

**Sydney North Planning Panel Meeting 10 May 2023**  
**12-20 BERRY ROAD AND 11-19 HOLDSWORTH AVENUE, ST LEONARDS**

**Subject:** 12-20 Berry Road and 11-19 Holdsworth Avenue, St Leonards  
**Record No:** DA22/115-01 - 15540/23  
**Division:** Environmental Services Division  
**Author(s):** Greg Samardzic

<b>Panel Reference</b>	PPSSNH-339
<b>DA Number</b>	115/2022
<b>LGA</b>	Lane Cove Council
<b>Proposed Development</b>	Demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including one affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles
<b>Street Address</b>	12-20 Berry Road and 11-19 Holdsworth Avenue, St Leonards
<b>Applicant/Owner</b>	Applicant: Hilary Apitz (Altis Bulky Retail P/L) Owner: SJD St Leonards P/L and Aqualand St Leonard Development 3 P/L as Trustee for Aqualand St Leonard Development 2 Unit Trust
<b>Date of DA lodgement</b>	26 September 2022
<b>Total number of Submissions</b>	Five
<b>Number of Unique Objections</b>	Five ( <b>Note: All copies of submissions sent to the Panel for review</b> )
<b>Recommendation</b>	<b>Refusal</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Development has a capital investment value of more than \$30 million.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• <b>relevant environmental planning instruments</b> <ul style="list-style-type: none"> <li>- SEPP 65 – Design Quality of Residential Apartment Development;</li> <li>- SEPP Transport and Infrastructure 2021;</li> <li>- SEPP Resilience and Hazards 2021;</li> <li>- SEPP Building Sustainability Index 2004;</li> <li>- SEPP Planning Systems 2021; and</li> <li>- Lane Cove Local Environmental Plan 2009.</li> </ul> </li> <li>• <b>proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority</b> <ul style="list-style-type: none"> <li>- N/A</li> </ul> </li> <li>• <b>relevant development control plan</b></li> </ul>

	<ul style="list-style-type: none"><li>- Lane Cove Development Control Plan 2009</li><li>• 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 under section 7.4</li><li>- Yes – draft voluntary planning agreement that a developer has offered to enter into under Section 7.4</li><li>• relevant regulations e.g. Regs 92, 93, 94, 94A, 288</li><li>- Clause 92(1)(b) – Demolition of Structures</li><li>• coastal zone management plan</li><li>- Nil</li><li>other relevant plans</li><li>- Apartment Design Guide (ADG)</li><li>- Childcare Planning Guideline (CPG)</li><li>- St Leonards South Landscape Masterplan</li><li>- St Leonards South Section 7.11 Contributions Plan</li><li>- Special Infrastructure Contribution Levy Direction</li></ul>																																																												
List all documents submitted with this report for the Panel’s consideration	<table><tr><th>Annex.</th><th>Document</th><th>Prepared By</th></tr><tr><td>1</td><td>Draft Reasons for Refusal</td><td>Lane Cove Council</td></tr><tr><td>2</td><td>SEPP 65 Assessment (ADG)</td><td>Lane Cove Council</td></tr><tr><td>3</td><td>CPG Assessment</td><td>Lane Cove Council</td></tr><tr><td>4</td><td>Development Control Plan Assessment</td><td>Lane Cove Council</td></tr><tr><td>5</td><td>Summary of Submissions</td><td>Lane Cove Council</td></tr><tr><td>6</td><td>NSROC DRP Minutes</td><td>NSROC Design Review Panel</td></tr><tr><td>7</td><td>NSROC DEP Minutes</td><td>NSROC Design Review Panel</td></tr><tr><td>8</td><td>SNPP Briefing Notes</td><td>Lane Cove Council</td></tr><tr><td>9</td><td>Draft Planning Agreement</td><td>Altis Bulky Retail</td></tr><tr><td>10</td><td>Architectural Plans</td><td>Silvester Fuller</td></tr><tr><td>11</td><td>Landscape Report and Plans</td><td>RPS Australia East</td></tr><tr><td>12</td><td>Stormwater Report</td><td>BG&amp;E</td></tr><tr><td>13</td><td>Statement of Environmental Effects</td><td>Gyde</td></tr><tr><td>14</td><td>Section J Report</td><td>Integreco</td></tr><tr><td>15</td><td>BCA Report</td><td>Steve Watson &amp; Partners</td></tr><tr><td>16</td><td>Traffic Impact Assessment</td><td>Traffix</td></tr><tr><td>17</td><td>Aboricultural Impact Assessment</td><td>Eco Logical</td></tr><tr><td>18</td><td>Access Report</td><td>Morris Goding Access Consulting</td></tr><tr><td>19</td><td>Noise Impact Assessment</td><td>Pulse White Noise</td></tr></table>	Annex.	Document	Prepared By	1	Draft Reasons for Refusal	Lane Cove Council	2	SEPP 65 Assessment (ADG)	Lane Cove Council	3	CPG Assessment	Lane Cove Council	4	Development Control Plan Assessment	Lane Cove Council	5	Summary of Submissions	Lane Cove Council	6	NSROC DRP Minutes	NSROC Design Review Panel	7	NSROC DEP Minutes	NSROC Design Review Panel	8	SNPP Briefing Notes	Lane Cove Council	9	Draft Planning Agreement	Altis Bulky Retail	10	Architectural Plans	Silvester Fuller	11	Landscape Report and Plans	RPS Australia East	12	Stormwater Report	BG&E	13	Statement of Environmental Effects	Gyde	14	Section J Report	Integreco	15	BCA Report	Steve Watson & Partners	16	Traffic Impact Assessment	Traffix	17	Aboricultural Impact Assessment	Eco Logical	18	Access Report	Morris Goding Access Consulting	19	Noise Impact Assessment	Pulse White Noise
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		Acoustics
20	Combined Preliminary and Detailed Site Investigation	JBS&G Australia
21	Quantity Surveyors Report	Rider Levett Bucknall
22	Design Excellence Report	Silvester Fuller
23	Construction & Demolition Waste Management Plan	Elephants Foot Company
24	Operational Waste Management Plan	Elephants Foot Company
25	BASIX Certificate	Integreco
26	Site Survey	SJD Property Group
27	Geotechnical Report	Douglas Partners
28	SEPP 65 Design Statement	Silvester Fuller
29	ESD Report	Integreco
30	Hydrogeological Report	Douglas Partners
31	Public Art Strategy	Aqualand
32	Connecting to Country Report	WSP
33	Solar Reflectivity Report	Windtech
34	Construction Management Plan	Aqualand
35	Notification Extent Map	Lane Cove Council
36	NSW Police Response	North Shore PAC
37	WaterNSW Request for Further Information	WaterNSW
38	Ausgrid Comments	Ausgrid
39	Final Response to DRP Comments	Gyde
40	Aboriginal Heritage Office Comments	AHO
41	Council's Request for Further Information (RFI) Letter	Lane Cove Council
42	Oculus Comments	Oculus
43	Detailed RFI Response	Gyde
44	Architectural Plans Schedule	Silvester Fuller
45	RFI Traffic Responses	Traffix
46	Updated Sun Studies	Silvester Fuller
47	Geotechnical Investigation Services	Douglas Partners
48	DEP Presentation	Silvester Fuller
49	Integrated Development Letter	Gyde
50	Sydney North Planning Panel Record of Briefing	Sydney North Planning Panel
51	Erosion & Sediment Control Plan & Details	BG&E
52	Minutes from Meeting between Council and Proponent – 19 May 2022	Lane Cove Council
53	Electrical Supply Report	Shelmerdines
54	Wind Report	Windtech
55	CPTED Report	Gyde

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	56	DCP & ADG Compliance Table	Gyde
	57	NatHERS	Integreco
	58	Draft Sewer Concept Plan	Sydney Water
	59	Sewer & Water Utility Statement	Craig & Rhodes
	60	Demolition Plan	Silvester Fuller
	61	Hydraulic & Wet Fire Services Statement	Norman Disney & Young
	62	Structural Design Certificate	Dunnings
	63	Construction Traffic Management Plan	Traffix
	64	Sustainable Traffic & Access Plan	Traffix
	65	Pre-DA Report	Lane Cove Council
<b>Clause 4.6 requests</b>	Not applicable		
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Design excellence/quality</li> <li>• Building separation</li> <li>• Height, bulk and scale</li> <li>• Setbacks</li> <li>• Solar access</li> <li>• Natural ventilation</li> <li>• Overshadowing</li> <li>• Traffic, transport and access</li> <li>• Parking</li> <li>• Flora and fauna</li> <li>• Green Spine</li> <li>• Through site link</li> <li>• Sustainability</li> <li>• Lack of open space</li> <li>• Loss of privacy</li> <li>• Loss of views</li> <li>• Limited infrastructure</li> <li>• Design Review Panel concerns</li> <li>• Public interest</li> <li>• DCP non-compliances</li> <li>• Contradictions between Council planning instruments</li> <li>• Non-compliance with LEP and DCP objectives</li> <li>• SEPP 65 and ADG compliance</li> <li>• Cumulative Effects</li> <li>• Removal of trees and wildlife</li> <li>• Canberra Avenue closure</li> <li>• Topography and design</li> <li>• Building envelope and articulation</li> </ul>		
<b>Report prepared by</b>	<b>Greg Samardzic</b>		
<b>Report date</b>	10 May 2023		

### 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**

### 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 summarised, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### 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? **Not applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **No – refusal recommended**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## 1. EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including 1 affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles on land known as Nos. 12 – 20 Berry Road and 11-19 Holdsworth Avenue, St Leonards.

The Development Application is referred to the Sydney North Planning Panel for determination under SEPP (Planning Systems) 2021 as the Capital Investment Value exceeds \$30 million.

The Development Application had followed an extensive design process through the Northern Sydney Region of Council's Design Review Panel and Design Excellence Panel prior to the lodgement of the Development Application and during its assessment. The resulting and subject Development Application does not provide for a design that exhibits *design excellence* as required for all developments within the St Leonards South Precinct.

The proposal has been assessed against the relevant parts of Section 4.15 of the Environmental Planning and Assessment Act, 1979. A detailed assessment of the relevant environmental planning instruments is provided in Section 6 of this report. A summary of the matters requiring consent authority satisfaction is provided in **Table 1** below.

<b>Table 1 – EPI Matters to be Satisfied</b>		
<b>EPI</b>	<b>Clause</b>	<b>Recommendation Summary</b>
SEPP 65 – Design Quality of Residential Apartment Development	28(2) – Advice of design review panel, the design quality principles and the ADG to be considered	See report below and annexure 2 for further details

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SEPP Resilience and Hazards 2021	7 – Contamination and remediation to be considered in determining an application.	Combined preliminary and detailed site investigation submitted which indicated that the subject site would likely to be suitable for continued residential use
SEPP Transport and Infrastructure 2021	3.23 – Applicable provisions of the Child Care Planning Guideline for a centre-based childcare facility to be considered in determining an application	Satisfied – see annexure 3
LCLEP 2009 – Incentive Provisions/Design Excellence	7.1(4) – Provide required unit mix, green spine setbacks, site area and pedestrian link.	Not entirely satisfied – refer to table 6 of this report for further details
LCLEP 2009 – Earthworks	6.1A - This clause generally requires development consent for earthworks and requires that the consent authority consider certain matters before granting consent for earthworks to ensure the works will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposed earthworks would not have a detrimental impact on environmental functions or surrounding lands (refer to submitted erosion and sediment control plan at annexure 51 and geotechnical report at annexure 27)

The subject Development Application has been assessed against the requirements of the recently adopted St Leonards South planning instruments and there are substantial variations proposed with respect to:

- **Green spine setbacks (height of buildings);**
- **Number of storeys/part storey controls; and**
- **Building setback controls.**

There are balcony encroachments into the required 24m wide green spine area which contains a maximum LEP height standard of 2.5m. Such encroachments breach this standard and cannot be supported. It was requested that these elements be deleted and in response the applicant had not deleted these encroachments. This design outcome is not supported as other approved and proposed developments within the Precinct have fully complied with this requirement. Full compliance ought to be achieved and these elements be deleted.

The subject development site contains a maximum 10 storey DCP control. A maximum of 11 storeys is proposed for the building on Area 16 and a maximum of 12 storeys for the building on Area 17 is proposed. The applicant was requested to redesign the proposal to comply with the maximum number of storeys controls and the applicant in response did not amend the proposal to comply. Full compliance ought to be achieved and it is recommended that the subject Development Application be refused on this basis.

Further, the proposal also does not comply with the required setbacks to the street and to the required 15m wide east-west pedestrian link. Again, the applicant was requested to redesign the proposal to fully comply with the DCP setback requirements and the applicant had chosen not to do so. It is noted that Council will not support any building setback variations in this instance.

The Development Application was notified, and a total of four submissions under the public exhibition/1<sup>st</sup> notification period. It is noted that there was one late submission received after the 2<sup>nd</sup> notification period had occurred. The submissions relate to the following matters:

- Design excellence/quality
- Building separation
- Height, bulk and scale
- Setbacks
- Solar access
- Natural ventilation
- Overshadowing
- Traffic, transport and access
- Parking
- Flora and fauna
- Green Spine
- Through site link
- Sustainability
- Lack of open space
- Loss of privacy
- Loss of views
- Limited infrastructure
- Design Review Panel concerns
- Public interest
- DCP non-compliances
- Contradictions between Council planning instruments
- Non-compliance with LEP and DCP objectives
- SEPP 65 and ADG compliance
- Cumulative Effects
- Removal of trees and wildlife
- Canberra Avenue closure
- Topography and design
- Building envelope and articulation

The submissions have been summarised and addressed within annexure 5 of this report.

The proposed development represents as an overdevelopment due to its substantial non-compliant nature. The Development Application is not considered to achieve the required design quality standard for developments within the St Leonards South Precinct and is reported to the Sydney North Planning Panel with a recommendation for **refusal**.

## **2. STRATEGIC CONTEXT**

### **2.1 St Leonards South Precinct**

The subject site is located within the 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 2009*. The precinct planning was finalised concurrently with the *St Leonards Crows Nest 2036 Plan*.

### **2.2 Location**

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

within which the precinct is situated include the Pacific Highway, rail/metro to the east, a commercial centre (St Leonards Plaza and St Leonards Square) and Newlands Park and Gore Hill Oval.



**Figure 1: St Leonards South Precinct**





**Figure 2: St Leonards South Precinct – Concept Photomontage**

### 2.3 Vision

The vision of the St Leonards South Precinct is described within *Lane Cove Development Control Plan 2009 Part C – Residential Localities – Locality 8* as follows:

*The desired future character of the St Leonards South Precinct is for a liveable, walkable, connected, safe, Precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre.*

A concept photomontage of the St Leonards South Precinct is shown in **Figure 2** above.

### 2.4 Planning Controls

The planning controls and mechanisms to achieve the vision of the Precinct are detailed and addressed in **Section 6** of this report.

The planning controls are 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 2009*, 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 (see **Figure 3** below).



**Figure 3: St Leonards South Precinct – Area Designation**

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

**i. Zoning**

The Precinct is zoned R4 High Density Residential.

**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 (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 for Height and FSR**

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 provisions 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 would assist Council and the Sydney North Planning Panel in determining SEPP 65 and design excellence.

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:

**vi. 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 4** and is characterised by shared facilities and significant landscaping (50% minimum deep soil).



**Figure 4: Green Spines (Shaded Green)**

**vii. 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.*

This is being applied where there is any part of a storey beneath the ground level (existing) resulting from (1) excavation of a steep slope **or** (2) including basement parking, the entire storey will not be counted 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 use.”*

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:

**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, 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 (LMP) design is provided in **Figure 5** below. It is noted that the proposal complies with the LMP design where it has been assessed by Council's Landscaped Architect and no objections are raised.



**Figure 5: Landscape Master Plan (LMP)**



### 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.

### **2.5 Site in Future Envisaged Context**

The subject development site is centrally located within the St Leonards South Precinct and is known as **Areas 16 and 17**. The site in the future envisaged context would include provision of a 15m wide east-west public pedestrian link through the development site.



**Figure 6: Subject Development Site in Future Envisaged Context**

### 3.1 Subject Site

The subject site is known as Nos. 12-20 Berry Road and 11-19 Holdsworth Avenue, St Leonards, with a total site area of 5,015m<sup>2</sup> (Areas 16 and 17).

The key site characteristics are summarised in **Table 2** below.

<b>Table 2 – Site Characteristics</b>	
<b>Site Characteristic</b>	<b>Subject Site</b>
<b>Title Particulars</b>	12-22 Berry Road and 11-19 Holdsworth Avenue, St Leonards (Lots 33-31, Section 2, DP 7259, Lots A-B DP 110452 and Lots 10-14, Section 2, DP 7259)
<b>Total Site Area</b>	Total: 5,015sqm
<b>Site Dimensions</b>	Approx. 73m to northern and southern boundaries  Approx. 61m to Berry Road  Approx. 76m to Holdsworth Avenue
<b>Topography</b>	See existing site survey plans with spot RLs at <b>Annexure 26</b> .
<b>Zoning</b>	R4 High Density Residential
<b>Existing Structures</b>	The site contains detached dwelling houses on separate allotments with an assortment of ancillary structures and trees
<b>Existing Use</b>	The site is being or has been used for residential purposes
<b>Vehicular Access</b>	Vehicular access (existing) is provided through individual vehicle crossovers for each allotment

#### 3.1.1 Topography

The site slopes from north to south, with a cross fall of approximately 3.5m on Holdsworth Avenue and approximately 4.16m on Berry Road. Rather than being uniform, the cross fall is progressively steep moving from north to south.

The site also slopes from west to east, falling as much as approximately 6.75m from Berry Road to Holdsworth Avenue.

In this case, the slope becomes increasingly steep towards Holdsworth Avenue, with extremely steep gradients approximately 1:3.

#### 3.1.2 Site Photographs



**Figures 7 & 8: Nos. 20-14 Berry Road**





**Figures 9 & 10: Nos. 14 & 12 Berry Road**





Figures 10 & 11: Nos. 19 & 11 Holdsworth Avenue

### 3.1.3 Site Surrounds

The immediate locality is currently characterised by single and double storey detached dwellings. Such dwellings are surrounded by established yards.

The site adjoins two residential lots at No. 22 Berry Road and No. 21 Holdsworth Avenue to the south. These allotments currently accommodate detached dwellings that have been purchased and consolidated for future development as part of Areas 18-20 which has obtained development consent (Development Consent No. 60/2022) for the demolition of existing structures and construction of five residential flat buildings comprising a total of 230 apartments and basement parking for 411 vehicles.

Land to the east comprising Area 5 which currently accommodates detached dwellings which has obtained development consent (Development Consent No. 162/2021) for redevelopment from the Sydney North Planning Panel on 27 June 2022. Approval was granted for the demolition of existing structures and construction of a mixed-use development comprising 80 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 117 vehicles, east-west public pedestrian link and stratum/strata subdivision.

Land to the southeast comprising Areas 7-11 which currently accommodates detached dwellings which has obtained development consent (Development Consent No. 99/2021) for redevelopment from the Sydney North Planning Panel on 2 March 2022. Approval was granted for the demolition of existing structures and construction of five residential flat buildings (ranging from 6 to 10 storeys) comprising a total of 330 apartments and basement parking for 372 vehicles.

Land to the southwest comprising Areas 22 and 23 which also accommodates detached dwellings, Council has received a Development Application (DA No. 154/2022) for construction four residential flat buildings with four levels of basement car parking, comprising a total of 314 dwellings and a proposed new road connecting Park and Berry Road. The application is yet to be determined.

## **4. PROPOSAL**

### **4.1 Overview**

The Development Application is for the demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including 1 affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles on land known as Nos. 12 – 20 Berry Road and 11-19 Holdsworth Avenue, St Leonards (Areas 16 and 17).

The architectural plans are provided as **Annexure 10** to this report and a summary of the key development statistics are provided in **Table 3** as follows:





**Figure 12: Proposed Photomontage**

#### 4.1.1 Key Development Statistics

<b>Table 3 – Development Statistics</b>	
<b>Component</b>	<b>Description</b>
<b>Number of Buildings</b>	Two with basement
<b>Number of Storeys</b>	11 storeys for both buildings according to the applicant
<b>Part Storeys</b>	One-part storey for both buildings (note: see further discussion below)
<b>Building Height</b>	Max. 37m – Holdsworth Avenue (Area 16) Max. 38m – Berry Road (Area 17)
<b>Site Area</b>	2,786m <sup>2</sup> – Holdsworth Avenue (Area 16) 2,229m <sup>2</sup> – Berry Road (Area 17) Total - 5,015m <sup>2</sup>
<b>Gross Floor Area</b>	7,880m <sup>2</sup> – Holdsworth Avenue (Area 16) 8,326m <sup>2</sup> – Berry Road (Area 17) Total - 16,206m <sup>2</sup>
<b>Floor Space Ratio</b>	2.83:1 – Holdsworth Avenue (Area 16)

	3.74:1 – Berry Road (Area 17) Total - 3.23:1
<b>Total Apartments</b>	130
<b>Unit Mix</b>	28, 1-bedroom units (22%)  59, 2-bedroom units (45%)  33, 3-bedroom units (25%)  10, 4-bedroom units (8%)
<b>Vehicular Access</b>	Singular vehicular access point from Holdsworth Avenue
<b>Parking</b>	180 vehicles
<b>Pedestrian Link</b>	The provision of 15m wide pedestrian link through the Area 16 portion of the subject development site
<b>Deep Soil within Green Spine</b>	Greater than 50% of green spine
<b>Childcare Centre</b>	The provision of a childcare centre within the development - 450m2
<b>Deep Soil within Green Spine</b>	The provision of a community facility within the development - 150m2
<b>Affordable Housing</b>	One affordable housing unit

#### 4.1 Development Description

The Development Application is for the demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including one affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles on land known as Nos. 12 – 20 Berry Road and 11 - 19 Holdsworth Avenue, St Leonards.

#### 4.2 Overview

The proposal involves:

- Two residential flat buildings (RFBs), up to 11 storeys in height according to the applicant, with a total of 130 dwellings (inclusive of one affordable dwelling), several communal open space areas, and four basement levels with parking for 180 vehicles for residents, visitors and employees.
- A centre based childcare centre within the proposed Berry Road building to be delivered as cold shell will be dedicated to Council. The fit out and operation of the centre will be subject to future agreements with any operator, as well as a separate Development Application. The centre is expected to comprise approximately 450m2 of area with a total external play area of 450m2.
- A 150m2 community centre to be delivered as cold shell and will be dedicated to Council.
- A 15m wide east-west pedestrian through site link between Berry Road and Holdsworth Avenue as part of Area 16 which will be dedicated to Council.
- Extensive landscaping within the site boundary including the green spine and street frontages.

#### **4.3 Proposed Dwelling Mix**

- 28 1-bedroom units (22%)
- 59 2-bedroom units (45%)
- 33 3-bedroom units (25%)
- 10 4-bedroom units (8%)

#### **4.4 Car Parking**

- Total – 180
- Residential - 135
- Visitors – 26
- Childcare Centre – 19

#### **4.5 Demolition**

All existing structures on the site are proposed to be demolished.

#### **4.6 Tree Removal**

Existing trees on the site are proposed to be removed. Extensive new landscaping, in accordance with the St Leonards South Landscape Master Plan, is proposed as part of the development.

#### **4.7 Excavation and Filling**

Excavation of approximately 15m is proposed to accommodate four basement levels and to achieve the levels prescribed in the Council's St Leonards South Landscape Masterplan.

#### **4.8 Landscaping, Communal Open Space and Public Domain**

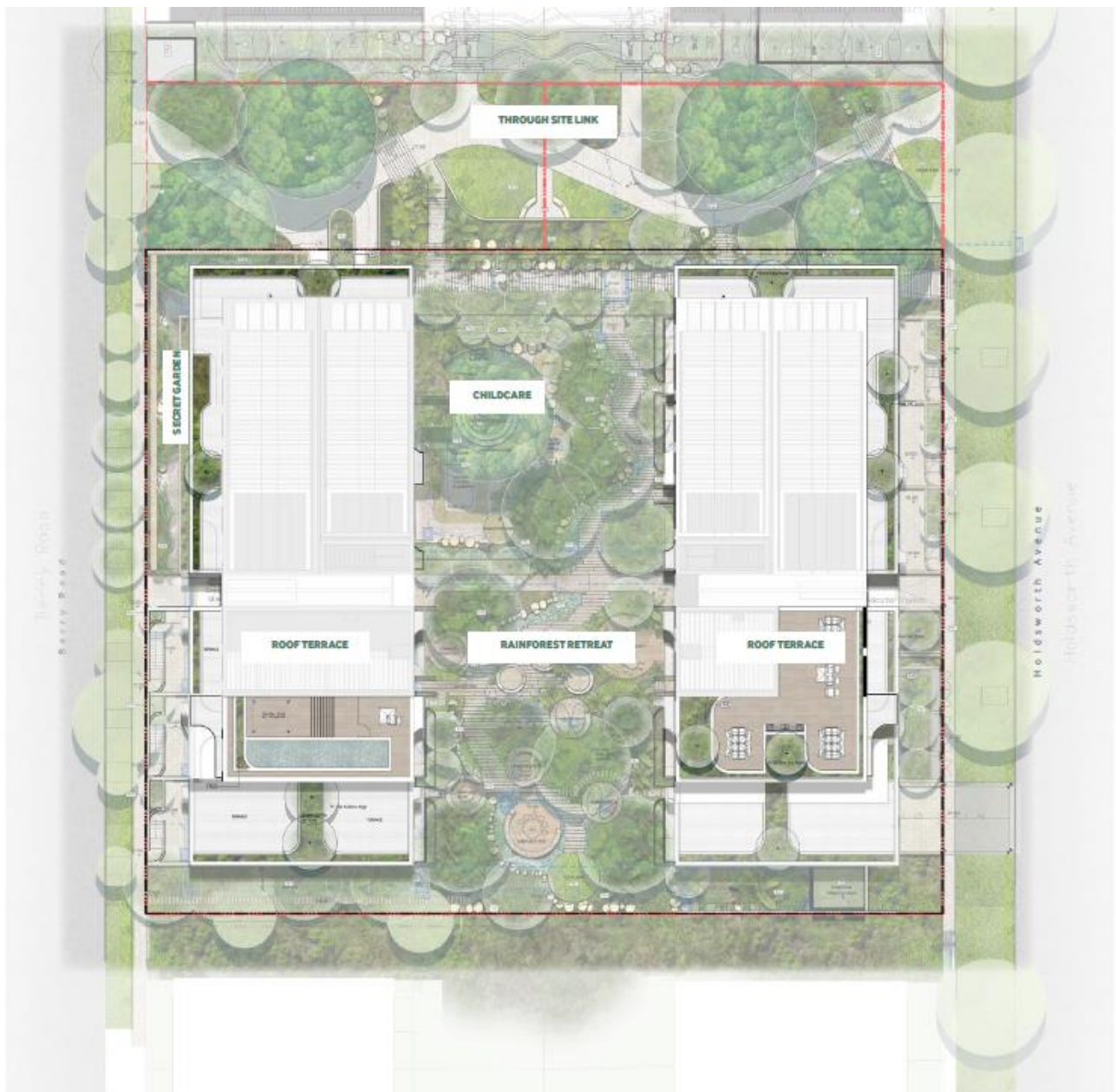
As anticipated by the St Leonards South Landscape Master Plan, the proposal includes extensive ground level as well as above ground landscaping. Much of the landscaping comprises of deep soil zones to facilitate tree growth. The proposal's landscaping, as well as elsewhere throughout the proposed envelopes, incorporates extensive connection to country strategies. Reference can be made to the proposal's landscape master plan, as well as the connection to country strategy, for further details.

Some key details are as follows:

- 1,211m<sup>2</sup> of deep soil areas, which is equivalent 24% of the site area.
- A 'green spine' which is 1,463m<sup>2</sup> in area and includes 732m<sup>2</sup> of deep soil.
- An outdoor play area within the green spine for a future childcare centre.
- A dry creek bed within the green spine to assist with stormwater management and connecting to country.

Roof top communal open spaces are also proposed with a swimming pool for the proposed building on Area 17.





**Figure 13: Proposed Landscaped Plan**

#### **4.9 Vehicular Access**

Basement access is proposed via a driveway on Holdsworth Avenue for both private residential car parking and childcare centre car parking.

#### **4.10 Pedestrian Access**

The proposal includes multiple pedestrian access points, including direct street access for the ground/lower ground dwellings from both Berry Road and Holdsworth Avenue. Access to the lobbies of both respective RFB envelopes will also be provided directly to/from both streets. In addition, the dwellings, childcare centre and community hall will also be accessible from the pedestrian through site link that is to be delivered by the Northern neighbour.

#### **4.11 Service Access**

The lower ground level basement and associated Holdsworth Avenue driveway has been designed with a 4.5m clearance to allow service trucks to access the basement level waste storage areas.

## **5. ASSESSMENT HISTORY**

### **5.1 Assessment Timeline**

The assessment timeline is provided in **Table 4** below.

<b>Table 4 – Proposal Timeline</b>	
<b>Date</b>	<b>Description</b>
25 February 2022	NSROC Design Review Panel and Council Pre-DA meeting.
19 May 2022	Meeting between Council and the proponent/developer (which was Aqualand P/L) to discuss concerns with proposed variations to height in metres (balconies encroaching into the maximum 2.5m building height control); height in storeys and building setbacks.
28 June 2022	Another meeting between Council and the proponent/developer (Aqualand) to further discuss the above listed concerns.
26 September 2022	Subject Development Application lodged.
12 October 2022	Meeting between Council and the applicant/new developer (Altis) to discuss with them that the concerns raised previously have still not been addressed with the submission of the subject application.
30 September 2022	Public notification of Development Application commenced.
28 October 2022	Public notification of Development Application concluded (see <b>Section 7</b> for summary of submissions received).
9 November 2022	NSROC Design Excellence Panel meeting.
6 December 2022	Letter sent to the applicant requesting additional information.
24 January 2023	Applicant provided amended plans and additional information. The proposal was not redesigned to comply with the concerns raised with the abovementioned proposed variations.
30 January 2023	2nd notification period of Development Application commenced.
15 February 2023	2nd notification period of Development Application to concluded.
15 March 2023	Briefing of the Sydney North Planning Panel.
20 March 2023	Meeting with the applicant to discuss the outcome of the panel briefing and the remaining outstanding concerns with building height (balcony encroachments into the required green spine area), height in storeys and building setbacks. The applicant advised that they did not wish to amend the proposal any further and understood that the likely recommendation by Council to the panel would be a refusal.
10 May 2023	Matter to be considered or determined by the Sydney North Planning Panel.

### **5.2 Design Amendments**

A summary of the architectural plan amendments made is provided in **Table 5** below.

<b>Table 5 – Plan Amendments</b>	
<b>Revision</b>	<b>Description</b>
Revision 1	Submitted on 24 January 2023 as part of the response to request for further information in relation to requesting full compliance with the proposed significant variations to building setbacks (to both street frontages and to



	<p>the pedestrian link), number of storeys (part storey interpretation) and building (balcony) encroachments into the Green Spine area (see Council's Request for further information letter in Appendix 41 for further details).</p> <p>It is noted that no redesign had occurred to comply with the setbacks, storeys and encroachments into the Green Spine Area.</p> <p>Some minor other than to address the landscaping and Design Excellence Panel comments are as follows:</p> <ul style="list-style-type: none"> <li>• Further detail has been included in the plan to achieve greater coordination with any development on the northern side of the east-west link. In this regard, the seating node has been repositioned entirely within the boundaries of the subject site.</li> <li>• Additional cascading species and lower height shrubs are proposed within boundary fencing planter boxes to soften the pedestrian interface.</li> <li>• Dwellings B.CL.04 and B.CL.05 have been converted from two storey town houses to single bedroom, single level apartments with their RL slightly above street level. Their former lower-level floor space has been converted to non-habitable space such as storage for parcels as well as additional bicycle parking.</li> <li>• B.CL.03 is retained as a two-storey town house however it's RL has been raised to be within approximately 1m of the existing footpath level. Given the lower level is located behind boundary fencing, it would not be read as a storey.</li> <li>• Landscaping in the vicinity of the stacks has been amended to minimise the visual perceptibility of carpark ventilation shafts. Additional landscaping has been inserted between the stacks and the main pathway to provide a degree of screening and thereby minimising views to the infrastructure. These modifications are included in the landscaping plans.</li> <li>• Additional use of sandstone in lieu of palisade fencing where the line of sandstone has been increased by a further 500mm in most areas. In some sections, palisade fencing is retained as it achieves greater integration with landscaping, softening of edges, and passive surveillance of the communal open space and public domain.</li> <li>• The additional solar sun studies requested by the Panel are provided as part of the amended architectural package. The sun studies include detailed images for solar access to the proposal's east facing dwellings at the times of 10.30am and 11.00am, as requested. In summary, the additional analysis confirms that the proposal continues to satisfy the ADG's solar and daylight access guidelines in that 91 of the 130 proposed dwellings (or 70%) receive 2 hours solar access between 9am-3pm at mid-winter.</li> </ul>
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### **5.3 Additional Information**

A summary of the additional information provided (but not limited) is provided as follows:

- Detailed RFI Response (see Annexure 43)
- Amended Architectural Plans (see Annexure 10)

- Architectural Plans Schedule (see Annexure 44)
- Updated Traffic Advice (see Annexure 45)
- Amended Landscape Plans (see Annexure 11)
- Updated Sun Studies (see Annexure 46)

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The applicant in their responses and amended plans had failed to redesign the proposal to fully comply with the relevant DCP building setback, number of storeys/part storeys and building encroachments into the green spine (maximum LEP 2.5m building height) area requirements raised within Council's request for further information letter. The reasons provided for in the detailed RFI response by the planning consultant are not supported and the proposal ought to be substantially redesigned to fully comply with the recently adopted South St Leonards precinct planning controls.

## **6. Environmental Planning and Assessment (EP&A) Act, 1979**

Section 4.46 of the EP&A Act defines 'Integrated Development' as matters which require development consent and approval of one or more authorities under related legislation. In these circumstances, prior to granting consent, Council must obtain from each relevant approval body their General Terms of Approval (GTA) in relation to the development. Pursuant to Section 4.46 of the EP&A Act and Section 90 of the Water Management Act 2000, the proposed development is 'Integrated Development' and requires approval from WaterNSW as the proposed excavation levels of approximately 15m would be below the water table and during the construction stage dewatering may be required.

The submitted geotechnical report is unclear as to whether the proposed development basement would be either tanked or based on a drained basement scenario. The report potentially suggests a drained basement however the required information has not been supplied to support this. Further information had been requested to allow WaterNSW to further consider and to be re-referred back to WaterNSW for the required GTA to be issued. The applicant has not been able to provide the required additional information in time and had indicated whether the requirements could be conditioned up instead. However, for this type of construction dewatering, WaterNSW cannot issue standard conditions and has a strict process in place that must be followed.

The required additional information is still required to be submitted for a full hydrogeological review by DPE-Water otherwise the subject application would need to be refused based on WaterNSW advice. If WaterNSW were to proceed with referral to DPE-Water without the required additional information and based only with the information provided so far on the NSW Portal to date, a GTA for temporary dewatering (tanked basement) may be issued with the risk DPE may not support it and recommend refusal. In the event GTA's for temporary dewatering are issued, when in fact the applicant requires permanent dewatering (drained basement scenario), they would then need to apply for a S4.55 Modification Application which would cause further delays.

At the time of writing this report, Water NSW have not provided their GTA for the development and as a result any development consent could not be granted unless the required GTA is obtained. It is recommended that this forms part of the recommended reasons for refusal in this instance.

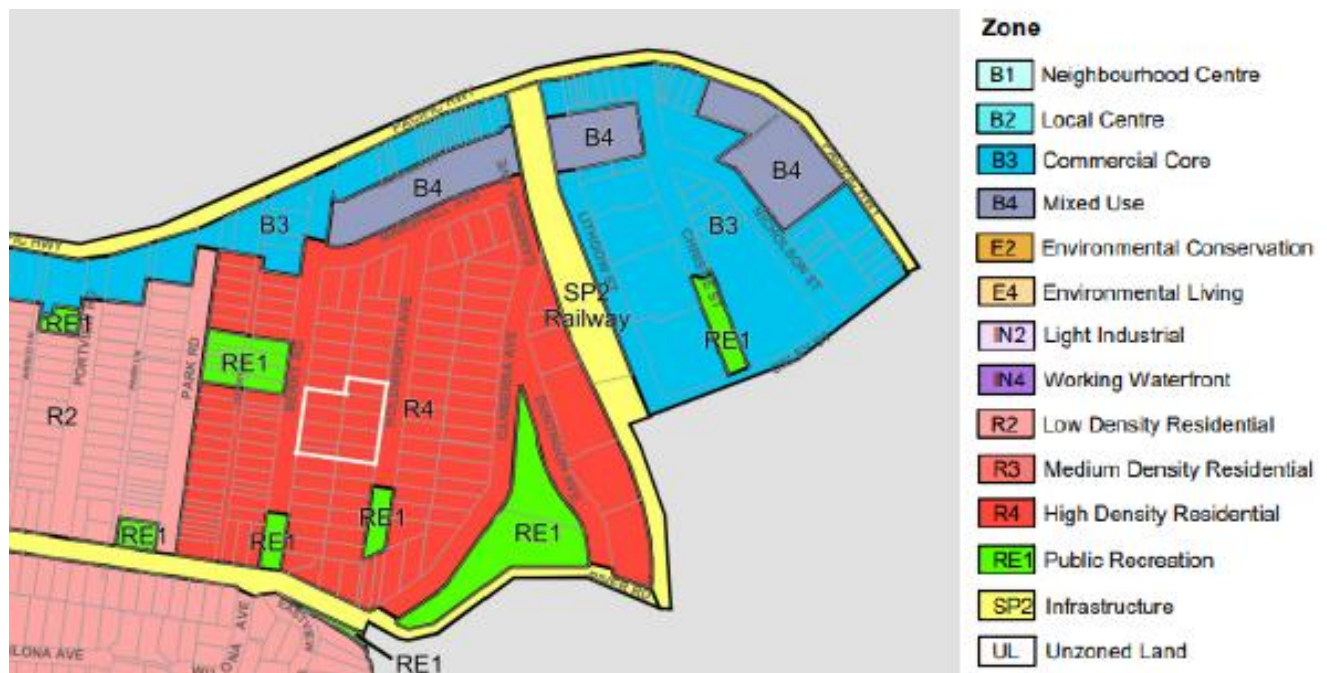
The following assessment is provided against the relevant provisions of Section 4.15 of the NSW Environmental Planning and Assessment Act, 1979:

### **6.1 Any environmental planning instrument:**

### 6.1.1 Lane Cove Local Environmental Plan 2009

#### 6.1.1.1 Permissibility

The site is zoned R4 High Density Residential under LCLEP 2009. Residential flat buildings are permissible with consent in the R4 High Density Residential zone. The proposed development is therefore permissible with consent.



**Figure 14: Zoning Map**

#### 6.1.1.2 Incentive Building Height and Floor Space Ratio

An incentive building height and floor space ratio control applies to the site under LCLEP 2009 under Clause 7.1 - Development on land in St Leonards South Area. The relevant objective reads as:

*(1) The objective of this clause is to promote, by providing building height and floor space incentives, residential development within the St Leonards South Area that provides for—*

- (a) community facilities, open space, including communal open space, and high quality landscaped areas, and*
- (b) efficient pedestrian and traffic circulation, and*
- (c) a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets, including by providing affordable housing, and*
- (d) the amalgamation of lots to prevent the fragmentation or isolation of land.*

##### 6.1.1.2.1 Accessing Incentive Provisions

The incentive building height and floor space ratio are available only if the incentive provisions of Part 7.1(4) of LCLEP 2009 are met (see **Section 2.4ii** of this report for further full details or requirements).

##### 6.1.1.2.2 Compliance with Incentive Provisions/Incentive Qualification Criteria

An assessment against the relevant incentive provisions is provided in **Table 6** as follows:

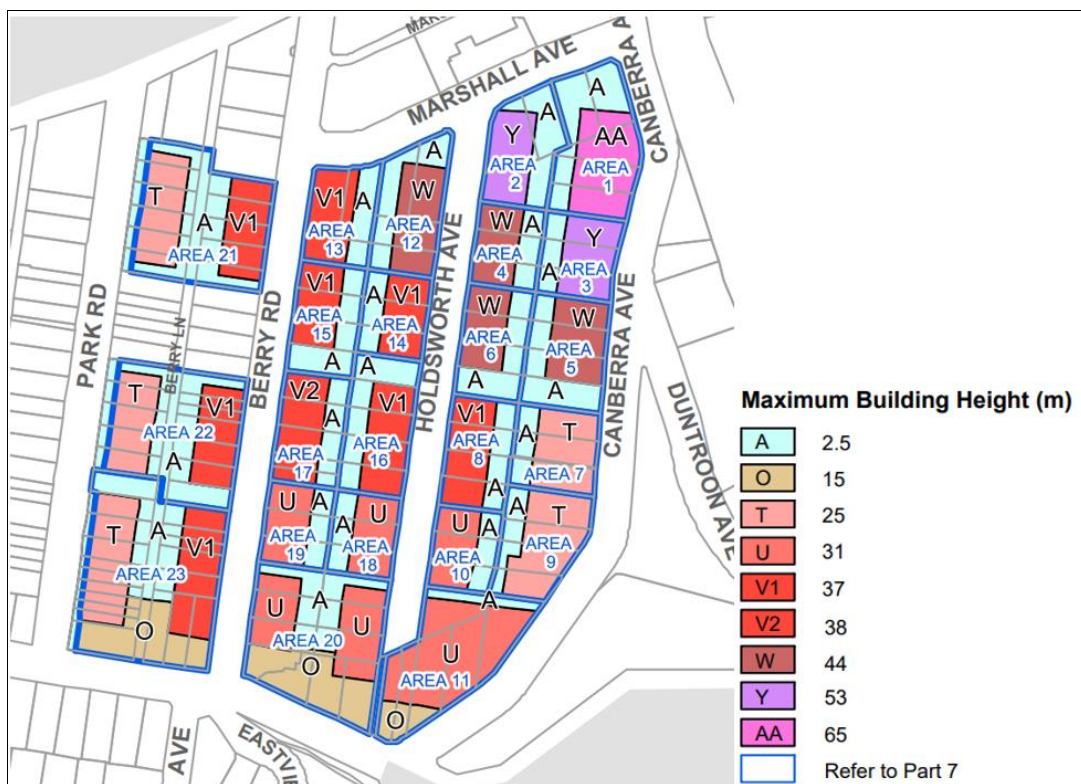
<b>Table 6 – Applicable Incentive Provisions</b>			
<b>Category</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Unit Mix</b>	Minimum 20% of 1/2/3-bedroom units	28 1-bedroom units (22%)  59 2-bedroom units (45%)  33 3-bedroom units (25%)  10 4-bedroom units (8%)	Yes
<b>Green Spine Setbacks</b>	The provision of setbacks to establish communal open space and green spines between buildings	There are building balcony encroachments into the required minimum 24m wide Green Spine Area which are planned green spine widths under the recently adopted South St Leonards precinct planning controls	<b>No, see report below for further details</b>
<b>Minimum Site Area</b>	Area 16: Min.2,500sqm Area 17: Min. 2,200sqm <u>Total: Min. 4,700sqm</u>	Area 16: 2,786sqm Area 17: 2,229sqm <u>Total - 5,015sqm</u>  The proposal complies with Council's required amalgamation pattern and the minimum site areas	Yes
<b>Affordable Housing</b>	Area 16 is not required to provide for any affordable housing  Area 17 is required to provide for one affordable dwelling	Not applicable to Area 16  One dwelling provided	N/A  Yes
<b>Recreation Area and Community Facilities</b>	Area 16 is not required to provide for any recreational area and community facilities  Area 17 is required to provide for 450sqm recreational area and 600sqm community facilities	Not applicable to Area 16  Achieved	N/A  Yes

	The recreation area will be adjacent to the community facility		
<b>Pedestrian Link</b>	Area 16 is required to provide a 15m wide pedestrian link	15m wide pedestrian link to be provided	Yes
	Area 16 is required to provide a 15m wide pedestrian link	Not applicable to Area 16	N/A

The proposal complies with the provisions of 7.1(4) of LCLEP 2009 with exception of achieving the minimum required 24m wide green spine setback area (to be discussed below in further detail) which would be contrary to objectives (a) & (b) in terms of providing for high quality communal open space and landscaped areas and efficient pedestrian circulation. Accordingly, the proposal cannot seek to utilise the incentive height and floor space ratio provisions on this basis.

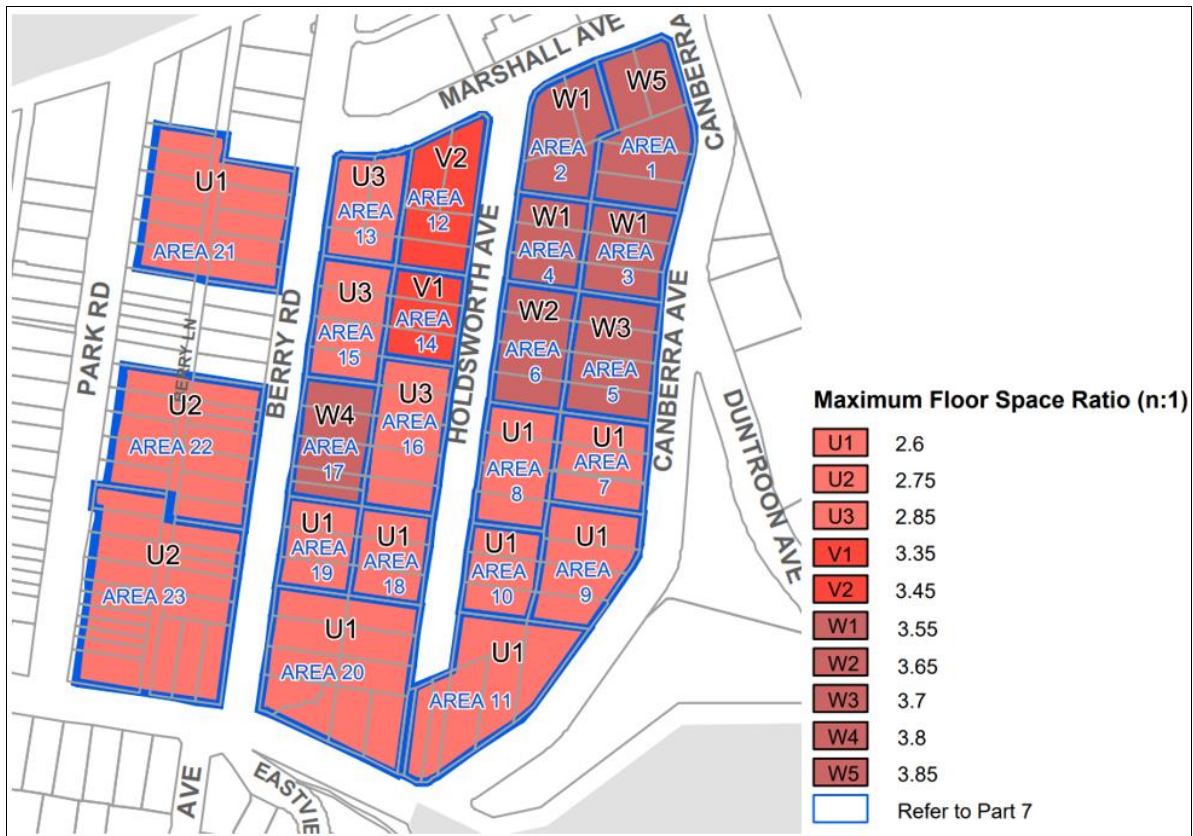
#### 6.1.1.2.3 Incentive Building Height and Floor Space Ratio Controls

The incentive building height (**Figure 15**) and incentive floor space ratio (**Figure 16**) apply to the development.



**Figure 15: Maximum Building Height Map**





**Figure 16: Maximum Floor Space Ratio Map**

#### 6.1.1.2.4 Compliance with Incentive Building Height and Floor Space Ratio Controls

##### i. Building Height

An assessment of the proposal against the incentive building height provisions is provided in **Table 7** below.

<b>Table 7 – Compliance with Incentive Building Height</b>			
<b>Category</b>	<b>Incentive Building Height (Max.)</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Area 16</b>	2.5m (max) – Green Spine Area	>2.5m	<b>No, balconies encroach into the required Green Spine Area</b>
	<b>Note:</b> The incentive building height map includes a 2.5m zone through the pedestrian link and green spine (coloured in blue).  37m (max) – Holdsworth Avenue	Max. 37m	Yes
<b>Area 17</b>	2.5m (max) – Green Spine Area	>2.5m	<b>No, balconies encroach into the required Green Spine Area</b>

	38m (max) – Berry Road	Max. 38m	Yes
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### **Building Height Development Standard**

It is advised that the proposal contains balconies elements into the required 24m wide Green Spine Area and would be contrary to the maximum 2.5m green spine building height development standard under Clause 7.1(3)(a) of LCLEP 2009 (see Figure 15 above).

It was requested that these elements be deleted to ensure full compliance and in response the applicant had not deleted these encroachments. The applicant's justification is as follows:

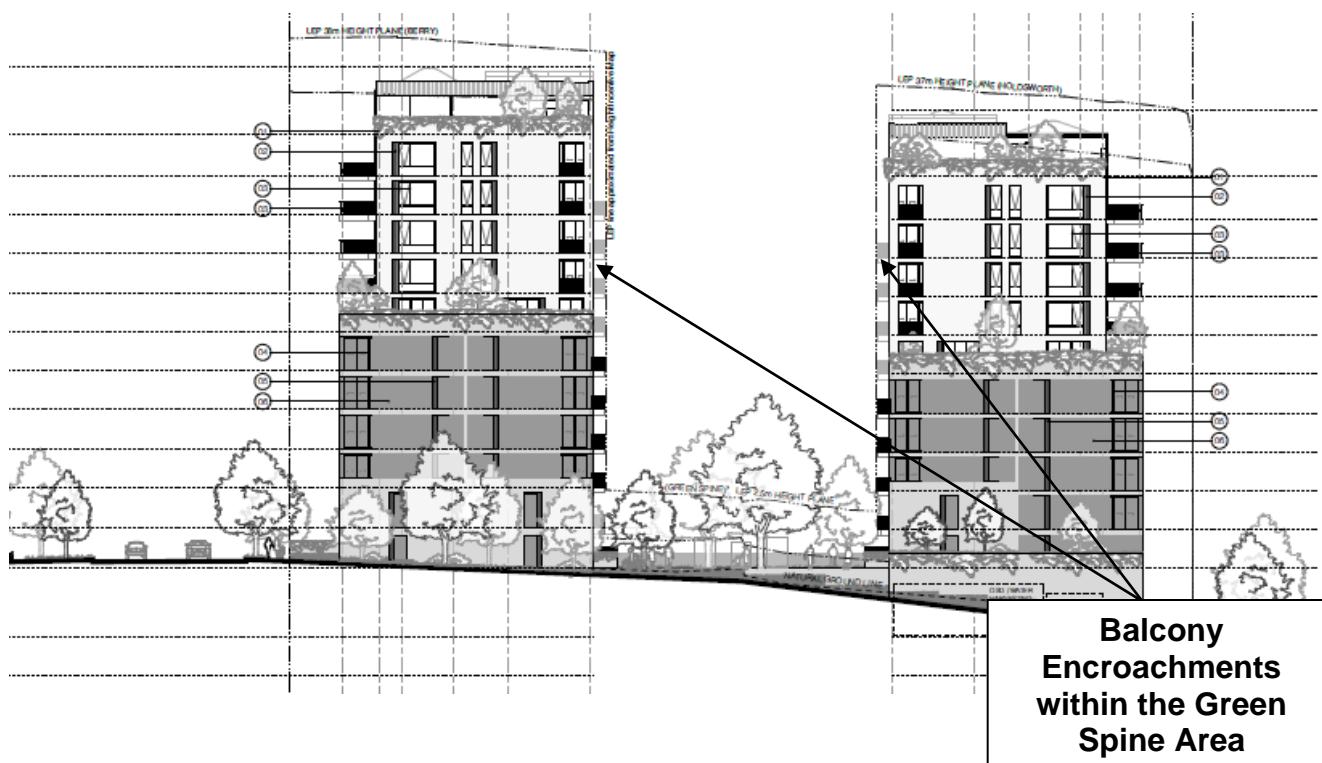
*The Lane Cove Development Control Plan 2010 (the DCP) requires Green Spines to be provided as set out in Figure 17 of the DCP (not dimensioned) and the St Leonards South Landscape Master Plan (the LMP). The LMP indicates that Green Spines should be 24-30m wide (page 28) and achieve a variety of performance requirements which are set out on page 41 of the LMP. An indicative typology for the Green Spine affecting 12– 20 Berry Rd and 11– 19 Holdsworth Ave (the site) is shown on page 45 of the LMP.*

*The proposed width of the Green Spine (i.e. the distance between the facades of the two buildings) on the site is 24.515m. Each of the building facades are punctuated by balconies that include decorative elements which protrude between 0.7m and 1m beyond the façade. The extent of the protrusion within the nominal 24m width of the Green Spine is therefore approximately 0.44m to 0.74m.*

*The protrusions relate to balconies that serve as private open space for the apartments, as well as a number of smaller decorative balconies. The purpose of the protrusion is to create visual interest and relief in the façade which improves the relationship of the buildings with the public domain, including the Green Spine. The protrusion is not strictly required to achieve the minimum amount of private open space required for each apartment and in this regard the balconies could be deleted and/or redesigned without affecting numerical compliance with the relevant design criteria in the ADG. Deletion of the decorative elements of the balconies would, however, result in an inferior design outcome as observed by the NSROC Design Excellence Panel on 9 November 2022:*

*“Several balconies project 1m into the central communal open space. The Panel supports this Non-compliance because the balconies give visual relief to the otherwise uniform building alignment suggested by the DCP.”*

*It is also important to observe that the balcony protrusions do not prejudice the achievement of any of the attributes or character of the Green Spines as set out on page 40 of the LMP. The protrusions do not prevent the achievement of the ground plane envisaged in the LMP as they sit over the indicative ground floor private terraces. Because the balcony protrusions occupy a relatively small area of each building façade and have been carefully designed as lightweight cantilevered elements with open balustrades, they do not adversely affect the visual bulk of the building and do not exacerbate the sense of enclosure already created by the apartment buildings which define the Green Spine.*



**Figure 17 – Proposed Balcony Encroachments into the Required Green Spine Area**

*Having regard to the above, we consider it appropriate, therefore, to exercise flexibility in the application of the numerical DCP criteria to permit the minor encroachment of the decorative building elements. Council would of course be aware that the consent authority is required to be flexible in applying the DCP provisions to allow*

**Comment:** Further to the above justifications, the applicant indicated at the meeting on 20 March 2023 that there were some cadastral LEP map inconsistencies that would made the proposal complaint with respect to height. It was stated that the blue coloured part of the LEP height map is below 24m in width as the map due to the thickness of the black lines. This argument by the applicant is not supported in principle as the intent of the green spine is to be a minimum 24m in width under the DCP and that there be no encroachments above 2.5m above natural ground level. It is noted that Clause 4.6(8)(cb) – Exceptions to development standards reads as:

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 4.1A,*
- (cb) Part 7, except clauses 7.1(4)(e) and 7.2.**

As a result, no building variations under Clause 4.6 are permitted under the Plan and cannot occur as the applicant is attempting to invoke or rely upon on the building height and FSR incentive



clause under Part 7. Further, Part 7 Built Form – Building Envelope of Locality 8 – St Leonards South Precinct of Part C – Residential Localities LCDCP 2010 under Table 7.1 – Requirements to be entitled to Incentives requires that for both Areas 16 and 17:

*Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the “Specifications for Private Open Space in the St Leonards South Precinct” with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919*

The DCP and the associated Landscape Master Plan (LMP) states that a minimum 24m wide Green Spine Area be provided as part of any development. Under Part 7 – Built Form, the Building Envelope table: Control No. 2: Rear Building Setback requires a ‘*Minimum 12m setback to rear boundary of an Area*’. The proposed design outcome with balconies encroaching into the Green Spine Area and the applicant’s justification is not supported as other approved or proposed developments within the precinct have fully complied with this height requirement. Full compliance should be achieved, and these building elements be deleted as they cannot be approved.

## ii. Floor Space Ratio

An assessment of the proposal against the incentive floor space ratio provisions is provided in **Table 8** below.

<b>Table 8 – Compliance with Incentive Floor Space Ratio</b>			
<b>Category</b>	<b>Incentive FSR (Max.)</b>	<b>Total Proposed</b>	<b>Compliance</b>
<b>Area 16 – 2,786sqm</b>	2.85:1 (max) – Holdsworth Avenue	2.83:1 (7,880sqm)	Yes
<b>Area 17 – 2,229sqm</b>	3.8:1 (max) – Berry Road (Area 17)	3.74:1 (8,326sqm)	Yes

**Note:** However, it is noted that namely ‘Site Area’ is defined under LCLEP 2009 by the development site boundaries not by individual areas meaning that averaging of the FSR could have been adopted across the areas. The proposal is considered satisfactory with respect to the maximum floor space ratio being proposed.

### 6.1.1.3 Design Excellence

Clause 7.6(3) of LCLEP 2009 states that consent authority must not grant consent unless it considers the development exhibits design excellence. The relevant objective of Clause 7.6 Design excellence – St Leonards South Area reads as:

*(1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.*

The criteria and associated assessment have been provided in **Table 9** as follows:

<b>Table 9 – Compliance with Design Excellence Provisions</b>			
<b>Clause</b>	<b>Provision</b>	<b>Comment</b>	<b>Compliance</b>
7.1.6(4)(a)	<i>whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved</i>	The proposal has been assessed by the Design Excellence Panel (DEP) and raised no concerns in relation to design, materiality and	<b>No, in part due to the inappropriate design of the development</b>

		<p>detailing.</p> <p>However, this does not overcome to be discussed in greater detail in this report, the concerns with the proposed number of storeys and building setbacks which would not result in a high standard development within a new precinct that would expect to achieve design excellence. It is considered that the proposed building type, design, and location are not satisfactory in this instance.</p>	<b>as a whole</b>
7.1.6(4)(b)	<i>whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	<p>Based on the inappropriate nature of the proposal described above, the form and external appearance would not integrate appropriately with the public domain. The overall massing of the two residential flat buildings would not improve the quality and amenity of the domain. The proposed built form does not successfully implement the intent of the existing masterplan planning requirements of individual building forms sitting within a densely landscaped context.</p> <p>It presents as an overbearing scale to the street and to the east-west pedestrian link where it does not ensure that taller elements are appropriately setback and recessive. The proposed substantial variations to the number of storeys and setbacks would not provide a high-quality design to the street/pedestrian link and internally. The variations would also contribute to additional unnecessary overshadowing onto the public domain areas.</p>	<b>No</b>
7.1.6(4)(c)	<i>whether the development protects and enhances the natural</i>	The proposal attempts to respond to the topography	<b>No, due to the unsatisfactory</b>

	<i>topography and vegetation including trees or other significant natural features,</i>	<p>through the either the provision of activated part storey or the required childcare level to be at the same level of the required green spine area. The proposal retains relevant canopy trees in the public domain where possible. The proposal again attempts to incorporate landscaping within the building setback areas and within the communal green spine area however there are concerns with how vigorous the proposed landscaping is on the site to replace the removed trees and natural features.</p> <p>The proposal had not ensured the recommended provision of the 1m wide planting strip along the street frontage boundary at the same grade as the public domain footpath as it is important in mitigating the change in level between the public domain and the ground level of buildings and apartment terraces. Without this planting strip at the public domain streetscape/verge level, there is likely to be a poor outcome to the interface with the public domain where retaining walls and balustrades are exposed to the street. It is recommended that this requirement is maintained as not providing it will result in a poor outcome and would set a precedent for the entire precinct.</p>	<b>proposed landscaped outcome proposed</b>
7.1.6(4)(d)	<i>whether the development detrimentally impacts on view corridors,</i>	The proposal sits within the key DCP building envelope planes. The proposal would not detrimentally impact on view corridors.	Yes
7.1.6(4)(e)	<i>whether the development achieves transit-oriented design principles, including the need to ensure direct, efficient and safe pedestrian and</i>	The site is serviced by a range of well-established and frequent public transport services. There are nearby	Yes

	<i>cycle access to nearby transit nodes,</i>	<p>bus stops and the site is located within walk distance to the St Leonards Railway Station to the northeast.</p> <p>The proposal would provide for a high-level of integration into pedestrian and cycle infrastructure including shared user paths at all street frontages and comprehensive network of pedestrian infrastructure including walking paths with the green spine.</p> <p>The subject application has been supported by a detailed Ecologically Sustainable Development (ESD) report.</p>	
7.1.6(4)(f)	the requirements of the <i>Lane Cove Development Control Plan</i> ,	<p>The proposal has been assessed against the Lane Cove Development Control Plan and is unsatisfactory.</p> <p>The proposal does not comply with the required number of storeys and building setback requirements. The proposed maximum storey height and the minimal setbacks to the street/east-west pedestrian link including balcony encroachments within the green spine area.</p>	<b>No, the proposed DCP variations are not supported, and refusal is recommended</b>
7.1.6(4)(g)	<p><i>how the development addresses the following matters—</i></p> <p>(i) <i>the suitability of the land for development,</i></p> <p>(ii) <i>existing and proposed uses and use mix,</i></p>	<p>(i) Whilst the subject land would be ultimately suitable for the development, it is considered that a high level of care had not been taken in the design to ensure that it responds to site specific characteristics.</p> <p>(ii) The proposed use/s (a high-density mixed-use development) is appropriate given the zoning and location.</p>	<b>No, in part due to the unsatisfactory design or nature of the proposal</b>

		<p>However, the overall design of the development is not supported.</p> <p>(iii) The proposal does not include heritage items or a specific heritage interface, however the streetscape presentation is not of a high quality. The proposed setbacks are not appropriate, and the upper levels of buildings are not setback to ensure a strong street wall with recessive upper elements. The design of the proposal had not ensured that an exceptional design quality would be provided for.</p> <p>(iv) The internal separation, setbacks, height, amenity, and urban form is not satisfactory. The interrelationship between the site and neighbouring sites have not been carefully managed. Compliant setbacks, number of storeys and height ought to be provided for.</p> <p>(v) The proposal does not provide for massing and modulation in line with the DCP in relation to street wall heights, setbacks and the number of storeys. The buildings are not appropriately stepped to the street and to the pedestrian link. It is considered that the proposal would not provide for a high-quality development consistent with Council's vision for the area.</p> <p>(vi) Street frontage heights do not comply with the DCP</p>	
	<p><i>(iii) heritage issues and streetscape constraints,</i></p> <p><i>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i></p> <p><i>(v) bulk, massing and modulation of buildings,</i></p> <p><i>(vi) street frontage heights,</i></p>		

		<p>and would not provide an appropriate human scale. The overall setback scheme including the upper levels of the buildings are not setback significantly behind the required street wall heights to ensure that these levels do not dominate the relevant street frontages.</p>	
	<p><i>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i></p>	<p>(vii) The environmental impacts have been considered through sustainability initiatives (such as Nathers etc) however a compliant scheme would further assist in achieving better or improved sustainability levels. The proposed development would not ensure a high level of amenity for future residential users and to the public domain.</p>	
	<p><i>(viii) the achievement of the principles of ecologically sustainable development,</i></p>	<p>(viii) ESD is achieved as outlined in the submitted ESD Report however compliance with the DCP has not been achieved. Further the inclusion of high level of landscaping both on site and within the building design itself has not been fully achieved to ensure that the development would reach its full sustainability potential.</p>	
	<p><i>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</i></p>	<p>(ix) The development provides for pedestrian and cycling connectivity within and in the adjacent public domain to the site however the visual impact of the development onto the pedestrian link and green spine area is not</p>	

	<p>(x) the impact on, and any proposed improvements to, the public domain,</p> <p>(xi) the configuration and design of publicly accessible spaces and private spaces on the site.</p>	<p>supported. Vehicular and service access is of a high quality with a single driveway entry from Holdsworth Avenue. The proposal consolidates the number of existing vehicle crossings into the public domain. Parking is also provided in accordance with Council requirements.</p> <p>(x) The proposed setbacks and number of storeys involved would not provide for substantial improvements to the public domain.</p> <p>(xi) The concept pedestrian link plans have been provided for however the visual impact of the development onto the pedestrian link and green spine area is not supported. The private spaces on site are provided through the green spine and along the relevant street frontages.</p>	
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As a result, it is considered the proposal would not meet the above relevant objective of this clause in ensuring design excellence would be achieved.

The proposal has been assessed against the following additional provisions of LCLEP 2009 as detailed in **Table 10** below.

<b>Table 10 – Additional LCLEP 2009 Provisions</b>			
<b>Clause</b>	<b>Provision</b>	<b>Comment</b>	<b>Compliance</b>
<b>6.1A - Earthworks</b>	<p>(3) Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p>	<p>The proposal would result in extensive excavation to accommodate the proposed basement levels.</p> <p>The proposal was accompanied by geotechnical investigation and construction and demolition waste</p>	<b>No, refusal is recommended</b>

	<p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p>	<p>management plans that ensure proper fill disposal, detail soil stability conditions and considerations.</p> <p>A referral has been sent to Water NSW in relation to groundwater impacts however their required concurrence has not been received.</p> <p>All relevant matters required to be addressed under Clause 6.1A have not been fully addressed.</p>	
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Based on the above concerns raised, the proposal does not meet Clause 7.1(1)(a) & (b) objectives to ensure that high quality green spine and landscaped areas are provided for and to provide for efficient pedestrian circulation. The proposal fails to meet the relevant objective of Clause 7.6(3) to *to 'deliver the highest standard of architectural, urban and landscape design'*. Further, the proposal also does not meet the following LEP, zone and building height aims/objectives as follows:

*to establish, as the first land use priority, Lane Cove's sustainability in environmental, social and economic terms, based on ecologically sustainable development, inter-generational equity, the application of the precautionary principle and the relationship of each property in Lane Cove with its locality.*

*to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies in accordance with the indicated expectations of the community.*

*in relation to residential development, to provide a housing mix and density that—*

- *is compatible with the existing environmental character of the locality, and*
- *has a sympathetic and harmonious relationship with adjoining development.*

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

*to ensure development allows for reasonable solar access to existing buildings and public areas.*

*to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable.*

*to seek alternative design solutions in order to maximise the potential sunlight for the public domain.*



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

**The Development Application does comply with Lane Cove Local Environmental Plan 2009 and refusal is recommended.**

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

Clause 28(2) of SEPP 65 states that in determining a Development Application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) –

- (a) the advice (if any) obtained from the design review panel (see **Section 6.1.2.1**),
- (b) the design quality of the development when evaluated in accordance with the design quality principles (see **Section 6.1.2.2**), and
- (c) the Apartment Design Guide (see **Section 6.1.2.3**).

#### **6.1.2.1 Design Review Panel**

The Development Application was referred to the Northern Sydney Region of Council's Design Review Panel on 25 February 2022 and Design Excellence Panel on 9 November 2022. The minutes of these meeting are provided as **Annexure 6 & 7** to this report. The applicant's response to the latest meeting is included in **Annexure 52** and it is considered that the applicant had satisfactorily addressed the relevant matters raised by the panel.

#### **6.1.2.2 Design Quality Principles**

The design quality of the development has been assessed in relation to the design quality principles contained within SEPP 65. The principles are quoted and then addressed in turn.

#### **PRINCIPLE 1: CONTEXT AND NEIGHBOURHOOD CHARACTER**

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

**Comment:** The proposal does not respond to its intended context and neighbourhood character of South St Leonards (SLS) precinct. The proposal in its design overall is not considered to contain responsive design elements that will contribute to the future character of the precinct. The proposed number of storeys and building setbacks to the street and to the pedestrian link would not contribute to the high design excellence criteria required to be met to enable for higher densities to be permitted on the development site. The proposed variations to the number of storeys, height and building setbacks would exacerbate the built form and bulk/scale concerns that exist for the subject development.

The development does not respond to the context into which it is placed. The proposed development represents as an overdevelopment due to the proposed development being non-

compliant. The development does not conform to the future desired character of the newly adopted precinct and would affect its future intended built outcomes to be achieved. The proposed design does not satisfy Principle 1: Context and Neighbourhood Character.

### **PRINCIPLE 2: BUILT FORM AND SCALE**

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

**Comment:** The proposed built form and scale does not reflect the anticipated built form specified in the LEP and DCP controls for the SLS precinct. The development does not comply with the maximum building height within the green spine area, the number of storeys, building setbacks, and street wall height controls. The proposal does not contain appropriate setbacks sympathetic to the relevant street and future pedestrian link conditions when viewed from these surrounding areas. The applicant has not agreed to redesigning the proposal to fully comply as per Council's request where it is noted that other approved developments within the precinct have either been designed or redesigned to fully comply.

There remains a significant concern with the built form and scale. The non-compliant setbacks are not in keeping with the intended character of the streetscape. The height (including the number of levels) of the development overall in particular along the eastern boundary is not acceptable in terms of future residential amenity impacts. The proposal does not respond to its context. Concerns are raised which results in an overdevelopment. The proposed design does not satisfy Principle 2: Built Form and Scale.

### **PRINCIPLE 3: DENSITY**

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

**Comment:** The proposed density of the development is at the maximum incentive floor space ratio and would not exceed the anticipated density envisaged for the subject development site. However, Principle 3 requires a consideration of the amenity afforded to that density. In this instance, the proposal relies on substantial variations to accommodate the proposed maximum density permitted and they do not provide for good planning outcomes in this instance. The proposed development is an overdevelopment. The development does not comply with Council's numerical density controls and results in an unacceptable built form outcome. The proposed design does not satisfy Principle 3: Density.

### **PRINCIPLE 4: SUSTAINABILITY**

Good design combines positive environmental, social and economic outcomes. Good sustainable

design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

**Comment:** The aim of the project is to revitalise the Lane Cove precinct with a strong focus on sustainability to promote a healthier way of living not just for the present but in the years to come. Embedded in the design are a range of sustainable initiatives however the principal concern relates to the non-compliant scheme of the development that would not assist in the principle of achieving good sustainability outcomes. Whilst it does appear that sustainability to be achieved as outlined in the submitted ESD Report however the proposal lacks inclusion of a high level of landscaping to the public domain.

A referral has been sent to Water NSW in relation to groundwater impacts however their required concurrence has not been received. The proposed design does not satisfy Principle 4: Sustainability.

#### **PRINCIPLE 5: LANDSCAPE**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.

**Comment:** The proposal does not provide for a high-quality landscape scheme to the public domain. The proposed landscaping would not assist either to soften the visual impact of the proposed buildings. The proposed design does not satisfy Principle 5: Landscape.

#### **PRINCIPLE 6: AMENITY**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

**Comment:** The design does not provide for high levels of external amenity within the green spine and public domain areas which would have a sense of an unnecessary 'enclosing' impact on these spaces. All other approved developments within the precinct have either been designed or redesigned to fully comply with respect to no building encroachments into the green spine area. The proposed building setbacks and number of storeys to both the street and the pedestrian link would not enhance the amenity of the public domain to future users due to the same visual impact of the buildings would have on these areas due to the large variations being proposed. The overall building design compromises privacy of future residents given the building setbacks and number of storey concerns. The proposed design does not satisfy Principle 6: Amenity

#### **PRINCIPLE 7: SAFETY**

*Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.*

**Comment:** The proposal would provide for appropriate safety through the provision of active street frontages, passive surveillance of public and communal areas and the incorporation of crime prevention through relevant environmental design principles (CPTED). Pedestrian entries are well-lit and visible from internal communal areas and the public domain. The paths will be relatively level and straight where possible, and well defined with lighting to create good lines of sight from the surrounding lobbies and drop off points for safe access. The proposal was referred to NSW Police Local area command who raised no objections subject to conditions. The proposed design satisfies Principle 7: Safety.

#### **PRINCIPLE 8: HOUSING DIVERSITY AND SOCIAL INTERACTION**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.*

**Comment:** The proposal provides for an appropriate apartment mix and sizes. The proposal provides for adaptable apartments, visitable apartments and well-connected communal open space areas including the green spine area. A childcare centre and a communal facility are provided within the development and the childcare is positioned adjacent within the green spine area to contain an outdoor play area. Both the childcare centre and the community facility are also adjacent to the 15m wide pedestrian link with lift and ramp access. The proposed design satisfies Principle 8: Housing Diversity and Social Interaction.

#### **PRINCIPLE 9: AESTHETICS**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

**Comment:** The proposed materiality is supported. A variety of design elements are introduced to the buildings to provide legibility and visual interest to the facades. The buildings have been designed with appropriate colours and finishes which reflect each street frontage and natural conditions. Whilst the materiality is supported, the proposal fails to provide for a highly integrated aesthetic development in relation to its proposed built-form, landscape, public/private domain interfaces. The reduced building setbacks and the proposed balcony encroachments into the green

spine area are not supported. Good design would be better achieved through a reduction in the number of storeys and setback including deletion of the balconies within the green spine.

Further, the lack of sun shading to west elevations to both buildings are not supported by the Design Excellence Panel. The proposed design does not satisfy Principle 9: Aesthetics.

### 6.1.2.3 Apartment Design Guide (ADG)

A SEPP 65 assessment against the ADG is provided as **Annexure 2** to this report.

**The Development Application does not comply with SEPP 65 and refusal is recommended.**

### 6.1.3 SEPP Resilience and Hazards 2021

The proposal is assessed against the relevant provisions of SEPP Resilience and Hazards 2021 as detailed in **Table 11** below.

<b>Table 11 – SEPP No. 55 Clause 7 Compliance Table</b>	
<b>Provision</b>	<b>Compliance</b>
<p><i>(1) A consent authority must not consent to the carrying out of any development on land unless -</i></p> <p><i>(a) it has considered whether the land is contaminated</i></p> <p><i>(b) if the land is contaminated, it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i></p>	<p><b>Complies</b> - the proposal was accompanied by a Combined preliminary and detailed site investigation submitted which indicated that the subject site would likely to be suitable for continued residential use – see <b>Annexure 20</b>.</p>
<p><i>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</i></p>	<p><b>Complies</b> – the submitted reporting has been assessed by Councils Environmental Health Officer and raised no objections.</p>
<p><i>(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the</i></p>	<p><b>Complies</b> – see above</p>

<b>Table 11 – SEPP No. 55 Clause 7 Compliance Table</b>	
<b>Provision</b>	<b>Compliance</b>
<i>findings of the preliminary investigation warrant such an investigation.</i>	
<p>(4) <i>The land concerned is—</i></p> <p>(a) <i>land that is within an investigation area,</i></p> <p>(b) <i>land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</i></p> <p>(c) <i>to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—</i></p> <p><i>land—</i></p> <p>(i) <i>in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</i></p> <p>(ii) <i>on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</i></p>	<p><b>Complies</b> - the site is not within an investigation area or listed in the guidelines. The current reporting is satisfactory, and the proposed development could be approved for such a mixed-use purpose.</p>

#### **6.1.4 SEPP (BASIX) 2004**

A BASIX certificate accompanies the application and is provided as **Annexure 25** to this report. The BASIX Certificate demonstrates compliance with the provisions of the SEPP and is consistent with the architectural documentation submitted.

**The Development Application complies with SEPP (BASIX) 2004**

#### **6.1.5 SEPP (Planning Systems) 2021**

The Development Application is referred to the Sydney North Planning Panel for determination as the Capital Investment Value is \$78,000,000.00 (exceeding \$30 million) satisfying the requirements of SEPP (Planning Systems) 2021.

**The Development Application complies with SEPP (Planning Systems) 2011.**

#### **6.1.6 SEPP (Biodiversity and Conservation) 2021**

The subject site is within the Sydney Harbour Catchment generally but is significantly outside any foreshore or waterways area. Therefore, the relevant part of SEPP (Biodiversity and Conservation) 2021 is the planning principles for the Sydney Harbour Catchment. The principles have been reviewed and the proposal satisfies the relevant matters. Specifically, the proposal provides for appropriate stormwater management to protect the catchment including pollutant control and with the assistance of landscaped areas to be provided on the site.

**The Development Application complies with SEPP (Biodiversity and Conservation) 2021.**

### 6.1.7 SEPP Transport and Infrastructure 2021

The proposal has been assessed against the relevant provisions of SEPP (Infrastructure) 2007 and the following childcare centre requirements of the SEPP are addressed in the table below and the associated Child Care Planning Guidelines are contained within **Annexure 3**. Also, pursuant to Clause 2.48(1)(d), the application was referred to Ausgrid for comment and see their response under **Annexure 38**.

Table 12 - Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
Clause 3.22 Centre-based childcare – concurrence of Regulatory Authority required for certain development – N/A		
(1) This clause applies to development for the purpose of a centre-based childcare facility if:		
(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> , or	Requires: 3.25m <sup>2</sup> /child 195m <sup>2</sup> required/60 children  <u>Minimum 450sqm Area Provided</u>	Yes
(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	Requires: 7m <sup>2</sup> /child 420m <sup>2</sup> required/60 children  <u>Minimum 455sqm Area Provided:</u>	Yes
3.23 Centre-based childcare facility—matters for consideration by consent authorities		
Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> , in relation to the proposed development.	Refer to assessment in <b>Annexure 3</b> .	
3.26 Centre-based child care facility—non-discretionary development standards		
(1) The object of this clause is to identify development standards for particular matters relating to a centre-based childcare facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.		
(2) The following are non-discretionary development standards for the purposes of Sections 4.15(2) and (3) of the Act in relation to the carrying out of development for the purposes of centre-based child care:		

<b>Table 12 - Part 3 Early education and care facilities—specific development controls</b>		
<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
(a) <b>location</b> —the development may be located at any distance from an existing or proposed early childhood education and care facility,	Appropriately located in accordance with St Leonards South precinct planning requirements	Yes
<b>(b) indoor or outdoor space</b>		
(i) for development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or	<p><u>Indoor Space</u> The proposal complies with the required indoor space as outlined in the Regulations.</p> <p><u>Outdoor Space</u> The proposal complies with the required outdoor space for the proposed children placement sought.</p>	<p>Yes</p> <p>Yes</p>
(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the <i>Children (Education and Care Services) Supplementary Provisions Regulation 2012</i> applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,	Clause 28 applies to temporary emergency relocation of early education and childcare facility – exempt development	Not Applicable
(c) <b>site area and site dimensions</b> —the development may be located on a site of any size and have any length of street frontage or any allotment depth,	Appropriately located on a large development site area, street frontage and allotment depth	Yes
(d) <b>colour of building materials or shade structures</b> —the development may be of	Appropriate colour and materials scheme lodged	Yes



Table 12 - Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.		
(3) To remove doubt, this clause does not prevent a consent authority from:		
(a) refusing a development application in relation to a matter not specified in subclause (2), or	The subject Development Application is recommended for refusal however not due to the design of the childcare centre	
(b) granting development consent even though any standard specified in subclause (2) is not complied with.		
3.27 Centre-based childcare—development control plans		
1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based childcare facility:		
(a) operational or management plans or arrangements (including hours of operation),		Relevant consideration has been carried out in although cannot be used as reasons for refusal.
(b) demonstrated need or demand for childcare services,		
(c) proximity of facility to other early childhood education and care facilities,		
(d) any matter relating to development for the purpose of a centre-based childcare facility contained in:		
(i) the design principles set out in Part 2 of the <i>Child Care Planning Guideline</i> , or		
(ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).		
(2) This clause applies regardless of when the development control plan was made.		

## **6.2 Any proposed instrument (Draft LEP, Planning Proposal)**

N/A

## **6.3 Any development control plan**

### **6.3.1 Lane Cove Development Control Plan 2009**

The Development Application has been assessed against the relevant provisions of Lane Cove Development Control Plan (LCDCP) 2009 as detailed in **Annexure 4**. The assessment indicates that the proposal complies with all the relevant provisions with exception of the following:

**Number of Storeys/Part Storey Controls**

Part 7 – Built Form, Figure 10 – Height of Buildings (in storeys) or Control No. 7 under the ‘Building Envelope Table’ of Locality 8 – St Leonards South Precinct of Part C – Residential Localities LCDCP 2009 which permits a **maximum of 10 storeys** on the subject development site. It is noted the ‘Building Envelope Table’ states that ‘A part storey will not count as a storey’.

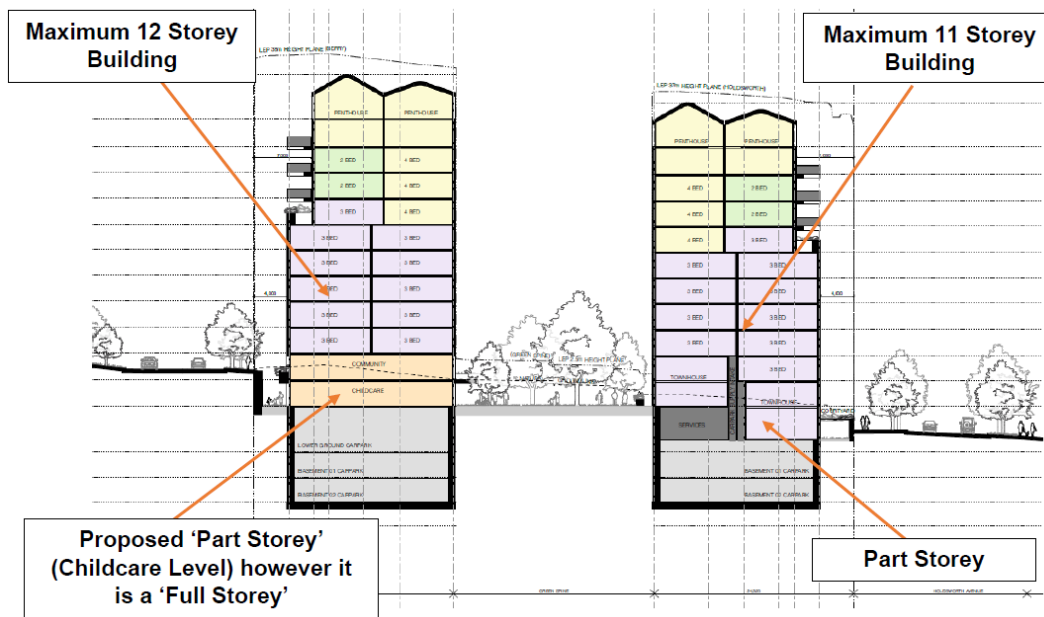


**Figure 10: Height of Buildings (in storeys)**

**Figure 18 – Maximum 10 Storey DCP Control on Areas 16 & 17**

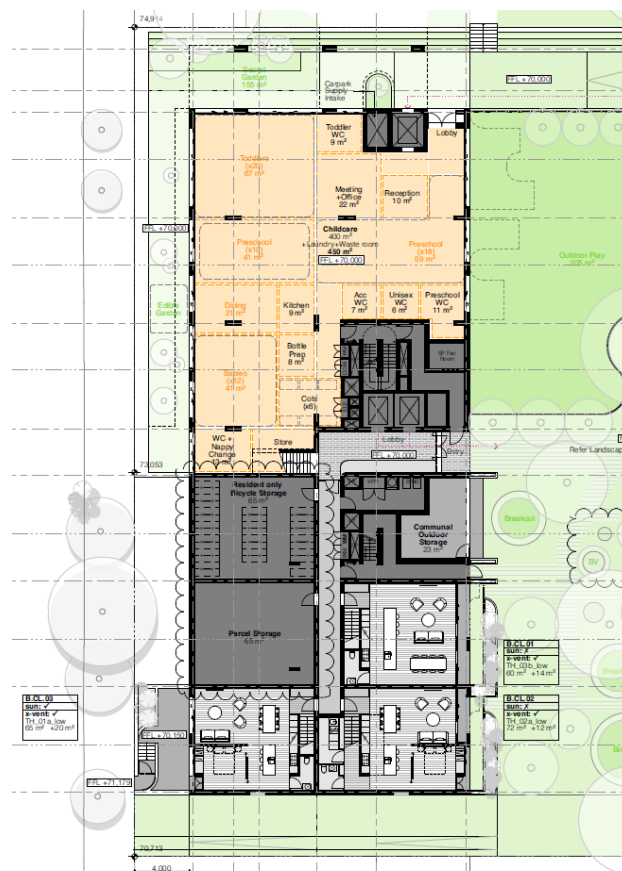
Based on the relevant ‘part storey’ definitions described above in this report and the maximum 10 storeys control, it is considered that the proposal does not comply with the relevant number of storeys/part storeys DCP controls.

A **maximum of 11 storeys** is proposed for the building on **Area 16** and a **maximum of 12 storeys** for the building on **Area 17** are proposed.



**Figure 19 – Maximum 11 Storey Building (Area 16) and 12 Storey Building (Area 17)**

Further, the applicant is of the opinion that the proposed ground childcare level is a 'part storey' however it is Council's view that it does not constitute as a 'part storey' rather as a 'full storey'. This level is to be counted as a 'full storey' as more than 50% of the proposed floor plate is habitable (including the childcare spaces coloured in peach) as shown on the figure below.



**Figure 20 – Proposed Floor Plate of the Childcare Centre Level**

The applicant was requested to redesign the proposal to comply with the maximum number of storeys controls and the applicant in response did not amend the proposal to comply. The applicant's justification is as follows:

*It is important to observe that the proposal satisfies each of the objectives as demonstrated by the broad support for the proposal offered by the NSROC Design Excellence Panel (the Panel) at their meeting of 9 November 2022. In relation the height in storeys issue, the Panel specifically said:*

Definition of storeys

The Panel notes the proposal does not appear to comply with the definition of part storeys and therefore exceeds the maximum number of 10 storeys prescribed in the DCP Clause 6.2.7. In order to be considered a part storey at least 50% of the space should be used as non-habitable space ancillary to the main purpose for the building (refer to DCP Attachment Dictionary as amended 23<sup>rd</sup> August 2022). However, the Panel considers the non-compliance is acceptable in this case and that this control should be applied flexibly because:

- the proposed building heights are below the LEP height control,
- of the significant topography,
- the southern building envelopes are well set back to roof levels 9 and 10, in order to provide communal open space, thereby limiting any additional overshadowing that may otherwise occur to the south,
- the maximum FSR would otherwise be an unreasonable shortfall.

This would be acceptable subject to the removal of townhouses B.CL 03 and B.CL 04, B.CL 05, their modification to each form a single storey at the current proposed upper level, or the adoption of the alternative design option.

*Additionally, it is noted that the proposal's two envelopes are stepped to achieve height transition, accommodate changes in landform and reduce building bulk. The proposal is well articulated, adopts high quality and suitable finishes, minimises the number of subterranean dwellings, and avoids the presentation of basements to any public domain.*

*As indicated earlier, the storeys control is provided in Table 7.1 of the DCP. Being a control within a development control plan, it is not a statutory requirement. Sections 3.42 and 3.43 of the Act provide that the purposes of development controls plans are to "to provide guidance" - "giving effect the aims of any environmental planning instrument (such as the LEP) that applies to the land" and "facilitating development that is permissible under any such instrument" and "achieving the objectives of land zones under any such instrument". In this regard, "the provisions of a development control plan...are not statutory requirements".*

*As noted earlier, section 4.15(3)(a) of the Act also requires a consent authority to be flexible in applying DCP provisions.*

*In relation to statutory controls, it is important to note that the proposal complies with the Incentive Height of Buildings development standard prescribed by Clause 7.1(3)(a) of the LEP and the Incentive Floor Space Ratio control in clause 7.1(3)(b).*

*The objectives of clause 7.1 include "to promote, by providing building height and floor space incentives, residential development within the St Leonards South Area that provides for ... community facilities, open space, ... affordable housing ...".*

*It is relevant to observe that strict adherence to the non-statutory numerical criteria in the DCP would require the deletion of whole floors in the buildings and would prevent the achievement of the LEP height and floor space ratio incentives that have been carefully designed and calibrated to*



*enable the provision, in the case of this development proposal, of a child care centre, community room and affordable housing at no cost to Council or the community.*

*Not only would this hinder, rather than facilitate, development that is permissible under the LEP, but it would also be contrary to the aims of the LEP, and specifically aim (g) which seeks “to provide for the range and types of accessible community facilities that meet the needs of the current and future residents and other users” and aim (j) which seeks “to increase the number of affordable dwellings in Lane Cove and to promote housing choice”.*

*Strict adherence to the numerical criteria in the DCP, therefore, is contrary to sections 3.42, 3.43 of the Act and any consent authority that attempted to enforce strict compliance with the DCP numerical criteria for storeys would, in the circumstances of this development application, be abrogating its responsibility under section 4.15 of the Act.*

*Given that the proposal satisfies the objectives of the control and the objectives of Part C (7) of the LCDCP 2010 more generally, the non-statutory nature of the control, the proposal’s compliance with height of building development standard, as well as the Panel’s support for the proposal (subject to minor design changes that have been incorporated in the amended plans), the flexible application of the number of storeys control must be supported by both Council and the consent authority, being the Sydney North Planning Panel (SNPP).*

*Further evidence that flexibility is warranted is found in the Landscape Master Plan for the precinct that stipulates a finished floor level of RL70 for the Green Spine where it runs through the site as well as the childcare centre. The existing ground level at the kerb along Berry Street ranges from 74.95 to 70.79. In order to achieve the prescribed finished floor level of RL70, a significant portion of the building (and specifically the childcare centre) is required to be below ground or at least partially below ground.*

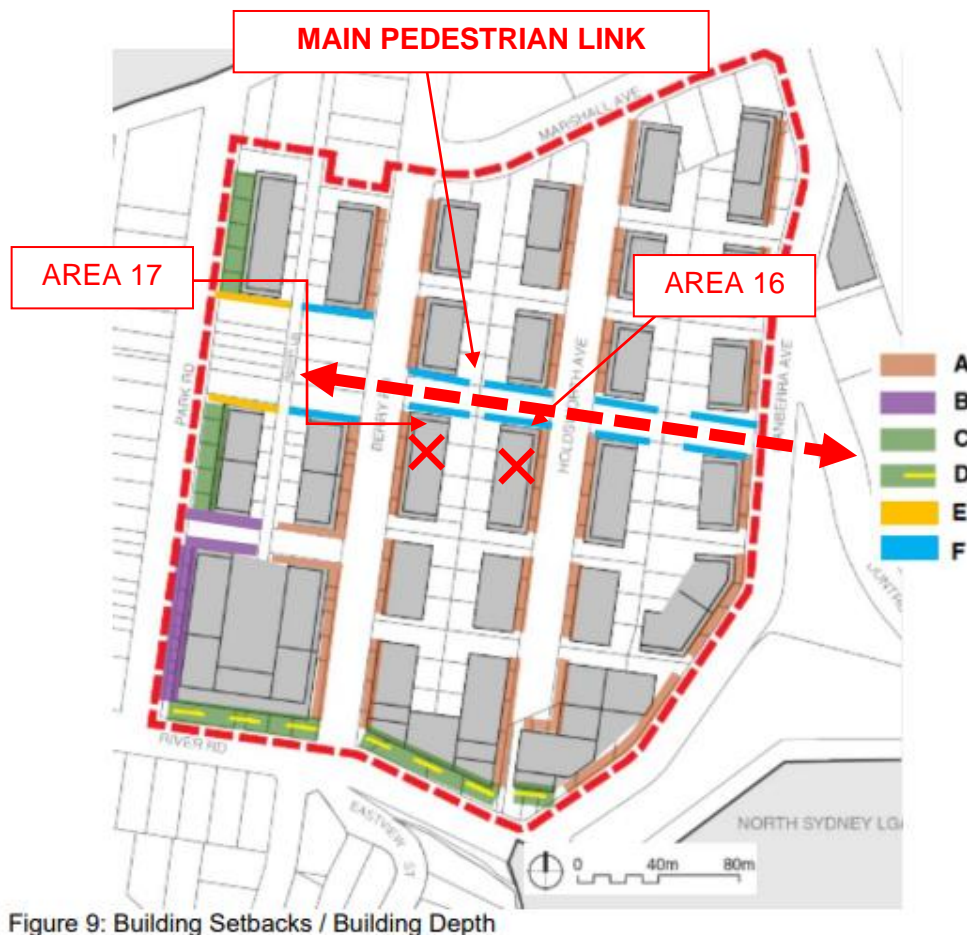
**Comment:** Full compliance should be achieved as other approved developments in the precinct have complied with this control and it is recommended that the subject Development Application be refused on this basis. Full compliance would ensure that any approval would reflect the expectations of the community that Council’s newly adopted site-specific or precinct wide DCP be fully complied with which went through an extensive strategic planning and community consultation process. Such a scheme would also contain the benefit of reducing the non-compliant components of the development in relation to its visual and overshadowing impacts onto the public domain.

Whilst a DCP can be interpreted flexibly however it is considered that the design of the proposed development disregards key ‘big ticket’ item controls within the DCP such as the number of storey controls to maximise both the permitted maximum LEP incentive building height envelope and FSR. The reliance by the applicant that the Design Excellence Panel supports the proposal ought not to guarantee development consent as it is noted that the panel generally reviews matters from an aesthetic, appearance, materiality etc. perspective. Whilst it may make opinions, the panel ultimately understands and often leaves matters of LEP or DCP compliance matters with Council to assess on and make relevant recommendations to the Sydney North Planning Panel (SNPP) to determine on.

It is noted that panel has been appropriately briefed on the concerns raised by Council and fully understands them. Approval of the subject proposal would result in an outcome that would be inconsistent with other forms of approved development within the new precinct and the proposed variation to the number of storeys is not supported in this instance.

### **Building Setback Controls**

It is advised that the subject proposal does not comply with the required setbacks to Berry Road and Holdsworth Avenue under Part 7 Built Form – Building Envelope – Setbacks (Control No. 1) of Locality 8 – St Leonards South Precinct of Part C – Residential Localities LCDCP 2010. Further, the proposal also does not comply with the required setbacks to the east-west pedestrian link.



**Figure 21 – Required Building Setbacks in Brown (A) and Blue (F)**

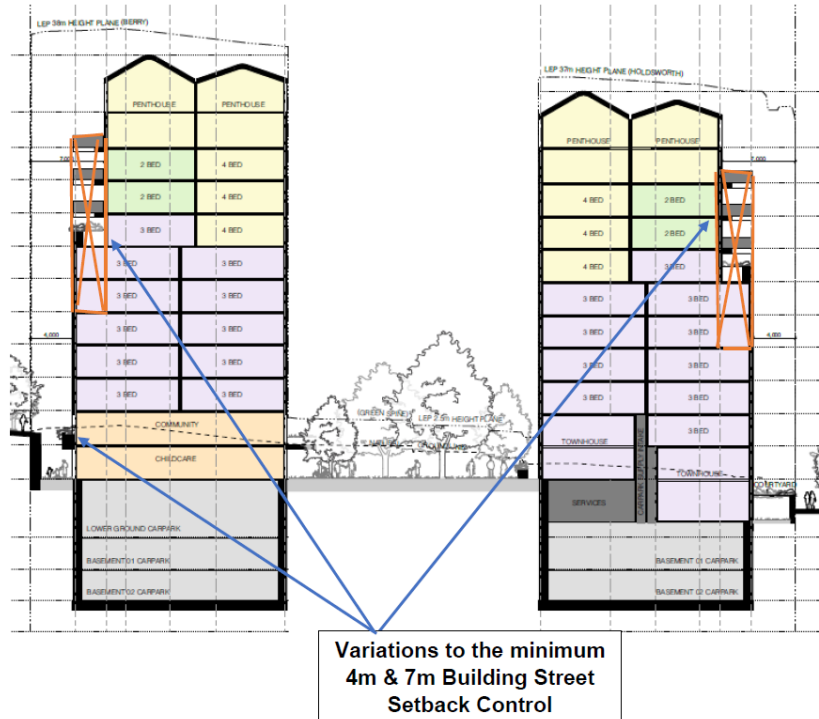
<b>Front Building Setbacks A</b> (Refer to Figure 9)	<ul style="list-style-type: none"> <li>• 4m at street level</li> <li>• + 3m at and above Level 6</li> </ul>	To Canberra, Marshall, Holdsworth & Berry (1-19) + east (21-23)
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**Figure 22 – Required Setbacks to Berry Road and Holdsworth Avenue**

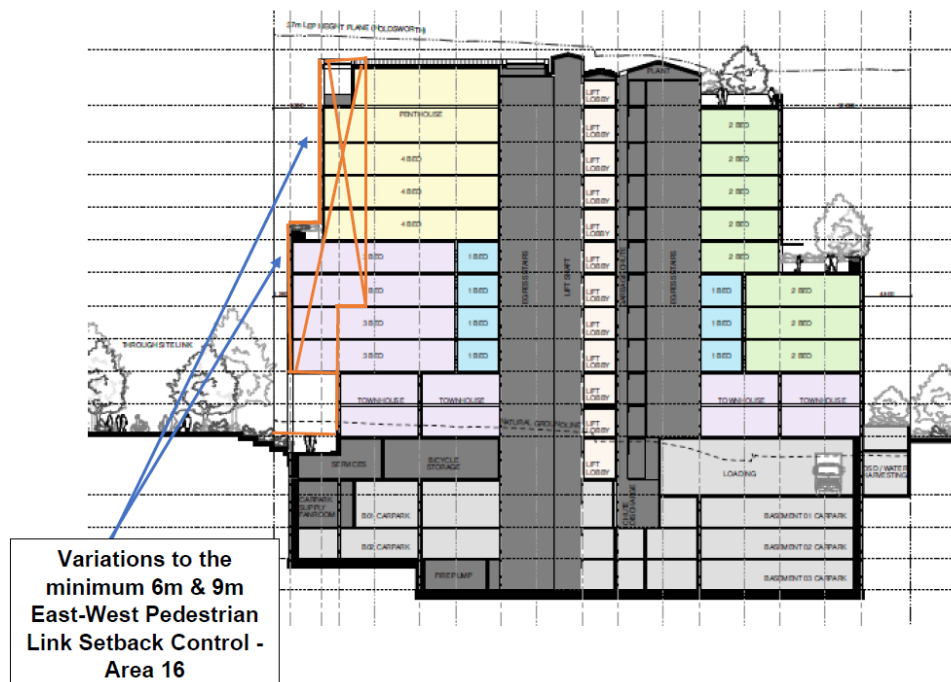
<b>Building Setbacks F</b> (Refer to Figure 9)	<ul style="list-style-type: none"> <li>• 6m at park and east-west pathway reservation level</li> <li>• +3m at and above Level 5</li> </ul>	<ul style="list-style-type: none"> <li>• To Local Park (eastern buildings of Areas 21 and 22) and</li> <li>• to east-west pathway reservation as shown in Figure 5(b) (for Areas 5, 6, 7, 8, 14, 15, 16 and 17).</li> </ul>
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**Figure 23 - Required Setbacks to the East-West Pedestrian Link**

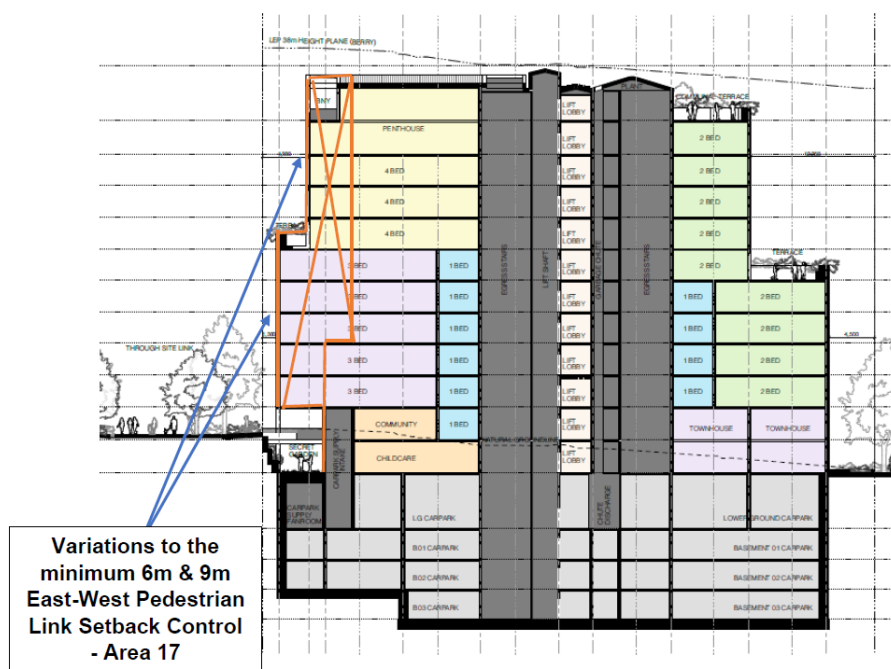
There are substantial variations being proposed to the required **minimum 7m setback** for both buildings **at Level 6 and above to Berry Road and Holdsworth Avenue** (see Figure 24). Further, there are substantial variations being proposed to the required **minimum 6m and 9m setback** for both buildings to 15m wide pedestrian link (see Figures 25 and 26).



**Figure 24 – Extent of Building Setback Variations to Holdsworth Avenue (Building to the Right) and Berry Road (Building to the Right)**



**Figure 25 – Extent of Building Variations to the East-West Pedestrian Link (Area 16)**



**Figure 26 - Extent of Building Variations to the East-West Pedestrian Link (Area 17)**

Again, the applicant was requested to redesign the proposal to fully comply with the DCP setback requirements and the applicant had chosen not to do so. The applicant's justification is as follows:

*The proposal's front setbacks are closely linked to the proposal's number of storeys and overall height of building. As discussed immediately above, these warrant a flexible application of the non-statutory DCP criteria. For the same reasons, the front setbacks are also considered to be appropriate by the Panel. The non-compliant setbacks to the east-west link are acknowledged, and addressed in the Statement of Environmental Effects which accompanied the DA. In summary, strict compliance with the Building Setback F controls would necessitate relocating building bulk to the southern end of the building envelopes. This would result in additional overshadowing to any proposal on the southern adjoining sites.*

*The DEP has confirmed, as shown in the following extract of the DEP minutes, that the proposal is merits support and has specifically supported a flexible approach to the setbacks to the east-west link as follows:*

**Building setbacks**

The DCP applies a 6m setback from the northern façades to the boundary of the east-west pedestrian link, while the proposal is for an approximately 1.38m setback. While other developments fronting such open spaces within the precinct generally comply, the Panel considers the non-compliance is acceptable in this case because:

- the setback is on the south side of the east-west pedestrian link and therefore not over-shadowing public space,
- the proposal provides for visual and physical activation of most of the southern edge of the east-west pedestrian link through the location of the community space, childcare centre, and the north-south communal open space,
- the proposal provides publicly accessible pedestrian amenity and building entrances to the northern facades and
- the maximum FSR would otherwise be an unreasonable shortfall.



*Further to the Panel's justification for the proposed setbacks to the east-west link, the proposal satisfies the Apartment Design Guide's (ADG) recommendations for building separation to any building on the opposite side of the east-west link. That is, the proposal achieves a minimum separation of 22m (by virtue of the pedestrian link's width) to any development to the north, thereby exceeding the ADG's recommendation of 18m for envelopes up to 8 storeys.*

*It is also worth noting that flexibility was applied to the setback controls for DA 21/162-01 for a similar development with similar circumstances at 13-19 Canberra Avenue, St Leonards South.*

*Overall, we are of the view that the proposed setbacks merit support given they result in a better design outcome as confirmed by the Panel. A compliant scheme would result in greater solar impacts to the southern adjoining allotment. Additionally, we note that similar flexibility has been applied to other DAs in the precinct.*

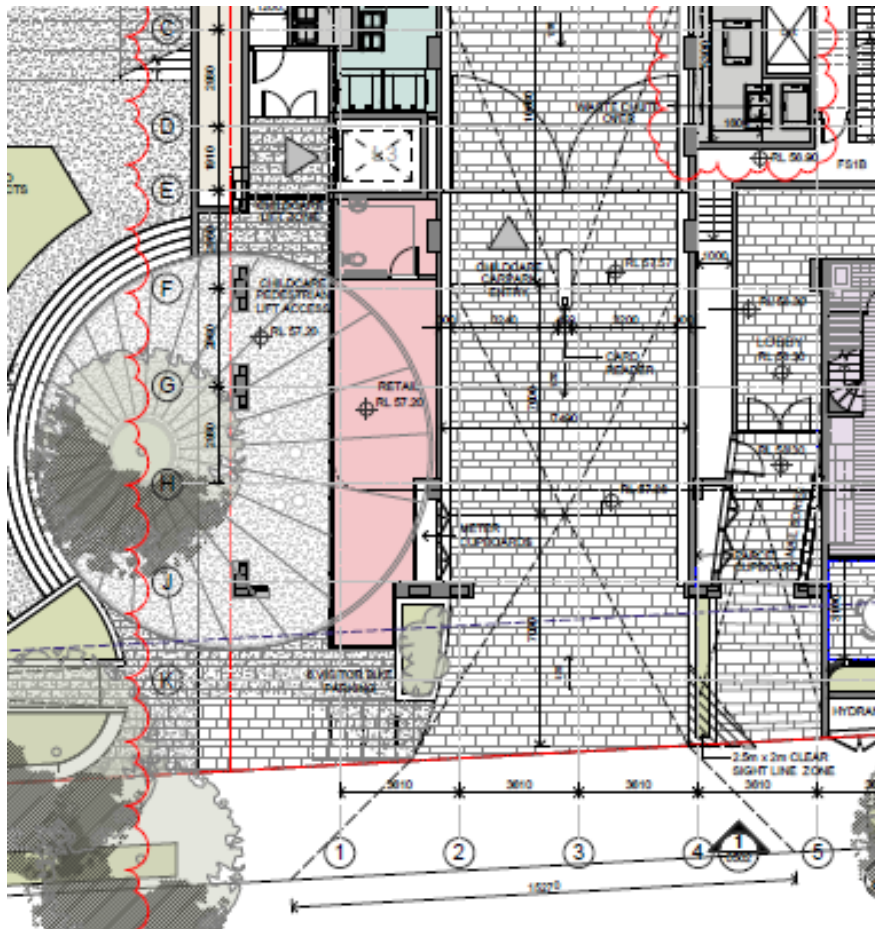
**Comment:** Predominantly for the same reasons provided above under the proposed variations to the number of storeys control section of this report, it is noted that Council will not support any building setback variations in this instance. Recent determinations have reinforced the provisions of complaint building setbacks to relevant street frontages to ensure there are appropriate street wall heights present to minimise any unnecessary bulk/scale and overshadowing onto the public domain space areas. A compliant setback scheme would reduce significant visual massing impacts when viewed from the street. A fully complaint scheme for the subject proposal is strongly recommended to ensure that developments within the precinct are similar in scale.

It is the view of the author of this report that the relevant street setbacks of the DCP are 'generous' (i.e. fairly minimal street setbacks to be provided for) in nature to begin with, which allows for an expansive building envelope to be provided on site and any requests to further reduce the required minimum street setbacks are not supported under any circumstances. The applicant ought to redesign the development in a manner that fits within the set parameters of the relevant building envelope as set out by the recently adopted precinct wide planning documentation.

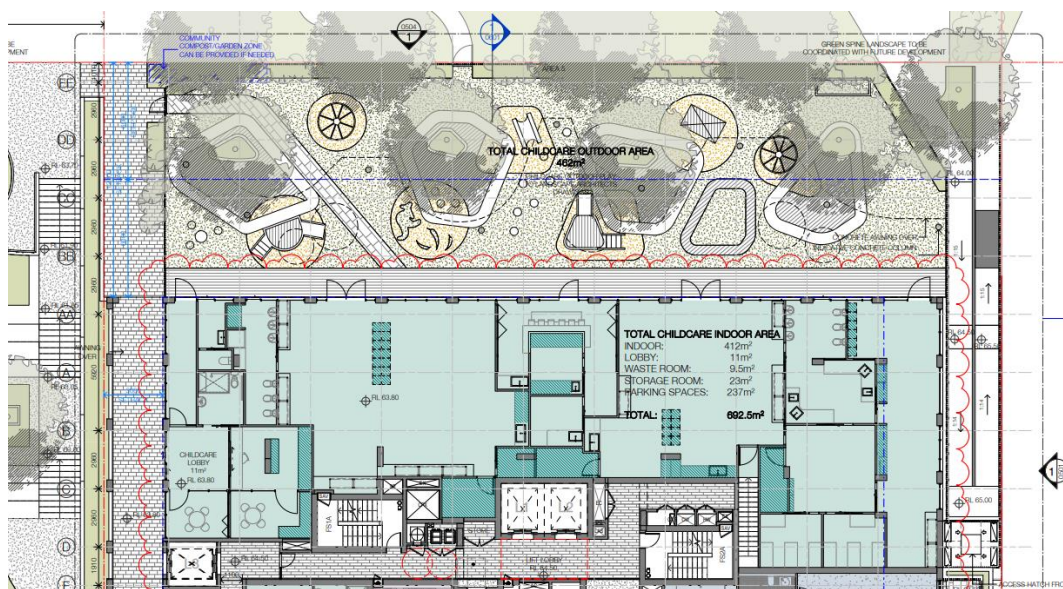
With respect to approved mixed use development under Development Consent No. 162/2021 within Area 5 which also required to provide an east-west pedestrian, childcare centre and community facility, it is not agreed that it contained similar circumstances to that of the subject proposal. The topographical constraints are different as Area 5 is located on the high side of the link as opposed to the subject development site which is situated on a much lower end/side of the required link. Further, Area 5 is a stand-alone development that would have contained only one building therefore presenting more of a constrained challenging development site.

By virtue of this contrasting difference in site characteristics, the reduced approved setback on Area 5 resulted in a better planning outcome being achieved where it would provide for an appropriate activation along the link and with the corner of the site that a café adjacent to the amphitheatre designed entrance of the link to Canberra Avenue with a public lift to gain access to the childcare centre and community facility above which has a ramp leading out to the higher end of the pedestrian link heading east. The placement of these development features would require such reduced setbacks on the lower levels in that instance.

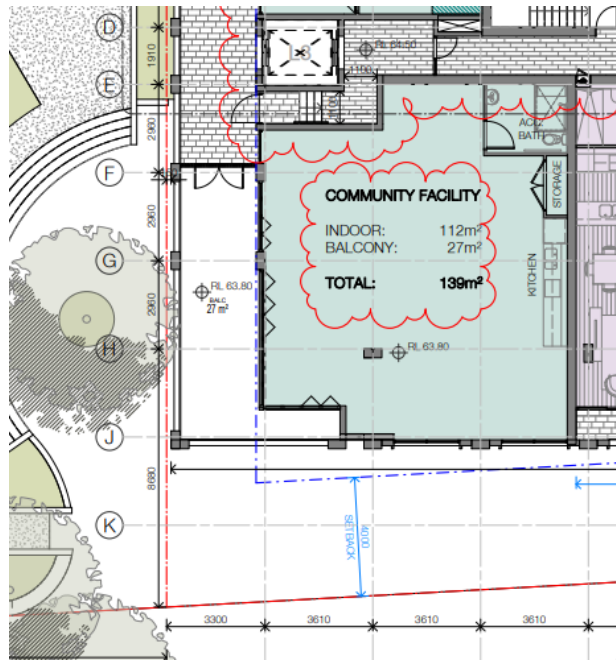
A complaint scheme would have created a very thin or a narrow 12-storey tall building which would not be visually appropriate and due to its topography a deep 'canyon' like effect would have been created between the building and the nature or the level of pedestrian link at the corner of Canberra Avenue. It is considered that the subject development site would have an opposite effect and the proposed non-compliant setbacks under the subject proposal would not provide for a better planning outcome. A compliant scheme would offer a much-improved designed development.



**Figure 27: Approved Access off Canberra Avenue and Location of Café on Area 5 with the Pedestrian Link to the Left**



**Figure 28: Approved Childcare Centre and Outdoor Play Area Level Above on Area 5 with the Link to the Left**



**Figure 29: Approved Community Facility Level Above on Area 5**

Based on the above concerns raised with the proposed DCP variations involved, the proposal does not meet with the following DCP vision, overall and built form objectives as follows:

*The desired future character of the St Leonards South Precinct is for a liveable, walkable, connected, safe, Precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre.*

*To ensure that all new development will achieve design excellence, as well as providing suitable transition and interfaces to adjoining zones and open space.*

*To facilitate a new, accessible network for pedestrians, cyclists and families that integrate and connect to functional community infrastructure and open space.*

*To create an accessible, well-designed public open space network that provides a variety of recreation spaces (active and passive) and communal open space that is functional and shared by residents.*

*Ensure changes in landform are accommodated.*

*Encourage a stepped-back building form in order to reduce building bulk and scale to the street. To facilitate street and front setback (deep soil) tree planting to further reduce apparent bulk and scale.*

*Optimise solar access to all buildings, public domain and private open space.*

*Activate and engage with the public domain in a manner which optimises public interaction and public safety.*

#### **6.4 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 addressed where it is considered that there would be significant adverse impacts either to the natural and built environments, social and economic or amenity of the locality as detailed within this report.

#### **6.5 The suitability of the site for the development**

Whilst the subject land would be ultimately suitable for the development, it is considered that the proposed development had not been designed in a manner to ensure that it responds to site specific characteristics as detailed above in this report.

#### **6.6 Any submissions made in accordance with this Act or the regulations**

The proposal was notified in accordance with Lane Cove Council's Notification Policy.

##### **i. Notification Extent**

The Development Application was notified on two separate occasions to the extent shown in the Public Notification Map included as **Annexure 35** to this report.

##### **ii. Notification Period**

The notification period and the number of submissions received are summarised in the following table (see **Table 13** below):

<b>Table 13 - Public Notification</b>			
<b>Plan Revision</b>	<b>Lodgement Date</b>	<b>Notification Period</b>	<b>Unique Submissions Received</b>
<b>DA Lodgement</b>	26 September 2022	30/09/2022 – 28/10/2022	Four
<b>Revision 1</b>	24 January 2023	30/01/2023 – 15/02/2023	One late submission
		<b>Total</b>	Five

##### **iii. Summary of Submissions**

The submissions received are summarised and addressed in **Annexure 5** to this report.

#### **6.7 Public Interest**

Approval of the subject proposal would be contrary to the public interest as the development would not meet the relevant objectives of the South St Leonards precinct planning scheme and the future intended desired character of the locality within a high-density residential environment.

#### **7. Contributions**



## **7.1 Voluntary Planning Agreement and St Leonards South Section 7.11 Contributions Plan**

The provision of infrastructure is proposed to be facilitated in part through the [St Leonards South Section 7.11 Contributions Plan](#) and a relevant condition would have been imposed if approval had been recommended. Further, the applicant had lodged a draft Voluntary Planning Agreement (VPA) with Council as being proposed by the applicant as a mechanism to provide for the proposed 15m pedestrian link as a works-in-kind offer to support the development. The Draft VPA was notified separately with the Development Application and is to be dealt with separately by Council.

## **7.2 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. A relevant condition would have been imposed if approval had been recommended.

## **8. CONCLUSION**

The Development Application has been assessed in accordance with the Environmental Planning and Assessment Act, 1979 and it is not considered to be satisfactory in this instance. The proposed development does not adequately respond to the site constraints, is not consistent with the relevant planning controls, and would not achieve design excellence within Areas 16 and 17 of the St Leonards South Precinct. The Development Application is reported to the Sydney North Planning Panel with a recommendation for refusal.

## **RECOMMENDATION**

That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel at its meeting of 10 May 2023 refuse Development Application DA115/2022 for the demolition of existing structures and construction of a mixed-use development containing two buildings comprising a total of 130 apartments (including 1 affordable dwelling), childcare centre, community facility and basement parking for 180 vehicles (see Annexure 2 for reasons for refusal).

Mark Brisby  
**Executive Manager**  
**Environmental Services Division**

## **ATTACHMENTS:**

There are no supporting documents for this report.