

**Environmental Services Division**  
**Sydney East Joint Regional Planning Panel meeting of 13 February 2014**  
**2013SYE112**

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Property: 15-25 Marshall Avenue, St. Leonards

DA No: DA32/13

Date Lodged: 29 November 2014

Cost of Work: \$20,496,793.00 (original cost of work)

Owner: Loftex Pty Ltd

Applicant: Loftex Pty Ltd

Author: Rebecka Groth

<b>DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION</b>	Section 96(2) modification seeking amendments and internal reconfiguration to an approved mixed use development
<b>ZONE</b>	B4 Mixed Use under the Lane Cove Local Environmental Plan 2009
<b>IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?</b>	Yes
<b>IS THE PROPERTY A HERITAGE ITEM?</b>	No
<b>IS THE PROPERTY WITHIN A CONSERVATION AREA?</b>	No
<b>BUSHLAND PRONE LAND?</b>	No
<b>BCA CLASSIFICATION</b>	Class 2
<b>STOP THE CLOCK USED</b>	10 days
<b>NOTIFICATION</b>	<p>2, 4, 6, 8, 10, 12, 14 and 16 Marshall Avenue</p> <p>1, 2, 3, 4 and 6 Holdsworth Street</p> <p>1A, 1, 2, 9, 11 and 13 Berry Road</p> <p>1, 3, 5, 7 and 9 Canberra Avenue</p> <p>2-4, 6-8, 10, 12, 14, 16 , 18, 20, 22, 24, 26, 28, 30, 32, 32-42, 44, 46, 58-64 and 66 Pacific Highway</p> <p>East Ward Councillors</p> <p>Associations: Marshall Avenue Action Group, Marshall Avenue West Action Group, St Leonards-Wollstonecraft Residents Association</p>

	<p>Others: Council's Manager Strategic Planning</p> <p>Those who lodged submissions to the previous application were also notified of the proposed modification</p>
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## **REASON FOR REFERRAL:**

This application has been referred to the Sydney East Joint Regional Planning Panel as per Schedule 4A of Environmental Planning and Assessment Act 1979 as the proposal is a Section 96(2) modification and the proposal has a capital investment value of greater than \$20 million.

## **EXECUTIVE SUMMARY:**

- On 9 May 2013 the JRPP granted consent to an 8 storey mixed use development comprising 66 residential units and 105m<sup>2</sup> commercial/retail area at the ground floor with 91 basement car spaces, a future pedestrian walkway and subdivision. The approved development has a maximum height of 24.6m. Basement parking comprises 91 car spaces (73 resident, 17 visitor and 1 commercial space). Provision for 14 accessible car spaces was made.
- The proposed modification involves alterations and internal reconfigurations to the approved mixed use development. The proposal is within the approved building footprint, no change to the FSR or building height is proposed.
- The proposal meets the requirements of Council's Local Environmental Plan 2009 with regard to maximum permissible floor space ratio and maximum permissible height.
- The proposal meets the requirements of Council's Development Control Plan.
- Council's Consulting architect has confirmed that the proposed development meets the 10 design quality planning principles of State Environmental Planning Policy 65.
- No submissions have been received in relation to the proposed modification.
- On 22 January 2014, the JRPP was briefed on the proposal.
- The proposed development is recommended for approval subject to conditions.

## **Background into Planning Proposal**

The applicant controls all lots having frontage to north Marshall Avenue, St Leonards and has sought to amend the height over two thirds of the site from 36m to 25m and to increase the height of the eastern third from 36m to 78m. The FSR is proposed to be changed under a planning proposal from 5.1:1 to 2.5:1 for the western two thirds of the site, with the remaining portion increasing from 5.1:1 to 10:1. The adjustment in the controls is to allow the construction of a tower at the end of the site closest to the railway line. It is not proposed to change the zoning over the site or change the total allowable floor area of the site.

This application only pertains to the western portion of the draft planning proposal site area (15-25 Marshall Avenue) and has been designed to comply with the draft controls in the Planning Proposal. As these controls are more stringent than the current LEP for height and floor space ratio (FSR), the proposal readily complies with the current LEP controls.

## **SITE:**

The site is located on the northern side of Marshall Ave, south of the Pacific Highway. The description of the site is Lots 1 and 2 in DP 209715, Lot 25 Section 1 in DP 7259, Lot 26 in DP 666506, Lot 27 Section 1 in DP 7259, Lot 1 in DP 1083410 and Lot 28 Section 1 in DP 7259. The site is irregular in shape with an area of 2502.50m<sup>2</sup>. The site has a frontage to Marshall Ave, Berry Street and Marshall Lane.

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

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

To the site's north is land zoned B3 Commercial Core which addresses the Pacific Highway. The commercial buildings which are immediately north of the site are approximately two to three storeys and have vehicular access from Marshall Lane.

To the site's east is land zoned B4 Mixed Use and comprises a temporary sales office. This land was previously occupied by dwelling houses however they were demolished in 2013.

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

To the site's north-west on Berry Street are commercial buildings ranging from two to seven storeys in height. These buildings address the corner of Berry Street and the Pacific Highway. Further south along Berry Street is an elevated open air car park and a single storey building. These properties are zoned B3 Commercial Core. The remainder of Berry Street is occupied by single storey dwelling houses and is zoned R2 Low Density Residential.

## **PROPOSAL:**

### Proposed Modification:

Basement levels 1 to 3	<ul style="list-style-type: none"><li>• Realignment of the basement pile wall to boundary to simplify shoring of adjoining property</li></ul>
Basement level 1	<ul style="list-style-type: none"><li>• Amended lobby with single sided lift, additional storage area and amended plant room</li><li>• Amended entry doors to townhouses 19-23</li><li>• Storage rooms to townhouses amended to open storage area</li></ul>
Ground floor	<ul style="list-style-type: none"><li>• Internal disabled bathroom added to commercial space</li><li>• Main building entry ramp amended to comply with BCA requirements</li><li>• Commercial garbage room layout amended</li><li>• Amendments made to the plant room layout and entry due to service requirements</li><li>• Dedicated cleaner's WC added</li><li>• Storage cage layout amended due to structural column layout</li><li>• Amended bathroom, living room window position and privacy fence alignment to apartment G04</li></ul>

	<ul style="list-style-type: none"> <li>• Amended bathroom layouts to upper floors of townhouses 19-23</li> <li>• Amended door positions to apartments G02 and G03</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• Amended window alignment to apartments 101 and 102 to improve usability of balconies</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> <li>• Skylight deleted over main entry</li> <li>• Awning amended over cafe</li> <li>• Amended bathroom layouts to apartments 106 and 107</li> <li>• Glass access door added for maintenance access to lower roof</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• Laundry amended in apartment 201</li> <li>• Wardrobe amended in apartment 202</li> <li>• Amended window alignments 202 and 203 to improve useability of balconies</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• Laundry amended in apartment 301</li> <li>• Wardrobe amended in apartment 302</li> <li>• Amended window alignment to apartments 302 and 303 to improve useability of balconies</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>• Laundry amended in apartment 401</li> <li>• Wardrobe amended in apartment 402</li> <li>• Minor internal reconfiguration to apartment 405</li> <li>• Amended window alignment to apartment 402 and 403 to improve usability of balconies</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> <li>• Minor internal reconfiguration to apartment 410</li> </ul>
Level 5	<ul style="list-style-type: none"> <li>• Laundry amended in apartment 501</li> <li>• Wardrobe amended in apartment 502</li> <li>• Minor internal reconfiguration to apartment 505</li> <li>• Amended window alignment to apartment 502 and 503 to improve usability of balconies</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> <li>• Minor internal reconfiguration to apartment 510</li> </ul>
Level 6	<ul style="list-style-type: none"> <li>• Laundry amended, wardrobe amended and power room added in apartment 601</li> <li>• Minor internal reconfiguration to apartment 605</li> <li>• Amended window alignment to apartment 602 and 603</li> <li>• Amended corridor service cupboard layouts due to service requirements</li> <li>• Minor internal reconfiguration to apartment 610</li> </ul>
North elevation	<ul style="list-style-type: none"> <li>• Realignment of plant room doors</li> <li>• Change of finish to exterior wall adjoining plant rooms</li> </ul>
South elevation	<ul style="list-style-type: none"> <li>• Glass access door for maintenance access to lower roof on Level 1</li> <li>• Amendments to townhouse fences</li> </ul>

East elevation	<ul style="list-style-type: none"> <li>• Minor realignment of windows due to BCA compliance for spandrel separation</li> <li>• Amended wall finish to ground floor wall</li> <li>• New access door to main switchboard room</li> </ul>
West elevation	<ul style="list-style-type: none"> <li>• Amended entry path due to BCA compliance for disabled access</li> <li>• Amended awning over cafe</li> <li>• Amended door height to hydrant booster cupboard</li> </ul>

No change to the number of units or bedroom configuration is proposed.

#### **PREVIOUS APPROVALS/HISTORY:**

A review of Council's records indicates the following applicable approvals relating to the site:

DA2012/226 – Demolition of dwellings on No. 1-25 Marshall Avenue, St Leonards (report **ATT 1**).

Modification to DA13/32 – Deletion of Condition 63 which required a remediation action plan. Council's Manager Environmental Services agreed that the conclusions reached by the consultant with regards to the submitted report relating to contamination were acceptable and agreed that a RAP was not required. Council granted approval to this modification on 9 December 2013 and removed Condition 63 from the development consent (report **ATT 2**).

#### **MATTERS for CONSIDERATION - Section 96(2) Environmental Planning and Assessment Act 1979**

A consent authority may modify the development consent if:

***(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

The modification seeks to make design amendments and internal reconfiguration of the approved development. The proposed modification is substantially the same development.

***(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

There is no requirement to consult with any Minister, public authority or approval body as a result of the proposed modification.

***(c) it has notified the application in accordance with:***

***(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

The modification was notified in accordance with Council's notification policy. No submissions were received in response to the notification policy.

***(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.***

An assessment of the proposal is required in relation to Section 79C(1) of the Act. This assessment follows.

## **SECTION 79C(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (the Act)**

### **S.79C(1)(a)(i) The provisions of any environmental planning instrument**

#### **Lane Cove Local Environmental Plan 2009 (the LEP)**

Mixed use developments are permitted in the current B4 - (Mixed Use) zone. As indicated in the following table, the proposed modification complies with the applicable planning controls.

	<b>Code</b>	<b>Approved</b>	<b>Proposed S96</b>	<b>Complies/ Comment</b>
Clause 2.2- Zoning	B4 – Mixed Use zone	Proposed mixed use development comprising of 66 units & retail/ commercial space at ground level	No change to approved development	Yes
Clause 4.3 - Height of Buildings	<b>At the time of DA lodgement</b>  9.5m along Marshall Ave  36m remainder of the site	Max 5.1m  Max 24.6m	No change to approved development	Yes
	<b>Gazetted 27 September 2013</b>  25m	NA	No change to approved development  Max 5.1m  Max 24.6m	Yes

	Code	Approved	Proposed S96	Complies/ Comment
Clause 4.4 - Floor Space Ratio	<b>At the time of DA lodgement</b>  5.1:1  <b>Gazetted 27 September 2013</b>  2.5:1	2.8:1  (GFA 6254m <sup>2</sup> / Lot 1 2162m <sup>2</sup> )  NA	No change to approved development   No change to approved development 2.8:1	Yes   Yes  Development approved prior to gazettal of current control. The approved FSR is acceptable

## 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.

The Section 94 Contribution is based on the following calculation:

- i. the population (person density) of the 5 existing dwelling houses (comprising 5 x 3 bedrooms) = 15
- ii. the population (person density) of the proposal as indicated in the following table:

The population of the proposed building and credit for existing lots:

No. of bedrooms	Average occupancy rate (persons/dwelling)	Population
27 x 1 bedroom	1.2	27 x 1.2 = 32.4
33 x 2 bedroom	1.9	33 x 1.9 = 62.7
6 x 3 bedroom	2.4	6 x 2.4 = 14.4*
<b>Total Population</b>		<b>95.10 + *cap of \$20,000 per 3 bedroom unit</b>
<b>Credit of existing lots</b>		
5 lots	3	5 x 3 = 15
<b>Commercial/retail m<sup>2</sup></b>	<b>Contribution rate per m<sup>2</sup> of floor space</b>	<b>Population</b>
105m <sup>2</sup>	\$94.87	105m <sup>2</sup> x \$94.87 = \$9,961.35

A cap of \$20,000 per dwelling has been imposed under the *Reforms of Local Development Contribution*. Therefore because of the approved 6 x 3 bedroom units, the applicable S.94 contributions would comprise the following:

- 95.10 persons in the 1 and 2 bedroom units (32.4 + 62.7);
- Plus the capped amount for each of the 3 bedroom units (6 x \$20,000 = \$120,000.00);
- Less the credit of the 5 existing lots (15 persons)

The net person increase would therefore be 95.10 persons – 15 persons = 80.10 persons, and because of the cap, the amount required for the residential component to be imposed would be:

- 80.10 (the net person increase) x \$9,391.00 per person (current rate for 2013/2014) = \$752,219.10 + (6 x \$20,000 = \$120,000) = \$872,219.10

The amount required for the commercial/retail component to be imposed would be:

- 105m<sup>2</sup> commercial/retail at a rate of \$94.87 per m<sup>2</sup> of floor space is \$9,961.35.

**The total contributions required for the application would be: \$882,180.45** (\$872,219.10 + \$9,961.35). The required s.94 contribution is addressed via condition 3.

There are no applicable planning instruments in addition to those discussed which are relevant to the proposed modification.

#### **S.79C(1)(a)(ii) The provisions of any draft environmental planning instrument**

Not applicable.

#### **S.79C(1)(a)(iii) The provisions of any development control plan**

##### **The Lane Cove Residential Development Control Plan 2009 (the DCP)**

The proposed modification would not be inconsistent with the requirements of the Development Control Plan 2009.

##### **Lane Cove Development Control Plan**

The proposed modification is consistent with the approved development. The proposed modification would not result in the development being inconsistent with the DCP. As such a detailed assessment of Part D, B, C and F of the DCP applicable to the site is not required.

#### **Part D – Commercial Development & Mixed Use Localities**

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

The St Leonards key precinct controls were largely deferred when the DA was approved in May 2013. The deferred controls were not included in the initial assessment and a merit based approach was adopted. In October 2013 an amendment to the DCP was adopted including changes to the controls applying to the subject precinct.



The proposed modification does not seek to alter the approved building which would result in the development being inconsistent with the DCP. As such a detailed assessment of each section of the DCP is not required.

On 10 January 2014 the applicant submitted a letter of commitment as per condition 19 and 21 of the development consent stating they are committed to reconfiguring Lot 2 to achieve compliance with the minimum width of the future pedestrian pathway in conjunction with a future development application. Commitment is also provided to providing a formal public access over Lot 2 if required (**ATT 3**).

## **REFERRALS:**

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

Council's consulting architect has confirmed that the proposed amendments are minor in nature and are generally subtle improvements to the internal layouts. The proposal is considered to meet the objectives of the 10 planning principles of SEPP No. 65.

### Manager Development Assessment

Council's Senior Building Surveyor advises of no building related objection to the minor modifications to the approved base building design with respect to compliance with the National Construction Code (BCA) 2013. The Surveyor advises the amended plans address numerous building code requirements and have also been revised to accommodate service requirements to the proposed residential unit development.

The amended plans are capable of complying with the performance requirements of the Building Code of Australia and detailed construction plans can be submitted to the principal certifying authority addressing compliance at the construction certificate stage of the project.

### Manager Strategic Planning

Given that no LEP or DCP provisions would be breached as a result of these amendments Strategic Planning raises no objection to the proposed amendments.

### Manager Urban Design and Assets

Council's Development Engineer reviewed the proposed modification with regards to stormwater and raised no concern with the proposal.

### Manager Open Spaces

Council's Senior Tree Assessment Officer and Landscape Architect reviewed the proposal and raised no objection to it.

### Manager Environmental Services

As the proposed modification does not seek to alter the approved garbage storage area arrangement the Manager raises no objection to the modification.

## **CONCLUSION**

The matters pursuant to Section 96 have been considered and are deemed to be satisfied.

The proposal complies with the provisions of Lane Cove Council's Local Environmental Plan 2009. The proposed development is consistent with the Marshall Avenue planning proposal. The proposed development generally complies with the provisions of the Lane Cove Development Control Plan.

The proposal meets the objectives of the 10 planning principles of SEPP 65.

The proposal represents a high quality development that would not unreasonably impinge upon the future character of the area. The proposal responds well to the surrounding commercial and residential developments. A transition in height is provided between the proposal and the low density residential properties situated opposite the site in Marshall Avenue. This proposal should be referenced in the development of any future DCP for the Marshall Avenue precinct.

The modification is substantially the same development and is recommended for approval.

The proposal is recommended for approval subject to amendments to conditions 1 and 3 with all other conditions remaining unchanged.

## **RECOMMENDATION**

That pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act, 1979, as amended, the Sydney East Joint Regional Planning Panel grant development consent to the modification of Development Application DA13/32 for the construction of a mixed use development comprising of 66 residential units and retail/commercial space at the ground level and subdivision on Lots 1 and 2 in DP 209715, Lot 25 Section 1 in DP 7259, Lot 26 in DP 666506, Lot 27 Section 1 in DP 7259, Lot 1 in DP 1083410 and Lot 28 Section 1 in DP 7259 and known as address 15-25 Marshall Avenue, St Leonards subject to the amendment of condition 1 and 3:

### **Condition 1 Amended:**

1. That the development be strictly in accordance with the following drawings prepared by Nettleton Tribe Partnership Pty Ltd except as amended by the following conditions:

Site plan and analysis, DA1-01, Revision A, dated 13/02/13  
Basement 3 floor plan, DA1-03, Revision B, dated 20/11/2013  
Basement 2 floor plan, DA1-04, Revision B, dated 20/11/13  
Basement 1 floor plan, DA1-05, Revision B, dated 20/11/13  
Ground floor plan, DA1-06, Revision C, dated 20/11/13  
Level 1 floor plan DA1-07, Revision B, dated 20/11/13  
Level 2 floor plan DA1-8, Revision B, dated 20/11/13  
Level 3 floor plan DA1-9, Revision B, dated 20/11/13  
Level 4 floor plan DA1-10, Revision B, dated 20/11/13  
Level 5 floor plan DA1-11, Revision C, dated 20/11/13  
Level 6 floor plan DA1-12, Revision C, dated 20/11/13  
Roof plan DA1-13, Revision A, dated 13/02/13

North elevation DA1-21, Revision C, dated 20/11/13  
South elevation DA1-22, Revision B, dated 20/11/13  
East elevation DA1-23, Revision B, dated 20/11/13  
West elevation DA1-24, Revision B, dated 20/11/13  
Section A, Revision A, dated 13/02/13  
Section B, Revision A, dated 13/02/13  
Section C, Revision A, dated 13/02/13  
Landscape plan SS13-2559 (101), Revision B, prepared by Site Image and dated 5/02/13, except as amended by the following conditions.

**Condition 3 Amended:**

3. THE PAYMENT OF A CONTRIBUTION FOR AN ADDITIONAL 80.10 PERSONS AND 105M<sup>2</sup> ADDITIONAL COMMERCIAL FLOOR SPACE IN ACCORDANCE WITH COUNCIL'S SECTION 94 CONTRIBUTIONS PLAN. THIS PAYMENT BEING MADE PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE AND IS TO BE AT THE CURRENT RATE AT TIME OF PAYMENT. THE AMOUNT IS \$882,180.45 AT THE CURRENT RATE OF \$9,391.00 PER PERSON AND \$94.87M<sup>2</sup> OF FLOOR SPACE. NOTE: PAYMENT MUST BE IN BANK CHEQUE. PERSONAL CHEQUES WILL NOT BE ACCEPTED.

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

The above has been recalculated using the applicable 2013/2014 fees and charges.

**All other conditions as per the consent issued on 9 December 2013 remain unchanged (ATT 2).**