



Greenwich Community Association Inc

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For current committee contact details see www.greenwich.org.au

Submission

DA 171/2020

29 – 57 Christie Street, St Leonards

The Greenwich Community Association Inc objects to the above Development Application on the following grounds:-

1. The exceedances of planning controls in Lane Cove's LEP sought by the applicant must be dealt with by way of Planning Proposal, not by a Development Application and a Clause 4.6 request.

The applicant seeks approval of a development that significantly exceeds the planning controls in the Lane Cove LEP.

The 2036 Plan at p 76 states as follows:-

Rezoning

Changes to a site's existing statutory planning controls will be required to allow development to occur in accordance with the Plan. It will be the responsibility of each relevant Council to progress planning proposals through amendments to their respective local environmental plans to give effect to the built form recommendations in the Plan.

Assessment of the current Development Application should be delayed until the applicant has lodged a Planning Proposal for Buildings A, B and (if appropriate) C.

This will then allow for the "further opportunities for the community to provide feedback as part of the public exhibition of any planning proposal" as outlined on p 76 of the 2036 Plan.

Through the lodgement of a development application, the applicant appears to be seeking to avoid the critical interim Planning Proposal stage foreshadowed by the 2036 Plan and consent should be refused on this basis alone.

2. The Development Application must be refused as Lane Cove Council has not yet demonstrated to the Secretary of the Department of Planning, Industry and Environment (DPIE) by way of a Planning Proposal that the inconsistencies between the building heights sought by the applicant and the total height of the storeys on its development sites as specified in the St Leonards Crows Nest 2036 Plan are of minor significance while still achieving the vision, objectives and actions identified in the 2036 Plan.

The building heights sought by the applicant for Buildings A and B are significantly in excess of those specified in the Lane Cove LEP and of the total height of the storeys for each site specified in the St Leonards Crows Nest 2036 Plan (refer Attachment A).

The 2036 Plan at p 76 states as follows:-

Section 9.1 Direction

*The Plan is implemented under Section 9.1 of the Environmental Planning and Assessment Act 1979, requiring future rezonings to be consistent with the Plan. **Planning proposals may be inconsistent with the Plan if it can be demonstrated to the Secretary of the Department of Planning, Industry and Environment that the inconsistency is of minor significance while still achieving the vision, objectives and actions identified in the Plan.***

For the above reason, the applicant cannot proceed by way of Development Application until the Secretary of the DPIE has approved a Planning Proposal to amend the controls in the Lane Cove LEP consistent with the development specifications sought by the applicant.

3. In addition to the reasons outlined in 1 and 2 above, the exceedances of Lane Cove LEP planning controls sought by the applicant do not meet the requirements of Clause 4.6 as follows:-

- (a) as will be outlined later in this submission, the proposed heights for Buildings A and B significantly exceed the total heights of storeys designated for those sites in the 2036 Plan.

The 2036 Plan is clear that inconsistencies between the controls specified in the 2036 Plan and those sought by the applicant must be approved by the Secretary of the DPIE.

This has not happened.

Without approval of the Secretary of the DPIE, Clause 4.6(2) cannot apply.

- (b) the applicant has acknowledged in its Statement of Environmental Effects (SEE) that it had at least three contacts with DPIE between the release of the draft 2036 Plan and the final 2036 Plan. The applicant states that the 2036 Plan was discussed and it is assumed that development controls would have been included in these discussions.

The applicant has, at all times, been aware of the height controls in the Lane Cove LEP.

The draft 2036 Plan was released on 15 October 2018 and the total heights proposed by the DPIE for each of the applicant's sites were clear from that point.

The applicant had its first meeting with Council officers on 17 December 2018, when it introduced itself as the new owner of the site. It knew then the number of storeys specified for its development sites in terms of the draft 2036 Plan and was able to calculate relevant building heights for each site.

It is assumed that, in the many contacts between the applicant and Council prior to release of the final 2036 Plan, the applicant would have been aware of the height controls for the sites supported by Lane Cove Council.

The applicant had almost two years to develop a plan consistent with the heights contemplated in the draft 2036 Plan.

The storey numbers (and, as a consequence, building heights) in the final 2036 Plan were, in fact, a bonus for the applicant as they significantly exceeded those depicted in the draft 2036 Plan.

Despite this, the applicant still seeks heights which exceed the final 2036 Plan.

Compliance with a development standard that is already well in excess of the standard depicted in the draft 2036 Plan (of which the applicant was aware for almost two years) is not unreasonable or unnecessary and exceedance of this standard should not be supported in terms of Clause 4.6(3)(a).

- (c) the 2036 Plan was developed through a detailed and extensive process that commenced in August 2017 with the Interim Statement for the St Leonards and Crows Nest Station Precinct.

The process of development involved detailed studies and extensive community consultation as detailed in pp.1-16 of the final 2036 Plan. It provided an opportunity for all property owners and potential developers to outline their objectives for their sites. The applicant had the opportunity to input into this process.

After due consideration of all input, the DPIE released the final 2036 Plan to provide strategic direction for the development of the St Leonard Crows Nest Precinct.

Given the extensive and detailed process involved to develop the final 2036 Plan as a plan for strategic development of the precinct, there are insufficient planning grounds in terms of Clause 4.6(3)(b) to justify contravening the development standard.

To allow such a significant contravention by an applicant who has held the sites throughout the duration of the evolution of the 2036 Plan would undermine confidence in the integrity of the planning process and would not be in the public interest in terms of Clause 4.6(4)(ii).

4. The Development Application must be re-exhibited in conjunction with the Voluntary Planning Agreement foreshadowed in Appendix Y.

The final date for submissions in respect of the Development Application should be extended to the final date for submissions respect of the Voluntary Planning Agreement.

We have outlined above our concern that the Development Application for Buildings A and B should proceed only after assessment of a Planning Proposal for the sites.

Noting, however, that the applicant has lodged a Development Application, it is understood that Council must now assess the Development Application.

Regulation 25D (1) under the EP&A Act requires a planning authority to give public notice of a proposed planning agreement, if practicable, contemporaneously with notice of the development application to which it relates or as soon as possible thereafter.

It is concerning that, on the day that exhibition will close for the subject Development Application, there is no sign of the related Voluntary Planning Agreement.

It seems extraordinary, given the extensive communication between Lane Cove Council and the applicant since their first meeting on 17 December 2018 and given that the agreement was discussed in a meeting with Council on 20 August 2020, that the draft Voluntary Planning Agreement was not available for exhibition with the Development Application.

It is not possible to make an informed submission in respect of the current Development Application in the absence of exhibition of a final draft Voluntary Planning Agreement – they are linked and must be analysed together.

It is noted, however, that there is a significant discrepancy between Appendix Y and the SEE in relation to payment of Section 7.11 contributions.

- SEE p 24
“a monetary contribution will be paid in accordance with Council’s section 7.11 Contribution Plan towards community facilities/infrastructure”.
- Appendix Y Clause 4.3
“ As set out above, the contributions comprise the construction of infrastructure, the provision of material benefits for the use by the public and a monetary contribution to go towards other public purposes, in lieu of the payment of any s7.11 or s7.12 monetary contribution under any condition of development consent granted for the Development”.
- Appendix Y Clause 8.1
The Planning Agreement will exclude the application of section 7.11 and 7.12 of the EPA Act (or equivalent provisions such as local infrastructure contribution requirements because of any reforms to planning legislation) to the Development on the Land, to the extent that the Development is to be carried out on any part of the Land.

If the proponent seeks to make no Section 7.11 contribution, the SEE should be annotated accordingly as it currently reflects a proposal at odds with Appendix Y.

For reasons outlined above, the current Development Application and the draft Voluntary Planning Agreement should be exhibited together and further submissions should be accepted in respect of the current Development Application.

In the event that the applicant elects or is required to proceed by way of Planning Proposal, Regulation 25D(1A) would apply to require that the Planning Proposal and the draft Voluntary Planning Agreement should be exhibited together.

5. A detailed Development Application for Building C must be exhibited contemporaneously with the draft Voluntary Planning Agreement.

In the alternative, the draft Voluntary Planning Agreement must be amended to delete reference to Building C.

It is noted that Appendix Y includes the following clause:-

3.2 For the avoidance of doubt, we confirm that this offer comprises the total offer for the provision of works for public purposes for the development under the Concept Plan, including for the detailed DA that will be lodged in the future for the construction of Building C.

In the absence of a detailed Development Application for Building C, it is not possible for Council or community members to assess the public benefit of what is being offered under the proposed Voluntary Planning Agreement relative to what will be sought by the applicant in a Development Application for Building C.

The draft Voluntary Planning Agreement to be exhibited in relation to the current Development Application must relate to Buildings A and B only.

Merri Southwood
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APPENDIX A
Building heights

<u>Building</u>	<u>Lane Cove LEP</u>	<u>Draft 2036 Plan</u>	<u>Final 2036 Plan</u>	<u>DA per p 3 Appendix W</u>
A	25m	4 storeys	6 storeys Assume 3.5 m per storey 21 m	8 storeys RL 115.2 Exceed LEP by 13.7 m 38.7 m
B	25m	9 storeys	11 storeys Assume 3.5m per storey 38.5 m	12 storeys RL 130 Exceed LEP by 28.5 m 53.5 m

Height exceedance DA over 2036 Plan

Building A 84%

Building B 39%

The height increases of Buildings A and B in the current Development Application over the total heights of the storeys for each site* specified in the final 2036 Plan are significant and inconsistent with the Liveability Objective outlined on p 9 of the Plan:-

In transition areas between low and high-rise developments, new development should consider the prevailing scale and existing character in the design of their interfaces.

***based on 3.5 m per storey**