

independent assessment of development application no. 172/2016

**Construction of an Eight (8) Storey Residential Flat Building,
Child Care Centre and
Neighbourhood Shop**

Property:

**Lots 101 and 102 DP 1013285
and Lot 31 DP 540796
Nos. 296-314 Burns Bay Road,
Lane Cove**

Applicant:

**HGP General Pty Ltd
(Hyecorp Property Group)**

Date:

January 2017

Prepared by:

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**REPORT TO JRPP – DA 172/16
296 – 314 BURNS BAY RD, LANE COVE**

APPLICATION DETAILS

Properties: Nos. 296 – 314 Burns Bay Road, Lane Cove

DA No: DA 172/16

Date Lodged: 23rd September, 2016

Cost of Work: \$34,698,069

Cadastral and Ownership Details:

Address	Lot Description	Owner
No. 296 Burns Bay Road	Lot 31 in DP 540796 (generally comprises land which will form part of the widened intersection between Burns Bay Road and Waterview Drive, as well as a small part of the subject development site).	Lane Cove Council
No. 302 Burns Bay Road	Lot 101 in DP 1013285 (comprises the northern end of the development site)	Lane Cove Council
No. 304-314 Burns Bay Road	Lot 102 in DP 1013285 (generally comprises the existing Hughes Park, part of the development site, as well as Waterview Drive)	Lane Cove Council
Total	3 lots	

Applicant: HPG General Pty Ltd (Hycorp Property Group)

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Eight (8) storey residential flat building comprising 107 dwellings and 194 car parking spaces, an attached childcare centre, an attached neighbourhood shop and associated tree removal, site works and landscaping.
ZONE	R4 – High Density Residential
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
IS THE PROPERTY ADJACENT TO BUSHLAND?	No
BCA CLASSIFICATION	Classes 2 and 7
STOP THE CLOCK USED	Yes
NOTIFICATION Neighbours	Refer to the Notification Plan in Attachment 4

REASON FOR REFERRAL TO JRPP

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

EXECUTIVE SUMMARY

- DA No. 172/16 was lodged with Council on 23rd September, 2016 and sought approval for the construction of an eight (8) storey residential flat building (RFB) comprising 107 apartments, a child care centre for 60 children, a 120m² neighbourhood shop, 194 car parking spaces and associated earthworks, tree removal, landscaping and extension/augmentation of services as necessary on Council-owned land at Nos. 296-314 Burns Bay Road at Lane Cove.
- The application also seeks approval for subdivision of the land into 3 stratum allotments to facilitate the future strata subdivision of the RFB and the transfer of the child care centre and shop to Council in accordance with a Deed of Agreement signed with Council prior to lodgement of the DA. However, prior to this subdivision occurring, the re-subdivision of the three (3) existing allotments the subject of this application needs to occur to create: the actual development site containing the proposed building; the sections of public road over Waterview Drive running through the site and the additional land required for the widening of the intersection at Burns Bay Road; and the necessary public reserve over Hughes Park (which is currently contained with lot 102). This plan of subdivision has been prepared but is currently awaiting registration at Land and Property Information (LPI). In addition, no plan of the stratum subdivision was submitted with the development application or advertised as part of the public notification of the application. As such, it is proposed to remove the three (3) lot stratum subdivision from any consent granted to the current application and instead require that such subdivision be effected via a separate application and following registration of the plan for the initial subdivision of the site. This would avoid confusion and ensure the stratum subdivision matches up with the exact boundaries of the actual development site (which is also subject to change to accommodate an adjustment to the area of the communal open space as discussed later in the report), as well the exact dimensions and levels of the building (which aren't known at this stage and are subject to the preparation of construction certificate plans and a further survey).
- The applicant and its team attended a pre-lodgement meeting with Council and Tim Shelley (of Tim Shelley Planning) on 2nd June 2016, wherein Council provided comments in relation to preliminary plans previously submitted and identified a range of issues needing to be addressed as part of the development application. Of particular note, Council raised a number of specific issues in relation to:
 - zoning of the site (a minor portion of the development site was zoned RE1 - Public recreation Zone at that time, rendering a portion of the proposal as prohibited development);
 - unit mix (less than 10% of the dwellings were 3 bedrooms);
 - lack of pedestrian access from Burns Bay Road to the proposal;
 - non-compliant setback to the Northern Ocean Outfall Sewer (NOOS) tunnel and related foundations;
 - the need for separate and self-contained waste management systems for the residential component and the non-residential component;
 - minimum basement clearances for waste collection and removalist's vehicles as per the (then) draft DCP;
 - the provision of bicycle parking;
 - conflict between the shared waste collection vehicle loading area and the shared pickup/drop off area associated with the child care centre;
 - screening to Burns Bay Road;
 - bike pathways around the site; and
 - the need to submit a noise impact report, construction noise management plan, traffic management plan and contamination report with the application.

- In relation to zoning, this issue has been addressed by the gazettal of Amendment No. 20 to Lane Cove LEP 2009 on Friday 23rd December 2016, which rezoned the small section of the development site zoned RE1 to R4 High Density, thereby permitting all components of the proposed development.
- With respect to the non-compliant setback to the NOOS tunnel, a specialist assessment has been provided by the applicant which indicates the setback would not result in any impact to the sewer and its infrastructure. In correspondence provided to Council as part of the referral process, Sydney Water advised that they raise no specific objections or concerns to the proposed development with respect to future water and wastewater servicing requirements. They further advised of a requirement to obtain a Section 73 certificate and provided generic advice in relation to works within proximity to their assets (as opposed to a specific response to the applicant's specialist assessment). Subject to the adoption of a condition requiring the applicant obtain a Section 73 certificate and a further specific condition requiring the sewer design to be submitted to and approved by Sydney Water to ensure it meets their requirements to protect the NOOS from superimposed loads from any building, it is considered that this issue has been satisfactorily addressed.
- The applicant has indicated that the remaining matters raised in the meeting have been addressed via the submission of information and further refinements to the design of the development since that time, with each item identified and discussed in Section 2.4 of the SOEE lodged with the DA. The discussion provided by the applicant with respect to each of these issues is deemed to be generally acceptable, with any further discussion in relation to any specific item provided in the following report where necessary.
- As the development involves Council-owned land, an independent assessment of this application has been undertaken by Tim Shelley Planning.
- A total of twenty six (26) submissions were received in relation to the proposal during the notification period. The main concerns raised in these submissions included: parking; traffic congestion; insufficient public transport; compliance with the DCP and design issues; overshadowing; noise; notification of the application; construction impacts; tree removal; inadequacy of local infrastructure; use of the shop; the appropriateness of using Council – owned land for residential purposes; and loss of property value.
- The relevant issues raised in the submissions have been (or can be) addressed by either: the initial zoning of the land to R4; the design of the development; by documentation submitted with the application or following lodgement; by comments provided by Council assessing officers; via proposed conditions of consent where necessary, or via the continuation of liaison between Council and the State Transit Authority (STA) and NSW Department of Transport in relation to bus servicing requirements and commencement of liaison with Roads Maritime Services (RMS) in relation to the phasing of traffic signals on Waterview Drive and Burns Bay Road.
- In correspondence dated 31st October 2016, Council raised a number of issues in relation to tree retention; the number and location of adaptable and visitable units; the layout and design of accessible and tandem car parking spaces; clarification of the model used for traffic modelling of Burns Bay Road; the submission of a Remediation Action Plan and Construction Noise Management Plan; and compliance with SEPP 65 and the ADG with respect to circulation space.

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- In response, the applicant submitted a letter on 21st November 2016 satisfactorily addressing each of the above matters, inclusive of an amended plan identifying the provision of two (2) additional 2 x 1 bedroom adaptable units and providing updated floor plans for same. No changes were made to any other aspect to the development nor any other amended plans submitted at that time.
- The proposed development complies with all provisions of Lane Cove Local Environmental Plan 2009 with the exception of a minor encroachment to the 25 metre height limitation. In this regard, a 950mm encroachment is apparent within one small section of the roof on the southern side of the building. The applicant has justified this minor encroachment via use of Clause 5.6 of the LEP (Architectural Roof Features), which is considered to be an appropriate mechanism such that the minor variation is able to be supported.
- Council officers have indicated all issues have been satisfactorily addressed with the exception of contamination. In this regard, Council's Environmental Health Manager has recommended that a "Deferred Commencement" consent be granted pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 requiring the applicant to prepare a remediation action plan (RAP) in accordance with the provisions of SEPP 55 to identify the remediation works required to ensure the site is suitable for residential development.
- The proposed development is also consistent with the nine (9) design principles of SEPP 65 and the Apartment Design Guide and complies with all relevant parts and provisions of Lane Cove Development Control Plan 2010 with the exception of minor variations to the building depth and the accessible storage areas for individual units. In relation to building depth, suitable justification has been provided by the applicant to demonstrate that the objectives of this requirement has been met, whilst the submission of amended plans which demonstrate the provision of the provision of accessible storage for apartments in accordance with Part C 3.13 of Lane Cove DCP 2010 are to be required as a further condition of the deferred commencement consent.
- Accordingly, it is recommended that a "Deferred Commencement" consent be granted pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 requiring the applicant to prepare a remediation action plan (RAP) in accordance with the provisions of SEPP 55 and amended plans which demonstrate the provision of accessible storage for apartments in accordance with Part C 3.13 of Lane Cove DCP 2010. This information is to be submitted to and approved by Council prior to the consent becoming operational. Upon confirmation of compliance with the conditions of deferred commencement, the consent shall become operational subject to the draft conditions listed in Attachment 1, inclusive of a condition requiring the proposed stratum subdivision to be undertaken via a separate development application and a condition requiring the site to be amalgamated (or re-subdivided) to formally create the development lot, the required sections of public road over the widened intersection at Burns Bay Road and the remaining section of Waterview Drive, and the public reserve known as Hughes Park.
- It is further recommended that:
 1. Council continue liaison with STA and NSW Department of Transport in relation to the availability and potential increase in bus services to the site and surrounding precinct; and

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- Council undertake liaison with RMS to establish if the phasing of the signals at the intersection of Waterview Drive and Burns Bay Road is appropriate and adjusted if necessary to provide additional time for vehicles to exit Waterview Drive onto Burns Bay Road to reduce congestion and delays.

THE SITE

Location

As shown on Figure 1 below, the subject site is located on the eastern side of Burns Bay Road at Lane Cove, south of the Lane Cove West shops and just to the north of Linley Point. The site forms part of a former industrial and public open space precinct which is currently undergoing renewal for residential and community purposes. The entire public open space component included bowling greens, as well as passive and active open space areas. The subject development site occupies a small component of the former bowling green and open space area.

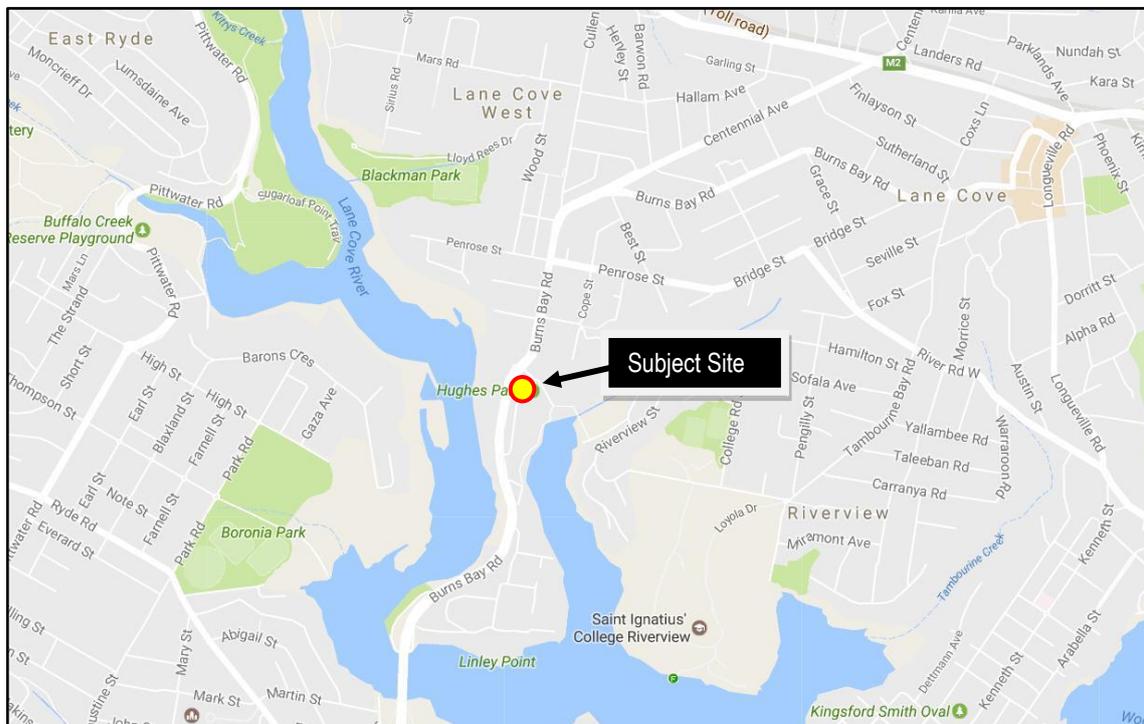


Figure 1 – Locality Plan

Cadastral Information

The site the subject of the application comprises three (3) allotments identified as Lots 101 and 102 in DP 1013285 and lot 31 in DP 540796, which together are known as Nos. 296-314 Burns Bay Road. These allotments are shown bounded by a yellow line on the cadastral plan taken from Council’s mapping system provided as Figure 2 below. These three allotments currently contain a much larger area than the actual site of the proposed development, which is a vacant area to the west adjacent to Burns Bay Road (shown in a blue dashed line below). In this regard, the three lots also include land at the northern end of the development site recently used for the widening of the intersection onto Burns Bay Road (within lot 31); the section of Waterview Drive running to the east of the development site (within lots 101 and 102); and the recently upgraded public reserve to the east of Waterview Drive known as Hughes Park (within lot 102).

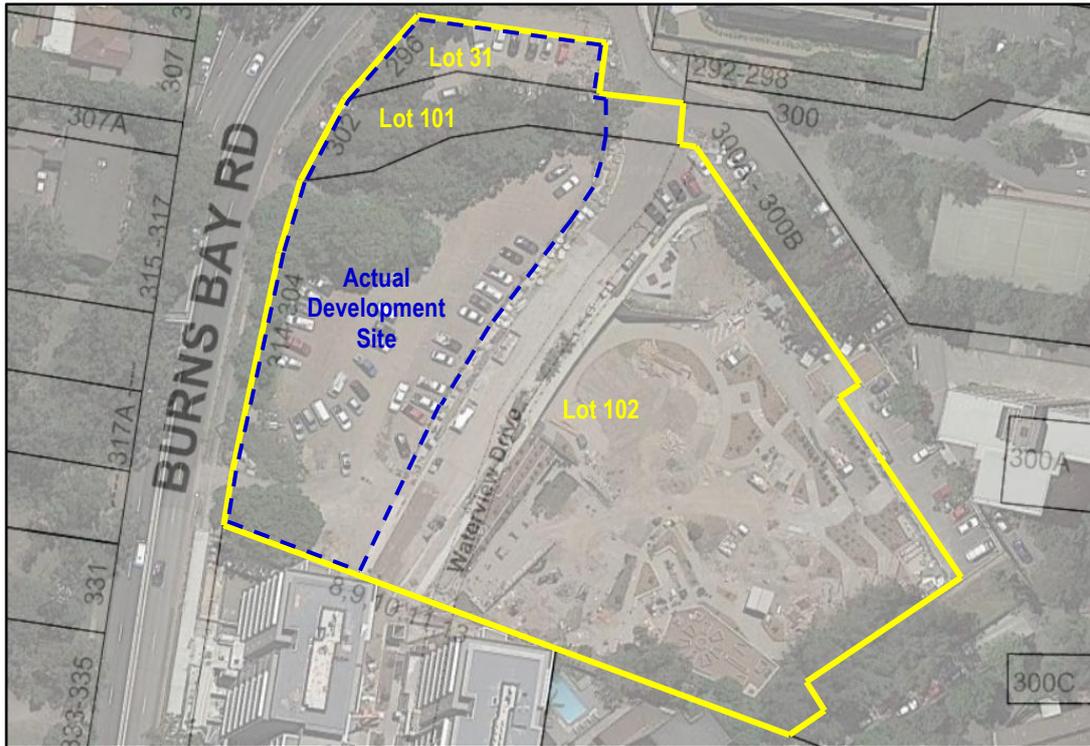


Figure 2 – Cadastral Plan

As shown in the blue dashed line above, the actual site of the proposed development is irregular in shape. The northern boundary is approximately 60m in length; the eastern boundary (to Waterview Drive) is approximately 94m in length; the southern boundary (to the recently completed flat building) is approximately 32m in length; whilst the western boundary (to Burns Bay Road) boundary is approximately 68m in length. Total area of the development site is 4,625m². Vehicular access is currently gained from Waterview Drive to the east.

Physical Description

The development site falls from Burns Bay Road quite steeply initially down an embankment before generally levelling out across to Waterview Drive. A similar fall from the Waterview Drive and Burns Bay Road intersection abutting the northern boundary of the site is also evident. The site is currently vacant, with a number of exotic and native trees located adjacent to the western and northern boundaries, the majority of which need to be removed to make way for the proposed development.

The site was previously used as a bowling green with associated amenities. As part of the precinct's renewal and Council's Expression of Interest (EOI) process to sell the site, the existing bowling green facilities were demolished and Waterview Drive constructed to provide access to the subject development site, the public reserve to the west, the community centre beneath Waterview Drive and the residential precinct to the south and east.

LEP Mapping Layers

The site does not contain any known items of Aboriginal or European heritage nor located in a heritage conservation area. The site is not located in a coastal zone; not bushfire prone; not subject to any potential acid sulphate soils; not identified as being affected by any local road widening; not identified for any acquisition; nor affected by any other mapping layer of the LEP.

Existing Easements, Covenants, Restrictions

As shown on the survey plan accompanying the application, a 3.05m wide easement for transmission purposes extends along the development site's southern boundary. An easement for the Northern Ocean Outfall Sewer (NOOS) also extends across the southern portion of the subject developments site. The architectural plans accompanying the application demonstrate that the proposal's footprint and envelope do not encroach on either easement.

Deed of Agreement/Sale of Land to Applicant

In November 2015, Council invited Expressions of Interest (EOI) to acquire and redevelop the site which had been rezoned R4 – High Density Residential. Hycorp Property Group was one of three (3) shortlisted parties for the purpose of the EOI process, with their expression ultimately confirmed as successful in 2016. As such, Hycorp Property Group has entered into an agreement to acquire the subject development site from Council. The EOI process included several conditions stipulated by Council which applicants were required to comply with. They included the provision of a childcare centre and a neighbourhood shop as part of any redevelopment of the site, as well as minimum sizes for a number of the new dwellings. These requirements have been generally met in the proposed development. However, as this is a contractual matter between the current and future owner of the land, it falls outside the scope of the assessment of this application.

As part of the agreement, Council would retain responsibility to subdivide the subject allotments via a separate application to create separate allotments for the proposed RFB, child care centre and neighbourhood shop components. Following consent for any such subdivision and registration of the allotment in question, Council would transfer the development site to Hycorp Property Group, but retain those allotments pertaining to the Waterview Drive road corridor and public open space. As this process is equivalent to the amalgamation of the land and considered to form an integral part of the current application and proposed development, a condition requiring the registration of this subdivision to occur prior to the issue of the occupation certificate is proposed to be attached to the consent.

As required by the Deed, the applicant has also indicated that a further subdivision is proposed to be undertaken as part of this application, being a stratum subdivision of the development site being transferred to Hycorp. Such subdivision is proposed to create three (3) separate strata allotments containing the residential apartments, the neighbourhood shop and the child care centre to allow the latter two components of the development to be transferred to Council. However, as the creation of the allotment forming the development site is required to occur as a necessary pre-cursor (as discussed above), this subdivision is to be removed from any consent granted to the current application and instead be the subject of a separate application.

SURROUNDING USES

The intersection between Burns Bay Road and Waterview Drive is located immediately to the north of the site of the proposed development. This intersection has recently been widened on land included as part of the development site and is the main vehicular entry and exit point for the precinct. A public reserve known as Hughes Park is located to the east of the site on the opposite side of Waterview Drive. The reserve is the centre piece of the precinct and includes passive and active open space and an indoor community centre located beneath Waterview Drive. Further to the east of Hughes Park is a serviced apartment development, through which public access is available to Burns Bay.

A recently completed eight storey residential flat building (known as 11 Waterview Drive) development is located immediately to the south of the subject site on the western side of Waterview Drive. A residential flat building of similar style and height is also located on the eastern side of Waterview Drive opposite this development. Burns Bay Road is located to the immediate west of the site, with a mix of low rise residential flat buildings, single dwellings and a public park located further to the west again on the opposite side of Burns Bay Road.

An aerial photo of the site is provided below as Figure 3.



Figure 3 – Aerial Photograph

As shown on the zoning map provided as Figure 4 on page 19, the area to the south of the site on both sides of Waterview Drive and to the north-east on the eastern side of Burns Bay Road is zoned R4 High Density Residential and is characterised by recently constructed residential flat buildings. This R4 zoning continues further to the east beyond the park on the eastern side of Waterview Drive down to the foreshore, which is an area characterised by older residential flat buildings. The land to the west of the site on the opposite side of Burns Bay Road is zoned RE1 Public Recreation and R2 Low Density Residential, whilst a further pocket of R4 High Density Residential exists to the north-west of the site opposite the intersection into Waterview Drive.

PROPOSED DEVELOPMENT

Summary

The proposed development comprises the following:

- Site preparation works, bulk earthworks and removal of fourteen (14) trees (predominantly along the Burns Bay Road boundary);

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- Construction of an eight (8) storey residential flat building (RFB) comprising:
 - 107 apartments, including:
 - 7 x studio (6.5%)
 - 39 x 1 bedroom (36.4%)
 - 48 x 2 bedroom (44.8%)
 - 13 x 3 bedroom (12.1%)

Of the 107 apartments, 100 are visitable (93%) and 23 are adaptable (21.5%).

- car parking for 194 spaces in two (2) basement levels and at ground level comprising:
 - 144 spaces for residents (basement level);
 - 29 spaces for residents' visitors (27 at basement level, 2 at ground level);
 - 18 childcare spaces (ground level);
 - 3 spaces for the commercial tenancy (ground level) plus 1 service vehicle/wash bay space at ground level.

Of the 194 spaces, 26 are accessible.

- Provision of a child care centre for 60 children on the ground floor of the RFB (i.e. Waterview Drive level) with an area of approximately 550m² and outdoor open space area of 780m² (inclusive of landscaping, play equipment and shade sails etc). The child care centre would operate between 7.00am and 6.00pm, Monday to Friday and employ ten (10) persons;
- Provision of a neighbourhood shop on the ground floor of the RFB (i.e. Waterview Drive level) with an area of approximately 120m²;
- Stratum subdivision to create three (3) separate allotments containing the RFB, neighbourhood shop, and childcare centre components;
- Landscaping works, including ground level landscaping within communal open space areas around the building and a landscaped entry statement within the road reserve of Burns Bay Road opposite the site (inclusive of public art); and
- Extension/augmentation of services and utilities to service the development.

Detailed Description of Building

On a floor-by-floor basis, the breakdown of the building is as follows:

- **Basement Level 2**
 - A total of ninety (90) car spaces for residents, including ten (10) accessible spaces.
 - A total of four (4) motor cycle spaces.
 - Two (2) lifts and three (3) emergency stair wells providing access to the ground level or the entire building envelope.
 - A total of 82m³ of storage space for residents.
 - Stormwater basement pump-out pits.
- **Basement Level 1**
 - A total of eighty-one (81) car spaces for residents and their visitors, comprising:
 - Fifty-four (54) car spaces for residents, including eleven (11) accessible spaces; and
 - Twenty-seven (27) residential visitor's spaces, including one (1) accessible space.
 - A total of two (2) motor cycle spaces.

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- Two (2) lifts and three (3) emergency stair wells providing access to the ground level or the entire building envelope.
- A mechanical ventilation shaft and services such as the hot water tank room.
- Level 1 (Ground Level)
 - A child care centre for 60 children with an area of approximately 550m²;
 - A neighbourhood shop with an area of approximately 120m²;
 - A total of twenty-three (23) car spaces comprising:
 - Eighteen (18) car spaces for the proposed child care centre, including three (3) accessible spaces.
 - Three (3) car spaces for the proposed ground level neighbourhood shop, including one (1) accessible space.
 - Two (2) general spaces in the layover bay.
 - Seven (7) motor cycle spaces.
 - Forty-six (46) bicycle parking spaces in either a bicycle rack or bicycle rail.
 - One (1) external parking space for a removalist vehicle
 - One (1) secure vehicular access point for both cars and service vehicles, including garbage collection vehicles, to/from Waterview Drive. This point provides access to basement levels 1 and 2.
 - One (1) vehicular access point to/from Waterview Drive, providing access to five (5) of the parking spaces stated previously. These spaces are located immediately adjacent the proposed child care centre.
 - Two (2) lifts and four (4) emergency stair wells providing access to the ground level or the entire building envelope.
 - A 30m² bulky goods storage room.
 - Three (3) garbage rooms accommodating a total of fifty (50) standard 240L bins.
 - Garbage vehicle collection dock (which also functions as a car wash bay) with a separate turning bay.
 - Various plant and service rooms for pumps, ventilation systems and ducts, hot water tanks and the like.
 - On-site stormwater detention tank (110m³) beneath the 3 space open car park next to the child care centre.
 - Two (2) x 5,000l rainwater tanks beneath the access driveway into the ground level car park of the building.
 - Communal open space and landscaping around the perimeter of the building footprint inclusive of art features, pathways, lighting, shrubs, trees, turf and the like.
- Level 2 (First Floor)
 - Pedestrian access to/from Waterview Drive.
 - A total of thirteen (13) dwellings, each with external private open space (POS), comprising:
 - 1 x studio dwelling.
 - 4 x 1 bedroom dwellings.
 - 6 x 2 bedroom dwellings.
 - 2 x 3 bedroom dwellings.
 - A 735m³ storage area for all dwellings.
 - Two (2) lifts and three (3) emergency stair wells providing access to the ground level.
 - A 21m² communal podium landscaped area.
 - A central corridor providing access to each of the proposed dwellings.
 - Various plant and service rooms for garbage chutes, service ducts, emergency equipment and the like.

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- Level 3 – 7 (Second to Sixth Floors)
 - A total of sixteen (16) dwellings per level, each with external private open space (POS), comprising:
 - 1 x studio dwelling.
 - 6 x 1 bedroom dwellings.
 - 7 x 2 bedroom dwellings.
 - 2 x 3 bedroom dwellings.
 - Two (2) lifts and three (3) emergency stair wells providing access to the ground level.
 - A central corridor providing access to each of the proposed dwellings and each lift core.
 - Various plant and service rooms for garbage chutes, service ducts, emergency equipment and the like.

- Level 8 (Seventh Floor)
 - A total of fourteen (14) dwellings, each with external private open space (POS), comprising:
 - 1 x studio dwelling.
 - 5 x 1 bedroom dwellings.
 - 7 x 2 bedroom dwellings.
 - 1 x 3 bedroom dwellings.
 - Two (2) lifts and three (3) emergency stair wells providing access to the ground level.
 - An 80m² communal area with covered and outdoor seating areas, planter boxes and the like.
 - A central corridor providing access to each of the proposed dwellings and to each lift core.
 - Various plant and service rooms for garbage chutes, service ducts, emergency equipment and the like.

The development provides for 1,917m² of communal open space (41% of the site area), including 1,504m² of deep soil planting (32% of the site area).

PREVIOUS APPROVALS

From aerial photographs and review of the contamination report submitted with the application, it appears that the subject development site was used as a bowling green and passive open space from approximately 1941 through to around 2013. At that time, the bowling greens and associated club and facilities were removed and Waterview Drive and the community centre and upgraded public reserve constructed. During this time, which the site was generally vacant but temporarily used for parking and as a site office for the construction of Waterview Drive and the public open space and community facilities. There is no record of any recent approvals on the land and none that are relevant to the proposed development.

PROPOSAL DATA/POLICY COMPLIANCE

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

LEP 2009	Provision	Proposed	Complies/ Comment
ZONE	R4 – High Density Residential zone	Residential Flat Buildings	YES. Permissible with consent.

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LEP 2009	Provision	Proposed	Complies/ Comment
MAXIMUM PERMITTED BUILDING HEIGHT UNDER BUILDING HEIGHT MAP	25.0m	Predominantly 25.0m or less but up to 25.950m maximum for small section of roof along southern side of building	NO (950mm encroachment by roof feature but permitted under CI 5.6 – see below)
MAXIMUM PERMITTED FSR UNDER FSR MAP	2.0:1	1.99:1	YES

From the above, it is apparent that the amended proposal is consistent with all major requirements and development standards of the LEP with the exception of height, where a minor encroachment of 950mm to a roof feature on southern side of building is apparent. However, this encroachment can be considered under Clause 5.6 – Architectural Roof Features, as discussed later in report under section “height”.

LANE COVE DEVELOPMENT CONTROL PLAN 2010

The following sections of Lane Cove DCP 2010 (the DCP) are relevant to the proposed development.

Part B – General Controls

Part C – Residential Flat Buildings (including *Residential Localities – Locality 1 – Burns Bay Road Precinct – Block 1 296-314 Burns Bay Road*)

Part D – Commercial and Mixed Use Development

Part F – Access and Mobility

Part I – Child Care Centres

Part J – Landscaping

Part O – Stormwater Management

Part Q – Waste Management and Minimisation

Part R – Traffic, Transport and Parking (*formerly included within Part C*)

The extent to which the proposed development complies with the relevant provisions of these sections of the DCP is identified in the compliance table provided as Attachment 2 and also discussed further within the relevant Council officers’ comments where necessary later in the report. For the purpose of this assessment, it is noted that the provisions of the DCP have no effect where they are inconsistent with the Apartment Design Guide (as per Clause 6A of SEPP 65). Each of these instances is highlighted in the table.

From the table, it is apparent that the proposed development complies (or can comply) with the all relevant parts and requirements of the DCP, with the exception of Part C(3.3) – Building Depth and the provision of accessible storage areas for individual units as per Part C(3.13) – Storage.

With respect to Part C(3.3) – Building Depth, a maximum depth of 18 metres is prescribed for residential flat buildings, whereas the depth of the proposed building ranges from 21 metres – 29 metres. In response, the applicant has argued that the proposed development complies with the objectives of this requirement, which are as follows:

- *To ensure that the bulk of the development is in scale with the existing or desired future context.*
- *To provide adequate amenity for building occupants in terms of sun access, daylight and natural ventilation.*
- *To provide for dual aspect dwellings.*

In this regard, the applicant contends as follows:

“The proposed envelope is consistent with existing, recently developed developments in the precinct. In particular, the proposal is consistent with the five (5) RFBs on the allotment immediately to the south of the subject development site (i.e. 8 - 13 Waterview Drive). This SEE therefore provides that the proposal's bulk is in context with the precinct's desired future character, as sought by the first objective of this control. It has been demonstrated previously that the proposal satisfies the solar access and ventilation guidelines prescribed by SEPP 65 and the ADG, for both the proposed dwellings and dwellings in adjoining developments. Therefore, it can be concluded that the proposal provides adequate amenity for dwelling occupants, as sought by the control's second objective.

Dual aspect dwellings are included in the total number of dwellings in the proposed RFB. The third objective is therefore satisfied.”

The applicant's response is considered to adequately demonstrate that the development satisfies the objectives of Part C(3.3) of the Lane Cove DCP 2010 such that the numerical non-compliance is considered acceptable and the variation can be supported.

In relation to the provision of accessible storage areas for individual units, storage of only 3m³ and 5m³ have been provided for studio, 1, 2 and 3 bedroom units instead of 6m³, 6m³, 8m³ and 10m³ respectively as required under Part C(3.13) – Storage. The applicant contends that *“although this is non-compliant, it is considered acceptable particularly given most of the proposed dwellings could be considered as ‘oversized’”*.

The applicant's justification for this non-compliance is both limited and inadequate, as it is not known what the reference to units being “oversized” refers to (as not all units are) and what relevance this has to the lack of storage provided. If anything, the larger the unit, the more storage required and the more room available to provide same, not the opposite. In any event, none of the storage areas comply with even the minimum requirement for studios. As such, there appears no reason why the storage areas cannot and should not comply with the requirements of the DCP. Accordingly, a further condition of the deferred commencement consent will require the submission of amended plans which demonstrate the provision of the provision of accessible storage for apartments in accordance with Part C(3.13) of Lane Cove DCP 2010.

With respect to Part C(3.4) – Building Width, a maximum overall width of 40 metres is prescribed for a building facing a street, whereas the width of the proposed building facing Waterview Drive and Burns Bay Road ranges from 50- 70 metres. It is noted however that this requirement is not relevant, as the Burns Bay Locality Plan takes precedence over normal Part C requirements. In this regard, the Locality Plan allows a building length (i.e. the building width in this instance) to Burns Bay Road to increase beyond 40 metres if façade articulation is satisfactory and the length of individual facades are 40 metres or less, which is the case in this instance. In addition, Council's SEPP 65 Officer has indicated that the building meets the nine (9) design principles of SEPP 65 (including character, scale and context), is suitably consistent with the provisions of the ADG, provides for adequate amenity and is well-articulated to compensate for its increased depth.

With respect to Part R, the DCP requires a total of 190.46 car spaces to cater for the residential, child care centre and neighbourhood shop components of the development (or rounded down to 190). In response, 194 spaces are proposed to be provided, inclusive of the necessary number of resident and visitor spaces and employee spaces for the child care centre, as well as the necessary percentage of accessible spaces for all components.

LANE COVE COUNCIL'S SECTION 94 CONTRIBUTION PLAN

Lane Cove Section 94 Contribution Plan applies to the proposal due to the increase in population of the area as a consequence of the development. Given the required Section 94 contribution must not exceed \$20,000 per dwelling in accordance with the cap under the Reforms of the Local Development Contributions, the Section 94 contribution is calculated in the following manner:

As there are no dwelling houses currently (or formerly) erected on the property, no credit is applicable under the S.94 plan. As such, the development as proposed generates the following Section 94 Contributions.

No. of bedrooms	S.94's per dwelling	Required Contribution
7 x studio/ 39 x 1 bedroom	\$10,000/person x 1.2 persons/dwelling = \$12,000	\$552,000 (46 x \$12,000)
48 x 2 bedroom	\$10,000/person x 1.9 persons/dwelling = \$19,000	\$912,000 (48 x \$19,000)
13 x 3 bedroom	\$10,000 x 2.4 persons/dwelling = \$24,000 = \$20,000.00 (cap)	\$260,000 (13 x \$20,000)
Total 107		\$1,724,000

Based on the above table, the required S.94 contribution for the proposed development is \$1,724,000.

INTERNAL REFERRALS

The plans and supporting documents were referred to the relevant professional Council officers for comment. In response, the following responses were received:

1. **Building Surveyor** – advised that no objections were raised to the building plans as the design is capable of achieving compliance with the National Building Code (formerly BCA). In this regard, whilst some non-compliances were identified, these are able to be addressed via a fire engineer solution report at the construction certificate stage as per the BCA Compliance report submitted with the application. As such, building-related conditions were identified which have been included in the draft conditions provided as Attachment 1.
2. **Waste Contract Co-ordinator** – advised that waste management arrangements must be in line with Part Q of Lane Cove DCP 2010 and provided a range of conditions in relation garbage chutes; service rooms; waste and bulk waste recycling rooms; path of travel and access to waste collection points; internal waste management and indemnity. These conditions are included in the draft conditions in Attachment 1.
3. **Manager Environmental Health** – advised that the applicant is to prepare a Construction Noise Management Plan (CNMP) and Remediation Action Plan (RAP) for the remediation of the site in accordance with the provisions of SEPP 55. The applicant was advised that these items were recommended to be covered by a deferred commencement consent. In relation to the CNMP, the applicant has since advised that this item was provided with the application (as Appendix 6 to the submitted SOEE). This has subsequently been reviewed and found to be generally satisfactory.

In relation to the RAP, that applicant has advised that “as per the Deed of Agreement with Council as landowner, Council will seek to remediate the site prior to Hyecorp taking ownership of the land. As such, Council is currently in the process of engaging consultants and preparing a remediation action plan”.

However, Council’s Manager Environmental Health has further advised that the issue of the clean up and validation of the site is an issue that is a contractual matter regarding the project and should be addressed outside of the approval for the use. As such, a deferred commencement is recommended to be issued requiring that the RAP be submitted to and approved by Council prior to the consent becoming operation to provide certainty for all parties as to the extent of works required to ensure the site is suitable for the proposed development.

In addition to the above comments, Council’s Manager Environmental Health also provided a range of conditions to be attached to the operational consent in relation to construction noise, acoustic measures, dust control, erosion and sedimentation controls, car park ventilation and a range of site preparation, waste management and health issues. These conditions are included in the draft conditions in Attachment 1.

4. Community Development, Ageing and Disability Officer – initially raised concerns in relation to:

- the non-provision of 80% visitable units as required by Lane Cove DCP 2010;
- obstructions in the vicinity of some disabled parking spaces; and
- the non-provision of 1 bedroom adaptive units (pre-adaptive/ post-adaption).

In response, the applicant addressed each of the above items as follows:

- identified that 100 (or 93%) of the 107 units are visitable;
- advised that pylons positioned within the shared spaces for disabled parking are in the same location as the bollards required for the shared zone and still provide a path of travel greater than 1000mm and are in an appropriate position as in AS2890.1-1993 Clause 5.2 Min 750mm from the front of the zone; and
- provided an amended plan identifying two (2) x 1 bedroom units that can become pre & post-adaptable units, taking the total number of adaptable units from 21 to 23 (21.5%).

The above responses were considered to have satisfactorily addressed the issues raised. On this basis, no further issues have been raised by Council’s Community Development, Ageing and Disability Officer nor any specific conditions provided.

5. Strategic Planning – advised that the application could not be determined until gazettal of the proposed amendment to Lane Cove LEP 2009 to rezone the section of the site from RE1 to R4 has occurred. As noted previously in this report, the remainder of the development site was rezoned R4 upon gazettal of Amendment No. 20 to Lane Cove LEP 2009 on Friday 23rd December 2016.

6. Development Engineer – raised no objection to the proposed development from an engineering point of view and provided detailed comments in relation to: footpaths; ground anchors; stormwater; vehicular crossings and access driveways; parking and access; flooding; and geotechnical and groundwater issues.

Within these comments, some minor issues and non-compliances with the location of the basement access driveway and the driveway threshold levels and long sections were identified, which are able to be addressed by conditions. To this end, Council's Development Engineer provided a comprehensive set of engineering conditions which have been included in the draft conditions in Attachment 1.

7. **Traffic Manager** – advised that they had reviewed the Traffic Report by Colston Budd Hunt and Kafes and the development plans from the applicant and raised no objection to the proposed development from a traffic and parking point of view, subject to the following items being addressed:
- a. In accordance with the DCP Part R, tandem spaces are not accepted. Any tandem spaces must be allocated to the same unit.
 - b. All accessible spaces that have a column within the shared space are not accepted. Amended plans are required showing compliance with AS2890.1.
 - c. Visitor Space 17 on Basement level 1 is not accepted due to the lack of clearance between the column and the parking space. Amended plans are required reflecting this requirement.
 - d. The applicant is to clarify how many adaptable units have been provided and the number of bedrooms for each adaptable unit.
 - e. As the RMS approved base model for Burns Bay Road is in Almsun, the impact of the additional traffic of the development is to be modelled using the same program.

In response, the applicant has addressed each of the above items as follows:

- a. *"The development consists of only three tandem spaces. We confirm that these spaces will be allocated to the same units"*.
- b. This issue was addressed above in response to the comments of the Community Development Officer. However, further comments were provided from the Traffic consultant and the applicant as follows:
 - o *"The function of the shared zone is to assist in entering and exiting a vehicle and manoeuvring around a vehicle. The columns located within the shared zone of some parking spaces do not affect this function as:*
 - o *The columns are located outside of the door opening zones; and*
 - o *The columns provide the same function as the bollard required by AS2890.6-2009.*
 - o *Additionally, the column layouts currently on the submitted plans are indicative only. The final layout is subject to a review by our structural engineers as part of our Construction Certificate."*
- c. The Traffic consultant has advised that:
"The column located adjacent to space 17 does not affect access to/from the space or intrude into the door opening zone. Visitor spaces 17 & 18 are both 2.4 metres wide with adjacent columns located outside the door opening zone. Thus the spaces comply with AS2890.1-2004."
- d. A table outlining the adaptable unit breakdown was provided.
- e. The Traffic consultant has advised that:
"As noted in our traffic report and discussions with Council's traffic engineer, the base modelling undertaken by Council for the analysis of the Waterview Drive/Burns Bay upgrade included traffic from the redevelopment of the subject site. We simply undertook a sensitivity test using SIDRA which showed the upgraded intersection operated at LOS A/B. Hence no need to undertake an updated AIMSUM model."

The above responses were considered to have satisfactorily addressed the issues raised. On this basis, no further issues have been raised by Council's Traffic Manager nor any further specific conditions provided in addition to those already provided by Council's Development Engineer.

- 8. Landscape Architect** – raised no objection to the proposed development from a landscaping point of view and provided comments in relation to tree removal and replacement tree planting. Within these comments, some minor issues were raised in relation to the location of endemic canopy trees, species mix, planting around the child care centre and inconsistencies between architectural and landscape plans which could be addressed by conditions. To this end, a comprehensive set of landscaping conditions were provided which have been included in the draft conditions in Attachment 1.
- 9. Senior Tree Assessment Officer** – advised the applicant that tree numbers 1, 13 and 14 are suitably located and worthy of retention and therefore required to be retained, with all other trees able to be removed. In response, the applicant raised objection to the retention of tree numbers 13 and 14 on the basis that they were identified as having low retention significance by their arborist, with tree 14 also considered to be an "environmental weed."

Tree 13 was also identified for removal as it is considered to be in close proximity to the building excavation line (within 4.9m) and will interfere with the redirection of electrical and Telstra cables required as part of this development. Likewise, the location of tree 14 was problematic due to its proximity to the child care centre, with its retention requiring significant ramping, retaining walls and a substantial reduction in the childcare play area, as well as potential risk from dropping limbs.

Council's Senior Tree Officer has further advised that these comments are concurred with and has agreed to the removal of tree numbers 13 and 14, but still requires tree number 1 to be retained. The retention of this tree is covered by a condition, along with a range of other tree protection and replacement conditions, all of which are included in the draft conditions in Attachment 1.

- 10. SEPP 65 Officer** – initially advised the applicant that circulation corridors served by the southern core did not have any windows to provide for natural light, as required by Part 4F Common Circulation and Spaces of the ADG. In response the applicant as follows:

"Under Part 4F: "Common Circulation" of the ADG, the Design Criteria requires that the maximum number of units off a circulation core on a single level be no more than eight. Currently there are only seven units off the southern core and hence no window for natural light is required under the ADG"

This clarification was concurred with and as a result, Council's SEPP 65 Officer has subsequently provided detailed comments and a table indicating that the proposed development is sufficiently compliant with the requirements of the ADG and entirely consistently each of the nine (9) design principles of SEPP 65. A copy of this assessment is provided as Attachment 4. No specific conditions were identified by Council's SEPP 65 Officer.

EXTERNAL REFERRALS

1. NSW Roads and Maritime Services (RMS) – the RMS advised that they have reviewed the submitted application and would provide concurrence under Section 87(4) of the Roads Act 1993 subject to a number of conditions being included in any consent issued by Council as follows:

- *All buildings and structures together with any improvements integral to the future use of the site are to be wholly within the freehold property boundary (unlimited in height or depth) along Burns Bay Road boundary.*
- *The proposed Traffic Control Signal (TCS) at the intersection of Burns Bay Road & Waterview Drive shall be designed to meet Roads and Maritime requirements*
- *The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment and approval prior to commencement of works.*
- *Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system in Burns Bay Road are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.*
- *A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Burns Bay Road during construction activities.*
- *A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.*
- *All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Burns Bay Road.*

These conditions are included in the set of draft conditions in Attachment 1.

2. Sydney Water – due to the proximity of the proposed development to the Northern Ocean Outfall Sewer tunnel, Council requested the applicant liaise with Sydney Water prior to lodgement of the application. As part of this process, a specialist assessment was prepared on behalf of the applicant and submitted to Sydney Water which indicated the development would not result in any impact to the sewer tunnel or any associated infrastructure.

In subsequent correspondence to Council dated 2nd November 2016, Sydney Water advised that they have reviewed the application and provided advice with respect to the future water, wastewater and trade waste servicing requirements. Of particular note, Sydney Water confirmed that infrastructure with sufficient capacity to service the proposed development was available to the site; provided generic advice in relation to works within proximity to their assets; and advised that requirements for the servicing of the development would be provided as part of a Section 73 application phase. Accordingly, Council's standard condition requiring a Section 73 Certificate to be obtained from Sydney Water prior to the issue of a construction certificate will be attached to the consent, as well as a further condition requiring the sewer design to be submitted to and approved by Sydney Water to ensure it meets their requirements to protect the NOOS from superimposed loads from any building.

3. Ausgrid – advised that they raised no objection subject to a waiver indicating the possibility of customer funded works being required to supply the proposed development. In addition, Ausgrid indicated that high voltage cables currently exist under the footpath outside the boundary of the site and to the existing sub-station near the site. As such, Ausgrid have further advised that the footpath level of Burns Bay Road may not be lowered without their permission.

Accordingly, a condition has been added to the consent to require the developer to liaise with Ausgrid and comply with any of their requirements (including relocation/lowering of the footpath) prior to the issue of the construction certificate.

PLANNING CONTROLS

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (Section 79C(1)(a))

Zoning and Permissibility

Amendment No. 20 to Lane Cove LEP 2009 was gazetted on Friday 23rd December 2016, which rezoned the small section of the development site zoned RE1 shown on Figure 4 below to R4 High Density. As a result, the entire development site is now zoned R4 High Density Residential under Lane Local Environmental Plan 2009 (the LEP).

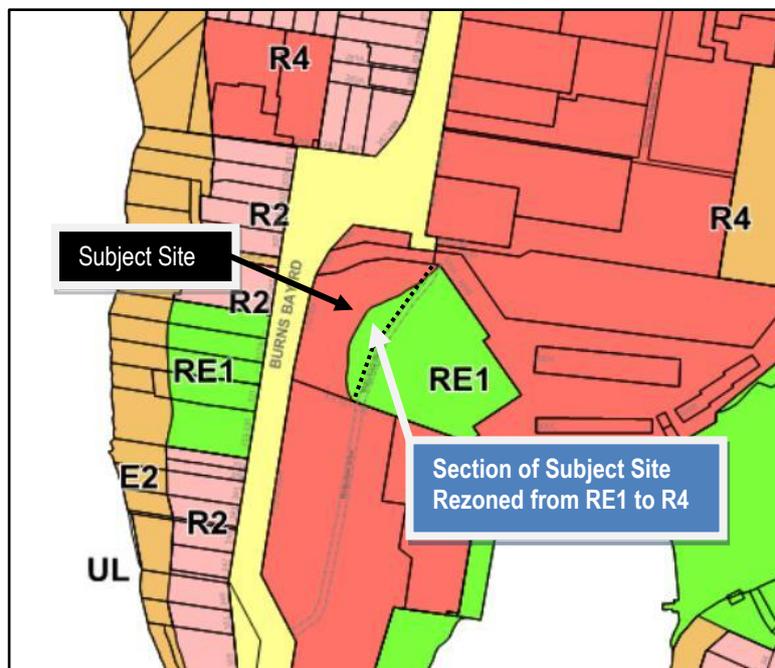


Figure 4 – Extract from Lane Cove LEP 2009 Zoning Map

Under the dictionary of the LEP, the proposed development would be concurrently defined as a “residential flat building”, “child care centre” and “neighbourhood shop” as follows:

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

“child care centre means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre...”

“neighbourhood shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.”

Residential flat buildings, child care centres and neighbourhood shops are all permissible uses in the R4 zone subject to consent. In addition, the neighbourhood shop has an area of 120m², which is less than the maximum floor space allowable of 300m² for neighbourhood shops which front local roads as prescribed under Clause 5.4 of the LEP. As such, consent is able to be granted for each component of the proposed development.

Clause 2.6 – Subdivision

The proposed stratum subdivision requested by the applicant is permissible with development consent under Clause 2.6 of the LEP. However, as previously discussed, the proposed subdivision is considered premature at this stage as the re-subdivision of the site into three allotments to create the development lot and allow transfer of the road and public reserve to Council is required as a pre-cursor. In addition, the building needs to be firstly approved and its dimensions finalised so the stratum lots around the child care centre and neighbourhood shop can be accurately defined and then created (including the required adjustments to address changes to the outdoor open space area of the development as earlier in the report).

As such, the proposed subdivision component of the application cannot be included under the consent recommended to be granted to this application, with such subdivision to occur via a separate application. A condition to this effect will be placed on the consent.

Clause 2.3(2) – Zone Objectives

In accordance with Clause 2.3(2), a consent authority must have regard to the objectives for the development in a zone when determining a development application in respect of land within the zone. In this regard, the proposed residential flat building, as well as the child care centre and neighbourhood shop, is considered to be consistent with each of the objectives of the R4 zone as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents. To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To ensure that the existing amenity of residences in the neighbourhood is respected.*
- *To avoid the isolation of sites resulting from site amalgamation.*
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

Clause 4.3 – Height of Buildings

Under Clause 4.3 of the LEP, a maximum height has been adopted for a range of zones and specific sites within the Lane Cove LGA. As shown on Figure 5 below, the subject site has been identified as Category T, which equates to a maximum height limit of 25.0 metres.



Figure 5 – Extract from Lane Cove LEP 2009 Building Height Map

The majority of the development falls within the 25.0 metre height plane, with the exception of a minor portion of the roof along the southern side of the building, which has a maximum height of 25.950 metres, which exceeds the height limit by 950mm. The location of this encroachment is shown on Figure 6 below and Figure 7 on the following page.



Figure 6 – Elevation showing location of height encroachment by roof feature

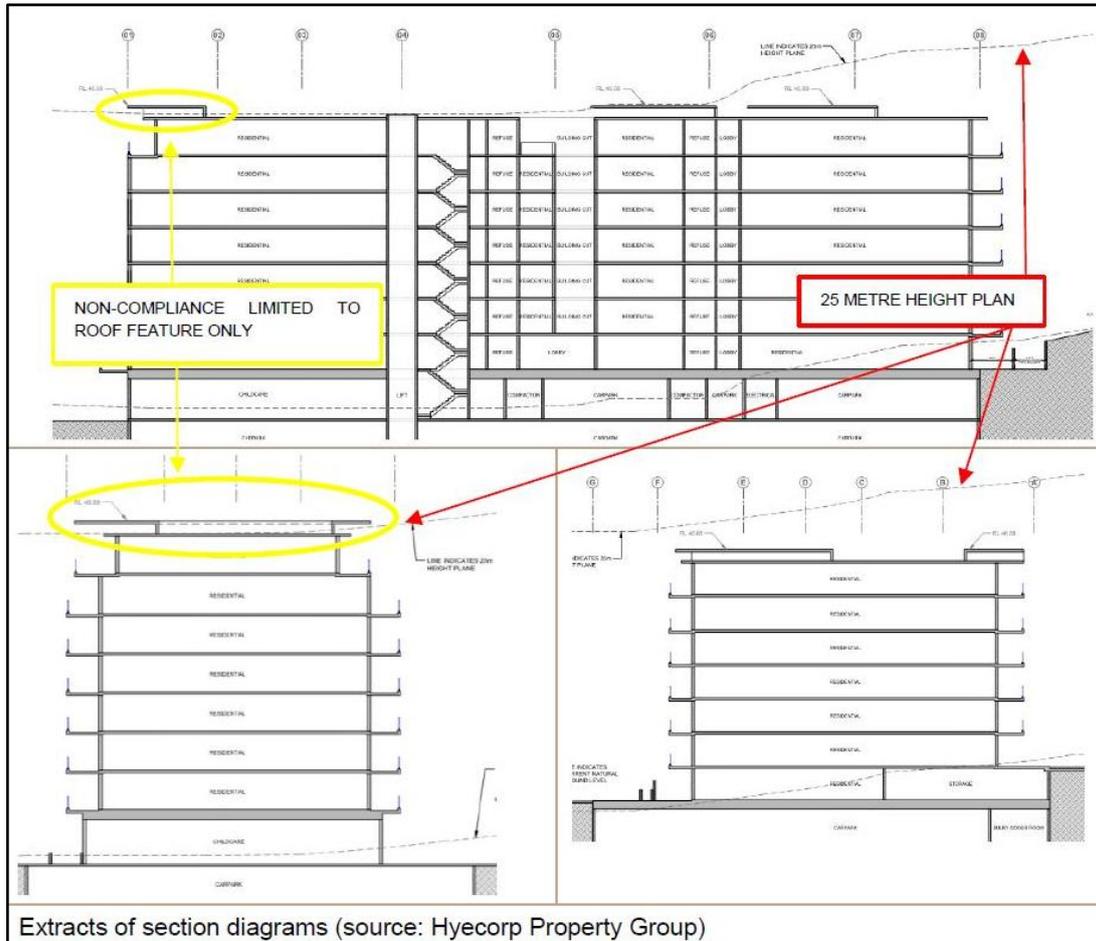


Figure 7 – Section showing location and extent of encroachment of roof profile

The applicant has indicated that the proposed encroachment of the height limit can be approved using Clause 5.6 – architectural roof features, which allows consent to be granted to development that exceeds, or causes a building to exceed, the height limits set by clause 4.3. In this regard, Clause 5.6(3) states that:

(3) *Development consent must not be granted to any such development unless the consent authority is satisfied that:*

(a) *the architectural roof feature:*

- (i) *comprises a decorative element on the uppermost portion of a building, and*
- (ii) *is not an advertising structure, and*
- (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
- (iv) *will cause minimal overshadowing, and*

(b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

In support of the use of Clause 5.6 as the mechanism to seek consent for the encroachment, the applicant has provided the following submission:

“As noted in Section 6.10.4 of this SEE, the DA relies on this clause as it includes a roof feature which exceeds the applicable 25m building height development standard prescribed by Clause 4.3 of the Lane Cove LEP 2009, albeit marginally.

This SEE provides that the roof feature in question is a decorative element, and is clearly located on the uppermost portion of the proposed building envelope. It is also provided that the roof feature does not include, and is not capable of including any floor space. Advertising material does not form part of the roof feature, as proposed.

As is demonstrated in the solar access analysis forming part of the DA's architectural plans, the SEPP 65 assessment at Appendix 11, as well as the ADG assessment provided at Appendix 12, the proposed architectural roof feature causes minimal overshadowing. In particular:

- The additional overshadowing created by the roof feature is differentiated from overshadowing from an entirely compliant scheme through a differing colour (i.e. purple, as can be seen in the extract of the overshadowing analysis on the following page). It can be seen that the additional overshadowing created by the roof feature is, in fact, limited in terms of both area as well as the number of dwellings affected.*
- Importantly, any dwellings affected by the additional overshadowing created by the roof feature continue to receive at least the minimum solar access (i.e. 2 hours between 9am to 3pm at June 21) expectations prescribed by the ADG. Some affected dwellings will in fact achieve 3 hours solar access at June 21.*
- Any overshadowing resulting from the proposed roof feature onto the newly created public park which forms part of the subject precinct, is minimal. In fact, no shadows are cast by the proposed roof feature onto the nearby park between 9am to 12.30pm, at June 21*

In light of the above, this SEE provides that the proposed roof feature satisfies the objectives of Clause 5.6, as well as its intended environmental outcomes. Subsequently, this SEE provides that Council can consent to the proposed roof feature.”

Comment:

This issue has been discussed with Council's SEPP 65 Officer, who has advised that the section of roof that encroaches the 25 metre height limit is indeed a specific feature or separate, decorative element (as opposed to part of the roof proper) and therefore is a feature for which Clause 5.6 is specifically set up to permit. In this regard, the feature in question comprises an additional element above the actual roof (as shown by Figure 7), which is located immediately beneath and which is in fact below the 25 metre height restriction as required to be. Furthermore, Council's SEPP 65 Officer has indicated that the roof feature satisfactorily meets each of the objectives identified under Clause 5.6 as indicated by the applicant and, which as a result, provides for a more articulated roof form and improved built form outcome. As such, it is considered that Clause 5.6 is an appropriate mechanism to permit the minor encroachment to the roof feature in this instance and it is therefore recommended that it be permitted on this basis.

Clause 4.4 – Floor Space Ratio

As shown on Figure 8 below, the subject site has been identified as Category T1 on the relevant floor space ratio (FSR) map adopted under Clause 4.4 of the LEP, which equates to a maximum FSR of 2.0:1.



Figure 8 – Extract from Lane Cove LEP 2009 Floor Space Ratio Map

For the purpose of this calculation, the site area has been taken to include only that portion of the development site which is zoned R4 – High Density Residential i.e. the area to the west of Waterview Drive, inclusive of the small portion recently rezoned from RE1 – Public Recreation as shown in blue dashed lines on Figure 2, as opposed to the much larger parent site as shown in yellow lines on Figure 2. On this basis, the area of the site is taken to be 4,625m². The submitted plans show that the proposed development comprises a total floor space of 9,246m² which equates to a FSR of 1.99:1 when compared to a site area of 4,625m².

OTHER MAPPING LAYERS

Under the LEP, the subject site is not affected by the following mapping layers:

- Lot Size Map – whilst the proposed development does include subdivision, stratum lots are not subject to the minimum allotment size as shown on the lot size mapping layer (in any event, the stratum subdivision is not being included in the consent proposed to be granted);
- Land Reclassification Map – the site is not identified for reclassification;
- Land Reservation Acquisition Map – no part of the site is not identified for acquisition for any purpose;
- Acid Sulphate Soils – the site is not identified as containing any potential acid sulphate soils;
- Heritage Map – the site does not contain any known heritage sites; and
- Environmental Protection Land Map/Foreshore Building Line Map/Riparian Land Map – the site does not contain any items of environmental protection; is not affected by the foreshore building line; and does not contain any riparian land.

OTHER RELEVANT CLAUSES OF LANE COVE LEP 2009

Clause 5.9 – Preservation of Trees or Vegetation

Under Clause 5.9, consent must be granted for the removal, destruction or injury to any tree or other vegetation. As such, approval for the removal of trees on the subject site required as part of the civil works is sought under this application. Further discussion on the extent and significance of the vegetation has been provided in earlier sections of this report.

Clause 6.1A – Earthworks

Under Clause 6.1 of the LEP, development consent is required for earthworks unless the earthworks are exempt or ancillary to other development already approved. As neither of these two exemptions applies, consent has been sought as part of this application for the earthworks required for the proposed development.

INTEGRATED DEVELOPMENT

The application does not require the separate approval of any other referral body listed under S.91 of the Environmental Planning and Assessment Act 1979 as such, does not constitute “Integrated Development”.

OTHER PLANNING INSTRUMENTS

State Environmental Planning Policy (State and Regional Development) 2011

The proposed development does not constitute State Significant Development under this SEPP and hence the provisions relating to same are not relevant.

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

In this regard, Schedule 4A (3) indicates as follows:

3 General development over \$20 million

Development that has a capital investment value of more than \$20 million.

As indicated on the DA form and as confirmed by a quantity surveyors report accompanying the application, the proposed development has a capital investment value of \$34,698,069. As such, the consent authority for the application will be the Joint Regional Planning Panel.

State Environmental Planning Policy – Design Quality of Residential Apartment Development (SEPP 65)

The proposed development is affected by the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). In accordance with Section 50(1A) of SEPP 65, a Design Verification Statement has been prepared by Mr Van

Aratoon of Amglen Pty Ltd (Registered Architect 3697). This Statement provides discussion as to how the proposed development satisfies each of the nine (9) design principles of SEPP 65 and the requirements of the Apartment Design Guide (ADG).

In this instance and as previously discussed, the application and SEPP 65 report was referred to Council's SEPP 65 Officer for assessment, who initially raised concern that circulation corridors served by the southern core did not have any windows to provide for natural light, as required by Part 4F Common Circulation and Spaces of the ADG.

However, as part of the further information submitted to Council on 21st November, 2016, clarification was provided by the applicant as follows:

"Under Part 4F: "Common Circulation" of the ADG, the Design Criteria requires that the maximum number of units off a circulation core on a single level be no more than eight. Currently there are only seven units off the southern core and hence no window for natural light is required under the ADG."

This clarification was concurred with and as a result, Council's SEPP 65 Officer has subsequently advised the proposed development is sufficiently compliant with the requirements of the ADG and entirely consistent with each of the nine (9) design principles of SEPP 65. A copy of this assessment is provided as Attachment 3.

State Environmental Planning Policy (Infrastructure) 2007

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

In accordance with clause 104 of iSEPP, the application was referred to RMS under Schedule 3 of the SEPP, as the site is located on a road (Waterview Drive) that connects to classified road within 90 metres (Burns Bay Road) and the development comprises more than 75 dwellings. The development also triggered the threshold of parking for "50 or more" motor vehicles in Schedule 3.

The response from RMS is discussed previously in the report, wherein it was indicated that RMS raised no objection but requested a number of conditions be attached to any consent issued.

Clause 101 of iSEPP further provides that a consent authority must not consent to such development unless it is satisfied that:

- *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - *the design of the vehicular access to the land, or*
 - *the emission of smoke or dust from the development, or*
 - *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In response, it is apparent that each of these items has been satisfactorily addressed by the proposed development as follows:

- The development includes access for vehicles from Waterview Drive only, as opposed to Burns Bay Road, as sought by the clause.
- A Traffic and Parking Impact Assessment was conducted in relation to the proposal by Colston Budd Rogers and Kafes. In summary, the Assessment found that the safety, efficiency and ongoing operation of Burns Bay Road will not be adversely affected by the design of the proposal's vehicular access, nor the nature, volume or frequency of traffic generated by it. This view is concurred with by RMS and Council's Traffic Manager who have raised no issue with the proposed development from a traffic generating or access point of view and as such, are satisfied that the proposed development would not adversely affect the operation, safety and efficiency of the classified road adjoining the site such that they have granted concurrence to the application.
- As indicated in the acoustic assessment submitted with the application, the proposal has been appropriately, sited and designed to ameliorate traffic noise.

In addition to the above, Clause 102 of iSEPP seeks to ensure that any proposed development for the purpose of a residential land use on land which is on or adjacent to any road corridor with an annual average daily traffic volume of more than 40,000 vehicles will achieve suitable internal amenity. Given Burns Bay Road accommodates an annual average daily traffic volume in excess of 40,000 vehicles (as per maps on the RMS website), clause 102 of iSEPP applies to this application.

Under Clause 102, the consent authority is required to consider any noise related guidelines issued by the Secretary-General prior to determining any such application. For applications involving dwellings, the consent authority must also be satisfied that the following noise criteria are not exceeded:

- *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
- *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

In response, the acoustic assessment submitted with the application has found that the residential component of the proposed development can satisfy the above noise criteria, subject to the incorporation of various design measures such as specific glazing treatment and use of sealants around glazing, doors, windows, roofs and other similar areas. This report has been reviewed by Council's Manager Environmental Health who has recommended a condition be attached to the consent requiring compliance with the recommendations of this report.

Given the above, the proposed is entirely consistent with the noise and amenity related requirements of the iSEPP.

State Environmental Planning Policy No 55 – Contaminated Lands

Clause 7 (1) of SEPP 55 prevents Council from consenting to a development unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In accordance with Clause 7, SLR consulting previously undertook a Stage 1 Investigation, comprising a visual assessment of fill and contamination potential at the site as part of a pre-purchase due diligence contamination assessment, which concluded that:

- *The potential for widespread, significant contamination is low;*
- *The site soils are unlikely to pose an unacceptable contamination risk to future site users, for the proposed high density residential development;*
- *The site is considered suitable, from a contamination perspective, for the proposed high density residential land use, in accordance with SEPP 55.*

The Stage 1 investigation also noted the following:

- *The site contains a significant quantity of fill material, particularly on the eastern portion of the site. Much of this fill material will require excavation to construct the two level basement that is proposed;*
- *Based on the visual observations, SLR considers that the soil will classify as General Solid Waste if it was to be disposed to landfill at significant cost, however, this is subject to laboratory analysis of the samples collected. Alternative disposal options such as disposal to a recycler and as ENM will require appropriate and additional assessment.*

Accordingly, SLR Consulting conducted a Stage 2 Detailed Site Investigation (DSI) which has been submitted with the application. In summary, the DSI found as follows:

- *A contamination hotspot is present at test pit TP5, due to the reported elevated concentrations of arsenic and carcinogenic PAH;*
- *Elevated concentrations of carcinogenic PAH appear to be widespread within the fill material;*
- *The identified contaminated fill material is likely to be excavated and removed offsite as part of the proposed basement excavation; and*
- *The site is considered suitable for the proposed high density residential land use, subject to the excavation and offsite disposal of the impacted fill material within the proposed basement footprint, including the contamination hotspot at TP5, and other excavations ancillary to the proposed development.*

This Investigation has been reviewed by Council's Manager Environmental Health who has advised that the applicant is to prepare a remediation action plan (RAP) in accordance with the provisions of SEPP 55. In response, the applicant advised that *"as per the Deed of Agreement with Council as landowner, Council will seek to remediate the site prior to Hycorp taking ownership of the land. As such, Council is currently in the process of engaging consultants and preparing a remediation action plan"*.

However (and as previously discussed), Council's Manager Environmental Health has further advised that the issue of the clean up and validation of the site is an issue that is a contractual matter regarding the project and should be addressed outside of the approval for the use. As such, a deferred commencement is recommended to be issued requiring that the RAP be submitted to and approved by Council prior to the consent becoming operation to provide certainty for all parties as to the extent of works required to ensure the site is suitable for the proposed development.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX report has been submitted with the application which certifies that the proposed development is able to meet each of the required water, thermal comfort and energy efficiency targets. Conditions requiring compliance with the certification and the commitments therein have been included in the set of draft conditions provided as Attachment 1. The proposal therefore satisfies the policy and raises no further issues.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The entire Lane Cove LGA is within the Sydney Harbour Catchment. Therefore, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP) applies to the proposal. Under the SREP, the subject site is located within the 'Foreshores and Waterways Area', but not located within a 'zone' prescribed by the SREP, not located within a 'Wetlands Protection Area' not located within the 'Critical Habitat Map and not nominated on the 'Heritage Map. As such, Clauses 20 to 27 of the SREP prescribe several matters which must be considered by a consent authority prior to determining a development application. The matters are generic and broad in nature and generally relate to preserving and improving the health of and access to the catchment's natural environmental features. Due to the considerable distance of the site from the foreshore, the proposal raises no issues with respect to the matters raised under clauses 20-27.

APPLICABLE REGULATIONS

Environmental Planning and Assessment Regulation 2000

There are no specific requirements under the Environmental Planning and Assessment Regulation 2000 of relevance to the proposed development.

RESPONSE TO NOTIFICATION

The application was advertised between the dates of 27th September and 24th October 2016. Twenty six (26) submissions were received during the notification period.

The issues raised in these submissions have been summarised in the table below, with comments provided in response to each. The number of submissions which make reference to each issue raised is included in brackets after the issue.

SUMMARY OF ISSUES	RESPONSE
Insufficient Public Transport – particularly buses (14)	
<ul style="list-style-type: none"> Congested, lack of services and request for increase in same 	<p>This appears to be a significant issue for the existing residents of the precinct. Given the substantial additional population this development would generate, the cumulative impact on public transport service availability for this entire high density precinct and surrounding medium density areas – which is limited only to bus services 3 times an hour during peak periods – is likely to be significant and should be addressed (consistent with issues raised by objectors to other high density developments in the Lane Cove LGA recently and as identified under Section 3.2 of Part R of the DCP – Public Transport – Large development sites). However, it is considered that issue is outside the</p>

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SUMMARY OF ISSUES	RESPONSE
	responsibility of the developer or the scope of this particular application but rather is a larger community/strategic issue. On this basis, it is considered appropriate for Council to instigate and undertake discussions with the NSW Department of Transport and the State Transit Authority (STA) in relation to the potential to add further bus services to improve public transport access to this high density area.
DCP Non-Compliance (12)	
<ul style="list-style-type: none"> Building width – 50m-70m instead of 40m 	Not relevant/no variation. Burns Bay Locality Plan takes precedence over normal Part C requirements. In this regard, the Locality Plan allows building length to Burns Bay Road (the same standard as building width in this instance) to increase beyond 40 metres if façade articulation is satisfactory and length of individual facades are 40 metres or less, which is the case in this instance as discussed earlier in the report.
<ul style="list-style-type: none"> Building depth – 21-29m instead of 18m 	Agreed but variation satisfactorily justified by the applicant and considered appropriate as discussed earlier in the report.
<ul style="list-style-type: none"> Setback – no setback above 4th floor 	Under the Burns Bay Locality Plan, no additional setback for the 4 th floors or above (as is the case in Part C) is applicable. Rather, a setback of 5 metres to Waterview Drive and a 6 metre setback to Burns Bay Road applies to all floors, which has been complied with (other than for a minor encroachment to some corners of the ground floor of the building which is considered acceptable on the basis of the irregular shape of the site and the fact the building is below the level of Burns Bay Road and the embankment adjacent to same at these locations).
<ul style="list-style-type: none"> Storage area – only 3m³ to 5m³ instead of 6m³ to 10m³. No justification for shortfall. 	It is agreed that there is no apparent reason for this non-compliance and that the applicant's justification is both limited and inadequate. As such, a deferred commencement condition is to be included requiring the submission of amended plans providing the appropriate amount of storage commensurate for each sized apartment.
<ul style="list-style-type: none"> Inconsistent with original master plan for site by Scott Carver 	The development is consistent with the site specific locality applicable to the site under Lane Cove DCP 2010.
<ul style="list-style-type: none"> Have included child care centre in communal open space calculations 	An additional plan submitted by the applicant indicates that of a total of 1,940m ² of open space is provided at ground level. Of this area, 1,160m ² has been provided as communal open space, which is 4m ² in excess of that required under the DCP). The remaining 780m ² is allocated as outdoor play area around the child care centre, which is 360m ² in excess of the 420m ² of the outdoor play area required under the DCP (60 children @7m ² /child). Therefore, two separate areas that meet the relevant area requirements under the DCP have been provided.
<ul style="list-style-type: none"> No common indoor space 	Incorrect. A community room and terrace with an area of 80m ² is provided on the top floor (level 8).
<ul style="list-style-type: none"> Insufficient open space/needs ground floor open space 	Incorrect. See calculations above.
<ul style="list-style-type: none"> No evidence of applicant liaising with State Transit Authority/Dept of Transport TA re bus servicing 	Agreed. However, considered this should be conducted by Council as part of holistic process to investigate availability and potential shortfall in bus services for this area. In this

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SUMMARY OF ISSUES	RESPONSE
	regard, initial liaison with STA/DoT undertaken by Council in 2012. Separate recommendation identified to continue this process.
Parking(13)	
<ul style="list-style-type: none"> Insufficient parking generally 	Incorrect. Total development requires 190 spaces. 194 provided (surplus of 4 spaces).
<ul style="list-style-type: none"> Insufficient on-street parking 	As per the DCP, all parking required for the development is to be provided on the development site. On-street parking arrangements will not change and would continue to be controlled via existing signage and parking restrictions and regulated and enforced by Council as necessary.
<ul style="list-style-type: none"> Insufficient ground floor parking 	Incorrect. 20 spaces are required to be provided for the CCC and the shop, all of which should be at ground level in close proximity to these tenancies. In response, 23 are provided at ground level (5 in open spaces next to the CCC and 18 inside the building).
<ul style="list-style-type: none"> Insufficient parking for child care centre and shop/is there parking underground for CCC? 	Incorrect. See above. CCC requires 17 spaces, with 20 provided. Shop requires 3 spaces, with 3 provided.
Traffic (19)	
<ul style="list-style-type: none"> Congestion generally 	It is agreed that the proposed development would increase local traffic movement. Accordingly, the applicant submitted a comprehensive traffic report to assess this impact. This study has taken into account the cumulative impact of other developments in the vicinity in their modelling. Both the application and this report were referred to RMS for comments in relation to the likely impact on any classified roads (Burns Bay Road) and the wider road network. Upon review, RMS raised no objection to the proposal on traffic grounds. In addition, Council's Traffic Manager is satisfied that the traffic generated by the development can be adequately accommodated by the surrounding road network.
<ul style="list-style-type: none"> Waterview Drive too narrow 	Council's Traffic Manager has advised that the width of Waterview Drive is satisfactory, with no need identified for the widening of this road as a result of the proposed development.
<ul style="list-style-type: none"> Traffic lights too short and create congestion. Only one access out of precinct which creates congestion 	The operation of the traffic signals was presumably taken into consideration by the RMS as part of their assessment of the application. Nonetheless, it appears from the significant number of submissions raised in relation to this issue that the signals provide only a short time for vehicles to exit Waterview Drive and lead to considerable congestion, given this road is the single access point for the entire surrounding precinct and hence taking vehicles from a large number of high density developments within same. As such, it is recommended that further liaison be undertaken between Council and RMS to establish if the phasing of the signals can be reviewed and adjusted if necessary to provide additional time for vehicles to exit Waterview Drive onto Burns Bay Road.
<ul style="list-style-type: none"> Traffic report not agreed with 	Traffic report submitted to and concurred with by RMS and Council's Traffic Manager. Both satisfied as to the modelling used and the findings of the report.

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SUMMARY OF ISSUES	RESPONSE
<ul style="list-style-type: none"> Traffic excessive from child care and will cause problems at start and finish times 	The traffic report submitted with the application took the traffic generated by the CCC into consideration – inclusive of start and finish times (which are generally staggered over 2 hours in both the morning and afternoon) and found the impact to be satisfactory. This report was concurred with by the RMS and Council's Traffic Manager.
<ul style="list-style-type: none"> Should allow access via Burns Bay Rd 	This issue is within the control of RMS who have stipulated that no access to the site is to be provided via Burns Bay Road (which is a classified State Road). This control is also identified in the site specific Locality Plan.
<ul style="list-style-type: none"> Burns Bay Road not wide enough 	This issue is within the control of RMS and relates more to the capacity of the wider road network as opposed to the traffic generated by this development. It is noted that widening of the intersection onto Burns Bay Road has recently been undertaken to assist in improving access and capacity into and out of the Waterview Drive precinct. No further road works external the site were identified as being required by RMS in their response to the referral of the application.
<ul style="list-style-type: none"> Shop and child care centre will add to congestion 	See comments above re traffic generated by the CCC and shop. Further to this, it is expected that a significant number of the patrons of the shop and parents/carers using the CCC may in fact be residents of the proposed building, thereby lessening the amount of traffic generated by these two additional uses. For this reason, the co-location of these facilities is in fact beneficial and encouraged as facilities are being provided at the source as opposed to off-site.
<ul style="list-style-type: none"> Pedestrian safety and the need for a crossing of Waterview Dr between the site and Hughes Park to the east 	The need for this facility has not been identified by Council's Traffic Manager given that the recent upgrading works to the Waterview Drive intersection at Burns Bay Road included the provision of a pedestrian refuge. Nonetheless, Council has further advised the provision of a crossing on Waterview Drive between the development and Hughes park will be investigated given the direct desire lines between these locations and the potential pedestrian/vehicle conflicts caused by persons crossing driveway into the site in order to access the park via the pedestrian refuge to the north.
<ul style="list-style-type: none"> Suggest provision of community bus 	There is no provision in the DCP for the provision of such a facility.
Tree Removal (11)	
<ul style="list-style-type: none"> Negative impact of removal of all trees/"concrete jungle"/loss of greenery along Burns Bay Rd/poor streetscape created 	Council's Arborist has agreed with the need to remove 13 of the 14 existing trees located along the Burns Bay Road boundary of the site due to their limited longevity if retained on the basis of either health or location with the building envelope (or the area subject to excavation works). Whilst it is agreed this removal will initially have a negative impact, the replanting of trees and shrubs – including large canopy trees – along this setback will ultimately offset, or compensate for, this impact as these trees will be better located and suited to the conditions and therefore able to grow with the development and hence provide better long term screening and softening of same.
<ul style="list-style-type: none"> Justification for removal of all trees 	Discussed above (i.e. health, lack of longevity or location within proposed footprint of works or development).

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SUMMARY OF ISSUES	RESPONSE
<ul style="list-style-type: none"> Insufficient tree planting proposed and need for planting of mature trees 	<p>Council's Landscape Architect has recommended the planting of additional large canopy trees (i.e. in addition to those shown on the landscape plan) to better compensate for the loss of existing trees. This will be conditioned.</p>
Design (8)	
<ul style="list-style-type: none"> Development an "eyesore" 	<p>This is subjective. Council's SEPP 65 Officer has indicated the building satisfactorily addresses the 9 principles of SEPP 65, including a number of principles relating to external design, aesthetics and character.</p>
<ul style="list-style-type: none"> Request for building to be split to create gap to maintain view corridor from opposite of Burns Bay Rd 	<p>This has not been deemed necessary by Council's SEPP 65 Officer. In fact, creating a gap in the building would push it further south and reduce separation and privacy and increase overshadowing to the existing residential flat building to the south. Conversely, such a gap would be limited in width and hence effectiveness. A more effective view corridor is created by large separation (23 metres) to building to south (as discussed below).</p>
<ul style="list-style-type: none"> View loss to units on western side of Burns Bay Road 	<p>Existing views from the western side of Burns Bay Road are limited due to existing vegetation on both sides of the road and the existing flat buildings to the south and further to the east. An extensive gap will be provided between the new building and the existing flat building to south (23 metres – well in excess of the separation required under SEPP 65) to maintain a significant view corridor.</p> <p>The development also comprises a flat roof which is integrated into the design of the building as encouraged in Part B4 – View Sharing of the DCP to minimise the impact of any perceived view loss.</p> <p>It is also noted that the maximum permissible height of the development has not been achieved for a large proportion, with much of the building well under the 25 metre height limit as shown in brown shading on Figure 9 earlier in the report.</p>
<ul style="list-style-type: none"> Request child care centre be moved further south and dedicated car park and drop off area provided 	<p>The CCC forms an integral component of building (as opposed to a separate entity), which is impractical to move discussed above. A dedicated car park (5 separate spaces) and drop-off area is provided for the CCC at ground level.</p>
<ul style="list-style-type: none"> Development will look into east-facing side units at 315-317 Burns Bay Rd opposite the site (western side) and impact upon privacy. 	<p>Impact on privacy in this direction considered limited given these units separated by 4 lane Burns Bay Road and existing trees within their front setback. In addition, an appropriate setback is provided to the proposed building.</p>
Overshadowing/solar access (10)	
<ul style="list-style-type: none"> Overshadowing of 315/317 Burns Bay Rd to west and lack of shadow diagram showing same. Believe summer shadow diagram required as well as shadow will be worse or different direction. 	<p>This is incorrect. The shadow diagrams submitted with the application show the proposed development casting shadows towards – but not over – the existing 3 storey units at 315-317 Burns Bay Road at 9:00am on 21st June. From that time onwards, the shadows move further to the east as the sun moves west such that the development casts no shadow over the units in question between the hours of 9:00am and 3:00pm. Given the shadows would be considerably shorter in summer months (albeit on a slightly higher angle), the impact of shadowing would only improve, thereby negating the need for any shadow diagrams for the summer months as requested.</p>

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SUMMARY OF ISSUES	RESPONSE
<ul style="list-style-type: none"> Overshadowing of child care centre 	<p>The building would cast a significant shadow over the outdoor play area for the CCC on 21st June. However, there is no minimum amount of sunlight required for outdoor play areas identified in Part I of the DCP pertaining to child care centres, rather just a preference that “<i>outdoor areas should if possible be located to the north or north east of a building</i>” to minimise exposure to external noise, pollution and wind. Although the play area is located to the south of the building in this instance, it is of a significant size due to the substantial separation between the proposal and adjoining development to the south and the inclusion of east and west wings beyond the building such that it would receive adequate sunlight, ventilation and good amenity. Conversely, the casting of some shadow over the play area is in fact beneficial to some degree as it allows the requirement for shading of 50% of this area between 10:00am and 3:00pm under the DCP for skin cancer prevention to be met.</p>
<ul style="list-style-type: none"> Overshadowing of Hughes Park to east 	<p>The proposed development will cast a shadow towards and partially over Hughes Park of varying degrees over the year. However, shadow diagrams submitted with the application demonstrate that the park continues to receive 4 hours unobstructed sunlight from 8am to 12 noon on 21st June.</p>
Property Value (4)	
<ul style="list-style-type: none"> Loss in value (generally) 	<p>Both SEPP 65 and Lane Cove DCP identify a range of requirements that, when met, aim to facilitate the construction of a building of high standards and with necessary range of facilities such that they would not detract from the aesthetics, amenity and inherent value of the area, but rather enhance it.</p> <p>In any event, this claim is hard to quantify and most likely varies from area to area and site to site. There is no evidence to suggest that this development would result in the loss in the value of any adjoining properties. In fact, anecdotal evidence from other areas indicates that the construction of high quality residential flat buildings such as this one (which also includes a shop and child care centre for additional amenity) in place of vacant sites would more than likely increase the value of surrounding sites.</p>
<ul style="list-style-type: none"> Glut of apartments in surrounding area lowering property value 	<p>The developer is within their rights to develop the property in accordance with the range of permitted uses identified in the R4 land use table with no regard to the amount of dwellings existing and/or approved in a particular area. Any decision in relation to the marketability and take-up rate of the development is ultimately the responsibility of the developer. As such, this issue is outside the scope of the assessment of the application but is rather an issue related to market forces.</p>
Height (4)	
<ul style="list-style-type: none"> Height should comply 	<p>As discussed earlier in the report, applicant has adequately justified that the minor encroachment is limited to a roof feature and demonstrated that its impact is minor with no adverse implications on the amenity of surrounding residences. On this basis, the minor encroachment can be consented to under Clause 5.6 of the LEP, which has been concurred with by Council’s SEPP 65 Officer.</p>

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SUMMARY OF ISSUES	RESPONSE
<ul style="list-style-type: none"> Query nature of “roof feature” and use of same 	The “roof feature” referred to in the SOEE is not a separate feature or area, but simply a term (in fact a misnomer) used in the SOEE to describe a section of the roof at a particular point (in this instance, the section that encroached the height limit). As such, it is not capable of being used for any other purposes.
<ul style="list-style-type: none"> Wants guarantee no further increase 	No guarantee can be provided that any persons or party will not submit a S.96 application to modify any consent. However, as the maximum height allowable on the site has already been achieved under the current application (and in one location slightly exceeded, it is highly unlikely that consent would be granted to any proposed increase.
Noise (5)	
<ul style="list-style-type: none"> Impact of noise from additional traffic 	An acoustic report was submitted that addressed traffic noise, including a growth factor to account for an increase in traffic over coming years which would also include traffic generated by this development. Council officers have reviewed this report and are satisfied with its findings and the necessary mitigation measures have been incorporated into the design of the development or will be adopted as conditions of consent.
<ul style="list-style-type: none"> No noise study done 	Incorrect. Three (3) acoustic reports were submitted with the application addressing: the impact of traffic noise on the residential component; noise affecting and generated by the child care centre; and the impact of construction noise. Each report recommended a range of mitigation and management measures that have either already been incorporated into the design of the development or will be adopted as conditions of consent.
<ul style="list-style-type: none"> Existing traffic noise exacerbated on Burns Bay Road by construction of eight (8) storey building adjacent and “canyon effect” of same 	The noise study has not identified any such impact as being an outcome of the development. Without the development being built, this impact would be difficult to quantify.
<ul style="list-style-type: none"> Potential noise from A/C units on roof. Need details of units and ensure appropriate acoustic measures. 	Agreed. A condition has been included requiring this detail to be provided to and approved by Council prior to issue of CC (consistent with a condition applied to recent DA for 5 storey RFB at Little Street Lane Cove).
Inappropriate Use of Council Land (2)	
Land should be a park	The land is not identified within the DCP as a park. Hughes Park is located immediately to the east and has recently been upgraded to meet the demands of the surrounding precinct. The small section of RE1 zoned land that was rezoned to facilitate the development was subject to a transparent and rigorous Planning Proposal process that involved the public and required endorsement from the State Government.
Council shouldn't be making a profit from land	Not a relevant issue to the assessment of the application. The land is zoned R4 in which a residential flat building, child care centre and neighbourhood shop are all permissible uses.
Density/scale (2)	
<ul style="list-style-type: none"> Too many units in development and area (oversupply) 	The amount and supply of units to the market is not within the scope of 79C assessment, subject to land being correctly

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SUMMARY OF ISSUES	RESPONSE
	zoned and development being permissible and sufficiently meeting relevant requirements. The proposed units will help to meet housing targets for Lane Cove LGA under Sydney Regional Plan and to this end, the land was strategically zoned for this purpose by Council
<ul style="list-style-type: none"> Excessive generally – suggest smaller/lower development 	The FSR and height of the building (other than for a small section of roof which has been justified above) comply with the relevant maxima under the LEP, whilst the required setbacks and building separation have been adopted. As such, the scale of the development is consistent with that allowed under the relevant controls. Eight (8) storeys is also consistent with the height level of this particular R4 zone surrounding the site and hence with the emerging/future character of this area, including the buildings recently constructed to the immediate south of the site.
<ul style="list-style-type: none"> Excessive scale adjacent to Burns Bay Road 	See above. Building consistent with the height and scale envisaged and provided for under the LEP and site specific Locality Plan.
<ul style="list-style-type: none"> Wants guarantee from developer that no S.96 will be lodged to increase number of apartments 	No guarantee can be provided that any persons or party will not submit a S.96 application to modify any consent. However, as the maximum FSR, setbacks and height allowable on the site have been achieved under the current application and a building footprint (including basement and access points) specifically adopted to accommodate 107 units, it is highly unlikely that any increase would be physically possible and in turn, any consent issued for same.
Construction Impact (7)	
<ul style="list-style-type: none"> Impact generally from noise and vehicles 	A detailed Construction Noise and Vibration Management Plan was submitted with the application to address noise and vibration during the construction phase. The consent has been conditioned to require compliance with this Plan, with additional conditions proposed to further mitigate the impact of construction activities such as dust generation. A Construction Management Plan was also submitted to addressing issues related to the movement and parking of construction vehicles, safe access of construction vehicles, and any conflict with other road users in the street, including vehicles involved with the construction of any other developments. The consent will be conditioned to comply with the recommendations of this Plan.
<ul style="list-style-type: none"> Want guarantee hours will be appropriate and enforced 	Standard construction hours will be conditioned on the consent and these will be enforced by Council in conjunction with the Principal Certifying Authority, with any breaches dealt with as necessary.
<ul style="list-style-type: none"> Wants construction access off Burns Bay Road 	As with permanent access, temporary access into the site off Burns Bay Road is the sole domain of RMS. In this regard, RMS have prohibited any temporary or permanent access into the site off Burns Bay Road.
Infrastructure (4)	
<ul style="list-style-type: none"> Generally insufficient infrastructure to cater for development (particularly public transport, parking, traffic and schools) 	Public transport discussed above and investigation into additional services being sought. Parking satisfactory and traffic able to be managed, with further investigation into phasing and operation of traffic lights recommended. Whilst

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SUMMARY OF ISSUES	RESPONSE
	capacity of local schools is a strategic issue outside the scope of this application, it is noted that the Dept of Education was made aware of the rezoning of the precinct to R4 and raised no issues in this regard. Council's Engineers have indicated that satisfactory utility services are available to the subject site with sufficient capacity to accommodate the increased loadings generated by the proposed development.
Notification Issues (5)	
<ul style="list-style-type: none"> No consultation/Conflicting dates/lack of plans and information available/poorly done. 	The application was advertised in excess of the normal 14 days required under Council policy and notified to all surrounding properties as required and as shown on the plan in Attachment 4. The application and all supporting documentation were also made available on Council's website both during and subsequent to the notification period. Review of files also indicates council staff responded to any queries in relation to the information submitted directly and promptly and pointed to where this could be found on the website. However, to further assist the community remaining updated with respect to the proposed development, a condition will be added to the consent requiring the establishment of a Community Liaison Committee for the duration of the construction period.
Supporting Information (2)	
<ul style="list-style-type: none"> Need details of child care centre re staff and hours 	Details of the CCC (i.e. 10 staff and 60 children) were provided with the SOEE which was exhibited on Council's website.
<ul style="list-style-type: none"> Insufficient details of DCP compliance 	A detailed DCP compliance table was provided as part of the documentation submitted with the application and placed on Council's website.
Contamination (1)	
<ul style="list-style-type: none"> Need to ensure any contamination on site removed prior to development commencing 	Deferred commencement consent to be issued requiring a remediation action plan (RAP) to be prepared to identify works to be done to remove and remediate contamination on the site.
Shop Issues (3)	
<ul style="list-style-type: none"> Shop of no value and should be cafe instead of neighbourhood shop. 	The initial use or occupation of the shop does not form part of this application. Rather, the initial use will be determined by Council and the future tenant as per the contractual arrangements and will be subject to separate development or complying development application.
<ul style="list-style-type: none"> Shop not of sufficient size to be adopted for café. 	A tenancy of 120m ² is considered to provide a viable sized tenancy for a range of shop or café related uses. Again, the actual use and fitout of this area will be the subject of a separate application.
Energy Efficiency (2)	
<ul style="list-style-type: none"> Insufficient-sized rainwater tanks 	Rainwater tanks are suitably sized as per the BASIX certification for the development (5,000 litres each).
<ul style="list-style-type: none"> No solar panels provided on building 	These are not required under the DCP or by the BASIX assessment.
Rezoning (1)	
<ul style="list-style-type: none"> Wasn't aware site had been rezoned/was this advertised? 	Public notification of the change in the zoning of the site occurred as part of the Planning Proposal process, as required by the Department of Planning and in accordance

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SUMMARY OF ISSUES	RESPONSE
	with Council's extended notification policy.
Recreation Space (2)	
<ul style="list-style-type: none"> Not enough recreation space in the vicinity – new park (Hughes Park) won't cater for additional population of this and other developments 	This is a strategic issue and outside the scope of the assessment of this application. Council would have made population projections when rezoning this site and other sites to R4 within the LGA and determined the amount of and type/mix of open space (i.e. active, passive etc) required to cater for same and satisfied in this regard. This development can only be responsible for providing the necessary amount of open space on this site generated by the number of units and as shown above, provides the satisfactory amount communal open space and private open space for each apartment as per the DCP.
Land Re-classification (1)	
<ul style="list-style-type: none"> Details requested of date for hearing of public hearing into re-classification of land on the site (presumably the RE1 land) 	This hearing occurred as part of the Planning Proposal process to change the zoning of the land.
Safety and Security Concerns (1)	
<ul style="list-style-type: none"> Police station removed from Lane Cove 	The proximity of a police station to the site is outside the scope of the assessment of this application. However, a number of security measures and recognised Crime Prevention Through Environmental Design (CPTED) features are incorporated into the development to reduce the risk of crime, such as extensive lighting (including sensor/security lighting), the design and location of pathways and landscaped areas, fencing and limited secure access points into the building.
Wildlife (1)	
<ul style="list-style-type: none"> Existing rabbits living on site. Need to ensure new home found. 	No special requirements for relocation required given rabbits are an introduced species (considered a pest). Nature of species is that they will relocate themselves upon commencement of development and activity occurring.

Overall, it is considered that the issues raised in the public submissions do not warrant refusal of the application or any further modification of the proposed development. Rather, the relevant issues raised have generally been addressed in the design of the development; the documentation submitted with the application or following lodgement; in comments provided by Council assessing officers; or via proposed conditions of consent where necessary.

Alternatively, some are strategic issues which have been addressed at the rezoning stage of the process such as the appropriateness of the initial zoning of the land to R4 and the amount of open space and other facilities that are available (or are earmarked to be provided) to cater for the additional population of this and surrounding developments within the precinct. This would also include the single access point, which has been agreed upon in consultation between Council and the RMS.

It is however agreed that some of the issues raised do warrant further investigation, namely those in relation to the availability and potential increase in bus services to the site and surrounding precinct as well as cumulative traffic congestion and in particular, the impact of the traffic signals on Waterview Drive, issues which were raised in a significant number of submissions.

With respect to public transport, it is considered appropriate for Council (rather than the developer) to liaise with the NSW Department of Transport and the State Transit Authority (STA) in relation to the potential to increase bus services, as this issue goes beyond just this particular site or specific development, but rather is the result of an cumulative increase in density of the surrounding R4 zoned precinct. Whilst this issue is flagged in the DCP as being the responsibility of the applicant, it is however considered to be a strategic – and hence Council-instigated – issue. To this end, it is noted that Council commenced liaison with the Minister for Transport in relation to bus servicing issues in 2012, who committed to a review of services in the vicinity in response. It is therefore recommended that Council continue to liaise with the Department of Transport and STA to obtain resolution of this issue.

Likewise, it is also recommended that Council liaise with the RMS with respect to the operation – and particularly the phasing – of the traffic signals at the intersection of Waterview Drive and Burns Bay Road. In this regard, it is apparent that this intersection significantly contributes to and potentially constrains access into the entire R4 zone high density precinct that feeds into Waterview Drive. Therefore, it is considered in the public interest to investigate the potential to improve the phasing to increase the time available for vehicles to exit Waterview Drive and reduce potential traffic congestion in this precinct. Again, this is considered a strategic issue that dovetails into the operation of the surrounding road network, as opposed to an issue specific to this site or development in isolation, which Council would be best equipped to take up with the RMS.

As such, a request for liaison to occur between Council and the RMS in relation to the Waterview Drive signals has also been added as a separate recommendation to this report.

CONCLUSION

The development application has been assessed in accordance with matters for consideration outlined in Section 79C of the Environmental Planning and Assessment Act 1979 and having regard to all of the relevant instruments and policies.

The proposed development comprises three (3) components, each of which are permissible on the land as result of the recent gazettal of Amendment No. 20 to Lane Cove LEP 2009. In addition, the proposed development complies with all other relevant provisions of the Lane Cove LEP 2009, with the exception of a minor encroachment of a roof feature on the southern side of the building to the maximum height limit, which can be consented to under Clause 5.6 – Architectural Roof Features.

The proposed development is also consistent with the nine (9) design principles of SEPP 65 and the Apartment Design Guide and complies with all relevant parts and provisions of Lane Cove Development Control Plan 2010 with the exception of variations to the building depth and the provision of accessible storage areas for individual units. In relation to building depth, suitable justification has been provided by the applicant to demonstrate that the objectives of the relevant parts have been met, whilst the submission of amended plans which demonstrate the provision of accessible storage for apartments in accordance with Part C 3.13 of Lane Cove DCP 2010 are to be required as a condition of the deferred commencement consent.

The relevant issues raised in submissions against the proposal are not considered to warrant refusal of the application or any further modification of the proposal. Rather, these issues are considered to have been addressed either at the time of the initial zoning of the land, in the design of the development or via conditions of consent.

The proposal is not considered to result in any significant or undue adverse impacts for the locality and is not considered to be contrary to the public interest. In addition, Council's Executive Manager of Environmental Services has advised that the development of 107 residential apartments, a 60 place child care centre and provision for a neighbourhood shop will complete Council's vision for the redevelopment of this once industrial land use into an integrated, well serviced and vibrant residential precinct that embodies community, creativity and the principles of liveability.

Accordingly, it is recommended that "Deferred Commencement" consent be granted requiring the submission to and approval by Council of a Remediation Action Plan and amended plans indicating satisfactory accessible storage for individual units becoming operational. Upon the consent becoming operational, the consent is recommended to be subject to the draft conditions listed in Attachment 1.

It is also recommended that Council continue liaison with STA and NSW Department of Transport in relation to the availability and potential increase in bus services to the site and surrounding precinct. It is further recommended that liaison be undertaken between Council and RMS to investigate the phasing of the signals at the intersection of Waterview Drive and Burns Bay Road and adjusted if necessary to provide additional time for vehicles to exit Waterview Drive onto Burns Bay Road to reduce congestion and delays.

RECOMMENDATION

1. That pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a "Deferred Commencement" consent be granted to DA No. 172/16 for the construction of an eight (8) storey residential flat building comprising 107 dwellings and 194 car parking spaces, an attached childcare centre, an attached neighbourhood shop and associated tree removal, site works and landscaping, subject to the following condition being met to the satisfaction of the consent authority within twelve (12) months from the date of this consent:
 - a. The submission to and approval by Council of a Remediation Action Plan in accordance with the provisions of SEPP 55; and
 - b. The submission to and approval by Council of amended plans which demonstrate the provision of accessible storage for individual units in accordance with Part C 3.13 of Lane Cove DCP 2010.
2. That upon written confirmation by the consent authority of compliance with the deferred commencement condition, that consent be granted to DA No. 172/16 for the construction of an eight (8) storey residential flat building comprising 107 dwellings and 194 car parking spaces, an attached childcare centre, an attached neighbourhood shop and associated tree removal, site works and landscaping subject to the draft conditions listed in Attachment 1.
3. That Council continue liaison with the State Transit Authority and NSW Department of Transport in relation to the availability of and potential increase in bus services to the site and surrounding precinct.
4. That liaison be undertaken between Council and Roads and Maritime Services to investigate the phasing of the traffic signals at the intersection of Waterview Drive and Burns Bay Road and adjusted if necessary to provide additional time for vehicles to exit Waterview Drive onto Burns Bay Road to reduce congestion and delays.

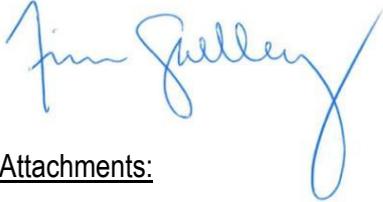
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5. That those that made a submission in response to the application be advised of the JRPP's decision.

Report Prepared by:

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Attachments:

1. Draft Conditions of Consent
2. Lane Cove DCP 2010 Compliance Table
3. SEPP 65 Assessment
4. Notification Plan