



29 June 2023
Our ref:DA162/2021

Mr Simon Truong
HPG General P/L
Heritage House, Suite 1, 256 Victoria Avenue
CHATSWOOD NSW 2067

Dear Sir,

Re: Application Under Section 4.55 of the Environmental Planning and Assessment Act 1979 to Modify Consent – DA162/2021 (PPSSNH-380)
Property:13-19 Canberra Avenue, St Leonards

You are advised that pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979, the Sydney North Planning Panel at its meeting of 21 June 2023 determined to refuse the subject Section 4.55(2) Modification Application to Development Consent No. 162/2021 (PPSSNH-380) for the reasons as outlined in the Panel decision notice issued 29 June 2023.

The subject application is refused on the following grounds:

1. The proposed development as amended does not satisfy the intent of *Part 7 Additional local provisions – St Leonards South Area, Clause 7.1 – Development on land in St Leonards South Area* to provide for the building height and floor space incentives as it does not comply with *Clause 7.1(3)(a) of Lane Cove Local Environmental Plan (LCLEP) 2009* as it exceeds the maximum 44m building height identified on the Incentive Height of Buildings Map.
(Section 4.15(1)(a)(i),(b),(c) & (e) of the EP & Act, 1979).
2. The proposed Building Height variation under *Part 7, Clause 7.1(3)(a) of LCLEP 2009* is not supported, where despite *Clause 4.3* of the same plan, the consent authority may only consent to development on land to which the above clause applies that would result in a building where the building height does not exceed the increased building height identified on the Incentive Height Buildings Map. Further, *Clause 4.6(8)(cb) – Exceptions to development standards* does not allow development consent to be granted for development what would contravene *Part 7, except Clauses 7.1(4)(e) and 7.2*. The proposed variation to building height cannot be approved under the operation of the LEP.
(Section 4.15(1)(a)(i),(b),(c) and (e) of the EP & A Act, 1979).
3. The proposed development does not satisfy the *Part 7, Clause 7.6(3)(1) – Design Excellence - St Leonards South Area objective and Clause 7.6(4)(a),(b),(d),(f) and (g)(i),(iv), (v) & (x) of LCLEP 2009*:

- To deliver the highest standard of architectural and urban design to ensure design excellence would be achieved.
 - To provide a high standard of design which is appropriate to the building type and location would be achieved.
 - The built form of the development as amended would not improve the quality and amenity of the public domain.
 - The requirements of *Lane Cove Development Control Plan* have not been met. The proposal as amended does not comply with the required number of storeys requirement.
 - The proposal's building height, number of storeys, setbacks amenity and built form is not satisfactory.
 - The proposal as amended does not provide for massing and modulation in line with the DCP in relation to heights and the number of storeys.
 - The proposed development as amended would not ensure a high level of amenity for future residential and public domain users.
- (Section 4.15(1)(a)(i),(b),(c) & (e) of the EP & Act, 1979).

4. The proposed development as amended represents as an 'overdevelopment' on the subject development site and is inconsistent with the following aims, R4 High Density Residential and Building Height objectives of *LCLEP 2009*:

- *to establish, as the first land use priority, Lane Cove's sustainability in environmental, social and economic terms, based on ecologically sustainable development, inter-generational equity, the application of the precautionary principle and the relationship of each property in Lane Cove with its locality – Clause 1.2(2)(a) Aims of Plan.*
- *to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies in accordance with the indicated expectations of the community - Clause 1.2(2)(b) Aims of Plan.*
- *in relation to residential development, to provide a housing mix and density that—*
 - *is compatible with the existing environmental character of the locality, and*
 - *has a sympathetic and harmonious relationship with adjoining development - Clause 1.2(2)(c)(ii) & (iii) Aims of Plan.*
 - *is compatible with the existing environmental character of the locality, and*
 - *has a sympathetic and harmonious relationship with adjoining development - Clause 1.2(2)(c)(ii) & (iii) Aims of Plan.*
- *to ensure development allows for reasonable solar access to existing buildings and public areas – Clause 4.3(1)(a) – Height of buildings.*
- *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable - Clause 4.3(1)(b) – Height of buildings.*
- *to seek alternative design solutions in order to maximise the potential sunlight for the public domain - Clause 4.3(1)(c) – Height of buildings.*
- *to relate development to topography - Clause 4.3(1)(d) – Height of buildings.*

- *to ensure that the existing amenity of residences in the neighbourhood is respected – Zone R4 High Density Residential objective dot point 5. (Section 4.15(a)(i),(b),(c) and (e) of the EP & A Act, 1979).*
5. The development as amended does not comply with the following requirement of *Lane Cove Development Control Plan (LCDCP) 2009 Part C - Residential Localities*:
- Number of storeys/part storey controls (*Part 7 – Built Form Figure 10 – Height of Buildings (in storeys) and Control No. 7 – Height in Storeys under the ‘Building Envelope Table’ of Locality 8 – St Leonards South Precinct*).
 - The proposed development as amended with the maximum 14 storey building coupled with the non-compliant building height proposed is considered unsatisfactory, resulting in a poor built outcome which would affect the level of amenity for future residents and public domain users of the South St Leonards precinct. The development as amended does not satisfy the following DCP vision overall and built form objectives as follows:
 - *The desired future character of the St Leonards South Precinct is for a liveable, walkable, connected, safe, Precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre – Part 2 Vision.*
 - *To ensure that all new development will achieve design excellence, as well as providing suitable transition and interfaces to adjoining zones and open space – Part 3 Overall Objective, Objective 2.*
 - *Optimise solar access to all buildings, public domain and private open space – Part 7 Built Form. Objective 10.**(Section 4.15(a)(iii), (b),(c) and (e) of the EP & A Act, 1979).*
6. The proposal as amended does not comply or address the following requirements *State Environmental Planning Policy (SEPP) No. 65* and the *Apartment Design Guide (ADG)* with respect to:
- *Context and Neighbourhood Character – SEPP 65 Principle 1* (the proposal as amended does not respond to its intended context and neighbourhood character of South St Leonards (SLS) precinct).
 - *Built Form and Scale – SEPP 65 Principle 2* (the proposed built form and scale does not reflect the anticipated built form specified in the LEP and DCP controls for the SLS precinct).
 - *Density – SEPP 65 Principle 3* (the proposal as amended relies on substantial variations to accommodate the proposed increase in density permitted and they do not provide for good planning outcomes in this instance).
 - *Amenity – SEPP 65 Principle 6* (the design as amended would not provide for high levels of external amenity for future residents and public domain users).

- *Aesthetics – SEPP 65 Principle 9* (the proposal as amended fails to provide for a highly integrated aesthetic development in relation to its proposed built-form).
- *ADG Part 3 Siting the Development* (the proposal as amended does not demonstrate good design decisions have been made in relation to the site-specific context).
- *ADG Part 3B Orientation* (the proposal as amended has not addressed the additional impacts of the proposal would have on the future intended precinct due to the proposed variations to building height and the number of storeys).
- *ADG Part 3C Public Domain Interface* (Not satisfactory due to the proposed variations to building height and the number of storeys contributing to a poor built outcome to the public domain).
- *ADG Part 3F Visual Privacy* (Not satisfactory due to the proposed building visual impact, height, number of storeys, setbacks and separation to the green spine/pedestrian link areas and to the northern boundary).
- *ADG Part 4M Facades* (the proposed façade as amended does not provide for a high level of visual interest due to the breaches to the building height, the number of storeys and the setbacks to the green spine/pedestrian link areas).

(Section 4.15(a)(i), (b),(c) and (e) of the EP & A Act, 1979).

7. The proposal as amended would unreasonably add to the intensity, bulk and scale of the development resulting in an overdevelopment of the site. The proposed development as amended would have an unreasonable visual impact upon the future and envisioned South St Leonards precinct. The impacts on both the environmental, the built and social environments of the locality are unsatisfactory.

(Section 4.15(1)(a)(iii),(b),(c) and (e) of the EP & A Act, 1979).

8. The subject Section 4.55(2) Modification Application should be refused because the proposal as amended would represent as an overdevelopment and the overall design would not be suitable for the subject development site having regard to the unnecessary impacts that the proposed intensification would have on the newly adopted precinct.

(Section 4.15(1)(a)(iii),(b),(c) and (e) of the EP & A Act, 1979).

9. The subject Section 4.55(2) Modification Application should be refused primarily for the reasons provided above, and approval of the application would be contrary to the public interest. Approval of the proposal as amended would be contrary to the public interest as it would provide for an overdevelopment of the subject development site that would depart from the envisaged future development of this site located within a new high density residential precinct which should respond to and be informed by a more sensitive building design through:

- reduced height; and
- reduced number of storeys.

(Section 4.15(1)(a)(iii),(b),(c), (d) and (e) of the EP & A Act, 1979).

10. The subject Section 4.55(2) Modification Application should be refused because approval of the proposed development as amended would set an undesirable and a dangerous precedent for similar inappropriate developments within the South St Leonards precinct.
(Section 4.15(1)(a)(iii), (b), (c), (d) and (e) of the EP & A Act, 1979).
11. Pursuant to the provisions of s. 4.55(2) & (3) of the Environmental Planning and Assessment Act 1979, the Panel is not satisfied the development to which the consent as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified. With respect to the original assessment report, approved plans, conditions and reasons provided by the Panel, this modification application fails on a quantitative and qualitative assessment. Examples are listed in Council's assessment report and if the Panel is wrong on this reason for refusal then the modification application also fails on a merits assessment in the context of the relevant planning framework.

This notice is given pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979.

If you are dissatisfied with this determination you may:

- (a) apply to Council to review its decision under Section 8.9 of the Environmental Planning and Assessment Act 1979. Such application must be made and determined by Council within six (6) months after the date on which you received this notice provided that an appeal under Section 8.9 of the Environmental Planning and Assessment Act, 1979 has not been made against this determination.
- (b) appeal to the Land and Environment Court under Section 8.9 of the Environmental Planning and Assessment Act 1979, such appeal must be lodged within six (6) months of this notice.

Council recommends that you discuss this option with the relevant Council officer before acting.

Should you require any further information or assistance please do not hesitate to contact Council's Senior Town Planner, Greg Samardzic, by telephoning 9911-3521 Monday to Friday.

Yours faithfully



Rajiv Shankar

MANAGER, DEVELOPMENT ASSESSMENT