

27 March 2025

Lane Cove Local Planning Panel  
PO Box 20  
LANE COVE NSW 1595

### SUBMISSION TO PANEL

We act on behalf of the landowner of No. 2 Marshall Avenue, St Leonards ("the site"). As you are aware the site is subject to Planning Proposal 40 which was heard at the panel meeting on 25 March 2025.

In response to the comments raised by the Panel at the meeting we request that the Panel defer their recommendation of the Planning Proposal to allow for the Applicant to provide the additional information identified by the Panel members during the meeting. We do note despite raising issues with the proposal in terms of additional information, Council's report did not request any additional information from the Applicant prior to the panel meeting.

To accompany this request to the panel to defer their recommendation we provide the following responses to key items raised by the Panel at the meeting on 25 March 2025:

#### Voluntary Planning Agreement

The Panel advised that, despite the required amount of recreation area for Area 1 having been delivered by DA79/2022, it is reasonable that the Planning Proposal commit to a formal mechanism for dedication of additional open space in conjunction with the uplift sought. It is the clear intention of the Applicant to provide public open space along the Marshall Avenue frontage, the Panel were not satisfied that this would come to fruition if not strictly required by the LEP amendment or other formal mechanism.

As such, the Applicant seeks to enter into a Voluntary Planning Agreement (VPA) with Lane Cove Council whereby a certain amount of recreation area (to be determined at a later date), would be provided in the event that the site is redeveloped in accordance with the proposed density uplift.

An additional amendment could be made to the LEP to require this additional provision of recreation area as follows:

#### *7.4 Minimum recreation area and community facility requirements*

*For the purposes of clause 7.1(4)(g), the following requirements apply to development on land to which clause 7.1 applies—*

- (a) for Area 1—at least 900 square metres will be used for the purposes of recreation areas, **with an additional XXX square metres to be provided at No. 2 Marshall Avenue, St Leonards if a co-living housing development is proposed***
- (b) for Area 2 or Area 12—at least 400 square metres will be used for the purposes of recreation areas,*
- (c) for Area 5 or Area 17—*
  - (i) at least 450 square metres will be used for the purposes of a recreation area, and*
  - (ii) at least 600 square metres will be used for the purposes of a community facility, and*
  - (iii) the recreation area will be adjacent to the community facility.*

A VPA Letter of Offer is provided to accompany this submission.



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### Intended Use of the Site

The Panel advised that the intended use of the site in accordance with the controls was marked for open space only. However, this is incorrect, as evidenced by the LCLEP Incentive Height of Buildings Map, which clearly identifies a portion of the site, measuring approximately 25% of the total site area, is subject to a 65m building height limit. As such, the existing controls anticipated for built form to be provided on the site in some form. Although the site was left out of the amalgamation of Area 1 and the subsequent development approval, it still remains that a portion of the site is subject to a 65m building height limit as well as a 3.85:1 FSR.

The proposal seeks to maintain this existing building height limit and apply a height limit of 53m to a portion of the site in order to allow for a suitable redevelopment. Notably, the proposal seeks to maintain a portion of the site that is subject to the 2.5m height limit in order to provide for recreation area.

The extent of the existing and proposed building height limits in accordance with the LCLEP Incentive Height of Buildings Map is shown in **Figure 1** below.



**Figure 1** Extracts of the existing (left) and proposed (right) LCLEP Incentive Height of Buildings Map 004 (site edged in red).

### Amenity Impacts

It is noted that the Panel believes it necessary to address and consider certain potential impacts of the Planning Proposal with regard to the density uplift, likely building envelope and proposed land use and density.

As such to understand the amenity impacts of the proposal we have prepared a solar access analysis and completed a view impact assessment, both of which are submitted to accompany this submission.

With regard to privacy, given the nature of development which would be permitted by the Planning Proposal, there would not be any likely acoustic impacts resulting from the proposal, being a residential form of development within an area which anticipated high density residential development.

As for visual privacy, whilst we appreciate the Panel's comments we do still submit that a full assessment of visual privacy of the proposal and the potential impacts from the proposal would be more appropriate at a later stage when building envelopes and internal configuration are refined. Nevertheless, and as previously advised, the privacy of the adjoining property to the south would be appropriately protected as anticipated by compliance with the Apartment Design Guide (ADG). Notably, the site has two street frontages and in accordance with the approved development on the adjoining site, will adjoin a public open space. As such, it is likely that a residential development can be designed to ensure dwellings are oriented away from the adjoining residential development to the south.



In addition to these items we can provide an assessment of traffic impacts of the proposal on the surrounding road network subject to additional time for this analysis to be completed. Given the development will not trigger thresholds for Traffic Generating Development and is located in a high density established urban area, it would be appropriate that a transport and parking impact assessment be completed either pre-Gateway or pre-exhibition.

Importantly, the Panel questioned parking arrangements for the Proposal since only building envelopes were provided for context. As submitted in the additional plan provided with this submission, the site is capable of accommodating a basement level for parking on-site so as to not take away from any existing on-street parking spaces. Additional information can be provided with regard to the potential impacts of the proposed development on the flow of traffic. It is however important to highlight that the site is well located to accommodate the additional density being situated within an accessible location, only 180m walking distance of the St Leonards Railway Station and will result in reasonable traffic impacts to the surrounding locality, particularly when considering the density of development anticipated for the precinct and the proximity to a range of transport options. Notably, given the site is located within an accessible location the parking requirements for a co-living development in accordance with the Housing SEPP would be reduced to a lesser parking rate therefore limiting vehicular use to the site and associated traffic implications.

#### Variation to Minimum Lot Size

Under Clause 69(b) of the Housing SEPP, the minimum lot size required for co-living housing on the site is 800m<sup>2</sup>. The subject site measures 688m<sup>2</sup> and therefore would result in a variation to the minimum lot size control of 112m<sup>2</sup> or 14%. This is considered to be a relatively minor variation particularly in the context of the strategic and site merit to provide co-living within this location.

It is noted that the Panel questioned whether Clause 69(1)(b) of the Housing SEPP was susceptible to the function of Clause 4.6. In our experience this clause can be varied by a Clause 4.6 Variation Request and in submitting this we make specific reference to the Land and Environment Court Judgement for *Charalambous v Sutherland Shire Council [2024] NSWLEC 1488*, which granted consent to a co-living housing development which was accompanied by a Clause 4.6 to vary the minimum lot size contained within Clause 69(1)(b). We have provided this judgement to accompany our submission to the Panel.

#### Other Matters

Additionally, we wish to highlight the following in response to comments made by the Panel at the meeting on 25 March 2025:

- **The Planning Proposal Does NOT seek a change to FSR**

During the Panel meeting it was stated by the Panel that the Planning Proposal sought a change to both building height and FSR, however this is not the case. The permissible FSR for the site for an uplift scheme under the current planning controls is 3.85:1. The proposed uplift in building height will allow for the existing permissible FSR to be realised on the site.

Furthermore, DA79/2022 for the remainder of Area 1 did not include the uplift FSR available to the subject site and therefore the incentive FSR has not been utilised to date.

- **The Planning Proposal is for co-living ONLY**

The Planning Proposal would only allow for a development for the size that is proposed for the purpose of co-living housing. It would not allow for a different land use to be provided within the building height parameters proposed.





### Conclusion

We request that this letter and the additional information attached be circulated to the Panel members present on 25 March 2025 to assist with their consideration of the matter (noting that their decision is expected in one week from the meeting date).

We also request that the Panel consider the option of deferring a decision from 25 March and reconsider the matter in conjunction with the additional information provided, at the next available Panel meeting.

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  
**DIRECTOR**