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1 December 2010

General Manager  
Lane Cove Council  
48 Longueville Road  
Lane Cove NSW 2065

Attention: May Li

Dear May Li

**DA 198/2010 - 554 to 560 Mowbray Road, Lane Cove**

I am a town planning consultant acting on behalf of Landmark Group Pty Ltd, the applicant for the for the proposed demolition of the improvements on the four dwelling house allotments and for the construction of a four storey residential flat building with basement carparking at No.554-560, Mowbray Road, Lane Cove.

The applicant has agreed to amend the proposal to satisfy the concerns raised by Council's planning officers in relation to the front setback from Mowbray Road and the side setback from Girraween Avenue. Three sets of amended plans shown in Drawing Nos. DA 02-12 (Rev DA/B), C1 & C2 (Rev DA/B), S1-S3 (Rev DA/B), SS1-SS4 (Rev DA) accompanies this letter.

The Sun Diagrams in Drawings SS1 to SS4 show that 71% of living rooms and private open spaces in the proposed development receive a minimum of three hours direct sunlight between 9 am and 3 p.m. on 21<sup>st</sup> June.

The main change to the proposal is that the front boundary setback has been increased from 6.0m to 7.5m and the side boundary setback from Girraween Avenue has been increased from 5.0m to 6.0m.

As a result of the changes above, the landscaped area has increased from 40.5% to 41.1%. The deep soil planting has been increased from 27% to 29.3%, and the planting on structures has been reduced from 13.5% to 11.8%.

The amendments have resulted in a reduction in the Floor Space Ratio from 1.87:1 to 1.78:1.

Whilst the proposed FSR is below that permissible, the applicant has not been able to further reduce the height to comply with the height standard to achieve the potential for the site. In the original site analysis consideration before the plans were prepared, the applicant was aware that slope of the land and the various excavations that have already occurred when the four dwelling houses were first constructed made it extremely difficult to comply fully with the height control. The design criteria were then to come up with a proposal where the minor variation to the height standard could be justified.

Clause 4.6 of the LEP allows a development to be approved even though the development contravenes a development standard. Clause 4.6 (1) and (2) states:

4.6 Exceptions to development standards

*(1) The objectives of this clause are:*

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

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

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

This section represents the written request required by Clause 4.6(3) of the LEP to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

1. Building height – Clause 4.6 of the LEP allows a development to be approved even though the development contravenes a development standard. Building height (or height of building) is defined in the LEP as:

*the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The objectives the building height standard are defined in Clause 4.3(1) of the LEP as:

*(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.*

As height is measured as the "vertical distance between ground level (existing) at any point to the highest point of the building", the contravention of the maximum height control is primarily a result of the slope of the land and the various excavations that have already occurred when the four dwelling houses were first constructed. These variations in the existing ground level (being lower than the natural ground level) have resulted in punctuations in the building where it marginally exceeds the permitted. These variations do not add to any significant bulk to the proposed building and is predominantly in the middle of the roof where there is little impact on the amenity of the adjoining residential properties and on the streetscape.

The most obvious area of non-compliance is on the southwestern corner of the proposed building. This is a result of this corner being on the lowest portion of the site due to the existing natural landform. The variation varies from nil to 0.4m. The other variation is in the middle of the building where parts of the height is approximately 1.5m above the maximum level. This is primarily a result of the existing ground levels being excavated for the existing improvements on the site and has no impact on views and overshadowing and does not add to any significant bulk and scale of the building. Notwithstanding the above non-compliance with the height standard, it will be shown that the proposal satisfies the above objectives of Clause 4.3(1) of the LEP.

There are no views across the site. The non-conforming portion is in the middle and on the southwestern corner of the building and will not have any significant impact on overshadowing impact. (The shadowing impact has already been addressed in Section 4.2 of the Statement of Environmental Effects).

The building has been designed to maximize privacy of adjoining properties. The visual impacts of development on neighbouring properties is considered to be satisfactory as the proposed building follows the contour down and across the site, is well articulated, and not excessive in height, bulk and scale. In this regard, the proposal satisfies objective (a) of the height objectives.

As Mowbray Road is to the north of the subject site, there will be no overshadowing impact on the road. The proposed building is set 6.0m from the Girraween Avenue frontage and there are trees on the verge along the western boundary of the site. The major height variation is towards the lower end of the site the proposal will not have any significant overshadowing of the public domain. In this regard, the proposal satisfies objective (b) of the height objectives.

The proposed development hugs the contours and relates to the topography of the site. The new building is well proportioned and articulated and is in three segments as it terraces down the slope to the rear. The effect of the bulk and scale of the proposal has been minimised. In this regard, the proposal satisfies objective (c) of the height objectives.

The proposed development is considered to be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the Zone R4 High Density which are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To ensure that the existing amenity of residences in the neighbourhood is respected.*
- *To avoid the isolation of sites resulting from site amalgamation.*

- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

In summary, the proposal is a development on a site that has constraints primarily due to its topography. Despite these difficulties, the design a development meets the R4 High Density Residential zone objectives to ensure a reasonable level of residential amenity in terms of maintaining privacy, minimising overshadowing, providing sufficient parking and suitable massing, landscaping and usable outdoor open space.

Please call me if you have any further queries on this matter.

Yours faithfully



Sonny Ooi  
**Director**  
Ooi Personal Planning Services Pty Ltd