

STATEMENT OF ENVIRONMENTAL EFFECTS (Section 4.56 Modification)

Modification to the approved residential flat building utilising SEPP (Affordable Rental Housing) 2019 under DA/186/2016



Address: 27 FLETCHER STREET, CAMPSIE (3D Perspective)

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Just Property & Planning
creative property development

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1. THE SITE & SURROUNDING AREA

1.1 The subject site

The site is legally described as Lot 89 in DP 4178 and is known as No.27 Fletcher Street, Campsie. The site is rectangular in shape and has an area of 650.3m². The site has a frontage of 15.24m in width and a depth of 42.67m. The site is relatively flat with a slight fall from the rear to the street.

Currently, the site contains a single storey dwelling house constructed of face brick walls and terracotta tile roof. Detached garage with carport is located along the rear boundary.



[Photo 1] Street view of the subject site



[Photo 2] Rear view of the existing dwelling house at 27 Fletcher Street



[Photo 3] Rear yard of 27 Fletcher Street

1.2 The Surrounding Area

The surrounding area represents a good mixture of detached dwelling houses, multi dwelling housing development and older style 2 storey walk-up residential flat buildings.

The surrounding area is illustrated in the aerial photograph below:



[Figure 1] Aerial photograph of the locality (Source: SIX Map)

1.2.1 No.25 Flecher Street (east)

The adjoining site to the east at 25 Flecher Street contains 2 storey multi dwelling housing development comprising 3 units which are shown on the photographs below:



[Photo 4] Street view of 25 Fletcher Street



[Photo 5] Side view of 25 Fletcher Street from the subject site

1.2.2 No.29 Fletcher Street (west)

The adjoining site to the west at 29 Fletcher Street also contains 2 storey multi dwelling housing development comprising 3 dwellings which are shown on the photographs below:



[Photo 6] Street view of 29 Fletcher Street (multi dwelling housing)



[Photo 7] Side view of 29 Fletcher Street from the subject site

1.2.3 Two storey walk-up residential flat buildings

The following photographs show two storey walk-up residential flat buildings in the vicinity:



[Photo 8] 2 storey walk-up apartment at 37 Fletcher Street



[Photo 9] 2 storey walk-up apartment at 31 Fletcher Street

1.2.3 Other recent residential development in the vicinity

The following photographs show recent residential development in the vicinity with flat roof design:



[Photo 10] New house at 60 Fletcher Street with flat roof design



[Photo 11] New house at 8 Fletcher Street with flat roof design



[Photo 12] New house under construction at 50 McKern Street with flat roof design



[Photo 13] New 3 storey RFB at 10-12 Beaumont Street with flat roof design

2. THE ORIGINAL APPROVAL

The site benefits Development Consent (i.e. Appeal No.63175 of 2017 or DA/186/2016) which was approved by the Land & Environment Court on 28 November 2017 for:

- i) the demolition of all existing buildings and associated structures throughout the site
- ii) construction of a three storey residential flat building with basement car park comprising 9 units including 4 affordable units and 7 car parking spaces utilising SEPP (Affordable Rental Housing) 2009

3. THE PROPOSED MODIFICATIONS

As illustrated on the plans in clouding and listed in the table below, this S4.56 modification application seeks Council consent to modify the design of the approved residential flat building.

It is also proposed to modify Conditions 25, 26 and 82 of the original consent as below which relate to the floor slab thickness and minimum ceiling height. It has been found that these conditions are no longer achievable under the current NCC requirements. (Refer to the BCA Statement by Building Innovations Australia)

STRUCTURAL

25. ~~The structural plan must be designed with 150mm thick concrete slabs in all areas that require a finished floor to ceiling height of 2.7metres. The plan must be designed by a suitably qualified structural engineer and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.~~
26. An updated architectural section, illustrating all finishes, must be submitted demonstrating compliance with a finished floor to ceiling height of 2.7metres in all habitable areas. ~~The detail must include and address the following:~~
- ~~a) Lighting to be limited to track light fittings, oyster lights, or equivalent.~~
 - ~~b) A flat plate structural slab with a hob must be utilized in all units.~~
 - ~~c) The floor finish and required acoustic treatment must be limited to 20mm thick.~~
 - ~~d) Any imperfections in the concrete slab are to be grinded back to achieve a level slab.~~
 - ~~e) All services are to be located within non-habitable areas.~~
 - ~~f) The plasterboard ceiling is to be replaced with white set plaster.~~
 - ~~g) Electrical wiring to run within the concrete slab.~~

The plan must be designed by a suitably qualified architect and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

FLOOR AND CEILING LEVELS

82. A Works-As-Executed Plan of all finished floor levels, completed by a Registered Surveyor, must be submitted to the Principal Certifying Authority and Canterbury-Bankstown Council's Development Engineer, prior to the issue of an Occupation Certificate. The plan must accurately demonstrate that the finished floor and ceiling levels of all habitable areas achieve a height of 2.7 metres and are in accordance with the approved plans. The Principal Certifying Authority must be certify that the that the site has been inspected and has been built in accordance with the Works-As-Executed Plan and approved plans. ~~The slab thicknesses in areas where a 2.7 metre floor to ceiling height is required shall be a maximum of 150mm. If necessary the slabs shall be ground down to remove imperfections and achieve the necessary thicknesses and floor to ceiling heights. Oyster lights only shall be utilised in areas where a 2.7 metre floor to ceiling height is required. All electrical wiring shall be laid within the slabs and no lighting, mechanical ventilation or plumbing fixtures shall intrude into the required 2.7 metre floor to ceiling height.~~

The project architect has provided the list of changes as below:

DWG NO	REV.	DWG TITLE	LIST OF CHANGES
S4.56-00	A	COVER PAGE	<ul style="list-style-type: none"> • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF. • SLAB EDGE EXTENDED FOR IMPROVED FRL.
S4.56-01 TO S4.56-02	A	DEVELOPMENT STATISTIC & SITE ANALYSIS	<ul style="list-style-type: none"> • UPDATED DEVELOPMENT STATISTICS.
S4.56-001	A	SITE PLAN	<ul style="list-style-type: none"> • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF.
S4.56-004	A	DEMOLITION PLAN	<ul style="list-style-type: none"> • UPDATED TO REFLECT LATEST ARCHITECTURAL CHANGES.
S4.56-100	A	BASEMENT FLOORPLAN	<ul style="list-style-type: none"> • GENERAL STRUCTURAL, MECHANICAL & HYDRAULIC SERVICES UPDATE. • BASEMENT TO BE FLAT AT SSL 33.97 (NO MORE SPLIT LEVELS). • REPLACED CLEANER'S ROOM WITH GAS / WATER METER ROOM. • RENAMED PLANT ROOM TO DOMESTIC WATER PUMP ROOM & ADJUST TO ALLOW MORE HEADROOM BELOW RAMP (REFER "DRIVEWAY SECTION"). • ADJUSTED STORAGE CAGES.

			<ul style="list-style-type: none"> • SWAPPED ACCESSIBLE CARPARK AS PER TRAFFIC ENGINEER'S ADVISE. • ADDED NEW EGRESS STAIRCASE TO BCA REQUIREMENT.
S4.56-101	A	GROUND LEVEL FLOORPLAN	<ul style="list-style-type: none"> • GENERAL STRUCTURAL, MECHANICAL & HYDRAULIC SERVICES UPDATE. • ADJUSTED FFLs. • UNIT G03(ADAPTABLE) - SWAPPED COMMON BATHROOM WITH STUDY DUE TO HEADROOM ISSUE FOR THE FIRE EGRESS BELOW. • UNIT G01 - EXTENDED B1 TO ALLOW MIN. 3000mm WIDTH DUE TO INTRODUCTION OF CARPARK EXHAUST RISER, & COMMON BATH ALSO ADJUSTED TO SUIT. PRIVATE GARDEN AT COURTYARD REMOVED. • UNIT G02 - EXTENDED B1 TO ALLOW MIN. 3000mm WIDTH. PRIVATE GARDEN AT COURTYARD ALSO REMOVED. • ADDED NEW EGRESS STAIRCASE TO BCA REQUIREMENT.
S4.56-102	A	LEVEL 1 FLOORPLAN	<ul style="list-style-type: none"> • GENERAL STRUCTURAL, MECHANICAL & HYDRAULIC SERVICES UPDATE. • ADJUSTED FFLs. • UNIT 101 - EXTENDED B1 TO ALLOW MIN. 3000mm WIDTH DUE TO INTRODUCTION OF CARPARK EXHAUST RISER, & COMMON BATH ALSO ADJUSTED TO SUIT. • UNITS 102, 103, 104 - BEDROOMS ADJUSTMENTS TO ENSURE MIN. 3000mm WIDTH IS ACHIEVED.
S4.56-103	A	LEVEL 2 FLOORPLAN	<ul style="list-style-type: none"> • GENERAL STRUCTURAL, MECHANICAL & HYDRAULIC SERVICES UPDATE. • ADJUSTED FFLs. • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF.
S4.56-104	A	ROOF PLAN	<ul style="list-style-type: none"> • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF.

S4.56-200	A	NORTH & SOUTH ELEVATION	<ul style="list-style-type: none"> • UPDATED MATERIAL FINISHES. • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF. • REFLECT LATEST CHANGES IN ARCHITECTURAL PLANS (I.E. COLUMNS AT BALCONIES, AND BEAMS & COLUMNS AT DRIVEWAY.)
S4.56-201	A	EAST & WEST ELEVATIONS	
S4.56-300	A	SECTION A & B	<ul style="list-style-type: none"> • GENERAL STRUCTURAL UPDATE (I.E. SHOW SLAB THICKNESS). • ADJUSTED FFLs. • TILED ROOF REMOVED & REPLACED WITH RC FLAT ROOF.
S4.56-301	A	DRIVEWAY SECTION	<ul style="list-style-type: none"> • GENERAL STRUCTURAL UPDATE (I.E. SHOW SLAB THICKNESS). • ADJUSTED FFLs. • UNIT G03(ADAPTABLE) - SWAPPED COMMON BATHROOM WITH STUDY. • ADDED SWEEP PATH TO SHOW COMPLIANCE. • RENAMED PLANT ROOM TO DOMESTIC WATER PUMP ROOM & ADJUST TO ALLOW MORE HEADROOM BELOW RAMP.
S4.56-500	A	PRE & POST ADAPTABLE UNIT	<ul style="list-style-type: none"> • UPDATED TO REFLECT LATEST ARCHITECTURAL CHANGES.
S4.56-702	A	3D VIEWS & FINISHES SCHEDULE	<ul style="list-style-type: none"> • REFER COMMENTS FOR ELEVATIONS.
S4.56-801	A	SOLAR ACCESS	<ul style="list-style-type: none"> • NEW DRAWINGS
S4.56-802 TO 803	A	SUN EYE DIAGRAM	<ul style="list-style-type: none"> • NEW DRAWINGS
S4.56-901 TO 902	A	SHADOW DIAGRAMS	<ul style="list-style-type: none"> • NEW DRAWINGS
S4.56-1001	A	GFA CALCULATION	<ul style="list-style-type: none"> • NEW DRAWINGS
S4.56-1002	A	COMMUNAL OPEN SPACE, DEEP SOIL & LANDSCAPE	<ul style="list-style-type: none"> • NEW DRAWINGS
100 TO 301	A	COMPARISON DRAWINGS	<ul style="list-style-type: none"> • NEW DRAWINGS COMPARING ORIGINAL LEC APPROVALS VS PROPOSED AMENDMENTS.
S4.56-500	A	PRE & POST	<ul style="list-style-type: none"> • UPDATED TO REFLECT LATEST

		ADAPTABLE UNIT	ARCHITECTURAL CHANGES.
S4.56-702	A	3D VIEWS & FINISHES SCHEDULE	• REFER COMMENTS FOR ELEVATIONS.
S4.56-801 TO 803	A	SOLAR ACCESS	• NEW DRAWINGS
S4.56-901 TO 902	A	SHADOW DIAGRAMS	• NEW DRAWINGS
100 TO 301	A	COMPARISON DRAWINGS	• NEW DRAWINGS

4. STATUTORY PROVISIONS

4.1 Environmental Planning and Assessment Act 1979

Section 4.56 *Modification by consent authorities of consents granted by the Court (cf previous S 96AA)*

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

“Substantially the same development test”

Comment: The words “*substantially the same development*” have repeatedly been interpreted by the Land and Environment Court to mean “*essentially or materially the same or having the same essence*” and “*to alter without radical transformation*”. (In *Vacik Pty Ltd v Penrith City Council* (Unreported NSWLEC, 18 February 1992) and in *Ryde Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433)

In determining whether the development is substantially the same it is essential to compare the whole development to which the consent relates to the whole development to which the consent as modified relates.

Therefore, it would be important to look at the various features, elements and components in the context of the total approved development with quantitative and qualitative comparison.

To apply the above principles, the following analysis has been made:

	Original DA	S4.56 Proposal	Substantially the same test
Proposed development in essence (proposed land use)	Demolition then construction of 3 storey residential flat building with basement carpark comprising 9 units and 7 car park spaces	Demolition then construction of 3 storey residential flat building with basement carpark comprising 9 units and 7 car park spaces	The same
Number of storey	3 storey + 1 basement level	3 storey + 1 basement level	The same
Maximum building height	RL47.76 to ridge (i.e. approximately 9.47m)	RL47.42 to TOH (i.e. approximately 9.13m)	Reduction by 0.34m or 3.58% – Substantially the same
Building siting	All building setbacks relative to the boundaries remain the same except for minor reconfiguration of the bathroom wall on Unit 101 and the stairwell on the second floor		Substantially the same
Gross floor area (shown as 'Net internal area under the approved DA drawings)	Ground fl = 190.35m ² First fl = 251.66m ² Second fl = 130.1m ² Total fl = 572.11m ²	Ground fl = 203m ² First fl = 254m ² Second fl = 132m ² Total fl = 589m ²	16.89m ² or 2.95% increase – Substantially the same
Building style & roof form	Mixture of pitched terracotta tile roof and flat roof (Note: The pitched roof was considered more compatible in the streetscape context back in 2017)	Flat roof throughout (Note: more and more medium to high density residential development adopt contemporary flat roof design in recent years)	Substantial change in style

External finish & materials	<ul style="list-style-type: none"> • Ground & first floor walls = mainly face bricks (PGH Matterhorn & PGH Blue Steel Flash) • First floor walls = mainly CSR FC cladding in Dulux Linseed • Rendered wall colours = Dulux Linseed & Dulux Oolong • Roof = terracotta tiles • Window frames = aluminium in Satin Charcoal Grey 	All the external materials and finishes remain the same except for the roof tiles which have been deleted	Substantially the same
Vehicular access arrangement & car park	The vehicle access point and number of car spaces, basement configuration remains substantially the same.		Substantially the same
Internal layout	As described in '3 The proposed modification' to provide service facilities and to comply with the current BCA requirements		Substantially the same

Although some changes have been made internally and externally under the proposed S4.56 application, the development retains the substantially the same essence having 3 storey residential flat building development containing substantially the same components (i.e. 9 units including 4 affordable units and 7 car space basement) in substantially the same locations relative to the boundaries. The proposed modifications are not considered to radically transform the original development.

Under the circumstances, the proposed modification (as described above) is not considered to radically transform the original development and therefore it is considered to be substantially the same development as the development for which the consent was originally granted.

(b) it has notified the application in accordance with—

- (i) the regulations, if the regulations so require, and
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: Council to notify

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

Comment: Council to notify

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: Council to consider submissions

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

“S4.15(1) of the Act & Reasons of the modifications”

Comment: Matters for consideration under S4.15(1) of the Act are discussed throughout this report. Also, the reasons of the modifications are as below:

The reasons for the proposed modifications are:

- Internally, the original DA approved design did not allow any space for the essential services for the subject residential flat building to function properly such as communications room, electrical room, water metre room and CEs. As such, this S4.56 modification application is inevitable to add these facilities in and adjust affected internal areas accordingly.
- Externally, the original DA approved design did not allow any space for the essential facilities such as fire hydrant pump and boost and gas regulator spaces. As such, this S4.56

modification application is inevitable to add these facilities in and adjust affected external areas accordingly.

- The original DA failed to consider one of the most critical BCA requirements (i.e. the maximum travel distance to the exit for escape in the event of a fire in the basement). As such, this S4.56 modification application is inevitable to add the second staircase which has resulted in reducing the landscaped area subsequently.
- Conditions 25, 26 and 82 of the original consent are considered impractical to achieve as demonstrated by the BCA Statement (Building Innovations Australia).
- Most residential flat buildings built in recent years are of contemporary flat roof design which reflects the current trend in architecture in the wider streetscape context. It is no longer considered necessary to have a pitched roof to be compatible in the streetscape character. Since the determination of the original DA in 2017, the locality has been witnessing the contemporary architecture with flat roof form positively contributing to the built environment without resulting in unacceptable amenity impacts. In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, the Land and Environment Court has established that compatibility does not mean sameness. It was derived that there are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing and there are urban environments that are so unattractive that it is best not to reproduce them. The conventional 2 storey walk-up apartments in the locality which has been described under 'the surrounding area' earlier in this report do not necessarily present very attractive or desirable built environment in the streetscape and lack architectural expressions and aesthetics.

(1B) (Repealed)

(1C) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

Comment: This subclause basically sets out the power of a consent authority to modify a development consent. Therefore, where a provision relates only to the 'granting of development consent', it will generally not apply to the modification of a development consent under Section 4.56 such as a contribution under Section 7.11 of the Act (Refer to *Peter Duffield and Associates Pty Ltd v Canada Bay City Council* [2002] NSWLEC 168 at [34] – [35]) or a written request under Clause 4.6 of a Local Environmental Plan (Refer to *DHA Pty Ltd v Waverley Council* [2015] NSWLEC 65 at [34] – [35]).

In this particular case, the original development consent was granted by the Land and Environment

Court despite the maximum building height standard of 8.5m for the site in Canterbury LEP 2012 being breached by 1.1m (i.e. 9.6m in maximum building height for the roof ridge at RL 47.87) as the written request pursuant to Clause 4.6 was found satisfactory. (Note: the LEC incorrectly quoted the roof ridge RL to be 47.87 instead of 47.76)

The Court (Commissioner Dickson) stated:

37 *Having regard to the evidence and in particular the written objection prepared I am satisfied these tests have been met. This is particularly the case because the agreed position of the experts is that the development standard can be varied with no detrimental amenity or streetscape impact. I note their agreement that the solar access to the development is acceptable and that the proposal does not unacceptably impact on solar gain of adjoining properties. On this evidence the development proposed is consistent with the objectives of cl. 4.3 Building Height in LEP 2012 which centre on compatibility with character (cl. 4.3(a)); impact on adjoining properties (cl. 4.3(b)); internal amenity (cl. 4.3(b)); and streetscape presentation (cl. 4.3(c)).*

39 *The variation request prepared by Mr Michael Brewer identifies reasoning in support of the variation sought which I have summarised below:*

- *the proposed height non-compliance allows for the provision of a pitched roof form which assists in achieving a built form that is compatible with the character of the surrounding area and the desired future character;*
- *providing a development with a pitched roof form will result in the gutter line being lower than that for a flat roof. This results in less overshadowing to the adjoining neighbours;*
- *the proposal will not disrupt any views, nor will it significantly adversely impact on the amenity of adjoining properties or private open spaces;*
- *there is a reasonable visual relationship with adjoining development as the top level has been set back from the front building line by 6.4m and is located within the roof to give the appearance of a two storey form to Fletcher Street;*
- *upper floor windows have been oriented away from the side boundaries or provided as "highlight" windows to mitigate any privacy impacts;*
- *the variation to the building height in part arises from the bonus to floor space provided through SEPP ARH (refer paragraph [12]) and that additional yield has been provided within the site by additional height which has no detrimental impacts; and*
- *the proposed development has the ability to provide affordable housing in a prime location proximate to public transport.*

40 *I am satisfied that the written request and the evidence demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

41 *I am satisfied that the written request and the evidence of the planning experts demonstrate that there are sufficient environmental planning grounds to justify the variation. I accept the evidence of Mr Brewer that “the variation will result in an improved environmental outcome of maximising development pursuant to SEPP ARH and in the R4 High Density Residential zone on an infill site that is well located to accommodate that development” (Exhibit L). I can comfortably conclude that an alternative approach to the site with larger floor plates at each level within the compliant building height plane, or with a flat roof, would be an inferior response to the site that would likely have more significant adverse impacts.*

42 *There are no matters of significance for State or regional environmental planning and based on the evidence no public benefit in maintaining the standard in the circumstances of the case.*

43 *For these reasons I am satisfied that the provisions of cl 4.6 of LEP 2012 are met.*

In *Ku-ring-gai Council v Buyozo* [2021] NSWCA 177 at [42], the Courts have also found that while there is no express power to impose or amend conditions when determining an application for a modification application, the power to do so is implied.

For this reason, Conditions 25, 26 and 82 restricting floor slab thickness can be removed or amended as these are no longer achievable under the current NCC requirements.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

Comment: Council to notify submitters

(3) The regulations may make provision for or with respect to the following—

(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,

(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

Comment: Noted

(4) (Repealed)

4.2 SEPP (Affordable Rental Housing) 2009 & SEPP (Housing) 2021

The original development consent was approved utilising SEPP (ARH) 2009 which has been repealed by SEPP (Housing) 2021. Nevertheless, Schedule 7A (Savings and transitional provisions) provides savings provision as below that SEPP (Affordable Rental Housing) 2009 continues to apply for the subject DA:

1 Definitions

In this Schedule—

commencement date means 26 November 2021.

repealed ARH SEPP means State Environmental Planning Policy (Affordable Rental Housing) 2009, as in force immediately before its repeal.

repealed instrument means an instrument repealed under Chapter 1, section 10.

repealed Seniors SEPP means State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, as in force immediately before its repeal.

2 General savings provision

(1) This Policy does not apply to the following matters—

(d) a development consent granted on or before the commencement date,

3 Continued application of site compatibility certificates

(4) This Policy, Part 4 applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land for which a site compatibility certificate has been issued under State Environmental Planning Policy (Affordable Rental Housing) 2009, clause 37, as in force immediately before its repeal.

Part 2 New affordable rental housing

(Note: Historical version for 14 July 2017 to 28 February 2018 when the original DA was granted)

Development standards	SEPP Requirement	Compliance
Division 1 In-fill affordable housing		
10 Applicable development	Dual occupancies, multi-dwelling housing, residential flat building if permitted under another EPI	A RFB was permitted under Canterbury LEP 2012 (Yes)

	Not being heritage item	The site is not heritage listed item or located in the heritage conservation area. (Yes)
	The development to be within an accessible area	The site remains within an accessible area. (Yes)
13 FSR	<p>Additional FSR permitted if at least 20% of the GFA of the development is used for the purpose of affordable housing</p> <p>$0.75 + Y : 1 = 1.093 : 1$ (if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent)</p> <p>$Y = AH \div 100$ (AH is the percentage of the gross floor area of the development that is used for affordable housing)</p>	<p>Original DA: 35.08% (200.72m² out of 572.11m²) --> S4.56: 34.30% (202m² out of 589m²) (Yes)</p> <p>$0.75 + 0.3430 = 1.093:1$ or 710m² permitted & 0.906:1 or 589m² proposed (Yes)</p>

Affordable housing

Note. The Act defines affordable housing as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

(1) *In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:*

- (a) *has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*
- (b) *is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*

(2) *In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.*

14 Standards that cannot be used to refuse consent

(1) Site & solar access	Site area (min): 450m ²	650.3m ² (Yes)
	Landscaped area (min): 30% =	189m ² or 24.5% (No) – Pursuant to

requirements	195m ²	(3) below, Council has the discretion to grant consent despite the variation without requiring a Clause 4.6 variation request.
	<p>Landscaped area</p> <p>The following justifications are provided for Council consideration in support of the proposed S4.56, despite the numerical non-compliance:</p> <ul style="list-style-type: none"> • The main reason for the short fall in the landscaped area of approximately 6m² is to retrospectively provide the second staircase at the rear of the basement carpark to comply with the current NCC requirement regarding the maximum travel distance to the exit for escape in the event of a fire. The original DA failed to consider this most critical BCA requirements. As such, this S4.56 modification application is inevitable to add the second staircase which no longer makes it comply with the landscaped area which was already very tight. • The original DA also failed to allow for a fire hydrant pump and boost and gas regulator spaces in the front which are all essential facilities. As such, this S4.56 modification application is inevitable to add these facilities which no longer makes it comply with the landscaped area which was already very tight. • Apart from the above, the proposed landscaped area remains substantially the same especially within the side and rear setback areas. 	
	<p>Deep soil zones (min):</p> <ul style="list-style-type: none"> • 15% of site area • 3m dimensions • If practical, 2/3 to be at the rear of the site 	<p>11.69% or 76m² (No) – However, it complies with ADG requirement of 7% under SEPP 65 which is acceptable. Pursuant to (3) below, Council has the discretion to grant consent despite the variation without requiring a Clause 4.6 variation request.</p> <p>Generally 3m or over (Yes)</p> <p>Greater than 2/3 at rear (Yes)</p>

	<p>Solar access:</p> <p>Living rooms & POS for minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	7 out of 9 units (77.8%) are able to receive greater than 3 hours direct sunlight between 9am and 3pm in mid-winter, as demonstrated in the solar access diagrams (Yes)
(2) General	<p>Parking (min):</p> <ul style="list-style-type: none"> 0.5 spaces are for 1 bedroom 1 space for 2 bedroom 1.5 spaces for 3 or more bedroom 	$(0.5 \times 5) + (1 \times 4) = 6.5$ spaces required & 7 spaces provided as approved (Yes)
	<p>Dwelling size (min):</p> <ul style="list-style-type: none"> 35m² for studio 50m² for 1 bedroom 70m² for 2 bedrooms 95m² for 3 or more bedrooms 	<p>1 bedroom = Greater than 50m² (Yes)</p> <p>2 bedroom = Greater than 70m² (Yes)</p> <p>3 bedroom = (N/A) (Yes)</p>
(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2)		Council has the discretion to consent despite any non-compliance, subject to merit assessment.
15 Design requirements	<p>The consent authority to take into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy</p> <p>This clause does not apply to development to which clause 4 of SEPP 65 applies</p>	<p>(N/A)</p> <p>SEPP 65 provisions addressed below (Yes)</p>
16 Continued application of SEPP 65	SEPP 65 continues to apply	SEPP 65 provisions addressed below (Yes)
16A Character of local area	The consent authority to take into consideration whether the design of the development is compatible with	The modified design under the S4.56 is still considered to be compatible in the wide streetscape context which

	the character of the local area	has witnessed the emergence of numerous contemporary designed buildings with flat roof in recent years (Yes) - The adjacent 2 storey older style walk-up apartments predate SEPP 65 which do not necessarily represent high quality architecture nor the desirable future streetscape character. Also, the proposed modification to the roof form will not be completely out of character. In this case, compatibility with the future character is more appropriate than with the existing.
17 Must be used for affordable housing for 10 years	<p>The consent authority to impose conditions of consent to the effect that:</p> <p>(a) for 10 years from the date of the issue of the occupation certificate:</p> <p>(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</p> <p>(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</p> <p>(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met</p>	<p>The development will need to comply with Conditions 85 and 86 of the original DA consent stating:</p> <p><i>85. In accordance with Clause 17 of State Environmental Planning Policy (Affordable Rental Housing) 2009, four (4) apartments being Units G01, G02, 101 and 102 within the approved development must be used for the purpose of affordable housing for a tenure of 10 years from the date of the issue of the occupation certificate. All affordable rental housing at the site must be managed by a registered community housing provider.</i></p> <p><i>86. A restriction must be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, prior to the issue of the occupation certificate requiring that a minimum of 4</i></p>

		<i>apartments (Units G01, G02, 101 and 102) within the approved development be used for the purposes of affordable housing for 10 years from the date of issue of the occupation certificate in accordance with Clause 17 of State Environmental Planning Policy (Affordable Rental Housing) 2009.</i>
18 Subdivision	Subdivision permitted subject to consent	(N/A) Subdivision not proposed part of this S4.56

4.3 SEPP No. 65 – Design Quality of Residential Apartment Development

A merit assessment under the ADG relating to the proposed modifications is discussed below:

Part 2 – Developing the controls

2F Building separation

Objectives/Design Criteria/Design Guidance				Design Response	Compliance
Minimum separation distances for building:					
Building height	Between habitable rooms & balconies	Between Habitable & non-habitable rooms	Between non-habitable rooms	The approved building separations largely to remain	N/A
Up to 12m (4 storeys)	12m	9m	6m		
Up to 25m (5-8 storeys)	18m	12m	9m		
Over 25m (9+ storeys)	24m	18m	12m		

Part 3 – Siting of development

3A Site analysis

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 3A-1		
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Remain substantially the same	
Design guidance		
Each element in the Site Analysis Checklist should be addressed (see Appendix 1).		

3B Orientation

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 3B-1		
Building types and layouts respond to the streetscape and site while optimising solar access within the development.	Remain substantially the same	
Design guidance		
Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1). Where the street frontage is to the east or west, rear buildings should be orientated to the north. Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west (see figure 3B.2).	Remain substantially the same	N/A
Objective 3B-2		
Overshadowing of neighbouring properties is minimised during mid winter.		
Design guidance		
Living areas, private open space and communal open space should receive solar access in	The submitted shadow and sun-eye diagrams confirm that the additional	Yes

<p>accordance with sections 3D – Communal and public open space and 4A – Solar and daylight access.</p> <p>Solar access to living rooms, balconies and private open spaces of neighbours should be considered.</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.</p> <p>If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.</p> <p>Overshadowing should be minimised to the south or down hill by increased upper level setbacks.</p> <p>It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development.</p> <p>A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.</p>	<p>shadow impact is marginal and that all existing windows of the south-western neighbour at No.29 Fletcher Street will not be affected by the development from 12pm onwards.</p>	
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3C Public domain interface

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.		

Design criteria		
Communal open space has a minimum area equal to 25% of the site (see figure 3D.3).	25.37% or 165m ²	Yes
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	2h+ is achievable for the COS	Yes
Objective 3D-2		
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	No modifications proposed	N/A
Design guidance		
Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements: seating for individuals or groups; barbecue areas; play equipment or play areas; swimming pools, gyms, tennis courts or common rooms.	No modifications proposed	N/A

3E Deep soil zones

Objectives/Design Criteria/Design Guidance			Design Response	Compliance
Objective 3E-1				
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.				
Design criteria				
Deep soil zones are to meet the following minimum requirements:				
Site area	Min dimensions	Deep soil zone (% of site area)	11.69% or 76m ²	Yes
less than 650m ² : 0m	-	7%		
650m ² - 1,500m ² : 3m	3m			

greater than 1,500m ² : 6m	6m			
greater than 1,500m ² with significant existing tree cover : 6m	6m			

3F Visual privacy

Objectives/Design Criteria/Design Guidance			Design Response	Compliance
Objective 3F-1				
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.				
Design criteria				
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:				
Building height	Habitable rooms & balconies	Non-habitable rooms	The approved building setbacks will largely remain unchanged as the original DA	N/A
Up to 12m (4 storeys)	6m	3m		
Up to 25m (5-8 storeys)	9m	4.5m		
Over 25m (9+ storeys)	12m	6m		

3G Pedestrian access and entries

Objectives/Design Criteria/Design Guidance		Design Response	Compliance
Objective 3G-1			
Building entries and pedestrian access connects to and addresses the public domain.			

Design guidance		
<p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge.</p> <p>Entry locations relate to the street and subdivision pattern and the existing pedestrian network.</p> <p>Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries.</p> <p>Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries.</p>	<p>The pedestrian entry arrangement will be substantially the same as the original DA except for the footpath ramp being straightened and fire hydrant pump and boost being provided</p>	Acceptable

3H Vehicle access

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 3H-1		
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	The vehicle access arrangement will be substantially the same as the original DA	N/A

3J Bicycle and car parking

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 3J-1		
Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.		
Design criteria		
<p>For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or 	The car parking spaces will be substantially the same as the original DA	N/A

<ul style="list-style-type: none"> on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>The minimum car parking requirement for residents and visitors is set out in the 'Guide to Traffic Generating Developments', or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p>		
Objective 3J-2		
Parking and facilities are provided for other modes of transport.		
Design guidance		
<p>Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.</p> <p>Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.</p> <p>Conveniently located charging stations are provided for electric vehicles, where desirable.</p>		N/A

Part 4 – Designing the building

4A Solar and daylight access

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4A-1		
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.		Yes
Design criteria		
Living rooms and private open spaces of at least	77.8% of the units (7 out of 9 units) will	Yes

70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	be able to receive greater than 2 hours of direct sunlight between 9am and 3pm in mid-winter, as demonstrated in the solar access analysis table	
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	11.11% - 1 out of 9 units cannot receive direct sunlight between 9 am and 3 pm at mid-winter.	Yes

4B Natural ventilation

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4B-1		
All habitable rooms are naturally ventilated.		
Design guidance		
<p>The building's orientation maximises capture and use of prevailing breezes for natural ventilation in habitable rooms.</p> <p>Depths of habitable rooms support natural ventilation.</p> <p>The area of unobstructed window openings should be equal to at least 5% of the floor area served.</p> <p>Light wells are not the primary air source for habitable rooms.</p> <p>Doors and openable windows maximise natural ventilation opportunities by using the following design solutions: adjustable windows; a variety of window types; windows which the occupants can reconfigure to funnel breezes into the apartment.</p>	The same level of natural ventilation will be provided as the original DA	N/A
Objective 4B-2		

The layout and design of single aspect apartments maximises natural ventilation.		
Design guidance		
<p>Apartment depths are limited to maximise ventilation and airflow (see also figure 4D.3).</p> <p>Natural ventilation to single aspect apartments is achieved with the following design solutions: primary windows augmented with plenums and light wells; stack effect ventilation / solar chimneys or similar to naturally ventilate internal building areas; courtyards or building indentations with a width to depth ratio of 2:1 or 3:1.</p>	The same level of natural ventilation will be provided as the original DA	N/A
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design criteria		
<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	The same level of natural ventilation will be provided as the original DA	N/A
Design guidance		
<p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths.</p> <p>In cross-through apartments external window and door opening sizes/areas on one side of an apartment (inlet side) are approximately equal to the external window and door opening sizes/areas on the other side of the apartment (outlet side) (see</p>	The same level of natural ventilation will be provided as the original DA	N/A

figure 4B.3).		
<p>Apartments are designed to minimise the number of corners, doors and rooms that might obstruct airflow.</p> <p>Apartment depths, combined with appropriate ceiling heights, maximise cross ventilation and airflow.</p>		

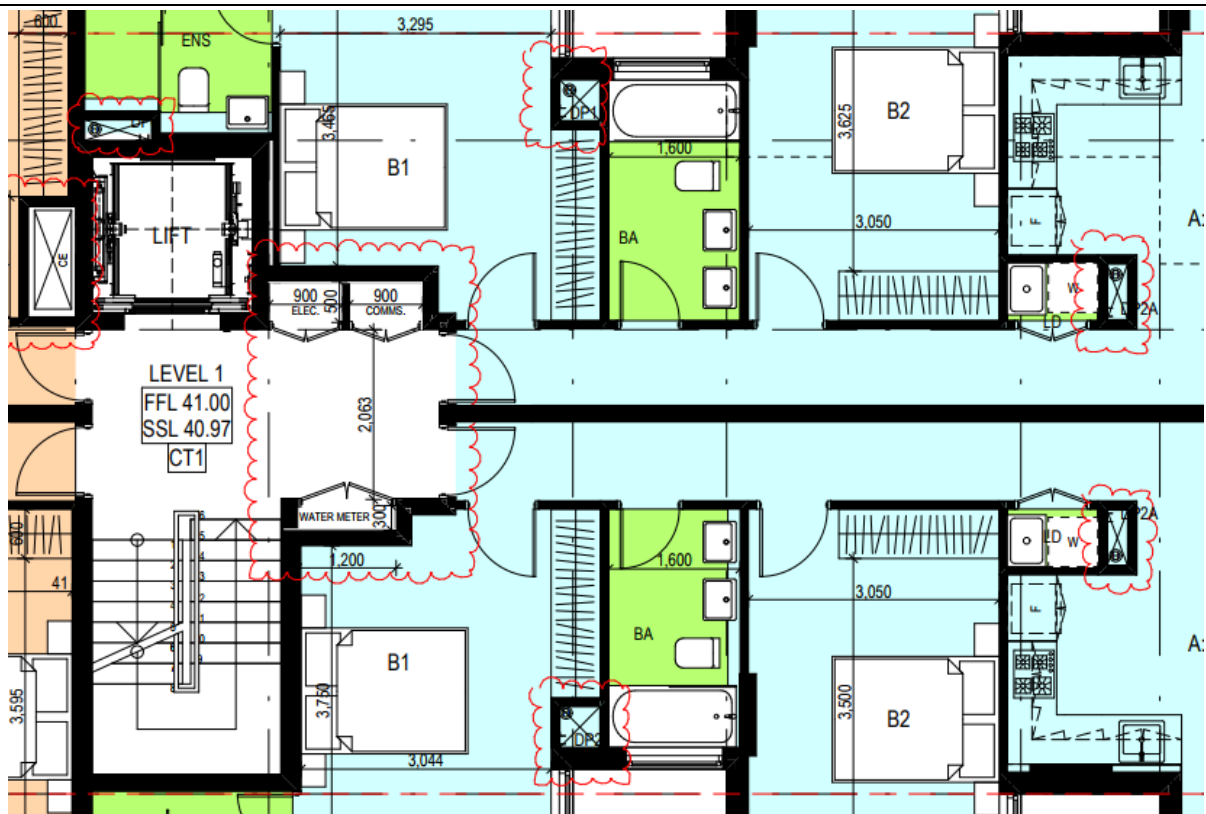
4C Ceiling heights

Objectives/Design Criteria/Design Guidance		Design Response	Compliance
Objective 4C-1			
Ceiling height achieves sufficient natural ventilation and daylight access.		A sufficient ceiling height of 2.7m has been allowed under this S4.56 by lowering the ground floor levels by 290mm from FFL 38.14 to FFL 37.85	Yes
Design criteria			
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:			Yes
Minimum ceiling heights for apartment & mixed use buildings:		Greater than 2.7m ceiling height achieved	Yes
Habitable rooms	2.7m		
Non-habitable	2.4m		
2 storey apartments	2.4m for second floor, where its area does not exceed 50% of the apartment area		
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope		
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use		

4D Apartment size and layout

Objectives/Design Criteria/Design Guidance		Design Response	Compliance
Objective 4D-1			

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.		Yes
Design criteria		
Apartments are required to have the following minimum internal areas:		Yes
Apartment type	Minimum internal area	
studio	35m ²	
1 bedroom	50m ²	
2 bedroom	70m ²	
3 bedroom	90m ²	
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.		No
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Yes
Minimum internal area for additional bathroom		
<p>The ADG requires the minimum internal floor areas of units to increase by 5m² for an additional bathroom. Unfortunately, the internal areas of Units 103 & 104 had to be reduced slightly under this S4.56 modifications not in compliance with the minimum. The following justifications are provided in support of the S4.56:</p> <ul style="list-style-type: none">• The main reason for the numerical non-compliance is to retrospectively provide for essential service facilities such as comms, electrical and water meter rooms within the approved building footprint. (Refer to Figure 2 below) The original DA failed to consider these essential facilities for the subject residential flat building to function properly. As such, this S4.56 modification application is inevitable to add these facilities in which resulted in reducing the internal unit sizes slightly.• Despite the variation, Units 103 & 104 provides bedrooms and living rooms greater than 3m and 4m in dimensions respectively in compliance with the ADG.		



[Figure 2] S4.56 floor plan showing the necessary modifications relating to service rooms

Design guidance		
Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space).	The kitchens are not located as part of the main circulation space for larger units.	Yes
A window should be visible from any point in a habitable room.	Windows are generally visible from any point in a habitable room.	Yes
Where minimum areas or room dimensions are not met, apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space.	All apartments meet the minimum areas or room dimensions.	Yes
Objective 4D-2		
Environmental performance of the apartment is maximised.		Yes
Design criteria		
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	All new bedrooms and living rooms are within 6.75m of the external glazed walls or windows (2.5x the ceiling height of	Yes

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	2.7m) with the exception of some of the kitchen spaces All new kitchen spaces are less than 8m of a window.	Yes
Design guidance		
Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths.	All new kitchen spaces are less than 8m of a window	Yes
All living areas and bedrooms should be located on the external face of the building.	All new living areas and bedrooms are located on the external face of the building.	Yes
Where possible: bathrooms and laundries should have an external openable window; main living spaces should be oriented toward the primary outlook and aspect and away from noise sources.	Openable windows are provided for bathrooms wherever possible.	Yes
Objective 4D-3		
Apartment layouts are designed to accommodate a variety of household activities and needs.		Yes
Design criteria		
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	All master bedrooms have a floor area greater than 10m ² and other bedrooms over 9m ² (excluding wardrobe space).	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Some of the bedrooms have a minimum dimension less than 3m (excluding robe space).	No
Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments; 4m for 2 and 3 bedroom apartments.	All 1 bedroom units have at least 3.6m wide living rooms & all 2 bedroom units have at least 4m wide living rooms.	Yes
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	All apartments have width over 4m	Yes

Design guidance		
Access to bedrooms, bathrooms and laundries is separated from living areas minimising direct openings between living and service areas.	Access to bedrooms, bathrooms and laundries is separated from living areas.	Yes
All bedrooms allow a minimum length of 1.5m for robes.	All modified bedrooms have a robe with length greater than 1.5m.	Yes
The main bedroom of an apartment or a studio apartment should be provided with a wardrobe of a minimum 1.8m long, 0.6m deep and 2.1m high.	All main bedrooms of the apartment provide with a wardrobe of greater than 1.8m long, 0.6m deep and 2.1m high.	Yes
Apartment layouts allow flexibility over time, design solutions may include: dimensions that facilitate a variety of furniture arrangements and removal; spaces for a range of activities and privacy levels between different spaces within the apartment.	All apartments promote open plan living and adoptive re-use which allows flexibility over time.	Yes

4E Private open space and balconies

Objectives/Design Criteria/Design Guidance			Design Response	Compliance
Objective 4E-1				
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.				Yes
Design criteria				
All apartments are required to have primary balconies as follows:			The approved balcony sizes to remain	N/A
Dwelling type	Minimum area	Minimum depth	All 1 bedroom = greater than 8m ² & >2m width All 2 bedroom = greater than 10m ² & >2m width	Yes
Studio	4m ²	-		
1 bedroom	8m ²	2m		
2 bedroom	10m ²	2m		
3+ bedroom	12m ²	2.4m		
Objective 4E-2				
Primary private open space and balconies are appropriately located to enhance liveability for residents.				Yes
Design guidance				
Primary open space and balconies should be located			The approved balcony locations will	N/A

adjacent to the living room, dining room or kitchen to extend the living space.	remain unchanged.	
Private open spaces and balconies predominantly face north, east or west.		
Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms.		

4F Common circulation and spaces

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4F-1		
Common circulation spaces achieve good amenity and properly service the number of apartments.		
Design criteria		
The maximum number of apartments off a circulation core on a single level is eight.	To remain unchanged	N/A
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.		

4G Storage

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4G-1		
Adequate, well designed storage is provided in each apartment.		
Design criteria		
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		
Dwelling type	No changes in storage areas	N/A
Studio		
1 bedroom		
2 bedroom		
3 bedroom		
Storage size volume		
4m ³		
6m ³		
8m ³		
10m ³		

At least 50% of the required storage is to be located within the apartment.	At least 50% of the required storage will be within the new apartments.	
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4H Acoustic privacy

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4H-1		
Noise transfer is minimised through the siting of buildings and building layout.	The approved building separations and siting will largely remain unchanged.	N/A

4K Apartment mix

Objectives/Design Criteria/Design Guidance	Design Response	Compliance
Objective 4K-1		
A range of apartment types and sizes is provided to cater for different household types now and into the future.		
Design guidance		
<p>A variety of apartment types is provided.</p> <p>The apartment mix is appropriate, taking into consideration: the distance to public transport, employment and education centres; the current market demands and projected future demographic trends; the demand for social and affordable housing; different cultural and socioeconomic groups.</p> <p>Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households.</p>	The approved apartment types will remain unchanged.	N/A

4.4 SEPP (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 aims to facilitate planning, designing and delivering sustainable buildings in NSW including residential dwellings and key types of non-residential buildings in order to

minimise the consumption of water and energy and reduction of greenhouse gas emissions.

Residential sustainability [BASIX]

The Building Sustainability Index (BASIX) requirements will continue to apply with increased standards for energy use and thermal performance in homes.

Comment: A valid BASIX certificate is provided in compliance with the SEPP. The proposed development will meet the updated water, energy and thermal performance targets.

Non-residential sustainability

Chapter 3 of the SEPP applies to non-residential buildings that involves—

- (a) the erection of a new building, if the development has a capital investment value of \$5 million or more, or
- (b) alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.

4.5 Canterbury Local Environmental Plan 2012 (Repealed)

The subject site used to be zoned R4 (High Density Residential) under Canterbury LEP 2012. The proposed modifications will remain consistent with the objectives of the zone as approved by the Land and Environment Court.

Part 4 Principal development standards

Planning standards	LEP Requirement	Compliance
Height of buildings (Cl 4.3)	8.5m (max)	RL47.42 to TOH (i.e. approximately 9.13m) However, reduction by 0.34m or 3.58% (No) – Refer to discussion below & Clause 4.6 variation request
<p>Section 4.56(1C) of the EP&AA Act states:</p> <p><i>(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.</i></p>		

This subclause sets out the power of a consent authority to modify a development consent. Therefore, where a provision relates only to the 'granting of development consent', it will generally not apply to the modification of a development consent under Section 4.56 such as a written request under Clause 4.6 of a Local Environmental Plan (Refer to *DHA Pty Ltd v Waverley Council* [2015] NSWLEC 65 at [34] – [35]). For this reason, an additional Clause 4.6 variation request is not considered necessary.

Nevertheless, the following justifications are provided in support of the proposed modifications:

- This S4.56 proposes to lower the ground floor levels by 290mm from FFL 38.14 to FFL 37.85 which will also result in reducing the maximum building height by 340mm.
- As discussed earlier, Conditions 25, 26 and 82 cannot be achieved under the current NCC due to the reasons provided in the BCA statement prepared by Building Innovation Australia.
- As discussed throughout the SEE, it does not have to be a conventional pitched roof form to be visually compatible with the existing streetscape.
- As demonstrated, the S4.56 will not result in a significant additional overshadowing impact on the neighbouring properties.

A separate Clause 4.6 variation request is submitted in appendix in case Council consider it necessary.

FSR (Cl 4.4)	0.75: 1 (max)	589m ² or 0.906:1 (No) – However SEPP (Affordable Rental Housing) permitted a bonus FSR which override the LEP standard in this case
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4.6 Canterbury-Bankstown Local Environmental Plan 2023

The subject site is zoned R4 (High Density Residential) under Canterbury-Bankstown LEP 2023. The proposed modifications will not change the approved uses of the original DA and will remain consistent with the objectives of the zone.

Part 4 Principal development standards

Planning standards	LEP Requirement	Compliance
Height of buildings (Cl 4.3)	8.5m (max)	RL47.42 to TOH (i.e. approximately 9.13m) However, reduction by 0.34m

		or 3.58% (No) – Refer to discussion below
<p>Section 4.56(1C) of the EP&A Act states:</p> <p><i>(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.</i></p> <p>This subclause sets out the power of a consent authority to modify a development consent. Therefore, where a provision relates only to the 'granting of development consent', it will generally not apply to the modification of a development consent under Section 4.56 such as a written request under Clause 4.6 of a Local Environmental Plan (Refer to DHA Pty Ltd v Waverley Council [2015] NSWLEC 65 at [34] – [35]). For this reason, an additional Clause 4.6 variation request is not considered necessary.</p> <p>Nevertheless, the following justifications are provided in support of the proposed modifications:</p> <ul style="list-style-type: none"> • This S4.56 proposes to lower the ground floor levels by 290mm from FFL 38.14 to FFL 37.85 which will also result in reducing the maximum building height by 340mm. • As discussed earlier, Conditions 25, 26 and 82 cannot be achieved under the current NCC due to the reasons provided in the BCA statement prepared by Building Innovation Australia. • As discussed throughout the SEE, it does not have to be a conventional pitched roof form to be visually compatible with the existing streetscape. • As demonstrated, the S4.56 will not result in a significant additional overshadowing impact on the neighbouring properties. <p>A separate Clause 4.6 variation request is submitted in appendix in case Council consider it necessary.</p>		
FSR (CI 4.4)	0.75: 1 (max)	563.7m ² or 0.86:1 which is slight reduction in GFA from the original DA consent (No) – However SEPP (Affordable Rental Housing) permitted a bonus FSR which override the LEP standard in this case

4.6 Canterbury-Bankstown Development Control Plan 2023

Chapter 5 Residential Accommodation

5.2 Former Canterbury LGA

The following assessment has been made against the relevant DCP provisions with regard to the proposed modifications under S4.56:

Development control	DCP Requirement	Compliance
Section 5 – Residential flat buildings		
5.2.11 Roof design and features	<p><u>Building three storeys or less</u></p> <p>C1 Use a simple pitched roof that accentuates the shape of exterior walls, and minimises bulk and scale.</p> <p>C2 Avoid complex roof forms with multiple gables, hips and valleys, or turrets.</p> <p>C3 Roof pitches are to be compatible and sympathetic to nearby buildings.</p> <p>C4 Parapet roofs that increase the height of exterior walls are to be minimised.</p> <p>C5 Use minor gables only to emphasise rooms or balconies that project from the body of a building.</p> <p>C6 Mansard roofs (or similar) are not permitted.</p> <p>C7 Pitched roofs should not exceed a pitch of 30 degrees.</p> <p>C8 Relate roof design to the desired built form and context.</p>	<p>The proposed modification to the roof form has been discussed in detail throughout the report. In summary, the proposed flat roof will still be acceptable and compatible in the wider streetscape context.</p>

	<p>C9 Roofs with greater pitches will be considered on merit taking into account matters such as streetscape, heritage value and design integrity.</p> <p>C10 Relate roof design to the desired built form and context.</p>	
5.2.12 Solar access and overshadowing	<p>C1 Daylight is to be provided to all common circulation areas (including lift wells) that are above ground. Solar access to neighbouring development</p> <p>C2 Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.</p> <p>C3 If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property.</p> <p>C4 Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following: (a) Systems must receive at least 3 hours of direct sunlight between 8.00am and 4.00pm on 21 June. (b) If a system currently receives less than 3 hours sunlight, then</p>	<p>The submitted shadow and sun-eye diagrams confirm that the additional shadow impact is marginal and that all existing windows of the south-western neighbour at No.29 Fletcher Street will not be affected by the development from 12pm onwards.</p>

	<p>proposed development must not reduce the existing level of sunlight.</p> <p>C5 Clothes drying areas on adjoining residential properties must receive a minimum of 3 hours of sunlight on 21 June.</p>	
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5. CONSIDERATION UNDER S4.15 OF THE EP&A ACT

5.1 The likely impacts of the development

The proposal (as modified under S4.56) is not likely to adversely affect the environment. All other relevant considerations are discussed throughout the Statement of Environment Effects including privacy, overshadowing and streetscape.

5.2 The suitability of the site

The suitability of the site will not be affected by the proposed modification.

5.3 Submissions

Council is to notify the S4.56 application in accordance with the relevant legislations and consider any submissions received.

5.4 The public interest

The proposed modification is considered to be in the public interest for the following reasons:

- The S4.56 will allow for compliance with the current building requirements under NCC including the maximum travel distance to the exit for escape in the event of a fire which were neglected during the original DA process.
- The S4.56 will allow to provide essential service facilities for the subject residential flat building to properly function which were missing upon the original DA.

6. CONCLUSION

The proposed development (as modified under S4.56) remains consistent with the objectives of the R4 zone and will not compromise the built and natural environment of the area and the residential amenity of adjoining properties. Therefore, this S4.56 application is worthy of Council support.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jim', with a stylized, flowing script.

James Kim

B. U&RP & Grad. Dip. U&RP