

**SYDNEY NORTH PLANNING PANEL COVER SHEET – PPSSNH-1  
REPORT MEETING – 23 OCTOBER 2019**

<b>Panel Reference</b>	PPSSNH-1
<b>DA Number</b>	DA50/2019
<b>LGA</b>	Lane Cove Council
<b>Proposed Development</b>	Concept development application for a residential flat building
<b>Street Address</b>	20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove
<b>Applicant</b>	NSW Land and Housing Corporation
<b>Owner</b>	NSW Land and Housing Corporation
<b>Date of DA lodgement</b>	13 May 2019
<b>Number of submissions</b>	Eleven (11)
<b>Regionally Significant Development Criteria</b>	CIV > \$5 million - Council party to an agreement CIV > \$5 million – Crown development
<b>Capital Investment Value (CIV)</b>	\$12,932,700.00
<b>List of all relevant S4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• <b>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</b> <ul style="list-style-type: none"> <li>- SEPP 55 – Remediation of Land;</li> <li>- SEPP 65 (Design Quality of Residential Apartment Development) and Apartment Design Guide (ADG);</li> <li>- Lane Cove Local Environmental Plan 2009;</li> <li>- Lane Cove Section 94 Contributions Plan 1996 (as amended).</li> </ul> </li> <li>• <b>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)</b>  Not Applicable</li> <li>• <b>List any relevant development control plan: s4.15(1)(a)(iii)</b> <ul style="list-style-type: none"> <li>- Lane Cove Development Control Plan 2010.</li> </ul> </li> <li>• <b>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into</b></li> </ul>

	<p>A draft planning agreement has been entered into by the developer and Lane Cove Council.</p> <ul style="list-style-type: none"> <li>• <b>List any coastal zone management plan: s4.15(1)(a)(v)</b></li> </ul> <p>Not applicable.</p> <ul style="list-style-type: none"> <li>• <b>List any relevant regulations: s4.15(1)(a)(iv) e.g. Regs 92, 93, 94, 94A, 288</b></li> </ul> <p>Not applicable.</p>		
<b>List of all documents submitted with this report for the Panel's consideration</b>	<b>Attachment</b>	<b>Document</b>	<b>Prepared By</b>
	1	Architectural Plans	Stewart Hollenstein
	2	Draft Voluntary Planning Agreement	HWL Ebsworth Lawyers
	3	SEPP 65 Assessment	Henry Burnett
	4	Clause 4.6 Request	NSW Land and Housing Corporation
	5	DCP Assessment	Henry Burnett
	6	Supporting Documents (Tree and Survey Plan)	Various
	7	Draft conditions of consent	Henry Burnett
<b>Clause 4.6 Exceptions to development standards</b>	Clause 4.6 written request submitted to vary the maximum building height development standard in LCLEP 2009		
<b>Recommendation</b>	Approval subject to draft conditions.		
<b>Report By</b>	Henry Burnett – Senior Town Planner – Lane Cove Council		

### Summary of S4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? Yes

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### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? Yes

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### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not Applicable
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**Conditions**

Have draft conditions been provided to the applicant for comment?	Yes
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**Sydney North Planning Panel Meeting 23 October 2019**  
**20-22 MINDARIE STREET AND 30 PINAROO PLACE, LANE COVE NORTH**

**Subject:** 20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove North  
**Record No:** DA19/50-01 - 47390/19  
**Division:** Environmental Services Division  
**Author(s):** Henry Burnett

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Property:	20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove North
DA No:	DA50/2019
Description:	Concept DA for a 6 Storey Residential Flat Building pursuant to LCLEP 2009
Date Lodged:	15 May 2019
Cost of Work:	\$12,932,700.00 (CIV)
Applicant/Owner:	NSW Land and Housing Corporation

### **REASON FOR REFERRAL**

The proposal is referred to the Sydney North Planning Panel for determination as regionally significant development under SEPP (State and Regional Development) 2011 as the capital investment value exceeds \$5 million, the applicant is the Crown (Schedule 7, Clause 4) and there is a Council interest relating to the development (Schedule 7, Clause 3(d)).

### **EXECUTIVE SUMMARY**

The concept development application is for a 6 storey residential flat building on 20-22 Mindarie Street and 30 Pinaroo Street, Lane Cove North. The proposal seeks approval of a building envelope for a residential flat building. Detailed design and construction of the residential flat building would be subject to a built form development application to the Sydney North Planning Panel.

The proposal has been assessed against SEPP 65 – Design Quality of Residential Apartment Development including the nine design quality principles and the relevant design criteria of the Apartment Design Guide and is considered satisfactory as detailed in the report.

The proposal has been assessed against the relevant provisions of Lane Cove Local Environmental Plan 2009 and is considered satisfactory. The proposal does not comply with the maximum building height permitted under LCLEP 2009. A maximum 17.5m is permitted where a maximum 20.07m is proposed. The proposal was accompanied by a clause 4.6 written request seeking to vary the development standard. The merits of the request are outlined in the report and the provisions of clause 4.6 are considered. The development as proposed would result in a better planning outcome.

The proposal has been assessed against Lane Cove Development Control Plan 2010 and is considered satisfactory. The proposed departures to the maximum number of storeys and the precinct specific deep soil zones are addressed in the report.

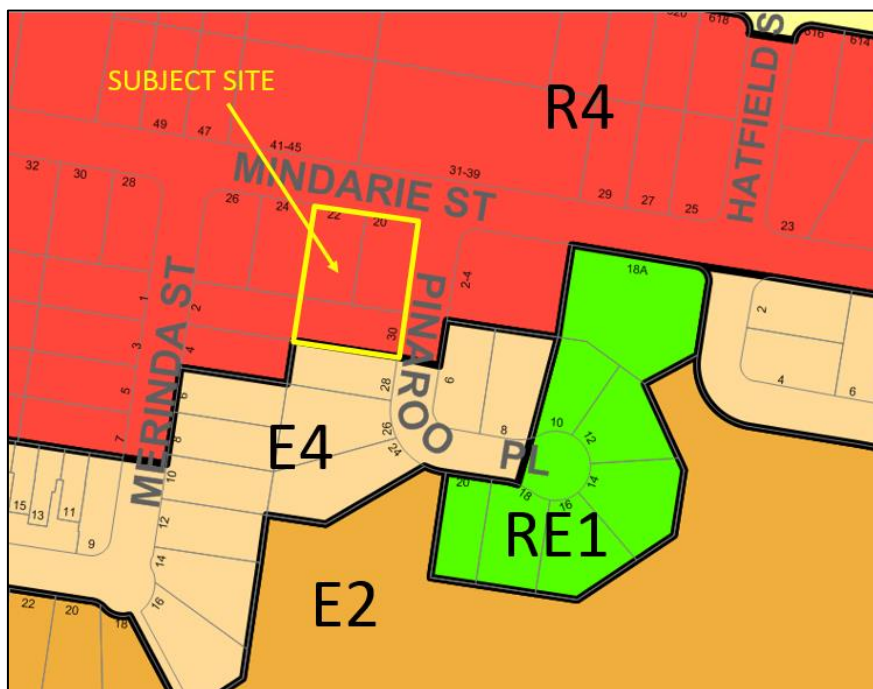
The proposal was notified in accordance with Council policy on two occasions and a total of 11 submissions by way of objection were received. The concerns raised in the submissions are detailed and addressed in the report and relate to traffic, privacy, overshadowing, bulk and scale, view sharing and the nature of social housing.

The Development Application is referred to the Sydney North Planning Panel with a recommendation that the applicant's clause 4.6 request be supported, and the concept application be approved.

## **SITE**

The subject site is known as 20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove North (Lot 81-83, DP 35865). The site has a total area of 1,745m<sup>2</sup>. The site has a frontage of 48.31m to Pinaroo Place and 36.57m to Mindarie Street. The site has a cross-fall from Mindarie Street to the south-east corner on Pinaroo Place of 7 metres across a distance of 60m at 11.66%. The existing allotments each contain a dwelling house.

The site is adjacent to single dwellings to the south, south-east and south-west on land zoned E4 Environmental Living. To the west is located single detached dwellings on land zoned R4 High Density Residential. To the east is located an existing residential flat building on the eastern side of Pinaroo Place. To the north, across Mindarie Street, are residential flat buildings. The site and surrounds are characterised by a transition from high density residential development (R4 zoning), to low density residential development (E4 zoning), to Mindarie Park (RE1 zoning) and Batten Reserve/Stringybark Creek (E2 zoning). The subject site is located on the point of transition between the R4 High Density Residential zone and the E4 Environmental Living zone as shown in Figure 1 below.



**Figure 1: Subject Site and Zoning Map**

## **STRATEGIC PLANNING BACKGROUND**

The subject site came to be zoned R4 High Density Residential in 2010 when the Department of Planning & Infrastructure rezoned part of the Mowbray precinct. In total, more than 1,500 dwellings can potentially be built in the precinct.

## **VOLUNTARY PLANNING AGREEMENT**

**Sydney North Planning Panel Meeting 23 October 2019**  
**20-22 MINDARIE STREET AND 30 PINAROO PLACE, LANE COVE NORTH**

At the time of the rezoning Council raised concerns about the lack of additional open space with the Department who subsequently agreed to co-fund with Council a strategic review in 2011-12. The strategic review report included a recommendation that an exchange occur to obtain 10-20 Pinaroo Place from Housing NSW for public open space (see Figure 1 for property locations) as an extension of an existing park on the corner of Mindarie Street and Kullah Parade.

An agreement was made between Council and NSW Land and Housing Corporation to transfer No. 16 Pinaroo Place to Council for public open space in exchange for a Voluntary Planning Agreement (VPA) in relation to a proposed development at 30 Pinaroo Place, 20 and 22 Mindarie Street Lane Cove.

A draft VPA was placed on public exhibition from 6 June 2019 to 5 July 2019. Council at an Ordinary Council meeting of 22 July 2019 resolved to enter into a VPA with NSW Land and Housing Corporation. A copy of the draft VPA subject to that report is attached (AT2).



**Figure 2: Development Site and VPA Site**

## CONCEPT DA HISTORY

Date	Description
15 January 2019	Pre-DA meeting held with NSW Land and Housing Corporation.
13 May 2019	Subject concept development application lodged.
6 June 2019	Proposal notified in accordance with Council policy.
25 June 2019	Meeting held with NSW Land and Housing Corporation to discuss preliminary assessment.
26 July 2019	Amended plans submitted by the applicant including the following amendments: <ul style="list-style-type: none"> <li>Increasing 5<sup>th</sup> &amp; 6<sup>th</sup> storey setback to Mindarie St from 7.5m to 10.5m;</li> </ul>

	<ul style="list-style-type: none"> <li>Increasing 5<sup>th</sup> &amp; 6<sup>th</sup> storey setback to Pinaroo Place from 6m to 9m;</li> <li>Increasing 6<sup>th</sup> storey setback to south boundary from 15m to 16.74m;</li> <li>Decreasing 5<sup>th</sup> storey setback from 15m to 12m;</li> <li>The maximum building height decreasing from 21m to 20.07m.</li> </ul>
<b>2 August 2019</b>	Amended proposal notified in accordance with Council policy.
<b>14 August 2019</b>	Council briefing with the Sydney North Planning Panel.
<b>11 September 2019</b>	Draft conditions sent to applicant.

## PROPOSAL

The proposal is for a concept plan for a 6 storey residential flat building on 20-22 Mindarie Street and 30 Pinaroo Street, Lane Cove North.

The proposal seeks approval of a building envelope for a residential flat building in relation to the parameters of **building setback/separation** and **building height**.

The proposal does not seek to establish a specific **floor space ratio**. Notwithstanding, reference plans were submitted with the original application indicating a floor space ratio of not greater than 1.8:1 (LCLEP 2009 maximum).

Detailed design of the residential flat building would be subject to a further development application to the Sydney North Planning Panel.

The methodology of proposing a concept application necessitating a subsequent detailed development application is for the purposes of NSW Land and Housing Corporation's Communities Plus model of housing delivery for which the subject site is designated.

## SECTION 4.15 ASSESSMENT

The following assessment is provided against the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979:

### Section 4.15 Matters for Consideration

(a) The provisions of:-

#### (i) Any environmental planning instrument:

#### SEPP 55 – Remediation of Land

The proposal is for a concept application and does not approve the construction of a residential flat building. Given the historic use of the land for housing and there being no significant concern regarding site contamination, the SEPP 55 assessment can be deferred for consideration to the detailed development application. A draft condition of consent is proposed in this regard to ensure appropriate reporting is undertaken for the detailed development application. (Refer draft condition 8).

### **SEPP 65 – Design Quality of Residential Apartment Development**

The proposal has been assessed against SEPP 65 – Design Quality of Residential Apartment Development and is considered satisfactory. The proposal was accompanied by a design verification statement and reference plans indicating compliance with SEPP 65 and the ADG can be achieved. An assessment against the design quality principles and relevant parts of the ADG is provided as an attachment to the report (**AT3**). The proposal complies with the numerical requirements of the ADG with the exception of the following:

<b>Design Criteria</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
<b>Building Separation</b>	9m (6m+3m) for first 4 storeys at zone transition	6m for first 2 storeys at zone transition.	No, 3m variation.

The ADG specifies that at a zone transition to a lower density area an additional 3 metres should be added to the minimum building separation requirement. The proposal provides for 6m building separation to the southern boundary adjoining an E4 Environmental Living zone. A variation to the southern building separation is considered satisfactory in this instance for the following reasons:

- The Mowbray Precinct DCP allows for a 6m separation for the first two storeys in lieu of 9m and utilisation of this site/precinct specific control, over the generally applicable ADG, is considered warranted in this instance:
  - *Development applications at the interface between the high and low density residential zones are to demonstrate that the amenity of adjacent houses has been a design consideration by stepping the building in at least 3m after the second level.*
- The proposal provides for an additional 3m on all other storeys at the interface, including an additional 7.74m (9m base + 7.74m additional) at the sixth storey.
- Shadowing from the reduced building separation is for a two storey component and remains less than an equivalent two storey dwelling given a minimum building separation of 6 metres is achieved for the first two storeys of the proposed residential flat building envelope compared with a minimum 1.5m permitted side setback for a two storey dwelling.

### **Lane Cove Local Environmental Plan 2009**

#### **Permissibility**

A residential flat building is permissible with consent in the R4 High Density Residential zone under LCLEP 2009. Reference is made in the determination that the residential flat building approved by the concept development application is pursuant to LCLEP 2009. This is to ensure that there is no misunderstanding at the detailed development application stage as to which environmental planning instrument the concept development application was made and assessed.

#### **Development Standards**

The following table provides an assessment against the relevant development standards contained within LCLEP 2009:



Development Standard	Control (Max)	Proposed (Max)	Complies
<b>Height of Buildings</b>	17.5m	20.07m	<b>No, 2.57m variation proposed. See assessment below.</b>
<b>Floor Space Ratio</b>	1.8:1	Not proposed as part of concept application. Notwithstanding, reference plans of 1.8:1 have been provided and they generally align with the proposed building envelope. That is, the proposed envelope is not considered to be over and above the maximum permitted FSR. The subsequent detailed development application would confirm proposed FSR, a draft condition is recommended limiting the maximum FSR in accordance with LCLEP 2009 (Refer draft condition 6).	N/A

#### Building Height

The building height has been calculated in accordance with LCLEP 2009. A maximum building height of 17.5m is permitted under LCLEP 2009. A maximum building height of 20.07m is proposed representing a variation of 2.57m or 14.7%.

Clause 4.6 of LCLEP 2009 allows for exceptions to development standards. Under Clause 4.6, 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.

The applicant has provided a written request seeking a variation to the development standard which is included as an attachment to this report (**AT4**). Under Clause 4.6(3) the written request is required to demonstrate:

- (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.*

A recent judgement of the NSW LEC in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 provides direction to the consent authority that they may need to themselves in fact form a view as to whether the matters in Clause 4.6(3)(a) and (b) are met and not simply rely on the applicant to do so. It is not enough for the applicant to simply cover the matters or that an argument had been advanced. As such the following assessment against Clause 4.6(3) presents both the applicant's argument and an assessment of that argument to ensure that Clause 4.6(3) is wholly considered:

**1. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

The submitted Clause 4.6 request seeks to rely on the 'First Method' established in *Wehbe v Pittwater Council* [2007] NSW LEC 82 which states that where the objectives of the standard are met the numerical compliance is unreasonable. Consistency with the objectives of the standard are addressed in Clause 4.6(3) below and the conclusions made are summarised as follows:

- Reasonable solar access is provided to all surrounding developments;
- The visual appearance of the building is in keeping with the high density character of the Mowbray Precinct;
- The building separation accords with the Apartment Design Guide and the reference design minimises overlooking to the sensitive E4 Environmental Living zone interface;
- Shadowing to the public domain (Mindarie Street and Pinaroo Place) is minimised by keeping within the building setbacks established in the DCP; and
- The building steps with the topography of the site and the localised height breaches are principally a result of the stepping of the building with the site.

Compliance with the objectives in lieu of numerical compliance is considered an appropriate means of establishing the unreasonableness of strict compliance with the development standard. Arguments put forward by the applicant, when advanced in the discussions under Clause 4.6(3) of this report, establishes in the view of Council staff that compliance with the development standard is unreasonable in the circumstances of this case.

**As detailed above, the written request is considered to demonstrate that compliance with the development standard is unreasonable in the circumstances of the case, satisfying Clause 4.6(3)(a) of LCLEP 2009.**

**2. Environmental planning grounds to justifying contravening the development standard.**

The environmental planning grounds provided by the applicant to address Clause 4.6(3)(b) are summarised as follows:

- The proposed development would allow for the delivery of social and affordable housing within the NSW Land and Housing Corporations Communities Plus model which provides for a mixture of privately owned and social housing within an integrated community. The additional height would allow for NSW Land and Housing Corporation to meet the planned Floor Space Ratio of the site;
- The proposed development would have minimal environmental impact and does not represent an overdevelopment of the site given no unreasonable amenity impacts, the high density character of the Mowbray Precinct, and the detailed solar access study outlining no unreasonable solar access impacts on adjoining properties or the public domain.

**In accordance with the above the written request is considered to demonstrate that there are adequate environmental planning grounds justifying contravening the standard, satisfying Clause 4.6(3)(b) of LCLEP 2009.**

**3. Consistent with the zone objectives and objectives of the development standard.**

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would 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. An assessment against the objectives of building height and the R4 High Density Residential zone contained within LCLEP 2009 are provided as follows:

### **Height of Building Objectives**

Clause 4.3 (1) provides the following objectives:-

- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas;*

**Comment:** The applicant has worked with Council staff to amend the scheme to improve solar access when compared to the original submission including a reduction in the maximum proposed building height. In particular amendments were made to increase the 5<sup>th</sup> and 6<sup>th</sup> storey street setbacks to Mindarie and Pinaroo Place and the 6<sup>th</sup> storey southern setback was increased to 16.74m, resulting in a reduction in the maximum building height proposed.

The amended proposal was accompanied by detailed solar access analysis which is contained within the Clause 4.6 request. The analysis stipulates that while the north-south orientation does impact solar access to the south and in particular 28 Pinaroo Place, there is reasonable solar access afforded to the front of 28 Pinaroo Place at 9:00am mid-winter and to the rear of the dwelling and private open space at noon mid-winter. The shadow cast from the proposed building envelope at 3:00pm primarily impacts No. 6 Pinaroo Place. However, the additional shadow compared with a DCP compliant design and compliant building height is negligible and it cannot be concluded that the proposed additional height results in unreasonable solar access. Refer to Attachment 1 for comparative solar access analysis.

The proposal seeks approval for a maximum building envelope and as a result the shadow cast is the maximum possible. It is likely, as per the reference plans submitted with the original application, that the detailed built form would have less of an impact. Solar access is considered satisfactory in this instance and would not result in less solar access provision compared with a compliant building envelope.

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

**Comment:** The proposal has been stepped in accordance with the ADG and DCP for zone transitions and the visual and privacy impacts can be appropriately ameliorated at the detailed development application stage. The upper storey which is where the height breach occurs is set back a minimum of 16.74m in excess of the 12m stipulated under the ADG. The additional set back provides suitable allowance to mitigate any privacy or visual impact of the upper storey at the detailed development application phase.

- (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain; and*

**Comment:** The overshadowing of the public domain is limited to the public road (Pinaroo Place) and between 1:00pm to 3:00pm mid-winter (within the standard 9:00am to 3:00pm mid-winter period). The sunlight available to the public domain at other times

within the period is maximized with good quality solar access available between 11:00am and 1:00pm. It is noted the site is in proximity to Mindarie Park, a higher value public domain, which is not overshadowed by the proposed building envelope within the specified period.

(d) *to relate development to topography*

**Comment:** The development adequately relates to the topography of the land stepping with the fall of the site in a north-west/south-east direction down Pinaroo Place. The height breach is primarily the result of the difficulty of having a diagonal cross-fall on a development site. As can be seen in the Mindarie Street and western elevation the extent of the height variation is largely indiscernible. Height breaches as a result of the stepping of the development limit overshadowing to the south and are considered reasonable in this instance.

**In accordance with the above, the development complies with the LCLEP 2009 objectives for the height control.**

#### **R4 High Density Residential Zone Objectives**

The R4 High Density Residential Zone objectives are as follows:

- *To provide for the housing needs of the community within a high density residential environment*

**Comment:** The proposal provides for the planned density (not exceeding an FSR of 1.8:1) within a high density residential environment.

- *To provide a variety of housing types within a high density residential environment.*

**Comment:** The proposal being the Communities Plus housing model would provide for a variety of housing types within a high density residential environment.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Comment:** N/A

- *To provide for a high concentration of housing with good access to transport, services and facilities.*

**Comment:** The proposal is located within the Mowbray Precinct established by the NSW Department of Planning in a rezoning of the locality. The provision of housing in this area and the strategic justifications around access to transport, services and facilities has already been established.

- *To ensure that the existing amenity of residences in the neighbourhood is respected.*

**Comment:** The proposal, as far as reasonably possible at a zone interface, respects the amenity of the neighbourhood. The proposal seeks to minimise the impacts on the adjoining E4 Environmental Living properties by complying with the building envelope in

relation to building separation and setbacks. The impacts of the additional height have been addressed in the report and would be satisfactory.

- *To avoid the isolation of sites resulting from site amalgamation.*

**Comment:** The proposal does not isolate any sites with four (4) R4 High Density Residential allotments to the west capable of amalgamation and development.

- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

**Comment:** The proposal provides for suitable opportunities for landscaping which would be considered under any future detailed development application.

**In accordance with the above, the development complies with the LEP 2009 objectives for the R4 High Density Residential zone.**

**The proposal satisfies Clause 4.6(4) and is considered in the public interest as notwithstanding the numerical non-compliance the proposal is consistent with the objectives of the building height standard and the R4 High Density Residential zone.**

**As Clause 4.6(3) and (4) are considered to be satisfied it is recommended that the Sydney North Planning Panel approve a variation to the building height development standard in the circumstances of this case.**

**(ii) Any proposed instrument (Draft LEP, Planning Proposal)**

Not applicable.

**(iii) Any development control plan**

**Lane Cove Council Development Control Plan 2010**

A detailed assessment against the relevant provisions of LCDCP 2010 is provided as an attachment to this report (**AT5**). The proposal complies with the numerical provisions of the DCP with the exception of the following:

Control	Provision	Proposal	Complies
<b>Number of Storeys</b>	6 storeys	5 storeys	No, 1 storey variation.
<b>Deep Soil Zone</b>	40%	27%	No, 13% variation.

A variation to the maximum number of storeys is considered satisfactory in this instance for the following reasons:

- The 6<sup>th</sup> storey is limited in size having the maximum envelope dimensions of 18.6m to Mindarie Street and 20.8m to Pinaroo Place. This represents an area of 386m<sup>2</sup> or

45.6% of the ground floor building platform, and 22.2% of the total site area. Further, given the envelope is inclusive of balconies, the actual building line and bulk of the building would be perceivably less;

- The 6<sup>th</sup> storey is well set back from adjoining properties and the street and the development provides a four storey podium characteristic of existing residential flat building development in the Mowbray Precinct. The setbacks and building separation to the 6<sup>th</sup> storey comply with the DCP and ADG to the north, east and west. To the south, a setback in excess of ADG/DCP requirements is provided (16.74m proposed where 12m is required).
- The objectives of the clause are met despite non-compliance with the prescriptive measure. The relevant objectives in Lane Cove Development Control Plan 2010 Part C – Residential Localities – Locality 6 – Mowbray Precinct, are as follows:
  - *4. To enhance the amenity of the existing and future residents in the precinct.*
  - *5. To provide an appropriate transition to the adjoining residential uses.*
  - *6. To retain the treed outlook onto the Precinct from the dwellings to the south.*
- The impact of the 6<sup>th</sup> storey on the amenity of the existing and future residents is addressed under the building height considerations earlier in this report and therefore Objective 4 is considered to be met. The additional setback from the southern boundary for the 6<sup>th</sup> storey is considered to appropriately transition to the adjoining residential uses satisfying Objective 5. The treed outlook is retained as the placement of floor area on the 6<sup>th</sup> storey allows for more of the site to be provided for deep soil planting zones, satisfying Objective 6.
- There are other examples of 6 storey residential flat buildings approved in the Mowbray Precinct where the floor area was placed on a 6<sup>th</sup> storey to provide for a better quality transition to the E4 Environmental Living zone to the south.

A variation to the deep soil zone requirements of the Mowbray Precinct is considered satisfactory in this instance for the following reasons:

- The proposal complies with the prescribed setbacks at the ground floor allowing for substantial areas of landscaping. The basement car park generally aligns with the building platform with the exception of a part of the basement extending south of the proposed building platform, however extensive areas are available to the north, east and west;
- The proposal exceeds Apartment Design Guide (ADG) minimum deep soil zones with 27% of the site provided as a deep soil zone where the ADG includes a guide that sites greater than 1,500m<sup>2</sup> should be provided with 15% deep soil;
- The proposal exceeds the standard landscaping requirements contained within Part C3 of Lane Cove Development Control Plan 2010 which specifies a minimum 40% landscaping which is to include a minimum 25% deep soil zone and minimum 15% on

structure planting. The proposal provides 27% deep soil zone planting and 15% on structure planting, being a total 42% landscaping;

- The objectives of the clause are met despite non-compliance with the prescriptive measure with the proposal capable of *preserving and enhancing the landscape character of the area and providing for future significant vegetation such as large and medium sized trees* (Lane Cove Development Control Plan 2010 Part C – Residential Localities – Locality 6 – Mowbray Precinct - Objective 1).

**(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The impacts of the development have been considered and demonstrated to not adversely impact the locality.

**(c) The suitability of the site for the development**

The site suitability has been established as the site constraints have been addressed as outlined within this report.

**(d) Any submissions made in accordance with this Act or the regulations**

The proposal was notified on two occasions in accordance with Council policy and 11 submissions were received by way of objection. A copy of the submissions has been provided to the Sydney North Planning Panel. The submissions are summarised and addressed within the following table:

Concern	Comment
<b>Building Height and Form</b>	
The height should be limited to 17.5m and 5 storeys in accordance with the revised rezoning for the Mowbray Precinct.	The merits of the building height variation are addressed in the report, considered satisfactory and supported.
The 6 <sup>th</sup> storey should be 50% of the 5 <sup>th</sup> storey in accordance with the Mowbray Precinct DCP.	As outlined in the DCP table of compliance the upper storeys are considered capable of compliance with the DCP noting that balcony areas are excluded from the 50% requirement, but included in the proposed building envelope.
The scale of 2 Pinaroo Place is more appropriate which provides for better building separation to the adjoining residential properties.	The planning controls for 2 Pinaroo Place are not comparable to the subject site. The maximum building height of 2 Pinaroo Place is 14.5 metres under LCLEP 2009 and 4 storeys under the DCP, where the subject site is 17.5m and 5 storeys.  In any event, the proposed building envelope provides

**Sydney North Planning Panel Meeting 23 October 2019**  
**20-22 MINDARIE STREET AND 30 PINAROO PLACE, LANE COVE NORTH**

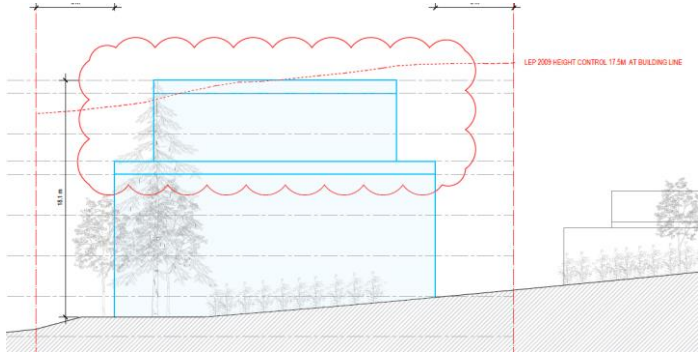
Concern	Comment
	<p>for a greater building setback (to the southern boundary) when compared with 2 Pinaroo Place. The proposed building envelope provides a 9 metre setback at the 3<sup>rd</sup> and 4<sup>th</sup> storey where 2 Pinaroo Place provides only 6 metres. The proposed building envelope also provides for a greater setback to Pinaroo Place (6m compared to 3.5m).</p> <p>It is also noted the 2 Pinaroo Place building appears as 5 storeys to Mindarie Park, a single storey variation to the DCP.</p>
<p>The proposal does relate to topography as it doesn't recess ground level apartments and the basement level protrudes above the existing ground level.</p>	<p>The proposed building relates to the topography by stepping the design with the topography of the site. The sectional detail shows recessing of the ground floor from both Mindarie Street and the western boundary (refer Drawing 1301 and 1302). In relation to the basement level, the basement follows the topography of the site outside of the building envelope, and within the building envelope is above natural ground level for a portion of the platform to the south-eastern corner. The protrusion is considered satisfactory given the recessing of the building at the high-side of the site.</p>
<p>Given the transitional nature of the site being adjacent to an E4 Environmental Living zone, a maximum townhouse development should be permitted.</p>	<p>The site is zoned R4 High Density Residential. A residential flat building is permitted in the zone. The proposed building envelope provides for the additional setbacks required at the zone transition.</p>
Amenity	
<p>Overshadowing including the following:</p> <p>28 Pinaroo Place - no reprieve between 9:00am and 3:00pm mid-winter. The current condition of full northern sun access across the northern façade of 28 Pinaroo Place should be maintained.</p> <p>26 Pinaroo Place – overshadowing from a LEP compliant and proposed design blocks solar access to approved extension with associated amenity and potential health impacts.</p>	<p>The proposed building is no worse than a DCP compliant building envelope as shown in Drawing No. DA1403 in relation to the impacts on 26 and 28 Pinaroo Place. This is achieved by setting back the 6<sup>th</sup> floor 16.74 metres from the rear boundary. Achieving the existing solar access to both 26 and 28 Pinaroo Place is considered unreasonable given the site zoning, the site orientation and the additional storey resulting in no additional overshadowing to the southern adjoining properties. It is again reiterated that the overshadowing is a maximum possible overshadowing which is likely to reduce upon detailed design including balcony openings and building articulation etc. It is further noted that the overshadowing in mid-winter and the solar access outcome in Spring/Autumn/Summer would be improved.</p>
<p>Privacy including overlooking of the southern adjoining properties.</p>	<p>Privacy at a base level is achieved by DCP compliant setbacks. Detailed privacy measures would require further consideration at the detailed development</p>



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**20-22 MINDARIE STREET AND 30 PINAROO PLACE, LANE COVE NORTH**

<b>Concern</b>	<b>Comment</b>
	application stage.
Communal open space location would cause amenity impacts on the adjoining properties.	Indicative amenity impacts from the communal open space location are satisfactory. However further detailed consideration at the detailed development application stage is important.
<b>Traffic and Parking</b>	
Parking in the reference design does not comply with Lane Cove Development Control Plan 2010.	No variation to the parking provisions of LCDCP 2010 would be approved under the concept development application (Refer draft condition 9).
Traffic already congested and this would contribute to this matter. Parking restrictions should be considered on Pinaroo Place.	Parking restrictions are being considered by Council in relation to Mindarie Park and the impact on Pinaroo Place.
Driveway location away from E4 Environmental Living zone due to potential noise impacts, pedestrian safety and the maintenance of a low-density streetscape character.	The driveway location is not approved by the concept development application. Notwithstanding, it is considered suitable to provide for a car park entry at the lowest part of the site. Suitable acoustic, landscaping and amenity protection would be required to be detailed at the detailed development application stage should the driveway be located on Pinaroo Place.
<b>Other</b>	
Social housing and the details of what is being proposed as part of the subject application.	The proposal seeks approval under LCLEP 2009 for a concept residential flat building. Accordingly, technically the proposal does not include a social housing component. However, it is anticipated that the site would form part of the NSW Land and Housing Corporations Communities Plus housing model. More information on this model is obtainable from NSW Land and Housing Corporation.
Tree removal is not satisfactory.	The subject proposal does not consent to any tree removal. Council's tree officer has reviewed the proposal and provided tree preservation principles for the detailed development application to observe. These principles may require refinement of the building envelope to as best possible retain existing trees.
Additional hardstand would overburden Stringybark Creek because of stormwater run-off.	The detailed development application would be required to comply with Part O – Stormwater Management of Lane Cove Development Control Plan 2010 which includes provisions for On-site Detention which provides for the detention and managed release of stormwater.
Decrease in the value of adjoining	Property value is not a planning consideration. In any

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Concern	Comment
apartments due to an oversupply of apartments.	event it is noted that a portion of the apartments would be set aside for social housing which would not directly compete with apartment market demand.
Construction vehicles, dust and noise is a safety hazard to uses of Mindarie Park.	Construction matters would be considered at the detailed development application stage and there are considered suitable mechanisms for construction management to minimise hazards during the construction period.
Bushfire risk is not acceptable to this form of high-density development.	The NSW RFS reviewed the concept development application and raised no objection subject to recommendations which would form a consideration under the detailed development application.
The VPA should not be used as a grounds for supporting the subject application.	As outlined in the report, the VPA does not contribute to the merits of the building height variation proposed by the applicant in accordance with the Act.
View Sharing	<p>Concerns of the northern adjacent residential flat buildings are noted in particularly views to the tree canopy of Batten Reserve and Stringybark Creek to the south. However, the proposed building when viewed from Mindarie Street would largely read as compliant with the building height limit as shown in Drawing No. DA1201 (see <b>AT1</b>) replicated below:</p>  <p>Accordingly, the view impact of the proposal when compared to a compliant design is only marginally greater (along the depth of the building). The northern properties would retain vistas down Pinaroo Place and along the western boundary of the subject site to the tree canopy.</p>

**OTHER SECTIONS OF THE EP&A ACT, 1979**

**Concept Development Application (Division 4.4)**

For the purposes of the Act, the applicant has requested the subject application be treated as a ***concept development application*** setting out a concept proposal for the development of a site,

for which a detailed proposal for the site is to be the subject of a subsequent development application.

Two draft conditions are recommended to ensure that any determination meets the terms of Division 4.4 Firstly, that the approval is a concept only and that a subsequent application is required for the detailed design of the residential flat building (refer draft condition 2). Secondly, that the subsequent applicant cannot be inconsistent with the concept approval in accordance with Clause 4.24(2) of the Act (refer draft condition 3).

Subject to the above, the proposal and draft conditions are considered satisfactory with respect to Division 4.4 of the Act.

### **Bushfire Prone Land**

The proposal was referred to the NSW RFS under Section 4.14 of the Act. NSW RFS provided recommendations and no objection to the proposal subject to the recommendations being imposed. Given the application is a concept development application only, the NSW RFS recommendations are not required to form a condition of consent but would provide the parameters for the subsequent detailed proposal application.

### **Voluntary Planning Agreement**

For the purposes of this report the limitations of Clause 7.4 (9) and 7.4(10) of the Environmental Planning and Assessment Act, 1979 are acknowledged and satisfied. That is, the VPA does not obligate the consent authority to grant consent and the variation to building height does not in any way rely on the VPA to justify the merits of the departure. A copy of the VPA is provided at Attachment 2.

### **Section 7.11/7.12 Contributions**

A residential flat building is subject to the Lane Cove Section 7.11 Contributions Plan. As the subject proposal is for a concept approval only, and the contribution relates to the apartment mix/yield a Section 7.11 contribution cannot be calculated. To ensure clarity is provided as to the application of the Section 7.11 Contributions Plan a draft condition is recommended (refer draft condition 10).

## **CONCLUSION**

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

The proposed concept development application for a residential flat building is consistent with the zoning of the site as R4 High Density Residential and does not seek to exceed the maximum permitted Floor Space Ratio of 1.8:1.

The proposed variation to the building height standard under Lane Cove Local Environmental Plan 2009 is supported. The written request adequately addresses the matters in Clause 4.6(3) and the proposal meets both the zone and standard objectives despite the non-compliance with the prescriptive measure.

The building envelope proposed is appropriate for the site. In particular, the building envelope is fully compliant with the applicable minimum building setbacks under Lane Cove Development Control Plan 2010 including specific controls for the Mowbray Precinct and those established for the zone transition to E4 Environmental Living. The applicant should be commended for amendments made during the course of the application to ensure the building envelope fully

complied with the minimum building setback provisions and that overshadowing minimised to be comparable to a compliant building envelope.

The submissions are summarised and addressed in the report and are not considered to warrant refusal of the application. Notwithstanding, the submissions highlight the need for considered planning at the detailed development application stage. The proposed building envelope is a maximum possible envelope and it is likely that a nuanced approach would be required to detailed design given the sensitive location of the site.

On balance the proposed concept development application would provide a better planning outcome and therefore is recommended for approval.

## **RECOMMENDATION**

That the Sydney North Planning Panel approve a variation to the height prescribed by Clause 4.3 of the Lane Cove Local Environmental Plan 2009, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.

That pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel grant consent to concept development application DA50/2019 for a residential flat building pursuant to Lane Cove Local Environmental Plan 2009 on 20-22 Mindarie Street and 30 Pinaroo Place, subject to the draft conditions contained within Attachment 7.

Michael Mason  
**Executive Manager**  
**Environmental Services Division**

### **ATTACHMENTS:**

<b>AT-1</b> <a href="#">View</a>	Architectural Plans	15 Pages
<b>AT-2</b> <a href="#">View</a>	Draft Voluntary Planning Agreement	17 Pages
<b>AT-3</b> <a href="#">View</a>	SEPP 65 Design Quality Principles and ADG Assessment	4 Pages
<b>AT-4</b> <a href="#">View</a>	Clause 4.6 Written Request	21 Pages
<b>AT-5</b> <a href="#">View</a>	DCP Assessment	4 Pages
<b>AT-6</b> <a href="#">View</a>	Supporting Documents (Tree and Survey)	2 Pages
<b>AT-7</b> <a href="#">View</a>	Draft Conditions of Consent	3 Pages

## ATTACHMENT 7 – DRAFT CONDITIONS OF CONSENT

1. **Approved Plans** That the concept development, except as amended by the following conditions, be carried out in accordance with the following drawings:

Architectural Drawings (Stamped)		
Prepared by: Stewart Hollenstein		
Drawing No.	Title/Description	Revision / Date
DA1101	Roof Floor Plan Envelope	I / 17/07/2019
DA1201	Mindarie Street Elevation Proposed Envelope	I / 17/07/2019
DA1202	Pinaroo Place Elevation Proposed Envelope	I / 17/07/2019
DA1203	West Elevation Proposed Envelope	I / 17/07/2019
DA1204	South Elevation Proposed Envelope	I / 17/07/2019
DA1301	Section AA Proposed Envelope	I / 17/07/2019
DA1302	Section BB Proposed Envelope	I / 17/07/2019
DA1102	Basement Plan Level B1 and B2	A / 04/10/2019
Supporting Documentation (Not Stamped)		
-	Survey Plan	-
-	Tree Management Plan	-

2. **Concept Development Application Parameters:** A concept development application sets out a concept proposal for the development of a site. The parameters subject to this consent are restricted to a building envelope, as shown on the approved plans (including basement levels). Detailed design and the consent of any physical works is subject to a further detailed development application. All structures in the detailed development application are to be consistent with the building envelope approved under this consent (including balconies). An exception may be made for any lift over-run subject to further assessment and approval.
3. **Detailed Development Application Requirements:** The detailed development application is to comply with the relevant provisions of Division 4.4 of the Environmental Planning and Assessment Act, 1979.
4. **Residential Flat Building:** The concept development application subject to this consent is for a residential flat building pursuant to Lane Cove Local Environmental Plan 2009. Any detailed development application relying on the concept development

application is to be made pursuant to Lane Cove Local Environmental Plan 2009 and satisfy the definition of a residential flat building contained within.

5. **Building Height:** The subject consent approves a building height in accordance with the approved building envelope. Any detailed development application proposed within the approved building envelope is not required to seek approval for building height as it has been established with the concept development application.
6. **Floor Space Ratio:** The subject consent does not approve a Floor Space Ratio. Floor Space Ratio is subject to assessment and determination under the detailed development application. To ensure the concept development application does not inadvertently allow for additional FSR, the detailed development application is limited to a maximum FSR of 1.8:1 in accordance with Lane Cove Local Environmental Plan 2009.
7. **SEPP 55** Detailed compliance with State Environmental Planning Policy No 55 – Remediation of Land is to be demonstrated under the detailed development application.
8. **Lane Cove DCP 2010:** This consent does not approve any variation to Lane Cove Development Control Plan 2010 unless specifically included within the concept proposal as outlined in condition 2.
9. **Section 7.11 Contributions:** Section 7.11 Contributions are applicable to the development and will be levied under the detailed development application on determination of the unit mix.
10. **Voluntary Planning Agreement:** Execution of the Voluntary Planning Agreement to be entered into by Lane Cove Council and NSW Land and Housing Corporation relating to the subject consent.

ADVISORY NOTES:

- A. **NSW RFS Recommendations:** The NSW RFS reviewed the concept development application and provided recommendations. The recommendations relate to the detailed development application and would form a condition of any consent granted.
- B. **Tree Management Principles:** The concept development application does not approve any physical works including any tree removal. The following tree management principles outlined in Table 1 and 2 below, in conjunction with the reference plan attached to this consent, are to be considered as a guide during the detailed development application:

<b>Table 1: Trees located on and adjoining the site</b>		
Tree number	Species	Preference to retain or replace
1	Callistemon Spp.	Retain
2	Schefflera Spp.	Replace
3	Araucaria columnaris	Retain
4	Cupressus macrocarpa	Replace

5	Tristaniopsis laurina	Retain
6	Leptospermum Spp.	Replace
7	Glochidion ferdinandi	Replace
8	Banksia integrifolia	Retain
9	Brachychiton acerifolius	Replace
10	Tristaniopsis laurina	Retain
11	Jacaranda mimosifolia	Replace
12	Jacaranda mimosifolia	Replace

**Table 2:** Trees preferred to be retained and required set backs from development

Tree number	Species	Set back measured as a radius from the centre of the trunk
1	Callistemon Spp.	Street tree, min 2M
3	Araucaria columnaris	Minimum 4.2M
5	Tristaniopsis laurina	Street tree, min 3M
8	Banksia integrifolia	Minimum 5.8m
10	Tristaniopsis laurina	Street tree, min 2M

The minimum set back from trees specified is a guideline estimating a potential acceptable impact on retained trees on one side only to assist with the concept planning. Retained trees will require a detailed impact assessment prepared in compliance with Australian Standard 4970 Protection of Trees on Development Sites 2009. Any departure from the principles contained within this advisory note will required detailed justification under the detailed development application.