhouses to the south of the site;
- more thoughtfully respond to the changed physical context to that originally planned to the north of the site, by utilising building separations, configurations and heights more compatible with adjoining built forms; and
- demonstrate a greater harmony and coherency with the form and scale of adjoining developments and help moderate the perception of scale from the public domain when viewed from the street as well as the locality and adjoining buildings.

The exceptions will result in development more compatible with the existing and approved context in the locality. The concept as designed remains consistent with the underlying purpose and objectives of the respective zone and height standard which would be defeated or thwarted by strict compliance with that standard.

It is therefore, concluded that the proposed contraventions to the height of building development standard as described, does not undermine or frustrate the underlying objectives to that standard.

The adjusted non-compliance does not give rise to any significant additional adverse environmental impacts but provides for a better urban planning and design outcome through a well-reasoned concept design.

It is therefore considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard as proposed.

This written request has adequately addressed the matters required to be demonstrated in establishing the above and that the proposed development will be in the public interest.

It is also considered appropriate to provide the required flexibility in applying the development standards to achieve better outcomes for and from development as proposed for The Orchards site by allowing this flexibility in this particular circumstance.

Accordingly, the consent authority should find that it is able to support the requested exception to development standards under clause 4.6 of The Hills LEP 2012.

ATTACHMENT I – DEVELOPMENT CONSENT 736/2017/JP



16 April 2018

Sekisui House Australia Pty Ltd
Ground Floor 68 Waterloo Rd
MACQUARIE PARK NSW 2113

Ref No.:736/2017/JP
SCCPP: 11 April 2018

Dear Sir/Madam

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Pursuant to Section 4.18(1) of the Environmental Planning and Assessment Act, 1979, notice is hereby given of the determination by Sydney Central City Planning Panel of the Development Application referred to herein.

The Application has been determined by the granting of Consent subject to the conditions referred to in this Notice.

The conditions of the Consent referred to herein are deemed necessary by The Hills Shire Council, pursuant to Part 4, Division 4.3, Section 4.17 of the Environmental Planning and Assessment Act, 1979.

This Consent shall become effective from the endorsed date of Consent.

This Consent shall lapse unless development, the subject of the Consent, is commenced within five (5) years from the endorsed date of Consent or as otherwise provided under Section 4.53 of the Environmental Planning and Assessment Act, 1979 which may vary the above date of the lapsing of the Consent.

Right of Appeal

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six (6) months after receipt of this notice. For development applications lodged before 28 February 2011, the statutory timeframe for appeal is twelve (12) months from the determination date.

APPLICANT: Sekisui House Australia Pty Ltd

OWNER: SH Orchards Pty Limited

PROPERTY: Lot 101 DP 1176747 and Lot 1 DP 1233538,
RMB 47 Spurway Drive, Baulkham Hills and 104
Fairway Drive, Kellyville

DEVELOPMENT: Concept Masterplan encompassing a total of
1,300 dwellings.

ENDORSED DATE OF CONSENT: 11 April 2018

CONDITIONS OF CONSENT

GENERAL MATTERS

1. Development in Accordance with Submitted Plans (as amended)

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

The amendments in red include: -

- The 6 metre setback for Building A3 and all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-005	Masterplan Setbacks	-	C	12 December 2017
MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
MP-250-010	North Envelope Elevation - Linear Park	-	C	12 December 2017
MP-250-020	South Envelope Elevation - Spurway Drive	-	C	12 December 2017
MP-250-040	West Envelope Elevation - Fairway Drive	-	C	12 December 2017
MP-350-001	GA Section Envelope Section 01	-	E	12 December 2017
MP810-001	Staging Stage 1	-	D	21 March 2017
MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017

512SL	Landscape Masterplan – 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

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

2. Compliance with Masterplan

Approval is granted for the proposed Masterplan in accordance with the plans and details provided with the application to provide guidance for future development of the site. All Stages of works the subject of the Masterplan will require the submission and approval by the relevant authority of an application as required by the relevant legislation including all external authorities with the exception of the Office of Environment and Heritage in relation to flora and fauna impacts which are required to be offset in accordance with Condition 3.

3. Ecology Requirements

i. Biodiversity Impact Mitigation Requirements

To mitigate the potential impacts of construction, the developer must comply with the conditions in Schedule 1 On-site Measures set out in Biobanking Statement ID 49 issued by the NSW Office of Environment & Heritage under the Masterplan development. The site-specific Construction Environmental Management Plan must be prepared taking into account conditions 1.2 to 1.14 of Schedule 1. The CEMP must be submitted to The Hills Shire Council and approved by the Manager – Environment and Health prior to issue of a Construction Certificate.

ii. Biodiversity Offsetting Requirements

To offset the loss of biodiversity from the site the developer must comply with all of the credit retirement conditions in Schedule 2 of Biobanking Statement ID 49 issued by the NSW Office of Environment & Heritage under the Masterplan development. The biodiversity credits must be retired prior to any physical works commencing for each stage of the development. Evidence of retirement of ecosystem credits in accordance with the Biobanking Statement conditions must be submitted to The Hills Shire Council's Manager – Environment and Health.

4. Southern Road Verge – Spurway Drive

All future Applications and construction works involving the southern verge of Spurway Drive west of the golf course entrance driveway shall incorporate a 2 metre wide shared path and street tree landscaping in accordance with Landscape Section 'Option B' Project No. 512SL Sheet No. 28 Revision A.

5. Engineering Works Requirements

a) Road Formation

Roads are to be delivered as per the early works/ infrastructure development application over the site (DA 634/2017/ZB), complying specifically with the following configurations:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Spurway Drive	Road Type: Collector Road w/ cyclepath 3.5m/ 9.5m/ 3.5m (16.5m) Pavement Design: Collector Road (Design Guidelines Section 3.12)
Stone Mason Drive	Road Type:

	Collector Road w/ Cyclepath 3.5m/ 9.5m/ 3.5m (16.5m) Pavement Design: Collector Road (Design Guidelines Section 3.12)
Lucinda Avenue	Road Type: Access Street 3.5m/ 8.5m/ 3.5m (15.5m) Pavement Design: Access/ Local (Design Guidelines Section 3.12)
Castle Pines Drive	Road Type: Private Road 0m/ 7.0m/ 0m (7.0m) Pavement Design: Private (Design Guidelines Section 3.12)
Private Road (MC02)	Road Type: Private Road 0m/ 6.0m/ 0m (6.0m) Pavement Design: Private (Design Guidelines Section 3.12)

b) Stormwater & Water Sensitive Urban Design

All future development applications are to generally comply with the following, along with any other requirements of Council at the time:

- Flood Study Report prepared by Northrop dated 2 September 2016
- Water Sensitive Urban Design (WSUD) Strategy prepared by Alluvium dated September 2016 and their subsequent response memorandum dated 3 March 2017;

The following design requirements also apply:

- Runoff from each of the sites it to be treated and is to meet the following targets for nutrient and sediment removal:
 - o 95% reduction in the annual average load of gross pollutants
 - o 85% reduction in the annual average load of total suspended solids
 - o 65% reduction in the annual average load of total phosphorous
 - o 45% reduction in the annual average load of total nitrogen
- The bio-retention treatment systems (Basins 3 and 4) within the linear park are not to treat stormwater runoff from the public trunk drainage line. Public easements are to be created over private land.
- Gross Pollutant Traps (GPTs) are not to be located within any public trunk drainage lines or on public land. Any proposed GPT's are to be located within private land only.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to:

- Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

6. Acoustic Requirements

The recommendations of the *Masterplan DA Acoustic Assessment* for 47 Spurway Drive, Baulkham Hills, prepared by Acoustic Logic, project number 20160992.1, dated 22/02/2017 and submitted as part of the concept masterplan are to be complied with. In particular, site specific acoustic assessments are to be submitted for every stage (sections 4.3 and 5.3). The acoustic assessment is to address internal noise levels, mechanical plant and construction noise management.

The following overall project specific criterion is to be achieved at every stage of the development to prevent background creep.

- Day 0700-1800: 50dB(A)_{leq15min}
- Evening 1800-2200: 45dB(A)_{leq15min}
- Night 2200-0700: 40dB(A)_{leq15min}

6A. Acoustic Requirements Stage 5

The future development applications for Stage 5 are to include an acoustic report addressing the need for acoustic treatment to the rear of properties within the Central Park development backing on to Spurway Drive.

7. Contamination Requirements

The recommendations of the *Detailed Site Investigation* for 47 Spurway Drive, Baulkham Hills prepared by EI Australia, referenced as E23307 AA_Rev0, dated 6 April 2017 and submitted as part of the concept masterplan are to be implemented as conditioned in each approved stage of the development.

A validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council) prior to the subdivision certificate being issued. The validation report must reference the *Detailed Site Investigation* for 47 Spurway Drive, Baulkham Hills prepared by EI Australia, referenced as E23307 AA_Rev0, dated 6 April 2017 and include the following:

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

8. Waste Management Plans Required

All future built form applications must be accompanied by a construction and operational waste management plan. The built form designs must be generally in accordance with the details provided in the Master Plan. Built form designs are subject to a further detailed assessment.

9. Aboriginal Archaeological Sites or Relics

If, during activities involving earthworks and soil disturbance, any evidence of an Aboriginal archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage must be notified immediately.

10. European Sites or Relics

If, during the earthworks, any evidence of a European archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage be contacted immediately. All relics are to be retained in situ unless otherwise directed by the Office of Environment and Heritage.

ATTACHMENT: DEVELOPMENT ADVISORY NOTES

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objectives of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 are maintained.

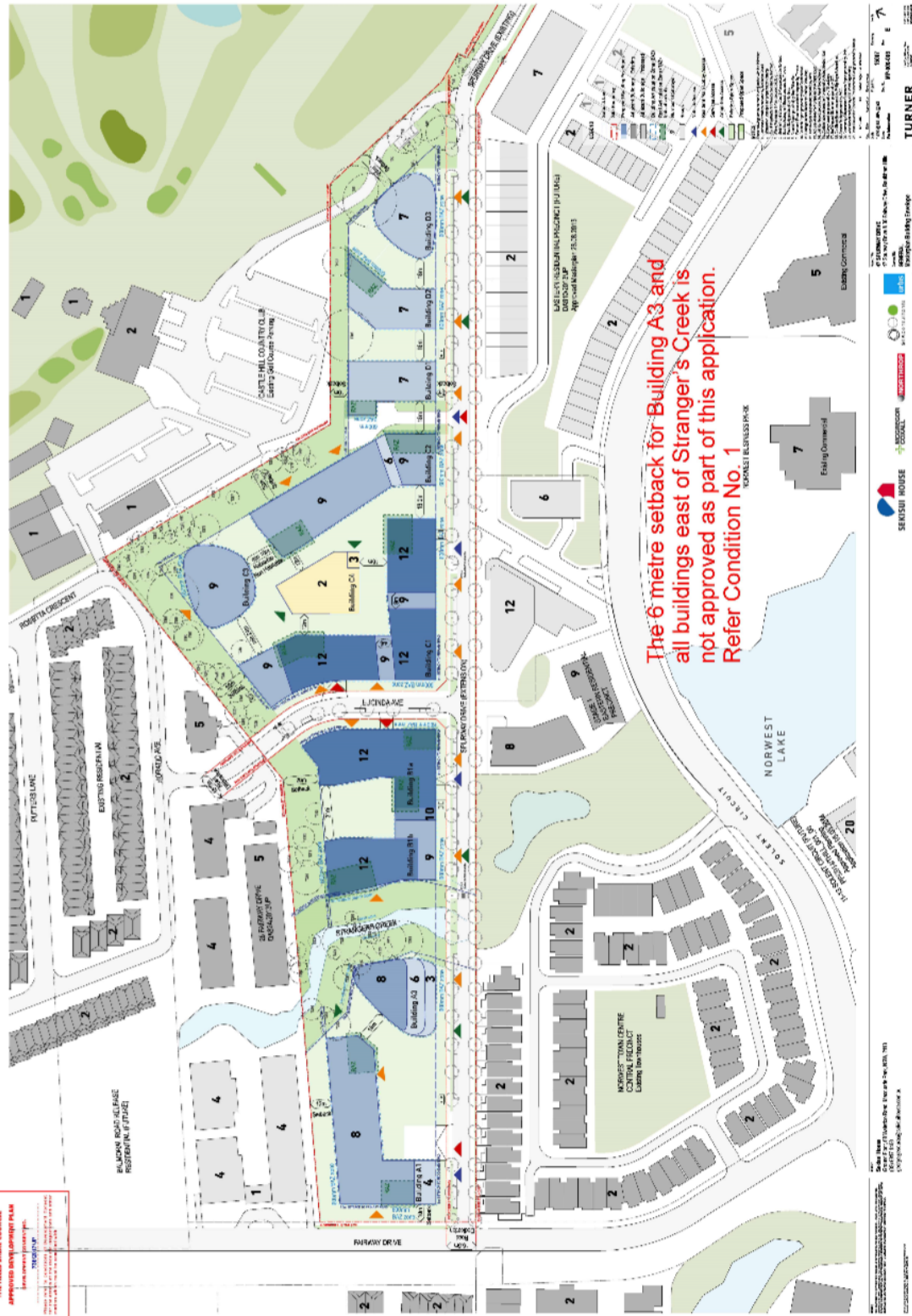
Should you require any further information please contact Robert Buckham on 9843 0267.

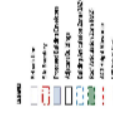
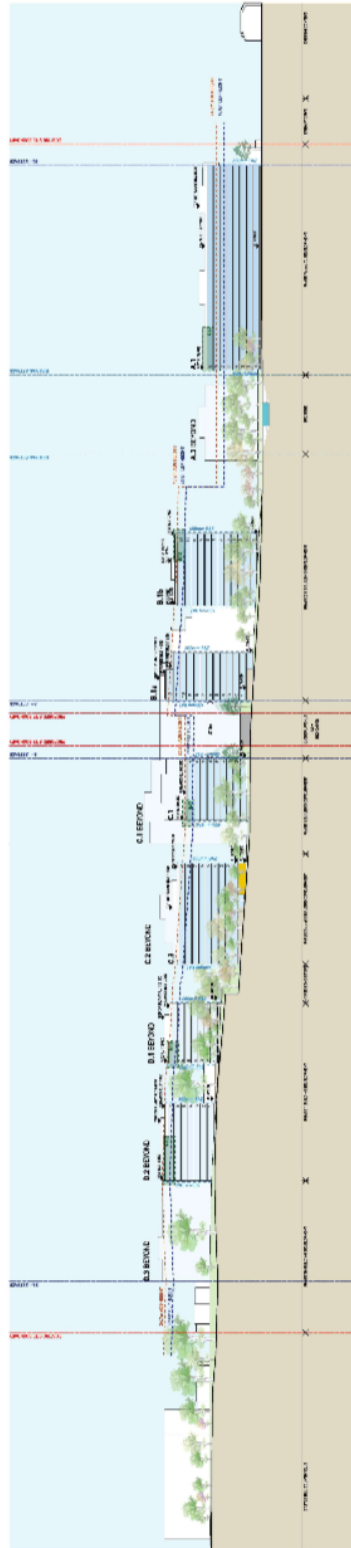
Yours faithfully



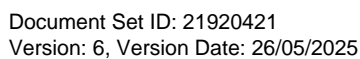
Paul Osborne

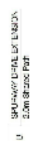
MANAGER-DEVELOPMENT ASSESSMENT



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McGREGOR & CO. LLC
 10000 Highway 100, Suite 100, Dallas, TX 75243
 Phone: (214) 343-7800 | Fax: (214) 343-7801
 Email: info@mcgregorandco.com
 Website: www.mcgregorandco.com

ATTACHMENT J – MODIFICATION CONSENT 736/2017/JP/A



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

21 January, 2020

Sekisui House Australia Pty Ltd
Ground Floor 68 Waterloo Rd
MACQUARIE PARK NSW 2113

Ref No.736/2017/JP/A
Delegated Authority

Dear Sir/Madam

SECTION 4.55 MODIFICATION OF DEVELOPMENT CONSENT

CONSENT NUMBER: 736/2017/JP/A

Pursuant to the provisions of Section 122(1) of the Environmental Planning and Assessment Regulation 2000, notice is hereby given of the determination by The Hills Shire Council of the Development Application described below:

APPLICANT:	Sekisui House Australia Pty Ltd
OWNER:	SH Orchards Pty Limited
PROPERTY:	Lot 4 DP 271187, Lot 101 DP 1176747, Lot 2 DP 1246113 104 Fairway Drive, NORWEST, PRIVATE ROAD, RMB 47 Spurway Drive, NORWEST
DEVELOPMENT:	Section 4.55 (1A) Modification to the staging of an approved concept masterplan.
DATE OF APPROVAL:	21 January 2020
ENDORSED DATE OF ORIGINAL CONSENT:	11 April 2018

www.thehills.nsw.gov.au | 9843 0555

The Section 4.55 application for modification of Development Consent 736/2017/JP be approved as follows:

CONDITIONS OF CONSENT

Condition No. 1 to be **deleted** and **replaced** as follows:

1. Development in accordance with submitted plans

The development being carried out in accordance with the approved plans and details associated with development application 736/2017/JP as amended in red, and as further modified by the following plans approved with Development Consent No. 736/2017/JP/A, except where amended by other conditions of consent.

REFERENCED PLANS 736/2017/JP

The amendments in red include: -

- The 6 metre setback for Building A3 and all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-005	Masterplan Setbacks	-	C	12 December 2017
MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
MP-250-010	North Envelope Elevation – Linear Park	-	C	12 December 2017
MP-250-020	South Envelope Elevation – Spurway Drive	-	C	12 December 2017
MP-250-040	West Envelope Elevation – Fairway Drive	-	C	12 December 2017
MP-350-001	GA Section Envelope Section 01	-	E	12 December 2017
MP810-001	Staging Stage 1	-	D	21 March 2017
MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017
512SL	Landscape Masterplan – 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

REFERENCED PLANS 737/2017/JP/A

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-410-001	Staging Plan	-	B	17 January 2020

Pursuant to Clause 122 of the Environmental Planning and Assessment Act Regulations 2000, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objects of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's Planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected, and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant heads of consideration under Section 4.15 of the Act 1979 are maintained.

Right of Review

Section 8.2 of the Environmental Planning and Assessment Act 1979 confers on the applicant the right of review of determination, subject to such request being made within six (6) months of the determination date and accompanied by a fee as prescribed in clause 257 of the Environmental Planning and Assessment Regulation 2000.

Section 8.2(2) of the Environmental Planning and Assessment Act 1979 does not permit a review of determination in respect of:

- a) A Complying Development Certificate,
- b) Designated Development,
- c) Development referred to in Division 4.6

Right of Appeal

Section 8.9 and 8.10 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six (6) months of the endorsed date of determination..

Should you require any further information please contact Robert Buckham on 9843 0267.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION

PUBLIC NOTIFICATION OF THE DETERMINATION PURSUANT TO ITEM 20(2) (c) AND (d) OF SCHEDULE 1 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

DECISION:

APPROVED

DATE OF THE DECISION:

21/01/2020

REASONS FOR THE DECISION:

The Development Application has been assessed against the relevant heads of consideration under the following statutory requirements:

- Section 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979
- The Hills Local Environmental Plan 2012
- The Hills Development Control Plan 2012

and is considered satisfactory subject to conditions as outlined in the Notice of Determination.

HOW COMMUNITY VIEWS WERE TAKEN INTO ACCOUNT IN MAKING THE DECISION:

1. The Development Application was notified in the local newspaper in accordance with Section 3.1 of The Hills Shire Development Control Plan 2012 Part A Introduction which outlines the advertising and notification procedure pathways for various forms of development.
2. The submission received during the notification period has been considered in the assessment of the Development Application pursuant to Section 4.15(d) of the Act and issues raised do not warrant refusal of the application.
3. The Development Application has been assessed having regard to Section 4.15(e) of the Act taking into consideration the public interest.

ATTACHMENT K – MODIFICATION CONSENT 736/2017/JP/B



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

20 September, 2022

G Dowling
52 Marian St
ENMORE NSW 2042

Ref No.736/2017/JP/B
SCCPP: 08 September 2022

Dear Sir

SECTION 4.55 MODIFICATION OF DEVELOPMENT CONSENT

CONSENT NUMBER: 736/2017/JP/B

Pursuant to the provisions of Clause 118 of the Environmental Planning and Assessment Regulation 2021, notice is hereby given of the determination by the Sydney Central City Planning Panel of the Development Application described below:

APPLICANT:	G Dowling
OWNER:	SH Orchards Pty Limited
PROPERTY:	Lot 4 DP 271187, Lot 101 DP 1176747 104 Fairway Drive, Norwest
DEVELOPMENT:	Section 4.55 (2) Modification to an approved concept masterplan encompassing 10 buildings with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre, civil works, internal roads and landscaping - changes to building height in Stage 4.
DATE OF APPROVAL:	08 September 2022
ENDORSED DATE OF ORIGINAL CONSENT:	11 April 2018

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Document Set ID: 20333105
Version: 5, Version Date: 20/09/2022

The Section 4.55 application for modification of Development Consent 736/2017/JP be approved as follows:

CONDITIONS OF CONSENT

1. Condition No. 1 to be **deleted** and **replaced** as follows:

1. Development in accordance with submitted plans

The development being carried out in accordance with the approved plans and details associated with development application 736/2017/JP and 736/2017/JP/A as amended in red, and as further modified by the following plans approved with Development Consent No. 736/2017/JP/B, except where amended by other conditions of consent.

REFERENCED PLANS 736/2017/JP

The amendments in red include: -

- The 6 metre setback for Building A3 and all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-005	Masterplan Setbacks	-	C	12 December 2017
MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
MP-250-010	North Envelope Elevation - Linear Park	-	C	12 December 2017
MP-250-020	South Envelope Elevation - Spurway Drive	-	C	12 December 2017
MP-250-040	West Envelope Elevation - Fairway Drive	-	C	12 December 2017
MP-350-001	GA Section Envelope Section 01	-	E	12 December 2017
MP810-001	Staging Stage 1	-	D	21 March 2017
MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017
512SL	Landscape Masterplan - 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

REFERENCED PLANS 736/2017/JP/A

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
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MP-410-001	Staging Plan	-	B	17 January 2020
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REFERENCED PLANS 736/2017/JP/B

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-006	Masterplan Building Envelope	-	F	23 December 2021
MP-250-010	North Envelope Elevation – Linear Park	-	D	23 December 2021
MP-250-020	South Envelope Elevation – Spurway Drive	-	D	23 December 2021
MP-350-001	GA Section Envelope Section 01	-	F	23 December 2021

Pursuant to Clause 118(3) of the Environmental Planning and Assessment Regulation 2021, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objects of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's Planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected, and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant heads of consideration under Section 4.15 of the Act 1979 are maintained.

Right of Review

Section 8.2 of the Environmental Planning and Assessment Act 1979 confers on the applicant the right of review of determination, subject to such request being made within six (6) months of the determination date and accompanied by a fee as prescribed in Sch 4, Part 7 of the Environmental Planning and Assessment Regulation 2021.

Section 8.2(2) of the Environmental Planning and Assessment Act 1979 does not permit a review of determination in respect of:

- a) A Complying Development Certificate,
- b) Designated Development,
- c) Development referred to in Division 4.6

Right of Appeal

Section 8.9 and 8.10 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of

appeal to the NSW Land and Environment Court exercisable within six (6) months of the endorsed date of determination.

Should you require any further information please contact Robert Buckham on 9843 0267.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION



Planning
Panels

DETERMINATION AND STATEMENT OF REASONS SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	8 September 2022
DATE OF PANEL DECISION	8 September 2022
DATE OF PANEL MEETING	8 September 2022
PANEL MEMBERS	Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Janelle Atkins
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 1 September 2022.

MATTER DETERMINED

PPSSCC-341 – The Hills Shire - DA 736/2017/JP/B - 104 Fairway Drive, Norwest - Section 4.55(2)
Modification to an approved concept masterplan – changes to building height in Stage 4

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Application for modification of a consent

The panel determined to approve the application pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to approve the application for the reasons outlined in the council assessment report, for the following reasons:

- The site is considered suitable for the development (as proposed to be modified).
- The proposed modifications result in an outcome that is substantially the same development as originally approved.
- The proposed modifications adequately satisfy the relevant state and local planning provisions.
- The proposed modifications will have no unacceptable impacts on the built or natural environments.
- The variation to height results in a development that is consistent with the relevant objectives, and compliance with the standard is considered unreasonable and unnecessary in this instance, and the proposal results in a better planning outcome as outlined in this report.
- The proposal is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report.





CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during the public exhibition. The panel notes that issues of concern included:

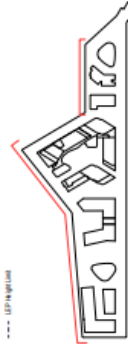
- Increased building height
- Increased bulk and scale
- Reduction in solar access

- Overshadowing
- Increased density
- Traffic impacts
- Changing local character
- Question whether the application is substantially the same development.

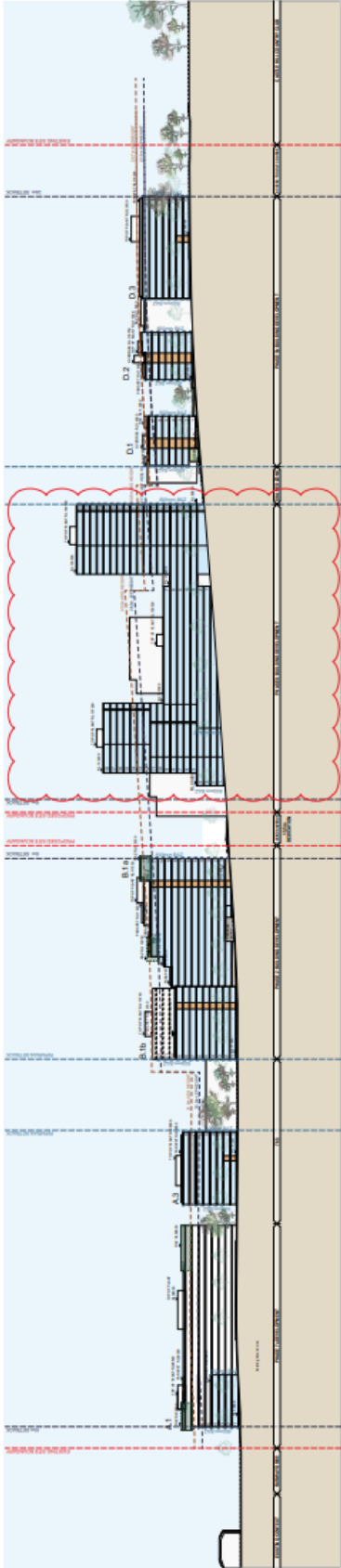
The panel considers that concerns raised by the community have been adequately addressed in the assessment report

PANEL MEMBERS	
Abigail Goldberg (Chair) 	David Ryan 
Roberta Ryan 	Janelle Atkins 

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-341 – The Hills Shire - DA 736/2017/JP/B
2	PROPOSED DEVELOPMENT	Section 4.55(2) Modification to an approved concept masterplan – changes to building height in Stage 4
3	STREET ADDRESS	104 Fairway Drive, Norwest
4	APPLICANT/OWNER	Applicant: Greg Dowling Owner: SH Orchards Pty Limited
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> SEPP (Planning Systems) 2021 SEPP 65 - Design Quality of Residential Apartment Development The Hills Local Environmental Plan 2019 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> The following sections of The Hills DCP 2012: <ul style="list-style-type: none"> Part B Section 5 – Residential Flat Building Part C Section 1 – Parking Part C Section 3 – Landscaping Part D Section 7 – Balmoral Road Release Area Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> 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 <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 1 September 2022 Written submissions during public exhibition: Six Total number of unique submissions received by way of objection: Six
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick Off Briefing: 17 March 2022 <ul style="list-style-type: none"> <u>Panel members</u>: David Ryan (Chair) <u>Council assessment staff</u>: Robert Buckham Final briefing to discuss council's recommendation: 8 September 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Roberta Ryan, Janelle Atkins <u>Council assessment staff</u>: Robert Buckham, Paul Osborne
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

[illegible]

THE HILLS SHIRE COUNCIL
APPROVED
DEVELOPMENT CONSENT
7261012/0018



LEGEND

	Staircase Line
	Site Boundary
	Proposed Building Envelope
	Adjacent Building
	Building Footprint 2016
	Footprint 2016 2017
	Footprint 2017 2018
	Footprint 2018 2019
	Footprint 2019 2020
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John F. Paine & Mary Anne Paine, 2011 (2)

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ATTACHMENT L – MODIFICATION CONSENT 736/2017/JP/C



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

8 November, 2023

SH Orchards Pty Limited
C/- G Dowling
52 Marian St
ENMORE NSW 2042

Ref No.736/2017/JP/C
DAU: 07 November 20203

Dear Sir/Madam

SECTION 4.55 MODIFICATION OF DEVELOPMENT CONSENT

CONSENT NUMBER: 736/2017/JP/C

Pursuant to the provisions of Clause 118 of the Environmental Planning and Assessment Regulation 2021, notice is hereby given of the determination by The Hills Shire Council of the Development Application described below:

APPLICANT:	SH Orchards Pty Limited
OWNER:	SH Orchards Pty Limited
PROPERTY:	Lot 4 DP 271187 104 Fairway Drive, Norwest
DEVELOPMENT:	Section 4.55(1A) Modification to an Approved Concept Masterplan - Reprogram the Spurway Drive extension roadworks to coincide with the subsequent Stage 4 development construction.
DATE OF APPROVAL:	07 November 2023
ENDORSED DATE OF ORIGINAL CONSENT:	11 April 2018

www.thehills.nsw.gov.au | 9843 0555

The Section 4.55 application for modification of Development Consent 736/2017/JP be approved as follows:

CONDITIONS OF CONSENT

Conditions No. 1 be deleted and replaced as follows:

1. Development in accordance with submitted plans

The development being carried out in accordance with the approved plans and details associated with development application 736/2017/JP and 736/2017/JP/A as amended in red, and as further modified by the following plans approved with Development Consent No. 736/2017/JP/B, except where amended by other conditions of consent.

REFERENCED PLANS 736/2017/JP

The amendments in red include: -

- The 6 metre setback for Building A3 and all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
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MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
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MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017
512SL	Landscape Masterplan - 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

REFERENCED PLANS 736/2017/JP/A

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
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MP-410-001	Staging Plan	-	B	17 January 2020
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REFERENCED PLANS 736/2017/JP/B

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-006	Masterplan Building Envelope	-	F	23 December 2021
MP-250-010	North Envelope Elevation – Linear Park	-	D	23 December 2021
MP-250-020	South Envelope Elevation – Spurway Drive	-	D	23 December 2021
MP-350-001	GA Section Envelope Section 01	-	F	23 December 2021

REFERENCED PLANS 736/2017/JP/C

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-410-001	Staging Plan	-	C	10 May 2023

Pursuant to Clause 118(3) of the Environmental Planning and Assessment Regulation 2021, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objects of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's Planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected, and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant heads of consideration under Section 4.15 of the Act 1979 are maintained.

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Section 8.2(2) of the Environmental Planning and Assessment Act 1979 does not permit a review of determination in respect of:

- a) A Complying Development Certificate,
- b) Designated Development,
- c) Development referred to in Division 4.6

Right of Appeal

Section 8.9 and 8.10 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six (6) months of the endorsed date of determination.

Should you require any further information please contact Robert Buckham on 9843 0267.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION

ATTACHMENT 1: STATEMENT OF REASONS FOR THE DECISION

**PUBLIC NOTIFICATION OF THE DETERMINATION PURSUANT TO ITEM 20(2) (c)
AND (d) OF SCHEDULE 1 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT
ACT, 1979**

DECISION:

APPROVAL

DATE OF THE DECISION:

07 November 2023

REASONS FOR THE DECISION:

Section 4.55 (EP&A Act) – Satisfactory.
The Hills LEP 2019 – Satisfactory.
State Environmental Planning Policy (Planning Systems) 2021 – Satisfactory.
State Environmental Planning Policy (Transport and Infrastructure) 2021 – Satisfactory.
DCP Part D Section 7 – Balmoral Road Release Area – Satisfactory.

**HOW COMMUNITY VIEWS WERE TAKEN INTO ACCOUNT IN MAKING THE
DECISION:**

Notification letters were issued to 1182 adjoining properties over 14 days. Five submissions were received. The issues raised in the submissions were addressed in the report. A further email submission was tabled and considered at the meeting.

