

MEMORANDUM

To: Rebecka Groth
From: Rajiv Shankar, Manager Development Assessment
Subject: 1-13 Marshall Avenue, St Leonards. DA205/15
Dated: 1 June 2016

Proposal:

The proposed development consists of a mixed use development which includes a combination of two distinct building, one being low rise and the other being a high rise tower.

The low rise building consists of five residential levels. There are some apartments which front Marshall Avenue directly. These apartments are two storeys with internal stair access. Above these two levels are three more levels of apartment. This block is serviced by two cores each of which includes a lift and a stair. This block has 52 apartments which would be 18 x 1 bedroom, 24 x 2 bedroom and 10 x 3 bedroom apartments.

The hi-rise tower has two apartments which front Marshall Avenue directly. One apartment is two storeys with internal stair and the other apartment is a single level apartment with another apartment above in level 1. On this level there is a double height retail space and various services.

There are 27 levels of apartments above level 1.

Level 3 has some commercial space in addition to apartments. This level would be at the same level as the level of a future plaza proposed over Canberra Avenue and the Railway line towards the east of the tower. The high rise tower is serviced by a single core which includes three lifts and a stair.

The tower would have 217 apartments which would be 21 x Studio, 80 x 1 bedroom, 89 x 2 bedroom, 27 x 3 bedroom apartments.

The total number of apartments in the proposed development would be 269.

SEPP 65 Design quality principles

Principle 1: Context and neighbourhood character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Assessment: The proposed development is the second phase of an overall development conceived along the northern side of Marshall Avenue. The overall building volumes have been established by a site specific planning proposal in which various parameters relating to the urban design have been taken into consideration.

The overall development consists of a first phase 8 storey building, the proposed second phase 5 storey building and a 27 storey high rise tower.

The land towards the north and west is zoned B3 commercial which has buildings of various heights. The land towards the south of Marshall Avenue is presently zoned R2 low density residential, however under the St Leonards South Strategy the area is expected to be rezoned to accommodate higher density which would permit high rise development.

Towards the east is a railway line over which a plaza has been envisaged. Level 3 of the proposed development is the same as the level of the future plaza with which it would integrate. The precinct is characterised by high rise office and residential flat buildings.

Compliance: The proposal meets the objective of the principle.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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

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

Assessment:

The proposed development meets the overall height and floor space ratio requirements as specified in the planning proposal for this site.

The low rise building block has a built form which is rectangular but well-articulated. The building has adequate setbacks from site boundaries. The depth of the building is around 18m being the maximum which provides for adequate solar penetration and cross ventilation.

The high rise block is squarish in shape which deep recesses for articulation.

The built form and scale of the proposed development is consistent with that envisaged in the planning proposal.

Compliance: The proposal meets the objective of the principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Assessment: The proposed development meets the FSR and Height standards of the LEP as specified in the planning proposal. No part of the proposed development breaches the overall height control.

The proposed development does provide a range of apartment sizes. The proposal provide reasonable and adequate amenity to the apartments. The corridors in both building blocks provide natural light and ventilation which provides adequate amenity to the proposed development. The proposed development meets the requirements of solar access and cross ventilation.

The number of dwellings and the achieved density is considered appropriate.

Compliance: The proposal meets the objective of the principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Assessment: The site is regular and oriented in such a manner that it can take advantage of the northerly direction for adequate solar access.

70.2% of the apartments receive a minimum of 2 hours of direct solar access between 9.00am to 3.00pm mid-winter to living rooms. The apartments are well designed. The amenity of the apartments have not been compromised by providing small apartments facing north.

Nearly 60% of the apartments are cross ventilated. The proposed development is accompanied by a Basix certificate which indicates that the proposed development meets the principle of sustainability.

Compliance: The proposal meets the objective of the principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Assessment: The proposed development includes a basement for car parking and has little opportunities for deep soil plantation being 7% primarily within the front setback. The proposed development does provide a significant size of onsite storm water detention system for controlled discharge of stormwater into Council's stormwater system. On balance the landscaping provided is considered reasonable.

Compliance: The proposal generally meets the objective of the principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

Assessment: 70.2% of the apartments receive a minimum of 2 hours of direct solar access between 9.00am to 3.00pm mid-winter to living rooms. Nearly 60 percent of the apartments are cross ventilated.

The apartments are well designed to provide for adequate amenity to the future residents. The apartment design does not include circulation through usable spaces such as kitchen. The internal layouts are efficient and the amenity of the apartments has not been compromised by providing large number of small apartments facing north. All corridors have access to natural light and ventilation. The apartments utilise the distant views available towards the north east.

Compliance: The proposal meets the objective of the principle.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Assessment: There are some apartments which front Marshall Avenue directly which provides or street activation.

The north and south facing balconies and windows would provide for an increased perception of passive surveillance along Marshall Avenue and Marshall Lane.

Compliance: The proposal meets the objective of the principle.

Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Assessment:

The proposed development would have a total of,

The low rise block has 52 apartments. These would be 18 x 1 bedroom (34.6%), 24 x 2 bedroom (46.1%) and 10 x 3 bedroom (19.2%) apartments.

The high rise tower block would have 217 apartments. These would be 21 x Studio (9.7%), 80 x 1 bedroom (36.9%), 89 x 2 bedroom (41%), 27 x 3 bedroom (12.4%) apartments.

It is noted that the 3 bedroom apartments are more than the minimum 10% requirement.

The proposed mix would provide for adequate housing choice and is considered appropriate.

Compliance: The proposal meets the objectives of the principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Assessment: The low rise building block is well articulated, modulated and broken into smaller building elements in particular by the use of balconies on each level which would create interest within the building form.

The high rise building block has distinct structural members utilised as architectural features which demonstrate verticality and simultaneously break the monotony by providing a certain level of articulation. These vertical features extend right up to the roof features so that they give the appearance of integrated architectural element and not two different elements.

The distinct building volumes, being a combination of low rise and high rise, the articulated squarish tower form and the use of architectural features is unique. The use of complementary building materials makes the building aesthetically sound and pleasing.

Compliance:

The proposal meets the objectives of the principle.

Conclusion: The proposal meets all the objectives of the principles of good design.

The proposed development would meet the minimum requirements for solar access and cross ventilation.

The mix of the unit types is considered appropriate to provide adequate housing choice.

The apartments are well designed and provide for adequate amenity. The apartment design does not include circulation through usable spaces such as kitchens. The internal layouts are efficient and the sizes of the apartments have not been compromised. All corridors have access to natural light and ventilation. The apartments utilise the available distant views which provide amenity.

The integration of structural elements to demonstrate verticality and their integration with the roof features makes an architectural statement and shall become a landmark within the precinct.

The proposed development meets the principles set out within the State Environmental Planning Policy 65, Design Quality of Residential Apartment Development.

Rajiv Shankar
Architect NSW Registration 7248
Manager Development Assessment

20 May 2016

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

ATTENTION: Rebecka Groth

Dear Sir/Madam,

**STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007
DEVELOPMENT APPLICATION – DA205/2015
1-13A Marshall Avenue, St Leonards**

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

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

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

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

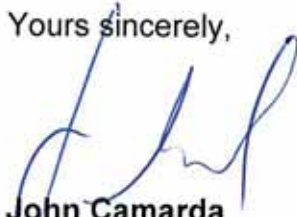
In this regard, Sydney Trains has taken the above matters into consideration and has decided to grant its concurrence to the development proposed in development application DA205/2015 subject to Council imposing the conditions listed in Attachment A.

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

In the event that this development proposal is the subject of a Land and Environment Court appeal, Council's attention is drawn to Section 97A of the Environmental Planning and Assessment Act 1979 which requires Council to give notice of that appeal to a concurrence authority. Sydney Trains therefore requests that Council comply with this requirements should such an event occur.

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

Yours sincerely,



John Camarda
A/General Manager Property

Attachment A

A1. All excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings and recommendations detailed in the following documents:

- Geotechnical Report prepared by JK Geotechnics (Ref:24766SB3rpt) dated 23 June 2014.
- Geotechnical Comments prepared by JK Geotechnics (Ref:24766SB3let) dated 04/03/2016.
- Construction Management Plan – Revision C, prepared by Hutchinson Builders, dated 18/02/2016.
- Soldier Pile Shoring Wall Design Report - Issue 5, prepared by Pile Design Solutions (Ref: 137-005), dated 04/03/2016.
- Site Retention Plan – Drawing No. S070 – Revision E, dated 29/07/2015 prepared by BG&E Engineering.
- Site Retention Elevations Sheet 1 – Drawing No. S075 – Revision G, dated 26/02/2016 prepared by BG&E Engineering.
- Site Retention Elevations Sheet 2 – Drawing No. S076 – Revision F, dated 26/02/2016 prepared by BG&E Engineering.
- Site Retention Elevations Sheet 3 – Drawing No. S077 – Revision E, dated 26/02/2016 prepared by BG&E Engineering.
- Site Retention Sections Sheet 3 – Drawing No. S082 – Revision F, dated 26/02/2016 prepared by BG&E Engineering.
- Site Retention Details – Drawing No. S085 – Revision D, dated 26/02/2016 prepared by BG&E Engineering.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that the documentation listed in this condition have not be superseded with the approval/certification of documentation in Condition A2. Should Sydney Trains advise that any of the documentation listed in this condition have not been superseded, then the measures detailed in those specific documents are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

A2. If required by Sydney Trains, prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.

A3. Unless advised otherwise the Applicant shall comply with the following items:

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

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

A4. The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:

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

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

A5. Sydney Trains and Transport for NSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.

A6. Copies of any certificates, drawings or approvals given to or issued by Sydney Trains must be submitted to Council for its records.

A7. Prior to the issuing of an Occupation Certificate the Applicant is to submit the as-built drawings to Sydney Trains, Transport for NSW and Council. The Principal Certifying Authority is not to issue the Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A8. Prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness

- written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- A9. Prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- A10. In exercising its functions in relation to any Sydney Trains conditions, Sydney Trains reserves the right to liaise with Transport for NSW and impose any requirements (as advised by those entities) on their behalf as if they were Sydney Trains requirements.
- A11. An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
- A12. Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- A13. The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A14. If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- A15. Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- A16. The Sydney Trains corridor access gates located opposite the development site shall be unobstructed at all times.

A17.No construction vehicles (including staff vehicles), equipment, bins or building material shall occupy the land used for car parking purposes located opposite the development site.

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3 February 2016

Roads and Maritime Reference: SYD16/00117 (A11480430)
Council Ref: RHG

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

Attention: Rebecka Groth

Dear Sir/Madam,

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

Reference is made to Council's letter dated 12 January 2016 regarding the abovementioned Application which was referred to Roads and Maritime Services (Roads and Maritime) for comment in accordance with Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007.

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

1. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2 – 2002 for heavy vehicle usage.
2. The proposed development will generate additional pedestrian movements in the area. Consideration should be given to ensuring pedestrian safety.

Should you have any further enquiries in relation to this matter, please do not hesitate to contact Rachel Nicholson on telephone 8849 2702 or by email at Development.Sydney@rms.nsw.gov.au

Yours sincerely,



Greg Flynn
**Manager Strategic Land Use
Network and Safety Section**



Australian Government

Department of Infrastructure and Regional Development

File reference: 15/521

TO: Mr Rob Turchini LOFTEX P/L rturchini@loftexproperty.com	Cc: Peter Bleasdale Sydney Airport Corporation Limited peter.bleasdale@syd.com.au Michael Turner Sydney Airport Corporation Limited michael.turner@syd.com.au Airport Developments Airservices Australia airport.developments@airservicesaustralia.com Joe Hain Civil Aviation Safety Authority Joe.Hain@casa.gov.au Rebeckah Groth Lane Cove Council rgroth@lanecove.nsw.gov.au	FROM: Flysafe Airspace Protection flysafe@infrastructure.gov.au
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DECISION UNDER THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS 1996:

Proposed Activity: Building Construction: Property Development

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

MGA 94 Coordinates: E332787, N6255848

Proponent: Loftex P/L

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

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

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

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

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

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

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

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

Decision

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

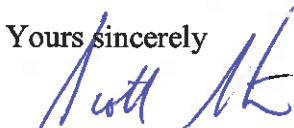
In making my decision, I have taken into consideration the opinions of the proponent, the Civil Aviation Safety Authority, Airservices Australia, and SACL.

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

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

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

Yours sincerely



Scott Stone
General Manager, Aviation Environment
Aviation and Airports Division

2 February 2015

Parties

Lane Cove Council

Loftex Pty Ltd

Planning Agreement

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

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Date 16/12/2015

Parties

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

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

Background

- A The Developer proposes to lodge a Planning Proposal for the site which seeks to increase the height control from 65 metres to 94 metres on the eastern part of the Land.
- B As part of the Planning Proposal, the Developer offers to enter into a voluntary planning agreement on the terms of the letter of offer 2 April 2015.
- C As contemplated by section 93F of the Act, the Parties wish to enter into a Voluntary Planning Agreement in connection with the Planning Proposal and Development Application on the terms of this Agreement.

Operative provisions

It is agreed

1 Definitions and interpretation

In this Agreement these terms have the following meanings:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Additional Gross Floor Area	means any Gross Floor Area approved under the Development Consent by the consent authority that is located more than 65m above existing ground level.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council, issued by: <ul style="list-style-type: none">(a) one of the following trading banks:<ul style="list-style-type: none">(i) Australia and New Zealand Banking Group

	Limited,
	(ii) Commonwealth Bank of Australia,
	(iii) Macquarie Bank Limited,
	(iv) National Australia Bank Limited,
	(v) St George Bank Limited,
	(vi) Westpac Banking Corporation, or
	(b) any other financial institution approved by the Council in its absolute discretion.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Consent Authority	has the same meaning as under the Act.
Construction Certificate	has the same meaning as under section 109C of the Act.
CPI	means the All Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
Development	A mixed-use residential apartment development comprising two separate buildings located over a common basement car park proposed to be constructed on the Land. The first building will comprise approximately 52 apartments over seven storeys, with the second building comprising a tower of approximately 217 apartments plus commercial and retail space over 29 storeys, as modified from time to time.
Development Application	means a development application made under Part 4 of the Act for the Development.
Development Consent	means the development consent granted by the Consent Authority to the Development Application, which has the same meaning as Development Consent in the Act and includes any amendment or modification of the Development Consent, including a Section 96 Modification.
Explanatory Note	the Explanatory Note attached at schedule 2 .
Force Majeure	means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.
Gross Floor Area	has the same meaning as provided by the LCLEP.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act or regulation relating to the imposition or administration of the GST.

Land	the land located at 1-13a Marshall Avenue, St Leonards and contained in the folio identifier Lot 100 in DP 1200133
Land Owners	means the Developer.
Law	means: <ul style="list-style-type: none"> (a) the common law including principles of equity, and (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an authority, that presently apply or as they may apply in the future.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
LPI	means the Land and Property Information Office of New South Wales or any other authority replacing it.
Monetary Contribution	means the amount calculated under clause 6 , as indexed in accordance with clause 6.2 .
Party	a party to this Agreement, including their successors and assigns.
Planning Proposal	means the gateway planning proposal under Part 3 of the Act to amend the LCLEP so that the permissible height of buildings on the eastern part of the Land is increased from 65m to 94m.
Public Purpose	has the same meaning as in section 93F(2) of the Act.
Registration on Title	means the registration of this Agreement under section 93H of the Act in the folio of the register kept under the <i>Real Property Act 1900</i> in relation to the Land, and Registered on Title refers to the state of the Agreement being so registered.
Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Schedule	means a schedule to this Agreement and forming part of this Agreement.
Security	means a Bank Guarantee.
Security Amount	means the amount equivalent to the value of the Monetary Contribution as calculated by the Developer.
Section 96 Modification	means any modification of the Development Consent pursuant to section 96 of the Act.
Strata Lot	means a lot that forms part of the Land and is to be created by the registration of a Strata Plan and has been or is being developed for residential, commercial or retail purposes.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act	means the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
Stratum Lot	means a stratum lot created in registration of a plan of subdivision.
Sunset Date	means the date on which the Development Consent lapses, should that occur.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this Agreement.

1.3 Compliance with New Laws

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

2 Planning Agreement under the Act

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

3 Application of this Agreement

This Agreement applies to:

- (a) the Land;
- (b) the Planning Proposal; and
- (c) the Development.

4 Operation of this Agreement

- (a) This Agreement operates from the later of:
 - (i) the date that this Agreement is entered into as required by clause 25C(1) of the Regulation; or
 - (ii) the date upon which the Planning Proposal is made effecting an amendment to the LCLEP by increasing the permissible building height on the eastern part of the Land from 65m to 94m.
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached.
- (c) If a legal challenge to the Development Consent or Planning Proposal by a third party results in the Development Consent or Planning Proposal being rendered invalid or unenforceable, then the Developer may, in its

absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

- (d) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the consent authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration when determining a Development Application.

5 Not used

6 Development Contributions to be made under this Agreement

6.1 Provision of Development Contributions

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

$$A \times B = C$$

whereas,

A = \$1,300 per square metre

B = Additional Gross Floor Area in square metres

C = Monetary Contribution payable

6.2 Indexation

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

6.3 Timing

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

6.4 Delivery of Monetary Contribution

- (a) The Monetary Contribution is made for the purposes of this Agreement when either:
 - (i) cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council; or

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

7 Application of the Monetary Contribution

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

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

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

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act to the Development; or
 - (ii) any other monetary contribution required under the Act,in connection with any Development Consent that is granted in respect of the Development Application for the Land, including any Section 96 Modifications.

- (b) Any benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

9 Registration of this Agreement

- (a) Subject to **clause 9(b)**, the Parties agree that this Agreement **will not be registered on the title of the Land**.
- (b) If the Developer has not made the Monetary Contribution in accordance with this Agreement within 6 months of the date of this Agreement, the Developer must, at its expense take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.
- (c) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General on the title of the Land as soon as reasonably practicable after the date that an obligation to register the Agreement arises under **clause 9(b)**.
- (d) The Parties agree that on registration by the Registrar General on the title of the Land, the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.
- (e) Subject to **clause 9(f)**, the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land but no other dealing during the period after Development Consent is granted and prior to provision of the Security or where registration of this Agreement is triggered by the operation of **clause 9(b)**.
- (f) If the Council lodges a caveat in accordance with **clause 9(e)**, then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of any dealing with the Land other than a transfer; and
 - (ii) remove the caveat from the title to the Land promptly, following provision of the Security in accordance with **clause 6.3(a)** or registration of this Agreement pursuant to **clause 9(b)**.
- (g) Despite **clause 9(d)**, the Council as caveator must consent to registration of transfer of the land or any part of the Land from the

developer to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**.

- (h) If the Developer has not registered this Agreement on the Land in accordance with **clause 9(b)** within 120 days after the date of operation in **clause 4(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, to lodge the caveat under **clause 9(e)**.

10 Review of this Agreement

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

11 Dispute Resolution

11.1 Reference to dispute

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

11.2 Notice of dispute

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

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

11.3 Representatives of parties to meet

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

(including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

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

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

12 Security and Enforcement

12.1 Developer to provide security

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

12.2 Security to be provided to council

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

12.3 Release of security to the developer

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

12.4 Call on security

- (a) Subject to **clause 12.3**, the Security provided in **clause 12.2** is given to secure performance by the Developer of its obligation to pay the Monetary Contribution.
- (b) The Council must only exercise its rights under the Security in accordance with this **clause 12.4**.

- (c) If the Developer does not comply with its obligation to pay the Monetary Contribution under this Agreement, then Council may, after giving the Developer no less than 10 Business Days notice of the default, call on all or part of the Security and apply the proceeds as its own property in order to recover Council's loss arising from the failure of the Developer to pay the Monetary Contribution.

12.5 Enforcement by any party

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

13 Notices

13.1 Delivery

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

Lane Cove Council

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

Loftex Pty Ltd

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

13.2 Change of details

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

13.3 Giving of notice

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two Business Days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; and
- (d) if it sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

13.4 Delivery outside of business hours

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

14 Approvals and consent

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

15 Assignment and dealings

15.1 Assignment

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

15.2 Transfer dealings

- (a) Subject to **clause 15.2(b)**, the Developer must not transfer all or any part of the Land under this Agreement to another party (**Transferee**) unless

the Transferee delivers to the Council a novation deed signed by the Transferee and the Developer in a form and of such substance as is acceptable to the Council, acting reasonably, containing provisions under which either:

- (i) the Transferee agrees to comply with all the obligations of the Developer under this Agreement; or
 - (ii) other suitable arrangements are agreed as between the Developer, Council and the Transferee whereby the Developer retains the obligations under this Agreement; and
- (b) **clause 15.2(a)** does not apply to any transfer of any part of the Land that is a Strata Lot or Stratum Lot.

16 Costs

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

17 Entire agreement

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

18 Further acts

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

19 Governing law and jurisdiction

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

20 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds

them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

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

22 Representations and warranties

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

23 Severability

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

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any

obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

25.1 Construction

In this **clause 25**:

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

25.2 Intention of the Parties

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

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

25.3 Consideration GST exclusive

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

25.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 25.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 25.4(b)**, **25.4(c)** and **25.4(e)** (as appropriate).
- (b) ~~To the extent that the consideration to be provided by the Recipient for~~ the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 25.4(c)** and **25.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.

- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non-monetary consideration),

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

25.5 Valuation of non-monetary consideration

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

25.6 Tax invoice

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

25.7 Adjustment event

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

Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

25.8 Reimbursements

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

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

25.9 No Merger

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

26 Relationship of parties

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

27 Further steps

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

28 Counterparts

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

29 Rights cumulative

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

30 Explanatory Note

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

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	The Land.
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 5 .
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not* excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not* excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not* excluded by this Agreement.
Benefits to be taken into account (Section 93F(3)(e))	No, the benefits under the Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 11 .
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 12 .
Registration of this Agreement (Section 93H)	See clause 9 .

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

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Explanatory Note for Voluntary Planning Agreement

1- 13A Marshall Avenue, St Leonards

Summary

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

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* ("**the Regulations**").

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

Parties

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

Description of subject land

1-13A Marshall Avenue, St Leonards being Lot 100 DP1200133 ("**the Land**").

Description of the Planning Proposal and Development Application to which the Planning Agreement applies

The Planning Proposal proposes to increase the height on the eastern part of the site to 94 metres. The current height control for this part of the site under Lane Cove Local Environmental Plan 2009 is 65 metres. The additional height equates to 9 additional stories.

The Development Application will propose a mixed-use residential apartment development comprising two separate buildings located over a common basement car park proposed to be constructed on the Land. The first building will comprise approximately 52 apartments over seven storeys, with the second building comprising

a tower of approximately 217 apartments plus commercial and retail space over 29 storeys.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides for a monetary contribution of \$1300 per square metre of Gross Floor Area located more than 65m above existing ground level. Council engaged HillPDA to undertake a valuation to determine the contribution rate.

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

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

Assessment of the Merits of the Planning Agreement

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

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

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

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

The Planning Agreement promotes the following:

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

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

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

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

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

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

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

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

The Planning Purposes served by the Planning Agreement

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

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

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

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

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

In the event of the Developer obtaining Development Consent for the Development, the contribution will become due and payable prior to the issue of the Construction Certificate. The Developer is required to provide a Bank Guarantee for the contribution amount from the date of operation of the Planning Agreement until the payment of the contribution to the Council (which is increased with CPI annually).

Execution

Executed as a deed.

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

.....
Witness
Joerg Paul Henry Schmidt-Liermann

.....
Name of Witness (print)

.....
Attorneys Signature
CRAIG ANTHONY WRIGHTSON

.....
Name of Attorney (print)

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

.....
Company Secretary/Director

.....
XIAO NAN RUAN
Name of Company Secretary/Director
(print)

.....
Director

.....
XIAO YAO WANG
Name of Director (print)



planning consultants

15 June 2016
Our Ref: 7920C1.DW

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

Attn: Rebecka Groth

Dear Rebecka,

**“Tenacity” View Sharing Assessment – Addendum
DA No. 205/2015
1-13 Marshall Avenue, St Leonards**

DFP Planning Pty Ltd (DFP) has been engaged by the applicant Loftex Pty Ltd (Loftex) to prepare an addendum to the view sharing assessment contained within the Statement of Environmental Effects prepared by DFP and dated 8 December 2015 for the proposed development. In this regard, Council has requested that a view sharing assessment be also made against the Planning Principles detailed in the NSW Land and Environment Court judgment *Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity judgment)*. Accordingly, the following has translated much of the detailed view sharing assessment contained within the Statement of Environmental Effects and applied it against the four step Planning Principle of the *Tenacity* judgment.

Furthermore, for thoroughness and as suggested by Council we have also provided a building envelope assessment of the proposed development against the Planning Principles detailed in the NSW Land and Environment Court judgment *Veloshin v Randwick Council [2007] NSWLEC 428 (Veloshin judgment)*.

1.0 View Sharing

The majority of the Site has low rise buildings with the proposed high rise building occupying a small footprint at the eastern end of the site. The high rise building entirely complies with the maximum 94 metre building height development standard for the site adopted in Lane Cove Local Environmental Plan 2009 (Amendment No 19) that commenced on 10 June 2016. This amendment to Lane Cove Local Environmental Plan 2009 (Lane Cove LEP 2009) has increased the maximum building height for the eastern part of the site from 65 metres to 94 metres.

The buildings that are proposed will be visible from surrounding buildings including commercial floor space and apartments. Potential view impacts resulting from the proposed development has been considered in relation to:

- The residential dwellings on the southern side of the Forum East and Forum West high rise buildings;



- The residential apartments in the Abode building on the corner of Albany Street and Pacific Highway; and
- Suites within the commercial development located on the northern side of the Pacific Highway.

It is noted that the recent amendment to Lane Cove LEP 2009 for this site (Amendment No. 19) that increased the building height on the site from 65m to 94m considered the potential view impacts of a building being increased in height from 65m to 94m.

As can be seen in the photomontages provided in this correspondence, the proposed building envelope on the site is shown in grey shading up to 65m in height and in pink shading above up to 94m in height to reflect the recent amendment to Lane Cove LEP 2009.

1.1 Tenacity Planning Principle

The NSW Land and Environment Court's planning principle for view sharing is established in *Tenacity Consulting v Warringah [2004] NSWLEC 140* where (former) Senior Commissioner Roseth outlined a four step approach in the assessment of view sharing. These steps are detailed below with a comment on the proposed development following:

First Step:

"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

Comment:

Forum Apartments

There is a distance separation of approximately 150m between the Forum and the Site. The Forum residential buildings are sited on a north-south axis and taper on the southern end. Balconies to Forum apartments are mainly oriented east or west. It is the west facing apartments located in the south western corner of the two high rise buildings that will be able to see a building on the Site.

Photomontages were prepared for Loftex for the 29 storey building proposed in DA 14/143 and reproduced for the current DA. The images were based on photographs taken from various levels of both Forum East and Forum West. The photographs were taken by Council officers and some photographs have been "stitched" to create a panorama which appears to have caused some distortion.

A 94m building envelope on the Site has been superimposed on to the photographs. When the photomontages are compared to the view cones in each figure below, it can be seen that there is a good degree of correlation between the photomontages and the view cones such that they can be confidently used as an assessment tool.

In all of the photomontages the pink shading presents the additional height between 65-94m.



Figure 1 Forum (East) Unit 1701 – Panorama and view angles

Unit 1701 is located on the western side of the Forum (East) building in the south western corner. It is clear from this image (**Figure 1**) that the important city skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed by a 94m high building on the Site. A narrow part of the Parramatta River will be obscured from the existing expansive views.

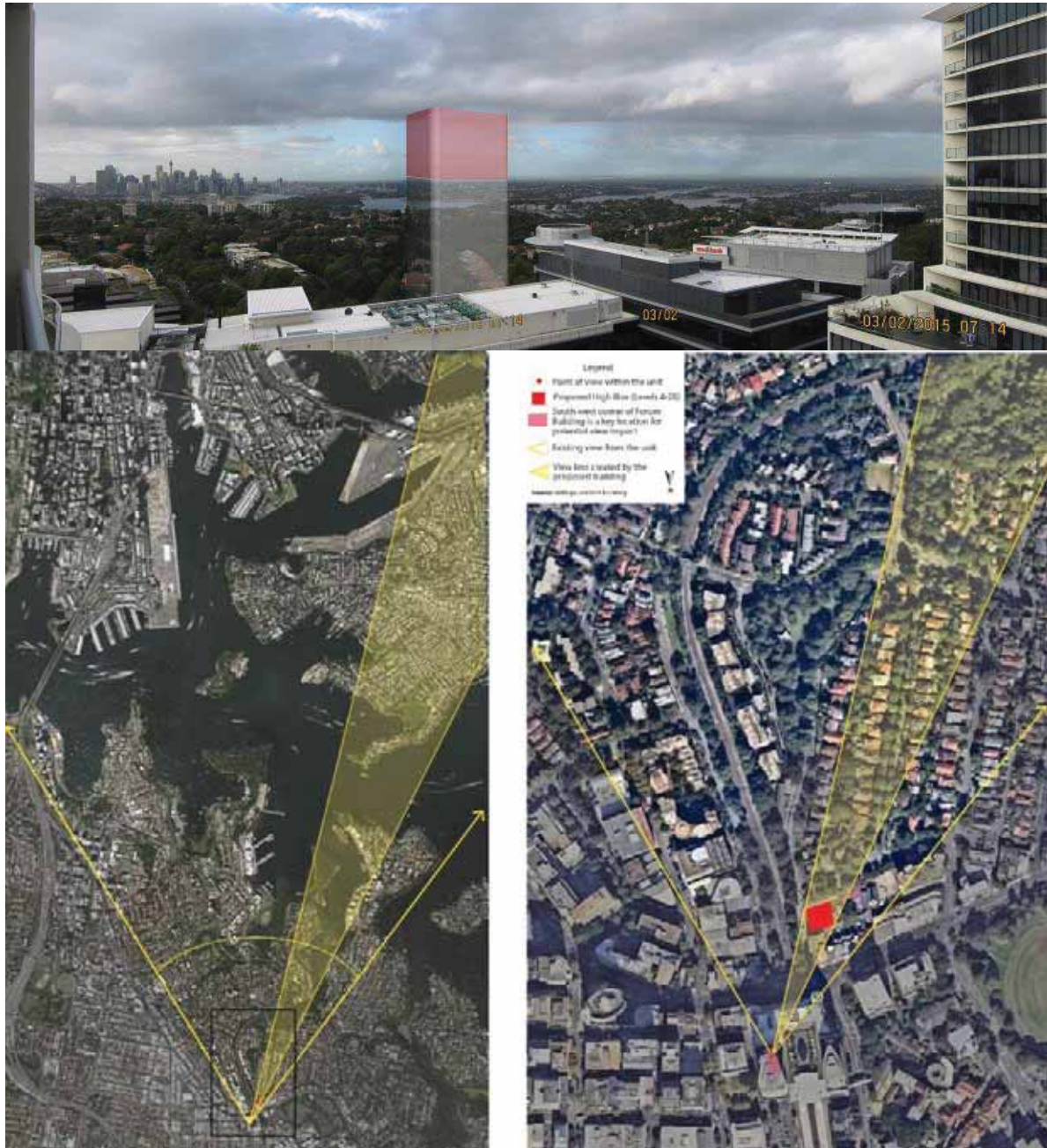


Figure 2 Forum (East) Unit 2002 - Panorama and view angles

Unit 2002 is located on the western side of the Forum (East) building and is a west facing apartment. It is clear from this image (**Figure 2**) that the important city skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed by a 94m high building on the Site. A narrow part of the Parramatta River will be obscured from the existing views.



Figure 3 Forum (East) Unit 2901 - Panorama and view angles

Unit 2901 is located on the western side of the Forum (East) building in the south western corner. The photomontage illustrates that the a proposed 94m high building on the Site would impact on views over part of the Wollstonecraft peninsula across Parramatta River to Balmain (**Figure 3**). Iconic views to the city skyline, Harbour Bridge and the Harbour setting are unaffected and view sharing principles are satisfied.



Figure 4 Forum West Unit 1801

Unit 1801 is located in the south-western corner of Forum West. This photograph illustrates that upper parts of some of the buildings in the western city skyline are blocked by a component of the proposed development above 65m on the Site (**Figure 4**). Sydney Tower and the Harbour Bridge remain within view. It is noted that this view is to the side and is not the primary aspect from these bedrooms which is more southwest over the office building in the foreground and the wide panorama of Parramatta and Lane Cove Rivers is unaffected. This apartment also has a balcony and main living areas further to the east which will lessen this view impact as the view changes reference point.

the Abode building, however, the extent of visual impact is considered minor. A high rise building on the Site would not affect any views that might be enjoyed to the south west across the Greenwich Peninsula, Lane Cove River and Hunters Hill Peninsula.

However, the above assessment needs to be considered in the context of the future buildings that are likely to be constructed to take advantage of the recent amendment to Lane Cove LEP 2009 that increased the building height at 500-504 Pacific Highway (New Hope site formerly known as the Charter Hall site) to 37 storeys and 472-494 Pacific Highway (Mirvac site formerly known as the Leighton site) to 24-34 storeys. It is highly likely that buildings of this height will take place given the very recent amendment of Lane Cove LEP 2009 (May 2015) in respect of these properties. Particularly given that the Mirvac site has been recently approved by the JRPP and the New Hope site DA is current under assessment by Council.

In addition, there is a Planning Proposal with the NSW Department of Planning and Environment (DPE) for Gateway Determination for 84-90 Christie Street and 75-79 Lithgow Street (Winten site) that proposes a base height of 20-37 storeys and a public benefit scheme of 27-44 storeys. The views from Abode apartments have been represented in **Figure 6** and have indicated where the future buildings are located.



Figure 6 View cone from Abode Apartments

Figure 6 clearly illustrates that the height of the Charter Hall and Leighton sites (on the Pacific Highway) will obstruct views from the Abode Apartments and the building height proposed for 1-13 Marshall Avenue will sit behind those towers and not contribute to view loss. The same condition applies to the Winten site in Lithgow Street.

In the unlikely event that the Pacific Highway buildings are not constructed or if the Planning Proposal for the Lithgow/Christie Street does not proceed, then the proposed 94m tower will be visible from the Abode apartments but will only affect part of the westerly views available from the apartments within the building and the distance separation will maintain a significant proportion of the currently southerly, south westerly and westerly available views.

Commercial Development on Northern Side of Pacific Highway

The commercial development on the northern side of the Pacific Highway has heights varying from 4 to 13 storeys. The mid to upper levels of the buildings have views across the Site towards the south-east to the city and to south-west. **Figure 7** is a photomontage taken from Level 6 of Building B, 207 Pacific Highway.

Figure 7 illustrates that the North Sydney skyline and part of the Harbour Bridge is blocked by the lower levels of the proposed development, however the remainder of the Harbour Bridge, the city skyline, and partial Harbour setting are unaffected. The proposed tower building allows the remainder of the site to be of low scale and therefore minimise the potential view impact across the site as seen at **Figure 7**. It is noted that, the proposed building height between 65m and 94m on the Site (Lane Cove LEP 2009 Amendment 19) would not affect views from the commercial building.

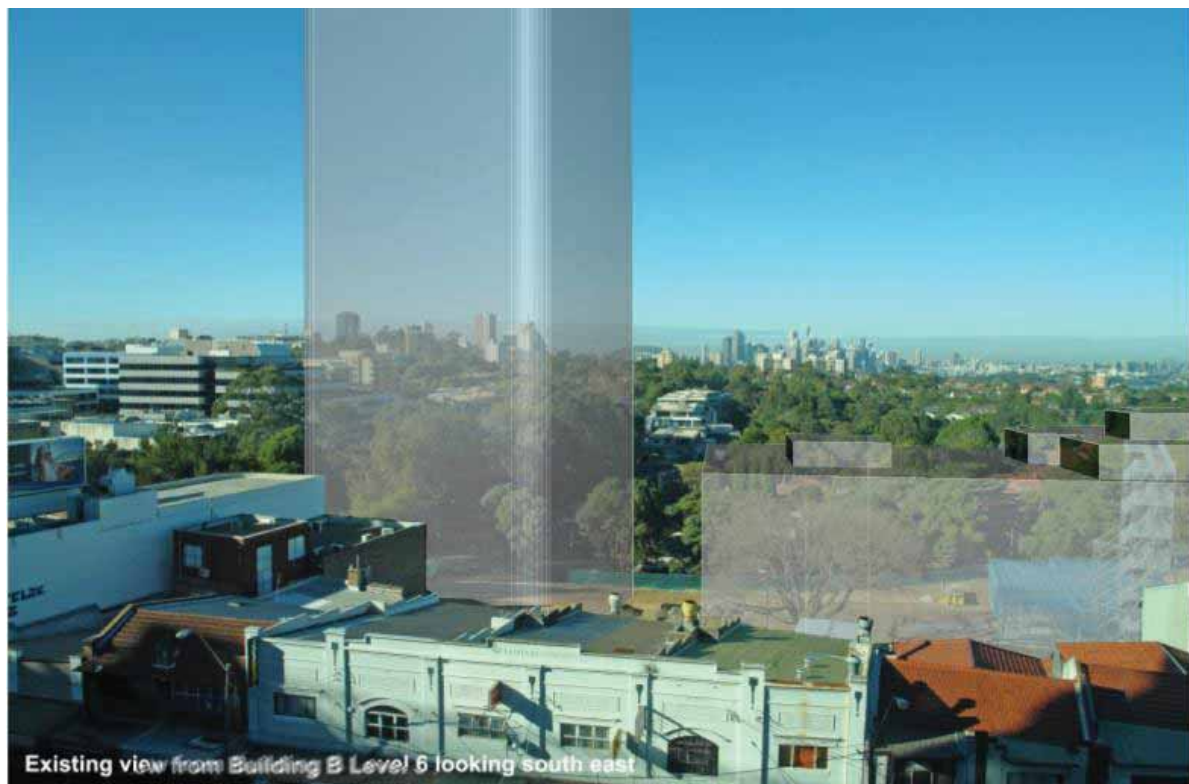


Figure 7 207 Pacific Highway (Building B – Level 6)

Second Step & Third Step:

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

Comment:

Table 1 below provides a quantitative and qualitative assessment of potential view impacts for the buildings and apartments documented in accordance with the second step and third step of the *Tenacity* judgment Planning Principle.

Table 1 View Assessment				
Building/apartment	Photograph location	Photograph aspect	Quantitative view loss assessment	Qualitative view loss category
Forum East Unit 1701	Balcony	Central view (standing)	City skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed.	Minor
Forum East Unit 2002	Balcony	Angled side view to south leaning over balcony (standing)	City skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed.	Minor
Forum East Unit 2901	Unknown position	Central view (unknown whether standing or sitting)	City skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed.	Minor
Forum West Unit 1801	Balcony to bedrooms	Angled side view to south leaning over balcony (standing)	Partial city skyline views blocked, Sydney Tower and Harbour Bridge retained. This balcony's central view of the Parramatta and Lane Cove Rivers is retained.	Minor (due to angled side view of City skyline)
Forum West Unit 2401	Balcony	Central view and angled view to south (standing)	City skyline, Harbour Bridge and Harbour views around those iconic features will not be obstructed. Small part of southern city skyline blocked.	Minor/moderate
Abode apartments	N/A	Towards west	Future buildings on sites that have been the subject of recent amendments to the Height of Buildings Map (increased height) are located in the view corridor between the site and the Adobe apartments and thus are likely to block views once developed. In any event, the significant separation between the site and Adobe apartments will ensure a significant proportion of the existing	Minor (existing) Negligible (once new buildings are constructed on other sites)

Table 1 View Assessment

			available views to the west are maintained.	
Commercial development on northern side of Pacific Highway	Office windows	Central view (standing)	North Sydney skyline and part of the Harbour Bridge is blocked by the lower levels of the proposed development, however the remainder of the Harbour Bridge, the city skyline, and partial Harbour setting are unaffected. The proposed tower building achieves the development potential of the site and allows the remainder of the site to be of low scale and therefore minimise the potential view impact across the site.	Moderate

Fourth Step:

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment:

The proposed development entirely complies with the maximum building height and FSR development standards of Lane Cove LEP 2009. On 10 June 2016 Amendment No 19 of Lane Cove LEP 2009 was published on the NSW legislation website which amended the Height of Buildings Map by applying a 94m maximum building height for the site and also amended Clause 1.8A Savings provisions relating to development applications of Lane Cove LEP 2009 to ensure that Amendment No 19 applies to the determination of the subject DA (**Attachment A**). Accordingly, given that the proposed development complies with the relevant planning controls relating to building envelope, the remaining question to be addressed is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

In this regard, the proposed design provides a 94m high tower that maximises the development potential of the site at its eastern most end. **Figure 8** below provides an overlay of the proposed site plan on the FSR Map of the Site. As can be seen, the proposed 94m high tower footprint occupies approximately one quarter of the site and only half of the area of the site identified with a maximum 10:1 FSR and 94m building height under Lane Cove LEP 2009. Accordingly, a tall and slender building is proposed in lieu of a less tall building with wider floor plate which would likely have on balance a greater adverse impact upon view corridors of nearby buildings. Furthermore, the Site is located within the Marshall Precinct of Lane Cove DCP 2009 being one of the precincts within the St Leonards Locality. The DCP divides the Marshall Precinct into four Blocks as illustrated below at **Figure 9**. The subject site relates to Blocks C and D. The proposed building on Block C is referred to as the low rise building and on Block D, the high rise building. The proposed development is entirely consistent with the Marshall Precinct block plan.

Therefore in the opinion of DFP, the proposed design is considered reasonable from a view sharing perspective and the proposed development represents a skilful and compliant design that maximises view sharing whilst achieving the desired future character of the locality.

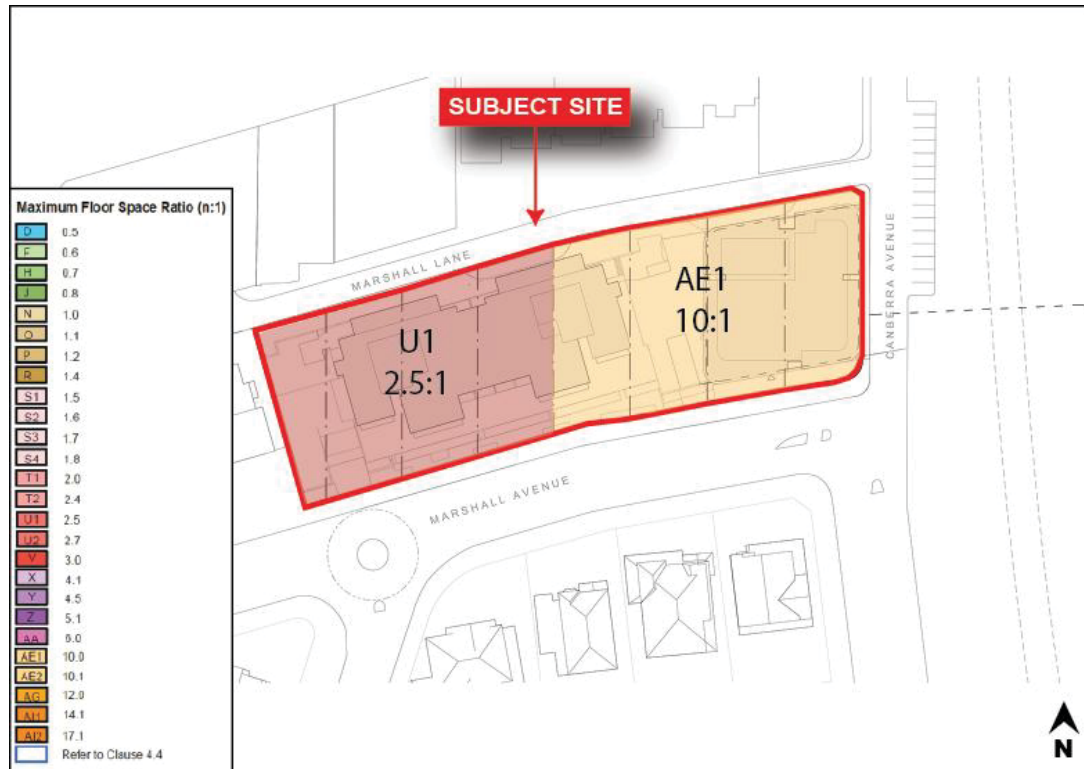


Figure 8 FSR Map extract overlaid with the proposed site plan

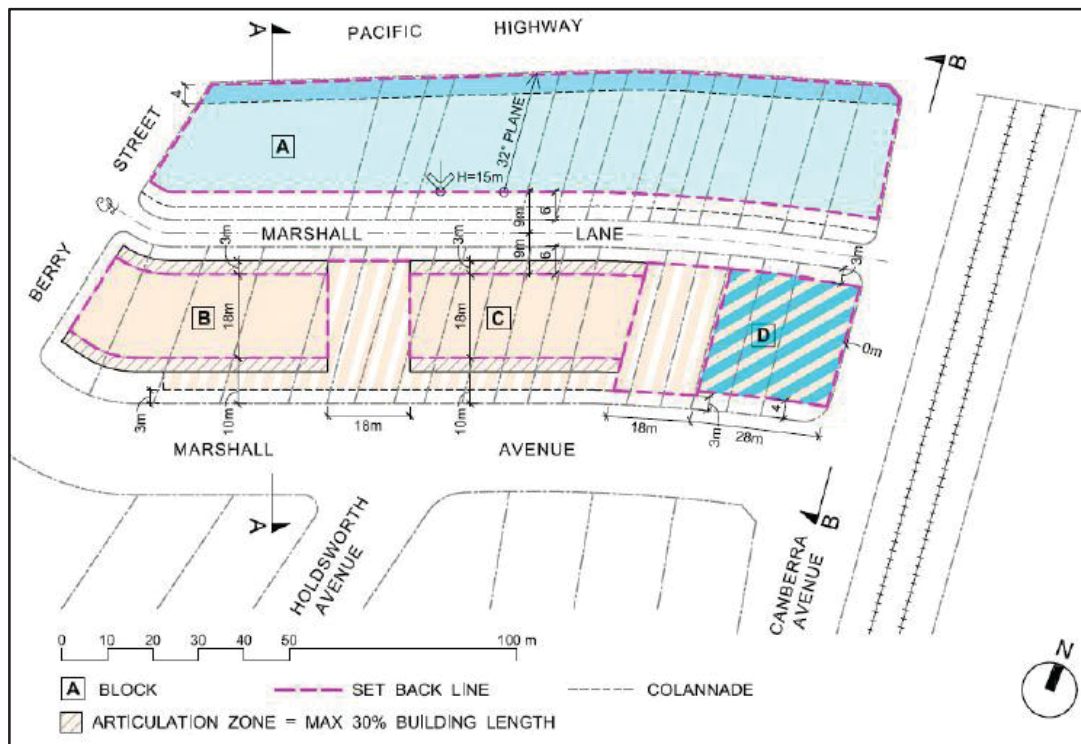


Figure 9 Lane Cove DCP 2009 Marshall Precinct Block Plan



2.0 Building Envelope

In *Veloshin v Randwick Council [2007] NSWLEC 428* former Senior Commissioner Roseth developed planning principles in relation to assessment of building height and bulk in an existing context, with the most relevant principle relating to this matter stipulated below:

“The appropriateness of a proposal’s height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.

How does the proposal’s height and bulk relate to the height and bulk desired under the relevant controls? Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?”

In regard to the first question, the proposed development is entirely compliant with the planning controls that determine the building envelope under the Lane Cove LEP 2009.

Regarding the second question, the proposed design provides a 94m high tower that maximises the development potential of the site at its eastern most end and provides low scale buildings for the remainder of the site. Accordingly, a tall and slender building is proposed in lieu of a less tall building with wider floor plate. This type of site planning is consistent with the desired and emerging character of the locality.

Furthermore it is noted that correspondence from DPE dated 2 June 2016 (**Attachment B**) advising of the approval of Amendment No 19 of Lane Cove LEP 2009 stated the following in regard to the desired future character of the area:

“The proposal will facilitate high density mixed commercial and residential development in close proximity to the St Leonards Strategic Centre, the Royal North Shore Hospital, and existing and proposed high capacity public transport infrastructure, in an area with a progressively higher density character.”

This leads to the third question which is answered resoundingly in the positive given the compliance of the mixed use proposed development with the bulk and character intended by Lane Cove LEP 2009 and Lane Cove DCP 2009.

We hope this correspondence assists Council and the JRPP in its assessment of the proposed development. Should you have any questions in regard to the above matter please contact David Kettle or Daniel West on 9980 6933.



Yours faithfully
DFP PLANNING PTY LIMITED

A handwritten signature in black ink, appearing to be 'D. West', written over a light grey rectangular background.

DANIEL WEST
PRINCIPAL PLANNER

dwest@dfplanning.com.au

A handwritten signature in black ink, appearing to be 'R. Hayer', written over a light grey rectangular background.

Reviewed: _____

Attachment A: Lane Cove LEP 2009 (Amendment No 19)
Attachment B: Correspondence from DPE



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ATTACHMENT A



New South Wales

Lane Cove Local Environmental Plan 2009 (Amendment No 19)

under the

Environmental Planning and Assessment Act 1979

The Greater Sydney Commission makes the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

MARCUS RAY

As delegate for the Greater Sydney Commission

Lane Cove Local Environmental Plan 2009 (Amendment No 19)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Lane Cove Local Environmental Plan 2009 (Amendment No 19)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to land at 1–13 Marshall Avenue, St Leonards, being part of Lot 100, DP 1200133.

4 Maps

The maps adopted by *Lane Cove Local Environmental Plan 2009* are amended or replaced, as the case requires, by the maps approved by the Greater Sydney Commission on the making of this Plan.

5 Amendment of Lane Cove Local Environmental Plan 2009

Clause 1.8A Savings provisions relating to development applications

Insert after clause 1.8A (3):

- (4) To avoid doubt, *Lane Cove Local Environmental Plan 2009 (Amendment No 19)* applies to the determination of a development application made (but not finally determined) before the commencement of that Plan.



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ATTACHMENT B



RECEIVED
14 JUN 2016

BY:.....

Our ref: PP_2015_LANEC_003_00 (15/09277)

Mr David Kettle
Director
DFP Planning Pty Ltd
PO Box 230
Pennant Hills NSW 1715

Dear Mr Kettle

Lane Cove Local Environmental Plan 2009 (Amendment No. 19)

I refer to the above proposal to increase the height of buildings for part of the site at 1-13 Marshall Avenue, St Leonards (formerly 1-13A Marshall Avenue, St Leonards) from 65 metres to 94 metres.

I wish to advise you that, as delegate of the Greater Sydney Commission, I have made the Plan under section 59(2) of the *Environmental Planning and Assessment Act 1979*, and under section 34(5) it will take effect when published on the NSW Legislation website.

In making this decision, the Department has considered the changing nature of the St Leonards area, community submissions, advice received from Council, and from other State Government agencies.

The proposal will facilitate high density mixed commercial and residential development in close proximity to the St Leonards Strategic Centre, the Royal North Shore Hospital, and existing and proposed high capacity public transport infrastructure, in an area with a progressively higher density character.

It will also provide for improvements to the public domain and public amenity, including enhanced pedestrian accessibility and connectivity, in the local area through the proposed St Leonards Plaza over the North Shore Railway Line, or other significant works of public benefit in the area.

If you have any questions regarding this matter, please contact Ms Karen Armstrong, Director, Sydney Region East on (02) 9228 6512.

Yours sincerely

Marcus Ray
Deputy Secretary
Planning Services

02/06/2016