

Sydney North Planning Panel Meeting 10 December 2025
28 - 42 PACIFIC HIGHWAY ST LEONARDS HOTEL MIXED-USE DEVELOPMENT.

Item No:

Subject: 28 - 42 Pacific Highway St Leonards Hotel mixed-use development.

Record No: DA25/97-01 - 71599/25

Division: Planning and Sustainability Division

Author(s): Christopher Shortt

DA Number	Council Reference: DA97/2025 Portal Reference: PPSSNH-730
Proposed Development	Demolition of existing structures and the construction of a mixed-use, hotel development comprising commercial tenancies, 99 hotel units, communal living and communal outdoor areas, basement parking and facilities and associated works
Street Address	28 – 42 Pacific Highway St Leonards
Applicant	Paro Consulting Pty Ltd
Owner	Edsgear Pty Limited
Date of DA Lodgment	16 September 2025
Public Notification	Notification Period: 16 September 2025 to 14 October 2025
Total number of unique Submissions Received	6 unique submissions. All submissions forwarded to the SNPP for consideration.
Recommendation	Approval
Regional Development Criteria	The proposal is referred to the Sydney North Planning Panel as Clause 2.19(1) & Schedule 6(2) of <i>State Environmental Planning Policy (Planning Systems) 2021</i> (PS SEPP) and Section 2.15 of the <i>Environmental Planning & Assessment Act, 1979</i> (EP&A Act) states that a DA requires determination by the relevant regional panel in this case being the Sydney North Planning Panel (SNPP) if it constitutes development over \$30 million. The proposed EDC exceeds \$30 million and therefore the DA will be assessed by Council but determined by the SNPP.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments • SEPP (Biodiversity and Conservation) 2021; • SEPP (Resilience and Hazards) 2021; • SEPP (Sustainable Buildings) 2022; • SEPP (Transport and Infrastructure) 2021; and • Lane Cove Local Environmental Plan 2009. • proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority • relevant development control plan • Lane Cove Development Control Plan 2010 • relevant regulations - Environmental Planning & Assessment Regulation 2021 Section 61 – Demolition of Structures - Water Management Act 2000

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	<ul style="list-style-type: none"> • other relevant plans • Lane Cove Section 7.11 Contributions Plan 		
List all key documents submitted with this report for the Panel's consideration	Annexure	Document	Prepared By
	1	Draft Conditions	Lane Cove Council
	2	Architectural Plans (Amended)	Tonkin Zulaikha Greer architects
	3	Landscape Plans	Melissa Wilson Landscape Architects
	4	Statement of Environmental Effects	Paro Consulting Pty Ltd
	5	Clause 4.6 variation request Height	Paro Consulting Pty Ltd
	6	Clause 4.6 variation request FSR	Paro Consulting Pty Ltd
	7	Architectural Design Statement	Tonkin Zulaikha Greer architects
	8	Response to RFI	Paro Consulting Pty Ltd
	9	ESD Report	D Squared
	10	Public Notification Map	Lane Cove Council
	11	Shadow Diagrams	Tonkin Zulaikha Greer architects
	12	3D Montages	Tonkin Zulaikha Greer architects
	13	Traffic and Parking Impact Statement	CJP Consulting Engineers
	14	Geotechnical Report and addendum	JK Geotechnics
	15	Stormwater Management Report	Northrop
	16	Stormwater Management Plan	Northrop
	17	Preliminary Site Investigation	Ei Australia
	18	Statement of Heritage Impact	Tonkin Zulaikha Greer architects & Adaptive Reuse
	19	Hotel Use and Operation	Paro Consulting Pty Ltd
	20	Urban Design Report	Tonkin Zulaikha Greer architects
	21	Water NSW General Terms of Approval	Water NSW
	22	Comment Transport for NSW	TfNSW
	23	Sydney Water comment	Sydney Water
	24	Minutes NSROC Design Review Panel.	NSROC
	25	Remediation Action Plan	Ei Australia
	26	NSW Police Referral	NSW Police Force

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		Response	
	27	DDA Capability Statement	BM + G
	28	Waste Management Plan	MRA Consulting Group
Clause 4.6 requests	Two clause 4.6 requests: <ul style="list-style-type: none"> • Building Height • FSR 		
Summary of key submissions	<ul style="list-style-type: none"> • Building Height/Clause 4.6 • Hote Use • Obstruction of advertising sign/ property value impacts 	<ul style="list-style-type: none"> • Shadows and shadow diagrams • Architectural Character • Lack of off-street parking 	
Report prepared by	Christopher Shortt: Senior Planner Lane Cove Council		
Report date	10 December 2025		
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?			Yes Clause 4.6 requests for Building Height and FSR attached to assessment report

Summary of s. 4.15 matters	
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards	
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Conditions	
Have draft conditions been provided to the applicant for comment?	Yes

1. EXECUTIVE SUMMARY

History

On 25 May 2025, the proposal was reviewed by The North Sydney Region of Council's Design Review Panel (NSROC). The Panel process occurred prior to lodgement of the Development Application (DA) aiming to resolve key issues and provide for higher quality lodgements. Minutes from the meeting and recommendations by the NSROC Panel were submitted to the applicant. The minutes of the meeting are provided as **Annexure 24** to this report

Council also undertook a PRE-DA assessment and provided the applicant a PRE-DA report which included comment by Council's planners, stormwater engineers, waste officers, traffic engineers, arborists, and landscape officers.

Comments from the NSROC and Council were generally incorporated into the DA design that was lodged in September 2025 and are discussed later in this report.

Proposal

The subject development application proposes the demolition of existing structures and the construction of a mixed-use, hotel development comprising commercial tenancies, 99 hotel units, communal living, gym and communal outdoor areas, basement parking and facilities and associated work.

The application proposes an 8-9 storey building to Pacific Highway and a 5-6-storey building to Marshall Lane. A total of 99 hotel/guest rooms are proposed including 91 x 1-bedrooms and 8 x 2-bedrooms.

The proposal would include 1 additional level of basement below the 2 existing basement floors, (3 basement levels in total) accommodating 23 vehicle spaces, 8 motor bike spaces and 50 bicycle parking spaces.

Notification

The development application has been notified in accordance with Council policy and a total of 5 submissions were received. The concerns raised in these submissions have been addressed later in this report.

Applicable Legislation and environmental planning instruments

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

- Environmental planning and Assessment Act 1979
- Roads Act 1993
- Water Management Act 2000

- Crows Nest TOD Design Guideline
- SEPP (Resilience and Hazards) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP (Building Sustainability Index) 2004;
- SEPP Planning Systems 2021; and
- Lane Cove Local Environmental Plan 2009 – Clause 4.6 Request x 2

Clause 4.6 requests

The development application is accompanied by two Clause 4.6 requests which seek to vary the Height and FSR development standards.

The proposed Building Height and FSR are consistent with the permitted maximum development standards of the Lane Cove LEP 2009 when measured from natural ground level. The Clause 4.6 requests are required as the site currently has two existing levels of excavated basement. Therefore the “existing” ground level considered when calculating the maximum building height is 5.2m below natural ground level at Pacific Highway frontage.

Similarly, the excavated levels of basement carparking are above ‘existing’ ground level and are required to be included in the FSR calculation despite being non-habitable basement areas.

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

REFERRAL TO SYDNEY NORTH PLANNING PANEL

*A **unique submission** means a submission which is in substance unique, distinctive and unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

Referrals

The Development Application was referred to internal and external departments. No objections are raised to the proposed development subject to the recommended conditions

Recommendation

This report recommends that the Sydney North Planning Panel could be satisfied in relation to the relevant matters under Section 4.15 of the EP&A Act and exercise its functions as the consent authority to grant consent of the subject to the draft conditions

2. SITE AND SURROUNDS

Subject Site:

The site contains 4 allotments and is known as 28-42 Pacific Highway, St Leonards. The site is located on the southern side of the Pacific Highway and the northern side of Marshall Lane. The site is legally described as Lot 1 DP 746012, Lot A and Lot B of 418201 and Lot D of 419240.

The site has a primary frontage of approximately 40m to the Pacific Highway. The secondary frontage includes rear vehicular access via Marshall Lane. The site is irregular in shape with an area of approximately 1,236m².

The structures located on the site include a five-storey commercial building (34-42 Pacific Highway) with basement car parking and 3 x two-storey commercial terraces (28, 30 and 32 Pacific Highway).

The site currently contains no deep soil landscaping. The site includes a fall in natural ground level from the higher northern side (Pacific Highway) to the lower southern side (Marshall Lane) of an average of approximately 2.7 - 2.9m.

The key site characteristics are summarised in below.

Table 1 - Site Characteristics of 28-42 Pacific Highway, St Leonards	
Site Characteristic	Subject Site
Title Particulars	Nos. 28, 30, 32 and 34 - 42 Pacific Highway St Leonards <ul style="list-style-type: none"> • Lot 1 DP 746012, Lot A and Lot B 418201 and Lot D 419240
Total Site Area	1,236m ²
Site Frontage	Approx. 40.345m to Pacific Highway Approx. 40.161m to Marshall Lane
Site depth	Approx. 37.2m to the eastern common boundary

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	Approx. 33.555m to the western common boundary
Topography	Approx. 2.7m from north to south (RL78.2 to RL75.5)
Zoning	E2 Commercial Centre Zone

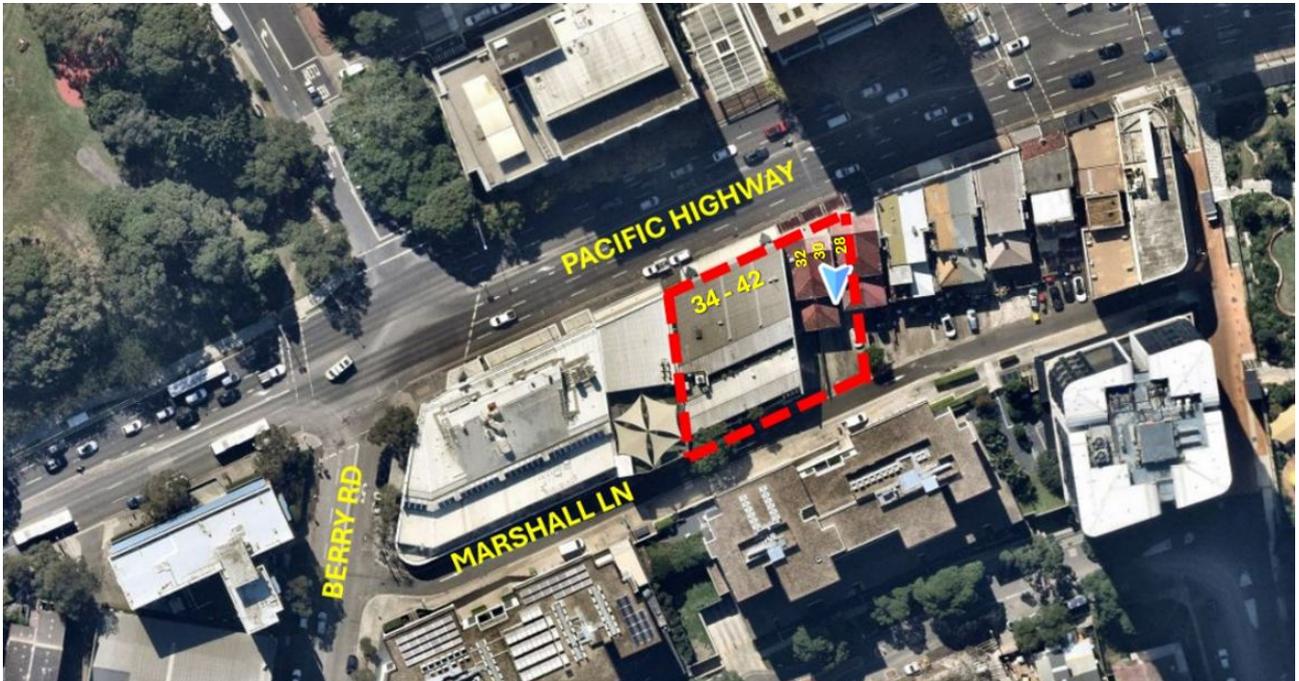


Figure 1: Subject Site - Location Plan. (Source: Nearmap)

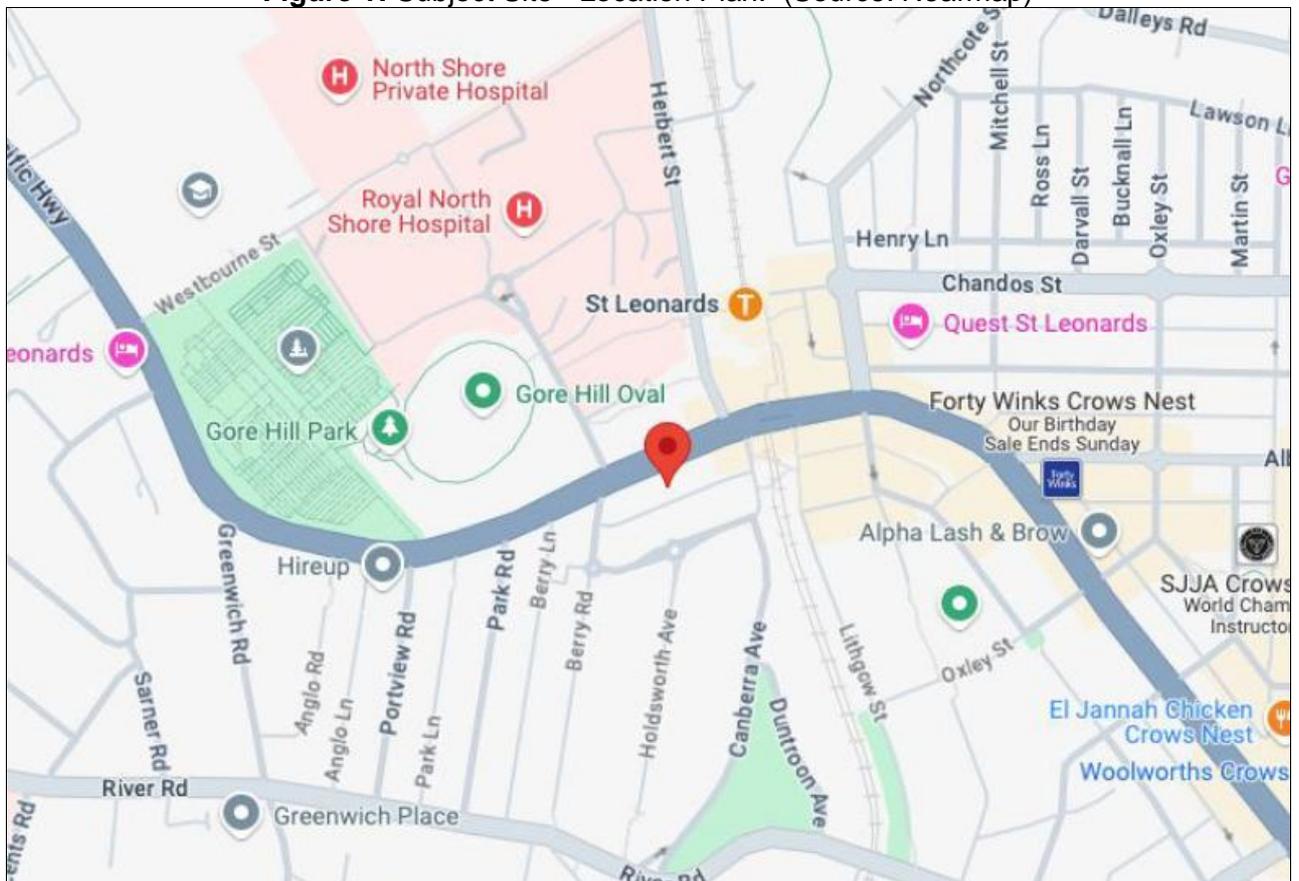


Figure 2: Site context- red balloon indicates site. (Source: google maps).



Figure 3: Pacific Highway frontage. Facing west



Figure 4: Site Pacific Highway frontage. Facing east.



Figure 5: View of site from Marshall Lane facing west.



Figure 6: Rear of site viewed from Marshall Lane.

Surrounding Area:

The site is located within the Crows Nest Transport Orientated Development (TOD) area and is within close proximity to both St Leonards Railway Station and Crowes Nest Metro stations. The area is undergoing a transition from lower/medium densities to higher densities.

Table 2 – Adjoining Sites	
Direction	Description
North	To the north of the site is the Pacific Highway which is defined as a ‘classified’ road by Transport NSW under the <i>Roads Act</i> . The Pacific Highway forms the boundary between Lane Cove Council and Willoughby Council. Further north in the Willoughby Council LGA are two connected 8-storey commercial buildings at 207 Pacific Highway. (Refer to Figure 9).
East	Directly east of the site at 44-46 Pacific Highway is a 3-storey commercial building with basement level parking used as a childcare centre and pre-school. Further east at 58 - 64 Pacific Highway is a three-storey commercial office building, consisting of commercial office space to Ground Floor, First Floor and Second Floor with two levels of underground car parking. (Refer

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	to Figure10).
South	South of the site is Marshall Lane. On the southern side of Marshall Lane is a 5-storey residential flat building at 1-13A Marshall Avenue. This building was approved as part of the overall 28-storey Embassy Tower development which it shares a connected basement carpark This development was determined by the Sydney East Joint Regional Planning Panel at its meeting of 19 March 2015. (Ref: 143/2014) (Refer to Figure 7 and 8).
West	To the western boundary is a row of attached two and three-storey commercial terraces at 26 – 14 Pacific Highway. These terraces have retail uses at ground floor fronting the Pacific Highway. (Refer to Figure 11).

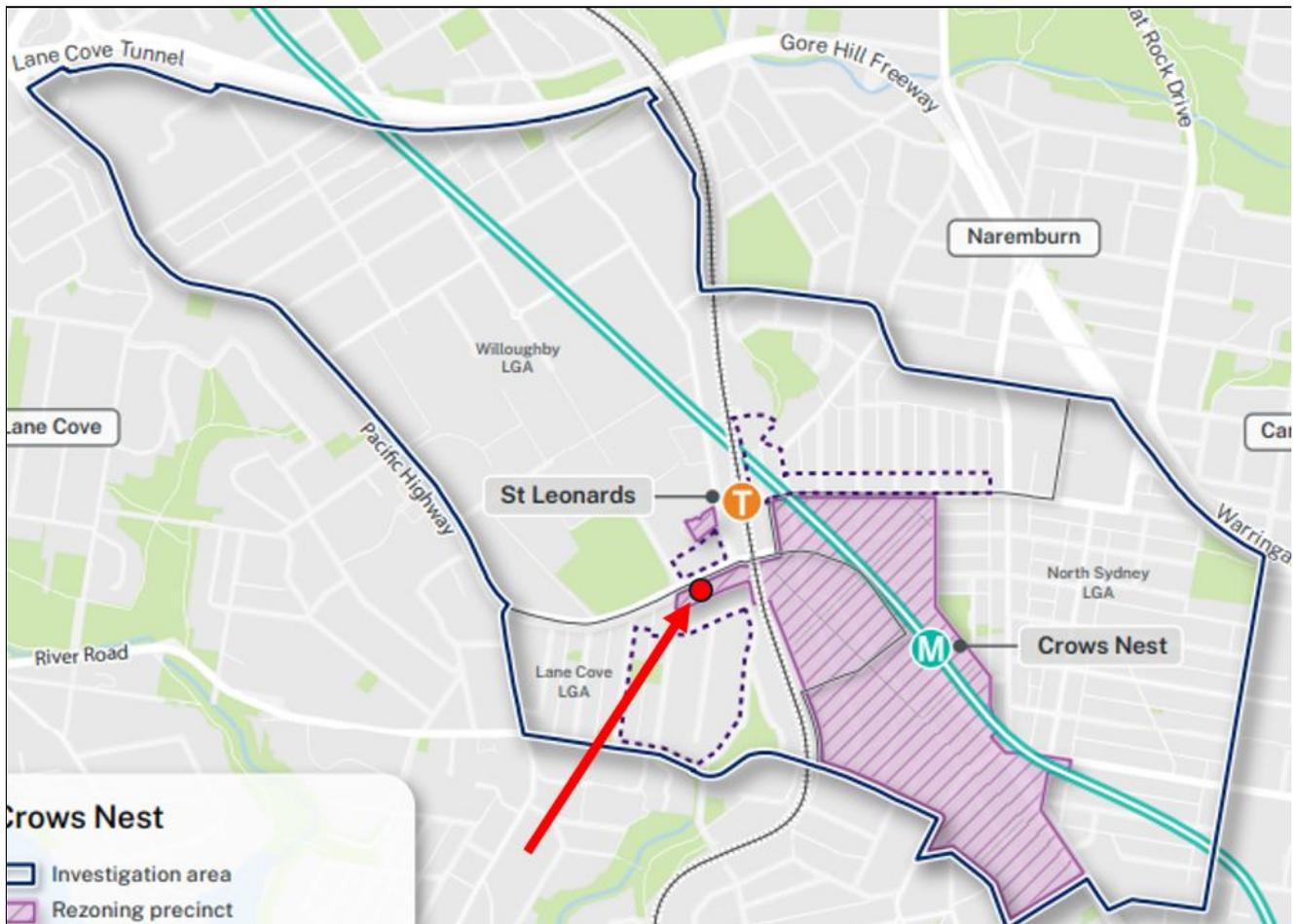


Figure 6A: Crows Nest TOD Map (source Department of Planning).



Figures 7 & 8: Site to the south at 1-13A Marshall Avenue facing east (left) and west (right).

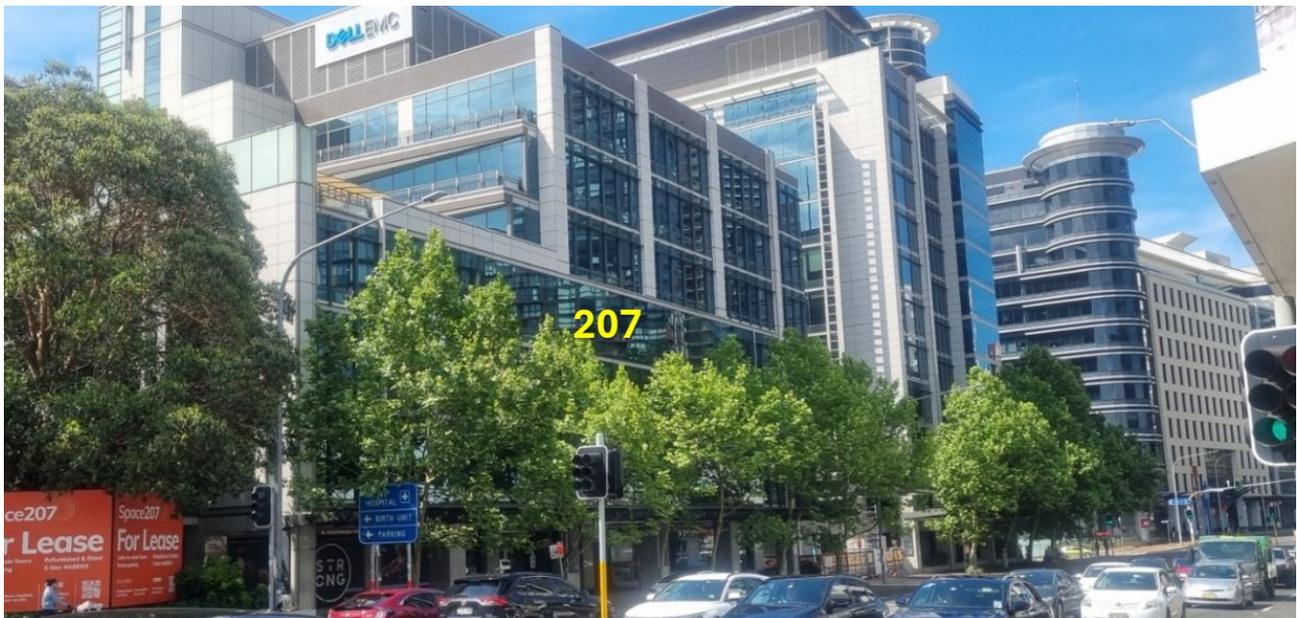


Figure 9: North of site on opposite side of Pacific Highway.



Figure 10: Development west of the site. Fronting Pacific Highway.

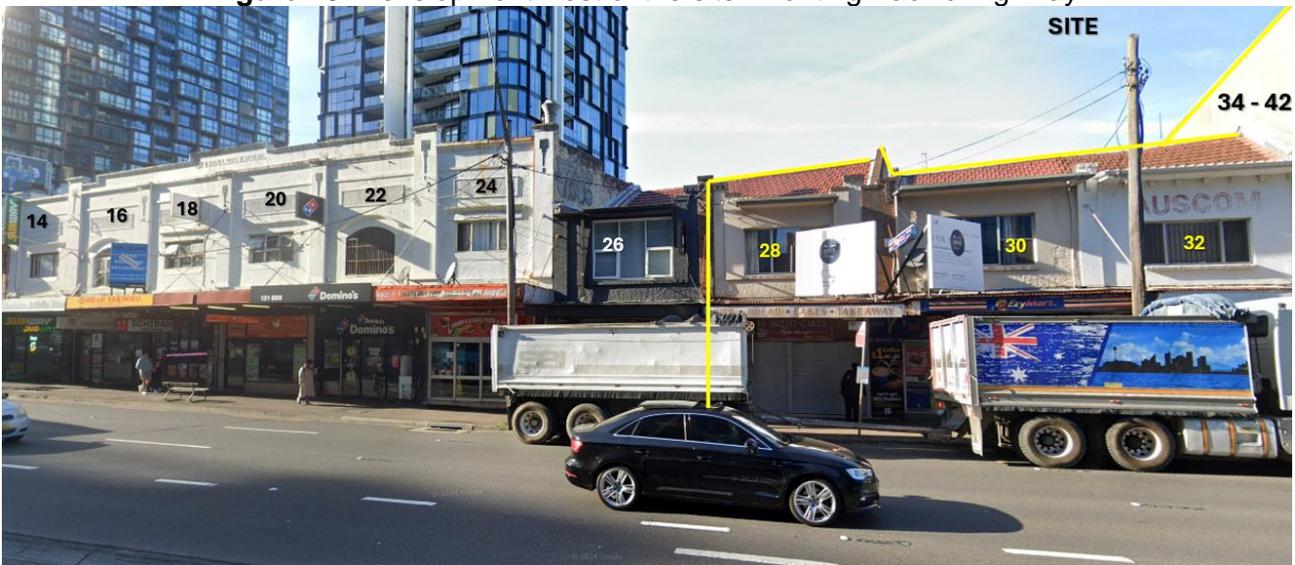


Figure 11: Development east of the site. Fronting Pacific Highway.

3. PROPOSAL

The proposal seeks approval for the demolition of the existing buildings and structures and construction of Mixed-Use, Hotel development including ground level commercial (retail) to both frontages, hotel accommodation providing a total of 99 rooms, roof top communal living (indoor and outdoor) and basement areas. The proposal comprises the following main components

- Three basement levels providing service areas, storage, parking and a hotel gym
- Lower ground floor commercial (retail) fronting Marshall Lane
- Ground level commercial (retail) premises fronting Pacific Highway with mezzanine floor above
- Six (6) levels of Hotel accommodation
- Communal indoor / outdoor areas

Table 3 – Development Statistics	
Component	Description
Number of Buildings	1 w/ 3 x levels of basement
Number of Storeys	Part 5 - 6, part 7, part 8, and part 9 storeys.
Building Height	34.4m above natural ground level; but is

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	39.8m above existing ground level (due to existing excavated basement)
Gross Floor Area	GFA of 6305.6m ² (excluding existing basement areas below natural ground level); but is 5.24:1 or GFA of 6486.3m ² (including existing basement areas below natural ground level)
Floor Space Ratio	5:1 (excluding existing basement areas below natural ground level) 5.24:1 (including existing basement areas below natural ground level)
Total Rooms	99 rooms
Room Mix	91 x 1-bedroom 8 x 2-bedrooms
Vehicular Access	Singular vehicular access point from Marshall Lane.
Parking	23 vehicle spaces
Deep Soil	No deep soil. Site currently 100% hard paved.

The following provides a detailed description of each proposed level:

<p><u>Basement Level 2:</u></p> <ul style="list-style-type: none"> • Hotel gym • Hotel Store • Commercial store • Hydraulic services • Grease arrestor • Lift lobby • Lift and stairs 	<p><u>Basement Level 1:</u></p> <ul style="list-style-type: none"> • Service plant • Comms room • Storage area • End of Trip facilities • Bike store • Motorcycle parking • Carparking
<p><u>Lower Ground Floor:</u></p> <ul style="list-style-type: none"> • Commercial (retail) tenancies fronting Marshall Lane • Commercial waste • Hotel waste area • Water tank storage area • Fire pump room • Lift and stairs • Main switch room • Substation • Retail / commercial car parking 	<p><u>Ground Floor:</u></p> <ul style="list-style-type: none"> • Retail / commercial tenancy • Bathroom facilities • Lobby • Lift and stairs <p><u>Mezzanine above Ground Floor:</u></p> <ul style="list-style-type: none"> • Retail/commercial mezzanine • Void to GF below • Lift and stairs
<p><u>Ground Floor Mezzanine:</u></p> <ul style="list-style-type: none"> • Retail / Commercial tenancy • Lift and stairs 	<p><u>Level 1 – Level 4</u></p> <ul style="list-style-type: none"> • 20 x Hotel rooms (1 and 2 bedroom) per level • Lift and stairs
<p><u>Level 5:</u></p> <ul style="list-style-type: none"> • 11 x Hotel rooms (1 and 2 bedroom) 	<p><u>Level 6:</u></p> <ul style="list-style-type: none"> • 8 x Hotel rooms (1 bedroom) • Communal outdoor area • Lift and stairs
<p><u>Level 7:</u></p> <ul style="list-style-type: none"> • Communal indoor area • Communal outdoor area • Lift and stairs 	<p><u>Level 8/ Roof Top:</u></p> <ul style="list-style-type: none"> • Communal outdoor area

- Exhaust / plant

Clause 4.6 requests

The application is accompanied by Clause 4.6 requests for height and FSR.

The applicable development standards are as follows:

- **LCLEP - Height is 38m; and**
- **LCLEP – FSR is 5.1:1**

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

Proposed Height is:

- 34.4m above natural ground level; but is
- 39.8m above existing ground level (due to existing excavated basement)

Proposed FSR is:

- 5:1 or GFA of 6305.6m² (excluding existing basement areas below natural ground level); but is
- 5.24:1 or GFA of 6486.3m² (including existing basement areas below natural ground level)



Figure 12: Photomontage of Pacific Highway frontage. (Source: Tonkin Zulaikha Greer architects).



Figure 13: Photomontage Marshall Lane frontage (Source: Tonkin Zulaikha Greer architects).

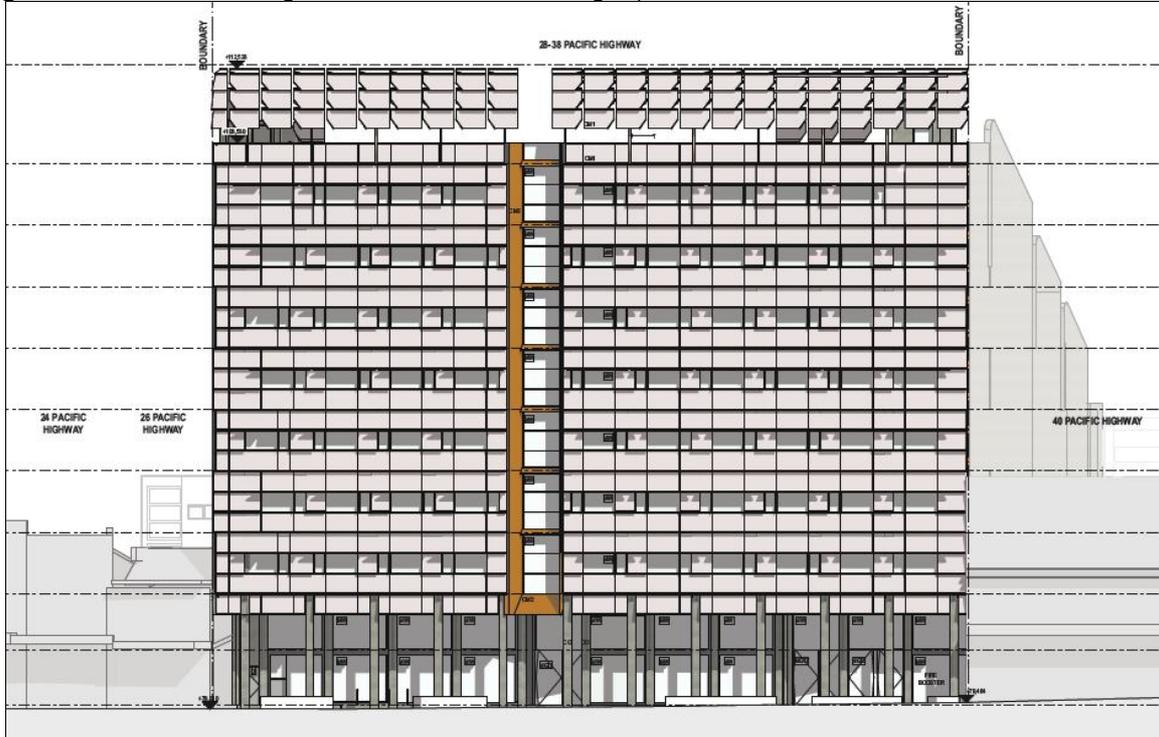


Figure 14: Pacific Highway (north) elevation (Source: Tonkin Zulaikha Greer architects).

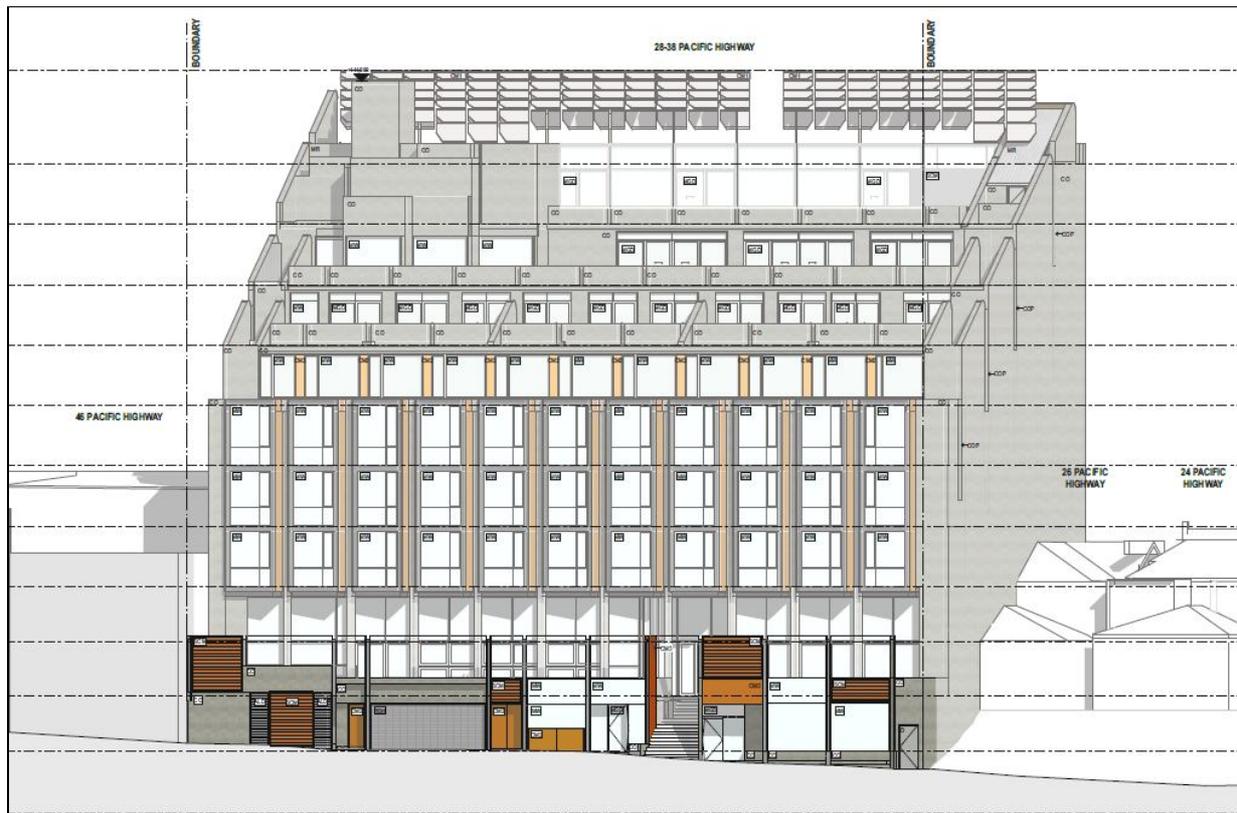


Figure 15: Marshall Lane (south) elevation. (Source: Tonkin Zulaikha Greer architects).

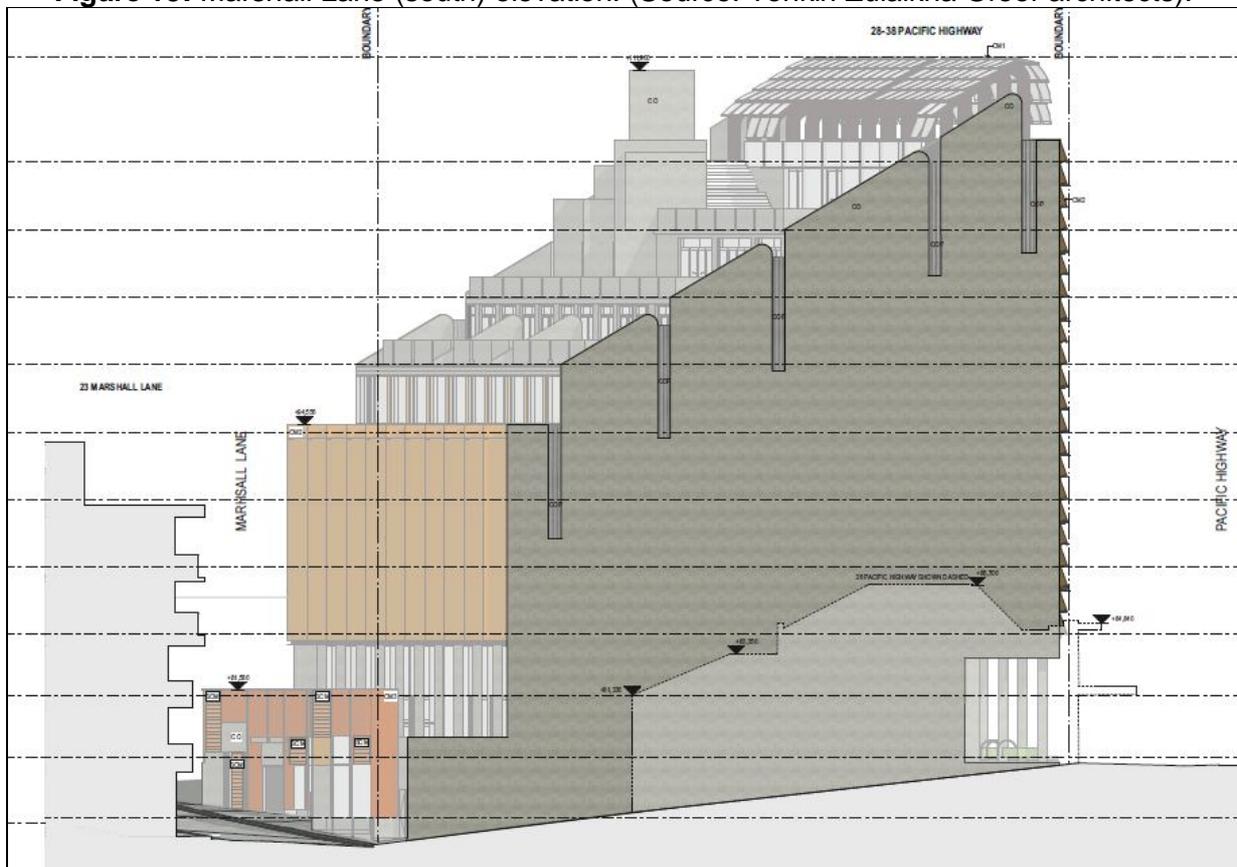


Figure 16: East elevation. (Source: Tonkin Zulaikha Greer architects).



Figure 17: West elevation. (Source: Tonkin Zulaikha Greer architects).

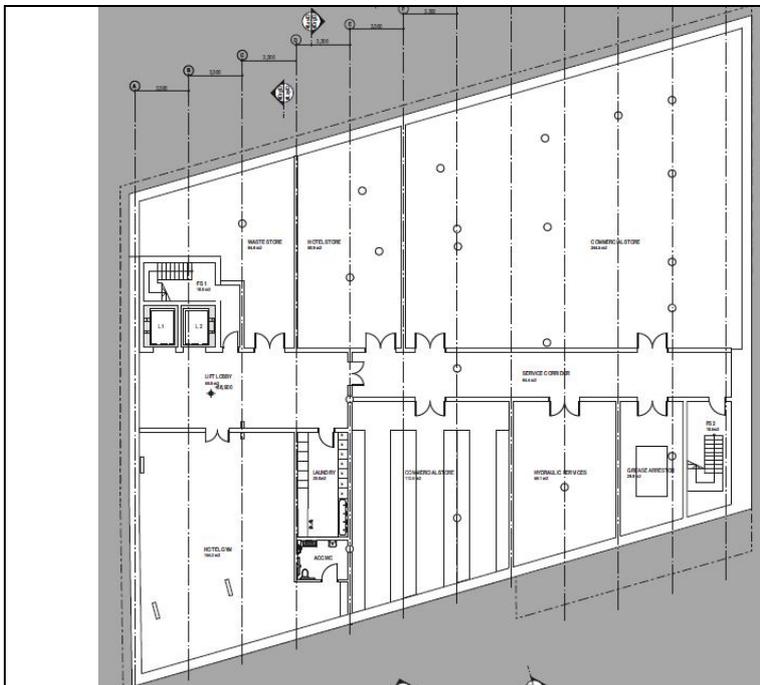


Figure 18: Basement level 2 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 68,900

- Hotel gym and bathroom
- Hotel Store
- Commercial store
- Hydraulic services
- Grease arrestor
- Lift lobby
- Lift and stairs
- Laundry

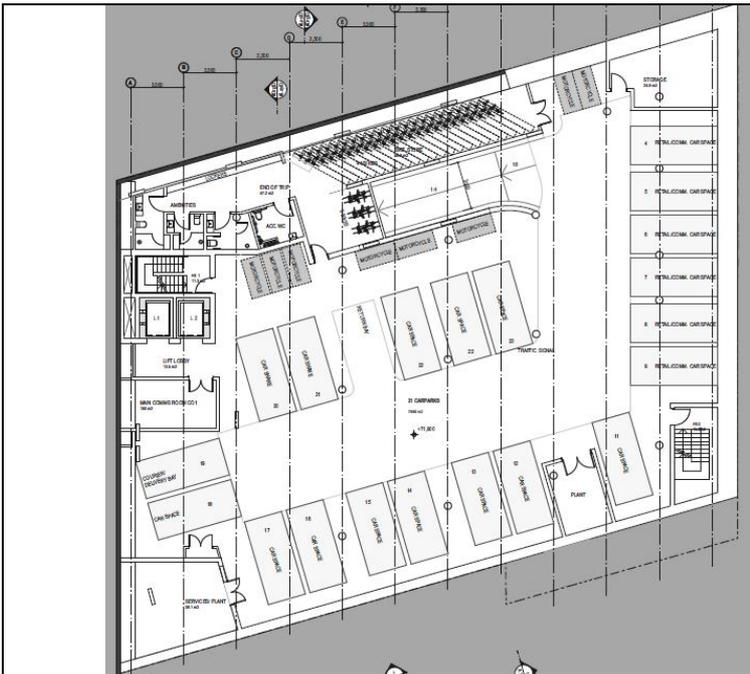


Figure 19: Basement level 1 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 71,900

- Service plant room
- Main Comms room
- Storage room area
- Plant room
- End of Trip facilities for bicycle (4 x showers, 4 x toilets lockers)
- Bike store (44 spaces)
- Motorcycle parking (8 spaces)
- Carparking 21 spaces including:
 - 11 x hotel car spaces,
 - 7 x retail/communal car spaces
 - 2 x car share spaces
 - 1 x courier delivery bay space

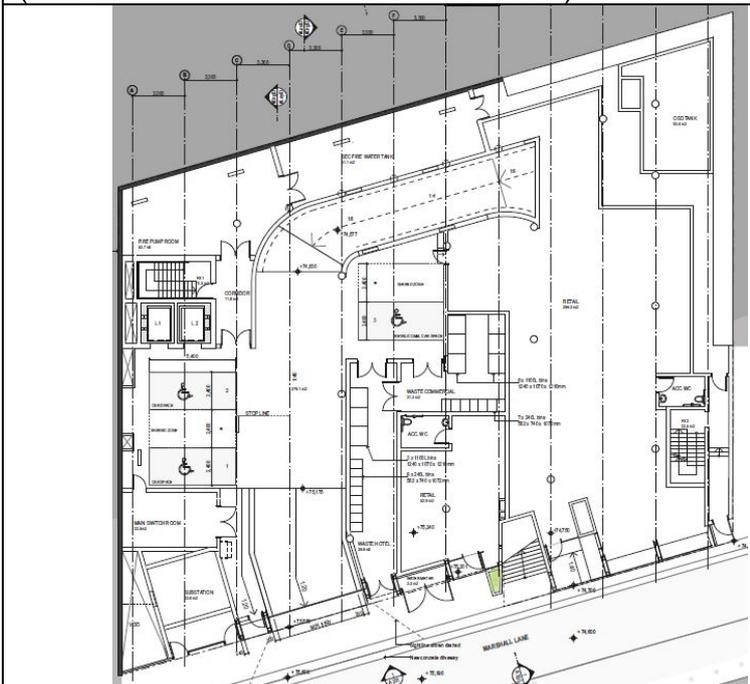


Figure 20: Lower Ground Floor Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 75,175

- Commercial (retail) tenancies fronting Marshall Lane
- Commercial waste
- Hotel waste area
- Waste exit hallway
- Water tank storage area
- Fire pump room
- Lift and stairs
- Main switch room
- Substation
- Retail / commercial car parking (3 x accessible spaces)

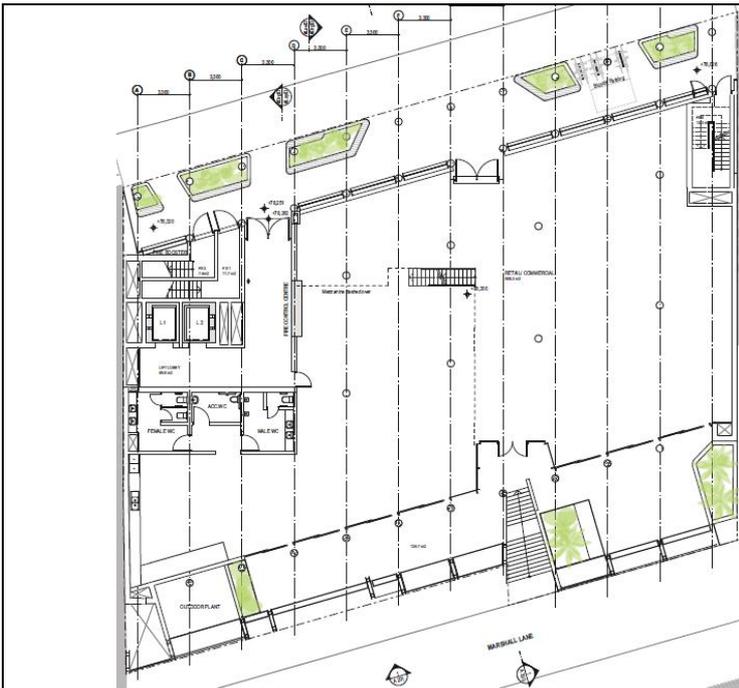


Figure 21: Ground Floor Plan
 (Source: Tonkin Zulaikha Greer architects).

- RL + 78,300
- Retail / commercial tenancy
 - Bathroom facilities
 - Lobby
 - Lift and stairs

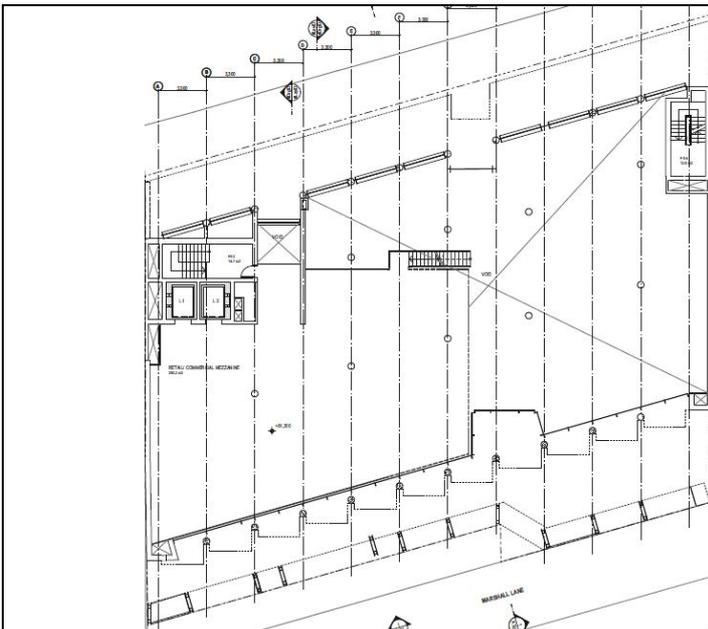


Figure 22: Mezzanine Floor Plan above Ground floor.
 (Source: Tonkin Zulaikha Greer architects).

- RL + 81,300
- Retail/commercial mezzanine
 - Void to GF below
 - Lift and stairs

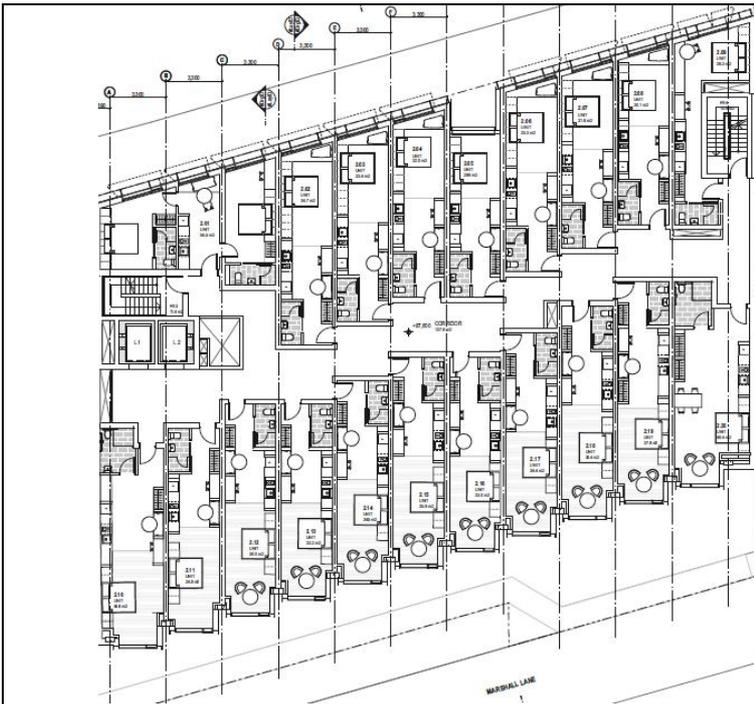


Figure 23: Level 1 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 84,300

- 19 x 1-bedroom rooms
- 1 x 2-bedroom room
- Lift and stairs

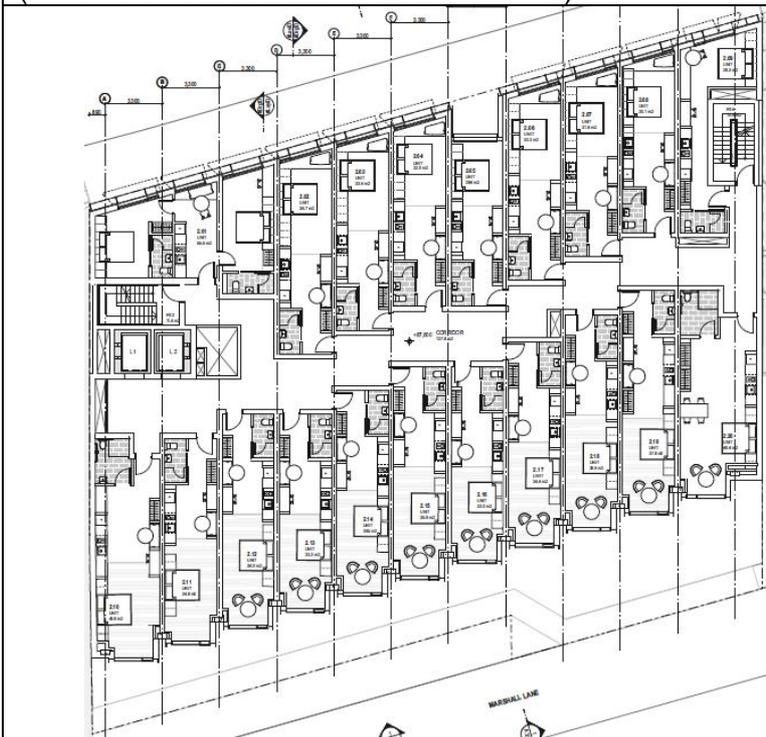


Figure 24: Level 2 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 87,600

- 19 x 1-bedroom rooms
- 1 x 2-bedroom room
- Lift and stairs

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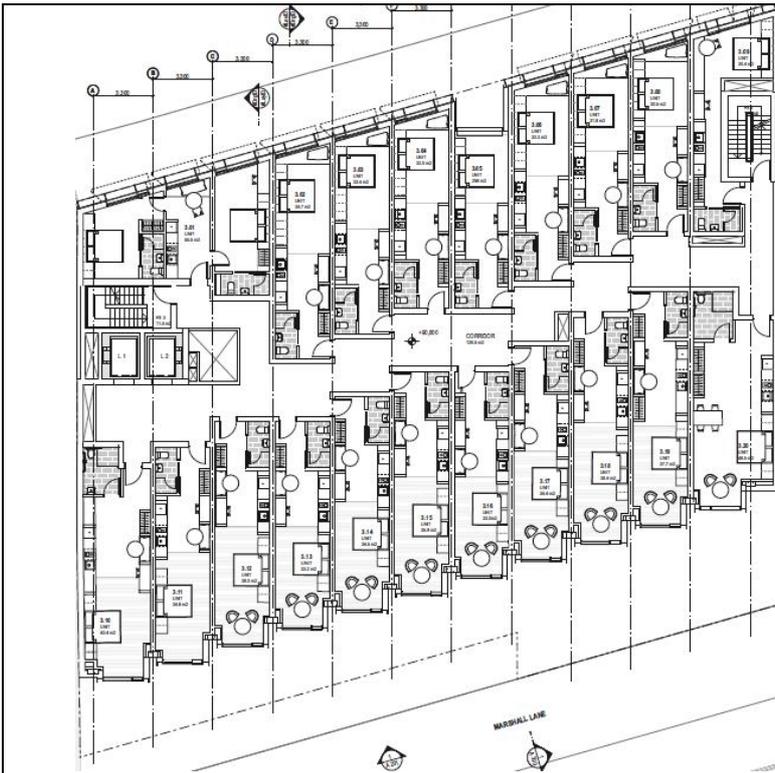


Figure 25: Level 3 Plan
(Source: Tonkin Zulaikha Greer architects).

RL + 90,800

- 19 x 1-bedroom rooms
- 1 x 2-bedroom room
- Lift and stairs

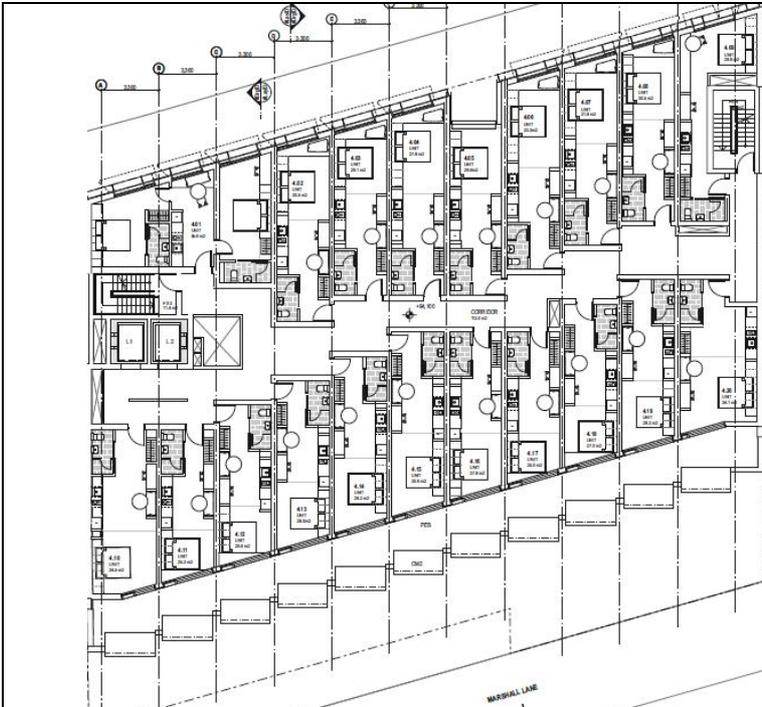


Figure 26: Level 4 Plan
(Source: Tonkin Zulaikha Greer architects).

RL + 94,100

- 19 x 1-bedroom rooms
- 1 x 2-bedroom room
- Lift and stairs



Figure 27: Level 5 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 97,500

- 7 x 1-bedroom rooms
- 4 x 2-bedroom room
- Guest lounge
- Outdoor opens pace to rooms 5.09, 5.10 and 5.11.
- Planting on structure
- Lift and stairs



Figure 28: Level 6 Plan
 (Source: Tonkin Zulaikha Greer architects).

RL + 100,800

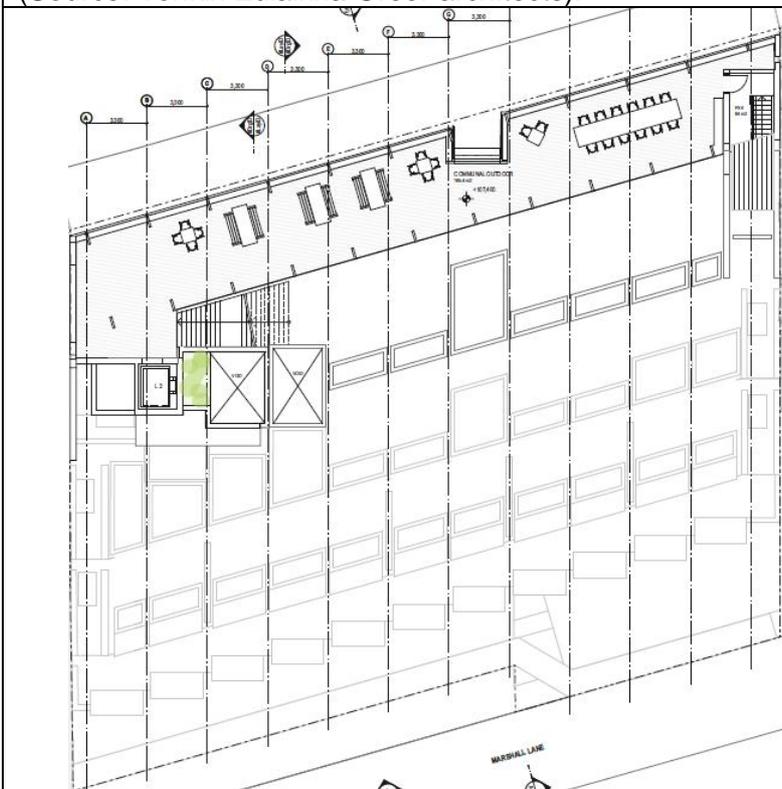
- 8 x 1-bedroom rooms
- Guest lounge
- Communal indoor room
- Communal outdoor terrace
- Planting on structure
- Lift and stairs



RL + 104,100

- Communal indoor room with accessible WC
- Communal outdoor terrace
- Planting on structure
- Lift and stairs

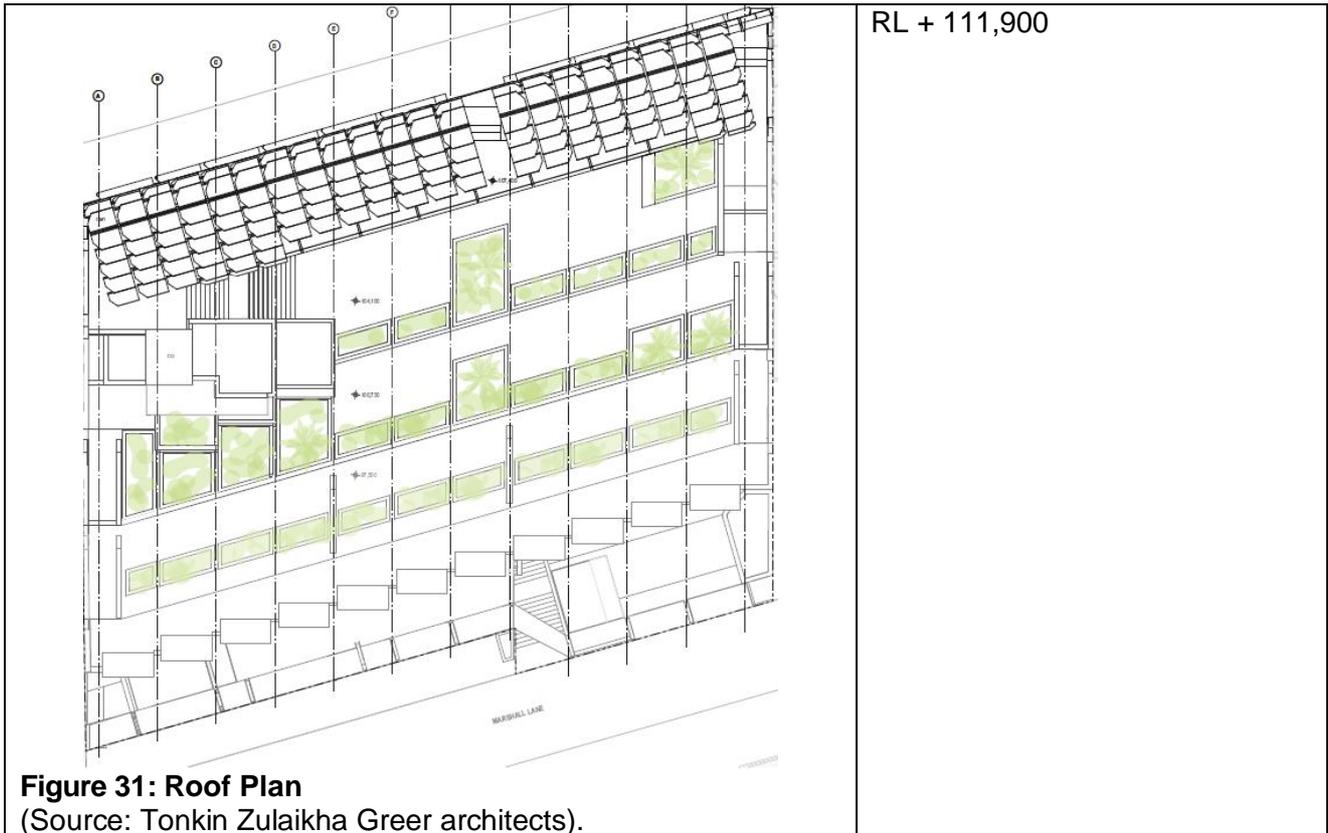
Figure 29: Roof Plan
 (Source: Tonkin Zulaikha Greer architects).



RL + 107,400

- Communal outdoor terrace
- Lift and stairs

Figure 30: Level 8 Plan
 (Source: Tonkin Zulaikha Greer architects).



4.1 Subdivision

No subdivision (strata or stratum) proposed as part of this development.

4.2 Landscaping



4.3 Tree Removal and Replacement

4.4 Tree Removal

The Jacaranda tree on Marshall Lane is proposed for removal. Council's arborist supported the removal and replacement of the Council Street tree on Marshall Lane due to it being in poor condition.

4.5 Tree Replacement

Indicative plant schedule includes 9 replacement trees.

- 1 x tree at ground floor.
- 6 x trees on level 6
- 2 x trees on level 7

The landscaping plan also includes 25 large shrubs, 752 smaller shrubs & grasses, and 159 groundcovers & spillover.

4.6. Pedestrian and Vehicle Access

Singular vehicular access from Marshall Lane. Pedestrian access is proposed from both street frontages.

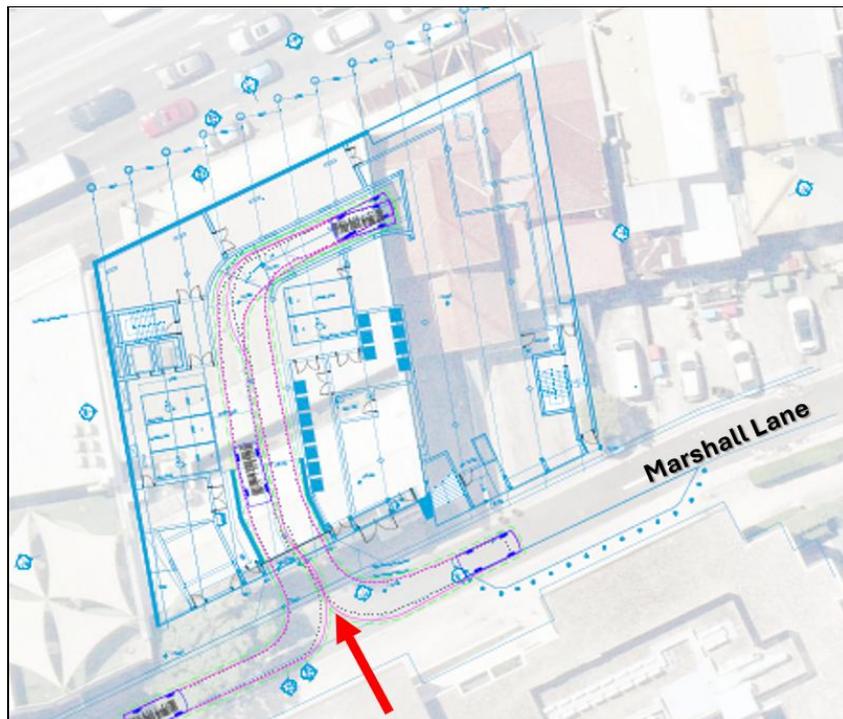


Figure 33: Vehicle access from Marshall Lane (Source: CJP Consulting engineers).

4.7. Materiality

The proposed external colours and finishes are detailed in **Figure 34** and a mix of horizontal concrete bands, fluted precast concrete, grey bricks, timber cladding, metal cladding, metal vertical battons, and aluminum balustrades to draw from the character of the surrounding dwellings. A diversity of materials has been incorporated by a variety of solid elements including shading structures and cladding panels.

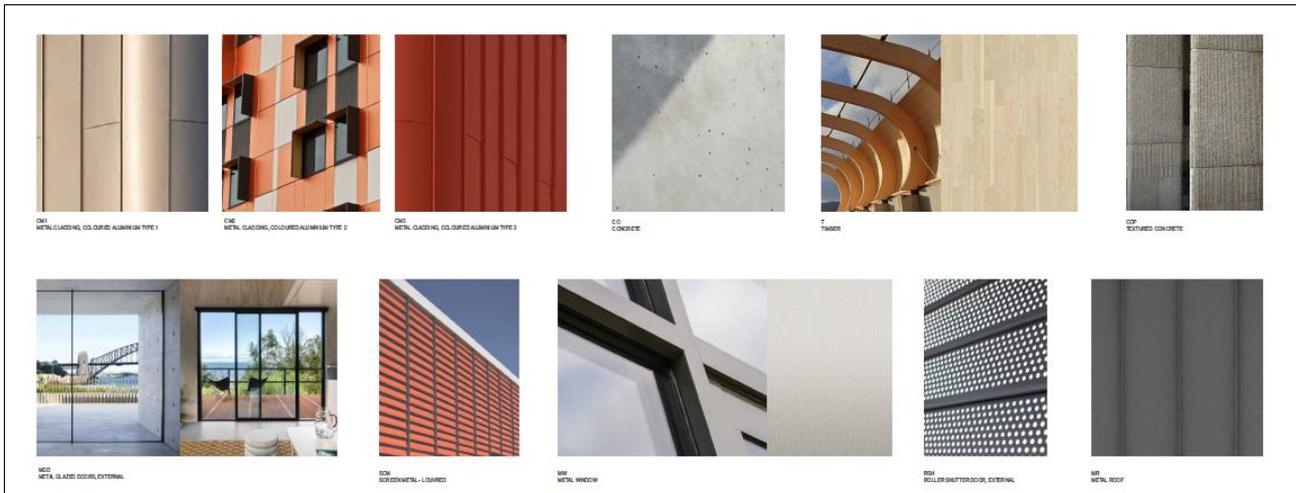


Figure 34: Materials and finishes source (Source: Tonkin Zulaikha Greer architects).

4.8. Waste Management

Waste management is detailed in the submitted operational waste management plan as amended (**Annexure 28**). Each of the 99 Hotel rooms is to be provided with space to store (a minimum) two day's garbage waste and recycling generated and allow for separation of garbage, food organics and recycling. Hotel cleaning staff will be responsible for the transfer of waste from the room to the communal bins within the Waste Storage and Recycling Area (WSRA) on the lower ground and basement floor levels via building lift.

Bulky waste items need to be temporarily stored or to be housed by additional waste infrastructure. Space is provided on the lower basement floors for bulky waste.

The bins would be moved from the ground floor waste room to the laneway via the waste corridor. Due to the commercial use, a private contractor will be engaged to collect waste and recycling generated at the site. As per the existing building, waste will be collected on the lane way. Draft conditions have been recommended to address the waste requirements (**Annexure 1**).

4.9. Stormwater Management

Stormwater management is detailed in the submitted stormwater management report (**Annexure 15**) and stormwater management plan (**Annexure 16**). At the request of Councils' stormwater engineer the stormwater management plan is to be amended. A new pipe system is required to be installed into Marshall Lane.

9. Sustainability

SEPP (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings SEPP) 2022, commenced on 1 October 2023 and aims to encourage the design and delivery of sustainable buildings. Note: A BASIX Certificate is not required for hotel development

The proposal was accompanied by the following key documents in relation to sustainability:

- ESD Report (**Annexure 9**)

The reports outline various measures to achieve sustainability urban heat and shade initiatives, energy efficiency through an all-electric building, passive solar design and high performance facades with double glazing and external shade hoods EV-charging vehicle and bicycle infrastructure, water usage sensitive design reduction. No gas is proposed for any hotel rooms or associated balconies. Rainwater harvesting tanks are proposed on site.

10. Hotel Use/Operation.

From the applicant:

(i) Check-In / Check-Out Procedures

The proposed hotel is designed to be flexible in its use and could potentially operate as a self-check-in / self-check-out model including provision for a concierge model option. Guests would receive a digital check-in link and a unique access code or QR code prior to arrival. Guests proceed directly to their room, and check-out is completed via the hotel's management platform.

(ii) Staffing Arrangements & Future Concierge Option

No hotel staff are proposed to be permanently located on-site under the baseline operational model. The hotel will be supported by off-site operations team, responsible for:

- *24/7 remote support for guests*
- *Monitoring of access and security systems*
- *Coordination of cleaning, linen and maintenance services*
- *Emergency escalation procedures*

However, once a future operator is engaged, there is flexibility for the operator to utilise the ground-floor retail tenancy to accommodate an integrated concierge/reception point should their business model require it.

This space could support:

- *Concierge check-in assistance*
- *Key handover (if preferred by the operator)*
- *Guest enquiries or luggage drop*

This provides operational adaptability while ensuring that the proposal can function independently without on-site staff from the outset.

A draft condition requiring a full Plan of Management (PoM) will be required to be prepared by the future operator, addressing the final operational model, staffing arrangements, concierge integration (if adopted), and guest management procedures. This will be required to be submitted to Council prior to the issue of an Occupation Certificate.

(iii) Security Measures and Access Control

A secure electronic access control system will be implemented, including:

- *Controlled lift access to guest floors*
- *Individual digital key codes for each room (auto-expiring on check-out)*
- *CCTV throughout all key circulation and entry areas*
- *Remote monitoring*
- *A 24/7 emergency contact line for guests*

Guests will have 24-hour access to the building and approved amenities using their access credentials.

(iv) Visitor Vehicle Access to the Carpark

Guest vehicles will access the basement carpark via a temporary digital access code or QR pass issued at the time of booking.

(v) Pedestrian Access from Marshall Lane

Guests accessing the hotel via Marshall Lane will only occur if once a future operator is engaged, the operator seeks to utilise the ground-floor retail tenancy to accommodate an integrated concierge/reception point. Otherwise, access will not be provided through the retail tenancy and will only be available via the primary Princes Highway entry.

4. ASSESSMENT TIMELINE

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

Table 4 - Proposal/History Timeline	
Date	Description
12 September 2025	Application lodged and accepted by Council
16 September 2025	Public notification of Development Application commences.
14 October 2025	Public notification of Development Application concludes.
15 October 2025	RFI Letter sent to applicant requiring additional information for Councils, Traffic Engineers, Stormwater Engineers, Landscape Architects, Arborist, Waste Officer and that concerns raised in the public submissions be addressed.
12 November 2025	Response to RFI submitted by applicant
10 December 2025	Determination meeting with SNPP.

5. NSW LEGISLATION

Environmental Planning and Assessment Act 1979

The Sydney District Panel has the delegation to exercise the functions of the Council as the Consent Authority pursuant to Clause 4.16 of the Environmental Planning & Assessment Act 1979. The proposed development is to be determined by the Sydney North Planning Panel (SNPP).

The proposed use as mixed use Hotel building is consistent with the Section 1.3 objectives of the Act.

Council as the consent authority assessed the relevant matters for consideration under Section 4.15 of the Act.

Due to the level of excavation the application is categorised as integrated under Section 4.46 - Integrated Development of the Act. The application was required to be forwarded to Water NSW as Integrated Development, as the proposed basement levels could encounter groundwater with the

depth of excavation. Council has received integrated approval from Water NSW (See **Annexure 21**) and has included the General Terms of Approval (GTAs) as a draft condition in **Annexure 1**.

Development Application complies with Environmental planning and Assessment Act 1979

Water Management Act 2000

The amended Geotechnical Investigation Assessment confirming a tanked basement which confirms the suitability of the 7.6m of proposed excavation and earthworks for this proposal, identified that groundwater was observed within the depth of excavation.

In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the application is required to be forwarded to Water NSW as Integrated Development, Council has received integrated approval from Water NSW (see **Annexure 21**) and has included the General Terms of Approval (GTAs) as a draft condition in **Annexure 1**.

Development Application complies with Water Management Act 2000

Roads Act 1993

The application was referred to Transport for NSW for concurrence under section 138 of the Roads Act 1993. TfNSW stated:

- *TfNSW has reviewed the submitted information and notes that proposed louvres on the development's Pacific Highway facade may be overhanging the road reserve. While the submitted 'Eastern Elevation' plan (Drawing no. A202 Rev 01 dated 2 April 2025) indicates the louvres are contained within the property boundary, the 'Sections Plan – 1' (Drawing no. A300 Rev 01 dated 1 August 2025) indicates some components would encroach into the road reserve.*
- *In this regard, TfNSW does not support any new buildings or structures (other than pedestrian footpath awnings) being located in/overhanging the road reserve of Pacific Highway (unlimited in height or depth) and would not issue concurrence under section 138 of the Roads Act 1993 to these structures. The plans should be amended to rectify this and ensure these components are located within the freehold property boundary, to the satisfaction of Council as the relevant planning authority.*

In light of the TfNSW recommendations, (**See Annexure 22**) Council will include a condition requiring the louvres on the front façade of the building facing the Pacific Highway to be deleted and amended plans be submitted to Council for approval prior to the issue of a Construction Certificate. Other recommended conditions from TfNSW included in the draft Conditions in **Annexure 1**.

Development Application conditioned to comply with Roads Act 1993

6. STATE ENVIRONMENTAL PLANNING POLICIES

SEPP Resilience and Hazards 2021

The proposal is assessed against the relevant provisions of SEPP Resilience and Hazards 2021 as detailed in **Table 12** below.

Table 5 – SEPP Resilience and Hazards 2021 Compliance Table	
Provision	Compliance
<p><i>(1) A consent authority must not consent to the carrying out of any development on land unless -</i></p> <p><i>(a) it has considered whether the land is contaminated</i></p> <p><i>(b) if the land is contaminated, it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i></p>	<p>Complies - The proposal was accompanied by a Geotechnical Report, Preliminary Site Investigation (Annexure 17) and Remediation Action Plan (Annexure 25) to assist Council in determining compliance with Clause 7(1) of SEPP Hazards and Resilience which does not raise any issues of contamination.</p>
<p><i>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</i></p>	<p>Complies – The Preliminary Site Investigation (Annexure 17) and Remediation Action Plan Report (Annexure 25) is considered satisfactory by Councils Environmental Health Officer subject to recommended draft conditions.</p>
<p><i>(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</i></p>	<p>Complies – The Preliminary Site Investigation (Annexure 17) and Remediation Action Plan Report (Annexure 25) is considered satisfactory by Councils Environmental Health Officer subject to recommended draft conditions.</p>
<p><i>(4) The land concerned is—</i></p> <p><i>(a) land that is within an investigation area,</i></p> <p><i>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</i></p> <p><i>(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes,</i></p>	<p>Complies - The site is not within an investigation area or listed in Table 1 to the guidelines. The Remediation Action Plan Report (Annexure 25) submitted and was considered to be satisfactory</p>

Table 5 – SEPP Resilience and Hazards 2021 Compliance Table	
Provision	Compliance
<p><i>or for the purposes of a hospital—land—</i> <i>(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</i> <i>(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</i></p>	

The Development Application complies with SEPP Resilience and Hazards 2021

SEPP (Transport and Infrastructure) 2021

The proposal has been assessed against the relevant provisions of SEPP (Transport and Infrastructure) 2021 as detailed in **Table 13** below.

Table 6 – SEPP (Transport and Infrastructure) 2021		
Clause	Assessment	Compliance
2.120 – Impact of road noise or vibration on non-road development	The proposal was accompanied by an Acoustic Report which appropriately addresses the impact of road noise on the development in accordance with the Guidelines and complies with clause 2.120 of the SEPP.	Yes

The Development Application complies with SEPP (Transport and Infrastructure) 2021.

SEPP (Biodiversity and Conservation) 2021

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

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

Chapter 2 Vegetation in non-rural areas

Chapter 2 of the Biodiversity and Conservation SEPP 2021 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW, to preserve the natural amenity of these areas. The subject proposal included the removal of 1 street tree which was considered to be in poor condition.

Council's Landscape Officer and Arborist supported the removal subject to a draft condition requiring 1:1 replacement planting and investigation of addition street trees fronting the Pacific Highway.

Chapter 6 Water catchments.

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

The Development Application complies with SEPP Biodiversity and Conservation 2021

SEPP Planning Systems 2021

The Development Application is referred to the Sydney North Planning Panel for determination as the Capital Investment Value is **\$41,410,573.00 Excluding GST** (exceeding \$30 million) satisfying the requirements of SEPP (State and Regional Development) 2011.

The Development Application complies with SEPP Planning Systems 2021

7. REFERRALS

Table 4 - Referrals		
Referral	DCP	Comment
Landscaping	Part J – Landscaping	Satisfactory – Subject to draft conditions.
Tree Preservation	Part J – Landscaping	Satisfactory – The proposed development is considered acceptable subject to draft conditions.
Development Engineer	Part O – Stormwater Management	Satisfactory – Councils' stormwater engineer requires the stormwater management plan to be amended. A new pipe system is required to be installed into Marshall Lane. The amended proposal was considered acceptable subject to Draft conditions.
Traffic, Transport and Parking	Part R – Traffic, Transport and Parking	<p>Satisfactory - Council's Traffic, Transport and Parking Officer has reviewed the amended Traffic Impact Assessment (Annexure 13).</p> <p>The proposed development would vary the parking spaces required in the Part R of LCDCP 2010 but would be comply with the parking requirement stipulated in the Crows Nest TOD Design</p>

Table 4 - Referrals		
Referral	DCP	Comment
		<p>Guideline.</p> <p>The site is benefited by being close proximity to both St Leonards Railway Station and Crows Nest Metro Station, and other forms of public transport such as buses along the Pacific Highway. The Hotel use would result in low-traffic generation as compared to a residential flat building.</p> <p>Excavation for basement is limited to 1 additional level due to proximity of the zone of influence of the underground Crows Nest Metro line. Therefore, limiting the volume of vehicle spaces.</p> <p>The proposed use of a Hotel and retail at ground floor would be low vehicle use due to short term stay for visitors.</p> <p>The proposal was reviewed by Council's traffic engineers who considered the shortfall with the DCP acceptable due to compliance with the Crows Nest TOD and Hotel use.</p>

Waste Management	Part Q – Waste Management and Minimisation	Satisfactory - The proposed Waste Management Plan development is considered acceptable subject to the Draft conditions.
Building Surveyor	N/A	Satisfactory – Proposals complies with the deemed to satisfy provisions of the National Construction Code (BCA) 2019.
Environmental Health	Part B – General Controls (Part B6/B7)	Satisfactory – RAP, Acoustic Report and EMP and supported by Council's Environmental Health Officer (EHO). The proposal was considered acceptable.
NSW Police	CPTED	Complies - NSW Police have provided generic referral comments provided as Annexure 26 to this report.
Accessibility	Part F – Access and Mobility	Satisfactory – The DDA Capability Statement is provided in Annexure 27 . The proposal complies with this provision for all section of the building including Class 3 Hotel buildings (common areas, sole occupancy units, Class 5 Office, Class 6 retail, Class 7a Carpark, and class 7b storage).

PROPOSAL DATA/POLICY COMPLIANCE

8. LANE COVE LOCAL ENVIRONMENTAL PLAN

Lane Cove Local Environmental Plan 2009- Permissibility

Part 2.2 Permitted or prohibited development -land use zoning

The site is zoned E2 Commercial Centre under the LCLEP 2009, see **Figure 34** below. Hotel or motel accommodation, and commercial premises are permissible with consent in the E2 Commercial Centre zone.

The proposal complies with the land use zoning objectives of the E2 Commercial Centre zone.



Figure 34: Zoning Map highlighted E2 zone (Source: Lane Cove LEP 2009).

Clause 4.3 Height of Buildings.

Due to previous excavation having altered the ground level of the site the proposal results in a maximum height of 39.8m as measured from *ground level (existing)*. Refer to **Table 8** below.

Clause 4.4 Floor Space Ratio.

Due to the altered ground level of the site, the existing basement levels are technically considered to be located above “existing” ground level. These areas technically meet the LEP definition to be included as gross floor area. Consequently, these areas within the lower ground floor have been included in the calculation of FSR. The proposed development therefore includes an FSR of 5.24:1:1. Refer to **Table 8** below.

Table 8 – LCLEP 2009 – from excavated basement			
Standard	Requirement	Proposed	Compliance
Height of Buildings	38m (max.)	39.8m above existing ground level (due to existing excavated basement)	No, clause 4.6 variation lodged. See below assessment section

Floor Space Ratio	5.1:1 (max)	5.24:1 (including existing basement areas below natural ground level)	No, Clause 4.6 variation lodged. See below assessment section
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Alternatively, **Table 9** below provides the proposals compliance in relation natural ground levels (not excavated) of the site.

Table 9 – LCLEP 2009 from natural ground level			
Standard	Requirement	Proposed	Compliance
Height of Buildings	38m (max.)	34.4m (above natural ground level)	Yes
Floor Space Ratio	5.1:1 (max)	5:1 (above natural ground level)	Yes

Clause 5.10 Heritage Conservation

The above clause requires the environmental heritage of Lane Cove to be preserved including heritage items and heritage conservation areas. This includes associated heritage fabric, settings and views.

The site is not listed as heritage item and is not located within a heritage conservation area. The site is in proximity to the Gore Hill Cemetery which includes state heritage items. The site is also in proximity to local heritage listed dwellings houses on Park Road. The cemetery is located approximately 280m distance from the site. The site is also 220m distance from the heritage listed houses on Park Road.

The application included a Heritage Impact Statement by a qualified heritage consultant which confirmed the proposed development would not have any adverse impacts on the significance of heritage items in proximity to the site.

Clause 6.1 Acid Sulphate Soils

Site is not identified as containing acid sulphate soils map.

Clause 6.1A Earthworks

Table 10 – Additional LCLEP 2009 Provisions
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Clause	Provision	Comment	Compliance
6.1A - Earthworks	<p><i>(3) Before granting development consent for earthworks, the consent authority must consider the following matters—</i></p> <p><i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></p> <p><i>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p><i>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</i></p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i></p> <p><i>(f) the likelihood of disturbing relics,</i></p> <p><i>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p>	<p>The proposal would result in up to approximately 7.6m of excavation.</p> <p>The proposal was accompanied by geotechnical investigation and construction and demolition waste management plans that ensure proper fill disposal, detail soil stability conditions and considerations, and an integrated referral has been sent to Water NSW in relation to groundwater impacts and their integrated approval received. A condition has been included in Annexure 1 Draft Conditions</p> <p>All matters required to be addressed under Clause 6.1A are addressed by the applicant and inform draft conditions of consent.</p>	Yes

Clause 7 Additional Local Provisions – St Leonards South

The site is located outside the northern boundary of the St Leonards South Precinct. SLS provisions do not apply to the site.

Clause 8 Crows Nest Transport Orientated Development (TOD) Precinct

The proposed Hotel/mixed use building would comply with objectives of the Crows Nest TOD precinct including:

The Hotel would provide short term accommodation and retail premises that contribute to the vibrant streetscape and community amenity of the centre.

Clause 8.5 Design Excellence (within Crows Nest Transport Orientated Development Precinct)

The proposal would achieve design excellence as defined in clause 8.5 of the Crows Nest Transport Orientated Development Precinct.

- The proposal is considered to exhibit a high standard of architectural design including materiality and finishes;

- The proposed would encompass greater sustainability, high quality public and communal open spaces. The proposal would achieve the required principles of ecologically sustainable development;
- The external appearance would improve the quality and amenity of the public domain as compared to the existing developments on site. The proposal would include the demolition of detracting 2 storey commercial terraces and a dated commercial building;
- The replacement building would, allow for greater activation of the Pacific Highway through colonnade and Marshall Lane through active retail uses improving the quality of the public domain;
- The bulk and massing reflect the LEP and DCP envelope controls and is considered to be reflective of the recently developed surrounding sites and transitioning character of the precinct.
- The proposal includes a developed landscape design which significantly improves the site which current has little landscaping and zero deep soil.

9. CROWS NEST TRANSPORT ORIENTATED DEVELOPMNT DESIGN GUIDE

The site is located within the 'Rezoning Precinct' of the Crows Nest TOD. Refer to Figure 6A

Table 11 - Control (Relevant)	Compliance
1.5 Relationship with other instruments.	As per clause 1.5 of the Crows Nest TOD provisions prevail over the Lane Cove DCP controls.
3.2 Connecting with country	As per clause 3.2 The application has included an urban design report which demonstrates that the design is informed by the connection to country principles.
3.3.1 Land use	The proposed use as a mixed-use commercial building and hotel is a permissible is in the E2 zone within the Lane Cove LEP
3.3.3 Retain commercial core	The proposal includes a mixed-use development comprising commercial (retail) and hotel uses within mixed use centre
3.4.1 Built Form – building heights	The proposed building height is consistent with the height standard applicable to the site under the Lane Cove LEP and considered to generate an appropriate height transition (DCP sun planes) with the tallest building fronting the Pacific Highway and lowest to Marshall Lane.
3.4.2 Built Form – Solar amenity and wind impacts.	Detailed shadow diagrams which demonstrate that adjoining sites are able to retain acceptable access to natural sunlight when considered against the backdrop of the permitted building envelope.
5. Maximum Floor Height c) Above ground floor commercial -3.8m	The proposed floor-to-floor height of the commercial (Hotel) levels comply, above ground do not exceed 3.8m (proposed 3.3m).
6. Maximum and minimum FSR Non-residential minimum 85%	Site is 100% commercial uses (Hotel and Retail) and complies.
7. Rooftop Plant	Proposed rooftop plant integrated within building design. Subject to measuring height from natural ground level it does not exceed heigh

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	standard.
13. Open space	The Hotel includes high quality open space areas on level 6, 7 and 8. This would provide high quality amenity for Hotel users.
3.4.1(b) Maintain solar access to key street and public open spaces	The proposed development does not result in any additional overshadowing of the areas identified in <i>Table 2 Areas to be protected from overshadowing</i> and <i>Figure 8 Solar Access Map</i> of the Design Guideline.
Solar amenity and protection from overshadowing should be consistent with table 2 Areas to be protected from overshadowing	The proposed development does not result in any additional overshadowing of the areas including: <ul style="list-style-type: none"> - Existing and proposed open spaces, Streetscapes, - Low Density Residential Areas (Inside the Investigation Area boundary), - Low Density Residential Areas (Outside the Investigation Area boundary), or - Conservation Areas. the existing residential apartment development to the south of the site (with an orientation to Marshall Avenue and Lane) is located within a MU1 zone and therefore is not protected under this design guideline.
3.6.3 Tree canopy and Deep Soil and Biodiversity	There is zero existing deep soil on the site. The ADG does not apply to the subject use (Hotel). Additional landscaping has been provided on structure (levels 1, 6-8) to significantly increase vegetation on the site.
3.7 Design Excellence	Proposal achieves Design Excellence. The proposal was reviewed by The North Sydney Region of Council's Design Review Panel (NSROC). (See Annexure 24) The Panel process occurred prior to lodgement of the Development Application (DA) aiming to resolve key issues and provide for higher quality lodgements. Recommendations of the Panel were generally incorporated to improve the overall design.
3.8 Setbacks	The reverse setback control requires a 6m building setback from the centre line of Marshall Lane. The rear building line complies with the minimum setback.
3.9 Street wall heights	Consistent with objectives. The proposed development provides for a: <ul style="list-style-type: none"> • 8-9-storey street wall height to Pacific Highway; and • 5-6-storey street wall height to Marshall Lane. This results in a variation of the street wall

	<p>height requirement to Pacific Highway. The proposal is considered to be acceptable as the design would respond to the differing scales of the Pacific Highway and Marshall Lane. The Marshall Lane frontage has been stepped away from the building to the south at each level to maximise the retainment of solar access. The Pacific Highway includes a double height colonnade and architectural interest and increase amenity for pedestrians.</p>
<p>3.11 (2) Carparking</p>	<p>A commercial building (Hote/Retail) use provides 23 car parking spaces which is variation to the requirements of the Lane Cove DCP which requires 55 spaces. This variataion is considered acceptable as the Crows Nest TOD Precinct has no minimum parking rate (i.e. can consider 0 off street spaces), due to the site being close proximity to both St Leonards Railway Station and Crows Nest Metro Station, and other forms of public transport such as buses along the Pacific Highway.</p>

10. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 of LCLEP 2009 allows a variation to the development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has considered and agrees with the written request from the applicant that seeks to justify the contravention of the development standard.

The development application is accompanied by two Clause 4.6 variation requests. These are for the maximum building height (the “Height”) and the maximum floor space ratio (the “FSR”) development standards.

Justification for Contravention of the Development Standard:

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

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

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

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

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

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

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

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

The Clause 4.6 variation has argued that it is unreasonable or unnecessary to require strict compliance with the development standard for the following reasons (these have been summarised from the Clause 4.6 request):

Clause 4.6 Written Request – Building Height

A maximum building height of 38m applies to the site under LCLEP 2009, see **Figure 35** below.

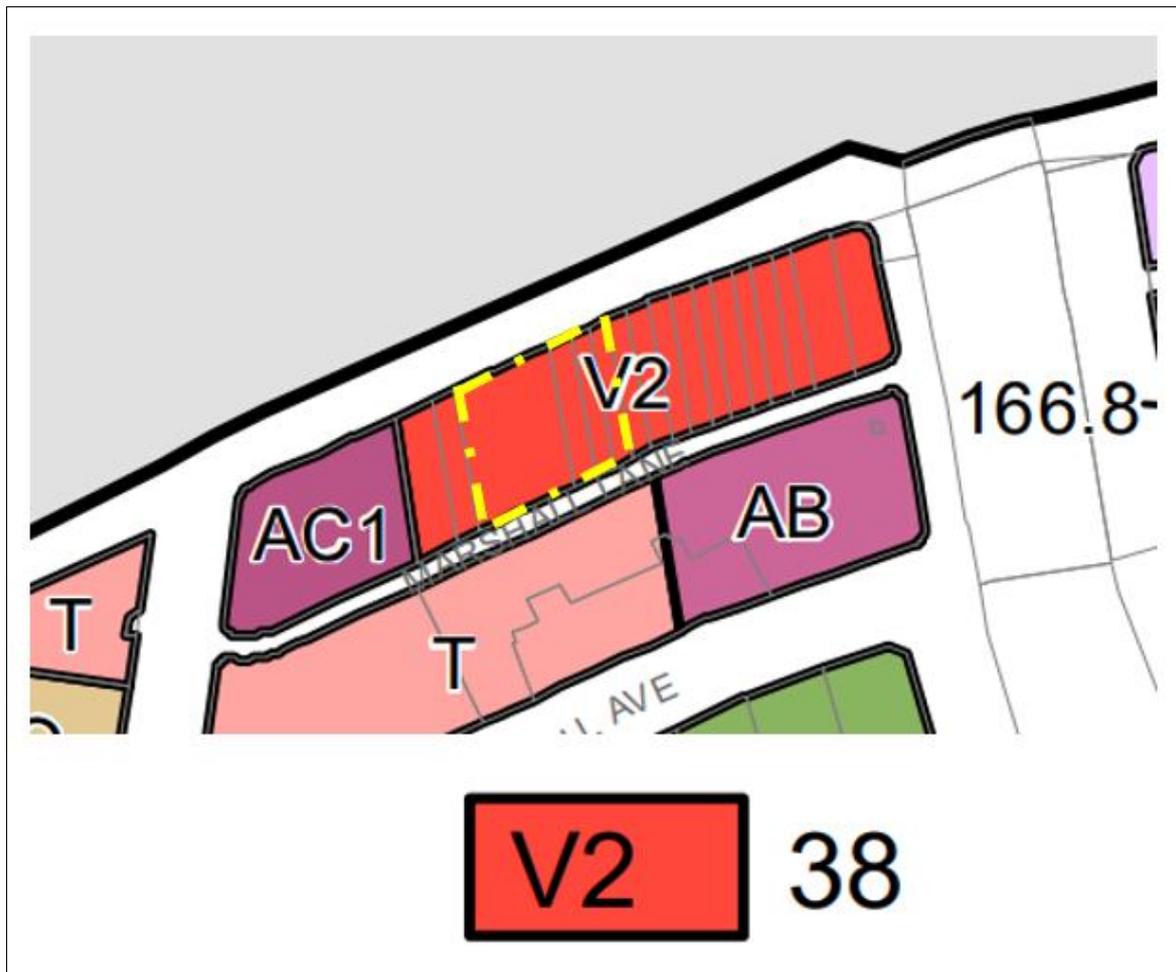


Figure 35: Height of Buildings Map (38m) (Source: Council LEP)

An assessment against the relevant objectives is provided below.

Interpretation of ‘ground level (existing)’.

The site contains 2 existing levels of basement below the natural ground levels of the site. Consistent with the decisions made in the Land and Environment Court in *Triple Blue Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1065 (at[47]); *Stokes v Waverley Council (No 3)* [2020] NSWLEC 1224 (at [59]) and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (at [83]), the legal interpretation is that excavated ground level must be considered as ground level (existing). This alters the point at which building height is measured from and in this instance, the existing building and excavated ground levels occupy the entirety of the site. Subsequently building height is now to be measured from the existing level 2 basement slab.

This has resulted in a variation of the height development standard as at the time of lodgment, this was the ‘existing’ ground level. Had the application been lodged where there was no basement, there would be no requirement to lodge a Clause 4.6 request. The application would simply comply with the Lane Cove height requirements.

Diagrams in **Figure 36** and **37** have been provided in order to help visualise the Clause 4.6 requirement.

Bettar v Council of the City of Sydney [2014] NSWLEC 1070

It is noted that the leading decision on determining “ground level (existing)” on land that is sloping or completely excavated is the decision of Commissioner O’Neill in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* (Bettar). In this instance, consent was sought for a residential flat building on a site where an existing building already occupies the entire site. This has resulted in no remaining ‘ground’ for determining the existing ground level.

In *Bettar*, Commissioner O’Neill held that where a site contains an existing building, the existing ground level should be determined based on “the level of the footpath at the boundary”, as this “bears a relationship to the context and the overall topography” of the site (at [41]).

The Commissioner agreed with the approach of the Applicant on this issue of the existing ground level of the site to be determined by the ground levels found on the footpath (i.e. — outside the site) across the entire site to measure the vertical distance to the highest point of the building.

Irrespective of the *Bettar* Judgment, a clause 4.6 variation written request statement for height has been submitted by the applicant with ‘abundant caution’ in relation to the height exceedance when measured from the ground level (existing)

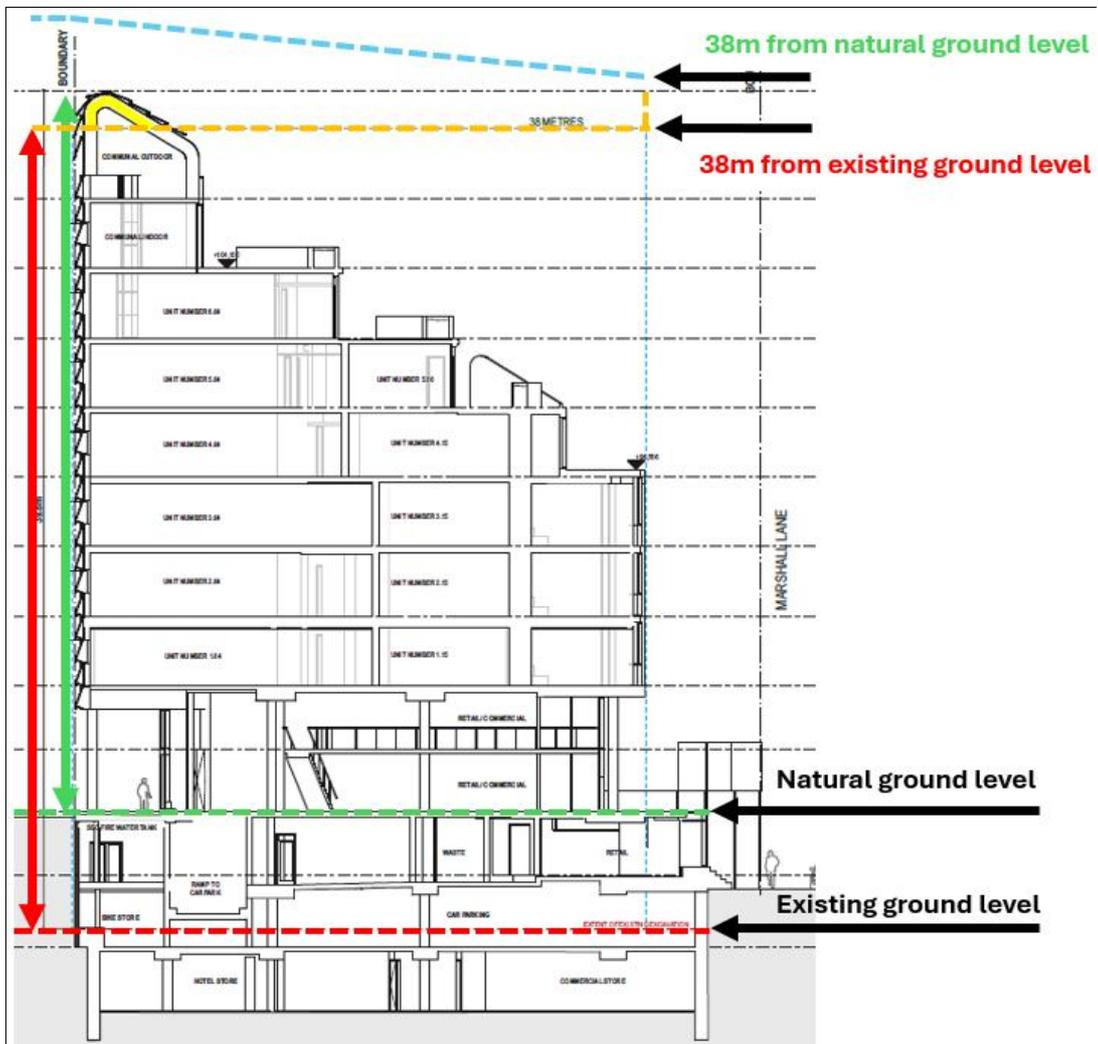


Figure 36: Proposed height measured from basement / natural ground level
 (Source: Annotated by Council Planner)

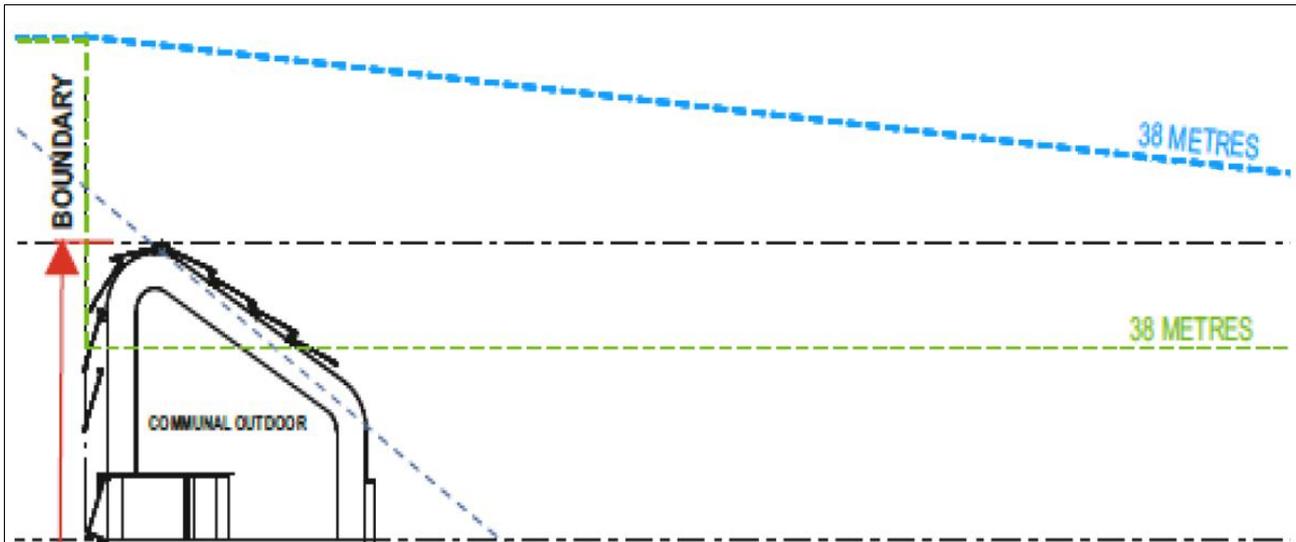


Figure 37: Roof of communal outdoor area which varies the 38m height control as measured from existing basement. (Source: Architectural Plans)

Extent of the variation.

The proposed development includes a maximum building height of

- 39.8m (RL 112.70) to the highest point of the building when measured from ground level (existing); and
- 34.4m (RL 112.70) to the highest point of the building when measured from natural ground level on the footpath adjoining the front boundary -The *Bettar* method.

This proposal as measured from ‘existing’ ground level would result in a variation of 1.8m or 4.74% from the 38m control.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

The objectives of Clause 4.3 Height of Buildings of the Lane Cove LEP

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

Whilst the proposal represents a minor variation of 1.8m non-compliance in terms of the 38m height control and would result in negligible impacts on shadowing, refer to the shadow diagrams:

- In terms of neighbouring development in proximity to the site, proposal maintains acceptable solar access to adjoining residential properties to the south and does not generate any additional overshadowing compared to a compliant scheme measured from natural ground level.
- The proposed building adopts the DCP envelope which requires a 32-degree sloping height plane control. This allows the building bulk to be orientated towards the Pacific Highway and away from residents on the opposite side of Marshall Lane. This dramatically reduces the overall shadow impacts in comparison to the permitted building envelopes under the Crowes Nest Transit TOD design guide. The development would fully comply with the 32 degree pitch sun plane with the exception of the lift overrun which has no adverse shadow impacts.

- The shadow analysis and sun access diagrams demonstrate most additional shadows cast are resulting from the permissible building envelope. Any shadows cast onto habitable spaces are considered acceptable in this instance as it is a direct result of the orientation and topography of the sites. Refer to the DCP solar access assessment in table 13.

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

The proposed development achieves acceptable privacy and visual impacts as would be acceptable for transit orientated development located within dense urban environments. The height variation is located at the Pacific Highway frontage almost 27m from the southern boundary and over 30m from the residential flat building on the opposite side of Marshall Lane.

The proposed rear setbacks increase at each level beyond level 5. The setbacks which are informed by the 32-degree sun plane control are significantly beyond the minimum controls at the upper levels. This ensures neighbours along Marshall Lane benefit from minimal visual bulk and a significant reduction direct overlooking.

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

As is noted above, the building form steps down towards Marshall Lane. The upper levels of the hotel are recessed to allow increased sunlight penetration to the laneway and adjacent pedestrian areas. The minor exceedance of the height when measured above “existing” ground level does not contribute to any net overshadowing caused by the compliant design. The non-compliant nature of the development has arisen, where excavation works have altered “existing” ground level.

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

The proposed levels are stepped to correspond to the natural topography of the land and as such skillfully reduces any additional adverse overshadowing and amenity impacts. The minor variation has only arisen as excavation works have altered “existing” ground level.

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Enforcing strict compliance with the development standard would prevent the building achieving its actual permitted height under the LEP.

From the Applicant:

- *The proposal achieves the visual and environmental objectives the height limit is intended to support noting that the basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development*
- *It is contended that the proposal achieves the visual and environmental objectives the height limit is intended to support noting that the basements contribute to building height under the strict definition, even where these levels are largely subterranean and do not impact the perceived scale or bulk of the proposed development.*
- *The consequence is that requiring strict compliance would thwart the underlying objectives and purpose of achieving appropriate built form, aligned with the overarching strategic planning objectives of the Crows Nest Transport Oriented Development (TOD) Precinct.*

Council Planner Comment:

The height limits envisaged in Clause 4.3 of The Lane Cove LEP have been set with reference to pre-excavated ground levels. Clause 4.3 of The Lane Cove LEP does not prescribe that the ground level should be referenced from the excavated basement, whilst this is the legal interpretation. It is more prudent to consider the maximum height in relation to the natural ground level found on the footpath directly adjacent to the site.

The proposed development provides acceptable solar access to the neighbouring properties and the public open space. This is demonstrated through sun access diagrams. The residential building directly south at 1-13 Marshall Avenue would achieve compliance with the solar access requirements of the ADG where over 70% of the north-facing apartments would receive more than 3 hours of solar access. (91% receive solar compliance) The impacts on solar access are reasonable and objectives (a) and (c) of the Building Height Standard have been satisfied.

The extent of the subject view impacts are acceptable. The design includes a the LEP cascading building form as per the DCP sun plane control stepping the maximum building heights to ensure the equitable sharing of views and solar access is maximised in the redevelopment of the site. This proposal would ensure that acceptable privacy is maintained for surrounding developments and the public domain. The impacts on views and privacy are reasonable and objective (b) of the Building Height Standard has been satisfied.

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

Approval of the development application and supporting the Clause 4.6 variation in consistent with the desired future character of the area being achieved. The proposed development would provide significant public benefits through the activation of Marshall Lane through a retail interface at ground floor (e.g. a café). The proposed development would achieve this whilst satisfying the relevant objectives of the building height standard. Accordingly, it would be unreasonable to require strict compliance with the development standard, particularly when considering the nature of the variation.

Environmental planning grounds to justifying contravening the development standard.

The requirement in Clause 4.6(3)(b) of the LEP is to justify there are sufficient environmental planning grounds to support the variation. The applicant has stated that there are sufficient planning grounds to vary the Building Height development standard as follows:

The variation is based solely on the technicality resulting from the “existing” excavated ground level. The development achieves the envisaged height prescribed by clause 4.3 of the Lane Cove LEP and would fully comply if there was no excavated basement.

The proposal will provide public benefit through the the activation of Marshall Lane through a retail interface at ground floor (e.g. a café). This is consistent with the strategic vision of Marshall Lane as an activated pedestrian link between Berry Road and Wadangarri Park/ St Leonards Railway Station. Laneway revitalisation would result in a significant upgrade of the area.

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

- Any additional shadowing on neighbouring properties is acceptable and complies with the relevant LEP and Crows Nest TOD requirements for both the private and public domain;
- There would be no unreasonable impacts on views;
- The proposed rear setbacks would allow adequate separation to ensure acceptable impacts on privacy;
- The proposed development maintains the relationship with the topography of the site, through the proposed design and compliance with 32-degree sun plane control. The development would fully comply with the 32 degree pitch sun plane control with the exception of the lift overrun which has no adverse shadow impacts.

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

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

Supporting the development application would achieve a superior planning outcome, which constitutes sufficient environmental planning grounds to warrant the proposed variation to the current height control. Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for significant variations to be approved in the right circumstances.

Council Planner Comment:

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

- The proposed development would provide public benefit through the activation of Marshall Lane through a revitalised retail interface at ground floor (e.g. a café). This is consistent with the strategic vision of Marshall Lane as an activated pedestrian link between Berry Road and Wadangarri Park. Laneway revitalisation would result in a significant upgrade of the area. This is also consistent with the desired future character for transit orientated development as informed and afforded by Crowes Nest TOD. The proposal would result in short term hotel accommodation for visitors to the Royal North Shore Hospital and is appropriately located within proximity to St Leonards Railway Station.
- The Clause 4.6 variation request has arisen due to the existing excavated levels on the site. If the building had no existing basement, the proposal would fully comply with the requirements of the Lane Cove LEP, and the Clause 4.6 request would not be required. It would be a suboptimal planning outcome to refuse the development based on a variation resulting from the excavated levels.
- The proposed development satisfies the relevant objectives of the Building Height development standard as previously discussed:

- The relevant solar access provisions of the DCP and Crows Nest TOD have been satisfied and overshadowing has been minimised through the design of the upper levels where practical.
- The visual impact of the development is acceptable.
- The proposed rear setbacks comply and privacy measures (including screened planting) would ensure that any adverse privacy impacts are mitigated.
- The proposed development retains the stepped massing at the upper levels to maintain the relationship with the topography of the site.

Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in circumstances. The proposed variation to the height standard of LCLEP 2009 is justified and is supported in the circumstances of this case. The development satisfies the objectives of the control and the criteria outlined in Clause 4.6. As such, the variation is considered to be well founded and would achieve a better planning outcome than enforcing strict compliance with the standard.

Clause 4.6 Written Request – Floor Space Ratio

A maximum floor space ratio of 5.1:1 applies to the site under LCLEP 2009, refer to **Figure 38** below.

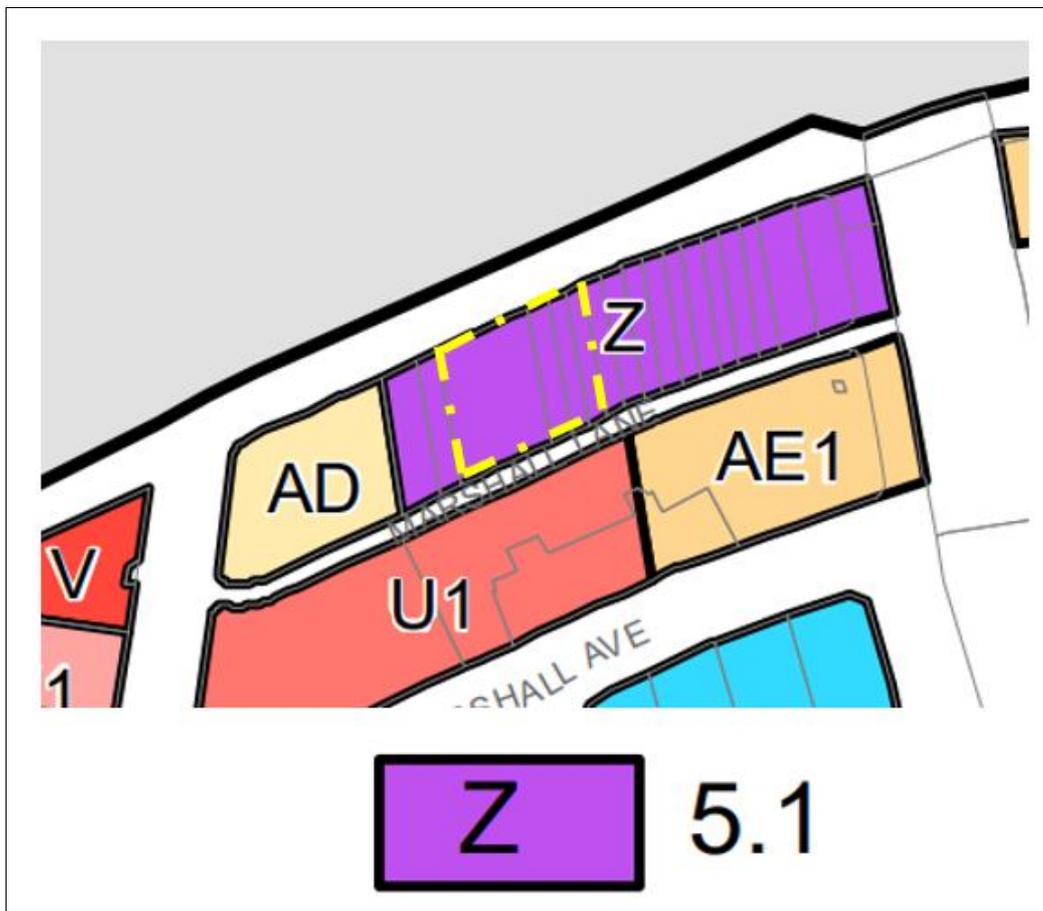


Figure 38: FSR Map (5.1:1) (Source: Council LEP)

Interpretation of ‘ground level (existing)’.

The site contains 2 existing levels of basement below the natural ground levels of the site. Consistent with the decisions made in the Land and Environment Court in *Triple Blue Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1065 (at[47]); *Stokes v Waverley Council (No 3)* [2020] NSWLEC 1224 (at [59]) and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (at [83]), the legal interpretation is that excavated ground level must be considered as ground level (existing). This alters the point at which building height is measured from and in this instance, the existing building and excavated ground levels occupy the entirety of the site. Subsequently FSR is now to be measured from the slab of the 2nd level of the existing basement.

The proposed development would achieve a floor space ratio of 5.24:1 when measuring from the “existing” ground level of basement. This would equate to a gross floor area of 6,486.3m². This is a 180.7m² or 2.9% variation from the 5.1:1 FSR standard in the Lane Cove LEP 2009

Due to the altered ground level, the basement level plant rooms, the communications rooms, bicycle park, end of trip facilities, amenities, storage, are part of the FSR calculation as they are technically considered to be located above “existing” ground level. These areas technically meet the LEP definition to be included as gross floor area.

Consequently, these areas have been included in the calculation of FSR.

Justification for Contravention of the Development Standard:

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

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

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

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

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

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

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

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

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

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

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

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

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

- The objectives of the FSR development standard have been met irrespective of strict compliance with the numerical standard.



Figure 39: Areas in basement included in GFA calculation as above 'existing' ground level. (Source: Tonkin Zulaikha Greer architects).

Extent of the variation.

The proposed development includes a FSR of:

- 5.24:1 when measured from ground level (existing) and including GFA at existing basement 1 and 2; and
- 5.1:1 when measured from natural ground level on the footpath adjoining the front boundary -The *Bettar* method.

This proposal as measured from 'existing' ground level would result in a variation of 180.7m² or 2.9% variation from the 5.1:1 FSR control.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

The objectives of Clause 4.4 Floor Space Ratio of the Lane Cove LEP

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

From the Applicant:

With regards to the character of the locality, the strict terms of clause 4.4 of the LEP does not define the desired future character or character of the locality (Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 at [53]). The desired future character of the locality or character of the locality establishes the bulk and scale on land in the locality and not the other way around (cf SJD DB2 Pty Ltd (at [56])). This means that the floor space ratio limit set out under clause 4.4 alone does not establish the desired future character and can be evaluated by reference to matters other than the strict provisions of clause 4.4 (cf SJD DB2 Pty Ltd at [59]).

The proposed development, even with the floor space ratio variation, is considered to be compatible with the bulk and scale of the character of the locality, noting that compatible is interchangeable with the word consistent which does not mean 'sameness' (Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191). The proposed development, even with the floor space ratio variation, will appear compatible with the bulk and scale of surrounding properties.

Council Planner Comment:

The proposed development would result in a bulk and scale which is compatible with recent approvals within other buildings in proximity to the site including those in St Leonards South.

The proposed development attains a bulk and scale envisaged within the LEP and DCP controls as:

- The proposed development is compatible with transitioning character of the Crows Nest Transit-Orientated Development Precinct and the form and density envisage under the Lane Cove LEP 2009;
- The proposal includes a minor non-compliance in terms of the FSR of just 2.9% when calculating the GFA to include rooms in basement levels;
- The proposed variation would not be discernible when viewed from the surrounding properties or the public domain;
- The proposal whilst resulting in a technical numerical variation of the FSR, would maintain acceptable amenity for surrounding development in terms of shadows and privacy.
- The development would be aligned with the desired future character for high density transit-oriented development.

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

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

The requirement in Clause 4.6(3)(b) of the LEP is to justify there are sufficient environmental planning grounds for the variation. The applicant has stated that there are sufficient planning grounds to vary the FSR development standard as follows (summarised):

The variation to the FSR control should be viewed relative on the technicality resulting from excavated ground level. Whilst the proposal would attain an FSR of 5.24:1 when calculated in accordance with the definition of existing ground level, this interpretation is technical and minor in nature.

The proposed development would satisfy the relevant objectives of the FSR development standard as detailed in the previous section of this Clause 4.6 assessment. The applicant is of the view that the FSR is consistent with the bulk, scale and character of developments in the area.

The proposed alterations and additions give better effect to the E2 Commercial Centre objectives and the strategic intent for redevelopment in within the Crowes Nest TOD and in proximity to the St Leonards South Precinct than the approved development for the following reasons:

- The proposed Hotel and retail spaces would support the role of the St Leonards commercial centre through the provision of Hotel by providing accommodation and generating employment positions;
- The proposed Mixed-use building including a Hotel and ancillary retail spaces would provide additional employment opportunities therefore generating economic growth;
- The additional short-term accommodation would increase more visitors to the area;
- The proposed Hotel would have a high level of accessibility due to its location on a classified road with bus services and proximity to St Leonards Railway Station and Crows Nest Metro Station;
- The proposal would include ground level retail uses fronting both the Pacific Highway and Marshall Lane creating active street frontages and contributing to the functional and vibrant streetscape and public spaces.
- The proposed Hotel would be in a highly-accessible location, further supporting public transport patronage and also promoting walking and cycling.

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

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

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

Council Planner Comment:

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

- The proposal is consistent with the desired future character for transit orientated development as informed and afforded by the Housing SEPP. The proposal would provide an uplift in visitor accommodation appropriately located with proximity to St Leonards Railway Station, Royal North Shore Hospital and the education facilities provided throughout the North Sydney area.

The proposed contravention and Clause 4.6 variation request has arisen due to the existing excavated basement on site. Without a basement the proposal would fully comply with the requirements of the LEP, and the Clause 4.6 request would not be required. It would be a suboptimal planning outcome to prevent the delivery of an activated retail space on Marshall Lane as per the strategic vision of providing a pedestrian link between Berry Road and Wadangarri Park/St Leonards Railway Station and Crows Nest Metro. Laneway revitalisation would result in a significant upgrade of the area.

- The development satisfies the relevant objectives of the FSR development standard as previously discussed:
 - The proposed development achieves an FSR that is consistent with the desired future character of the area and is consistent with the envisaged density of transit-oriented development.
- The proposed development satisfies the relevant objectives of the E2 Commercial Centre zone objectives and strategic vision for development fronting the Pacific Highway in St Leonards.
 - The proposal provides for the short-term accommodation needs of the community within a commercial centre zone without any unreasonable impacts; and
 - The short-term accommodation would be provided at a site within a highly accessible location which supports public transport patronage, walking and cycling.

Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in circumstances. The proposed variation to the floor space ratio control in the LCLEP 2009 is justified and is supported in the circumstances of this case. The development satisfies the objectives of the control, and the criteria outlined in Clause 4.6. As such, the variation is considered to be well founded and would achieve a better planning outcome than enforcing strict compliance with the standard.

4.15 (iii) Any development control plan:

11. LANE COVE DEVELOPMENT CONTROL PLAN 2010

Table 12- Part B Control	Assessment	Compliance
Part B3 Site Amalgamation	The proposed development includes the amalgamation of lots and would not result in an isolated lot in accordance with the LEP, Crows Nest TOD Design Guide or the LC DCP 2010.	Yes
a) Development.... 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.	As sated above the proposal would not result in any isolated sites	Yes
Part B4 View Sharing a) To ensure that public view corridors between buildings or along streets are retained and enhanced from streets or public spaces. b) To minimise the impact of new development on existing public and private views and vistas.	The proposal would not obscure water or scenic views to the south and southeast. Properties north of the site are separated by a 6-lane highway and are generally commercial in nature or the Gore Hill parkland /cemetery.	Yes
6.1 Sunlight to Public spaces 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	Provisions stipulated in the Crows Nest TOD Design Guideline are complied with, These controls prevail over the Lane Cove DCP 2010.	Yes
6.3 Energy and Water Efficiency for Buildings d) Orientation of building and facade design of all developments should capture and manage solar access, natural ventilation and breezes into the building. 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.	The application included a ESD Report which outlines how the design and operation of the Hotel will minimise water use and wastage. Including WELS star rating for toilets, urinals, taps (bathrooms and kitchens) and shower heads Rainwater Tank storage Stormwater drainage systems Commitment to sustainable materials with reduced embodied carbon, and A whole life approach to the consent of the building. Reduction of waste,	Yes

<p>For mixed use development (commercial component): a) The design of any new mixed use (commercial component) or commercial building including the base building, its services and fit outs must be capable of achieving a minimum 5 star rating under the National Australian Built Environment Rating System (NABERS) Building Greenhouse Rating Scheme.</p>	<p>Sustainable transport</p>	
<p>B7 Development Near Road and Rail Corridors a) Acoustic assessments for noise sensitive developments as defined in the Transport and Infrastructure SEPP may be required if located in the vicinity of a rail corridor or busy roads.</p>	<p>A Noise impact assessment with compliance with Department of Planning guidelines publication "Development Near Rail Corridors & Busy Roads Interim Guideline 2008 was submitted and referred to in draft Conditions in Annexure 1.</p>	<p>Yes</p>
<p>B8 Safety and Security</p>	<p>Proposal referred to NSW Police for comment who supported subject to the inclusion of draft condition ensuring compliance with the CPTED principles which promote passive surveillance to and from the public domain and within the building. (See Annexure 26)</p> <p>Entry points are highly identified and clear visual sightlines are proposed.</p>	<p>Yes</p>
<p>8.1 Activation a) Development is to be well connected to the street and contribute to the accessibility of the public domain. d) open spaces and provide uses at ground level that provide activity</p>	<p>Proposal includes activated retail spaces onto Pacific Highway and Marshall Lane. The spaces are accessible and promote an interactive ground level interface for pedestrians.</p>	<p>Yes</p>

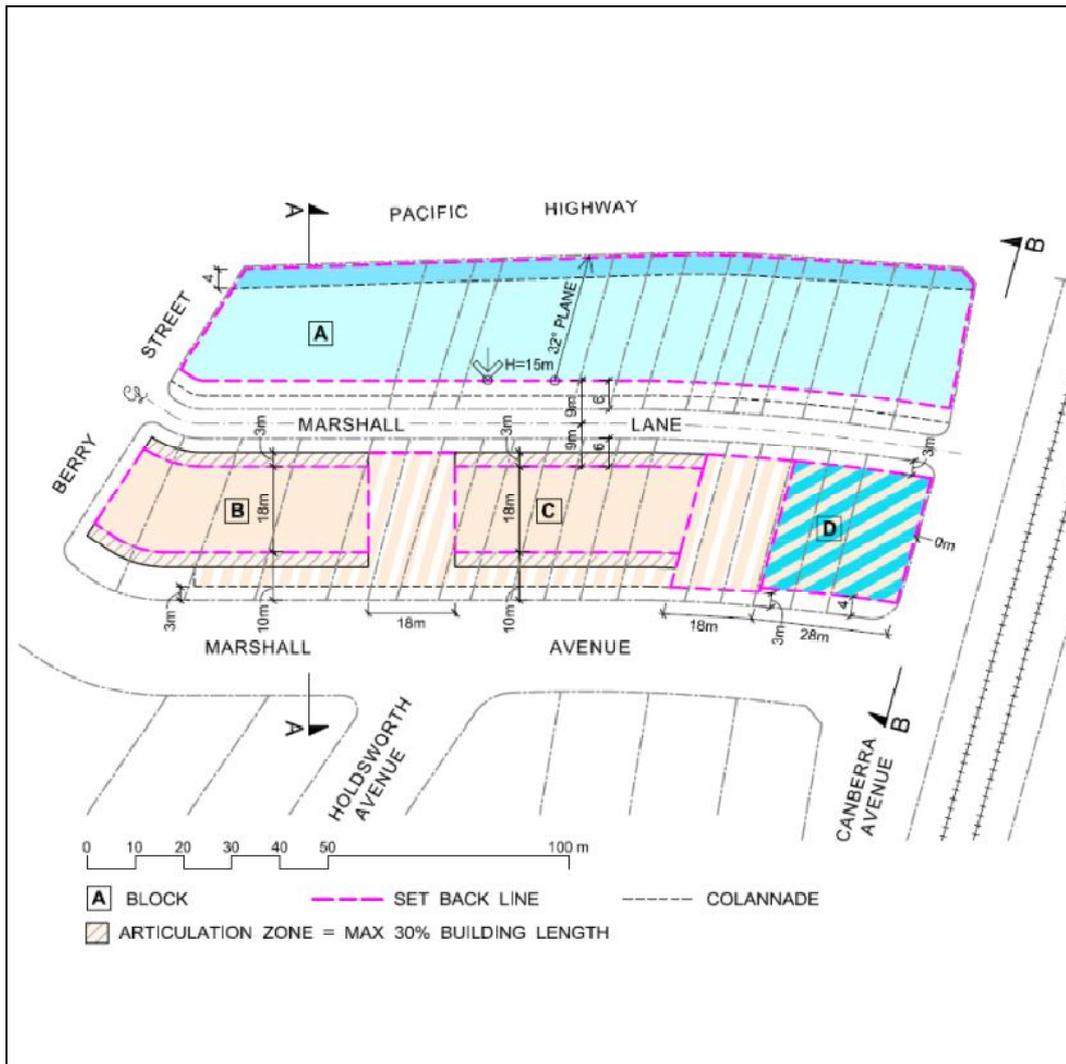


Figure 40: Block Layout Plan. (Source: Lane Cove DCP).

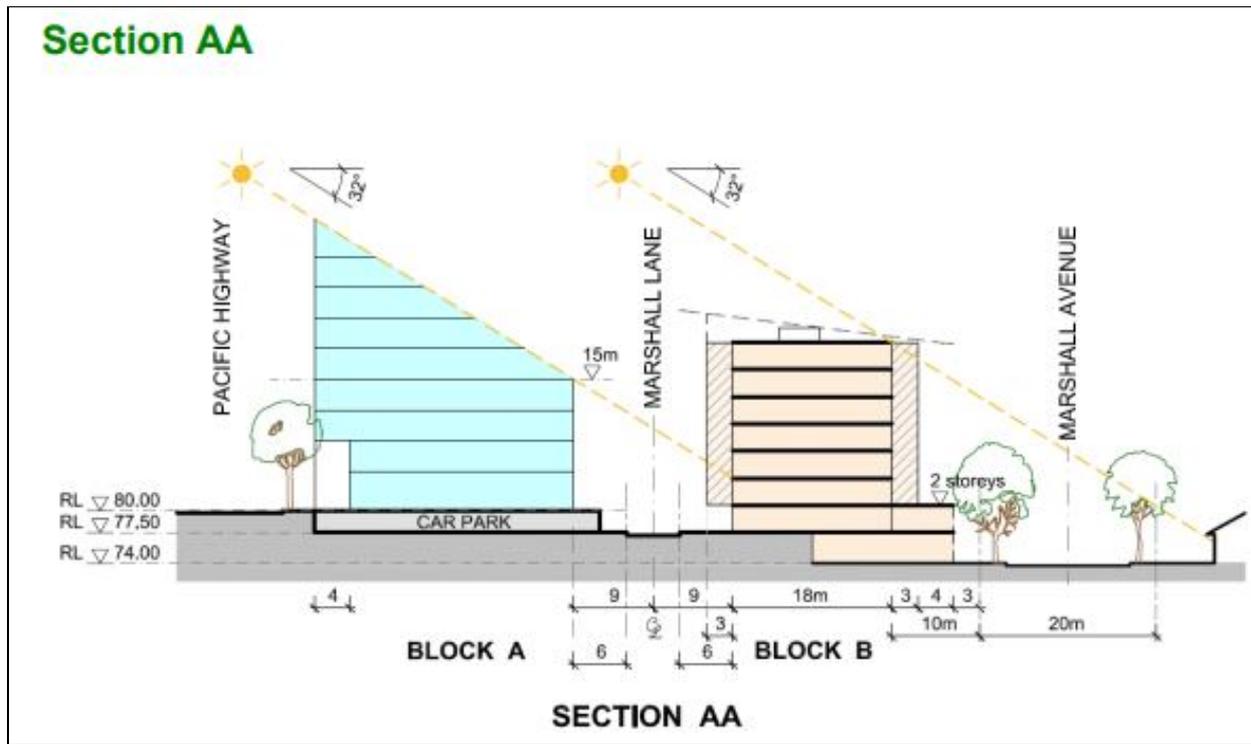


Figure 41: Section AA of Block A. (Source: Lane Cove DCP).

DCP Part D commercial Development and Mixed Use

Table 13- DCP Part D Commercial and Mixed-Use Development	Assessment	Compliance
<p>D.1 General Provisions</p> <p>1.1.1 Building to Street frontages (a) Within E2 Zone – street setback of a maximum 2.0m permitted for outdoor seating.</p>	<p>The ground floor is setback 4.2m to accommodate colonnades with landscaping, bicycle parking for visitors.</p> <p>This complies with the design requirement of the Crows Nest TOD which encourages increased setbacks and landscape areas that contribute to the character and the site specific DCP see Figure 41 above.</p>	<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD requirements.</p>
<p>1.1.3 Active Street frontages a) Street and lane frontage uses should incorporate one, or a combination of, the following at street level: I. Entrances to residential and commercial occupying less than 50% of the street frontage II. Retail shop front, cafés or restaurants, if accompanied by an</p>	<p>The proposal would include active street frontages at both the Pacific Highway and Marshall Lane. Retail and commercial uses are proposed at both street frontages to allow an activated visually pleasing facade at each elevation.</p> <p>Vehicle entries are consolidated to a single entry, ground level windows are clear glazing and blank facades are avoided.</p>	<p>Yes</p>

<p>entry from the street III. Active office uses, such as reception, if visible from the street IV. Civic or community building if accompanied by an entry V. Allow for visual interest on the external face of fire escapes, service doors and equipment hatches</p>								
<p>1.1.6 Building Separation – Setbacks.</p> <p>Front setbacks Minimum of 5m (all levels)</p>	<p>Pacific Highway: The proposal would have 4.2m setback to the Pacific Highway at ground floor and nil setback at levels 2- 8.</p> <p>The Crows Nest TOD requires a minimal 6m reverse setback from the middle of the Pacific Highway. A 6m setback from centre line would translate to a Nil setback from Pacific Highway front boundary (front boundary is already 10m distance from centre line of Pacific Highway). The proposal would comply with Crows Nest TOD setback requirements.</p> <p>(Refer to figure 42).</p>	<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD setback requirements.</p>						
<p>Side setbacks 0m – up to 2-storeys 6m – 3 or more storeys</p>	<p>Side Setback: Nil side setback at all levels. Crows Nest TOD only required setbacks from street frontage. No minimum setback control from side boundaries with neighbouring sites.</p> <p>Existing buildings have Nil setbacks at all levels.</p>	<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD setback requirements.</p>						
<p>Laneway setbacks 3m – 1-storey (Ground) 0m – 2-storeys (First Floor) 6m – 3 or more storeys</p>	<p>Marshall Lane: Setback measured to outer face of external wall</p> <p>The Crows Nest TOD requires a minimal 6m reverse setback from the middle of Marshall Lane. A 6m setback from centre line of Marshall Lane would translate to a 2.5m setback from boundary Marshall Lane. The proposal would comply with Crows Nest TOD setback requirements.</p> <table border="1" data-bbox="603 1973 1201 2038"> <thead> <tr> <th data-bbox="603 1973 799 2038">Floor</th> <th data-bbox="799 1973 995 2038">Setback boundary</th> <th data-bbox="995 1973 1201 2038">Setback centre of</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Floor	Setback boundary	Setback centre of				<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD setback requirements.</p>
Floor	Setback boundary	Setback centre of						

			Marshall Ln	
	Lower Ground	App. 2.5m	Majority App. 6.2m	
	Ground Floor	App. 7.3m	App. 10m	
	L2 - L4	App. 4.5m	App. 8.7m	
	L5	App. 9.1m	App. 12.5m	
	L6	App. 14.2m	App. 17.5m	
	L7	App. 16.7m - 25m	App. 20m - 29m	
	L8	App. 22m - 27m	App. 24m - 31m	
<p>1.1.7 Building Design and Exteriors</p> <p>a) Floor to ceiling heights – see Diagram Nos. 4 & 5 and for mixed use development, see Part C 3.13.</p>	<p>The proposed floor-to floor height of the commercial (hotel) levels comply, above ground do not exceed 3.8m (proposed 3.3m).</p>			<p>Yes</p> <p>The Crows Nest TOD Precinct Design Guideline provides specific floor to ceiling heights which override the DCP controls. (Refer to table 10 earlier in this report).</p>
<p>1.1.7 Building Design and Exteriors</p> <p>b) Materials, colours, finishes, proportion and scale of new development should add interest to façades and the streetscape.</p> <p>c) Avoid large unbroken expanses of blank wall on any facade adjacent to the public domain.</p> <p>d) Provide flexible building layouts and floor to ceiling heights which allow variable tenancies or uses on the first floor of a building above the ground floor.</p> <p>e) The design of roof plant and lift overruns is to be integrated into the overall architecture of the building.</p>	<p>The proposal includes high-quality finishes and materials to provide a positive addition to the streetscape.</p> <p>The design avoids large blank wall areas.</p> <p>Retail and commercial spaces are open-plan and can accommodate various future layouts for a variety of tenancies.</p> <p>All roof plant and associated services would be integrated within the building rooftop architecture.</p>			<p>Yes</p>

<p>f) Balconies and terraces particularly where buildings overlook public open spaces. They should be avoided where they overlook the private open spaces and severely impact the privacy of the adjoining residential properties</p>	<p>The proposal would include multiple balconies and communal outdoor spaces and levels 1, 6, 7 and 8. These balconies provide good quality amenity with good access to sunlight. Balconies at each level would include planter boxes on southern end to obscure southern views onto Marshall Lane and the RFB beyond.</p>	<p>Yes</p>
<p>1.2 Excavation a) All development is to relate to the existing topography of the land at the time of the adoption of this DCP. b) Excavation for major development is to be contained within the footprint of the development d) Uses at ground level are to respond to the slope of the street by stepping frontages and entries to follow the slope.</p>	<p>The site has an existing slope from the Pacific Highway to Marshall Lane. The site has 2 levels of existing basement The proposal includes 1 additional level of excavation for basement within the existing building footprint. The proposed excavation is consistent and working with the topography of the site.</p>	<p>Yes</p>
<p>1.3 Design and Location of on-site parking a) Parking of vehicles is prohibited in setback areas b) All developments must incorporate the required car parking on-site. c) All on-site parking, loading facilities and vehicle access points must be: I. accessed from a rear lane wherever available II. fully concealed from view from any public street or arcade III. accessible from only one opening in the rear lane facade for both on-site parking and loading. Access openings are to be fitted with a garage door or roller shutter. e) For developments with a rear lane façade width equal to or</p>	<p>No parking is proposed within a setback area on either frontage. The proposal complies with the parking requirement stipulated in the Crows Nest TOD Design Guideline. The site is benefited by being close proximity to both St Leonards Railway Station and Crows Nest Metro Station, and other forms of public transport such as buses along the Pacific Highway. The Hotel use would result in low-traffic generation as compared to a residential flat building as it would be occupied by short term visitors and tourists. Vehicle access is from Marshall Lane. Basement vehicle access is consolidated to 1 door The rear lane access would include a numerical variation to the 5.5m width control being 6.077m. A condition will be included requiring the width be reduced to ensure compliance. Pedestrian entry point is appropriately</p>	<p>Yes</p>

<p>greater than 12.0m this opening must not be wider than 6.0m.</p>	<p>separated from the vehicle entry point.</p> <p>Parking and services areas located within the building footprint and not visible from the public domain.</p> <p>All proposed ventilation screens are considered integrated within the overall building design</p> <p>The sites existing and proposed basement levels would be adequately ventilated.</p>	
<p>1.4 Carparking</p>	<p>The proposal complies with the parking requirement stipulated in the Crows Nest TOD Design Guideline. The site is benefited by being in close proximity to both St Leonards Station and Crows Nest Metro Station, and other forms of public transport such as buses along the Pacific Highway. The Hotel use would result in low-traffic generation as compared to a residential flat building.</p>	<p>Yes</p> <p>The Crows Nest TOD Precinct Design Guideline takes precedent over the DCP and is complied with.</p>
<p>1.5 Awnings a) Continuous street frontage awnings are to be provided for all new developments on main streets or major retail streets in centres except where colonnades are required.</p>	<p>The building proposes a colonnade at the Pacific Highway frontage for added pedestrian amenity therefore, an awning is not required in this instance.</p>	<p>N/A</p>
<p>1.6 Reflectivity a) Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.</p>	<p>The finishing materials on external facade facing Pacific Highway and Marshall Lane include glazing and solid screens, and landscaping on structure. The finishes are not anticipated to result in any adverse glare impacts.</p>	<p>Yes</p>
<p>1.7 External Lighting a) Any external lighting of buildings is to be considered with regard to: I. the integration of external light fixtures with the architecture of the building (for example, highlighting external features of the building), II. the contribution of the visual effects of external lighting to the character of the building, surrounds and skyline, III. the energy efficiency of the external lighting system, IV. the amenity of residents in the</p>	<p>No flood lighting is proposed to external design.</p> <p>All external lighting is sympathetic to the site and surrounds. It would not result in adverse amenity impacts to neighbouring residential properties to the south.</p>	

locality.		
<p>1.8 Landscaping</p> <p>a) Locate basement car parking predominately under the building footprint to maximize opportunities for landscaped area.</p> <p>b) Deep soil zones in atria, courtyards and boundary setbacks are encouraged</p>	<p>The site includes no existing deep soil. All basement works are within the existing building envelope.</p> <p>The proposed planting on structure would significantly increase the existing vegetation that can be accommodated on site.</p>	
<p>1.9 Planting on Structures</p> <p>a) Areas with planting on structures should be irrigated with recycled water and appropriate drainage provided.</p> <p>b) Provide sufficient soil depth and area to allow for plant establishment and growth. The recommendations are:</p> <p>I. Large trees (canopy diameter of up to 16m at maturity)</p> <ul style="list-style-type: none"> - i. minimum soil volume 150m³ - ii. minimum soil depth 1.3m - iii. minimum soil area 10m x 10m area or equivalent <p>II. Medium trees (8m canopy diameter at maturity)</p> <ul style="list-style-type: none"> - i. minimum soil volume 35 m³ - ii. minimum soil depth 1m - iii. approximate soil area 6m x 6m or equivalent <p>III. Small trees (4m canopy diameter at maturity)</p> <ul style="list-style-type: none"> - i. minimum soil volume 9m³ - ii. minimum soil depth 800mm - iii. approximate soil area 3.5m x 3.5m or equivalent <p>IV. Shrubs</p> <ul style="list-style-type: none"> - i. minimum soil depths 500-600mm <p>V. Ground cover</p> <ul style="list-style-type: none"> - i. minimum soil depths 300-450mm <p>VI. Turf</p> <ul style="list-style-type: none"> - i. minimum soil depths 100-300mm. 	<p>Indicative plant schedule on structure includes 9 replacement trees.</p> <ul style="list-style-type: none"> • 1 x tree at ground floor. • 6 x trees on level 6 • 2 x trees on level 7 <p>The landscaping plan also includes 25 large shrubs, 752 smaller shrubs & grasses, and 159 groundcovers & spillover.</p> <p>All soil depths will be conditioned to comply.</p>	Yes
<p>1.10 Solar Access</p> <p>a) Commercial and mixed-use developments are not to reduce sunlight to dwellings in the adjacent or same zone below a minimum of 3 hours of sunlight</p>	<p>The design has elected to maintain a stepped form down to the Marshall Lane side of the building to preserve solar access to the southern neighbours at 1-13A Marshall Avenue.</p>	Yes

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<p>on a portion of the windows of the habitable rooms between 9am and 3pm on 21 June</p> <p>c) Habitable rooms in at least 70 percent of dwellings in high density residential developments, should receive a minimum of three hours direct sunlight between 9 am and 3 pm on 21st June, in total between any portions of those rooms. In dense urban areas a minimum of two hours may be acceptable. 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.</p>	<p>The permitted height control of 38m in context to the topography and orientation of the site will unavoidably cause some minor additional shadows to the north facing apartments on the lower levels of 1-13A Marshall Avenue. Additional shadows cast are as result of a permissible building envelope.</p> <p>It is worth noting that under the Crows Nest TOD which overrides the DCP the design could have incorporated a 38m high built-form at the Marshall Lane frontage which would have significantly greater shadow impacts onto 1-13A Marshall Avenue.</p> <p>The sun diagrams confirm that all northern facing units would retain sun access between 9.00am and 11.00am at mid-winter. At 12 noon all units on levels 1-5 retain solar access. However, two lower-level units on the western end of the building, and two-lower level units in the central area which are recessed a further 3m into the building would lose sun at 12 noon. It is noted that the central recessed units are crossflow units which also have south facing windows with secondary access to daylight (not sunlight).</p> <p>Therefore, all but 4 of 38 north-facing units (91%) would receive 3 hours solar unimpacted access between 9.00am and 12.00 noon at winter solstice. The 4 remaining units would receive 2 hours unimpacted solar access between 9.00am and 11.00am.</p> <p>The proposal is considered acceptable in terms of solar access to neighboring development and the public domain.</p>	
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<p>1.11 Access and Mobility</p> <p>a) Any new development must comply with the relevant Australian Standards</p>	<p>The development satisfies the accessibility provisions of the BCA pertaining to access to proposed hotel.</p>	<p>Yes</p>
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<p>for Design for Access and Mobility, Adaptable Housing, Parking Facilities, Lifts, Escalators, Moving Walks and with Part F of this DCP – Access and Mobility.</p>	<p>Refer to DDA capability report in Annexure 27.</p>	
<p>1.13 Signage a) All signage shall comply with Part N of this DCP – Signage and Advertising.</p>	<p>The proposal does not seek approval for any signage. A condition will be include requiring a separate DA for signage.</p>	<p>N/A</p>

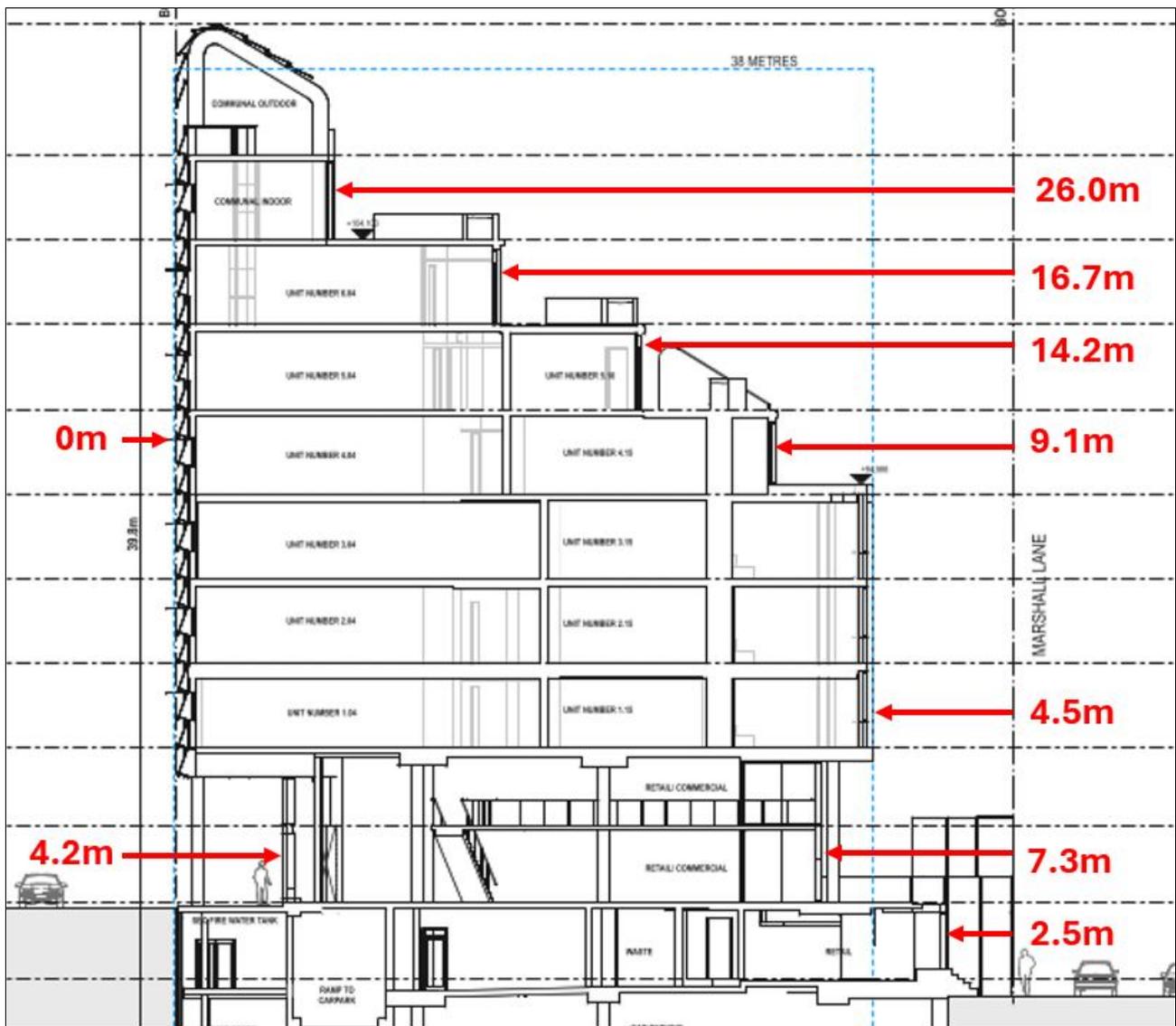


Figure 42: Section with annotated setbacks. (Source: (Source: Tonkin Zulaikha Greer architects).

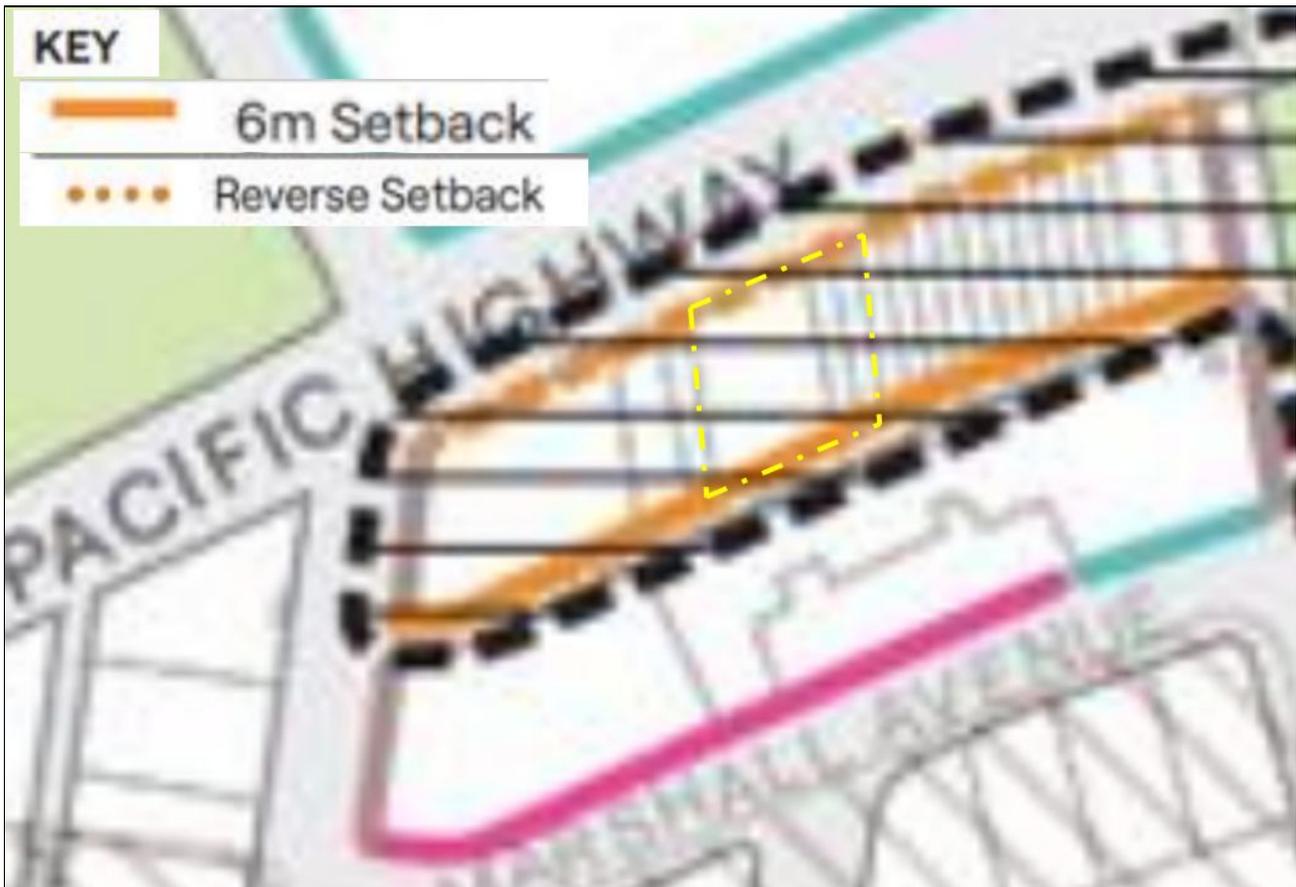


Figure 43: Crows Nest TOD Map. 6m ‘Reverse’ setback from centre of Pacific Highway and Marshall Lane.

Table 14- Part D Commercial and Mixed-Use Localities	Assessment	Compliance
Locality 1 -St Leonard’s Precincts – Block 1: Marshall Precinct		
Block A Bound by the Pacific Highway to the north, Canberra Avenue to the east, Berry Road to the west and Marshall Lane to the south.		
<p>1. Height: Overall building height - refer LEP 15 m podium+ sloping height plane</p>	<p>The proposal complies with the applicable height standard prescribed by the Lane Cove LEP. (Subject to a clause 4.6 variation due to the existing excavated basement on site) The proposal has also been designed to respond to the 15m and 32-degree height plane of the Lane Cove DCP. The development would fully comply with the 32 degree pitch with the exception of the lift overrun which has no adverse shadow impacts.</p>	<p>Yes</p>
<p>2. Street frontage height, Pacific Hwy: Variable, dependent on sloping height plane</p>	<p>Superseded by and complies with Crows Nest TOD frontage height requirements.</p>	<p>Yes</p>

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3. Uses: active uses at ground or street level to Pacific Highway and Canberra Avenue, desirable to Berry Road, commercial above.	The proposal would have active retail spaces fronting the Pacific Highway and Marshall Lane with Hotel above.	Yes
4.1 Street setback Pacific Hwy: No setback to property boundary but Colonnade setback applies.	Proposal complies with colonnade setback and nil setback above.	Yes
4.3 Street setback Marshall Lane: 6m setbacks to 15m high podium, 3m setback to car park entries.	Partial 2.5m setback at car parking entry level 4.5m setback to 15m height 9.1m setback However, the DCP controls are superseded by the Crows Nest TOD design guide setback requirements.	Yes Superseded by and complies with Crows Nest TOD setback requirements.
5. Colonnade: 4m depth from building edge and 2-storeys clear height.	Colonnades with a width of 4m and a 2-storey height are proposed to the Pacific Highway as detailed above.	Yes
6. Vehicle entry and service vehicles: Via Marshall Lane.	Single vehicular entry is proposed via Marshall Lane	Yes
7. Car parking: underground or below Pacific Highway level, access from Marshall Lane.	Basement carparking is proposed with access from Marshall Lane	Yes
8. Landscaping / public domain: Colonnade to be paved in high-quality material to accommodate continuous pedestrian pathway along the Pacific Highway. Continuous accessible pathway to be provided along Marshall Lane setback zone.	High-quality colonnade arrangement proposed at Pacific Highway frontage giving greater amenity to pedestrians and building occupants. Both street frontages will include integrated landscaping in the form of planter boxes as shown in the attached Landscape Plan (Refer to Annexure 3).	Yes
9. Privacy: Where necessary, building design to include devices/screens to prevent overlooking to residential dwellings.	Balconies at each level would include planter boxes on southern end to obscure southern views onto Marshall Lane and the RFB beyond. The building steps back from Marshall Lane at each level ensure greater separation distances.	Yes
10. Isolated sites: Proposed development is to avoid the creation of isolated sites.	No isolated site as result of DA.	Yes

Table 15- DCP Part K Motels	Assessment	Compliance
<p>1.1 Objective The objective of this section is maintaining, and where necessary, enhancing the existing high standard of residential development in the R4 Zone, whilst providing for the establishment of motel developments.</p>	<p>N/A Hotel in E2 Zone not R4 Zone.</p>	<p>NA</p>
<p>1.2 Minimum Site Ares of less than 2,000m².</p>	<p>Hotel in E2 Zone not R4 Zone</p>	<p>NA</p>
<p>1.3 Building Design and Scale a) To ensure the preservation of the existing residential character in the vicinity of the development, the architectural style of motel proposals must be sympathetic to the adjoining surrounding buildings in terms of height, materials used, roof pitch and overall building character b) the area of the site devoted to driveways and vehicle turning areas should be minimised. Designs which include an excessive paved area or which do not screen paved areas adequately from the street or neighbouring development, will not be accepted, Similarly, design which show little imagination in the placement of building mass and with straight driveways are also unacceptable.</p>	<p>The site at 28-42 Pacific Highway is currently 100% commercial. The proposed Hotel would comply with the built form and sloping sun plan control of the Marshall Precinct.</p> <p>The height and density are in principle compliant with the Lane Cove LEP controls. (Subject to a clause 4.6 variation due to the existing basement on site)</p> <p>The design was subject to a Design Excellence assessment by the Design Review panel prior to lodgement and has adopted comment and recommendation of the panel minutes.</p> <p>The site is currently 100% hard paved the proposal would include significant planting structure to increase landscaping associated with the site.</p>	<p>Yes</p>
<p>1.4 Views and Overshadowing a) the siting of a motel on an allotment needs to be related to the particular effect the development may have on the adjoining dwellings. For a proposal to be sympathetic to the existing immediate neighbouring buildings, it is required that the development will not significantly affect any available views from adjoining dwellings, nor significantly</p>	<p>The proposal would not obscure water or scenic views to the south and southeast. Properties north of the site are separated by a 6-lane highway and are generally commercial in nature or the Gore Hill, Parkland /cemetery.</p> <p>The proposed development provides acceptable solar access to the neighbouring properties and the public domain. This is demonstrated through compliance with the solar access requirements of the direct Southern neighbour at 1-13 Marshall Avenue ADG where over 70% of the north facing</p>	<p>Yes</p> <p>The Crows Nest TOD Design Guideline provides provisions relating to views and solar access for development within the</p>

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<p>decrease the amount of sunshine access available to the adjoining allotments. designed that a total of five hours sunshine is available daily over 80% of the southern contiguous allotment during 21st June.</p>	<p>apartments would receive more than 3 hours of solar access. (91% receive 3 hours solar compliance).</p> <p>In any regard the Crows Nest TOD provisions prevail over the DCP which are complied with by the subject design.</p>	<p>precinct. The guideline provisions prevail over the DCP in this instance</p>
<p>1.5 Setbacks a) Building setback from a public street are to match that of neighbouring residential development. Side and rear boundary setbacks should not be less than that of neighbouring or nearby flat development</p>	<p>Pacific Highway: The Crows Nest TOD requires a minimal 6m reverse setback from the middle of the Pacific Highway. A 6m setback from centre line would translate to a Nil setback from Pacific Highway front boundary (front boundary is already 10m distance from centre line of Pacific Highway). The proposal would comply with Crows Nest TOD setback requirements which take precedence over the DCP.</p> <p>Marshall Lane: The Crows Nest TOD requires a minimal 6m reverse setback from the middle of Marshall Lane. A 6m setback from centre line of Marshall Lane would translate to a 2.5m setback from boundary Marshall Lane. The proposal would comply with Crows Nest TOD setback requirements.</p>	<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD setback requirements.</p>

Table 16 - DCP Part O Stormwater Management	Assessment	Compliance
	<p>Concept stormwater has been reviewed by Council Stormwater Engineer who is generally supportive subject to draft conditions.</p>	<p>Yes- subject to draft condition.</p>

Table 17 - DCP Part Q Waste Management	Assessment	Compliance
<p>Include a <i>demolition, construction and change of use of a site/premise, must be accompanied by a Waste Management Plan (WMP). In addition to submission of a WMP, the waste management facilities proposed as part of the development, must be clearly illustrated on the plans of the proposed development,</i></p>	<p>WMP has been reviewed by Council Waste Officer who is generally supportive subject to draft conditions.</p>	<p>Yes</p>

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<p><i>accompanying the DA. Note: persons carrying out complying or exempt development are encouraged to minimise the generation of waste in the construction and operation of any such use or activity, and to deal with any waste generated in accordance with the above objectives.</i></p>		
<p>4.5 Commercial Development and Change of Use -waste</p>	<p>The application is supported by an Operational Waste Management Plan by <i>MRA Consulting Group</i>, which was supported buy Council waste and sustainability officers.</p> <p>The Hotel would not accumulate a large volume of waste as it would cater for short term stays tourists. The Hotel would not accommodate room service or a dedicated restaurant.</p>	<p>Yes</p>
<p>4.6 Mixed Use Development</p>	<p>Separate and self-contained waste management facilities are proposed for the Hotel and the retail components of the proposal</p>	<p>Yes</p>

<p>Table 18 - DCP Part R Traffic, Transport and Parking</p>	<p>Assessment</p>	<p>Compliance</p>
<p>2.2 Electric Vehicle Infrastructure</p>	<p>The applicant has indicated they are happy to Council to condition EV charging stations in the basement</p>	<p>Yes- subject to draft condition.</p>
<p>2.3 Parking rates</p>	<p>The application proposes 23 off street parking spaces.</p> <ul style="list-style-type: none"> • 13 (including 2 accessible spaces) x hotel spaces; • 1 x Courier/delivery bay; • 2 x car share spaces; and • 7 (including 1 accessible space) x Commercial/retail spaces <p>The DCP requires 40 spaces for the Hotel and 13 spaces for the retail component. Total 53.</p> <p>The shortfall is considered acceptable in this instance based on the following.</p> <p>The Crowns Nest TOD controls specify no minimum parking rate and superseded the Lane Cove DCP.</p>	<p>Yes</p> <p>Superseded by and complies with Crows Nest TOD parking requirements.</p>

	<p>The site is in close proximity to public transport (400m walking distance to St Leonards Station, close proximity to Crows Nest Metro).</p> <p>Excavation for basement is limited due to 1 additional level due to proximity of the zone of influence of the underground Crows Nest Metro line. Therefore, limiting the volume of vehicle spaces.</p> <p>The use as a Hotel and retail at ground floor would be low vehicle use due to short term stay for visitors.</p> <p>The proposal was reviewed by Council's traffic engineers who considered the shortfall with the DCP acceptable due to compliance with the Crows Nest TOD and Hotel use.</p>	
2.7 Bicycle Parking	<p>42 Bicycle spaces required</p> <p>50 Bicycle spaces provided</p>	Yes
2.8 Motorcycle Parking	<p>22 motorcycle spaces required</p> <p>22 motorcycle spaces provided</p>	Yes
2.9 Disabled Parking Provision	<p>Accessible spaces provided as per the requirements.</p>	Yes

12. 4.15(1) (b) IMPACTS OF DEVELOPMENT

The proposed development would have acceptable impacts on neighbouring properties and the public domain in terms of overshadowing, visual privacy, acoustic privacy, traffic and parking. The proposal presents a development outcome that is consistent with the aims and objectives of the Lane Cove LEP and relevant controls.

The proposed development is consistent with the desired future character as informed by the Crows Nest Transit Orientated Development Accelerated Precinct.

Accordingly, the proposal would not have unreasonable impacts on neighbouring properties or the public domain.

The proposed development complies with the solar access provisions of the TOD.

13. 4.15(1) (C) SUITABILITY OF SITE

The site suitability has been established by the Crows Nest TOD as being within an "accessible area", being 500m walking distance from St Leonards Railway Station and Crows Nest Metro. The proposal would appropriately locate short term accommodation in proximity to key areas such as Royal North Shore Hospital and the education facilities located in North Sydney.

The land is appropriately zoned to permit the development (E2 Commercial centre), and the development meets the objectives of the Lane Cove LEP.

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

14. 4.15(1) (d) RESPONSE TO NOTIFICATION

Council received 6 submissions in response to the notification period. The concerns have been summarised in **Table 19** below.

Table 19 – Summary of submissions and Council’s response	
CONCERNS RAISED IN SUBMISSIONS	RESPONSE
<p>Concerns with shadows impacts to neighboring residential development to the south</p>	<p>As discussed earlier in this report, the permitted height control of 38m in context to the topography and orientation of the site will unavoidably cause some additional shadows in the afternoon to the north facing apartments on the lowest level of 1-13A Marshall Avenue. Additional shadows cast are as result of a permissible building envelope.</p> <p>It is worth noting that under the Crows Nest TOD which overrides the DCP the design could have incorporated a 38m high built-form at the Marshall Lane frontage which would have significantly greater shadow impacts onto 1-13A Marshall Avenue. The applicant has opted to comply with the DCP which would significantly reduce overall shadow impacts.</p> <p>The sun diagrams confirm that all northern facing units would retain sun access between 9.00am and 11.00am at mid-winter. At 12 noon all units on levels 1-5 retain solar access. However, two lower level units on the western end of the building, and two lower level units in the central area which are recessed a further 3m into the building would lose sun at 12 noon.</p> <p>It is noted that the central recessed units are crossflow units which also have south facing windows with secondary access to daylight (not sunlight).</p>
<p>Concerns with exceedance of building height control</p>	<p>If measured from natural ground level the proposal would comply with the 38m Height control. However, the definition of ‘building height’ in the Lane Cove LEP is measured from ‘existing ground level’. This results in height being measured below natural ground level and down to the slab of the 2nd level of existing basement carparking. Had the application been lodged where there was no basement the application would fully comply with the Lane Cove 38m height requirements. (Refer to Figures 36 and 37 earlier in this report).</p>

	<p>The application included a Clause 4.6 variation statement to justify the ‘technical’ variation.</p> <p>The building height is compatible with the evolving character of the Crows Nest Transit-Oriented Development Precinct and aligns with the intended urban form under the Lane Cove LEP 2009 and Crows Nest TOD Design Guide.</p> <p>The proposed variation to the height control of LCLEP 2009 is justified and is supported in the circumstances of this case. The development satisfies the objectives of the control, and the criteria outlined in Clause 4.6. As such, the variation is well founded and would achieve a better planning outcome than enforcing strict compliance with the standard.</p>
<p>Concerns that proposal is not for a legitimate Hotel use but is proposing serviced apartments/boarding house by stealth.</p>	<p>The application proposes a mixed-use Hotel building with retail uses at ground floor.</p> <p>The Lane Cove LEP defines a Hotel as:</p> <p><i>hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—</i></p> <p><i>(a) comprises rooms or self-contained suites, and</i> <i>(b) may provide meals to guests or the general public and facilities for the parking of guests’ vehicles,</i></p> <p>The subject proposal is consistent with the use of a Hotel as defined in the Lane Cove LEP 2009.</p> <p>The proposed hotel is designed to be flexible in its use and could potentially operate as a self-check-in / self-check-out model including provision for a concierge model option. Guests would receive a digital check-in link and a unique access code or QR code prior to arrival. Guests proceed directly to their room, and check-out is completed via the hotel’s management platform.</p> <p>A draft condition requiring a full Plan of Management (PoM) will be required to be prepared by the future operator, addressing the final operational model, staffing arrangements, concierge integration (if adopted), and guest management procedures. This will be required to be submitted to Council prior to the issue of an Occupation Certificate.</p> <p>Refer to Hotel Use section 10 on pages 26-27 in this report.</p>

<p>Concerns with shadow diagrams which do not adequately demonstrate impacts.</p>	<p>The proposal included solar access diagrams at 9.00am, 12.00noon and 3.00pm at mid-winter in plan which confirm where the additional shadows are cast.</p> <p>The documentation also includes sun view diagrams at hourly intervals between 9.00am and 3.00pm which accurately depict windows and balconies of the buildings to the south receiving sola access.</p>
<p>Concerns that proposed Hotel building will have adverse impact on the architectural character of the streetscape of the Pacific Highway and Marshall Lane.</p>	<p>The existing buildings on site including the five-storey commercial building (34-42 Pacific Highway) and two-storey commercial terraces (28, 30 and 32 Pacific Highway) are not heritage items. The strategic vision and associated planning controls of the LEP permit an uplift to greater building densities along the Pacific Highway.</p> <p>The proposed development was subject to a Design Review Panel prior to lodgment and achieves design excellence.</p> <p>The proposal would include retail spaces along the Pacific Highway with colonnade. Most importantly the proposal introduces retail spaces to Mashall Lane. These spaces would activate these frontages, providing a pedestrian friendly laneway revitalisation link between Berry Road and Wadangarri Park / St Leonards Railway station.</p>
<p>Concerns that the proposed building will obstruct view from eastbound traffic to rooftop signage on 2-4 Pacific Highway.</p>	<p>From approximately 130m distance and closer, eastbound vehicles would be able to view the roof top signage.</p> <p>The proposed building will only begin to obstruct views to the signage when eastbound traffic is a significant distance away. The impacts are limited to when eastbound traffic are approaching the intersection with Reserve Road as shown in the submission. It is argued that at such a distance, the content of the sign would be less identifiable from a driver's perspective.</p> <p>As assessed earlier this report, the clause 4.6 variations to height and FSR are based arise from existing excavated basement levels. The resulting bulk and scale is consistent with the envisioned built form of development within the Crows Nest TOD Area. The impacts on sightlines to the signage from greater than 135m distance are not a reasonable justification to refuse the development.</p>



<p>Concerns on financial impact of the sign being less visible for traffic and loss of revenue.</p>	<p>Financial impacts/property values are not a planning consideration in the assessment of a development application.</p>
<p>Concerns with shortfall of vehicle spaces as required in the Lane Cove DCP.</p>	<p>The proposal complies with the parking requirement stipulated in the Crows Nest TOD Design Guideline. The site is benefited by being close proximity to both St Leonards Railway Station and Crows Nest Metro Station, and other forms of public transport such as buses along the Pacific Highway. The Hotel use would result in low-traffic generation as compared to a residential flat building as it would be occupied by short term visitors and tourists.</p> <p>Excavation for basement is limited to 1 additional level due to proximity of the zone of influence of the underground Crows Nest Metro line. Therefore, limiting the volume of vehicle spaces. The proposal was reviewed by Council’s traffic engineers who considered the shortfall with the DCP acceptable due to compliance with the Crows Nest TOD and Hotel use.</p>

15. SECTION 7.11 ASSESSMENT

The proposal is subject to the provisions of the Lane Cove Section 94 Contributions Plan (now Section 7.11) which levies new developments to assist in catering for the demand placed on existing Council community facilities and/or infrastructure. The Section 7.11 contribution payable is

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28 - 42 PACIFIC HIGHWAY ST LEONARDS HOTEL MIXED-USE DEVELOPMENT.

calculated in accordance with the Plan (2025/2026 rates) being the average number of persons per dwelling size as detailed in the following table:

GROSS FLOOR AREA	COST PER SQM (COMMERCIAL RETAIL RETAIL)_
6305.6m ²	\$165.39 (25/26)
TOTAL	\$1,042,883.184

The Section 7.11 contribution payable is reduced through any **existing credit applied** to the existing entitlements as detailed in the following table:

EXISTING CREDIT GROSS FLOOR AREA	COST PER SQM (COMMERCIAL RETAIL RETAIL)_
Existing: 3169 m ²	\$165.39 (25/26)
TOTAL	\$524,120.91

NET TOTAL MINUS CREDIT = \$1,042,883.184 - \$524,120.91 = \$518,762.274

16. CONCLUSION

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

The proposal would provide a mixed-use Hotel development with retail spaces at ground floor and 99 rooms in a highly accessible location to service the needs of visitors to the area including Royal North Shore Hospital.

The application includes a variation to the height and floor space ratio standards. The variations arise from the existing basement carparking which altered 'existing' ground levels of the site resulting in technical breaches of both height and calculable GFA. The negligible variations are supported with Clause 4.6 Variation Requests that have been submitted with the DA. These requests demonstrate that the proposed variation to the height and floor space ratio standards are acceptable and that strict compliance with the standard is unreasonable and unnecessary, in the circumstances of the case with adequate environmental grounds justifying the variations.

The proposal would be consistent with the relevant planning controls, would provide for much needed short-term/visitor accommodation in the area and achieve design excellence within the Crows Nest Transit Orientated Development area guideline.

On balance as the proposed development would be acceptable, it is reported to The Sydney North Sydney Planning Panel (SNPP) that the application is recommended for approval subject to the provided conditions.

RECOMMENDATION

That:-

- (a) That the Sydney North Planning Panel at its meeting of 10 December 2025, exercising the functions of the Council as the Consent Authority pursuant to Clause 4.16 of the Environmental Planning & Assessment Act 1979 approve a variation to the Height prescribed by Clause 4.3 of the Lane Cove Local Environmental Plan 2009, and approved

the variation to Floor Space Ratio prescribed by Clause 4.4 of the Lane Cove Local Environmental Plan 2009 as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest as it is consistent with the objectives of that particular standard and the objectives for development within the zone.

- (b) That pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel, at its meeting of 10 December, approve the proposed Development Application DA97/2025 to the approved a mixed use commercial hotel building with 99 hotel units, communal living and communal outdoor areas, basement parking, gym and facilities and associated works at 28 - 42 Pacific Highway St Leonards subject to conditions contained in **Annexure 1**.

Mark Brisby
Director - Planning and Sustainability
Planning and Sustainability Division

ATTACHMENTS:

There are no supporting documents for this report.