



## STATEMENT OF ENVIRONMENTAL EFFECTS

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Section 4.55(2) Application to Residential Flat Building (approved under DA162/2021) including the addition of two storeys and additional basement car parking spaces

13-19 Canberra Avenue,  
St Leonards

Prepared for: Hyecorp

REF: M220514

DATE: 9 March 2023





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# 1. Introduction

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We act on behalf of the applicant for the approved mixed-use development at Nos. 13-19 Canberra Avenue, St Leonards ('the site'). The development consent, as modified, to which this application relates is for the demolition of existing structures and construction of a mixed-use development comprising 80 apartments, a childcare centre, community facility, retail space (restaurant-café) and basement parking, east-west public pedestrian link and stratum/strata subdivision.

As detailed within Section 3 of this Statement of Environmental Effects (the Statement), the development was approved under DA162/2021. Four (4) modification applications have been lodged and two (2) modifications have been approved since the original DA was granted consent.

This application seeks to modify DA162/2021. The modifications as part of this Section 4.55(2) are proposed to optimise the development's capacity to deliver the intended incentive floor space provision of the Lane Cove LEP and will comprise:

- The addition of two storeys providing an additional four (4) residential apartments;
- Alterations to Level 12 to reduce the floor to ceiling height to 3.1m; and
- Amended basement car parking to provide an additional seven (7) spaces;

The proposed changes have been designed to ensure the additional height has limited visual impact from the streetscape and surrounding properties and that overshadowing impacts are minimised. The proposal development remains below the maximum allowable FSR permitted under the Lane Cove LEP.

In essence, the proposal aims to match the floor space available under the LEP to accommodate the public benefits to be delivered under the Incentive Floor Space Ratio scheme. Despite the proposed alterations and additions establishing a height non-compliance for part of the building, the proposal will increase the available floor space of the development beyond that approved (but not in excess of that available under the LEP controls) and therefore contributes towards the delivery of community infrastructure which is fundamental to the successful delivery of the St Leonards South Precinct. The St Leonards South Contributions Plan (Contributions plan) and Lane Cove DCP notes that this community infrastructure and public benefits are to be delivered through the incentive floor space and building height provisions under the Lane Cove LEP. The interrelationship between achieving the incentive floor space and delivery of the community infrastructure fundamentally underpins the successful delivery of the entire precinct.

The "Area 5" site is the most burdened of all the 23 Area sites within the St Leonards South precinct that have been identified with infrastructure delivery requirements. The masterplan identified Area 5 as requiring an incentive FSR of 3.7:1 to deliver these outcomes. Regrettably, during the master planning process the translation of infrastructure requirements into planning controls provided a sub-optimal outcome. The amended proposal delivers a high level of design excellence whilst balancing the overall design objectives of the community's expectations under the masterplan, DCP and LEP.

Changes proposed as part of the Section 4.55(2) application are fully detailed on the architectural plan set that has been prepared by *SJB Architects* and are submitted with the modification application.

The proposal involves additional height that will exceed the maximum building height of 44m. It is noted that a variation request under Clause 4.6 is not required. However, this Statement (see Section 5.6.2.1) provides justification for the non-compliance with the Lane Cove LEP Height of Buildings development standard.



The purpose of this Statement is to address the planning considerations associated with the modified proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of Sections 4.55 and 4.15 of the EP&A Act.

In accordance with the Sydney District & Regional Planning Panels Operational Procedures (November 2022), the Planning Panels will determine certain specified applications to modify regionally significant consent under Section 4.55(2) of the EP&A Act where one or more of the criteria is met. In this case, the consent authority for the proposed modification is to be the Sydney North Planning Panel.

## 2. Site Analysis and Context

The site has the street address of Nos. 13-19 Canberra Avenue, St Leonards and is legally identified as Lots 11, 12, 13, and 14 of Section 3 in DP 7259. The site is outlined in red in **Figure 1**.



**Figure 1** Location Plan (Source: Nearmap)

The site is rectangular in shape with a frontage to Canberra Avenue of 63.06m, a western rear boundary length of 60.96m, a northern side boundary of 41.37m and a southern side boundary of 44.825m. The site has a total area of 2,629.3m<sup>2</sup>. The site falls from the rear to the front by approximately 6m and falls from the north to the south by approximately 2.5m.

The site contains four (4) detached dwellings, including one and two storey homes. Vehicle access is currently provided from Canberra Avenue. There are a number of small to large trees located throughout the site. Tree removal was approved under the original development application.



## 3. Background

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The St Leonards South precinct forms part of the *St Leonards and Crows Nest 2036* planning strategy and was rezoned in 31 August 2020. This planning strategy leveraged the precinct's public transport infrastructure and the new Crows Nest Metro Station to support the growing of the St Leonards and Crows Nest are with the delivery of 6,800 new homes and capacity for an additional 120,000sqm of employment floor space over the life of the strategy.

Lane Cove Council sought to implement the Planning Strategy through the introduction of new local planning controls for the St Leonards South Precinct. Specifically, the *Lane Cove Local Environmental Plan 2009 (Amendment 25)* amended the Lane Cove Local Environmental Plan 2009 by including new development controls for St Leonards South through Part 7 of the LEP.

The St Leonards South precinct was masterplanned to achieve a particular density and the delivery of key public benefits. The public benefits that are crucial to the precinct are intended to be delivered through the allocation of incentive FSR as is identified within the Lane Cove DCP and St Leonards South 7.11 Contributions Plan.

The proposal aims to match the floor space available under the LEP to accommodate the public benefits to be delivered under the Incentive Floor Space Ratio scheme. Despite the proposed modification establishing a height non-compliance for part of the building, the proposal will increase the available floor space of the development beyond the approved (but not in excess of that available under the LEP controls) and therefore contributes towards the delivery of community infrastructure which is fundamental to the successful delivery of the St Leonards South Precinct. The St Leonards South Contributions Plan (Contributions Plan) and Part C, Locality 10 of the Lane Cove DCP emphasise the importance of achieving the incentive FSR to assist in funding public infrastructure items in the Precinct.

It is important to note that under the planning controls, Area 5 is required to deliver the most significant quantifiable community infrastructure and public benefits across the entire St Leonards South Precinct. These are summarised below:

- Construction and dedication to Council of a 15m wide east-west pedestrian link to enable connection between Holdsworth Avenue and Canberra Avenue,
- Provision of a publicly accessible pedestrian lift within the building to connect persons with a disability from Canberra Avenue to the upper parts of the east west link as per the Masterplan and DCP,
- Construction and dedication to Council of a minimum 600m<sup>2</sup> of community facility (831.5m<sup>2</sup> approved (231.5m<sup>2</sup> above minimum requirement) comprising a child care centre for 60 children,
- Construction and dedication to Council 1,1138.4m<sup>2</sup> (688.4m<sup>2</sup> above minimum requirement) of recreation area to be used as the outdoor play area to the child centre and communal open space as part of the green spine outside child care centre hours,
- East west pedestrian link comprising new public square and areas for passive active recreation, and
- Expected local and State infrastructure contributions to a density equivalent to 3.7:1 (3.32:1 approved).

On 27 June 2022, the North Sydney Planning Panel (NSPP) granted consent to development application DA162/2021 for the '*Demolition of existing structures and construction of a mixed-use development (12 storeys) comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, east-west public pedestrian link and stratum/strata subdivision*'.

Since its approval, four (4) modification applications have been lodged to amend the development. Two (2) of the modification applications have been approved including a s4.55(1A) for minor internal amendments to the approved building. As detailed, this application seeks to modify DA162/2021 as described in Section 4 below.



## 4. Details of Proposed Modification

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), this application seeks to modify the approved development to provide two additional storeys and additional car parking spaces in the basement.

Specifically, the following modifications are proposed:

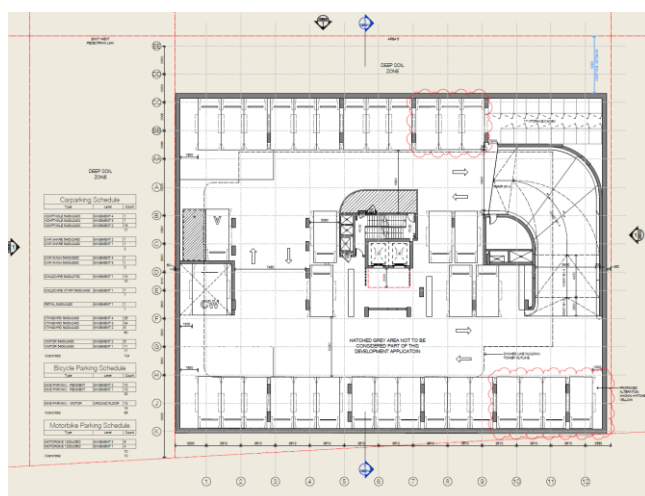
- Basement Level 3 is amended to provide an additional seven (7) carparking spaces,
- the floor to ceiling height of Level 12 has been reduced from 4.6m to 3.1m,
- Level 13 is introduced and provides three (3) x 3-bedroom apartments,
- Level 14 is introduced which provides one (1) penthouse apartment, and
- A new roof is proposed above these new floors.

**Table 1 Project Data Comparison**

	<i>Approved Development (as approved)</i>	<i>Proposed Modifications</i>	<i>Changes</i>
1-bedroom	27	27	Nil
2-bedroom	25	25	Nil
3-bedroom	28	32	+ 4
<b>Total</b>	80 Apartments	84 Apartments	+4 Apartments
Building Height	43.5m (44.7m when including a 1.2m parapet increase required by the Sydney North Planning Panel as part of Condition A.2).	48.16m (including lift overrun and roof plant)	3.46m
FSR (GFA)	3.32:1 (8,726m <sup>2</sup> )	3.58:1 (9,401m <sup>2</sup> )	0.26:1 (675m <sup>2</sup> )
Deep Soil	16%	16%	No change
Communal Open Space	45% (1,206m <sup>2</sup> )	45% (1,206m <sup>2</sup> )	No change

The proposed changes are detailed in the architectural plans prepared by *SJB Architects* as indicated below:

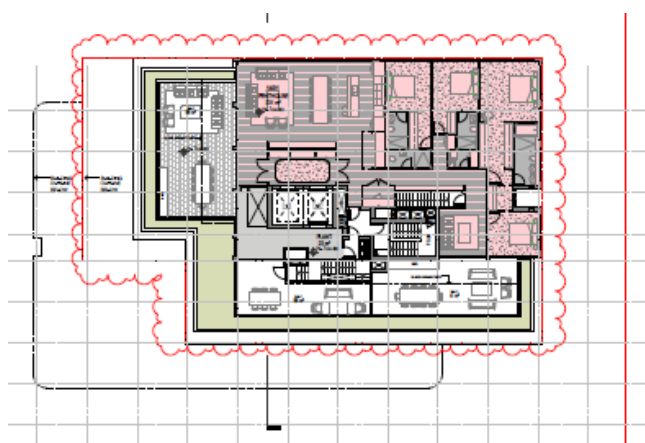




**Figure 2** Proposed changes proposed to basement level 3



**Figure 3** Proposed Level 13 Floor Plan



**Figure 4** Proposed Level 14 Floor Plan

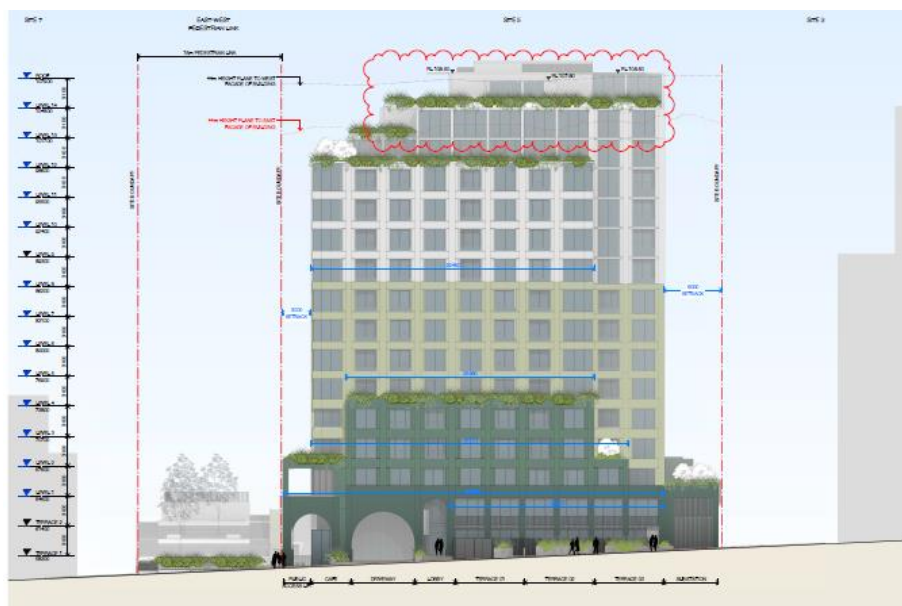


Figure 5 Proposed Eastern Elevation

## 5. Statutory and Policy Compliance

### 5.1 SECTION 4.55

Section 4.55 of the *Environmental Planning & Assessment Act 1979* contains provisions relating to the modification of development consent. Specifically, subclause (2) refers to other modifications, and states:

**(2) Other modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

The proposal is the subject of a Section 4.55(2) modification as it entails modifications to the design of the approved development including the addition of two storeys. The proposed modifications maintain the use of the approved mixed-use building and will not result in any significant increase in intensity beyond that of the approved scheme. Importantly, the building's design and form and its relationships to the streetscape and neighbouring properties remains substantially the same as the originally approved application. For these reasons, the proposed changes to the development are characterised as modifications.

When assessing a modification application, the consent authority has a threshold decision to make, and must be satisfied that what is proposed is "substantially the same" development as the original development, as set out in Section 4.55(2)(a) of the EP&A Act. Whether the development will be "substantially the same" as the original consent is a mixed question of fact and law. This decision can be guided by principles and tests established in the Courts.

Decisions of the Land and Environment Court support the proposition that the main elements of the proposal are matters substantially the same as the existing development consent, as outlined below.

#### Modification Principles Established by the Courts

The traditional 'test' as to whether or not a development as modified will be "substantially the same" development as that originally approved was applied by J Stein and the Court of Appeal in *Vacik Pty Limited v Penrith City Council* [1992] NSWLEC 8 and endorsed by J Bignold in *Moto Projects (No 2) Pty Ltd V North Sydney C* [1999] NSWLEC 280.

J Stein stated in the *Vacik* case: "In my opinion 'substantially' when used in the section [s102, the predecessor of s4.55] means essentially or materially having the same essence".

J Bignold expressed in the Moto case: *“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified ... not merely a comparison of the physical features or components of the development ... rather ... involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”*

J Bignold came to deal with the matter of “substantially the same” again in *Tipalea Watson Pty Limited v Ku-ring-gai Council* [2003] NSWLEC 253. From this Judgement, one can distil a list of matters or ‘tests’ to consider, being whether the modification involves the following:

- (a) significant change to the nature or the intensity of the use;
- (b) significant change to the relationship to adjoining properties;
- (c) adverse amenity impacts on neighbours from the changes;
- (d) significant change to the streetscape; and
- (e) change to the scale or character of the development, or the character of the locality

In 2015, the principles regarding Section 96(2)(a) (now Section 4.55(2)(a)) were summarised in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75 where Pepper J set out the legal principles that apply as follows:

*The applicable legal principles governing the exercise of the power contained in s 96(2)(a) of the EPAA may be stated as follows:*

1. first, the power contained in the provision is to “modify the consent”. Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (*North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475 and *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore “chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity” (*Michael Standley* at 440);
2. the modification power is beneficial and facultative (*Michael Standley* at 440);
3. the condition precedent to the exercise of the power to modify consents is directed to “the development”, making the comparison between the development as modified and the development as originally consented to (*Scrap Realty* at [16]);
4. the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8);
5. the term “substantially” means “essentially or materially having the same essence” (*Vacik* endorsed in *Michael Standley* at 440 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);
6. the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (*Scrap Realty* at [19]);
7. the term “modify” means “to alter without radical transformation” (*Sydney City Council v Ilene Pty Ltd* [1984] 3 NSWLR 414 at 42, *Michael Standley* at 474, *Scrap Realty* at [13] and *Moto Projects* at [27]);

8. in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) (Vacik);

9. the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)” (Moto Projects at [56]); and

10. a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed” (Moto Projects at [52]).

In the recent case of *Arrage v Inner West Council* [2019] NSWLEC 85, Preston J found that there was no legal obligation to consider the circumstances in which the development consent was granted when comparing the approved development and the proposed modified development, or to consider the material or essential elements of the original development consent, neither of which are mandatory relevant matters. Rather it is the statutory provision of Section 4.55 which provides the relevant test.

Whether or not there will be increased environmental or neighbourhood amenity impacts under a proposed modified development is not a consideration as to whether or not a modification proposal is substantially the same under Section 4.55 of the EP&A Act. Authority for this position is set out in a decision of Talbot J in *Wolgan Action Group Incorporated v Lithgow City Council* [2001] NSWLEC 199 [43] in which he provides:



*“Even if the present applicant is correct in that there will be a significant increase in the environmental impact ... that, nevertheless, does not necessarily preclude a conclusion that the development, to which the consent as modified relates, is substantially the same development as that already permitted. The extension ... alone does not change the inherent character of the development itself. There may be some additional environmental impact but that is a matter to be considered as part of the deliberations on the merits.”*

#### Modification Principles Applied to the Proposal

The proposed modifications, which entail both amendments to the layout of the Level 3 basement carpark and the provision of an additional two (2) storeys, provide for a development that is substantially the same as the development for which consent was granted. The consent authority can therefore consider the application pursuant to Section 4.55(2) of the EP&A Act. In reaching this conclusion, we have considered the modifications against the above principles.

A comparison between the development as modified and the development that is the subject of the original consent, can conclude that there is no significant difference in the built form, visual or physical appearance of the building as demonstrated in the Urban Design Report prepared by SJB Architects, and therefore the extent of the modification will be “essentially or materially having the same essence” as the approved development (Vacik endorsed in *Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]).

As detailed, the physical form of the building will be largely unchanged, except for changes to the building massing at the upper levels to accommodate the proposed additional storeys. The proposed changes have undergone a meticulous design to achieve the same outcome (as originally approved) when viewed from the public domain with minimal additional visual impacts and overshadowing proposed compared to that approved. The additional two storeys are recessed in part from the storeys below and the proposed modifications will enhance design and residential amenity for future occupants without impacting the amenity of adjoining properties. The design will optimise the built form within the limits of the incentive floor space provision of the Lane Cove LEP 2009. There will be no change to the setbacks and building footprint and the building envelope changes only in terms of the additional height. Accordingly, there will be no significant change to intensity or density. Additional parking in the existing basement footprint will accommodate



the parking needs generated by the additional apartments. The proposed modifications will still have the same essence as the original approval and the proposed modifications will “alter without radical transformation” (*Sydney City Council v Ilence Pty Ltd* [1984] 3 NSWLR 414 at 42, *Michael Standley* at 474, *Scrap Realty* at [13] and *Moto Projects* at [27]).

As detailed, the proposed modifications also do not alter the approved use of the land as a mixed use building. Whilst the intensity of use, of itself, is not sufficient to conclude the development is substantially the same, it is a relevant consideration which adds to the above analysis.

With consideration to the tests identified in *Tipalea Watson Pty Limited v Ku-ring-gai Council*, the proposal as modified will:

- (a) not significantly change to the nature or the intensity of the use with only a minor increase of four (4) apartments (still a mixed use development with a childcare centre, community facility and restaurant/café);
- (b) not change the relationship to adjoining properties (maintains amenity, bulk and scale of the approved development);
- (c) not adversely affect the amenity of neighbouring properties (in terms of privacy, overshadowing and views as discussed in Part 5.3.3 of this SEE);
- (d) provide a mixed use building which is entirely compatible with the nature of residential flat buildings and mixed use developments in the streetscape and compatible with the high density desired future character of the area; and
- (e) not significantly change the scale or character of the development or the locality as the building is entirely compatible with the scale of surrounding properties.

As noted in *Wolgan Action Group Incorporated v Lithgow City Council*, an increase in environmental impacts is not a consideration as to whether or not a modification proposal is substantially the same. Nonetheless, in our view, the impact of the proposed modifications will be minimal when set against the backdrop of the approved building envelope, especially in terms of design, solar access, privacy and views.

Finally, *Moto Projects (No. 2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298, which outlines principles for determining whether a s4.55(2) application is ‘substantially the same’ as an originally issued development consent. The assessment of ‘substantially the same’ needs to consider qualitative and quantitative matters.

In terms of a quantitative assessment, the proposed modifications are limited to relatively modest increase to the building’s form and scale, including increase in gross floor area and building height. However, the changes proposed do not occur outside of the approved setbacks and are related to internal reconfigurations and additional height that has been thoughtfully designed. With regards to landscaped area and deep soil planting, this will be unchanged as part of this application. The additional height has been meticulously designed to minimise impact on the amenity of adjoining properties, maintain the visual impact of the approved mixed use building and maintain its compatibility with the nature of future development in St Leonards.

Qualitatively, the proposal will retain the desired character of the mixed-use building as viewed from Canberra Avenue. The proposed modifications to the approved development will retain the aesthetic quality and architectural characteristics of the development. Overall, the form and scale of the approved development will not be transformed and is entirely compatible with the scale of other developments in the immediate locality including the approved development adjoining the site to the south and anticipated future redevelopment in accordance with the FSR and Height incentives in the LEP. In this regard, the proposal continues to achieve design excellence.

In conclusion, the modifications proposed by this application are considered to result in a development that is substantially the same as the development for which consent was originally granted. This proposal does not seek to alter the mixed use and largely retains the built form and impacts on adjoining properties and the public domain.





The proposal will continue to operate under all other conditions imposed under DA162/2021 and its subsequent modifications.

## **5.2 SECTION 4.15 ASSESSMENT**

Section 4.55(3) requires the proposed modification to be considered having regard to any relevant matters under Section 4.15(1)(a) of the EP&A Act, 1979.

Lane Cove Council's assessment of the original development application (DA162/2021) considered all applicable Environmental Planning Instruments (EPIs) applying to the proposed development.

### **5.2.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The development application had regard to Chapter 2 of the SEPP, Vegetation in non-rural areas. The proposed amendments to the development do not affect the findings of the original DA assessment in respect of its impact on existing trees on the land.

Chapter 6 – Water Catchments applies to the subject site. The subject site is located within the catchment of Sydney Harbour which is a regulated catchment under the provisions of the SEPP. The approved development provided a satisfactory outcome in terms of its impact on water quality within the catchment.

The proposed changes to the approved development do not have any significant impacts on the findings of the original assessment and the conditions imposed on the DA approval.

### **5.2.2 State Environmental Planning Policy (Resilience and Hazards) 2021**

The development application considered Clause 4.6 where contamination and remediation are to be considered in the determination of a development application. Council's assessment found the Preliminary Site Investigation demonstrated the site was suitable for continued residential use.

The proposed changes to the approved development do not have any significant impacts on the findings of the original assessment and the conditions imposed on the DA approval.

### **5.2.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The original development application included the provision of a BASIX certificate prepared in respect of the original residential component of the development.

The proposed changes to the approved development, specifically the additional dwellings on Levels 13 and 14, are the subject of additional BASIX certificates that are submitted with the application.

### **5.2.4 State Environmental Planning Policy (Transport and Infrastructure) 2021**

The development application considered Clause 3.23 and the applicable provisions of the Child Care Centre Planning Guideline for a centre-based child care facility.

The proposed changes to the approved development do not have any impacts on the findings of the original assessment of the child care centre or the conditions imposed on its operation.

### **5.2.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development**

The development, as modified, remains compliant with the objectives and/or design criteria contained with the Apartment Design Guide (ADG) including solar access and cross ventilation requirements, apartment size and



configuration, separation and parking provision. This is detailed in the architectural plans submitted with this application. A full table assessing the proposed development is provided in the accompanying Urban Design Report prepared by SJB and reproduced below.

Table 2 Apartment Design Guide Compliance Table		
Objective & Design Criteria	Proposal	Complies?
<b>Part 3 – Siting the Development</b>		
<b>Site Analysis</b>	No change to approved.	No change
<b>Orientation</b>		
Building types and layouts respond to the streetscape and site while optimising solar access within the development	No change to approved.	No change
Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1)	No change to approved.	No change
Where the street frontage is to the east or west, rear buildings should be orientated to the north.	Development has east-west dual frontage with short neighbouring boundary to the north. Thus northern orientation is not considered appropriate.	No
Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west (see figure 3B.2)	No change to approved.	No change
Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.	Complies.	Yes
Solar access to living rooms, balconies and private open spaces of neighbours should be considered.	Solar access has been considered. No additional impact to surrounding areas with the exception of Area 8.	Yes
Overshadowing should be minimised to the south or downhill by increased upper level setbacks.	Massing has been considered and crafted to minimise overshadowing onto park down south.	Yes
It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development.	Privacy and overshadowing impacts have been avoided to the West, South and East due to significant setback from the green spine, pedestrian link and Canberra Avenue. Massing on top is further stepped back on South and East.	N/A
A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.	N/A	
<b>Public Domain Interface</b>	No change to approved.	No change.



**Table 2 Apartment Design Guide Compliance Table**

<b>Community and Public Open Space</b>	No change to approved.	No change.
<b>Deep Soil Zones</b>	No change to approved.	No change.
<b>Visual Privacy</b> Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance	The additional massing in this application has been stepped back on the South East and Eastern Elevation to reduce shadow on the park.	Yes
<b>Pedestrian Access and Entries</b>	No change to approved.	No change.
<b>Vehicle Access</b>	No change to approved.	No change.
<b>Bicycle and Car Parking</b>	No change to approved.	No change.
<b>Part 4 – Designing the building</b>		
<b>Solar and Daylight Access</b> 2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter. Living areas are best located to the north and service areas to the south and west of apartment. To optimise the direct sunlight to habitable rooms and balconies a number of the following design features are used: <ul style="list-style-type: none"> <li>· dual aspect apartments</li> <li>· shallow apartment layouts</li> <li>· two storey and mezzanine level apartments</li> <li>· bay windows</li> </ul>	Detailed analysis is provided in the accompanying architectural plans and Urban Design Report. Living spaces are orientated to ensure solar access is maximised. Services have been located to the rear. The additional apartments all have multiple aspects.	Yes Yes Yes
<b>Ceiling Heights</b>	Each of the additional apartments will achieve the minimum ceiling height.	Yes
<b>Apartment Size and Layout</b> Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas. All bedrooms allow a minimum length of 1.5m for robes. The main bedroom of an apartment or a studio apartment should be provided with a wardrobe of a minimum 1.8m long, 0.6m deep and 2.1m high. Apartment layouts allow flexibility over time, design solutions may include:	The additional units have been designed with generous internal areas, complying with minimum measurements. Where achievable this approach has been adopted. Complies. Complies.	Yes Yes Yes Yes



**Table 2 Apartment Design Guide Compliance Table**

- dimensions that facilitate a variety of furniture arrangements and removal
- spaces for a range of activities and privacy levels between different spaces within the apartment
- dual master apartments
- dual key apartments
- Note: dual key apartments which are separate but on the same title are regarded as two sole occupancy units for the purposes of the Building Code of Australia and for calculating the mix of apartments
- room sizes and proportions or open plans (rectangular spaces (2:3) are more easily furnished than square spaces (1:1))
- efficient planning of circulation by stairs, corridors and through rooms to maximise the amount of usable floor space in rooms

**Private Open Space and Balconies**

Minimum balcony areas.

Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space.

Private open spaces and balconies predominantly face north, east or west.

Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms.

Solid, partially solid or transparent fences and balustrades are selected to respond to the location. They are de-signed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. Solid and partially solid balustrades are preferred.

Full width full height glass balustrades alone are generally not desirable.

Projecting balconies should be integrated into the building design and the design of soffits considered.

Operable screens, shutters, hoods and pergolas are used to control sunlight and wind.

Balustrades are set back from the building or balcony edge where overlooking or safety is an issue.

Downpipes and balcony drainage are integrated with the overall facade and building design.

Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.

Each of the additional apartments will comply.	Yes
Complies.	Yes
Complies.	Yes
Complies.	Yes
Complies.	Yes
Complies.	Yes
Complies – combination of glass and solid balustrades are proposed.	Yes
The balconies are completely integrated and form part of the façade design.	Yes
Complies.	Yes
Complies.	Yes
Complies.	Yes
Complies.	Yes
N/A	N/A
Complies.	Yes



**Table 2 Apartment Design Guide Compliance Table**

Where clothes drying, storage or air conditioning units are located on balconies, they should be screened and integrated in the building design.	Complies.	Yes
Ceilings of apartments below terraces should be insulated to avoid heat loss.	Complies.	Yes
Water and gas outlets should be provided for primary balconies and private open space.	Complies.	Yes
Changes in ground levels or landscaping are minimised.		
Design and detailing of balconies avoids opportunities for climbing and falls.		
<b>Common Circulation and Spaces</b>		
Greater than minimum requirements for corridor widths and/or ceiling heights allow comfortable movement and access particularly in entry lobbies, outside lifts and at apartment entry doors.	Complies.	Yes
Daylight and natural ventilation should be provided to all common circulation spaces that are above ground.	Corridor spaces are naturally cross ventilated to provide access to daylight and ventilation.	Yes
Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors.	Glass louvres are provided for light and ventilation.	Yes
Design common circulation spaces to maximise opportunities for dual aspect apartments, including multiple core apartment buildings and cross over apartments.	Complies.	Yes
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Complies.	Yes
Direct and legible access should be provided between vertical circulation points and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.	Complies.	Yes
Tight corners and spaces are avoided.	Complies.	Yes
Circulation spaces should be well lit at night.	Complies.	Yes
Legible signage should be provided for apartment numbers, common areas and general wayfinding.	Complies.	Yes
Incidental spaces, for example space for seating in a corridor, at a stair landing, or near a window are provided.	Community hall has been provided on level 1.	Yes
In larger developments, community rooms for activities such as owners corporation meetings or resident use should be provided and are ideally co-located with communal open space.	Complies.	Yes
Where external galleries are provided, they are more open than closed above the balustrade along their length.		
<b>Storage</b>		



**Table 2 Apartment Design Guide Compliance Table**

<p>Minimum storage areas.</p> <p>Storage is accessible from either circulation or living areas.</p> <p>Storage not located in apartments is secure and clearly allocated.</p> <p>Storage is provided for larger and less frequently accessed items, where practical.</p> <p>Storage space in internal or basement car parks is provided at the rear or side of car spaces or in cages so that allocated car parking remains accessible.</p> <p>Storage not located in an apartment is integrated into the overall building design and not visible from the public domain.</p>	<p>Minimum storage volumes are provided. Yes</p> <p>Complies.</p> <p>Complies. Yes</p> <p>Yes</p> <p>Storage rooms are located in the basement for larger storage items. Yes</p> <p>Storage will not be designed to impede the car parking spaces. Yes</p> <p>Additional storage is located in the basement. Yes</p>
<p><b>Acoustic Privacy</b></p> <p>Adequate building separation is provided within the development and from neighbouring buildings / adjacent uses (also see section 2F Building separation and section 3F Visual Privacy).</p> <p>Window and door openings are generally orientated away from noise sources.</p> <p>Noisy areas within buildings including building entries and corridors are located next to or above each other and quieter areas next to or above quieter areas.</p> <p>Storage, circulation areas and non-habitable rooms are located to buffer noise from external sources.</p> <p>The number of party walls (walls shared with other apartments) are limited and are appropriately insulated.</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas are located at least 3m away from bedrooms.</p> <p>Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions:</p> <ul style="list-style-type: none"><li>· rooms with similar noise requirements are grouped together</li><li>· doors separate different use zones</li><li>· wardrobes in bedrooms are co-located to act as sound buffers.</li></ul> <p>Where physical separation cannot be achieved noise conflicts are resolved using the following design solutions:</p> <ul style="list-style-type: none"><li>· double or acoustic glazing</li><li>· acoustic seals</li><li>· use of materials with low noise penetration properties</li></ul>	<p>Complies.</p> <p>Complies.</p> <p>Complies.</p> <p>Service cupboards and circulation areas are centrally located, with bedrooms sitting on the outside of the apartments and non-habitable spaces on the inside of the apartments.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p>



**Table 2 Apartment Design Guide Compliance Table**

<ul style="list-style-type: none"> <li>continuous walls to ground level courtyards where they do not conflict with streetscape or other amenity requirements.</li> </ul>		
<b>Noise and Pollution</b>	No change to approved.	No change.
<p><b>Apartment Mix</b> A variety of apartment types is provided.</p> <p>The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none"> <li>the distance to public transport, employment and education centres</li> <li>the current market demands and projected future demographic trends</li> <li>the demand for social and affordable housing</li> <li>different cultural and socioeconomic group</li> </ul> <p>Flexible apartment configurations, such as dual key apartments, are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households.</p> <p>Different apartment types are located to achieve successful facade composition and to optimise solar access. See figure 4A.3.</p> <p>Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available.</p>	<p>The following dwelling types are provided: terrace house/studio, 1 bedroom + study, 2 bedroom + study, 3 bedroom + study, two-storey penthouse.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>Ground Floor Apartments</b>	No change to the approved apartments.	No change are proposed.
<p><b>Facades</b></p> <p>Design solutions for front building facades may include:</p> <ul style="list-style-type: none"> <li>A composition of varied building elements</li> <li>A defined base, middle and top of the buildings</li> <li>Revealing and concealing certain elements</li> <li>Changes in texture, material, detail and colour to modify the prominence of elements</li> </ul> <p>Building services should be integrated within the overall façade.</p> <p>Building facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale. Design solutions may include:</p> <ul style="list-style-type: none"> <li>Well composed horizontal and vertical elements</li> <li>Variation in floor heights to enhance the human scale</li> <li>Elements that are proportional and arranged in patterns</li> <li>Public artwork or treatments to exterior blank walls</li> <li>Grouping of floors or elements such as balconies and windows on taller buildings</li> </ul>	<p>Complies.</p> <p>Complies.</p> <p>The building has a rigid and heavy vertical grid composition with horizontal “fading” towards the sky. Massing are stepped to create visual interest and minimise visual bulk from the street.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>



**Table 2 Apartment Design Guide Compliance Table**

Building façades relate to key datum lines of adjacent buildings through upper level setbacks, parapets, cornices, awnings or colonnade heights.	There is existing apartment development around the building at the time of the application. However, the application has carefully considered possible future development datums.	Yes
Shadow is created on the façade throughout the day with building articulation, balconies and deeper window reveals.	A play of shadows can be seen through the highly articulated vertical elements. and "fading" horizontal bands.	Yes
Building entries should be clearly defined.	Breaks in the façade highlight where the building entries exist.	Yes
Important corners are given visual prominence through a change in articulation, materials or colour, roof expression or changes in height.	The 'civic' corner on ground floor has a distinct facade geometry to indicate the prominence of the corner. For upper levels of the tower, the corners are curved to provide panorama view out.	Yes
The apartment layout should be expressed externally through façade features as party walls and floor slabs.	Complies.	Yes
<b>Roof Design</b>		
Roof design relates to the street. Design solutions may include:	Stepped massing to minimise roof appearance from the street.	Yes
<ul style="list-style-type: none"> <li>• Special roof features and strong corners</li> <li>• Use of skillion or very low pitch hipped roofs</li> <li>• Breaking down the massing of the roof by using smaller elements to avoid bulk</li> <li>• Using materials or a pitched form complementary to adjacent buildings</li> </ul>	Complies.	Yes
Roof treatments should be integrated with the building design. Design solutions may include:		
<ul style="list-style-type: none"> <li>• Roof design proportionate to the overall building size, scale and form</li> <li>• Roof materials complement the building</li> <li>• Service elements are integrated</li> </ul>		
Habitable roof space should be provided with good levels of amenity. Design solutions may include:		
<ul style="list-style-type: none"> <li>• Penthouse apartments</li> <li>• Dormer or clerestory windows</li> <li>• Openable skylights</li> </ul>		
Open space is provided on roof tops subject to acceptable visual and acoustic privacy, comfort levels, safety and security considerations.	Communal open space provided on Level 12 has planted edge and awnings to help with visual and acoustic privacy.	Yes
Roof design maximises solar access to apartments during winter and provides shade during summer. Design solutions may include:	Complies.	
<ul style="list-style-type: none"> <li>• The roof lifts to the north</li> </ul>		Yes





**Table 2 Apartment Design Guide Compliance Table**

<ul style="list-style-type: none"><li>· Eaves and overhangs shade walls and windows from summer sun</li></ul> <p>Skylights and ventilation systems should be integrated into the roof design.</p>	Complies.	
<b>Landscape Design</b>	No change to approved.	No change.
<b>Planting on Structures</b>	No change to approved.	No change.
<b>Universal Design</b>	No change to approved.	No change.
<b>Adaptive Reuse</b>	No change to approved.	No change.
<b>Mixed Use</b>	No change to approved.	No change.
<b>Awnings and Signage</b>	No change to approved.	No change.
<b>Energy Efficiency</b>	No change to approved.	No change.
<b>Waste Management and Conservation</b>	No change to approved.	No change.
<b>Waste Management</b>	No change to approved.	No change.
<b>Building Maintenance</b>	No change to approved.	No change.

### 5.2.6 Lane Cove Local Environmental Plan 2009



The subject site is located within Zone R4 High Density Residential under Lane Cove LEP 2009. Permissible development includes; *Residential flat buildings, restaurants or cafes, centre-based childcare facilities and community facilities*. The development as modified will continue to meet the objectives of Zone R4 in that the proposal provides quality high density residential development, childcare and community facilities in an area that is highly accessible due to its proximity to several modes of public transport and the St Leonards Town Centre.

The proposed modifications introduce two additional storeys (Levels 13 and 14) which will increase both the proposal's gross floor area (by 680m<sup>2</sup>) and building height (6.2 metres).

#### 5.2.6.1 Clause 7.1 Development on land in St Leonards South Area

The gross floor area of the proposed development is a total of 9,401m<sup>2</sup>, resulting in a FSR of 3.58:1 and height of 48.16 metres. Despite the proposed modification to the development being greater than the approved FSR, the proposal remains well below the maximum Incentive Floor Space Ratio control of 3.7:1 permitted under clause 7.1(3) of Lane Cove LEP 2009.

The proposal will increase the height of the development from 43.5 metres (44.7m when including a 1.2m parapet required by Sydney North Planning Panel as part of Condition A.2) to 48.16 metres, which breaches the maximum Incentive Height of Buildings control of 44 metres. This is a non-compliance of 4.16 metres to the Incentive Height of Buildings control and an increase of 3.46m above the previously approved building height.



In the NSW Land and Environment Court case of *Gann & Anor v Sutherland Shire Council [2008]*, the Court held that there is a power to modify a development application (via a modification application) where the modification would result in the breach of development standard. The Court took the view that development standards within a LEP did not operate to prohibit the granting of consent if they were not complied with and no objection pursuant to SEPP No 1 (now relevant to Clause 4.6 variation) had been lodged. Notwithstanding, the Court held that despite a SEPP No 1 Objection (or Clause 4.6 variation) not being required, a Section 96 application (now a Section 4.55 of the EP&A Act) still requires the consent authority to take into consideration those matters referred to in Section 4.15. These matters were relevant to the application as assessed throughout this Statement.

#### Objectives of the Clause

The objectives of Clause 7.1 of Lane Cove LEP 2009 are as follows:

*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.*

The proposal, as amended, provides a building height that will have no additional adverse impact on solar access to either adjacent properties or to the public domain in the vicinity of the site. The proposed development provides for an well designed built form that responds to the local topography and reflects the built form outcomes that are anticipated by the planning controls that apply to the site.

#### Objectives of the Zone

It is also relevant to consider the proposal in light of the R4 High Density Residential zone objectives which are stated as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To ensure that the existing amenity of residences in the neighbourhood is respected.*
- *To avoid the isolation of sites resulting from site amalgamation.*
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

The proposed development will continue to be demonstrably consistent with the objectives of the Zone R4 as the development will provide for the housing needs of the community in a high density residential environment whilst providing for a range of housing types, in close proximity to transport and services and delivering a high quality landscape setting. Despite the minor increase in building height, the proposal will continue to provide a variety of housing types (1-bed, 2-bed and 3-bed) in proximity to the St Leonards railway station and local bus routes. The amended proposal will continue to provide a high quality residential development with short, medium and long term economic benefits to the St Leonards South precinct.

On “planning grounds” the modified proposal does not alter the degree which compliance with the zone objectives was achieved under the originally approved and amended development. As discussed above, the modifications will not increase the intensity of the development, create any substantial increase in bulk and scale and will retain the amenity



of the surrounding locality. In fact, the extent of variation above the Height of Building development standard will not be readily visible to the casual observer by virtue of its location and minimal exceedance.

Although a variation statement pursuant to Clause 4.6 is not required in the circumstances of this application, the reasoning applied in *Wehbe v Pittwater Council [2007] NSW LEC 827*, is appropriate to rely upon to determine that the proposal is well founded despite the departure from clause 7.1 of Lane Cove LEP 2009. In the judgement, the Chief Justice set out five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The current proposal is considered to be consistent with the first of these in that the objectives of incentive building height and the R4 zone are achieved notwithstanding the numerical variation proposed.

As such, the modified proposal continues to be entirely consistent in relation to the objectives of the building height/incentive building height development standard, despite the numerical variation proposed. Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives, will create negligible environmental impacts and will provide for a variety of housing opportunities in a highly suitable location. The proposal is therefore justified on environmental planning grounds.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a “better” planning outcome. Therefore, on balance, the proposal is considered to achieve a planning purpose of enhancing amenity and delivery of important public benefits and achieving the desired density for the site in the absence of any additional or new adverse impacts.

#### **5.2.6.2 Clauses 7.4 and 7.5 Provision of Certain Public Benefits**

Together both of these clauses impose requirements for the provision of certain public benefits including recreation area, community facility and a pedestrian link as part of the development. The approved development has made provision for all of the required public benefits despite the approved development not reaching the maximum FSR applying to the site.

It is widely understood that the St Leonards South precinct was master-planned to achieve a particular level of density to offset the costs associated with the delivery of key public benefits. The Lane Cove DCP and St Leonards South Contributions Plan both emphasise the importance of the full floor space being achieved to provide for the delivery of the suite of public benefits for the community. The precinct’s planning documents indicate that the delivery of community infrastructure is vital for the precinct achieving the desired level of public amenity to support future population growth and urban renewal consistent with local and State planning strategies.

The proposed modification does not intend any changes to the design or location of the public benefits that were included in the approved development. This application does, however seek to increase the gross floor area (and as a consequence the FSR of the development) to achieve the site’s development potential under the LEP. As demonstrated elsewhere in this application, this is achieved without any additional material adverse impacts.

#### **5.2.6.3 Clause 7.6 Design Excellence**

This clause requires development to deliver the highest standard of architectural, urban and landscape design. The approved development was subject to an extensive design review process that culminated with Council’s Design Review and Excellence Panel, Lane Cove Council and the Sydney North Planning Panel concluding that the design satisfied all of the applicable assessment criteria provided in clause 7.1(6) of Lane Cove LEP 2009 and found that design excellence was exhibited.



The proposed amendments to the approved design (as subsequently modified) maintain the same standard of design excellence exhibited by the approved development. The amended design does not have any additional impacts in terms of views and solar access. These matters are comprehensively addressed in the Urban Design Report that has been prepared by *SJB Architecture* and provided with the application.

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

Lane Cove DCP 2009 provides planning controls which apply to the St Leonards South precinct. The original application was assessed and approved having regard to the provisions of the relevant controls within Part C8 of the Lane Cove DCP 2009. The approved development is generally compliant with the requirements of the Lane Cove DCP with the exception of the southern side setback to the east-west link.

The modifications to the approved development do not significantly alter the assessment and conclusions from the original development application assessment report which are still valid. Any potential non-compliances or amenity impacts are considered throughout this SEE.

##### **5.2.7.1 Height of Buildings (Storeys)**

Section 7 – Built Form of Part C8 of the DCP provides a maximum building height of 12 storeys for the subject site. In addition, the DCP indicates that part storeys that result from excavation of steep slopes or semi-basement parking do not count as a storey. The approved development, as modified, involves 12 storeys plus 2 x part-storeys/terrace levels at the front of the site and are the result excavation following the slope of the land.

The proposed amendments involve increasing the height of the building from the current 12 storeys to 14 storeys plus the two terrace levels that are part storeys. Although the proposed modification of the development will not comply with the DCP building height, measured in storeys, it is important that appropriate weight should be given to this requirement.

Section 3.43(5) of the Environmental Planning and Assessment Act 1979 makes it clear that a DCP provision that is substantially the same, inconsistent or incompatible with the provision of an environmental planning instrument applying to the land has not effect in respect of that provision. Given the DCP building height is substantially the same as the height of building development standard in the Lane Cove LEP 2009, the DCP provision should have no effect.

Nevertheless, the environmental impacts associated with the proposed additional two storeys (level 13 and level 14) are considered in Section 5.2.6.1 of this Statement. On the basis that the impacts of the non-compliance with the DCP building height is minor, the proposed variation is worthy of support.

### **5.3 IMPACT OF PROPOSED MODIFICATION**

#### **5.3.1 Natural Environment**

The proposal does not give rise to any significant additional environmental impacts beyond that considered and approved as part of the original application. The proposal will maintain compliance with the approved conditions of consent that are imposed to minimise all environmental impacts during construction and upon completion of the development.

Furthermore, the proposed modifications do not require any additional excavation.

#### **5.3.2 Built Environment**

In terms of the relationship of the proposal to the adjoining properties, the proposed modifications to the approved development will not have an adverse impact on the amenity of adjoining properties and will be entirely compatible with the anticipated built form of Canberra Avenue and surrounds.



Furthermore, the proposed alterations will not significantly impact on the streetscape or character of the area and will not increase the intensity of development at the site as the built form is to be largely the same as approved. See the Urban Design Report by *SJB Architects* for details including assessment of visual impacts from public places, solar access and impacts on views.

Accordingly, the modification to the approved development will have no adverse impact on the built and natural environment as outlined above.

### 5.3.3 Amenity Impacts

The amenity impacts of the proposed modifications are considered below:

#### 5.3.3.1 Visual & Aural Privacy

The proposed amendments will not result in any additional aural or visual privacy impacts to the surrounding properties beyond the original approval. Specifically, as the modifications will not alter approved setbacks and location of habitable and non-habitable areas and new apartments have increased separation from site boundaries. The privacy of neighbouring properties will be maintained.

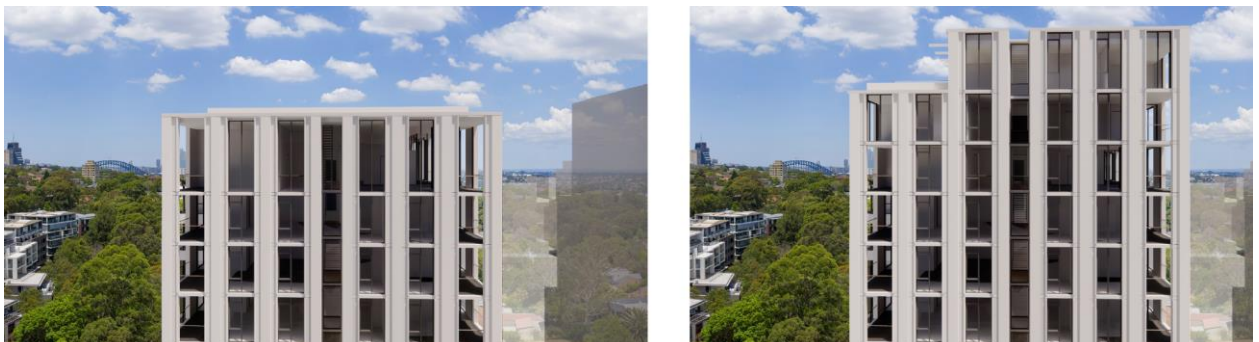
#### 5.3.3.2 Views

A measure of design excellence as identified in Clause 7.6(4)(d) of the Lane Cove LEP 2009 is that development does not have a detrimental impact on view corridors.

In its assessment of the approved development, Lane Cove Council found the design to have no detrimental impact on any significant view corridors. The proposed modifications to the approved development have carefully considered view impacts arising from the proposed changes and have avoided any adverse impacts.

#### Impact on Area 3

Area 3 is located to the north of the subject site. This site can be developed up to a height of 53m and enjoys partial distant views to the south towards the Sydney CBD skyline. **Figure 6** shows a comparison of the views from Area 3 between and the approved design of the development and the impact of the proposed modifications.



**Figure 6** Comparison of proposed impact on views from Area 3

#### Impact on Area 4

Area 4 is located to the north-west of the subject site. This site can be developed up to 44m in height and enjoys partial distant views of the North Sydney CBD skyline. **Figure 7** shows a comparison of the views from Area 4 between and the approved design of the development and the impact of the proposed modifications.



**Figure 7** Comparison of proposed impact on views from Area 4

#### Impact on Area 6

Area 6 is located to the west of the subject site. This site can be developed up to 44m in height and enjoys partial distant views of the North Sydney CBD skyline. **Figure 7** shows a comparison of the views from Area 6 between and the approved design of the development and the impact of the proposed modifications.



**Figure 8** Comparison of proposed impact on views from Area 6

As demonstrated above, the proposed modifications will not result in any further loss of approved distant partial views of the Sydney CBD skyline from neighbouring sites, beyond those that have been found to acceptable with the approved development. The remaining views are limited to distant suburban or sky views which are neither significant or iconic. Importantly, the proposal's thoughtful design has stepped the additional massing to minimise view loss from adjacent properties.

#### **5.3.3.3 Shadowing Impacts**

Updated shadow diagrams addressing the proposed modifications to the approved development have been submitted within the Urban Design Report prepared by *SJB Architects*.

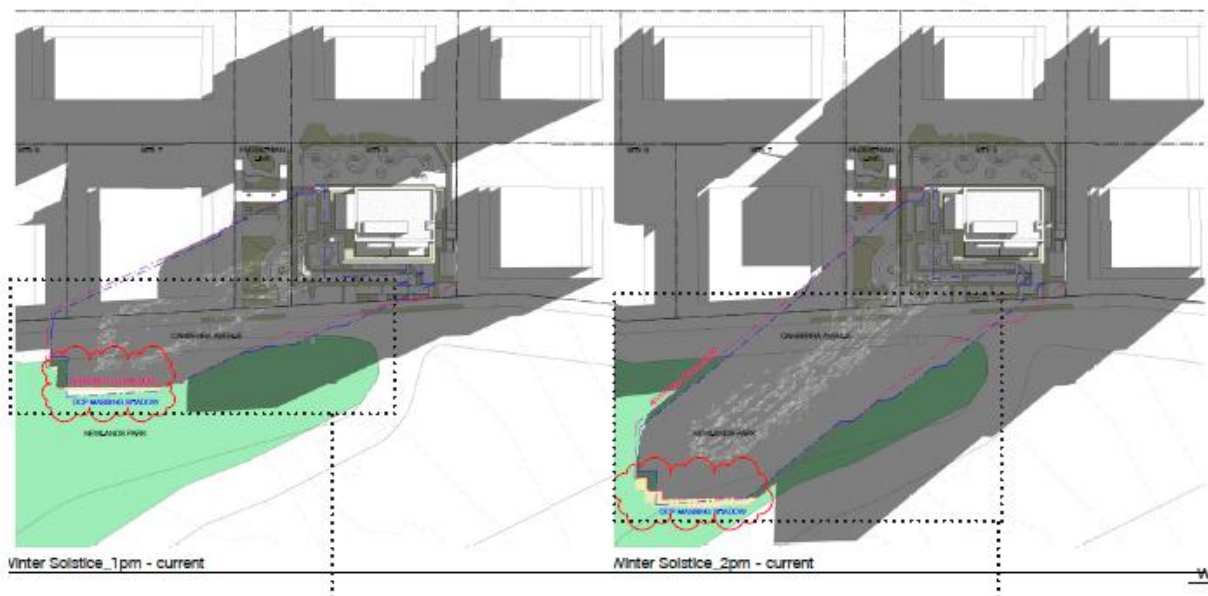
The proposal does not have any overshadowing impact on Newlands Park opposite the subject site, except for between 1:00pm and 3:00pm at midwinter (21 June). **Figure 9** shows the overshadowing impact of the approved development upon Newlands Park at 1:00pm and 2:00pm on 21 June.





**Figure 9** Overshadowing impact on Newlands Park from the Approved DA design.

The proposed modifications have manipulated the rooftop massing to reduce the overall height of Level 12 (from 4.6m to 3.1m) and steps back the additional height significantly. This has resulted in reducing some of the shadow impact **Figure 10** shows the overshadowing impact to Newlands Park of the proposed changes to the building.



**Figure 10** Overshadowing impact of proposed modification on Newlands Park.

As indicated above, the proposed changes will have only a modest impact on Newlands Park, slightly increasing the shadow to the eastern part of the park, this impact by the additional area is only apparent at 1pm and 2pm. As noted throughout this Statement the design of the proposed modifications to the upper levels of the building have sought to minimise additional overshadowing as far as practicable and involved a negligible overshadowing impact compared with the approved development.



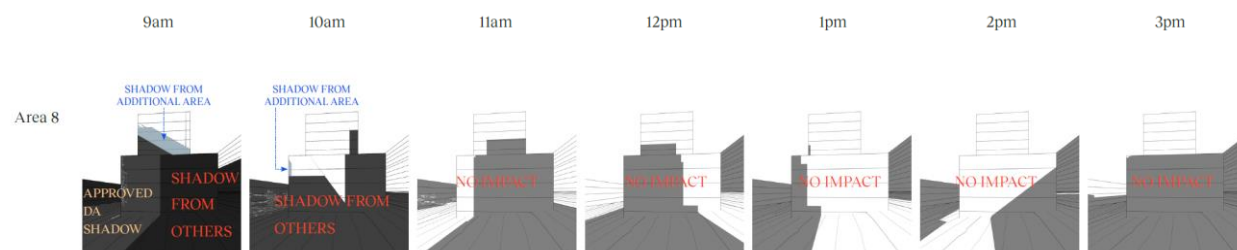
### 5.3.4 Solar access

The approved building does not cast any shadows onto future developments on land known as Areas 3, 4 and 6 due to the orientation & location of the site. In respect of the proposed modifications, there will be minor impact on solar access to adjoining properties known as Areas 7 and 8. A detailed solar access analysis was undertaken by *SJB Architects* to evaluate impact on these sites. As shown in **Figure 11**, the additional area in this application does not cast any additional shadows onto Area 7 's northern façade compared with the approved DA.



**Figure 11** Solar access impacts to Area 7 (northern facade).

As shown in **Figure 12**, the proposed modifications to the building's design has minor impact to the northern facade of Area 8 at 9am and 10am.



**Figure 12** Solar access impact to Area 8 (northern facade).

On balance, the impacts of the proposed modifications to the approved development, as modified, are minor and will have no material impact on the amenity of the adjacent residential developments.

### 5.3.5 Wind Impacts

The modification application is supported by an updated Wind Environment Assessment prepared by *Windtech* that updates the previous assessment carried out in respect of the approved DA. The updated report has considered the proposed changes to the approved development and states:

*“A review of the design changes indicates that the trafficable areas within and around the development are expected to experience similar wind conditions to those outlined within Windtech’s previous DA reporting for 13-19 Canberra Avenue, St Leonards. As such, the wind mitigation treatments recommended with Windtech’s previous reporting will still be applicable to the proposed modification. The additional recommended treatments for the revised/new plans with trafficable areas are as follows:*

- Level 13: addition of 1.5m-2m high screening (maximum 30% porosity) on corner balconies, retain proposed densely foliating evergreen landscaping.
- Level 14: retain proposed densely foliating evergreen landscaping.

*With the inclusion of the recommended wind mitigation treatments, from Windtech’s previous reporting and the above, it is expected that all areas within and around the subject development will experience suitable wind comfort and safety conditions for the intended uses of those areas”.*

### 5.3.6 Traffic and Parking Impacts

The modification application is supported by an updated Traffic and Parking Assessment report prepared by *Transport and Traffic Planning Associates*. The updated report considers the traffic and parking impacts associated with the development as subsequently modified.

The modified proposal will provide an additional seven (7) parking spaces in the Basement Level 3.

Table 3 Comparison between approved and proposed car parking provision				
	<i>Approved Development</i>	<i>Proposed Development</i>	<i>Change</i>	<i>Complies</i>
Resident Parking	77 spaces	84 spaces	+ 7 spaces	Yes
Visitor Parking	17 spaces	17 spaces	No change	Yes
Child Care Centre	17 spaces	17 spaces	No change	Yes
Car share	2 spaces	2 spaces	No change	Yes
Retail	1 space	1 space	No change	Yes
<b>Total</b>	<b>114 spaces</b>	<b>121 spaces</b>	<b>+ 7 spaces</b>	<b>Yes</b>

It is proposed to provide 121 parking spaces as well as 2 car wash bays, 10 motorcycle spaces and 36 bicycle spaces in the 4 basement levels with vehicle access located on Canberra Avenue.

The updated traffic and parking assessment report indicates that:

*“The traffic, transport and parking assessment for the s4.55 scheme confirms that:*

- The proposed development will only generate minor additional peak traffic movements and will not present any adverse traffic/safety implications.*
- The proposed parking provisions (car, motorcycle and bicycle) accord with the Council’s DCP requirements”.*

## 5.4 ECONOMIC & SOCIAL IMPACTS

Undertaking the works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Accordingly, it is considered that the proposed development is likely to have only positive economic impacts in the locality.

The proposed modifications will not have any significant impact on the social dynamic of the locality. The change to apartment layouts will improve the study spaces that were approved by allowing for their use as quiet office space conducive to working from home. This has social benefits for future occupants.

## 5.5 THE PUBLIC INTEREST

The proposal, as amended, is considered to be compatible with existing surrounding development and will provide a balance between protecting residential amenity, the natural/built environment, and providing appropriate amenity to the future occupants.

The proposed amendments have been made to accommodate additional floor area within the building in line with the maximum Incentive FSR that applied under clause 7.1(3) of Lane Cove LEP 2009. Achieving the permissible FSR is necessary in order to deliver the public benefits that are required by Part 7 of Lane Cove LEP, Lane Cove DCP and Section 7.11 Contributions Plan. These public benefits, including recreation area, community facility and pedestrian links, will be dedicated to Lane Cove Council for public use.



The proposal predominantly complies with the objectives and/or requirements contained within the LCLEP 2009 and adequately responds to the LCDCP 2009. Where there are non-compliances with the requirements of these instruments, adequate justification has been provided.

The proposal will provide improved residential accommodation for future occupants without adversely impacting on neighbouring properties. The proposal will have minimal adverse impacts on the natural environment. Accordingly, the proposed development is considered to be in the public interest.



## 6. Conclusion

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This Statement of Environmental Effects accompanies an application pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which seeks approval for alterations and additions to the approved development at Nos. 13-19 Canberra Avenue, St Leonards (DA162/2021) for two additional storeys and seven (7) additional car parking spaces.

The proposed modifications will enhance resident amenity and apartment mix in comparison to the approved mixed-use development. The proposed modifications are considered to be substantially the same as the approved development, and it is considered that the modifications will result in a high level of amenity for the potential occupants without significantly affecting the amenity of adjoining properties, as originally approved. The modifications will optimise the feasibility of supporting the successful delivery of community facilities and optimise the efficient redevelopment of the site in a manner that is reasonably anticipated by the LEP incentives for FSR and building height.

The modifications are generally consistent with the objectives and/or controls of the Lane Cove LEP 2009 and the Lane Cove DCP 2009. Where the modifications introduce new areas of non-compliance, such as the LEP's building height control and the DCP's building height (number of storeys), these have been justified in the relevant section of this Statement. The proposed changes to the approved development do not introduce any adverse built or natural environmental impacts over and above the approved development.

The proposed amendments have been made to accommodate additional floor area within the building in line with the maximum Incentive FSR that applied under clause 7.1(3) of Lane Cove LEP 2009. Achieving the permissible FSR is necessary in order to deliver the public benefits that are required by Part 7 of Lane Cove LEP, Lane Cove DCP and Section 7.11 Contributions Plan. These public benefits, including recreation area, community facility and pedestrian links, will be dedicated to Lane Cove Council for public use.

Accordingly, for the reasons outlined in this Statement, we respectfully request that Council modify the development consent to incorporate the proposed changes detailed in this report and accompanying plans.