

**Environmental Services Division**  
**Sydney East Joint Regional Planning Panel meeting of 9 May 2013**  
**2013SYE018**

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Property: 15-25 Marshall Avenue, St. Leonards

DA No: DA32/13

Date Lodged: 18 February 2013

Cost of Work: \$20,496,793.00

Owner: Loftex Pty Ltd, M.K.Sharma, J.L.Sharma, M.Arena, J. Mangano and B. Cosgrove

Applicant: Loftex Pty Ltd

Author: Rebecka Groth

<b>DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION</b>	Construction of a mixed use development comprising of 66 residential units and retail/commercial at the ground level and subdivision
<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>	Yes
<b>BCA CLASSIFICATION</b>	Class 2
<b>STOP THE CLOCK USED</b>	2 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>

	Others: Council's Manager Strategic Planning
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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 because the proposed development has a capital investment value of greater than \$20 million.

## EXECUTIVE SUMMARY:

- The subject site is irregular in shape with an area of 2501m<sup>2</sup>. The site is located on the northern side of Marshall Avenue and falls approximately 3.5m from the north-western section down to the north-eastern section.
- 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 with the exception of:
  - Encroachment into 3m setbacks to Berry Road and Marshall Lane
  - Building footprint is 1539m<sup>2</sup>, exceeding the 1500m<sup>2</sup> maximum
  - Minimum width of future pedestrian link is 4.65m as opposed to the minimum of 6m
  - Length of building addressing the street is 55m exceeding the 40m control
  - 17 single aspect dwellings with southerly aspect are proposed as against a maximum of 7
  - Dwelling mix only 9% of dwellings proposed are 3 bedrooms, against the minimum of 10%
  - Variation to the configuration of the depth of private open space of Unit G04. The area of the terrace exceeds the DCP area control
- Council's Consulting architect has confirmed that the proposed development meets the 10 design quality planning principles of State Environmental Planning Policy 65.
- A total of 33 objections and 2 letters of support have been received in response to the notification of the proposed development. The objections are substantially with regard to the suitability of the site and errors in the traffic report. Other reasons for objection include:
  - Loss of solar access
  - Loss of views and outlook
  - Loss of privacy
  - Bulk and scale of the proposal
  - Increased noise
  - Non compliance with building length and setbacks
  - Inadequate infrastructure

Several objections were received in relation to the draft planning proposal applying to the site these have been listed within the following report.

- On 3 April 2013, 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.

Included below is a brief history of the Planning Proposal including a comment on its current status.

- In October 2011, Planning Proposal was submitted to Council for an amendment to the Local Environmental Plan (LEP) 2009 for 1-25 Marshall Avenue, St Leonards.
- Gateway approval was received from the Department of Planning and Infrastructure on 13 April 2012 and public exhibition was undertaken. A total of 172 submissions were received (including one petition with 534 signatures). An information evening was also held during the exhibition period.
- On 16 July 2012, Council considered a report on the exhibition's submissions with a recommendation for approval of the planning proposal, subject to reduction of height from 78m to 65m for the tower block. Council voted to defer its decision and called for additional information.
- The report to the Council Meeting of 19 November 2012 provided the additional information requested by Councillors at its meeting on 16 July 2012. In addition, the report recommended to Council that the planning proposal be supported, with a reduction in height for the tower from 78m to 65m. At the meeting, Council resolved to write to Loftex asking for a letter of support for an extension of time, this was received from Loftex. The Department on 2 January 2013 agreed to an extension of time for the completion of the planning proposal until the 30 June 2013.
- At the Council meeting of 18 March 2013, Council resolved not to continue with the planning proposal. Also, until the Department formally terminates the planning proposal it remains a relevant draft planning instrument.
- At the Council meeting of 15 April 2013, Council resolved to rescind the resolution of the 18 March 2013 Council meeting and resolved to proceed with the planning proposal.
- The Department of Planning and Infrastructure has been requested to make the plan.

This development 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. The dwellings on the site and towards the east have been approved to be demolished as part of a separate development application (DA2012/226, No. 1-25 Marshall Avenue, St. Leonards).

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. Dwelling houses are situated east of the site and front Marshall Avenue, vehicular access is provided from Marshall Lane.

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 Development:

- Construction of a mixed use development comprising of 66 residential units and 105m<sup>2</sup> commercial/retail area at the ground floor and subdivision.
- Associated basement parking comprising 91 car spaces (73 resident, 17 visitor and 1 commercial space). Provision for 14 accessible car spaces has been made.
- Vehicular access to Marshall Avenue.
- Two lot torrens title subdivision, creating proposed Lot 1 being 2162m<sup>2</sup> comprising the mixed use development and Lot 2 = 340.5m<sup>2</sup> which would form part of a future pedestrian walkway.

### Dwellings:

The residential flat building would contain a total of 66 dwellings:

- 27 x 1 bedroom dwellings.
- 33 x 2 bedroom dwellings.
- 6 x 3 bedroom dwellings.

Of these dwellings, 13 dwellings would be adaptable.

#### **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.

#### **PROPOSAL DATA/POLICY COMPLIANCE:**

Site area 2502.50m<sup>2</sup> (proposed Lot 1 = 2162m<sup>2</sup> and proposed Lot 2 = 340.5m<sup>2</sup>)

#### **Lane Cove Local Environmental Plan 2009**

	<b>Code</b>	<b>Proposed</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	Yes
Clause 4.3 - Height of Buildings	9.5m along Marshall Ave  36m remainder of the site	Max 5.1m  Max 24.6m	Yes
Clause 4.4 - Floor Space Ratio	5.1:1	2.8:1  (GFA 6254m <sup>2</sup> / Lot 1 2162m <sup>2</sup> )	Yes

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

The applicable controls from the DCP are addressed below.

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

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

The St Leonards key precinct controls are largely deferred as they no longer relate to the planning proposal as discussed previously within this report. As such, the deferred controls have not been included within the following assessment table and a merit based approach to the proposal has been adopted.



Clause	Control	Proposed	Complies/ Comment
	point from Marshall Ave		
Car parking	Underground/sleeved	Underground parking	Complies
Mid Block Connection	<p>Direct connection linking Pacific Highway &amp; Marshall Ave</p> <p>To be lined with active uses 24 hours/7 days a week</p> <p>To be located on an axis with Holdsworth Ave</p> <p>To be an open air pedestrian laneway</p> <p>Min 6m width</p>	<p>A section of the site is proposed to be subdivided (Lot 2) and would form part of the future pedestrian connection link. A link to the Pacific Highway is not proposed in conjunction with this DA. It is noted this control assumes the precinct will be developed as per the block plan which is in part deferred.</p> <p>Casual surveillance of the pedestrian link available from balconies and the like</p> <p>Located on an axis to Holdsworth Avenue</p> <p>The pathway is an open air pathway</p> <p>The link has a variable width that is a minimum of 4.65m at the Marshall Ave frontage</p>	<p>Supported</p> <p>Supported</p> <p>Complies</p> <p>Complies</p> <p>Discussed in the Variations to Council's Development Control Plan/Policies section of this report</p>
Landscaping/Open Space/Public Domain	Street trees to be provided on Pacific Highway, Berry Street and Marshall Avenue and public open space.	One street tree proposed to be removed within the driveway area. All other trees to be retained	Complies

Clause	Control	Proposed	Complies/ Comment
	Public circulation space on private property to be upgraded with planting, paving, seating and street improvements and lighting	Café circulation space within pedestrian pathway area will be suitably finished and seating provided	Complies

### **\*Setback to proposed Lot 2**

The DCP provides for applicable setback controls for mixed use developments for streets only. The setbacks of the proposal to this boundary range from 1m at the ground level and level 1, 2.7m for Levels 2 to 4 and 2.4m for levels 5 and 6.

The setback of the proposal to the proposed common boundary with proposed Lot 2 has been considered with regard to the separation requirements of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development. Based on the overall height of the proposal, the code requires a separation of 18m between flat buildings. The proposed setbacks would provide a separation range of 6.6m to 14.1m (and includes proposed Lot 2) to a future development on No. 1-13A Marshall Avenue. It is noted additional separation would be provided on the adjoining sites.

A letter of commitment from the landowner is recommended as a draft condition to ensure the future pedestrian pathway (Lot 2) is provided at a minimum width of 6m (refer to draft condition no. 19). This minimum width would also assist in providing adequate distance being provided between the current proposal and any future development. In light of the above, the setback is supported.

## **Part D – Commercial Development and Mixed Use**

### **Part D.5 – Development in B4 Mixed Use Zone**

Clause	DCP	Proposed	Complies/ Comment
5.3 Hours of Operation for Lighting	External lighting operates, as a minimum requirement, from dusk until dawn on Thursday, Friday and Saturday nights, and from dusk until midnight on other nights.  Control to turn on at dusk is initiated by a suitably adjusted/ calibrated photo-	Not available at this stage	Addressed as a draft condition (see condition no. 64)



Clause	DCP	Proposed	Complies/ Comment
	electric switch such that the lights will be at full output when the daylight luminance in the subject areas falls to the required illuminances stipulated.		
5.4 Noise	<p>Noise generated by residents, visitors, retail or commercial part and mechanical plant and equipment should not exceed the following repeatable maximum L Aeq (1 hour) level, on weekdays:</p> <p>Day 7am-6pm: 55dB(A)  Evening 6pm- 10pm: 45dB(A)  Night 10pm-7am: 40dB(A) and on weekends:</p> <p>Day 8am-7pm: 50dB(A)  Evening 7pm-10pm: 45dB(A)  Night 10pm-8am: 40dB(A) or in any case not more than 5 dB(A) above the background level during the day and evening and not exceeding the background level at night when measured at the boundary of the property.</p> <p>b) Incorporate noise reduction measures on plant and machinery.</p> <p>c) Use design features or planning that will reduce noise.</p> <p>d) Incorporate adequate measures</p>	Mechanical plant equipment is not known at this stage.	Addressed as a draft condition (see condition no. 63)

Clause	DCP	Proposed	Complies/ Comment
	for tonal, low frequency, impulsive, or intermittent noise		
5.5 Non residential facilities	<p>Provide a variety of different sized non-residential spaces (eg. cafes).</p> <p>Open space to follow design principles of SEPP No. 65</p>	<p>The proposal includes commercial/café space on the ground level.</p> <p>Private open space is provided to each residential unit within the street setback. Complies with design principles of SEPP No. 65</p>	Complies
5.6 Access, entries and servicing	<p>a) Separate commercial service requirements, such as loading docks, from residential access, servicing needs and primary outlook</p> <p>b) Locate clearly demarcated residential entries directly from the public street</p> <p>c) Clearly separate and distinguish commercial and residential entries and vertical circulation.</p> <p>d) Provide security access controls to all entrances into private areas, including car parks and internal courtyards.</p> <p>e) Provide safe pedestrian routes through the site</p>	Proposal complies with these requirements	Complies
5.7 Residential Component within Mixed Use	The provisions for Residential Flat Buildings in Part C Residential	Refer to Part C assessment table & comments provided from Council's	Complies

Clause	DCP	Proposed	Complies/ Comment
	<p>Development section of this DCP and the Residential Flat Design Code associated with SEPP 65, and the additional following provisions shall apply to the residential component within mixed use developments.</p> <p>d) Minimise the amount of glazed area on the eastern and western elevations and incorporate shading devices</p>	<p>consultant architect in relation to SEPP No. 65</p> <p>Glazed area proposed is on the north-western elevation in conjunction with commercial/café area. A shading device is incorporated along this elevation</p>	Complies

#### D.1 – General provisions

Clause	DCP	Proposed	Complies/ Comment
Street frontage activities	<p>V. Allow for visual interest on the external face of fire escapes, service doors and equipment hatches.</p> <p>b) Limit opaque or blank walls for ground floor uses to 20% of the street frontage.</p> <p>d) Provide enclosure on corner sites to define the corner.</p> <p>e) All street frontage windows at ground floor level are to have clear glazing.</p> <p>g) Provide multiple entrances for large developments including an entrance</p>	<p>External openings and enclosures are incorporated into the design.</p> <p>Opaque and blank walls are limited.</p> <p>The corner of the proposal to Berry Street is defined through the use of the commercial/café area and design of the residential units fronting this façade</p> <p>Clear glazing is utilized on the commercial/café area</p> <p>Pedestrian entries are proposed on each street frontage</p>	Complies

Clause	DCP	Proposed	Complies/ Comment
	on each street frontage		
Building depth & bulk	<p>For Mixed Use Developments:</p> <p>I. The maximum horizontal dimension of the residential component parallel to the street frontage is to be 40m.</p>	The residential component of the proposal is approximately 48.7m	Discussed in the Variations to Council's Development Control Plan/Policies section of this report
Building design & exteriors	<p>a) Floor to ceiling heights – <b>3.3m</b> for commercial uses &amp; <b>2.7m</b> for residential uses</p> <p>b) Materials, colours, finishes, proportion and scale of new development should add interest to façades and the streetscape.</p> <p>c) Avoid large unbroken expanses of blank wall on any facade adjacent to the public domain</p> <p>e) The design of roof plant rooms and lift overruns is to be integrated into the overall architecture of the building.</p> <p>f) Balconies and terraces should be provided, particularly where buildings overlook public open spaces. They should be avoided where they overlook the private open spaces and</p>	<p>Complies</p> <p>Design incorporates interest in the external finishes and scale</p> <p>Blank walls are avoided on the street frontages through the implementation of pedestrian access points and balconies/terraces</p> <p>Incorporated into design</p> <p>Balconies and terraces are proposed to all residential units.</p> <p>The privacy of surrounding residential properties is not considered to</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>Complies</p>

Clause	DCP	Proposed	Complies/ Comment
	severely impact the privacy of the adjoining residential properties	be adversely affected as surrounding distant views will be enjoyed by the site's residents as opposed to views into nearby residential dwellings.  Balconies enable casual surveillance of pedestrian pathway and streets	
Excavation	<p>a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP</p> <p>b) Excavation for major development is to be contained within the footprint of the development</p> <p>d) Uses at ground level are to respond to the slope of the street by stepping frontages and entries to follow the slope.</p>	Building responds to the topography of the site and excavation is contained within the footprint of the development	Complies
Design & location of on-site parking	b) All developments must incorporate the required car parking on-site.	<p>The proposal complies with the number of car spaces required</p> <p>Due to the slope of the site and the requirements of the Block Plan as mentioned above, the vehicular access point is proposed from Marshall Avenue. The entry into the basement car park along this elevation is a maximum of 7.8m. The vehicular entry proposed complies with the requirements.</p>	Complies

Clause	DCP	Proposed	Complies/ Comment
	<p>c) All on-site parking, loading facilities and vehicle access points must be:</p> <p>I. accessed from a rear lane wherever available</p> <p>II. fully concealed from view from any public street or arcade</p> <p>III. accessible from only one opening in the rear lane facade for both on-site parking and loading.</p> <p>Access openings are to be fitted with a garage door or roller shutter.</p> <p>f) Vehicle entry should be:</p> <p>I. easily accessible and recognisable to motorists</p> <p>II. located to minimise traffic hazards and queuing of vehicles on public roads</p> <p>III. located to minimise the loss of on street car parking, and to minimise the number of access points.</p> <p>IV. Located away from main pedestrian entries and on secondary frontages.</p> <p>V. Located having regard to any approved cycling routes.</p> <p>g) Avoid black holes in the facade for major development by providing security doors to car park entries</p>	<p>The loading dock and area for waste collection vehicles is proposed on-site within the Marshall Lane setback. This is considered to be an appropriate outcome.</p> <p>This entry point would be fitted with a roller door.</p> <p>The vehicle entry point into the development is easily recognisable and is proposed along Marshall Avenue. The location of the entry point is such that interruptions to traffic flow would be minimal. Minimal on-site car parking space would be lost as a result of the entry into the proposal</p> <p>There is an approved on-street cycle link in the Marshall Avenue precinct. The proposal would not adversely impact this cycle route</p> <p>The entry into the basement car park along Marshall Ave is a maximum of 7.8m and is secured via a roller door</p>	

Clause	DCP	Proposed	Complies/ Comment
	<p>h) Return the facade material into the car park entry recess up to the extent visible from the street.</p> <p>i) Parking and service/delivery areas are to be located underground within building footprint or screened from adjacent residential uses or the public domain by sleeving with active uses.</p> <p>j) Parking and service/delivery areas are to be located to minimise conflict between pedestrians/ cyclists and vehicles and to minimise impact on residential amenity.</p> <p>o) Integrate ventilation grills or screening devices of carpark openings into the facade design and landscape design.</p> <p>p) Provide safe and secure access for building users, including direct access to residential apartments, where possible.</p> <p>q) Basement car parking is to be: I. adequately ventilated II. predominantly located within the building footprint III. located fully below</p>	<p>The return facades material into the car park entry is sandstone cladding which is used along the Marshall Ave frontage</p> <p>Parking and service/delivery areas are provided within the boundaries on the site and are accessed via Marshall Lane. These areas are not visible from the adjacent residential uses.</p> <p>The ventilation grills associated with the basement car park are integrated into the design of the street façade</p> <p>Provided</p> <p>Design complies with these requirements</p>	Complies

Clause	DCP	Proposed	Complies/ Comment
	natural ground level. Where slope conditions mean that this is unachievable, the maximum basement projection above natural ground level is to be 1.2m but not to the street front.		
Number of car parking spaces	<p>Commercial component</p> <p>Max 1 car space per 110m<sup>2</sup> of gross floor area for commercial developments within a radius of 800m from St. Leonards Railway Station = 0.95 space = <b>1 space</b></p> <p>Residential component of Mixed Use (min rates):</p> <p>Studio and 1 bedroom apartment = 0.5 space = 27 x 0.5 = 13.5 spaces = <b>14 spaces</b></p> <p>2 bedroom apartment = 1 space = 33 x 1 = <b>33 spaces</b></p> <p>3 and more bedroom apartment = 1.5 spaces = 6 x 1.5 = <b>9 spaces</b></p> <p>Visitors = 1 space per 4 dwellings = 16.5 spaces = <b>17 spaces</b></p> <p><b>Total number of spaces required: 74</b></p> <p><b>Commercial: 1 space</b></p> <p><b>Residential spaces: 73</b></p>	<p>Provided</p> <p><b>Total number of spaces proposed: 91</b></p> <p>Commercial: 1 space</p> <p>Residential spaces: 90</p>	<p>Complies</p> <p>Complies</p>



Clause	DCP	Proposed	Complies/ Comment
	Residents: 56 spaces  Visitors: 17 spaces	Resident spaces: 73 spaces  Visitor spaces: 17 spaces	
Traffic & accessibility report	A Transport and Accessibility Report may be required by the Traffic Manager	Traffic Impact Assessment report submitted	Complies
Reflectivity	Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%	Minimal reflective materials used	Complies
External lighting to buildings	a) Any external lighting of buildings is to be considered with regard to: I. the integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building) II. the contribution of the visual effects of external lighting to the character of the building, surrounds and skyline III. the energy efficiency of the external lighting system IV. the amenity of residents in the locality. b) Floodlights for buildings are prohibited	This level of detail is not available at this stage	Addressed as a draft condition (see condition no.64)
Landscaping	a) Locate basement car parking predominately under the building footprint to maximize	Basement parking generally situated under building footprint	Complies

Clause	DCP	Proposed	Complies/ Comment
	<p>opportunities for landscaped area</p> <p>b) Deep soil zones in atria, courtyards and boundary setbacks are encouraged</p>	A deep soil zone is proposed in the Marshall Ave setback	
Planting on structures - controls apply for planting on roof tops or over car park structures.	<p>a) Areas with planting on structures should be irrigated with recycled water and appropriate drainage provided.</p> <p>b) Provide sufficient soil depth and area to allow for plant establishment and growth. The recommendations are:</p> <p>I. Large trees (canopy diameter of up to 16m at maturity)</p> <p>i. minimum soil volume 150m<sup>3</sup></p> <p>ii. minimum soil depth 1.3m</p> <p>iii. minimum soil area 10m x 10m area or equivalent</p> <p>II. Medium trees (8m canopy diameter at maturity)</p> <p>i. minimum soil volume 35 m<sup>3</sup></p> <p>ii. minimum soil depth 1m</p> <p>iii. approximate soil area 6m x 6m or equivalent</p> <p>III. Small trees (4m canopy diameter at maturity)</p> <p>i. minimum soil volume 9m<sup>3</sup></p> <p>ii. minimum soil depth 800mm</p> <p>iii. approximate soil area 3.5m x 3.5m or equivalent</p> <p>IV. Shrubs</p> <p>i. minimum soil depths</p>	Council's Landscape Architect reviewed the proposal and advised the proposed landscape plan and soft landscape area is considered adequate based on the nature of the site location, proposed use and the proposed block plan with regard to the overall landscape intent.	Complies

Clause	DCP	Proposed	Complies/ Comment
	500-600mm V. Ground cover i. minimum soil depths 300-450mm VI. Turf i. minimum soil depths 100-300mm		
Solar access	<p>a) Mixed use developments are not to reduce sunlight to dwellings in the adjacent or same zone below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 9am and 3pm on 21 June.</p> <p>c) Habitable rooms in at least 70% (46.2 units) of dwellings in high density residential developments should receive a min of 3 hours direct sunlight between 9am &amp; 3pm on 21st June, in total between any portions of those rooms.</p> <p>In dense urban areas a minimum of two hours may be acceptable.</p> <p>A reasonable proportion of both the common &amp; private open space in those sites is also to receive sunlight during that</p>	<p>Dwellings are situated opposite the site in Marshall Ave, Holdsworth Ave and along part of Berry Road.</p> <p>An inspection and review of the the 'winter' shadow plans provided demonstrate that the surrounding dwellings will achieve at least 3 hours of sunlight to habitable rooms between 9am and 3pm. It is noted the SEE states these plans are based on 21 June</p> <p>Council's consultant architect confirms 70% of dwellings receive the required sunlight access.</p> <p>Private open spaces and informal common open spaces also receive reasonable access to sunlight</p>	<p>Complies</p> <p>Complies</p>

Clause	DCP	Proposed	Complies/ Comment
	<p>period, according to the circumstances of the sites</p> <p>d) The number of single-aspect dwellings with a southerly aspect (SW-SE) should be limited to a maximum of 10% of the total dwellings within a high density residential development (6.6 dwellings).</p> <p>Developments varying from the minimum standard due to site constraints and orientation must demonstrate how energy efficiency is addressed.</p>	<p>26% of dwellings (17 dwellings) are single aspect and are southerly facing</p>	<p>Discussed in the Variations to Council's Development Control Plan/Policies section of this report</p>
Access & mobility	<p>a) Any new development must comply with Australian Standards AS 1428 Design for Access and Mobility, AS 4299 Adaptable Housing, AS 2890 Parking Facilities and AS 1735 Lifts, Escalators and Moving Walks and with the Part F of this DCP – Access and Mobility</p>	<p>The Access report provided demonstrates the proposal is compliant</p>	<p>Complies</p>

Clause	DCP	Proposed	Complies/ Comment
Signage	a) All signage shall comply with the Part N of this DCP – Signage and Advertising	No signage is proposed at this time	Addressed via a condition (see condition no. 20)

### Part B – General Controls

Clause	DCP	Proposed	Complies/ Comment
B7 – Development near busy Roads and Rail Corridors	LAeq levels: (i) In any bed room 35dB(A) 10.00pm to 7.00am. (ii) anywhere else 40dB(A)	The building design limits openings in the front façade.  Acoustic report states proposal can comply. To be conditioned should proposal be supported	Complies
B8 – Safety & security	Required	Crime Prevention Through Environmental Design (CPTED) principles satisfactorily addressed	Complies

### Part C3 – Residential Flat Buildings

Clause	DCP	Proposed	Complies/ Comment
3.10 Size of dwellings	At least 10% of each 1, 2 or 3 bedroom dwellings to be provided	27 x 1 bedroom dwellings (41%)  33 x 2 bedroom dwellings (50%)  6 x 3 bedroom dwellings (9%)	Discussed in the Variations to Council's Development Control Plan/Policies section of this report
3.11 Private open space	Primary balconies 10m <sup>2</sup> min depth 2m  Primary terrace 16m <sup>2</sup> min depth 4m	Complies  G04 does not comply with	Complies  Discussed in the Variations to

Clause	DCP	Proposed	Complies/ Comment
3.10 Size of dwellings	At least 10% of each 1, 2 or 3 bedroom dwellings to be provided	27 x 1 bedroom dwellings (41%) 33 x 2 bedroom dwellings (50%) 6 x 3 bedroom dwellings (9%)	Discussed in the Variations to Council's Development Control Plan/Policies section of this report
		dimensions (10.1m x 2.4m) however total area is 20m <sup>2</sup>	Council's Development Control Plan/Policies section of this report
3.14 Storage	1- bed 6m <sup>3</sup> 2- bed 8m <sup>3</sup> 3- bed 10m <sup>3</sup>  A minimum of 50% of this storage volume is to be provided within the dwelling accessible from the hall or living area as hall cupboards	Storage provided complies	Complies
3.16 Natural ventilation	60% of the dwellings should have cross ventilation	66% of units achieve cross ventilation	Complies

### Part F - Access and Mobility

Clause	DCP	Proposed	Complies/ Comment
3.3 Public spaces and link to private properties	Development on public and private properties must provide and maintain accessible links and paths of travel between Class 2 to Class 10 buildings and to adjacent public spaces or pedestrian networks	Complies	Complies
3.5 Parking	Provide 1 accessible parking space per 100 spaces, in Class 2 to 9c buildings = <b>0.91 space =</b>	Total 14 accessible spaces provided	Complies

	<b>1 space</b>  Provide 1 accessible parking space (dimensions in accordance with relevant Australian Standards) for each adaptable housing unit within the total calculation of spaces required for that dwelling <b>= 13.2 spaces</b>		
3.6 Adaptable and Visitable housing	Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings <b>= 13.2 dwellings</b>  Adaptable housing to be equitably distributed throughout all types and sizes of dwellings  80% of the dwellings are to be visitable (52.8 dwellings)	13 adaptable dwellings proposed (Units G02, 101, 102, 202, 203, 302, 303, 402, 403, 502, 503, 602, 603)  Adaptable units are provided on all levels and comprise 1 and 2 bedrooms  Complies	Complies
3.7 Mobility impaired access to and within buildings	Mobility impaired access is required to common areas and all dwellings.	Complies	Complies

## REFERRALS:

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

Council's consulting architect has confirmed that the proposed development meets the objectives of the 10 planning principles of SEPP No. 65. A copy of the Council's consulting architect's report is attached to this report (see attachment No. 1).

### Manager Strategic Planning

Council's Manager of Strategic Planning has reviewed the proposal and has provided the following advice:

### The Lane Cove LEP 2009 and the Planning Proposal – 1-25 Marshall Avenue

Under the current LEP, the site is zoned B4 Mixed Use, with a height of 36m for the majority of the site and a height of 9.5m for a thin strip of land along Marshall Avenue. The current FSR for the site is 5.1:1.

A planning proposal has been endorsed by council and seeks 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 65m. The FSR is proposed to be changed under the 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 Marshall Avenue 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.

The development application only pertains to the western portion of the planning proposal site area and has been designed to comply with the draft controls in the Planning Proposal.

#### The Lane Cove DCP 2010

The site is within Block 1: Marshall Precinct (which forms part of Locality 1 – St Leonards). The Lane Cove DCP 2010 was adopted within days of the gazettal of the Lane Cove LEP 2009. The LEP height controls imposed by the Department of Planning was not anticipated and as such the DCP was amended to state in relation to the Marshall Precinct that the “BLOCK PLAN BELOW DEFERRED”, referring to the map of the precinct and envisaged building forms etc. Several of the controls in the block plan table were also “DEFERRED”.

In summary, in relation to the block plan:

- The objectives remain relevant (with the exception of those objectives pertaining to properties on the Highway & the eastern open space area);
- Controls need to be applied where relevant;
- Where the block plan does not contain specific relevant controls, the General DCP controls apply.

The proposal is considered to support the relevant objectives for the precinct and is generally consistent with the controls in the block plan table. The proposal seeks to vary several controls.

#### Building Length

The proposal is not compliant with the 30m maximum tower frontage to Marshall Ave as the proposed building length is approximately 55m. The proposed building length is also at odds with the general building length control which is 40m for residential flat buildings and also 40m for the residential component of mixed use developments.

Buildings need to be broken up to allow light penetration, public views/glimpses and a decreased perception of building bulk. Moreover, the subject site of the DA is in a sensitive position opposite predominantly single detached dwellings, one to two storeys in height. In this position it is critical to minimise bulk and scale up hill of the single dwellings. The proposed building length is not supported.

#### Side setback to the eastern boundary

The adjoining site to the east is not a through site link currently and no guarantee exists that it will be developed as a through site link. It may be considered reasonable that the proposed



side setbacks to the through site link be accepted if the land with the through site link be conditioned to in fact be used as a through site link and see also below (see condition no. 19).

#### Subdivision

The area of the through site link (proposed Lot 2) has been taken into account when calculating the FSR of the subject DA. The proponent proposes that Lot 2 be subject of a covenant that recognises that the site area of Lot 2 has been taken into account in the calculation of the mixed use development the subject of the current DA.

In the DCP block Plan, the pedestrian link was shown further to the east to allow for possible vehicle exit opposite Holdsworth Avenue, avoiding possible issue of headlights impacting on houses.

The proposal supports the planning proposals stated strategic objectives to increase densities near major transport nodes and also generally supports the relevant objectives for the Marshall Precinct as set out in the DCP.

**In response to the above comments the following is provided:** The variation to the building length, setback to proposed Lot 2, proposed subdivision and the calculation of floor space ratio are discussed in detail in the DCP assessment table within this report.

#### Manager Urban Design and Assets

Council's Development Engineer reviewed the proposal and raised no concern with the proposal subject to conditions. Draft conditions which include conditions with regard to the new driveway, extent of excavation, pedestrian pathways and nature strips are included in the report (refer to draft conditions 70 to 108).

#### Manager Open Spaces

Council's Tree Assessment Officer provided the following advice. All street trees directly adjacent to the site are to be retained and protected for the duration of the development works including the demolition phase. The avenue planting of Brushbox trees lining Marshall Avenue provide a high level of landscape amenity to the area therefore all efforts must be taken to ensure these trees are protected. One Jacaranda tree is within the footprint of the proposed driveway entrance and this tree will be removed as part of the demolition works.

The street trees growing directly adjacent to the site consist of eight (8) mature Brushbox trees in Marshall Avenue, one (1) Jacaranda in Marshall Avenue and two (2) Paperbarks standing in Berry Road on the west side of the site.

In response to Council's consultant architect relating to overshadowing of the row of Brushbox street trees, the trees would receive adequate sunlight for photosynthesis in the mornings. This resilient species would not be affected by increased shading caused by the proposed structure.

The Tree Assessment Officer provided draft conditions which are included in the draft conditions of consent (refer to draft conditions 43 to 51).

Council's Landscape Architect has reviewed the proposal and concurred with the Tree Assessment Officer's comments regarding the importance of the street trees. Further the Landscape Architect advised the proposed landscape plan and soft landscape area is

considered adequate based on the nature of the site location, proposed use and the proposed block plan with regard to the overall landscape intent.

The Landscape Architect provided draft conditions which are included in the draft conditions of consent (refer to draft conditions 52 to 57).

#### Manager Environmental Services (Waste Management)

Council's Waste Officer has reviewed the proposal and advised the proposal satisfactorily addressed the requirements as per Part Q of Council's DCP in relation to waste management.

The Waste Officer provided draft conditions, however the plans referred to in the comments above include a reference to the plans which are addressed as a draft standard condition.

Council's Environmental Health Officer reviewed the proposal and has provided the following advice:

The noise and vibration mitigation measures and recommendations outlined in the "Construction Noise and Vibration Management Plan are supported.

The Stage 1 Environmental Assessment report identifies there is potential for the site to be contaminated as a result of its previous use and that a detailed investigation should be undertaken to ascertain the extent of the contamination. The applicant advised that as the site would have a significant amount of material excavated from the site that would essentially remove any potentially contaminated materials, that Council approve the proposal as a deferred commencement.

The officer advised they have no objection to this proposal subject to the following conditions being imposed:

- *A Remediation Action Plan (RAP ) is to be prepared in accordance with the provisions of SEPP55- Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites and submitted to Council for assessment. The submission of the RAP to Council is to be accompanied by a Site Audit Statement from a NSW EPA Accredited Site Auditor confirming that the RAP has been prepared in accordance with SEPP 55. No works are to commence until Council has provided written confirmation to the applicant that the RAP has been endorsed by Council and that works can commence.*
- *All works are to be completed in accordance with the provisions of SEPP55- Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites.*

Several draft standard conditions were also recommended.

The Environmental Health Officer provided conditions which are included in the draft conditions of consent (refer to draft conditions 58 to 69).

Council's Building Surveyor has reviewed the proposal and advised of general support for the proposal. The Surveyor recommended draft conditions in relation to compliance with the National Construction Code (BCA) 2012, Australian Standards and Access to Buildings-Premises Standards 2010. These conditions are included in the draft conditions of consent (refer to draft conditions 23 to 42).

### Traffic and Transport Manager

Council's Traffic and Transport Manager reviewed the proposal and provided an assessment which is provided in Attachment No. 2 of this report.

In response to the concerns raised in the review, the following comments are made.

There is no concurrence requirement under the State Environmental Planning Policy (Infrastructure) 2007 for this development application. Despite this, the NSW Roads and Maritime Services were contacted given the site's proximity to the Pacific Highway, however no response was received.

Council's DCP stipulates a maximum on-site parking rate for commercial components within mixed use developments. The on-site parking requirement for the residential and visitor component however requires a minimum parking rate. The proposed development is required to provide a total of 74 car spaces. The development provides 17 car spaces in addition to the 74 spaces required.

Whilst additional parking at this location is not considered necessary, due to the site's close proximity to the St. Leonards train station and public bus service, the proposal represents compliance with Council's DCP.

**Officers comment:** The supported conditions are included in the draft conditions of consent (refer to draft condition numbers 109 to 111).

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

### **Lane Cove Local Environmental Plan 2009**

#### **Clause 2.2 - Zoning**

The subject site is zoned B4 – Mixed Use under the provisions of Lane Cove Local Environmental Plan 2009. The proposed development meets the zone objectives and is permitted with development consent.

#### **Clause 4.3 - Height of Buildings**

The maximum permissible height limit is 36m. The proposed development is below the maximum permissible height limit.

#### **Clause 4.4 - Floor Space Ratio**

The proposed floor space ratio of 2.8:1 complies with the maximum permissible floor space ratio of 5.1:1.

### **Lane Cove Development Control plan**

As indicated in the preceding policy compliance table, the proposal meets all the Development Control Plan requirements with the exception of the following matters discussed below.

## **Variations to Council's Development Control Plan/Policies**

The following variations to the DCP are sought.

### *1. Building footprint*

The DCP stipulates a maximum building footprint of 1500m<sup>2</sup>. However, given the Marshall Precinct DCP block plan has been deferred, a merit assessment is considered appropriate

The proposed ground level has a footprint of approximately 1539m<sup>2</sup>. The proposed footprint represents a 2.6% variation.

The proposal is considered to meet the objective of the Marshall Avenue Precinct in providing balance to the scale of development to the north of the Pacific Highway. The proposal provides a transition between the development fronting the Pacific Highway and the surrounding Marshall Avenue precinct.

It is also noted the proposal is well within the floor space ratio and building height provisions pursuant to the Lane Cove Local Environmental Plan 2009. This variation is supported.

### *2. Encroachment into the setbacks to Berry Road and Marshall Lane*

The Marshall Precinct block plan control requires a minimum of 3m setback to all streets.

The commercial/café at the ground level is setback 2.480m from Berry Street, representing a 520mm variation. The hydrant and sprinkler booster cupboard adjoining this space is setback 1.380m from Berry Street. The cupboard is integrated well into the design of the building.

The residential levels of the development provide a varied setback to Berry Street ranging from 1.38m to 2.480m. The levels which encroach into the 3m setback comprise of sections of living areas and bedrooms.

The site is opposite properties zoned commercial core and commercial uses. Development within these zones may be constructed to the boundary. Further the varied setbacks assist to activate and highlight the corner of the proposal.

No significant adverse impact on surrounding properties with regards to overshadowing or loss of privacy would be experienced as a result of this variation. This variation is supported.

### *3. The minimum width of future pedestrian link*

Proposed Lot 2 is proposed to form part of the future pedestrian link as per the Marshall Avenue Precinct block plan. The pedestrian link is required to have a minimum width of 6m. Proposed Lot 2 has a variable width of 4.65m at the Marshall Ave frontage and 14.705m at the Marshall Lane frontage.

This minimum dimension is required to be adjusted and included in conjunction with the future DA over the adjoining development on Marshall Avenue. It is noted the adjoining properties are in the same ownership as the current DA. A letter of commitment to this effect is included in the draft conditions (refer to Condition No. 19).

#### *4. Length of proposal addressing the street*

The DCP requires that the maximum horizontal dimension of the residential component parallel to the street frontage is 40m. The proposed residential component is approximately 48.7m.

The proposal is articulated and responds well to the street frontages. As discussed within this variation section above, the proposal is well within provision of the Lane Cove Local Environmental Plan 2009 in relation to height and floor space ratio

No significant adverse impact on surrounding properties with regards to overshadowing or loss of privacy would be experienced as a result of this variation. This variation is supported.

#### *5. Single aspect dwellings with southerly aspect*

The number of single-aspect dwellings with a southerly aspect is limited to a maximum of 10% of the total dwellings, resulting in 6.6 dwellings for the current development. The proposal results in 26% of dwellings or 17 dwellings having a single aspect.

This variation results largely from the site's orientation. Council's consultant architect advises the development exceeds the overall access to sunlight requirements of the design controls contained within SEPP No. 65 (refer to the referrals section of this report). This variation is supported as the proposal complies with the requirements of SEPP No. 65.

#### *6. Dwelling mix*

The DCP requires a minimum of 10% of each 1, 2 or 3 bedroom dwellings. The number of three (3) unit bedroom units proposed is 9%, whilst the number of 1 and 2 bedroom units provided exceed 10%. A draft condition is included requiring this non-compliance to be rectified (refer to condition no. 21).

#### *7. Configuration of the private open space of Unit G04*

Primary terraces are to be designed to have a minimum area of 16m<sup>2</sup> and a depth of 4m. The proposed terrace for Unit G04 is 10.1m x 2.4m, which results in a total area of 20m<sup>2</sup>. Despite the variation, the terrace is considered to be useable and could accommodate an outdoor dining setting. The variation to the terrace for Unit G04 terrace is supported.

### **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 calculated in the following manner:

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

<b>No. of bedrooms</b>	<b>Average occupancy rate (persons/dwelling)</b>	<b>Population</b>
27 x 1 bedroom	1.2	$27 \times 1.2 = 32.4$
33 x 2 bedroom	1.9	$33 \times 1.9 = 62.7$
6 x 3 bedroom	2.4	$6 \times 2.4 = 14.4$
<b>Total Population</b>		<b>109.5</b>
<b>Credit of existing lots</b>		
5 lots	3	$5 \times 3 = 15$
<b>Residential Contribution</b>		$109.5 - 15 \text{ (credit)} = 94.5$ $94.5 \times \$9,180.35 = \$867,543.075$
<b>Total Residential Contribution</b>		<b>\$867,543.075</b>

<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	$105\text{m}^2 \times \$94.87 = \$9,961.35$
<b>Total Contribution</b>		<b>\$9,961.35</b>

The Section 94 contribution applicable is:

- 94.5 persons at a rate of \$9,180.35 per person, therefore \$867,543.075 (or \$13,144.59 per dwelling); and
- 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 Section 94 contribution for the proposal is \$877,504.425.

The required section 94 contribution is less than \$20,000 per dwelling and it would not exceed the cap of the Reforms of Local Development Contributions.

#### **State Environmental Planning Policy (Building Sustainability Index) 2004**

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

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

The proposed development complies with the provisions of Lane Cove Local Environmental plans 2009. The proposed development has been conditioned to generally comply with provisions of the Lane Cove Development Control Plan. The proposed development meets

the 10 design quality planning principles of State Environmental Planning Policy 65. The proposed development would set the emerging scale and future character of the area.

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

Given the location and zoning of the site, the site is considered suitable for the proposed development.

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

The proposal was notified in accordance with Council's notification policy. The application was initially notified on 21 February 2013 for 14 days. The proposal was re-notified on 25 February 2013 with a corrected development description, for a further 14 days.

A total of 35 submissions were received in response to the notification, comprising of 33 objections and 2 letters of support.

The issues raised in the objections relating to the current development application are indicated below:

#### Traffic

- *The traffic counts do not take into account stage 2 of the Duntroon Ave development.*
- *Insufficient parking is provided, traffic generation will be excessive traffic and will endanger residents*
- *This proposal will add to public transport congestion*
- *The wider traffic catchment area should be considered*
- *Access from Marshall Ave should be left turns in and out of the site only to help with traffic flow and safety*

#### **Comment:**

A revised Traffic Impact Assessment report was requested and submitted by the applicant. The Assessment report included revised survey figures based on data collected on 20 March and 9 April 2013. This information was placed on council's website for public review.

The proposal complies with Council's DCP which requires 74 on-site parking spaces.

There would be additional traffic generation within this precinct as a result of the proposed development. The additional vehicular movements associated with the proposal are within capacity limits for vehicles.

Council's Traffic and Transport Manager the revised Traffic Impact Assessment report or proposed vehicular access arrangements.

#### Building Height

- *The DA shows the maximum height for the whole site should be 25m, this will dominate the skyline*
- *An 8 storey block of units opposite 1 to 2 storey dwellings is too high*
- *The proposed height does not offer any transition to buildings on the south side of Marshall Avenue*

**Comment:**

The LEP permits a maximum building height of 36m over the site. The proposal is well within this limit being a maximum of 25m in height.

The subject site is zoned B4 Mixed Use. The residential properties located on the southern side of the Marshall Avenue are zoned R2 Low Density Residential.

The proposal offers a transition in building height to Marshall Avenue. A three (3) storey portion of the development immediately fronts Marshall Avenue. The proposal then steps up into a maximum of eight (8) storeys.

**Design**

- *Marshall Lane should be activated with ground floor commercial activity*
- *The proposal does not address the intersection of Marshall Avenue and Berry Street*
- *The proposal is difficult to consider given it comprises a portion of the precinct. A holistic approach to the precinct is needed*
- *The proposal will not meet the SEPP No. 65 guidelines*

**Comment:**

Commercial activity is proposed at the ground floor level on the corner of Berry Street and Marshall Avenue. Activity along these street frontages is considered more important than activity along Marshall Lane.

The design of the proposal is considered to address the intersection this is achieved via the commercial area/cafe at the ground level and the varied setbacks of the residential levels.

As previously discussed in this report, the planning proposal for the precinct is proceeding. The fluid form of Marshall Avenue is intended to redistribute bulk and built form in a manner that reduces visual and physical impacts on the properties to the south of the site. This proposal seeks to accommodate future detailed guides that may result from community consultation and the adoption of a site specific DCP.

Council's consulting architect has confirmed that the proposed development meets the objectives of the 10 planning principles of SEPP No. 65. The consultant's report is provided as Attachment No.1 to this report.

**Suitability**

- *The proposal is not in keeping with the area/village, Marshall Avenue is a predominantly single storey precinct.*
- *The proposal reduces the buffer between high rise buildings near the highway and residential buildings*
- *There is no precedent for 66 units directly opposite single dwellings in the LGA. This will set a precedent*
- *The layout and density are excessive*
- *The proposal is not in keeping with the surrounding 1920's urban streetscape*
- *The proposal will put additional pressure on infrastructure*



**Comment:**

Despite the site being located opposite low density residential development, the proposal is situated within a Mixed Use zone in which mixed use developments are permitted with the consent of the council.

The proposal complies with the floor space ratio and height controls permitted within the LEP. Minor variations are sought to the building footprint and length of the building fronting the street. These variations are discussed in the DCP assessment section of this report and are supported in this instance.

The proposal is consistent with the objective of the zone which encourages a mix of land uses.

The proposal would create additional demands on existing infrastructure. The applicant would be required to liaise with the relevant authorities with regards to available capacity for the proposal, a draft condition has been recommended in this regard (see Condition No. 2).

**Non-compliance with the LEP**

- *The proposal does not adhere to the lower street scale required as per the LEP*

**Comment:**

The proposal complies with the lower street scale required by the LEP. This matter is detailed in the assessment table within this report.

**Amenity**

- *The pedestrian link will not be a friendly/useable area given it will have a 8m high wall adjoining it*
- *Significant landscaping is not proposed. The street trees in Marshall Ave should be retained for amenity/street character. All site access should be from Marshall Lane to protect the trees*
- *Design does not allow for 'green fingers' to break up building*
- *Loss of privacy, reduced amenity, increase in traffic and noise from additional units and commercial space*
- *The proposal will overshadow the single dwellings and Newlands Park*
- *The townhouses will be overshadowed by future development on the Pacific Highway*

**Comment:**

It is proposed that Lot 2 would form part of a future pedestrian link. The current proposal would be constructed adjoining this pathway which is not considered to result in it being unusable.

The street trees in Marshall Avenue would be retained. One tree which is proposed to be removed in Marshall Avenue to facilitate the proposed driveway.

The proposal provides sufficient setbacks from residential properties through its design and Marshall Avenue itself. Views enjoyed from the proposed upper residential levels would be distant views rather than views into nearby properties.

The submitted shadow diagrams indicate that some of the dwellings situated on the southern side of Marshall Avenue and along Berry Street would be overshadowed, however as discussed within this report the shadow impact is reasonable. These dwellings would receive at least 3 hours of sunlight during mid winter. The affect of shadow does not extend as far as Newlands Park.

The site is likely to be overshadowed by future development along the Pacific Highway as the site is situated immediately south of the highway.

#### Community liaison committee

- *A community liaison committee should be established including representatives from local residents, council, builder and developer*

**Comment:** The St. Leonards Liaison Committee is an established committee which community members can liaise with.

#### During construction

- *Footpath access should be maintained to a high level during construction*
- *Trucks/heavy vehicles should enter/exit via Berry Road*

**Comment:** The provision of a footpath during construction has been addressed as a draft condition. A Traffic Management Plan is included in the draft conditions which includes routes of construction vehicles. This plan would be submitted to Council for review.

#### Details not provided

- *The cafe should have external ventilation for cooking*
- *Roof top units for air-conditioning are not shown on the plans*

**Comment:** These details are not available at this stage. These will be required at the construction certificate stage.

#### Notification

- *The notification area should be expanded due to the impacts of the proposal including overshadowing, traffic and visual impacts*

**Comment:** The extent of the notification was consistent with Council's notification policy (see attachment No. 3).

#### Letters of support for the proposal included the following matters:

- *Area needs more residential units to provide affordable housing and will create business and employment opportunities to the area*
- *This development is the type that should be encouraged*
- *The site is suitable for high density development given its proximity to the city and amenities*
- *Some houses will be overshadowed. It is wrong to keep this site so close to amenities as a low density suburb*

- *Council should discourage car ownership given the site is so close to public transport and encourage the use of go-get schemes*

**Comment:** The above matters in part endorse the LEP objectives and are of limited relevance to this assessment.

### **Comments made regarding the planning proposal**

Submissions were received related to the Marshall Avenue precinct planning proposal. The planning proposal does not form part of the development application. All submissions received, including those relating to the planning proposal, were forwarded to the JRPP and Council's strategic planning section for review.

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

The proposed development meets the requirements of Lane Cove Council's Local Environmental Plan 2009 and the provisions of Development Control Plan.

The proposed development would not create major environmental impacts. Accordingly it is considered that the proposed development is in the public interest and can be approved subject to appropriate draft conditions.

### **CONCLUSION**

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

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 issues raised by neighbours have been considered and discussed in the body of the report.

The proposal represents a high quality development that would not 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 proposal is recommended for approval subject to conditions.

## 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 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 following conditions:

### **General Conditions:**

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 A, dated 13/02/13  
Basement 2 floor plan, DA1-04, Revision A, dated 13/02/13  
Basement 1 floor plan, DA1-05, Revision A, dated 13/02/13  
Ground floor plan, DA1-06, Revision B, dated 28/03/13  
Level 1 floor plan DA1-07, Revision A, dated 13/02/13  
Level 2 floor plan DA1-8, Revision A, dated 13/02/13  
Level 3 floor plan DA1-9, Revision A, dated 13/02/13  
Level 4 floor plan DA1-10, Revision A, dated 13/02/13  
Level 5 floor plan DA1-11, Revision A, dated 13/02/13  
Level 6 floor plan DA1-12, Revision A, dated 13/02/13  
Roof plan DA1-13, Revision A, dated 13/02/13  
North elevation DA1-21, Revision A, dated 13/02/13  
South elevation DA1-22, Revision A, dated 13/02/13  
East elevation DA1-23, Revision A, dated 13/02/13  
West elevation DA1-24, Revision A, dated 13/02/13  
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.

2. The approved plans must be submitted to a Sydney Water Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) see Your Business then Building & Developing then Building & Renovating or telephone 13 20 92.

The consent authority or a private accredited certifier must:-

- Ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the issue of any Construction Certificate.
3. THE PAYMENT OF A CONTRIBUTION FOR AN ADDITIONAL 94.5 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 \$877,504.425 AT THE CURRENT RATE OF \$9,180.35 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.

4. All car parking spaces on-site shall comply with requirements of the Australian Standard AS 2890.1-1993 ("Parking facilities, Part 1: Off-street car parking").
5. The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise.
6. All advertising signs/structures being the subject of a separate development application.
7. The provision of on-site car parking spaces for the use at all times to comply with the minimum requirement of Council's Development Control Plan.
8. Access and parking spaces for disabled persons being provided in accordance with Part D.3 of the Building Code of Australia.
9. The cleaning out of ready-mixed concrete trucks, wheelbarrows and the like into Council's gutter is PROHIBITED.
10. All glazing is to comply with the requirements of AS 1288.
11. A check survey certificate is to be submitted at the completion of:-
  - a Dampcourse level;
  - b The establishment of all basement and floor levels;
  - c The roof framing; and
  - d The completion of works.

Note: All levels are to relate to the reduced levels as noted on the approved architectural plans and should be cross-referenced to Australian Height Datum.

12. Noise from domestic air conditioners is not to be audible in any adjoining dwelling between the hours of 10:00pm and 7:00am on weekdays or between the hours of 10:00pm and 8:00am on weekends and public holidays.

If the noise emitted from the air conditioning unit results in offensive noise, Council may prohibit the use of the unit, under the provisions of the Protection of the Environment Operations Act 1997.

13. All spillage deposited on the footpaths or roadways to be removed at the completion of each days work.

14. The site being properly fenced to prevent access of unauthorised persons outside of working hours.
15. BASIX - Compliance with all the conditions of the BASIX Certificate lodged with Council as part of this application.
16. Pedestrian access, including disabled and pram access, is to be maintained throughout the course of the construction as per AS 1742.3, 'Part 3 - Traffic control devices for works on roads'.
17. Separate application must be made for strata subdivision of the development.
18. Separate application must be made for the use of the commercial/café area.
19. Prior to the issue of a construction certificate, a letter of commitment from the land owner shall be submitted to Council advising Lot 2 will be reconfigured to achieve compliance with the minimum width of the future pedestrian pathway in conjunction with a future development application. The letter of commitment shall also include a commitment to providing formal public access over Lot 2.
20. Signage shall comply with the Part N of Council's Development Control Plan – Signage and Advertising.
21. Prior to the issue of a construction certificate, amended plans shall be submitted to the PCA demonstrating the proposal provides a minimum of 10% of 3 bedroom dwellings. Associated on-site car parking shall comply with Council's Development Control Plan.
22. Public access shall be provided over Lot 2 from Marshall Avenue to Marshall Lane.

#### **Building conditions:**

#### **General Conditions:**

23. All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.
24. All building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:-

Monday to Friday (inclusive)	7am to 5.30pm
Saturday	8am to 12 noon <b>with no excavation, haulage truck movement, rock picking, sawing, jack hammering or pile driving to be undertaken. Failure to fully comply will result in the issue of a breach of consent P.I.N.</b>

Sunday no work Sunday or any Public Holiday.

25. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

26. Depositing or storage of builder's materials on the footpath or roadways within the Municipality without first obtaining approval of Council is PROHIBITED.

Separate approval must be obtained from Council's Works and Urban Services Department PRIOR TO THE PLACEMENT of any building waste container ("Skip") in a public place.

27. Where Lane Cove Council is appointed as the Principal Certifying Authority, it will be necessary to book an inspection for each of the following stages during the construction process. Forty eight (48) hours notice must be given prior to the inspection being required:-

- a) All reinforcement prior to filling with concrete.
- b) Installation of steel beams and columns prior to covering
- c) Waterproofing of wet areas
- d) Stormwater drainage lines prior to backfilling
- e) Completion

28. A check survey certificate is to be submitted at the completion of works.

Note: All levels are to relate to the reduced levels as noted on the approved architectural plans and should be cross-referenced to Australian Height Datum.

29. The site being cleared of all debris and left in a clean and tidy condition at the completion of all works.

30. An approved type of hoarding being erected along the street frontage.

**Conditions to be satisfied prior to construction certificate:**

31. The submission of a Construction Certificate and its issue by Council or Private Certifier PRIOR TO CONSTRUCTION WORK commencing.

32. The approved plans must be submitted to a Sydney Water Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) see Your Business then Building & Developing then Building & Renovating or telephone 13 20 92.

The consent authority or a private accredited certifier must:-

- Ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the issue of any Construction Certificate.
33. Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home Building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council or the PCA that they have complied with the applicable requirements of Part 6. **Council as the PCA will not release the Construction Certificate until evidence of Home Owners Warranty Insurance or an owner builder permit is submitted.** THE ABOVE CONDITION DOES NOT

APPLY TO COMMERCIAL/INDUSTRIAL CONSTRUCTION, OWNER BUILDER WORKS LESS THAN \$5000 OR CONSTRUCTION WORKS LESS THAN \$20,000.

34. A "Fire Safety Schedule" specifying the fire safety measures that are currently implemented in the building premises and the fire safety measures proposed or required to be implemented in the building premises as required by Clause 168 – Environmental Planning & Assessment Regulation 2000 are to be submitted and approved **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**.
35. Structural Engineer's details being submitted PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE for the following:-
  - a) underpinning;
  - b) retaining walls;
  - c) footings;
  - d) reinforced concrete work;
  - e) structural steelwork;
  - f) upper level floor framing;
  - g). Completion
36. A copy of Sydney Water's Notice of Requirements must be submitted to the Principal Certifying Authority **PRIOR TO THE CONSTRUCTION CERTIFICATE BEING ISSUED**.
37. **Long Service Levy** Compliance with Section 109F of the *Environmental Planning and Assessment Act 1979*; payment of the Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or, where such a levy is payable by installments, the first installment of the levy) – All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%.

COMPLIANCE WITH THE REQUIREMENTS OF THIS CONDITION MUST BE SATISFIED **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**.

**Conditions to be satisfied prior to commencement of works:**

38. Prior to the commencement of any construction work associated with the development, the Applicant shall erect a sign(s) at the construction site and in a prominent position at the site boundary where the sign can be viewed from the nearest public place. The sign(s) shall indicate:
  - a) the name, address and telephone number of the Principal Certifying Authority;
  - b) the name of the person in charge of the construction site and telephone number at which that person may be contacted outside working hours; and
  - c) a statement that unauthorised entry to the construction site is prohibited.

The signs shall be maintained for the duration of construction works.

39. A temporary connection to be made to the sewers of Sydney Water (where available) with an approved toilet structure and toilet fixtures being provided on the site **BEFORE WORK IS COMMENCED**. Where the Sydney Water sewer is not available a "Chemical Closet" type toilet shall be permitted.
40. The site being properly fenced to prevent access of unauthorised persons outside of working hours.



### Conditions to be satisfied prior to issue of occupation certificate:

41. An Occupation Certificate being obtained from the Principal Certifying Authority before the occupation of the building.
42. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then follow the "e-Developer" icon or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the plan of subdivision.

### Tree Conditions:

#### General conditions:

43. Lane Cove Council regulates the **Preservation of Trees and Vegetation** in the Lane Cove local government area. Clause 5.9(3) of *Lane Cove Local Environmental Plan 2009*, states that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by development consent or a permit granted by the Council. Removal of trees or vegetation protected by the regulation is an offence against the Environmental Planning and Assessment Act 1979 (NSW). The maximum penalty that may be imposed in respect to any such offence is \$1,100,000 or a penalty infringement notice can be issued in respect of the offence, the prescribed penalty being \$1,500.00 for an individual and \$3,000.00 for a corporation. The co-operation of all residents is sought in the preservation of trees in the urban environment and protection of the bushland character of the Municipality. All enquiries concerning the Preservation of Trees and Vegetation must be made at the Council Chambers, Lane Cove.
44. The applicant must obtain written authority from Council prior to the pruning of any street trees or trees in neighbouring properties. Tree 17 (the Jacaranda street tree) is exempt from this condition.
45. There must be no stockpiling of topsoil, sand, aggregate, spoil or any other construction material or building rubbish on any nature strip, footpath, road or public open space park or reserve.
46. Excavation and/or soil manipulation within 6 metres of street trees directly adjacent to the site must be carried out under the supervision of the project arborist (Level 5). Any tree roots encountered during excavation must be cut cleanly by the arborist.
47. The footings supporting the front boundary walls must remain in place as a root protection measure. Machinery usage in close proximity to the wall footings must be carried out in such a way that the footings are not disrupted.

48. A 1.8m high chain mesh fence shall be erected encompassing the entire nature strip between the footpath and the street gutter. Adequate room must be provided to allow car passengers to exist parked cars. The tree protection zones must not enclose the parking metres. The tree protection area shall not be used for the storage of building materials, machinery, site sheds, or for advertising and soil levels within the tree protection area shall remain undisturbed.
49. A waterproof sign must be placed on tree protection zones at 6 metre intervals stating 'NO ENTRY TREE PROTECTION ZONE – this fence and sign are not to be removed or relocated for the work duration.' Minimum size of the sign is to be A4 portrait with NO ENTRY TREE PROTECTION ZONE in capital Arial Font size 100, and the rest of the text in Arial font size 65.

**Conditions to be satisfied prior to commencement of work or issue of construction certificate:**

50. All tree protection measures and signage must be erected **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR THE COMMENCEMENT OF WORKS, WHICHEVER OCCURS FIRST.** This includes demolition or site preparation works, and tree protection measures must remain in place for the duration of the development, including construction of the driveway crossing.
51. **BOND ON STREET & COUNCIL TREES**

Pursuant to Section 80A(6)(a) and (7) of the Environmental Planning and Assessment Act 1979, the applicant must, prior to the issue of the first construction certificate, provide security in the amount of \$15,000 (by way of cash deposit with the Council, or a guarantee satisfactory to the Council) for the payment of the cost of making good any damage caused, as a consequence of the doing of anything to which this development consent relates, to all street trees that are on the public road reserve immediately adjoining the land subject of this development consent.

The Council may apply funds realised from the security to meet the cost of making good any damage caused, as a consequence of the doing of anything to which this development consent relates, to the said trees. If the cost of making good any damage caused to the said trees as a consequence of the doing of anything to which this development consent relates exceeds the amount of the security provided by the applicant additional security must be provided by the applicant to the Council to cover that cost and the Council may apply funds realised from the additional security to meet the total cost of making good the damage.

The bond shall be refundable following issue of the Final Occupation Certificate. The owner must notify Council's Senior Tree Assessment Officer who will inspect the street trees and organize the bond refund.

**Landscaping Conditions:**

52. The Applicant shall ensure that as per Landscape Plan 101 B, prepared by Site Image there are sufficient number of groundcovers and low shrubs, planted at proposed pot sizes, with appropriate distances and depths to eliminate bare mulched gardens areas within twelve (12) months of completion of all landscaping works. Where the specified Syzgium 'Cascade' (Pink Flowering Lilly Pilly) screen planting is proposed throughout the development, plants must have a minimum foliage height of 1.5m above ground at planting.

53. The Applicant shall ensure that all landscaping is completed to a professional standard, free of any hazards or unnecessary maintenance problems and that all plants are consistent with NATSPEC specifications.
54. The proposed Street tree planting of *Melaleuca quinquenervia* on Berry Road requires adequate site and tree pit preparation with sufficient soil depth to support the proposed 400L bag size as per the proposed Landscape Plan 101 B, prepared by Site Image.

**Conditions to be satisfied prior to the issue of occupation certificate:**

55. A landscape practical completion report is to be prepared by the consultant landscape architect and submitted to Council or the accredited certifier within 7 working days of the date of practical completion of all landscape works. This report is to certify that all landscape works have been completed in accordance with the approved Landscape Plan 101 B. A copy of this report is to accompany the request for issue for issue of an Occupation Certificate

*Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification to be forwarded to Council within 5 working days of the date of issue.*

56. Prior to issue of the Certificate of Occupation, the applicant is to submit evidence of an agreement for the maintenance of all site landscaping by a qualified horticulturist, landscape contractor or landscape architect, for a period of 12 months from the date of issue of the Certificate of Occupation.
57. At the completion of the landscape maintenance period, the consultant landscape architect/ designer is to submit a final report to Council or the accredited certifier within 7 working days, certifying that all plant material has been successfully established, that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the 12 month landscape maintenance strategy has been provided to the Owner/ Occupier.

*Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification to be forwarded to Council within 5 working days of the date of issue.*

**Environmental Health conditions:**

**General conditions:**

58. All works are to be completed in accordance with the provisions of SEPP55 - Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites.
59. The following measures must be taken to control the emission of dust:
  - a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work
  - b) Any existing accumulations of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter

- c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system
  - d) All stockpiles of materials that are likely to generate dust must be kept damp or covered
  - e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.
60. Noise monitoring must be carried out by a qualified acoustical consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the excavation and construction work
61. All contaminated soil removed from the site must be disposed at a waste facility that can lawfully receive that waste.
- Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.
62. All noise and vibration mitigation measures and recommendations outlined in the "Construction Noise and Vibration Management Plan" produced by Renzo Tonin & Associates dated 12 April 2013 are to be implemented throughout all applicable stages of the development.
63. Noise generated by residents, visitors, retail or commercial part and mechanical plant and equipment should not exceed the maximum L Aeq levels pursuant to Council's Development Control Plan – Part D.5 – Development in B4 Mixed Use Zone.
64. External lighting shall comply with the hours of operation specified in Council's Development Control Plan – Part D.5 – Development in B4 Mixed Use Zone.

**Conditions to be complied with prior to commencement of works:**

65. A Remediation Action Plan (RAP) is to be prepared in accordance with the provisions of SEPP55- Contaminated Land and the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites and submitted to the PCA. The submission of the RAP to Council is to be accompanied by a Site Audit Statement from a NSW EPA Accredited Site Auditor confirming that the RAP has been prepared in accordance with SEPP 55. No works are to commence until Council has provided written confirmation to the applicant that the RAP has been received by Council and that works can commence.
66. Erosion and sediment control devices are to be provided. All devices are to be established prior to the commencement of engineering works and maintained for a minimum period of six months after the completion of all works. Periodic maintenance of the erosion and sedimentation control devices is to be undertaken to ensure their effectiveness.
67. A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council/and or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (blue Book).

68. A site water management plan is to be submitted to Council for approval. The plan is required to be site specific and be in accordance with "Managing Urban Stormwater – Soils and Construction" (the blue book) produced by the NSW Department of Housing.
69. Hazardous or intractable wastes arising from the excavation and remediation process being removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority, and with the provisions of:
- *New South Wales Occupational Health and Safety Act, 2000;*
  - *The Occupational Health and Safety (Hazardous Substances) Regulation 2001;*
  - *The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;*
  - *Protection Of the Environment Operations Act 1997 (NSW) and*
  - *Environment Protection Authority's Environmental Guidelines; Assessment, Classification and Management of Liquid and Non Liquid Wastes (1999).*

#### **General Engineering Conditions:**

70. All engineering plans and work shall be carried out in accordance with Council's standards and relevant development control plans except as amended by other conditions.
71. Where the applicant requires the use of Council land for placement of building waste, skips or storing materials a "*Building waste containers or materials in a public place*" application form is to be lodged. Council land is not to be occupied or used for storage until such application is approved.
72. Separate application shall be made to Council's Urban Services Division for works on Council property. This shall include vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be submitted **prior to the start of any works on Council property.**
73. Where the applicant requires the use of construction plant on the public road reservation, an "*Application for Standing Plant Permit*" shall be made to Council. Applications shall be submitted and approved **prior to the start of any related works.** Note: allow 2 working days for approval.
74. Public areas must be maintained in a safe condition at all times. Restoration of disturbed Council land is the responsibility of the applicant. All costs associated with restoration of public land will be borne by the applicant.
75. If any public services are to be adjusted, as a result of the development, the applicant is to arrange with the relevant public utility authority the alteration or removal of those affected services. All costs associated with the relocation or removal of services shall be borne by the applicant.
76. Pedestrian access, including disabled and pram access, is to be maintained throughout the course of the construction as per AS-1742.3, '*Part 3 - Traffic control devices for works on roads*'.

77. The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement. If a Council stormwater line is located on the property during construction, Council is to be immediately notified. Where necessary the stormwater line is to be relocated to be clear of the proposed building works. All costs associated with the relocation of the stormwater line are to be borne by the applicant.
78. Prior to any excavation works, the location and depth of all services must be ascertained. All costs associated with adjustment of the public utility will be borne by the applicant.
79. Prior to commencement of site works, the applicant shall
- Nominate a contact person who will be responsible for all heavy vehicle operations.
  - Submit contact details of the nominated person to Council including relevant telephone numbers, facsimile numbers and email.

During construction the applicant shall:

- Submit a weekly summary of all trucking movements. The summary is to include the number of trucks that have travelled to and from the site each day, and the registration numbers (both truck and dog-trailer registration plates) of these vehicles.
80. The applicant shall
- Inform in writing all contractors of Council's requirements relating to truck cleanliness leaving the site.
  - Keep a register of all contractors that have been notified, the register is to be signed by each contractor. The register must be available for access by Council officers at all times.
  - Place an employee within close proximity of the site exit during site operation hours to ensure that all outgoing heavy vehicles comply with Council's requirements. This employee shall liaise with heavy vehicle drivers and provide regular written updates to drivers on the conditions of entry to the subject site.

Those drivers who have been determined to continually not comply with Council's requirements, either by the developer or authorised Council officers, shall not be permitted re-entry into the site for the duration of the project.

81. A truck shaker ramp must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass the truck shaker. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.
82. All vehicles transporting soil material to or from the subject site shall ensure that the entire load is covered by means of a tarpaulin or similar material. The vehicle driver shall be responsible for ensuring that dust or dirt particles are not deposited onto the roadway during transit. It is a requirement under the Protection of the Environment Operations (Waste) Regulation, 1996 to ensure that all loads are adequately covered, and this shall be strictly enforced by Council's ordinance inspectors. Any breach of this legislation is subject to a "*Penalty Infringement Notice*" being issued to the drivers of those vehicles not in compliance with the regulations.
83. To prevent stormwater from entering the building the finished habitable ground floor level of the building must be a minimum of 150mm above the adjacent finished ground level.

84. The on-site detention system shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in part O Council's DCP-Stormwater Management. An approved plate may be purchased from Council's customer service desk.
85. Any drainage pit within a road reserve, a Council easement, or that may be placed under Council's control in the future, shall be constructed of cast in situ concrete and in accordance with part O Council's DCP- Stormwater Management.
86. All access grates to the on-site stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 m in depth must be fitted with step irons.
87. The proposed rainwater tanks are to be installed in accordance with Council's rainwater tank policy and relevant Australian standards.  
Note:
- Rainwater draining to the reuse tanks are to drain from the roof surfaces only. No "on - ground" surfaces are to drain to the reuse tank. "On - ground" surfaces are to drain via a separate system.
  - Mosquito protection & first flush device shall be fitted to the reuse tank.
  - The overflow from the rainwater reuse tank is to drain by gravity to the receiving system.
88. A gross pollutant trap needs to be designed and added to the amended plans within the property boundary prior to the connection to the street system. The design and construction of the drainage system is to fully comply with, AS-3500 and Part O of Council's DCP - Stormwater Management. The design shall ensure that the development, either during construction or upon completion, does not impede or divert natural surface water so as to have an adverse impact upon adjoining properties.

**Engineering conditions to be complied with prior to construction certificate:**

89. The stormwater drainage plan **numbered ITCE-1046 Rev 01** prepared by **Cardno ITC P/L** dated **January 2013** is to be amended to reflect Condition No. 85. 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**.
90. 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.
91. The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of a Positive Covenant over the on-site detention system. Lodgement of this bond is required **prior to the issue of the Construction Certificate**.
92. All retaining structures greater than 1m in height are to be designed and certified for construction by a suitably qualified engineer. The structural design is to comply with, all relevant design codes and Australian Standards. The design and certification shall

be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

93. In order to cover the accelerated depreciation to Council's Road Infrastructure the applicant is to pay a fee based upon a calculation of the damage caused by trucking operations.

A qualified consultant needs to prepare a report estimating all associated truck movements leaving the site for the duration of the construction works. The fee shall be calculated based on the following table:

3 axle single unit	<b>\$5.76</b>
4 axle single unit	<b>\$7.17</b>
4 axle or less double unit, 1 unit is truck	<b>\$8.56</b>
5 axle double unit, 1 unit is truck	<b>\$10.03</b>
6 or more axle double, 1 unit is truck	<b>\$11.50</b>
5 axle or less multi unit	<b>\$18.06</b>
6 axle multi unit	<b>\$14.32</b>

The calculated fee is payable to Lane Cove Council Prior to the issue of the **Construction Certificate.**

94. A geotechnical report is to be completed for the excavation proposed for the development. The Geotechnical Report and supporting information are to be prepared by a suitably qualified geotechnical engineer and be submitted to Principle Certifying Authority prior to issue of a Construction Certificate.
95. Excavation works associated with the proposed development must be overseen and monitored by a suitably qualified engineer. A Geotechnical Monitoring Program shall be submitted to the principle certifying authority prior to issue of a Construction Certificate. The Geotechnical Monitoring Program must be produced by suitably qualified engineer ensuring that all geotechnical matters are regularly assessed during construction.

The Geotechnical Monitoring Program for the construction works must be in accordance with the recommendations of the Geotechnical Report and is to include

- Recommended hold points to allow for inspection by a suitably qualified engineer during the following construction procedures;
  - Excavation of the site (face of excavation, base, etc)
  - Installation and construction of temporary and permanent shoring/retaining walls.
  - Foundation bearing conditions and footing construction.
  - Installation of sub-soil drainage.
- Location, type and regularity of further geotechnical investigations and testing.

Excavation and construction works must be undertaken in accordance with the Geotechnical and Monitoring Program.

96. There are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations. A suitably qualified engineer must prepare a Construction Methodology report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to Principal Certifying Authority prior to issue of a Construction



Certificate. The details must include a geotechnical report to determine the design parameters appropriate to the specific development and site.

The Report must include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

97. 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.

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**.

98. The plans and supporting calculations of the internal driveway, turning areas, ramps, garage opening widths, parking space dimensions and any associated vehicular manoeuvring facilities shall be submitted to the Principal Certifying Authority.

The plans shall be prepared and certified by a suitably qualified engineer. The design is to be certified that it fully complies with AS 2890 Series and Council's standards and specifications. The design and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

99. The proposed vehicular crossing shall be constructed to the specifications and levels issued by Council. A '*Construction of a Multi Unit Footpath Crossing*' application shall be submitted to Council **prior to the issue of the Construction Certificate**. All works associated with the construction of the crossing shall be completed **prior to the issue of the Occupation Certificate**.

100. The levels of the street alignment shall be obtained from Council. These levels are to be incorporated into the design of the internal pavements, car parking, landscaping and stormwater drainage plans and shall be obtained **prior to the issue of the Construction Certificate**. Note: The finished floor level of the proposed garage or carport shall be determined by Council.

101. The applicant shall lodge with Council a \$80,000.00 cash bond or bank guarantee. The bond is to cover the repair of damage to Council's roads, footpaths, kerb and gutter, drainage or other assets as a result of the development. The bond will be released upon issuing of the Occupation Certificate. If Council determines that damage has occurred as a result of the development, the applicant will be required to repair the damage. Repairs are to be carried out within 14 days from the notice. All repairs are to be carried in accordance with Council's requirements. The full bond will be retained if Council's requirements are not satisfied. Lodgement of this bond is required **prior to the issue of the Construction Certificate**.

102. The applicant shall construct / reconstruct the following:

1. New 1.5m wide footpath along the Marshall Avenue and Berry Road frontages.
2. New Kerb and Gutter along the entire frontages of the site.
3. Reinstate all adjustments to the road surface to Council's satisfaction.
4. Reinstate all existing nature-strips with turf and soil to Council's satisfaction.

A \$10,000.00 cash bond or bank guarantee shall be lodged with Council to cover the satisfactory construction of the above requirements. Lodgement of this bond is required **prior to the issue of the Construction Certificate**. The Bond will be held for a period of six months after satisfactory completion of the works. All works shall be carried out **prior to the issue of the Occupation Certificate**. All costs associated with the construction of the above works are to be borne by the applicant.

Note: the above is subject to separate approval.

103. The following items shall require Council inspections.

- All new footpaths on Council Property
- New kerb and gutter on Council Property
- All asphalt adjustments to the roadway
- All the approved stormwater drainage works on Council property

Each item is to be inspected prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with Council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / setout requirements.

An Inspection fee of \$580.00 is to be paid **prior to the issue of the Construction Certificate**.

**Engineering conditions to be complied with prior to commencement of construction:**

104. The applicant shall install appropriate sediment control devices **prior to the start of any works on the site**. The devices are to be installed in accordance with the plan numbered **ITCE-1046 H0200 Rev 01** prepared by **Cardno ITC P/L** dated **January 2013**. The devices shall be maintained during the construction period and replaced when necessary.

**Engineering conditions to be complied with prior to occupation certificate:**

105. On completion of the drainage system a suitably qualified engineer shall certify that the drainage system has been constructed in accordance with the approved plans, Part O of Council's DCP- Stormwater Management and AS-3500. The certification is to include a work as executed plan. The work as executed plan shall:

- (a) be signed by a registered surveyor, &
- (b) clearly show the surveyor's name and the date of signature.

All documentation is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate**.

106. All redundant gutter and footpath crossings shall be removed and the kerb, gutter and footpath reinstated to the satisfaction of Council's Urban Services Division. These works shall be carried out **prior to the issue of the Occupation Certificate**.
107. A suitably qualified engineer shall provide certification to the principal certifying authority that all retaining structures and excavations have been carried out in accordance with the relevant Australian Standards and Codes of Practice.
- The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted to the principal certifying authority **prior to the issue of the Occupation Certificate**.
108. Documents giving effect to the creation of a positive covenant over the on-site detention system shall be registered on the title of the property **prior to the issue of the Occupation Certificate**. The wording of the terms of the positive covenant shall be in accordance with Part O of Council's DCP - Stormwater Management.

#### **Traffic and Parking Conditions:**

##### **General conditions:**

109. All on site car parking facilities including ramps and servicing areas must comply with AS 2890.1 Off-street parking and AS 2890.6 Off-street parking for people with disabilities. If access to the basement car park is controlled by means of a security gate or other similar entry device, an intercom system at the entry to the car park must be provided to allow visitor access.

##### **Conditions to be complied with prior to construction certificate or works commencing:**

110. The developer should pay the sum of \$25,000 towards the design and implementation of cycle paths as per the Lane Cove Bicycle Plan. This is in accordance with Council's S94 Contributions Plan Table 7.12 Schedule of Works (Traffic Management and Streetscape Improvements) – St Leonards Local Area Traffic Management.
111. A construction traffic management plan, including a Traffic Control Plan produced by an RTA accredited red or orange card holder, must be approved by Council before the commencement of any construction work. It must also be shown how construction and trades vehicles will be accommodated without resulting in adverse impacts on surrounding residential streets.

An application for a Work Zone adjacent the development shall be submitted to Lane Cove Council for determination, prior to the commencement of any works that require construction vehicle and machinery movements to and from the site. The approval of application for a Work Zone by Council's Traffic Section must be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

**Attachment No. 1**

**Council's consultant architect's comments**

**Attachment No. 2**

**Acting Manager Traffic and Transport comments**

**Attachment No. 3**

**Council's notification policy**