

OUR REF: JOB NO. 21092 – S4.55(8)

28 May 2024

Randwick City Council
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Randwick NSW 2031

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Dear Sir or Madam,

**RE: SECTION 4.55(8) MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO. 617/2021/B)
NOS. 33-35 CHURCH STREET, RANDWICK**

This Section 4.55(8) Modification has been prepared for Siew Kiang c/o Couvaras Architects by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek Council approval for a Section 4.55(8) modification of the development consent (DA No. 617/2021/B) at Nos. 33-35 Church Street, Randwick. This submission proposes modification to Condition Nos. 1, 2 and 33 of DA No. 617/2021/B, and Condition Nos. 4 and 28 of DA No. 617/2021/A, to reflect the architectural design changes and other updated supporting documentation.

The application seeks to modify Condition 1 of that consent to reflect the revised architectural plans and updated BASIX certification. The proposed modifications predominantly relate to introducing one extra car stacker for Unit 7 with an associated basement extension; converting Unit 4 to an affordable housing unit; reconfiguration of Unit 5; expanding Unit 7 from 2BR unit to 3BR unit with associated internal reconfiguration; reconfiguring the common entrance with a new awning over; lift overrun amendment; and other internal and external refinement. These internal and external refinements have been carefully designed to rationalise the approved layout and improve occupant amenity.

The modifications introduce an additional 71m² of affordable Gross Floor Area (GFA), through converting the approved Unit 4 to an affordable housing unit. In addition, the proposed expansion of Unit 7 will slightly increase the total GFA by 44m², which remains compliant with the relevant LEP and SEPP (Affordable Rental Housing) 2009 standards. It is noted that the original DA was determined on 02/06/2022. As such, this modification application is covered by the savings provision of Schedule 7A, Clause 2(1)(da) of Housing SEPP 2021. In other words, the Housing SEPP is not relevant and consideration is required of SEPP (Affordable Rental Housing) 2009 (ARH SEPP).

The proposal will also maintain the approved roof height at RL 81.67. The slight increase of the whole building height is a function of the 300mm increase in the lift overrun (from RL 82.27 to RL 82.57) which is necessary to accommodate the lift. This is supported by a cover letter, prepared by Schindler Lift Australia Pty Ltd. Updated shadow diagrams indicate that the overrun increase will not result in any additional overshadowing to the surrounding properties. In addition, the modifications mainly retain the approved building envelope, with the exception of the proposed refinement to Unit 7. The additional building envelope of Unit 7 has been carefully designed to minimise adverse impacts on neighbouring development. In our opinion, the proposed modification has been carefully designed to minimise amenity impact on neighbouring properties relating to privacy, views and solar access and the building will remain consistent with the area's desired character.

The proposed development is the subject of a Section 4.55(8) modification and not a new development application. This is because the amendments are relatively minor. There is no change to the proposed use, no change to the number of levels, no change to the number of dwellings, minor change to the approved building height, and the general appearance of the building continues to present as residential apartment development. Impacts of cross viewing, views and solar access are agreed to be substantially the same as those arising from the previously approved DA.

This report includes an assessment of substantially the same; a brief site analysis; a brief background to the proposal; the conditions of development consent requested to be modified; a description and justification of the proposed modifications; an environmental planning assessment; and a conclusion.

1.0 SITE ANALYSIS

The Site

The subject site is located approximately 5.20km south-eastern of the Sydney CBD, 3km from Bondi Junction and is located within the Local Government Area (LGA) of Randwick (see **Figure 1**). The subject site is located on the eastern side of Church Street, between Cowper and Frances Streets and is known as Nos. 33-35 Church Street, Randwick, described as Lot 3 in DP650404 and Lot 2 in DP 555033.

The site is a rectangular parcel of land, with northern and southern boundaries of 38.575 metres each, and eastern and western boundaries of 15.24 metres, providing a total site area of 587.88m² (see Survey Plan submitted with the DA).



Source: SIX Maps

Figure 1: Location Plan

 **Subject Site**

The site is occupied by a pair of single-storey attached dwellings, which have a pitched tiled roof (see **Photograph 1** on the following page). The site has a lawn at the front setback, with separate entrances for each dwelling connecting to paved pathway along the side boundaries. The site currently does not consist of any off-street parking. At the rear of the site is a glass podium extension, as well as an external shed in the south-eastern corner of the site. The rear of the site also consists of a paved area, shrubs and a garden.



Photograph 1: The subject site, as viewed from Church Street

The Surrounds

This part of Randwick is characterised by three to four-storey residential flat buildings of various ages and styles, as well as some older-style detached and attached dwellings. Many nearby residential flat buildings contain off-street parking in external garages.

To the north is No. 31 Church Avenue, a single-storey brick dwelling house with a tiled pitched roof at the front and a metal roof towards the rear (see **Photograph 2**). To the east are Nos. 16 and 18 Cook Street, two semi-detached brick dwelling houses with tiled pitched roofs (see **Photograph 3**). To the south, adjoining the subject site, is No. 37 Church Street, a three-storey brick residential flat building with a pitched roof and part internal and part external garage parking (see **Photograph 4**). To the west are Nos. 6-8 Church Street, a three-storey brick residential flat building above ground floor car parking with a centre void area (see **Photograph 5**).



Photograph 2: Nos. 16 and 18 Cook Street, as viewed from the east



Photograph 3: Nos. 16 and 18 Cook Street, as viewed from the east



Photograph 4: No. 37 Church Street, as viewed from the west



Photograph 5: Nos. 6-8 Church Street, as viewed from the east

2.0 BACKGROUND

On **8 October 2021**, a Development Application (DA No. 617/2021) was submitted with Randwick Council for the demolition of existing structures and construction of a four-storey residential flat building comprising 6 units, basement parking, lot amalgamation, landscaping and associated works (affordable rental housing proposed, variation to height of buildings of the RLEP 2012) at Nos. 33-35 Church Street, Randwick. On **2 June 2022**, the application was approved by Land and Environment Court, subject to a number of conditions.

On **17 July 2022**, a Section 4.56 Modification (DA No. 617/2021/A) was lodged with Randwick Council for the modification, including internal and external changes. The application was approved on **18 May 2023**.

On **15 August 2023**, a Section 4.56 Modification (DA No. 617/2021/B) was lodged with Randwick Council for the modification of the approved residential flat building, including internal and external changes. This application was approved on **30 April 2024**.

3.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to Condition Nos. 1, 2 and 33 of DA No. 617/2021/B, and Condition Nos. 4 and 28 of DA No. 617/2021/A. This will be discussed below.

3.1 Condition 1 - Approved Plans & Documents

Condition 1 of the development consent relates to the approved architectural plans and documentation. It is proposed to modify this condition to reflect the proposed design changes which form part of this modification. The amended architectural drawings (Issue AD, dated 11/02/24) have been prepared by Couvaras Architects and an updated BASIX Certificate (No. 1242298M_07), separately submitted:

3.2 Condition 2 – Amendment of Plans & Documents

Condition 2(a) of the development consent requested to provide a 1.6m timber look aluminium batten screen to the outer side of the kitchen window of Unit 6 on the southern elevation. It is proposed to delete this condition as the window is already opaque and the additional screen is unnecessary in this case. Furthermore, the window design remains unchanged from the original application (DA No. 617/2021). Therefore, this application requests the deletion of Condition 2(a).

3.3 Condition 33 – Amendment Landscape Plans

Condition 33 of the development consent relates to the amended Landscape Plans. Given the proposed design changes, the podium planter around the perimeter of the Unit 7's rear balcony/roof terrace is no longer part of the project. Therefore, this application requests the deletion of Condition 33.

3.4 Condition 4 – Affordable Rental Housing

Condition 4(a) of the original development consent (**DA No. 617/2021/A**, dated 17 May 2023) relates to requirements for the use of Units 1, 2 and 3 for the purposes of 'affordable housing' as per the Affordable Rental Housing SEPP 2009. Unit 4 must be added to this clause.

Existing Condition:

- a) *Units 1, 2 and 3 are to be used for the purposes of 'affordable housing', as per the provisions of the SEPP (Affordable Rental Housing) 2009 shall be used as such for at least 10 years from the date of the issue of the Occupation Certificate.*

We respectfully request the existing condition be modified as follows:

Proposed Condition:

- a) *Units 1, 2, ~~and 3~~ and 4 are to be used for the purposes of 'affordable housing', as per the provisions of the SEPP (Affordable Rental Housing) 2009 shall be used as such for at least 10 years from the date of the issue of the Occupation Certificate.*

3.5 Condition No. 28 – Site Seepage & Dewatering

Condition No. 28 of the original development consent (**DA No. 617/2021/A**, dated 17 May 2023) relates to requirements for the adequate management of site seepage and sub-soil drainage. It is proposed to modify this condition to reflect the required tanking on the basement level is not necessary, which form part of this modification. The existing conditions are as follows:

Existing Condition:

- a) *Seepage/ground water and subsoil drainage (from planter boxes etc) must not be collected & discharged directly or indirectly to Council's street gutter or underground drainage system.*
- b) *Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).*
- c) *The walls of the basement level/s of the building are to be waterproofed /tanked to restrict the entry of any seepage water and subsoil drainage into the basement level/s of the building and the stormwater drainage system for the development.*
- d) *Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.*
- e) *Details of the proposed stormwater drainage system including methods of tanking the basement levels and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Certifying Authority and details are to be included in the construction certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Certifying Authority.*

We respectfully request the existing condition be modified as follows:

Proposed Condition:

- a) *Seepage/ground water and subsoil drainage (from planter boxes etc) must not be collected & discharged directly or indirectly to Council's street gutter or underground drainage system.*
- b) *Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).*

- c) ~~The walls of the basement level/s of the building are to be waterproofed /tanked to restrict the entry of any seepage water and subsoil drainage into the basement level/s of the building and the stormwater drainage system for the development.~~
- d) Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
- e) Details of the proposed stormwater drainage system **including methods of tanking the basement levels** and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Certifying Authority and details are to be included in the construction certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Certifying Authority.

Rationale:

The proposed architectural drawings have been amended, including the reconfiguration of OSD & RWT on the basement level. A revised Geotechnical Investigation Report has been prepared by Geo-environmental Engineering to support that tanking on the basement level is not necessary, inter alia:

The flow of seepage water is expected to be sufficiently managed during the earthworks phase by pumping from a sump at the base of the excavation. In the long term, it is recommended that sufficient permanent drainage be provided beneath and around the outside of the subsurface structures to ensure the dissipation of any hydrostatic forces which may result from the accumulation of any seepage water. This will also mean that the basement will not require tanking.

...

Permanent groundwater was also not encountered within the boreholes and is expected to be confined, or partly confined within the sandstone bedrock formation. In this regard, the volume of groundwater required to be withdrawn during excavation works, and long term, is expected to be significantly less than the 3ML/year and according to Clause 7 of Schedule 4 in the Water Management (General) Regulation 2018 the site should also be exempt from needing a water access licence. A tanked basement will also not be necessary."

Thus, this submission is proposed to remove Condition No. 28 c) and amend Condition No. 28 e) of the original development consent (DA No. 617/2021/A, dated 17 May 2023) to reflect the amended drawings and stormwater drainage system.

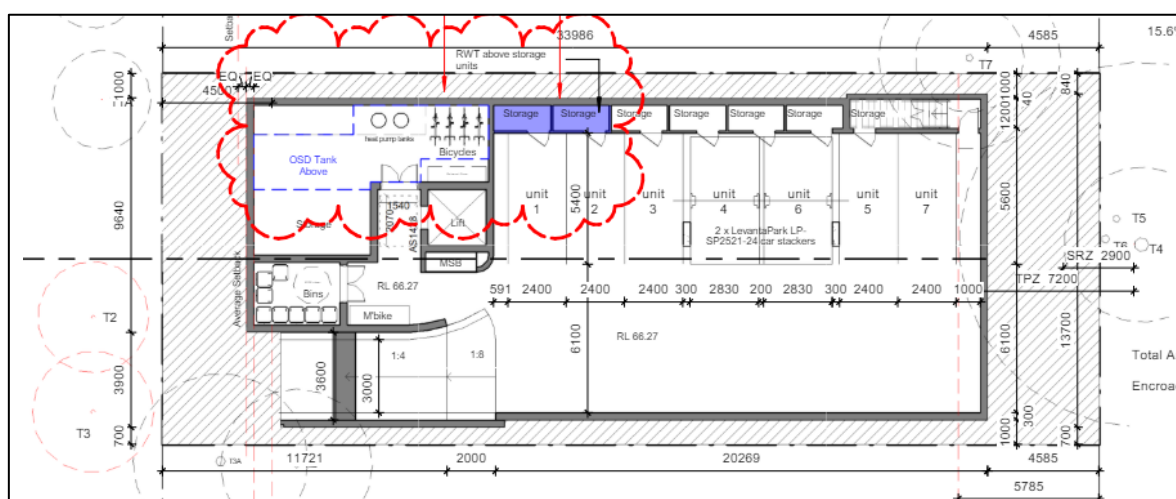
4.0 DESCRIPTION & RATIONALE OF MODIFICATIONS

The proposed modifications relate to introducing one extra car stacker for Unit 7 with an associated basement extension; converting Unit 4 to an affordable housing unit; reconfiguration of Unit 5; expanding Unit 7 from a 2BR unit to a 3BR unit with the associated internal reconfiguration; reconfiguration of the common entrance with a new awning over; lift overrun amendment; and other internal and external refinement.

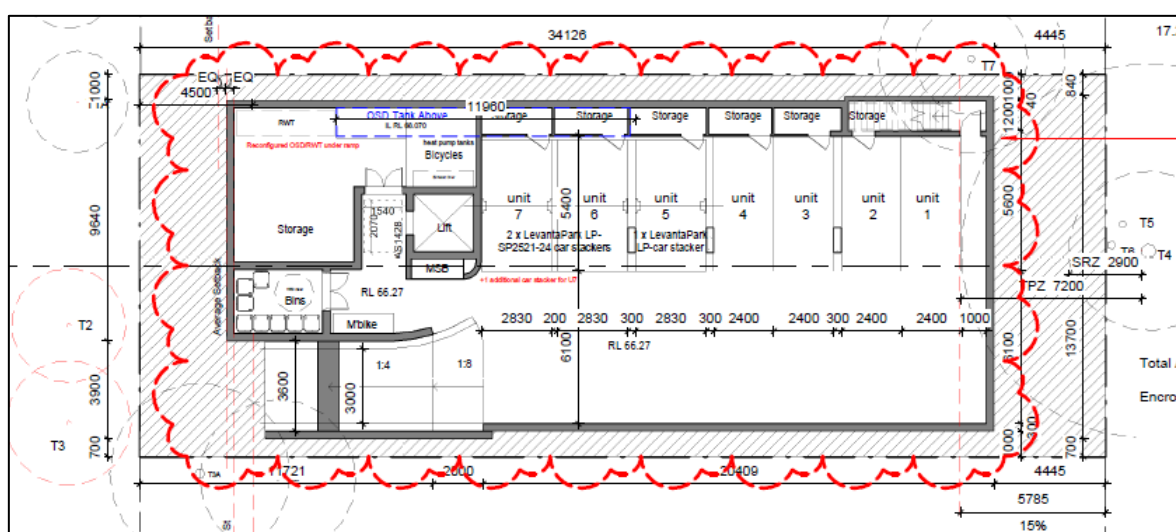
A floor by floor description is provided below. Further details of the proposed development are contained in the architectural drawings, separately submitted.

Basement Floor Level (see Figure 2)

- Reconfiguration of the OSD/RWT system under ramp;
- Introduction of one extra car stacker for Unit 7; and
- Basement extension to the west (rear) by 140mm to accommodate the proposed car stacker.



Approved



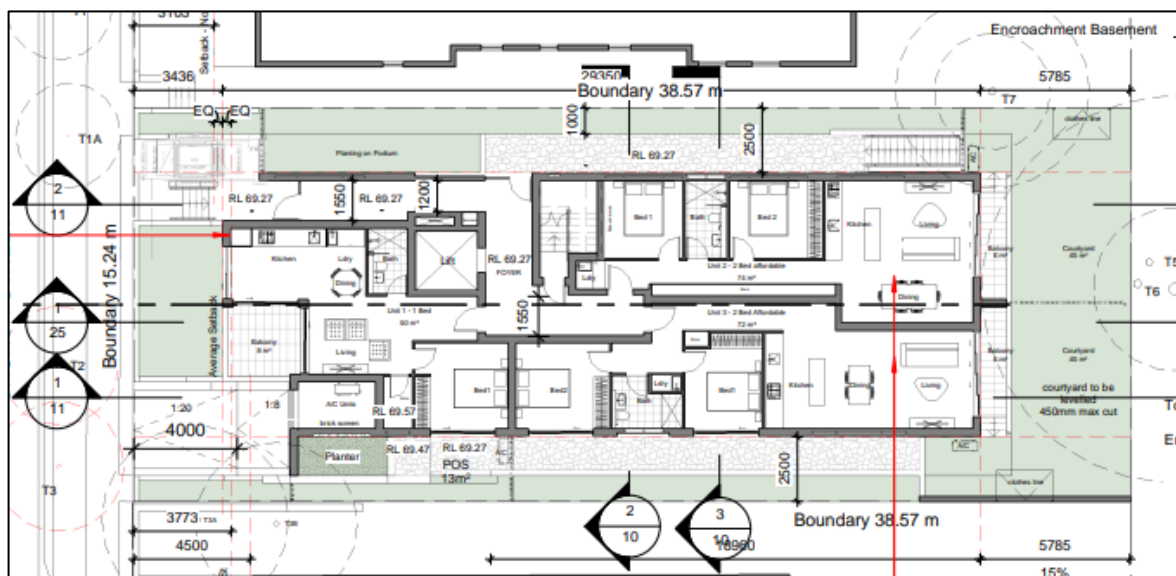
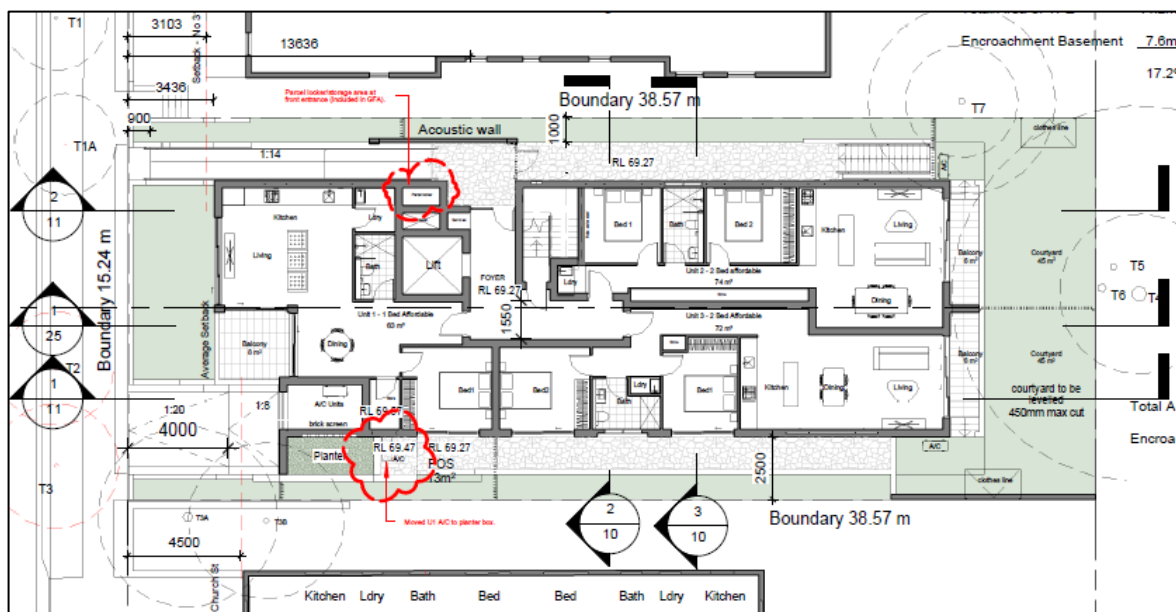
Proposed

Source: Couvaras

Figure 2: Approved and Proposed Basement Floor Plan

Ground Floor Level (see Figure 3)

- Removal of the platform lift on the north-western corner;
- Replace the front entrance with a new accessible side pathway along the northern boundary, with a ramp of 1:14;
- Accommodation of a new acoustic screen wall to the ground floor entry, whose acoustic performance meets or exceeds the previously approved entrance;
- Internal layout refinement of Unit 1 (extended from 50m² to 63m²);
- Provision of the parcel locker/storage at the entrance; and
- Relocation of Unit 1's A/C condenser unit to the planter box (adjacent to Bedroom 1); and
- Provision of a new awning over common entrance in line with acoustic wall for weather protection.

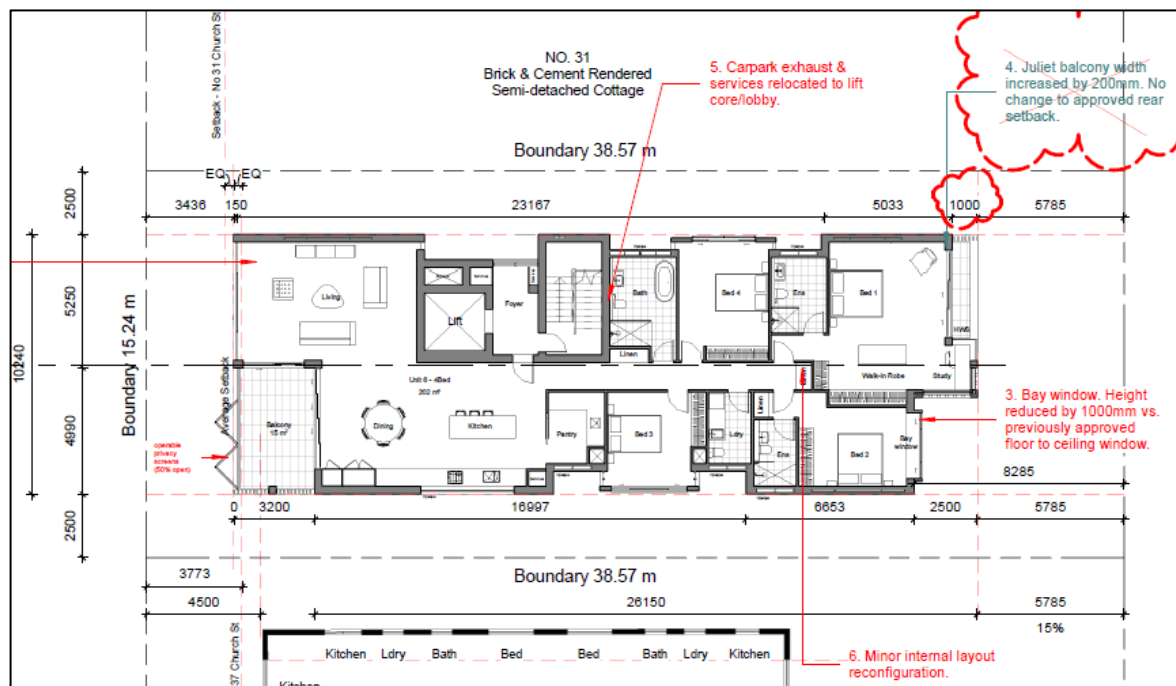
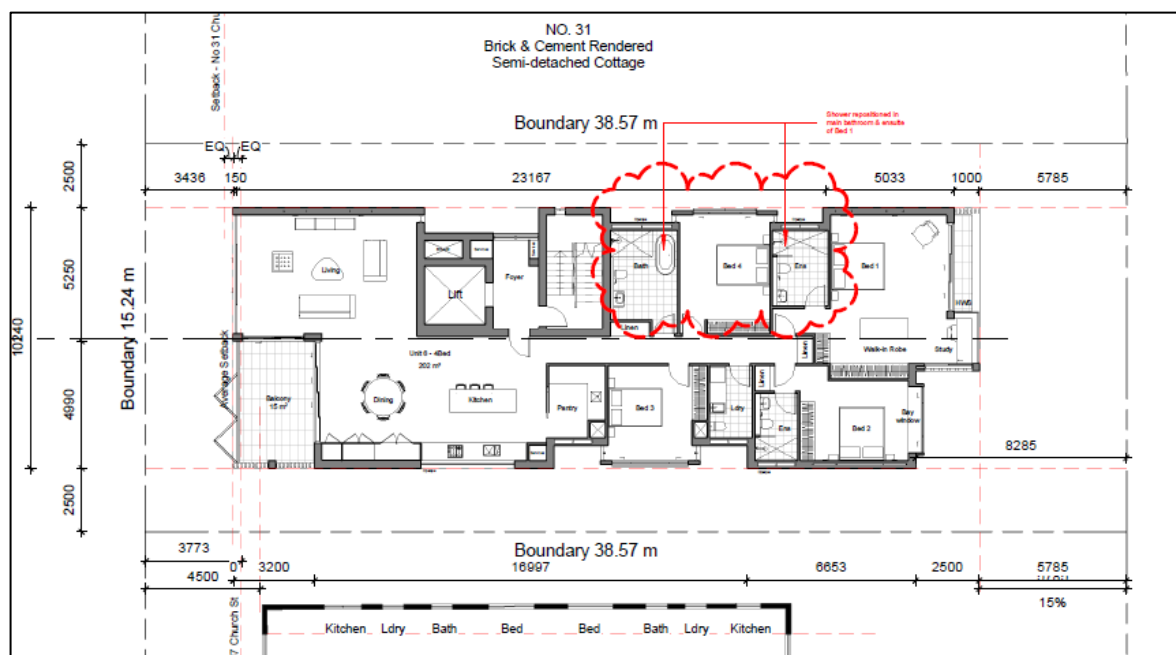
**Approved****Proposed**

Source: Couvaras

Figure 3: Approved and Proposed Ground Floor Plan

Level 2 (see Figure 5)

- Reposition of showers in the main bathroom and Bedroom 1's ensuite.

**Approved****Proposed**

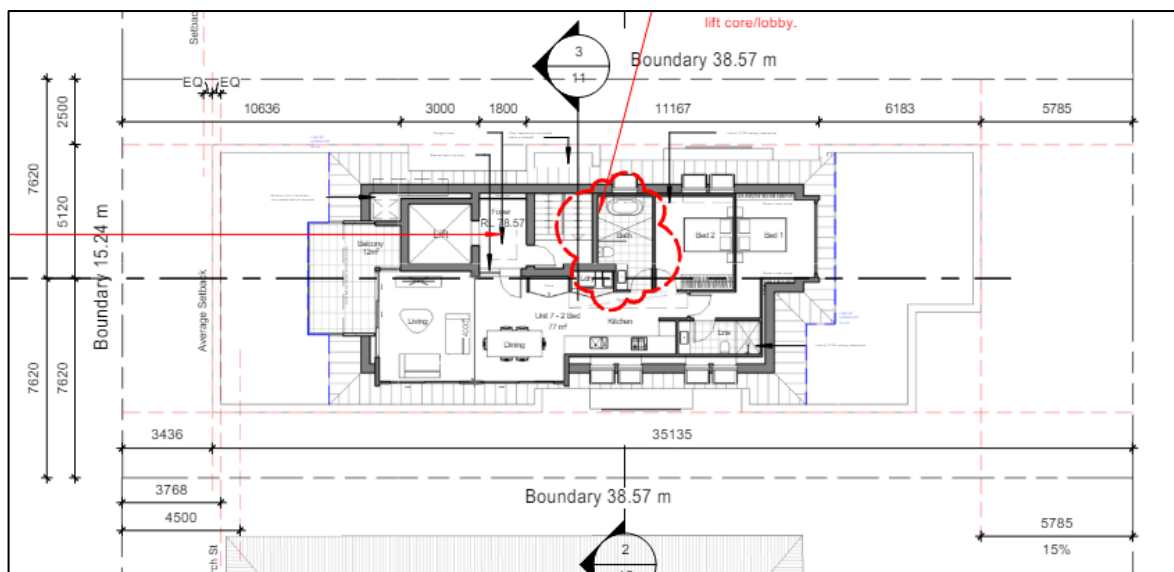
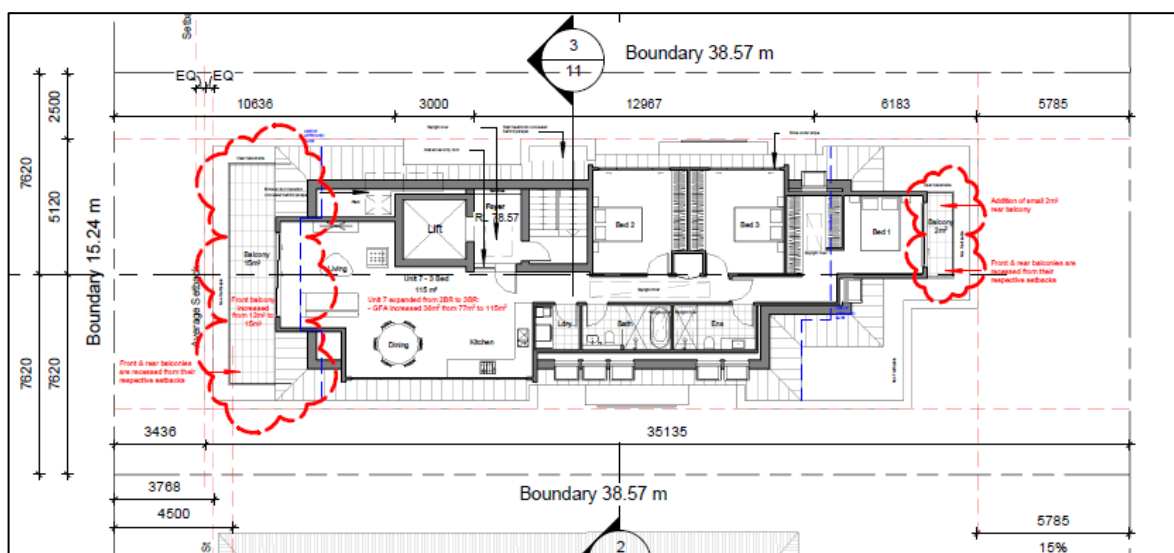
Source: Couvaras

Figure 5: Approved and Proposed Level 2 Plan

Level 3 (see Figure 6)

- Expansion of Unit 7 from 2BR to 3BR unit. Detailed works include extend the approved front glazing line of Unit 7 to the west by 1.74 metres, with a refined front balcony; extend the rear glazing line to the east by 1.74 metres, with a new rear balcony; a new north-facing dormer to Bedroom 2 & 3; refinement of the south-facing dormer to the dining and kitchen area and one new south-facing window to the proposed laundry.

The amended Unit 7 comprises an open plan living, dining and kitchen, one bedroom (Bedroom 1) with ensuite and walk-in robes, two other bedrooms, a bathroom, a laundry, a front balcony (15m², accessed from living space), a rear balcony (2m², accessed from Bedroom 1), and an internal lift and stairs.

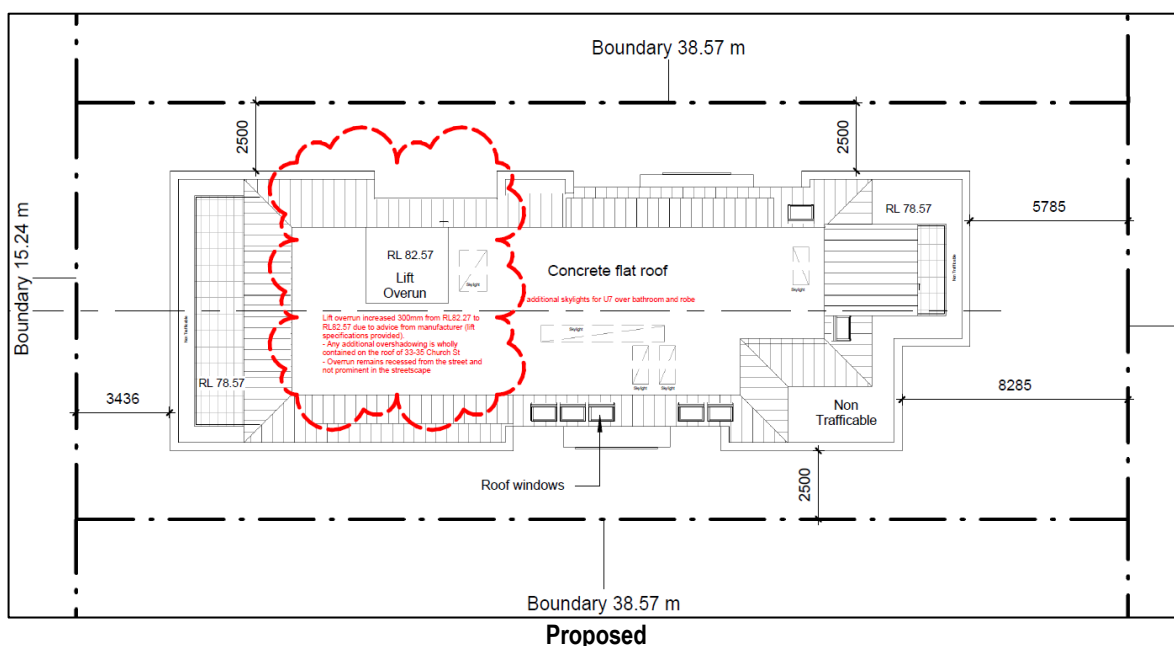
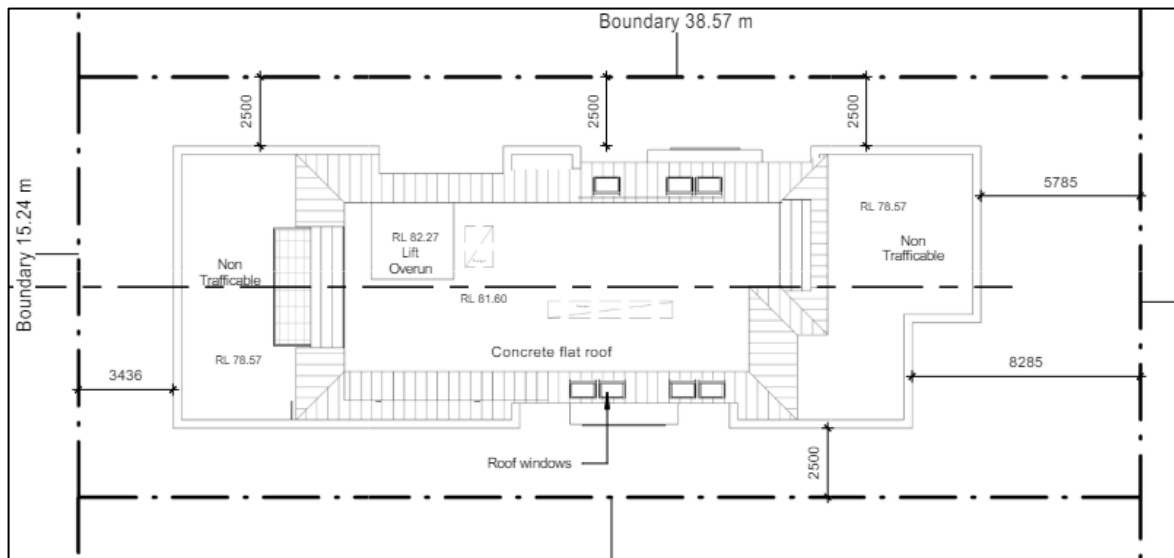
**Approved****Proposed**

Source: Couvaras

Figure 6: Approved and Proposed Level 3 Plan

Roof Level (see Figure 7)

- Height increase of the lift overrun by 300mm (from RL 82.27 to RL 82.57), due to the minimum headroom requirements for passenger lifts (a supporting letter has been prepared by Schindler Lifts Australia Pty Ltd, separately submitted); the amended overrun remains recessed from the street and not prominent in the streetscape; and
- Three additional skylights over Unit 7's bathroom and robes.



Source: Couvaras

Figure 7: Approved and Proposed Roof Plan

South Elevation (see Figure 8)

- Refinement of the south-facing dormer to Unit 7 's living and kitchen area;
- Fenestration refinement, including bathroom windows (W30) to Unit 5 and 6, bathroom window (W23) to Unit 4 and laundry windows (W04) to Unit 5 and 6.



Approved



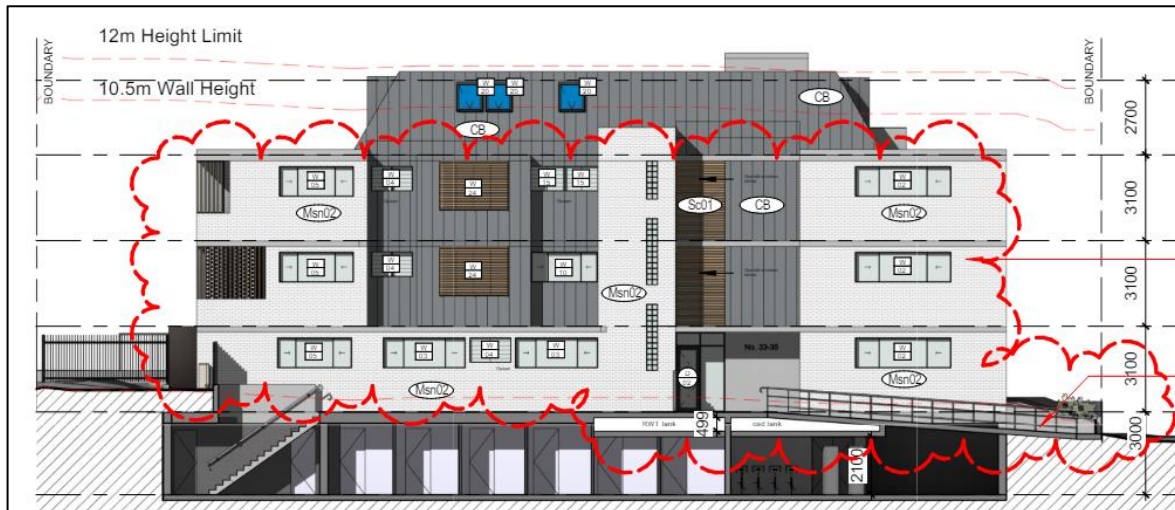
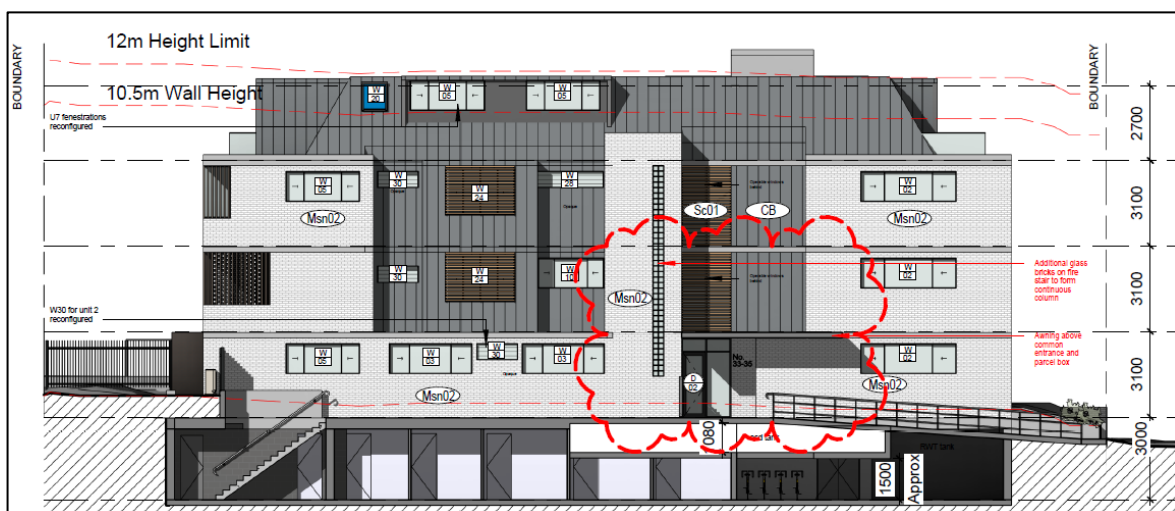
Proposed

Source: Couvaras

Figure 8: Approved and Proposed South Elevation

North Elevation (see Figure 9)

- A new dormer with new windows to Unit 7's Bedroom 2 and 3;
- Additional glass bricks on fire stair to form continuous column; and
- A new awning above common entrance and parcel box.

**Approved****Proposed**

Source: Couvaras

Figure 9: Approved and Proposed North Elevation

5.0 SUBSTANTIALLY THE SAME ASSESSMENT

The proposal is subject to a Section 4.55 Modification and not a new development application as it is substantially the same as the approved application. In establishing that the proposal is subject to a Section 4.55 Application, the proposal has been assessed against a set of legal principles governing the power to modify as outlined in the *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd* (No 3) [2015] NSWLEC 75.

Legal Principle: *first, the power contained in the provision is to “modify the consent”. Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468 at 475 and Scrap Realty Pty Ltd v Botany Bay City Council [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore “chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity” (Michael Standley at 440);*

Response: It is noted that modifications will improve residential amenities via internal reconfigurations and provide one extra affordable housing unit (Unit 4, converted from a non-affordable housing unit) and increased living/habitable areas for Units 5 and 7 while maintaining the building height when measured from the roof level. In addition, the extended Unit 7 (Level 3) remains recessed. Additional height is minor in nature (300mm) and is a function of the lift overrun refinement.

Legal Principle: *the modification power is beneficial and facultative (Michael Standley at 440);*

Response: The proposed modifications will provide an amenity benefit for future occupants without adversely impacting the amenity of neighbouring properties and increase the amount of affordable housing. Council has the power to modify the approved conditions of consent.

Legal Principle: *the condition precedent to the exercise of the power to modify consents is directed to “the development”, making the comparison between the development as modified and the development as originally consented to (Scrap Realty at [16]);*

Response: This section provides a direct comparison between the approved development and the modifications proposed.

Legal Principle: *the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (Vacik Pty Ltd v Penrith City Council [1992] NSWLEC 8);*

Response: Noted.

Legal Principle: *the term “substantially” means “essentially or materially having the same essence” (Vacik endorsed in Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);*

Response: The proposal remains as a residential flat building which will appear similar in terms of the approved bulk and scale when viewed from Church Street. The proposed basement refinement to accommodate one extra car stacker is not visible from the street. Whilst Unit 7 is proposed to be expanded, it will not be readily visible from the public domain as it remains recessed from the front and rear building edges. Other modifications are located within the approved building envelope as a function of internal layout refinement. Importantly, the proposed minimum setbacks, number of storeys and units will all be maintained. The approved building height will also be maintained when measured from the roof level and the slight change is limited to the height increase of the lift overrun. The modified residential flat building will provide additional affordable housing GFA and minor increase of the whole GFA, which continue to comply with the relevant LEP and Housing SEPP (2021) standards. Therefore, the proposed works will not change the approved design “essentially or materially”.

Legal Principle: *the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (Scrap Realty at [19]);*

Response: In our opinion, the proposal provides Council with the requisite facts to determine the application.

Legal Principle: *the term “modify” means “to alter without radical transformation” (Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 42, Michael Standley at 474, Scrap Realty at [13] and Moto Projects at [27]);*

Response: The proposal is for modifications that do not ‘radically transform’ the essence of the building.

In *Hrsto v Ku-Ring-Gai Council* [2011] NSWLEC 1169, the proposed modifications included an increase in the number of units, a reduction in the number of car parking spaces, an increase in floor area, an increase in FSR, a decrease in the building footprint, an increase in deep soil area and; a reduction in the basement volume. In accepting the amendments, the Court determined the modification was ‘essentially or materially’ the same as the previous approval. Arguably the modifications approved in this court case are more significant than what is being proposed in this instance.

Legal Principle: *in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) (Vacik);*

Response: Whilst the proposal continues to provide the same residential flat building as approved, it should be noted that it is not solely on this basis that the proposal is considered ‘substantially the same development’. The proposal is also considered substantially the same ‘essentially or materially’ (as demonstrated above) and ‘qualitatively and quantitatively’ (as demonstrated below).

Legal Principle: *the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)” (Moto Projects at [56]); and*

Response: The proposal provides both a quantitative and qualitative assessment of the proposed changes, comparatively with the approved shop top housing development. A quantitative comparison is provided in **Table 1**.

TABLE 1: QUANTITATIVE COMPARISON OF APPROVED AND PROPOSED			
Measure	Approved	Proposal	Modification
Levels	4 levels	4 levels	No Change
Height (measured from Roof)	Roof - RL 81.67 Whole height: 11.82m	Roof - RL 81.67 Whole height: 11.82m	No Change
Height (measured from Lift overrun)	Lift Overrun –RL 82.27 Whole height: 12.522m	Lift Overrun –RL 82.57 Whole height: 12.822m	+0.30m
GFA	712m ²	756m ²	+44m ²
Affordable GFA	232m ²	303m ²	+71m ²
Affordable Unit	Unit 1, 2 & 3	Unit 1, 2, 3 & 4	+1
FSR	1.22:1	1.29:1	+0.7
Car Parking	7 (+2 car stackers) Total: 9	7 (+3 car stackers) Total: 10	+1 (car stacker)
Front Setback	Min. 3.436m	Min. 3.436m	No Change
Rear Setback	Min. 5.785m	Min. 5.785m	No Change
Side Setback	Min. 2.5m	Min. 2.5m	No Change
Landscaping	26.5% (SEPP)	26.3% (SEPP)	-0.2%
Deep Soil Landscaping	16.1% (SEPP)	15.8% (SEPP)	-0.3%
Landscaped Open Space	46.1% (DCP)	46.1% (DCP)	No Change

Qualitatively, as the majority of the proposed modifications are minor and will predominantly maintain the approved building envelope, through retaining the approved setbacks and roof RL, the proposal will not noticeably increase the bulk or scale, alter the building type or adversely impact amenity to neighbouring properties. While there is a proposed extension to Unit 7, the proposed extension and balconies are further recessed from the approved leading edges at the front and rear of the site. In addition, the proposed building height amendment is limited to the minor height increase of the approved lift overrun. The proposed reduction of the landscaping and deep soil landscaped area is a function of the minor basement extension to accommodate one extra car stacker, which is still compliant with the SEPP parking controls. These modifications will not result in a significant loss of landscaped area, and will not have unreasonable adverse view sharing, solar access and privacy impacts to neighbouring properties. Details will be discussed in Section 6.5 of this report.

For all of these reasons, the proposal can be considered a Section 4.55 modification application.

Legal Principle: a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed” (Moto Projects at [52]).

Response: A quantitative evaluation is provided above and is considered substantially the same.

As the proposal is quantitatively, qualitatively and essentially substantially the same as approved development, the modifications can be considered under Section 4.55(8).

6.0 ENVIRONMENTAL PLANNING ASSESSMENT

This section deals with the proposal's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 4.15(1)(b) to (e) of the Environmental Planning and Assessment Act 1979.

6.1 Randwick Local Environmental Plan (LEP) 2012

The subject site is zoned R3 Medium Density Residential under the Randwick Local Environmental Plan (LEP) 2012. The proposed modification to the approved residential flat buildings is permissible with consent and consistent with the R3 zone's relevant objectives. The site is not identified as a heritage item or in a heritage conservation area.

Floor Space Ratio

The LEP FSR provisions in Clause 4.4 prescribe a maximum FSR of 0.9:1 for the site. However, Part 2, Division 1 of SEPP (Affordable Rental Housing) 2009 allows development to exceed the maximum FSR permitted under Clause 4.4 of the LEP by an additional floor space ratio. The previous Clauses 16 and 17 have been amended to an additional floor space ratio of up to 30% based on the affordable housing calculation in accordance with the latest Clause 16(2).

However, an exception exists in Schedule 7A, Clause 2(1)(da). This clause exempts modifications to development consents (granted after the commencement date (14 December 2023) if the original application was submitted before that date. Our S4.55 modification applies to development consent DA 617/2021/B, which was granted but not determined before 14 December 2023. Therefore, the Floor Space Ratio (FSR) bonus calculation will follow the previous version of the AFH SEPP Clauses (see Section 6.2 for details).

The proposal nominates 303m² (40% of the GFA) for affordable housing purposes. As a result, the allowable FSR bonus for this new S4.55 modification is 0.40:1, with the provision of 40% of the GFA as affordable housing. In other words, a maximum FSR of 1.3:1 (0.9:1 + 0.4:1) would be allowed.

The proposed conversion of Unit 4 to an affordable housing unit will increase the affordable GFA by 71m² (increased from 232m² to 303m²). The extension of Unit 7 from a 2BR unit to a 3BR unit and internal layout rearrangement for other units will increase the total GFA by 44m² (from 712m² to 756m²). The proposed modification will result in a total FSR of 1.29:1, including 40% affordable housing, which complies with Clause 17(2) of AFH SEPP 2009.

Accordingly, the proposal will continue to comply with the FSR control.

Building Height

Clause 4.3 of Council's LEP prescribes a maximum building height of 12 metres. The modification will maintain the roof level at RL 81.67 as approved, and the building height measured from the roof level to the existing ground line immediately below is retained as 11.852m. The proposed works include the 300mm height increase of the lift overrun from RL 82.27 to RL 82.57, resulting in a maximum building height breach increased from 523mm to 823mm. When measured from the highest point of the lift overrun, the whole building height is 12.822m (increased from the approved 12.522m). All other proposed modifications are located under the 12m height line and/or within the approved building envelope. The proposed change to the lift overrun is driven by the minimum headroom requirements for passenger lifts, which is supported by a cover letter prepared by Schindler Lift Australia Pty Ltd, inter alia:

We have reviewed Section 1 from DA/617/2021/B Issue Z Sheet 10 prepared by Couvaras Architects. Refer attached snip.

This drawing specifies a total headroom height of 3500mm.

This headroom height is insufficient for the installation of the Schindler 3000 MRL lift as configured and shown in the version A1 reference drawings.

This lift requires a total car plus headroom height of 3800mm. This requirement is noted in the HSK dimension in Section A-A on the page marked DRG No 103 in the drawings, as reflected in above snip.

As such, an increase in headroom height of 300mm is necessary for the installation of this lift.

For clarity, the headroom is measured from the topmost floor FFL to the underside of the shaft roof.

Thus, the proposed increase of the lift overrun is necessary for the installation of the lift.

In addition, one of the key considerations in supporting this proposal and indeed any other proposals that breach a control is to ensure consistency with the objectives of that control. In our opinion, the proposed modification is consistent with the relevant objectives of the building height standard:

(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives (Clause 2.3);
- c. The land use table (at the end of Part 2); and
- d. The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 13m

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); **Residential flat buildings**; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture*

The proposed residential flat building is permissible in the zone in accordance with the permissible land uses provided above. The proposed modifications will maintain the approved roof level at RL 81.67 AHD and the proposed building height change is limited to the height reconfiguration of the lift overrun. It is noted that the lift overrun will continue in the previously approved location, which is recessed from the building edges and not prominent in the streetscape. Thus, the building height

variation due to the proposed modifications is minor in nature and the whole building will continue to be consistent with the surrounding development and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In this judgement, Clay AC notes at [69]:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the appeal of this case by Preston CJ that the desired future character should be informed by the nearby and future development and not limited by the development standards. As discussed, the proposed modification will maintain the approved built form, the number of storeys, and setbacks; and the minor building height change is limited to the height increase of the approved lift overrun, the modified proposal will continue to be compatible with the desired future character of the locality.

(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,

N/A. The site is not identified as a heritage item or in a heritage conservation area. While it is located adjacent to the "St Jude's" heritage conservation area, the proposed building height breach due to the reconfiguration of the lift overrun would be unlikely to result in any adverse impact on the nearby heritage items.

(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

Privacy

As discussed, the increase of the building height is due to the height reconfiguration of the approved lift overrun. Privacy will be preserved as there are no openings at the areas of the height exceedance. The building height non-compliance is limited to the non-trafficable lift overrun, which will not result in additional privacy impacts on neighbouring properties. On this basis, the proposal will preserve the privacy for residents of approved built form.

Solar Access

As the height exceedance is limited to the recessed lift overrun, any additional overshadowing is wholly contained on the roof of the subject building. Thus, the proposed building height increase will not result in any adverse solar access impact on the neighbouring properties.

View Sharing

Considering the proposed height increase is limited to the reconfiguration of the lift overrun, the height variation is unlikely to result in any adverse impact relating to view sharing.

In our opinion, the proposed modifications have been thoughtfully designed to maintain approved levels of amenity for neighbouring development.

Accordingly, despite the height exceedance, the proposed building height variation will preserve neighbours' amenity and be consistent with the standards and objectives of the LEP.

6.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

SEPP (Housing) 2021 was gazetted on 26 November 2021 and the in-fill affordable housing provisions were transferred from Statement Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) to Statement Environmental Policy (Housing) 2021 (Housing SEPP) under Chapter 2, Part 2, Division 1.

However, Schedule 7A, Clause 2(1)(da) of Housing SEPP 2021 demonstrates an exception if an application is to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date. This new S4.55 modification is aimed at modifying the development consent (DA 617/2021/B), which was made but not determined before the commencement date. As such, this modification application is covered by this savings provision. The Housing SEPP is not relevant, and consideration is required of SEPP (Affordable Rental Housing) 2009 (ARH SEPP).

Clause 16: Development to which Division applies

Division 1 applies to residential development if:

(a) *the development is permitted with consent under another environmental planning instrument, and*
The proposed development comprises a residential flat building, which is permitted with consent in the R3 zone under the LEP.

(b) *at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and*

The proposal will continue to provide four out of the seven units (Unit 1, 2 and 3 on the ground floor level, and Unit 4 on the first-floor level, and reaches 40% of the proposed gross floor area) to be used for affordable housing.

(c) *for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and*

The subject site is in the Greater Sydney region and well within 140m walking distance to a bus stop on Cowper Street and within 180m from a bus stop on Frances Street which both have more than one bus per hour servicing the bus stops that vary between 6 am and 11 pm each day from Monday to Sunday. The subject site is also located within 350m walking distance to the Wansey Road Light Rail which provides regular services to Circular Quay.

(d) *for development on other land—all or part of the development is within 400 metres walking distance of land within Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to those zones.*

This subclause is not relevant.

Accordingly, Division 1 applies to the proposal.

Clause 17: Floor space ratios

Clause 17(2)(a)(ii) allows development to exceed the maximum FSR permitted under another environmental planning instrument (Clause 4.4 of the LEP in this case) by a bonus calculated on a pro-rata basis of the amount of GFA nominated to be used for affordable housing.

The proposal nominates 303m² (40% of the GFA) for affordable housing purposes. Clause 17(2)(a)(ii) therefore allows a 0.4:1 FSR bonus or a maximum FSR of 1.3:1 (0.9:1 + 0.4:1), with the provision of 40% of the GFA as affordable housing. The proposed FSR of 1.29:1, including 40% affordable housing, complies with Clause 17(2).

Clause 18: Standards that cannot be used to refuse consent

Clause 18 contains standards whereby the consent authority cannot refuse consent if there is compliance with the standards (see **Table 2**). Subclause (2) provides a consent authority may consent to the development whether or not the development complies with these standards.

TABLE 2: PROJECT COMPLIANCE – HOUSING SEPP			
Provision	Requirement	Proposal	Complies
Site Area	Min 450m ²	587.8m ²	YES
Landscaped Area	Min 30% of site area Requirement = Min 176.36m ²	Approved S4.56: 156.1m ² (26.5%) Proposed: 154.2m ² (26.3%)	NO
Deep Soil Zones	Min 15% of site area Requirement = Min 88.17m ²	Approved S4.56: 94.9m ² (16.1%) Proposed: 93m ² (15.8%)	YES
	Min 3m dimension	Deep soil areas are greater than 3m	YES
	Min 2/3 at rear	> 2/3	YES
Solar Access	Min 3hrs sunlight to living rooms & POS for min 70% of proposed dwellings betw. 9am - 3pm Requirement = Min 4 dwellings	>3 hrs to 100%	YES
Parking	1-bed: Min 0.5 2-bed: Min 1 3-bed or more: Min 1.5 Requirement = Min 8 spaces	Approved S4.56: 7 + 2 car stackers Proposed: 7 + 3 car stackers	YES
Dwelling Size	1-bed: Min 50m ² 2-bed: Min 70m ² 3-bed or more: Min 95m ²	1-bed: 63m ² 2-bed: 71 - 74m ² 3 bed: 111 - 115m ² 4-bed: 202m ²	YES

The proposed modifications will continue to comply with the standards under Clause 14, except for the landscaped area. The AFH SEPP requires a minimum of 30% of the site area to be landscaped and 15% of the site area to be deep soil areas. The previously approved S4.56 Modification has a total landscaped area of 156.1m² (26.5%), and the proposal will minor decrease the proposed landscaped area by 1.9m², resulting in a total landscaped area of 154.2m² (26.3%). The minor change is a result of the basement extension to accommodate the proposed one extra car stacker for Unit 7. As the approved Unit 7 will be expanded from a 2BR unit to 3BR, the proposed one additional parking space (in the form of a car stacker) is reasonable and is still compliant with the parking rate standard under Clause 14. It is noted that the proposal will continue to provide more than a compliant deep soil area.

6.3 State Environmental Planning Policy (SEPP) No. 65 - Design Quality of Residential Flat Development

The former SEPP No. 65 Design Quality of Residential Apartment Development was repealed on 14 December 2023 and Chapter 4 'Design of Residential Apartment Development' and Schedule 9 'Design Principles' were incorporated into the subject SEPP. However, given the relevant saving provisions, consideration of this application is still required of SEPP No.65.

A Design Verification Report prepared by Couvaras has verified that a qualified designer designed, or directed the design of, the original development, and that the proposal is consistent with the nine Design Principles in Schedule 9 of the SEPP. The proposal also complies with the key provisions of the Apartment Design Guide (ADG) which informs the SEPP. An assessment against all the relevant provisions of the ADG is provided below/separately.

It is noted that Part 3G of the ADG includes objectives and design guidance regarding to the building entries and pedestrian access. The relevant objectives under Part 3G of the ADG and our responses have been outlined below:

Objective 3G – 1: Building entries and pedestrian access connects to and addresses the public domain.

The accessible pedestrian entrance ramp connects directly to the footpath on Church Street with the entry awning and path breaking the building envelope at the podium level. These elements ensure the entrance is well defined, legible and addresses the public domain.

Objective 3G - 2: Access, entries and pathways are accessible and easy to identify.

The accessible entrance and awning are easily identifiable and provide straight line access making access and entry easy to identify. It is important to note, aside from the approved vehicle access, there is no other secondary pedestrian access points available on the subject site. Therefore, the proposed pedestrian access point will be noticeable and easy to identify.

Objective 3G - 3: Large sites provide pedestrian links for access to streets and connection to destinations.

N/A. The subject site is not large site, thus this objective is not applicable.

In addition, there are also other examples of existing and newly developed residential flat buildings along Church Street that comprise pedestrian entries via the side of the property, and these include the following:

- No. 8 Church Street;
- No. 10 Church Street;
- No. 10a Church Street;
- No. 37 Church Street;
- No. 24 Church Street (DA177/2018); and
- No. 53 Church Street.

Furthermore, the proposed modification to the pedestrian entrance at the ground floor level is a better planning outcome to the approved scheme for the following reasons:

- It will result in the removal of a chair lift which reduces visual clutter to the streetscape and noise to surrounding properties;
- As confirmed by the Acoustic Report separately submitted prepared by Day Design Pty Ltd, the proposal improves acoustic measures by reducing noise levels from 40dBA to 38dBA (a reduction of 60%) for 31 Church Street compared to the approved development;
- It provides 15m² of additional GFA to Unit 1 which is affordable rental housing. This results in a 63m² unit which converts the unit from a studio sized unit to a one-bedroom unit that complies with the minimum floor area requirements for a one-bedroom unit under the ADG which will significantly improve amenity for the future occupants;
- It provides 2m² of additional balcony space to Unit 1;
- It improves the overall internal amenity for the future occupants of Unit 1 by providing larger living area, private open space area and the addition of a north facing window. The approved scheme provides solar access to the living areas between 1 – 3pm from a western facing window, whereas the proposal provides access between 9am – 3pm; and
- It provides 6m² of additional deep soil landscaping at the frontage of the subject site;
- Additionally achieves numerous objectives under the Part B3: Ecologically Sustainable Development of the DCP by eliminating a platform lift and replacing it with an accessible ramp. The objectives include reducing the use of resources in development, using low

maintenance materials with low embodied energy content, promotion of energy efficiency in the design and operation of buildings and minimizing greenhouse gas emissions.

Accordingly, the proposed building entrance the modified side entrance is considered to achieve the relevant objectives under Part 3G of the ADG. It is also a better planning outcome to the approved scheme as it improves the amenity to the neighbours and occupants of the subject site and results in an improved streetscape outcome. In our opinion, the modified building entrance will provide good pedestrian access, “delivering high quality, equitable, safe and pleasant walking environments along the street, into the development and to individual apartments” which is the overarching aim of Part 3G.

6.4 Randwick Development Control Plan (DCP) 2013

The DCP came into force on 14 June 2013 and applies to the site and the proposed development. The proposed modifications generally retain existing levels of compliance with the applicable controls. Our assessment of the DCP control where the proposed modifications result in departure is as follows (see Table 3):

TABLE 3: PROJECT COMPLIANCE – RANDWICK DCP 2013			
Provision	Requirement	Proposal	Complies
Part B: General Controls			
Vehicles Parking Rates	Resident: 1 space per 1-bed; 1.2 spaces per 2-bed; 1.5 spaces per 3 or more bed; 1 visitor space per 4 dwellings Requirement (Max) = 10+2	Approved: 11 Proposed: 12	YES Also Comply with Housing SEPP
Part C2: Medium Density Residential			
Landscaped Open Space	Min 50% of site area Requirement = 293.9m²	Approved: 271.0m² (46.1%) Proposed: 271.0m² (46.1%)	As Approved
Deep Soil Area	Min 25% of site area Requirement = 146.9m²	Approved: 156.1m² (26.5%) Proposed: 154.2m² (26.3%)	YES
Private and Communal open Space	Private open space has a Min area of 8 sqm and a Min dimension of 2m.	Unit 5: 14m ² (reduced from 15m ²); Unit 6: 15m ² (increased from 12m ²) Dimensions >2m	YES
Front Setback	Consistent with prevailing street setback Generally min 3m	No changes The proposed expansion of Unit 7 is further recessed from the approved building edges on Level 2.	As Approved
Side Setback	If 14-16m site width Requirement = Min 2.5m		
Rear Setback	15% of site depth or 5m, whichever is greater. Requirement = Min 5.77m		
Habitable Roof Space	Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation.	The approved mansard roof form will be amended to accommodate the Unit 7 extension (from a 2-bedroom unit to 3-bedroom unit) which contributes to the dwelling mix of the development. It will also be dual aspect and there are windows and balconies provided to the front and rear elevations which will allow for good natural ventilation.	YES

	Has a maximum floor space of 65% of the storey immediately below. Maximum: 130m ²	115m ²	YES
Solar Access & Overshadowing	Min 3hrs sunlight to living areas & POS for min 70% of proposed dwellings betw. 8am – 4pm Requirement = 4 dwellings	The proposed modifications will provide a similar level of solar access to the dwellings within site and the neighbouring dwellings.	YES (see Section 5.5)
	Min 3hrs sunlight to part of living area windows for neighbouring dwellings betw. 8am – 4pm		
	Min 3hrs sunlight to 50% of landscaped areas for neighbouring dwellings betw. 8am – 4pm		
Visual Privacy	Habitable room windows & balconies to minimise overlooking of windows or glass doors in adjoining dwellings. Locate & design POS for high level of user privacy	Unit 5- privacy screens to both sides of the rear balcony will be maintained. Unit 7 – the proposed front and rear balconies are recessed from the approved building edges and sightlines are oriented towards the roofs of neighbouring properties. Setbacks comply with ADG building separation distance criteria.	YES (see Section 5.5)
	Orient balconies to front & rear or courtyards as much as possible	Balconies and courtyards oriented to front/rear	YES (see Section 5.5)
View Sharing	Reasonably maintain existing view corridor/vistas to significant elements from streets, public open spaces & neighbouring dwellings	The proposal will maintain the approved setbacks and building height, thus it is not likely to cause any view impact.	YES (see Section 5.5)

6.5 Appearance of the Building and Landscape Considerations

The proposed modifications are predominantly within the previously approved building envelope, with the exception of the lift overrun refinement and the expansion of the top-level Unit 7. The whole building height will be slightly increased by 300mm due to the height increase of the lift overrun. A supporting letter has been prepared by Schindler Lift Australia Pty Ltd and indicates that this minor change is necessary for the installation of the lift. While the proposed expansion of Unit 7 comprises extensions to the front and rear with additional building envelope increase, it remains recessed from the approved building edges on the lower levels to minimise visible appearance changes.

When viewed from Church Street, the proposal will maintain its approved three-storey built form with a recessed topmost level and vehicular access adjacent to the southern end of the street front boundary. The proposed new materials will be similar in style/colour to the previously approved modifications and will maintain a high degree of articulation to the streetscape. The visible modification works are related to the expanded top-level unit (Unit 7). However, as the expanded top floor unit has been carefully designed in terms of architectural styles and choice of materials, the proposal will maintain contextual compatibility with the existing streetscape and align with the desired future character of the area (see **Figure 10**). In addition, given the maintained roof level and continued recessed top-level unit, the modified development will not be seen as over-developed. However, the proposed modification has been carefully designed to be consistent with the architectural style of the approved building and the desired future character of the locality.



Source: Couvaras

Figure 10: Approved and Proposed West (Street) Elevations

6.6 Relationship to Surrounding Development

The proposed modifications have been designed to maintain visual and acoustic privacy, solar access and views from neighbouring developments.

Acoustic and Visual Privacy

In respect of privacy, no additional privacy impact is envisaged from the ground floor level to Level 1. On Level 2, as the approved privacy screens on both sides of the rear balcony are maintained, there will not be any additional privacy impact on neighbouring properties. On Level 3, while the expanded Unit 7 includes new side-facing windows, these windows are limited in size and sightlines will be oriented towards the neighbouring properties' roofs without overlooking the habitable rooms or their private open space. Similarly, the proposed new front and rear balconies are further set back from the approved building edges on the lower levels and comply with the ADG building separation distance criteria.

Solar Access

To assess the effect of the proposed development in terms of solar access, shadow diagrams, sun eye view diagrams and elevation shadow diagrams have been prepared for 8:00am, 12 noon and 4:00pm for the winter solstice (June 21). These diagrams compare shadows from the approved and proposed building envelope (**Figure 11** on the following page).

At 8:00 am, the proposed modification will cast additional shadows over the roof and minor portion of the north elevation wall at No. 37 Church Street, with no impact on the neighbouring properties' north-facing windows or private open space.

At 9:00 am, the proposed rear extension on Level 3 will result in minor additional overshadowing to the two east-end north-facing windows (Level 2) at No. 37 Church Street (pink area in **Figure 11**).

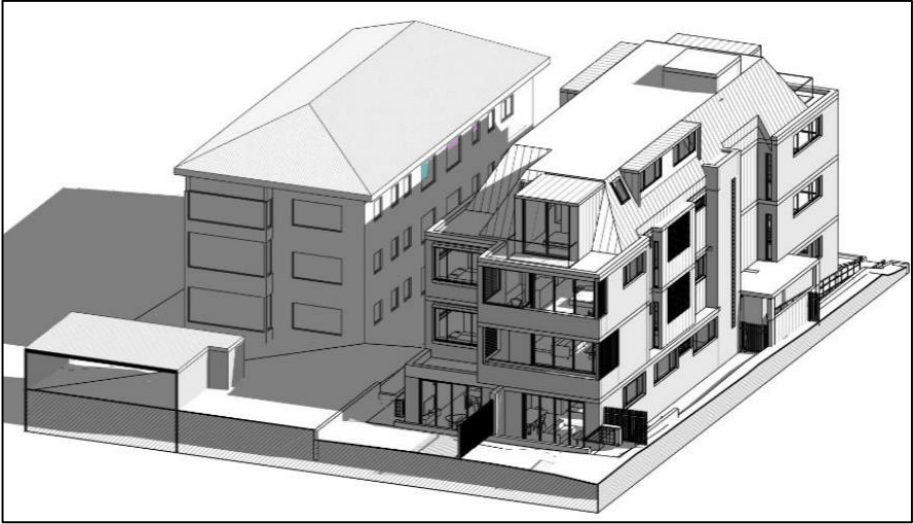
At 12 noon, the proposed front extension on Level 3 will result in additional shadow to the upper portion of two north-facing windows (Level 2) at No. 37 Church Street (pink area in **Figure 11**). However, due to the proposed minor reduction to the south-facing dormer on Level 3, another north-facing window (Level 2) of No. 27 Church Street will gain direct sunlight (green area in **Figure 11**). In addition, the portion of windows affected by the proposed modification is smaller than the portion of windows that regained sunlight, which is an improvement of amenity when compared to the previous approval.

At 4:00 pm, additional shadow will occur to the roofs of Nos. 20 and 22 Cook Street and minor impact to one north-facing window (Level 2) at No. 37 Church Street.

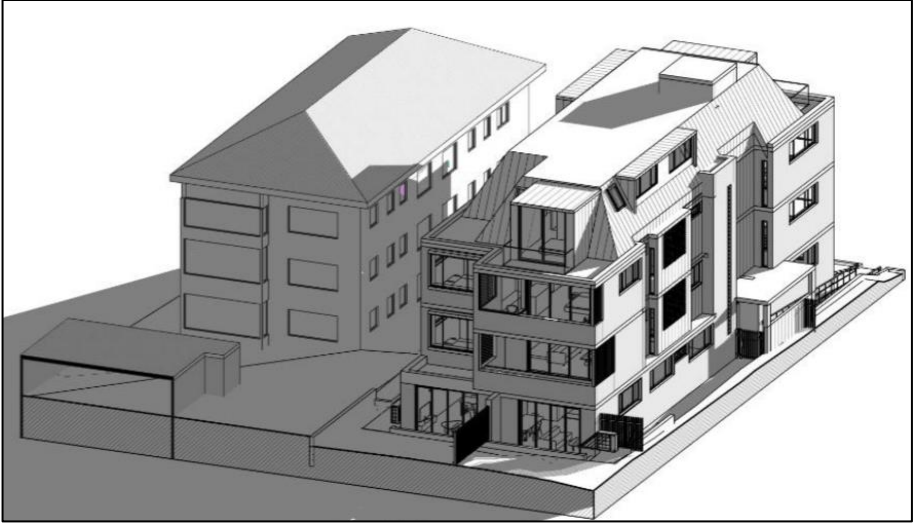
While there would be additional shadows to the top level of No. 37 Church Street due to the proposed expansion of Unit 7, the impact is minor in nature and caused by the compliant building envelope. In our opinion, the proposed modifications have been thoughtfully designed to provide a similar level of solar access to the neighbouring properties.



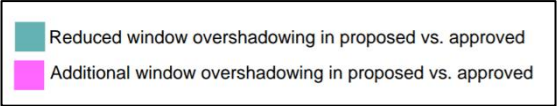
9:00 am



12 noon



4:00 pm



Source: Couvaras

Figure 11: Shadow Diagrams on 21st June

View Sharing

Considering the proposed modifications are predominantly within the approved building envelope, and the roof level, front, side and rear setbacks will be maintained as approved, the proposal is unlikely to result in any adverse impact relating to view sharing. It is important to note that the approved Level 3 is already higher than any other highest habitable levels of nearby buildings, thus, the proposed expansion at this level will not result in any further view obstructions.

In our opinion, the proposed modifications have been thoughtfully designed to maintain approved levels of amenity for neighbouring development.

6.7 The Suitability of the Site

The proposed modifications are relatively minor and will improve the overall function and appearance of the development, when compared to the approved.

The modifications will not significantly increase approved traffic generation rates or the likelihood of hazards such as landslip, bushfire or flooding. While the proposed works include one extra car stacker for Unit 7, it can be considered acceptable due to the proposed expansion of Unit 7 from a 2BR unit to a 3BR unit. The proposed number of car parking spaces continues to comply with SEPP standards and Council's car parking requirements and is likely to satisfy the parking demand.

In summary, the proposal is not likely to adversely affect the surrounding road and intersection network. The proposed car parking arrangements are considered to be appropriate.

6.8 The Public Interest

The proposed modifications will not result in any adverse social or economic impacts in the locality. The proposed modifications will not significantly vary the appearance of the approved development when viewed from neighbouring development or the public domain. The changes to the topmost level (Level 3) are consistent with the architectural style of the approved building and the character of the surrounding properties, and will enhance the site's appearance and functionality. As previously discussed, the proposed modifications are restrained in order to maintain solar access, views and privacy to the surrounding development.

The proposed works will ensure the employment of numerous people directly and indirectly. Additionally, the proposal provides employment in the provision of maintenance services once the residential flat building is occupied. Unit 4 will also be designated as affordable housing. It is in the public interest as supported by HomeGround Real Estate Sydney (a not for profit community housing provider) in the submitted letter which outlines the demand for affordable housing in the current housing crisis. Accordingly, in our opinion, the proposal will not impact on the area's character, maintain amenity, and is in keeping with the public interest.

7.0 CONCLUSION

The proposed modifications to the previously approved residential flat building include the expansion of Unit 7 from 2BR unit to 3 BR unit, the basement extension to accommodate one extra car stacker for Unit 7, the refinement of the lift overrun, the addition of Unit 4 as affordable housing, and other internal and external modifications. Accordingly, we respectfully request that Council amend Condition 1 of DA No. No. 617/2021/B. It is supported by amended architectural plans prepared by Couvaras, and an updated BASIX Certificate.

This letter demonstrates the proposal is substantially the same as the approval. The proposed modifications have been considered both qualitatively and quantitatively, with reference to Land and Environment Court cases relating to modifications to consent. We noted Section 4.55(8) Modification applications with a greater degree of change and impact had been approved by other NSW Councils and the Land and Environment Court.

The proposal will continue to provide a well-articulated built form to the streetscape and neighbouring properties. The internal modifications to the approved dwelling will improve the efficiency of the unit layout and enhance the amenity of life for residents. The proposal will continue to be consistent with the character of approved development and the surrounding area, and provide similar levels of solar access, privacy and views for neighbours.

Council can be satisfied that the proposed modifications to development consent DA No. 617/2021/B can be assessed as a Section 4.55(8) modification to consent.

We trust this information is of assistance to you. Should you require further information, please do not hesitate to contact our office.

Yours faithfully,



George Karavanas
MANAGING DIRECTOR

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