

Further submission to Independent Planning Commission: St Leonards South Planning Proposal

Overview

Thank you for the opportunity to make this further submission in response to the transcript of the Commission's meeting with Lane Cove Council on 23 May 2019. The transcript has only been available online since Thursday 30 May 2019 and was released too late for our prior submissions. We have reviewed the transcript, and have additional and/or more detailed comments to make in response, in large part to provide a more accurate picture for consideration by the IPC.

Our additional comments address:

- Council's refusal to address the serious questions regarding economic viability and achievability of the proposed new park, and the impacts this has on various aspects of the planning merit of the proposal;
- the persistent 'mislocation' of the proposed park relative to heritage, with the effect of understating the impact of the proposal on heritage conservation;
- reliance on a 6 metre setback of development in Park Road from the side boundaries of the proposed park for the purposes of heritage and shadow analysis, in circumstances where this setback is not reflected in LEP or DCP;
- further questions regarding Council's conclusions on the impacts on heritage conservation, including apparent disregard of a Heritage Council recommendation for review, failure to adequately consider the conservation and future of the heritage properties, and lack of protection for heritage from nearby development under the existing Lane Cove LEP/DCP;
- the potential uncertainty and lack of transparency associated with the proposed incorporation of DCP provisions in the LEP, with particular questions regarding how requisite flexibility for developers is to be handled;
- questions regarding the adequacy of (and RMS support for) the traffic analyses to date;
- questions regarding 'the traffic analysis' as a reason to discount planning for the whole precinct;
- the need for accurate and comprehensive shadow modelling; and
- Council's unacceptable response (or lack of any response) to submissions on public exhibition, the only formal opportunity for public comment on the proposal.

The viability of the proposed park

The proposed park is relied upon by Council to justify:

- extension of the planned boundary from Berry Road to Park Road (transcript P26:21);
- rejection of staging of the current proposal (transcript P27:10);
- inconsistency with conservation of heritage (transcript P4:16, P45:16).

Council assertions regarding funding and acquisition of the proposed park require further, rigorous analysis. The Commission has already received cogent and detailed analyses (at the public hearing and in writing) that raise serious questions about the financial viability and practical achievability of the park proposal. Similar concerns were also raised directly with Council in formal submissions on the LEP exhibition in 2017 (refer Appendix A). Council's dogged adherence to this outdated and unsustainable analysis, despite ongoing credible critique, raises serious questions about its level of commitment to the proposed park as a realistic outcome.

If the park is such a critical plank in the proposal, as indicated by Council, we suggest its viability and deliverability should be confirmed prior to any approval of the plan as a whole.

Location of park relative to heritage

Council persists in misrepresenting the location of the heritage properties relative to the proposed park:

"So two of the heritage items are directly opposite to the park. One is not" (transcript P45:16)

Is there some confusion about the location of the heritage-listed properties?

- Only one of the heritage-listed properties, 7 Park Road, is directly opposite the proposed park (refer Figure 1).
- 9 Park Road is also opposite the park, but it is *not* heritage-listed.
- 5 Park Road has a metre or so of land along its southern boundary that will oppose the northern boundary of the proposed park. Overwhelmingly, the heritage-listed site at 5 Park Road (including the entirety of the dwelling) is opposite 14 Park Road, which forms part of the land parcel designated for amalgamation as block 21.
- No part of 3 Park Road is opposite the park.

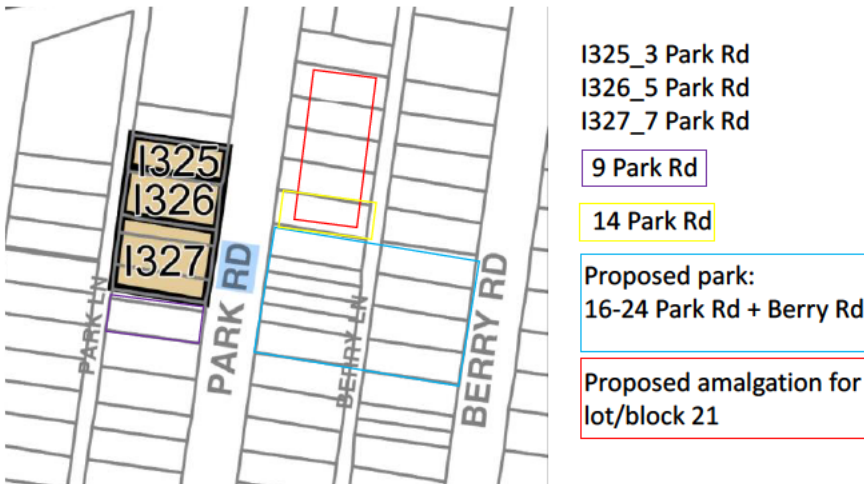


Figure 1: Adapted from Lane Cove LEP Heritage map

Council argues (see P45:40) that this is necessary as it is unable to otherwise deliver a building of an FSR suitable for developers. This seemingly amounts to an assertion that the heritage buildings should only be protected to the extent this does not interfere with Council's pre-conceived plans for building mass. It is instructive as to the approach taken by Council in the planning process.

6 metre side setback from park?

Council states that the apartment building proposed in Park Road (at the north end) opposite the heritage buildings is to be set back 6 metres from the north side boundary of the park (transcript P45:28).

The Dawbin Report also relies on a 6 metre setback (at p.13):

*"The building in the new development opposite the heritage items is set back 10m from Park Road and 6m from the park, ...
... A section of the west facade of proposed Block 21 building (4-8 storeys high) will be located opposite the heritage items.
(1) No. 3 Park Road will be opposite the proposed Block 21 building;
(2) The northern wall of No. 5 aligns with the southern wall of the Block 21 west building which has a 6m side setback;
(3) No. 7 is opposite the proposed park;
It is therefore concluded that the proposed development will not unreasonably impact on the heritage items as two of the three items are not affected and No. 3 will retain views of the park and the surrounding area."*

However, the 6 metre setback referred to above *does not* appear in the DCP or the LEP. This means that Council's assurances to the Commission regarding DCP controls reflecting the outcomes of the Dawbin Report (transcript P46:17) are clearly incorrect. The absence of this setback necessitates a reconsideration of the conclusions of the Dawbin Report.

Heritage Council submission ignored

The Heritage Council of NSW wrote to Council in February 2018 recommending:

"Based upon the information provided in the Heritage Impact Study, we believe that the proposed density of development has the potential to impact on the character of the streetscape and the setting of local heritage items. The heritage study by Dawbin Architects recommends that Council review the location, height and massing of proposed development along the western boundary of the study area. This recommendation is supported."

This comment from the Heritage Council came *after* the public exhibition of the plan (including the Dawbin Report and the DCP), and so must be taken to recommend a review (or further review) of the proposal as exhibited. No such review has ever been undertaken, and Council's comments at the recent meeting (transcript P46) indicate it believes that the current DCP finalises matters. The recommendation of the Heritage Council has been ignored – as have the other issues outlined above, all of which we have raised previously in our submissions to Council.

Dawbin conclusions: “minimal impact” ?

Council relies on the conclusions of the Dawbin Report to state, regarding the heritage properties in Park Road:

“those items are being really predominantly protected by use of the park as a buffer up against them, so the impact from our heritage study is there is minimal impact on them anyway” (transcript P4:15-20)

However, the conclusion of the Dawbin Report (“that the proposed development will not unreasonably impact on the heritage items as two of the three items are not affected”) is somewhat at odds with its earlier analysis, where it observes (p.12):

“The development will be introducing a new scale and height in excess of anything in the vicinity including the commercial development on the Pacific Highway to the north of the Precinct. The scale of development proposed has potential to impact on the heritage buildings and the character of the streetscape.”

This applies particularly given the absence of the 6 metre setback from the north side boundary of the proposed park (discussed above).

It does seem to us that this is in the realm of the blindingly obvious. An available conclusion is that these factors have been ignored because to take them into account would require a change of plan.

The role of setting in conservation

Neither Council (in its comments at the meeting) nor the Dawbin Report address how the radical change proposed to the setting of the heritage properties may affect their conservation. This is a shortcoming of the Dawbin Report, which was commissioned (and is relied upon) by Council to satisfy the LEP Gateway Condition regarding Heritage Conservation. Section 117 Direction 2.3 requires that the planning proposal contain provisions that “*facilitate the conservation*” of heritage items.

The setting of the heritage properties is relevant to their conservation. The NSW Heritage Office Guidelines for Infill Development in the Historic Environment (2005) state:

“Design in a historic context or infill design aims to preserve the special qualities that give a place character in a way that respects the old while reflecting the new and meeting the amenity needs of its users.”

These Guidelines also incorporate Article 8 of the Burra Charter:

“Conservation requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place. New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate.”

The existing setting of the Park Road heritage properties and character of streetscape is described in the Dawbin Report:

“The houses are complementary with the setting of Park Road, including contemporary single storey cottages on the eastern side of Park Road.”

The properties at 12, 14, 16 Park Road (all pictured in the Dawbin Report), are directly opposite the heritage properties and have substantially original facades of an early (inter-war?) era, and so contribute to the complementary setting in an immediate sense.



12, 14 and 16 Park Road

16 Park Road

Figure 2:
Heritage listed properties 3, 5 and 7 Park Road
Properties directly opposite 3 and 5 Park Road (12, 14, 16 Park Road)
(photos from Dawbin Report),

This existing, complementary setting is to be demolished and replaced with a wall of 8-storey buildings. The impact on the scale of the streetscape and the setting will be profound, with Park Road dominated by long blocks of high-density apartments.

Council openly acknowledges that the location of the proposed park (not really opposite the heritage properties) and the scale of the built form (8-10 storeys) have been dictated by economic objectives (P45:40):

“Obviously, because your built form – you know, trying to get a building that has got the right scale meant that we couldn’t get the park exactly opposite.”

No consideration has been given to whether (and to what extent) the economic and development imperatives (FSR, FSR, FSR) that drive the St Leonards South proposal should prevail over the usual planning considerations, such as built form, transition to low density, access to sunlight and conservation of heritage.

What is the future for the heritage properties?

Council and the Dawbin Report fail to address the future of the heritage properties, arguably an essential consideration for conservation of heritage, including for the purposes of Section 117 Direction 2.3.

Regarding consideration of the future (for heritage conservation), the Burra Charter states:

“Policy development should also include consideration of other factors affecting the future of a place such as the owner’s needs, resources, external constraints and its physical condition.” (Article 6.3)

The Weir Report (heritage report accompanying the Draft 2036 Plan) also looks to the future of the heritage properties in the area:

“It is critical that the amenity of ... heritage listed buildings is protected. If amenity is substantially reduced the desirability of properties will be eroded and thus the long term protection of the significant items and areas may be threatened.”

Our previous submissions have addressed the compromised planning outcomes and inequities that result from isolating a small, low density residential precinct (including the seven heritage listed properties) between the St Leonards South redevelopment, the Pacific Highway commercial strip and ongoing development on Greenwich Road.

Development of the remainder of the precinct to Greenwich Road is considered to be only a matter of time – as indicated by Council’s comments in meeting regarding the “second stage” of St Leonards South (transcript P8:42, P27:25), also the Department’s Interim St Leonards and Crows Nest Report (2017). In this context, it seems imperative that either the entire precinct be properly planned, and/or the sustainability of the heritage status of the Park Road properties be reviewed.

Other protections for heritage?

The protections for the heritage of St Leonards from nearby development in the Lane Cove LEP and DCP are scant, and significantly less than those applicable for comparable sites in North Sydney and Willoughby LGAs. This places a significant onus on planning for the Draft 2036 Plan area to ensure that zoning and controls in the vicinity of such properties are appropriate, and/or that an appropriate plan for their ‘repurposing’ or redevelopment is implemented as part of the planning for redevelopment of the precinct.

The Dawbin Report mentions the protections for heritage from nearby development contained in the existing Lane Cove LEP and DCP. However, the description fails to articulate the extent to which the few protections available for heritage Lane Cove LGA do not apply the heritage of St Leonards South:

“Controls for Heritage Items, development in the vicinity of Heritage Items, and Heritage Conservation Areas are outlined in Part 5.10 of the LEP, Heritage Conservation.

Lane Cove Council has established controls with the objective of ensuring that new development does not adversely affect the heritage significance of heritage items or conservation areas and their settings, including streetscapes and landscapes.

Council must consider the extent to which the proposed development located within a conservation area would affect the heritage significance of the conservation area.

The LEP outlines policies and guidelines for compatible and appropriate development affecting heritage items or conservation areas and which is located in the vicinity of heritage items to minimize adverse impacts on identified heritage items. **Council shall not grant consent to a development application unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features of the setting.** (Dawbin Report 2017, pp. 11-12, emphasis added)

Our comments on the above are as follows:

- None of the seven heritage properties of St Leonards South are in a heritage conservation area, and so protections for such areas (as referred to above) are irrelevant to St Leonards South.
- Development approval (DA) of high-rise apartments opposite the heritage properties in Park Road or immediately behind those properties across the narrow Park Lane would not, under the Lane Cove LEP or DCP, require a Heritage Impact Statement (HIS). A HIS is only required for a DA where the proposed development is “adjacent to or adjoining” the listed item (DCP Part B section 9.3).
- A heritage assessment (the Dawbin Report) was required for the current proposal (across the road) only because of the Gateway Condition imposed regarding Heritage Conservation.
- Any DA required for development adjacent to (‘in the vicinity of’) a heritage listed property would not be subject to any guidelines requiring respect of, response to, or sympathy with, any features specific to the heritage properties (scale, curtilage, style, set-backs, design, siting, alignment, outlook, landscaping, etc). Such provisions are absent from the Lane Cove LEP and DCP.
- In contrast, the DCP provisions of adjacent North Shore LGAs within the Draft 2036 Plan area (North Sydney, Willoughby) relating to development in the vicinity of heritage listed items are substantially more expansive, and substantially more protective of heritage listed properties. Appendix B extracts the key provisions for the three Councils for comparison.
- In particular, the DCPs of each of North Sydney and Willoughby Councils both provide that, even where a heritage property is not located within a heritage conservation zone:

- the area taken to be relevant to the heritage property may include developments across the road, across the back lane or otherwise nearby. It is not limited to “adjacent to or adjoining” the property (as in Lane Cove); and
- specific guidelines prescribe that any new development should respect, respond to, and/or be sympathetic with specific characteristics of nearby heritage properties (scale, curtilage, style, set-backs, design, siting, alignment, outlook, landscaping, etc).

The lack of protection for the St Leonards South heritage properties from nearby development is of particular concern given the novel LEP model proposed by Council, as discussed below.

DCP as LEP

Council are proposing a rigid LEP regime, including “locking in” substantial DCP provisions within the LEP framework and removing the clause 4.6 variation provision. However, Council indicates that this is to be coupled with discretion around implementation in response to variation requests made by developers at the stage of development controls:

“We can certainly move at the edges where we consider that there’s going to be a benefit” (transcript P47:20)

This regime provides for the antithesis of certainty and transparency in planning. It will (again) be susceptible to devolving into Council discretions, and private negotiation with key financial stakeholders (transcript P47:13). Nearby residents (including those of the heritage-listed properties in Park Road) will be most affected by changes to development controls such as those affecting massing of built form, location of balconies, facade, landscaping, vehicle entry and the like. These residents will be condemned to further years of reviewing, objecting, making submissions on planning proposals to Council, in an environment where their voice will continue to be substantially irrelevant, as it has been to date. As noted above, there exists no requirement within the Lane Cove LEP or DCP for an application for any such change to consider impact on heritage properties across the road.

Council has recently rejected several DAs from developers that are purporting to conform substantially with the Council’s proposal. Council stated at the meeting (transcript P40:6) that developers has indicated acceptance of the proposal from an “economic viewpoint”, and had not sought amendments to height or façade. This is not correct:

- the DA (14/2019) for the Park Road/Berry Road site (Greaton) alters the proposed setbacks and dimensions of the façade fronting Park Road, resulting in a significantly increased building mass on (and close to) the Park Road frontage, with particular impacts on the single-storey dwellings on the other side of Park Road (see Figure 3).

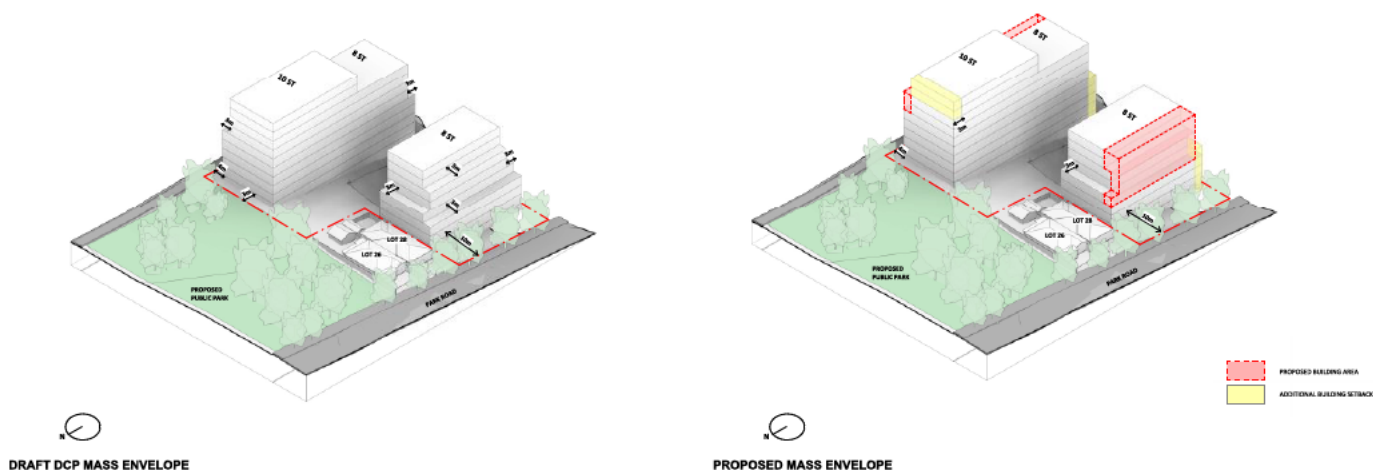


Figure 3: Developer-proposed increases (in red) to façade and massing on Park Road frontage (extracted from design report accompanying DA 14/2019).

- Further, a 31m height limit provided for in the DCP is challenged by one of the developers (Country Gardens St Leonards), which argues that it should be 37m – claiming it is an anomaly that does not permit the 10 storeys of development agreed with Council (Public Hearing Transcript P32:5). We understand Council agrees it has made a mistake – which seems a fairly significant mistake in the circumstances. This affects the site bounded by Park

Road, Berry Road and River Road, and so is relevant to overshadowing and transition to low density in the south western section of the proposal area. This discrepancy is evident from comparison of the LEP building height diagram and the DCP building heights (refer Figure 4). The impact of this revised 37 metre building height (if correct) should be assessed in shadow modelling, particularly affecting the south side of River Road.

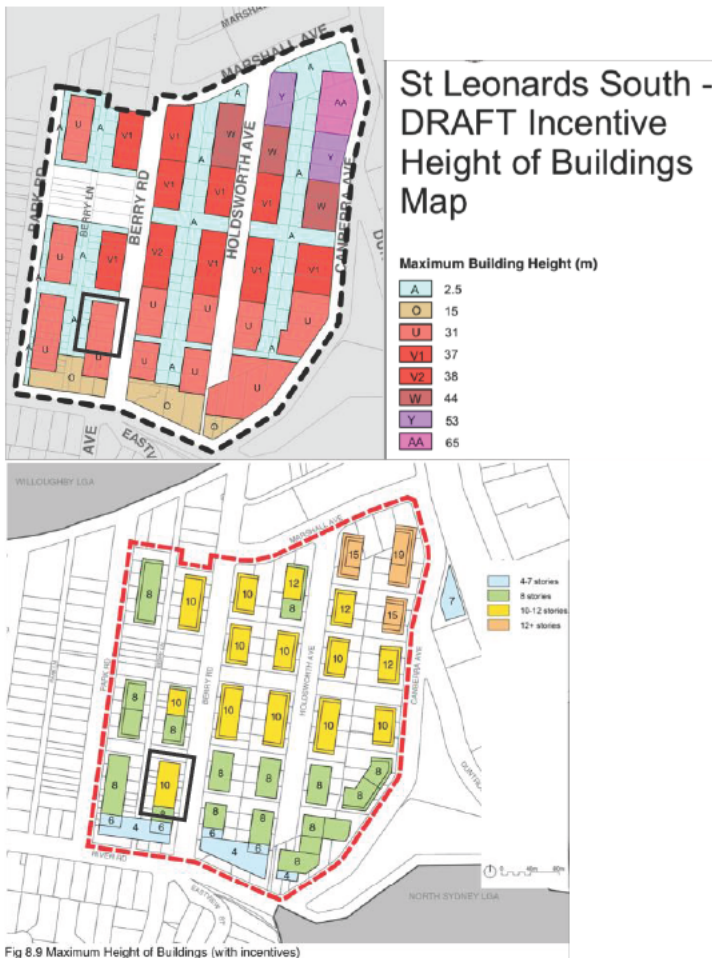


Fig 8.9 Maximum Height of Buildings (with incentives)

Figure 4: Developer-contested height limit, subject area outlined in black (adapted from proposal LEP and DCP plans)

RMS position on traffic analysis

Council stated that:

"the RMS have actually come back to us and said, "Look, we're satisfied that, you know, your particular development is not going to have a significant impact and raises no objections to the planning proposal proceeding"" (transcript P6:18-21)

This position is not reflected in the correspondence from the RMS:

- An email from RMS of 30 April 2019 indicates that any support for the Council proposal is conditional on provision for SIC to be levied on residential development to fund public infrastructure. Negating this, Council is actively campaigning for an exemption from SIC for its planning proposal (transcript P27:13).
- The RMS email is a response to Council offering up a number of road-associated Land Reservation concessions (without any contemplation of public consultation) designed to increase road capacity, including along River Road. Further, it is not clear whether the Council proposal to reduce road width within the precinct (P7:39) to satisfy green coverage requirements has been canvassed with the RMS.
- The RMS submission on exhibition of the proposal (letter 26 February 2018) specifically discounts the traffic modelling done to date, and recommends deferral of consideration of the proposal:

“Until the Traffic and Transport Impact Assessment for the St Leonards / Crows Nest Precinct is finalised, Roads and Maritime considers the traffic modelling / analysis undertaken for the subject Planning Proposal as inadequate and limited in scope”

Given that no additional/updated modelling has been attempted since this time, there exist serious questions about the adequacy of the traffic analysis for the proposal in the context of the broader Draft 2036 Plan, and also for the purposes of the Gateway Condition imposed on the proposal relating to traffic analysis.

Our previous submissions to Council in December 2017 already highlighted the absurdity of the suggestion that the traffic resulting from an additional 5000 residents could be addressed by inserting a Give Way sign in place of a round-about on Berry Road. Since that time, no apparent effort has been made to address what appears to be a fairly fundamental planning consideration.

Consideration of planning for precinct to Greenwich Road

In response to a question regarding why planning for the precinct was not extended to Greenwich Road, Council stated:

“the cumulative traffic study also said no matter what traffic measures put into it, if you went up to Greenwich Road, it would never work” (P13:6, see also P15:11)

This misrepresents the findings (or lack thereof) from traffic analysis.

The Annand Masterplan document (2014) presented five options for development of the precinct, one of which was development of the whole precinct to Greenwich Road at a range of densities (2200 dwellings). No traffic modelling was ever done for this option. A report by TMA (dated 8 June 2015) (**First TMA Report**) notes that this option was “Not proceeded with” (p.2). Rather, it considers an alternative proposal for development to Greenwich Road, prepared by Woods-Bagot (5000 dwellings) and presented by a private resident group (which has since sold to developers and exited). The Woods-Bagot proposal was never made public, although was openly referred to by Council as under active consideration (including as part of a Council-hosted public forum in 2015).

The First TMA Report is not available on the IPC website (a later report by TMA covering only the proposal area to Park Road (**Second TMA Report**) is included in Appendix A of the TEF Consulting Report (2017)). The First TMA was previously available on Council website (we can email a copy, if required).

The First TMA Report is the only traffic modelling undertaken on a development scenario for the whole precinct, and so is apparently relied upon by Council to justify dismissing consideration of a plan for the entire precinct.

The First TMA Report did find that the Woods-Bagot proposal would lead to potentially significant traffic issues (assuming existing road system). However, the same modelling also identified potentially significant traffic issues arising from the then proposed Council Masterplan (Canberra Avenue to Berry Road – so *excluding* extension to Park Road). Even Council’s original proposal (only to Berry Rd) resulted in “loss of service” at key intersections (including Pacific Hwy/Berry Rd, River Rd/Shirley Rd, River Rd/Lithgow St) during AM and PM peaks. The First TMA Report concluded definitely that no high-density development beyond Berry Road could be tolerated by the existing road networks. Despite this, Council increased the area proposed for rezoning from Berry Road to Park Rd in July 2015, unsupported by additional modelling.

As discussed in the TEF Report (2017), the modelling by TMA was subsequently discredited (refer RMS letter to Council dated 4 January 2016, Appendix A to TEF Report). Council then commissioned revised modelling on a far more limited basis (essentially a single intersection), that it asserts shows no problems for the extended Masterplan area to Park Road (as noted above, the RMS position actually appears to differ from this). However, Council are still relying on the original, flawed (?) First TMA Report modelling to justify their refusal to consider a plan for the whole precinct. Similarly, Council’s response to Gateway Conditions (29 September 2017) conflates the results of various modelling approaches, without adequate explanation or qualification.

Shadow modelling

Overshadowing is an important issue affecting this proposal (both within and outside proposal boundaries). It is imperative that accurate and complete shadow modelling is available to assess these impacts. The following is noted in this context:

- It appears that the shadow modelling conducted by the Department for the proposal shows more extensive shadowing than the modelling conducted by Council. Council suggests that its modelling might be more accurate (transcript P33:46, additional response 31/5/19), yet acknowledges that its modelling did not include shadows from other significant sites outside of the Lane Cove area (transcript P37:23).

- Council's shadow diagram modelling assumes a 6 metre setback from the northern and southern side boundaries of the proposed park in Park Road East (refer Attachment M Supplementary Design Report 16/5/2016, p13). This 6 metre setback from the northern park side boundary was also represented by Council at the meeting (transcript P45:28). However, the 6 metre side setbacks are *not* incorporated into the DCP or LEP. This discrepancy impacts the extent of the significant overshadowing of the proposed park (contrary to the Draft 2036 Plan design principles).
- As discussed above, a DA proponent for an amalgamated lot towards the south west corner of the precinct argues that a block properly allowed 37 metres height is represented in the LEP at 31 metres height. If correct, this should be rectified in the shadow modelling.

Council suggests that additional overshadowing of Newlands Park should be discounted because it coincides with shadows cast by trees lining the park (transcript P5:3, additional response 31/5/19). This approach should be rejected:

- Trees cast a dappled shadow, of distinctly different character to the shadows cast by monolithic buildings.
- A requirement for preservation of sunlight access in open space (as in the Draft 2036 Plan) serves to preserve sunlight for people, but also plants which will not thrive or (in some cases) survive without it. The proposed built form will deprive the trees and grass in Newlands Park of afternoon sun, which may well compromise their health and viability.

Response to public exhibition

We understand that Council is yet to formerly consider the results of the proposal exhibition over the Christmas/New Year period of 2017/18. A successful Freedom of Information application by a local community organisation revealed that the vast majority of the hundreds of submissions received were opposed to the proposal. Council's dismissal of this consultation appears arrogant, proceeding on the basis that the plan (in particular the density and built form) are necessarily predetermined. Council's comments regarding their approach to the formal submissions are telling:

"really very few submissions actually now commented on the scheme itself. They were more just commenting on the fact that we think there's too much development or there's – the impacts of having development ... any comments that were made in relation to the actual documents, we did actually have a further, I think we mentioned earlier, design review panel that have considered those and ultimately council will consider any suggestions they've made. But it's really a further refinement of those issues." (transcript P16:25)

So, Council staff have essentially dismissed all submissions other than those that could be considered technical design tweaks. The "design review panel" (referred to also at transcript P7:21) was a closed, invitation-only event. The agenda, identity of attendees, and outcomes have all remained secret.

Does the NSW planning system require the community to accept this as adequate "public consultation" for such a significant planning proposal?

In particular, this was the first (and only) formal opportunity for public consultation regarding the extension of the proposal from Berry Road to Park Road. A brief overview of the background to this highlights the deficits with Council's approach to the public exhibition of the proposal:

- Council commissioned and exhibited a comprehensive draft masterplan for St Leonards South (the Annand Masterplan 2014) and undertook a 'public consultation' process. This included holding public forums, receipt of written and oral submissions, and meetings with groups of interested residents. The Annand Plan presented five alternative development scenarios for consideration, recommending high-density development to Berry Road.
- Redevelopment to Park Road was *not* one of the options proposed for consideration in the Annand Report, and even the most directly-affected residents (in Park Road west) were never notified by Council that high-density rezoning extending to Park Road (but excluding Park Road west) was an option being considered by Council, nor one on which they were invited to comment.
- First notification of Park Road as a boundary for high-density appeared in the Agenda for the 13 July 2015 meeting, published literally days before the meeting and notified only to subscribers to Council's 'St Leonards South' email group. Even the decision to hold an Extraordinary Meeting to consider the matter, and the date of the meeting, were not specifically notified to directly-affected residents and property owners.
- Irrespective of the legality (or otherwise) of the above, it was unacceptable, particularly given:

- i) the significance of the change proposed for Park Road west relative to the recommended Berry Road option;
- ii) the weight afforded by Councillors to the lobbying by residents seeking up-zoning; and
- iii) the bias introduced by the evident determination at this early stage of a 'masterplan', which has since been immovable and which induced purchase by developers which are now put forward as a reason to proceed.

Conclusion

Assumptions around economic viability to incentivise developers have been the predominant factor shaping the density and built form of the proposal (eg, refer Annand Masterplan (2014), transcript P6:43 f, P45:40). All other planning considerations have been secondary (at best), including mitigating transition to low density, traffic management, landscaping, access to sunlight, reference to heritage across the road, 'replacement' of local character, etc. This is fundamentally at odds with the approach of the Draft 2036 Plan.

Kim McIntyre & Justin O'Farrell



7 June 2019

Appendix A: Extract from Submission of the Park Road West and Portview Road Action Group (21 December 2017) on the public exhibition of the proposal. A full copy of the submission is attached to the Group's submission on the Draft 2036 Plan.

In our view, this equation is not financially sensible, when compared to the alternative precinct-wide approach. There are also significant questions as to achievability, with an obvious inference that the park proposal is being offered as a "sop" to affected residents which will inevitably be watered down, abandoned or revised as the proposal proceeds.

More specifically, our reservations regarding the funding, acquisition and delivery of the proposed park are as follows:

- **Funding:** LCC proposes to pay \$8500 per sqm, whereas all of the six other amalgamated sales (reported in Hill PDA Report (Jul 2017) and/or publically accessible NSW Valuer General data) fell within a range between \$11,600 and \$11,900 per sqm, including sites slated for the same FSR (2.75:1) as Park Road East/Berry Road West.
- The figure of \$8500 per sqm is based predominantly on the price realised for the unconditional sale of a single amalgamated lot in Marshall Avenue/Berry Road, even though this sale is atypical relative to other sales in the precinct in terms of: **1) small size** of the site (less than 2000 sqm compared with an average of almost 5500 sqm for the six other amalgamated site sales, ranging 2620-6920 sqm); and **2) the low price**, \$8920 per sqm (according to NSW Valuer General data) compared with the other six amalgamated sales referred to above.
- Discussion regarding the potential price differential between sales that are unconditional and those that are conditional on some planning outcome is largely speculative, given that the terms of the sales are not reliably ascertainable (other than to parties to the contracts). Our information from vendor residents and selling agents is for additional unconditional sales at prices over \$11,000 per sqm for sites with projected FSR of 2.75:1.
- **Acquisition:** although LCC's S94 Contributions Plan expresses a preference for purchasing the park land by negotiation (p.25), such a significant apparent disparity in valuation relative to comparable properties is unlikely to be well-received by affected property owners. Compulsory acquisition, even if legally defensible, would potentially lead to litigation, and may raise significant issues of inequitable dealing by LCC.
- **Delivery:** the S94 Contributions Plan notes that the timing of section 94 contributions is "uncertain" and that "it is difficult for the Council to determine with any certainty [*whether when where*] (sic) the various items of local infrastructure included in this plan will be delivered" (p. 24). It is expected that sufficient funds to acquire and develop the park for public use will not be available until at least 1500 dwellings have been developed, a significantly advanced stage of development (p.25). In this context, it is noted that LCC's costings exclude removal and onsite stabilisation of asbestos and other hazardous waste. Given that such materials are very likely to be encountered in the demolition of so many houses constructed over the last 100 or so years, this represents an additional (and potentially substantial) additional cost, not to mention a source of grave concern for residents living opposite in Park Road West.

Appendix B:

Council Development Control Plan (DCP) requirements for development near heritage items not in Heritage Conservation Zone

Lane Cove	<p>"B 9.3 Development in the vicinity of heritage items</p> <p>a) A Heritage Impact Statement is to be prepared as part of any DA for development "in the vicinity of a heritage item".</p> <p>b) "In the vicinity of a heritage item" is to be interpreted as meaning "adjacent to or adjoining" that item."</p>
North Sydney	<p>13.4) "Development near heritage items is required to consider the potential for new work to impact on the heritage item's setting. This requires an understanding of the role of the site in the streetscape, and in relation to the heritage item."</p> <p>Specific provisions:</p> <p>"P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work.</p> <p>P2 Maintain significant public domain views to and from the heritage item.</p> <p>P3 Ensure compatibility with the orientation and alignment of the heritage item.</p> <p>P4 Provide an adequate area around the heritage item to allow for its interpretation. "</p>
Willoughby	<p>H.1.3) "WLEP 2012 requires the submission of a satisfactory Heritage Impact Statement for heritage items, or land in the vicinity of a heritage item ... before Council grants development consent" <i>[NB the meaning of "vicinity" is not limited to adjoining/adjacent]</i></p> <p>H.2.6 <i>[sets out extensive, specific provisions relating to new development ('infill') near heritage items, with objective:]</i></p> <p>"To ensure that infill development achieves a sympathetic relationship with ... nearby Heritage Items ... in terms of its scale, massing, character, setback, orientation, materials and detailing ...[and] ... respects the established streetscape, and the patterns of development, including setbacks, siting, landscape settings, carparking, height, dominant ridge line and building envelope. Infill needs to display architectural "good manners" by respecting the significant characteristics of nearby and adjoining development."</p>