



LOFTEX

**EMBASSY TOWER
1-13A MARSHALL AVENUE
ST. LEONARDS**

ACCESS REVIEW

Morris-Goding Accessibility Consulting

FINAL

21 November 2014

REPORT REVISIONS		
Date	Version	Drawing No / Revision
21.11.2014	Final	DA001 (28.08.14), DA002 (28.08.14), DA003 (20.11.14), DA004 (20.11.14), DA005 (20.11.14), DA006 (20.11.14), DA007_1 (20.11.14), DA008_1 (20.11.14), DA009_1 (20.11.14), DA010_1 (20.11.14), DA011 (28.08.14), DA012_1 (20.11.14), DA013_1 (20.11.14), DA014_1 (20.11.14), DA015_1 (20.11.14), DA016_1 (20.11.14), DA017_1 (20.11.14), DA018 (28.08.14), DA019 (20.11.14), DA020 (20.11.14), DA021 (28.08.14), DA022 (28.08.14), DA023_1 (20.11.14), DA024 (20.11.14), DA025_1 (20.11.14), DA026_1 (20.11.14), DA027_1 (20.11.14), DA028 (20.11.14), DA029 (28.08.14), DA030 (28.08.14), DA031 (28.08.14), DA032 (28.08.14), DA033 (28.08.14), DA034 (28.08.14), DA036 (28.08.14), DA037 (28.08.14), DA038 (28.08.14), DA060_1 (20.11.14), DA061_1 (20.11.14), DA062_1 (20.11.14), DA063_1 (20.11.14), DA064_1 (20.11.14), DA065_1 (20.11.14), DA072 (20.11.14)

This report prepared by:



Stefan van Vliet
Access Consultant
Morris Goding Accessibility Consulting

Reviewed by:



David Goding
Director
Morris Goding Accessibility Consulting

TABLE OF CONTENTS

1.	EXECUTIVE SUMMARY	4
2.	INTRODUCTION	5
3.	INGRESS & EGRESS	7
3.1.	General	7
3.2.	Low Rise Building Level 0 Pedestrian Entry	7
3.3.	High Rise Building Marshall Avenue Pedestrian Entry	7
3.4.	Low Rise Building Level 1 Pedestrian Entrances	7
3.5.	High Rise Building Level 1 Pedestrian Entrances	8
3.6.	Emergency Egress	9
4.	PATHS OF TRAVEL	10
4.1.	Low Rise Building	10
4.2.	High Rise Building	10
4.3.	Doors	11
5.	ACCOMMODATION	12
5.1.	Residential Units	12
5.2.	Adaptable Unit Design	12
5.3.	Typical Adaptable Unit 1 (10x 1 Bed - DA060_1)	12
5.4.	Typical Unit 2 (7x 1 Bed – DA061_1)	13
5.5.	Typical Unit 3 (13x 2 bed – DA062_1)	13
5.6.	Typical Unit 4 (9x 3 bed – DA063_1)	14
5.7.	Typical Unit 5 (13x bed – DA064_1)	15
5.8.	Typical Unit 6 (4x 3 bed – DA065_1)	16
5.9.	Visitable Units	16
6.	COMMON USE FACILITIES	18
6.1.	General	18
6.2.	Low Rise Building - Function and Meeting Room	18
6.3.	Low Rise Building - Gym	18
6.4.	Garbage Areas	19
6.5.	Mailbox Areas	19
6.6.	Storage	19
7.	COMMERCIAL/RETAIL	20
7.1.	General	20
7.2.	Commercial Entry	20
7.3.	Paths of Travel	20
7.4.	Toilet Facility	20
8.	CAR PARKING	21
8.1.	General	21
8.2.	Residential Car Parking	21
8.3.	Residential Visitor Car Parking	21
8.4.	Retail Car Parking	21

1. EXECUTIVE SUMMARY

The Access Review Report is a key element in design development of Embassy Tower, 1-13A Marshall Avenue, St Leonards and an appropriate response to the AS1428 series, Building Code of Australia (BCA), DDA Access to Premises Standards (including DDA Access Code and ultimately the Commonwealth Disability Discrimination Act (DDA).

Morris-Goding Accessibility Consulting has prepared the Access Report to provide advice and strategies to maximise reasonable provisions of access for people with disabilities.

The development has been reviewed to ensure that ingress and egress, paths of travel, circulation areas, toilets, adaptable units and parking comply with relevant statutory guidelines.

In general, the development has accessible paths of travel that are continuous throughout. In line with the reports recommendations, the proposed development has demonstrated an appropriate degree of accessibility. The Development Application drawings indicate that compliance with statutory requirements, pertaining to site access, common area access, accessible parking and adaptable units, can be readily achieved.

The recommendations in this report are to be developed in the ongoing design development and should be confirmed prior to construction certificate stage. As the project proceeds, further review of documentation is strongly recommended to ensure that appropriate access is provided to and throughout the development.

The main recommendations that have arisen from the access review include:

- (i) Ensure all corridor ends have a minimum 1540mm x 2070mm turning area suitable for a person in a wheelchair to perform 180° turns in accordance with the DDA Premises Standards.
- (ii) Ensure the high rise ground floor and low rise level 1 common corridors have sufficient clear width to allow wheelchair users to perform a 90° turn at change of directions, compliant with AS1428.1-2009.
- (iii) Ensure the common use resident toilet facilities have sufficient internal dimensions, to accommodate a minimum 1900mm x 2300mm unobstructed circulation area around the toilet pan, compliant with AS1428.1-2009.
- (iv) Ensure the commercial passenger lift has minimum 1400mm x 1600mm internal dimensions, compliant with BCA and DDA Premises Standards.
- (v) Ensure the accessible bedroom in the nominated adaptable residential units have increased internal dimensions, to provide the required clearances and wheelchair circulation areas, in line with AS4299.

2. INTRODUCTION

2.1. General

Loftex has engaged Morris-Goding Accessibility Consulting to provide a design review of the proposed residential development Embassy Tower, located at 1-13A Marshall Avenue, St Leonards.

From the information provided, the proposed development consists of two residential buildings, with 3 basement car parking levels underneath.

The development accommodates a total 269 residential units. The low rise building contains a total of 52 residential units spread over 7 floors. The high rise building contains a total of 217 residential units spread over 29 floors.

The requirements of the investigation are to:

- Review supplied drawings of the proposed development.
- Provide a report that will analyse the provisions of disability design of the development, and
- Recommend solutions that will ensure the design complies with the Federal Disability Discrimination Act (DDA), DDA Access to Premises Standards (including DDA Access Code), Building Code of Australia (BCA) and AS 1428 series.

2.2. Objectives

The report considers user groups such as residents and residential visitors. The Report attempts to deliver equality, independence and functionality to people with disabilities inclusive of:

- People with sensory impairment (hearing and vision)
- People with mobility impairments (ambulant and wheelchair)
- People with dexterity impairments

The Report seeks to provide compliance with the DDA. In doing so, the Report attempts to eliminate, as far as possible, discrimination against persons on the ground of disability.

2.3. Limitations

This report is limited to the accessibility provisions of the buildings in general. It does not provide comment on detailed design issues, such as: internals of accessible, fit-out, lift specification, slip resistant floor finishes, door schedules, hardware and controls, glazing, luminance contrast, stair nosing, TGSI's, handrail design, signage, hearing augmentation etc. that will be included in construction documentation.

2.4. Statutory Requirements

The following standards are to be used to implement the Report:

- AS 1428.1:2009 (General Requirements for Access-New Building Work)
- AS 4299:1995 (Adaptable Housing Code)
- AS 1735.12:1999 (Lifts, Escalators, & Moving Walks)

- AS 2890.6:2009 (Off Street Parking for People with Disabilities)
- BCA – Building Code of Australia 2013
- DDA Access to Premises Standards 2010
- Lane Cove Council DCP Part F 2011

3. INGRESS & EGRESS

3.1. General

The development is bound by Marshall Lane to the North, Canberra Avenue to the East and Marshall Avenue to the South.

The low rise and high rise building each have a separate main pedestrian entrance, which are both located along Marshall Avenue public footpath.

Alternatively, access into the building is provided from the Marshall Lane and the common use outdoor area on level 1 of the development.

3.2. Low Rise Building Level 0 Pedestrian Entry

The main pedestrian entry to the low rise building is set back from the Marshall Avenue public footpath.

There appear to be a level (no steeper than 1:40) accessible path of travel from the public footpath to the building entry sliding doorway.

In general, there is a continuous accessible path of travel from the entry door to the two passenger lift lobbies and the entry door of each of the residential units on the ground floor of the low rise building, compliant with BCA D3.2.

Recommendation:

- (i) Ensure the path from the public footpath to the building entrances has gradients of no steeper than 1:40, to comply with AS1428.1-2009.

3.3. High Rise Building Marshall Avenue Pedestrian Entry

The pedestrian entry to the high rise building is set back from the Marshall Avenue public footpath.

There is a level (no steeper than 1:40) accessible path of travel from the public footpath to the building entry sliding doorway.

In general, there is a continuous accessible path of travel from the entry sliding door to the bank of passenger lifts, to the mail room, office and to the entry doors of most of the sole occupancy units on the ground floor of the high rise building, compliant with BCA D3.2.

3.4. Low Rise Building Level 1 Pedestrian Entrances

In general there is a continuous accessible path of travel from Marshall Lane public footpath to the western and eastern level 1 entry lobby of the low rise building.

Western Entry Lobby

The 1:20 graded walkway provides a suitable accessible path of travel from the Marshall Lane public footpath to the communal terrace in front of the door to the western entry lobby of the low rise building, compliant with AS1428.1-2009.

The communal terrace has sufficient unobstructed circulation areas to allow wheelchair users to perform a 360° turn and to access the entry doorway.

Internally, a 1:14 gradient ramp provides access to the level 1 lift lobby of the western lobby of the building.

Review is required, to ensure the entry door has sufficient internal latch side clearances. The ramp does also require review to ensure the provisions of handrails along the full length on both sides of the ramp and the provision of suitable turning circulation areas at the top and bottom of the ramp, compliant with AS1428.1-2009.

Eastern Entry Lobby

The entry gate along Marshall Lane provides direct access to the common outdoor area located on level 1, between the low rise and high rise buildings.

The 1:14 gradient ramp provides access from the common outdoor area to the entry door of the level 1 eastern entry lobby of the low rise building. The ramp has sufficient clear width and landing areas, compliant with AS1428.1-2009.

Review is required, to ensure the ramp and adjacent stairs are appropriately set back or have suitable barriers to allow handrails with required extensions on both sides, compliant with AS1428.1-2009.

Internally, a 1:14 gradient ramp provides access to the level 1 lift lobby of the eastern lobby of the building.

Review is required, to ensure the entry door has sufficient internal and external latch side clearances and that handrails can be installed along the full length and on both sides of the internal ramp, compliant with AS1428.1-2009.

Additionally, the corridor adjacent the bulk waste room provides direct access to the level 1 lobby from Marshall Avenue. This corridor has sufficient clear width to allow wheelchair users to perform a 180° turn and to pass one another, compliant with AS1428.1-2009.

Recommendations:

- (i) Ensure the external ramp and stair providing access to the western level 1 entry door are appropriately set back or have suitable barriers, to allow handrails with required extensions on both sides, compliant with AS1428.1-2009.
- (ii) Ensure the entry doors to the level 1 entry lobbies have sufficient internal and external latch side clearances, compliant with AS1428.1-2009.
- (iii) Ensure handrails can be installed along the full length on both sides of the internal ramps providing access to the level 1 lift lobbies.

Additionally, the ramp to the eastern lift lobby shall be set back a minimum 400mm from the lift corner to allow for suitable handrail extensions and have minimum 1500mm in depth landing areas, to allow wheelchair users to perform a 90° turn, compliant with AS1428.1-2009.

3.5. High Rise Building Level 1 Pedestrian Entrances

In general there is a continuous accessible path of travel from Marshall Lane public footpath to the level 1 entry lobby of the high rise building.

The entry gate along Marshall Lane provides direct access to the common outdoor area located on level 1, between the low rise and high rise buildings. In general, there is a continuous accessible path of travel from the common outdoor area to the level 1 entry doorway.

Internally, the 1:20 graded walkway provides a continuous accessible path of travel from the entry door to the passenger lifts in the centre of the building, compliant with AS1428.1-2009.

Recommendation:

- (i) Provide level access to the entry door way on level 1 of the building, compliant with AS1428.1-2009.

3.6. Emergency Egress

There are fire stairs in each of the buildings providing egress route from the upper residential levels and the basement car park levels.

The ground floor and level 1 entry foyers of both residential buildings are regarded as the most appropriate means of accessible points egress in the event of an emergency situation.

Recommendations:

- (i) Provide at least one accessible handrail within all fire-isolated stairs, compliant with AS1428.1 as required under BCA 2013 part D2.17.
- (ii) Consider that emergency services include audible and visual warnings and signals to assist people with sensory disabilities (advisory).

4. PATHS OF TRAVEL

4.1. Low Rise Building

In general there is a continuous accessible path of travel from the ground floor main entrance to the level 1 entry lobbies and the upper level lift lobbies.

The two passenger lifts in the building provide a continuous accessible path of travel from the ground floor entry foyer to the basement car park levels and the upper residential levels.

The two passenger lifts in the low rise building appear to have sufficient internal dimensions to comply with BCA and DDA Premises Standards. In general, the lift lobbies have sufficient circulation areas to allow wheelchair users to access the passenger lift and to pass one another in an equitable and dignified manner, compliant with DDA Premises Standards.

In general the corridors have sufficient clear width to allow wheelchair users to perform a 180° at corridor ends, compliant with AS1428.1-2009.

Recommendation:

- (i) Ensure the passenger lifts have a minimum 1400mm internal width and minimum 1600mm internal length, to comply with BCA and DDA Premises Standards.

4.2. High Rise Building

In general there is an accessible path of travel from the ground floor and level 1 building entrances to the car park and to the entry door of each of the sole occupancy units within the building.

Review is required, to ensure suitable wheelchair access is provided to residential unit G01, to comply with BCA and DDA Premises Standards. Additionally, the corridor and door to the ground floor car park require increased wheelchair circulation areas, to ensure compliance with AS1428.1-2009.

The three passenger lifts in the centre of the building provide a continuous accessible path of travel from the ground level to the basement car park levels and levels 1 to 28 of the building.

The three passenger lifts in the high rise building appear to have sufficient internal dimensions to comply with BCA and DDA Premises Standards. In general, the lift lobbies have sufficient circulation areas to allow wheelchair users to access the passenger lift and to pass one another in an equitable and dignified manner, compliant with DDA Premises Standards.

In general the corridors have sufficient clear width to allow wheelchair users to perform a 180° at corridor ends, compliant with AS1428.1-2009. Review is required, to ensure this is also provided on ground level and levels 2 and 3.

Recommendations:

- (i) Ensure the corridor to access unit G01 has suitable clearances to allow wheelchair users to access the residential unit, to comply with BCA and DDA Premises Standards.

- (ii) Ensure the door to the ground floor car park has sufficient door circulation areas, to comply with AS1428.1-2009.
- (iii) Ensure the corridor between the ground floor car park and the entry foyer has suitable clearances, to allow wheelchair users to perform 90° turn at the change of direction, compliant with AS1428.1-2009.
- (iv) Ensure all corridor ends on ground level and levels 2, and 3 have a minimum 1540mm x 2070mm turning area suitable for a person in a wheelchair to perform 180° turns in accordance with the DDA Premises Standards.
- (v) Ensure the stair in front of unit G01 complies with AS1428.1-2009.
- (vi) Ensure the passenger lifts have a minimum 1400mm internal width and minimum 1600mm internal length, to comply with BCA and DDA Premises Standards.

4.3. Doors

Most common use doors in the development have suitable 850mm clear door width and appropriate circulation areas compliant with AS1428.1.

Recommendation:

- (i) Ensure all common use doors have minimum 850mm clear width (generally 920mm door leaf) and appropriate door circulation compliant with AS1428.1 Fig. 31.

5. ACCOMMODATION

5.1. Residential Units

In general, there is a continuous accessible path of travel from the building entrances to the entry door of each sole occupancy unit in the building, compliant with BCA.

There are total 269 residential units within the development, 217 residential units in the high rise building and 52 residential units in the low rise building.

The development contains of a range of studio, 1 bed, 2 bed and 3 bedroom residential units.

The development falls under Lane Cove Council. According to Council DCP, a minimum of 20% of total units is required to be designed according to AS1428.1 and AS4299.

From the information provided, there are a total of 54 adaptable units provided, which satisfies the 20% adaptable unit requirements of the Lane Cove Council DCP. The adaptable units are spread amongst the 1, 2 and 3 bedroom apartment are distributed throughout the two buildings.

The following section outlines the requirements for adaptable unit design.

5.2. Adaptable Unit Design

The intent of adaptable housing is to provide a range of housing choices within the community promoting equitable access to residential accommodation. Adaptable housing is designed so that it can be adapted to meet the changing needs of residents at minimal personal and economic costs.

There are 5 types of adaptable unit proposed. At this stage of the development ensure the following recommendations are implemented in the design layout of each adaptable unit at pre-adaptation stage. These recommendations will ensure the correct circulation areas and ease of modification in the future in accordance with AS4299 Class C and AS14228.1:2009 requirements.

Recommendation:

- (i) Provide slip-resistant floor surface with min. wet pendulum test rating of 'X' (under HB197/AS4856) in all adaptable unit bathrooms, kitchens and laundries at pre-adaption stage as required in AS4299 clause 4.5.4. Test results will be required at OC Stage.

5.3. Typical Adaptable Unit 1 (10x 1 Bed - DA060_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and circulation areas compliant with AS4299 and AS1428.1. Internal doorways have suitable 850mm clear width at pre-adaption stage compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The door to the accessible bedroom has sufficient circulation areas. However, the accessible bedroom requires increased internal dimensions to ensure sufficient circulation spaces at the sides and base of the bed compliant with AS4299.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess.

There is suitable 1550mm unobstructed circulation areas in front of the laundry area and kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. The kitchen has a 300mm workspace adjacent refrigerator and 800mm work bench adjacent the sink and cooktop, compliant with AS4299.

Recommendation:

- (i) Accessible bedroom to be increased in size to allow for the required minimum 1540mm x 2070mm circulation area at base of bed in addition to the minimum 1000mm required on both sides of the bed compliant with AS4299.

5.4. Typical Unit 2 (7x 1 Bed – DA061_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and circulation areas compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The accessible bedroom requires review to allow for sufficient circulation spaces at the sides and base of the bed compliant with AS4299.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess.

There is suitable 1550mm unobstructed circulation areas in front of the laundry area and kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. The kitchen has a 300mm workspace adjacent the refrigerator. Review is required to ensure suitable 800mm width workspace adjacent to the cooktop and sink as required under AS4299.

Recommendations:

- (i) Ensure the door to the accessible bedroom has a minimum 850mm clear opening width, compliant with AS1428.1-2009.
- (ii) Accessible bedroom to be increased in size to allow for the required minimum 1540mm x 2070mm circulation area at base of bed in addition to the minimum 1000mm required on both sides of the bed compliant with AS4299.
- (iii) Provide a minimum 800mm workspace beside cooktop and sink compliant with AS4299 at pre-adaption stage.

5.5. Typical Unit 3 (13x 2 bed – DA062_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and circulation areas compliant with AS4299 and AS1428.1. Internal doorways have suitable 850mm clear width at pre-adaption stage compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The accessible bedroom has sufficient internal dimensions to achieve the required circulation spaces at the sides and base of the bed compliant with AS4299.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess.

There is suitable 1550mm unobstructed circulation areas in front of the laundry area and kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. The kitchen has a 300mm workspace adjacent the refrigerator. The kitchen has sufficient clearances to accommodate the 800mm width workspace adjacent to the cooktop and sink as required under AS4299.

Recommendations:

- (i) Ensure the internal doors have a minimum 850mm clear opening width, compliant with AS1428.1-2009.
- (ii) Accessible bedroom to be increased in size to allow for the required minimum 1540mm x 2070mm circulation area at base of bed in addition to the minimum 1000mm required on both sides of the bed compliant with AS4299.
- (iii) Provide a minimum 800mm workspace beside cooktop and sink compliant with AS4299 at pre-adaption stage.

5.6. Typical Unit 4 (9x 3 bed – DA063_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and circulation areas compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The accessible bedroom requires review to allow for sufficient circulation spaces at the sides and base of the bed compliant with AS4299.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess.

There is suitable 1550mm unobstructed circulation areas in front of the laundry area and kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. The kitchen has a 300mm workspace adjacent the refrigerator and 800mm width workspace adjacent the cooktop. Review is required to ensure suitable 800mm width workspace adjacent the sink as required under AS4299.

Recommendations:

- (i) Ensure the internal doors have a minimum 850mm clear opening width, compliant with AS1428.1-2009.

- (ii) Accessible bedroom to be increased in size to allow for the required minimum 1540mm x 2070mm circulation area in addition to the minimum 1000mm required on both sides of the bed compliant with AS4299.
- (iii) Provide a minimum 800mm workspace beside cooktop and sink compliant with AS4299 at pre-adaption stage.

5.7. Typical Unit 5 (13x bed – DA064_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and circulation areas compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The nominated accessible bedroom has sufficient circulation areas. The larger bedroom could also be nominated as the accessible bedroom, as long as the required door circulation areas are achieved.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess. The shower and toilet pan remain in the same location between pre and post adaption, and is minimal modification required to ensure compliant with AS4299.

There is suitable 1550mm unobstructed circulation areas in front of the kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. Review is required, to ensure the 1550mm diameter circulation area is also provided in front of the laundry area.

The kitchen has a 300mm workspace adjacent refrigerator and 800mm work bench adjacent the sink and cooktop, compliant with AS4299.

Recommendations:

- (i) Ensure the internal doors have a minimum 850mm clear opening width, compliant with AS1428.1-2009.
- (ii) Accessible bedroom to be increased in size to allow for the required minimum 1550mm depth at the base of the bed in addition to the 1000mm required on both sides of the bed compliant with AS4299.
- (iii) Provide a minimum 1200mm clearance between the kitchen benches at pre-adaptation, to allow easy of adaptation to achieve 1550mm unobstructed circulation between the benches at post-adaptation.

Pre-adaptation drawings to include extra capped off services and continuous flooring under kitchen island bench (post-adaption location) to allow it to be easily relocated to achieve 1550mm min. clearance compliant with AS4299 at post-adaption.
- (iv) Ensure a minimum 1550mm diameter unobstructed circulation area is provided in front of the laundry area, compliant with AS4299.
- (v) Pre-adaptation drawings to include extra capped off services for the washbasin.

5.8. Typical Unit 6 (4x 3 bed – DA065_1)

The following assessment has been made from the typical unit layout drawing provided.

The unit entry door has suitable clear width and external latch circulation areas compliant with AS4299 and AS1428.1. Review is required to ensure suitable internal latch side clearance is provided at pre-adaptation or can easily be achieved at post-adaptation compliant with AS4299 and AS1428.1.

There is a minimum 1000mm unobstructed path of travel to the living/dining room. The living/dining room can achieve appropriate 2250mm diameter turning area, compliant with AS4299.

The nominated accessible bedroom has sufficient internal dimensions to achieve the required circulation areas in accordance AS4299 around the bed. It should be noted that the larger bedroom has sufficient internal dimensions to satisfy AS4299.

The bathroom has sufficient internal dimensions to achieve the required circulation spaces required around the toilet pan, washbasin and shower recess.

There is suitable 1550mm unobstructed circulation areas in front of the kitchen area, to allow wheelchair users to perform a 180° turn, compliant with AS4299. Review is required, to ensure the 1550mm diameter circulation area is also provided in front of the laundry area.

The kitchen has a 300mm workspace adjacent refrigerator. Review is required to ensure 800mm work bench is provided adjacent the sink and cooktop, compliant with AS4299.

Recommendations:

- (i) Ensure the entry door has suitable internal latch side clearances, to comply with AS1428.1-2009.
- (ii) Ensure the internal doors have a minimum 850mm clear opening width, compliant with AS1428.1-2009.
- (iii) Ensure the door to the larger bedroom could easily achieve the required latch side door circulation areas as per AS1428.1 at post adaptation, without the need of major modifications.
- (iv) Provide a minimum 1550mm diameter unobstructed circulation area in front of the laundry area, compliant with AS4299.

5.9. Visitable Units

A least 80% of the residential units will have an entry door 850mm clear opening width. There will be a minimum 1000mm clear width path of travel to the living room area of all of the residential units, which is in line with AS4299 visitable unit requirement.

The visitable unit design shows there is a departure from 1250mm x 900mm required circulation area in front of the toilet pan. However, MGAC will support the alternative proposed design, as a minimum 900mm x 900mm unobstructed circulation area in front of the toilet pan, which is suitable for people with ambulant disability in accordance with AS1428.1-2009.

Additionally, there is a new common use accessible toilet facility provided within in each of the buildings, which will be designed in accordance with AS1428.1-2009. This will allow visitors of residential units to access a purpose built wheelchair accessible toilet.

These common use accessible toilet facilities are located on level 1 of the low rise building and ground level of the high rise building. There is a continuous accessible path of travel from all lift lobbies to the common use accessible toilet facilities. In general, residents and visitors can access these toilet facilities in one lift ride.

Review is required, to ensure these common use accessible toilet facilities have sufficient internal dimensions, to achieve a minimum 1900mm x 2300mm unobstructed circulation area around the toilet pan, compliant with AS1428.1-2009, which is achievable.

Recommendations:

- (i) Ensure the entry door and bathroom door of at least 80% of the residential units have an 850mm clear opening width.
- (ii) Ensure the common use accessible toilet facilities have sufficient internal dimensions to achieve a minimum 1900mm x 2300mm unobstructed circulation area around the toilet pan, compliant with AS1428.1-2009. Ensure the fixtures in the accessible toilets comply with AS1428.1-2009.
- (iii) Provide additional reinforcement in the visitable unit bathrooms to allow for future provision of grab rail adjacent the pan.

6. COMMON USE FACILITIES

6.1. General

There are common use residents facilities (including gym with toilet facility, meeting room, function room, terrace, and communal terrace) provided on level 1 of the low rise building.

There are resident's storage facilities provided on level 1 of the low rise and on ground level of the high rise building.

In general, the common outdoor area between the low and high rise buildings provides a continuous accessible linkage between the two buildings. This allows residents from both buildings to access the common use facilities in the low and high rise buildings.

6.2. Low Rise Building - Function and Meeting Room

In general there is a continuous accessible path of travel from the main entrance and the passenger lift to the function room on level 1 of the low rise building.

The function room has sufficient internal dimensions to allow wheelchair users to perform a 360° turn after the furniture is placed. Suitable access to the meeting room as well as the terrace could be achieved.

Review is required to ensure the doors to the function room and meeting room have suitable door circulation areas, to comply with AS1428.1-2009.

Recommendations:

- (i) Ensure the doors to the function and meeting rooms have sufficient door circulation areas, to comply with AS1428.1-2009.
- (ii) Provide a level transition between the function room and terraces, compliant with AS1428.1-2009.

6.3. Low Rise Building - Gym

There is a gym facility provided on level 1 of the low rise building.

In general there is a continuous accessible path of travel from the passenger lift to the entry door of the gym. Review is required to ensure the door to the gym has suitable door circulation areas, compliant with AS1428.1-2009.

The gym has sufficient internal dimensions to allow for suitable wheelchair circulation areas after the equipment is placed.

There is unisex accessible toilet facility provided within the gym facility. The accessible toilet facility has sufficient internal dimensions, to accommodate a minimum 1900mm x 2300mm unobstructed circulation area around the toilet pan, compliant with AS1428.1-2009.

Recommendations:

- (i) Ensure the door to the gym has sufficient door circulation areas, to comply with AS1428.1-2009.
- (ii) Ensure the fixtures in the accessible toilet comply with AS1428.1-2009.

6.4. Garbage Areas

There is a garbage chute and recycling bin facility provided on each residential level of the low and high rise buildings.

The common use corridors have a sufficient width to allow wheelchair users to access the garbage chute and recycling bin, which satisfies BCA and DDA Premises Standards.

6.5. Mailbox Areas

The mailboxes are located externally in front of the main entry of the low rise building and within the mail room on the ground level of the high rise building.

Low Rise Building

The path from the public footpath to the building entrance appear to have level (no steeper than 1:40) gradients. As a result, suitable circulation areas are provided in front of the mailboxes, compliant with AS4299.

High Rise Building

In general, there is an accessible path of travel from the main entrance and passenger lift to the mail room on the ground level. Review is required to ensure the door to the mail room has sufficient door circulation areas in accordance with AS1428.1-2009. Additionally, unobstructed circulation area is required to be achieved in front of the mailboxes.

Recommendations:

- (i) Ensure the area in front of the mailboxes located at the low rise building entrance is level (no steeper than 1:40) to accommodate minimum 1550mm diameter unobstructed circulation areas.
- (ii) Ensure the door to the mail room in the high rise building has sufficient door circulation areas, compliant with AS1428.1-2009.
- (iii) Ensure the mail room in the high rise building has sufficient internal dimensions to accommodate minimum 1550mm diameter turning area in front of mailboxes suitable for a wheelchair user to perform 180° turns in accordance with AS4299.

6.6. Storage

There are storage resident's facilities provided on level 1 of the low and high rise buildings.

In general there is an accessible path of travel from the passenger lifts to the resident's storage on level 1 of the buildings.

Review is required to ensure sufficient wheelchair circulation areas are provided between the storage units.

Recommendations:

- (i) Ensure the doors to the resident's storage in the low and high building have sufficient door circulation areas, compliant with AS1428.1-2009.
- (ii) Ensure the resident's storage in the low and high rise building accommodate sufficient circulation areas (1500mm x 1500mm) between the storage units, to allow wheelchair users to perform a 90° turn at intersecting aisles.

7. COMMERCIAL/RETAIL

7.1. General

There is a commercial/retail tenancy on the east side, on level 1 and 3 of the high rise building.

The commercial/retail space on level 3 may potentially be used as future residential entry lobby to provide a pedestrian access point from the proposed future plaza to the east of the building.

7.2. Commercial Entry

There appear to be level access from the Canberra Avenue public footpath into the commercial entry lobby on the north east corner of the high rise building.

In general, the commercial entry lobby entry doorway has sufficient circulation areas, to allow wheelchair users to pass one another when accessing the commercial entry lobby.

The commercial entry lobby has sufficient internal dimensions to allow wheelchair users to perform a 360° turn and to allow wheelchair users to access the entry door of the commercial/retail tenancy on level 1 and the passenger lift providing access to level 3.

7.3. Paths of Travel

The passenger lift provides a continuous accessible path of travel from the level 1 commercial entry lobby to the level 3 commercial/retail tenancy and basement level 1.

The passenger lift has minimum 1100mm x 1400mm internal dimensions, which is sufficient if the lift would travel no more than 12 metres. However, in this instance, the lift car travels more than 12 metres and requires increased internal dimensions to ensure compliance with BCA and DDA Premises Standards.

The commercial lobby on basement level 1 has sufficient circulation areas to allow wheelchair user to access the passenger lift in an equitable and dignified manner, compliant with AS1428.1-2009.

Recommendations:

- (i) Ensure the commercial passenger lift has minimum 1400mm x 1600mm internal dimensions, compliant with BCA and DDA Premises Standards.
- (ii) Lift car components (grabrail, control buttons, lighting) to comply with AS1735.12.

7.4. Toilet Facility

There is an area within the level 1 commercial/retail tenancy reserved for future toilet facilities.

The design and configuration of the toilet facilities will be subject to a future DA for the fit out of the commercial/retail space.

8. CAR PARKING

8.1. General

There is residential and retail car parking provided on basement levels 1 to 3 and ground level of the development. The car park drawings show a total of 296 car parking bays.

From the information provided, a total of 225 spaces are allocated as residential, 68 as visitor and 3 as retail car parking bays.

8.2. Residential Car Parking

There are a total of 54 accessible resident car parking bays provided, one for each adaptable unit in the development, as required to comply with AS4299.

The accessible car parking bays have a 2.4 metre clear width and are provided adjacent a 2.4 metre wide shared zone, compliant with AS2890.6-2009.

In general, the accessible resident car parking bays are provided near the passenger lift, providing access to the entry foyer and the floor containing adaptable residential units.

Recommendation:

- (i) Ensure the accessible car parking bays and adjacent shared zones have a minimum 2.5m vertical height clearance. The approach to each accessible car parking bay shall have a vertical clearance of not less than 2.2m.

8.3. Residential Visitor Car Parking

There are a total of 68 residential visitor car parking bays provided, spread over basement levels 1 and ground level of the development.

There is one accessible visitor car parking bays provided on ground level of the development. The accessible car bay is provided within proximity of the entry door to the ground floor lift lobby/entry foyer of the low rise building.

The accessible visitor car parking bay have a 2.4 metre clear width and are provided adjacent a 2.4 metre wide shared zone, compliant with AS2890.6-2009.

Recommendations:

- (i) Ensure the accessible car parking bay and adjacent shared zone has a minimum 2.5m vertical height clearance. The approach to the accessible car parking bay shall have a vertical clearance of not less than 2.2m.

8.4. Retail Car Parking

There are a total of 3 retail car parking bays provided on basement level 1 of the building. The retail car parking bays are provided within proximity of the commercial passenger lift, providing access to level 1 and level 3 of the high rise building.

In line with the BCA, there is no need to designate any of the car bays as an accessible car parking bay when there are no more than 5 retail car parking bays provided. Nonetheless, one of the car parking bays is required to be located adjacent a shared zone and to have the appropriate head height clearances, compliant with AS2890.6-2009.

Recommendation:

- (i) Provide a retail car bay adjacent a 2.4m wide shared, compliant with AS2890.6-2009. The retail car bay does not need to be identified as accessible car parking bay. Ensure the car bay and the adjacent shared zone have a minimum 2.5m vertical height clearance and that the approach to the two car bays achieves a minimum 2.2m vertical height clearance.



DDA Expert Opinion

Embassy Tower

St Leonards, NSW

Prepared for: Loftex

Prepared by:

Angela Chambers
McKenzie Group Consulting (QLD) Pty Ltd
ABN: 30 140 159 486

Telephone: 07 3834 9800

Email: achambers@mckenzie-group.com.au

Job Number: 68396

Revision No: 1.0

EXPERT OPINION ASSESSMENT

PROJECT: EMBASSY TOWER

ADDRESS: 1-13A MARSHALL AVENUE, ST LEONARDS, NSW

EXECUTIVE SUMMARY

The following report is a review of the proposed visitable toilets within the Embassy Tower Development design as it applies to the prescribed requirements of Lane Cove Council's DCP and the spirit and intent of the Disability Discrimination Act (DDA) with regards to visitability.

The purpose of this expert opinion is to support the approach of the project Access Consultant regarding the provision of visitable toilets within the development.

It is our professional opinion that the proposed solution to provide 'ambulant toilets' within 100% of the residential units in lieu of 'visitable toilets' within 80% of the units, is a better outcome. We support this approach to visitable housing and believe that the departure from the Lane Cove DCP is acceptable given that the proposed solution provides a more functional and dignified outcome that will meet the range of needs by all occupants.

INTRODUCTION

This advice has been formulated by McKenzie Group Consulting DDA and Accessibility services and has been prepared by Angela Chambers and reviewed/authorised by Francis Lenny.

This Expert Opinion supports the approach taken by Morris-Goding Accessibility Consulting (MGAC) in order to assess the design solution presented by the design team ensuring compliance with the spirit and intent of the Disability Discrimination Act (DDA) 1992.

The following report has been prepared on the basis of a desktop review of the project documentation undertaken on 23 January 2014.

PROJECT DESCRIPTION

The proposed development comprises of two (2) residential buildings – “low rise” and “high rise” - including three (3) levels of basement car parks.

The development contains a total of 269 residential units. The low rise building contains 52 units over seven (7) levels. The high rise building contains 217 units over 29 levels.

In addition, Levels 1 and 3 of the high rise development contain commercial office/retail tenancies.

KEY ISSUES SEEKING EXPERT OPINION

The following area has been identified as an issue of non-compliance as prescribed by the Lane Cove Development Control Plan (Amendment 5 – 3 April) Part F Access and Mobility and includes:

- The proposal to not provide visitable toilets within a minimum of 80% of the residential units

DEFINITIONS

For the purposes of this report, the following definitions apply:

Visitable Toilet

As per Clause 1.4.12 of AS4299-1995, a visitable toilet is

A toilet which has a space of minimum 1250mm in front of the toilet x 900mm wide clear of door swings and fixtures (Refer below Figure 1)

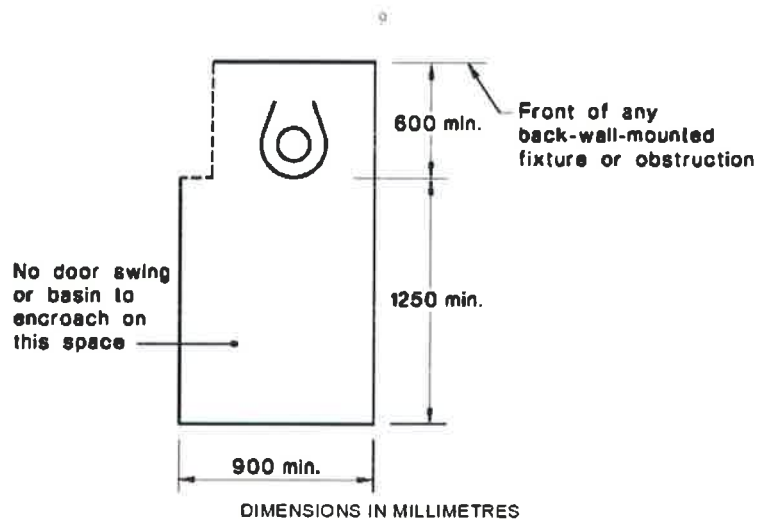


FIGURE 1.1 VISITABLE TOILET

Figure 1: Visitable Toilet (Extract from AS4299-1995)

Ambulant Toilet

In line with the requirements of Clause 16 of AS1428.1-2009, an ambulant toilet caters for a person with an ambulant disability which provides a clear space of 900mm x 900mm in front of the pan clear of door swing or fixtures (refer Figure 2). (Note: grabrails will not be installed).

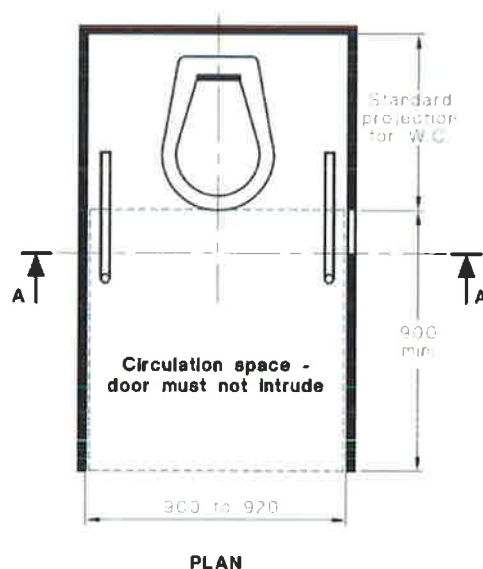


Figure 2: Ambulant Toilet (Extract AS1428.1-2009 - Figure 53(A))

TECHNICAL ADVICE AND REASONS FOR EXPERT OPINION

Ambulant Toilet in lieu of Visitable Toilet

Legislative Requirements

In accordance with the current BCA requirements, Class 2 residential buildings are not required to provide accessible/adaptable units.

However to meet Lane Cove Development Control Plan requirements, the following adaptable and visitable housing provisions apply:

- A minimum of 20% adaptable units are to be provided and designed in accordance with AS4299-1995
- A minimum of 80% visitable housing is required which requires a continuous path of accessible travel from the property frontage or carparking area to the living area and to a toilet that is either accessible or visitable and common areas within the building.

Technical Departure:

In lieu of a visitable toilet within 80% of the units, it is proposed to provide a minimum of one (1) ambulant toilet within 100% of the units.

Discussion/ Justification

This Expert Opinion has been produced to provide technical support for the proposal to provide 'ambulant toilets' within 100% of the residential units in lieu of 'visitable toilets', based on the following justification:

- 100% of the units have been designed as visitable with an 'ambulant toilet' in lieu of the 80% prescribed by Council's DCP
- As per Clause 3.6 of the Part F – Access and Mobility policy produced by Lane Cove DCP *"Groups who benefit from visitable housing include families with strollers or prams for young children, older and frail aged people and persons with disability"*
- The dimensions and layout of the specified 'visitable toilet' with a clear floor space of 900mm x 1250mm does not provide adequate circulation for a wheelchair user who prefers angled or side transfer on and off the pan.
- In addition, the design of the visitable toilet is not required to be fitted with grabrails to allow a person to transfer on and off the pan.
- In line with the DCP requirements, the proposed 'ambulant' toilet (refer figure 2) will cater for families with strollers or prams for young children, older and frail aged people and persons with an ambulant disability.
- As part of this solution, a minimum of one (1x) unisex accessible sanitary facility will be provided within the common areas of each building to cater for a visitor with limited mobility and for any visitor who may have difficulty using the 'ambulant toilets'.
- There is no prescribed requirement (BCA or DCP) to provide any common use sanitary facilities.
- The provision a unisex accessible sanitary facility within each of the buildings provides a higher degree of compliance catering for a wider range of visitors with disability, due to the larger compartment size and increased circulation spaces around each fixture in addition to the provision of grabrails, compliant pan and basin and associated fixtures that are within the required reach ranges.
- In addition this enables a person to independently use the facilities as opposed to being assisted on and off a visitable toilet.
- An equal distribution of left and right handed mirror image facilities will be provided throughout the development.
- The addition of such facilities in the building will enhance the functionality for all visitors, residents and staff.

- The provision of lift access within each residential tower enables immediate access to the unisex accessible facilities with the tower, which is considered efficient and convenient.
- Consideration to a visitor requiring use of toilets during an overnight stay has been reviewed, however it is our professional opinion, that the intent of the term 'visitable' implies short term stay. This is also based on the fact that the term 'visitable housing' does not require a continuous path of travel to a bedroom, nor does it require a visitable shower facility.
- It should also be noted that a total of 54 Adaptable units (20% of the units) will provide a toilet with AS1428.1-2009 circulation spaces in the pre adaption phase, catering for a visitor with disability.
- As the user group of this environment are known users of this space (residents) they have the opportunity to learn about the location of the common accessible facilities and will be able to advise friends and visitors - thus reducing any functional deficits associated with this departure.
- Wayfinding signage will be provided on each level at the lift landings to direct users to the location of the common accessible facilities within the building.
- Given the nature and use of the development, this proposed solution is considered a reasonable solution to catering for the needs of visitors with disability.

Associated Technical Compliances:

The following features are recommended to be provided in support of this approach:

- A single unisex accessible sanitary facility designed in accordance with AS1428.1-2009 is to be provided in each of the buildings – low rise and high rise building.
- An equal distribution of Left handed and right handed transfers shall be accommodated within the development (i.e. one LH in low rise building and one RH in high rise building)
- Wayfinding signage to be installed at each bank of toilets and at lift landings to identify the location of the unisex accessible sanitary facilities in accordance with Clause 8 of AS1428.1-2009 (refer figure 9(d) and (e) as examples)

Recommended Technical Additions:

The following features are recommended as part of this advice:

- Consider the provision of a baby change table within each of the accessible sanitary facilities to enhance the use of these facilities for parents

SUMMARY

Therefore it is our professional opinion that suitable access for visitors with disabilities has been provided to the buildings in relation to the nature and use of the development and that the proposed visitable housing meets the range of needs of all occupants.

We support this approach to visitable housing and believe that the departure from the Lane Cove DCP is acceptable given that the proposed solution provides a more functional and dignified outcome that will meet the range of needs by all occupants.

SUPPORTING EVIDENCE

This Alternative Solution is based on the follow key project drawings/documentation:

- Part F Access and Mobility – Lane Cove Development Control Plan, Amendment 5 Dated 03-04-13
- Morris-Goding Accessibility Consulting (MGAC) Access Review, Final, Dated 21-11-14

DECISION

The recommendations in this report have been provided to assist in the creation of a universally accessible environment within the development proposed.

In summary, we are satisfied that the proposed design documentation complies with the spirit and intent of Disability Discrimination Act (DDA), the principals of universal accessibility and the relevant technical requirements of the AS1428 series for access and mobility; AS4299 Adaptable Housing; the Access to Premises Standard (2010) and applicable associated documentation for the purposes of the development application process.

AUTHORISATION BY DDA & ACCESSIBILITY CONSULTANT

Prepared By:



Angela Chambers
Access Consultant
ACAA Associate Access Consultant (Membership No 406)
McKenzie Group Consulting (Qld) Pty Ltd
ACN 140 159 486

Date: 28/01/2015

Authorised By:



Francis Lenny
Access Consultant
Accredited Member - Association of Consultants in Access Australia
Membership Number 371
McKenzie Group Consulting (Qld) Pty Ltd
ACN 140 159 486

Date: 28/01/2015

DISCLAIMER

This document has been prepared solely for the use of our client in accordance with our current professional standards and as per our agreement for providing compliance consulting services. Although all due care has been taken in the preparation of this document, no warranty is given, nor liability accepted (except that required by law) in relation to the information contained within this document. This document represents the opinions of McKenzie Group Consulting based on the facts and matters known at the time of preparation of this document. Opinions, judgments and recommendations detailed in this document, which are based on our understanding and interpretation of current statutory and regulatory obligations and standards, should not be construed as legal opinions.



29th October 2014,

Attention: **Rajiv Shankar**
Manager, Development Assessment
Rebecka Groth, Assessing officer,
Lane Cove Council
PO Box 20 Lane Cove
NSW 1595

Your ref 14/143

Dear Rebecka,

RE: SEPP 65 report 1-13a Marshall Avenue St Leonards.

I refer to your letter dated 30th of September 2014, requesting my comment pursuant to the provisions of the state environmental planning policy number 65, and to a pre-DA lodgement meeting held at the Council earlier this year.

The following comments have been prepared based on the drawings supplied by Council
Including:

- Drawings by Nettleton Tribe job number SS 14–2817 dated 24th of the 7th 2014 including OOB,, 100 B, 101, 102, 501, 502, architectural drawings dated 08 14 including 001, 002, 003, 004, 006, 007, 008, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 0 to 1, 0 to 2, 0 to 3, 0 to 4, 0 to 5, 0 to 6, 0 to 7, 0 to 8, 0 to 9, 0 30, 0 31, 0 32, 0 33, 0 36, 0 37, 0 38, 061, 062, 063, 041, 042, 043, 044, 045, 046, 047, 048, 051, 052, 071, 072.
- a statement of environmental effects by D FP planning consultants dated September 2014 including:
 - a. Site survey
 - 2 architectural plans
 - 3 SEPP65 design verification and residential flat design code assessment
 - for SEPP 65 assessment solar access overshadowing and natural ventilation
 - landscape plans
 - voluntary planning agreement letter of offer
 - hydraulic plans
 - assessment against Lane Cove DCP 2009
 - preliminary stage to environmental site assessment
 - geotechnical investigation
 - geotechnical assessment of the impact of proposed residential development on Sydney transit infrastructure
 - acoustic assessment
 - construction noise and vibration management plan
 - traffic impact assessment



- pedestrian wind environment study
- solar light reflectivity and analysis
- arboricultural impact assessment
- waste management plan accessibility report
- BCA assessment
- Basics certification
- perspective renders

We take on face value the accuracy of all the documents given to us and rely on them to form our assessment.

We have visited the site.

DESIGN QUALITY PRINCIPLES

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

1. Context

Good design responds to and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's character or, in the case of precincts undergoing a transition, the desired future character as stated in Planning and design policies. New buildings will thereby contribute to the quality and identity of an area. (SEPP65)

The site is bound by Marshall Lane to the North Marshall Avenue to the south and Canberra Road to the East. The subject site is part of a larger landholding owned by the applicant that stretches west from the subject site to Berry Road.

The site is one block south of the Pacific Highway and is zoned for residential flat buildings within a B4 mixed use zone. The properties fronting onto the Pacific Highway, to the north of the subject site are zoned commercial only.

The area is characterised by the commercial zones along the Pacific Highway, largely health related due to the proximity to the North shore hospital. Sites vary in size in this zone from small shop top housing to large floor plates with potential for future development.

The current DCP identifies the eastern portion of the site as being appropriate for a tower form development and for the sites to the West to have high-density residential development to a height of 25 m.



The application is for the 2nd tranche of a 2 stage development that includes a tower development adjacent to the railway line. The applicant has limited the height of his development in the 1st phase to 7 storeys. The western portion of the subject development is also 7 stories. This will be seen as an intermediate height between the tower building at the eastern end of the site and the low scale residential areas to the south.

St Leonards is a bustling residential and commercial centre. The precinct around the railway station is characterised by high rise office and residential buildings. The south-west sector of the railway station however, does not yet have any high-rise buildings.

Adjacent councils have planned for and encouraged the St Leonards station precinct to be an intensive urban environment including high-rise buildings. This development extends this general urban form and will mark the south-west portion of the precinct with a building of similar form and scale.

High density residential development close to public transport is appropriate. Residential flat buildings, one block removed from the busy and noisy Pacific Highway but still closed to the public transport node is to be encouraged.

The proposal meets the objectives of this principle.

2. Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area. (SEPP65)

The proposal comprises of a 7 story component, which is well within the maximum height allowable on-site and a tower development at the Eastern boundary.

The lower section of the development follows the controls in the DCP, which are designed to minimise the impact of overshadowing to properties on the south side of Marshall Avenue.

The footprint of the building generally has a depth of approximately 20 m which is slightly greater than the recommended 18 m but the architects have used some devices that reduce the potential impact of a deep building, such as deep recesses in the facade so achieve cross ventilation.

The tower component is the subject of a VPA and is taller than the maximum height identified in the DCP. This additional height has some additional overshadowing impact on the properties to the south west of the Tower, which I will discuss below.

The scale proposed development is appropriate in the context.

The proposal meets the objectives of this principle.

3. Built form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of the building elements.

Appropriate built form defines the public domain, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.(SEPP65)

The proposal has 2 main components, the tower at the eastern end and the lower built form to its west. As described above, the tower, adjacent to the railway line, responds to the scale of the St Leonards precinct, which is characterised by buildings of a similar height.

The tower is located as far east as possible on the site in order to reduce the potential overshadowing impact to the properties to the south-west. A large proportion of the shadow generated by the Tower will be on to the railway line. Some overshadowing is unfortunately unavoidable but the design and positioning of the tower attempt to minimise this impact.

The built form of the Lower part of the proposal responds to the various site conditions. Two-level Terrace type units are proposed along Marshall Avenue, which will relate in size and typology to the 1 and 2 storey dwellings characteristic of the area.

The lower building is set back from the Marshall Avenue boundary as required in the DCP and forms a stepped presentation to Marshall Avenue. The building is well articulated with protruding balconies further reducing the impact of the scale.

The bulk of the building has been pushed to the north of the site in order to minimise overshadowing to the dwellings on the south side of Marshall Avenue.

Overshadowing

Overshadowing is one of the proposal's most significant impacts. Whilst the lowrise sections of the proposal will only have marginal impact on properties on the southside of Marshall Avenue during the winter solstice, the tower, with its additional height will overshadow, if only briefly, a broad sweep of residences south-west of the development



during the winter solstice. Any overshadowing is a loss of amenity and regrettable. This is an unavoidable consequence of the tower development in this position. The applicant has minimised the impact of overshadowing by positioning and proportioning the building as far to the east of the site as possible.

The applicant's shadow analysis diagrams show the extent of this overshadowing. The tower has been designed to be as narrow as is practicable thereby generating a narrow band of overshadowing that will pass relatively quickly over the affected properties. The greater proportion of the properties affected by the Tower will see its shadow pass in an hour or less, leaving more than adequate direct sun between 9 AM and 3 PM.

The properties most affected are those directly south of the tower along Marshall Avenue. Even these properties appear to continue to receive 3 hours of sun, or close to, between 9 AM and 3 PM on the winter solstice.

The proposal generally meets the objectives of the principle.

4. Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents)

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality. (SEPP 65)

The number and mix of apartments is appropriate. This sort of density is consistent with the future desired density of the area.

The proposal meets with the objectives of this principle.

5. Resource, energy and water efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and re-use of water. (SEPP65)

The proposal has been designed using passive solar principles. A maximum number of units face North and have appropriate sun shading which will reduce the need for heating in winter and air conditioning in summer.

The Proposal comprises to build forms as discussed above. The lower form is subjected to the normal methods of calculation to achieve 60% cross ventilation whereas the tower requires slightly different parameters to establish cross ventilation equivalency due to exposure to winds above a certain height which can generate a movement within single sided apartments.

Cross ventilation

The lower building achieves 67% cross ventilation and the Tower building achieves 69% cross ventilation without the need to include single sided units. The proposal therefore easily meets the 60% rule of thumb.

Solar access

And accurate assessment of the solar access to the proposal is difficult for me to undertake without access to appropriate 3-D modelling. I have based my assessment on the material supplied by the applicant. Any discrepancy with the applicant's conclusion is therefore only based on what is counted as being legitimate solar access.

The applicant's consultant claims that the proposal achieves 83% of units as having adequate solar access. This claim is qualified by the assumption that units can receive 2 hours of direct sun as opposed to 3 and that this is counted from 8 AM to 4:30 PM as opposed to 9 AM to 3 PM.

Low-rise component

A breakdown of the applicant's figures shows that 35 of the 52 units or 67.3%, receive more than 3 hours direct sun and that one additional unit achieves between 2 and 3 hours bringing the total to 69.2%.

High-rise component

92 of 219 units receive 3 hours of direct sun or 42%.
(This means that 46.9% of the units in the Total development will receive 3 hours of sun between 9am and 3pm.)

49 units are listed as receiving 2 hours of sun which, if added to the 92, would provide 64.4%.



If the 50 additional units that receive between 2 and 3 hours of sun are included, the combined percentage would be 65.3% of units receiving sun between 9 AM and 3 PM.

The applicant's consultant has provided further calculations that include those apartments that receive 2 hours of direct sun between 8 AM and 4:30 PM. Should these be counted, this would provide a further 48 units to the count resulting in the stated 83%. The applicant has not provided a calculation of the units that would receive 3 hours of sun between 8 AM and 4:30 PM but this exercise would be purely academic, as are those for 2 hours between 8 AM and 4:30 PM. The question remains as to whether or not these figures are acceptable.

In my opinion, the lowrise component complies, more or less, with the 70% rule of thumb. It is clear that the high-rise component does not.

In my opinion, there is no reason why a building in a relatively unconstrained position, not overshadowed by any other building, should not be able to achieve the minimum solar access requirements.

Provision has been made in the basement for on-site storage for the rain water. This water is intended to be used for car washing and toilets.

There is no provision for outdoor clothes drying. Perhaps provision could be made for this on the roof between the plant rooms. Clothes dryers use enormous quantities of energy and contribute significantly to the carbon footprint.

The proposal does not meet the objectives of this principle.

6. Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the site's natural and cultural features in responsible and creative ways. It enhances the development's natural environment performance by coordinating water and soil management, solar access, microclimate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise usability, privacy and social opportunity, equitable access and respect for neighbours' amenity and provide for practical establishment and long-term management. (SEPP65)

The proposal covers most of the site. Some landscaping is provided on the southern side of the development and between the tower and the lowrise element. The narrow configuration and location of the site, within an urban setting, close to a busy transport node, justify the lack of much deep soil planting.

Street trees outside the property boundary will provide the bulk of the landscape setting of the proposal. The desire to protect and retained the significant street trees along Marshall Avenue is noted. There is some concern that the trees will now be often overshadowed by the development. The change in micro-climatic conditions and reduced exposure to sun for these trees, may affect them. An appropriately qualified horticultural consultant should be consulted.

The proposal generally meets the objectives of this principle.

7. Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility. (SEPP65)

The proposal has well designed units with a good relationship between the public and private areas within the building and the active and passive areas within the units themselves.

The proposal has the required number of adaptable units and the adaptability of the units has been demonstrated. Storage units are provided on ground level.

The sizes of the balconies in the tower are of concern. Most of them are well under the minimum sizes recommended in the RFDC. Some balconies have been called Winter Gardens due to their dimensions. I agree that balconies above approximately level VII are likely to be exposed to winds and be difficult to inhabit without appropriate sheltering. The winter garden idea is therefore appropriate in these circumstances. The detailing of the Windows to the Winter Garden and the degree to which the internal walls or doors open and the level of the balcony/winter garden in relation to the internal floor level all play an important part in the success of such spaces. Ideally, the floor level should be the same in order to extend the inside out and the outside in and the doors fully operable for the same reason. The scale of the drawings provided do not allow me to check whether this is the case.



Good-sized balconies have been provided up to level III however the balconies from levels 4 to 7 appear to be the same size as those in the levels above. No doubt the architect was primarily concerned with the appearance of the building. In my opinion, the balcony sizes and dimensions below level VIII are inadequate for practical use.

Sun shading,

As mentioned at the pre-DA meeting, the tower does not appear to have adequate sun shading to the North, East or West facades. Notwithstanding the fact that the building will be a conditioned, the lack of sun shading will cause significant heat loading on the building requiring considerable energy to cool. Some glazing technologies can reduce heat loadings however nothing can replace the physical shading of the façade in terms of efficacy. Further explanation is needed.

The proposal does not meet the objectives of this principle. Further explanation or justification or design modification is required.

8. Safety and security

Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces. (SEPP65)

Safety and security have generally been well handled. The passive surveillance of the surrounding streets and lanes will enhance the sense of security in the area.

The proposal potentially meets with the objectives of the principle

9. Social dimensions

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs of the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community. (SEPP65)

The proposed mix of dwellings is appropriate to the area and should accommodate a range of occupants. The provision of space appropriate to the establishment of commercial or retail purposes in the eventuality of a future square over the railway line is noted.

The proposal meets the objectives of this principle.

10. Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area. (SEPP65)

The proposal has been well considered architecturally. Sandstone walls are retained along Marshall Avenue, providing a base to the building and continuity to the fabric of the area. The facades are well modulated and articulated in the lowrise component, reducing the apparent bulk. Materials are contemporary and of a high quality.

The tower element is conceived of as having a unique and eye-catching anaesthetic. Vertical elements that fold into roof forms give the building an organic appearance and a sense of unity, which is pleasing to the eye and most often not considered in tower developments. The detailing and materiality of the tower's façade is key to the success of the building. Prototype sections should be submitted to Council for approval.

The proposal meets the objectives of this principle.

Conclusion


Naturally, the biggest concern with this project is the impact of the tower on the properties to the south west of the site. In my opinion, the applicant has endeavoured to minimise the impact of the proposal with respect to overshadowing, and will be providing a valuable addition to a future public square over the railway line.

Of some concern is the use and function of the Winter Gardens/balconies in the Tower building and the related issue of the detailing and thermal performance of the façade treatment, which requires further development and explanation.

Solar access to the tower is inadequate.

With the exceptions mentioned above, the proposal meets with the Objectives of the Principles of Good Design.

Tim Williams
Architect AIA





10 January 2015,

Attention

Rebecka Groth, senior town planner, Assessing officer,
Lane Cove Council
PO Box 20 Lane Cove
NSW 1595

Your ref 14/143

Dear Rebecka,

RE: SEPP 65 report 1-13a Marshall Avenue St Leonards.

I refer to your instructions 27 November requesting my comment on the modifications to the proposal and our meeting of 11th of December 2014, also to our meeting with the applicant on 11 November and to my previous report of 29 October 2014, .

This report deals with the specific issues of solar access, balcony sizes and Winter Gardens discussed at our meetings and has addressed by the applicant in their letter of 24 November 2014.

The following comments have been prepared based on the drawings supplied by Council
Including:

- Drawings by Nettleton Tribe stamped by Council 25th of November 2014
- A letter by Loftex addressed to yourself dated 24th of November 2014

We take on face value the accuracy of all the documents given to us and rely on them to form our assessment.

Solar access,

The applicant's architect has modified the design of the tower so that a larger number of smaller units face the northern and eastern facades thereby maximising the number of units receiving sun between 9 AM and 3 PM on 21 June.

Notwithstanding the fact that the Eastern façade's calculations have been made on the basis of Sun between 8:30 AM and 11:30 AM, I believe the project now achieves the 70% recommended by the RFDC.



Balconies and Winter Gardens

As discussed in our meeting, I believe it is reasonable to expect balconies to all units up to and including level 7.

I believe that the Winter Gardens in units 03 and 07 on levels 4 to 7 should be converted into balconies.

I accept that the corner studio units on levels 8 to 13, 14 and 15 to 25 need not have balconies due to the fact that they are smallish studios and that they are on corners which are susceptible to strong turbulent winds. These include units 08, 09, on levels out to 13, 1407, 1408 units 06 and 07 on floors 15 to 25.

In my opinion, the lack of balconies or Winter Gardens to units 03 and 05 on levels 8 to 13 is not justified, especially with respect to unit 03, which is a two-bedroom unit with ample space for a balcony on the corner.

It is also my view, that unit 1403 and unit 03 on floors 15 to 27 should also have a balcony. A small 6 m balcony has been provided between 2 of the 3 bedrooms. If this is the more desirable position for a balcony, the planning of the unit should be rearranged so that it is both larger (10 metres) and be immediately accessible to the living spaces. Alternatively, a balcony could be provided in the corner as per the units below or as a mirror image of what is provided in unit 01.

With respect to Winter Gardens, as discussed in our meetings, given that windows to the Winter Gardens can only open to an equivalent amount as standard Windows. This means that they are fairly pointless and do not replace the need for a balcony. With regards to unit 06 on floors 26 and 27, I believe the winter garden should be replaced with a balcony, possibly immediately adjacent to the balcony in unit 05.

I understand the applicant's desire with respect to the sleek aesthetics of the building, not to have balconies on the corners, due to the curved form of the building. I am persuaded that the continuation of mullions across balcony areas would continue to allow the corners to be read as curved surfaces, it would be preferable, however, to position the balconies away from the corners as has been successfully done in most other cases.



Conclusion

I believe the rearrangement of units has successfully resolved the solar access requirements of the RFDC.

In my opinion, if the balcony issues were addressed, as suggested above, the proposal would meet the objectives of the principles of good design.

Please do not hesitate to contact me if you require any clarification or further information.

Tim Williams
Architect AIA



6 February 2015

The General Manager
Lane Cove Council
PO Box 20
Lane Cove NSW 1595

ATTENTION: Rebecka Groth

Dear Sir/Madam,

**STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007
DEVELOPMENT APPLICATION – DA143/14
1-13A Marshall Avenue, St Leonards**

I refer to Council's letter requesting RailCorp's concurrence for the above development application in accordance with clause 86(1) of the above SEPP.

As of 1 July 2014 the property functions of RailCorp have been transferred to Sydney Trains. Whilst RailCorp still exists as the legal land owner of the rail corridor, its concurrence function under the above SEPP has been delegated to Sydney Trains.

As such, Sydney Trains now advises that the proposed development is being assessed in accordance with the requirements of Clause 86(4) being:

- a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
- b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

Sydney Trains has identified that the proposed development has been designed to provide a future connection to Council's proposed Plaza located predominantly over the rail corridor. Sydney Trains advises that the assumed level of this Plaza is at the applicant's risk given that Sydney Trains and/or Transport for NSW (TfNSW) may require the Plaza to be at a level which meets the standards and operational requirements of Sydney Trains and TfNSW. This could result in the proposed development being unable to interconnect with the Plaza.

In this regard, Sydney Trains has taken the above matters into consideration and has decided to grant its concurrence to the development proposed in development application DA143/14 subject to Council imposing the deferred commencement condition provided in Attachment A and operational conditions listed in Attachment B that will need to be complied with upon satisfaction of the Deferred Commencement Condition.

Should Council choose not to impose the deferred commencement condition in Attachment A and the operational conditions provided in Attachment B (as written), then concurrence from Sydney Trains has not been granted to the proposed development.

Please contact Mr Jim Tsirimiagos on 8575 0780 should you wish to discuss this matter. Finally, Sydney Trains requests that a copy of the Notice of Determination and conditions of consent be forwarded to Sydney Trains.

Yours sincerely,



Kevin Sykes
General Manager Property

Deferred Commencement Condition

This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:

A1

The Applicant shall prepare and provide to Sydney Trains for approval/certification the following items:

- 1. Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducting on the site closest to the rail corridor.*
- 2. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.*
- 3. Cross sectional drawings showing the tunnel easement, tunnel location, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail tunnel. All measurements are to be verified by a Registered Surveyor.*
- 4. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement and tunnel location.*
- 5. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.*

Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

Attachment B

B1. If required by Sydney Trains, prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.

B2. Unless advised otherwise the Applicant shall comply with the following items:

- *All excavation works with 25m of the rail corridor are to be supervised by a geotechnical engineer experience with such excavation projects.*
- *No rock anchors/bolts are to be installed into RailCorp's property or easements.*
- *On completion of the basement slab works all temporary rock anchors/bolts along the rail corridor boundary are to be destressed in accordance with the Geotechnical and Structural Reports.*
- *The project engineer is to conduct vibration monitoring during the course of the excavation.*

A Construction Certificate is not to be issued until the measures detailed in this condition of consent have been incorporated into the construction drawings and specifications. Prior to the commencement of works the Principle Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

B3. The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:

- *Machinery to be used during excavation/construction.*
- *If required by Sydney Trains, track monitoring plan detailing the proposed method of track monitoring during excavation and construction phases.*
- *If required by Sydney Trains, a rail safety plan including instrumentation and the monitoring regime.*

The Principle Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

B4. Sydney Trains and Transport for NSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.

- B5. Copies of any certificates, drawings or approvals given to or issued by Sydney Trains must be submitted to Council for its records.*
- B6. Prior to the Prior to the issuing of an Occupation Certificate the Applicant is to submit the as-built drawings to Sydney Trains, Transport for NSW and Council. The Principal Certifying Authority is not to issue the Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.*
- B7. Prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.*
- B8. Prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.*
- B9. In exercising its functions in relation to any Sydney Trains conditions, Sydney Trains reserves the right to liaise with Transport for NSW and impose any requirements (as advised by those entities) on their behalf as if they were Sydney Trains requirements.*
- B10. An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".*
- B11. Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.*
- B12. The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.*

- B13. If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.*
- B14. Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.*
- B15. The Sydney Trains corridor access gates located opposite the development site shall be unobstructed at all times.*
- B16. No construction vehicles (including staff vehicles), equipment, bins or building material shall occupy the land used for car parking purposes located opposite the development site.*

--oOo--



2 October 2014

Roads and Maritime Reference: SYD14/01073 (A7650373)
Council Ref: DA143/14

The General Manager
Lane Cove Council
PO Box 20
LANE COVE NSW 1595

Attention: Rebecka Groth

Dear Sir/Madam,

**PROPOSED RESIDENTIAL FLAT BUILDINGS WITH COMMERCIAL PREMISES
1-13A MARSHALL AVENUE, ST LEONARDS**

Reference is made to Council's letter dated 19 September 2014 regarding the abovementioned Application which was referred to Roads and Maritime Services (Roads and Maritime) for comment in accordance with Schedule 3 of the *State Environmental Planning Policy (Infrastructure) 2007*.

Roads and Maritime has reviewed the submitted documentation and raise no objection to the Application. Roads and Maritime has the following comments for Council's consideration in the determination of the application:

1. All vehicles should enter and leave the site in a forward direction.
2. All vehicles should be wholly contained on site before being required to stop.
3. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2 – 2002 for heavy vehicle usage.
4. The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS.

Should you have any further inquiries in relation to this matter, please do not hesitate to contact the nominated Land Use Planner, Hans Pilly Mootanah on telephone 8849 2076 or by email at Hans.pilly.mootanah@rms.nsw.gov.au

Yours sincerely,

Angela Malloch
Senior Land Use Planner
Network and Safety Section



Australian Government

Department of Infrastructure and Regional Development

File reference: 15/521

TO: Mr Rob Turchini LOFTEX P/L rturchini@loftexproperty.com	Cc: Peter Bleasdale Sydney Airport Corporation Limited peter.bleasdale@syd.com.au Michael Turner Sydney Airport Corporation Limited michael.turner@syd.com.au Airport Developments Airservices Australia airport.developments@airservicesaustralia.com Joe Hain Civil Aviation Safety Authority Joe.Hain@casa.gov.au Rebeckah Groth Lane Cove Council rgroth@lanecove.nsw.gov.au	FROM: Flysafe Airspace Protection flysafe@infrastructure.gov.au
--	---	---

DECISION UNDER THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS 1996:

Proposed Activity: Building Construction: Property Development

Location: 1-13A Marshall Avenue, St Leonards NSW

MGA 94 Coordinates: E332787, N6255848

Proponent: Loftex P/L

I refer to the application from Loftex P/L (the proponent), received by the Department on **10 December 2014** from Sydney Airport Corporation Ltd (SACL). This application sought approval under the Airports (Protection of Airspace) Regulations 1996 (the Regulations) for the intrusion of one building at **1-13A Marshall Avenue, St Leonards NSW (the site)**, into airspace which, under the Regulations, is prescribed airspace for Sydney Airport.

‘Prescribed airspace’ includes ‘the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport’ (see subregulation 6(1)).

The Outer Horizontal Surface of the OLS above this site is at a height of **156 metres** Australian Height Datum (AHD) and hence prescribed airspace above the site commences at **156 metres**. At a maximum height of **166.8 metres AHD**, the building will penetrate the OLS by **10.8 metres**. The second building involved in this development is below the OLS, at a maximum height of 96.8m AHD.

Accordingly, the proposed construction of the development would constitute a “controlled activity” under Section 182 of the *Airports Act 1996* (the Act). Section 183 of the Act requires that controlled activities cannot be carried out without approval. Details of the penetrations of prescribed airspace are provided in **Table 1**.

Activity	MGA 94 coordinates	Maximum height (AHD)	Penetration of prescribed airspace
Building	E332787; N6255848	166.8 metres	10.8 metres

Table 1: Height and location of the proposed development at the site that will intrude into prescribed airspace for Sydney Airport.

Attachments A1-A2 show the location and height of the building which will intrude into prescribed airspace at the site.

Under the Regulations, the Secretary is empowered to make decisions in relation to the approval of controlled activities, and the imposition of conditions on approvals. I have been delegated the Secretary's powers under the Regulations.

Decision

Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Paragraph 14(1)(b) provides that an approval may be granted subject to conditions.

In making my decision, I have taken into consideration the opinions of the proponent, the Civil Aviation Safety Authority, Airservices Australia, and SACL.

In accordance with this Regulation 14(1)(b), I **impose the following conditions on my approval:**

1. The building **must not exceed** a maximum height of **166.8 metres AHD**, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
2. Separate approval **must be sought** under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the building.
3. At the completion of the construction of the building, a certified surveyor **must notify in writing** the airfield design manager of the finished height of the building.

Breaches of approval conditions are subject to significant penalties under sections 185 and 187 of the Act.

Yours sincerely



Scott Stone

General Manager, Aviation Environment
Aviation and Airports Division

2 February 2015

Parties

Lane Cove Council

Loftex Pty Ltd

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

Contents

1	Definitions and interpretation	2
1.2	Interpretation	4
2	Planning Agreement under the Act	5
3	Application of this Agreement	5
4	Operation of this Agreement	5
5	Development Contributions to be made under this Agreement	6
5.1	Provision of Development Contributions	6
5.2	Indexation	6
5.3	Timing	7
5.4	Delivery of Monetary Contributions	7
6	Application of the Monetary Contributions	7
7	Application of sections 94, 94A and 94EF of the Act to the Development	8
8	Registration of this Agreement	8
9	Dispute Resolution	9
9.1	Reference to dispute	9
9.2	Notice of dispute	9
9.3	Representatives of parties to meet	9
9.4	Neither party may constrain	9
10	Security and Enforcement	10
10.1	Developer to provide security	10
10.2	Security to be provided to Council	10
10.3	Release of security to the developer	10
10.5	Enforcement by any party	10
11	Notices	11
11.1	Delivery	11
11.2	Change of details	11
11.3	Giving of notice	11
11.4	Delivery outside of business hours	12
12	Approvals and consent	12
13	Assignment and dealings	12
13.1	Assignment	12
13.2	Transfer dealings	12

14	Costs	12
15	Entire agreement	13
16	Further acts	13
17	Governing law and jurisdiction	13
18	Joint and individual liability and benefits	13
19	No fetter	13
20	Representations and warranties	13
21	Severability	14
22	Waiver	14
23	GST	14
23.1	Construction	14
23.2	Intention of the Parties	14
23.3	Consideration GST exclusive	14
23.4	Payment of GST – additional payment required	15
23.5	Valuation of non-monetary consideration	15
23.6	Tax invoice	16
23.7	Adjustment event	16
23.8	Reimbursements	16
23.9	No Merger	16
24	Relationship of parties	16
25	Further steps	16
26	Counterparts	16
27	Rights cumulative	17
28	Explanatory Note	17
	Schedule 1 - Section 93F Requirements	18
	Schedule 2 - Explanatory Note	20
	4. Summary of objectives, nature and effect of the planning agreement	21
	Schedule 3 - Land title details	23
	Execution	24

Date 5 March 2015.

Parties

Lane Cove Council ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South Wales (Council)

Loflex Pty Ltd ACN 135 286 494 of Level 16, 61 Lavender Street, Milsons Point, New South Wales (Developer)

Background

- A At the Ordinary Council meeting held on 15 April 2013, Council resolved as follows:
1. *Council adopt the exhibited amendments to the Lane Cove Local Environmental Plan 2009 relating to 1-25 Marshall Avenue, St Leonards, subject to the proposed building height map showing the height of the eastern portion reduced from 78m to 65m;*
 2. *The Department of Planning & Infrastructure be requested to finalise the Planning Proposal LEP Amendments; and*
 3. *Council indicate it will only consider any further height increase if the applicant enters into a suitable Voluntary Planning Agreement (VPA) to enhance the public domain in the vicinity of the site.*
- B The Developer seeks Development Consent to carry out the Development on the Land.
- C As part of the Development the Developer proposes to seek a variation under clause 4.6 of the *Lane Cove Local Environmental Plan 2009* to the height limit applicable to the Land so that the proposed tower building is approximately 94 metres above the existing ground level, being an increase of 29 metres (or nine storeys) above the existing height limit of 65 metres.
- D The Development Application for the Development was accompanied by an offer by the Developer to enter into this Agreement providing for the Developer to make Monetary Contributions which are to be applied towards the Agreed Public Purpose.
- E As contemplated by section 93F of the *Environmental Planning & Assessment Act 1993*, the parties wish to enter into an Agreement in connection with the Development Application on the terms and conditions of this Agreement.
-

Operative provisions

It is agreed

1 Definitions and interpretation

In this Agreement these terms have the following meanings:

Act	means <i>The Environmental Planning and Assessment Act 1979</i> (NSW).
Additional Gross Floor Area	means any Gross Floor Area approved under the Development Consent by the consent authority pursuant to clause 4.6 of the LCLEP and that is located above the Height Limit.
Agreed Public Purpose	means the construction of a new public plaza over the railway line in St Leonards
Agreement	means this voluntary planning agreement including any schedules and annexures.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council, issued by: (a) one of the following trading banks: (i) Australia and New Zealand Banking Group Limited, (ii) Commonwealth Bank of Australia, (iii) Macquarie Bank Limited, (iv) National Australia Bank Limited, (v) St George Bank Limited, (vi) Westpac Banking Corporation, or (b) any other financial institution approved by the Council in its absolute discretion.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Consent Authority	has the same meaning as under the Act.
Construction Certificate	has the same meaning as under section 109C of the Act.
CPI	means the All Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.

Development	A mixed-use residential apartment development comprising two separate buildings located over a common basement car park proposed to be constructed on the Land. The first building will comprise approximately 52 apartments over seven storeys, with the second building comprising a tower of approximately 219 apartments plus commercial and retail space over 29 storeys, as modified from time to time.
Development Application	means a development application made under Part 4 of the Act for the Development.
Development Consent	means the development consent granted by the Consent Authority to the Development Application, which has the same meaning as Development Consent in the Act and includes any amendment or modification of the Development Consent, including a Section 96 Modification.
Explanatory Note	the Explanatory Note attached at schedule 2 .
Force Majeure	means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.
Gross Floor Area	has the same meaning as provided by the LCLEP.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Height Limit	means the height limit in the LCLEP as at the date of this Agreement as it applies to the Development and the Land under the LCLEP Height Limit map.
Land	the land located at 1-13a Marshall Avenue, St Leonards and proposed Lot 2 in the draft subdivision plan of 15-25 Marshall Avenue, St Leonards and contained in the folio identifiers listed in schedule 3 .
Land Owners	means the Developer
Law	means: <ul style="list-style-type: none"> (i). the common law including principles of equity, and (ii). the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority, that presently apply or as they may apply in the future.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
LPI	means the Land and Property Information Office of New South Wales or any other authority replacing it.
Monetary	means the amount calculated under clause 5 , as indexed

Contribution	in accordance with clause 6.1 .
Party	a party to this Agreement, including their successors and assigns.
Public Purpose	has the same meaning as in section 93F(2) of the Act.
Registration on Title	means the registration of this Agreement under section 93H of the Act in the folio of the Register kept under the Real Property Act in relation to the Land, and Registered on Title refers to the state of the Agreement being so registered.
Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Schedule	means a schedule to this Agreement and forming part of this Agreement
Security	means a Bank Guarantee.
Security Amount	means the amount equivalent to the estimated value of the Monetary Contribution as calculated by the Developer.
Section 96 Modification	means any modification of the Development Consent pursuant to section 96 of the Act.
Strata Lot	means a lot that forms part of the Land and is to be created by the registration of a Strata Plan and has been or is being developed for residential, commercial or retail purposes.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.
Strata Schemes Act	means the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
Sunset Date	means the date on which the Development Consent lapses, should that occur.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;

- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.
- (b) For the avoidance of doubt any New Law will not relieve the Developer from its obligation to pay the Monetary Contribution.

2 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.
- (b) **Schedule 1** of this Agreement sets out the mandatory requirements of section 93F of the Act and the corresponding provisions of this Agreement.

3 Application of this Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

4 Operation of this Agreement

- (a) This Agreement operates from the later of:
 - (i) the date that this Agreement is entered into as required by clause 25C(1) of the Regulation; or
 - (ii) the date upon which the Development Consent becomes operational.
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached.
- (c) If a legal challenge to the Development Consent by a third party results in the Development Consent being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.
- (d) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the consent authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration.

5 Not used

6 Development Contributions to be made under this Agreement

6.1 Provision of Development Contributions

The Developer is to pay a Monetary Contribution to Council in accordance with the following formula:

$$A \times B = C$$

whereas,

A = \$1,300 per square metre

B = Additional Gross Floor Area in square metres

C = Monetary Contribution payable

6.2 Indexation

The Monetary Contribution calculated in accordance with **clause 6.1** is to be indexed annually in accordance with the any movement in the CPI from the date of entry into this Agreement until such time as the Monetary Contribution is paid to Council.

6.3 Timing

- (a) The Security for the Monetary Contribution must be provided by the Developer to Council in accordance with **clause 12** within 10 Business Days of this Agreement becoming operational under **clause 4(a)**; and.
- (b) The Monetary Contribution must be paid by the Developer to Council prior to the issue of a Construction Certificate for all of any part of the Development.

6.4 Delivery of Monetary Contributions

- (a) The Monetary Contribution is made for the purposes of this Agreement when either:
 - (i) cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council; or
 - (ii) a bank cheque is provided to Council by the Developer.
- (b) The Developer is to give the Council not less than 10 Business Days written notice of:
 - (i) its intention to pay the Monetary Contributions; and
 - (ii) the amount proposed to be paid and the details of the calculation of the Monetary Contribution using the formula in **clause 6.1**.
- (c) If a tax invoice is by law required to be provided to the Developer by the Council:
 - (i) the Developer is not required to pay the Monetary Contributions under this Agreement until the Council, after having received the Developer's notice under **clause 6.4(b)**, has given to the Developer a tax invoice for the amount of the Monetary Contributions;
 - (ii) the Developer is not in breach of this Agreement if it fails to pay the Monetary Contributions at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the Monetary Contributions; and
 - (iii) a failure by Council under this **clause 6.4(c)** will not prevent the issue of a Construction Certificate for the Development.

7 Application of the Monetary Contributions

The Council must apply the Monetary Contributions received from the Developer under this Agreement towards the construction of a new public plaza over the railway line at St Leonards.

However, if the Council determines that a new public plaza over the railway line at St Leonards will never be constructed, then, after having given written notice to the Developer of its intention to do so, the Council must apply the Monetary Contributions received from the Developer under this Agreement towards infrastructure for a Public Purpose that is located generally within the St Leonards area of the Lane Cove Local Government Area unless otherwise agreed between the Parties.

8 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act to the Development;
 - (ii) any other monetary contributions required under the Act, in connection with any Development Consent that is granted in respect of the Development Application or the Land, including any Section 96 Modifications.
- (b) Any benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

9 Registration of this Agreement

- (a) Subject to clause 9(b), the Parties agree that this Agreement will not be registered on the title of the Land.
- (b) If the Developer has not made the Monetary Contribution in accordance with this Agreement within 6 months of the date of this Agreement, the Developer must, at its expense take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.

- (c) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the date that an obligation to register the Agreement arises under **clause 9(b)**.
- (d) The Parties agree that on registration by the Registrar General the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.
- (e) Subject to **clause 9(f)**, the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land but no other Dealing during the period after development consent is granted and prior to provision of the Security or where registration of this Agreement is triggered by the operation of **clause 9(b)**.
- (f) If the Council lodges a caveat in accordance with **clause 9(e)**, then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of any dealing with the Land other than a transfer; and
 - (ii) remove the caveat from the title to the Land promptly, following provision of the Security in accordance with **clause 6.3(a)** or registration of this Agreement pursuant to **clause 9(b)**.
- (g) Despite **clause 9(d)**, the Council as caveator must consent to registration of transfer of the land or any part of the Land from the developer to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**.
- (h) If the Developer has not registered this Agreement on the Land in accordance with **clause 9(b)** within 120 days after the date of operation in **clause 4(a)(ii)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, to lodge the caveat under **clause 9(e)**.

10 Review of this Agreement

- (a) This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in a manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

11 Dispute Resolution

11.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

11.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 11.2**), meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clauses 11.3(b)(i) to 11.3(b)(iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

12 Security and Enforcement

12.1 Developer to provide security

Section 93F(3)(g) of the Act requires the enforcement of a planning agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the Agreement by the Developer. The intention of the Parties is that this clause 12 satisfies this obligation through the provision of a Bank Guarantee to Council as Security and the enforcement provisions.

12.2 Security to be provided to Council

- (a) The Developer must provide Security for the Security Amount to the Council within 10 Business Days of this Agreement becoming operational under clause 4(a).
- (b) Within a reasonable period after each anniversary date of the date of provision of the Security to Council, the Developer must provide a replacement Security to Council which is equal to the Security Amount as indexed annually in accordance with the CPI from the date of provision of the Security to Council.

12.3 Release of security to the developer

The Council is to release the Security provided by the Developer within 10 Business Days of the payment of the Monetary Contributions to Council.

12.4 Call on Security

- (a) Subject to clause 12.3, the Security provided in clause 12.2 is given to secure performance by the Developer of its obligation to pay the Monetary Contributions.
- (b) The Council must only exercise its rights under the Security in accordance with this clause 12.4.
- (c) If the Developer does not comply with its obligation to pay the Monetary Contribution under this Agreement, then Council may, after giving the Developer no less than 10 Business Days' notice of the default, call on all or part of the Security and apply the proceeds as its own property in order to recover Council's loss arising from the failure of the Developer to pay the Monetary Contribution.

12.5 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or

- (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Notices

13.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Lane Cove Council

Attention: The General Manager
Address: 48 Longueville Road, Lane Cove, NSW
Fax Number: 02 9911 3600
Email: lccouncil@lanecove.nsw.gov.au

Loflex Pty Ltd

Attention: Rob Turchini
Address: Level 16, 61 Lavender Street, Milsons Point
NSW
Fax Number: 02 8920 0528
Email: RTurchini@loflexproperty.com

13.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its postal address, fax number or email address then any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest postal address, fax number or email address.

13.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, two Business Days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number;

- (d) If it sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Assignment and dealings

15.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause 15 is of no effect.

15.2 Transfer dealings

- (a) Subject to clause 15.2(b), the Developer must not transfer all or any part of the Land under this Agreement to another party (Transferee) unless the Transferee delivers to the Council a novation deed signed by the Transferee and the Developer in a form and of such substance as is acceptable to the Council, acting reasonably, containing provisions under which either:
 - (i) the Transferee agrees to comply with all the obligations of the Developer under this Agreement; or
 - (ii) other suitable arrangements are agreed as between the Developer, Council and the Transferee whereby the Developer retains the obligations under this Agreement; and
- (b) Clause 15.2(a) does not apply to any transfer of any part of the Land that is a Strata Lot.

16 Costs

The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

17 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier Agreement, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

19 Governing law and jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement:
 - (i) the Land Owners are the legal and beneficial owners of the Land;
 - (ii) the Land Owners have provided written consent to:
 - (A) the Developer entering into and performing its obligations under this Agreement; and
 - (B) if the obligation arises under **clause 9(b)**, the registration of this Agreement in the relevant folio of the Land titles.
 - (C) the lodgement by the Council of caveats notifying its interest in the Agreement in the relevant folio of the Land titles, up until such time as the Security is provided or this Agreement is registered pursuant to the operation of **clause 9(b)**.
- (b) If an obligation to register the Agreement on title arises under **clause 9(b)**, the Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Agreement in the relevant folios of the Land titles.
- (c) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law

23 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

25.1 Construction

In this **clause 25**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the GST Act.

25.2 Intention of the Parties

Without limiting the operation of this **clause 25**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) Despite **clause 6.4(c)** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 25.4** below) on account of GST.

25.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

25.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 25.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 25.4(b)**, **25.4(c)** and **25.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 25.4(c)** and **25.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,(**Non-taxable non-monetary consideration**),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the non-taxable non-monetary consideration.

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 25.4(a)** and subject to **clause 25.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 25.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 25.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

25.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 25.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

25.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 25.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

25.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 25.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

25.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 25.4** in respect of that reimbursement.

25.9 No Merger

This **clause 25** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

26 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

27 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

28 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

29 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

30 Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	The Land.
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 5.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not* excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not* excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not* excluded by this Agreement.
Benefits to be taken into account (Section 93F(3)(e))	No, the benefits under the Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 1.1(a).
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 12.
Registration of this Agreement (Section 93H)	See clause 9.

Provision of the Act	This Agreement
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 21.

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Explanatory Note for Voluntary Planning Agreement 1 – 13A Marshall Avenue, St Leonards

Summary

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a voluntary Planning Agreement ("**the Planning Agreement**") under Section 93F of the *Environmental Planning and Assessment Act 1979* ("**the Act**").

This Explanatory Note has been prepared jointly between the parties as required by clause

25E of the *Environmental Planning and Assessment Regulation 2000* ("**the Regulations**").

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Loftex Pty Ltd ("**the Developer**") has made an offer to Lane Cove Council ("**the Council**") to enter into a Voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

Description of subject land

1 – 13A Marshall Avenue, St Leonards ("**the Land**").

Description of the Development Application to which the Planning Agreement applies

Development Application No. x/2014 proposes a tower at the eastern end of the land with a height of 94 metres. The height control for this part of the site under Lane Cove Local Environmental Plan 2009 is 65 metres. The additional height equates to 9 additional stories.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides for a monetary contribution of \$1300 per square metre of Gross Floor Area over the existing height control. Council engaged HillPDA to undertake a valuation to determine the contribution rate.

The monetary contribution will be used for the construction of the St Leonards Rail Plaza and Bus Interchange.

In the event that the St Leonards Rail Plaza and Bus Interchange does not proceed, the funds may be utilised for the provision of public infrastructure generally within the St Leonards area of Lane Cove Local Government Area.

Assessment of the Merits of the Planning Agreement

Impact of the Planning Agreement on the public or any section of the public

The Agreement enables Council to utilise funds provided by the Developer to construct a new public plaza over the railway line at St Leonards (or if that infrastructure does not proceed, the monies will be utilised for the provision of public infrastructure generally within the St Leonards area of Lane Cove Local Government Area).

This ensures that Council is able to undertake the orderly planning and development of land and the Agreement provides a reasonable means of achieving this purpose.

How the Planning Agreement Promotes the Objects of the Act and the public Interest

The Planning Agreement promotes the following objectives of the Environmental Planning and Assessment Act 1979:

- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iv) the provision of land for public purposes,*

The Planning Agreement promotes the public interest and the above objectives of the Act by providing public domain improvements that will benefit existing and future residents and workers in the St Leonards area. Council's vision is for a public plaza and bus interchange over the rail corridor.

How the Planning Agreement promotes the elements of the Local Government Act 1993 and the Council's Charter

The Planning Agreement is consistent with the following purposes of the Local Government Act 1993:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public;
- to give councils a role in the management, improvement and development of the resources of their areas.

The Planning Agreement promotes the following element of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- have regard to the long term and cumulative effects of its decisions; and
- to engage in long-term strategic planning on behalf of the local community.

These elements of the Council's Charter are promoted through the raising of funds through the proposed monetary contribution so as to provide the St Leonards Rail Plaza and Bus Interchange.

The Planning Purposes served by the Planning Agreement

The Planning Agreement facilitates the promotion and co-ordination of the orderly and economic use and development of land as it recognises and supports the existing transport infrastructure. It also provides for contributions by the Developer for the Enhanced Public Open Space - St Leonards Rail Plaza and Bus Interchange.

The Agreement provides for a reasonable means of achieving this material public benefit to the community by contributing funding to Council for this purpose.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The proposed St Leonards Rail Plaza and Bus Interchange is included in the Council's Section 94, Development Contributions Plan. It conforms with Council's Capital Works Program. The Section 94, Development Contributions Plan will not provide sufficient funding on its own to deliver the Rail Plaza and Bus Interchange which is estimated at \$50M. The Voluntary Planning Agreement regime is a key funding source for the project.

Requirements of the agreement that must be complied with before a construction certificate, occupation certificate

In the event of the Developer obtaining development consent, the contribution will become due and payable prior to the issue of the Construction Certificate. The Developer is required to provide a bank guarantee for the contribution amount from the date of operation of the Planning Agreement until the payment of the contribution to the Council.

Schedule 3

Land title details

Lot 17 in DP 7259
Lot 181 in DP 1044948
Lot 182 in DP 1044948
Lot 191 in DP 1048543
Lot 192 in DP 1048543
Lot 201 in DP 633091
Lot 202 in DP 633091
Lot 1 in DP 1068458
Lot 2 in DP 1068458
Lot 2 in DP 602010
Lot 1 in DP 602010
Lot 232 in DP 566002
Lot 231 in DP 566002
Lot 2 in an unregistered plan of subdivision of Lot 2 in DP209715, Lot 1 in DP 209715, Lot 25 of Section 1 of DP 7259, Lot 26 of DP 666508, AUTO CONSOL 6931-150 and Lot 28 of Section 1 in DP 7259 at 15-25 Marshall Avenue, St Leonards


Execution

Executed as a deed.

Executed by Lane Cove Council by its
duly appointed attorney pursuant to
Power of Attorney registered book 4637
No.811 in the presence of:


Witness

MILLIE STEPHEN
Name of Witness (print)


Attorneys Signature

CRAIG ANTHONY WRIGHTSON

.....
Name of Attorney (print)

Executed by Loftex Pty Ltd in
accordance with section 127(1) of the
Corporations Act 2000 (Cth) by
authority of its directors.


Company Secretary/Director

XIAO YANG WANG
Name of Company Secretary/Director
(print)


Director

XIAONAN RUAN
Name of Director (print)



existing view from Building B Level 6 looking south east





04/02/2015 14:02

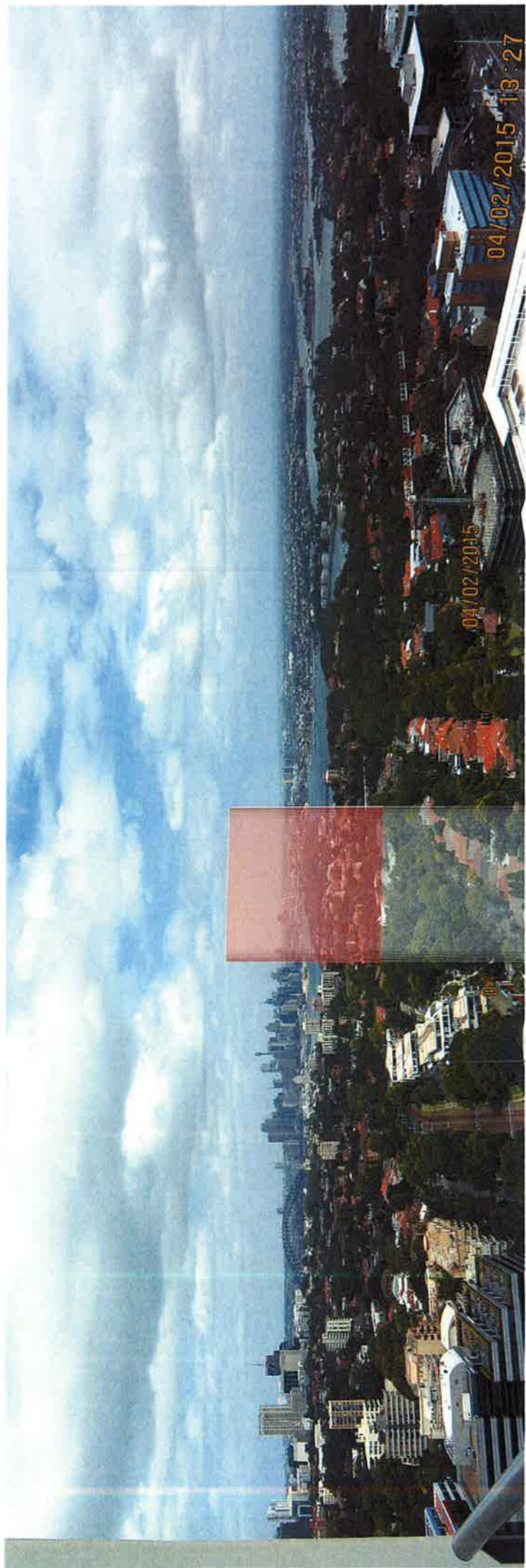
04/02/2015 14:02

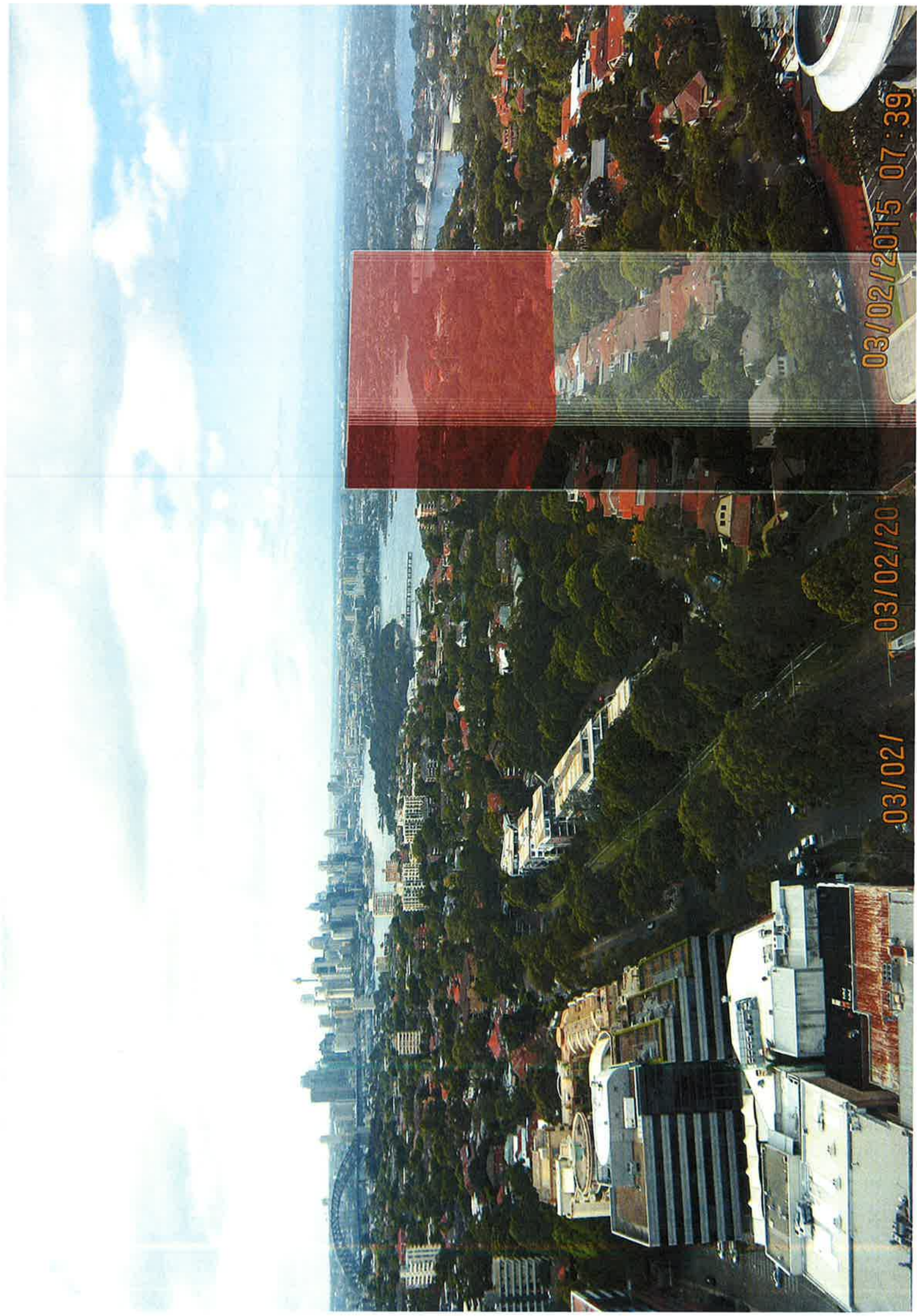


03/02/2015 07:14

03/02

03/02/2015 07:14





03/02/2015 07:39

03/02/20

03/02/

