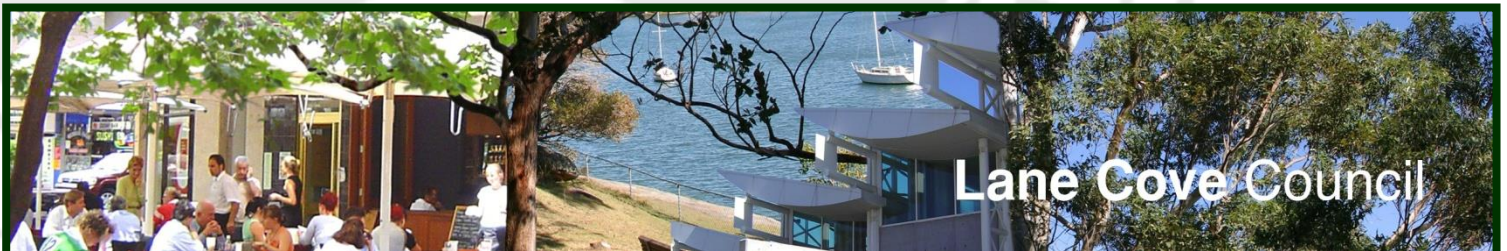


Agenda
Lane Cove Local Planning Panel Meeting
21 June 2023



Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Wednesday 21 June 2023 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully



Craig Wrightson
General Manager

Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by The Hon David Lloyd QC or alternate Chairs. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Local Planning Panel Charter and any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Minutes of LCLPP meetings are published on Council's website www.lanecove.nsw.gov.au as soon as possible following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include audio of members of the public that speak during the meeting. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

DECLARATIONS OF INTEREST

APOLOGIES

NOTICE OF WEBCASTING OF MEETING

LANE COVE LOCAL PLANNING PANEL REPORTS

1.	22B HAUGHTON STREET, LINLEY POINT.	4
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Lane Cove Local Planning Panel Meeting 21 June 2023
13-19 CANBERRA AVENUE, ST LEONARDS

Subject: 13-19 Canberra Avenue, St Leonards
Record No: DA23/21-01 - 28343/23
Division: Environmental Services Division
Author(s): Greg Samardzic

DA Number	21/2023
LGA	Lane Cove Council
Proposed Development	Alterations and additions to an approved mixed-use development
Street Address	Nos. 13 to 19 Canberra Avenue, St Leonards
Applicant/Owner	Applicant: Simon Truong - HPG General P/L Owners: SLD P/L
Date of DA lodgement	13 March 2023
Total number of Submissions	14
Number of Unique Objections	14
Recommendation	Refusal
Local Planning Panel Referral Criteria (Schedule 1 of Planning Direction)	<p>Contentious Development: More than 10 unique submissions have been received by way of objection; and</p> <p>Departure from Development Standards: Development that contravenes development standards imposed by an environmental planning instrument by more than 10%.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments SEPP 65 – Design Quality of Residential Apartment Development; SEPP (Building Sustainability Index) 2004; and Lane Cove Local Environmental Plan 2009. • proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority N/A • relevant development control plan Lane Cove Development Control Plan 2009 • 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 Planning agreement that the developer had offered to be entered into under Section 7.4 under the original development consent

	<ul style="list-style-type: none">• relevant regulations e.g. Regs 92, 93, 94, 94A, 288 Nil• coastal zone management plan Nil <p>other relevant plans</p> <p>St Leonards South Section 7.11 Contributions Plan</p>																																																																																													
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>ADG Assessment</td><td>Lane Cove Council</td></tr><tr><td>3</td><td>Development Control Plan Assessment</td><td>Lane Cove Council</td></tr><tr><td>4</td><td>Summary of Submissions</td><td>Lane Cove Council</td></tr><tr><td>5</td><td>NSROC DRP Minutes</td><td>NSROC Design Review Panel</td></tr><tr><td>6</td><td>Neighbour Notification Map</td><td>Lane Cove Council</td></tr><tr><td>7</td><td>Architectural Plans</td><td>SJB</td></tr><tr><td>8</td><td>Landscape Plans</td><td>Site Image</td></tr><tr><td>9</td><td>Statement of Environmental Effects</td><td>Planning Ingenuity</td></tr><tr><td>10</td><td>Design Verification Statement</td><td>SJB</td></tr><tr><td>11</td><td>Design Review Panel Reporting</td><td>-</td></tr><tr><td>12</td><td>Design Excellence Panel Reporting</td><td>-</td></tr><tr><td>13</td><td>Urban Design Report</td><td>SJB</td></tr><tr><td>14</td><td>Access Report</td><td>Accessible Building Solutions</td></tr><tr><td>15</td><td>Acoustic Report</td><td>PWNA</td></tr><tr><td>16</td><td>NatHERS and BASIX Report</td><td>Efficient Living</td></tr><tr><td>17</td><td>BCA Report</td><td>Credwell</td></tr><tr><td>18</td><td>Notification Plans</td><td>SJB</td></tr><tr><td>19</td><td>Operational Waste Management Plan</td><td>Elephants Foot</td></tr><tr><td>20</td><td>Traffic and Parking Assessment</td><td>TTPA</td></tr><tr><td>21</td><td>Wind Effects Response Report</td><td>Windtech</td></tr><tr><td>22</td><td>QS Report</td><td>Mitchell Brandtman</td></tr><tr><td>23</td><td>Briefing Note to the SNPP</td><td>Lane Cove Council</td></tr><tr><td>24</td><td>Kick Off Record of Briefing</td><td>SNPP</td></tr><tr><td>25</td><td>Applicant's Kick Off Briefing</td><td>Hyecorp</td></tr><tr><td>26</td><td>Applicant's Design Review Panel Presentation</td><td>SJB</td></tr><tr><td>27</td><td>Approved Stamped Plans</td><td>Lane Cove Council</td></tr><tr><td>28</td><td>Original Assessment Report</td><td>Lane Cove Council</td></tr><tr><td>29</td><td>Stormwater Plans</td><td>Acor</td></tr><tr><td>30</td><td>Public Art Strategy</td><td>UAP</td></tr></table>	Annex.	Document	Prepared By	1	Draft Reasons for Refusal	Lane Cove Council	2	ADG Assessment	Lane Cove Council	3	Development Control Plan Assessment	Lane Cove Council	4	Summary of Submissions	Lane Cove Council	5	NSROC DRP Minutes	NSROC Design Review Panel	6	Neighbour Notification Map	Lane Cove Council	7	Architectural Plans	SJB	8	Landscape Plans	Site Image	9	Statement of Environmental Effects	Planning Ingenuity	10	Design Verification Statement	SJB	11	Design Review Panel Reporting	-	12	Design Excellence Panel Reporting	-	13	Urban Design Report	SJB	14	Access Report	Accessible Building Solutions	15	Acoustic Report	PWNA	16	NatHERS and BASIX Report	Efficient Living	17	BCA Report	Credwell	18	Notification Plans	SJB	19	Operational Waste Management Plan	Elephants Foot	20	Traffic and Parking Assessment	TTPA	21	Wind Effects Response Report	Windtech	22	QS Report	Mitchell Brandtman	23	Briefing Note to the SNPP	Lane Cove Council	24	Kick Off Record of Briefing	SNPP	25	Applicant's Kick Off Briefing	Hyecorp	26	Applicant's Design Review Panel Presentation	SJB	27	Approved Stamped Plans	Lane Cove Council	28	Original Assessment Report	Lane Cove Council	29	Stormwater Plans	Acor	30	Public Art Strategy	UAP
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Lane Cove Local Planning Panel Meeting 21 June 2023
13-19 CANBERRA AVENUE, ST LEONARDS

	31	Geotechnical Report	PTC
	32	Clause 4.6 Written Submissions - Building Height & FSR	Planning Ingenuity
	33	Pedestrian Wind Report	Windtech
	34	Section 4.55(2) Assessment Report	Lane Cove Council
	35	Section 4.55(2) Application Plans	SJB
Clause 4.6 requests	- Applicable – see Annexure 35		
Summary of key submissions	<ul style="list-style-type: none"> • Building Height • Number of Storeys 		
Report prepared by	Greg Samardzic		
Report date	21 June 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? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes – condition imposed under original consent**
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

Development Consent No. 162/2021 was granted for the demolition of existing structures and construction of a mixed-use development containing demolition of existing structures and construction of a mixed-use development comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, pedestrian link and stratum/strata subdivision.

A maximum height of 43.5m and 12 storeys was proposed on the development site known as Area 5. However, the applicant stated that the approved development height is actually 44.7m which had breached the 44m LEP development standard by virtue of the SNPP imposing a condition (Condition A.2) requiring a provision of a 1.2m parapet on top of the proposed maximum 43.5m

proposed building. This claim is disputed as the LEP excludes architectural roof features from height calculations.

The subject Development Application is for further alterations and additions to the above consent and contains the following works:

- Basement Level 3 is amended to provide an additional seven carparking spaces;
- The floor to ceiling height of Level 12 has been reduced from 4.6m to 3.1m;
- Construction of two new levels (storeys) which would accommodate four additional apartments;
- Level 13 is introduced and provides three (3) x 3-bedroom apartments;
- Level 14 is introduced which provides one (1) penthouse apartment containing 4 bedrooms; and
- A new roof is proposed above these new floors.

The justification for the proposed works is to ensure that the additional height has limited visual impact from the streetscape and surrounding properties and that overshadowing impacts are minimised. The real purpose for the subject application is to circumvent the South St Leonards Precinct Part 7 Incentive Clauses which was relied upon under the original consent mentioned above as that part of the LEP does not permit any variation to the incentive building height development standard by containing a Clause 4.6 prohibition. As a result, the applicant is proposing to revert, back to the base height and Floor Space Ratio (FSR) development standards of the LEP to obtain consent for the above proposed works.

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 scheme.

The proposal includes a variation to the maximum building height development standard of 9.5m, where 48.16m is proposed being a variation of 38.66m or 507%. The proposal also includes a variation to the maximum FSR development standard of 0.5:1, where a FSR of 3.58:1 is proposed being a variation of 3:08:1 or 716%. Clause 4.6 written requests accompanies the Development Application, and they are not supported due to the large numerical variations being proposed and not considered to establish suitable environmental planning grounds to vary the development standards or demonstrate compliance with the height of building or FSR objectives.

Further, the applicant's intent of circumventing the operation and intent of the Part 7 of the LEP is not supported and the application should be refused on this basis.

The proposal further includes a variation to the maximum 12 storeys DCP control by proposing a maximum of 14 storeys. The proposed variation to the number of storeys is also not supported as Area 5 again, full compliance should be achieved, and it is recommended that the Panel does not approve such a variation as the additional storeys proposed contributes to the above substantial height breach and other approvals within the precinct have achieved full compliance with this control. The applicant had originally proposed 14 storeys under the original application and amended to comply to obtain a recommendation for approval to the panel which was fully aware of this background when granting consent originally.

The proposal is not supported due to its substantial non-compliant nature and a better planning outcome would not be necessarily achieved other than achieving more development yield for the developer or maximise the building height and FSR available on the site. Approval would be contrary to the other approved compliant developments within the precinct thus far and is reported to the Lane Cove Local Planning Panel (LCLPP) with a recommendation for **refusal**.

2. STRATEGIC CONTEXT

2.1 St Leonards South Precinct

The subject development 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*. Further information on the history prior to finalisation is available on [Council's website](#) and the [Department's website](#).

2.2 Location

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

2.4 Planning Controls

The planning controls and mechanisms to achieve the vision of the Precinct are detailed and addressed later in 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 (**Figure 3**). The subject development site is known as Area 5.



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 (with exception of a park and new road).

ii. Incentive Building Height and FSR

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

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

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

iii. No Clause 4.6 Variation Requests

The planning scheme precludes the use of Clause 4.6 to vary the incentive building height, incentive floor space ratio, incentive provisions (with exception of the minimum site area provision to allow for site hold-out scenarios) and design excellence provisions. Again, it is noted that this is the main purpose for the lodgement of the subject Development Application to overcome this Clause 4.6 prohibition under this part of the LEP and to revert back to the base LEP controls.

iv. Design Excellence

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

v. NSROC Design Review Panel

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

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

Development Control Plan

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).

i. Green Spines - Shared Communal Open Space

Green spines are a key feature of the St Leonards South Precinct. The green spine is a 24m wide shared communal open space between residential flat buildings.

Ordinarily a residential flat building development would provide communal open space for its own use only.

The green spines will combine the communal open space of multiple residential flat buildings with each contributing to, and sharing in, a larger communal open space area.

The shared communal open space will be grouped in accordance with **Figure 4** and is characterised by shared facilities and significant landscaping (50% minimum deep soil).



Figure 4: Green Spines (Shaded Green)

ii. Part Storey Control

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

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

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

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 site is centrally located within the northern-eastern part of the St Leonards South Precinct and is known as **Area 5**. The site in the future envisaged context would include provision of a child-care centre and community facility in a future residential flat building development. Further, it is envisaged that there be an east-west public pedestrian link along the southern boundary and the western portion be shared green spine with Area 6.



Figure 5: Subject Site in Future Envisaged Context

3. SITE AND SURROUNDS

3.1 Subject Site

The subject site is known as Nos. 13 to 19 Canberra Avenue, St Leonards with a total site area of 2,629.2m². The site is known as Area 5 within the St Leonards South Precinct planning scheme and located in the north-eastern part of the Precinct. The site is located on the western side of Canberra Avenue, south of its intersection with Marshall Avenue and west of Duntroon Avenue. The site had recently commenced construction works. The key site characteristics are summarised in below.

Site Characteristics of Nos. 13-19 Canberra Avenue	
Site Characteristic	Subject Site
Title Particulars	Nos. 13 to 19 Canberra Avenue - Lots 11-14 Sec 3 DP 7259
Total Site Area	2,629.2m ²
Site Frontage	Approx. 61.08m to Canberra Avenue (east) Approx. 60.96m to the western common boundary Approx. 41.37m to the northern common boundary Approx. 44.89m to the southern common boundary
Site width	Approx. 61m
Topography	Approx. 6.83m from north to south (RL65.10 to RL58.27)
Zoning	R4 High Density Residential

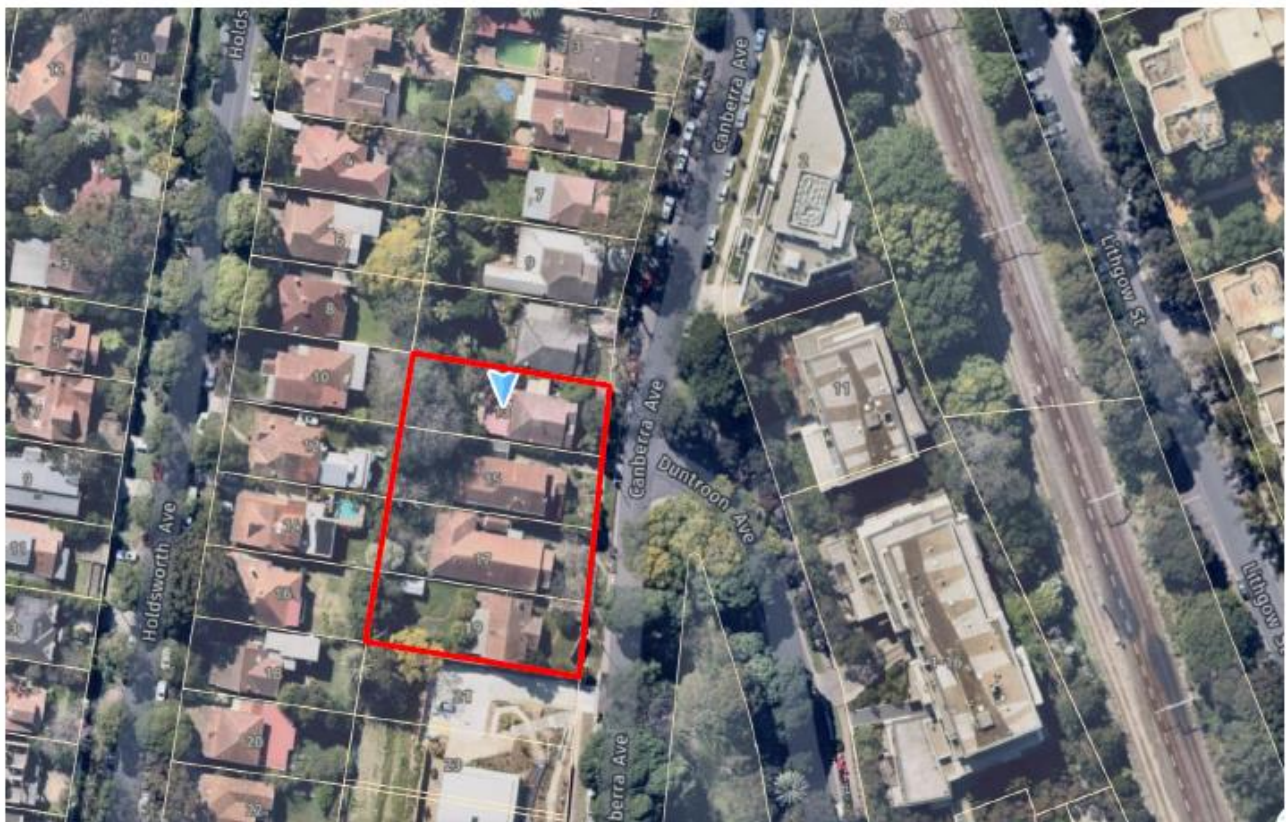


Figure 6: Subject Site

3.2 Adjoining/Surrounding Sites

The area or the precinct is in transition towards a desired future character which is reflected in the planning instruments and recently constructed developments. Recently constructed residential flat buildings adjoin the site to the north and east. There have been other approvals within the precinct as described below:

Land to the south comprising Areas 7-11 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. This development site is currently under construction.

Land to the northwest comprising Areas 12 has obtained approval (Development Consent No. 187/2021) for demolition of the existing structures and construction of three residential flat buildings (ranging from 12 to 19 storeys) comprising a total of 232 apartments and basement parking for 348 vehicles.

Land to the north comprising Areas 1, 2 & 4 has obtained approval (Development Consent No. 79/2022) for demolition of the existing structures and construction of a part 10 and part 12 storey residential flat building comprising 96 apartments and basement parking for 110 vehicles.

Land to the southwest comprising Areas 18-20 has obtained development consent (Development Consent No. 60/2022) from the SNPP 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 Areas 16 & 17 had a Development Application No. 115/2022 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. The application was refused from the SNPP based on the proposed variations to building height, number of storeys and building setbacks including setbacks to the east-west 15m wide pedestrian link.

Land further to the southwest comprising Areas 22 & 23 there is currently 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.

Land further to the northwest comprising Areas 13-15 there is currently a Development Application (DA No. 56/2023) for construction of three residential flat buildings with four levels of basement carparking comprising 187 apartments and 249 vehicle spaces. The application is yet to be determined.

The development to the south-east comprises Newlands Park. Newlands Park is an open space area that incorporates play equipment and pedestrian paths of travel that link to Duntroon Avenue and River Road. It features natural landscaping comprising predominantly canopy tree planting. Beyond Newlands Park, Duntroon Avenue supports a range of contemporary multi-storey residential flat buildings addressing the park.

4. PROPOSAL

The original consent (Development Consent No. 162/2021) approved on 27 June 2022 by the Sydney North Planning Panel (SNPP) was for the demolition of existing structures and construction of a mixed-use development containing demolition of existing structures and construction of a mixed-use development comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, pedestrian link and stratum/strata subdivision. A maximum height of 43.5m and 12 storeys was proposed on the development site known as Area 5. This consent has been modified twice, which now comprising 80 apartments and 117 car parking spaces.

The subject Development Application is for further alterations and additions to the above consent and contains the following works:

- Basement Level 3 is amended to provide an additional seven carparking spaces;
- The floor to ceiling height of Level 12 has been reduced from 4.6m to 3.1m;
- Construction of two new levels (storeys) which would accommodate four additional apartments;
- Level 13 is introduced and provides three (3) x 3-bedroom apartments;
- Level 14 is introduced which provides one (1) penthouse apartment containing 4 bedrooms, and
- A new roof is proposed above these new floors.



Figure 7: Proposed Photomontage

**Lane Cove Local Planning Panel Meeting 21 June 2023
13-19 CANBERRA AVENUE, ST LEONARDS**

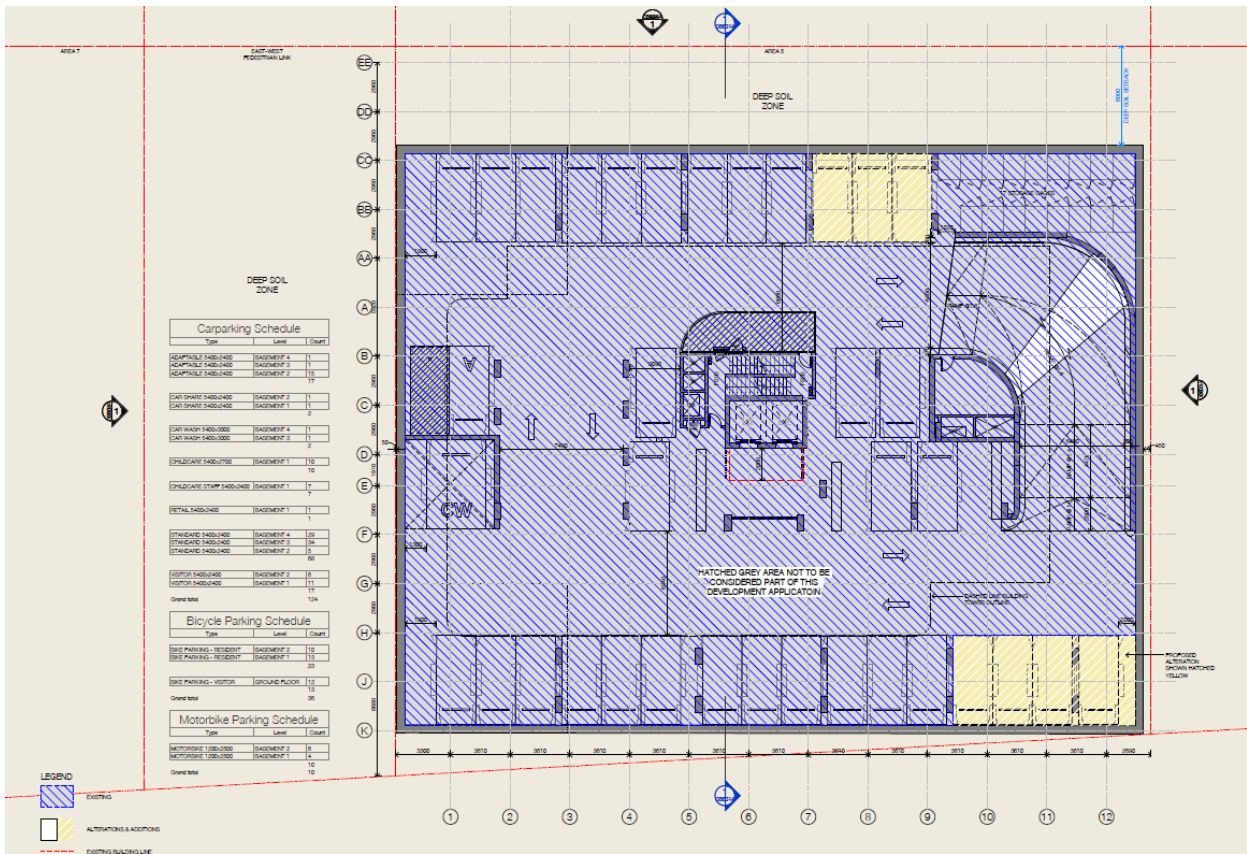


Figure 8: Basement Level 3 Amendments

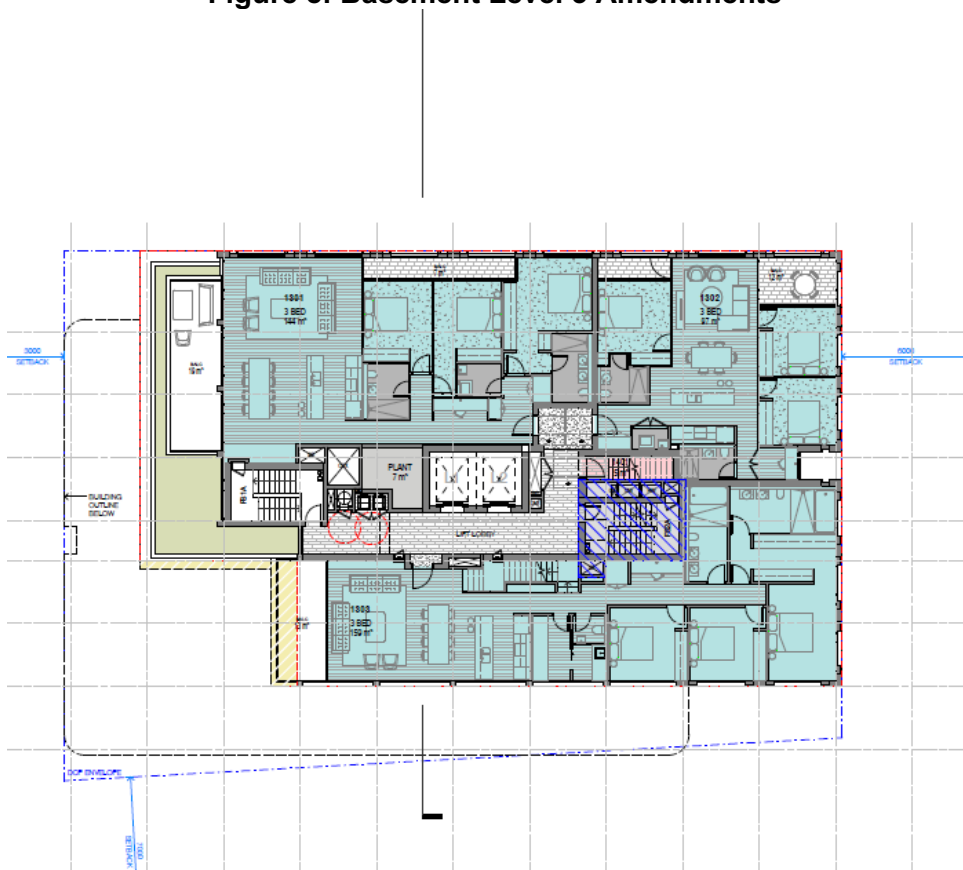


Figure 9: Proposed Level 13 Floor Plan

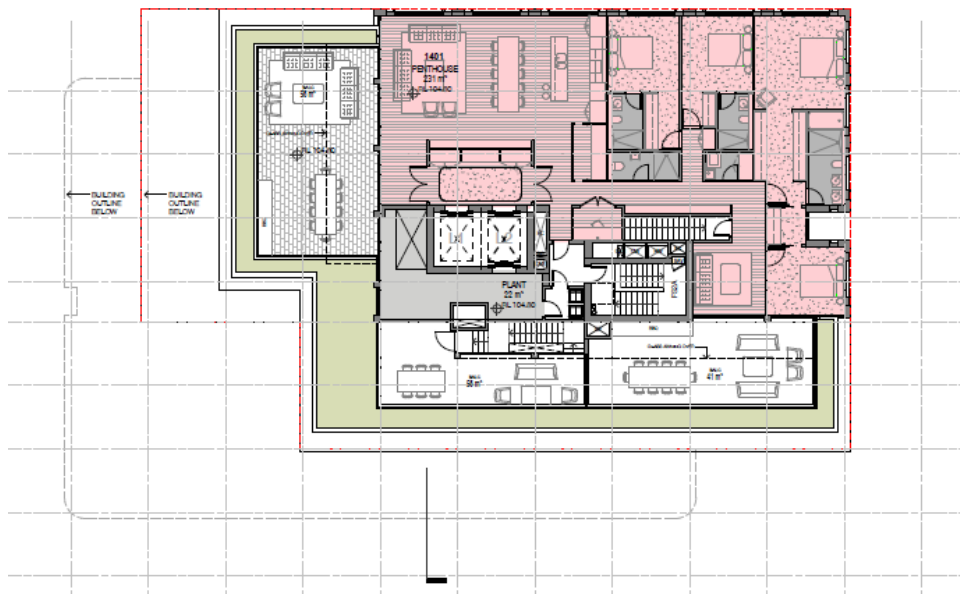


Figure 10: Proposed Level 14 Floor Plan

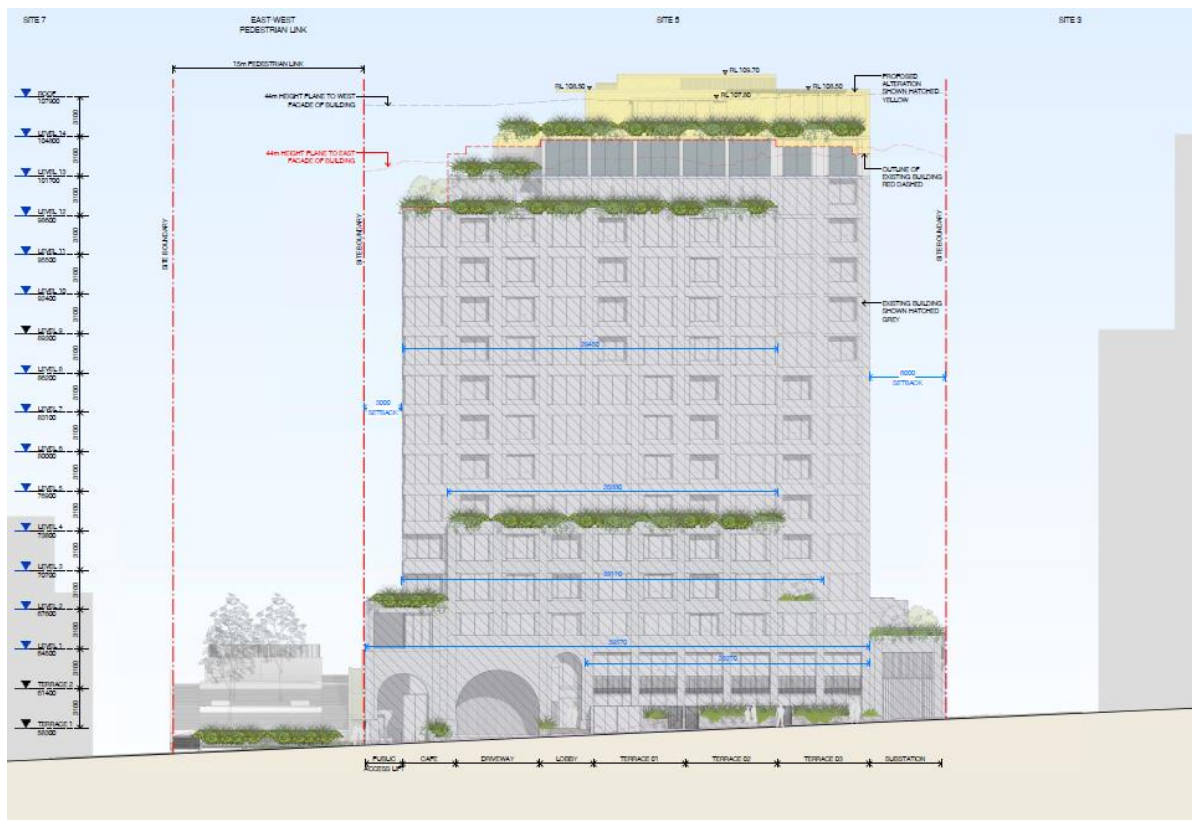


Figure 11: Proposed Eastern (Canberra Avenue) Elevation

The justification for the proposed works is to ensure that the additional height has limited visual impact from the streetscape and surrounding properties and that overshadowing impacts are

minimised. The real purpose for the subject application is to circumvent the South St Leonards Precinct Part 7 Incentive Clauses which was relied upon under the original consent mentioned above as that part of the LEP does not permit any variation to the incentive building height development standard by containing a Clause 4.6 prohibition. As a result, the applicant is proposing to revert, back to the base height and Floor Space Ratio (FSR) development standards of the LEP to obtain consent for the above proposed works.

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 scheme.

The approved apartment mix was:

- **27 one-bedroom units;**
- **25 two-bedroom units; and**
- **28 three-bedroom units**

The amended mix is now:

- **27 one-bedroom units;**
- **25 two-bedroom units;**
- **31 three-bedroom units; and**
- **1 four-bedroom penthouse**

A maximum height of 48.16m including lift overrun and roof plant is now proposed. The applicant stated that the approved development height is actually 44.7m which had breached the 44m LEP Incentive Building Height development standard by virtue of the SNPP imposing a condition (Condition A.2) requiring a provision of a 1.2m parapet on top of the proposed maximum 43.5m proposed building. The approved FSR has been amended from **3:32:1** (8,726sqm) and the proposed amended FSR is now **3.58:1** (9,401sqm). It is proposed to increase the car parking to a total of 124 car parking spaces and to increase the number of basement storage spaces to account for the increased number of apartments.

There are no amendments to the approved deep soil areas and no changes are proposed to the landscaping scheme that was approved under the original consent, with exception of changes to the roof terrace landscaping to accommodate the two additional storeys. The proposed new landscaping for the two additional storeys is detailed in the submitted landscape plans.

Note: The above proposal or subject Development Application is predicated on seeking to vary the LEP development standards {height & FSR} and the DCP control {storeys}. The applicant has lodged a separate Section 4.55(2) Modification Application undertaking the same proposed works. Where should the relevant tests of Section 4.55 not be met, the applicant then would rely on the subject application. Again, the applicant seeks to vary the base LEP Building Height and FSR Development Standards. The applicable development standards are as follows:

- **LCLEP - Height is 9.5m; and**
- **LCLEP – FSR is 0.5:1**

By relying on the LEP not the SLS Part 7 Incentive Clauses which contains a Clause 4.6 prohibition thus not permitting any breaches to the incentive building height and FSR controls, they are seeking to utilise Clause 4.6 to seek to vary the LEP to obtain consent for the proposed works.

5. HISTORY

5.1 Assessment/History Timeline

The assessment/history timeline is provided in the table below.

Proposal/History Timeline	
Date	Description
27 June 2022	Development Consent No. 162/2021 approved by the SNPP for the demolition of existing structures and construction of a mixed-use development containing demolition of existing structures and construction of a mixed-use development (maximum 12 storeys) comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, pedestrian link and stratum/strata subdivision.
17 November 2022	Section 4.55(1A) Modification Consent approved by Council to combine approved units 1106 (three-bedroom unit) and 1107 (two-bedroom unit) into one larger three-bedroom unit with a total internal area of 191sqm and balcony area of 23sqm.
13 February 2023	<p>Section 4.55(1A) Modification Consent approved by Council to:</p> <p>Basement Level 4:</p> <ul style="list-style-type: none"> • Redesign the one-way lane to improve the maneuvering and to avoid sharp turns. • Amended car parking layout (with one additional car parking space). • Redesign the storage cages. <p>Ground Floor:</p> <ul style="list-style-type: none"> • Redesign the bin room to comply with the original Development Application condition. • Redesign services to comply with detailed design requirements for BCA and Australian Standards including pump room, electrical room, tank zones, mechanical exhausts, fire corridors etc. • Managers room added. • Apartment design to improve the design and consideration of structural columns. <p>Upper Ground Floor:</p> <ul style="list-style-type: none"> • Cinema room redesign to improve the amenity. • Apartment redesign to improve the design and consideration of new structural columns. • Fire stairs adjusted to avoid access issues. <p>Levels 6 and 7</p> <ul style="list-style-type: none"> • Minor design adjustment on kitchens and bathrooms to improve the design and comply with visitable apartment requirements.
13 March 2023	Section 4.55(2) Modification Application lodged and the subject Development Application (DA21/2023) proposing the same works lodged.
14 March 2023	Public notification of the Development Application for a period of 28 days.

Lane Cove Local Planning Panel Meeting 21 June 2023
13-19 CANBERRA AVENUE, ST LEONARDS

4 April 2023	NSROC Design Review Panel Meeting (see Annexure 6 for their minutes and responses for both concurrent applications).
3 May 2023	Briefing of the Sydney North Planning Panel for the concurrent Section 4.55(2) Modification Application.

5.2 Design Amendments

No formal design amendments had occurred however the applicant had indicated that the following design amendment would occur to address part of the Design Review Panel (DRP) concerns with the proposal as follows:

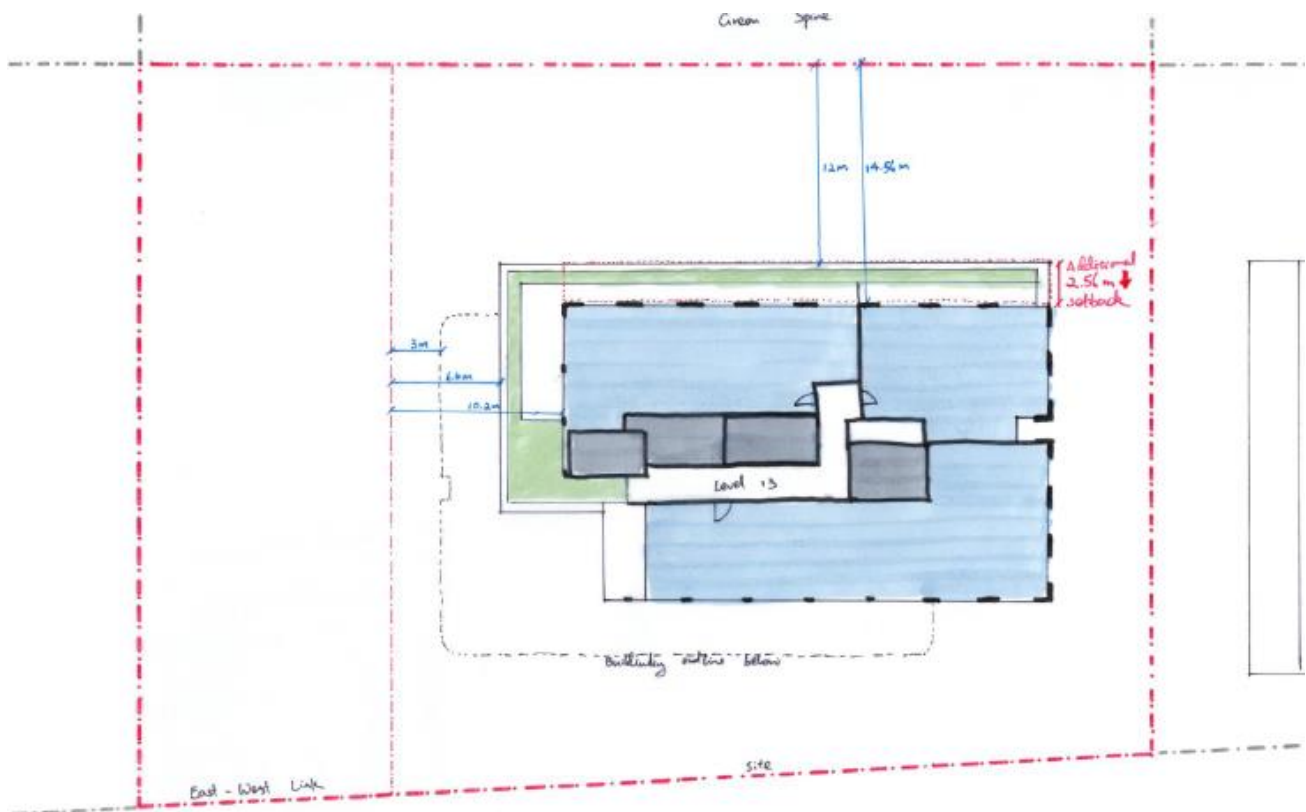


Figure 12: DRP – 2.5m Western Setback Recommendation

Note: Should the above design had been formally submitted, the proposal would have still been recommended for refusal due to the breaches in height and number of storeys.

6. CONCURRENT SECTION 4.55 MODIFICATION APPLICATION ASSESSMENT

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, the concurrent Section 4.55(2) is recommended for refusal as it not considered to be 'substantially the same' development as originally approved and the proposed variation to the LEP Incentive Height of Buildings map within Clause 7.1 cannot be supported on the basis that the development as amended now exceeds the height limit which cannot be varied. The operation and wording of both Clauses 4.3 and 7.1 would prohibit the granting of consent to buildings which would exceed such development standards (see Annexure 34, Section 6 of the assessment report completed for the SNPP's consideration and determination).

On this basis it is recommended that the subject Section 4.55(2) Modification Application be refused.

7. SECTION 4.15 ASSESSMENT

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

7.1 Any environmental planning instrument:

7.1 Lane Cove Local Environmental Plan 2009

7.2 Permissibility

The site is zoned R4 High Density Residential under LCLEP 2009. Residential flat buildings, restaurants or cafes, centre-based childcare facilities and community facilities are permissible with consent in the R4 High Density Residential zone. The proposed development as amended as 'alterations and additions' for the residential flat buildings purposes remains permissible with consent.

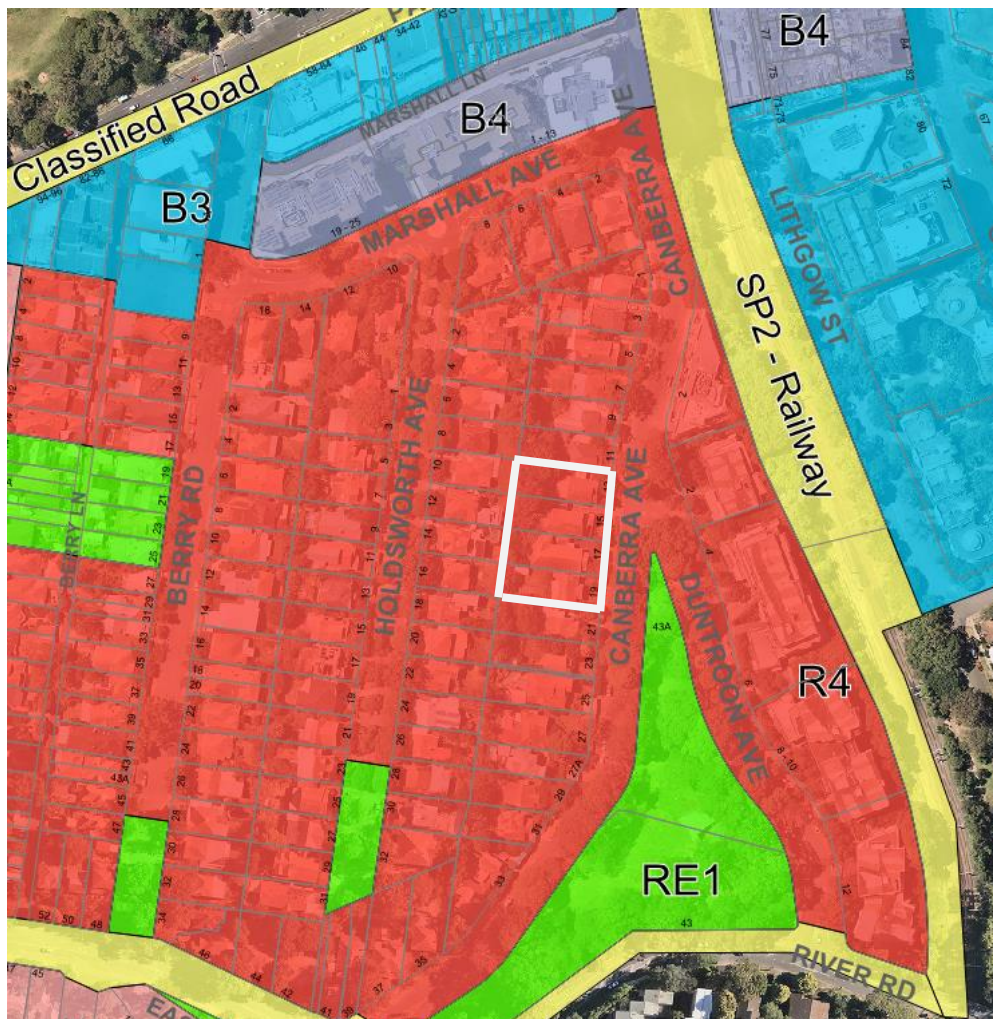


Figure 13: Zoning Map

7.3 Compliance with Base Development Standards Provisions

The proposal has been assessed against the applicable base development standards within LCLEP 2009 as detailed in the following table of compliance as the applicant is attempting to circumvent the Clause 4.6 prohibition under Part 7 of the LEP:

Lane Cove LEP 2009	Proposal	Compliance
4.3 Height		
Max. 9.5m	Maximum 48.16m (507% variation)	No, see discussion below
4.4 FSR		
Max. 0.5:1 Site Area: 2,629.2m ² Max. FSR permitted = 1,314.6m ²	3:58:1 or 9,401m ² (716%)	No, see discussion below

A. Clause 4.6 Written Request – Building Height

A maximum building height of 9.5m applies to the site under LCLEP 2009.

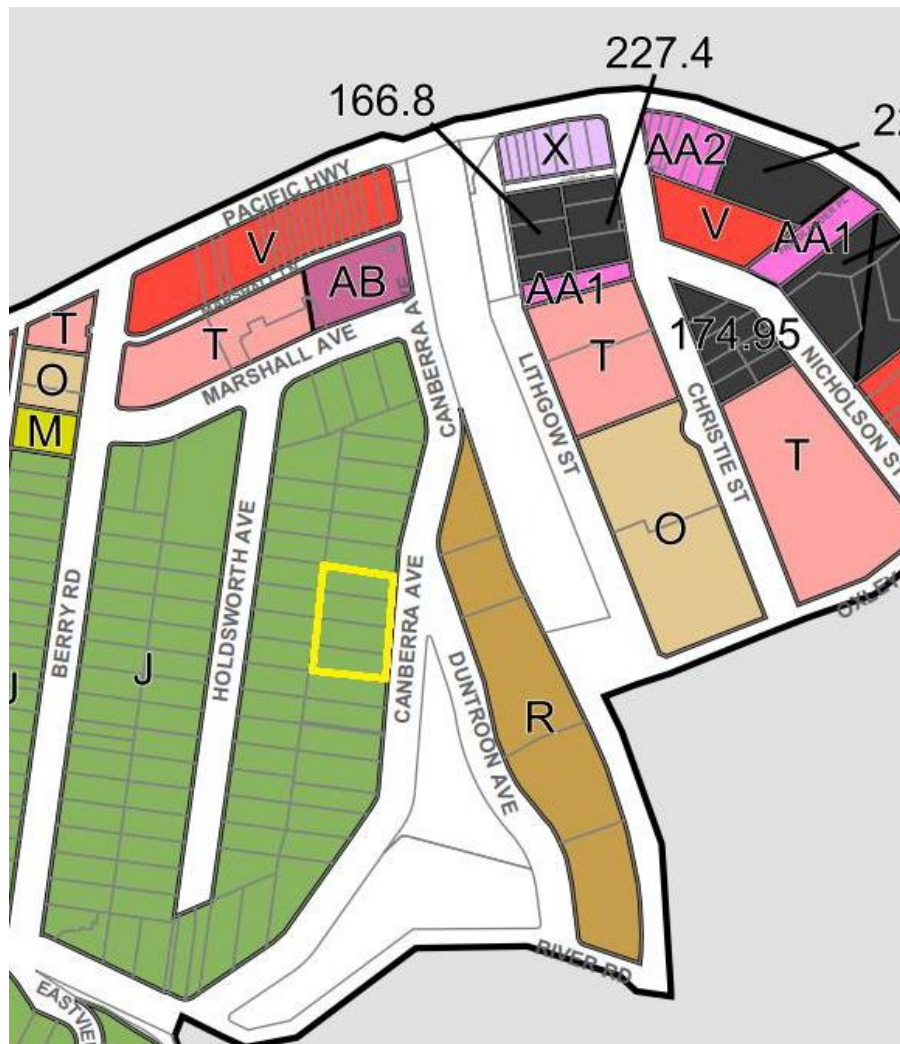


Figure 14: Base Height of Buildings Map (J=9.5m)

The proposed building will now have a maximum building height of 48.16m (a variation of 38.66m or 507%) due to the proposed additional two storeys.

The proposed and approved height plane sections of the development are provided below on the following page.

Clause 4.6 Exceptions to development standards

Clause 4.6 of LCLEP 2009 allows exceptions to development standards.

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered and agrees with the written request from the applicant that seeks to justify the contravention of the development standard.

This written request must demonstrate compliance with the relevant provisions of Clause 4.6 of LCLEP 2009. These matters are discussed below:

Written request provided by the applicant

The applicant has provided a written request (see Attachment 32) seeking a variation to the development standard with the lodged application.

A copy of the request provided to the Panel. Under Clause 4.6(3) the applicant is required to demonstrate:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

1. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 variation has argued that it is unreasonable or unnecessary to require strict compliance with the development standard for the following reasons:

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard.... the objection is considered to be well-founded....

Notably, under Clause 4.6(4)(a)(ii) a consent authority must be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed.....

Lane Cove Local Planning Panel Meeting 21 June 2023
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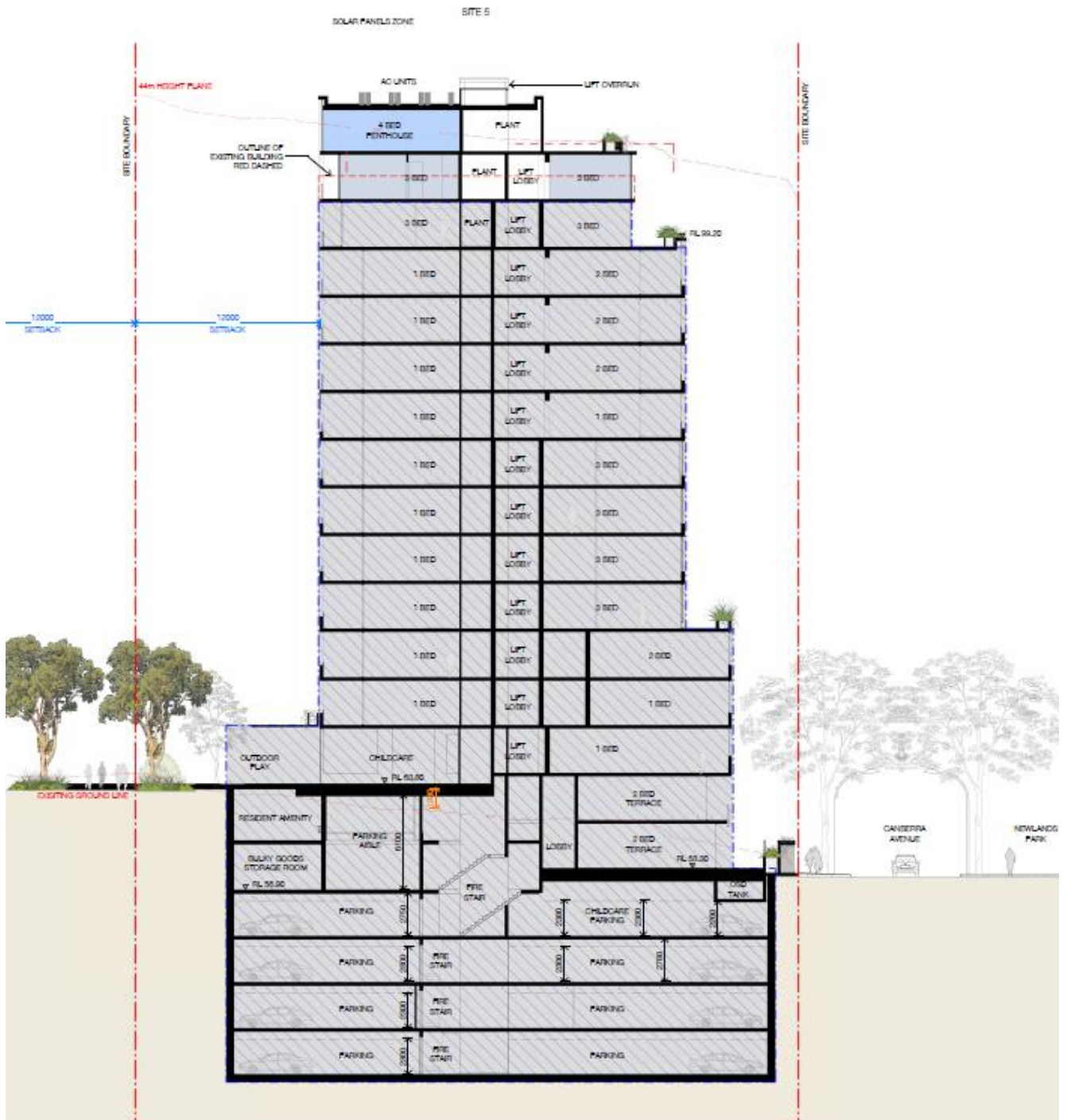


Figure 15: Proposed Breach to the Maximum 44m Building Height Plane

Comment:

The proposed variation would result in additional adverse visual impacts and unnecessary bulk or scale to surrounding developments and strict compliance is reasonable in this instance. The development as amended would not present as an appropriate built form outcome for the new precinct. There are proposed units that sit above the maximum building height plane and the proposed variation would have additional adverse impacts onto the immediate locality. The variation is not consistent with the objectives of the development standard for the following reasons:

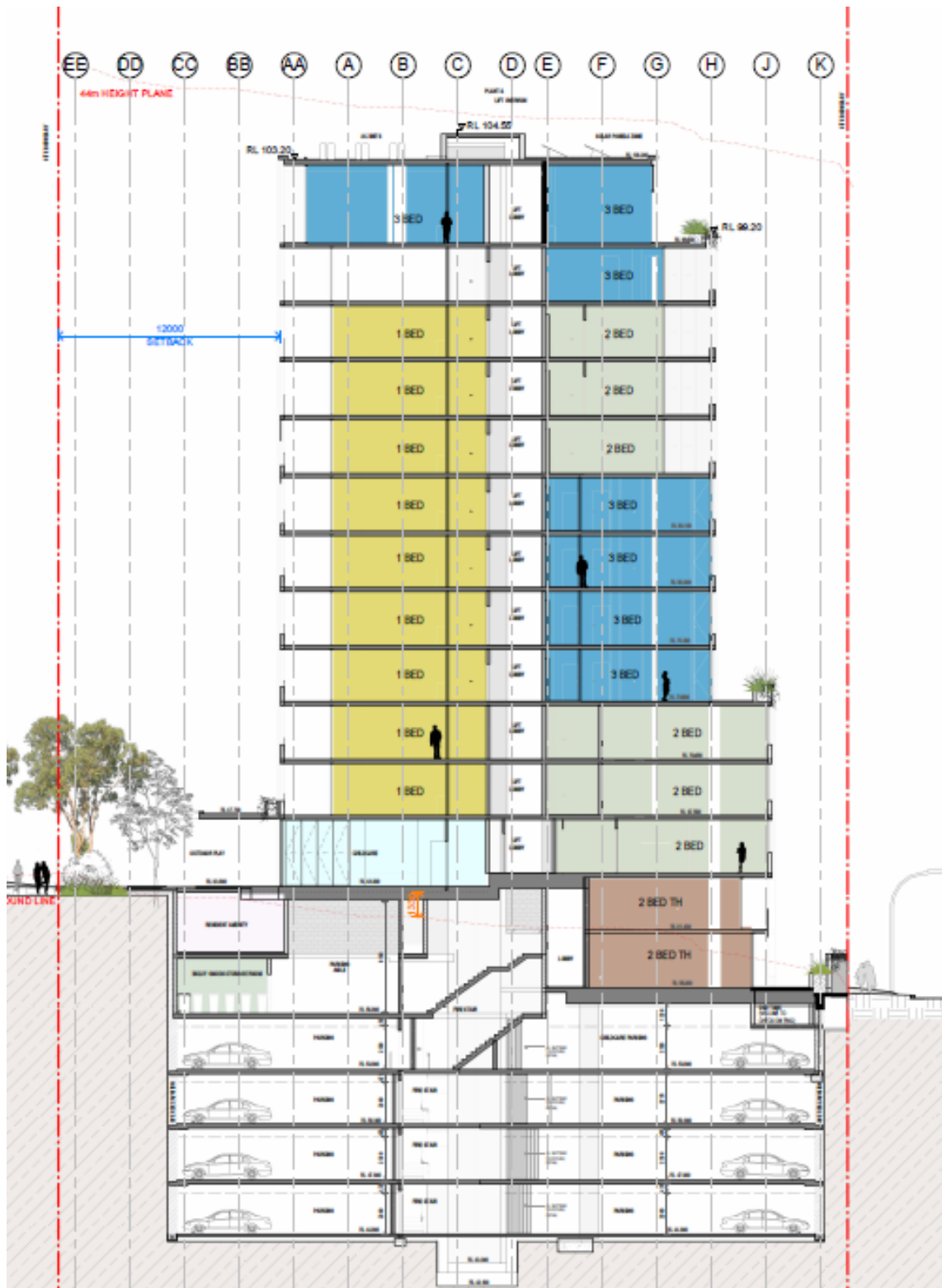


Figure 16: Approved Development that is Compliant with the Maximum 44m Building Height Plane

- The proposed variation provides for additional bulk and scale of the development and would allow for additional overshadowing to adjoining buildings and public areas.
- The proposal does not contain additional adverse privacy and visual impacts on neighbouring properties and on the adjoining green spine/east-west pedestrian link.

Comment:

Given the additional impacts on neighbouring properties and the public domain, strict compliance with the Height of Buildings development standard would be reasonable and necessary. Approval of a 507% variation would not be appropriate in this instance and the written request is not supported. The request for variation does not indicate how the breach in the building height control would achieve better outcomes for the development and surrounding it. The proposed development as amended does not appropriately identify the future intended character of the locality with not providing for a satisfactory building height and number of storeys built outcome and not improving amenity levels for future users of the precinct.

2. Environmental planning grounds to justifying contravening the development standard.

The requirement in Clause 4.6(3)(b) of the LEP is to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity. The applicant has stated that there are sufficient planning grounds to contrive the Building Height development standard as:

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Furthermore, the following planning grounds are submitted as planning grounds to justify contravening the maximum building height:

- *The proposed building height (48.16m) is 3.46m above the previously approved building height (44.7m). Given the approved building has a height of 44.7m, this additional height represents a minor (7.7%) increase to the overall building height. That approved building height must be construed as setting the context and character for the site rather than the base height limit. Furthermore, the proposed additions to the approved building represents a minor (9.45%) breach of the incentive building height of 44m. The quantum of the variation sought is minimal and represents an appropriate degree of flexibility in the context of the building heights anticipated in the locality as facilitated by the height of buildings incentive clause 7.1(3).*
- *The proposal involves the development of an additional two storeys in order to optimise the available floor space control applying to the site and thereby satisfy the planning objectives of the St Leonards South Precinct. Despite representing a breach in height, the proposal remains well below the site's maximum 3.7:1 FSR.*
- *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 Part C, Locality 8, Section 10 of the LCDCP 2009 emphasize the importance of achieving the incentive FSR to assist in funding public infrastructure items in the Precinct.*
- *The additional shadowing that the height non-compliance will generate is negligible. The additional storeys (Levels 13 and 14) have been carefully massed to avoid additional*

adverse overshadowing as demonstrated in the Urban Design Report by SJB Architects. The shadow diagrams submitted with this application clearly show there is minimal additional overshadowing resulting from the additional building height. Shadows impacts on adjoining buildings have been detailed in the accompanying architectural plans prepared by SJB Architects;

- The height non-compliance is partially a function of the fall across the consolidated site and the architectural response of creating a horizontal parapet for this portion of the building;*
- The additional visual bulk will not be perceptible. The location and distribution of building mass will ensure that it will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible;*
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy;*
- Despite the minor variation in comparison to the approved development, the objectives of the building height clause have been achieved.*
- The proposed alterations and additions to the approved development give better effect to the R4 zone objectives and the strategic intent for redevelopment of the St Leonards South Precinct than the approved development.*
- Providing for the housing needs of the community (within a high density residential environment) by providing for four additional apartments (without any material adverse impact);*
- Contributing to the variety of housing types within the high density residential environment through the provision of additional 3 x 3-bedroom units and an additional 4-bedroom penthouse;*
- Including four additional dwellings on the site, being a site within a highly-accessible location, further support public transport patronage and promote walking and cycling.*
- The four additional apartments will 'better satisfy increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities' (as per the aim set out in clause 2(3)(c) of State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development (SEPP 65)). The additional three x three-bedroom and one x four-bedroom apartment add to the choice for a diversity of households to be accommodated in the locality.*
- The changes will 'minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions' (as per the aim set out in clause 2(3)(e) of SEPP 65). By making better use of the site, a style of living similar to that of a house is able to be achieved (ie. Three and four bedroom apartments), but in less greenhouse intensive way that, for example, the construction of a new free-standing dwelling house on greenfield land in a location more remote from amenities, employment and services.*
- The alterations and additions to the approved development will 'contribute to the provision of a variety of dwelling types to meet population growth' (in accordance with the aim set out in clause 2(3)(f) of SEPP 65) and 'support housing affordability' growth' (in accordance with the aim set out in clause 2(3)(g) of SEPP 65). By providing the four additional apartments, more compact and more (relatively) affordable dwellings are provided as an alternative to*

dwelling houses in the same locality. There is a relative under-supply of three and four-bedroom apartments, in particular, in the locality.

- *Given the absence of material adverse impacts, the changes will better achieve 'good design' and 'a density appropriate to the site and its context' (in accordance with design quality principle 3 in Schedule 1 of SEPP 65).*
- *The new dwellings will better 'respond to social context by providing housing and facilities to suit the existing and future social mix' (as per design quality principle 8 in Schedule 1 of SEPP 65).*
- *Further, the key objectives in the Environmental Planning and Assessment Act 1979 (the EP&A Act) and Lane Cove LEP are achieved.*
- *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the approved building, the surrounding properties or the general public. Instead, strict compliance would constrain the provision of housing in a location which the planning controls identify as being a highly desirable place for the provision of compact housing that will support walkable neighborhoods and promote the use of public transport. Requiring strict compliance (and refusing the development application) would be a suboptimal planning outcome. Avoiding that suboptimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control.*

Comment:

A maximum building height of 48.16m is now proposed. The applicant has stated that the approved development height is actually at 44.7m, breached the 44m LEP development standard and had occurred by virtue of the SNPP imposing a condition (Condition A.2) requiring a provision of a 1.2m parapet on top of the proposed maximum 43.5m proposed building. This claim is disputed as the LEP excludes architectural roof features from height calculations under Clause 5.6 – Architectural roof features for instance and would be a lightweight structure.

The environmental planning grounds to justify contravening the development standard are considered relevant. Whilst the applicant has sought to provide for a design which would provide some benefits to the future users of the building whilst attempting to minimise any significant impacts externally, the overall impact on the locality has not been minimised or reduced when compared to the approved scheme.

To be discussed elsewhere in this report, it is noted that the applicant is attempting to revert, back to the base controls to use the Clause 4.6 process to circumvent the requirements of Part of the LEP which prohibits any variation to the maximum 44m incentive Building Height map. This outcome would be inappropriate as it would appear is that the applicant is 'cherry picking' a scenario to justify the proposed increased yield though submission of the subject application should the other concurrent Section 4.55(2) Modification Application should fail.

The proposal would contain additional adverse impacts on the adjoining/surrounding developments and onto public domain areas such as the adjoining Newlands Park. The environmental planning grounds provided above are not considered satisfactory or sufficient to support such a large variation and refusal is recommended. Clause 4.6(3)(b) is not satisfied as the proposed breach of the Height development standard by such a large amount should not be supported and any approval of the subject application would result in a development that would be inconsistent with other approvals within the precinct which all have achieved full compliance with the key controls within the new precinct.

3. Consistent with the objectives of the development standard and zone objectives.

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would not be contrary to the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The applicant has stated that the proposal achieves the relevant objectives of the Building Height standard by:

Objective (a): “to ensure development allows for reasonable solar access to existing buildings and public areas”

The non-compliant portions of the building breaching the 44m incentive building height are the lift and upper portions of the fourteenth floor which will have minimal shadow impacts (see shadow diagrams). The additional floors have undergone a meticulous design process culminating in a thoughtful massing which largely reduces adverse additional overshadowing.

Objective (b): “to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable”

The additional floors are setback from all edges of the building, with larger setbacks than floors below to provide a stepped upper building form, and will therefore result in no visual impact of loss of privacy. The additional units have been appropriately articulated and represent a positive visual impact from the streetscape.

Objective (c): “to seek alternative design solutions in order to maximise the potential sunlight for the public domain”

As is noted above, the proposed additional floors and units have been massed to reduce any additional overshadowing as far as practicable. The proposal is considered to be the most effective design solution with minimal impact to solar access to the public domain.

Objective (d): “to relate development to topography”

The proposed levels are stepped to correspond to the natural topography of the land and as such skillfully reduces any additional adverse overshadowing and amenity impacts.

The applicant has stated that the proposed development is consistent with the R4 zone objectives as the proposed development as follows:

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives (as well as the development standard objectives). The proposed development is consistent with the objectives of Zone R4 in that it will result in the development of 84 apartments in a residential tower format and will thus provide for the housing needs of the community in a high-density residential environment. The development will provide for a range of dwelling sizes and accessible and adaptable accommodation types and will therefore align with the objective to provide a variety of housing types. The development is sited in close proximity to St Leonards railway station and therefore encourages public transport use. The development will not result in site isolation. Landscaping remains as approved.

For these reasons the development proposal meets the objectives for development in Zone R4, despite non-compliance with the building height development standard.

Comment:

An assessment against the objectives of building height and the R4 High Density Residential zone objectives contained within LCLEP 2009 are provided as follows:

Height of Building Objectives

Clause 4.3 (1) provides the following objectives:-

- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas;*

-

Comment: The development would not allow for reasonable solar access to existing/future buildings and public areas. There would be additional overshadowing onto adjoining developments and onto Newlands Park.

- (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable;*

- **Comment:** There would contain additional privacy and visual impacts onto the adjoining/surrounding developments due to the increased unnecessary bulk/scale of the development.

-

- (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain; and*

Comment: The development would allow for reasonable sunlight for the public domain as additional overshadowing would occur from the proposed breaches.

- (d) *to relate development to topography*

Comment: The proposal has not been appropriately designed which appropriately considers the topography whilst providing for high amenity levels to adjoining development and public areas.

In accordance with the above, the development does not comply with the LCLEP 2009 objectives for the base height control and is not supported.

R4 High Density Residential Zone Objectives

The R4 zone objectives are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*

Comment: The proposal provides for four additional units in addition to the 80 already approved to meet the housing needs of the community.

- *To provide a variety of housing types within a high density residential environment.*

Comment: The proposal would provide for a variety of unit types within a high density precinct.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The original consent included approval for a child care centre, community facility and retail space.

- *To provide for a high concentration of housing with good access to transport, services and facilities.*

Comment: The subject development site would have good access to transport, services and facilities.

- *To ensure that the existing amenity of residences in the neighbourhood is respected.*

Comment: It is considered that the unnecessary bulk and scale created from the proposed development would not improve amenity levels for future residents of the South St Leonards precinct.

- *To avoid the isolation of sites resulting from site amalgamation.*

Comment: No site isolation would occur from the subject proposal.

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

Comment: No substantial change is being proposed to the approved landscaped scheme would occur under the subject application.

In accordance with the above, the development does not comply with the relevant LCLEP 2009 objective dot point 5 for the R4 High Density Residential zone.

It is noted under the St Leonards 2036 Plan it states as an action to “*Minimise overshadowing of key open spaces, public places and adjoining residential areas. Solar height planes should be adhered to as indicated within the Solar Access Map*”. In its supporting text: “*The solar access controls protect these key places by requiring that new development in the area does not produce substantial additional overshadowing during specific hours in mid-winter (21 June)*”. It is advised that because the 2036 Plan is an action of the North District Plan, this can be considered as part of the assessment of a Development Application process under the public interest (Section 4.15 (1)(e) of the Act) head of consideration.

4. Concurrence of the Director General.

The Local Planning Panel can assume concurrence for exceptions to development standards where the variation to the development standard is greater than 10%. The building height variation is more than 10% (507%). As the proposal is referred to the Lane Cove Local Planning Panel for determination; concurrence is taken to be assumed should the Panel be satisfied that notwithstanding the above impacts and non-compliances the proposal is acceptable. However, it is strongly recommended that the panel refuses the subject application in accordance with the reasons for refusal recommended within this report.

5. Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in circumstances. The variation to the height standard of LCLEP 2009 is not justified and is not supported in the circumstances of this case. The development would not satisfy the objectives of the control. The development does not satisfy the objectives and the criteria outlined in Clause 4.6. As such, the variation is not well founded and would be contrary to the public interest.

It is not considered that a better planning outcome has been achieved where the proposed variation to height seeks to maximise the developments full yield potential on the subject site at the expense of key South St Leonards precinct planning controls that are currently in

place. The proposed development is not considered to be satisfactory under the circumstances of this case.

B. Clause 4.6 Written Request – FSR

A maximum FSR of 0.5:1 applies to the site under LCLEP 2009.

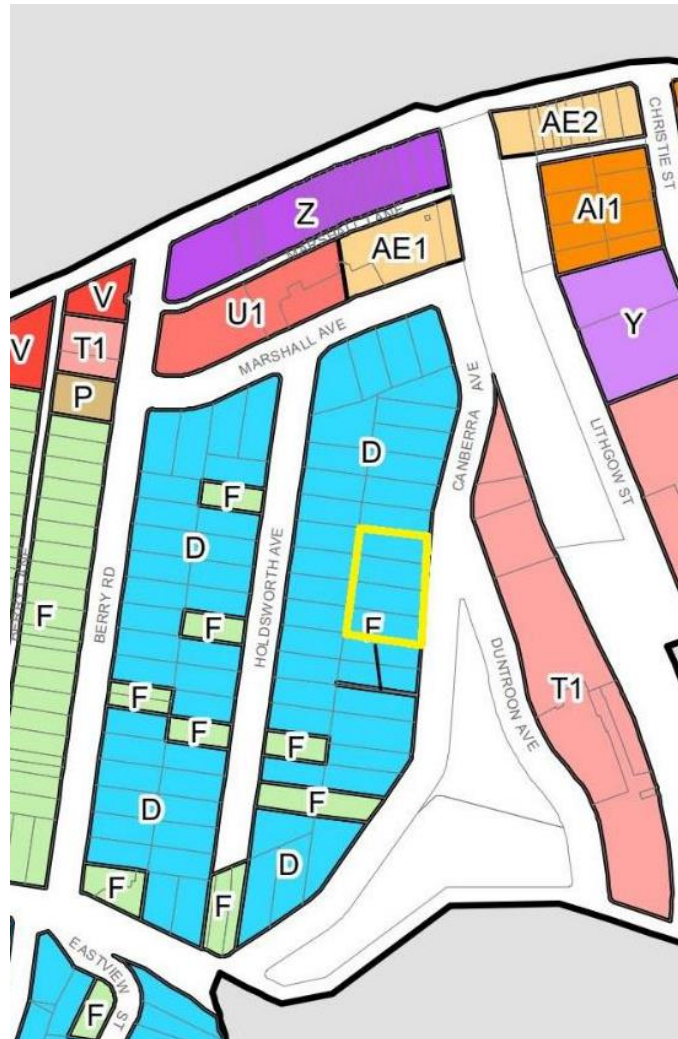


Figure 17: Base FSR Map (D=0.5:1)

The proposal has a maximum FSR of 3.58:1 (a 716% variation) where a maximum of floorspace of 1,314.6m² is permitted and a maximum floorspace proposed is 9,401m² (being 8,086.4m² over).

Clause 4.6 Exceptions to development standards

Clause 4.6 of LCLEP 2009 allows exceptions to development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has considered and agrees with the written request from the applicant that seeks to justify the contravention of the development standard. This written request must demonstrate compliance with the relevant provisions of Clause 4.6 of LCLEP 2009. These matters are discussed below:

Written request provided by the applicant

The applicant has provided a written request seeking a variation to the development standard with the lodged application. A copy of the request is provided to the Panel (**see Annexure 32**). Under Clause 4.6(3) the applicant is required to demonstrate:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

1. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 variation has argued that it is unreasonable or unnecessary to require strict compliance with the FSR development standard for the following reasons:

Compliance with the maximum floor space ratio development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved..... the objection is considered to be well-founded.... Notably, under Clause 4.6(4)(a)(ii) a consent authority must be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed...

Comment:

Compliance with the development standard would be reasonable and necessary in the circumstances of the subject proposal. The written request does not demonstrate that the breach to FSR would be consistent with the LEP FSR objective to ensure that the bulk and scale of development would be compatible with the character of the locality which is a newly created precinct. Given the additional impacts on neighbouring properties and the public domain, strict compliance with the FSR development standard would be reasonable or necessary in this case.

Approval of a 716% variation would not be appropriate in this instance and the written request is not supported. The request for variation does not indicate how the breach in the FSR control would achieve better outcomes for the development and surrounding it. The proposed development as amended does not appropriately identify the future intended character of the locality by not providing for a satisfactory building height and number of storeys built outcome and not providing for improved amenity levels for future users of the precinct.

2. Environmental planning grounds to justifying contravening the development standard.

The applicant has provided the same environmental planning grounds as the Building Height development standard variation in addition to the following additional justifications:

The following planning grounds are submitted as planning grounds to justify contravening the maximum floor space ratio:

- *The proposed density of the development (expressed as a floor space ratio) is 0.26:1 above the previously approved floor space ratio. Given the approved building has a floor space ratio of 3.32:1, this additional density represents a minor (7%) increase to the overall density of the development. In addition, the proposal additions to the*

approved building do not any breach of the incentive floor space ratio of 3.7:1. The quantum of the variation sought is minimal and represents an appropriate degree of flexibility in the context of the permitted density anticipated in the locality as facilitated by the floor space ratio incentive clause 7.1(3)(b).

- *The proposal involves the development of an additional two storeys in order to optimise the available floor space control applying to the site and thereby satisfy the planning objectives of the St Leonards South Precinct. Despite representing involving a breach in the base floor space ratio (0.5:1), the proposal remains well below the site's maximum 3.7:1 incentive FSR.*
- *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 floor space ratio non-compliance to the base floor space ratio, 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 public benefits which is fundamental to the successful delivery of the St Leonards South Precinct. The St Leonards South Section 7.11 Contributions Plan (Contributions plan) and Part C, Locality 8, Section 10 of the Lane Cove DCP 2009 both place emphasis on the importance of achieving the incentive FSR to assist in funding public infrastructure items in the Precinct.*
- *The additional density has been distributed on the additional storeys of the building to avoid any material increase in over shadowing to adjacent land including Newlands Park and other development sites. The additional storeys (Levels 13 and 14) have been carefully massed to avoid additional adverse overshadowing as demonstrated in the Urban Design Report by SJB Architects. The shadow diagrams submitted with this application clearly show there is minimal additional overshadowing resulting from the additional building height. Shadows impacts on adjoining buildings have been detailed in the accompanying architectural plans prepared by SJB Architects;*
- *The additional density does not result in any perceptible visual bulk. The location and distribution of building mass will ensure that it will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible;*
- *The density breach will not result in any adverse impacts on neighbouring properties in relation to view loss or visual privacy;*
- *Despite the minor variation in density compared with the approved development, the objectives of the floor space ratio clause have been achieved.*
- *Strict compliance with the development standard would result in an inflexible application of the floor space ratio control that would not deliver any meaningful benefits to the owners or occupants of the approved building, the surrounding properties or the general public. Instead, strict compliance would constrain the provision of housing in a location which the planning controls identify as being a highly desirable place for the provision of compact housing that will support walkable neighborhoods and promote the use of public transport. Requiring strict compliance (and refusing the development application) would be a suboptimal planning outcome. Avoiding that sub-optimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current density (floor space ratio) control.*

Comment:

The variation to FSR is in due to the applicant circumventing the Part 7 Incentive Building Height map restricting the height to a maximum of 44m to obtain consent for the proposed breaches to the maximum building height and number of storeys controls. Otherwise, the proposal would remain compliant with the Incentive FSR map which permits a maximum FSR of 3.7:1. Regardless, it is considered that the proposal would produce unnecessary additional visual, bulk and scale impacts

onto the newly created precinct. The additional bulk and scale would only provide for additional yield to be provided for however it would not reduce any of the potential off-site impacts. The proposal would not offer any better amenity levels on surrounding buildings or on public areas.

Given the additional impacts on neighbouring properties, in terms of visual and overshadowing impacts for instance, the subject proposal is not supported. More importantly, the proposal is not supported on the basis that it would be more prudent on environmental planning grounds to ensure still require full compliance with the requirements of Part 7 of the LEP with respect to bulk and scale matters of consideration rather than supporting a substantial technical base Building Height and FSR control variations of the LEP. The environmental planning grounds provided are not satisfactory.

Clause 4.6(3)(b) is not satisfied in this instance as the proposed breach to the FSR development standard by such a large amount should not be supported and any approval of the subject application would result in a development that would be inconsistent with other approvals within the precinct which all have achieved full compliance with the key controls within the new precinct.

3. Consistent with the objectives of the development standard and zone objectives.

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The applicant has stated that the proposal achieves the relevant objective of the FSR development standard as follows:

Objective (a): “to ensure that the bulk and scale of development is compatible with the character of the locality”

The proposed development involves a built form (both height and density) that will be compatible with the future desired character of the locality as is expressed in the planning controls set out in the Lane Cove LEP and DCP. Part 7 of the Lane Cove LEP anticipates a maximum floor space ratio of 3.7:1 for this site which not be breached by the proposed additions.

FSR Objective

Clause 4.4(1) provides the following objective:-

- (a) to ensure that the bulk and scale of development is compatible with the character of the locality.*

Comment: The additional floor space created would contribute to unnecessary bulk and scale to the overall building and in turn would not adversely affect the intended character of the locality being the new South St Leonards precinct where a good built outcome had not been provided for.

In accordance with the above, the development does not comply with the LCLEP 2009 objective for the base FSR control and is not supported.

R4 High Density Residential Zone Objectives

The applicant has provided the same justifications for under the Building Height Clause 4.6 written request section of this report to demonstrate that the proposed development would be consistent with the R4 zone objectives and Council provides the same reason/s as to why the proposal would not satisfy the relevant zone objective dot point 5.

In accordance with the above, the development does not comply with the LCLEP 2009 objective dot point 5 for the R4 High Density Residential zone.

4. Concurrence of the Director General.

The Local Planning Panel can assume concurrence for exceptions to development standards where the variation to the development standard is greater than 10%. The building height variation is more than 10% (716%). As the proposal is referred to the Lane Cove Local Planning Panel for determination; concurrence is taken to be assumed should the Panel be satisfied that notwithstanding the above impacts and non-compliances the proposal is acceptable. However, it is strongly recommended that the panel refuses the subject application in accordance with the reasons for refusal recommended within this report.

5. Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in circumstances. The variation to the FSR standard of LCLEP 2009 is not justified and is not supported in the circumstances of this case. The development would not satisfy the objectives of the control. The development does not satisfy the objectives and the criteria outlined in Clause 4.6. As such, the variation is not well founded and would be contrary to the public interest.

It is not considered that a better planning outcome has been achieved where the proposed variation to FSR seeks to maximise the development's full yield potential on the subject site at the expense of key South St Leonards precinct planning controls that are currently in place. The proposed development is not considered to be satisfactory under the circumstances of this case.

7.4 Compliance with Incentive Provisions

For abundance of caution on whether Part 7 of the LEP applies or not if the applicant reverts back to the base LEP development standards, an assessment against the relevant incentive activating provisions is still undertaken below.

The applicant appears to address the same provisions within their Statement of Environmental Effects as well and refer to Annexure 34 for a full discussion on the relevant requirements of Part 7 under the concurrent Section 4.55(2) Modification Application assessment report:

Applicable Incentive Provisions			
Category	Requirement	Proposed	Compliance
Unit Mix	Minimum 20% of 1/2/3-bedroom units	27 x one-bedroom units (32%)	Yes
		25 x two-bedroom units (30%)	
		31 x three-bedroom units (37%)	
		1 x four-bedroom unit (1%)	

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Green Spine Setbacks	The provision of setbacks to establish communal open space and green spines between buildings	Setbacks continued to be provided for the required and planned green spine widths	Yes
Pedestrian Link	The provision of a 15m wide pedestrian link in Area 5	Achieved	Yes
Minimum Site Area	The amalgamation of all required sites within the development area	Compliant	Yes
Recreation Areas and Community Facilities	<p>450 square metres will be used for the purpose of a recreation area</p> <p>600 square metres will be used for the purpose of a community facility</p> <p>The recreation area will be adjacent to the community facility</p>	Achieved	Yes

The development as amended complies with the provisions of 7.1(4) of LCLEP 2009.

7.5 Incentive Building Height and Floor Space Ratio Controls

The incentive building height (**Figure 18**) and incentive floor space ratio (**Figure 19**) apply to the development.

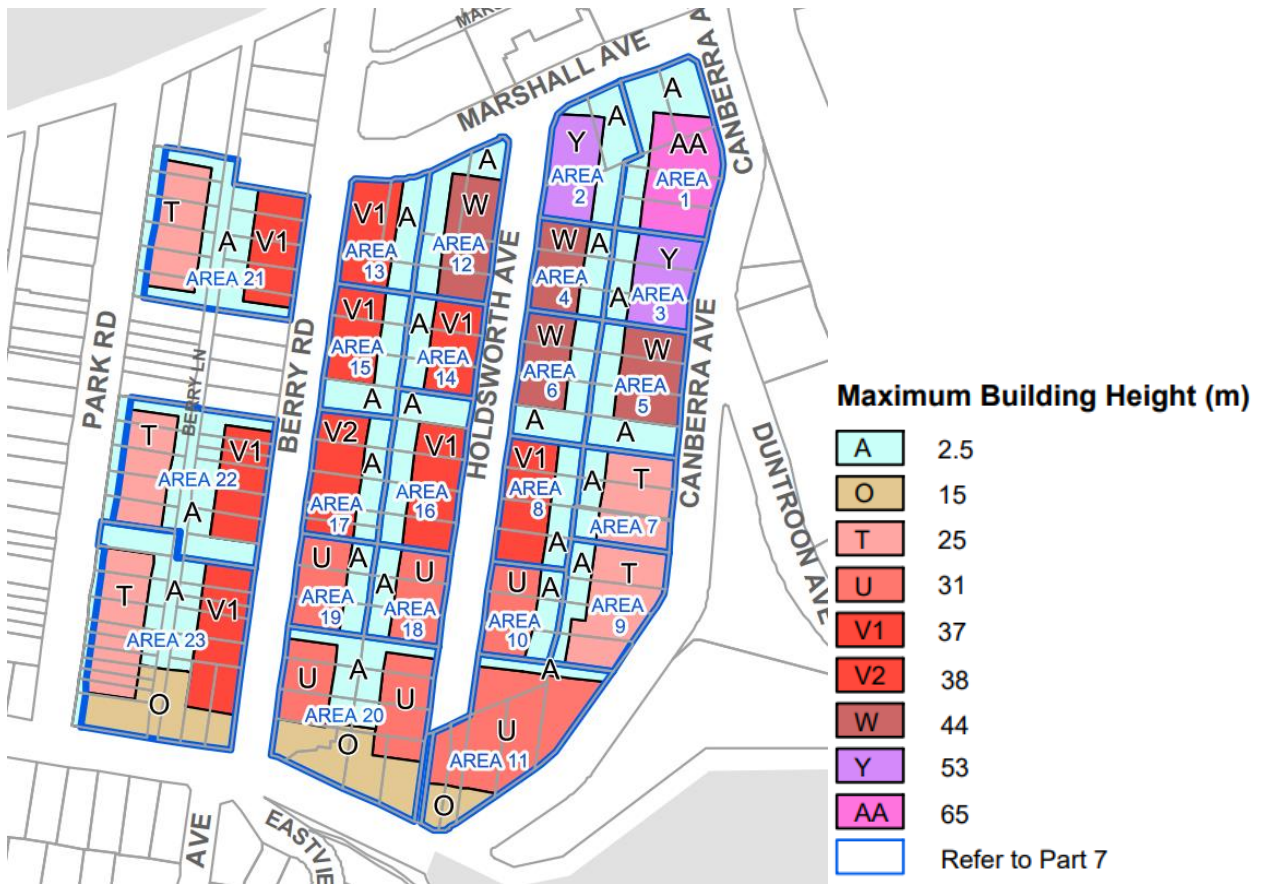


Figure 18: Incentive Height of Building Map – W (Max. 44m)

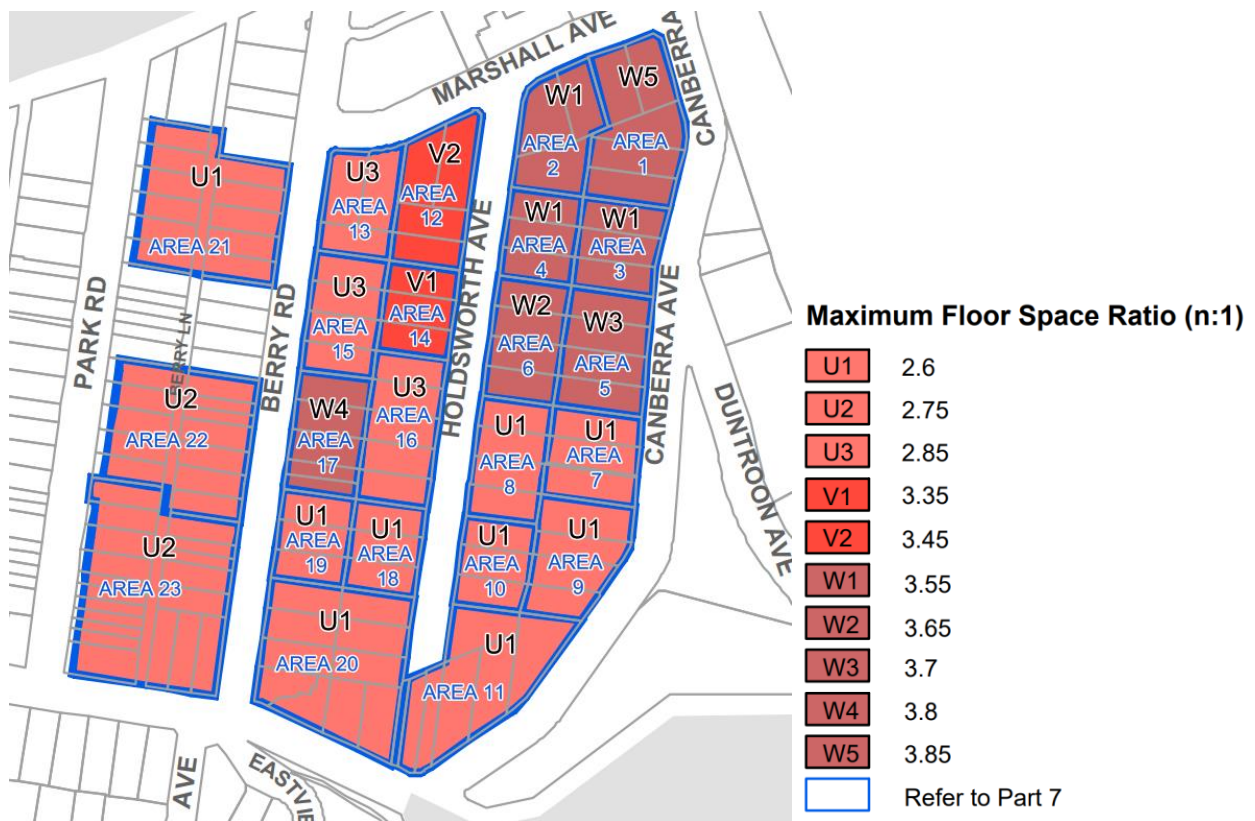


Figure 19: Incentive Floor Space Ratio Map – W3 (Max. 3.7:1)

7.6 Compliance with Incentive Building Height and Floor Space Ratio Controls

i. Floor Space Ratio

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

Compliance with Incentive Floor Space Ratio			
Category	Incentive FSR (Max.)	Total Proposed	Compliance
Area 5	3.7:1	3:32:1 (8,726sqm) - approved 3.58:1 (9,401sqm) – proposed	Yes

The development as amended is still considered satisfactory with respect to the maximum floor space ratio.

ii. Building Height

An assessment of the proposal against the incentive building height provisions is provided in the table below.

Compliance with Incentive Building Height			
Category	Incentive Building Height (Max.)	Proposed	Compliance
Area 5	44m	Max. 43.5m (approved) Max. 48.16m (proposed)	No, refusal recommended

Note: The incentive building height map includes a 2.5m zone through the pedestrian link and green spine. The original proposal had complied with this provision as the proposed building was located completely outside of this zone. It is noted that there was a 3.6m high childcare awning attached over the outdoor play to provide for appropriate weather protection and acoustic treatment in accordance with the requirements of State Environmental Planning Policy Transport and Infrastructure 2021 and the associated Child Care Planning Guidelines. This 2.5m building height zone component remains unchanged under the subject application.

Building Height Development Standard

As advised above, the proposal as amended now contains a building height breach over the maximum 44m Incentive Building Height map and which would be contrary to the building height development standard under Clause 7.1(3)(a) of LCLEP 2009 (see Figure 18 above). The applicant and the SNPP under the Section 4.55(2) Modification Application have been advised that no approval can or should be granted to such a breach. 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 height variations under Clause 4.6 are permitted under the Plan and cannot occur as the applicant had clearly attempted to invoke or rely upon on the building height and FSR incentive clause under Part 7 under the original consent. The proposed design outcome now containing a 9.5% building height variation partly due to the increase in two storeys is not considered that strict compliance would be unreasonable or unnecessary and the justification by the applicant is not well founded. The justification/s is not supported or agreed with as other approved or proposed developments within the precinct have fully complied with this height requirement.

The additional visual impacts onto future adjoining developments and the additional shadow impacts onto adjoining and onto public domain areas including Newlands Park are not supported as the compliant scheme would involve a lesser impact when compared to the current scheme. It would be clear that the proposal would not satisfy relevant LEP objectives and there would insufficient environmental planning grounds available. Full compliance should be achieved, and the proposed two storey elements be deleted as they cannot be approved.

iii. Clause 4.6 Prohibition

The incentive provisions are excluded from the operation of Clause 4.6 of LCLEP 2009. The approved development did not seek to vary the incentive floor space ratio or building height control as it could not seek to rely on Clause 4.6 of LCLEP 2009. The applicant is now attempting to use the Section 4.55(2) Modification Application or the subject Development Application process to circumvent this prohibition to obtain consent for the proposed works. It is considered that this approach undertaken by the applicant is not appropriate under the circumstances of the case as it would be contrary to the operation or intent of the incentive clause to require full and strict compliance with the relevant building height map.

7.7 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 the table follows:

Compliance with Design Excellence Provisions			
Clause	Provision	Comment	Compliance
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 Review Panel (DRP) and raised concerns with the intended approach of the subject application.	No, in part due to the inappropriate design of the development as amended as a whole

		However, this does not overcome to be discussed in greater detail in this report, the concerns with the proposed building height, number of storeys and minimal setbacks on the upper levels to the green spine area and to the northern boundary 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, height, design, and location are not satisfactory in this instance.	
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 perceived form and external appearance would not integrate appropriately with the public domain. The overall massing of the building 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.</p> <p>The proposed substantial variations to the height, number of storeys and minimal setbacks would not provide a high-quality design. The variations would also contribute to additional unnecessary overshadowing onto the public domain areas.</p>	No
7.1.6(4)(c)	<i>whether the development protects and enhances the natural topography and vegetation including trees or other significant natural features,</i>	Remains unchanged under the subject application.	Yes
7.1.6(4)(d)	<i>whether the development detrimentally impacts on view corridors,</i>	<p>4. The proposal would unnecessarily reduce available view corridors from future adjoining developments within the precinct.</p> <p>5.</p>	No

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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 cycle access to nearby transit nodes,</i>	Remains unchanged under the subject application.	Yes
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 requirements. The proposed maximum storeys and resultant maximum building height is not supported.</p>	No, the proposed DCP variations are not supported, and refusal is recommended
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><i>(ii) existing and proposed uses and use mix,</i></p> <p><i>(iii) heritage issues and streetscape constraints,</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 by introducing more non-complaint proposal when compared to the original approved design.</p> <p>(ii) The proposed use/s (a high-density mixed-use development) remains the same and appropriate given the zoning and location. However, the overall proposed design of the development is not supported.</p> <p>(iii) The proposal does not include heritage items or a specific heritage interface, however the amended streetscape presentation is not supported. The proposed additional storeys and setbacks are</p>	No, in part due to the unsatisfactory design or nature of the proposal

	<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><i>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i></p>	<p>not appropriate. The design of the proposal had not ensured that an exceptional design quality would be provided for.</p> <p>(iv) The setbacks, height, amenity, and urban form is not satisfactory. The interrelationship between the site and neighbouring sites have not been carefully managed. Reduced setbacks and compliant number of storeys and height should be provided for.</p> <p>(v) The proposal does not provide for massing and modulation in line with the LEP and DCP in relation to heights and number of storeys. The buildings are not appropriately stepped to the green spine area and to the northern boundary. 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) The proposed additional storeys in a non-compliant scheme with respect to building heights and number of storeys which would not provide an appropriate bulk and scale for the future precinct.</p> <p>(vii) The environmental impacts have been considered 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>	
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	<p><i>(viii) the achievement of the principles of ecologically sustainable development,</i></p> <p><i>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</i></p> <p><i>(x) the impact on, and any proposed improvements to, the public domain,</i></p> <p><i>(xi) the configuration and design of publicly accessible spaces and private spaces on the site.</i></p>	<p>(viii) ESD has been considered however again a compliant scheme with the LEP/DCP would assist.</p> <p>(ix) The visual impact of the development onto the pedestrian link and green spine area is not supported. Parking provision remains to be satisfactory.</p> <p>(x) The proposed height, number of storeys and setbacks involved would not provide for substantial improvements to the public domain.</p> <p>(xi) The visual impact of the development onto the pedestrian link and green spine area is not supported.</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. Based on the above concerns raised, the proposal does not meet the intent and the objective of Clause 7.1 which would allow for the building height and FSR incentives upgrades in the first instance. The intent is that full compliance with both height and FSR be achieved. The two concurrent applications seeks to circumvent the intent of Part 7 and as a result, the proposal would not meet the following LEP aims, zone and building height 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 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 relate development to topography.*
- *to ensure that the existing amenity of residences in the neighbourhood is respected.*

The Development Application does not comply with Lane Cove Local Environmental Plan 2009 and refusal is recommended

8.1 SEPP 65 – Design Quality of Residential Development

The proposal was accompanied by a Design Verification Statement satisfying Clause 50 of the Environmental Planning and Assessment Regulation 2000. 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,
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

8.2 Design Review Panel

The Development Application was referred to the Northern Sydney Regional of Council's Design Review Panel on 4 April 2021. The minutes of the meetings are provided as **Annexure 5** of this report. The key comment from the panel was that:

The planning process for this audacious masterplan (undertaken by the Council) has featured a high degree of cooperation, coordination and good will between developers, our professional colleagues and the Design Review Panel. All the participants have been dedicated to achieving the highest aspirations of this remarkable precinct. During this process, it has occurred to most applicants that target densities – conceived at master planning stage – are not necessarily able to be met if a high-quality urban design outcome is to be achieved.

The Panel understands that Clause 4.55 variations are explicitly prohibited – a contract with the public who so gracefully agreed to the massive uplift that drives the master planning process. Understandably, Council is committed to this contract – as is the Panel – as it represents the same spirit of openness and collaboration that has characterised a very positive development process. Against this background, the current proposal - to add more bulk and scale to an approved scheme - appears to push back against these aims, objectives and generosity that the Panel has encountered so far.

No doubt, this proposal will disappoint and offend the many residents and stakeholders who have been part of the process, who would expect virtually all developers to follow suit. That would be highly regrettable. The Panel has determined the outcome of the DEP review and provides final direction to the Applicant as follows:

- *The Panel does not support the proposal for the reasons described.*

8.3 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 height, number of storeys and building setbacks 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 height and number of storeys 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 and the number of storeys controls. The proposal should be refused as 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 height (including the number of levels) of the development overall 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 whilst reverting, back to the base 0.5:1 LEP control would not exceed the anticipated density envisaged for the subject development site. However, the proposal relies on substantial variations to accommodate the proposed additional FSR at the expense of the intended outcomes within the precinct and the proposed design do not provide for good planning outcomes in this instance. The proposed development represents as a

form of an overdevelopment and would result 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. The proposed design satisfies 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 would not adversely affect the landscape scheme to the public domain and within the development. The proposed design as amended continues to 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 the relevant requirements of the precinct. The proposed building height and the number of storeys would not enhance the amenity of future public and private domain users due to the visual impact of the building would have on these areas due to the large variations being proposed. The overall building design compromises privacy and amenity of future residents given the building height, number of storeys and setbacks 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 continue to provide for appropriate safety. 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 still provides for an appropriate apartment mix and sizes. 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. Whilst the materiality is supported, the proposal fails to provide for a highly integrated aesthetic development in relation to its proposed built form. Good design would be better achieved through a reduction in the number of storeys and a compliant building height. The proposed design does not satisfy Principle 9: Aesthetics.

8.4 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

9.1 SEPP BASIX 2004

A BASIX certificate accompanies the application and is provided as **Annexure 16** to this report.

The BASIX Certificate demonstrates compliance with the provisions of the SEPP.

The Development Application complies with SEPP BASIX 2004

10.1 Any proposed instrument (Draft LEP, Planning Proposal)

N/A

11.1 Any development control plan

11.2 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 3**.

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 12 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 20 – Maximum 12 Storey DCP Control on Area 5

Based on the relevant 'part storey' definitions described above in this report and the maximum 12 storeys control, it is considered that the proposal does not comply with the relevant number of storeys DCP controls.

A **maximum of 14 storeys** is now proposed.

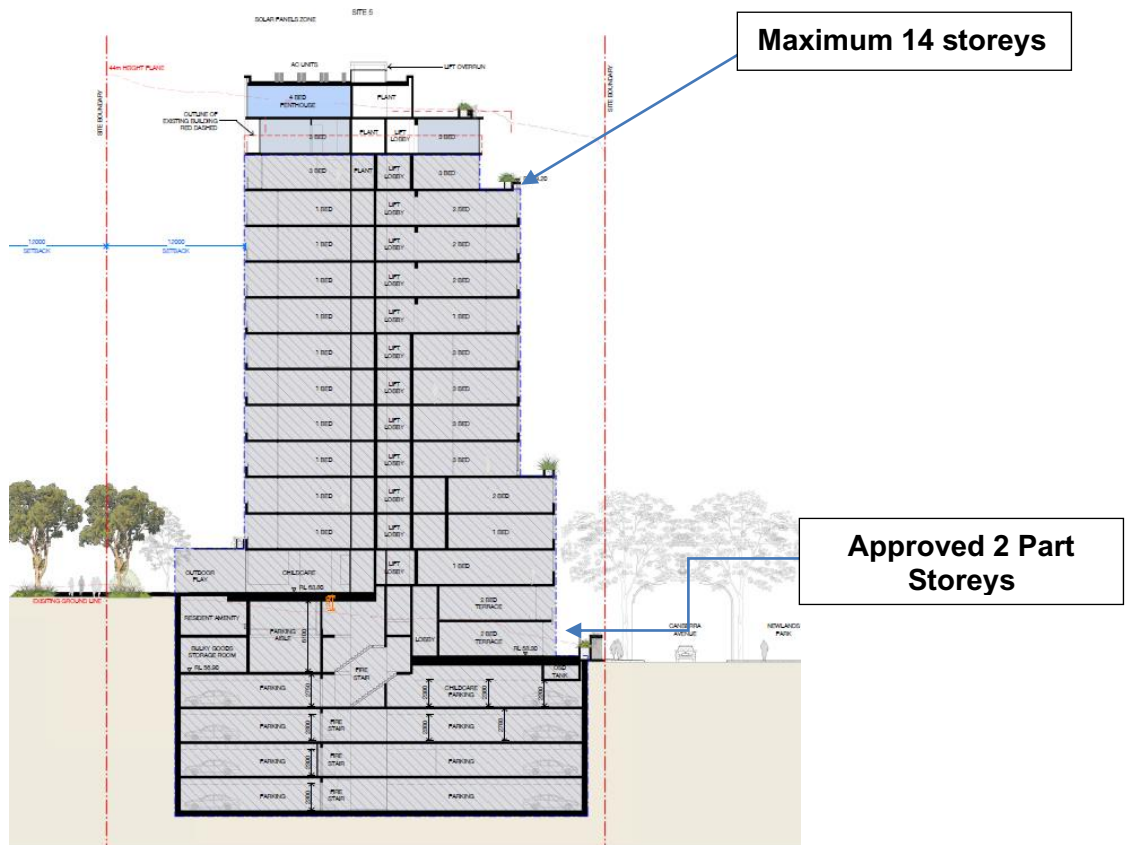


Figure 21 – Proposed 14 Storey Building

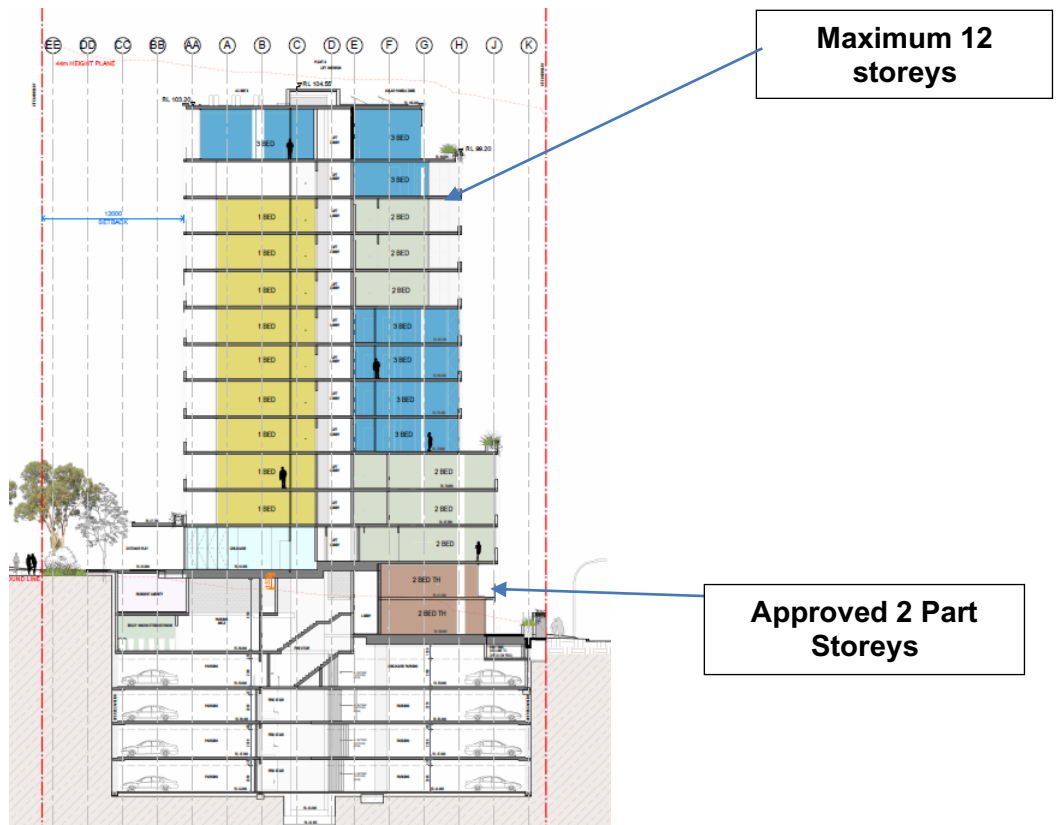


Figure 22 – Approved 12 Storey Building

The applicant has been advised that support for the proposed variation to the number of storeys would not be supported with a likely recommendation for refusal. The applicant is still seeking determination of the subject application and has provided the following justification:

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

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, bulk/scale, view and overshadowing impacts onto the public domain and/or from future adjoining developments.

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 LEP/DCP such as the maximum permitted LEP incentive building height envelope and the number of storey controls to maximise its FSR potential on the development site. This sentiment is also shared by the Design Review Panel where they recommend that the proposal should not be supported. It is recommended that the panel adopts the same recommendation for a refusal in this case.

It is noted that the SNPP has been appropriately briefed on the concerns raised by Council and with the applicant present where it fully understands the relevant issues or concerns at hand. 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.

Based on the above concerns raised with the proposed DCP variation 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.*
- *Optimise solar access to all buildings, public domain and private open space.*

The Development Application does not comply with Lane Cove Development Control Plan 2009 and refusal is recommended

12.1 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 additional adverse impacts either to the natural and built environments, social and economic or amenity of the locality as detailed within this report.

13.1 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.

14.1 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 to the extent shown in the Public Notification Map included as **Annexure 7** to this report.

ii. Notification Period

The notification period and the number of submissions received are summarised in the following table:

Public Notification			
Plan Revision	Lodgement Date	Notification Period	Submissions Received
DA Lodgement Revision	13 March 2021	14/03/2023 – 11/04/2023	14

iii. Summary of Submissions

The submissions received are summarised and addressed in **Annexure 4** to this report.

15.1 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.

16.1 Contributions

16.2 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 to reflect the amended change in unit numbers/mix had the subject application been recommended for approval.

17.1 CONCLUSION

The subject 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 is not consistent with the relevant planning controls (with the proposed breach to building height and the number of storeys requirements). The proposal would not achieve design excellence within Area 5 and intent of the St Leonards South Precinct and the application is reported to the Lane Cove Local 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 Lane Cove Local Planning Panel at its meeting of 21 June 2023 refuse Development Application DA21/2023 for alterations and additions to an approved mixed-use development (see Annexure 1 for reasons for refusal).

ATTACHMENTS:

AT-1	View Annexure 1 - Draft Reasons for Refusal	Available Electronically
AT-2	View Annexure 2 - ADG Assessment	Available Electronically
AT-3	View Annexure 3 - Development Control Plan Assessment	Available Electronically
AT-4	View Annexure 4 - Summary of Submissions	Available Electronically
AT-5	View Annexure 5 - NSROC DRP Minutes	Available Electronically
AT-6	View Annexure 6 - Neighbour Notification Map	Available Electronically
AT-7	View Annexure 7 - Architectural Plans	Available Electronically
AT-8	View Annexure 8 - Landscape Plans	Available Electronically
AT-9	View Annexure 9 - Statement of Environmental Effects	Available Electronically
AT-10	Annexure 10 - Design Verification Statement	Available

View		Electronically
AT-11	Annexure 11 - Design Review Panel Reporting	Available
View		Electronically
AT-12	Annexure 12 - Design Excellence Panel Reporting	Available
View		Electronically
AT-13	Annexure 13 - Urban Design Report	Available
View		Electronically
AT-14	Annexure 14 - Access Report	Available
View		Electronically
AT-15	Annexure 15 - Acoustic Report	Available
View		Electronically
AT-16	Annexure 16 - NatHERS and BASIX Report	Available
View		Electronically
AT-17	Annexure 17 - BCA Report	Available
View		Electronically
AT-18	Annexure 18 - Notification Plans	Available
View		Electronically
AT-19	Annexure 19 - Operational Waste Management Plan	Available
View		Electronically
AT-20	Annexure 20 - Traffic and Parking Assessment	Available
View		Electronically
AT-21	Annexure 21 - Wind Effects Response Report	Available
View		Electronically
AT-22	Annexure 22 - QS Report	Available
View		Electronically
AT-23	Annexure 23 - Briefing Note to the SNPP	Available
View		Electronically
AT-24	Annexure 24 - Kick Off Record of Briefing	Available
View		Electronically
AT-25	Annexure 25 - Applicant's Kick Off Briefing	Available
View		Electronically
AT-26	Annexure 26 - Applicant's Design Review Panel	Available
View	Presentation	Electronically
AT-27	Annexure 27 - Approved Stamped Plans	Available
View		Electronically
AT-28	Annexure 28 - Original Assessment Report	Available
View		Electronically
AT-29	Annexure 29 - Stormwater Plans	Available
View		Electronically
AT-30	Annexure 30 - Public Art Strategy	Available
View		Electronically
AT-31	Annexure 31 - Geotechnical Report	Available
View		Electronically
AT-32	Annexure 32 - Clause 4.6 Written Submissions -	Available
View	Building Height & FSR	Electronically
AT-33	Annexure 33 - Pedestrian Wind Report	Available
View		Electronically
AT-34	Annexure 35 - Section 4.55(2) Application Plans	Available
View		Electronically
AT-35	Attachment 34 - Section 4.55(2) Assessment Report	Available
View		Electronically