

Our Ref: M240413

24 March 2025

Attn: Lane Cove Local Planning Panel

**SUBMISSION TO PANEL – PLANNING PROPOSAL 40
2 MARSHALL AVENUE, ST LEONARDS**

We act on behalf of the Applicant in relation to the planning proposal for the land known as No. 2 Marshall Avenue, St Leonards.

We have reviewed Councils Assessment Report to the panel which recommends refusal of the planning proposal. We ask that the panel reconsider this recommendation and support the planning proposal on the basis that it has both site and strategic merit.

Below we detail a number of reasons as to why the planning proposal should be supported by the panel and recommended to continue through the proposal process.

Site History

Council recommended, and the SNPP approved DA79/2022 on April 6, 2023, on the basis that DA79/2022 met all of the objectives of Clause 7.1 for Area 1 and 2 in the St Leonards South LEP including:

- 1348m² of public open space
- The provision of 14 affordable housing units

And demonstrated the redevelopment potential for 2 Marshall Ave.

The St Leonards South LEP Amendment in November 2020 allocated an incentive height of 55m and FSR 3.851 to 2 Marshall Ave, which was not utilised in DA79/2022. Upon approval, the height of 2 Marshall Ave. reverted to the 2009 LEP, which is now 16 years old. This PP effectively seeks to reinstate the height and FSR allocated to the site as part of St Leonards South LEP amendment and to provide diverse housing, additional open space, and efficient traffic circulation.

The current planning controls are outdated and inadequate

The current controls for St Leonards South established in November 2020 sought to facilitate a specific layout for high-density RFBs and 1,300m² of public open space in Area 1 and Area 2 of St Leonards South Precinct.

The subsequent development consents have created high-density RFBs and will deliver 1,300m² of public open space.

The current LEP provisions are inappropriate for the site and its context (Height 9.5m, FSR 0.5:1) and need to change.

The proposal has strategic merit for high density residential development

- Zone R4
- Adjacent to the Crows Nest TOD
- Surrounded by R4, MU1 and E2 Zones
- Creates opportunities for housing diversity in St Leonards South Precinct
- Creates additional public open space compatible with approved open space and green links



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The site-specific merit for co-living is demonstrated in the schematic diagrams.

The site context is further supported by the following recently approved 4.55 variations (by the SNPP) St Leonards South – all of which Council has recommended for approval:

- 13/8/24 – 13-19 Marshall Ave. New height 57.2, new FSR 4.5:1
- 6/3/25 – 12 Marshall Ave. New height 56.85 New FSR 4.485:1
- 2/4/25 (Scheduled) – 1-3 Canberra & 4-8 Marshall new height 84.5m New FSR 5:1

NSROC Design Review Panel

This planning proposal has NOT been presented to the design review panel

The presentation to the design review panel on 26 March 2024 was a previous concept, proposing different height, FSR and built form. All comments presented in the assessment report from that NSROC report should be disregarded.

Submissions to the public notification of the planning proposal

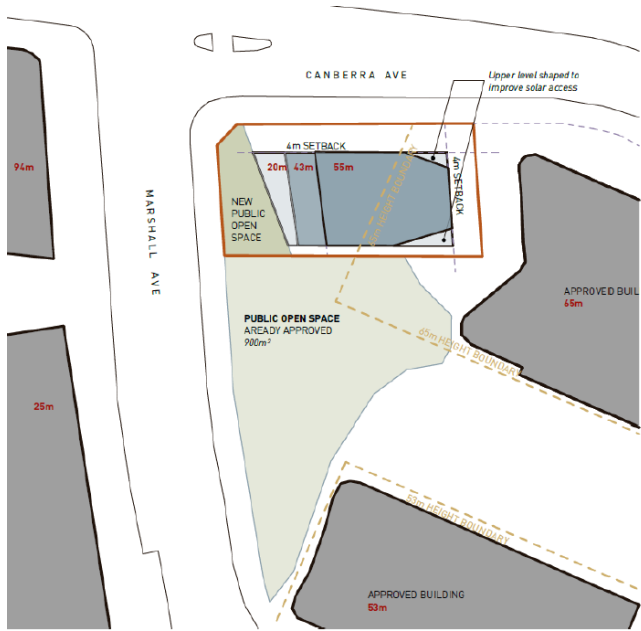
- Most submissions raise issues that can only be resolved by a DA (views, shadowing, traffic, compliance)
- Views and shadows – likely no impact given surrounding existing and approved developments are larger buildings. The built form of DA79/2022 was demonstrated to increase solar access to the proposed public open space compared to the St Leonards South Master Plan (see Council Report to Sydney North PP 7 December 2022).
 - The majority of Area 1 (including 2 Marshall) is subject to shadows in mid-winter due to existing large scale developments north of the site (including 88 Christie Street, 1-13 Marshall Avenue and 15-19 Marshall Avenue) and the existing topography which falls to the south (pg 12)
 - Despite the existing solar conditions of the overall area, an orderly and economic use of 2 Marshall Avenue as a standalone site can be achieved. Council has discretion to approve any future redevelopments of 2 Marshall as a standalone site with variations to the LC DCP including solar access controls.

Response to the recommendations of the report

<u>Report recommendation</u>	<u>Comment</u>
A. Does not Pass the Strategic Merit Test	
Reason 1) Is inconsistent with the Greater Sydney Region Plan Objective 31 that “public open space is accessible, protected and enhanced”.	Incorrect The planning proposal includes the dedication of new public open space as shown in the concept plan layout. The public open space creates a direct thoroughfare from Marshall Avenue to the future public open space on the neighbouring site.





	<p>Thus it provides efficient traffic and pedestrian circulation as per clause 7.1 of the St Leonards South LEP.</p> <p>“protection and enhancement” details can be resolved with a future DA.</p>  <p>Figure 15 Draft building envelope indicating public open space offering on the site.</p>
<p>Reason 2)</p> <p>Is inconsistent with the North District Plan Actions 31 & 34 which is to deliver and implement a Place Strategy and Infrastructure Plan for the St Leonards health precinct and to “deliver new high open space, upgrade public areas, and establish collaborative place-making initiatives” – in St Leonards</p>	<p>Incorrect</p> <p>The proposal includes new public space consistent with the neighbouring site and broader context.</p>
<p>Reason 3)</p> <p>Is inconsistent with the State Government's Crows Nest TOD plans (including the Design Guide) which show this site specifically as public open space.</p>	<p>Incorrect</p> <p>The site is not within the Crows Nest TOD and the Design Guide does not apply.</p>
<p>Reason 4)</p> <p>Is inconsistent with Section 9.1 Ministerial Direction 1.13 because it does not achieve (and undermines) the intended outcomes of</p>	<p>Incorrect</p> <p>The Crows Nest TOD sets the future character and form for the locality which is high density Mixed uses and Commercial Centre.</p>



the Crows Nest TOD plans and is not of minor significance.	<p>The Proposal is consistent with this character.</p> <p>The current planning controls limit future development to a low density-built form which is inconsistent with the character established by the adjoining Crows Nest TOD.</p>
<p>Reason 5)</p> <p>Is inconsistent with the following actions of Council's Local Strategic Planning Statement:</p> <p>a. Implement Council's planning responses in St Leonards South to facilitate delivery of the 6 - 10 year (2021 - 2026) housing supply.</p> <p>b. Improve connections to the Green Grid, where possible, to enhance liveability.</p> <p>c. Identify opportunities for the provision of more open space in the planning proposal and development assessment phases</p>	<p>The LSPS was adopted March 2020.</p> <p>The St Leonards South LEP amendments were effective from November 2020.</p> <p>The St Leonards South LEP Amendments were used to assess and determine DA79/2022 and included a Clause 4.6 variation to the site area.</p> <p>This PP is needs to appropriately respond to the current and future circumstances for the site and its context which is:</p> <ul style="list-style-type: none"> - A high density residential and mixed use precinct - Connectivity to the new open space network <p>The PP DOES:</p> <ul style="list-style-type: none"> (a) Deliver housing supply <p>And further it improves on housing diversity in comparison to St Leonards South LEP Amendments</p> <ul style="list-style-type: none"> (b) Improves green grid connectivity by dedicating additional public open space (c) Provides MORE public open space than was required by St Leonards South LEP Amendments. <p>Note:</p> <p>Area 1 and 2 were anticipated by the LEP amendment and precinct plan to provide 1,300m2 of new public open space.</p> <p>DA79/2022 includes Condition FA.14 which requires 1,300m2 of embellished public open space to be dedicated to Council.</p> <p>This proposal includes new public open space IN ADDITION to the 1300m2 anticipated by the St Leonards South LEP amendments</p>
Reason 6)	<p>The affordable housing requirements for Area 1 were met by DA79/2022.</p>

<p>Is inconsistent with Council's adopted Local Housing Strategy which states that Council should only pursue planning proposals or other planning framework changes in the Lane Cove LGA if they include a principal affordable housing purpose. The proposal actively seeks to remove itself from this requirement</p>	<p>The Departments conditional approval of the Housing Strategy was provided in a letter dated 14 September 2021.</p> <p>The letter specifically states:</p> <p><i>"The LHS discusses the importance of <u>housing diversity</u> in the LGA and commits to reviewing and implementing updated planning controls in order to encourage greater housing diversity in the LGA. This is a sufficient response, subject to the requirements identified below.</i></p> <p><i>The LHS discusses housing affordability and commits to preparing and implementing an Affordable Housing Strategy; however, commitment to further actions for delivery are required by the requirements below.</i></p> <p><i>My approval is subject to the following requirements:</i></p> <p><i>(including)</i></p> <p>2. Council is to review LEP and DCP controls which restrict the development of smaller, diverse and fit-for-purpose housing and provide an update to the Department by December 2022. This should consider:</p> <ul style="list-style-type: none"> • the introduction of controls to encourage the delivery of diverse housing typologies (such as those in the Low Rise Housing Diversity Code) where the Code does not apply/does not enable delivery of housing through an exempt or complying mechanism <p>5. Council is to prepare principles for assessing proponent-initiated requests for planning proposals, including out-of-sequence criteria to consider any additional opportunities for growth that are not identified in the LHS, or for urban renewal opportunities. In fulfilling this requirement, Council should use and expand upon its Local Strategic Planning Statement (LSPS) Principles for Location of Additional Housing. Advisory notes have been provided that include appropriate heads of consideration.</p> <p><i>Any planning proposals for new housing development will be assessed against the Lane Cove Council LHS, the requirements above and advisory notes attached. Any State Government policy changes that may occur in the future are to prevail in the event of any inconsistency."</i></p> <p>None of the above requirements have been implemented.</p>
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	<p>Therefore, it is incorrect to rely this aim of the Local Housing Strategy when it is clearly contradicted by the Department's requirements.</p> <p>NOTE: Attach original letter from Dept conditionally supporting the Local Housing Strategy</p>
B. Does not comply with Section 3.33 of the NSW Environmental Planning and Assessment Act	
<p>Reason:</p> <p>This section of the Act deals with the preparation, explanation and justification of Planning Proposals – which requires Proposals to state whether they will give effect to both a Local Strategic Planning Statement and comply with the relevant directions under section 9.1. Having considered the above, the Planning Proposal is inconsistent with Section 3.33 (2)(c) of the EP&A Act because the Planning Proposal will not “give effect to” Council's Local Strategic Planning Statement and does not comply with the relevant Section 9.1 Ministerial Direction (i.e. Direction 1.13).</p>	<p>See above Section A Reason 5.</p>
C. Does not pass the Site-specific Merit Test	
<p>Reason 1)</p> <p>Both State Government and Council plans show this site as public open space (along with their surrounds) with no residential development. This is confirmed across a range of endorsed plans. It is correct that the area around the site was to be developed as residential with attached open space however Council's plans were for the developer to acquire this site and use it as public open space.</p>	<p>Incorrect</p> <p>There are no State Plans which require the site to be public open space.</p> <p>The TOD Accelerated Precinct and Design Guide for Crows Nest TOD does not apply to the site.</p> <p>SEPP Housing facilitates:</p> <ul style="list-style-type: none">- Co-living permitted with consent- Low and Mid Rise Housing with Height of 22m and FSR 2.2:1 <p>The Lane Cove LEP 2009 permits:</p> <ul style="list-style-type: none">- R4 zone- Height of 9.5m- FSR 0.5:1





	<p>The current 2009 LEP provisions are NOT compatible with the character and context of the site NOR with the objectives for diverse housing and housing affordability.</p> <p>The purpose of the PP is to re-instate height, FSR and open space provisions which best match the present and future context, setting and character.</p> <p>The PP takes account of the current and future site conditions and setting.</p>
<p>Reason 2)</p> <p>Based on the building envelope, Council is not satisfied that such a building could be built on site to satisfy controls (particularly setbacks, basements and waste).</p>	<p>Irrelevant</p> <p>The PP does not propose a building envelope.</p> <p>The PP proposes FSR, Height and future public open space.</p> <p>Consistent with Ministerial Direction 1.4 Site Specific Provisions – no additional development standards are proposed.</p> <p>These are matters to be resolved with a future DA.</p> <p>Importantly the assessment and determination of DA79/2022 concluded that it has been demonstrated there were reasonable opportunities for the redevelopment of No.2 Marshall Avenue as an isolated site.</p>
<p>Reason 3)</p> <p>Council's Design Review Panel found that the entire proposal lacked merit and "the design proposal does not demonstrate design excellence in terms of master planning, built form, sustainability or connection with Country. In addition, the proposal does not demonstrate adequate design quality in respect to the Apartment Design Guide".</p>	<p>Irrelevant</p> <p>The scheme considered by the Design Review Panel was NOT the scheme envisaged by the PP.</p> <p>Co-living development is not subject to the ADG with the exception of separation distances.</p>
<p>Reason 4)</p> <p>If the proposal is approved, it will reduce the amount of public open space infrastructure in the St Leonards South precinct. The amount provided in the proposal is not an improvement or an offset</p>	<p>Incorrect.</p> <p>See Part A Reason 5 response</p> <p>Area 1 and 2 were anticipated to provide 1,300m2 of new public open space in accordance with the St Leonards South DCP.</p>





	<p>DA79/2022 includes Condition FA.14 which requires 1,300m2 of embellished public open space to be dedicated to Council.</p> <p>This proposal includes new public open space IN ADDITION to the 1300m2 anticipated by the St Leonards South LEP amendments</p> <p>Condition FA</p>
D. Does not comply with Council's intended plans for the site	
<p>As shown above, all State and Local Government planning have consistently designated this site (and the surrounding ones) as public open space.</p> <p>Based on recent Development Application (DA) approvals in the area, Council should give consideration to a future rezoning of this site and others in the area as RE1 Public Recreation</p>	<p>No state government plans require the site to be open space.</p> <p>Lane Cove LEP 2009 does not <u>require</u> the site to be public open space because:</p> <ul style="list-style-type: none">- There is no Land Reserved for Acquisition for Open Space applying to the site- The site is in Zone R4- The LEP provisions allow a building height of 9.5m and FSR of 0.5:1- SEPP? <p>The PP seeks the most appropriate future use of the site matches with the character, context and setting of the site and surrounds.</p>

Should you require any further information or clarification regarding the above request, please do not hesitate to contact the undersigned on 0295312555.

Yours faithfully,
Planning Ingenuity Pty Ltd

Sophie Perry
ASSOCIATE DIRECTOR

