

29 April 2016

The General Manager
Lane Cove Council
48 Longueville Road
LANE COVE NSW 2066

Attn: Ms Rebecka Groth

Dear Rebecka,

472-494 Pacific Highway St Leonards - DA 222/2014 - Response to Late Submission from Natalie Richter Planning dated 19 April 2016

This letter has been prepared by Urbis on behalf of Mirvac, in response to the late submission received by Council dated 19 April 2016 in respect to DA 222/2014. The late submission has been prepared by Natalie Richter Planning on behalf of the residents of Abode at 599 Pacific Highway, St Leonards. This response is focussed on the key items raised in that submission.

We note that a lengthy and extensive development assessment has been completed by Lane Cove Council (including referrals to authorities, peer review consultants, Council officers etc) and the matters raised have been taking into account during Council's thorough assessment. Notwithstanding this, it appears the items raised in the submission generally relate to the proposal's impact on views from apartments within The Abode.

It is contended in the submission that this impact is unreasonable having regard to:

1. the proposal's inconsistency with the Planning Proposal that informed LEP Amendment 18 and associated site specific DCP provisions;
2. the proposal's inconsistency with DCP requirements and consequential impact on views from The Abode;
3. the proposal's inconsistency with certain SEPP 65 Design Principles; and
4. the proposal's inconsistency with Lane Cove LEP Amendment 18.

Each of these issues are addressed below.

1 Consistency with Planning Proposal

Information provided as part of a Planning Proposal submission has the purpose of informing any subsequent LEP amendment and associated DCP amendment. Whilst the Planning Proposal for 472-520 Pacific Highway, St Leonards was informed by an indicative design concept, that concept must be further designed and refined to be the subject of a Development Application. The only matters for consideration in the assessment of a Development Application are those contained within the relevant LEP and DCP which were made following gazettal and adoption of these documents post a Planning Proposal.

As such, the contention that the proposed DA design scheme should be consistent with the form and scale contemplated by the Planning Proposal is itself inconsistent with s79C of the Environmental Planning & Assessment Act and therefore has no relevance in the consideration of the subject development application. Notwithstanding this, the proposal is generally consistent with the Planning Proposal intent in any event.

Accordingly, assessment of the subject development application has been framed against the parameters detailed in the Lane Cove LEP 2009 and the site specific DCP controls which set out the relevant building location and envelope controls for a mixed use development such as that proposed.

2 Inconsistency with DCP requirements and consequential impact on views from the Abode

The submission contends that the proposed building exceeds some DCP envelope provisions which would further impact view loss from apartments within The Abode, when compared with a strictly complying mixed-use scheme.

From the outset it is important to highlight that the subject proposal is a significant improvement when compared to a complying development under the previous planning framework which would result in the wholesale loss of views for the residents of The Abode. And, for absolute clarity, the building separation of 22m in the proposal is wholly compliant with the site specific DCP which recognised the site constraints to full RFDC compliance on building separation.

The detailed design undertaken as part of the development application has resulted in some immaterial minor encroachments to the building setbacks under the RFDC and floor plate areas contained within the site specific DCP. These minor items have been appropriately justified in the Development Application and supporting material and result in no material additional impact on the views obtained from The Abode. This has also been the outcome reached by Council's assessment which included Peer review consultants and an extensive review during a thorough assessment process.

A comprehensive and thorough assessment of view impact generated by the subject proposal was contained in the original DA documentation with further detailed view analysis undertaken at the request of the JRPP. This addressed both the principles of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* and those established in *Veloshin v Randwick Council [2007] NSWLEC 428*. Whilst there are some very minor deviations to the applicable planning controls it is considered that strict compliance with the RFDC rule-of-thumb building separation of 24m and very minor 68m² increase in building floorplate for levels 4-14 results in no material increase in the extent of views obtained from The Abode.

In responding to the JRPP's request for additional view assessment addressing:

- Impact on views resulting from an increased internal building separation from 22m (being compliant with the site specific DCP) to 24m (being the RFDC separation distance for levels 9 and above); and
- Comparison of impact of views from a building envelope compliant with the applicable site controls prior to Amendment 18

A revised view study was provided to Council on 20 April 2016. This demonstrates that;

- There would be no material additional view obtained to residents of The Abode by a scheme that provides 24m building separation between the two towers. Of note, any additional slither of view is indiscernible and would not include any 'iconic' view such as the Sydney Harbour Bridge or CBD skyline.

- A compliant development under the previous planning framework would result in a significantly worse outcome for the residents of The Abode and would completely obscure all views through the site. The view resulting from the proposed scheme is significantly improved from that which would result from a development that complied under this previous planning framework.

3 Inconsistency with certain SEPP 65 Design Principles

The submission contends that insufficient justification for the proposal has been given in light of the SEPP 65 Schedule 1 Design Principles.

This section of the submission contends that the proposal is inconsistent with the design scheme which informed the Planning Proposal and on that basis is inconsistent with the SEPP 65 Design Principles – particularly *Principle 1: Context and Neighbourhood Character* and *Principle 3: Density*. As noted above, the contents of a Planning Proposal are not matters for consideration in the assessment of a subsequent Development Application. Notwithstanding this the proposal is generally consistent with the Planning Proposal in any event.

Further, the submission contends that the proposed floor plates are excessive with little associated planning justification, making it inconsistent with *Principle 2: Built form and scale*. The floorplates proposed are addressed and justified in the SEE report accompanying the development application and have been supported by Council following a rigorous development assessment process. An extremely minor reduction of 68m² over the entire floorplate for levels 1-14 would be imperceptible in real terms and would not result in any material increase in views obtainable from The Abode apartments.

The submission contends that the impacts on views from The Abode have been downplayed and as such inadequate justification has been provided in terms of addressing *Principle 6: Amenity*. A comprehensive view assessment was provided with the DA package, addressing the principles of *Tenacity* and *Veloshin*. Further, an updated view study was provided to Council in April 2016 demonstrating the imperceptible, minor additional view that would be achievable through amending the building separation within the site from 22m to 24m.

The view impact has not been downplayed rather it has been assessed based on the allowable building envelopes that we decided upon as being acceptable following a Planning Proposal process Gazetted by the Minister for planning are guided by the DCP provisions. The impact has been vigorously reviewed and justified through in the development application and subsequent analysis requested by JRPP and is considered to be acceptable given the principles of *Tenacity* and *Veloshin* established by the Land and Environment Court.

4 Inconsistency with Lane Cove LEP Amendment 18

The submission contends that given the proposal achieves a higher yield and is inconsistent with the LEP and various commitments of the Planning Proposal documents, it is not clear as to why height excess is justifiable in environmental planning terms, particularly where there are demonstrable external impacts.

The submission is incorrect in contending that the development application achieves a higher yield than is allowable. The proposal seeks an FSR of 11.47:1, **being below the applicable FSR control of 12:1.**

An amended Clause 4.6 Variation request was submitted to Council in April 2016, further addressing the proposed variation to the building height standard in light of the *Four2Five* decision. This amended Clause 4.6 variation provides that there are demonstrable planning grounds particular to the site justifying the very minor proposed height variation.

The submission of a Clause 4.6 Variation is entirely permissible under the planning framework and the subject Clause 4.6 Variation in our view adequately supports the proposal as it currently stands.

In terms of view impact, the location of architectural roof blades and lift over runs on the roof of the building will have no impact whatsoever on views from The Abode.

Summary

The late submission prepared on behalf of residents of The Abode is based primarily on the contention that the subject development application departs too greatly from the concept scheme informing the Planning Proposal, and as such has an unreasonable impact on views currently available from The Abode.

Whilst the proposal is generally consistent with the Planning Proposal in any event, in accordance with s79C of the EP&A Act, the proposal has been assessed against the relevant LEP and DCP controls applicable to the site. Justification has been provided for the proposed very minor deviations to the LEP height and DCP controls and is considered to be sound based on extensive urban design, architectural, and view analyses. This is the outcome also reached by Council following a lengthy and extensive development assessment including referrals to authorities, multiple peer review consultants, Council officers etc. The matters raised have been taken into account during Council's thorough assessment.

A supplementary view impact report has been prepared and issued to Council addressing the JRPP query regarding building separation. This updated assessment demonstrates that the scenarios requested by the JRPP to be assessed will not result in any material increase in views from The Abode. The additional report to the JRPP also clearly demonstrates that the subject proposal is in fact a far better outcome from that which would occur from a complying commercial scheme, especially to the iconic Sydney Harbour Bridge and CBD skyline.

Conclusion

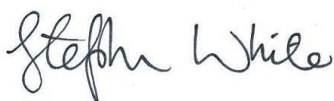
We conclude that following lodgement of the Development Application in late 2014 by the former owner of the site Leighton Properties, Mirvac refined the subject DA and significantly improved the overall outcome.

The subject proposal has been comprehensively assessed by Lane Cove Council over a considerable period with extensive referrals, reviews by peer consultants and refinements made by the applicant to further improve the development outcome. It has undergone a high level of rigour and scrutiny relative to the site specific controls.

The proposal is a quality outcome for the St Leonards area consistent with the Planning Proposal intent gazetted by the planning minister and the subsequent LEP and DCP planning controls. Where minor departures are evident, these have been substantiated and are supportable as per Council's recommended conditions of consent.

In our professional opinion the subject DA represents a high quality outcome that is supportable as recommended by Lane Cove Council.

Yours sincerely,



Stephen White
Director