

Sydney East Joint Regional Planning Panel meeting of 7 May 2014

Property: 316-332 Burns Bay Road, Lane Cove
Application No: 2013 SYE110, DA 12/39A (Section 96 Modification)
Date Lodged: 28 November 2013
Amended Plans Lodged: 3 February 2014
Cost of Work: As per the original development (\$89,925,000)
Owner: Tuta Properties Pty Ltd
Applicant: Icon Construction Australia (NSW) Pty Ltd

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Section 96 Modification to development consent DA 12/39 for the demolition of existing buildings, removal of trees, and construction of a residential flat building complex development comprising 268 dwellings within 5 building blocks, and basement car parking for 444 cars
ZONE	R 4 – High Density Residential - Lane Cove Local Environmental Plan 2009
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No. However, the site is adjacent to a heritage item located at 334 Burns Bay Road, Lane Cove
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
IS THE PROPERTY ADJACENT TO BUSHLAND?	No. However, the site is located within a Bush Fire Prone Land - Vegetation Buffer 100m & 30m
BCA CLASSIFICATION	Class 2, 6 & 10b
NOTIFICATION	The original S96 proposal and the amended plans were notified in accordance with Lane Cove Council Notification Policy.

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 as the proposed development has a capital investment value greater than \$20 million.

EXECUTIVE SUMMARY

- The subject site is located within R4 - High Density Residential zone and residential flat building developments are permissible within the zone in accordance with Lane Cove Local Environmental Plan 2009 (the LEP).
- Development consent DA 12/39 for the construction of residential flat building complex comprising 5 buildings and a shop was granted by JRPP on 6 December 2012. Each building comprised 7 levels of residential dwellings with basement car park for a total of 218 dwellings.
- The Section 96 application seeks amendments to the design of the approved development. The proposed amendments include the consolidation of 5 separate basement car parks to one large basement car park below the buildings, conversion of the shop to a dwelling, modification to internal apartment layouts and mix, increasing the number of dwellings to 268, minor increase to the building heights and amendments to the landscaping design and building materials. It also deletes the deceleration lane adjacent to Burns Bay Road at the front of the site.
- The proposed amendments would improve the traffic circulation within the basement car park and would provide additional car spaces to meet the DCP car parking requirement for the 50 additional dwellings.
- Deletion of the deceleration lane adjacent to Burns Bay Road would ensure all traffic accessing to the site would use the new road to the north of the site currently under construction at 314 Burns Bay Road. This Section 96 amendment would address the concerns relating to the traffic movement raised by the residents in Linley Point during the original development application assessment process.
- The Section 96 proposal includes minor amendments to building envelopes and landscaping of the approved development.
- The amended proposal is supported by the development engineer, heritage consultant, traffic engineer, landscaping architect and community officer.
- Council's SEPP 65 consultant raised concerns to the building separation between the proposed buildings, the setbacks and the nature of the original approved development.
- The proposed building separation is considered acceptable as it is consistent with the building separation and setbacks of the approved development.
- The Section 96 amended development is considered substantially same as the original approved development given that the nature of the original development is residential flat buildings and a car park for Carisbrook House. The deletion of the shop forms a minor and insignificant part of this development.
- The Section 96 modification application is recommended for approval subject to draft conditions provided with this report.

SITE

The subject site is located at the eastern side of Burns Bay Road between Cope Street to the north and View Street to the south.

The site is made up of 6 lots, namely:

- Lot A, DP 342316, 316 Burns Bay Road;
- Lot 1, DP 338571, 316A Burns Bay Road;
- Lot B, DP 342316, 318-322 Burns Bay Road;
- Lot 1, DP 204603, 318-322 Burns Bay Road;
- Lot 2, DP 204603, 318-322 Burns Bay Road;
- Lot 3, DP 204603, 318-322 Burns Bay Road;

The site is irregular in shape with a 195.81m frontage to Burns Bay Road and has an area of 12,818m². The slope of the site falls from the north western corner of 316A Burns Bay to the south-eastern corner of the site by approximately 8.3m.

There was a dwelling house at 316 Burns Bay Road, an electricity substation at 316A Burns Bay Road, and three industrial buildings with associated car parking at 318-322 Burns Bay Road at the time of the lodgement of the original development application DA 12/39. The dwelling house and two industrial buildings have since been demolished.

An industrial building has been converted into a display suite since October 2013.

Surrounding development comprises a mixture of dwelling houses, residential flat buildings and a heritage item including:

To the north: Vacant land at 304-314 Burns Bay Road which is zoned R4 – High Density Residential at the western section of the site and Public Recreation RE1 at the eastern section. A new road is currently under construction on the site.

To the south: A heritage item known as Carisbrook House at 334 Burns Bay Road which is within R2 – Low Density Residential zone. Carisbrook House is owned by Lane Cove Council and is used as a museum.

To the east: Residential flat buildings are located at 300A, 300B, 300C and 302 Burns Bay Road. The adjoining properties are within R4 – High Density Residential zone.

To the west: Dwelling houses are located at the western side of Burns Bay Road within R2 – Low Density Residential zone.

EXISTING APPROVAL

Development consent DA 12/39 was granted by JRPP on 6 December 2012. The schedule of dwellings is as follows:

Dwelling Type	1 bedroom	2 bedroom	3 bedroom	Total dwellings
	68 (31%)	130 (60%)	20 (9%)	218

The approved development included a shop with a gross floor area of approximately 100.23m². A car park for the Carisbrook House comprised 18 car spaces and a bus parking space.

The development also included:

- Demolition of all existing structures including a dwelling house at 316 Burns Bay Road, a substation at 316A Burns Bay Road, and 3 industrial buildings at 318-332 Burns Bay Road, Lane Cove.
- Removal of trees.
- Construction of 5 residential flat buildings having 7 levels comprising 218 dwellings and a shop with basement car parks for 377 cars.
- Construction of a car park for Carisbrook House located adjacent to the south of the site at 334 Burns Bay Road. The car park comprised 18 car spaces and a bus parking space.
- Construction of an internal road between the buildings at the centre of the site.
- Landscaping.

Site preparation for the construction of the approved development is been carried out and an existing industrial building is been used for a sale display suite.

PROPOSAL

The Section 96 proposal involves amendments to the design of the original consent for the demolition of all existing structures and construction of a residential flat development with 5 residential flat buildings, a shop, and a car park for Carisbrook House.

The original Section 96 proposal comprised 270 dwellings and the amended S96 proposal comprised 268 dwellings.

The proposal amended schedule is described as follows:

Dwelling Type	1 bedroom & 1 bed + study	2 bedroom & 2 bed+ study	3 bedroom & 3bed+ study	Total dwellings
	81 (30.2%)	162 (60.5%)	25 (9.3%)	268 (100%)

The shop is proposed to be deleted and there are no amendments to the car park for Carisbrook House.

The Section 96 application seeks amendments to the building design of the approved development. The amended proposal retains the building location and the landscaping of the approved development.

The Sections 96 proposal would retain the nature of the approved development as a residential flat building complex development and is considered substantially the same as the original approved development.

PROPOSAL DATA/POLICY COMPLIANCE

A compliance table with a comparison of the approved development and the Section 96 proposal relative to Council's development controls is detailed as follows:

Site Area (approximately 12,818m²)

Lane Cove Local Environmental Plan 2009

LEP 2009	Provision	Approved	Amended S96 Proposal	Complies/ Comment
Zone	R4 – High Density Residential zone	Residential Flat Building	As approved	Yes
Maximum permitted FSR	2.0:1	1.66:1	1.87:1	Yes
Maximum permitted building height	25.0m	25.0m	25.0m	Yes

Lane Cove Development Control Plan

Part B – General Controls

Clause	DCP	Approved DA	Amended S96 Proposal	Complies/ Comment
B.3 Site Amalgamation & Development on Isolated sites	To encourage site consolidation of allotments for development in order to promote the desired urban design outcomes and the efficient use of land and to avoid the creation of isolated sites.	Consolidation of 6 allotments for a single residential development. The proposed development would not create isolated sites.	As approved	Yes
B.4 – View Sharing	To ensure public viewing corridors between buildings	Residents of the complex share their outlook to bushland and water views to the east from the proposed communal open space	As approved	Yes

Clause	DCP	Approved DA	Amended S96 Proposal	Complies/ Comment
B.7 – Development near Busy Roads and Rail Corridors	To ensure an appropriate acoustic amenity can be achieved for development near transport corridors.	The noise impact from Burns Bay Road was identified and conditions were imposed to ensure the amenity of the development	As approved	Original acoustic protection conditions would remain unchanged.
B.8 – Safety & security	Ground floor dwellings have direct access or entries from the street and at least one habitable room with windows facing the street	Block 1 & 3 had pedestrian entries from Burns Bay Road and all windows facing Burns Bay Road are habitable room windows (bedrooms or living rooms).	As approved	Yes

Part C3 – Residential Flat Buildings

Clause	Requirement	Approved DA	S96 Proposal	Complies/ Comment
3.2 Density	Minimum site area 1500m ²	Area of site Approx 12,818m ²	As approved	Yes
3.3 Building depth	Maximum 18m exclusive of any balcony	18m	Block A: 18.6m Block B: 16.8m Block C: 16.6m Block D: 16.6m Block E: 16.6m	No (minor variation) Yes Yes Yes Yes
3.4 Building width	N/A. Refer to the block control requirement	Refer to the block control compliance table	As approved DA	Acceptable
3.5 Setback Front Side & rear	N/A. Refer to the setback requirements in Block control	9m to Burns Bay Rd	6m	No However, the ground level was previously designed for a car park below the existing

Clause	Requirement	Approved DA	S96 Proposal	Complies/ Comment
Encroachments into the setback zone for underground parking	Maximum 2m	4m	As approved	ground level Acceptable
Podium Height				
Height adjoining front boundary	1.2m	Block 1: Nil Block 3: Nil	Block A: Nil Block C: Nil	Yes Yes
Height adjoining eastern boundary	1.2m	Block 2: 4m	Block B: 4m Block D: 4.4m Block E: 4.2m	Minor amendments to approved DA
Height adjoining southern boundary	1.2m	Block 3: Nil Block 5: Nil	Block C: Nil Block E: Nil	Yes Yes
Height adjoining northern boundary	1.2m	Block 1: Nil Block 2: Nil	Block A: Nil Block B: Nil	Yes Yes
		Part of the podiums exceed the podium height requirement due to the topography of the site and is considered acceptable in this context.	Similar to approved DA	Acceptable
3.6 Building separation within development	Refer to block control requirements	Refer to block control compliance table	Refer to the block compliance table	N/A
3.8 Excavation	Excavation to be contained as close as practicable to the footprint of the development	The basement of Block 2: 2m from the eastern boundary The basement of Block 3: 1.4m from the western (front) boundary Justification was supported by the	Block A: 4.5m setback to the western boundary on the Ground Level	Acceptable

Clause	Requirement	Approved DA	S96 Proposal	Complies/ Comment
		DA consent		
3.9 Design of roof top area	Detailed landscape plan required	No roof top area proposed	No roof top terraces proposed	N/A
3.10 Size of dwellings & component of mixed use buildings	Minimum 40m ² Development should include a mix of 1, 2 & 3 bedroom units. At least 10% of each unit type should be provided	Minimum 59.21m ² 1 bedroom dwellings: 31% 2 bedroom dwellings: 60% 3 bedroom dwellings: 9% This minor non-compliance was considered acceptable.	52m ² 1 bedroom: 32.22% (81 dwellings) 2 bedroom: 60.44% (162 dwellings) 3 bedroom: 9.32% (25 dwellings)	Yes Yes Yes Acceptable as the S96 is consistent with the approved DA
3.11 Private open space	Primary balconies - 10m ² with minimum depth 2m Primary terrace- 16m ² with minimum depth 4m	Balconies meet minimum size requirement. Private terraces meet minimum dimensions	The balcony area of some units have been split into two balconies (8m ² +2m ²) Private terraces meet minimum dimensions	No However, the balconies with 8m ² would be sufficient for their functions Yes
3.12 Number of car parking, motorcycle and bicycle spaces	1 car space per 1 bedroom dwelling 1.5 car spaces per 2 bedroom dwellings 2 car spaces per 3 bedroom dwellings 1 visitor car space per 4 dwellings 1 car space per 40m ² of shop area	1 bedroom dwellings = 68 spaces (68x1) 2 bedroom = 195 spaces (130x1.5) 3 bedroom dwellings = 40 spaces (20x2) Visitor = 54.5 spaces (218/4) Shop: 2.5 spaces (100.23/40)	1 bedroom dwellings = 81 spaces (81x1) 2 bedroom = 243 spaces (162x1.5) 3 bedroom dwellings = 50 spaces (25x2) Visitor = 67 spaces (268/4) N/A	

Clause	Requirement	Approved DA	S96 Proposal	Complies/ Comment
		Required car parking = 360 spaces	Required car parking = 441 spaces	
		377 car spaces proposed	Proposed 444 car spaces	Yes
	1 motor cycle space per 25 car spaces	14 spaces required (360/25)	18 spaces required (441/25) 18 motor space proposed	Yes
	1 bike locker per 10 dwellings	22 required (218/10)	27 required (268/10) 28 proposed	Yes
	1 Bike rails per 12 dwellings	18 required (218/12)	22 required (268/12) 23 proposed	Yes
3.13 Ceiling heights	Minimum 2.7m	2.7m	2.7m	Yes
3.14 Storage	6m ³ per 1 bedroom & studio dwelling 8m ³ per 2 bedroom dwelling 10m ³ per 3 bedroom dwelling 50% of the storage volume within the dwelling	33 storage areas on B1, B2 and B3 are proposed which is more than 50% of the required storage volume. The internal space of the dwellings would be sufficient to meet the requirements of storage volume	The storage area in the basement and internal space of the units is able to meet the requirement	Yes
3.15 Solar access	Living rooms and private open spaces of 70% of the units to receive 3 hours of direct sunlight between 9am – 3pm on 21 June Maximum 10% dwellings with a southerly aspect	52.3% of the dwellings would receive more than 3 hours solar access Nil	54.5% Nil	No. However, the S96 would improve the compliance solar access requirement of the DCP. Yes

Clause	Requirement	Approved DA	S96 Proposal	Complies/ Comment
3.16 Natural ventilation	Minimum 60% of the dwellings should have cross ventilation.	66% of the dwellings would have cross ventilation. (144 dwellings)	66% as approved	Yes
	Minimum 25% of kitchens have access to natural ventilation	64% kitchens have access to natural ventilation (140 dwellings)	More than 25% of kitchens have natural ventilation	Yes
3.17 Visual privacy	Provide visual privacy between the adjoining properties	Privacy screens proposed for the directly facing windows between Block 2 & 4, and Block 4 & 5.	Privacy screens are proposed	Yes
3.18 Communal open space	Minimum 25%	25.3% provided	25%	Yes
3.19 Landscaped area	45% (Minimum 25% provided on the ground level and up to 15% provided on structures)	45% (33% on the ground level and 12% on structures)	30.9% Deep soil: 27% On structure: 3.9%	No Yes No

Part F - Access and Mobility

DCP Provision	Approved DA	S96 Proposal	Comment
Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings (20%) (44 dwellings required)	44 (20%) adaptable dwellings proposed. However, the adaptable dwellings are not shown on the plans	53 adaptable dwellings proposed (19.8%)	Acceptable
Provide 1 accessible parking space for each adaptable housing unit (43 spaces required)	46 accessible parking spaces are proposed.	54 accessible car spaces are proposed in the basement car park	Yes

Note: An accessible car space should be provided for visitors

Block 2: 316-322 Burns Bay Road

	Control	Provision	Approved DA	Proposed	Complies / Comment
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	Control	Provision	Approved DA	Proposed	Complies / Comment
1	Height	25m (LEP control)	25m	25m	Yes
2	Uses	High density residential	5 Residential flat buildings and a shop proposed	5 Residential flat buildings proposed	Yes
3	Building Separation	Minimum 12m, otherwise refer to the diagram 16m between Block 2 & 4 14m between Block 4 & 5	 13m 13m	 B & D: 11.6m on ground level D & E: 12m	 No No Privacy screens proposed
4	Building footprint	Maximum 18 depth	18m	Block A: 18.6m All other buildings meet the provision	No Yes
5	Setbacks	10m to Burns Bay Road 10m to shared boundary with Carisbrook House 4m minimum to proposed access road Break up building bulk above 4 th level	Block 1: 9m Block 3: 11.2m 10m from Block 5 Minimum 6.1m from Block 2 Break up building bulks from Level 5	Block A: 6m on Ground level Block E: 10m Block B: 7m No break up on Level 5	No The ground level is below the existing ground level. Yes Yes No
6	Building Orientation / Length	Maximum 50m building frontage to Burns Bay Road and new access road. Building length permitted to increase beyond 50m if façade articulation etc is	Block 1: 68.4m Block 2: 63m Block 3: 34m Block 4: 34m Block 5: 34m	Block A: 70m Block B: 64.2m Block C: 33.8m Block D: 34.6m Block E: 32.2m	No No Yes Yes Yes

	Control	Provision	Approved DA	Proposed	Complies / Comment
		satisfactory in streetscape			
7	Pedestrian Entry / Address	From Burns Bay Road and proposed access road to foreshore, reserve and Carisbrook House	<p>Pedestrian access from Burns Bay Road is provided to Block 1 and 3.</p> <p>However, pedestrian access to Blocks 2, 4 & 5 is proposed to be gained through Blocks 1 and 3 and by the pathway at the southern end of the site through the car park on the land owned by Council.</p>	Pedestrian accesses to Block B, D & E via Block A & C are retained	Acceptable
8	Vehicle Entry	<p>From proposed access road to connect at the northern end to the yet to be constructed access road to lights on Burns Bay Road (right and left turn in & out) and at the middle of site (left in/left out).</p> <p>Access to Carisbrook House is to be provided through this site.</p>	<p>Right turn from the site would use the loop road under Figtree Bridge.</p> <p>Access to Carisbrook House is proposed at the southern end of the site</p>	<p>To be connected to new road to the north of the site.</p> <p>Burns Road will be used for left turn exit only</p>	Yes
9	Road Dedication	3m wide to either side of proposed access road for provision of 1.5m wide footpath, verge and street trees to each side of the road	<p>6m wide internal access road is proposed</p> <p>1.5m wide footpath as conditioned</p>	<p>As approved</p> <p>1.6m wide footpath proposed</p>	<p>Yes</p> <p>Yes</p>

	Control	Provision	Approved DA	Proposed	Complies / Comment
10	Car parking	Underground may be sleeved with residential uses to the new access road due to topography	5 Basement car parks are proposed	Basement car proposed	Yes
11	Mid Block Pedestrian Connection	Provide pedestrian links from Burns Bay Road to the foreshore in location indicated approximately on diagram. Orient buildings to overlook and address the pedestrian connection.	The pedestrian links from Burns Bay to the internal road are proposed via Block 1, Block 3 and a pathway adjacent to Carisbrook House car park	As approved	Yes
12	Heritage	Provide at least 10 car parking spaces for Carisbrook House and 1 bus parking space as approved by Traffic Manager Provide setback as above to respect the setting and scale of the heritage item and in particular to minimise overshadowing of the courtyard to the north of Carisbrook House. A development application is to be accompanied by a heritage impact statement relating to Carisbrook House.	8 car spaces are proposed within the site with additional 10 car spaces and a bus parking space are proposed on Council Land. The amended plans show that Block 5 adjacent to Carisbrook House complies with the building height and setback requirements. Provided	As approved	Acceptable

	Control	Provision	Approved DA	Proposed	Complies / Comment
		Signage and landscaping to be developed for car & bus parking areas to Carisbrook entrance in agreement with Council policies.			
13	Landscaping / Open Space / Public Domain	<p>Setbacks to be treated as landscape buffer to provide privacy and noise reduction.</p> <p>Existing vegetation to be retained (see diagram) and enhanced with additional vegetation. Tree species to be agreed by Council.</p> <p>20% minimum communal open space to be provided generally between the built form to the west and south west.</p> <p>Public domain improvements required to Burns Bay Road and new vehicle access road. Paving design and specifications to be agreed with Council.</p>	<p>Screening planting is proposed</p> <p>Removal of trees for the construction of the deceleration lane in front of Block 1. Council tree assessment officer does not support the removal of 5 trees adjacent to Block 2</p> <p>26.7%</p> <p>All traffic from the proposed development would access to Burns Bay Road directly.</p>	<p>The landscape plans provided & the deceleration lane on the front setback area adjacent to Road has been deleted</p> <p>Existing trees along the eastern boundary are retained</p> <p>25%</p>	<p>Improvement. Increased amenity for pedestrians with wider path and greater opportunity for landscaping.</p> <p>Yes</p> <p>Access to the site will be connected to the new road to the north of the site</p>

Section 94 Contribution Plan

Lane Cove Section 94 (S94) Contribution Plan applies to the proposal for the increase of population in the area as a consequence of the proposed development.

The S94 contribution for the S96 proposal, which increased the number of dwellings by 50, is calculated in the following manner:

Dwelling	Average Occupancy Rate	Contribution Per Person (2013-2014)	Contribution Per Dwelling	Number of Dwellings	Contribution
1 Bedroom & studio	1.2	\$9391.00	\$11,269.20	81	\$912,805.20
2 Bedroom	1.9	\$9391.00	\$17,842.90	162	\$2,890,549.80
3 Bedroom	2.4	\$9391.00	\$20,000 Cap	25	\$500,000.00
Total				268	\$4,303,355.00

A credit of S94 contribution for the existing 3 bedroom house at 316 Burns Bay Road is \$20,000 cap.

The required S94 Contribution is therefore \$4,283,355.00 (\$4,303,355-20,000).

Condition 11 of the development consent will be amended in accordance with the above assessment.

The shop has been deleted in the S96 proposal and the requirement of the S94 contribution for the shop is longer required. The condition 12 relating to the S94 contribution for the shop will be deleted.

Other conditions in the original consent relating to the use of the shop would also be deleted (16 and 17).

REFERRALS

Heritage

The subject site is immediately adjacent to a heritage item listed in the State Heritage Register (SHR) known as Carisbrook House at 334 Burns Bay Road, Lane Cove.

The original proposal was referred to Council's heritage adviser Conybeare Morrison International Pty Ltd for comment.

The heritage consultant originally advised that the proposed development would have the benefit of removing an intrusive 2 storey structure to the immediate north of the Carisbrook boundary, and therefore potentially increase the visual cartilage of the heritage item.

The heritage consultant further advised that the S96 proposed amendments are minor changes to the building envelopes and facades and therefore can be regarded as having no additional heritage impacts. The addition of landscaping along the boundary with Carisbrook would have a positive benefit as it would help screen the proposed development as viewed from the rear yard of the heritage item.

Principal Building Surveyor

Council Principal Building Surveyor has assessed the proposal in accordance with the Building Code of Australia and the Premises Standards 2010 and advised that the proposal is able to comply with the BCA.

Development Engineer

The development engineer has advised that the proposed stormwater concept plan has deleted the previous rainwater reuse systems. The new BASIX certificate has no rainwater reuse requirement.

The previous stormwater concept plan proposed three new remediation devices in lieu of a gross pollutant trap which was supported by Council. The amended system provides only two devices and would be conditioned to add an additional bio-remediation device to gain the exemption from a gross pollutant trap.

Original consent conditions 69 and 70 will be replaced with new conditions.

Executive Manager Human Services

Council's Executive Manager Human Services has reviewed the proposed amendments and advised that the amended proposal does not significantly alter the impacts on Carisbrook House. A number of previously raised issues during the development assessment process have now been addressed and rectified by the modified design. Amendments to conditions 76 and 97 are recommended.

Traffic Engineer

The Traffic Engineer has provided the following advice:

Intersection - Left out only

The new intersection being "left out" only will be an improvement in traffic compared to the previous proposed left in, left out arrangement.

Internal Parking Configuration

The internal parking configuration including aisle widths, dimensions, circulation patterns and compliance with the Australian Standards appear to be satisfactory.

New Service/Access Road

It is understood the developer is cooperatively working with Council to provide part funding for a new service/access road and it could be argued that, by this provision, they have more than satisfied their traffic obligations for the development.

Traffic Generation

The submitted traffic report provides a well reasoned discussion supporting the proposal and concludes that the increase in traffic would have unnoticeable effects on the operation of the surrounding traffic network.

On this basis there is limited scope for Council to require the developer to make any further provision over and above that required in the initial DA.

Deletion of the Shop

The shop is to be deleted. It is understood that in the near future a small shop might be provided as part of a nearby child care development, slightly to the north of the site. This will provide good convenience and liveability for the new residents.

Summary of Traffic Comments

On balance, from traffic perspective the application should be supported and the previous traffic conditions stand.

Additional Recommended Conditions of Consent

- A. Each pair of parking spaces in a tandem configuration must be allocated to the same strata title.*
- B. The removal of the deceleration lane on Burns Bay Road provides the opportunity to install a dedicated bus bay for STA buses to service new passengers arising from the development. The bus bay must be constructed in accordance with relevant Austroads design standards. Subject to Lane Cove Local Traffic Committee approval the bus bay must be provided on Burns Bay Road (southbound) immediately adjacent to the development site. The final location and detailed design of the bus bay must be submitted to Local Traffic Committee no more than 6 months after the issue of the first Construction Certificate for the residential buildings. If approval for an indented bus bay is not given the applicant must provide an on-street bus zone in accordance with the relevant Australian Standards and including a bus shelter and seat.*

Officer's comment:

The additional traffic conditions are supported as they increase traffic and parking efficiency for the site and they will be included in conditions 141 and 142 of development consent.

Tress Assessment Officer

No objections were raised by the tree assessment officer.

Landscape Architect

No objections were raised to the S96 proposal from the landscape architect.

NSW Rural Fire Service (RFS)

The NSW Rural Fire Service has viewed the submitted amended plans and documentation, and raises no objections to the proposed modifications subject to compliance with our original terms of approval dated 11 May 2012.

Waste Co-ordinator

The proposal complies with the waste management requirements of the DCP. Council's Waste Service Co-ordinator has endorsed the amended proposal and advised that condition 107 in the consent relating to the requirements of bins would require amendments.

Condition 107 would be amended in accordance with the recommendation.

Roads and Maritime Services (RMS)

RMS has reviewed the application and raised no objection to the Section 96 modification for the subject development.

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) (Section 79C (1) (a))

Part 2 of SEPP 65 sets out ten design quality principles as a guide to assess a residential flat building development. The Residential Flat Design Code (The Code) is referred to as an acceptable guide as to how the principles are to be achieved.

The Sections 96 proposal was referred to Council's consulting architect for assessment. The consultant architect advised that the applicant has made changes in response to Council's concerns regarding the ground floor apartments within Block A and B which has increased the amenity of those units.

There would be better solar access performance in the amended proposal.

The building separation between Block D and E and the setback to the northern boundary are less than the recommended provision of the Residential Flat Building Design Code.

Officer's comment:

The building separation between Block D and Block E is 14m in Block Plan of the DCP. The DCP requirement is less than the requirement of SEPP 65. The building separation of the approved building with privacy screen measures was considered acceptable and the Section 96 proposal is consistent with the approved development.

For SEPP 65 assessment advice, refer **Attachment (AT1)**.

State Environmental Planning Policy (Building Sustainability Index) 2004

A new BASIX report has been submitted along with the Sections 96 application. No issues are raised with regard to water, thermal comfort and energy targets.

Condition 37 would be amended to reflect the new BASIX certificate.

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

The Lane Cove LEP 2009 rezoned the site and its surrounding adjoining properties to R4 – High Density Residential. The objectives of the zone are to provide housing needs of the community within a high density residential environment and provide facilities or services to meet the day to day needs of the residents.

The approved development for a residential flat building complex meets the zone objectives and the future desired character of the area. There are minor modifications to the building envelopes, landscaping and the number of the dwellings to the approved development. The Sections 96 modifications would retain the nature of the approved development as a residential

flat building complex and the Sections 96 amended proposal is considered to be substantially same to the approved development.

LANE COVE DEVELOPMENT CONTROL PLAN

The amended design satisfies the objectives of the DCP. The application seeks variations to two DCP requirements:

Building separation

The block control of the DCP states that the minimum separation between Block B and Block D should be 16m and between Block D and Block E should be 14m. The approved building separation between Block B and Block D is 13m. The separation between Block D and Block E is also 13m. The approved building separation with the provision of external louvers was consistent with the provisions of SEPP 65 Design Code and was considered acceptable.

In the Section 96 application, proposed building separations have been reduced. With the proposed privacy screens and landscaping the building separations are considered acceptable.

The variation to the building separation requirement of the DCP is considered reasonable and is supported.

Building Lengths

The maximum length of Block A is 70m and Block B is 64m, which exceeds the DCP requirements.

Officer's Comment:

The block control of the DCP states that the building length should be a maximum of 50m with frontage to Burns Bay Road and new access road. Building length is permitted to increase beyond 50m if facade articulation is satisfactory.

The building lengths in Block A and B exceeded the DCP requirement. The centre of Blocks A and B had been set in to break the visual bulk for better façade articulation of the buildings. The approved design met the objectives of the requirement and the variations were supported. The Sections 96 proposal has minor extensions to the lengths the approved Block A and B. However, the design is consistent with the consent and meets the objectives of the DCP.

Front setback

The DCP requires a minimum of 10m setback from the Burns Bay Road boundary. Two small sections of Block B are 6m from Burns Bay Road front boundary.

Officer's comment:

There are two buildings fronting Burns Bay Road (Block A and Block C). The average front setback of the proposed development is more than 10m. Given that the building sections are below the footpath level, the variation is considered acceptable as it would not create any adverse impact upon the streetscape.

Landscaping

The Sections 96 would reduce the landscaping on structure of the development consent. A children play area is proposed at the front of the site adjacent to Carisbrook House. This would improve the quality of landscaping and the community open space of the development. The variation to the landscaping on structural requirement of the DCP is supported.

VARIATIONS TO COUNCIL'S CODES/POLICIES (SECTIONS 79C(1)(a), (1)(b), and (1)(c))

The preceding policy assessment table identifies those controls that the proposal does not comply with. Each departure has been discussed in previous sections of the report.

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

The Sections 96 proposal was notified in accordance with Council's notification policy. The original Sections 96 proposal was notified between 12 December 2013 and 2 January 2014. 8 submissions were received. Amended plans were lodged on 3 February 2014. It was not considered necessary to notify the amended proposal as the plans satisfactorily address the identified concerns and non-compliances. The issues raised in the submissions can be summarised as follows.

- *The S96 proposal is a different development to the approved as it would have an increase to the number of dwellings within the development.*

Officer's comment:

The Section 96 proposal would increase the number of dwellings in the development from 218 dwellings to 268 dwellings. Some additional dwellings are created by reducing the dwelling size in the approved development and some by the use of the approved car park space in Block A and C. All dwellings meet the minimum dwelling size requirement of the DCP and the amenity of the proposed dwellings is considered acceptable.

The Sections 96 proposal meets the building height and FSR standards of the LEP. The locations of the buildings, the internal road, car park for Carisbrook House and the landscaping setting are similar to the original development consent. The Sections 96 proposal would not alter the nature of the approved development as a residential flat building complex development and the amended proposal is considered substantially the same as the original consent.

- *The proposed development would adversely overshadow the adjoining properties.*

Officer's comment:

The adjacent property to the east of the site, 302 Burns Road, Lane Cove, would receive more than 3 hours of sunlight between 9am and 3pm on 21 June. The proposal meets the minimum solar access requirements of the DCP and is considered acceptable.

- *Removal of trees*

Officer's comment:

The approved development would require removal of most of the trees at the centre of the site for the construction of the approved buildings. The proposed landscaping setting is consistent with the approved development and trees located at the eastern boundary of the site would be retained.

- *The proposed development provides insufficient car parking*

Officer's comment:

The car parking spaces in the amended proposal are more than the minimum parking requirement of the DCP. The proposed car parking spaces are considered adequate.

- *There should be no traffic access to Burns Bay Road*

Officer's comment:

The traffic design of left out only on Burns Bay would allow south bound traffic from the site directly access Burns Bay Road. Council traffic engineer and RMS raised no objections to the proposed traffic design.

- *The removal of the retail shop should be rejected.*

Officer's comment:

There would be 268 dwellings built on the site and the removal of the retail shop in the development may not be the best outcome for the development. However, there is no provision in the DCP requiring a neighbourhood shop to be provided for this development.

All submissions have been taken into considered during the assessment and the objections raised in the submissions do not warrant for the refusal of the Sections 96 application.

CONCLUSION

The matters under Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979 have been considered.

The development application was lodged with Council in November 2013. Further amended plans were lodged in February 2014 for the improvement of the amenity of the dwellings on the Ground Level in Blocks A and C.

The amended proposal now meets the objectives of all the ten principles of good design of SEPP 65.

It is considered that the proposed development would meet the objectives of Lane Cove LEP 2009.

The amended proposal would retain the nature of the approved development for the construction of a residential flat building complex and a car park for Carisbrook House and meets the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

The Section 96 Modification application is recommended for approval.

RECOMMENDATION

Pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979, as amended, the development consent DA 12/39 granted on 6 December 2012 for the demolition of all existing structures and construction of 5 residential flat building complex on the following lots

- Lot A, DP 342316;
- Lot 1, DP 338571;
- Lot B, DP 342316;
- Lot 1, DP 204603;
- Lot 2, DP 204603; and
- Lot 3, DP 204603

and known as 316-322 Burns Bay Road, Lane Cove is amended in the following manner:

A. By amending condition 1 to read as the follows:

- "1. That the development be in accordance with the following drawings with Job 13035, dated 03/02/14, prepared by Marchese Partners International Pty Ltd except as amended by the following conditions.
- Coversheet, DA0.00, Revision B;
 - Site Plan, DA0.01, Revision A, dated 25/11/13;
 - Typical Basement 03 Floor Plan, DA1.00, Revision B;
 - Typical Basement 2 Floor Plan, DA1.01, Revision B;
 - Typical Basement 1 Floor Plan, DA1.02, Revision B;
 - Ground Floor Plan, DA1.03, Revision B;
 - Level 01 Floor Plan, DA1.04, Revision B;
 - Level 02 – 03 Floor Plan, DA1.05, Revision B;
 - Level 04 Floor Plan, DA1.06, Revision B;
 - Level 05 Floor Plan, DA1.07, Revision B;
 - Level 6 Floor Plan, DA1.08, Revision B;
 - Roof Level, DA1.10, Revision B;
 - East & West Elevations, DA2.01, Revision B;
 - East & West Internal Elevations, DA2.02, Revision B;
 - North & South Elevations, DA2.03, Revision B;
 - North & South Elevation, DA2.04, Revision B;
 - Section AA, BB, DA3.01, Revision B;
 - Section CC, DA3.02, Revision B;
 - Landscape Concept Plan, DA-1329-02, Issue A, prepared by Sturt Noble Associates, dated 20.11.2013;
 - Plant Schedule, DA-1329-03, Issues A, prepared by Sturt Noble Associates, dated 20.11.2013;
 - West Entry Plan & Sections, DA-1329-04, Issue A, prepared by Sturt Noble Associates, dated 20.11.2013."

B. By amending Condition 11 and read as the follows:

- "11. THE PAYMENT OF A CONTRIBUTION FOR THE ADDITIONAL PERSONS LIVING ON THE SITE IN ACCORDANCE WITH COUNCIL'S SECTION 94 CONTRIBUTIONS PLAN. THIS PAYMENT BEING MADE PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE AND IS TO BE AT THE CURRENT RATE AT TIME OF PAYMENT. THE AMOUNT IS **\$4,283,355.00** AT THE CURRENT RATE (2013-2014) OF \$9,391 PER PERSON. NOTE: PAYMENT MUST BE IN BANK CHEQUE. PERSONAL CHEQUES WILL NOT BE ACCEPTED.

The S94 Contribution is calculated as the following table:-

Dwelling	Average	Contribution Per	Contribution	Number of	Contribution
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	Occupancy Rate	Person (2013-2014)	Per Dwelling	Dwellings	
1 Bedroom & studio	1.2	\$9391.00	\$11,269.20	81	\$912,805.20
2 Bedroom	1.9	\$9391.00	\$17,842.90	162	\$2,890,549.80
3 Bedroom	2.4	\$9391.00	\$20,000 Cap	25	\$500,000.00
Total				268	\$4,303,355.00

A credit of S94 contribution of the existing 3 bedroom house at 316 Burns Bay Road is \$20,000 cap.

The required S94 Contribution is \$4,283,355.00 (\$4,303,355-20,000).

C. By deleting condition 12 and read as the follows:

"12. Deleted"

D. By deleting condition 16 and read as the follows:

"16. Deleted"

E. By deleting condition 17 and read as the follows:

"17. Deleted"

F. By amending condition 19 as read as the follows:

"19. The provision of 441 on-site car-parking spaces for the use of the development at all times."

G. By amending condition 38 and read as the follows:

"38. **BASIX** - Compliance with all the conditions of the BASIX Certificate number 515033M, dated 21 November 2013 lodged with Council as part of this application."

H. By amending condition 69 and read as the follows:

"69. **Drainage Plans Amendments:** The stormwater drainage plan numbered 13557 Rev C prepared by Australian Consulting Engineers dated Nov 13 is to be amended to reflect the above condition titled 'Stormwater requirement'. The amended design is to be certified that it fully complies with, AS-3500 and Part O, Council's DCP-Stormwater management; certification is to be by a suitably qualified engineer. The amended plan and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

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

I. By amending condition 70 and read as the follows:

"70. **Stormwater Requirement:** All stormwater pits draining Road 01 and Road 02 shall drain via a Bio-Retention Device prior to discharging into the existing stormwater system draining

to the foreshore.”

J. By amending condition 76 and read as the follows:

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

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

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

In relation to the common sandstone wall between the subject site and Carisbrook House, photographic evidence of the stabilization works be recorded. It is requested that the applicant update the dilapidation report and photographic records to reflect these recent works in case of future post construction damage.”

K. By amending condition 97 and read as the follows:

- “97. The Applicant must ensure that 3 medium trees are planted along the southern boundary between the proposed sandstone gateway walls (as per Landscape Plan DA1329-02 A 20.11.13), to provide buffer planting and a vegetative partition between the heritage property courtyard and the proposed development. Adequate soil depth, volume and an appropriate structural soil profile and load bearing surface treatment with any root deflection measures, if required, against the heritage outhouses are to be installed. Submission of the refined details, are to be submitted for Councils approval.”

L. By amending condition 107 and read as the follows:

- “107. The number of bins will be required for the proposed development in accordance with the following bin schedule:

240L Recycling Bins	1100L Commingle	1100L Garbage
Bins to be supplied		
32	4	6
28	4	5
16	2	4
14	2	3
14	2	3
104	14	21

M. By adding the following traffic management conditions:

- “141. Each pair of parking spaces in a tandem configuration must be allocated to the same strata title for the preparation of the strata subdivision application.

142. The removal of the deceleration lane on Burns Bay Road provides arising from the development. The bus bay must be constructed in accordance with relevant Austroads design standards. Subject to Lane Cove Local Traffic Committee approval the bus bay must be provided on Burns Bay Road (southbound) immediately adjacent to the development site. The final location and detailed design of the bus bay must be submitted to Local Traffic Committee no more than 6 months after the issue of the first Construction Certificate for the residential buildings. If approval for an indented bus bay is not given the applicant must provide an on-street bus zone in accordance with the relevant Australian Standards and including a bus shelter and seat."

Attachment 1 - Consulting Architect's SEPP 65 assessment advises



12 March 2014,

May Li, Assessing officer,
Lane Cove Council
PO Box 20 Lane Cove
NSW 1595

Your ref: DA 12/39

Dear May Li,

RE: Newly amended proposal 316-322 Burns Bay Road Section 96 modification

I refer to your letter of 11 February 2014 and to the accompanying documents; including a letter addressed to Michael Mason dated 3rd of February 2014 by JBA urban planning consultants, a revised set of architectural plans by Marchese partners issue 7th of January 2014, and a letter of advice from Wiltshire Webb Staunton and Beattie lawyers dated 31st of January 2014.

Building separation:

I see no material difference in the amended scheme, between the balconies facing each other from blocks C and D. The separation between the balconies is still in the order of 15.5 m. I understand that permanent privacy screens have been provided to the north facing windows and balconies in building C. This is a Band-Aid solution and does not replace the need for adequate building separation. A better solution would be to recess the balconies as has been done in other parts of the development.

The building separation between Blocks D and E is approximately 13m. The apartments concerned have habitable rooms facing each other across this distance. The RFDC recommends an 18m separation. I acknowledge that privacy louvers are provided and that 80% of the rooms concerned have an alternative outlook, however this does not replace the need for the recommended separation.

Additional dwellings in blocks A and C

Improvements have been made to the ground floor units in blocks A and C. These are now dual orientation, which provides much better amenity.

The applicant has chosen not to address the privacy issues raised in the lower levels and has accepted that the apartments affected are inferior as he expects them to be sold for less. My concern therefore remains.

**Setback to the front boundary**

Modifications have been made to the ground level of block A to increase the front building setback to 6 m.

Setback to Northern Boundary.

Only 6m setbacks have been provided to the Northern Boundary. This setback should be 9m minimum.

Solar access

The applicant has responded to Council's request for further analysis with respect to solar access as our investigations had found that approximately 50% of the apartments would achieve 3 hours of solar access in midwinter as opposed to the 79.4% claimed in the approved development.

The applicants detailed testing has found 52.3% of the apartments receive 3 hours of solar access which correlates with our estimation.

The applicant claims that the amended scheme achieves 54.6% of apartments receiving 3 hours of sun and that a further 31% receive 2 hours or more.

Given that the applicant is working with an approved built form, and that the amended scheme is an improvement, this situation would have to be seen as acceptable even if this means that in a very large development such as this one, a large number of units will not receive much direct sun.

The nature of the original development

The degree of difference between the original approved development and the proposed amended application is in question.

The applicant maintains that Council should modify the consent because the section 96 modification is *"substantially the same development as the development forward the consent was originally granted"*

In my opinion,

- the consolidation of the basement parking structures
- the removal of the mixed use components of the application
- and increase from 218 to 268 units,

are substantial changes to the approved development and represent a radical transformation to the use and the fabric of the buildings and the landscape.



The consolidation of the basement parking structures means that the 5 buildings are physically connected. This has important implications on the landscape and experience of publicly accessible street as no significant trees will be able to be planted on the slab above the car park. This is a significant and detrimental change to the potential landscape amenity and to the character of the development.

The removal of the shop and community facilities, and the elimination of the possibility of using the ground floor of buildings A B C and D for home offices or professional suites eliminates the possibility of some active use and therefore passive surveillance over the street. This is a radical transformation of the use and character of the development.

An additional 50 units is also a substantial change to the development. Most developments within the Lane Cove Council area would be for less than 50 units in total. This means that the population increase in the development could total number of residents from say 400 to save 500. There is no provision for community facilities or adequate play areas for this community. The Development is not within reasonable walking distance of any facilities or shops. The removal of these things will radically transform the experience of living here.

Having consideration for the advice from lawyers Wiltshire Webb Staunton and Beattie Lawyers, in my opinion these are substantial changes to the development, the result being that the development will not have the same essence.

Conclusion

The applicant has made changes in response to councils concerns regarding the ground floor apartments within blocks A and B which has increased the amenity for those units.

In my opinion the building separation issue has not been addressed adequately, especially between blocks C and D and to a lesser extent between blocks D and E

The solar access issue has been addressed in so much as a the real situation has been evaluated and that there is not much one can do with an existing approved built form.

In my opinion, the changes relating to the number of units, the consolidation of the car park and the removal of the mixed-use components of the application constitute a radical transformation of the proposal.

Tim Williams

Architect AIA