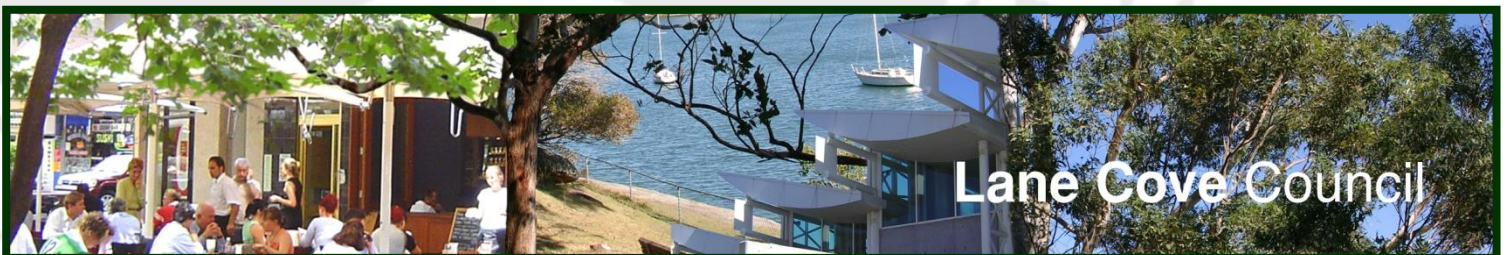


Agenda  
Lane Cove Local Planning Panel Meeting  
3 May 2022,



## Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Tuesday 3 May 2022 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Craig Wrightson', with a stylized flourish at the end.

Craig Wrightson  
**General Manager**

## Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by The Hon David Lloyd QC. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Lane Cove Local Planning Panel Charter and any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes during the public forum which is held at the beginning of the meeting. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Speakers must address the Chair and speakers and Panel Members will not enter into general debate or ask questions during this forum. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Following the conclusion of the public forum the Panel will convene in closed session to conduct deliberations and make decisions. The Panel will announce each decision separately after deliberations on that item have concluded. Furthermore the Panel may close part of a meeting to the public in order to protect commercial information of a confidential nature.

Minutes of LCLPP meetings are published on Council's website [www.lanecove.nsw.gov.au](http://www.lanecove.nsw.gov.au) by 5pm on the Friday following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include vision and audio of members of the public that speak during the Public Forum. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

**DECLARATIONS OF INTEREST**

**APOLOGIES**

**NOTICE OF WEBCASTING OF MEETING**

**LANE COVE LOCAL PLANNING PANEL REPORTS**

<b>2.</b>	<b>21 - 25 AUSTIN STREET LANE COVE.....</b>	<b>4</b>
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<b>4.</b>	<b>178-180 &amp; 188-192 PACIFIC HIGHWAY, GREENWICH.....</b>	<b>83</b>

**Lane Cove Local Planning Panel Meeting 03 May 2022**  
**21 - 25 AUSTIN STREET LANE COVE**

**Subject:** 21 - 25 Austin Street Lane Cove  
**Record No:** DA21/131-01 - 8594/22  
**Division:** Environmental Services Division  
**Author(s):** Christopher Shortt

Property:	21 – 25 Austin Street Lane Cove
DA No:	DA131/2021
Date Lodged:	6 September 2021
Cost of Work:	\$10,986,269.80
Owner:	CNAU GROUP PTY LTD ATF ZHONGZHOU FAMILY TRUST
Applicant:	Ms Hong Huang

Description of the proposal to appear on determination	Demolition of existing structures and construction of multi-dwelling housing development with basement carparking.
Zone	R3 Medium Density Residential
Is the proposal permissible within the zone	Yes
Is the property a heritage item	No
Is the property within a conservation area	No
Is the property adjacent to bushland	No
BCA Classification	Class 2 and 7a
Stop the Clock used	Yes
Notification	Notified as per Council's policy. Twelve (12) submissions were received.

## 1. REASON FOR REFERRAL

The development application is referred to the Lane Cove Local Planning Panel as more than 10 public submissions were received by way of objection as a result of the notification period.

## 2. EXECUTIVE SUMMARY

Development Application is for the demolition of 6 existing dwelling houses and all associated structures, construction of a multi-housing development consisting of 17 townhouses. Including excavation and construction of 2 levels of basement carparking from Austin Street, removal of 46 trees and amalgamation of all 6 allotments into a single site. The proposal is not supported and is recommended for **refusal** based on the following:

- The proposal is incompatible with the character of the area and is an overdevelopment of the site;
- Non - compliance with relevant sections in the Lane Cove DCP relating to multi-dwelling housing;
- Poor amenity for the proposed townhouses and adverse amenity impacts to neighboring properties;
- Insufficient deep soil and an overdevelopment of the site; and
- Lack of information for Council to make an assessment.

### **3. SITE**

The site is located on the western side of Austin Street and includes the properties:

- 21 Austin Street, 21A Austin Street, 23 Austin Street, 23A Austin Street, 23B Austin Street and 25 Austin Street.

The sites are legally known as:

- Lots 1 and 2 of DP 872498;
- Lots 11 and 12 of DP 734969; and
- Lots A and B of DP 362786.

The site comprises 6 lots and has an accumulative area of approximately 3679m<sup>2</sup>. The site is irregular in shape. Its north-eastern boundary is approximately 55m in length, the north-western boundary is approximately 42m in length, the south-western boundary is 36m in length, the non-linear front boundary is approximately 37m in width, and the southern boundary is 62m in length. Refer to Figure 1 and 2 below.

The site currently contains 6 single dwelling houses. One detached dwelling house is located on each lot. The existing dwellings are between one and two-storeys in height.

### **4. ADJOINING PROPERTIES**

North-east of the site is a part single and part two-storey dwelling house at No. 19 Austin Street. Further north-east is a dwelling house converted for use as an early-learning child care centre at No. 17 Austin Street. North-west of the site is a landscaped area of open space fronting Sera Street. South-west of the site is a medium density residential development fronting Austin Crescent. South of the site is a single-storey dwelling at No. 5 Austin Crescent. Further south are 2 dwelling houses fronting Austin Crescent which are locally heritage listed items.

East of the site on the opposite side of Austin street is Lane Cove Public School. The school grounds are located opposite the development site. The two-storey modern classroom building is located directly opposite, and behind the modern building is a 1927 heritage listed school building.



Figure 1: Location Plan.



Figure 2: Northern end of the Austin Street frontage.

## **5. PREVIOUS APPROVALS/HISTORY**

No recent applications associated with the sites.

## **6. PROPOSAL**

The development application proposes the demolition of 6 existing dwelling houses and all associated structures and construction of a multi-housing development consisting of 18 townhouses. Works include:

- Demolition of all structures on site;
- Amalgamation of all 6 allotments;
- Removal of 46 trees;
- Construction of multi-dwelling house development, containing 18 townhouses (three bedroom/ two-storeys) with roof-top private open space;
- Communal and private open space at ground floor;
- Excavation and construction of lower basement level to include:
  - Basement carparking including 24 resident vehicle spaces (22 tandem spaces), 5 visitor vehicle spaces., 3 motorcycle spaces
  - Storage and laundry space for the proposed dwellings.
- Excavation and construction of upper basement level to include:
  - 12 residential vehicle spaces;
  - Garbage room.
- Vehicle access from Austin Street.

## **7. APPLICATION HISTORY**

On **14<sup>th</sup> October 2021**, Council's assessment officer requested the applicant **withdraw the application** based on significant number of non-compliances with the Lane Cove LEP and DCP controls. Including:

- **Site Area:** Minimum 250m<sup>2</sup> average site area requirement not being met.
- **Landscaping:** Minimum 35% landscaping requirements not being met.
- **Lack of Information:** The Statement of Environmental Effects (SEE) indicates there is a height variation and some of the submitted plans indicate that this is the case however there is no submission of a Clause 4.6 written justification.
- **Private Open space:** Minimum 50m<sup>2</sup> rear private open space area not provided.
- **Communal Space:** Minimum 10% of the site area containing a useable common open space not provided.
- **Height in Storeys:** There are basement levels above 1.2m natural ground levels which constitutes as the development being technically 3-storeys. and
- **Building Separation:** Minimum 9m and 12m building separation not achieved.

Concerns were also raised in relation to:

- **Trees:** high volume of tree proposed to be removed, lack of deep soil, incomplete landscaping plans, incomplete arborist report not complaint with Australian Standard 4970 Protection of Trees on Development Sites (2009).
- **Waste Management:** outstanding matters including clearance and swept path diagrams for SRV vehicles entering/ leaving the site, bulky storage and waste recycling rooms;
- **Traffic:** No traffic report submitted; and
- **Accessibility:** The lifts don't travel to the lower basement to adaptable units; Unit 11 has no lift access, no access to common areas.

On 22<sup>nd</sup> December 2021 amended plans were submitted with the following changes:

- Reduction of total townhouses from 18 to 17;
- Amendments to architectural plans; and
- Additional information included updated traffic report, updated BASIX report, Preliminary Site Investigation, Updated Erosion and Sediment Control Plan, Updated Landscaped Plan, Construction Management Plan, Updated Stormwater Management Plan, Access Report, Operation Waste Management Plan.

## **8. SECTION 4.15 ASSESSMENT**

The following assessment is provided against the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979:

### **Section 4.15 Matters for Consideration**

#### **(a) The provisions of:-**

##### **(i) Any environmental planning instrument:**

#### **State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021**

The provisions of the SEPP require Council to consider the potential for a site to be contaminated. The subject site has a history of residential type uses and as such, it is unlikely to contain any contamination and further investigation is not warranted in this case. A Preliminary Site Investigation (PSI) was submitted to Council. The PSI was considered acceptable by Council's Environmental Health Officer.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

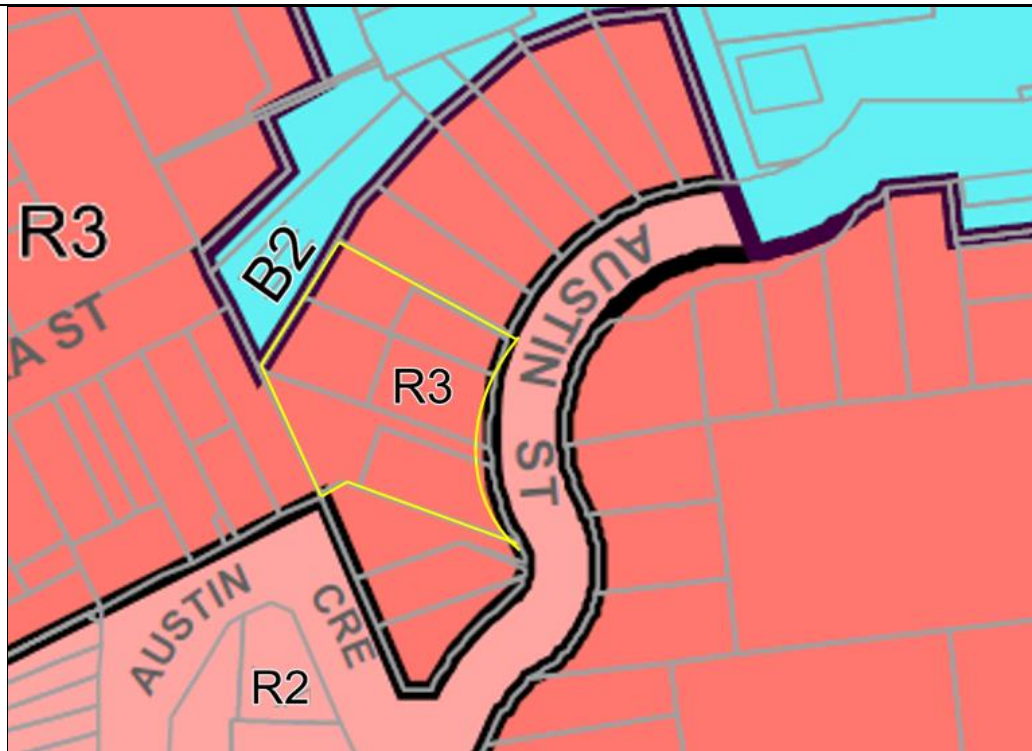
A BASIX certificate has been submitted which demonstrates compliance with the provisions of the SEPP and is consistent with the commitments identified in the application documentation. A standard condition could be included requiring compliance with this BASIX certificate. The proposal would be considered satisfactory with respect to SEPP (BASIX) 2004.

#### **Lane Cove Local Environmental Plan 2009**

**Permissibility:** The subject site is zoned R3 High Density Residential under LCLEP 2009 as shown in Figure 3 above. Multi dwelling housing is permitted with consent in the zone:

***multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.***

The proposal meets with the definition with each dwelling having access at ground level, with basement parking underneath, and is therefore considered satisfactory with respect to permissibility under LCLEP 2009.

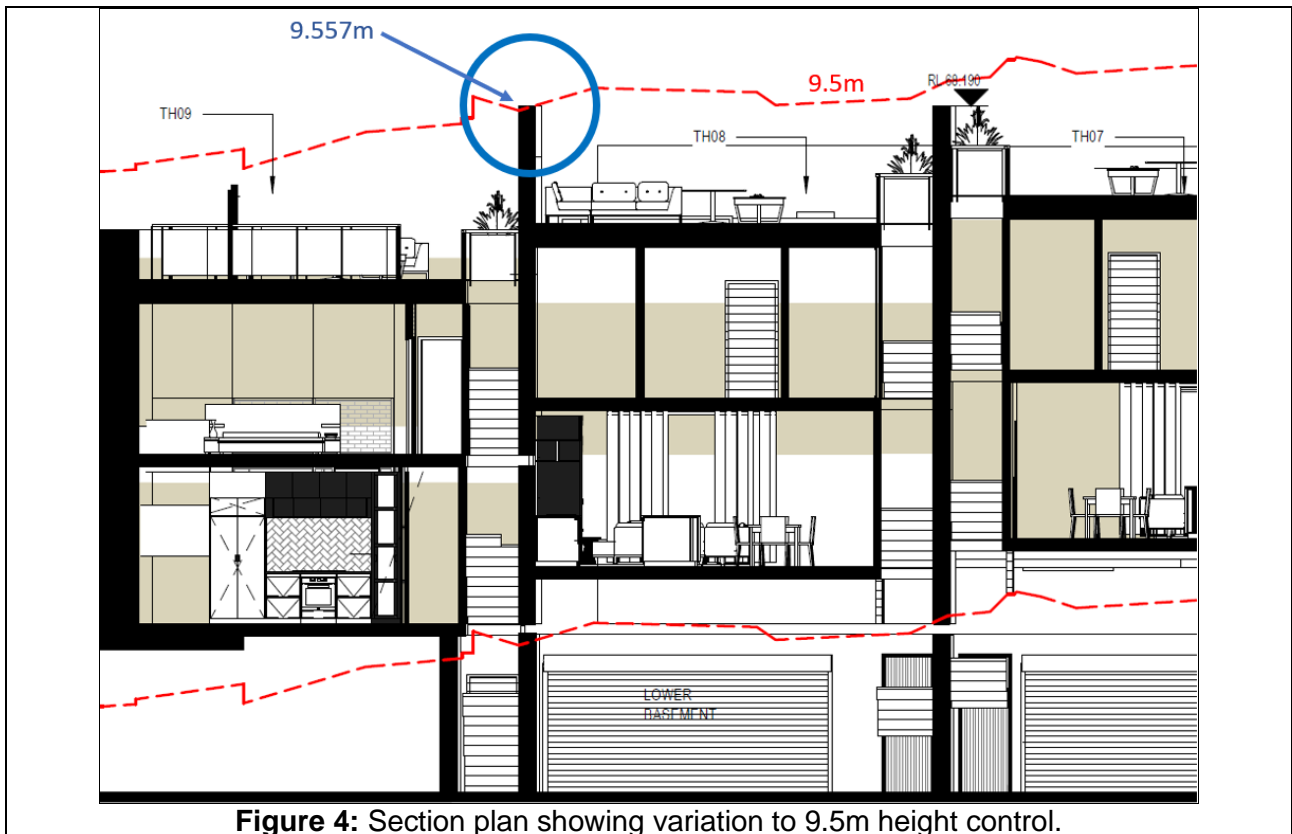


**Figure 3: Site Zoning – R3 Medium Density Residential**

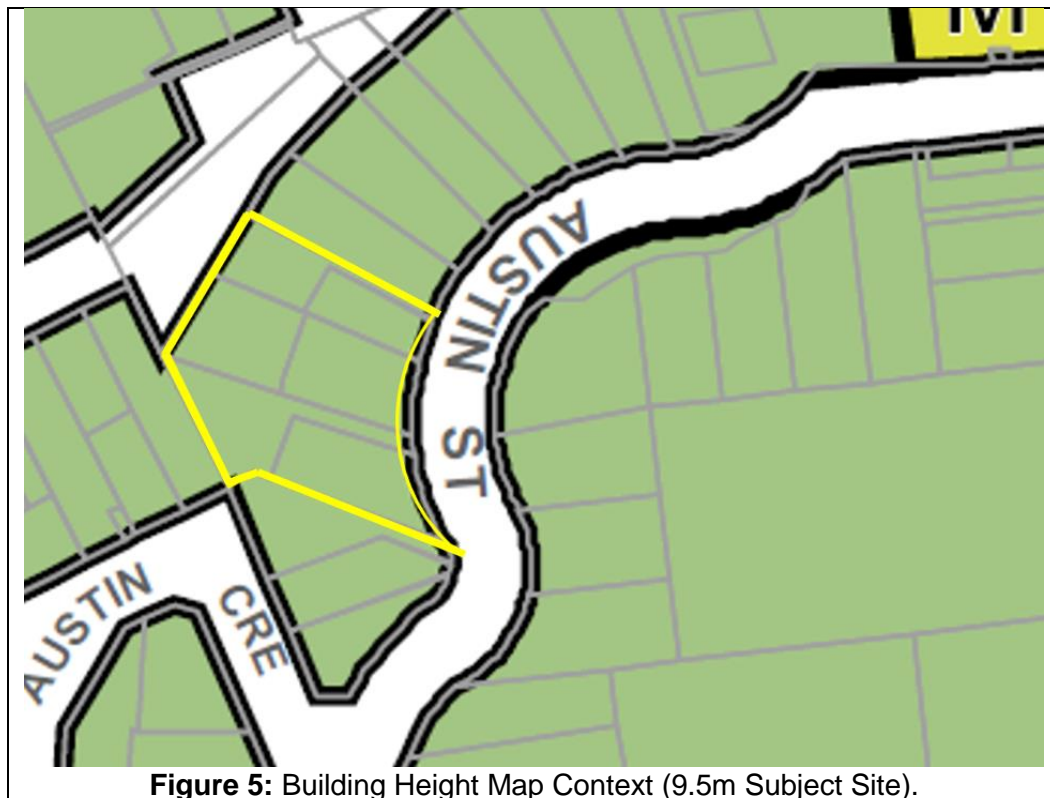
**Subdivision** The proposal does not include subdivision of the proposed multi dwelling housing development.

**Development Standards** The proposal has been assessed against the applicable development standards within LCLEP 2009 as detailed in the following table of compliance:

Lane Cove LEP 2009	Proposal	Compliance
<b>4.3 Height</b>		
9.5m	9.557m –  The dividing wall between the roof top terrace of townhouse TH09 and townhouse TH08 exceeds the height control. (see <b>figure 4</b> below)	<b>No.</b>  <b>0.057m above height control or 0.6% non-compliance.</b>  <b>No clause 4.6 variation statement submitted.</b>
<b>4.4 FSR</b>		
0.7:1 (2,575m <sup>2</sup> )	0.7:1 (2,575m <sup>2</sup> )	Yes



An excerpt of the Height Map (**Figure 5**), Floor Space Ratio Map (**Figure 6**) and Heritage Map (**Figure 7**) are shown below.



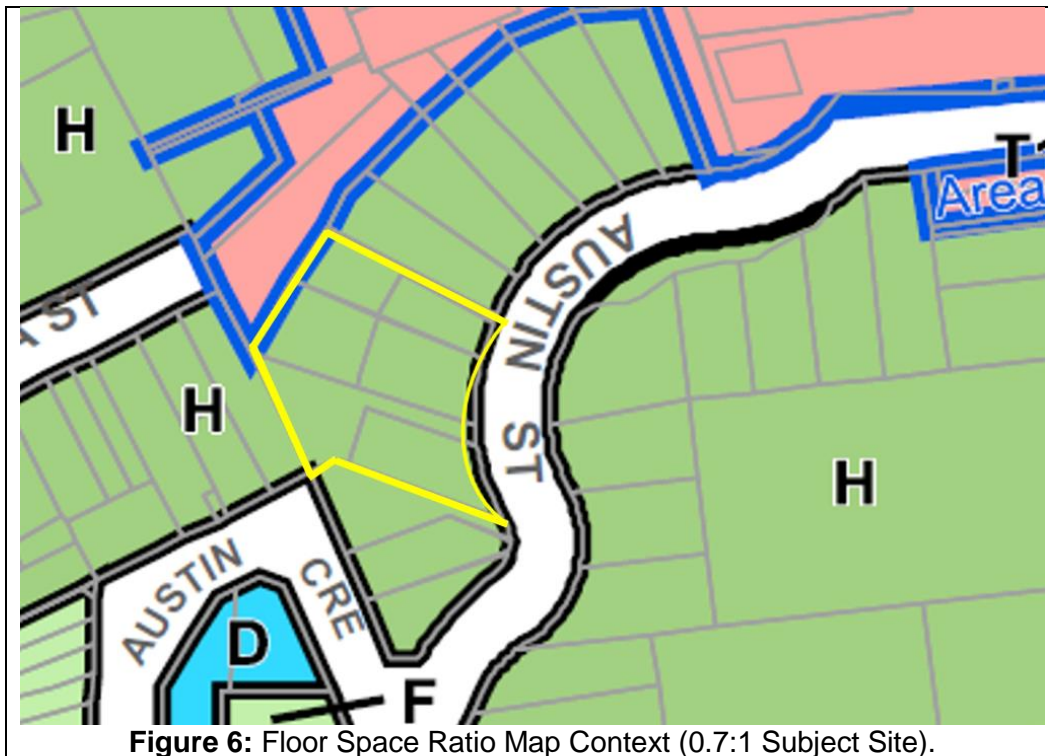


Figure 6: Floor Space Ratio Map Context (0.7:1 Subject Site).

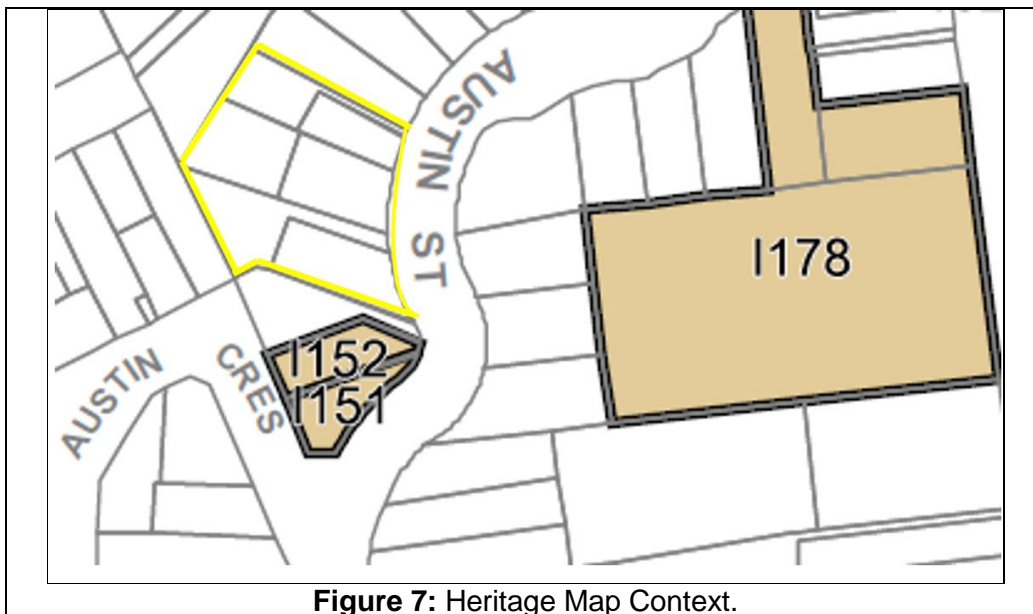


Figure 7: Heritage Map Context.

(ii) Any development control plan

**Lane Cove Development Control Plan 2010**

The proposal has been assessed against Part C – Residential of Lane Cove Development Control Plan 2010 as outlined in the below tables of compliance.

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**Part B – General Controls**

Clause	DCP	Proposed	Complies/ Comment
B3 – Site Amalgamation & Isolated site	To encourage site consolidation of allotments for development in order to promote the desired urban design outcomes and the efficient use of land and to avoid the creation of isolated sites.	The proposed site is within R3 zone and does not isolate any adjoining property (See Figure 3 earlier in report).	Yes
B8 – Safety & security	Ground floor dwellings have direct access or entries from the street and at least one habitable room with windows facing the street.	The building has pedestrian entries from Austin Street with habitable rooms facing the street.	Yes

**Part C2 – Attached Dwellings and Multi Dwelling Housing**

Clause	Requirement	Proposed	Complies/ Comment
2.1 General objectives	To be compatible & complementary to the visual and environmental character of surrounding residential area.	The proposed building would have a 2-storey appearance viewed from the street level which in the context of the site zoning and emerging character is appropriate.	Yes
	The protection of significant natural landscape features.	The tree investigation report confirmed that a proposed 46 trees significant trees on the site are proposed for removal.	<b>Not supported, see further detail in Tree Management assessment below.</b>
2.2 Site area & frontage	A minimum site area of 1000m <sup>2</sup>	3679m <sup>2</sup>	Yes
	A minimum site width at the front building line of 20m	Non-linear, approximately 37m <sup>2</sup>	Yes
	An average site area 250m <sup>2</sup> per multi dwelling unit.	Average site area is 217m <sup>2</sup> which is 33 m <sup>2</sup> non-compliance with the minimum requirement.	<b>No</b> <b>An average area of 217m<sup>2</sup> per townhouse is proposed. The number of proposed townhouses (17) is an overdevelopment of the site and results in poor amenity as detailed later in this report.</b>

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Clause	Requirement	Proposed	Complies/ Comment
2.3 Streetscape	<p>New buildings are to recognise and respond to the lot pattern &amp; rhythm of dwellings within the street.</p> <p>Dwellings are not to be position over driveway to basement car park</p> <p>Carports or garages are not permitted within the street setback</p>	<p>6 dwellings to street responds to R3 character of the street.</p> <p>No townhouses positioned over driveway.</p> <p>No carports or garages are proposed within the front setback area</p>	<p>Yes</p> <p>Yes</p>
2.4 Setback	Minimum 6m	6.0m	Yes
Street setback			
Front setback	Minimum 2m within the development	N/A	N/A
Side	Minimum of 1.5m for two storey dwelling	1.5m to north 7.5m to south	Yes
Rear	A minimum of 3m	3.0m ground and first floor	Yes
2.5 Fence	Up to 1.2m for part solid and predominantly see through fences	Austin Street front fence 1m see-through palisade fence above 0.2m solid masonry base.	Capable of complying
2.6 Landscaped Area	A minimum of 35% of the site is required to be deep soil landscaping.	<p>The amended proposal has 35.7 % or 1313m<sup>2</sup> of landscaping.</p> <p>However, Part J - Landscaping Section 1.6 defines landscape area as deep soil (unencumbered by basement carparking etc.)</p> <p>The proposal provides only 646m<sup>2</sup> of deep soil or 17.6% of the site.</p>	<p><b>No</b></p> <p><b>The proposal has inadequate deep soil to accommodate significant trees. The application proposes to remove 46 trees. There would be insufficient capacity of deep soil to accommodate for 1 to 1 replacement of canopy trees.</b></p>
2.7 Cut & Fill	Maximum depth of excavation or fill of 1m at any point of the site	6.4m cut	<p><b>No</b></p> <p><b>However, satisfactory on merit given excavation is proposed for the construction of basement garages and has been minimised through</b></p>

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Clause	Requirement	Proposed	Complies/ Comment amended plans.
2.8 Building Design	2.8 (b) the architectural design of development must be sympathetic to the adjoining and surrounding buildings in terms of height, materials, roof pitch, and overall building character.	The southern façade facing No. 5 Austin Crescent includes retaining walls adjacent to the boundary which are up to 2.6m higher than the boundary fence line.	<b>No</b>  <b>The blank retaining walls are not considered to be sympathetic to adjoining dwellings. The walls are not high-quality design and are a undesirable visual outcome.</b>
	2.8 (j) Minimum dwelling width is 5m	All dwellings are greater than 5m in width measured from outer face of walls.	
	2.8 (i) (l) Maximum 2 storeys in R3 zone.	2 storeys proposed.	Yes
2.9 Amenity 2.9.1. Privacy	Building elements to minimise overlooking.	External moveable screens provided to windows of habitable rooms.	Yes
Within development	Separation within development site. <ul style="list-style-type: none"> <li>• 12m between habitable rooms</li> <li>• 9m habitable rooms and non-habitable rooms/blank walls</li> <li>• 3m between non-habitable rooms/blank walls</li> </ul>	Separation of 11.5m between bedroom of Townhouse 017 and living room of townhouse 06.  Separation of 7.7m allowing oblique views between bedroom of townhouse 07 and living room townhouse 03.  Separation of 4.5m allowing oblique views between bedrooms of townhouse 09 and townhouse 011. It is noted that a significant portion of the window of the ground floor bedroom of townhouse 09 and townhouse 011 directly abuts the private open space of townhouse 010. This is a poor amenity outcome	<b>No</b>  <b>The non-compliances in minimum building separation between townhouses result in poor amenity (visual and acoustic). The density of 17 townhouses are an overdevelopment of the site.</b>

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Clause	Requirement	Proposed	Complies/ Comment
		which would result in unacceptable visual and acoustic privacy impacts.	
2.9.1 Privacy  Neighboring properties		<p>The proposal was amended and the two townhouses closest to the boundary with No. 19 Austin Street (TH17 and TH06) have non - trafficable roof-tops. Townhouses 07 and 08 has an increased setback of at least 5m from the property boundary with No. 7 Austin Crescent. townhouse 01 is adjacent to the front yard of No. 5 Austin Crescent and not the dwelling house.</p> <p>Terraces at the north-western end of the site are adjacent to a landscaped area of open space fronting Sera Street not dwellings.</p>	<p>Yes</p> <p>If supported, a condition would be recommended to increase the balustrades heights of the southern ends of roof top terraces of townhouses TH07, TH08, and TH09 be increased in height to reduce views to No. 5 and No. 7 Austin Crescent. The balustrades would need to be below the 9.5m height control.</p>
2.9.2 Solar Access  Proposed dwellings	<p>A minimum of 3 hours sunlight to habitable rooms &amp; to at least 50% of the private open space between 9am – 3pm on 21 June.</p> <p>Where existing development currently receives less light than this requirement, this should not be unreasonably reduced.</p>	<p>3 hours to habitable rooms not achieved.</p> <p>The shadow impact diagrams demonstrate that habitable rooms (east facing) of townhouses TH10, TH11, TH12, TH13, TH14, TH16 and TH17 do not receive solar access between 10.00am and 3.00pm in mid-winter. These windows are the only sources of light to approximately 13 bedrooms.</p> <p>The scheme relies on solar access to roof top courtyards to comply with solar access</p>	<p><b>No</b></p> <p><b>The proposal would result in non-compliant solar amenity to a number of the proposed townhouses and is not supported.</b></p>

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Clause	Requirement	Proposed	Complies/ Comment
		provisions for private open space. The ground floor POS areas do not appear to comply with solar access provision.	
2.9.2 solar Access  Neighboring Dwellings	<p>A minimum of 3 hours sunlight to habitable rooms &amp; to at least 50% of the private open space between 9am – 3pm on 21 June.</p> <p>Where existing development currently receives less light than this requirement, this should not be unreasonably reduced.</p>	<p>The shadow diagrams show that the east-facing windows of No. 5 Austin Crescent would receive 1.5 hours of solar access between 10.30am and 12 noon during mid-winter.</p> <p>The north-facing windows of No#5 Austin Crescent does not appear to receive more than 1 hours of solar access during mid-winter.</p>	<p><b>No</b></p> <p><b>Shadow impacts to windows of habitable rooms of No. 5 Austin Street have not been adequately addressed.</b></p>
2.9.3 Private Open Space	<p>Private Open Space is to be:</p> <ul style="list-style-type: none"> <li>• Directly accessible from the living area of the dwelling;</li> <li>• A minimum of 4.0m in any direction;</li> <li>• A minimum of unbuilt upon area of 50m<sup>2</sup> per 2- or 3-bedroom dwelling</li> <li>• Private open space will not be permitted in front the setback area</li> </ul>	<p>Townhouses 01-08 and 10-16 have less than 50m<sup>2</sup> of Private Open space (POS) that is directly accessible from living area. (i.e. rear yards off living room at ground floor).</p> <p>The proposal relies on obtaining private open space by combining POS within front setback, small centrally located lightwells and the roof top terraces to achieve 50m<sup>2</sup>. The roof top terraces are up 2 flights of stairs and not considered to be 'directly accessible off the GF living area of the dwelling'. The roof top terraces do not have lift access. Therefore, the roof top terraces of the 'adaptable units' are not accessible.</p>	<p><b>No</b></p> <p><b>A total of 15 of the 17 townhouses (83.3%) do not comply) with DCP requirements for Private Open Space.</b></p>
2.9.3 Communal Open Space	A minimum of communal space encompassing 10% of the site area.	389m <sup>2</sup> or 10.6% communal open space	Yes

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**Part J Landscaping**

Clause	Requirement	Proposed	Complies/comment
1.6 How much landscaped area is required	Development type Attached dwellings, townhouses and villas  Minimum 35% of site to be landscaped area (i.e. deep soil)	17.6% (approx. 646m <sup>2</sup> ) of deep soil	<b>No</b>  <b>The proposal has inadequate deep soil to accommodate significant trees.</b>
2.2.1 Tree Preservation Objective	The retention of the maximum possible number of existing trees, particularly native trees, within the Municipality in healthy condition and natural form and shape.	Removal of a total of 46 trees on site.	<b>No</b>  <b>The proposal does not look to retain the maximum possible number of trees.</b>

Other sections of Lane Cove Development Control Plan 2010 have been addressed through **referrals** as outlined in the following table:

Referral	DCP	Comment
<b>Accessibility</b>	Part F – Access and Mobility	An amended accessibility report was submitted. <b>It is noted that the roof top terraces of the adaptable units are not accessible. Therefore, the largest areas of POS which receive the most solar access would not be accessible. This is a poor amenity outcome.</b>  <b>Any proposed any lift overrun structure on the roof tops would breach the 9.5m height control.</b>
<b>Landscaping</b>	Part J – Landscaping	Objection on the basis of tree impacts, lack of deep soil.  <ul style="list-style-type: none"> <li>- 1:1 tree replacement ratio required at a minimum for all trees onsite proposed to be removed.</li> <li>- Landscaped area refers to the minimum site area that is <b>deep soil landscaping</b>. Deep soil landscaping as defined by the ADG 2015: Deep soil zones are areas of soil not covered by buildings or structures within a development. They exclude basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas. The current proposal shows 17% of the site area is deep</li> </ul>

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Referral	DCP	Comment
		<p>soil landscaping which is only half of the required 35% of the LCC DCP Part J landscaping.</p> <ul style="list-style-type: none"> <li>- Lane Cove Council declared climate emergency in 2019 and as a result of this declaration will not allow any net loss of canopy cover on development sites.</li> </ul> <p>See draft reasons for refusal.</p>
<b>Tree Preservation</b>	Part J – Landscaping	Objection on the basis of tree impacts. See draft reasons for refusal.
<b>Engineering</b>	Part O – Stormwater Management	The stairwells from the roof top terraces are open to the sky and do not have protection from rain. The Drainage Plans indicate that ' <i>All roofwater to drain to rainwater tank</i> ' However the design does demonstrate how stormwater will be dealt with that falls directly into the stairwell or how drainage will be resolved and not flood the level below. This is not an acceptable stormwater management outcome.
<b>Waste Management</b>	Part Q – Waste Management and Minimisation	An amended Waste Management Plan was submitted and supported by Council's environmental health officer.
<b>Traffic, Transport and Parking</b>	Part R – Traffic, Transport and Parking	No objection on the basis of revised plans and traffic report which removed non-compliant ramp.
<b>Building Surveyor</b>	N/A	No objection including the provision of draft conditions.
<b>Environmental Health</b>	Part B – General Controls (Part B6/B7)	Applicant has submitted an Acoustic Report, an amended Waste Management Plan (WMP), Preliminary Site Investigation (PSI). However, an Environmental Management Plan, Construction Noise Management Plan still outstanding. The proposal cannot be determined without this information.
<b>Heritage</b>	Part B9 – General Controls. Development in proximity to heritage items requires a Heritage Impact Statement (HIS).	Council's heritage consultant reviewed the HIS and raised no objection. They noted that the height is consistent with other two-storey residences in the vicinity.

**(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The impacts of the development have been considered and the impact on existing trees are not considered to be adequately addressed with the viability of retention not substantiated or supported by Council staff.

**(c) The suitability of the site for the development**

The site suitability has been established and is appropriate for a multi dwelling housing development. However the scale, density of the development is not supported in this instance.

**(d) Any submissions made in accordance with this Act or the regulations**

The proposal was notified in accordance with Council policy and twelve (12) submissions were received. The submissions are summarised and addressed within the following table:

<b>Concern</b>	<b>Comment</b>
Concerns with tree removal and environmental impacts.	Council does not support the proposed level of tree removal. The application is recommended for refusal.
Concerns with non-compliance with DCP minimum average site area requirements	The proposed 17 townhouses result in 217m <sup>2</sup> average area size and does not comply. The proposal is considered an overdevelopment of the site and is not supported.
Non-complaint landscaped area.	The non - compliant landscaped area (deep soil) as defined in Part J of Council's DCP. The lack of deep soil would compromise the ability to accommodate replacement canopy trees. The proposed landscaping is not supported.
Traffic concerns and location of driveway	The proposal was reviewed by Council's traffic engineer who did not raise concerns with the location of the driveway or the traffic impacts of the proposal. No objection on the basis of revised plans and traffic report which removed non-compliant ramp.
Visual privacy to rear adjoining properties from roof top terraces	<p>The proposal was amended and rooftops of TH06 and TH17 were made non-trafficable. The next nearest terrace TH16 has a 2.3m high wall blocking northward views to 19 Austin Street. Terraces at the north-western end of the site are adjacent to a landscaped area of open space fronting Sera Street not dwellings.</p> <p>If supported, a suitable draft condition would be recommended to increase the balustrades heights of the southern ends of roof top terraces of townhouses TH07, TH08, and TH09 be increased in height to reduce views to No. 5 and No. 7 Austin Crescent. The balustrades would need to be below the 9.5m height control.</p>
Construction noise impacts to Lane Cove Public School and neighbourhood.	If the proposal was supported suitable draft conditions relating to construction hours and noise monitoring would be recommended. Council requested a Construction Noise Management Plan (CNMP) from the applicant which was not submitted.

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<b>Concern</b>	<b>Comment</b>
Building appearance in context to heritage items in proximity to site	Council's heritage consultant reviewed the HIS and raised no objection. They noted that the height is consistent with other two-storey residences in the vicinity.
Concerns with impacts to solar access to 5 Austin Crescent,	The shadow diagrams do not demonstrate the impacts to the north.
Structural Impacts from basement carpark	If the proposal was supported suitable draft conditions would be recommended by Council's engineer including the submission of dilapidation reports for all excavation greater than 1m, and the submission of a geotechnical report. These documents which are prepared by a qualified engineer would deal with any structural concerns.
Concerns with building setbacks.	The proposed development complies with the minimum front side and rear setback controls for multi-dwelling housing.

**(e) Public Interest**

In its current form, the proposal would not be in the public interest as the density results in insufficient amenity.

**9. SECTION 7.11 ASSESSMENT**

The proposal is subject to the provisions of the Lane Cove Section 7.11 (formally Section 94) Contributions Plan 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 calculated in accordance with the Plan being the average number of persons per dwelling size as detailed in the following table:

<b>No. bedrooms</b>	<b>Average occupancy</b>	<b>Amount of contribution per dwelling</b>	<b>No. of Dwellings</b>	<b>Total contribution</b>
3 Bedrooms	2.4 persons	\$11,044.52 x 2.4 = \$26,507.808 <b>Capped Rate \$20,000.00 per dwelling</b>	17 x \$20,000.00	\$340,000.00
			<b>TOTAL</b>	<b>\$340,000.00</b>

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

<b>No. bedrooms</b>	<b>Average occupancy</b>	<b>Amount of contribution per dwelling</b>	<b>No. of Dwellings</b>	<b>Total contribution</b>
2+ Bedrooms	N/A	<b>Capped Rate \$20,000.00 per dwelling</b>	6 x \$20,000.00	\$120,000.00
			<b>TOTAL</b>	<b>\$120,000.00</b>

The Section 7.11 contribution payable is **\$340,000.00 - \$120,000.00 = \$220,000.00**

## **10. CONCLUSION**

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

The proposal is compliant with the floor space ratio but has a variation to the building height which is not been accompanied by a Clause 4.6 variation request. Although multi-dwelling housing is permitted in the zone, the density and form of the development results in a large number of non-compliances with the Lane Cove DCP 2010.

The large number of departures from the Lane Cove Development Control Plan 2010 result in unsatisfactory amenity for both the proposed townhouses and to neighbouring dwellings. The significant removal of trees and lack of deep soil is resulting from an overdevelopment of the site and the excessive number of dwellings proposed within the envelope.

The proposed development cannot be supported in its current form for reasons outlined within the report and detailed in the recommendation below and accordingly it is recommended for refusal.

### **RECOMMENDATION**

That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979 the Lane Cove Local Planning Panel at its meeting of 3 May 2022, exercising the functions of Council as the consent authority, **refuse** Development Application DA131/21 for the demolition of existing structures, and construction of a multi-dwelling housing comprising 17 townhouses with basement car parking at 21-25 Austin Street Lane Cove. The proposal is recommended to **be refused** for the following reasons:

#### **Aims of Lane Cove Local Environmental Plan 2009:**

1. The proposed development does not meet the aims of Lane Cove Local Environmental Plan 2009.

##### Particulars:

- (a) The proposed development would not preserve and improve the existing character, amenity and environmental quality of the land and the expectations of the community.
- (b) The proposed development does not meet the aims which are outlined in Clause 1.2(c) of the LEP 2009 as it would not provide a housing mix and density that would be compatible with the existing environmental character of the locality, and does not have a sympathetic and harmonious relationship with adjoining properties.

#### **Density:**

2. The development application is recommended for refusal because the subject site does not meet the minimum site area required for 17 multi-dwelling units.

##### Particulars:

- (a) Section 2.2(c) in Part C2 of LCDCP 2010 sets out the provision for density as follows:
  - *"An average site area 250m<sup>2</sup> per attached dwelling or multi-dwelling unit (including common areas) is required"*.
- (b) The average site area of each townhouse is 217m<sup>2</sup>. The area is 33m<sup>2</sup> below from the

- required minimum site area for multi-dwelling units.
- (c) The overall density of the proposed development is not considered to be consistent with the desired built form for the site.

**Trees, Landscaping and Deep Soil:**

3. The development application is recommended for refusal because the subject site does not meet the minimum area requirements for landscaping and deep soil and includes excessive tree removal.

Particulars:

- (a) Section 2.6 (b) in Part C2 of the LCDCP 2010 requires minimum of 35% (unencumbered deep soil) of the site is to be landscaped area with a minimum width of 3.0m. For attached dwellings, this refers to each allotment individually.
- (b) Section 1.6 in Part J of the LCDCP 2010 defines that 35% of the landscaped area to be deep soil.
- (c) Section 2.2.1 Tree Preservation Objective of the Part J LCDCP 2010 requires the retention of the maximum possible number of existing trees,
- (d) The application proposes the removal of 46 trees and is considered to have a detrimental environmental impact. The proposal does not provide adequate deep soil to accommodate replacement canopy trees at a 1:1 ratio.

**Amenity:**

4. The proposed development does not achieve acceptable amenity in terms of building separation, solar access, and private open space.

Particulars:

- (a) The proposed development does not comply with section Part C.2 section 2.9.2 Solar Access of LCDCP2010:
  - (i) 7 of the proposed town houses do not achieve 3 hours minimum solar access to habitable room windows or ground floor POS at mid-winter; and
  - (ii) Windows to habitable rooms of the neighbouring property at No. 5 Austin Street do not receive 3 hours minimum solar access at mid-winter.
- (b) The proposal does not comply with Part C.2 section 2.9.3 (a) and (d) of LCDCP 2010. The majority of townhouses have less than 50m<sup>2</sup> of private open space that is directly accessible from the living area. (i.e. rear yards off living room at ground floor).
- (c) The proposal does not comply with Part C.2 section 2.9.1(c) and (d) of the LCDCP 2010 relating to building separation. A number of townhouses do not achieve adequate separation distance between habitable rooms resulting in adverse visual and acoustic privacy impacts.

**Building Design:**

4. The proposed retaining walls on the southern façade facing No. 5 Austin Crescent includes retaining walls adjacent to the boundary which are up to 2.6m higher than the boundary fence line.

**Accessibility:**

5. The proposed adaptable apartments do not comply.

Particulars:

The three (3) proposed adaptable units (TH13, TH14 and TH15) do not have lift access to their primary outdoor private open space areas.

**Lack of Information:**

6. The proposal does not include adequate information to make an assessment.

Particulars:

The proposal includes a variation with the height control under clause 4.3 of the Lane Cove LEP 2009. No clause 4.6 variation statement was submitted to support the variation. Under Clause 4.6 (3) Council cannot grant consent to a development that contravenes a development standard unless a written request to justify the contravention of the development standard.


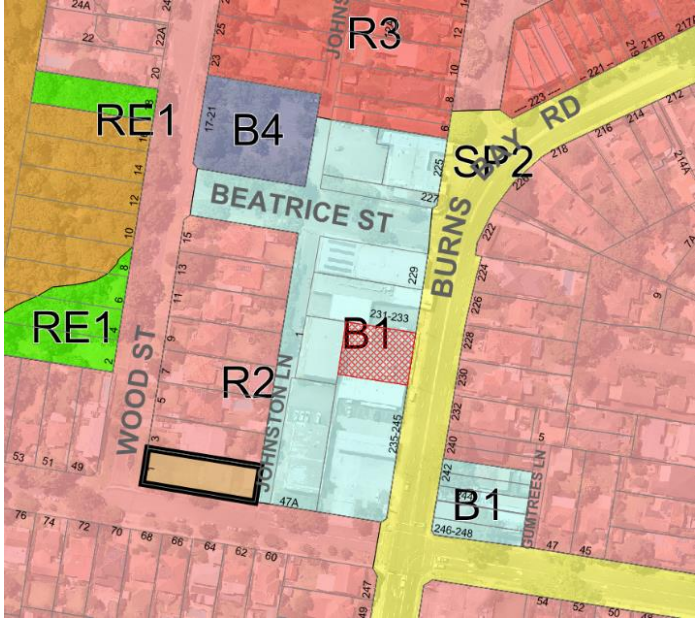
**ATTACHMENTS:**

There are no supporting documents for this report.

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**235 BURNS BAY ROAD, LANE COVE WEST**

**Subject:** 235 Burns Bay Road, Lane Cove West  
**Record No:** DA21/161-01 - 15206/22  
**Division:** Environmental Services Division  
**Author(s):** Greg Samardzic

Property:	No. 235 Burns Bay Road, Lane Cove West
DA No:	DA161/2021
Date Lodged:	10 November 2021
Cost of Work:	\$2,900,000.00
Owner:	L & W Chen Company P/L
Applicant:	Bo Shang

<p>Description of the proposal to appear on determination</p>	<p>Construction of a shop top housing development</p>  <p><b>Figure 1: Perspective of Proposal</b></p>
<p>Zone</p>	<p>B1 Neighbourhood Centre under Lane Cove Local Environmental Plan (LCLEP) 2009</p>  <p><b>Figure 2: B1 Zoning of Subject Site</b></p>
<p>Is the proposal permissible</p>	<p>Yes – a 'shop top housing' development is permissible with</p>

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within the zone	consent within the B1 zone
Is the property a heritage item	No – however around the corner from the subject site is heritage item I221, being No.1 Wood Street. This is a single storey residence known as “The Oaks” with local historic significance. The development proposal will not have any impact upon the heritage significance of this site.
Is the property within a conservation area	No
Is the property adjacent to bushland	No
BCA Classification	Class 2, 5, 6 and 7a
Stop the Clock used	<p>On 21 March and 28 March 2022, a request for further information was requested in relation (but not limited) to:</p> <ol style="list-style-type: none"> <li>1. A Site Audit Statement (SAS) to be submitted to Council to evaluate the accuracy of the Detailed Site Investigation (DSI) submitted as no Remediation Action Plan (RAP) had been submitted.</li> <li>2. A bulky waste room is to be provided as per Part Q of the DCP.</li> <li>3. Details of onsite commercial waste storage and collection to be provided.</li> <li>4. As the use of the commercial premises hadn't been determined, the worst-case scenario had to be considered i.e. a food shop that will require an exhaust system and a grease trap which should be planned for or the impact of odours from the cooking of food to be planned for in relation to impacts on the residential use of the premises and air-conditioning system.</li> <li>5. A Sediment and Erosion Control Plan to be submitted that shows all weather access point.</li> <li>6. An Environmental Management Plan (EMP) (construction phase) to be submitted addressing treatment and disposal/dewatering of excavation waters, dust management, sediment and erosion controls.</li> <li>7. The development had identified one adaptable unit however further to meeting the minimum 20% adaptable unit requirement is that there is to be 80% visitable units. The visitable units is required to be identified and to meet the visitable unit standards.</li> <li>8. Further justifications required to the proposed size, utility and design of the proposed rooftop common open space area which would determine whether the submitted Clause 4.6 written justification to the proposed LCLEP Building Height variation would be supported or not.</li> <li>9. Further justifications on whether the proposed front upper level setback to Burns Bay Road is adequate.</li> <li>10. Require relocation of the above ground OSD located within the rear deep soil area to be underground instead to keep this area free of any structure.</li> <li>11. Further embellishments to the rooftop common open space area.</li> </ol>

	<p>On 31 March and 14 April 2022, the applicant submitted additional information to include:</p> <ul style="list-style-type: none"> <li>• A response on the status on the contamination of the subject site advising that a SAS had already been prepared for the adjoining service station site which previously included the subject site. The submitted DSI did not identify contamination levels above relevant criteria within soils and its removal to a licensed landfill after excavation. Nevertheless, a SAS and Dewatering Management Plan (DMP) would be required to construct the proposed tank basement.</li> <li>• Amended plans showing SRV paths, a bulky waste room, onsite commercial waste storage/collection, notations should the tenancies be used as a food shop and that 80% of the units are to be visitable by disabled person/s.</li> <li>• Sediment and Erosion Control Plan.</li> <li>• Environmental Management Plan.</li> <li>• That the OSD cannot be relocated as it would be contrary to relevant stormwater requirements.</li> <li>• Amended landscape plans to provide further embellishments within the rooftop COS area</li> </ul>
Notification	Notified in accordance with Council's policy and one submission received

## REASON FOR REFERRAL

The subject Development Application is referred to the Lane Cove Local Planning Panel as a maximum 33.68% breach to the Building Height development standard under LCLEP 2009 is proposed and the proposed development is subject to State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development.

## EXECUTIVE SUMMARY

The subject Development Application is for construction of a shop top housing development on the subject development site. It is proposed to have 12 basement car parking spaces, two commercial ground floor tenancies and two storeys of seven apartment (three x one-bedroom, three x two-bedroom and one x three-bedroom) units.

The Development Application is subject to the maximum 9.5m building height development standard under LCLEP 2009 and a maximum 33.68% variation with a maximum height of 12.7m is proposed. A Clause 4.6 written request accompanies the Development Application and the written request is considered to establish suitable environmental planning grounds to vary the development standard or demonstrate compliance with the height objectives. The proposed building is below the maximum height plane however the proposed lift over-run and communal rooftop structures would exceed the relevant standard.

The breach in height is due to the provision of a large useable rooftop common open space area and given the context of the site including the nature of the proposed building, the proposed height variation would not have significant adverse impacts onto surrounding properties or the immediate locality. The proposed variation is supported as the proposed development would not be incompatible with the existing or future character of the locality including the intended built form or massing of other adjoining or surrounding B1 Neighbourhood Centre zoned allotments.

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The Development Application is also subject to State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development. The proposed development is considered satisfactory with respect to the design quality principles of SEPP 65 and with the design criteria contained within the Apartment Design Guide (ADG).

The Development Application has been assessed against the Lane Cove Development Control Plan (LCDCP) 2010. The proposal includes variations to the minimum 3m front upper level building setback control with a nil balcony setback and nil side boundary setbacks for the first level. The merits of the variations are considered in full detail in this assessment report and are supported based on that approval of the subject proposal would not be inconsistent with other potential future developments within the immediate locality.

This development should it be approved would not likely set an undesirable precedent due to detailed design options presented with the aim of achieving appropriate building setbacks with a 6m rear setback containing a 3m wide deep soil area and a generous 6m side boundary setback for the upper residential level. A further increase to the front setback area for the upper level would reduce the large side and rear setbacks of the proposed development.

The Development Application was notified to surrounding property owners and one submission was received by way of objection from No. 228 Burns Bay Road which is a residential property opposite the subject site. The primary issue raised in the objections relate to the proposed building height and the potential undesirable precedent the proposal would create if the application were to be approved. The proposed height/bulk of the proposed development is reasonable in this instance and a reasonable development outcome would be achieved.

The subject Development Application has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. It is considered that the proposal as submitted provides for a reasonable built outcome which is consistent with both the existing and future built form envisaged in the B1 zoned locality. The proposed development would maintain relevant amenity objectives to surrounding developments and the Development Application is recommended for approval subject to draft conditions.

## **SITE**

Property	Lot 2 DP 1191641, No. 235 Burns Bay Road, Lane Cove West
Area	697m <sup>2</sup>
Site location	Western side of Burns Bay Road between the intersections of Penrose Street to the south and Beatrice Street to the north.



**Figure 3: Aerial Photograph**

Currently vacant with a concrete slab with boundary fencing

Existing  
improvements



**Figure 4: Subject Site as Viewed from Burns Bay Road**



Figure 5: Subject Site in the Middle (View Looking North-West)



Figure 6: Subject Site Looking West Towards No. 1 Johnston Lane Boarding House Development Behind



Figure 7: Subject Site Looking South

Shape	Rectangular
Dimensions	Width: 22.795m (front and rear boundaries) Depth: 30.59m (northern boundary) and 30.60m (southern boundary)

A service station is located to the south and a drive- through bottle shop is located to the north. A boarding house development is located to the west of the subject site and detached dwellings to the east across Burns Bay Road.



**Figure 8: View looking South Along Burns Bay Road**

Adjoining  
properties



**Figure 9: Existing Burns Bay Road Streetscape**



**Figure 10: Existing Building Behind on Johnston Lane**



**Figure 11: Existing View Looking North-East along Johnston Lane**



**Figure 12: Existing Drive-Through Bottle Shop as Viewed from Johnston Lane**

## **PREVIOUS APPROVALS/HISTORY**

Since the late 1950s to 2016, the current site was part of a service station located at Nos. 235 – 245 Burns Bay Road. Prior to this, the site was vacant and undeveloped. In 2016, the site was subdivided from the service station. Environmental investigations were completed to support the subdivision and an audit by an NSW EPA accredited contaminated land auditor concluded the site was suitable for ongoing land use. The service station was subsequently decommissioned and redeveloped. As part of the decommissioning works, a waste oil underground storage tank located in the southwest corner of subject site was removed.

Since 2016, the site has been used as a storage space for shipping containers, automobiles, caravans, trailers, and other structural and commercial items associated with the demolition of old service station building such as cabinets, cold storage equipment, machine tools, etc.

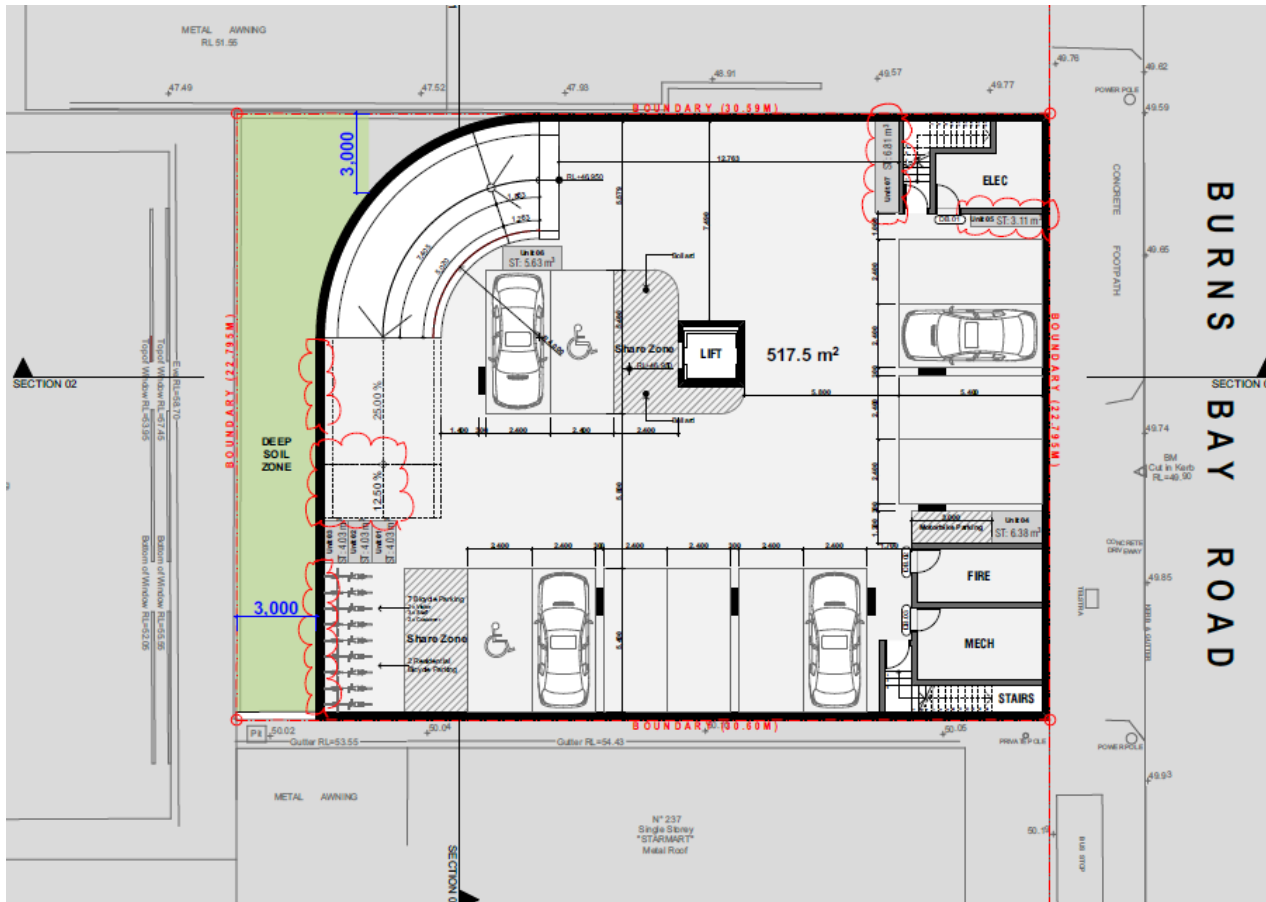
## **PROPOSAL**

The proposal is for construction of a shop top housing development on the subject development site. It is proposed to have 12 basement car parking spaces, two commercial ground floor tenancies and two storeys of seven apartment (three x one-bedroom, three x two-bedroom and one x three-bedroom) units. The proposal will comprise the following finished built form elements:

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**Basement Level (RL46.95)**

Underground parking for 12 vehicles including two spaces for people with a disability, one motorcycle space and a bicycle storage/parking area for nine bikes. This level will contain plant and electrical rooms. A basement lift is provided for access to the proposed levels above. At the northern and southern street facing ends there is an independent stairwell, providing direct access to the footpath on Burns Bay Road.



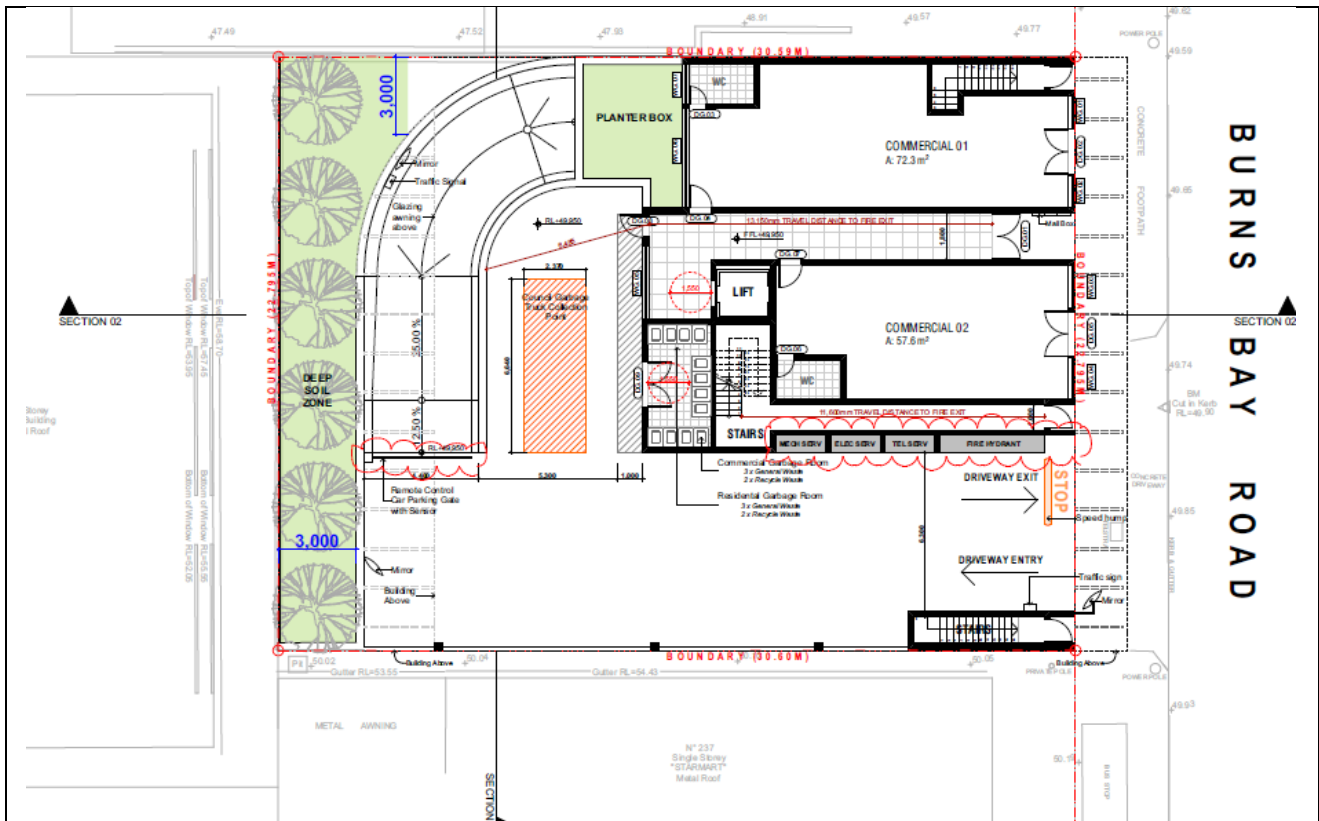
**Figure 13: Proposed Basement Level**

A 3m wide deep soil zone filled with suitable landscaping as shown on the submitted landscaping and ground level plans will border the western boundary.

**Ground Floor Level (RL49.95)**

Comprises two commercial tenancies with internal amenities measuring 58m² and 73m² respectively. A central hallway separates the two shops and provides pedestrian access to the elevator and bin storage area located behind tenancy No. 2. The double width driveway is located at the southern end of the site (closest to the adjoining petrol station) which also permits access for a garbage truck to park and collect the residents rubbish bins.

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**Figure 13: Proposed Ground Level**

**First Floor Level (RL53.45)**

Comprises three x one-bedroom units (each of which faces Burns Bay Road and have recessed balconies) and two x two-bedroom units (which face westwards and with extended balconies having access from the lounge and both bedrooms).

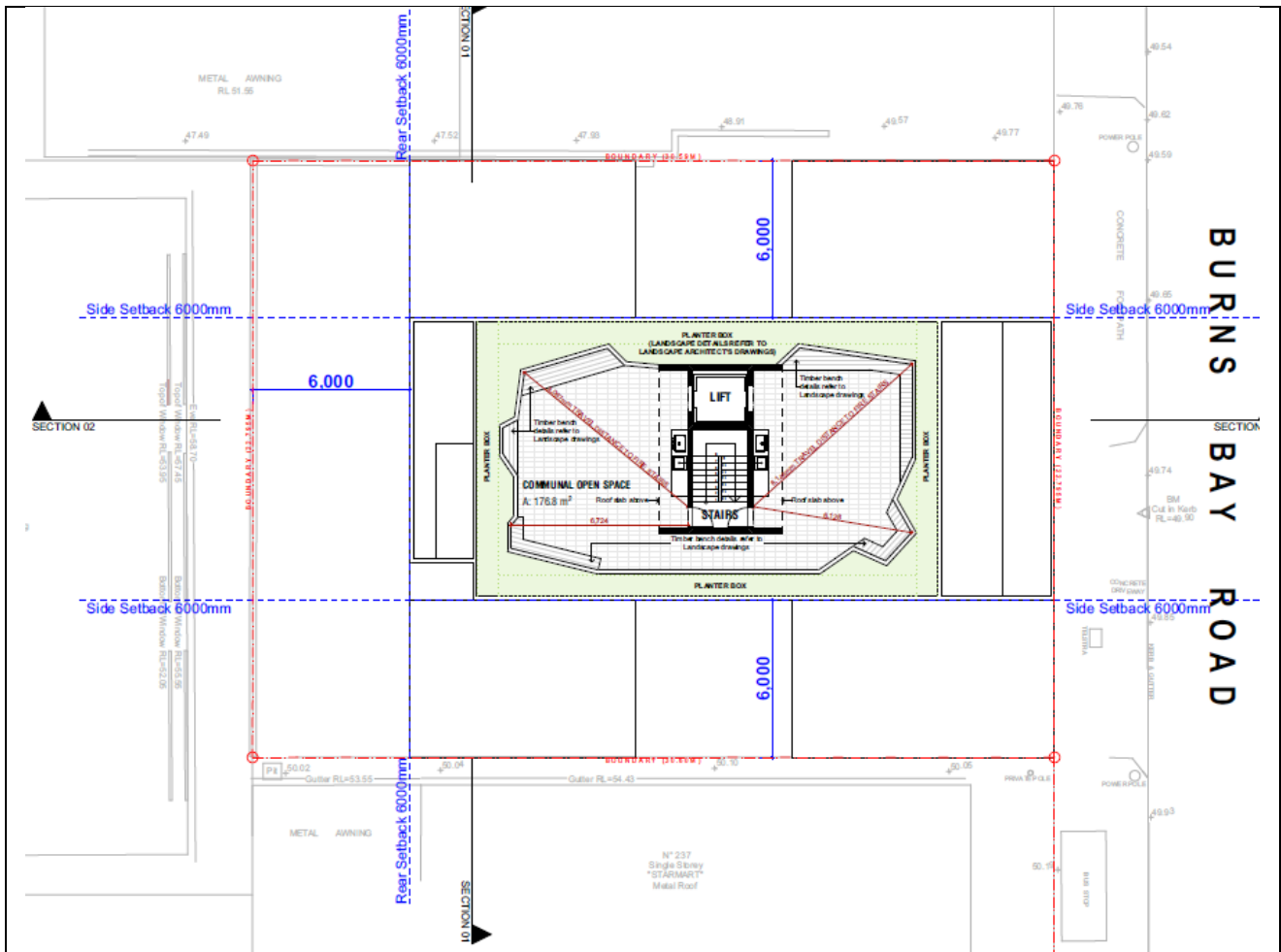
**Second Floor Level (RL56.35)**

Comprises one x two-bedroom unit facing Burns Bay Road (with an extended recessed balcony that provides access to all internal rooms). At the rear is proposed one x three-bedroom unit, also with an extended recessed balcony.

**Rooftop Level**

A rooftop communal open space area is also provided which will be surrounded by a planter box with significant vegetation for screening purposes.

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**Figure 14: Proposed Rooftop Common Open Space Area**

Detailed perspective and a schedule of external finishes is provided detailing the range of contemporary external treatments.



01



Facebrick - Metallix Platinum

02



Painted Dark Grey

03



Glass Balustrade

04



Laminated Glass Roof

05

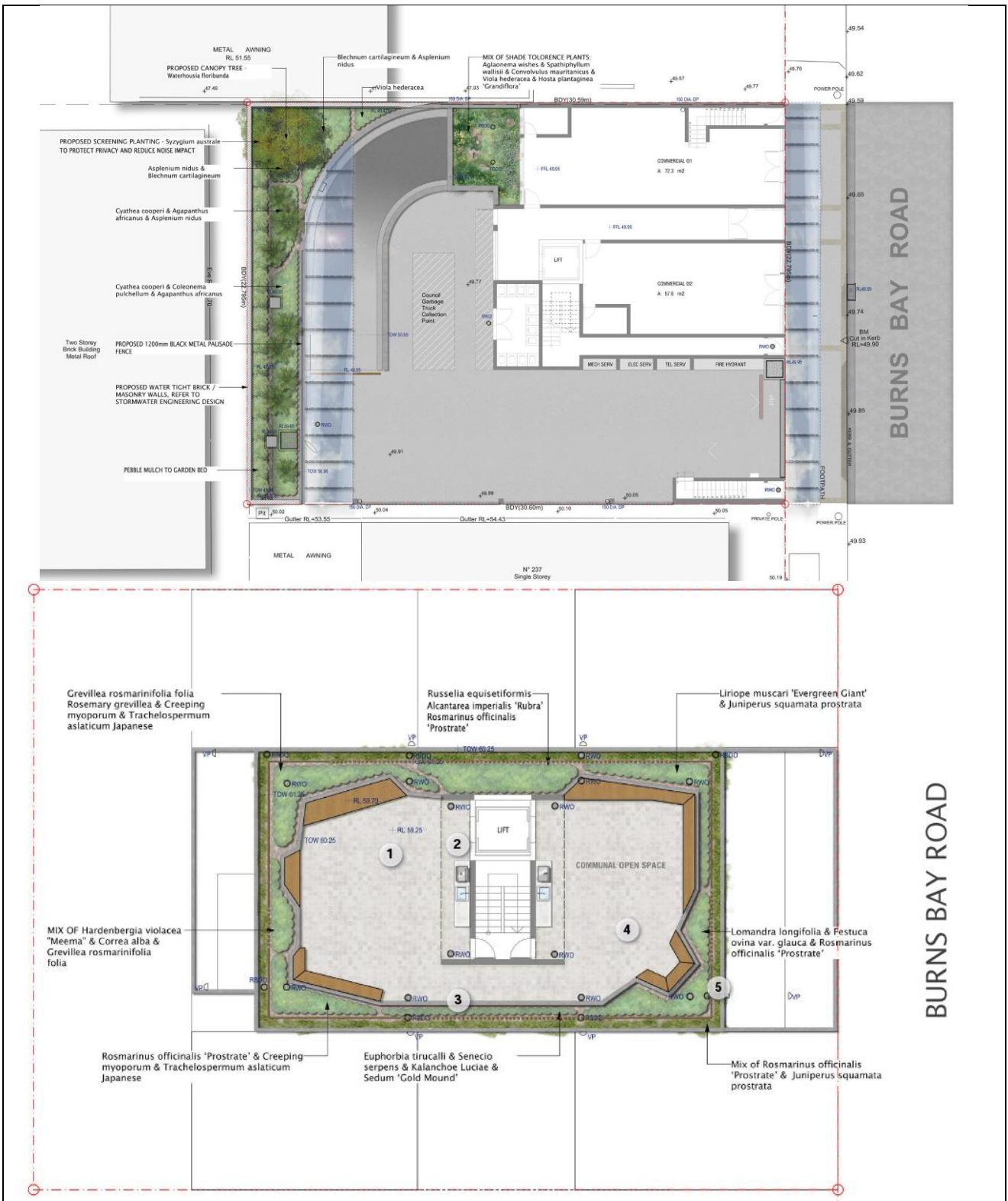


Painted Light Grey

**Figure 15: Proposed Schedule of Finishes and Materials**

A landscape concept plan accompanies the subject Development Application and provides for at least 77m<sup>2</sup> (or 11% of the site area) of combined landscaping/deep soil area.

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### Figures 16 & 17: Proposed Landscape Plans

The applicant had submitted a stormwater management plan which includes provision of an On-Site Detention (OSD) System.

No specific uses or any operational details are proposed within the proposed commercial tenancies and no signage is proposed as part of the subject Development Application which all would be subject

to a separate application/s.

## **SECTION 4.15 ASSESSMENT**

### **(a) The provisions of**

#### **(i) Any environmental planning instrument:**

##### State and Sydney Regional Environmental Planning Policies

##### **State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004**

A valid BASIX certificate has been submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the policy.

##### **State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021**

On 1 March 2022, the provisions of SEPP (Resilience and Hazards) 2021 had consolidated three state policies including SEPP 55 – Remediation into one policy which still requires Council to consider the potential for a site to be contaminated. The subject site has a history of forming part of the service station/motor garage use and later mainly as a vehicle storage carparking area. As such, it would be possible that the subject site could contain contamination and further investigation would be warranted in this case.

It is recommended that a condition be imposed requiring that the applicant is to submit a SAS Statement prior to the commencement of works to evaluate the accuracy of the DSI submitted which concluded that contaminants of potential concern were not detected at concentrations above relevant criteria in all soil and groundwater samples analysed. Further, it is recommended that a Dewatering Management Plan (DMP) would be required to construct the proposed tank basement. The proposal complies with the relevant contamination provisions of the SEPP.

##### **State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development**

This Policy aims to improve the design quality of residential flat developments and this proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- The nine SEPP 65 Design Quality Principles (see Attachment 1); and
- The NSW Apartment Design Guide (ADG) guidelines (see Attachment 1).

##### **Schedule 1 Design Quality Principles**

A review of the Schedule 1 Design Quality Principles of the SEPP and the ADG has occurred as part of the assessment of the subject Development Application against the submitted design plans prepared by the applicant. Council is supportive of the plans due to greater side/rear setbacks with a 3m wide rear deep soil area being provided for the proposed development whilst accepting a nil side setback for the ground/first floor levels. Other design benefits include a revised ground floor arrangement with the driveway positioned to the southern boundary (with a suitable width) and east/west facing apartments to Level 1 and a two floor plan options for Level 2 which includes a nil front setback on the upper level.

This was a result in the applicant provided generous 6m rear and side setbacks. Further, the applicant has provided a rooftop common open space area and has addressed the following relevant components of the development (but not limited to) as follows:

- Developing the street elevations in more detail.
- Providing and testing the ground and building envelope of the adjacent lots to demonstrate how adequate separation can be maintained on the third level if a similar shop top housing development occurs on the adjoining sites in the future.
- Developing the building form and floor plan options to improve apartment amenity and satisfy the solar and natural ventilation requirements of the ADG.

The future development potential of adjoining allotments which would reflect the proposed built form arrangement of the subject proposal should they be redeveloped in the future. As to be discussed in further detail in this report, it is considered that the proposed front setback on the upper level is appropriate in this instance on the basis that approval of the subject proposal would not be inconsistent with other potential future developments that would occur within the immediate locality. A further increase to the front setback area for the upper level would reduce the large side and rear setbacks of the proposed development due to the small constrained nature of the subject development site.

The applicant as part of the DA submission had provided relevant solar and cross ventilation full compliance tables whilst maintaining appropriate privacy measures to common boundaries. A review of the principles has indicated that the proposed development would address the relevant design quality principles and the ADG. The bulk and scale of the proposed development would fit in within the immediate locality. The proposed development is reasonable in providing for an appropriate landscaped and amenity outcome for the future residents due to the required common open space area being provided on the roof level and appropriate building separation provided for.

Also, there are no concerns with the potential conflicts between the residential and commercial uses involved where they can be appropriately managed into the future.

## **Variations**

### **ADG Building Depth**

The proposed development complies with the requirements of the ADG with exception of Part 2E of the ADG that requires a maximum 12m – 18m building depth to ensure that apartments receive adequate daylight and cross ventilation. A maximum building depth of 25m (inclusive of balconies) and 23m (exclusive of balconies) are proposed and as discussed above in this report the internal amenity levels of the proposed units and associated lobby corridors have been assessed to be satisfactory in this instance. The applicant has provided a satisfactory built form, internal floor plan layout and location of windows to ensure full compliance with the ADG's solar access and cross ventilation requirements are met whilst maintaining appropriate privacy measures in place.

### **Lane Cove Local Environmental Plan (LCLEP) 2009**

Shop top housing are permissible forms of development within B1 Neighbourhood Centre zone.

### **Development Standards**

The proposal has been assessed against the applicable development standards within LCLEP 2009 as detailed in the following table of compliance:

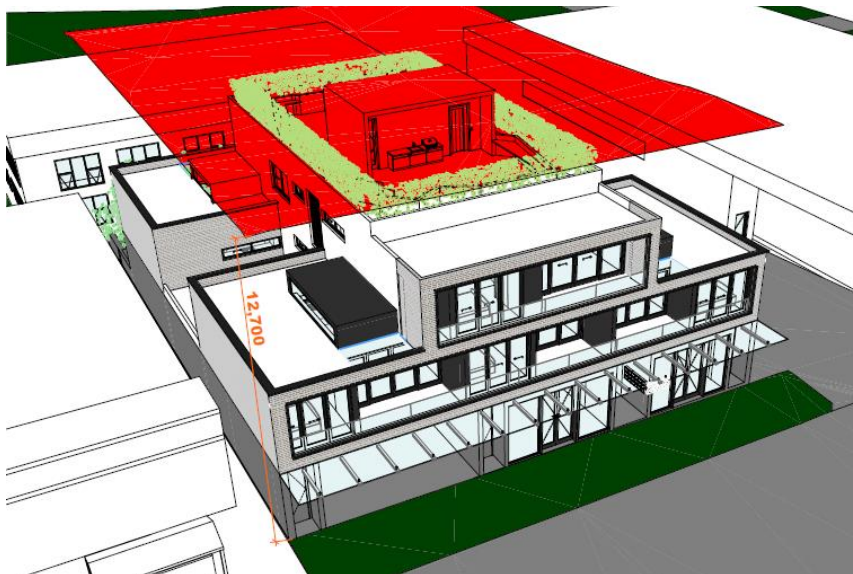
Lane Cove LEP 2009	Proposal	Compliance
<b>4.3 Height</b>		
9.5m	Maximum 12.7m (33.68% variation)	<b>No, see discussion below</b>
<b>4.4 FSR</b>		
1:1 Site Area 697m <sup>2</sup> FSR = 697m <sup>2</sup>	1:1 or 697m <sup>2</sup>	Yes

#### **Other Provisions**

LEP	Proposed
<b>5.6 Architectural Roof Features</b>	The application does not propose or include any architectural roof features that exceed the maximum building height.
<b>5.10 Heritage Conservation</b>	Around the corner from the subject site is heritage item I221, being No.1 Wood Street. This is a single storey residence known as "The Oaks" with local historic significance. The development proposal will not have any impact upon the heritage significance of this site.
<b>6.1A Earthworks</b>	Excavation of a 2.7m high basement would be suitable for the proposed development from a contamination, soil stability and stormwater perspective as the structure would be 'tanked' watertight. All excess excavated fill will be disposed of in accordance with relevant requirements and EMP would be implemented to identify measures for the treatment of any contaminated waters.

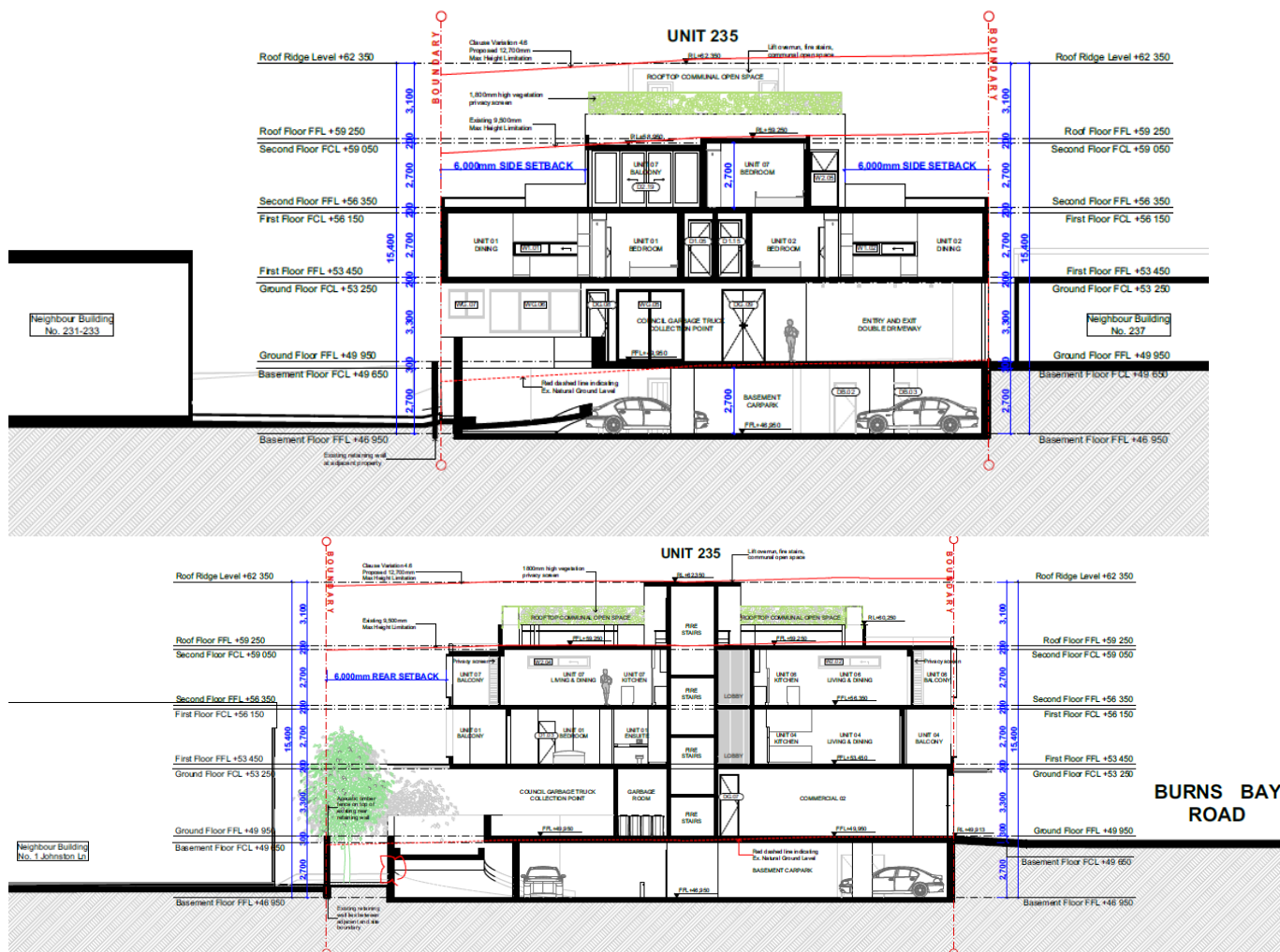
#### **A. Clause 4.6 Written Request – Building Height**

A maximum building height of 9.5m applies to the site under LCLEP 2009. The proposed building has a maximum building height of 12.7m (a variation of 3.2m or 33.68%) due to the proposed rooftop common open space area. The relevant height plane and section diagrams of the proposal are provided below.



**Figure 18: Proposed Building Height Plane**

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**Figures 19 & 20: Proposed Sections (the Bottom Red Line is the Maximum 9.5m LEP Building Height Line)**

## Clause 4.6 Exceptions to development standards

Clause 4.6 of LCLEP 2009 allows exceptions to 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. This written request must demonstrate compliance with the relevant provisions of Clause 4.6 of LCLEP 2009. These matters are discussed below:

Written request provided by the applicant

The applicant has provided a written request (see Attachment 2) seeking a variation to the development standard with the lodged application. A copy of the request provided to the Panel. Under Clause 4.6(3) the applicant is required to demonstrate:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

**1. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

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:

- *The extent of the non-compliance is limited to the lift overrun and stairs and the planter box which surrounds the rooftop communal open space;*
- *The height of the habitable parts of the development proposal remains entirely compliant with the height of buildings development standard;*
- *Strict compliance with the height of buildings control artificially restricts the useability of the rooftop for communal open space purposes which is otherwise encouraged by Council's development controls pertaining to shop top housing;*
- *The extent of non-compliance will not have any significant adverse impact upon the neighbouring properties or upon the public domain; and*
- *The proposal remains consistent with the LEP objectives and the objectives relating to height of buildings.*

**Comment:**

The proposed variation has little adverse visual impact effect to the scale of surrounding buildings as it only forms part of the proposed building to accommodate a useable common open space area and strict compliance is unreasonable. The development presents as an appropriate built form to all elevations and to surrounding developments. There are no proposed units that sit above the maximum building height plane and the proposed variation would have very little adverse impact onto the immediate locality. The variation is consistent with the objectives of the development standard for the following reasons:

- The proposed variation makes very little visible increase to the bulk and scale of the development and it allows for reasonable solar access to existing buildings and public areas to be maintained.
- The proposal does not contain significant adverse privacy and visual impacts on neighbouring properties.

Given the minimal impacts on neighbouring properties and the public domain, strict compliance with the Height of Buildings development standard would be unreasonable or unnecessary in this instance. The written request demonstrates that the breach to height would not result in the departure from the building height objectives in relation to privacy/visual physical impacts and to ensure that the development relates to the topography of the subject site. The proposed development appropriately identifies the existing character of the locality by providing for satisfactory building setbacks whilst providing for improved amenity levels of the future users of the subject building.

**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, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity. The applicant has stated that there are sufficient planning grounds to contrive the Building Height development standard as:

- *The development allows for the use of the site for shop top housing;*
- *The construction of the proposed development will enhance the existing streetscape;*
- *The proposed lift over-run and planter box will have minimal adverse impacts upon adjoining properties;*
- *The proposal maintains the approved overall finished built form which is appropriate for the site and accordingly the height of buildings breach is not associated with an excessive finished built form; and*
- *Flexibility in this instance will allow for the site to be developed with no discernible impacts beyond a fully compliant scheme.*

**Comment:**

The environmental planning grounds to justify contravening the development standard are considered relevant. The applicant has sought to provide for a design which would provide benefits to the future users of the building whilst minimising any significant impacts externally. The additional height created above the 9.5m building height standard is due in part in providing a common open space area which would provide for a better or good planning outcome in this instance rather than a fully complying development that does not include such an area.

Reasonable attempts have been made to appropriately design the development to provide for this outcome which is to provide for a high-quality modern shop top housing development which contributes to both employment and housing within the Lane Cove LGA. A clear or detailed analysis had been made in the submitted Clause 4.6 written justification. The overall impact on the locality has been minimised where possible and the proposal would not adversely impact on the adjoining and surrounding premises. The environmental planning grounds provided are considered satisfactory and are supported. Clause 4.6(3)(b) is satisfied.

**3. Consistent with the zone objectives and objectives of the development standard.**

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would not be contrary to the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The applicant has stated that the proposal achieves the relevant objectives of the Building Height standard by:

***Objective (a)***

*It has been demonstrated in the development plans that the proposal minimises any overshadowing, loss of privacy and visual impacts upon existing surrounding buildings or upon the public domain. It also maximizes solar access for the public domain by locating where the breach to the height control is located centrally within the site and the shadows cast are demonstrated as being acceptable.*

***Objective (b)***

*Behind the site (to the west) and on the western side of Johnston Lane, there is a residential pocket zoned R2 Low Density Residential. The considerable rear setbacks and location of neighbouring buildings restricts any adverse impacts upon the neighbouring R2 zone land.*

***Objective (c)***

*That part of the proposal that breaches the height of buildings control will result in minimal additional shadows over the adjoining site to the south, which is currently used as a services station.*

**Objective (d)**

*The density and intensity of land use proposed for the site will remain compatible with the surrounding neighbourhood.*

*In addition to the above, the proposal will remain consistent in the future streetscape and compatible with the varying built forms of neighbouring properties. Accordingly, it is considered the proposal will not detract from the existing or desired future character of the locality when viewed in conjunction with the adjoining buildings. The proposed non-compliance is therefore not considered to result in a size or scale of development that is incompatible with the existing or desired future character of the locality. The proposal therefore satisfies Objective (c).*

An assessment against the objectives of building height and the B1 Neighbourhood Centre zone contained within LCLEP 2009 are provided as follows:

**Height of Building Objectives**

Clause 4.3 (1) provides the following objectives:-

- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas;*

**Comment:** The development would allow for reasonable solar access to existing buildings and public areas.

- (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable;*

**Comment:** There would not contain significant adverse privacy and visual impacts onto the adjoining properties.

- (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain; and*

**Comment:** The development would allow for reasonable sunlight for the public domain.

- (d) *to relate development to topography*

**Comment:** The proposal has been appropriately designed which appropriately considers the topography whilst providing for a high amenity shop top housing development.

**In accordance with the above, the development does comply with the LCLEP 2009 objectives for the height control and is supported.**

The applicant has stated that the proposed development is consistent with the B1 zone objectives as the proposed development:

*The proposal meets the relevant objectives for development in the B1 zone. It will provide for a range of small-scale retail uses which will service the needs to people who live and work in the neighbourhood. The proposal provides a development that is compatible with the character and amenity of the surrounding neighbourhood of a height and scale that achieves the desired future character of this small commercial centre. The proposal provides for a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.*

*The proposal is considered to meet the objectives for development in the zone and is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.*

### **B1 Neighbourhood Centre Zone Objectives**

The B1 zone objectives are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood*

**Comment:** The proposal provides for two retail/commercial tenancies to meet the needs of people who would live or work within the immediate locality including the future residents of the proposed shop top housing development. The proposed tenancies would allow for reasonable amenity for the occupants and for customers.

- *To encourage urban design maximising attractive public domain and adequate circulation space throughout the neighbourhood centres for current and future users.*

**Comment:** The proposal would provide for a well-designed modern shop top housing development that would improve on the current public domain appearance and would successfully integrate within the envisaged character of the neighbourhood centre.

- *To ensure that landscaping is a significant element in public and private development viewed from the public domain.*

**Comment:** The proposed shop top housing building with a rear 3m wide deep soil zone and dense landscaping along the perimeter of the rooftop common open space would ensure that landscaping would be a significant element.

**In accordance with the above, the development does comply with the LCLEP 2009 objectives for the B1 Neighbourhood Centre zone.**

### **4. Concurrence of the Director General.**

The Local Planning Panel can assume concurrence for exceptions to development standards where the variation to the development standard is greater than 10%. The building height variation is more than 10% (33.68%). As the proposal is referred to the Lane Cove Local Planning Panel for determination; concurrence is taken to be assumed should the Panel be satisfied that notwithstanding the above impacts and non-compliances the proposal is acceptable.

### **5. 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 variation to the height standard of LCLEP 2009 is justified and supported in the circumstances of this case. The development would satisfy the objectives of the control despite the non-compliance with the height control. The development satisfies the objectives and the criteria outlined in Clause 4.6. As such, the variation is well founded, it results in a better planning outcome and would not be contrary to the public interest.**

- (ii) **Any proposed instrument (Draft LEP, Planning Proposal)**

N/A

**(iii) Any development control plan**

Lane Cove DCP 2010

**Parts B – General and C3 – Residential Flat Buildings**

A full assessment of the proposal under DCP 2010 Parts B and C3 has occurred (see Attachment 4) as illustrated in the compliance table). The non-compliances identified in the table are assessed below.

**Variations**

**Density**

Clause 3.2 – Density requires a minimum site area for residential flat developments is 1,500m<sup>2</sup> and the proposed development site area is 697m<sup>2</sup> however there is no minimum site area requirements for either shop top housing or mixed-use developments which are separately defined under LCLEP 2009. It is considered that the subject site is large enough to accommodate a small-scale shop top housing development.

**Building Depth**

See ADG Apartment Depth discussion above in this report for further details.

**Balcony Setback Encroachments**

See Part D DCP frontage and side setbacks discussion below for further details.

**Landscape Area**

Clause 3.18 – Landscaped Area requires a minimum of 40% of the site area is to be planted, comprising 25% landscaped area and a further minimum of 15% planting on structures or landscaped area. A total of 11.1% landscaped on the ground level and 9% on the rooftop COS area are proposed (refer to Figures 16 and 17). The relevant objectives are:

- 1 To provide privacy and amenity.*
- 2 To retain and provide for significant vegetation, particularly large and medium sized trees and to provide continuous vegetation corridors.*
- 3 To conserve significant natural features of the site.*
- 4 To assist with management of the water quality and water table.*
- 5 To conserve and create buildings in a landscaped setting.*

**Comment:** The proposed landscaping and deep soil area scheme are a reasonable outcome achieved in this instance. A review of the submitted landscaping plans have occurred and no objections are raised by Council's Landscape Architect with respect to that scheme has appropriately worked with the constraints of the subject site which currently has no on-site landscaping due to the existing commercial nature of the subject site. Given the nature of the proposed development, the provision of dense rear 3m landscaped area and perimeter around the rooftop COS area ensures appropriate landscape treatments to reduce the visual impact to the proposal.

The proposed landscaping is also used to provide an appropriate interface with the rear boarding house development. The communal area has also been densely landscaped to provide for high

residential amenity and to soften the height development when viewed from the public domain or from Burns Bay Road. The landscaping to the COS area would also mitigate offsite privacy impacts where it would ensure that overlooking to surrounding receivers are minimised.

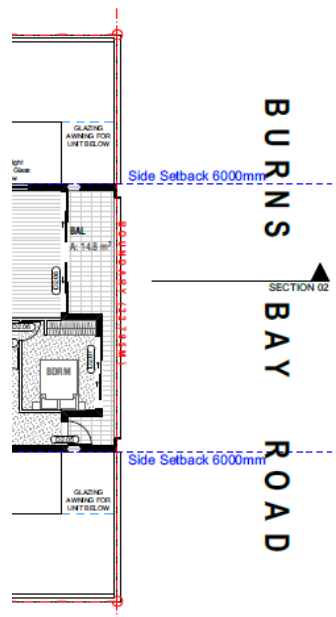
### **Part D – Commercial Development and Mixed Use**

A full assessment of the proposal under DCP 2010 Part D has occurred (see Attachment 3) as illustrated in the compliance table). The non-compliances identified in the table are assessed below.

### **Variations**

#### **Frontage and Side Setbacks**

Clause 1.1.6 – Setbacks requires a minimum 3m front setback above two storeys and minimum 3m side setback for shop top housing above the ground floor level. The proposed development encroaches into the front 3m from setback area for the upper level with a nil balcony setback and a 0.5m-2m building façade setback. A nil side setback on Level 1 is proposed.



**Figure 21: Nil Balcony and 0.5m-2m Front Façade Setback of 3<sup>rd</sup> Storey Component**

The relevant DCP objective is as follows:

#### **1.1.6 Setbacks**

1. *To reduce the impact of scale as well as assist with cross-ventilation, solar access, privacy, views sharing and to reduce adverse wind effects.*

**Comment:** The proposed development has been appropriately designed to reduce the scale of the proposal onto adjoining and surrounding properties. To require full compliance with the front setback would reduce the generous rear and side setbacks for the proposed upper level. The upper level units have been designed to maximise levels of cross ventilation, solar access, privacy and view sharing. The proposed front variation would not adversely impact on the residential zoned area opposite the subject site. The development would be consistent with future adjoining commercial developments as it would likely take the same built form as the subject proposal with a nil side setback on the first level.

The upper level is a relatively minor portion of the whole development at a width of approximately 10m. It is considered that there is no excessive bulk and scale with the proposed building. The

proposed development would not be entirely inconsistent with the intended desired future character for the Lane Cove West commercial locality. The siting of the building, its design and its finished built form will result in a building that activates the street frontage whilst also providing for suitable amenity levels for future users of the development and for surrounding properties. The proposed variations to front and side setbacks can be supported in this instance.

### **Design and Location of On-Site Parking**

Clauses 1.3(m) & (o) – Design and Location of On-Site Parking requires that residential and non-residential car parking spaces are to be physically separated and for residential flat buildings, generally limit the width of driveways to a maximum of 6m. The required commercial and residential car parking are provided in the basement level and the maximum width of the driveway is 6.3m (see Figure 13). The relevant DCP objectives are as follows:

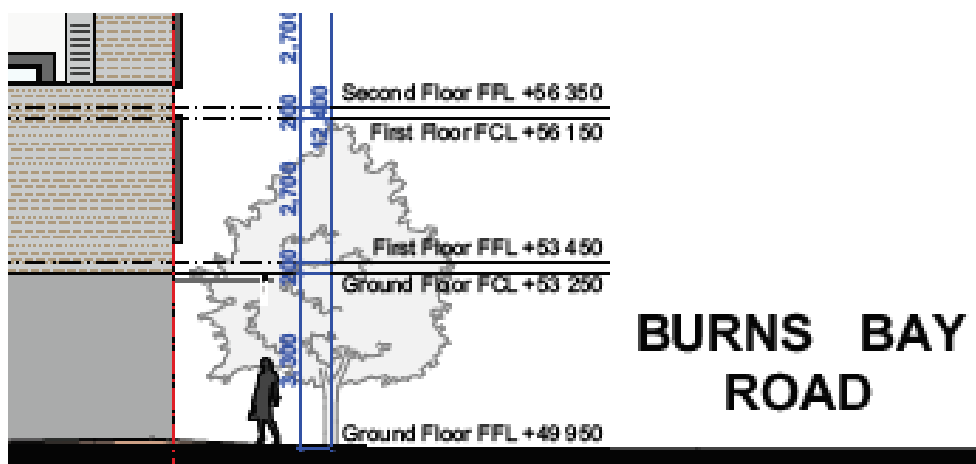
1. *Minimise the impact of vehicle access points and driveway crossovers on streetscape amenity, pedestrian & cyclist safety and the quality of the public domain by;*
  - a) *Designing vehicle access to required safety and traffic management standards,*
  - b) *Integrating vehicle access with site planning, streetscape requirements, traffic patterns, cycle routes and*
  - c) *Minimising potential conflict with pedestrians & cyclists.*
2. *Minimise the size and quantity of vehicle and service crossings to retain streetscape continuity and reinforce a high-quality public domain.*

**Comment:** The proposed development does not physically separate the residential and commercial car parking spaces however they would be appropriately marked and dedicated. The basement level has been appropriately designed due to the small scaled nature of the development to minimise any potential land use conflicts that may occur. The subject development can be appropriately managed to ensure it operates in a safe manner. Council's Traffic section has assessed the proposal and has raised no objections subject to conditions. The siting and location of the basement parking remains fully concealed from public view.

The site remains easily accessible by motor vehicles associated with the residential and commercial components of the site. The driveway width of 6.3m has been minimised where possible and will not compromise the availability of on-street parking which is not permitted along this part of Burns Bay Road.

### **Awnings**

Clause 1.5(d) requires a minimum 3.3m awning height and a 3.1m awning height is proposed.



**Figure 22: 3.1m Awning Height**

The relevant DCP objectives are as follows:

- 1 To increase pedestrian amenity by the provision of weather protection.*
- 2 To create a protected transition area between internal and external spaces for public and commercial buildings.*

**Comment:** The proposed awning is appropriate in this instance as suitable pedestrian amenity would be maintained and provide for adequate weather protection. The design of the awning is supported as it would create an attractive transition area between the footpath area and the development itself.

## **Part F - Access and Mobility**

<b>PART F - ACCESS AND MOBILITY</b>		
<b>DCP Controls</b>	<b>Proposal</b>	<b>Complies</b>
<b>3.5 Adaptable and Visitable Housing (residential flats and dual occupancies)</b>		
Adaptable housing to be provided at the rate of 20% of all dwellings in a Class 2 development.	One adaptable apartment (Unit 4) and has been designed to meet the minimum adaptable dwellings provisions.	Yes – subject to a condition requiring that two adaptable units are to be provided
Dwellings are to be visitable at the rate of 80% in developments requiring adaptable housing.	All seven apartments are visitable.	Yes
<b>3.8 Access to, and within, buildings</b>		
1. Access is to be provided in accordance with BCA Clause D3.1 and in accordance with Table 1: - Residential Flat Building 2; - Car park Class 7a From a required accessible entrance to at least 1 floor containing SOU's and to the entrance doorway of each SOU on that level. To and within 1 of each type of room or space for use in common by the building occupants.	Access to residential units and commercial spaces would meet the requirements of BCA	Yes

## **Part R – Traffic, Transport and Parking**

<b>PART R TRAFFIC, TRANSPORT AND PARKING</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>2.2 Car Parking Rates</b>		
<b>Shop Top Housing</b>		
<b>Table 1 – Car parking rates</b> <u>Residential:</u> One space per dwelling • Seven units require seven spaces  One disabled space per adaptable housing unit: One adaptable unit provided however condition recommended for two adaptable units to be provided  One onsite removalist truck per 100 residential units	Seven spaces provided   One space provided.   Loading bay for a SRV provided to be shared with the allocated waste collection space.	Yes – subject to a condition that the proposed two accessible spaces to be allocated to the two required adaptable units

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235 BURNS BAY ROAD, LANE COVE WEST**

<b>PART R TRAFFIC, TRANSPORT AND PARKING</b>		
<b>Development Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>2.2 Car Parking Rates</b>		
<b>Shop Top Housing</b>		
<b>Total required Seven spaces including two disabled space</b>	<b>Total: Seven spaces including one disabled space</b>	
<b>Commercial Premises</b>		
<b>Office/business premises</b>		
One space per 60m <sup>2</sup> gross floor area: 131m <sup>2</sup> /60m <sup>2</sup> = Three spaces required. One disabled space per 20 car spaces (min one disabled space)		Yes – subject to a condition that one of the car parking spaces be deleted to be converted into a shared zone to allow for a third accessible space to be allocated to the commercial component
<b>Total required: Three spaces and one disabled space</b>	<b>Total: Five spaces including one disabled space</b>	
<b>Total Spaces required: 11</b>	<b>Total provided: 12</b>	<b>Yes – to be appropriately conditioned</b>
<b>2.7 – Motorcycle parking</b>		
One motorcycle space per 15 car spaces Motorcycle parking spaces are to have an area of 1.2m x 3m	One provided in basement.	Yes

### **Section 7.11 - Development Contributions Plan**

The proposed development is subject to S7.11 contributions in accordance with Council's S94 Contributions Plan. The development would increase the population living on the site as well as increasing the commercial and retail use. There would be seven dwellings in the proposed development comprising of three x one-bedroom, three x two-bedroom and one x three-bedroom dwellings. There would be 131m<sup>2</sup> of commercial space. The S7.11 is calculated for residential and commercial floor space as follows:

#### **Residential**

The S7.11 plan has specified the average number of people per dwelling, based on the number of bedrooms. The occupancy rates are:

- 1.2 persons per one-bedroom unit in high density developments.
- 1.9 persons per two-bedroom unit in high density developments.
- 2.4 persons per three-bedroom unit in high density developments.

The S7.11 contribution for each dwelling of the proposed shop top housing development is calculated at the current rate of \$11,044.52 per person (2021-2022) as follows:

<b>High density developments</b>				
<b>No. bedrooms</b>	<b>Average occupancy</b>	<b>Amount of contribution per person</b>	<b>No. of Dwellings</b>	<b>Total contribution</b>
One Bedrooms	1.2 persons	\$11,044.52 x 1.2 = \$12,770.40 per dwelling	Three x \$12,770.40	\$38,311.20
Two	1.9 persons	\$11,044.52 x 1.9 =	Three x	\$60,000.00

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Bedrooms		\$20,219.80 per dwelling (capped at \$20,000)	\$20,000.00	
Three Bedrooms	2.4 persons	\$11,044.52 x 2.4 = \$26,506.85 per dwelling (capped at \$20,000)	One x \$20,000.00	\$20,000.00
			<b>TOTAL:</b>	<b>\$118,311.20</b>

\*N/B The reforms to Local Development Contributions have a cap of \$20,000 per residential lot or per dwelling limitation on local development contributions. Per dwelling contributions is below the cap.

The total S7.11 contribution for the residential component of the development is \$118,311.20.

### **Commercial/Retail**

The Section 7.11 Contributions applicable for Retail/Commercial Development – Traffic Management and Streetscape improvements (per m<sup>2</sup> of gross floor area) at a rate of \$139.26 per m<sup>2</sup> of GFA (2021/2022 Fees & Charges Schedule) are calculated as follows:

- (Commercial 131m<sup>2</sup>) x \$139.29 (2021/2022) = **\$18,247.00**

### **Total S7.11 Contribution**

The required S7.11 contribution for the retail/commercial and residential components of the development is calculated at: \$118,311.20 + \$19,947.00 = **\$136,558.20**. Were the application to be supported a condition requiring payment would be included in the draft conditions of consent.

### **(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The proposed development would be in-excess of the maximum permissible height control. The excessive height would not dominate the streetscape and surrounding developments. The parking provided for is adequate. The parking arrangement is satisfactory which would not adversely impact upon the amenity of the residents and commercial space users. The privacy of the units and surrounding developments would not be compromised. The proposed building separation and setbacks are adequate. The development is considered satisfactory in terms of environmental impacts.

### **(c) The suitability of the site for the development**

The subject development site is suitable for the proposed development where the relevant contamination, height, setbacks and parking issues have been adequately addressed to enable the proposed development to be recommended for approval subject to conditions. A well-considered proposal that seeks to deliver the relevant LEP and DCP objectives has been achieved.

### **(d) Any submissions made in accordance with this Act or the regulations**

In accordance with Council's notification policy, owners of surrounding properties were given notice of the application and one submission was received from a resident directly opposite the subject site at No. 228 Burns Bay Road. The following issues were raised as follows:

*It is noted that residents live in a busy road position where our property is attractive to us because of ready access to transport, privacy behind our front fences and proximity to the city. The surrounding homes are all similar being single level homes enjoying the same convenient benefits.*

*Our concern with the development is the size and height proposed. The other buildings in the block facing Burns Bay Road (being the Ampol Service Station, Figtree Cellars/Dan Murphys, F45 Gym and Sweet Temptation Patisserie) are all single level and residents have a level of privacy. The development proposed, being across three levels and appears to be over 12m high, will certainly affect our amenity and is unsympathetic with others in the area.*

*Our neighbours at Nos. 226 and 230 Burns Bay Road (copied into this submission) have similar concerns. Council is advised that permission to build to such a different height so close to smaller level buildings would seem to be inviting other Development Applications to be lodged in the area to adopt similar flexibilities.*

**Comment:** As discussed in detail above in this report, the proposed overall height of the development is satisfactory in this instance and has been supported by a detailed Clause 4.6 written justification. The proposed built form would not inconsistent with the envisaged future commercial character of the Lane Cove West precinct as a shop top housing development is a permissible form of development and its three storey form would not inappropriate along a classified road. There are no privacy concerns due to separation involved between the development and the residential allotments opposite Burns Bay Road where privacy levels would not be significantly reduced due to the height of the development.

Approval of the subject Development Application would not create a dangerous precedent and other applications lodged in this precinct would be subject to a separate merit assessment.

#### **(e) The public interest**

Having regard to the assessment contained in this report, it is still considered that approval of the development would not be contrary to the public interest.

#### Development Engineer - Traffic

No objections subject to recommended conditions to include ensuring compliance with relevant Australian Standards with the design of the car park/driveway areas and traffic matters.

#### Development Engineer - Stormwater

No objections subject to recommended conditions to include ensuring compliance with relevant stormwater, driveway, Council infrastructure and geotechnical matters.

#### Manager Environmental Health

No objections subject to recommended conditions to include ensuring completion of a SAS prior to the issue of the construction certificate and compliance with relevant waste and health and environment matters.

#### Building Coordinator

No objections subject to recommended conditions to include ensuring compliance with the Building Code of Australia (BCA) and fire safety matters.

#### Transport for New South Wales (TfNSW)

Concurrence obtained from TfNSW as driveway access is proposed off a classified road and no objections subject to recommended conditions to include ensuring traffic, driveway crossing, kerb, guttering, stormwater, demolition, construction and excavation matters meet TfNSW requirements (see Condition No.10).

New South Wales Rural Fire Service (NSW RFS)

No objections subject to recommended conditions to include ensuring Asset Protection Zones (APZ's), water/utility services and landscaping matters meet NSW RFS requirements.

## **CONCLUSION**

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied. The proposed warehouse development is not compliant with the numerical Building Height development standard within LCLEP 2009. The submitted Clause 4.6 written request is considered satisfactory and well-founded as detailed in this report. The proposed shop top housing development is considered compatible with the local character without having significant adverse impacts onto surrounding properties.

The proposed development has DCP non-compliances including the front setbacks of the upper level. The subject development would achieve a reasonable built form outcome when viewed from the street and from surrounding developments. The development would have a reasonable visual impact as it would provide for visual interest to the Burns Bay Road streetscape. The proposal was notified in accordance with Council policy and one submission was received. The issues raised within the submission do not warrant outright refusal of the subject Development Application. It is considered that the proposal as submitted involves for a reasonable built outcome which is consistent with the existing and future envisaged built form in the locality.

The proposed development would satisfy the employment and housing needs of the Lane Cove West precinct and would continue to maintain relevant amenity objectives to surrounding developments. The Development Application is recommended for approval subject to conditions of consent.

## **RECOMMENDATION**

That the Lane Cove Planning Panel approve the proposed variations to the Building Height development standards in Clause 4.3(2) in *Lane Cove Local Environmental Plan 2009*, as the applicant's written request does adequately address the matters required to be demonstrated. The proposed development would not be contrary to the public interest because it is consistent with the objectives of the standard, the objectives for development in the zone and there are environmental planning grounds to justify the variations.

The Lane Cove Local Planning Panel, at its meeting of 3 May 2022, in exercising its duties as the consent authority, pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, approve the subject Development Application DA161/2021 for the shop top housing development on land at No. 235 Burns Bay Road Lane Cove West subject to the following conditions:

### **General Conditions**

1. **Approved Plans and Documents:** That the development be strictly in accordance with Drawing Nos.:
  - A101-102, A202, A301 & A516 Issue B dated 08.12.2021,
  - A103-105 & A201 Issue A dated 18.10.2021 prepared by BJ Architects; and
  - LP02-08 Revision F dated 14 April 2022 prepared by Affordable Design Solutions.

except as amended by the following conditions.

**Reason:** To ensure the development is in accordance with the determination.

2. **Design Amendments** All proposed studies on Level 1 are to have a highlight window.

**Reason:** To ensure adequate amenity levels are provided for future occupants.

3. **Section 7.11 Contribution.** The payment of a contribution for additional person/s and commercial floor space in accordance with Council's Section 7.11 (S94) Contributions Plan shall be paid prior to the issue of any Construction Certificate. This payment is to be at the current 2021/2022 rate at the time of payment. The amount of **\$136,558.20** is required to be paid.

**NOTE: PAYMENT MUST BE IN BANK CHEQUE. PERSONAL CHEQUES WILL NOT BE ACCEPTED.**

This contribution is for Community facilities, Open Space/Recreation and Roads under the Lane Cove Section 7.11 (S94) Contributions Plan which is available for inspection at the Customer Service Centre located at Lane Cove Council, No. 48 Longueville Road, Lane Cove.

**N/B** The Section 7.11 Contribution is calculated as the follows:

No. bedrooms	Average occupancy	Amount of contribution per person	No. of Dwellings	Total contribution
One Bedrooms	1.2 persons	\$11,044.52 x 1.2 = \$12,770.40 per dwelling	Three x \$12,770.40	\$38,311.20
Two Bedrooms	1.9 persons	\$11,044.52 x 1.9 = \$20,219.80 per dwelling (capped at \$20,000)	Three x \$20,000.00	\$60,000.00
Three Bedrooms	2.4 persons	\$11,044.52 x 2.4 = \$26,506.85 per dwelling (capped at \$20,000)	One x \$20,000.00	\$20,000.00
			<b>TOTAL:</b>	<b>\$118,311.20</b>

\*N/B The reforms to Local Development Contributions have a cap of \$20,000 per residential lot or per dwelling limitation on local development contributions

The contribution is also partly based on 131sqm and the current rate of \$139.26 per sqm of additional commercial floor space which is a total of **\$18,247.00**.

**Reason:** Statutory requirement.

4. **Disabled Access** - Prior to the issue of the Construction Certificate, a report is to be **provided from a suitably qualified access consultant to verify that the construction certificate plans illustrate a minimum 20% of units as adaptable and 80% as visitable in accordance with Lane Cove Development Control Plan 2010, including a mix of 1, 2 and 3-bedroom units and that the units comply with the Building Code of Australia and Australian Standards AS1428.1, AS4299, AS1735.12 and AS2890.6. A total of two adaptable apartments are to be provided within the development. These apartments are to comply with the requirements as outlined in AS4299. The report is to be provided to the Principal Certifying Authority and Council (if Council is not the PCA).**

**Reason:** To ensure accessibility requirements are met.

5. **Design Verification.** Prior to the relevant Construction Certificate being issued with respect to this development, the Principal Certifying Authority is to be provided with a written Design Verification from a qualified designer. This statement must include verification from the designer that the plans and specification achieve or improve the design quality of the development to which this consent relates, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*. This condition is imposed in accordance with Clause 143 of the *Environmental Planning and Assessment Regulation 2000*.

**Reason:** Statutory requirement.

6. **Parking Allocation** Both the owner and occupier of the development and/or the strata body must provide and maintain the minimum parking allocation as follows;
1. Seven residential spaces including two accessible and one carwash bay space;
  2. Four commercial spaces including one accessible space;
  3. One motorbike space; and
  4. Nine bicycle spaces.

**Reason:** To ensure parking spaces are provided in accordance with the determination

7. **Crime Prevention Through Environmental Design:** The following Crime Prevention Through Environmental Design requirements must be complied with:
- (a) The site will need to be clearly identified through a business name and street number and be visible from the street. This will enable all emergency services to locate the premises.
  - (b) Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. "This site is under 24 hour video surveillance".
  - (c) Bicycle parking should be in a secure area and covered with CCTV cameras.
  - (d) Mail boxes and parcel delivery areas should be secure and covered with CCTV cameras. If possible, a secure method for parcel delivery should be set up in the building.
  - (e) If the site has storage cages they should be made of solid materials that can't be cut open and covered by CCTV cameras. Signs should be placed in the area warning residents not to leave valuable items in storage cages.
  - (f) Lighting in and around the proposed development should comply with Australian Standard AS: 1158 and should provide for adequate, uniform illumination. External lighting should be of a 'white light' source. Note that high or low pressure sodium 'orange' lighting is not compatible with quality surveillance systems. Internal lighting should be controlled from 'Staff only' areas, away from public access. If this is not possible, use tamper-resistant switches. Luminaries (light covers) should be designed to reduce opportunities for malicious damage.
  - (g) Lighting within the site will need to be positioned in a way to reduce opportunities for offenders to commit crime i.e. vandalism and graffiti. The lighting will need to be sufficient to enable people to identify signs of intoxication and anti-social behavior. The lighting will also need to be sufficient to support images obtained from any CCTV footage. Please note that some low- or high-pressure lighting is not compatible with surveillance systems.
  - (h) Doors should be of solid construction and should be fitted with quality deadlock sets that comply with the Building Code of Australia and Australian Standards – Lock Sets AS:4145.

- (i) Windows within the site should also be of solid construction. These windows should be fitted with quality window lock sets that comply with the Australian Standards – Lock Sets AS:4145. Glass within doors and windows should be reinforced to restrict unauthorised access. The glass can be either fitted with a shatter-resistant film or laminated to withstand physical attacks.
- (j) An electronic surveillance system should be included to provide maximum surveillance of all areas of the site including entry/exits, car parks, bicycle parking, mail areas and common areas. Cameras should also cover public footpath areas around the premises. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering.
- (k) An emergency control and evacuation plan should be implemented within the site and displayed for the information of residents.
- (l) All recording made by the CCTV system must be stored for at least 30 days. Ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector. The CCTV cameras will need to be placed in suitable locations to enhance the physical security and assist in positively identifying an individual, who may be involved in criminal behavior.
- (m) “Park Smarter” signage should be displayed in the car park to warn/educate motorists to secure their vehicles and not leave valuable items in their cars. The car park will also need to have adequate lighting.
- (n) Wheelchair access should at no time be blocked nor impede access to anyone with a disability.
- (o) The landscaping design around the site needs to be free from potential hiding places and provide sightlines throughout the site and into any surrounding areas such as car parks, playgrounds and recreational amenities. Trees and shrubs should be maintained regularly to reduce concealment opportunities and increase visibility. Avoid the use of landscaping materials which could, when mature, serve as screens or barriers to impede views.
- (p) The boundaries of the site should be clearly identified to deter unauthorised persons from entering the site.

**Reason:** To provide safety and security

**8. Rural Fire Service Condition.**

**Asset Protection Zones**

1. From the start of building works, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entire property must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

### **Water and Utility Services**

2. The provision of water, electricity and gas must comply with the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:

- reticulated water is to be provided to the development where available;
- all above-ground water service pipes external to the building are metal, including and up to any taps;
- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
  - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal;
- polymer sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

### **Landscaping Assessment**

3. Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

9. **Lighting.** Lighting is to be provided around the site and all lighting is to comply with the following requirements:

1. Lighting is to be designed and installed in accordance with the relevant Australian and New Zealand Lighting Standards.
2. A Lighting Maintenance Policy is required to outline the maintenance, monitoring and operation of lighting.
3. Lighting is to be provided to all common areas including all car parking levels, stairs and access corridors and communal gardens.

4. Lighting is to be automatically controlled by time clocks and where appropriate, sensors for energy efficiency and a controlled environment for residents. Details demonstrating compliance are to be submitted to the Principal Certifying Authority **prior to the issue of any Occupation Certificate.**

**Reason:** To provide safety and security

**10. Transport for NSW Conditions.**

1. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property unlimited in height or depth along the Burns Bay Road boundary.

2. The redundant driveway on Burns Bay Road should be replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter crossing shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to [DeveloperWorks.Sydney@transport.nsw.gov.au](mailto:DeveloperWorks.Sydney@transport.nsw.gov.au) Detailed design plans of the proposed kerb and gutter crossing are to be submitted to TfNSW for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au) A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

3. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au) A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

4. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au). If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

5. All vehicles are to enter and exit in a forward direction.

6. All vehicles are to be wholly contained on site before being required to stop.

7. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Burns Bay Road.

8. A Road Occupancy License (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Burns Bay Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

**Reason:** TfNSW Condition.

**BUILDING CONDITIONS**

11. **Cladding and glazing** No external combustible cladding is permitted on the building. The ground floor commercial glazing facing Burns Bay Road is to be clear for the life of the development to ensure an appropriate level of street activation and passive surveillance is achieved.

**Reason:** To promote safety and street activation.

12. **Payment of building and construction industry long service levy**  
Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy based on the cost of works as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* and provides proof of this payment to the certifier.

**Reason:** To ensure the longservice levy is paid.

13. **Asbestos removal, handling and disposal**  
The removal, handling and disposal of asbestos from building sites shall be carried out in accordance with the requirements of the Occupational Health and Safety Act and the Regulations. Details of the method of removal in accordance with this condition is to be submitted to the Principal Certifying Authority and Council's Environmental Health Section, prior to commencing any demolition works.

**Reason:** To ensure worker and public health and safety.

14. **Construction site management plan**  
Prior to any demolition works and before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
- location and materials for protective fencing and hoardings to the perimeter on the site.
  - For sites adjoining bushland a 1.8m chain mesh perimeter fence with 1m sediment fencing attached to the lower portion is required to ensure that no foreign materials enter the bushland.
  - provisions for public safety
  - pedestrian and vehicular site access points and construction activity zones
  - details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site. The construction traffic management plan shall comply with the requirements of Part R of Lane Cove DCP 2010 and shall be submitted to Council's Traffic Section for written approval. Consultation with NSW Police, TfNSW, and Sydney Buses may be required. Note: Heavy vehicles are not permitted to travel on local roads without Council approval.
  - protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
  - For major works, appointment of a project arborist of minimum AQF Level 5 qualification to oversee/monitor tree(s) condition during the construction process.
  - details of any bulk earthworks to be carried out
  - location of site storage areas and sheds
  - equipment used to carry out all works
  - a garbage container with a tight-fitting lid

- dust, noise and vibration control measures including a construction noise management plan prepared in accordance with the NSW EPA's *Interim Construction Noise Management Guidelines* by an appropriately qualified acoustic consultant.
- location of temporary toilets.
- The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

### **Council Approvals**

1. Hoarding is required to be provided along the relevant street frontage, a Hoarding Application is to be submitted to Council for approval.
2. Any construction plant on the public road reservation requires an approved "Application for standing plant *permit*".

### **Additional Council Requirements**

1. Stockpiles or soil shall not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies.
2. All stockpiles of contaminated materials must be stored in an environmentally sensitive manner in a secure area on the site and shall be suitably covered to prevent dust and odour nuisance.
3. All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, including NSW EPA Waste Classification Guidelines (2014).
4. Where sites adjoin bushland:
  - For sites identified to be within bushfire prone land An Asset Protection Zone (APZ) shall be provided entirely within the site boundary. To protect bushland and property from fire risk, APZ standards are to be in accordance with Planning for Bushfire Protection (PBP) 2019.
  - Access to the site from adjacent parks/reserves/bushland for the purposes of carrying out building works, landscaping works, storage materials, storage of soil or rubbish is not permitted.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

### **15. Erosion and sediment control plan**

Prior to any demolition works or clearing of any vegetation and before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- Council's development control plan,
- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

**Reason:** To ensure no substance other than rainwater enters the stormwater system and

waterways.

**16. Waste management plan (WMP)**

Before the issue of a construction certificate, the applicant is to ensure that a waste management plan is prepared in accordance with the EPA's Waste Classification Guidelines and the following requirements before it is provided to and approved by the certifier:

- a) Council's Development Control Plan (Part Q: Waste Management and Minimisation).
- b) Where sites adjoin bushland (private or public):
  - the WMP shall detail measures to mitigate any rubbish or foreign materials from entering the bushland.
  - Access through parks, reserves and bushland to the site is not permitted.
  - Council's Coordinator of Bushland must be notified of any accidental or intentional dumping of material in the bushland area.
- c) details the following:
  - the contact details of the person(s) removing the waste
  - an estimate of the waste (type and quantity) and whether the waste is expected to be reused, recycled or go to landfill
  - the disposal and destination of all waste material spoil and excavated material

The applicant must ensure the waste management plan is referred to in the construction site management plan and kept on-site at all times during construction.

**Reason:** To ensure resource recovery is promoted and local amenity protected during construction.

**17. Utilities and services**

Before the issue of the relevant construction certificate, the applicant must submit the following written evidence of service provider requirements to the certifier:

- a) a letter of consent from all utility and service providers demonstrating that satisfactory arrangements can be made for the installation and supply of electricity.
- b) a response from Sydney Water as to whether the plans proposed to accompany the application for a construction certificate would affect any Sydney Water infrastructure, and whether further requirements need to be met.
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, what changes are required to make the development satisfactory to them.

**Reason:** To ensure relevant utility and service providers requirements are provided to the certifier.

**18. Dilapidation report**

Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, trees to be retained and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

**Reason:** To establish and document the structural condition of adjoining properties and public land for comparison as building work progresses and is completed.

**19. Structural engineer's details**

The Construction Certificate plans and specifications must include detailed professional

structural engineering plans and/or specifications for the following:

- underpinning;
- retaining walls;
- footings;
- reinforced concrete work;
- structural steelwork;
- upper level floor framing;

and where relevant in accordance with any recommendations contained in an approved geotechnical report.

**Reason:** To ensure structural adequacy.

20. **Sydney Water requirements**

The approved plans must be submitted to Sydney Water online approval portal "Sydney Water Tap In" for approval. A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

**Reason:** To comply Sydney Water requirements.

21. **Erosion and sediment controls in place**

Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

**Reason:** To ensure runoff and site debris do not impact local stormwater systems and waterways.

**Reason:** To protect and retain trees

22. **Signs on site**

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

**Note:** This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

**Reason:** Prescribed condition EP&A Regulation, clauses 98A (2) and (3).

23. **Compliance with Home Building Act**

In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

**Reason:** Prescribed condition EP&A Regulation, clause 98(1)(b).

**24. Hours of work**

All demolition, building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:-

Monday to Friday (inclusive)                      7am to 5.30pm

**High noise generating activities, including rock breaking and saw cutting be restricted between 8am to 5.00pm with a respite period between 12.00 noon to 1.30pm Monday to Friday**

Saturday    8am to 12 noon

**with NO high noise generating activities, including excavation, haulage truck movement, rock picking, sawing, jack hammering or pile driving to be undertaken. Failure to fully comply will result in the issue of a breach of consent P.I.N.**

A Notice/Sign showing permitted working hours and types of work permitted during those hours, including the applicant's phone number, project manager or site foreman, shall be displayed at the front of the site.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

**Note:** Any variation to the hours of work requires Council's approval.

**Reason:** To protect the amenity of the surrounding area.

**25. Compliance with the Building Code of Australia**

Building work must be carried out in accordance with the requirements of the Building Code of Australia.

**Reason:** Prescribed condition - EP&A Regulation clause98(1)(a).

**26. Procedure for critical stage inspections**

While building work is being carried out, any such work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.

**Reason:** To require approval to proceed with building work following each critical stage inspection.

**27. Surveys by a registered surveyor**

While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
- b) At other stages of construction – any marks that are required by the principal certifier.

**Reason:** To ensure buildings are sited and positioned in the approved location.

**28. Shoring and adequacy of adjoining property**

If the development involves any excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent

must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**Reason:** Prescribed condition - EP&A Regulation clause 98E.

**29. No obstruction of public way**

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

**Reason:** To ensure public safety.

**30. Encroachments**

1. No portion of the proposed structure shall encroach onto the adjoining properties.
2. The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council.
3. No encroachment is to occur into public open space.

**Reason:** To ensure works are contained wholly within the subject site

**31. Post-construction dilapidation report**

Before the issue of an occupation certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:

- a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
- b) where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent.

Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

**Reason:** To identify damage to adjoining properties resulting from building work on the development site.

**32. Sydney Water requirements**

A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

**Reason:** Sydney Water requirement.

**33. Annual fire safety certificate**

During occupation and ongoing use of the building, the applicant must provide an annual fire safety statement to Council and the Commissioner of Fire and Rescue NSW in accordance with clause 177 of the EP&A Regulation.

**Reason:** To satisfy Council's Engineering requirements to ensure annual checks on fire safety measures.

34. **Implementation of BASIX commitments**

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

**Reason:** To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 97A(2) EP&A Regulation).

35. **Separate Application for Subdivision**

A separate application to Council is required for any subsequent subdivision of the consolidated development site.

**Reason:** To ensure the subdivision provides for orderly development and the provision of shared communal open space.

36. **Property Numbering**

Prior to registration of any strata plan, submit to Council for approval a schedule of unit numbers against lot numbers.

**Reason:** To ensure the numbering system is in accordance with Australian Standard AS/NZS 4819:2011, and the NSW Address Policy and User Manual.

**General Engineering Conditions**

37. **Design and Construction Standards:** All engineering plans and work shall be carried out in accordance with Council's standards and relevant development control plans except as amended by other conditions.

**Reason:** To ensure all works are in accordance with Council's requirements

**Materials on Roads and Footpaths:** Where the applicant requires the use of Council land for placement of building waste, skips or storing materials a "*Building waste containers or materials in a public place*" application form is to be lodged. Council land is not to be occupied or used for storage until such application is approved.

**Reason:** To ensure public safety and amenity

39. **Works on Council Property:** Separate application shall be made to Council's Urban Services Division for approval to complete, any associated works on Council property. This shall include hoarding applications, vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be submitted **prior to the start of any works on Council property.**

**Reason:** To ensure public works are carried out in accordance with Council's requirements

40. **Permit to Stand Plant:** Where the applicant requires the use of construction plant on the public road reservation, an "*Application for Standing Plant Permit*" shall be made to Council. Applications shall be submitted and approved **prior to the start of any related works.**

Note: allow 4 working days for approval.

**Reason:** To ensure public safety

41. **Restoration:** Public areas must be maintained in a safe condition always. Restoration of disturbed Council land and assets is the responsibility of the applicant. All costs associated with restoration of public land will be borne by the applicant.

**Reason:** To maintain Council infrastructure

42. **Public Utility Relocation:** If any public services are to be adjusted, because of the development, the applicant is to arrange with the relevant public utility authority the alteration or removal of those affected services. All costs associated with the relocation or removal of services shall be borne by the applicant.

**Reason:** To protect, maintain and provide utility services

43. **Pedestrian Access Maintained:** Pedestrian access, including disabled and pram access, is to be maintained throughout the course of the construction as per AS-1742.3, *'Part 3 Traffic control devices for works on roads'*.

**Reason:** To ensure pedestrian access is maintained

44. **Council Drainage Infrastructure:** The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council. If a Council stormwater line is located on the property during construction, Council is to be immediately notified. Where necessary the stormwater line is to be reconstructed or relocated to be clear of the proposed building works. Developer must lodge Stormwater Inspection Application form to Council. All costs associated with the reconstruction or relocation of the stormwater line are to be borne by the applicant. Applicant is not permitted to carry out any works on existing Council and private stormwater pipe lines without Council's approval.

**Reason:** To protect public infrastructure

45. **Services:** Prior to excavation works, the location and depth of all services must be ascertained. All costs associated with adjustment of the public utility will be borne by the applicant.

**Reason:** To protect and maintain infrastructure assets

46. **Boundary Levels:** The levels of the street alignment shall be obtained from Council. These levels are to be incorporated into the design of the internal pavements, car parking, landscaping, driveway and stormwater drainage plans and shall be obtained **prior to the issue of the Construction Certificate**. Note: The finished floor level of the proposed garage or carport shall be determined by Council.

The applicant is to lodge Vehicular Crossing Application form with application fee as shown in the form.

**Reason:** To provide consistent street alignment levels

**Engineering conditions to be complied with prior to Construction Certificate**

47. **Council Infrastructure Damage Bond:** The applicant shall lodge with Council a \$5000 cash bond or bank guarantee. The bond is to cover the repair of damage to Council's roads footpaths, kerb and gutter, drainage or other assets because of the development. The bond will be released upon issuing of the Occupation Certificate. If Council determines that damage has occurred because of the development, the applicant will be required to repair

the damage. Repairs are to be carried out within 14 days from the notice. All repairs are to be carried in accordance with Council's requirements. The full bond will be retained if Council's requirements are not satisfied. Lodgement of this bond is required **prior to the issue of the Construction Certificate.**

**Reason:** To protect and maintain public infrastructure

48. **Excavation Greater Than 1m depth:** Where there are structures on adjoining properties including all Council infrastructures, located within 5 meters of the proposed excavation.

The applicant shall: -

- (a) seek independent advice from a suitably qualified engineer on the impact of the proposed excavations on the adjoining properties
- (b) detail what measures are to be taken to protect those properties from undermining during construction
- (c) provide Council with a certificate from the engineer on the necessity and adequacy of support for the adjoining properties

The above matters are to be completed and documentation submitted to principal certifying authority **prior to the issue of the Construction Certificate.**

- (d) Provide a dilapidation report of the adjoining properties and Council infrastructure. The dilapidation survey must be conducted **prior to the issue of the Construction Certificate.** The extent of the survey must cover the likely "zone of influence" that may arise due to excavation works, including dewatering and/or construction induced vibration. The dilapidation report must be prepared by a suitably qualified engineer.

A second dilapidation report, recording structural conditions of all structures originally assessed shall be submitted to the principle certifying authority **prior to the issue of the Occupation Certificate.**

All recommendations of the suitably qualified engineer are to be carried out during excavation. The applicant must give at least seven (7) days' notice to the owner and occupiers of the adjoining allotments before the excavation works commence.

**Reason:** To protect surrounding properties and identify vulnerable structures

49. **Drainage Plans Amendments:** The stormwater drainage plan prepared by ING Consulting Engineers Pty Ltd, reference No: 255092020DA, revision D and dated on 02/12/21 is to be amended as detailed below by a qualified practising hydraulic engineer and certified by him/her. This amended plan shall show full details of new pipe network amended as follows and satisfying part O of the Council's stormwater DCP;

1. This DA requires OSD. The detailed design for this proposed system is required
2. Proposed drainage system should show pipe sizes and invert levels up to connection point; confirming pipe system satisfies part O of Council' storm water DCP.
3. The stormwater requirements shown in Basix certificate shall be included in stormwater management plan.
4. Sediment control fence shall be placed around the construction site and shown in plan
5. Subsoil agg-line drainage is required around proposed retaining wall, dwelling, or it is necessary and connected to proposed drainage system
6. Pit-2 shall be modified into a silt arrester pit with mesh (RH3030) and sump(300mm) as shown in section 3.4.1 of Part O of Council DCP is required within the site, at start of the discharge pipe to Council system.
7. In case of the overflow from Pit-2, the overflow shall be directed to street and not to basement. A suitable overflow path shall be provided into Pit-2.
8. A gross pollutant trap suitable for this site needs to be designed and added to the amended plans within the property boundary prior to the connection to the street system. The details of this GPT shall be shown in stormwater plan. The suitable access to the GPT for future maintenance is required.

9. The OSD calculation shall be based on the calculation shown in Appendix 14 in part O of Council stormwater DCP.
10. The detailed cross section of the OSD is required and shall show levels, sizes, depths and widths.
11. A plan with longitudinal section of the proposed pipe system from the site to the existing Council pit in Burns Bay Road with relevant calculations are required for further assessment and/or approval. This plan should show pipe sizes, invert levels and existing surface levels to confirm that the pipe system satisfies Council's DCP.
12. The applicant has to get full details of the required road reconstruction works on Burns Bay Road from RMS and submitted to Council.
13. The pump out system in basement shall satisfy section 5.4 of part O of Council's stormwater DCP. The full details of the hydraulic calculation for pump out system shall be included in stormwater management plan submitted to Council.
14. The proposed basement shall be constructed with water-proof walls around it.

The amended design is to be certified that it fully complies with, AS-3500 and Part O, Council's DCP-Stormwater management; certification is to be by a suitably qualified engineer. The amended plan and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

The Principal Certifying Authority is to be satisfied that the amendments have been made in accordance with the conditional requirements and the amended plans are adequate for the purposes of construction. They are to determine what details, if any, are to be added to the construction certificate plans, for the issue of the Construction Certificate.

**Reason:** To ensure the proposed stormwater designs meet and satisfy Part O, Council DCP

50. **Geotechnical Report:** A geotechnical report is to be completed for the excavation of proposed development. The Geotechnical Report and supporting information are to be prepared by a suitably qualified geotechnical engineer and be submitted to Principle Certifying Authority **prior to issue of a Construction Certificate.**

**Reason:** To protect the environment and required for any excavation greater than 2m

51. **Construction Methodology Report:** There are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations. A suitably qualified engineer must prepare a Construction Methodology report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to Principal Certifying Authority **prior to issue of a Construction Certificate.** The details must include contamination management plan geotechnical report to determine the design parameters appropriate to the specific development and site. The Report must include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts. The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

**Reason:** To protect neighbouring properties

52. **Road Dilapidation Survey:** The applicant is to prepare a dilapidation survey and a dilapidation report that includes details of the existing state of repair/condition of the road surface of Burns Bay Road and provide that survey and report to the Council and RMS prior to the issue of the construction certificate. Following completion of construction of the development and prior to the issue of the occupation certificate, the applicant is to prepare a second dilapidation report that includes details of all changes and damage caused to the

surface of the said public roads as a consequence truck movements associated with construction of the development. The Council/TfNSW may apply funds from the security deposits paid in favour of this consent to meet the cost of making good any damage caused to the surface of the said public road as a consequence of truck movements associated with the construction of the development to which the consent relates.

The dilapidation surveys and reports must be prepared by an engineer registered with the Institute of Engineers (Australia).

**Reason:** To provide a record of Council's infrastructure and protect them

53. **Council Construction Requirements:** The applicant shall construct / reconstruct the following to Council's satisfaction;

1. New footpath adjacent the entire subject site frontage to Burns Bay Rd
2. New Kerb and Gutter along the entire subject site frontage to Burns Bay Rd and along the pipe line trench
3. Extension of new street drainage system along Burns Bay Rd
4. Reconstruction of existing pit at No. 233 Burns Bay Road where new pipe system starts
5. Reinstate all adjustments to the road surfaces satisfying TfNSW
6. Reinstate all damages identified in dilapidation report

**Reason:** In accordance with Council's requirements to restore site

A \$40,000 cash bond or bank guarantee shall be lodged with Council to cover the satisfactory construction of the above requirements. Lodgement of this bond is required **prior to the issue of the Construction Certificate**. The Bond will be held for a period of six months after satisfactory completion of the works. All works shall be carried out **prior to the issue of the Occupation Certificate**. All costs associated with the construction of the above works are to be borne by the applicant.

**Reason:** In accordance with Council's requirements to restore site

54. **Council Inspection Requirements:** The following items are to be inspected

- Proposed stormwater drainage work on Burns Bay Road
- All footpath, kerb/gutter and landscaping works
- Any adjustment works in Burns Bay Road

Each item is to be inspected prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / set out requirements.

An Inspection fee (\$205 for one inspection) is to be paid **prior to the issue of the Construction Certificate**.

**Reason:** To ensure completion of work satisfying Council

55. **Positive Covenant Bond:** The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of a Positive Covenant over the onsite detention system and pump out system. Lodgement of this bond is required **prior to the issue of the Construction Certificate**

**Reason:** To protect stormwater infrastructure and confirm future maintenance

56. **On-Site Stormwater Detention System - Marker Plate:** The on-site detention system shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size:100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or access grate. The wording on the marker plate is described in Council's DCP-Stormwater management. An approved plate may be purchased from Council's customer service desk.

**Reason:** To ensure clear identification of onsite stormwater infrastructure

57. **On-Site Stormwater Detention Tank:** All access grates to the onsite stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 m in depth must be fitted with step irons.

**Reason:** To prevent unauthorised access and ensure safe access to stormwater infrastructure

58. **Temporary Footpath Crossing:** A temporary footpath crossing must be provided at the Vehicular access points. It is to be 1.5m in width, made of sections of hardwood with chamfered ends and strapped with hoop iron.

**Reason:** To ensure safety vehicular movement to and from site

59. **Design of Retaining Structures:** All retaining structures greater than 1m in height are to be designed and certified for construction by a suitably qualified engineer. The structural design is to comply with, all relevant design codes and Australian Standards. The design and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**.

**Reason:** To ensure the safety and viability of the retaining structures onsite

**Engineering condition to be complied during construction**

60. **Drainage Construction:** The stormwater drainage on the site is to be constructed generally in accordance with approved plan.

Certification by a suitably qualified engineer of the above plans is to be submitted to the Principal Certifying Authority stating that the design fully complies with, AS-3500 and Part O, Council's DCP-Stormwater Management. The plans and certification shall be submitted **prior to the issue of the Construction Certificate**.

The Principal Certifying Authority is to satisfy themselves of the adequacy of the certified plans for the purposes of construction. They are to determine what details, if any, are to be added to the Construction Certificate plans, for the issue of the Construction Certificate.

**Reason:** To maintain the stormwater management of the property

61. **Heavy Vehicle Duty Employee and Truck Cleanliness:** The applicant shall
- Inform in writing all contractors of Council's requirements relating to truck cleanliness leaving the site.
  - Keep a register of all contractors that have been notified, the register is to be signed by each contractor. The register must be available for access by Council officers at all times.
  - Place an employee within close proximity of the site exit during site operation hours to ensure that all outgoing heavy vehicles comply with Council's requirements. This employee shall liaise with heavy vehicle drivers and provide regular written updates to

drivers on the conditions of entry to the subject site.

Those drivers who have been determined to continually not comply with Council's requirements, either by the developer or authorised Council officers, shall not be permitted re-entry into the site for the duration of the project.

**Reason:** To protect the environment

62. **Covering Heavy Vehicle Loads:** All vehicles transporting soil material to or from the subject site shall ensure that the entire load is covered by means of a tarpaulin or similar material. The vehicle driver shall be responsible for ensuring that dust or dirt particles are not deposited onto the roadway during transit. It is a requirement under the Protection of the Environment Operations (Waste) Regulation, 1996 to ensure that all loads are adequately covered, and this shall be strictly enforced by Council's ordinance inspectors. Any breach of this legislation is subject to a "*Penalty Infringement Notice*" being issued to the drivers of those vehicles not in compliance with the regulations.

**Reason:** To ensure worksite pollutions are controlled accordingly to protect the environment

63. **Truck Shaker:** A truck shaker ramp must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass the truck shaker. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.

**Reason:** To protect the environment

**Engineering condition to be complied with prior to Occupation Certificate**

64. **Certification of Retaining Structures and Excavations:** A suitably qualified engineer shall provide certification to the principal certifying authority that all retaining structures and excavations have been carried out in accordance with the relevant Australian Standards and Codes of Practice.

The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted to the principal certifying authority **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure retaining walls are constructed according to approved plan

65. **Stormwater System Engineering Certification:** On completion of the drainage system a suitably qualified engineer shall certify that the drainage system has been constructed in accordance with the approved plans, part O Council's DCP-Stormwater Management and AS-3500. The certification is to include a work as executed plan. The work as executed plan shall:

- (a) Be signed by a registered surveyor, &
- (b) Clearly show the surveyor's name and the date of signature.

All documentation is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure stormwater infrastructure has been installed in accordance with Australian Standards and Council's requirements

66. **Engineering Certification:** A suitably qualified engineer shall certify that following has been constructed in accordance with the approved plans and is within acceptable construction tolerances.

- Pump out system
- OSD System
- All repair works identified in Dilapidation report
- Proposed drainage extension on Burns Bay Rd

Certification is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate.**

**Reason:** Statutory requirement

67. **Engineering Note:** All engineering compliance certificates are to contain the following declarations:

- a. This certificate is supplied in relation to **235 Burns Bay road, Lane Cove**
- b. **[INSERT NAME OF ENGINEER AND COMPANY]** have been responsible for the supervision of all the work nominated in (a) above.
- c. I have carried out all tests and inspections necessary to declare that the work nominated in (a) above has been carried out in accordance with the approved plans, specifications, and the conditions of the development consent.
- d. I have kept a signed record of all inspections and tests undertaken during the works and can supply the Principal Certifying Authority with a copy of such records and test results if and when required.

**Reason:** Statutory requirement

68. **Positive Covenants OSD and Pump Out System:** Documents giving effect to the creation of a positive covenants over the on-site detention system and over the basement pump out system shall be registered on the title of the property **prior to the issue of the Occupation Certificate.** The wordings of the terms of the positive covenants shall be in accordance with part O Council's DCP-Stormwater Management.

**Reason:** Statutory requirements and to protect stormwater infrastructure and confirm future maintenance

69. **Works as Executed Drawings for OSD:** A works as executed survey of the onsite detention facility will need to be prepared and certified to demonstrate that the OSD system functions as per the intention of the approved design. A suitably qualified engineer must certify that the construction system is satisfactory.

**Reason:** Statutory requirements

70. **Works as Executed Drawings for street drainage construction:** A works as executed survey of the proposed street drainage works on Burns Bay Rd will need to be prepared and certified by qualified engineer to demonstrate that the drainage system is accordance with the approved plan.

**Reason:** Statutory requirements

71. **Redundant Gutter Crossing:** All redundant kerb/gutter and footpath crossings shall be removed, and the kerb, gutter and footpath reinstated to the satisfaction of Council's Urban Services Division. These works shall be carried out **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure Council's footpath and nature strip is free from potential vehicular or other obstructions.

## **Traffic Conditions**

### **PARKING AND SERVICING**

72. The proposed car park design is to comply with AS290.1-2004. This includes all parking Spaces, ramps, aisles, disabled parking and loading areas. All other aspects of the carparking areas are required to comply with AS2890.2-2002 for Loading Facilities and Services Vehicles.
73. One visitor car space to be provided and line-marked.
74. The access to the car park shall comply with Australian Standards. AS 2890.1-2004.
75. Visibility requirements of the proposed access must comply with AS 2890.1-2004.
76. All accessible car spaces in the car park are to be adequately signposted and line marked and provided in accordance with AS2890.6:2009 including the adjacent shared space and the height clearance.
77. On site garbage collection must be provided for with sufficient headroom in accordance with AS2890.2:2002 and to allow the vehicle to enter and exit in a forward direction. The waste collection and holding area are to be clearly signposted and line marked.
78. Install wheel stops on all car parking spaces to prevent any collision with structures or objects.
79. Motorcycle parking space to be sign posted and adequately line marked.
80. A traffic report demonstrating the safety and functionality of the basement car park including tails of the proposed signalised system are to be provided and approved by Council's Traffic section before the issue of the construction certificate.
81. An independent traffic consultant is to review and approve the signal system installed in the Basement to ensure that it is safe and functional before the issue of the occupation certificate.
82. Proposed waiting bays should be adequately line-marked.
83. All vehicles must front in/ front out to/ from the development.

### **Construction Traffic Management Plan**

84. A Construction Management Plan must be lodged with Council prior to the issuing of a Construction Certificate. As per DCP Part R, the Construction Management Plan should address (but not necessarily be limited too) issues related to the movement of construction vehicles to and from the site, safe access of construction vehicles, and any conflict with other road users in the street including public transport. Heavy vehicles will not be permitted to travel on local roads unless prior Council permission is obtained from Council's Traffic section. Consultation with NSW Police, RMS and Transport for NSW / Sydney Buses will be required as part of preparation of the Construction Traffic Management Plan.

Construction Management Plan should specify proposed Work/Construction Zones and the impact of the construction traffic activities to all road users including pedestrians and

cyclists. The Construction Management Plan may contain issues requiring the attention and approval of the Lane Cove Traffic Committee (LTC). The Construction Management Plan should also assess and address the impact of construction vehicles travelling through the surrounding road network.

## **Landscaping Conditions**

### **GENERAL CONDITIONS**

#### **85. Approved landscape plans and supporting documentation**

Development must be carried out in accordance with the approved landscaped plans except where the conditions expressly require otherwise.

<b>Plan Number</b>	<b>Drawing Title</b>	<b>Date</b>	<b>Issue</b>
LP01	Cover sheet and Content	10/12/2021	E
LP02	Tree retention / removal / replenish	10/12/2021	E
LP03	Planting Palette/Schedule & Material – Ground Floor	10/12/2021	E
LP04	Landscape Plan Rooftop Garden	10/12/2021	E
LP05	Planting Palette/Schedule & Material – Roof Top Garden	10/12/2021	E
LP06	Landscape Sections –Ground Floor	10/12/2021	E
LP07	Landscape Sections – Rooftop Garden	10/12/2021	E
LP08	Landscape Details	10/12/2021	E
LP09	Irrigation Diagram	10/12/2021	E

In the event of any inconsistency between the approved plans and any supporting documentation, the approved plans prevail.

**Reason:** To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

### **BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### **86. Design amendments**

Before the issue of a construction certificate, the certifier to the satisfaction of Council must ensure the approved construction certificate (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.

#### **Rooftop Communal Open Space – Missing Symbols**

Landscape plan LP 04 indicates with numbers 1 and 4 proposed furniture and amenities for the roof top area. However, there are no symbols applicable to these numbers demonstrating the approximate size and shape of these features.

The Landscape Architect is to amend their plans to include this information and to send back to Councils Landscape Architect prior to issue of Construction Certificate.

#### **Rooftop Communal Open Space**

The Communal Open Space at the roof level shall be to a high level of design and shall be equipped with the following:

- Natural shade from midsized trees in raised planter boxes

- Additional shade from a retractable awning with the minimum dimension of 3m x 3m
- Toilet facilities
- Barbecue facilities
- Power points
- Water and sink
- Direct lift access to the area

The Landscape Architect is to revise their design to incorporate a minimum of 4 x mid-sized trees in the rooftop communal open space. Additional Landscape Area should be provided on the rooftop to cater for soil depth for the proposed trees.

**Reason:** To require minor amendments to the approved plans and supporting documentation following assessment of the development. Further, to ascertain the intentions of the landscape plans and to provide shade and amenity to the users of the rooftop area.

**87. Plant supply**

All trees planted on site shall conform to Australian Standard AS 2303-2015 Tree Stock for Landscape Use. All other plants shall conform to NATSPEC specifications and be free from disease or defects and be in a healthy condition.

**Reason:** To ensure the proposed planting is free of disease and defects to provide the best chance for successful establishment and ongoing health and vigour.

**88. Planting of garden beds**

All garden beds shall be planted out with enough plant quantities and spacing to ensure that no areas of bare mulch remain visible following the typical 12-month landscape establishment period.

**Reason:** For suppression of weeds and to fulfil the Landscape Design Intent.

**89. Automatic irrigation system**

An automatic drip irrigation system is to be designed and installed to all garden bed areas that will ensure the ongoing health of the planting scheme for the life of the development.

**Reason:** To ensure adequate moisture levels are maintained for the 12-month establishment period eliminating the threat of plants dying due to lack of water during this time of in times of future drought.

**90. Raised planter boxes**

All raised planter boxes shall be waterproofed by a licensed professional in accordance with AS4654.1-2012 *Waterproofing membranes for external above-ground use*

**Reason:** To ensure the structural integrity of the planter box and parking structure below are maintained and to ensure that no leaks occur in the raised planter box as installed.

**WHILE BUILDING WORK IS BEING CARRIED OUT**

**91. Compliance Certificate for waterproofing planting on structures**

A certificate must be submitted by a qualified practising Landscape Architect certifying that the proposed subsoil drainage and any associated waterproofing membrane have been

installed in accordance with the details shown on the approved landscape working drawings and specification to all raised and formed garden bed areas.

**Reason:** To ensure there is no water penetrating the planter boxes to the infrastructure or building below.

**92. Cut and fill**

While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management Facility and the classification and the volume of material removed must be reported to the Principal certifier. All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 or a material identified as being subject to a resource recovery exemption by the NSW EPA.

**Reason:** To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants.

**93. Uncovering relics or Aboriginal objects** While building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment. In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
  - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
  - (b) is of State or local heritage significance; and
- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non -Aboriginal extraction and includes Aboriginal remains.

**Reason:** To ensure the protection of objects of potential significance during works.

**BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE**

**Note:** Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification must be forwarded to the attention of via e-mail at [service@lanecove.nsw.gov.au](mailto:service@lanecove.nsw.gov.au) within five (5) working days of the date of issue.

**Reason:** To meet Council Statutory Regulations.

**94. Practical Completion Report - Landscape works**

A landscape practical completion report must be prepared by the consultant landscape architect and submitted to Council or the accredited certifier within 7 working days of the

date of practical completion of all landscape works. This report must certify that all landscape works have been completed in accordance with the landscape working drawing. A copy of the report must be submitted to Council.

**Reason:** To ensure the landscape works have been carried out in accordance with the stamped approved construction documents.

**95. Practical Completion Report - Landscape maintenance and establishment**

At the completion of the landscape maintenance period, the consultant landscape architect/designer must submit a final report to Council or the accredited certifier, certifying that all plant material has been successfully established, that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the 12 month landscape maintenance strategy has been provided to the Owner/ Occupier. A copy of the report must be submitted to Council.

**Reason:** To ensure the landscape works have been carried out in accordance with the stamped approved construction documents.

**96. Repair of infrastructure:** Before the issue of an occupation certificate, the applicant must ensure any tree to be retained or surrounding public open space or landscape areas damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

**Note:** If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

**Reason:** To ensure any damage to public infrastructure is rectified to identify damage to existing trees retained resulting from building work on the development site

**ENVIRONMENTAL HEALTH CONDITIONS**

**97. Detailed site investigation**

A Detailed Site Investigation (Contamination) (DSI) is to be carried out prior to the issue of the construction certificate. The DSI shall provide information on land and ground water contamination and migration in relation to past and current activities and uses that may have occurred on the site. Any recommendations for further investigations identified in the Preliminary Site Investigation are to be carried out as part of the DSI. The DSI is to provide recommendation on the need for any further targeted investigation(s) and/or site remediation (if deemed necessary).

The DSI and Remediation Action Plan (RAP) (if required) shall be undertaken/completed by a suitably qualified environmental consultant in accordance with relevant Acts/guidelines:

- Contaminated Land Management Act 1977
- NEPC National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) (NEPC, 2013); and
- NSW EPA Guidelines for Consultants Reporting on Contaminated Land (NSW EPA, 2020).

An NSW Environmental Protection Authority (EPA) Accredited Site Auditor shall provide a Site Audit Statement at the completion of the earthworks (and after any further investigation and/or remediation works), i.e. prior to construction, and provide a Validation Certificate to confirm that:

- Any remediation works have been undertaken in accordance with the relevant

requirements;

- the site is suitable for its intended use; and
- that all works have been completed in accordance with SEPP 55 and the NSW EPA requirements for consultants reporting on contaminated sites.

Note:

Prior to any remediation works, a Site Environmental Management Plan (SEMP) must be prepared by a suitably qualified environmental consultant. The SEM shall include measures to address the following matters:

- a) General site management, site security, barriers, traffic management and signage
- b) Hazard identification and control
- c) Worker health & safety, work zones and decontamination procedures
- d) Prevention of cross contamination
- e) Appropriate site drainage, sediment controls, and if necessary dewatering
- f) Air quality criteria to be implemented during remediation, in accordance with Part 8 of the WHS Regulation 2011
- g) Air and water quality monitoring requirements
- h) Air quality management measures for asbestos to protect on-site workers and the surrounding community during remediation, particularly in relation to dust mitigation
- i) Site work responses to be implemented during remediation should environmental monitoring criteria be exceeded
- j) Storage, handling, classification, and disposal of hazardous wastes
- k) contingency plans and incident reporting, including Health and Safety and environmental incident management
- l) Details of provisions for monitoring implementation of remediation works and persons/consultants responsible (to include contact name and numbers)
- m) Details for deliveries, parking and vehicular access to and from the site, ensuring adequate measure are in place to minimise environmental and neighbourhood disturbance
- n) Any other proposed preventative response procedures to manage the issue of public exposure to contaminants including but not limited to asbestos
- o) Containment control zones
- p) A copy of the Auditor approved Site Environment Management Plan is to be forwarded to Council prior to commencing remediation works.

**Reason:** To ensure that the site is suitable for its intended use.

98. An Operational Waste Management Plan is to be prepared in accordance with Part Q of the Lane Cove DCP and is to be submitted for approval prior to the issue of the construction certificate.
99. A Section 88B Instrument is to be created on the Deposited Plan that states the following: 'the property is in proximity of a service station and a liquor outlet/commercial premises that due to the approved hours of operation may have an impact on the amenity of the locality and the response of residents'.
100. **Construction environmental management plan**  
Prior to the commencement of any works including remedial works, a construction environmental management plan (CEMP) must be prepared for the site and submitted to Council for written approval prior to the commencement of work. The CEMP must consider all potential environmental impacts from the approved works including but not limited to sedimentation control, contamination containment, stockpiles, noise and vibration, odours and dust emissions. All works must be undertaken onsite in accordance with the approved CEMP.

**Reason:** To ensure health and safety.

**101. On-site Containment**

Should it be proposed to provide on-site containment/capping of asbestos or other contaminants, written details of the proposal must be contained in the Remedial Action Plan and must be referred to Council for consideration and written concurrence must be obtained from Council prior to implementation of the Remedial Action Plan.

**Reason:**

**102. Offsite disposal of contaminated soil**

All contaminated material to be removed from the site will need to be assessed, classified, and managed in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines (2014). Once assessed, the materials will be required to be disposed to a licensed waste facility suitable for the classification of the waste with copies of tipping dockets supplied to Council. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

**Reason:** To ensure health and safety.

**103. Hazardous or intractable wastes**

Hazardous or intractable wastes arising from the site works, excavation and remediation process must be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority, and with the provisions of:

- Work Health and Safety Act 2011;
- The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
- The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
- Protection of the Environment Operations Act 1997 (NSW);
- Protection of the Environment Operations (Waste) Regulation 2005;
- Waste Avoidance and Resource Recovery Act 2001; and
- NSW EPA Waste Classification Guidelines (2014).

The works must not cause any environmental pollution, public nuisance or, result in an offence under the Protection of the Environment Operations Act 1997 or Work Health & Safety Act 2011 and Regulations.

**Reason:** To ensure health and safety.

**104. Removal of Underground Storage Tanks**

The removal of underground storage tanks shall be undertaken in accordance with NSW WorkCover requirements which includes writing to the Chief Inspector of Dangerous Goods and complying with any conditions imposed. The tank removal shall be conducted in accordance with the Australian Institute of Petroleum's Code of Practice, The Removal and Disposal of Underground Petroleum Storage Tanks (AIP CP22-1994) and AS4976-2008 The removal and disposal of underground petroleum storage tanks. In the event of conflict between the Code of Practice and NSW WorkCover requirements, the latter shall prevail.

**Reason:** To protect the environment.

**105. Ground Level Commercial Floor Area** Occupation and fitout of the ground floor commercial floor area approved by this consent is subject to separate approval.

**Reason:** To ensure an adequate assessment of any commercial usage is undertaken.

**106. Construction and fit-out of food premises**

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, the construction and fit-out of any food premises must comply with the following:

- i) The Food Act 2003 (as amended);
- ii) Food Regulation 2015 (as amended);
- iii) Australia and New Zealand Food Standards Code;
- iv) Australian Standard AS 4674 – 2004 (Design, construction and fit-out of a food premises);
- v) Sydney Water – trade Waste Section;
- vi) The Protection of the Environment Operations Act 1997; and
- vii) The Building Code of Australia.

A certificate of compliance with (iv) for the proposed kitchen design shall be submitted to the Principal Certifying Authority, prior to issuing the relevant Construction Certificate.

**Reason:** To ensure food preparation areas meet the relevant requirements.

**107. Compliance with acoustic report**

The Construction Certificate drawings shall demonstrate compliance with the recommendations contained in the submitted Acoustic Report. The Report is to include details of the specified AC plant and any other plant equipment for which details are unknown at the DA stage.

**Reason:** To ensure acoustic mitigation measures adhere to relevant standards/requirements.

**108. Construction noise**

While building work is being carried out, and where a noise and vibration management plan is approved under this consent, the applicant must ensure that any noise generated from the site is controlled in accordance with the requirements of that plan.

**OR**

While building work is being carried out the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

**Reason:** To protect the amenity of the neighbourhood.

**109. Stockpiles**

Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

**Reason:** To mitigate adverse environmental impacts on the surrounding area.

**110. Storage and assessment of potentially contaminated soils**

- a) All stockpiles of potentially contaminated soil must be stored in an environmentally acceptable manner in a secure area on the site.
- b) All stockpiles of potentially contaminated soils must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, including NSW EPA Waste Classification Guidelines (2014).

**Reason:** To mitigate adverse environmental impacts on the surrounding area.

**111. Environmental Impacts during construction**

The works shall not give rise to environmental pollution or public nuisance or, result in an offence under the Protection of the Environment Operations Act 1977 or the NSW Occupational Health and Safety Act (2000) & Regulations (2001).

**Reason:** To protect the environment.

**112. Compliance with acoustic report**

At completion of the construction works and prior to the issue of any occupation certificate, a validation certificate is to be submitted to the Principal Certifier confirming that the development has been constructed in accordance with the acoustic report, and that the internal noise levels have been achieved.

**Reason:** To ensure adequate internal acoustic amenity.

**Waste Management Conditions**

**113. Waste and Recycling Storage Rooms**

- Level 1 waste and recycling rooms must be of sufficient size to accommodate garbage chute systems, a total of 1 x 240L garbage bins per 3 units, 1 x 240L yellow recycling bins per 10 units and 1 x 240L blue recycling bins per 10 units with adequate space for maneuvering garbage and recycling bins. 240L green waste bins available with up to 3 bins per premises – number can be reduced if the premises remove green waste privately.
  - Minimum clearance between bins of 300mm;
  - Minimum door openings of 1700mm; &
  - Minimum distance of 1700mm between rows of bins (where bins are located on either side of the room).
- The floor of waste and recycling rooms (including bulky waste storage rooms) must be constructed of either:
  - Concrete which is at least 75mm thick; or
  - Other equivalent material; and
  - Graded and drained to a floor waste which is connected to the sewer
- All floors must be finished to a smooth even surface, coved at the intersection of walls and floor.
- The walls of waste and recycling rooms, bulky waste storage areas and waste service compartments must be constructed of solid impervious material and must be cement rendered internally to a smooth even surface coved at all intersections.
- All waste and recycling rooms and bulky waste storage rooms must be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
- A close-fitting and self-closing door that can be opened from within the room must be fitted to all waste/recycling and bulky waste storage rooms.
- All waste/recycling and bulky waste storage rooms must be constructed to prevent the entry of vermin.
- All waste/recycling and bulky waste storage rooms must be ventilated by either:

- Mechanical ventilation systems exhausting at a rate of 5L/s per m<sup>2</sup> of floor area, with a minimum rate of 100l/s; or
- Permanent, unobstructed natural ventilation openings direct to the external air, not less than 1/20<sup>th</sup> of the floor area.
- All waste/recycling and bulky waste storage rooms must be provided with artificial light controlled by switches located both outside and inside the rooms.
- Clearly printed “No Standing” signs must be affixed to the external face of each waste/recycling and bulky waste storage room.

**114. Bulky Waste Storage Room**

Readily accessible bulky waste storage areas located near the main garbage rooms must be provided for the use of all residents.

- Bulky waste storage rooms must be of sufficient size to accommodate a minimum of 6m<sup>3</sup> of bulky waste at any given time. Doorways and travel paths must be a minimum width of 1700mm and of sufficient height and be free of obstructions to permit easy transport from individual units to the storage area, and from the storage area to collection point.

**115. Access to Waste Collection Point**

All waste must be collected on-site via on-site access by Council's garbage collection vehicles.

- The location(s) of waste and recycling rooms & bulky waste storage areas must be conveniently accessible for both occupants and Council's waste collection contractors.
- The minimum finished ceiling height must be 2.6m along the path of travel from the street to the residential waste and recycling collection point and maneuvering area. This clearance must be kept free of any overhead ducts, services and other obstructions.
- The maximum grade of any access road leading to the waste and recycling collection point must not be more than 1:5 (20%). The turning area at the base of any ramp must be sufficient for the maneuver of a 6.0m rigid vehicle to enter and exit the building in a forward direction.
- Where security gates are proposed, a Council master key system must be installed to permit unimpeded access.

**116. Indemnity**

**Prior to the issue of an Occupation Certificate**, the applicant must enter into a suitable Deed indemnifying Council and its contractors against claims for loss or damage to common property, liabilities, losses, damages and any other demands arising from any on-site collection service. This is to be submitted to Council at least forty (40) days, prior to any occupation of the building.

**117. Composting/Worm Farming**

The applicant must provide a container for communal composting/worm farming, the siting of such must have regard to potential amenity impacts.

**118. Internal Waste Management**

Internal waste/recycling cupboards with sufficient space for one day's garbage and recycling generation must be provided to each dwelling.

119. **Provision of Waste Services**

**Prior to the issue of an Occupation Certificate**, the applicant must make written application to Council for the provision of domestic waste services.


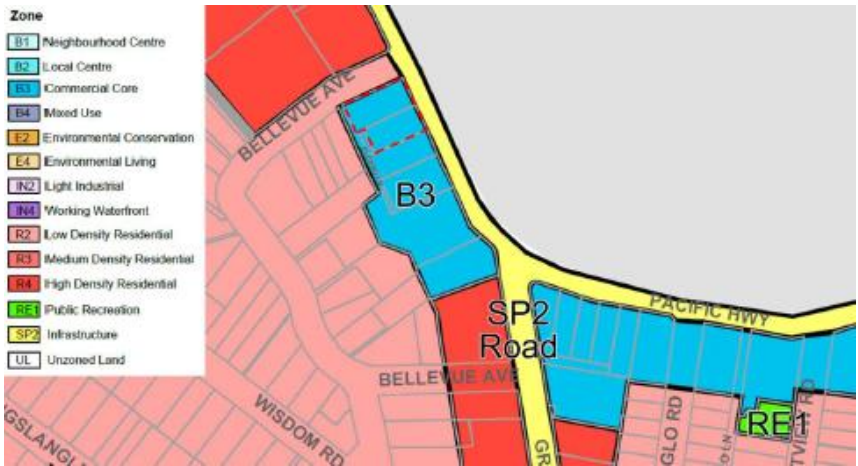
**ATTACHMENTS:**

<b>AT-1</b>	<a href="#">View</a>	Attachment 1 SEPP 65 Assessment	42 Pages
<b>AT-2</b>	<a href="#">View</a>	Attachment 2 - Clause 4.6 Variation Request	11 Pages
<b>AT-3</b>	<a href="#">View</a>	Attachment 3 - Part D Assessment	9 Pages
<b>AT-4</b>	<a href="#">View</a>	Attachment 4 - Part B & C3 DCP Assessment	4 Pages

**Lane Cove Local Planning Panel Meeting 03 May 2022**  
**178-180 & 188-192 PACIFIC HIGHWAY, GREENWICH**

**Subject:** 178-180 & 188-192 Pacific Highway, Greenwich  
**Record No:** DA21/168-01 - 15712/22  
**Division:** Environmental Services Division  
**Author(s):** Greg Samardzic

Property:	Nos. 178-180 & 188-192 Pacific Highway, Greenwich
DA No:	DA168/2021
Date Lodged:	11 November 2021
Cost of Work:	\$19,367,145.00
Owner:	Rainfall Melody P/L and Waydice P/L
Applicant:	Jack Prail

<p>Description of the proposal to appear on determination</p>	<p>Part demolition of existing building on Nos. 178-180 Pacific Highway, demolition of existing building on Nos.188-192 Pacific Highway, construction of an eight-storey mixed use development containing 37 independent seniors housing units and 251m<sup>2</sup> commercial space on the ground level</p>  <p><b>Figure 1: Perspective of Development from Bellevue Avenue</b></p>
<p>Zone</p>	<p><b>B3 Commercial Core</b></p>  <p><b>Figure 2: B3 Zoning of the Subject Development Site</b></p>
<p>Is the proposal permissible within the zone</p>	<p>Yes, pursuant to the provisions of State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability)</p>

	<p>2004. The Policy applies to land that is zoned primarily for urban purposes (B3 Commercial Core) only if certain land uses are permitted on the land. In this instance, the applicant relies on a hospital being permitted under the former SEPP (Infrastructure) 2007, for this Policy to apply.</p> <p>The application of the Policy using a third environmental planning instrument that is contrary to Lane Cove Local Environmental Plan 2009, has been reviewed in detail, and the Policy is considered to apply. The SEPP anticipates permissibility on commercially zoned land by way of Clause 19.</p>
Is the property a heritage item	No, however it is in vicinity of a state heritage item (Gore Hill Cemetery) located on the opposite side of Pacific Highway and two local heritage items (dwellings at Nos. 8 and 14 Bellevue Avenue – satisfactory impacts (to be discussed in further details in this report)
Is the property within a conservation area	No
Is the property adjacent to bushland	No
BCA Classification	Class 2, 6 and 7a
Stop the Clock used	<p>On 23 March 2022, a request for further information was sent to the applicant raising the following matters (but not limited) to be addressed:</p> <ul style="list-style-type: none"> <li>• Disability car spaces are required to have a shared space with a bollard.</li> <li>• WC on Level 1 to be accessible toilet.</li> <li>• Turning circles in the kitchen between the benches and the island needs to be 1500mm.</li> <li>• Trees 2 and 3 to be retained.</li> <li>• Missing items of the landscape development checklist to be provided.</li> <li>• Lack of amenity in communal open space (COS).</li> <li>• Deep soil requirements to be addressed.</li> <li>• Trees along Pacific Highway to be planted within a structural root cell system (strata cell or approved equivalent).</li> <li>• Detailed level information required for top/bottom wall heights and levels/grades throughout the design.</li> <li>• Vehicle access along Bellevue Avenue to be addressed.</li> <li>• Driveway ramps details to be provided.</li> <li>• Details of improvements to Elcedo Lane to be provided.</li> <li>• Swept path for waste trucks to be provided.</li> <li>• A DCP compliant bulky waste storage area to be shown in amended drawings.</li> <li>• Submission of an environmental management plan.</li> <li>• Sediment and erosion control plan to be submitted.</li> <li>• Dust management plan to be submitted.</li> <li>• Excavation water treatment and method of disposal to be submitted.</li> <li>• Complaint management protocols to be submitted.</li> <li>• A Detailed Site Investigation (DSI) is to be submitted post</li> </ul>

	<p>demolition.</p> <ul style="list-style-type: none"> <li>• There were concerns with the size and location of the proposed common open space on Level 2 where it is suggested that a second area could be created on the rooftop level.</li> <li>• Preparation a full Apartment Design Guide (ADG) compliance table.</li> <li>• Ensuring full compliance with car/ disabled/ motorcycle/ bicycle parking requirements.</li> <li>• It was requested that full compliance with the Floor Space Ratio (FSR) development standard.</li> <li>• The relevant privacy issues for the proposed balconies facing Elcedo Lane.</li> <li>• Unit size areas to be addressed.</li> <li>• DCP setback requirements are to be addressed.</li> </ul> <p>On 12 April 2022, the applicant submitted additional information to include (but not limited to):</p> <ul style="list-style-type: none"> <li>• Deletion of the proposed waste truck access point off Bellevue Avenue to retain two existing street trees.</li> <li>• Amendments to the basement level to accommodate for improved waste vehicle turning circles.</li> <li>• Further landscaping details provided to include higher trees to be planted on the Level 2 COS area.</li> <li>• Further justifications to support the proposed COS areas without the need to provide a rooftop COS area.</li> <li>• Redesign to fully comply with the maximum LEP FSR standard.</li> <li>• Further traffic details to include a signal system to be installed for the proposed one-way ramp system within the basement.</li> </ul>
Notification	Notified in accordance with Council's policy and 10 submissions were received

## REASON FOR REFERRAL

The subject Development Application is referred to the Lane Cove Local Planning Panel as the proposed development is subject to State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development.

## EXECUTIVE SUMMARY

The subject Development Application is for part demolition of existing building on Nos. 178-180 Pacific Highway, demolition of existing building on Nos.188-192 Pacific Highway, construction of an eight-storey mixed use development containing 37 independent seniors housing units and 251m<sup>2</sup> commercial space on the ground level.

The independent seniors housing unit component of the Development Application is pursuant to the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 which permits seniors housing on the subject site and satisfies the SEPP's relevant clauses with respect to (but not limited to) restriction as to user; site analysis; location/access to facilities; design of residential development requirements; and self-contained dwelling standards. However, there are non-compliances with:

- Building Height;
- Density and Scale (FSR);
- Landscaped Areas/Deep Soil Zones; and
- Solar Access.

The Development Application provides for a development, permitted by way of SEPP (Housing for Seniors or People with a Disability) 2004 that is considered satisfactory in this instance for the following key reasons:

- The variations proposed are due to the existing local planning provisions in place and to the sites constraints of the site being currently used for commercial purposes.
- The built-form would be in keeping with the envisaged character for the site in the context of its locality.
- The proposal would provide a high-quality streetscape, façade and landscaping treatment.
- The proposal would minimise impacts on the western adjoining residential properties.
- The proposal would provide for ground floor commercial floor space and seniors housing above within a commercial zone as permitted by the SEPP.
- The proposal would provide for large and useable apartments which would be provided for high amenity for future users.

The Development Application is subject to the maximum 25m building height development standard under LCLEP 2009 and a maximum 9% variation with a maximum height of 27.5m is proposed. The variation is supported by a Clause 4.6 written request and the written requests is considered to establish suitable environmental planning grounds to vary the relevant development standard or demonstrate compliance with the height objectives.

Majority of the proposed building is below the maximum height plane however there are proposed rooftop structures that exceed the relevant height standard. The maximum breach in height is due to the provision of a lift overrun and the exceedance would not significantly contribute to the bulk or scale of the development. Given the context of the site including the nature of the proposed building, the proposed variation would not have significant adverse impacts onto surrounding residential properties or the immediate locality.

The proposed variation is supported as the proposed development would not be incompatible with the existing or future character of the locality including the intended built form or massing of other adjoining or surrounding B3 Commercial Core zoned allotments.

The Development Application is also subject to State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG). The proposed development is considered satisfactory with respect to the design quality principles of SEPP 65 and with the design criteria contained within the ADG as the proposed development has been designed in a manner which reduces its impact on the adjoining detached dwellings to the rear. It is considered that the proposal would contain appropriate setbacks, building separation and a responsive built transition form with the adjoining dwellings with appropriate privacy measures in place. However, there are ADG non-compliances with:

- Building Depth;
- Common Open Space;
- Deep Soil;
- Car Parking;
- Solar Access;
- Cross Ventilation; and
- Ceiling Heights.

The applicant has prepared a comprehensive design response to these proposed variations. The proposed building would contain well designed units with high amenity levels with excellent access to outdoor/indoor common open space and efficient car parking areas including other available facilities.

The Development Application has been assessed against the Lane Cove Development Control Plan (LCDCP) 2010. The proposal includes variations to the minimum 6m rear lane setback for the proposed common open space area and private balcony on Level 2 that has a nil balcony setback. The merits of the variation are supported in that the common open space area in this location would not contain significant privacy impacts onto the adjoining residences with the provision of appropriate building/landscaping screening measures in place.

The Development Application was notified to surrounding property owners and nine objections were received from nearby residents including the nearest residential property at No. 2 Bellevue Avenue. The primary issue raised in the objections relate to the proposed building height and the potential undesirable impacts the proposal would create if the application were to be approved. Other concerns with overshadowing, privacy and traffic were also raised. The proposed height/bulk of the proposed development is reasonable in this instance and a reasonable development outcome would be achieved. Compliant solar access levels would be maintained for adjoining dwellings and Council's Traffic section has raised no traffic concerns with the proposal.

The submissions are summarised and addressed in the report.

The subject Development Application has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. It is considered that the proposal as submitted involves for a reasonable built outcome which is consistent with both the existing and future built form envisaged in the B3 zoned locality. The proposed development would maintain relevant amenity objectives to surrounding developments and the Development Application is recommended for approval subject to draft conditions.

## **SITE**

Property	Lot 22 DP 563604 and Lot 1, Section 2 in DP 3586
Area	1,757m <sup>2</sup>
Site location	The site is on the corner of Pacific Highway and Bellevue Avenue with rear lane access for on-site car parking provided on Elcedo Lane.



**Figure 3: Aerial Photograph**

The site is currently occupied by a commercial building at Nos. 178-180 Pacific Highway and a Jaycar Electronic store at Nos. 188-192 Pacific Highway



**Figure 4: Existing Buildings on the Subject Site (Viewed from Pacific Highway)**



**Figure 5: View to the Subject Site from the Corner of Pacific Highway and Bellevue Avenue**

Existing  
improvements



**Figure 6: View to the Subject Site from the Corner of Bellevue Avenue and Elcedo Lane**



**Figure 7: View to the Subject Site from Elcedo Lane**

Shape	Both development lots are rectangular
Dimensions	Pacific Highway and Elcedo Lane frontage: Approximately 39m Bellevue Avenue frontage: Approximately 45m Side southern boundary: Approximately 42m
Adjoining properties	<p>The Greenwich locality is characterised by a variety of commercial, residential and tourist or visitor accommodation uses as follows:</p> <ul style="list-style-type: none"> <li>• Hotel Urban (5 storeys) is located directly north on the opposite side of Bellevue Avenue with a mix of multi storey hotel and residential developments further north along Pacific Highway.</li> <li>• Gore Hill Cemetery is located to the east on the opposite side of Pacific Highway.</li> <li>• Multi storey commercial, office and medical centre buildings located to the south along Pacific Highway.</li> <li>• Medium density residential development to the north-west.</li> <li>• Low density residential to the west.</li> </ul>



**Figure 8: View of Hotel Urban**

The site is located approximately 500m away from the St Leonard's Town Centre and 800m to St Leonard's Station to the east. St Leonards is identified as a health and educational precinct under the Greater Sydney Regional Plan and the North District Plan. The locality comprises Royal North Shore Hospital, North Shore Private Hospital and a wide range of specialist health services where the subject site would be accessible to these services.

There are well serviced bus routes with a bus stop located in front of the subject development site and all returned routes has a bus stop 240m away on the opposite side of the highway with access to pedestrian crossings.

## PREVIOUS APPROVALS/HISTORY

There are no relevant previous approvals or history relevant to the subject Development Application other than the subject site has been historically used for commercial and associated car parking purposes. On 14 October 2014, DA193/2013 was refused for the proposed change of use to a hotel/motel accommodation development on Nos. 178-180 Pacific Highway.

## PROPOSAL

The proposal is for the part demolition of existing building on Nos. 178-180 Pacific Highway, demolition of existing building on Nos.188-192 Pacific Highway, construction of an eight-storey mixed use development containing 37 independent seniors housing units and 251m<sup>2</sup> commercial space on the ground level.



**Figure 9: Perspective from Pacific Highway**

Further, the proposal includes the following:

- Retaining the basement floors, ground floor and first floor of the existing building at Nos. 178-180 Pacific Highway for the purposes of car parking.
- The seniors housing component would contain a mixture of three x one-bedroom, nine x two-bedroom and 25 x three-bedroom units located from the first floor to the seventh floor.
- Provision of a concierge facility that will assist in the providing a range of services to the residents.
- Provision of landscaping including provision of a community garden on the ground level along the Bellevue Avenue frontage.
- Two outdoor communal open space areas on Level 2 and one community garden at the northwest corner of the site at ground level.



**Figure 10: Perspective from the Rear Common Open Space Area on Level 2**



**Figure 11: Perspective of Common Open Space Area along Bellevue Avenue**

- One internal common open space area on Level 2 to contain a yoga room, tables, seating and a GP health room where a health practitioner will attend on a regular basis.



**Figure 12: Internal Common Open Space Area on Level 2**

- A total of 52 on-site car parking spaces.
- Sustainability initiatives to include solar panels and water reuse systems.
- Both commercial tenancies will face Pacific Highway with direct access with the northern tenancy also facing Bellevue Avenue. Future occupation of these tenancies would be subject to a separate application.

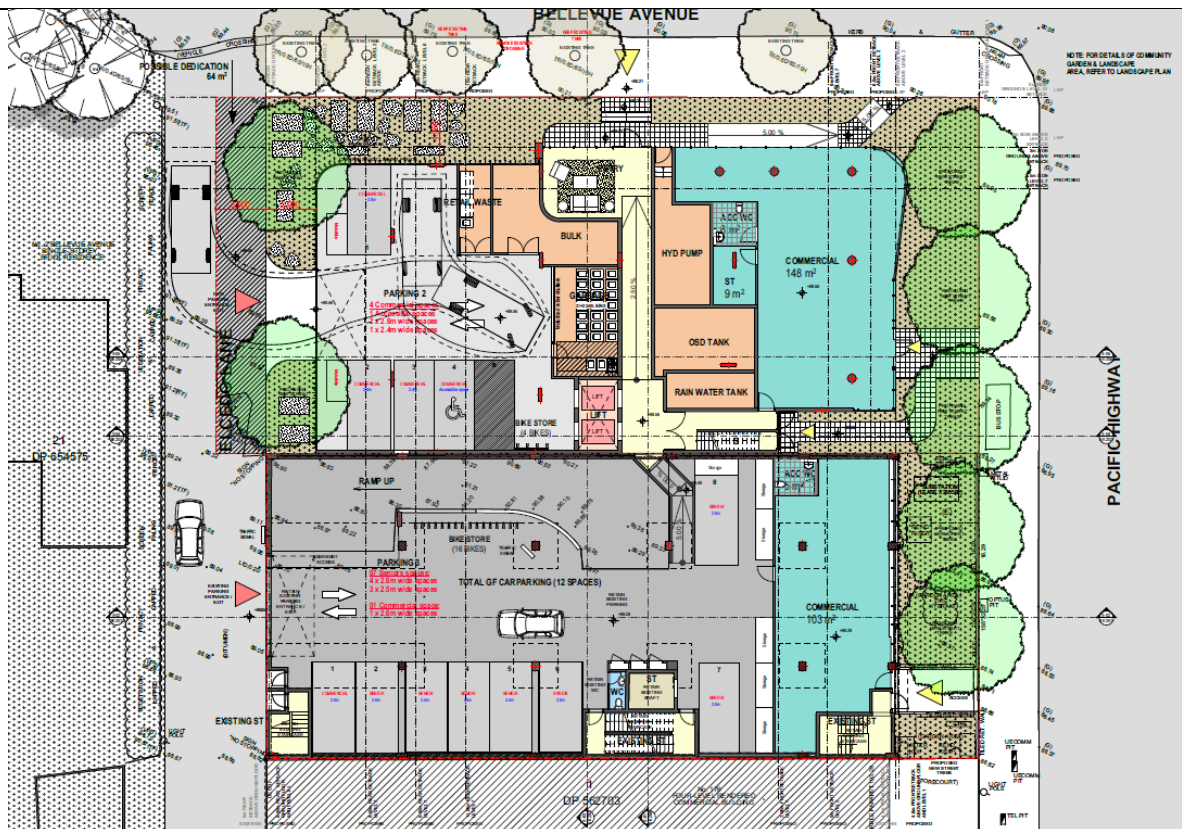


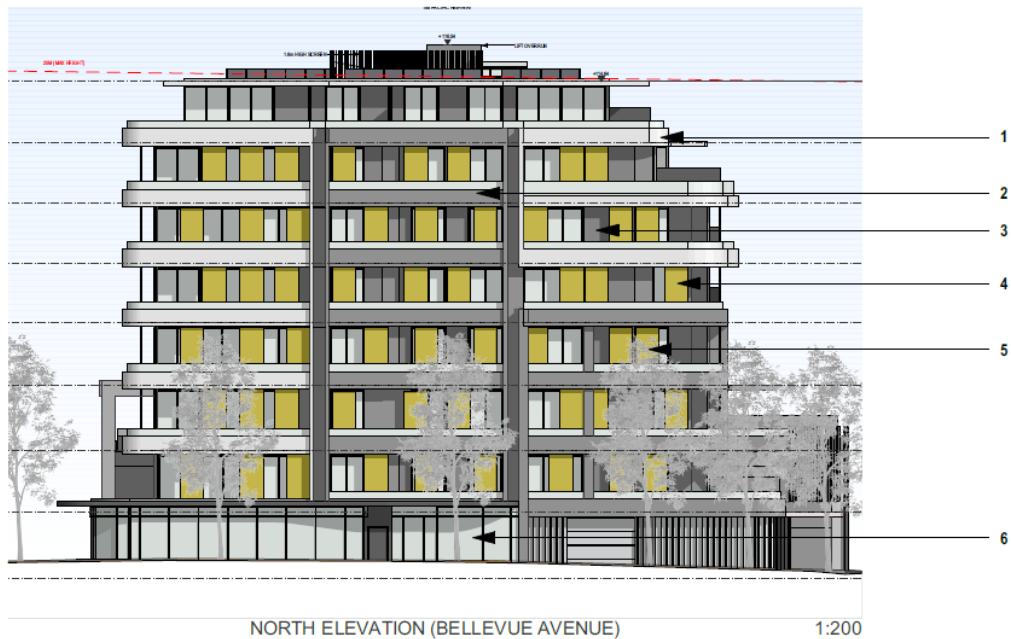
Figure 13: Proposed Ground Floor Plan

All vehicle access will be off Elcedo Lane via two separate entry/exits. The existing vehicular access off Nos. 178-180 Pacific Highway will be retained and an additional entry/exit is proposed off Nos. 188-192 Pacific Highway. This will ensure the separation between residential and commercial/residential visitor car parking spaces. This new access will also be accessed by waste trucks with provision of a turntable. The applicant is providing for part of the land attached to Nos. 188-192 Pacific Highway to be dedicated to Council for the full length of Elcedo Lane to be reinstated as laneway to improve traffic flow.



Figure 14: Perspective from Elcedo Lane

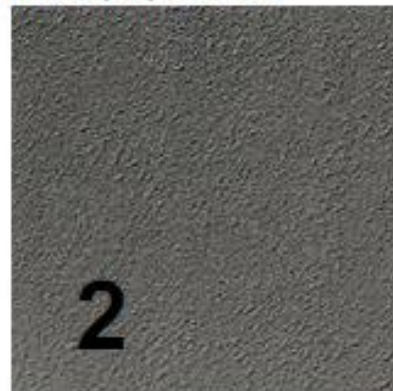
Detailed perspective and a schedule of external finishes is provided detailing the range of contemporary external treatments.



Dulux "Terrace White" Render Finish  
Walling and Slab Edges



Walling and Slab Edges  
Dulux "Malay Grey" Render Finish



Walling  
Hebel PowerPattern Pre-routed pattern panels



Balustrades  
White Glass Clear

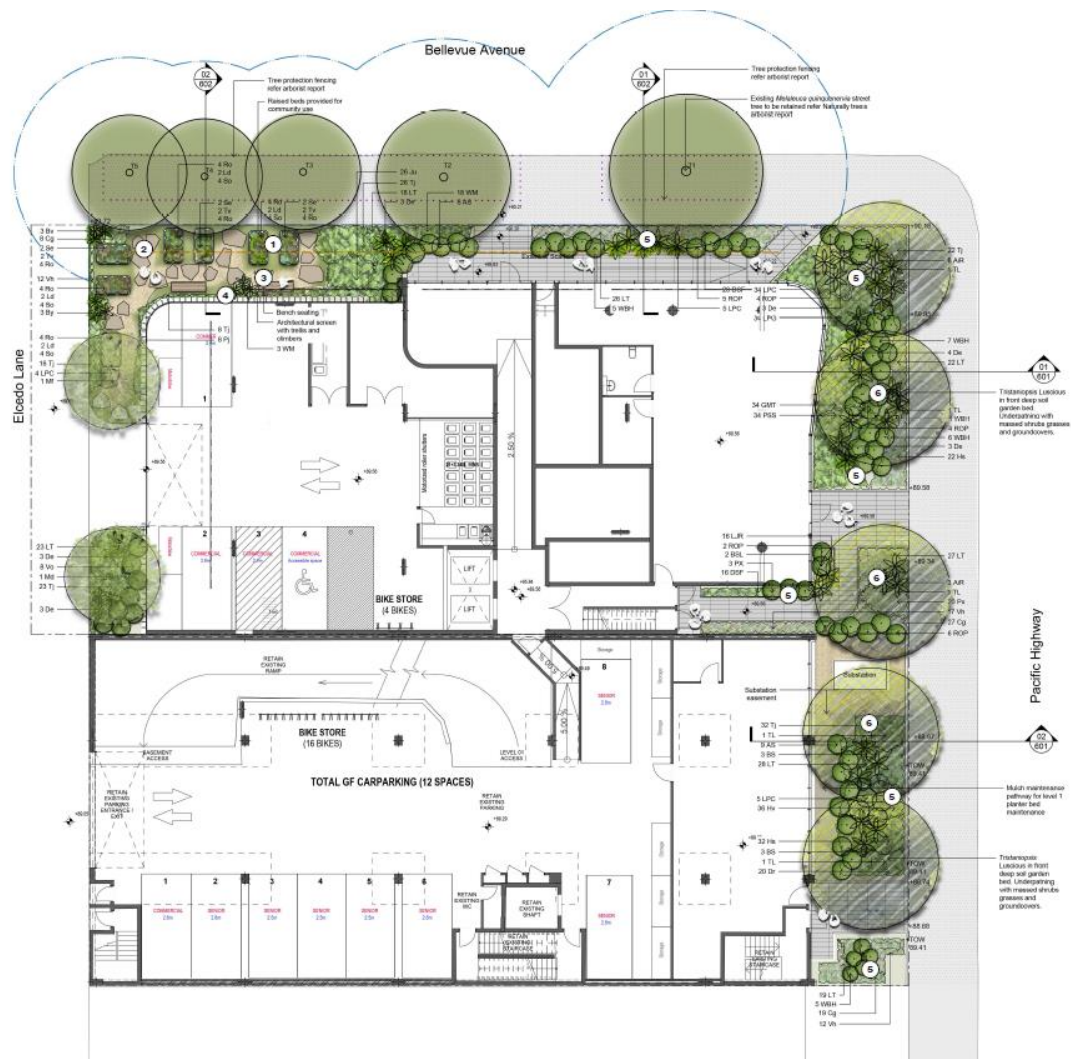


Lane Cove Local Planning Panel Meeting 03 May 2022  
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**Figure 15: Proposed Schedule of Finishes and Materials**

A Landscape Concept Plan accompanies the subject Development Application and provides for at least 383m<sup>2</sup> (or 22% of the site area) of combined landscaping/deep soil area.



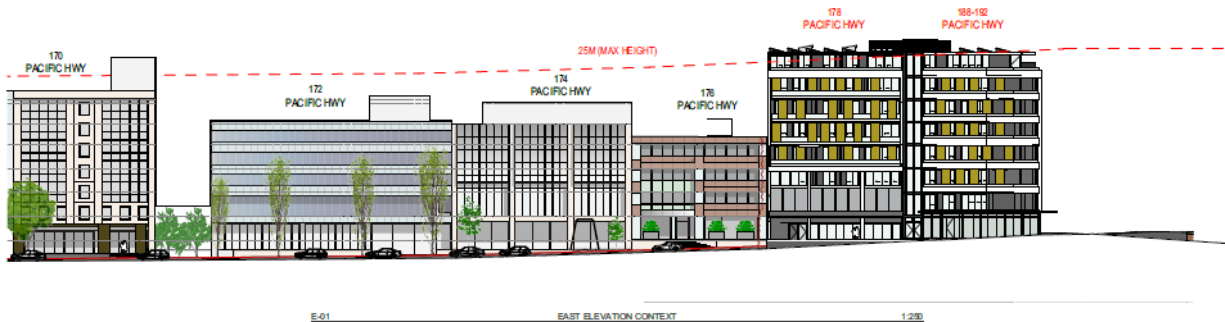
### Figure 16: Proposed Landscape Plan

The applicant had submitted a stormwater management plan.

It is proposed to strata subdivide the proposed self-contained units and the applicant has submitted draft strata plans as part of the subject application.

No signage is proposed as part of the subject Development Application which all would be subject to a separate application/s.

The proposed Pacific Highway streetscape is shown in Figure 15 and the proposal reads as eight storeys from Pacific Highway.



**Figure 17: Proposal in Context of Streetscape**



**Figure 18: Perspective from the Rear**

#### **SECTION 4.15 ASSESSMENT**

##### **(a) The provisions of**

##### **(i) Any environmental planning instrument:**

State and Sydney Regional Environmental Planning Policies

**State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021**

### **Clause 2.121 – Traffic-generating Development**

The proposal was referred to Transport for NSW under Clause 2.121 of the SEPP as the proposed development has a car park greater than 50 vehicles. Transport NSW has assessed the proposal and raised no objections subject to standard traffic conditions i.e. to ensure the proposed driveway and car parking areas comply with relevant Australian Standards. The proposal complies with Clause 2.121 of SEPP (Transport and Infrastructure) 2021.

### **State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004**

A valid BASIX certificate has been submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the policy.

### **State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021**

On 1 March 2022, the provisions of SEPP (Resilience and Hazards) 2021 had consolidated three state policies including SEPP 55 – Remediation into one policy which still requires Council to consider the potential for a site to be contaminated. The subject development site has a history of being used primarily commercial purposes. It is recommended that a condition be imposed requiring that the applicant submit a Detailed Site Investigation (DSI) post demolition and prior to construction. The proposal complies with the relevant contamination provisions of the SEPP.

### **State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004**

On 26 November 2021, the provisions of SEPP (Housing) 2021 had consolidated five state policies including SEPP – Housing for Seniors or People with a Disability) into one policy however there are saving provisions applicable for senior housing applications lodged before commencement of the new SEPP and the subject application was lodged on 11 November 2021. The assessment table in Attachment 1 provides an assessment of the relevant clauses of SEPP (Housing for Seniors or People with a Disability) 2004.

### **Variations**

The proposal complies with the SEPP with exception of five 'do not refuse standards' (Clause 50) being building height, density, landscaping, deep spoil and solar access as described in the table above. The following note is provided within Clause 50 as to the operation of a 'do not refused standard':

*The provisions of this clause do not impose any limitation on the grounds on which a consent authority may grant development consent.*

The extent of the variations to the 'do not refuse standard' are outlined in the table below.

<b>Variations to Clause 50 of SEPP and Reference Planning Provisions</b>					
<b>Standard</b>	<b>SEPP 'Do Not Refuse' Standard</b>	<b>Proposed</b>	<b>Compliance</b>	<b>Reference Planning Provision</b>	<b>Compliance</b>
<b>Building Height</b>	8m	Max. 25.7m under the SEPP height definition and max. 27.5m under the LCLEP height definition	No	LCLEP 2009 25m	<b>No, refer to Clause 4.6 discussion below in this report</b>
<b>Density and</b>	0.5:1	3:1	No	LCLEP 2009	Yes

**Lane Cove Local Planning Panel Meeting 03 May 2022  
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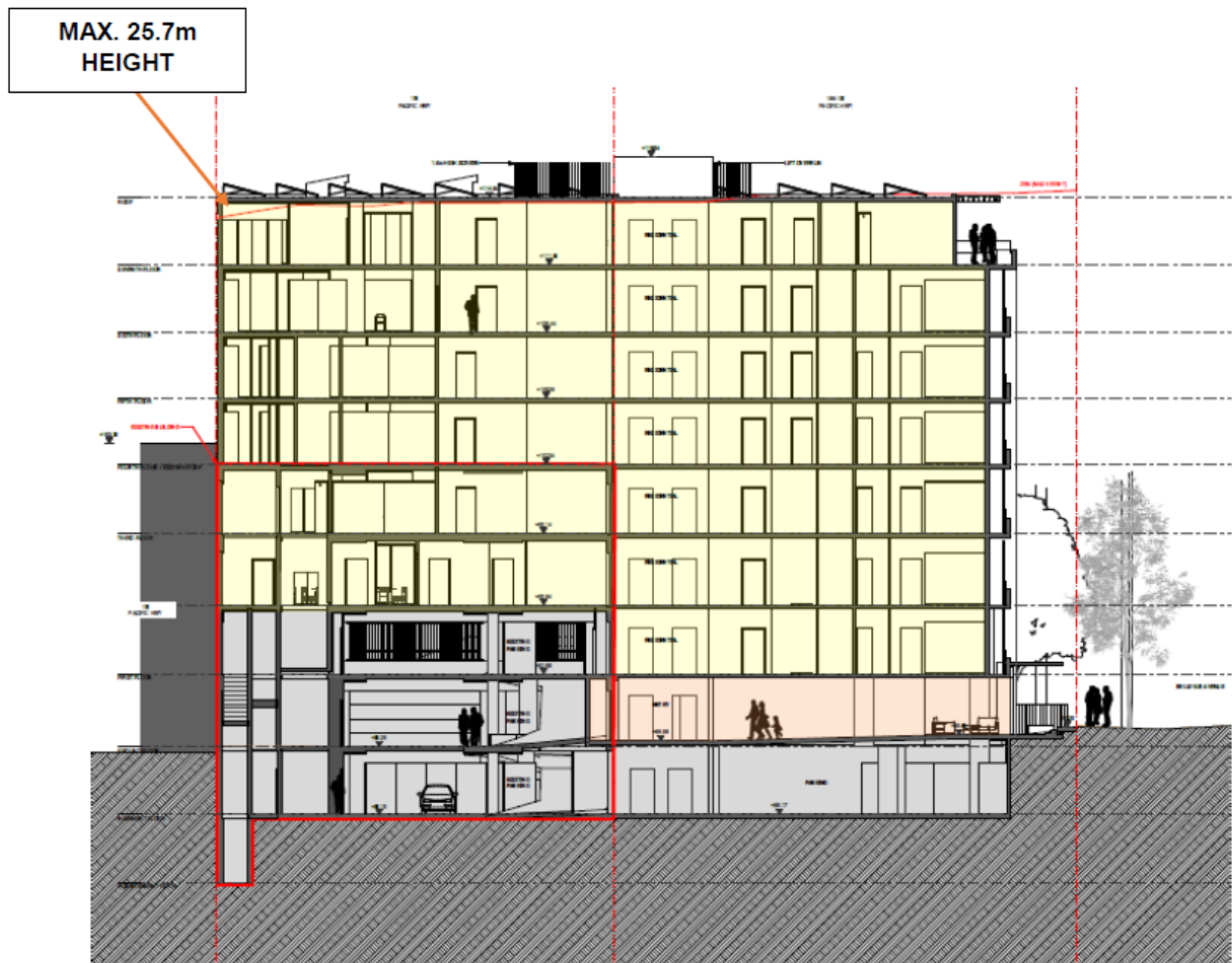
<b>Scale (FSR)</b>				3:1	
<b>Landscaped Area</b>	Min. 30%	23.8%	No	Part C3 – Residential Flat Buildings – 40%	<b>No, refer to variation discussion below</b>
<b>Deep Soil Zones</b>	Min. 15% with 2/3 to be located within rear area with a minimum 3m width	15% located along the three street boundary setback areas as the subject site does not have a defined 'rear' area in this instance.  Min. 3m wide areas provided for where possible however some areas include hard path and driveways.	No	ADG – 7% with a minimum 6m dimension	<b>No, refer to variation discussion below</b>
<b>Solar Access</b>	70% 3 hours mid-winter to living + private open space.	Not addressed by the applicant as the solar access ADG requirement was being relied upon instead	No	ADG – 70% 2 hours mid-winter to living + private open space	<b>No – 59.5%, refer to ADG discussion below in this report</b>

### **Building Height**

A Clause 4.6 written variation have submitted for the building height variation as the proposal would also be inconsistent with the relevant local planning provision. With respect to building height, there are two separate definitions under the SEPP and LCLEP for measuring building height where the SEPP defines height as:

**"height"** in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

It is noted that LCLEP describes height to includes structures above any point above the ceiling of the topmost floor such as roof structures and structures on the roof such as lift overruns. The proposed development has a maximum building height of 25.7m under the SEPP definition of building height. Further, the ground level in this instance has been measured to exclude the already constructed basement where if it were to be counted would result in a maximum height of approximately 31.4m. It is more appropriate to treat the ground level as the existing ground levels on the subject site rather than the most bottom existing basement level.



**Figure 19: Maximum Height Breach under the SEPP Height Definition**

The proposed development also does not comply with the LCLEP maximum 25m height limit with a maximum height of 27.5m which includes rooftop structures including a lift overrun. The structures are minor in scale and are appropriately located on the roof level without causing significant adverse impacts onto surrounding developments. The submitted Clause 4.6 variation will be discussed in further detail below in this report where it has been concluded that there are sufficient grounds to approve the proposed height above the 'do not refuse' standards within the SEPP.

### **Density and Scale**

The proposed GFA calculated under both the SEPP and LCLEP definitions is 3:1 and the proposal complies with the LCLEP maximum 3:1 FSR limit. Again, there are sufficient grounds to approve the proposed FSR above the 'do not refuse' standards within the SEPP. A variation to the 'do not refuse' density and scale standard of the SEPP is considered satisfactory as the proposed density and scale of the development are considered satisfactory on merit in this instance.

### **Landscape Areas and Deep Soil Zones**

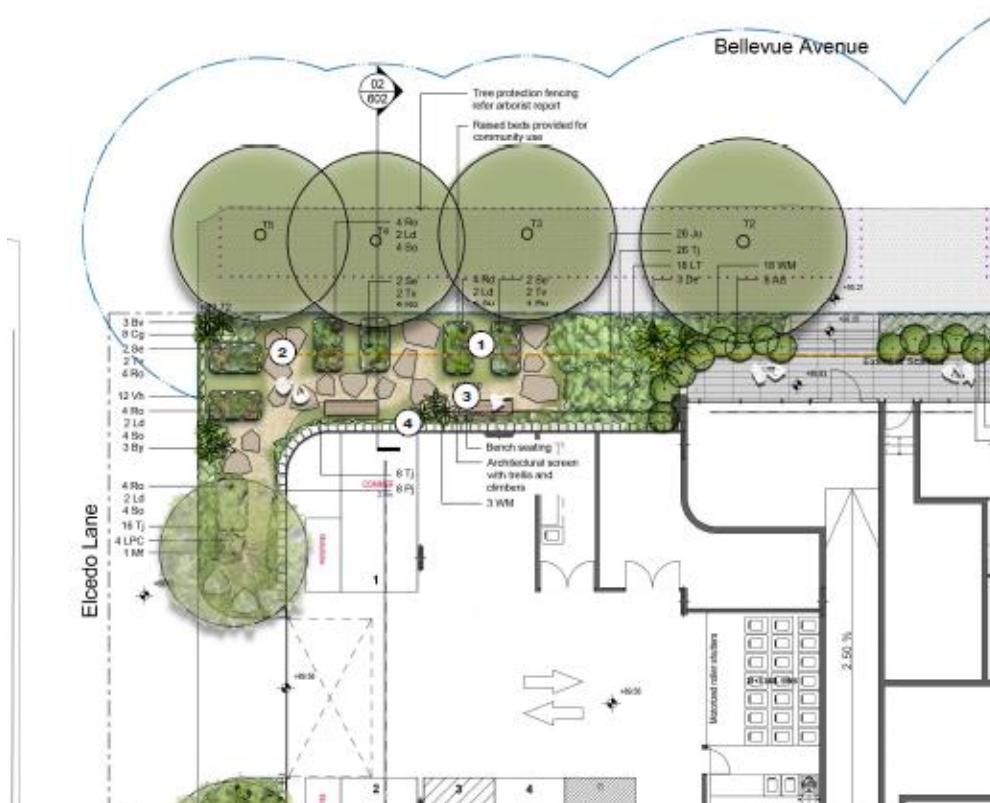
The SEPP requires a minimum 30% landscaped area with a minimum dimension of 3m and 15% deep soil zone with two thirds to be located to the rear of the site. The proposed scheme would provide for 417m<sup>2</sup> (23.8% of the site area) of landscaped area, whereby 267m<sup>2</sup> of this is provided as deep soil (15% of the site area – see Figure 16) with minimum 3m wide dimensioned areas

however are interrupted with paved pathways or driveways. The ADG requires a minimum of 7% and dimensions of 6m and Part C3 – Residential Flat Buildings of Council's DCP requires a minimum of 40% of the site area is to be planted, comprising 25% landscaped area and a further minimum of 15% planting on structures or landscaped area.

A total of 8.8% planting on structures are proposed. The proposed landscaping and deep soil area scheme are a reasonable outcome achieved in this instance. A review of the submitted landscaping plans have occurred and no objections are raised by Council's Landscape Architect with respect to that scheme has appropriately worked with the constraints of the subject site which currently has minimal on-site landscaping due to the existing commercial nature of the subject site. Given the nature of the proposed development, the provision of dense landscape setbacks to the main street frontages including the laneway frontage ensures appropriate treatments to the public domain and reduces the visual impact to the streets.

The proposed landscaping is also used to enhance the sleeving of the ground floor parking and the proposal utilises large trees in the main street frontage setbacks to provide an appropriate interface with the public domain. This includes retaining trees along the Bellevue Avenue frontage and five new Water Gum trees along the Pacific Highway frontage, consistent with Council's landscape policies.

Communal areas have also been densely landscaped to provide for high residential amenity. This includes bench seating, flagstone paving with groundcovers and raised garden beds within the communal gardens on the north-western corner of the ground floor. Trellis with climbing plants is also provided between the communal gardens and carparking to mitigate any acoustic and visual impacts.



**Figure 20: Communal Gardens and Landscaping Features**

Landscaping to communal outdoor terraces on the second floor are also provided with densely landscaped planter boxes to mitigate offsite impacts. This ensures overlooking to surrounding

properties are minimised, that visual privacy is maintained and that noise emissions from these communal areas is reduced. Residential apartments on the first floor at the western elevation are also provided with planter boxes including dense plantings. This has been done given the interface with the residential zone at this elevation and to mitigate any negligible impacts such as overlooking.

### **Solar Access**

The submitted Statement of Environmental Effects (SEE) relies on the ADG standard instead given the proposed residential flat building form and the application of SEPP 65 which will be discussed in further detail below in this report. This report concludes that where significant views can be achieved the reduced solar access at 59.5% for two hours between 9am and 3pm at mid-winter to living and private open space is justified by the ADG in this instance where the level of solar access provided for is deemed appropriate with respect to SEPP 65 for the residential flat building form proposed.

### **Conclusion**

The proposed building height, density and scale, landscaped area, deep soil zones and solar access are considered acceptable for reasons outlined above. The proposal is considered satisfactory with respect to SEPP (Housing for Seniors or People with a Disability) 2004.

### **State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development**

This Policy aims to improve the design quality of residential flat developments and this proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- The nine SEPP 65 Design Quality Principles (see Attachment 2); and
- The NSW Apartment Design Guide (ADG) guidelines (see Attachment 2).

### **Schedule 1 Design Quality Principles**

A review has occurred against the relevant Schedule 1 Design Quality Principles of the SEPP and the ADG on the submitted design plans prepared by the applicant and design achievements have been made in the following manner:

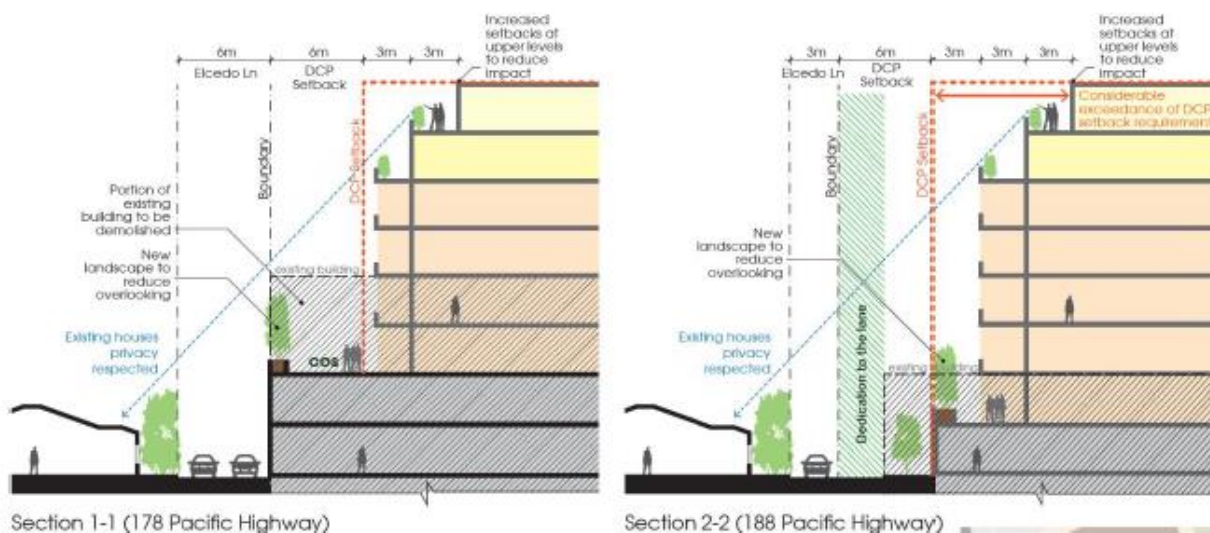
- Extension of commercial premises around corner to assist in the activation of Bellevue Avenue.
- Enlargement of the residential lobby at ground floor on Bellevue Avenue to enhance the activation of this frontage.
- Provision of services and storage for both commercial tenancies.
- Amendments to lobby area on each level to ensure natural lighting to meet ADG recommendations.
- Additional setbacks to upper most level to reduce overshadowing and to provide for a better transition to the residential areas west of the site.
- Garbage truck access able to be obtained via the proposed ground level.

Council is supportive of the concept plans as the relevant provisions of SEPP 65 and the ADG have been addressed with respect to building separation for instance. The applicant has addressed this relevant requirement through the provision of an appropriate building form to the west with general compliance with DCP setback requirements and with landscaping privacy treatments in place. Other design improvements included a revised commercial ground floor arrangement to ensure for a much-

improved commercial activation to Bellevue Avenue and appropriate investigations in how the proposal would fit within the future envisaged commercial precinct with St Leonards.

It is considered that approval of the subject proposal would not be inconsistent with other potential future developments that would occur within the immediate locality. There are no significant concerns regarding the breach in building height would have on surrounding residential allotments to the rear. The applicant had submitted a Clause 4.6 written justification which had demonstrated that there would be no significant adverse impacts due to appropriate design of the development with respect to privacy and overshadowing impacts.

Greater setbacks have been achieved for the upper levels of the development to ensure there is an appropriate building transition between the proposed eight storey building and the low residential density detached dwellings behind Elcedo Lane. A further reduction in height or the deletion in one level would not materially alter the visual relationship between the development and the dwellings to the west. The applicant as part of the DA submission had provided appropriate privacy and landscaping measures to the rear to further reduce the impacts of the development onto the adjoining R2 zoned area.



**Figure 21: Increased Rear Setbacks to the Western Boundary and Adjoining R2 Low Density Residential Zoned Area (Red Hatch Shows Minimum Part D Setback Line)**

The proposed bulk and scale of the building has carefully considered the context in which it is located and the surrounding built form. This has been achieved through appropriate street wall heights, increased upper-level setbacks and building widths. The provision of increased upper-level setbacks benefits both future residents and existing surrounding residents and businesses. Setbacks provided on the western elevation benefit existing residents to the west through reducing overshadowing and overlooking from the proposed development. These setbacks also provide an appropriate transition, through a stepped building form, to the lower density residential development to the west.

A review of the principles has indicated that the proposed development would address the relevant design quality principles and the ADG. The bulk and scale of the proposed development would fit in within the immediate locality. The proposed development is reasonable in providing for an appropriate landscaped and amenity outcome for the future residents due to the required common open space area being provided throughout the development and with appropriate building separation being provided for. Also, there are no concerns with the potential conflicts between the internal residential and commercial uses involved where they can be appropriately managed into the future.

## **Variations**

### **ADG Building Depth**

The proposed development does not comply with the requirements of Part 2E of the ADG that requires a maximum 12m – 18m building depth to ensure that apartments receive adequate daylight and cross ventilation. A maximum building depth of 37m (inclusive of balconies) and 28m (exclusive of balconies) are proposed due to in part the part retention of the existing commercial building on Level 2 which will contain the outdoor/indoor common areas and the new building works contain a maximum building depth of 35m on the first-floor level.

The UDRP had requested that the applicant address this component of the development and the applicant has stated that the proposed built form responds to its context and presents in smaller blocks to break up any bulk and scale. It is considered that the internal amenity levels of the proposed units, balconies and associated lobby corridors have been assessed to be satisfactory in this instance. Varying building widths have been provided to ensure consistency with existing buildings in vicinity of the subject site. This results in recesses provided in the built form to break up the bulk of the building and to modulate the facades.

The applicant has provided a satisfactory built form, internal floor plan layout and location of windows to ensure units receive reasonable solar access and cross ventilation whilst maintaining appropriate privacy measures in place.

### **Common Open Space**

The proposed development does not comply with the requirements of Part 3D Communal and public open space where communal open space is to have a minimum area equal to 25% of the site. A total of 183m<sup>2</sup> outdoor common open space (COS) is provided equating to 11% of the site area and 200m<sup>2</sup> indoor COS is provided equating to 11% of the site. Only one part of the outdoor COS area (83m<sup>2</sup> in area) is located within the proposed ground deep soil area (see Figure 20). The relevant objective is:

*An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping*

It is noted that the Seniors SEPP does not have any requirements for COS and although the proposed COS areas are separated into areas rather than one consolidated outdoor area preferably within the deep soil zone on the ground floor, it is considered that the proposal includes the provision of communal areas and design features which will ensure a high level of internal residential amenity. Further to the ground level COS area shown on Figure 20, a further larger COS area is provided for on the second floor which opens-up on to a spacious communal outdoor terrace. This communal space includes a BBQ, tables, chairs, lounges and plantings provided to the terrace, providing for passive recreation and social interaction.

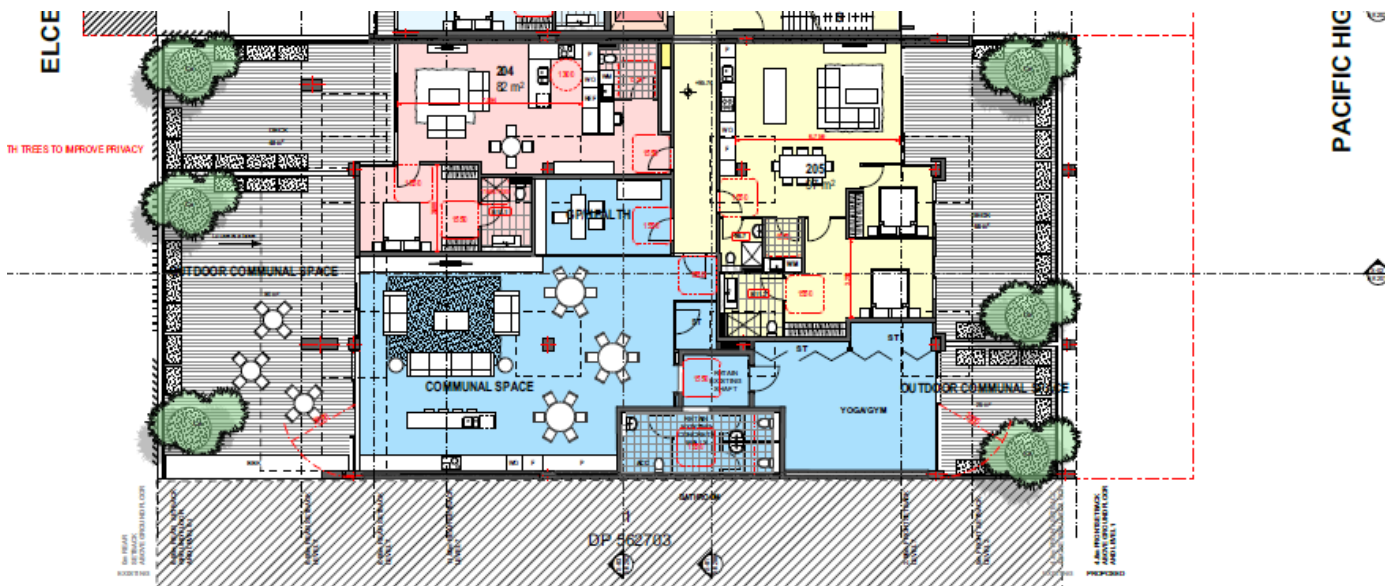


Figure 22: External COS Adjacent to Internal (in Blue) COS Area on Level 2

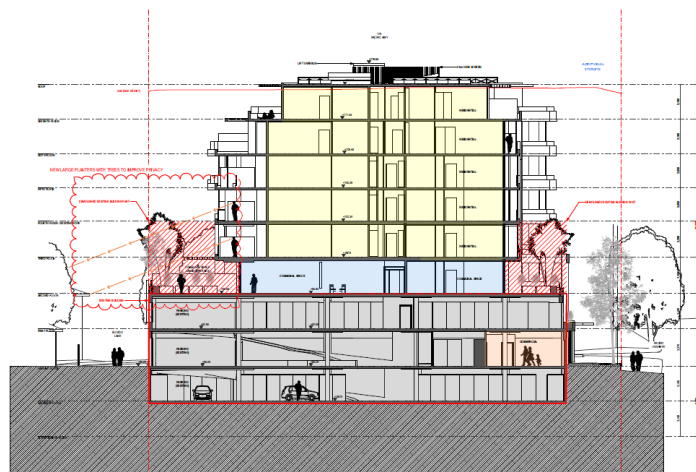
There is an additional indoor COS area proposed to include a lounge/seating, room yoga/gym room which can be used for communal activities which also adjoins another outdoor terrace. Internal areas within the apartments have been designed above ADG requirements to ensure spacious layouts that maximise amenity for future residents. It is noted that there is potential for a COS area being provided on the rooftop should it be required. The proposed size and location of the COS area is satisfactory in this instance.

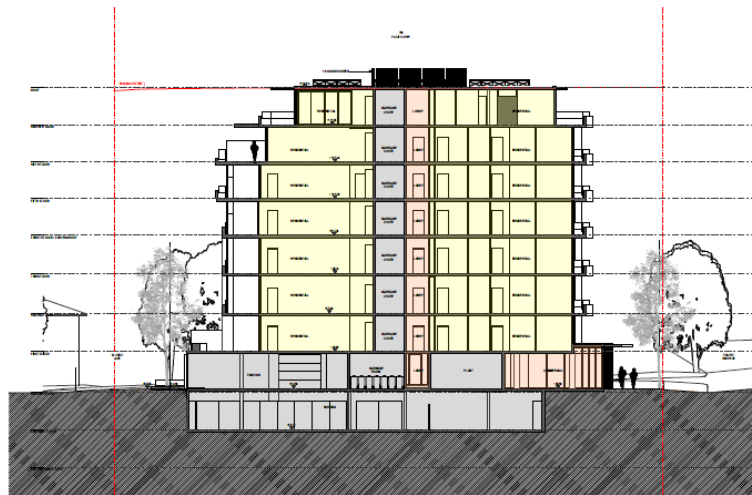
### Deep Soil

Refer to the deep soil discussion under the Seniors SEPP section of this report above for further detail.

### Car Parking

Part 3J-5 of the ADG requires that on-grade car parking should be avoided and Part 3J-6 requires that exposed parking should not be located along primary street frontages. On-grade and above ground parking proposed with retention of the existing car parking structure and partially along Bellevue Avenue and Pacific Highway. The relevant objectives are that visual and environmental impacts of at grade and above ground enclosed car parking are to be minimised.





**Figures 23 & 24: Proposed Car Parking Levels in Grey which includes At Grade and Above Ground Parking**

The proposal would not be inconsistent with existing other car parking arrangements along Elcedo Lane and on the existing current car parking arrangement on the subject Jaycar site. The relevant objectives are achieved in this instance where proposed car parking would be successfully incorporated into the overall design of the building. The proposed car parking is predominantly located off the rear laneway which the ADG supports and an appropriate design has been implemented with the proposed sleeving design approach undertaken by the applicant to minimise the visual impacts of these structures onto surrounding properties.

This is achieved with commercial tenancies sleeve the Pacific Highway frontage of the site, consistent with the strong existing character adjoining the site, particularly to the south towards the St Leonards centre. Separate entrances are provided to each of these tenancies to maximise movement and activity along this frontage. A secondary access point to the residential lobby is also provided off the Pacific Highway, providing direct access to the adjacent bus stop. Existing structure above the ground level on the Nos. 178-180 Pacific portion of the site will be utilised to provide for planting that will create a green wall effect.

This will sleeve the car parking provided within the existing car park structure which is to be retained (with considerable setback) on the first floor and provide diversity and interest in the architectural character. The Bellevue Avenue frontage of the site has a distinctly different character, being more residential in its nature. To be consistent and enhance this character, the area to the west of the residential lobby is proposed to be extensively landscaped to provide for a community garden, with raised planter beds and seating, which will effectively sleeve and screen the ground level car park on this part of the northern frontage as well as provide activation.

Behind the community garden, architectural treatment using batons as well as a vertical trellis against the façade will create an effective green screen. The approach taken is to ensure that it presents in a way that is attractive and dynamic to both the Pacific Highway and Bellevue Avenue. The proposed car parking arrangement is satisfactory in this instance.

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**Figures 25, 26 & 27: Proposed Car Parking At-Grade and Above Ground Parking Integrated into Overall Design of the Building**

## Solar Access

The proposal provides 59.5% of apartments receiving adequate solar access where the ADG requires 70%.



**Figure 28: Proposed Solar Access Compliance Diagrams**

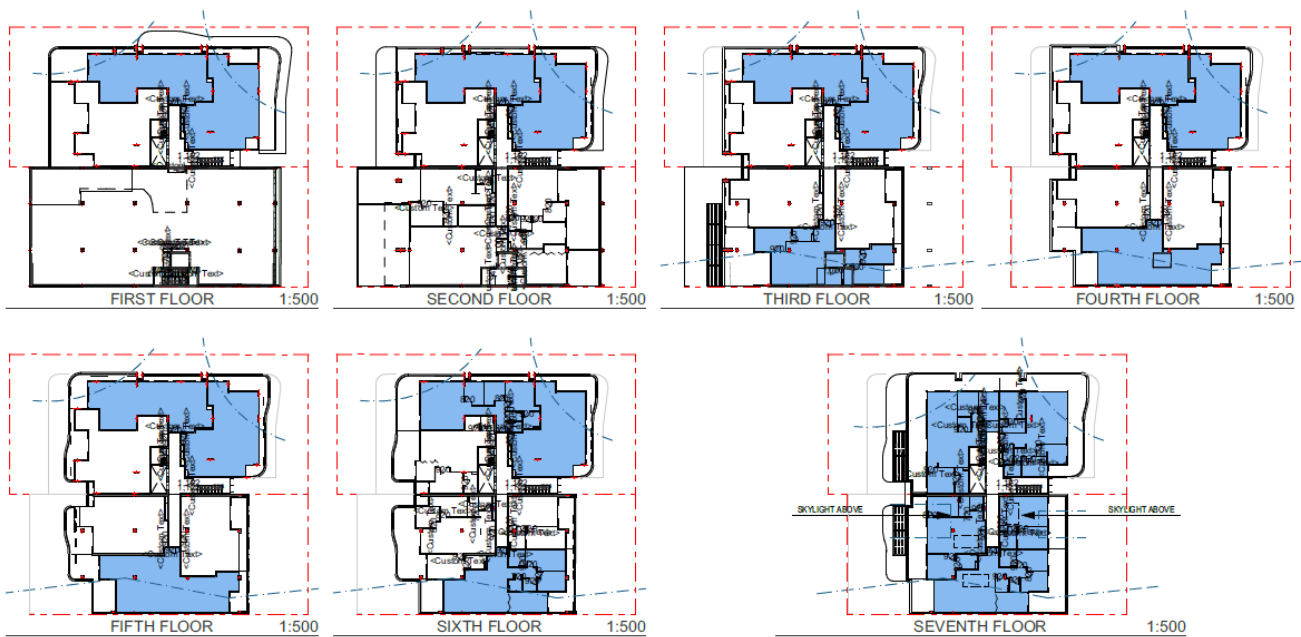
The ADG states the following:

*Achieving the design criteria may not be possible on some sites. This includes where significant views are orientated away from the desired aspect for direct sunlight.*

The proposed variation results from the design decision to locate main living spaces towards the west and south-west to maximise views towards the Harbour including the orientation of the subject development site. In this instance, given there are significant views towards the Harbour (and district views more broadly), the proposed shortfall is considered satisfactory. It is noted that there will be a total of 70% of the units which will receive two hours or more of solar access to bedrooms however would not have the best views available. A variation to the design criteria is considered satisfactory.

## Cross Ventilation

The proposal provides 57% of apartments being naturally cross ventilated where the ADG requires 60%.



**Figure 29: Proposed Cross Ventilation Compliance Diagrams**

The applicant has provided the following justification:

*Cross ventilation of the proposal will be similar or greater to that achieved in a development which fully complies with the ADG in a typical location. This is the result of the location of the building on a ridge line, with land falling rapidly away from the site, resulting in high airflow. The airflow on the 7th storey of the building is comparative to or greater than airflow on the 10th floor of a typical apartment building.*

The proposed variation is due to in part the number of single aspect units being proposed however the variation is minor in this instance and the single aspect units have minimal apartment depths for natural air to flow from the proposed balcony and circulate within the unit and exit through a bedroom window. The variation to the design criteria is supported as natural ventilation has been maximised where possible in the subject development to create a comfortable indoor environment for residents.

### Ceilings Heights

Part 4C-1 ADG requires a minimum 2.7m ceiling height for residential levels and 3.1m ceiling height for the commercial ground floor level of a mixed-use development. The residential ceiling heights are compliant at 2.9m however at the entry of the residential lobby level on the ground floor, the ceiling height is 2.6m and the remainder of the lobby level is compliant. The proposed commercial floor height is 2.9m for the tenancy on the corner of Pacific Highway and Bellevue Avenue which is consistent with all the residential floor levels above however the entry area of the tenancy facing Pacific Highway has a compliant ceiling height of 3.4m. The other commercial tenancy is compliant.

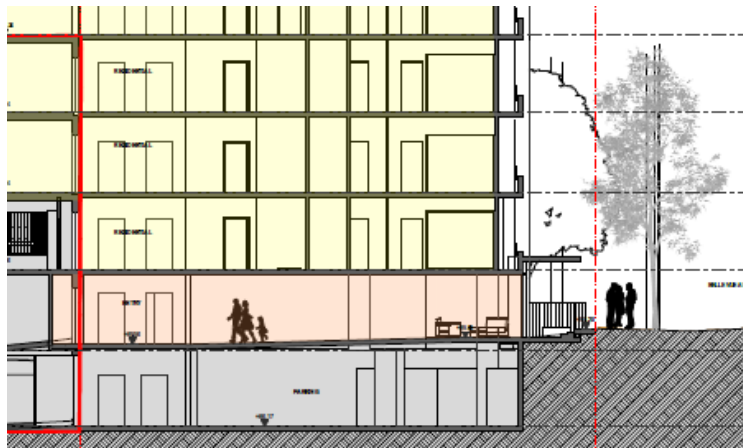


Figure 30: Proposed 2.5m Ceiling Height at Lobby Entrance (in Pink)

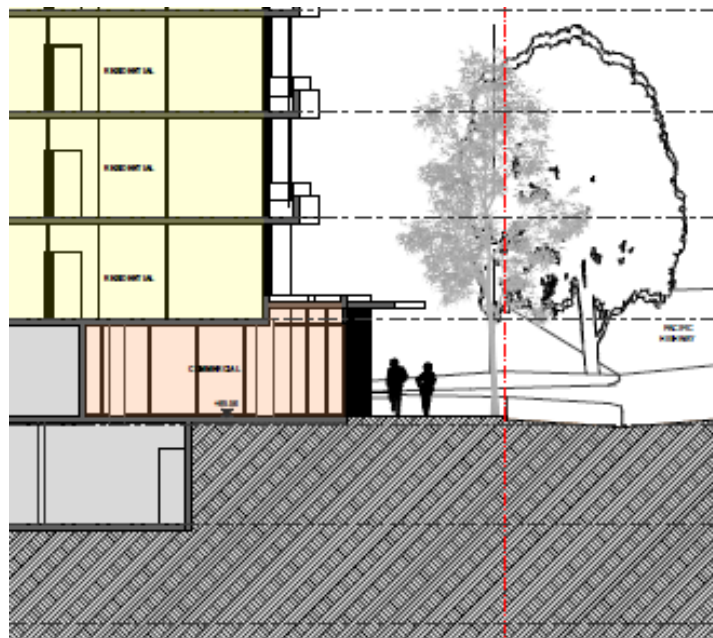


Figure 31: Proposed 2.9m and 3.4m Ceiling Height for Commercial Tenancy (in Pink)

The relevant objective is:

*Ceiling height achieves sufficient natural ventilation and daylight access.*

There are no concerns with this design approach as it would be BCA compliant and a 2.6m entry ceiling height to the lobby is appropriate as it only forms a minor portion of the total lobby area which is compliant with the ADG. The reduced ceiling height at this point is due to maintaining existing footpath levels along Bellevue Avenue where the footpath level is slightly above the proposed finished ground level. A 2.9m ceiling for one of the commercial tenancy is adequate in this instance as the amenity levels for the future users would not be compromised where a dual street aspect would be provided for and will have a strong street visual presentation to Pacific Highway with a 3.4m ceiling height at the entry of the tenancy.

#### **Lane Cove Local Environmental Plan (LCLEP) 2009**

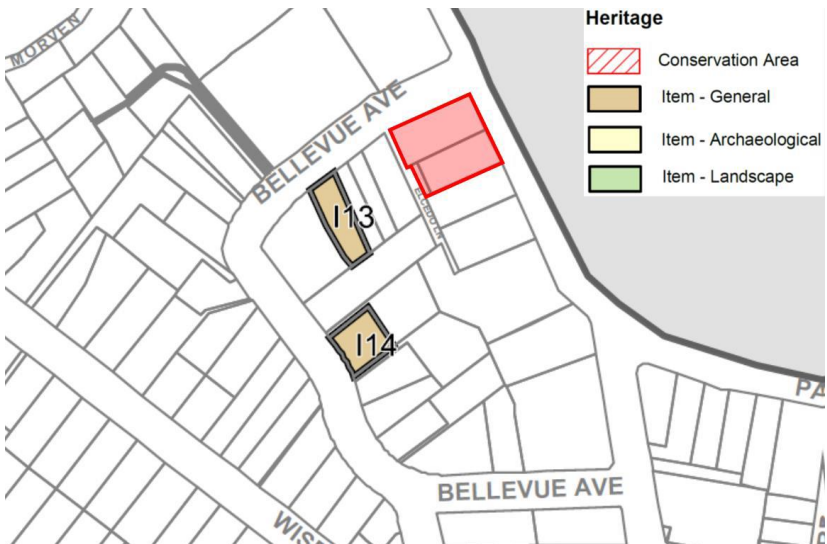
See page 2 of this report in relation to permissibility.

## Development Standards

The proposal has been assessed against the applicable development standards within LCLEP 2009 as detailed in the following table of compliance:

Lane Cove LEP 2009	Proposal	Compliance
<b>4.3 Height</b>		
25m	Maximum 27.5m (9% variation)	<b>No, see discussion below</b>
<b>4.4 FSR</b>		
3:1 Site Area 1,757m <sup>2</sup> FSR = 5,271m <sup>2</sup>	3:1 or 5,268m <sup>2</sup>	Yes

## Other Provisions

LEP	Proposed
<b>5.6 Architectural Roof Features</b>	<p>The application does not propose or include any architectural roof features that exceed the maximum building height.</p> <p>Council's Heritage Consultant has assessed the proposal and made the following comments:</p> <p><b>The Proposal</b>  <i>This proposal is for an eight storey Seniors Housing and Mixed-Use Development plus car parking, located at the corner of the Pacific Highway and Bellevue Avenue in Greenwich.</i></p> <p><b>Heritage Items</b>  <i>The site is not subject to any Council heritage listings, however it is located in the vicinity of 2 heritage items within the Lane Cove LGA identified as:</i></p> <ul style="list-style-type: none"> <li>• 'House' – I13, 8 Bellevue Avenue, Greenwich</li> <li>• 'House' – I14, 14 Bellevue Avenue, Greenwich</li> </ul>
<b>5.10 Heritage Conservation</b>	 <p><b>Figure 32: Local Heritage Items in Proximity to the Subject Site</b></p> <p><i>The site is also located opposite the Gore Hill Cemetery, which is listed on the State Heritage Register as a heritage item of State</i></p>

	<p>significance. The Cemetery is located in the Willoughby LGA and is listed as an item of local significance on the Willoughby LEP.</p> <p><b>Heritage Impact of the proposed development</b>          With respect to potential impact on the two heritage items in Bellevue Avenue, any visibility of the top 3 storeys will be mitigated by stepping of the built form with greater setbacks provided at upper levels. Impacts are further mitigated through considerable articulation and modelling of the elevations.</p> <p>The Pacific Highway separates the subject site from the State listed Gore Hill Cemetery. A pattern of high rise and commercial development on the west side of the Pacific Highway has become established in recent years. The proposed development is consistent with prevailing large scale and high rise on the Pacific Highway, therefore the proposal should have negligible impact on the Gore Hill Cemetery precinct.</p> <p><b>Recommendation</b>          I have no object to development as proposed.</p>
<b>6.1A Earthworks</b>	<p>Excavation for a basement level would be suitable for the proposed development from a contamination, soil stability and stormwater perspective. The proposal would not be inconsistent with the requirements of Clause 6.1A.</p>

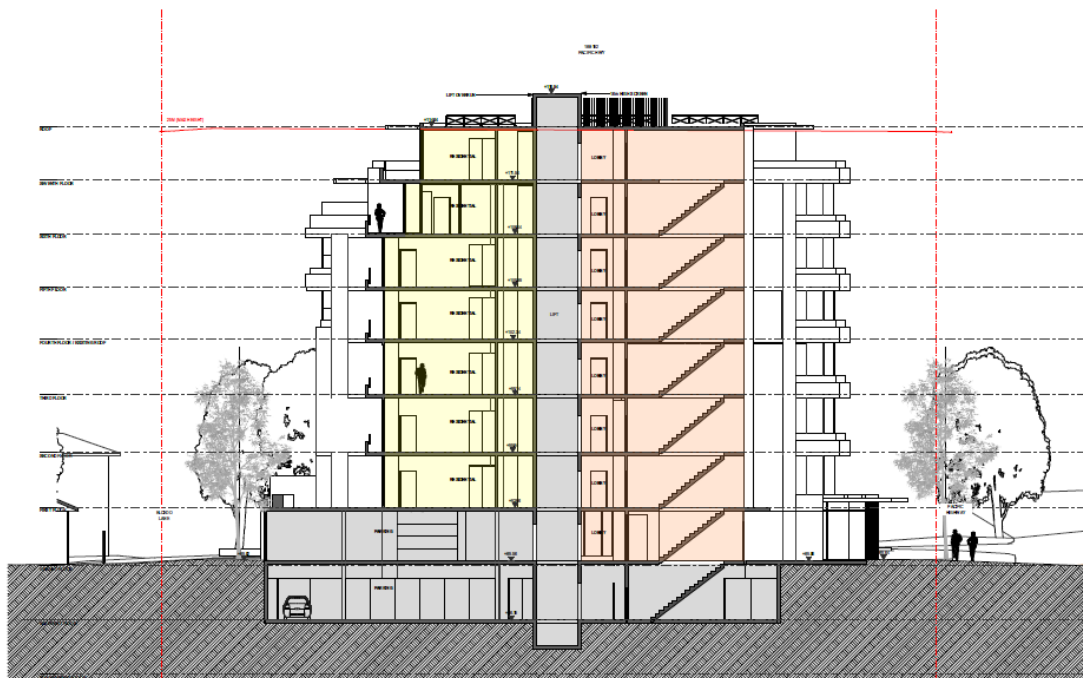
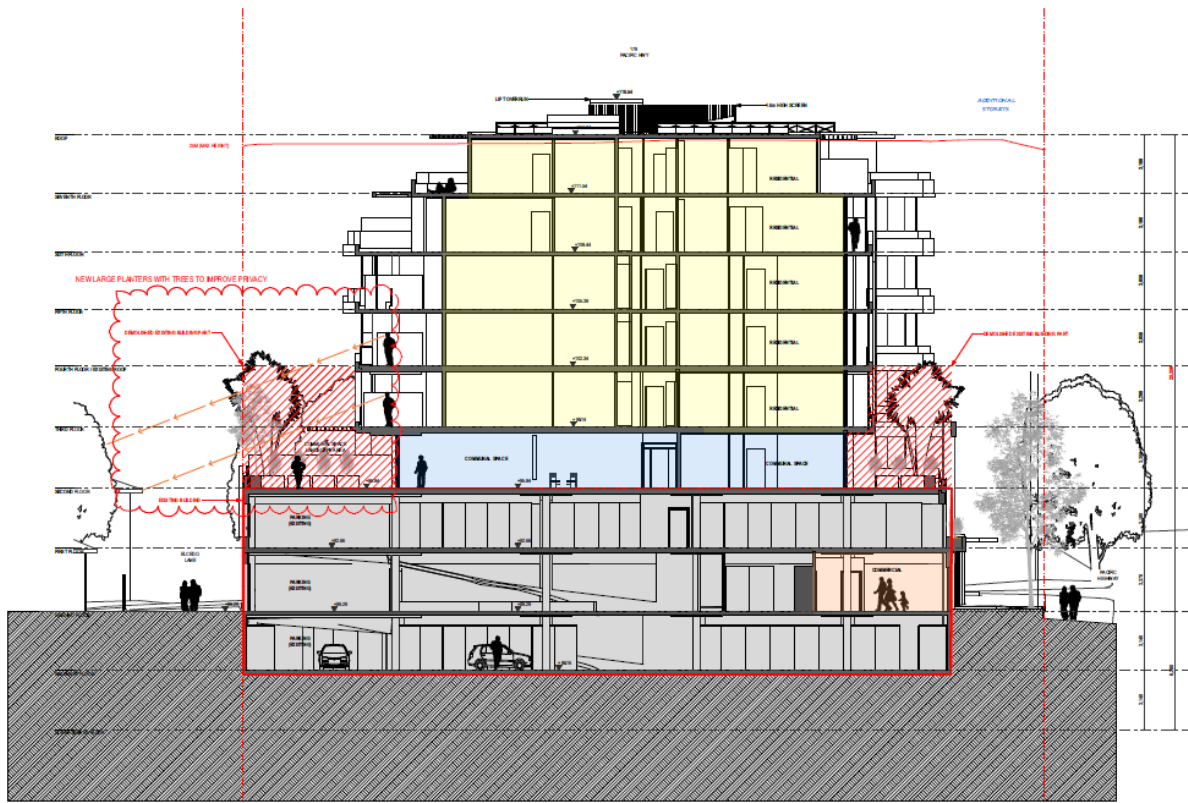
#### A. Clause 4.6 Written Request – Building Height

A maximum building height of 25m applies to the site under LCLEP 2009. The proposed building has a maximum building height of 27.5m (a variation of 2.5m or 9%) due to the proposed lift overrun, plant and solar panel roof structures. Again, the ground level in this instance has been measured to exclude the already constructed basement where if it were to be counted would result in a maximum height of approximately 32.3m (a variation of 7.3m or 29%) and it would be more appropriate to treat the ground level as the existing ground levels on the subject site rather than the most bottom existing basement level.



**Figure 33: Height Building Map (T=25m)**

The relevant sections of the proposal are provided below.



Figures 34 & 35: Proposed Sections Showing Rooftop Structures Above the Maximum 25 LEP Building Height Limit

#### Clause 4.6 Exceptions to development standards

Clause 4.6 of LCLEP 2009 allows exceptions to 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. This written request must demonstrate compliance with the relevant provisions of Clause 4.6 of LCLEP 2009. These matters are discussed below:

Written request provided by the applicant

The applicant has provided a written request (see Attachment 3) seeking a variation to the development standard with the lodged application. A copy of the request provided to the Panel. Under Clause 4.6(3) the applicant is required to demonstrate:

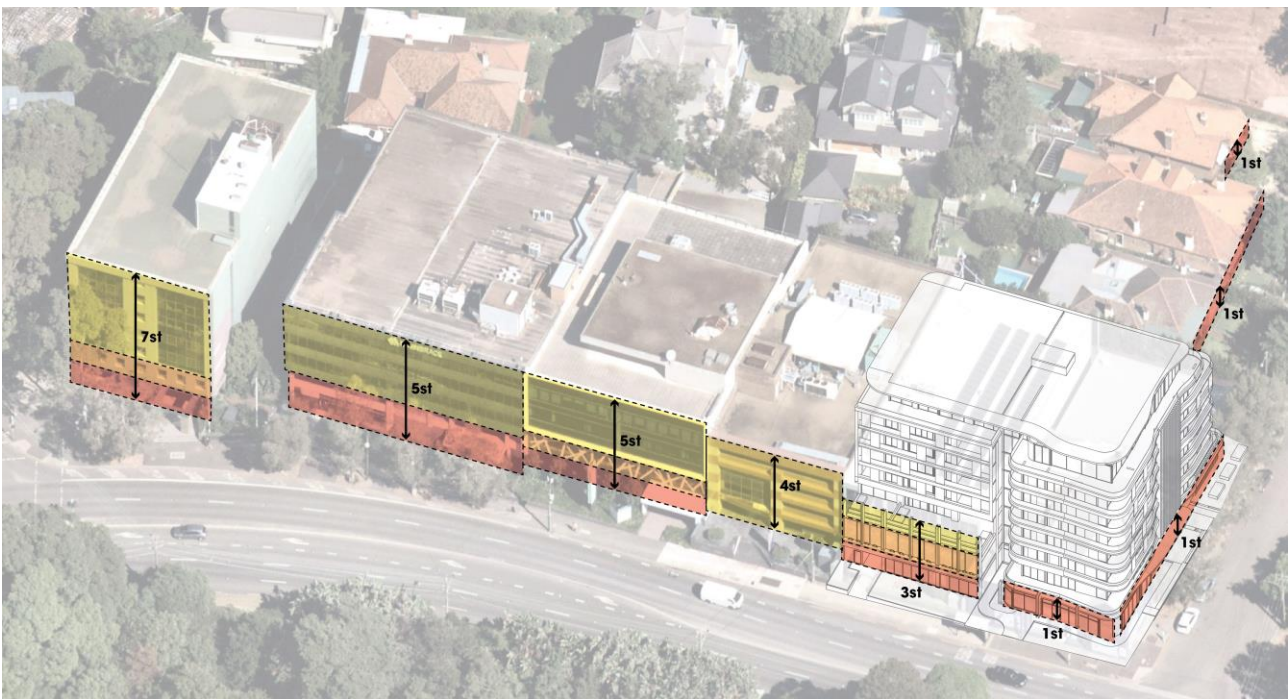
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

**1. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.**

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:

- Compliance with the 25m height control would require either additional excavation basement car parking or reduced levels of seniors apartments, which would result in additional environmental impacts (through additional construction activity and waste generation) or would greatly reduce the development's yield and its contribution to the meeting the objectives of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) and the District's and LGA's housing targets.*
- The proposed height enables the retention of part of the existing building at 178-180 Pacific Highway (basement floors, ground floor and first floor for car parking) which will reduce demolition activity and associated impacts and resultant construction waste generation.*
- The proposed development is located on a prominent corner site at the gateway to the St Leonards, which provides an opportunity to deliver a statement building.*
- The site is within an urbanised corridor along Pacific Highway characterised by taller, denser building forms and the proposal will act as interface to the lower density residential development to the west.*
- The proposed height exceedances are minor and localised and will generally be imperceptible; therefore, they will not appreciably add to the bulk or scale of the building in its existing context.*
- The development still achieves the objectives of the zone and the development standard.*
- The proposal includes substantial areas of ground level landscaping along both the Pacific Highway and Bellevue Avenue frontages and at the Levels 1 and 2 terraces.*
- The proposed height exceedances do not result in any adverse impacts on low density residential development to the west.*
- The proposed building has a significantly more articulated and stepped form than existing commercial buildings on the site and on neighbouring sites, which provides an effective transition to lower density development to the west.*

- *The proposed building remains predominantly compliant with the 25m height control, with the exceedances limited to the southern edge of the building which adjoins an existing multi-storey commercial development and to the plant and lift overrun which is centralised on the roof and positioned away from the parapet – accordingly there would be no additional visual impacts from the proposed height exceedances.*
- *There would be no additional overshadowing impacts to residential properties to the west of the site compared with a height compliant scheme between the critical hours of 9am and 3pm at mid-winter. The proposal will only result in negligible impacts at 9am to residential development to the west. Given the applicable height control of 25 m on the site, this minor increase is to be expected from any development built to this height. There are no additional overshadowing impacts to these residential properties at 12 pm or 3 pm, with afternoon shadowing confined to Elcedo Lane, existing commercial buildings and Pacific Highway. The proposed development minimises overshadowing of adjacent properties by providing upper-level setbacks to reduce bulk and scale.*
- *The proposed height exceedances would not obstruct the outlook or views from neighbouring properties.*



**Figure 36: Proposal's Relationship to Neighbouring Sites**

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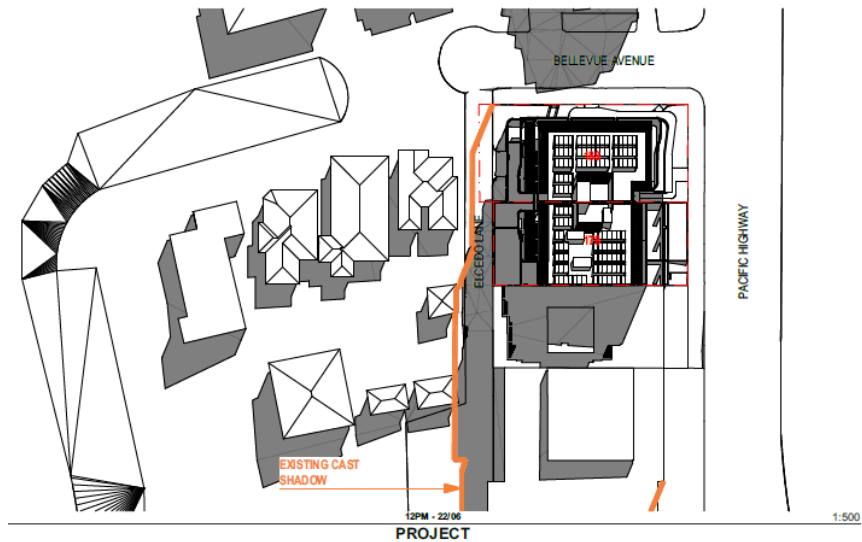
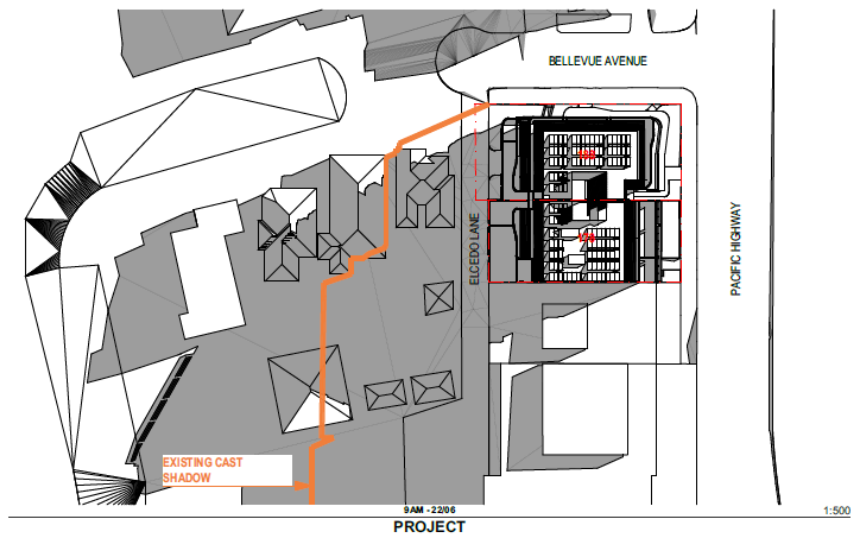


Figure 37, 38 & 39: Shadow Cast by the Development Between 9am and 3pm (Top to Bottom)  
Comment:

The proposed variation has little adverse visual impact effect to the scale of surrounding buildings as it only forms part of the proposed building to accommodate lift, plant and solar panel structures where strict compliance is unreasonable. The development presents as an appropriate built form to all elevations and to surrounding developments. There are no proposed units that sit above the maximum building height plane and the proposed variation would have very little adverse impact onto the immediate locality. The variation is consistent with the objectives of the development standard for the following reasons:

- The proposed variation makes very little visible increase to the bulk and scale of the development and it allows for reasonable solar access to existing buildings and public areas to be maintained.
- The proposal does not contain significant adverse privacy and visual impacts on neighbouring properties.

Given the minimal impacts on neighbouring properties and the public domain, strict compliance with the Height of Buildings development standard would be unreasonable or unnecessary in this instance. The written request demonstrates that the breach to height would not result in the departure from the building height objectives in relation to privacy/visual physical impacts and to ensure that the development relates to the topography of the subject site. The proposed development appropriately identifies the existing character of the locality by providing for satisfactory building setbacks whilst providing for improved amenity levels of the future users of the subject building.

## **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, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity. The applicant has stated that there are sufficient planning grounds to contrive the Building Height development standard as:

*The proposed development will:*

- *increase the supply and diversity of seniors housing in an area well supported by transport, retail, health and other services, in accordance with the aims of the Seniors SEPP.*
- *provide diverse and a greater housing supply in accordance with the Greater Sydney Region Plan.*
- *meet the directions of the North District Plan by nurturing quality lifestyles through well-designed housing in neighbourhoods close to transport and other infrastructure.*
- *provide housing choices which meet the needs of the community as detailed in the Lane Cove Local Strategic Planning Statement (LSPS).*

*The urban design benefits of the proposed height of the development include:*

- *the design response, including the proposed building height, will provide for a building with landmark qualities that will create an instantly recognisable development, which is desirable for a site which acts as an interface between the residential area and existing higher density commercial development along Pacific Highway.*
- *the proposed heights maintain a consistent street wall height with existing development along Pacific Highway.*
- *the proposed height exceedances are minor and localised and will not generally imperceptible; therefore, they will not appreciably add to the bulk or scale of the building in its existing context.*

- *the proposed height exceedances do not compromise the ability to achieve an articulated and stepped building form that responds to the lower density development to the west.*
- *the proposed height will provide a stronger vertical emphasis to the building and will provide for additional physical building articulation in addition to architectural/façade treatments.*
- *the proposal includes substantial areas of ground level landscaping along both the Pacific Highway and Bellevue Avenue frontages and at the Levels 1 and 2 terraces.*

*The proposed building height improves the relationship of the development with the surrounding built form context as:*

- *it acts as an interface between existing higher density, large floor plate commercial development along Pacific Highway and the low-density areas to the west.*
- *it provides a development of a height and scale suitable for a corner location and which provides a gateway element to the St Leonards centre.*
- *it provides new and enhanced ground level landscaping along the Pacific Highway and Bellevue Avenue frontages.*



**Figure 40: Northern Elevation Showing Transition to Residential Zoning to the West**

**Comment:**

The environmental planning grounds to justify contravening the development standard are considered relevant. The applicant has sought to provide for a design which would provide benefits to the future users of the building whilst minimising any significant impacts externally. The additional height created above the 25m building height standard is due in part in providing a lift overrun, plant equipment and solar panel above the roof line which would provide for a better planning outcome in this instance rather than a fully complying development that does not include such structures on the roof space.

Reasonable attempts have been made to appropriately design this development to provide for this outcome which is to provide for a high-quality senior's living or mixed-use development which contributes to both employment and housing within the Lane Cove LGA. A clear or detailed analysis had been made in the submitted Clause 4.6 written justification. The overall impact on the locality has been minimised where possible and the proposal would not adversely impact on the adjoining and surrounding premises. The environmental planning grounds provided are considered satisfactory and are supported. Clause 4.6(3)(b) is satisfied.

**3. Consistent with the zone objectives and objectives of the development standard.**

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would not be contrary the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The applicant has stated that the proposal achieves the relevant objectives of the Building Height standard by:

**Objective (a)**

*The proposed development does not significantly impact on solar access to existing buildings or the public domain.*

**Objective (b)**

*The proposed development incorporates rear setbacks and upper level setbacks which ensure no privacy impacts on residential development to the west. Furthermore, the proposed height increases are of a minor and localised nature that do not add any visual bulk or scale to the proposal and will not result in undue visual impacts on surrounding areas.*

**Objective (c)**

*As the proposal ensures adequate solar access to the public domain, alternative design solutions are not proposed in this instance.*

**Objective (d)**

*The subject site is relatively flat, with minor sloping to the south and west. The proposed building height steps to the west to reflect this topography and ensure a suitable transition to the lower density residential development to the west.*

An assessment against the objectives of building height and the B3 Commercial Core zone contained within LCLEP 2009 are provided as follows:

**Height of Building Objectives**

Clause 4.3 (1) provides the following objectives:-

- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas;*

**Comment:** The development would allow for reasonable solar access to existing buildings and public areas.

- (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable;*

**Comment:** There would not contain significant adverse privacy and visual impacts onto the adjoining properties.

- (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain; and*

**Comment:** The development would allow for reasonable sunlight for the public domain.

*(d) to relate development to topography*

**Comment:** The proposal has been appropriately designed which appropriately considers the topography whilst providing for a high amenity senior's living or mixed-use development.

**In accordance with the above, the development does comply with the LCLEP 2009 objectives for the height control and is supported.**

The applicant has stated that the proposed development is consistent with the B3 zone objectives as the proposed development:

**Objective (a)**

*The proposal provides 2 ground level commercial tenancies, providing a total 257m2 of commercial/retail GFA. These tenancies will service the future residents of the proposed seniors housing component as well as existing residents and local workers on adjoining sites.*

**Objective (b)**

*The provision of these tenancies also provides an opportunity for employment on the site. The site is highly accessible with consideration to the available bus services and proximity to the St Leonards Centre and railway station.*

**Objective (c)**

*The site is well serviced by public transport, being located on a bus route along Pacific Highway, and within walking distance of the St Leonards Centre and railway station.*

**Objective (d)**

*The proposed provides additional commercial and retail GFA in a highly accessible location.*

**Objective (e)**

*The proposed development does not result in significant overshadowing impacts on surrounding properties or the public domain. It results in minor additional overshadowing of residential properties to the west at 9 am mid-winter, however this shadow moves to Elcedo Lane by midday and commercial buildings to the south and Pacific Highway by 3 pm.*

**Objective (f)**

*The proposal provides a high-quality urban design outcome on a prominent corner site that acts as a gateway to the St Leonards Centre.*

**B3 Commercial Core Zone Objectives**

The B3 zone objectives are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

**Comment:** The proposal provides for two retail/commercial tenancies and 37 senior's housing apartments that would meet the needs of people who would live or work within the immediate locality including the future residents of the proposed senior's housing development. The proposed tenancies would allow for reasonable amenity for the occupants and for customers.

- *To encourage appropriate employment opportunities in accessible locations.*

**Comment:** The proposal would provide for appropriate employment opportunities in a highly accessible location.

- *To maximise public transport patronage and encourage walking and cycling.*

**Comment:** The proposal being situated in a highly accessible location would encourage the use of public transport and walking/cycling if required.

- *To integrate business, retail and other development in accessible locations.*

**Comment:** The proposal integrates mixed uses on one development site in a highly accessible location.

- *To maximise sunlight for surrounding properties and the public domain.*

**Comment:** Sunlight for surrounding properties has been maximised where possible and has been improved.

- *To encourage urban design maximising attractive public domain and adequate circulation space throughout the St Leonards commercial centre for current and future users.*

**Comment:** The proposal provides for an appropriate urban design response and would improve the appearance of the public domain within the St Leonards precinct for current and future users.

**In accordance with the above, the development does comply with the LCLEP 2009 objectives for the B3 Commercial Core zone.**

#### **4. Concurrence of the Director General.**

The Local Planning Panel can assume concurrence for exceptions to development standards. As the proposal is referred to the Lane Cove Local Planning Panel for determination; concurrence is taken to be assumed should the Panel be satisfied that notwithstanding the above impacts and non-compliances the proposal is acceptable.

#### **5. 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 variation to the height standard of LCLEP 2009 is justified and supported in the circumstances of this case. The development would satisfy the objectives of the control despite the non-compliance with the height control. The development satisfies the objectives and the criteria outlined in Clause 4.6. As such, the variation is well founded, it results in a better planning outcome and would not be contrary to the public interest.**

- (ii) Any proposed instrument (Draft LEP, Planning Proposal)**

N/A

- (iii) Any development control plan**

## Lane Cove DCP 2010

### **Parts B – General and C3 – Residential Flat Buildings**

A full assessment of the proposal under DCP 2010 Parts B and C3 has occurred (see Attachment 4) as illustrated in the compliance table). The non-compliances identified in the table are assessed below.

#### **Variations**

##### **Building Depth**

Refer to the ADG apartment depth discussion of this report for further details.

##### **Size and Mix of Dwellings**

Clause 3.10(b) requires in a residential flat building and the residential component of mixed-use buildings, development should include a mix of 1, 2 and 3-bedroom units. At least 10% of each unit type should be provided. The proposal accommodates:

- 3 x 1 bedroom
- 9 x 2 bedroom
- 25 x 3 bedroom

The proposal achieves the minimum 10% requirement with exception of the 1-bedroom unit types where it would represent a total of 8%.

**Comment:** The proposed variation is very minor and there is a demonstrated demand for large apartment seniors living product which the proposal has been designed to meet. All unit types far exceed the minimum ADG size requirements and the proposed mix of apartments are appropriate in this instance.

##### **Common Open Space**

Refer to the ADG COS discussion of this report for further details.

##### **Landscaped Area**

Refer to the Seniors SEPP landscaped area and deep soil discussion of this report for further details.

### **Part D – Commercial Development and Mixed Use**

A full assessment of the proposal under DCP 2010 Part D has occurred (see Attachment 5 as illustrated in the compliance table). The non-compliances identified in the table are assessed below.

#### **Variations**

##### **Frontage, Side and Laneway Setbacks**

Clause 1.1.6 – Setbacks requires a minimum 5m front setback to Pacific Highway and the proposal slightly encroaches into the front 5m setback area on the corner of Pacific Highway and Bellevue Avenue on the commercial ground level and with the Level 1 balcony above. Also, the ground level setback to laneways is to be 3m to allow for colonnades and landscaping. The existing at-grade

car park structure has a nil setback and the Level 2 COS area also has a nil setback. For three storeys and above, a minimum 6m side and laneway setback is required and 6m setbacks to Elcedo Lane for upper levels are achieved with minor balcony encroachments on the 5<sup>th</sup> and 6<sup>th</sup> floors. A nil side southern boundary is proposed.

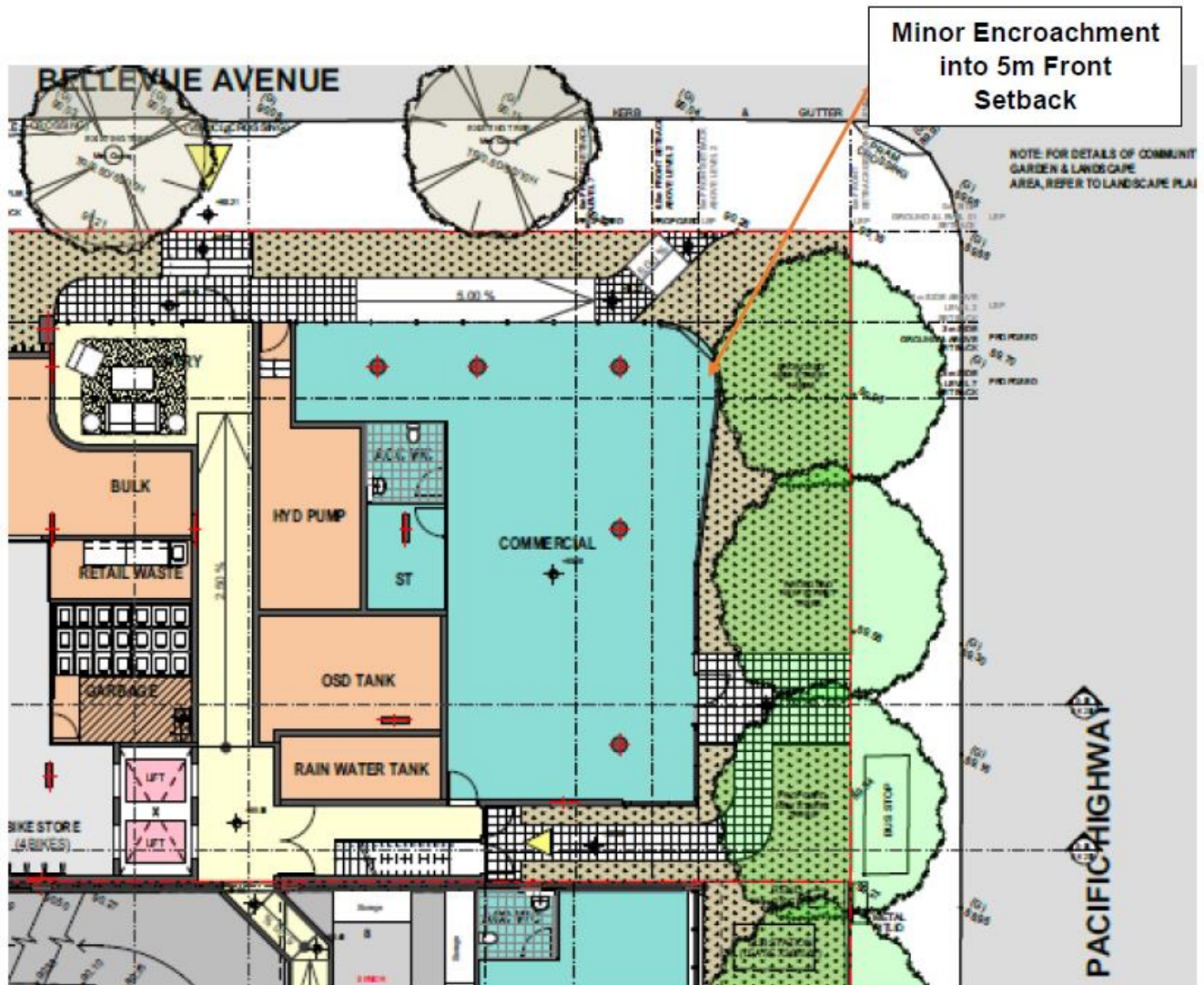


Figure 41: Front Setback Encroachment

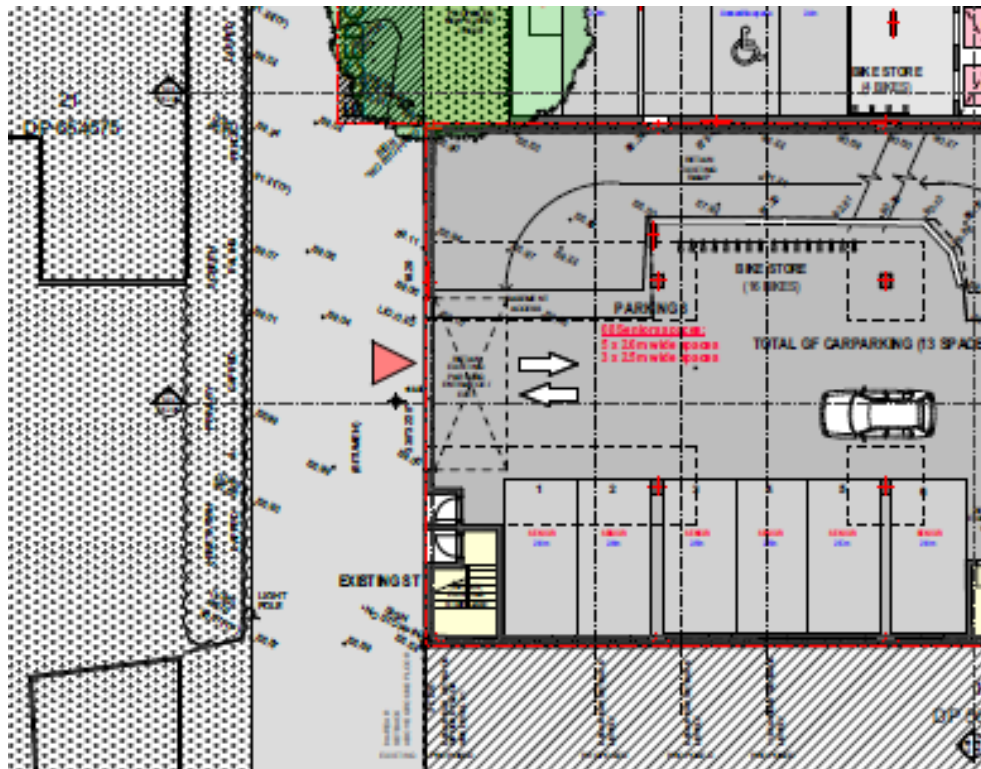


Figure 42: Existing Nil Car Parking Structure Setback

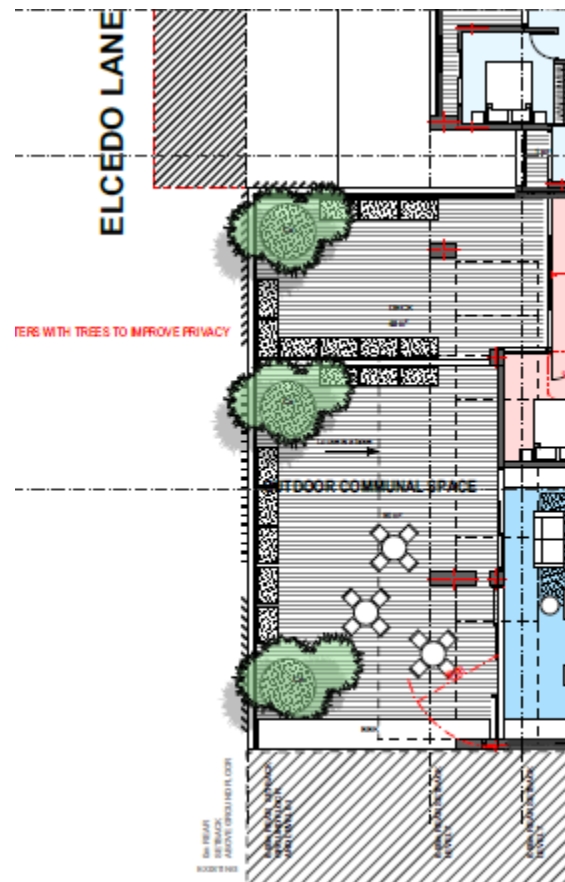


Figure 43: Nil COS and POS Area Setback on Level 2

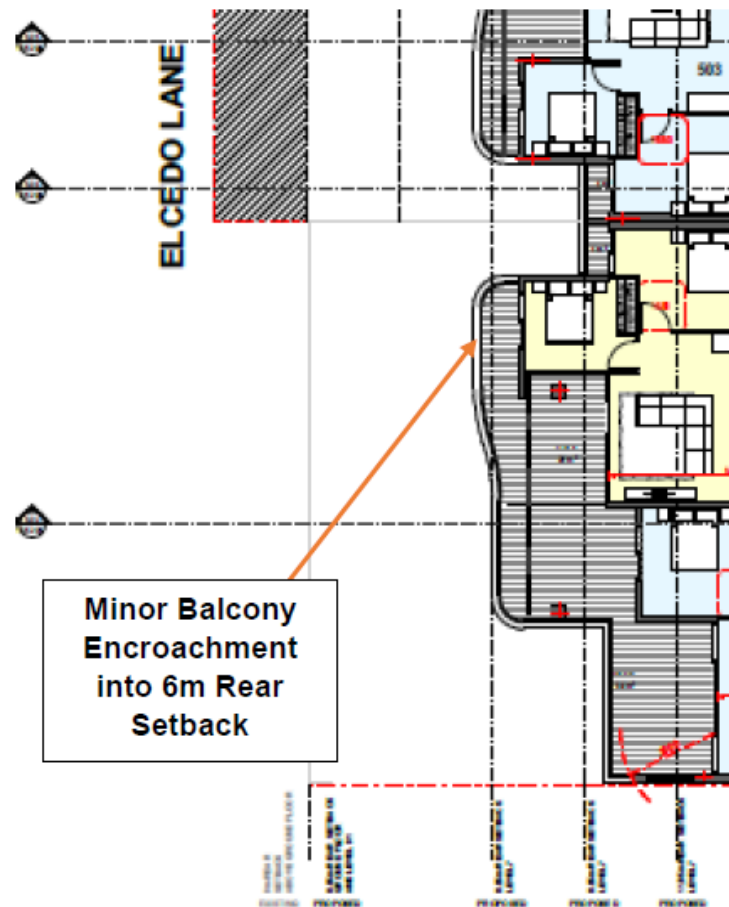


Figure 44: Balcony Encroachments on the 5<sup>th</sup> & 6<sup>th</sup> Level

The relevant DCP objective is as follows:

#### 1.1.6 Setbacks

1. *To reduce the impact of scale as well as assist with cross-ventilation, solar access, privacy, views sharing and to reduce adverse wind effects.*

**Comment:** The proposed development has been appropriately designed to reduce the scale of the proposal onto surrounding properties. The minor variation to the front would provide for an articulated featured corner development to the entrance of the St Leonards precinct. The terraces on Level 2 have been appropriately landscaped to address any privacy and building separation concerns with the residential zoned area opposite the site. The building has been appropriately transitioned with the adjoining residential zone with increased setbacks with the upper most level/s and would far exceed the Part D DCP setback/ADG building separation requirements through some sections of the building (see Figure 19).

It is recommended that the minor balcony breaches on Levels 5 and 6 be deleted and would in turn achieve full compliance the ADG building separation requirements. The nil ground level car parking structure to Elcedo Lane is an existing structure to be retained and would be consistent with other above ground car parking structures located along the laneway. The development has been designed to maximise levels of cross ventilation, solar access, privacy and view sharing where possible. The development would be consistent with future adjoining or surrounding commercial developments as it would likely take the same built form as the subject proposal. It is considered that there is no excessive bulk and scale with the proposed building.

The proposed development would not be entirely inconsistent with the intended desired future character for the St Leonards commercial locality. The siting of the building, its design and its finished built form will result in a building that activates the street frontage whilst also providing for suitable amenity levels for future users of the development and for surrounding properties. The proposed variations to front and laneway setbacks can be supported in this instance.

### **Ceiling Heights**

Refer to the ADG ceiling height discussion of this report for further details.

### **Design and Location of Car Parking**

Refer to the ADG car parking discussion of this report for further details.

### **Awnings**

Clause 1.5(d) requires a minimum 3.3m awning height and a 3.1m awning height is proposed to the residential lobby along Bellevue Avenue (refer to Figure 27). The relevant DCP objectives are as follows:

- 1 To increase pedestrian amenity by the provision of weather protection.*
- 2 To create a protected transition area between internal and external spaces for public and commercial buildings.*

**Comment:** The proposed awning is appropriate in this instance as suitable pedestrian amenity would be maintained and provide for adequate weather protection. The variation is due to the same reasons for the variation proposed to the ADG minimum ceiling heights to the residential lobby along Bellevue Avenue due to the site sloping away from the street. The design of the awning is supported as it would create an attractive transition area between the footpath area and the development itself. It is noted that the height of the awnings to the commercial tenancies are compliant.

### **Solar Access**

Refer to the ADG solar access discussion of this report for further details.

### **Part F - Access and Mobility**

The proposed development provides adequate accessibility and ensures compliance with the BCA as demonstrated in the Access Report and BCA Report provided. These reports demonstrate compliance with the relevant provisions of the DCP.

### **Part R – Traffic, Transport and Parking**

The proposal's car parking has been designed with consideration to the provisions of the Seniors SEPP where 0.5 car spaces for each bedroom are required. A total of 96 bedrooms are proposed and a total of 48 car parking spaces are required. A total of 48 seniors housing spaces including three accessible spaces are proposed.

Council's parking DCP requires one space per 60sqm of commercial space and a one disabled space. A total of 251sqm of commercial space is proposed which requires a maximum of five spaces and one disabled space. A total four spaces including one disabled space are proposed. It is considered that the technical shortfall of two car parking spaces to the commercial component of the development can be supported in this instance due to the site being situated in a highly

accessible location in St Leonards with a bus stop directly in front of the subject site. Council's Traffic section has no objections to the proposed development.

Further, based on the commercial floor space proposed, one motorcycle space, one bicycle rack to employees and two bicycle racks to customers are required. Two motorcycle spaces and four bike racks for employees are proposed. To ensure better compliance with the DCP, it is recommended that the required car parking condition includes the provision of one bike rack each to be located at the entrances of the commercial tenancies for customers.

### **Section 7.11 - Development Contributions Plan**

The proposed development is subject to S7.11 contributions in accordance with Council's S94 Contributions Plan. The development would increase the population living on the site as well as increasing the commercial and retail use. There would be 37 dwellings in the proposed development comprising of three x one-bedroom, nine x two-bedroom and 25 x three-bedroom dwellings. There would be 251m<sup>2</sup> of commercial space. The S7.11 is calculated for residential and commercial floor space as follows:

#### **Residential**

The S7.11 plan has specified the average number of people per dwelling, based on the number of bedrooms. The occupancy rates are:

- 1.2 persons per one-bedroom unit in high density developments.
- 1.9 persons per two-bedroom unit in high density developments.
- 2.4 persons per three-bedroom unit in high density developments.

The S7.11 contribution for each dwelling of the proposed shop top housing development is calculated at the current rate of \$11,044.52 per person (2021-2022) as follows:

<b>No. bedrooms</b>	<b>Average occupancy</b>	<b>Amount of contribution per person</b>	<b>No. of Dwellings</b>	<b>Total contribution</b>
One Bedrooms	1.2 persons	\$11,044.52 x 1.2 = \$12,770.40 per dwelling	Three x \$12,770.40	\$38,311.20
Two Bedrooms	1.9 persons	\$11,044.52 x 1.9 = \$20,219.80 per dwelling (capped at \$20,000)	Nine x \$20,000.00	\$180,000.00
Three Bedrooms	2.4 persons	\$11,044.52 x 2.4 = \$26,506.85 per dwelling (capped at \$20,000)	25 x \$20,000.00	\$500,000.00
			<b>TOTAL:</b>	<b>\$718,311.20</b>

\*N/B The reforms to Local Development Contributions have a cap of \$20,000 per residential lot or per dwelling limitation on local development contributions. Per dwelling contributions is below the cap.

The total S7.11 contribution for the residential component of the development is \$718,311.20.

#### **Commercial/Retail**

The Section 7.11 Contributions applicable for Retail/Commercial Development – Traffic Management and Streetscape improvements (per m<sup>2</sup> of gross floor area) at a rate of \$139.26 per m<sup>2</sup> of GFA (2021/2022 Fees & Charges Schedule) are calculated as follows:

- (Commercial 251m<sup>2</sup>) x \$139.29 (2021/2022) = **\$34,961.80**

### **Total S7.11 Contribution**

The required S7.11 contribution for the retail/commercial and residential components of the development is calculated at: \$718,311.20 + \$34,961.80 = **\$753,273.00**. Were the application to be supported a condition requiring payment would be included in the draft conditions of consent. Note:

### **(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The proposed development would be in-excess of the maximum permissible height control. The excessive height would not dominate the streetscape and surrounding developments. The parking provided for is adequate. The parking arrangement is satisfactory which would not adversely impact upon the amenity of the residents and commercial space users. The privacy of the units and surrounding developments would not be compromised. The proposed building separation and setbacks are adequate. The development is considered satisfactory in terms of environmental impacts.

### **(c) The suitability of the site for the development**

The subject development site is suitable for the proposed development where the relevant contamination, height, setbacks and parking issues have been adequately addressed to enable the proposed development to be recommended for approval subject to conditions. A well-considered proposal that seeks to deliver the relevant LEP and DCP objectives has been achieved.

### **(d) Any submissions made in accordance with this Act or the regulations**

In accordance with Council's notification policy, owners of surrounding properties were given notice of the application and ten submissions was received including nine by way objections from surrounding residents at Nos. 2, 4, 6, 1/10A, 2/10A, 12, 1/14A, 17B and 17G Bellevue Avenue. The following issues were raised as follows:

<b>Concern</b>	<b>Comment</b>
<b>The proposal is prohibited</b>	<p>The proposed development and built form as a residential flat building style development are permissible and anticipated under both the Senior's SEPP and SEPP 65 (see page 2 of this report for further details).</p> <p>The applicant has demonstrated within the Statement of Environmental Effects (SEE) that the development is permissible under the Seniors SEPP as 'Hospitals' are permitted within the B3 zoning under the Infrastructure SEPP and seniors living housing can occur on land which permits hospitals.</p> <p>This not a convenient 'loop hole' undertaken by the applicant to overcome the permissibility issue as senior living housing developments are encouraged by the SEPP to be situated in highly accessible areas such as the subject development site to important facilities to be accessed by resident seniors.</p>
<b>Excessive building height and a reduction in height by one storey</b>	<p>As discussed in detail under the LCLEP 2009 section and elsewhere of this report, the proposed overall height of the development is reasonable and supported in this instance. The main part of the building, the roof form and proposed units are contained within the maximum 25m building height limit and the</p>

Concern	Comment
	<p>proposed breaches are only related to rooftop structural elements such as the lift overrun, plant, plant screening and solar panels which would be centrally located on the roof.</p> <p>These elements would not be visible from surrounding properties and it is not recommended that the height of the development be reduced by one or more storeys as it would not substantially reduce the perceived visual bulk of the development when viewed from a surrounding residential property. The proposal has had satisfactory regard to the existing local planning provisions.</p> <p>The proposal provides for reasonable building separation to the west to transition to the lower density residential zone.</p>
<b>Excessive overshadowing</b>	<p>The submitted shadow diagrams (see Figures 34-36) indicates in detail that all surrounding residential properties will receive adequate solar access and would be largely maintained where possible. The development would not reduce sunlight to dwellings below a minimum of three hours of sunlight and would be fully compliant with relevant ADG requirements.</p>
<b>Negative impact to privacy</b>	<p>As discussed in detail elsewhere of this report, the proposed development would not contain significant adverse privacy impacts onto surrounding residential properties where reasonable design and privacy measures have been implemented to avoid direct overlooking into any adjoining private open space area.</p> <p>There is a reasonable separation between the proposed building and the adjoining dwellings to the west which would assist in reducing any significant adverse visual and acoustic impacts. The proposed built form of the development would not be inconsistent with the existing or future envisaged developments along the eastern commercial side of Elcedo Lane.</p>
<b>Increased traffic congestion within Elcedo and all access should be through Bellevue Avenue</b>	<p>Council's Traffic section has assessed the submitted traffic report and have raised no objections subject to conditions. The proposal would provide for a sufficient number and a safe on-site car parking scheme which would not contribute to unreasonable traffic levels on the laneway or on the surrounding road network. The design of the car parking scheme would also ensure that all delivery vehicles are able to be provided on-site as well.</p> <p>A Construction and a Demolition Traffic Management Plan are recommended as a condition to ensure traffic is appropriately managed during the construction and demolition phase of the development. The suggestion to have access off Bellevue Avenue is not supported as access off an existing laneway is available and would result in the removal of existing street trees.</p>
<b>Waste Collection must accommodate normal garbage trucks not custom trucks</b>	<p>Council's Health and Environment section has assessed the proposal and have raised no objections subject to waste conditions. All waste collection will be undertaken on-site to minimise any significant adverse impacts onto surrounding properties. SRV waste trucks will be used and is an accepted</p>

Concern	Comment
	size of truck to be used to collect waste for a development of this size or nature.
<b>Increased setbacks to Elcedo Lane requested such as a minimum 9m setback</b>	It is not recommended that setbacks to Elcedo Lane be further increased as the proposed built form provides for an appropriate building transition to the detached dwellings to the west (refer to Figure 37). The proposal complies with the relevant building separation ADG requirements which is assisted with the existing 3m-6m width of the laneway.

### **(e) The public interest**

Having regard to the assessment contained in this report, it is still considered that approval of the development would not be contrary to the public interest.

#### Development Engineer - Traffic

No objections subject to recommended conditions to include ensuring compliance with relevant Australian Standards with the design of the car park/driveway areas and traffic matters.

#### Development Engineer - Stormwater

No objections subject to recommended conditions to include ensuring compliance with relevant stormwater, driveway, Council infrastructure and geotechnical matters.

#### Environmental Health Manager

No objections subject to recommended conditions to include ensuring completion of a DSI prior to the issue of the construction certificate and compliance with relevant waste and health and environment matters.

#### Transport for New South Wales (TfNSW)

Recommendations for conditions obtained from TfNSW as a traffic generating development under SEPP Transport and Traffic. The conditions recommended to include ensuring traffic, driveway crossing, kerb, guttering, stormwater, demolition, construction and excavation matters meet TfNSW requirements.

### **CONCLUSION**

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied. The proposed mixed-use development to include a 37-unit senior's living component is not compliant with the numerical Building Height development standard within LCLEP 2009. The submitted Clause 4.6 written request is considered satisfactory and well-founded as detailed in this report. The proposed development is considered compatible with the local character without having significant adverse impacts onto surrounding properties.

The proposed development has some Senior's SEPP, ADG and DCP non-compliances to include (but not limited to) variations to such as landscaping, solar access, cross-ventilation and setback requirements. The subject development would achieve a reasonable built form outcome when viewed from all street elevations and from surrounding developments. The development would have a reasonable visual impact as it would provide for visual interest to the relevant streetscapes. The proposal was notified in accordance with Council policy and nine objections were received. The issues raised within the submission do not warrant outright refusal of the subject Development

Application. It is considered that the proposal would not be inconsistent with the existing and future envisaged built form in the locality.

The proposed development would satisfy the employment and housing needs of the St Leonards precinct and would continue to maintain relevant amenity objectives to surrounding developments. The Development Application is recommended for approval subject to conditions of consent.

#### **RECOMMENDATION**

That the Lane Cove Planning Panel approve the proposed variations to the Building Height development standards in Clause 4.3(2) in *Lane Cove Local Environmental Plan 2009*, as the applicant's written request does adequately address the matters required to be demonstrated. The proposed development would not be contrary to the public interest because it is consistent with the objectives of the standard, the objectives for development in the zone and there are environmental planning grounds to justify the variations.

The Lane Cove Local Planning Panel, at its meeting of 3 May 2022, in exercising its duties as the consent authority, pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, approve the subject Development Application DA161/2021 for the part demolition of existing building on Nos. 178-180 Pacific Highway, demolition of existing building on Nos.188-192 Pacific Highway, construction of an eight-storey mixed use development containing 37 independent seniors housing units and 251m<sup>2</sup> commercial space on the ground level on land at Nos. 178-180 & 188-192 Pacific Highway, Greenwich subject to the following conditions:

#### **General Conditions**

1. **Approved Plans and Documents:** That the development be strictly in accordance with Drawing Nos.:
  - DA 102, DA 207, DA 300, DA 401-402, DA 404 & DA 500 Issue A dated 29.10.21,
  - DA 208-217, DA 301-304 & DA 403 Issue B dated 06.04.2022; and
  - Draft Strata Plan Sheet 1-6 dated 23/12/2021 prepared by PA Studio.
  - 001, 101, 102 Issue B dated 06.04.2022 & 501 dated 28.10.2021 prepared by Site Image Landscape Architects.

except as amended by the following conditions.

**Reason:** To ensure the development is in accordance with the determination.

2. **Dedication to Council of Land as Laneway**

Provision of approximately 3m wide land adjacent to Elcedo Lane on Nos. 188-192 Pacific Highway is to be dedicated to Council in perpetuity prior to the issue of an Occupation Certificate.

**Reason:** To ensure landscape maintenance and establishment has occurred and continues.

3. **Section 7.11 Contribution.** The payment of a contribution for additional person/s and commercial floor space in accordance with Council's Section 7.11 (S94) Contributions Plan shall be paid prior to the issue of any Construction Certificate. This payment is to be at the current 2021/2022 rate at the time of payment. The amount of **\$753,273.00** is required to be paid.

**NOTE: PAYMENT MUST BE IN BANK CHEQUE. PERSONAL CHEQUES WILL NOT BE ACCEPTED.**

This contribution is for Community facilities, Open Space/Recreation and Roads under the Lane Cove Section 7.11 (S94) Contributions Plan which is available for inspection at the Customer Service Centre located at Lane Cove Council, No. 48 Longueville Road, Lane Cove.

**N/B** The Section 7.11 Contribution is calculated as the follows:

No. bedrooms	Average occupancy	Amount of contribution per person	No. of Dwellings	Total contribution
One Bedrooms	1.2 persons	\$11,044.52 x 1.2 = \$12,770.40 per dwelling	Three x \$12,770.40	\$38,311.20
Two Bedrooms	1.9 persons	\$11,044.52 x 1.9 = \$20,219.80 per dwelling (capped at \$20,000)	Nine x \$20,000.00	\$180,000.00
Three Bedrooms	2.4 persons	\$11,044.52 x 2.4 = \$26,506.85 per dwelling (capped at \$20,000)	25 x \$20,000.00	\$20,000.00
			<b>TOTAL:</b>	<b>\$718,311.20</b>

\*N/B The reforms to Local Development Contributions have a cap of \$20,000 per residential lot or per dwelling limitation on local development contributions

The contribution is also partly based on 251sqm and the current rate of \$139.26 per sqm of additional commercial floor space which is a total of **\$34,961.80**.

**Reason:** Statutory requirement.

4. **Design Amendments** A minimum 6m balcony setback is to be achieved to the western elevation adjoining Elcedo Lane on Levels 5 and 6. Further, the design of the internal/external common open space area on Level 2 are to be reversed with Units 204 and 205.

**Reason:** To ensure adverse privacy impacts are minimised.

5. **Design Verification.** Prior to the relevant Construction Certificate being issued with respect to this development, the Principal Certifying Authority is to be provided with a written Design Verification from a qualified designer. This statement must include verification from the designer that the plans and specification achieve or improve the design quality of the development to which this consent relates, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*. This condition is imposed in accordance with Clause 143 of the *Environmental Planning and Assessment Regulation 2000*.

**Reason:** Statutory requirement.

6. **Parking Allocation** Both the owner and occupier of the development and/or the strata body must provide and maintain the minimum parking allocation as follows;
  1. 48 senior's residential spaces including three accessible and carwash bay space;
  2. Four commercial spaces including one accessible space;
  3. Two motorbike spaces on the commercial car parking level;

4. Four bicycle racks on the commercial car parking level; and
5. One bicycle rack at the entrance of each commercial tenancy.

**Reason:** To ensure parking spaces are provided in accordance with the determination

7. **Crime Prevention Through Environmental Design:** Compliance with the following Crime Prevention Through Environmental Design requirements:

- The building address is to be clearly identified with signage visible from the street;
- An electronic surveillance system (CCTV) is to be included to provide surveillance of areas of the building including entry/exits, mail boxes and garage areas particularly bicycle and motorcycle parking areas and storage cages. The system is to be capable of recording high-quality images of events. The recording equipment is to be locked away to reduce the likelihood of tampering. Monitors should be placed in secure areas, to allow security staff, if applicable, to view all areas under camera surveillance;
- Appropriate signage is to be erected inside and around the perimeter of the property to warn of security treatments in place e.g. "This site is under 24 hour video surveillance";
- Lighting in and around the common areas of the development should comply with Australian Standard 1158 and provide for adequate, uniform illumination. External lighting should be of a 'white light' source. Luminaries (light covers) are to be installed throughout all common area lighting to reduce opportunities for malicious damage;
- An emergency control and evacuation plan should be implemented within the building;
- All recording made by the CCTV system must be stored for at least 30 days and ensure that the system is accessible by at least one member of staff (or authorised resident) at all times it is in operation, and provide any recordings made by the system to a police officer or police inspector within 24 hours of any request made by those persons;
- Mailboxes should be secured so they are entirely within the building lobby or only able to be opened from inside the building (or behind a secured common area). Australia Post requirements prevail where there is any inconsistency; and
- Suitable warning signs are to be erected within the basement parking area warning residents of theft of bicycles, motorcycles and from storage cages.

8. **Transport for NSW Conditions.**

1. All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Pacific Highway boundary.

2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon the Pacific Highway are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au). A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au). If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway

is/are given at least seven-day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

4. All demolition and construction vehicles are to access the site via Bellevue Avenue. A construction zone will not be permitted on the Pacific Highway.

5. The proposed development, noting its partial use of a senior's living development, is to be designed, as per the requirements of State Environmental Planning Policy (Transport & Infrastructure) 2021 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from the Pacific Highway. These measures shall be certified by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a Construction Certificate.

**Reason:** TfNSW Condition.

9. **Restriction on Persons Accommodated.** The development may only be for the accommodation of the following only –

- Seniors or people who have a disability,

A restriction as to user is to be registered against the title of the property to which this consent relates **prior to the issue of an Occupation Certificate**, in accordance with Section 88E of the Conveyancing Act 1919, limiting use of any accommodation to the kinds of people referred to above. The restriction as to user is to include the definition of **seniors** and **people with a disability** contained within SEPP (Housing for Seniors or People with a Disability) 2004.

**Reason:** Statutory requirement

10. **Accessible Design** Compliance with Schedule 3 of SEPP (Housing for Seniors or People with a Disability) 2004, as referenced in the submitted Access Report is to be detailed in the construction level architectural drawings, and certified by a suitably qualified access consultant, prior to issue of a Construction Certificate for below ground building works.

**Reason:** Statutory requirement.

11. **Ground Level Commercial Floor Area** Occupation and fitout of the ground floor commercial floor area approved by this consent is subject to separate approval.

**Reason:** To ensure an adequate assessment of any commercial usage is undertaken.

### **BUILDING CONDITIONS**

12. **Cladding and glazing** No external combustible cladding is permitted on the building. The ground floor commercial glazing facing Burns Bay Road is to be clear for the life of the development to ensure an appropriate level of street activation and passive surveillance is achieved.

**Reason:** To promote safety and street activation.

13. **Payment of building and construction industry long service levy**  
Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy based on \$ 2,490,273.00 cost of works as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* and provides proof of

this payment to the certifier.

**Reason:** To ensure the longservice levy is paid.

**14. Asbestos removal, handling and disposal**

The removal, handling and disposal of asbestos from building sites shall be carried out in accordance with the requirements of the Occupational Health and Safety Act and the Regulations. Details of the method of removal in accordance with this condition is to be submitted to the Principal Certifying Authority and Council's Environmental Health Section, prior to commencing any demolition works.

**Reason:** To ensure worker and public health and safety.

**15. Construction site management plan**

Prior to any demolition works and before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site.
- For sites adjoining bushland a 1.8m chain mesh perimeter fence with 1m sediment fencing attached to the lower portion is required to ensure that no foreign materials enter the bushland.
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site. The construction traffic management plan shall comply with the requirements of Part R of Lane Cove DCP 2010 and shall be submitted to Council's Traffic Section for written approval. Consultation with NSW Police, TfNSW, and Sydney Buses may be required. Note: Heavy vehicles are not permitted to travel on local roads without Council approval.
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- For major works, appointment of a project arborist of minimum AQF Level 5 qualification to oversee/monitor tree(s) condition during the construction process.
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures including a construction noise management plan prepared in accordance with the NSW EPA's *Interim Construction Noise Management Guidelines* by an appropriately qualified acoustic consultant.
- location of temporary toilets.
- The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

**Council Approvals**

1. Hoarding is required to be provided along the street frontages, a Hoarding Application is to be submitted to Council for approval.
2. Any construction plant on the public road reservation requires an approved

“Application for standing plant *permit*”.

**Additional Council Requirements**

1. Stockpiles or soil shall not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies.
2. All stockpiles of contaminated materials must be stored in an environmentally sensitive manner in a secure area on the site and shall be suitably covered to prevent dust and odour nuisance.
3. All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, including NSW EPA Waste Classification Guidelines (2014).
4. Where sites adjoin bushland:
  - For sites identified to be within bushfire prone land An Asset Protection Zone (APZ) shall be provided entirely within the site boundary. To protect bushland and property from fire risk, APZ standards are to be in accordance with Planning for Bushfire Protection (PBP) 2019.
  - Access to the site from adjacent parks/reserves/bushland for the purposes of carrying out building works, landscaping works, storage materials, storage of soil or rubbish is not permitted.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

**16. Erosion and sediment control plan**

Prior to any demolition works or clearing of any vegetation and before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- Council's development control plan,
- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

**Reason:** To ensure no substance other than rainwater enters the stormwater system and waterways.

**17. Waste management plan (WMP)**

Before the issue of a construction certificate, the applicant is to ensure that a waste management plan is prepared in accordance with the EPA's Waste Classification Guidelines and the following requirements before it is provided to and approved by the certifier:

- a) Council's Development Control Plan (Part Q: Waste Management and Minimisation).
- b) Where sites adjoin bushland (private or public):
  - the WMP shall detail measures to mitigate any rubbish or foreign materials from entering the bushland.
  - Access through parks, reserves and bushland to the site is not permitted.

- Council's Coordinator of Bushland must be notified of any accidental or intentional dumping of material in the bushland area.
- c) details the following:
  - the contact details of the person(s) removing the waste
  - an estimate of the waste (type and quantity) and whether the waste is expected to be reused, recycled or go to landfill
  - the disposal and destination of all waste material spoil and excavated material

The applicant must ensure the waste management plan is referred to in the construction site management plan and kept on-site at all times during construction.

**Reason:** To ensure resource recovery is promoted and local amenity protected during construction.

**18. Utilities and services**

Before the issue of the relevant construction certificate, the applicant must submit the following written evidence of service provider requirements to the certifier:

- a) a letter of consent from all utility and service providers demonstrating that satisfactory arrangements can be made for the installation and supply of electricity.
- b) a response from Sydney Water as to whether the plans proposed to accompany the application for a construction certificate would affect any Sydney Water infrastructure, and whether further requirements need to be met.
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, what changes are required to make the development satisfactory to them.

**Reason:** To ensure relevant utility and service providers requirements are provided to the certifier.

**19. Dilapidation report**

Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, trees to be retained and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

**Reason:** To establish and document the structural condition of adjoining properties and public land for comparison as building work progresses and is completed.

**20. Structural engineer's details**

The Construction Certificate plans and specifications must include detailed professional structural engineering plans and/or specifications for the following:

- underpinning;
- retaining walls;
- footings;
- reinforced concrete work;
- structural steelwork;
- upper level floor framing;

and where relevant in accordance with any recommendations contained in an approved geotechnical report.

**Reason:** To ensure structural adequacy.

**21. Sydney Water requirements**

The approved plans must be submitted to Sydney Water online approval portal "Sydney Water Tap In" for approval. A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

**Reason:** To comply Sydney Water requirements.

**22. Signs on site**

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

**Note:** This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

**Reason:** Prescribed condition EP&A Regulation, clauses 98A (2) and (3).

**23. Compliance with Home Building Act**

In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

**Reason:** Prescribed condition EP&A Regulation, clause 98(1)(b).

**24. Hours of work**

All demolition, building construction work, including earthworks, deliveries of building materials to and from the site to be restricted as follows:-

Monday to Friday (inclusive)                      7am to 5.30pm

**High noise generating activities, including rock breaking and saw cutting be restricted between 8am to 5.00pm with a respite period between 12.00 noon to 1.30pm Monday to Friday**

Saturday    8am to 12 noon

**with NO high noise generating activities, including excavation, haulage truck movement, rock picking, sawing, jack hammering or pile driving to be undertaken. Failure to fully comply will result in the issue of a breach of consent P.I.N.**

A Notice/Sign showing permitted working hours and types of work permitted during those hours, including the applicant's phone number, project manager or site foreman, shall be displayed at the front of the site.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

**Note:** Any variation to the hours of work requires Council's approval.

**Reason:** To protect the amenity of the surrounding area.

**25. Compliance with the Building Code of Australia**

Building work must be carried out in accordance with the requirements of the Building Code of Australia.

**Reason:** Prescribed condition - EP&A Regulation clause98(1)(a).

**26. Procedure for critical stage inspections -**

While building work is being carried out, any such work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.

**Reason:** To require approval to proceed with building work following each critical stage inspection.

**27. Surveys by a registered surveyor -**

While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
- b) At other stages of construction – any marks that are required by the principal certifier.

**Reason:** To ensure buildings are sited and positioned in the approved location.

**28. Shoring and adequacy of adjoining property**

If the development involves any excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**Reason:** Prescribed condition - EP&A Regulation clause98E.

**29. No obstruction of public way**

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

**Reason:** To ensure public safety.

**30. Encroachments**

- 1. No portion of the proposed structure shall encroach onto the adjoining properties.
- 2. The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council.

3. No encroachment is to occur into public open space.

**Reason:** To ensure works are contained wholly within the subject site

**31. Post-construction dilapidation report**

Before the issue of an occupation certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:

- a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
- b) where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent.

Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

**Reason:** To identify damage to adjoining properties resulting from building work on the development site.

**32. Sydney Water requirements**

A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

**Reason:** Sydney Water requirement.

**33. Annual fire safety certificate**

During occupation and ongoing use of the building, the applicant must provide an annual fire safety statement to Council and the Commissioner of Fire and Rescue NSW in accordance with clause 177 of the EP&A Regulation.

**Reason:** To satisfy Council's Engineering requirements to ensure annual checks on fire safety measures.

**34. Implementation of BASIX commitments**

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

**Reason:** To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 97A(2) EP&A Regulation).

**35. Property Numbering**

Prior to registration of any strata plan, submit to Council for approval a schedule of unit numbers against lot numbers.

**Reason:** To ensure the numbering system is in accordance with Australian Standard AS/NZS 4819:2011, and the NSW Address Policy and User Manual.

**36. Lot Consolidation and Strata Subdivision**

All lots subject to this consent are to be consolidated into a single allotment and the strata subdivision registered prior to the issue of any Occupation Certificate.

**Reason:** To ensure the development occurs in accordance with the consent.

37. **88B Instrument:** An instrument under 88B of the Conveyancing Act 1919 plus two copies is to be submitted to Council prior to the release of subdivision certificate. The 88B instrument shall properly reflect the requirements of the conditions of the development consent, plans forming part of the consent and Council's policies.  
Where Council, interallotment drainage lines or services are located within the development, drainage easements and easements for services shall be created in accordance with Council's minimum widths as set out in Council's DCP-Stormwater Management.  
Part 2 of the 88B instrument shall contain a provision that any easements, rights of way, covenants shall not be extinguished or altered without the written consent of Council.
38. **Linen Plan of Subdivision:** A Linen Plan of Subdivision plus five copies are to be submitted to Council prior to the release of subdivision certificate.  
The linen plan of subdivision shall be suitable for endorsement by the general manager pursuant to Section 327 of the local government act and shall properly reflect the requirements of the conditions of the development consent, plans forming part of the consent and Council's policies.

### **General Engineering Conditions**

40. **Design and Construction Standards:** All engineering plans and work shall be carried out in accordance with Council's standards and relevant development control plans except as amended by other conditions.

**Reason:** To ensure all works are in accordance with Council's requirements

41. **Materials on Roads and Footpaths:** Where the applicant requires the use of Council land for placement of building waste, skips or storing materials a "*Building waste containers or materials in a public place*" application form is to be lodged. Council land is not to be occupied or used for storage until such application is approved.

**Reason:** To ensure public safety and amenity

42. **Works on Council Property:** Separate application shall be made to Council's Urban Services Division for approval to complete, any associated works on Council property. This shall include hoarding applications, vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be submitted **prior to the start of any works on Council property**.

**Reason:** To ensure public works are carried out in accordance with Council's requirements

43. **Permit to Stand Plant:** Where the applicant requires the use of construction plant on the public road reservation, an "*Application for Standing Plant Permit*" shall be made to Council. Applications shall be submitted and approved **prior to the start of any related works**. Note: allow 4 working days for approval.

**Reason:** To ensure public safety

44. **Restoration:** Public areas must be maintained in a safe condition always. Restoration of disturbed Council land and assets is the responsibility of the applicant. All costs associated with restoration of public land will be borne by the applicant.

**Reason:** To maintain Council infrastructure

45. **Public Utility Relocation:** If any public services are to be adjusted, because of the development, the applicant is to arrange with the relevant public utility authority the alteration or removal of those affected services. All costs associated with the relocation or removal of services shall be borne by the applicant.

**Reason:** To protect, maintain and provide utility services

46. **Pedestrian Access Maintained:** Pedestrian access, including disabled and pram access, is to be maintained throughout the course of the construction as per AS-1742.3, *'Part 3 – Traffic control devices for works on roads'*.

**Reason:** To ensure pedestrian access is maintained

47. **Council Drainage Infrastructure:** The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council. If a Council stormwater line is located on the property during construction, Council is to be immediately notified. Where necessary the stormwater line is to be reconstructed or relocated to be clear of the proposed building works. Developer must lodge Stormwater Inspection Application form to Council. All costs associated with the reconstruction or relocation of the stormwater line are to be borne by the applicant. Applicant is not permitted to carry out any works on existing Council and private stormwater pipe lines without Council's approval.

**Reason:** To protect public infrastructure

48. **Services:** Prior to excavation works, the location and depth of all services must be ascertained. All costs associated with adjustment of the public utility will be borne by the applicant.

**Reason:** To protect and maintain infrastructure assets

49. **Boundary Levels:** The levels of the street alignment shall be obtained from Council. These levels are to be incorporated into the design of the internal pavements, car parking, landscaping, driveway and stormwater drainage plans and shall be obtained **prior to the issue of the Construction Certificate**. Note: The finished floor level of the proposed garage or carport shall be determined by Council.

Applicant has to lodge Vehicular Crossing Application form with application fee as shown in the form.

**Reason:** To provide consistent street alignment levels

**Engineering conditions to be complied with prior to Construction Certificate**

50. **Council Infrastructure Damage Bond:** The applicant shall lodge with Council a \$20000 cash bond or bank guarantee. The bond is to cover the repair of damage to Council's roads, footpaths, kerb and gutter, drainage or other assets because of the development. The bond will be released upon issuing of the Occupation Certificate. If Council determines that damage has occurred because of the development, the applicant will be required to repair the damage. Repairs are to be carried out within 14 days from the notice. All repairs are to be carried in accordance with Council's requirements. The full bond will be retained if Council's requirements are not satisfied. Lodgement of this bond is required **prior to the issue of the Construction Certificate**.

**Reason:** To protect and maintain public infrastructure

51. **Drainage Plans Amendments:** The stormwater drainage plan prepared by ING Consulting Engineers Pty Ltd, reference No: 326092021DA, issue A and dated on 11 October 21 is to be amended as detailed below by a qualified practising hydraulic engineer and certified by him/her. This amended plan shall show full details of new pipe network amended as follows and satisfying part O of the Council's stormwater DCP;
1. This DA requires OSD. The detailed design for this proposed system is required
  2. Proposed drainage system should show pipe sizes and invert levels up to connection point; confirming pipe system satisfies part O of Council' storm water DCP.
  3. Clean out pits are required at all low points of charged drainage line if charged pipe system is proposed.
  4. Sediment control fence shall be placed around the construction site and shown in plan
  5. Stormwater runoff from driveway shall be collected by grated driveway pit and connected to stormwater system
  6. Minimum of 1.8m height difference is required between start and end of the charged pipe system as per section 5.1 in Council DCP. The details of design level difference shall be shown in plan.
  7. The stormwater connection pipe from fence line to proposed pit shall be designed for gravity discharge only and no charged pipe line allowed.
  8. A gross pollutant trap suitable for this site needs to be designed and added to the amended plans within the property boundary prior to the connection to the street system. The details of this GPT shall be shown in stormwater plan. The suitable access to the GPT for future maintenance is required.
  9. The OSD calculation shall be based on the calculation shown in Appendix 14 in part O of Council stormwater DCP.
  10. The detailed cross section of the OSD is required and shall show levels, sizes, depths and widths.
  11. Overflow from the OSD shall not re-enter the site via proposed driveway and must be directed to an acceptable stormwater system.
  12. By considering all these issues, Council recommends improving existing pipe system in Bellevue Avenue satisfying Council's Stormwater DCP to accommodate future stormwater from this proposal. The applicant shall install one kerb inlet pit on lower point at right corner of the site and extend the pipe system to this pit from existing Council's street drainage system.
  13. Council will not support any pit where the flow direction changes more than 90 degree.
  14. A plan with longitudinal section of the proposed pipe system from the site to the existing Council pit with relevant calculations are required for further assessment and/or approval. This plan should show pipe sizes, invert levels and existing surface levels to confirm that the pipe system satisfies Council's DCP.
  15. The pump out system in basement shall satisfy section 5.4 of part O of Council's stormwater DCP. The full details of the hydraulic calculation for pump out system shall be included in stormwater management plan submitted to Council.
  16. The proposed basement shall be constructed with water-proof walls around it.
  17. Installation pipe system near the protected trees must be assessed by Council Tree Officer.

The amended design is to be certified that it fully complies with, AS-3500 and Part O, Council's DCP-Stormwater management; certification is to be by a suitably qualified engineer. The amended plan and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

The Principal Certifying Authority is to be satisfied that the amendments have been made in accordance with the conditional requirements and the amended plans are adequate for the

purposes of construction. They are to determine what details, if any, are to be added to the construction certificate plans, for the issue of the Construction Certificate.

**Reason:** To ensure the proposed stormwater designs meet and satisfy Part O, Council DCP

52. **Construction Methodology Report:** There are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations. A suitably qualified engineer must prepare a Construction Methodology report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted to Principal Certifying Authority **prior to issue of a Construction Certificate**.

The Report must include recommendations of improvement works on adjoining street on appropriate construction techniques to ameliorate any potential adverse impacts.

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

**Reason:** To protect neighbouring properties

53. **Road Dilapidation Survey:** The applicant is to prepare a dilapidation survey and a dilapidation report that includes details of the existing state of repair/condition of the road surface of Bellevue Avenue, Elcedo Lane and Pacific Highway and provide that survey and report to the Council and RMS prior to the issue of the construction certificate. Following completion of construction of the development and prior to the issue of the occupation certificate, the applicant is to prepare a second dilapidation report that includes details of all changes and damage caused to the surface of the said public roads as a consequence truck movements associated with construction of the development. The Council/TfNSW may apply funds from the security deposits paid in favour of this consent to meet the cost of making good any damage caused to the surface of the said public road as a consequence of truck movements associated with the construction of the development to which the consent relates.

The dilapidation surveys and reports must be prepared by an engineer registered with the Institute of Engineers (Australia).

**Reason:** To provide a record of Council's infrastructure and protect them

54. **Council Construction Requirements:** The applicant shall construct/reconstruct the following to Council's satisfaction;
1. New footpath adjacent the entire frontage of the site to Council's satisfaction
  2. New Kerb and Gutter along the entire frontage of the site to Council's satisfaction
  3. Construction of new street drainage system along Bellevue Ave
  4. Reinstate all adjustments to the road surfaces.
  5. Reinstate all existing nature-strips with turf and soil on road reserve.
  6. Reinstate all damages identified in dilapidation report

**Reason:** In accordance with Council's requirements to restore site

A \$40000 cash bond or bank guarantee shall be lodged with Council to cover the satisfactory construction of the above requirements. Lodgement of this bond is required **prior to the issue of the Construction Certificate**. The Bond will be held for a period of six months after satisfactory completion of the works. All works shall be carried out **prior to the issue of the Occupation Certificate**. All costs associated with the construction of the above works are to be borne by the applicant.

**Reason:** In accordance with Council's requirements to restore site

55. **Council Inspection Requirements:** The following items are to be inspected

- Proposed drainage construction on Bellevue Ave
- All footpath, kerb/gutter and landscaping works
- Any adjustment works in Council road reserve

Each item is to be inspected prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / set out requirements.

An Inspection fee (\$205 for one inspection) is to be paid **prior to the issue of the Construction Certificate.**

**Reason:** To ensure completion of work satisfying Council

56. **Positive Covenant Bond:** The applicant shall lodge with Council a \$1000.00 cash bond to cover the registration of a Positive Covenant over the onsite detention system. Lodgement of this bond is required **prior to the issue of the Construction Certificate**

**Reason:** To protect stormwater infrastructure and confirm future maintenance

57. **On-Site Stormwater Detention System - Marker Plate:** The on-site detention system shall be indicated on the site by fixing a marker plate. This plate is to be of minimum size: 100mm x 75mm and is to be made from non-corrosive metal or 4mm thick laminated plastic. It is to be fixed in a prominent position to the nearest concrete or permanent surface or accessgrate. The wording on the marker plate is described in Council's DCP-Stormwater management. An approved plate may be purchased from Council's customer service desk.

**Reason:** To ensure clear identification of onsite stormwater infrastructure

58. **On-Site Stormwater Detention Tank:** All access grates to the onsite stormwater detention tank are to be hinged and fitted with a locking bolt. Any tank greater than 1.2 m in depth must be fitted with step irons.

**Reason:** To prevent unauthorised access and ensure safe access to stormwater infrastructure

59. **Rainwater Reuse Tanks:** The proposed rainwater tank is to be installed in accordance with Council's rainwater tank policy and relevant Australian standards.

Note:

- Rainwater draining to the reuse tank is to drain from the roof surfaces only. No "on - ground" surfaces are to drain to the reuse tank. "On - ground" surfaces are to drain via a separate system.
- Mosquito protection & first flush device shall be fitted to the reuse tank.
- The overflow from the rainwater reuse tank is to drain to the receiving system.
- Installation of rainwater tank shall be accordance with section O6 of part O of Council DCP.
- Hydraulic calculation prepared by qualified engineer for charged pipe system draining to rainwater tank and submitted to Council
- This tank shall have effective volume as mentioned in plan, with 100mm air gap on top

and 100mm sludge zone at the bottom

**Reason:** To comply with Council's requirements and satisfy hydraulically

60. **Proposed Vehicular Crossing:** The proposed vehicular crossing shall be constructed to the specifications and levels issued by Council. The driveway opening width includes wings along at the face of kerb is to satisfy all requirements and conditions given by Traffic Section of Lane Cove Council, in the interest of pedestrian safety. The driveway shall be 300mm away from existing power pole and existing stormwater pit. This driveway is to be designed to stop road runoff entering the property, to be certified that it fully complies with AS 2890 Series and Council's standards and specifications and constructed in accordance with AS 2890.1.2004 "Off Street Car Parking".

The following plans shall be prepared and certified by a suitably qualified engineer demonstrating:

- Longitudinal section along the extreme wheel paths of the driveway/access ramp at a scale of 1:20 demonstrating compliance with the scaping provisions of AS2890.1. It shall include all levels and grades, including those levels stipulated at boundary levels, both existing and proposed from the centre line of the roadway through to the parking area clearly demonstrated that the driveway complies with Australian Standards 2890.1-2004 "Off Street Car Parking". This is to address the following;

- a. Transitional grades in accordance with AS2890 to be provided.
- b. If a gradient in excess of 25% is proposed, the engineer must certify that this design is safe and environmentally sustainable.

- Sections showing the clearance to the underside of any overhead structure demonstrating compliance with the clearance provisions of AS2890.1.

- An analysis of vehicle maneuvering is required to confirm vehicle movement is safe in the proposed parking area.

A 'Construction of Residential Vehicular Footpath Crossing' application, design and certification shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**. All works associated with the construction of the crossing shall be completed **prior to the issue of the Occupation Certificate**.

**Reason:** To ensure compliance with Australian Standards and Council's standards

61. **Temporary Footpath Crossing:** A temporary footpath crossing must be provided at the Vehicular access points. It is to be 1.5m in width, made of sections of hardwood with chamfered ends and strapped with hoop iron.

**Reason:** To ensure safety vehicular movement to and from site

62. **Splay of Front Fence:** The front fence is to have a 1x1m splay on both sides of the driveway to maintain pedestrian sight lines. Plans showing this amendment to the proposed design are to be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**; all associated works are to be completed **prior to the issue of the Occupation Certificate**.

**Reason:** To ensure good visibility

**Engineering condition to be complied during construction**

63. **Drainage Construction:** The stormwater drainage on the site is to be constructed generally in accordance with approved plan  
Certification by a suitably qualified engineer of the above plans is to be submitted to the Principal Certifying Authority stating that the design fully complies with, AS-3500 and Part O,

Council's DCP-Stormwater Management. The plans and certification shall be submitted **prior to the issue of the Construction Certificate.**

The Principal Certifying Authority is to satisfy themselves of the adequacy of the certified plans for the purposes of construction. They are to determine what details, if any, are to be added to the Construction Certificate plans, for the issue of the Construction Certificate.

**Reason:** To maintain the stormwater management of the property

64. **Heavy Vehicle Duty Employee and Truck Cleanliness:** The applicant shall
- Inform in writing all contractors of Council's requirements relating to truck cleanliness leaving the site.
  - Keep a register of all contractors that have been notified, the register is to be signed by each contractor. The register must be available for access by Council officers at all times.
  - Place an employee within close proximity of the site exit during site operation hours to ensure that all outgoing heavy vehicles comply with Council's requirements. This employee shall liaise with heavy vehicle drivers and provide regular written updates to drivers on the conditions of entry to the subject site.
- Those drivers who have been determined to continually not comply with Council's requirements, either by the developer or authorised Council officers, shall not be permitted re-entry into the site for the duration of the project.

**Reason:** To protect the environment

65. **Covering Heavy Vehicle Loads:** All vehicles transporting soil material to or from the subject site shall ensure that the entire load is covered by means of a tarpaulin or similar material. The vehicle driver shall be responsible for ensuring that dust or dirt particles are not deposited onto the roadway during transit. It is a requirement under the Protection of the Environment Operations (Waste) Regulation, 1996 to ensure that all loads are adequately covered, and this shall be strictly enforced by Council's ordinance inspectors. Any breach of this legislation is subject to a "*Penalty Infringement Notice*" being issued to the drivers of those vehicles not in compliance with the regulations.

**Reason:** To ensure worksite pollutions are controlled accordingly to protect the environment

66. **Truck Shaker:** A truck shaker ramp must be provided at the construction exit point. Fences are to be erected to ensure vehicles cannot bypass the truck shaker. Sediment tracked onto the public roadway by vehicles leaving the subject site is to be swept up immediately.

**Reason:** To protect the environment

**Engineering condition to be complied with prior to Occupation Certificate**

67. **Certification of Existing Structures and Excavations:** A suitably qualified structural engineer shall provide certification to the principal certifying authority that all existing structures are structurally satisfactory for proposed development and retaining structures and excavations have been carried out in accordance with the relevant Australian Standards and Codes of Practice.
- The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted to the principal certifying authority **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure retaining walls are constructed according to approved plan

68. **Stormwater System Engineering Certification:** On completion of the drainage system a suitably qualified engineer shall certify that the drainage system has been constructed in accordance with the approved plans, part O Council's DCP-Stormwater Management and AS-3500. The certification is to include a work as executed plan. The work as executed plan shall:

- (a) Be signed by a registered surveyor, &
- (b) Clearly show the surveyor's name and the date of signature.

All documentation is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure stormwater infrastructure has been installed in accordance with Australian Standards and Council's requirements

69. **Engineering Certification:** A suitably qualified engineer shall certify that following has been constructed in accordance with the approved plans and is within acceptable construction tolerances.

- Pump out system
- Rainwater tank
- New pipe system in Bellevue Ave

Certification is to be submitted to the Principle Certifying Authority **prior to the issue of the Occupation Certificate.**

**Reason:** Statutory requirement

70. **Positive Covenants OSD and Pump Out System:** Documents giving effect to the creation of a positive covenants over the on-site detention system and over the basement pump out system shall be registered on the title of the property **prior to the issue of the Occupation Certificate.** The wordings of the terms of the positive covenants shall be in accordance with part O Council's DCP-Stormwater Management.

**Reason:** Statutory requirements and to protect stormwater infrastructure and confirm future maintenance

71. **Works as Executed Drawings for OSD:** A works as executed survey of the onsite detention facility will need to be prepared and certified to demonstrate that the OSD system functions as per the intention of the approved design. A suitably qualified engineer must certify that the construction system is satisfactory.

**Reason:** Statutory requirements

72. **Works as Executed Drawings for street drainage construction:** A works as executed survey of the proposed street drainage works on Orion Rd will need to be prepared and certified by qualified engineer to demonstrate that the drainage system is accordance with the approved plan.

**Reason:** Statutory requirements

73. **Redundant Gutter Crossing:** All redundant kerb/gutter and footpath crossings shall be removed, and the kerb, gutter and footpath reinstated to the satisfaction of Council's Urban Services Division. These works shall be carried out **prior to the issue of the Occupation Certificate.**

**Reason:** To ensure Council's footpath and nature strip is free from potential vehicular or other obstructions.

### **Traffic Conditions**

#### **Parking and servicing**

74. The proposed car park design is to comply with AS290.1-2004. This includes all parking Spaces, ramps, aisles, disabled parking and loading areas. All other aspects of the car parking areas are required to comply with AS2890.2-2002 for Loading Facilities and Services Vehicles.
75. The access to the car park shall comply with Australian Standards. AS 2890.1-2004.
76. Visibility requirements of the proposed access must comply with AS 2890.1-2004.
77. All accessible car spaces in the car park are to be adequately signposted and line marked and provided in accordance with AS2890.6:2009 including the adjacent shared space and the height clearance.
78. On site garbage collection must be provided for with sufficient headroom in accordance with AS2890.2:2002 and to allow the vehicle to enter and exit in a forward direction. The waste collection and holding area are to be clearly signposted and line marked.
79. Install wheel stops on all car parking spaces to prevent any collision with structures or objects.
80. Motorcycle parking spaces are to be sign posted and adequately line marked.
81. A traffic report demonstrating the safety and functionality of the basement car park including details of the proposed signalised system are to be provided and approved by Council's Traffic section before the issue of the construction certificate.
82. An independent traffic consultant is to review and approve the signal system installed in the Basement to ensure that it is safe and functional before the issue of the occupation certificate.
83. Proposed waiting bays should be adequately line-marked.
84. All vehicles must front in/ front out to/ from the development.
85. All cycling racks and secure bike parking must be provided on-site and must meet the minimum standards as outlined in Section 4.3 in Part R of the DCP and designed in accordance with AS2890.3:2015. Alternative designs that exceed the Australian Standards will also be appropriate.
86. The bicycle facilities are to be clearly labelled and advisory/directional signage is to be Provided at appropriate locations.

#### **Construction Traffic Management Plan**

87. A Construction Management Plan must be lodged with Council prior to the issuing of a Construction Certificate. As per DCP Part R, the Construction Management Plan should address (but not necessarily be limited too) issues related to the movement of construction vehicles to and from the site, safe access of construction vehicles, and any conflict with

other road users in the street including public transport. Heavy vehicles will not be permitted to travel on local roads unless prior Council permission is obtained from Council's Traffic section. Consultation with NSW Police, RMS and Transport for NSW / Sydney Buses will be required as part of preparation of the Construction Traffic Management Plan.

The Construction Management Plan should specify proposed Work/Construction Zones and the impact of the construction traffic activities to all road users including pedestrians and cyclists. The Construction Management Plan may contain issues requiring the attention and approval of the Lane Cove Traffic Committee (LTC). The Construction Management Plan should also assess and address the impact of construction vehicles travelling through the surrounding road network.

88. **Demolition Traffic Management Plan** - As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by Council prior to commencing any demolition work.

The DTMP must:-

- i. Make provision for all construction materials to be stored on site, at all times.
- ii. Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- iii. Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless a Works Zone is approved by Council.
- iv. Include a Traffic Control Plan prepared by an RMS accredited ticket holder for any activities involving the management of vehicle and pedestrian traffic.
- v. Specify that a minimum seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.

Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.

- i. Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- ii. The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’s Manual – “Traffic Control at Work Sites”.

**NOTE:** This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent the site.

**Reason:** Safety and amenity

89. **Work Zones** - Due to requirements for safe traffic and pedestrian movement, loading or unloading of any vehicle or trailer carrying material associated with the development must

not take place on the public road unless within an approved Works Zone.

If the Works Zone is required, the developer must give the Council written notice of at least six (6) weeks prior to the date upon which use of the Works Zone will commence and the duration of the Works Zone approval shall be taken to commence from that date. All vehicle unloading/loading activities on a public roadway/footway are to be undertaken within an approved Works Zone

**Reason:** Safety and amenity

### **WASTE CONDITIONS**

90. **Garbage Chutes** - A garbage chute system and interim recyclable storage facilities must be provided to the development.
- Garbage chutes must be constructed in accordance with the requirements of the Building Code of Australia (BCA).
  - Garbage chutes must be located and insulated in a manner that reduces noise impacts.
  - Chutes, service openings and charging devices must be constructed of material (such as metal) that is smooth, durable, impervious, non-corrosive and fire resistant.
  - Chutes, service openings and charging devices must be capable of being easily cleaned.
  - Chutes must be cylindrical and have a diameter of at least 500mm.
  - Chutes must not have any vends or sections of reduced diameter in the main shaft of the chute;
  - Internal overlaps in the chute must follow the direction of waste flow.
  - Chutes must deposit rubbish directly into a bin or compactor located within a waste/recycling storage room.
  - A cut-off device must be located at or near the base of the chute so that the bottom of the chute can be closed when the bin or compacting device at the bottom of the chute is withdrawn or being replaced.
  - The upper end of the chute must extend above the roofline of the building.
  - The upper end of the chute must be weather protected in a manner that does not impede the upward movement of air out of the chute.
  - Compaction of garbage must not exceed a ratio of 2:1. No compaction is permitted for recyclable material or green waste.

**Reason:** Waste condition

91. **Garbage Chute Service Rooms** - The service opening (for depositing rubbish into the main chute) on each floor of the building must be located in a dedicated service room.
- The charging device for each service opening must be self-closing and must not project into the main chute.
  - Branches connecting service openings to the main chute must be no longer than 1m.

- Each service room must include provision for 2x240L recycling bins for the storage of recyclable materials. Signage regarding the materials that can be recycled must be displayed near these recycling bins.
- Each service room must be located for convenient access by users and must be well ventilated and well lit.
- The floors, walls and ceilings of service rooms must be finished with smooth durable materials that are capable of being easily cleaned.
- Service rooms must include signage that clearly describes the types of materials that can be deposited into the garbage chute, the types of materials which must be deposited into recycling bins, and bulky waste collection arrangements including the location and travel paths to the bulky waste storage room.

**Reason:** Waste condition

**92. Waste and Recycling Storage Rooms**

- Waste and recycling rooms must be of sufficient size to accommodate garbage chute systems, a total of 1 x 240L garbage bins per 3 units, 1 x 240L yellow recycling bins per 10 units and 1 x 240L blue recycling bins per 10 units with adequate space for maneuvering garbage and recycling bins. 240L green waste bins available upon request.
  - Minimum clearance between bins of 300mm;
  - Minimum door openings of 1700mm; &
  - Minimum distance of 1700mm between rows of bins (where bins are located on either side of the room).
- The floor of waste and recycling rooms (including bulky waste storage rooms) must be constructed of either:
  - Concrete which is at least 75mm thick; or
  - Other equivalent material; and
  - Graded and drained to a floor waste which is connected to the sewer
- All floors must be finished to a smooth even surface, coved at the intersection of walls and floor.
- The walls of waste and recycling rooms, bulky waste storage areas and waste service compartments must be constructed of solid impervious material and must be cement rendered internally to a smooth even surface coved at all intersections.
- All waste and recycling rooms and bulky waste storage rooms must be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
- A close-fitting and self-closing door that can be opened from within the room must be fitted to all waste/recycling and bulky waste storage rooms.
- All waste/recycling and bulky waste storage rooms must be constructed to prevent the entry of vermin.
- All waste/recycling and bulky waste storage rooms must be ventilated by either:
  - Mechanical ventilation systems exhausting at a rate of 5L/s per m<sup>2</sup> of floor area, with a minimum rate of 100l/s; or

- Permanent, unobstructed natural ventilation openings direct to the external air, not less than 1/20<sup>th</sup> of the floor area.
- All waste/recycling and bulky waste storage rooms must be provided with artificial light controlled by switches located both outside and inside the rooms.
- Clearly printed “No Standing” signs must be affixed to the external face of each waste/recycling and bulky waste storage room.

**Reason:** Waste condition

93. **Bulky Waste Storage Room** - Readily accessible bulky waste storage areas located near the main garbage rooms must be provided for the use of all residents.
- Bulky waste storage rooms must be designed to the following minimum sizes:
    - >21 units: 30m<sup>2</sup>
  - Otherwise, to be serviced by a concierge.
  - Doorways and travel paths must be a minimum width of 1700mm and of sufficient height and be free of obstructions to permit easy transport from individual units to the storage area, and from the storage area to collection point.

**Reason:** Waste condition

94. **Access to Waste Collection Point** - All waste must be collected on-site via on-site access by Council's garbage collection vehicles.
- The location(s) of waste and recycling rooms & bulky waste storage areas must be conveniently accessible for both occupants and Council's waste collection contractors.
  - The minimum finished ceiling height must be 2.6m along the path of travel from the street to the residential waste and recycling collection point and maneuvering area. This clearance must be kept free of any overhead ducts, services and other obstructions.
  - The maximum grade of any access road leading to the waste and recycling collection point must not be more than 1:5 (20%). The turning area at the base of any ramp must be sufficient for the maneuver of a 6.0m rigid vehicle to enter and exit the building in a forward direction.
  - Where security gates are proposed, a Council master key system must be installed to permit unimpeded access.

**Reason:** Waste condition

95. **Indemnity** - Prior to the issue of an Occupation Certificate, the applicant must enter into a suitable Deed indemnifying Council and its contractors against claims for loss or damage to common property, liabilities, losses, damages and any other demands arising from any on-site collection service.

**Reason:** Waste condition

96. **Composting/Worm Farming** -The applicant must provide a container for communal composting/worm farming, the siting of such must have regard to potential amenity

impacts.

**Reason:** Waste condition

**97. Internal Waste Management**

Internal waste/recycling cupboards with sufficient space for one day's garbage and recycling generation must be provided to each dwelling.

**Reason:** Waste condition

**98. Provision of Waste Services**

**Prior to the issue of an Occupation Certificate**, the applicant must make written application to Council for the provision of domestic waste services.

**Reason:** Waste condition

**ENVIRONMENTAL HEALTH CONDITIONS**

- 99. Contamination** In accordance with the contamination provisions of SEPP55 Contaminated Land, a Detailed Site Investigation and Remediation Action Plan (if required) are to be submitted to the satisfaction of Council prior to the issue of the Construction Certificate.

**Reason:** Safety and amenity

- 100. Dust Control** - The following measures must be taken to control the emission of dust:
- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work
  - (b) Any existing accumulations of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter
  - (c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system
  - (d) All stockpiles of materials that are likely to generate dust must be kept damp or covered
  - (e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

**Reason:** Safety and amenity

- 101. Stabilised Access Point** - A stabilised all weather access point is to be provided prior to commencement of site works and maintained throughout construction activities until the site is stabilised. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

**Reason:** Safety and amenity

- 102. Site Water Management Plan** - A site water management plan is to be submitted to Principal Certifying Authority for approval prior to the issue of a Construction Certificate. The plan is required to be site specific and be in accordance with "Managing Urban Stormwater – Soils and Construction" (the blue book) produced by the NSW Department of Housing.

**Reason:** Safety and amenity

103. **A Construction Noise Management Plan** is to be submitted to Council for approval prior to the issue of a Construction Certificate. The plan is required to be site specific and be in accordance with the NSW EPA's Interim Guidelines for Construction Noise Management

**Reason:** Safety and amenity

104. **Noise Monitoring** - Noise monitoring must be carried out by a qualified acoustical consultant if complaints are received, or if directed by Council, and any control measures recommended by the acoustical consultant must be implemented during the demolition and construction work.

**Reason:** Safety and amenity

105. **Storage of Potentially Contaminated Soils** - All stockpiles of potentially contaminated soil must be stored in an environmentally acceptable manner in a secure area on the site.

**Reason:** Safety and amenity

106. **Assessment of Potentially Contaminated Soils** - All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, such as the publication titled Environmental Guidelines: Assessment, Classification and Management of Liquid and Non – Liquid Wastes (EPA, 1999).

**Reason:** Safety and amenity

107. **Offsite Disposal of Contaminated Soil** - All contaminated soil removed from the site must be disposed at a waste facility that can lawfully receive that waste. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

**Reason:** Safety and amenity

108. **Clean Water only to Stormwater System** - Only clean unpolluted water is permitted to enter Council's stormwater drainage system.

**Reason:** Safety and amenity

109. **Operation of Plant or Equipment** - To minimise the impact of noise from the development, all sound producing plant, equipment, machinery, mechanical ventilation systems and or refrigeration systems, shall be designed and or located so that the noise emitted does not exceed 5db(A) above the ambient background level when measured from the boundary of any affected premises between the hours of 8am to 10pm. Between the hours of 10pm and 8am, noise shall not exceed the ambient background level when measured at the boundary of an affected premises.

**Reason:** Safety and amenity

110. **Construction and fit-out of food premises**

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, the construction and fit-out of any food premises must comply with the

following:

- i) The Food Act 2003 (as amended);
- ii) Food Regulation 2015 (as amended);
- iii) Australia and New Zealand Food Standards Code;
- iv) Australian Standard AS 4674 – 2004 (Design, construction and fit-out of a food premises);
- v) Sydney Water – trade Waste Section;
- vi) The Protection of the Environment Operations Act 1997; and
- vii) The Building Code of Australia.

A certificate of compliance with (iv) for the proposed kitchen design shall be submitted to the Principal Certifying Authority, prior to issuing the relevant Construction Certificate.

**Reason:** To ensure food preparation areas meet the relevant requirements.

**111. Compliance with acoustic report**

The Construction Certificate drawings shall demonstrate compliance with the recommendations contained in the submitted Acoustic Report. The Report is to include details of the specified AC plant and any other plant equipment for which details are unknown at the DA stage.

**Reason:** To ensure acoustic mitigation measures adhere to relevant standards/requirements.

**112. Construction noise**

While building work is being carried out, and where a noise and vibration management plan is approved under this consent, the applicant must ensure that any noise generated from the site is controlled in accordance with the requirements of that plan.

**OR**

While building work is being carried out, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

**Reason:** To protect the amenity of the neighbourhood.

**113. Stockpiles**

Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

**Reason:** To mitigate adverse environmental impacts on the surrounding area.

**114. Compliance with acoustic report**

At completion of the construction works and prior to the issue of any occupation certificate, a validation certificate is to be submitted to the Principal Certifier confirming that the development has been constructed in accordance with the acoustic report, and that the internal noise levels have been achieved.

**Reason:** To ensure adequate internal acoustic amenity.

**115. Outdoor lighting**

Outdoor lighting shall comply with Australian Standard AS 4282-1997 – *Control of the obtrusive effects of outdoor lighting*.

**Reason:** To protect the amenity of nearby residential properties.

## **TREE CONDITIONS**

### **GENERAL CONDITIONS**

116. **Tree preservation and approved landscaping works** All landscape works shall be undertaken generally in accordance with the approved landscape plan(s) and Arborist Report, as modified by any conditions of consent. Lane Cove local government area in accordance with State Environmental Planning policy (Vegetation in non- rural areas) 2017.Part 2 Section 7 (1) of the SEPP states

*“A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part “Clearing of vegetation includes “a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or b) lop or otherwise remove a substantial part of the vegetation.”* Removal of trees or vegetation protected by the regulation is an offence against the Environmental Planning and Assessment Act 1979 (NSW). The maximum penalty that may be imposed in respect to any such offence is \$1,100,000.

All landscape works shall be undertaken in accordance with the approved landscape plan(s) and Arborist Report.

**Reason:** To protect the natural environment.

117. Council requires amendment to the Arboricultural Impact Appraisal and Method Statement: Naturally Trees / Andrew Scales, dated September 2021, to reflect the retention of **Tree 2 and Tree 3** prior to the issue of the construction certificate to the satisfaction of Council.

**Reason:** To protect the natural environment.

118. Council also requires amendments to the Arboricultural Impact Appraisal and Method Statement: Naturally Trees / Andrew Scales, dated September 2021/ Appendix 4 to be amended to include Canopy Protection from scaffolding and other high access machinery, to ensure no damage to the canopy will occur during development of the site prior to the issue of the construction certificate to the satisfaction of Council.

**Reason:** To protect the natural environment.

119. **Payment of security deposits** Before the commencement of any works on the site or the issue of a construction certificate, the applicant must make all of the following payments to Council and provide written evidence of these payments to the Certifier:

<b>Security deposit</b>	<b>Revision</b>
<b>Council owned trees</b>	\$100,000

The payments will be used for the cost of:

- making good any damage caused to any council property (including street trees) as a consequence of carrying out the works to which the consent relates,
- completing any public work such as roadwork, kerbing and guttering, footway construction, stormwater drainage and environmental controls, required in connection with this consent, and

- any inspection carried out by Council in connection with the completion of public work or the making good any damage to council property.

**Note:** The inspection fee includes Council's fees and charges and includes the Public Road and Footpath Infrastructure Inspection Fee (under the *Roads Act 1993*). The amount payable must be in accordance with council's fees and charges at the payment date.

**Note:** Council inspection fees are calculated in accordance with Council's fees and charges at the payment date.

**Note:** Required Council inspections for civil works involving Council assets are to be carried out prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / set out requirements.

The following items are to be inspected:

- proposed stormwater drainage improvements
- proposed stormwater connection to existing Council pit in street;
- all footpath, kerb/gutter and landscaping works; and
- any adjustment works in Council's Road reserve.

**Reason:** To ensure any damage to public infrastructure is rectified and public works can be completed.

#### **PRIOR TO DEMOLITION WORKS**

120. **Project arborist** Prior to the commencement of any works including demolition, a project arborist of minimum Australian Qualitative Framework (AQF) Level 5 qualification is to be appointed to oversee/monitor trees/condition compliance during the demolition and construction process. Compliance certificates must be available upon request and submitted to the Principal Certifier **prior to the issue of an occupation certificate**. The project Arborist shall:

- Certify tree protection measures listed prior to demolition and construction works
- Oversee the excavation for the basement level within the Tree Protection Zone of existing Bellevue Avenue street trees.
- Oversee the excavation required for stormwater drainage and installation of services within the Tree Protection Zone of any retained trees,
- Provide monthly health and condition assessments on protected trees
- Statement upon completion for the development that all retained trees have been maintained in a healthy, viable condition. The statement must also recommend remedial advice for trees post construction to mitigate and long-term construction impacts.

**Reason:** To ensure trees to be protected on the site.

121. **Tree Protection Measures** The following tree protection measures must be in place prior to demolition works and certified by the project arborist. A Tree Protection Plan must be submitted to the Principal Certifying Authority prior to the issue of a Construction certificate. The Tree Protection Plan must show the location of Tree Protection Fencing. The Tree Protection Plan must be included in the Revised Landscape Documentation Package and be available on-site during compliance inspections.

The fencing must consist of a 1.8 m high chain mesh fence held in place with concrete block footings and fastened together. An example of fencing is shown under figure 3 on page 16 of the Australian Standard 4970-2009 *The Protection of Trees on Development*

**Sites.** The fenced area shall not be used for the storage of building materials, machinery, site sheds, or for advertising and the soil levels within the fenced area shall remain undisturbed. The area within the fencing must be mulched to a depth of 75mm using weed free coarse woodchip with leaf mulch and irrigated for the life of the development.

A waterproof sign must be placed on every second panel stating, 'NO ENTRY TREE PROTECTION AREA – this fence and sign are not to be removed or relocated for the work duration.' Minimum size of the sign is to be A3 portrait with NO ENTRY TREE PROTECTION ZONE in capital Arial Font size 100, and the rest of the text in Arial font size 65.

Such fencing and signage must be erected **Prior to Demolition** including site preparation and remain in place for the duration of the construction work

Movement of Tree Protection Fencing for the installation of new footpaths must be overseen and approved by the project Arborist with notification provided to Council's Tree Management Officer in writing.

**Reason:** To protect the natural environment

#### **WHILE BUILDING WORK IS BEING CARRIED OUT**

122. **Tree protection:** While site or building work is being carried out, the applicant must maintain all required tree protection measures in good condition in accordance with the construction site management plan required under this consent, the relevant requirements of *AS 4970-2009 Protection of trees on development sites* any arborist's report approved under this consent. This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.

**Reason:** To protect trees during construction.

#### **BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE**

123. **Completion of landscape and tree works** Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

Additional Council requirements are outlined below:

- Certification of the above shall be provided by the project arborist (if applicable) or by a qualified practising landscape architect. Certification shall also be provided for the following:
  - subsoil drainage and any associated waterproofing membrane have been installed in accordance with the details shown on the approved landscape working drawings.
  - All landscaping areas have an automatic irrigation system on a timer that provides adequate water for the ongoing health and vitality of the plants.

**Reason:** To ensure the approved landscaping works have been completed before occupation, in accordance with the approved landscaping plan(s).

## **LANDSCAPING CONDITIONS**

### **GENERAL CONDITIONS**

124. **Approved landscape plans and supporting documentation** The approved landscaped plans require the following design amendments contained herein.

#### **Missing Items of the Landscape Development Checklist**

The project Landscape Architect is to amend their drawings to include the required missing items from the Landscape Development Checklist (itemised below) and send back to Councils Landscape Architect for assessment prior to issue of Construction Certificate.

- **Proposed tree protection measures** provided by the Level 5 Project Arborist and any mitigation measures to be undertaken within the Tree Protection Zone of any retained tree
- **Existing services and easements** from the survey and shown on the landscape plan, Proposed services and Easements shall also be shown on the landscape plan
- **Landscape calculations:** percentage of landscaped area and deep soil planting clearly delineated and shown as a percentage of the overall site size.
- **Tree incursions:** Clearly indicate graphically where the root zone of existing trees to be retained may come into conflict with any part of the demolition of existing or installation of proposed buildings
- **Planting plan:** with lawn areas, all new plantings, plant schedule showing species, container size and size at maturity oil types, soil additives and mulches to be used
- **Bulk Earthworks** showing any possible conflicts with the roots of trees to be retained as well as any mitigation measures
- **Sections and elevations** clearly showing the relationship of the proposed landscaping with the built form. A minimum of two sections east – west and north – south required.
- **Proposed plantings** The proposed *Tristania laurina* to be planted in the front setback along Pacific Highway, are to be planted within a structural root cell system (stratacell or approved equivalent). The revised landscape documentation is to specify in detail the extent and depth of the root cell system and ensure that the appropriate soil volume is available for the healthy development of the trees specified for this area by Council. The structural root cell is to extend from the back of kerb to the building footprint along the boundary and shall be backfilled with a native soil mix.
- **Wall heights** The current proposal shows little detailed level information. The Landscape Architect is to amend their drawings to show accurate top of wall heights (TOW), bottom of wall heights (BOW), spot levels, Relative Level (RLS) and grades throughout the design.

It is noted that the Project Landscape Architect has already provided 2 sections in their drawing package, however, two additional sections traversing along Pacific Highway and Bellevue Avenue will be needed to assess the relationship between the built form and the landscape.

**Reason:** To ensure all parties are aware of the approved plans/supporting documentation that applies to the development, to ensure the ongoing sustainability and canopy growth of proposed new trees. Further, to assess the practicality of the proposed design and Council do not support unnecessary tree removal of community asset trees as consistent with LCC DCP Part J.

125. **Canopy Trees** Canopy trees along the street setback areas shall be a minimum 4m above finished ground level at the time of planting and planted in a contiguous trench of structural root cell such as stratacell or an approved equivalent.

**Reason:** To maintain the street and neighbourhood character.

126. **Automatic irrigation system** An automatic drip irrigation system is to be designed and installed to all garden bed areas that will ensure the ongoing health of the planting scheme for the life of the development.

**Reason:** To ensure adequate moisture levels are maintained for the 12-month establishment period eliminating the threat of plants dying due to lack of water during this time of in times of future drought

127. **Raised planter boxes:** All raised planter boxes shall be waterproofed by a licensed professional in accordance with AS4654.1-2012 *Waterproofing membranes for external above-ground use*.

**Reason:** The ensure the structural integrity of the planter box and parking structure below are maintained and to ensure that no leaks occur in the raised planter box as installed

#### **BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**

128. **Pre-Construction Dilapidation report: Trees to be Retained:** Before the issue of a construction certificate, a suitably qualified Arborist with a minimum of an AQF level 5 Degree must prepare a pre-construction dilapidation report on the health of the trees to be retained and protected following a site visit with Council's Senior Tree Preservation Officer. The report shall be agreed upon by both parties and shall include photographs of each tree and any existing damage, defects or areas of concern well represented.

(i) after comparing the pre-construction dilapidation report to the post- construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and

(ii) here there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent. Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

**Reason:** To identify damage to existing trees retained resulting from building work on the development site.

129. **Works within structural root zones of existing trees:** Where works must take place within the Structural Root Zone of any tree to be retained, root mapping through hand digging shall take place and a report showing the findings shall be prepared by the Project Arborist with an AQF5 qualification and then shall be submitted to Council's Senior Tree Assessment Officer for approval

**Reason:** To ensure that no damage occurs to the root system of trees to be retained thus ensuring their ongoing health and vigour.

130. **Plant supply:** All trees planted on site shall conform to Australian Standard AS 2303-2015 Tree Stock for Landscape Use. All other plants shall conform to NATSPEC specifications and be free from disease or defects and be in a healthy condition.

**Reason:** To ensure the proposed planting is free of disease and defects to provide the best chance for successful establishment and ongoing health and vigour

131. **Planting of garden beds:** All garden beds shall be planted out with enough plant quantities and spacing to ensure that no areas of bare mulch remain visible following the typical 12-month landscape establishment period.

**Reason:** For suppression of weeds and to fulfil the Landscape Design Intent

#### **WHILE BUILDING WORK IS BEING CARRIED OUT**

132. **Compliance Certificate for waterproofing planting on structures:** A certificate must be submitted by a qualified practicing Landscape Architect certifying that the proposed subsoil drainage and any associated waterproofing membrane have been installed in accordance with the details shown on the approved landscape working drawings and specification to all raised and formed garden bed areas.

**Reason:** To ensure there is no water penetrating the planter boxes to the infrastructure or building below

133. **Cut and fill:** While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements: All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.  
All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

**Reason:** To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants

134. **Uncovering relics or Aboriginal objects:** While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment. In this condition:

"relic" means any deposit, artefact, object or material evidence that:

- (i) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and is of State or local heritage significance; and
- (i) "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

**Reason:** To ensure the protection of objects of potential significance during works

#### **BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE**

**Note:** Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification must be forwarded to the attention of via e-mail at

[service@lanecove.nsw.gov.au](mailto:service@lanecove.nsw.gov.au) within five (5) working days of the date of issue

**Reason:** To meet Council Statutory Regulations

135. **Works-as-executed plans and any other documentary evidence:** Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- All stormwater drainage systems and storage systems

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

**Reason:** To confirm the location of works once constructed that will become council assets

136. **Post Construction Dilapidation report: Trees to be Retained:** Before the issue of a construction certificate, a suitably qualified Arborist with a minimum of an AQF level 5 Degree must prepare a post-construction dilapidation report on the health of the trees to be retained and protected following a site visit with Council's Senior Tree Preservation Officer. The report shall be agreed upon by both parties and shall include photographs of each tree and any existing damage, defects or areas of concern well represented. After comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent. Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

**Reason:** To identify damage to existing trees retained resulting from building work on the development site

137. **Repair of infrastructure:** Before the issue of an occupation certificate, the applicant must ensure any tree to be retained or surrounding public open space or landscape areas damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

**Note:** If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

**Reason:** To ensure any damage to public infrastructure is rectified to identify damage to existing trees retained resulting from building work on the development site

138. **Practical Completion Report - Landscape works:** A landscape practical completion report must be prepared by the consultant landscape architect and submitted to Council or the accredited certifier within 7 working days of the date of practical completion of all landscape works. This report must certify that all landscape works have been completed in accordance with the landscape working drawing. A copy of the report must be submitted to Council.

**Reason:** To ensure the landscape works have been carried out in accordance with the stamped approved construction documents.

139. **Practical Completion Report - Landscape maintenance and establishment:** At the completion of the landscape maintenance period, the consultant landscape architect/designer must submit a final report to Council or the accredited certifier, certifying that all plant material has been successfully established, that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the 12 month landscape maintenance strategy has been provided to the Owner/ Occupier. A copy of the report must be submitted to Council.

**Reason:** To ensure the landscape works have been carried out in accordance with the stamped approved construction documents

**ATTACHMENTS:**

<b>AT-1</b>	<a href="#">View</a>	Attachment 1 SEPP Senior's Assessment	7 Pages
<b>AT-2</b>	<a href="#">View</a>	Attachment 2 SEPP 65 Assessment	41 Pages
<b>AT-3</b>	<a href="#">View</a>	Attachment 3 - Clause 4.6 Written Request (Height)	23 Pages
<b>AT-4</b>	<a href="#">View</a>	Attachment 4 Part B & C3 DCP Assessment	5 Pages
<b>AT-5</b>	<a href="#">View</a>	Attachment 5 Part D DCP Assessment	10 Pages