

OUR REF: 16229

26 August 2021

Planning Panels Secretariat
c/o Lane Cove Council
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Lane Cove NSW 2066

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Attention: Ms Julie Savet Ward (Chair) and Panel

Dear Ms Savet Ward,

**RE: SUBMISSION TO THE SYDNEY NORTH PLANNING PANEL
FOR NO. 266 LONGUEVILLE ROAD, LANE COVE
(PLANNING PANEL REFERENCE: PPS-2017SNH069; LANE COVE COUNCIL DA117/2017)**

Thank you for the opportunity to provide a submission in respect of the abovementioned matter, on behalf of our client, Australian Unity (AU).

As you would be aware, the subject matter will be before you on 1 September 2021 with a favourable recommendation. This recommendation has come about after an extensive amount of consultation and numerous redesigns. With the exception of Condition Nos. 3, 5, 9, 154 and 156 which I will discuss subsequently, AU welcomes the recommendation.

The proposal presents as two storeys from the street and has many internal user-friendly spaces for future senior residents (see Figure 1 below and Figure 2 on the following page).



Figure 1: The Proposal As Viewed from Longueville Road

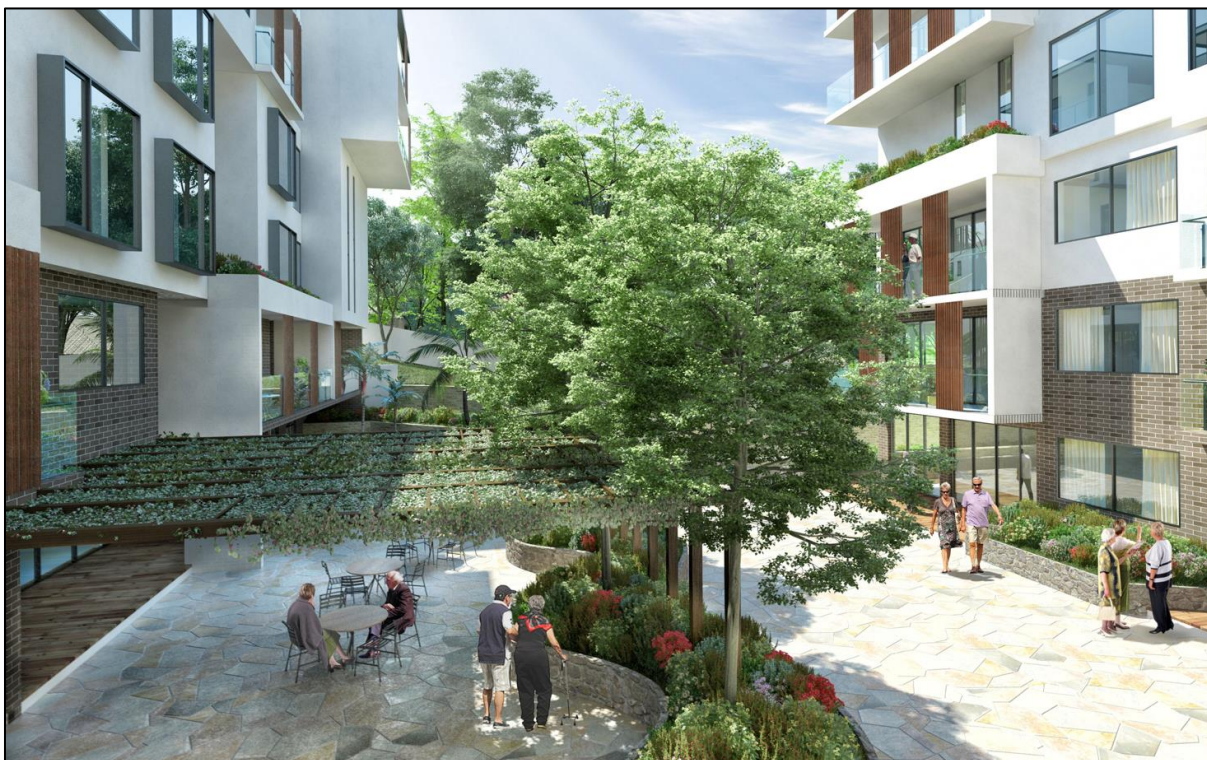


Figure 2: Courtyard (Artist Impression)

The proposal has also been re-designed to minimise impacts on adjoining residents to the south (270 Longueville Road, also known as Timbertops). This was achieved by increasing the southern setback by one metre to increase building separation, subsequent internal replanning, and redesigning the southern façade to maximise articulation (see Figure 3 and Figure 4 on the following page).



Figure 3: Relationship of Proposal (left) to Timbertops, as viewed from the shared driveway



Figure 4: Proposed Articulation of the South Elevation, as viewed from the Driveway Shared with Timbertops

The current proposal also retains significant trees, including those identified in the Arborist's Report as Tree Nos. 92 and 93, located near the southern boundary. In addition, the proposal will also remove contamination on the site which has accrued over a 30 year period, which will provide the opportunity to enhance the sustainability of the adjoining bushland.

To assist the Panel in appreciating the timeline of events and coordination with community stakeholders and Council leading up to the current recommendation, a history of the proposed development at No. 266 is provided as **Attachment A**.

The Applicant would also request that the wording of five conditions be reconsidered. These are identified as Condition Nos. 3, 5, 9, 154 and 156 and relate to the commission of the design architect, design of the pocket park and playground, Section 94 contributions, right of carriageway and positive covenant respectively. An outline of these conditions, along with the Applicant's requested changes is provided as **Attachment B**.

In conclusion, the project has been redesigned to meet the requirements of the previous Panel, the Independent Assessor and hopefully the current Panel. We therefore commend this recommendation with amendments to Condition Nos. 3, 5, 9, 154 and 156 to the panel for a favourable recommendation.

Yours faithfully,

Dr Gary A. Shields
SENIOR CONSULTANT

PhD (UNSW) M. Urb. Design (Syd)
M. Eng. Sc (UNSW) M. Urb. Studies (Mac) RPIA LF

ATTACHMENT A:**HISTORY OF THE PROPOSED AGED CARE FACILITY AT
No. 266 LONGUEVILLE ROAD, LANE COVE**

- In **October 2015**, Lane Cove Council sought Expressions of Interest (EOI) for the re-development of Council owned land at (the subject site) for the purpose of a Seniors Living development under a long term lease arrangement.
- In **June 2016**, Australian Unity was selected as one of four organisations to participate in a bid for the redevelopment of the site and in December 2016, Council advised Australian Unity it was the successful bidder for the redevelopment.

Site Compatibility Certificate No. 1

- On **8 May 2017**, an SCC was lodged with the Department of Planning and Environment (DP&E) for a new seniors housing development comprising a mix of 70 residential aged care beds, 93 independent living units, two levels of basement car parking for 148 vehicles and associated facilities.
- On **6 July 2017**, an SCC was issued by the DP&E.

Development Application – original scheme

- On **19 July 2017**, a Development Application (DA117/2017) was lodged with Lane Cove Council for a seniors housing development comprising 70 residential aged care beds, 90 independent living units/self-contained dwellings and basement car parking for 137 vehicles. Recreational facilities were proposed for residents, together with communal courtyards. The DA included publicly accessible facilities such as a café or retail use, a new landscaped public park fronting Longueville Road and a landscaped through-site link along the northern boundary, connecting the park to the existing nearby golf course.
- Following the notification period, meetings with Council, the Independent Assessor and representatives of the adjoining property at No. 268 Longueville Road (known as 'Timbertops') were held and the applicant received written feedback from the Independent Assessor. As a result, a number of modifications were made to the DA plans, in order to improve amenity for surrounding development and clarify the design. This included the relocation of the top floor.

Sydney North Planning Panel

- On **11 July 2018**, the DA was considered at the SNPP at Lane Cove Council, with the Independent Assessor's report recommending approval subject to conditions (Reference No. 2017SNH069 – 117/2017). At the conclusion of this meeting, the Panel resolved to defer its decision to seek additional information and requested that the applicant submit amended plans which would include an increased setback on the southern boundary, additional articulation to the southern elevation and an additional landscaped strip between the site and the adjoining Timbertops land.
- The amendments and additional information requested by the SNPP is summarised below:
 - Detailed site investigation under SEPP 55
 - Independent peer review of traffic assessments

- Assessment of ecological impact to ensure development does not significantly impact flora and fauna on the site and adjacent E2 zone
- Assessment of visual impact from golf course, east ridge line and Richardson St West
- Plans and supporting information provided to the Department for the Site Compatibility Certificate
- Calculation of GFA/FSR based on SEPP
- Drawings that reflect an increased setback on the southern boundary by 1m with no decrease on the northern side, and a 2 metre landscaped strip towards Timbertops for landscape screening
- Based on ecological assessment, eastern boundary to be adjusted is required.

Amended Development Application - relocation

- In **April 2019**, the amended DA was lodged, was re-notified and subsequently reviewed by the Independent Assessor.
- The DA endeavoured to highlight the substantial changes made to the proposal in response to requests made by the Sydney North Planning Panel (SNPP). These changes included:
 - an increased setback on the southern boundary of 1m and a 2m landscape strip;
 - a further assessment of the ecological relationship with the E2 zone;
 - a further site investigation pursuant to SEPP 55; and
 - a view assessment from the nearby golf course, East Ridge and Richardson Street West.
- Importantly, the SNPP did not request that the building be lowered or that there were any issues relating to height and the Clause 4.6 that accompanied the application.
- The DA Assessment Report was finalised and ready to go to the Panel when SCC No. 1 expired on **6 July 2019**.
- As the amended **DA had not been determined**, Council advised that a new SCC application was required.

Site Compatibility Certificate No. 2

- In **August 2019**, the second SCC was lodged with NSW Planning Industry and Environment (DPIE) following the expiration of SCC No. 1.
- It was unclear whether the DPIE was fully aware of the changes requested by the Panel or indeed the redesign of the proposal that had occurred.
- In **May 2020**, the NSW DPIE provided their SCC report, recommending the lowering of the building to 62.8 AHD, effectively resulting in the loss of two storeys for most of its length and one storey at the street; and a considerable loss of accommodation proposed for seniors.

Site Compatibility Certificate No. 3

- In **December 2020**, a third SCC application was lodged to the NSW DPIE.
- In **June 2021**, NSW DPIE issued SCC No. 3
- On **1 September 2021**, the Independent Assessor's report is before the Sydney North Planning Panel with a favourable recommendation. The proposal before the Panel embraces all of the design changes recommended by the SNPP on 11 July 2018.

ATTACHMENT B:
PROPOSED CHANGES TO DRAFT CONDITIONS BY APPLICANT
DA0117/2017 | 266 Longueville Road Lane Cove

Australian Unity requests that the following amendments to the draft conditions are made by the SNPP, on the basis that they are justified under relevant planning controls or otherwise at law. The requested amendments have been the subject of previous submissions by Australian Unity in connection with this application.

Australian Unity has also previously sought amendments to other draft conditions. While some of those matters are not proposed again below, Australian Unity reserves its position on those matters.

Conditions requested to be amended	Draft condition	Australian Unity request 25 August 2021
3	In order to ensure the design quality of the development is retained: i. The design architect Thomson Adsett (NSW) Pty Ltd is to have direct involvement in the design documentation, contract documentation and construction stages of the project; ii. The design architect Thomson Adsett (NSW) Pty Ltd shall have full access to the site and shall be authorised by the applicant to respond directly to the consent authority or Council where information or clarification is required in the resolution of design issues throughout the life of the project; iii. Evidence of the design architect Thomson Adsett (NSW) Pty Ltd commission shall be provided to Council prior to the release of a Construction Certificate. iv. The design architect Thomson Adsett (NSW) Pty Ltd of the project shall not be changed without prior agreement by the Council. Council shall not unreasonably withhold or delay such agreement	Australian Unity has previously submitted that the evolution of this condition is unsatisfactory and proposes that it be wholly redrafted as follows: <u>i. The design architect of the project shall be Thomson Adsett (NSW) Pty Ltd or such other architect appointed with prior agreement by the Council. Council shall not unreasonably withhold or delay such agreement;</u> <u>ii. A design architect contemplated by paragraph (i) is during the course of their appointment to have direct involvement in the design documentation, contract documentation and construction stages of the project;</u> <u>iii. A design architect contemplated by paragraph (i) shall during the course of their appointment have full access to the site;</u> <u>iv. Evidence of the commission of a design architect contemplated by paragraph (i) shall be provided to Council prior to the release of a Construction Certificate.</u>
5	Design of the Pocket Park and publicly accessible playground, including details of all playground equipment and surface treatments selected must be submitted to Council for approval. The playground is to be located a safe distance from the building footprint allowing safe fall zone areas that comply with the Australian Standards.	Australian Unity has previously submitted that potential scope ambiguity in this condition should be mitigated and proposes the drafting amendments below in red: Design of the Pocket Park and publicly accessible playground, including details of all playground equipment and surface treatments selected must be submitted to Council for approval. The playground is to be located a safe distance from the building footprint allowing safe fall zone areas that comply with the Australian Standards. <u>The design will be in accordance with the intent of the concept drawings provided in the DA Landscape Package revision E dated 23/08/2018, and includes a cubby and nature play consisting of a log for climbing and a four steppers that can be implemented in the space in consideration of play and safety compliances and Australian Standards.</u>
9	9.1 The payment of a contribution for additional persons in accordance with council's section 94 contributions plan. The amount is \$1,560,474.40 at the present rate of \$10,642 per person on the 2019/2020 fees and charges and will be adjusted to the current rate at the time of payment. 9.2 This contribution is for community facilities, open space/ recreation and road under the lane cove section 94 contributions plan which is available for inspection at the customer service counter, Lane Cove Council, 48 Longueville Road, Lane Cove. The Section 94 Contribution is calculated in the following manner: <i>[refer draft conditions for table]</i> The total Section 94 contribution for the proposal is 9.2 This contribution is to paid before the issue of the first occupation certificate or interim occupation certificate in respect of any building to which this consent relates, except as provided by condition 9.3. 9.3 If no construction certificate in respect of the erection of any building to which this consent relates has been issued before or on 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that	Australian Unity has previously submitted that the calculated section 94 contribution amount be offset by the works in kind that Australian Unity will be constructing in the form of publicly accessible facilities on the site, namely the publicly accessible walkway, pocket park, playground and access park as envisaged by condition 156. As noted in condition 9.2, the section 94 contribution is intended for the funding of infrastructure for community facilities, open space and recreation, among other things. The publicly accessible facilities that Australian Unity will be developing on the site will themselves serve those purposes. The publicly accessible facilities to be developed on the site meet one or more of the criteria for satisfaction of section 94 contributions as set out in the Development Contributions Practice Note, and on that basis Australian Unity submits that they should be taken into account for the purpose of the section 94 contribution obligation. Proposed additions to condition 9 to reflect this (and to deal with typographical matters) are set out below in red: 9.1 <u>Subject to the offsets noted in condition 9.5, t</u> The payment of a contribution for additional persons in accordance with council's section 94 contributions plan. The amount is \$1,560,474.40 at the present rate of \$10,642 per person on the 2019/2020 fees and charges and will be adjusted to the current rate at the time of payment. 9.2 ...

Conditions requested to be amended	Draft condition	Australian Unity request 25 August 2021
	date for any such building.	<p>The total Section 94 contribution for the proposal is <u>\$1,560,474.40</u>.</p> <p>9.23 This contribution is to be paid before the issue of the first occupation certificate or interim occupation certificate in respect of any building to which this consent relates, except as provided by condition 9.34.</p> <p>9.34 If no construction certificate in respect of the erection of any building to which this consent relates has been issued before or on 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.</p> <p><u>9.5 The applicant may offset from section 94 contribution payment otherwise required by condition 9.1 the expected costs, as reasonably determined by an independent quantity surveyor, of the publicly accessible walkway, pocket park, playground and access park as envisaged by condition 156, with only the balance (if any) after those offsets being payable as a cash payment.</u></p>
154	<p>A plan of consolidation of the land identified as 266 Longueville Road – comprising Lots 1 & 2 in DP1227921 and Lot 1 in DP321353, shall be registered at the Land Titles Office. The plan shall incorporate the creation of a Right of Carriageway as defined in Part 1 of Schedule 8 of the Conveyancing Act 1919 burdening the aforementioned land as the servient tenement and benefitting the adjoining land identified as 268 – 270 Longueville Road, Lane Cove comprising all of that land comprised in SP5383 (Timbertops Land) as the dominant tenement, being generally in the location identified in the approved drawings showing the location of proposed driveway, and in any event of such dimensions and in such location as approved by the Lane Cove Council so as to ensure vehicular access to and from Longueville Road to the residential parking areas on the Timbertops Land.</p>	<p>Australian Unity has previously submitted that the Right of Carriageway referred to in condition 154 should bear the same terms that are contained in and were agreed to in clause 24 of the Lease for the site. This will ensure that a right of access is maintained for the Timbertops Land as long as that site is registered Strata Plan 5383.</p> <p>Ongoing access to the adjoining land is already secured by clause 24 of the Lease for the site. It is inappropriate for Council to seek to impose a broader proprietary right in favour of the adjoining land as part of the development consent, to that which was negotiated and agreed to under the Lease. Australian Unity has reasonable concerns that if a Right of Carriageway is required to be registered in perpetuity, there may be changes to the Timbertops Land which could result in a material increase in the use of the driveway resulting in impacts to driveway function and safety.</p> <p>Further, and similar to the comments made below with respect to public access to the pocket park, the playground and the publicly accessible walkway on the northern boundary of the site, Australian Unity's position is that the appropriate mechanism to allow access over the driveway is through a condition of consent and not through a Right of Carriageway, positive covenant or other easement.</p> <p>As such, Australian Unity has proposed that condition 154 be modified as set out below in red:</p> <p><u>(a) A plan of consolidation of the land identified as 266 Longueville Road – comprising Lots 1 & 2 in DP1227921 and Lot 1 in DP321353, shall be registered at the Land Titles Office. The plan shall incorporate the creation of a Right of Carriageway as defined in Part 1 of Schedule 8 of the Conveyancing Act 1919 burdening the aforementioned land as the servient tenement and benefitting the adjoining land identified as 268 – 270 Longueville Road, Lane Cove comprising all of that land comprised in SP5383 (Timbertops Land) as the dominant tenement, being generally in the location identified in the approved drawings showing the location of proposed driveway, and in any event of such dimensions and in such location as approved by the Lane Cove Council so as to ensure vehicular access to and from Longueville Road to the residential parking areas on the Timbertops Land.</u></p> <p><u>(b) For as long as the adjoining land identified as 268 – 270 Longueville Road, Lane Cove comprising all of that land comprised in SP5383 (Timbertops Land) is registered Strata Plan 5383, access must be allowed for users of the Timbertops Land to:</u></p> <p><u>i. pass and repass by vehicle generally across the location identified in the approved drawings showing the location of proposed driveway, and in any event of such dimensions and in such location as approved by the Lane Cove Council so as to ensure vehicular access to and from Longueville Road to the residential parking areas on the Timbertops Land (Right of Access Site); and</u></p> <p><u>ii. do anything reasonably necessary for that purpose, including:</u></p> <p><u>A. entering the Right of Access Site;</u></p> <p><u>B. take anything on to the Right of Access Site; and</u></p> <p><u>C. in the case of the Owners Corporations of the Timbertops Land only, carry out work within the Right of Access Site, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures if the developer fails to do so within a reasonable time after receiving a request for it to do so.</u></p> <p><u>(Right of Access).</u></p> <p><u>(c) The developer may take reasonable measures to regulate the use of the Right of Access Site for the safety of all users.</u></p> <p><u>(d) The Right of Access does not apply to the extent any redevelopment of the Timbertops Land results in either or both a material increase in the use of the Right of Access Site or a material change in the type of vehicles using</u></p>

Conditions requested to be amended	Draft condition	Australian Unity request 25 August 2021
		<u>the Right of Access Site or their use of the Right of Access where such material increase or change causes material additional noise or material additional disturbance or any material increase in the safety risks of users.</u>
156	Documents giving effect to the creation of a positive covenant allowing for public access to the publicly accessible walkway, pocket park, playground and the access park located on the northern boundary of the site registered on the title of the property. The wording of the terms of the positive covenant shall be in accordance with the wording provided by Lane Cove Council.	<p>Similarly to the proposal in relation to condition 154, Australian Unity has previously submitted that that a condition of consent only is appropriate to permit public access, and a positive covenant or easement is not required or appropriate. A condition of consent must be complied with in perpetuity and failure to comply with a condition of consent can be enforced by the Council just as readily as a public positive covenant or easement. The terms of access should also be in accordance with the Lease for the site.</p> <p>Further, given that the Council is the registered proprietor of the site, a positive covenant as proposed would create the unusual scenario of Council being both the entity benefitted and burdened by a registered Right of Access under the <i>Conveyancing Act 1919</i>. Also, and importantly from Australian Unity's perspective, the agreed position between Council and Australian Unity is that Council remains responsible for and has indemnified Australian Unity against any third party liability relating to the pocket park and public pathway. If a positive covenant were to be registered, it is unclear how that indemnity would operate.</p> <p>The Landscape Plans also refer to a dawn to dusk gate restricting access along the publicly accessible walkway.</p> <p>On the basis of the above, Australian Unity proposes that condition 156 be wholly redrafted as follows:</p> <p><u>The developer must allow the public to access and use the pocket park, the playground and the public pathway along the northern boundary of the site as shown in the DA Landscape Package revision E dated 23/08/2018 prepared by Taylor Brammer. Access to the public pathway along the northern boundary of the site will be restricted between the hours of dusk and dawn.</u></p>