

# **independent assessment of s.96(2) application**

**To Modify Consent No. 223/2014  
For a Residential Flat Development  
Containing 93 Dwellings**

**Property:**

**Various Lots  
Nos. 27-43 Little Street, Lane Cove**

**Applicant:**

**SJD Property Group Pty Ltd**

**Date:**

**March 2016**

**Prepared by:**

**tim shelley planning**

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**REPORT TO JRPP – S.96 DA No. 223/2014  
27-43 LITTLE STREET, LANE COVE**

**APPLICATION DETAILS**

**Properties:** 27 – 43 Little Street, Lane Cove

**DA No:** S.96(2) Application – DA 223/14

**Date Lodged:** 27<sup>th</sup> November, 2015

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

**Cadastral and Ownership Details:**

Address	Lot Description	Area	Owner
27 Little Street	Lot 39 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
29 Little Street	Lot 38 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
31 Little Street	Lot 37 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
33 Little Street	Lot 36 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
35 Little Street	Lot 35 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
37 Little Street	Lot 1 DP 843377	395m <sup>2</sup>	SJD Property Group Pty Ltd
37A Little Street	Lot 2 DP 843377	372m <sup>2</sup>	SJD Property Group Pty Ltd
39 Little Street	Lot 33 DP 5922	768m <sup>2</sup>	SJD Property Group Pty Ltd
41 Little Street	Lot 32 DP 5922	767m <sup>2</sup>	SJD Property Group Pty Ltd
43 Little Street	Lot 31 DP 5922	767m <sup>2</sup>	SJD Property Group Pty Ltd
<b>Total</b>	<b>10 lots</b>	<b>6912m<sup>2</sup></b>	

**Applicant:** SJD Property Group Pty Limited

**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**

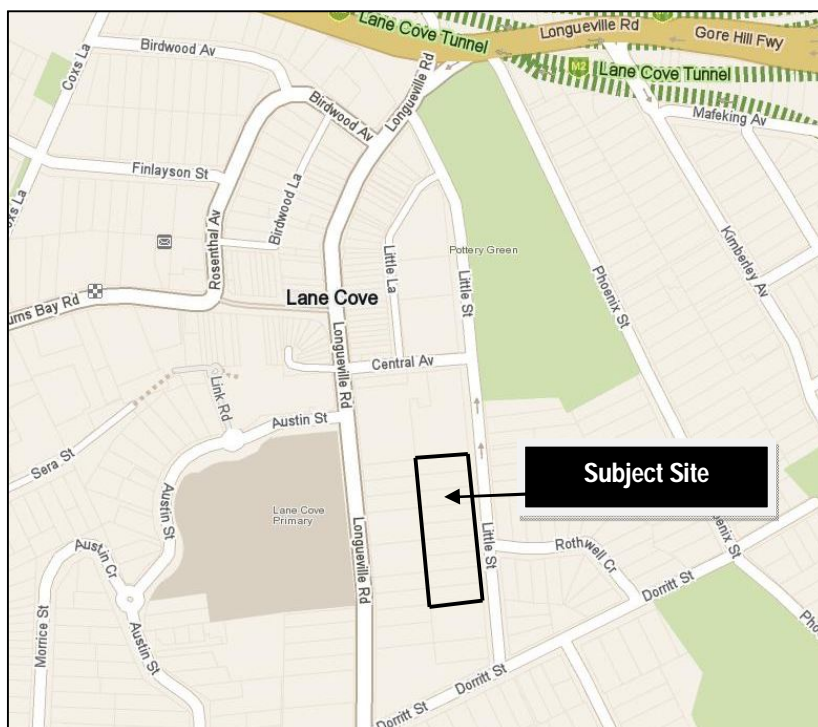
- Sydney East JRPP approved DA No. 223/14 on 21<sup>st</sup> August 2015 for the demolition of 10 residential dwellings and the construction of three (3) residential flat buildings of three, four and partially five 5 storeys at 27-43 Little Street Lane Cove, comprising 93 units with 154 basement car parking spaces. In detail, the proposed development comprised the following:
  - Site preparation, demolition of 10 residential dwellings, removal of trees as necessary and the undertaking of earthworks and excavation;
  - The construction of three (3) residential flat buildings identified as Blocks A, B and C, consisting of three (3), four (4) and partly five (5) storeys above ground level and two basement levels beneath Block A and one inter-connected basement level beneath Blocks B and C.

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- The buildings contain 94 apartments comprised of 34 x one bedroom, 47 x 2 bedrooms and 13 x 3 bedrooms, of which 19 (i.e. 20%) are adaptable. Car parking for 154 vehicles (130 resident and 24 visitor spaces) is provided within Blocks A, B and C and is accessed via two (2) separate driveways off Little Street.
- The buildings have a total floor space of 8292m<sup>2</sup>, equating to a floor space ratio of 1.2:1.
- The development also included:
  - connection to services as necessary;
  - comprehensive landscaping of the site;
  - motor cycle and bicycle spaces for residents and racks for visitors; and
  - storage facilities, plant rooms, waste rooms and loading areas within the basements.
- The proposed development is permissible on the land with consent under Lane Cove LEP 2009 and consistent with all relevant provisions of Lane Cove Development Control Plan 2010 and the design principles of SEPP 65. The development also complied with all other relevant provisions of the Lane Cove LEP 2009, with the exception of some encroachments to the maximum height limit of 12 metres relating to the site, for which a detailed Clause 4.6 variation submission was provided by the applicant. The majority of variations were adequately justified by the 4.6 submission and were supported. However, the largest variation of 2.3 metres was not supported as it resulted in the encroachment of Unit B503 to a level above the height plane considered unreasonable. As a result, this unit was deleted, taking the final number of units for which consent was granted from 94 to 93.
- A Section 96 application was lodged with Council on 27<sup>th</sup> November, 2015 which seeks to make minor changes to the consent as follows:
  - the reinstatement of 99m<sup>2</sup> of the 133m<sup>2</sup> of floor space lost upon deletion of Unit B503 by the JRPP. This floor space is to be distributed across a number of existing units, thereby increasing their area marginally. This has also resulted in the addition of one (1) bedroom within apartment C302 in Building C (taking it from one bedroom to two bedrooms). However, the number of units remains unchanged at 93.
  - the approved lift overruns are proposed to be increased in height by approx 400mm but still within the maximum height plane, as well); and
  - minor adjustments are proposed to the southern façade of Building B.
- As part of the required change to Condition 7 to increase the S.94 contributions to cover the additional bedroom, it will also be recommended Condition 7 be amended to require contributions to be paid prior to the issue of Construction Certificate as opposed to prior to the issue of subdivision certificate as is currently stated on the consent.
- Overall, the modifications sought by the applicant are considered to be minor and result in no tangible additional impact over and above that of the originally approved development. As such, it is recommended that the application be modified in the manner described at the end of this report.

### THE SITE

The site is located on the western side of Little Street at Lane Cove, between Central Avenue to the north and Dorritt Street to the south, as shown on Figure 1 on the following page.



**Figure 1** – Locality Plan

The Potters Green sports ground, Lane Cove aquatic centre and Lane Cove Council are located to the north of the site within approximately 250 metres, whilst Lane Cove Public School, Lane Cove Community health centre and the main commercial and retail precinct along Longueville Road are located just to the west of the site.

The site comprises ten (10) allotments, being lots 31 – 33 and 35 – 39 in DP 5922 and lots 1 and 2 in DP 843377, known as Nos. 27 – 43 Little Street, Lane Cove. The site is rectangular in shape, with a frontage to Little Street of 137.16 metres, a rear (western) boundary of 137.16 metres, a depth of approximately 50 metres and a total area of 6912m<sup>2</sup>.

The site essentially comprises an amphitheatre – or bowl – facing the east, as it falls from both the northern and southern ends as well as from the western boundary to a trough, or depression, opposite Rothwell Crescent. As such, the surrounding properties to the north, south and west are all at a higher level than the site of the proposed development.

## **SURROUNDING USES**

The site is bounded by a three (3) storey brick apartment complex to the north known as Potters Gardens, a range of older style two, three and four storey apartment buildings to the west fronting Longueville Road; a town house complex to the south; and Little Street to the east. A number of single and two storey dwellings are located on the eastern side of Little Street opposite the site, either side of Rothwell Crescent.

Little Street is a two-way road, although access for southbound vehicles from the northern end of the street (at its intersection with Central Avenue) is prohibited. The street is kerb and guttered with a carriageway of approximately 7 metres. A footpath is constructed on the western side of the road for its full length and on the eastern side for the section between Central Avenue and Rothwell Crescent.



The site is serviced by overhead electricity powerlines located on the western side of Little Street.

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 below.



**Figure 2** – Aerial Photograph

## DETAILS OF PROPOSED MODIFICATIONS

### Details of and Justification for Proposed Changes to the Development

The applicant has sought modifications to the development approved under consent no. 223/14 pursuant to the provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979. In the applicant's submission, the modifications are described as follows:

*"This application seeks to reintroduce 99m<sup>2</sup> of previously forfeited GFA generally within the existing building envelope. The GFA would be distributed throughout most of the previously approved habitable and non-habitable floor levels. That is, the 99m<sup>2</sup> of GFA is proposed to be distributed throughout areas which were previously designated as storage spaces, balconies and voids for example (reference should be made to the architectural plans for a detailed understanding of the location of the additional GFA). The outcome being that several of the previously approved dwellings are marginally larger, with only one (1) dwelling including one (1) additional bedroom (i.e. apartment C302 on Level 3). The modification does not seek to increase the previously approved number of units.*

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*The application also seeks to marginally increase the lift overruns by 400mm as well as amend the external finishes on the southern elevation of Building B."*

The proposed changes to the height and material schedules on the facades are shown highlighted in yellow text boxes and red revision clouds on the diagrams below taken from the applicant's submission.

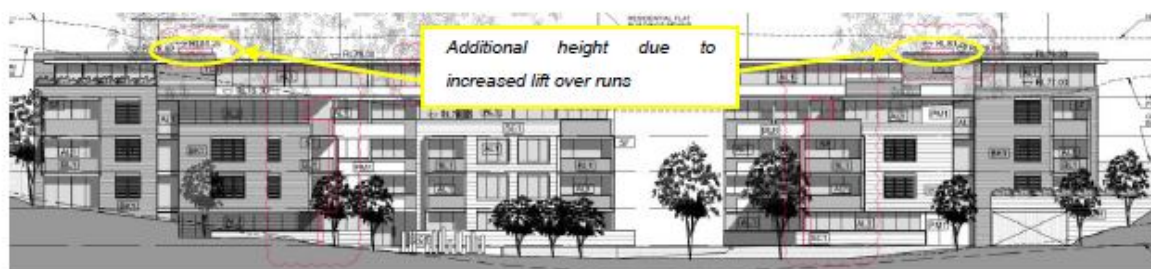


Figure 5: Little Street east elevation demonstrating increased lift over runs

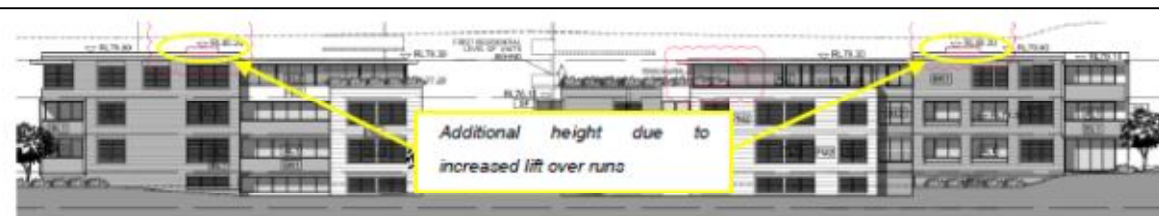


Figure 6: Little Street west elevation demonstrating increased lift over runs

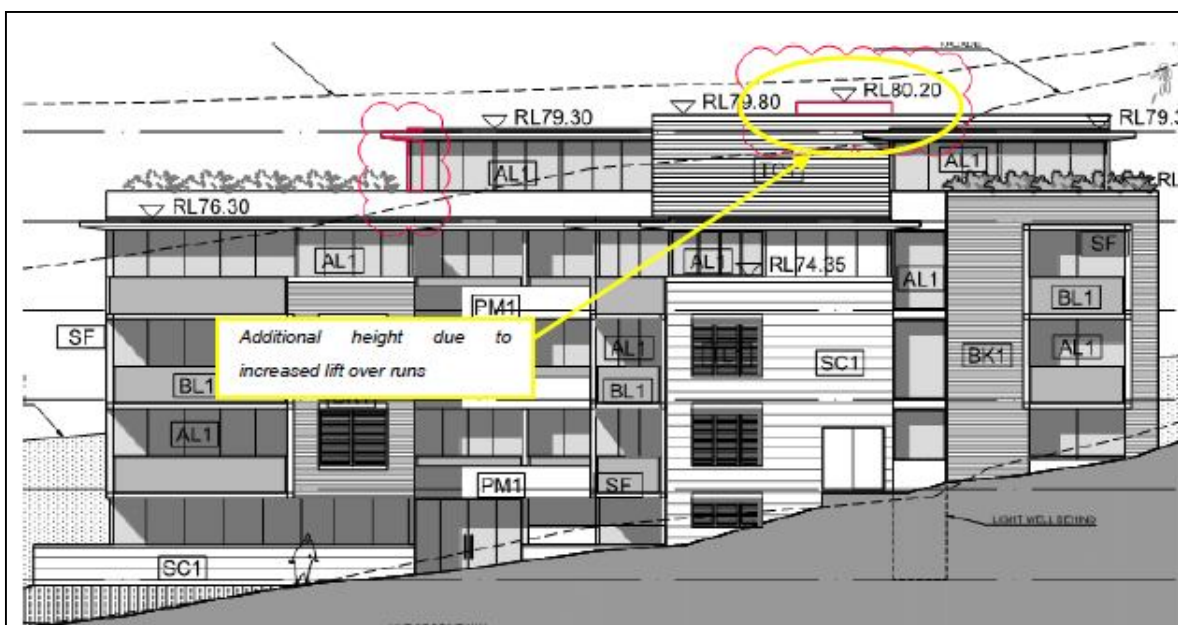


Figure 7: North Elevation of Building A demonstrating additional height due to lift over runs



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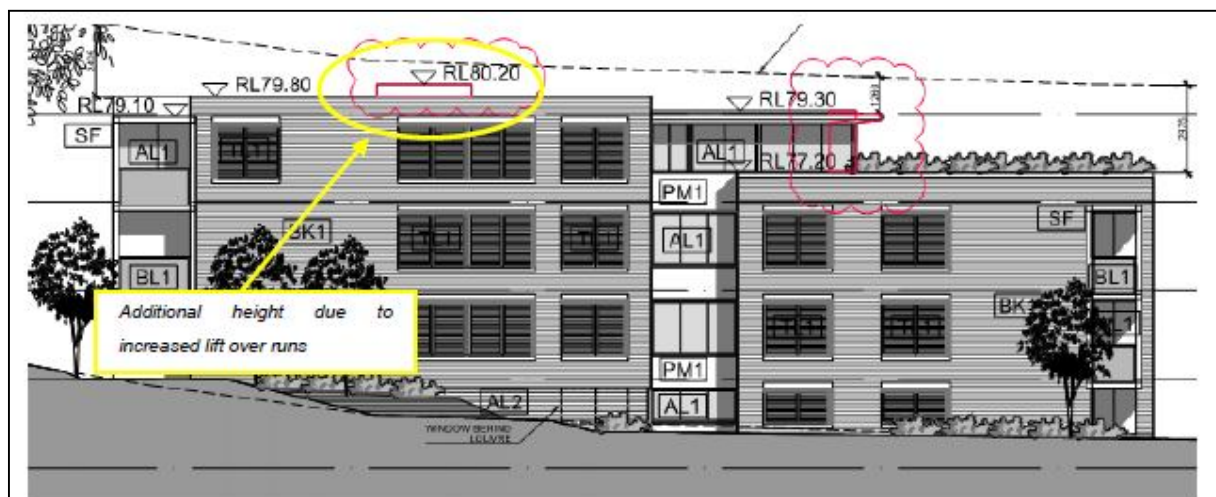


Figure 8: South Elevation of Building A demonstrating additional height due to lift over runs

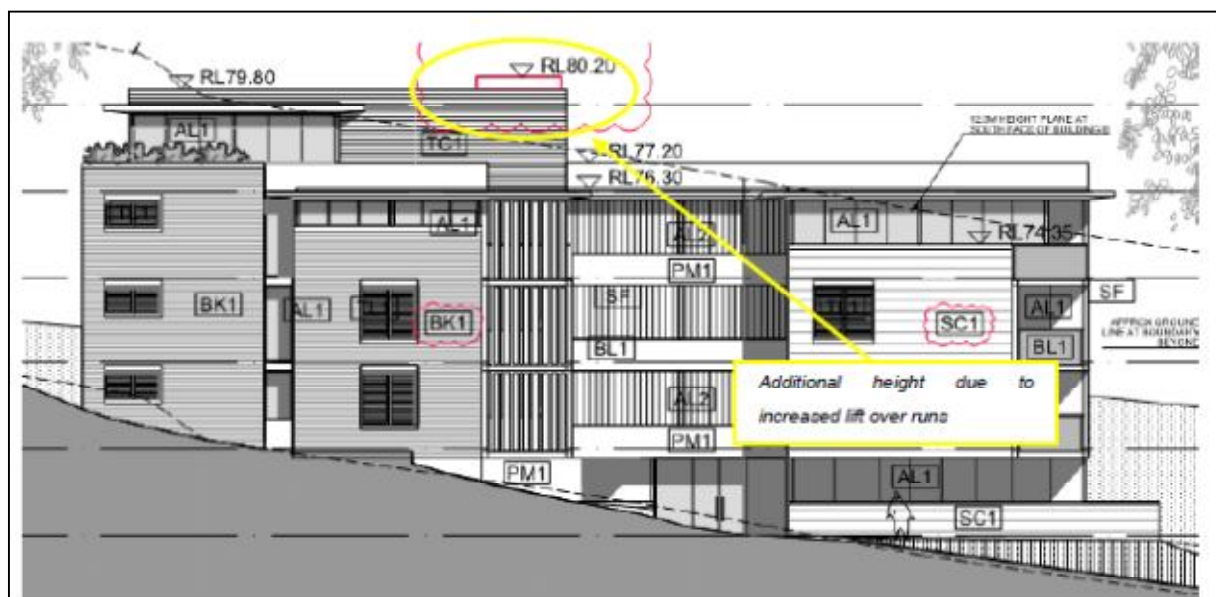


Figure 9: South Elevation of Building B demonstrating additional height due to lift over runs

It is also noted that existing condition 7 requires that S.94 contributions are to be paid “prior to the issue of subdivision certificate”, which is incorrect. Rather, S.94 contributions are always paid prior to the issue of Construction Certificate. Therefore as part of the required change to Condition 7 to increase the S.94 contributions to cover the additional bedroom, it will also be recommended that this aspect of Condition 7 be amended as well.

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

- The construction of three (3) x three, four and partly five 5 storey residential flat buildings in the same location and of essentially the same height;
- Combined basement car parking for 154 vehicles;
- Extent of landscaping;
- A maximum floor space ratio (FSR) of 1.2:1; and
- 93 dwellings (as a result of the deletion of Unit B503 from the original application).

### Amended Information

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

- Modified Architectural Plans by Mijollo International Architects, inclusive of updated floor plans, elevations, sections, shadow diagrams and solar access diagrams. To assist in the assessment of the amended proposal, the proposed changes were identified in red revision clouds on each of the plans as necessary; and
- An updated SEPP 65 Design Verification Statement and Apartment Design Guide Assessment prepared by Mijollo International Architects.

### INTERNAL REFERRALS

Due to the minor nature of the changes, the plans and supporting documents were only referred to Council's SEPP 65 Officer. As indicated below, this officer has indicated that the proposed development as amended would continue to meet the objectives of the 9 principles set out within SEPP 65.

### 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 provided the following advice:

*“Substantially the same development” means essentially or materially or having the same essence” as defined by Judge Pearlman in Schrodgers Australian Property Management Ltd v Shoalhaven City Council and Anor (1999) NSWLEC 251. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved that is of most importance. That is, the development as modified would essentially and materially have the same essence.*

*This report provides that given the proposed modifications are minor, the development, as modified, is materially the same as that which was originally consented to by the JRPP. In particular, the proposal would not increase the number of units within the development, nor the number of car spaces or building storeys. The increase in size to those units which will benefit from the proposed additional GFA, is negligible.*



*Similarly, the proposed increase in height is marginal and would not materially alter the development.*

*Importantly, the proposed modifications do not alter the proposal's environmental impacts, either to existing or proposed public and private amenity".*

The applicants view is concurred with. In addition, it is also noted that the S.96 proposal retains the main characteristics of the original consent including:

- The construction of three (3) x three, four and partly five 5 storey residential flat buildings in the same location and of essentially the same height;
- Combined basement car parking for 154 vehicles;
- Extent of landscaping;
- A maximum floor space ratio (FSR) of 1.2:1; and
- 93 dwellings (as a result of the deletion of Unit B503 from the original application).

Given the above, it is considered that the S.96 proposal would result in an amended development that is substantially the same in terms of appearance, 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(2) 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)), are required to be notified for a period of 14 days. Accordingly, the amended application was publicly notified by Council on behalf of the Sydney East JRPP for 14 days between the dates of 2<sup>nd</sup> and 15<sup>th</sup> December 2015.

- (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, seven (7) 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 and are discussed later in the report.

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:

CLAUSE 115 REQUIREMENTS	COMMENT
<b>(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:</b>	
(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 for S.96(2) applications.
(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.

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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.	An updated SEPP 65 Design Verification Statement and Apartment Design Guide Assessment prepared by Mijollo International Architects was submitted with the application.
(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 the development consent was granted.	New SEPP 65 Design Verification statement provided from architect indicating that amended design still meets design principles of SEPP 65.  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.
(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.	N/A
(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	New BASIX certificate provided which indicates relevant BASIX targets have been met.
(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 below, the subject site is zoned R4 High Density Residential under Lane Local Environmental Plan 2009 (the LEP). The site comprises the ten (10) remaining single allotments zoned R4 on the western side of Little Street and hence represents a single consolidated development site.

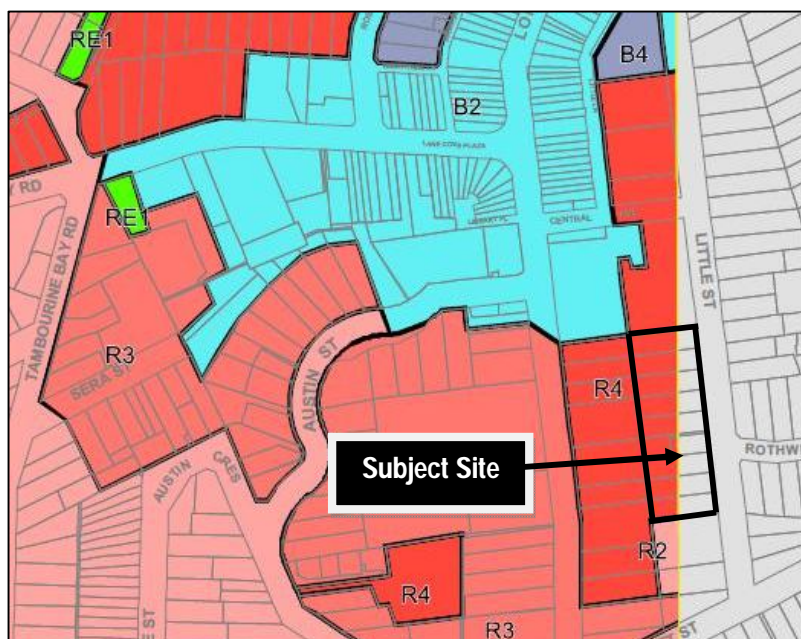


Figure 4 – Extract from LCLEP Zoning Map

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.

Clause 2.3 – Zone Objectives

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

The applicant has indicated that proposal's maximum height, as a result of the amended lift overruns, is 14.2m. This exceeds the 12m height applicable to the subject site pursuant to Clause 4.3 of the LEP 2009. However, it should be noted that the building height approved as part of Development Consent 223/2014 was non-compliant at 13.8m once Unit B503 was deleted (which was the major height encroachment), comprised mainly of roof overhangs and stair and lift overruns.



A review of the height increases proposed to the lift overruns indicates that relative to the existing approved height, they appear to be minor and present no concerns. In addition, due to the location of the lift overruns towards the centre of the building envelopes and their limited footprint in comparison to the area of the building, they are unlikely to result in any amenity impacts such as additional adverse overshadowing.

#### Clause 4.4 – Floor Space Ratio

The proposal, as modified, provides a floor space ratio (FSR) of 1.197:1. This complies with the maximum FSR of 1.2:1 as prescribed by Clause 4.4 of the LEP 2009.

#### **SEPP 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT**

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

A formal assessment of these documents and the amended plans has been undertaken by Council's SEPP 65 Officer who has advised as follows:

*"The proposed amendments would marginally increase the areas of a few apartments. The proposed amendment would increase one bedroom to one apartment. Overall the building envelope footprint would remain unaltered.*

*The proposed development as amended would continue to meet the objectives of the 9 principles set out within the State Environmental Planning Policy 65 Design Quality of Residential Apartment Development."*

#### **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 this instance, the origin proposal was not of a scale listed under Column 2 (apartment buildings with 300 or more apartments), whilst the site does not include a direct or indirect connection (within 90 metres) of a classified road. In addition, the proposed parking supply of 154 spaces did not exceed the thresholds noted in Column 2 of Schedule 3 of the Policy (200 or more).

As such, the proposed development was not affected by the provisions of this SEPP and the application therefore did not require referral to the RMS on that basis. Given the proposed modifications involve no changes to the scale of the development nor the amount of parking, the S.96 application is not required to be referred to the RMS for comment.

### **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**

Under section 55A(2)(a) of the Environmental Planning and Assessment Regulation 2000 – *Amendments with Respect to BASIX Commitments*, a development application may be amended or varied by the lodging of a new BASIX certificate to replace a BASIX certificate that accompanied the application. Accordingly, a new Multi-Dwelling BASIX Certificate has been prepared by an accredited BASIX assessor for the amended development which indicates compliance with the relevant thermal comfort, energy and water reduction targets.

### **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**

As part of the applicant’s submission, an amended DCP compliance table has been provided. The compliance table demonstrates that the development, as modified, remains compliant with the DCP. Given the very minor nature of the modifications proposed to the height and floor space and the fact that no additional units or any other significant physical changes are being made to the development, this conclusion is concurred with.

In relation to parking, the original proposal provided 154 spaces for 94 units as required by the DCP requirements. Given the development as approved by the JRPP only included 93 units, the provision of 154 spaces remains satisfactory even allowing for the one additional bedroom.

#### Lane Cove Section 94 Contribution Plan

The Lane Cove Section 94 Contribution Plan applies a levy on proposed developments based on the number of bedrooms. Given the proposed modifications include increasing the number of bedrooms within the development by one (1) (i.e. unit C302), additional S.94 contributions are applicable. The schedule of constructions under Condition 7 of the consent will therefore be adjusted to reflect this increase in the number of bedrooms.

#### **(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 essentially the same with the only changes being slight increases to the lift overruns, which are located in the centre of each building and occupy only a very small proportion of the roof space. As a result, the overall impact of these increases on surrounding properties would be negligible. Likewise, the addition of 99 square metres of floor space results in no increase in the building footprint and an insignificant increase in floor space ratio (in fact less than the original compliant development prior to deletion of Unit B503).

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).

However, the increase in the number of bedrooms in the development by one (1) will require a minor adjustment to the S.94 contributions currently listed on the consent.

#### **(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 2<sup>nd</sup> and 15<sup>th</sup> December 2015, during which time even (7) submissions were received. The main issues raised in these submissions and comments provided in response to same are summarised in the table below:

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**27-43 LITTLE STREET, LANE COVE**

Summary of Issues	Response
<p>Height</p> <ul style="list-style-type: none"> <li>height encroachments beyond the 12m LEP limit not be allowed, particularly in Building B and A.</li> <li>reject any modification to the existing approved DA further breach the 12 metre height restriction, except for the lift shaft (practical reasons).</li> <li>query as to actual extent of height encroachment by lifts etc.</li> <li>additional shadowing on itself and perhaps the adjacent properties.</li> </ul>	<p>As indicated earlier in the report, the height increases proposed relate essentially to the lift overruns (400mm) and relative to the existing approved height are considered to be minor, such that they present no concerns. In addition, due to the location of the lift overruns towards the centre of the building envelopes and their limited footprint in comparison to the area of the building, they are unlikely to result in any amenity impacts such as additional adverse overshadowing. This is confirmed by the amended shadow diagram submitted with the application.</p>
<p>Inadequate/inaccurate/confusing documentation making assessment difficult/ impossible (x 7).</p>	<p>The modified architectural plans prepared by Mijollo International Architects included updated floor plans, elevations, sections, shadow diagrams and solar access diagrams which were identical in style and content to those submitted with the original application and therefore considered to be suitably clear and accurate. To further assist in the understanding and assessment of the amended proposal, the proposed changes were identified in red revision clouds on each of the plans as necessary. In addition, a town planning report was submitted with the application that clearly identified the proposed amendments.</p>
<p>Inadequate time to view documentation over holiday period.</p>	<p>The application was advertised for the correct period of time as required by legislation and advertised in the manner required by Council.</p>
<p>Request for Council to republish a clearer explained document and give neighbours a proper time to respond to those changes.</p>	<p>As above.</p>
<p>Lack of architectural merit of filling a void on Building B.</p> <ul style="list-style-type: none"> <li>void is critical in providing relief to the façade of Building B Infilling this important element (recess) will be significantly detrimental to the façade.</li> </ul>	<p>As noted earlier in the report, an updated Design Verification Statement was submitted by the applicant as required by SEPP 65. A formal assessment of this statement and the amended plans was been undertaken by Council's SEPP 65 Officer who has advised that <i>The proposed amendments would continue to meet the objectives of the 9 principles set out within the State Environmental Planning Policy 65 Design Quality of Residential Apartment Development, inclusive of criteria in relation built form and aesthetics.</i></p>
<p>Query about possible impact of extending balconies on Building B on overshadowing of Building A and impact on privacy of houses in Little Street if occurring on eastern side of building.</p>	<p>Updated shadow diagrams were submitted with the application that indicates that the proposed amendments to the building would have an intangible additional impact on overshadowing of Little Street due to the minor extent of the changes to the building height. In addition, no changes are proposed to the location or orientation of any balconies on the eastern façade of the building such that there will be no additional impact on privacy of dwellings in Little Street.</p>
<p>Query as to whether 70% of units obtain solar access as per SEPP 65 as</p>	<p>The amended plans, SEPP 65 Design Verification Statement and Apartment Design Guide Assessment submitted with the</p>



**REPORT TO JRPP – S.96 DA No. 223/2014  
27-43 LITTLE STREET, LANE COVE**

Summary of Issues	Response
claimed.	application indicate that the amount of solar access received by the proposed development meets the required minimum. In any event, the proposed modifications are of such minor scale that they would have had an intangible impact on the degree of solar access received by the original proposal which has already been deemed as compliant.
Query re need to amend development now given many units already sold off plan.	Not a relevant planning consideration. It is the vendor's responsibility to ensure any potential purchaser is aware of any proposed changes to the development that may affect the unit they intend to purchase.
Incorrect reference to 94 units in S.96 documentation.	Agreed. The preceding report acknowledges that only 93 units are approved and this is shown on the submitted plans.
Impact on solar access on particular objector's property on Little Street.	As indicated above, updated shadow diagrams were submitted with the application that indicates that the proposed amendments to the building would have an intangible additional impact on overshadowing of Little Street due to the minor extent of the changes to the building height
Request that it should be stipulated to proponent that no more S.96 (2) applications can be made as height is being increased by stealth.	It is not within the consent authority's power to advise the applicant as to what applications they may chose to submit in the future. Rather, the JRPP as consent authority would be required to assess the merits of any future application (either a new DA or a further S.96), which would take into consideration any changes already made, the extent of height encroachments already permitted and the cumulative impact of same.

Given the above, it is considered that the issues raised in the public submissions do not warrant refusal of the application for modification of the development, nor the inclusion of new conditions or further modification to existing conditions.

**(e) the public interest**

Due to their minor scale and insignificant impact, the proposed modifications are not contrary to the public interest.

**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 August 2015. In this regard, the modifications proposed to the development would remain essentially unchanged in terms of its height and floor space ratio and which also remains compliant with the remaining relevant provisions of Lane Cove, the requirements of LEP 2009 and Lane Cove DCP 2010 and the nine design principles of SEPP 65.

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.

**REPORT TO JRPP – S.96 DA No. 223/2014**  
**27-43 LITTLE STREET, LANE COVE**

On this basis, it is considered that the proposed modifications 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. 223/2014 be modified as 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. 223/2014 be modified as follows:

- Condition 5 needs to be amended as follows:

5. *That the development be strictly in accordance with the following architectural drawings drawn by Mijollo International and Landscape drawings drawn by Sturt Noble Associates **as amended by the following drawings:***

DRAWING NAME	DRAWING NO.	REVISION	DATED
COVER SHEET	A101	A	8-Dec-14
<b>SITE PLAN</b>	<b>A103</b>	<b>B</b>	<b>16-NOV-15</b>
<b>FSR DIAGRAMS</b>	<b>A104</b>	<b>C</b>	<b>16-NOV-15</b>
BASEMENT 2 PLAN	A200	B	31-Mar-15
BASEMENT 1 PLAN	A201	B	31-Mar-15
<b>LEVEL 1 PLAN</b>	<b>A202</b>	<b>D</b>	<b>27-OCT-15</b>
<b>LEVEL 2 PLAN</b>	<b>A203</b>	<b>C</b>	<b>27-OCT-15</b>
<b>LEVEL 3 PLAN</b>	<b>A204</b>	<b>C</b>	<b>16-NOV-15</b>
<b>LEVEL 4 PLAN</b>	<b>A205</b>	<b>C</b>	<b>16-NOV-15</b>
<b>LEVEL 5 PLAN</b>	<b>A206</b>	<b>D</b>	<b>16-NOV-15</b>
<b>LEVEL 6 PLAN</b>	<b>A207</b>	<b>D</b>	<b>27-OCT-15</b>
<b>ROOF PLAN</b>	<b>A208</b>	<b>C</b>	<b>16-NOV-15</b>
<b>ELEVATIONS EAST &amp; WEST</b>	<b>A301</b>	<b>C</b>	<b>16-NOV-15</b>
<b>ELEVATION - NORTH</b>	<b>A302</b>	<b>C</b>	<b>16-NOV-15</b>
<b>ELEVATION - SOUTH</b>	<b>A303</b>	<b>C</b>	<b>16-NOV-15</b>
MATERIAL FINISHES BOARD	A310	A	8-Dec-14
SECTION A-A, B-B, C-C	A401	B	15-July-15
ADAPTABLE LAYOUTS SHEET 1	A601	B	8-Apr-15
ADAPTABLE LAYOUTS SHEET 2	A602	B	8-Apr-15
LANDSCAPE CONCEPT PLAN	DA-1425-01	G	22-Apr-15
LANDSCAPE CONCEPT PLAN - DETAIL	DA-1425-02	F	22-Apr-15
LANDSCAPE CONCEPT PLAN - LEVEL 5	DA-1425-03	E	22-Apr-15

- The second sentence of Condition 7 needs to be amended to read:
    7. *This payment being made prior to the issue of a ~~subdivision certificate~~ **construction certificate** and is to be at the current rate at time of payment.*
  - The schedule of Section 94 contributions in Condition 7 be amended to increase the contributions by one (1) bedroom.
2. 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

