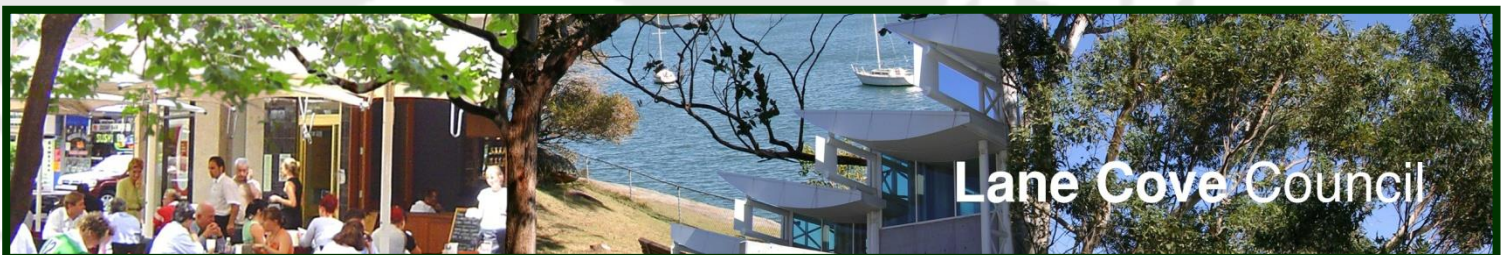


Agenda  
Lane Cove Local Planning Panel Meeting  
19 February 2025



## 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 Wednesday 19 February 2025 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 Ms Jan Murrell or alternate Chairs. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Local Planning Panel Charter 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. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. 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.

Minutes of LCLPP meetings are published on Council's website [www.lanecove.nsw.gov.au](http://www.lanecove.nsw.gov.au) as soon as possible 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 audio of members of the public that speak during the meeting. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

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

**DECLARATIONS OF INTEREST**

**APOLOGIES**

**NOTICE OF WEBCASTING OF MEETING**

**LANE COVE LOCAL PLANNING PANEL REPORTS**

**1. 36 - 38 DUNOIS STREET, LONGUEVILLE..... 4**

**Lane Cove Local Planning Panel 19 February 2025  
36 - 38 DUNOIS STREET, LONGUEVILLE**

**Subject:** 36 - 38 Dunois Street, Longueville  
**Record No:** DA24/157-01 - 3764/25  
**Division:** Planning and Sustainability Division  
**Author(s):** Sam Wilson

**PROPOSAL**

Property:	36 – 38 Dunois Street, Longueville
DA No:	DA157/2024
Date Lodged:	20/01/2025
Cost of Work:	\$1,800,000.00 (EDC \$2,721,750.00)
Owner:	SBM Homes Pty Ltd
Applicant:	Sam Semaan

Description of the proposal to appear on determination	The subdivision of two lots and the construction of two 3-storey detached dwelling houses including new driveway crossovers, internal garages, and in-ground swimming pools.
Zone	R2 Low Density Residential
Is the proposal permissible within the zone	No – the amalgamation of the two lots and consequent subdivision would result in two undersized lots below the minimum area requirement of 550m <sup>2</sup> .
Is the property a heritage item	No – However the property is adjacent to a heritage item I279 at 101 William Edward Street.
Is the property within a conservation area	No
Does the property adjoin bushland	No
BCA Classification	Class 1a and 10b
Stop the Clock used	No
Notification	Notified in accordance with Council's policies and (5) submissions were received.

**EXECUTIVE SUMMARY**

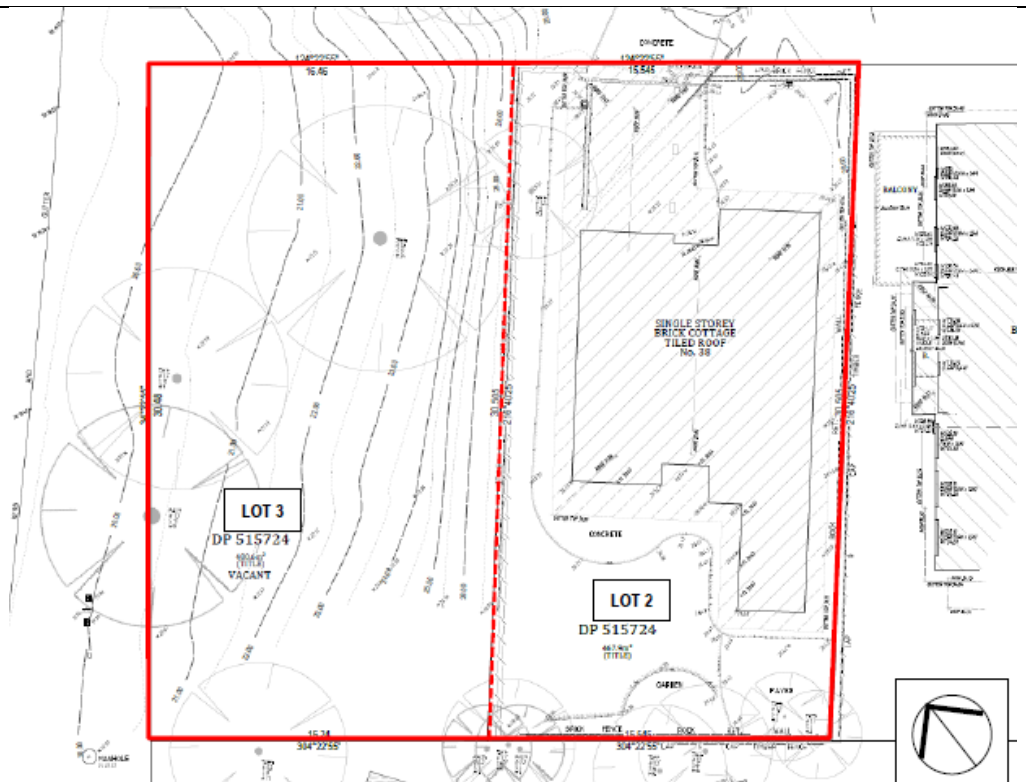
Date	Description
08/04/2024	A development application was submitted for the demolition of an existing dwelling house, the subdivision of two lots, and construction of two 4-storey detached dwelling houses.
10/04/2024	Council submitted a request for further information to the applicant.
19/04/2024	The applicant was advised that the subject development application would not be supported as it was a subdivision of undersized lots.
22/04/2024	The applicant provided a response to Council's request for further information.
22/04/2024	The applicant was readvised that the subject development application would not be supported as it was a subdivision of undersized lots. Additionally, it was confirmed that the proposed development required 3 separate applications; a subdivision application, and two development applications for either dwelling house.
07/05/2024	The applicant confirmed the intent to resubmit the development application under 3 separate applications.
10/05/2024	The development application was returned in the NSW Planning Portal

**Lane Cove Local Planning Panel 19 February 2025**  
**36 - 38 DUNOIS STREET, LONGUEVILLE**

	prior to lodgment.
27/08/2024	A complying development certificate was lodged and approved by PAC Certifiers to demolish the existing dwelling house at 38 Dunois Street, Longueville.
27/09/2024	An exempt development subdivision application was submitted for the 'realignment of boundaries' at 36 – 38 Dunois Street, Longueville.
01/10/2024	The exempt development application was refuted by Council and the signed linen plans were not released.
03/10/2024	Council sought legal advice from HWL Ebsworth regarding the previous application of a 'boundary realignment'.
14/10/2024	Council received legal advice from HWL Ebsworth that confirms the stance that the application proposes a subdivision of undersized lots.
16/10/2024	The applicant provided legal advice from McKees Legal Solutions requesting the release of the signed linen plans.
24/10/2024	The applicant requested the release of the signed subdivision plans, and the request was denied by Council.
19/12/2024	The applicant submitted a development application for the subdivision of two lots and construction of two 3-storey detached dwelling houses including a double-spaced internal garage and in-ground swimming pool.
20/01/2025	The development application was accepted by Council.
20/01/2025	The development application was notified between 21 January 2025 and 11 February 2025; receiving a total of (5) submissions.
12/02/2025	The development application is recommended for refusal.

**SITE**

Property	Lot 2 DP 515724 Lot 3 DP 515724
Area	Lot 2: 473.80m <sup>2</sup> Lot 3: 483.10m <sup>2</sup> Total = 948.50m <sup>2</sup>
Site location	The subject site of Lot 2 is located at the northwestern section of the cul-de-sac of Dunois Street. Lot 3 is located on southeastern side of Dettmann Avenue. The existing allotment is shown in Figure 1 below;



*Figure 1: Existing Allotment (Source: Applicant)*

Existing improvements	<p>Existing improvements consist of two vacant lots;</p> <p>Lot 2 of No. 38 Dunois Street was previously occupied by a single storey two-bedroom brick dwelling with a pitched tiled roof and a single carport accessed from Dunois Street. These structures were recently demolished under a Complying Development Certificate and this lot is currently vacant.</p> <p>Lot 3 of No. 38 Dunois Street is a vacant allotment which slopes upwards from Dettmann Avenue to the retaining wall of Lot 2. This lot comprises untended landscaping including lawn areas, overgrown shrubs and three trees.</p>
Shape	Irregular
Dimensions and Topography	<p>The dimensions represented are of the combined allotment;</p> <p>Northwest: 30.48m          Northeast: 32.00m          Southwest: 30.79m          Southeast: 30.51m</p> <p>The combined allotment is classified as steep, with a decline from the eastern boundary (RL28.47 AHD) to the western boundary (RL20.00 AHD) – at an approximate 8.47m change in levels.</p>



*Figure 2: Dettman Avenue View (Source: Maps)*



*Figure 3: Dunois Street View (Note: Dwelling has since been demolished)  
 Source: Maps*

Adjoining properties	<p>Adjoining properties consist of the following;</p> <p>Southeast (101 William Edward Street): A 2-3 storey heritage listed detached dwelling house with an internal double-garage and an in-ground swimming pool.</p> <p>Southwest (103 William Edward Street):                  A 2-storey detached dwelling house with a front carport and an in-ground swimming pool.</p> <p>North: A landscaped reserve that contains dense vegetation and a steep slope from the cul-de-sac of Dunois Street to the frontage of Dettmann Avenue.</p>
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## SITE APPLICATION HISTORY

The development application history is detailed in the executive summary at the beginning of the report.

## PROPOSAL

The development application seeks approval for the following works at 36 – 38 Dunois Street, Longueville;

### Subdivision:

- The amalgamation of Lot 2 and Lot 3 to create a combined allotment; and
- The subdivision of the amalgamated allotment to form two separate lots;
  - o Lot 2: 16 Dettmann Avenue – 473.8m<sup>2</sup>
  - o Lot 3: 18 Dettmann Avenue – 483.1m<sup>2</sup>

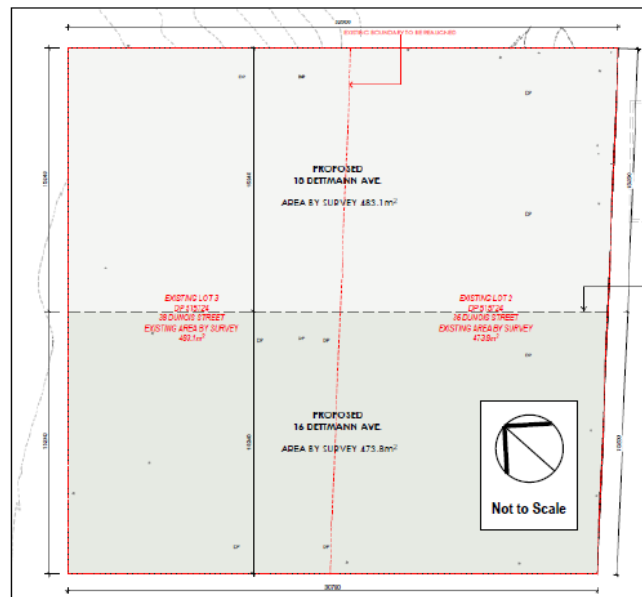


Figure 4: Subdivision Plan (Source: Plans)

### Landscaping:

- The removal of three trees; T3: *Camelia sasanqua*, T12: *Eucalyptus botryoides*, and T13: *Corymbia maculata*

### Dwelling House (2):

#### Basement Level:

- Driveway crossover at Dettmann Avenue;
- External staircase to service side setback access;
- Internal double-garage with an EV charging port;
- Feature entry pavers;
- Levelled grassed front yard;
- Covered front porch;
- Entry foyer;
- Internal landscaped courtyard;
- Lift and core to service access to all levels; and
- Internal staircase to service access to all levels.



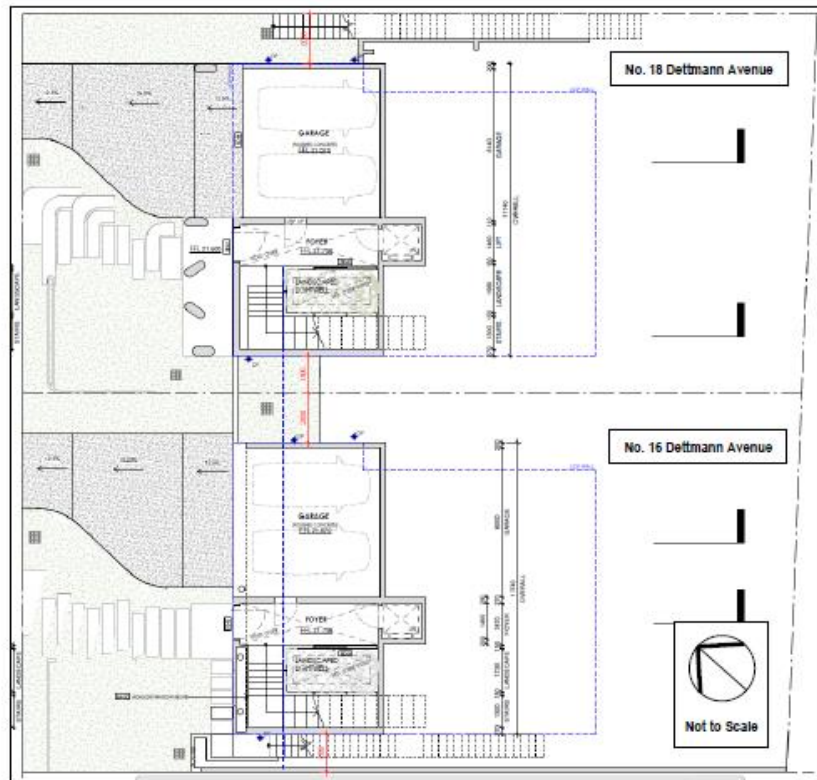


Figure 5: Basement Level (Source: Plans)

**Lower Ground Level:**

- Front (northwest) balcony and planter box;
- Side balcony and planter box;
- Bedroom 1, Bedroom 2, with access to side balcony;
- Bedroom 3 including a walk-in-robe, ensuite bathroom, and side balcony access;
- Master bedroom including a walk-in-robe, ensuite bathroom, and front balcony access;
- Bathroom featuring a landscaped internal courtyard;
- Pool equipment room; and
- Study nook.



Figure 6: Lower Ground Level

**Ground Floor Level:**

- Front (northwest) balcony with planter box;
- Living room;
- Dining room;
- Kitchen with a butler's pantry/kitchen;
- Powder room;
- Laundry;
- Covered outdoor dining area;
- Levelled rear grassed yard;
- Enclosed swimming pool area with an in-ground swimming pool; and
- Skillion roof over featuring 2 skylight openings.

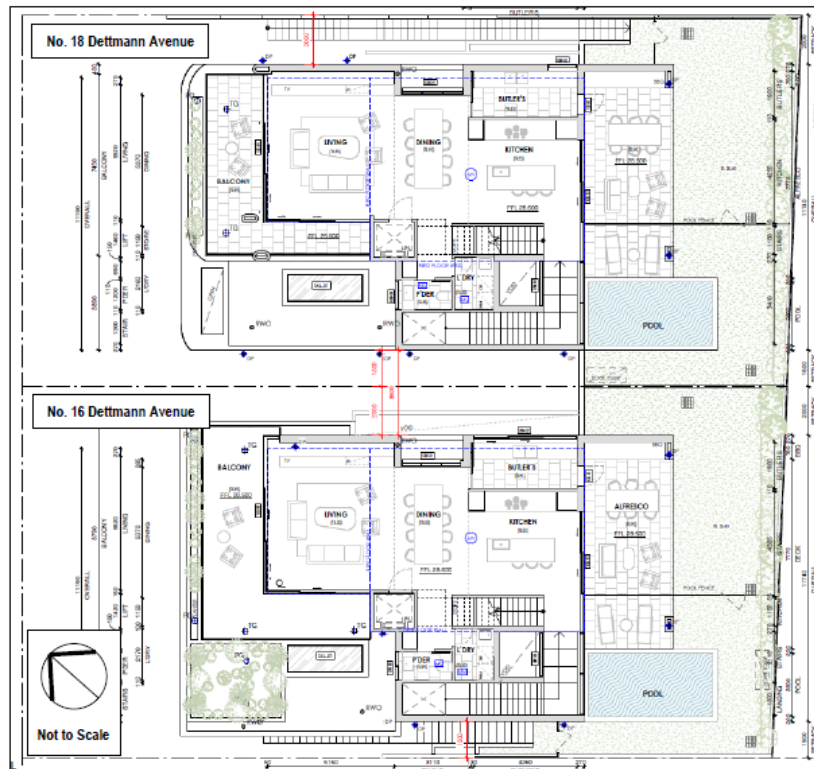


Figure 7: Ground Floor Level (Source: Plans)

**First Floor Level:**

- Front (northwest) terrace with a feature planter box;
- Master bedroom with a walk-in-robe and ensuite bathroom; and
- Skillion roof over lower levels including 20 solar PV panels and a 1 skylight.

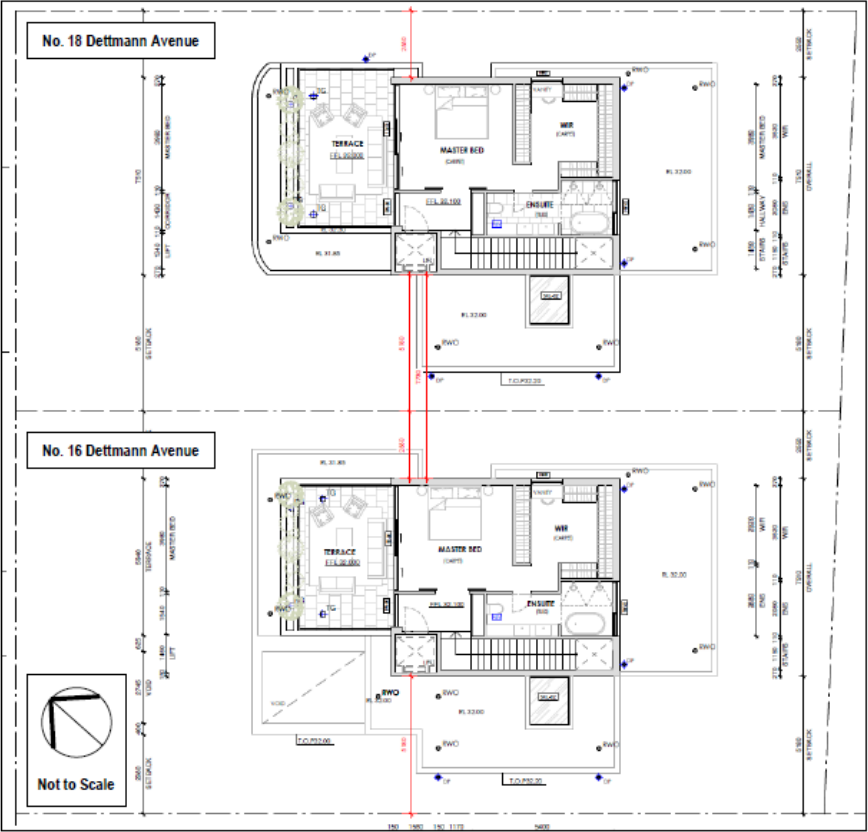


Figure 8: First Floor Level (Source: Plans)

**Roof Level:**

- Skillion roof with a southern lightwell opening; and
- 24 solar PV panels.

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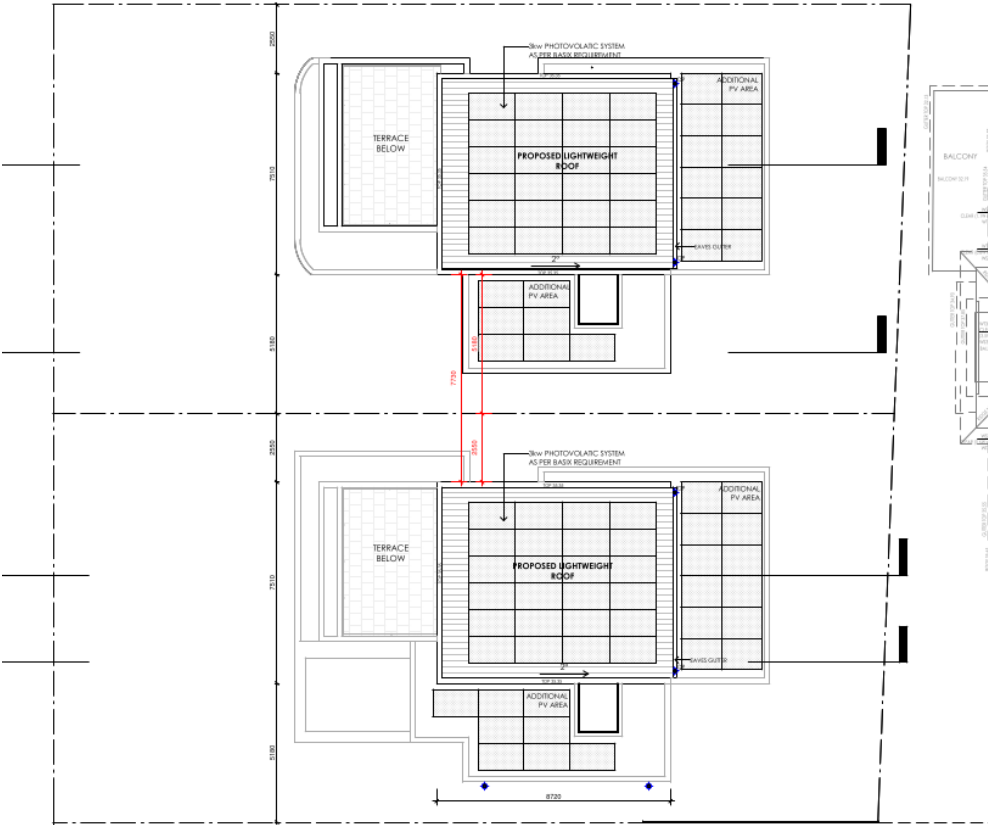


Figure 9: Roof Level (Source: Plans)



Figure 10 & 11: View from Dettmann Avenue (Source: Plans)

## **ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2021**

The subject development application proposes the amalgamation of two undersized lots and the subsequent subdivision of the new lot to create two undersized lots. Lot 2 proposes a total area of 473.8m<sup>2</sup> and Lot 3 proposes a total area of 483.1m<sup>2</sup>. The following variations to the development standard would result;

- Lot 2 would vary the minimum 550m<sup>2</sup> development standard by 13.85%; and
- Lot 3 would vary the minimum 550m<sup>2</sup> development standard by 12.16%.

As per Section 35B of the Environmental Planning and Assessment Regulation 2021, the development application is required to provide a clause 4.6 variation request to the development standard.

### ***35B Additional requirements for development applications involving contravention of development standards***

(1) *This section applies to a development application that proposes, in accordance with a relevant EPI provision, development that contravenes a development standard imposed by any environmental planning instrument.*

(2) *The development application must be accompanied by a document that sets out the grounds on which the applicant seeks to demonstrate that—*

*(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

(3) *In this section—*

*relevant EPI provision means—*

***(a) clause 4.6 of a local environmental plan that adopts the provisions of the Standard Instrument, or***

*(b) an equivalent provision of another environmental planning instrument.*

The development application fails to address the 13.85% and 12.16% variations to the minimum lot size development standard. Therefore, Council does not have the authority to support the application.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 NO 203**

The development application proposes the subdivision of a dual allotment between Lot 2 DP 515724 and Lot 3 DP 515724. The two lots would require consolidation and re-subdivision to establish the lot pattern shown in Figure 4.

The definition of development under Section 1.5 of the EPA Act includes subdivision of land.

(1) *For the purposes of this Act, **development** is any of the following—*

*(a) the use of land,*

***(b) the subdivision of land,***

- (c) *the erection of a building,*
- (d) *the carrying out of a work,*
- (e) *the demolition of a building or work,*
- (f) *any other act, matter or thing that may be controlled by an environmental planning instrument.*

The classification of subdivision is confirmed within the applicants statement of environmental effects on page 7; "3.1 Subdivision".

The definition of *subdivision of land* is set out in Section 6.2 of the EPA Act as follows:

- (1) *For the purposes of this Act, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.*  
  
*The division may (but need not) be effected -*
  - (a) *by conveyance, transfer or partition, or*
  - (b) *by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.*
- (2) *Without limiting subsection (1), subdivision of land includes the procuring of the registration in the office of the Registrar-General of—*
  - (a) **a plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919, or**
  - (b) *a strata plan or a strata plan of subdivision within the meaning of the Strata Schemes Development Act 2015.*
- (3) *However, subdivision of land does not include—*
  - (a) *a lease (of any duration) of a building or part of a building, or*
  - (b) *the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or*
  - (c) *the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or*
  - (d) *a division of land effected by means of a transaction referred to in section 23G of the Conveyancing Act 1919, or*
  - (e) *the procuring of the registration in the office of the Registrar-General of—*
    - (i) *a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the Conveyancing Act 1919, or*

- (ii) *a strata plan of consolidation or a building alteration plan within the meaning of the Strata Schemes Development Act 2015.*

A plan of subdivision under Section 195 of the *Conveyancing Act 1919* means a plan that shows-

- (a) *the division of an existing lot into 2 or more new lots, or*
- (b) ***the consolidation of 2 or more existing lots and their simultaneous redivision, along new boundaries, into 2 or more new lots, or***

Therefore, the application proposes to obtain a subdivision plan for registration which is within the meaning of Section 195 of the *Conveyancing Act 1919* in that the **consolidation of 2 existing lots and their simultaneous redivision**, along new boundaries into 2 new lots is development by way of subdivision of land. By definition, the Act recognises the works as a subdivision.

### **LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (2010 EPI 49)**

#### **LCLEP Part 1 Clause 1.2 - Aims of Plan**

- (1) *This Plan aims to make local environmental planning provisions for land in Lane Cove in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*

- (2) *The particular aims of this Plan are as follows—*

...

(b) *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,*

(c) *in relation to residential development, to provide a housing mix and density that—*

...

(i) *is compatible with the existing environmental character of the locality, and*

(iii) *has a sympathetic and harmonious relationship with adjoining development,*

...

(f) *in relation to conservation—*

...

(iii) *to control all new buildings to ensure their compatibility with surrounding existing built form and natural environmental character, and*

(iv) *to conserve heritage items,*

...



(c)i) – Compatibility with Environmental Character

The existing character of Lot 3 is summarised as an open, sloping, vacant allotment that contains several different tree species. The subject lot is open to the northwestern boundary where the dense vegetation that populates the site and is readily perceivable from Dettmann Avenue. The surrounding sites across Dettmann Avenue entail significant native vegetation across their front boundaries. The greenery envelopes the area and is seen as the primary environmental and urban characteristic of the area.



*Figure 12: Streetview from Dettmann Avenue (Source: Google Maps)*

The development proposes the removal of a substantial amount of existing canopy coverage across both lots. As evidenced in the landscaping plans, the proposal fails to provide the minimum 1:1 replanting ration stipulated within LDCP Part C and LDCP Part J. The result would be that of two overdeveloped and undersized lots that do not contribute to the greenscape character of Dettmann Avenue or provide visual relief from the proposed 3-storey dwelling houses.

(c)ii) – Sympathetic and Harmonious Relationship

The proposed development is not considered to nurture a sympathetic relationship with the adjoining properties or the dwelling houses within the immediate vicinity of the subject site. The reasons are as follows;

- The development would create two new front boundaries that propose zero canopy coverage or general vegetation within the front setback would directly oppose the objectives and be inconsistent with the existing neighbouring dwellings;
- As the proposed lots would be undersized, the provision of two expansive 3-storey dwelling houses cannot be considered sympathetic. The adjoining sites have site areas of 918.35m<sup>2</sup> at 101 William Edward Street, and 924.4m<sup>2</sup> at 103 William Edward Street. The creation of two separate lots below 500m<sup>2</sup> in total area would be anomalous. Table 1, 2 and 3 below demonstrates the inconsistency between the neighbouring properties' lot sizes and the proposed developments allotments;

<b>Table 1: Southern Neighbouring Property Lot Sizes (Dettmann Avenue and William Edward Street)</b>	
Address	Area
101 William Edward Street	918.35m <sup>2</sup>
103 William Edward Street	924.2m <sup>2</sup>
105 William Edward Street	947.85m <sup>2</sup>
107 William Edward Street	584.22m <sup>2</sup>
8 Dettmann Avenue	545.77m <sup>2</sup>
111 William Edward Street	929.91m <sup>2</sup>
113 William Edward Street	930.38m <sup>2</sup>
<b>Average Lot Size</b>	<b>= 692.90m<sup>2</sup></b>

<b>Table 2: Western/Northwestern Neighbouring Property Lot Sizes (Dettmann Avenue)</b>	
Address	Area
3 Dettmann Avenue	637.7m <sup>2</sup>
3A Dettmann Avenue	1011.55m <sup>2</sup>
5 Dettmann Avenue	803.52m <sup>2</sup>
5A Dettmann Avenue	1045.59m <sup>2</sup>
7 Dettmann Avenue	657.44m <sup>2</sup>
7A Dettmann Avenue	1014.4m <sup>2</sup>
9 Dettmann Avenue	1012.03m <sup>2</sup>
11 Dettmann Avenue	842.61m <sup>2</sup>
13 Dettmann Avenue	861.36m <sup>2</sup>
15 Dettmann Avenue	894m <sup>2</sup>
17 Dettmann Avenue	1037.59m <sup>2</sup>
19 Dettmann Avenue	1079.68m <sup>2</sup>
21 Dettmann Avenue	762.67m <sup>2</sup>
23 Dettmann Avenue	916.01m <sup>2</sup>
25 Dettmann Avenue	843.3m <sup>2</sup>
27 Dettmann Avenue	843.72m <sup>2</sup>
<b>Average Lot Size</b>	<b>= 891.45m<sup>2</sup></b>

<b>Table 3: Northeastern Neighbouring Property Lot Sizes (Dettmann Avenue and William Edward Street)</b>	
Address	Area
34 Dettmann Avenue	724.85m <sup>2</sup>
32 Dettmann Avenue	527.77m <sup>2</sup>
30 Dettmann Avenue	547.4m <sup>2</sup>
28 Dettmann Avenue	542.62m <sup>2</sup>
26 Dettmann Avenue	504.91m <sup>2</sup>
24 Dettmann Avenue	523.62m <sup>2</sup>
22 Dettmann Avenue	507.25m <sup>2</sup>
20 Dettmann Avenue	469.58m <sup>2</sup>
83 William Edward Street	951.03m <sup>2</sup>
85 William Edward Street	1134.41m <sup>2</sup>
87 William Edward Street	857.12m <sup>2</sup>
89 William Edward Street	789.69m <sup>2</sup>
91 William Edward Street	650.16m <sup>2</sup>
93 William Edward Street	494.35m <sup>2</sup>
95 William Edward Street	517.84m <sup>2</sup>
97 William Edward Street	492.70m <sup>2</sup>
99 William Edward Street	424.97m <sup>2</sup>

<b>Average Lot Size</b>	<b>= 627.07m<sup>2</sup></b>
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The pocket allotment between Dettmann Avenue, Dunois Street, William Edward Street and Cowper Street is an undersized anomaly of the area, accounting for only 8 lots in the vicinity. 4 of these lots are undersized. This distinction in the lot pattern cannot be considered a pattern and is therefore not reflective of the character of the area. The average lot size between the neighbouring properties of the captured zone is 737.14m<sup>2</sup>. As Lot 2 and Lot 3 have 473.8m<sup>2</sup> and 483.10m<sup>2</sup> accordingly, the undersized area of the proposed allotment would be readily perceivable from the streetscape. The design would present large dwelling houses on restricted sites. The result would be a clear overdevelopment of the site that is discordant from the existing pattern of the area.



Figure 13: Neighbouring Lot Sizes Map (Source: Nearmaps)

(f(ii) – Conservation of Heritage Items

The proposed development would detract from existing heritage value of the adjoining property; item I279 at 101 William Edward Street, Longueville. An assessment against LCLEP Section 5.10 is completed later in this report.

**LCLEP Part 4 Clause 4.1 - Minimum subdivision lot size**

- (1) *The objectives of this clause are as follows—*
  - (a) *to promote consistent subdivision and development patterns in zones.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

**Comment:** As demonstrated in Figure 14, the existing allotment for Lot 2 and Lot 3 is registered as an undersized lot with an area below the 550m<sup>2</sup> threshold. Lot 2 has an existing total area of 473.8m<sup>2</sup> and Lot 3 has an existing total area of 483.1m<sup>2</sup>.



Figure 14: Lot Size Map (Source: Council)

The Lot Size Map has purposefully left the lots as 'uncoloured' as they are already registered as undersized. When amalgamated for the purposes of subdivision, the new lot would measure 956.9m<sup>2</sup>, meaning that the Lot Size Map would highlight the new lot in colour as it would be above the minimum 550m<sup>2</sup>. However, the new lot would result in a 143.1m<sup>2</sup> shortfall of the required 1100m<sup>2</sup> area to subdivide and create two 550m<sup>2</sup> lots.

The applicant proposes the new allotment pattern to have the same area as the existing lots – 473.8m<sup>2</sup> and 483.1m<sup>2</sup> accordingly. This would ultimately result in the lots remaining 'uncoloured' and undersized. In accordance with Section 2 and 3 of Clause 4.1 of the LCLEP, the proposed subdivision is not permissible, and the provisions do not permit Council to support the creation of undersized lots.

#### **LCLEP Clause 4 Part 4.6 – Exceptions to the Development Standards**

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- (c) *That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- (d) *That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and*

- (e) *That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out.*

**Comment:** The subject development application proposes the amalgamation of two undersized lots and the subsequent subdivision of the new lot to create two undersized lots. The following variations to the development standard would result;

- (f) Lot 2 would vary the minimum 550m<sup>2</sup> development standard by 13.85%; and
- (g) Lot 3 would vary the minimum 550m<sup>2</sup> development standard by 12.16%.

The applicant has failed to provide Council with a Clause 4.6 variation request to vary the minimum lot size of the two subdivided lots. For the purposes of this report, the proposed variation is assessed against the relevant legislation.

(1) *The objectives of this clause are as follows—*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

**Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Compliance with the minimum lot size development standard is reasonable and achievable.

Following the amalgamation of the two undersized lots, a compliant, single lot would be created. The new lot would entail a total area of 956.90m<sup>2</sup>. The amalgamated lot would present reasonable grounds to construct a single dwelling house that would be consistent with the character of the neighbourhood;

The compliant single lot would be afforded the possibility of the construction of a detached dual occupancy development. This is highlighted in the Section 4A of Part 4 Lane Cove Local Environmental Plan. Council views this as an alternative planning pathway that would comply with the relevant legislation.

Compliance with the development standard is achievable through the amalgamation of the two lots to create a single lot. This would provide a subject site that complies with the development standard, satisfies the primary objective, and allows for a reasonable single dwelling house to be constructed. This planning pathway is seen as most appropriate, however, has been refuted by the applicant.

**Clause 4.6(3)(b) – Is there sufficient environmental planning grounds to justify contravening the development standard?**

In order for development consent to be granted, the applicant is required to provide an assessment against Clause 4.6(a)(a.i)(a.ii)(b) of the Lane Cove Local Environmental Plan 2009 that demonstrates sufficient planning grounds for approval. The applicant has failed to provide any assessment against such provisions. There is no addressal of the relevant controls that would substantiate any reasonable planning grounds to justify the contravention of Council's development standard.

To ensure clarity on Council's stance of the variation, relevant caselaw is referenced and the variation is weighed against the principles outlined in said caselaw;

Preston CJ in *Wehbe v Pittwater Council* ([2007] NSWLEC 827 at [44]-[48]) - outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:

*Test 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;*

*Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

*Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

*Test 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*

*Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

**Response to Test 1:**

*Test 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;*

As previously mentioned, the singular objective of the development standard is as follows;

4.1 Minimum subdivision lot size

(1) The objectives of this clause are as follows—

**(a) to promote consistent subdivision and development patterns in zones.**

The creation of two lots that fail to comply with the minimum 550m<sup>2</sup> threshold would be inconsistent with the development pattern of the area.

The existence of lots within the neighbouring that entail an area below the 550m<sup>2</sup> threshold is not representative of the established and consistent pattern. The consistent pattern is that of adequately sized lots with an average of 700m<sup>2</sup> to 750m<sup>2</sup> (737.14m<sup>2</sup> approximately) that accommodate single dwelling houses.

Consistent subdivision is measured against what currently exists across the neighbourhood. The applicant proposes two new driveway crossovers at Dettmann Avenue which would create in a 90-degree shift in the allotment pattern.

The existing pattern results in a desirable area of a greenscaped 'break-out' from the built-up surrounding area, providing spatial relief from the single dwelling houses in the neighbourhood. To remove this would directly conflict with the existing pattern.

**Response to Test 2:**

*Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective of the minimum lot size development standard is to provide adequately sized lots that are consistent with allotment patterns in the R2 Low Density Residential Zone. This is not demonstrated by the proposed development.

Compliance with the minimum lot size is directly applicable to the proposed development as subdivision is proposed.

As substantiated in Table 1, 2, and 3, the size, pattern and arrangement of the proposed lots would be discordant from the surrounding sites. The objective would not be achieved.

**Response to Test 3:**

*Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective (to provide consistent allotment patterns) would be disregarded if the creation of undersized lots was approved.

The predominant lot size of the surrounding sites spans between 1100m<sup>2</sup> to 550m<sup>2</sup> – with the average area of approximately 737.14m<sup>2</sup>. The average existing site in the surrounding area is established as fully compliant with the development standard. Lot 2 proposes a total area of 473.8m<sup>2</sup> and Lot 3 proposes a total area of 483.1m<sup>2</sup>.

Therefore, the creation of two new undersized lots with shortfalls to the average lot area of 263.34m<sup>2</sup> and 254.04m<sup>2</sup> cannot comply with the objective. Compliance is reasonable.

**Response to Test 4:**

*Test 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*

Under the current Lane Cove Environmental Plan 2010, Council has not granted approval of subdivisions of a lot under 1100m<sup>2</sup> in any case. Council's stance on the minimum lot size of 550m<sup>2</sup> has remained the same since the inception of the LCLEP in 2010.

It is noted that all undersized lots specified in the catchment area in Table 1, 2 and 3 were created or approved prior to the gazettal of the most recent Lane Cove Local Environmental Plan.

By granting consent to the variation, not only would there be a disregard for the singular objective of the development standard, but there would also be the creation of a precedence for the approval of undersized lots – a variation that historically has not been supported under the current LEP.

**Response to Test 5:**

*Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Lot 2 and Lot 3 are located within an R2 Low Density Residential Zone. The existing use of both lots is vacant and undefined.

Previously, Lot 2 hosted a single detached two-storey dwelling house for residential purposes, however, subject to a complying development certificate, approval was granted for the demolition of the dwelling house. The existing use is now classified as 'vacant'.

Council records indicate that Lot 3 has remained vacant since its creation.

Where a lot is vacant and has no defined residential use, it is unreasonable to allow for the said lot to be amalgamated with another undersized lot, and subsequently subdivided to create two undersized residential lots.

Compliance with the development standard is reasonable and achievable through the amalgamation of the two lots to create a single lot. This would provide a subject site with an area of 956.90m<sup>2</sup> that complies with the development standard, satisfies the primary objective, and allows for a single dwelling house to be constructed.

**Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the objectives of the particular and the objectives for development within the zone in which the development is proposed to be carried out?**

As previously demonstrated, the subdivision of the amalgamated site does not satisfy the singular objective of Part 4 Clause 4.1(1)(a) of the Lane Cove Local Environmental Plan 2009; to promote consistent subdivision and development patterns in zones.

Overdevelopment on undersized lots gives potential rise to setting a precedence which, in turn, can negatively influence future developments in the area to impact the amenity (privacy, solar access, building separation etc.) of other existing dwelling houses.

The public concern of the proposed development is evidenced by the submissions made to Council during the period of public notification. These are addressed later in the report.



**PROPOSAL DATA/POLICY COMPLIANCE**

**Local Environmental Plan 2009**

**Zoning: R2 Low Density**

**Site Area: Lot 2 – 473.8m<sup>2</sup> / Lot 3 – 483.1m<sup>2</sup>**

<b>LEP table</b>			
	<b>Development Standard</b>	<b>Proposal</b>	<b>Complies</b>
Floor Space Ratio (max)	0.6:1	No 16 (Lot 2): 0.598:1 No 18 (Lot 3): 0.589:1	Yes Yes
Height of Buildings (max)	9.5m	No 16 (Lot 2): 9.22m No 18 (Lot 3): 9.46m	Yes Yes

**LANE COVE DEVELOPMENT CONTROL PLAN**

<b>Part B – General Controls</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
Existing Water View Corridors	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.	Water views are achieved from Dunois Street. The proposed envelope would obstruct the existing views. Council does not support	<b>No - See variations assessment.</b>
Building Design	d) Buildings on steeply sloping sites should adjust the height of the building envelope to follow the natural topography of the site.	The building design features a 3-storey component which is not considered to respond to the topographical decline of the site.	<b>No - See variations assessment.</b>
Side Setback Concessions	f) Applicants may not be able to achieve the maximum permissible height in order to cater and facilitate view sharing. In such cases, concessions shall be given for side and rear setbacks subject to meeting the requirements for privacy, amenity and solar access to the adjoining neighbours.	The development seeks to attain maximum heights of 9.22m and 9.46m – near achieving the maximum development standard. Both dwellings present three-storey components and do not take into consideration the existing water views experienced from the adjoining heritage dwelling at 101 William Edward Street.	<b>No - See variations assessment.</b>
Water Views from Living Areas	h) Development is not to unreasonably affect existing water views from living areas of	No. 16 and No.18 would have a direct impact to the existing water views	<b>No - See variations assessment.</b>

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	adjoining dwellings.	experienced from the ground level living area of the adjoining property.	
View Testing Principles	j) Views will also be tested against the extent of view available. Where appropriate the views will also be tested against the view sharing principles stated by the Land and Environment Court.	The development is not assessed against any view sharing principles. The full extent of the view impacts are unable to be quantified by Council given the lack of a supporting View Impact Assessment.	<b>No - See variations assessment.</b>

<b>Part C - DCP Table</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
Front setback (min)	Consistent with area or 7.5m	<u>No 16:</u> BFL: 8.5m LGFL: 8.5m GFL: 9.9m FFL: 14.3m  <u>No 18:</u> BFL: 8.5m LGFL: 8.5m GFL: 9.9m FFL: 14.3m	Yes Yes Yes Yes  Yes Yes Yes Yes
Side setback (min) Northeast	1.2m single storey 1.5m two storey	<u>No 16:</u> BFL: 2m LGFL: 2m GFL: 2m FFL: 2.55m  <u>No 18:</u> BFL: 2m LGFL: 2m GFL: 2m FFL: 2.55m	Yes Yes Yes Yes  Yes Yes Yes Yes
Side setback (min) Southwest	1.2m single storey 1.5m two storey	<u>No 16:</u> BFL: 1.5m LGFL: 1.5m GFL: 1.5m FFL: 5.18m  <u>No 18:</u> BFL: 1.5m LGFL: 1.5m GFL: 1.5m FFL: 5.18m	Yes Yes Yes Yes  Yes Yes Yes Yes
Rear setback (min)	<1000m <sup>2</sup> : 8m or 25% >1000m <sup>2</sup> : 10m or 35%	<u>No 16:</u> BFL: 16.3m LGFL: 7.8m GFL: 7.8m	Yes <b>No</b> <b>No</b> Yes

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<b>Part C - DCP Table</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
		FFL: 8m  <u>No 18:</u>  BFL: 17m LGFL: 8.5m GFL: 8.4m FFL: 8.4m	Yes Yes Yes Yes
Wall height (max)	7m + 600mm parapet for flat roof structures	<u>No 16:</u> 9.35m  <u>No 18:</u> 10.5m	<b>No</b>  <b>No</b>
Ridge height (max)	9.5m	No 16 (Lot 2): 9.22m No 18 (Lot 3): 9.46m	Yes Yes
Number of storeys (max)	2	3 storeys	<b>No</b>
Landscaped area (min) (Minimum dimension of 3m)	35%	<u>No 16:</u> 18.54%	<b>No</b>
		<u>No 18:</u> 17.75%	<b>No</b>
Cut and fill (max)	1m	7.1m	<b>No</b>
Solar access (min)	3 hours to habitable windows.	<u>101 William Edward:</u>  > 3hrs to northwestern windows on all levels of the dwelling house.	Yes
		<u>103 William Edward:</u>  > 3hrs to northwestern windows on all levels of the dwelling house.	Yes
Deck/balcony depth (max)	3m	<u>No 16:</u> BFL: N/A LGFL: 1.8m GFL: 2.5m FFL: 3.6m	N/A Yes Yes <b>No</b>
		<u>No 18:</u> BFL: N/A LGFL: 1.5m GFL: 2.3m FFL: 3.6m	N/A Yes Yes <b>No</b>
Private open space (min)	24m <sup>2</sup> and 4m in depth	<u>No 16:</u> >24m <sup>2</sup>	Yes
		<u>No 18:</u> >24m <sup>2</sup>	Yes
BASIX Certificate	Required	No 16: 1736168S_04 No 18: 1733862S_04	Yes Yes

**Car parking**

<b>Car parking table</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
Off-street spaces (min)	1	2 <u>No 16:</u>	Yes
		2 <u>No 18:</u>	Yes
Driveway width	3m at the kerb	3.7m <u>No 16:</u>	Yes
		3.7m <u>No 18:</u>	Yes

**Private swimming pools**

<b>Private swimming pool table</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
Setback to neighbour's house (min)	3m to waterline	3.5m <u>No 16:</u>	Yes
		5.9m <u>No 18:</u>	Yes
Setback to boundary (min)	1m to waterline	1.7m <u>No 16:</u>	Yes
		1.6m <u>No 18:</u>	Yes
Height (max) (steeply sloping sites)	1m 1.8m	In-ground. <u>No 16:</u>	Yes
		In-ground. <u>No 18:</u>	Yes

**Fences**

<b>Fences table</b>			
	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
Front fence height (max)	Solid: 900mm Lightweight: 1.2m	1.1m	Yes
Height of side and rear fences (max)	1.8m	<u>No 16:</u> Side – 1.8m Rear – 1.8m	Yes
		<u>No 18:</u> Side – 1.8m Rear – 1.4m	Yes

**PART S - ASSESSMENT**

The proposed works amount to a cost over \$250,000 and therefore an assessment against the provisions of Part S Environmental Sustainability is required.

<b>S.2 Achieving Net-Zero</b>			
<b>Provision</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
2.1 All Electric Buildings	All new developments are to use electricity for all energy requirements associated with normal operations.	The architectural plans and SEE confirms that both dwelling houses would be constructed as all-electric.	Yes
2.2 On-site solar	Residential development of three storeys or less will include the installation of a solar PV system of no less capacity than 25% of the roof area.	No 16: 58.39%	Yes
		No 18: 58.17%	Yes

<b>S.3 Resilience and Health</b>			
<b>Provision</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
3.1 Natural Ventilation	<p>a) For all residential accommodation not affected by SEPP 65:</p> <p>i. The natural ventilation requirements of the NCC are to be met with the area of openings to be calculated following the Apartment Design Guide Glossary definition of Effective Open Area (EOA), including necessary allowance for insect screens.</p> <p>ii. Windows are to be located on multiple aspects to promote natural cross ventilation.</p>	The development complies with the natural ventilation requirements.	Yes
3.2 Glazing	<p>a) Window-to-wall ratios of each major aspect are to be limited to a maximum of:</p> <p>i. For residential buildings, 30% when measured externally or 50% when measured on the internal façade, whichever is lower. Windows and walls facing onto private open spaces are excluded from the window-to-wall ratio calculation.</p> <p>b) External solar shading should be provided to glazing on the north, east and western facades where it is not significantly over-shadowed by neighbouring buildings or by</p>	<p style="text-align: center;"><u>No 16:</u></p> <p>Northwest: 29.06%          Northeast: 26.5%          Southwest: 10.5%          Southeast: N/A</p> <p style="text-align: center;"><u>No 18:</u></p> <p>Northwest: 29.21%          Northeast: 21.4%          Southwest: 7.7%          Southeast: N/A</p>	<p>Yes          Yes          Yes          N/A</p> <p>Yes          Yes          Yes          N/A</p>

<b>S.3 Resilience and Health</b>			
<b>Provision</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
	<p>the inclusion of balconies. The solar shading should be designed to maximise the protection of the glazing from the summer sun and maximise solar transmission in the winter sun.</p> <p>d) Glazing is to be selected with external solar heat and visible light reflectivity no greater than 20% measured at normal incidence.</p>		
3.3 Urban Heat and Shade	<p>a) For low density residential, at least 75% of the site area must comprise one or a combination of the following when assessed in plan view:</p> <p>i. Vegetation,</p> <p>ii. Green roofs,</p> <p>iii. Roofing materials, including shade structures, with a minimum solar reflectivity index (SRI) of 82 if a horizontal surface or a minimum SRI of 39 for sloped surfaces greater than 15 degrees,</p> <p>iv. Hardscaping elements shaded by overhanging vegetation or roof structures,</p> <p>v. Water bodies and/or watercourses.</p>	<p>75.5% <u>No 16:</u></p> <p>76.4% <u>No 18:</u></p>	<p>Yes</p> <p>Yes</p>
3.4. Sustainable Materials	<p>a) All newly sourced timber used in construction is to be FSC certified.</p> <p>b) Alternatives products are to be preferenced to replace materials that cause environmental harm or health risks in manufacture, including materials containing formaldehyde, chlorinated polymers, hydrochlorofluorocarbons and Halogenated flame retardants.</p>	<p>The SEE confirms the use of sustainable materials in the construction of the dwelling houses.</p>	<p>Yes</p>

<b>S.3 Resilience and Health</b>			
<b>Provision</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
	c) Engineered stone products must be handled in accordance with the appropriate standards.		

<b>S.4 Integrated Urban Water Management</b>			
<b>Provision</b>	<b>Provision</b>	<b>Proposal</b>	<b>Complies</b>
4.1 Water Efficiency	a) All development must demonstrate the prioritisation of water conservation measures to minimise water consumption.	Both dwelling houses propose the installation of 10,000L rainwater tanks beneath the ground surface at the front setback.	Yes
4.2 Stormwater Management	<p>a) Peak stormwater flows are to be reduced with a stormwater detention system. Other measures can include green roofs, stormwater harvesting, rain gardens, bio-retention basins and passive filtration measures. Other water sensitive urban design measures are described in Part J – Landscaping and Tree Preservation.</p> <p>b) The use of porous surfaces is to be maximised.</p> <p>c) Where required, Gross Pollutant Traps and filtration are to meet Sydney Water Best Practice guidelines for reducing stormwater pollutants.</p>	<p>The development proposes a series of planter boxes and green roofs.</p> <p>Deep soil and impervious landscaping is proposed to allow on-site stormwater filtration.</p>	Yes

**Lane Cove Local Environmental Plan – Section 5.10 Heritage**

The subject site is not identified as a heritage item, however, it is located adjacent to an individual heritage item listed as Item I279 (101 William Edward Street, Longueville – Lot 1 DP510446 – House and Garden).

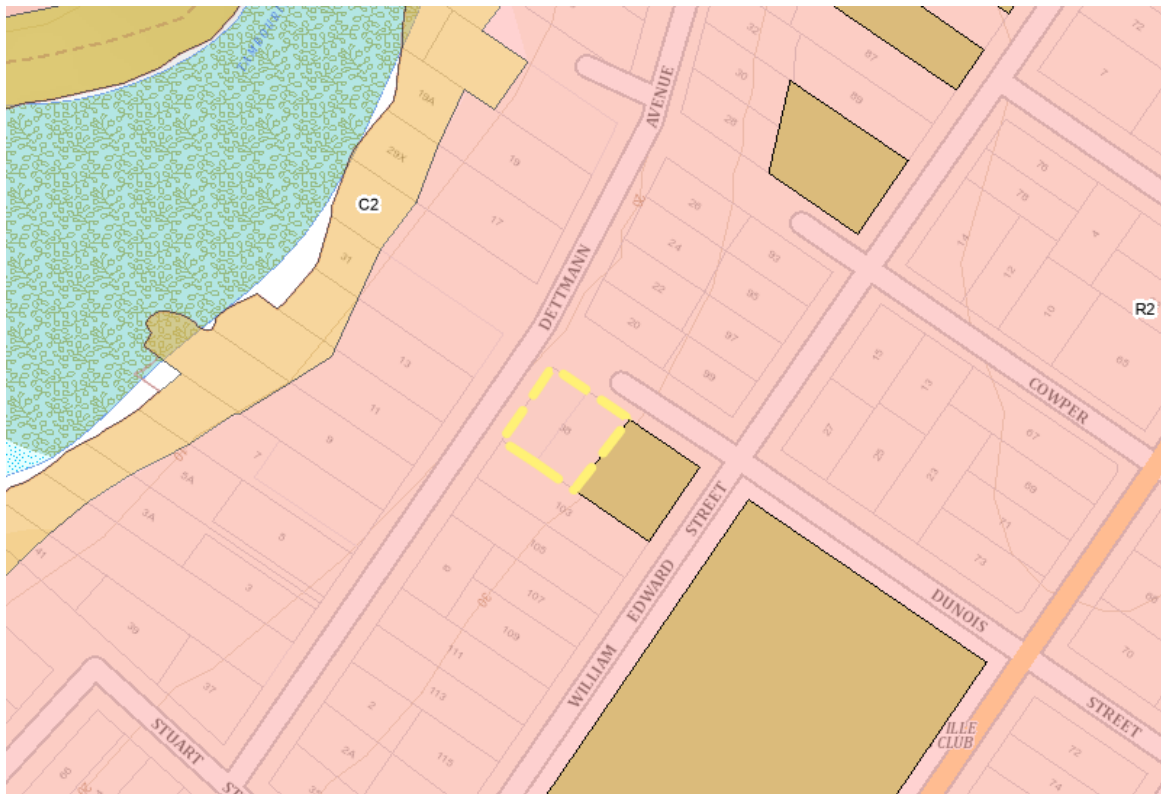


Figure 15: Heritage Map (Source: Eplanning)

The applicants supporting Heritage Impact Assessment specifies the significance of the property in the following;

*The Council-adopted Statement of Significance for item I279, reproduced from the NSW Heritage Inventory, follows:*

*Intact Edwardian residence set back in large suburban block retaining many architectural features and garden elements. It is indicative of the character of Longueville's development of the period.*

*The inventory entry also provides the following historical/physical information for item I279 (sic):*

*Single-storey brick and roughcast late 1920s [circa 1909] Edwardian residence on large suburban block. Terracotta Marseille tiled roof with brick corbelled chimneys. Asymmetrical about a recessed entry porch with original tessellated tiles. Remnant garden features are enclosed by a timber and woven wire fence and lantana hedge. The curved stone flagged entry path is brick-edged. Curved garden beds are stone-edged and support a variety of shrubs. Remnant plants include maple, frangipani, cyprusses, sp. hydrangeas, azaleas roses, port wine magnolia and cotoneaster. A small timber garden shed to the southern side of the house.*

*While there are other heritage items more broadly in the vicinity of the subject place, none are within its practical viewshed.*

As per subsection 10 of Part 5 Section 5.10 Heritage Conservation of the LCLEP, Council is required to assess the potential impacts of the subject development against any adjoining heritage property.



*(10) Conservation incentives*

*The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—*

...

*(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*

*(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Accordingly, the development proposal is assessed against the objectives of Section 5.10 as follows;

**5.10 Heritage conservation**

*Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the [Heritage Map](#) as well as being described in Schedule 5.*

*(1) Objectives The objectives of this clause are as follows—*

*(a) to conserve the environmental heritage of Lane Cove,*

*(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

*(c) to conserve archaeological sites,*

*(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

**(b) – Comment):** The subject development would not consider the existing fabric, settings, or views of the heritage dwelling house at 101 William Edward Street. The following attributes of the design and the subject site would inflict detrimental impact to the items significance in Lane Cove;

- The development proposes a hyper-modern, light material palette that would be incongruent with the material softness of the heritage dwelling and would directly conflict with the fabric of the existing I279 heritage item;
- The proposed height of the 3-storey dwelling houses on undersized lots would generate a dominating bulk and excessive scale that detracts from the heritage value of the adjoining dwelling house and lessens its value amongst the streetscape on both Detmann Avenue and Dunois Street;
- The building envelope of the development proposal is envisaged to obstruct high-value water views from important internal locations in the heritage dwelling house. Despite the lack of a view loss assessment provided with the application, it is evident that the ground floor level balcony and living area of 101 William Edward Street exists would be impacted to a detrimental extent by way of the proposed developments third level. The impacts would be further exacerbated by a second building envelope located to the South (No.16); therefore,

- Council does not consider the proposed development to satisfy subsection (a) or (b) of Part 5.10 of the Lane Cove Local Environmental Plan. This is confirmed in Council's referral to an external heritage consultant which can be found in the referrals section of the report.

**Lane Cove Local Environmental Plan – Section 6.1A Earthworks**

The development application proposes to develop two 3-storey single residential dwellings with a double basement garage and an in-ground swimming pool. In order to accommodate for the development, the proposal seeks approval for earthworks. The excavation shown in the architectural plans show that the earthworks would be undertaken from the frontage of Dettmann Avenue to the rear section of the site where the proposed building footprint finishes. As established in the compliance table, the maximum depth of excavation on the subject site reaches approximately 7.1m; 6.1m in exceedance of the 1m provision shown in Council's DCP. As a result, the 610% variation is assessed against Clause 6.1A of the LCLEP regarding earthworks.

(1) The objectives of this clause are as follows—

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

The assessment is as follows;

(3) Before granting development consent for earthworks, the consent authority must consider the following matters—

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

**Comment:** The existing drainage patterns present on the subject site fall from the eastern boundary towards the western boundary and further to Woodford Bay. The average RL at the eastern boundary of the site is RL28.47 AHD which declines towards the western boundary at an average RL20.00AHD, thus giving a an approximate 8.47m difference in levels. This is a significant slope that exceeds 10% in decline.

Due to the significant slope, the existing drainage patterns present are not envisaged to be impacted across the site. The 8.47m decline on the site is still envisaged to direct stormwater/rainwater in the same direction at a similar rate as what currently exists on site.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land,*

**Comment:** The proposed development would not have any adverse impact on the future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both,*

**Comment:** The quality of the excavation would be monitored prior to, during and after construction of the development. The respective conditions would ensure that any adverse impacts would not occur during or after the proposed excavation.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

**Comment:** The proposed development would not have any adverse impact on the access to sunlight or privacy of the adjoining properties. However, the significance of excavation encourages a significantly altered landscape and in turn, gives rise to the creation of two 3-storey dwelling houses.

These developments present building envelopes that would diminish the amenity of the rear adjoining property at 101 William Edward Street. The amenity impacts would occur through the deletion of any high-value water views that are experienced in the important internal and external private areas of the residence. The application fails to provide a view impact assessment that allows council to quantify the exact severity of impact. It is of the opinion of Council that the development would not satisfy the objective of maintaining the amenity of existing properties.

*(e) the source of any fill material and the destination of any excavated material,*

**Comment:** As previously mentioned, the quality/source of any excavation and fill would be monitored prior to, during and after construction of the development. The relevant conditions would ensure that no adverse impacts would occur.

*(f) the likelihood of disturbing relics,*

**Comment:** The subject site is not identified as being within the proximity of any Aboriginal heritage sites or having the potential to contain any historical relics.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

**Comment:** The area is not identified as being environmentally sensitive. The existing watercourses and drainage patterns would be retained in the proposed development.

## **REFERRALS**

### Development Engineer – Part O – Stormwater Management

No objections subject to recommended draft conditions.

### Tree Assessment Officer – Part J – Landscaping and Tree Preservation

The development application was referred to Council's principal arborist and the following comments/determinations were made;

- *Removal of trees 3,5,12 and 13 is supported to low retention value and poor structural form and canopy weight distribution for tree 12 and 13 as they were previously suppressed by a Cinnamomum camphora canopy dominance which has been removed. Tree 11 is to be retained however requires a further set back from the proposed driveway and redesign of stormwater services to be viable. Currently the Stormwater connection pit and line to Kerb for the proposed 16 Dettmann Avenue conflicts with the TPZ/SRZ of tree 11.*
- *Further the applicant's Engineer has provided a statement that indicates that for each dwelling, re-use below ground storage tanks with 10,000L effective capacity are positioned*

*within the front landscaped areas of each dwelling, as such this area will need to be discounted from calculations relating to Landscape area.*

- *Landscape calculation undertaken by Tesser Arch in Drawing A102 rev A are inaccurate in that they are not in compliance with the minimum Landscape area % required for the site together with the minimum dimensions for deep soil Area as indicated in Table 1.1 Percentage of the landscape area' dependent on development type of the Lane Cove Development Control Plan part J – Landscaping and Tree Preservation. (Note that 35% Minimum landscape area % of the site area is required all on deep soil with areas being calculated being 3m x3m to count) Additionally under section 2.4.4 Deep Soil Landscape Requirements, Deep soil and landscaped areas are defined in the Dictionary section of this Development Control Plan as the same as the LEP and that any excavation exceeding 600mm in depth nullifies that area as deep soil as the existing soil profile has been too disturbed to support tree growth. This area should also not be counted in deep soil calculations. Please further note that the LEP definition for landscape area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. These areas must also be removed from the landscape area calculations.*
- *The Landscape Architect should provide revised Landscape and Deep Soil calculations that will comply with the minimum Landscape area % required for the site together with the minimum dimensions for deep soil Area as indicated in Table 1.1 Percentage of the landscape area' dependent on development type of the Lane Cove Development Control Plan Part J – Landscaping and Tree Preservation.*
- *The Landscape Design Package Plans by Enclave Studio must also be revised as they do not contain a planting schedule with plant species, plant quantities and pot sizes, nor all existing trees to be retained.*

**DETERMINATION:**

*The proposal in the current form is not supported due the conflict relating to the retention of tree 11 and a significant shortfall in Landscape are and deep soil requirements.*

**Heritage Consultant – Part C – Residential Development**

The development application was referred to Council's Heritage Consultant and the following comments/determinations were made;

*Proposal*

*The proposed work includes subdivision of the property into two lots and construction of two new residences.*

*Heritage items*

*The subject property is not a listed heritage item. It is however located adjacent to heritage item at 101 William Edward Street. This building is an intact single storey brick and tile Federation period residence with first floor attic extension.*

*Impact on heritage items*

*The proposed new residences are modernist in design with flat roofs and geometric lines. The design is commercial in character and scale and is not sympathetic with the neighbouring heritage item or the predominantly Federation character of the streetscape in Dunois Street, William Edward Street and Dettman Avenue.*

*The sloping site necessitated stepped construction of the floors which are three storeys in some areas, resulting in excessive wall heights. The massing of the buildings is exacerbated by overdevelopment of the two sites which are less than minimum allotment size and the minimal setbacks of the buildings to the side and rear boundaries. The development is inconsistent with the low density of subdivision and large blocks prevailing in the area.*

*Recommendations*

*The massing of the new buildings is excessive due to the slope of the site and the design is unsympathetic with the heritage item and the character of the surrounding area. The development will impose an unacceptable visual impact on the adjacent heritage item.*

*Conclusions*

*I do not support the development as proposed in its present form.*

**ASSESSMENT - ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**PROVISIONS OF ANY LEP, DCP, SEPP OR REGULATION (Section 4.15(1)(a))**

The proposal is not permissible with respect to the minimal lot size development standard outlined in the Lane Cove Local Environmental Plan 2009.

The amalgamation of two undersized lots, and subdivision to create another two undersized lots is contrary to the standards of the LCLEP 2009.

The development application fails to be supported by a Clause 4.6 variation request in accordance with EP and A Regulations 2021.

The proposal complies with the Floor Space Ratio development standard. The proposal also complies with the Height development standard.

**OTHER PLANNING INSTRUMENTS**

**SEPP (Resilience and Hazards) 2021**

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.

**APPLICABLE REGULATIONS**

The Environmental Planning and Assessment Regulation 2021 indicates that the standards for demolition and removal of materials should meet with AS 2601-2001 and therefore any consent would require the application of a relevant condition seeking compliance with this Standard.

**VARIATIONS TO COUNCIL'S CODES/POLICIES**

The preceding policy assessment tables identify those controls that the proposal does not comply with. Each departure is discussed below.

<b>Control</b>	<b>Proposed</b>	<b>Comment</b>	<b>Council support</b>
<i>LDCP Part B – Clause B.4(b, d, f, h, j) - View Sharing</i>	Two 3-storey dwelling houses located within the front view line of an existing heritage property.	The development proposes several variations to the views haring principles listed within Part B. Council cannot support the variations without an assessment against the relevant principles and legislation.	<b>No</b>
<i>LDCP Part C -</i>	<b>No 16:</b>	The proposed dwelling house at	Yes

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<p><i>Clause 1.3.4 - Rear Setbacks – Minimum 8m</i></p>	<p>BFL: 16.3m          LGFL: 7.8m          GFL: 7.8m          FFL: 8m</p>	<p>16 Dettmann Avenue seeks a 200mm variation to the minimum 8m setback provision. It is noted that the variation is proposed at the ground level and the lower ground level. A variation at these levels would not directly impact the amenity of the rear adjoining property. As mentioned above, the amenity impacts to the adjoining property are resultant of the third storey. Subsequently, the variation is considered minor.</p>	
<p><i>LDCP Part C - Clause 1.7.1 – Wall Height – Maximum 7m</i></p>	<p style="text-align: center;"><u>No 16:</u>          9.35m  <u>No 18:</u>          10.5m</p>	<p>The maximum wall height is varied at both proposed dwelling houses – by 2.35m at No. 16 and 3.5m at No. 18. These variations are considered significant given the impacts to the amenity of the neighbouring rear property. The variation is not supported.</p>	<p><b>No</b></p>
<p><i>LDCP Part C - Clause 1.7.1 – Number of Storeys – Maximum 2</i></p>	<p>3 storeys provided.</p>	<p>A significant section of the proposed dwelling houses would present 3 habitable floors in vertical succession. The development is classified as 3-storeys and would be viewable from Dettmann Avenue as a 4-storey development. Council does not support the variation.</p>	<p><b>No</b></p>
<p><i>LDCP Part C - Clause 1.8.2(c) – Maximum Deck Depth – 3m</i></p>	<p>3.6m depth provided at both dwelling houses.</p>	<p>The development proposes a 3.6m deep terrace at the first floor of both dwelling houses. The 600mm variation would not contribute to any overlooking or amenity impact to the neighbouring properties. Council would support the balcony depth variation.</p>	<p>Yes</p>
<p><i>LDCP Part C – Clause 1.5(a) – Minimum Landscaped Area – 35%</i></p>	<p>No 16: 18.54%          No 18: 17.75%</p>	<p>The development proposes two variations to the minimum landscaped area of 35%. The variations are 16.46% at No.16 and 17.75% at No.18. The large numerical departures are not supported.</p>	<p><b>No</b></p>
<p><i>LDCP Part C – Clause 1.6 – Cut and Fill – Maximum 1m</i></p>	<p>7.1m</p>	<p>Clause 1.6(d) of the LDCP states that a maximum cut and fill of 1m is permitted at any point on the site unless it is demonstrated that the site's slope is too steep to reasonably construct a 2-storey dwelling with this extent of excavation. The development</p>	<p><b>No</b></p>

		exceeds the provision by 6.1m and presents a 3-storey component on a section of the site that exists as flat. Council does not support the variation.	
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**Part B General Controls – B.4 View Sharing**

Lane Cove Local Government Area is located over a number of peninsular areas including Greenwich, Linley Point, Longueville, Northwood and Riverview. The sharing of all views is part of the character of the Lane Cove area and should be maintained where possible subject to how the view is obtained and whether the maintenance of such a view creates an unreasonable impost on adjoining landowners. The objectives for view sharing are as follows;

- a) *To ensure that public view corridors between buildings or along streets are retained and enhanced from streets or public spaces.*
- b) *To minimise the impact of new development on existing public and private views and vistas.*
- c) *To preserve or fairly share water views for foreshore residents.*

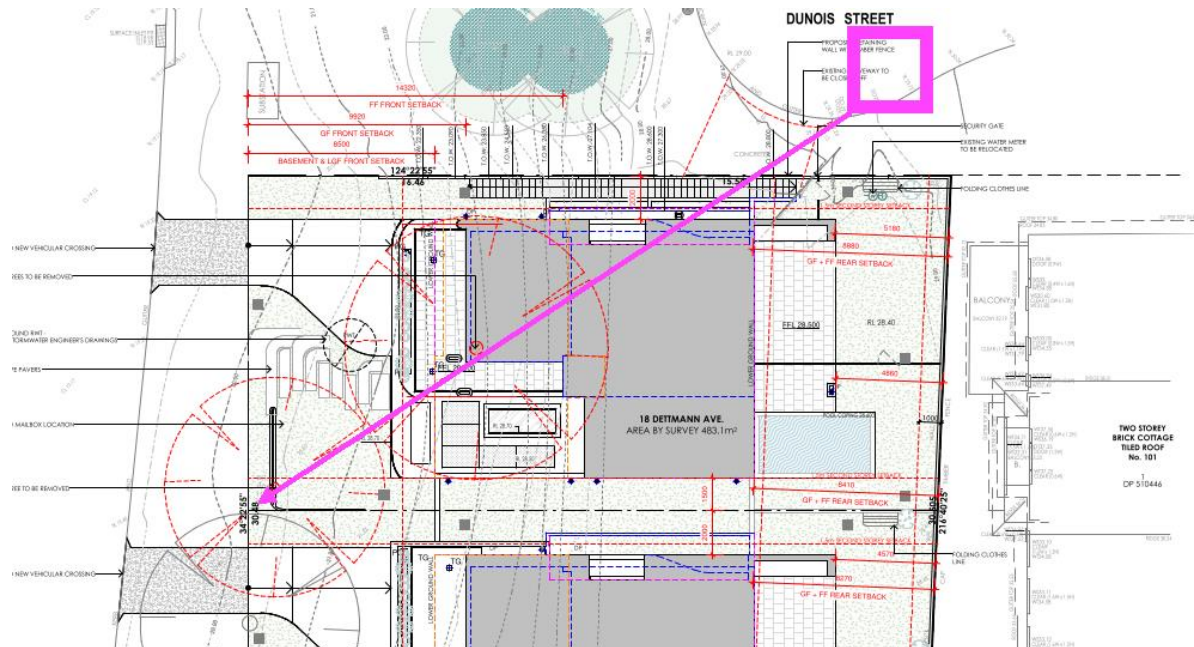
Water views are prominent within the streetscape of Dunois Street. Upon approach to the cul-de-sac, spanning views to the Lane Cove River are achieved over a Dettmann Avenue and beyond. Water views are also a significant component to the heritage dwelling house at 101 William Edward Street. This is evidenced in the figure below;



Figure 16: Streetscape View to Lane Cove River (Source: Planner)

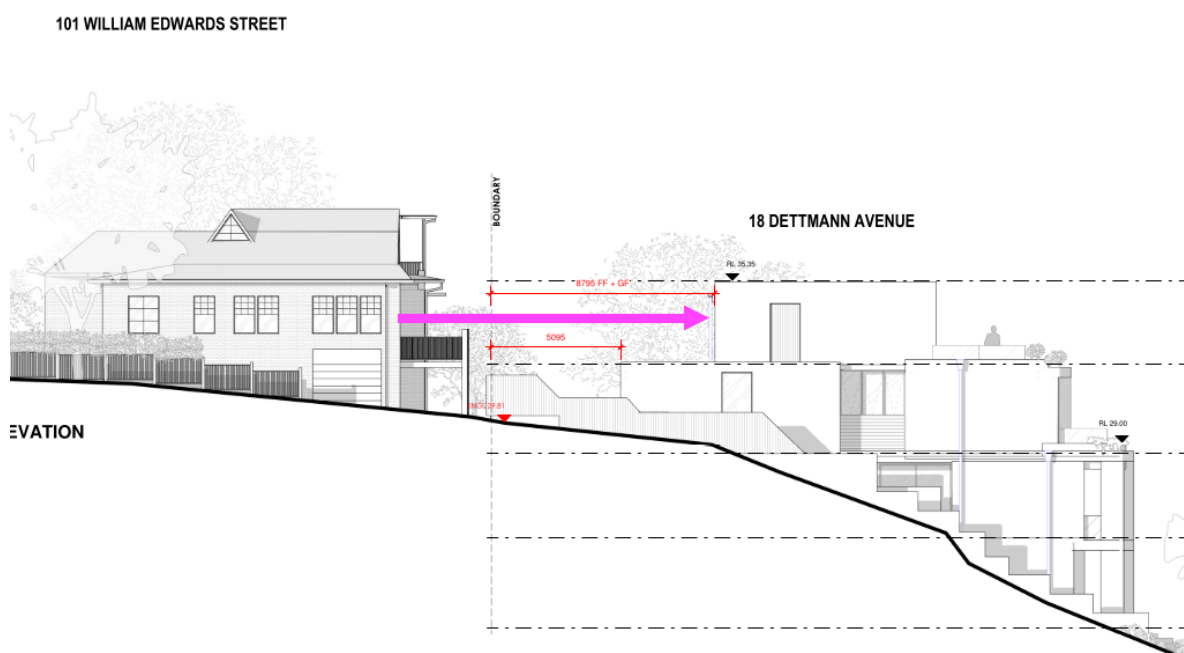
Whilst the applicant has not provided a view impact assessment in accordance with LCLEP Heritage 5.10, and LCLDCP Part B.4, Council’s preliminary assessment is positioned to confirm

(with a level of certainty) that the proposed development would not satisfy the abovementioned objectives. It is highlighted on drawing A100 by Tesserarch dated 11/12/2024 that the relative level of the existing driveway is at RL29.00. The ridge of the proposed dwelling houses is at RL35.50. This is a 6.50m total height from the existing level of the driveway as pictured above. For clarity, Figure 17 demonstrates the location at which the image is taken.



*Figure 17: Viewline to Water (Source: Plans)*

It is reasonable to estimate that the total height and building envelope would cause significant obstruction to the public views achieved from Dunois Street. Additionally, private view impacts to the adjoining heritage property are further substantiated by the Dunois Street Elevation on drawing A310 by Tesserarch dated 07/01/2025.



*Figure 18: Elevational View from Neighbouring Property (Source: Architectural Plans)*



The property hosts a large internal living area and associated balcony which achieve high-value water views to the Lane Cove River. The approximate internal level of the neighbouring dwelling house is at RL32.290, where the subject development would be at a height of RL35.35. Any potential water views would be impeded by a 3.06m rear at the third level of the proposed dwelling. The development fails to satisfy objectives a, b, and c of Part B.4.

**Part C - Clause 1.7.1 – Wall Height**

Part C1.7.1(a) stipulates that proposed residential developments are limited to a maximum wall height of 7m from the existing ground level. The developments propose wall heights of 9.35m at the central section of the southern wall at No.16, and 10.5m at the front section of the northern wall at No.18. The 2.35m and 3.5m wall height variations are considered substantial. The following reasons support Council's reasoning for the refusal;

- The large spanning walls would result in visually unappealing, unarticulated, areas of blank concrete walls. The lack of fenestration, visual breaks or in-stepping contribute to the appearance as an excessively bulky and disproportionately scaled envelope;
- The wall height exceedance at No. 18 is created by the addition of a third storey. This is a design choice that is uncharacteristic amongst the immediate neighbourhood character that results in a 30.92% variation from the maximum allowable wall height; and
- As the applicant has not provided a view impact assessment, Council is unable to attain the exact level of impact caused by the wall height exceedances of both dwelling houses. It is envisioned that through a more considered design that provides articulation through the in-stepping of first storey walls, then the impact would be reduced. However, this has not been implemented in the design, thus resulting in the variation.

**Part C - Clause 1.7.1 – Number of Storeys**

Part C Clause 1.7.1(e) stipulates that a maximum of 2 storeys is permissible at any point above ground level (existing) and no building will be permitted to have an appearance (in elevation) exceeding three storeys in height. The proposed development results in two 3-storey dwelling houses. The variation to the provision is not supported as per the following reasons;

- The dwelling houses would be viewed as 4-storeys from the public domain of Dettmann Avenue. This is highlighted by the figure below;

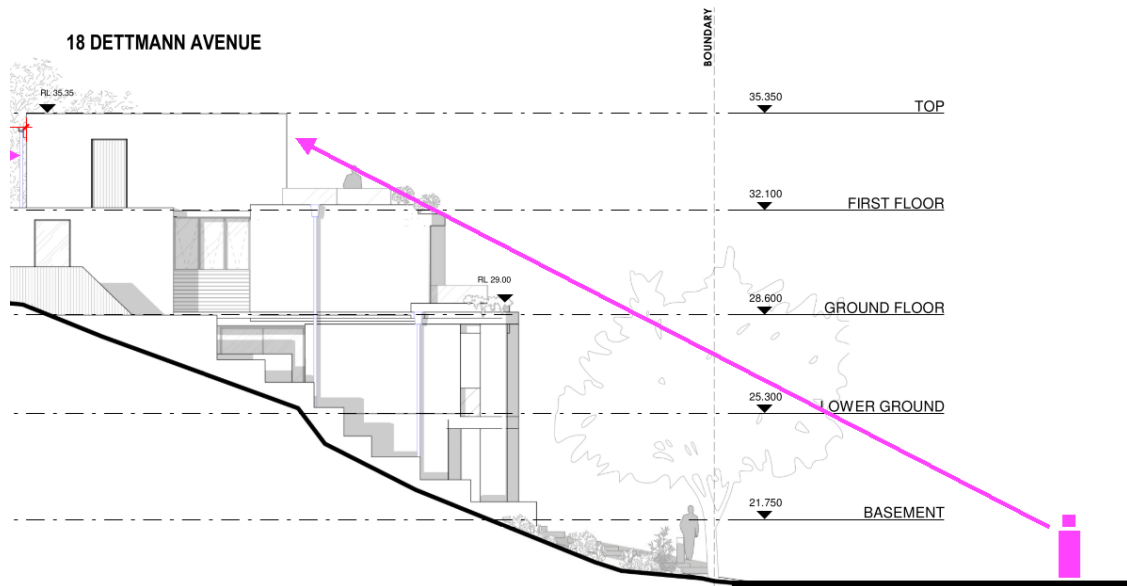


Figure 19: View from Dettmann Avenue (Source: Architectural Plans)

- The section of the site where the variation occurs is relatively flat. The design shows an approximate 3m excavation into the earth to allow for the lower ground level. A design that is responsive to the natural topography would take this into consideration to ensure that this section of the site does not propose 3 habitable floor plates atop each other;

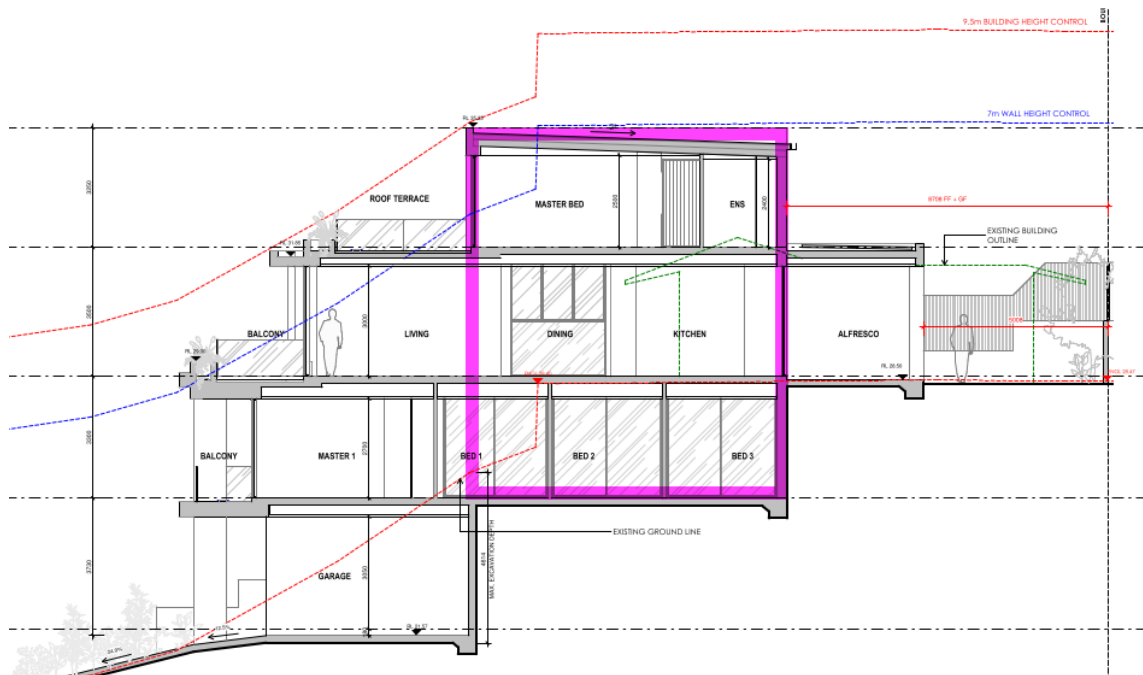
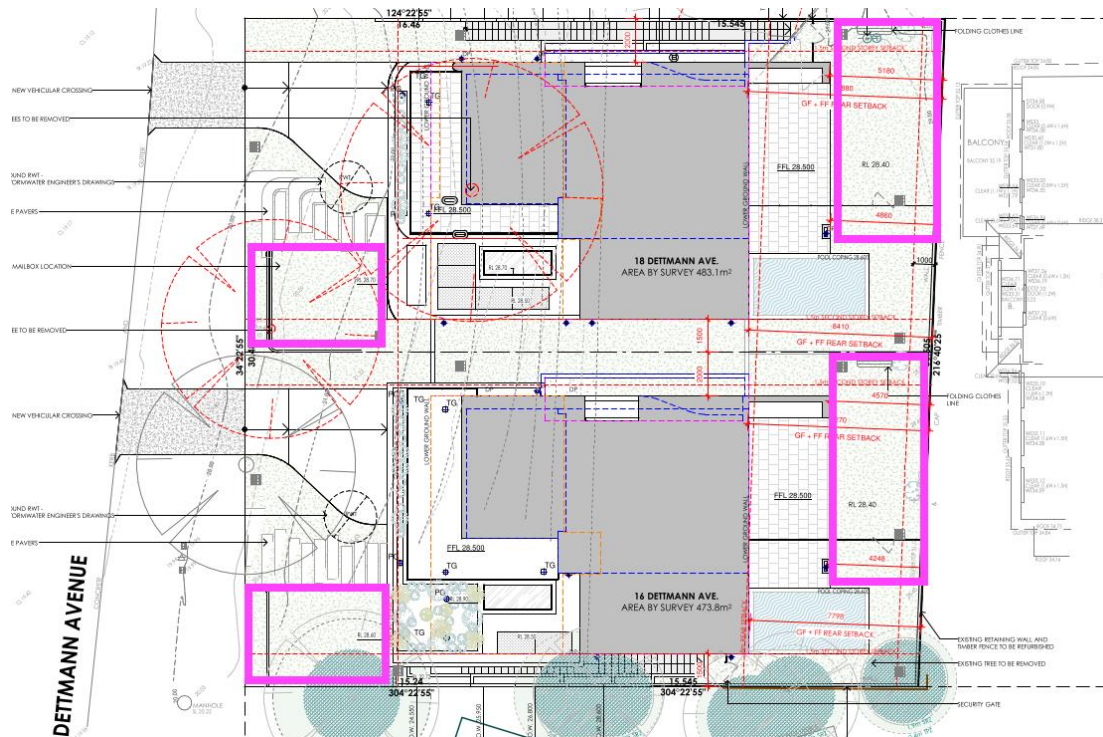


Figure 20: 3-Storey Component (Source: Architectural Plans)

- As mentioned previously, the 3-storey component of both dwelling houses would entail significant view impacts to the rear neighbouring property at 101 William Edward Street.

**Part C – Clause 1.5(a) – Minimum Landscaped Area**

Clause 2.6(b) states that a minimum of 35% of the site is to be landscaped area with a minimum width of 3.0m. In this instance, each proposed site is measured individually. Council’s arborist stated within the referral section of the report that the applicant’s calculation of the landscaped area was not in accordance with the minimum dimension requirements. The applicant’s calculation included hardscaped paving areas, balcony planter boxes, and areas that would not meet the minimum soil depth requirements. The areas on both subject sites permitted to be included in the calculation are outlined in the figure below;



*Figure 21: Landscape Calculation Areas (Source: Architectural Plans)*

The departures are not supported for the following reasons;

- The significant numerical variations would not allow for adequate areas to plant medium or large tree species. The restricted areas present difficulty to allow for sufficient root development of any tree species;
- The landscaped areas lack the provision of any native tree species that would provide canopy coverage, general amenity, and privacy screening to the dwelling houses;
- The proposal would significantly alter the existing natural landscaped features of the subject sites when viewed from Dettmann Avenue;
- The proposed landscape treatment is discordant from the existing landscape character that hosts several native species; and
- The numerical variation gives rise to the aspect of overdevelopment on the undersized lots. The 16.46% and 17.75% variation would be materially perceivable when viewing the development from the streetscape. There would be a clear imbalance between built product and natural landscaping.

**Part C – Clause 1.6 – Cut and Fill**

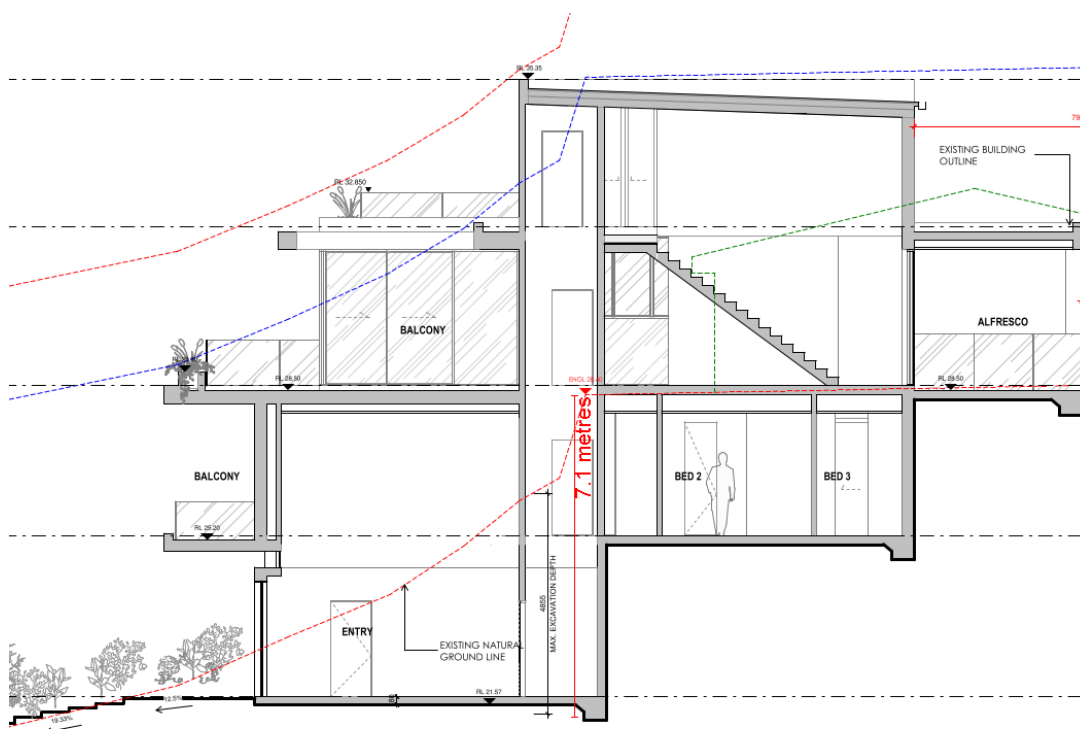
Clause 1.6 states that the maximum cut and fill of a development is limited to 1m. The relevant cut and fill controls of Part C Residential Develop LDCP Clause 1.6 are as follows;

*(a) All dwellings are to relate to the existing topography of the land at the time of the adoption of this DCP.*

*(b) The area of the site contained within the building footprint can be excavated or filled only where it is necessary to reasonably construct a dwelling on steeply sloping sites.*

*(d) Development is limited to a maximum depth of excavation or fill of 1m at any point on the site unless it is demonstrated that the site's slope is too steep to reasonably construct a 2-storey dwelling within this extent of excavation.*

The development exceeds the provision by 6.1m and presents a 3-storey component on a section of the site that exists as flat. This is demonstrated in the following figure;



*Figure 22: Proposed Excavation (Source: Architectural Plans)*

Council does not support the variation for the following reasons;

- The total amount of excavation would result in a 610% departure from the maximum allowable 1m cut and fill provision;
- The area of the subject site at which the maximum excavation occurs exists as a flat surface. It presents a reasonable surface to construct upon without the requirement of such excavation;

- A more architecturally skilful design would utilise stepping of the envelope to ensure compliance with the provision. The result of the current design would be an envelope that presents an excessive bulk and scale;
- The variation would result in a dwelling house that proposes 3-storeys and further, would have a 4-storey elevational view from the public domain at Dettmann Avenue;
- The excessive excavation to create 3-storeys is not in character with the R2 Low Density Zone. In the Lane Cove LGA, basement excavation is characteristic for shared basements for multi-dwelling housing in the R3 Medium Density Zone and residential flat buildings in the R4 Zone High Density Zone; and
- Allowing such depth of excavation is contrary to the expectations of the community and conflicts with a number of similar development applications which have not been supported by Council.

Consequently, Council recommends that the development be refused due to the proposed design and its variation of the following controls within the LDCP;

- o *LDCP Part B – Clause B.4(b, d, f, h, j);*
- o *LDCP Part C - Clause 1.7.1 – Wall Height;*
- o *LDCP Part C - Clause 1.7.1 – Number of Storeys; and*
- o *LDCP Part C – Clause 2.6(b) – Landscaped Area*
- o *LDCP Part C – Clause 1.6 – Cut and Fill*

**IMPACTS OF DEVELOPMENT (Section 4.15(1)(b))**

The proposal would have adverse impact neighbouring properties and the public domain in terms of bulk and scale, view loss, neighbourhood character, and precedent. The proposal presents a development outcome that is inconsistent with the objectives of the relevant planning controls.

**SUITABILITY OF SITE (Section 4.15(1)(c))**

The subject site would not be suitable for the proposed development due to the creation of undersized lots. The proposed development would negatively impact the amenity of the neighbouring properties and the surrounding area. The subject sites would constrain the development and set a negative precedent for development in Longueville and the wider Lane Cove local government area.

**RESPONSE TO NOTIFICATION (Section 4.15(1)(d))**

***101 William Edward Street***

<b>Concern</b>	<b>Comment</b>
Concern for the lack of detailed information for Council to make a full assessment.	Council concurs with the objection. The development application lacks several assessments/documents to ensure that a full assessment against any potential impacts could be completed. The documents are as follows;  a) View Impact Assessment b) Updated Geotechnical Investigation c) Clause 4.6 Variation Request:
Concern for the proposed bulk and scale of the developments.	As demonstrated previously within the report, the bulk and scale of the proposed development is excessive. The construction of two 3-storey dwelling houses that are perceivable as 4-storeys from the public realm, would be an overdevelopment that is

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	exacerbated by undersized lots. The building envelopes would fail to integrate to the natural topography of the subject site, and the result would be that of two oversized, unarticulated forms that dominate the low-density, greenscaped character of Dettmann Avenue.
Concern for the detriment to the existing streetscape character.	<p>The adjoining sites encompass areas of 918.35m<sup>2</sup> at 101 William Edward Street, and 924.4m<sup>2</sup> at 103 William Edward Street. The neighbourhood entails single-dwelling houses on singular allotments.</p> <p>Most notably, the adjoining property at 101 William Edward Street entails a heritage dwelling that features a red-brick masonry construction and expansive terracotta-clad hipped roof design. The federation-period dwelling houses are predominant amongst Longueville and are considered to be contributory to the fabric of the character.</p> <p>Council concurs that the proposed design would not respect the existing character of the adjoining properties – both in terms of their built product and lot size. The built result of the proposed dwelling houses would undermine the heritage value of the neighbouring heritage item.</p>
Concern for the contravention of a historical covenants applicable to the subject site.	The development application is recommended for refusal and therefore, there would be no breach of the covenant.
Concern for the loss of views by way of the proposed top level of the design.	The applicant has failed to provide any form of a view impact assessment in accordance with any view sharing principles. It is evident that the construction of two 3-storey dwelling houses would enact significant impacts to the rear neighbouring property at 101 William Edward Street. Council is unable to quantify the full extent of the impacts subject to the lack of any such investigation by the applicant.

***Longueville Residents Association***

<b>Concern</b>	<b>Comment</b>
Concern for the removal of several mature species on the subject site.	Council's arborist has completed a full assessment regarding the removal of species on the subject site. The assessment is summarised within the Officer Comments section of the report.
Concern for the rear setbacks.	The development proposes a 200mm variation to the minimum 8m rear setback provision.
Concern for the miscalculation in the total landscaped area.	Council has completed an internal calculation of the landscaped area. No 16 would provide 18.54% and No.18 would provide 17.27% landscaped area. Both entail significant departures from the required 35% landscaping stated within Clause 2.6(b). Council is not in support of the variation.
Concern for the total excavation proposed.	The development proposes a total excavation of 7.1m on the subject site. The excavation is proposed to accommodate for the 3-storey component of the design. It is considered a substantial variation from the maximum allowable 1m, which gives rise to a series of secondary variations. The variation fails to satisfy Section 6.1(d) of the LEP and therefore, Council is not in support.
Concern for the proposed wall	As demonstrated in the variations section of the report; Council

height exceedances.	concurs with the statement of the objection and is not in support of variation.
Concern for the impact on water views from neighbouring properties and the public domain.	As demonstrated in the LDCP Part B section of the report; Council concurs with the statement of the objection and is not in support of variation.

**17 Dettmann Avenue**

<b>Concern</b>	<b>Comment</b>
Concern for overdevelopment on an undersized lot.	As demonstrated in the LCLEP Part 4 Clause 4.1 section of the report; Council concurs with the statement of the objection and is not in support of variation.
Concern for the exclusion of basement parking from the floor space ratio calculation.	A basement garage is not considered as a habitable space that is included in floor space ratio calculations.
Concern for the increase in traffic congestion at Dettmann Avenue.	The increase in total traffic resultant of the proposed parking arrangement is not considered as an impact that would warrant refusal of the application.
Concern for overlooking between properties and general privacy impacts.	It is not envisioned that there would be any privacy or overlooking impacts to the lower properties located on the western side of Dettmann Avenue. The properties are located on the opposite side of the street and are set back appropriately from their front boundaries.
Concern for the lack of adequate structural investigation regarding the proposed excavation.	The development provides a geotechnical investigation to assess the potential impacts of the proposed excavation.
Concern for potential stormwater management issues.	The development would comply with the general stormwater management provisions stated in the LDCP. Both dwelling houses propose the installation of 10,000L rainwater tanks beneath the ground surface at the front setback. Council's engineer has completed an assessment of the proposal, and no concerns were raised regarding the stormwater management systems.
Concern for the number of storeys of both dwelling houses.	As demonstrated previously within the report, the bulk and scale of the proposed development is excessive. The construction of two 3-storey dwelling houses that are perceivable as 4-storeys from the public realm, would be an overdevelopment that is exacerbated by undersized lots.

**29 Dunois Street**

<b>Concern</b>	<b>Comment</b>
Concern for the loss of total canopy coverage across the subject sites.	Council has determined that the total landscaped area is insufficient and varies the minimum 35% requirement.
Concern for the increase in urban heat impacts.	The proposal complies with the urban heat and shade provision within LDCP Part S. However, as mentioned as above, the total landscaped area would be a significant departure from Council's requirement. Council is not in support of the above variation.
Concern for overdevelopment on an undersized lot.	As demonstrated in the LCLEP Part 4 Clause 4.1 section of the report; Council concurs with the statement of the objection and is not in support of variation.
Concern for the total excavation proposed.	The development proposes a total excavation of 7.1m on the subject site. The excavation is proposed to accommodate for the

	3-storey component of the design. It is considered a substantial variation from the maximum allowable 1m, which gives rise to a series of secondary variations. The variation fails to satisfy Section 6.1(d) of the LEP and therefore, Council is not in support.
Concern for potential soil run off to enter the public domain of Dettmann Avenue.	Council is not in support of the development application. If the application was supported, Council would recommend a series of conditions of consent to ensure sediment control during construction.
Concern for the miscalculation of the gross floor area and subsequent exceedance of the 0.6:1 FSR.	The FSR of both proposed dwelling houses is compliant with the maximum 0.6:1 ratio. However, Council concurs that the bulk and scale objective of the development standard is not met resultant of the undersized lots.
Concern for the material impact on the adjoining heritage property.	Council concurs that the proposed design would not respect the existing character of the adjoining properties – both in terms of their built product and lot size. As demonstrated in the report, the heritage dwelling would be impacted through the obstruction of high-value water views.

### **13 Dettmann Avenue**

<b>Concern</b>	<b>Comment</b>
Concern for overdevelopment on an undersized lot.	As demonstrated in the LCLEP Part 4 Clause 4.1 section of the report; Council concurs with the statement of the objection and is not in support of variation.
Concern for the increase in traffic congestion at Dettmann Avenue.	The increase in total traffic resultant of the proposed parking arrangement is not considered as an impact that would warrant refusal of the application.
Concern for the removal of several mature species on the subject site.	Council's arborist has completed a full assessment regarding the removal of species on the subject site. The assessment is summarised within the Officer Comments section of the report.
Concern for potential soil/rainwater run off to enter the public domain and neighbouring properties of Dettmann Avenue.	Council is not in support of the development application. If the application was supported, Council would recommend a series of conditions of consent to ensure sediment control and stormwater runoff during construction and into occupation.

### **PUBLIC INTEREST (Section 4.15(1)(e))**

The proposal would have an unreasonable impact on neighbouring properties and the public domain with regard to the Lane Cove LEP 2009, Lane Cove DCP 2009 and other environmental planning instruments. Therefore, approval of this application would be contrary to the public interest.

### **CONCLUSION**

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have not been satisfied.

The application does not comply with the minimum lot size development standard of the LCLEP 2009.

The application varies several primary controls within Part C Residential Development Objectives of the Lane Cove Development Control Plan 2009.

On balance as the proposed development would be unreasonable it is therefore recommended for refusal.



## RECOMMENDATION

That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, Development Application DA157/2024 for the subdivision of two lots and the construction of two 3-storey detached dwelling houses including new driveway crossovers, internal garages, and in-ground swimming pools at 36-38 Dunois Street Longueville, is recommended to be **refused** for the following reasons;

### 1. EP and A Assessment Regulations 2021

As per Section 35B of the Environmental Planning and Assessment Regulation 2021, the development application is required to provide a clause 4.6 variation request to the development standard.

#### **35B Additional requirements for development applications involving contravention of development standards**

- (4) *This section applies to a development application that proposes, in accordance with a relevant EPI provision, development that contravenes a development standard imposed by any environmental planning instrument.*
- (5) *The development application must be accompanied by a document that sets out the grounds on which the applicant seeks to demonstrate that—*
  - (c) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (d) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*
- (6) *In this section—*
  - relevant EPI provision means—*
    - (b) **clause 4.6 of a local environmental plan that adopts the provisions of the Standard Instrument, or**
    - (b) *an equivalent provision of another environmental planning instrument.*

**Comment:** The development application fails to address the 13.85% and 12.16% variations to the minimum lot size development standard. Under Section 35B of the EP and A Regulations, Council does not have the authority to support the application.

### 2. Lane Cove Local Environmental Plans 2009 – Aims

The proposed development would be unsuitable for the subject site and is inconsistent with the following aims *LCLEP 2009* as follows:

#### 1.2 *Aims of Plan*

(1) *This Plan aims to make local environmental planning provisions for land in Lane Cove in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*

(2) *The particular aims of this Plan are as follows—*

...

- (c) *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,*
- (d) *in relation to residential development, to provide a housing mix and density that—*
  - (i) *accords with urban consolidation principles, and*
  - (ii) *is compatible with the existing environmental character of the locality, and*
  - (iii) *has a sympathetic and harmonious relationship with adjoining development,*

**Comment:** The development application proposes two 3-4 storey dwelling houses on undersized lots within an R2 Low Density Residential Zone. The proposal requires the consolidation and subdivision of the two undersized lots to alter their existing arrangement. The proposal fails to satisfy the aims stated within 2(c), 2(d)i), 2(d)ii) and 2(d)iii).

### **3. Lane Cove Local Environmental Plan 2009 – Zoning Objectives**

The proposed development would be discordant to the objectives of an R2 Low Density Residential Zone as demonstrated by the following;

*Zone R2 Low Density Residential*

#### *1 Objectives of zone*

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To retain, and where appropriate improve, the existing residential amenity of a detached single family dwelling area.*
- *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.*
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

**Comment:** The proposed density of the development would be discordant from the standard residential dwellings within the neighbourhood given the lack of an adequately sized lot. The design presents two dwelling houses with gross floor areas that reflect overdevelopment. Given the height, and bulk and scale of the development, there are sufficient planning reasons that suggest the dwelling houses would be highly visible from the Lane Cove River. The visual prominence of the development when viewed from Dettmann Avenue disputes that landscaping is a central element in the proposed design. Additionally, the removal of existing canopy trees and failure to comply with the minimum 1:1 replanting ratio further substantiates that the design disregards the greenscape environment.

### **4. Lane Cove Local Environmental Plan – Lot Sizes**

The LEP provides the following objective for lot sizes;

#### *4.1 Minimum subdivision lot size*

- (1) *The objectives of this clause are as follows—*

- (a) to promote consistent subdivision and development patterns in zones.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.



Figure 23: Minimum Lot Size Map (Lane Cove Council)

**Comment:** The existing allotment for Lot 2 and Lot 3 is registered as an undersized lot with an area below the 550m<sup>2</sup> threshold. Lot 2 has an existing total area of 473.8m<sup>2</sup> and Lot 3 has an existing total area of 483.1m<sup>2</sup>. As demonstrated in Figure 12, the Lot Size Map has purposefully left the lots as ‘uncoloured’ as they are already registered as undersized. When amalgamated for the purposes of subdivision, the new lot would measure 956.9m<sup>2</sup>, meaning that the Lot Size Map would highlight the new lot in colour as it would be above the minimum 550m<sup>2</sup>. However, the new lot would result in a 143.1m<sup>2</sup> shortfall of the required 1100m<sup>2</sup> area to subdivide and create two 550m<sup>2</sup> lots.

#### 5. Lane Cove Local Environmental Plan – Heritage Conservation

The proposed development was assessed against the objectives for Part 5.10 of the LCLEP;

##### 5.10 Heritage conservation

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the [Heritage Map](#) as well as being described in Schedule 5.

(1) **Objectives** The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Lane Cove,

*(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

*(c) to conserve archaeological sites,*

*(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

**Comment:** The proposal fails to satisfy objectives (a) and (b) of Part 5.10. The material selection, building form and envelope, streetscape character, and subsequent view loss would result in the unreasonable amenity impacts to the adjoining heritage dwelling and are adequate grounds for Council's refusal of the application.

#### **6. Lane Cove Local Environmental Plan – Section 6.1A Earthworks**

The proposed development was assessed against the objectives of Section 6.1 of the LCLEP;

*(1) The objectives of this clause are as follows—*

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

*(3) Before granting development consent for earthworks, the consent authority must consider the following matters—*

...

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

...

**Comment:** The proposal fails to satisfy objective (d) of Section 6.10. The building form and envelope, streetscape character, and subsequent view loss would result in the unreasonable amenity impacts to the adjoining dwelling and are adequate grounds for Council's refusal of the application.

#### **7. Lane Cove Development Control Plan – Controls and Objectives**

The development application was assessed against the control/objectives of the Lane Cove Development Control Plan Part B General Controls and the controls/objectives of the Lane Cove Development Control Plan Part C Residential Development. The proposed development fails to satisfy the following controls/objectives of the following subsection within LDCP Part B and Part C;

- *LDCP Part B – Clause B.4(b, d, f, h, j) – View Sharing;*
- *LDCP Part C - Clause 1.7.1 – Wall Height;*
- *LDCP Part C - Clause 1.7.1 – Number of Storeys;*

- *LDCP Part C – Clause 2.6(b) – Landscaped Area; and*
- *LDCP Part C – Clause 1.6 – Cut and Fill.*

Subsequent to the departures in the abovementioned, the proposal would have an unreasonable impact on neighbouring properties and the public domain. The subject site would not be suitable for the proposed development due to the creation of undersized lots. On balance, as the proposed development is recommended for refusal.

#### **8. EPAR – Insufficient Information**

Insufficient information has been submitted in support of the application in accordance with Clause 36 of the Environmental Planning & Assessment Regulations (EPAR) 2021 with respect to:

The application fails to provide a comprehensive investigation, research, or assessment as to the view impacts of the proposed development envelopes.

The application fails to provide a Clause 4.6 variation request to assess and support the variation of the minimum 550m<sup>2</sup> for the allotments.

#### **9. Public Interest**

The development application should be refused having regard to the contentions raised above as approval of the proposed development would set an undesirable precedent and the proposed development is therefore not in the public interest.

The approval of the proposed development would encourage similar overdevelopments on undersized allotments in R2 Low Density Residential Zones, which may result in a significantly altered streetscape and character in the vicinity of the subject site.

Mark Brisby  
**Director - Planning and Sustainability**  
**Planning and Sustainability Division**

#### **ATTACHMENTS:**

There are no supporting documents for this report.