

MEMO

Date: 3 September 2021

To: Sydney North Planning Panel

From: Robert Montgomery (Independent DA Assessor)

Subject: 2017SNH069 - Lane Cove – DA117/2017

Following the Panel Meeting on 1 September 2021, I have reviewed the following matters as requested.

1. Updated clause 4.6 request from applicant

On 2 September 2021 the applicant provided a revised written request pursuant to clause 4.6 of Lane Cove LEP 2009 in respect of the exceedance of the building height development standard contained in clause 4.3 of the instrument.

In my opinion the written request satisfies the requirements of clause 4.6 of Lane Cove LEP 2009 and demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

I am also satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the relevant development standard and the objectives of the relevant zone.

Accordingly, I confirm that my recommendation No. 1 as contained on page 22 of the Council Supplementary Report to the Panel dated 1 September 2021 has not changed as a consequence of the revised request.

A copy of the applicant's revised request is attached.

2. Commentary in relation to draft Housing SEPP.

State Environmental Planning Policy (Housing) 2021 was published in the form of a "public consultation draft" on 28 July 2021. Accordingly, the draft SEPP is a matter for consideration under section 4.15 of the EP&A Act. As the draft was published 8 days after the Council Supplementary report was finalised, it was not a consideration at that time. The following information is from the NSW Planning Portal.

"The draft Housing SEPP will:

- *consolidate five existing housing-related SEPPs:*
 - *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);*
 - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);*
 - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70);*

- State Environmental Planning Policy No 21—Caravan Parks; and
- State Environmental Planning Policy No 36—Manufactured Home Estates.
- include the recently made provisions for short term rental accommodation and build-to-rent housing;
- include the recently updated social housing provisions;
- introduce provisions for co-living housing, a form of housing that provides small private rooms (which may or may not include private kitchen and bathroom facilities), offset by access to managed communal spaces;
- incorporate amendments to boarding house and seniors housing provisions;
- amend some local environmental plans in relation to secondary dwellings in rural zones, and the permissibility of boarding houses in R2 zones.

The Housing SEPP consultation draft does not include the caravan park and manufactured home estate provisions, nor provisions from phases one and two (LAHC social and affordable housing provisions, and build-to-rent) as a review of these provisions will be undertaken as part of a broader review, 24 months after the Housing SEPP is made. The consultation draft also does not include the short-term rental accommodation provisions which are due to take effect on 1 November 2021. However, these provisions will be included in the Housing SEPP when it is finalised."

Relevantly, State Environmental Planning Policy (Housing for Seniors or People with a Disability) will be repealed upon gazettal of the new Housing SEPP. Part 4 of draft SEPP contains provisions relating to seniors housing, including permissibility, definitions, development standards and design principles.

From my review of Part 4 of the draft housing SEPP, the main differences from the Seniors SEPP relate to the vertical villages controls. In particular, the following is proposed:

- No site compatibility certificate process is required to obtain floor space bonus.
- Additional FSR for combined independent living units and residential care will be 25%.
- Building height shall not exceed maximum permissible height by more than 3.8m.
- No requirement for affordable dwellings.

Seniors are defined as people over 60 years of age, compared to 55 in the current SEPP. It is also noted that the draft SEPP will extend occupancy to include people who live in the same household with seniors or people with a disability.

Importantly, Schedule 6 of the draft SEPP contains savings provisions for development applications made or consents issued prior to the repeal day (ie date of draft SEPP gazettal). The provisions of the current Seniors SEPP will continue to apply in those circumstances. The provisions of the site compatibility certificate will also continue to apply.

As a draft environmental planning instrument, the consent authority must determine the weight to be placed on the draft provisions. The draft Housing SEPP is still on public exhibition for comment. Therefore, gazettal is not imminent or certain, nor is there certainty as to the actual provisions which will be gazetted. It is also important to note that the draft Housing SEPP contains savings provisions for DAs made or consents issued prior to gazettal of the final SEPP.

It is therefore my opinion that, when given appropriate weight in consideration under s4.15 of the Act, the draft Housing SEPP does not impact on the assessment or recommendation presented for this development application.

3. Details of consultation with NSW RFS.

Clause 27 of the Seniors SEPP provides:

27 Bush fire prone land

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 10.3 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2”, “Bush fire prone land—vegetation category 3” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled *Planning for Bush Fire Protection*, ISBN 978 0 646 99126 9, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019.
- (2) A consent authority, in determining a development application made pursuant to this Chapter to carry out development on land in the vicinity of land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1, must take into consideration the general location of the proposed development, the means of access to and egress from the general location and other relevant matters, including the following:
 - (a) the size of the existing population within the locality,
 - (b) age groups within that population and the number of persons within those age groups,
 - (c) the number of hospitals and other facilities providing care to the residents of the facilities within the locality, and the number of beds within those hospitals and facilities,
 - (d) the number of schools within the locality and the number of students at those schools,
 - (e) existing development within the locality that has been carried out under this Policy or [State Environmental Planning Policy No 5—Housing for Older People or People with a Disability](#),
 - (f) the road network within the locality and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the locality in the event of a bush fire,
 - (g) the adequacy of access to and from the site of the proposed development for emergency response vehicles,
 - (h) the nature, extent and adequacy of bush fire emergency procedures that are able to be applied to the proposed development and its site,
 - (i) the requirements of New South Wales Fire Brigades.
- (3) In exercising its functions under subclause (1) or (2), a consent authority must consult with the NSW Rural Fire Service and have regard to its comments.

Figure 1 below is an extract from the Bushfire Prone land map which confirms that the subject site is not identified as bushfire prone land.

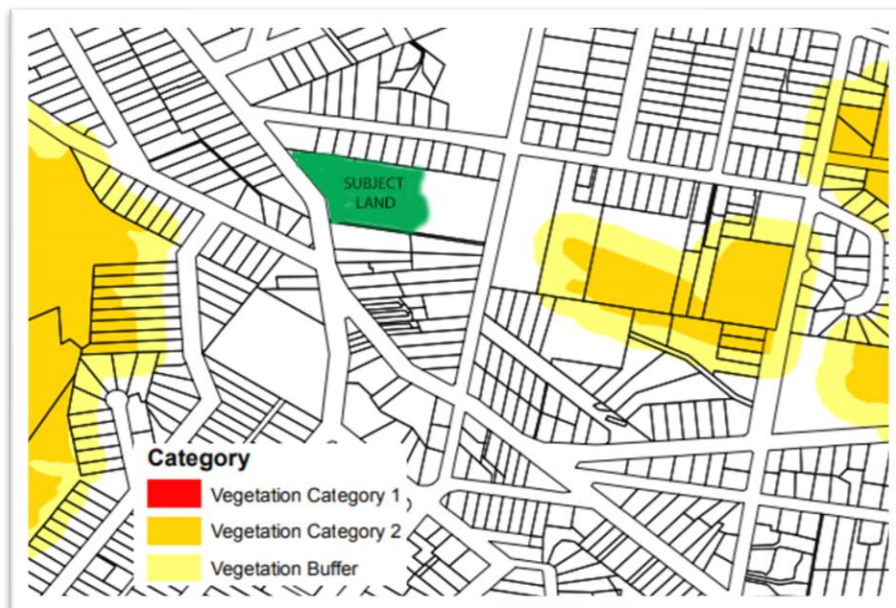


Figure 1: Extract from Lane Cove Bushfire Prone Land Map

The eastern boundary of the site is located some 125 metres from land which is identified as bushfire prone. Therefore subclause 1 does not apply. Based on the proximity to bushfire prone land, it is reasonable to draw the conclusion that the land is “in the vicinity of land identified as bushfire prone” as mentioned in subclause 2.

The applicant provided a response to the matters listed in subclause 2, which satisfies that subclause.

The Council consulted with the NSW Rural Fire Service as required by subclause 3 by letter dated 21 February 2018. The applicant’s response to the matters in subclause 2 was included in the referral letter.

The NSW RFS responded on 4 June 2018. The response was headed “Integrated Development” and requested information on asset protection zones in accordance with Planning for Bushfire Protection (2006).

It was clear that the RFS were attempting to assess the matter as if it was Integrated Development and would require a Bushfire Safety Authority, notwithstanding the clear references to clause 27 (2) and 27(3) of the Seniors SEPP.

As the development is not Integrated development, I formed the view that the consultation requirements of Clause 27 of the Seniors SEPP had been fully satisfied. I remain of this view, and I consider that nothing further is required to be done.

4. Planning Bushfire Protection 2019 (PBP2019)

It is instructive to consider the following two paragraphs on page 9 and 19 of PBP2019:

“Planning for Bush Fire Protection 2019 (PBP) provides development standards for designing and building on bush fire prone land in New South Wales.”

“A bush fire safety authority (BFSA) is required from the NSW RFS for residential and rural residential subdivision and SFPP developments on BFPL [Bush Fire Prone Land]. An application for a BFSA must address the extent to which the development complies with PBP.”

“The Commissioner of the NSW RFS designates what constitutes BFPL [Bush Fire Prone Land] and how it is to be mapped. Each council prepares a map in accordance with the guidelines and submits the map to the NSW RFS for certification by the Commissioner.”

It is clear from these statements and other provisions of the document that PBP applies to development on bushfire prone land only. It is also clear that the RFS Commissioner controls the mapping of bushfire prone land.

Section 100B of the *Rural Fires Act, 1997*, provides that a person must obtain a bush fire safety authority from the commissioner for a subdivision of bush fire prone land for residential or rural residential or development of bushfire prone land for a “special fire protection purpose”.

The Rural Fires Act contains no requirement for a bushfire safety authority for any development on land which is not bushfire prone. **Therefore, the subject development is not Integrated Development and the provisions of Planning for Bushfire Protection 2019 do not apply to the site.**

5. Query about fire sprinkler systems

Clause 55 of the Seniors SEPP provides:

“A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system.”

Although details of the sprinkler system are not provided on the DA Plans, this should not be considered as an oversight, as in my experience, this level of detail would usually only be presented in the subsequent construction certificate plans. A review of the DA documentation does reveal that the construction cost summary report includes a sum of \$2,305,286.00 for fire protection.

It is also noted that as a Class 9c building, compliance with the Building Code of Australia would require the installation of fire sprinklers.

For abundant caution, I have prepared a draft consent condition should the Panel see the need to include it in any consent. (Condition 9 in the attached revised draft conditions).

6. Draft Conditions to satisfy clause 18 of the Seniors SEPP

Conditions 157 and 168 have been included in the attached revised draft conditions.

7. Draft condition requiring submission of an operational management plan.

A new condition 10 has been included in the attached revised draft conditions.

Please don't hesitate to contact me should you have any questions or wish to discuss further.

Yours sincerely



Robert Montgomery MPlA
Principal



Lane Cove LEP 2009 Revised Clause 4.6 Exceptions to Development Standards – Height of Building

New Seniors Housing Development at

**No. 266 Longueville Road,
Lane Cove**

Prepared for:
AUSTRALIAN UNITY LIMITED
114 Albert Road
SOUTH MELBOURNE VIC 3205

Prepared by:
GSA PLANNING
Urban Design, Environmental & Traffic Planners
(A.B.N 18 003 667 963)
95 Paddington Street, Paddington NSW 2021
p: 02 9362 3364
e: info@gsaplanning.com.au

JOB NO. 16229
September 2021 (as amended)

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LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 REVISED CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Australian Unity Limited

SITE ADDRESS: No. 266 Longueville Road, Lane Cove

PROPOSAL: Construction of a New Seniors Housing Development

1. (i) Name of the applicable planning instrument which specifies the development standard:

Lane Cove Local Environmental Plan (LEP) 2009 (as amended)

(ii) The land is zoned:

R4 High Density Residential

(iii) The number of relevant clause therein:

Clause 4.3 – Height of Buildings

Clause 4.6 - Exception to Development Standards

2. Description of the Proposed Development and Relevant Background

The proposal is for the construction of a seniors housing development that includes three interconnected buildings which appear as two storeys when viewed from Longueville Road. These buildings vary in height from two to seven storeys above ground by utilising a steeply sloping site. The development comprises a 70-bed residential aged care facility, 82 independent living units/self-contained dwellings for seniors, recreational facilities for residents, communal courtyards and basement car parking for 122 vehicles. This breakdown has been slightly altered from the originally submitted DA as part of a refined design.

The proposal incorporates publicly accessible facilities including a café, a new public park fronting Longueville Road and a landscaped through-site link along the northern boundary, connecting the park to the existing nearby golf course.

As Lane Cove Council recognised a need for seniors housing in the local area, a design competition for aged care providers was conducted by Council. Australian Unity was the successful tenderer in that competition. The NSW Department of Planning and Environment (DP&E) subsequently granted a Site Compatibility Certificate advising that the site is suitable for increased development density.

The subject site has been earmarked for redevelopment since as early as **2007** when it was included in Council's Major Project Plan. Since that time, there has been extensive community consultation; the preparation of a Planning Proposal; a public hearing relating to the reclassification of the site; and amendments to Council's LEP to facilitate the redevelopment.

Council's reporting indicates that, at the time of the community consultation for the Major Projects Plan, over 80% of the Lane Cove community was supportive of the Plan and it was also found that 77% of the community supported the development of No. 266 Longueville Road.

The planning controls have been developed to encourage the redevelopment of the site for a seniors living development which in general terms, has a two storey height to Longueville Road and a six storey height at the rear. A background to the evolution of the planning controls that apply to the site is set out below.

Planning Proposal Prepared by Don Fox Planning (DFP)

The Planning Proposal to amend the planning controls that apply to the site was prepared for Council by Don Fox Planning in **2013**. This detailed document considered the existing conditions on the site, analysed the surrounding context and based on this, proposed a height limit for the subject site of RL 65.5. The Planning Proposal stated the following, inter alia:

It is recommended that an RL of 65.5 be adopted as the height limit across that part of the site proposed to be zoned R4....This height limit would allow for development of 2-3 storeys at the street frontage and around 6/7 storeys at the bushland interface.

Resolution of Council

The Planning Proposal was reported to Council on **15 April 2013** and Council resolved to proceed with the height of RL 65.5. The report stated, inter alia:

The consultant has taken into account the existing ground level, topography, surrounding building heights, and views through the site, as well as the desired future character. It was considered that "a suitable height for the subject site is one which retains a consistent bulk and scale at the street frontage and yet responds appropriately to topography and surrounding development".

The Planning Proposal was forwarded to the DP&E for assessment on this basis.

Report by NSW Department of Planning and Environment (DP&E)

In the Planning Proposal assessment report prepared by DP&E, the proposed height was considered and supported on the basis it would result in minimal impact and that the proposal would provide housing for seniors within an ageing local population. The report stated the following, inter alia:

The Planning Proposal is supported as it will have minimal impact on the surrounding environment and local community due to the proposed controls limiting proposed buildings to 2-3 storeys at the Longueville Road frontage and 6-7 storeys at the rear in response to the downward slope of the site.

Public Hearing into Reclassification of Land

As the Planning Proposal involved the reclassification of the subject site from 'recreational' to 'operational' pursuant to the Local Government Act 1993, there was a legislative requirement to hold a public hearing. At this hearing, the issue of building height was considered. The chairman of the public hearing considered submissions in relation to building height as well as concept envelopes prepared by Council (which were not substantially detailed). The chairman recommended the proposed building height be reduced to RL 62.8, being the parapet height of the adjoining 'Timbertops' development at Nos. 268-270 Longueville Road.

Further Council Resolution and LEP Amendment

Council Officers reported the recommendations of the public hearing to Council, seemingly without significant additional testing of architectural implications, and it was resolved to proceed with the LEP amendment at a height of RL 62.80. The LEP was subsequently made to this effect.

Development Application

On **10 August 2017**, a Clause 4.6 Variation Application was lodged with the Development Application (DA No. 117/2017) to Lane Cove Council. The Clause 4.6 related to several height non-compliances with a maximum height of RL 68.00.

Revised Design

Post lodgement, the design was refined after meeting with 'Timbertops' and in response to Council feedback and community submissions. A revised Clause 4.6 variation was submitted as part of an additional information package on **22 December 2017**. This responded to Point 4 of Council's letter dated **8 December 2017**, which requested additional assessment of the proposed non-compliances. Further, a response to submissions was submitted to Council on **1 February 2018**.

Council provided a further letter on **6 April 2018** which identified a series of items that were required to be addressed in greater detail. This included further justification in the Clause 4.6 for the proposed Level 7. Council's letter stated, inter alia:

It is considered that sufficient justification has been provided in relation to the exceptions described as "streetscape", "southern edge", and "roof structures".

...

Council's Independent Assessor has formed the view that a partial seventh storey may be justifiable if it was located in a position other than on the eastern end of building and perhaps near the lift overrun (sic).

A revised design submitted to Council in **May 2018** reflected this recommendation by relocating the seventh storey to Building B in the middle of the site.

Sydney North Planning Panel

On **11 July 2018**, the Development Application was presented to the Sydney North Planning Panel (SNPP) for determination. The Panel deferred the matter to allow the applicant to provide additional information. This included an increased setback along the southern boundary by one metre without any decrease on the northern side.

This revised Clause 4.6 Variation reflects the revised drawings which includes the additional one metre setback and responds to the additional justification requested by Council. It has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and this report has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This clause operates in conjunction with the Height of Buildings Map which indicates that a maximum building level of RL 62.80 applies to the subject site.

Areas of Height Non-Compliance

The height of the proposal varies across the site and within each of the proposed buildings (see Table 1 below and Figure 1 on the following page). Broadly speaking, there are three predominant areas of non-compliance which will be outlined individually below.

TABLE 1: EXTENT OF PROPOSED HEIGHT VARIATION			
Building	Roof Level	Lift Overrun Level	Extent of Variation
Building A	RL 63.70	RL 64.93	0.9m - 2.1m
Building B	RL 67.01	RL 67.76	4.21m – 4.96m
Building C	RL 63.40	RL 66.80	0.6m – 4.0m



Figure 1: Southern Elevation Showing Extent of Non-Compliance

Variation No. 1 – Streetscape

The proposal will present a portico and two storey built form to the street and with a parapet at the street frontage of RL63.40 is 600mm over the height limit. The street frontage height ranges between 4.3m and 7.2m and includes retail tenancies and pedestrian access with a high level of articulation.

Variation No. 2 – Southern Edge

The parapet of Level 6 along the southern edge of the development is proposed at RL 63.40, which is 600mm above the height limit.

Variation No. 3 – Roof Structures

The lift overruns and stairs servicing the respective buildings are the highest points of the development. However, these are setback from both the property boundaries and from the leading edge of the buildings (see Figure 2). It is noted that the centrally located rooftop landscaped courtyard is also located above the height limit. The location of some of the roof structures have been altered since the DA design.

Variation No. 4 - Level 7

Three 2 bedroom units are proposed on Level 7 which is proposed at the top of Building B. This level will have a maximum pitched roof height of RL 67.01, which is 4.21m over the height limit (see Figure 2).

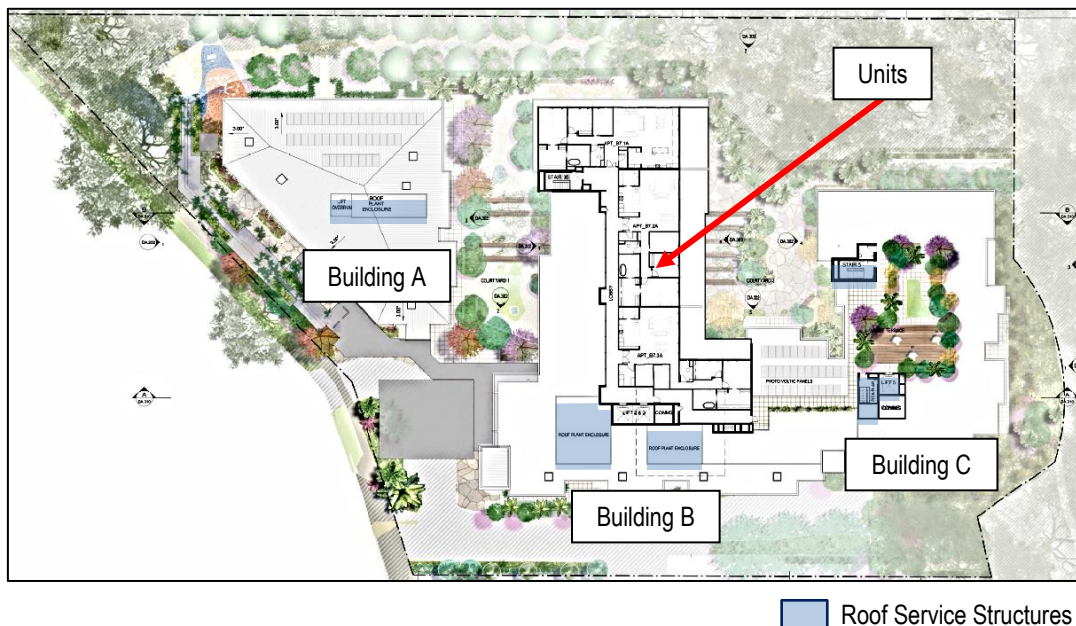


Figure 2: Level 7 Floor Plan Showing Units and Services

4. Consistency with the Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the recent Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118 (*Initial Action*), Preston CJ notes at [87, 90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still considered helpful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

- | | |
|---------------|---|
| Objective (a) | <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> |
| Objective (b) | <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i> |

The proposal seeks flexibility in the application of the height development standard to the development. It is our opinion that the height of the proposal is appropriate for a number of reasons including the constraints of the site, the compliant floor space ratio (FSR), minor additional overshadowing compared to a compliant building envelope, the high level of Apartment Design Guide (ADG) compliance, the quality streetscape presentation and the provision of additional accommodation for seniors housing to respond to an identified demand. In our opinion, these matters represented better planning outcomes both for and from the development.

The subject site has steep topography, falling considerably from the street to the rear of the site. In addition, the site has environmental constraints including the proximity of bushfire prone land and requirements for public through site links and green space. The development responds carefully to each of these factors and, in our opinion, presents a high quality urban design outcome. In order to respond to the site constraints and design requirements that have been outlined above, it has become necessary to increase the height of the building beyond the LEP height limit. This is supported by the high level of ADG compliance exhibited by the proposal.

There is a clearly identified demand for Seniors Housing within the Lane Cove Local Government Area (LGA) to meet the needs of an ageing population. The suitability of the site for this use is another long-standing consideration for the redevelopment of the site. The increase in the height of the building would allow additional housing to be provided (up to a compliant FSR) which will benefit the community at large.

In our opinion, the proposal is consistent with the objectives of Clause 4.6 by achieving a better outcome for and from the development.

5. Justification for Variation to Development Standards

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The clause is stated, *inter alia*:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Tests 1 and 3 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, the proposal is consistent with the desired character of the area. Reasons why the proposed development is consistent with the objectives of the height standard are explained below.

Objective (a): to ensure development allows for reasonable solar access to existing buildings and public areas

This objective will be addressed in respect of neighbouring buildings, buildings on the subject site and public areas.

Solar Access to Existing Neighbouring Buildings

In order to assess the overshadowing implications of the revised proposal, shadow diagrams were prepared prior to the presentation to the SNPP for 9am to 3pm on the winter solstice (June 21) along the northern elevation of the 'Timbertops' development. In addition, shadow diagrams of the eastern elevation are provided until 12:45pm, after which time there will be no overshadowing from the proposed built form. These shadow diagrams demonstrate the

additional overshadowing caused by Level 7 (**Variation No. 4**) compared to a compliant built form.

The overshadowing analysis to 'Timbertops' prepared by Steve King as part of the submission presented to the SNPP states, inter alia:

The full 3D model analysis confirms that between 9 AM and 3 PM on June 21 additional overshadowing of 'Timbertops' can be expected to affect only two apartments, each for approximately half an hour, where those apartments otherwise have the benefit of sun throughout the day.

In my considered opinion overshadowing impact of the proposed aged care and independent living unit development on neighbouring residential property is so small as to be negligible.

These shadow diagrams indicate that the non-compliant elements will not significantly impact solar access to the windows of the 'Timbertops' development. This is a substantial improvement on the DA design previously submitted.

In considering solar access, the ADG indicates that apartments should receive 2 hours sun between 9am and 3pm on 21 June. The shadow diagrams that were presented to the SNPP indicate that all windows of the adjoining property at Nos. 268-270 Longueville Road will receive 2 hours sunlight.

In response to the SNPP deferral, the proposal has been modified to include a further 1m setback from the southern boundary. This would invariably improve the already acceptable impact of solar access on 'Timbertops' compared to the DA. In this regard, additional comment was sought from Steve King based on the revised scheme who states, inter alia:

I note that the effect of the amended plans is to further improve the solar access for 'Timbertops'. The conclusions remain the same as previously.

The revised shadow diagrams indicate that the proposal will provide reasonable and compliant solar access for adjoining properties. The proposed Level 7 will not significantly increase overshadowing on the windows of the 'Timbertops' development and can therefore be considered consistent with the objective of the standard.

Solar Access to Existing Buildings on Subject Site

All existing structures on the subject site will be demolished and solar access is therefore not a relevant consideration.

Solar Access to Public Areas

Given the orientation of the subject site, the proposal will not result in significant overshadowing to the public domain. This includes both Longueville Road and the proposed through site link on the northern side of the development. The proposal includes a two storey bulk to Longueville Road which will maximise sunlight at the frontage. Accordingly, the development provides reasonable solar access to public areas. Design alternatives to maximise solar access are discussed under Objective (c) below.

Objective (b): to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable

In our opinion, the extent of impacts on adjoining or nearby properties in respect of loss of privacy and visual impacts will be reasonable. This will now be discussed.

Privacy

Variation No. 1 refers to height non-compliances at the street frontage. This area will overlook the street and is unlikely to result in any privacy impacts.

Variation No. 2 is not likely to result in any adverse privacy impacts as only parapets or the tops of windows are above the height limit.

Despite the roof top open space (**Variation No. 3**) being above the height limit, it is significantly set back from all boundaries and unlikely to result in adverse visual privacy impacts. In addition, the open space will be utilised by seniors who typically do not generate significant aural impacts.

As indicated, the proposed Level 7 units (**Variation No. 4**) were relocated to Building B under the revised design and will not have any sightlines towards the 'Timbertops' development. Following the SNPP deferral, the design was further revised to include an additional 1m setback from the southern boundary. This will further inhibit sightlines and maximise the privacy of the neighbouring residential flat building. These units are also recessed and well in excess of ADG building separation provisions.

To the north, privacy is maintained for dwellings along Richardson Street West by the landscape buffer and substantial building separation. A recent photograph from a drone shows sightlines in this direction (see Photograph 1). In addition, it is noted that the primary views are district views towards the east and future occupants are likely to predominantly face this direction.

Accordingly, the areas of non-compliance with the height standard will not have an adverse impact on privacy.



Photograph 1: Drone photograph showing sightlines directly to the north from the proposed Level 7 unit (RL 65.10)

Revised Visual Impact and Assessment by Dr. Richard Lamb

When viewed from the street, the proposal will have a two storey presentation which is compatible with the streetscape. The topography falls away within the site and the rear of the building is not readily visible from the street. When viewed from the golf course, the rear of the building is largely obscured by existing and proposed vegetation. In our opinion, the proposal will not have an adverse visual impact and the areas of height non-compliance will not be readily noticeable in the context of the development.

In order to assess any potential visual and view impact from the proposal, a visual impact assessment was undertaken by Dr. Richard Lamb as part of the previously submitted application. This was subsequently revised to reflect updated plans. As part of his assessment, Dr. Lamb considers visual impact on the public domain and states the following, inter alia:

The exposure of the amended proposal to the public domain would be confined to the Longueville Road streetscape. Parts of two buildings (Building A and B), the formal entrance from the street and the proposed new public park in the north-west corner of the site would be visible in the streetscape.

Although theoretically visible from the street, the amended Level 7 would generally be of minimal presence, as it is set back a substantial distance from the street, behind and beyond Building A. To the extent that it would be visible, the height of Level 7 would not cause significant view loss, or negative impacts on view sharing. Beyond the site to the east, relative to views from the street, the existing vegetation canopy is higher than the proposed development. Level 7 if it is visible, would be seen against a leafy backdrop of vegetation canopy.

The appearance of the development in the street, as in the existing DA, is restrained, of human and residential scale and appropriate to the intended use. The entry is inviting, visually and physically permeable. The intended materiality appears to be relevant to the adjacent residential context. The landscape plans will have the effect of setting the proposal into the existing leafy setting. The increased retention of existing trees will be a benefit in this regard.

It is considered that the appearance of the proposal in the public domain is acceptable. The increased extent of deep soil planting will assist in decreasing the visibility of hard surfaces in the view down the shared driveway from Longueville Road and complement the increased articulation of the southern façades of the development.

There is a substantial separation between the subject site and the adjoining development at 'Timbertops' which acts to minimise adverse visual impact between these buildings. It is noted that these separations are in excess of that required by the ADG.

Dr. Lamb similarly considers that the proposal is unlikely to have adverse impacts in terms of view loss and undertakes an assessment against the principles of *Tenacity v Warringah Council* (2004) NSWLEC 140 (*Tenacity*) within his report. He concludes the following, inter alia:

The analysis carried out above showed that the proposal would make a minor but significant improvement in the visual amenity of the site. Increased articulation of the southern façades, driveway design, landscape design, provision of tree planting and retention of existing vegetation would all contribute to a higher level of amenity, in particular with the southern neighbour, Timber Tops.

*The analysis also showed that the amended proposal would not cause significant view loss or overlooking. In addition, the part of the building that is not compliant with the development standard for height of buildings, Level 7, is predominantly not visible, or where it is visible, would not cause significant impacts on the streetscape, or the loss of valued items in views in *Tenacity* terms. The proposed amended building would not cause any significant increase in view loss, compared to a fully compliant building.*

Following this analysis and the application of relevant planning principles to considering the merits of the non compliance with the development standard for height of building, the application is considered reasonable. We consider that the proposal is satisfactory with regard to view sharing and a Clause 4.6 request to vary the development standard for height of buildings, in that regard, can be supported.

Dr. Lamb also notes that a fully compliant development would not result in any different view loss. Based on the assessment undertaken by Dr. Lamb, the building – in particular the non-compliant elements - will not result in adverse visual impacts, in terms of *Tenacity* and will not impact upon the public domain.

Following the presentation to SNPP, a request was made to specifically address visual impacts from four locations: Richardson Street West; Richardson Street East and the ridges to the east; Lane Cove Golf Course; and Longueville Road south of the site. This has been addressed in a Visual Impact Addendum Report, prepared by Dr. Lamb and separately submitted. This report, dated August 2018, concludes, inter alia:

The analysis carried out above showed the following outcomes:

1. Richardson Street West.

- a. The proposed building would be of no visibility from the majority of the street.*
- b. A small wedge of building would be visible between two residences on the south side of the street, from an isolated location on the northern footpath.*
- c. The part of the building visible would include part of Level 7.*

2. Richardson Street East and the ridges to the east

- a. The proposed building would not be visible from the public domain in streets on the ridge east of the Site.*
- b. A cameo view toward the west that includes roofs of buildings in Richardson Street East is available from the western terminus of the street. The Site is not visible as a result of heavy screening of views by vegetation in the view lines that is higher than the proposed building on the Site.*
- c. Partial views heavily screened by intervening vegetation are available from the western terminus of the street where access is available to the Lane Cove Golf Course. The Site is not visible and the proposed building would be unlikely to be visible for the same reasons outlined in 2(b) above.*

3. Lane Cove Golf Course

- a. The proposed building would not be visible from the majority of the Golf Course north or south relative to the Site.*
- b. Part of Levels 5 and 6 of the proposed building would be visible through a window of opportunity between existing trees, from an isolated location on the fairway of the 7/16th Hole, to the east of the Site.*
- c. Other parts of the building may be partly visible from the same or closely adjacent locations, seen through heavy vegetation screening.*
- d. The adjacent building at Timbertops which is at similar height to Level 6 of the proposed building is also of minimal visibility from the Golf Course, giving a clear indication that the likely future visibility of the proposed building would also be likely to be minimal.*

4. Longueville Road south of the Site

- a. The proposed building would be clearly evident in the street.*
- b. The bulk of the upper level of the building would be of minimal visibility.*

Accordingly, the proposal is considered reasonable in terms of visual exposure to the abovementioned locations.

Objective (c): to seek alternative design solutions in order to maximise potential sunlight for the public domain

There are three areas within and around the subject site that would be considered as public domain: Longueville Road to the west, the E2 zoned land to the east, and the proposed through site link within the northern setback of the development. Given the orientation of the subject site, the proposal will not result in significant overshadowing to the public domain areas identified. This is demonstrated in the 3D shadow diagrams prepared by Thomson Adsett and submitted separately (see Figure 3 on the following page)

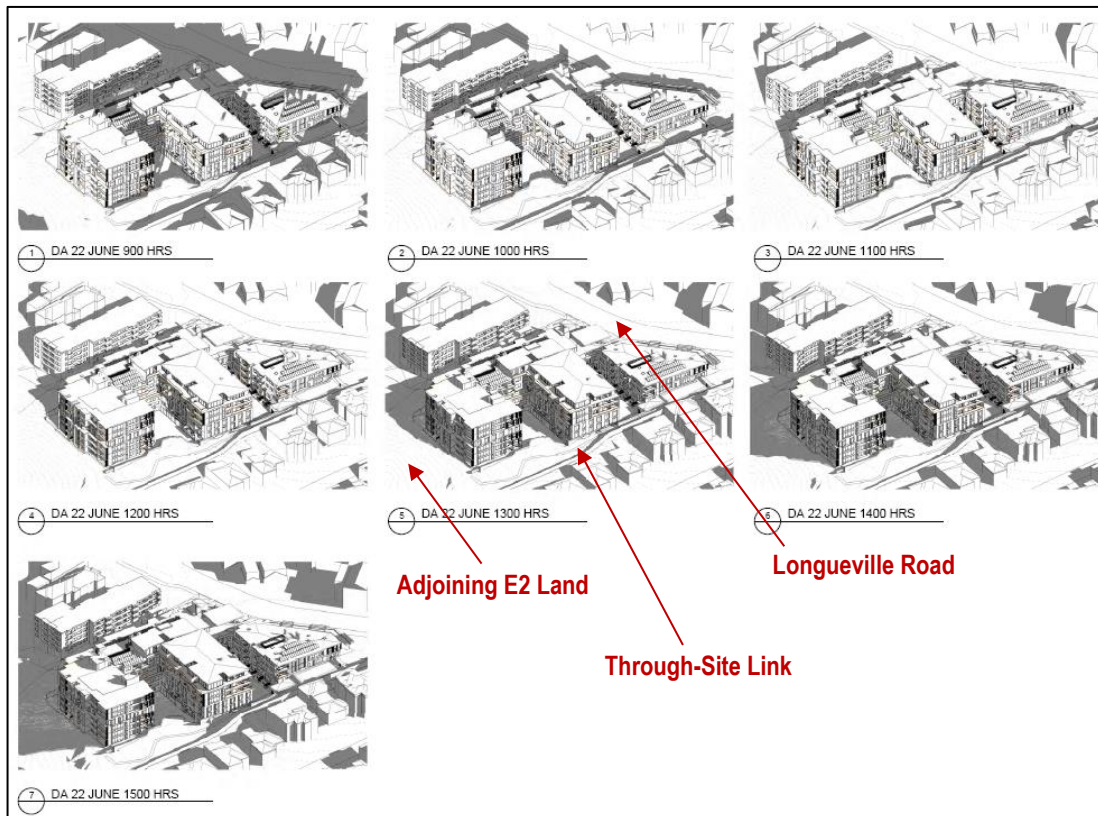


Figure 3: Shadow Diagrams Showing impact on the Public Domain

The proposal presents as two storeys to Longueville Road, which will maximise sunlight at the street frontage. In order to further improve solar access to Longueville Road, a reduction in the number of storeys at the street front (Building A) was considered. This would not result in a good planning outcome, as it would create a single storey presentation to Longueville Road. This is inconsistent with the adjoining Timbertops development, as well as other two storey built forms in the street. A reduction in the non-compliant lift shaft to Building A was also considered. However, as the lift shaft is set back from the front building line, its reduction would not affect the extent of solar access to Longueville Road.

The proposed public through-site link is located within the northern setback of the development. The proposed buildings, including the areas of height non-compliance, will not affect the extent of solar access available to this area, given the shadowing occurs to the south, east and west. A height reduction as an alternate design solution would therefore have no effect.

A reduction in the building height was also considered to Building C, in order to maximise solar access to the adjoining E2 zoned land to the east. It is noted that the area immediately to the east comprises dense bushland which creates existing overshadowing to the public domain. The extent of non-compliance at the easternmost edge of Building C is minor and a further reduction in height would not likely maximise sunlight to an existing overshadowed public area. While the lift overrun to Building C has a greater non-compliance, its reduction would also not maximise solar access. This is because it is set back substantially from the eastern edge and does not contribute to overshadowing to the E2 zoned land. In our opinion, the proposal is consistent with Objective (c).

Objective (d): to relate development to topography

In our opinion the proposed height does not alter the manner in which the development relates to the challenging topography of the site. The current state of the site includes filled areas, undulating topography and various 'benched' areas. The proposal responds to this, provides a high quality urban design outcome and a landscaping concept which will enhance the visual quality of the site. The areas of non-compliance at the upper levels of the building will not impact this, rather creating a consistent building line along the southern edge. The elevation will be appropriately articulated through the use of balconies and recessed elements. In addition, substantial landscaping will soften the appearance of the built form (see Figure 4). Accordingly, the proposal is consistent with Objective (c).



Figure 4: Southern Elevation

Test 3 - the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;

In the case of the subject site, there is an underlying purpose of facilitating the redevelopment of the subject site for the purposes of high density seniors housing. Throughout the process, Council have intended that this development would have a form of a two storey building at Longueville Road and a seven storey building towards the rear. This is in fact reflected in the indicative sections which form part of the Development Control Plan (DCP).

The proposal responds to this underlying purposes and presents a high quality seniors living scheme that was supported in principle by Council during the bid process for its design excellence. The scheme has a high level of ADG compliance and responds to the site constraints outlined throughout this document. It provides the floor to floor levels required to comply with the ADG and the additional services required by residential care facilities. The amended plans, with an additional 1m setback from the southern boundary when compared to the DA scheme, further increase ADG compliance and create an improved amenity outcome.

The non-compliances predominately relate to lift and stair overruns and the upper level of the roof (**Variation No. 3**). Although the top level (**Variation No. 4**) is above the height limit,

it is unlikely to result in significant privacy impacts as it is stepped back and provides no openings to the south. The provision of compliant driveway levels and compliant floor to ceiling heights is the primary driver of the height.

In order to reduce the extent of non-compliance, it would be necessary to remove the entire Level 6 and 7 of the building. This would significantly reduce the amount of accommodation the proposal can provide, impacting the consistency of the proposal with Council's long term objectives for the site. This would also thwart the underlying purpose of the standard to present a building that responds to the site constraints while having a height of between two and seven storeys. It would also reduce the economic viability of the scheme and potentially reduce the amount of community and public facilities that can be provided.

In addition, enforcing strict compliance would force the FSR compliant massing onto the ground floor which will dramatically reduce the provision of open space. Relocating the bulk to the ground may also compromise the proposed pedestrian through-link which provides a significant public benefit in the current design. Accordingly, although exceeding the height limit, the proposed massing promotes a better design and amenity outcome in accordance with Object (g) of the Environmental Planning and Assessment Act 1979 (EPA Act).

For these reasons, it is considered that compliance with the development standard is unreasonable and necessary in the circumstances of the case and the third test of *Wehbe* is satisfied.

The proposal satisfies both Test 1 and Test 3 of *Wehbe* and, in our opinion, this clearly demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variations are essential to the viability, operation and functioning of the proposed aged care facility and, in our opinion, there are sufficient environmental planning grounds for each. The environmental planning grounds of each variation will be addressed individually below.

Variation No.1 – Streetscape

Despite the height non-compliance, the development will present as two storeys when viewed from Longueville Road in either direction (see Figure 5 on the following page). This is consistent with the height and scale of any number of developments within the streetscape and is considered appropriate in this regard. In addition, the scale of the frontage is consistent with the desired number of storeys fronting the streetscape as identified throughout the Planning Proposal process.

In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal will provide a two storey built form on what is currently an under-developed site. This will be in keeping with the scale of the streetscape, which is a sufficient environmental planning ground for contravening the development standard as per the quote above. The

proposal will also facilitate to orderly and economic development of the land in accordance with Object (c) of the EPA Act.



Figure 5: Photomontages Showing the Two-Storey Form of the Proposal as Viewed from Longueville Road (DA Submission)

Variation No. 2 – Southern Edge

The non-compliant 600mm along the length of the southern edge creates a consistent building line and is unlikely to have a significant impact on the adjoining 'Timbertops' development.

The proposed building height will present as a two storey form when viewed from the street, a three to four storey form when viewed from the side and six storeys when viewed from the rear. This is consistent with the long standing built form intentions for the site which were established as part of the early considerations for redevelopment.

As indicated, the subject site presents a number of constraints which make it difficult to comply with the established building height. Several of these are discussed below.

Access Arrangement to the Subject Site

The floor levels of the proposal are constrained by the access to the subject site from the street. This needs to achieve specific gradients, minimise level changes and comply with the relevant Australian Standards for seniors housing. Again, the required levels of the driveway access have affected the minimum levels of the car parking and, in turn, increase the height of the building. The topography of the site falls substantially from the street to the rear. This affects the level of the building at the street and driveway access levels throughout the site.

Shared Driveway Configuration

A key contributing factor to the height of the proposed building is the driveway configuration both in terms of access to the site and the continued provision of access to 'Timbertops'. The existing street level, the shared driveway arrangement and the topography of the site dictates the levels of the driveway. The existing driveway at 'Timbertops' has a level of RL 51.95 and is significantly above the ground level of the driveway on the subject site at RL 50.09 (see Photograph 2).



Photograph 2: The existing driveway to the subject site and 'Timbertops' development

The revised proposal reconstructs a shared driveway to the subject site and 'Timbertops'. The difference in levels constrains access and affects the proposed floor levels (see Figure 6). A revised driveway plan is separately submitted.



Figure 6: The Shared Driveway Between the Subject Site (left) and 'Timbertops' (right)

Floor to Ceiling Height Requirements for Residential Care Facility

The integration of the aged care and retirement living is an innovative and progressive model of care not yet built in the Sydney housing market. This model of care will enable care services to

be easily delivered to residents in their home, a true ageing in place model of care. Partners can relocate to 'care' from a residential setting allowing them to maintain continuity in their living arrangements and connection to their community; thereby minimising disruption.

In relation to the proposed height non-compliance, Council's letter dated **8 December 2017** states, inter alia:

An additional 600mm in height may be able to be justified by the benefits of incorporating residential aged care and independent living dwellings within the same building.

The non-compliance of the parapet of Level 6 is a function of the increased floor to ceiling heights that are required to be provided to the residential care facility. There are increased service requirements and complexities for residential care facilities which in turn require an increased floor to floor height. A floor to floor height of 3.5m is proposed, compared to 3.2m for the residential only levels of the building. This has contributed to the 0.6m in building height above the LEP standard.

The floor levels of the independent living portion of the building are to be compliant with the ADG which requires a minimum clear ceiling height of 2.7m. Allowing for structure (min. 0.2m) and services (min. 0.3m), this requires floor heights of 3.2m.

Given the mix of the residential care and independent living uses, there is an increase in the floor to ceiling requirements of the building, however this does not increase the number of storeys above that envisaged by Council's controls.

Variation No. 3 – Roof Structures

The roof structures, which include the lift cores and roof terrace, are centralised and not readily visible from the public domain. Accordingly, they will not increase the perceived bulk and scale of the building and are unlikely result in any privacy impacts. The lift and stairs provide access to the roof terrace and plant equipment, improving the functionality of the building. The roof terrace will provide communal green space with a high level of solar access and amenity.

As indicated in Figure 2, the structures are relatively small and are not considered to result in adverse environmental impacts.

Variation No. 4 - Level 7

Variation No. 4 relates to the three two-bedroom residential care units described as Level 7 as part of Building B in the middle of the site. These have been moved from the rear of the site in accordance with the Independent Assessor's advice in order to reduce the visual impact resulting from the sloping site. The number of units on the upper level have been reduced and are further set back compared to the original DA submission. The additional 1m setback required by the SNPP in its Record of Deferral and reflected in the current plans represents a further improvement in respect of neighbour amenity. This will enhance the privacy of the adjoining 'Timbertops' development. The relocated Level 7 will continue to provide a considerable building separation from 'Timbertops', well in excess of the ADG requirements.

The revised design will further minimise aural impacts and inhibit direct sightlines to the neighbouring property. There will be no openings towards 'Timbertops' from Level 7. In addition, the proposal will only result in minor additional overshadowing over the northern and eastern façade windows of 'Timbertops' compared to a compliant built form. This is outlined in Steve King's Overshadowing Analysis separately submitted. Furthermore, the units will not be readily visible from the public domain and will therefore not contribute to the perceived bulk and scale of the development.

Accordingly, there are particular circumstances that justify flexibility in this instance and there will be planning benefits both for and from the development as a result of this flexibility. The

following section will identify why enforcing strict compliance with the numerical provisions of the control is unreasonable and unnecessary in the circumstances of this particular case and will also consider the merits of the proposal.

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) governs the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of these requirements of Clause 4.6(4)(a), for all of the reasons set out in this request, and also having regard to the unique characteristics of this particular site, in this particular locality; and having regard to the compliant FSR which has been carefully and skilfully distributed across the development in a manner that responds appropriately to the character of the local area, while also minimising any adverse amenity impacts. In our opinion, the proposal is consistent with the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R4 High Density Residential Zone, as discussed in Table 2 below. From this, we consider the proposal is in the public interest and should be supported.

TABLE 2 – HEIGHT COMPLIANCE WITH OBJECTIVES OF THE R4 HIGH DENSITY RESIDENTIAL ZONE	
Objective	Response
a) <i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposed height exceedance will provide additional housing within a high density residential environment. The three additional units on Level 7 will contribute to meeting the demand for seniors housing in the area.
b) <i>To provide a variety of housing types within a high density residential environment.</i>	As indicated in the Statement of Environmental Effects (SEE), the proposal will include aged care facility beds for seniors who require a higher level of care, as well as a mix of studio, one and two bedroom independent living units within a high density residential environment.
c) <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed height contributes to a proposal that will include a number of additional facilities including a café, shops, salon, wellness area, auditorium and other activity areas. These facilities will meet the day to day needs of residents and enhance well-being.
d) <i>To provide for a high concentration of housing with good access to transport, services and facilities.</i>	The proposed height allows for an increase in the concentration of housing in this ideal location near public transport. The proposed high quality design will provide access to a wide range of day to day services both on and off site. As indicated, the proposed Level 7 facilitates three additional units consistent with the high density residential character.
e) <i>To ensure that the existing amenity of residences in the neighbourhood is respected.</i>	The building has been designed to ensure that the existing amenity of residents in the neighbourhood is maintained. This is outlined throughout this Clause 4.6 Variation.
f) <i>To avoid the isolation of sites resulting from site amalgamation.</i>	This objective is not relevant as there will be no isolation of sites.
g) <i>To ensure that landscaping is maintained and enhanced as a major element in the residential environment.</i>	The design rationale for the location of Level 7 is to ensure there are no amenity impacts on neighbours and provide additional landscaping on the lower levels. The proposal complies with the FSR and the proposed massing promotes landscaping as a major element of the design. This includes the provision of a new park and landscaped pedestrian link through the site which will enhance the residential environment.

7. Clause 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the DP&E) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for a Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Council, Panel or Secretary are required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not likely to raise any matter of significance for State or regional environmental planning. An assessment against the relevant strategic plans was provided in the SEE. The height non-compliance is considered to be in the public interest as it will contribute to a high quality seniors housing development that will contribute to meeting the growing demand for this type of housing. In addition, the non-compliance provides a public benefit by maximising open space on the ground floor. This includes a new park and landscaped pedestrian through link which will be accessible by the public.

The public benefit of maintaining the development standard is not considered significant given the major non-compliances will not readily impact neighbouring properties or the public domain.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under Clause 4.6(5). The height exceedance will not result in significant amenity impacts and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 3 on the following page).

We are of the view that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the R4 High Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 3: Compliance Matrix

Para (Initial Action)	Requirement	Section	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	YES
11	What is the development standard	1	Height of Buildings	YES
12	What is the control	1 & 3	RL 62.80	YES
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement. The consent authority does not have to directly form the opinion of satisfaction regarding the matters in Clause 4.6(3)(a)&(b), but only that the applicant's written request has adequately addressed the matters required. The applicant bears the onus to demonstrate that the matters in Clause 4.6(3) have been adequately addressed in order to enable the consent authority to form the requisite opinion of satisfaction.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5	The proposal is consistent with Tests 1 and 3 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; and The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be indirectly satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	5	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed height facilitates a high density residential development consistent with the planning objectives of the area; The development will appear as two storeys in the streetscape, consistent with surrounding buildings; The proposal is consistent with the FSR development standard and generally consistent with the setback controls; The proposal provides building separation in excess of the ADG requirement and is sympathetic to the adjoining 'Timbertops' development; There are a number of site constraints that make strict compliance difficult including the shared driveway configuration and floor to ceiling heights for residential care facilities; The height non-compliance does not result in unreasonable privacy, overshadowing or view impacts; 	YES

			<ul style="list-style-type: none"> • The height non-compliance results in a better planning and design outcome than additional massing on the lower levels, which would reduce the provision of open space; and • The proposal contributes to meeting the demand for seniors housing development in an area with a rapidly ageing population. 	
26-27	<p>2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.</p> <p>This second opinion differs from the first opinion of satisfaction in that the consent authority must be <u>directly</u> satisfied about the matter in Clause 4.6(4)(a)(ii).</p>	5, 6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Webhe</i> . The proposal is also consistent with the objectives of the R4 High Density Residential Zone, as addressed in Table 2.	YES
28-29	<p>Second Precondition to Enlivening the Power – that the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.</p>	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council or Panel can grant development consent.	YES

General Conditions

1. The development be strictly in accordance with the following drawings:

Drawing Number	Title	Date and Revision	Prepared By
DA.100	Site plan	26.3.2019 Rev E	Thomson Adsett
DA.101	Demolition Plan	26.3.2019 Rev E	Thomson Adsett
DA.200	Level 1 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.210	Level 2 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.220	Level 3 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.230	Level 4 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.240	Level 5 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.250	Level 6 Floor Plan	26.3.2019 Rev E	Thomson Adsett
DA.260	Level 7 Floor Plan	24.8.2018 Rev D	Thomson Adsett
DA.270	Roof Plan	24.8.2018 Rev D	Thomson Adsett
DA.300	Elevations	26.3.2019 Rev E	Thomson Adsett
DA.301	Elevations	26.3.2019 Rev F	Thomson Adsett
DA.302	Elevations	26.3.2019 Rev E	Thomson Adsett
DA.304	Street Elevation	24.8.2018 Rev D	Thomson Adsett
DA.310	Sections	24.8.2018 Rev D	Thomson Adsett
DA.311	Sections	24.8.2018 Rev D	Thomson Adsett
DA.312	Sections	24.8.2018 Rev D	Thomson Adsett
DA.350	Driveway Plan-stormwater	26.3.2019 Rev E	Thomson Adsett
LA01	Tree removal and retention plans	23.8.2018 Rev H	Taylor Brammer
LA02	Site Plan	23.8.2018 Rev H	Taylor Brammer
LA03	Site Plan	23.8.2018 Rev H	Taylor Brammer
LA04	Play ground and Longueville road streetscape	23.8.2018 Rev H	Taylor Brammer
LA05	Longueville Road Porte-cochere	23.8.2018 Rev H	Taylor Brammer
LA06	Level 3 Courtyard	23.8.2018 Rev H	Taylor Brammer
LA07	Level 3 Courtyard character	23.8.2018 Rev H	Taylor Brammer
LA08	Level 3 Courtyard indicative sections and elevations	23.8.2018 Rev H	Taylor Brammer
LA09	Level 1 Courtyard	23.8.2018 Rev H	Taylor Brammer
LA010	Level 1 Courtyard indicative sections	23.8.2018 Rev H	Taylor Brammer
LA011	Level 3 residents terraces	23.8.2018 Rev H	Taylor Brammer
LA012	Level 3 residents terraces-indicative sections	7.6.2018 Rev H	Taylor Brammer
LA013	Bio retention plan	23.8.2018 Rev H	Taylor Brammer
LA014	Roof top plan	23.8.2018 Rev H	Taylor Brammer
LA015	Tree replenishment plan	23.8.2018 Rev H	Taylor Brammer
LA016	Planting plan	23.8.2018 Rev H	Taylor Brammer
LA017	Planting schedule	23.8.2018 Rev H	Taylor Brammer

except as amended by the following conditions.

- 2.1 The development shall comply with the maximum permissible floor space ratio for the site of 1.6:1, calculated in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The area of any car parking provided in addition to the 102 spaces required must be included in the calculation of gross floor area.

- 2.2 Prior to the issue of a construction certificate, the applicant shall provide amended plans to the satisfaction of Council which demonstrate how the floorspace has been reduced, which may include:
- Reducing the actual floorspace within the building;
 - Removing 22 spaces from the car park from either or both basement levels and enclosing those areas to be used for service activities; or
 - Converting some of the floorspace within the building to non-GFA as per the SEPP.

Reason: *to comply with the correct Floor Space Ratio development standard.*

- 3.1 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.
- 3.2 A design architect contemplated by paragraph 3.1 is to have direct involvement in the design documentation, contract documentation and construction stages of the project during the course of their appointment.
- 3.3 A design architect contemplated by paragraph 3.1 shall have full access to the site during the course of their appointment.
- 3.4 Evidence of the commission of a design architect contemplated by paragraph 3.1 shall be provided to Council prior to the release of a Construction Certificate.

Reason: *To ensure the design quality of the development is retained.*

Prior to Issue of a Construction Certificate

The following conditions numbered 4- 10 and 11-36 must be satisfied prior to the issue of a construction certificate:

4. The development shall provide 6 studio apartments and 2 one bedroom apartments as affordable places in perpetuity.
- Reason:** *To achieve compliance with Part 6 Clause 45(6)(a)(ii) of the State Environmental Planning Policy (Housing for seniors or People with a Disability)2004.*
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 design shall be in accordance with the intent of the concept drawings included in Landscape Plans revision E dated 23 August 2018. The playground equipment, surfaces and design shall comply with the relevant Australian Standards. with the Australian Standards.
6. Design of the Public Pathway between the buildings and the northern boundary must be submitted to Council for approval.
7. A Construction Traffic Management Plan shall be submitted to Lane Cove Council for further approval before issuing a construction certificate. Consultation with NSW Police, RMS and Transport for NSW / Sydney Buses will be required as part of preparation of the Construction Traffic Management Plan.
8. A 'Construction of a Multi Unit Footpath Crossing' application shall be submitted to Council prior to the issue of a Construction Certificate.
9. The development shall incorporate a fire sprinkler system as required by State Environmental Planning Policy (Housing for Seniors or Persons with a Disability) 2004 and the Building Code of Australia. Full details and specifications shall be submitted to the Principal Certifier prior to issue of a construction certificate.

10. An operational management plan shall be submitted to and approved by Lane Cove Council which includes, but is not limited to:
- Compliance with operational conditions of consent;
 - Management of noise from plant, delivery and service vehicles and general operations;
 - Procedures to reduce the potential for traffic congestion during the afternoon shift change;
 - Complaints handling and monitoring; and
 - Maintenance of public spaces.
- 11.1 The payment of a contribution pursuant to section 7.11 of the *Environmental Planning and Assessment Act, 1979* for additional persons in accordance with Lane Cove section 7.11 Development 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.
- 11.2 This contribution is for community facilities, open space/ recreation and road under the Lane Cove section 7.11 Development Contributions Plan which is available for inspection at the customer service counter, Lane Cove Council, 48 Longueville Road, Lane Cove.
- 11.3 The Section 7.11 Contribution is calculated in the following manner:

Residential Contributions

Dwelling Type	Contribution per dwelling type	Total Number of persons per dwelling	Contribution payable @ \$10,642/person 2019/2020 fees and charges
10 x 1 bedroom apartments	1.2 x 10,642 = \$12,770.4	10 x 12,770.4	\$127,704
1 x 1 bedroom + study apartment	1.2 x 10,642 = \$12,770.4	1 x 12,770.4	\$12,770.40
32 x 2 bedroom apartments	1.9 x 10,642 = 20219.8 20,000 (Cap)	32 x 20,000	\$640,000
39 x 2 bedroom + study apartments	1.9 x 10,642 = 20219.8 20,000 (Cap)	39 x 20,000	\$780,000
Total 82 apartments			\$1,560,474.40

The total Section 7.11 contribution for the proposal is **\$1,560,474.40**.

- 11.4 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.
- 11.5 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.
- 12 The applicant shall lodge with Council a \$50,000 cash bond or bank guarantee. The bond is to cover the repair of damage or outstanding works to Council's roads, footpaths, kerb and gutter, drainage or other assets as a result of the development. If Council determines that damage has occurred as a result of the development, the applicant will be required to repair the damage. Repairs are to be carried out within 14 days from the notice. All repairs are to be carried in

accordance with Council's requirements. The full bond will be retained if Council's requirements are not satisfied

The Bond will be held for a period of six months after satisfactory completion of the works.

- 13 An Inspection fee of \$580.00 is to be paid to Council for inspection of works on public land.
- 14 The applicant shall lodge with Council a \$20,000 bond or bank guarantee to cover the satisfactory construction/ reinstatement of concrete footpath, kerb and gutter, nature strips and road surface adjustments for the entire frontage of Longueville Road.

The full bond will be retained if Council's requirements are not satisfied. The Bond will be held for a period of six months after satisfactory completion of the works.

- 15 The applicant shall lodge with Council a \$20,000 bond or bank guarantee to cover the satisfactory construction of the proposed pedestrian access along the northern boundary of the site.

The Bond will be held for a period of six months after satisfactory completion of the works.

- 16 Payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or, where such a levy is payable by instalments, the first instalment of the levy) shall be made prior to the issue of a construction certificate.
- 17 The approved plans shall be submitted to Sydney Water online approval portal "Sydney Water Tap In" - www.sydneywater.com.au. This is to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. An approval receipt with conditions issued by Sydney Water (if determined to be satisfactory) is to be submitted to the Principal Certifier.
- 18 A Waste management plan to address the provision of Part Q of the Lane Cove DCP including onsite collection and management of waste recycling and clinical waste, shall be submitted to the Principal Certifier.
- 19 A Construction Noise Management Plan which addresses the NSW EPA's Interim Construction Noise Guidelines shall be submitted to the Principal Certifier.
- 20 Plans and specifications for the construction of the designated garbage area, detailing a smooth impervious floor graded to a floor waste and connected to the sewer, ventilation, fire sprinklers. The garbage area/room shall be well ventilated and fitted with fire sprinklers and meet fire safety standards in accordance with the Building Code of Australia.

21 Submission of a remedial action plan

- 21.1 A contaminated land consultant, certified by one of the industry certification schemes recognised by the NSW Environment Protection Authority, must prepare a remedial action plan (RAP) in accordance with the *Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land* and relevant guidelines made or approved by the NSW Environment Protection Authority under section 105 of the *Contaminated Land Management Act 1997*. The RAP must indicate how the site will be made suitable, after remediation, for the proposed development.
- 21.2 The applicant must provide the RAP to the Council.
- 21.3 The applicant must provide the RAP and written confirmation to the principal certifier (unless Council is the principal certifier) from Council that it is satisfied the site will be suitable for the proposed development after remediation is undertaken in accordance with the RAP.

22. An Environmental Management Plan (EMP) for the construction phase of the project. Which addresses measures and controls associated with dust, sediment and erosion controls and complaint management shall be submitted to the Principal Certifier.
23. An updated compliant BASIX calculation and certificate(s) shall be submitted to the Principal Certifier.
24. Structural Engineer's details shall be submitted to the Principal Certifier for the following:
 - a) underpinning;
 - b) retaining walls;
 - c) footings;
 - d) reinforced concrete work;
 - e) structural steelwork;
 - f) framing;
25. Plans and supporting calculations of the internal driveway, turning areas, ramps, garage opening widths, parking space dimensions and any associated vehicular maneuvering facilities shall be prepared and certified by a suitably qualified engineer as fully compliant with AS 2890 Series and Council's standards and specifications. The design and certification shall be submitted to the Principal Certifier.
26. Shade / sun protection must be provided to 50% of the Level 7 rooftop communal open space in the form of a fixed lightweight shade structure, pergola or similar. Details to be shown on Construction Certificate plans.
27. Communal barbeque facilities including sink and tap connection are to be provided at the Level 7 rooftop communal open space. Details to be shown on Construction Certificate plans.
28. A detailed Tree Protection Plan & Specification is to be prepared by a minimum AQF Level 5 consulting Arborist which provides details, plans and guidance as to how existing trees to be retained are to be protected prior to and during construction. This is to take into consideration all trees on site and trees within the neighbouring allotments and street verge which may be affected by the proposed works. This document is to be prepared and submitted to the Principal Certifier prior to the issue of a Construction Certificate and implemented prior to the commencement of any demolition, site preparation or construction works.
29. The stormwater drainage on the site is to be constructed generally in accordance with the plan numbered 16-002046 Rev D prepared by Calibre Consulting NSW dated 20-08-18. Certification by a suitably qualified engineer of the above plans is to be submitted to the Principal Certifier stating that the design fully complies with, AS-3500 and Part O, Council's DCP-Stormwater Management.
30. All retaining structures greater than 1m in height are to be designed and certified for construction by a suitably qualified engineer. The structural design is to comply with, all relevant design codes and Australian Standards. The design and certification shall be submitted to the Principal Certifier.
31. A geotechnical report is to be completed for the excavation and ground water impacts associated with this development. The Geotechnical Report and supporting information are to be prepared by a suitably qualified geotechnical engineer and be submitted to Principal Certifier.
32. The levels of the street alignment shall be obtained from Council. These levels are to be incorporated into the design of the internal pavements, car parking,

landscaping and stormwater drainage plans and shall be obtained prior to the issue of a Construction Certificate.

33. Excavation works associated with the proposed development must be overseen and monitored by a suitably qualified engineer. A Geotechnical Monitoring Program shall be submitted to the Principal Certifier prior to issue of a Construction Certificate. The Geotechnical Monitoring Program must be prepared by suitably qualified engineer ensuring that all geotechnical matters are regularly assessed during construction.

The Geotechnical Monitoring Program for the construction works must be in accordance with the recommendations of the Geotechnical Report and is to include

- Recommended hold points to allow for inspection by a suitably qualified engineer during the following construction procedures;
 - Excavation of the site (face of excavation, base, etc)
 - Installation and construction of temporary and permanent shoring/ retaining walls.
 - Foundation bearing conditions and footing construction.
 - Installation of sub-soil drainage.
 - Location, type and regularity of further geotechnical investigations and testing.
34. The applicant shall provide a construction methodology report to the Principal Certifier. The report shall be prepared by a suitably qualified engineer which demonstrates that the proposed excavation will have no adverse impact on structures on adjoining land within the zone of influence. The report must include a geotechnical report to determine the design parameters appropriate to the specific development and site and include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.
35. The applicant shall provide a dilapidation report to the Principal Certifier prepared by a suitably qualified engineer for all adjoining properties located within the zone of influence of the proposed excavation. The report shall consider the impacts of excavation works, dewatering and construction induced vibration and make appropriate recommendations to protect adjoining properties during construction.
36. The applicant shall prepare a dilapidation survey and report detailing the existing state of repair/condition of the road surfaces along Longueville Road, adjacent the site. The survey and report shall be submitted to the Council prior to the issue of a Construction Certificate.

Prior to Commencement of Works

The following conditions numbered 37 to 59 must be satisfied prior to commencement of works

37. No demolition or construction works shall commence until a Construction Certificate is issued by Council or private certifier.

38. Site Remediation

- 38.1 Before remediation work commences, the applicant must ensure a contaminated land consultant, certified by one of the industry certification schemes recognised by the NSW Environment Protection Authority, finalises the draft remedial action plan (RAP) approved with this development consent in accordance with the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land and relevant guidelines made or approved by the NSW Environment Protection Authority under section 105 of the Contaminated Land Management Act 1997.

- 38.2 Before remediation work commences, the applicant must:
- appoint a suitably qualified and experienced contaminated land consultant, where available certified by one of the industry certification schemes recognised by the NSW Environment Protection Authority, to supervise the site remediation and validation work to ensure it is undertaken in accordance with the remedial action plan approved under this consent, and
 - submit the contact details of the contaminated land consultant, including their accreditation under a recognised certification scheme, to Council.
39. Prior to any excavation works, the location and depth of all services must be ascertained. All costs associated with adjustment of the public utility will be borne by the applicant.
40. The applicant shall install appropriate sediment control devices prior to the start of any works on the site. The devices are to be installed in accordance with the approved erosion and sediment control plan. The devices shall be maintained during the construction period and replaced when necessary.
41. A vegetation management plan describing the methodology and plant species for the bushland buffer zone revegetation shall be submitted to Council for approval. The landscape documentation shall reflect the findings and recommendations of the project ecologist and a separate plan at a scale of 1:200 showing the plants selected, their mature heights & spreads, container size at time of planting, spacing and water requirements.
42. A 1.8 m high fence of chain mesh fence shall be erected along the common property boundary and the adjacent E2 zone. The fenced area shall not be used for the storage of building materials, machinery, site sheds, or for advertising and the soil levels within the fenced area shall remain undisturbed. A waterproof sign must be placed on every second panel stating: "NO ENTRY BUSHLAND AREA". The fence and sign are not to be removed or relocated for the duration of the work. The sign is to be A3 portrait in size with the wording in capital Arial Font size 100. Any additional text shall be in Arial font size 65.
43. A 1.8-metre-high chain mesh fence shall be erected at a radial distance of 6 metres measured from the edge of the trunk of trees #92 and #93 to enclose the trees. The fenced area shall not be used for the storage of building materials, machinery, site sheds, or for advertising and the soil levels within the fenced area shall remain undisturbed. A waterproof sign must be placed on every second panel stating: "NO ENTRY TREE PROTECTION AREA". The fence and sign are not to be removed or relocated for the duration of the work. The sign is to be A3 portrait in size with the wording in capital Arial Font size 100. Any additional text shall be in Arial font size 65.
44. Within the tree protection area of Trees 92 and 93, a layer of mulch, 100mm thick is to be in place prior to the commencement of any works on site and topped up at intervals to maintain a depth of 100mm throughout the construction period. The mulch shall be eucalyptus leaf mulch or approved equal. The mulch shall not be in direct contact with the tree trunk.
45. An inspection of all trees to be retained shall be conducted jointly by Council's Senior Tree Preservation Officer and the project Arborist following site establishment and the installation of tree protection measures to determine the current health of the trees. The findings shall be published in a dilapidation report and submitted to Council. The report shall include site photographs of all trees documenting any defects that exist at the time the joint report was conducted.
46. All tree assessment reports required by this development consent shall be prepared by a minimum AQF5 Level Arborist.

47. The area north of the building envelope in the 25 metre setback zone must be inspected by an AQF5 level Arborist and any dead, dying, diseased or dangerous wood removed and the replenishment trees installed prior to construction works commencing. This area is to be fenced off and shall remain inaccessible for the duration of the construction period with the exception of maintaining the undergrowth and the tree protection measures.
48. The developer is to establish a community liaison committee, consisting of Developer representatives as necessary, three community representatives, and an appointed Council staff representative, to facilitate information flow to the community regarding the development progress, issues and complaints that arise and solutions and remedies initiated. A newsletter should be produced and circulated to adjoining residents and occupants on a monthly or as agreed basis. Meetings are to be chaired by Developer representatives. The Committee shall operate during the construction phase of the development.
49. Prior to the commencement of any construction work associated with the development, the Applicant shall erect a sign(s) at the construction site and in a prominent position at all the site boundaries where the sign can be viewed from the nearest public place. The sign(s) shall indicate:
- a) the name, address and telephone number of the Principal Certifier;
 - b) the name of the person in charge of the construction site and telephone number at which that person may be contacted outside working hours; and
 - c) a statement that unauthorised entry to the construction site is prohibited.
- The signs shall be maintained for the duration of construction works.
50. A temporary connection to be made to the sewers of Sydney Water (where available) with an approved toilet structure and toilet fixtures being provided on the site before work is commenced. Where the Sydney Water sewer is not available a "Chemical Closet" type toilet shall be permitted.
51. The site shall be securely fenced to prevent access of unauthorised persons outside of working hours.
52. An approved type of hoarding shall be erected along the street frontage.
53. Separate application shall be made to Council's Urban Services Division for approval to complete any associated works on public property controlled by Council. This shall include hoarding applications, vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works.
54. Where the applicant requires the use of construction plant on the public road reservation, an "Application for Standing Plant Permit" shall be made to Council. Applications shall be submitted and approved prior to the start of any related works. Note: allow 2 working days for approval.
55. Due to requirements for safe traffic and pedestrian movement, loading or unloading of any vehicle or trailer carrying material associated with the development must not take place on the public road unless within a works zone. The works zone application is to be submitted to and approved by Council prior to the earlier of the following two situations occurring; either (a) issue of a Construction Certificate or (b) any work commencing, in the case where work is to occur on a Public Road during demolition. The developer must give the Council written notice of at least 14 days prior to the date upon which use of the work zone will commence and the duration of the works zone approval shall be taken to commence from that date. All vehicle unloading/loading activities on a public roadway/footway are to be undertaken within an approved work zone.
56. A site water management plan is to be submitted to Council for approval. The plan is required to be site specific and be in accordance with "Managing Urban

Stormwater – Soils and Construction” (the blue book) produced by the NSW Department of Housing.

57. Prior to the commencement of any vegetation clearing, the adjoining bushland area should be assessed for potential fauna by a suitably qualified and experienced fauna spotter and/or ecologist and a protocol established for the capture and relocation of any fauna to avoid harm or injury to wildlife.
58. The location of the stormwater outlet from the temporary sediment basin must be approved by Council’s Coordinator Bushland.
59. A set of construction drawings shall be prepared by the landscape architect which outlines the construction methodology, materials to be used, location of the substructure and all other relevant construction details. The plan set shall be submitted to Council for approval prior to construction works taking place on the northern and eastern access pathways.

During Construction

The following conditions numbered 60 to 133 must be satisfied during construction:

60. Where Lane Cove Council is appointed as the Principal Certifier, it will be necessary to book an inspection for each of the following stages during the construction process with 48 hours notice.
 - a) All reinforcement prior to filling with concrete.
 - b) Framework including roof and floor members when completed and prior to covering.
 - c) Installation of steel beams and columns prior to covering
 - d) Waterproofing of wet areas
 - e) Stormwater drainage lines prior to backfilling
 - f) Completion.

61. Construction Hours

- 61.1 All demolition, building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:-

Monday to Friday	7:00am to 6:00pm
Saturday	8:00am to 1:00pm
Sunday & Public Holidays	No work to occur

- 61.2 Where practical, immediately adjoining residents should be advised of any proposed blasting or rock breaking activities by close of business the previous day.
- 61.3 The applicant may apply to undertake critical concrete pours outside of approved working hours with approval from Council and provided all of the following requirements are satisfied:
 - the submission, at least seven (7) working days prior to the critical concrete pour, to Council of an application along with the prescribed fee, in the prescribed Council form, that includes a written statement of intention to undertake a critical concrete pour and that also contains details of the critical concrete pour, the number of such pours required, their likely time duration, impact statement and how foreseeable impacts will be addressed (i.e light spill/ noise/ traffic etc);

- adjoining and nearby affected residents being notified in writing at least two (2) working days prior to the pour, and a copy of this notice to be provided to Council for review prior to issue;
 - no work and deliveries to be carried out before 7.00am and after 10pm; and
 - no work occurring on a Sunday or any Public Holiday.
 - Following any critical concrete pour, the applicant must advise Council in writing no later than seven (7) working days after the completion of the pour, what measures were actually undertaken by the applicant to minimise any potential adverse impacts as a result of the pour, including but not limited to impacts with respect to noise, light spillage, and the positioning of the required vehicle(s), so that all related matters can be reviewed and any potential adverse events and/or impacts addressed in future critical concrete pours.
62. The electricity kiosk shall be positioned in “substation location 2” marked on the diagram attached to the letter prepared by GSA Planning dated 8 June 2018, ie inside the Longueville Road boundary approximately half-way between the porte cochere entry and the public park, subject to the approval of the electrical utility provider.
63. A check survey certificate is to be submitted at:
- a Initial layout (peg out survey)
 - b The establishment of each floor level;
 - c The completion of works.
- Note: All levels are to relate to the reduced levels as noted on the approved architectural plans and should be cross-referenced to Australian Height Datum.
64. All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.
65. Any cladding shall be of noncombustible material and shall not include any Poly Ethylene core.
66. All metal deck roofs being of a ribbed metal profile, in a mid to dark colour range with an anti-glare finish. The intent of the condition is to reduce sun reflection and glare to protect the amenity of surrounding residents.
67. All food preparation areas shall be designed and implemented in accordance with the requirements of:
- a) Food Act 2003 & Food Regulations 2004
 - b) Food Safety Standards 3.1.1, 3.2.2, 3.2.3
 - c) Sydney Water Corporation – Trade Waste Section
 - d) The Protection of the Environmental Operations Act 1997
 - e) Australian Standard AS 1668 Part 1 & 2
 - f) The Building Code of Australia.
68. To ensure that adequate provision is made for ventilation of the premises, mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provision of:
- a) The Building Code of Australia
 - b) AS 1668 Part 1 and 2 – 1991
 - c) Protection of the Environment Operations Act 1997

69. The covered car park must be provided with an adequate system of permanent natural ventilation or an approved system of mechanical ventilation.
70. All fresh air intake vents must be located in a position that is free from contamination and at least 6 metres from any exhaust air discharge vent or cooling tower discharge.
71. All exhaust discharge vents must be located in a position where no nuisance or danger to health will be created and at least 6 metres from any fresh air intake vent or natural ventilation opening
72. All engineering plans and work shall be carried out in accordance with Council's standards and relevant development control plans except as amended by other conditions.
73. A truck shaker ramp must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass the truck shaker. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.
74. The applicant shall construct / reconstruct the following:
- New 1.5m wide concrete footpath adjacent the entire frontage of Longueville Road to Council's satisfaction
 - New Kerb and Gutter along the entire frontage of Longueville Road to Council's satisfaction
 - Construct the proposed pedestrian access along the northern boundary to Council's satisfaction
 - Reinstate all adjustments to the road surfaces to Council's satisfaction.
 - Reinstate all existing nature-strips with turf and soil to Council's satisfaction.
- 74.1 The following items require Council inspections.
- All new footpaths on Council Property
 - New kerb and gutter on Council Property
 - All asphalt adjustments to the roadway
 - All the approved stormwater drainage works on Council property
- 74.2 Each item is to be inspected prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with Council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / setout requirements
75. Construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council. If a Council stormwater line is located on the property during construction, Council is to be immediately notified. Where necessary the stormwater line is to be relocated to be clear of the proposed building works. The developer must lodge a Stormwater Inspection Application form to Council. All costs associated with the relocation of the stormwater line are to be borne by the applicant
76. Public areas must be maintained in a safe condition at all times.
77. All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, such as the publication titled Environmental Guidelines: Assessment, Classification and Management of Liquid and Non – Liquid Wastes (EPA, 1999).
78. All stockpiles of potentially contaminated soil must be stored in an environmentally acceptable manner in a secure area on the site.

79. All contaminated soil removed from the site must be disposed at a waste facility that can lawfully receive that waste.
- Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.
80. Erosion and sediment control devices are to be provided. All devices are to be established prior to the commencement of engineering works and maintained for a minimum period of six months after the completion of all works. Periodic maintenance of the erosion and sedimentation control devices is to be undertaken to ensure their effectiveness.
81. A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (blue Book)
82. The following measures must be taken to control the emission of dust:
- a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work
 - b) Any existing accumulations of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter
 - c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system
 - d) All stockpiles of materials that are likely to generate dust must be kept damp or covered
 - e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.
83. The applicant shall:
- Inform in writing all contractors of Council's requirements relating to truck cleanliness leaving the site.
 - Keep a register of all contractors that have been notified, the register is to be signed by each contractor. The register must be available for access by Council officers at all times.
 - Place an employee within close proximity of the site exit during site operation hours to ensure that all outgoing heavy vehicles comply with Council's requirements. This employee shall liaise with heavy vehicle drivers and provide regular written updates to drivers on the conditions of entry to the subject site.
- Those drivers who have been found to continually not comply with Council's requirements, either by the developer or authorised Council officers, shall not be permitted re-entry into the site for the duration of the project.
84. Trade wastewater shall be disposed of in accordance with the permit requirements of Sydney Water. The proprietor shall contact the Trade Waste Office of Sydney Water so as to ensure that the sewerage pre – treatment system installed is appropriate for the proposed use of the premises.
85. Any drainage pit within a road reserve, a Council easement, or that may be placed under Council's control in the future, shall be constructed of cast in situ concrete and in accordance with Part O Council's DCP- Stormwater Management.

86. All access grates to the on site stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 m in depth must be fitted with step irons.
87. Pedestrian access along Longueville Road, including disabled and pram access, is to be maintained throughout the course of the construction as per AS-1742.3, 'Part 3 - Traffic control devices for works on roads'.
88. Where the applicant requires the use of public land controlled by Council land for placement of building waste, skips or storing materials a "Building waste containers or materials in a public place" application form is to be lodged with and approved by Council.
89. Any works required on the adjoining land to the south required to make good the transition across the boundary including, but not limited to, accessways, retaining walls, landscaping and drainage shall be carried out at the applicant's cost.
- 90. Remediation Works**
- 90.1 All remediation works shall be carried out in accordance with the requirements of the approved remedial action plan (RAP).
- 90.2 The removal, handling and disposal of asbestos from building sites shall be carried out in accordance with the requirements of the Occupational Health and Safety Act and the Regulations.
91. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.
92. Compliance with Australian Standard 2601 - The Demolition of Structures.
93. Compliance with the Waste Management Plan submitted in accordance with this consent.
94. Planting of street trees shall be in accordance with the approved landscape plan.
95. All vehicular access to the subject development shall be restricted to left in/left out (LILO) movements on road safety and network efficiency grounds. In this regard, a triangular raised median should be constructed at the driveway (within the property boundary) and the driveway splayed/angled to physically prevent vehicles turning right to/from the development.
96. An "All Traffic Left" sign is to be installed within the property boundary at the driveway (facing motorists exiting the site) as part of the development to enforce vehicles to exit the site in left turn only.
97. In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking), the driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from the property boundary.
98. All vehicles shall enter and exit the site in a forward direction. A swept path plan, demonstrating vehicles entering and exiting the site in a forward direction, shall be submitted to Council.
99. The proposed Car Park design shall comply with AS 2890.1-2004. This includes all parking spaces, ramps, aisles, disabled parking and loading areas. All other aspects of the Car Parking areas, including the dimensions of the ambulance bay are required to comply with AS 2890.2-2002 for Loading Facilities and Services Vehicles
100. The access to the car park shall comply with Australian Standards. AS 2890.1-2004.
101. Visibility requirements of the proposed access must comply with AS 2890.1-2004.

102. All accessible car spaces in the car park are to be adequately signposted and linemarked, and provided in accordance with AS2890.6: 2009 including the adjacent shared space and the height clearance.
103. The on-site garbage collection area shall have sufficient headroom in accordance with AS2890.2: 2002 and have sufficient area to allow the vehicle to enter and exit in a forward direction. The waste collection and holding area is to be clearly signposted and linemarked.
104. A qualified acoustic consultant shall be engaged to certify that the design and construction of the traffic noise affected portions of the building complies with the EPA's – Environmental criteria for road traffic noise. An acoustic report shall be submitted to Council with a Construction Certificate
105. All cycling racks and secure bike parking provided on-site must meet the minimum standards as outlined in Section 4.3 in Part R of the DCP and designed in accordance with AS 2890.3: 2015. Alternative designs that exceed the Australian Standards will also be considered appropriate.
106. The bicycle facilities are to be clearly labelled, and advisory/directional signage is to be provided at appropriate locations.
107. The existing bus shelter shall be relocated to another position at the front of the site. The relocation will require prior approval of State Transit Authority and the Lane Cove Local Traffic Committee.
108. Garbage room floors shall be graded to a floor waste, which shall be connected to the sewer. No drainage from garbage rooms shall be connected directly or indirectly to the stormwater drainage system.
109. Noise monitoring must be carried out by a qualified acoustical consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the demolition work.
110. The playground within the pocket park shall be fenced with appropriate child-proof fencing.
111. Playground equipment must conform to all relevant Australian Standards, legislation and policies including but not limited to AS 4685 Playground equipment and surfacing and AS 4422 Playground surfacing.

Bushland and Tree Protection and Management During Construction

112. The grading of the soil in the buffer area to achieve finished levels between the development site and the bushland area is to be done in 2 stages, with rough grading to be done at the most practicable time during the demolition stage and finish grade at landscape construction. Work must not commence in this area at either stage until an on-site meeting has been held with Council's Coordinator Bushland and a suitable work plan has been prepared.
113. During construction, the designated buffer area between the building area and the adjacent public bushland area must be kept clean of all building materials and rubbish. There must not be any filling or stockpiling of soil or building materials or dumping of building rubbish in this area. Any rubbish that is blown into these areas must be immediately cleaned up.
114. All plant species to be used within the bushland buffer and northern bushland planting and revegetation area must be indigenous to the Lane Cove municipality and meet the satisfaction of Council's Bushland Manager. A species list is available from Council on request.

115. Work, including control of any weeds, must not commence until an on-site meeting has been held with Council's Coordinator Bushland and a suitable work plan has been prepared. All bush regeneration works within the Bushland Buffer Area within the development site must be carried out to the satisfaction of Council's Bushland Manager.
116. Any trenching for the stormwater pipe through the E2 bushland area downhill of the bioretention basin is to be done by low impact techniques including hand digging, directional bore with root mapping where necessary. Heavy-duty jute mesh will be required to stabilise the soil near any digging together with pinning of the mesh and planting of locally indigenous ground covers. These works are done to the satisfaction of Council's Coordinator Bushland.
117. The sediment fence is to be located outside of and parallel to the catch drain in the north eastern corner of the site so that the grove of trees to be retained in the northern area are protected from any potential sediment runoff from the construction area.
118. Stormwater infrastructure within the Tree Protection Zones of trees to be retained is to be located as far away from existing trees to be retained as practical. Should the excavation for the stormwater pits and trenches conflict with any major structural roots (greater than 40mm diameter) of existing trees, their location and alignment is to be modified in consultation with the Project Arborist to avoid impact. Under no circumstances should roots be severed or cut without prior approval from the Project Arborist.
119. All stormwater and drainage works shall be in accordance with the stamped and approved Civil Report prepared by Calibre Professional services and approved by Council's Senior Tree Preservation Officer. Any variations to the approved plans need to be assessed by Council's Senior Tree Preservation Officer for approval prior to implementation.
120. Any utility services to be located underground within the TPZ are to be undertaken utilising excavation techniques that prevent or minimise damage to structural roots (roots greater than 40 mm diameter). To prevent soil compaction and root damage these works should be conducted with non-motorised hand tools or directional drilling.
121. The project Arborist shall conduct monthly inspections of all trees to be retained and protected and record their findings. Any mitigation measures required shall be proposed to Council for review and implemented upon advice from Council's Senior Tree Preservation Officer. A journal of the record of attending the site shall be submitted with the final condition report following construction.
122. The following trees, as referenced on Landscape Plan drawing number LA01 (Revision F dated 05.06.2018), are permitted for removal: Tree 9, 10, 11, 12, 13, 16, 17, 18, 24, 29 & 94. All other trees must be retained and protected as part of any development works regardless of the recommendations of any other reports or information shown on any other drawings.
123. The portions of the public access pathway located within the Tree Protection Zones of those trees to be retained are to be provided as a fire rated Fibre Reinforced Polymer (FRP) or steel boardwalk design elevated above existing ground levels with minimal excavation required for installation. Details of are to be submitted and approved by Council prior to the issue of a Construction Certificate.

Landscaping Works

124. All plant species to be used in and around the bioretention basin are to be local indigenous species to be the satisfaction of Council's Coordinator Bushland. The

applicant must provide verification that the appropriate plant species have been sourced and ordered from a suitable plant nursery.

125. The proposed *Angophora costata* and *Eucalyptus haemastoma* plantings located within the proposed raised planter adjacent the southern side of the driveway access must be supplied and installed in pot sizes of no smaller than 200 litres.
126. Screen planting is required to soften the electrical substation. These plants must be healthy, good quality nursery stock, planted at a minimum 45L pot size, being free of girdling roots and other defects and be at least 2m tall above the ground at time of planting with a height at maturity of at least 3 m tall. Plants must be spaced 1.5 m apart at planting. Species selected are to be locally native. A species list of local native plants is available from Council.
127. The Applicant must ensure that there are a sufficient number of groundcover and low shrubs, planted at appropriate distances and depths to eliminate bare mulched gardens areas within twelve (12) months of completion of all landscaping works.
128. The Applicant must ensure that all landscaping is completed to a professional standard, free of any hazards or unnecessary maintenance problems and that all plants conform to the specifications of AS 2303:2015 Tree stock for landscape use and NATSPEC.
129. The proposed *Archontophoenix cunninghamiana* located within the Level 3 south terraces are to be substituted for *Elaeocarpus eumundii* planted at a minimum 75 litre pot size.
130. Automatic irrigation systems are to be supplied to all landscape areas including communal open spaces to ensure adequate water is available to vegetation. Irrigation systems shall be fully automated and capable of seasonal adjustments.
131. Raised planters provided on site must include minimum depths that are in accordance with Section 1.10 of Part J of the Lane Cove Development Control Plan 2010. Details of compliance are to be shown on the plans for Construction Certificate.
132. Boundary fencing to the eastern rear boundary is to be provided as an open style palisade design with a minimum openness ratio of 70% and maximum height of 1.5m.
133. Balustrades are to be provided to the edge of raised planters at Level 7 communal open space as necessary which meet the relevant Australian Standards and Building Code of Australia. Details of compliance are to be shown on the plans for Construction Certificate.

Prior to Issue of an Occupation Certificate

The following conditions numbered 134 to 157 must be satisfied prior to the issue of an Occupation Certificate:

134. A Completion Certificate is to be issued by either the Principal Certifier or a qualified accredited Fire Safety Engineer, confirming that all identified Performance Solutions have been completed for the building prior to the issue of a final occupation certificate.
135. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site www.sydneywater.com.au then follow the "e-Developer" icon or telephone 13 20 92 for assistance.

Following application, a “Notice of Requirements” will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifier prior to occupation of the development.

136. Validation Report

- 136.1 On completion of remediation work, and before the issue of any occupation certificate, the applicant must submit a validation report, prepared by a suitably qualified and experienced contaminated land consultant, where available certified by one of the two industry schemes recognised by the NSW Environment Protection Authority, to Council and the principal certifier (unless Council is the principal certifier).
- 136.2. The validation report must confirm the site is suitable for the proposed development and demonstrate, in the opinion of the suitably qualified consultant:
- a) the objectives of the approved remedial action plan (RAP) have been complied with;
 - b) the remediation acceptance criteria in the approved RAP have been satisfied; and
 - c) all remediation work complies with the Contaminated Lands Planning Guidelines, the *Contaminated Lands Management Act 1997* and *State Environmental Planning Policy 55*.
- 136.3 The validation report must also:
- a) attach works-as-executed plan(s), prepared by a registered surveyor, that identifies the extent of the remediation work undertaken (including any on-site containment of contamination)
 - b) attach a notice of completion of remediation work as required under clause 18 of SEPP 55; and
 - c) confirm the site, following remediation or on-site containment, is suitable for the proposed development.
137. A certificate shall be submitted from a practicing mechanical engineer certifying that the design and operation of the mechanical ventilation system meets the requirements of AS 1668 Parts 1 and 2.
138. The proposed suspended path along the eastern rear boundary to the south east corner in the location as shown on the General Arrangement Plan prepared by Calibre Consulting is to be installed together with the boundary fence on the eastern rear boundary prior to the issuing of an occupation certificate. The access path is to be located on Council land and shall not encroach into the private open space of the eastern facing, ground floor units.
139. The on-site detention system shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in part O Council's DCP-Stormwater Management. An approved plate may be purchased from Council's customer service desk.
140. The publicly accessible pathway along the northern boundary shall be 1.5 metres wide, with minimal steps and of the least grade possible for the site conditions. It shall be built around the existing trees to be retained with a boardwalk style path made from fibreglass reinforced plastic material or approved equal that is resistant to decay and degradation.

141. Restoration of Council land and assets which may have been disturbed during construction must be completed.
142. All costs associated with the relocation or removal of services shall be borne by the applicant.
143. A final dilapidation report, recording structural conditions of all structures originally assessed prior to the commencement of works, must be carried out at the completion of the works and be submitted to Principle Certifying Authority prior to issue of an Occupation Certificate.
144. A final dilapidation report that includes details of all changes and damage caused to the surface of Longueville Road as a consequence of truck and/or plant movements associated with the construction of the development shall be submitted to the Council. The Council may require the applicant to repair any damage or may apply funds from the damage deposit held by Council for the cost of making good any damage caused to the road surface. The dilapidation survey and reports must be prepared by an engineer registered with the Institute of Engineers.
145. All works associated with the construction of the crossing to Longueville Road shall be completed prior to the satisfaction of the Council.
146. A suitably qualified engineer shall certify that the drainage system has been constructed in accordance with the approved plans, part O Council's DCP-Stormwater Management and AS-3500. The certification is to include a work as executed plan. The work as executed plan shall:
 - be signed by a registered surveyor, and
 - clearly show the surveyor's name and the date of signature.

All documentation shall be submitted to the Principle Certifying Authority.

A suitably qualified engineer shall certify that all retaining structures and excavations have been carried out in accordance with the relevant Australian Standards and Codes of Practice. The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted to the Principal Certifier.

147. All redundant gutter and footpath crossings shall be removed and the kerb, gutter and footpath reinstated to the satisfaction of Council's Urban Services Division.
148. A site inspection of all trees which have been retained shall be conducted jointly by Council's Senior Tree Preservation Officer and the project Arborist. The project arborist shall provide a report to Council which documents the current health of the trees post-construction. The report shall be submitted to Council and shall include site photographs of all trees documenting any defects that exist at the time the joint report was conducted.
149. A revised Arboricultural Impact Assessment shall be prepared and submitted to Council for approval. The revised report shall reflect the latest plans from all other consultants with specific attention focused on the latest civil, soil and stormwater management report and the impacts on Trees # 92, and #93.
150. A landscape practical completion report, prepared by the consultant landscape architect, shall be submitted to the Principal Certifier. This report must certify that all landscape works have been completed in accordance with the landscape working drawing.
151. A compliance certificate, prepared by the consultant landscape architect or horticulturalist, certifying that the proposed subsoil drainage and any associated waterproofing membrane has been installed in accordance with the details shown on the approved landscape working drawings and specification. The certificate shall be submitted to the Principal Certifier.

152. The applicant shall submit evidence of an agreement for the maintenance of all site landscaping by a qualified horticulturist, landscape contractor or landscape architect, for a period of 12 months from the date of issue of the Certificate of Occupation. The evidence shall be submitted to the Principal Certifier.
153. 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.
154. A restrictive or positive covenant shall be registered on the land for the continued provision of affordable places identified in this approval in perpetuity, prior to the issue of an occupation certificate.
Reason: *To achieve compliance with Part 6 Clause 45(8) of the State Environmental Planning Policy (Housing for seniors or People with a Disability)2004.*
- 155.1 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.
- 155.2 Access to the public pathway along the northern boundary of the site shall be closed between the hours of dusk and dawn. Lockable gates and signage shall be installed to the satisfaction of Council.
- 156 Documents giving effect to the creation of a positive covenant over the on-site detention system and over the basement pump out system shall be registered on the title of the property prior to the issue of an Occupation Certificate. The wording of the terms of the positive covenants shall be in accordance with part O Council's DCP-Stormwater Management.
- 157 Documents giving effect to the creation of a restriction as to user on the title of the land in accordance with section 88E of the Conveyancing Act, 1979 limiting the use of any accommodation to seniors or people with a disability only.

Operating Conditions

The following conditions numbered 158 to 168 must be satisfied at all times during the operation of the premises.

- 158 All sound producing plant, equipment, machinery, mechanical ventilation systems and or refrigeration systems, shall be designed and or located so that the noise emitted does not exceed 5db(A) above the ambient background level when measured from the boundary of any affected premises between the hours of 8am to 10pm. Between the hours of 10pm and 8am, noise shall not exceed the ambient background level when measured at the boundary of an affected premises.
- 159 All sound producing equipment shall comply with the Protection of the Environmental Operations Act 1997.
- 160 All outside lighting must be appropriately designed and directed to reduce the amount of light projecting towards the east, where lighting may affect ground-

dwelling mammals, such as the Common Brushtail Possum, Ringtail Possum and micro-bats.

- 161 All garbage shall be stored in a designated garbage area, which includes provision for the storage of all putrescible waste and recyclable material emanating from the premises.
- 162 Waste and recycling material generated by the premises must not be collected between the hours of 10pm and 7am on any day.
- 163 Sharp disposable instruments (such as needles, lances or blades) be placed in a special sharps disposable container and disposed of in accordance with the "Skin Penetration Guidelines" 1991, published by the NSW Health Department.
- 164 All air handling and water systems regulated under the *Public Health Act 1991* must be installed, operated and maintained in accordance with the requirements of the *Public Health (Microbial Control) Regulation 2000*. These systems must be registered with Council within one month of installation.
- 165 A final food premises inspection shall be arranged by the applicant and shall be undertaken by Council before trading commences.
- 166 At the completion of the 12-month landscape maintenance period, the consultant landscape architect/ designer must submit a final landscape condition report to Council certifying that all plant material has been successfully established, that any outstanding maintenance works or defects have been rectified.
- 167 Ongoing maintenance of the publicly accessible pocket park, playground and walkway shall be the responsibility of the Applicant, and shall remain useable and in a hygienic condition at all times to the satisfaction of Council.
- 168 The development shall be occupied only by seniors or people with a disability as defined in State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.

The reasons for the imposition of these conditions are listed under Section 4.17 of the *Environmental Planning and Assessment Act 1979* as are relevant to the subject of this consent.