

Agenda
Lane Cove Local Planning Panel Meeting
5 July 2022



A G E N D A

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 5 July 2022 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully



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 or alternate Chairs as applicable. The meetings and other procedures of the Panel will be undertaken in accordance with the 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 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.

A G E N D A

DECLARATIONS OF INTEREST

APOLOGIES

NOTICE OF WEBCASTING OF MEETING

PUBLIC FORUM

Members of the public may address the Panel to make a submission.

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30 LANDERS ROAD, LANE COVE NORTH

Subject: 30 Landers Road, Lane Cove North
Record No: DA22/24-01 - 15217/22
Division: Environmental Services Division
Author(s): Greg Samardzic

Property:	No. 30 Landers Road, Lane Cove North Lot 1 DP 1224331
DA No:	DA 24/2022
Date Lodged:	3 March 2022
Cost of Work:	Unchanged from the original amount
Owner:	Entrepreneur Enterprises P/L
Applicant:	Brooke Minto

Description of the proposal to appear on determination	Increase children places from 56 to 88 (increase of 32 spaces) of an existing childcare centre operation
Zone	R4 High 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 7a, 9b and 10b
Stop the Clock used	No
Notification	Notified in accordance with Council's policy and 14 submissions received

REASON FOR REFERRAL

The Development Application is referred to the Lane Cove Local Planning Panel as a contentious development as more than 10 submissions have been received.

EXECUTIVE SUMMARY

The proposal seeks to increase the children places from 56 to 88 (increase of 32 spaces) of an existing childcare centre operation. The original Development Application was approved by the Land and Environment Court (which was originally proposed as a 116-place childcare centre) was agreed at the Section 34 Conciliation Conference that the appropriate maximum capacity of the children centre to maintain the existing residential amenity would be restricted at 56 children. A subsequent Section 4.56 Modification Application was to increase numbers from 56 to 93 (which included a drop off/pick up zone within Cox Lane for a total of three car parking spaces) was refused by the Lane Cove Local Planning Panel and the lodged Court appeal was dismissed.

No additional car parking spaces are being proposed to accommodate the increase in children numbers under the subject Development Application and it has not addressed the unresolved adverse car parking and acoustic impacts that would result from such a large increase in children numbers where for instance all car parking impacts associated with the centre ought to be

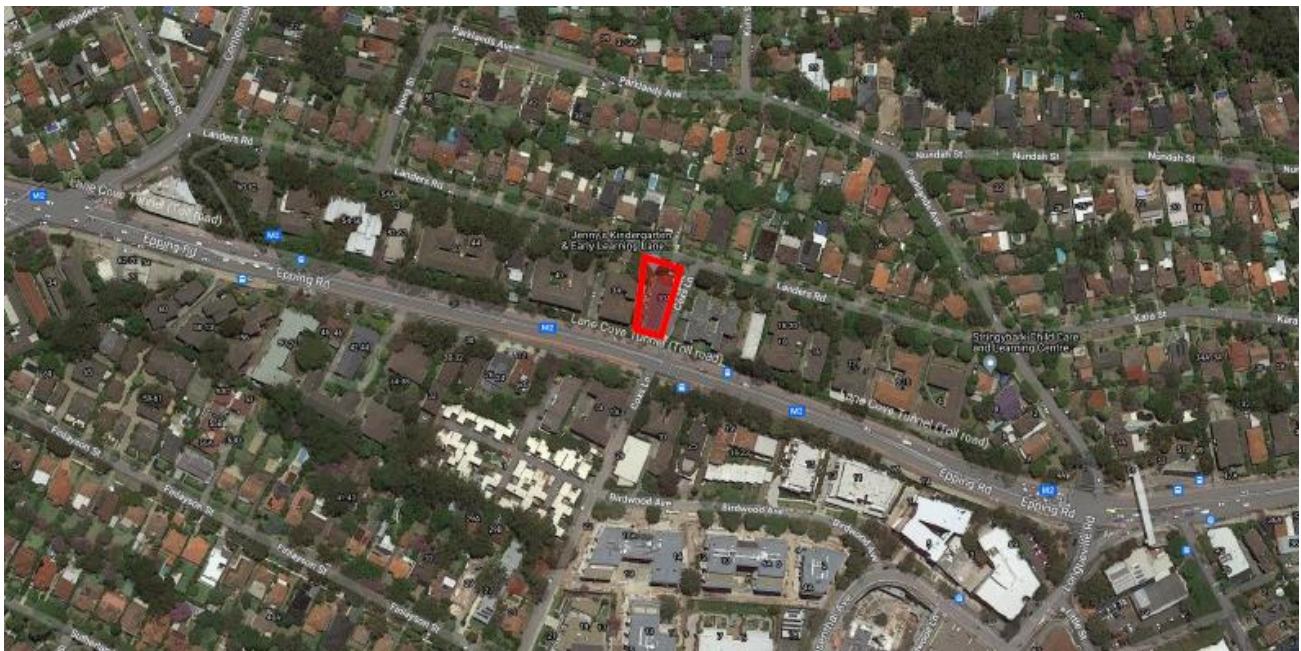
contained on site. The proposal has been assessed against Section 4.15 of the Environmental Planning and Assessment Act, 1979, as detailed in the report, and is considered unsatisfactory. The proposal would be considerably different to the intensity and scale originally approved by the Land and Environment Court.

The original application and including the conditions imposed such as restricting the maximum number of children to 56 was key in addressing any potential adverse impacts and managing any adverse impacts. The proposal would still result in a substantial car parking variation by a total of 7 car parking spaces and the variation is not supported as car parking impacts was a key contention under the previous Court proceedings. The proposal was notified and a total of 15 submissions were received raising concerns with the adverse traffic, acoustic and amenity impacts resulting from the proposed increase in children numbers. The matters raised in the submissions are addressed in this report.

The subject Development Application is reported to the Lane Cove Local Planning Panel due to the number of submissions received which is a contentious development and refusal is recommended.

SITE AND SURROUNDS

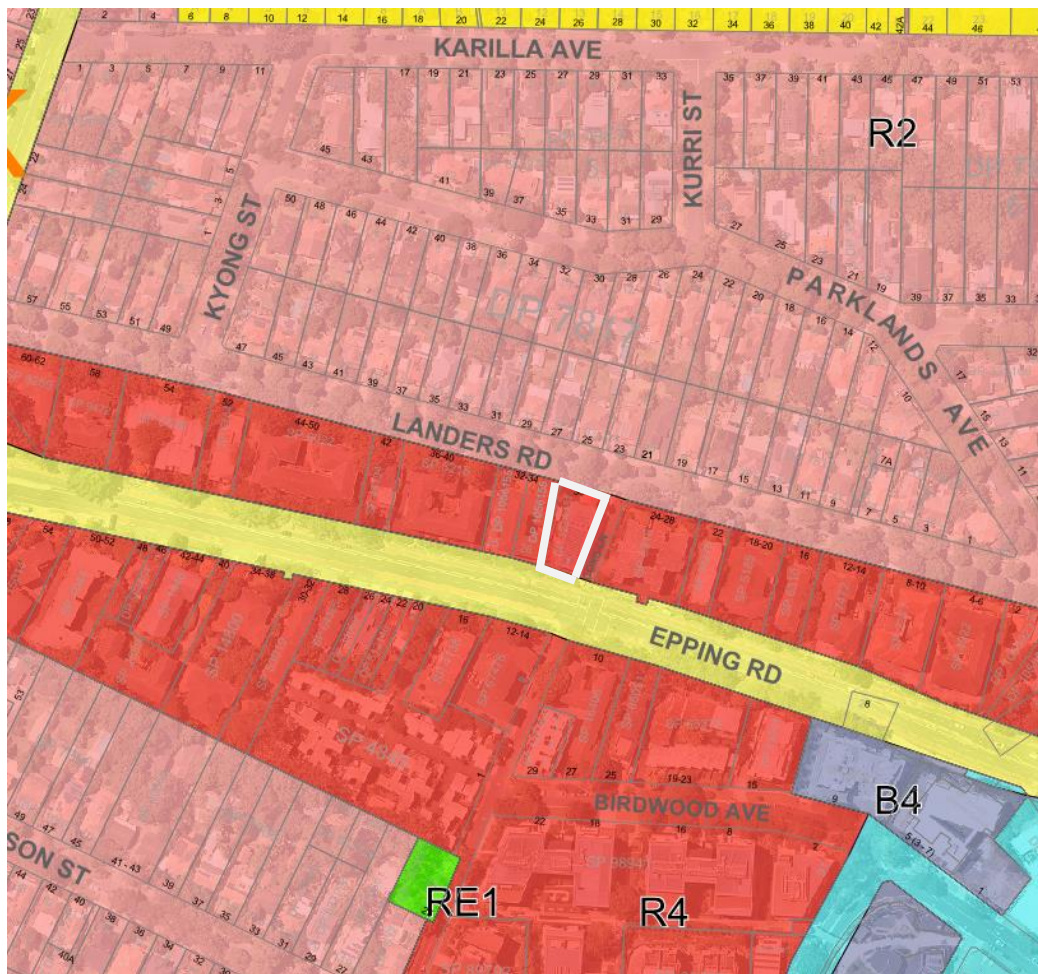
The subject site is located at the south-western corner of Landers Road and Cox Lane in Lane Cove North. The site has an area of 875.1m² with a 23.65m frontage to Landers Road, 18.28m frontage to Epping Road at the rear and a 42m frontage to Cox Lane Cove to the east. The slope falls approximately 5m from its north-eastern corner at the front of the site to the south-western corner at the rear. There is a three storey childcare centre building with a basement for 19 car parking spaces currently located on the site.





Site Location

Surrounding developments comprise dwelling houses along the northern side of Landers Road in R2 Low Density Residential zone and residential flat buildings along the southern side of Landers Road in R4 High Density Residential zone.



Zoning Plan

Two adjacent residential flat building at Nos. 24-28 and Nos. 32-34 Landers Road at the southern side of Landers Road are three storey buildings.

PREVIOUS APPROVALS/HISTORY

Development Consent DA15/148 was granted by the Land and Environment Court (Proceedings No. 11157 of 2015) after the conciliation conference and hearing pursuant Section 34(3) of the Land and Environment Court Act 1979 on 15 June 2016 for a 56-place childcare centre. The Development Application was for a 116-place childcare centre. On 16 July 2019, a deemed refusal appeal against a modification application to increase children places from 56 to 93 (which included a drop off/pick up zone within Cox Lane for a total of three car parking spaces) was lodged with the Land and Environment Court (Proceedings Nos. 2019/220493). On 20 November 2020, the appeal was dismissed.

PROPOSAL

The Land and Environment Court approval was for the construction of a three storey childcare centre for 56 children over 1 level of basement car parking containing 19 spaces. Condition No. 3 read as:

3. *The maximum number of children in the child care centre must not exceed 56 at any time made up of the following ages:*

0 to 2 years of age: maximum of 28 children
2 to 3 years of age: maximum of 10 children
3 to 5 years of age: maximum of 18 children

The original Development Application lodged was for a 116-place childcare centre comprising:

- 0 to 2 years of age: maximum of 28 children
- 2 to 3 years of age: maximum of 33 children
- 3 to 5 years of age: maximum of 55 children

Condition No. 12 reads as:

12. *19 on-site car parking spaces including an accessible car space must be provided for the uses of the development at all times, of which a minimum of 11 car spaces must be allocated for the drop off/pick up provisions of the development.*

The previous Section 4.56 Modification Application sought to increase the current capacity of the centre from 56 to 93 children (an increase in 37 children) that would be accompanied by a total of 15 educators and two support staff. The following age groups are as follows:

- 0 to 2 years of age: maximum of 28 children
- 2 to 3 years of age: maximum of 10 children
- 3 to 4 years of age: maximum of 20 children
- 4 to 5 years of age: maximum of 30 children

The subject Development Application now proposes to increase current capacity of the centre from 56 to 88 children (an increase in 32 children) that would be accompanied by a total of 14 educators and two support staff. The following age groups are as follows:

- 0 to 2 years of age: maximum of 28 children
- 2 to 3 years of age: maximum of 15 children
- 3 to 5 years of age: maximum of 50 children

This reallocation of numbers has resulted in that 13 spaces are allocated to drop off/pick up purposes and 6 spaces allocated to staff within the basement car park however the maximum total number of spaces remains at 19. The justification for the proposed increase in numbers is that the existing unencumbered indoor/outdoor spaces of the centre can adequately accommodate the increased capacity and no substantial alterations or additions to the existing childcare centre building are proposed. It is proposed to include minor alterations to the building to address any potential acoustic impacts that may arise from the proposed increase in children numbers such as:

- The acoustic absorption (NRC not less than 0.8) is to be located on the inner faces of the masonry walls to the south-eastern outdoor play area.
- The underside of the ground floor covered play area is to be treated with acoustic absorption for 50% of the area (Envirospray 300 or 50mm thick Martini HD).

Other minor works have already occurred to which the applicant had considered to constitute as 'Exempt Development' or on de minimus basis (which suggests that the law is not concerned with trifles and trifling matters). However, it is noted that such exempt provisions technically only apply to residential developments not childcare centre developments. These works included:

- A 10 mm thick polycarbonate backing was installed to the open metal barrier along the eastern side of the ground floor south-eastern outdoor play area.
- The height of the barrier along the southern side of the south-eastern outdoor play area is to

be increased by 200mm using 10 mm thick polycarbonate.

- Acoustic absorption (NRC not less than 0.8) is to be located on the inner faces of the masonry walls to the south-eastern outdoor play area.
- The height of the barrier along the southern side of the ground floor western outdoor play area was increased to 1.8m by installing a 10 mm thick polycarbonate panel to the top of the existing masonry barrier.
- A 1.8m high intermediate barrier is required along the western side of the ground floor northern outdoor play area to provide acoustic shielding to the residential flat building at Nos. 32- 34 Landers Road.
- The height of the barrier along the eastern side of the Level 1 Outdoor Play Area is to be increased to 1.6m by installing a 10 mm thick polycarbonate panel to the top of the existing masonry barrier.
- The underside of the ground floor covered play area is to be treated with acoustic absorption for 50% of the area (Envirospray 300 or 50mm thick Martini HD).
- The northern and eastern sides of the ceiling above the Level 1 Outdoor Play Area are to be treated with acoustic absorption (Envirospray 300).
- 50% of the ceiling above the Level 2 Outdoor Play Area is to be treated with acoustic absorption (50mm Martini HD).
- The use of the Level 2 outdoor play area requires the operation of the roll down weather blinds in accordance with the permutations of blind use (versus active and passive play/number of children).

Further, the central column to the basement entry has also been removed to improve access into or exiting the basement.

The subject Development Application has been supported by:

- Revised Architectural Plans prepared by Nigel Merryweather Architects, Drawing No. A1K to A5K and dated 11/2/22.
- Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering & Road Safety Consultants, Report No. 220007.01FA and dated 28/1/22.
- Acoustical Assessment prepared by The Acoustic Group, Report No. 52.5445.R3A:MCC and dated 3/2/22.
- Plan of Management prepared by Jenny's Kindergarten & Early Learning and dated February 2022.
- Letter Regarding Recent Exempt Development Works prepared by Minto Planning Services and dated 9/2/22.

No other modifications i.e. to hours of operation and additional signage are proposed.

1. Section 4.15(1) Matters for Consideration

(a) The provisions of

(i) Any environmental planning instrument

SEPP (Transport and Infrastructure) 2021

The proposal has been assessed against the relevant provisions of SEPP (Infrastructure) 2007 and the following childcare centre requirements of the SEPP and the associated Child Care Planning Guidelines are addressed below.

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Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
Clause 3.22 Centre-based childcare – concurrence of Regulatory Authority required for certain development – N/A		
(1) This clause applies to development for the purpose of a centre-based childcare facility if:		
(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> , or	Requires: 3.25m ² /child 286m ² required/88 children <u>Minimum 318sqm Area Provided</u>	Yes
(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	Requires: 7m ² /child 616m ² required/88 children <u>Minimum 626sqm Area Provided:</u>	Yes
3.23 Centre-based childcare facility—matters for consideration by consent authorities		
Before determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> , in relation to the proposed development.	Refer to assessment below.	
3.26 Centre-based child care facility—non-discretionary development standards		
(1) The object of this clause is to identify development standards for particular matters relating to a centre-based childcare facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.		
(2) The following are non-discretionary development standards for the purposes of Sections 4.15(2) and (3) of the Act in relation to the carrying out of development for the purposes of centre-based child care:		
(a) location —the development may be located at any distance from an existing or proposed early childhood education and care facility,	Existing childcare centre.	Yes
(b) indoor or outdoor space		
(i) for development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those	<u>Indoor Space</u> The proposal complies with the required indoor space as outlined in the Regulations.	Yes
	<u>Outdoor Space</u> The proposal complies with the required outdoor space for the proposed 88 children placement sought.	Yes

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Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
clauses, or (ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the <i>Children (Education and Care Services) Supplementary Provisions Regulation 2012</i> applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,	Clause 28 applies to temporary emergency relocation of early education and childcare facility – exempt development	Not Applicable
(c) site area and site dimensions —the development may be located on a site of any size and have any length of street frontage or any allotment depth,	Existing childcare centre.	Yes
(d) colour of building materials or shade structures —the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Existing childcare centre.	Yes
(3) To remove doubt, this clause does not prevent a consent authority from:		
(a) refusing a development application in relation to a matter not specified in subclause (2), or	The subject Development Application is recommended for refusal. Grounds for refusal are not specified in subclause (2).	
(b) granting development consent even though any standard specified in subclause (2) is not complied with.		
3.27 Centre-based childcare—development control plans		
1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:		
(a) operational or management plans or arrangements (including hours of operation),	Lane Cove Development Control Plan Part I – Child Care Centres contains provisions relating to the following clauses and an assessment has been carried out in a separate table below (although cannot be used as reasons for refusal).	
(b) demonstrated need or demand for childcare services,		
(c) proximity of facility to other early childhood education and care facilities,		
(d) any matter relating to development for the purpose of a centre-based childcare facility contained in:		
(i) the design principles set out in Part 2 of the <i>Child Care Planning Guideline</i> , or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking		

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Part 3 Early education and care facilities—specific development controls		
Requirement	Proposed	Complies
rates).		
(2) This clause applies regardless of when the development control plan was made.		

Child Care Planning Guideline	
Design Quality Principle Considerations	Comment
Part 2 Design Quality Principles	
Context	
Good design responds and contributes to its context, including the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood. Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.	The centre is located within an area which is well serviced by public transport and proximity to Lane Cove Town Centre, in addition to surrounding residences. A childcare centre of 56 children at the subject site is compatible with the context of its surrounding locality. However, the proposed intensification of the existing centre is not considered to be appropriate having regard to non-compliances with car parking in particular.
Built form	
Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the surrounding area. Good design achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Good design also uses a variety of materials, colours and textures. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook. Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.	The subject application is an ad hoc response to increase children numbers for the existing centre which would result in significant adverse impacts onto adjoining residences due to the location of the outdoor play areas provided within the front and side setback areas including above ground creating potential land use conflicts which are unreasonable and would result in the loss of amenity.
Adaptive Learning Space	
Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out. Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.	The site layout and relationship of indoor and outdoor spaces are already approved by the Court.
Sustainability	
Sustainable design combines positive environmental, social and economic outcomes. This includes use of	Existing childcare centre.

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Child Care Planning Guideline	
Design Quality Principle Considerations	Comment
natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation. Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.	
Landscaping	
Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.	Existing landscaping.
Amenity	
Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff. Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility. Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.	The proposal is deficient in providing sufficient car parking spaces on site which presents amenity concerns due to the conflicts with the childcare use and neighbours.
Safety	
Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately. Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).	The shortfall in car parking presents potential safety concerns onto the local road network including access to the public lane.

It is advised that the applicant did not address the Child Care Planning Guidelines for the subject proposal. The relevant Part 3 Matters of Considerations are:

3.1 Site selection and location

- *To ensure that appropriate zone considerations are assessed when selecting a site.*
- *To ensure that the site selected for a proposed child care facility is suitable for the use.*

3.2 Local Character, streetscape and the public domain interface

- *To ensure that the child care facility is compatible with the local character and surrounding streetscape.*

3.5 Visual and acoustic privacy

- *To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.*

3.8 Traffic, parking and pedestrian circulation

- *To provide parking that satisfies the needs of users and demand generated by the centre.*
- *To provide vehicle access from the street in a safe environment that does not disrupt traffic-flows.*
- *To provide a safe and connected environment for pedestrians both on and around the site.*

Comment: The original Development Application lodged was for a 116-place childcare centre and was refused by Council and the Court approved a maximum 56-place centre. The previous modification application to increase children numbers to 92 places was also refused and the appeal upheld by the Court for the centre to remain as a 56-place childcare centre. The subject application would again unreasonably increase the intensification of the use that would be experienced by adjoining and surrounding residents. The proposal is still not supported from a traffic perspective and involves a substantial shortfall in required car parking numbers.

Whilst the building has been designed to cater for a maximum of 88 children based on the indoor and outdoor areas provided for however the increase in children would represent a technical shortfall of 7 car parking spaces which is a significant variation. With the large increase in numbers, it would be likely that the basement would achieve full capacity quickly during peak times and parents would be forced to reverse back out in front of the basement garage door and park on either on Cox Lane or Landers Road which is an undesirable outcome. As the required additional car parking is not provided on site, the intensification of use is unacceptable as the increase in children are not considered to be minor.

It is not appropriate to adopt a large increase in numbers with no provision of additional car parking spaces on site and due to the concerns raised by residents (14 separate submissions), the proposal as amended would be contrary to the appropriate intensity of use already established by the Court in the first instance and would have unreasonable traffic impacts to adjoining streets and particularly Cox Lane. Approval of the subject application would unreasonably intensify the amount of activities being conducted on the premises and would result in additional adverse impacts offsite.

It is not considered that the proposed development would satisfy the relevant context, built form, amenity and safety design quality principle considerations. The centre is located within a predominant residential area and a childcare centre at 56 children at the subject site is compatible with the context of its surrounding locality. The proposed intensification of the existing centre is not considered to be reasonable or appropriate having regard to non-compliances with car parking.

The subject application is an ad hoc response to increase children placement for the existing centre which would result in significant adverse impacts onto adjoining residences due to the location of the outdoor play areas provided within the front and side setback areas including above ground which would create potential land use conflicts. The proposal is deficient in providing sufficient car parking spaces on site which presents amenity concerns due to the conflicts with the childcare use and neighbours.

Whilst the original application was determined prior to the introduction of the Child Care Planning Guidelines, it has been used as guide to assess the subject application which has indicated that proposed intensification of use within the existing facility would materially change the existing use and would not satisfy the above considerations or objectives.

Local Environmental Plan 2009

The subject site is zoned R4 High Density Resident and the proposal continues to comply with the floor space ratio and building height development standards of the LEP. As discussed above and to be further discussed, it is considered that the proposal would not satisfy the following aim and zone objectives of the LEP as follows:

‘to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies in accordance with the indicated expectations of the community.

To ensure that the existing amenity of residences in the neighbourhood is respected.”

As a result, refusal is recommended.

(ii) Any proposed instrument

N/A

(iii) Any development control plan

Lane Cove Development Control Plan 2010

The proposal has been assessed against the relevant parts of Lane Cove Development Control Plan 2010 as follows:

Part I – Child Care Centres

Lane Cove Development Control Plan Part I – Child Care Centres

Provision	Requirements	Proposed	Complies
I.3.1 Indoor play area	3.25m ² /child	See table above	Yes
I.3.2 Other indoor space	Minimum 5m ² for each employee (85m ² required)	35.75m ² @ 1.7 m ² /employee	No, unchanged and the variation was acceptable under original application
	17 staff (15 teachers + 2 support staff) Administration room required	Admin and office space are provided on the ground level	Yes
I.3.3 Outdoor play area	7m ² /child	See table above	Yes
	30% Natural Planting area	Plantings unchanged at 24%	No, however the variation was acceptable under original application
	Access to three hours of sunlight a day (in commercial	The site is located within residential area	N/A

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Provision	Requirements	Proposed	Complies
	<p>areas)</p> <p>Provision of a variety of surfaces (including sand, soft fall, paving and timber platforms)</p> <p>Children have access to 3 hours of sunlight a day</p> <p>Special attention must be given to reduce or minimise noise, pollution and wind.</p>	<p>Sand pits, soft areas, rated surface turf, hard paved and timber decking provided</p> <p>The outdoor play areas are would receive a minimum of 3 hours of solar access.</p> <p>Existing outdoor play areas.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
I.4 Built form & building appearance	a) Child care centres must comply with the same standards for built form controls as provided under the DCP of the respective zone.	The proposed childcare centre is located within R4 zone and the existing building would be retained.	Yes
	b) The design and layout of the child care centres must respond to the character of the existing neighbourhood and streetscape.	The subject application is an ad hoc response to increase children numbers for the existing centre which would result in significant adverse impacts onto adjoining residences due to the location of the outdoor play areas provided within the front and side setback including limited on-site car parking creating potential land use conflicts. The subject building and site are not suitable to accommodate such a large increase in children numbers.	No, however built form, design and layout is existing and approved by the Court.
	c) In low density residential areas, child care centres are encouraged to be single storey in height for reasons of safety and access. In the case of 2 storey buildings, the second storey should only be used for the purposes of storage and staff facilities.	The subject site is located in a high-density residential area however adjoins a low density residential area and any further intensification of use is not supported in this instance.	No, however similar to the adjoining residential flat building and approved by the Court.
	d) All child care centres are preferred to be located at ground floor level where achievable and in areas where the opportunity for natural landscaping comprising deep planting is possible (i.e., not located entirely over a basement area).	The proposed centre is located on three levels and any further increase in children number are not supported.	No, however approved by the Court.
	e) In buildings including both residential uses and child care centres, the residential areas of the property are to be designed so as to prevent access to them by non-resident	The building does not include any residential uses.	NA

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Provision	Requirements	Proposed	Complies
	children. This includes both indoor and outdoor areas (such as washing lines etc.)		
I.5 Car parking / traffic	For the Childcare Centre: 1 space/2 full time employees 1 drop off space/5 children 1 disabled car space/20 car spaces	16 staff /8 spaces required. 88 children/15.6 spaces required. 1 space (not additional to total requirement). 25.6 (26) spaces required. 19 spaces provided to include 6 staff within existing basement	No, the shortfall in 7 car spaces is not supported.
	The centre should not be located on a road which carries traffic volumes in excess of 1,000 vehicles per hour, unless satisfactory off-street parking and entry/ exit provision is made.	Burns Road is a local road and carries traffic volumes less than 1000vph.	Yes
I.6 Accessibility	Access should be in accordance with Australian Standard 1428.1 to 4 to comply with Part D of the Building Code of Australia	Unchanged	Yes
I.7 Safety/security/fencing	a) Floor should be of a non-slip surface and easy to clean	Unchanged	Yes
	b) Fire safety precautions must be provided in accordance with Building Code of Australia and Australian Standard 1851.1–1995.	Compliance with BCA proposed	Yes
	c) Every gate should be provided with a childproof self-locking mechanism, but must still be accessible for adults in wheelchairs.	Unchanged	Yes
	d) Child Care Centres which are not entirely located at ground level must satisfy Council as to their high safety level relating to fence / balcony heights, reduced window opening sizes etc.	Unchanged	Yes
	e) Any part of the Child Care Centre that is designated for outdoor play space must be fenced on all sides.	Outdoor play areas are fenced on all sides	Yes
	f) Any side of a stairway, ramp, corridor, hallway or external balcony that is not abutting a wall must be enclosed to prevent a child being trapped or falling through.	The proposed indoor and outdoor areas are surrounded by fences	Yes
	g) Fences should be designed	Existing fencing at the eastern	No, however

Lane Cove Local Planning Panel Meeting 05 July 2022
30 LANDERS ROAD, LANE COVE NORTH

Provision	Requirements	Proposed	Complies
	to minimise noise transmission (on busy roads), improve privacy and must not dominate the streetscape. Materials and finishes for fences may be used that complement the surrounding streetscape.	<p>outdoor play areas currently not improving privacy.</p> <p>Rear fence is acceptable</p> <p>West fence is acceptable</p> <p>Front fence is acceptable</p>	approved by the Court
I.8 Environmental hazards/air quality	a) In Child Care Centres located on roads where there is an average daily traffic rate of more than 5,000 per day, exposure to air and noise pollution sources should be minimised by the use of air conditioning and the location of outdoor play areas.	Existing air conditioning and outdoor play areas.	Yes
	b) To avoid mosquito bite infections Council may require that all doors and windows should be screened. Mosquito breeding must be minimized by ensuring that drains and gutters are cleared and/or covered and that dark, damp areas are clear of vegetation and clutter.	Unchanged	Yes
I.9 Landscaping /planting	a) Planting should be used for its quality of shading, screening and decorating outdoor areas. Trees located on the northern and western boundary will shade the place during the hottest part of day.	Unchanged	Yes
	b) The planting and vegetation should provide educational features.	Unchanged	Yes
	c) Where the outdoor play area is proposed above ground level natural plants are to be provided in pots.	Unchanged	Yes
I.10 Privacy and Noise Minimisation	Effort should be made to reduce any possible adverse noise impact into the child care centre. In certain situations, this may require double-glazing of windows or appropriate location of windows.	Unchanged	Yes
	b) The development application should demonstrate that privacy and noise minimisation for neighbouring properties have been considered in designing the centre.	Whilst the acoustic report attempts to address the issues raised in the previous Court Appeal, there are still concerns that noise will be experienced by the nearby neighbours, particularly those that work from home, or those members of the community that don't work away from their	No, not supported by Council's Environmental Health Officer

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30 LANDERS ROAD, LANE COVE NORTH

Provision	Requirements	Proposed	Complies
		<p>residence during business hours.</p> <p>The acoustic treatments proposed would have the desired effect to reduce noise, but the sounds of children playing (yelling, laughing, shouting etc) would be audible in the nearby residences and would be challenging to control and manage at times when background noise (traffic) reduces.</p> <p>The only way that appropriate acoustic treatment could occur if the residential units that directly face the childcare centre be acoustically treated to abate these potential noise impacts to habitable rooms i.e. double glazing or products such as magnetite https://www.magnetite.com.au/benefits/noise-reduction.html or similar. It is envisaged that approximately 20 units/houses adjacent to the childcare premises would benefit from this glazing treatment at a cost of approximately \$30,000 (2 windows per premises) however this approach would be difficult to achieve.</p> <p>Further, the proposed acoustic fence in the front courtyard would split the front ground level outdoor play area and would render part of it potentially useable. No visual assessment had been completed by the applicant on the 'exempt' type works already undertaken on site through submission of updated elevational diagrams.</p>	
I.11 Sustainability	Applications in residential zonings need to indicate that they fulfil any requirements for a BASIX Certificates which may have been introduced by the State government for relating to water and energy efficiency etc.	Unchanged	Yes
I.12 Hours of Operation	The maximum hours of operation shall be between 7.00am and 6.00pm, Monday	Unchanged	Yes

Provision	Requirements	Proposed	Complies
	till Friday, in a residential zone.		

Built Form, Fencing and Noise Minimisation

The following development standards are relevant:

Clause 1.4

b) The design and layout of the child care centres must respond to the character of the existing neighbourhood and streetscape.

c) In low density residential areas, child care centres are encouraged to be single storey in height for reasons of safety and access. In the case of 2 storey buildings, the second storey should only be used for the purposes of storage and staff facilities.

d) All child care centres are preferred to be located at ground floor level where achievable and in areas where the opportunity for natural landscaping comprising deep planting is possible (i.e., not located entirely over a basement area).

Clause 1.7

g) Fences should be designed to minimise noise transmission (on busy roads), improve privacy and must not dominate the streetscape. Materials and finishes for fences may be used that complement the surrounding streetscape.

Clause 1.10

b) The development application should demonstrate that privacy and noise minimisation for neighbouring properties have been considered in designing the centre.

The relevant DCP objectives are:

Clause 1.4

- 1. To ensure child care centres are compatible with the scale of existing buildings in the vicinity.*
- 2. To ensure that the appearance of the development is of a high visual quality and enhances and compliments the streetscape of the area.*

Clause 1.10

- 3. To provide visual and acoustic privacy for children, staff and nearby residents.*

The main objectives of the DCP under Clause 1.6 are:

- 1. To encourage the provision of child care centres in the Lane Cove Government Area which meets the needs of the community, in particular with the provision of spaces 0-2 year olds.*
- 2. To ensure that sites containing child care centres are appropriate for that purpose and provide a functional and pleasant environment for their users.*
- 3. To ensure that sites containing child care centres are compatible with the environment in which they are situated, particularly in terms of visual character, landscaping etc.*
- 4. To ensure that potential adverse impacts from child care centres on surrounding residential areas, such as those created by noise, traffic generation and on-street parking, are minimised.*

Further, Clause 12 – Locational Considerations states that:

Child Care Centres to limit the maximum number of places at any one child care centre in residential zone to 60.

It is advised that the applicant did not adequately address the above provisions.

Comment: The subject site is not suitable to accommodate such a large increase in children numbers. The site located in a high-density residential area adjoins a low-density residential area to the north and any further intensification of use is not supported in this instance. The facility is located across three levels and any further increase in children numbers is not supported. Whilst the Child Care SEPP states that an application cannot be refused on children numbers however the standard can be used as a guide in establishing what would be an appropriate scale for a childcare centre located within a residential area.

Based on a merit assessment of the subject application, it is considered that a 56 -place childcare centre would be more of an appropriate scale compared to an 88-place facility proposed.

Part R – Traffic, Transport and Parking

In relation to parking under Table 1 of the DCP the following assessment is provided above in the table above under the childcare DCP section of this report which indicates there is a 7-space shortfall under the subject application. It is noted that the previous modification application had a 9-space shortfall which was refused by Council and appeal upheld with a reduced number by the Land and Environment Court. The applicant provided the following justification/s to the proposed variation to car parking which is as follows:

The subject proposal for an increase in the scale of the childcare centre at No. 30 Landers Road is fully supportable in terms of its traffic and parking impacts. The following outcomes of this traffic impact assessment are relevant to note:

- *The proposal is for an increase of 32 children and three (3) staff members at the existing childcare centre.*
- *Three-days of parking surveys surround the site has indicated a minimum of 89 on-street parking spaces available within walking distance of the site. A minimum of four (4)[AM] and three (3) [PM] on-street car parking spaces are available within 100m of the site along Landers Road, during the sites hours of operation.*
- *Three-day travel mode surveys of the childcare centres parents has indicated an average of 40% of parents walk to the centre, with 3% catching the bus to/from the site, which is a comparatively high-proportion walks to any childcare centre. Three-days of staff travel mode surveys has indicated that on average only 21% of staff drive to work, with 32% of staff walking to work with the remaining staff members using a range of alternative travel modes including public transport and ride-share.*
- *This report recommends the removal of the centralised column and intercom within the basement carpark entrance to provide a minimum of 6.1m wall-to-wall entrance width, compliant with AS2890.1:2004 requirements and to improve site access efficiency. This recommendation has been adopted and implemented as of January 2022.*
- *This report recommends the adjustment of the sites existing plan of management to ensure the basement door remains open from 7am – 9:30am and from 3pm - 6pm, allowing visitors to enter and exit the basement without the use of the keypad system.*
- *The future parking demand of the childcare centre has been calculated under a first principles analysis, resulting in a demand for 17 car parking spaces, with 12 for parents / visitors and five (5) for staff.*
- *This report proposes the re-allocation of the existing 19 basement car parking spaces to provide 13 parent / visitor parking spaces and six (6) staff parking spaces. This parking provision will exceed the sites car parking demand.*
- *A conservative estimate of the increase in traffic generation due to the proposed change in scale of this childcare centre has been conservatively estimated to be some +26 trips in the AM peak period (+13 IN, +13 OUT) and +22 trips in the PM peak period (+11 IN, +11 OUT), giving no*

adjustment due the high 40% parent walking rate record at this site. The impacts of the traffic generation have been modelled using SIDRA INTERSECTION 9.0, indicating that there will be no detrimental impact to the performance of the intersections or on residential amenity surrounding the site as a result of the generated traffic.

The relevant Clause 2.1 Parking general DCP objectives are:

- 1. Ensure that reasonable parking needs are met.*
- 2. Ensure that developments do not impose excessive demand for on-street parking on surrounding streets.*
- 3. Ensure that car parking spaces are convenient and accessible so that they are utilised for their intended purpose.*
- 4. Provide a lower level of car parking in areas with good access to public transport and services.*

Comment: The justification provided for the parking shortfall of 7 spaces is not supported and refusal is recommended. Council's Traffic and Transport Coordinator has reviewed the proposal and does not support for the following reason:

The parking shortfall of 7 spaces is not accepted for following reasons:

1. The car parking spaces provided is not in accordance to Council's DCP Part R
2. Increase in number of children would increase the number of traffic in Cox Lane.
3. It would impose extra demand for on-street parking on streets.
4. Council is trying to reduce the conflicts between pedestrians and cars on Cox Lane as public is using the footpath to access the Bus Stop at Epping Road.

Given the narrow width of Cox Lane, it is difficult for additional traffic to turn around on Cox Lane when the basement car park is filled to capacity due to the proposed shortfall in car parking and would encourage parking within the immediate local street network. This would impact on the area which also provides for pedestrian access to and from Epping Road for the residents of Landers Road and beyond.

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

The likely impacts of the proposal would change from the current amenity levels due to the proposed substantial increase in traffic activities that would be conducted on the subject site which in turn would increase adverse impacts onto the surrounding residential properties.

(c) The suitability of the site for the development

The suitability of the site would now be changed where insufficient car parking on site has been provided to accommodate the proposed large increase in children numbers. The proposed increase in children placement and associated building works represents as an overdevelopment of the site. The increase in the capacity of children for the centre by 32 placements would involve adverse traffic issues on the site and in the immediate locality due to the deficient parking provided on site. The nature of the proposal is conducted in an ad hoc response to utilise the indoor and outdoor areas available at the existing facility without proper regard to any other relevant considerations or impacts resulting from the increased capacity of children.

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

In response to the notification of the proposed modification and 14 submissions were received. The matters raised in the submissions are summarised and addressed in the following table:

Concern	Comment
Parents dropping off their children are already blocking access to Cox Lane and are illegally parking there rather than parents using the existing basement car park area. Illegal parking and parking in resident's driveways on Landers Road (which has restricted parking in place) are also occurring. This is further exacerbated by the narrow width of both the lane and the road. People using the lane for drop off purposes also use the existing driveway to the basement or the driveway to Nos. 24-28 Landers Road to turn around requiring a reverse movement. Council's DCP does not allow for reversing of vehicles onto the street as it is dangerous for a childcare use.	The proposal would represent as an overdevelopment on the subject site causing additional adverse impacts onto surrounding residences. It is considered that approval of the subject application would exacerbate the current traffic and car parking problems being experienced at the subject site and within the immediate locality. The subject site is not suitable to accommodate such a large increase in children.
Child numbers has already been appropriately set and restricted to control the adverse traffic and acoustic impacts. The additional noise control measures are an indicator that there will be intrusive noise levels onto surrounding residents to accommodate the increase in children numbers.	The applicant has not adequately demonstrated that the proposal would be satisfactory where this issue had already been established by the Court what the appropriate intensity of the use would be restricted to in relation to parking, intrusive noise levels and amenity impacts. The proposed shortfall in car parking numbers and the increase in noise are not supported where refusal is recommended.
The proposal would cause a significant hazard for pedestrians. Many people use Cox Lane to access the bus stop on Epping Road.	The increased traffic impacts would adversely impact upon pedestrian safety as there are at least 180 pedestrians who use the stairs and footpath on Cox Lane to Epping Road on each weekday.
The accuracy and timing of the traffic survey is questioned as it was conducted during the COVID pandemic. There are false claims within the traffic report that there is sufficient on-street parking on Landers Road up to a 100m away from the centre (which parents will not use as they will try to park as close as possible to the centre) and that drivers do not use Landers Road as a rat run.	The justifications provided within the traffic report to support the proposal is not agreed with in this instance.
There is already another centre on Landers Road and is there a need for more child places at this centre.	This issue cannot be a reason of refusal.

(e) The public interest

The proposal would be contrary to the public interest as it would provide for further adverse impacts onto surrounding properties. The requirement to provide 26 on-site parking spaces is supported to ensure the proposal adequately provides for on-site parking for staff and customers in accordance with the DCP. Approval of the proposal is not considered to have proper regard to the amenity and safety of children attending the centre due to the proposed intensification of use on the subject site.

CONCLUSION

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been considered. The proposed increase in children places is not supported as the existing childcare centre has 56 children and it provides for adequate parking on-site. The increase in

children numbers to 88 children would result in deficient car parking being provided on site and would spread the traffic impacts off site affecting surrounding residential properties.

The increase in children numbers is an ad hoc response to fully utilise the indoor and outdoor play areas that are available however the cumulative traffic and acoustic impacts onto surrounding residents are not supported in this instance. Approval of the proposal would be contrary to the public interest having regard to the amenity and safety of the children and residents. The application 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 5 July 2022, exercising the functions of Council as the consent authority, refuse the subject Development Application D148/2015 to 24/2022 to increase children places from 56 to 88 (increase of 32 spaces) of an existing childcare centre operation for the following reasons:

Lane Cove Local Environmental Plan 2009 Aims and Zone Objectives

1. The proposal does not meet the aims and R4 High Density Residential zoning objectives of Lane Cove Local Environmental Plan 2009.

Particulars

- (a) The proposed development as amended would not meet the 1.2(2)(b) of the aims of Lane Cove Local Environmental Plan 2009 which requires the following:

“to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies in accordance with the indicated expectations of the community.”

- (b) The proposed development as amended would not meet the following zone objective:

“To ensure that the existing amenity of residences in the neighbourhood is respected.”

The proposed increase in children placement by 32 represents as an overdevelopment of the site. The existing child care centre has a child placement of 56 and currently provide adequate parking on-site. The increase in the capacity of children for the centre would involve adverse traffic issues on the site and in the immediate locality due to deficient parking provided on site. The subject application is an ad hoc response to fully utilise the indoor and outdoor play areas that are currently available. Approval of the proposed development is not supported having regard to the amenity and safety of children attending the centre and due to the nature of the proposed modification proposed.

Car Parking and Traffic

2. The proposal fails to provide sufficient on site car parking and is inappropriate to accommodate the proposed increase in children.

Particulars

- (a) The proposal requires a total of 26 parking spaces for 88 children and 16 staff in accordance with Part R of LCDCP 2010 – Table 1.

- (b) The proposal provides for 19 basement parking spaces. Insufficient parking has been provided on-site to accommodate 88 children and 16 staff for the childcare centre in accordance with Part R of LCDCP 2010.
- (c) The proposed development as amended would not meet Clause 2.1 Parking general of Part R of LCDCP objectives are:
1. *Ensure that reasonable parking needs are met.*
 2. *Ensure that developments do not impose excessive demand for on-street parking on surrounding streets.*
 3. *Ensure that car parking spaces are convenient and accessible so that they are utilised for their intended purpose.*
 4. *Provide a lower level of car parking in areas with good access to public transport and services.*
- (d) The justifications for the parking shortfall of 7 spaces relates to the reasons stated in the submitted traffic report. The proposed justifications to the variation found within the traffic report is not supported and refusal is recommended.

Residential Amenity

3. The proposal would not maintain and protect the current residential amenity of adjoining and surrounding residential properties.

Particulars

- (a) The proposed development would not meet Principle 1 - Context, Principle 2 – Built Form, Principle 6 – Amenity and Principle 7 – Safety Part 2 design quality principles of the Child Care Planning Guidelines.
- (b) The proposed development would not meet the following Part 3 Matters of Consideration objectives of the Child Care Planning Guidelines as follows:
- 3.1 *Site selection and location*
- *To ensure that appropriate zone considerations are assessed when selecting a site.*
 - *To ensure that the site selected for a proposed child care facility is suitable for the use.*
- 3.2 *Local Character, streetscape and the public domain interface*
- *To ensure that the child care facility is compatible with the local character and surrounding streetscape.*
- 3.5 *Visual and acoustic privacy*
- *To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments.*
- 3.8 *Traffic, parking and pedestrian circulation*
- *To provide parking that satisfies the needs of users and demand generated by the centre.*
 - *To provide vehicle access from the street in a safe environment that does not disrupt traffic-flows.*
 - *To provide a safe and connected environment for pedestrians both on and around the site.*
- (c) It is not considered that the proposed development satisfy context, built form, amenity and safety design quality principle considerations. The centre is located within a

predominant residential area. A child care centre at 56 children at the subject site is more compatible with the context of its surrounding locality. However, the proposed intensification of the existing centre is not considered to be appropriate having regard to non-compliances with car parking.

- (d) The subject application is an ad hoc response to increase children placement for the existing centre which would result in significant adverse impacts onto adjoining residences due to the location of the outdoor play areas provided within the front and side setback areas including above ground creating potential land use conflicts. The proposal is deficient in providing sufficient car parking spaces on site which presents amenity concerns due to the conflicts with the child care use and neighbours. The shortfall in car parking present potential safety concerns as pedestrian and adjoining neighbour's access can also be obtained easily due to the shared access arrangement within the public lane.
- (e) The proposed increase in children numbers would be an over-intensification of use and would not satisfy the above considerations or objectives.
- (f) The proposed development would not meet with Clauses I.4(b), (c) & (d), I.7(g) and I.10(b) of Part I of LCDCP as follows:

Clause I.4

b) The design and layout of the child care centres must respond to the character of the existing neighbourhood and streetscape.

c) In low density residential areas, child care centres are encouraged to be single storey in height for reasons of safety and access. In the case of 2 storey buildings, the second storey should only be used for the purposes of storage and staff facilities.

d) All child care centres are preferred to be located at ground floor level where achievable and in areas where the opportunity for natural landscaping comprising deep planting is possible (i.e., not located entirely over a basement area).

Clause I.7

g) Fences should be designed to minimise noise transmission (on busy roads), improve privacy and must not dominate the streetscape. Materials and finishes for fences may be used that complement the surrounding streetscape.

Clause I.10

b) The development application should demonstrate that privacy and noise minimisation for neighbouring properties have been considered in designing the centre.

- (g) The proposed development would not meet with Clauses I.4 & I.10 and 1.6 objectives of Part I of LCDCP as follows:

Clause I.4

- 1. To ensure child care centres are compatible with the scale of existing buildings in the vicinity.*
- 2. To ensure that the appearance of the development is of a high visual quality and enhances and compliments the streetscape of the area.*

Clause I.10

- 1. To provide visual and acoustic privacy for children, staff and nearby residents.*

Clause 1.6

- 2. To ensure that sites containing child care centres are appropriate for that purpose and provide a functional and pleasant environment for their users.*
- 3. To ensure that sites containing child care centres are compatible with the*

environment in which they are situated, particularly in terms of visual character, landscaping etc.

4. *To ensure that potential adverse impacts from child care centres on surrounding residential areas, such as those created by noise, traffic generation and on-street parking, are minimised.*

- (h) The subject building and site are not suitable to accommodate such a large increase in children numbers. The subject site is located in a high density residential area however adjoins a low density residential area and any further intensification of use is not supported in this instance. The centre is located on three levels and any further increase in children numbers are not supported. Based on a merit assessment of the subject application, it is considered that a 56 place child care centre would be more of an appropriate scale compared to a 88 place facility.
- (i) The proposed development is not supported as approval of the subject application would exacerbate the current traffic and acoustics impacts onto the immediate locality.

Intensification of Use

4. The proposal would involve a significant intensification of the existing use adversely impacting on adjoining and surrounding residential allotments.

Particulars:

- (a) Pursuant to Section 4.15(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development would contain adverse traffic, parking and acoustic impacts onto the immediate locality due to its increased amount of increased people and vehicles accessing the premises and its close proximity to adjoining and surrounding residential allotments.
- (b) The likely impacts of the proposal would not remain unchanged from the current operation due to the substantial increase in the amount of activities that would be conducted on the subject site which in turn would increase adverse impacts onto the surrounding residential properties.

Site Suitability

5. The site is not suitable for the proposed development.

Particulars:

- (a) Pursuant to Section 4.15(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered suitable for the proposed development with the increased child placements in its current form, having regard to the above matters.
- (b) The suitability of the site would not remain unchanged from the current operation where insufficient car parking on site has been provided to accommodate the proposed large increase in children numbers. The proposed increase in children placement represents as an overdevelopment of the site. The increase in the capacity of children for the centre by 32 placements would involve adverse traffic issues on the site and in the immediate locality due to the deficient parking provided on site.
- (c) The nature of the proposal is an ad hoc response to utilise the indoor and outdoor areas available at the existing facility without proper regard to any other relevant considerations or impacts resulting from the increased capacity of children.

Public Interest

6. Approval of the proposal would be contrary to the public interest.

Particulars:

- (a) Pursuant to Section 4.15(1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*, the subject application should not be approved having regard to concerns raised in the submissions received by Council and the above matters.
- (b) The proposal would be contrary to the public interest as it would provide for further adverse impacts onto surrounding properties. The requirement to provide 26 on-site parking spaces is supported to ensure the proposal adequately provides for on-site parking for staff and customers in accordance with the DCP. Approval of the proposed development is not considered to have proper regard to the amenity and safety of children attending the centre due to the proposed intensification of use on the subject site.

Undesirable Precedent

7. The proposal development would set an undesirable precedent for a similar development in residential areas in relation to child care centres operating with insufficient on-site car parking.

ATTACHMENTS:

There are no supporting documents for this report.

**Lane Cove Local Planning Panel Meeting 05 July 2022
6 MARY STREET LONGUEVILLE**

Subject: 6 Mary Street Longueville
Record No: DA21/122-01 - 68971/21
Division: Environmental Services Division
Author(s): Christopher Shortt

Property:	6 Mary Street Longueville
DA No:	DA122/2021
Date Lodged:	25 August 2021
Cost of Work:	\$1,527,000.00
Owner:	Mrs Laura Valerio
Applicant:	Mrs Laura Valerio

Description of the proposal to appear on determination	Alterations and additions to an existing dwelling house.
Zone	R2 Low 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 1a and 10b
Stop the Clock used	No
Notification	Original proposal notified as per Council's policy. Eleven (11) submissions received. Amended proposal notified as per Council's policy. Ten (10) submissions received.

REASON FOR REFERRAL

The proposal is referred to the Lane Cove Local Planning Panel as more than 10 unique submissions were received as a result of the notification period. The proposal is therefore considered to be a contentious development application.

EXECUTIVE SUMMARY

The proposed development application was lodged on 25th August 2021 for alterations and additions to an existing dwelling house.

Following a meeting between Council and the applicant on 1st December 2021, a number of revisions were made to the design.

On 11th April 2021 amended documents were submitted. The changes included:

- Removal of the 1st floor addition above the garage;

- Reducing the finished floor level of proposed trafficable landscaping terraces adjacent to the proposed pool by 57cm including:
 - Upper lawn terrace from RL 12.31 to RL 11.74;
 - Lower lawn terrace from RL 11.93 to RL 11.36;
 - Pool water level from RL 12.21 to RL 11.64
 - Pool coping level on southern side from RL 10.17 to 9.60
- Additional privacy screens to the level 1 and level 2 balconies on the northern and southern sides;
- Reduced the depth of the balcony to level 2 from 4.7m to 4m from the glazing line;
- Increased the southern setback to level 3 to 3.3m;
- Shift level 3 building towards the eastern boundary;
- Modify the roof form of level 3 from a flat roof to a sloping roof which slopes downward from the western boundary to the eastern boundary. This resulted in the maximum height variation above the 9.5m height control being reduced from 1240mm to 940mm.

The proposal includes a variation to the height standard of 940mm. A clause 4.6 variation statement was submitted to justify the variation and is considered well founded. The design as amended is considered acceptable in this instance and is recommended for approval.

SITE

The site is located on the southern side of Mary Street and is legally known as Lot 3 of Deposited Plan 311198. The site is irregular in shape and has an area of approximately 681.90sqm. The site is close to the intersection of Mary Street and Arabella Street. The site has a narrow street frontage width of approximately 9.1m. The width of the site increases to approximately 12m after a 16m setback from the street frontage.

The site has a steep fall in natural ground level from the northern-most boundary at Mary Street frontage (high point) to the southern-most boundary (low point) of approximately 20m. The site contains a dwelling house which steps down with the slope of the site from the detached garage at the Mary Street. The existing dwelling levels are described as follows:

- Level Mary Street: Double garage and pedestrian entry path;
- Level 2: Central elevated entry terrace area. Entry to dwelling house with 3 x bedrooms, 1 x bathroom and ensuite, kitchenette and rear balcony;
- Level 1: Living room, kitchen, dining room, pantry, powder room, laundry and rear balcony;
- Level 0: Covered alfresco area, pool plant room, bathroom; and
- Lower level: Rear yard/ pool level.

The site is a foreshore property and its southern-most boundary adjoins the Lane Cove River (Yacht bay).

The area surrounding the site is characterized by single dwelling houses. North-east and south-west of the site are dwelling houses at 8 Mary Street and 4 Mary Street. The neighbouring dwelling houses are located closer to the Mary Street frontage as compared to the subject site which is setback 26m from the front boundary. Neighbouring dwelling houses to the south-east at 4 Mary Street and 2 Mary Street are also located on steeply sloping sites and appear as 3 and 4-storey dwellings when viewed from the Lane Cove River.

Further South-East is a strip of bushland reserve leading to the North Shore Rowing Club, the Longueville Aquatic Park and the Longueville Ferry Terminal. West of the site are dwelling houses which front Arabella Street and are orientated perpendicular to the site.



Figure 1: Location Plan.



Figure 2: Mary Street frontage.



Figure 3: Central elevated courtyard and entry to dwelling house at 1st floor.



Figure 4: Eastern elevation of site.



Figure 5: Site viewed from Lane Cove River.

PREVIOUS APPROVALS/HISTORY

A preliminary search of Council records finds no recent development applications associated with the site.

PROPOSAL

The application proposes partial demolition, alterations and additions to an existing split level dwelling house, including new carport, replacement garage, reconfigured swimming pool, landscaping. Internal and external windows and doors.

Works include:

Demolition and Tree Removal: Proposed demolition of centrally located entry terrace, roof of level 2 of dwelling house, rear wall of garage, removal of vegetation including 4 shrubs (Camelia bushes, Lilly Pillys and 1 tree (Western Australian Peppermint).

Alterations and Additions:

Level Mary Street: Demolition of entry stairs a construction of new entry stairs on Council nature strip, new front fence and entry gate, replacement of existing garage roller door, new stone cladding to garage wall, landscaped green roof on garage, rear extension of garage slab/platform by 6.7m to accommodate carport behind existing garage, 1m high safety balustrade at each side, stairs to reconfigured entry path and new landscaping new 1.8, side boundary fence.

Upper Level: Addition of Level 3 to accommodate a master bedroom with ensuite and walk-in robe accessible and vertical circulation (new lift and main stair).

Level 2: Infill of the central terrace to extend the dwelling house forward and accommodate entry foyer, additional bedroom, ensuite, relocated stairs, new passenger lift, extension of rear balcony with privacy screens at each end, replacement of pitched roof with flat roof which would be approximately 1.5m lower.

Level 1: Rear extension of south-east corner to square off the dining room, removal of 4 windows on the north-western elevation and 4 windows on the south-eastern elevation, 3 new window openings on the south eastern elevation, extension of rear balcony with privacy screens at each end, internal changes to accommodate allow open plan kitchen/living and dining room, passenger lift and reconfigured stairs.

Level 0: Raised pool area, 2 x terraced lawn areas stepping down from pool level to lower patio area, structural blade/privacy screens to south-eastern side of existing covered alfresco area, landscaping adjacent to side boundaries with 4 and 8 Mary Street, pool patio.

PROPOSAL DATA/POLICY COMPLIANCE

1. Lane Cove Local Environmental Plan 2009

Control:	Proposal:	Complies:
<p>Zoning: R2 Low Density</p> <p>Objectives:</p> <p><i>To provide for the housing needs of the community within a low-density residential environment.</i></p> <ul style="list-style-type: none"> <i>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>• To retain, where appropriate improve, the existing residential amenity of a detached single-family dwelling area.</i> <i>• To encourage new dwelling houses or extensions of existing dwelling houses that are not highly visible when viewed from the Lane Cove River or Parramatta River.</i> <i>• To ensure that landscaping is maintained and enhanced as a major element in the residential</i> 	<p>Alterations and addition to dwelling house.</p> <ul style="list-style-type: none"> • Provides for housing needs of community in a low-density single dwelling residence; • The application retains existing residential amenity. The proposal complies with solar access controls. Privacy measures have been addressed in the design and via recommended draft conditions. • Alterations to the dwelling would not be highly discernable as compared to the existing building due to reduction of building height of the existing building (1st floor) and proposed upper level significantly set back from level below when viewed from Lane Cove River. • Additional porous areas/vegetation are proposed and would result in a net increase in total landscaped area of approximately 13.97 sqm. Therefore, landscaping is both maintained and enhanced 	<p>Yes</p>

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<i>environment.</i>		
Clause 2.7 Demolition requires development consent.	Consent is sought for the proposed demolition	Yes

LEP Standard	Existing	Original Proposal	Amended Proposal	Control	Complies
Clause 4.4 Floor Space Ratio	0.32:1	0.49:1	0.49:1	0.5:1	Yes
Clause 4.3 Height of Buildings	<p>Existing Level 2 = 11.98m. (pitched roof).</p> <p>Variation of 2.06m or 21.68% above height control.</p>	<p>Proposed Level 2 = 10.78m. (flat roof).</p> <p>Variation of 1.28m or 13.3% above height control.</p> <p>Proposed Upper Level = 10.74m.</p> <p>Variation of 1240mm or 13.1% above height control.</p>	<p>Proposed Level 2 = 10.78m. (flat roof).</p> <p>Variation of 1.28m or 13.3% above height control.</p> <p>Proposed Upper Level = 10.44m.</p> <p>Variation 940mm or 9.9% above height control.</p>	9.5m	<p>No</p> <p>Clause 4.6 variation submitted</p>

Control:	Proposal:	Complies:
Clause 5.9 Preservation of trees or vegetation	<p>Consent is sought for the removal of 4 shrubs and 1 existing tree. An arborist report was submitted and considered acceptable by Council tree officer subject to recommended draft conditions.</p> <p>The application included a landscaping plan which proposed vigorous planting schedule including 2 x 45 litre trees, 13 banksia shrubs among other shrubs grasses and ground covers.</p>	Yes
Clause 5.10 Heritage Conservation	<p>The subject site is located within close proximity to two (2) locally listed heritage items. Refer to Figure 6 below.</p> <ul style="list-style-type: none"> East of the site is a dwelling house at 118 Arabella Street. (item 230); and North side of Mary Street at 31 Mary Street. – wall and entry gates (item 253) <p>The amended design would result in Mary Street frontage remaining as a single storey garage structure. The streetscape would remain the</p>	

same and would not impact wall/gates of 31 Mary Street

The proposed addition would not prevent views to the heritage item at 181 Arabella Street when viewed from the public domain (Lane Cove River). The heritage item at 181 Arabella Street (dwelling house) is located over 20m away from the subject site. The heritage item does not adjoin the subject site. The heritage item is separated by the full length of the rear yard, and two (2) right of footway easements for waterfront access, and mature trees.

The proposed development would have no detrimental impacts on the heritage significance on the items in proximity to the site.



Figure 6: Excerpt Heritage map from Lane Cove LEP.

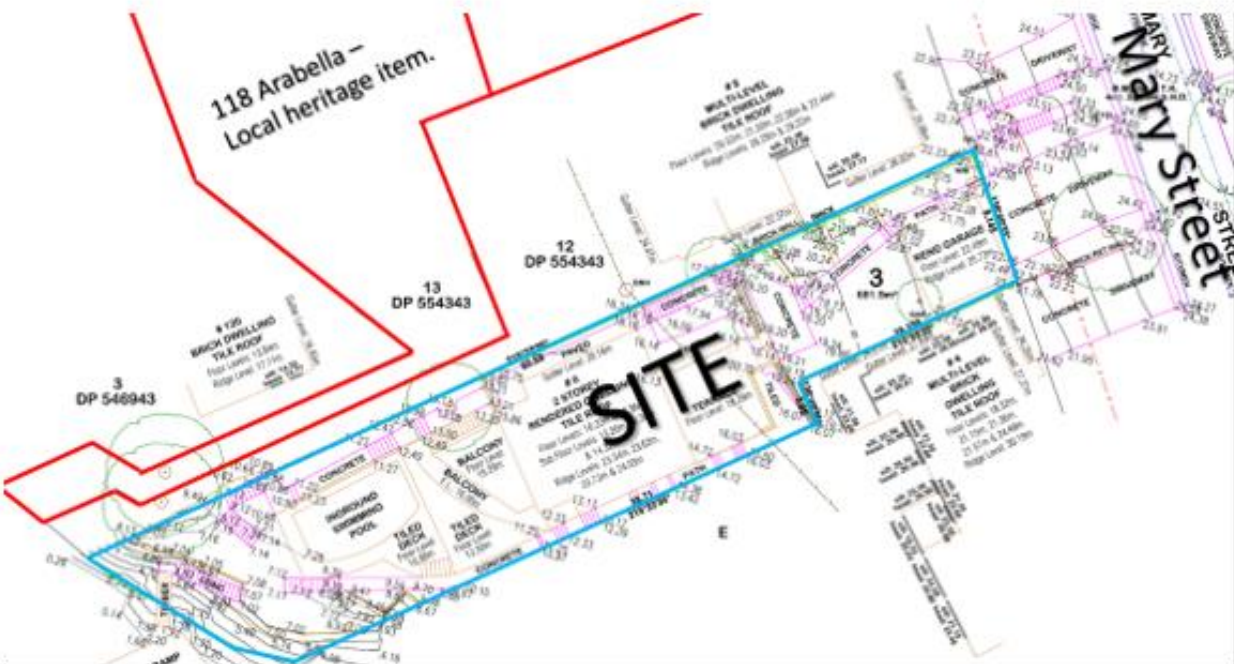


Figure 7: Survey plan and proximity between site boundary (blue) and boundary of 118 Arabella (red).



Figure 8: Arial view with 20.65m separation distance between subject dwelling and heritage item.

Clause 4.3 - Height of Buildings

Building height is defined in the Lane Cove LEP2009 as meaning the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like. Clause 4.3(2) of Lane Cove LEP 2009 states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

A maximum building height of 9.5m applies to the site under LCLEP 2009. The proposed building has a maximum building height of 10.78m at 2nd floor and a maximum building height of 10.44m (940mm or 9.9% variation) to the upper (3rd) floor roof.

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 provided a written request seeking a variation to the development standard with the lodged application. A copy of the request is 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 objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard (First Method established in Wehbe v Pittwater Council [2007] NSW LEC 287).*

Assessment against objectives of the height of buildings standard.

- *The objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard.*
- *The proposed building presents as predominantly within the maximum height of buildings as it presents to the street and is consistent with the desired character of the locality.*
- *The proposal minimises overshadowing, loss of privacy and visual impacts for the neighbouring properties, due to predominantly compliant setbacks.*
- *The proposal maximises solar access for the public domain where the main breaches to the height control is located centrally within the proposed building floorplate and the shadows cast from the variation are demonstrated as being within the shadows of the compliant portions of the building.*
- *The point encroachments are balanced by other parts of the development which are below the height control, particularly at the north-eastern corner, north-western corner and along the western elevation.*

Compliance with the development standard is considered to be unreasonable and unnecessary in the circumstance of the subject proposal. The written request clearly demonstrates that the breaches to height are the result of massing decisions that do not result in any additional impact compared to a compliant scheme. Clause 4.6(3)(a) is considered to be satisfied. The shadow diagrams confirm shadows caused from elements breaching the height control would generally fall onto the Lane Cove River and the roof of the proposed building and not onto windows of habitable rooms of neighbouring properties.

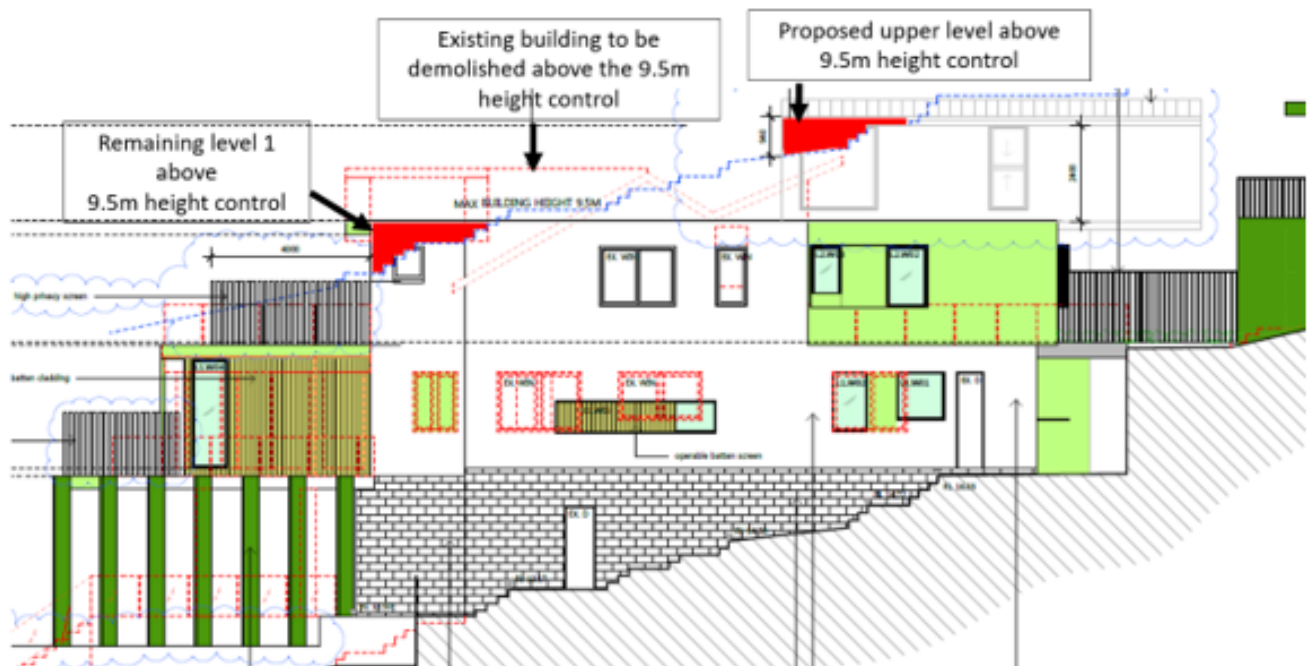


Figure 9: East elevation. Existing and proposed built elements varying the height standard.

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

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 demonstrates that the requirement in Clause 4.6(3)(b) of the LEP 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 argued that:

- *“The variation request to the maximum building height relates to a limited area of the upper wall and roof line of the upper level wall. The breach only occurs in two areas with the maximum variation occurring within the central part of the platform along the south-eastern aspect of the dwelling.*
- *The cross fall of the site from front to rear is in the order of 10m. The slope directly affects and contributes to the height variation. The height non-compliance of the upper sections of the wall and roof line to the upper level is significantly less than the height of the existing wall and roof structures which are sought to be demolished. The extent of the building and roof line over the control is minimal and is far less than the volume of the building under the control.*
- *The density is appropriate for the site given that the proposal complies with the setback and FSR provisions. Whilst the proposal falls short of the minimum landscaping requirements, the proposal seeks to increase the total amount of landscape areas on site and significantly improve*

the amount of usable landscape areas towards the rear with access to the waterfront when compared to the existing. Revised scheme now have a lower finished bond beam and walling adjacent to the neighbours.

- *The re-distribution of the building height across the established building platform better responds to the site conditions. This is achieved through the replacement of high-pitched sections of roof with new contemporary flat roofs which visually blend into the ridgeline landscape, particularly when viewed from the water.*
- *Views to the water by the adjacent properties on the northern side of Mary Street will continue over the top of the garage structure as well as to the east and west of the garage structure. Any view impacts experienced by properties to the north are not the result of height breaches of the upper level as explained in this written variation request and is the result of a height compliant garage.*
- *The extent of the height breaches are minor, with a maximum reduced 2nd floor 1300mm for identified with 940mm at the upper (3rd) level bedroom. Where the variation occurs the wall is set in from the side property boundaries to maintain reasonable views to neighbours. The breach does not result in any significant visual or privacy impacts.*
- *Where new work is proposed, the side setbacks are either compliant or greater than the LCDCP so as to provide a benefit to 4 Mary Street when compared to a LCDCP compliant setbacks. A 3.3m side setback is provided to 4 Mary Street at the upper level that also assists with maintaining views from across the road.*
- *The existing roof line of the dwelling sits some 1.5m higher than the proposed roof line over the second level. The proposal seeks to reduce this height, albeit to a point which would still exceed the maximum height plane. The breach is minor and is isolated to a small portion of the upper level along the south-west section of the site.*
- *The overall bulk, scale and form is compatible with the foreshore setting in which the site is located. The proposal balances the available volume under the height line so that there is more volume under the control than there is over the control. Areas of the dwelling where the maximum height has not been utilised maintains or provides a water view to the neighbours to the east. A water view down the northern side of the dwelling to the Lane Cove River is provided by the proposal and views over the roof are provided to the Lane Cove River and Hunters Hill Peninsular.*

The building massing does not result in unacceptable impacts to the properties to the south. The environmental planning grounds provided are considered satisfactory and supported. Clause 4.6(3)(b) is considered to be satisfied.

3. Consistency with the zone objectives and objectives of the development standard

Development consent cannot be granted to vary a development standard unless the consent authority is satisfied that the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. An assessment against the objectives of building height and the R2 Low Density Residential zone contained within LCLEP 2009 are provided as follows:

General

In relation to the LEP the proposal:-

- is permissible in the R2 zone with consent;

- generally satisfies the relevant objectives of the R2 zone.

(1) Pursuant to Subclause 4.6(4)(a)(ii), the Objectives of the Zone

The proposed development generally satisfies the relevant objectives for the R2 zone because:

To provide for the housing needs of the community within a low density residential environment.

- the single dwelling house is maintained and therefore provides for the housing needs of the community within a low-density residential environment;
- The proposal as amended would improve the residential amenity of the subject site. The proposal as amended would retain the amenity of adjoining residential properties on either side of the site through introduction of screens and recommended draft conditions including high-sill windows;

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

- This objective is not applicable to the subject site which is residential.

To retain, and where appropriate improve, the existing residential amenity of a detached single-family dwelling area.

- The proposal seeks to demolish, alter and add to an existing dwelling. The residential amenity of the area will be retained and where appropriate improves amenity as follows through;
 - The proposal would result in a net increase in the total landscaped area of the site;
 - The existing 1st floor pitched higher roof would be demolished and replaced with a flat roof which would approximately 1.2m lower in height than the existing which would reduce overall bulk and shadow impacts;
 - The proposal would consolidate the existing building with improved amenity addition of lift to allow residents to mobility on a steeply sloping site for the long-term; and
 - Introduction of privacy screens to block direct sightlines between the rear balconies and windows of neighbours.

To encourage new dwelling houses or extensions of existing dwelling houses that are not highly visible when viewed from the Lane Cove River or Parramatta River.

- The site is a foreshore property and is visible from the Lane Cove River. The proposed alteration and additions are not considered to increase visibility as compared to the existing dwelling house due to the following:
 - The existing 1st floor roof would be lowered approximately 1.2m in height and would reduce overall visibility;
 - The proposed upper level would be stepped back approximately 9.4m from the floor below which would reduce its overall perceived bulk as viewed from the Lane Cove River. The building levels be viewed as a stepping down with the steep slope of the site;
 - Changes to the pool and rear yard would not be more visible than the existing. The proposal would result in increased and denser landscaping in the rear yard which would help provide a visual buffer.

To ensure that landscaping is maintained and enhanced as a major element in the residential environment.

The proposal would result in a net increase in the total landscaped area of the site. The existing landscaped area is 206.45sqm which equates to approximately 30.28% of the site.

The proposal would increase the total landscaped area by 13.97sqm or a total of 220.42sqm which equates to a maximum **32.32%**. In this regard the existing landscaping is maintained and enhanced.

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 proposal include shadow diagrams which demonstrate that the proposal would comply with the solar access provisions of the Lane Cove DCP.

- At mid-winter - 9.00am a small amount of additional shadow would fall onto the Lane Cove River;
 - At mid-winter - 12.00 noon a small amount of shadow falls on Lane Cove River, additional shadows falling onto small portion of the rear lawn, the pool terrace and blank walls of the ground floor of 4 Mary Street. The elevational shadow diagrams demonstrate that no shadows fall on 1st floor windows of habitable rooms of 4 Mary Street;
 - At mid-winter 3.00pm a small amount of additional shadow falls on the Lane Cove River, and a section of the rear yard and foreshore area of 2 Mary Street. Additional shadows fall blank walls of the ground floor of 4 Mary Street. The elevational shadow diagrams demonstrate that no shadows fall on 1st floor windows of habitable rooms. Some additional shadow fall on the bushland reserve adjacent to the Longueville Aquatic Park.
- (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable;*

Comment: Currently the rear balconies at 1st and 2nd floor have no screens at either end. These balconies have direct views to windows neighbouring properties at 188 and 120 Arabella Street and to the rear yard of 4 Mary Street. Although the application proposes to increase the area of the balconies, the proposal would increase privacy measures by requiring 1.6m high screens to the ends.

The proposed height variation would not result in any adverse privacy impacts. The largest window of the master bedroom on the proposed upper level would be conditioned to raise the sill height to 1.5m above finished floor level FFL or be obscure/opaque glazing up to 1.5m above FFL.

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

Comment: The solar analysis demonstrates that the proposed development allows for reasonable levels of solar access to the public domain and would not materially impact sunlight within the public domain.

- (d) *to relate development to topography*

Comment: The site is subject to a steep slope towards the foreshore with a 10m change to ground levels. The proposed master bedroom level is largely contained within the 9.5m height limit demonstrating a balancing of the height across the building footprint. The parts of the development which project above the height standard are generally point encroachments on the south east side section of the site where the natural ground level drops away sharply. The breaches are offset by the majority of the development which sits comfortably below the 9.5m height control. The breaches are generally located away from the side boundaries of neighbouring site which minimise overall impacts. It is noted that the proposed design would reduce the overall building height by up to 1.5m on the 1st floor level. The proposal is considered to relate to the natural topography of the site.

Comprehensive DCP

	Proposed	Control	Complies
Front setback (min)	Dwelling house proposed setback 14.9m.	Consistent with area or 7.5m	Yes
Side setback (min)	1 st floor addition (infill of central courtyard):		
	2m setback from northwestern side boundary. 1.5 from south-eastern side boundary	1200mm single-storey	Yes
	Upper level addition: 2m setback from northwestern side boundary 3.2m setback from south-eastern side boundary	1500mm two-storey	Yes
Rear setback (min)	Rear external wall of building approx. 17m from rear boundary.	<1000m ² : 8m or 25%	Yes
Wall Height (max) (max parapet of 600mm)	9.4m	7.0m	No Refer to variations section.
Maximum Ridge height	10.78m	9.5m	No Refer to variations section.
Subfloor height (max)	No change to subfloor height	1.5m	N/A
Number of Storeys (max)	3	2	No

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	Proposed	Control	Complies
			Refer to variations section.
Landscaped area (min) (Minimum width of 1m required to be included in area)	<p>Proposed landscaped area: (220.42 sqm).</p> <p style="text-align: center;">32.32%</p> <p>Existing landscaped area: (206.45sqm) 30.28%</p>	35%	<p>No</p> <p>Refer to variations section.</p>
Foreshore Building Line (min)	<p>The rear building line (external wall) of the dwelling house would not move any closer to the water and remains an average of 17.3m from the rear boundary.</p> <p>The squaring off of balconies are no closer to the rear boundary than the existing overall building as they would not extend as far as the existing alfresco level below. The DCP controls permit decks/stairs within the foreshore setback line.</p> <p>The amended pool would be relocated further away from the water/ rear boundary as compared to the existing location.</p> <p>The only works closer to the water are terraced landscaped lawn areas which are permitted. Refer to Figure 10 below.</p> <p>New works are constructed with</p>	<p>5.14 Building Design and Style within the foreshore setback</p> <p>(b)Structures such as swimming pools, stairs & landings, decks and boathouses may be acceptable within the Foreshore Setback Line subject to the:</p> <ul style="list-style-type: none"> - i. design of the structure being in character with the locality. - ii. height of the structure (excluding boathouses which are to be single storey) being as close as practicable to the ground level (existing) and large unsightly undercroft areas are not created. - iii. use of colours and materials which blend with existing foreshore vegetation and landscape elements, and - iv. minimisation of visual clutter. 	Yes

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	Proposed	Control	Complies
	suitable materials which would be sympathetic to the foreshore context. The works are consolidated and would not result in visual clutter.		
Cut and Fill (max)	No change to cut and fill	1m	N/A
Solar Access	<p>The proposed development would comply with the solar access provisions of the Lane Cove DCP.</p> <p>At 9.00m no shadows fall on neighbouring properties.</p> <p>At 12.00 noon (mid-winter) a small amount of shadow falls on Lane Cove River, additional shadows falling onto small portion of the rear lawn, the pool terrace and blank walls on ground floor of 4 Mary Street. The elevational shadow diagrams demonstrate that no shadows fall on 1st floor windows of habitable rooms;</p> <p>At 3.00pm (mid-winter) a small amount of additional shadow falls on the Lane Cove River, and a section of the rear yard and foreshore area of 2 Mary Street. Additional shadows on fall blank walls on the ground floor of 4 Mary Street.</p>	3 hours to north-facing windows during mid - winter	Yes
Provide for view sharing	The original proposal was modified and the proposed studio above the garage was	a) Where existing views from public spaces are through the gaps between side setbacks	Yes

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	Proposed	Control	Complies
	<p>deleted to ensure views from Mary Street are retained.</p> <p>The existing 1st floor roof pitched roof is proposed to be demolished and replaced by a flat roof which is up to 1.2m lower which reduces the bulk of the existing built structures.</p> <p>An assessment of the proposed development against the tenacity view sharing principles in NSW caselaw is discussed later in this report.</p> <p>The proposal is considered to comply with the provisions for view sharing in the DCP.</p>	<p>of buildings, the length of the building and roof of any proposal should be oriented towards the view in order to minimise view obstruction.</p> <p>b) Existing or potential view corridors to the water from the street are to be protected as public view corridors by ensuring that fencing to the front boundary is open in character.</p> <p>c) Garages and outbuildings are not to be located within the view corridor and the required side setback is to be clear of all built form obstructions. Lightweight carport structures may be considered inside setbacks</p> <p>d) Buildings on steeply sloping sites should adjust the height of the building envelope to follow the natural topography of the site</p> <p>e) To facilitate view sharing for residential developments, flat roofs or low mono -pitched roofs can be used where the design of the building and roof is integrated architecturally and where its appearance would be appropriate given the character of the street.</p>	
Heritage Conservation	<p>The site is in proximity to two heritage items.</p> <p>The amended design</p>	<p>A Heritage Impact Statement is to be prepared as part of any DA for development "in</p>	Yes

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	Proposed	Control	Complies
	<p>would result in Mary Street frontage remaining as a single storey garage structure. The streetscape would remain the same in scale and would not impact the heritage listed wall of 31 Mary Street</p> <p>The proposed addition would not prevent views to the heritage item at 181 Arabella Street when viewed from the public domain (Lane Cove River). The heritage item at 181 Arabella Street (dwelling house) is located over 20m away from the subject site. The heritage item is not considered to be adjacent and does not adjoin the subject site.</p> <p>The proposed development would have no detrimental impacts on the heritage significance on the items in proximity to the site.</p> <p>A separate heritage impact statement is not required in this instance.</p>	the vicinity of a heritage item". "In the vicinity of a heritage item" is to be interpreted as meaning "adjacent to or adjoining" that item	
Deck/Balcony depth (max)	Amended 1 st floor rear deck is 4m in depth	3m	No Refer to variations section.
Private open space	Proposed terraced lawns, and existing alfresco area are greater than 24sqm.	24 m ² (min) 4m minimum depth	Yes

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	Proposed	Control	Complies
Basix	Submitted	Required	Yes

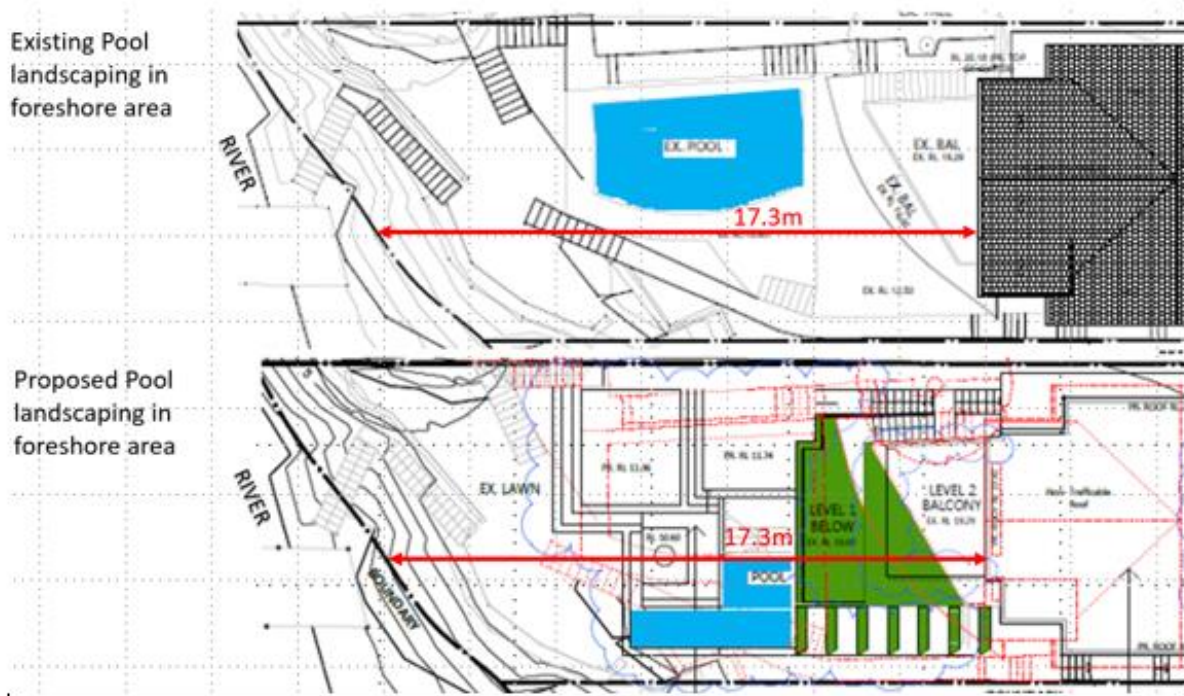


Figure 10: Existing (above) and proposed (below) works within foreshore area of Lane Cove River.

Car Parking

	Proposed	Control	Complies
Off-street spaces (min)	4	Minimum 1 space	Yes
Driveway width	No change to driveway width	3m at the lot boundary	N/A

Carports within the Front Setback & Garages Facing the Street

	Proposed	Control	Complies
% of Allotment Width (garages & carports)	No change to width of existing garage (5.8m)	50% of lot width or 6m, whichever is the lesser	N/A

Private Swimming Pools

	Proposed	Control	Complies
Setback to Neighbour's House (min)	11.7m to nearest neighbour's house at 120 Arabella Street.	3m to waterline	Yes
Setback to boundary (min)	1.3m from waterline to boundary	1m to waterline	Yes
Height (max) (steeply sloping sites)	2m above ground on a steeply sloping site	1.0m 1.8m	No
Setback from boundary if coping is above ground level (existing) (min)	and 1.3m from south eastern boundary.	Coping to be set back at a ratio of 1:1	Refer to variations section.

Fences

	Proposed	Control	Complies
Front fence height (max)	Existing fence to Nil setback is 1.2m in height Proposed fence Proposed fence = 1.5m high solid concrete fence with a setback of nil to 1.2m from front boundary (average setback = 0.51m.	Solid fences: Permitted maximum height of 900mm. Light weight fences: Permitted maximum of 1.2m.	No Draft Condition recommended that proposed fence no higher than existing (1.2m) which exceeds the control by 300mm
Side and rear fences	1.8m	1.8m	Yes

Outbuildings

	Proposed	Control	Complies
	The proposed rear carport extension would have a maximum wall height of 3.1m to the finished floor level, and 5.7m to the carport roof This is primary due to the slope of the land. The carport is setback 2.2m from the western side boundary and 580mm from the eastern side boundary.	(b) Outbuildings shall not exceed one storey up to a maximum of 3.6m in height. The maximum external wall height is 2.4m. (c) Consideration may be given to proposals having a maximum height in excess of 3.6m where the proposal is sited on sloping ground, has a minimum setback of 900mm from the boundaries and Council is satisfied that the proposal will not materially affect the amenity of any adjoining site.	No The maximum wall component wall height below the carport slab is 3.1m which exceeds the control by 0.7m. Part (c) permits for height to exceed 3.6m on sloping ground. Refer to variations section.

View sharing:

An assessment against the *Tenacity Planning Principles 2004* for view sharing from NSW Caselaw are detailed below.

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more*

highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The principles have been primarily assessed against the neighbouring directly west of the site at 8 Mary Street. It is noted the neighbours across the street at 27 Mary, 29 Mary and 31 Mary Street raised concerns in relation to view loss. The amended design which deleted the storage area above the garage is considered to address any view loss concerns. The existing garage would not be increased in height. The proposed carport extension and upper level addition behind the existing garage would sit below its roof height. Other dwellings along the southern side Mary Street have unimpacted southern water views from 1st and 2nd floors.

View loss concerns were also raised by the neighbours at 118 Arabella. Figure 14 shows that the majority of water views would be retained. The dwellings also enjoys views to the south onto the Lane Cove River.

Another neighbour (confidential) expressed concerns that water views and city skyline views would be impacted as a result of the development. A site visit confirmed that city views would not be impacted as a result of the development. The upper level addition would be a maximum roof height of RL25.46 or approximately 1m higher than the gutter of 8 Mary Street (RL 24.47) which would only impact views on the bushland and aquatic park only. All city views above being retained. Beyond this, all existing southern water views are retained. Please refer to Figures 17 and 18.

Principle	Assessment
Principle 1 -Type of views:	<p>The neighbours at 8 Mary Street enjoy water views to the south, south east and south west to the Lane Cove River from the ground floor balcony, family room, dining room and lounge.</p> <p>The neighbours at 8 Mary Street also enjoy south-eastern water views from the bedroom/study above the garage across the side boundary of the subject site. The proposed upper level addition would impact these views. Please refer to Figure 12.</p> <p>The water views are onto the Yacht bay and the Lane Cove River and beyond to Hunters Hill. The views enjoyed are not considered to be iconic Sydney harbour views (e.g. views to the harbour bridge, opera house, Luna Park).</p>
Principle 2 - Where the views are obtained:	<p>Lower Floor: Views are obtained from 1st floor living room and rear balcony across the rear boundary over 120 Arabella Street.</p> <p>Upper Floor: The views from the bedroom/studio above the garage are obtained across the side boundary and through 6 Mary Street. The views are achieved from a standing and sitting positions within the bedroom/study.</p>
Principle 3 - The extent of the impact:	<p>Lower Floor: A site inspection by Council's planner confirmed that the vast majority of views to the south, south-east and south-west to Yacht Bay and the Lane Cove River are retained. From their 1st floor living room and rear balcony southward views across the rear boundary over 120 Arabella Street would not be affected by the proposal other than privacy screens added to the balconies. The section of roof which is proposed to be lowered would allow additional views to Hunters Hill foreshore properties this level. (Refer to Figure 11).</p> <p>Upper Floor: The views which are most significantly impacted are primarily obtained across the side boundary to the south east through 6 Mary Street.</p> <p>The controls state that views across side boundaries are harder to protect. It is an unreasonable expectation that neighbours retain 100% of views across side boundaries.</p>

Principle 4 - Reasonableness of the proposal:

Planning Controls: The part of the proposal which affects views is relates upper level addition.

The with the exception of height, the upper level addition for the master bedroom complies with the relevant planning controls including:

FSR: complies with the FSR control of 0.5:1.

REAR SETBACK: Rear building does not exceed the existing rear setback line.

SIDE SETBACK: complies with the 1.5m side setback control.

HEIGHT: As discussed in the clause 4.6 variation section of this report, a part of the roof of the upper level addition varies the height control. The majority of the upper level is compliant with the 9.5m height control with the exception of a portion of the southern end of the roof.

Principle 4 - Reasonableness of the proposal (continued)

The tenacity principles require that a more skilful design with the same development potential be explored to check if available.

Due to the irregular allotment and shape of the site, the dwelling house is further setback. It is noted that any addition must be designed to not only minimise view loss to 8 Mary Street but also properties across Mary Street at 29-31 Mary and properties to the north west at 118 and 120 Arabella.

Design alternative 1:

A knock down and rebuild of the dwelling and construction of a 9.5m high 2-storey dwelling at the street frontage. The applicant has discussed the impacts of this type of development in the SEE. The street frontage is 9.1m. Including required DCP side setbacks would result in a 6m wide dwelling house. The increase from a single storey garage to a 9.5m high dwelling would significantly impact water views enjoyed by dwelling houses across the street at 29 and 31 Mary. (Refer to Figure 2: photo taken from 31 Mary Street) The original design included a 1st floor above storage area above the garage which was not supported.

Design alternative 2:

Extend the building closer to the waterfront with rear ground floor and 1st floor extension. Council would not support the rear building line being extended closer to the Lane Cove River as this would breach the foreshore setback controls and would also impact water views enjoyed by 8 Mary, 118 Arabella and 120 Arabella.

Proposed design:

The location of the upper level is considered to be the least impactful on view loss to all surrounding residents. It would ensure the street frontage remains as a single-storey garage and would minimise view loss for 118 and 120 Arabella. Some side water views across the side boundary from 8 Mary street would be impacted from the bedroom above the garage. However, water views across the rear boundary of 8 Mary Street would be largely retained.

The original design was modified, and the upper level addition was revised to reduce its impacts to neighbouring properties. The 2.7m high flat roof was reduced to a sloping roof down to 2.4m height. (Refer to Figure 15).



Figure 11: Views to Yacht Bay from deck off the lower floor living room at 8 Mary Street



Figure 12: Views to Yacht Bay from bedroom/study above garage at 8 Mary Street.



Figure 13: Sightline plan of 8 Mary confirming majority of water views are retained.



Figure 14: Views to Yacht Bay from entry level sunroom of 118 Arabella.

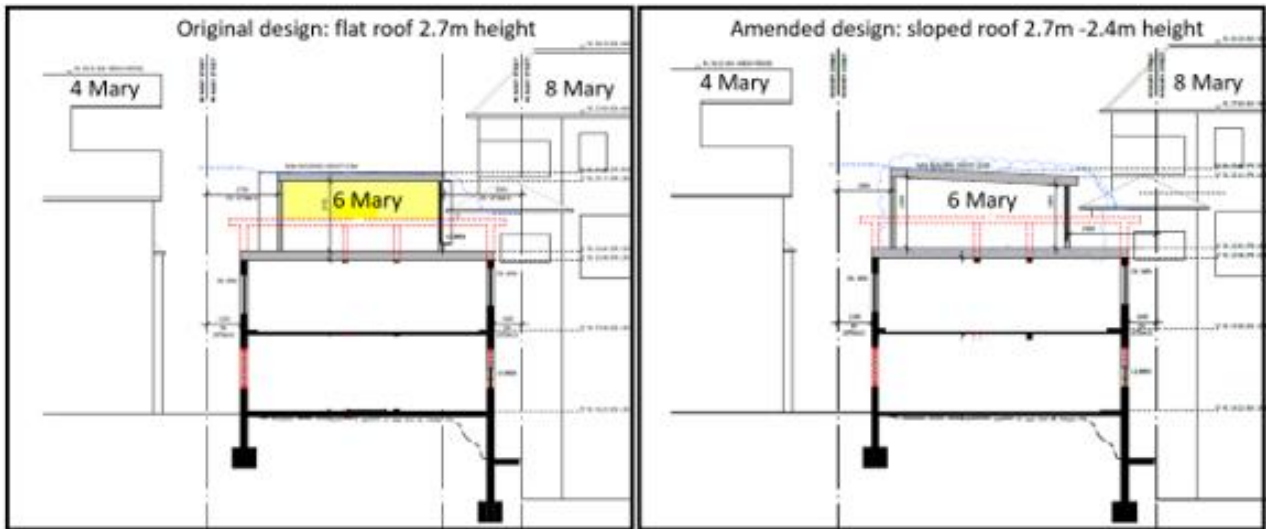


Figure 15: Changes to roof form of upper level addition.



Figure 16: Sightline plan of 10 Mary confirming majority of water views are retained.



Figure 17: Eastern city skyline and water views retained. Upper level addition roof RL 25.46 in yellow.

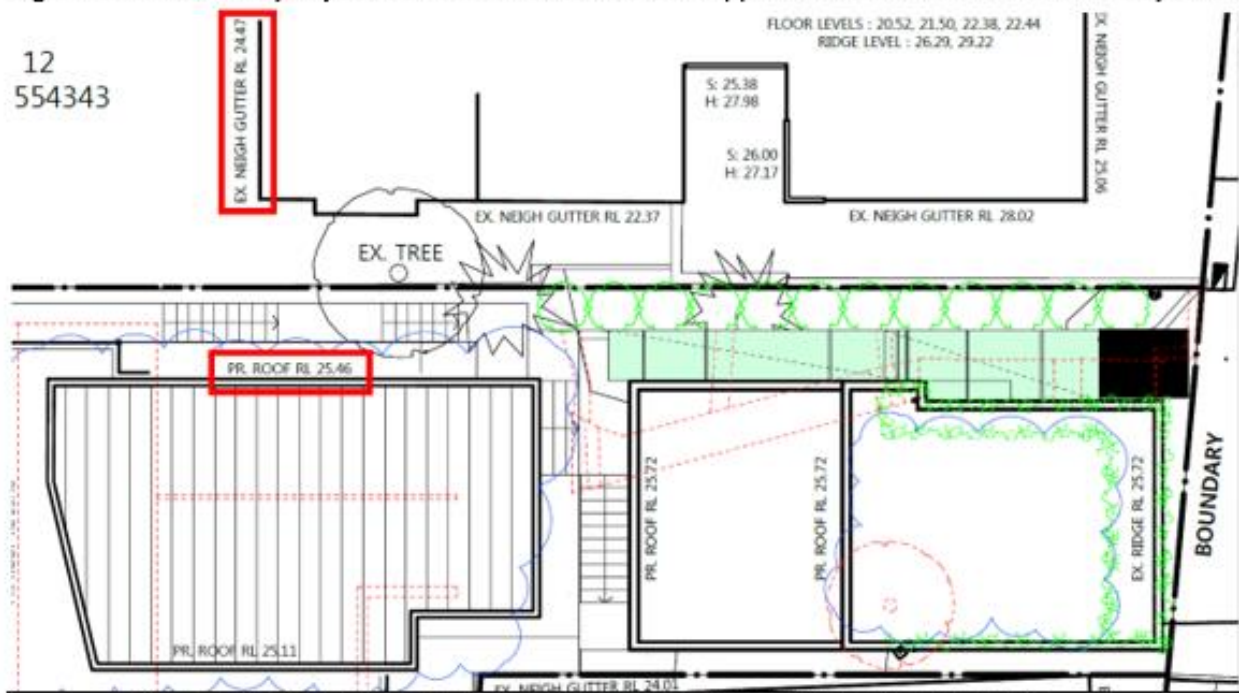


Figure 18: Roof plan with RL of gutter and RL of roof of upper level addition.

REFERRALS

Development Engineer

No objections subject to recommended draft conditions.

Tree Assessment Officer

No objections subject to recommended draft conditions.

Landscaping Officer

No objections subject to recommended draft conditions.

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (Section 79C(1)(a))

The application complies with the Floor Space Ratio controls as required in the Lane Cove Local Environmental Plan 2009.

The application proposes a variation to the height control standard under clause 4.6 which is considered well founded in this instance.

OTHER PLANNING INSTRUMENTS

SEPP 55 Remediation of Land

The subject site and adjoining sites are zoned for residential purposes. Given the types of uses permissible within the residential zones, it is unlikely that the site would be contaminated.

SREP Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005)

The site is located within the Sydney Harbour Catchment area and is therefore subject to the provisions of the SREP.

Clause:	Complies:
Clause 2. Aims of the plan	Yes. The proposed works would ensure the catchment, waterways are protected and enhanced. The works would be within the existing building floor plates, and setbacks from the rear property boundary which are on average approximately 17.3m from rear boundary. The reconfiguration of the existing pool and adjoining yard would be approximately 10m from the mean high-water mark of the foreshore.
Clause 21. Biodiversity, ecology and environmental protection	Yes. The proposed works are minor and would have a neutral effect on the waterway. The works closest to the foreshore relate to the upgrade of an existing pool and would be greater than 10 metres distance away from the foreshore. The proposal would not extend beyond the existing built area.
Clause 22. Public Access to use of foreshores and waterways	Yes. The proposal would not impact on access to the foreshore.
Clause 25. Foreshores	Yes. The proposal would not detrimentally impact the scenic quality of the foreshore and waterways.

	<p>The proposed upper level extension is stepped back from the level below. This would better relate to the natural topography and be located away from the waterfront. The change from a pitched roof to a lower flat roof would reduce the overall height by up to 1.5m of the perceived bulk. The development would be similar in character in scale to neighbouring properties.</p> <p>Overall, the development would have a neutral impact when viewed from The Lane Cove River</p>
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VARIATIONS TO COUNCIL'S CODES/POLICIES (SECTIONS 79C(1)(a), (1)(b), and (1)(c))

The preceding policy assessment table identifies those controls that the proposal does not comply with. Each of the departures is discussed below.

Part C – Section 1.7.1 (a) Wall height, (d) building height, and (e) storey height.

Part C Section 1.7.1 (a) *permits a maximum wall height from the underside of the eaves for any floor above ground level (existing) is 7.0m to minimize bulk and massing.*

The maximum wall height is 9.4m. The non-compliance is acceptable in this instance based on the following:

- The non-compliant wall height is a direct result of the significant fall in natural ground level on site. Due to the steep slope of approximately 20m, the existing maximum wall height of the dwelling house is greater than 10m. The proposal would reduce the wall non-compliance to approximately 9.1m by reconstructing the pitched roof to a flat roof form.
- The proposed upper-storey (level 2) further up the slope would introduce an additional section of non-compliant wall height of 9.4m. However this element would be located adjacent to the neighbouring 3-storey dwellings which also have non-compliant wall heights and are of similar bulk and scale to the proposal;
- The non-compliant wall height does not result in adverse amenity impacts in terms of shadows;
- The non-compliant wall height is located at the rear, is not visible from Mary Street and on a sloping part of the site; and
- There would be no adverse privacy impacts as a result of the proposal subject to recommended draft conditions. New windows in the non-complaint sections have been recommended to be high-sill windows as part of the recommended draft conditions.

Part C Section 1.7.1 (d) *permits the maximum height for a pitched roof house is 9.5m above ground level (existing).*

The maximum building height is 10.78m. The non-compliance is acceptable in this instance based on the following:

- A clause 4.6 variation statement was submitted to justify the non-compliance with the 9.5 height control in the LEP. The arguments raised in the clause 4.6 variation statement are relevant to the non-compliance with the 9.5m DCP control.
- The proposed size and scale as submitted would be consistent with neighbouring dwelling houses in Mary Street;

- The existing non-compliant height of level 1 would actually be reduced by up to 1.2m by modifying the roof form from a pitched roof to a flat roof. Therefore, the proposal would reduce some of the existing bulk and scale impacts.
- The non-compliance does not result in adverse shadow or privacy impacts; and
- The non-compliance is caused in part by the steep slope from the street frontage to the rear of the site.

Part C Section 1.7.1 (e) *permits a maximum of 2-storeys plus basement above ground level (existing). No building will be permitted to have an appearance (in elevation) exceeding three storeys in height.*

The application proposes an upper level addition which results in a part 2-storey and part 3-storey dwelling.

- The proposal would be perceived as single-storey garage when viewed from Mary Street Place, keeping with the character of the streetscape;
- Neighbouring dwellings at 2 Mary Street and 4 Mary Street are 3-storeys in height. (Refer to figure 18 below) The proposal is similar in scale to these properties; and
- The location of the proposed upper floor was modified and stepped- back 9.8m from the floor below. The increased separation results in the proposal better relating to the steep topography of the site and would be less visible when viewed from the Lane Cove River.
- The 3-storey element is limited to a depth of 7.8m and a significant portion of the GFA would be to accommodate vertical circulation (stairs and a passenger lift) to access all levels.
- The majority of the upper level is compliant with the 9.5m height control with the exception of a portion of the southern end of the roof;
- The amended upper level addition would comply with and exceed the required side setbacks. It would have a 2m setback to the north- western boundary and a 3.3m setback to the south-eastern boundary to minimise its visual impact.



Figure 19: Rear elevations of 4 Mary Street and 2 Mary Street (3-and 4storey buildings).

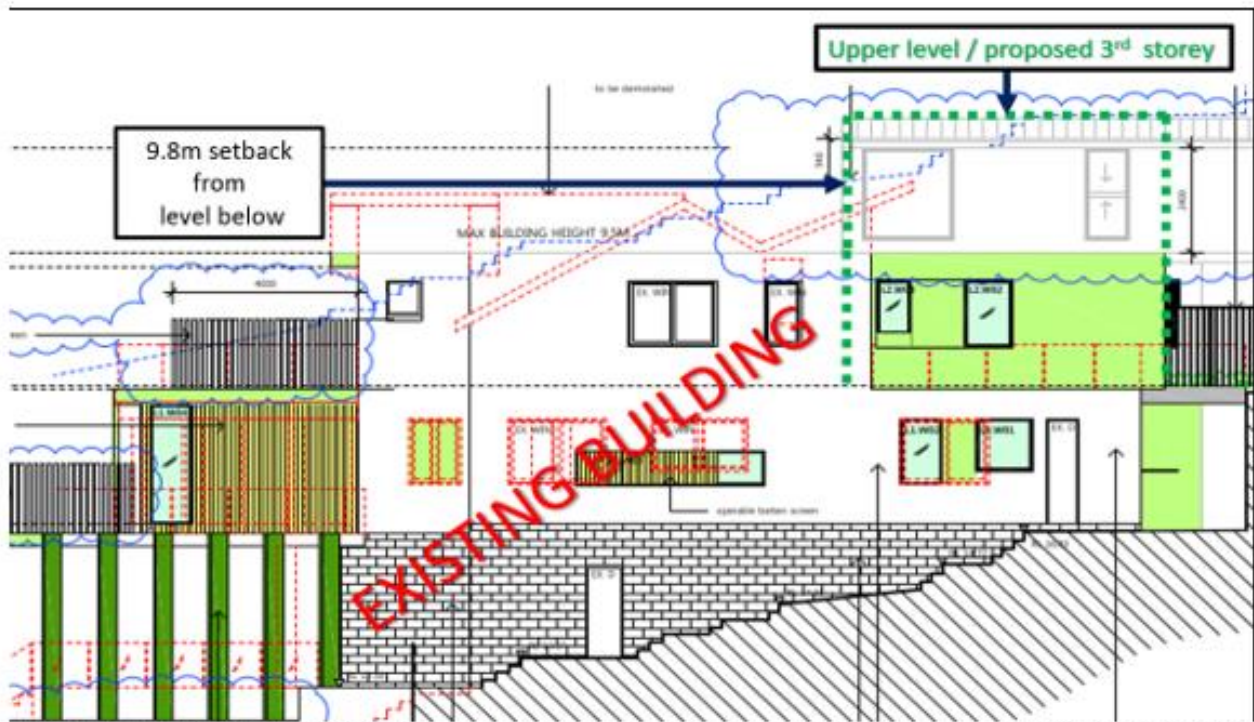


Figure 20: South-eastern elevation Proposed element of upper level which is 3 storeys (green dashed line).

Part C Clause 1.5 (a) Landscaping of the Lane Cove DCP – requires a minimum landscaped area of 35% of the site

The application proposes a total landscaped area of 220.42 sqm or 32.32% of the site. The non-compliance is considered acceptable in this instance for the following reasons:

- The existing total landscaped area is 206.45sqm or 30.28% of the site. The proposal would increase the total amount of landscaped area by 13.97sqm;
- The proposed would remove existing paved path areas and the larger pool patio and replace with terraced lawn areas;
- The net increase of landscape area would improve pervious surface, drainage and the environmental performance of the site;
- The application included a landscaping plan which proposed vigorous planting schedule including 2 x 45 litre trees, 13 banksia shrubs among other shrubs, grasses and ground covers.

Part C - Section 1.8.2 Privacy visual and acoustic (c) of Lane Cove DCP requires *elevated decks and terraces....greater than 1m above ground level (existing) to living areas are not to exceed a maximum depth of 3.0m. Deeper decks may be considered if privacy to adjoining properties is addressed.*

The proposed level 2 rear balcony would be 4m in depth and a maximum of 5.8m above natural ground level. The non-compliance of 1m is considered acceptable in this instance for the following reasons:

- Currently the balcony is angled with a maximum depth of 4.9m at the north-western perimeter and a minimum depth of 1.3m of the south eastern perimeter. The total area of the existing balcony is approximately 19.1sqm. The existing balcony has clear balustrades with no privacy screening;
- The proposal would square off the balcony to a consistent 4m depth. The area of the proposed balcony (19.3 sqm) would be approximately the same as the area of the existing balcony (19.1sqm);
- The proposed balcony would include 1.6m high privacy screens at either end to prevent direct views to neighbouring properties;
- Currently the trafficable area of the balcony is setback approximately 2.8m from the boundary with 4 Mary Street. The revised balcony would set in the balustrade approximately 4m from the boundary of the neighbour at 4 Mary Street ensuring greater separation.
- In light of the above, although not meeting the numerical requirements, the proposal complies with objectives of section 1.8 of the Part C of The DCP and minimises existing overlooking impacts between dwellings.

Part C –Section 1.10.1 Private Swimming Pools (g) of Lane Cove DCP requires *where the coping of the pool is above ground level (existing) then the setback from the lot boundary is to be at a ratio of 1:1 to ensure the raised area of the pool does not impact on the amenity of adjoining neighbours.*

The coping would be maximum of 2m above natural ground level at the adjacent to the south eastern boundary. The proposed pool water line would be 1.3m from the south eastern side boundary. The non-compliance is considered acceptable in this instance based on the following:

- The south-eastern perimeter coping of the pool is narrow and highly non-trafficable area
- Two thirds of the length of the pool coping includes 44cm wide angled full height spaced louvred screens;
- The landscaping plan proposes privacy hedging in the 1m setback from the side boundary fence. The privacy hedging would include 9 wild yellow jasmine shrubs with mature height up to 3m which would act as a vegetative screen;

- It is noted that the existing pool has clear glass balustrades and no vegetation screen and has views onto the rear yard of 4 Mary Street; and
- In light of the above the proposed pool would not result in adverse overlooking impacts. The proposed privacy measures would reduce the existing sightlines to neighbouring properties.

Part C –Section 1.10.3 Outbuildings (b) and (c) of Lane Cove DCP requires *outbuildings shall not exceed one storey up to a maximum of 3.6m in height. The maximum external wall height is 2.4m.*

Consideration may be given to proposals having a maximum height in excess of 3.6m where the proposal is sited on sloping ground, has a minimum setback of 900mm from the boundaries and Council is satisfied that the proposal will not materially affect the amenity of any adjoining site.

The proposed rear carport extension would have a maximum wall height of 3.1m which exceeds the 2.4m control by 700mm.

The maximum height of the carport roof would be 5.7m in height and would have a minimum side setback of 580mm to the eastern side boundary. The required side setback exceeds the setback by 320mm. The variations are supported in this instance because:

- The site is subject to a steep fall. Due to the fall, the existing garage is elevated above natural ground level to allow a flat area for cars to park. The site continues to slope downwards beyond the garage;
- The proposal to extend the rear of the garage slab to accommodate a carport for 2 vehicles is required to be at the same RL level as the garage to comply with AS standards and allow vehicle to safely enter and exit;
- The carport would be open on three sides, located behind and below the garage and would not be visible from the Mary Street frontage;
- The structure would remain single-storey in appearance;
- The 580mm setback of the carport from the eastern boundary follows the existing 580mm setback wall of the garage which aligns with the existing driveway crossover from the street;
- The carport would not result in adverse privacy or shadow impacts to the neighbours either side; and
- The carport would accommodate 2 additional vehicle space to minimise pressure on existing on-street parking in the area.

APPLICABLE REGULATIONS

The Environmental Planning and Assessment Regulation 2000 indicates that the standards for demolition and removal of materials should meet with AS 2601-2001 and therefore any consent will require the application of a relevant condition seeking compliance with the Standard.

RESPONSE TO NOTIFICATION (Section 79C(1)(d))

The original application was notified in accordance with Council's policy and 11 submissions were received. Amended proposal notified as per Council's policy. Ten (10) submissions received.

<u>Submission:</u>	<u>Response:</u>
<u>2 Mary Street</u>	
1. Concerns with visual privacy impacts from upper level windows.	1. The separation between habitable rooms of No. 2 and No. 6 Mary Street is greater than 20m. Beyond this, a draft condition is recommended that upper level windows be amended to be:
2. Concerns with acoustic privacy revised pool and rear balconies.	

<p>3. Concerns with non-compliance with 7m wall height control</p>	<ul style="list-style-type: none"> • 'High sill' windows with a minimum sill height of 1.5m above finished floor level (FFL); or • Frosted glass up to a minimum of 1.5m in height from finished floor level with clear glass permitted above 1.5m. <p>2. The revised level 2 balcony would have a maximum depth of 4m. However, it would be approximately the same area as the existing balcony and would be setback further from the southern boundary than the existing balcony. The non-compliance with section 1.8.2 Privacy visual and acoustic has been discussed earlier in this report. The revised drawings included 1.6m high privacy screens at each end. The level 1 balcony complies with the maximum depth of 3m.</p> <p>3. The non-compliance with the wall height is considered acceptable in this instance. An assessment against section 1.7.1 (a) 'wall height' in the LC DCP has been discussed earlier in this report.</p>
<p>4 <u>Mary Street</u></p> <p>1. Concerns relating to privacy and overlooking from upper level windows facing 4 Mary Street, recommend windows are obscure/opaque up to 1.5m above FFL.</p> <p>2. Concerns with privacy impacts of revised pool area.</p> <p>3. Concerns that flat roof beyond the upper level would be used as a trafficable terrace.</p> <p>4. Concerns with overshadowing of pool/terrace of 4 Mary Street.</p>	<p>1. To address privacy concerns, a draft condition is recommended that upper level windows be amended to be either:</p> <ul style="list-style-type: none"> • 'High sill' windows with a minimum sill height of 1.5m above finished floor level (FFL); or • Frosted glass up to a minimum of 1.5m in height from finished floor level with clear glass permitted above 1.5m. <p>2. The pool and surrounding areas were amended in the revised plans to reduce overlooking concerns. The pool level, coping and terraced garden areas were reduced in height by 57cm. Appropriate landscaping and buffer shrubs are proposed on the south eastern boundary adjacent to the pool to block views. Please refer to the Part C –Section 1.10.1 Private Swimming Pools earlier in this report.</p> <p>3. A draft condition is recommended which prohibits the use of the roof adjacent to</p>

	<p>the upper level master bedroom from being used as a trafficable terrace and that no safety balustrade can be constructed.</p> <p>4. The submitted shadow diagrams confirm that during midwinter- the pool is entirely in shadow from 9.00am to 3.00pm. A small amount of shadow falls on the terrace and lower lawn at 12 noon. Upper level windows receive full sun between 12 noon and 3.00pm. The proposal would not result in unacceptable shadow impacts to 4 Mary Street.</p>
<p><u>8 Mary Street</u></p> <p>1. Concerns of proposed demolition of existing pathway/entry stairs on Council footpath.</p> <p>2. Concerns with non-compliance with 7m wall height control</p> <p>3. Concerns with view impacts to bedroom/studio above garage which is claimed to be primary living space.</p> <p>4. Concerns with the carport extension exceeding 2.4 wall height</p> <p>5. Concerns that the proposal is a 5-storey building with a maximum height of 12m.</p> <p>6. Concerns about solar impacts of proposal.</p>	<p>1. Council does not support the demolition and construction of the pathways. The works are proposed on Council owned land and are not supported. A draft condition is recommending that the works not be approved and be deleted from the plans.</p> <p>2. The non-compliance with the wall height is considered acceptable in this instance. An assessment against section 1.7.1 (a) 'wall height' in the LC DCP is discussed earlier in this report.</p> <p>3. The carport extension has a maximum wall height of 3.1m on a steeply sloping site. The 700mm non-compliance is supported in this instance as it would have no adverse amenity impacts and would not be readily visible from the public way.</p> <p>4. The carport extension has a maximum wall height of 3.1m on a steeply sloping site. The 700mm non-compliance is supported in this instance as it would have no adverse amenity impacts and would not be readily visible from the public way.</p> <p>5. The proposal is a 3 storey building with a maximum height of 10.74m</p> <p>6. No shadows fall on the neighbours at 8 Mary Street.</p>
<p><u>Confidential property</u></p> <p>1. Concerns with loss of water views from</p>	<p>1. The design has been amended and the attic level above the garage deleted. The</p>

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<p>attic / storage addition above garage and the upper level addition.</p> <p>2. Concerns that the SEE should address impacts on Flora and Fauna, the character of Longueville, impacts on neighbours and the Lane Cove River, carbon footprint.</p> <p>3. Concerns with non-compliance with building height control.</p> <p>4. Concerns that the proposal is for a dual occupancy.</p>	<p>majority of water views area retained. In this instance all southern water views are retained. Eastern views to the city skyline would be retained from the balcony rear balcony and kitchen window. Please refer to Figures 17 and 18. It is an unreasonable expectation to retain 100% of views enjoyed including side views across multiple property boundaries. Beyond this 100% of southern water views from living rooms/kitchen, bedrooms and balconies are retained.</p> <p>2. The application is for alterations and addition to a dwelling house. The proposal would increase the total landscaped area, the application included a BASIX certificate which is a mandatory sustainability index requirement. Works are within the existing floorplate area and not in proximity to any indigenous relics. The SEE addressed the impacts of the neighbouring properties as required under part C of the Lane Cove DCP.</p> <p>3. The non-compliance with the height has been addressed in the report and included a clause 4.6 request to vary the height control and has been considered well-founded.</p> <p>4. The proposal relates to alterations and additions to a single dwelling. It is not proposed to be a dual occupancy.</p>
<p><u>27 Mary Street</u></p> <p>1. Concerns with non-compliance with height control.</p> <p>2. Concerns with non-compliance with storage space above garage. Impact on views non-compliance with DCP.</p> <p>3. Concerns that the application proposes a 4-storey building.</p> <p>4. Concerns that the carport roof is trafficable.</p>	<p>1. The non-compliance with the height has been addressed in the report and included a clause 4.6 request to vary the height control and was considered well-founded.</p> <p>2. The design has been amended, and the storage space deleted.</p> <p>3. The application proposes a part 3-storey dwelling. The proposal was assessed against the DCP and was considered acceptable in this instance base on the context of neighbouring 3-storey dwellings. The proposed dwelling would not be 4 storeys.</p> <p>4. A draft condition is recommended which prohibits the use of the carport roof as a</p>

	<p>trafficable terrace and that no safety balustrade can be constructed.</p>
<p><u>29 Mary Street</u></p> <ol style="list-style-type: none"> Submission requests that the garage roof area is not used as a trafficable space. Concerns that the upper level would result in view loss to the Lane Cove River 	<ol style="list-style-type: none"> A draft condition is recommended to be included that the roof is not permitted to be trafficable. The green roof element would be conditioned to be removed. It is noted that no safety balustrade is proposed on the roof, therefore any proposed use of the roof as a trafficable space would not comply with the BCA. The proposed roof of the upper level addition would have a maximum height RL of 25.46 sloping down to RL 25.11. The survey measures the floor levels of the dwelling across the street at 29 Mary Street to be RL 27.39 at ground floor and 30.73m at 1st floor. The sightline diagrams depict a person of average height would be: <ul style="list-style-type: none"> at an eye level of approx. 3.53m above the roof line of the upper level addition when standing at the ground floor porch at an eye level of approx. 7.62m above the roof line of the upper level addition when standing at the 1st floor balcony the proposal as amended which deleted the storage level above the garage is considered to be consistent with the view sharing principals of the Tenacity principal and part B9 of the Lane Cove DCP.
<p><u>31 Mary Street</u></p> <ol style="list-style-type: none"> Impacts relating to view loss of the green roof above the garage and extension of the carport behind. Concerns that the roof over the garage will become trafficable and that the green roof lacks adequate detail and is likely to fail. Concerns about the non-compliant wall height of the carport extension. Concerns with impacts to heritage listed wall. Concerns that no Heritage Impact Statement (HIS) was submitted. 	<ol style="list-style-type: none"> A draft condition is recommended that the proposed green roof above the garage be deleted. A draft condition is recommended to be included that the roof is not permitted to be trafficable. The carport extension has a maximum wall height of 3.1m on a steeply sloping site. The 700mm non-compliance is supported in this instance as it would have no adverse amenity impacts and would not be readily visible from the public way.

<p>4. Concerns with privacy impacts as a result of rear balconies and that neighbours will require extra planting /screening to compensate which will obscure water views.</p> <p>5. Concerns regarding acoustic impacts from increased hard surfaces of the development.</p>	<p>3. The amended proposal resulted in the storage area above the garage being deleted. There are no proposed works which would significantly change the appearance of the site as viewed from Mary Street. The front fence and gate are considered acceptable subject to draft conditions that they be reduced to 1.2m in height. The heritage item at 181 Arabella Street (dwelling house) is located over 20m away from the subject site. The heritage item is not considered to be adjacent and does not adjoin the subject site. The proposed development would have no detrimental impacts on the heritage significance on the items in proximity to the site.</p> <p>4. The balconies have been adequately screened with 1.6m high screens at each end. Council cannot comment on whether any neighbours will install screen planting in the future.</p> <p>5. The proposal would increase the overall net landscaped area (soft surfaces) of the site. The proposal is not considered acceptable on these grounds.</p>
<p><u>118 Arabella Street</u></p> <p>1. Concerns with view loss as a result of the amendments to the rear balconies.</p> <p>2. Concerns with impacts on the primary orientation of the local heritage item.</p> <p>3. Concerns that the extension of the rear balconies would result in adverse privacy impacts.</p>	<p>1. Please refer Figure 14 in the report. The majority of views facing east are fully retained. 118 Arabella also has southern water views which are unaffected by the development.</p> <p>2. The proposal as amended is not considered to have no detrimental impacts to the heritage significance of the 118 Arabella Street. The works are located a significant distance (greater than 20m) away from the property.</p> <p>3. The revised level 2 balcony would have a maximum depth of 4m. However, it would be approximately the same area as the existing balcony and would be setback further from the southern boundary than the existing balcony. The non-compliance with section 1.8.2 Privacy visual and acoustic has been discussed earlier in this report. The revised drawings included 1.6m high privacy screens. The level 1 balcony</p>

	complies with the maximum depth of 3m.
<u>120 Arabella Street</u>	
<ol style="list-style-type: none"> Concerns with the extension of the rear balconies due to bulk and privacy impacts to pool and patio areas. Concern with loss of water views enjoyed from upper level/living rooms and dining rooms, Concern that the proposal will result in adverse shadow impacts at spring and autumn equinox. Concerns loss of solar access loss to pool and patio and sunken courtyard Concerns that the pool and garden will result in overlooking impacts to the pool area. Concerns relating overlooking from alfresco area Concerns that the proposal does not comply with the foreshore building line setback. Concerns that the submitted elevation drawings do not show the subject dwelling house. 	<ol style="list-style-type: none"> The balconies currently have no screens and allow direct views towards windows and outdoor areas of 120 Arabella Street. The extended balconies with 1.6m high screens would prevent direct western views. Due to the orientation between 6 Mary and 120 Arabella, oblique southern views from the balconies are available. The views are considered acceptable in this instance because there is existing and proposed vegetation between the balconies and the neighbouring property at 120 Arabella which would help screen sightlines. The proposed squaring off of the balconies would affect some views facing east. However, all southern water views facing south and some eastern views would be retained from internal and external living areas. The proposal is considered to be consistent with the Tenacity View sharing principles. The planning controls relate to shadow impacts at mid-winter. There is no requirement to demonstrate solar access at autumn and spring solstice. The submitted shadow diagrams demonstrate that no additional shadows fall onto 120 Arabella between 9.00am and 3.00pm at mid-winter. The proposed pool area and terraced landscaped was reduced in height by 57cm. The proposed landscaping plan includes a row 9 of banksias along the western boundary adjacent to the pool and landscaped area. These have a mature height up to 2.5m and would also protect visual privacy. The alfresco area is existing and the DA does not propose to raise the floor height. The proposal is consistent with the controls and objectives for foreshore development. Pools, decks and stairs are permitted within the foreshore setback. The rear building line (external

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wall) of dwelling house remains an average of approximately 17.3m. Please refer to Figure 10 and the table on pages 16 and 17 in this report.

CONCLUSION

The matters in relation to Section 79 C of the Environmental Planning and Assessment Act 1979 have been satisfied.

The application complies with the Floor Space Ratio controls as required in the Lane Cove Local Environmental Plan 2009.

The application proposes a variation to the height control standard under clause 4.6 which is considered well founded in this instance. The shape, orientation and extreme slope of the site result in conditions where flexibility to vary the height control, would result in a better planning outcome..

The proposal generally meets with the Part C Residential Development Objectives in the Lane Cove Development Control Plan subject to some variations which have been justified as having acceptable impacts in the report subject to recommended draft conditions.

The proposal as amended on balance is considered reasonable and therefore is recommended for approval.

RECOMMENDATION

That the Lane Cove Local Planning Panel at its meeting of 5 July 2022, exercising the functions of the Council as the Consent Authority pursuant to Clause 4.16 of the Environmental Planning & Assessment Act 1979 approve a variation to the height prescribed by Clause 4.3 of the Lane Cove Local Environmental Plan 2009, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest as it is consistent with the objectives of that particular standard and the objectives for development within the zone.

That pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979 the Lane Cove Local Planning Panel at its meeting of 5 July 2022, exercising the functions of Council as the consent authority, grant consent to Development Application DA122/21 for alterations and additions to a dwelling house , subject to attached draft conditions.

You are advised that the abovementioned development application has been approved by Council subject to the following conditions:

1. (20) That the development be strictly in accordance with:

Drawing	Prepared by:	Dated:
DA 1.02 Proposed Site plan Rev D	Design Studio Group	30/03/22
DA 2.01 Proposed Garage floor plan Rev D	Design Studio Group	30/03/22
DA 2.02 Proposed Garage	Design Studio Group	30/03/22

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Rev D		
DA 2.03 Proposed Level 2 floor plan Rev D	Design Studio Group	30/03/22
DA 2.04 Rev D	Design Studio Group	30/03/22
DA 2.05 Proposed Level 1 floor plan Rev D	Design Studio Group	30/03/22
DA 2.06 Proposed Level 3 floor plan Rev D	Design Studio Group	30/03/22
DA 2.07 Proposed Roof plan Rev D	Design Studio Group	30/03/22
DA 3.01 Proposed Mary St & East elevation Rev D	Design Studio Group	30/03/22
DA 3.03 Proposed South elevation - J Rev D	Design Studio Group	30/03/22
DA 3.04 Proposed South elevation - K Rev D	Design Studio Group	30/03/22
DA 3.06 Proposed West elevation Rev D	Design Studio Group	30/03/22
DA 3.09 Proposed North elevation - N Rev D	Design Studio Group	30/03/22
DA 3.10 Proposed North elevation - P Rev D	Design Studio Group	30/03/22
DA 4.01 Proposed Section AA Rev D	Design Studio Group	30/03/22
DA 4.03 Proposed Section BB - X Rev D	Design Studio Group	30/03/22
DA 4.04 Proposed Section BB Y Rev D	Design Studio Group	30/03/22
DA-10 (A1) Rev B Landscape Masterplan	Landart	16/03/22

except as amended by the following conditions.

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

2. The following changes are to be shown on amended architectural plans for approval by the Principle Certifying Authority (PCA) prior to the issue of an amended construction certificate.
- (i) The proposed demolition of the existing walkway and construction of new walkway at the Mary Street frontage is not approved and is to be deleted from the plans. No works are permitted in the Council owned land within the front setback.
 - (ii) The proposed front fence is to be reduced to a maximum height of 1.2m above existing ground level.
 - (iii) Windows L1. W04, and the two upper level windows on the southern elevation plan are required to be amended to be either:
 - High sill' windows with a minimum sill height of 1.5m above finished floor level (FFL); or
 - Frosted glass up to a minimum of 1.5m in height from finished floor level with clear glass permitted above 1.5m.

Reason: Design changes required for safety and amenity.

3. The roof above the garage/carport and the roof adjacent to the upper level master bedroom are prohibited from being used as trafficable terraces. No balustrades are permitted to be erected on either of these roofs. The proposed green roof landscaping above the garage/carport is not supported and is to be deleted from the plan.

Reason: Privacy and amenity.

4. (1) The submission of a Construction Certificate and its issue by Council or Principal Certifier PRIOR TO CONSTRUCTION WORK commencing.

Reason: Ensures the detailed construction plans and specifications comply with the requirements of the Building Code of Australia (BCA) and any relevant Australian Standard.

5. (2) All building works are required to be carried out in accordance with the provisions of the Building Code of Australia.

Reason: Statutory requirement.

6. (11) The approved plans must be submitted to Sydney Water online approval portal "Sydney Water Tap In", please refer to web site www.sydneywater.com.au. This is to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. An approval receipt with conditions shall be issued by Sydney Water (if determined to be satisfactory) and is to be submitted to the accredited certifier prior to the issue of a Construction Certificate.

Reason: Statutory requirement.

7. (12) Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home Building Act 1989 whereby a person must not contract to do any residential

building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council or the Principal Certifier (PC) that they have complied with the applicable requirements of Part 6. **Council as the PC will not release the Construction Certificate until evidence of Home Owners Warranty Insurance or an owner builder permit is submitted.** THE ABOVE CONDITION DOES NOT APPLY TO COMMERCIAL/INDUSTRIAL CONSTRUCTION, OWNER BUILDER WORKS LESS THAN \$5000 OR CONSTRUCTION WORKS LESS THAN \$20,000.

Reason: Statutory requirement.

8. (17) An Occupation Certificate being obtained from the Principal Certifier before the occupation of the building.

Reason: To ensure all works have been completed in accordance with the development consent conditions, approved plans and the Building Code of Australia.

9. (35) All demolition, building construction work, including earthworks, deliveries of building materials to and from the site to be restricted to the following hours:-

Monday to Friday (inclusive)	7.00am to 5.30pm
Saturday	7.00am to 4.00pm
No work to be carried out on Sundays or any public holidays.	

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.

Reason: To ensure reasonable amenity is maintained to the neighbouring properties.

10. (36) Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, battle-axe driveway; natural watercourse, footpath, kerb or roadside.

Reason: To protect the environment and public amenity.

11. (37) The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise.

Reason: To protect the environment and public amenity.

12. (48) Depositing or storage of builder's materials on the footpath, battle-axe driveway or roadways within the Municipality without first obtaining approval of Council is PROHIBITED.

Separate approval must be obtained from Council's Works and Urban Services Department PRIOR TO THE PLACEMENT of any building waste container ("Skip") in a public place.

Reason: To protect the environment and public amenity.

13. (49) Prior to the commencement of any construction work associated with the development, the Applicant shall erect a sign(s) at the construction site and in a prominent position at the site boundary where the sign can be viewed from the nearest

public place. The sign(s) shall indicate:

- a) the name, address and telephone number of the Principal Certifier;
- b) the name of the person in charge of the construction site and telephone number at which that person may be contacted outside working hours; and
- c) a statement that unauthorised entry to the construction site is prohibited.

The signs shall be maintained for the duration of construction works.

Reason: To ensure public safety and public information.

14. (50) The cleaning out of ready-mix concrete trucks, wheelbarrows and the like into Council's gutter is PROHIBITED.

Reason: To protect the environment.

15. (52) The swimming pool being surrounded by a fence:-

- a) That forms a barrier between the swimming pool; and
 - i) any residential building or movable dwelling situated on the premises; and
 - ii) any place (whether public or private) adjacent to or adjoining the premises; and
- b) That is designed, constructed and installed in accordance with the standards as prescribed by the Regulations under the Swimming Pool Act, 1992, and the Australian Standard AS1926 – 2012, "Swimming Pool Safety".

SUCH FENCE IS TO BE COMPLETED BEFORE THE FILLING OF THE SWIMMING POOL.

ADVICE: In accordance with the Swimming Pools Amendment Act 2012, the swimming pool or spa is required to be registered on the NSW Government State wide Swimming Pool Register when completed.

The register can be found at www.swimmingpoolregister.nsw.gov.au.

Reason: Statutory requirement.

16. (53) The filter and pump being located in a position where it will create no noise nuisance at any time or, alternatively, being enclosed in an approved soundproof enclosure. The pool filter and pump is to be stored outside the tree protection zone of adjoining trees. If noise generated as a result of the development results in an offensive noise Council, may prohibit the use of the unit, under the provisions of the Protection of the Environment Operations Act 1997.

Reason: Statutory requirement.

17. (54) In accordance with the requirements of the Swimming Pools Act 1992 and Regulations thereunder a warning notice is to be displayed in a prominent position in the immediate vicinity of the swimming pool at all times.

The notice must be in accordance with the standards of the Australian Resuscitation Council for instructional posters and resuscitation techniques and must contain a warning "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL".

Reason: Statutory requirement.

18. (55) Fibrecrete Swimming Pool Shell being constructed in accordance with AS.2783-1985 "Concrete Swimming Pool Code, AS 3600-1988 - "Concrete Structure" and "AW1 Fibresteel Technical Manual, November 1981".

Reason: To ensure compliance with the Australian Standards.

19. Standard Condition (56) Where Lane Cove Council is appointed as the Principal Certifier, it will be necessary to book an inspection for each of the following stages during the construction process. Forty eight (48) hours' notice must be given prior to the inspection being required:-

- a) The pier holes/pads before filling with concrete.
- b) All reinforcement prior to filling with concrete.
- c) The dampcourse level, ant capping, anchorage and floor framing before the floor material is laid.
- d) Framework including roof and floor members when completed and prior to covering.
- e) Installation of steel beams and columns prior to covering.
- f) Waterproofing of wet areas.
- g) Pool reinforcement prior to placement of concrete.
- h) The swimming pool safety fence and the provision of the resuscitation poster prior to filling of the pool with water.
- i) Stormwater drainage lines prior to backfilling.
- k) Completion.

Reason: Statutory requirement.

20. Standard Condition (57) Structural Engineer's details being submitted PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE for the following:-

- a) underpinning;
- b) retaining walls;
- c) footings;
- d) reinforced concrete work;
- e) structural steelwork;
- f) upper level floor framing;

Reason: Statutory requirement.

21. (58) Structural Engineer's Certificate being submitted certifying that existing building is capable of carrying the additional loads. Such Certificate being submitted PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE.

Reason: To ensure structural adequacy.

22. (63) All metal deck roofs being of a ribbed metal profile, in a mid-colour range with an anti-glare finish. The intent of the condition is to reduce sun reflection and glare to protect the amenity of the surrounding residents.

Reason: To protect residential amenity.

23. Standard Condition (64) A check survey certificate is to be submitted at the completion of:-

- a) Dampcourse level;
- b) The establishment of the first-floor level;
- c) The roof framing; and
- d) The completion of works.

Note: All levels are to relate to the reduced levels as noted on the approved architectural plans and should be cross-referenced to Australian Height Datum.

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

24. (66) The removal, handling and disposal of asbestos from building sites being carried out in accordance with the requirements of the Occupational Health and Safety Act and the Regulations. Details of the method of removal to be submitted PRIOR TO COMMENCING ANY DEMOLITION WORKS.

Reason: To ensure public safety.

25. (72) The demolition works being confined within the boundaries of the site.

Reason: To ensure compliance with the determination and public safety.

26. (77) All spillage deposited on the footpaths or roadways to be removed at the completion of each day's work.

Reason: To ensure public safety.

27. (78) The site being properly fenced to prevent access of unauthorised persons outside of working hours.

Reason: To comply with Work Health and Safety Regulations and ensure public safety.

28. (79) Compliance with Australian Standard 2601 - The Demolition of Structures.

Reason: To ensure compliance with the Australian Standards.

29. (130) Compliance with the Waste Management Plan submitted along with the application.

Reason: To protect the surrounding environment.

30. (132) It should be understood that this consent in no way relieves the owners or applicant from any obligation to obtain any other approval which may be required under any covenant affecting the land or otherwise nor relieve a person from the legal civil consequences of not complying with any such covenant.

Reason: To ensure all works are carried out lawfully.

31. (141) **Long Service Levy** Compliance with Section 6.8 of the *Environmental Planning and Assessment Act 1979*; payment of the Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or, where such a levy is payable by instalments, the first instalment of the levy) – All building works in excess of \$25,000 are subject to the payment of a Long Service Levy at the rate of 0.35%.

COMPLIANCE WITH THE REQUIREMENTS OF THIS CONDITION MUST BE SATISFIED **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE.**

Reason: To ensure the levy is paid.

32. (142) **BASIX** - Compliance with all the conditions of the BASIX Certificate lodged with Council as part of this application.

Reason: Statutory requirement.

ENGINEERING CONDITIONS:

33. **(A1) 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

34. **(A2) 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

35. **(A3) 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

36. **(A4) 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

37. **(A5) 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

38. **(A6) 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

39. **(A7) 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

40. **(A8) 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

41. **(A9) Services:** Prior to any 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

Engineering conditions to be complied with prior to Construction Certificate

42. **(B1) Council Infrastructure Damage Bond:** The applicant shall lodge with Council a \$3000 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

43. **(D2) Drainage Plans Amendments:** The stormwater drainage plan prepared by itm design, reference No: 18/267, revision A and dated on 30/07/21 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. 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.
2. A rainwater tank shall be included into storm water management plan as per Basix certificate.
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. Seepage agg line drainage line is required in upstream of the dwelling and connected to proposed drainage 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. Council does not support pipe lines underneath of any part of the buildings including garage and carport except seepage agg-line system.

The amended design is to be certified that it fully complies with, AS-3500 and Part O of 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 of Council's DCP

44. **(D3) 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

45. **(R1) Rainwater Reuse Tanks:** The proposed rainwater tank is required as per BASIX certificate and 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.
- Hydraulic calculation prepared by qualified engineer for charged pipe system draining to rainwater tank and submitted to Council
- Installation of rainwater tank shall be accordance with section O6 of part O of Council DCP.

Reason: To comply with Basix/Council's requirements and satisfy hydraulically

46. **(T1) 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

47. **(T2) Design of Pool Structure:** The proposed concrete pool is 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 structural stability and the proposed design is in accordance and comply with Australian Standard

48. **(F4) Overland Flow, Pool Damage:** Council accepts no liability for any damage to the pool as a result of overland flows or high tide inundation. The property owner shall submit written acceptance of liability of any damages **prior to the issue of the Construction Certificate.**

Reason: To ensure Council accepted stormwater management around the pool

49. **(W1) Pool Construction:** The pool design shall ensure that either during construction or upon completion, surface water is not be directed or diverted so as to have an adverse impact upon adjoining properties.

Council accepts no liability for any damage to the pool as a result of overland flows or high tide inundation. The property owner shall submit written acceptance of liability of any damages **prior to the issue of the Construction Certificate.**

Reason: To ensure Council accepted stormwater management around the pool

50. **(W2) Pool Construction Stormwater:** The stormwater runoff from the new impervious areas surrounding the pool shall be connected to the existing drainage system [OR] the proposed drainage system in accordance with the requirements of Lane Cove Council's DCP Stormwater Management.

The existing stormwater system is to be certified that it is in good working order and meets the requirements set out in Council's DCP-Stormwater Management. The certification is to be carried out by a fully licensed and insured plumber or a suitably qualified engineer **prior to the issue of the Construction Certificate.** Where an existing element does not comply with current standards the subject element is to be replaced.

Where the existing system does not comply with Council's DCP-Stormwater management a drainage design is required. The stormwater drainage plan is to be prepared and certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of the construction certificate. The design is to be certified that it fully complies with, AS-3500 and Council's DCP-Stormwater Management.

Reason: To ensure Council accepted stormwater management around the pool

Engineering condition to be complied with prior to commencement of construction

51. **(C2) Erosion and Sediment Control:** The applicant shall install appropriate sediment control devices **prior to the start of any works on the site.** The devices shall be maintained during the construction period and replaced when necessary.

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

52. **(D7) Safety fence along the boundary of the property:** Before commencement of any works, barrier or temporary fencing is to be provided along the full frontage of the property. This fence is for the safety of pedestrians on the public footpath.

Reason: To ensure safety of road and footpath users

Engineering condition to be complied with prior to Occupation Certificate

53. **(D6) 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

54. **(M2) Certificate of Satisfactory Completion:** Certificates from a registered and licensed Plumber must be obtained for the following matters. The plumber is to provide a copy of their registration papers with the certificate. The relevant Certificates are to be submitted to the Principal Certifying Authority **prior to issue of any Occupation Certificate.**

- Confirming that the site drainage system has been constructed in accordance with the relevant Australian Standards and Council's DCP-Stormwater Management.

Reason: To ensure stormwater infrastructure is in accordance with Australian Standards and Council's requirements

55. **(M3) 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.

- Swimming Pool

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

Reason: Statutory requirement

LANDSCAPING CONDITIONS

56. **Tree Replacement Ratio**

Any tree that is removed by the applicant must be replaced at a 1:1 ratio and clearly depicted on the landscape plans. The replacement trees must be a species that is able to reach the mature height and spread of the removed trees.

Five trees are proposed to be removed as part of the development onsite. Two of the proposed trees are excluded from Lane Cove Council's Tree Preservation Order. Therefore at least 3 trees are needed to be nominated on the landscape plans for replacement of trees 2, 3 and 7.

The Landscape Plans will need to be amended to show the Arboricultural report information (assigned tree numbers, species etc.) and to nominate proposed replacement trees that are able to reach the mature height and spread of the approved removed trees.

The Landscape plans must be amended to show this information and sent to Council's Landscape Architect Prior to issue of Construction Certificate.

Reason: Landscaping requirements.

57. Pool Area

The *Cyathea australis* proposed to be planted on the Southern edge of the 'Poolside Area' should be moved to a different location as to not be within the 900mm climbable area of the pool fence in order to comply with AS1926.1-2012.

The 'Poolside Area' also needs further clarification as to whether it is a tiled area or lawn area as currently the drawings are depicting it as both options.

The Landscape plans must be amended to show this information and sent to Council's Landscape Architect Prior to issue of Construction Certificate.

Reason: Landscaping requirements.

TREE CONDITIONS

58. Lane Cove Council regulates the Preservation of Trees and Vegetation in the 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 any 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.

Reason: To protect the natural environment.

59. A Project Arborist of minimal AQF Level 5 qualification is to be appointed **prior to the issue of the Construction Certificate** to oversee/monitor trees condition during construction and sign off on tree protection measures. Trees are to be monitored throughout construction and a certificate produced upon completion demonstrating the trees have been maintained in a viable condition. All certificates are to be available to the Principal Certifier within five days of site attendance and must be available to council immediately upon request; failure to produce the latest certificate will be considered a breach of conditions. Final certification is to be submitted to the Principal Certifier **prior to the issue of Occupation Certificate**. The reason is to provide professional and independent management advice on retained trees during the development phases.

Reason: To provide an independent professional to manage retained trees on site.

60. All landscape documentation and civil drawings are to be updated to reflect the proposed removals and retentions identified in the Arborist Report prepared by Naturally Trees dated 7/07/2021 **prior to the issue of the Construction Certificate**.

Reason: To maintain consistency between documents.

61. All stormwater and drainage plans are to be assessed and approved by the project Arborist confirming no additional trees are to be removed as a result of the installation of storm water infrastructure. Written approval of drainage plans is to be submitted to the Principal

Certifier **Prior to the issue of the Construction Certificate.**

Reason: To minimize the development impact on trees.

62. Lane Cove Council regulates the Preservation of Trees and Vegetation in the 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 any 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.

Reason: To protect the natural environment.

63. Approval is granted for the removal of trees located on and adjoining the site strictly in accordance with the Arborist report prepared by Naturally Trees dated 7/07/2021, page 15 (Appendix 2). All other trees are to be retained and protected for the life of the development.

Reason: Trees will be subject to intolerable levels of development impact.

64. Replacement trees are to be installed strictly in accordance with the Landscape Development Application Report prepared by Land Art, Dated 15/05/21.

Reason: To provide replenishment planting for trees removed through the development process.

65. Retained trees are to be protected in accordance with the Tree Protection Specifications contained within the Arborist report prepared by Naturally Trees dated 07/07/2021, Appendix 2. All tree protection measures are to be included in the construction management plans and be available to all contractors on site. Tree protection is to be installed **prior to the issue of the Construction Certificate.**

Reason: To protect the natural environment.

66. A Project Arborist of minimal AQF Level 5 qualification is to be appointed **prior to the issue of the Construction Certificate** to oversee/monitor trees condition during construction and sign off on tree protection measures. Trees are to be monitored throughout construction and a certificate produced upon completion demonstrating the trees have been maintained in good condition. All certificates are to be available to the Principal Certifier within five days of site attendance and must be available to council immediately upon request; failure to produce the latest certificate will be considered a breach of conditions. Final certification is to be submitted to the Principal Certifier **prior to the issue of Occupation Certificate.**

Reason: To provide monitoring to retained trees to minimise development impact.

67. The Project Arborist is to attend the site **prior to the removal of any trees** and mark each tree approved for removal with coloured spray paint.

Reason: To ensure no trees to be retained are damaged or removed.

68. The project Arborist is to attend site to inspect trees and at the following intervals. Each

attendance is to be followed with written certification submitted to the Principal Certifier within five days of attendance.

- a. Prior to the commencement of any works to mark approved trees for removal.
- b. Prior to the commencement of works to approve tree protective measures have been installed.
- c. During the demolition of any structures within the TPZ area of retained trees.
- d. During the installation of structures approved within the TPZ area of any retained tree.
- e. Prior to and during the installation of services where required within the TPZ area of retained trees.
- f. Monthly intervals during the development works.
- g. Upon the completion of the development prior to the Occupation Certificate.

Reason: To provide monitoring to retained trees to minimise development impact.

69. No services or structures are to be located within the Structural Root Zones of any retained trees.

Reason: To minimise the development impact on retained trees.

70. No level changes greater than 150 millimetres are to occur within the Tree protection Zones of any retained trees unless approved in writing by the project Arborist.

Reason: To minimise development impacts on retained trees.

71. Footing, trench or excavation that is within the Tree protection Zone of any retained trees must be carried out under the guidance of the Project Arborist and using non-destructive techniques. No tree roots greater than 40mm diameter to be pruned unless approved by the Project Arborist. All roots are to be pruned and documented by the Project Arborist then submitted with the final certificate of compliance upon completion of the project. **Prior to the issue of Occupation Certificate.** Once Complete and roots have been pruned clear of the area, civil machinery may resume excavation from outside of the tree protection zone.

Reason: To minimise the development impact on retained trees.

72. The Project Arborist is to submit a statement upon completion of the development that all retained trees have been maintained in a healthy, viable condition. The statement is also to recommend remedial advice for trees post construction to mitigate construction impacts long term. The statement is to be submitted to and approved by the Principal Certifier **Prior to the issue of the Occupation Certificate.**

Reason: To provide monitoring to retained trees to minimise development impact.

73. All proposed footpaths are to be installed under the guidance of the project Arborist where located within the Tree Protection Zones of retained trees. No tree roots equal to or greater than 40 millimetres in diameter are to be damaged or severed unless approved by the Arborist it will be of no detriment to the tree.

Reason: To minimise development impact on retained trees.

74. Pursuant to Section 80A(6)(a) and (7) of the Environmental Planning and Assessment Act 1979, the applicant must, prior to the issue of the construction certificate, provide security in the amount of \$50,000 (by way of cash deposit with the Council, or a guarantee satisfactory to the Council) for the payment of the cost of making good any damage caused, as a

consequence of the doing of anything to which this development consent relates, to all trees that are standing in the public reserves immediately adjoining the land subject of this development consent. This bond may be forfeited in the event of damages to any of these trees because of the development works as determined by Council's Tree Management Officer, at a minimum the cost of replacing the tree including labour will be deducted from the bond. The applicant shall contact Council to have the street tree inspected following issue of the Occupation Certificate.

Reason: To protect the natural environment.

ATTACHMENTS:

There are no supporting documents for this report.