

Subject	Briefing Note to Sydney North Planning Panel
Property	Nos. 22-44 Berry Road, 21-21 Holdsworth Avenue and 42-46 River Road, St Leonards
Description of Proposal	Demolition of existing structures and construction of five residential flat buildings comprising a total of 238 apartments and basement parking for 411 vehicles
Council/Panel Application No.	DA60/2022 / PPSSNH-316
Lodgement Date	1 June 2022
Indicative Determination Date	First quarter of 2023
Capital Investment Value	\$138,059,712.00
Applicant / Owners	Helena Miller (MG Planning P/L) (Applicant) CIFI St Leonards P/L and Greateon St Leonards Holdings P/L (Owners)

1. Strategic Planning Context

The subject Development Application is the second within the St Leonards South Precinct. The strategic planning context/background is provided at briefing stage for the benefit of the SNPP.

A. St Leonards South Precinct

The St Leonards South Precinct was brought into effect on **1 November 2020** through amendments to *Lane Cove Local Environmental Plan 2009* and *Lane Cove Development Control Plan 2010*. The plan was finalised concurrently with the *St Leonards Crows Nest 2036 Plan*. Further information on the history prior to finalisation is available on [Council's website](#) and the [Department's website](#).

The St Leonards South Precinct is bounded by Marshall Avenue to the north, Canberra Avenue to the east, Park Road to the west and River Road to the south as shown in **Figure 1** below.



Figure 1: St Leonards South Precinct

The vision of the St Leonards South Precinct is for a liveable, walkable, connected, safe, high density residential precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre.

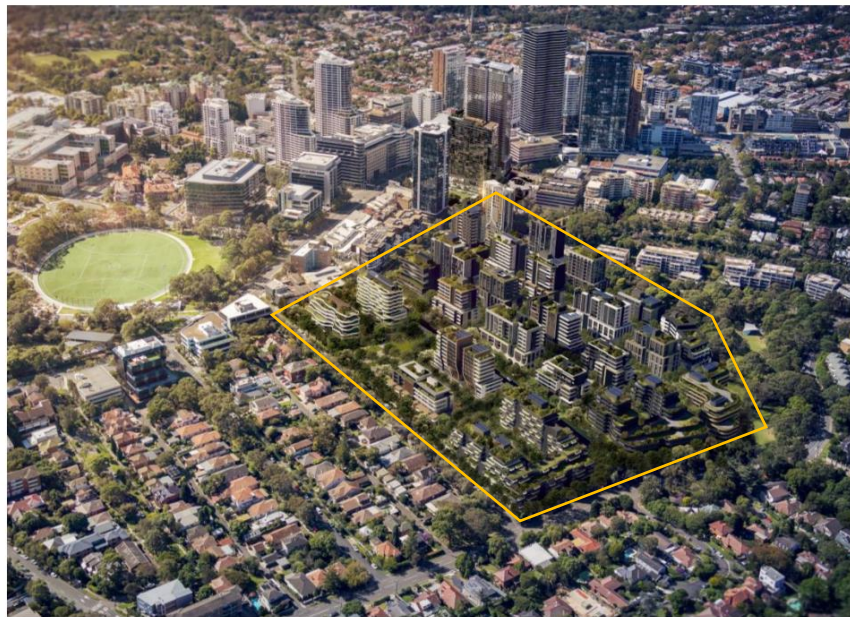


Figure 2: St Leonards South Precinct – Concept Photomontage

B. Planning Scheme

The planning scheme for the St Leonards South Precinct is principally contained within [Part 7 of Lane Cove Local Environmental Plan 2009](#) and supported by a precinct-specific part of *Lane Cove Development Control Plan 2010*, a Landscape Master Plan, a Section 7.11 Contributions Plan and designation as a Special Infrastructure Contribution area. The Precinct is divided into 'Areas' which are the envisaged amalgamated development sites (**Figure 3**).



Figure 3: St Leonards South Precinct – Area Designation

Lane Cove Local Environmental Plan 2009

The key provisions of *Lane Cove Local Environmental Plan 2009* are summarised as follows:

i. Zoning

The Precinct is zoned R4 High Density Residential (with exception of a park and new road).

ii. Incentive Building Height and FSR

The planning scheme operates with an incentive building height and incentive floor space ratio control. The incentive maximum building height and floor space ratio are available only if the incentive provisions of Part 7.1(4) of *Lane Cove Local Environmental Plan 2009* are provided which are summarised as follows:

- **Unit Mix:** Minimum 20% of each 1, 2 and 3 bedroom dwellings (Part 7.1(4)(a)-(c);
- **Green Spine:** Setbacks to establish communal open space between buildings (Part 7.1(4)(d));
- **Minimum Site Area:** Site amalgamations as per **Figure 3** (Part 7.1(4)(e) and Part 7.2);
- **Affordable Housing:** The provision of affordable housing (Part 7.1(4)(f) and Part 7.3);
- **Recreation Areas and Community Facilities:** The provision of recreation areas and community facilities (Part 7.1(4)(g) and Part 7.4); and
- **Pedestrian Links and Roads:** The provision of pedestrian links and roads (Part 7.1(4)(h) and Part 7.5).

Note: Unit mix, green spine and site area provisions apply to all sites. Affordable housing, recreation areas and community facilities, and pedestrian links and roads are allocated on a per site/area basis.

iii. No Clause 4.6 Variation Requests

The planning scheme precludes the use of Clause 4.6 to vary the incentive building height, incentive floor space ratio, incentive provisions (with exception of the minimum site area provision to allow for site hold-out scenarios) and design excellence provisions.

iv. Design Excellence

The planning scheme seeks to provide design excellence in relation to architectural, urban and landscape design. The criteria for achieve design excellence is listed in [Part 7.6 of Lane Cove Local Environmental Plan 2009](#). The consent authority cannot grant development consent unless it is satisfied that design excellence is achieved.

v. NSROC Design Review Panel

The North Sydney Region of Council's Design Review Panel was established to coincide with the commencement of the St Leonards South Precinct planning scheme. The Panel will provide advice on SEPP 65 and design excellence (Part 7.6 of LCLEP 2009) for development within the St Leonards South Precinct.

The Panel process occurs **prior to lodgement of the Development Application** aiming to resolve key issues and provide for higher quality lodgements. The NSROC Design Review Panel comments will assist Council and the Sydney North Planning Panel in determining SEPP 65 and design excellence.

Lane Cove Development Control Plan 2009

A Precinct-specific Development Control Plan is contained within [Lane Cove Development Control Plan 2009 Part C – Residential Localities – Locality 8 – St Leonards South Precinct.](#)

The DCP guides infrastructure, access, built-form (setbacks etc.), public domain, private domain, sustainability and landscaping (including calling up the Landscape Master Plan). Key unique provisions of the DCP are discussed as follows:

i. Green Spines - Shared Communal Open Space

Green spines are a key feature of the St Leonards South Precinct. The green spine is a 24m wide shared communal open space between residential flat buildings. Ordinarily a residential flat building development would provide communal open space for its own use only. The green spines will combine the communal open space of multiple residential flat buildings with each contributing to, and sharing in, a larger communal open space area. The shared communal open space will be grouped in accordance with **Figure 3** and characterised by shared facilities and significant landscaping (50% minimum deep soil).



Figure 3: Green Spines (Shaded Green)

ii. Part Storey Control

The DCP includes a maximum number of storeys control. Importantly, the DCP includes the following in relation to calculating the number of storeys:

Part storeys resulting from excavation of steep slopes or semi basement parking will not count as a storey.

As per Amendment 20 the definition of a part storey is:

- a) “part storey means a storey where the floor level is partly more than 1 metre below ground level (existing) and where 50% of the space within the storey is used as non-habitable space (such as for car parking, vehicular access, plant rooms, mechanical

services, loading areas, waste storage or the like) that is ancillary to the main purpose for which the building is used.”

It is noted that at the same time as amending the definition of a ‘part storey’ Council also amended clause 1.6 Savings Provisions to include a ‘note’ as shown in bold italics below:

If a development application has been made before the commencement of this DCP in relation to land to which this DCP applies and the application has not been finally determined before that commencement, the application must be determined as if this DCP had not commenced.

Note : The provisions of this DCP as amended by Lane Cove Development Control Plan 2009 (Amendment No. 20) apply to development applications made both before and after Lane Cove Development Control Plan 2009 (Amendment No. 20) came into effect, despite any other provision of this DCP.

Landscape Master Plan

The private and public domain urban and landscape design are further detailed within the [St Leonards South Landscape Master Plan](#). The Landscape Master Plan provides design guidance to the **public domain** (materiality, lighting, street trees, road infrastructure etc.), **private domain** (green spine levels, green spine facilities and landscaping calculations) and **public/private domain interface** (such as ground floor apartment fencing/landscaping design). An overview of the Landscape Master Plan design is provided in **Figure 4** below.



Figure 4: Landscape Master Plan Overview

Draft St Leonards South Section 7.11 Plan

The provision of infrastructure is proposed to be facilitated in part through the [St Leonards South Section 7.11 Contributions Plan](#) which is now in force.

Special Infrastructure Contribution

The site is within the [St Leonards and Crows Nest Special Contributions Area](#) which requires the payment of a contribution to support the St Leonards and Crows Nest 2036 Plan.

2. Subject Site

The subject site is known as Nos. 22-44 Berry Road, 21-21 Holdsworth Avenue and 42-46 River Road, St Leonards, St Leonards with a total site area of 8,758m² known as Areas 18-20 (refer to **Figure 3** above) within the St Leonards South Precinct planning scheme. The site located in the southern part of the Precinct.

4. Proposal Timeline

The proposal timeline (to date and forecast) is provided in **Table 1** as follows:

Table 1 – Proposal Timeline	
Date	Description
9 March 2021	NSROC Design Review Panel Meeting and Council Pre-DA Meeting.
14 December 2021	NSROC Design Excellence Panel Meeting.
1 June 2022	Subject Development Application lodged.
8 June 2022	Public notification of Development Application commenced.
6 July 2022	Public notification of Development Application concluded (see Section 7 for summary of submissions received).
4 August 2022	Letter sent to the applicant requesting additional information (See Section 6 for summary of issues to be addressed).
7 September 2022	Public notification of the VPA commenced.
5 October 2022	Public notification of the VPA concluded (see Section 7 for summary of submissions received).
10 October 2022	Applicant provided additional information.
17 October 2022	2nd notification period of Development Application commenced.
1 November 2022	Briefing of the Sydney North Planning Panel.
14 September 2022	2nd notification period of Development Application to conclude.
First quarter of 2023	Determination by the Sydney North Planning Panel.

5. Proposal

The Development Application is for the demolition of existing structures and construction of five residential flat buildings comprising a total of 238 apartments and basement parking for 411 vehicles.



Figure 5: Proposed Perspective from River Road

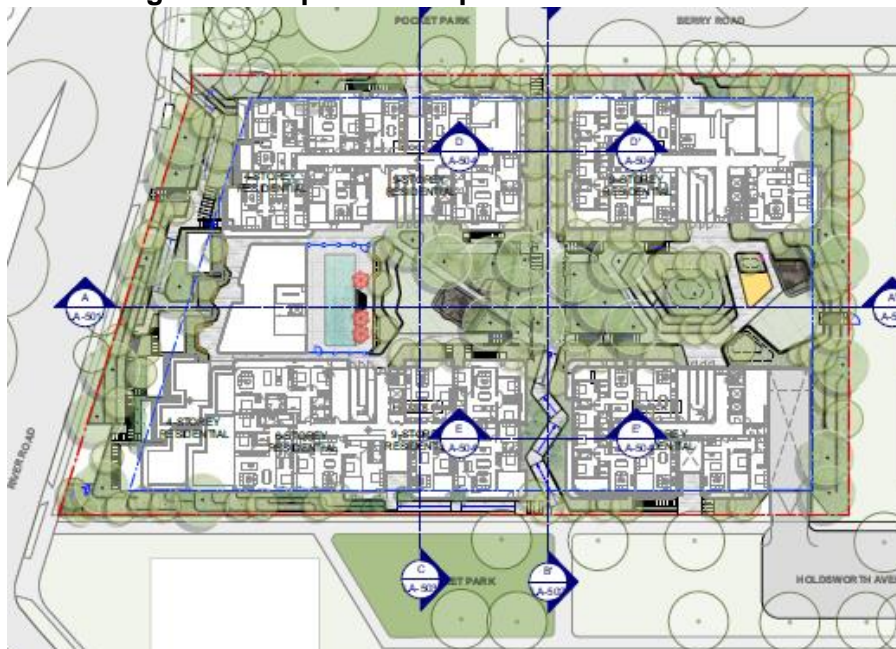


Figure 6: Landscape Plan

A. Key Development Statistics

Table 2 – Proposed Development Statistics	
Component	Description
Number of Storeys	4 -8 storeys
Part Storeys	One-Part Storey at the Ground Floor Level of Buildings A-D (Note: see further discussion below)
Building Height	15m & 31m
Site Area	8,758m ²
Gross Floor Area	22,770m ²
Floor Space Ratio	2.60:1
Total Apartments	238
Unit Mix	78 x 1 bedroom (33%) 109 x 2 bedroom (46%) 51 x 3 bedroom (21%)
Vehicular Access	Singular vehicular access point from Holdsworth Avenue.
Parking	411 vehicles
Pedestrian Link	The provision of 9m wide pedestrian link through the subject development site (It is noted that 6m width is required under LCLEP 2009)
Deep Soil within Green Spine	50% of Green Spine

6. Preliminary Assessment

A. NSROC Design Review Panel

The NSROC Design Review/Excellence Panel has reviewed the proposal and is generally supportive of the design.

B. St Leonards South Precinct Planning Scheme

The key issues in the St Leonards South Precinct Planning Scheme as they relate to the proposed development are addressed as follows:

i. Incentive Qualification Criteria

The incentive qualification criteria applicable to the subject Development Application are listed in **Table 3** below.

Table 3 – Applicable Incentive Provisions		
Date	Requirement	Compliance
Unit Mix	Minimum 20% of 1/2/3-bedroom units	Yes
Green Spine Setbacks	The provision of setbacks to establish communal open space and green spines between buildings.	Yes
Pedestrian Link	The provision of a 6m wide pedestrian link through the land to enable a connection between Berry Road and Holdsworth Avenue.	Yes
Minimum Site Area	The amalgamation of all sites within each development area.	Yes

The proposal meets with the incentive provisions and accordingly the proposal can seek to utilise the incentive height and floor space ratio provisions.

ii. Incentive FSR and Building Height Provisions

The applicable incentive FSR and building height provisions map is provided in **Figure 8** and **Figure 9**.

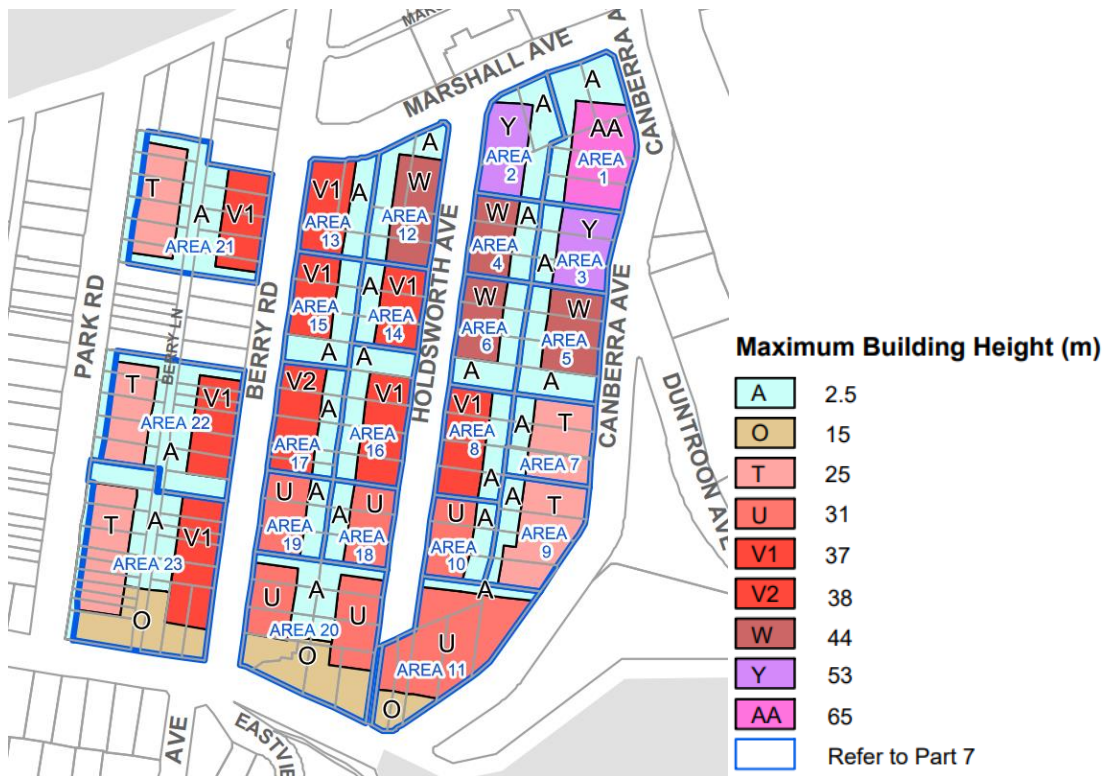


Figure 7: Incentive Height of Building Map

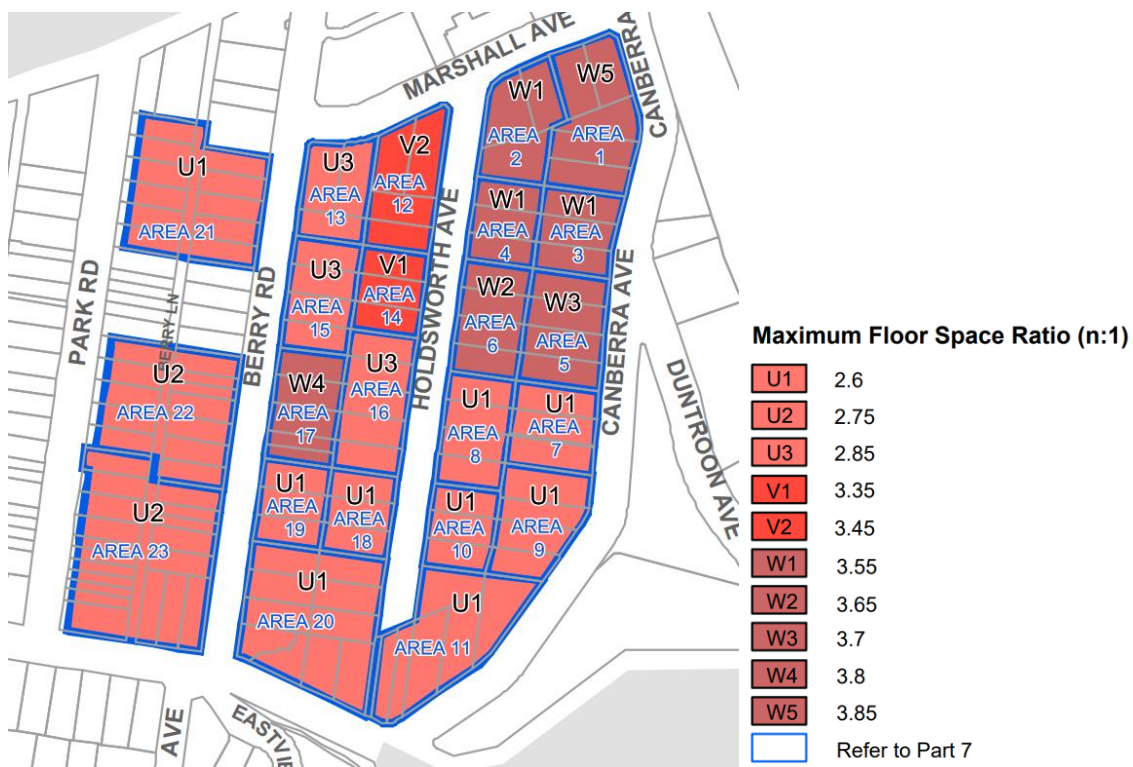


Figure 8: Incentive Floor Space Ratio Map

iii. Compliance with Incentive Height of Building and Floor Space Ratio

The proposals compliance with the incentive height of building and floor space ratio is detailed in **Table 4** below.

Table 4 – LCLEP 2009 – Compliance with Development Standards			
Standard	Requirement	Proposed	Compliance
Floor Space Ratio	2.6:1 (max)	2.6:1	Yes
Height of Buildings	2.5m (max) 15m (max.) 31m (max.)	>2.5m <15m 31m	No Yes Yes

Building Height Development Standard

It is advised that the proposal contains building elements such as slab, fin and planter box elements encroaching into the required 24m wide green spine would be contrary to the maximum 2.5m green spine building height development standard under the LCLEP 2009 and it was requested that these elements be deleted. . In response the applicant has provided the following justification/s as follows:

The amended architectural plans at Attachment 2 provide a separation between Buildings A and D and Buildings B and C of 24m from all structural amendments of the buildings. This is as per Council's 'shape file' which it is understood details the location of the 2.5m maximum height zone set out on the LEP map. The design has been amended so that the building slabs edges have been reduced by 50mm such that they do not protrude into this area.

Accordingly, the only remaining projections above the 2.5m maximum height zone are lightweight non-structural screening elements attached to the building's but which do not form part of the structure of the building. These elements do not extend to the ground below and are merely add on elements to improve the appearance of the buildings and the internal amenity of units by providing shading. They are not therefore measured for the purposes of the height control. This is standard planning practice and has been confirmed as a correct interpretation in legal advice provided by Corrs Chambers Westgarth.

It is therefore considered that there is no height non-compliance in respect of the LEP height limit within the 2.5m green spine zone and that there is therefore no impediment to the proposal being approved with the subject fin elements and above ground planter boxes projecting above the green spine zone.

Comment: It is noted that a review of the amended architectural and landscaping plans indicates that there are still building slabs and planter box still encroaching into the green spine area over the maximum LEP 2.5m building height zone. The submitted legal advice is not agreed with and it is strongly recommended that there be no building encroachments into the green spine area. This outcome would not be unreasonable as other approved and proposed developments within the Precinct have fully complied with this requirement.

iv. Lane Cove Development Control Plan

Number of Storeys/Part Storey Controls

Based on the relevant part storey definitions provided above in this briefing note, it is considered that the proposal does not comply with the relevant number of storeys and part storeys DCP controls. In response the applicant has provided the following justification/s as follows:

Architectural sections A300-304 (Appendix 2) inclusive show part storeys shown pale blue which have resulted from the site slope and basement parking. Storeys as counted (excluding part storeys) are also clearly illustrated. Only one-part storey is proposed in any one building. It is noted that on 23 August 2022 Council amended the Lane Cove DCP definition of a 'part storey'. Further we also note that contrary to legal convention (and equity) at the same time as amending the definition of a 'part storey' Council also amended clause 1.6 Savings Provisions to include a 'note' and accordingly but for this 'note' the definition amendment would not apply to the subject DA.

On 3 August 2022 Corrs Chambers Westgarth made a submission on the DCP amendment on behalf of our client CIFI St Leonards Pty Ltd and Greateon St Leonards Holdings Pty Ltd. For the reasons outlined in the submission we do not consider it reasonable for Council to retrospectively apply the changed definition of a 'part storey'. Further the DCP amendment seeks to introduce a highly prescriptive control which is contrary to the purpose of a DCP provision. As outlined in section 3.42(1) of the Environmental Planning and Assessment Act 1979 the principal purpose of a DCP is to provide "guidance" on the following matters:

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,*
- (b) facilitating development that is permissible under any such instrument,*
- (c) achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.*

To reiterate, the Act clearly states that the provisions of a development control plan are not statutory requirements.

The proposed development (both as submitted and as now amended) is fully compliant with the statutory LEP incentive height limit which applies to the site under Lane Cove LEP 2009. Accordingly, rather than giving effect to the LEP it is considered that the intent of the amended 'part storey' control is to create a further barrier to high density residential development in the St Leonards South precinct contrary to the LEP intent and more specifically the objective of the LEP height control which is clearly to provide for development up to a maximum height of 31m on the subject land. The DCP part storey limitation and overall storey limit is therefore contrary to the purpose of the LEP provision.

We have therefore maintained the proposed part storeys within our development proposal and request that in the interests of fairness and equity Council and the Sydney North Planning Panel assess the subject application on the basis of the DCP provisions in effect on the date of the DA lodgement. In any event we note that even if Council applies its revised definition of a 'part storey' the proposed development is well within the statutory height limit and demonstrates design excellence. Accordingly, the DCP storey guideline should not be strictly applied in this instance.

Comment: It is still considered that the proposal does not comply either part storey DCP definition at the time of DA lodgement and with the amendment. The primary reason is that the proposed ground floor levels of Buildings A-D (i.e. the proposed part storeys shaded in light blue shown on the submitted sections) being relied upon as part storeys are not considered to be 'part storeys' as they would have predominantly residential floor plates and should be counted as a 'full storey' instead. As a result, the proposal does not comply with Figure 10 of Locality 8 – St Leonards South Precinct of Part C – Residential Localities LCDCP 2010 which permits a maximum of 8 storeys.



Figure 10: Height of Buildings (in storeys)

It is recommended that Buildings A-D be redesigned to ensure compliance by ensuring that a maximum of 8 storeys be provided for to fully comply with the maximum number of storeys controls contained within the DCP.

C. Key Amendments Requested

The key amendments requested by Council were provided to the applicant in a request for further information provided as **Attachment A** to this briefing note. It is noted that the applicant in their response has addressed majority of the issues raised with the exception to number of storeys/part storeys and building encroachments into the green spine (maximum 2.5m building height) area.

The amended plans have addressed the building setback concerns where all buildings either comply with or exceed the DCP setbacks. Given the significant splay of the River Road boundary an average 24m setback (for Building A on Level 5 and above (floor plans) and on Building D on Level (floor plan)) has been applied to the minimum 24m setback requirement (Levels 6 and above) to allow for a logical building layout.

7. Submissions

The proposal was notified in accordance with Council policy and 10 submissions including three submissions related to the proposed VPA were received by way of objection.

The issues relate to the following matters:

- FSR

- Design excellence/quality
- Height, bulk and scale
- Setbacks
- Street wall height
- Inconsistent with existing character and topography
- Solar access
- Natural ventilation
- Overshadowing
- Edge treatments/basement protrusions above ground
- Traffic, transport and access
- Parking
- Flora and fauna
- Through site link
- Information insufficient to allow assessment
- Sustainability
- Lack of open space
- Safety and security
- Loss of privacy
- Loss of views
- Loss of property values
- Construction impacts
- Design Review Panel concerns

7. Next Steps

The next steps are advising the applicant of Council's remaining concerns with the proposed development and reporting to the Sydney North Planning Panel for determination with a likely **recommendation of refusal** (tentatively scheduled early in 2023) to provide the applicant with an opportunity to address Council's concerns.

Attachment A – Council Request for Further Information