

Environmental Services Division Report
Sydney East Joint Regional Planning Panel meeting of 26 March 2014
2014SYE005

Property: 390-398 Pacific Highway, Lane Cove

DA No: 2014SYE005 (DA13/205)

Date Lodged: 20 December 2013

Cost of Work: \$37,038,000.00

Owner: Tepazo Pty Ltd

Applicant: Tepazo Pty Ltd

Author: Rebecka Groth

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Demolition of existing commercial buildings and the construction of a residential flat building comprising 123 units and on-site parking for 196 vehicles
ZONE	R4 High Density Residential
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
BUSHLAND PRONE LAND?	No
BCA CLASSIFICATION	Class 2 and 7A
STOP THE CLOCK USED	4 days
NOTIFICATION	388 and 382 Pacific Highway 26A, 26, 22-24, 22A, 18-20, 14-16, 10 and 6-8 Longueville Road 2, 4, 6, 8, 9, 10 and 15 Mafeking Avenue 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18 and 20 Gatacre Avenue

	2, 4, 6, 8, 10, 12, 14, 16, 18 and 20 Kimberley Avenue Osborne Park Residents Association Incorporated Willoughby City Council East wards councillors
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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 regular in shape with an area of 2,575.60m². The site is located on the southern side of the Pacific Highway. The site falls from north to south by approximately 7.0m.
- It is proposed to demolish the existing commercial buildings and construct a residential flat building comprising 123 units (53 x 1 bed, 56 x 2 bed and 14 x 3 bed) and on-site parking for 196 vehicles
- The proposal is inconsistent with Council's Local Environmental Plan 2009 (LEP) with regard to the maximum permissible height.
- A draft LEP amendment is being considered by Planning and Infrastructure. The draft LEP is yet to be gazetted, however Lane Cove Council resolved to support a maximum height of 25.0m and a maximum FSR of 2.0:1. The proposal is inconsistent with the draft LEP amendment.
- The proposal does not meet the requirements of Council's Development Control Plan:

Part B – General Controls:

- Clause B7 Development near busy roads and rail corridors - Background noise levels within the development cannot be assessed as an acoustic report was not submitted.

Part C – Residential Flat Buildings

- Clause 3.5 Setbacks – the basement car park encroaches into the 6.0m setback
- Clause 3.5.3 - The basement extends more than 1.2m above the ground level and is within 2m of the setback zone. The DCP permits encroachments into setback zone of up to 2m for underground parking structures no more than 1.2m above ground level.

- Clause 3.9 Design of roof top area – The landscape plan and architectural plans do not correlate. The landscape plan shows a communal open space on the rooftop, the architectural plans do not reflect this space.
- Clause 3.11 Private Open Space – The primary balconies of several units do not achieve a minimum of 10m²
- Clause 3.12 Car parking, motorcycles and bicycle spaces – the proposal seeks to provide less car spaces than required, multiple tandem spaces and small car spaces
- Clause 3.15 Solar Access – The proposal does not meet the minimum solar access requirements and would result in unacceptable overshadowing of the surrounding properties
- Clause 3.18 Communal Open Space – The communal open space area is largely located below the ground level of the residential component of the development. The landscape plan shows a communal open space on the rooftop, the architectural plans do not reflect this space.

Part F – Access and Mobility

- Clause 3.3 – Public spaces and link to private properties – Details regarding the gradient at the Pacific Highway frontage is not provided.
- Clause 3.6 – Adaptable and visitable housing – the adaptable dwellings proposed are not equitably distributed throughout the proposal.
- The proposed development does not meet the SEPP 65 objectives for good design principles of context, scale, built form, density, resource, energy and water efficiency, amenity and social dimension.
- The following external referrals which have been considered.
 - Consulting architect for SEPP 65.
 - NSW Roads and Maritime Services
- A total of 33 objections have been received in response to the notification of the proposed development. Reasons for objection include:
 - The height and floor space ratio of the proposal is excessive
 - The proposal is inconsistent with the character of the precinct
 - Overshadowing to surrounding properties
 - Reduced privacy to surrounding properties
 - The proposal would result in additional congestion on the surrounding roads due to on-street parking and additional vehicular trips
 - Cumulative traffic impact of the proposal and adjoining development application
 - Design and visual impact of the proposal
 - Construction management concerns
- On 5 February 2014 the JRPP was briefed on the proposal.

- On 14 February 2014 Council received advice that a Class 1 Appeal has been lodged with the Land and Environment Court. Amended plans were included in the Appeal demonstrating the rearrangement of storage areas within the basement parking levels resulting in a FSR of 4.1:1 and amendments to address BCA concerns.
- The proposed development is recommended for refusal for the following reasons:
 - The proposal is not compatible with the desired streetscape and the residential flat building character of the locality.
 - The proposal does not comply with the maximum building height of the Lane Cove LEP or the draft LEP amendment which shows the site as having a maximum building height of 12m and 25.0m respectively. The proposal comprises a building height of 58.15m.
 - The proposal does not comply with the draft LEP amendment which shows the site as having a maximum floor space ratio of 2:1m and the proposal comprises a floor space ratio of 4.1:1.
 - Details have not been provided to satisfy Part B Clause B7 *Development near busy roads and rail corridors* of the DCP.
 - The proposed basement on the northern and southern elevations are setback a minimum of 4m, the DCP requires a setback of 6m due to the height of the podium.

The podium height proposed is excessive.

- The balconies for several units are less than the minimum of 10m²:
- The proposal does not comply with on-site car parking, motorcycle and bicycle spaces.
- The proposal does not comply with access to sunlight requirements and will result in overshadowing of surrounding properties.
- The proposed communal open space is situated approximately 6m below the finished floor level of the ground floor units. The area proposed at ground level would be in shadow and be an uninviting space.
- Significant plantings should be incorporated into the design of the landscape plan to reduce the visual impact of the proposal when viewed from Mafeking Avenue.

- Details of the proposed access ramp to the Pacific Highway are not provided.
- There are no adaptable units proposed on Levels 7 to 13 inclusive.
- The proposed design does not comply with the design quality principles of context, scale, built form, resource, energy and water efficiency and amenity of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.
- The applicant has not confirmed whether the non-compliances identified in the BCA report will be the subject of an alternate solution under the Building Code of Australia.
- The proposal would reduce the amenity of surrounding residents through reduced level of privacy and increased overshadowing.
- Insufficient Information has been submitted including geotechnical design review to assure that the tunnel infrastructure would not be affected by the proposed works
- Approval of the development application is not in the public interest having regard to the above matters.

SITE:

The site is bound by the Pacific Highway to the north-east and Mafeking Avenue to the south-west.

The description of the site is Lot 13, 14 and 15 in DP 1056023. The site is regular in shape with an area of 2,575.60m². The site has a frontage of 42.27m to the Pacific Highway, a 42.25m frontage to Mafeking Avenue and a depth of 60.96m.

The site falls from the Pacific Highway frontage to the Mafeking Avenue frontage by approximately 7.0m.

The site contains a one to two storey brick office building and 2 x 2 storey shop/office buildings orientated towards the Pacific Highway. Vehicular access to each allotment is available via Mafeking Avenue. There are several trees adjoining the rear boundary of the site. The easements for the Lane Cove Tunnel are situated underneath the site towards the north-eastern section of the site.

A Council walkway runs parallel to the site along the Pacific Highway frontage. Willoughby City Council adjoins the opposite side of the Pacific Highway. The

developments along this side of the Pacific Highway include a residential flat building and commercial development.

Towards the north west of the site are commercial and retail developments. A development application has been lodged immediately north of the site for a residential flat building comprising of 58 units within a 7 storey configuration (DA13/143). This application is likely to be determined in April. The land to the north and north west of the site fronting the Pacific Highway is zoned R4 High Density Residential, with the exception of 10 Longueville Road which is zoned RE1 Public Recreation.

Towards the south east fronting the Pacific Highway is a two storey brick shop and fronting Gatacre Avenue are two single storey dwelling houses. The remainder of Gatacre Avenue comprises a two storey motel and one to two storey dwelling houses. The land to the south-east of the site is zoned R4 High Density Residential.

Towards the south-west of the site are dwelling houses ranging from one to two storeys, this land is zoned R2 Low Density Residential.

PROPOSAL:

Proposed Development:

- Demolition of the existing commercial buildings
- Construction of a residential flat building
- Associated basement parking comprising of 192 car spaces
- Vehicular access to Mafeking Avenue.

Dwellings:

The proposed residential flat building would contain a total of 123 dwellings:

- 53 X 1 bedroom dwellings.
- 56 X 2 bedroom dwellings.
- 14 X 3 bedroom dwellings.

Of these dwellings, 25 dwellings would be adaptable.

PREVIOUS APPROVALS/HISTORY:

A review of Council's records indicates the site has been used for commercial purposes since 1982.

PROPOSAL DATA/POLICY COMPLIANCE:

Site area: 2,575.60m².

Lane Cove Local Environmental Plan 2009

Provisions	LEP	Draft LEP	Proposed	Compliance
Zone	R4 – High density residential	R4	Residential flat building development	Yes
Max FSR	4.1:1	2.0:1	4.1:1 (GFA: 10,559.96m ²)	Yes No
Max building height	12m	25m	58.15m	No No

The building height and FSR standards in the current LEP are incompatible to each other as the FSR of 4.1:1 is unachievable within a maximum building height of 12.0m. The draft LEP seeks to amend the two standards to complement each other, limit impacts to adjoining R2 Low Density Residential zone and create an acceptable streetscape by lowering the FSR to 2.0:1 and increasing the building height to a maximum of 25.0m.

The proposed building height of 58.15m and a FSR of 4.1:1 demonstrably exceeds the building height and FSR standards of the current LEP. The FSR of 4.1:1 was clearly an error in drafting under LEP 2009 and Council has sought to correct this anomaly since 2012. The proposal exceeds the building height and FSR of the draft LEP.

Lane Cove Development Control Plan

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. An acoustic report was not submitted	Details not provided
B8 – Safety & security	Required	Crime Prevention Through Environmental Design (CPTED) principles considered and satisfactory.	Complies

Part C3 – Residential Flat Buildings

Clause	Requirement	Proposed	Complies/ Comment
3.2 Density	Minimum site area 1500m ²	2,575.60m ²	Complies
3.3 Building depth	18m exclusive of any balcony	Complies	Complies
3.4 Building width	40m maximum fronting the street	Complies	Complies
3.5 Setback Pacific Highway	Minimum 7.5m	7.5m to building	Complies
Northern Side	6m up to 4 storeys 9m for 5-8 storeys	4m (Basement L1 and L2) 9m to building (G/L to L2) 9m (L3 to L6) 12m (L7) Min 11.5m (L8 to L15)	No Basement L1 and L2 are setback 4m Complies
Southern Side	6m up to 4 storeys 9m for 5-8 storeys	4m (Basement L1 and L2) 9m (G/L to L2) 9m (L3 to L6) 12m (L7) Min 12m (L8 to L15)	No Basement L1 and L2 are setback 4m Complies
Mafeking Avenue	Minimum 7.5m	7.5m	Complies

Clause	Requirement	Proposed	Complies/ Comment
3.5.3 General Parking Podium Height within setback zone.	Encroachments into setback zone of up to 2m may be permitted for underground parking structures no more than 1.2m above ground level.	Basement levels 1 and 2 extend beyond 1.2m above ground and are setback 4m from the northern and southern boundaries 3.6 to 3.9m adjoining Pacific Highway boundary 4m to 6.4m adjoining northern boundary 3.8 to 8.5m adjoining southern boundary 9.8m to 12m adjoining Mafeking Avenue boundary	No
3.6 Building separation within development	9m between non- habitable rooms and blank wall to any other window, well or balcony for 5-8 storeys up to 25m	NA There is only one building proposed on the site.	NA
3.8 Excavation	a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP. b) Excavation for major development is to be contained as close as practicable to the footprint of the development. c) NA d) Uses at ground level are to respond to the slope of the street by stepping frontages and entries to follow the slope.	The development does not relate to the topography of the land, minimal excavation is proposed Excavation is contained to the footprint of the basement parking	No

Clause	Requirement	Proposed	Complies/ Comment
	e) The extent of excavation proposed for underground uses should not compromise the provision of deep soil areas or landscaped areas for residential flat buildings.		Minimal deep soil planting is proposed
3.9 Design of roof top area	Detailed landscape plan required for roof top area	Landscape plan provided however this conflicts with the architectural floor plans provided	Error in plans
3.10 Size & mix of dwellings	<p>Minimum 40m²</p> <p>A mixture of 1, 2, & 3 bedroom dwellings should be provided</p> <p>At least 10% of each unit type is to be provided</p>	<p>Achieved</p> <p>53 x 1 bed = 43%</p> <p>56 x 2 bed = 45%</p> <p>14 x 3 bed = 11%</p>	<p>Complies</p> <p>Complies</p>
3.11 Private open space	<p>Primary balconies - 10m² with minimum depth 2m</p> <p>Primary terrace - 16m² with minimum depth 4m</p>	<p>01 = 9.5m²</p> <p>101 = 9.5m²</p> <p>201-601 = 9.5m²</p> <p>805-1305 = 9.89m²</p> <p>NA</p>	<p>No</p> <p>NA</p>
3.12 Number of car parking, motorcycle and bicycle spaces	<p>Required car parking spaces = 196 spaces</p> <p>53 x 1 bedroom dwellings = 53 spaces</p> <p>56 x 2 bedroom dwellings = 84 spaces</p> <p>17 x 3 bedroom dwellings = 28 spaces</p> <p>Resident spaces = 165 spaces</p>	<p>196 car spaces</p> <p>Resident = 166 car spaces</p> <p>Visitor = 30 car spaces</p>	No, but can be addressed by a condition

Clause	Requirement	Proposed	Complies/ Comment
	<p>Visitor 1 per 4 dwellings = 30.75 spaces = 31 spaces</p> <p>Required car parking spaces = 195.75 spaces</p> <p>1 motor cycle space per 25 car spaces (7.83 spaces required)</p> <p>1 bike locker per 10 dwellings (12.30 lockers required)</p> <p>1 Bike rail per 12 dwellings (9.84 rails required)</p>	<p>Motor cycle spaces = 9 spaces</p> <p>Bike store/rails = 24 spaces</p>	<p>No, but can be addressed by a condition</p> <p>Yes</p>
3.13 Ceiling heights	Minimum 2.7m	2.7m	Yes
3.14 Storage	<p>6m³ per 1 bedroom dwelling = 53 x 6m³ = 318m³</p> <p>8m³ per 2 bedroom dwelling = 56 x 8m³ = 448m³</p> <p>10m³ per 2 bedroom dwelling = 14 x 10 = 140m³</p> <p>Total required= 428m³</p> <p>50% (453m³) of the storage volume within the dwelling</p>	<p>Storage within units provided</p> <p>461.10m³ within basement</p>	<p>Yes</p> <p>Yes, additional storage provided within basement</p>
3.15 Solar access	Living rooms and private open spaces of 70% (86 dwellings) of the units to receive 3 hours of direct sunlight between 9am – 3pm on 21 June	<p>Approximately 50% This is in part due to the likely overshadowing adjoining development at 9 Mafeking Avenue. At least 25 units on the northern façade of the proposal would not receive 3 hours of sun on 21 June</p>	No

Clause	Requirement	Proposed	Complies/ Comment
	Maximum 10% (12 dwellings) dwellings with a southerly aspect	Units which have a southerly aspect: 21 dwellings including 10, 11, 110, 111, 210 to 610 (5 dwellings), 211-611 (5 dwellings), 706, 806-1306 (6 dwellings)	No
3.16 Natural ventilation	Minimum 60% (74 dwellings) of the dwellings should have cross ventilation.	Approximately 65%	Complies
	Minimum 25% (31 dwellings) of kitchens have access to natural ventilation	67 dwellings have access to natural ventilation	Complies
3.17 Visual privacy	Provide visual privacy between the adjoining properties		Complies
3.18 Communal open space	Minimum 25% (643.90m ²)	640m ² proposed in deep soil zone but this is approximately 6 to 10m below the ground floor The Landscape plan shows a rooftop communal area of approximately 89m ² however the roof top plan does not reflect this area	Complies. The area is provided but it is not considered to be practical/useable
3.19 Landscaped area	25% provided at ground level and up to 15% provided on structures (40% required)	Deep soil landscaping 640m ² (25%) Podium and roof top plantings 386m ² (15%)	Complies. Given the bulk and scale of the proposal, more significant plantings should be provided in the large ground floor podium planters to provide greater amenity and reduce building scale

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	Details of the access ramp to the Pacific Highway are not available/provided on the plans	No
3.5 Parking Provide 1 space for each adaptable housing unit.	DCP requires 25 adaptable dwellings and therefore 25 disabled car spaces	25 spaces provided on the plans	Complies
3.6 Adaptable and Visitable housing	Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings which would be 25 dwellings	25 adaptable units (20%)	Complies
	Adaptable housing to be equitably distributed throughout all types and sizes of dwellings	There are no adaptable units on levels 7 to 13 inclusive	No
	80% of the dwellings are to be visitable (98 dwellings)	101 proposed	Complies
3.7 Access to and within buildings	Access is required to common areas and all dwellings	Details of the access ramp to the Pacific Highway are not available/provided on the plans	No

REFERRALS:

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

Council's consulting architect has reviewed the proposal and advised that the proposed development does not meet the objectives of all the 10 planning principles of SEPP 65. The consultant architect advises the height of the proposal is a complete departure from the desired future character of the area. The resultant overshadowing and privacy impacts are not in the public interest. The proposal does not meet the objectives of

good design of the principles of context, scale, built form, density, resource, energy and water efficiency, amenity and social dimensions.

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

NSW Roads and Maritime Services

The application was referred to the NSW Roads and Maritime Services (RMS) who granted concurrence to the proposal subject to adequate geotechnical design review to assure that the tunnel infrastructure would not be affected by the proposed works. Further the RMS requires the applicant to undertake the following:

- Submit a construction traffic management plan,
- Submit swept path analysis, compliance with AS2890.1-2004,
- The proposal be designed such that road traffic noise from adjacent public roads is mitigated by durable materials,
- Obtain a Road Occupancy License,
- In the event the post development stormwater discharge from the subject site into the RMS system exceeds the pre-development discharge, detailed design plans and hydraulic calculations of any charges be submitted to the RMS for approval,
- Design drawings and documents relating to the excavation of the site and support structures to RMS for assessment,
- Landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath and all works/regulatory signposting associated with the proposed development are to be at no cost to the RMS.

In addition to the above the RMS also advised council should request the applicant to assess the impact of the proposal on the intersection of the Pacific Highway and Gatacre Avenue.

The RMS also advised that Council request the applicant assesses the impact of the proposal on the intersection of Pacific Highway and Gatacre Avenue **AT 2**.

Manager Strategic Planning

Council's Strategic Planner reviewed the proposal and advised the height exceeds both the current and draft height controls. Below is a brief summary relating to the FSR and height controls:

1. Council raised concern in 2011 with Planning and Infrastructure as the FSR and height were at odds with a good planning outcome. Council has modeled the height and FSR and considered the FSR of 2:1 and Height of 25m would achieve desirable development in line with the objectives of the LEP 2009.
2. Council sought Gateway approval, exhibited the DLEP and considered all submissions and resolved to make the plan.

3. The DLEP has been with Infrastructure and Planning since 2012. At the time of writing of this report, Planning and Infrastructure had not gazetted the draft LEP.
4. Notwithstanding the lack of advice by Planning and Infrastructure the current LEP 2009 standards are not considered appropriate and are not supported.
5. The proposal would have adverse impacts on adjoining land uses, be totally out of character with the current and proposed streetscape and intended character for this modest gateway to Lane Cove.
6. The site and area generally has never been considered as a gateway to the region as indicated by the proponent.

The objectives of the proposed height control of 58.15m are not supported and as such the Clause 4.6 objection is also not supported.

Manager Community Services

Council's Manager Community Services has reviewed the plans and has advised of the following concerns:

- There are no adaptable units on Levels 7 to 13 inclusive, they are not distributed throughout the development
- The pre-adaptive units would not be adapted at minimal cost
- Details regarding the access ramp to the Pacific Highway are not available and;
- Details of the location of letterboxes are not available.

Manager Urban Design and Assets

Council's Development Engineer has reviewed the proposal and has provided the following advice. The site has an RMS easement for tunnels and appurtenant structures covering the whole site below the horizontal plane at RL 88.9m AHD. A RMS easement for ground anchors exists below a plane at RL90m. A detailed analysis of the proposed development needs to be prepared and approved by the RMS to demonstrate that there would be no adverse effects on their infrastructure.

As a result of the abovementioned easements the information provided with this application is inconclusive as to whether this proposal is achievable from a structural perspective.

The stormwater concept plan provided with this application proposes an adequate system including on-site detention and rainwater reuse, however minor amendments are needed to relocate one stormwater pit and to include a gross pollutant trap.

An existing sewer pit conflicts with the proposed driveway. Approval from Sydney Water would be required for the impact on their asset. The driveway on Council property also conflicts with three existing street trees.

Traffic and Transport Manager

Council's Transport Planner reviewed the proposal and advises the main concern with the proposal is that the Traffic Impact Assessment (TIA) does not provide an analysis of the existing or future performance of local intersections.

Recent analysis of the Osborne Road / Pacific Highway intersection prepared by Traffix for the 9 Mafeking Ave development (DA13/143) shows this intersection currently operates at a poor Level of Service. The applicant has not provided SIDRA modelling to show how development traffic would affect local intersections and suitable mitigation measures.

The Transport Planner advises:

- A. The TIA does not consider the existing performance of the surrounding intersections and therefore does not acknowledge that some are already at, or close to, capacity. The proposed development will add traffic to the already busy intersections and further reduce their levels of service. The applicant *must* assess the impact of the development on the intersections using SIDRA and suggest appropriate mitigation measures where necessary.
- B. It has been observed that the southbound and eastbound route from the site via Osborne Road is convoluted and subject to local traffic management measures, which could make it unattractive to drivers. It is therefore suggested that southbound and eastbound trips are likely to turn left from Gatacre Ave to travel north on Pacific Highway then undertake a u-turn via Howarth Road to travel south/east. The impact of the development traffic generation on the Howarth Road intersection should be assessed.
- C. There are 13 small car spaces proposed for the development. Given the growing popularity of larger cars (eg. SUVs), small car spaces provide poor amenity to the residents and should be avoided where possible. The applicant must make every effort to provide standard car spaces whilst providing aisle widths compliant with AS2890.1.
- D. There are 42 pairs of tandem parking spaces (84 spaces in total). Tandem parking arrangements do not provide good amenity to residents. The inconvenience may cause residents to seek on-street parking on the nearby local roads, which must be avoided.
- E. The applicant proposes that one 3-bedroom unit will be allocated a single parking space. It is recommended that all 3-bedroom units are allocated at least 2 spaces as per Council's DCP Part C.
- F. The secured bike store on Basement Level 3 should be relocated closer to the entrance of the underground car park for the convenience of bicycle users.

- G. Council's DCP Part C Section 3.12 (c) states that residential flat buildings are to provide 1 bicycle locker for every 10 dwellings and 1 bicycle rack for every 12 dwellings. Given the proximity of the development to a State Bicycle Route it is considered that double this bicycle parking provision is appropriate in order to encourage non-car (bicycle) travel to and from the development and to minimise the risk of overspill parking on surrounding residential streets.
- H. It is noted that the TIA adopts a conservative approach to calculating the AM trip generation, which is consistent with the latest RMS AM trip rate (2013). However, it is recommended that the latest RMS PM trip rate of 0.41 vehicles per unit is adopted. This suggests that the development would generate roughly 50 vehicles per PM peak hour.
- I. The applicant is to confirm how the trip assignment proportions of traffic have been generated eg. Bureau of Transport Journey Work Data.

Manager Open Spaces

Council's Tree Assessment Officer reviewed the proposal and provided the following comments. There are no objections to this development application from an arboricultural perspective. The three allotments do not contain trees or gardens that would be considered worthy of retention. The Plans show removal of two trees on the site (adjacent to Mafeking Avenue) and the retention of one semi-mature Eucalyptus street tree (also adjacent to Mafeking Avenue). There are no objections to the removal of the two trees from the site or the street tree standing directly adjacent to the boundary line.

The street trees in Mafeking Avenue are vulnerable to mechanical damage during truck movement in the street.

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

The deep soil landscape area allowed for in the proposed development of 640m² (25%) complies with the DCP. The ground floor level incorporates significant podium landscape area which, combined with podium landscape at level 7 and the roof, offers additional 15% landscape area, meeting the 40% required by the DCP. However, given the bulk and scale of the proposal more significant plantings should be provided in the large ground floor podium planters to provide greater amenity and reduce building scale.

Manager Environmental Services

The Manager Environmental Services reviewed the contamination report prepared by JBS&G dated 18 December 2013 (reference No. 43205/56391) and raised no objection is raised to the proposal.

Council's Waste Contract Coordinator reviewed the proposal and raised no concern with it in relation to waste management.

Building Surveyor

Council's Senior Building Surveyor reviewed the proposal and advises there are a number of non-compliances mainly relating to extended exit travel distances and paths of travel that are identified in the BCA report.

The following non-compliances were identified requiring rectification on the architectural plans:

1. Fire hose reels are required to be located a maximum of 4m from an exit in accordance with Clause E1.4 of the BCA.
2. Indicate levels and gradients of external paving in accordance with Clause D1.10.
3. The cleaners/employee toilet located on basement 4 is require to be accessible and comply with AS1428.1-2009.
4. A Fire Control Centre is to be shown on the plans in accordance with Clause E1.8 and Spec 1.8.
5. A Sprinkler valve room and Hydrant pump room is to be shown on the plans in accordance with the relevant Australian Standard and Specification E1.5.

Further information was submitted by the applicant on 17 January 2014 which advised the above matters were capable of being addressed at the Construction Certificate Stage. Amended plans to address the above concerns were requested and subsequently submitted as part of the appeal documentation received by council on the 14 February 2014. Council's Senior Building Surveyor reviewed the amended plans and advised the amendments satisfied the above matters. The Surveyor advised the applicant had not confirmed whether the non-compliances identified in the BCA report will be the subject of an alternate solution under the Building Code of Australia.

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

Lane Cove Local Environmental Plan 2009

The proposed development is inconsistent with the desired future character, scale and bulk of the precinct. The desired future character of the precinct is reflected in the current LEP and Draft LEP standards.

Clause 2.2 - Zoning

The subject site is zoned R4 – High Density Residential under the provisions of Lane Cove Local Environmental Plan 2009. The objectives of the zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To ensure that the existing amenity of residences in the neighbourhood is respected.*
- *To avoid the isolation of sites resulting from site amalgamation.*
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

The proposed development does not meet the zone objectives. The proposal provides housing choice within the precinct however the units situated along the northern facade would not receive adequate solar access as a result of the proposed development at 9 Mafeking Avenue.

The proposal does not ensure the existing amenity of residences in the neighbourhood is respected. The proposal would result in a reduced level of amenity by way of overshadowing, visual intrusion and increased vehicular movements. The proposal is out of scale with the desired future character of the area. The proposal does not incorporate substantial landscaping to screen the proposal from surrounding properties.

Clause 4.3 - Height of Buildings

The maximum permissible height limit as per the current LEP is 12m. The draft LEP amendment seeks a height of 25m. The proposed development has a height of 58.15m which exceeds the maximum permissible height limit of the current LEP and the draft LEP.

Clause 4.4 - Floor Space Ratio

The proposed development complies with the maximum permissible floor space ratio of 4.1:1, having an FSR of 4.1:1. The draft LEP amendment as resolved by Council comprises an FSR of 2:1 which the proposal is inconsistent with.

Clause 4.6 – Exceptions to development standards

The applicant seeks to vary Clause 4.3 Height of Buildings. The building height as per the current LEP is 12m and the draft LEP is 25m. The proposal has a height of 58.15m.

Lane Cove Council has adopted a LEP which is in the standard instrument format. The Lane Cove Local Environmental Plan 2009 includes provision for variations to development standards via Clause 4.6. Clause 4.6 enables flexibility in applying certain development standards to particular developments to achieve better outcomes for and from development. Pursuant to Clause 64 of the Environmental

Planning and Assessment Regulation 2000, where the Council's standard LEPs includes Clause 4.6, the Director-General's concurrence can be assumed. The proposal would therefore require concurrence from Lane Cove Council for the variation to the building height.

The current LEP height of building map identifies the site as having a maximum building height of 12m. At the time of lodgement of the development application, December 2013, the maximum permitted building height applicable was 12m.

At the time of writing this report, the draft LEP amendment was being reviewed by Planning and Infrastructure in their Urban Feasibility Model and as such the Planning and Infrastructures support or otherwise for the draft LEP amendment is awaited. The draft LEP proposed and supported by Council has a height of 25m and an FSR of 2:1 for this site.

5 Part Test

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

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

The following assessment considers the objectives of clause 4.3:

- (1) *The objectives of this clause are as follows:*
 - (a) *to minimise any overshadowing, loss of privacy and visual impacts of development on neighbouring properties, particularly where zones meet, and*
 - (b) *to maximise sunlight for the public domain, and*
 - (c) *to relate development to topography.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) *Despite subclause (2), the maximum height for multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres.*

Minimise any overshadowing

Surrounding properties are situated in south and south-east of the proposed development site, it is considered reasonable that some overshadowing would be experienced by these surrounding properties.

The proposal incorporates a maximum building height of 58.15m. The applicant seeks to formally vary the permitted building height. The submitted shadow plans show the properties south and south-west of the site as being overshadowed throughout the day. It is noted that the extent of overshadowing on properties within Kimberley Avenue is not depicted on the submitted plans. The submitted shadow plans show properties on Mafeking Avenue, Gatacre Avenue, part of Kimberley

Avenue and the Pacific Highway as being partly in shadow throughout 21 June. The properties immediately to the south of the site that front Gatacre Avenue will be the most affected, being progressively overshadowed from 11.00am onwards. The properties to the west on the other side of Mafeking Avenue would be overshadowed in the morning all year round.

The cumulative impact of overshadowing throughout the year has not been demonstrated.

Minimise any loss of privacy and visual impacts

There is a minimum of 14.0m separation between the habitable rooms and balconies from the development application under consideration at 9 Mafeking Avenue situated immediately north of the site.

The proposal provides a minimum of 6.7m separation within the site to 388 Pacific Highway. The two storey commercial building situated on 388 Pacific Highway is built to the boundary. At the time of writing this report, Council refused a development application on this site for alterations to the existing building for retail and a boarding house (DA13/174). No changes are proposed along the shared boundary of the subject site. The ground floor of 388 Pacific Highway is to be retained as a commercial/retail space. The upper storey is to be converted to a Boarding House comprising 9 rooms. The balconies are proposed fronting the Pacific Highway.

The proposal provides a minimum of 14.0m between the habitable rooms and balconies to the properties immediately south-west of the site 3, 5 and 7 Gatacre Avenue.

The adjoining development being considered by Council at 9 Mafeking Avenue immediately north of the site has a lower finished floor level than the proposed development.

There is a minimum of 27.0m separation proposed between habitable rooms and balconies of the subject site and the properties located on the opposite side of Mafeking Avenue.

Due to the topography, the site is located approximately 2.0m above the properties on the opposite side of Mafeking Avenue. The topography, height of the podium and the 58.15m height of the proposed building, the building would result in an overbearing visual impact for the existing residents.

Maximise sunlight to the public domain

The submitted shadow plans show Mafeking Avenue and Gatacre Avenue as being overshadowed throughout the day. It is estimated that Butler Lane would also be overshadowed. Mafeking Avenue would be partly in shadow from 9am to 2pm and Gatacre Avenue would be in shadow from 10am on 21 June. The cumulative impact throughout the year on surrounding properties has not been demonstrated.

There are no other public domain areas which would be affected by shadow as a result of this proposal.

Relate to topography

The proposal as viewed from the Pacific Highway and Mafeking Avenue, steps up from the side boundaries of the site towards the centre of the site. The additional height proposed would detract from the desired future character of the area. The scale is inappropriate to the desired character of the area and to the surrounding properties.

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

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

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

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

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

This reason is not being relied upon.

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

This reason is not being relied upon.

Pursuant to Clause 4.6 the applicant has not demonstrated that compliance with the Building Height development standard is unreasonable in this instance and there are insufficient environmental planning grounds to justify contravening the development standard.

It is considered that the proposed development would not be in the public interest because it is inconsistent with the objectives for development within the R4 High Density Residential Zone and the objectives of Clause 4.3. It is recommended that the JRPP not assume the concurrence of the Director General in this instance.

It is considered that the proposal is unsympathetic to the existing developments and the desired future character of the Mafeking Avenue precinct.

Council's consultant architect advises this site has a local context in which a building of this scale would have detrimental consequences. The proposal departs from the LEP height control and is therefore out of scale with the desired future character of the area.

Lane Cove Development Control Plan

The preceding DCP assessment table indicates that the proposal complies with all the controls of the Development Control Plan with the exception of the following:

Part C

- Clause 3.5 requires the proposal to be setback a minimum of 6m up to 4 storeys. The proposal is setback a minimum of 4m to the northern and southern boundaries as a result of the podium level.

It is acknowledged that further excavation cannot occur as a result of the Lane Cove Tunnel laying beneath the site. However a reduced number of units would reduce the height of the on-site parking numbers and the podium.

This variation is not supported.

- Clause 3.5.3 permits encroachments into the setback zone of up to 2.0m for underground parking structures which are no more than 1.2m above existing ground level, where there is no unreasonable effect on streetscape.

The proposed car park is over 1.2m above the ground level and has a podium height of a minimum of 3.6m and a maximum of 12m. From Mafeking Avenue the podium height is 9.8m to 12.0m. The proposal has an unreasonable impact on Mafeking Avenue.

This variation is not supported.

- Clause 3.11 requires that primary balconies have a minimum area of 10m².

Several of the primary balconies proposed are less than 10m² as detailed below.

Unit	Private Open Space Provided
01	9.5m ²
101	9.5m ²
201, 301, 401, 501 and 601	9.5m ²
805, 905, 1005, 1105, 1205 and 1305	9.89m ²

This variation is not supported.

- Clause 3.15 requires the number of dwellings with a southerly aspect not exceed the maximum of 10% (12 dwellings).

The proposal includes 17% (21 dwellings) of the dwellings with a southerly aspect.

This variation is not supported.

Clause 3.15 requires new development not to unreasonably overshadow existing properties.

The proposal would result in extensive overshadowing of properties to the south and west throughout the year.

This variation is not supported.

- Clause 3.18 requires that communal open space be provided which is useable and attractive.

The communal open space is substantially located approximately 6.0m below the ground level of the residential component of the building. This space is not considered to be attractive and denied of amenity.

This variation is not supported.

Part F

- Clause 3.6 requires that adaptable units are equitably distributed throughout the development.

The adaptable dwellings are not distributed evenly throughout the proposal, there are no adaptable units on levels 7 to 13 inclusive.

This variation is not supported.

- Clause 3.7 requires that access is required to all common areas and all dwellings.

Details of the access ramp to the Pacific Highway are not available.

This uncertainty is not 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. In the event the

application is supported, the Section 94 Contribution would be calculated and provided to the JRPP.

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 does not comply with the provisions of Lane Cove Local Environmental Plan 2009 and the Lane Cove Development Control Plan. The proposed development does not meet all the design quality planning principles of State Environmental Planning Policy 65. The proposed development is not in accordance with the emerging scale and future character of the area.

The increase in traffic on Mafeking Avenue would have an adverse impact upon the existing traffic on the road network of nearby streets including the Pacific Highway.

A total of 33 objections were received in response to the notification of the proposed development. The objections are substantially with regard to site suitability, non-compliance with the LEP, traffic and parking impacts, reduced amenity, construction management and the likely impact on the Lane Cove Tunnel.

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

The site is zoned R4 - High Density Residential in which residential flat buildings are permissible. The LEP prescribes that the site has a maximum height of 12.0m and an FSR of 2.1:1. The proposal incorporates a building height of 58.0m and an FSR of 4.22:1. As a result of the Lane Cove Tunnel infrastructure and the number of units proposed, approximately 12m of the basement parking level would be visible from Mafeking Avenue. The proposal is likely to result in an unacceptable traffic impact on neighbouring streets and would result in a reduced level of amenity for residents.

The site is not considered to be suitable for the proposed development.

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

The proposal was notified in accordance with Council's notification policy. A total of 33 objections have been received in response to the notification of the proposed development.

The issues raised in the objections are indicated below:

- *The proposed development is 58.15m high. This is more than twice the allowable height under the Lane Cove LEP (being 25m).*

Comment: The proposal does not comply with the height adopted under the LEP.

- *The proposed building would change the look of the street*

Comment: The proposed building is not considered to be consistent with the desired future character of the precinct with regards to height and FSR.

- *The redevelopment of the site is capable of accommodating additional height and FSR over the draft LEP amendment and over the existing LEP limit*

Comment: The site is subject to development standards relating to FSR and height. It is acknowledged that Infrastructure and Planning are undertaking a review of the current 12.0m height limit and 4.1:1 FSR.

- *The height of the proposed development will be exacerbated by the elevation of the site.*

Comment: The site constraints with regards to slope and context to nearby properties have been considered in the assessment of the application.

- *The design of the facades of the parking proposed at the ground level requires careful treatment. Given the slope of the site and the tunnel infrastructure below some above ground level parking is expected however if not carefully treated the visual impact of the above ground car park level facades will be negative from the streets and adjoining developments.*

Comment: A portion of the basement car parking would extend beyond the ground level of this site as a result of the Lane Cove Tunnel infrastructure and the number of car spaces provided.

- *The proposal will lead to further traffic congestion, increased on-street parking from commuters, visitors and construction workers, traffic delays and will pose safety issues to pedestrians as there are no formal pedestrian pathways within Mafeking Avenue. These impacts will be exacerbated by the adjoining development proposal at 9 Mafeking Avenue.*

Comment: The NSW Roads and Maritime Services advised Council it should request that the applicant assess the impact of the proposal on the intersection of Pacific Highway and Gatacre Avenue.

- *The applicant has used the old RTA Guide Lines to forecast the number of vehicular movements generated by the new development.*

Comment: Council's Traffic and Transport Manager has raised concern regarding the calculations used in the traffic report.

- *Council should increase its minimum on-site parking requirements for this proposal*

Comment: Council does not intend to vary the required on-site parking spaces in this instance.

- *Can Mafeking Avenue accommodate heavy vehicles when it has a 3.0 tonne limit?*

Comment: The 3 tonne limit was introduced to prevent short cuts being taken through Mafeking Avenue.

- *Will the 4.0pm no left turn onto Longueville Road be removed or altered?*

Comment: There are no plans to alter this arrangement.

- *Parking on Mafeking Avenue should be restricted to one side of the street only and with a residents parking scheme*

Comment: There are no plans to alter the current parking arrangements for Mafeking Avenue.

- *Concern raised regarding construction management, parking of construction vehicles within the surrounding streets and illegally within private property, working within the construction hours, impacts on traffic flow during construction*

Comment: Construction management has not been adequately addressed by the applicant.

- *The use of Gatacre Avenue as access for construction vehicles to and from the Pacific Highway would be detrimental to surrounding businesses as a result of noise and inconvenience to customers*

Comment: It is likely that the construction phase of the development would cause disruption to surrounding residences and businesses.

- *Heavy vehicles should not arrive to the site prior to 8am*

Comment: The application is not being recommended for approval however the Council has adopted hours in which construction work may occur being from 7am Monday to Friday and 8am on Saturday.

- *The proposal would impact upon the public transport system*

Comment: The proposal is likely to increase the demand on public transport system.

- *Comparisons between the proposed development and 450 Pacific Highway, Artarmon cannot be made as this building is isolated with no immediate neighbours and has vehicular access from the Pacific Highway which has the capacity to service such a large development*

Comment: The application includes comparisons between the proposal and a nearby development outside of the Lane Cove Council Local Government Area to justify the varying the applicable controls.

- *The proposal will significantly affect the privacy of nearby residents*

Comment: The proposal would reduce the amenity of surrounding residents as the scale of the proposal is significantly higher than the surrounding developments.

- *Solar access to surrounding properties will be reduced as a result of the proposal. This will be exacerbated by the adjoining development at 9 Mafeking Avenue*

Comment: It is agreed that solar access of the surrounding will be reduced as a result of the proposal.

- *The proposed floor space ratio is 4.1:1 which exceeds the allowable FSR of 2.1:1*

Comment: The proposal does not comply with the FSR of 2.1:1 as per the draft LEP.

- *The noise generated by construction vehicles would impact upon the amenity of residents. An acoustic report was not submitted with the development application*

Comment: Construction vehicles would result in noise impacts to the surrounding properties. An acoustic report was not submitted with the application.

- *The dust generated by the construction of the development will impact surrounding residents*

Comment: The application is recommended for refusal. In the event the application is modified to address the non-compliances raised, a condition requiring the management of dust during work would be imposed.

- *Ventilation of surrounding properties will be affected by the development*

Comment: Given the separation between the subject site and surrounding residences, the impact on ventilation is considered to be acceptable.

- *The proposed setbacks are not sufficient for such a high development*

Comment: The proposed setbacks of the majority of the building comply with the DCP. The proposed basement parking Levels 1 and 2 do not comply with the required DCP setbacks due to their height above ground level.

- *Has there been an assessment of the impact upon the Lane Cove Tunnel as a result of this development?*

Comment: An assessment of the likely impact on the Lane Cove Tunnel has not been submitted with the application.

- *Will the development impact the water mains or geologic foundations?*

Comment: Sydney Water would review any development in relation to the impact on water mains. The applicant has not provided a geotechnical report.

- *If the development is to proceed the land bound by Gatacre Avenue, Pacific Highway, Epping Road and Phoenix Streets should be rezoned*

Comment: Rezoning of land cannot be considered in conjunction with this application.

- *There are discrepancies between the number of trees to be removed in the landscape plan (ground floor plan) and the basement 3 plan*

Comment: The landscape plan details two trees for removal and the basement 3 plan details three trees for removal outside the site adjoining the boundary to Mafeking Avenue.

- *The trees within Council's reserve situated at the rear of 390 and 394 Pacific Highway should be retained for screening purposes*

Comment: The applicant is seeking consent to remove the trees adjacent to the rear boundary of the site.

- *The landscaping plan includes non-native plants and should be revised in accordance with Council's landscape policy*

Comment: Council's Landscape Architect did not raise concern with the landscape species proposed.

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

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

The proposal is not considered to be in the public interest.

CONCLUSION

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

The height and density proposed are not suitable for the site. The proposal is a departure from the desired future character for the area.

The proposal is likely to result in an unacceptable traffic impact on neighbouring streets and would result in a significant reduced level of amenity for residents.

The impact upon the infrastructure of the Lane Cove Tunnel is unknown.

The applicant has failed to justify why council should support an amendment to the draft LEP being sought from Planning and Infrastructure.

The proposal does not meet the objectives of good design of the principles of context, scale, built form, density, amenity and social dimensions of State Environmental Planning Policy No. 65.

The proposal does not comply with the provisions of Lane Cove Council's Local Environmental Plan 2009, the draft LEP amendment and the Lane Cove Development Control Plan. The existing height and FSR gazetted by the Planning and Infrastructure in 2009 was clearly an error and any attempt to capitalise on such would not be in the interest of residents, Lane Cove or good planning practice.

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 refuse the Development Application DA13/205 for a 15 storey residential building on 4 levels of basement car park (123 apartments) on Lots 13, 14 and 15 in DP 1056023 and known as 390-398 Pacific Highway, Lane Cove for the following reasons:

Height

1. The development application should be refused because the height of the proposed development is excessive and does not comply with the standard for maximum height in clause 4.3 of Lane Cove Local Environmental Plan 2009 ("LEP 2009").
 - (a) Pursuant to *Height of Buildings Map – Sheet HOB_003*, referred to in clause 4.3(2) of LEP 2009, the maximum permissible height for the site is 12 metres.
 - (b) The height of the proposed development is 58.15 metres which exceeds the maximum height permissible by 46.15 metres.
 - (c) The Applicant's written request pursuant to clause 4.6(3) of LEP 2009 seeking to justify the contravention of the development standard in

clause 4.3(2) of LEP 2009 is not well founded and does not demonstrate:

- (i) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (ii) That there are sufficient planning grounds to justify contravening the development standard.

2. The development application should be refused because the height of the proposed development is excessive and does not comply with the proposed standard for maximum height in the Draft Local Environmental Plan 2009 Amendment No. 8 ("Draft LEP 2009 Amendment No. 8").

- (a) Pursuant to the *Draft Height of Buildings Map – LEP 2009 Sheet HOB_003* under Draft LEP 2009 Amendment No. 8, the proposed maximum permissible height for the site is 24 metres.
- (b) The height of the proposed development (58.15 metres) exceeds the proposed maximum height standard under Draft LEP 2009 Amendment No. 8 by 33.15 metres.

Floor Space Ratio

3. The development application should be refused because the floor space ratio of the proposed development is excessive and does not comply with the proposed standard for maximum floor space ratio in Draft LEP 2009 Amendment No. 8.

- (a) Pursuant to the *Draft Floor Space Ratio Map - LEP 2009 Sheet FSR_003* under Draft LEP 2009 Amendment No. 8, the proposed maximum permissible floor space ratio for the site is 2.0:1
- (b) The floor space ratio of the proposed development is 4.1:1 which exceeds the maximum floor space ratio standard under Draft LEP 2009 Amendment No. 8 by 5,408.76m².

Setbacks

4. The development application should be refused because the setbacks of the proposed development are inadequate and do not comply with the provisions for setbacks in clause 3.5 in Part C3 of Lane Cove Development Control Plan 2010 (“LCDCP 2010”)
 - (a) The setbacks of the basement levels which extend above ground level to the boundary at the Pacific Highway and to the boundary at Mafeking Avenue are 5.5 metres.
 - (b) Basement L1 and L2 extend more than 1.2 metres above ground level.
 - (c) The podium height of the basement car park is:
 - 3.6 – 3.9 metres at the Pacific Highway elevation;
 - 4 - 6.4 metres at the northern elevation;
 - 3.8 – 8.5 metres at the southern elevation; and
 - 9.8 - 12 metres at the Mafeking Avenue elevation.
 - (d) The setback of the basement levels which extend above ground level to the northern and southern boundary are 4 metres.

Bulk and Scale

5. The development application should be refused because the bulk and scale of the proposed development is excessive (as a result of the excessive height, excessive floor space ratio and inadequate setbacks) which results in an overdevelopment of the site and the proposed development does not satisfy the design principles for “Scale” and “Built Form” in clauses 10 and 11 of State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (“SEPP 65”).

Character

6. The development application should be refused because the proposed development, in terms of its excessive height and floor space ratio is inconsistent with the existing and desired future character of the area and does not satisfy the design principle for “Context” in clause 9 in SEPP 65.

The area to the south-west of the proposed development is zoned R2 Low Density Residential and is characterised by low density, single dwellings.

Car Parking and Car Park Design

7. The development application should be refused because the proposed development does not provide adequate on-site parking and does not comply with the provisions for Number of Car Parking, Motorcycle and Bicycle Spaces in clause 3.12 in Part C3 of LCDCP 2010.
 - (a) The proposed development requires 31 visitor car parking spaces to be provided however only 30 visitor car parking spaces are provided.
 - (b) One 3-bedroom unit of the proposed development is proposed to be allocated with a single car parking space however 2 car parking spaces are required.
 - (c) The proposed development is located in close proximity to a State Bicycle Route. It is considered that 2 bicycle lockers should be provided for every 10 units and 2 bicycle racks should be provided for every 12 dwellings to adequately facilitate and encourage the use of bicycle travel and to minimise the risk of overspill parking on surrounding residential streets.
8. The development application should be refused because the design of the on-site car parking for the proposed development is unacceptable and is likely to have an adverse impact on the amenity of future residents and visitors to the proposed development.

- (a) The proposed development includes 42 pairs of tandem car parking spaces (84 car parking spaces in total) which are likely to have an adverse impact on the amenity of future residents of the proposed development in terms of convenient access to those spaces.
- (b) The proposed development provides 13 small car parking spaces which are likely to have an adverse on the amenity of future residents of the proposed development in terms of access to those spaces.
- (c) The location of the secured bike store on basement L3 is not acceptable and should be located closer to the entrance of the underground car park.

Private Open Space

- 9. The development application should be refused because the private open space to a number of the units of the proposed development is inadequate and does not comply with the provisions for Private Open Space clause 3.11 in Part C3 of LCDCP 2010.
 - (a) The balconies for units 01, 101, 201, 301, 401, 501, 601, 805, 905, 1005, 1105, 1205 and 1305 have an area of less than 10m².

Solar Access

- 10. The development application should be refused because solar access to the proposed development is inadequate and the proposed development does not satisfy the design principles for “Resource, energy and water efficiency” and “Amenity” in clauses 13 and 15 of SEPP 65, the provisions for “Daylight Access” in the Residential Flat Design Code (“RFDC”) or the provisions for solar access in clause 3.15 in Part C3 of LCDCP 2010.
 - (a) The proposed development on the adjoining property at 9 Mafeking Avenue, Lane Cove (subject of Land and Environment Court Proceedings No 10141 of 2014) will significantly overshadow the proposed development with an estimated 25 additional units on the

north façade of the proposed development not receiving 3 hours of direct sunlight on 21 June. The percentage of units that will receive less than 3 hours direct sunlight on 21 June will be 50% (62 units).

- (b) The percentage of units with a single-aspect southerly aspect is 17% (21 units).

Communal Open Space

- 11. The development application should be refused because the communal open space for the proposed development is inadequate and is inconsistent with objective 3 of clause 3.18 in respect of Communal Open Space in Part C3 of LCDCP 2010.

- (a) The communal open space for the proposed development is situated approximately 6 metres below the finished floor level of the ground floor units and is likely to be overshadowed by the proposed development and is therefore considered to be impractical and uninviting.

Landscaped Area

- 12. The development application should be refused because the landscaped area of the proposed development is inadequate and does not satisfy the design principles for “Landscape” in clause 14 of SEPP 65 and is inconsistent with objectives 1, 2 and 3 of clause 3.19 in respect of Landscaped Area in Part C3 of LCDCP 2010.

- (a) Having regard to the bulk and scale of the proposed development, the proposed development does not incorporate sufficient significant planting into the design of the landscaped area and the large ground floor podium planters in order to reduce the visual impact of the proposed development when viewed from Mafeking Avenue.

Excavation

13. The development application should be refused because the excavation for the proposed development is inconsistent with objective 3 of clause 3.8 in respect of Excavation Part C3 of LCDCP 2010.
 - (a) The proposed excavation works do not relate to the topography of the land and minimal excavation is proposed having regard to Lane Cove Tunnel which runs underneath the site.

Accessibility

14. The proposed development should be refused because it has not been demonstrated that the proposed development will provide adequate accessibility between public and private spaces and therefore compliance with clause 3.3 in Part F of LCDCP 2010.
 - (a) Details of the access ramp to the Pacific Highway are not provided on the plans.

Adaptable Housing

15. The development application should be refused because the proposed development does not comply with the provisions for Adaptable and Visitable Housing in clause 3.6 in Part F of LCDCP 2010.
 - (a) The proposed development does not provide any adaptable units on levels 7 to 13 inclusive.

Amenity of Adjoining Properties

16. The development application should be refused because the proposed development is likely to have an unacceptable impact on the properties to the south and west of the site as a result of its excessive bulk and scale and is

inconsistent with the fifth objective of the R4 High Density Residential Zone under the provisions of LEP 2009.

- (a) The properties immediately to the south of the subject site which front onto Gatacre Avenue would be progressively overshadowed by the proposed development from 11 am onwards.
- (b) The properties to the west of the site on Mafeking Avenue would be overshadowed by the proposed development in the morning all year round.
- (c) The cumulative effect of the overshadowing of the proposed development and the proposed development at 9 Mafeking Avenue is likely to have an unacceptable impact on the amenity of surrounding properties.
- (d) The properties in the adjoining low density residential locality are likely to be adversely impacted by the proposed development in terms of privacy, increased vehicular movement and the visual impact of a 58 metre building.

Building Code of Australia

17. The development application should be refused because it was not demonstrated that the proposed development will comply with the provisions of the Building Code of Australia.

- (a) The Applicant has not confirmed whether the non compliances identified in the BCA report would be the subject of an alternate solution under the Building Code of Australia.

Suitability of the Site

18. The development application should be refused because the site is not suitable for the proposed development particularly having regard to the abovementioned reasons.

Insufficient information

19. The development application should be refused because insufficient information has been provided to enable a proper assessment of the development application.
- a) The Applicant has not provided a geotechnical design review to assure that the Lane Cove tunnel infrastructure would not be adversely affected by the proposed development.
 - b) The Applicant has not provided a construction traffic management plan.
 - c) The Applicant has not provided a swept path analysis demonstrating compliance with AS2890.1-2004.
 - d) The Applicant has not provided evidence that the proposed development is designed such that road traffic noise from adjacent public roads is mitigated by durable materials, and that the proposed development complies with clause B.7 in Part B of LCDCP 2010.
 - e) The Applicant has not provided design drawings and documents relating to the excavation of the site and support structures.
 - f) The Applicant has not provided sufficient detail to assess the impact of the proposed development on the intersections of Pacific Highway and Gatacre Avenue.
 - g) The Traffic Impact Assessment provided by the Applicant does not provide an analysis of the existing or future performance of local intersections. The impact of the development on the intersections using SIDRA is required and appropriate mitigation measures should be provided where necessary.

- h) The Traffic Impact Assessment has not adopted the latest Road and Maritime Services PM trip rate of 0.41 vehicles per unit.
- i) The Traffic Impact Assessment has not addressed the impact of the development on the Howarth Road intersection. The southbound and eastbound route from the site via Osborne Road is convoluted and subject to local traffic management measures. It is suggested that southbound and eastbound trips are likely to turn left from Gatacre Ave to travel north on Pacific Highway then undertake a u-turn via Howarth Road to travel south/east.
- j) The Applicant has not submitted information as to how the trip assignment proportions of traffic have been generated eg. Bureau of Transport Journey Work Data.

Inadequate Plans

- 20. The landscape and architectural plans submitted in relation to the proposed development do not reflect the same information regarding the communal roof top area.

Precedent

- 21. The development application should be refused because approval of the development application will set an undesirable precedent for similar inappropriate development in the area.

Public Interest

- 22. The development application should be refused because approval of the development is not in the public interest having regard to the contentions raised in the proceedings, in particular, the significant non-compliance with

the standard for maximum height and the number and nature of the submissions received in relation to the proposed development.