



STATEMENT OF ENVIRONMENTAL EFFECTS

Alterations and additions to an approved mixed-use development (DA162/2021) involving the addition of five storeys, twenty-four apartments and twenty-five parking spaces within the basement levels in accordance with Division 1 In-fill affordable housing of Housing SEPP.

13-19 Canberra Avenue,
St Leonards

Prepared for: Hyecorp

REF: M220514

DATE: 15 April 2024





Contents

1.	INTRODUCTION	1
1.1	Overview	1
1.2	Environmental Assessment	1
1.3	History	2
1.4	Supporting Documents	3
2.	SITE ANALYSIS AND CONTEXT	4
2.1	The Site	4
2.2	Desired Future Character	5
2.3	Surrounding Development	5
3.	BACKGROUND.....	7
3.1	Planning History	7
3.2	Section 4.55(2) with LEC	8
4.	DESCRIPTION OF THE PROPOSAL	9
4.1	Proposed Development	9
4.2	Building Arrangement and Configuration	10
4.3	Deep Soil and Landscaping	11
4.4	Waste Management.....	11
4.5	Project Data Comparison	11
4.6	Resolution of Inconsistencies with DA162/2021	12
4.7	Explanation of Section 4.17(1)(b).....	13
4.8	Terms of the new development consent	13
5.	ENVIRONMENTAL PLANNING ASSESSMENT	15
5.1	Preamble	15
5.2	Statutory and policy compliance	15
5.2.1	SEPP (Resilience and Hazards) 2021	16
5.2.2	SEPP (Biodiversity and Conservation) 2021	16
5.2.3	SEPP (Transport and Infrastructure) 2021	16
5.2.4	State Environmental Planning Policy (Sustainable Buildings) 2022	16
5.2.5	State Environmental Planning Policy (Housing) 2021.....	17
5.2.6	Lane Cove Local Environmental Plan 2009.....	26
5.2.7	Lane Cove Development Control Plan 2009.....	28
5.3	Impacts on Natural & Built Environment	29





5.3.1	Topography & Scenic Impacts.....	29
5.3.2	Micro-climate Impacts.....	29
5.3.3	Water & Air Quality Impacts.....	29
5.3.4	Flora & Fauna Impacts	29
5.3.5	External Appearance & Design.....	29
5.3.6	Views	30
5.3.7	Solar Access.....	38
5.3.8	Aural & Visual Privacy	39
5.3.9	Wind Impacts	40
5.4	Economic & Social Impacts	40
5.5	The Suitability of the Site	41
5.5.1	Access to Services	41
5.5.2	Parking and Access	41
5.5.3	Hazards	43
5.6	The Public Interest	43
6.	CONCLUSION.....	44

FIGURES

Figure 1	Aerial image with subject site edged in red (Source: Nearmap)	4
Figure 2	Photomontage of approved development.....	5
Figure 3	Walking distance and route of subject site to St Leonards Railway Station public entry (Source: <i>Google Maps</i>)	18
Figure 4	Photomontage of approved development.....	23
Figure 5	Photomontage of proposed development, including uplift in density permitted by Housing SEPP at Areas 3 and 6	23
Figure 6	Perspective of proposed development as viewed from Canberra Avenue	30
Figure 7	Image of site and location of views.....	31
Figure 8	Comparison of proposed impact on views from Site 1 (Left indicates approved, right indicates proposed) .	32
Figure 9	Proposed impact on views from Site 1, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP ..	32
Figure 10	Comparison of proposed impact on views from Site 2 (Left indicates approved, right indicates proposed)	33
Figure 11	Proposed impact on views from Site 2, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP	33
Figure 12	Comparison of proposed impact on views from Site 3 (Left indicates approved, right indicates proposed)	34
Figure 13	Comparison of proposed impact on views from Site 4 (Left indicates approved, right indicates proposed)	35





Figure 14 Comparison of proposed impact on views from Site 6 (Left indicates approved, right indicates proposed)	35
Figure 15 Comparison of proposed impact on views from Site 12 (Left indicates approved, right indicates proposed)	36
Figure 16 Proposed impact on views from Site 12, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP	36
Figure 17 Extract from the Height of Buildings Map [J=9.5m]	68
Figure 18 Extract from the Incentive Height of Buildings Map [W=44m, A=2.5m, AA=65m, Y=53m, T=25m, U=31m, V1=37m, V2=38m]	70
Figure 19 Section of proposed alterations and additions, with the existing excavated level shown as a red dotted line (RL44.9)	71
Figure 20 3D Height Plane Analysis showing 57.2m limit	72
Figure 21 Building form stepping with approved (left) and proposed (right), extracted from page 5 of the <i>Architectural Design Report</i> , SJB	82
Figure 22 View from Green Spine — South, approved (left), proposed with incentive heights for neighbours (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 54 of the <i>Architectural Design Report</i> , SJB	82
Figure 23 View from Green Spine — North, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 52 of the <i>Architectural Design Report</i> , SJB	83
Figure 24 View from the pedestrian link, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 56 of the <i>Architectural Design Report</i> , SJB	83
Figure 25 View from Canberra Avenue — South, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 58 of the <i>Architectural Design Report</i> , SJB	84
Figure 26 View from Canberra Avenue — North, approved (left), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 59 of the <i>Architectural Design Report</i> , SJB	84
Figure 27 Extract from the Floor Space Ratio Map (D = 0.5:1)	89
Figure 28 Extract from the Incentive Floor Space Ratio Map [W3=3.7:1, W1=3.55:1, W5=3.85:1, U1=2.6:1, W4=3.8:1, U3=2.85:1, U1=2.6:1, U2=2.75:1]	91
Figure 29 Section of proposed alterations and additions, with the existing excavated level shown as a red dotted line (RL44.9)	92
Figure 30 Building form stepping with approved (left) and proposed (right), extracted from page 5 of the <i>Architectural Design Report</i> , SJB	102
Figure 31 View from Green Spine — South, approved (left), proposed with incentive heights for neighbours (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 54 of the <i>Architectural Design Report</i> , SJB	102





Figure 32 View from Green Spine — North, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 52 of the <i>Architectural Design Report</i> , SJB	103
Figure 33 View from the pedestrian link, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 56 of the <i>Architectural Design Report</i> , SJB	103
Figure 34 View from Canberra Avenue — South, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 58 of the <i>Architectural Design Report</i> , SJB.....	104
Figure 35 View from Canberra Avenue — North, approved (left), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 59 of the <i>Architectural Design Report</i> , SJB.....	104

TABLES

Table 1 Supporting Documentation	3
Table 2 Site History	7
Table 3 Project Data Comparison.....	12
Table 4 Section 4.15 Matters for Consideration.....	15
Table 5 Affordable Housing Apartments under Housing SEPP	19
Table 6 Compliance with Development Standards	27
Table 7 Housing SEPP Parking Rates.....	41
Table 8 CBD/CP Parking Rates.....	42

ANNEXURES

Annexure A. State Environmental Planning Policy (Housing) 2021 – Compliance Table.....	45
Annexure B. Apartment Design Guide – Compliance Table.....	52
Annexure C. Lane Cove Local Environmental Plan 2009 – Compliance Table	59
Annexure D. Clause 4.6 Variation - Building Height	66
Annexure E. Clause 4.6 Variation - Floor Space Ratio.....	87
Annexure F. Lane Cove Development Control Plan 2009 – Compliance Table.....	107
Annexure G. Conditions for Consent	127





1. Introduction

1.1 OVERVIEW

We act on behalf of the applicant for the approved mixed-use development at Nos. 13-19 Canberra Avenue, St Leonards ('the site'). The development consent, as most recently modified, to which this application relates is for the demolition of existing structures and construction of a part 12, part 14 storey mixed-use development comprising 78 apartments, a childcare centre, community facility, retail space and basement parking, with east-west public pedestrian link, green spine and subdivision approved under DA162/2021.

The proposal involves alterations and additions to the approved mixed-use development (DA162/2021) and seeks consent for the provision of affordable housing, comprising of 23 affordable apartments, across five additional storeys (or four additional storeys, if the Section 4.55(2) Modification Application with the Land and Environmental Court is approved). The proposal will seek to deliver an additional 25 apartments within the proposed upper levels (including level 12), inclusive of 8 x one bedroom, 4 x two bedroom and 13 x three bedroom apartments, and will result in a total of 102 apartments across the site. It is noted that the proposal will seek to make minor modifications to the ground floor units, being the amalgamation of two apartments into one to deliver a five bedroom apartment. As a result, the proposal will deliver 24 additional apartments throughout the entirety of the modified development.

The proposal will also seek to alter the internal arrangement of the approved basement parking levels. The development will provide for an additional 25 parking spaces, resulting in a total of 101 resident car spaces and 17 visitor spaces. This application will also seek approval for strata subdivision per the supporting documentation.

The proposal provides for significant social public benefits, in that it will provide for 23 additional affordable housing apartments per *Chapter 2 Affordable housing, Division 1 In-fill affordable housing* of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). In accordance with the *Lane Cove Local Environmental Plan 2009* (LCLEP), the delivery of 43 affordable housing apartments is required across the St Leonards South Precinct. The provision of 23 affordable housing apartments equates to 53.5% of the total required within the Precinct. Further to this, Area 1 requires the provision of 14 affordable housing apartments, which is the highest requirement for affordable housing in the Precinct. The proposal, which provides for 23 affordable apartments, represents an increase of 164.3% of that required for Area 1, therefore delivering a significant social benefit to the locality. The provision of such a great quantum of affordable housing will assist in addressing the housing crisis and demand for affordable housing, particularly for key workers at the St Leonards Health and Education Precinct, including Royal North Shore Hospital.

This application is submitted as an alterations and additions Development Application. This application seeks to modify the original consent to permit alterations and additions to the approved residential development, hence the subject application being defined as an alterations and additions DA. This is consistent with Section 4.17 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) which permits amendments to an existing development consent and is discussed in detail under Section 5 of this Statement.

1.2 ENVIRONMENTAL ASSESSMENT

As detailed, the proposed increase in density is sought in accordance with the recently amended Housing SEPP, *Chapter 2 Affordable housing, Division 1 In-fill affordable housing*. The amendments were made on 14 December 2023 and deliver a floor space ratio (FSR) and building height bonus of 20-30% for developments that include at least 10-15% of gross floor area as affordable housing, for a minimum period of 15 years. The proposed development, which seeks approval for an increase in floor space of 27.3% and building height of 30% (to the incentive development

standards), will deliver affordable housing equating to 15% of the total floor area and therefore meets the requirements of the Housing SEPP.

The LCLEP also applies to the proposed development. The site is located within the R4 High Density Residential zone and the proposed alterations and additions to the approved development are permissible with consent and align with the objectives of the zone. The site is located within the St Leonards South Precinct which permits a higher density development within a landscaped setting. Planning controls within Part 7 of LCLEP provide for incentive height and density in return for provision of certain public benefits, including open space, community facilities and pedestrian connections through the precinct. The development approved under DA162/2021 satisfied the various requirements under Part 7 and as such, benefitted from the bonus height and density desired within the St Leonards South Precinct. This will be unchanged in this application.

It is prudent to note that the proposed alterations and additions cannot technically rely on Clause 7.1(3) of the LCLEP for the incentive height and floor space (inclusive of the Housing SEPP bonuses under Section 16(3)), due to specific technicalities. These are summarised below:

- Excavation has commenced on-site in accordance with DA162/2021, resulting in a new existing ground level;
- Per the definition of building height contained within the LCLEP and in accordance with relevant caselaw, the building height must be measured from the excavated ground level;
- The proposed building height therefore exceeds the maximum permitted by Clause 7.3(3)(a), including the 30% bonuses afforded by the Housing SEPP, as measured from the excavated basement level;
- Clause 4.6(2) of LCLEP indicates that Clause 7.1(3) does not apply to a development standard that is “expressly excluded from the operation of this clause”;
- As Clause 7.1(3)(a) and (b) are expressly excluded from the operation of Clause 4.6, the building height must be measured against the base controls under Clause 4.3; and
- To benefit from the incentive FSR under Clause 7.3(1)(b), the development must comply with both development standards, including Clause 7.1(3)(a) and as such, must similarly rely on Clause 4.4.

Whilst the proposal will comply with the incentive standards under Clause 7.1(3) of LCLEP, including the bonuses afforded by the Housing SEPP, for the above listed technical reasons, Clause 4.6 Variations are provided in **Annexures D and E** for Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio (respectively), inclusive for the Housing SEPP bonuses under Section 16(3).

In addition to the above, the proposal has also been assessed against the provisions of the *Apartment Design Guide* (ADG) and *Lane Cove Development Control Plan 2009* (LCDCP) and is a suitable form of development within the site context.

1.3 HISTORY

As identified above, this application is submitted as an alterations and additions Development Application consistent with Section 4.17 of the EP&A Act. The amendments are proposed to DA162/2021 as approved and most recently modified.

It is noted that two separate applications have been submitted and seek to provide for an uplift in building height via a concurrent Section 4.55(2) Modification Application (DA162/2021) and Development Application (DA21/2023). Both applications seek approval for an additional storey, amongst other changes. These applications have both been appealed to the Land and Environmental Court and are yet to be determined. Importantly, as the Section 4.55(2) application has yet to be determined, this alterations and additions development application is made to DA162/2021 as most recently approved and modified.



Should the Section 4.55(2) be approved, this application will be amended to reverse the works pursuant to *Clause 37 Amendment of development application of the Environmental Planning and Assessment Regulation 2021*. This is discussed in further depth under Section 3 of this Statement.

1.4 SUPPORTING DOCUMENTS

The development is supported by a series of consultant reports and plans, listed below at **Table 1**.

Table 1 Supporting Documentation	
Document	Author
Architectural Plans	<i>SJB Architects and Hyecorp</i>
Urban Design Report	<i>SJB Architects</i>
Access Report	<i>Accessible Building Solutions</i>
Acoustic Report	<i>Pulse White Noise Acoustics</i>
BASIX	<i>Efficient Living</i>
Landscape Plans	<i>Site Image</i>
Quantity Surveyors Report	<i>Mitchell Brandtman</i>
Stormwater Drainage Plan	<i>Torinex</i>
Traffic and Parking Assessment	<i>Transport Strategies</i>
Wind Impact Assessment	<i>Windtech</i>
BCA Report	<i>Credwell</i>
Geotechnical Report	<i>PTC</i>
Contamination Report	<i>EI Australia</i>
Waste Report	<i>Elephants Foot</i>

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of S.4.15 of the Environmental Planning & Assessment (EP&A) Act, 1979.

This Statement is divided into six sections. The remaining sections include a locality and site analysis; a background; a description of the proposal; an environmental planning assessment; and a conclusion.



2. Site Analysis and Context

2.1 THE SITE

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



Figure 1 Aerial image with subject site edged in red (Source: Nearmap)

The site is rectangular in shape with a frontage to Canberra Avenue of 63.06m, a western (rear) boundary length of 60.96m, a northern (side) boundary of 41.37m and a southern (side) boundary of 44.825m. The site has a total area of 2,629.3m². The site falls from the rear to the front boundary by approximately 6m, and also contains a cross fall from the north to the south by approximately 2.5m.

Excavation and construction have commenced on-site in accordance with the development approved under DA162/2021. All previous structures and vegetation have been removed. A photomontage of the approved development is provided in **Figure 2** below.



Figure 2 Photomontage of approved development

2.2 DESIRED FUTURE CHARACTER

The site is located within the St Leonards South Precinct which is anticipated to undergo significant transformation as a result of the LCLEP, St Leonards South Contributions Plan and Part C Residential Locality Statements of the LCDCP. The LCLEP and LCDCP codifies the vision, objectives and frameworks to achieve the incentivised redevelopment of the St Leonards South Precinct with a desired future character being a highly liveable transit-orientated residential area that encourages community interaction, public transport use and increased density around St Leonards railway station. The DCP provides built form controls including entitlements to incentives in the form of additional floor space and building height order to encourage developments that align with the precinct's vision.

This desired future character is also supported by the NSW State Governments desire to increase and encourage the delivery of transit orientated development, inclusive of affordable housing. The subject site, which is situated within 450m walking distance of the St Leonards Railway Station, is strategically located to benefit from and deliver much needed residential accommodation, inclusive of affordable housing, in the Precinct.

2.3 SURROUNDING DEVELOPMENT

The subject site contains an approval under DA162/2021 (as modified) for the *'demolition of existing structures and construction of a mixed-use development (12 storeys) comprising 78 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, east-west public pedestrian link and*



stratum/strata subdivision'. This aligns with the incentive building height and floor space, which will increase the density within the St Leonards Precinct, as outlined in Section 2.2.

Further to the above, there are a number of developments which have been approved and are under construction reflecting the desired increase of density in the St Leonards Precinct. These include, but are not limited to, the following:

- **13-19 Canberra Avenue:** On the subject site, DA162/2021 was approved with a FSR of 3.32:1 and building height of 44.7m, in accordance with the incentive controls.
- **21-41 Canberra Avenue and 18-32 Holdsworth Avenue:** To the south, DA99/2021 was approved for five residential flat buildings, including a maximum height of 36.8m and FSR of 2.6:1 in accordance with the incentive height controls.
- **21-31 Holdsworth Avenue, 22-32 Berry Road and 44-46 River Road:** To the south-west, DA60/2022 was approved for five residential flat buildings, including a maximum height of 31m and FSR of 2.6:1 in accordance with the incentive height controls.
- **1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue:** To the north, DA79/2022 was approved for three residential flat buildings, including a maximum height of 64.8m and FSR of 3.85:1 in accordance with the incentive height controls.

It is noted that both Nos. 7-11 Canberra Avenue and Nos. 4-8 Holdsworth Avenue do not contain any approval for redevelopment in accordance with the incentive building height and floor space ratio standards contained under Part 7 of LCLEP. It is anticipated that these will be redeveloped overtime, likely in accordance with the uplift in density afforded by the Housing SEPP, given their proximity to St Leonards Railway Station.



3. Background

3.1 PLANNING HISTORY

A review of Council records for the subject site has provided the following DA approvals for the site:

Table 2 Site History			
Consent Reference	Description	Lodgement Date	Decision Date
DA162/2021	Demolition of existing structures and construction of a mixed-use development (12 storeys) comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, east-west public pedestrian link and stratum/strata subdivision.	10 November 2021	Approved 27 June 2022 by North Sydney Planning Panel
DA162/2021	Section 4.55(1A) Modification to combine approved units 1106 (three bedroom unit) and 1007 (two bedroom unit) into one larger three-bedroom unit with a total internal area of 191m ² and balcony area of 23m ² .	27 September 2022	Approved on 17 November 2022
DA162/2021	Section 4.55 Modification to amend the Water NSW General Terms of Approval (GTA) to allow for a drained basement.	15 August 2022	Approved on 9 December 2022
DA162/2021	Section 4.55(1A) for minor internal changes to the approved building.	7 December 2022	Approved 13 February 2023
DA162/2021	Section 4.55(1A) for minor internal changes to the approved building, including combining approved units 1103 and 1104 into one larger three bedroom unit.	16 August 2023	Approved 27 September 2023
DA162/2021	Section 4.55 Modification application for minor amendment to combine units 905 and 906 into one unit, resulting in a total 78 apartments.	15 February 2024	Approved 5 April 2024
DA162/2021	Section 4.55(2) Modification application for internal changes and an additional storey.	13 March 2023	Currently with the LEC. Submitted concurrently with an alterations and additions amending application, which is also with the LEC.
DA21/2023	Alterations and additions development application for internal changes and additional storey to the building approved under DA162/2021.	13 March 2023	Currently with the LEC. Submitted concurrently with a Section 4.55(2) application also with the LEC.

It is noted that Consent DA162/2021 required the provision of public benefits to gain access to the incentive floor space and building height. Those public benefits include:

- Provision of an indoor community facility and child-care centre with outdoor play area within the mixed use development;
- Provision of a 15m wide publicly accessible pedestrian link between Canberra Avenue and Holdsworth Avenue; and
- Provision of a green spine along the western boundary.

All of these facilities will be delivered to Lane Cove Council through a Voluntary Planning Agreement (VPA) process.

3.2 SECTION 4.55(2) AND ALTERATIONS AND ADDITIONS DA WITH LEC

As identified above, two separate applications have been submitted and seek to provide for an uplift in building height via a concurrent Section 4.55(2) Modification Application (DA162/2021) and Development Application (DA21/2023). Both applications seek approval for an additional storey, amongst other changes. These applications have both been appealed to the Land and Environmental Court and are yet to be determined.

As the Section 4.55(2) application has yet to be determined, this alterations and additions DA is made to DA162/2021 as most recently approved and modified. Should the Section 4.55(2) be upheld by the LEC, this application will be amended pursuant to *Clause 37 Amendment of development application of the Environmental Planning and Assessment Regulation 2021*. Importantly, the extent of amendments will be minor and will pertain to changes in the description, reversing work to the upper levels proposed in the not yet approved modification application. This is required as any modification application granted will replace an earlier consent.

It should be noted that if DA21/2023 is approved, this will have no bearing on the proposal.



4. Description of the proposal

4.1 PROPOSED DEVELOPMENT

This development application seeks consent for alterations and additions to DA162/2021 (as modified) to allow for provision of 23 affordable housing apartments throughout the development, in accordance with Part 2, Division 1 of the Housing SEPP. In accordance with Section 5.2.6 of this Statement, this application seeks to dedicate the following apartments to affordable housing:

Table 3 Affordable Housing Apartments under Housing SEPP

Count	Apartment Number	Internal Area	Number of Bedrooms
1	102	50	1
2	307	95	2
3	401	96	3
4	403	54	1
5	603	54	1
6	606	111	3
7	803	54	1
8	805	87	2
9	903	54	1
10	1003	54	1
11	1004	81	2
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



Table 3 Affordable Housing Apartments under Housing SEPP

Total GFA: 1,574m² as affordable apartments and 284m² of circulation space. This equates to 1,858m² or 15%. This includes 23 affordable apartments, comprising 14 x 1 bedroom, 7 x 2 bedroom and 2 x 3 bedroom apartments.

Following the above, the proposal seeks approval for the construction of five additional storeys to the approved mixed-use development (or four additional storeys if the current Section 4.55(2) which is subject to the LEC is upheld). The proposal will provide for an additional 25 apartments from Levels 12 to 17, and seek to combine two apartments on ground level to provide a resultant total of 24 apartments throughout the entire development. The proposal will also seek to provide 25 additional parking spaces within the existing basement footprint, to provide for a total of 101 resident and 17 resident visitor spaces.

The overall development, as modified, will provide for 102 apartments, including 34 x 1 bed, 24 x 2 bedroom, 43 x 3 bedroom and 1 x 5 bedroom apartments. Strata subdivision is also proposed as part of this application.

The development will not make any changes to the ground plane or built from Ground to Level 11, unless otherwise identified. The proposed alterations and additions are detailed on the Architectural Plans prepared by *SJB* and *Hyecorp*.

4.2 BUILDING ARRANGEMENT AND CONFIGURATION

As outlined, this application will seek approval for an additional five storeys, in addition to minor changes to the ground floor and basement parking. The proposal will not alter any of the approved floor levels from Ground to Level 11, however, will seek to modify the arrangement Level 12 to accommodate the additional floor levels. As described in detail below, the proposal will include additional Levels 13 to 17 in accordance with the uplift in density afforded by the Housing SEPP.

Basement Levels

The proposed parking arrangement has been modified to accommodate an additional 25 parking spaces. The remaining building services are unchanged from that approved, and will be capable of supporting the increase in density proposed as part of this application. It is noted that the additional residential parking (including accessible spaces) are located within basement levels 2 to 4.

Ground Floor (RL58.28)

The proposal will seek to amalgamate G01 and G02 into a single, five bedroom townhouse (identified as G01). This apartment will include a significant at-grade private open space in accordance with the ADG, and will contain internal stair access to the upper ground floor. A fire control room is also proposed to ensure compliance with the National Construction Code.

No other changes are proposed to the ground floor plane.

Level 12 (RL98.6)

The proposal will undertake alterations to the approved Level 12 to accommodate the uplift in density. Whilst the proposal will not alter the lobby, lifts, stair cores and services beyond that approved, the arrangement of residential apartments will be modified. The building footprint will be consistent with the approved lower levels and will seek to provide a total of 6 apartments, including 2 x 1 bedroom, 1 x 2 bedroom and 3 x 3 bedroom apartments. Each apartment includes a private open space in accordance with the ADG and will receive appropriate amounts of solar access and natural ventilation.

It is noted that the communal open space as approved on Level 12 is to be removed and relocated on Level 16.

Levels 13 (RL101.7) to 15 (RL107.9)

The proposed additional Levels 13 to 15 are identical in layout to Level 12. Each level will provide for a total of 6 apartments, including 2 x 1 bedroom, 1 x 2 bedroom and 3 x 3 bedroom apartments. Each apartment includes a private open space in accordance with the ADG and will receive appropriate amounts of solar access and natural ventilation. As above, the building footprint will be consistent with the approved lower levels.

Vertical lift and stair access is provided to the upper and lower levels.

Level 16 (RL111.0)

The proposed additional Level 16 will seek to provide for a total of 2 x 3 bedroom apartments. Each apartment includes a private open space in accordance with the ADG and will receive appropriate amounts of solar access and natural ventilation.

This level will also include the provision of an internal communal area (including kitchen, accessible bathroom and living area) and adjacent communal open space. This space is near identical to the approved Level 12 under DA162/2021.

Vertical lift and stair access is provided to the upper and lower levels.

Level 17 (RL114.1)

The proposed additional Level 17 will seek to provide for a total of 2 x 3 bedroom apartments. Each apartment includes a private open space in accordance with the ADG and will receive appropriate amounts of solar access and natural ventilation.

Vertical lift and stair access is provided to the lower levels.

Roof Plan

The roof will include building services, lift overrun and solar panels.

4.3 DEEP SOIL AND LANDSCAPING

No changes are proposed to the landscaping scheme that was approved under DA162/2021, with the exception of the ground floor terrace entry configuration and relocated communal open space on Level 16. Plantings and plant selections are to remain as approved and are detailed in the accompanying Landscape Plan prepared by *Site Image*.

4.4 WASTE MANAGEMENT

The proposal incorporates a primary waste and recycling bin storage area for the additional residential apartments within the approved storage areas. The approved areas will be capable of accommodating the additional waste generated by the alterations and additions.

A Waste Management Plan prepared by *Elephants Foot* is submitted with this application.

4.5 PROJECT DATA COMPARISON

Provided within the following table is a summary comparison of key numerical data between the approved development and the proposed alterations and additions.

**Table 4 Project Data Comparison**

	<i>Approved Development (as modified per Mod 7)</i>	<i>Proposed Development</i>	<i>Change</i>
1-bedroom	26	34	+ 8
2-bedroom	22	24	+ 2
3-bedroom	30	43	+ 13
5-bedroom	0	1	+ 1
Total	78 apartments	102 apartments	+ 24 apartments
Affordable Housing	Nil	23 apartments	+ 23 apartments
Building Height	43.5m (44.7m when including 1.2m parapet increased required by Sydney North Planning Panel as part of Condition A.2)	56.65m (to lift overrun) as measured from approved ground level. 73.3m (to lift overrun) as measured from excavated basement level.	+10.95m as measured from approved ground level.
Storey Height	Part 12, Part 14	Part 17, Part 19	Increase of 5 storeys
FSR	3.32:1 (8,726m ²)	4.5:1 (11,842m ²) based on existing ground level at time DA162/2021 was approved. 4.71:1 (12,388m ²) when including the storage and lobby areas within basement, due to excavation.	+1.15:1 (3,045m ²) based on existing ground level at time DA162/2021 was approved.
Deep Soil	16%	16%	No change
Communal open space	45% (1,206m ²)	45% (1,206m ²)	No change
Parking	76 17 visitor parking spaces 17 childcare spaces 2 carwash space 10 motorcycle spaces 1 shared space 1 retail space	101 residential parking spaces 17 visitor parking spaces 17 childcare spaces 2 carwash space 10 motorcycle spaces 1 shared space 1 retail space	+ 25 resident parking spaces. No change to visitor parking. No change to remaining uses.

4.6 RESOLUTION OF INCONSISTENCIES WITH DA162/2021

If a development consent is granted to this development application (the new consent) two development applications will apply to the subject site.

The new consent will authorise works, namely the carrying out of work shown in the drawings submitted for approval as part of this development application.



Development consent DA162/2021 will continue to apply to the site.

The two development consents applying to development on the same land need to be read together to ascertain the development that is authorised to be carried out on the land.

For practical reasons, it is desirable to avoid any apparent inconsistency between the terms of the two development consents.

Accordingly, the application also seeks that a requirement be imposed (under the new consent) that DA162/2021 must be modified in accordance with condition 4.17(1)(b) and section 4.17(5) of the EP&A Act. The modification must be effected prior to the issue of any construction certificate for the building. This will ensure that there are no inconsistencies between the two development consents.

4.7 EXPLANATION OF SECTION 4.17(1)(B)

Section 4.17(1)(b) allows a condition to be imposed as part of a new consent which requires 'the modification ... of a consent'. This provision exists to deal with the possibility that more than one development consent may be in operation on a site at a given point in time: *Waverley Council v C M Hairis Architects* [2002] NSWLEC 180 at [30].

The planning purpose of a condition imposed under section 4.17(1)(b) is to eliminate the inconsistencies that would otherwise exist if multiple consents applied to the site (*Lindsay Bennelong Developments v City of Sydney Council* [2016] NSWLEC 1064 at [45]).

Section 4.17(1)(b) of the EP&A Act, so far as it relates to modification, operates independently of section 4.55 of the Act: *Hairis Architects* at [25]. The 'substantially the same' test does not apply: *Hairis Architects* at [27].

The procedure for giving effect to a condition imposed under section 4.17(1)(b) and section 4.17(5) is set out in section 67 of the *Environmental Planning and Assessment Regulation 2021*. The modification of an existing development consent is achieved by delivery of a notice to the consent authority: *Hairis Architects* at [26].

The consequence is that an earlier consent may be modified, under these provisions, without any necessity for there to be an application under section 4.55. *Hairis Architects* at [27].

This streamlined procedure for modification necessitates that there should be a great deal of certainty about the actual modification that will be effected when a notice is given to the consent authority under section 67.

4.8 TERMS OF THE NEW DEVELOPMENT CONSENT

There are two ways that the proposed alterations and additions DA could be approved:

- **Option 1:** The alterations and additions development consent could be granted on the basis that it **directly** approves the carrying out of the alterations and additions under that **new** development consent. With this option, the balance of the works not approved under the alterations and additions DA would be carried out under the base development consent.

The new alterations and additions development consent would include a condition requiring the modification of the earlier consent to make it clear that the earlier consent operates subject to the later consent. The procedure for the giving effect to such a condition is set out in section 67 of the *Environmental Planning and Assessment Regulation 2021*.

This option would require a separate construction certificate(s) under **each** of the development consents that are applicable to the land.

- **Option 2:** With this option, the Council could impose a condition under the new consent requiring the **base consent** to be modified in accordance with section 4.17(1)(b) and section 4.17(5) of the EP&A Act, **so that the base consent expressly authorises the works that are the subject of the alterations and additions DA**. Again, the procedure for the giving effect to such a condition is set out in section 67 of the *Environmental Planning and Assessment Regulation 2021*.

The benefit of this option is that it avoids the need for separate construction certificate(s) to be issued under the base consent and the alterations and additions consent.

This has the added benefit of ensuring that the same version of the Building Code of Australia (BCA) applies to all aspects of the development.

The second option set out above has been applied by the Land and Environment Court, for example in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2023] NSWLEC 1107; *Lateral Estate Pty Ltd v Council of the City of Sydney* [2020] NSWLEC 1381 and *Season Group Pty Ltd v Council of the City of Sydney* [2019] NSWLEC 1588.

It is requested as part of this development application that the consent authority adopt the second option detailed above. This will avoid the practical difficulties of having construction certificates issued under two different development consents over the same site.

An outline of the key conditions for the alterations and additions consent (if granted under option 2, as requested) is set out in **Annexure G**.



5. Environmental Planning Assessment

5.1 PREAMBLE

This section of the Statement provides a planning assessment of the proposed development covering all relevant heads of consideration under Section 4.15 of the EP&A Act, 1979.

5.2 STATUTORY AND POLICY COMPLIANCE

The relevant matters for consideration under Section 4.15(1)(a) of the EP&A Act, 1979, are identified in the following Table:

Table 5 Section 4.15 Matters for Consideration				
EP & A Act, 1979.	Matters for Consideration	OK	See Comments	N/A
S4.15(1)(a)(i)	SEPP (Resilience and Hazards) 2021	✓	✓	
"	SEPP (Biodiversity and Conservation) 2021	✓	✓	
"	SEPP (Transport and Infrastructure) 2021	✓	✓	
"	State Environmental Planning Policy (Sustainable Buildings) 2022	✓	✓	
"	State Environmental Planning Policy (Planning Systems) 2021	✓	✓	
"	SEPP (Housing) 2021	✓	✓	
S4.15(1)(a)(ii)	Lane Cove Local Environmental Plan 2009	✓	✓	
S4.15(1)(a)(iii)	Lane Cove Development Control Plan 2009	✓	✓	
S4.15(1)(a)(iv)	Any other prescribed matter:- <ul style="list-style-type: none">Government Coastal Policy;AS 2601-1991: Demolition of structures.	✓		✓

The matters identified in the above Table as requiring specific comment are discussed below. The primary statutory document that relates to the subject site and the proposed development is the *State Environmental Planning Policy (Housing) 2021* and *Lane Cove Local Environmental Plan 2009*. The primary non-statutory plan relating to the subject site and proposed development is the *Apartment Design Guide* and *Lane Cove Development Control Plan 2009*. The relevant provisions of these documents and other relevant planning controls are summarised below and the proposal's compliance with them assessed.



5.2.1 SEPP (Resilience and Hazards) 2021

This SEPP was notified in December 2021 and came into effect on 1 March 2022. The Policy consolidated the provisions of several State Policies including the Coastal SEPP, Hazardous Industry SEPP and SEPP No 55.

As established in the original development application (DA162/2021), there is no reason to suspect that this property is subject to any contamination as it appears to have been in residential use since the land was subdivided.

The new application does not raise any issues that were not dealt with in the original application in this regard. The conditions of the existing development consent in respect of contamination will continue to apply and the proposal remains suitable for the approved use. The original Contamination Report prepared by EI Australia for DA162/2021 is resubmitted for reference.

5.2.2 SEPP (Biodiversity and Conservation) 2021

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

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

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

5.2.3 SEPP (Transport and Infrastructure) 2021

This SEPP was notified in December 2021 and came into effect on 1 March 2022. The Policy consolidated the provisions of several State Policies including the Infrastructure SEPP and the Education SEPP.

The approved development application considered Clause 3.23 and the applicable provisions of the Child Care Centre Planning Guideline for a centre-based child care facility. The proposed changes to the approved development do not have any impacts on the findings of the original assessment of the child care centre or the conditions imposed on its operation.

5.2.4 State Environmental Planning Policy (Sustainable Buildings) 2022

The provisions of *SEPP (BASIX: Building Sustainability Index) 2004* (SEPP BASIX) were considered in the assessment of the original development application. Since that time, SEPP BASIX has been repealed and Chapter 2 Standards for residential development – BASIX, incorporated into the *State Environmental Planning Policy (Sustainable Buildings) 2022*. The proposed alterations and additions are submitted with a new BASIX Certificate which demonstrates that the proposal achieves the required water, energy and thermal comfort targets.

5.2.5 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 was notified on 2 December 2021 and came into force on 1 March 2022. The provisions of the SEPP relevant to the proposal are set out in *Schedule 6, Clause 5 Private infrastructure and community facilities over \$5 million*. Specifically, the proposed alterations and additions for affordable housing will have a CIV of greater than \$5 million and as such, the application will be determined by the Sydney Eastern Planning Panel.

5.2.6 State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021 and aims to incentivise the supply and ensure the effective delivery of new affordable and diverse housing. The Housing SEPP consolidates five existing housing related policies, including:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP);*
- *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);*
- *State Environmental Planning Policy No 70 - Affordable Housing (Revised Schemes) (SEPP 70);*
- *State Environmental Planning Policy No 21 - Caravan Parks; and*
- *State Environmental Planning Policy No 36 - Manufactured Home Estates.*

In addition to the above, the Housing SEPP was recently amended on 14 December 2023 to further incentivise affordable housing, and to also consolidate the provisions of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*. The relevant sections 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.*

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

The proposed alterations and additions seek to deliver in-fill affordable housing under Chapter 2 of the Housing SEPP.

On 14 December 2023, in-fill affordable housing reforms were gazetted to encourage private developers to boost affordable housing and deliver more market housing. The reforms primarily deliver a floor space ratio bonus of 20-30% and building height bonus of 20-30% for projects that include at least 10-15% of gross floor area as affordable housing. This application will seek to benefit from the additional floor space and building height, and resultantly deliver affordable housing.

The site is 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, or
- (ii) for a light rail station with no entrance—a platform of the light rail station, or
- (iii) a public entrance to a wharf from which a Sydney Ferries ferry service operates, or

(b) (Repealed)

(c) 400m walking distance of a bus stop used by a regular bus service, within the meaning of the *Passenger Transport Act 1990*, that has at least 1 bus per hour servicing the bus stop between—

- (i) 6am and 9pm each day from Monday to Friday, both days inclusive, and
- (ii) 8am and 6pm on each Saturday and Sunday.

The subject site is located approximately 450m from the public entry of St Leonards Railway Station, as demonstrated in **Figure 3** below.

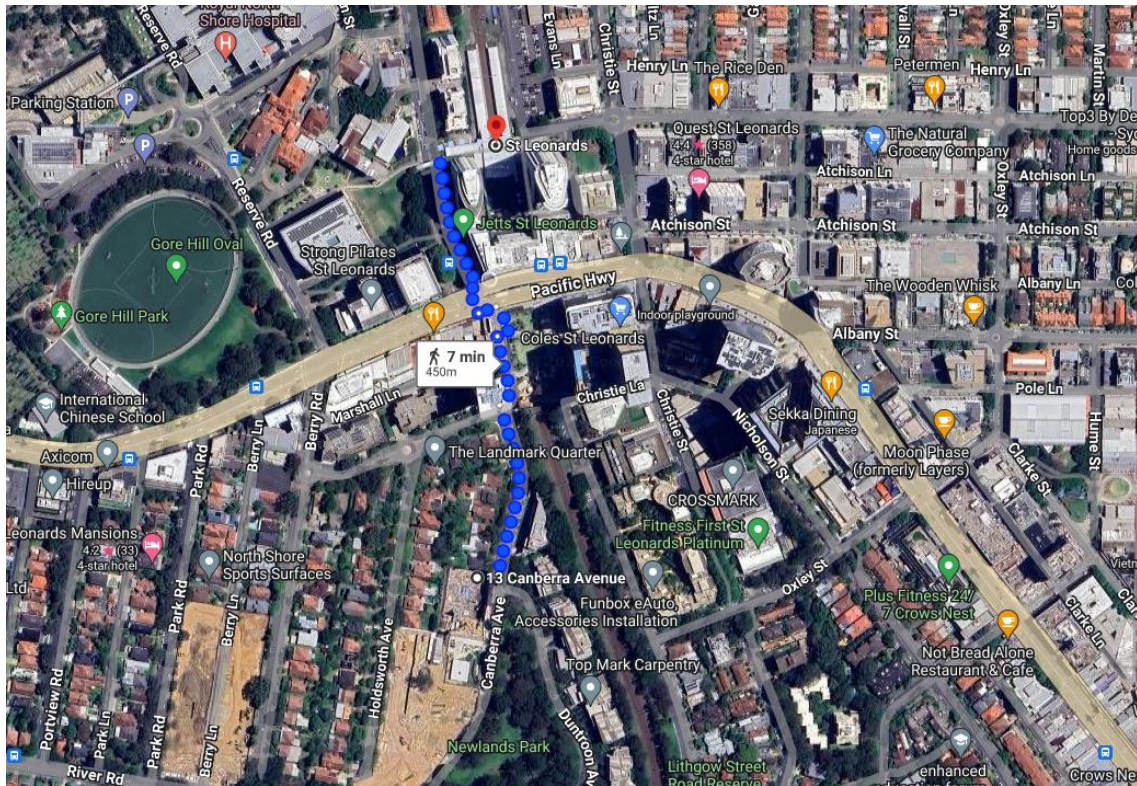


Figure 3 Walking distance and route of subject site to St Leonards Railway Station public entry (Source: Google Maps)

Section 16 of the Housing SEPP contains calculations for the provision of floor space ratio and building height bonuses. It states 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—*

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

- (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).*

Example— *Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.*

- (4) *This section does not apply to development on land for which there is no maximum permissible floor space ratio.*



In accordance with the incentive bonuses under Clause 7.13(3)(a) and (b), the subject site is permitted a maximum building height of 44m and FSR of 3.7:1 (9,778.41m²), respectively. The proposed development seeks to provide for a total FSR of 4.71:1 and GFA of 12,388m², when including the lobby and storage areas contained within the basement, due to the modified natural ground level (refer to discussion in Section 5.2.6 of this Statement). This equates to an additional GFA of 2,609.59m², FSR 1.01:1 and bonus of 27.3% when compared to the incentive GFA and FSR.

Whilst the development seeks to benefit from a 27.3% increase in GFA and FSR, a height bonus of 30% is proposed. Based on the incentive building height under Clause 7.13(a) of 44m, a maximum building height of 57.2m is permitted and proposed (as measured from the existing ground level that applied when DA162/2021 was approved).

As a maximum bonus of 30% is proposed for the building height, 15% of the total floor area is to be allocated as affordable housing. This equates to 1,858m² of the total floor area required as affordable housing. Importantly, the 15% affordable housing allocation been calculated against the total floor area of 12,388m², which includes the area within the basement levels as required by the modified existing ground level.

Per the above, the proposal will allocate a total GFA of 1,858m² or 15% of the total floor area as affordable housing and therefore satisfies the Housing SEPP. This includes 23 apartments equating to 1,574m² and 284m² of circulation space serving the affordable apartments. It is noted that a total circulation space and communal amenities of 1,893.93m² is provided, and 15% of this space equates to 284m², which will be allocated to affordable housing.

The following apartments will be provided as affordable housing under the SEPP:

Table 6 Affordable Housing Apartments under Housing SEPP

Count	Apartment Number	Internal Area	Number of Bedrooms
1	102	50	1
2	307	95	2
3	401	96	3
4	403	54	1
5	603	54	1
6	606	111	3
7	803	54	1
8	805	87	2
9	903	54	1
10	1003	54	1
11	1004	81	2
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



Table 6 Affordable Housing Apartments under Housing SEPP

19	1403	54	1
20	1404	81	2
21	1502	61	1
22	1503	54	1
23	1504	81	2

Total GFA: 1,574m² as affordable apartments and 284m² of circulation space. This equates to 1,858m² or 15%. This includes 23 affordable apartments, comprising 14 x 1 bedroom, 7 x 2 bedroom and 2 x 3 bedroom apartments.

Whilst the proposal will comply the Housing SEPP bonuses afforded by Section 16, as applied to the incentive FSR and building height under Clause 7.1(3) of LCLEP, there are certain technicalities which do not allow the development to be assessed under Clause 7.1(3), as discussed in this Statement and the respective Clause 4.6 Variations. In this regard, if the Housing SEPP bonus of 30% is applied to Clause 4.3 and Clause 4.4, a maximum building height of 12.35m and FSR of 0.65:1 is permitted and is calculated for the purpose of the Clause 4.6 Variations. Whilst this is a result of technicalities, the proposal will comply with the Housing SEPP bonuses as applied to the incentive standards, as anticipated in the locality.

A Compliance Table which considers the proposal against the relevant standards and provisions of the Housing SEPP is provided at **Annexure A**.

5.2.6.2 Non-discretionary development standards

The proposed development addresses Clause 19 of Housing SEPP which prevents a consent authority from requiring more onerous standards for which this division applies on the following grounds:

(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

- (a) a minimum site area of 450m²,*
- (b) a minimum landscaped area that is the lesser of—*
 - (i) 35m² per dwelling, or*
 - (ii) 30% of the site area,*
- (c) a deep soil zone on at least 15% of the site area, where—*
 - (i) each deep soil zone has minimum dimensions of 3m, and*
 - (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,*
- (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 at mid-winter,*
- (e) the following number of parking spaces for dwellings used for affordable housing—*
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*





Further to this, desired future character is also considered by *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*, where in determining the desired future character, matters other than development standards must be considered. This is also consistent with the findings in *Big Property Pty Ltd v Randwick City Council [2021]*, where it was also found that desired future character is not determined solely by standards that control building envelopes for an area, and that in-fill affordable housing must be factored in the consideration of desired future character.

For the purpose of this development, it is noted that the LCLEP and LCDCP development controls do not anticipate the additional FSR and building height permitted in accordance with the recently amended Housing SEPP. Notwithstanding, it is considered that the proposal provides a high-quality design which is compatible with the various characteristics of surrounding properties and that approved under DA162/2021. Whilst the development will result in a bulk and scale which is greater than the immediate properties, this is anticipated to be consistent with that desired by the Housing SEPP, reflective of the sites close proximity to St Leonards Railway Station and desire for transit orientated development. In accordance with the relevant caselaw, the height and FSR of a development are not the only factors which determine compatibility with surrounding development. It is also the building and landscaped design, materiality, modulation and proportioning, which are consistent with that approved on-site and desired within the locality, which ensure compatibility with local character.

In relation to the appearance of the building, the proposed alterations and additions are designed to maintain the site planning, architectural language and form and landscaped character of that approved under DA2020/0143. That is, the modulation, fenestration, materiality and roof design maintain the character originally deemed appropriate by the consent authority. Whilst the proposal will evidently increase building height and floor space ratio to the public domain and surrounding properties buildings, it is designed to suitably address the streetscape as originally approved, with a distinct podium and landscaped setting, including through-site link and green spine. **Figures 4 and 5** below provide a comparison between that approved and proposed on the subject site.





Figure 4 Photomontage of approved development



Figure 5 Photomontage of proposed development, including uplift in density permitted by Housing SEPP at Areas 3 and 6

As demonstrated above, the neighbouring properties to the north and west at Areas 3 and 6 (respectively) are currently undeveloped, and are capable of accommodating an increase in density consistent with the bonuses afforded by the Housing SEPP. In this regard, the area is anticipated to transition overtime, reflecting not only the density desired by the LCLEP, but also the permitted density encouraged by the Housing SEPP and transit orientated development. It is the integration of key architectural and landscaped elements, such as the distinct podium, modulation, parapet roof and materiality through a contemporary form, which ensures compatibility with the desired character of buildings along Canberra Avenue. This is further bolstered through the community centre, through-site link and green spine, which are unchanged in this application. Whilst it is noted that the proposal is greater in bulk and scale than the surrounding properties, it is evidently compatible with the character deemed appropriate on the subject site.

As originally approved, the proposal appropriately responds to the topography of the subject site and provides for a stepped form, from Canberra Avenue to the western rear boundary. The proposal will continue to address the public domain and through-site link, and will appropriately activate the locality as originally approved. The additional bulk and scale are concealed within an envelope, footprint and character which achieves a high level of design excellence in the St Leonards South Precinct.

Further, the proposal has also been designed in accordance with the relevant *Overall Objectives* for the St Leonards South Precinct, per *Part C Residential Localities* of LCDCP. As noted, a selection of controls in the LCDCP cannot be satisfied due to the permitted increase in density afforded by the Housing SEPP, which mainly pertain to maximum storey height. Whilst varying this control, the proposal integrates an architectural design which maintains key characteristics of the approved development and character of development in the locality. Further to this, the proposal also maintains, as approved under DA162/2021, the building uses, setbacks and footprint, through-site link and landscaped (green spine) area, basement footprint and overall building design, which is deemed consistent with the

existing and desired streetscape character of the locality. The *Overall Objectives* of the St Leonards South Precinct are in-part reproduced below:

'...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.

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

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...

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

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

Of most relevance, this application will directly satisfy Objective 3, which seeks to deliver a variety of affordable housing which will meet the needs of the future residents in the St Leonards locality. As described throughout this Statement, the proposal will deliver 23 affordable apartments which equates to 53.5% of the total required within the Precinct. The proposal considerably exceeds the maximum required for Area 1, and therefore delivers significant social and public benefits to the locality. The significant quantum of affordable apartments allocated as part of this application will assist in addressing the housing crisis and contribute to the desired future character as set by the Housing SEPP and desired for transit orientated developments.

Following the above, the alterations and additions are designed to respond to the character of the streetscape as established by the approved development and built forms of neighbouring properties (both approved and future). The built form, architectural design, setbacks and landscaped area are all consistent with the desired character and will not be obtrusive from the public domain. As discussed, the additional storey height throughout the development is mitigated through the abovementioned measures and whilst being greater than the immediate neighbours, is anticipated for transit orientated developments. The following is noted:

- **Building Use:** The proposal will not alter the approved uses, including the community facility, childcare centre and provision of residential accommodation, which creates a liveable transit orientated development.
- **Building Design:** The architectural design maintains the modulation, fenestration, balcony articulation, materiality and character as originally approved and deemed acceptable by the consent authority;
- **Roof Design:** The proposal provides for a parapet roof, as originally approved and anticipated for contemporary developments;
- **Storey height:** Whilst the proposal will result in a storey height which differs from the approved neighbouring properties, it incorporates an architectural character, design and envelope which is entirely compatible with that desired within the streetscape and is in accordance with transit orientated development;
- **Setbacks:** The setbacks and separation distances of the proposed alterations and additions are consistent with the approved development and will not alter the relationship to the streetscape, neighbouring properties, through-site link or green spine;
- **Through-site link:** The proposal will maintain the approved east-west through-site link which contributes to the character of the development.
- **Landscaping:** The proposed development will not alter the amount of deep and soft landscaping on-site, including the green spine, which ensures the character of the site, as originally approved, is unchanged;

- **Communal open space:** The proposal will maintain the provision of generous open space at-grade and ensures the provision of open, landscaped space is maintained as desired in the locality; and
- **Parking:** The proposed development will maintain the provision of basement parking as originally approved and anticipated for contemporary developments in the locality.

In terms of the physical impacts, the application documentation and discussion contained within this Statement demonstrates that the physical impacts of the proposal are acceptable. Specifically, the proposal incorporates appropriate design elements to ensure overlooking and noise transmissions from windows and balconies will be minimised in a dense urban environment. The proposal will ensure that the amenity afforded to the future occupants is not diminished, whilst privacy of neighbours is protected.

The extent of overshadowing created by the alterations and additions is also considered to be reasonable within a dense urban environment. The proposed development has been designed to minimise overshadowing to adjoining properties, where its impact is dictated to a large extent by the approved building envelope and site orientation. Any overshadowing caused by the proposed alterations and additions are considered acceptable.

Furthermore and in terms of views, the proposed uplift is designed so that it is contained within the approved building envelope, and views are maintained around the periphery of the built form. The loss of views in this regard will not be adverse or significant, as discussed in this Statement.

For all of the reasons outlined above, the proposal satisfies the character test pursuant to Clause 20 of the Housing SEPP.

5.2.6.4 Affordable Housing

Clause 21 states that consent must not be granted for development to which the Division applies unless conditions are imposed requiring restrictions on the use of the land as affordable housing for 15 years from the date of issuance of the occupation certificate and all accommodation that is used for affordable housing will be managed by a registered community housing provider.

In this respect, a suitable condition of consent can be imposed by Council which requires that a restriction be registered against the title of the property (prior to issue of an occupation certificate) in accordance with section 88E of the Conveyancing Act 1919, to ensure that the requirements of the Housing SEPP are met.

5.2.6.5 Subdivision

Clause 22 states that land on which development has been carried out under the Division may be subdivided with the consent of the consent authority. Strata subdivision is proposed as part of this development application and is detailed in the submitted documentation.

5.2.6.6 Retention of existing affordable rental housing

Part 3 of the Housing SEPP relates to the retention of existing low-rental residential buildings. All existing structures on the subject site have been demolished in accordance with the originally approved development and therefore Part 3 of the Housing SEPP does not apply.

5.2.6.7 Chapter 4 Design of residential apartment development

As outlined, on 14 December 2023 the NSW Government consolidated the provisions of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* into the Housing SEPP and the *Environmental Planning and Assessment Regulation 2021*. The process of consolidation does not affect the operations of the provisions or the Apartment Design Guide (ADG).

Schedule 9 of the Housing SEPP sets out nine 'Design Quality Principles' and Clause 147 requires that the consent authority, in determining a development application, takes into consideration:

- The advice (if any) of a relevant design review panel;
- The design quality of the residential flat development when evaluated in accordance with the design quality principles; and
- The Apartment Design Guide.

A compliance table is provided at **Annexure B** detailing compliance with the applicable Design Criteria contained within the Apartment Design Guide. The compliance table identifies that the proposal is consistent with the relevant design criteria or is acceptable on merit for the reasons detailed in the compliance table.

A Design Verification Statement has been submitted with this development application by *SJB* detailing compliance with the design quality principles and in satisfaction of the EP&A Act.

Furthermore, Clause 149 of the SEPP states that development control plans cannot be inconsistent with the Apartment Design Guide in relation to:

- “(a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.”*

In addition, Clause 148 of the SEPP states that a development application cannot be refused if it complies with the prescribed criteria of the Apartment Design Guide in relation to ceiling heights, parking and internal apartment sizes.

5.2.7 Lane Cove Local Environmental Plan 2009

The subject site is zoned R4 High Density Residential under the LCLEP. Among the permissible land uses in zone R4 are *Residential flat buildings, restaurants or cafes, centre-based childcare facilities and community facilities*. The proposed alterations and additions will continue to meet the objectives of zone R4 in that the proposal provides a quality high density residential development, with childcare and community facilities, in an area that is highly accessible due to its proximity to public transport and the St Leonards Town Centre.

As discussed, the subject site benefits from an incentive building height of 44m and FSR of 3.7:1. As this application is made pursuant to Chapter 2, Division 1 of the Housing SEPP, the maximum permitted building height and FSR are proportionally increased to 57.2m and 4.71:1, respectively, in lieu of allocating floor area as affordable housing. In this regard, the proposal complies with the incentive development standard and bonuses afforded by the Housing SEPP.

However, due to the existing site conditions (being the modified ground level) technical non-compliances with the incentive building height, inclusive of Housing SEPP bonuses, arise. Specifically, the site has been excavated to accommodate the basement levels as approved under DA162/2021. In accordance with the definition of building height, the height must be measured from the excavated (existing) ground level, which results in a maximum building height

of 73.3m and is therefore non-compliant with the incentive building height development standard, including Housing SEPP bonuses.

Following the above, Clause 4.6(2) of LCLEP indicates that this clause does not apply to a development standard that is “expressly excluded from the operation of this clause”. The development standards that are relevantly excluded from the operation of Clause 4.6 are Part 7 (except clauses 7.1(4)(e) and 7.2). Accordingly, as the incentive height cannot be varied and the development must be assessed under Clause 4.3 of LCLEP, a Clause 4.6 Variation is provided in **Annexure D**. It should be noted that if the building height is measured from the existing ground level that applied when DA162/2021 was approved, the development would be compliant with the incentive height (including Housing SEPP bonuses), at 56.65m.

In terms of FSR, Clause 7.1(3)(b) cannot be relied upon as it only applies when a development does not exceed both the height and floor space as set by the incentive maps within the LCLEP. As the proposal cannot comply with the incentive height limit (only due to excavation), it cannot be subject to Clause 7.1(3) and as such, Clause 4.4 applies. In this regard, a Clause 4.6 Variation is provided in **Annexure E** addressing this non-compliance. As above, it is important to note that the proposal complies with the incentive FSR, inclusive of bonuses afforded by the Housing SEPP, with a FSR of 4.62:1, inclusive of the basement storage areas and lobbies.

Table 7 below shows the proposal’s compliance against the planning controls contained within Part 4 Primary development standards and Part 7 Additional Local Provisions – St Leonards South Area, inclusive of Housing SEPP bonuses.

Table 7 Compliance with Development Standards					
	<i>Proposal</i>	<i>Base Controls</i>	<i>Complies</i>	<i>Incentive Controls</i>	<i>Complies</i>
Building Height	356.65m as measured from existing ground level that applied when DA162/2021 was approved.	Clause 4.3(2) - 9.5m and 12.35m including 30% bonus	No	Clause 7.1(3)(a) - 44m and 57.2m including 30% bonus	Yes, if measured from DA162/2021 existing ground.
	73.3m as measured from excavated ground level in accordance with DA162/2021.				No, if measured from excavated ground level.
Floor Space Ratio	4.5:1 if calculated based on existing ground level that applied when DA162/2021 was approved.	Clause 4.4(2) - 0.5:1 and 0.65:1 including 30% bonus	No	Clause 7.1 (3)(b) - 3.7:1 and 4.71:1 including 27.3% bonus	Yes, in both instances
	4.71:1 if calculated based on excavated ground level, thus including basement storage and lobby areas.				

A detailed response to the requirements of Lane Cove LEP is provided at **Annexure A**, where it is demonstrated that the proposed development is generally consistent with the relevant provisions of the LEP.

5.2.7.1 Clause 7.6 Design Excellence

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

The proposed alterations and additions to the approved design (as subsequently modified) maintain the same standard of design excellence exhibited by the approved development. The amended design does not have any additional adverse impacts in terms of views, solar access and privacy, and will continue to deliver a high quality contemporary architectural development. These matters are comprehensively addressed in the Urban Design Report that has been prepared by *SJB Architecture* provided with the application.

5.2.8 Lane Cove Development Control Plan 2009

The provisions of *Lane Cove Development Control Plan 2009* (LCDCP) provides planning controls which apply to the St Leonards South Precinct and subject site. The approved development was assessed having regard to the provisions of the relevant controls within Part C8 of the LCDCP 2009. The proposed alterations and additions to the approved development do not significantly alter the assessment and conclusions from the original development application assessment report which are still valid.

In relation to strict numerical compliance, attention is drawn to Section 4.15(3A) of the EP&A Act, 1979 which states as follows:

"(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application"*

Subclause (b) is of most relevance as it emphasises that there may be alternatives to strict numeric compliance in achieving the objectives of a DCP control. It compels the consent authority to be flexible in the application of DCP controls where the objectives of that control are met.

The above is particularly relevant for the storey height control as it applies to the subject site. As discussed in Section 5.2.5.3 Character of Local Area and the Clause 4.6 for Building Height, the proposed development will sit comfortably within the desired future character of the locality. Further to this, the additional height, which is consistent with the bonuses afforded by the Housing SEPP, will not result in any adverse amenity or environmental impacts per Section 5.3 of this Statement. Consistent with the accessible location and the desire to encourage transit orientated development, an increase in density per the Housing SEPP is reasonably expected on the subject site. In this regard, the consent authority must flexibly apply the LCDCP controls and consider the bonuses afforded by the Housing SEPP.

A Compliance Table is provided in **Annexure F** addressing the LCDCP.



5.3 IMPACTS ON NATURAL & BUILT ENVIRONMENT

5.3.1 Topography & Scenic Impacts

The proposal will not alter the approved volume of excavation on the site as the footprint and extent of the approved basement levels will not be altered. Accordingly, there will be no further impact to the topography beyond that approved.

In terms of scenic impacts, the proposal maintains the form of a contemporary mixed-use development and will have a positive impact on the scenic quality of the area. Whilst resulting in an additional five storeys to the approved development (or four additional storeys should the Section 4.55(2) application subject to the LEC be approved), the built form is designed to maintain the architectural character and language so that it will be compatible with the desired character of the locality and will minimise any adverse scenic impacts. The visual impact of the proposal has been specifically addressed in the Urban Design Report prepared by *SJB* submitted with this development application and has demonstrated that the additional building height and floor space will not result in any adverse bulk, scale or character impacts to the locality.

5.3.2 Micro-climate Impacts

The proposed development will have no significant impact on the micro-climate of the locality.

5.3.3 Water & Air Quality Impacts

The proposed development will have no significant impact on air or water quality in the locality. The completed project will continue to incorporate areas of landscaping across the site which will assist in absorbing and filtering rainwater, thereby improving water quality.

Existing sewer connections will be maintained and upgraded where necessary in accordance with the requirements of Sydney Water. The proposal is therefore unlikely to have any adverse impact in terms of air or water quality.

5.3.4 Flora & Fauna Impacts

There are no additional impacts to flora and fauna at the site that have not already been considered and approved under DA162/2021.

5.3.5 External Appearance & Design

The proposed alterations and additions represent an appropriate bulk, scale and character of development along Canberra Avenue and the St Leonards locality. The Urban Design Report prepared by *SJB Architects* illustrates the thoughtful design process which aims to maintain the building as close to approved form as possible and at the same time, optimise the development capacity available under Housing SEPP, as desired for transit orientated development.

The proposal represents an excellent response to the urban fabric of the approved development, site characteristics and desired character for the surrounding locality. The proposal is consistent with the desired built form anticipated by the applicable planning controls of the Housing SEPP and objectives of the R4 zone. The architectural language of the proposed alterations and additions utilises a contemporary approach, through a high quality, simplified design, which is complimentary with the approved development. Specifically, the additional floors incorporate horizontal and vertical modulation, fenestration, balcony articulation and parapet roofing with compatible materiality and colour, to ensure consistency with the established and desired character of the site and surrounding locality.

Importantly and as discussed under Section 5.2.5.3, the proposal responds appropriately to the desired future character of the locality. The additional levels will be consistent with the envelopes of both approved and future developments in the locality, as density is desired in close proximity to public transport and centres.



A perspective of the proposed development is provided in **Figure 6** below.



Figure 6 Perspective of proposed development as viewed from Canberra Avenue

In this regard, the proposed contemporary forms incorporate proportioning and design elements which are consistent with that originally approved. The proposed alterations and additions will utilise high quality materials, including render, glazing and solid balustrades, which are considered to be consistent with the desired contemporary character in St Leonards. As detailed, the proposal will not alter the architectural form of approved lower levels, landscaping and pedestrian link under DA162/2021, which establishes an appropriate visual and physical relationship to the character of the locale.

Accordingly, the proposed development will provide a high-quality architectural design which is compatible with the existing and desired character locality, in addition to the approved development.

5.3.6 Views

A measure of design excellence as identified in Clause 7.6(4)(d) of the LCLEP is that development does not have a detrimental impact on view corridors. In its assessment of the approved development, Lane Cove Council found the



design to have no detrimental impact on any significant view corridors. The proposed alterations and additions to the approved development have carefully considered view impacts arising from the proposed changes and have avoided any adverse impacts. View loss impacts have been considered from the following properties, as shown in **Figure 7** below:

- **Site 1**, Nos. 1-5 Canberra Avenue and 2-4 Marshall Avenue - Approved building envelope;
- **Site 2**, Nos. 6-8 Marshall Avenue and 2 Holdsworth Avenue - Approved building envelope;
- **Site 3**, Nos. 7-11 Canberra Avenue – Assumed building envelope;
- **Site 4**, Nos. 4-8 Holdsworth Avenue – Approved building envelope;
- **Site 6**, Nos. 10-16 Holdsworth Avenue – Assumed building envelope; and
- **Site 12**, Nos. 1-3 Holdsworth Avenue and 10-12 Marshall Avenue – Approved building envelope.

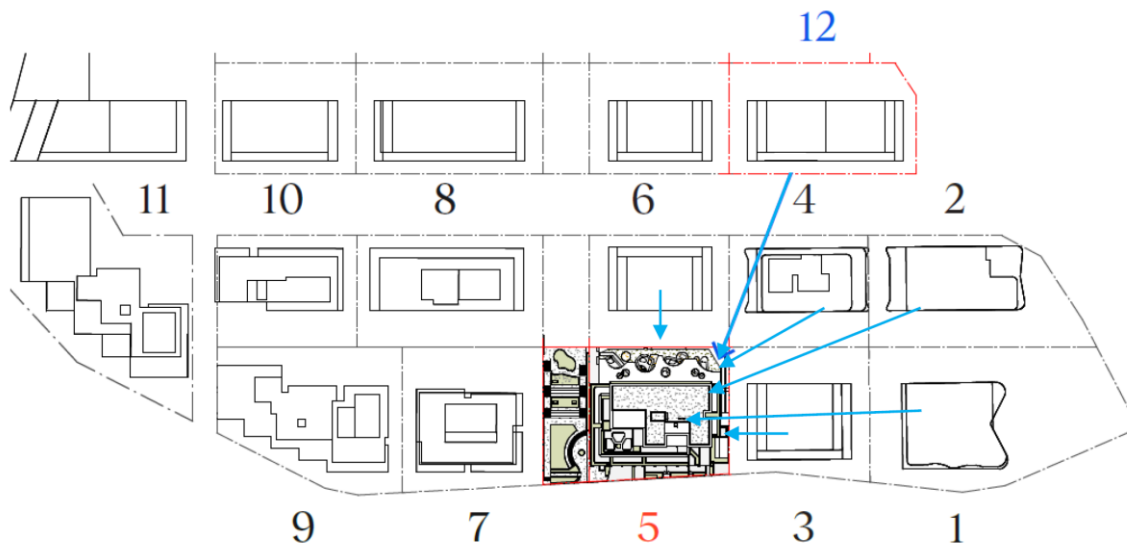


Figure 7 Image of site and location of views

This assessment has been prepared with consideration given to the four-step assessment established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 ('Tenacity') for the proposal. This Assessment is submitted with a Architectural Design Report prepared by *SJB*, which includes drone photographs taken by *Flying Robot Australia* and photomontages prepared by *Rock Hunter Australia*.

This Assessment has considered the view impacts from surrounding developments as required above and provides an assessment in accordance with the Tenacity Principles. The view photomontages have also been prepared in accordance with the Land and Environment Court's Photomontage Policy.

Impact on Site 1

Steps 1 and 2: This view is obtained from Level 17 of the approved development at Nos. 1-5 Canberra Avenue and 2-4 Marshall Avenue, at RL120.4. The image is taken 1.5m the floor level of Level 17 (RL118.9), across the future building at Site 3 and south towards the subject site. This includes partial views of the Sydney CBD skyline and Sydney Harbour Bridge. The views of Sydney CBD skyline and Sydney Harbour Bridge are obscured by surrounding developments, namely the assumed future building at Site 3 (based on the prescribed 53m incentive height limit), in addition to a variety of vegetation. Should the future building at Site 3 benefit from an uplift in density per the Housing SEPP, it will appear significantly greater as shown in **Figure 9**.





Step 3: This montage demonstrates that the proposed development will result in no impact to Sydney Harbour Bridge and Sydney CBD skyline. Whilst there will be a minor impact to the district views and distant land-water interfaces, significant views will still be retained over and around the proposed built form. Importantly and as detailed, the properties at Areas 3 and 6 can accommodate additional density per the Housing SEPP, which would limit any impact created by the proposed development. Should the potential building envelope at Site 3 be disregarded, the proposal will only result in a minor impact to district views and will have no impact to any Sydney CBD skyline or Sydney Harbour Bridge views. In percentage terms, it is considered that the views will be lost are less than 10%.

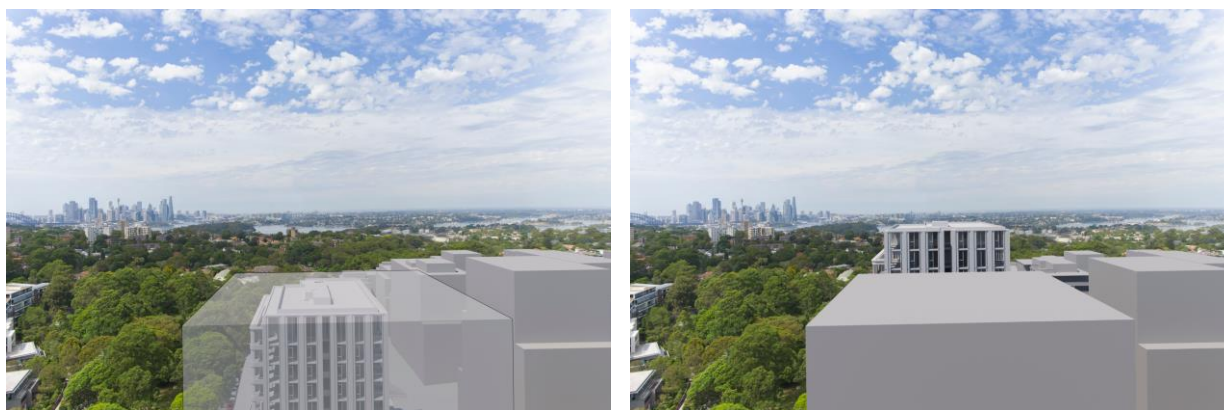


Figure 8 Comparison of proposed impact on views from Site 1 (Left indicates approved, right indicates proposed)



Figure 9 Proposed impact on views from Site 1, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP

Impact on Site 2

Steps 1 and 2: This view is obtained from roof top communal open space of the approved development at Nos. 6-8 Marshall Avenue and 2 Holdsworth Avenue, at RL 121.3. The image is taken 1.5m above the floor level of the communal space (RL119.7), across the side and rear boundary of the site. This includes partial views of the Sydney CBD skyline, district views and distant land-water interface. The views of CBD skyline, Sydney Harbour Bridge and district and land-water interface are obscured by surrounding developments, namely the assumed future buildings, in addition to a variety of vegetation and other developments. Should the future building at Sites 3 and 6 benefit from an uplift in density per the Housing SEPP, it will appear significantly greater as shown in **Figure 11**. It is noted that the approved building envelope also obscures part of the surrounding district views.

Step 3: This montage demonstrates that the proposed development will result in a minor loss of district views from roof top of the approved building on this neighbouring property. Whilst there is a minor impact, the proposal will not impact





any CBD skyline, Sydney Harbour Bridge or significant land-water interface views. Furthermore, the proposal will maintain district views around the proposed built form. In percentage terms, it is considered that the views will be lost are less than 10%.

As shown in **Figure 11**, it is noted that the neighbouring properties at Area 3 and 6 are capable of benefitting from the uplift in density per the Housing SEPP. These properties will result in a view impact beyond that proposed by the development. As such, this is entirely reasonable as there will be full retention of high-value views enjoyed across the site.



Figure 10 Comparison of proposed impact on views from Site 2 (Left indicates approved, right indicates proposed)



Figure 11 Proposed impact on views from Site 2, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP

Impact on Site 3

Steps 1 and 2: This view is obtained from the assumed roof top communal open space of a future development at Nos. 7-11 Canberra Avenue, 1.5m (RL111.550) above the assumed roof top communal level of RL110.050. This is derived from the known ground survey level adjacent to the site. This view is taken across the side boundary of the site. This includes district and land-water interface views, in addition to views of the Sydney CBD skyline and Sydney Harbour Bridge. The views of land-water interface, Sydney CBD skyline and Sydney Harbour Bridge are partly obscured by surrounding developments, a variety of vegetation and the approved building envelope. It should be noted if this property is developed according to the 30% affordable housing bonus per the Housing SEPP, the height would be at a RL of 125.95 which would stand well-above the height of the proposed development.





Step 3: This montage demonstrates that the proposed modifications will result in a moderate to severe loss of district views, land and water interface views and CBD skyline from the assumed roof top communal open space of this neighbouring property. Whilst there is an evident impact, the proposal will protect district views, distant land and water interface views, CBD skyline and Sydney Harbour Bridge views around the periphery of the built form. Furthermore, it is reasonably anticipated that other views are enjoyed from differing parts of the roof top space, ensuring that in totality, the impacts are acceptable. The views are also lost are from the roof top communal open spaces of the neighbouring property, and is acceptable in a dense urban environment. In percentage terms, it is considered that the views will be lost are less than 50% as generous views are retained around the built form.

As noted above, it is also important to note that Site 3 is not yet developed and is capable of accommodating additional density per the Housing SEPP. If this property benefitted from these bonuses, it would obtain views over and above the subject site, therefore rendering any impact as negligible. As such, this is entirely reasonable as there will be an acceptable retention of views enjoyed.



Figure 12 Comparison of proposed impact on views from Site 3 (Left indicates approved, right indicates proposed)

Impact on Site 4

Steps 1 and 2: This view is obtained from the approved roof top services level of a development at Nos. 4-8 Holdsworth Avenue at RL110.3. The image is taken 1.5m above the roof top communal area of RL 108.00 across the side and rear boundary of the site. This includes district views, in addition to views of the Sydney CBD skyline and Sydney Harbour Bridge. Very minor, distant views of land-water interfaces are obtained. The views of land-water interface, Sydney CBD skyline and Sydney Harbour Bridge are partly obscured by surrounding developments, a variety of vegetation and the approved building envelope.

Step 3: This montage demonstrates that the proposed modifications will result in a moderate to severe loss of district views and Sydney Harbour Bridge and CBD Skyline views from the approved roof top communal open space of this neighbouring property. Whilst there is an evident impact, the proposal will maintain district views, partial CBD skyline views and distant land-water interface views. In percentage terms, it is considered that the views will be lost are less than 60% given the retention of views around the periphery of the built form.

It is also reasonably anticipated that other views are enjoyed from differing parts of the roof top space, ensuring that in totality, the impacts are acceptable. In addition, the views lost are from the roof top communal open spaces of the neighbouring property, and is acceptable in a dense urban environment. As such, this is entirely reasonable as there will be an acceptable retention of views enjoyed across the site and amenity will be appropriately maintained.





Figure 13 Comparison of proposed impact on views from Site 4 (Left indicates approved, right indicates proposed)

Impact on Site 6

Steps 1 and 2: This view is obtained from the assumed roof top communal open space of a future development at Nos. 10-16 Holdsworth Avenue, 1.5m (RL107.500) above the assumed roof top communal level of RL106.00. This is derived from the known ground survey level adjacent to the site. This view is taken across the rear boundary of the site. This includes district views of the surrounding locality. The views are partly obscured by surrounding developments, a variety of vegetation and the approved building envelope. It should be noted if this property is developed according to the 30% affordable housing bonus per the Housing SEPP, the height would be at a RL of 119.2 which would stand above the height of the proposed development.

Step 3: This montage demonstrates that the proposed development will result in a moderate loss of district views from the assumed roof top communal open space of this neighbouring property. Whilst there is an impact, the proposal will maintain district views along each side boundary. Importantly, there will be no impact to any iconic views or the like. In percentage terms, it is considered that the views will be lost are less than 50%.

As noted above, it is also important to note that Site 3 is not yet developed and is capable of accommodating additional density per the Housing SEPP. If this property benefitted from these bonuses, it would obtain views over and above the subject site, therefore rendering any impact as negligible. As such, this is entirely reasonable as the proposal will maintain a suitable quantum of district views above and around the built form.



Figure 14 Comparison of proposed impact on views from Site 6 (Left indicates approved, right indicates proposed)



Impact on Site 12

Steps 1 and 2: This view is obtained from the approved roof top communal open space of a development at Nos. 1-3 Holdsworth Avenue and 10-12 Marshall Avenue, at RL109.55. The image is taken 1.5m above the roof top communal area (RL108.05), across the side and rear boundary of the site. This includes partial views of the Sydney CBD skyline, Sydney Harbour Bridge and district views. The views of Sydney CBD skyline, Sydney Harbour Bridge and district are obscured by surrounding developments, namely the buildings at Sites 4 and 6, in addition to a variety of vegetation and surrounding developments. The approved building envelope also obscures part of the surrounding district views. It should be noted that the approved development does include higher private apartments on Level 12 to RL 111.2 and rooftop services of RL 117.5, which sits above the proposed building height.

Step 3: This montage demonstrates that the proposed development will result in a minor loss of district views from the approved roof top communal open space of this neighbouring property. Whilst there is a minor impact, the proposal will not impact any Sydney CBD skyline and Sydney Harbour Bridge views, noting these elements are impacted by surrounding developments. In percentage terms, it is considered that the district views lost are less than 10%.

As detailed and demonstrated in **Figure 16**, Areas 3 and 6 are undeveloped and are capable of benefitting from the additional uplift in density afforded by the Housing SEPP. These properties will result in a view loss impact beyond that proposed. As such, this is entirely reasonable as there will be full retention of high-value views enjoyed across the site.



Figure 15 Comparison of proposed impact on views from Site 12 (Left indicates approved, right indicates proposed)



Figure 16 Proposed impact on views from Site 12, if Area 3 and 6 benefit from bonuses afforded by Housing SEPP

Step 4: In terms of compliance with planning controls, the proposal satisfies the incentive development standards as contained within the LCLEP, inclusive of bonuses afforded by the Housing SEPP. Specifically, the proposal will comply





with the height and FSR permitted under the incentive bonuses of Clause 7.1 (including Housing SEPP bonuses) when disregarding the modified existing ground level as set out in the respective Clause 4.6 Variations. That is, where the proposal exceeds the incentive standards, the variations are technical in nature and only a result of the modified existing ground level which has skewed the calculation of building height. Accordingly, the alterations and additions result in a built form which is entirely consistent with the bulk, scale and character of developments as desired for transit orientated developments, including that approved on the subject site or within close proximity to it. It is also noted that the proposed modifications will not impact compliance with unit mix, green spine setbacks, pedestrian links, recreation areas and community facilities. The proposal is permissible in the zone and compatible with the desired future character of the locality.

With regards to the LCDCP, the proposed modifications are generally compliant with the relevant controls. However, it is noted that there are two variations to the controls contained within Part C Residential Localities, Locality 7 St Leonards South Precinct, as follows:

- *Control No. 1 Building Setbacks F:* This control requires a 6m setback to the east-west pathway reservation, and additional 3m at and above Level 5. The proposed additions provide for a 3m to 6.6m setback and does not technically comply. This is consistent with the approved application (noting no changes are proposed to the lower levels), as the site is restricted due to the required provision of a community centre and recreation facility adjacent to the east-west through-site link. The proposal represents the most logical arrangement of floor space and does not result in any adverse loss of views, particularly given the proposed envelope is consistent with that originally approved, and the neighbouring allotments will retain appropriate views above or around the modified built form. A strictly compliant development would not result in any significant improvement to views, when considering the assessments made above.
- *Control No. 7 Height in Storeys:* This control requires that buildings on the subject site be a maximum of 12 storeys. The proposed development will provide for a storey height of 17 to 19 storeys, which exceeds the DCP control due to the bonuses afforded by the Housing SEPP. Whilst the development exceeds the storey height control, it is prudent to note that the development does not exceed the maximum building height control, as benefitting from the Housing SEPP, which is the matter for consideration. In totality, the development will retain an appropriate quantum of views from surrounding properties and is considered acceptable given the significant public benefits afforded by the proposal.

With regards to the Apartment Design Guide, the additional storeys do not comply with the separation distance to the northern boundary. Part 3F-1 requires a 12m setback to habitable rooms and 6m setback to non-habitable rooms, for the ninth storey and above. As shown in the architectural plans, the proposal provides a 6m setback to the upper levels, including both habitable and non-habitable rooms, and is therefore non-compliant as it pertains to the habitable rooms. Notwithstanding, the proposal aligns with the envelope of the approved development below and the proposed upper levels do not result in any adverse loss of views as addressed above. Importantly, the objective of Part 3F-1 is to maintain the visual privacy of the surrounding residents and does not seek to establish building envelope. In this regard, the proposal aligns with the approved envelope as was considered reasonable by the consent authority.

Per the above, it is acknowledged that the proposed development does not strictly satisfy the building envelope controls. However, the building envelope variations do not constitute an impact that is 'unreasonable'. The proposed modifications, which are consistent with that approved on-site and as desired by the LCLEP and Housing SEPP bonuses, will be compatible with the desired future character of the locality particularly as it relates to transit orientated, affordable housing developments.

The view loss montages and analysis as shown under Step 3 demonstrates that there is a potential for minor to severe view loss from the assumed and approved roof top communal open spaces. In totality, the loss of views is considered



moderate and a reasonable view sharing outcome is achieved when considering the position, location and extent of views enjoyed from the neighbouring properties. Importantly, the following should be noted in light of the view loss:

- The impacts are from the roof top communal open spaces of neighbouring properties. Whilst it is appreciated that some view loss is adverse, this must be put into the context of a dense urban environment which is continually undergoing transition. In this instance, it is unreasonable to fully protect views from communal areas in an environment which is capable of accommodating a significant increase in density, particularly when substantial public benefits are delivered in the form of 23 affordable housing apartments;
- When considering the view impacts in totality, there are assumed additional views obtained in other directions from the neighbouring roof top open spaces. That is, whilst there will in some instances an impact to higher value views, additional outlook can be obtained in other directions to ensure the amenity of the neighbouring properties are appropriately protected; and
- As above, the site is located in a dense urban environment within close proximity to the railway station. The need for affordable, transit orientated development is critical in St Leonards and is of great public benefit. To remove affordable residential accommodation to protect views in a dense urban environment is inferior.

Following the above, the proposed development has been skilfully designed to ensure compatibility with the desired future character of the locality. When disregarding the modified ground level, the proposal complies with the maximum building height and FSR incentive development standards, inclusive of Housing SEPP bonuses, and will be consistent with the approved envelope on-site and approvals on surrounding properties. Ultimately, there is no more skilful way to locate the additional density afforded by the Housing SEPP without having an adverse impact to the overall character of the development, relationship to neighbouring properties and provision of public open spaces, including the east-west through-site link and green spine.

The proposal therefore presents to the public domain as a high-quality mixed-use development which will be compatible with future surrounding developments and the overall built form is consistent with LCLEP. Whilst there are minor variations to the LCDCP and ADG, as outlined above, they do not result in a development which is inconsistent with the St Leonards South Precinct.

Accordingly, the proposal is considered acceptable with regards to view loss.

5.3.7 Solar Access

The proposed development has been designed to retain, as far as practicable, solar access to the surrounding properties and the public domain from 9am to 3pm during mid-winter.

The proposed alterations and additions do not cast any shadows onto land known as Areas 3, 4 and 6 due to the orientation and location of the site and is therefore acceptable. With regards to the adjoining properties known as Areas (or Buildings) 7, 8 and 10, and developments at Nos. 2-6 Duntroon Avenue, there will be unavoidable overshadowing as a result of the increase in density afforded by the Housing SEPP.

Despite this and as detailed in the solar access analysis undertaken by *SJB Architects*, the extent of impact is entirely reasonable with regards to the Design Criteria set out in the ADG. The following is noted:

- **Building 7 (South):** The proposed development will maintain two hours of solar access to 43 of 43 (100%) apartments during mid-winter and is therefore considered acceptable.
- **Building 8 (South):** The proposed alterations and additions will result in a relatively minor impact to the solar access of this neighbouring property. Whilst resulting in an additional impact and as demonstrated in the submitted shadow diagrams, Building 8 to the south will receive 2 hours of solar access to 53 of 70 (75.7%) apartments during mid-winter and therefore satisfies the ADG Design Criteria. Whilst the 88.7% of apartments

receive solar access during mid-winter in accordance with the approved site conditions, the proposal will not result in any adverse impact and is acceptable.

- **Building 10 (South):** The proposed development will result in a minor impact and is considered acceptable with regards to the ADG Design Criteria. Specifically, 42 of 46 (91%) apartments will receive 2 hours of solar access during mid-winter and is therefore considered acceptable.
- **Nos. 2 and 6 Duntroon Avenue:** The proposal will result in a negligible solar impact to residential apartments at Duntroon Avenue from 2:45pm to 3:00pm and is acceptable.

As such, the proposal will not result in any significant increase in overshadowing when compared to the approved development, despite the permitted increase in density.

With regards to the solar access of Newland Park, *Section 6.1 Sunlight to Public Spaces* requires the following:

a) New development must allow for a minimum of 2 hours of solar access to at least 50% of new and existing public open areas or plazas between the hours of 11am and 2pm on 21st June.

In accordance with the above, the proposed increase in building height will have a relatively minor impact on the public open space known as Newlands Park, from 1pm to 2pm during mid-winter. Whilst there will be an impact, this is limited and will ensure the public open space will receive 5 hours solar access from 9am to 2pm during mid-winter, to greater than 50% of the public open space. This is suitable for the amenity of the public open space and general public.

In terms of solar access to the proposed development, the overall development complies with the solar access requirements of the ADG, with 72 of 102 (70%) apartments achieving the minimum 2 hours and no apartments receiving no direct solar access during mid-winter.

As such, the proposal is acceptable in this regard.

5.3.8 Aural & Visual Privacy

In terms of privacy, the proposed alterations and additions have been designed to minimise, as far as practicable, the likelihood of any adverse overlooking or invasion of aural privacy of neighbouring properties. When considering the visual and acoustic privacy of the neighbouring sites, this is achieved by providing appropriate setbacks, blank facades and orientation of views, as originally approved. The following is noted regarding the proposed additional levels:

- **Southern (side) boundary:** To the southern (side) boundary, the additional levels provide for an 18.25m to 19.35m setback to the boundary shared with the neighbouring property, thereby exceeding the minimum separation requirements as outlined in the ADG ensuring visual privacy is maintained. Whilst a reduced setback will be provided to the east-west pedestrian link, this is consistent with the envelope of the approved development and will not result in any adverse privacy impact. In fact, the provision of additional residential apartments will contribute to casual surveillance and is superior in this regard.

Northern (side) boundary: To the north, the proposal provides for a consistent 6m setback across all additional levels. Whilst falling short of the 9m separation requirement stipulated by the ADG Design Criteria, the envelope and footprint is designed to be consistent with that approved under DA162/2021, which the consent authority deemed acceptable in terms of visual and aural privacy. Importantly, the number of additional apartments opposing the northern boundary are minimal, and generally pertain to openings from non-habitable rooms and less trafficked bedrooms to reduce privacy impacts. It is noted that the proposal satisfies the objective of Part 3F-1, as previously accepted by the consent authority, which was achieved through dual orientated habitable bedrooms. Furthermore, Council imposed Condition A2 requiring additional privacy mitigation measures at the northern facade in the form of louvers. Similar measures will be imposed

as part of this development. As such, the proposal will satisfy Objective 3F-1 and will provide equitable separation and ensure visual privacy is maintained.

- **Western (rear) boundary:** To the western rear boundary, the proposal provides for a consistent 12m setback across all additional levels. This satisfies the ADG Design Criteria and will ensure, by virtue of separation distances, that the visual privacy of future residents and neighbouring properties will be maintained.

As such and in terms of privacy of neighbouring properties, the impact is minimal.

With regards to acoustic privacy, the proposed development is consistent with the reasonable permitted density on the subject site and is permitted within the zone, per the bonuses afforded by the Housing SEPP. Resultantly, any acoustic privacy impact is considered to be entirely reasonable and as anticipated in the locality, as originally approved. This is confirmed in the supporting addendum Acoustic Report prepared by *PWNA*.

In light of the above, the development will not have any adverse impacts on visual or acoustic privacy of neighbouring properties or that of future occupants and is considered acceptable.

5.3.9 Wind Impacts

The development application is supported by a Wind Environment Assessment prepared by *Windtech* that updates the previous assessment carried out in respect of the approved DA. The Assessment has considered the additional levels proposed as part of the alterations and additions, and has found that the proposed development will perform favourably with regards to wind environment and comfort.

Accordingly, the proposal is considered to perform favourably with regards to wind impacts.

5.4 ECONOMIC & SOCIAL IMPACTS

The proposed development will improve the existing and approved housing stock through the provision of 102 high-quality residential apartments, inclusive of additional affordable housing as desired by the Housing SEPP.

The proposal will provide for high quality alterations and additions to the approved residential flat building, with high levels of amenity for future residents and neighbouring properties, whilst ensuring consistency with the existing and desired urban fabric of the locality. The proposal incorporates well-sized one to five bedroom apartments, inclusive of affordable housing, which are tailored for modern living and contribute to the housing stock within the locality. The proposal will continue to provide landscaping, parking and services which are consistent with the originally approved development.

As detailed, the proposal will provide for 23 additional affordable housing apartments per the Housing SEPP. In accordance with the LCLEP, the delivery of 43 affordable housing apartments is required across the St Leonards South Precinct. The provision of 23 affordable apartments equates to 53.5% of the total required within the Precinct. Further to this, Area 1 requires the provision of 14 affordable housing apartments, which is the highest requirement in the Precinct. The proposal, which provides for 23 apartments, represents an increase of 164.3% of that required for Area 1, therefore delivering a significant social benefit to the locality.

The subject site also enjoys excellent access to commercial services, various services and facilities and public transport. The proposed development will utilise existing infrastructure including electricity, sewer, water and telecommunication services, as originally approved. Undertaking the demolition and construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects.

Accordingly, it is considered that the proposed development is likely to have only positive social and economic impacts in the locality.



5.5 THE SUITABILITY OF THE SITE

5.5.1 Access to Services

The subject site is well served by public transport, being located in close proximity to St Leonards Train Station. In addition, the site is located within close proximity to the St Leonards Town Centre which provides district level retail, commercial, community services and facilities. As the site is within an established area, electricity, sewer, telephone, and water services are readily available to the subject site.

5.5.2 Parking and Access

A Traffic and Parking Assessment report has been prepared by *Transport Strategies* and is submitted with the application.

Vehicular access to the site is provided from Canberra Avenue and is unchanged from that originally approved under DA162/2021. The proposed alterations and additions do not seek to modify the basement footprint or envelope, however, seeks to increase the number of residential parking spaces on-site by 25. This will result in the provision of 101 resident and 17 visitor parking spaces. The parking allocated to other uses will be unchanged in this application.

Clause 19 Non-discretionary development standards of the Housing SEPP provides parking rates for affordable and non-affordable housing as reproduced below:

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

(e) *the following number of parking spaces for dwellings used for affordable housing—*

- (i) *for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
- (ii) *for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*
- (iii) *for each dwelling containing at least 3 bedrooms— at least 1 parking space,*

(f) *the following number of parking spaces for dwellings not used for affordable housing—*

- (i) *for each dwelling containing 1 bedroom—at least 0.5 parking spaces,*
- (ii) *for each dwelling containing 2 bedrooms—at least 1 parking space,*
- (iii) *for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,*

As outlined in **Table 8** below, the proposal requires parking to be provided as follows:

Table 8 Housing SEPP Parking Rates				
	Control	Requirement	Proposal	Complies
Affordable Apartments	1 bedroom – at least 0.4 parking spaces 2 bedroom – at least 0.5 parking spaces 3 bedroom – at least 1 parking space	The proposal will provide 23 apartments as affordable housing, including the following: 14 x 1 bedroom affordable apartments = 5.6 parking spaces 7 x 2 bedroom affordable apartments = 3.5 parking spaces	Total of 102 spaces are required. Total of 101 spaces provided.	No, however proposal complies with LCDCP



Table 8 Housing SEPP Parking Rates

		2 x 3 bedroom affordable apartments = 2 parking spaces This requires a total of 11.1 (12) parking spaces for affordable apartments.		
Non-Affordable Apartments	1 bedroom – at least 0.5 parking spaces 2 bedroom – at least 1 parking spaces 3 bedroom – at least 1.5 parking space	The proposal will provide 79 apartments not used affordable housing, including the following: 20 x 1 bedroom apartments = 10 parking spaces 17 x 2 bedroom apartments = 17 parking spaces 42 x 3/4 bedroom apartments = 63 parking spaces This requires a total of 90 parking spaces for standard (not affordable) apartments.		

The proposed parking arrangement will fall short of the minimum requirements for the affordable and non-affordable apartments (by a single space) per the Housing SEPP. Whilst non-compliant, this is minor and the proposal will satisfy the requirements as set out by the LCDCP and is considered to be entirely reasonable.

In addition to the above, *Part R, Section 2.4 Parking near St Leonards Railway Stations* of the LCDCP provides parking rates for the subject site as reproduced in **Table 9** below.

Table 9 LCDCP Parking Rates

	Control	Requirement	Proposal	Complies
Resident Parking	Studio to 1 bedroom: 0.5 spaces 2 bedroom: 0.9 spaces 3 bedroom: 1.4 spaces. 4+ bedroom: 2 spaces Allocation of parking spaces at developer's discretion. 1 disabled space for each adaptable housing unit 1 onsite removalist truck space per 100 residential units (as per relevant Australian Standards) 1 car wash bay per 50 units for developments over 20 units	34 x 1 bedroom = 17 required 24 x 2 bedroom = 21.6 required 43 x 3 bedroom = 60.2 1 x 4 bedroom = 2 required Total Required = 100.8 (101) spaces	Total of 101 resident spaces provided.	Yes
Visitor Parking	1 space per 5 unit 1 disabled space per 10 visitor	102 apartments equates to a maximum of 20.4 (20) spaces.	Total of 17 visitor	Yes

Table 9 LCDCP Parking Rates

	spaces (minimum 1 disabled space)		spaces provided.	
--	-----------------------------------	--	------------------	--

Note: The proposal will not make any changes to other uses approved on the subject site under DA162/2021.

In accordance with the above, the proposal will comply with the resident rates as set out by the LCDCP despite the increase in density. Whilst the proposal will not strictly satisfy the visitor parking requirements, this is acceptable given the highly accessible nature of the site and proximity to public transport and provision of 2 available car share spaces. Accordingly, the proposed development is considered acceptable with regards to the provision of resident and visitor parking as set out in the Housing SEPP and LCDCP.

5.5.3 Hazards

The site is not in an area recognised by Council as being subject to landslip, flooding, bushfire or any other particular hazards. The proposed development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

5.6 THE PUBLIC INTEREST

The proposal is designed to deliver high quality alterations and additions to the approved development under DA162/2021. The proposal will contribute to the desired character of the locality, through providing contemporary alterations and additions consistent with that approved on-site, including the delivery of affordable housing. The proposed development will also provide high quality accommodation within built forms which are compatible in bulk, scale and character of the locality. The proposal has incorporated specific design measures and materiality to ensure the additional floor space and building height, as envisaged by the Housing SEPP, will contribute to the streetscape of the locality.

The proposal provides for significant social public benefits, in that it will provide for 23 additional affordable housing apartments per *Chapter 2, Division 1* of the Housing SEPP. In accordance with the LCLEP, the delivery of 43 affordable housing apartments is required across the St Leonards South Precinct. The provision of 23 affordable housing apartments equates to 53.5% of the total required within the Precinct. Further to this, Area 1 requires the provision of 14 affordable housing apartments, which is the highest requirement for affordable housing in the Precinct. The proposal, which provides for 23 affordable apartments, represents an increase of 164.3% of that required for Area 1, therefore delivering a significant social benefit to the locality. The provision of such a great quantum of affordable housing will assist in addressing the housing crisis and demand for affordable housing, particularly for key workers at the St Leonards Health and Education Precinct, including Royal North Shore Hospital.

The proposed modifications has also been designed to protect the amenity of neighbouring properties, as well as to provide a high degree of amenity for residents. The proposed development is in an accessible location, with good access to local amenities, employment and services. Overall, the proposal will provide a high-quality development which will both improve the character of the locality.

The proposal is consistent with the relevant provisions and is considered to have largely positive social and economic impacts, and manageable impacts on the environment. As such, the proposed development is considered to be in the public interest.



6. Conclusion

This Statement of Environmental Effects accompanies a development application for alterations and additions to an approved mixed-use development (DA162/2021), and seeks consent for the provision of affordable housing, comprising of 23 affordable apartments, across five additional storeys (or four additional storeys, if the Section 4.55(2) Modification Application with the Land and Environmental Court is approved) at Nos. 13-19 Canberra Avenue, St Leonards. The proposal will seek to deliver an additional 24 apartments across the development resulting in a total of 102 apartments.

The proposed development has been assessed in light of Section 4.15 of the EP&A Act, 1979, the relevant State Environmental Planning Policies, namely the Housing SEPP (including ADG) and Council's planning instruments.

The proposed increase in density is sought in accordance with the recently amended Housing SEPP, *Chapter 2 Affordable housing, Division 1 In-fill affordable housing*. The proposal will seek to benefit from a 27.3% increase in maximum FSR and 30% increase building height, as measured from the incentive standards under Clause 7.1(3) of LCLEP. The development will therefore allocate 15% of the total floor area as affordable housing, equating to 23 apartments, aligning with the Housing SEPP.

Whilst Clause 4.6 Variations are submitted in relation to Clause 4.3 and 4.4 of the LCLEP, these are technical in nature and a result of the recently modified site conditions. In this regard, the site's highly accessible location is considered suitable for the proposed increase in density and will deliver much needed affordable housing in the St Leonards locale and is consistent with the NSW Government objectives of delivering housing (inclusive of affordable housing) in close proximity to public transport and centres. The proposed additional storeys are contained within the envelope of the approved development, and will maintain the high quality, contemporary built form and landscaped character.

The proposed alterations and additions will positively contribute to the diversity of housing stock and will have manageable impacts on both the environment and amenity of the locality, as discussed in this Statement. Accordingly, in the circumstances of the case, the proposal is considered to be in the public interest and worthy of Council's support.

ANNEXURE A

State Environmental Planning Policy (Housing) 2021 – Compliance Table



SEPP (Housing) 2021 - Compliance Table			
Clause / Control	Requirement	Proposal	Complies?
Part 2 Development for Affordable Housing Division 1 In-fill affordable housing			
15C Development to which this division applies	<p>(1) This division applies to development that includes residential development if—</p> <p>(a) the development is permitted with consent under Chapter 3, Part 4 or another environmental planning instrument, and</p> <p>(b) the affordable housing component is at least 10%, and</p> <p>(c) all or part of the development is carried out—</p> <p>(i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or</p> <p>(ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.</p> <p>(2) Affordable housing provided as part of development because of a requirement under another environmental planning instrument or a planning agreement within the meaning of the Act, Division 7.1 is not counted towards the affordable housing component under this division.</p> <p>(3) In this section— relevant zone means the following—</p> <p>(a) Zone E1 Local Centre,</p> <p>(b) Zone MU1 Mixed Use,</p> <p>(c) Zone B1 Neighbourhood Centre,</p> <p>(d) Zone B2 Local Centre,</p> <p>(e) Zone B4 Mixed Use.</p>	<p>The proposed residential flat building is permitted with consent in the R4 High Density Residential zone.</p> <p>The proposal will provide 15% of the total floor area as affordable housing.</p> <p>The development is within the Six Cities Region and is within 450m walking distance to the entry of St Leonards Railway Station to the north and is therefore accessible.</p> <p>Noted.</p> <p>Noted.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>-</p> <p>-</p>
16 Affordable housing requirements for	(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	In accordance with the incentive bonuses under Clause 7.13(3)(a) and (b), the subject site is permitted a maximum building height of 44m and FSR of 3.7:1 (9,778.41m ²), respectively. The proposed	Yes

SEPP (Housing) 2021 - Compliance Table

additional floor space ratio	<p>ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</p> <p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$ <p>(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).</p> <p>Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.</p> <p>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</p>	<p>development seeks to provide for a total FSR of 4.71:1 and GFA of 12,388m², when including the lobby and storage areas contained within the basement, due to the modified natural ground level (refer to discussion in Section 5.2.6 of this Statement). This equates to an additional GFA of 2,659.59m², FSR 1.01:1 and bonus of 27.3% when compared to the incentive GFA and FSR.</p> <p>Whilst the development seeks to benefit from a 27.3% increase in GFA and FSR, a height bonus of 30% is proposed. Based on the incentive building height under Clause 7.13(a) of 44m, a maximum building height of 57.2m is permitted and proposed (as measured from the existing ground level that applied when DA162/2021 was approved).</p> <p>As a maximum bonus of 30% is proposed for the building height, 15% of the total floor area is to be allocated as affordable housing. This equates to 1,858m² of the total floor area required as affordable housing. Importantly, the 15% affordable housing allocation been calculated against the GFA of 12,388m², which includes the area within the basement levels as required by the modified existing ground level.</p> <p>Per the above, the proposal will allocate a total GFA of 1,858m² or 15% of the total floor area as affordable housing and therefore satisfies the Housing SEPP. This includes 23 apartments equating to 1,574m² and 284m² of circulation space serving the affordable apartments. It is noted that a total circulation space and communal amenity of 1,893.93m² is provided, and 15% of this space equates to 284m², which will be allocated to affordable housing.</p>	
17 Additional floor space ratio	(1) This section applies to residential development to which this division applies that is carried out—	Not applicable. The proposal is not for a registered community housing provided.	N/A

SEPP (Housing) 2021 - Compliance Table

for relevant authorities and registered community housing providers	(a) by or on behalf of a relevant authority or registered community housing provider, and (b) on land with a maximum permissible floor space ratio of 2:1 or less.		
18 Affordable housing requirements for additional building height	<p>(1) This section applies to development that includes residential development to which this division applies if the development—</p> <p>(a) includes residential flat buildings or shop top housing, and</p> <p>(b) does not use the additional floor space ratio permitted under section 16.</p> <p>(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).</p> <p>(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> <p>affordable housing component = additional building height ÷ 2 (as a percentage)</p>	Not applicable as the proposed development also seeks to benefit from the additional floor space under Section 16.	N/A
19 Non-discretionary development standards—the Act, s 4.15	(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.	Noted.	-
	(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—	Noted.	-
	(a) a minimum site area of 450m ² ,	The site area is 2,629.3m ² .	Yes

SEPP (Housing) 2021 - Compliance Table

	(b) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	35m ² per dwelling equates to 3,570m ² . 30% of the site area equates to 788.79m ² . Therefore the minimum landscaped area requirement is 788.79m ² . As originally approved, the proposal provides a total landscaped area of 929.9m ² or 35.4% and therefore compliant.	Yes
	(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	This is not applicable as subclause (3) states that subclause (2)(c) and (d) do not apply to development to which Chapter 4 applies. As the proposal is for a residential flat building, <i>Chapter 4 Design of residential apartment development</i> applies and as such, (c) is not applicable.	N/A
	(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 at mid-winter,	This is not applicable as subclause (3) states that subclause (2)(c) and (d) do not apply to development to which Chapter 4 applies. As the proposal is for a residential flat building, <i>Chapter 4 Design of residential apartment development</i> applies and as such, (d) is not applicable.	N/A
	(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,	The proposal will provide 23 apartments as affordable housing, including the following: 14 x 1 bedroom affordable apartments = 5.6 parking spaces 7 x 2 bedroom affordable apartments = 3.5 parking spaces 2 x 3 bedroom affordable apartments = 2 parking spaces This requires a total of 11.1 (12) parking spaces for affordable apartments. A total of 102 spaces are required for the proposed development. The proposal provides for 101 spaces and does not comply with the Housing SEPP, but complies with the LCDCP.	No, but acceptable and compliant with LCDCP
	(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	The proposal will provide 79 apartments not used affordable housing, including the following: 20 x 1 bedroom apartments = 10 parking spaces 17 x 2 bedroom apartments = 17 parking spaces 42 x 3/4 bedroom apartments = 63 parking spaces	No, but acceptable and compliant with LCDCP

SEPP (Housing) 2021 - Compliance Table

		This requires a total of 90 parking spaces for standard (not affordable) apartments. A total of 102 spaces are required for the proposed development. The proposal provides for 101 spaces and does not comply with the Housing SEPP, but complies with the LCDCP.	
	(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Proposed apartments satisfy the minimum internal area requirements prescribed by the ADG.	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 applicable.	N/A
	(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (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 ADG applies.	N/A
	(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	The proposal is for a residential flat building and as such Chapter 4 applies. Accordingly, subclauses (2)(c) and (d) do not apply to this application.	Yes
20 Design requirements	(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	Not applicable.	N/A
	(2) Subsection (1) does not apply to development to which Chapter 4 applies.	Noted.	-
	(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—	Refer to Section 5.2.5.3 of this Statement which addresses local character.	Yes

SEPP (Housing) 2021 - Compliance Table

	(a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.		
21 Must be used for affordable housing for at least 15 years	<p>(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—</p> <p>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p> <p>(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.</p>	It is anticipated that a condition in relation to affordable housing will be imposed by the consent authority.	Yes
22 Subdivision permitted with consent	Land on which development has been carried out under this Division may be subdivided with development consent.	Strata subdivision will form part of a separate application.	N/A

ANNEXURE B

Apartment Design Guide – Compliance Table



Apartment Design Guide

Part	Design Criteria	Proposal	Complies?												
3D Communal and public open space and	Communal open space has a minimum area of 25% of the site.	The proposed alterations and additions to the approved development do not involve any changes to the approved area of communal open space. It is noted that DA162/2021 included a communal open space of 45% or 1,206m ² .	Yes												
	Developments achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours.	The proposed alterations and additions to the approved development do not involve any change to the extent of solar access received by the area of communal open space. It is noted that DA162/2021 achieves 50% of direct solar access for 2 hours during mid-winter.	Yes												
3E Deep soil zones	Deep soil zones are to meet the following minimum requirements: <div><table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² - 1,500m²</td><td>3m</td></tr><tr><td>greater than 1,500m²</td><td>6m</td></tr><tr><td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table></div>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	Deep soil areas approved under DA162/2022 will not be changed by the proposed development. It is noted that 16% of the site area, with a minimum 6m dimension, is maintained.	Yes
Site area	Minimum dimensions	Deep soil zone (% of site area)													
less than 650m ²	-	7%													
650m ² - 1,500m ²	3m														
greater than 1,500m ²	6m														
greater than 1,500m ² with significant existing tree cover	6m														
3F Visual privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	<p>The proposed additional floor levels will provide for the following separation distance above the 9th storey:</p> <ul style="list-style-type: none">• Southern(side) boundary: 18.25m to 19.35m and complies• Northern (side) boundary: 6m and does not comply• Western (rear) boundary: 12m and complies <p>The proposed additions generally meet the minimum separation distances as set out by the ADG. However, part of the built form</p>	<p>Yes</p> <p>On merit</p> <p>Yes</p>												

Apartment Design Guide

	<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	opposing the northern boundary does not meet the requirements as it has been designed to follow the envelope of the floor levels of the approved development below. Whilst non-compliant, the proposal will maintain appropriate visual privacy as required by Objective 3F-1. This is discussed in Section 5.3.8 of this Statement.	
Building height	Habitable rooms and balconies	Non-habitable rooms													
up to 12m (4 storeys)	6m	3m													
up to 25m (5-8 storeys)	9m	4.5m													
over 25m (9+ storeys)	12m	6m													
3J Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none">• on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or• on any land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent, in a nominated regional centre. <p>the minimum car parking requirement for residents and visitors is set out in the <i>Guide to Traffic Generating Developments (2002)</i>, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.</p>	The parking rates under the Housing SEPP apply, in which the proposal is compliant.	Yes												
4A Solar and daylight access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p>	<p>Overall, 72 of 102 (70%) of apartments receive 2 hours of solar access during mid-winter.</p> <p>In terms of the additional apartments, 20 of 24 (83.3%) of apartments receive 2 hours of solar access during mid-winter.</p>	Yes												
	<p>In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter</p>	Not applicable.	N/A												

Apartment Design Guide

	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Overall, no apartments receive no direct solar access during mid-winter.	Yes												
4B Natural ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	31 of 50 (62%) of apartments are natural cross ventilated for the first nine storeys.	Yes												
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Not applicable	N/A												
4C Ceiling heights	<div>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:<table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table></div> <div>These minimums do not preclude higher ceilings if desired</div>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	The proposal does not alter the floor levels of the approved development. The additional levels will comply with the minimum ceiling height of 2.7m.	Yes
Minimum ceiling height for apartment and mixed use buildings															
Habitable rooms	2.7m														
Non-habitable	2.4m														
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area														
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope														
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use														
4D Apartment size and layout	Apartments are required to have the following minimum internal areas:	The proposed residential apartments will comply with the minimum internal areas as shown in the architectural plans and is considered acceptable.	Yes												

Apartment Design Guide

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

Habitable room depths are limited to a maximum of 2.5 x the ceiling height

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

As indicated on the architectural plans provided with the application, the additional apartment layouts are compliant with this requirement.

As detailed, there will be no changes to the approved apartment layout and design.

As indicated on the architectural plans provided with the application, the additional apartment layouts are fully compliant with this requirement.

As detailed, there will be no changes to the approved apartment layout and design.

Yes

Yes

Apartment Design Guide

	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	<p>As indicated on the architectural plans provided with the application, the additional apartment layouts are fully compliant with this requirement.</p> <p>As detailed, there will be no changes to the approved apartment layout and design.</p>	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	<p>As indicated on the architectural plans provided with the application, the additional apartment layouts are fully compliant with this requirement.</p> <p>As detailed, there will be no changes to the approved apartment layout and design.</p>	Yes
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	<p>As indicated on the architectural plans provided with the application, the additional apartment layouts are fully compliant with this requirement.</p> <p>As detailed, there will be no changes to the approved apartment layout and design.</p>	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	<p>As indicated on the architectural plans provided with the application, the additional apartment layouts are fully compliant with this requirement.</p> <p>As detailed, there will be no changes to the approved apartment layout and design.</p>	Yes
4E Private open space and balconies	All apartments are required to have primary balconies as follows:	As indicated on the architectural plans provided with the application, the additional apartment private open spaces are fully compliant with this requirement.	Yes

Apartment Design Guide

Dwelling type	Minimum area	Minimum depth
Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3+ bedroom apartments	12m ²	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m

As detailed, there will be no changes to the approved private open space layout and design.

There will be no changes to the approved ground level, private open space layout and design.

N/A

4F Common circulation and spaces

The maximum number of apartments off a circulation core on a single level is eight.

For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40

The additional levels proposed as part of this application comply with this requirement.

The maximum number of apartments above 10 storeys does not exceed 40 apartments, notwithstanding there are two lifts serving the building.

Yes

Yes

4G Storage

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type	Storage size volume
Studio apartments	4m ³
1 bedroom apartments	6m ³
2 bedroom apartments	8m ³
3+ bedroom apartments	10m ³

At least 50% of the required storage is to be located within the apartment.

As indicated on the architectural plans provided with the application, the additional apartment include storage which are fully compliant with this requirement.

Yes

ANNEXURE C

Lane Cove Local Environmental Plan 2009 – Compliance Table



LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

Clause / Control	Requirement	Proposal	Complies
4.2 Zone Objectives & Land Use Table	<p>Zone R4 High Density Residential</p> <ul style="list-style-type: none"> To provide for the housing needs of the community within a high density residential environment. To provide a variety of housing types within a high density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To provide for a high concentration of housing with good access to transport, services and facilities. To ensure that the existing amenity of residences in the neighbourhood is respected. To avoid the isolation of sites resulting from site amalgamation. To ensure that landscaping is maintained and enhanced as a major element in the residential environment. 	<p>The proposal involves the construction of five additional storeys and 24 apartments (in total) to the approved mixed-use development and will contribute to the quantum of dwellings in St Leonards and thus provide for the housing needs of the community. The proposal will provide for one to five bedroom apartments, and will result in a total of 102 apartments across the site. Importantly, this application is made pursuant to Chapter 2, Division 1 of the Housing SEPP and will dedicate 23 apartments to affordable housing and will provide for the housing needs of the community.</p> <p>Importantly, the proposal will not seek to alter any of the approved uses and facilities, including the childcare, community facility and pedestrian link which will serve the needs of the community. The proposal will also maintain the amount of landscaping as approved with DA162/2021.</p>	Yes
4.3 Height of buildings	(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. (9.5m)	<p>The 9.5m height limit, when including a 30% bonus afforded by the Housing SEPP, is 12.35m.</p> <p>As discussed, the development complies with the incentive height control (7.1(3)(a)) including the Housing SEPP bonus of 57.2m, as measured from the ground level at the time which DA162/2021 was approved. However, when measured from the excavated basement level per the LCLEP definition, will not comply. As Clause 7.1(3) cannot be varied pursuant to Clause 4.6, Clause 4.3 is the relevant development standard.</p> <p>The proposed development provides for the following:</p> <ul style="list-style-type: none"> Height of 56.65m from the existing ground level at the time which DA162/2021 was approved. This complies with the incentive height and 30% Housing SEPP bonuses of 57.2m. 	Refer to Clause 4.6 Variation in Annexure D

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

		<ul style="list-style-type: none"> - Height of 73.3m from the excavated basement level. This exceeds the incentive height and 30% Housing SEPP bonuses of 57.2m. <p>Refer to supporting Clause 4.6 Variation Statement in Annexure D.</p>	
4.4 Floor space ratio	(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. (0.5:1)	<p>The 0.5:1 FSR, when including the 30% bonus is 0.65:1.</p> <p>As discussed, the development complies with the incentive FSR control (7.1(3)(b)) including the Housing SEPP bonus, with a FSR of 4.71:1 (27.3%). This includes the floor space located within the basement levels and complies with the incentive and Housing SEPP bonuses. However, as the development does not comply with the incentive building height and both components must comply for Part 7 to be relied upon, Clause 4.4 is the relevant development standard.</p> <p>As such, a Clause 4.6 Variation is provided in Annexure E.</p>	Refer to Clause 4.6 Variation in Annexure E
6.1A Earthworks	<p>(3) Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p>	The proposal will not make any changes to the approved basement footprint and excavation and as such, the extent of excavation will be unchanged.	Yes

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

7.1 Development on land in St Leonards South Area	(3) Despite clauses 4.3 and 4.4, the consent authority may consent to development on land to which this clause applies that will result in a building with both of the following— (a) a building height that does not exceed the increased building height identified on the Incentive Height of Buildings Map, (44 metres & 2.5m)	As identified above, the proposal does not rely upon the height control in Clause 7.1(3)(a). However and as measured from the approved existing ground level, the proposal will comply with the incentive height and bonuses afforded by the Housing SEPP. However, as measured from the excavated basement level the proposal does not comply and as such, the proposal must refer to Clause 4.3.	N/A
	(b) a floor space ratio that does not exceed the increased floor space ratio identified on the Incentive Floor Space Ratio Map. (3.7:1)	The proposal does not rely upon the FSR control in Clause 7.1(3)(b). As discussed, whilst the proposal will comply with the incentive FSR and Housing SEPP bonuses, Clause 7.1(3)(b) cannot be relied upon as the proposal does not satisfy 7.1(3)(a).	N/A
	(4) Development consent must not be granted under this clause unless the consent authority is satisfied that— (a) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be studio or 1-bedroom dwellings, or both, and (b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be 2-bedroom dwellings, and (c) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be 3 or more bedroom dwellings, and (d) the development will provide appropriate building setbacks to facilitate communal open space between buildings, and	The approved development was compliant with this requirement. The proposed alterations and additions will also comply. 34 (33.3%) studios/1-bedroom apartments. 24 (23.5%) 2-bedroom apartments. 44 (43.1%) 3/5-bedroom units proposed.	Yes
	(e) the development will comply with the requirements of clause 7.2 in relation to the minimum site area of the development, and	The proposed alterations and additions to the approved development do not change the building's approved setbacks. The additional levels are located on the upper levels and are entirely consistent with the approved development.	Yes
		The proposal complies with a site area of 2,629.3m ² .	Yes

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

	<p>(f) the development will, if applicable, comply with the requirements of clause 7.3 in relation to the minimum number of dwellings that will be used for the purposes of affordable housing, and</p> <p>(g) the development will, if applicable, comply with the requirements of clause 7.4 in relation to the minimum area that will be used for the purposes of recreation areas and community facilities, and</p> <p>(h) the development will, if applicable, comply with the requirements of clause 7.5 in relation to the provision of pedestrian links and roads.</p>	<p>Not applicable.</p> <p>No change from approved.</p> <p>No change from approved.</p>	<p>N/A</p> <p>No change</p> <p>No change</p>
7.2 Minimum site area requirements	<p>For the purposes of clause 7.1(4)(e), the minimum site area for development on land to which clause 7.1 applies is the area specified in the table to this clause.</p> <p>Area 5 - 2,200m²</p>	The site area is 2,629.3m ² .	Yes
7.4 Minimum recreation area and community facility requirements	<p>For the purposes of clause 7.1(4)(g), the following requirements apply to development on land to which clause 7.1 applies—</p> <p>(c) for Area 5 or Area 17—</p> <p>(i) at least 450 square metres will be used for the purposes of a recreation area, and</p> <p>(ii) at least 600 square metres will be used for the purposes of a community facility, and</p> <p>(iii) the recreation area will be adjacent to the community facility</p>	No change from approved.	No change
7.5 Requirements for pedestrian links and roads	<p>For the purposes of clause 7.1(4)(h), the following publicly accessible pedestrian links and roads are required to be provided for development on land to which clause 7.1 applies—</p> <p>(a) for Area 5 or Area 6—a 15 metre wide pedestrian link through the land to enable a connection between Holdsworth Avenue and Canberra Avenue,</p>	No change from approved.	No change

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

7.6 Design excellence—St Leonards South Area	<p>(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—</p> <p>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</p> <p>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</p> <p>(c) whether the development protects and enhances the natural topography and vegetation including trees or other significant natural features,</p> <p>(d) whether the development detrimentally impacts on view corridors,</p> <p>(e) whether the development achieves transit-oriented design principles, including the need to ensure direct, efficient and safe pedestrian and cycle access to nearby transit nodes,</p> <p>(f) the requirements of the Lane Cove Development Control Plan,</p> <p>(g) how the development addresses the following matters—</p> <p>(i) the suitability of the land for development,</p> <p>(ii) existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> <p>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p>	<p>The approved development was found to exhibit design excellence when reviewed by the Design Review and Excellence Panel, Council's planning staff and the Sydney North Planning Panel. The proposed alterations and additions have been designed for compatibility with the approved massing and form of the building, whilst appropriately accommodating the bonuses afforded by the Housing SEPP. The Urban Design Report prepared by <i>SJB Architects</i> indicates that the building will continue to exhibit design excellence.</p> <p>The architectural design and materials are consistent with the approved building and provide for well-considered additions.</p> <p>As originally approved, the form and appearance will contribute to the public domain.</p> <p>The proposal will not alter the topography, vegetation and extent of landscaping beyond that originally approved.</p> <p>The proposal will have no adverse impact to views as discussed in this Statement.</p> <p>The increase in density afforded by the Housing SEPP will directly encourage the principles of transit-orientated development.</p> <p>The proposal responds appropriately to the LCDCP as discussed in this Statement.</p> <p>The subject site is suitable for the proposed uplift and is in an accessible area.</p> <p>The proposal will provide for additional residential apartments, including affordable apartments.</p> <p>The proposal is not constrained by heritage issues. The development will provide for sympathetic additions consistent with the approved development.</p> <p>The proposal is compatible with the neighbouring properties and provides setbacks and building design consistent with the approved</p>	Yes
--	--	---	-----

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009

	<p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</p> <p>(viii) the achievement of the principles of ecologically sustainable development,</p> <p>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</p> <p>(x) the impact on, and any proposed improvements to, the public domain,</p> <p>(xi) the configuration and design of publicly accessible spaces and private spaces on the site.</p>	<p>development. Amenity is also acceptable as discussed in this Statement.</p> <p>The additional levels are consistent with the approved building envelope, and will provide for modulation and building design as originally approved.</p> <p>The increase in building height will have no adverse impact to street frontage heights. The additional levels are consistent with the approved development.</p> <p>The proposal will have no adverse environmental impacts as discussed in this Statement.</p> <p>This application is submitted with a BASIX Certificate.</p> <p>The proposal will not alter the circulation throughout the site.</p> <p>The proposal will not have impact to the public domain beyond that approved.</p> <p>As above.</p>	
--	---	---	--

ANNEXURE D

Clause 4.6 Variation - Building Height



CLAUSE 4.6 VARIATION STATEMENT – MAXIMUM HEIGHT OF BUILDINGS (CLAUSE 4.3) OF LCLEP AND SECTION 16(3) OF HOUSING SEPP

1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of Lane Cove Local Environmental Plan 2009 (LCLEP) to accompany the Development Application. The application seeks consent for alterations and additions to an approved development (DA162/2021) at Nos. 13-19 Canberra Avenue, St Leonards ('the site').

DA162/2021 was approved at a height of 43.5m (44.7m when including 1.2m parapet increase required by the Sydney North Planning Panel as part of Condition A.2) in accordance with the *Incentive Building Height* provided under clause 7.1(3) of Lane Cove LEP. Clause 7.1(3) allows a maximum building height on the subject site of 44m.

In addition to the above, this application is made pursuant to *Part 2 Development for affordable housing, Division 1 In-fill affordable housing, Section 16 Affordable housing requirements for additional floor space ratio*. Specifically, this application seeks to benefit from the 30% building height bonuses under Section 16(3) of the Housing SEPP, where affordable housing is provided to 15% of the total gross floor area (GFA) for a minimum 15-year period. Accordingly, and per the Housing SEPP, the subject site is permitted a maximum building height of 57.2m, where the 44m incentive height limit applies.

Clause 4.6(2) of LCLEP indicates that this clause does not apply to a development standard that is "expressly excluded from the operation of this clause". The development standards that are relevantly excluded from the operation of clause 4.6 are Part 7 (except clauses 7.1(4)(e) and 7.2) (in accordance with clause 4.6(8)(cb)).

As such, the incentive building height provisions do not apply to the current Development Application. Clause 7.1(3) says:

*"Despite clauses 4.3 and 4.4, the consent authority may consent to development on land to which this clause applies that will result in a building with **both** of the following—*

- (a) a building height that **does not exceed** the increased building height identified on the Incentive Height of Buildings Map,*
- (b) a floor space ratio that does not exceed the increased floor space ratio identified on the Incentive Floor Space Ratio Map (bold added)."*

The proposed alterations and additions, **if measured from the existing ground level that applied when DA162/2021 was approved** would be compliant with the *Incentive Height of Buildings Map* and Housing SEPP bonus afforded by Section 16(3).

However, the building height identified on the *Incentive Height of Buildings Map* is expressed as metres measured from existing ground level (rather than reduced levels in Australian Height Datum). Excavation has since commenced on-site in accordance with DA162/2021. Accordingly, it is the now **excavated** ground level that must be regarded as the existing ground level, as per the decisions of 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]).

For this reason clause 7.1(3) cannot apply to the development as the building will **exceed** the increased building height identified on the *Incentive Height of Buildings Map* and per the bonuses afforded by the Housing SEPP, because of the excavation of the site. As a result the development standard that applies to the development is the height standard under clause 4.3(2) of the LCLEP. It is **this** standard that is sought to be varied by this clause 4.6 request. If the 30% Housing SEPP bonus is applied to the 9.5m standard, a maximum height of 12.35m is permitted.



Nonetheless, the height limit established by the *Incentive Height of Buildings Map*, inclusive of the bonuses afforded by the Housing SEPP, when measured with reference the pre-existing ground level and the existing ground level in the locality, is relevant to this clause 4.6 request. This is because that height plane establishes a benchmark as to what height is reasonable and what is expected to occur generally in the locality. This approach taken in this clause 4.6 request is consistent with the approach taken by the Land and Environment Court in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216.

As a result, this clause 4.6 request is technical in nature. The variation only exists as a result of the excavation, rather than the perceived height of the built form from the public domain and other land. There would, in fact, be no variation at all if the ground level had not been lowered and clause 7.1(3) of the LCLEP, inclusive of Housing SEPP bonuses, applied.

2. Proposed variation to Height of Buildings development standard

Clause 4.3 of Lane Cove LCLEP prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. The relevant map [sheet HOB_004] indicates that the maximum building height permitted at the subject site is 9.5m. The existing approved building has a height of 44.7m (or 43.5m, RL104.55) and exceeds the LCLEP maximum height by some 38.66m (407%), as measured from the existing ground line prior to excavation.

As identified, the 30% bonus afforded by the Housing SEPP will permit a maximum building height of 12.35m

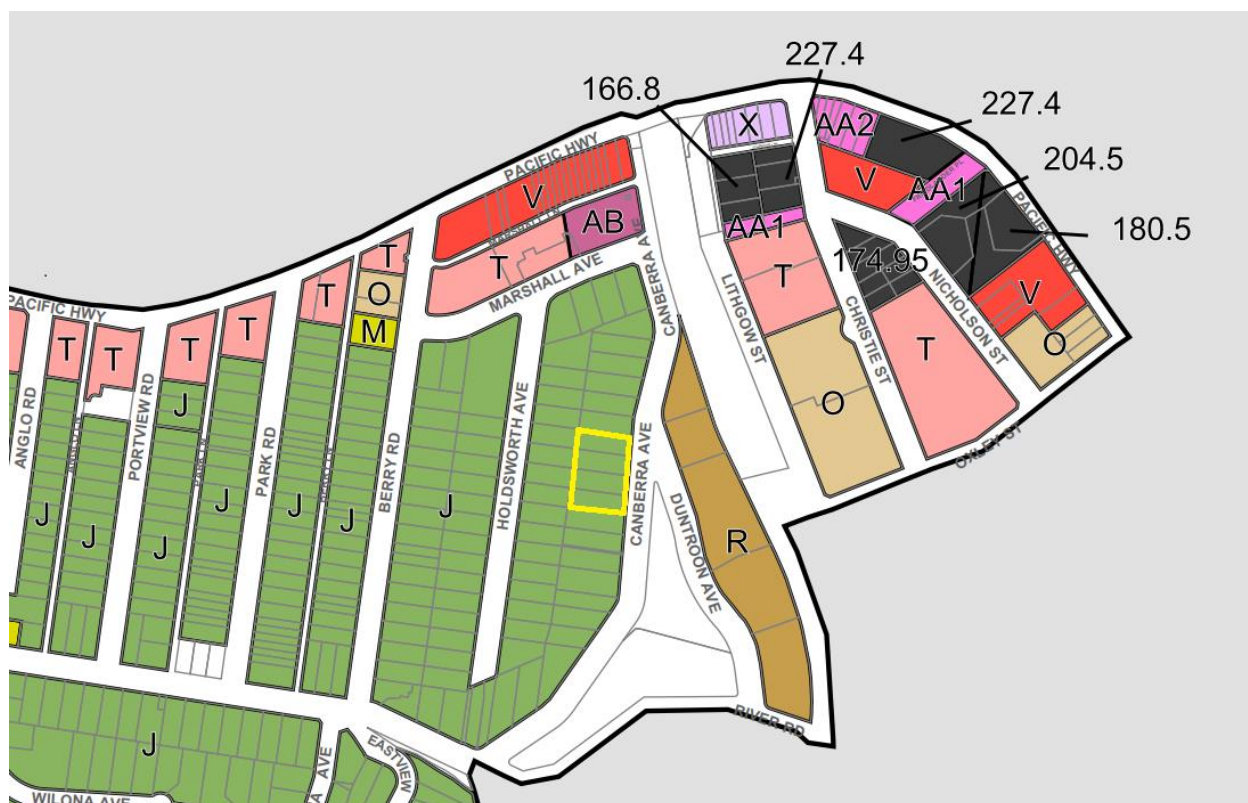


Figure 17 Extract from the Height of Buildings Map [J=9.5m]

Building height is defined as:

“building height (or height of building) means:





(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

However, the LCLEP does not generally anticipate that buildings will actually be constructed to a 9.5-metre height limit on the subject site, or in the precinct more generally. As discussed above, an *Incentive Height of Buildings Map* applies to the precinct under clause 7.1(3) of the LCLEP.

The relevant map [sheet HOB_004] indicates that the maximum building height permitted when the incentive provisions apply at the subject site is 44m. Additionally, buildings in the locality are planned to be variously 65m, 53m, 25m, 31m, 37m, and 38m in height. Developers in the precinct are progressing development applications based on the incentive controls, rather than the 9.5m base control. Aside from the subject site, the development consents have been granted, based on the incentives controls, for areas 1,2,4 (DA number PAN-240276) and areas 7-11 (DA number PAN-108292). The recent approvals, which define bulk and scale of development in St Leonards, include the following (amongst others):

- **13-19 Canberra Avenue:** On the subject site, DA162/2021 was approved with a FSR of 3.32:1 and building height of 44.7m, in accordance with the incentive controls. The proposed alterations and additions are entirely consistent with bulk and scale of the approved development on-site.
- **21-41 Canberra Avenue and 18-32 Holdsworth Avenue:** To the south, DA99/2021 was approved for five residential flat buildings, including a maximum height of 36.8m and FSR of 2.6:1 in accordance with the incentive height controls.
- **21-31 Holdsworth Avenue, 22-32 Berry Road and 44-46 River Road:** To the south-west, DA60/2022 was approved for five residential flat buildings, including a maximum height of 31m and FSR of 2.6:1 in accordance with the incentive height controls.
- **1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue:** To the north, DA79/2022 was approved for three residential flat buildings, including a maximum height of 64.8m and FSR of 3.85:1 in accordance with the incentive height controls.



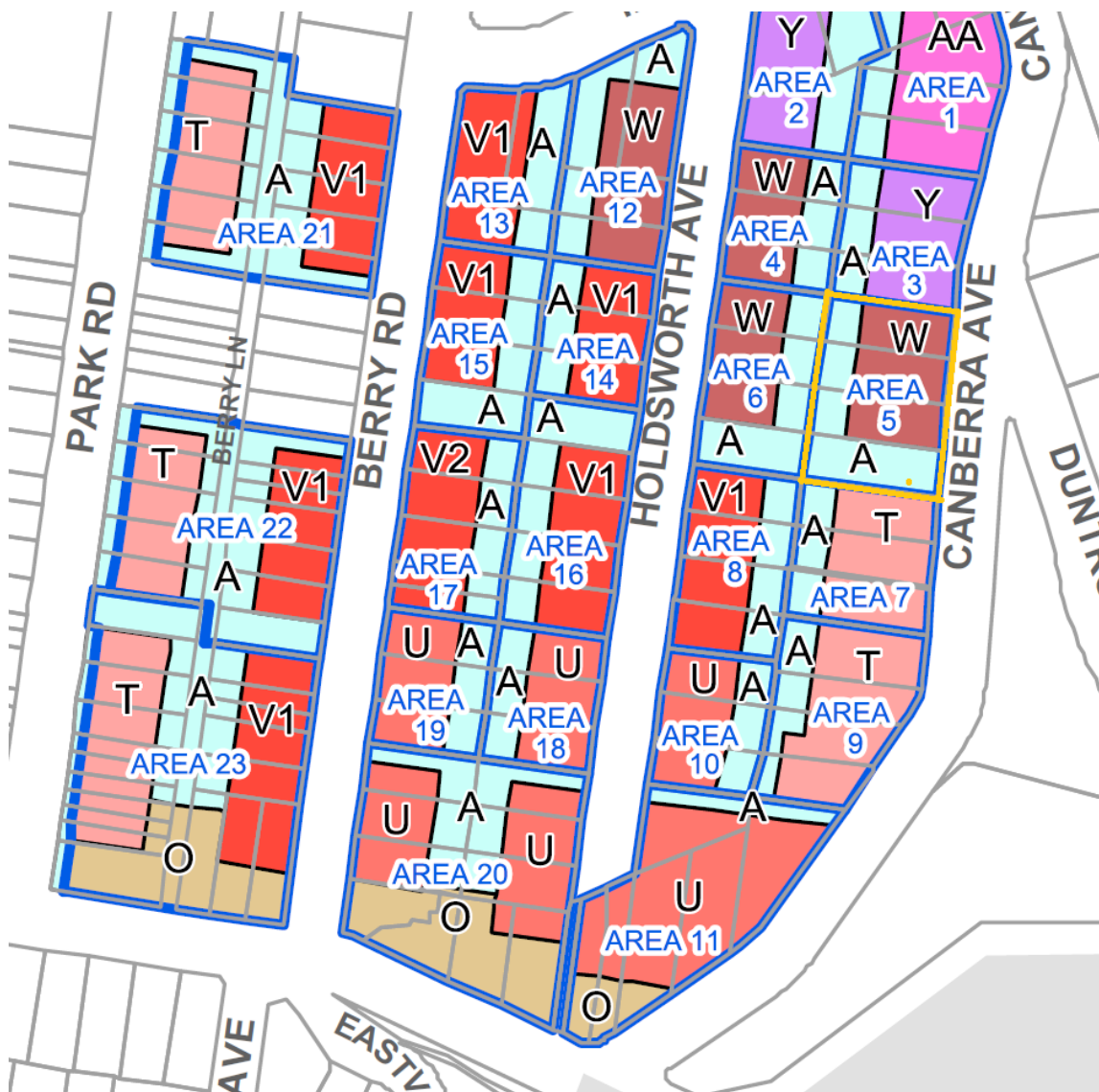


Figure 18 Extract from the Incentive Height of Buildings Map [W=44m, A=2.5m, AA=65m, Y=53m, T=25m, U=31m, V1=37m, V2=38m]

As described under Section 1, excavation has commenced on-site in relation to DA162/2021. This has resulted in an existing excavated ground level of RL44.9, which is to accommodate Basement Level 04 as allowed within the approved development. Due to the modified site conditions, the building height must be measured from the lowest excavated level. The existing excavated ground level is shown in **Figure 19** below.

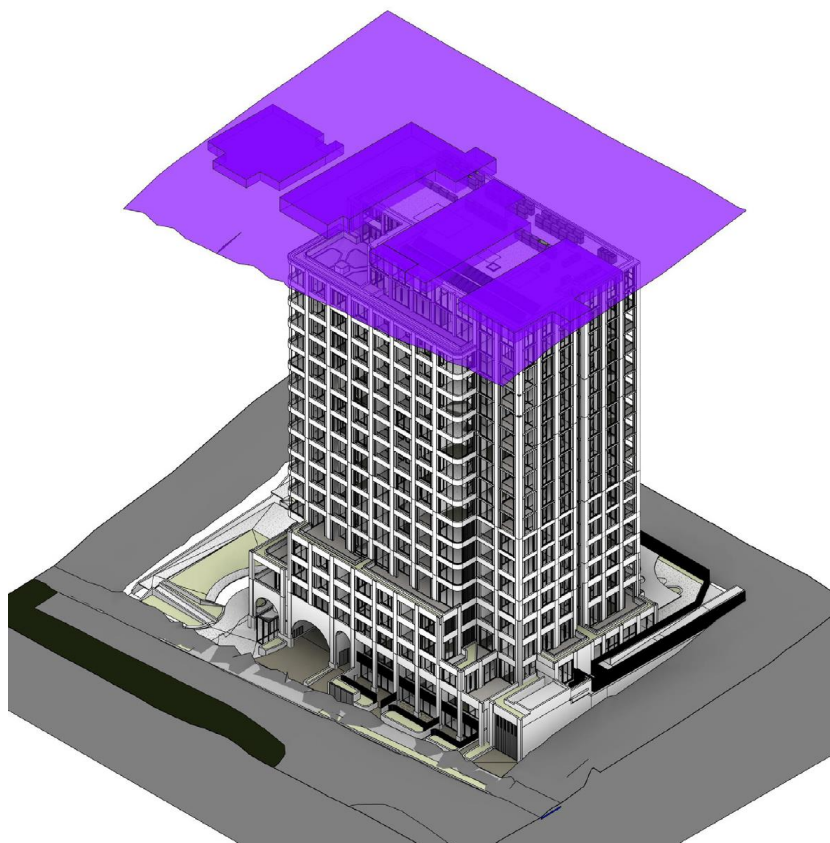


Figure 20 3D Height Plane Analysis showing 57.2m limit

For completeness, if the maximum height of the approved building were to be measured from the excavated basement level (RL44.9), as is consistent with the definition of building height and relevant caselaw, it would attain a maximum height of 59.65m to the lift overrun (RL104.55) or height of 60.85m to the parapet (as imposed by the condition of consent).

The height plane shown in **Figure 20** above is generally consistent with the one favoured by the Land and Environmental Court case of *Bettar Vs Council of the City of Sydney* [2014] NSWLEC 1070. In this matter Commissioner O'Neil stated as follows:

- 41 *I prefer Mr Chamie's approach to determining the existing ground level because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished.*

Per the above, when measuring the maximum height of the development from unexcavated ground level on the periphery of the site and extrapolating between periphery levels, that is, without the variations to the landform created by the excavated basement level (RL44.9), the proposal attains a maximum height of 56.65m to the lift overrun and complies with the incentive height and permitted bonuses. Regardless, we acknowledge that the technical maximum building height is measured from the lowest existing excavated level in accordance with the definition contained within the LCLEP.

The maximum building height under Clause 4.3 is a “development standard” to which exceptions can be granted pursuant to Clause 4.6 of the LCLEP.

3. Clause 4.6 to LCLEP 2009

The objectives and provisions of Clause 4.6 of Lane Cove LEP are as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note— *The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 4.1A,
- (cb) Part 7, except clauses 7.1(4)(e) and 7.2.

It is noted that clause 4.3 is not “expressly excluded” from the operation of clause 4.6. This request seeks a variation to the height of buildings control prescribed in Clause 4.3.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to

a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved, despite the variation, for the reasons set out in this request. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

The objectives and relevant provisions of clause 4.3 of LCLEP are as follows:

- (a) to ensure development allows for reasonable solar access to existing buildings and public areas,*
- (b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*
- (c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,*
- (d) to relate development to topography.*

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below. Whilst it is noted that there are no objectives for the height bonus afforded by the Housing SEPP, the objective of *Division 1 In-fill affordable housing* of the Housing SEPP is also addressed.

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

The non-compliant portions of the building breaching the 9.5m height control (or 12.35m when including the Housing SEPP bonuses) are generally consistent with the development as approved under DA162/2021. Whilst the proposal represents a significant variation from the 9.5m height of buildings control, if measured from the extrapolated topography (ignoring the modifications in landform created by the basement excavation), the development achieves a maximum height of 56.65m and is therefore compliant with the maximum 57.2m incentive building height standard, as increased Section 16(3) of the Housing SEPP.

Importantly, objective (a) seeks to allow for reasonable solar access to existing buildings and public areas. The approval of DA162/2021, which included a maximum building height of 43.5m, amongst other recent approvals, demonstrates that the reasonableness of solar access must be predicated on the incentive building height control. As the proposed development continues to comply with the incentive height control including bonuses afforded by the Housing SEPP, as measured from the extrapolated topography, the extent of overshadowing created by the development is reasonable.

For completeness, the following is noted regarding the solar impact to neighbouring properties and the public domain as created by the additional building height:

- **Building 7 (South):** Despite non-compliance, the proposal will maintain two hours of solar access to 43 of 43 (100%) apartments during mid-winter and is therefore considered acceptable per the ADG.
- **Building 8 (South):** The non-compliant building height, when compared to that approved, will result in a relatively minor impact to the solar access of this neighbouring property. Whilst resulting in an additional impact as demonstrated in the submitted shadow diagrams, Building 8 to the south will receive 2 hours of solar access to 53 of 70 (75.7%) apartments during mid-winter and therefore satisfies the ADG Design Criteria.
- **Building 10 (South):** The proposal, including non-compliances, will result in a minor impact and is considered acceptable with regards to the ADG Design Criteria. Specifically, 42 of 46 (91%) apartments will receive 2 hours of solar access during mid-winter and is therefore considered acceptable.
- **Nos. 2 and 6 Duntroon Avenue:** The non-compliance will result in a negligible solar impact to residential apartments at Duntroon Avenue from 2:45pm to 3:00pm and is therefore acceptable.

- **Newlands Park:** The non-compliance will have a relatively minor impact on the public open space known as Newlands Park, from 1pm to 2pm during mid-winter. Whilst there will be an impact, this is limited and will ensure the public open space will receive 5 hours solar access from 9am to 2pm during mid-winter, to greater than 50% of the public open space per the LCDCP requirements.

Following the above, the proposed alterations and additions do not result in any material adverse impact to the neighbouring properties and public domain beyond that approved, per the shadow diagrams. The proposed alterations and additions have undergone a meticulous design process culminating in a thoughtful massing which largely reduces adverse additional overshadowing.

Accordingly, objective (a) is satisfied despite the non-compliance.

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

As above, objective (b) seeks to similarly ensure that the privacy and visual impacts of developments on neighbouring properties are reasonable. The reasonableness of the impact must be considered against the approved development on the subject site and on the surrounding properties, which has been informed by the incentive building height and floor space controls. As the development continues to comply with the incentive building height control including the bonuses as afforded by the Housing SEPP, as measured from the extrapolated topography, the extent of privacy and visual impact is entirely anticipated for the highly accessible, transit orientated nature of the site. Furthermore and when compared to the approved development, the building envelope and footprint are consistent and therefore the potential impact is similarly reasonable. The additional building height over that originally approved is inclusive of the Housing SEPP bonuses and is designed to limit any adverse impact where non-compliant.

In this regard, it is only when measured from the existing excavated basement level that the building exceeds the incentive height control, including Housing SEPP bonuses. However, and as outlined in the Planning Grounds, this variation is both temporary and technical in nature, and does not represent the actual relationship of the built form to the surrounding locality. As such and when considering the proposed alterations and additions on the upper levels, the proposal incorporates setbacks, orientation of views and opening design to limit any visual or privacy impact from the streetscape or neighbouring properties. As a summary, the following is noted:

- **Southern (side) boundary:** To the southern (side) boundary, the additional levels provide for an 18.25m to 19.35m setback to the boundary shared with the neighbouring property, thereby exceeding the minimum separation requirements as outlined in the ADG ensuring visual privacy is maintained despite non-compliance.
- **Northern (side) boundary:** To the north, the proposal provides for a consistent 6m setback across all additional levels. The envelope and footprint is designed to be consistent with that approved under DA162/2021, which the consent authority deemed acceptable in terms of visual and aural privacy. Importantly, the number of additional apartments opposing the northern boundary are minimal, and generally pertain to openings from non-habitable rooms and less trafficked bedrooms to reduce privacy impacts and is acceptable despite non-compliance. It is also noted that the proposal satisfies the Part 3F-1 objectives as accepted by Council under DA162/2021, achieved through dual orientation habitable bedrooms. Further, it is noted that Council in the original approval imposed Condition A2 requiring additional privacy mitigation measures to the northern facade in the form of louvres, which are to be submitted and approved by Council. Similar measures will be imposed in the future as part of this development.
- **Western (rear) boundary:** To the western rear boundary, the proposal provides for a consistent 12m setback across all additional levels. This satisfies the ADG Design Criteria and will ensure, by virtue of separation distances, that the visual privacy of future residents and neighbouring properties will be maintained.

Accordingly, objective (b) is satisfied despite the non-compliance.

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

As is noted under objective (a), the proposed alterations and additions have been massed to reduce any additional overshadowing as far as practicable. The proposal is considered to be the most effective design solution with minimal impact to solar access to the public domain, namely Newlands Park, and is consistent with the requirements of the LCDCP. Whilst the proposal creates a technical non-compliance with the building height control, as measured from the excavated basement level, it is consistent with the height of buildings as desired within the St Leonards locality, transit orientated developments and as permitted by Section 16 of Housing SEPP. There is no alternative or superior solution to relocate the additional floor space permitted by the Housing SEPP, as it would have adverse impacts to approved through-site link and green spines, in addition to relationships to neighbouring properties. Accordingly, the extent of overshadowing to the public domain, created by the proposed alterations and additions, is considered to be acceptable.

As such, objective (c) is satisfied despite non-compliance.

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

The proposed alterations and additions are stepped to correspond to the natural topography of the land, as originally approved, and as such skilfully reduces any additional adverse overshadowing and amenity impacts. As described in this request, the proposal is compliant with the incentive height of buildings control and Section 16 of the Housing SEPP, and it is only when measured from the modified ground level where a variation is present. As measured from the extrapolated topography around the periphery of the built form, the development will comply with the 57.2m standard and appropriately responds to the topography.

Accordingly, objective (d) is satisfied despite the variation to maximum building height.

Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

The objective of this division is 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, including the non-compliant building height as measured from the excavated ground level, will facilitate the delivery of new in-fill affordable housing which will meet the needs of very low, low and moderate income households. To request strict compliance and require deletion of the proposed five storeys will adversely reduce the provision of affordable residential accommodation in the St Leonards South Precinct, particularly given the variation is technical in nature. The proposed distribution of floor space is the most appropriate response to the site constraints, relationship to neighbouring properties and the public domain.

Following the above, the proposal will allocate 23 apartments as affordable housing per the Housing SEPP. In accordance with the LCLEP, the delivery of 43 affordable housing apartments is required across the St Leonards South Precinct. The provision of 23 affordable apartments equates to 53.5% of the total required within the Precinct. Further to this, Area 1 requires the provision of 14 affordable housing apartments, which is the highest requirement in the Precinct. The proposal, which allocate 23 apartments as affordable housing, represents an increase of 164.3% of that required for Area 1, therefore delivering a significant social benefit to the locality.

To request strict compliance would be antipathetic to the objective of *Division 1 In-fill affordable housing* and as such, is considered acceptable.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))



Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

In this case the whole of the development that is the subject of the current Development Application (being alterations and additions) represents the ‘contravention (for the technical reasons discussed earlier). Accordingly, it is the environmental planning benefits of the whole development (being the alterations and additions) that need to be considered under the heading of ‘sufficient environmental planning grounds’.



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

- The building under DA162/2021 was approved at a height of 43.5m (44.7m when including 1.2m parapet increase required by the Sydney North Planning Panel as part of Condition A.2). Hence prerequisites for the application of the incentive controls have already been demonstrated to have been met on the site. The current Development Application is for alterations and additions to that approved building and seeks to benefit from an uplift in density as afforded by the Housing SEPP. While the current Development Application does not technically benefit from the incentive provisions (due to the excavation) there is no good planning reason why the proposal should not be evaluated with reference to the building height anticipated by those provisions.
- As set out in Section 2 of this request, the proposal attains a maximum building height of 73.3m to the lift overrun, as measured from the excavated basement level. Whilst this measurement is consistent with the definition of building height, it is both technical and temporary in nature. That is, upon completion of the development, the maximum building height will be perceived from the topography at the periphery of the built form (and site), which results in a maximum height of 56.65m, complying with the intent of the incentive building height standard and 30% bonus afforded by Section 16(3) of the Housing SEPP, which permits a maximum height of 57.2m.
- As measured from the extrapolated topography, the proposed building height is 56.65m. Whilst this represents an increase over that previously approved on the subject site, the height is a result of the benefits afforded by the recently amended Housing SEPP and subsequently delivery of affordable housing. Importantly, the approved building had a height of 43.5m, with an increase to 44.7m when factoring the condition to increase



the parapet height. In this regard, the approved building height must be construed as setting the context and character for the site rather than the base height limit. As such, the quantum of the variation represents an appropriate degree of flexibility in the context of the building heights anticipated in the locality as facilitated by the height of buildings incentive clause 7.1(3), including the bonuses afforded by the Housing SEPP and desire to deliver transit orientated development.

- Whilst exceeding the base building height control, contravention is necessary to achieve a scale that is consistent with the strategic vision of the area, as evidenced by both the incentive building height and floor space controls. See also the visual analysis in the Figures below. This is consistent with the findings of the Land and Environmental Court Case *Hyside 15 Chapman Pty Ltd v City of Canada Bay Council* [2022] NSWLEC 1155 at [22] and *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216. Furthermore and in accordance with *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, the proposed variation to building height is consistent with the bulk, scale and character of developments in the area, including those approved, under construction or recently completed, per the incentive controls.
- Following the above, whilst the development will also seek to increase the density in accordance with the Housing SEPP, there are significant public benefits afforded by the allocation of 23 affordable housing apartments in the St Leonards South Precinct. The increase in height, beyond that approved, is consistent with the desire for transit orientated development and as afforded by the Housing SEPP. It would be antipathetic to the objective of Part 2, Division 1 of the Housing SEPP to deny the building height variation, which is predicated on a technicality, and remove a significant quantum of affordable housing. As such, whilst the building height significantly exceeds the 9.5m standard, it is entirely consistent with the established and desired character of the St Leonards locality.
- The proposal involves the development of five additional storeys in order to optimise the available floor space permitted by the Housing SEPP. The increase in building height will satisfy the planning objectives of both the Housing SEPP and St Leonards South Precinct, through the provision of additional housing (including affordable housing) in a highly accessible location. Despite representing a technical breach in height, the proposal will comply with the maximum FSR which applies to the subject site, even when including the storage areas and lift lobbies located within the basement (as discussed in the Clause 4.6 Variation for FSR).
- The proposal aims to match the floor space available under the LCLEP and Housing SEPP, to deliver numerous public benefits (as set out above) within the St Leonards South Precinct. Despite the alterations and additions establishing a height non-compliance, the proposal will increase the available floor space of the development beyond that approved (but not in excess of that available under the LCLEP and Housing SEPP, when including storage areas and lift lobbies within the basement) and therefore contributes towards the delivery of residential accommodation, affordable housing and community infrastructure which is fundamental to the successful delivery of the St Leonards South Precinct. The St Leonards South Contributions Plan (Contributions plan) and Part C, Locality 8, Section 10 of the LCDCP emphasises the importance of achieving the incentive FSR to assist in funding public infrastructure items in the Precinct.
- The additional shadowing that the height non-compliance will generate is entirely reasonable. The additional building height, as afforded by the Housing SEPP, has been carefully massed to avoid additional adverse overshadowing as demonstrated in the Urban Design Report by *SJB Architects* (which forms part of this request). The shadow diagrams submitted with this application clearly show there is minimal additional overshadowing resulting from the additional building height, and that the surrounding residential flat buildings will continue to comply with the ADG. Furthermore, Newlands Park will also receive an appropriate amount of solar access, which will comply with the DCP requirements. Shadows impacts on adjoining buildings and the



public domain have been detailed in the accompanying architectural plans prepared by *SJB Architects* (which forms part of this request);

- The additional building height will not result in any adverse view loss or visual impact. In this regard we refer to and adopt the View Loss Assessment contained within Section 5.3.6 of this Statement and view loss imagery submitted with this application. The location and distribution of building mass, whilst being greater than the approved development, has been designed as to provide a high quality, contemporary form as is consistent with the desire to deliver transit orientated development and affordable housing. In terms of view loss, this impact is considered to be reasonable within a dense urban environment and appropriate views will be retained above and around the periphery of the built form. In this regard, see, for example, **Figures 21 to 26** below. Importantly, the proposal will modify the approved development to provide for additional storeys which will be within the envelope of the original approval;
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy. That is, the proposal is designed in accordance with the approved building envelope and has orientated views away from the neighbouring properties to minimise privacy impacts;
- The proposed alterations and additions (which constitute a 'contravention' in their entirety) give better effect to the R4 zone objectives and the strategic intent for redevelopment of the St Leonards South Precinct than the approved development (explained below). The proposed alterations and additions will do this by:
 - providing for the housing needs of the community (within a high density residential environment) by providing for 24 additional apartments (without any material adverse impact);
 - contributing to the variety of housing types within the high density residential environment through the provision of an additional 8 x 1 bedroom, 4 x 2 bedroom and 13 x 3 bedroom, plus amalgamation of an existing apartment to provide a single 5 bedroom;
 - providing for 23 affordable housing apartments in accordance with the Housing SEPP;
 - including additional dwellings on a site within a highly-accessible location, further supporting public transport patronage and also promoting walking and cycling.
- The 24 additional apartments, inclusive of affordable housing, will 'better satisfy increasing demand, the changing social and demographic profile of the community, and the needs of a wide range of people, including persons with disability, children and seniors' (as per Clause 142(1)(d) of Chapter 4 of the Housing SEPP). The provision of additional one to four bedroom apartments add to the choice for a diversity of households to be accommodated in the locality.
- The alterations and additions to the approved development will 'contribute to the provision of a variety of dwelling types to meet population growth' (in accordance Clause 142(1)(e) of Chapter 4 of Housing SEPP). By providing the 24 additional apartments, more compact dwellings are provided as an alternative to dwelling houses in the same locality. There is a relative under-supply of three and four bedroom apartments, in the locality, which the proposal will assist in resolving.
- The provision of 23 affordable housing apartments will also 'support housing affordability' per Clause 142(f) of Chapter 4 of the Housing SEPP. The additional affordable apartments, and subsequent non-compliance as measured from the excavated existing ground, is only afforded through the proposed development which is made per the Housing SEPP.

- The changes will 'minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions' (as per the aim set out in Clause 142(1)(g) of Chapter 4 of the Housing SEPP). By making better use of the site, a style of living similar to that of a house is able to be achieved (including three and four bedroom apartments), but in less greenhouse intensive way that, for example, the construction of a new free-standing dwelling house on greenfield land in a location more remote from amenities, employment and services. The proposal will include specific BASIX performance targets, all new apartments from Levels 15 to 17 are electric apartments and the commitment to provide renewable electricity to meet demand.
- Given the absence of material adverse impacts, the changes will better achieve 'good design' and 'a density appropriate to the site and its context' (in accordance with design quality principle 3 in Schedule 9 of Housing SEPP).
- The new dwellings, including affordable housing, will better 'respond to social context by providing housing and facilities to suit the existing and future social mix' (as per design quality principle 8 in Schedule 9 of Housing SEPP).
- Further, the following key objectives in the EP&A Act and LCLEP 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 reasons set out above; and
 - in the Lane Cove LEP - the aim in clause 1.2(2)(c) to '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 result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the approved building, the surrounding properties or the general public. Instead, strict compliance would constrain the provision of housing, including affordable dwellings, in a location which the planning controls identify as being a highly desirable place for the provision of compact housing that will support walkable neighbourhoods and promote the use of public transport. Requiring strict compliance (and refusing the development application) would be a suboptimal planning outcome and antipathetic to the intent of the Housing SEPP. Avoiding that suboptimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control.

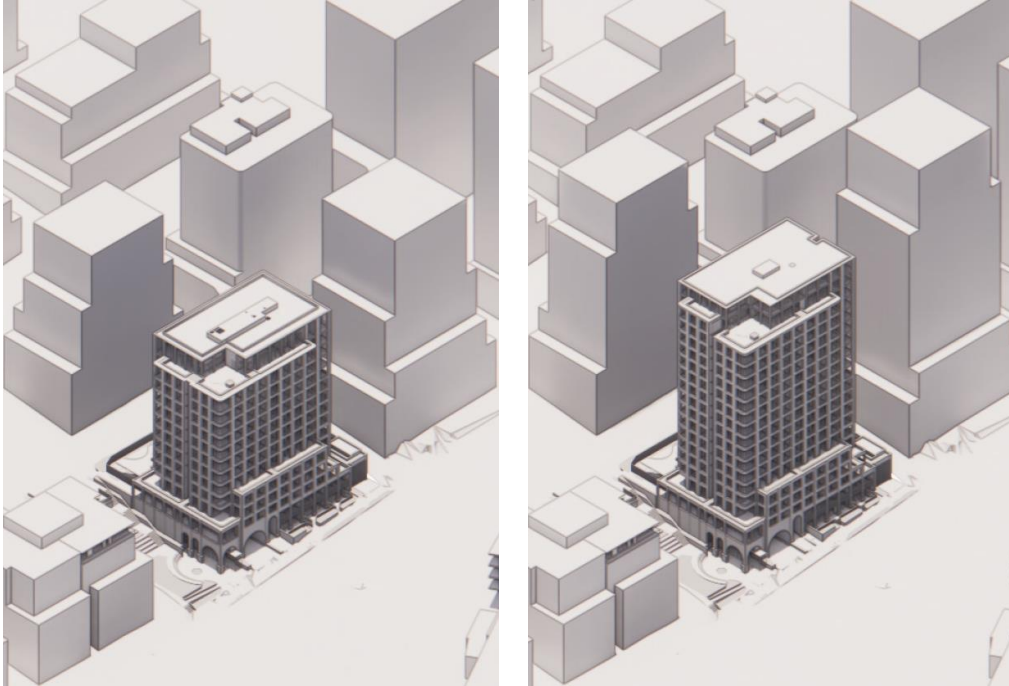


Figure 21 Building form stepping with approved (left) and proposed (right), extracted from page 5 of the *Architectural Design Report*, SJB



Figure 22 View from Green Spine — South, approved (left), proposed with incentive heights for neighbours (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 54 of the *Architectural Design Report*, SJB





Figure 23 View from Green Spine — North, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 52 of the *Architectural Design Report*, SJB



Figure 24 View from the pedestrian link, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 56 of the *Architectural Design Report*, SJB



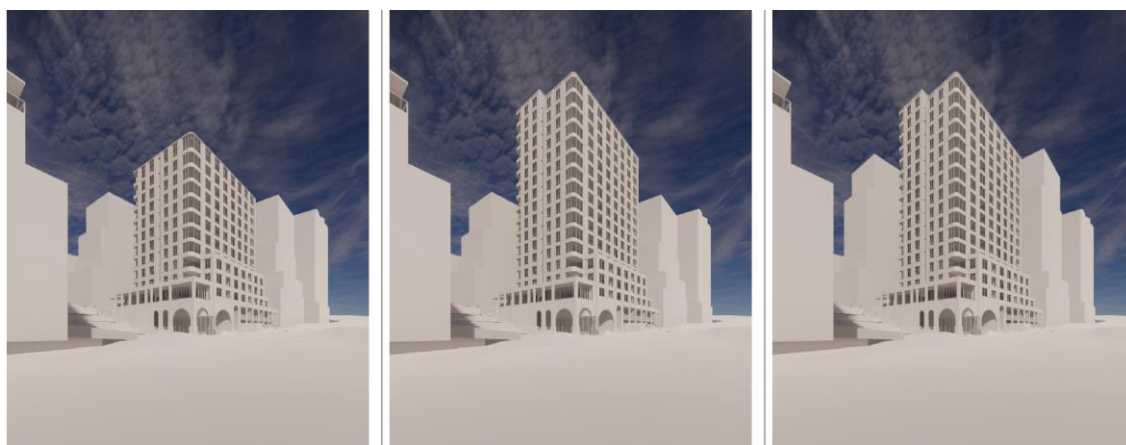


Figure 25 View from Canberra Avenue — South, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 58 of the *Architectural Design Report*, SJB



Figure 26 View from Canberra Avenue — North, approved (left), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 59 of the *Architectural Design Report*, SJB

The above environmental planning grounds are not general propositions. The additional height has benefits specific to the site and the development as advanced above.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a clause 4.6 request does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect



relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the 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 depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Some examples that illustrate the wide range of commonplace numerical variation to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *GM Architects*, a height exceedance of 103 per cent was approved, along with a floor space ratio exceedance of 44.7 per cent.
- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003, the Land and Environment Court granted development consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court approved a floor space ratio variation of 187 per cent.
- In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted a development consent for a residential flat building. In this decision, the Court approved a floor space ratio variation of 85 per cent (from 0.65:1 to 1.21:1).
- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583, the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
- In *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The exceedance was around 65 per cent.
- In *Edmondson Grange Pty Ltd v Liverpool City Council* [2020] NSWLEC 1594, the Court granted a development consent for three residential flat buildings. In this decision, the Court approved a floor space ratio variation of 59 per cent (from 0.75:1 to 1.19:1).
- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.

- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).
- In *Symond Family Investments Pty Ltd v Woollahra Municipal Council* [2023] NSWLEC 1789 the Court granted development consent to alterations to commercial premises and, in doing so, approved a 36.6 per cent contravention of the 14.7-metre height standard (to 20.075 metres). The Court also approved an 18.7 per cent contravention of the 2.5:1 floor space ratio standard (allowing development at 3.01:1).
- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555, the Court granted development consent for a three-storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).
- In *Leda Holdings Pty Ltd v Northern Beaches Council* [2022] NSWLEC 1179, the Court granted development consent for a mixed use building containing nine self-storage units and 27 industrial units (including car parking and landscaping works) with a height exceedance of 28 per cent (14.1m compared with the permitted 11m).

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

There are sufficient environmental planning grounds to justify the contravention of the development standard.

6. Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in Lane Cove LEP 2009, alongside the bonuses afforded by the Housing SEPP. The request identifies that the maximum building height is 73.3m which equates to a numerical variation of 60.95m and percentage variation of 493.5%, as measured from the existing excavated basement level to the lift overrun. However, when considering the *incentive height of buildings* control, inclusive of bonuses afforded by the Housing SEPP, and as measured from the extrapolated topography, the proposed height is a maximum of 56.65m which does not exceed the 57.2m permitted on-site.

The request explains that, despite the proposed variation, the development satisfies the objectives of the height of buildings standard and the objectives of Zone R4, and it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard.

In addition, the request demonstrates that there are sufficient site-specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

ANNEXURE E

Clause 4.6 Variation - Floor Space Ratio



CLAUSE 4.6 VARIATION STATEMENT – FLOOR SPACE RATIO (CLAUSE 4.4) OF LCLEP AND SECTION 16(1) OF HOUSING SEPP

1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of *Lane Cove Local Environmental Plan 2009* (LCLEP) to accompany the Development Application. The application seeks consent for alterations and additions to the development (DA162/2021) at No. 13-19 Canberra Avenue, St Leonards ('the site').

DA162/2021 was approved with a Floor Space Ratio (FSR) of 3.32:1 in accordance with the *Incentive Floor Space Ratio* provided under clause 7.1(3) of Lane Cove LEP. Clause 7.1(3) allows a maximum Floor Space Ratio (FSR) on the subject site of 3.7:1.

This application is made pursuant to *Part 2 Development for affordable housing, Division 1 In-fill affordable housing, Section 16 Affordable housing requirements for additional floor space ratio*. Specifically, this application seeks to benefit from a 24.8% FSR bonus under Section 16(3) of the Housing SEPP in lieu of providing affordable housing. Accordingly, and per the Housing SEPP, the subject site is permitted a maximum FSR of 4.62:1, where the 3.7:1 incentive FSR limit applies.

However, Clause 4.6(2) of LCLEP indicates that this clause does not apply to a development standard that is "expressly excluded from the operation of this clause". The development standards that are excluded from the operation of clause 4.6 are identified in clause 4.6(8) and include (cb) Part 7, except clauses 7.1(4)(e.) and 7.2.

The incentive building height provisions do not apply to the current Development Application. Clause 7.1(3) says:

*"Despite clauses 4.3 and 4.4, the consent authority may consent to development on land to which this clause applies that will result in a building with **both** of the following—*

- (a) a building height that **does not exceed** the increased building height identified on the Incentive Height of Buildings Map,*
- (b) a floor space ratio that does not exceed the increased floor space ratio identified on the Incentive Floor Space Ratio Map (bold added)."*

The proposed alterations and additions, **if measured from the existing ground level that applied when DA162/2021 was approved**, would be compliant with the *Incentive Height of Buildings Map* including the Housing SEPP bonuses.

However, the building height identified on the *Incentive Height of Buildings Map* is expressed as metres measured from existing ground level (rather than reduced levels in Australian Height Datum). Excavation commenced on-site in accordance with DA162/2021. Accordingly, it is the now **excavated** ground level that must be regarded as the existing ground level, as per the decisions of 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]).

For this reason clause 7.1(3) cannot apply to the development — as the building will **exceed** the increased building height, inclusive of the Housing SEPP bonuses, identified on the *Incentive Height of Buildings Map* (because of the excavation of the site). Clause 7.1(3) only applies when a development does **not exceed both** the height set by the *Incentive Height of Buildings Map* **and** the floor space ratio set by the *Incentive Floor Space Ratio Map*. As the proposed development cannot comply with the incentive height limit (only due to the excavation), it also cannot be the subject of clause 7.1(3) in relation to the incentive floor space ratio.

As a result the development standard that applies to the development is the floor space ratio standard under clause 4.4(2) of the LCLEP. It is **this** standard that is sought to be varied by this clause 4.6 request. Nonetheless, the floor

space ratio maximum established by the *Incentive Floor Space Ratio Map* is relevant to this clause 4.6 request. This is because that floor space ratio establishes the character of the locality and, therefore, is an appropriate reference point when evaluating compatibility. This approach taken in this clause 4.6 request is consistent with the approach taken by the Land and Environment Court in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216.

As explained above, excavation has commenced on-site in accordance with DA162/2021. The excavation is to a depth of RL44.9 to accommodate the approved Basement Level 04, and has set a new existing ground level on the subject site. Due to the depth of this excavation and new existing ground level, the storage areas and lift lobby entries located within the basement levels are technically located above the new existing ground level and in accordance with the definition of *gross floor area* (GFA), must be included in FSR. The inclusion of these basement storage areas and lift lobby entries therefore results in a total FSR of 4.71:1 and does not exceed the maximum FSR permitted on the subject site, inclusive of the Housing SEPP bonuses. Should the basement storage and lift lobby entries be excluded from the calculation of FSR, that is, if the excavation had not taken place, the proposal will provide for a FSR of 4.5:1.

As outlined above, if the ground level of had not been lowered (and building height comply), the proposal would also comply with Clause 7.1(3) of the LCLEP inclusive of the Housing SEPP bonuses.

2. Proposed variation to Floor Space Ratio development standard

Clause 4.4 of Lane Cove LEP prescribes the maximum floor space ratio for the site and refers to the *Floor Space Ratio Map*. The relevant map [sheet FSR_004] indicates that the maximum floor space ratio permitted at the subject site is 0.5:1. The existing approved floor space ratio is 3.32:1 and exceeds the LEP maximum floor space ratio by some 3.08:1.

As this application is made pursuant to Part 2, Division 1 of the Housing SEPP, a maximum FSR of 0.65:1 is permitted in lieu of providing of affordable housing.

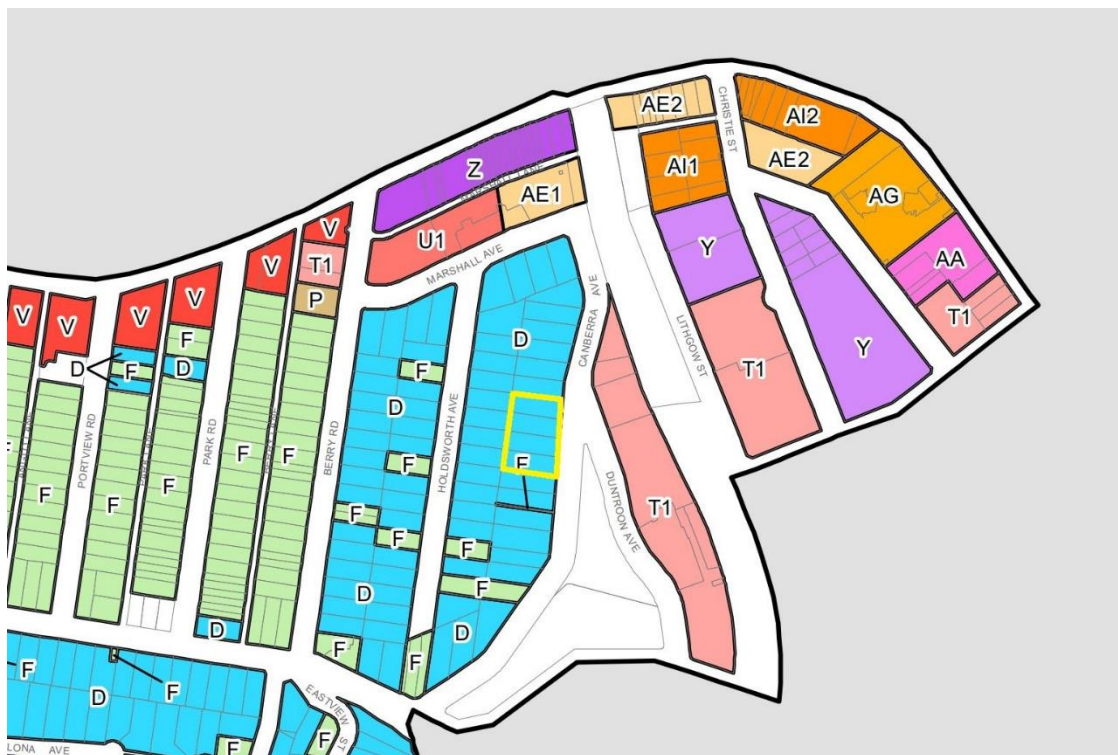


Figure 27 Extract from the Floor Space Ratio Map (D = 0.5:1)

Within the LCLEP, floor space ratio is defined as:

“floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Following the above, Gross Floor Area is defined as follows:

“gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,
but excludes—
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above”

However, the LCLEP does not generally anticipate that buildings will actually be constructed to a 0.5:1 floor space ratio (or 0.65:1 when factoring the Housing SEPP) on the subject site, or in the precinct more generally. As discussed above, an *Incentive Floor Space Ratio Map* applies to the precinct under clause 7.1(3) of the LCLEP.

The relevant map [sheet IFSR_004] indicates that the maximum floor space ratio permitted when the incentive provisions apply at the subject site is 3.7:1. Additionally, buildings in the locality are planned to be variously 3.55:1, 3.85:1, 2.6:1, 3.8:1, 2.85:1, 2.6:1 and 2.75:1. Developers in the precinct are progressing development applications based on the incentive controls, rather than the 0.5:1 base control. Aside from the subject site, the development consents have been granted, based on the incentives controls, for areas 1,2,4 (DA number PAN-240276) and areas 7-11 (DA number PAN-108292).

Furthermore, the subject site is also within an ‘accessible area’ per the definition of the Housing SEPP, and is capable of benefitting from 30% increase in FSR where affordable housing is provided.

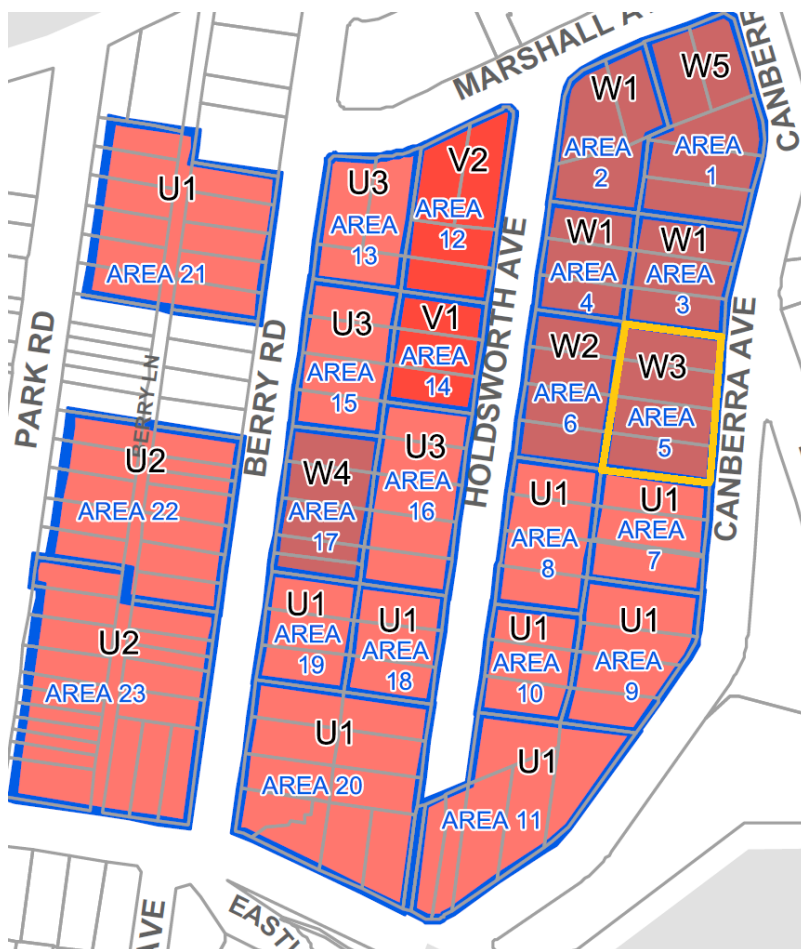


Figure 28 Extract from the Incentive Floor Space Ratio Map [W3=3.7:1, W1=3.55:1, W5=3.85:1, U1=2.6:1, W4=3.8:1 U3=2.85:1, U1=2.6:1, U2=2.75:1]

As described within Section 1 of this Variation, excavation has commenced on-site to accommodate Basement Level 04, resulting in a new excavated existing ground level of RL44.9. Due to the depth of excavation and the new existing ground level, the basement storage areas and lift lobby entries are technically located above the current existing ground level and must be included in GFA, per the definition. This results in a maximum FSR of 4.71:1 (12,388m²) and therefore exceeds the FSR of 0.65:1 (including Housing SEPP bonuses) by 4.06:1 or 624%. The new (now 'existing') excavated ground level is shown in **Figure 29** below.



Figure 29 Section of proposed alterations and additions, with the existing excavated level shown as a red dotted line (RL44.9)

As described, the proposed development will comply with the incentive FSR permitted under Part 7 of LCLEP, including the bonuses afforded by Section 16(1) the Housing SEPP, even when including the additional storage areas and lift lobbies within the basement, which must be included as a result of the newly excavated ground level. When allowing for the 27.3% FSR bonus under Section 16(3) of the Housing SEPP, in lieu of providing affordable housing, the subject site is permitted a maximum FSR of 4.71:1 where the 3.7:1 incentive FSR limit applies, in which the development complies.

It is noted that at the time in which DA162/2021 was granted, the storage areas and lift lobby entries were excluded as the ground level had not yet been modified. If the same approach was taken and the basement storage and lift lobby entries were excluded, the proposed alterations and additions attain a maximum GFA of 11,842m² and FSR of 4.5:1 with the pre-excavation existing ground levels.

However and as detailed above, the non-compliance is technical in nature as the development cannot rely on Part 7 of LCLEP and as such, Clause 4.4 must apply. Importantly, the LCLEP ultimately intends that the precinct be developed to much greater bulk and scale than 0.5:1, as is established by the *Incentive Floor Space Ratio Map* and also permitted by the Housing SEPP bonuses. To date the evidence indicates that the built form in the locality is transitioning to the built form anticipated by the incentive controls. For these reasons, when evaluating the proposed contravention, the better reference point is the *Incentive Floor Space Ratio Map*, excluding non-habitable rooms below pre-existing ground levels.



In *GM Architects*, the Commissioner found that there are no numerical limits on the degree of flexibility which a consent authority can depart from a numerical standard (at [85]), thus the size of the variation is not in itself a material consideration.

The maximum floor space ratio under Clause 4.4 is a “development standard” to which exceptions can be granted pursuant to Clause 4.6 of the LEP and is the standard proposed to be varied in this request.

3. Clause 4.6 to LCLEP 2009

The objectives and provisions of Clause 4.6 of Lane Cove LEP 2009 are as follows:

“(1) The objectives of this clause are as follows—

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

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

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 4.1A,

(cb) Part 7, except clauses 7.1(4)(e) and 7.2"

It is noted that Clause 4.4 is not "expressly excluded" from the operation of Clause 4.6. This request seeks a variation to the height of buildings control prescribed in Clause 4.4.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the

proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are at least 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Clause 4.6(3)(a) requires that the request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because the development achieves the objectives of the development standard, even with the proposed variation (see below).

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.

In this matter it will be demonstrated that the contravention does not cause any environmental harm (of a kind that the objectives seek to avoid).

In summary, the proposed contravening alterations and additions are consistent with the bulk, scale and character of the approved development on-site and other recent approvals within the St Leonards locality, despite the non-compliance.

Clause 4.4(1) of the LCLEP has a single objective as follows:

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

In order to address the requirements of Clause 4.6 the objectives of Clause 4.3 are addressed in turn below. Whilst it is noted that there are no objectives for the FSR bonus afforded by the Housing SEPP, the objective of *Division 1 In-fill affordable housing* of the Housing SEPP is also addressed.

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

The proposed development involves a built form (both height and density) that will be compatible with the future desired character of the locality as is expressed in the planning controls set out in the Lane Cove LEP and DCP, and as permitted by Part 2, Division 1 of the Housing SEPP. In accordance with Section 16(1) of the Housing SEPP and Part 7 of the Lane Cove LEP, a maximum FSR of 4.71:1 is permitted for the site predicated on a 27.3% bonus (or 4.81:1 if a full 30% bonus was sought), which will not be breached by the proposed alterations and additions, even when including basement storage and lift lobby entries (due to the excavated existing ground level) as described throughout this Variation request.

Consistent with the decision of the Court in *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115 at [53], [54] and [56], the bulk and scale of the development that is compatible with the character of the locality is not defined by the base FSR development standard. The bulk and scale of development in the locality is defined by recent approvals, which have benefited from the incentive floor space and building height standards. The recent approvals, which define bulk and scale of development in St Leonards, include the following (amongst others):

- **13-19 Canberra Avenue:** On the subject site, DA162/2021 was approved with a FSR of 3.32:1 and building height of 44.7m, in accordance with the incentive controls. The proposed alterations and additions are entirely consistent with bulk and scale of the approved development on-site.
- **21-41 Canberra Avenue and 18-32 Holdsworth Avenue:** To the south, DA99/2021 was approved for five residential flat buildings, including a maximum height of 36.8m and FSR of 2.6:1 in accordance with the incentive height controls.
- **21-31 Holdsworth Avenue, 22-32 Berry Road and 44-46 River Road:** To the south-west, DA60/2022 was approved for five residential flat buildings, including a maximum height of 31m and FSR of 2.6:1 in accordance with the incentive height controls.
- **1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue:** To the north, DA79/2022 was approved for three residential flat buildings, including a maximum height of 64.8m and FSR of 3.85:1 in accordance with the incentive height controls.

In addition to the above, the proposal seeks to benefit from the additional FSR and building height as permitted by Section 16 of the Housing SEPP, as desired for transit orientated developments. This is consistent with *Big Property Pty Ltd v Randwick City Council* [2021], where it was found that that in-fill affordable housing must be factored in the consideration of compatibility with the desired future character of an area. In this regard, whilst the development will seek to increase the amount for floor space from that approved, not only is this compliant with the incentive development standard (including bonuses), but is also consistent with that encouraged by the relevant *State Environmental Planning Policies*.

To request strict compliance and remove the additional floor space will result in a significant loss of affordable rental housing without any improvement to compatibility with the bulk and scale of the locality. Accordingly, the proposed contravening alterations and additions are consistent with the bulk, scale and character of the approved development on-site and other recent approvals within the St Leonards locality, in addition to that desired for transit orientated developments, despite the non-compliance.

Division 1 In-fill affordable housing: The objective of this division is 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, including the non-compliant floor space (which is technical in nature), will facilitate the delivery of new in-fill affordable housing which will meet the needs of very low, low and moderate income households. To request strict compliance and require deletion of the proposed five storeys will adversely reduce the provision of

affordable residential accommodation in the St Leonards South Precinct, particularly given the variation is technical in nature. The proposed distribution of floor space is the most appropriate response to the site constraints, relationship to neighbouring properties and the public domain.

Following the above, the proposal will allocate 23 apartments as affordable housing per the Housing SEPP. In accordance with the LCLEP, the delivery of 43 affordable housing apartments is required across the St Leonards South Precinct. The provision of 23 affordable apartments equates to 53.5% of the total required within the Precinct. Further to this, Area 1 requires the provision of 14 affordable housing apartments, which is the highest requirement in the Precinct. The proposal, which allocate 23 apartments as affordable housing, represents an increase of 164.3% of that required for Area 1, therefore delivering a significant public benefit to the locality.

To request strict compliance would be antipathetic to the objective of Division 1 In-fill affordable housing and as such, is considered acceptable.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

In this case the whole of the development that is the subject of the current Development Application (being alterations and additions) represents the ‘contravention (for the technical reasons discussed earlier). Accordingly, it is the environmental planning benefits of the whole development (being the alterations and additions) that need to be considered under the heading of ‘sufficient environmental planning grounds’.

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

Additionally, the proposed development, despite the non-compliance with the standard, better achieves important statutory goals (when compared with a compliant development).

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

- The building under DA162/2021 was approved at a height of 43.5m (44.7m when including 1.2m parapet increase required by the Sydney North Planning Panel as part of Condition A.2) and with a FSR of 3.32:1. Hence prerequisites for the application of the incentive controls have already been demonstrated to have been

met on the site. The current Development Application is for alterations and additions to that approved building. While the current Development Application does not technically benefit from the incentive provisions (due to the excavation and the resultant height non-compliance) there is no good planning reason why the proposal should not be evaluated with reference to the standards anticipated by those provisions.

- As set out in Sections 1 and 2 of this Variation request, the proposal attains a maximum GFA of 12,388m² and FSR of 4.71:1 and is therefore non-compliant with the base FSR standard which applies to the site. However and as detailed, when considered against the incentive FSR standard and bonus afforded by Section 16 of the Housing SEPP, the proposal complies with the maximum permitted on-site. This includes the additional floor area located within the basement levels, which must be included in the calculation due to the excavation that has commenced on-site per DA162/2021. That is, excavation has been undertaken to a depth of RL44.9 to accommodate Basement Level 04 and has set a new existing ground line on the subject site. As a result of the excavation and the new existing ground level, the basement storage areas and lift lobby entries are technically located above existing ground level and in accordance with the definition of GFA, must be included in FSR (when calculated strictly).

If the storage areas and lift lobby entries were excluded from the calculation of GFA, that is, if the ground was not modified as a result of the excavation, the proposed alterations and additions result in a maximum floor area of 4.5:1 or 11,842m² (calculated with pre-excavation existing ground level) and would also comply with the incentive FSR and bonuses afforded by the Housing SEPP.

It is only because the development does not comply with the maximum incentive building height, including Housing SEPP bonuses, that the development must be considered against Clause 4.4 of LCLEP. As such, the variation is technical in nature.

- The proposed density of the development (expressed as a floor space ratio) represents a proportional increase over the approved development, predicated on the delivery of affordable housing in accordance with Part 2, Division 1 of the Housing SEPP. As described, the subject site is located within a highly accessible location within 450m walking distance from St Leonards Railway Station, and can benefit from an increase in density in lieu of allocating affordable housing per the Housing SEPP. There are significant public benefits afforded by the non-compliance, through the allocation of 23 affordable housing apartments in the St Leonards South Precinct. This is consistent with the desire to deliver transit orientated development and it would be antipathetic to the objective of Part 2, Division 1 of the Housing SEPP to deny the variation, which is predicated on a technicality, and remove a significant quantum of affordable housing.
- Whilst exceeding the base FSR control, contravention is necessary to achieve a scale of building that is consistent with the strategic vision of the area, as evidenced by both the incentive building height and floor space controls and permitted by Section 16 of the Housing SEPP. See also the visual analysis in the figures below. This is consistent with the findings of the Land and Environmental Court Case *Hyside 15 Chapman Pty Ltd v City of Canada Bay Council* [2022] NSWLEC 1155 at [22] and *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216. Furthermore and in accordance with *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, the proposed variation to FSR is consistent with the bulk, scale and character of developments in the area, including those approved, under construction or recently completed, per the incentive controls. As such, whilst the FSR significantly exceeds the 0.5:1 standard, it is entirely consistent with the established and desired character of the St Leonards locality as encapsulated in the incentive controls and as desired for transit orientated developments, per the Housing SEPP. Commissioner O'Neill states at [42] in the *Initial Action* decision that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

- The proposal involves the development of an additional five storeys in order to optimise the available floor space applying to the site as permitted by the Housing SEPP and St Leonards South Precinct. The increase in density will satisfy the planning objectives of both the Housing SEPP and St Leonards South Precinct, through the provision of additional housing, including vital affordable housing, in a highly accessible location. Despite involving a technical breach in the base floor space ratio (0.5:1), the proposal remains as compliant with that permitted by the incentive standards and bonuses under Section 16 of the Housing SEPP. This ensures that the density of development is consistent with that desired for the locality.
- The proposal aims to match the floor space available under the LCLEP and Housing SEPP to accommodate the public benefits (as set out above) within the St Leonards South Precinct. The proposal will increase the available floor space of the development beyond that approved (but not in excess of that available under the incentive LEP controls and Housing SEPP, when including the basement storage and lift lobby entries in the basement) and therefore contributes towards the delivery of residential accommodation, affordable housing and community infrastructure which is fundamental to the successful delivery of the St Leonards South Precinct. The St Leonards South Section 7.11 Contributions Plan (Contributions plan) and Part C, Locality 8, Section 10 of the LCDCP both place emphasis on the importance of achieving the incentive FSR to assist in funding public infrastructure items in the Precinct.
- The additional density, achieved by the proposed contravention, has been distributed on the upper levels of the building to avoid any material increase in overshadowing to adjacent land including Newlands Park and other development sites. The shadow diagrams submitted with this application clearly show that whilst there is additional overshadowing resulting from the increase in density, the proposal will retain appropriate solar access to the neighbouring properties in accordance with the ADG, and to Newlands Park in accordance with the LCDCP. Shadows impacts on adjoining buildings and public domain have been detailed in the accompanying architectural plans prepared by *SJB Architects* (and these plans form part of this request).
- The additional density, achieved by the proposed contravention, does not result in any perceptible visual bulk. The location and distribution of building mass will ensure that it will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible in a dense urban environment. See **Figures 30 to 35** below. As described, the FSR does not exceed the incentive control and Housing SEPP bonuses, and will be entirely compatible with the desired bulk, scale and character of the St Leonards locality. The location of additional floor space on the upper levels is the most appropriate response to the site constraints and approved development. That is, the proposal will have no adverse impact to the amenity of surrounding properties (as discussed), and will not alter the approved through-site link, green spine, community facility or childcare centre.
- The density breach will not result in any adverse impacts on neighbouring properties in relation to view loss or visual and acoustic privacy. In this regard we refer to an adopt the View Loss Assessment contained within Section 5.3.6 of the Statement of Environmental Effects and the Architectural Design Report prepared by *SJB* (which form part of this request);

- The proposed contravening alterations and additions to the approved development give better effect to the R4 zone objectives and the strategic intent for redevelopment of the St Leonards South Precinct than the approved development. The proposed alterations and additions will do this by:
 - providing for the housing needs of the community (within a high density residential environment) by providing for 23 additional apartments (without any material adverse impact);
 - contributing to the variety of housing types within the high density residential environment through the provision of an additional 8 x 1 bedroom, 4 x 2 bedroom and 13 x 3 bedroom apartments, including the amalgamation of two existing apartments (on ground level) to provide a single, five bedroom apartment;
 - providing for 23 affordable housing apartments in accordance with the Housing SEPP;
 - including additional dwellings on a site within a highly-accessible location, further supporting public transport patronage and also promoting walking and cycling.
- The 24 additional apartments, inclusive of affordable housing, will 'better satisfy increasing demand, the changing social and demographic profile of the community, and the needs of a wide range of people, including persons with disability, children and seniors' (as per Clause 142(1)(d) of Chapter 4 of the Housing SEPP). The provision of additional one to four bedroom apartments add to the choice for a diversity of households to be accommodated in the locality.
- The alterations and additions to the approved development (which constitute a 'contravention' in their entirety) will 'contribute to the provision of a variety of dwelling types to meet population growth' (in accordance with Clause 142(1)(e) of Chapter 4 of Housing SEPP). By providing the 24 additional apartments, more compact dwellings are provided as an alternative to dwelling houses in the same locality. There is a relative under-supply of three and four bedroom apartments, in the locality, which the proposal will deliver.
- The provision of 23 affordable housing apartments will also 'support housing affordability' per Clause 142(f) of Chapter 4 of the Housing SEPP. The additional affordable apartments, and subsequent non-compliance with the base FSR standard, is only afforded through the proposed development which is made per the Housing SEPP.
- The changes will 'minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions' (as per the aim set out in Clause 142(1)(g) of Chapter 4 of the Housing SEPP). By making better use of the site, a style of living similar to that of a house is able to be achieved (including three and four bedroom apartments), but in less greenhouse intensive way that, for example, the construction of a new free-standing dwelling house on greenfield land in a location more remote from amenities, employment and services. The proposal will include specific BASIX performance targets, all electric apartment and the commitment to provide renewable electricity to meet demand. We need to confirm last point.
- Given the absence of material adverse impacts of the proposed contravention, the changes will better achieve 'good design' and 'a density appropriate to the site and its context' (in accordance with design quality principle 3 in Schedule 9 of Housing SEPP).
- The new dwellings, including affordable housing, will better 'respond to social context by providing housing and facilities to suit the existing and future social mix' (as per design quality principle 8 in Schedule 9 of Housing SEPP).

- Further, the following key objectives in the EP&A Act and LCLEP are better achieved by allowing the contravention:
 - in the EP&A Act - the site is located within an existing urban locality in which there is a high demand for housing (including affordable housing), it would be an inefficient use of such an important site to unnecessarily redevelop it below its planned intensity, other than to the extent that it is essential to avoid unacceptable adverse impacts. As there would be no unacceptable adverse impacts in this case, the proposed variation should be allowed. Not to do so, would be contrary to:
 - the objective in section 1.3(c) of the EP&A Act which is to 'promote the orderly and economic use and development of land'; and
 - the objective set out in section 1.3(g) which is to 'promote good design and amenity of the built environment' for reasons set out above; and
 - in the LCLEP – the proposed alterations and additions give better effect to the R4 zone objectives than a compliant development. The proposed contravention does this as follows:
 - by better contributing to the aim in clause 1.2(2)(c) to 'to provide a housing mix and density that accords with urban consolidation principles' by the provision of 23 additional apartments, including a mix of 1 to 4 bedroom apartments; and
 - by better contributing to clause 1.2(2)(j) to 'increase the number of affordable dwellings in Lane Cove and to promote housing choice' through the provision of 23 affordable apartments allocated through the Housing SEPP, which equates to 53.5% of the total required within the St Leonards South Precinct.
- Strict compliance with the development standard would result in an inflexible application of the floor space ratio control that would not deliver any meaningful benefits to the owners or occupants of the approved building, the surrounding properties or the general public. Instead, strict compliance would constrain the provision of housing, including affordable housing, in a location which the planning controls identify as being a highly desirable place for the provision of compact housing that will support walkable neighborhoods and promote the use of public transport. Requiring strict compliance (and refusing the development application) would be a suboptimal planning outcome and antipathetic to the intent of the Housing SEPP, particularly given the variation is technical in nature. Avoiding that sub-optimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the current density (floor space ratio) control.

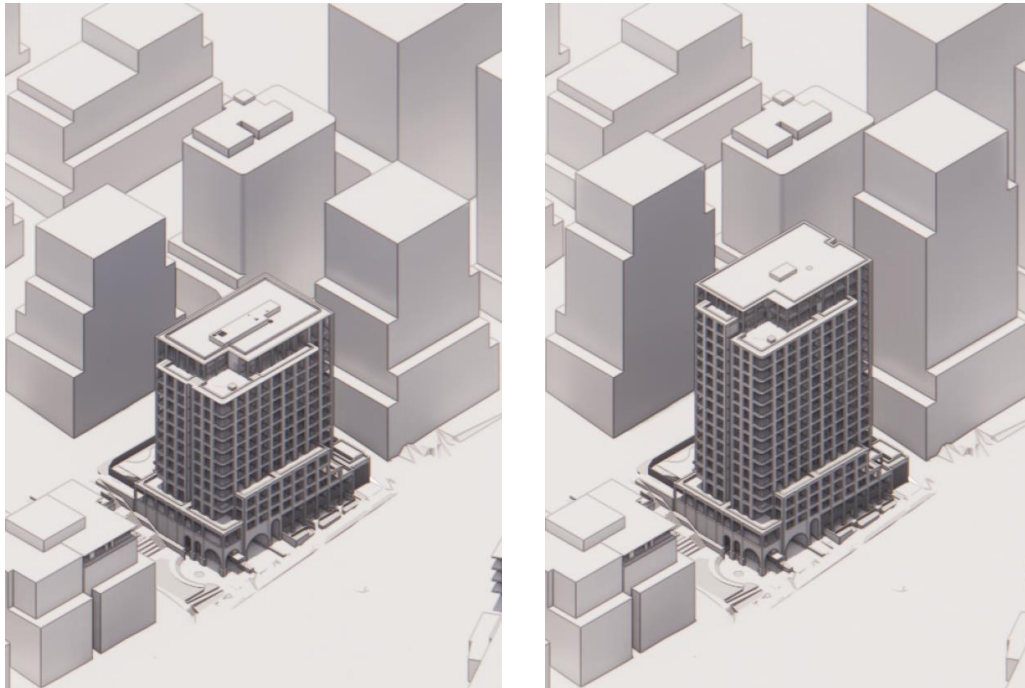


Figure 30 Building form stepping with approved (left) and proposed (right), extracted from page 5 of the *Architectural Design Report*, SJB



Figure 31 View from Green Spine — South, approved (left), proposed with incentive heights for neighbours (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 54 of the *Architectural Design Report*, SJB





Figure 32 View from Green Spine — North, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 52 of the *Architectural Design Report*, SJB



Figure 33 View from the pedestrian link, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 56 of the *Architectural Design Report*, SJB





Figure 34 View from Canberra Avenue — South, approved (left), proposed with incentive heights (middle), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 58 of the *Architectural Design Report*, SJB



Figure 35 View from Canberra Avenue — North, approved (left), proposed with Housing SEPP bonuses for neighbours (right), extracted from page 59 of the *Architectural Design Report*, SJB

The above environmental planning grounds are not general propositions. The additional floor space ratio has benefits specific to the site and the development as advanced above.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 request does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what



the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

Nonetheless, in the present case, it is submitted that there will be a better planning outcome from the approval of the additional dwellings.

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 depart from a numerical standard under Clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Some examples that illustrate the wide range of commonplace numerical variation to development standards under Clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *GM Architects*, a height exceedance of 103 per cent was approved, along with a floor space ratio exceedance of 44.7 per cent.
- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003, the Land and Environment Court granted development consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court approved a floor space ratio variation of 187 per cent.
- In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted a development consent for a residential flat building. In this decision, the Court approved a floor space ratio variation of 85 per cent (from 0.65:1 to 1.21:1).
- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583, the Court granted development consent for a four-storey mixed-use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
- In *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The exceedance was around 65 per cent.
- In *Edmondson Grange Pty Ltd v Liverpool City Council* [2020] NSWLEC 1594, the Court granted a development consent for three residential flat buildings. In this decision, the Court approved a floor space ratio variation of 59 per cent (from 0.75:1 to 1.19:1).
- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).

- In *Symond Family Investments Pty Ltd v Woollahra Municipal Council* [2023] NSWLEC 1789, the Court granted development consent to alterations to commercial premises and, in doing so, approved a 36.6 per cent contravention of the 14.7-metre height standard (to 20.075 metres). The Court also approved an 18.7 per cent contravention of the 2.5:1 floor space ratio standard (allowing development at 3.01:1).
- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555, the Court granted development consent for a three-storey building containing hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).
- In *Leda Holdings Pty Ltd v Northern Beaches Council* [2022] NSWLEC 1179, the Court granted development consent for a mixed-use building containing nine self-storage units and 27 industrial units (including car parking and landscaping works) with a height exceedance of 28 per cent (14.1m compared with the permitted 11m).

In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

6. Conclusion

This written request has been prepared in relation to the proposed variation to the floor space ratio development standard contained in clause 4.4 of the Lane Cove LEP 2009, inclusive of a 30% bonus afforded by the Housing SEPP. The request identifies that the maximum floor space ratio is 4.71:1 which equates to a numerical variation of 4.06:1 and percentage variation of 624%, when including the basement storage areas and lift lobby entries in the calculation of GFA, due to the change to pre-excavation existing ground level.

As detailed in Section 1, the proposed development does not exceed the incentive FSR standard in clause 7.1(3)(b), inclusive of a 27.3% bonus permitted in accordance with the Housing SEPP, when including the storage areas and lift lobbies located within the basement. It is only the non-compliance with the incentive building height development standard (inclusive of Housing SEPP bonuses), as measured from the excavated existing ground level, that Clause 4.4 must be relied upon and a Clause 4.6 prepared.

The request explains that, despite the proposed variation, the development satisfies the objectives of the floor space ratio standard and the objectives of zone R4, and it is therefore unreasonable and unnecessary to require strict compliance with the floor space ratio development standard.

In addition, the request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation to the base FSR control, and therefore the proposal is considered to be in the public interest.

Annexure F

Lane Cove Development Control Plan 2009 – Compliance Table



Lane Cove Development Control Plan 2009 Compliance Table

Clause / Control	Requirement	Proposal	Complies?
Part B General Controls			
B.3 Site Amalgamation and Development on Isolated Sites	a) Development for the purpose of residential flat buildings and high density housing should not result in the isolation of sites such that they cannot be developed in compliance with the relevant planning controls, including Lane Cove LEP 2009 and this DCP.	The proposal will comply with the minimum lot sizes for St Leonards South Precinct as prescribed by the LCLEP.	Yes
B.4 View Sharing	<p>a) Where existing views from public spaces are through the gaps between side setbacks of buildings, the length of the building and roof of any proposal should be oriented towards the view in order to minimise view obstruction. Refer Diagram No. 2.</p> <p>b) Existing or potential view corridors to the water from the street are to be protected as public view corridors by ensuring that fencing to the front boundary is open in character.</p> <p>c) Garages and outbuildings are not to be located within the view corridor and the required side setback is to be clear of all built form obstructions. Lightweight carport structures may be considered in side setbacks.</p> <p>d) Buildings on steeply sloping sites should adjust the height of the building envelope to follow the natural topography of the site .</p> <p>e) To facilitate view sharing for residential developments, flat roofs or low mono -pitched roofs can be used where the design of the building and roof is integrated architecturally and where its appearance would be appropriate given the character of the street.</p> <p>f) Applicants may not be able to achieve the maximum permissible height in order to cater and facilitate view sharing. In such caes, concessions shall be given for side and rear setbacks subject to meeting the requirements for privacy, amenity and solar access to the adjoining neighbours. These concessions should be discussed with the Council Officers prior to the lodgement of Development Application.</p> <p>g) Views from commercial development will not carry the same weight as views from dwellings.</p>	<p>The proposed alterations and additions will be contained within the approved building envelope and will ensure any views enjoyed across the side or rear boundaries will be retained.</p> <p>The proposal will not result in any adverse view loss to land and water interfaces or iconic views, as discussed in Section 5.3.6.</p> <p>Not applicable.</p> <p>As originally approved, the proposed additions provide for a stepped built form which responds to the topography.</p> <p>The proposal provides for a flat roof which minimises any view loss as discussed in this Statement.</p> <p>The proposal provides for an increase in height in accord with the Housing SEPP. The proposal will not result in any adverse view loss from neighbouring properties as set out in this Statement.</p> <p>Noted.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>-</p>

Lane Cove Development Control Plan 2009 Compliance Table

	<p>h) Development is not to unreasonably affect existing water views from living areas of adjoining dwellings. Views from bedrooms are not considered to have the same significance unless they are the only available views within the dwelling.</p> <p>i) In such cases the maintenance of the view will be tested against its reasonableness i.e. how the view is obtained and where the view is gained. For instance views that are gained by leaning out a side boundary window and looking obliquely across a number of lots will not be given weight against a view from the main living area window.</p> <p>j) Views will also be tested against the extent of view available. Where appropriate the views will also be tested against the view sharing principles stated by the Land and Environment Court.</p>	<p>The views from surrounding developments, approved and future, will not be adverse and will retain an appropriate quantum of land and water interface views.</p> <p>The extent of view loss is reasonably anticipated in a dense urban environment.</p> <p>Refer to Section 5.3.6 of this Statement.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
B.6 Environmental Management	a) New development must allow for a minimum of 2 hours of solar access to at least 50% of new and existing public open areas or plazas between the hours of 11am and 2pm on 21st June.	The proposal will retain 5 hours of solar access to greater than 50% of Newland Park from 9am to 2pm during mid-winter.	Yes
6.2 Wind standards for St Leonards	<p>To ensure public safety and comfort the following maximum wind criteria are to be met by new buildings in St Leonards Centre:</p> <p>a) 13 metres/second along major streets and public places and 16 metres/second in all other streets.</p> <p>b) Design buildings to minimise the adverse wind effects on recreation facilities on podium terraces within developments. A Wind Effects Report is to be submitted with the DA for all buildings within the St Leonards precinct taller than 40 metres above street level.</p>	This application is submitted with a Wind Assessment Report prepared by <i>Windtech</i> which deems the additional building height as acceptable.	Yes
6.3 Energy and Water Efficiency for Buildings	<p>a) Demonstrate the prioritisation of passive design measures to minimise the energy gained and lost through the building envelope, and to provide thermal comfort to occupants throughout the year.</p> <p>b) Maximise the utility of natural light to reduce the need for artificial lighting during daytime hours.</p> <p>c) Improve the control of mechanical heating and cooling by designing systems to allow individual control of different rooms, zones or tenancies combined with the ability to open windows and facades for natural ventilation when the climatic conditions allow.</p>	<p>The proposal alterations and additions provide passive design measures as originally approved to maintain a level of thermal comfort, including natural solar access, ventilation, materiality and building orientation.</p> <p>The proposal is designed with all habitable areas containing openings to maximise natural light. The solar access is compliant with the ADG. Noted.</p>	<p>Yes</p> <p>Yes</p> <p>-</p>

Lane Cove Development Control Plan 2009 Compliance Table

	<p>d) Orientation of building and facade design of all developments should capture and manage solar access, natural ventilation and breezes into the building.</p> <p>e) Provide external sun shading - vertical shading for east and west windows and horizontal sun shading for north facing windows.</p> <p>f) Use high performance glass with minimal glare impacts where possible</p> <p>g) The use of light wells as the primary source of daylight is prohibited for habitable rooms. Where they are proposed for other rooms or spaces they are to have a minimum dimension of at least 6m by 12m.</p> <p>h) Capture and reuse rainwater for irrigation of landscape areas and for apartments, townhouses, villas and mixed use or commercial development also for toilet flushing and washing machines. Refer to Part O – Stormwater Management for further controls.</p>	<p>The proposed additions are orientated to maximise ventilation and solar access, as originally approved. The proposal will comply with the ADG ventilation and solar requirements.</p> <p>The proposal incorporates shading devices as originally approved, in the form of inset balconies.</p> <p>Refer to BASIX Certificate.</p> <p>Not proposed.</p> <p>Refer to BASIX Certificate.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>
B.8 Safety and Security	<p>a) Ensure that the building design allows for casual surveillance of access ways, entries and driveways.</p> <p>b) Avoid creating blind corners and dark alcoves that provide concealment opportunities in entry areas, pathways, stairwells, hallways and car parks.</p> <p>c) Provide a clear line of sight between one public or communal circulation space and the next .</p> <p>d) Provide entrances which are in visually prominent positions and which are easily identifiable, with visible numbering.</p> <p>e) Provide adequate lighting of all pedestrian access ways, parking areas and building entries. Such lighting should be on a timer or movement detector to reduce energy consumption and glare nuisance.</p> <p>f) Provide clear lines of sight and well -lit routes throughout the development.</p> <p>g) For large scale retail, commercial, motel and Senior's Living development with a GFA of over 5,000m², provide a 'Safer by Design' assessment in accordance with the Crime Prevention Through Environmental Design (CPTED) principles from a qualified consultant.</p> <p>h) A formal crime risk assessment is to be carried out and provided as part of any development application for development of more than 20 new dwellings.</p>	<p>The proposed additions will overlook public and communal spaces on the subject site and surrounding locality.</p> <p>The proposal will not alter the ground floor plane arrangement.</p> <p>The proposal will not alter the ground floor plane arrangement. The relocated roof top communal open space will be entirely consistent with the arrangement and design as originally approved.</p> <p>The entry and building numbers are not changed.</p> <p>This will be unchanged from the original approval.</p> <p>As above, this will be unchanged. The additions will maintain the building lobby and design as originally approved.</p> <p>Not applicable.</p> <p>The proposal provides for 23 additional apartments, however, a formal CPTED Report is not required as the original approval was deemed</p>	<p>Yes</p> <p>No change</p> <p>Yes</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>N/A</p> <p>Yes</p>

Lane Cove Development Control Plan 2009 Compliance Table

	<p>i) Provide security access controls where appropriate.</p> <p>j) Public pedestrian areas within developments as well as communal access ways within multi -unit developments are to provide non -slip pavement surfaces.</p> <p>k) High density residential and mixed use development buildings should contain multiple stairs/ lift cores which limit the number of dwellings with access from the circulation core.</p>	<p>acceptable. The additions are entirely consistent with the safety principles as originally approved.</p> <p>As originally approved.</p> <p>No change from the approved.</p> <p>The proposed additions are consistent with that approved.</p>	<p>No change</p> <p>No change</p> <p>Yes</p>
8.1.2 Residential development	<p>a) All ground floor apartments, villas, townhouses and attached or detached dwellings that have a street frontage other than battle axe blocks are to have direct access or entries from the street and at least one habitable room with windows facing the street .</p> <p>b) Dwellings on corner lots are to address and provide attractive facades to both streets .</p> <p>c) A dedicated pathway and gate is to be provided for each dwelling separate to any driveways and in the case of apartments also separate from the main entry to the overall development or building.</p> <p>d) Ground floor uses in mixed use or commercial buildings outside centres subject to the zoning are to be:</p> <p>I. Live /work uses ,</p> <p>II. Commercial suites , and/or III. Residential apartments .</p> <p>e) Ground floor uses for mixed use or commercial uses within centres are to be:</p> <p>I. Retail uses to all major retail streets</p> <p>II. Commercial uses to secondary streets</p> <p>III. Live /work uses or residential uses only where the street is not a major retail or secondary street within the centre .</p> <p>f) All ground floor uses are to have direct access from the street .</p> <p>g) All ground floor uses are to continue the street level into the building with any grade changes accommodated within the building</p>	<p>The proposal will not alter the approved ground floor plane beyond the amalgamation of two apartments. This will address the street frontage as originally approved.</p> <p>Not applicable.</p> <p>The ground floor plane will be unchanged. In terms of the amalgamated apartment, this will continue to provide direct access from the public domain.</p> <p>No change beyond that approved, as described above.</p> <p>As above.</p> <p>The amalgamated ground floor dwelling has direct access from the street.</p> <p>As above.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>No change</p> <p>No change</p> <p>Yes</p> <p>Yes</p>
8.2 Passive Surveillance	<p>a) All development at ground level is to offer passive surveillance for safety and security of residents and visitors .</p>	<p>The proposal does not alter the ground floor arrangement. The amalgamated ground floor apartments will overlook the public domain.</p>	<p>Yes</p>

Lane Cove Development Control Plan 2009 Compliance Table

<p>b) All development is to contribute to the safety of any public domain areas .</p> <p>c) Development is to optimise the visibility, functionality and safety of building entrances .</p> <p>d) Development is to improve at least some these opportunities for casual surveillance by:</p> <p>I. For mixed use commercial or retail development - orienting active areas within tenancies to provide direct outlook (without blinds) to streets and other public areas.</p> <p>II. For residential semi and detached dwellings - orienting habitable areas to provide direct outlook to the streets and other public areas.</p> <p>III. Using bay windows and balconies to protrude beyond the main facade of the building to enable a wider angle of view to the street .</p> <p>IV. Using corner windows which provide oblique views to the street or open space .</p> <p>V. Providing casual views of common internal semi public areas such as lobbies, foyers, hallways, recreation areas for mixed use commercial developments.</p> <p>e) Minimise opportunities for concealment in all development.</p> <p>f) Control access to residential flats, commercial and mixed use development by:</p> <p>I. Making adjoining uses, apartments or tenancies inaccessible from the balconies, roofs and windows of neighbouring buildings or dwellings</p> <p>II. Separating and controlling the residential car parking component of developments from any other building use and from public and common areas</p> <p>III. Providing direct access from car parks to apartment lobbies for residents</p> <p>IV. Providing direct access from car parks to each floor of the development for all uses</p> <p>V. Providing separate access for residents in mixed use buildings</p> <p>VI. Providing an audio or video system at the entry or in the lobby for visitors to communicate with residents or tenants VII. Providing keyed car parking access for residents</p>	<p>The alterations and additions will contribute to the safety of the public domain through additional overlooking and surveillance.</p> <p>This is unchanged from the approved.</p>	<p>Yes</p> <p>No change</p>
	<p>Not applicable.</p>	<p>N/A</p>
	<p>Not applicable.</p>	<p>N/A</p>
	<p>Openings are provided from the proposed apartments to the public domain.</p>	<p>Yes</p>
	<p>Corner balconies are provided where possible.</p>	<p>Yes</p>
	<p>The additional apartments will overlook all public and communal areas.</p>	<p>Yes</p>
	<p>The ground floor plane will not be altered.</p>	<p>No change</p>
	<p>As originally approved, access to the additional residential apartments will be controlled by security card and intercom systems.</p>	<p>No change</p>

Part C Residential Development – Residential Flat Buildings

Lane Cove Development Control Plan 2009 Compliance Table			
3.2 Density	a) The minimum site area for residential flat developments is 1,500m ²	The proposal complies with the minimum lot size as originally approved.	Yes
3.3 Building Depth	a) The maximum residential flat building depth is to be 18 m. b) This depth is exclusive of balconies.	The building depth is unchanged from the approved development as the proposal follows the approved envelope and footprint.	Yes
3.4 Building Width	a) The maximum overall width of the building fronting the street shall be 40m. Greater widths may be permissible if the proposed building articulation is satisfactory in the streetscape.	As above, the building width is unchanged from the approved development as the proposal follows the approved envelope and footprint.	Yes
3.5 Setbacks	3.5.1 Front/Street a) The front setback of the building shall be consistent with the prevailing setback along the street (refer Diagram No.1). However, Special Residential Areas subject to Block Plans should comply with the setback stated therein. Where there is no predominant setback within the street, and no Block Plan for the locality, the setback should be a minimum of 7.5m	The proposal complies with the front setbacks of the St Leonards South Precinct.	Yes
	3.5.2 Side and Rear a) To the boundary within the R4 zone, the minimum side and rear setback shall be: 6m up to 4 storeys 9m for 5-8 storeys 12m for 9 storeys and above	The proposal complies with the side and rear setbacks as prescribed by the St Leonards South Precinct.	Yes
	3.5.3 General a) In general, no part of a building or above ground structure may encroach into a setback zone. Exceptions are: I. Encroachments into the setback zone of up to 2m may be permitted for underground parking structures no more than 1.2m above ground level (existing), where there is no unreasonable effect on the streetscape. Refer to Diagram 10. II. Awnings, balconies, blade walls, bay windows and other articulation elements up to a maximum of 500mm. III. Setback variation may be required or permitted on merit to preserve existing trees.	The proposal satisfies the setback requirements of the St Leonards South Precinct. As described, the development is within the footprint and envelope of that originally approved.	Yes
3.8 Excavation	a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP.	The original approval responded to the topography of the land. The proposed additions will provide for a stepped built form which responds to the topography and is consistent with the original approval.	Yes

Lane Cove Development Control Plan 2009 Compliance Table

	b) Excavation for major development is to be contained as close as practicable to the footprint of the development.	No additional excavation is proposed as part of this application. It is noted that excavation has commenced on-site.	No change
3.9 Design of Roof Top Areas	<p>a) Roof top areas including podium area are to be designed for use as recreation facilities where practicable and should be of high standard of finish and design. A detailed landscape design and plan of roof top design is to be submitted with the DA.</p> <p>b) The design of exterior private open space such as roof top gardens is to address visual and acoustic privacy, safety, security, and wind effects.</p>	<p>The proposal provides for a roof top communal open space on Level 16, consistent with the arrangement and landscaped design of the original approval.</p> <p>Whilst on an upper level, the orientation, privacy and design of the Level 16 communal open space is unchanged from the approval.</p>	<p>Yes</p> <p>Yes</p>
3.10 Size and mix of dwellings	<p>a) In residential flat buildings and the residential component of mixed use buildings, studio dwellings are to have a minimum size of 40m².</p> <p>b) In residential flat buildings and the residential component of mixed use buildings, development should include a mix of 1, 2 and 3 bedroom units. At least 10% of each unit type should be provided.</p>	<p>The internal size of apartments comply with the ADG per Annexure B.</p> <p>The proposal provides for a mix of apartment as required by the LCLEP.</p>	<p>Yes</p> <p>Yes</p>
3.11 Private Open Space (balconies and terraces)	<p>a) Provide primary balconies for all above ground dwellings with a minimum depth of 2m and minimum area of 10m².</p> <p>b) Provide a primary terrace for all ground floor dwellings with a minimum depth of 4m and minimum area of 16m². All ground floor dwellings are to have direct access to a terrace or front garden area.</p> <p>c) Balconies and terraces shall not be enclosed under any circumstances.</p>	<p>The private open spaces comply with the ADG per Annexure B.</p> <p>As above, noting that the amalgamated ground floor apartment complies with the necessary requirements.</p> <p>Not proposed.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>
3.12 Ceiling Heights	<p>a) In residential flat buildings, including residential apartments in mixed use buildings, the floor to ceiling height shall be:</p> <p>I. for non-habitable rooms, a preferred minimum of 2.4m, however a minimum of 2.25m will be permitted</p> <p>II. for the upper level of a 2 storey apartment, a minimum of 2.4m provided at least 50% of the apartment has a minimum of 2.7m height and III. for all single level apartments, a minimum of 2.7m.</p>	<p>The additional levels provide for a 2.7m floor to ceiling height which will comply with the ADG Design Criteria.</p>	<p>Yes</p>
3.13 Storage	<p>a) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <p>I. studio dwellings 6m³</p> <p>II. one-bedroom dwellings 6m³ III. two-bedroom dwellings 8m³</p>	<p>Appropriate storage space is provided within the proposed residential apartments in accordance with the ADG. Refer to Annexure B.</p>	<p>Yes</p>

Lane Cove Development Control Plan 2009 Compliance Table

	IV. three plus bedroom dwellings 10m ³ A minimum of 50% of this storage volume is to be provided within the dwelling accessible from the hall or living area as hall cupboards.		
3.14 Solar Access	a) Habitable rooms in at least 70 percent of dwellings in high density residential developments, should receive a minimum of two hours direct sunlight between 9 am and 3 pm on 21st June, in total between any portions of those rooms. A reasonable proportion of both the common and private open space in those sites is also to receive sunlight during that period, according to the circumstances of the sites.	The proposed development will provide for 72 of 102 apartments (70.5%) which will receive a minimum 2 hours of direct sunlight between 9am and 3pm on 21 June.	Yes
3.15 Natural Ventilation	a) Sixty percent (60%) of dwellings should be naturally cross ventilated.	31 of 50 apartments (62%) on the first nine storeys will receive cross ventilation in accordance with the ADG. Refer to Annexure B .	Yes
3.16 Visual privacy	a) Locate and orient new development to encourage visual privacy between buildings on site and adjacent buildings	The proposal provides for separation and building envelopes which are consistent with the approved development and deemed acceptable by the consent authority. This is discussed in Section 5.3.8 of this Statement.	Yes
3.17 Communal Open Space	a) A minimum of 25% of the site area is to be provided as communal open space.	The proposal will continue to provide 45% (1,206m ²) of communal open space as originally approved. As noted, communal floor area will be relocated on Level 16 due to the uplift in density.	Yes
3.18 Landscaped Area	a) A minimum of 40% of the site area is to be planted, comprising 25% landscaped area and a further minimum of 15% planting on structures or landscaped area.	The proposal will not alter the quantum of landscaping beyond that approved.	No change

Part C Residential Locality 8 St Leonards South Precinct

This section of the DCP must be read in conjunction with all other parts of the DCP. Site specific clauses in this section of this DCP (Locality 8 St Leonards South) prevail over general clauses elsewhere in the DCP, unless stated otherwise.

Structure Plan	Land use should be in accordance with the Structure Plan in Figure 3.	The proposal does not raise any issues with consistency with the DCP Structure Plan. This application will provide for additional residential apartments in accordance with the Housing SEPP.	Yes
Heritage	Development shall not have an adverse impact on heritage significance of Heritage items in the vicinity of the development.	The proposal does not raise any issues regarding impacts on heritage items.	Yes
Access	Provide public roads, pedestrian and bicycle links in accordance with Figure 4 – Access Networks.	The proposal does not raise any issues regarding delivery of the required access network. This will be unchanged from approved.	Yes

Lane Cove Development Control Plan 2009 Compliance Table

	Create E-W pedestrian and bicycle links as indicated in Figures 4 and 5 (b) with associated stairs/ramps and lifts to optimise accessibility.	The proposal will not alter the approved east-west pedestrian link.	No change
	Ensure “Green Spines” connect/integrate with E-W pedestrian and bicycle links, where applicable.	The proposal will not alter the approved green-spine.	No change
	Provide infrastructure for potential to provide electric charging points to every car space within the internal parking basements for hybrid and electric vehicles.	This will be integrated into the basement as originally approved. The additional parking spaces will include electric charging points.	Yes
Infrastructure	Recreation Areas – create recreation areas – Figure 6	The proposal does not raise any issues with delivery of the required recreation areas. As described above, the proposal will maintain the through-site link and green spine.	No change
	Community Facilities – provide community facilities including a multi-purpose facility of 600sqm – comprising child care centre 450sqm, community hall 150sqm and adjacent recreation area 450sqm.	The proposal will not alter the approved community facility, childcare centre and open spaces.	No change
	Affordable Housing – Affordable housing as per Figure 7 in accordance with the Specifications for Affordable Housing in the South St Leonards Precinct.	Not applicable to the proposal. It is noted that affordable housing will be provided in accordance with the Housing SEPP.	N/A
	Utility Services – Undergrounding of services within public road for total frontage of each site.	The proposal does not raise any issues with compliance with this requirement beyond that originally approved.	Yes
Built Form	Amalgamation – Sites are to be amalgamated in accordance with Figure 8.	The proposal does not raise any issues regarding site amalgamation as originally approved.	Yes
	Building envelope – Setbacks	The proposal does not change any of the approved building setbacks as the proposed additional levels are located within the approved building envelope.	Yes
	Front setback (a): 4m at street level, +3m at and above Level 6	The proposal will not alter the front setback to Canberra Parade. The additional levels will match the envelope below as originally approved, noting that this complies with the 7m minimum and increases on the upper levels to 9.4m.	Yes
	Through—site link setback (F): • 6m at park and east-west pathway reservation level, +3m at and above Level 5	As above, the setbacks match the approved envelope. The proposal will provide for a 3m to 6.6m on the upper levels and is acceptable as originally approved.	On merit
	Rear Building Setback: 12m	A rear setback of 12m is provided as originally approved.	Yes

Lane Cove Development Control Plan 2009 Compliance Table

	Building Separation: Per ADG	The proposal matches the approved envelope below as was deemed acceptable. The northern setback is addressed in Section 5.3.8 and satisfies the visual privacy requirements of Part 3F-1.	Yes
	Maximum Building depth: 18m-22m	The building depth matches the approved building envelope below and is therefore acceptable.	Yes
	Building Length: Maximum building length shall not be greater than 35m unless strongly articulated.	The additional levels match the envelope below. While the proposal exceeds the control at 36.7m, the built form is highly articulated as originally approved.	On merit
	Building Articulation: A high degree of articulation is mandatory for the front façade and include balconies, overhangs, blades and other architectural features.	As above, the built form is highly articulated as originally approved.	Yes
	Articulation elements shall not utilise contrasting 'bright' colours to emphasise the articulation.	No bright colours are proposed.	Yes
	Height in Storeys – 12 storeys	The proposed development exceeds the 12 storey height limit as a result of the additional building height permitted under the Housing SEPP. This is addressed throughout the Statement, namely, Section 5.2.5.3 Character of Local Area and Annexure D Building Height Clause 4.6.	On Merit
	Solar Access – Comply with ADG	The proposal does not involve any material adverse impacts to adjacent development compared with the approved development. This is discussed in Section 5.3.7 of this Statement. It is noted that the solar access of residential apartments complies with the ADG Design Criteria.	Yes
	Building Floor Levels - Building floor levels shall have regard to Figure 18, to facilitate the creation and access to "Green Spines"	The proposal will not alter the approved Green Spine.	Yes
Incentives Area 5	Maximum LEP height of buildings: 44 metres and 2.5 metres - As shown in LEP Incentive Height of Buildings map	This is discussed throughout the Statement. A Clause 4.6 is provided in Annexure D .	Refer to Clause 4.6
	Maximum LEP FSR: 3.7:1	This is discussed throughout the Statement. A Clause 4.6 is provided in Annexure E .	Refer to Clause 4.6
	Maximum height of building (storeys): 12 - As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	As discussed, the proposal will exceed the height in storeys map which aligns with the Housing SEPP.	On merit

Lane Cove Development Control Plan 2009 Compliance Table

	<p>Outcome to be entitled to incentives:</p> <p>a) Minimum site area of 2,200m²</p> <p>b) A multi-purpose (child care centre and community hall) facility of 600sqm with direct connection to an outdoor play space of 450sqm provided in accordance with the "Specifications for Community Facilities in the St Leonards South Precinct" and dedicated to Council in perpetuity;</p> <p>c) Public lifts associated with multi-purpose facility, to provide accessibility;</p> <p>d) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys);</p> <p>e) A 15m wide pedestrian and bicycle link connecting Canberra Avenue and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity;</p> <p>f) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919;</p> <p>g) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and</p> <p>h) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.</p>	<p>No change to approved.</p> <p>No change to approved. Facility is retained.</p> <p>No change to approved.</p> <p>The development, as amended, continues to exhibit design excellence as demonstrated in the Urban Design Report prepared by <i>SJB Architects</i> and per Annexure C.</p> <p>No change to approved.</p> <p>No change to approved. The additional levels follow the envelope of the approved building.</p> <p>The proposed alterations and additions represent a mix of 34% 1-bedroom, 24% 2-bedroom and 44% 3/4-bedroom dwellings.</p> <p>No change to approved.</p>	<p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>Yes</p> <p>Yes</p> <p>No change</p>
Other Built Form	<p>Pedestrian Entry/ Address</p> <p>All building access shall be sited to provide level street access to minimise ramps</p> <p>Provide entries to properties generally as indicated in Figure 11.</p> <p>Design for passive surveillance of recreation areas and pedestrian and bicycle links from the public domain and for developments.</p>		
	<p>Edge Treatments</p> <p>Limit basement protrusions to 1.5m.</p>	<p>The proposal will not alter the basement protrusion from that approved.</p>	<p>No change</p>

Lane Cove Development Control Plan 2009 Compliance Table

	Treat exposed basements with textural materials and landscaping as per the LMP to minimise visual impact. Provide 1.2m front fence/ hedge or other landscape combination at front boundary to create privacy for ground floor and semi-basement units.	No change from approved. No change from approved.	No change No change
	Transition to Lower Densities Plant large tree species in enlarged front setback. Additional setback to include large trees and be unfenced with landscaping to integrate with site landscape design.	No change to landscaping beyond that approved. As above.	No change No change
	Vehicle Access Provide vehicle access from street frontage at lower end/edge of site. Where multiple areas are consolidated, minimise vehicle access points.	The proposal will not alter vehicle access.	No change
	Parking No parking is permitted within the front setback. Parking is to be in basements under the building footprint but NOT: o under designated deep soil zones as per LMP; o under the front setback; o under the 'Green Spine'. Where justification is provided, intrusions into deep-soil Green Spine areas shall only be considered after two levels of basement parking has been provided under the building footprint.	Not proposed or changed. No change is proposed to the approved basement footprint.	No change No change
Landscape	Landscaping for the Precinct shall be as set out in the Landscape Master Plan	The proposal will not involve any changes to the approved landscaping at-grade.	No change
	Open space shall be located as shown in the LMP	As above, no change is proposed to open space.	No change
	Street tree and other landscape planting shall be provided as set out in the LMP	No change is proposed to the landscaped plan from that approved.	No change
	Landscape design of all E-W Pedestrian Links shall be provided as set out in the LMP.	As above, no change is proposed	No change
Private Domain	Tree retention shall be as per Figure 16.	No change is proposed.	No change
Communal Open Space (Green Spines)	Green Spines are to be provided as set out on Figure 17.	The proposed alterations and additions will not impact the location, extent and design of the approved green spine. As detailed, all changes are located within the approved building envelope, on upper levels.	Yes

Lane Cove Development Control Plan 2009 Compliance Table			
North-South Grade Transitions	North-South level transitions shall be accommodated at or near property boundaries by ramp or stairs to achieve the levels shown in Figures 18 and 20.	The proposal will not alter the north-south transition levels as originally approved. The additional levels are designed so that they respond to the sloping topography.	Yes
East-West Grade Transitions	East-West transitions shall incorporate levels shown in Figures 18 and 21. The site may step at street edge and/or o building facade	The proposal will not alter the relationship of the approved built form to the topography. The additional levels are stepped to reduce impact to Canberra Avenue.	Yes
Front Courtyards and Setbacks	Front setbacks to be deep soil and to be treated as front gardens to GF units (or basements units).	The proposal will not alter the front setback landscaping. The amalgamated ground floor unit will not result in any significant change to landscaping.	Yes
	Edge treatment to the boundary shall comprise a 1.2m max fence/hedge to provide screening as per the LMP.	No change is proposed.	No change
	Boundary treatments shall be as indicated in Figures 23-24 & LMP.	As above.	No change
Private Courtyards at ground level	Private courts to be located as indicated on Figure 23. Private courts may extend a maximum of 1 metre into Green Spines. Direct access shall be provided from private courts to Public Domain and/or Green Spine Edge treatment between private courts and communal Green Spine shall be as detailed in Figures 22, 23 and 24.	The proposal will not result in any change to the at-grade private open spaces. The amalgamated apartment on ground floor will be entirely consistent with that originally approved.	Yes
Edge Treatments	Edge treatments to protruding basements, retaining walls shall be as per LMP details (Figure 24).	No change from that approved.	No change
	Edge treatments between private courts and communal green spine – see as detailed in Figures 22, 23 and 24.	As above, there will be no change to private open spaces and the communal green spine.	No change
Roof Terraces	Roof Terraces are encouraged, refer Figures 25 (a) and (b) and LMP for desired Roof Terrace design.	The proposal will provide a roof terrace on Level 16. As described, whilst on a different level, this is entirely consistent with the approved development in terms of location, orientation, design and arrangement.	Yes
	Roof Terraces must be accessible (lift access).	The roof terrace is accessible via lift.	Yes
	Communal amenities shall be provided (kitchen, toilets, sheltered eating/BBQ areas).	Communal amenities are provided on Level 16.	Yes
	Enclosed space and shelter for communal amenities provided for roof terraces are not counted as a storey. These spaces should only contain non-habitable floor space	Appropriate shelters are provided on Level 16.	Yes

Lane Cove Development Control Plan 2009 Compliance Table			
Public Art	Each Area shall prepare a public art strategy to integrate with their landscape plans (see LMP). Each Area shall provide Public Art to a minimum value of 0.1% of the development construction value	No change form approved.	No change
Environmental/ Sustainability	Environmental Performance - The design, construction and operations of any new building in this precinct, including its services and fit outs, must be capable of achieving a minimum 6 star rating under NATHERS. Note: Taller towers to use centralised integrated cooling/heating system.	This application is submitted with a BASIX Certificate and is considered acceptable.	Yes
	Wind Impact - Buildings shall comply with Part B6.2 of LCDCP 2010. A Wind Effects Report is to be provided.	The proposal maintains compliance with the approved development. Refer to updated Wind Assessment Report.	Yes
	Green Roofs - All developments are encouraged to consider inclusion of a green roof to provide thermal efficiency.	This has been provided where it is possible. It is noted that the roof form includes solar panels and services necessary for the building to function.	Yes
	Green Walls / Vertical Gardens - All developments are encouraged to consider inclusion of green walls / vertical gardens	There will be no change to approved at-grade landscaping.	No change
	Potable water - Minimise potable water use by using water efficient appliances, rainwater collection and reuse and the use of drought tolerant plants.	Refer to BASIX Certificate.	Yes
	Urban Stormwater - Collect, store and treat on site. Note: Stormwater can be collected and stored in combined storage tanks/retaining walls, which will be integrated with the stepped nature of green spines. This water can be used to irrigate garden areas.	This will be unchanged from the approved development.	No change
	Flood Management - Provide detention tanks desirably under paved areas, driveways, in retaining walls or in basement car parks.	This will be unchanged from the approved development.	No change
Infrastructure Funding	Funding for infrastructure to be funded through, S7.11 contributions, conditions of consent, the provision of planning incentives in return for items identified in LEP Part 7.	Noted. Relevant contributions will be applied to the proposed alterations and additions.	Yes
Part Q Waste Management and Minimisation			

Lane Cove Development Control Plan 2009 Compliance Table

2.2 Waste Management Plans	A Waste Management Plan (WMP) outlines measures to minimise and manage waste generated during demolition, construction, and ongoing use of the site/premises.	A Waste Management Plan prepared by <i>Elephants Foot</i> is submitted with this application.	Yes
4.4 Residential Flat Buildings	<p>a) Plans submitted with a development application must show:</p> <ul style="list-style-type: none"> i. The location of an indoor waste/recycling cupboard for each dwelling that is large enough to accommodate two days' waste and provides for the separation of garbage, food organics, and recycling. ii. The location of garbage chute(s) and interim storage facilities for recyclable materials. iii. The location of waste/recycling storage areas able to accommodate Council's required allocation of waste and recycling bins. iv. The location of any waste compaction equipment. v. The location of bulky waste storage room(s). vi. The location for individual or communal compost containers, the siting of which will have regard to potential amenity impacts. vii. The nominated collection point for the collection and emptying of Council's allocated waste and recycling bins, ensuring that traffic and pedestrian safety is maintained. viii. The path of travel for moving bins from the storage area to the identified collection point. ix. The nominated collection point for bulky waste presentation including the path of travel from the storage area to the collection point. x. The path of travel for collection vehicles, taking into account accessibility, width, height and grade, and ensuring that safety is maintained. <p>b) Residential Flat Buildings containing four or more storeys must be provided with a chute system for the transportation of general waste from each storey to the main waste storage/collection room(s). Chute openings must be located in a dedicated service room on each floor, with the service room sized to accommodate bins for the source separation of comingled containers, paper and cardboard, and food organics.</p> <p>c) Garbage chutes must be designed in accordance with Appendix D: Garbage Chutes and the Building Code of Australia.</p>	<p>The additional residential apartments will include appropriate waste storage.</p> <p>The garbage chutes will align with the approved development.</p> <p>This will be unchanged from this application and will accommodate the additional bins. Not proposed. A bulky waste area is provided and will accommodate the additional apartments. No change proposed.</p> <p>The collection point is unchanged from that approved.</p> <p>As above, this is unchanged from the approved development.</p> <p>This is unchanged from that approved.</p> <p>This is unchanged from that approved.</p> <p>The additional levels are provided with waste chutes as approved on the lower levels.</p> <p>As above, these are designed in accordance with relevant standards.</p>	<p>Yes</p> <p>Yes</p> <p>No change</p> <p>N/A</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>Yes</p> <p>Yes</p>

Lane Cove Development Control Plan 2009 Compliance Table

	<p>d) Residential flat buildings must include waste/recycling storage room/s designed in accordance with Appendix E Waste Recycling/Storage Rooms in Multi-Unit Dwellings.</p> <p>e) For residential flat buildings that include ten or more dwellings, a dedicated room or caged area must be provided for the temporary storage of discarded bulky items. The storage area must be readily accessible to all residents and must be located close to the main waste storage room or area.</p> <p>f) Bulky waste storage rooms must be designed to the following minimum sizes: 1-10 units - 10m² 11-20 units - 20m² >21 units - 30m²</p> <p>g) Doors to bulky waste storage rooms must have a minimum opening width of 1700mm.</p> <p>h) All bins must be collected onsite. The designated collection point must be located inside the property boundary and close to the property vehicular entrance (<10m).</p> <p>i) Where security gates are provided to the development, gates must be accessible by Council's waste collection contractor by way of a master key or lock box.</p> <p>j) If bins need to be moved from normal storage areas to the collection point, arrangements for the movement of bins must be detailed on the Waste Management Plan. Bins are to be moved to the collection point no earlier than the evening before collection day and returned to their storage areas no later than the evening of collection day.</p> <p>k) For on-site bulky waste collection, unobstructed access of 4.3m must be provided, with the collection point located</p>	<p>All waste storage rooms are provided as originally approved.</p> <p>Bulky waste storage is provided as originally approved.</p> <p>This is provided as originally approved and will be changed.</p> <p>Unchanged from approved.</p> <p>This is unchanged from approved.</p> <p>No change from approved.</p> <p>No change from approved.</p> <p>No change from approved.</p>	<p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p>
Part R Traffic, Transport and Parking			
2.2 Electric vehicle infrastructure	<p>a) All new developments are to meet the relevant Deemed-to-Satisfy Provisions of the National Construction Code or any subsequent amendment, except where varied by this clause.</p> <p>b) 10% or a minimum of 4, of all car-share spaces and spaces allocated to visitors must have a Minimum Level 2 40A charger, to be provided prior to Occupation Certificate.</p> <p>c) All low density residential dwellings are to be provided with a minimum of one 15A circuit and socket adjacent to the car parking facilities.</p>	<p>Noted.</p> <p>Electric car charging will be provided as originally approved.</p> <p>Not applicable.</p>	<p>-</p> <p>No change</p> <p>N/A</p>

Lane Cove Development Control Plan 2009 Compliance Table

	d) 10% of bicycle parking must be provided with 10A General Power Outlets (GPO).	Noted, this will be consistent with the original approval.	No change
2.4 Parking near St Leonards Railways Station	<p>a) Any development occurring within 400m (refer to Figure 1) of St Leonards Railway Station shall be subject to the parking rates shown in Table 2 – Car parking rates near St Leonards Railway Station. Where any part of a street block falls within 400m radius of St Leonards Railway Station, the whole of that block is considered to be included within catchment.</p> <p>b) Developments occurring within 400m of St Leonards Railway Station that generate 10 or more vehicles per hour must be accompanied by a Sustainable Travel and Access Plan (STrAP).</p> <p>c) The STrAP must be approved by Council prior to the issuing of the Occupation Certificate.</p> <p>d) The allocation of private parking spaces in residential developments within 400m of St Leonards Railway Station is at the discretion of the developer. Developers may allocate car parking to units based on market demand (ie. No minimum parking allocation per unit). This is to optimise the utilisation of residential parking space and minimise the risk of overspill parking onto nearby streets.</p>	<p>The subject site is within 400m of the railway and complies with the parking requirements.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>	<p>Yes</p> <p>-</p> <p>-</p> <p>-</p>

Lane Cove Development Control Plan 2009 Compliance Table

	<table><tr><th colspan="3">Table 2 – Car parking rates near St Leonards Railway Station</th></tr><tr><th>Proposed Use</th><th>Residents/Employees</th><th>Customers/Visitors</th></tr><tr><td>Residential & Mixed Use Development (Residential component)</td><td colspan="2"></td></tr><tr><td>Attached Dwellings and Multi-Dwelling Housing</td><td>Refer to Table 1</td><td>Refer to Table 1</td></tr><tr><td>Residential flat buildings</td><td>0.5 spaces per studio 0.5 spaces per 1-bedroom unit 0.9 space per 2-bedroom unit 1.40 spaces per 3 bedroom unit 2 spaces per 4+ bedroom unit Allocation of parking spaces at developer's discretion. 1 disabled space for each adaptable housing unit 1 onsite removalist truck space per 100 residential units (as per relevant Australian Standards) 1 car wash bay per 50 units for developments over 20 units</td><td>1 space per 5 units 1 disabled space per 10 visitor spaces (minimum 1 disabled space)</td></tr></table>	Table 2 – Car parking rates near St Leonards Railway Station			Proposed Use	Residents/Employees	Customers/Visitors	Residential & Mixed Use Development (Residential component)			Attached Dwellings and Multi-Dwelling Housing	Refer to Table 1	Refer to Table 1	Residential flat buildings	0.5 spaces per studio 0.5 spaces per 1-bedroom unit 0.9 space per 2-bedroom unit 1.40 spaces per 3 bedroom unit 2 spaces per 4+ bedroom unit Allocation of parking spaces at developer's discretion. 1 disabled space for each adaptable housing unit 1 onsite removalist truck space per 100 residential units (as per relevant Australian Standards) 1 car wash bay per 50 units for developments over 20 units	1 space per 5 units 1 disabled space per 10 visitor spaces (minimum 1 disabled space)	<p>The proposal provides:</p> <ul style="list-style-type: none">- 34 x 1 bedroom = 17 required- 24 x 2 bedroom = 21.6 required- 43 x 3 bedroom = 60.2- 1 x 4 bedroom = 2 required- Total Required = 100.8 (101) spaces- Visitors 102 apartments = 20.4 (29)- Adaptable apartments = All adaptable apartments comply with the accessible parking requirements. <p>The proposal provides 101 resident parking spaces and complies.</p> <p>In addition, 17 visitor spaces are provided which does not comply, however is considered acceptable given the accessible location of the site.</p>	<p>Yes</p> <p>On merit</p>
Table 2 – Car parking rates near St Leonards Railway Station																		
Proposed Use	Residents/Employees	Customers/Visitors																
Residential & Mixed Use Development (Residential component)																		
Attached Dwellings and Multi-Dwelling Housing	Refer to Table 1	Refer to Table 1																
Residential flat buildings	0.5 spaces per studio 0.5 spaces per 1-bedroom unit 0.9 space per 2-bedroom unit 1.40 spaces per 3 bedroom unit 2 spaces per 4+ bedroom unit Allocation of parking spaces at developer's discretion. 1 disabled space for each adaptable housing unit 1 onsite removalist truck space per 100 residential units (as per relevant Australian Standards) 1 car wash bay per 50 units for developments over 20 units	1 space per 5 units 1 disabled space per 10 visitor spaces (minimum 1 disabled space)																
2.6 Car share	a) Outside the St Leonards Railways Station 400m catchment area, public car share spaces may be provided in residential developments in lieu of on-site parking.	Not applicable.	N/A															
2.8 Motorcycle parking	a) Developers shall provide 1 motorcycle parking space per 15 car spaces for all types of development. b) Motorcycle parking spaces are to have an area of 1.2m x 3m.	123 resident and visitor parking spaces are proposed, therefore requiring 8.2 (8) motorcycle spaces. The proposal provides 10 motorcycle spaces.	Yes															
2.9 Disabled parking provision	a) For disabled car parking rates refer to Table 1 and Table 2	As above, the proposal will provide for 20 adaptable parking spaces and will serve all adaptable apartments.	Yes															
2.11 Parking and access for service vehicles	a) Parking areas shall be provided and designed to allow for access and loading by Council's waste collection contractor.	This is unchanged in the application.	No change															
2.12 Parking area access and design	a) All parking areas, including access ramps and driveways, must be designed in accordance with the relevant Australian Standards.	The modification to the parking arrangement will comply with the relevant Australian Standards per the Traffic Report prepared by <i>Transport Strategies</i> .	Yes															

Lane Cove Development Control Plan 2009 Compliance Table

4.3 Bicycle facilities and infrastructure

a) Refer to Table 3 – Bicycle parking rates; and design bicycle parking in accordance with the relevant Australian Standards.

Table 3 – Bicycle parking rates		
Proposed Use	Residents/Employees	Customers/Visitors
Residential & Mixed Use Development (Residential component)		
Dwelling house	-	-
Residential flat buildings	1 per 4 dwellings	1 rack + 1 rack per 10 dwellings

The proposal includes 102 apartments which necessitates 25.5 (26) bicycle spaces for residents and 11 spaces for visitors. The proposal provides for 28 bicycle spaces for residents and 8 spaces for visitors.

Yes

Annexure G

Conditions for Consent



PROPOSED CONDITIONS FOR CONSENT

The following are proposed conditions to form part of the additions and alterations consent if approved by the consent authority:

1. Modification of Consent for DA162/2021

This consent requires the modification of development consent DA162/2021 approved on 22 June 2022 for the demolition of existing structures and construction of a mixed-use development (12 storeys) comprising 81 apartments, childcare centre for 60 children, community facility, restaurant/café and basement parking for 116 vehicles, east-west public pedestrian link and stratum/strata subdivision.

The modification is to be effected under section 4.17(1)(b) and section 4.17(5) of the *Environmental Planning and Assessment Act 1979* prior to the issue of any construction certificate for the subject building.

The required modifications:

- are to be set out in a notice of modification of development consent DA162/2021; and
- must be lodged with the consent authority, in compliance with the requirements of section 67 of the Environmental Planning and Assessment Regulation 2021 ("the EP&A Regulation").

In the terms prescribed by any condition of this consent that sets out a required modification to DA162/2021.

2. Approved Plans and Documents

The development must be implemented in accordance with the following approved plans and supporting documentation listed except where amended by conditions of this consent.

Architectural Drawings prepared by SJB Architects and Hyecorp			
Drawing	Reference	Date	Revision
Floor Plan L12 – Deletion Plan	DA-0218-D	05/04/2024	51
Roof Plan – Deletion Plan	DA-0223-D	05/04/2024	51
Floor Plan B4	DA-0201-A	05/04/2024	66
Floor Plan B3	DA-0202-A	05/04/2024	66
Floor Plan B3	DA-0203-A	05/04/2024	66
Floor Plan B3	DA-0204-A	05/04/2024	66
Floor Plan Ground	DA-0205-A	05/04/2024	66
Floor Plan Upper Ground	DA-0206-A	05/04/2024	66
Floor Plan L1	DA-0207-A	05/04/2024	66
Floor Plan L2	DA-0208-A	05/04/2024	66
Floor Plan L3	DA-0209-A	05/04/2024	66
Floor Plan L4	DA-0210-A	05/04/2024	66
Floor Plan L5	DA-0211-A	05/04/2024	66
Floor Plan L6-L7	DA-0212-A	05/04/2024	66
Floor Plan L8	DA-0214-A	05/04/2024	66
Floor Plan L9	DA-0215-A	05/04/2024	66
Floor Plan L10	DA-0216-A	05/04/2024	66
Floor Plan L11	DA-0217-A	05/04/2024	66
Floor Plan L12-L15	DA-0218-A	05/04/2024	66
Floor Plan L16	DA-0221-A	05/04/2024	66
Floor Plan L17	DA-0222-A	05/04/2024	66



Roof Plan	DA-0223-A	05/04/2024	66
North Elevation	DA-0501-A	05/04/2024	66
East Elevation	DA-0502-A	05/04/2024	66
South Elevation	DA-0503-A	05/04/2024	66
West Elevation	DA-0504-A	05/04/2024	66
Building Section 1	DA-0601-A	05/04/2024	66
Adaptable Apartment Type – Sheet 01	A900	18/11/2022	DA50
Adaptable Apartment Type – Sheet 02	A901	27/07/2023	DA51
Adaptable Apartment Type – Sheet 03	A902	18/11/2022	DA50
Adaptable Apartment Type – Sheet 04	A903	18/11/2022	DA50
Adaptable Apartment Type – Sheet 05	A904	18/11/2022	DA50
Adaptable Apartment Type – Sheet 06	A905	05/04/2024	66
Adaptable Apartment Type – Sheet 07	A906	05/04/2024	66
East Elevation – Materials and Finishes	DA-2402-A	05/04/2024	66
North Elevation – Materials and Finishes	DA-2403-A	05/04/2024	66
South Elevation – Materials and Finishes	DA-2404-A	05/04/2024	66
West Elevation – Materials and Finishes	DA-2405-A	05/04/2024	66
Landscape plans prepared by Site Image			
Landscape Ground and Upper Ground General Arrangement Plan	AH-100	-	A
Landscape Level 1 General Arrangement	AH-101	-	A
Landscape Level 2 General Arrangement	AH-102	-	A
Landscape Level 4 General Arrangement	AH-103	-	A
Landscape Level 16 General Arrangement	AH-104	-	A
Landscape Level 17 General Arrangement	AH-105	-	A
Landscape Ground Planting Plan	AH-200	-	A
Landscape Level 1 Planting Plan	AH-201	-	A
Landscape Level 2 Planting Plan	AH-202	-	A
Landscape Level 4 Planting Plan	AH-203	-	A
Landscape Level 16 Planting Plan	AH-204	-	A
Landscape Level 17 Planting Plan	AH-205	-	A
Landscape Specification Notes	AH-500	-	A
Landscape Details	AH-501	-	A
Landscape Details	AH-502	-	A
Landscape Details	AH-503	-	A
Landscape Elevation West	AH-601	-	A
Landscape Elevation South	AH-602	-	A
Landscape Elevation East	AH-603	-	A
Landscape Elevation North	AH-604	-	A
Landscape Elevation Retail/Terrace/Childcare	AH-605	-	A
Documents			
Description	Document Reference	Date	Prepared by



Acoustic Review – Affordable Housing Alterations and Additions DA	230661	9 April 2024	PWNA
Pedestrian Wind Environment Statement	WG232-01F02(REV3)- WS REPORT	18 October 2021	Windtech
NatHERS Stamped Plans and BASIX Certificate	24-5653R	03 April 2024	Efficient Living
Statement of Compliance Access for People with a Disability	Job No: 221127	10 April 2024	Accessible Building Solutions
NCC Assessment Report (DA Stage)	220225C-NCC-r5	10 April 2024	Credwell
Operational Waste Management Plan	SO1070 Revision L	12 April 2024	Elephants Foot
Stormwater Services Drawings	2000192	09 April 2024	Troinex Consulting Engineers
Design Verification Statement	-	April 2024	SJB
Traffic and Parking Impact Assessment	21144	April 2024	Transport Strategies

It is a requirement of this condition that a new condition A.1A is to be inserted into development consent DA162/2021 as follows:

Despite any provision of this development consent DA162/2021, this consent does not authorise or require anything that is inconsistent with the work approved in accordance with development consent (insert new DA number) and to the extent of any inconsistency the latter consent applies. The terms of development consent (insert new DA number) must be satisfied when carrying out development under this consent.

It is a requirement of this condition that a new condition A.1B is to be inserted into development consent DA162/2021 as follows:

Despite condition A.1, the development must be implemented in accordance with the following approved plans and documents as amended by conditions of this consent:

[The table above is to be inserted here]

[Other amendments to conditions in development consent DA162/2021 can be inserted here, arising from the approval of the alterations and additions DA as appropriate]