

10 October 2022

Mr Greg Samardzic
Senior Town Planner
Lane Cove Council
48 Longueville Road
LANE COVE NSW 2066

Dear Greg,

**ST LEONARDS SOUTH GREATON EAST QUARTER DA D/60/2022 REQUEST FOR
INFORMATION SUBMISSION**

I refer to your RFI letter dated 4 August 2022 requesting additional information in accordance with Clause 54 of the *Environmental Planning and Assessment Regulation 2000* in respect of the subject development application. Matters raised are addressed below and in the following attachments:

Attachment 1 – Detailed RFI Response

Attachment 2 - Revised Architectural Plans prepared by Koichi Takada Architects

Attachment 3 – Corrs Chambers Westgarth Submission on Part Storey DCP Amendment

Attachment 4 – Revised Digital Model

Attachment 5 – Corrs Chambers Westgarth Legal advice in relation to Building Height

Attachment 6 – Contamination advice by Douglas Partners

Attachment 7 – Revised Acoustic Report prepared by PKA Acoustic Consulting

Attachment 8 – Erosion and Sediment Control Plan by Robert Bird Group

Attachment 9 – Revised Landscape Plans prepared by Aspect Studios

Attachment 10 – Revised Landscape Design Report by Aspect Studios

Attachment 11 – Survey Plan prepared by LTS Surveyors

Attachment 12 – Additional Arborist advice prepared by Lawrence and Co.

Attachment 13 – Revised Access Report prepared by ABE Consulting

Attachment 14 – Revised Architectural Design Report prepared by Koichi Takada Architects

Attachment 15 - Aboriginal Heritage Due Diligence Assessment prepared by RPS

Attachment 16 - Response to Submissions prepared by MG Planning

Attachment 17 – Response to DRP comments prepared by Koichi Takada Architects and Aspect Studios

Attachment 18 – Revised ESD Report prepared by JHA

Following consideration of the matters raised by Council, amendments have been made to the proposed scheme to address Council's concerns and issues raised in submissions following the public exhibition of the development application. Key changes to the design can be summarised as:

- Building C has had 1 typical lower level removed to be consistent with the DCP 8 storey guideline
- Building E fronting River Road has had a "4th" storey added setback 17m from the River Road frontage consistent with the DCP storey guideline and setbacks
- Buildings A, D and E have been amended to be consistent with the DCP River Road setbacks of 10m, 17, and 24m with additional dimensions provided on the plans to clearly delineate the building level and relevant DCP setback guideline. An averaging of the 24m setback is provided on Storey 6 and above for Building A as a result of the splayed site boundary consistent with Council's advice. The top floor of Building A has also been setback 3m to maintain a recessed upper level and recessive architectural reading. A stepped massing has therefore been applied to Building A consistent with the DCP guideline and similar to Building D.
- The massing of Building D has been adjusted with the building form stepping towards River Road well behind the DCP setback line and wholly within the LEP maximum height plane.
- The floorplate of the penthouse levels of all buildings have marginally increased resulting in the east and west facades moving further out (Note: this change doesn't have any major impact on the building mass and remains compliant with the DCP setbacks)
- The slab edge of buildings within the Green Spine area have been amended to reduce the depth of these elements by 50mm such that they do not encroach into the 24m setback zone and where elements do encroach clarify that these are lightweight architectural shading elements only and do not form part of the structure of the building. Accordingly, the 2.5m LEP height limit does not apply to these elements
- Pedestrian access from the central green spine to Area 16 & 17 has been introduced
- The landscape design around the amenity block has been amended to accommodate architectural changes, and
- Upper level terraces planter box locations have been amended similarly to accommodate architectural changes.

As detailed on the Project Summary sheet (A001) at **Attachment 2** the amended proposal provides for a reduction in apartments from the previously proposed total of 245 apartments to 238 apartments,

that is, a reduction of 7 apartments although the total GFA remains at 22,770m² equating to an FSR of 2.6:1. Key statistics of the amended proposal are as follows:

SPECIFICATION	DA AS LODGED	AMENDED DA	CHANGE
Site area	8,758m ²	8,758m ²	Nil
GFA	22,770m ²	22,770m ²	Nil
FSR	2.60:1	2.60:1	Nil
Apartment Total	245	238	-7
1 bdrm	82 (33%)	78 (33%)	-4 apartments
2 bdrm	114 (47%)	109 (46%)	-5 apartments
3 bdrm	49 (20%)	51 (21%)	+2 apartments
Green spine width	24m	24m	Nil
Deep soil	1984m ²	1984m ²	Nil
Communal open space	2411m ²	2411m ²	Nil
No. of Storeys	Max 9	Max 8	-1 storey (Bdg C)
Car parking	418 spaces	411 spaces	-7 spaces

We note that the proposed development includes a number of 'part storeys' in accordance the definition of part storey contained in the DCP at the date of lodgement (1 June 2022) as follows:

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

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' to the following:

Part storey means a storey where the floor level is partly more than 1 metre below ground level (existing) and where 50% or more 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.

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' 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.

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 Greaton St Leonards Holdings Pty Ltd. A copy of this submission is provided at **Attachment 3**. 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.

As outlined above please refer to **Attachment 1** and the remaining attachments for a detailed response to all issues raised by Council in its RFI letter.

We trust that the amended development proposal can now be supported by Council for approval by the Sydney North Planning Panel. We look forward to your positive consideration. Should you require any further information please do not hesitate to contact the undersigned.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'H. Miller', with a stylized, flowing script.

Helena Miller
MG Planning