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Planning Proposal to amend the Height of Building Map to Lane Cove LEP 2009



Lane Cove LEP 2009 Amendment
1-13 Marshall Avenue, St Leonards

Prepared for: Loftex Pty Ltd
Project No: 7920C
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Planning Proposal

1-13 Marshall Avenue, St Leonards

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1 Introduction and Summary

1.1 Commission

DFP has been commissioned by Loftex Pty Ltd (Loftex) to prepare a Planning Proposal in respect of the land at 1-13 Marshall Avenue (the Site) to amend the Height of Building Map in Lane Cove Local Environmental Plan (LEP) 2009.

1.2 Purpose of this Report

The purpose of this report is to provide Council with the necessary information to prepare a Planning Proposal for the Site in accordance with the following resolution made at the Ordinary Council Meeting on 20 April 2015:

1. *Council approve the preparation and lodgement of a planning proposal for submission to the NSW LEP Gateway seeking approval for exhibition that amends the LEP height applying to 1-13A Marshall Avenue, St Leonards from 65 metres to 94 metres, subject to a Voluntary Planning Agreement for the site with the same terms endorsed by Council on 17 November 2014;*
2. *The Department be requested to issue delegation to Council's General Manager to undertake the planning proposal process;*
3. *Draft amendments to Development Control Plan 2010 relating to this planning proposal be prepared and exhibited with the planning proposal; and*
4. *The planning proposal exhibition include the Voluntary Planning Agreement for the site.*

This Planning Proposal seeks to amend the Building Height Map by replacing the 65m building height with a 94m building height for 1-13A Marshall Avenue (now known as 1-13 Marshall Avenue).

A Planning Agreement in the same terms as previously executed between Council and Loftex is also included in this report.

The purpose of this report is to provide Council and the Department of Planning and Environment (DPE) with the necessary information to assess the Planning Proposal and for the Minister to make a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.3 Report Structure

This Planning Proposal is structured in the following manner:

- Section 2** provides a brief **Background** to the proposal;
- Section 3** is a **Site Context** and provides a detailed description of the Site and the nature of surrounding development;
- Section 4** explains the need for the Planning Proposal;
- Section 5** provides a discussion of the **Key Planning Considerations** of the Planning Proposal
- Section 6** responds to the **Matters required by Section 55 of the EP&A Act**;
- Section 7** is a **Conclusion** and provides recommendations for determination of the Planning Proposal.

1.4 Summary of Conclusions and Recommendations

This report concludes that the proposal to increase the building height to 94m over the eastern part of the Site is consistent with the State, metropolitan and local strategies. The Planning Proposal will reinstate the development potential of the Site, originally set by the Department of Planning and Infrastructure in February 2010 as part of the Lane Cove LEP

2009. The original development potential was inadvertently reduced with a recent Planning Proposal published in September 2013.

The Planning Proposal the subject of this report:

- is consistent with regional and subregional planning and transport strategies as well as local planning studies;
- is not inconsistent with relevant SEPPs and Section 117 Directions; and
- will have acceptable impacts in terms of overshadowing, view loss, view impacts character and scale.

Council has already resolved on 20 April 2015 to support a new Planning Proposal to increase the building height to 94m. We therefore we recommend that Council prepare a Planning Proposal and forward it to the Minister for Gateway Approval.

2 Background

For the purposes of the background, the planning history of the Site needs to be put in context. The Site originally comprised 1-25 Marshall Avenue, St Leonards being a street block. As set out below, part of the original site is now under construction. The remaining part of the original site (the subject of this Planning Proposal) is known as 1-13 Marshall Avenue.

The site has a lengthy history as set out below.

Date	Event
Feb 2010	The then Department of Planning and Infrastructure (DoPI) gazettes Lane Cove LEP 2009 which zones 1-25 Marshall Avenue (the original site) B4 – Mixed Use with a maximum FSR of 5.1:1 and a maximum building height of 36m. The original site had a site area of 6,300m ² and with a FSR of 5.1:1 = approximately 31,500m ² of Gross Floor Area (GFA) or approximately 350 apartments could be developed.
Mar 2010	Loftex commences acquisition of the site over a 12 month period.
Oct 2011	After several meetings with Council planning staff and community consultation meetings, Loftex lodges a Planning Proposal to redistribute the FSR across the site. The Planning Proposal reduced the building height from 36m to 25m for most of the original site, and proposed an increased building height to 78m at the eastern end of the site in order to improve planning outcomes, particularly to reduce building bulk to Marshall Avenue and overshadowing on the southern side of Marshall Avenue. No additional FSR was sought as part of the Planning Proposal.
Apr 2012	The DoPI issues a Gateway Determination and the Planning Proposal proceeds to public exhibition and the plan making process.
Feb 2013	In order to keep the project moving forward, Loftex lodges a DA for a 25m high building at the western end of the original site, despite the building height still being 36m at the time. The building comprises 66 apartments and is referred to as Stage 1 and is under construction.
Mar 2013	Following exhibition and receipt of public submissions, Council resolves not to proceed with the Planning Proposal.
Apr 2013	Council resolves to rescind the March 2013 decision, and resolves to approve the Planning Proposal, however with a reduced height of the tower from 78m to 65m. It also resolves not to permit any additional height without Loftex entering into a Voluntary Planning Agreement (VPA) to fund construction of the proposed plaza over the railway line adjacent to the site. Loftex did not offer or even suggest a planning agreement at the time. Section 4.1 below provides further discussion on this resolution.
May 2013	The JRPP approves the Stage 1 DA at the western end of the site.
Sept 2013	The DoPI publishes the amended Lane Cove LEP with a reduced building height of 65m for the tower despite written submissions by Loftex that it effectively downzones the site by reducing the ability to achieve the FSR original set for the site by the DOPI. The published amendment also reduced the building height for the

Date	Event
	remainder of the Site from 36m to 25m.
Sept 2013	Council makes site specific amendments to the Lane Cove DCP that further reduces the available floor space on the site by increasing setbacks for the tower and requiring commercial space at the future plaza level. The DCP directly reduces the ability to achieve the FSR applying to the Site.
Nov 2013	In response to further written submissions from Loftex following gazettal, DoPI write to explain their decision, and encourage Loftex to liaise with Council and enter into a VPA plus seek increased building height via a Clause 4.6 variation to the height control when a DA is lodged for the tower.
January 2014	The Stage 1 building construction commences and any recouping of gross floor area on that part of the Site has now been lost.
September 2014	Loftex lodges a DA for Stage 2 of the site comprising a low rise building plus a tower of 94m in height, accompanied by an offer to enter into a VPA. The VPA would deliver \$8.3 million. The total number of apartments proposed is 269 (which in addition to the 66 apartments approved in Stage 1 bring the total of dwellings for the entire site to 335). The additional height of the tower is required to compensate for lost building envelope from the LEP and DCP amendments by Council but was still compliant with FSR controls for the Site (i.e. no extra floor space was sought).
March 2015	Council recommends the Stage 2 DA for approval, subject to conditions. In addition, Council execute the VPA. A copy of the Council's assessment report is included at Appendix A .
19 March 2015	JRPP refuses the DA on the grounds that the Clause 4.6 variation cannot be supported for a number of technical reasons. The VPA was given little weight in their consideration of the matter. A copy of the JRPP decision is included at Appendix B . Section 4.2 provides further discussion on the DA and the JRPP determination.
20 April 2015	Council resolves to support a new Planning Proposal to increase the building height on the eastern (tower end) of the Site to 94m as well as enter into a new VPA on the same terms as the one previously executed.

3 Site Context

3.1 The Site

The subject site is located within the Lane Cove Local Government Area and is known as 1-13 Marshall Avenue with a legal property description of Lot 100 DP 1200133. **Figure 1** shows the location of the subject site with a red outline.

3.2 Site Description

The site has a southern slope falling from Marshall Lane to Marshall Avenue. The land also falls from Canberra Avenue to the west and also falls from Berry Road to the east, resulting in a low point about 40m west of the intersection of Marshall Avenue and Canberra Avenue.

The eastern end of the Site has been cleared of the former dwelling houses and vegetation. A sales centre and car park now occupy the Site. Due to the slope of the land the former houses that occupied the site were all elevated above street level and the front boundaries contained substantial retaining walls and fencing which formed the streetscape character. Those retaining walls remain in place, but will be replaced as part of the proposed works.

The western end of the site is a construction site for the Stage 1 building which is considerably advanced.

Figure 1 shows the location of the site in relation to the broader St Leonards area. The site has frontages to Marshall Avenue, Marshall Lane and Canberra Avenue and shares the boundary with the Stage 1 DA site.



Figure 1 Subject site and surrounds

Figures 2 to 4 are photographs of the subject site viewed from the three street frontages. The site has been cleared of the former dwellings and vegetation under development consent DA 226/2012 approved on 24 March 2013.



Figure 2 Marshall Avenue street frontage (looking west)



Figure 3 Marshall Lane street frontage (looking east)



Figure 4 Canberra Avenue street frontage

3.3 Surrounds

The subject site is located on the south-western fringe of the St Leonards commercial precinct within a 250 metre radius of the station. The site is also located near a strategic bus corridor as identified in the draft Inner North Subregional Strategy.

Figure 5 on the following page is a photographic site analysis illustrating the surrounding development. **Figure 6** illustrates the surrounding land uses and approximate heights of existing buildings in the surrounding area.



Photo 1: Looking north up Canberra Ave adjacent to the site



Photo 2: Railway corridor to the east of the site



Views key map



Photo 8: Apartment buildings up to 7 storey scale in Duntroon Ave



Photo 7: 2 & 3 storey scale retail/commercial development adjacent to site



Photo 3: Marshall Lane looking west
Figure 5 Photographic Site Analysis



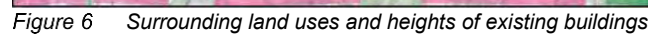
Photo 4: Examples of detached houses in Holdsworth Ave



Photo 5: Typical house on southern side of Marshall Ave



Photo 6: View south along Herbert St (tower will terminate the vista)



- Commercial / retail development on the opposite side of Marshall Lane and fronting the Pacific Highway ranging in scale from 2 to 4 storeys.
- On the northern side the Pacific Highway is commercial development ranging from 4-13 storey and behind is the Forum residential high rise buildings at 25-35+ storeys.
- The North Shore railway line to the east is in a cutting. Beyond the railway line along Lithgow Street is commercial development currently of 3-7 storey scale. A DA was approved on 84-90 Christie Street and 75-79 Lithgow Street for an 18 storey commercial building to RL 149.05 (equating to approximately 25 residential storeys).
- To the south is development comprising single and two storey detached houses. Single and two storey residential development extends south along Canberra Avenue and Holdsworth Avenue.
- Further to the south along Duntroon Avenue (approximately 150m from the subject site) is a residential flat building development ranging in scale from 3 to 7 storeys.
- Commercial development to the west at the corner of Berry Road and Pacific Highway of 3 to 7 storey scale transitioning to lower scale residential away from the Pacific Highway.

As discussed in Section 4.3, the area is in transition and likely to undergo further change, most notably in terms of building scale.

3.4 Surrounding Road Network

The surrounding road network is characterised by the following:

- The Pacific Highway which is a classified road is located approximately 45m to the north of the subject site. The subject site does not have frontage to the Pacific Highway.
- River Road to the south is a major road. The only connection with River Road is Canberra Avenue and Duntroon Avenue both with restricted movements.
- Berry Road is a local road which comprises the western boundary of the original site. Berry Road connects the site and immediate locality with the Pacific Highway. The intersection of Berry Road and Pacific Highway is a traffic controlled intersection permitting all movements into and out of the immediate area.
- Marshall Avenue is a local road and forms the main frontage to the site. It connects other local roads such as Canberra Avenue and Holdsworth Street with the Pacific Highway via Berry Road.
- Canberra Avenue is to the east of the site. This section of Canberra Avenue terminates just north of Marshall Lane and does not provide a vehicular connection to the Pacific Highway.
- Marshall Lane is a narrow laneway forming the northern boundary of the site. It currently provides vehicular access to the subject site and rear lane service and parking access for the Pacific Highway shops and commercial properties. It is one-way east bound.

Canberra Avenue and Berry Road are the main pedestrian connections from the residential area to the Pacific Highway.

On street parking is available in the local residential streets, however some of it is time-limited owing to its proximity to the St Leonards railway station, buses, employment and Royal North Shore Hospital.

4 The Need for the LEP Amendment

Section 2 of this report provided a chronology of events relating to the development of the site to date. This Section provides further commentary on the more recent events and decisions that have led to the need for further amendment to Lane Cove LEP 2009.

4.1 Lane Cove LEP 2009 and Lane Cove DCP 2009 Amendments

Loftex submitted a Planning Proposal request to Lane Cove Council in October 2011 to amend the Building Height and Floor Space Ratio controls applying to the street block (1-25 Marshall Avenue). The intent of that planning proposal was to redistribute the Building Height and FSR controls applying to the site to reduce the building height control applying to the western portion of the site and increase building height on the eastern portion of the site. The proposed amendments were structured to retain the gross floor area development potential of the site.

On 15 April 2013, the Planning Proposal for 1-25 Marshall Street, St Leonards received support from Lane Cove Council. Council resolved as follows:

1. Council adopt the exhibited amendments to the Lane Cove Local Environmental Plan 2009 relating to 1-25 Marshall Avenue, St Leonards, subject to the proposed building height map showing the height of the eastern portion reduced from 78m to 65m;
2. The Department of Planning & Infrastructure be requested to finalise the Planning Proposal LEP Amendments;
3. Council indicate it will only consider any further height increase if the applicant enters into a suitable Voluntary Planning Agreement (VPA) to enhance the public domain in the vicinity of the site;
4. Development Control Plan amendments be prepared in an appropriate timeframe supporting the finalisation of the LEP amendments for the subject site; and
5. The St Leonards Community Liaison Committee be involved in the development of the DCP.

On 27th September 2013, Amendment No. 11 to the Lane Cove LEP 2009 was published. Amendment No. 11 modified the Height of Building Map and FSR Map of the Lane Cove LEP 2009, as they apply to 1-25 Marshall Avenue as illustrated in **Figure 7**.

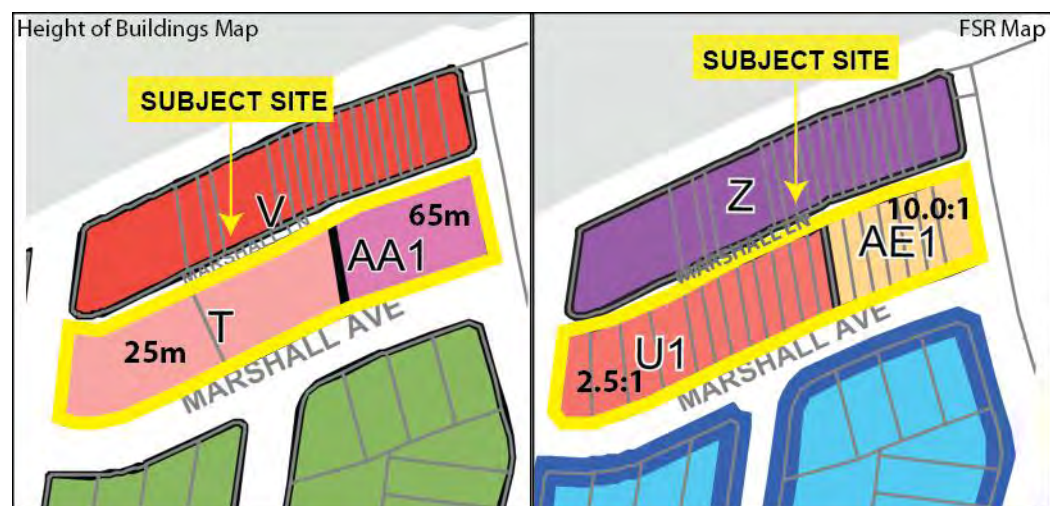


Figure 7 Current Building Height and FSR controls

In line with the Council's recommendation (quoted above), the Lane Cove Development Control Plan (DCP) and in particular Part D – Commercial Development and Mixed Use Localities which contains specific built form and design controls for the Marshall Precinct in which the site is located has also been updated. These controls reflect the recent LEP amendments, but also require:

- the mixed use component to be in the location of the proposed high rise building and within the bottom 3 to 4 levels of the high rise building;
- the setback to Marshall Avenue being increased from 3m to 4m. This has reduced the development potential of the site (compared to that available prior to amendment of the DCP);
- a building entry level at RL80 to link with a future public plaza (proposed by Council); and
- floor to ceiling heights of 3.6m to accommodate retail or commercial uses (in the bottom 3-4 levels).

When the Planning Proposal was submitted, the basis of the then proposed amendment was to maintain the GFA of the site, but redistribute height. When Amendment No. 11 to Lane Cove LEP 2009 was published, the originally proposed height of 78m was reduced to 65m. This reduction of 13m (or 4 storeys) has resulted in a loss of GFA across the site equating to a reduced dwelling yield of approximately 40 apartments. Given that the site is within a few minutes' walk of St Leonards railway station, public buses on the Pacific Highway, and proximate to retail, commercial and employment opportunities, it is unreasonable that development potential of this site is not fully realised to at least the equivalent GFA that applied prior to Amendment No. 11.

The effect of the above DCP controls replaces previously intended residential floor space with commercial floor space. The higher floor to ceiling requirements and requirement to provide access to a future plaza also has the effect of removing one residential level of the building (in addition to the 4 storeys 'lost' as a result of Amendment No. 11).

These controls, and to ensure the building can link with the future public plaza, have financial impacts on the viability of the commercial components of the development (which will be beneath the plaza). Further the residential floor space has been reduced as a result of the DCP setbacks.

The combined effect of the LEP and DCP amendments has lowered the development potential of the site (5 storeys and gross floor area), which is an unusual and unfortunate planning outcome given the site's location close to major public transport, retail, commercial and employment opportunities.

4.2 Development Application DA14/143

Following the making the above LEP amendment, Loftex submitted a DA for a proposed Mixed Use Development at 1-13A and part 15 and 15A Marshall Avenue, St Leonards. The development comprised a low rise building comprising a 6 to 7 storey scale building and a high rise building at the eastern end of the site of 29 levels (from Marshall Avenue) plus roof plant. The development also included a 3 to 4 level basement car parking.

A Planning Agreement accompanied the DA which offered a monetary contribution of \$8.3 million towards public infrastructure, namely the St Leonards Plaza over the railway line.

Due to the combined effect of the LEP amendment and DCP amendments that reduced the development potential of the site, the DA proposed a building of 94m in height. This height reinstated the achievable gross floor area that previously existed before the publishing of Amendment No. 11 to the LEP. As suggested by the DoPI at the time, a clause 4.6 variation was submitted to justify the departure from the 65m building height development standard of the LEP.

The DA was assessed by Council's planning staff and determined by the Sydney East Joint Regional Planning Panel (JRPP) due to the cost of work exceeding \$20 million. The Council's planning staff recommended approval of the DA subject to conditions. A copy of the Council's assessment report is at **Appendix A**.

The JRPP refused the DA for six reasons that are discussed in turn below.

1. *The majority of the Panel ... considers that in order to accept the building height standard variation under cl 4.6 of the LEP, it must be satisfied on a number of matters:*
 - *First, that compliance with the standard is unnecessary and unreasonable in the circumstances of the case;*
 - *Second, that there are sufficient planning grounds to justify contravention of the standard;*
 - *Third, that the variation is in the public interest.*

Clause 4.6 is only applicable to a DA that contravenes a development standard. Clause 4.6 is not applicable to a Planning Proposal and the Planning Proposal should be assessed on its merits. Nevertheless, the three tests are expanded upon in the other reasons cited by the JRPP and discussed below.

2. *For the building height standard, the objectives of the standard are to minimise overshadowing, to minimise loss of privacy, to minimise visual impact on neighbouring properties, to maximise sunlight to the public domain and to relate well to the topography.*

The objectives of clause 4.3 – Height of Buildings are worded to require development to minimise overshadowing, privacy or visual impact and maximise sunlight to the public domain. The drafting of the objectives require development to minimise an impact and effectively operate to hinder or even rule out the application of clause 4.6. The objectives of clause 4.6 are to *provide an appropriate degree of flexibility in applying certain development standards to particular development and achieve better outcomes for and from development by allowing flexibility in particular circumstances*. The building height objectives, as currently worded, effectively prevent that flexibility. Council has recognised the shortcomings of the currently worded objectives to the Height of Buildings clause and resolved at its meeting on 20 April 2015 to amend the objectives of clause 4.6 to replace the term ‘minimising impacts’ with more appropriately worded objectives that are consistent with the operation of clause 4.6 and its objectives to promote design flexibility.

Further, the objective of the building height standard applies to a wide range of building heights in the Lane Cove LEP ranging from 9.5m to 72m and RL 227.4. The wide variation of maximum building heights will in turn have a wide variation in terms of potential impacts which is not recognised in the objectives. The impact of development in terms of overshadowing, privacy, visual impact and sunlight to the public domain need to be considered in terms of their reasonableness and context. Section 4.3 discusses the changing and emerging character of St Leonards. Section 5 considers the key planning issues including those of overshadowing, privacy, visual impact and sunlight to the public domain.

3. *The majority of the Panel cannot agree that the proposed development, that increases the height of the tower building by almost 30m (or nine floors) beyond the building height standard, complies with the above objectives. In particular it will have worse impact on views and result in larger shadows on the public domain than would a building of complying height.*

The Planning Proposal should not be assessed against the overly restrictive objectives of clause 4.3 – Height of Buildings. A Planning Proposal should be considered on its merits in terms of reasonableness of impacts. In this regard it is noted that Council’s planning assessment of DA 14/143 found that a building of 94m was acceptable in terms of shadows, privacy, visual impact and sunlight to the public domain. Section 5 discusses the key planning issues and demonstrates that the impacts of the additional nine floors do not

have an unacceptable impact on overshadowing, privacy, visual impact or public domain shadows are not any more unreasonable than a building height of 65m.

4. *Moreover, the proposed building at a height of 94m, would be out of scale with both the existing and desired future character of the area, which does not provide a transition of scale to the proposal. The majority of the Panel notes that the Council sought to change its planning controls to allow a building of 65m on the subject site. It assumes therefore that this height suggests the desired future character of the area.*

It is important to note that when Council considered the former Planning Proposal for 1-25 Marshall Street, St Leonards on 15 April 2013 and resolved, in part, as follows:

3. *Council indicate it will only consider any further height increase if the applicant enters into a suitable Voluntary Planning Agreement (VPA) to enhance the public domain in the vicinity of the site;*

The Council's resolution clearly invited a proposal for a height greater than 65m, provided a VPA to enhance the public domain in the vicinity of the site was entered into. Therefore a building height of 65m should not be read as being the desired future character. The proposed height and VPA accompanying this Planning Proposal request responds to the Council's resolution of 15 April 2013 and more recently the resolution of 20 April 2015.

The VPA sets out the public benefit in the form of a monetary contribution that can be delivered through the additional height. The VPA has been drafted such that s94 contributions under the Council's Contributions Plan can be levied for the entire development, but the GFA associated with the additional height will be subject to an additional levy of \$1,300 per m² of GFA above 65m.

In addition, the s.94 Contributions Plan identifies the public plaza in its works schedule with a value of \$33.6 million (as at September 2013). The contribution that would be realised through the VPA would equate to a significant proportion of the total contribution required. When the proportion of the other s.94 funds collected for the remainder of the development is taken into account, the percentage will be higher. This is a significant monetary contribution that can advance the planning of the plaza and timely delivery of the public benefits.

The offer to Council to enter into a Planning Agreement will also provide funds (in addition to Section 94 contributions) that can be directed towards the financing of the public plaza adjacent to the subject site and extending across Canberra Avenue, over the railway line to tie in with Lithgow Street. This project, which is already identified in the Council's Development Contributions Plan, will deliver a significant public benefit to both the local residential and the St Leonards working communities.

As discussed in Section 4.3, the character of St Leonards is changing with taller buildings being approved. Recent changes to planning controls along the Pacific Highway to allow for buildings significantly taller than the 94m proposed in this Planning Proposal, and other Planning Proposals before Council for increased building height again greater than 94m are also considered in Section 4.3. The St Leonards South Strategy has commenced which could also see a significant change in the character and scale of the built form in the immediate vicinity of the Site.

5. *The Panel notes that the LEP which governs the development of this area is of recent origin. Departures from it so soon after gazettal would be undesirable and undermine the community's confidence in the planning process.*

As discussed above, the Council's resolution clearly invited a proposal for a building height greater than 65m. However, Council's resolution is unable to be reflected in a height of building map. A public decision has been made to consider height greater than 65m. The Planning Proposal will remove any concerns in that regard.

6. *The majority of the Panel accepts that the Voluntary Planning Agreement (VPA) offered by the applicant and accepted by the Council has some relevance to this application because the funds offered would be spent in the public interest. However, the Panel believes that the proposal must comply with all the requirements of clause 4.6 before any consideration can be given to the VPA, and for that reason the Panel has given minor weight to it.*

A VPA accompanies the Planning Proposal and is intended to be executed before the determination of a DA. The VPA will therefore be able to be given determinative weight when assessing the DA.

4.3 Emerging Character of St Leonards

Council made its decision regarding the 65m height control at its meeting on 15 April 2013. The local context is set to change in light of recent strategic planning decisions and other Planning Proposals in the 2 years since that decision and public domain improvements currently being considered including:

1. The publishing of Lane Cove LEP Amendment No. 18 on 15 May 2015 that has amended the Height of Building Map as it relates to:
 - i. 500-504 Pacific Highway with a maximum building height of RL 227.4 (about 37 storeys) (the Charter Hall site); and
 - ii. 472-494 Pacific Highway with a maximum building height of RL 180.46 and RL 264.46 (about 24-34 storeys) (the Leighton site).

The concepts submitted with the Planning Proposal illustrated three new towers along the Pacific Highway which will significantly change the built form character of the St Leonards precinct.

2. A planning proposal for 84-90 Christie Street and 75-79 Lithgow Street (the Winten site) that proposes two sets of planning controls – a “Base Scheme” and a “Public Benefit Scheme”
 - i. Base Scheme – proposes maximum building heights of 65m (RL 145.51) and 113m (RL 193.66) – 20-37 storeys.
 - ii. Public Benefit Scheme – proposes maximum building heights of 95m (RL 166.8) and 149m (RL 224) 27-44 storeys.

The concept drawings submitted with the Planning Proposal illustrate significant building form on the eastern side of the railway line directly opposite the Site. The buildings would be within the immediate visual catchment of the site. Irrespective of Planning Proposal for 84-90 Christie Street and 75-79 Lithgow Street, there is a Part 3A Concept Plan approval for that site which approved an 18 storey commercial building to a height of 72.4m.

3. In November 2014, North Sydney Council released a Planning Study for Precincts 2 and 3 of the St Leonards/Crows Nest Strategy. These precincts include land close to St Leonards train station. The Study has identified 4 sites capable of development greater than 18 storeys and Council has invited land owners to submit a planning proposal for greater height and FSR.
4. Willoughby Council has received a planning proposal request for land north of the Forum towers for building heights of 137m to 190m (38-55 storeys above a 3 storey commercial podium).
5. St Leonards South Strategy which encompasses an area bound by the rail line, Berry Road, Pacific Highway and River Road. The Stage 1 report identified opportunities for changes in land use and density. Stage 2 comprised a Growth Scenarios Report

exploring different options for land uses and density. This was publicly exhibited between 19 December 2014 and 1 May 2015 and will be reported to Council shortly. The Strategy aims to increase density close to major transport hubs and centres which is an outcome that would be consistent with *A Plan for Growing Sydney*. The St Leonards South area is likely to undergo significant change in setting, urban context and building scale since previous Council decisions. **Figure 9** is an extract of height and envelopes of the preferred Masterplan illustrating the possible built form outcome.

Figure 8 shows the location of these five sites/precincts in relation to the subject site.



Figure 8 Recent developments

5 Key Planning Considerations

The key planning considerations relevant to the Planning Proposal are building height/scale, shadow impacts and view impacts.

5.1 Building height and scale

The discussion in Section 4.3 regarding the emerging character of St Leonards demonstrates the shift towards increased building heights. A proposed building height of 94m will sit comfortably within that future built form character of St Leonards. Many of the planned buildings for St Leonards are located on the ridge and are therefore starting from a higher ground point than the site.

Figure 9 is an extract from the St Leonards South Master Plan and indicates the height of envelopes of the preferred master plan option. **Figure 9** shows a tower form on the Site that appears to be shown at 29 storeys. **Figure 9** also illustrates some of the recent developments and Planning Proposals in the St Leonards CBD. If the Masterplan did not eventuate in the form illustrated in **Figure 9**, the illustration also demonstrates that a building height of 94m would also sit within the context of the surrounding taller buildings (and recently approved buildings).

Council's Assessment Report to the JRPP considered the Statement of Environmental Effects and specifically the arguments contained in the clause 4.6 variation in respect of a building height of 94m including the existing and future context. Council considered that the "additional height does not give rise to unacceptable environmental impacts and would deliver significant public benefits through the offer to enter into a VPA with Council."

The illustration also places the Forum Towers in the local context and collectively they demonstrate the future scale of buildings in St Leonards. Whilst the preferred Masterplan will require a Planning Proposal it is an indicator of the planning direction being considered

by Council and the likely change in built form, scale and height and a 94m high building would sit comfortably within that context.

A5 Heights and Envelopes

St Leonards South Masterplan

Heights and envelopes have been proposed based on preliminary assessments and modelled. The 3-D model includes all major existing buildings in St Leonards Centre (and those approved by Council at the date of modelling November 2014). It demonstrates how the proposed redevelopment of the Precinct will fit with the massing of the St Leonards Centre.

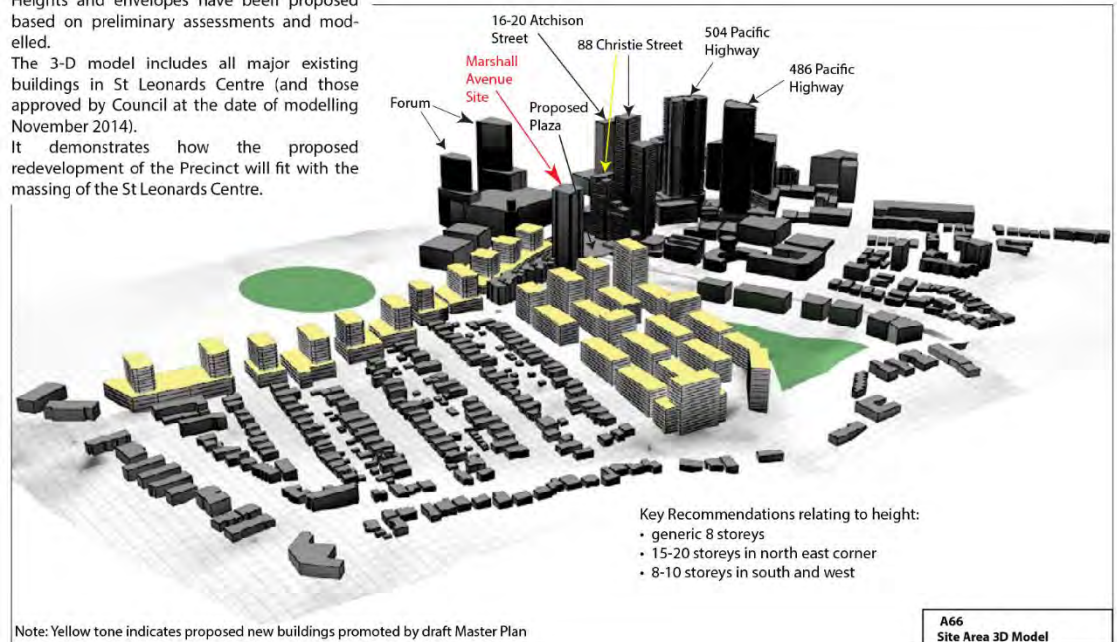


Figure 9 Extract from St Leonards South Master Plan – Preferred Masterplan (annotated by DFP)

A 65m high building would be visible in the surrounding locality. The additional height will similarly be visible in the surrounding locality. The visual impact of the additional height is considered to be negligible in the context of the surrounding building heights and the emerging future character. The additional building height will not be an isolated building, but instead one that becomes an integral part of the existing and future skyline. In terms of viewing opportunities from residential areas, a building at 65m would be visible in certain locations, as will a building at 94m in height.

The surrounding street tree canopy will assist in screening views of the building and restrict views of the high rise building from many of the surrounding residential streets. This is particularly the situation for the streets closer to the site where the evergreen street tree canopy of the street trees is wide spreading. The building will be visible to a pedestrian or driver but as illustrated in the examples in **Figures 10 and 11** the direct views of taller buildings in St Leonards (such as the Forum Towers) are screened by the street tree canopy.



Figure 10 Street tree canopy from corner of Duntroon Avenue and Canberra Avenue



Figure 11 Street tree canopy from Holdsworth Avenue

There are certain locations where the tree canopy is thinner or not present (e.g. at road intersections), but these viewing opportunities are confined to a limited number of locations and not the wider residential area. The visibility of a building is not increased due to the additional building height, and overall the views of the building from residential areas will be partly screened by the surrounding tree canopy. The scale of development to the south is also likely to change from detached single and two storey dwellings and the proposed height would not be out of context with that likely future character.

5.2 View sharing

The majority of the Site has low rise buildings with the proposed high rise building occupying a small footprint at the eastern end of the site. Should this Planning Proposal proceed, the buildings that will be developed will be visible from surrounding buildings including commercial floor space and apartments. Potential view impacts resulting from the proposed additional height have been considered in relation to:

- The residential dwellings on the southern side of the Forum East and Forum West high rise buildings;
- The residential apartments in the Abode building on the corner of Albany Street and Pacific Highway;
- Suites within the commercial development located on the northern side of the Pacific Highway; and
- Office within the commercial development located on the southern side of the Pacific Highway (on the opposite side of Marshall Lane).

It should be noted that the recent amendment to Lane Cove LEP 2009 considered the view impact of a building 65m in height. The height above 65m should be the main focus of the assessment (i.e. not the 65m component). The assessment of view impacts has been undertaken having regard to case law relevant to this issue.

Forum apartments

There is a distance separation of approximately 150m between the Forum and the Site. The Forum residential buildings are sited on a north-south axis and taper on the southern end. Balconies to Forum apartments are mainly oriented east or west. It is the west facing apartments located in the south western corner of the two high rise buildings that will be able to see a building on the Site.

Photomontages were prepared by Loftex for the 29 storey building proposed in DA 14/143. The images were based on photos taken from various levels of both Forum (East) and Forum West. The photos were taken by Council officers and appear to have been taken using a zoom lens. The focal length of the lens is not known and some photos have been “stitched” to create a panorama which appears to have caused some distortion. A 94m building envelope on the Site has been superimposed on to the photographs, but due to the zoom lens, the images appear larger in the frame than would have been the case if a 35mm lens was used. However, when the photomontages are compared to the view cones in **Figure 17 and 18**, it can be seen that there is a good degree of correlation between the photomontages and the view cones such that they can be confidently used as an assessment tool.

In all of the photomontages the pink shading presents the additional height between 65-94m.

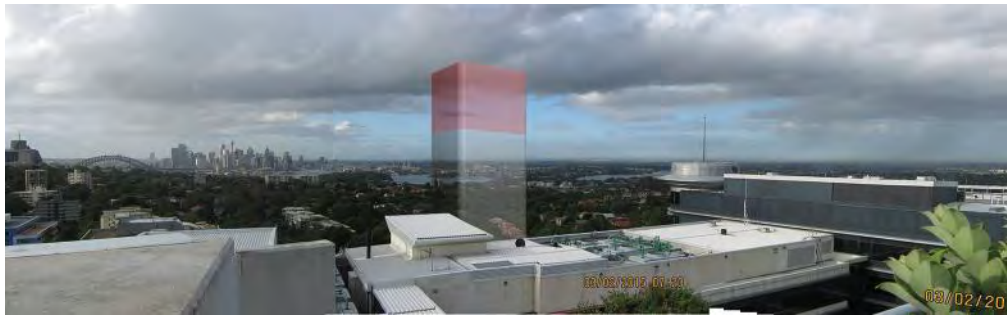


Figure 12 Forum (East) Unit 1701 - Panorama

Unit 1701 is located on the western side of the Forum building in the south western corner. The photo (**Figure 12**) appears to have been taken from the balcony on the southern side of the unit. It is clear from this image that the important city skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed by a 94m high building on the Site. The additional building height above 65m does not affect any views, other than sky.



Figure 13 Forum (East) Unit 2002 - Panorama

Unit 2002 is located on the western side of the Forum building and is a west facing apartment. The balustrade on the left hand side of the photo (**Figure 13**) indicates that the photo was probably taken leaning over the balustrade and is thus not a fair representation of the view from the balcony (if sitting) or living areas. In any event the photo shows that the additional height of a building 65m on the Site does not affect views other than sky.

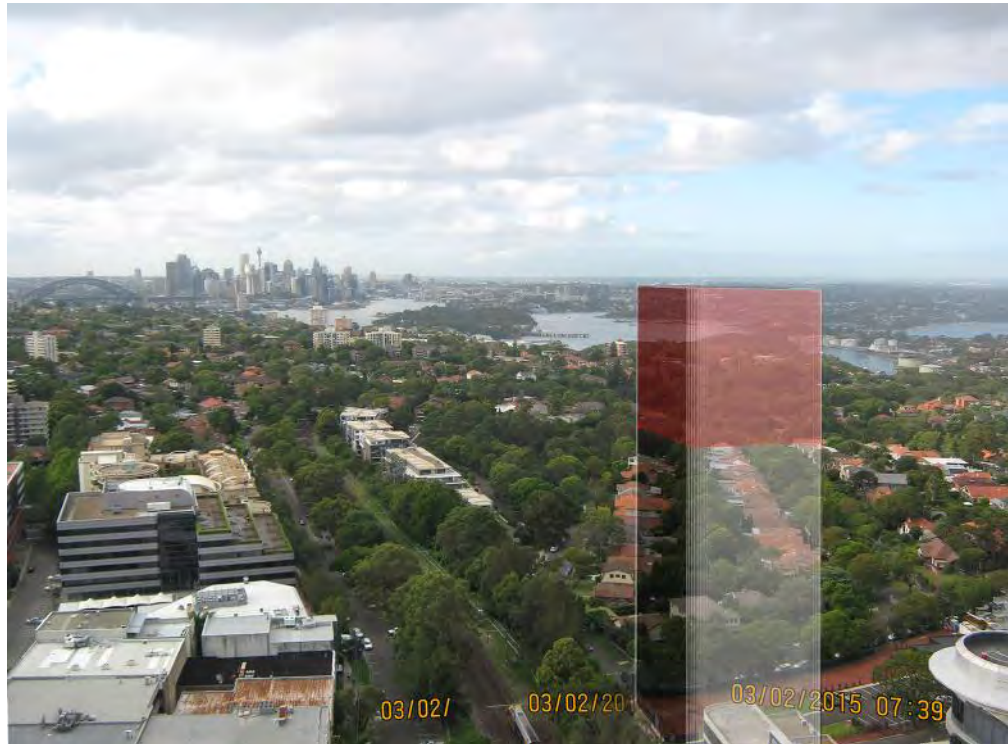


Figure 14 Forum (East) Unit 2901

Unit 2901 is located on the western side of the Forum building in the south western corner. It is not certain where the photographer was standing when taking the photo (**Figure 14**). The photomontage illustrates that the additional height of a building on the Site would impact on views over part of the Wollstonecraft peninsula across Parramatta River to Balmain. Iconic views to the city skyline, Harbour Bridge and the Harbour setting are unaffected and view sharing principles are satisfied.

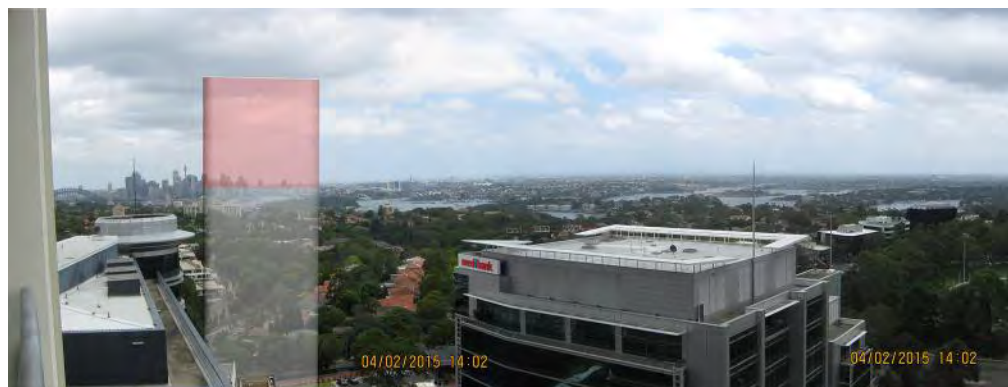


Figure 15 Forum West Unit 1801

Unit 1801 is located in the south-western corner of Forum West. The balustrade and blade wall on the left hand side of the photo (**Figure 15**) suggest that this photo was taken from the west facing balcony adjoining the second and third bedrooms. This illustrates that upper parts of some of the buildings in the western city skyline are blocked by a component of a building above 65m on the Site. Sydney Tower and the Harbour Bridge remain within view. This view however is not the primary aspect from these bedrooms which is more southwest over the office building in the foreground and the wide panorama of Parramatta and Lane Cove Rivers is unaffected. This apartment also has a balcony and main living areas further to the east which will lessen this view impact as the view changes reference point.

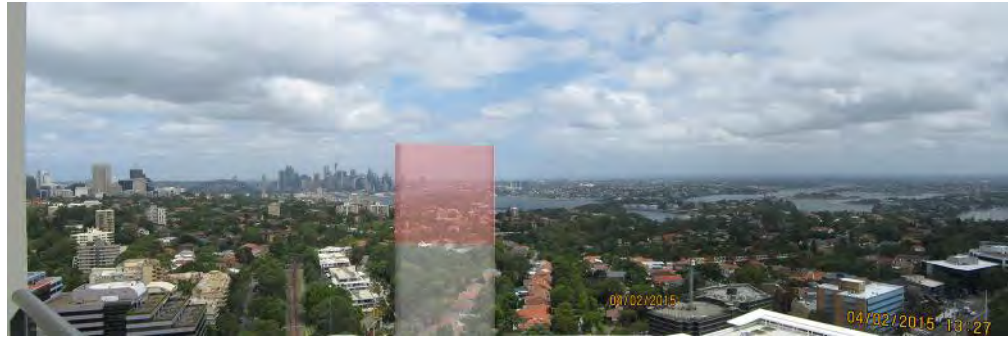


Figure 16 Forum West Unit 2401

Unit 2401 is located in the south-western corner and is a 2 storey apartment. The main living areas appear to be on level 24 and presumably bedrooms are located on Level 25. **Figure 16** shows that the building height above 65m on the Site affect views over Berry's Island and Darling Harbour. The iconic views for the Harbour Bridge, city skyline, Sydney Tower, Anzac Bridge would be unaffected. The panorama over the Parramatta and Lane Cove Rivers is also unaffected.

Figures 17 and 18 are an analysis of the view cones from the Forum East and Forum West apartment buildings. These images are useful to compare to the photomontages and it can be seen that there is a good degree of correlation between the photomontages and the view cones such that they can be confidently used as an assessment tool.

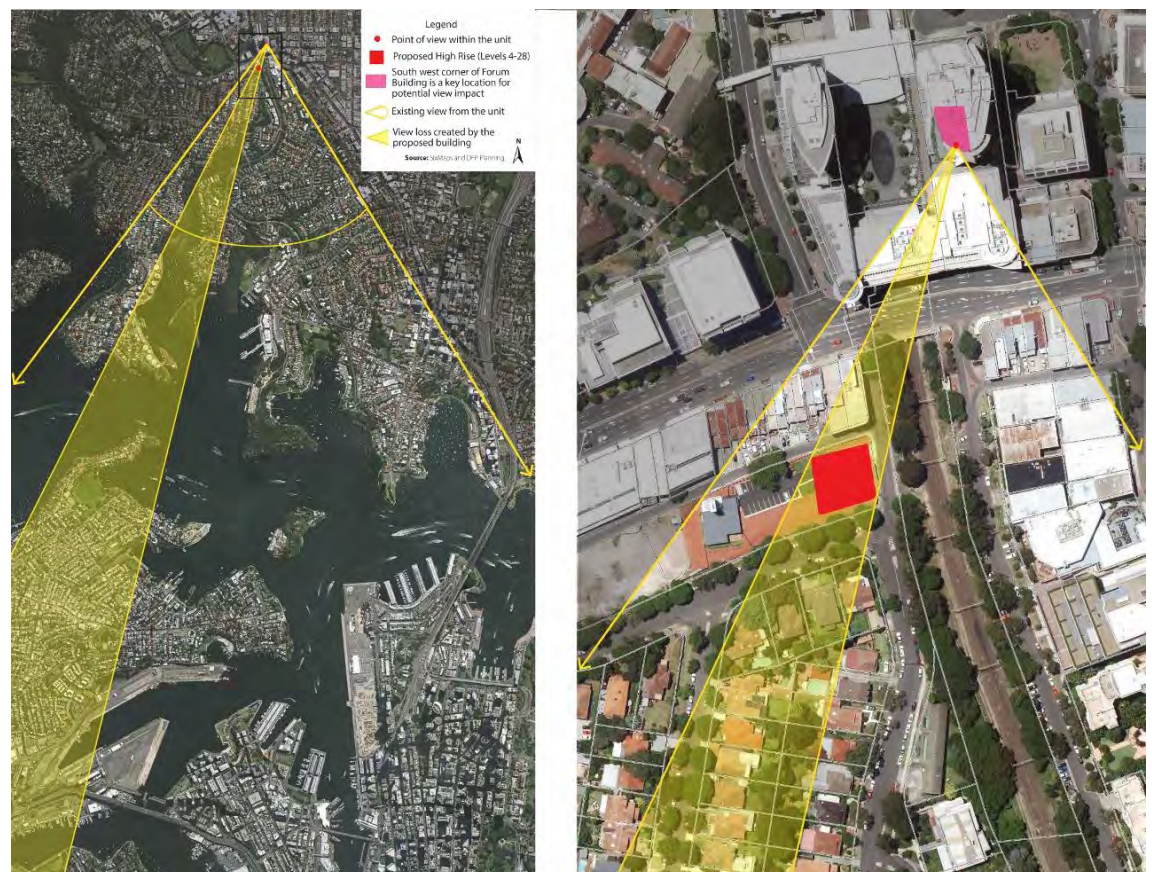


Figure 17 Viewing angles from Forum East

The Forum East building is less affected due to the point of reference being further to the east. This ensures that the iconic views are not affected. For both Forum buildings, the photomontages illustrate that below level 20, the additional height only affects the sky.

In relation to the upper levels of Forum East (south west corner) the impacts are confined to areas west of the city skyline generally over the Wollstonecraft peninsula across the rivers to Balmain. The wide panorama remains unaffected.

In relation to the upper levels of Forum West (south west corner) there will be impacts slightly more towards the east affecting the western part of the city skyline and Darling Harbour area. However, iconic buildings and features are unaffected.

The impacts are considered to be reasonable and, when balanced against the objectives of focussing residential development at major transport and employment hubs, is an acceptable and balanced outcome.

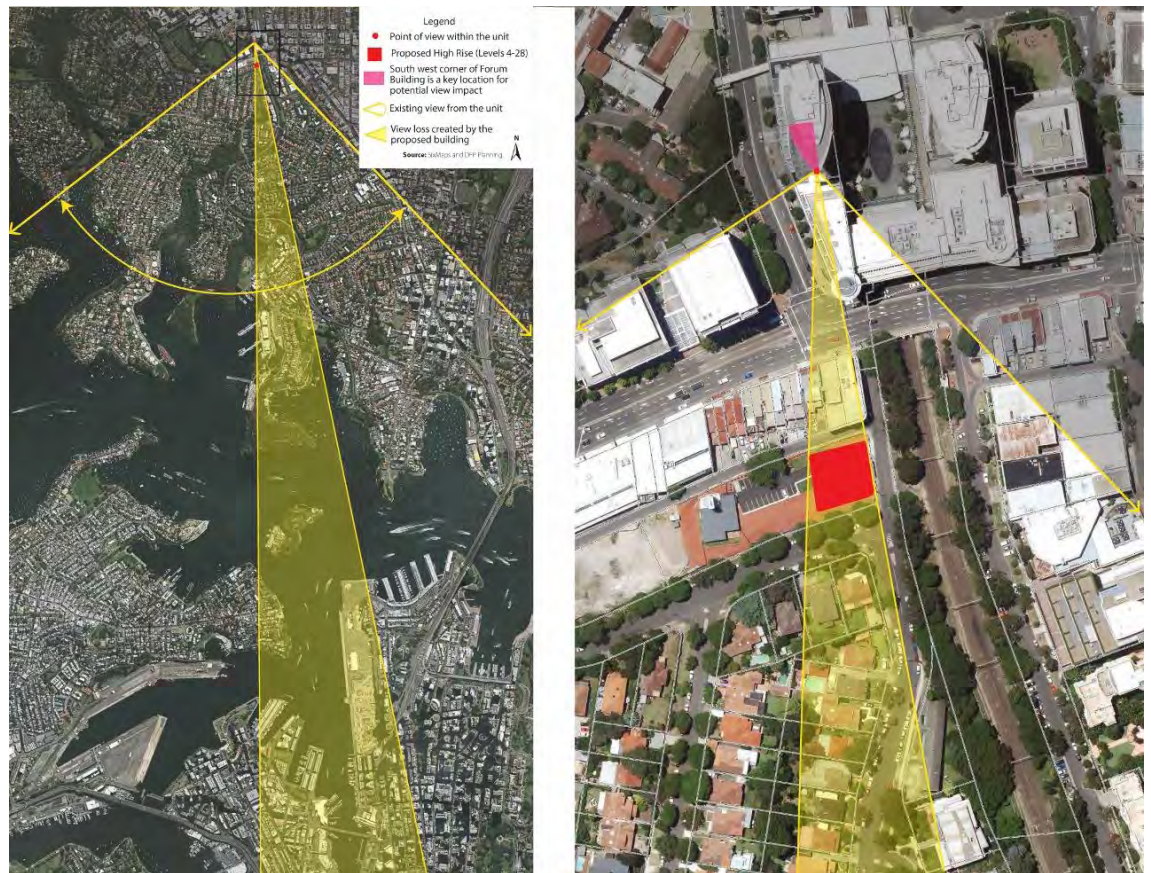


Figure 18 Viewing angles from Forum West

Abode apartments

The Abode apartments are located to the east of the Site on the corner of the Pacific Highway and Albany Street. Part of the development has views to the southwest and west towards the subject site. Lower level apartments would already have views obstructed by buildings fronting the Pacific Highway. A high rise building on the Site would be visible from the upper levels of the Abode building, however, the extent of visual impact is minor. A high rise building on the Site would not affect any views that might be enjoyed to the south west across the Greenwich Peninsula, Lane Cove River and Hunters Hill Peninsula.

The above assessment has been made in isolation of any future building that takes advantage of the recent amendment to Lane Cove LEP 2009 that increased the building height at 500-504 Pacific Highway (Charter Hall site) to 37 storeys. A future building of 37 storeys will block views from the Abode apartment building.

Commercial development on Northern Side of Pacific Highway

The commercial development on the northern side of the Pacific Highway has heights varying from 4 to 13 storeys. The mid to upper levels of the buildings have views across

the Site towards the south-east to the city and to south-west. **Figure 19** is a photomontage taken from Level 6 of Building B, 207 Pacific Highway.

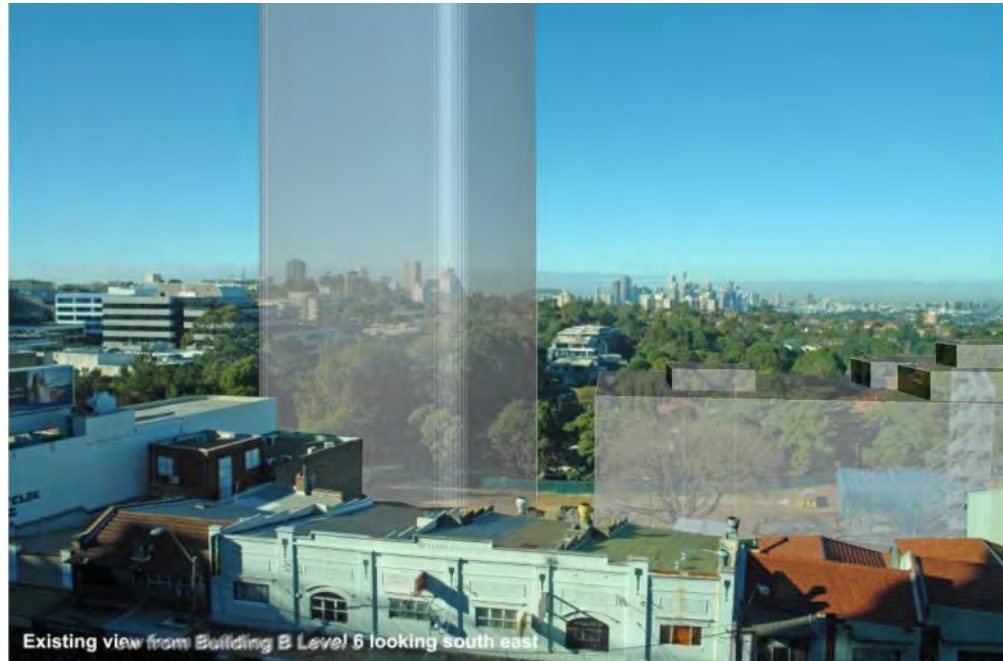


Figure 19 207 Pacific Highway (Building B – Level 6)

Figure 19 illustrates that additional building height above 65m on the Site would not affect views from the commercial building.

Commercial development on Southern Side of Pacific Highway

Development on the northern side of Marshall Lane (Pacific Highway properties) is the closest buildings to the site of a future high rise tower. The Pacific Highway properties have a maximum building height of 36m. Existing and future buildings are too close to be affected by any increase in building height from 65m to 94m.

5.3 Solar Access

A thorough shadow analysis was prepared for the 94m high building as proposed under DA14/143. That assessment is equally relevant to this Planning Proposal.

Nettletontribe has prepared shadow diagrams which are attached at **Appendix C**. Steve King, Consulting Architect undertook an independent analysis to verify the accuracy of Nettletontribe's shadow diagrams which is also provided at **Appendix C** (please note that this report was submitted with DA 14/143 and contains other assessment material relating to solar access and ventilation of the proposed dwellings which is not relevant to this Planning Proposal). These appendices also show shadows from other buildings on the overall site. For the purposes of the Planning Proposal, only the additional height above 65m is relevant.

Having regard to the objectives of the building height control there are three main considerations in terms of shadow impacts:

- The shadow cast on the Marshall Avenue properties, and particularly their northern (front) elevations;
- Shadow cast by the additional height of the high rise building on properties further to the south; and
- Shadows cast on Newlands Park.

Marshall Avenue Properties

The shadow diagrams have been prepared in elevation relative to the northern façade of the houses on the southern side of Marshall Avenue. These are at hourly intervals at mid-winter. Steve King has also used 3-D modelling to validate the elevational shadow diagrams prepared by Nettletontribe. Steve King's analysis has found that at the winter solstice the Marshall Avenue properties *"will retain at least three hours of solar access to their north facing elevations. The possible exception is 4 Marshall Avenue, where depending on the internal plan of the dwelling the retained solar access to living area may be just under three hours."*

Aside from a possible departure in respect of No. 4 Marshall Avenue, a building with a height of 94m will comply with the DCP solar access criteria of 3 hours of sunlight to a portion of the windows of a habitable room between 9am and 3pm on 21 June.

Broader Residential Area Further South

Steve King has reviewed the shadow diagrams prepared by Nettleton Tribe to confirm their extent and has noted that the architect's projection is slightly overstating the extent of shadows. The diagrams are therefore on the conservative side, but still informative for assessment.

The impact of the shadow from a 94m building on the Site is generally limited to no more than one hour to the front or rear yard of any affected property. In relation to the additional height (i.e. above 65m), the same outcome applies. Whilst the length of the shadow for a 94m building would be longer than for a 65m high building, the impact moves over any one property relatively quickly. The shadow cast by the additional height is compliant with Council's controls.

Newlands Park

The submissions made during the exhibition of the original Planning Proposal in April 2013 commented about shadow impact to Newlands Park. The shadow diagrams (in plan) demonstrate that Newlands Park is not affected by shadows from a tower building on the Site including the additional height proposed above 65m.

5.4 Privacy To Residential Areas

Figure 20 (on the following page) is a photograph from a balloon taken at RL 140 (approximately Level 22) illustrating view opportunities from a tower. The photograph illustrates that the tree canopy obscures views into private open spaces and that views of houses are largely confined to their roofs. There will also be a large separation between the proposed dwellings and surrounding houses. The contribution of these factors ensures privacy impacts are acceptable from additional building height up to 94m.



Figure 20 View from RL 140 (Level 22)

6 Matters Required by Section 55 of the EP&A Act

6.1 Introduction

Section 55 of the EP&A Act relates to Planning Proposals and specifically, the matters that are to be addressed in a Planning Proposal. Specifically, Section 55 states:

- “(1) Before an environmental planning instrument is made under this Division, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the planning proposal).”*
- (2) The planning proposal is to include the following:*
 - (a) a statement of the objectives or intended outcomes of the proposed instrument,*
 - (b) an explanation of the provisions that are to be included in the proposed instrument,*
 - (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117),*
 - (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,*
 - (e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.*
- (3) The Director-General may issue requirements with respect to the preparation of a planning proposal.”*

The following subsections of this Planning Proposal address the requirements of Section 55 of the EP&A Act.

6.2 Part 1 - Objectives or Intended Outcomes (Section 55(2)(a))

6.2.1 Objectives and Outcomes

The Planning Proposal intends to amend the Height of Buildings Map as it applies to the Site to ensure that the building height controls correspond with the floor space ratio

controls applying to the land. This will ensure that the original density envisaged when the DoPI set the height and FSR controls for the site in 2010 can be realised.

Specifically, the Planning Proposal seeks to amend the Building Height Map by replacing the 65m building height with 94m, as illustrated in **Figure 21**. The illustration shows the current 25m and proposed 94m building height relative to the proposed development submitted under DA 14/143.

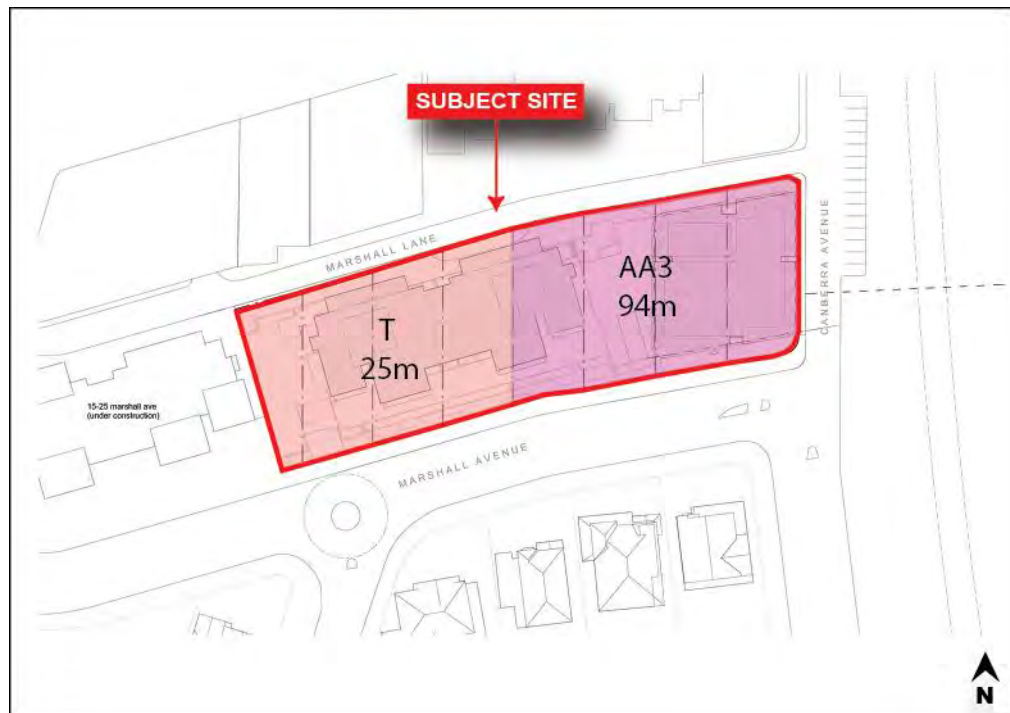


Figure 21 Proposed Building Height Amendment

Without this amendment the development capacity of the Site is reduced below that which could have been realised when Lane Cove LEP 2009 was originally published and likewise the Site's contribution towards providing housing in a location highly accessible by public transport, services and facilities is also reduced. Such an outcome is inconsistent with *A Plan for Growing Sydney*.

6.3 Part 2 - Explanation of Provisions (Section 55(2)(b))

The proposed outcome will be achieved by an amendment to the Building Height Map as illustrated in **Figure 21**.

6.4 Part 3 – Justification (Section 55(2)(c))

This Planning Proposal recommends that the Building Height Map should be amended. This section demonstrates how the proposed amendment to the Map will satisfy the questions that the Department of Planning applies to gateway determinations.

6.4.1 Section A – Need for the Planning Proposal

6.4.1.1 Strategic Studies or Reports

This Planning Proposal is not directly the result of any strategic study or report. The Planning Proposal has arisen following a recent series of events that have had the inadvertent effect of reducing the development potential of the Site to less than that originally intended for the Site when the Department of Planning and Infrastructure increased the FSR and building heights on the land to take advantage of its strategic location.

Council recently resolved on 20 April 2015 “to approve the preparation and lodgement of a planning proposal for submission to the NSW LEP Gateway seeking approval for exhibition that amends the LEP height applying to 1-13A Marshall Avenue, St Leonards from 65 metres to 94 metres, subject to a Voluntary Planning Agreement for the site with the same terms endorsed by Council on 17 November 2014.”

This Planning Proposal report is in response to the Council’s resolution and has been prepared to assist Council in preparing its Planning Proposal to request a Gateway Determination.

6.4.1.2 Best Means of Achieving the Intended Objectives or Outcomes

The Planning Proposal is the best means to achieve the objectives ensuring that the FSR and Building Height development standards correlate. If the Building Height remains at 65m, the FSR is not capable of being achieved within the height controls and the State Government’s objective of increasing density at this major transport hub would be reduced.

Also, the JRPP’s most recent decision of DA14/143 has made it clear that the use of clause 4.6 – Exceptions to Development Standards is not appropriate (in this circumstance) to justify a height variation from 65m to 94m. A Planning Proposal therefore remains the most appropriate means of reinstating the density originally intended for the Site.

6.4.2 Section B – Relationship to Strategic Planning Framework

6.4.2.1 Regional and Subregional Strategies

NSW Long Term Transport Master Plan

The NSW Long Term Transport Master Plan, December 2012 sets as one of its aims the integration of land use and transport planning. The Planning Proposal is consistent with this aim.

The Plan also includes planning for the Sydney Rapid Transit train as part of a new CBD rail link and second Harbour crossing. The planning for the second Harbour crossing including protecting an underground rail corridor beneath St Leonards has commenced. Recent development applications and Planning Proposals adjacent to the existing rail corridor have had to take into account the future rail corridor. The future rail link will ultimately increase the transport infrastructure that would be available in the future.

A Plan for Growing Sydney

In 2014, the Department of Planning and Environment released *A Plan for a Growing Sydney*. This Plan replaced the Metropolitan Plan for Sydney.

The Plan contains:

A vision for Sydney: A strong global city, a great place to live. The vision is supported by four goals.

Four goals for Sydney:

- Goal 1: A competitive economy with world-class services and transport
- Goal 2: A city of housing choice with homes that meet our needs and lifestyles
- Goal 3: A great place to live with communities that are strong, healthy and well connected
- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.

Three planning principles that will guide how Sydney grows:

- Principle 1: Increasing housing choice around all centres through urban renewal in established areas
- Principle 2: Stronger economic development in strategic centres and transport gateways
- Principle 3: Connecting centres with a networked transport system

One of the key components of *A Plan for a Growing Sydney* is to accelerate the delivery of new housing in Sydney to meet the needs of a bigger population and to satisfy a growing demand for different types of housing. *Over the next 20 years, the population in Sydney will grow much faster than in the last 20 years. Projections indicate that Sydney will need around 664,000 additional homes over the next 20 years. New housing will be needed in greenfield locations and the established urban area. Providing housing in a variety of sizes, types and locations will be essential to meeting Sydney's future housing need. Increasing housing supply will boost economic activity and generate viable infrastructure and business investment opportunities.*

The previous Planning Proposal process unwittingly reduced the capacity of the Site to contribute towards achieving these principles. This new Planning Proposal will allow for a dwelling density that the Department of Planning originally intended for the Site in a location well serviced by public transport and other services and facilities. Therefore this planning proposal will assist in meeting the objectives of *A Plan for a Growing Sydney*.

North Subregion

The LGAs of Lane Cove Willoughby and North Sydney are all located within the North Subregion. St Leonards extends across all three LGAs. St Leonards is identified as a Strategic Centre and the priorities for St Leonards are:

- Work with Council to retain a commercial core in St Leonards for long-term employment growth.
- Work with Council to provide capacity for additional mixed-use development in St Leonards including offices, health, retail, services and housing.
- Support health-related land uses and infrastructure around Royal North Shore Hospital.
- Work with Council to investigate potential future employment and housing opportunities associated with a Sydney Rapid Transit train station at St Leonards/Crows Nest.

The previous Planning Proposal process reduced the capacity of the Site to contribute towards housing targets adjacent to the major transport hub. This current Planning Proposal is not inconsistent with the objective of retaining a commercial core to St Leonards. The Planning Proposal will reinstate the capacity of the Site to contribute towards the housing targets for the North Subregion in a location close to employment in and around the St Leonards train station.

6.4.2.2 Local Strategies and Policies

St Leonards Strategy, November 2006

The St Leonards Strategy, November 2006 covers the Lane Cove, Willoughby and North Sydney LGAs for the St Leonards Specialised Centre. The St Leonards Strategy has four main purposes:

- To inform the content of a new LEP, as part of the NSW Planning Reform Program.
- To identify how the economic role of the centre can be strengthened.

- To identify how sustainability, amenity and a sense of place in the centre can be strengthened.
- To establish a coordinated planning approach from the three Councils.

The outcomes of this Strategy informed the preparation of the Lane Cove LEP 2009. As noted above, the Planning Proposal does not change the zoning and re-instates the original development potential of the site and therefore the Site is still capable of consistency with the aims and objectives of the St Leonards strategy.

The St Leonards Strategy identified specific recommendations for precincts, including the Western Precinct which includes the Marshall Avenue land. The Strategy recommended the relaxation of land use prohibitions to allow mixed use between Marshall Avenue and the Pacific Highway. This recommendation has been implemented through the application of the B4 – Mixed Use zone over the subject site. The reason for this recommendation was *“to promote the redevelopment of underdeveloped sites.”* The Planning Proposal does not alter this outcome and further seeks to ensure an appropriate outcome for the Site to encourage and facilitate its redevelopment in line with the Strategy.

The Planning Proposal is considered to be consistent with the St Leonards Strategy, 2006.

Draft Community Strategic Plan 2025

Lane Cove Council has also prepared a draft Community Strategic Plan, 2025 which comprises several ‘Planning Themes’. Our Society; Our Built Environment; Our Natural Environment; Our Culture; Our Local Economy; and Our Council. Of particular relevance is Our Built Environment which contains an objective related to Housing to *“promote a range of sustainable housing options in response to changing demographics”*. One of the strategies to achieve this objective is *“plan for concentrated growth around transport nodes”*.

St Leonards South Strategy Precinct Report, 2013

Council has commenced investigations into St Leonards South being a large precinct on the southern side of the Pacific Highway. The precinct is identified as an area that has the potential for redevelopment given its proximity to a transport hub.

6.4.2.3 State Environmental Planning Policies

Table 1 provides an assessment of the Planning Proposal’s consistency with relevant State Environmental Planning Policies (SEPPs).

Table 1 Consistency with Applicable State Environmental Planning Policies		
SEPP	Response	Consistency
SEPP 1 Development Standards	The Planning Proposal will amend Lane Cove LEP 2009 and pursuant to Clause 1.9, SEPP 1 does not apply.	Yes
SEPP 32 Urban Consolidation (Redevelopment of Urban Land)	Consistent. The Planning Proposal will reinstate the previously intended development potential of the Site that was inadvertently reduced as part of the recent Planning Proposal process.	Yes
SEPP 55 Remediation of Land.	Environmental Investigation Services (EIS) prepared a Preliminary Stage 2 Environmental Site Assessment for the Site (submitted with DA14/143). EIS made the following conclusions in relation to contamination: • The potential for significant, widespread soil or groundwater contamination at the site is considered to be relatively low.	Capable of consistency

Table 1 Consistency with Applicable State Environmental Planning Policies		
SEPP	Response	Consistency
	- The soil and groundwater contamination conditions at the site are considered to pose a relatively low risk to the human and environmental receptors. - Having regard to the above two findings EIS concluded that remediation of the site (and preparation of a RAP) is not required. - The site is considered to be suitable for the proposed residential development. EIS also noted that “<i>in the event of an unexpected find during earthworks, EIS should be contacted immediately. This should facilitate appropriate adjustment of the works programme and schedule in relation to the changed site conditions.</i>”	
SEPP 65 Design Quality of Residential Flat Development	The assessment of DA14/143 which included a 29 storey building demonstrated that a building of that height can comply with the design principles in SEPP 65 and the Residential Flat Design Code.	Capable of consistency
SEPP 70 Affordable Housing (Revised Schemes)	The Planning Proposal will not contain provisions that would be inconsistent with, or hinder the application of the SEPP.	Capable of consistency
SEPP (Building Sustainability Index: BASIX) 2004	The Planning Proposal will not restrict the ability of a future development to achieve BASIX targets, as has been demonstrated in DA14/143.	Capable of consistency
SEPP (Exempt and Complying Development Codes) 2008	The Planning Proposal will not contain provisions that would be inconsistent with, or hinder the application of the SEPP.	Consistent
SEPP (Housing for Seniors or People with a Disability) 2004	The Planning Proposal will not contain provisions that would be inconsistent with, or hinder the application of the SEPP.	Consistent
SEPP (Infrastructure) 2007	The Planning Proposal will not contain provisions that would be inconsistent with, or hinder the application of the SEPP.	Consistent
Sydney Regional Environmental Plan (Sydney Harbour Catchment)	The site is located within the Sydney Harbour Catchment, but is not identified as being within a ‘Foreshores and Waterways Area’. Nor is it a strategic foreshore site, a heritage item or a wetlands protection area.	Capable of consistency

Accordingly, the Planning Proposal is considered to be consistent with the relevant applicable SEPPs.

6.4.2.4 Directions under Section 117

Table 2 provides an assessment of the Planning Proposal’s compliance with relevant Section 117 Directions.

Table 2 Compliance with Section 117 Directions		
Section 117 Direction	Response	Consistency
1.1 Business and Industrial Zones (1) The objectives of this direction are to: (a) encourage employment growth in suitable locations, (b) protect employment land in business and industrial	The Planning Proposal retains the current B4 – Mixed Use zone and the current FSR controls.	Consistent

Table 2 Compliance with Section 117 Directions		
Section 117 Direction	Response	Consistency
zones, and (c) support the viability of identified strategic centres. (4) A planning proposal must: (a) give effect to the objectives of this direction, (b) retain the areas and locations of existing business and industrial zones, (c) not reduce the total potential floor space area for employment uses and related public services in business zones, (d) not reduce the total potential floor space area for industrial uses in industrial zones, and (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.	The outcome of the previous Planning Proposal (published 27 September 2013) had an unintended consequence of reducing the development potential of the Site and therefore the ability of the Site to support the viability of the St Leonards strategic centre was reduced. The Height of Buildings Map is to be amended to ensure that the height and FSR controls correlate to achieve the density outcome originally intended for the site. The Planning Proposal is consistent with this Direction.	
3.1 Residential Zones (1) The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands. (4) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. (5) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	The outcome of the previous Planning Proposal (published 27 September 2013) had an unintended consequence of reducing the development potential of the site. That outcome could be regarded as being inconsistent with this Direction as in effect the 65m and 25m building heights applying to the land reduced the achievable residential density. The Planning Proposal seeks to rectify that unintended consequence and is therefore consistent with the Direction.	Consistent
3.4 Integrating Land Use and Transport (1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and	The Planning Proposal is consistent with this Direction as it retains the existing zoning and FSR provisions. The increase in building height over part of the site will ensure that the maximum FSR applying to	Consistent

Table 2 Compliance with Section 117 Directions		
Section 117 Direction	Response	Consistency
reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. (4) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).	the site (and therefore the alternative dwelling density) correlates with the building height control to ensure a design outcome that maximises the dwelling density in a location close to a major transport node. The Planning Proposal can achieve the planning objectives of this Direction.	
7.1 Implementation of A Plan for Growing Sydney (1) The objective of this direction is to give legal effect to the planning principles, directions; and priorities for subregions, strategic centre and transport gateways contains in <i>A plan for Growing Sydney</i>. (4) Planning proposals shall be consistent with: (a) the NSW Government's A Plan for Growing Sydney published in December 2014	As discussed in Section 6.4.2.1 of this report, this Planning Proposal is consistent with A Plan for Growing Sydney.	Consistent

Accordingly, the Planning Proposal is considered to comply with the Section 117 Directions applicable to this Planning Proposal and the Site.

6.4.3 Section C – Environmental, Social and Economic Impact

6.4.3.1 Critical Habitat, threatened species, populations or ecological communities

Not applicable.

6.4.3.2 Other environmental effects and their management

The main environmental considerations relevant to the Planning Proposal are character, scale, view impacts, visual impact, overshadowing all of which are discussed earlier in this Planning Proposal report. In all cases the potential impacts are considered to be acceptable in the circumstances and having regard to the public benefits that can be delivered through the VPA. In addition Council has also considered the environmental impacts of a 94m building in their assessment of DA14/143 and in summary concluded at page 45 of the Assessment (**Appendix A**) that “*given the strategic planning direction for St Leonards, consideration of the relevant planning instruments and policies and the assessment of likely environmental impacts, the site is considered suitable for the proposed development.*”

6.4.3.3 Social and economic effects

The Planning Proposal retains the existing zone and FSR control applying to the Site. The Planning Proposal proposes to increase building height over part of the Site to 94m to ensure that the maximum FSR and building height controls correlate and together ensure that the dwelling density originally intended for the Site is reinstated. This will have positive social and economic benefits by locating new housing close to a major transport node, employment and services in the St Leonards precinct.

6.4.4 Section D – State and Commonwealth Interests

6.4.4.1 Public Infrastructure

The Planning Proposal does not alter the public infrastructure requirements that would be required when compared to the existing zoning and planning controls. The site is within walking distance of public transport (trains and buses), employment and lifestyle retail facilities within St Leonards and Crows Nest. Upgrades to infrastructure arising from the redevelopment of the site (such as utilities and traffic) can be assessed during the development application process.

Loftex has offered to enter into a VPA under Section 93I(3) of the EPA&A Act with Lane Cove Council for the proposed development. A copy of the draft VPA is provided at **Appendix D**.

The draft VPA provides for a monetary contribution of \$1,300 per m² of gross floor area above the current 65m height limit.

The draft VPA also sets out that the VPA will not exclude the application of s94, s94A or s94EF of the EP&A Act, and that the amount payable under the VPA will be in addition to any contribution payable under the Council's s94 or s94A Contributions Plan (in this case a s94 Contributions Plan). Therefore s94 contributions will be levied for the entire development including units above 65m.

The draft VPA sets out that the payment will be made for the purposes of contributing towards the funding of the construction of a new public plaza over the railway line in St Leonards. However, if the plaza does not eventuate, then the monetary contribution is to be applied towards other infrastructure for a public purpose located generally in the St Leonards area of the Lane Cove LGA. In either scenario, the contribution will have a significant positive effect on the social infrastructure available to the residential and working community of St Leonards.

6.4.4.2 Public Authority Consultation and Referral

Consultation with the relevant State and Commonwealth public authorities can be undertaken in conjunction with the exhibition of the Planning Proposal following the Gateway Determination. However, as the previous Planning Proposal and Stage 1 and Stage 2 DAs have also been referred to various State agencies there should be no additional matters arising that have not already been addressed as part of the previous Planning Proposal or DAs.

6.5 Part 4 – Mapping (Section 55(2)(d))

Figure 21 indicates the proposed amendment to the Height of Building Map. DFP has not prepared the GIS mapping as we understand that this will be undertaken by Lane Cove Council.

6.6 Part 5 - Community Consultation (Section 55(2)(e))

Whilst it is a requirement to undertake statutory consultation relating to a Draft LEP, we are of the opinion that this should not exceed 28 days which is consistent with the Gateway Determination dated 13 April 2012 for the Planning Proposal that previously amended the Building Height controls.

6.7 Part 6 – Project Timeline

The timeline for assessment, consultation and determination of this Planning Proposal will be for Council and DPE to determine. However, given the previous Planning Proposal, Stage 1 and Stage 2 DA, we consider that Council and the Department have a good understanding of the issues and it should be possible to expedite this Planning Proposal

within a timeframe of 6 months or less. It should certainly not be any greater than the 9 months nominated in the previous Gateway Determination dated 13 April 2012.

The delegation of the plan making functions to Lane Cove Council will assist in time efficiencies.

7 Conclusion and Recommendations

This Planning Proposal has been prepared on behalf of Loftex and seeks to increase the building height for the eastern end of the Site to 94m.

This report and accompanying material has been prepared in accordance with Section 55 of the EP&A Act and relevant Departmental guidance.

This report concludes that the proposal:

- is consistent with regional and subregional planning and transport strategies as well as local planning studies;
- is not inconsistent with relevant SEPPs and Section 117 Directions;
- has acceptable environmental impacts in terms of character, scale, overshadowing, view impacts and visual impacts; and
- reinstates the development potential of the Site that was inadvertently reduced following the publishing of an earlier Planning Proposal that reduced the height of the eastern end of the site to 65m.

The Planning Proposal request is in response to the Council's resolution of 20 April 2015 to prepare a Planning Proposal to seek Gateway Determination. Accordingly, we recommend that Council prepare its own Planning Proposal and forward it to the Minister for Gateway Approval.



planning consultants

APPENDIX A

Environmental Services Division
Sydney East Joint Regional Planning Panel meeting of 19 March 2015

2014SYE117

Property: 1-13A and Part 15 and 15A Marshall Avenue, St. Leonards

DA No: DA14/143

Date Lodged: 15 September 2014

Cost of Work: \$95,503,546

Owner: Loftex Pty Ltd

Applicant: Loftex Pty Ltd

Author: Rebecka Groth

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Construction of a mixed use development comprising 269 residential units, commercial/retail space, communal areas and basement parking for 295 vehicles, construction of a roundabout, subdivision and a voluntary planning agreement
ZONE	B4 Mixed Use under the Lane Cove Local Environmental Plan 2009
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
IS THE PROPERTY ADJACENT TO BUSHLAND?	No
BCA CLASSIFICATION	2, 5/6 and 7a
STOP THE CLOCK USED	Yes
NOTIFICATION	2, 4, 6, 8, 10, 12, 14 and 16 Marshall Avenue All properties within Holdsworth Street All properties within Berry Road Properties on the eastern side of Park Road All properties within Canberra Avenue 52, 54, 71-73, 75, 77 and 70 Lithgow Street 2-4, 6-8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 32-42, 44, 46, 58-64, 66, 558, 560, 562 and 564 Pacific Highway

	East Ward Councillors Associations: Marshall Avenue Action Group, Marshall Avenue West Action Group, St Leonards-Wollstonecraft Residents Association Others: Willoughby Council Complete details of the notification are available on Council's file
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REASON FOR REFERRAL:

This application has been referred to the Sydney East Joint Regional Planning Panel as per Schedule 4A of Environmental Planning and Assessment Act 1979 as the proposed development has a capital investment value of greater than \$20 million.

EXECUTIVE SUMMARY:

- The subject site is irregular in shape with an area of 3,795m². The site is located on the northern side of Marshall Avenue and falls approximately 3.5m from the north-western section down to the north-eastern section.
- The proposed mixed use development meets the requirements of Council's Local Environmental Plan 2009 with regard to maximum permissible floor space ratio.
- The low rise component of the proposal complies with the maximum permissible height limit for the site. The high rise, Tower, component seeks consent to vary from the maximum permissible height for the site by approximately 29m or 9 storeys.
- A voluntary planning agreement (VPA) has been proposed by the applicant, exhibited and adopted by Council at its meeting of 17 November 2014. The VPA accompanies the development application.
- The proposal generally meets the requirements of Council's Development Control Plan, the following variations are sought:
 - Visitable unit requirement for access to bathrooms
 - Minor reduction in on-site car parking
 - Proportion of building presenting to the street
- Council's Consulting architect confirms the proposed development generally meets the 10 design quality planning principles of State Environmental Planning Policy 65.
- A total of 115 individual submissions were received as a result of the notification period and two (2) petitions with 64 signatures for the proposal. The primary issues raised in the submissions include the following:
 - Suitability of the development for the site
 - Bulk and scale of the proposal
 - View loss
 - Overshadowing
 - Opposition to and support for the Voluntary Planning Agreement

- Traffic congestion
 - Amenity
 - Noise
- On 6 November 2014, the JRPP was briefed on the proposal.
 - The proposed development is recommended for approval subject to draft conditions.

Background into Planning Proposal

The applicant controls all lots having frontage to north Marshall Avenue, St Leonards and sought to amend the height over two thirds of the site from 36m to 25m and to increase the height of the eastern third from 36m to 78m. The FSR was sought to be changed under the planning proposal from 5.1:1 to 2.5:1 for the western two thirds of the site, and the remaining portion increasing from 5.1:1 to 10:1. The amendment to the controls sought to permit the construction of a tower at the end of the site closest to the railway line. The redistribution of building height towards the eastern section of the site would ensure the properties immediately south of Marshall Avenue would continue to enjoy adequate access to sunlight. The above has been endorsed by Council and the Minister by the Planning Proposal and gazettal.

Below is a brief history of the Planning Proposal:

- In October 2011, Planning Proposal was submitted to Council for an amendment to the Local Environmental Plan (LEP) 2009 for 1-25 Marshall Avenue, St Leonards.
- Gateway approval was received from the Department of Planning and Infrastructure on 13 April 2012 and public exhibition was undertaken. A total of 172 submissions were received (including one petition with 534 signatures). An information evening was also held during the exhibition period.
- On 16 July 2012, Council considered a report on the exhibition's submissions with a recommendation for approval of the planning proposal, subject to reduction of height from 78m to 65m for the tower block. Council voted to defer its decision and called for additional information.
- The report to the Council Meeting of 19 November 2012 provided the additional information requested by Councillors at its meeting on 16 July 2012. In addition, the report recommended to Council that the planning proposal be supported, with a reduction in height for the tower from 78m to 65m. At the meeting, Council resolved to write to Loftex asking for a letter of support for an extension of time, this was received from Loftex. The Department on 2 January 2013 agreed to an extension of time for the completion of the planning proposal until the 30 June 2013.
- At the Council meeting of 18 March 2013, Council resolved not to continue with the planning proposal. Also, until the Department formally terminates the planning proposal it remains a relevant draft planning instrument.
- At the Council meeting of 15 April 2013, Council resolved to rescind the resolution of the 18 March 2013 Council meeting and resolved to proceed with the planning proposal.
- The plan was gazetted on the 17 April 2014.

The western most portion of the site included within the planning proposal (DA13/32, 15-25 Marshall Avenue) is currently under construction. The current development application pertains to the remaining portion of the planning proposal site area (1-13A and part 15 and 15A Marshall Avenue) and has been designed with regard to the controls in the Planning Proposal.

SITE:

The site is located on the northern side of Marshall Ave, south of the Pacific Highway. The description of the site is as follows:

Property	Legal Description
1 and 1A Marshall Avenue	Lot 17 Section 1 DP 7259
3 Marshall Avenue	Lot 181 DP 1044948
3A Marshall Avenue	Lot 182 DP 1044948
5 Marshall Avenue	Lot 191 DP 1048543
5A Marshall Avenue	Lot 192 DP 1048543
7 Marshall Avenue	Lot 201 DP 633091
7A Marshall Avenue	Lot 202 DP 633091
9 Marshall Avenue	Lot 1 DP 1068458
9A Marshall Avenue	Lot 2 DP 1068458
11 Marshall Avenue	Lot 2 DP 602010
11A Marshall Avenue	Lot 1 DP 602010
13 Marshall Avenue	Lot 232 DP 566002
13A Marshall Avenue	Lot 231 DP 566002
Part 15 Marshall Avenue	Lot 2 DP 209715
Part 15A Marshall Avenue	Lot 1 DP 209715

The site is irregular in shape with an area of 3,795.1m². The site has a frontage to Marshall Ave, Canberra Avenue and Marshall Lane.

The site falls approximately 3.5m from the north-western section of the site down towards the north-eastern section of the site.

The site comprises fifteen lots. The site previously comprised dwellings however these have been demolished as part of a separate development application (DA2012/226, No. 1-25 Marshall Avenue, St Leonards). A sales office associated with the redevelopment of the Marshall Avenue site operates from the site.

Matures trees line both sides of Marshall Avenue and are situated outside of the site boundaries. One tree is proposed to be removed to enable vehicular access into the proposed basement.

To the site's north is land zoned B3 Commercial Core which addresses the Pacific Highway. The commercial buildings which are immediately north of the site are approximately two to three storeys and have vehicular access from Marshall Lane. The northern side of Pacific Highway opposite the site is within the Willoughby Council Local Government Area.

To the site's east is land zoned SP2 Railway and comprises a rail corridor. To the north-east of the rail corridor is land zoned B3 Commercial Core and comprises dwelling houses and residential flat buildings.

To the site's south on Marshall Avenue and along part of Berry Street are one to two storey dwelling houses. These properties are zoned R2 Low Density Residential.

To the site's immediate north-west is an eight (8) storey mixed use building with a maximum height of 24.6m which is under construction to the immediate west at 13-25 Marshall Avenue. This building is known as Stage 1 of the redevelopment of Marshall Avenue. Further north-west of this construction site on Berry Street are commercial buildings ranging from two to seven storeys in height. These buildings address the corner of Berry Street and the Pacific Highway. Further south along Berry Street is an elevated open air car park and a single storey building. These properties are zoned B3 Commercial Core. The remainder of Berry Street is occupied by single storey dwelling houses and is zoned R2 Low Density Residential.

PROPOSAL:

Proposed Development:

Construction of two (2) buildings which have a total gross floor area (GFA) of approximately 25,271m² and comprise:

- 327m² commercial/ retail space on Level 1 (157m²) and 3 (170m²) of the high rise building
- Approximately 816m² communal facilities including a meeting room, function room, gym, common outdoor area and communal terrace
- 269 residential dwellings:
 - Low Rise Building: comprising 52 apartments within a part 6 and 7 storey configuration
 - High Rise Building: comprising 217 apartments, 327m² commercial/retail spaces within a 29 storey configuration
- Four (4) basement parking levels comprising:
 - 295 car spaces (resident, visitor, retail and 1 car share space), 1 car wash bay, motorcycle spaces and bike racks
- Vehicular ingress and egress from Marshall Avenue
- Construction of a roundabout within Marshall Avenue, opposite Holdsworth Avenue
- Landscaping
- Consolidation of thirteen (13) allotments (3795.1m²)
- A Voluntary Planning Agreement (VPA)

Dwellings:

The proposal would comprise 269 dwellings:

- 19 x studio units
- 97 x 1 bedroom dwellings.
- 120 x 2 bedroom dwellings.
- 33 x 3 bedroom dwellings.

Of these dwellings, 54 dwellings would be adaptable.

PREVIOUS APPROVALS/HISTORY:

The following approvals relate to the site:

DA2012/226 – Demolition of dwellings at 1 to 25 Marshall Avenue, St Leonards. Consent granted on 24 March 2013.

DA2013/32 - Construction of a mixed use development comprising of 66 residential units and retail/commercial at the ground level and subdivision. Consent granted by the JRPP on 9 May 2013.

Modification of DA2013/32 – Deletion of Condition No. 63 requiring a remediation action plan be prepared from the development consent. Consent granted 11 December 2013.

Modification of DA2013/32 – Section 96(2) modification seeking amendments and internal reconfiguration to an approved mixed use development. Consent granted by the JRPP on 26 February 2014.

THE PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT (Section 79 (C) (1) (a)(i))

Lane Cove Local Environmental Plan 2009

	Code	Proposed	Complies/ Comment
Clause 2.2- Zoning	B4 – Mixed Use zone	Mixed use development comprising two (2) buildings, residential units & retail/commercial spaces	Yes
Clause 4.3 - Height of Buildings	The site has two building height controls of 25m and 65m and is evident in Figure 1 below.	Low rise is RL 95.5 and is below the 25m height requirement Tower is RL 166.8 and is above the 65m height limit	Low rise complies. Tower - Discussed in Clause 4.6 assessment
Clause 4.4 - Floor Space Ratio	2.5:1 + 10:1 and is evident in Figure 2 below.	Detailed below	Yes

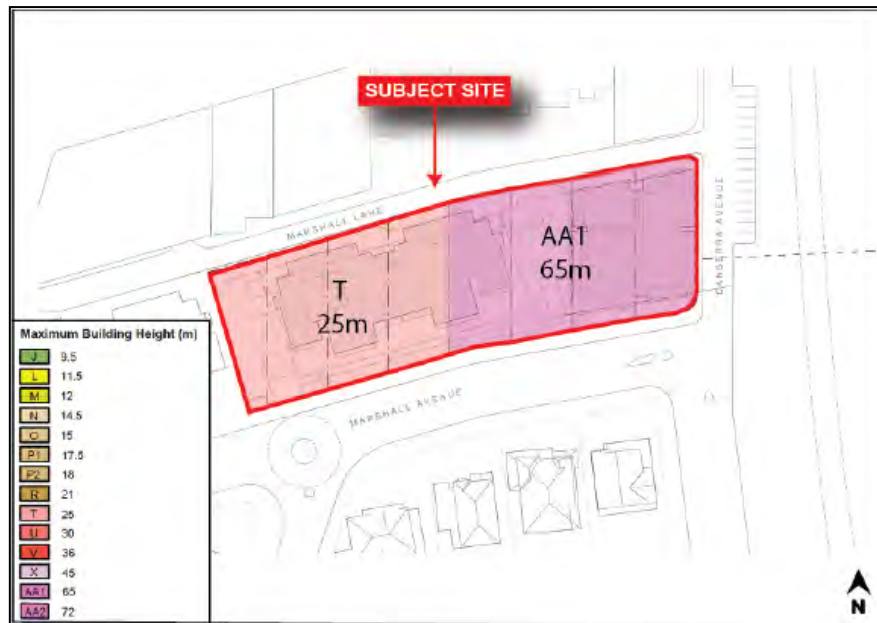


Figure 1 – Height of building map – Lane Cove LEP 2009

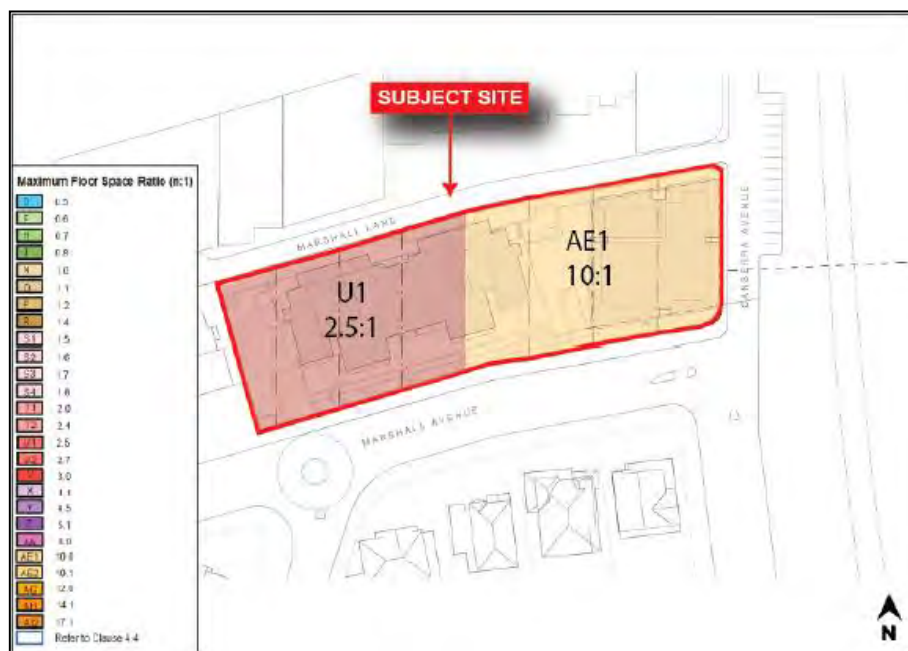


Figure 2 –Floor Space Ratio map – Lane Cove LEP 2009

Floor Space Ratio

The following table summarises the permitted GFA and FSR and indicates the proposal is compliant with the maximum permitted FSR on the subject site.

GFA	FSR
Permitted GFA = 25,880m ²	Permitted FSR for the entire site = 12.5:1 (2.5:1 + 10:1) Site area = 3,795.1m ²
Complying proposal (without the VPA) = approximately 18,985m ²	Complying proposal (without the VPA) = 5:1
Proposal (with the VPA) = 24,978m ²	Proposal (with the VPA) = 6.6:1
Proposal is theoretically 902m ² below maximum permissible GFA for the subject site	

THE PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN (Section 79 (C) (1) (a)(iii))

Lane Cove Development Control Plan 2010

Part D – Commercial Development & Mixed Use Localities

Locality 1: St. Leonards Key Precinct – B1: Marshall Precinct

The current proposal relates to the Block C (low rise) and Block D (high rise) of the DCP controls. An assessment of the proposal with regard to relevant controls is summarised below.

Table 1 – Block C – **Low Rise**

Clause	Control	Proposed	Complies/ Comment
1. Height	LEP control (25m)	Maximum 24m	Complies
2. Height – podium	Max 2 level podium is permissible along Marshall Ave, setback 3m from Marshall Ave	Achieved	Complies
4.1 Street setback	6m setback to Marshall Lane boundary. 3m articulation zone (max 30% of boundary length permitted for balcony extensions) <i>Note: Articulation zones subject to SEPP 65. Continuous accessible</i>	Range 3m to 6m Low rise building is articulated as are the balconies	Variation deemed to be acceptable given articulation proposed

Clause	Control	Proposed	Complies/ Comment
	<i>footpath to be provided in setback zone</i>		
4.3 Street setback to Marshall Ave	10m setback including 3m articulation zone (max 30% of boundary length permitted for balcony extensions) 3m setback to podium level	10m setback proposed to Level 2 and above. Balconies setback 6.6m from Marshall Avenue (6.4m encroachment) 3m setback to Level 1 (townhouses)	Complies
4.4 Setback, eastern end of Block B	18m separation provided between Block B & Block C Between Blocks B & C and Blocks C & D: - Dwellings are not permissible - No building, including car parking is to be higher than ground level at Marshall Lane at that point	18m is proposed between the development currently under construction (DA13/32), Block B and the proposed low rise building being Block C There are no dwellings proposed between Blocks B, C and D Buildings are at the ground level at Marshall Lane	Complies Complies Complies
5 Service vehicles	<i>Note: All servicing – Marshall Lane</i>	Service vehicles are proposed to use Marshall Lane via a shared service lane within the subject site	Complies
6 Car parking	Access from Marshall Ave in the area indicated in the circulation plan opposite end of Holdsworth Ave. Sleeved & predominantly underground. <i>Note: One common car park entry for the whole block</i>	The current proposal would result in two (2) separate driveways from Marshall Avenue. The driveway proposed under the current proposal for Blocks C and D is proposed to be sited opposite Holdsworth Avenue in line with the DCP. The development under construction, Block B (DA13/32) comprises a separate vehicular access to the current proposal which is located further west	The proposed driveway location for the current proposal is consistent with the DCP.

Clause	Control	Proposed	Complies/ Comment
		along Marshall Avenue. This has already been approved in this location	
7 Landscaping	Maximum possible retention of all street trees along Marshall Ave. Landscaping to be provided between Blocks B & C and C & D. 3m setback to Marshall Ave to be landscaped for max screening of buildings <i>Note: Extreme care to be taken with the protection of the Marshall Ave street trees</i>	One (1) street tree, a casuarinas tree, is proposed to be removed to accommodate the proposed driveway. All other trees are proposed to be retained. Council's Manager Traffic and Transport and Council's Senior Tree Assessment Officer support the removal of this tree.	Complies
8 Privacy	Where necessary, building design to include devices/screens to prevent overlooking to residential dwellings	Commercial uses operate immediately north of the site on the Pacific Highway and as such overlooking into adjoining residential uses is not a concern. A child care centre has been approved to operate at 44-46 Pacific Highway which incorporates outdoor play areas fronting Marshall Lane. There is a minimum of 10m separation between the sites and as such direct overlooking between the uses is not a concern	Complies

Table 2 – Block D – Tower (high rise)

To avoid duplication, the controls addressed in Table 1 which are relevant also to Block D have not been included below. The relevant controls to the Tower are summarised below.

Clause	Control	Proposed	Complies/ Comment
1. Height	LEP control (65m)	Approximately 94m as per the architectural plans	Clause 4.6 variation discussed in the LEP section of this report

Clause	Control	Proposed	Complies/ Comment
		RL 166.9 proposed	Variation is supported
2. Uses	Mixed use retail commercial and residential. Building must be designed to be able to accommodate an entry from the future square level , RL 80 <i>Notes: Floor to floor heights capable of accommodating commercial & retail to be provided up to future square level RL 80.</i> <i>Where uses are predominantly residential, RFB controls apply</i>	Tower comprises 327m² retail /commercial space and 269 residential units. Level 3 of the tower has been designed to accommodate the future square level of RL 80	Complies
3.1 Street setback, Marshall Lane	3m setback from Marshall Lane boundary <i>Note: A continuous accessible footpath to be provided within 3m setback</i>	3m setback to Marshall Lane achieved Accessible pathway provided within the setback which would be shared with service vehicles	Complies
3.2 Street setback, Canberra Avenue	No setback to property boundary <i>Note: Building to be able to address future square at RL80m level</i>	Nil to approximately 1.8m setback to Canberra Ave. Predominantly residential units from ground level to Level 4 are setback 4.6m. Proposed Tower addresses future plaza site	Acceptable, proposal addresses future square.
3.3 Street setback to Marshall Ave	4m setback to Marshall Ave	3.8m to 4.8m setback achieved to Marshall Avenue	Minor variation considered acceptable
6 Landscaping	Max possible retention of all street trees along Marshall Ave. Landscaping to be provided between Blocks C & D. 3m setback to Marshall Ave to be landscaped for max screening of	1 street tree proposed to be removed to accommodate the driveway No additional screening plantings are proposed	Complies

Clause	Control	Proposed	Complies/ Comment
	buildings <i>Note: Extreme care to be taken with the protection of the Marshall Ave street trees</i>		
7 Privacy	Where necessary, building design to include devices/screens to prevent overlooking to residential dwellings	The closest dwellings to the site are those situated south of the site on the opposite side of Marshall Avenue. Additional screening is not considered necessary.	Complies

Part D – Commercial Development and Mixed Use

Part D.5 – Development in B4 Mixed Use Zone

It is noted that the development application was lodged with council prior to the adoption of *Part R – Traffic, Transport and Parking* of the DCP, as such the parking provisions within Part D of the DCP have been relied upon.

Clause	DCP	Proposed	Complies/ Comment
5.3 Hours of Operation for Lighting	External lighting operates, as a minimum requirement, from dusk until dawn on Thursday, Friday and Saturday nights, and from dusk until midnight on other nights. Control to turn on at dusk is initiated by a suitably adjusted/ calibrated photo-electric switch such that the lights will be at full output when the daylight luminance in the subject areas falls to the required illuminances stipulated.	Details of lighting are not available at this stage however this matter would be addressed as a condition (refer to draft condition 3).	Achieved condition (refer draft condition 3)
5.4 Noise	Noise generated by residents, visitors, retail or commercial part and mechanical plant and equipment should not exceed the following repeatable maximum L _{Aeq} (1 hour) level, on weekdays:	Mechanical plant equipment is not known at this stage. It is noted that plant equipment would be situated on the rooftop of each building. However this matter would be addressed via conditions (refer to	Achieved via conditions (refer to draft conditions 5 and 143-145)

Clause	DCP	Proposed	Complies/ Comment
	Day 7am-6pm: 55dB(A) Evening 6pm- 10pm: 45dB(A) Night 10pm-7am: 40dB(A) and on weekends: Day 8am-7pm: 50dB(A) Evening 7pm-10pm: 45dB(A) Night 10pm-8am: 40dB(A) or in any case not more than 5 dB(A) above the background level during the day and evening and not exceeding the background level at night when measured at the boundary of the property. b) Incorporate noise reduction measures on plant and machinery. c) Use design features or planning that will reduce noise. d) Incorporate adequate measures for tonal, low frequency, impulsive, or intermittent noise	draft conditions 5 and 143-145)	
5.5 Non residential facilities	Provide a variety of different sized non-residential spaces (eg. cafes). Open space to follow design principles of SEPP No. 65	Retail/commercial spaces are proposed on the first and third floors	Complies
5.6 Access, entries and servicing	a) Separate commercial service requirements, such as loading docks, from residential access, servicing needs and primary outlook b) Locate clearly demarcated residential entries directly from the public street c) Clearly separate and distinguish commercial and residential entries	Service vehicles shall access the site via Marshall Lane Entries for residential uses are clearly defined and are available directly from Marshall Ave and Marshall Lane and the future plaza The commercial and residential entries are clearly separated	Complies Complies Complies

Clause	DCP	Proposed	Complies/ Comment
	and vertical circulation.		
	d) Provide security access controls to all entrances into private areas, including car parks and internal courtyards.	Achieved	Complies
	e) Provide safe pedestrian routes through the site	Achieved	Complies
5.7 Residential Component within Mixed Use	The provisions for Residential Flat Buildings in Part C Residential Development section of this DCP and the Residential Flat Design Code associated with SEPP 65, and the additional following provisions shall apply to the residential component within mixed use developments. d) Minimise the amount of glazed area on the eastern and western elevations and incorporate shading devices	Complies Addressed in Part C assessment table and comments provided from Council's consultant architect discussed in the SEPP No. 65 section of this report	Complies Refer to DCP Part C and SEPP 65 assessment within this report

D.1 – General provisions

The following general provisions relate to both the low rise and the high rise buildings.

Clause	DCP	Proposed	Complies/ Comment
Street frontage activities	Allow for visual interest on the external face of fire escapes, service doors and equipment hatches. Limit opaque or blank walls for ground floor uses to 20% of the street frontage.	Visual interest is provided for in the design of the proposal. Blank walls are avoided in the development's façades	Complies
	Provide enclosure on corner sites to define the corner. All street frontage windows at ground floor level are to have clear glazing. Provide multiple	Corner to future Plaza has been designed to address the Plaza Achieved for commercial/retail spaces Pedestrian entrances	Complies Complies Complies

Clause	DCP	Proposed	Complies/ Comment
	entrances for large developments including an entrance on each street frontage	available at Marshall Ave, Marshall Lane and the future Plaza frontages	
Building depth & bulk For Mixed Use Developments:	I. The maximum horizontal dimension of the residential component parallel to the street frontage is to be 40m.	Low rise maximum 58m to Marshall Avenue. Low rise is articulated, presenting as town houses to Marshall Avenue and the second portion of the low rise is well setback into the site. Tower generally maximum of 28m to Marshall Ave	Variation to low rise horizontal dimension considered to be acceptable Tower complies
Building design & exteriors	a) Floor to ceiling heights: 3.3m for commercial uses & 2.7m for residential uses b) Materials, colours, finishes, proportion and scale of new development should add interest to façades and the streetscape c) Avoid large unbroken expanses of blank wall on any facade adjacent to the public domain	3.3m floor to ceiling heights proposed for commercial/retail use on Level 3, 3.1m floor to ceiling heights proposed commercial/retail use on Level 1. 2.7m Residential floor to ceiling heights proposed The proposal is required to comply with the floor to ceiling heights of the BCA (refer to draft condition 11). Achieved There are no large unbroken expanses of blank wall on the facades of the proposal	Achieved Complies Complies
	e) The design of roof plant rooms and lift overruns is to be integrated into the overall architecture of the building. f) Balconies and terraces	Achieved Balconies included in	Complies Complies

Clause	DCP	Proposed	Complies/ Comment
	should be provided, particularly where buildings overlook public open spaces. They should be avoided where they overlook the private open spaces and severely impact the privacy of the adjoining residential properties	the design of the low rise and the tower. Balconies proposed are orientated towards Marshall Avenue, Marshall Lane and the future Plaza	
Excavation	a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP	The proposed excavation relates to the footprint of the proposed development	Complies
	d) Uses at ground level are to respond to the slope of the street by stepping frontages and entries to follow the slope.	The uses at ground level respond to Marshall Avenue and Marshall Lane through stepping entries to follow the slope	Complies
Design & location of on-site parking	b) All developments must incorporate the required car parking on-site.	On-site parking is provided on-site	Complies
	c) All on-site parking, loading facilities and vehicle access points must be: I. accessed from a rear lane wherever available II. fully concealed from view from any public street or arcade III. accessible from only one opening in the rear lane facade for both on-site parking and loading.	Driveway entry accessed from Marshall Avenue. Service vehicles to access garbage room and the like via Marshall Lane	Complies
	Access openings are to be fitted with a garage door or roller shutter.	Achieved	Complies
	f) Vehicle entry should be: I. easily accessible and recognisable to motorists II. located to minimise traffic hazards and queuing of vehicles on public roads III. located to minimise the loss of on street car parking, and to minimise the number of access	Vehicle entry easily accessible and identifiable from Marshall Avenue. Proposal includes the construction of a roundabout on Marshall Avenue which would assist in the safe movement of traffic	Complies

Clause	DCP	Proposed	Complies/ Comment
	points.		
	IV. Located away from main pedestrian entries and on secondary frontages.	The driveway is situated clear of main pedestrian entry and is situated on Marshall Avenue	Complies
	V. Located having regard to any approved cycling routes.	N/A	N/A
	g) Avoid black holes in the facade for major development by providing security doors to car park entries	Roller shutter door proposed	Complies
	h) Return the facade material into the car park entry recess up to the extent visible from the street.		
	i) Parking and service/delivery areas are to be located underground within building footprint or screened from adjacent residential uses or the public domain by sleeving with active uses.	The proposed parking area is accessed via Marshall Avenue but is situated under the footprint of the proposal. Service delivery area situated at the rear of the site within Marshall Lane, away from view of residential uses	Complies
	j) Parking and service/delivery areas are to be located to minimise conflict between pedestrians/ cyclists and vehicles and to minimise impact on residential amenity.	Marshall Lane would become a shared zone thereby reducing conflict between vehicles, cyclists and pedestrians	Complies
	o) Integrate ventilation grills or screening devices of carpark openings into the facade design and landscape design.		
	p) Provide safe and secure access for building users, including direct access to residential apartments, where possible.	Achieved	Complies

Clause	DCP	Proposed	Complies/ Comment
	q) Basement car parking is to be: I. adequately ventilated II. predominantly located within the building footprint III. located fully below natural ground level. Where slope conditions mean that this is unachievable, the maximum basement projection above natural ground level is to be 1.2m but not to the street front.	Basement is located predominantly within the building footprint. The basement is situated generally below the buildings.	Complies
Number of car parking spaces Note: The proposal was lodged with council on the 15 September 2014. Part R of the DCP relating to parking was adopted by council on the 26 September 2014. As such the car parking requirements within Part D.1 of the DCP have been relied upon	Commercial component Max 1 car space per 110m² of GFA for commercial developments within a radius of 800m from St. Leonards Railway Station = 3 spaces Residential component: Studio and 1 bedroom apartment = 0.5 space = 116 x 0.5 = 58 spaces 2 bedroom apartment = 1 space = 120 x 1 = 120 spaces 3 and more bedroom apartment = 1.5 spaces = 33 x 1.5 = 50 spaces Visitors = 1 space per 4 dwellings = 269 spaces = 68 spaces Total number of spaces required: 299 Commercial: 3 space Residential spaces: 228 Residents: 228 spaces Visitors: 68 spaces	Total number of spaces proposed: 295 Commercial: 3 space Residential spaces: 224 spaces Visitor spaces: 68 spaces 55 accessible spaces,	Variation Given the site is an accessible location, being within 400m walking distance to St Leonard's Train Station and regular bus services along the Pacific Highway, this variation is considered to be acceptable 1 x car share space

Clause	DCP	Proposed	Complies/ Comment
		including 1 x accessible visitor space 1 x car wash bay 1 x car share space	proposed Accessible car spaces are short. 56 adaptable dwellings proposed, 54 accessible spaces proposed. Condition requiring minimum 56 accessible car spaces required (refer draft condition 4)
Traffic & accessibility report	A Transport and Accessibility Report may be required by the Traffic Manager	Traffic Impact Assessment report was submitted with the DA. An addendum to this report was requested and submitted.	Complies
Reflectivity	Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%	Achieved.	Complies
External lighting to buildings	a) Any external lighting of buildings is to be considered with regard to: I. the integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building) II. the contribution of the visual effects of external lighting to the character of the building, surrounds and skyline III. the energy efficiency of the external lighting system IV. the amenity of residents in the locality. b) Floodlights for buildings are prohibited	This level of detail is not available at this stage	Addressed via a draft condition (refer to draft condition 3)
Landscaping	a) Locate basement car parking predominately under the building footprint to maximize opportunities for landscaped area b) Deep soil zones in atria, courtyards and	Basement parking is proposed to be situated within the building footprint. Deep soil zones are not incorporated into the design of the proposal. Given the proposal is to be situated within a	Complies

Clause	DCP	Proposed	Complies/ Comment
	boundary setbacks are encouraged	high density urban environment	
Planting on structures - controls apply for planting on roof tops or over car park structures.	a) Areas with planting on structures should be irrigated with recycled water and appropriate drainage provided. b) Provide sufficient soil depth and area to allow for plant establishment and growth. The recommendations are: I. Large trees (canopy diameter of up to 16m at maturity) i. minimum soil volume 150m³ ii. minimum soil depth 1.3m iii. minimum soil area 10m x 10m area or equivalent II. Medium trees (8m canopy diameter at maturity) i. minimum soil volume 35 m³ ii. minimum soil depth 1m iii. approximate soil area 6m x 6m or equivalent III. Small trees (4m canopy diameter at maturity) i. minimum soil volume 9m³ ii. minimum soil depth 800mm iii. approximate soil area 3.5m x 3.5m or equivalent IV. Shrubs i. minimum soil depths 500-600mm V. Ground cover i. minimum soil depths 300-450mm VI. Turf i. minimum soil depths 100-300mm	Council's Landscape Architect advised that the landscape proposed is acceptable given the high density urban environment in which the site is located	Complies
Solar access	a) Mixed use developments are not to reduce sunlight to dwellings in the adjacent or same zone below a minimum of 3 hours of	The design and siting of the proposal ensures surrounding dwelling houses receive access to at least 3 hours of sunlight in mind winter.	Complies

Clause	DCP	Proposed	Complies/ Comment
	this DCP – Signage and Advertising		

Part B – General Controls

Clause	DCP	Proposed	Complies/ Comment
B4 – View sharing	Views are to be shared Views from commercial development will not carry the same weight as views from dwellings. Views will be tested against the extent of view available. Where appropriate the views will also be tested against the view sharing principles stated by the Land and Environment Court.	View sharing is discussed in detail in the impacts section of this report. Views from properties to the north of the site on the opposite side of the Pacific Highway enjoy views of the Sydney Harbour Bridge, Sydney Tower, CBD and Harbour.	View sharing is discussed separately in this report. Having regard to the assessment of view sharing and the submission received the proposal is supported as proposed
B6 – Environmental Management <i>6.1 Sunlight to public spaces</i> <i>6.2 Wind Standards for St Leonards</i>	a) New development must allow for a minimum of 2 hours of solar access to at least 50% of new and existing public open areas or plazas between the hours of 11am and 2pm on 21st June. b) The location of the sunlight during these hours for urban plazas is to be adjacent to building frontages to allow for outdoor seating during the lunchtime period. The following maximum wind criteria are to be met by new buildings in St Leonards Centre: a) 13 metres/second along major streets and public places and 16 metres/second in all other streets.	The subject site adjoins the future Plaza site to its east. The submitted shadow plans demonstrate the future Plaza site would be free of overshadowing as a result of the proposal until 1pm in mind winter. From 1pm onwards the shadow cast by the Tower would gradually move across a minor portion of the future Plaza site. A Pedestrian Wind Environment Study prepared by Windtech was submitted with the DA. The Study concludes treatments are required for certain locations to achieve the desired criteria for pedestrian comfort and safety and include a 2m	Complies Complies

Clause	DCP	Proposed	Complies/ Comment
	b) Design buildings to minimise the adverse wind effects on recreation facilities on podium terraces within developments. c) A Wind Effects Report is to be submitted for all buildings within the St Leonards precinct taller than 40m above street level.	high screen/gate on the northern and southern entrances to the Level 1 common outdoor area, 2m baffle screen on the northern side of the grassed terrace adjoining the low rise and tower buildings and setback of Levels 1 and 2 of the north-east corner of the tower. The study concludes with the inclusion of the recommended treatments the wind conditions for all outdoor trafficable areas within and around the proposed development would be suitable for their intended use. The Study supports the introduction of winter gardens on the corners of the Tower to prevent these areas from prevailing winds. It is noted Council's Consultant Architect believes balconies would be useable up to Level 7 of the Tower.	
B7 – Development near busy Roads and Rail Corridors	L_{Aeq} levels: (i) In any bed room 35dB(A) 10.00pm to 7.00am. (ii) anywhere else 40dB(A)	The submitted Acoustic Report prepared by Renzo Tonin and Associates assessed the external noise and vibration intrusion into the proposal and concludes that appropriate controls can be incorporated into the building design to achieve a satisfactory accommodation environment consistent with the intended quality of the building and relevant standards. The Report concludes in order to control airborne traffic and train noise intrusion and comply with the nominated criteria,	The proposal is supported subject to the recommendations of the Acoustic Report being implemented (refer to draft condition 5)

Clause	DCP	Proposed	Complies/ Comment
		glazing of the north, south, east and west facades of both buildings is recommended.	
B8 – Safety & security	A safe and secure environment encourages activity, vitality and viability, enabling a greater level of security	The proposal has been considered with regard to the safer by design principles. The design provides safe and secure entries and well observed communal open spaces.	Achieved

Part C3 – Residential Flat Buildings

The relevant controls relating to the proposal are addressed below. To avoid duplication of controls, standards or controls included within the SEPP 65 or DCP assessment tables above are not included.

Clause	DCP	Proposed	Complies/Comment
3.10 Size & mix of dwellings	At least 10% of 1, 2 & 3 bedroom dwellings to be provided	Total development proposal 269 units: 19 x studio = 7% 97 x 1 bedroom = 36% 120 x 2 bedroom = 45% 33 x 3 bedroom = 12%	Yes
3.14 Storage	b) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: I. studio dwellings 6m ³ II. one-bedroom dwellings 6m ³ III. two-bedroom dwellings 8m ³ IV. three plus bedroom dwellings 10m ³ A minimum of 50% of this storage volume is to be provided within the dwelling accessible from the hall or living area as hall cupboards.	Achieved	Complies
3.16 Natural Ventilation	Sixty percent (60%) (161 units) of dwellings should	67% achieved for low rise	Complies

	be naturally cross ventilated. Ventilation provided to one end of a dwelling via windows onto an open access corridor does not satisfy this requirement due to privacy and acoustics' impacts. Twenty five percent (25%) (67 units) of kitchens within a development should have access to natural ventilation.	69% achieved for Tower 25% Achieved	Complies
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Part F - Access and Mobility

Clause	DCP	Proposed	Complies/ Comment
3.3 Public spaces and link to private properties	Development on public and private properties must provide and maintain accessible links and paths of travel between Class 2 to Class 10 buildings and to adjacent public spaces or pedestrian networks	Achieved	Complies
3.5 Parking	Provide 1 accessible parking space per 100 spaces, in Class 2 to 9c buildings 3 spaces required for commercial/retail uses. No requirement for accessible car spaces in this instance Provide 1 accessible parking space (dimensions in accordance with relevant Australian Standards) for each adaptable housing unit within the total calculation of spaces required for that dwelling = 56 spaces	No requirement for accessible car spaces in this instance 54 accessible spaces provided for residents 1 accessible space provided for visitors The proposal is 2 accessible car spaces short. This shall be addressed as a draft condition	N/A Achieved as a draft condition (refer draft condition 4)
3.6 Adaptable and Visitable housing	Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings = 54 dwellings	56 adaptable dwellings proposed	Achieved
	Adaptable housing to be equitably distributed	Adaptable units are provided on levels 4	Achieved

	throughout all types and sizes of dwellings	to 27 within the Tower and levels 2 to 6 in the low rise and comprise 1, 2 and 3 bedrooms	
	80% of the dwellings are to be visitable = 215 dwellings	Variation proposed	Variation. The bathrooms of the visitable units would not be accessible. The applicant instead proposes a public accessible bathroom in each building which could cater for all levels of mobility of visitors and residents. The submitted expert advice by the McKenzie Group advising, they are satisfied that the proposed design documentation complies with the spirit and intent of Disability Discrimination Act (DDA). This variation to the DCP is considered as acceptable in this instance. This matter is discussed in detail below
3.7 Mobility impaired access to and within buildings	Mobility impaired access is required to common areas and all dwellings.	Achieved	Achieved

Variations to Council's Development Control Plan/Policies

As indicated in the preceding policy compliance table, the proposal meets all the Development Control Plan requirements with the exception of the following matters discussed below.

Part D – Clause 4.1 Setback to Marshall Lane – Low Rise

The DCP requires that the low rise building be setback 6m to Marshall Lane. The proposal includes a setback of 3m to 6m. The portion of the building within the 6m setback comprises balconies which are permitted and two living rooms, repeated for each level, which seek to maximise solar access. The staggered setback proposed to Marshall Lane is considered to be acceptable in this instance.

Part D – On-site Car Parking

The proposal would require 299 on-site car spaces as per the DCP. The proposal incorporates 295 car spaces. The site is within an accessible location, being within 400m

walking distance to St Leonard's Train Station and regular bus services situated along the Pacific Highway. Further the applicant has proposed 1 x car share space within the basement car park. Given this context and the proximity to public transport, this variation is considered to provide articulation, is minor, and is therefore acceptable.

The proposal incorporates 56 adaptable dwellings and 54 accessible spaces, being 2 accessible car spaces short of the DCP requirement. This matter can be addressed via a draft condition requiring minimum 56 accessible car spaces be marked on the plans prior to the issue of the construction certificate (refer draft condition 4).

Part F– Clause 3.6 Visitable housing

The DCP requires adaptable housing to comply with AS4299 meaning that the dwelling is designed that it can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.

The DCP considers that visitable housing is an important part of maintaining a connected community in which people are able to go to see family members and friends at home. Groups who benefit from visitable housing include families with strollers or prams for young children, older and frail aged people and persons with disability. The DCP states that visitable housing is to provide a continuous path of accessible travel from the property frontage or car parking area to the living area and to a toilet that is either accessible or visitable and common areas within the building. Further the DCP requires that dwellings are to be visitable at the rate of 80% in developments requiring adaptable housing. The current proposal incorporates the provision of 56 adaptable dwellings and as such visitable dwellings are required.

The applicant seeks consideration of the proposal on merit in relation to the visitable dwellings.

The initial Access Report was requested to be submitted by council officers and was prepared by Morris-Goding Accessibility Consulting, dated 21 November 2014 and is included in **ATT 1**.

The Access Report states the current design relating to bathrooms and bedrooms in the adaptable units do not achieve compliance with the AS4299. The Report states the proposal provides the correct dimensions required for access into the visitable units, however the required dimensions are not provided for access to the bathrooms of the visitable units, there is a departure from 1250mm x 900mm required circulation area in front of the toilet pan. The Access Consultant supports the alternative design, as a minimum of 900mm x 900mm unobstructed circulation area in front of the toilet pan, which is advised is suitable for people with ambulant disability in accordance with AS1428.1-2009.

The Report propose the common use accessible toilet facility provided within Level 1 of the low rise and the Ground Level of the Tower buildings should be considered as a better outcome which would be designed in accordance with AS1428.1-2009. The accessible toilet facilities would allow visitors of the units to access a purpose built wheelchair accessible toilet.

Council's Community Services Officer raised concern with the proposal with regards to compliance of the proposed design of the adaptable and accessible units, in particular, the alternative proposed to the bathrooms within the accessible units.

Following discussions with council officers and the Access Consultant, the applicant submitted a DDA Expert Opinion Report prepared by the McKenzie Group, dated 28 January

2015 and is included in **ATT 2**. The Expert Report states Clause 1.4.12 of AS4299-1995 a visitable toilet is a toilet which has a space of a minimum of 1250mm in front of the toilet x 900mm wide clear of door swings and fixtures. The Report states that in accordance with the current BCA requirements, Class 2 residential buildings are not required to provide accessible/adaptable units. However to meet Lane Cove Council's DCP requirements the applicant has provided both adaptable and accessible units.

The Expert Report confirms the proposed alternative to the accessible toilets provides a better outcome for the development. The accessible toilets would provide a higher degree of compliance catering for a wider range of visitors with disability, due to the larger compartment size of the room and increased circulation space around each fixture in addition to the provision of grab rails, compliant pan and basin and associated fixtures.

The Expert Report addresses council's concern with regard to an overnight visitor. The McKenzie Group believe the term visitable implies short term stay and that this is based on the fact that the term visitable housing does not require a continuous path of travel to a bedroom, nor does it require a visitable shower facility.

The Expert Report states that the proposed solution to provide ambulant toilets within all of the residential units in place of visitable toilets within 80% of the units is a better outcome. McKenzie Group believes this departure from the DCP is acceptable given the proposed solution provides a more functional and dignified outcome that will meet the range of needs by all occupants.

Assessing Officer's comments:

The circulation requirements of the bathrooms and bedrooms of the adaptable units could be resolved via draft conditions of consent. The applicant would be required to submit amended plans for the adaptable units prior to the construction certificate detailing compliance with the requirements of AS4299. This matter has been discussed with the applicant who raises no objection to a draft condition in this regard (refer draft condition 6).

Where design permits, it is preferable that access to sanitary facilities be provided for visitors regardless of their mobility requirements within the visitable residential apartments themselves. It is unfortunate the current design of the low rise and high rise does not permit visitors requiring the use of a wheelchair to use bathrooms of visitable units. It is acknowledged that people with an ambulant disability could use these bathrooms. It is acknowledged that the current design provides an alternative, enabling all visitors, to use the accessible bathrooms situated in each of the buildings and that these bathrooms have a higher degree of compliance which would cater for a wider range of visitors with a disability. Given the McKenzie Group advice, they are satisfied that the proposed design documentation complies with the spirit and intent of Disability Discrimination Act (DDA), this variation to the DCP is considered as acceptable and is supported in this instance.

REFERRALS:

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Since the lodgement of the development application in September 2014, the proposal has undergone several amendments to address solar access, accessibility and design issues. Council's consulting architect reviewed the initial design and the subsequent amendments to the proposal as a result of concerns raised during the assessment of the application with regard to the objectives of the 10 planning principles of SEPP No. 65. The consultant architect's comments are summarised below.

Initial design lodged September 2014

The primary concern with the proposal is the impact of the tower on the properties to the south west of the site. Whilst the low rise sections of the proposal would have only marginal impact on properties on the south side of Marshall Avenue during the winter solstice, the tower, with its additional height would overshadow, if only briefly, a broad sweep of residences south-west of the development during the winter solstice. Any overshadowing is a loss of amenity and regrettable. This is an unavoidable consequence of the tower development in this position. The applicant has minimised the impact of overshadowing by positioning and proportioning the building as far to the east of the site as possible. The applicant's shadow analysis diagrams show the extent of this overshadowing. The tower has been designed to be as narrow as is practicable thereby generating a narrow band of overshadowing that would pass relatively quickly over the affected properties. The greater proportion of the properties affected by the Tower would see its shadow pass in an hour or less, leaving more than adequate sun between 9am and 3pm in mid winter. The properties most affected are those directly south of the tower along Marshall Avenue. Even these properties appear to continue to receive 3 hours of sun, or close to, between 9am and 3pm mid winter.

Of some concern was the use and function of the Winter Gardens/balconies in the Tower building and the related issue of the detailing and thermal performance of the facade treatment, which requires further development and explanation.

Solar access to the mid-rise portion of the development met the minimum rule of thumb for solar access being 70% of units having adequate solar access. The proposed tower did not meet the solar access requirement, 47% of units would have solar access.

Officers Comment:

With exception of the matters mentioned above, the reviewing architect found the proposal meet the objectives of the principles of good design. Further the architect advises the applicant has endeavoured to minimise the impact of the proposal with respect to overshadowing and would provide a valuable addition to a future public square over the railway line.

Amended design received 24 November 2014

Amended plans were submitted by the applicant on the 24 November 2014 which responded to concerns raised in relation to solar access. Council's Consultant Architect's revised report focused on the specific issues of solar access, balcony sizes and winter gardens in response to the amended plans. The consultant architect's advice is summarised below.

Solar Access

The amended design is such that a greater number of smaller units face the northern and eastern facades thereby maximising the number of units receiving sun between 9am and 3pm on 21 June. The amended proposal now achieves the 70% solar access recommended by the Residential Flat Design Code (RFDC).

Balconies and Winter Gardens

The consultant architect believes that it is reasonable to expect that balconies are provided to all units up to and including Level 7. The architect advises that the Winter Gardens on Units 03 and 07 on levels 4 to 7 should be converted into balconies.

The corner studios on levels 8 to 13, 14 and 15 to 25 need not have balconies due to the fact that they are small studios situated on corners which are susceptible to strong turbulent winds. These include units 08, 09 on levels up to 13, units 1407 and 1408 on level 14 and units 06 and 07 on levels 15 to 25.

The absence of balconies or Winter gardens to units 03 and 05 on levels 8 to 13 is not justified, especially with respect to unit 03 which is a two bedroom unit.

Unit 1403 and unit 03 on floors 15 to 27 should comprise balconies. A small 6m² balcony has been provided between the 3 bedrooms. If this is the more desirable location for a balcony then the internal planning of the unit should be amended as such that the balcony is accessed directly from a living space. Alternatively, a balcony could be provided in the corner as per the units below or as a mirror image of what is provided in unit 01.

It is noted that the windows to the winter gardens can only open to an equivalent amount as standard windows and as such do not replace the need for a balcony. The winter gardens attached to Unit 06 on floors 26 and 27 should be replaced with a balcony, possibly immediately adjacent to the balcony in Unit 05.

The consultant architect acknowledges the applicant's desire with respect to the sleek aesthetics of the building, not to have balconies of the corners, due to the curved form of the building. However the architect states that the continuation of mullions across the balcony areas would continue to allow the corners to be read as curved surfaces, however it would be preferable to position the balconies away from the corners as has been achieved in other areas of the proposal.

The architect advises if the balcony issues are addressed as suggested, the proposal would meet the objectives of the principles of good design.

Officer's Comment:

Having regard to the above suggested amendments, the introduction of balconies which would provide for greater amenity and not detract from the built form is supported. The amendments are supported. The absence of balconies for several of the units was discussed with the applicant. The applicant has indicated agreement to a draft condition requiring the introduction of a balcony to several units (refer to draft condition 8).

Copies of the consulting architect's reports are attached to this report refer to **ATT 3 and ATT 4**.

Development Assessment Manager

Council's Building Surveyor reviewed the proposal and initially raised concerns relating to BCA compliance for the toilet facilities, light to study rooms and turning areas provided within the corridors of the buildings. Amended plans and further BCA advice was submitted by the applicant on the 25 November 2014. The Senior Building Surveyor advised the amended proposal can generally comply with the Building Code of Australia and further the fire engineer advises the development would be subject to fire engineered solutions where a non-compliance has been identified with the deemed to satisfy provisions of the Building Code of Australia. The conditions recommended by the Senior Building Surveyor are included within the draft conditions (refer to draft conditions 10 - 32).

Strategic Planner

Council's Strategic Planner advised, that Council's Resolution of its meeting on the 15 April 2013 was to approve Amendment No11 to LEP 2009 which provided for a building height of 65m and to *"consider any further height increase if the applicant enters into a suitable*

Voluntary Planning Agreement (VPA) to enhance the public domain in the vicinity of the site”.

The height increase is accompanied by an appropriate VPA that contributes significantly to the proposed Rail Plaza/ Bus Interchange and is supported.

The height increase under the VPA does not result in any FSR increase and is supported on this basis, taking into account that the vehicle generation and parking requirements would be effectively the same.

Visual impact due to the height increase has been accepted by Council already in resolving to accept the VPA. From the major area of public domain i.e. the proposed Rail Plaza, the height would appear as a 26 storey tower. From the south, though substantial in size, the tower would be one of a cluster of existing or proposed buildings surrounding the Station’s immediate precinct, or be filtered by substantial tree canopy. This is supported as the emerging character of the St Leonards Specialised Centre in all three council areas.

Metropolitan Plan for Sydney 2036

Development proposals for new, large-scale mixed use along Pacific Highway, together with Transport for NSW plans to run the North-west Rail link through a second platform at St Leonards, all indicate that increased residential density on this site is consistent with the Metro Strategy.

Inner North Subregional Strategy 2007

Key directions include an emphasis on focussing residential development around centres, town centres, villages and neighbourhood centres. The proposal is consistent with this.

St Leonards Strategy 2006

The provisions for this sub-precinct support relaxing land use prohibitions, in particular changes to mixed use development “to encourage use of underutilised sites”. In principle, the location of higher density residential development adjacent to a low density residential precinct is therefore supported. It is noted that St Leonards is an area in transition. The tower form in the LEP for this site allows for acceptable shadow impacts within acceptable limits.

St Leonards South Strategy Precinct Report (2013)

The Report notes an opportunity for future built form in the precinct to “*maintain a diversity of scale and siting and provide a transition in built form scale generally from north to south and east to west.*” The Report reiterates the value of close proximity to a transport hub.

Solar Access

The general proposal that a high density residential development is appropriate to this site is supported by the relevant strategic documents. An issue remains as to whether a taller, narrower tower is a “better” outcome than a lower (complying) broader building, where both meet the FSR requirement. This can be viewed as a positive trade-off in terms of sunlight impacts on the existing residents in the St Leonards South precinct:

- A longer shadow would impact more residents further to the south; however,
- A narrower shadow would impact near residents for a shorter period of time.

Conclusion

Council has endorsed an LEP amendment permitting this tower form of development with a VPA providing for public benefit in return for a height increase above 65 metres. This proposal provides significant financial contribution towards the Rail Plaza / Bus Interchange public domain and infrastructure improvements.

The DCP objectives support the built form outcomes relating the tower to the Plaza. The impacts due to FSR are not altered and the shadowing impacts are acceptable. The DA is supported.

Traffic and Transport Manager

Council's Traffic and Transport Manager and Transport Planner reviewed the proposal and requested additional information relating to traffic survey data, SIDRA analysis, pedestrian refuges, on-site car parking including the proposed small car spaces and additional car spaces above council's DCP, shared zones and details of the proposed car share arrangement.

Further information was submitted by the applicant on 24 November 2014 and addressed the Traffic and Transport Team's concerns. Council's Traffic and Transport Team advised of its preference for the roundabout to remain on the DA plans. The applicant agreed to the requirement of the shared zone within Marshall Lane. It was agreed that given construction of the subject site and surrounds would damage the shared zone and any treatment of surfaces, this be a requirement addressed via a draft condition of consent.

The Traffic and Transport Team provided draft conditions including requirement of the design of the car park, car spaces, the shared zone and construction management plan (refer to draft conditions 56 - 65).

Manager Open Spaces

Council's Tree Assessment Officer raises no concern with the removal of one mature Forest Oak (Tree 17) to facilitate the new driveway crossing, provided all other street trees are retained and protected. The Tree Assessment Officer recommended conditions which are included in the draft conditions of consent (refer to draft conditions 66 - 74).

Council's Landscape Architect notes despite the limited provision for on-site soft landscaping, this outcome is considered appropriate given the site is within an urbanised area. The Landscape Architect supports the recommendation of the retention of the existing street trees as they would benefit the new streetscape. The conditions recommended by the Landscape Architect are included in the draft conditions of consent (refer to draft conditions 75 to 84).

Manager Urban Design and Assets

Council's Development Engineer reviewed the proposal and raised no concern with the proposal subject to draft conditions which include a new driveway, extent of excavation, 1.5m wide concrete pedestrian pathway along the sites entire frontage of Marshall Avenue and Marshall Lane (refer to draft conditions 85 -127).

Manager Environmental Services

The Environmental Health Officer raised no objection to the proposal subject to the recommended conditions addressing noise and construction concerns (refer to draft conditions 128 -156).

Council's Waste Coordinator reviewed the proposal and advised the proposal can address the requirements as per Part Q of Council's DCP in relation to waste management subject to the recommended draft conditions being included in any approval (refer to draft conditions 157 to 175).

THE PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT (Section 79 (C) (1) (a)(i))

Lane Cove Local Environmental Plan 2009

Clause 2.2 - Zoning

The subject site is zoned B4 – Mixed Use under the provisions of Lane Cove Local Environmental Plan 2009. The proposed development meets the zone objectives and is permitted with development consent.

Clause 4.3 - Height of Buildings

The maximum permissible height limit for the site is part 25m and part 65m. The proposed development is well below the maximum permissible height limit for the low rise component of the development. The Tower seeks to vary the building height limit, a 96m building is proposed and this matter is discussed in the Clause 4.6 variation assessment below.

Clause 4.4 - Floor Space Ratio

The proposal complies with the maximum permissible floor space ratio of 12.5:1. The proposal has an FSR of 6.6:1 which is 902m² below maximum permissible GFA for the subject site.

Clause 4.6 – Variation to Development Standards

The proposed Tower has an overall height of 94m (RL 166.80), approximately 29m above the 65m building height development standard. The following provides a summary of the applicant's submission to support varying the development standard.

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

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

Clause 4.6(3) requires as follows:

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

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

Under Clause 4.6(4) the consent authority must be satisfied as to the matters of subclause (3) and also be satisfied of the following:

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

Unreasonable or unnecessary

The Planning Proposal for the site was submitted to increase building height, the basis of the then proposed amendment was to maintain GFA and to redistribute height. The LEP amendment was published with a height of 65m, reduced from the originally proposed 78m, equating to a loss of 13m or 4 storeys. Given the proximity of the site to St Leonards railway station, public buses on the Pacific Highway and to retail, commercial and employment opportunities, it is unreasonable that the development potential of the site is not realised.

Following the amendment council updated the Lane Cove DCP in relation to the Marshall Precinct design controls. The controls reflect the amendment but also require mixed use to be situated in the Tower building and be within the bottom 3 to 4 levels; a building entry level at RL80 to link with a future public plaza resulting in a ground level on the eastern face of the building; a setback to Marshall Avenue increased from 3m to 4m; and floor to ceiling height of 3.6m to accommodate retail or commercial uses.

The effect of the above controls is to replace previously intended residential floor space with commercial floor space and to ensure the Tower can adapt for the public plaza have a financial impact on the viability of the development of the site. The LEP and DCP controls reduce the development potential of the site in order to facilitate public benefit and in that regard it is not unreasonable to vary the height control to compensate for the future public benefit of the public plaza.

Environmental planning grounds

Overshadowing

A thorough assessment of overshadowing impacts has been carried out which illustrate the shadow cast by the Tower including the shadow by the additional height. The additional height does not affect any residential property for more than one hour during mid winter. Council's planning report to council at its meeting on 16 July 2012 details that the Tower and additional height would not impact the nearby Newlands Park.

Scale

Council's report of 16 July 2012 noted that scale of buildings in the St Leonards area including the Forum, The Abode and the IBM Building which contribute to the scale of the precinct. The report also noted that the uplift in height and FSR in the Lane Cove LGA is part of a strategic decision of the Metropolitan Strategy to upgrade sections of St Leonards within the Lane Cove LGA and that the area is in transition. The proposed Tower would sit within the context of the surrounding taller buildings. Since July 2012 the local context is set to change with further increases in height proposed for St Leonards with developments at 472 Pacific Highway, 486 Pacific Highway, 504 Pacific Highway.

Visual Impact

The Urban Design Analysis submitted with the planning proposal and included within the July 2012 Council report for the change in height and FSR controls supported the urban design outcome of a taller building in this location. Potential visual impacts should therefore be considered in terms of the additional height 9 storeys proposed above the LEP required 65m. The taller building within a different scale to the detached housing character was found to be acceptable. The additional height would be visible in the surrounding locality as would a compliant building, however the visual impact of this height would be negligible in the context of the surrounding building height and future character. The existing tree canopy would screen a large portion of the building especially when viewed from the surrounding residential properties, however from some locations where the canopy thins more of the Tower would be evident.

View Impact

The height of the building would be visible from surrounding developments including residential buildings such as The Forum and commercial buildings located along the Pacific Highway. View impacts to residential buildings, as discussed further in the impacts section of this report, affect a portion of their angled view and do not obstruct views towards the iconic Sydney CBD, Harbour Bridge, Anzac Bridge and Parramatta and Lane Cove Rivers. Views from commercial development to the north would be affected, but views to the north are less important given that the high rise building would site within the St Leonards centre context. Further; the planning controls on the southern side of the Pacific Highway would block views from the commercial buildings opposite. There are no view impacts from the public domain.

Density

The additional height has been achieved within the maximum FSR applying to the site. The additional height is not associated with any increase in dwelling yield or associated traffic generation.

The objectives of the height of buildings development standard are:

- (a) to minimise any overshadowing, loss of privacy and visual impacts of development on neighbouring properties, particularly where zones meet, and*
- (b) to maximise sunlight for the public domain, and*
- (c) to relate development to topography.*

The objectives of the B4 – Mixed Use zone are:

- To provide a mixture of compatible land uses.*
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- To encourage urban design maximising attractive public domain and adequate circulation space for current and future users.*
- To maximise sunlight for surrounding properties and the public domain.*

The above summary demonstrates how the proposed Tower including its additional height does not give rise to unacceptable overshadowing, privacy or visual impacts when compared to a compliant building. The above demonstrates that sunlight to the public domain including Newlands Park is not reduced. The site is on the lower side of the St Leonards centre and the proposed building height would fit within the building scape of St Leonards.

The proposed building height departure does not compromise the zone objectives and consistency is achieved with those objectives as a mixed use development is retained as the DCP requirements. The proposal achieves residential accommodation close to public

transport, employment and other services. The proposal integrates with the existing public and future public domain and the VPA accompanying the DA would contribute to the funding of the proposed plaza or similar. There is no adverse impact on solar access of the public domain.

In terms of clause 4.6(4) the additional height can achieve consistency with the zone objectives and objectives of the building height development standard. Based on the environmental impacts as discussed, the variation to the building height is considered to be in the public interest and consistent with the objectives of the B4 zone. The VPA offered would deliver meaningful public benefits.

Public Benefit

In relation to the Tower, it is important to note that when council considered the former Planning Proposal for 1-25 Marshall Avenue, on 15 April 2013 it resolved, in part, to:

3. Council indicate it will only consider any further height increase if the applicant enters into a suitable VPA to enhance the public domain in the vicinity of the site

The council resolution provides that a proposal for greater height would be considered provided a VPA was entered into to enhance the public domain in the vicinity of the site. The proposal and VPA respond to the council resolution. The VPA sets out that public benefit in the form of a monetary contribution that can be delivered through the additional height. The VPA has been drafted such that Section 94 contributions can be levied for the entire development, but the GFA associated with the additional height would be subject to an additional levy (VPA) of \$1,300 per m² GFA above 65m.

Council's Section 94 Contributions Plan identifies that the public plaza in its works schedule with a value of \$33.6 million (as at September 2013). The contribution that would be realised through the VPA would equate to a significant proportion of the total contribution required. This project would deliver a significant public benefit to both the local residential and the St Leonards working communities.

Summary

The above Clause 4.6 variation has demonstrated that the additional height does not give rise to unacceptable environmental impacts and would deliver significant public benefits through the offer to enter into a VPA with council.

Section 94 Contribution Plan

Lane Cove Section 94 Contribution Plan applies to the proposal for the increase of population in the area as a consequence of the development.

The Section 94 Contribution is calculated in the following manner:

Residential Contributions

Dwelling Type	Number of dwellings	Persons per dwelling	Total Number of persons	Contribution payable @ \$9636/person 2014/2015 fees and charges
Studio	19	1.2	22.8	\$219,700.80
1 bedroom	97	1.2	116.4	\$1,121,630.40
2 bedroom	120	1.9	228	\$2,197,008.00
3 bedroom	33	2.4	79.2	*\$660,000.00
Total	269	N/A	446.4	*\$4,198,339.20

***Note:** A cap of \$20,000 per dwelling has been imposed under the *Reforms of Local Development Contribution*. As such, the Section 94 Contributions for the proposed three-bedroom dwellings are capped at \$20,000 per dwelling, i.e. 33 dwellings x \$20,000 = \$660,000.00

Retail/Commercial Development - Traffic Management and Streetscape improvement

327 m² @ \$97.34 per m² (2014/2015) = \$31,830.18

Credit for dwelling houses demolished

Dwelling type	Number of persons
14 x Semi-detached dwelling houses at 1-13A Marshall Avenue	14 x 2 bedrooms @ 1.9 persons per dwelling = 53.2 persons
Half of the Semi-detached dwelling houses (x2) at 15&15A Marshall Avenue	0.5 x [2 x2 bedrooms] @1.9 persons per dwelling = 3.8 persons
Total Credit	57 persons @ \$9636 per person = \$549252

Total Section 94 Contributions Payable

Contribution Type	Amount
Commercial/Retail:	\$31,830.18
Residential:	*\$4,198,339.20
(Credit for dwellings):	(\$549,252.00)
Total Contribution:	\$3,680,917.38

The total Section 94 contribution for the proposal is **\$3,680,917.38**.

State Environmental Planning Policy (Building Sustainability Index) 2004

A Basix report has been submitted along with the application. No issues are raised with regard to water, thermal comfort and energy targets.

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

RailCorp

Pursuant to Clause 86(1) of the Infrastructure SEPP, a referral was sent to RailCorp as the proposal involved excavation within 25m from the rail corridor situated east of the site.

RailCorp advises as of 1 July 2014 the property functions of RailCorp have been transferred to Sydney Trains. Whilst RailCorp still exists as the legal land owner of the rail corridor, its concurrence function under the above SEPP has been delegated to Sydney Trains.

As such, Sydney Trains now advises that the proposed development is being assessed in accordance with the requirements of Clause 86(4) being:

- a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
- b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

Sydney Trains identified that the proposed development has been designed to provide a future connection to Council's proposed Plaza located predominantly over the rail corridor. Sydney Trains advises that the assumed level of this Plaza is at the applicant's risk given that Sydney Trains and/or Transport for NSW (TfNSW) may require the Plaza to be at a level which meets the standards and operational requirements of Sydney Trains and TfNSW. This could result in the proposed development being unable to interconnect with the Plaza.

Sydney Trains has granted its concurrence to the proposed development subject to Council imposing the deferred commencement condition and operational conditions. The deferred commencement condition which must be satisfied prior to the consent becoming operational (Part A). This advice was provided in a letter dated 19 January 2015 and included two deferred commencement conditions. Following discussions with council officers, Sydney Trains removed the following requirement from the concurrence letter:

The Applicant shall obtain confirmation from Transport for NSW (TfNSW) that the proposed development, and its need to connect to a future Plaza, can be accommodated should the Plaza proposal proceed.

The revised concurrence letter dated 6 February 2015 requires that the applicant prepare and provide to Sydney Trains for approval/certification the following items:

- i. Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducting on the site closest to the rail corridor.
- ii. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.

- iii. Cross sectional drawings showing the tunnel easement, tunnel location, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail tunnel. All measurements are to be verified by a Registered Surveyor.
- iv. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement and tunnel location.
- v. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

The above advice received from Sydney Trains was forwarded to the applicant (refer draft conditions 1 and 33-48).

A copy of the advice from Sydney Trains is provided in **ATT 5**.

NSW Roads and Maritime Services (RMS)

Pursuant to Schedule 3 of the Infrastructure SEPP the application was referred to the RMS who raised no objection to the proposal subject to the inclusion of four (4) conditions. The recommended conditions relate to the ingress and egress of vehicles, layout of parking spaces and swept path being compliant with AUSTROADS (refer to draft conditions 52 - 55). A copy of the advice from RMS is provided in **ATT 6**.

Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996

The application was referred to Sydney Airport pursuant to *s.186 of the Airports Act 1996 and Reg 8 Airports (Protection of Airspace) Regulations 1996* as the Tower component of the proposal would intrude into the airspace which, under the Regulations, is prescribed for Sydney Airport.

The Department of Infrastructure and Regional Development (the Department) reviewed the application and considered any submissions made by Civil Aviation Safety Authority (CASA), Airservices and Sydney Airport. The response received from the Department is summarised below.

The Outer Horizontal Surface of the OLS above the subject site is at a height of 156m Australian (AHD) and the prescribed airspace above the site commences at 156m. At a maximum height of 166.8m AHD, the Tower building would penetrate the OLS by 10.8m. The low rise building is below the OLS at a maximum height of 96.8m AHD.

The proposed construction of the development would constitute a controlled activity under Section 182 of the Airports Act 1996 (the Act). Section 183 of the Act requires that controlled activities cannot be carried out without approval.

Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless varying out of the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Approval may be granted subject to conditions.

In resolving to grant approval, the Department had regard to the opinions of the applicant, CASA, Airservices Australia and SACL. The Department imposes the following conditions:

1. The building must not exceed a maximum height of 166.8m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lighting rods, any roof top garden plantings, exhaust flues etc.

2. Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the building.
3. At completion of the construction of the building, a certified surveyor must notify in writing the airfield design manager of the finished height of the building.

The above conditions are included within the draft conditions (refer draft conditions 49- 51). A copy of this advice is provided in **ATT 7**.

THE PROVISIONS OF ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 93F, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 93F (Section 79 (C) (1) (a)(iia))

The development application is accompanied with a Voluntary Planning Agreement (VPA). A formal letter of offer has been provided to Lane Cove Council and sets out that the high rise (Tower) building of the proposal would exceed the 65m height of building development standard under the Lane Cove Local Environmental Plan 2009. The extent of the departure is 29m (or 9 storeys) above the 65m building height development standard. A clause 4.6 variation has also been submitted with the application. The offer to Lane Cove Council is for a monetary contribution of \$1,300 per m² of gross floor area located above the 65m height limit, this amounts to approximately \$8.36 million.

The letter of offer sets out that the VPA would not exclude the application of Section 94 (developer contributions), Section 94A (Fixed Developer Consent Levies) or Section 94EF (Special Infrastructure Contributions) of the Environmental Planning and Assessment Act 1979 and that the amount payable under the VPA would be in addition to any contribution payable under Council's Section 94 Plan. Therefore Section 94 contributions would also be levied on the units above 65m.

The letter of offer also sets out that if the development application is approved, the payment would be made for the purposes of contributing towards the funding of the construction of a proposed St Leonards Rail Plaza and Bus/Rail Interchange over the railway line in St Leonards. In the event the St Leonards Rail Plaza and Bus/Rail Interchange does not proceed, funds may be used for the provision of public infrastructure generally within the St Leonards area.

At its meeting on the 21 July 2014 full Council considered the VPA proposal. The General Manager's report highlights that when Council considered the Planning Proposal for the entire Marshall Avenue block, being 1-25 Marshall Avenue, resolved that council indicate it would only consider any further height increase if the applicant enters into a suitable VPA to enhance the public domain in the vicinity of the site. Council resolved to give notice of its intention to enter into a VPA with the developer and following community consultation a further report was submitted to council for determination.

The VPA was publicly exhibited from 17 September 2013 to 15 October 2013. Fifty three (53) of the submissions raised objections that related to the Voluntary Planning Agreement. Many of the submissions were based on a form submission. Council received two submissions on behalf of thirteen (13) property owners in support of the VPA. These properties in Marshall, and 1 Holdsworth and 1-5 Canberra, are the most affected by the overall development.

Following the close of the exhibition period, the matter was reported back to council at its meeting of 17 November 2014. Following the consideration of the report, the council resolved to endorse the VPA in respect of the Development at 1-13A Marshall Avenue, St Leonards.

A draft condition has been recommended regarding the VPA (refer draft condition 9). A copy of the signed VPA is provided in **ATT 8**.

THE PROVISIONS OF THE REGULATIONS (Section 79 (C) (1) (a)(iv))

There are no provisions within the regulations which are applicable to the development proposal.

THE LIKELY IMPACTS OF DEVELOPMENT (Section 79C (1) (b))

In addition to the likely environmental impacts previously discussed, including wind and reflectivity, the likely impacts on current views resulting from the proposal is discussed below.

View Sharing

The following provides an assessment of the view sharing principles stated by the Land and Environment Court.

Due to the height of the proposed Tower building it was not feasible to install height poles on the subject site. The views currently enjoyed by surrounding properties would be largely unaffected as a result of the low rise component of the proposal. The view loss assessment focuses on the Tower portion of the development proposal using photographs and photomontages which approximate the anticipated views as a result of the development proposal. The assessment has been undertaken with regard to the planning principles of view sharing in the *Tenacity Consulting v Waringah 2004* case.

1. Assessment of views to be affected

District views of the iconic Sydney Central Business District (CBD) are available from properties situated north-west of the site. The views include the Sydney Harbour Bridge, Sydney Tower, Anzac Bridge and Parramatta and Lane Cove Rivers and the interface between land and water. These distant district views are enjoyed from surrounding St Leonards properties including the Forum East building (3 Herbert Street) and Forum West building (1 Sergeants Lane), 207 Pacific Highway, the Northmark building (52 Christie Street) and the Shoremark building (54 Christie Street).

The Forum East and Forum West buildings and 207 Pacific Highway are situated on the northern side of the Pacific Highway and are situated within the Willoughby Council Local Government Area.

The Northmark building was inspected. The views of the city currently enjoyed would be unaffected from the Shoremark and Northmark buildings given the buildings are situated south-east of the subject site.

The view loss assessment would therefore focus on the buildings situated north of the Pacific Highway, the Forum East, Forum West and 207 Pacific Highway.

2. From what part of the property the views are obtained

Forum East

The Forum East building is situated north-east of the subject site. Apartments orientated south on Levels 17, 20 and 29 were inspected.

Level 17

Views of the distant Sydney CBD, Sydney Harbour Bridge, Sydney Tower and small portions of the Sydney Harbour are enjoyed from the most southern section of the primary living areas and the most southern portion of the balcony on Level 17 whilst standing.

Level 20

Angled views of distant Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living areas and the western balcony on Level 20 whilst standing. From the western balcony, angled views of the Sydney CBD, a section of the Sydney Harbour Bridge, Sydney Tower and Sydney Harbour are enjoyed whilst standing.

Level 29

Panoramic views of the distant Sydney CBD, Sydney Harbour Bridge, Sydney Tower and Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living areas on Level 29 whilst standing. Views of the Sydney CBD, Sydney Harbour Bridge, Sydney Tower and Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary balcony on Level 29 whilst standing.

Forum West

Forum West building is situated north-east of the subject site. Apartments orientated south on Levels 18 and 24 (2 level, penthouse level) were inspected.

Level 18

Angled views of the distant Sydney CBD, the majority of Sydney Harbour Bridge, Sydney Tower, Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living area and most southern balcony whilst sitting and standing on Level 18.

Level 24

Views of the distant Sydney CBD, Sydney Harbour Bridge, Sydney Tower, Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living areas, master bedroom and most southern balconies whilst sitting and standing on Level 24.

Angled views of the distant Sydney Harbour Bridge, Sydney CBD and Sydney Tower, Anzac Bridge and Parramatta River are obtained from the secondary bedrooms and secondary western balcony on the upper level whilst sitting and standing.

207 Pacific Highway – Building B

207 Pacific Highway is north of the subject site and is a commercial building. Views enjoyed from Levels 3 to 10 within Building B include the distant Sydney CBD, Sydney Harbour Bridge and Sydney Tower from the southern section of the building whilst standing. Views from Levels 6 to 10 also enjoy a distant views of Sydney Harbour whilst sitting and standing.

Photomontages were prepared by the applicant following council officer's inspections of the above properties having regard to the RL of the buildings inspected, with the exception of 207 Pacific Highway. The submission received on behalf of 207 Pacific Highway incorporated a photograph of the view enjoyed from Level 6 of Building B and this photograph has been used by the applicant in the photomontage. The photomontages prepared by the applicant are included in **ATT 9** and provide an indication of views likely to be impacted.

3. Assess the extent of the impact

Forum East

Level 17

Views of the distant Sydney CBD, Sydney Harbour Bridge, Sydney Tower and small portions of the Sydney Harbour would continue to be enjoyed from the most southern section of the primary living areas and the most southern portion of the balcony on Level 17 whilst standing. The photomontage submitted demonstrates a small section of the Sydney Harbour being lost as a result of the Tower building. This view loss is considered to be minor, given the iconic views enjoyed remain unobstructed.

Level 20

Angled distant views of Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living areas and the western balcony on Level 20 would continue to be enjoyed. From the western balcony, angled views of the Sydney CBD, a section of the Sydney Harbour Bridge, Sydney Tower and Sydney Harbour would continue to be enjoyed. The photomontage submitted demonstrates a small section of Sydney Harbour being lost as a result of the Tower building. This view loss is considered to be minor, given the iconic views enjoyed remain unobstructed.

Level 29

Panoramic views distant of the Sydney CBD, Sydney Harbour Bridge, Sydney Tower and Sydney Harbour, Anzac Bridge and Parramatta River would continue to be enjoyed from the primary living areas on Level 29 whilst standing. Views of the Sydney CBD, Sydney Harbour Bridge, Sydney Tower and Sydney Harbour, Anzac Bridge and Parramatta River would continue to be enjoyed from the primary balcony on Level 29 whilst standing. The photomontage submitted indicates a small section of the Sydney Harbour being lost as a result of the Tower building. It is noted that the additional height is responsible for the loss of this portion of view. This view loss is considered to be minor, given the iconic views enjoyed remain unobstructed.

Forum West

Level 18

Angled views of the distant Sydney CBD, the majority of Sydney Harbour Bridge, Sydney Tower, Sydney Harbour, Anzac Bridge and Parramatta River are enjoyed from the primary living area and most southern balcony whilst sitting and standing on Level 18. A portion of the city skyline and Sydney Harbour would be lost as a result of the Tower. The portion of the Sydney Harbour Bridge and Sydney Tower currently enjoyed would remain. It is noted that some of the view loss of the city skyline and Sydney Harbour would also occur in the case of a compliant Tower height. This view loss is considered to be moderate however the highly valued iconic views enjoyed remain unobstructed.

Level 24

Views of the distant Sydney CBD, Sydney Harbour Bridge, Sydney Tower, Sydney Harbour, Anzac Bridge and Parramatta River would continue to be enjoyed from the primary living areas, master bedroom and most southern balconies whilst sitting and standing on Level 24. A portion of Sydney Harbour would be lost as a result of the additional Tower height. The view loss would not occur in the case of a compliant Tower building. This view loss is considered to be minor, given the iconic views enjoyed remain unobstructed.

Angled views of the distant Sydney Harbour Bridge, Sydney CBD and Sydney Tower, Anzac Bridge and Parramatta River would continue to be enjoyed from the secondary bedrooms and secondary western balcony on the upper level whilst sitting and standing. A portion of Sydney Harbour would be lost as a result of the additional Tower height and this loss is considered to be minor. The view loss would not occur in the case of a compliant Tower building. This view loss is considered to be minor, given the iconic views enjoyed remain unobstructed.

207 Pacific Highway

Views enjoyed from Levels 3 to 10 within Building B include the distant Sydney CBD, Sydney Harbour Bridge and Sydney Tower from the southern section of the building whilst standing. Views from Levels 6 to 10 also enjoys distant views of Sydney Harbour whilst sitting and standing.

The submitted photomontage, prepared based on a photograph from Level 6, anticipates approximately half of the iconic Sydney Harbour Bridge and district water views would be lost as a result of the Tower building. Whilst this view loss is significant, it is noted that a compliant Tower building would cause this loss. The additional building height of the Tower would have no consequence on this view. The view loss is considered to be significant however the remainder of the iconic views enjoyed are unobstructed.

4. Assess the reasonableness of the proposal causing the impact

The proposed development as a whole complies with the maximum permissible floor space ratio. The proposed Tower departs from the height of building development standard by 29m, approximately 9 storeys above the 65m building height development standard. The proposal would affect a portion of angled views obtained the residential buildings however it would not obstruct iconic views towards of the distant Sydney CBD, Sydney Tower, Anzac Bridge and Parramatta and Lane Cove Rivers. Parts of the Sydney Harbour Bridge would be obstructed from the Forum West building. Some of the view loss of the city skyline and Sydney Harbour would be experienced, even in the case of a compliant Tower height.

Iconic views from the commercial building at 207 Pacific Highway would be affected. The view enjoyed of the distant Sydney Harbour Bridge would likely be lost as the result of a fully compliant Tower building. Despite this the siting of the proposal Tower and low rise would permit the majority of the existing view of the Sydney Harbour Bridge to be retained.

It is noted that the properties immediately north of the subject site which address the Pacific Highway are largely underdeveloped. The maximum building height permitted as per the Lane Cove LEP for these properties is 36m. Should these properties be developed to this maximum height, loss of iconic views of the city would likely occur.

In light of the above assessment, it is considered that the loss of views as a result of the current Tower proposal is reasonable and acceptable given the character of the St Leonards precinct.

THE SUITABILITY OF THE SITE (Section 79C (1) (c))

The Strategic planning documents relating to the site, including the Lane Cove LEP, the Metropolitan Strategy, draft Inner North Subregion Strategy 2007 and the St Leonards Strategy have determined the suitability for the site for mixed use development and more intensive forms of residential development. Further the proposal would result in increased housing and retail/commercial floor space near established transport nodes.

The site has been considered by experts in relation to contamination and geotechnical investigations, vibration and acoustic investigations, urban design, solar access, and accessibility and is found to be suitable for the proposed development.

Given the strategic planning direction for St Leonards, consideration of the relevant planning instruments and policies and the assessment of likely environmental impacts, the site is considered suitable for the proposed development.

RESPONSE TO NOTIFICATION (Section 79C (1) (d))

The proposal was notified in accordance with Council's notification policy. The application was notified on 17 September 2014 to the 14 October 2014.

A total of 115 individual submissions were received as a result of the notification period and two (2) petitions with 64 signatures for the proposal. All submissions received were provided to the JRPP for its review.

The issues raised in the submissions are largely addressed in the body of the assessment report, however the objections to the proposal are summarised below:

- *The proposal pre-empts the planning for the St Leonards South Precinct*

The draft St Leonards South Strategy has regard for the subject site however the development application for the redevelopment of this site has been assessed independent of this.

- *Suitability of the development for the site*

The strategic planning policies for St Leonards encourage increased residential accommodation and employment generating development within proximity to established transport nodes. The proposal has been designed with regard to the protection of the residential amenity of surrounding properties. The proposal would allow for acceptable solar access to residential properties south of the site and to public open spaces including a future public plaza site. The proposal would also not unreasonably reduce iconic views of distant Sydney CBD. The assessment of the proposed development concludes the development is suitable for the site.

- *Bulk and scale of the proposal is not suitable for the area being opposite dwelling houses*

The proposal does not achieve the maximum permissible FSR for the site. The proposal redistributes the building height from the low rise building to the Tower to ensure solar access to surrounding residential properties is maintained. The low rise and Tower are well articulated, in particular the low rise building presents as a two storey development similar to a townhouse development. The upper levels of the low rise building are setback from Marshall Avenue to reduce the bulk of the building.

- *Noise*

It is acknowledged that the construction associated with the development proposal would result in additional noise for residential and commercial properties. This noise is anticipated to be experienced during the construction phase of the proposal only. Draft conditions have been recommended to ensure construction noise is kept to a minimum.

The submitted Acoustic Report found that the occupation of the proposal would not unreasonably reduce the amenity of surrounding properties. Plant equipment is proposed to be situated on the roof levels of the development to reduce noise impacts and is subject to noise limits through draft conditions of consent.

- *Overshadowing*

The submitted shadow diagrams prepared by the applicant demonstrate the cumulative impact of the current proposal and the mixed use development under construction at the western section of Marshall Avenue. The shadow diagrams demonstrate, that the development including the additional height of Tower, does not affect any residential property for more than one hour during mid winter. Reasonable access to sunlight is maintained as a result of the proposal.

- *View loss*

The proposal would not unreasonably obstruct views towards iconic of the Sydney CBD. The proposal would affect a portion of the views enjoyed by the residential buildings situated north of the site on the opposite side of the Pacific Highway. The view loss assessment found that some of the view loss of the city skyline and Sydney Harbour would be experienced in the case of a compliant Tower height.

Iconic views of the Sydney Harbour Bridge from the commercial building at 207 Pacific Highway would be affected however this would likely be lost as the result of a fully compliant Tower building.

The properties immediately north of the subject site which address the Pacific Highway are largely underdeveloped. The maximum building height permitted as per the Lane Cove LEP for these properties is 36m. Should these properties be developed to this maximum height, views of the city from the properties to the north of the site would likely be affected.

- *Is the Voluntary Planning Agreement (VPA) a legal process*

Section 93(f) of the Environmental Planning and Assessment Act 1979 provides that a VPA may be entered into under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose. The VPA can deliver significant public benefits through the offer to enter into a VPA with council.

- *No approval has been given for the public plaza and the VPA may never occur*

The letter of offer from the applicant sets out that if the development application is approved, the payment would be made for the purposes of contributing towards the funding of the construction of a proposed St Leonards Rail Plaza and Bus/Rail Interchange over the railway line in St Leonards. In the event the St Leonards Rail Plaza and Bus/Rail Interchange does not proceed, funds may be used for the provision of public infrastructure generally within the St Leonards area.

- *Traffic congestion*

The proposed development would generate additional vehicular movements within the St Leonards precinct, however the anticipated traffic generation is not deemed to be unreasonable or unacceptable in the circumstance.

- *Insufficient on-site parking is provided*

The proposed on-site parking is considered to be acceptable given the site is situated within an accessible location, being within 400m walking distance to public transport which is regularly serviced with trains and buses.

THE PUBLIC INTEREST (Section 79C (1) (e))

The proposed development meets the objectives of Lane Cove Council's Local Environmental Plan 2009 and generally meets the provisions of Development Control Plan.

The proposed development would not result in adverse environmental impacts namely, the proposal would not unreasonably reduce iconic views enjoyed from surrounding residential and commercial developments and solar access would not be unreasonably reduced to residential dwellings situated south of the site.

The proposal is consistent with the desired future character of St Leonards. The proposal is a high quality design which responds well to the constraints of the site and to the future public plaza.

The additional height does not give rise to unreasonable environmental impacts and can deliver significant public benefits through the offer to enter into a VPA with council. Accordingly it is considered the proposal is in the public interest and can be approved subject to appropriate draft conditions.

CONCLUSION

The matters under Section 79C of the Environmental Planning and Assessment Act 1979 Act have been considered.

The proposal complies with the provisions of Lane Cove Council's Local Environmental Plan 2009 with regards to the FSR and seeks to vary the building height relating to the Tower building by transferring floor space from the low rise to the eastern portion of the site.

The proposed development generally complies with the provisions of the Lane Cove Development Control Plan. The proposal seeks to provide an alternative to visitable access

within bathrooms of the visitable units by providing an accessible bathroom in the ground floor of each building and increase the general accessibility through the building for residents and visitors. The proposal is accompanied by expert advice in this regard detailing its compliance with the relevant Australian Standards and the application Discrimination Act.

The issues raised by neighbours within Lane Cove Council LGA and Willoughby Council's LGA have been considered and discussed in the body of the report.

The proposal generally meets the objectives of the 10 planning principles of SEPP 65 and is considered to represent a high quality development that would not impinge upon the future character of the area. The proposal responds well to the surrounding commercial and residential developments. A transition in height is provided between the proposal and the low density residential properties situated opposite the site in Marshall Avenue. This proposal maintains adequate solar access to the residential properties surrounding the site, particularly those to the south and to Newlands Park. Despite a portion of views of the distant Sydney Harbour Bridge and Sydney Harbour being lost, in particular from residential dwellings, the proposal maintains reasonable access to existing iconic views of the CBD given the character of St Leonards.

The DA is accompanied with a VPA which is a formal letter of offer to Lane Cove Council for a monetary contribution of \$1,300 per m² of gross floor area located above the 65m height limit, this amounts to approximately \$8.36 million. The VPA would be in addition to any contribution payable under Council's Section 94 Plan for the development in its entirety.

If the development application is approved, the payment would be made for the purposes of contributing towards the funding of the construction of a proposed St Leonards Rail Plaza and Bus/Rail Interchange over the railway line in St Leonards. In the event the St Leonards Rail Plaza and Bus/Rail Interchange does not proceed, funds may be used for the provision of public infrastructure generally within the St Leonards area.

At its meeting of 17 November 2014 the council resolved to proceed with the Voluntary Planning Agreement in respect of the Development at 1-13A Marshall Avenue, St Leonards. The VPA is considered to be in the public interest.

The development proposal would make a positive contribution to the St Leonards Precinct and Lane Cove Local Government Area generally. The proposal is recommended for approval subject to conditions.

RECOMMENDATION

That pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act, 1979, as amended, the Sydney East Joint Regional Planning Panel grant development consent to Development Application DA13/32 for the construction of a mixed use development comprising of 269 residential units and retail/commercial, subdivision and the Voluntary Planning Agreement at 1-13A and part 15 and 15A Marshall Avenue, St Leonards subject to the following conditions:

Sydney Trains (RailCorp)

Deferred Commencement Condition

This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:

1. **A1**

The Applicant shall prepare and provide to Sydney Trains for approval/certification the following items:

- vi. Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducted on the site closest to the rail corridor.
- vii. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
- viii. Cross sectional drawings showing the tunnel easement, tunnel location, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail tunnel. All measurements are to be verified by a Registered Surveyor.
- ix. Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains easement and tunnel location.
- x. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

Operational

General

2. (20) That the development be strictly in accordance with the following drawings prepared by:

Nettleton Tribe Partnership Pty Ltd

4264_DA001	Site Plan, dated 28.08.2014
4264_DA003_1	Basement Level 3 Plan, Rev A, dated 20.11.2014
4264_DA004_1	Basement Level 2 Plan, Rev A, dated 20.11.2014
4264_DA005_1	Basement Level 1 Plan, Rev A, dated 20.11.2014
4264_DA006_1	Ground level – overall Plan, dated 20.11.2014
4264_DA007_1	Level 1 – Overall Plan, Rev A, dated 20.11.2014
4264_DA008_1	Level 2 – Overall Plan, Rev A, dated 20.11.2014
4264_DA009_1	Level 3 – Overall Plan, Rev A, dated 20.11.2014
4264_DA010_1	Typical Overall Level Plan, Rev A, dated 20.11.2014
4264_DA011	Low Rise Building – Ground Level Plan, dated 28.8.2014
4264_DA012_1	Low Rise Building – Level 1 Plan, Rev A, dated 20.11.2014
4264_DA013_1	Low Rise Building – Level 2 Plan, Rev A, dated 20.11.2014
4264_DA014_1	Low Rise Building – Level 3 Plan, Rev A, dated 20.11.2014

4264_DA015_1	Low Rise Building – Level 4 Plan, Rev A, dated 20.11.2014
4264_DA016_1	Low Rise Building – Level 5 Plan, Rev A, dated 20.11.2014
4262_DA17_1	Low Rise Building – Level 6 Plan, Rev A, dated 20.11.2014
4264_DA018	Low Rise Building – Roof Plan, dated 28.8.2014
4264_DA019_1	High Rise Building – Ground Level Plan, Rev A, dated 20.11.2014
4264_DA020_1	High Rise Building – Level 1 Plan, Rev A, dated 20.11.2014
4264_DA021	High Rise Building – Level 2 Plan, dated 28.8.2014
4264_DA022	High Rise Building – Level 3 Plan, dated 28.8.2014
4264_DA023_1	High Rise Building – Midrise Level 4-7 Plan, Rev A, dated 20.11.2014
4264_DA024_1	High Rise Building – midrise level 8-13 Plan, Rev A, dated 20.11.2014
4264_DA025_1	High Rise Building - Level 14 Plan, Rev A, dated 20.11.2014
4264_DA026_1	High Rise Building – High Rise Level 15-25 Plan, Rev A, dated 20.11.2014
4264_DA027_2	High Rise Building – High Rise Level 26-27 Plan, dated 25.11.2014
4264_DA028_1	High Rise Building – Penthouse Level 28 Plan, Rev A, dated 20.11.2014
4264_DA029	High Rise Building –Plant Level Plan, dated 28.8.2014
4264_DA030	High Rise Building Roof Plan, dated 28.8.2014
4264_DA031_1	Overall North Elevation, dated 27.11.2014
4264_DA032_1	Overall South Elevation, dated 27.11.2014
4264_DA033_1	High Rise Building East/West Elevation, dated 27.11.2014
4264_DA036_1	East-West Overall Section, dated 27.11.2014
4264_DA037	Sections – Low Rise Building, dated 5.9.2014
4264_DA038	Sections – High Rise Building, dated 27.11.2014
4264_DA061	Adaptable Units – Sheet 1, dated 28.8.2014
4264_DA062	Adaptable Units – Sheet 2, dated 28.8.2014
4264_DA063	Adaptable Units – Sheet 3, dated 28.8.2014

Site Image, Landscape Architects

SS14-2817 000	Cover Sheet, Rev B, dated 24.7.2014
SS14-2817 100	Landscape Masterplan, Rev B, dated 24.7.2014
SS14-2817 101	Landscape Masterplan Marshall Street Frontage, Rev B, dated 24.7.2014
SS14-2817 102	Landscape Masterplan Marshall Lane Frontage, Rev B, dated 24.7.2014
SS14-2817 501	Landscape Details, Rev B, dated 24.7.2014
SS14-2817 502	Landscape Details, Specification Notes and Plant Schedule, Rev B, dated 24.7.2014

except as amended by the following conditions.

3. Prior to the issue of the construction certificate, details of external lighting and the operation system shall be submitted to the Private Certifying Authority and shall be implemented prior to the issue of an occupation certificate.
4. Prior to the issue of a construction certificate the applicant shall submit amended plans to the Private Certifying Authority demonstrating 56 accessible car spaces within the basement. The spaces shall be clearly marked as accessible spaces and be implemented within the basement prior to the issue of an occupation certificate.
5. Prior to the issue of the construction certificate the applicant shall implement the recommendations of the Acoustic Report prepared by Renzo Tonin and Associates and dated 27 June 2014 (Revision 1).

6. Prior to the issue of the construction certificate the applicant would be required to submit amended plans for the adaptable units detailing compliance with the requirements of AS4299 in accordance with the Access Review prepared by Morris-Goding Accessibility Consulting and dated 21 November 2014 and submitted to the Certifying Authority.
7. Prior to the issue of the construction certificate, the recommendations within the Access Review, prepared by Morris-Goding Accessibility Consulting and dated 21 November 2014 shall be implemented on the plans and submitted to the Certifying Authority.
8. Prior to the issue of the construction certificate the applicant shall submit amended plans of the Tower building to the certifying authority detailing the conversion of the winter balconies into balconies to Units 03 and Units 07 on Levels 4 to 7.
9. A Voluntary Planning Agreement (VPA) shall be entered into between Lane Cove Council and Loftex Pty Ltd for 1-13A and part of 15 and 15A Marshall Avenue, which is consistent with the VPA dated 5 March 2015. The VPA shall be satisfied as per the VPA requirements.
10. (1) The submission of a Construction Certificate and its issue by Council or Private Certifier PRIOR TO CONSTRUCTION WORK commencing.
11. (2) All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.
12. (11) The approved plans must be submitted to a Sydney Water Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site www.sydneywater.com.au see Your Business then Building & Developing then Building & Renovating or telephone 13 20 92.

The consent authority or a private accredited certifier must:-

- Ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the issue of any Construction Certificate.
13. (12) Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home Building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council or the PCA that they have complied with the applicable requirements of Part 6. **Council as the PCA will not release the Construction Certificate until evidence of Home Owners Warranty Insurance or an owner builder permit is submitted.** THE ABOVE CONDITION DOES NOT APPLY TO COMMERCIAL/INDUSTRIAL CONSTRUCTION, OWNER BUILDER WORKS LESS THAN \$5000 OR CONSTRUCTION WORKS LESS THAN \$20,000.
 14. (21) THE PAYMENT OF A CONTRIBUTION FOR AN ADDITIONAL **446.4 PERSONS AND 327M² OF RETAIL/COMMERCIAL FLOOR SPACE** IN ACCORDANCE WITH COUNCIL'S SECTION 94 CONTRIBUTIONS PLAN. THIS

PAYMENT BEING MADE PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE AND IS TO BE AT THE CURRENT RATE AT TIME OF PAYMENT. **THE AMOUNT IS \$3,680,917.38 AT THE CURRENT RATE OF \$9636 PER PERSON AND \$97.34 PER M² RETAIL/COMMERCIAL FLOOR SPACE (CALCULATED AT 2014/2015 RATES).** THIS AMOUNT INCORPORATES THE CREDIT FOR PREVIOUS DEVELOPMENT.

NOTE: PAYMENT MUST BE IN BANK CHEQUE. PERSONAL CHEQUES WILL NOT BE ACCEPTED.

THIS CONTRIBUTION IS FOR COMMUNITY FACILITIES, OPEN SPACE/ RECREATION AND ROAD UNDER THE LANE COVE SECTION 94 CONTRIBUTIONS PLAN WHICH IS AVAILABLE FOR INSPECTION AT THE CUSTOMER SERVICE COUNTER, LANE COVE COUNCIL, 48 LONGUEVILLE ROAD, LANE COVE.

15. (145) **Critical concrete pours**

The applicant may apply to undertake critical concrete pours outside of normal working hours provided all of the following requirements are satisfied:

- the submission, at least seven (7) working days prior to the critical concrete pour, to Council of an application along with the prescribed fee, in the prescribed Council form, that includes a written statement of intention to undertake a critical concrete pour and that also contains details of the critical concrete pour, the number of such pours required, their likely time duration, impact statement and how foreseeable impacts will be addressed (i.e light spill/ noise/ traffic etc);
- adjoining and nearby affected residents being notified in writing at least two (2) working days prior to the pour, and a copy of this notice to be provided to Council for review prior to issue;
- no work and deliveries to be carried out before 7.00am and after 10pm; and
- no work occurring on a Sunday or any Public Holiday.

All other relevant requirements relating to critical concrete pours that are the subject of other conditions of this development consent remain relevant at all times.

Following any critical concrete pour, the applicant must advise Council in writing no later than seven (7) working days after the completion of the pour, what measures were actually undertaken by the applicant with a view to minimising any potential adverse impacts as a result of the pour, including but not limited to impacts with respect to noise, light spillage, and the positioning of the required vehicle(s), so that all related matters can be reviewed and any potential adverse events and/or impacts addressed in future critical concrete pours.

NOTE:

- **There is a critical concrete pour application fee**
- **A critical concrete pour application and prior approval is required**
- **No work shall be undertaken outside standard working hours without prior written approval from Council.**
- **Council reserves the right to refuse the application with or without reason.**

16. (17) An Occupation Certificate being obtained from the Principal Certifying Authority before the occupation of the building.

17. (24) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the “Your Business” section of the web site www.sydneywater.com.au then follow the “e-Developer” icon or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the plan of subdivision.

18. All building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:-

Monday to Friday (inclusive) 7am to 5.30pm **High noise generating activities, including rock breaking and saw cutting must not be carried out continuously for longer than 3 hours without a 1 hour break.**

Saturday 8am to 12 noon **with NO excavation, haulage truck movement, rock picking, sawing, jack hammering or pile driving to be undertaken. Failure to fully comply will result in the issue of a breach of consent P.I.N.**

Sunday No work Sunday or any Public Holiday.

A Notice/Sign showing permitted working hours and types of work permitted during those hours, including the applicant’s phone number, project manager or site foreman, shall be displayed at the front of the site.

19. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.
20. The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise.
21. Continuous balustrading is to be provided to all balconies, decks, terraces, landings and the like where more than 1m above the ground or floor surface beneath. Such balustrading is to have a minimum height of 1m. Openings in the balustrade must not allow a 125mm sphere to pass through and where the floor is more than 4m above the ground or floor surface below, any horizontal or near horizontal elements within the balustrade between 150mm and 760mm above the floor must not facilitate climbing.
22. Depositing or storage of builder's materials on the footpath or roadways within the Municipality without first obtaining approval of Council is PROHIBITED.

Separate approval must be obtained from Council's Works and Urban Services Department PRIOR TO THE PLACEMENT of any building waste container ("Skip") in a public place.

23. Prior to the commencement of any construction work associated with the development, the Applicant shall erect a sign(s) at the construction site and in a prominent position at the site boundary where the sign can be viewed from the nearest public place. The sign(s) shall indicate:
- a) the name, address and telephone number of the Principal Certifying Authority;
 - b) the name of the person in charge of the construction site and telephone number at which that person may be contacted outside working hours; and
 - c) a statement that unauthorised entry to the construction site is prohibited.

The signs shall be maintained for the duration of construction works.

24. Structural Engineer's details being submitted PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE for the following:-

- a) underpinning;
- b) retaining walls;
- c) footings;
- d) reinforced concrete work;
- e) structural steelwork;
- f) upper level floor framing;

25. Where Lane Cove Council is appointed as the Principal Certifying Authority, it will be necessary to book an inspection for each of the following stages during the construction process. Forty eight (48) hours notice must be given prior to the inspection being required:-

- a) The pier holes/pads before filling with concrete.
- b) All reinforcement prior to filling with concrete.
- c) The dampcourse level, ant capping, anchorage and floor framing before the floor material is laid.
- d) Framework including roof and floor members when completed and prior to covering.
- e) Installation of steel beams and columns prior to covering
- f) Waterproofing of wet areas
- g) Stormwater drainage lines prior to backfilling
- h) Completion.

26. A check survey certificate is to be submitted at completion of the development.

Note: All levels are to relate to the reduced levels as noted on the approved architectural plans and should be cross-referenced to Australian Height Datum.

27. Noise from domestic air conditioners is not to be audible in any adjoining dwelling between the hours of 10:00pm and 7:00am on weekdays or between the hours of 10:00pm and 8:00am on weekends and public holidays.

If the noise emitted from the air conditioning unit results in offensive noise, Council may prohibit the use of the unit, under the provisions of the Protection of the Environment Operations Act 1997.

28. (67)
- (a) The use of mechanical rock pick machines on building sites is prohibited due to the potential for damage to adjoining properties.
 - (b) Notwithstanding the prohibition under condition (a), the principal certifying authority may approve the use of rock pick machines providing that:-
 - (1) A Geotechnical Engineer's Report that indicates that the rock pick machine can be used without causing damage to the adjoining properties.
 - (2) The report details the procedure to be followed in the use of the rock pick machine and all precautions to be taken to ensure damage does not occur to adjoining properties.
 - (3) With the permission of the adjoining owners and occupiers comprehensive internal and external photographs are to be taken of the adjoining premises for evidence of any cracking and the general state of the premises PRIOR TO ANY WORK COMMENCING. Where approval of the owners/occupiers is refused they be advised of their possible diminished ability to seek damages (if any) from the developers and where such permission is still refused Council may exercise its discretion to grant approval.
 - (4) The Geotechnical Engineer supervises the work and the work has been carried out in terms of the procedure laid down.

COMPLIANCE WITH THE REQUIREMENTS OF THIS CONDITION
MUST BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE.

29. An *automatic* fire detection and alarm system, designed to ensure the occupants are given adequate warning so they can evacuate the building in an emergency, must be installed in the dwelling.

This requirement is satisfied by:-

- (a) Smoke alarms installed in—
 - (i) Class 1a buildings in accordance with 3.7.2.3 of the Building Code of Australia; and
 - (ii) in Class 1b buildings in accordance with 3.7.2.4 and 3.7.2.5 of the Building Code of Australia
- (b) Smoke alarms complying with AS 3786.
- (c) Smoke alarms connected to the consumer mains power where consumer power is supplied to the building.

Location – Class 1b buildings

In a Class 1b building, smoke alarms must be installed on or near the ceiling—

- (a) in every bedrooms; and
- (b) in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and
- (c) on each other storey.

30. The site being properly fenced to prevent access of unauthorised persons outside of working hours.
31. **BASIX** - Compliance with all the conditions of the BASIX Certificate lodged with Council as part of this application.
32. **Long Service Levy** Compliance with Section 109F of the *Environmental Planning and Assessment Act 1979*; payment of the Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or, where such a levy is payable by instalments, the first instalment of the levy) – All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%.

COMPLIANCE WITH THE REQUIREMENTS OF THIS CONDITION MUST BE SATISFIED **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE.**

Sydney Trains (RailCorp)

33.
 - B1. If required by Sydney Trains, prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.
34.
 - B2. Unless advised otherwise the Applicant shall comply with the following items:
 - All excavation works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.
 - No rock anchors/bolts are to be installed into RailCorp's property or easements.
 - On completion of the basement slab works all temporary rock anchors/bolts along the rail corridor boundary are to be destressed in accordance with the Geotechnical and Structural Reports.
 - The project engineer is to conduct vibration monitoring during the course of the excavation.

A Construction Certificate is not to be issued until the measures detailed in this condition of consent have been incorporated into the construction drawings and specifications. Prior to the commencement of works the Principle Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

35.
 - B3. The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:
 - Machinery to be used during excavation/construction.

- If required by Sydney Trains, track monitoring plan detailing the proposed method of track monitoring during excavation and construction phases.
- If required by Sydney Trains, a rail safety plan including instrumentation and the monitoring regime.

The Principle Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

36.

B4. Sydney Trains and Transport for NSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.

37.

B5. Copies of any certificates, drawings or approvals given to or issued by Sydney Trains must be submitted to Council for its records.

38.

B6. Prior to the issuing of an Occupation Certificate the Applicant is to submit the as-built drawings to Sydney Trains, Transport for NSW and Council. The Principal Certifying Authority is not to issue the Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

39.

B7. Prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.

40.

B8. Prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

41.

B9. In exercising its functions in relation to any Sydney Trains conditions, Sydney Trains reserves the right to liaise with Transport for NSW and impose any requirements (as advised by those entities) on their behalf as if they were Sydney Trains requirements.

42. B10. An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
43. B11. Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
44. B12. The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
45. B13. If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
46. B14. Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
47. B15. The Sydney Trains corridor access gates located opposite the development site shall be unobstructed at all times.
48. B16. No construction vehicles (including staff vehicles), equipment, bins or building material shall occupy the land used for car parking purposes located opposite the development site.

Department of Infrastructure and Regional Development

49. The building must not exceed a maximum height of 166.8m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lighting rods, any roof top garden plantings, exhaust flues etc.
50. Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the building.

51. At completion of the construction of the building, a certified surveyor must notify in writing the airfield design manager of the finished height of the building.

NSW Roads and Maritime Services

52. All vehicles should enter and leave the site in a forward direction.
53. All vehicles should be wholly contained on site before being required to stop.
54. The layout of the proposed car parking areas associated with the subject development (including driveway, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS2890.1-2004 and AS2890.2-2002 for heavy vehicle usage.
55. The swept path of the longest vehicle (including garbage trucks) entering and exiting the site, as well as maneuverability through the site, shall be in accordance with AUSTROADS.

Traffic and Transport

56. The car park design shall comply with AS 2890.1-2004 including parking spaces, ramps, aisles, disabled parking and loading areas. All other aspects of the car parking areas shall comply with AS 2890.2-2002 for Loading Facilities and Services Vehicles.
57. The access to the public car park shall comply with Australian Standards AS 2890.1-2004.
58. All disabled car spaces in the public car park shall be adequately signposted and line marked, and provided in accordance with AS2890.6. The garbage collection area shall be clearly signposted and line marked, and provided in accordance with AS2890.2
59. Pedestrians shall be accommodated for on all approaches of the roundabout in Marshall Avenue including on the driveway with the inclusion of a pedestrian refuge. A stop line and stop sign shall be included in the edge of the property to ensure pedestrian safety along the northern side of Marshall Street.
60. Pedestrian access, including disabled and pram access shall be maintained throughout the course of the construction as per AS-1742.3, Part 3 - Traffic control devices for works on roads.
61. Prior to the issue of the occupation certificate the applicant shall construct, at their cost, a shared zone for the entire length of Marshall Lane to a design and specification approved by Lane Cove Council.
62. Provision shall be made for on-site visitor cycle parking, in addition to the cycle parking in the basement car park. The public cycle parking shall be clearly signposted, well lit and easily accessible by bike.

63. A Construction Traffic Management Plan (CTMP) shall be lodged with Council prior to the issue of a Construction Certificate. The CTMP shall be prepared in accordance with the requirements of the *Lane Cove Development Control Plan, Part R – Traffic Transport and Parking*. The CTMP shall specify proposed Work/Construction Zones and the impact of the construction traffic activities to all road users including pedestrians and cyclists.
64. Work Zone Permit Applications shall be submitted to Council prior to the commencement of works. No works shall commence on site until the Work Zone signs have been installed Council.
65. Prior to the issue of the construction certificate detailed drawings of the proposed roundabout at Marshall Avenue and Holdsworth Avenue and the proposed location of the driveway shall be submitted to Lane Cove Council for Local Traffic Committee for endorsement.

Tree Protection

66. Lane Cove Council regulates the **Preservation of Trees and Vegetation** in the Lane Cove local government area. Clause 5.9(3) of *Lane Cove Local Environmental Plan 2009* [the "LEP"], states that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by development consent or a permit granted by the Council. Removal of trees or vegetation protected by the regulation is an offence against the Environmental Planning and Assessment Act 1979 (NSW). The maximum penalty that may be imposed in respect to any such offence is \$1,100,000 or a penalty infringement notice can be issued in respect of the offence, the prescribed penalty being \$1,500.00 for an individual and \$3,000.00 for a corporation. The co-operation of all residents is sought in the preservation of trees in the urban environment and protection of the bushland character of the Municipality. All enquiries concerning the Preservation of Trees and Vegetation must be made at the Council Chambers, Lane Cove.
67. The applicant shall obtain written authority from Council prior to the pruning of any street trees or trees in neighbouring properties. Tree 33 (the Forest Oak street tree) is exempt from this condition and may be removed by the developer.
68. There shall be no stockpiling of topsoil, sand, aggregate, spoil or any other construction material or building rubbish on any nature strip, footpath, road or public open space park or reserve.
69. Excavation within 6 metres of street trees directly adjacent to the site shall be carried out under the supervision of the project arborist (Level 5). Any tree roots encountered during excavation must be cut cleanly by the arborist.
70. The footings supporting the front boundary walls shall remain in place as a root protection measure. Machinery usage in close proximity to the wall footings shall be carried out in such a way that the footings are not disrupted.
71. A 1.8m high chain mesh fence shall be erected encompassing the entire nature strip between the footpath and the street gutter. Adequate room must be provided to allow car passengers to exist parked cars. The tree protection zones must not enclose the parking metres. The tree protection area shall not be used for the storage of building

materials, machinery, site sheds, or for advertising and soil levels within the tree protection area shall remain undisturbed.

72. A waterproof sign must be placed on tree protection zones at 6 metre intervals stating 'NO ENTRY TREE PROTECTION ZONE – this fence and sign are not to be removed or relocated for the work duration.' Minimum size of the sign is to be A4 portrait with NO ENTRY TREE PROTECTION ZONE in capital Arial Font size 100, and the rest of the text in Arial font size 65.
73. All tree protection measures and signage must be erected **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR THE COMMENCEMENT OF WORKS, WHICHEVER OCCURS FIRST.** This includes demolition or site preparation works, and tree protection measures must remain in place for the duration of the development, including construction of the driveway crossing.

BOND ON STREET AND COUNCIL TREES

74. Pursuant to Section 80A(6)(a) and (7) of the Environmental Planning and Assessment Act 1979, the applicant must, prior to the issue of the first construction certificate, provide security in the amount of \$15,000 (by way of cash deposit with the Council, or a guarantee satisfactory to the Council) for the payment of the cost of making good any damage caused, as a consequence of the doing of anything to which this development consent relates, to all street trees that are on the public road reserve immediately adjoining the land subject of this development consent.

The Council may apply funds realised from the security to meet the cost of making good any damage caused, as a consequence of the doing of anything to which this development consent relates, to the said trees. If the cost of making good any damage caused to the said trees as a consequence of the doing of anything to which this development consent relates exceeds the amount of the security provided by the applicant additional security must be provided by the applicant to the Council to cover that cost and the Council may apply funds realised from the additional security to meet the total cost of making good the damage.

The bond shall be refundable following issue of the Final Occupation Certificate. The owner must notify Council's Senior Tree Assessment Officer who will inspect the street trees and organize the bond refund.

Landscaping

75. The applicant shall submit detailed landscape working drawings for construction which achieve the overall landscape design intent and comply with the conditions of the development consent. The plans shall be submitted to the private certifier prior to the issue of a Construction Certificate. Each plan/ sheet is to be certified by a qualified landscape architect / environmental designer or horticulturist. The landscape plan for construction shall show the treatment of common open space areas, front, rear and side setbacks, balconies or on-structure plantings, any decking and raised screening or general landscaping treatment (including sections, elevations, landscape profiles and specifications, consistent with Councils Landscape Checklist and landscape policy).
76. The applicant shall submit detailed landscape working drawings for construction including sections, elevations and landscape profiles and specifications of the

proposed public open space that comply with the conditions of the development consent, and are to be submitted to the private certifier prior to the issue of a Construction Certificate.

Each plan/ sheet is to be certified by a qualified landscape architect / environmental designer or horticulturist. The detailed landscape construction plans shall show the treatment of open space areas, level changes, treatment of all built form/ pedestrian interfaces, detailed hard and soft material selection and any other general landscaping treatment, within the communal open space and any future open space connections and linkages.

77. Provision shall be made for on-structure landscaping to have adequate soil depth, volume and suitable profile to support the number of trees and shrubs indicated on the plans by Site image.
78. A sufficient number of groundcovers and low shrubs which are planted at appropriate distances and depths shall be planted within twelve (12) months of completion of all landscaping works. Where screen planting is required throughout the development, plants must have a height of 2 m at planting as per Landscape Documentation Package prepared by Site Image.
79. All landscape works is to be completed to a professional standard, free of any hazards or unnecessary maintenance problems and that all plants are consistent with NATSPEC specifications.
80. The proposed tree plantings shall have a mature height of no less than 6m at maturity, to be installed in pot sizes no smaller than 45 litres in accordance with the Landscape Documentation Package prepared by Site Image.

MATTERS TO BE SATISFIED PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

81. A qualified practising landscape architect, Landscape / environmental designer or horticulturist, shall certify that the proposed subsoil drainage and any associated waterproofing membrane, have been installed in accordance with the details shown on the landscape working drawings and specification. Works are not to progress until the principal certifying authority has confirmed that this condition has been satisfied.
82. A landscape practical completion report shall be prepared by a consultant landscape architect and submitted to Council or the accredited certifier within 7 working days of the date of practical completion of all landscape works. This report shall certify that all landscape works have been completed in accordance with the approved landscape working drawings. A copy of this report is to accompany a request for the issue of an Occupation Certificate
83. Prior to the issue an Occupation Certificate, the applicant / developer shall submit evidence of an agreement for the maintenance of all site landscaping by a qualified horticulturist, landscape contractor or landscape architect, for a period of 12 months from date of issue.
84. At the completion of the landscape maintenance period, the consultant landscape architect/ designer shall submit a report to Council or the accredited certifier, certifying that all plant material has been successfully established and that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the 12 month landscape maintenance strategy has been provided to the Strata Managers /Owners/ Occupiers.

Engineering

General Engineering Conditions

85. **Design and Construction Standards:** All engineering plans and work shall be carried out in accordance with Council's standards and relevant development control plans except as amended by other conditions.
86. **Materials on Roads and Footpaths:** Where the applicant requires the use of Council land for placement of building waste, skips or storing materials a "*Building waste containers or materials in a public place*" application form is to be lodged. Council land is not to be occupied or used for storage until such application is approved.
87. **Works on Council Property:** Separate application shall be made to Council's Urban Services Division for approval to complete, any associated works on Council property. This shall include vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be submitted **prior to the start of any works on Council property.**
88. **Permit to Stand Plant:** Where the applicant requires the use of construction plant on the public road reservation, an "*Application for Standing Plant Permit*" shall be made to Council. Applications shall be submitted and approved **prior to the start of any related works.** Note: allow 2 working days for approval.
89. **Restoration:** Public areas must be maintained in a safe condition at all times. Restoration of disturbed Council land is the responsibility of the applicant. All costs associated with restoration of public land will be borne by the applicant.
90. **Public Utility Relocation:** If any public services are to be adjusted, as a result of the development, the applicant is to arrange with the relevant public utility authority the alteration or removal of those affected services. All costs associated with the relocation or removal of services shall be borne by the applicant.
91. **Pedestrian Access Maintained:** Pedestrian access, including disabled and pram access, is to be maintained throughout the course of the construction as per AS-1742.3, '*Part 3 - Traffic control devices for works on roads*'.
92. **Council Drainage Infrastructure:** The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement. If a Council stormwater line is located on the property during construction, Council is to be immediately notified. Where necessary the stormwater line is to be relocated to be clear of the proposed building works. All costs associated with the relocation of the stormwater line are to be borne by the applicant.
93. **Services:** Prior to any excavation works, the location and depth of all services must be ascertained. All costs associated with adjustment of the public utility will be borne by the applicant.
94. **Overland Flow around Buildings:** To prevent stormwater from entering the building the finished habitable ground floor level of the building must be a minimum of 150mm above the adjacent finished ground level.

95. **Overland Flow:** Overland flows generated from a 1 in 100 year storm event must be accepted at the upstream boundary and conveyed through the site. A hydraulic evaluation of the overland flow path shall be prepared by a suitably qualified engineer the hydraulic evaluation is to comply with Council's DCP- Stormwater Management.
96. **Work Zone:** A Traffic Construction Management Plan and an application for a Work Zone adjacent the development shall be submitted to Lane Cove Council for determination, prior to the commencement of the demolition and prior to any works that require construction vehicle and machinery movements to and from the site. If the development has access to a State Road, the Construction Management Plan and Work Zone need to be referred to RMS for approval. The approval of the Traffic Construction Management Plan and application for a Work Zone by Council's Traffic Section must be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
97. **Heavy Vehicle Duty Employee and Truck Cleanliness:** The applicant shall
- Inform in writing all contractors of Council's requirements relating to truck cleanliness leaving the site.
 - Keep a register of all contractors that have been notified, the register is to be signed by each contractor. The register must be available for access by Council officers at all times.
 - Place an employee within close proximity of the site exit during site operation hours to ensure that all outgoing heavy vehicles comply with Council's requirements. This employee shall liaise with heavy vehicle drivers and provide regular written updates to drivers on the conditions of entry to the subject site.
- Those drivers who have been determined to continually not comply with Council's requirements, either by the developer or authorised Council officers, shall not be permitted re-entry into the site for the duration of the project.
98. **Truck Shaker:** A truck shaker ramp must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass the truck shaker. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.
99. **Covering Heavy Vehicle Loads:** All vehicles transporting soil material to or from the subject site shall ensure that the entire load is covered by means of a tarpaulin or similar material. The vehicle driver shall be responsible for ensuring that dust or dirt particles are not deposited onto the roadway during transit. It is a requirement under the Protection of the Environment Operations (Waste) Regulation, 1996 to ensure that all loads are adequately covered, and this shall be strictly enforced by Council's ordinance inspectors. Any breach of this legislation is subject to a "*Penalty Infringement Notice*" being issued to the drivers of those vehicles not in compliance with the regulations.
100. **On-Site Stormwater Detention System - Marker Plate:** The on-site detention system shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in part O Council's DCP-Stormwater Management. An approved plate may be purchased from Council's customer service desk.

101. **Cast in Situ Drainage Pits:** Any drainage pit within a road reserve, a Council easement, or that may be placed under Council's control in the future, shall be constructed of cast in situ concrete and in accordance with part O Council's DCP-Stormwater Management.
102. **On-Site Stormwater Detention Tank:** All access grates to the on site stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 m in depth must be fitted with step irons.
103. **Stormwater Requirement:** The following details need to be added to the amended stormwater design plans:
 - The design needs to incorporate an adequate gross pollutant trap (GPT).
 - Discharge directly to the kerb and gutter is prohibited. The stormwater discharge from the development needs to drain directly into the nearest Council pipe line system. The extension of the Council stormwater system will require a minimum diameter 375mm reinforced concrete pipe.
 - All sub-soil drainage systems for the basement car park areas are to be connected to a pit and not directly to the Kerb and gutter.
 - Details of the pump-out drainage details for the basement car park areas of seepage water.

The design and construction of the drainage system is to fully comply with, AS-3500 and part O Council's DCP-Stormwater Management. The design shall ensure that the development, either during construction or upon completion, does not impede or divert natural surface water so as to have an adverse impact upon adjoining properties.

Engineering conditions to be complied with prior to Construction Certificate

104. **(X1) 88B Instrument:** An instrument under 88B of the conveyancing Act 1919 plus two copies is to be submitted to Council prior to the release of subdivision certificate. The 88B instrument shall properly reflect the requirements of the conditions of the development consent, plans forming part of the consent and Council's policies.
Where Council, inter-allotment drainage lines or services are located within the development, drainage easements and easements for services shall be created in accordance with Council's minimum widths as set out in Council's DCP-Stormwater Management.
Part 2 of the 88B instrument shall contain a provision that any easements, rights of way, covenants shall not be extinguished or altered without the written consent of Council.
105. **(X2) Linen Plan of Subdivision:** A Linen Plan of Subdivision for the lot consolidation are required plus 5 copies are to be submitted to Council prior to the release of subdivision certificate.

The linen plan of subdivision shall be suitable for endorsement by the general manager pursuant to Section 327 of the local government act and shall properly reflect the requirements of the conditions of the development consent, plans forming part of the consent and Council's policies

106. **Drainage Plans Amendments:** The stormwater drainage plan **numbered** H0000:H1011/Rev 02 prepared by **Cardno Pty Ltd** dated **June 2014** is to be amended to reflect the above condition titled '*Stormwater requirement*'. The amended design is to be certified that it fully complies with, AS-3500 and part O Council's

DCP-Stormwater Management; certification is to be by a suitably qualified engineer. The amended plan and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

The Principal Certifying Authority is to be satisfied that the amendments have been made in accordance with the conditional requirements and the amended plans are adequate for the purposes of construction. They are to determine what details, if any, are to be added to the construction certificate plans, in order for the issue of the Construction Certificate.

107. **Positive Covenant Bond 1:** The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of the required positive covenants for OSD. Lodgement of this bond is required **prior to the issue of the Construction Certificate.**
108. **Positive Covenant Bond 2:** The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of the required positive covenants for the Pump-Out System. Lodgement of this bond is required **prior to the issue of the Construction Certificate**
109. **Positive Covenant Bond 3:** The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of the required positive covenants for maintenance of overland flow path. Lodgement of this bond is required **prior to the issue of the Construction Certificate**
110. **Design of Retaining Structures:** All retaining structures greater than 1m in height are to be designed and certified for construction by a suitably qualified engineer. The structural design is to comply with, all relevant design codes and Australian Standards. The design and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**
111. **Geotechnical Report:** A geotechnical report is to be completed for the excavation and ground water impacts associated with this development. The Geotechnical Report and supporting information are to be prepared by a suitably qualified geotechnical engineer and be submitted to Principle Certifying Authority prior to issue of a Construction Certificate.
112. **Geotechnical Monitoring Program:** Excavation works associated with the proposed development must be overseen and monitored by a suitably qualified engineer. A Geotechnical Monitoring Program shall be submitted to the principle certifying authority prior to issue of a Construction Certificate. The Geotechnical Monitoring Program must be produced by suitably qualified engineer ensuring that all geotechnical matters are regularly assessed during construction.
The Geotechnical Monitoring Program for the construction works must be in accordance with the recommendations of the Geotechnical Report and is to include
 - Recommended hold points to allow for inspection by a suitably qualified engineer during the following construction procedures;
 - Excavation of the site (face of excavation, base, etc)
 - Installation and construction of temporary and permanent shoring/retaining walls.
 - Foundation bearing conditions and footing construction.
 - Installation of sub-soil drainage.
 - Location, type and regularity of further geotechnical investigations and testing.

Excavation and construction works must be undertaken in accordance with the Geotechnical and Monitoring Program.

113. **Construction Methodology Report:** There are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations. A suitably qualified engineer must prepare a Construction Methodology report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to Principal Certifying Authority prior to issue of a Construction Certificate. The details must include a geotechnical report to determine the design parameters appropriate to the specific development and site.

The Report must include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

114. **Dilapidation Report** The applicant is to provide a dilapidation report of all adjoining properties and any of Councils infrastructure located within the zone of influence of the proposed excavation.

Dilapidation report must be conducted by a suitably qualified engineer **prior to the commencement of any demolition, excavation or construction works**. The extent of the survey must cover the zone of influence that may arise due to excavation works, including dewatering and/or construction induced vibration. The Initial dilapidation report must be submitted to Principal Certifying Authority **prior to issue of a Construction Certificate**.

A second dilapidation report, recording structural conditions of all structures originally assessed prior to the commencement of works, must be carried out at the completion of the works and be submitted to Principle Certifying Authority **prior to issue of an Occupation Certificate**.

115. **Road Dilapidation Survey:** The applicant is prepare a dilapidation survey and a dilapidation report detailing the existing state of repair / condition of the road surfaces along Marshall Avenue, Marshall Lane, Berry Road and Canberra Street, adjacent the site. The survey and report need to be submitted to the Council prior to the issue of the first **Construction Certificate**. Following completion of construction of the development and prior to the issue of the first Occupation Certificate, the applicant is to prepare a second dilapidation survey and a dilapidation report that includes details of all changes and damage caused to the surface of the said public roads as a consequence truck movements associated with the construction of the development. The Council may apply funds realised from the security referred to in applicable condition to meet the cost of making good any damage caused to the surface of the said public road as a consequence truck movements associated with the construction of the development to which the consent relates. The dilapidation surveys and reports must be prepared by an engineer registered with the Institute of Engineers.

116. **Car Parking Certification:** The plans and supporting calculations of the internal driveway, turning areas, ramps, garage opening widths, parking space dimensions and any associated vehicular manoeuvring facilities shall be submitted to the Principal Certifying Authority.

The plans shall be prepared and certified by a suitably qualified engineer. The design is to be certified that it fully complies with AS 2890 Series and Council's standards

and specifications. The design and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

117. **Proposed Vehicular Crossing:** The proposed vehicular crossing shall be constructed to the specifications and levels issued by Council. A '*Construction of a Multi Unit Footpath Crossing*' application shall be submitted to Council **prior to the issue of the Construction Certificate.** All works associated with the construction of the crossing shall be completed **prior to the issue of the Occupation Certificate.**
118. **Boundary Levels:** The levels of the street alignment shall be obtained from Council. These levels are to be incorporated into the design of the internal pavements, car parking, landscaping and stormwater drainage plans and shall be obtained **prior to the issue of the Construction Certificate.** Note: The finished floor level of the proposed garage or carport shall be determined by Council.
119. **Council infrastructure damage bond:** The applicant shall lodge with Council a **\$50,000.00** cash bond or bank guarantee with no expiry date. The bond is to cover the repair of damage or outstanding works to Council's roads, footpaths, kerb and gutter, drainage or other assets as a result of the development. The bond will be released upon issuing of the Occupation Certificate. If Council determines that damage has occurred as a result of the development, the applicant will be required to repair the damage. Repairs are to be carried out within 14 days from the notice. All repairs are to be carried in accordance with Council's requirements. The full bond will be retained if Council's requirements are not satisfied. Lodgement of this bond is required **prior to the issue of the Construction Certificate.**
120. **Council Construction Requirements:** The applicant shall construct / reconstruct the following:
1. New 1.5m wide footpath adjacent the entire frontage of Marshall Ave and Marshall Lane.
 2. New Kerb and Gutter along the entire frontage of the Marshall Ave and Marshall Lane.
 3. Reinstate all adjustments to the road surface to Council's satisfaction.
 4. Reinstate all existing nature-strips with turf and soil to Council's satisfaction.

A \$10,000.00 cash bond or bank guarantee shall be lodged with Council to cover the satisfactory construction of the above requirements. Lodgement of this bond is required **prior to the issue of the Construction Certificate.** The Bond will be held for a period of six months after satisfactory completion of the works. All works shall be carried out **prior to the issue of the Occupation Certificate.** All costs associated with the construction of the above works are to be borne by the applicant.

121. **Council Inspection Requirements:** The following items shall require Council inspections.
- All new footpaths on Council Property
 - New kerb and gutter on Council Property
 - All asphalt adjustments to the roadway
 - All the approved stormwater drainage works on Council property

Each item is to be inspected prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with Council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / setout requirements.

An Inspection fee of \$580.00 is to be paid **prior to the issue of the Construction Certificate.**

122. **Erosion and Sediment Control Plan:** An *Erosion and Sediment Control Plan* (ESCP) shall be prepared by a suitably qualified consultant in accordance with the guidelines set out in the manual "*Managing Urban Stormwater, Soils and Construction Fourth Edition 2004 Volume 1*" prepared by LANDCOM. The plan is to be submitted to the principal certifying authority to **prior to the issue of the Construction Certificate**

Engineering condition to be complied with prior to commencement of construction

123. **Erosion and Sediment Control:** The applicant shall install appropriate sediment control devices **prior to the start of any works on the site**. The devices are to be installed in accordance with the approved plan satisfying condition '(C1) *Erosion and sediment control*'. The devices shall be maintained during the construction period and replaced when necessary.

Soil and water management control: The applicant shall install appropriate sediment control devices **prior to the start of any works on the site**. The devices are to be installed in accordance with the approved plan satisfying condition '(C1) *Erosion and sediment control plan*' [OR] '(C1) *Soil and Water Management Plan*'. The devices shall be maintained during the construction period and replaced when necessary.

Engineering Condition to be complied with prior to Occupation Certificate

124. **Stormwater System Engineering Certification:** On completion of the drainage system a suitably qualified engineer shall certify that the drainage system and overland flow path have been constructed in accordance with the approved plans, part O Council's DCP-Stormwater Management and AS-3500. The certification is to include a work as executed plan. The work as executed plan shall:
- (a) be signed by a registered surveyor and
 - (b) Clearly show the surveyor's name and the date of signature.

All documentation is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate.**

Redundant Gutter Crossing: All redundant gutter and footpath crossings shall be removed and the kerb, gutter and footpath reinstated to the satisfaction of Council's Urban Services Division. These works shall be carried out **prior to the issue of the Occupation Certificate.**

125. **Certification of Retaining Structures and Excavations:** A suitably qualified engineer shall provide certification to the principal certifying authority that all retaining structures and excavations have been carried out in accordance with the relevant Australian Standards and Codes of Practice. The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted to the principal certifying authority **prior to the issue of the Occupation Certificate.**
126. **Positive Covenants for Overland Flow Path and Restriction on the use of Land:** A Restriction and Positive Covenant shall be registered on the title for the maintenance of the overland flow path system. An evidence of such registration should be submitted to Council prior to issue of the **Occupation Certificate.**

127. **Positive Covenants OSD and Pump Out System:** Documents giving effect to the creation of a positive covenants over the on-site detention system and over the basement pump out system shall be registered on the title of the property **prior to the issue of the Occupation Certificate**. The wordings of the terms of the positive covenants shall be in accordance with part O Council's DCP-Stormwater Management.

Environmental Health

General

128. **Dust Control**

The following measures must be taken to control the emission of dust:

- a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work
- b) Any existing accumulations of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter
- c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system
- d) All stockpiles of materials that are likely to generate dust must be kept damp or covered
- e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

129. **Stabilised Access Point**

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (blue Book).

130. **Registration of water cooling and warm water systems**

All water cooling and warm water systems regulated under the *Public Health Act 1991* must be registered with Council's Environmental Services Unit within one month of installation.

131. **Clean water only to stormwater system**

Only clean unpolluted water is permitted to enter Council's stormwater drainage system.

132. The works shall not give rise to environmental pollution or public nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* or *NSW Occupational Health & Safety Act (2000) & Regulations (2001)*.

Operational

133. **Garbage storage area – Commercial/Industrial**

All garbage shall be stored in a designated garbage area, which includes provision for the storage of all putrescible waste and recyclable material emanating from the premises. The area is to be constructed with a smooth impervious floor graded to a floor waste and connected to the sewer. The garbage area/room is to be well

ventilated and fitted with fire sprinklers and meet fire safety standards in accordance with the Building Code of Australia. Detailed plans and specifications for the construction of the designated garbage area are to be submitted with the Construction Certificate.

134. Garbage collection – Commercial/Industrial

Liquid and solid wastes generated on the site shall be collected, transported and disposed of in accordance with the Protection of the Environment Operations Act 1997. Records shall be kept of all waste disposal from the site. Waste and recycling material, generated by the premises, must not be collected between the hours of 10pm and 6am on any day.

135. Litter Control

A sufficient number of garbage bins shall be provided on the premises for garbage disposal. Such bins shall be made of impervious material and shall have close – fitting, vermin – proof, fly – proof lids. All waste bins are to be stored in designated garbage/trade refuse areas which must be maintained in a satisfactory condition at all times and must not be stored in designated garbage/trade refuse areas which must be maintained in a satisfactory conditions at all times and must not be stored or permitted to overflow into car parking or gardens areas.

136. Garbage Room Location & Access

Garbage rooms shall:

- be located in positions which will permit easy, direct and convenient access for the removal of garbage without creating a nuisance from dust, litter, odour and noise.
- not contain any fittings, facilities or matter not associated with the treatment, storage or disposal of garbage.
- where possible be located within the main building. Where this is not practicable due to noise levels or other exceptional circumstances, the garbage room shall be located in a position approved by the Principal Certifying Authority. If it is proposed to make application to construct a detached structure, special attention shall be given to the aesthetics of the structure and its siting.

Details of appropriate recycling facilities must be provided, both in the communal garbage room and individual units.

137. Construction Requirements – Garbage Room

Garbage rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, remain subject to the following requirements:

- Floors of garbage rooms shall be constructed of concrete at least 75mm thick or other approved solid impervious material, graded and drained to an approved drainage outlet connected to the sewer, and shall be finished to a smooth even surface coved at the intersection with walls and plinths
- Walls of garbage rooms shall be constructed of approved solid impervious material and shall be finished to a smooth even surface coved at all intersections
- Ceilings of garbage rooms shall be finished with a rigid smooth faced non-absorbent material capable of being easily cleaned.

Construction

138. Compliance with the Waste Management Plan approved under application D14/143.

Contamination

139. Any soils proposed for removal from the site are to be initially classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW DECC (2009) and in accordance with the Preliminary Stage 2 Environmental Site Assessment report prepared by EIS, dated June 2014, which itself shall be taken within the context of the previous reports prepared by EIS for the Stage 1 DA pertaining to the development of 15-25 Marshall Avenue. Details of waste classification shall be submitted to Council prior to the issue of a Final Occupation Certificate.
140. **Storage of Potentially Contaminated Soils**
All stockpiles of potentially contaminated soil must be stored in an environmentally acceptable manner in a secure area on the site.
141. **Assessment of Potentially Contaminated Soils**
All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, such as the publication titled *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non – Liquid Wastes* (EPA, 1999).
142. **Offsite Disposal of Contaminated Soil**
All contaminated soil removed from the site must be disposed at a waste facility that can lawfully receive that waste.

Copies of all test results and disposal dockets shall be retained for at least 3 years and be made available to authorised Council officers on request.

Noise

143. **Noise Control – Offensive Noise**
To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an offensive noise as defined under the provisions of the Protection of the Environment Operations Act 1997.
144. **Noise Control – Residential Air Conditioning units**
To minimise the impact of noise from the air conditioning unit, it shall be located 3 meters from the boundary and/or attenuated so that noise generated does not exceed 5db(A) above the ambient background level between 7am and 10pm on weekdays and 8am and 10pm on Weekends and Public Holidays.
- Any noise emitted by the air conditioning unit shall not be audible within a room of any residential dwelling or sole occupancy unit at any time within the hours of 10pm and 7am on weekdays and 10pm and 8am on weekends and public holidays.
145. **Noise Control – Car Park Security Grills**
To minimise the impact on the amenity of surrounding residents, all sound producing plant, equipment, machinery or fittings within or forming part of the proposed security door fitted to the car parking area entrance shall be acoustically attenuated so that the noise emitted does not exceed 5db(A). Notwithstanding the above any noise that is emitted shall not be audible within any premises and comply with the Protection of the Environment Operations Act 1997.

146. **Noise Control**

Noise must be minimised as far as practicable, by the selection of appropriate methods and equipment, and by the use of silencing devices where practicable.

147. **Noise Monitoring**

Noise monitoring must be carried out by a qualified acoustical consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the demolition work

148. **Road Traffic Noise**

The residential flat building must be constructed so that road traffic noise levels comply with the satisfactory design sound level in *Australian/New Zealand AS/NZS 2107:2000 Acoustics – Recommended design sound level and reverberation times for building interior*, with windows and doors closed.

149. **Mechanical Ventilation of Rooms**

If the noise level with the windows and doors open exceeds the above noise criteria by more than 10dB(A), an approved system of mechanical ventilation must be provided.

Compliance with NSW Industrial Noise Policy

150. Noise mitigation measures must be implemented to ensure noise from the developments demolition, excavation and construction works are in accordance with the requirements of the NSW EPA Industrial Noise Policy.

Ventilation

151. To ensure that adequate provision is made for ventilation of the premises, mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provision of:

- a) The Building Code of Australia
- b) AS 1668 Part 1 and 2 – 1991
- c) Protection of the Environment Operations Act 1997

A certificate prepared by a suitably qualified mechanical engineer shall be submitted to the certifying authority certifying that the design and operation of the mechanical ventilation system meets the requirements of AS 1668 Parts 1 and 2.

152. **Ventilation – Garbage Rooms**

Garbage rooms shall be ventilated by:-

- a) an approved system of mechanical exhaust ventilation in accordance with the requirements of the Building Code of Australia and *Australian Standard AS 1668*
- b) permanent unobstructed natural ventilation openings with contact direct to the external air, having an aggregate area of not less than 1/20th of the floor area. One half of the openings shall be situated at or near the floor level and one half at or near the ceiling level
- c) Where permanent natural ventilation openings are provided the openings shall be designed to prevent the entry of rainwater.

153. Car Park Ventilation

The covered car park must be provided with an adequate system of permanent natural ventilation or an approved system of mechanical ventilation.

154. Fresh air intake vents

All fresh air intake vents must be located in a position that is free from contamination and at least 6 metres from any exhaust air discharge vent or cooling tower discharge.

155. Exhaust air discharge vents

All exhaust discharge vents must be located in a position where no nuisance or danger to health will be created and at least 6m from any fresh air intake vent or natural ventilation opening.

156. Exhaust air discharges

The composition, direction and velocity of the exhaust air discharged from the exhaust vents must be such that no nuisance or danger to health will be created.

Waste Conditions

Garbage Chutes

157. Prior to the issue of the construction certificate amended plans shall be submitted to the Private Certifying Authority detailing the location of the garbage chute and compaction unit in the Tower building.

158. Garbage chute systems and interim recyclable storage facilities shall be provided to the development.

- Garbage chutes must be constructed in accordance with the requirements of the Building Code of Australia (BCA).
- Garbage chutes must be located and insulated in a manner that reduces noise impacts.
- Chutes, service openings and charging devices must be constructed of material (such as metal) that is smooth, durable, impervious, non-corrosive and fire resistant.
- Chutes, service openings and charging devices must be capable of being easily cleaned.
- Chutes must be cylindrical and have a diameter of at least 500mm.
- Chutes must not have any bends or sections of reduced diameter in the main shaft of the chute;
- Internal overlaps in the chute must follow the direction of waste flow.
- Chutes must deposit rubbish directly into a bin or compactor located within a waste/recycling storage room.
- A cut-off device must be located at or near the base of the chute so that the bottom of the chute can be closed when the bin or compacting device at the bottom of the chute is withdrawn or being replaced.
- The upper end of the chute must extend above the roofline of the building.

- The upper end of the chute must be weather protected in a manner that does not impede the upward movement of air out of the chute.
- Compaction of garbage must not exceed a ratio of 2:1. No compaction is permitted for recyclable material or green waste.

Garbage Chute Service Rooms

159. The service opening (for depositing rubbish into the main chute) on each floor of the building shall be located in a dedicated service room.
- The charging device for each service opening must be self-closing and must not project into the main chute.
 - Branches connecting service openings to the main chute must be no longer than 1m.
 - Each service room must include provision for 2x240l recycling bins for the storage of recyclable materials. Signage regarding the materials that can be recycled must be displayed near these recycling bins.
 - Each service room must be located for convenient access by users and shall be well ventilated and well lit.
 - The floors, walls and ceilings of service rooms must be finished with smooth durable materials that are capable of being easily cleaned.
 - Service rooms must include signage that clearly describes the types of materials that can be deposited into the garbage chute, the types of materials which must be deposited into recycling bins, and bulky waste collection arrangements including the location and travel paths to the bulky waste storage room.

Waste and Recycling Storage Rooms

160. Prior to the issue of the construction certificate amended plans shall be submitted to the Private Certifying Authority detailing the location of the Waste and Recycling Storage Rooms.
161. Basement waste and recycling storage rooms shall be provided with each garbage chute and be of sufficient size to accommodate garbage chute systems and a total of 49x240l garbage bins and 47x240l recycling bins with adequate space for maneuvering garbage and recycling bins.
- Minimum clearance between bins of 300mm;
 - Minimum door openings of 1700mm; &
 - Minimum distance of 1700mm between rows of bins (where bins are located on either side of the room).
162. The floor of waste and recycling storage rooms (including bulky waste storage rooms) shall be constructed of either:
- Concrete which is at least 75mm thick; or
 - Other equivalent material; and
 - Graded and drained to a floor waste which is connected to the sewer

163. All floors must be finished to a smooth even surface, coved at the intersection of walls and floor.
164. The walls of waste and recycling storage rooms, bulky waste storage areas and waste service compartments must be constructed of solid impervious material and must be cement rendered internally to a smooth even surface coved at all intersections.
165. All waste and recycling storage rooms and bulky waste storage rooms shall be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
166. A close-fitting and self-closing door that can be opened from within the room shall be fitted to all waste and recycling and bulky waste storage rooms.
167. All waste and recycling and bulky waste storage rooms shall be constructed to prevent the entry of vermin.
168. All waste and recycling and bulky waste storage rooms must be ventilated by either:
 - Mechanical ventilation systems exhausting at a rate of 5L/s per m² of floor area, with a minimum rate of 100l/s; or
 - Permanent, unobstructed natural ventilation openings direct to the external air, not less than 1/20th of the floor area.
169. All waste and recycling and bulky waste storage rooms must be provided with artificial light controlled by switches located both outside and inside the rooms.
170. Clearly printed "No Standing" signs shall be affixed to the external face of each waste and recycling and bulky waste storage room.

Bulky Waste Storage Room

171. A readily accessible bulky waste storage room(s) located near the main garbage rooms must be provided for the use of all residents.
 - A bulky waste storage room(s) with a minimum floor area of 30m² shall be provided and be of sufficient size to practically accommodate a minimum of 10m³ of bulky waste at any given time. Doorways and travel paths must be a minimum width of 1700mm and of sufficient height and be free of obstructions to permit easy transport from individual units to the storage area, and from the storage area to collection point.

Access to Waste Collection Point

172. Prior to the issue of the construction certificate amended plans shall be submitted to the Private Certifying Authority detailing the path of travel for waste collection vehicle.
173. All waste must be collected on-site via on-site access by Council's garbage collection vehicles.
 - The location(s) of waste and recycling rooms and bulky waste storage areas must be conveniently accessible for both occupants and Council's waste collection contractors.

- The minimum finished ceiling height must be 2.6m along the path of travel from the street to the residential waste and recycling collection point and maneuvering area. This clearance must be kept free of any overhead ducts, services and other obstructions.
- The maximum grade of any access road leading to the waste and recycling collection point must not be more than 1:5 (20%). The turning area at the base of any ramp must be sufficient for the maneuver of a 6.0m rigid vehicle to enter and exit the building in a forward direction.
- Where security gates are proposed, a Council master key system shall be installed to permit unimpeded access.

Indemnity

174. Prior to the issue of any Occupation Certificate, the applicant shall enter into a suitable Deed indemnifying Council and its contractors against claims for loss or damage to common property, liabilities, losses, damages and any other demands arising from any on-site collection service.

Provision of Waste Services

175. Prior to the issue of any Occupation Certificate, the applicant shall make written application to Council for the provision of domestic waste services.
176. Prior to the issue of a construction certificate amended plans shall be submitted to the Certifying Authority demonstrating that the RL of the Ground Floor Level of the high rise building shall be amended from RL 69.70 to RL 69.05 in order to relate to the existing footpath levels on Marshall Avenue and facilitate disabled access to the main entry lobby.



Michael Mason
Executive Manager
Environmental Services Division



planning consultants

APPENDIX B

SYDNEY EAST JOINT REGIONAL PLANNING PANEL

Meeting held at Lane Cove Municipal Council on Thursday 19 March 2015 at 11:00am

Panel Members: John Roseth (chair), David Furlong, Sue Francis, Stephanie Bashford and Marc Gold

Apologies: None - Declarations of Interest: None

Determination and Statement of Reasons

2014SYE117 Lane Cove da14/143 [at 1-13A Marshall Avenue, St Leonards] as described in Schedule 1.

Date of determination: 19 March 2015

Decision:

The panel determined not to accept the recommendation of the assessment report and to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

Panel consideration:

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

Reasons for the panel decision:

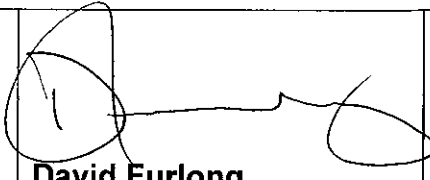
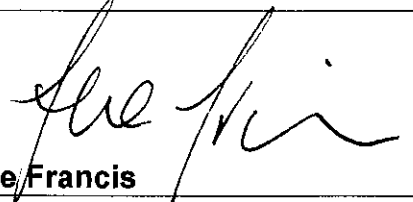
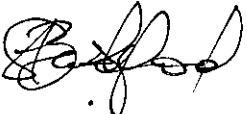
1. The majority of the Panel (John Roseth, David Furlong, Sue Francis Stephanie Bashford) considers that, in order to accept the building height standard variation under cl 4.6 of the LEP, it must be satisfied on a number of matters:
 - First, that compliance with the standard is unnecessary and unreasonable in the circumstances of the case;
 - Second, that there are sufficient planning grounds to justify contravention of the standard;
 - Third, that the variation is in the public interest.
2. For the building height standard, the objectives of the standard are to minimise overshadowing, to minimise loss of privacy, to minimise visual impact on neighbouring properties, to maximise sunlight to the public domain and to relate well to the topography.
3. The majority of the Panel cannot agree that the proposed development, that increases the height of the tower building by almost 30m (or nine floors) beyond the building height standard, complies with the above objectives. In particular it will have worse impact on views and result in larger shadows on the public domain than would a building of complying height.
4. Moreover, the proposed building, at a height of 94m, would be out of scale with both the existing and desired future character of the area, which does not provide a transition of scale to the proposal. The majority of the Panel notes that the council sought to change its planning controls to allow a building of 65m on the subject site. It assumes therefore that this height suggests the desired future character of the area.
5. The Panel notes that the LEP which governs the development of this area is of recent origin. Departures from it so soon after gazettal would be undesirable and undermine the community's confidence in the planning process.
6. The majority of the Panel accepts that the Voluntary Planning Agreement (VPA) offered by the applicant and accepted by the Council has some relevance to this application because the funds offered would be spent in the public interest. However, the Panel believes that the proposal must comply with all the requirements of cl 4.6 before any consideration can be given to the VPA, and for that reason the Panel has given minor weight to it.

SYDNEY EAST JOINT REGIONAL PLANNING PANEL

7. For the above reasons, the Panel cannot accept the recommendation of the assessment report for approval and refuses the application.
8. Marc Gold voted to approve the application for the reasons set out in the assessment report.

Conditions: Not relevant

Panel members:

 John Roseth (chair)	 David Furlong	 Sue Francis
 Stephanie Bashford	 Marc Gold	

SYDNEY EAST JOINT REGIONAL PLANNING PANEL

SCHEDULE 1

1	JRPP Reference – LGA- Council Reference: 2014SYE117 Lane Cove da14/143
2	Proposed development: Construction of a mixed use development comprising 269 residential units, commercial/retail space, communal areas and basement parking for 295 vehicles, construction of a roundabout and subdivision.
3	Street address: 1-13A Marshall Avenue, St Leonards
4	Applicant/Owner: Loftex Pty Ltd / Loftex Pty Ltd
5	Type of Regional development: Capital Investment Value > \$20M
6	Relevant mandatory considerations • Lane Cove Local Environmental Plan 2009 • Lane Cove Development Control Plan 2010 • Lane Cove Section 94 Contribution Plan • State Environmental Planning Policy (Building Sustainability Index) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • Airports Act 1996 • Airports (Protection of Airspace) Regulations 1996 • Draft Voluntary Planning Agreement • 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 EPA Act or EPA Regulation. • The public interest.
7	Material considered by the panel: Council Assessment Report Dated: 6 March 2015 Addendum Council Assessment Report dated 12 March 2015 Written submissions during public exhibition: 115 individual submissions and two (2) petitions with 64 signatures Verbal submissions at the panel meeting: Against- Lisa Bella Esposito on behalf of the Owners Corporation of Forum West and Greenwich St Leonards Action Group, Alexi Jubian on behalf of Albert Jubian, Arlette Jubian, Randy Brophy, Susan Ingham, Tim Ingham on behalf of Frances Vissel, Susan Dadswell, Pam Palmer, Kim McIntyre, Diane Willis, Arlette Jubian on behalf of Rima Jubian, Helen Pearson and Anita Jubian; On behalf of the applicant- Rob Turchini
8	Meetings and site inspections by the panel: Briefing Meeting on 6 November 2014
9	Council recommendation: Approval
10	Draft conditions: As attached to addendum Council Assessment Report dated 12 March 2015



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APPENDIX C



LOFTX

L16, 61 Lavender Street

Milsons Point NSW 2061
t 02 8920 0516 f 02 8920 0528

Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

Title

Scale

Date

Number

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Shadow diagram - 22 June 9am
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03.12.14

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e sydney@nettletontribe.com.au w nettletontribe.com.au



LOFTX

L16, 61 Lavender Street

Milsons Point NSW 2061
t 02 8920 0516 f 02 8920 0528

Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

Title

Scale

Date

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LOFTX

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Milsons Point NSW 2061
t 02 8920 0516 f 02 8920 0528

Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

Title

Scale

Date

Number

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Milsons Point NSW 2061
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Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

Title

Scale

Date

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Milsons Point NSW 2061
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Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

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Milsons Point NSW 2061
t 02 8920 0516 f 02 8920 0528

Embassy Tower

1-13A Marshall Ave

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- - shadow of proposed highrise building at 65m high

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L16, 61 Lavender Street

Milsons Point NSW 2061
t 02 8920 0516 f 02 8920 0528

Embassy Tower

1-13A Marshall Ave

St Leonards
Sydney NSW

- - shadow of proposed highrise building at 94m high
- - shadow of proposed highrise building at 65m high

Title

Scale

Date

Number

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Shadow diagram - 22 June 3pm
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03.12.14

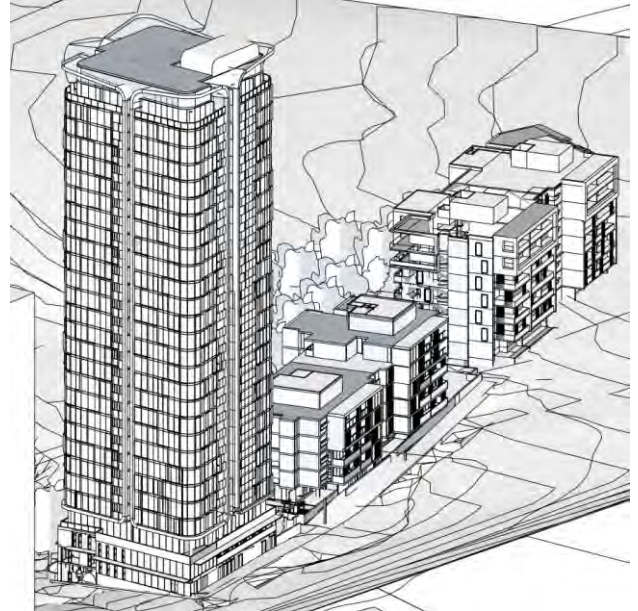
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117 willoughby road crows nest nsw 2065
t 02 9431 6431 f 02 9439 7474
e sydney@nettletontribe.com.au w nettletontribe.com.au

**EXPERT OPINION
SEPP65 AMENITY COMPLIANCE
SOLAR ACCESS
OVERSHADOWING
NATURAL VENTILATION**



1-13A Marshall Ave St Leonards

1 August 2014

Signed,

A handwritten signature in black ink, appearing to read "Steve King". The signature is fluid and cursive, with a large, stylized "K".

Steve King

STEVE KING

CONSULTANT ARCHITECT

11 Clovelly Road Randwick NSW 2031 Australia

PHONE 0414385485

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0.0 PRELIMINARIES

0.1 I provide this expert opinion relating to **solar access**, **overshadowing** and **natural ventilation** compliance with the relevant local controls, and the Residential Flat Design Code as it gives effect to the Amenity provisions of SEPP65, for proposed apartments at 1-13A Marshall Ave St Leonards.

0.2 My qualifications and experience are summarized at 2.0 *Credentials*.

1.0 SUMMARY

The proposal which is subject of this development consists of two blocks: a low rise portion adjacent to stage one presently under construction, and a residential tower on the easternmost part of the site at the corner of Marshall Avenue and Canberra Avenue.

1.1 Solar access

1.1.1 On the basis of the proposed high density, it is appropriate to apply the so-called two-hour standard to at least some of the proposed development.

Detailed analysis employing a full 3-D digital model – which includes sufficient extent of surrounding developments – also makes it possible to take account of effective direct sun before 9am and after 3pm for those units which face substantially east or west respectively. For my reasoning, I refer in particular to the judgement by Brown C. in *Botany Development Pty Ltd v Council of the City of Botany Bay LEC 10360 of 2013* on 31 January 2014. See my discussion at **5.4 Characterisation of solar access compliance: durations and available effective sun**.

1.1.2 The projected proportion of dwellings with complying solar access is 225 (83.0%) units from a total of 271. Of those complying dwellings over half achieve the higher standard of minimum three hours of direct sun between 9am and 3pm.

In my considered opinion this outcome can be considered excellent for the site, and conservatively complies with the relevant controls.

1.2 Overshadowing

Potentially adverse overshadowing impacts are identified on a number of nearby properties.

1.2.1 I provide a full table of hourly shadows (from the Stage 1 under construction and proposed development) on properties on the south side of Marshall Avenue. The analysis demonstrates that each of those properties will retain at least three hours of solar access to their north facing elevations. The possible exception is No.4 Marshall Avenue, where depending on the internal plan of the dwelling, the retained solar access to living areas may be just under three hours.

1.2.2 I also verify the general accuracy of the plan shadow diagrams provided by the architects, which indicate the overshadowing of properties further to the south of the subject site. This overshadowing is only from the tower portion of the proposal, and I note that the impact of such overshadowing is generally limited to a duration of no more than one hour for any affected property.

I conclude that overshadowing impacts substantially comply with Council's controls.

1.3 Natural ventilation

The proportion of dwellings with simple cross ventilation through openings on two or more different elevations is 185 (68.3%) out of the 271 apartments. The RFDC requires a minimum of 60%.

The proposed development fully complies for natural ventilation amenity.

But apartments at the higher levels of the tower block (conventionally taken as above Level 10) are usually exposed to significantly increased wind speeds. A further 41 have suitable orientations to be naturally ventilated at rates likely equivalent to cross ventilation. **On that basis, a total of 226 (83.4%) of the 271 apartments may be deemed to comply.**

2.0 CREDENTIALS

I have been teaching architectural design, thermal comfort and building services at the Universities of Sydney, Canberra and New South Wales since 1971. From 1992, I was a Research Project Leader in SOLARCH, the National Solar Architecture Research Unit at the University of NSW. Until its disestablishment in December 2006 I was the Associate Director, Centre for Sustainable Built Environments (SOLARCH), UNSW.

My research and consultancy includes work in solar access, energy simulation and assessment for houses and multi-dwelling developments. I am the principal author of *SITE PLANNING IN AUSTRALIA: Strategies for energy efficient residential planning*, published by AGPS, and of the BDP Environment Design Guides on the same topic. Through UNSWGlobal and NEERG Seminars, I conduct training

in solar access and overshadowing assessment for Local Councils. I have delivered professional development courses on topics relating to energy efficient design both in Australia and internationally.

SOLARCH/UNISEARCH were the contractors to SEDA NSW for the administration of the House Energy Rating Management Body (HMB), which set up and accredited assessors under the Nationwide House Energy Rating Scheme (NatHERS), NSW. I was the technical supervisor of the HMB, with a broad overview of the dwelling thermal performance assessments carried out in NSW over the first five years of the scheme. I have been a member of the NSW BRAC Energy Subcommittee, and also a member of the AGO Technical Advisory Committee on the implementation of the mandated software tool AccuRate under NatHERS.

I teach the wind and ventilation components of environmental control in the undergraduate course in architecture at UNSW, and am the author of internationally referenced, web accessed coursework materials on the subject. I have supervised PhD level research on the ventilation of multi-storey apartments, and am the co-author of peer reviewed scientific papers on the issue.

Of particular relevance, I have delivered the key papers in the general area of assessment of *ventilation and solar access performance and compliance*, including *Solar Access and Ventilation: Reflections on Parsonage* at the NEERG Seminar on 27 July 2005. Most Recently, Senior Commissioner Moore cited my assistance in reframing of the Planning Principle related to solar access (formerly known as the Parsonage Principle) in *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*.

I am a Registered Architect and maintain a specialist consultancy practice in Sydney and Canberra. I regularly assist the Land and Environment Court as an expert witness in related matters.

3.0 DOCUMENTS

3.1 In preparing this opinion, I have referred to:

- Architectural drawings of the Stage 2 DA design issued by NettletonTribe Architects on 21 July 2014:
 - 4264_DA-001 Site Plan
 - 4264_DA-002 Site Analysis
 - 4264_DA-003 Basement 3 Floor Plan
 - 4264_DA-004 Basements 2 Floor Plan
 - 4264_DA-005 Basements 1 Floor Plan
 - 4264_DA-006 Ground Floor Plan
 - 4264_DA-007 Level 1 Floor Plan
 - 4264_DA-008 Level 2 Floor Plan
 - 4264_DA-009 Level 3 Floor Plan
 - 4264_DA-010 Typical overall level plan
 - 4264_DA-011 Lowrise building - ground level plan (RL71.50/69.60)
 - 4264_DA-012 Lowrise building - level 1 plan (RL74.55)
 - 4264_DA-013 Lowrise building - level 2 plan
 - 4264_DA-014 Lowrise building - level 3-4 plan
 - 4264_DA-015 Lowrise building - level 5 plan
 - 4264_DA-016 Lowrise building - level 6 plan
 - 4264_DA-017 Lowrise building - level roof plan
 - 4264_DA-018 Highrise building - ground level plan (RL69.7)
 - 4264_DA-019 Highrise building - level 1 plan (RL73.8)
 - 4264_DA-020 Highrise building - level 2 plan (RL76.9)
 - 4264_DA-021 Highrise building - level 3 plan (RL80.0)
 - 4264_DA-022 Highrise building - midrise level 4-7 plan
 - 4264_DA-023 Highrise building - level 8-14
 - 4264_DA-024 Highrise building - level 15 plan
 - 4264_DA-025 Highrise building - highrise level 16-25 plan
 - 4264_DA-026 Highrise building - highrise level 26-27 plan
 - 4264_DA-027 Highrise building - penthouse level 28 plan
 - 4264_DA-028 Highrise building - plant level
 - 4264_DA-029 Highrise building - roof level
 - 4264_DA-031 Overall North elevation
 - 4264_DA-032 Overall South elevation
 - 4264_DA-033 High-rise building East/West elevations
 - 4264_DA-034 Low-rise building East/West elevations
 - 4264_DA-036 East – West overall section 1
 - 4264_DA-037 Sections – lowrise building
 - 4264_DA-038 Sections – high-rise building
 - 4264_DA-041 Shadow Diagrams - Winter June 22
 - 4264_DA-042 through 048 Shadow Diagrams - June 22 9am through 3pm
 - 4264_DA-061 through 63 Adaptable units Sheets 1 through 3
 - 4264_DA071 Area plans
- Digital 3D models supplied by the architects as export files.

3.2 I have visited the site.

4.0 GENERAL MASSING, PLANNING AND DESIGN RESPONSE

4.1 Site

The site is a long trapezoidal shape, resulting from the amalgamation of individual lots. It is bounded to the east by Canberra Ave along the railway line, to the north by Marshall Lane and to the south by Marshall Ave. To the west (with a zero lot line) is the amalgamated site of Stage 1 of the development, which is a low rise multi-storey residential flat building currently under construction.

The site slopes steeply to the south. Because of the sloping terrain, there are excellent views to the south generally, and in all directions from the tower component.

4.2 Building form

4.2.1 I have been advised that the development is the subject of a site specific envelope control.

4.2.2 The general design strategy for the low rise component is a double loaded multi-core floor plate running along the long axis of the site. The tower with an approximately square floor plate terminates the eastern end of the site, and could be said to respond to similar height, existing and planned developments to the east of the railway line, and to the north-east across Pacific Hwy.

Design decisions that maximise effective solar access for different apartments include:

- The disposition of apartments in the tower maximises the proportion of dwellings with favourable orientations by placing smaller units on the north, east and west facades. I see no likely variation of the plan of the tower that would improve on these proportions, without compromising other aspects of amenity;
- To reduce self-shading by recessed balconies, the majority of living spaces are brought out to the primary glazing line;
- At the corners of the tower where excessive wind speeds would otherwise make open balcony use a problem, glazed wintergardens are provided. These glazed private open spaces perform as 'attached sun spaces' with generally extended solar access durations, and other winter passive performance advantages;
- In the low rise portion, the 'through' apartments generally have a part of the living area to the north façade for solar access, while the principal living area is oriented towards the southerly view.

5.0 SOLAR ACCESS TO APARTMENTS

5.1 Methodology

I have analyzed and quantified solar access for compliance with the requirements of the DCP and the Residential Flat Design Code by use of a 3D digital model and the heliodon routine of the industry standard software application *Trimble SketchUp*.

5.1.1 Probity of modelling

The digital model files were supplied to me by the Architects, based on their own CAD documentation. I have independently geolocated the models, and verified the direction of North by reference to the cadastral grid north. I have also independently verified sufficient relevant model and location parameters to *conclude that the modelling is accurate to a suitable degree compatible with the graphical information of the provided plans*.

Models were provided for the purpose of

- solar access analysis, including significant known buildings to the east and north-east;
- overshadowing analysis, with 3D representations of the potentially impacted houses in correct spatial relationship with the complex terrain, and street trees excluded.

I have generated my own quantification and compliance tables, included in this report at Appendix A.

5.1.2 Projections: views from the sun

Because of the complexity of demonstrating in detail the solar access to glazing of various orientations — and taking into account the potential for self-shading by the recessed balconies and applied façade detailing — exhaustive detailed analysis was performed using projections known as 'View from the sun', taken at half hourly intervals. Other shaded views have been used as required for clarification of the area of sun patches on glazing.

A **view from the sun** is an aerial projection, where the observer views the subject site from the position of the sun at the nominated time and date. Such a view shows all sunlit surfaces at that time. It therefore allows a very precise count of sunlight hours on any glazing or horizontal surface, with little or no requirement for secondary calculations or interpolation. The technique is illustrated in Figure 1.

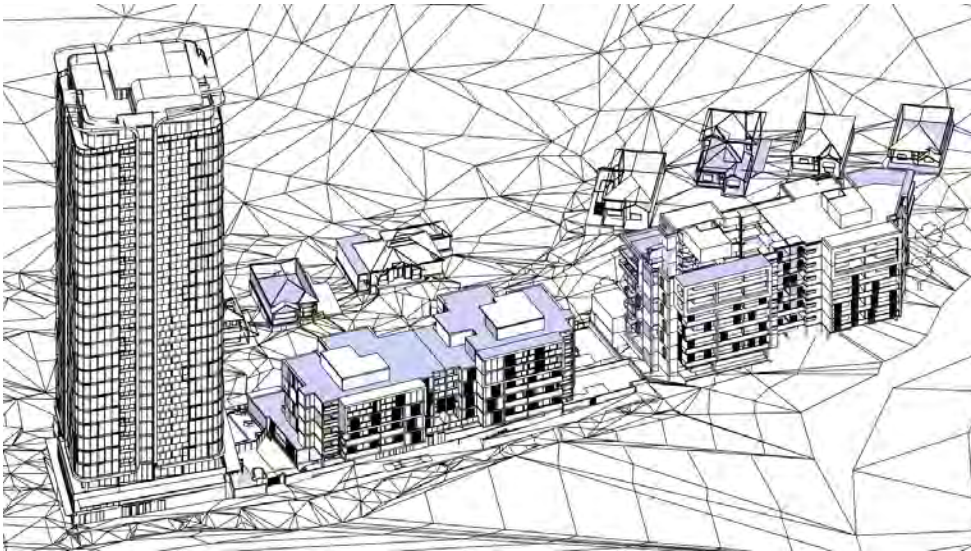


Figure 1: View from the sun, 12pm June 21

Note that a view from the sun does not show shadows, as shadows exactly align with (and are hidden by) the object which casts them. For that reason, views from the sun are the only projection in which it can be directly 'seen' what part of an obstructing building is the specific cause of any particular part of a shadow.

5.2 Relevant solar access standards

5.2.1 Residential Flat Design Code

The Residential Flat Design Code gives the following quantified recommendations:

- Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.
- Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10 percent of the total units proposed.
- Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).
(*Rules of Thumb: Daylight Access p. 84*)

5.2.2 Local controls

Clause 3.15 in Part C3 of LCDCP 2010 provides as follows:

Objectives

The objective for solar access is:

- 1 To provide reasonable solar access to habitable rooms and recreational areas of new and existing developments.

Provisions

These provisions apply to proposed developments and any residential development beyond the site.

- a) Habitable rooms in at least 70 percent of dwellings in high density residential developments should receive a minimum of three hours direct sunlight between 9 am and 3 pm on 21st June, in total between any portions of those rooms. A reasonable proportion of both the common and private open space in those sites is also to receive sunlight during that period, according to the circumstances of the sites.
- b) The number of single-aspect dwellings with a southerly aspect (SW-SE) should be limited to a maximum of 10 percent of the total dwellings within a high density residential development. Developments varying from the minimum standard

due to site constraints and orientation must demonstrate how energy efficiency is addressed.

- c) Where adjacent dwellings and their open space already receive less than the standard hours of sun, new development should seek to maintain this solar access where practicable.
- d) Council may accept a reduction in solar access for the subject site and adjacent development if the topography and lot orientation (as distinct from a preferred design) are such that the standard is considered unreasonable.

The DCP Clause is consistent with the requirement of the RFDC, and includes reduced performance expectation for closely built-up high density development. I note that the DCP controls offer some additional relief:

- Provision (a) extends the definition from “Living rooms’ to ‘habitable rooms’;
- Provision (d) makes provision for the exercise of discretion by Council to accept a reduced standard as complying.

5.3 Characterisation of solar access compliance: durations and available effective sun

5.3.1 Duration of sun access

I begin by classifying as complying when direct sun access is over three hours total of partially and fully sunlit glazing between 9am and 3pm mid-winter. Given the design, balconies will in most cases enjoy a more favourable sun exposure – the exceptions being the south-eastern and south-west corners of the tower.

The RFDC suggests that a less onerous '2-hour standard' can be applied in dense urban areas. My view is that *at least a proportion of apartments meeting the '2-hour standard' can be considered compliant*. My experience is that that this treatment of the relief afforded by the provision of the Residential Flat Design Code is consistent with criteria previously applied elsewhere in the municipality.

5.3.2 Applicable times of day for effective sun

The orientation of the building is such as to restrict solar access to the west façade. On the other hand, late afternoon sun will be effectively guaranteed to be unobstructed by buildings remote from the site, because of the clear parkland and cemetery to the west across the Pacific Hwy.

The 9am and 3pm limits are a legacy from early controls for single dwellings in arcadian suburban settings, where the desired mature tree canopied character was assumed to limit the availability of winter sun beyond those times. In my considered opinion, to apply those limits without reference to the availability of earlier and later sun is inappropriate, and this opinion has consistently had the support of the Land and Environment Court.

A suitable 3-D digital model can demonstrate what sun exposure is reliably available before 9am and after 3pm. To be relied on to do so, the digital model must incorporate sufficient extent of the surrounding developments adjacent to, and also remote from the site, for one to be able to form an opinion of whether the relevant sun exposure is likely to be permanent.

To capture where apartments will receive additional effective direct winter sun earlier or later than the arbitrary 9am and 3pm limits, I have recorded solar access from 8am and until 4.30pm. *I note that in general, these earlier and later periods of winter sun are actually the most effective for the relevant east and west glazing*. However, I have ignored where the model may show even earlier and later direct sun, as not sufficiently reliable for characterizing compliance.

5.3.3 Sun patches on glazing

For the purpose of calculating the compliance with the control, I have examined sun patches on the relevant glazing line of each apartment, and solar access of private open space related to those living spaces. In the tower component, I have given priority to compliance for the sun on the glazing of living areas. In accordance with the relevant *L+EC Planning Principle (Benevolent Society vs Waverley Council)*, when I determine exposure times, I generally ignore very *large angles of incidence* to the glazing surface, and unusably *small areas of sunlit glazing*.

I note that the 300mm deep ‘fins’ applied to the façade, where they are to the north of a relevant glazed opening, cut out approximately the same ineffective sun angles, and therefore they do not have a substantive impact on solar access durations.

5.3.4 Sun to bedrooms

The latest amendment of Clause 3.15 in Part C3 of LCDCP 2010 now reads:

“Habitable rooms in at least 70 percent of dwellings in high density residential developments should receive a minimum of three hours direct sunlight between 9 am and 3 pm on 21st June, in total between any portions of those rooms.”

I take this to be a careful and purposeful elaboration of the previously more restrictive text of the same control that referred to 'living areas', and infer its purpose is to recognise that for a proportion of apartments it is appropriate to give credit for solar access to bedrooms as constituting compliance. I note that in this development, Living spaces have been carefully located so that taking account of other habitable spaces has made little if any difference to the overall compliance level reported.

5.3.5 Overshadowing by existing features or known developments

To allow for potential overshadowing by such developments, the model is extended significantly to the east and north-east by placing extruded building volumes in the correct locations. Figure 2 is the 9am view from the sun on June 21. As is clear from that view, the modelled high rise buildings to the east along Pacific Hwy do not impact on the subject development. Buildings to the north of the Pacific Highway are omitted, because they would be 'off the page' in the right bottom corner of this view, and are too far to cause any overshadowing of the subject development.

5.3.6 Overshadowing by unknown but projected development

This consideration applies almost entirely to the potential effect of an approved commercial building at 88 Christie St to the east of the subject site (labelled A in Figure 2). I understand that the developer that obtained the DA is not proceeding with that scheme, and is in discussions with Council to rezone the site for alternate uses with likely different building envelope.

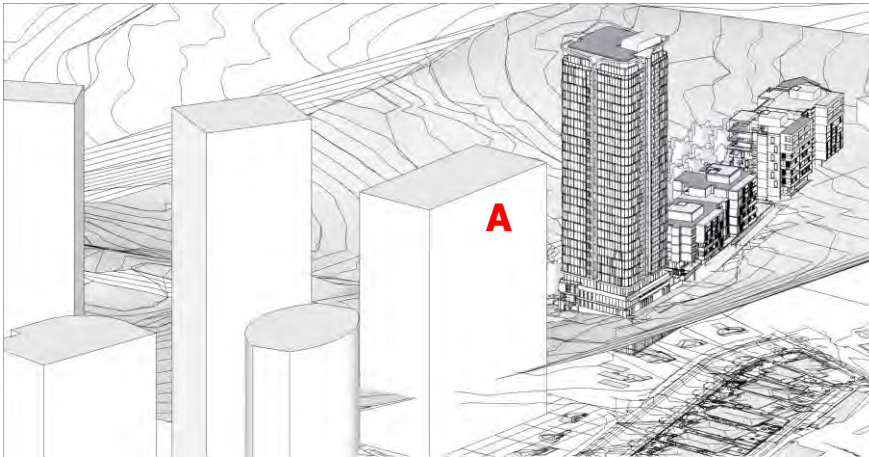


Figure 2: 9am view from the sun showing developments which may have had overshadowing impact on the site

5.4 Achieved solar access

Table 4 in Appendix A reports in detail the schedule of achieved mid-winter (June 21) solar access for each apartment for the scheme. In Appendix B Table 5 presents the 'views from the sun' taken from the model shown in Figure 2 above. This tabulated set of views is reproduced at reduced scale for reference. Larger versions of the views can be provided digitally on request if required for more detailed scrutiny by Council.

Table 1: Summary of solar access for units

Units which achieve 3 hours or more sunlight 9am – 3pm June 21 to Living area	127	46.9%
Additional units which achieve 2 hours or more sunlight 9am - 3pm June 21 to Living area	50	18.5%
Additional units which achieve 2 hours or more sunlight 8am – 4.30pm June 21 to Living area	48	17.7%
Units which achieve 3 hours or more sunlight 9am – 3pm June 21 to any part of habitable rooms	127	46.9%
Additional units which achieve 2 hours or more sunlight 9am - 3pm June 21 to any part of habitable rooms	50	18.5%
Additional units which achieve 2 hours or more sunlight 8am – 4.30pm June 21 to any part of habitable rooms	48	17.7%
Total number of units	271	
Units deemed to satisfy the RFDC and local controls	225	83.0%
South facing single aspect dwellings	34	12.5%

Council is encouraged by its DCP control to pay regard to the following factors:

- The RFDC suggests that a '2-hour standard' can be applied in dense urban areas. In the given context, my view is that apartments meeting the '2-hour standard' should be considered compliant;
- The DCP control provisions define the required sun access for each dwelling as 'in total to any portion of the habitable rooms'. In fact this provision makes little difference to the overall compliance achieved;

- Brown, C. in *Botany Development Pty Ltd v Council of the City of Botany Bay LEC 10360 of 2013* confirmed that effective sun before 9am and after 3pm is legitimately considered.

The last consideration is particularly pertinent to tower blocks where a range of unobstructed sun is relatively easily established.

On this site with its orientation bias favouring the east elevation, consideration of early morning sun is unnecessary to qualify east facing apartments as complying, but illustrates the extended effective sun actually available. If we take account of the sun after 3pm, ***the overall compliance t may be deemed to be 225 (83.0%) out of the total 271 apartments.*** The RFDC *Rules of Thumb* and the DCP control both nominate as a minimum 70%.

On that basis, in my view, solar access compliance is of a very high order.

5.5 South facing single aspect apartments

5.6.1 RFDC Rule of Thumb

The proportion of south facing single aspect dwellings slightly exceeds the maximum 10% nominated by the RFDC. If because of where the relevant *Provisions* limiting single aspect south facing units are to be found in the LCDCP and in the RFDC *Rules of Thumb*, consideration is given only to solar access, this would appear to be an issue. But such consideration is not consistent with the performance objective to which the control actually relates.

More careful scrutiny of the RFDC confirms that the *Rule of Thumb* is intended primarily as a daylighting and natural ventilation control.

5.5.2 Daylight and ventilation quality of south facing single aspect apartments.

The apartments so characterised are all 'wide and shallow' with 'triple fronted' layout in which every room enjoys excellent daylight quality. The same attributes, taken together with the stepped recessing of the three rooms, will ensure excellent natural ventilation in response to prevailing south to south-easterly summer cooling breezes.

5.5.3 Is there a reasonable alternative?

Objective scrutiny of the floor plans suggests that the proportion of apartments relying on the south façade is for all intents and purposes unavoidable.

In my view, the proportion of south facing single aspect apartments is acceptable given the otherwise effective floor layout and superb amenity of the southerly views. The apartment designs explicitly fulfil the daylighting and natural ventilation performance objectives. The issue in my considered opinion cannot be considered determinative.

6.0 OVERSHADOWING

6.1 Potential issues

6.1.1 The proposed development has potentially adverse overshadowing impacts on a number of nearby properties. Those impacts may be considered in two categories:

- Dwellings immediately to the south of the proposed development, on the southern side of Marshall Avenue, with north facing front gardens and front elevations. These dwellings are potentially affected by both the low rise and the tower components of the proposed scheme;
- Properties further to the south, affected only by the additional length of shadow due to the height of the tower component.

6.2 Controls

6.2.1 Clause 3.15 in Part C3 of LCDCP 2010 states that its 'provisions apply to proposed developments and any residential development beyond the site'.

6.2.2 Notwithstanding that the control offers some relief that may be normally considered applicable at transition between sites zoned for very different densities, in the first instance, I apply a criterion of retaining minimum three hours of sun to a sunward façade and to a 'reasonable proportion of private open space' for any potentially affected property. I consider this to be a conservative position.

6.3 Analysis

6.3.1 Immediate neighbours Marshall Avenue

I employ the second of the 3D digital models described in 5.2, to fully explore the potential overshadowing by the proposal. This model is simplified by excluding other remote buildings, but including 3D models of the potentially impacted houses in correct spatial relationship with the complex terrain.

I have undertaken the following analysis:

- Hourly shadows were projected onto relatively detailed north elevations of each of the relevant properties on the south side of Marshall Avenue. Figure 3 shows in tabular format that hourly shadows on each of those elevations, provided to me by the architects. Appendix C reproduces the same diagram in larger scale for better scrutiny.
- In Table 6 in Appendix C, I provide a full table of hourly views from the sun focusing on the same properties. The views from the sun validate the elevational shadows provided by the architects.

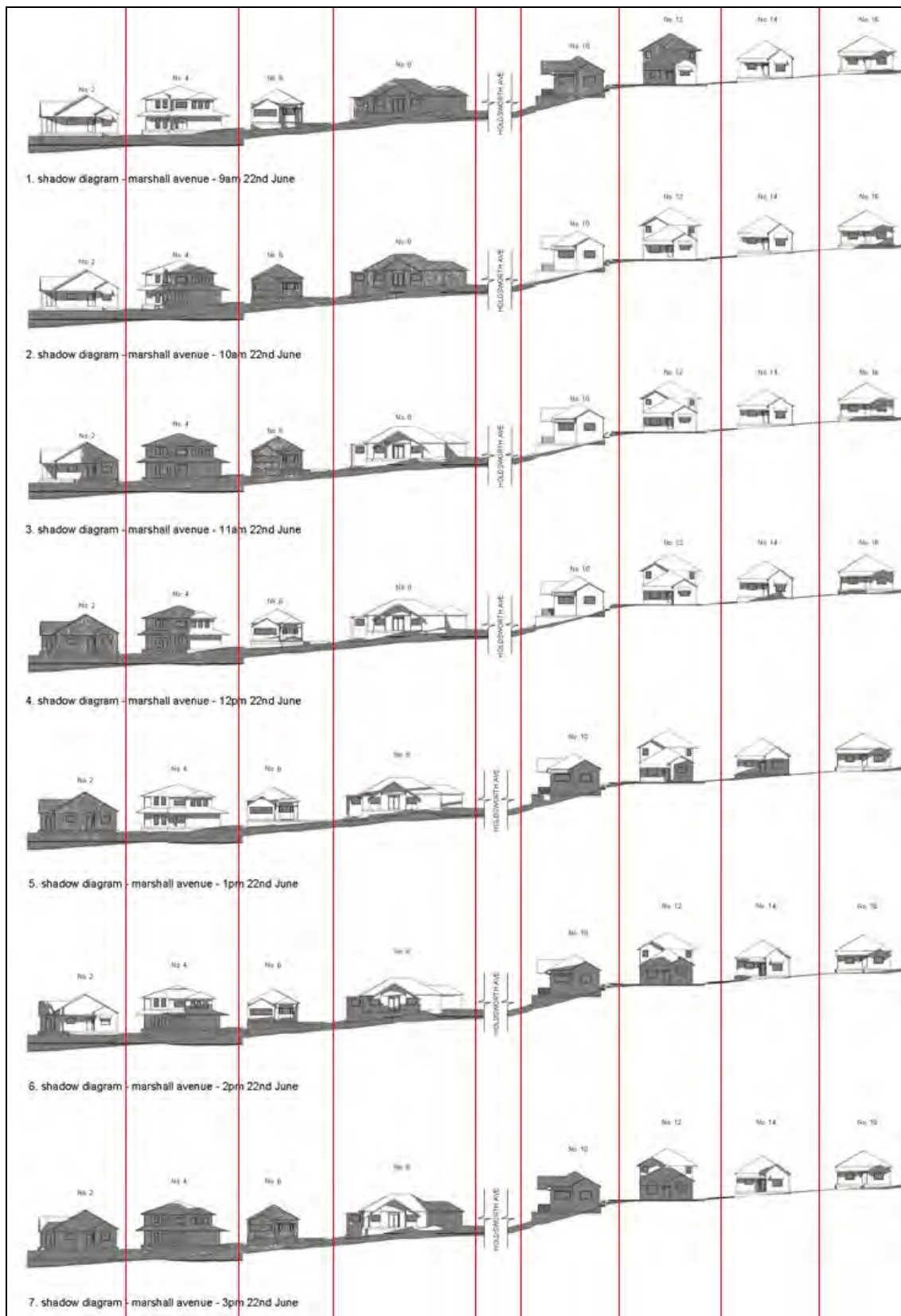


Figure 3: Shadows on north elevations in Marshall Ave

6.3.2 The overshadowing impacts on immediate neighbours

The analysis demonstrates that each of those properties will retain at least three hours of solar access to their north facing elevations. The possible exception is No.4 Marshall Avenue, where depending on the internal plan of the dwelling the retained solar access to living areas may be just under three hours.

In this model I have not taken account of the potential additional impact of the proposed development at 88 Christie St. This is because inspection of Figure 2 suggests that while at 9am the additional shadow would impact Nos. 2, 4 and 6 Marshall Ave, the impact is limited to that time, and potentially significantly reduced if the proposed building envelope is further amended.

6.2.3 Overshadowing by the tower component

I also verify the general accuracy of the plan shadow diagrams, specifically to confirm the extent of the shadows by the proposed tower, of properties further to the south of the subject site.

I superimpose at the same scale the shadows I have generated from the 3D digital model which I have independently 'set up', on the shadow diagrams prepared by the architects, and superimposed on an aerial photograph.



Figure 4: Plan projection of tower shadow at 12 noon, June 21 compared with my model projection

I note that the architects' projection is, if anything lightly overstating the likely extent of the tower shadow. I therefore consider it reasonable to base my summary analysis of the shadow impact on the architects' own hourly series of plan views, which I include at Appendix D.

Inspection of the hourly shadows suggests that the impact of the moving tower shadow is generally limited to a duration of no more than one hour to the front or rear yard of any affected property. Because of the dominant orientation of the nominally north-south streets, additional overshadowing of east and west facades is likely to be minor during those same approximately hour-long 'transits', most often additionally masked by the mature vegetation.

I conclude that overshadowing impacts of the extended tower shadow cannot reduce by more than one hour the available sun to any individual property, and therefore substantially comply with Council's controls.

In brief, while the additional overshadowing impacts are clearly identifiable, they are relatively minor. Given the context and that the impact is of a remarkably low level for such a clear zoning boundary, I have not attempted any more precise quantification. But as far as is evident from my analysis, the cumulative impacts do not trigger any explicit non-compliances that could be determinative in considering the application.

7.0 NATURAL VENTILATION COMPLIANCE

7.1 Performance Objectives

SEPP65 itself does not refer to prescribed quantitative standards. The Residential Flat Design Code gives a quantified recommendation for interpreting SEPP65 with respect to natural ventilation:

- Building depths, which support natural ventilation typically range from 10 to 18 metres.
- Sixty percent (60%) of residential units should be naturally cross ventilated.
- Twenty five percent (25%) of kitchens within a development should have access to natural ventilation.
- Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.
(Rules of Thumb: *Natural Ventilation* p.87)

A proper reading of the Residential Flat Design Code as it interprets SEPP65 makes clear the performance based approach of the Code.

The control of energy efficiency and energy use for assuring thermal comfort is now vested exclusively in SEPP BASIX. It would therefore be reasonable to assume that specific performance measures for buildings designed in compliance with SEPP65 will be considered with reference to a more general energy conservation objective, with emphasis on the issue of *ventilation for general amenity*.

7.2 Natural ventilation/cross ventilation

So-called 'cross-ventilation' is a simplification of opening arrangements of apartments for checking the likely contribution of natural ventilation to projected comfort conditions. The *Rules of Thumb* in the Residential Flat Design Code give a quantified recommendation for interpreting SEPP65 with respect only to cross ventilation. Furthermore, the Rules of Thumb relate only to the overall proportion of complying dwellings, but not to the expected performance for any one dwelling.

'Cross-ventilation' in the RFDC describes where a dwelling has operable openings to two or more distinctly different orientations, thus making likely that in any conditions of breeze, relative pressure differentials will assure some air movement through connected spaces in the dwelling. In the subject development, all such apartments are classified as cross-ventilated without further discussion.

Simple cross ventilation can also rely on ventilated skylights in top floor apartments, or on 'deep slots' in suitably oriented facades, such that under prevailing summer wind conditions, different spaces in the apartment can have openings in distinctly different pressure zones and thus create cross ventilation paths.

7.3 Equivalence to cross ventilation due to elevated exposure

At a certain height, suitable single sided apartments can be treated as subject to winds of so much greater velocity, that the distinction between single sided ventilation and cross ventilation is no longer relevant. The former provision for the 'cross ventilation bonus' in BASIX suggested this blanket categorisation may apply from level 10 above ground in all cases. Other authorities have typically adopted eight storeys above ground as the threshold in urban settings. The proposed development is located on an exposed site which assures that for the majority of the apartments there is little or no likelihood of obstruction of the relevant prevailing winds. *Refer to the wind rose in Figure 5.*

I therefore consider it relatively conservative to adopt the threshold Level 10 and I have therefore only applied this characterisation of blanket compliance at and above Level 10.

7.3.1 Cooling wind and breeze exposure

Figure 3 illustrates the relative distribution of frequency and velocity of summer winds for Sydney, based on the Reference Meteorological Year.

The chart shows relative frequencies for the whole summer day. The most frequent winds suitable for general cooling are the sea breezes from just east of north to south-east. Southerly ‘busters’ can achieve rapid cooling, often accompanied by rapid temperature drops and higher wind speeds. These also occur with useful frequency.

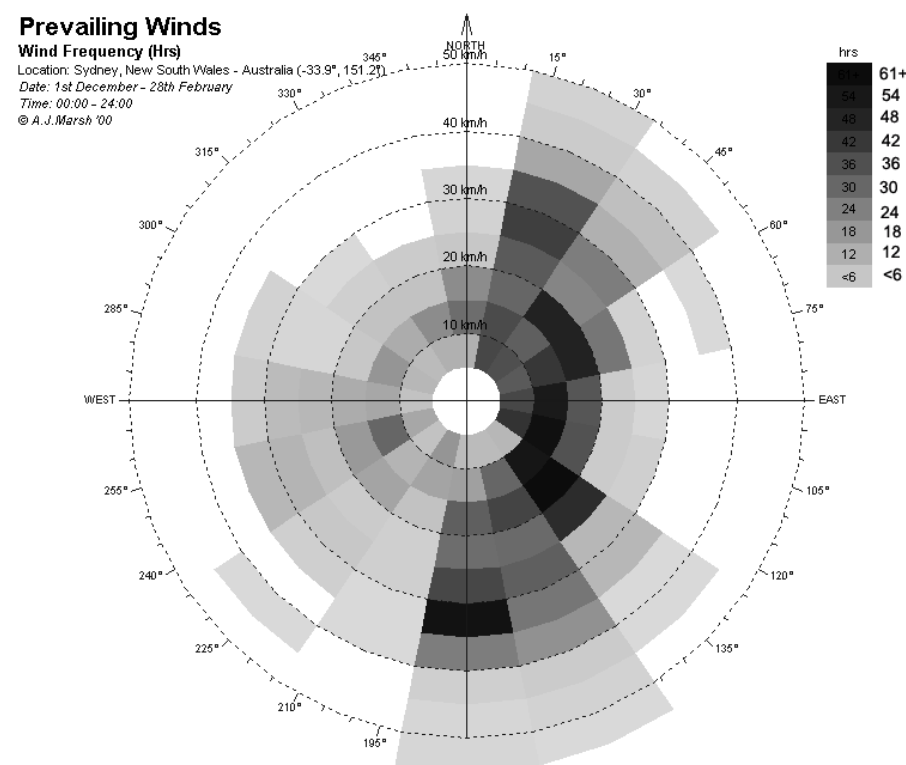


Figure 5: Summer wind velocities and frequencies, Sydney.

7.3.2 Validation studies

In forming my expert opinion for the assessment of likely enhanced single sided ventilation performance, and to increase confidence in my characterisation of the ventilation performance of high rise apartments, I have the benefit of a number of simulation based validation studies. Those studies have been carried out under my direction by Vipac Engineers and Scientists Ltd., Heggies Australia (now SLR Consultants), and CPP Wind Engineering, on a number of apartment proposals where comparable conditions and apartment designs were under consideration.

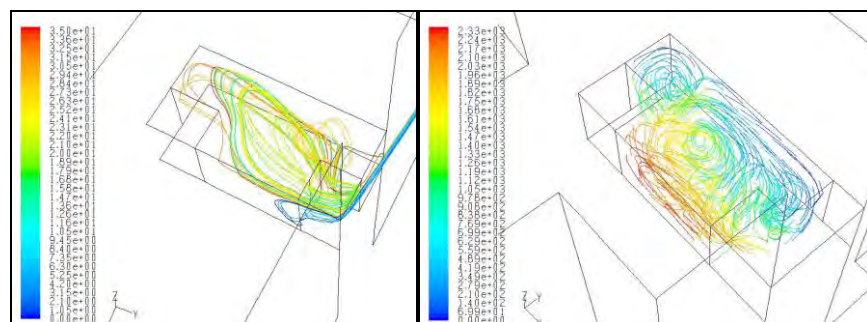


Figure 6: Simulated ventilation of typical east facing single sided apartment N to NE winds (left) and SE winds (right)
 Source: Vipac. The examples are from the Ashfield RSL project

Figure 6 illustrates streamline patterns for an apartment of similar design to that of the smaller apartments in the proposed building. The example is from the Ashfield RSL project, which was the determined for approval by Senior Commissioner Roseth in s34 Conference in the Land and Environment Court.

The results of such CFD simulations confirm that the single sided ventilation effects are sufficiently reliable under the influence of Sydney’s prevailing wind regime.

7.4 Natural ventilation compliance

In Table 2, I summarise the compliance for natural ventilation performance. Table 3 in Appendix A also sets out the natural ventilation status of individual apartments.

Table 2: Natural ventilation compliance

Conventionally cross ventilated apartments	185	68.3%
Additional apartments at Level 10 and above deemed <i>equivalent</i> to cross ventilation due to elevated exposure	41	15.1%
Total number of apartments	276	
Total deemed to comply	226	83.4%

8.0 CONCLUSIONS

8.1 Solar access

8.1.1 The proportion of apartments which comply with the performance requirements of the Residential Flat Design Code is **225 (83.0%) units from a total of 271**. The RFDC *Rules of Thumb* and the DCP control both nominate as a minimum 70%.

To arrive at this number, I have considered a proportion of the apartments to be complying with a minimum of two hours of direct sun. In addition, I have considered it reasonable to take account of sun available after 3pm, for those apartments where the 3D model makes clear that such sun is unlikely to be obstructed at any time in the future, and where in addition, such sun is the most effective for the apartments in question.

In my considered opinion, the development complies for solar access amenity.

8.2 Overshadowing

8.2.1 I investigate in detail the overshadowing of properties on the south side of Marshall Avenue. The analysis demonstrates that each of those properties will retain at least three hours of solar access to their north facing elevations. The possible exception is No.4 Marshall Avenue, where depending on the internal plan of the dwelling the retained solar access to living areas may be just under three hours.

8.2.2 I also verify the general accuracy of the plan shadow diagrams, which indicate overshadowing of properties further to the south of the subject site. I note that the impact of such overshadowing is from the fast moving shadow of the tower component of the proposal and is generally limited in duration to no more than approximately one hour on any affected property.

I conclude that overshadowing impacts substantially comply with Council's controls.

8.3 Natural ventilation

The proportion of dwellings with simple cross ventilation through openings on two or more different elevations is 185 (68.3%) out of the 271 apartments. But a further 41 apartments at and above Level 10 have suitable orientations to be naturally ventilated at rates likely equivalent to cross ventilation, due to their exposure to significantly increased wind speeds.

On that basis, a total of 226 (83.4%) of the 271 apartments may be deemed to comply. The RFDC requires a minimum of 60%.

In my considered opinion, the proposed development fully complies for natural ventilation amenity.

Table 3: Detailed compliance table for solar access

Low rise

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect
Ground	G01	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G02	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G03	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G04	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G05	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G06	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G07	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
Level 1	101	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	0									
Level 2	201	0	0	0	0	0	0	0	0	0	b	b	b	b	1	1	1	1	1	YES				YES				
	202	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	203	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	204	0	b	b	b	b	b	b	1	1	1	1	1	1	1	1	1	1	b	YES			YES			YES		
	205	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
	206	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	b	b	YES			YES			YES		
	207	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	208	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	209	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	210	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
Level 3	301	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES				YES				
	302	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	303	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	304	0	b	b	b	b	b	b	1	1	1	1	1	1	1	1	1	1	b	YES			YES			YES		
	305	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
	306	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	b	b	b	YES			YES			YES		
	307	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	308	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	309	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	310	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
Level 4	401	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES				YES				
	402	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	403	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	404	0	b	b	b	b	b	b	1	1	1	1	1	1	1	1	1	1	b	YES			YES			YES		
	405	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
	406	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	b	b	b	YES			YES			YES		
	407	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	408	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	409	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	410	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
Level 5	501	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	YES				YES				
	502	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	503	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	504	0	b	b	b	b	b	b	1	1	1	1	1	1	1	1	1	1	b	YES			YES			YES		
	505	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		
	506	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	b	b	b	YES			YES			YES		
	507	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	508	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect
Level 6	509	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	510	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0					YES		YES		
	601	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	YES				YES		YES		
	602	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	603	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	604	0	0	0	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
52 units																				35	1	0	35	1	0	34		7
																				67.3%	1.9%	67.3%	1.9%	0.0%	0.0%	65.4%		13.5%
																					69.2%	69.2%		69.2%	69.2%			
HIGHRISE																												
Ground																												
Level 2	G01	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	G02	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	G03	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES		YES
	201	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
Level 3	202	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	0							YES		
	203	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1									
	206	0	0	b	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1			YES			YES			
	301	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									YES
Level 4	302	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1			YES			YES	YES	YES	
	303	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	304	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	305	0	0	b	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
Level 5	401	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	402	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									YES
	403	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	404	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
Level 6	405	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	406	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	407	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES					
	408	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
Level 7	409	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	410	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	501	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	502	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									YES
Level 8	503	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	504	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	505	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	506	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
Level 9	507	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES					
	508	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	509	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
	510	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0		YES			YES		YES		
Level 10	601	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	602	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									YES
	603	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1			YES			YES	YES		
	604	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
Level 11	605	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	606	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	607	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES					
	608	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
Level 12	609	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	610	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	701	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect
Level 8	702	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									YES
	703	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	704	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	705	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	706	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	707	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES					
	708	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	709	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	710	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	801	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	802	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	
	803	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	804	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	805	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	806	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	807	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	808	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
Level 9	809	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	901	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	902	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	
	903	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	904	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	905	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	906	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
	907	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES					
Level 10	908	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
	909	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1001	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1002	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES	YES	
	1003	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1004	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1005	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1006	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
Level 11	1007	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
	1008	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
	1009	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1101	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1102	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES	YES	
	1103	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1104	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1105	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
Level 12	1106	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1107	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1108	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
	1109	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1201	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1202	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES	YES	
	1203	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1204	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1205	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1206	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1207	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES	YES	
	1208	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect
Level 13	1209	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1301	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1302	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	1303	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1304	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1305	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1306	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
Level 14	1307	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
	1308	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
	1309	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1401	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1402	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	1403	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1404	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
Level 15	1405	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1406	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
	1407	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES				YES	
	1408	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	b	0	YES			YES			YES		
	1409	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1501	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1502	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
Level 16	1503	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1504	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1505	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1506	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
	1507	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1508	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1601	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
Level 17	1602	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	1603	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1604	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1605	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1606	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
	1607	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1608	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
Level 18	1701	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1702	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	1703	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1704	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1705	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1706	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
	1707	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
Level 19	1708	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1801	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1802	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	1803	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1804	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1805	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1806	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
Level 19	1807	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1808	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1901	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	1902	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect
Level 20	1903	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1904	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	1905	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1906	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
	1907	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	1908	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2001	0	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2002	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	2003	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2004	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
Level 21	2005	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2006	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
	2007	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2008	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2101	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2102	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	2103	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2104	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2105	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2106	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES	
Level 22	2107	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2108	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2201	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2202	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	2203	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2204	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2205	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2206	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES					YES	
	2207	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2208	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
Level 23	2301	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2302	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	2303	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2304	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2305	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2306	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES					YES	
	2307	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2308	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2401	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2402	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
Level 24	2403	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2404	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2405	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2406	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES					YES	
	2407	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2408	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2501	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES		
	2502	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0								YES	YES
	2503	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
	2504	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES		
Level 25	2505	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		
	2506	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	b	b	YES				YES				YES	
	2507	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES		

	Unit	8	830	9	930	10	1030	11	1130	12	1230	13	1330	14	1430	15	1530	16	1630	>3hrs (9-3)	>2hrs (9-3)	>2hrs (8-4:30)	L+B >3hrs	L+B >2hrs	L+B >2hrs (8-4:30)	Cross vent	Vent compliance due to height	South facing single aspect				
Level 26	2508	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES	YES							
	2601	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES	YES							
	2602	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES	YES					
	2603	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES						
	2604	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
Level 27	2605	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES					
	2606	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
	2701	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0		YES			YES		YES						
	2702	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0							YES	YES					
	2703	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1			YES			YES	YES						
Level 28	2704	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
	2705	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	b	b	YES			YES				YES					
	2706	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
	2801	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0		YES			YES		YES						
	2802	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1			YES			YES	YES						
	2803	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
	2804	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	YES			YES			YES						
	HIGHRISE FIGURES ONLY																				219	units		92	49	48	92	49	48	151	41	27
																							42.0%	22.4%	21.9%	42.0%	22.4%	22.4%	68.9%	18.7%	12.3%	
																								141	190		141	190		192		
																							64.4%	86.3%		64.4%	86.3%		87.7%			
COMBINED FIGURES																				271	units		127	50	48	127	50	48	185	41	34	
																						46.9%	18.5%	17.7%	46.9%	18.5%	17.7%	68.3%	15.1%	12.5%		
																							177	225		177	225		226			
																							65.3%	83.0%		65.3%	83.0%		83.4%			

Views from the sun for analysis of solar access to apartments.

Table 4: Views from the sun

0800	
0830	

0900

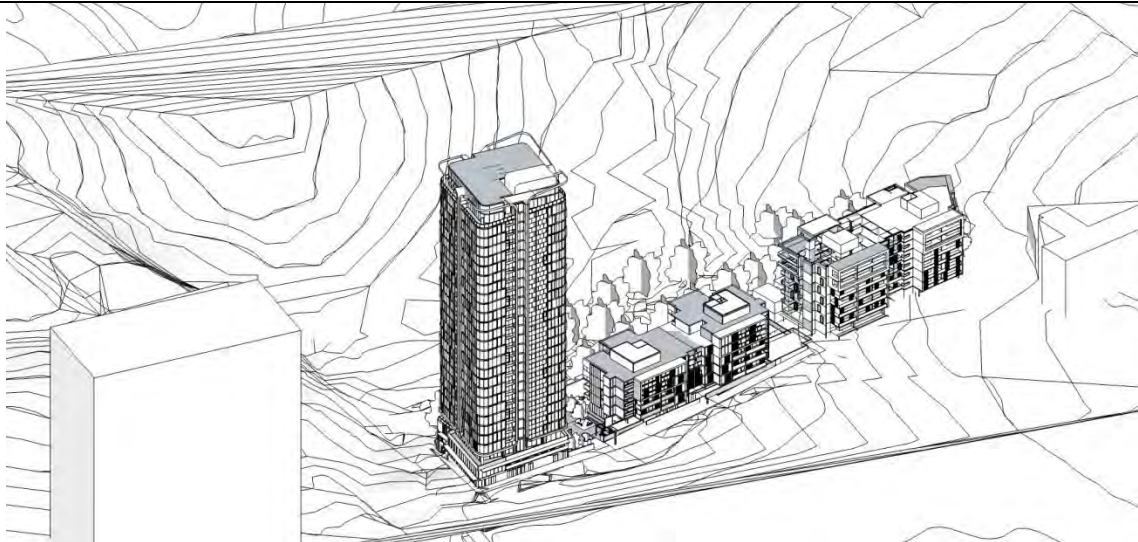


0930

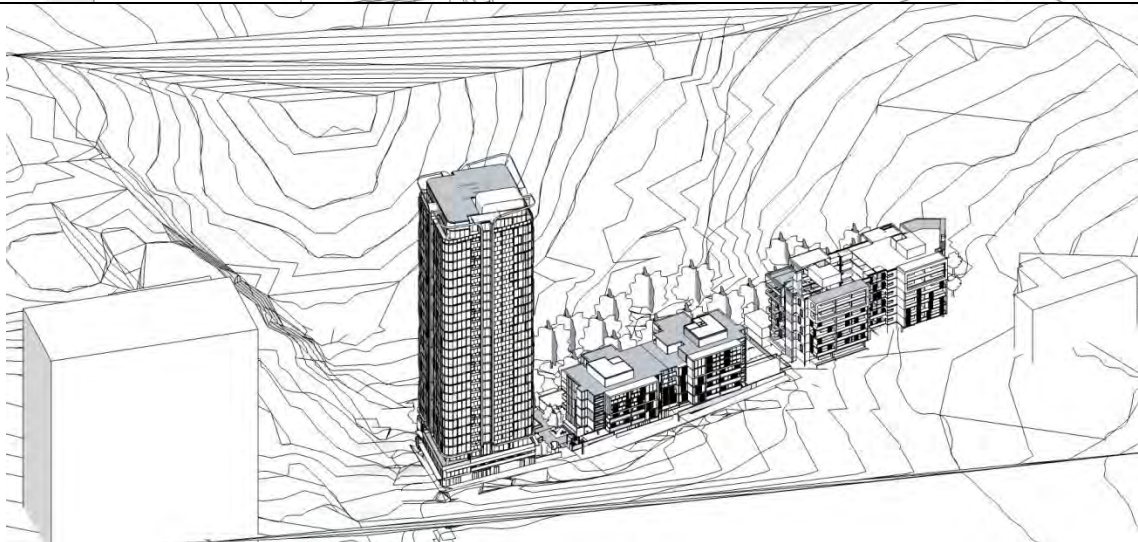


1000	
1030	

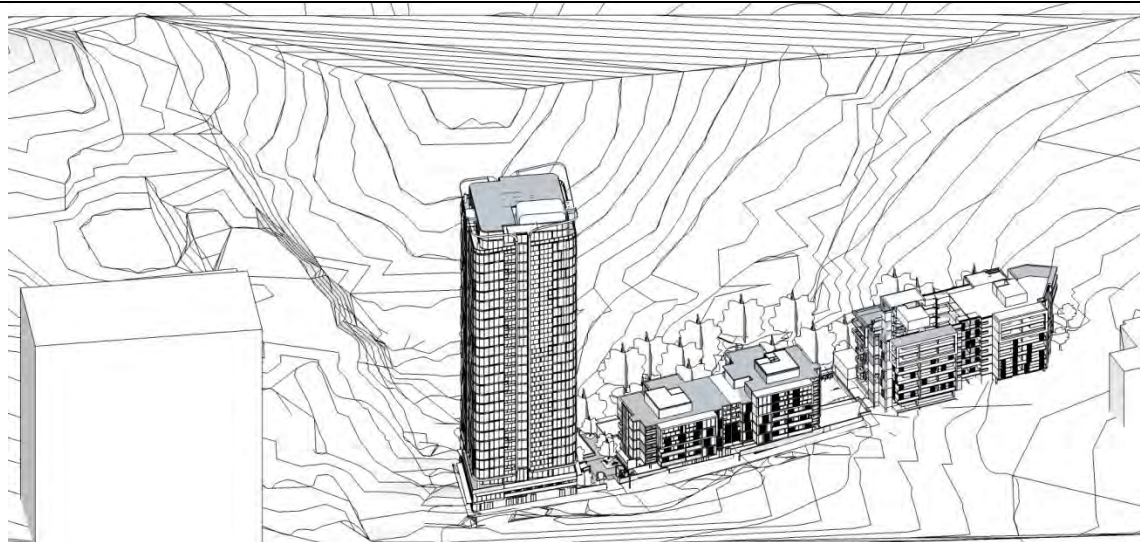
1100



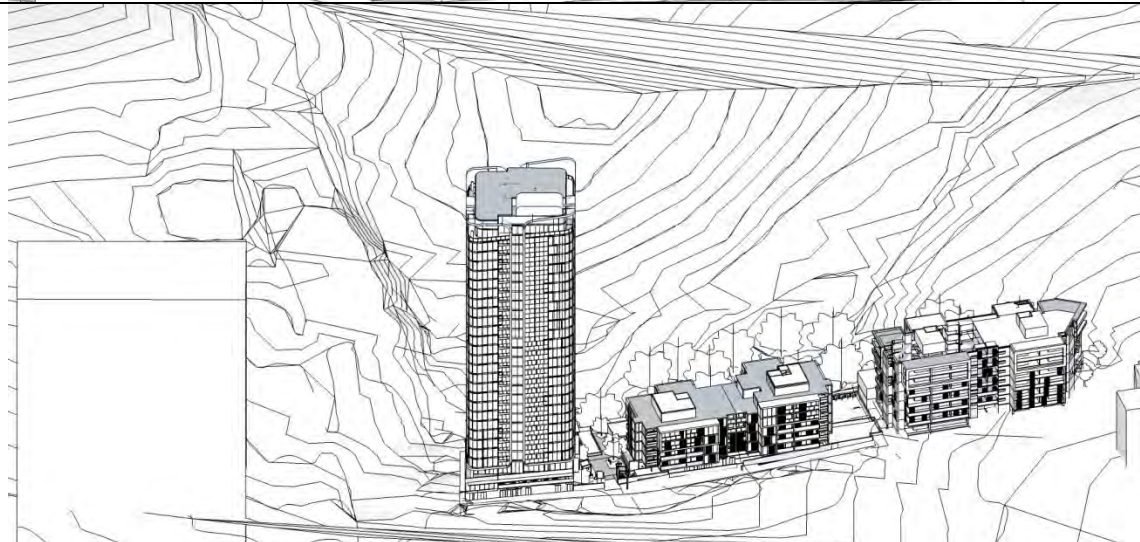
1130

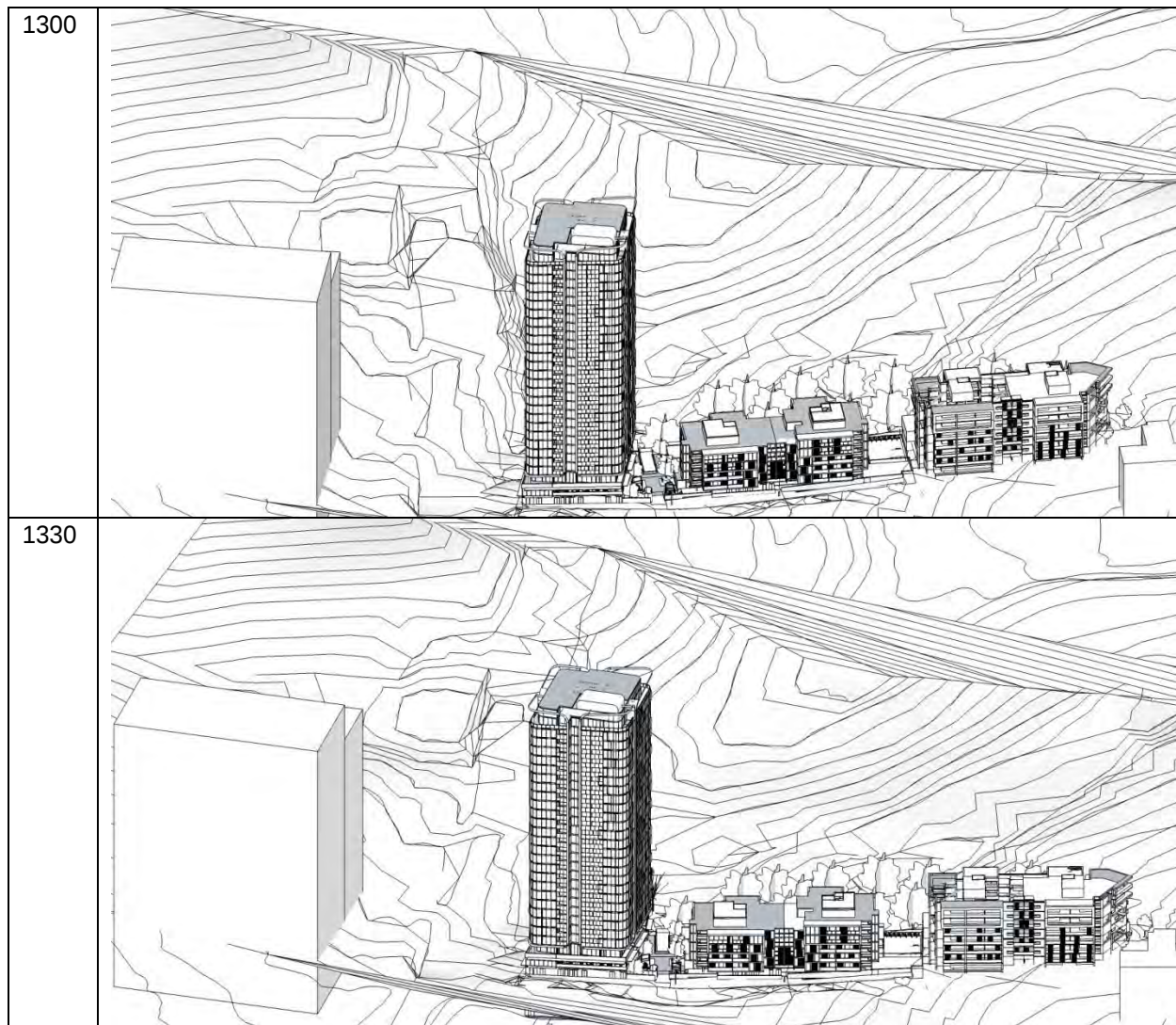


1200



1230





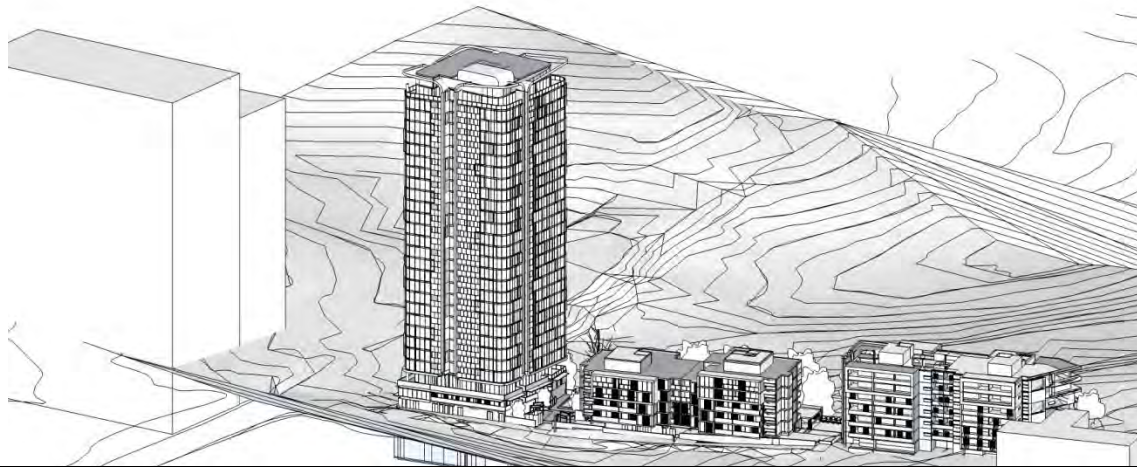
1400



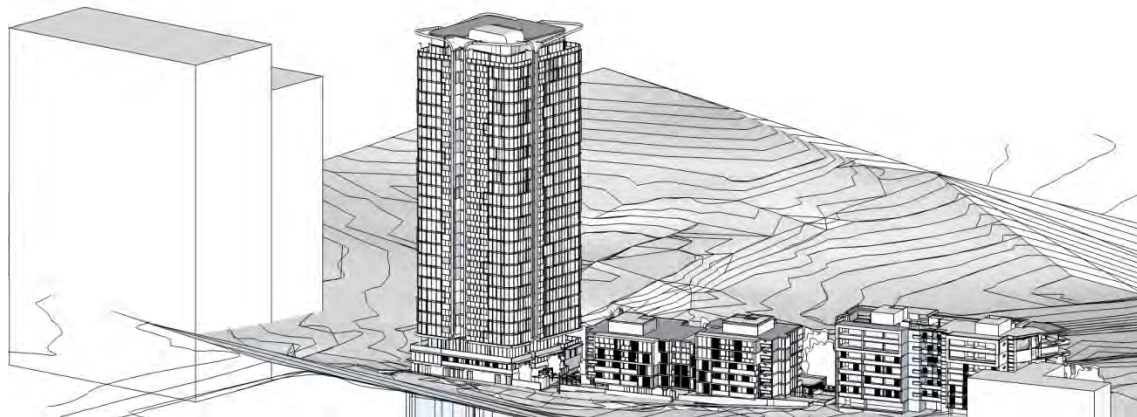
1430



1500



1530



1600

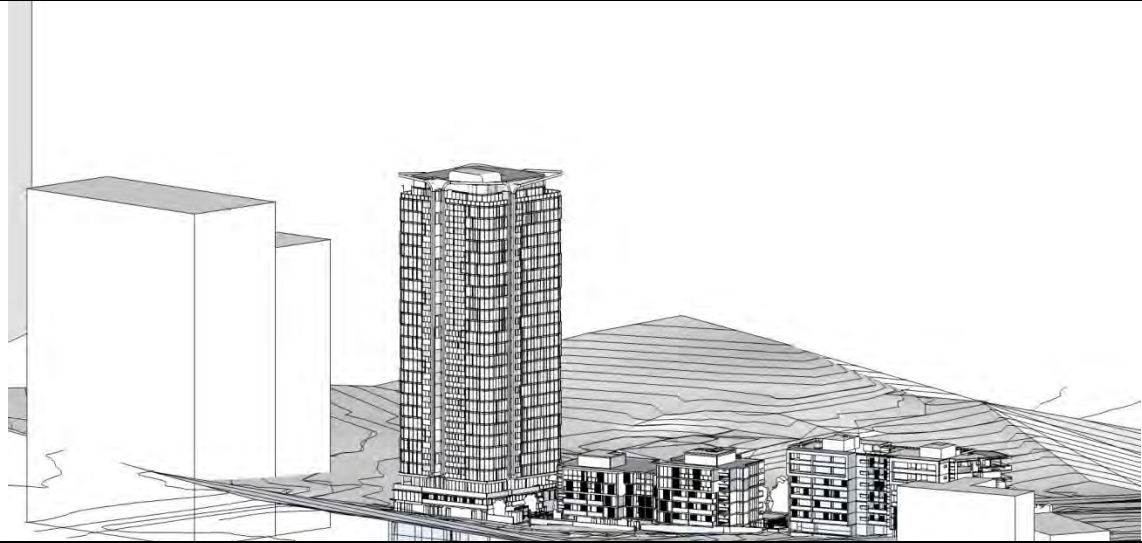
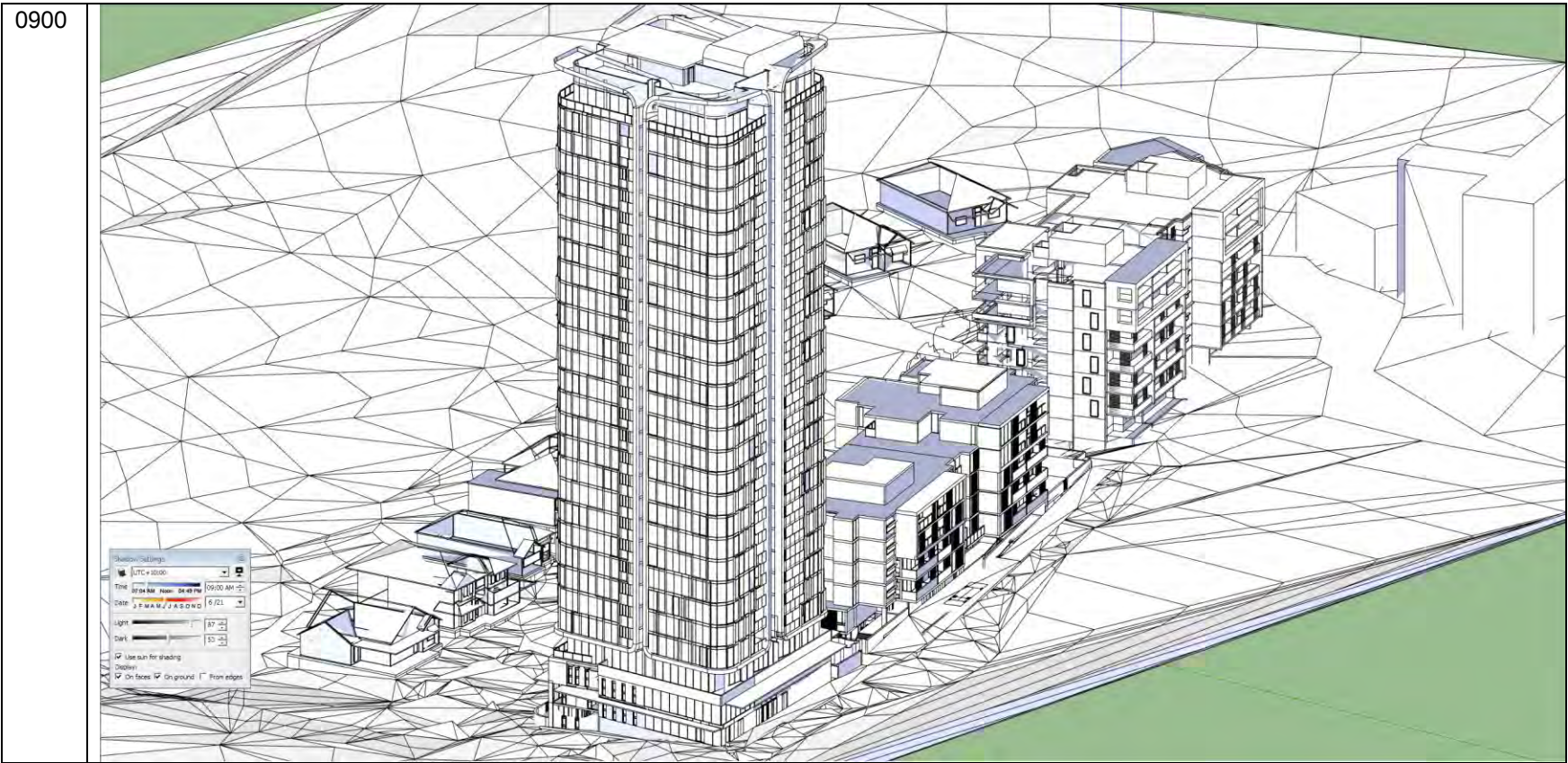


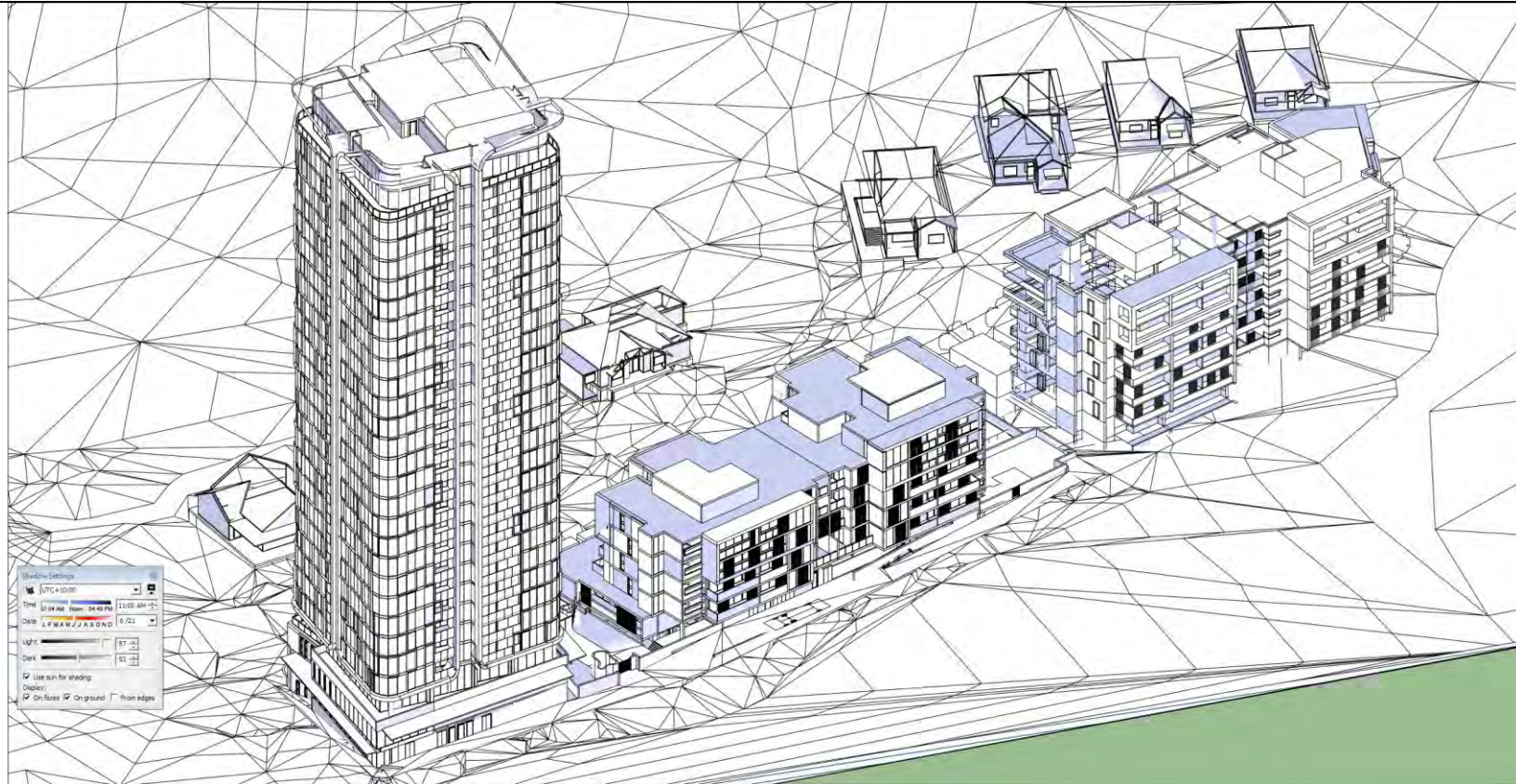
Table 5: Views from the sun (overshadowing study)



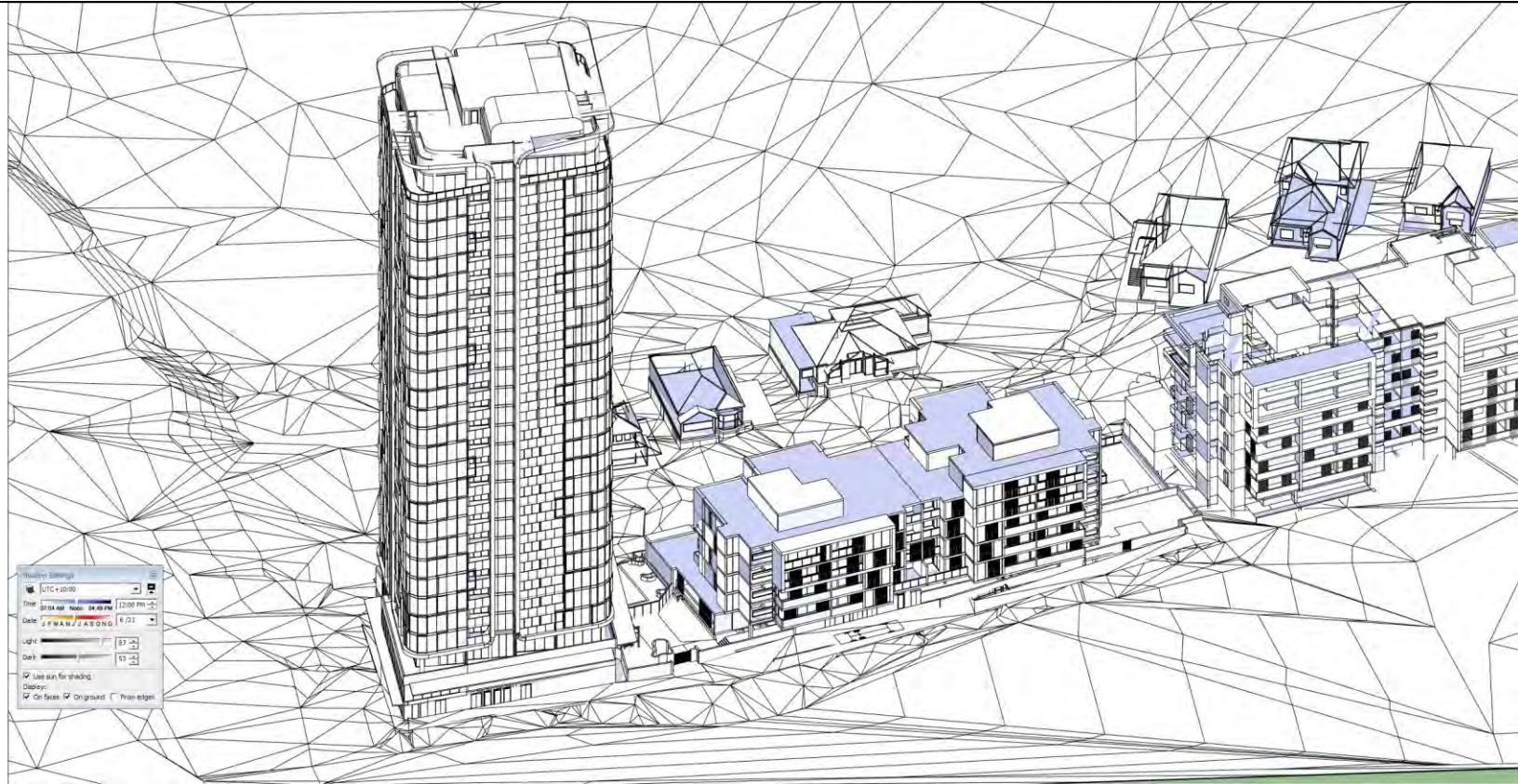
1000



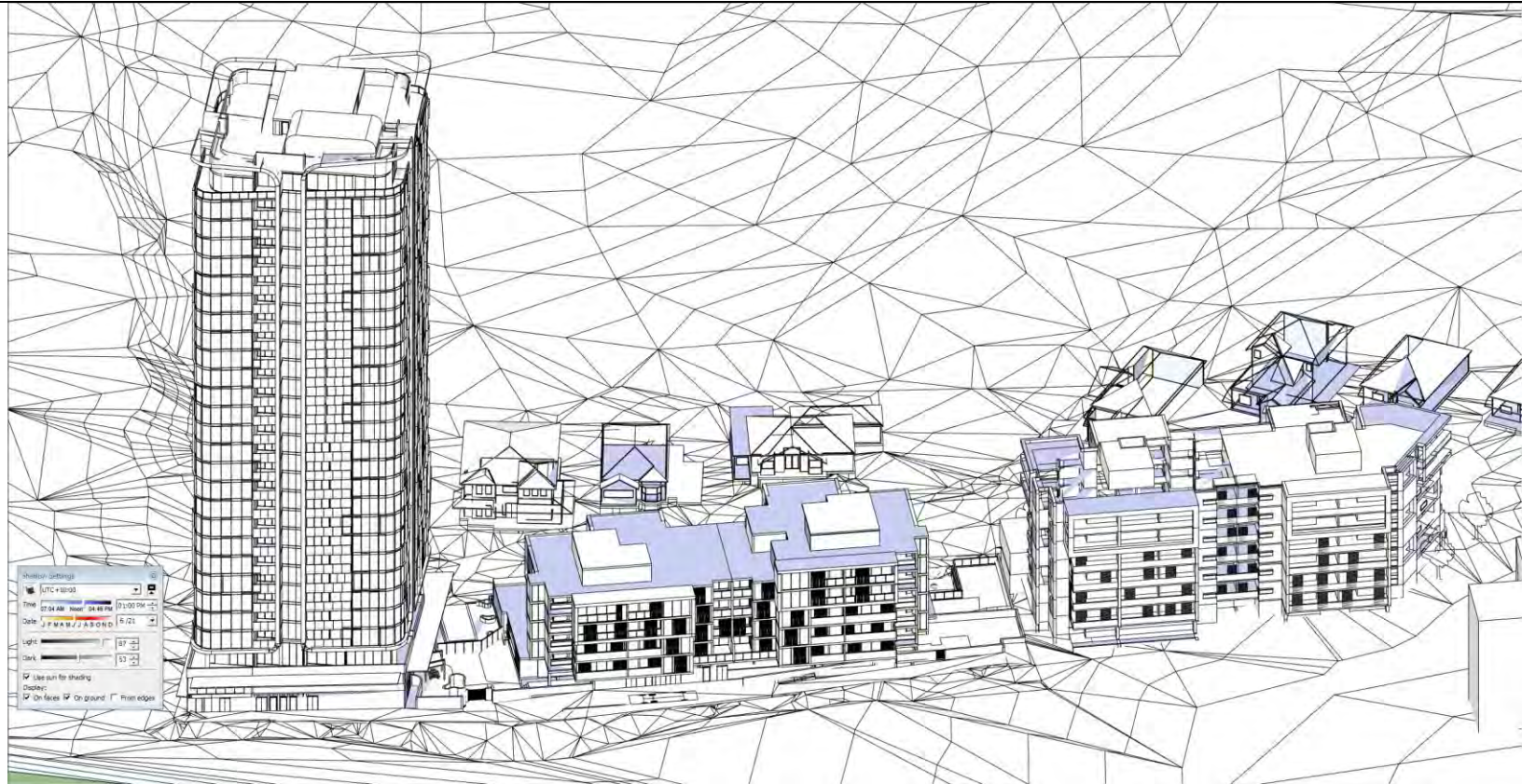
1100



1200



1300



1400



1500

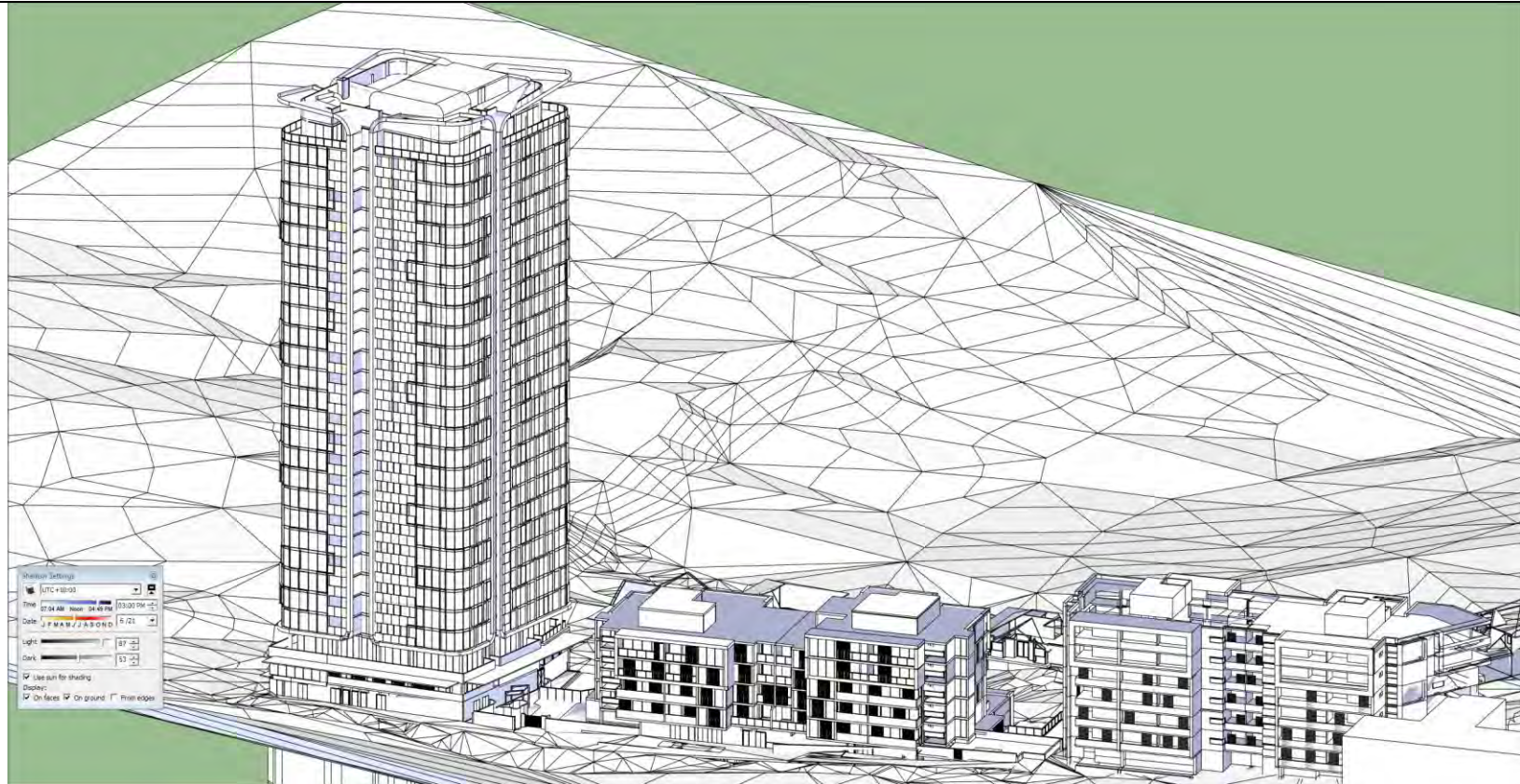
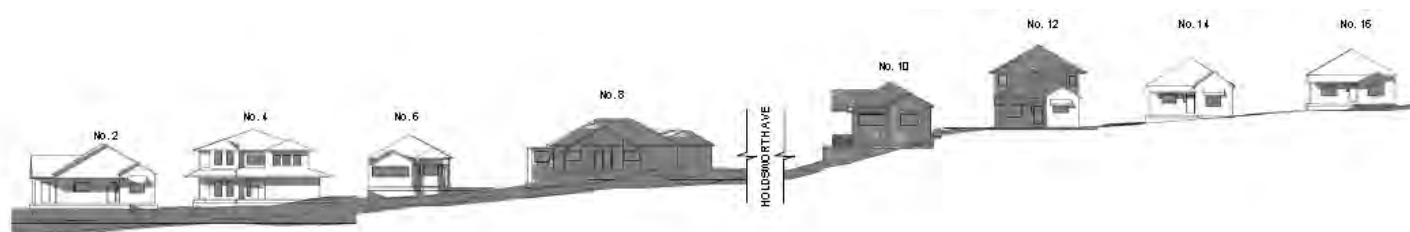
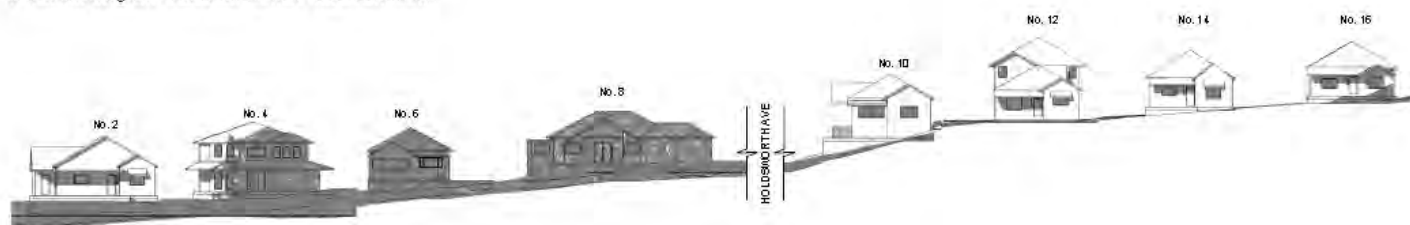


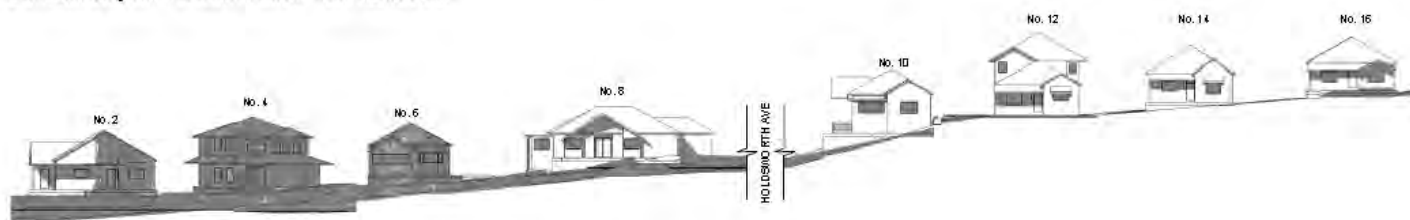
Figure 7: Marshall Ave elevations. Overshadowing on June 21.



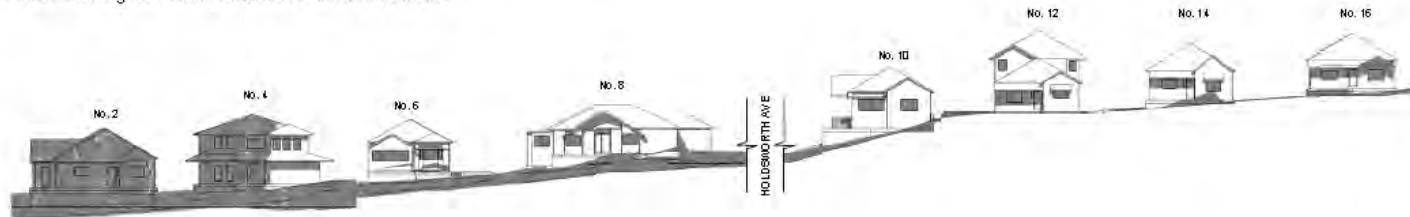
1. shadow diagram - marshall avenue - 9am 22nd June



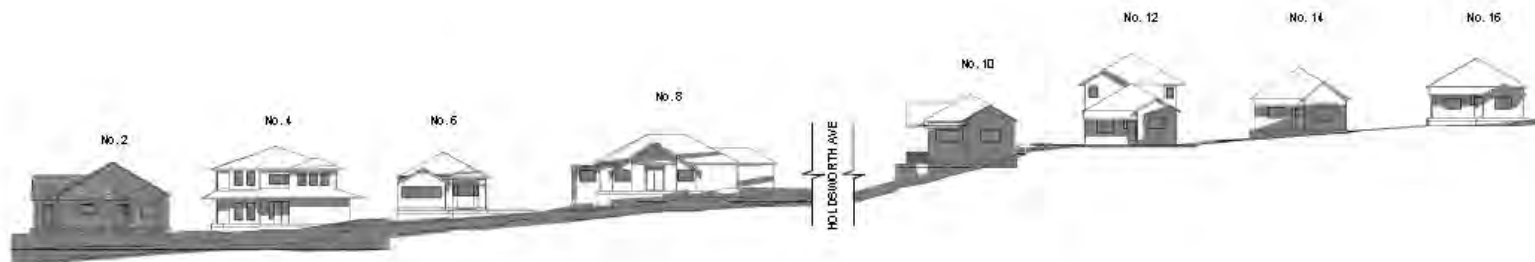
2. shadow diagram - marshall avenue - 10am 22nd June



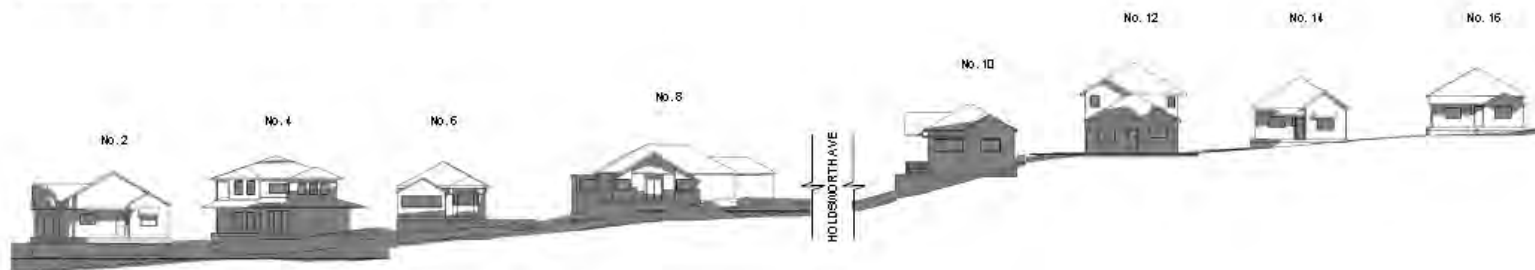
3. shadow diagram - marshall avenue - 11am 22nd June



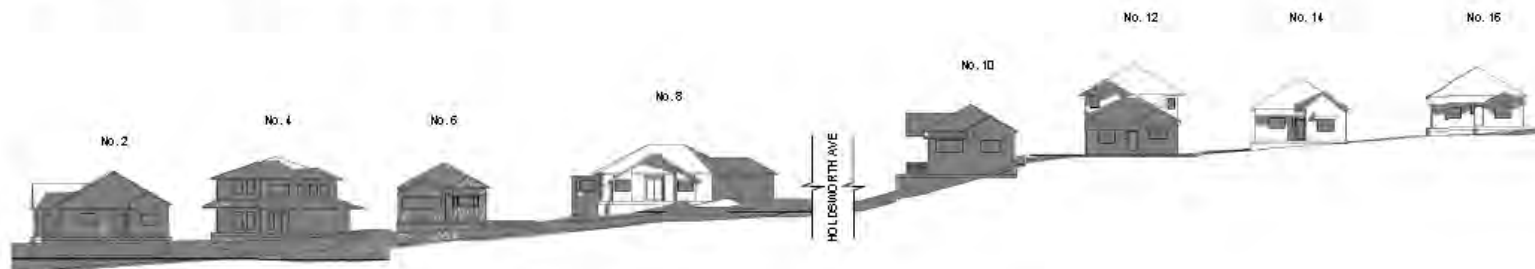
4. shadow diagram - marshall avenue - 12pm 22nd June



5. shadow diagram - marshall avenue - 1pm 22nd June



6. shadow diagram - marshall avenue - 2pm 22nd June



7. shadow diagram - marshall avenue - 3pm 22nd June

Figure 8: Hourly shadows June 21



9am



12am



3pm



10am



1pm



11am



2pm



planning consultants

APPENDIX D

Parties

Lane Cove Council

Loftex Pty Ltd

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Date

Parties

Lane Cove Council ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South Wales (**Council**)

Loftex Pty Ltd ACN 135 286 494 of Level 16, 61 Lavender Street, Milsons Point, New South Wales (**Developer**)

Background

- A The Developer proposes to lodge a Planning Proposal for the site which seeks to increase the height control from 65 metres to 94 metres on the eastern part of the Land.
- B As part of the Planning Proposal, the Developer offers to enter into a voluntary planning agreement on the terms of the letter of offer 2 April 2015.
- C As contemplated by section 93F of the Act, the Parties wish to enter into a Voluntary Planning Agreement in connection with the Planning Proposal and Development Application on the terms of this Agreement.

Operative provisions

It is agreed

1 Definitions and interpretation

In this Agreement these terms have the following meanings:

- | | |
|------------------------------------|---|
| Act | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW). |
| Additional Gross Floor Area | means any Gross Floor Area approved under the Development Consent by the consent authority that is located more than 65m above existing ground level. |
| Agreement | means this voluntary planning agreement including any schedules and annexures. |
| Bank Guarantee | means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council, issued by: <ul style="list-style-type: none">(a) one of the following trading banks:<ul style="list-style-type: none">(i) Australia and New Zealand Banking Group |

	Limited,
	(ii) Commonwealth Bank of Australia,
	(iii) Macquarie Bank Limited,
	(iv) National Australia Bank Limited,
	(v) St George Bank Limited,
	(vi) Westpac Banking Corporation, or
	(b) any other financial institution approved by the Council in its absolute discretion.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Consent Authority	has the same meaning as under the Act.
Construction Certificate	has the same meaning as under section 109C of the Act.
CPI	means the All Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
Development	A mixed-use residential apartment development comprising two separate buildings located over a common basement car park proposed to be constructed on the Land. The first building will comprise approximately 52 apartments over seven storeys, with the second building comprising a tower of approximately 217 apartments plus commercial and retail space over 29 storeys, as modified from time to time.
Development Application	means a development application made under Part 4 of the Act for the Development.
Development Consent	means the development consent granted by the Consent Authority to the Development Application, which has the same meaning as Development Consent in the Act and includes any amendment or modification of the Development Consent, including a Section 96 Modification.
Explanatory Note	the Explanatory Note attached at schedule 2 .
Force Majeure	means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.
Gross Floor Area	has the same meaning as provided by the LCLEP.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other act or regulation relating to the imposition or administration of the GST.
Land	the land located at 1-13a Marshall Avenue, St Leonards

	and contained in the folio identifier Lot 100 in DP 1200133
Land Owners	means the Developer.
Law	means: (a) the common law including principles of equity, and (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an authority, that presently apply or as they may apply in the future.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
LPI	means the Land and Property Information Office of New South Wales or any other authority replacing it.
Monetary Contribution	means the amount calculated under clause 6 , as indexed in accordance with clause 6.2 .
Party	a party to this Agreement, including their successors and assigns.
Planning Proposal	means the gateway planning proposal under Part 3 of the Act to amend the LCLEP so that the permissible height of buildings on the eastern part of the Land is increased from 65m to 94m.
Public Purpose	has the same meaning as in section 93F(2) of the Act.
Registration on Title	means the registration of this Agreement under section 93H of the Act in the folio of the register kept under the <i>Real Property Act 1900</i> in relation to the Land, and Registered on Title refers to the state of the Agreement being so registered.
Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Schedule	means a schedule to this Agreement and forming part of this Agreement.
Security	means a Bank Guarantee.
Security Amount	means the amount equivalent to the value of the Monetary Contribution as calculated by the Developer.
Section 96 Modification	means any modification of the Development Consent pursuant to section 96 of the Act.
Strata Lot	means a lot that forms part of the Land and is to be created by the registration of a Strata Plan and has been or is being developed for residential, commercial or retail purposes.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.
Strata Schemes	means the <i>Strata Schemes (Freehold Development) Act</i>

Act	1973 (NSW) or any other legislation replacing it.
Stratum Lot	means a stratum lot created in registration of a plan of subdivision.
Sunset Date	means the date on which the Development Consent lapses, should that occur.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.
- (b) For the avoidance of doubt any New Law will not relieve the Developer from its obligation to pay the Monetary Contribution.

2 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.
- (b) **Schedule 1** of this Agreement sets out the mandatory requirements of section 93F of the Act and the corresponding provisions of this Agreement.

3 Application of this Agreement

This Agreement applies to:

- (a) the Land;
- (b) the Planning Proposal; and
- (c) the Development.

4 Operation of this Agreement

- (a) This Agreement operates from the later of:
 - (i) the date that this Agreement is entered into as required by clause 25C(1) of the Regulation; or
 - (ii) the date upon which the Planning Proposal is made effecting an amendment to the LCLEP by increasing the permissible building height on the eastern part of the Land from 65m to 94m.
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached.
- (c) If a legal challenge to the Development Consent or Planning Proposal by a third party results in the Development Consent or Planning Proposal being rendered invalid or unenforceable, then the Developer may, in its

absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

- (d) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the consent authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration when determining a Development Application.

5 Not used

6 Development Contributions to be made under this Agreement

6.1 Provision of Development Contributions

The Developer is to pay a Monetary Contribution to Council in accordance with the following formula:

$$A \times B = C$$

whereas,

A = \$1,300 per square metre

B = Additional Gross Floor Area in square metres

C = Monetary Contribution payable

6.2 Indexation

The Monetary Contribution calculated in accordance with **clause 6.1** is to be indexed annually in accordance with the any movement in the CPI from the date of entry into this Agreement until such time as the Monetary Contribution is paid to Council.

6.3 Timing

- (a) The Security for the Monetary Contribution must be provided by the Developer to Council in accordance with **clause 12** within 10 Business Days of this Agreement becoming operational under **clause 4(a)**; and.
- (b) The Monetary Contribution must be paid by the Developer to Council prior to the issue of a Construction Certificate for all of any part of the Development.

6.4 Delivery of Monetary Contribution

- (a) The Monetary Contribution is made for the purposes of this Agreement when either:
 - (i) cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council; or

- (ii) a bank cheque is provided to Council by the Developer.
- (b) The Developer is to give the Council not less than 10 Business Days written notice of:
 - (i) its intention to pay the Monetary Contribution; and
 - (ii) the amount proposed to be paid and the details of the calculation of the Monetary Contribution using the formula in **clause 6.1**.
- (c) If a tax invoice is by Law required to be provided to the Developer by the Council:
 - (i) the Developer is not required to pay the Monetary Contribution under this Agreement until the Council, after having received the Developer's notice under **clause 6.4(b)**, has given to the Developer a tax invoice for the amount of the Monetary Contribution;
 - (ii) the Developer is not in breach of this Agreement if it fails to pay the Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the Monetary Contribution; and
 - (iii) a failure by Council under this **clause 6.4(c)** will not prevent the issue of a Construction Certificate for the Development.

7 Application of the Monetary Contribution

The Council must apply the Monetary Contribution received from the Developer under this Agreement towards the construction of a new public plaza over the railway line at St Leonards.

However, if the Council determines that a new public plaza over the railway line at St Leonards will never be constructed, then, after having given written notice to the Developer of its intention to do so, the Council must apply the Monetary Contribution received from the Developer under this Agreement towards infrastructure for a Public Purpose that is located generally within the St Leonards area of the Lane Cove Local Government Area unless otherwise agreed between the Parties.

8 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act to the Development; or
 - (ii) any other monetary contribution required under the Act,in connection with any Development Consent that is granted in respect of the Development Application for the Land, including any Section 96 Modifications.

- (b) Any benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

9 Registration of this Agreement

- (a) Subject to **clause 9(b)**, the Parties agree that this Agreement **will not be registered on the title of the Land**.
- (b) If the Developer has not made the Monetary Contribution in accordance with this Agreement within 6 months of the date of this Agreement, the Developer must, at its expense take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the **Real Property Act 1900** (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement under the **Real Property Act 1900** (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.
- (c) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General on the title of the Land as soon as reasonably practicable after the date that an obligation to register the Agreement arises under **clause 9(b)**.
- (d) The Parties agree that on registration by the Registrar General on the title of the Land, the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.
- (e) Subject to **clause 9(f)**, the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land but no other dealing during the period after Development Consent is granted and prior to provision of the Security or where registration of this Agreement is triggered by the operation of **clause 9(b)**.
- (f) If the Council lodges a caveat in accordance with **clause 9(e)**, then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of any dealing with the Land other than a transfer; and
 - (ii) remove the caveat from the title to the Land promptly, following provision of the Security in accordance with **clause 6.3(a)** or registration of this Agreement pursuant to **clause 9(b)**.
- (g) Despite **clause 9(d)**, the Council as caveator must consent to registration of transfer of the land or any part of the Land from the

developer to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**.

- (h) If the Developer has not registered this Agreement on the Land in accordance with **clause 9(b)** within 120 days after the date of operation in **clause 4(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, to lodge the caveat under **clause 9(e)**.

10 Review of this Agreement

- (a) This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in a manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

11 Dispute Resolution

11.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

11.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 11.2**), meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution

(including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clauses 11.3(b)(i) to 11.3(b)(iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

12 Security and Enforcement

12.1 Developer to provide security

Section 93F(3)(g) of the Act requires the enforcement of a planning agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the Agreement by the Developer. The intention of the Parties is that this **clause 12** satisfies this obligation through the provision of a Bank Guarantee to Council as Security and the enforcement provisions.

12.2 Security to be provided to council

- (a) The Developer must provide Security for the Security Amount to the Council within 10 Business Days of this Agreement becoming operational under **clause 4(a)**.
- (b) Within a reasonable period after each anniversary date of the date of provision of the Security to Council, the Developer must provide a replacement Security to Council which is equal to the Security Amount as indexed annually in accordance with the CPI from the date of provision of the Security to Council.

12.3 Release of security to the developer

The Council is to release the Security provided by the Developer within 10 Business Days of the payment of the Monetary Contribution to Council.

12.4 Call on security

- (a) Subject to **clause 12.3**, the Security provided in **clause 12.2** is given to secure performance by the Developer of its obligation to pay the Monetary Contribution.
- (b) The Council must only exercise its rights under the Security in accordance with this **clause 12.4**.

- (c) If the Developer does not comply with its obligation to pay the Monetary Contribution under this Agreement, then Council may, after giving the Developer no less than 10 Business Days notice of the default, call on all or part of the Security and apply the proceeds as its own property in order to recover Council's loss arising from the failure of the Developer to pay the Monetary Contribution.

12.5 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - (ii) the Council from exercising any function under the Act or any other Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Notices

13.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Lane Cove Council

Attention: The General Manager
Address: 48 Longueville Road, Lane Cove, NSW
Fax Number: 02 9911 3600
Email: lccouncil@lanecove.nsw.gov.au

Loftex Pty Ltd

Attention: Rob Turchini
Address: Level 16, 61 Lavender Street, Milsons Point
NSW
Fax Number: 02 8920 0528
Email: RTurchini@loftexproperty.com

13.2 Change of details

If a Party gives the other Party three Business Days notice of a change of its postal address, fax number or email address then any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest postal address, fax number or email address.

13.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two Business Days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; and
- (d) if it sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day .

14 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Assignment and dealings

15.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this **clause 15** is of no effect.

15.2 Transfer dealings

- (a) Subject to **clause 15.2(b)**, the Developer must not transfer all or any part of the Land under this Agreement to another party (**Transferee**) unless

the Transferee delivers to the Council a novation deed signed by the Transferee and the Developer in a form and of such substance as is acceptable to the Council, acting reasonably, containing provisions under which either:

- (i) the Transferee agrees to comply with all the obligations of the Developer under this Agreement; or
 - (ii) other suitable arrangements are agreed as between the Developer, Council and the Transferee whereby the Developer retains the obligations under this Agreement; and
- (b) **clause 15.2(a)** does not apply to any transfer of any part of the Land that is a Strata Lot or Stratum Lot.

16 Costs

The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

17 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier Agreement, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

19 Governing law and jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the Laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds

them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement:
 - (i) the Land Owners are the legal and beneficial owners of the Land;
 - (ii) the Land Owners consent to:
 - (A) if the obligation arises under **clause 9(b)**, the registration of this Agreement in the relevant folio of the Land titles; and
 - (B) the lodgement by the Council of caveats notifying its interest in the Agreement in the relevant folio of the Land titles, up until such time as the Security is provided or this Agreement is registered pursuant to the operation of **clause 9(b)**.
- (b) If an obligation to register the Agreement on title arises under **clause 9(b)**, the Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Agreement in the relevant folios of the Land titles.
- (c) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law

23 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any

obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

25.1 Construction

In this **clause 25**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the GST Act.

25.2 Intention of the Parties

Without limiting the operation of this **clause 25**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) despite **clause 6.4(c)** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 25.4** below) on account of GST.

25.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

25.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 25.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 25.4(b)**, **25.4(c)** and **25.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 25.4(c)** and **25.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.

- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non-monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 25.4(a)** and subject to **clause 25.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 25.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 25.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

25.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 25.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

25.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 25.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

25.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 25.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the

Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

25.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 25.4** in respect of that reimbursement.

25.9 No Merger

This **clause 25** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

26 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

27 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

28 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

29 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

30 Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	The Land.
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 5 .
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not* excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not* excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not* excluded by this Agreement.
Benefits to be taken into account (Section 93F(3)(e))	No, the benefits under the Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 11 .
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 12 .
Registration of this Agreement (Section 93H)	See clause 9 .

Provision of the Act	This Agreement
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 21.

draft

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Explanatory Note for Voluntary Planning Agreement 1- 13A Marshall Avenue, St Leonards

Summary

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a Voluntary Planning Agreement ("**the Planning Agreement**") under Section 93F of the ***Environmental Planning and Assessment Act 1979*** ("**the Act**").

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the ***Environmental Planning and Assessment Regulation 2000*** ("**the Regulations**").

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Loftex Pty Ltd ("**the Developer**") has made an offer to Lane Cove Council ("**the Council**") to enter into a Voluntary Planning Agreement, in connection with a Planning Proposal and Development Application relating to the subject land.

Description of subject land

1-13A Marshall Avenue, St Leonards being Lot 100 DP1200133 ("**the Land**").

Description of the Planning Proposal and Development Application to which the Planning Agreement applies

The Planning Proposal proposes to increase the height on the eastern part of the site to 94 metres. The current height control for this part of the site under Lane Cove Local Environmental Plan 2009 is 65 metres. The additional height equates to 9 additional stories.

The Development Application will propose a mixed-use residential apartment development comprising two separate buildings located over a common basement car park proposed to be constructed on the Land. The first building will comprise approximately 52 apartments over seven storeys, with the second building comprising

a tower of approximately 217 apartments plus commercial and retail space over 29 storeys.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides for a monetary contribution of \$1300 per square metre of Gross Floor Area located more than 65m above existing ground level. Council engaged HillPDA to undertake a valuation to determine the contribution rate.

The monetary contribution will be used for the construction of the St Leonards Rail Plaza and Bus Interchange.

In the event that the St Leonards Rail Plaza and Bus Interchange does not proceed, the funds may be utilised for the provision of public infrastructure generally within the St Leonards area of Lane Cove Local Government Area.

Assessment of the Merits of the Planning Agreement

Impact of the Planning Agreement on the public or any section of the public

The Agreement enables Council to utilise funds provided by the Developer to construct a new public plaza over the railway line at St Leonards (or if that infrastructure does not proceed, the monies will be utilised for the provision of public infrastructure generally within the St Leonards area of Lane Cove Local Government Area).

This ensures that Council is able to undertake the orderly planning and development of land and the Agreement provides a reasonable means of achieving this purpose.

How the Planning Agreement Promotes the Objects of the Act and the public interest

The Planning Agreement promotes the following:

- (ii) the promotion and co-ordination of the orderly and economic use and development of land,***
- (iv) the provision of land for public purposes,***

The Planning Agreement promotes the public interest and the above objectives of the Act by providing public domain improvements that will benefit existing and future residents and workers in the St Leonards area. Council's vision is for a public plaza and bus interchange over the rail corridor.

How the Planning Agreement promotes the elements of the *Local Government Act 1993* and the Council's Charter

The Planning Agreement is consistent with the following purposes of the ***Local Government Act 1993***:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- to give councils a role in the management, improvement and development of the resources of their areas.

The Planning Agreement promotes the following element of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- have regard to the long term and cumulative effects of its decisions; and
- to engage in long-term strategic planning on behalf of the local community.

These elements of the Council's Charter are promoted through the raising of funds through the proposed monetary contribution so as to provide the St Leonards Rail Plaza and Bus Interchange.

The Planning Purposes served by the Planning Agreement

The Planning Agreement facilitates the promotion and co-ordination of the orderly and economic use and development of land as it recognises and supports the existing transport infrastructure. It also provides for contributions by the Developer for the Enhanced Public Open Space - St Leonards Rail Plaza and Bus Interchange.

The Agreement provides for a reasonable means of achieving this material public benefit to the community by contributing funding to Council for this purpose.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The proposed St Leonards Rail Plaza and Bus Interchange is included in the Council's Section 94, Development Contributions Plan. It conforms with Council's Capital Works Program. The Section 94, Development Contributions Plan will not provide sufficient funding on its own to deliver the Rail Plaza and Bus Interchange which is estimated at \$50M. The Planning Agreement regime is a key funding source for the project.

Requirements of the agreement that must be complied with before a construction certificate, occupation certificate

In the event of the Developer obtaining Development Consent for the Development, the contribution will become due and payable prior to the issue of the Construction Certificate . The Developer is required to provide a Bank Guarantee for the contribution amount from the date of operation of the Planning Agreement until the payment of the contribution to the Council (which is increased with CPI annually).

Schedule 3

draft

Execution

Executed as a deed.

Executed by Lane Cove Council by its)
duly appointed attorney pursuant to)
Power of Attorney registered book 4637)
No.811 in the presence of:

.....
Witness

.....
Attorneys Signature

.....
Name of Witness (print)

CRAIG ANTHONY WRIGHTSON

.....
Name of Attorney (print)

Executed by Loftex Pty Ltd in)
accordance with section 127(1) of the)
Corporations Act 2000 (Cth) by
authority of its directors.

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)