

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

**SUPPLEMENTARY REPORT TO 2013SYE0105**

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

DA No: 2013SYE105 (DA13/194)

Author: Rebecka Groth

**EXECUTVE SUMMARY**

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 seeks to vary Council's Local Environmental Plan 2009 with regard to maximum permissible floor space ratio (FSR) and maximum permissible height. The applicant has provided justification for the variations and provided a list of community benefits in support of the proposal which relate to a proposed east west publically accessible site through link.

On the 12 March 2014 Council responded to correspondence by the applicant advising Council's principal concern with the proposed concept plan is the variation sought to the LEP with regards to FSR and building height. The rationale for this variation relies on the proposed publicly accessible pedestrian through site link. The applicant was advised that the application fails to quantify the perceived public good offered for the variation to Council's controls. The pedestrian through site link would provide a benefit to the future residents of the subject site, however Council remains yet to be satisfied as to the community benefits of this through site link to other residents and the community generally.

Council advised it does not agree with the applicant's assessment of the impacts to adjoining sites and the precinct generally or the justification provided in the letter from City Plan Services dated 27 February 2014 with regards to the variation to the LEP controls for FSR and height and the public benefit of the pedestrian through-link.

## **APPLICANT'S SUBMISSION**

In response to the publication of council's assessment report on the JRPP website, the applicant submitted, 2 working days prior to this meeting, additional information and amended plans.

The applicant's submission is summarised below.

*Council's assessment report recommends refusal of the above Stage 1 Concept Development Application. We strongly disagree with the contentions made in Council's assessment of this application and do not consider that the proposal warrants a recommendation of refusal.*

*Whilst it is our intent to keep this response as brief as possible, our concern is that there are so many issues raised by Council in the report that have either not been raised with us, are not fully addressed or justified, or where we simply have a difference in opinion.*

*In the first instance, we wish to emphasise that approval is sought for a concept plan only. Approval is sought for building envelopes, a total floor space ratio (FSR), building footprints, access points etc. All other matters will be addressed in future detailed DA(s). Whilst approval of such an application will set the parameters for future development applications to be considered, it will be on the onus of the Applicant to demonstrate to the Council and potentially the JRPP, in future applications, that the detailed design of the buildings deliver the "capability" outcomes or "commitments" demonstrated in this application. Such commitments or future requirements may be reinforced through the imposition of appropriate conditions to consent.*

*It is unfortunate that Council has recommended refusal largely on the basis of the proposed variations to the height and FSR standards. Whilst there are a range of reasons for refusal, as stated in the report, "Council's principal concern with the proposed concept plan is the variation sought to the LEP with regards to FSR and building height". Even though height is mentioned as an issue, it is clearly the additional gross floor area of the development that is of greatest concern.*

*Council incorrectly states that the rationale for the variation to the additional gross floor area relies on "several perceived public benefits namely the proposed publicly accessible pedestrian through site link". This is simply not the case and we have made this point on numerous occasions to the Council. Our submissions to-date clearly demonstrate that the Clause 4.6 variation requests stand up to scrutiny in their own right, regardless of the evident benefits of the proposal. These are simply*

*"flow-on" benefits of being able to consolidate and redevelop a site of this size that would otherwise not be feasible on an individual site-by-site basis.*

*Council also states that "the application fails to quantify the public good offered for the variation to Council's controls". This is **not** a simple case of land dedication in lieu of additional floor space. That is not what the application proposes and one cannot "quantify" the public good in dollar terms offered through the proposed through-site link and "pocket-parks" as a comparison or justification to the proposed variation to Council's controls. In the circumstances of this case, this is not an appropriate way to determine whether the variations to the controls are supported.*

### **Impacts of the Development**

*The impacts of the development and the height and FSR standard variations have been well considered in the application. We have also considered the relevant provisions of Clause 4.6 of the LCLEP and determine that the variations are warranted. We have also clearly demonstrated that despite Council remaining "unconvinced" as to the value of the development and the link specifically, this should not be a reason to refuse this development which presents a number of key opportunities to be harnessed.*

*Council's contentions that there will be unreasonable overshadowing is confusing. It acknowledges that "given the site is immediately north of two properties it is anticipated that some additional overshadowing would be experienced". Yet, Council clearly raises concerns regarding the shadows cast. The shadow analysis prepared by Turner (refer **Annexure 4**) clearly shows that the proposal:*

- maintains at least 3 hours of solar access in mid-winter to all units of adjacent development that previously received at least 3 hours;*
- results in some very marginal areas of reduced sunlight but equally, areas of improved sunlight over and above what compliant height envelopes would cast; and*
- the affected units (4) in 3-9 Finlayson Street still receive between 1.5 (1 unit) - 2 hours (3 units) of solar access in mid-winter. The affected units (8) in 17-21 Finlayson Street receive the same level of solar access that would be afforded by height compliant buildings on the subject site. The only impact is to the lower two (2) levels at 9am and given none of these units received at least 3 hours of solar access in mid-winter (due to self-shadowing), this is considered to be a very reasonable outcome. This outcome for the adjacent developments is appropriate given the high density desired future character of the Precinct, the fact that these properties are directly to the south of the proposed development and given on balance, the proposal actually results in a better outcome for solar access than a height compliant development on the subject site.*

*Notwithstanding the above, the proposed amended plans (which will be discussed in the following section of this letter) **improve the level of solar access to the lower level north-facing units of 3-9 Finlayson Street** to a result that is consistent with the RFDC and on balance, better than an outcome from a compliant height scheme.*

Other "impact" assessment issues raised by Council include visual bulk and scale, privacy, stormwater management, tree removal/retention, landscaping and car parking provision.

All of these issues have been addressed in our submission and we disagree with Council's contentions. Notwithstanding this, refer to the attached responses from our project team which address each of these issues pertaining to their relevant discipline. A response to the SEPP 65 analysis prepared by Council's consultant architect has also been prepared by Turner and is submitted with this letter. Refer to **Annexure 2** for copies of these responses.

Issues raised regarding construction impact are not relevant to this application as it is a concept plan and no physical works are proposed at this stage. This can be adequately addressed in future detailed DA's with the submission of a construction management plan or other relevant documentation.

### **Amended Plans**

Notwithstanding all of the above and all of our contentions made in our submissions to-date, we have genuinely sought to work with Council to come to an agreement on a concept scheme it is comfortable with. There does however need to be a level of practicality and willingness to consider the opportunities of the site and benefits of the proposal. Council cannot simply take a "comply or die" approach to any site, particularly one of this scale and influence to the Lane Cove Village Centre, unique circumstances and location.

Notwithstanding this, and with no further direction from Council, we formally submit to the JRPP and the Council amended plans which propose the following:

- **Deletion of the upper level of Building D**, thereby creating an envelope which has the capability of containing a built form consistent with those adjacent buildings on Finlayson Street. This amendment **reduces the total GFA of Building D by 345m<sup>2</sup>**, the overall height of this building and results in a better streetscape outcome for Finlayson Street. Overshadowing to the public domain is also reduced but it is important to note that any height compliant building in the location of Building D will result in overshadowing to the public domain/Finlayson Street.
- **Deletion of the upper level from Building B**. The purpose of this amendment is to **reduce the total GFA by 310m<sup>2</sup>**, the overall height of this building and reduction in the overshadowing to 3-9 Finlayson Street so that all units receive appropriate levels of solar access. The north-facing ground floor units will all receive at least 2 hours of solar access in mid-winter, which is appropriate given this approved development is to the south of the proposal and also, given the context is high density. Two (2) hours is appropriate as set out in the RFDC. All north-facing units above the ground level will receive at least three (3) hours of solar access.
- **A total reduction in GFA of 655m<sup>2</sup> and FSR from 1.92:1 (originally proposed at 1.95:1) to 1.85:1**. Approval is therefore sought for a **variation in FSR of 0.15:1, 8.8% and about an additional 1,565m<sup>2</sup> of GFA**, which

*represents less area than the proposed "publicly accessible" link and "pocket-parks" of 1,600m<sup>2</sup>.*

*Justification for retaining built form elsewhere on the site is included in original submissions and the accompanying responses by Turner and City Plan Urban Design.*

### ***Request for Deferral***

*We request that the Council and the JRPP considers this response to Council's assessment report and attached amended plans and technical response, prior determining this matter. Should the JRPP at its meeting on 26 March 2014 consider that amendments consistent with the plans forwarded to Council have merit we would appreciate the determination of the Panel to be deferred to allow council to prepare a formal assessment of the plans for your consideration.*

A copy of the applicant's submission is contained in **AT1**

### **RESPONSE TO THE APPLICANT'S SUBMISSION**

The applicant's response was submitted to Council at approximately 5pm on 21 March 2014. Given the timeframe, Council has undertaken a brief review the applicant's submission.

The acceptance of an amending application after the setting of the formal assessment report is generally not permitted. However, staff have reviewed the proposed amendment in line with this Council's practice of open and transparent communication to enable the JRPP to be fully informed.

The amended proposal comprises a reduced FSR over the site and a reduced building height for Buildings B and D. The amendments are summarised below.

**Table 1 comparison of amendments**

<b>Council LEP development standard</b>	<b>Amended plans received 11 February 2014</b>	<b>Amended plans received 21 March 2014</b>
FSR Maximum 1.7:1 (GFA 17,814.81m <sup>2</sup> )	1.92:1 GFA 20,035m <sup>2</sup>	1.85:1 GFA 19,380m <sup>2</sup>
Building Height Maximum 18m	Building B: maximum height 26.2m  Building D: maximum height 23.1m	Building B: maximum height 25.3m  Building D: maximum height 20m*

**\*Notes:**

The amended proposal includes a partial reduced building height for Building B from part 5, 6 and 7 storeys to part 4, 5 and 6 storeys and Building D from part 5, 6, and 7 storeys to part 4, 5, and 6 storeys.

The amended proposal is not supported as it only marginally seeks to address issues of non-compliance articulated in the assessment report and does not comply with the maximum permitted FSR and building height development standards pursuant to the Lane Cove Local Environmental Plan 2009. The proposal and amended proposal also fails to adequately justify their perception of public good or intended character of the precinct.

## **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 amended plans reduce the proposed FSR and building height. The amended proposal does not comply with the Lane Cove Local Environmental Plan 2009 and Council does not agree with the justification provided.

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 the development application is recommended for refusal for the reasons stated in the original assessment report.