

Sydney North Planning Panel Meeting 07 August 2024
13-19 CANBERRA AVENUE, ST LEONARDS

Subject: 13-19 Canberra Avenue, St Leonards
Record No: DA24/33-01 - 34111/24
Division: Planning and Sustainability Division
Author(s): Andrew Bland; Christopher Shortt

Panel Reference	PPSSNH-498
DA Number	33/2024
LGA	Lane Cove Council
Proposed Development	Alterations and Additions Development Application to the approved Mixed Use Residential building for Infill Affordable Housing pursuant to the SEPP (Housing)
Street Address	Nos. 13 to 19 Canberra Avenue, St Leonards
Applicant/Owner	Applicant: Stephen Abolakian – HPG GENERAL PTY LTD Owners: SLS Five Pty Ltd
Date of DA lodgement	23 April 2024
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> • 17 • 17 • All submissions have been forwarded to the SNPP
Recommendation	Approval
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021	<p>The affordable housing component of the development application has a capital investment value of over \$5 million, in accordance with Schedule 6, Clause 5 of the SEPP (Planning Systems) 2021.</p> <p>The CIV has been confirmed in the updated QS report as being \$5.2 million.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments • SEPP (Housing) 2021 - Chapter 2, Division 1 In-fill affordable housing • SEPP (Resilience and Hazards) 2021 • SEPP (Biodiversity and Conservation) 2021 • SEPP (Transport and Infrastructure) 2021 • 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

	<ul style="list-style-type: none">• 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 enter into under Section 7.4 under the original development consent. The Applicant has already executed the VPA and the proposed development would have no impacts on the delivery of the VPA. A condition has been included to deal with the 7.11 contributions for the additional dwellings.• relevant regulations e.g. Regs 92, 93, 94, 94A, 288- Nil• coastal zone management plan• Nil <p>other relevant plans</p> <ul style="list-style-type: none">• St Leonards South Section 7.11 Contributions Plan																																																						
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>Recommended conditions of consent</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>St Leonards South Strategic Planning Context</td><td>Lane Cove Council</td></tr><tr><td>4</td><td>Childcare Planning Guideline</td><td>Lane Cove Council</td></tr><tr><td>5</td><td>Ausgrid Comment</td><td>AUSGRID</td></tr><tr><td>6</td><td>Social Infrastructure and Open Space Study</td><td>Lane Cove Council</td></tr><tr><td>7</td><td>Architectural + Landscaping + Civil Plans</td><td>SJB + Site Image + Torinex</td></tr><tr><td>8</td><td>Statement of Environmental Effects</td><td>Site Image</td></tr><tr><td>9</td><td>Access Report</td><td>Planning Ingenuity</td></tr><tr><td>10</td><td>Addendum Noise Impact Statement</td><td>PWNA</td></tr><tr><td>11</td><td>Updated Wind Effects Letter</td><td>Windtech</td></tr><tr><td>12</td><td>BASIX & NatHERS Certificate</td><td>Efficient Living</td></tr><tr><td>13</td><td>Design Verification Statement</td><td>SJB</td></tr><tr><td>14</td><td>Traffic and Parking Report</td><td>Transport Strategy Alliance Pty Ltd</td></tr><tr><td>15</td><td>Urban Design Report</td><td>SJB</td></tr><tr><td>16</td><td>Traffic Report STRAP</td><td>Transport Strategy Alliance Pty Ltd</td></tr><tr><td>17</td><td>Updated Operational Waste Management Plan</td><td>Elephants Foot</td></tr></table>	Annex.	Document	Prepared By	1	Recommended conditions of consent	Lane Cove Council	2	ADG Assessment	Lane Cove Council	3	St Leonards South Strategic Planning Context	Lane Cove Council	4	Childcare Planning Guideline	Lane Cove Council	5	Ausgrid Comment	AUSGRID	6	Social Infrastructure and Open Space Study	Lane Cove Council	7	Architectural + Landscaping + Civil Plans	SJB + Site Image + Torinex	8	Statement of Environmental Effects	Site Image	9	Access Report	Planning Ingenuity	10	Addendum Noise Impact Statement	PWNA	11	Updated Wind Effects Letter	Windtech	12	BASIX & NatHERS Certificate	Efficient Living	13	Design Verification Statement	SJB	14	Traffic and Parking Report	Transport Strategy Alliance Pty Ltd	15	Urban Design Report	SJB	16	Traffic Report STRAP	Transport Strategy Alliance Pty Ltd	17	Updated Operational Waste Management Plan	Elephants Foot
Annex.	Document	Prepared By																																																					
1	Recommended conditions of consent	Lane Cove Council																																																					
2	ADG Assessment	Lane Cove Council																																																					
3	St Leonards South Strategic Planning Context	Lane Cove Council																																																					
4	Childcare Planning Guideline	Lane Cove Council																																																					
5	Ausgrid Comment	AUSGRID																																																					
6	Social Infrastructure and Open Space Study	Lane Cove Council																																																					
7	Architectural + Landscaping + Civil Plans	SJB + Site Image + Torinex																																																					
8	Statement of Environmental Effects	Site Image																																																					
9	Access Report	Planning Ingenuity																																																					
10	Addendum Noise Impact Statement	PWNA																																																					
11	Updated Wind Effects Letter	Windtech																																																					
12	BASIX & NatHERS Certificate	Efficient Living																																																					
13	Design Verification Statement	SJB																																																					
14	Traffic and Parking Report	Transport Strategy Alliance Pty Ltd																																																					
15	Urban Design Report	SJB																																																					
16	Traffic Report STRAP	Transport Strategy Alliance Pty Ltd																																																					
17	Updated Operational Waste Management Plan	Elephants Foot																																																					

Sydney North Planning Panel Meeting 07 August 2024
13-19 CANBERRA AVENUE, ST LEONARDS

	18	Addendum to SEE	Planning Ingenuity
	19	Response to Submissions	Hycorp
	20	Estimated Development Cost Report	Mitchell Brandtman
	21	Updated NCC Report	Credwell
	22	Kick Off Record of Briefing	SNPP
	23	Briefing Note to the SNPP	Lane Cove Council
	24	Neighbour Notification Map	Lane Cove Council
Clause 4.6 requests	Two Clause 4.6 requests: <ul style="list-style-type: none"> • Building Height • Floor Space Ratio 		
Summary of key submissions	<ul style="list-style-type: none"> • Building Height • Amenity impacts • Traffic • Non-compliance with Master Plan/ DCP • Overshadowing of Newlands Park • View Loss 		
Report prepared by	Andrew Bland		
Report date	7 August 2024		

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? **Yes**
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

Precinct context

The subject development is located within the St Leonards South Precinct (the “Precinct”). The planning context is provided in **Annexure 3** for the benefit of the SNPP as it relates to the approved consent which the subject application would modify.

History

The original application DA162/2021 has been amended twice, once by the Sydney North Planning Panel and once in the Land and Environment Court on 28 May 2024.

Planning Context

The application has been lodged in accordance with Chapter 2 Affordable Housing, Division 1 In-fill affordable housing in the Housing SEPP 2021 (the Housing SEPP). The provision of affordable housing enables the applicant to benefit from bonus to the maximum building height (the “height”) and bonus to the Floor Space Ratio (the “FSR”) development standards. The proposal seeks to benefit from a 30% bonus to the 44m incentive height control which would achieve a height of 57.2m (the proposed development would be a maximum of 56.65m to the lift overrun). The proposal also seeks to benefit from a 27.3% bonus to the 3.7:1 FSR control which would achieve an FSR of 4.5:1.

These bonuses are subject to satisfying the Housing SEPP Chapter 2 requirements including the non-discretionary standards, design requirements and the dedication of the affordable housing apartments to a register community housing provider for at least 15 years. A condition has been recommended to ensure compliance with these requirements, refer to **Annexure 1**.

Proposal

The subject development application proposes alterations and additions to DA162/2021 which obtained consent (as recently amended) for the construction of a mixed-use development comprising ***80 apartments***, parking, landscaping and public benefits such as childcare centre / pedestrian link (*approval summarised*).

Note: 80 apartments were approved in the Court approved modification of DA162/2021, the description incorrectly states there were 81 apartments approved. This has been corrected throughout this report.

The subject proposal primarily seeks consent for the construction of 4 additional levels and would accommodate 22 additional apartments (refer to proposal for full breakdown). This increase in density is achieved pursuant to bonuses as afforded by Chapter 2 of the Housing SEPP.

The proposal includes the dedication of 23 affordable housing apartments in accordance with the Housing SEPP Chapter 2 requirements. These apartments would be located throughout both the approved levels 1 – 10 under DA162/2021 and levels 12 – 15 within the proposed additional levels. These apartments have been identified in **Table 5** later in this report.

The proposal also includes the addition of 26 parking spaces in accordance with the Housing SEPP Chapter 2 requirements. These have identified in the amended basement plan.

The proposal also includes minor changes to the approved development including, internal amendments to the childcare facility, the consolidation of 2 town houses, the addition of a fire

control room on the ground floor and deletion of the approved level 12 to accommodate the proposed additional levels.

Notification

The development application has been notified in accordance with Council policy and a total of 17 submission were received. The concerns raised in these submissions have been addressed later in this report.

Applicable environmental planning instruments

The following environmental planning instruments are relevant and have been satisfied as discussed later in this report:

- SEPP (Housing) 2021 - Chapter 2 - Division 1 In-fill affordable housing
- SEPP (Housing) 2021 - Chapter 4 - Desing of residential apartment development
- SEPP (Resilience and Hazards) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP (Building Sustainability Index) 2004; and
- Lane Cove Local Environmental Plan 2009 – Clause 4.6 Request x 2

Clause 4.6 requests

The development application is accompanied by two Clause 4.6 requests which seek to vary the height and FSR development standards. Part 7 of the LEP precludes these requests being lodged within the St Leonards South Precinct and therefore the application has been lodged pursuant to the base LEP controls.

The Clause 4.6 requests seek to attain a height and FSR which is consistent with the bonuses afforded by the Housing SEPP 2021 when measured from the approved development (in accordance with incentive development standards under Part 7 of the LEP). These requests are required as excavation works have commenced on site which has altered the “existing” ground level considered when calculating the maximum building height.

The Clause 4.6 requests are the required planning pathway to facilitate the Housing SEPP bonuses and would not have been required had the excavation works not commenced. These requests are recommended to be supported as they are well founded and achieve a better planning outcome than strictly enforcing compliance with the development standard.

Section 4.15 Matters

The 4.15 matters for consideration (1)(a) – (1)(e) have been satisfied and addressed later in this report.

The development application has been assessed against the requirements of the Housing SEPP.

The Lane Cove LEP 2009 (the “LEP”) and the Lane Cove DCP 2009 (the “DCP”) and other related plans are overridden by the Housing SEPP requirements, in accordance with Section 8, Chapter 1 of the SEPP (Housing) 2021.

The relevant objectives and provisions of LEP and DCP have been considered in relation to the Clause 4.6 assessment where necessary.

Reason for SNPP referral

The affordable housing component of the development application is over \$5m in accordance with Schedule 6, Clause 5 of the Planning Systems SEPP 2021.

Conclusion

The proposed development satisfies the relevant requirement and is recommended to the Sydney North Planning Panel (SNPP) for determination.

2. HISTORIC STRATEGIC PLANNING CONTEXT

St Leonards South Precinct

Precinct Background for context

The St Leonards South Precinct (the Precinct) was brought into effect through amendments to *Lane Cove Local Environmental Plan 2009*. The vision of the Precinct is for a liveable, walkable, connected, safe, high density residential precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre. This vision is to be achieved through the Part 7 Planning Scheme (Part 7) in the LEP and its related documents.

The objectives of Part 7 are to ensure the Precinct provides:

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

Part 7 establishes an incentive scheme which provides bonuses to the development standards in exchange for the delivery of public benefits. These benefits include affordable housing, childcare facilities and through site links among others. It is intended that all developments achieve these incentive bonuses to facilitate the complete vision for the Precinct.

The site reverts to the base LEP controls (a height 9.5m and an FSR of 0.5:1) if a development does not achieve the aforementioned.

The subject development application seeks to modify (through alterations and additions to) the approved development DA162/2021 which has already satisfied the incentive scheme requirements through the delivery of the required public benefits.

An in-depth background of the St Leonards South Precinct has been provided in **Annexure 3**, for the panels benefit.

Clause 4.6 Requirement

Part 7 precludes the use of Clause 4.6 to vary the incentive height and incentive FSR development standards. This is to ensure that the public benefits are delivered in order to achieve the envisaged

incentive development standards and density. The exclusion of Clause 4.6 prevents high density developments that don't meet the vision of the Precinct being provided.

DA162/2021 was approved having provided the required public benefits and achieving the required design excellence provisions. The subject application would not alter the delivery of the public benefits as they are proposed to be maintained. Design excellence is maintained as the high-quality landscaping, architectural design, finishing and materiality are all provided for the proposed additional levels.

The subject application has been lodged pursuant to Council's base LEP controls to enable the Clause 4.6 requests to be lodged. The Clause 4.6 requests are required due to a legal interpretation of "existing" ground level where excavation works have commenced. The legal interpretation is that excavated ground level is now considered "existing" ground level in respect of measuring the maximum building height. Further details on this rationale have been provided later in the Clause 4.6 section of this report.

Accordingly, the application is to be assessed against the base LEP controls. Whilst this is the correct planning pathway, it is more prudent to consider the development application with reference to the incentive height and FSR already achieved by the approved development. It is more relevant to assess the application with regard to the desired future character which has been shaped by the Part 7 Planning Scheme.

3. SITE AND SURROUNDS

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. Construction works including excavation have commenced on site. The key site characteristics are summarised in below.

Table 1 - Site Characteristics of Nos. 13-19 Canberra Avenue	
Site Characteristic	Subject Site
Title Particulars	Nos. 13 to 19 Canberra Avenue <ul style="list-style-type: none"> • 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

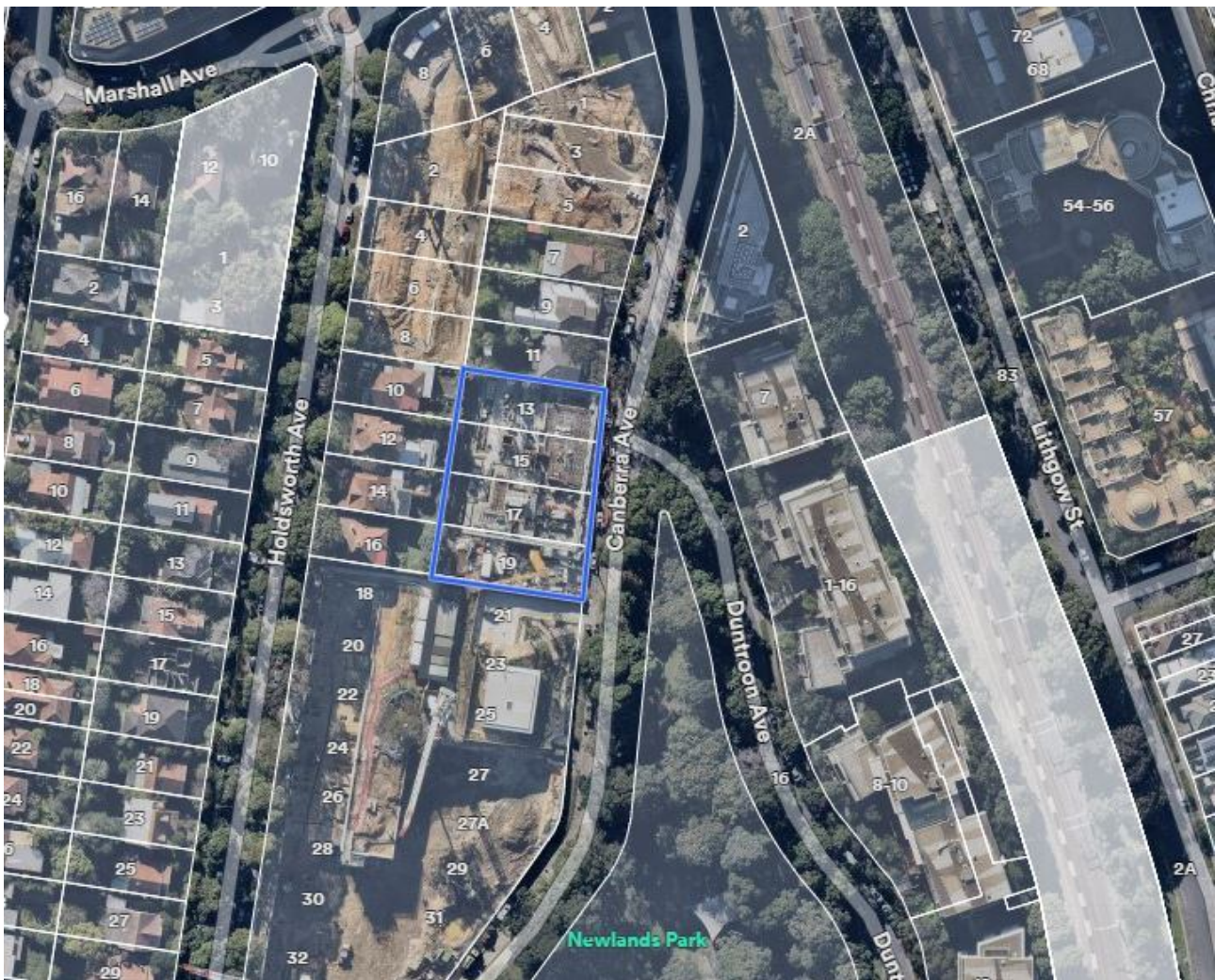


Figure 1: Subject Site (Source: Nearmaps)

Adjoining/Surrounding Sites

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 area to the north and east. There have been multiple 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 a part 10 and part 12 storey residential flat building comprising 96 apartments and basement parking for 110 vehicles. Construction has commenced on this site.

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 three residential flat buildings (ranging from 12 to 19 storeys) comprising a total of 232 apartments and basement parking for 348

vehicles. Works have commenced on this site. The Applicant has advised Council of their **intention to lodge an application seeking to provide affordable housing and benefit from the bonuses provided under Chapter 2 Infill Affordable Housing of the Housing SEPP**. An associated application has been lodged for an additional basement level in order to facilitate the required parking.

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 by 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. The development application is currently being appealed in the Land and Environment Court.

Land further to the southwest comprising Areas 22 & 23 has obtained development consent (Development Consent No. 154/2022) from the SNPP for the construction of four residential flat buildings with four levels of basement car parking, comprising a total of 306 dwellings and a proposed new road connecting Park and Berry Road. Works have commenced on this site.

Land further to the northwest comprising Areas 13-15 has obtained approval (Development Consent No. 56/2023) for construction of three residential flat buildings with four levels of basement carparking comprising 185 apartments and 249 vehicle spaces. An application has been lodged as **State Significant Development with the Department of Planning for Infill Affordable Housing in accordance with the SEPP Housing**. (ref: SSD-69615233)

4. PROPOSAL

Background

Development Consent No. 162/2021 was approved on 27 June 2022 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 comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, pedestrian link and stratum/strata subdivision.'*

DA162/2021 has been modified several times since the initial approval. Most recently, DA162/2021 was modified through a Section 4.55(2) which sought consent for 'internal changes and an additional storey'. This appeal was resolved by Section 34 agreement between parties on 28 May 2024 and therefore supersedes the previous iteration of DA162/2021.

DA162/2021 as most recently modified, provides for ***80 apartments***, including 26 x 1 bedroom, 23 x 2-bedroom, 29 x 3-bedroom and 2 x 4-bedroom apartments. All other components of the approved development, including the childcare centre, green spine, through-site link and the like, were unchanged.

Initial Proposal

The initial proposal in the subject alterations and additions application for DA162/2021 sought consent for 5 additional levels which would provide 25 additional apartments (24 following amalgamation) and include the following works:

- Dedication of 23 affordable housing apartments throughout the development.
- Basement levels amended to provide an additional 25 parking spaces.
- Amalgamation of 2 town houses and the addition of a fire control room on the ground floor.
- Construction of 5 additional storeys known as levels 13 – 17:
 - Level 12 amended to accommodate 6 apartments, where it previously contained 3 apartments and communal open space as the top floor.
 - Levels 12 – 15 would all accommodate 6 apartments and have the same layout.
 - Level 16 would accommodate 2 apartments and the relocated communal open space (improved).
 - Level 17 would accommodate 2 penthouse apartments.
 - New roof level to be provided above these new levels.

This application was lodged prior to the Section 34 agreement between parties in the LEC on 28 May 2024 to allow modifications to DA162/2021. These LEC approved modifications primarily provided 1 additional level. Accordingly, the base application subject to the proposed application is required to be updated to ensure consistency with the recent modifications approved by the LEC.

Clause 4.6 requests

The application is accompanied by Clause 4.6 requests for height and FSR. The strategic Planning Scheme under Part 7 of Council LEP precludes Clause 4.6 requests being lodged for height and FSR. As such, the development application has been lodged pursuant to the base LEP controls to enable the Clause 4.6 requests to be lodged.

The applicable development standards are as follows:

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

The proposed development includes the following variations of the maximum building height and FSR development standards:

- **Height is 56.65m; and**
- **FSR is 4.5:1.**

Amended Proposal

The subject proposal (as amended) seeks consent for 'alterations and additions to an approved mixed-use development (DA162/2021) involving the addition of 4 storeys, 22 apartments and 26 parking spaces within the basement levels in accordance with Division 1 In-fill affordable housing of Housing SEPP.'

Amendments include updates regarding the LEC decisions amongst other minor changes to the proposal application which are primarily cosmetic and internal changes.

The proposed amendments include:

- Descriptive changes to floor plans;

- Descriptive changes to elevations and sections showing the envelope of the development as most recently approved;
- Minor changes to basement layout, including 1 additional residential space in Basement Level 03 resulting in 102 spaces; and
- Minor changes to the childcare centre layout, as a result of operator requirements, including;
 - Door types;
 - Additional openings provided to outdoor play area;
 - Modification to location of partition walls and staff rooms;
 - Changes to kitchen, laundry and cot room; and
 - Specifications for fixtures and fittings.

It is proposed to provide an additional 26 residential car parking 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 relocating the communal open space to level 16.

The waste services (garbage chute) would be extended through all the proposed levels. This increased waste facilities have been located within the approved waste room located on the ground floor level. Refer to the Updated Operational Waste Management Plan has been submitted with the Application and discussed in the referral **Table 13**.

Proposed Apartment Mix

The approved (recent modification upheld in the LEC) apartment mix was:

Table 2 – Approved vs proposed apartment mix		
	Apartment mix	Total
Approved	26 one-bedroom apartments; 23 two-bedroom apartments; 29 three-bedroom apartments; and 2 four bed- room apartments.	*80*
Proposed	1 studio apartment; 33 one-bedroom apartments; 25 two-bedroom apartments; 42 three-bedroom apartments; and 1 five -bedroom apartment.	102

In depth proposal breakdown

The subject development application seeks consent for the following works:

Table 3 – In depth proposal breakdown	
	Proposed works
Affordable Housing	<ul style="list-style-type: none"> • Dedication of 23 affordable housing apartments throughout the development, in accordance with Chapter 2, Division 1 of the Housing SEPP. The dedicated apartments are identified in Table 5, later in this report; • Parking, adaptable unit provision and the level of communal

Table 3 – In depth proposal breakdown	
	Proposed works
	open space have been increased to respond to the increase in apartments.
Basement Levels	<ul style="list-style-type: none"> Basement levels B1-B4 have been reconfigured to provide an additional 26 parking spaces. Storage areas have been redesigned to facilitate the provision of additional parking. 102 residential parking spaces are provided in accordance with the minimum parking standards that apply under the Housing SEPP.
Ground Floor	<ul style="list-style-type: none"> Amalgamation of town houses G01 and G02 to a five bedroom townhouse (Identified as G01). Addition of a fire control room to ensure compliance with the National Construction Code.
Level 1	<ul style="list-style-type: none"> Fit out details and associated modifications to the internal areas of the childcare centre to facilitate Council requirements as the future operator of the facility. No changes are proposed to the outdoor childcare play area by this application.
Level 12 to Level 13	<ul style="list-style-type: none"> Amendment to the approved layout to accommodate the uplift in density. The lobby, lift, stair core and services remain as approved where the arrangement of apartments would be modified. The building footprint would be consistent with the approved lower levels and be comprised of 6 apartment including 2 x 1 bedroom, 1 x 2 bedroom, and 3 x 3 bedroom apartments. <p>Note: The communal open space as approved on this level under DA162/2021 is removed from Level 12 and relocated to Level 16.</p>
Level 14 to Level 15	<ul style="list-style-type: none"> Introduction of Levels 14 to 15 which provide an identical layout to Level 12 and 13 being comprised of 6 apartments including 2 x 1 bedroom, 1 x 2 bedroom, and 3 x 3 bedroom apartments. Vertical lift and staircase provided to the upper and lower floors.
Level 16 to Level 17	<ul style="list-style-type: none"> Introduction of Levels 16 and 17 which replicate the approved layouts and building footprints of Levels 12 and 13. The proposal includes provides 2 double storey apartments being 2 x 3 bedroom apartments. Relocation of the communal open space which is consistent in design to that of the approved Level 12 Under DA162/2021but comprises a larger area and includes the introduction of an

Table 3 – In depth proposal breakdown	
	Proposed works
	<p>internal communal area comprised of a kitchen, accessible bathroom and living area.</p> <ul style="list-style-type: none">• Vertical lift and staircase provided to the upper and lower floors.
Roof Plan	<ul style="list-style-type: none">• The roof will include building services, lift overrun and solar panels.



Figure 2: Photo montage (Source: Applicant)

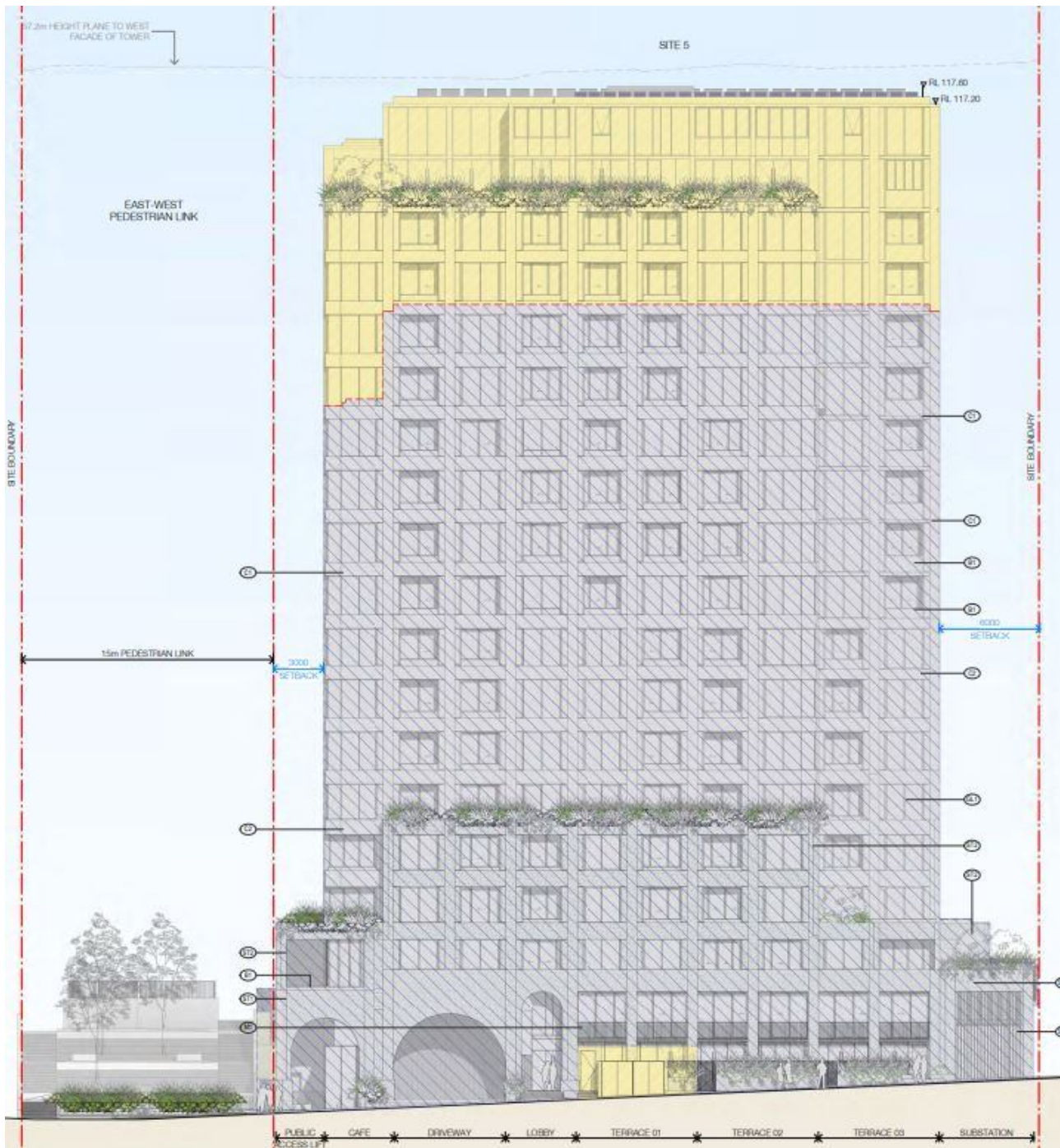


Figure 3: East elevation viewed from Canberra Avenue (Source: Applicant)

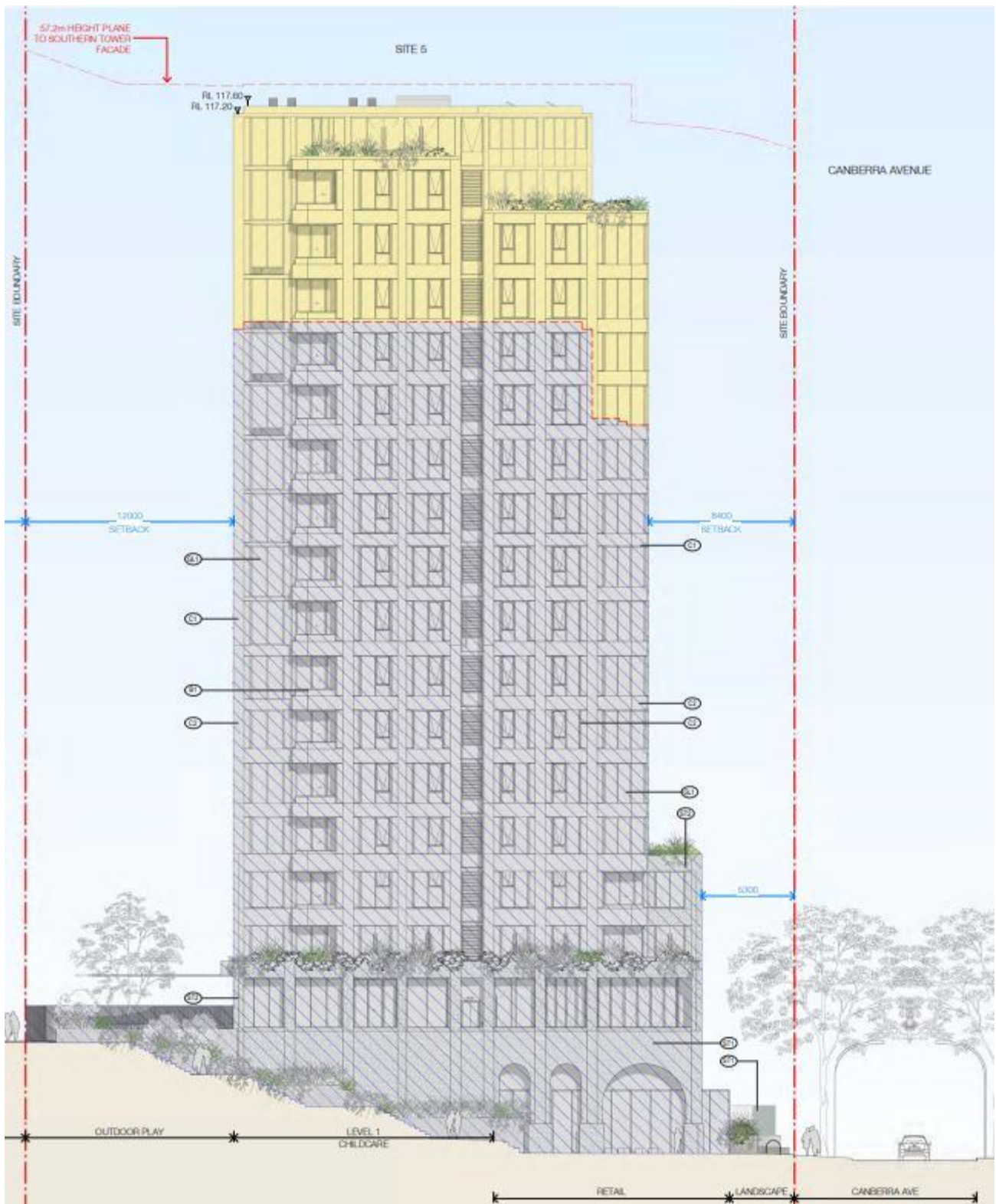


Figure 4: South elevation viewed from the east-west link (Source: Applicant)

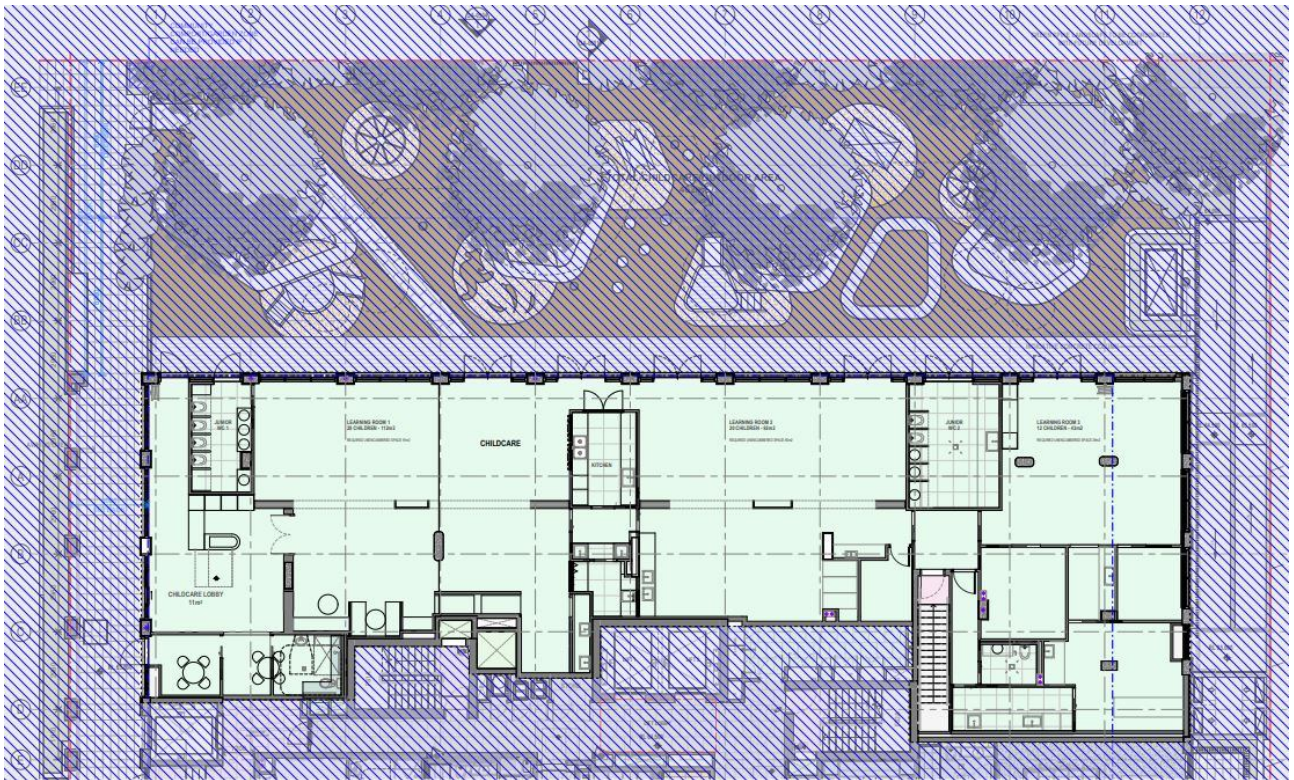


Figure 5: Childcare Centre floor plan (Source: Applicant)

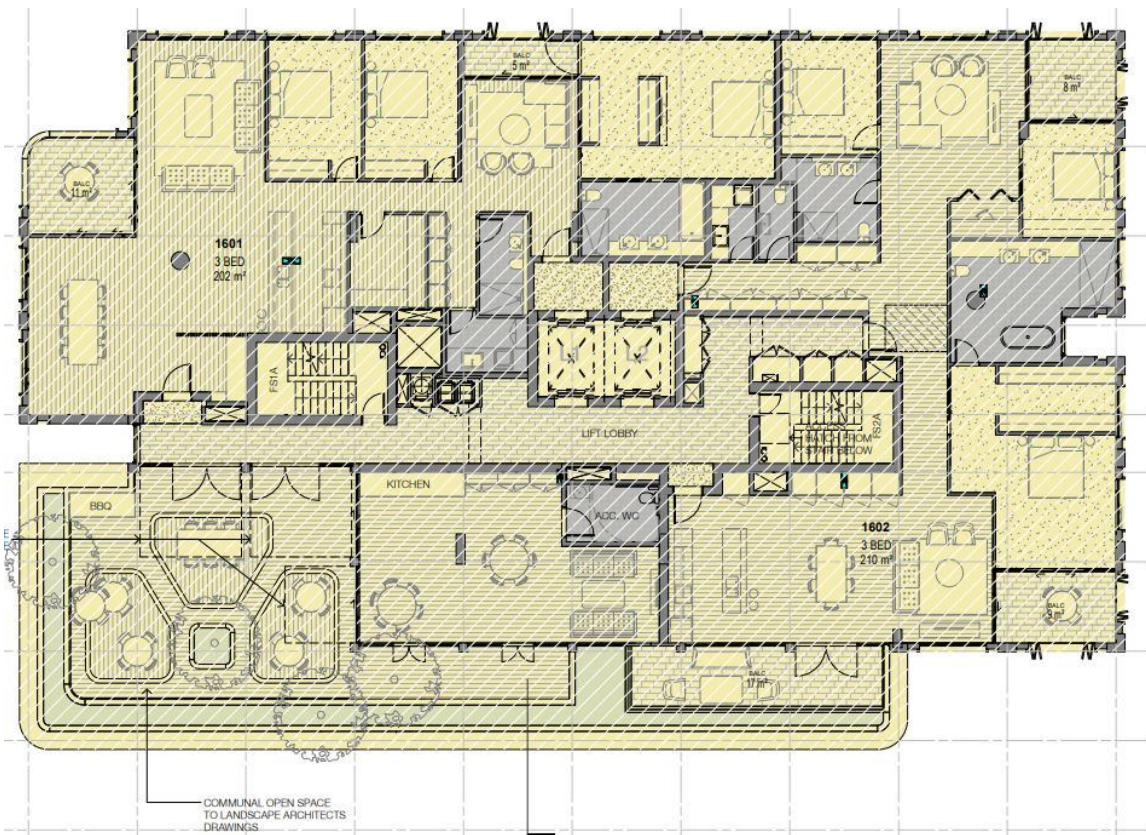


Figure 6: Level 16 floor plan containing the communal open space (Source: Applicant)

5. HISTORY

5.1 Assessment/History Timeline

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

Table 4 - Proposal/History Timeline	
Date	Description
27 June 2022	Development Consent No. 162/2021 was 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	A section 4.55(1A) Modification Consent was 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>A section 4.55(1A) Modification Consent was 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.

Sydney North Planning Panel Meeting 07 August 2024
13-19 CANBERRA AVENUE, ST LEONARDS

13 March 2023	A section 4.55(2) Modification Application to DA162/2021 and an Alterations and Additions Application (DA21/2023) were both lodged proposing the same works. These applications sought consent for the addition of 2 storeys. Both of these applications were recommended for refusal, and this was supported by the SNPP at its meeting on 26 June 2023.
7 July 2023	The applicant appealed both the section 4.55(2) Modification Application to DA162/2021 and an Alterations and Additions Application (DA21/2023) in the LEC.
January 2024	Section 34 Conciliation Conference held, and the parties failed to reach any agreement on the additional 2 storeys. The applicant sought leave from the court to amend the proposal to just 1 additional storey.
23 April 2024	Council received the subject Development Application.
29 April 2024	The Development Application was notified in accordance with Council policy and a total of 16 submissions were received.
9 May 2024	Regarding the Court Appeals, Section 34 agreement was reached between the parties the development application to include 1 additional storey.
5 June 2024	The briefing meeting was held with the Sydney North Planning Panel for the subject development application.
18 June 2024	Council received an amendment received to subject development application which has been detailed in the proposal section of this report.

6. 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:

Any environmental planning instrument:

SEPP (Housing) 2021 – In-fill affordable housing

The State Environmental Planning Policy (Housing) 2021 (the “Housing SEPP”) was published on 26 November 2021 and aims to incentivise the supply and ensure the effective delivery of affordable and diverse housing. The Housing SEPP was amended on 14 December 2023 to further incentivise affordable housing in order to address the housing crisis and provide for the needs of moderate, low and very low income households throughout New South Wales. The subject application seeks to benefit from these in-fill affordable housing incentives.

The relevant chapters of the Housing SEPP which apply to this development are:

- *Chapter 2 Affordable housing, Division 1 In-fill affordable housing; and*
- *Chapter 4 Design of residential apartment development.*

Chapter 2 Affordable housing, Division 1 In-fill affordable housing

The proposed alterations and additions seek to deliver in-fill affordable housing in accordance with Chapter 2 of the Housing SEPP. Recent reforms have sought to encourage developers through

bonuses to the height and FSR development standards in exchange for the provision of additional affordable housing. The affordable housing is to be managed by a registered community housing provider and held for a period of 15 years (minimum), which commences from the issue of an occupation certificate for the development.

Developments are to provide at least 15% of the GFA as affordable housing to achieve 20 – 30% bonuses for height or FSR. The full 30% may not be achieved for both development standards.

Character as informed by the Housing SEPP

Chapter 2 of the Housing SEPP now informs the desired future character of transport-oriented development throughout NSW. The density increases and affordable housing now forms part of the desired future character of development within the Precinct. The proposal presents a development outcome which is consistent with the vision and character of development as envisaged through the Housing SEPP. This is attained whilst providing the public benefits required by Part 7 and whilst maintaining reasonable amenity for future occupants and neighbouring dwellings.

The Housing SEPP has already begun to have a direct impact on development within the Precinct with many other sites seeking to utilise this affordable housing bonus scheme. An application has been lodged for Areas 13-15 (lodged as State Significant Development ref: SSD-69615233) which seeks approval for affordable housing. Council has also received an application for an additional basement level for Areas 1, 2 and 4 in preparation for their application for the affordable housing application.

The Housing SEPPs influence on the desired future character of the Precinct is important when considering the Clause 4.6 requests and specifically the view impacts on other developments within the Precinct.

Chapter 2 Affordable housing, Division 1 In-fill affordable housing

15C Development to which division applies

The proposed alterations and additions seek to deliver in-fill affordable housing in accordance with Chapter 2 of the Housing SEPP. The subject site is located within an “accessible area” as defined by the Policy which states:

Accessible area means land within –

(a) 800m walking distance of-

(i) A public entrance to a railway, metro or light rail station

The subject site is located approximately 450m from the western Herbert Street entrance to St Leonards Railway Station as demonstrated in **Figure 7** below.

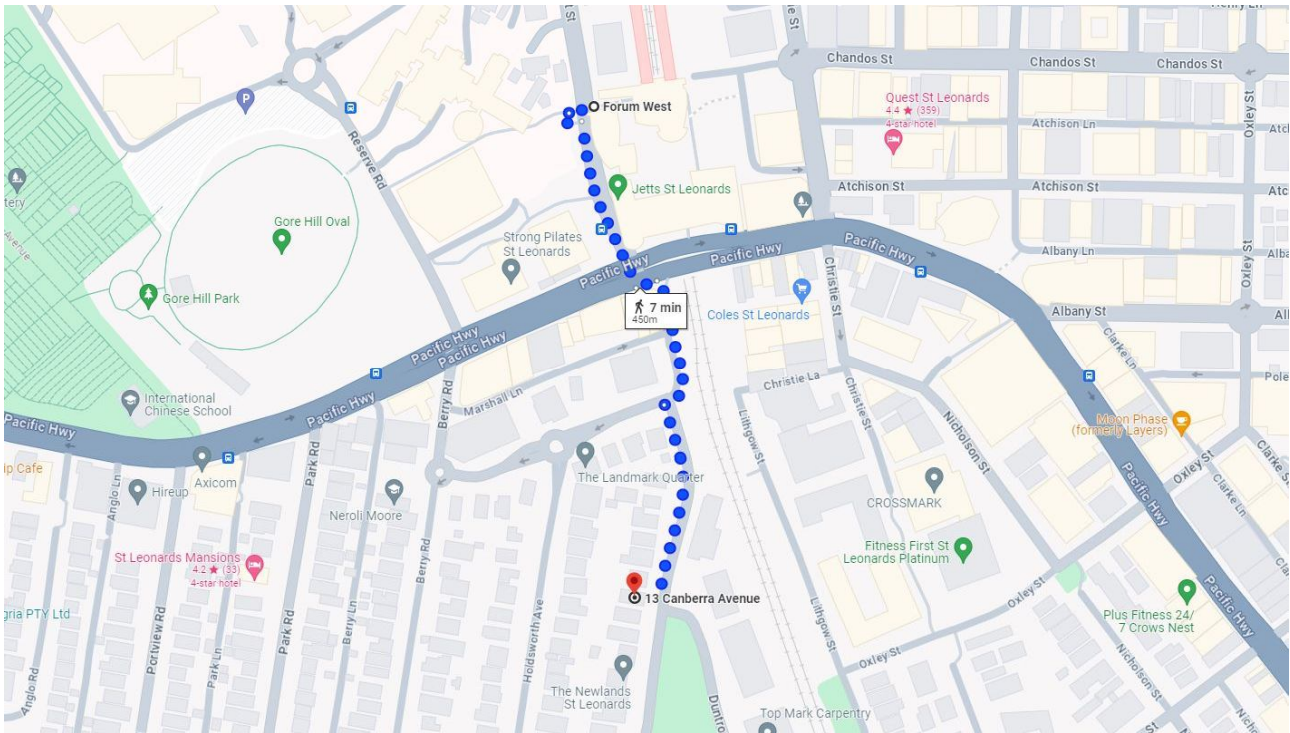


Figure 7: Walking distance to St Leonards Railway Station (Source: Google maps)

16 Affordable housing requirements for additional floor space ratio

Section 16 of the Housing SEPP contains calculations for the provision of floor space ratio and building height bonuses. It is stated in section 16 that:

*(1) **The maximum** floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an **additional floor space ratio of up to 30%**, based on the minimum affordable housing component calculated in accordance with subsection (2).*

*(2) **The minimum affordable housing component**, which must be at least 10%, is calculated as follows—*

$$\text{Affordable housing component} = \text{additional FSR (as a percentage)} \div 2$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

Affordable housing calculation for FSR

The incentive bonuses under Part 7 of the LEP permits the following on the subject site:

3.7:1 – maximum FSR (Gross Floor Area = 9,778.41sqm)

The proposal seeks to attain a total FSR of 4.71:1 (Gross Floor Area = 12,388sqm). This FSR calculation includes areas within the basement approved in DA162/2021. This is to

ensure consistency with the Clause 4.6 written requests lodged with this application and detailed later in this report.

This equates to an additional FSR of 1.01:1 and Gross Floor Area (a “GFA”) of 2,609.59sqm. This would be a bonus of 27.3% when compared to the incentive GFA and FSR.

The required affordable housing component has been calculated below:

$$\begin{aligned}\text{Affordable housing component requirement} &= 27.3\% \div 2 \\ &= 13.65\%\end{aligned}$$

Conclusion: The required affordable housing component is 13.65% in relation to the FSR bonus. However, the applicant is seeking to rely on the following Section 18 in order to achieve a larger bonus for the maximum building height.

18 Affordable housing requirements for additional building height

Section 18 provides the calculation for the additional building height in the instance that the Section 16 is not used. This allows the applicant to increase the building height beyond the percentage increase available for FSR (27.3%). It is stated in Section 18 that:

*(1) **This section applies to development that includes residential development to which this division applies if the development—***

- (a) **includes residential flat buildings or shop top housing, and***
*(b) **does not use the additional floor space ratio permitted under section 16.***

*(2) **The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).***

*(3) **The minimum affordable housing component, which must be at least 10%, is calculated as follows—***

$$\text{Affordable housing component} = \text{additional building height (as a percentage)} \div 2$$

Affordable housing calculation for maximum building height

The incentive bonuses under Part 7 of the LEP permits the following on the subject site:

44m – maximum building height

The proposal seeks to benefit from a 30% bonus to the incentive building height of 44m as achieved under Part 7 of the LEP. This would achieve a maximum building height of 57.2m (from pre-excavated ground level).

The required affordable housing component has been calculated below:

$$\begin{aligned}\text{Affordable housing component requirement} &= 30\% \div 2 \\ &= 15\%\end{aligned}$$

Conclusion: The development application satisfies the required provision of affordable housing apartments in accordance with Section 18 Division 1, Chapter 2 of the Housing SEPP. The applicant has sought to rely upon Section 18 to benefit from a 30% bonus to the maximum building height. This requires that the applicant provides 15% of the total GFA / FSR as affordable housing. The proposed development provides a total of 1,866sqm as affordable housing, which is 15% of the GFA as required. This includes 23 apartments equating to a total of 1,582sqm and 284sqm of circulation space which services the affordable apartments, this has been detailed in **Table 5** below.

Table 5 – Dedicated affordable housing apartments				
	Apartment Count	Apartment Number	Internal Area sqm	Number of Bedrooms
Apartments located in the building approved under DA162/2021	1	102	50	1
	2	103	119	2
	3	307	95	3
	4	401	96	1
	5	403	54	1
	6	603	54	3
	7	803	54	1
	8	805	87	2
	9	903	54	1
	10	1003	54	1
	11	1004	81	2
Apartments located in the proposed part of the building.	12	1202	61	1
	13	1203	54	1
	14	1204	81	2
	15	1302	61	1
	16	1303	54	1
	17	1304	81	2
	18	1402	61	1
	19	1403	54	1
	20	1404	81	2
	21	1502	61	1
	22	1503	54	1
	23	1504	81	2
Total	23	-	1582	34
Circulation space	-	-	284	-
Total	23	-	1,866 sqm	34

19 Non-discretionary development standards—the Act, s 4.15

Chapter 2 of the SEPP provides development standards for the proposed development which, if complied with, prevent the consent authority requiring more onerous standards. The proposed development satisfies all the non-discretionary development standards. The following **Table 6** identifies the compliance in accordance with these standards:

Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies

Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies
(a)	A minimum site area of 450sqm	The site area is 2,629.3sqm	Yes
(b)	A minimum landscaped area that is the lesser of – (i) 35sqm per dwelling, or (ii) 30% of the site area	35sqm per dwelling = 3,570sqm. 30% of the site area = 788.79sqm, (ii) is the lesser in this circumstance. No changes to the size of the approved landscaped area being 929.9sqm or 35.4%.	Yes
(c)	A deep soil zone on at least 15% of the site area, where – (i) Each deep soil zone has a minimum dimensions of 3m, and (ii) (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies. Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.	<i>Not applicable</i>
(d)	Living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm mid-winter	Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies. Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.	<i>Not applicable</i>
(e)	The following number of parking spaces for dwellings used for affordable housing – (i) 1 bedroom dwelling – at least 0.4 parking spaces (ii) 2 bedroom dwelling – at least 0.5 parking spaces (iii) 3 bedroom dwellings 1	The affordable housing component includes 23 apartments comprised of: 14 x 1 bedroom = 5.6 spaces 7 x 2 bedroom = 3.5 spaces 2 x 3 bedroom = 2 spaces This requires 12 spaces (rounded up to a full space) . The 12 spaces have been provided.	Yes
(f)	The following number of parking spaces for dwellings not used for affordable housing – (i) 1 bedroom dwelling – at least 0.5 parking spaces (ii) 2 bedroom dwelling – at	There would be 79 apartments not used for affordable housing comprised of: 20 x 1 bedroom = 10 spaces 17 x 2 bedroom = 17 spaces	Yes - (e) and (f)

Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies
	(iii) least 1 parking spaces 3 bedroom dwellings 1.5	42 x 3/4 bedroom = 63 spaces The requires 90 spaces which have been provided.	requires a total of 102 spaces which has been provided.
(g)	The minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development.	The proposed apartments satisfy the minimum internal area requirements prescribed by the ADG. The proposed apartments mirror the layout of previously approved apartments.	Yes
(h)	For development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) – the minimum floor area specified in the low rise housing diversity design guide.	Not relevant for this type of development.	<i>Not applicable</i>
(i)	(i) if paragraphs (g) and (h) do not apply, the (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	Not applicable as (g) and the Apartment Desing Guide applies.	<i>Not applicable</i>

20 Design requirements

The Clause 20 requirements include that the consent authority is to be satisfied that the proposed development meets the desired future character for precincts undergoing transition. The proposed development is located in the St Leonards South Precinct. The Clause 4.6 assessment within this report details how the Housing SEPP has influenced the desired future character of the Precinct which now includes the associated affordable housing bonuses. One other application has been lodged with the Department of planning seek to benefit from the affordable housing bonuses in accordance with the Housing SEPP. Council has also received correspondence from another site within the Precinct which will lodging an application for the affordable housing bonus in the 2nd half of 2024.

The proposed development meets the desired future character for the following reasons:

- The proposed development satisfies the overall objectives of the Precinct, and of particular note are the following objectives:
 - *1 To create a highly liveable transit-orientated residential precinct that integrates with St Leonards Station and proposed over-rail public plaza that encourages community interaction, walking, cycling and use of public transport.*
 - *3 To provide a variety of housing (including affordable housing) that is sustainable provides housing choice and that meet the needs of residents including access to community facilities.*
- The proposed development maintains the delivery of the required public benefits in accordance with the Part 7 Planning Scheme for the Precinct
- The proposed development provides affordable housing which is one of the public benefits desired by the Part 7 Planning Scheme for the Precinct.
- The proposed development provides (maintains) a high-quality architectural design which is compatible with the desired future character of approved developments within the Precinct.
- The proposed development maintains the high-quality landscaping and there would be no changes to approved deep soil landscaping at ground level.
- The proposed development maintains the modulation (to address the topography of the site), materiality and roof design to retain the approved character under DA162/2021.

Accordingly, the proposed development meets the desired future character of the Precinct as envisaged by Part 7 and as informed by the Housing SEPP.

21 Must be used for affordable housing for at least 15 years

The affordable housing apartments are required to be managed by a registered community housing provider for a period of at least 15 years. The applicant has acknowledged this requirement in the statement and endorsed that a condition is included to ensure this requirement is satisfied, refer to **Annexure 1**.

22 Subdivision permitted with consent

This clause states that the affordable housing apartments may be subdivided with consent from the relevant authority provided the subdivision plans are provided. Strata subdivision is proposed as part of this application and this has been detailed in the submitted documents including.

The Development Application complies with Chapter 2 of the Housing SEPP 2021.

Chapter 4 Design of residential apartment development - ADG

SEPP 65 – Design Quality of Residential Apartment Development has been consolidated into Chapter 4 of the Housing SEPP. Schedule 9 of the Housing SEPP 2021 includes the “Design Quality Principles” which are required to be satisfied for residential apartment developments. These design quality principles aim to ensure the high-quality delivery of residential flat buildings within New South Wales. This chapter applies to the subject development as it is a residential apartment development, albeit providing additional apartments to an approved development.

The proposal seeks to amend an approved development which has already satisfied all the design quality principles. The proposed development maintains the high-quality design through the retention of high quality articulation, materiality, layout of apartments, landscaping and the approved communal open spaces. This ensures that the proposed development satisfies the required design quality principles.

Referral to a Design Review Panel

Council is of the view that there is no need to refer the application to the design review panel in this instance as the overall design of the approved development is largely maintained. The previous advice from the DRP has already been applied to the approved development and maintained within the subject proposal. In accordance with Clause 29 of the EP & A Regulations 2021, a Design Verification Statement accompanies the application which confirms that the following design principles and objectives have been achieved.

Assessment against the ADG

Table 7 provides an assessment against the Schedule 9 Design Quality Principles as required by Chapter 4 of the Housing SEPP.

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
1 Context and neighbourhood character	<p>Satisfactory - The proposed development seeks to provide affordable housing. This is established in the desired future character through the Part 7 planning scheme (for other sites in the Precinct) and through Chapter 2 of the Housing SEPP.</p> <p>The subject site is located in the St Leonards South Precinct, which has been strategically located to provide high density residential developments within proximity to the St Leonards railway station, being a key transport hub.</p> <p>The application would provide affordable housing not only located within proximity to a transport hub (as envisaged by the Housing SEPP amendments), but also in proximity to other key areas such as Royal North Shore Hospital and the education facilities located in North Sydney. The numerous existing services which employ people eligible to live in affordable housing apartments workers are identified on pages 26 – 23 of Annexure 6 which identifies the existing services in a social infrastructure study.</p> <p>This would provide the opportunity for key workers such as nurses and teachers who rely on affordable housing to live in proximity to their place of work.</p> <p>The proposed development maintains its relationship with the site and neighbouring sites through the retention of high-quality landscaping, the retention of the established setbacks and high quality architectural design.</p>
2 Built form and scale	<p>Satisfactory - The Housing SEPP has now informed the built form and scale of development within the Precinct. The proposed</p>

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	<p>development would be constructed in accordance with the envisaged height and scale as prescribed in Chapter 2 of the Housing SEPP.</p> <p>The proposed development achieves an appropriate built form by maintaining the approved setbacks and high-quality architectural design of the development.</p> <p>The public domain remains equally defined through the design of the approved development and retention of the approved ground level structures.</p> <p>The impacts on views and vistas are considered reasonable as discussed alter in the view loss section of this report.</p> <p>The proposal largely maintains the internal layout of approved apartments from the levels below and the approved communal rooftop facilities are relocated to level 16 (with improved amenity).</p> <p>This ensures a high-quality built form and an appropriate scale with reference to the Housing SEPP.</p>
3 Density	<p>Satisfactory – The proposed development provides the strategically planned high density residential scale which corresponds with the recently amended R4 Zoning.</p> <p>The proposed development would attain a 30% bonus to the height and a 27.3% bonus to the FSR standard in accordance with the prescribed density by Chapter 2 of the Housing SEPP.</p> <p>The proposed development would achieve a density which is consistent with other development within the precinct.</p> <p>The apartments sizes exceed the ADG minimum requirements to ensure a high level of amenity for the future residents.</p> <p>The density would be sustained through the proximity to existing infrastructure, the future public benefits to be delivered in accordance with Part 7, key public transport hubs and the proximity to the St Leonards, Crows Nest and North Sydney region more broadly.</p>
4 Sustainability	<p>Satisfactory – The proposed development achieves a good sustainability outcome through maintaining the approved deep soil zones on the site to facilitate high quality canopy potential, and the use of renewable energy within the building.</p> <p>The proposed development is cross ventilated at all levels to ensure a positive environmental outcome through reducing the reliance on cooling and heating systems.</p>

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
5 Landscape	<p>Satisfactory – There would be no changes to the approved high quality landscaping areas located on the site. The proposed works are primarily located above the approved level 13 other than minor internal or facade changes to the basement levels, ground level and level 1.</p> <p>The landscaping in the approved communal space has been relocated to level 16.</p>
6 Amenity	<p>Satisfactory – The proposed development provides high quality amenity through the retention of the communal space and deep soil areas on site.</p> <p>The communal space has been relocated to level 16 and would provide internal and external areas, a BBQ, high quality landscaping and significant views towards the Sydney City Skyline. This provides access to high quality communal space both on top of the building, as well as the deep soil areas located on the ground floor.</p> <p>All apartments include generously sized private open spaces and living rooms. There are large built in storage areas provided in the apartments, as well as storage areas provided in the basement.</p> <p>The proposed development provides good access to sunlight and maintains cross ventilation on all levels to provide a positive living environment. The proposed development maintains high accessibility through the on grade entrance lobby and 2 lifts which access all levels.</p> <p>It must also be noted that there is direct access provided to the following approved infrastructure with the development: a pool, spa and sauna, fitness area, wine room, music room and cinema located on the upper ground floor.</p> <p>All these factors ensure the proposed development provides high quality amenity for the future occupants.</p>
7 Safety	<p>Satisfactory – There are no changes to the safety and security provided within the approved development. All relevant conditions remain relevant to the proposal.</p> <p>All public and private spaces remain clearly defined and there are no changes to the passive surveillance provided.</p> <p>A fire control room has been provided on the ground floor to ensure compliance with the fire safety requirements.</p>
8 Housing diversity and	Satisfactory – The proposed development provides for additional

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
social interaction	<p>housing diversity through the provision of 23 affordable housing apartments.</p> <p>This doubles the strategically planned affordable housing to be provided through the Part 7 incentive scheme for the Precinct.</p> <p>The identified affordable housing apartments would be constructed to the same high-quality finishing and layout as the other departments throughout the development.</p> <p>The proposed development provides affordable housing in a key area being close to a transport hub, education facilities (TAFE), emergency service facilities and medical facilities (Royal North Shore Hospital). A list of the existing services have been identified on pages 26 – 32 of Annexure 6 which is a social infrastructure study for the St Leonards and Crows Nest area.</p>
9 Aesthetics	<p>Satisfactory – The proposed development maintains the high-quality aesthetic design as supported in the approved dwelling.</p> <p>The materials, landscaping and articulation provides for a visually attractive architectural design.</p> <p>This ensures that design excellence is achieved.</p>

Apartment Desing Guide Provisions

The operations of the Apartment Design Guide (ADG) remain relevant and are to be considered for the proposed works. An assessment against the ADG has been provided in **Annexure 2**. The proposed development is compliant with the ADG requirements other than 3F – Visual privacy which has been considered under DA162/2021 and accepted on merit.

3F – Visual Privacy

The proposed development utilises the setbacks and envelope of the approved development. The original approval included separation from the northern (side) boundary which is compliant with the separation provisions.

This condition requires the erection of privacy louvers along the northern façade of the development to prevent direct overlooking between buildings. These same privacy mitigation measures are recommended to be imposed on the subject application to ensure that privacy is adequately addressed and the satisfaction of the 3F objective.

The Development Application complies with Chapter 4 of the Housing SEPP 2021.

The Development Application satisfied the Housing SEPP 2021.

SEPP Resilience and Hazards 2021

The proposal is assessed against the relevant provisions of SEPP Resilience and Hazard as detailed in the **Table 8** below.

Table 8 - Resilience and Hazard Assessment	
Provision	Compliance
<p><i>(1) A consent authority must not consent to the carrying out of any development on land unless -</i></p> <p><i>(a) it has considered whether the land is contaminated</i></p> <p><i>(b) if the land is contaminated, it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i></p>	<p>Complies - The original development application was accompanied by a Preliminary Site Investigation Report to assist Council in determining compliance with the SEPP which did not raise any issues of contamination.</p> <p>The proposed works are located on top of the approved development and there has been no exposure of contamination during the excavation works.</p>
<p><i>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</i></p>	<p>Complies – This requirement was dealt with in the original development application and the submitted Preliminary Site Investigation Report was found to be satisfactory.</p> <p>The applicant has confirmed that no contamination has been exposed during the excavation process to date.</p> <p>Given the residential history of the subject site and area, it is unlikely that contamination would be exposed.</p>
<p><i>(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</i></p>	<p>Complies – The Preliminary Site Investigation Report did not give rise to the requirement for a Detailed Site Investigation Report.</p> <p>The excavations works have not no exposed any contamination. Thus further investigation or reporting would not be necessary.</p> <p>Conditions of the DA162/2021 consent adequately deal with the potential exposure of any contaminated materials.</p>
<p><i>(4) The land concerned is—</i></p> <p><i>(a) land that is within an investigation area,</i></p> <p><i>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</i></p> <p><i>(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—land—</i></p> <p><i>(i) in relation to which there is no knowledge (or</i></p>	<p>Complies - The site is not within an investigation area or listed in Table 1 to the guidelines. A preliminary site investigation was submitted to the SEPP's satisfaction in the original development application.</p>

Table 8 - Resilience and Hazard Assessment	
Provision	Compliance
<i>incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</i> <i>(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</i>	

The Development Application complies with SEPP Resilience and Hazards 2021

SEPP BASIX 2004

A BASIX certificate accompanies the application and is provided as **Annexure 12** to this report. The BASIX Certificate demonstrates compliance with the provisions of the SEPP.

The Development Application complies with SEPP BASIX 2004

SEPP Transport and Infrastructure 2021

The original development application was assessed against the relevant provisions of SEPP Transport and Infrastructure including the childcare centre requirements of the SEPP and the associated Childcare Planning Guidelines. The approved development satisfied these requirements and was supported. The proposed development does not change compliance with these requirements as identified below and are also contained within **Annexures 4**.

Also, pursuant to Clause 2.48(1)(d), the original application was referred to Ausgrid for comment who had no objections to the development application regarding Overhead Powerlines or Underground Cables. The proposed development does not include any changes which raises concerns with these structures and therefore reissuing a referral to Ausgrid is not necessary in this instance.

Table 9 - Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
Clause 3.22 Centre-based childcare – concurrence of Regulatory Authority required for certain development – N/A		
(1) This clause applies to development for the purpose of a centre-based childcare facility if:		
(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> , or	Requires: 3.25m ² /child 195m ² required/60 children Minimum 245sqm Area <u>Provided</u>	Yes – no changes to the approved size.
(b) the outdoor space requirements for the building or place do not comply with regulation 108	Requires: 7m ² /child 420m ² required/60 children Minimum 460sqm Area	Yes – no changes to the approved size.

Table 9 - Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
(outdoor unencumbered space requirements) of those Regulations.	<u>Provided:</u>	
3.23 Centre-based childcare facility—matters for consideration by consent authorities		
Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> , in relation to the proposed development.	These matters have been satisfied, refer to assessment in Annexure 4 .	
3.26 Centre-based child care facility—non-discretionary development standards		
(1) The object of this clause is to identify development standards for particular matters relating to a centre-based childcare facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.		
(2) The following are non-discretionary development standards for the purposes of Sections 4.15(2) and (3) of the Act in relation to the carrying out of development for the purposes of centre-based child care:		
(a) location —the development may be located at any distance from an existing or proposed early childhood education and care facility,	Appropriately located in accordance with St Leonards South precinct planning requirements	Yes, no changes to the location of the child care facility.
(b) indoor or outdoor space		
(i) for development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or	Indoor Space The proposal complies with the required indoor space as outlined in the Regulations. Outdoor Space The proposal complies with the required outdoor space for the proposed 60 children placement sought.	Yes, remains as approved. Yes, remains as approved.
(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the <i>Children (Education and Care Services) Supplementary Provisions Regulation 2012</i> applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that	Clause 28 applies to temporary emergency relocation of early education and childcare facility – exempt development	Not Applicable

Table 9 - Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
clause,		
(c) site area and site dimensions —the development may be located on a site of any size and have any length of street frontage or any allotment depth,	Appropriately located on a large development site area, street frontage and allotment depth	Yes, no changes to the location.
(d) colour of building materials or shade structures —the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Appropriate colour and materials scheme lodged	Yes, no changes to the colour and materials.
(3) To remove doubt, this clause does not prevent a consent authority from:		
(a) refusing a development application in relation to a matter not specified in subclause (2), or	The subject Development Application is recommended for approval subject to conditions.	
(b) granting development consent even though any standard specified in subclause (2) is not complied with.		

The Development Application complies with SEPP Transport and Infrastructure 2021

SEPP (Biodiversity and Conservation) 2021

The site is located on land to which the Biodiversity and Conservation SEPP 2021 applies. This SEPP aims to protect environmentally sensitive areas and prevent adverse impacts from development on the natural environment. The chapters of this SEPP which are relevant the development application include the following:

- *Chapter 2 Vegetation in non-rural areas; and*
- *Chapter 6 Water catchments.*

Chapter 2 Vegetation in non-rural areas

Chapter 2 of the Biodiversity and Conservation SEPP 2021 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW, to preserve the natural amenity of these areas. The subject proposal does not propose any tree removal. All tree removal has been previously considered by Council's Arborist in the original development application. There would be no changes to the approved replanting schedule or the approved landscaping plan outside of the relocation of the approved communal open space (relocated from level 12 to level 16. The approved size and quality of this landscaping is maintained.

Chapter 6 Water catchments.

Chapter 6 of the Biodiversity and Conservation SEPP 2021 aim to prevent the adverse run-off of stormwater whether it be changed run-off patterns or quality of stormwater run-off. The subject proposal does not change the run-off pattern or the quality of stormwater run-off. The additional apartments are located on top of the approved development and there are no changes to deep soil landscaping areas. Any new stormwater systems would be connected to the approved stormwater facilities.

The Development Application complies with SEPP Biodiversity and Conservation 2021

SEPP Planning Systems 2021

The Development Application is referred to the Sydney North Planning Panel for determination as the Capital Investment Value of the Affordable Housing is \$5,217,666.00 (exceeding \$5 million) satisfying the Schedule 6 Clause 5 (b) requirements of SEPP Planning Systems 2021.

The Development Application complies with SEPP Planning Systems 2021

Lane Cove Local Environmental Plan 2009

Permissibility

The site is zoned R4 High Density Residential under LCLEP 2009, see **Figure 8** below. 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 remains permissible with consent as the proposed application does not change the type of development approved.

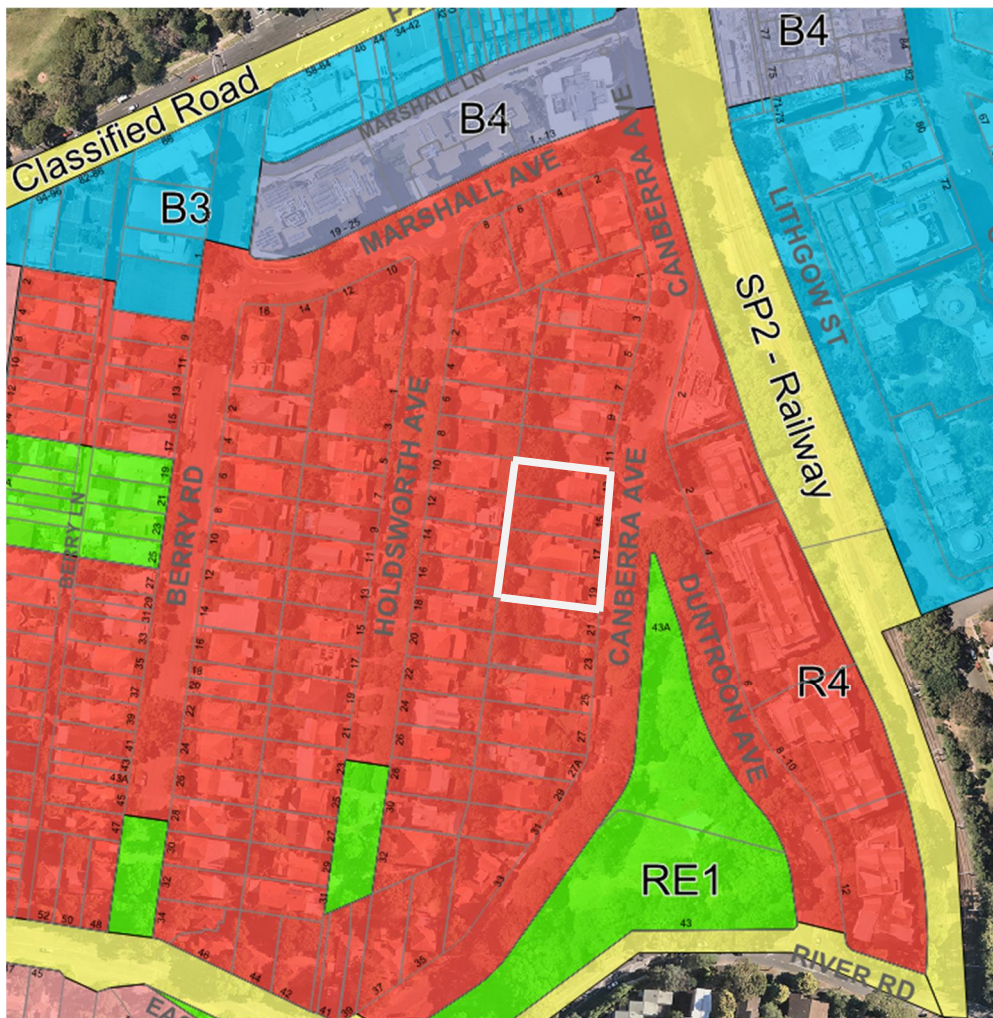


Figure 8: Zoning Map (Source: Council LEP)

Compliance with Base Development Standards Provisions

The proposed development complies with the Housing SEPP Height of Building and FSR bonuses as detailed earlier in this report. However, the development application has been lodged pursuant to the base development standards within LCLEP 2009. This is to enable the required Clause 4.6 requests to be lodged. **Table 10** provides the proposals compliance subject to the Base Development Standards.

Table 10 – LCLEP 2009 – Compliance with the Base Development Standards			
Standard	Requirement	Proposed	Compliance
Height of Buildings	9.5m (max.)	56.65m to the lift overrun based on existing ground level when DA162/2021 was approved.	No, clause 4.6 variation lodged.
+ 30% affordable housing bonus	12.35m (max)		
Floor Space Ratio	0.5:1 (max)	4.5:1 (11,842sqm) based on existing	No, Clause 4.6 variation lodged.

+ 30% affordable housing bonus	0.65:1 (max)	ground level when DA162/2021 was approved. 4.71:1 (12,388sqm) when including the storage and lobby areas within the basement, due to excavation.	
---------------------------------------	--------------	---	--

Alternatively, **Table 11** provides the proposals compliance in relation to the affordable housing bonus. This provides a more prudent assessment of the proposal given the relationship with the original approval (incentive height and FSR) and the approved development within the Precinct. The maximum affordable housing bonuses have been added, however it is noted that practically speaking 30% may not be achievable for both building height and FSR.

Table 11 – LCLEP 2009 – Compliance with the Incentive Development Standards + the 30% bonus provided by the Housing SEPP 2021			
Standard	Requirement	Proposed	Compliance
Height of Buildings	44m (max.)		
+ 30% affordable housing bonus	57.2m (max)	56.65m to the lift overrun as measured from ground level prior to an excavation works. 73.3 measured from excavated basement level.	Yes , based on this interpretation of ground level which the clause 4.6 is predicated on.
Floor Space Ratio	3.7:1 (max)	4.5:1 (11,842sqm) based on existing ground level when DA162/2021 was approved.	Yes , for either interpretation of ground level.
+ 30% affordable housing bonus	4.81:1 (max)	4.71:1 (12,388sqm) when including the storage and lobby areas within the basement, due to excavation.	

Clause 4.6 Exceptions to development standards

Clause 4.6 of LCLEP 2009 allows a variation to the 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.

The development application is accompanied by two Clause 4.6 variation requests. These are for the maximum building height (the “height”) and the maximum floor space ratio (the “FSR”) development standards. These requests have been lodged to achieve the bonuses afforded by the Housing SEPP 2021. The development application has been lodged pursuant the base LEP controls to enable the Clause 4.6 requests to be lodged, as they are prohibited by Part 7 of the LEP.

Council agrees with this regulatory pathway to facilitate the bonuses achievable under Chapter 2 of the Housing SEPP. The proposed development fully satisfies the requirements of the Housing SEPP. The Clause 4.6 requests are necessary to achieve the desirable future character for transit orientated development as envisaged through the Housing SEPP.

Interpretation of ‘ground level (existing)’.

Building works have commenced on site in accordance with DA162/2021 which includes excavation down to the level 4 basement. Consistent with the decisions made in the Land and Environment Court in *Triple Blue Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1065 (at[47]); *Stokes v Waverley Council (No 3)* [2020] NSWLEC 1224 (at [59]) and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (at [83]), the legal interpretation is that excavated ground level must now be considered as ground level (existing). This alters the point at which building height is measured from and in this instance, building height is now to be measured from the level 4 basement slab.

This has resulted in a technical variation of the height development standard as at the time of lodgment, this was the ‘existing’ ground level. Had that application been lodged where no excavation works had commencement on site, there would be no requirement to lodge a Clause 4.6 request. The application would simply satisfy the Housing SEPP requirements and comply with the associated bonuses.

Due to the altered ground level, the approved basement storage areas and lift lobby entries in DA162/2021 are technically considered to be located above “existing” ground level. These areas technically meet the LEP definition to be included as gross floor area.

Consequently, these areas have been included in the calculation of FSR. The proposal complies with the bonus FSR afforded by the Housing SEPP irrespective of these areas being included in the FSR calculations. The application has been lodged as such for consistency.

Diagrammatic explanation of the required planning pathway

The following diagrams from **Figure 9** and **Figure 10** have been provided in order to help visualise the Clause 4.6 requirement.

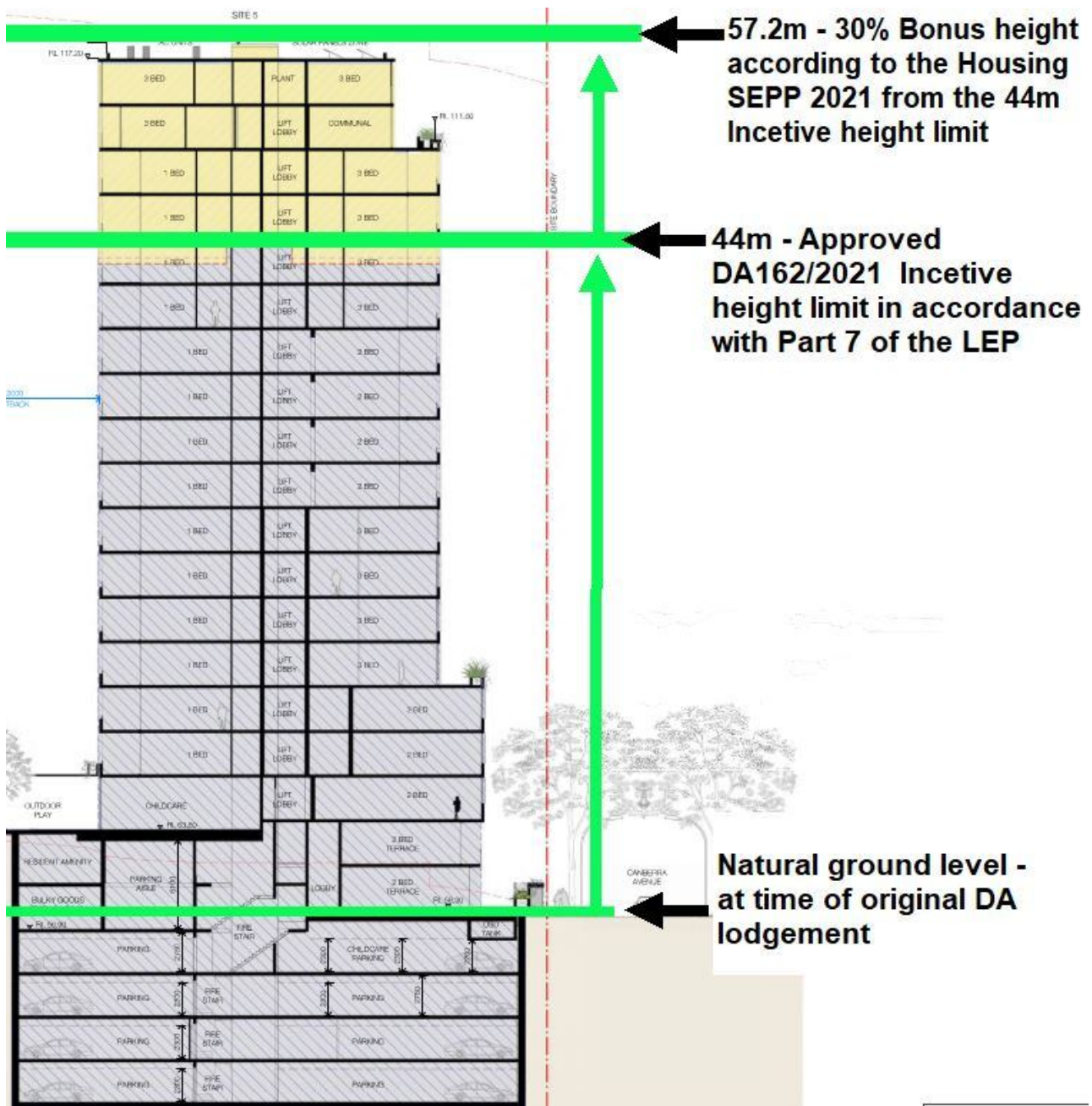


Figure 9: Compliance with the Housing SEPP bonus from pre-excavated / natural ground level (Source: Council Planner)

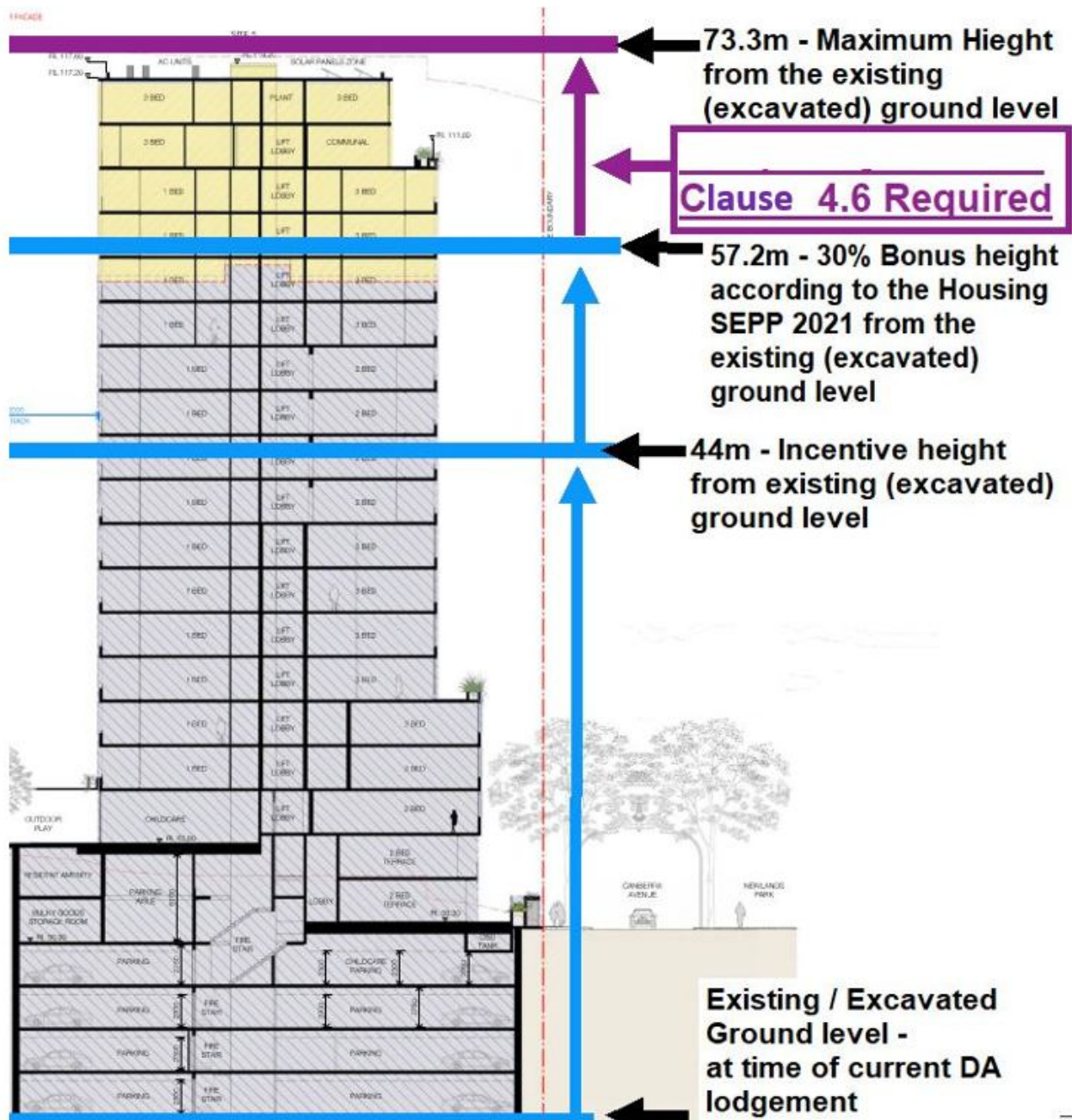


Figure 10: Compliance with the Housing SEPP bonus from excavated / existing ground level at time of lodgement, thus requiring a Clause 4.6 request (Source: Council Planner)

Clause 4.6 Written Request – Building Height

A maximum building height of 9.5m applies to the site under LCLEP 2009, see **Figure 12** below.

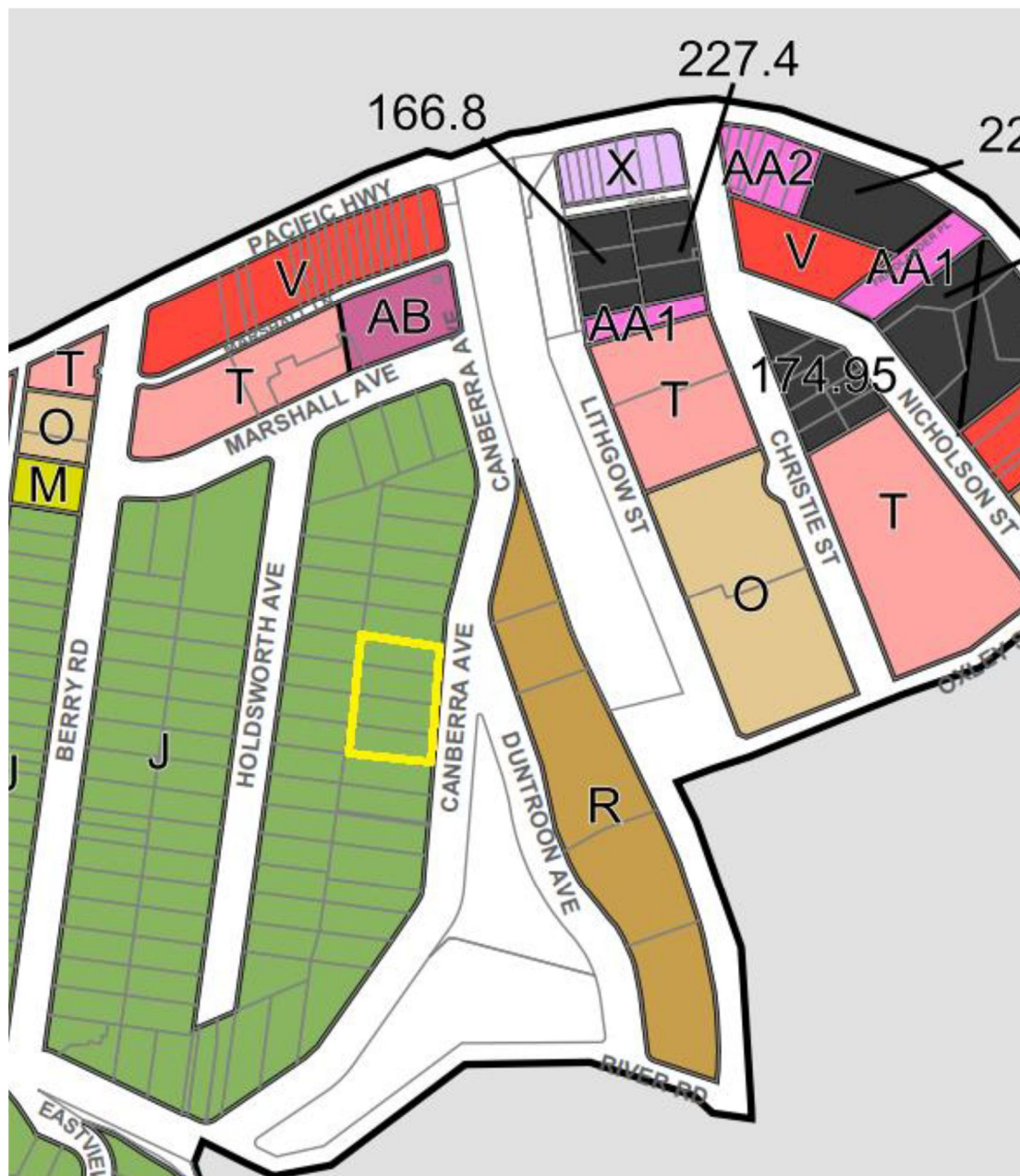


Figure 12: Base Height of Buildings Map (J=9.5m) (Source: Council LEP)

The proposed development would attain a maximum building height of 56.65m as measured to the lift overrun, refer to **Figure 13** below. This is a variation of 44.3m from the 9.5m base control plus the 30% Housing SEPP bonus which would permit 12.35m. Whilst this is a significant variation from the base control, the proposed development complies with the Housing SEPP bonus when measured from the incentive height already achieved by the approved development. The Clause 4.6 and reliance on the base controls is the required planning pathway to facilitate the affordable housing bonus, as detailed above.

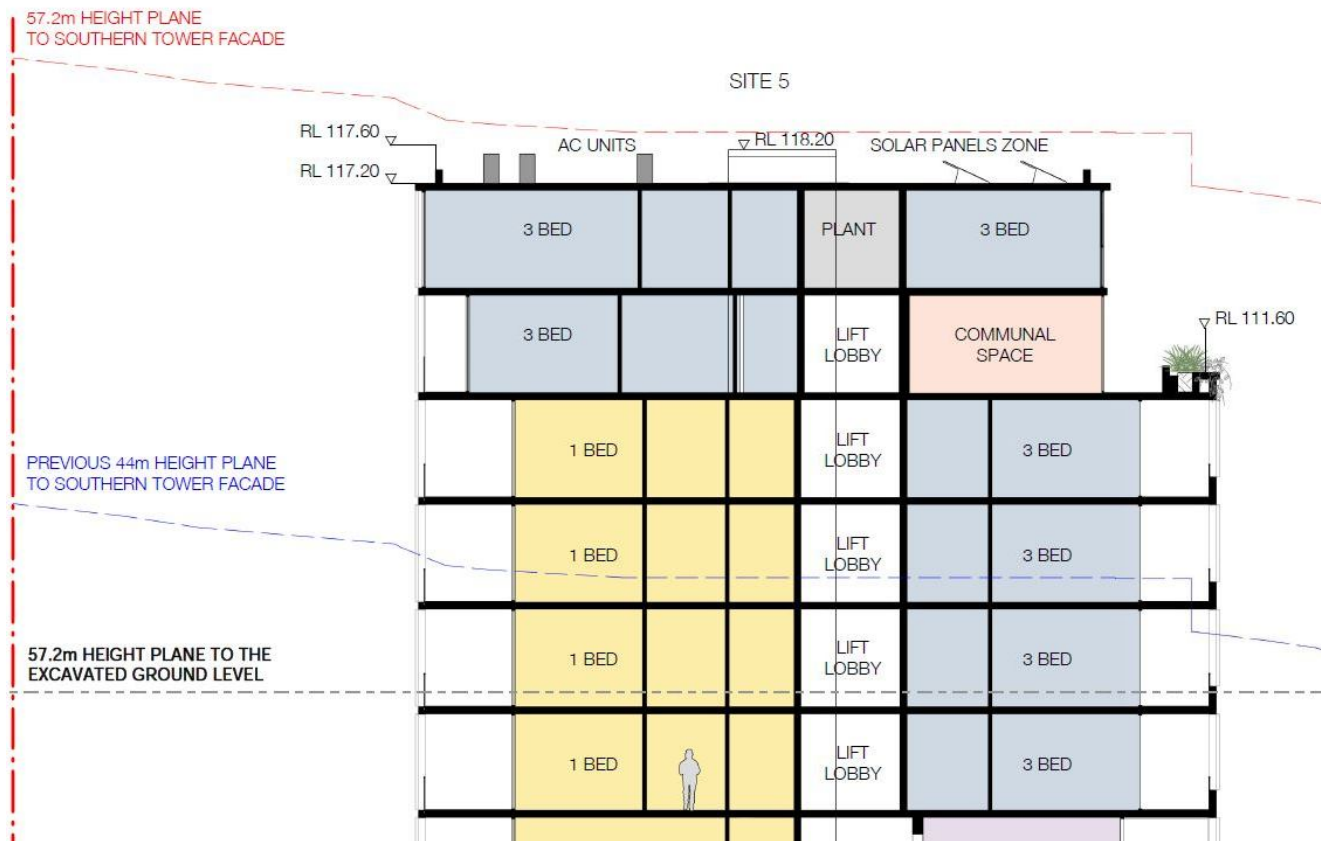


Figure 13: Proposed development when considering the Maximum 57.2m Building Height Plane afforded by the Housing SEPP 30% Bonus. (Source: Architectural Plans)

Justification for Contravention of the Development Standard:

Consistent with the judgment of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC (Initial Action)*, for there to be power to grant development consent for a proposal that contravenes a development standard, clause 4.6 (4)(a) requires that the consent authority, be satisfied by three matters before granting consent to a development which varies a development standard being:

- (a) the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i));
- (b) the written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i); and
- (c) the proposed development is in the public interest because it is consistent with the objectives of the zone and the standard in question (cl 4.6(4)(a)(ii)).

The consent authority must form an opinion and be satisfied in respect of (a) (b) and (c) above.

Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the assessment of the reasonableness of the contravention of a development standard the decision of the NSW Land and Environment Court in: *Wehbe v Pittwater Council (2007) LEC 827 (Wehbe)* is relevant to the subject development proposal.

Wehbe identified common (but not exhaustive) tests as a means to seek to establish compliance with the development standard can be shown as unreasonable or unnecessary in the circumstances of the case.

Wehbe identified tests by which compliance with the development standard can be shown as unreasonable or unnecessary in the circumstances of the case.

Of the five methods outlined in *Wehbe* the applicant draws emphasis to the following test:

- *The objectives of the standard are achieved notwithstanding the non-compliance with the standard.*

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 (these have been summarised from the Clause 4.6 request):

- The applicant is of the view that the relevant objectives of the height development standard have been met irrespective of compliance with the standard. The applicant reiterates the importance of considering the proposed development in relation to the approved incentive heights already achieved in DA162/2021 which is 43.5m. An assessment against the relevant objectives is provided below.

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

Whilst the proposal represents significant non-compliance in terms of the 9.5m height control, the four additional floors would result in minor impacts on shadowing, refer to the shadow diagrams:

- In terms of neighbouring development within the Precinct, compliance with the ADG solar access requirements would be maintained for all buildings located on sites toward the south including areas 7, 8 and 10.
- There would be minor impacts on the developments in Duntroon Avenue being an increase in shadowing of 15 minutes from 2:45pm to 3:00pm.
- There would be minor additional overshadowing of the public open space known as Newlands Park from 1pm to 2pm. This maintains compliance with the DCP requirement in that 50% of the public open space would receive 5 hours of solar access from 9am – 2pm.

The Applicant is of the view that the additional floors have undergone a meticulous design process culminating in a thoughtful massing which largely reduces adverse additional overshadowing. This relates to the stepping approach of the upper most levels.

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

The proposed development achieves acceptable privacy and visual impacts as would be acceptable for transit orientated development located within dense urban environments. The extent of the variation is not representative of the proposal's true relationship with the built form of

approved developments. The minimum setback requirements outlined in the ADG for the southern boundary have been exceeded. The approved 6m setback from the northern boundary has been maintained and would be reasonable given the continuation of the defensive design. There would be minimal additional bulk located on this façade and similar privacy measures required by Condition A2 of DA162/2021 are to be implemented. Similarly, the 12m setback from the western boundary has been maintained and complies with the ADG requirements.

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 designed to reduce additional overshadowing as far as practicable. The proposal is the most effective design solution with minimal impact on solar access to the public domain. These impacts are acceptable as the solar access requirements of the DCP have been met, the proposal complies with the incentive height requirements and the Housing SEPP building height requirements. The non-compliant nature of the development has arisen due to the technical Clause 4.6 request, where excavation works have altered “existing” ground level.

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 proposal complies with the incentive height and the Housing SEPP building height requirements. The non-compliant nature of the development has only arisen as excavation works have begun and thus ground level has been modified.

Objective of Part 2 Development for affordable housing
Division 1 In-fill affordable housing

The applicant has also provided an assessment in relation to the objectives of the Housing SEPP which has been summarised below:

Objective 15A: “to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.”

The proposed development includes the allocation of 23 apartments as affordable housing in accordance with the Housing SEPP. To enforce strict compliance with the building height standard would be contrary to the objective of Division 1 In-fill affordable housing particularly when considering the technical nature of the Clause 4.6 written request. The proposed development would provide a 53.5% increase of the total affordable housing required within the Precinct under Part 7 of the LEP. This would provide a significant social benefit for the locality.

Council Planner Comment:

The height limits envisaged for the Precinct under Part 7 and the Housing SEPP have been set with reference to pre-excavated ground levels. Part 7 and the Housing SEPP do not prescribe that the ground level should be referenced from the excavated basement, whilst this is the legal interpretation. It is more prudent to consider the maximum height in relation to the approved incentive height. This represents the desired future character of the Precinct. Enforcing strict compliance with the development standard would prevent the envisaged character and affordable housing being achieved.

The proposed development provides acceptable solar access to the neighbouring properties and the public open space being Newlands Park. This is demonstrated through compliance with the solar access requirements of the ADG where over 70% of the apartments in neighbouring developments would receive more than 2 hours of solar access. The properties at 2 and 6 Duntroon Avenue would be subject to an additional 15 minutes of shading from 2:45 to 3:00 which is considered negligible. The solar access to Newlands Park remains compliant with more than 50% of the park receiving solar access for over 5 hours. The proposed development has been designed in a way to optimise sunlight to the public domain. The impacts on solar access are reasonable and objectives (a) and (c) of the Building Height Standard have been satisfied.

The visual impacts of the development have been discussed in the view loss section later in this report. The impacts on views are a and there are supplementary and secondary views available to affected apartments in most instances. The scale of development prescribed by the Housing SEPP will inherently impact views given the increased density located on residential flat buildings. The extent of the subject view impacts are therefore acceptable. The Part 7 Planning Scheme of the LEP includes cascading maximum building heights to ensure the equitable sharing of views. This approach would be maintained where developments are constructed to the full developable potential of the site as informed by the Housing SEPP bonuses.

The setbacks and privacy measures approved for DA162/2021 are to be implemented for the subject development. This ensures that acceptable privacy is maintained for surrounding developments and the public domain. The impacts on views and privacy are reasonable and objective (b) of the Building Height Standard has been satisfied.

The proposed development maintains the high-quality architectural design approved under DA162/2021. The recommendations of the DRP have been implemented in the proposed development to ensure maximum amenity is achieved. The proposal maintains the design approach to ensure that the development relates to the topography of the site. This provides visual cohesion within the area and maximises solar access to the private and public domains. The proposed development retains this design to ensure that the relationship to the topography of the site is acceptable and as such objective (d) of the Building Height Standard has been satisfied.

Approval of the development application and supporting the Clause 4.6 variation enables the recently introduced desired future character of the area being achieved. The proposed development would provide significant public benefits through the provision of affordable housing. The proposed development would achieve this whilst satisfying the relevant objectives of the building height standard and the Housing SEPP. Accordingly, it would be unreasonable to require strict compliance with the development standard, particularly when considering the technical nature of the variation.

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 to support the variation. The applicant has stated that there are sufficient planning grounds to vary the Building Height development standard as follows:

Approval of DA162/2021 has established that the requirements of the incentive controls have been met. The uplift in density afforded by the Housing SEPP should therefore be relative to the approved development and not the 9.5m LEP height on the technicality resulting from excavated ground level in accordance with the bonus scheme.

The development achieves the envisaged height prescribed by the Housing SEPP and would comply if the excavation had not commenced. The proposed contravention is necessary to achieve a scale that is consistent with the strategic vision of the area as evidenced by incentive building height and floor spaces controls.

The proposal will provide significant public benefit through the allocation of 23 additional affordable housing apartments. This is consistent with the established and desired future character for transit orientated development in accordance with the Housing SEPP. Despite being a technical variation, the proposed development would comply with the maximum FSR which applies to the subject site, even when including the storage and lift lobby areas within the basement (discussed in the Clause 4.6 Variation for FSR section later in this report).

The proposed development provides increased density whilst satisfying the relevant objectives of the Building Height development standard as previously detailed at the beginning of this Clause 4.6 assessment. This has been summarised below:

- Any additional shadowing is acceptable and complies with the relevant ADG and DCP requirements for both the private and public domain.
- The applicant is of the view that there would be no unreasonable impacts on views (refer to view loss analysis section of the report) as the uplift in height is relative to desired future character afforded by the bonuses available through the Housing SEPP.
- The approved setbacks and conditioned privacy measures have been implemented in the subject proposal to ensure acceptable impacts on privacy.
- The proposed development maintains the relationship with the topography of the site, through the proposed design and compliance with the incentive height control plus the 30% bonus in accordance with the Housing SEPP.

The proposed alterations and additions, which constitutes the contravention give better effect to the R4 zone objectives and the strategic intent for the Precinct for the following reasons:

- Provides for the housing needs of the community (within a high-density residential environment) by providing for 24 additional apartments
- Contributing to the variety of housing types within the high-density residential environment including 8 x 1-bedroom, 4 x 2-bedroom and 13 x 3-bedroom apartments and the amalgamation of 2 existing apartments to provide a 5 bedroom townhouse.
- Providing 23 affordable housing apartments in accordance with the Housing SEPP
- Facilitating these additional dwellings on a site within a highly-accessible location which further supports public transport patronage, walking and cycling.

The additional apartments would better satisfy the increasing demand as per Clause 142(1)(d) and Clause 142(1)(e) of Chapter 4 of the Housing SEPP. The provision of 23 affordable housing apartments would also support housing affordability as per Clause 142(1)(f) of Chapter 4 of the Housing SEPP. The proposed development would provide more diverse housing within a development which would have a less intensive greenhouse impact, than that of free-standing dwelling houses constructed on greenfield sites. This would satisfy the aim set out in Clause 142(1)(g) of Chapter 4 of the Housing SEPP relating to the minimisation of non-renewable resources.

The proposed development achieves “good design” and “a density appropriate to the site and its context” in accordance with design quality principle 3 in Schedule 9 of the Housing SEPP. The new dwellings, including the affordable housing, would better “respond to social context by providing housing facilities to suit the existing and future social mix” in accordance with design quality principle 8 in Schedule 9 of the Housing SEPP.

The following key objectives in the EP&A Act and the Lane Cove LEP are better achieved by allowing the contravention:

- In the EP&A Act – the objective in section 1.3(c) to “promote the orderly and economic use and development of land” and section 1.3(g) to “promote good design and amenity of the built environment” for the reasons set out above.
- In the Lane Cove LEP – the aim in clause 1.2(2)(c) to “provide a housing mix and density that accords with urban consolidation principles” and clause 1.2(2)(j) to “increase the number of affordable dwellings in Lane Cove and to promote housing choice” for reasons set out above.

Strict compliance with the development standard would prevent the delivery of public benefit. This would be a suboptimal planning outcome regarding the intent of the Housing SEPP and the sites’ suitability for this form of development given the proximity to public transport. Supporting the development application would achieve a superior planning outcome, which constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control.

The extent of the variation is not in isolation a material consideration as to whether the variation request should be upheld. There is no constraint on the degree to which a consent authority may vary from a numerical stand under clause 4.6 (*GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*). In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for significant variations to be approved in the right circumstances.

Council Planner Comment:

There are sufficient planning grounds to support the contravention of the Building Height development standard including:

- The proposed development would provide significant public benefit through the allocation of an additional 23 affordable housing apartments within the Precinct. This is consistent with the established character with reference to Part 7 of the LEP and Council’s master plan where 43 affordable housing apartments are to be provided across the Precinct. This is also consistent with the desired future character for transit orientated development as informed and afforded by the Housing SEPP. The proposal would provide a 53.3% uplift of affordable housing, appropriately located within proximity to St Leonards Railway Station, Royal North Shore Hospital and the education facilities provided throughout the North Sydney area.
- The Clause 4.6 variation request has arisen due to the commencement of excavation works on site. Had works not begun, the proposal would strictly comply with the requirements of the Housing SEPP and the Clause 4.6 request would not be required. It would be a suboptimal planning outcome to prevent the delivery of affordable housing, as envisaged by the Housing SEPP, based on a technical variation resulting from the commencement of excavation works.
- The proposed development should be considered with reference to the strategic vision of the area including the incentive heights achieved under Part 7 of the LEP and the desired future character as informed by the Housing SEPP. Whilst an assessment against the base controls is necessary, the significant numerical variation is not indicative of the impacts of the proposed development or its relationship with approved development or the desired future character of the locality.
- The proposed development satisfies the relevant objectives of the Building Height development standard as previously discussed:

- The relevant solar access provisions of the DCP and ADG have been satisfied and overshadowing has been minimised through the design of the upper levels where practical.
 - The visual impact of the development is acceptable, as discussed in the view loss section later in this report.
 - The approved setbacks and privacy measures conditioned within the original DA162/2021 remain relevant and have been maintained to ensure that adverse privacy impacts are mitigated.
 - The proposed development retains the stepped massing at the upper levels to maintain the relationship with the topography of the site.
- The proposed development satisfies the relevant objectives of the R4 zone and strategic vision for development within the St Leonards South Precinct:
 - The proposal provides for the housing needs of the community within a high-density residential environment without any unreasonable impacts.
 - The proposal provides a variety of housing types within the high-density residential environment.
 - The proposal provides an additional 23 affordable housing apartments, which are in accordance with the Housing SEPP.
 - These additional dwellings are provided on a site within a highly accessible location which supports public transport patronage, walking and cycling.

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 proposed variation to the height standard of LCLEP 2009 is justified and is supported in the circumstances of this case. The development satisfies the objectives of the control and the criteria outlined in Clause 4.6. As such, the variation is considered to be well founded and would achieve a better planning outcome than enforcing strict compliance with the standard.

It is recommended that the Clause 4.6 request for Height is supported.

Clause 4.6 Written Request – Floor Space Ratio

A maximum floor space ratio of 0.5:1 applies to the site under LCLEP 2009, refer to **Figure 14** below.

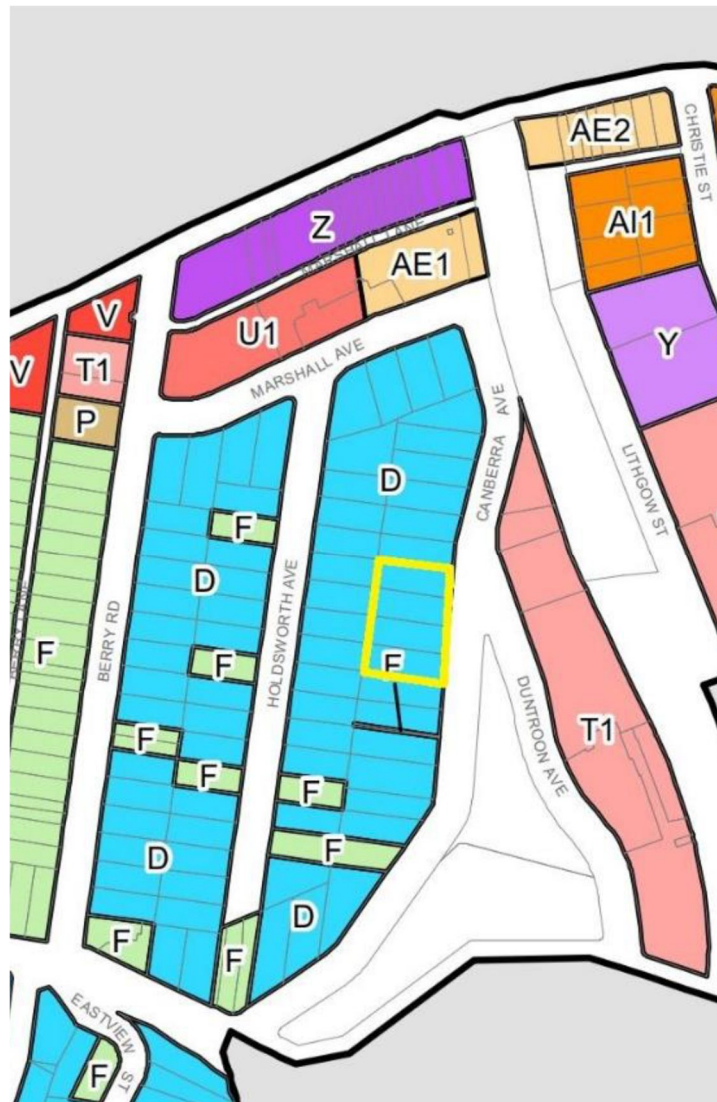


Figure 14: Base FSR Map (D=0.5:1) (Source: Council LEP)

The proposed development would achieve a floor space ratio of 4.71:1 and a gross floor area of 12,388m². This is a variation from the 0.5:1 base control plus the 30% Housing SEPP bonus which would permit an FSR of 0.65:1.

Again, the Clause 4.6 and reliance on the base LEP controls is the required planning pathway to facilitate the affordable housing bonus, as detailed at the beginning of the Clause 4.6 section in this report.

Justification for Contravention of the Development Standard:

Consistent with the judgment of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC (Initial Action)*, for there to be power to grant development consent for a proposal that contravenes a development standard, clause 4.6 (4)(a) requires that the consent authority, be satisfied by three matters before granting consent to a development which varies a development standard being:

- (a) the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i));

- (b) the written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i); and
- (c) the proposed development is in the public interest because it is consistent with the objectives of the zone and the standard in question (cl 4.6(4)(a)(ii)).

The consent authority must form an opinion and be satisfied in respect of (a) (b) and (c) above.

Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the assessment of the reasonableness of the contravention of a development standard the decision of the NSW Land and Environment Court in: *Wehbe v Pittwater Council (2007) LEC 827 (Wehbe)* is relevant to the subject development proposal.

Wehbe identified common (but not exhaustive) tests as a means to seek to establish compliance with the development standard can be shown as unreasonable or unnecessary in the circumstances of the case.

Wehbe identified tests by which compliance with the development standard can be shown as unreasonable or unnecessary in the circumstances of the case.

Of the five methods outlined in *Wehbe* the applicant places emphasis on the following test:

- *The objectives of the standard are achieved notwithstanding the non-compliance with the standard.*

Further, in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, the Chief Judge said (at[34]) that:

Establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary.

The applicant sets out to demonstrate that the proposed variation would not result in an environmental harm (of the kind that the objectives seek to avoid).

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 (summarised):

- The objectives of the FSR development standard have been met irrespective of strict compliance with the numerical standard. The applicant reiterates the importance of considering the proposed development in relation to the approved incentive FSR already achieved in DA162/2021 and the bulk, scale and character of approved development within the locality:

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

While the proposal includes a significant non-compliance in terms of the FSR, the proposed development would result in a bulk and scale which is compatible with recent approvals within the Precinct. This is consistent with the decision in *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115* at [53], [54] and [56] that the bulk and scale of the locality is defined by recent

approvals (which have benefited from incentive floor space in this instance) and not defined by the base FSR development standard. Recent approvals have been provided in the following **Table 12**.

Table 12 – Height and FSR of recently approved development in the Precinct			
DA No. and Address	Approved Height	Approved FSR	Allowable FSR + 30%
DA162/2021 13-19 Canberra Avenue	44.7m	3.32:1	4.81:1
DA99/2021 21-41 Canberra Avenue and 18-32 Holdsworth Avenue	36.8m	2.6:1	3.38:1
DA60/2022 21-31 Holdsworth Avenue, 22-23 Berry Road and 44-46 River Road	31m	2.6:1	3.38:1
DA79/2022 1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue.	64.8m	3.85:1	5:1

Reference is also made to *Big Property Pty Ltd v Randwick City Council [2021]*, where it was found that the in-fill affordable housing must be considered within the desired future character of the area. Thus, the applicant is of the view that the proposal is not only compatible with the floor space density of the Precinct but is also consistent with the bulk and scale as informed and encouraged by the relevant SEPPs which promote this level of density for transit orientated developments.

Objective of Part 2 Development for affordable housing **Division 1 In-fill affordable housing**

Objective 15A: “to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.”

The proposed development includes the allocation of 23 apartments as affordable housing in accordance with the Housing SEPP. To enforce strict compliance with the FSR standard would be antipathetic to the objective of Division 1 In-fill affordable housing particularly when considering the technical nature of the FSR variation. The proposed development would provide 53.5% of the total affordable housing required within the precinct which, provides a significant social benefit being delivered to the locality.

Council Planner Comment:

The proposed development attains a bulk and scale similar to that of recently approved development within the Precinct. The proposal would achieve this increased FSR whilst maintaining acceptable amenity for surrounding development, as detailed throughout the report.

The development would provide significant public benefit through the in-fill affordable housing, whilst being aligned with the desired future character for high density transit-oriented development.

The FSR envisaged for the Precinct under Part 7 and the Housing SEPP have been set with reference to pre-excavated ground levels. Part 7 and the Housing SEPP do not prescribe that ground level should be referenced from the excavated basement, whilst this is the legal interpretation. Council considers that it is more prudent to consider the FSR variation in relation to the incentive FSR achievable under Part 7 of the LEP inclusive of the 30% bonus afforded by the Housing SEPP. This now represents the desired future character of the Precinct and enforcing strict compliance with the development standard would not achieve this envisaged character or the affordable housing.

Notwithstanding, the proposed variation of the FSR development standard complies with the Housing SEPP being an uplift of 27.3% where 30% is permitted. This SEPP has informed the acceptable bulk and scale and enforcing strict compliance would not achieve the desired future character as established by the Housing SEPP.

It is considered that the proposal satisfies the objectives of the standard, and the Housing SEPP, notwithstanding the non-compliance with the standard. Therefore, it is unreasonable to enforce strict compliance with the development standard.

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. The applicant has stated that there are sufficient planning grounds to vary the FSR development standard as follows (summarised):

Approval of DA162/2021 has established that the requirements of the incentive controls have been met. The uplift in density afforded by the Housing SEPP should therefore be relative to the approved development and not the 0.5:1 LEP FSR, on the technicality resulting from excavated ground level. Whilst the proposal would attain an FSR of 4.71:1 when calculated in accordance with the definition of existing ground level, this interpretation is technical in nature.

The proposal represents the envisaged FSR prescribed by the Housing SEPP. The proposed development would comply with the Housing SEPPs bonus. The proposed contravention is necessary to achieve a scale that is consistent with the strategic vision of the area.

The proposed development will provide significant public benefit through the allocation of 23 additional affordable housing apartments. The proposed development would subsequently benefit from increased density in accordance with the Housing SEPP. This is consistent with the established and desired future character for transit orientated development in accordance with the Housing SEPP.

The proposed development would satisfies the relevant objectives of the FSR development standard as detailed in the previous section of this Clause 4.6 assessment. The applicant is of the view that the FSR is consistent with the bulk, scale and character of developments in the area. This is evidenced through satisfaction of the incentive controls under Part 7 of the LC LEP and satisfaction of the Housing SEPP objective of providing a diverse range of in-fill affordable housing.

The proposed alterations and additions give better effect to the R4 zone objectives and the strategic intent for redevelopment of the St Leonards South Precinct than the approved development for the following reasons:

- Providing for the housing needs of the community (within a high-density residential environment) by providing for 24 additional apartments;
- Contributing to the variety of housing types within the high-density residential environment including 8 x 1 bedroom, 4 x 2 bedroom and 13 x 3 bedroom apartments including the amalgamation of 2 existing apartments to provide a 5 bedroom townhouse;
- Providing 23 affordable housing apartments in accordance with the Housing SEPP; and
- Including additional dwellings on a site within a highly-accessible location, further supporting public transport patronage and also promoting walking and cycling.

The additional apartments would better satisfy the increasing demand as per Clause 142(1)(d) and Clause 142(1)(e) of Chapter 4 of the Housing SEPP. The provision of 23 affordable housing apartments would also support housing affordability as per Clause 142(1)(f) of Chapter 4 of the Housing SEPP. The proposed development will provide more diverse housing within a development which would have a less intensive greenhouse impacts. This would satisfy the aim set out in Clause 142(1)(g) of Chapter 4 of the Housing SEPP relating to the minimisation of non-renewable resources.

The proposed development achieves “good design” and “a density appropriate to the site and its context” in accordance with design quality principle 3 in Schedule 9 of the Housing SEPP. The new dwellings, including the affordable housing, would better “respond to social context by providing housing facilities to suit the existing and future social mix” in accordance with design quality principle 8 in Schedule 9 of the Housing SEPP.

The following key objectives in the EP&A Act and the LC LEP are better achieved by allowing the contravention:

- In the EP&A Act – the objective in section 1.3(c) to “promote the orderly and economic use and development of land” and section 1.3(g) to “promote good design and amenity of the built environment” for the reasons set out above.
- In the Lane Cove LEP – the aim in clause 1.2(2)(c) to “provide a housing mix and density that accords with urban consolidation principles” and clause 1.2(2)(j) to “increase the number of affordable dwellings in Lane Cove and to promote housing choice” for reasons set out above.

Strict compliance with the development standard will result in an inflexible application of development controls and will prevent the delivery of public benefit. This would be a suboptimal planning outcome with regard to the intent of the Housing SEPP and given that the surrounding area is suitable for this form of development given the proximity to public transport. Supporting the development application will achieve a superior planning outcome, which constitutes sufficient environmental planning ground to warrant the proposed variation to the FSR development standard.

The size of the variation is not in isolation a material consideration as to whether the variation request should be upheld. There is no constraint on the degree to which a consent authority may vary from a numerical stand under clause 4.6 (*GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*). In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for significant variations to be approved in the right circumstances.

Council Planner Comment:

There are sufficient planning grounds to support the variation of the FSR development standard including:

- The proposal will provide significant public benefit through the allocation of an additional 23 affordable housing apartments within the Precinct. This is consistent with the established character with reference to Part 7 of the LEP and Council's Master Plan where 43 affordable housing apartments are to be provided across the Precinct. This is also consistent with the desired future character for transit orientated development as informed and afforded by the Housing SEPP. The proposal would provide a 53.3% uplift of affordable housing, appropriately located with proximity to St Leonards Railway Station, Royal North Shore Hospital and the education facilities provided throughout the North Sydney area. Refer to pages 26 – 32 of **Annexure 6** which is a social infrastructure study for the St Leonards and Crows Nest area.
- The proposed contravention and Clause 4.6 variation request has arisen due to the commencement of excavation works on site. Had works not begun, the proposal would strictly comply with the requirements of the Housing SEPP and the Clause 4.6 request would not be required. It would be a suboptimal planning outcome to prevent the delivery of affordable housing, as envisaged by the Housing SEPP, based on a technical variation resulting from the commencement of excavation works.
- The proposed development should be considered with reference to the strategic vision of the area including the incentive heights achieved. Whilst an assessment against the base controls is necessary, the significant numerical variation is not indicative of the impacts of the proposed development or its relationship with approved development or the desired future character of the locality.
- The development satisfies the relevant objectives of the FSR development standard as previously discussed:
 - The proposed development achieves an FSR that is consistent with the desired future character of the Precinct and is consistent with the envisaged density of transit-oriented development.
- The proposed development satisfies the relevant objectives of the R4 zone objectives and strategic vision for development within the St Leonards South Precinct:
 - The proposal provides for the housing needs of the community within a high-density residential environment without any unreasonable impacts;
 - The proposal provides a variety of housing types within the high-density residential environment;
 - The proposal provides an additional 23 affordable housing apartments, which are in accordance with the Housing SEPP; and
 - These additional dwellings are provided on a site within a highly accessible location which supports public transport patronage, walking and cycling.

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 proposed variation to the floor space ratio of LCLEP 2009 is justified and is supported in the circumstances of this case. The development satisfies the

objectives of the control and the criteria outlined in Clause 4.6. As such, the variation is considered to be well founded and would achieve a better planning outcome than enforcing strict compliance with the standard.

It is recommended that the Clause 4.6 request for FSR is supported.

View Sharing Analysis for the Clause 4.6 assessment

The Clause 4.6 assessment requires that the objectives of the development standards are considered which includes visual impacts.

The Tenacity principle is a 4-step test implemented by the Land and Environment Court for the purposes of view loss assessment. The test was established in *Tenacity Consulting v Warringah [2004] NSWLEC 140* appeal. The objectives of the B.4 View sharing section of the Lane Cove Council DCP 2010 outline the key components of this 4-step view sharing principle.

The four steps of the Tenacity principle area as follows:

- **Step 1.** Assessing the types views to be affected. Water views are valued more highly than land views. Iconic views are valued higher than views without icons. Whole views are valued more highly than partial views.
- **Step 2.** Assessing what part of the property the views are obtained. Views over the rear or front boundary area favoured where side views are harder to protect. Seated views are harder to protect than standing views and living rooms and kitchens are more valuable than non-habitable rooms such as bedrooms.
- **Step 3.** Assessing the extent of the impact. This must consider views obtained from the whole property and not just from the location where a view is most affected.
- **Step 4.** Assessing the reasonableness of the proposal. A proposal which is fully compliant is more reasonable than one which doesn't comply, and, proposals which have been skilfully designed are considered more reasonable.

The applicant has provided a view loss analysis in the statement of environmental effects. This analysis includes images taken from drones to provide a perspective view from future developments throughout the Precinct. The drone images were taken from the perceived locations of key area's such as roof top communal open spaces and upper floors. The RLs were obtained from approved plans and surveys to provide an accurate assessment of the subject views. The following map in **Figure 15** identifies the impacted areas for the following view loss analysis.

Table 13 – Areas assessed in the view analysis relating to Figure 15

Area	Address	Approved / Assumed building envelope
Area 1	1-5 Canberra Avenue and 2-4 Marshall Avenue	Approved building envelope
Area 2	6-8 Marshall Avenue and 2 Holdsworth Avenue	Approved building envelope
Area 3	7-11 Canberra Avenue	Assumed building envelope
Area 4	4-8 Holdsworth Avenue	Approved building envelope
Area 6	10-16 Holdsworth Avenue	Assumed building envelope
Area 12	1-3 Holdsworth Avenue and 10-12 Marshall Avenue	Approved building envelope

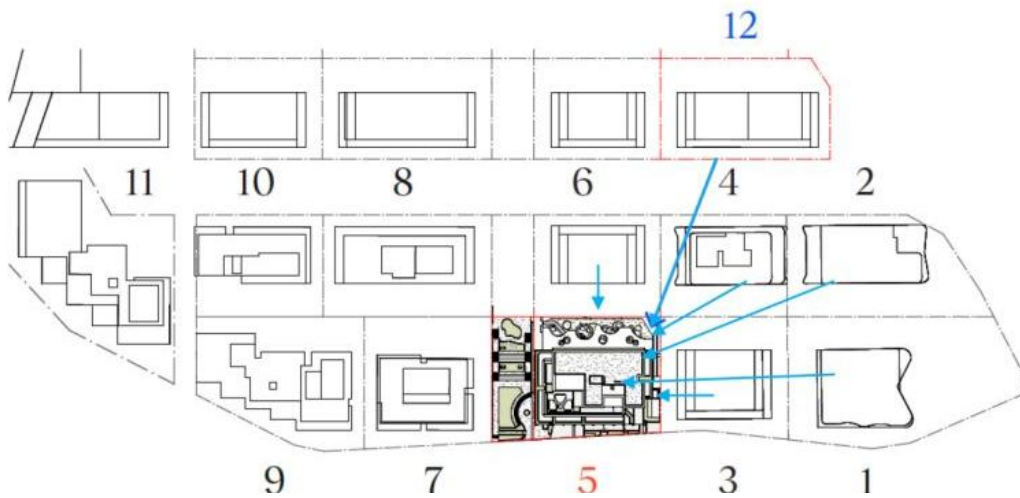


Figure 15: Map indicating areas assessed in view analysis. (Source: Council Planner)

Context for views

It is important to consider the context of any view loss in relation to the Housing SEPP. This SEPP has ultimately changed the desired future character of the St Leonards South Precinct. The envisaged character of the area now includes residential flat buildings with an uplift in accordance with the maximum building height and FSR bonuses. All sites can implement the 20-30% bonuses which is now the full developable potential of the site. The Department of Planning has received a state significant development application for another area in the Precinct which intend on utilising the Housing SEPP bonuses. (ref: SSD-69615233)

The sharing of views was considered in the design of the Precinct Master Plan. This included cascading height controls to enable the fair and equitable sharing of views. The views include district views across Sydney and significant views towards the south including Sydney Harbour, the Harbour Bridge and the City Skyline. If the sites within the Precinct achieve the full developable potential, then the impacts on views would be relative. The cascading height intent would still be achieved given all sites could benefit from the 20-30% bonuses. This has been demonstrated in the following images which represent the most impacted areas.

Area 1 view assessment

Step 1: The subject view contains significant features such as Sydney Harbour, the City Skyline and the Harbour Bridge. The view is partially obstructed by developments, foliage and headlands located in the middle ground of the images in **Figures 16 and 17**, see below.

Step 2: The subject view is obtained from Level 17 which is the second highest level of the approved development. The view is from standing position 1.5m above the finished floor level (RL118.9). The view would be obtained from the dining room and balcony of the subject apartment. See **Figure 18** below for the approved floor plate.

Step 3: There would be minor view impacts in this instance. The City and Harbour Bridge views would be unobstructed and small portions of district views and distant land and water interfaces would be impacted.

Note: The proposed development would be fully concealed in the instance that Area 3 is developed to the full potential in accordance with the Housing SEPP bonuses. Accordingly, there would be no impacts on views as seen in **Figure 17** below.



Figure 16: Comparison of proposed impact on views from Area 1 (left indicated approved, right indicates proposed). (Source: Applicant)

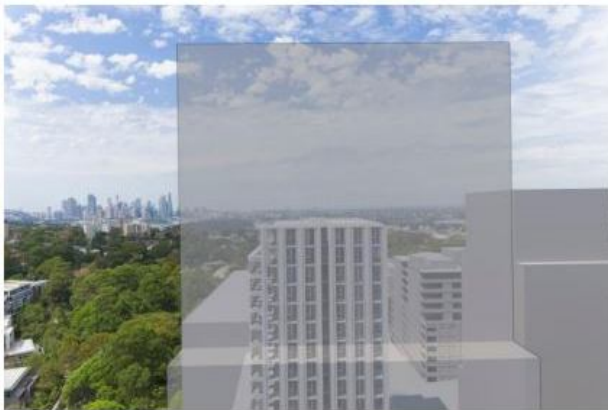


Figure 17: Proposed impact on views from Area 1, if Area 3 and 6 benefit from bonuses afforded by the Housing SEPP (Source: Applicant)

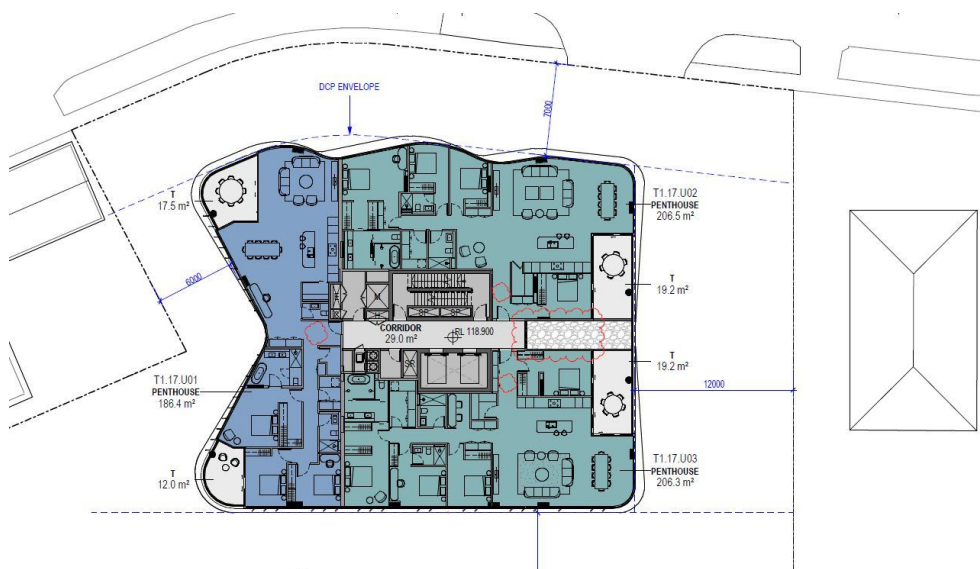


Figure 18: Approved floor plate of Area 1 (Source: Council Planner)

Area 2 view assessment

Step 1: The subject view contains significant features such as Sydney Harbour, the City Skyline and the Harbour Bridge. The view is partially obstructed by developments, foliage and headlands located in the middle ground of the images in **Figures 19** and **20**, see below.

Step 2: The view would be obtained from the roof top communal open space of the approved development at 6-8 Marshall Avenue and 2 Holdsworth Avenue. The view is from a standing position 1.5m above the finished floor level (RL119.7). The view would be obtained over the side and rear boundaries.

Step 3: There would be minor impacts on the significant views. The City and Harbour Bridge views would be unobstructed and small portions of district views and distant land and water interfaces would be impacted.



Figure 19: Comparison of proposed impact on views from Area 2 (left indicated approved, right indicates proposed). (Source: Applicant)



Figure 20: Proposed impact on views from Area 2, if Area 3 and 6 benefit from bonuses afforded by the Housing SEPP (Source: Applicant)

Area 3 view assessment

Note: There is no approved or proposed development being considered for this site.

Step 1: The subject view contains the City Skyline and the significant features which are not included in the image include Sydney Harbour and the Harbour Bridge. The view is partially obstructed by developments, foliage and headlands located in the middle ground of the images to the left hand side of the development as shown in **Figure 21** below.

Step 2: The view is obtained from an assumed roof top communal open space for the potential development at 7-11 Canberra Avenue. The view is from a standing position 1.5m above what

would be the finished floor level (RL111.55). This is derived from the surveyed known ground level adjacent to the site. The view would be obtained over the side boundary.

Step 3: There would be moderate impacts on views. There would be a severe impact upon some district views toward the west and moderate views on the City Skyline. There would be no impacts on the significant views of the Harbour Bridge and Sydney Harbour.

Note: If the development at Area 3 incorporated the affordable housing bonus of 30% for height there would be a considerable difference of approximately 14m which would reduce the extent of impacts shown in **Figure 21** below.



Figure 21: Comparison of proposed impact on views from Area 3 (left indicated approved, right indicates proposed). (Source: Applicant)

Area 4 view assessment

Step 1: The subject view contains significant features such as Sydney Harbour, the City Skyline and the Harbour Bridge. The view is partially obstructed by developments, foliage and headlands located in the middle ground of the images in **Figure 22** below.

Step 2: The view is obtained from the roof top communal open space of the approved development at 4-8 Holdsworth Avenue. The view is from a standing position 1.5m above the finished floor level (RL119.7). The view would be obtained over the side and rear boundary.

Step 3: There would be severe impacts on the significant views of the Harbour bridge with minor portions of the City Skyline and district views of north Sydney retained. District views and water interface views towards western Sydney would be available to the right-hand side of the image provided in **Figure 22** below.



Figure 22: Comparison of proposed impact on views from Area 4 (left indicated approved, right indicates proposed). (Source: Applicant)

Area 6 view assessment

Note: There is no approved or proposed development being considered for this site.

Step 1: The subject view does not contain any significant features. District views of the surrounding locality are provided and are partially obstructed by surrounding developments. Refer to **Figure 23** below.

Step 2: The view is obtained from the perceived roof top communal open space of a future development at 10-16 Holdsworth Avenue. The view is from a standing position 1.5m above the finished floor level (RL107.5). This has been derived from the surveyed known ground level adjacent to the site. The view would be obtained over the side and rear boundaries.

Step 3: There would be severe impacts on these district views. They are not considered to be significant views and there would be panoramic supplementary and secondary views available.



Figure 23: Comparison of proposed impact on views from Area 6 (left indicated approved, right indicates proposed). (Source: Applicant)

Area 12 view assessment

Step 1: The subject view contains highly obstructed views of significant features such as the City Skyline and the Harbour Bridge. The views would be largely obstructed by approved developments within the Precinct, as seen in **Figures 24** and **25** below.

Step 2: The subject view is obtained from the approved communal open space of the development at 1-3 Holdsworth Avenue and 10-12 Marshall Avenue. The view is from standing position 1.5m

above the finished floor level (RL108.05). The view is obtained across the side and rear boundaries of the site.

Step 3: There would be minor impacts on these views. There would be no impact on the partial views of the City Skyline and the Harbour Bridge and there would be moderate impacts on the district views towards North Sydney. There are supplementary and secondary views to the west / right hand side of the City Skyslines provided in this image.

Note: The proposed development would be fully concealed in the instance that Area 3 and 6 are constructed to the full potential in accordance with the Housing SEPP. Therefore, there would be no impacts on views as seen in Figure 25 below.



Figure 24: Comparison of proposed impact on views from Area 12 (left indicated approved, right indicates proposed). (Source: Applicant)



Figure 25: Proposed impact on views from Area 12, if Area 3 and 6 were to benefit from bonuses afforded by the Housing SEPP (Source: Applicant)

View loss outside the Precinct

There are likely to be minor view impacts on development outside of the Precinct. Most of the view corridors for surrounding development outside of the Precinct would already be subject to impacts from approved developments. These impacts are inherent given that the site is located within a transitioning precinct. For instance, Area 1 has an allowable height of 19 storeys which is higher than the proposed development. All view corridors between buildings and over the canopy of the green spines would be maintained as the proposed additional mass would be located directly on top of the approved development. These impacts are reasonable as the proposed development complies with the bonuses of the Housing SEPP and these impacts are inherent for the scale of development envisaged by the Housing SEPP.

Step 4: Assessing the reasonableness of the proposal

The proposed development achieves an envelope which is consistent with the bulk, scale and character of transit orientated development as informed by the Housing SEPP. This character includes high density residential flat buildings, inclusive of the development standard bonuses. The proposed development would be constructed in accordance with the development standard bonuses afforded by the Housing SEPP. The Clause 4.6 requests are recommended to be supported as the variations are technical and resulting from works having commenced on site. Accordingly, it is considered that the proposed development is fully compliant with respects of the relevant SEPP and LEP requirements.

The proposed development is consistent with the approved varied setbacks and otherwise is compliant with the ADG and the DCP Controls.

View corridors are maintained between the buildings and over the green spine canopy. Where views are impacted by the proposal, increased setbacks beyond the DCP requirements would result in a negligible benefit to views enjoyed by neighbours.

The view loss analysis illustrates that there would be a range of view impacts from minor to severe from the assumed and approved communal roof top areas. The individual apartments located within these developments would also be subject to varying view impacts. These impacts are an inherent byproduct of a transitioning dense urban environment. Supplementary and secondary views are provided throughout the Precinct with panoramic district views available in some instances. Supplementary views can be obtained over the green spine canopy and through site links for the lower apartments.

The scale of development prescribed by the Housing SEPP will result in impacts on views given the incentive is to increase the density of residential flat buildings. The proposed development satisfies the requirements of the Housing SEPP and would be constructed in accordance with the development standards bonuses. Accordingly, the proposed development achieves reasonable view sharing and further amendments to the design would be unwarranted in the circumstance.

Conclusion on views

The proposed development is considered reasonable in terms of view sharing. On average there would be minor impacts on the significant views enjoyed, and there would be supplementary district views provided in most instances. There is no alternate location for the increased density due to the single tower design. The Housing SEPP prescribes this scale of development, and it is accepted that some level of view loss is inevitable. The subject view impacts are reasonable given the site is located within a transitioning dense urban environment and any amendments would result in negligible benefit in terms of significant views.

4.15 (iii) Any development control plan:

Lane Cove Development Control Plan 2010 – Other Sections

The Lane Cove DCP 2009 (the “DCP”) and other related plans are overridden by the Housing SEPP requirements where there is an inconsistency, in accordance with Section 8, Chapter 1 of the SEPP (Housing) 2021. The relevant sections of DCP have been addressed in the following **Table 14** and through **referrals** where necessary:

Table 14 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
Development Engineer and Civil Engineer	Part O – Stormwater Management	<p>Satisfactory – The proposal was accompanied by stormwater plans which indicates that the additional apartments would be connected to the existing drainage systems. Council's Hydraulic Engineer has no concerns with the proposed development and provided the following comments:</p> <p><i>There is no increase in impervious area. No additional conditions are required</i> (in addition to the conditions imposed under DA162/2021).</p> <p>The appropriate engineering conditions have been recommended, refer to Annexure 1.</p>
Traffic Engineer	Part R – Traffic, Transport and Parking	<p>Satisfactory – The proposal was accompanied by an updated traffic report and basement level plans which detail the additional parking spaces and impacts on traffic. Council's Traffic Engineer has no concerns with the proposed development.</p> <p>The appropriate traffic conditions have been recommended, refer to Annexure 1.</p>
Waste Management	Part Q – Waste management and Minimisation	<p>Satisfactory – The proposal was accompanied by an updated operational waste management plan. This report confirms that the ground floor waste holding room meets the minimum area requirements.</p> <p>Further clarification was provided by the applicant confirming that the garage chute would be extended throughout all the proposed levels and terminate at level 17.</p> <p>The appropriate waste management conditions have been recommended, refer to Annexure 1.</p>
Landscaping	Part J – Landscaping	<p>Satisfactory – The proposal was accompanied by an updated landscape plan as required by Part J - Landscaping. There are no changes to the deep soil landscaping provided and it is only the relocation of the communal roof top garden which is changed. This area is maintained and relocated from level 12 to level 16.</p> <p>The appropriate landscaping conditions have been recommended, refer to Annexure 1.</p>
Tree Preservation	Part J – Landscaping	<p>Satisfactory – The proposal does not include any works which would impact retained or proposed</p>

Table 14 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
		trees. The appropriate tree preservation conditions have been recommended, refer to Annexure 1 .

4.15 (1) (b) Impacts of development:

The proposal will not adversely impact neighbouring properties or the public domain in terms of overshadowing, visual privacy, acoustic privacy, or traffic and parking. The proposal presents a development outcome that is consistent with the objectives of the relevant planning controls. This ensures that the development doesn't adversely impact the amenity of surrounding developments.

The proposal achieves a development which is consistent with the desired future character as informed by the Chapter 2 of the Housing SEPP. The proposed development satisfies all the non-discretionary standards and is consistent with the objectives and principles of Chapter 4 of the Housing SEPP. Accordingly, the proposal would not have unreasonable impacts on neighbouring properties or the public domain.

The proposed development complies with the solar access provisions of the DCP and the ADG. Visual and acoustic privacy has been achieved through a defensive design and privacy mitigation measures where necessary. Council's traffic team have supported the proposed basement plan and have confirmed that parking is acceptable as it complies with the requirements of the Housing SEPP. The impacts on views are reasonable as detailed in the view loss section of the report.

4.15 (1) (c) Suitability of site:

The site suitability has been established through the Housing SEPPs identification as being within an "accessible area", being 450m walking distance from St Leonards Railway Station. The proposal would appropriately locate affordable housing in proximity to key areas such as Royal North Shore Hospital and the education facilities located in North Sydney. Refer to pages 26 – 32 of **Annexure 6** which is a social infrastructure study for the St Leonards and Crows Nest area.

The site suitability is also established at the strategic planning stage, being located in the St Leonards South Precinct which has been designed to cater for the needs of a transitioning high density precinct. The proposed development is also permissible in the zone.

The proposed development would positively contribute to the amenity of the site and surrounding area. The proposed development would not constrain the subject site or neighbouring sites.

4.15 (1) (d) Response to notification:

Council received 17 submissions in response to the notification period. The concerns have been summarised in **Table 15** below.

Table 15 – Summary of submissions and Council's response

Sydney North Planning Panel Meeting 07 August 2024
13-19 CANBERRA AVENUE, ST LEONARDS

CONCERNS RAISED IN SUBMISSIONS	RESPONSE
Submission in support This will provide needed affordable housing in proximity to appropriate buildings such as Royal North Shore Hospital.	Refer to pages 26 – 32 of Annexure 6 which is a social infrastructure study for the St Leonards and Crows Nest area.
Overshadowing to Newlands Park and Adjoining properties at Duntroon Avenue and River Road - Overshadowing will be excessive	The proposed development has been carefully designed to minimise overshadowing. The proposed development complies with the solar access requirements of the ADG and DCP. The proposed development also satisfies the Housing SEPP 2021 requirements and therefore the impacts on shadowing are considered reasonable, refer to the height Clause 4.6 for further detail.
Breach of Planning Laws - The proposed development breaches existing planning laws	The proposed development has been lodged in accordance with the required planning legislation and complies with the Housing SEPP. The proposed development does not breach any planning laws or regulations.
Disregard for initial approvals - The proposed development disregards the consents previously granted.	The development application is proposed in accordance with the Housing SEPP which has changed the desired future character of the Precinct. This character now includes increased density and increased amounts of affordable housing apartments in accordance with the SEPP.
Ground level calculation - Ground level should be measured from the excavated level and thus the application should be refused.	The interpretation of existing ground line has been established by the Land & Environment Court caselaw.
Master Plan not being adhered to - The proposed development does not give regard to the master plan.	The proposed development has been lodged in accordance with the required planning legislation and complies with the Housing SEPP which overrides the Master Plan.
View Sharing - Loss of views	The impacts on views are reasonable. Refer to view loss analysis earlier in this report.
Height - In excess of LEP and DCP controls. - The 30% height bonuses and additional 5 levels is too much (4 additional levels are proposed as detailed in the proposal section) - The height increase should be from the approved height of the dwelling and not based on the maximum allowable height.	The proposed development complies with the height bonus afforded by the Housing SEPP.
FSR - The calculation ought to be correct (the proposed development should not be able to benefit from increased FSR)	The proposed development complies with the FSR bonus afforded by the Housing SEPP.
Loss of Privacy and Amenity	The proposed development would not unreasonably impact the privacy or amenity of neighbour developments. The proposal has

Sydney North Planning Panel Meeting 07 August 2024
13-19 CANBERRA AVENUE, ST LEONARDS

	been designed to comply with the objectives of the Apartment Design Guide with regards to privacy and amenity. Refer to ADG assessment earlier in this report.
Not suitable for affordable housing - What is the layout of the affordable apartments and are the suitable? - How can the cost of new apartments work with affordable housing?	There are no changes to the high-quality finishing, layout or amenity for the apartments which would be dedicated as affordable housing. The affordable housing has been distributed throughout the development, refer to Table 5 earlier in this report. The proposed development has been lodged in accordance with the required planning legislation and complies with the Housing SEPP for infill Affordable Housing.
Wind impacts - an updated wind report ought to be provided for assessment.	An updated wind report from Windtech dated 12 April 2024 was accompanied the development application. The recommendations of the wind impacts report have been implemented in the design and are considered acceptable in mitigating associated wind impacts.
Property Value - Loss in value	Property value is not a matter for consideration in the Environmental Planning and Assessment Act 1979.
Traffic - Does not address traffic volume impact - Amount of traffic movement is unacceptable. - Traffic study assumptions flawed.	A traffic and car parking assessment report was submitted with the DA. The application was referred to Council's traffic engineer who confirmed the traffic impacts would be acceptable. The proposed development satisfied the requirements of the Housing SEPP for Transport Oriented Development which promotes the use of St Leonards South train station.
DCP non-compliance - Does not meet DCP storeys control	The DCP controls are not a matter of consideration as the Housing SEPP 2021 overrides the requirement to assess the development against Council's DCP. The proposed development satisfies the design related requirements and ADG requirements as discussed throughout the report.
Precedent - Approval of the application would result in a precedent being created regarding acceptable heights within ST Leonards South and Lane Cove Council.	The proposed development satisfies the requirements of the Housing SEPP and provides affordable housing as required. The proposed development meets the desired future character of the area as provisioned by the Housing SEPP.
Public utilities are inadequate - The existing public utilities are inadequate for the increased density.	The St Leonards South Precinct includes significant additional public utilities and infrastructure including:

	<ul style="list-style-type: none"> • 1 x major park, • 5 x pocket parks, • 2 x childcare centres, • 65 x affordable housing units, • New road linking Park and Berry • East/West public pedestrian and cycle link from Canberra Avenue to the Major Park, <p>Beyond this all developments are required to pay a SLS Section 7.11 monetary contribution levied on developers at the development application stage to help pay for additional community facilities and/or infrastructure.</p>
<p>Lack of facilities for future occupants</p> <p>- There is a lack of facilities for the future occupants of St Leonards South area including:</p> <ul style="list-style-type: none"> • No cinema • No swimming pool • No tennis courts • No theatre 	<p>The master plan for the Precinct has ensured that there are ample facilities for the future occupants of St Leonards South.</p> <p>The development is located across the road from the future Newlands Park.</p> <p>Within the approved development alone there would be a cinema, swimming pool, music room, wine room, communal rooftop space, child care facility and high quality landscaping areas.</p>

4.15 (1) (e) Public interest:

The proposal would not have an unreasonable impact on neighbouring properties or the public domain with regard to the Lane Cove LEP 2009, Lane Cove DCP 2009 or any other environmental planning instruments. Therefore, approval of this application would not be contrary to the public interest.

7. Contributions

7.11 Contribution

The 7.11 contribution has been considered with regards to the additional apartments located on levels 12 – 17. There are 28 total apartments located on levels 12 – 17, however a 7.11 contribution has already been accounted for some apartments as indicated in **Table 16** and discussed as follows:

Whilst 2 x two bedroom townhouse apartments have been amalgamated on the ground floor level, these be joined to make a five bedroom townhouse and therefore no 7.11 credit should be given as the density remains similar.

There were 3 x three bedroom apartments on level 12 which have already been accounted for through the 7.11 condition on the original consent for DA162/2021. Therefore, these apartments have been excluded from the following calculations, see **Table 16** below.

The recent Court modification approved an additional level which facilitated 2 additional 4 bedroom apartments. The consent issued by the Court included an additional 7.11 condition which accounted

for these 2 additional apartments. Therefore, these apartments have been excluded from the following calculations, see **Table 16** below.

Table 16 – Dwelling located within the proposed levels 12 - 17			
	Dwellings	Dwellings already accounted for in 7.11 contribution	Total
1 Bedroom	8	-	8
2 Bedroom	4	-	4
3 or more Bedroom	16	5	11 (16 – 5 existing)
Total apartments	28	5	23

Accordingly, the following 7.11 contribution has been calculated for 23 of the 28 apartments as effectively, with regard to the 7.11 contribution there is 23 additional apartments (5 x 3 bedroom apartments already accounted for in DA162/2021 and the Court Appeal Modification). A condition has been recommended which includes the 7.11 contribution as calculated in **Table 17** below.

Table 17 – 7.11 Contribution for DA33/2024				
	Dwellings	Occupancy	People	Contribution (People x \$16,836.58 per person)
1 Bedroom	8	1.4	8 x 1.4 = 11.2	\$188,569.69
2 Bedroom	4	2	4 x 2 = 8	\$134,692.64
3 or more Bedroom	11	3.1	11 x 3.1 = 34.1	\$574,127.38
Total	23	-		\$897,389.71

8. Conclusion

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

The application has satisfied the requirements of Chapter 2 of the Housing SEPP 2021.

The proposal would provide 23 affordable housing apartments in lieu of a 30% bonus to the maximum building height and a 27.3% bonus to the floor space ratio development standard.

The Clause 4.6 requests that accompany the application are supported due to the technical nature of the variation and because these requests facilitate the affordable housing bonuses in accordance with the Housing SEPP 2021.

On balance as the proposed development would be acceptable and it is therefore reported to the Sydney North Planning Panel that the application is recommended for approval subject to the provided conditions.

RECOMMENDATION

That:

(a) The Sydney North Planning Panel determines that it is satisfied:

- (i) The applicant's written request to vary the development standards for maximum building height and floor space ratio as prescribed in Clause 4.3 and Clause 4.4 of the Lane Cove LEP 2009, adequately demonstrates and the Panel is of the opinion, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;

- (ii) The applicant's written request to vary the development standards for maximum building height and floor space ratio as prescribed in Clause 4.3 and clause 4.4 of the Lane Cove LEP 2009, that sufficient environmental planning grounds have been established to justify contravening the standard; and
 - (iii) The proposed development is in the public interest because it is consistent with the objectives of the R4 zone, the objectives of the standards for maximum building height and floor space ratio set out in Clause 4.3(1) and Clause 4.4(1) and the objectives of Chapter 2 Affordable Housing, Division 1 In-fill affordable housing contained in the State Environmental Planning Policy (Housing) 2021
- (b) The Applicant's written requests contained in the Statement of Environmental Effects dated 15 April 2024, pursuant to clause 4.6 of the Lane Cove Local Environmental Plan 2009 seeking to vary the development standard for maximum building height and floor space ratio as prescribed in Clause 4.3 and Clause 4.4 of the Lane Cove LEP 2009, is approved.
- (c) That pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel, at its meeting of 7 August 2024, approve Development Application DA33/2024 for Alterations and Additions Development Application to the approved Mixed Use Residential building for Infill Affordable Housing pursuant to the SEPP (Housing) at Nos. 13-19 Canberra Avenue, St Leonards subject to conditions contained in **Annexure 1**.

Mark Brisby
Director - Planning and Sustainability
Planning and Sustainability Division

ATTACHMENTS:

There are no supporting documents for this report.