

independent assessment of s.96(2) application

To Modify Consent No. 194/2013
For a Residential Flat Development
Containing a Maximum of 245 Dwellings

Property:

Various Lots
Nos. 2-22 Birdwood Avenue and Nos. 11-15 Finlayson Street,
Lane Cove

Applicant:

Robinson Urban Planning Pty Ltd

Date:

February 2016

Prepared by:

tim shelley planning

phone: 0409 306186
email: tandishelley@bigpond.com
postal address: PO Box 3165 Erina NSW 2250
abn: 93 953 894 518

REPORT TO JRPP – S.96 DA 194/2013
2 – 22 BIRDWOOD AVE & 11 – 15 FINLAYSON ST, LANE COVE

APPLICATION DETAILS

Properties: Nos. 2 – 22 Birdwood Avenue and 11 – 15 Finlayson Street, Lane Cove

DA No: S.96(2) Application – DA 194/13

Date Lodged: 18th August 2015

Cost of Work: N/A for S.96.

Cadastral and Ownership Details:

| Address | Lot Description | Owner |
|---------------------|-------------------|--------------------|
| 2 Birdwood Avenue | Lot 91 DP 10155 | Yefang L C Pty Ltd |
| 4 Birdwood Avenue | Lot 501 DP 868066 | Yefang L C Pty Ltd |
| 4A Birdwood Avenue | Lot 502 DP 868066 | Yefang L C Pty Ltd |
| 6 Birdwood Avenue | Lot 891 DP 855900 | Yefang L C Pty Ltd |
| 6A Birdwood Avenue | Lot 892 DP 855900 | Yefang L C Pty Ltd |
| 8 Birdwood Avenue | Lot 88 DP 10155 | Yefang L C Pty Ltd |
| 10 Birdwood Avenue | Lot 87 DP 10155 | Yefang L C Pty Ltd |
| 12 Birdwood Avenue | Lot 86 DP 10155 | Yefang L C Pty Ltd |
| 14 Birdwood Avenue | Lot 85 DP 10155 | Yefang L C Pty Ltd |
| 16 Birdwood Avenue | Lot 84 DP 10155 | Yefang L C Pty Ltd |
| 18 Birdwood Avenue | Lot 832 DP 844967 | Yefang L C Pty Ltd |
| 18A Birdwood Avenue | Lot 831 DP 844967 | Yefang L C Pty Ltd |
| 20 Birdwood Avenue | Lot 82 DP 10155 | Yefang L C Pty Ltd |
| 22 Birdwood Avenue | Lot 81 DP 10155 | Yefang L C Pty Ltd |
| 11 Finlayson Street | Lot 75 DP 10155 | Yefang L C Pty Ltd |
| 13 Finlayson Street | Lot 76 DP 10155 | Yefang L C Pty Ltd |
| 15 Finlayson Street | Lot 77 DP 10155 | Yefang L C Pty Ltd |
| Total | 17 lots | |

Applicant: Robinson Urban Planning Pty Ltd

REASON FOR REFERRAL TO JRPP

In accordance with the provisions of Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011 (as cross referenced to Schedule 4A to the Environmental Planning and Assessment Act 1979), the original development application was referred to the Joint Regional Planning Panel (JRPP) due to it having a Capital Investment Value of in excess of \$20 million.

Accordingly, as required by S.21(1)(b) of the SEPP, applications lodged under S.96(2) are also to be determined by the JRPP.

EXECUTIVE SUMMARY

- Sydney East JRPP approved Stage 1 Concept DA No. 194/13 on 26 March 2014 which established building envelopes and a range of provisions for a residential flat development on the site including:
 - Four residential flat buildings
 - Combined basement car parking

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- On-site landscaping
 - A pedestrian link through the site
 - Building envelopes
 - Maximum FSR of 1.85:1
 - Maximum of 245 dwellings.
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- The building envelopes adopted under this approval set heights and a maximum FSR for the development and in doing so, were deemed to have satisfactorily addressed issues such as building separation, overshadowing, privacy and view loss and other issues relating to the overall bulk scale and impact of the development.
 - A Section 96(2) application was lodged with Council on 18th August 2015 which sought to make changes to the Stage 1 Consent. These modifications related to changes in building envelopes, comprising a small number of minor increases to roof profiles and building heights (up to approx 100mm) in conjunction with significant reductions in footprint area (approx 14%), as well as changes to waste collection arrangements and storage facilities, the timing for submission of dilapidation reports and the requirement to comply with the newly adopted Apartment Design Guide (ADG) rather than the Residential Flat Design Code (RFDC) under SEPP 65.
 - As the original application was recommended for refusal by Council, an independent assessment of the S.96 application has been undertaken by Tim Shelley Planning.
 - The applicant was advised by a letter from Tim Shelley Planning dated 17th November, 2015 and in a meeting with Council and Tim Shelley Planning on 26th November 2015 that the minor increases to roof profiles would not be supported. Accordingly, amended plans were submitted by the applicant that removed these increases such that all building heights are the same (or are lower than) the levels specified for each building on the plans originally approved under condition 5. As such, the minor changes to roof profiles originally sought no longer form part of the application.
 - DA No. 125/15 was also lodged by the same applicant with Council on 18th August, 2015 for Stage 2 of the development approved under the concept plan, seeking approval for 237 apartments in four buildings generally in accordance with the concept plan approval but subject to the amendments proposed under this S.96 application. The assessment of this application is the subject of a separate, concurrent report to the JRPP.
 - A total of 5 submissions were received in relation to the proposal during the notification period. The concerns raised in these submissions included: excessive building height; scale and character of the development; overshadowing and privacy impacts; tree removal; construction issues (noise and traffic); potential geotechnical and stability issues to adjoining properties; acoustic impact (air conditioners); and the impact of the proposed development on traffic and parking and the veracity of the submitted traffic assessment in relation to same.
 - Most of these issues are not relevant to – or fall outside the scope of – the S.96 application, particularly those in relation to view loss, overshadowing, the number of units or the number of storeys of the buildings, as these were resolved as part of the Concept Plan approval.
 - Some of the issues raised (e.g. landscaping, parking etc) will be considered and addressed as part of the assessment of the Stage 2 application. Of the remaining issues, none are deemed as being sufficiently significant as to warrant any further changes to the approved development or to the existing consent conditions.

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- The proposed development demonstrates continued compliance with the relevant provisions of Lane Cove Local Environmental Plan 2009.
- The amended proposal also remains consistent with (and in fact is more compliant with) the ten (10) design principles of SEPP 65 and complies with all relevant requirements of Lane Cove Development Control Plan 2010, with the exception of some minor encroachments to the side setbacks to Rosenthal Avenue and Cox's Lane to provide improved articulation and building aesthetics. These variations are supported.
- Overall, the modifications sought by the applicant are considered to result in an improved built form outcome with a lesser impact and are therefore supported, other than for the proposed removal of a bulk storage area in each building, a requirement which remains relevant. As such, it is recommended that the application be modified in the manner described at the end of this report.

THE SITE

The site comprises 17 allotments at Nos. 2-22 Birdwood Avenue and Nos. 11-15 Finlayson Street at Lane Cove and has an area of 10,479m². The site is located to the west of the Lane Cove CBD and is roughly "T-shaped", with frontages to Birdwood Avenue to the north (of approximately 169.5 metres); Cox's Lane to the west (51.765 metres); to Finlayson Street to the south (45.72 metres) and Rosenthal Avenue to the east (42.48 metres). A map showing the location of the site is provided as Figure 1 below.

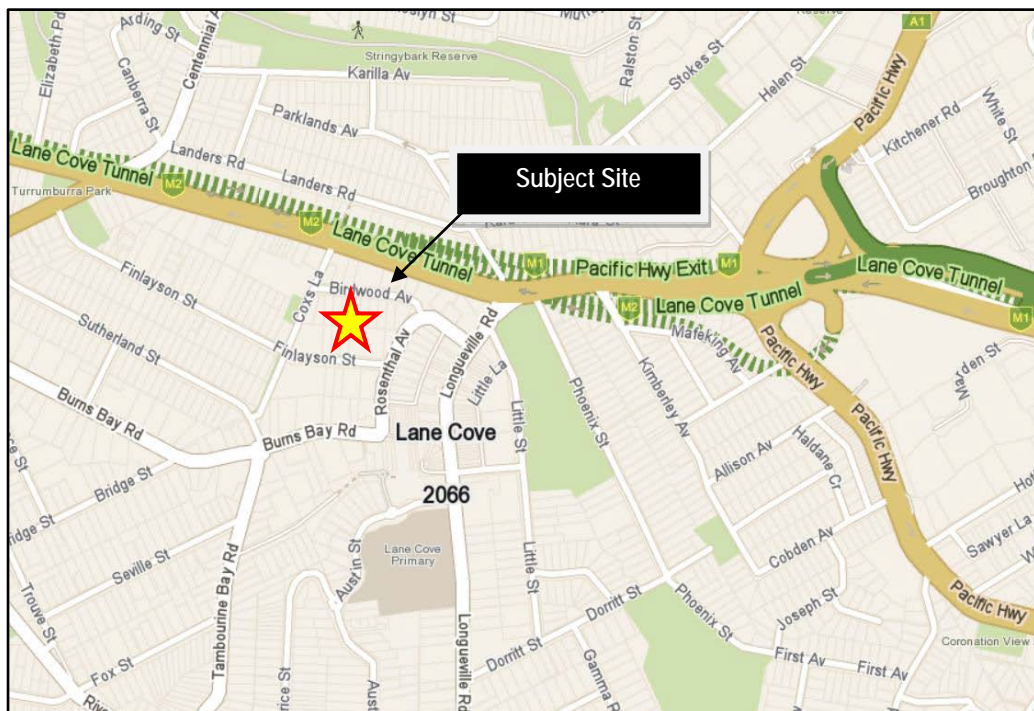


Figure 1 – Locality Plan

The site falls diagonally towards the northwest, with a fall of approximately 10.5m from Finlayson Street to a low point of RL 63.50 at the western end of Birdwood Avenue. Cox's Lane has a significant level change along the edge of the site boundary. The site frontages to Rosenthal Avenue and Finlayson Street are relatively level.

Existing development on the site consists of a mix of single storey and two storey detached dwelling houses and ancillary structures such as garages, car ports and garden sheds. Vegetation on the site comprises urban yards with mostly mown grass and gardens. There are numerous trees near the centre of the site plus trees on the road reserves adjacent to the site. Concept approval for tree removal, replacement and transplanting was addressed as part of the Stage 1 DA.

SURROUNDING USES

North – the area to the north of the site beyond Birdwood Avenue is residential land facing Epping Road. This land is in Zone R4 and B4 and is used for or undergoing redevelopment as residential flat buildings.

South – land to the south of the site on Finlayson Street, is occupied by recently completed residential flat buildings (known as Aurora, Botanic and Finlayson). This land is in Zone R4. Also to the south are some detached dwelling houses.

East – to the immediate east of the site is a two storey building being used as a dental centre, with a car park to the south of the building. Land further east beyond Rosenthal Avenue is zoned B4 in Lane Cove Village and includes the Rosenthal car park which has been identified for mixed use redevelopment by Council, including a concept for a pedestrian bridge connecting this area to the subject site, which Council is negotiating for the land platform on which a pedestrian stair and lift is to be located as part of this development.

West – a combination of detached dwelling houses (to the south-west in Zone R2) and residential flat buildings (to the north-west in Zone R4) are to the west of the site, beyond Cox's Lane. Two small parks are located on the western side of Cox's Lane. This road is to be widened in the future, with a 3.0 metre wide section of land fronting Cox's required to be dedicated to Council to facilitate such widening as part of this development.

An aerial photograph identifying the location of the subject site in the context of the surrounding area and nature of surrounding land uses is provided as Figure 2 on the following page.



Figure 2 – Aerial Photograph
(Source: SOEE for Stage 2 DA 125/2015 prepared by Robinson Urban Planning)

DETAILS OF PROPOSED MODIFICATIONS

Details of and Justification for Proposed Changes to the Development

The applicant has sought modifications to the concept development approved under consent no. 194/13 pursuant to the provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979. In this regard, the applicant has indicated that Stage 2 DA design work has identified a number of matters in the Stage 1 Consent that require modification including minor changes to the building envelopes (resulting in an overall reduction in building bulk) and refinement of a number of conditions as follows:

1. Condition 5 – Approved Drawings

Condition 5 lists the drawing approved by the Stage 1 Consent (MP 100 001 Rev S2 prepared by Turner and dated 20/ 03/ 2014). In addition to this referenced plan, the Stage 1 Consent is accompanied by a set of stamped plans and information. The S.96 application (following the submission of amended plans in December) seeks to modify the approved plans as follows:

- a. Reduce the approved envelope for Buildings A, B, C and D.
- b. Extend the approved envelope for Buildings A, B, C and D to provide for splay window and balcony projections to articulate the facades and improve residential amenity for future residents in the development, as shown in orange on the Envelope Area Analysis Plans by Bates Smart (DA 09.10 to DA 09.19).

Overall, the proposed envelope modifications reduce the building envelope area by 14.24%.

2. Condition 8 – Residential Flat Design Code

The application seeks to modify Condition 8 to refer to the new Apartment Design Guide (ADG) which applies to DA's lodged after 19 June 2015 rather than the Residential Flat Design Code (RFDC) as currently stated under the Stage 1 consent. Accordingly, the development under the Stage 2 Da has been designed in accordance with the ADG as opposed to the RFDC.

3. Condition 29 – Waste collection and loading bay

The applicant seeks to modify Condition 29 in relation to the height of the waste collection and loading bay area, which requires the waste collection and loading bay area to accommodate a small rigid vehicle (SRV) with a clearance of 3.5 metres. The applicant's traffic consultant GTA advises that the proposed residential flat development would be serviced by a small truck requiring a clearance of up to 2.6m (2.7m is proposed). GTA notes that:

"... the site [is] to be serviced by Council's smallest garbage truck. This garbage truck has a travel height clearance of 2.6m and an operational height clearance of 2.4m. Based on the above, a height clearance of minimum 3.5m to allow access by Council's typical domestic garbage truck is not required."

4. Condition 40 – Garbage service room

Condition 40 requires the provision of a dedicated waste and recycling service room within each residential flat building. The applicant seeks to modify the condition to require a dedicated service room only if the building does not include a garbage chute that enables to the separation of waste and recycling on the basis that this proposal is consistent with the advisory note to condition 39 which states that:

ADVISORY NOTE: It is desirable that dual chute system is used instead of single chute system to transport the recycling materials directly to the main waste storage/ collection room(s).

5. Condition 41 – Car park entry and waste vehicle travel path

Condition 41 requires an entry clearance and waste vehicle travel path of 5.2m. As noted above, GTA advises that the site would be serviced by a small truck and that an entry vehicle travel path of 2.6m is adequate. The applicant therefore seeks to modify the condition to require 2.7m.

6. Condition 42 – Bulky good storage room

The Stage 1 Approval requires the provision of a bulky good storage room (30m² each) in each residential flat building, necessitating the provision of four rooms in the development. Application is made to modify the condition to require a single room for the development. The applicant contends that one room for the entire development is considered to be adequate, as explained in the amended Waste Management Plan submitted with the application.

7. Condition 52 – Dilapidation

Condition 52 requires each DA on the site to be accompanied by dilapidation surveys and reports before and after construction. Pre-construction dilapidation reports are normally prepared prior to the issue of a Construction Certificate (CC) with post construction dilapidation reports prepared prior to Occupation Certificate (OC). The applicant therefore seeks to modify this condition to reflect this standard procedure.

Note: This condition incorporates a number of errors in wording and syntax that require amendment regardless.

The S.96(2) proposal retains the main characteristics of the original consent including:

- Four residential flat buildings in the same location and of the same height;
- Combined basement car parking;
- Extent of landscaping;
- A pedestrian link through the site in the same location between building envelopes;
- A maximum floor space ratio (FSR) of 1.85:1; and
- A maximum of 245 dwellings.

3.2 Amended Information

The S.96(2) application was accompanied by the following information:

- Modified Stage 1 Architectural Plans and information (comprising Envelope Drawings, Envelope Area Analysis Plans and Shadow Analysis by Bates Smart Architects). To assist in the assessment of the amended proposal, the footprint and height of both the currently approved development and the proposed changes was overlaid on each of the plans, elevations and sections in dashed lines.
- An updated SEPP 65 Design Verification Statement prepared by Bates Smart Architects;
- Traffic advice in relation to the basement car park, by GTA Consultants (13 August 2015).
- An amended Waste Management Plan justifying changes to the waste storage room condition.

Following a meeting with Council and Tim Shelley Planning on 26th November 2015 where it was indicated to the applicant that the minor increases to roof profiles would not be supported, amended plans were submitted by the applicant on 16th December that removed these increases such that all building heights are now the same (or are lower than) the levels specified for each building on the plans originally approved under condition 5.

3.3 Pre-Lodgement Liaison

The applicant and its team attended pre-lodgement meetings with Council on 6th May 2015 and 17th July 2015 in relation to both the S.96 application and Stage 2 DA.

ASSESSMENT OF PROPOSED MODIFICATIONS

An assessment of the merits of each of proposed changes above is provided below, along with a comment as to what (if any) changes are required to the consent as a result.

1. Condition 5 – Approved Drawings

Comment:

Following submission of the amended plans on 16th December that removed the proposed increases to roof profile, the other changes sought to the approved plans are deemed to be satisfactory. In this regard, the substantial reduction in the building envelopes and footprints is supported as it results in a significant increase in ground floor open space as well as building separation and associated improvements in privacy, overshadowing and solar access, thereby improving the amenity of the development as a whole. Likewise, the proposed extensions to the approved envelope for Buildings A, B, C and D to provide for splay window and balcony projections is also supported as the changes are minor and result in improvements to the facades of the buildings via additional articulation that increases interest and variety in the streetscape to the various frontages of the site. These modifications also provide for improved residential amenity for future residents in the development via increased privacy and solar access and less opportunity for direct overlooking due to the re-orientation of balconies away from adjoining buildings and more towards the street and view corridors through the site.

Whilst these balconies and/or building splays now encroach into the 9 metre setback adjacent to Rosenthal Avenue and Cox's Lane, the encroachment is minor (approx 1 metre) and has no adverse impact, but rather results in significant improvements in both building form and resident amenity as explained above. In addition, the encroachments with respect to Cox's Lane do not compromise the plans for future road widening along this boundary, as dedication of the 3 metres required to accommodate this work still provides for as a setback of generally 6 metres for the majority of this frontage, reducing to 5 metres in the locations of the proposed splays, which is still deemed sufficient. No objection to this change was raised by Council Traffic and Transport Section.

Required Action:

Condition 5 needs to be amended to make reference to the new plans submitted on 16th December 2015.

2. Condition 8 – Residential Flat Design Code

Comment:

It is agreed that applications lodged after 19th June 2015 are required to comply with the requirements of the new Apartment Design Guide (ADG) cross reformed under SEPP 65 in lieu of the Residential Flat Design Code (RFDC). Whilst this change had not occurred when the original consent was issued, the reference to the RFDC has now been superseded due to the period of time that has passed since the issue of the original consent and the lodgement of the more detailed Stage 2 DA to which this condition refers. As such, for the avoidance of doubt and to ensure the new DA is required to comply with the standards relevant at the time of its lodgement, it is agreed to amend this condition as requested.

Required Action:

Part B of this condition should be amended to refer to the Apartment Design Guide instead of the Residential Flat Design Code.

3. Condition 29 – Height of waste collection and loading bay

Comment:

As indicated in the comments from Council's Manager Environmental Health below, no issue is raised to amend condition 29 to change the height clearance to 2.7m as this dimension is in excess of the DCP (which prescribes a floor to ceiling height clearance of 2.6m) and will provide satisfactory access into the waste collection and loading bay area.

Required Action:

The condition should be amended to make reference to 2.7m instead of 3.5 metres.

4. Condition 40 – Garbage service room

Comment:

Council's Manager Environmental Health has advised that a chute system with an integrated compaction system (of 3;1) and 240L MGB carousel is to be provided for putrescible waste (red bins), with each floor to be provided with 2 x 240L recycling bins and mixed containers at a ratio of 3 units per 240L MGB. A building/tenants caretaker will be responsible for transferring the recycling MGB's from within the building to the dedicated collection point and then returning the MGB's to each floor upon then being emptied.

The applicant's request to modify the condition to require a dedicated service room only if the building does not include a garbage chute that enables the separation of waste and recycling is not objected to, subject to the arrangements complying with Part Q of the DCP. As such, Council's Manager Environmental Health has suggested slightly amended wording to accommodate the applicant's request but still ensuring compliance with the DCP.

Required Action:

The condition should be amended to read:

"Each building is to be provided with an integrated waste chute, compaction and carousel system. Where a dual system is not used i.e. a chute which allows for waste and recycled content to be deposited into the same chute, each floor shall be provided with a waste room that has capacity for 2 x 240L MGB's. These MGB's will be transferred to the recycling area in the basement by the caretaker of the building. At all times the development is to comply with the provisions of Part Q of Lane Cove DCP 2010."

5. Condition 41 – Car park entry and waste vehicle travel path

Comment:

Consistent with the comments from Council's Manager Environmental Health in relation to Condition 29, no issue is raised to amend condition 41 to change the entry height into the car park to 2.7m, subject to the arrangements complying with Part Q of the DCP. As such, Council's Manager Environmental Health has suggested slightly amended wording to accommodate the applicant's request but still ensuring compliance with the DCP.

Required Action:

The condition should be amended to read:

"A clear path of travel for the Small Rigid Vehicle (SRV) Waste Collection is to be provided. In this regard, drawings are to be submitted to and approved by Council prior to the issue of a construction certificate for the relevant building that clearly identify the sweep paths for waste vehicles including elevations showing clear access to the premises in accordance with the provisions of Part Q of Lane Cove DCP 2010."

6. Condition 42 – Bulky good storage room

Comment:

As advised to the applicant at the meeting dated 26th November 2015, the request to remove the requirement for individual bulk storage rooms in each building and replace them with a single room for the entire development is not supported. This is on the basis that each building was of suitable size so as to require its own storage facility to handle bulky items (such as mattresses). Conversely, a single room for the entire development was deemed to be insufficient given the scale of the development and impractical for residents to transfer bulky items from one building to another.

In correspondence dated 16th December 2015, the applicant has accepted this stance and agreed to withdraw this request and instead retain a garbage room in each building as currently required. As such, the existing condition on this consent will remain unchanged, but a new condition will be added to any consent issued for the Stage 2 DA (No. 125/15) requiring the provision of such a room.

Required Action:

Condition 42 is to remain unchanged.

8. Condition 52 – Dilapidation

Comment:

The applicant's request to modify the wording of this condition to reflect Council's standard procedure of requiring a dilapidation report prior to works commencing and then a further report following the completion of works is agreed with, as this would provide the opportunity to assess the conditions of surrounding structures before and after the construction of the development and in turn, determine the need for any remediation works required as a result.

In any event, this condition needs to be amended as the current wording is both poor (in terms of grammar/syntax) and impractical, as it requires the submission of both reports up front with each DA, which is impossible as dilapidation reports are a post-consent requirement, with one required prior to construction and the other required post-construction.

As such, the condition should be replaced with a more detailed and better worded condition to reflect the requirement for two reports to be submitted either side of construction as well as a requirement for the undertaking of any necessary remediation works (at the applicant's/developer's cost) required as a result of the construction works authorised by the relevant development consent (to reflect the fact more than one consent may be issued).

Required Action:

The condition should be replaced with a new Condition 52 to read generally as follows:

"The applicant is to provide a dilapidation report of all adjoining properties and any of Council's infrastructure located within the zone of influence of the proposed excavation as determined by the geotechnical engineer.

The dilapidation report must be conducted and prepared by a suitably qualified engineer prior to the commencement of any demolition, excavation or construction works. The extent of the survey must cover the zone of influence that may arise due to excavation works, including dewatering and/or construction induced vibration. The initial dilapidation report must be submitted to Council prior to issue of the Construction Certificate associated with each further development application. A copy of the initial dilapidation report must also be made available to the owners or occupiers of properties within the zone of influence of the proposed development as determined by the geotechnical engineer upon submission to the principal certifying authority.

A second dilapidation report, recording structural conditions of all structures originally assessed prior to the commencement of works, must be carried out at the completion of the works and be submitted to Council prior to issue of an Occupation Certificate. Any damage identified in the second dilapidation report not shown in the initial report will be assumed to have been caused as a result of the construction works authorised under the relevant development consent and must be rectified to the satisfaction of Council at the applicants/developers expense prior to the release of any Occupation Certificate."

INTERNAL REFERRALS

The plans and supporting documents were referred internally to the relevant professional Council officers.

The following comments were provided regarding the proposed changes:

1. Manager Environmental Health – generally agrees with the changes sought to conditions 29, 40 and 41, but does not agree to amend condition 42 in relation to bulky waste goods storage area. This may necessitate an amendment to the plans for the Stage 2 DA in order to comply with the existing condition on the master plan DA, or simply a condition of consent.

2. Traffic and Transport – did not originally agree with the proposed change to the loading and waste servicing area, but this view has since been superseded by the Manager Environmental Health's referral where the change to height Clearance to 2.7m is agreed with due to compliance with the DCP.
3. Strategic Planning – does not agree with the proposal to close the public link before 7am and after 5pm, but rather has indicated this link needs to remain open at all times. This comment is relevant to the Stage 2 DA and can be addressed by a condition of consent.
4. Manager Development Assessment (Architect SEPP 65) – has indicated that the amended building design is supported and compliance with SEPP 65 has been maintained.
5. Development Engineer – no comments provided as there are no engineering issues resulting from the modifications. Comments are provided in relation to the Stage 2 DA.

These comments have been incorporated into the comments provided above in response to each of the proposed modifications.

RELEVANT ISSUES UNDER SECTION 96(2) OF THE EPAA ACT

The application is required to comply with the criteria identified under Section 96(2) – Other Modifications. To this end, the requirements of this section of the Act have been met as follows:

“(2) Other Modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

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

Comment:

In response to this criterion, the applicant has indicated that the S.96 proposal retains the main characteristics of the original consent including:

- Four residential flat buildings
- Combined basement car parking
- On-site landscaping
- A pedestrian through site link
- Building envelopes (of the same height and in the same location)
- Maximum floor space ratio (FSR) of 1.85:1
- Maximum of 245 dwellings.

Given the retention of these aspects, it is considered that the amended development will result in a development that is substantially the same in nature, bulk, scale and form as the development for which consent was originally granted.

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

Comment:

The original application did not require the concurrence of the Minister or the granting of any General Terms of Approval from any other approval body. As such, the S.96 application does not require any further consultation or referral to any such body.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and (not relevant as the consent authority is the JRPP) and*

Comment:

In accordance with section 118(6) of the EPA Regulation 2000, S.96(2) applications for the modification of development consents issued by a regional panel (as per S.118(1)(c)), the application was notified for a period of 14 days by Council on behalf of the Sydney East JRPP.

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

Comment:

As noted later in this report, five (5) submissions were received during notification of the application. The issues raised in these submissions have been taken into consideration during the assessment of this application. These issues are summarised later in the report, with a more detailed table itemising each submission provided as Attachment 1.

Given the above, it is considered that the request to modify the consent has met the parameters for applications submitted under Section 96(2) of the Act.

RELEVANT ISSUES UNDER EPA REGULATION 2000

Clause 115 of the Environmental Planning and Assessment Regulation 2000 sets out additional requirements that all applications for modifications of consent under S.96 must comply with. The relevant requirements of Clause 115 and how they have been complied with are set out in the following table:

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| CLAUSE 115 REQUIREMENTS | COMMENT |
|---|---|
| (1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information: | |
| (a) the name and address of the applicant, | Provided on application form. |
| (b) a description of the development to be carried out under the consent (as previously modified), | Provided on application form. |
| (c) the address, and formal particulars of title, of the land on which the development is to be carried out, | Provided on application form. |
| (d) a description of the proposed modification to the development consent, | Provided on application form and discussed in previous section. |
| (e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or (ii) that the modification is intended to have some other effect, as specified in the statement, | N/A |
| (f) a description of the expected impacts of the modification, | Discussed in following section |
| (g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved, | Discussed in previous section |
| (h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner), | Consent of the owner of the land has been provided with the application. |
| (i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), | N/A. |
| (j) and, if the consent authority so requires, must be in the form approved by that authority. | N/A. |
| 3) In addition, if an application for the modification of a development consent under section 96 (2) or section 96AA (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer. | |
| (3A) The statement by the qualified designer must: (a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and (b) provide an explanation of how: (i) the design quality principles are addressed in the development, and (ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and (c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which | N/A. Original SEPP 65 design verification statement report prepared by different architect on behalf of architectural firm who prepared original drawings. New statement required from current architect under 3B - see below. |

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| | |
|---|--|
| the development consent was granted. | |
| (3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted. | <p>New SEPP 65 Design Verification statement provided from current architect indicating that new design still meets design principles of SEPP 65.</p> <p>Plans and statement referred to Council's architect who has confirmed that SEPP 65 requirements have been met and integrity of original design has been maintained.</p> |
| (6) An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates | <p>N/A.</p> <p>No BASIX certificate provided for original application therefore no requirement for new/updated certificate.</p> <p>Condition 12 requires submission of BASIX certificate for each residential flat building with the relevant further development application. To this end, BASIX Certification provided with DA 125/2015.</p> |
| (9) The application must be accompanied by the relevant fee prescribed under Part 15. | Fee paid upon lodgement. |

RELEVANT ISSUES UNDER SECTION 79C

Pursuant to Section 96(3) of the Environmental Planning and Assessment Act, The following issues under Section 79C of the Environmental Planning and Assessment Act 1979 are relevant to the assessment of the application:

(a)(i) the provisions of any environmental planning instrument

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (SECTION 79C(1)(A))

Zoning and Permissibility

As shown on Figure 4 on the following page, the subject site comprises seventeen (17) allotments all zoned R4 High Density Residential under Lane Cove Local Environmental Plan 2009 (the LEP).

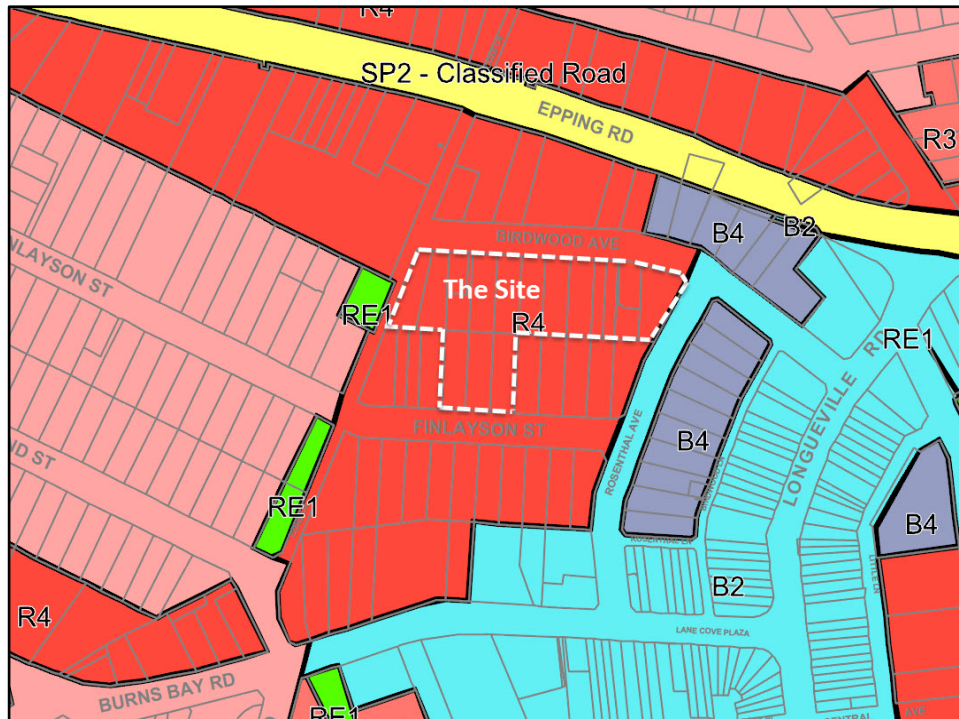


Figure 4 – Extract from LCLEP Zoning Map
(Source: SOEE for Stage 2 DA 125/2015 prepared by Robinson Urban Planning)

Under the dictionary of the LEP, the amended development continues to be defined as a "residential flat building" which means:

"residential flat building means a block containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing."

Residential flat buildings are a permissible use in the R4 zone subject to consent.

The modified development is still entirely consistent with the relevant objectives of the R4 zone as required by Clause 2.3(2) – Zone Objectives

Clause 4.3 – Height of Buildings

Under Clause 4.3 of the LEP, a maximum height has been adopted for a range of zones and specific sites within the Lane Cove LGA. Under the relevant map, the subject site has been identified as Category M, which equates to a maximum height limit of 18.0 metres.

Ordinarily the development would be required to comply with this height limit. However, the consent issued to the original application adopted site specific building envelopes for the development under the plans referred to in Condition 5, including specific heights for each building. As indicated earlier in the report, the amended plans submitted on 16th December 2015 shows the amended proposal complies with these height limits.

Clause 4.4 – Floor Space Ratio

Under the relevant floor space ratio (FSR) map adopted under Clause 4.4 of the LEP, the subject site has been identified as Category S3, which equates to a maximum FSR of 1.7:1.

However, as with height, the consent adopted site specific building envelopes for the development under the plans referred to in Condition 5, including a maximum FSR of 1.85:1. The amended plans show that the FSR still complies with the 1.85:1 maximum.

In this regard, the amended proposal comprises total floor space of 19,388m² which equates to a FSR of 1.85:1 when compared to a total site area of 10,479m².

SEPP 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

As required by Clause 115(3B) of the Regulation, a new SEPP 65 Design Verification statement has been provided from the architect that has prepared the amended plans to verify that new design still meets the design principles of SEPP 65.

A formal assessment of this statement and the amended plans has been undertaken by Council's SEPP 65 Officer who has advised that the amended proposal would articulate the facades and provide for better amenity for residents and continue to meet the objectives of the design principles of SEPP 65.

SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The amended proposal raises no issues regarding the provisions of policy.

STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

Clause 20 of this policy cross-references Schedule 4A to the Environmental Planning and Assessment Act 1979 ("the Act") which identifies a range of developments that – either due to their nature, scale, value, impact or location – are deemed to be of regional significance and which, as a result, require that the Joint Regional Planning Panel (JRPP) become the consent authority.

Pursuant to Schedule 4A(3), the original development had a capital investment value in excess of \$20 million, meaning the consent authority for the application was the Joint Regional Planning Panel. As required by S.21(1)(b) of the SEPP, applications lodged under S.96(2) are also to be determined by the JRPP.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Schedule 3 of SEPP Infrastructure identifies those developments that, due to either their scale or location (on or near an arterial road), require referral to Roads and Maritime Services (RMS) as traffic generating developments.

In accordance with clause 104 of the SEPP, the original application was referred to the RMS as it triggered two criteria under Schedule 3 of SEPP, that being the location on the site within 90m of a connection with a classified road (Epping Road) and its scale, given it comprised more than 75 dwellings. The development also triggered the threshold of parking for "50 or more" motor vehicles in Schedule 3.

Accordingly, the S.96 application was referred back to the RMS for comment, who advised that they raised no objection to the amended proposal (nor the concurrent application for Stage 2 - DA 125/2015), with their previous advice to the original application dated 8th January, 2014 remaining

applicable to both applications. This advice included a requirement that the development comply with the provisions of AS2890 and that a Construction Management Plan be submitted to Council for approval prior to the issue of the construction certificate. These items have been covered by conditions of the existing consent and therefore remain relevant.

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – CONTAMINATED LANDS

The amended proposal raises no issues regarding the provisions of this policy, with any contamination issues addressed as part of the original application and appropriate conditions applied with respect to excavation and geotechnical investigations.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

At this stage, no BASIX reports or certification has been provided either for the original application for the current application to modify the consent. Rather, a condition is currently attached to the consent requiring the submission of BASIX reports with the future development applications which remains relevant.

INTEGRATED DEVELOPMENT

The original application did not require the separate approval of any other referral body listed under S.91 of the Environmental planning and Assessment Act 1979 as such, did not constitute "Integrated Development". Accordingly, the amended proposal also requires no such approvals.

(a)(ii) the provisions of any draft environmental planning instruments

There are no draft environmental planning instruments relevant to the application.

(a)(iii) any development control plans

Lane Cove Development Control Plan 2010

A review of the applicant's SOEE for the Stage 2 DA (which includes detailed tables identifying the relevant controls) indicates the proposal remains generally consistent with the DCP, with the exception of minor variations to the side setbacks to Cox's Lane and Rosenthal Avenue. In this regard, these variations relate to balconies and building splays which encroach into the 9 metre setback adjacent to Rosenthal Avenue and Cox's Lane. However, as discussed previously, these encroachments are minor (approx 1 metre) and result in improvements in both building form and resident amenity via increased privacy and solar access.

On this basis, the variations requested are deemed appropriate and therefore supported.

(a)(iv) any matters prescribed by the regulations

There are no matters prescribed by the regulations relevant to the application.

(b) the likely impacts of the development

As previously discussed, the height of each of the buildings is to remain the same (or slightly lower in some instances), whilst the size of the building envelopes and overall development footprint has been significantly reduced from that currently approved (by approximately 14%). As

a result, the overall impact of the development and on the amenity of surrounding properties — has actually been reduced particularly with respect to overshadowing and privacy due to the increased building separation and re-orientation of balconies away from adjoining buildings and towards the street and view corridors through the site.

In addition, the number of dwellings, the amount car parking and the number of accesses also remains unchanged, thereby ensuring the impact on traffic movement and the surrounding road network has not increased to any degree.

The proposed modifications are also not likely to result in any additional stormwater generation, soil erosion, tree removal or any other further physical impact on either the site or surrounding area over and above the impact already anticipated and for which existing conditions of consent have already been imposed to address (or that will be attached to the consent for future applications when more specific details of the development are known).

(c) the suitability of the site for the development

The subject site remains entirely suitable for the proposed development, consistent with its current R4 High Density Residential zoning and the emerging higher density character of the surrounding area; the location of the site and its proximity to Lane Cove Village Centre, public transport and the availability of satisfactory utility services.

(d) any submissions made in accordance with the Act or regulations

The application was advertised for a period of 14 days between the dates of 27th August and 11th September 2015. During this period, five (5) submissions were received. The main issues raised in the submissions were similar – and some cases replicated – those raised in the eleven (11) submissions against the Stage 2 DA. These issues include the following:

- Height
 - Non-compliance with LEP 18m height restriction
 - Surrounding developments only 6 storeys – should reduce 7 storey sections to match
- Scale of the proposal in relation to adjoining and adjacent development, which are only 6 storeys
- Loss of privacy
- Potential view loss from adjoining developments (looking into walls)
- Query re building separation
- Overshadowing of adjoining properties
- Impact on solar access of adjoining properties
- Loss of village character and leafy outlook
- Traffic congestion from the proposal
 - lack of a comprehensive traffic study for area as a whole
 - existing traffic congestion issues
 - cumulative impact of increased traffic from this and other developments
- Inadequate parking
- Loss of existing vegetation, particularly large trees

Most of these issues are not relevant to – or fall outside the scope of – the S.96 application, particularly those in relation to view loss, overshadowing, the number of units or the number of storeys of the buildings. Rather, these issues were resolved as part of the Concept Plan approval

wherein building envelopes were adopted which were deemed to satisfactorily address overshadowing, view loss and height which are not proposed to change (upon the submission of amended plans on 16th December to remove minor height encroachments). In fact, some of these elements have been improved as a result of the reduction in building envelopes and increased building separation proposed under the S.96 application, particularly the scale of the development and the resulting impact on overshadowing and solar access.

Of the remaining issues raised, most are more relevant to the Stage 2 DA, which was required to provide greater details of and certainty in relation to the design and form of the actual building whilst still demonstrating consistency with the overall scheme and conditions of consent approved under the concept plan consent. As such, these issues (e.g. landscaping, parking etc) will be considered and addressed as part of the assessment of the Stage 2 application.

Given the above, it is considered that the issues raised in the public submissions do not warrant refusal of the application modification of the development, the inclusion of new conditions or further modification to existing conditions.

(e) the public interest

The proposed modifications are deemed to be in the public interest as they will facilitate a development that provides for smaller building envelopes and greater ground level open space, coupled with less bulk and greater building separation, resulting in less impact on the surrounding area and an improvement in the amenity for future residents.

CONCLUSION

Having regard for the provisions of Section 96(2) of the Environmental Planning and Assessment Act 1979, it is considered that the amended proposal is substantially the same development as that originally approved by the JRPP in June 2014. In this regard, the modifications proposed to the development will result in a development that incorporates substantially smaller building envelopes to provide more ground level open space and separation between buildings, but which is unchanged in terms of its height and floor space ratio. The development also remains compliant with the relevant provisions of Lane Cove LEP 2009 and Lane Cove DCP 2010, with the exception of some minor encroachments to the side setbacks to Rosenthal Avenue and Cox's Lane to provide improved articulation and building aesthetics.

The proposed modifications also result in a development that better addresses the ten design principles of SEPP 65 via improved and hence amenity for residents in terms of orientation, solar access and privacy.

Conversely, the modified development results in no additional adverse impact on the environment or any adjoining or nearby residences over and above those addressed as part of the original approval and for which appropriate conditions of consent have already been imposed to mitigate (which remain relevant). Furthermore, the issues raised in submissions from the public do not warrant refusal of the application nor modification of the development, the inclusion of new conditions or further modification to existing conditions.

On this basis, it is considered that the proposed modifications are in the public interest and will cause no prejudice to any person or persons who may have objected to the original application. It is therefore recommended that development consent no. 194/2103 be modified in the manner discussed in the preceding report and as identified in the manner below.

RECOMMENDATION

1. That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, consent to Development Application No. 194/2013 be modified as follows:

- Condition 5 needs to be amended as follows:

5. *All buildings that are proposed to be erected on the site must be contained wholly within the concept building envelopes shown in drawing number MP100-001 Rev S2 prepared by Turner and dated 20/03/2014, except as amended by the following **conditions and as amended by the following drawings:***

| <i>Drawing Number</i> | <i>Prepared By:</i> | <i>Revision No.:</i> | <i>Date:</i> |
|-----------------------|---------------------|----------------------|-----------------|
| <i>DA13.00[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>12.08.15</i> |
| <i>DA13.01[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>12.08.15</i> |
| <i>DA13.02[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>28.07.15</i> |
| <i>DA13.03[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>12.08.15</i> |
| <i>DA13.04[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>12.08.15</i> |
| <i>DA13.05[A]</i> | <i>Bates Smart</i> | <i>Rev A</i> | <i>12.08.15</i> |
| <i>DA13.06[B]</i> | <i>Bates Smart</i> | <i>Rev B</i> | <i>17.11.15</i> |
| <i>DA13.07[B]</i> | <i>Bates Smart</i> | <i>Rev B</i> | <i>17.11.15</i> |
| <i>DA13.08[B]</i> | <i>Bates Smart</i> | <i>Rev B</i> | <i>17.11.15</i> |
| <i>DA13.09[B]</i> | <i>Bates Smart</i> | <i>Rev B</i> | <i>17.11.15</i> |

- Condition 8 point (c) needs to be amended as follows:

8. *Any residential flat building that is proposed to be erected on the site must be designed in accordance with:*

- (a) *the design quality principles in State Environmental Planning Policy No 65—Design Quality of Residential Flat Development; and*
- (b) ~~*the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002);*~~
- (b) *the Apartment Design Guide (a publication of NSW Planning & Environment, 2015), and*
- (c) *the relevant provisions of Lane Cove Local Environmental Plan 2009; and*
- (d) *the relevant provisions of Lane Cove Development Control Plan*

- Condition 29 needs to be amended to read:

29. *The on-site waste collection/loading bay must comply with the Service Bay dimensions for the SRV vehicle class (3.5m x 6.4m; ~~3.5m~~ 2.7m vertical clearance) ~~as per AS 2890.2.~~ as per Lane Cove DCP 2010.*

- Condition 40 needs to be replaced by a new condition 40 to read:

40. *Each building is to be provided with an integrated waste chute, compaction and carousel system. Where a dual system is not used i.e. a chute which allows for waste and recycled content to be deposited into the same chute, each floor shall be provided with a waste room that has capacity for 2 x 240L MGB's. These MGB's will be transferred to the recycling area in the basement by the caretaker of the building. At all times the development is to comply with the provisions of Part Q of Lane Cove DCP 2010.*
- Condition 41 needs to be replaced by a new condition 41 to read:
41. *A clear path of travel for the Small Rigid Vehicle (SRV) Waste Collection is to be provided. In this regard, drawings are to be submitted to and approved by Council prior to the issue of a construction certificate for the relevant building that clearly identify the sweep paths for waste vehicles including elevations showing clear access to the premises in accordance with the provisions of Part Q of Lane Cove DCP 2010.*
- Condition 52 needs to be replaced with a new condition to read:
52. *The applicant is to provide a dilapidation report of all properties and any of Council's infrastructure located within the zone of influence of the proposed excavation as determined by the geotechnical engineer.*

The dilapidation report must be conducted prepared by a suitably qualified engineer prior to the commencement of any demolition, excavation or construction works. The extent of the survey must cover the zone of influence that may arise due to excavation works, including dewatering and/or construction induced vibration. The initial dilapidation report must be submitted to Council prior to issue of the Construction Certificate associated with each further development application. A copy of the initial dilapidation report must also be made available to the owners or occupiers of properties within the zone of influence of the proposed development as determined by the geotechnical engineer upon submission to the principal certifying authority.

A second dilapidation report, recording structural conditions of all structures originally assessed prior to the commencement of works, must be carried out at the completion of the works and be submitted to Council prior to issue of an Occupation Certificate. Any damage identified in the second dilapidation report not shown in the initial report will be assumed to have been caused as a result of the construction works authorised under the relevant development consent and must be rectified to the satisfaction of Council at the applicants/developers expense prior to the release of any Occupation Certificate."

2. That Lane Cove DCP 2010 be varied with respect to the side setback requirements to Rosenthal Avenue and Cox's Lane to permit the development; and
3. That those that made a submission in response to the modified application be advised of the JRPP's decision.

Report Prepared by:

Tim Shelley
Director – Tim Shelley Planning

Bachelor Urban and Regional Planning, University of New England

