

## COUNCIL SUPPLEMENTARY REPORT

<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>	DA Lodged: 13 May 2019 Additional Information Submitted: 15 April 2020
<b>Number of submissions</b>	Original Notification: Eleven (11) Additional Information: 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	Original Council Report	Henry Burnett (Lane Cove Council)
	2	Decision of Deferral	SNPP
	3	Amended Concept Architectural Plans	Stewart Hollenstein
	4	Amended Reference (Detailed) Architectural Plans	Stewart Hollenstein
	5	Clause 4.6 Request	Land and Housing Corporation
	6	Review of Submissions	Henry Burnett (Lane Cove Council)
	7	Amended Draft Conditions of Consent	Henry Burnett (Lane Cove Council)
<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?

N/A -  
Supplementary  
Report

### 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?

N/A -  
Supplementary  
Report

**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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**Subject:** 20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove North  
**Record No:** DA19/50-01 - 17048/20  
**Division:** Environmental Services Division  
**Author(s):** Henry Burnett

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## **EXECUTIVE SUMMARY**

Development Application DA50/2019 was lodged by Land and Housing Corporation on 15 May 2019 for a concept 6 storey residential flat building to deliver social housing under the Communities Plus housing model.

The determination of Development Application DA50/2019 was deferred by the Sydney North Planning Panel (SNPP) at its meeting on 23 October 2019. The original Council assessment report (**Attachment 1**) and the SNPP decision of deferral (**Attachment 2**) are attached.

The SNPP in its deferral decision of 23 October 2019 directed the applicant to either lodge a detailed development application (forgoing the need for a Concept Application), or amend the Concept Application by providing additional information to address the reasons for deferral.

The applicant submitted additional information responding to the SNPP deferral on 15 April 2020 seeking to proceed with a Concept Application and respond to the reasons for deferral. The additional information included amended concept plans (**Attachment 3**) which are attached. The additional information was notified to adjoining property owners and those who had commented on the original application.

The subject report addresses each of the five (5) reasons for deferral and the submissions received (**Attachment 6**) and concludes that the Concept Application is satisfactory for the following reasons:

- The proposed building envelope provides compliant additional building separation to the southern boundary in accordance with the high/low density zone interface provisions;
- The proposed building height would not result in additional overshadowing impacts to adjoining residential properties when compared with a compliant building height;
- The driveway location is suitably identified and located;
- The proposal includes reference plans (**Attachment 4**) to better demonstrate how a suitable built form outcome may be achieved on the site; and
- The proposal provides considerable public benefit by enabling the provision of social housing under the Communities Plus model.

It is recommended that the SNPP approve the Clause 4.6 written request (**Attachment 5**) and the Concept Application subject to modified draft conditions of consent (**Attachment 7**).

## **REASON FOR ORIGINAL REFERRAL**

The proposal was originally referred to the SNPP 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)). The reasons for referral have not changed.

## REASONS FOR DEFERRAL

The reasons for deferral are outlined in the following table with the applicant response and further Council assessment provided to each:

No.	Party	Reason/Response
<b>A</b>	<b>DETAILED OR CONCEPT DEVELOPMENT APPLICATION</b>	
	<b>SNPP</b>	<i>While the applicant is entitled to submit this application as a Concept Application, the Panel considers that there is insufficient detail and information in this application for it to make an informed determination, particularly given the variation sought to the height limit and the lack of detail as to the end form of the development both in physical form, uses, quantum of social housing and vehicular ingress/egress. In this respect, the applicant has indicated that a contract for development of the site has been issued. In this respect a detailed application will be necessary and will need to respond to the concerns raised. One purpose of the deferral is to allow the applicant to reconsider the question whether its purpose would be better served by lodging a detailed application thus avoiding the need for two approvals.</i>
	<b>Applicant</b>	<i>LAHC confirms that it wishes to proceed with the Concept DA. The additional information requested is addressed below.</i>
	<b>Council</b>	<p><b>Reason Addressed</b> – The applicant has decided to proceed with the Concept Application as allowed for under the Act and Part 2(b) of the SNPP deferral. Consideration of all the relevant issues is addressed in responding to the remaining reasons for deferral.</p> <p><b>Reason A of the SNPP deferral is considered satisfied.</b></p>
<b>B</b>	<b>MINIMUM INFORMATION FOR A CONCEPT APPLICATION</b>	
	<b>SNPP</b>	<i>However, if the applicant wishes to proceed with a Concept Application, the Panel considers that there is not enough information for it to make an informed decision. In particular, the application provides no information on where the vehicular entry and exist are located. This is a fundamental aspect even of a Concept Application.</i>
	<b>Applicant</b>	<p><i>The drawings for approval have been amended to clearly show the following:</i></p> <ul style="list-style-type: none"> <li>- <i>Location of the car park entrance. This is located on Pinaroo Place, towards the southern boundary of the site. As a low-point of the site, this minimises the need for excavation and is well separated from the intersection of Mindarie Street. The car park entrance is located to provide adequate separation to the boundary with the neighbouring residential dwelling to allow for appropriate landscaping to be provided to ensure visual and acoustic privacy is maintained. These privacy treatments will be detailed as part of the future detailed DA.</i></li> </ul>

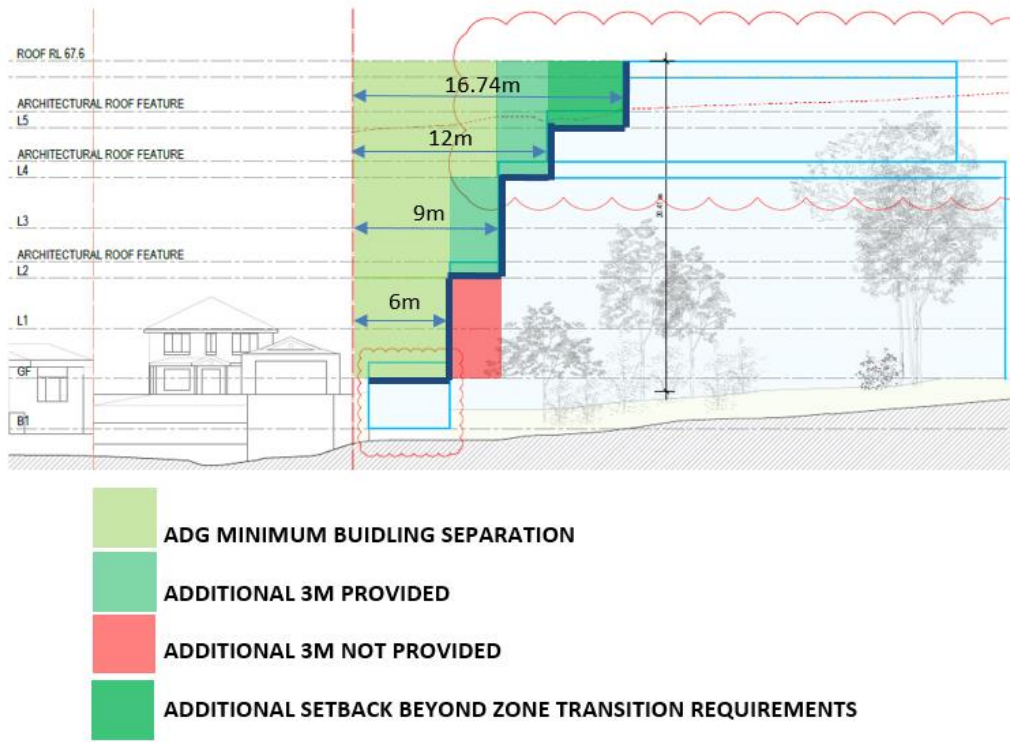
No.	Party	Reason/Response
		<p>- <i>Minor amendment to demolition drawing to only show trees to be removed on the subject site.</i></p> <p><i>It should be noted that the drawings for information show an indicative scheme that is consistent with the concept envelope, and this indicative scheme shows how details such as the amelioration of privacy and acoustic impacts could be implemented.</i></p>
	<b>Council</b>	<p><b>Reason Addressed</b> – The proposed vehicular entrance point has been identified on the amended concept plans. The location of the vehicular access is logical in relation to site topography. The level of the basement car park will provide for opportunities for landscaping and visual separation of the car park entrance from the southern adjoining property. The indicative reference plans (<b>Attachment 4</b>) provided with the further information show that a suitable interface can be provided within the proposed envelope.</p> <p><b>Reason B of the SNPP deferral is considered satisfied in the delineation of the vehicular access to the proposed building envelope.</b></p>
<b>C</b>	<b>OVERSHADOWING AND TRANSITION OF BUILT FORM AT BOUNDARY INTERFACE</b>	
	<b>SNPP</b>	<p><b><i>The Panel considered the objections of neighbours and listened to their concerns during the public meeting. The main concern is overshadowing of houses to the south and transition of the building form. The Panel notes that the site is on the sensitive boundary interface between an R4 and an E4 zone, and the planning principle (Seaside v Wyong Shire Council) specifically states that maximising the controls on the higher density site/zone cannot be presumed.</i></b></p>
	<b>Applicant</b>	<p><i>The crux of the planning principle established in Seaside Property Developments Pty Ltd v Wyong Shire Council is as follows:</i></p> <p><i>As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognize and take into account the form of existing development and/or development likely to occur in an adjoining different zone.</i></p> <p><i>The concept plan envelope has taken into account the adjoining E4 Environmental Living land to the south and does not treat it as if it is an extension of the R4 High Density Residential zone. The proposed building envelope has been designed with due regard to a number of factors including the existing and future building form surrounding the site, the site's development potential, the amenity of future occupants and the site-specific constraints and opportunities. Reduced storey elements and building transitions have been proposed to address changes in the site's topography, providing for suitable transition to low density development on the adjoining E4 land.</i></p> <p><i>To ensure that the concerns of the neighbor were understood and addressed by the Concept DA, senior LAHC staff met with the neighbor onsite for a face-</i></p>

No.	Party	Reason/Response
		<p><i>to-face meeting.</i></p> <p><i>As detailed in the Statement of Environmental Effects, the proposed concept envelope has an appropriate relation to the E4 zone in terms of the following:</i></p> <ul style="list-style-type: none"> <li>- <i>Building height, scale and massing;</i></li> <li>- <i>Materiality and modulation;</i></li> <li>- <i>Residential amenity;</i></li> <li>- <i>Solar impact;</i></li> <li>- <i>Visual privacy; and</i></li> <li>- <i>Views and vistas</i></li> </ul>
	<b>Council</b>	<p><b>Reason Addressed</b> – The two principal matters in Part C of the deferral relate to building transition and overshadowing which are addressed in turn:-</p> <p><u>Building Transition</u></p> <p>The proposed building transition provides setbacks specifically in response to the sensitive R4 to E4 zone interface in accordance with the Apartment Design Guide (Level 2 to Level 5) or the precinct specific controls (Ground and Level 1). In this way the proposal at all levels has provided building transitions designed in accordance with the prevailing controls for the sensitive zone transition and is considered satisfactory. For further detail see Figure 1 below in response to Reason E.</p> <p><u>Overshadowing</u></p> <p>The proposed building envelope is fully compliant with the DCP with the exception of the sixth storey. The sixth storey has been set back from the southern boundary specifically for the purpose of ensuring that overshadowing to the south does not exceed the overshadowing that would be generated by a complaint DCP envelope (5 storeys). The submitted shadow diagram details no additional overshadowing with the exception of the 3:00pm shadow which falls over the road surface of Pinaroo Place and will not adversely impact residential amenity.</p> <p><b>Reason C of the SNPP deferral is considered satisfied as the building transition is provided cognizant of the sensitive zone interface and overshadowing is not beyond a complaint building envelope.</b></p>
<b>D</b>	<b>CLAUSE 4.6 WRITTEN JUSTIFICATION</b>	
	<b>SNPP</b>	<b><i>The application does not comply with the height development standard and that the clause 4.6 submission provides insufficient environmental grounds to justify the variation.</i></b>
	<b>Applicant</b>	<i>The Clause 4.6 Submission submitted with the development application was prepared in accordance with the NSW Department of Planning and Environment guideline to Vary development standards: A Guide, August 2011,</i>

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No.	Party	Reason/Response
		<p><i>and his incorporated the relevant planning principles and judgements.</i></p> <p><i>The submission demonstrates that compliance with the maximum height development standard contained in Clause 4.3 of the Lane Cove LEP 2009 is unreasonable and unnecessary in the circumstances of this case and the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst allowing for a better social and planning outcome.</i></p> <p><i>The submission demonstrated that, despite the non-compliance with the maximum height development standard, the proposed development:</i></p> <ul style="list-style-type: none"> <li>- <i>Is in the public interest as the proposal is consistent with the applicable land use zones and development standards;</i></li> <li>- <i>Does not represent an overdevelopment of the site, with the height and proposed intensity (density) consistent with the locality's desired future character and its evolving urban context;</i></li> <li>- <i>Provides significant public benefit through the delivery of critical social housing;</i></li> <li>- <i>Can accommodate the additional height within the proposed envelope, which the accompanying SEE has found is compatible with the scale and character of the area;</i></li> <li>- <i>A better planning outcome than a compliant envelope design;</i></li> <li>- <i>Will not result in unacceptable adverse amenity or environmental impacts; and</i></li> <li>- <i>Does not raise any matters of State and regional planning significance relating to the height development standard variation.</i></li> </ul> <p><i>There is no public benefit in maintaining the height development standard adopted by the environmental planning instrument for this site. The flexible application achieves a better social and planning outcome than would be achievable by strict adherence to the controls applicable to the site.</i></p>
	<b>Council</b>	<p><b>Reason Addressed</b> – The submitted Clause 4.6 written request was a detailed justification for the variation (<b>Attachment 5</b>). The breach allows for the achievement of the LCLEP 2009 FSR (1.8:1) which will directly benefit the provision of social housing in the Communities Plus model providing significant public benefit. The departure relates to the south-eastern corner of the building and will not result in additional overshadowing to the southern adjoining properties due its 16.74m southern boundary setback and the mid-winter afternoon shadow (3:00pm) falling across the road reserve. Further, the departure is within the level of tolerance provided to other developments in the locality at the zone transition where additional GFA has been allowed for at a 6<sup>th</sup> storey as long as it was situated northward on the building massing to minimise amenity impacts.</p> <p><b>Reason D of the SNPP deferral is considered satisfied by the applicant's response and further assessment outlined above.</b></p>
<b>E</b>	<b>APARTMENT DESIGN GUIDE BUILDING SEPARATION</b>	



No.	Party	Reason/Response
	<b>SNPP</b>	<i>In addition, the Panel believes that any application should comply with the ADG's requirement for an additional 3m setback on sites situated on zone boundaries with a lower density development. This would significantly change the proposed concept envelope.</i>
	<b>Applicant</b>	<i>As discussed in the response to c. above and throughout the SEE, the southern side of the concept envelope has been carefully designed to provide an appropriate setback (at all levels) to the neighbouring site. The setbacks increase from 6 metres at lower levels up to 16.74 metres for the uppermost level. These setbacks ensure that a future building designed within the concept envelope will have an appropriate relationship to the site to the south.</i>
	<b>Council</b>	<p><b>Reason Addressed –</b> The implementation of the Apartment Design Guide requirement for an additional 3m building separation is detailed diagrammatically in Figure 1 below. The proposal is largely compliant with the ADG and it is acknowledged there may have been some misunderstanding as to the extent of compliance at the original determination meeting.</p>  <p style="text-align: center;"><b>Figure 1: Building Separation and ADG Compliance</b></p> <p>As detailed in Figure 1 the proposal provides the zone transition at all levels with the exception of the Ground Level and Level 1. Where the zone transition is not provided for at Ground and Level 1 there are sufficient planning grounds to support a departure to the ADG as follows:</p> <ul style="list-style-type: none"> <li>- The <b>Mowbray Precinct Development Control Plan</b> specifically allows for a 6 metre transition at the ground and first floor level at the point of a zone transition:</li> </ul>

No.	Party	Reason/Response
		<p><i>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 <b>after the second level</b>.</i></p> <ul style="list-style-type: none"> <li>- The overshadowing impacts and building height are acceptable as detailed in response to C and D of the SNPP deferral above.</li> <li>- The detailed development application will allow for detailed consideration of interface design treatments to the southern adjoining properties. The reference plans (<b>Attachment 4</b>) indicate this may include not utilising this part of the building envelope.</li> </ul> <p><b>Reason E of the SNPP deferral is considered satisfied by the applicant's response and further assessment outlined above.</b></p>

## SUBMISSIONS

The additional information was renotified to adjoining property owners and original objectors for a period of 14 days. A review of submissions is attached to this report (**Attachment 6**).

The review of the submissions addresses the matters raised and does not prevent determination of the Concept Application in accordance with the recommendations of this report.

## OTHER MATTERS

The draft recommended conditions were reviewed in response to the original determination meeting of the SNPP and revised as attached to this report (**Attachment 7**).

Firstly, the conditions were consolidated so that the assessment of a Detailed Development Application against the provisions of LCLEP 2009 and LCDCP 2010 is not pre-empted in the conditions of the Concept Application beyond the establishment of a building envelope.

Secondly, while the exact quantum of social housing has not been established, the applicant has agreed to "a mix of private and social housing" to be a condition of the Concept Application and this has been incorporated within the draft recommended conditions of consent.

SCHEDULE OF AMENDMENTS TO DRAFT CONDITIONS		
Condition No.	Description	Amendment
1	Approved Plans	<b>Amended</b> - Updated to reflect amended concept plans which incorporate the driveway location.
2	Concept DA Parameters	<b>Amended</b> – introduction of private and social housing mix, deletion of exception for lift overruns, inclusion of wording the envelope is for a residential flat building pursuant to LCLEP 2009.
3	Detailed DA consistent with Concept DA	<b>Retained</b>

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4	Compliance with RFB Definition	<b>Deleted</b> - incorporated in condition 2.
5	Building Height	<b>Deleted</b> - pre-empts merits of Detailed DA.
6	Floor Space Ratio	<b>Deleted</b> - pre-empts merits of Detailed DA.
7	SEPP 55	<b>Deleted</b> – and placed as advisory note.
8	Compliance with LCDCP 2010	<b>Deleted</b> - pre-empts merits of Detailed DA.
9	Section 7.11 Contributions	<b>Retained</b> – renumbered condition 4.
10	Voluntary Planning Agreement	<b>Retained</b> – renumbered condition 5.

## CONCLUSION

The Concept Application for a residential flat building envelope for a mix of social and private housing has been considered in accordance with the Environmental Planning and Assessment Act 1979 with specific reference to the matters of deferral issued by the Sydney North Planning Panel on 23 October 2019.

The applicant has provided additional information and the supplementary report provides additional clarification around the key issues raised and the proposal is considered to satisfy the matters of the deferral as follows:

- The proposed building envelope provides compliant additional building separation to the southern boundary in accordance with the high/low density zone interface provisions;
- The proposed building height would not result in additional overshadowing impacts to adjoining residential properties when compared with a compliant building height;
- The driveway location is suitably identified and located;
- The proposal includes reference plans to better demonstrate how a suitable built form outcome may be achieved on the site; and
- The proposal provides considerable public benefit by enabling the provision of social housing under the Communities Plus model.

The submitted Clause 4.6 written request is supported considering the additional clarification provided above particular in relation to massing and overshadowing.

The Concept Application is requested to be determined by the Sydney North Panel in accordance with the Recommendation of this report.

## 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 fully addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest as it is consistent with the objectives of that particular standard and 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 for a mix of private and social housing 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:**

There are no supporting documents for this report.