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|--------------------------------------|---|
| <b>Subject</b>                       | Briefing Note to Sydney North Planning Panel                            |
| <b>Property</b>                      | 13 to 19 Canberra Avenue, St Leonards                                   |
| <b>Description of Proposal</b>       | Alterations and additions DA to construct 5 additional storeys (Area 5) |
| <b>Council/Panel Application No.</b> | DA33/2024 / PPSSNH-498  |
| <b>Lodgement Date</b>                | 23/04/2024  |
| <b>Indicative Determination Date</b> | 27 April 2022   |
| <b>Capital Investment Value</b>      | \$10,870,137 – Proposal<br>\$5,217,666 – Affordable Housing             |
| <b>Applicant / Owners</b>            | HPG General Pty Ltd (Applicant)   |

## Preface

### Precinct context

The subject development is located within the St Leonards South Precinct. The planning context is provided in Annexure 1 for the benefit of the SNPP as it relates to the approved consent which the subject application would modify.

### Proposal

- DA162/2021 was approved for the construction of a mixed-use development comprising 81 apartments, parking, landscaping and public benefits such as childcare centre / pedestrian link (*approval summarised*).
- This approval is subject of this **alterations and additions development application**.
- The proposal seeks an uplift in density through the provision of **23 affordable housing apartments, in accordance with Housing SEPP 2021**.
- The provision of affordable housing enables the applicant to benefit from **bonuses to the building height and FSR development standards**.
- This would facilitate **5 additional levels** with 24 additional apartments.
- The 23 affordable apartments would be located **throughout the approved development as well as within 5 additional levels**.
- There are other minor changes to the approved development included within the proposal.

### Reason for SNPP referral

The affordable housing component of the development application is over \$5m.

## **1. Strategic Planning Context**

### **A. SEPP (Housing) 2021 – In-fill affordable housing**

The State Environmental Planning Policy (Housing) 2021 (Housing SEPP) was published on 26 November 2021 and aims to incentivise the supply, and ensure the effective delivery of affordable and diverse housing. The Housing SEPP was amended on 14 December 2023 to further incentivise affordable housing. The relevant section of the Housing SEPP which apply to this development are:

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

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

The proposed alterations and additions seek to deliver in-fill affordable housing in accordance with Chapter 2 of the Housing SEPP. Recent reforms have sought to encourage developers to provide additional affordable housing through FSR and height bonuses. The affordable housing is to be managed by a registered community housing provider and held for a period of 15 years commencing from the issue of an occupation certificate for the development.

Developments are to provide at least 10-15% of the GFA as affordable housing to achieve 20 – 30% bonuses for height or FSR. The full 30% may not be achieved for both development standards.

#### **Chapter 4 Design of residential apartment development - ADG**

SEPP 65 – Design Quality of Residential Apartment Development has been consolidated into Chapter 4 of the Housing SEPP. Schedule 9 of the Housing SEPP 2021 includes the “Design Quality Principles” which are required to be satisfied for residential apartment developments. These design quality principles aim to ensure the high quality delivery of residential flat buildings within New South Wales.

#### **Character as informed by the Housing SEPP**

The SEPP Housing requirements override Council's LEP and DCP controls in this context. The affordable housing and up to 30% uplift in density (building height and FSR) under the SEPP now informs the desired future character of development in St Leonards South, and more broadly throughout New South Wales.

### **B. St Leonards South Precinct**

#### Precinct Background for context

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

Part 7 precludes the use of Clause 4.6 to vary the incentive building height and incentive floor space ratio. As such, the development application has been lodged against Council's base LEP controls which include a 9.5m height and 0.5:1 FSR. Whilst this is the correct legal pathway, it is important to consider the application and specifically the Clause 4.6 requests,

with reference to the incentive development standards which has shaped the approved developments throughout the precinct.

An in depth background of the St Leonards South Precinct has been provided in **Annexure 1**

### 3. Subject Site

The subject site is known as 13 to 19 Canberra Avenue, St Leonards with a total site area of 2,629.2m<sup>2</sup> (**Figure 5**). The site is known as Area 5 within the St Leonards South Precinct planning scheme and is located in the north-eastern part of the Precinct.



**Figure 1: Aerial Photograph - Subject Site Shaded Blue and St Leonards South bordered in white (Source: Nearmap)**

#### 4. Proposal Timeline

The relevant proposal timeline is provided in **Table 1** as follows:

| <b>Table 1 – Proposal Timeline</b> |  |
|------------------------------------|--|
| <b>Date</b>                        | <b>Description</b>   |
| 27 June 2022                       | Sydney North Planning Panel {SNPP} granted approval for Development Consent DA21/162 – 12 storey mixed use development.                |
| 13 March 2023                      | A S4.55 & a new DA for Alterations and additions lodged seeking additional height and a further 2 storeys.                             |
| 26 June 2023                       | Both applications were recommended for refusal and this was supported by the SNPP.   |
| 7 July 2023                        | Applicant appealed both of these applications in the LEC.  |
| January 2024                       | Section 34 Conciliation Conference held and the parties failed to reach any agreement. The appeal was amended to seek just one storey. |
| 23 April 2024                      | Subject Development Application lodged.  |
| 29 April 2024                      | Public notification of Development Application (see <b>Section 7</b> for summary of submissions received).                             |
| 9 May 2024                         | An agreement was reached between Council & the Applicant and the appeal was discontinued.  |
| 5 June 2024                        | Briefing of the Sydney North Planning Panel.   |
| Date to be set                     | Determination by the Sydney North Planning Panel.  |



## 5. Proposal

The Development Application is for the construction of a mixed use building (17 storeys + 2 part storeys) comprising a total of 102 apartments including 23 infill affordable housing apartments in accordance with the SEPP Housing 2021, childcare centre, community facility, café and basement parking for 145 vehicles.

The subject development application seeks consent the following works:

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



Figure 2: Perspective

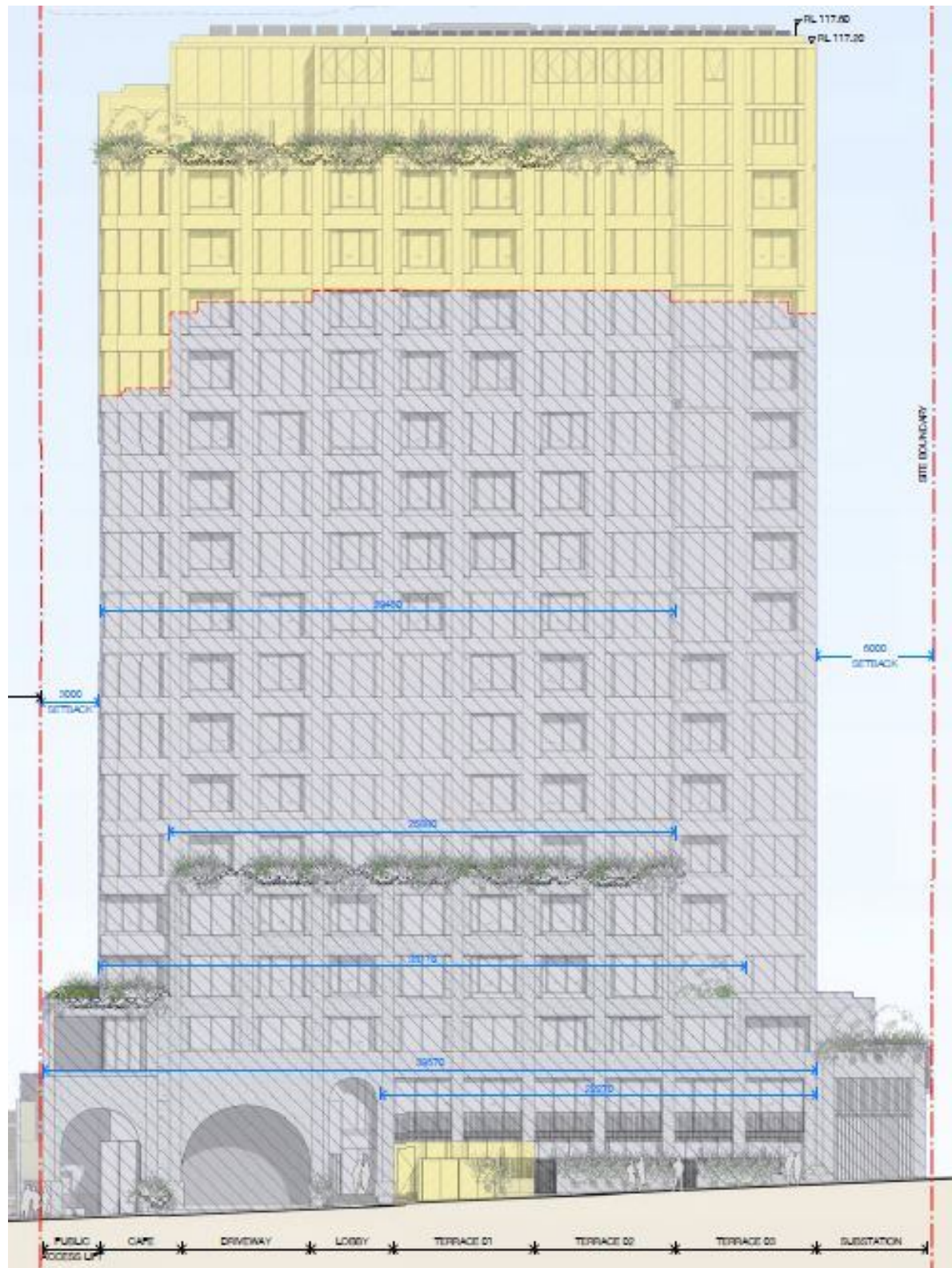


Figure 3: Proposal identified in yellow

## A. Key Development Statistics

| <b>Table 2 – Proposed Development Statistics</b> |  |
|--|--|
| <b>Component</b>                                 | <b>Description</b>   |
| <b>Number of Storeys</b>                         | 17 Storeys   |
| <b>Part Storeys</b>                              | 2 Part Storeys   |
| <b>Building Height</b>                           | 56.65m lift overrun - pre-excavation existing ground level<br>73.3m lift overrun - excavated existing ground level.  |
| <b>Site Area</b>                                 | 2,629.2m <sup>2</sup>  |
| <b>Gross Floor Area</b>                          | 11,842m <sup>2</sup> - pre-excavation existing ground level<br>12,388m <sup>2</sup> – excavated existing ground level.   |
| <b>Floor Space Ratio</b>                         | 4.5:1 - pre-excavation existing ground level<br>4.71:1 – excavated existing ground level.  |
| <b>Total Apartments</b>                          | 24 - additional apartments in the subject application<br><br>23 - infill affordable housing apartments throughout the overall development<br><br>102 - total apartments for the overall development if approved. |
| <b>Unit Mix</b>                                  | 34 x 1 bedroom (33.3%)<br>24 x 2 bedroom (23.5%)<br>43 x 3 bedroom (42.1%)<br><br>1 x 5 bedroom (0.09%)  |
| <b>Vehicular Access</b>                          | Singular vehicular access point from Canberra Avenue.  |
| <b>Parking</b>                                   | 25 additional spaces<br><br>145 vehicles spaces for the overall development if approved.   |
| <b>Pedestrian Link</b>                           | The provision of No. 19 Canberra Avenue for a pedestrian link would not change.  |
| <b>Childcare Centre</b>                          | The provision of a childcare centre within the development has been provided and would not change.   |
| <b>Community Facility</b>                        | The provision of a community facility within the development has been provided and would not change.   |
| <b>Deep Soil within Green Spine</b>              | 50% of Green Spine has been provided and would not change (rear 6m of green spine).  |

## 6. Preliminary Assessment

### A. Housing SEPP 2021

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

The maximum bonus of 30% is proposed for the building height development standard. This requires that 15% (1,858sqm) of the total GFA is to be dedicated as affordable housing. This has been provided.

Upon preliminary assessment it is believed that the application satisfies the requirements of Chapter 2.

#### Chapter 4 Design of residential apartment development - ADG

The proposed development is required to satisfy the ADG and the Schedule 9 Design Quality Principles. The proposal seeks to do this through maintaining the high quality architectural design and the retention of landscaping spaces.

Upon preliminary assessment it is believed that the application satisfies the requirements of Chapter 4

### B. LEP and Clause 4.6 request

The clause 4.6 requests have been lodged to enable the applicant to achieved the bonus development standards in accordance with the Housing Sepp 2021. This is further detailed below.

#### i. Compliance with Base Height of Building and Floor Space Ratio

The proposal's compliance with the base height of building and floor space ratio is detailed in **Table 4** below. The affordable housing bonus have been included.

| Table 4 – LCLEP 2009 – Compliance with the Base Development Standards |              |   |                                  |
|---|--------------|---|----------------------------------|
| Standard  | Requirement  | Proposed  | Compliance                       |
| Height of Buildings<br><br>+ 30% affordable housing bonus             | 9.5m (max.)  | 56.65m to the lift overrun based on existing ground level when DA162/2021 was approved.   | No, clause 4.6 variation lodged. |
|   | 12.35m (max) |   |                                  |
| Floor Space Ratio<br><br>+ 30% affordable housing bonus               | 0.5:1 (max)  | 4.5:1 (11,842sqm) based on existing ground level when DA162/2021 was approved.<br><br>4.71:1 (12,388sqm) when including the storage and lobby | No, Clause 4.6 variation lodged. |
|   | 0.65:1 (max) |   |                                  |



|  |  |   |  |
|--|--|---|--|
|  |  | areas within the basement, due to excavation. |  |
|--|--|---|--|

Table 5 provides the proposal's compliance in relation to the incentive development standards which is considered to be a more prudent point of measurement given its relationship with the approved context of development in St Leonards South. The affordable housing bonuses have been included, however it is noted that practically speaking 30% may not be achievable for both building height and FSR.

| <b>Table 5 – LCLEP 2009 – Compliance with the Incentive Development Standards + the 30% bonus provided by the Housing SEPP 2021</b> |                    |  |  |
|---|--------------------|--|--|
| <b>Standard</b>   | <b>Requirement</b> | <b>Proposed</b>  | <b>Compliance</b>  |
| <b>Height of Buildings</b>  | 44m (max.)         |  |  |
| <b>+ 30% affordable housing bonus</b>   | 57.2m (max)        | 56.65m to the lift overrun as measured from ground level prior to an excavation works.<br><br>73.3 measured from excavated basement level. | <b>Yes</b> , based on this interpretation of ground level which the clause 4.6 is predicated on. |
| <b>Floor Space Ratio</b>  | 3.7:1 (max)        | 4.5:1 (11,842sqm) based on existing ground level when DA162/2021 was approved.   | <b>Yes</b> , for either interpretation of ground level.  |
| <b>+ 30% affordable housing bonus</b>   | 4.81:1 (max)       | 4.71:1 (12,388sqm) when including the storage and lobby areas within the basement, due to excavation.                                      |  |

## ii. Clause 4.6 variation requests

The proposal has been lodged subject to the base LEP controls to enable Clause 4.6 requests to be lodged for FSR and Building Height. The intent is to achieve the bonus building height and FSR afforded by the Housing SEPP 2021. This approach is required due to the legal interpretation of ground level (existing).

### Legal Interpretation of 'ground level (existing)'.

Building works have commencement on site in accordance with DA162/2021. This includes excavation to the level 4 basement. The legal interpretation is that the existing excavated ground level must now be considered as ground level (existing).

This impacts the point at which building height is measured from (now 4 levels beneath natural ground level at the time of lodgement) and thus results in a 'technical' and temporary non-compliance with this measurement. As such, the approved basement storage areas and lift lobby entries are located above ground level (existing) and are also to be included as GFA in the FSR.

Council is of the view that the Housing SEPP 2021 does not intend on this interpretation of ground level being considered with respect of the bonuses afforded. This would impede development sites with historic basements or in this instance where excavation works have begun for an approved development.

Council agrees with this planning pathway to enable the Housing SEPP 2021 to be delivered. An assessment of the Clause 4.6 requests is to be undertaken.

### **C. LEP + DCP + Related**

In accordance with Section 8, Chapter 1 of the SEPP (Housing) 2021, the Lane Cove LEP, DCP and other related plans are overridden by the Housing SEPP.

Part 7 of the LEP: It is noted that the proposal would not change the provision of the public benefits (Through site link, childcare facility etc.)

DCP: The proposed development would maintain the approved compliance with Council's DCP.

Landscape Master Plan + Green Spine: There would be no changes to the approved landscape design on the ground level. The only changes to landscaping involve moving the communal open space from Level 12 (approved) to Level 16 (proposed).

The 7.11 contributions would be updated as required.

NSROC Design Review Panel: The NSROC Design Review/Excellence Panel reviewed the original proposal and was generally supportive of the design. There would be no changes to the design, materiality and finishes of the proposed development. All apartments would include the same high level finishing and there are no changes to the approved landscaping outside of relocating the roof level. Council is of the view that referral is not necessary in this instance.

## **7. Submissions**

The proposal was notified in accordance with Council policy and 16 responses were received. 15 submissions were received by way of objection and 1 submission in support of the application.

The concerns relate to the following matters:

- Height
- FSR
- Overshadowing
- St Leonards South master plan not being adhered to
- View Sharing

- Ground level calculation
- Privacy
- Development not suitable for affordable housing
- Wind impacts
- Traffic
- DCP non-compliance
- Public utilities are inadequate
- Lack of facilities for future occupants
- Property Value

## **7. Next Steps**

The next steps are the reporting to the Sydney North Planning Panel for determination with a likely recommendation of approval (tentatively scheduled for 9 July 2024)

## Annexure 1 – St Leonards South Background

### A. St Leonards South Precinct

The St Leonards South Precinct was brought into effect on **1 November 2020** through amendments to *Lane Cove Local Environmental Plan 2009* and *Lane Cove Development Control Plan 2010*. The plan was finalised concurrently with the *St Leonards Crows Nest 2036 Plan*. Further information on the history prior to finalisation is available on [Council's website](#) and the [Department's website](#).

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



**Figure 1: St Leonards South Precinct**

The vision of the St Leonards South Precinct is for a liveable, walkable, connected, safe, high density residential precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre.





**Figure 2: St Leonards South Precinct – Concept Photomontage**

## **B. Planning Scheme**

The planning scheme for the St Leonards South Precinct is principally contained within [Part 7 of Lane Cove Local Environmental Plan 2009](#) and supported by a precinct-specific part of *Lane Cove Development Control Plan 2010*, a Landscape Master Plan, a Draft Section 7.11 Contributions Plan and designation as a Special Infrastructure Contribution area. The Precinct is divided into 'Areas' which are the envisaged amalgamated development sites (**Figure 3**).



**Figure 3: St Leonards South Precinct – Area Designation  
Lane Cove Local Environmental Plan 2009**

The key provisions of *Lane Cove Local Environmental Plan 2009* are summarised as follows:

**i. Zoning**

The Precinct is zoned R4 High Density Residential (with exception of a park and new road).

**ii. Incentive Building Height and FSR**

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

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

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

**iii. No Clause 4.6 Variation Requests**

The planning scheme precludes the use of Clause 4.6 to vary the incentive building height, incentive floor space ratio, incentive provisions (with the exception of the minimum site area provision to allow for site hold-out scenarios) and design excellence provisions.

**iv. Design Excellence**

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

**v. NSROC Design Review Panel**

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

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

**Lane Cove Development Control Plan 2009**

A Precinct-specific Development Control Plan is contained within [Lane Cove Development Control Plan 2009 Part C – Residential Localities – Locality 8 – St Leonards South Precinct](#).

The DCP guides infrastructure, access, built-form (setbacks etc.), public domain, private domain, sustainability and landscaping (including calling up the Landscape Master Plan). Key unique provisions of the DCP are discussed as follows:

**i. Green Spines - Shared Communal Open Space**

Green spines are a key feature of the St Leonards South Precinct. The green spine is a 24 metre wide shared communal open space between residential flat buildings. Ordinarily a residential flat building development would provide communal open space for its own use only. The green spines will combine the communal open space of multiple residential flat buildings with each contributing to, and sharing in, a larger communal open space area. The shared communal open space will be grouped in accordance with **Figure 3** and characterised by shared facilities and significant landscaping (50% minimum deep soil).



**Figure 3: Green Spines (Shaded Green)**

**Landscape Master Plan**

The private and public domain urban and landscape design are further detailed within the [St Leonards South Landscape Master Plan](#). The Landscape Master Plan provides design guidance to the **public domain** (materiality, lighting, street trees, road infrastructure etc.), **private domain** (green spine levels, green spine facilities and landscaping calculations) and **public/private domain interface** (such as ground floor apartment fencing/landscaping design). An overview of the Landscape Master Plan design is provided in **Figure 4** below.





**Figure 4: Landscape Master Plan Overview**

#### **Draft St Leonards South Section 7.11 Plan**

The provision of infrastructure is proposed to be facilitated in part through the [Draft St Leonards South Section 7.11 Contributions Plan](#). The Plan is under review by IPART with their draft report having undergone public consultation and a final report due December 2021.

Given the Section 7.11 Plan is not yet in force, Voluntary Planning Agreements with Council are required. The Draft VPA will be notified concurrently with the Development Application.

#### **Special Infrastructure Contribution**

The site is within the [St Leonards and Crows Nest Special Contributions Area](#) which requires the payment of a contribution to support the St Leonards and Crows Nest 2036 Plan.