

Environmental Services Division Report
Sydney East Joint Regional Planning Panel meeting of 26 March 2014
2013SYE0105

Property: 2-22 Birdwood Avenue and 11-15 Finlayson Street, Lane Cove

DA No: 2013SYE105 (DA13/194)

Date Lodged: 25 November 2013

Cost of Work: \$64,685,405.00

Owner: R. Sampson, A & J. Tyrrell, H & U Mooser, R & D Haugh, A. Ping So, J & J Davis, J & T Spanos, C. Carberry, H. Sung Man Wong, M. Van Twest, J & J McNamara, P. Baum, X. Man Wang, N. Wong, Q. Zhou, Y. Li, J & P Stanley, M. Hone and U. McCathie

Applicant: Turner

Author: Rebecka Groth

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Stage 1 concept plan application for the redevelopment of the site for the purpose of four (4) residential flat buildings, basement car parking and on-site landscaping
ZONE	R4 High Density Residential
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
BUSHLAND PRONE LAND?	No
BCA CLASSIFICATION	The concept DA does not have a BCA classification. The future development proposal would have a BCA classification of 2, 10B, 7A.
STOP THE CLOCK USED	Yes, 2 days

NOTIFICATION	1, 7, 9, 13, 19-23, 25, 27, Birdwood Avenue 1 Coxs Lane 1, 9, 10, 11, 13, 14, 15, 22, 23, 24, 17-21, 27 Finlayson Street 19, Rosenthal Avenue 12-14, 16-38, Epping Road 71 Longueville Road 3 Sutherland Street
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REASON FOR REFERRAL:

This application has been referred to the Sydney East Joint Regional Planning Panel as per clause 13B of State Environmental Planning Policy (Major Development) 2005 because the proposed development has a capital investment value of greater than \$20 million.

EXECUTIVE SUMMARY:

- The subject site comprises seventeen (17) individual lots and is irregular in shape with an area of 10,479.3m². The site has four street frontages, Birdwood Avenue to the north, Rosenthal Avenue to the east, Finlayson Street to the south and Coxs Lane to the west. The site falls from east to west by approximately 8m and north to south by approximately 10m.
- The proposal comprises a Stage 1 concept plan for the future redevelopment of the site for the purpose of four (4) residential flat buildings, combined basement car parking and on-site landscaping. Approval is sought for the concept plan only.

The future stages of the development proposal would involve four (4) residential flat buildings on the site, known as Buildings A, B, C and D, basement car parking, site landscaping, pedestrian through-site link from Coxs Lane to the west of the site Rosenthal Street to the east of the site. A north to south link through the development site from the central courtyard to Finlayson Street is also proposed.

The applicant estimates the development site would yield 245 apartments however approval is sought only for the floor space ratio and building height. Detailed design of the residential flat buildings and the through site link would be provided in subsequent development applications. The future development would be undertaken over four (4) stages.

- The proposal also seeks to vary the requirements of Council's Local Environmental Plan 2009 with regard to maximum permissible floor space ratio (FSR) and maximum permissible height. The applicant has provided a list of

community benefits in support of the proposed variation which relate to a proposed east west publically accessible site through link.

- Given the proposal is for a concept only, compliance with a number of the requirements of Council's Development Control Plan cannot be confirmed at this stage. Detailed assessment would be required at all subsequent development application stages.

Despite this, concerns have also been raised by council officers with regards to compliance with Part C, Part F, Part Q and Part O of Council's DCP which relate to car parking, accessibility, waste management and minimisation and stormwater management.

- The following external referrals have been considered.
 - Consulting architect for SEPP 65.
 - NSW Roads and Maritime Services
- The indicative plans provided have been reviewed by council's consultant architect who advises the proposed development does not meet the 10 design quality planning principles of State Environmental Planning Policy 65.
- A total of 17 objections have been received in response to the notification of the proposed development. The main concerns raised in the submissions include:
 - Non compliance with the LEP in terms of FSR and height
 - Bulk and scale of proposed building
 - Inconsistent with the character of the precinct
 - Reduced amenity
 - Increased noise
 - Increased traffic
 - Non compliance with SEPP 65
 - Inadequate infrastructure
- On 22 January 2014, the JRPP was briefed on the essential elements of this proposal.
- The applicant provided further information to Council on the 3 February 2014, 10 February 2014 and 27 February 2014 to assist in the assessment of the application. This information included amendments to Block D resulting in a partial reduction in height, revised overshadowing plans and a response to council's request for information relating to the traffic impact assessment, flooding and stormwater management and waste collection and management issues.
- Council's principal concern with the proposed concept plan is the variation sought to the LEP with regards to FSR and building height. The variation to council's controls results in approximately 2,220.19m² of additional gross floor area. The rationale for this variation relies on several perceived public benefits offered by

the applicant, namely the proposed publicly accessible pedestrian through site link.

The application fails to quantify the public good offered for the variation to Council's controls. It is unclear whether adjoining properties would wish to participate in the inferred public access given some sites are currently being constructed and there appears little or no willingness to access what would be a public right of way.

The pedestrian through site link would clearly provide a benefit to the future residents of the subject site. However Council remains unconvinced as to the community value and or benefit of this through site link to other residents and the community generally.

Council does not agree with the applicant's assessment of the impacts to adjoining sites and the precinct generally. Council does not agree with the justification provided by the applicant for the variation to the LEP controls for FSR and height and the public benefit of the pedestrian through-link.

The matters under Section 79C of the Environmental Planning and Assessment Act 1979 Act have been considered. The proposal in its current form, with variations to FSR and height, is not considered to be suitable for the site and is not within the public interest.

- The application is recommended for refusal for the following reasons:
 1. The proposal does not meet the aims of the Lane Cove Local Environmental Plan 2009 in particular aims 2(a), (b), (c), (d) and (f).
 2. The proposed development does not comply with Clause 4.3 Building Height and Clause 4.4 Floor Space Ratio of the Lane Cove Local Environmental Plan 2009.
 3. The proposal is not consistent with the objectives of the R4 High Residential zone of the Lane Cove Local Environmental Plan 2009.
 4. The proposal does not comply with the Part C of the Development Control Plan 2010:
 - i. Locality 2 Finlayson Street in relation to building height
 5. The proposal is inconsistent with the desired and emerging character of the precinct.
 6. The Director General's concurrence is not assumed in this instance.
 7. Given the fundamental and demonstrable non compliances with a range of objections and standards within the Lane Cove LEP, SEPP 65, DCP and the reasons outlined above, the proposal is not considered to be in the public interest.

SITE:

The site is located within the Finlayson Street precinct being bound by Birdwood Avenue and Finlayson Street. The subject site is irregular in shape with a total combined area of 10,479.3m². The site has four street frontages, Birdwood Avenue to the north, Rosenthal Avenue to the east, Finlayson Street to the south and Coxs Lane to the west. The site falls from east to west by approximately 8m and north to south by approximately 10m.

The site comprises seventeen (17) allotments containing one to two storey dwelling houses. There are 89 trees within the site, with mature trees being concentrated towards the centre of the site. Birdwood Avenue comprises several mature street trees.

Pedestrian pathways run parallel to the site along Birdwood Avenue, Finlayson Street, Rosenthal Avenue and Coxs Lane.

To the north of the site on the opposite side of Birdwood Avenue are dwelling houses, a car park, residential flat buildings and the Lane Cove Club. The Lane Cove Club has development consent to construct a mixed use building comprising 34 car spaces for Lane Cove Club and 48 dwellings within a 6 storey configuration and a height of 15.8m at the building's north-eastern corner to 20.7m at its north-western corner. Epping Road is situated north of Birdwood Avenue.

Towards the east of the site on the opposite side of Rosenthal Avenue is council's car park. Further east of the car park is the Lane Cove CBD and the Lane Cove Plaza. Council is investigating redevelopment options for the purposes of commercial development, a community building and on-site parking.

To the south of the site fronting Rosenthal Avenue is a two storey commercial building known as 1 Finlayson Street. Fronting Finlayson Street and adjoining the site are two developments currently under construction for the purposes of residential flat buildings, 3-9 Finlayson Street (DA10/134) and 17-21 Finlayson Street (DA12/224). The approved residential flat building at 3-9 Finlayson Street contains 56 dwellings within a 5 storey configuration and has a maximum building height of 18m. The approved residential flat building at 17-21 Finlayson Street comprises part 4 and part 6 storeys and a maximum overall height of 18m. The 6 storey component was supported by council as the overall building height complied with the LEP height standard.

Towards the west of the site fronting Coxs Lane are dwelling houses, a park and residential flat buildings.

PROPOSAL:

Stage 1 concept plan for the future staged redevelopment of the site. The proposal involves the construction of four (4) residential flat buildings on the site, known as Buildings A, B, C and D, basement car parking, site landscaping, through-site link from

Coxs Lane to the west of the site Rosenthal Street to the east of the site. A link through the development from a central courtyard to Finlayson Street is also proposed.

The applicant estimates the development site would comprise 245 apartments however approval is sought only for the gross floor area and building height. Detailed design of the residential flat buildings and the through site link would be provided in the subsequent development applications.

The construction phases of the proposal comprise 4 further stages.

The applicant advises the key benefits of the proposal include:

1. East/west publically accessible through site link
2. North/south publically accessible through site link
3. Extend village pedestrian circulation beyond the Village Centre
4. Publically accessible open space located within the centre of the site
5. Retention of significant trees within the centre of the site and on Birdwood Avenue and Finlayson Street
6. Provides a high level of street activation and passive surveillance
7. Extending the village network to the proposed through-site link
8. Site isolation avoided
9. Sustainability initiatives possible through site consolidation
10. Minimise vehicular entry/exits
11. Clear masterplan for the site
12. Internal garbage collection
13. Landscaped perimeter
14. Disabled Access throughout the site
15. Limited excavation
16. Public Art

PREVIOUS APPROVALS/HISTORY:

There are no previous approvals relevant to this proposal.

PROPOSAL DATA/POLICY COMPLIANCE:

Site area 10,479.30m²

Lane Cove Local Environmental Plan 2009

The following assessment has been undertaken with regard to the submitted indicative plans for the site. As the proposal seeks approval for floor space ratio and

height only, it is not possible to establish to what extent the concept proposal complies with the relevant controls within the LEP and DCP.

Control – LEP	Code	Proposed	Complies/ Comment
Clause 2.2- Zoning	R4 – High Density Residential zone	Proposed Stage 1 Concept for Residential Flat Development	Yes
Clause 4.3 - Height of Buildings	18m	23.1m to 26.2m	No
Clause 4.4 - Floor Space Ratio	1.7:1 (GFA 17,814.81m ²)	1.92:1 (GFA 20,035m ²)	No

Lane Cove Development Control Plan

Part B – General Controls

DCP - Clause	DCP	Proposed	Complies/ Comment
B7 – Development near busy Roads and Rail Corridors	LAeq levels: (i) In any bed room 35dB(A) 10.00pm to 7.00am. (ii) anywhere else 40dB(A)	The building design limits openings in the front façade. An acoustic report would be required to verify compliance for any future DAs	Not a consideration for this stage of the proposal
B8 – Safety & security	Required	Detailed design not available at this stage	Not a consideration for this stage of the proposal

Part C – Residential Development

The proposal seeks approval for a Stage 1 concept plan to redevelop the site for the purposes of residential flat buildings. The following assessment tables are provided below. It is noted that the plans provided by the applicant are indicative only and do not form part of this application. Detailed design for the residential flat buildings would form part of any subsequent applications.

Part C – Residential Localities – Locality 2 Finlayson Street

Block 1 is located in the precinct area bound by Birdwood Avenue to the north, Finlayson Street to the south, and Coxs Lane to the west and Rosenthal Avenue to the east.

The DCP states that the Block Plan controls are applied with flexibility based on the achievement of the objectives.

Objectives

- 1 *To provide new development that achieves design excellence.*
- 2 *To provide increased density of development close to the amenities of Lane Cove Village Centre and achieve transition from the Village Centre on the east to the lower scale residential development to the west and north.*
- 3 *To provide improved and flexible amalgamation opportunities for development.*
- 4 *To preserve existing vegetation and landscape character to the rear of the existing lots and along the streets.*
- 5 *To safeguard the potential for widening Coxs Lane in the future if required.*

Clause	DCP	Proposed	Complies/ Comment
Height	18m 5 storeys maximum (LEP control)	20.2m to 26.2m Part 4, 5, 6 & 7 storeys	Indicative building footprints do not comply
Uses	High density residential	Concept plan for future staged residential flat development	Yes
Building Separation	12m Unless otherwise specified.	9m between Block A & D 14m between Block A & Block B 13m between Block B & Block C	Indicative building footprints do not comply
Building Footprint	Maximum 18m depth	Block A: 53.4m Block B: 50m Block C: 25m Block D: 30m	Indicative plans do not comply
Building Setback	6m To Rosenthal Ave, Birdwood Ave & Finlayson St	Blocks A , B, C & D are setback 6m	Yes

Clause	DCP	Proposed	Complies/ Comment
	Plus 3m above 4th floor (12m) To Rosenthal Ave, Birdwood Ave & Finlayson St	Block A comprises a 5 th & 6 th floor fronting Birdwood Avenue & is setback approximately 7.2m to 11.4m Block B comprises a 5 th & 6 th floor fronting Birdwood Ave & is setback approximately 6m to 10.6m Block C comprises a 5 th and 6 th floor fronting Birdwood Ave & is setback approximately 6m to 9m Block D comprises a 5 th floor fronting Finlayson St. Block D is setback approximately 8m to 11m	Indicative plans do not comply
	9m To Coxs Lane (3m road dedication for possible future widening of Coxs Lane)	Block A has a partial 4 storey component fronting Coxs Lane & this portion is setback approximately 9m	Yes
	Plus 6m above 4th floor To Coxs Lane (15m)	Block A is part 4 storeys and part 6 storeys Block A has a minimum setback of approximately 6m The 6 th floor is setback approximately 11.4m to Coxs Lane	Indicative plans do not comply
	9m To rear of lots	Block A is setback 9m to the rear of the site adjoining 17-21	Yes

Clause	DCP	Proposed	Complies/ Comment
		<p>Finlayson St</p> <p>Block B & C are setback approximately 9m to the rear of the site adjoining 3-9 Finlayson St and 1 Finlayson St</p>	
Pedestrian Entry/ Address	From Finlayson Street, Rosenthal Avenue and Birdwood Avenue	Pedestrian access provided from all street frontages	Yes
Vehicle Entry	<p>From Birdwood Avenue, Finlayson Street and Rosenthal Avenue</p> <p>Access to 2, 4 and 4A Birdwood Ave is to be from the western end of the development site.</p>	Proposed single entry for development site from Birdwood Avenue	Indicative plans do not comply. Block Plan does not anticipate the proposed lot amalgamation
Carparking	Underground	Partially above ground	Indicative plans do not comply
Building Orientation/ Length	<p>Minimum 18m frontage Maximum 34m frontage</p> <p>To Birdwood Avenue and Finlayson Street. Building length permitted to increase beyond 34m if façade articulation etc is satisfactory in streetscape.</p>	<p>Block A: 53.4m Block B: 50m Block C: 25m Block D: 30m</p>	Indicative plans do not comply
Landscaping / Public Domain	<p>Street trees, footpath and lighting improvements to Birdwood Avenue, Rosenthal Avenue and Finlayson Street.</p> <p>Tree species to be agreed with Council</p> <p>Paving design,</p>	Detailed plans not available at this stage	Detailed plans not available at this stage

Clause	DCP	Proposed	Complies/ Comment
	upgrades and specifications to be arranged with Council		

Part C3 – Residential Flat Buildings

To avoid duplication the controls addressed in the above Part C Locality 2 Finlayson Street assessment, those controls previously discussed are not considered in the following table.

Clause	DCP	Proposed	Complies/ Comment
3.2 Density	Minimum site area 1500m ²	10,479.30m ²	Yes
3.5.3 General Parking Podium Height within setback zone.	Encroachments into setback zone of up to 2m may be permitted for underground parking structures no more than 1.2m above ground level.	The indicative plans submitted indicate some podium above ground	Indicative plans indicate the podium will be above ground. Detailed plans have not been provided for this staged proposal
3.6 Building separation within development	Unless indicated elsewhere through block controls within the DCP, separation distances within a development are: Up to four storeys/12 m height: i. 12m between habitable rooms/balconies ii. 9m between habitable rooms/balconies and non-habitable rooms iii. 6m between non- habitable rooms and blank wall to any other window, light well or balcony. Five to eight storeys/up	NA	NA

Clause	DCP	Proposed	Complies/ Comment
	<p>to 25 m height:</p> <p>i. 18m between habitable rooms/balconies</p> <p>ii. 13m between habitable rooms/balconies and non-habitable rooms</p> <p>iii. 9m between non-habitable rooms and blank wall to any other window, well or balcony.</p>	<p>Block A & D – 14.4m between what appears to be between habitable rooms & balcony</p> <p>Within Block A – 18.6m between what appears to be balconies & habitable rooms</p> <p>Block A & B – min 14.2m between appears to be between habitable rooms</p> <p>Within Block B – 14.2m between what appears to be habitable rooms</p> <p>Block B & C - 13m between what appears to be habitable rooms & balconies</p>	Indicative plans do not comply
Clause 3.8 Excavation	<p>a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP.</p> <p>b) Excavation for major development is to be contained as close as practicable to the footprint of the development.</p> <p>c) NA</p> <p>d) Uses at ground level are to respond to the slope of the street by stepping frontages and entries to follow the slope.</p>	Detailed plans have not been provided for this staged proposal	Detailed plans have not been provided for this staged proposal

Clause	DCP	Proposed	Complies/ Comment
	e) The extent of excavation proposed for underground uses should not compromise the provision of deep soil areas or landscaped areas for residential flat buildings.		
3.9 Design of roof top area	Roof top areas can be designed where practicable	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.10 Size of dwellings	Minimum 40m ²	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.11 Private open space	Primary balconies - 10m ² with minimum depth 2m Primary terrace- 16m ² with minimum depth 4m	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.12 Car parking, motorcycle and bicycle spaces	Car parking – Total 388 spaces required The car parking rate is based on the following indicative unit mix 7 x 0.5 space per studio = 3.5 spaces 37x1 bedroom (37x1.0) = 37 spaces 61 x 1 bedroom + study (61 x 1.0) = 61 spaces 86x2 bedroom	Total 302 car spaces proposed The applicant proposes the following on-site parking rates given the proximity of the site to public transport 0.5 space per studio 1 space per 1 bedroom unit 1 space per 1 bedroom unit + study	No

Clause	DCP	Proposed	Complies/ Comment
	<p>$(86 \times 1.5) = 129$ spaces</p> <p>24 x 2 bedrooms + study $(24 \times 1.5) = 36$ spaces</p> <p>30x 3 bedroom $(30 \times 2.0) = 60$ spaces</p> <p>Visitors - 1 per 4 dwellings $(245 \times 0.25) = 61.25$ spaces</p> <p>Total 387.75 car spaces</p> <p>Motor cycle = 1 per 25 Car spaces = 15.51 spaces</p> <p>Bike Lockers@ 1 per 10 dwellings = 24.50 lockers</p> <p>Bike rails – 1 per 12 dwellings = 19.60 racks</p>	<p>1 space per 2 bedroom unit</p> <p>2 spaces per 3 bedroom unit</p> <p>0.125 visitor spaces per unit</p> <p>12 motorcycle spaces</p> <p>25 bicycle spaces</p>	
3.13 Ceiling heights	Minimum 2.7m	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.14 Storage	1- bed 6m ³ 2- bed 8m ³ 3- bed 10m ³	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.15 Solar access	<p>Living rooms and private open spaces of 70% of the units to receive 3 hours of direct sunlight.</p> <p>Single aspect dwellings with southerly aspect - 10% maximum (9 dwellings)</p> <p>Adjoining properties to receive 3 hours of sunlight between 9am to 3pm</p>	<p>Cannot confirm at this concept stage</p> <p>Cannot confirm at this concept stage</p> <p>The shadow plans show that the developments at 3-9 Finlayson Street and</p>	<p>Detailed plans have not been provided for this staged proposal</p> <p>Detailed plans have not been provided for this staged proposal</p> <p>Indicative plans do not comply</p>

Clause	DCP	Proposed	Complies/ Comment
		17-21 Finlayson Street would be impacted for most of the day during the winter solstice on the lower levels as a result of the proposal. Several properties situated on the opposite side of Finlayson Street are also shown as being partly in shadow during mid winter. Most of the shadow appears to be within the front setbacks of these properties from 10am onwards.	
3.16 Natural ventilation	60% of the dwellings should have cross ventilation	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.17 Visual privacy	Provide visual privacy between balconies of the adjoining properties	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.18 Communal open space	A minimum of 25% of the site area is to be provided as communal open space	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.19 Landscaped area	25% + 15% on structures or landscaped area	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal
3.20 Planting on Structures	Planting on structures	Cannot confirm at this concept stage	Detailed plans have not been provided for this staged proposal

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	Detailed designs are not available for the subsequent stages.	Detailed plans are not available at this stage
3.5 Parking	Provide 1 space for each adaptable housing unit.	The applicant is not seeking approval for the number of dwellings	Detailed plans are not available at this stage
3.6 Adaptable and Visitable housing	<p>Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings</p> <p>Adaptable housing to be equitably distributed throughout all types and sizes of dwellings.</p> <p>80% of the dwellings are to be visitable</p>	<p>The applicant is not seeking approval for the number of dwellings</p> <p>Detailed designs are not available for the subsequent stages.</p> <p>Detailed designs are not available for the subsequent stages.</p>	<p>If the application is supported, this matter would form a condition of consent.</p> <p>If the application is supported, this matter is to form a condition of consent.</p> <p>If the application is supported, this matter is to form a condition of consent.</p>
3.7 Access to and within buildings	Access is required to common areas and all dwellings.	The application does not include detailed design	If the application is supported, this matter would form a condition of consent

REFERRALS:

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

Council's consulting architect advises the proposed development does not meet the objectives of the 10 planning principles of SEPP 65. The proposal is not considered to meet the objectives of the principles of context, scale, built form, density, resource, energy and water efficiency and amenity.

Council's consulting architect advises that the proposal is presented as a master plan for the site and includes a through site pedestrian link. It is unclear what public benefit

this through site link would bring to the residents of Lane Cove. The public footpaths on Birdwood Avenue and Finlayson Street provide adequate east-west movement to the town centre and have the advantage of linking up existing streets and destinations. Ensuring the accessibility and amenity of the public footpaths is more in the public interest than the proposed through site link.

The architect raised concern regarding the indicative building footprints and separation distances.

The architect advises the proposal departs from council's desired future character of the area in terms of floor space ratio and building height. There is insufficient evidence to justify these non-compliances.

A copy of the Council's consulting architect's report is contained in **AT1**.

Manager Strategic Planning

Council's Strategic Planner reviewed the concept plan and advised that the applicable LEP FSR and height controls are new controls which have been applied with consistency to other development applications for residential flat buildings within the same locality.

The Strategic Planner advises that the applicant has not made an adequate planning case to allow the proposed excess height and FSR contained in the concept DA. As the proposed pedestrian through site link is parallel to two existing footpaths and give access to the same parts of the village, it is not considered that the path represents a substantial public benefit.

Manager Community Services

Council's Community Development Officer reviewed the concept proposal and advised an access report undertaken by a suitably qualified access consultant is required. Further the officer advises the proposal is required to meet the requirements of Part F Access and Mobility of the Development Control Plan.

Manager Urban Design and Assets

Council development engineer has reviewed the proposal and raised the following concerns:

1. The subject site is identified as a flood control lot. A flood study of the subject site is required.
2. A design for overland flow is required to address the requirements of Part O of the DCP.
3. The proposed stormwater pipe line diversion drawings by Wood and Greive Engineers numbered 25816-C are not supported. The abrupt changes in direction of the pipeline exceed the maximum allowable change in direction of 45 degrees in accordance with the DCP.

4. The proposed diversion of the existing Council stormwater pipe line which burdens the site needs to be designed and agreed upon with Council prior to the future design of the residential flat buildings.

The applicant submitted further information and amended plans on the 3 February 2014 which included a response to the abovementioned matters. The applicant advised the proposal is for a concept proposal only and not detailed design. The applicant considers the preliminary information provided adequately demonstrates that the concept development is capable of being designed in future stages to address council's stormwater management requirements and to address the issue of localised flooding from the stormwater pipe that traverses the site.

Council's Development Engineer does not support the applicant's view.

Manager Traffic and Transport

Council's Transport Planner has reviewed the concept proposal and raised the following concerns:

1. Table 4 of the Traffic Impact Statement (TIS) presents the parking provisions for the development and proposes that a total of 302 car spaces be provided. However, Table 4 shows that visitor parking is provided at a rate of 1 for every 8 dwellings, which is half of what is required in Council's DCP.
2. Council's Traffic and Transport Team recognises that the proposed development is well served by public transport and within walking distance to Lane Cove Village, which could lead to a reduction in private car trips and parking demand. However, the applicant must provide strong evidence that the shortfall of on-site parking spaces will not have an adverse impact on local traffic conditions.
3. The TIS makes reference to development's mode share targets. Council requires more detail on what the development's future mode share targets are and how they will be achieved.
4. Table 4 of the TIS shows that the required number of bicycle lockers will be provided on site but does not mention the provision of bicycle racks, which are also required by the DCP.
5. Council requires that disabled parking spaces comply with AS2890.6. Accessible spaces (compliant with AS4299) will *not* be considered as part of the overall disabled parking space provision.

6. It is anticipated that a residential development of this scale will generate a significant increase in pedestrian traffic in the local area. The applicant is to provide the expected pedestrian trip generation during peak hours.
7. Suitable improvement measures to pedestrian facilities between the development and Lane Cove Village (eg. along Rosenthal Avenue) are to be investigated by the applicant. The feasibility of a mid-block crossing on Rosenthal Avenue, connecting to the proposed boulevard, should be considered.
8. The applicant is to provide the expected number of public transport users generated by the development during peak hours. The adequacy of existing bus services to cater for the anticipated increase in public transport users is to be assessed. Suitable improvement measures to public transport facilities and services are to be proposed by the applicant if required.
9. The applicant is to provide the expected bicycle trip generation during peak hours. The adequacy of existing cycling facilities in catering for the anticipated increase in cyclists is to be assessed. Suitable improvement measures to cycling facilities are to be proposed by the applicant if required.

The applicant submitted further information and amended plans on the 3 February 2014 which included a response to the abovementioned matters by Henson Consulting.

Council's Transport Planner reviewed this response and provided the following comments:

1. Shortfall of car parking spaces

The applicant makes reference to RMS updated trip generation surveys (TDT 2013/04) and states that the average parking ratio of the five sites surveyed in Sydney Metropolitan area is 1.09, which is less than the 1.23 proposed. However, inspection of the RMS updated surveys shows that the average parking ratio of the five sites is 1.21. The survey results are shown below:

	Site 1	Site 2	Site 3	Site 4	Site 5
	St Leonards	Chatswood	Cronulla	Rockdale	Parramatta
Total Units	70	129	28	234	83
Parking Spaces	97	206	18	260	108
Parking Ratio	1.39	1.60	0.64	1.11	1.30

Average Ratio	1.21				
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The table shows that the average parking ratio is skewed by the Site 3 (Cronulla). It would be more appropriate to draw comparison with the Lower North Shore sites (St Leonards and Chatswood) which have an average parking ratio of 1.5. It should also be acknowledged that the surveyed sites are in areas served by train lines with better public transport amenity than Lane Cove Village, which does not have convenient access to a railway station.

The applicant must address the parking shortfall by providing the DCP minimum parking rate OR by providing the following:

- a) On-site car share spaces are to be provided in lieu of the parking shortfall (as per the DCP) at a rate of 1 per 3. These car share spaces are to be dedicated to commercial car share use and must be accessible to both residents *and* the general public i.e. on common property within the site boundary and *not* located behind security doors, roller blinds etc.

OR

- b) The applicant must make a financial contribution towards transport and parking infrastructure in Lane Cove in lieu of the on-site car share provision set out in (a). The value of the contribution is based on the rate for commercial parking in Lane Cove Village, listed in Council's adopted fees and charges. At the current rate of \$21,469 per space.

OR

- c) A combination of on-site car share provision and cash contribution to infrastructure works using the rates shown above in (a) and (b). Details to be confirmed with Council at DA stage.

Please note, under all of the scenarios shown above, each unit must be allocated a minimum of one private car space. This allocation should be marked on the architectural plans of the car park at DA stage.

5. Proposed pedestrian facility improvements

The applicant should provide concept designs of all proposed pedestrian facilities to accommodate the increased foot traffic generated by the development. The applicant must include a north-south pedestrian/cycle link through the site to provide direct and convenient access to local amenities in the Village to the south and the Epping Road transport corridor to the north.

The Transport Planner does not agree with the justification provided to support the proposal.

Manager Open Spaces

Council's Senior Tree Assessment Officer reviewed the proposal and provided the following comments:

The Tree Retention and Removal Diagram (Dwg No: 13053-DA08) shows the removal of 83 trees from the site and the retention of 6 trees. The five trees for retention consist of two Jacaranda trees (No:15 and No:81), one *Eucalyptus paniculata* (Grey Ironbark) (No: 30), one *Tibouchina macranta* (Lasiandra) (No: 83), one *Eucalyptus microcorys* (Tallowwood) (No: 94) and one *Cupressus torulosa* (Bhutan Cypress) (No:62).

All Council trees (save trees numbered 61 and 63) are designated for retention. The Section Plans show bulk excavation on the uphill side of the existing street trees in Birdwood Avenue. This bulk excavation will change ground water movement and reduce water availability to all street trees in Birdwood Avenue. Subsequently, the health of street trees on both sides of Birdwood Avenue will be negatively affected by this development.

Council's Landscape Architect reviewed the proposal and provided the following comments:

Based on the size of this proposed development with the implied loss of vegetation and number of canopy trees to be removed, Councils expectation for an extensive and well designed landscape proposal could be achieved with a site of this expanse. When considering this type of proposal requires that the sites combined are to be almost completely cleared of all vegetation as well as indirectly impacting the street trees.

With proposed number of units and the associated parking required it makes it difficult to achieve a large area of deep soils as the underground parking often forces the landscape to be on structure.

Some of the communal areas may be in shade a lot of time throughout the year with the layout and height of the buildings proposed.

The Landscape Architect advises the proposal could achieve compliance with council's requirements however further detail would be required.

Manager Environmental Services

The Manager Environmental Services reviewed the proposed development and raised the following matters for consideration:

1. The proposal fails to provide specific information to demonstrate compliance with *Part Q Waste Management and Minimisation* of Council's DCP including:
 - i. A waste management plan

- ii. For a development this size all waste is to be collected on-site. Access to the sub floor and car parking areas is to be provided for a rear or side waste vehicle that requires an unobstructed floor to ceiling capacity of 5.2m as per Part Q of the DCP
 - iii. Details of the innovative design and methods for waste management
 - iv. Provision of street litter and recycling bins and logistics for emptying and maintaining these by the body corporate
2. Detailed environmental plan addressing site management, dust control, demolition and construction noise, storage and management of contaminated soils and waste and emergency management for the site. The proposal should also address the induction of contractors to ensure that compliance with the conditions of consent are adhered to.
3. The applicant states they are committed to deliver a project in excess of minimum compliance and have noted that they could set a benchmark for sustainable residential development in Lane Cove. The applicant should be required to deliver upon the key sustainability initiatives.

A project that could be considered in this category includes seeking a Green Star rating for the precinct. This alone is not a sustainability measure but has the benefit of driving sustainability initiatives.

The other key precinct style sustainability projects presented in the Sustainability Statement include micro-cogeneration for base building electricity and hot water supply and roof powered solar. These projects would need further investigation and a feasibility assessment of each of these projects would be required at the subsequent DA stage.

Consideration should also be given to the implementation of a green roof or wall project within the precinct as a demonstration project for the Lane Cove area.

4. In accordance with *SEPP No. 55 – Remediation of Land* a Remediation Action Management Plan (Stage 2) would be required to be submitted with a future DA.

Building Surveyor

The application was referred to Council's Senior Building Surveyor who raised concern with the compliance with the Building Code of Australia (BCA) and accessibility. The Senior Building Surveyor advises access is required to all common areas under the BCA including the area between Blocks B and C and access is required between all associated buildings. If Building C is considered associated, it would require an access path linking all other proposed buildings on the site.

The applicant provided a response to the above concerns advising that compliance with the BCA is a statutory requirement and would be detailed in future development applications. The applicant advises the proposed concept is capable of complying

with the deemed-to-satisfy provisions of the BCA and relevant access requirements. The applicant proposes these concerns can be addressed as conditions of consent.

Council's Senior Building Surveyor advises the above response did not specifically address the concerns but acknowledges the need to comply with the BCA provisions.

NSW Roads and Maritime Services

The application was referred to the NSW Roads and Maritime Services (RMS) for comment. The RMS provided two conditions for council's consideration relating to compliance with AS2890.1-2004 and a construction traffic management plan. A copy of the comments from the RMS is contained in **AT 2**.

79 (C) (1) (a) the provisions of any Environmental Planning Instrument

Lane Cove Local Environmental Plan 2009

Clause 2.2 - Zoning

The subject site is zoned R4 – High Density Residential under the provisions of Lane Cove Local Environmental Plan 2009. The proposed development does not meet the zone objectives. The height and floor space ratio proposed does not ensure the existing amenity of residences in the neighbourhood is respected. The proposed variations are discussed in greater detail under the heading Height of Buildings and Floor Space Ratio.

Clause 4.3 - Height of Buildings

The maximum permissible height limit for the site is 18m. The proposal seeks approval for a maximum building height of 26.2m. This variation is discussed in detail in the following clause 4.6 assessment.

Clause 4.4 - Floor Space Ratio

The maximum permissible FSR for the site is 1.7:1. The proposal seeks approval for an FSR of 1.92:1. This variation is discussed in detail in the following clause 4.6 assessment.

Clause 4.6 – Exceptions to development standards

The applicant seeks to vary to Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio.

Lane Cove Council has adopted a local environmental plan which is in the standard instrument format. The Lane Cove Local Environmental Plan 2009 includes provision for variations to development standards via Clause 4.6.

Clause 4.6 enables flexibility in applying certain development standards to particular developments to achieve better outcomes for and from development. Clause 4.6 states:

(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.*

Development consent must not be granted for the development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (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, and*
- (b) the concurrence of the Director-General has been obtained.*

Pursuant to Clause 64 of the Environmental Planning and Assessment Regulation 2000, where the Council's standard LEPs includes Clause 4.6, the Director-General's concurrence can be assumed. The applicant therefore concurrence from Lane Cove Council for the variation to the FSR and building height is required.

The proposed maximum building height is 26.2m and the LEP height of building map identifies the site as having a maximum building height of 18m. The proposed FSR is 1.92:1 and the LEP FSR map identifies the site as having a maximum FSR of 1.7:1.

The applicant has provided justification to Clause 4.6 to demonstrate that compliance with the building height and floor space ratio development standard is unreasonable or unnecessary in the circumstances, there are sufficient environmental planning grounds to justify contravening the development standard and that the proposal will be in the public interest.

Summary of applicant's response:

The controls established on this site were predicated on single, site-by-site developments and not as proposed as an integrated consolidated site. This consolidation provides "planning" benefits not envisaged by the existing controls which should not be dismissed due to a concern regarding numerical compliance.

Whilst the development seeks approval for an additional GFA of 2,220.19m² (12.4% variation to the allowable 1.7:1), importantly, the development also seeks to provide 6,600m² of open space across the site, which equates to an additional 2,410m² or 23% open space greater than is envisaged under Council's controls. This includes 1,600m², or 15.3% of the total site area being allocated to the proposed publicly accessible through-site link and pocket parks. This will benefit the future residents of the development but also the existing wider public and the future public of the approved Finlayson St developments.

The key objective of Clause 4.6 is to allow flexibility in applying development standards to "*particular*" development to achieve better outcomes for and from development. The variations to the height and FSR standards satisfy the requirements of Clause 4.6 of the LCLEP. The proposal demonstrates a capability of delivering a development that does not result in any adverse or unreasonable environmental impact and results in a better planning outcome for the site, but also, for Lane Cove on a more strategic and long-term basis.

In the absence of any tangible environmental impacts, including adverse overshadowing and limited residential privacy, the proposal is considered to be a better planning outcome than a proposal with envelopes which strictly comply with the height and FSR standards, with less open space, no through-site link and devoid of the wide range of benefits outlined in the submission and attached letter. Whilst this might be an acceptable outcome, it is evidently not a better planning outcome. Requiring strict compliance with the LCLEP undermines the intent of Clause 4.6 of the LCLEP.

Officer's response:

The applicant has failed to demonstrate that the proposal would or can achieve the aims and objectives of the LEP and DCP. The desired future character of the locality is not only achieved by providing high density residential development in close proximity to the town centre as stated in the application. It is considered that the proposal to depart from the LEP height control and FSR control has not been justified with the bulk, scale and impacts on adjoining residential developments and the desired future character of the area.

Further development approvals have been granted for adjoining sites demonstrating that the current building height and floor space ratio can be used to redevelop this precinct for the purposes of residential flat buildings. The public benefits of the through site link proposed by the applicant are not supported. The through site link may benefit the amenity of the subject site's own future residents. The net benefit to the wider Lane Cove community is questioned.

Pursuant to Clause 4.6 Council officers are not satisfied with the applicant's justification demonstrates that compliance with the building height and floor space ratio development standards are unreasonable, there are sufficient environmental planning grounds to justify contravening the development standard and that the proposal will be in the public interest.

In light of the council officers not being satisfied with the above, it is recommended that the JRPP not assume the concurrence of the Director General in this instance.

5 Part Test - Building Height

The proposed variation from the building height development standard is assessed below against the accepted '5 Part Test' for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSW LEC 827.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The following assessment considers the objectives of clause 4.3:

- (1) *The objectives of this clause are as follows:*
 - (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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *Despite subclause (2), the maximum height for multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres.*

Minimise any overshadowing

Given the site is immediately north of two properties, 3-9 Finlayson Street and 17-21 Finlayson Street, it is anticipated that some additional overshadowing would be experienced.

The shadow plans show that the developments situated south-east at 3-9 Finlayson Street and south-west at 17-21 Finlayson Street would be impacted for most of the day during the winter solstice on the lower levels as a result of the proposal. Several properties situated on the opposite side of Finlayson Street are also shown as being partly in shadow during mid winter. Most of the shadow appears to be within the front setbacks of these properties from 10am onwards.

Minimise any loss of privacy and visual impacts

There appears to be a minimum of 12.4m and 18.6m between the indicative footprint of Block D and Block B respectively and the habitable rooms/balconies of the development application under consideration at 17-21 Finlayson Street situated immediately south west of the site.

There appears to be a minimum of 11.4m to 13m between the indicative footprint from Block D and the habitable rooms/balconies of the development application

under consideration at 3-9 Finlayson Street situated immediately south east of the site.

The additional height proposed would detract from the desired future character of the area. The scale is inappropriate to the desired character of the area and to the surrounding properties.

Maximise sunlight to the public domain

The development does not maximise sunlight to the public domain. There is additional overshadowing of Finlayson Street that may be avoided by a development that complies with the height controls. The solar access to the proposed public domain, the east to west pedestrian through link would be almost completely overshadowed for much of the year.

Relate to topography

The indicative plans demonstrate part of the basement car parking being partially above the ground level. Combined with the sloping topography of the site and the height proposed, the proposal would result in an overbearing visual impact for the existing residents.

2. That the underlying object or purpose is not relevant to the development.

Not applicable. The underlying objective or purpose of the standard is relevant.

3. That strict compliance with the standard would not achieve the underlying object or purpose.

Not applicable. Strict compliance with the standard would achieve the underlying object or purpose.

4. That the development standard had been virtually abandoned or destroyed by previous Council decisions.

This reason is not being relied upon.

5. That in the circumstances the zoning of particular land was unreasonable or inappropriate.

The applicant states the proposed concept DA demonstrates the appropriateness of the proposal for the site, through its context, its lack of adverse environmental impact and the range of key benefits delivered by the proposal. The applicant states the development standards associated with the zoning of the land are not appropriate for the site given the unique opportunity provided by amalgamating the existing 17

allotments into a single consolidated site together with the public benefits offered as a consequence of that amalgamation.

The applicant's justification is not supported. Recent development approvals for the adjoining sites, 3-9 Finlayson Street and 17-21 Finlayson Street demonstrate that the current building height control can be used to develop. The public benefits of the through site link proposed by the applicant are not supported. The through site link may benefit the amenity of the subject site's own future residents. The net benefit to the wider Lane Cove community is questioned from both an amenity and usability perspective.

5 Part Test - FSR

The proposed variation from the floor space ratio development standard is assessed below against the accepted '5 Part Test' for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSW LEC 827.

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The following assessment considers the objective of clause 4.4:

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

- (a) *to ensure that the bulk and scale of development is compatible with the character of the locality.*

Bulk and scale is compatible with the character of the locality

The proposal seeks approval for an additional 12% to 45% (proposed 20.2m to 26.2m) building height than permitted under the LEP. The proposal seeks approval for an additional GFA of approximately 2,220.19m² or 12% of FSR than the LEP permits.

The DCP permits a maximum of 5 storeys within a residential flat building. The indicative plans provided demonstrate envelopes comprising 4, 5, 6 and 7 storeys.

The desired future character of the area is reflected in the height and FSR of the LEP and DCP. The emerging character is also reflected in the development approvals currently under construction at 3-9 Finlayson Street and 17-21 Finlayson Street which comply with the current FSR and building height controls.

The proposed bulk and scale of the development when viewed from the public domain of Birdwood Ave is inconsistent with the character of the area as the buildings present as a consistent 7 storey building along this frontage where the clear desired future character is for 5 storey buildings. The bulk and scale of the development when viewed from Finlayson Street is inconsistent with the character of the area influenced by the height of adjoining and adjacent buildings under construction.

The proposal fails to meet the objectives of Clause 4.4.

2. That the underlying object or purpose is not relevant to the development.

Not applicable. The underlying objective or purpose of the standard is relevant.

3. That strict compliance with the standard would not achieve the underlying object or purpose.

Not applicable. Strict compliance with the standard would achieve the underlying object or purpose.

4. That the development standard had been virtually abandoned or destroyed by previous Council decisions.

This reason is not being relied upon.

5. That in the circumstances the zoning of particular land was unreasonable or inappropriate.

The applicant proposes that the R4 High density Residential zone of the site is appropriate. However the maximum floor space ratio standard associated with the zoning is not appropriate. The applicant proposes there is a unique opportunity provided by amalgamating the remaining undeveloped land within the street block, which was not envisaged by Council's controls. The applicant states the application demonstrates it is appropriate for the site through the lack of adverse impacts and key benefits. The applicant believes the proposed stage concept proposal meets the test of (v) as the development standards associated with the zoning of the land are not appropriate for the site.

The justification provided by the applicant is not supported. As discussed above, the development approvals for the adjoining sites, 3-9 Finlayson Street and 17-21 Finlayson Street demonstrate that the current floor space ratio can be used to develop for the purposes of residential flat buildings. The public benefits of the through site link proposed by the applicant are not supported. The through site link may benefit the amenity of the subject site's own future residents. The net benefit to the wider Lane Cove community is questioned when public pedestrian footpaths run parallel to the proposed internal link. The proposal fails to satisfy the unreasonable or inappropriate test.

Lane Cove Development Control plan

Detailed design is not available at this stage for the subsequent stages of the proposal. Compliance with the DCP controls cannot be established given the concept nature of the proposal. It is noted that there appear to be variations sought

in relation to on-site car parking, building height and number of storeys. These variations are not supported. Should the application proceed a subsequent detailed design should be designed to comply with Council's DCP.

OTHER PLANNING INSTRUMENTS

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.

In the event the application is supported Section 94 Contribution calculations would be provided for the subsequent development stages.

State Environmental Planning Policy (Building Sustainability Index) 2004

A Basix report was not submitted along with the application as residential works do not form part of this application.

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

The concept development proposal does not comply with the provisions of Lane Cove Local Environmental plans 2009 and fails to demonstrate compliance with the Lane Cove Development Control Plan. The concept development fails to demonstrate it can meet the 10 design quality planning principles of State Environmental Planning Policy 65. The proposed development would not be in accordance with the emerging scale and character of the area and would result in overshadowing of adjoining developments (under construction) south of the site.

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

The site is zoned R4 - High Density Residential. Given the proposed FSR and building height, the site is not considered suitable for the proposed development as it is inconsistent with the desired and emerging character of the area.

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

The proposal was notified in accordance with Council's notification policy. A total of 17 objections have been received in response to the notification of the proposed development.

The issues raised in the objections are indicated below:

- *Objection to the proposal as it exceeds the LEP building height and floor space ratio*

Comment: The proposal exceeds the LEP building height and floor space ratio.

- *The applicant has not demonstrated the variations to council's LEP is in the public interest or that there will be any additional benefit to the community*

Comment: The above comment is supported.

- *The applicant has not demonstrated that the existing height and FSR unreasonably prevents them undertaking a development of appropriate form or function*

Comment: The above comments are supported. Other developments under construction in Finlayson Street have complied with Council's LEP.

- *It is likely there are design benefits from developing the site as a single parcel however this does not imply that a better development outcome is provided by breaching development limits.*

Comment: The applicant has not demonstrated that the proposed development will result in a better outcome for the site by the variations proposed to the height and floor space ratio.

- *The DA states the benefits of pedestrian access throughout the site as justification for breaching limits, there is no indication that this design feature is contingent on breaching the FSR and height limits. Retention of significant trees is the only other claimed community benefit however this is an existing and unrelated development requirement that is not contingent on variation of the FSR and height restrictions.*

Comment: The applicant has not demonstrated that the proposed through site link would off-set the variations to the height and floor space ratio.

- *The applicant has not established that compliance with the development standards of building height and floor space ratio is unreasonable and unnecessary in the circumstances of this case and thus the request for variation to the standard should be denied.*

Comment: The above statement is supported other developments already in progress in Finlayson Street have complied with Council's LEP.

- *Council should not accept the developer using unused yield from 1 Finlayson Street and maintain the adopted FSR and height controls*

Comment: This justification has not been considered.

- *It is submitted that the variation to the standards requested by the applicant and some of the justification provided are an attempt to effect a general planning change to the standards in the R4 zone adjacent to the town centre. This should be achieved by a review of the planning controls in the R4 zones and preparation of a planning proposal for this purpose.*

Comment: The application in its current form is not supported.

- *The justification for the variation on the grounds of a shortage of development potential in the area to meet the strategic targets of council needs to be investigated and should be properly addressed by a review of planning controls and the preparation of a planning proposal and not be the granting of a variation to development standards.*

Comment: The application in its current form is not supported.

- *The applicant has failed to address the second arm of Clause 4.6(3) being there must be sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The justification provided by the applicant to vary the development standards of height and FSR is not supported.

- *The development does not minimise overshadowing, loss of privacy or visual impacts on neighbouring properties:*

Comment: The proposal is considered to result in overshadowing and would result in a reduced level of amenity for residents, both existing and future.

- *The development does not maximise sunlight for the public domain*

Comment: It is considered that a compliant building height would increase sunlight to the public domain

- *The development does not relate to the topography of the site*

Comment: The indicative plans provided indicates that the basement podium would be above ground level

- *The proposal would impact on the approved development at 17-19 Finlayson St by way of overshadowing of the east facing units, will create a visual impact, will reduce privacy and security as a result of the proposed east to*

west link and the reduced separation between Buildings A and D will restrict outlook

Comment: Amended plans were submitted in response to these concerns to reduce part of the development height of Block D from part 6 to 7 storeys to 5 storeys. It is understood this amendment did not address the above concerns.

- *The proposal will limit existing views of trees as viewed from properties in Epping Road*

Comment: The proposal would incorporate the retention of 37 trees on-site. It is likely the trees currently visible from Epping Road are proposed to be removed or may be screened by the future residential flat buildings.

- *The proposal would result in increased traffic congestion, reduced on-street parking, congestion and pollution. On-site parking proposed is considered to be insufficient*

Comment: The proposal would result in additional vehicular movements within the precinct. In its current form the application would not provide car parking on-site in accordance with the DCP.

- *Pedestrian movements around the village are becoming increasingly dangerous given the volume of traffic and construction vehicles in the area. The traffic lights need to be built in Rosenthal Avenue before any other construction work continues in this area*

Comment: Council does not have plans to construct traffic lights in Rosenthal Avenue however Council is examining pedestrian and vehicular movements within Lane Cove.

- *Insufficient on-site car spaces have been provided for a development this size*

Comment: Based on the indicative unit mixture provided within the concept development application, the proposal would not comply with the DCP in relation to on-site parking.

- *Concern raised regarding the single day sample used in the traffic report*

Comment: Council's Transport Planner has raised concern with the Traffic Impact Assessment Report.

- *How is the council going to improve the bottle neck at Longueville Road and Epping Road?*

Comment: Council has resolved to construct traffic signals at the intersection of Longueville Road and Phoenix Street.

- *On-street parking in Cox's Lane should not be permitted, the street is too narrow to accommodate parked cars, construction trucks and other vehicles*

Comment: The widening of Cox's Lane is being investigated by council. At this stage, there are no plans to restrict on-street parking within Cox's Lane.

- *Streets should be opened up so they have dual access to Centennial Avenue. Finlayson Street for example only has one way access to Centennial Ave. This would enable motorists access to Centennial Ave without having to drive through construction sites*

Comment: This is not a matter council is considering in conjunction with this application.

- *A major traffic study of the Lane Cove Village needs to be undertaken in this area before any other approvals are granted*

Comment: Council has developed a model of the Town Centre that forecasts traffic performance in 2021. The model takes into account additional traffic generated by anticipated developments.

- *Transport in the area needs to be improved, there are not enough buses to cope now*

Comment: Council is liaising with the state authority in this regard.

- *There are already three major developments under construction in Finlayson Street which create constant noise and traffic congestion issues for residents. What will be done to address noise and congestion?*

Comment: Should the DA proceed, conditions of consent relating to construction management, in particular noise would be required.

- *Is Cox's Lane going to be widened and if so when?*

Comment:

- *Can the existing infrastructure cope with the additional demand*

Comment: The applicant has not demonstrated that the road or stormwater system would cope with the likely additional demands the proposal would create.

- *The proposed stormwater relocation replaces a relatively straight section of pipe with a section containing 6 near 90 degree bends, one in close proximity to 17-19. It is requested that Council ensure the efficiency of this system and that any associated overland flow is adequately managed.*

Comment: The stormwater plan has been amended since the application was lodged to address concerns regarding the sharp change in angles. Council's Development Engineer is concerned regarding the proposed stormwater plan and the management of overland flow.

- *The proposal will result in overshadowing of surrounding properties and the public playground on Coxs Lane.*

Comment: The proposal would result in the overshadowing of surrounding properties however the submitted shadow plans do not demonstrate the proposal would overshadow the public park on Coxs Lane.

- *What protection measures are in place for the trees along Birdwood Avenue?*

Comment: Should the application be approved, Council would require bonds to the paid and tree protection measures be in place prior to any work commencing on-site.

- *How can the council consider such a large project outside of the planning rules?*

Comment: There is nothing within the Environmental Planning and Assessment Act 1979 which prevents the applicant from lodging a staged development application. The applicant can seek to vary council's development standards, being the building height and floor space ratio, pursuant Clause 4.6 of the Lane Cove Local Environmental Plan 2009.

- *Objection to the 14 day notification period not being long enough*

Comment: The application was lodged on 25 November 2013 and the application was available for public viewing for 27 days.

- *Will council run a public forum to address the numerous objections of this and other Das this size?*

Comment: A public form is not proposed to be run by Council for this application.

- *Concern raised regarding the location of the proposed driveway being opposite No. 25 Birdwood Avenue*

Comment: The plans submitted with this application are indicative only, detailed design would be submitted with the future development application.

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

The proposed development does not meet the requirements of Lane Cove Council's Local Environmental Plan 2009 and the provisions of Development Control Plan.

The proposed development comprises a density not envisaged for this precinct. Accordingly it is considered that the proposed development is not in the public interest.

CONCLUSION

Council's principal concern with the proposed concept plan is the variation sought to the LEP with regards to FSR and building height. The variation to council's controls results in approximately 2,220.19m² of additional gross floor area. The rationale for this variation relies on several perceived public benefits, namely the proposed publicly accessible pedestrian through site link.

The application fails to quantify the public good offered for the variation to Council's controls. It is unclear whether adjoining properties would wish to participate in the public access given some sites are being constructed and there appears little or no willingness to access what would be a public right of way.

The pedestrian through site link would clearly provide a benefit to the future residents of the subject site. However Council remains unconvinced as to the community benefits of this through site link to other residents and the community generally.

Council does not agree with the assessment of the impacts to adjoining sites and the precinct generally. Council does not agree with the justification provided for the variation to the LEP controls for FSR and height and the public benefit of the pedestrian through-link.

The matters under Section 79C of the Environmental Planning and Assessment Act 1979 Act have been considered. The proposal is not considered to be suitable for the site and is not within the public interest.

The proposal is recommended for refusal.

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 not grant development consent to Development Application DA13/194 for a concept DA for residential flat development on 2-22 Finlayson Street and 11-15 Birdwood Avenue, Lane Cove for the following reasons:

1. The proposal does not meet the aims of the Lane Cove Local Environmental Plan 2009.
2. The proposed development does not comply with Clause 4.3 Building Height and Clause 4.4 Floor Space Ratio of the Lane Cove Local Environmental Plan 2009.
3. The proposal is not consistent with the objectives of the R4 High Residential zone of the Lane Cove Local Environmental Plan 2009.
4. The proposal does not comply with the Part C of the Development Control Plan 2010:
 - ii. Locality 2 Finlayson Street in relation to building height
5. The proposal is inconsistent with the desired and emerging character of the precinct.
6. The Director General's concurrence is not assumed in this instance.
7. For the reasons outlined above, the proposal is not considered to be in the public interest.