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25 September 2023

Christopher Shortt
Senior Town Planner
Lane Cove Council
48 Longueville Rd, Lane Cove NSW 2066

Dear Chris,

RE: RFI RESPONSE – AREA 13-15 ST LEONARDS SOUTH (DA 56/2023)

1. INTRODUCTION

This letter relates to DA56/2023 (**the DA**) which seeks development consent for construction of a residential development comprising three residential flat buildings with basement car parking and associated landscaping and creation of new pedestrian landscaped link (**the proposal**) at 14-16 Marshall Avenue, 5-9 Holdsworth Avenue & 2-10 Berry Road, St Leonards (**the site, Area 13-15 St Leonards South**). The development application was lodged to the Lane Cove Council (**the Council**) in May 2023.

On behalf of Modern Construction & Development (**the Applicant**), this letter has been prepared to address matters raised in the agency submission (Water NSW) and Council throughout the public exhibition period. Specifically, Council issued a letter dated 18 August 2023 requesting for additional information (**RFI**). This letter has been prepared as a formal response to the RFI.

This letter is supported by the following technical reports and documentation:

- Landscape Response prepared by RPS (**Appendix A**)
- Updated Landscape Report prepared by RPS (**Appendix B**)
- Updated Public Art Strategy prepared by UAP (**Appendix C**)
- Waste Response prepared by Elephants Foot Consulting (**Appendix D**)
- Hydrogeological Investigation Report prepared by Foundation Earth Sciences (**Appendix E**)
- Construction Noise and Vibration Management Plan prepared by Acouras (**Appendix F**)
- Environmental Management Plan prepared by Foundation Earth Sciences (**Appendix G**)
- Detailed Site Investigation Report (DSI) prepared by Foundation Earth Sciences (**Appendix H**)



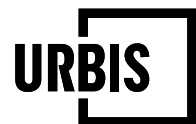
Table 1 Response to RFI matters in Council's letter dated 18 August 2023

Council Comment	Applicant Comment
Part - Storeys	
Please provide a detailed calculation plan to confirm compliance that the above floors are least 50% non-habitable GFA of the total floor area. Alternatively, both buildings are required to reconfigure the proposed part storeys to comply with the DCP definition.	<p>Urbis advised Council (through email) that <i>Appendix E - Design Review and Excellence Panel Report</i> includes calculations for part storeys as per the definition of part storeys.</p> <p>As per the email correspondence dated 23 August 2023, Council confirmed that the calculations provided demonstrate compliance with part storeys definition and control. As such, part storeys comment has been resolved and no further information is required.</p>
Setbacks	
<p>East/West Link:</p> <p>Buildings Setbacks F - from east/west pedestrian link requires:</p> <ul style="list-style-type: none"> 6m setback at park level to level 4; 9m setback at and above level 5. <p>The application proposed a 6m setback at all levels from the east/west link. Although the proposal complies on ground floor to level 4, the controls require an additional 3m from level 5 and above.</p> <p>Levels 5 – 10 of Buildings 14 and 15 do not comply with the 9m setback control.</p>	<p>Despite the numeric setback non-compliance at the upper levels, the non-compliance is justified on the following grounds:</p> <p>The proposal <u>satisfies the specific objectives of the setback control</u> in the following ways:</p> <ul style="list-style-type: none"> The upper level setback non-compliance does not impact on the ability for the site to amalgamate and will not create land fragmentation or isolation that detracts from the desired future character of the precinct. The upper level setback non-compliance does not impact on the proposal ability to have present a transition in height. The architectural design and use of materials colour create a distinct podium character and form that creates a clear building base and upper level composition. When viewed from the public domain, the proposal is able to achieve articulation, and a podium and tower form. The bulk and scale of the building is reduced through articulation and use of planting on the ground floor.

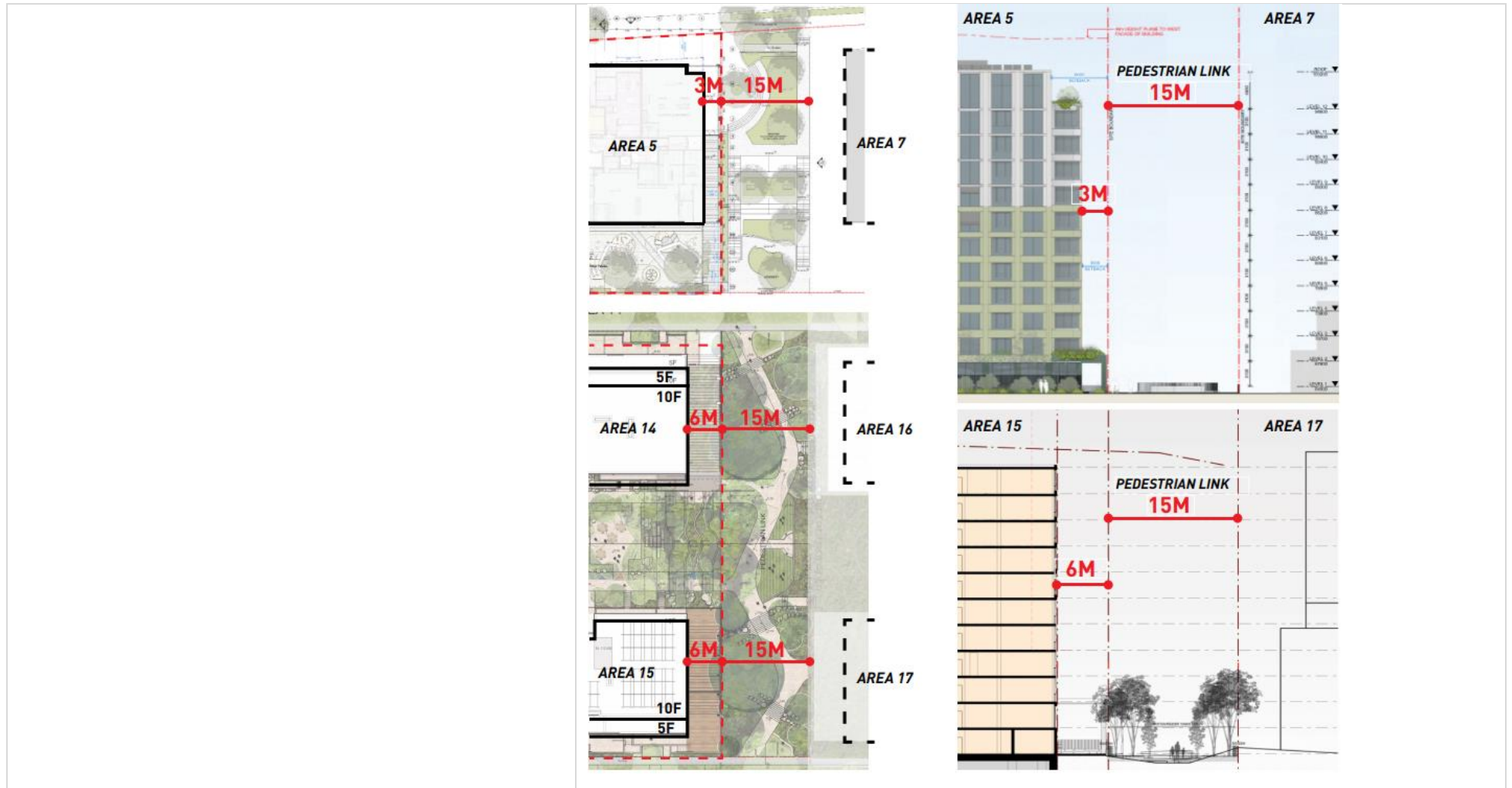


Council Comment	Applicant Comment
<p>Setbacks are defined in terms of "levels" (For example. '4m at street level' ; '3m at and above Level 6') , not in terms of floors. The definition of 'part storey' begins "means a storey where the floor level is...etc." . Therefore, a part storey IS a "floor" for the sake of calculating setbacks.</p> <p>Council strongly recommends that the proposal be amended to comply with the DCP setback controls.</p> <p>Please note Council has on-a-whole consistently required full compliance with the DCP setback controls across the SLS Precinct.</p> <p>Other DAs in the St Leonards South Precinct</p> <p>Area 16 and 17: Setback from E/W pedestrian link</p> <p>Areas 22 and 23: Setback from DCP New Road and New DCP Park</p> <p>Areas 7 and 8: Setback from E/W pedestrian link</p> <p>Area 5: Setback from E/W pedestrian link: The proposal was determined and approved by the SNPP on 27 June 2022. In that instance Council recommended support of a variation to setbacks from the E/W pedestrian link for Area 5 as it resulted in a better planning outcome being achieved. The approved setbacks were 0m - 3m at levels 1 - 4 and 3m - 6m at levels 5 and above. This example is the</p>	<ul style="list-style-type: none"> ▪ The proposal complies with height in storey and height in metres provision under the DCP and LEP. Therefore the desired built form scale is achieved despite the upper level setback non-compliance. ▪ The upper level setback non-compliance will not impact on the development's ability to respond to the changes in landform or topography. ▪ The upper level setback relates to built form that is not located at the edges of the precinct. ▪ The upper level setback non-compliance dose not impact on the provision of solar access to building façade. ▪ The upper level setback non-compliance does not impact on the ability to comply with 'central' deep soil zones (Green Spines) provisions. ▪ The area of non-compliance dose no creates unreasonable shadow impact to the pedestrian link. In addition, the pedestrian link will be mostly in shade due to the amount of dense landscaping proposed. Refer to the DA package for shadow analysis. ▪ The setback non-compliance relates to the upper level, the activation of the pedestrian link is not compromised by the upper level built form as the ground level achieves a compliance setback. Therefore activation and visual surveillance of the pedestrian link is retained. ▪ The setback non-compliance does not limit the development to provide a mix of housing types, including affordable housing, accessible dwelling and a mix of typologies

Council Comment	Applicant Comment
<p>only variation to setbacks in the precinct and is considered a unique example for the following reasons:</p> <ul style="list-style-type: none"> ▪ it would provide for an appropriate activation along the link and with the corner of the site that a café adjacent to the amphitheatre designed entrance of the link to Canberra Avenue with a public lift to gain access to the childcare centre and community facility above which has a ramp leading out to the higher end of the pedestrian link heading east. ▪ The placement of these development features required such reduced setbacks on the lower levels in that instance. <p>The approved setback variation to Area 5 is considered to be a unique circumstance and does not provide any precedent for the subject DA at Areas 14 and 15.</p>	<p>Achieves a positive urban design outcome to the pedestrian link</p> <ul style="list-style-type: none"> ▪ The proposal does not adversely impact on the legibility and spatial awareness of the pedestrian link. The pedestrian link will be 15m wide and the building setback a further 6m from the pedestrian link. Both the pedestrian link and the building setback areas will, as required by Council, be densely vegetated providing a 'layering' of dense shrubs coupled with medium to larger trees. As a consequence - only the lower street-level built form will be readily visible from the pedestrian link, which provides a compliant 6m setback, while upper levels will recede into the background given the width of the link and the tree planting, such that the non-compliance at the upper levels will have an inconsequential impact on the pedestrian amenity and character of the site in this context. ▪ The design and materials create a distinct podium appearance that clearly separates the lower and upper levels. When viewed from a distant, the proposals are able to achieve a podium and tower form that is articulated despite not adopting a varied setback. ▪ Accordingly, the setback non-compliance at the upper level would be perceived as marginally different from the pedestrian link and from the future development on areas 16 and 17. <p>Existing precedent for is setback non compliance</p> <ul style="list-style-type: none"> ▪ There is an existing approved precedent for non-compliance with the setback control. Area 5, which is subject to the same controls, was approved with only a 3m setback across the full height of the building (non-compliance of part 3m and part 6m). ▪ Area 5 setback concession had no genuine extenuating circumstances compared with the subject site to vary the controls as the DCP controls were established as part of a holistic masterplan and reduced setback controls could have been applied to Area 5 if it was



Council Comment	Applicant Comment
	<p data-bbox="947 435 2051 499">considered to warrant a different approach top other sites along the east-west pedestrian link , and that didn't occur.</p> <ul data-bbox="902 531 2063 882" style="list-style-type: none"><li data-bbox="902 531 2063 715">▪ Our proposal has a greater level of setback compliance compared with Areas 5. The Area 5 building was approved with a significantly less setback at all levels, in contrast to the proposed development at the subject site where the non-compliance is only from level 5 and above, and the non-compliance would just be 3m. As shown in the figure below, the proposal offers a significantly greater separation distance from the pedestrian link compared to Area 5.<li data-bbox="902 738 2063 882">▪ Although this development must be considered on its own merits, given there is precedent in the precinct that have already been approved with reduced setbacks, it cannot be asserted that this particular control has been strictly applied and thus the consideration of an alternate approach to meet the objectives of the provision is a relevant proposition to be assessed.

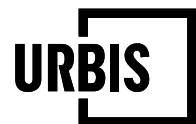




Council Comment	Applicant Comment
	<p>Complies with and exceeds the ADG separation distance to protect privacy of residents</p> <ul style="list-style-type: none"> From an amenity perspective, the proposal fully complies with ADG separation distance to the building at Areas 16 and 17 as additional separation is provided by the pedestrian link. The distance between the proposed buildings in Areas 14 and 15 and those in Areas 16 and 17 (across the pedestrian walkway) would be 27 metres for the full height the proposal. This 27m separation is well above all requirements in Part 2F and 3F of the ADG and is in fact 3 metres more than what is required under the ADG for levels 9 and above. <p>Flexibility (based on merit) should be applied with DCP controls</p> <ul style="list-style-type: none"> The <i>Environmental Planning and Assessment Act 1979 (EP&A Act)</i> states the “principal purpose” of a DCP is to provide “guidance” as to certain matters to the persons proposing to carry out relevant development and the consent authority for any such development (clause 3.42 of the EP&A Act). <i>Clause 4.15(3A) Development Control Plans</i> of the EP&A stipulates that where “reasonable alternative solutions” are put forward they are to be allowed by the consent authority. So, the EP&A Act makes is clear that the power exists for the consent authority to support applications that vary DCPs provisions. In respect to this application, we refer Council to these EP&A provisions and the relevant recent decisions in nearby sites where flexibility has been applied in the same circumstances sought in our application. <p>As outlined above, the consistent setback to the pedestrian link at and above level 5 represents an acceptable alternate solution. This proposed setback is able to respond to the acute sloping site character and the need to provide a rational apartment floorplates, while achieving design excellence and retaining a high quality public domain experience within the pedestrian link.</p>



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	Furthermore, the building will achieve greater than ADG building separation from the nearest future development ensuring desired residential amenity outcomes are achieved.
Public Art	
<p>The proposed public art strategy has been reviewed by Council's Cultural Program Coordinator, review comments are as follows:</p> <ul style="list-style-type: none"> ▪ The artwork may be sculptural as suggested, however, it is not suitable for the artwork to take the form of small-scale sculptural seating. ▪ If the developer decides to go ahead with sculptural seating, this should not take the place of a sculptural public artwork or artworks. ▪ Additional public art beyond the seating should be incorporated into a revised public art strategy. 	An updated Public Art Strategy has been prepared by UAP and provided at Appendix C . additional public art element in the form of artwork on a plinth is proposed.
Environmental Health	
<p>The applicant is to provide the following:</p> <ul style="list-style-type: none"> ▪ Construction Noise & Vibration Management Plan. ▪ Environmental Management Plan ▪ Detailed Site Investigation Report (DSI) 	<p>As per Council's request the following has been provided as part of the RFI response:</p> <ul style="list-style-type: none"> ▪ Construction Noise & Vibration Management Plan prepared by Acouras ▪ Environmental Management Plan prepared by Foundation Earth Sciences



Council Comment	Applicant Comment
	<ul style="list-style-type: none"> Detailed Site Investigation Report (DSI) prepared by Foundation Earth Sciences. The DSI confirmed that the site can be made suitable for residential purposes subject to recommendations.
Oculus Comment	
<p>The proposal has been assessed for consistency with Oculus. Please refer to attached Oculus assessment document (Annexure A).</p>	<p>Detailed landscape response and updated landscape plan has been prepared by RPS provided at Appendix A and B.</p>
Landscaping and Traffic	
<p>Please be advised Council's landscaping officers and transport engineers are still assessing other parts of the proposal.</p>	<p>Noted regarding landscape.</p> <p>Council confirmed on 4/9/2023 that Council's traffic engineers do not require any additional information.</p>
Waste	
<p>The proposal was referred to Council's waste officer who provided the following comments:</p> <p>Under Council's updated DCP (public exhibition completed in August 2023 with formal gazettal of changes imminent), dual chutes will no longer be permitted. Dual chutes are currently allowed in the DCP, however, Council requests</p>	<p>A response from Elephants Foot Consulting is provided at Appendix D.</p> <p>The proposal involves the use of a dual-chute system for general waste, and comingled recycling, which is accompanied by a 240L bin for paper/cardboard recycling.</p> <p>The residents of each level will have access to a dual chute system, and a 240L bin to dispose of their waste, comingled recycling, and paper/cardboard material to maximise resource separation.</p>



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<p>consideration of the waste design to meet the future requirements.</p> <ul style="list-style-type: none"> ▪ It is recommended consideration be given to a redesign to accommodate for 2 x 240L recycling bins (one yellow and one blue) on each level and reduce to a single chute; ▪ Please make changes as needed in the Waste Management Plan (WMP) and other related documents as a result of this change. ▪ Please indicate in the WMP that the building caretaker is also responsible for the coordination / movement of all bins (that are being serviced) to the central collection point (including all 240L bins in refuse rooms on each level of each building). ▪ Please clarify in the WMP for section 7.3; “Residents in building 14 will reside in the same level as the chute discharge room on ground floor. All residents....” – the ground floor (GF) plan of building 14 indicates only those GF residents that are required to do this. Please confirm; ▪ Ensure a clearance of at least 4.3m (currently designed for 4.5m as per the EPA Guideline) is maintained at all 	<p>The 240L paper/cardboard bins on each level, and bins beneath each chute discharge offset will be regularly monitored by the building caretaker.</p> <p>Further, Council expressed support for this proposed strategy in previous consultation dated 10 August 2021. In addition, dual chute systems have been accepted and approved in the other developments in St Leonard's South, therefore it is unjust to apply a different approach at this late stage to current developments in the precinct. The proposed strategy remains appropriate for the development.</p> <p>Based on Elephant Foot’s experience, the proposal is the most efficient and suitable strategy of the site.</p>



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<p>points for where the waste collection vehicle will need to travel; and</p> <ul style="list-style-type: none"> Please indicate details of the Communal Waste & Recycling Bins (e.g. green spine, rooftop terrace etc.) on the plans and incorporate services into the WMP. 	
Outstanding External Referrals	
<p>Council is still awaiting external comment from the following agencies.</p> <p>Water NSW: It may be helpful to also contact the assigned officer andrew.glasson@waternsw.com.au directly to request the GTA's.</p>	<p>Waster NSW comments (dated 21 August 2023) have been received.</p> <p>A Hydrogeological Investigation Report has been prepared by Foundation Earth Sciences to address Water NSW referral comments. The report confirms that:</p> <p>Pump tests in boreholes were carried out in June 2023. The results of the analysis indicate that drawdown as a result of the dewatering is expected to be negligible if at all present. Based on this testing and the parameters provided groundwater is unlikely to be identified within the basement.</p> <p>As the groundwater seepage inflow is less than 3ML/year, a water access licence will not be required subject to confirmation with Water NSW. Therefore a drained basement is suitable for the development.</p> <p>During the construction process, if water needs to be pumped into a holding Tank and a monitoring program needs to be applied. It is recommended that an appropriate filtration system is designed to allow the groundwater to pass through before entering the local system. Any remaining sediment in the holding tank is to be collected & disposed offsite appropriately.</p>

2. CONCLUSION

We trust that the information provided in this response addresses the matters raised by Lance Cove Council, WaterNSW, and Oculus and allows the planning assessment to proceed. The response provided in this letter and the attached appendices addresses the requirements raised by Council.

We look forward to Councils review and discussing these items on 1 November 2023 with Council and the Sydney North Planning Panel in progressing this DA to a determination meeting.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anna Wang", with a stylized, flowing script.

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