



Statement of Environmental Effects

S4.55(2) Application – Other Modifications

DA-460/2025

Co-Living Housing Development

32-34 Kent Street

Belmore

30 July 2026

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1.0 Introduction

On 13 April 2026, pursuant to DA-460/2025 (Parent Consent), Canterbury Bankstown Council (CBC) granted a deferred commencement consent to Mr Mirwan Hanna to demolish the existing structures and construct a four (4) storey Co-Living Housing Development, containing 32 double private rooms over basement car parking for seven (7) cars, eight (8) bicycle and three (3) motorcycle parking spaces. This consent and approved drawings accompany this modification application.

This Statement of Environmental Effects (SEE) has been prepared by Caladines Town Planning Pty Ltd on behalf of Mr Mirwan Hanna and accompanies a s4.55(2) Other Modification application, seeking consent to modify the Parent Consent by carrying out the following modifications:

- Add 2 additional floors to achieve 6 storeys. The 2 additional floor levels contain 8 additional rooms; however, the approved Ground floor proposes a reduction of 4 rooms to 3 rooms to accommodate additional common open space. The proposed net increase in rooms is 7, giving a total of 39 rooms compared to the approved 32 rooms.
- Levels 1-3 of the approved co-living development remain unchanged from that already approved as part of the Parent Consent.
- The building is proposed to be raised by 430mm above the approved levels. This amendment allows Driveway ramp to the basement carpark to be shortened, which in turn allows for the addition of one additional car space. The 8 car spaces proposed is in accordance with non-discretionary development standards Part 3 Clause 68 par.(e) (i) of SEPP (Housing) 2021 for 39 rooms.
- The basement car park is generally consistent with the approved plans but has been re-configured to accommodate 8 cars in lieu of the 7 approved. The accommodation of 8 bicycles and 3 motorcycles is consistent with the current consent.
- The common room has been reconfigured and enlarged to a floor area of 96m². to allow for the proposed additional 7 rooms proposed.
- The waste area has been enlarged and re-configured to accommodate the additional waste storage required for the proposed additional 7 rooms. One residential room has been deleted to accommodate the changes above.
- Levels 4 and 5 have been added to the approved built form. Each level contains an additional 4 double residential rooms which are compliant with the requirements of Part 3 of SEPP (Housing) 2021 for co-living accommodation.

This SEE has been prepared in accordance with Section 4.12 'Application' as set out under the Environmental Planning and Assessment (EP&A) Act, 1979 and Clause 24 of the Environmental Planning and Assessment (EP&A) Regulation (Reg's), 2021.

This report provides a description of the site and surrounds, a comprehensive description of the proposed development, a summary of the relevant planning controls, and an assessment of the environmental effects that the proposed building works may have on the surrounding urban environment.

The report concludes that after examining the environmental effects of the proposed development against the Evaluation Criteria as set out under Section 4.15 (1) of the EP&A Act, 1979, we have formed

the opinion that the proposal is an appropriate design response to its context and the proposal will have no adverse environmental impacts upon the surrounding built and natural environments and will assist in contributing towards a variety of housing types to meet the demand for this form of low cost accommodation.

Accordingly, in our view, this amended application is worthy of approval.

2.0 The Site and Surrounding Environment

The site is located on the eastern side of Kent Street between Chalmers Street and Leylands Parade Belmore and is generally known as 32-34 Kent Street Belmore. See locality map at **Figure 1**, location of Belmore train station and bus stops plan at **Figure 2** and aerial photo of site and surrounds at **Figure 3**.

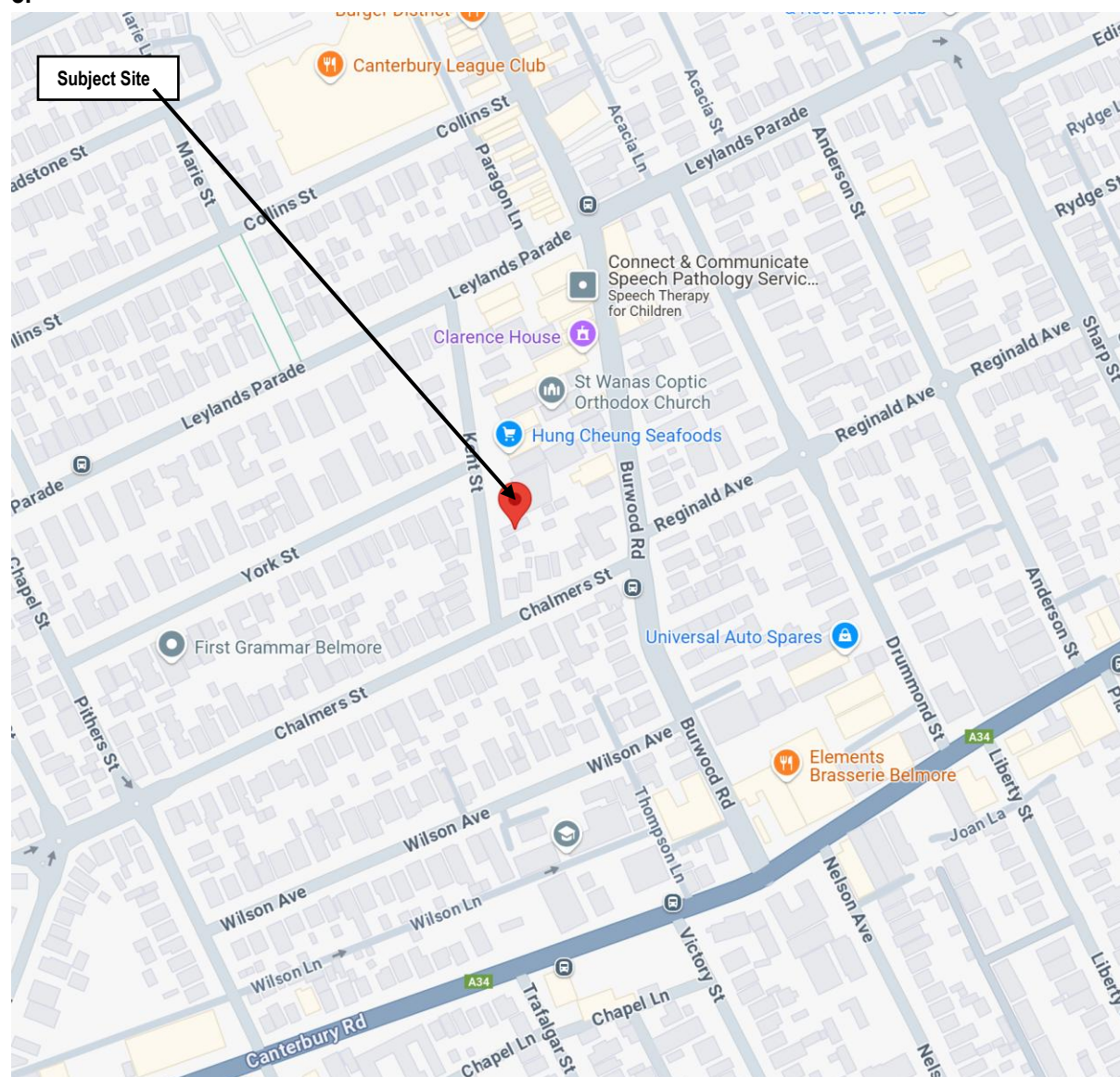


Figure 1
Source: UBD

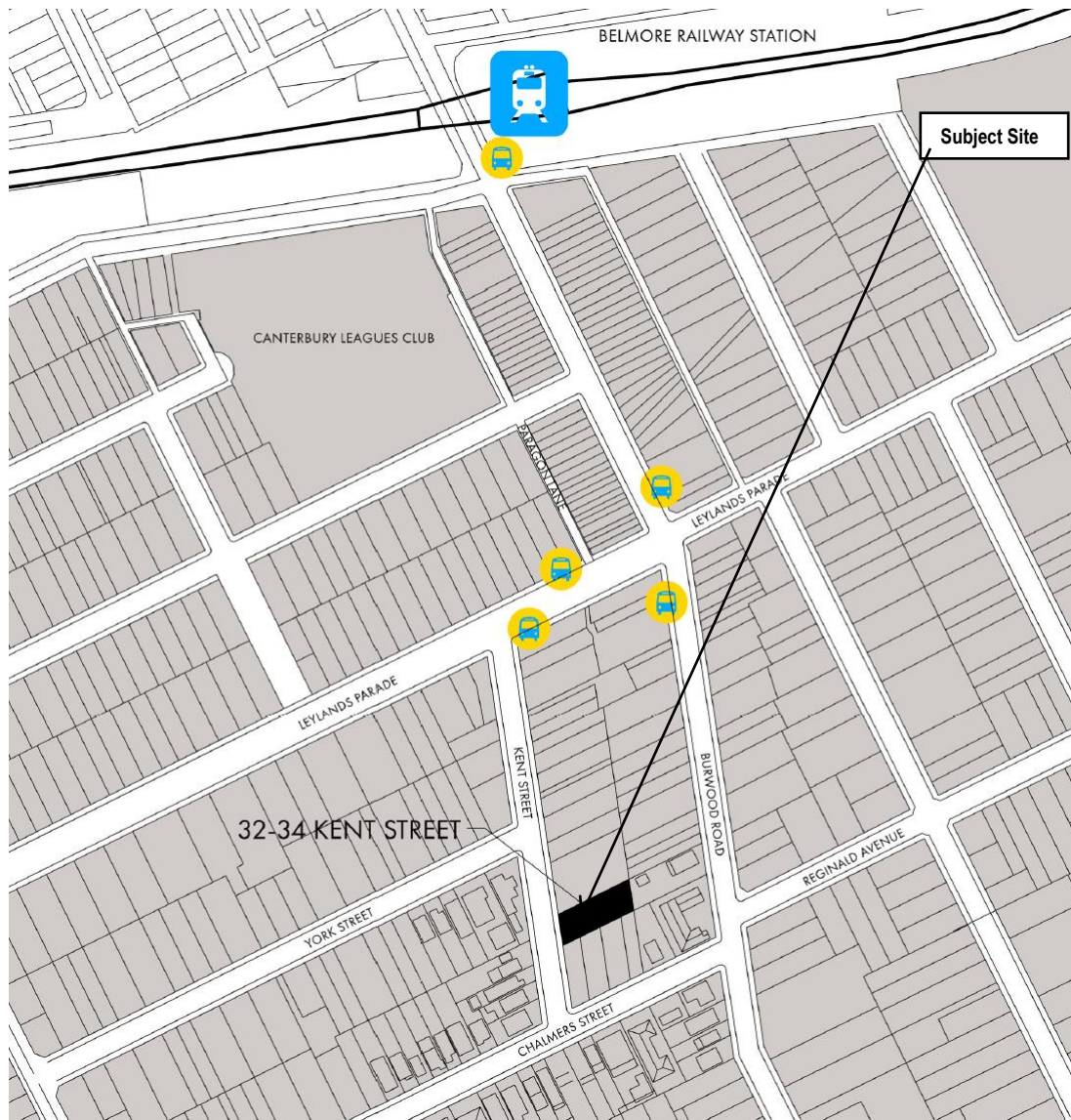


Figure 2
Source: Ross Howieson Architects

The subject site is sited approximately 600m from the Belmore Railway Station, and within 200m to 400m of other public transport options in the form of public bus stops.

Kent Street is predominantly residential in character with new multi-level apartment buildings to the north and east, as well as a number of old style residential flat buildings and low density housing.

The proposed co-living housing development is designed to integrate with the new built form characteristics to the north, through use a mix of painted concrete block work and face brick fabric, which is in-keeping with the changing built form characteristics transitioning into this neighbourhood.

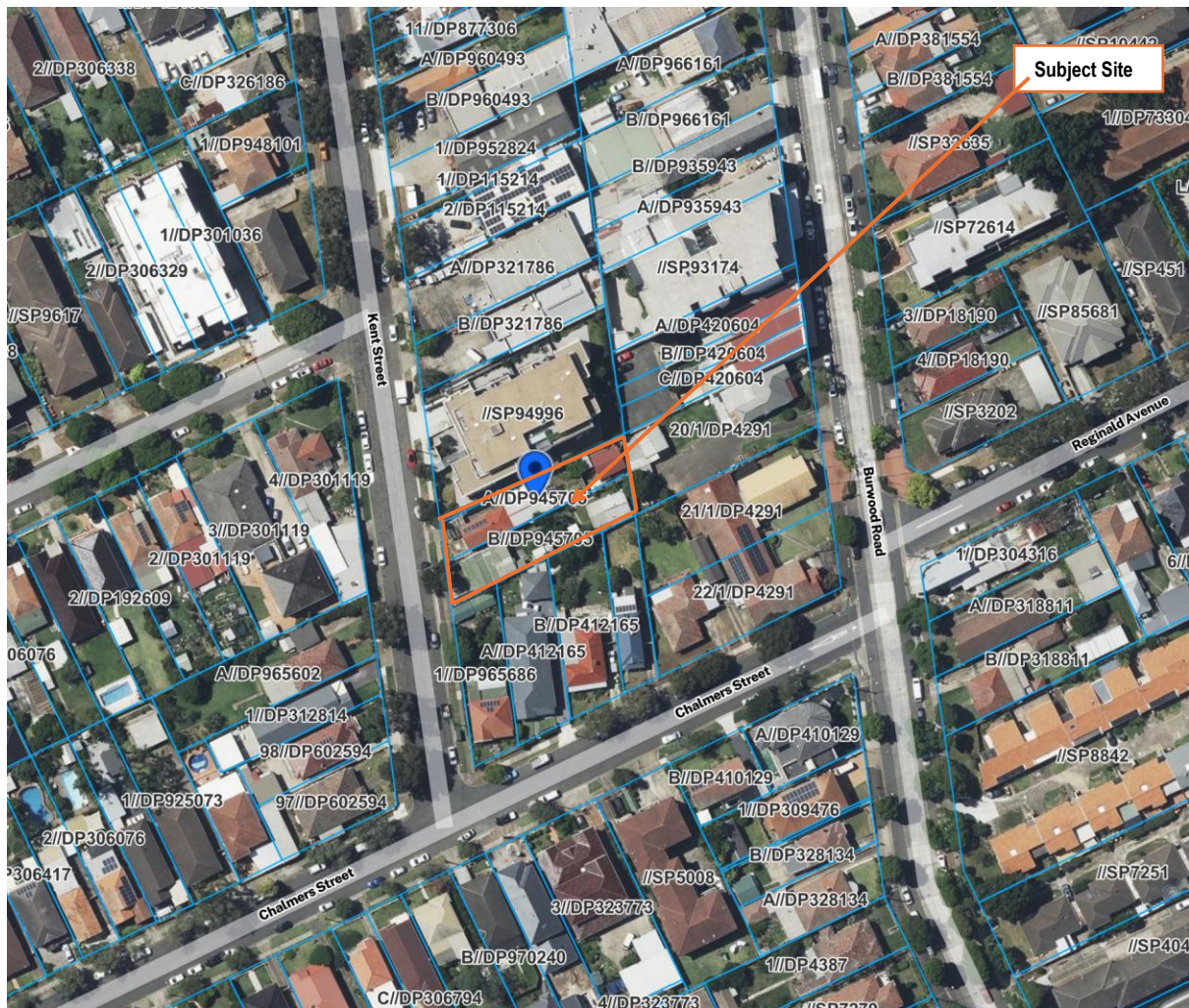


Figure 3
Source: Explorer

See photos of the site and surrounds at **Figures 4 – 10.**



Figure 4
View North Towards Subject Site



Figure 5
View East From Kent Street Towards Subject Site



Figure 6
View North-East From Kent Street Towards Subject Site

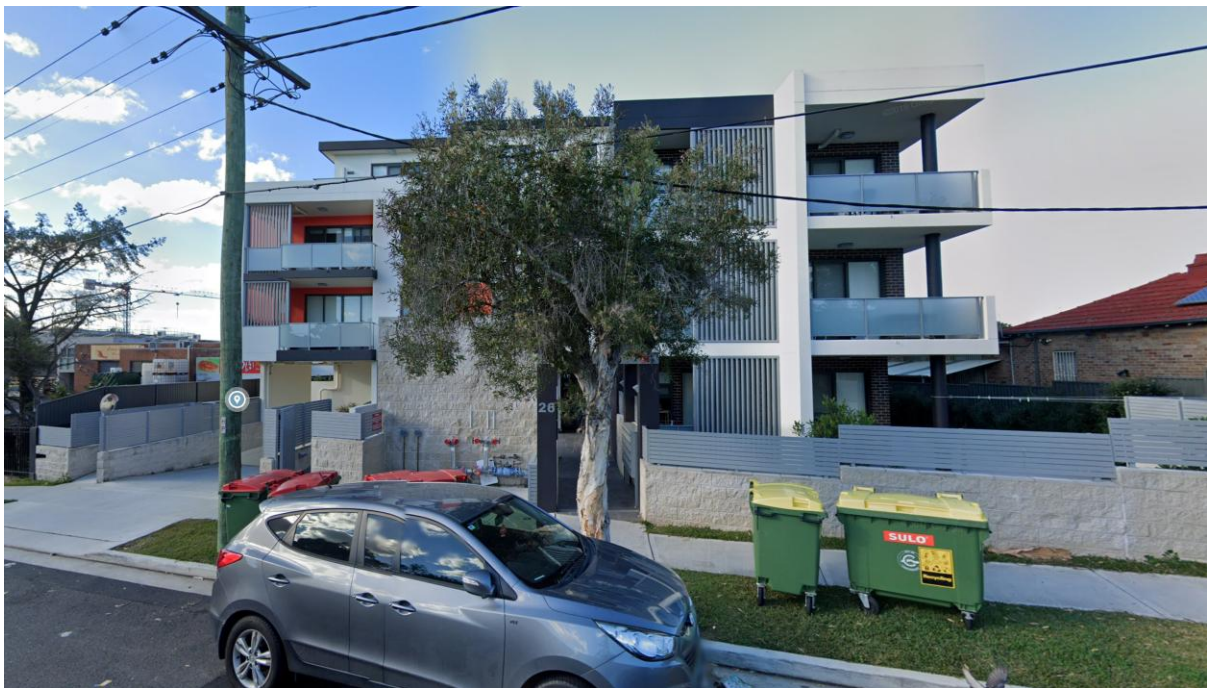


Figure 7
View East Towards Adjoining RFB at 28-30 Kent Street



Figure 8
View West Towards Neighbouring Dwellings Across the Road from the Subject Site



Figure 9
View South Along Kent Street



Figure 10
View North From Along Kent Street

3.0 Site Details

The development site consists of two (2) rectangular shaped lots that are legally described as Lot A and Lot B in DP 945705 having a total site area of 963.2m² and a street frontage of 20.115m, generally known as 32-34 Kent Street Belmore. See **Figure 11**.

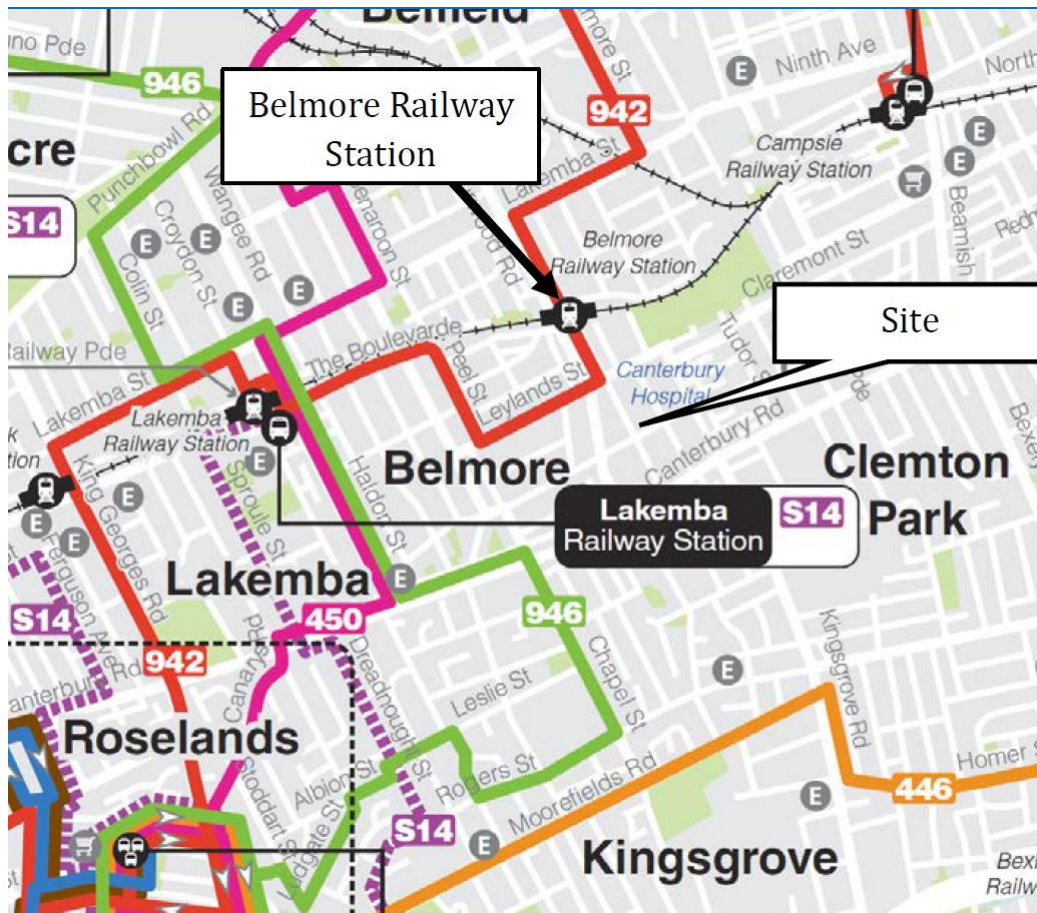


Figure 12
Source: Transport for NSW

4.0 The Proposal

The proposed works that form part of this modification application include:

- 2 additional floors to achieve 6 storeys. The 2 additional floors contain 8 additional rooms; however the approved Ground floor proposes a reduction from 4 rooms to 3 rooms to accommodate additional common open space. The proposed net increase in rooms is 7, giving a total of 39 rooms compared to the approved 32 rooms.
- Levels 1-3 of the approved co-living development remain unchanged from that already approved as part of the Parent Consent.
- The building is proposed to be raised by 430mm above the approved levels. This amendment allows the driveway ramp to the basement carpark to be shortened, which in turn allows for the addition of one additional car space from 7 to 8. The 8 car spaces proposed is in accordance with non- discretionary development standards Part 3 Clause 68 par.(e) (i) of SEPP (Housing) 2021 for 39 rooms.
- The basement car park is generally consistent with the approved plans but has been re-configured to accommodate 8 cars in lieu of the 7 approved. The accommodation of 8 bicycles and 3 motorcycles is consistent with the current consent.
- The common room at the rear of the building has been reconfigured and enlarged to create a floor area of 96m², which is to allow for the proposed additional 7 rooms proposed.

- The waste area has been enlarged and re-configured to accommodate the additional waste storage required for the proposed additional 7 rooms. One residential room has been deleted to accommodate the changes above.
- Levels 4 and 5 have been added to the approved built form. Each level contains an additional 4 double residential rooms which are compliant with the requirements of Part 3 of SEPP (Housing) 2021 for co-living housing.

The overall building form is architecturally sound, being efficient in the way it works and readily exhibits design excellence. The proposed building form can only enhance the streetscape by removing old building stock and associated structures and will introduce a high quality Co-Living housing development that is within easy walking distance of regular bus and train services and business hubs. At Table 1 below is a summary table that sets out the living area as defined by SEPP Housing 2021, the internal floor area and the proposed external area. See **Figures 13 to 33**.

TABLE 1

AREA SCHEDULE OF ROOMS

	LIVING AREA BY SEPP DEFINITION [SQ.M.]	TOTAL INTERNAL AREA [SQ.M.]	EXTERNAL AREA [SQ.M.]
ROOM G.01	22	30	12.6
ROOM G.02	22	30	12.6
ROOM G.03	19.5	26	11
MANAGER ROOM G.04	35	22	22.8
ROOM 1.01	20	29.5	13.9
ROOM 1.02	17.3	24.6	4
ROOM 1.03	18.75	25.78	4
ROOM 1.04	18.75	25.78	0
ROOM 1.05	18.75	25.78	4
ROOM 1.06	18.75	33.2	6.8
ROOM 1.07	22	29	9
ACCESSIBLE ROOM 1.08	22	33	5.8
ROOM 1.09	20	26.9	13.9
ROOM 2.01	20	29.5	13.9
ROOM 2.02	17.3	24.6	4
ROOM 2.03	18.75	25.78	4
ROOM 2.04	18.75	25.78	0
ROOM 2.05	18.75	25.78	4
ROOM 2.06	18.75	33.2	6.8
ROOM 2.07	22	29	9
ACCESSIBLE ROOM 2.08	22	33	5.8
ROOM 2.09	20	26.9	13.9
ROOM 3.01	18	24.5	0
ROOM 3.02	18.5	22.8	2.8
ROOM 3.03	18.3	23.9	2.8
ROOM 3.04	18.3	23.9	0
ROOM 3.05	18.3	23.9	4
ROOM 3.06	18.75	33.2	6.8
ROOM 3.07	22	29	9
ACCESSIBLE ROOM 3.08	22	33	5.8
ROOM 3.09	20	26.9	4.8
ROOM 4.01	24.5	32	13.5
ROOM 4.02	19	25.5	4.7
ROOM 4.03	22.5	29	5
ROOM 4.04	21.5	27.5	3.5
ROOM 5.01	24.5	32	13.5
ROOM 5.02	19	25.5	4.7
ROOM 5.03	22.5	29	5
ROOM 5.04	21.5	27.5	3.5
COMMUNAL LIVING AREA	96		
COMMUNAL OPEN SPACE	217		

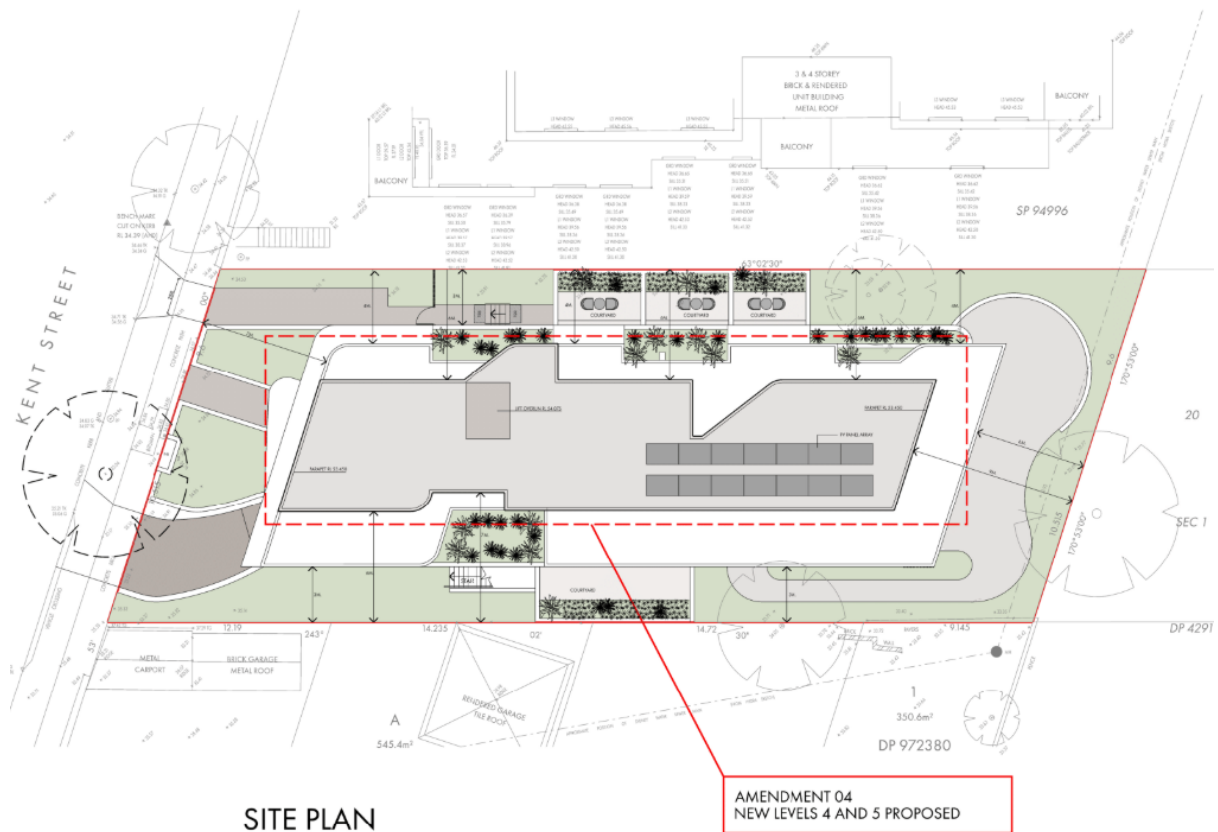


Figure 13
Source: Ross Howieson Architects

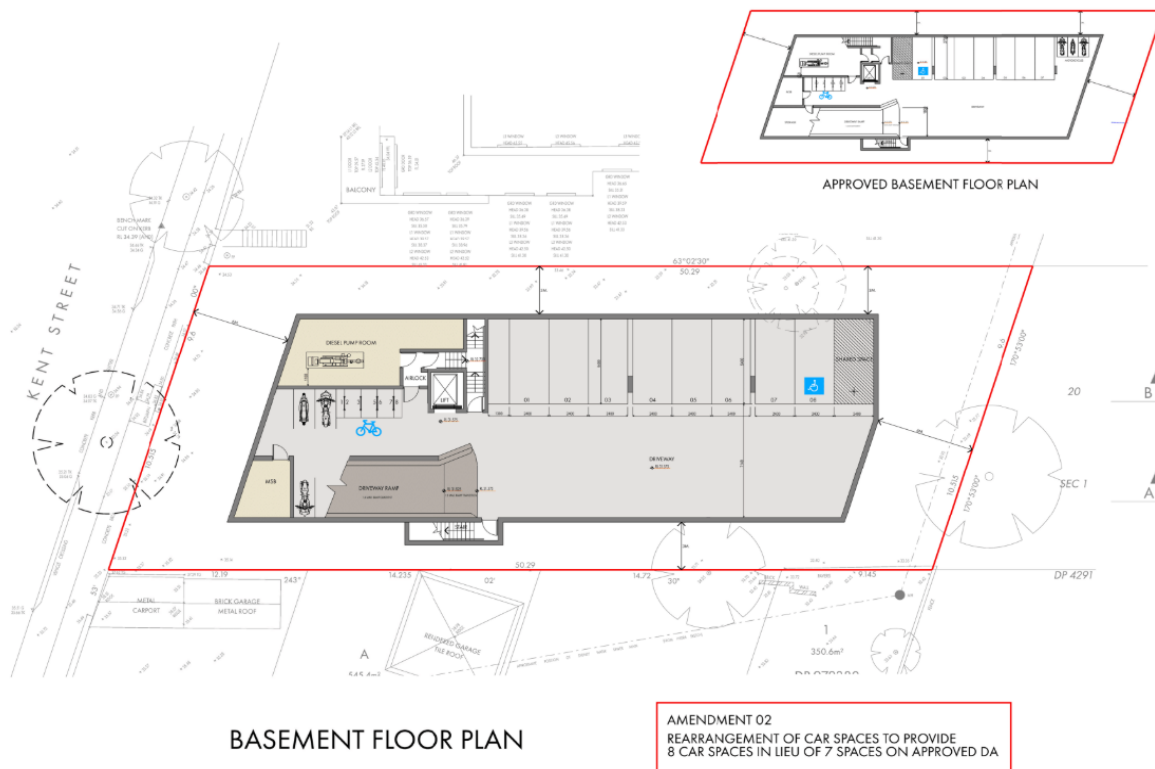
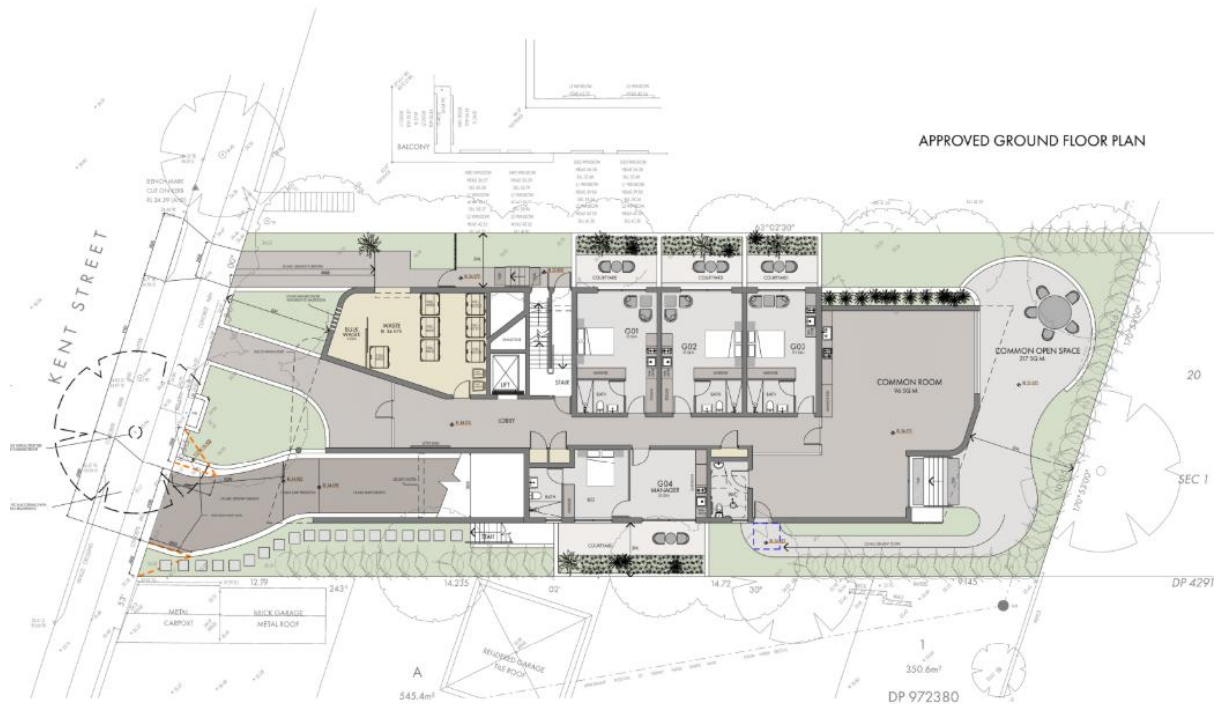


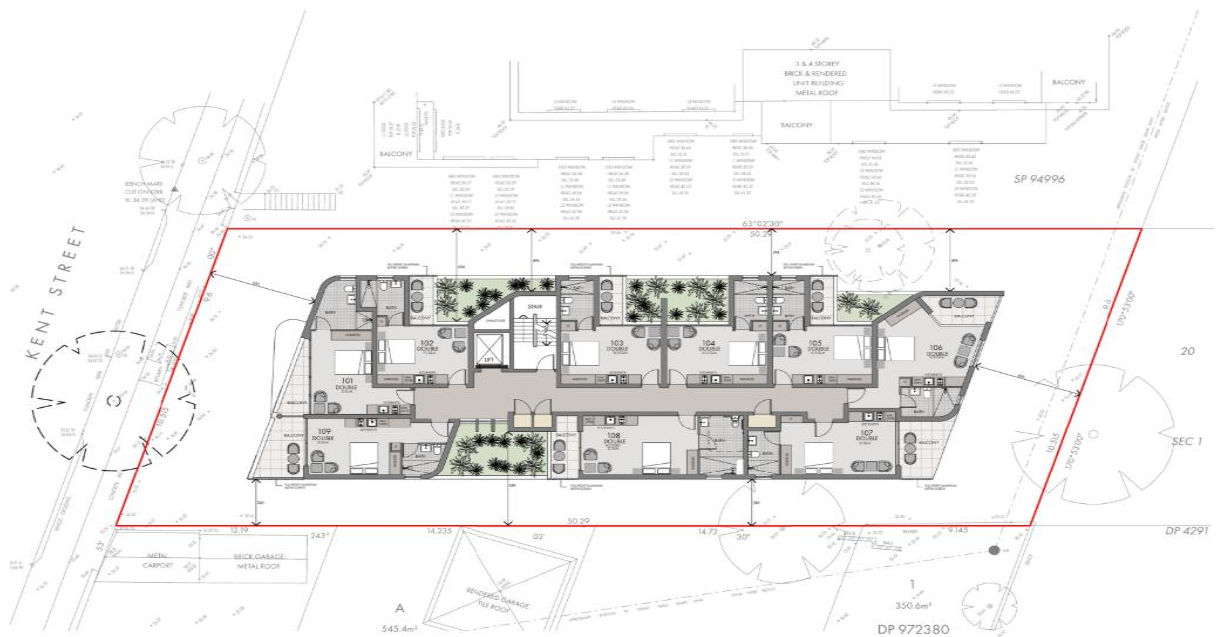
Figure 14
Source: Ross Howieson Architects



GROUND FLOOR PLAN
GFA = 328.5 SQ.M.

AMENDMENT 03
COMMON ROOM ENLARGED AND RECONFIGURED
WASTE AREA ENLARGED AND RECONFIGURED
1 DOUBLE RESIDENTIAL ROOM DELETED

Figure 15
Source: Ross Howieson Architects



LEVEL 1 FLOOR PLAN
GFA = 320 SQ.M.

NOTE:
LEVEL 1 REMAINS UNCHANGED FROM CURRENT APPROVAL

Figure 16
Source: Ross Howieson Architects

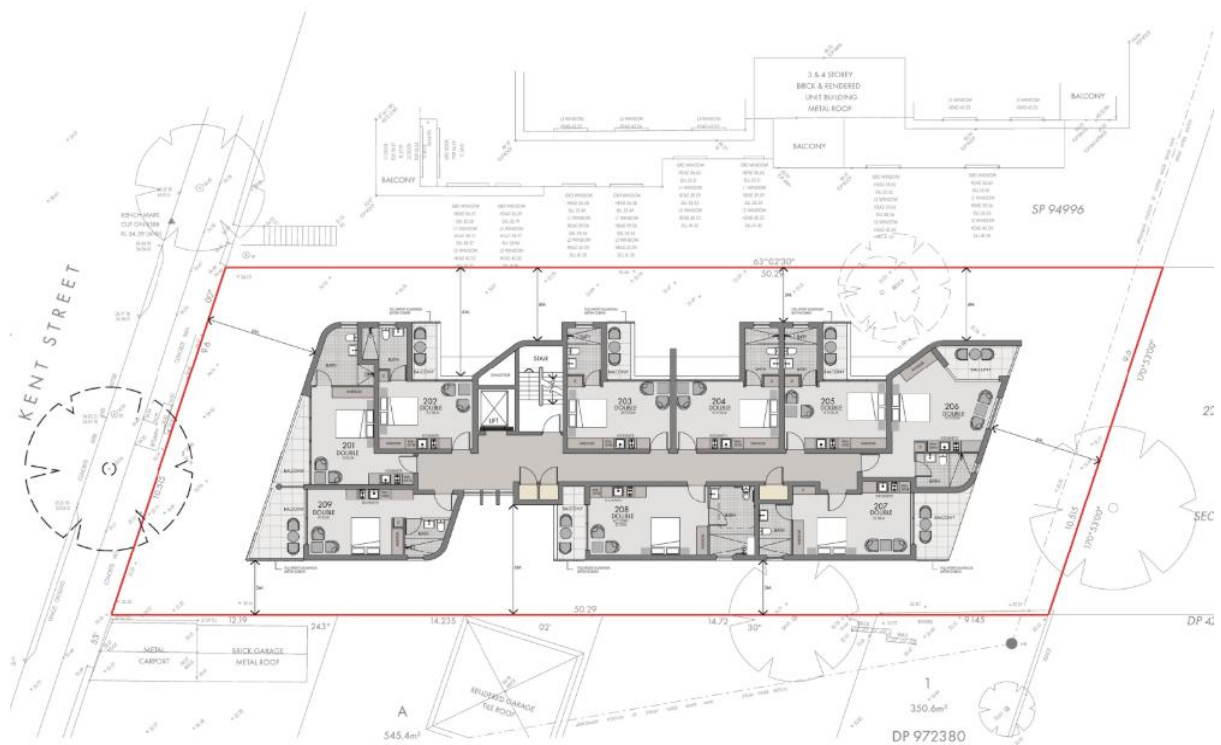


Figure 17
Source: Ross Howieson Architects



Figure 18
Source: Ross Howieson Architects

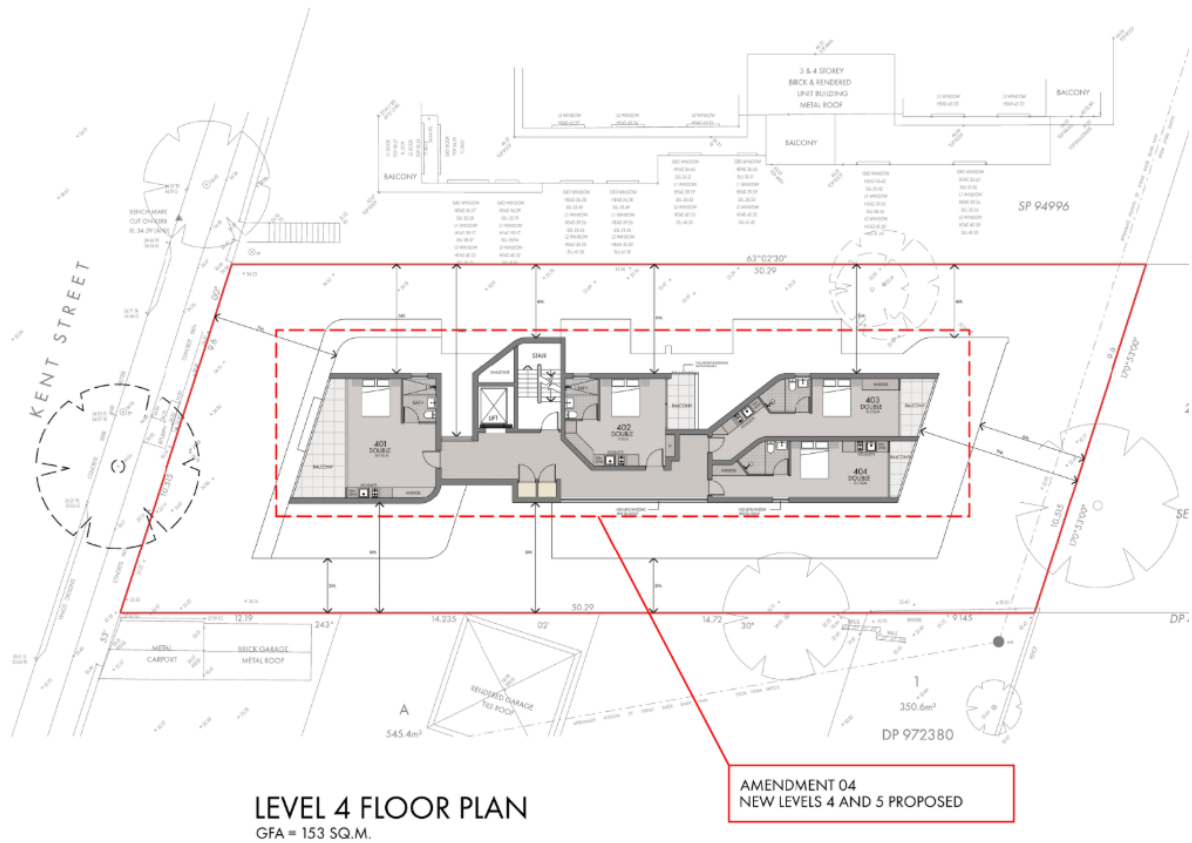


Figure 19
Source: Ross Howieson Architects

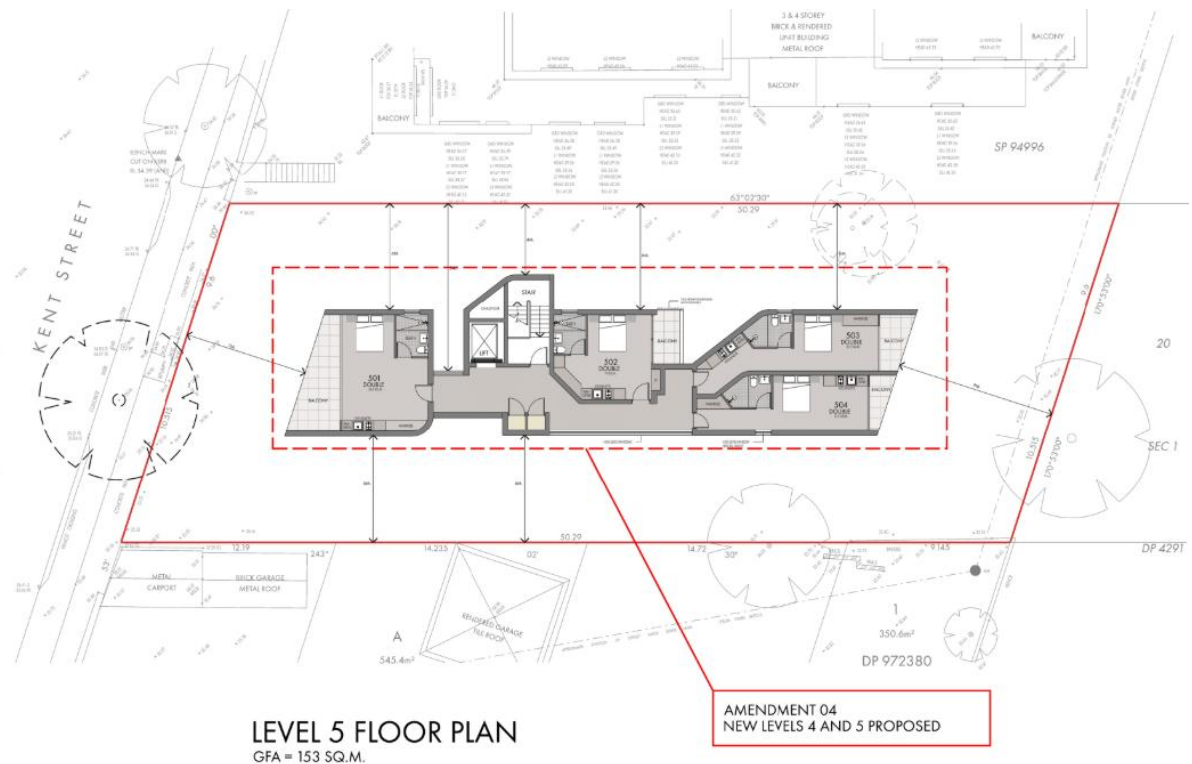


Figure 20
Source: Ross Howieson Architects

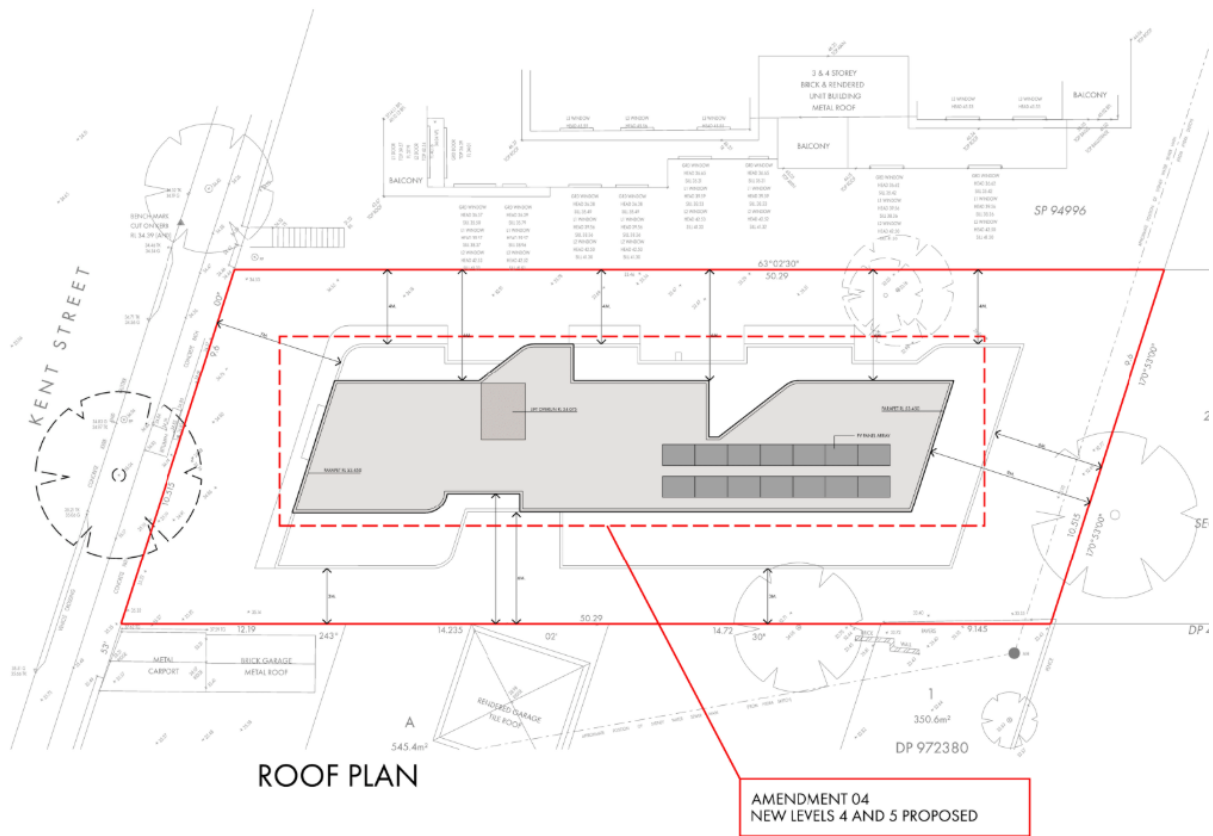


Figure 21
Source: Ross Howieson Architects



Figure 22
Source: Ross Howieson Architects

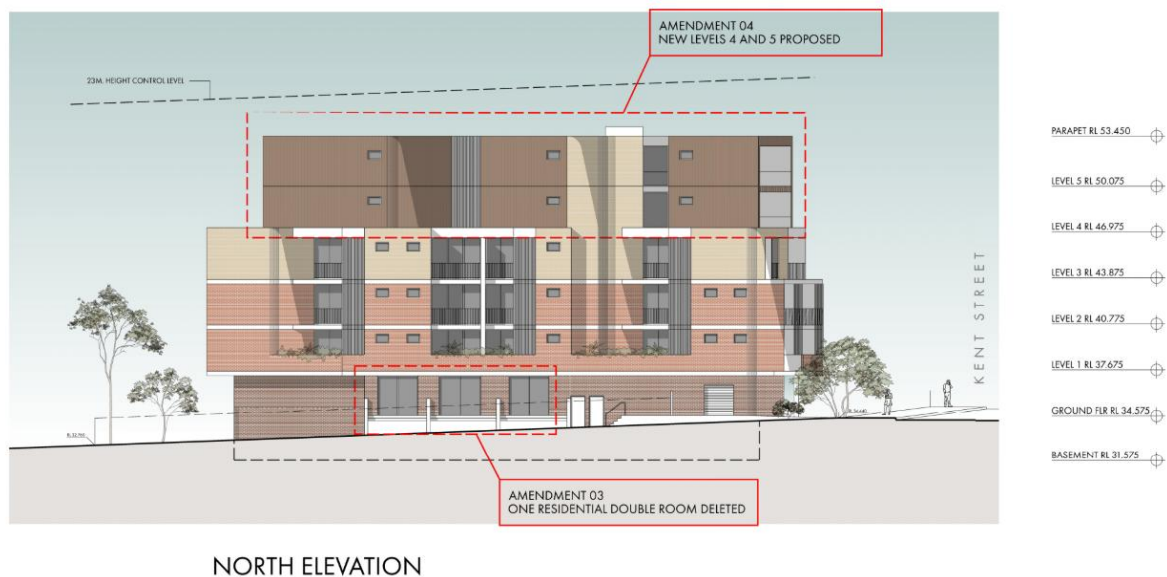


Figure 23
Source: Ross Howieson Architects

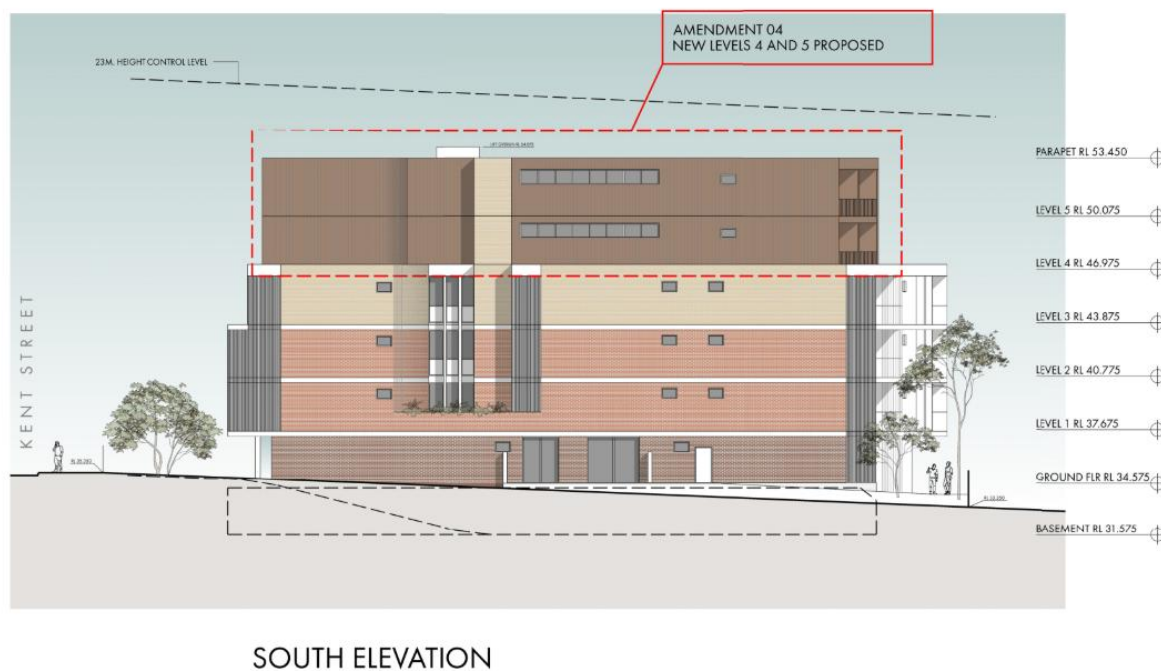


Figure 24
Source: Ross Howieson Architects



KENT STREET ELEVATION

Figure 25
Source: Ross Howieson Architects

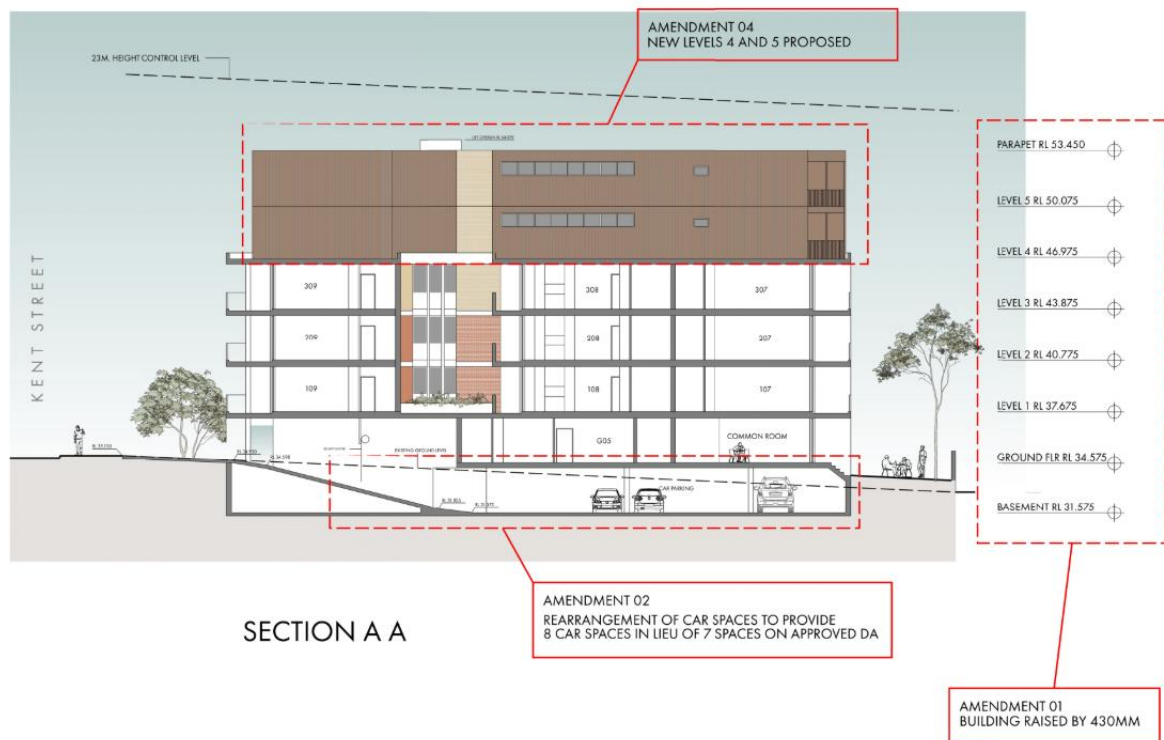


Figure 26
Source: Ross Howieson Architects

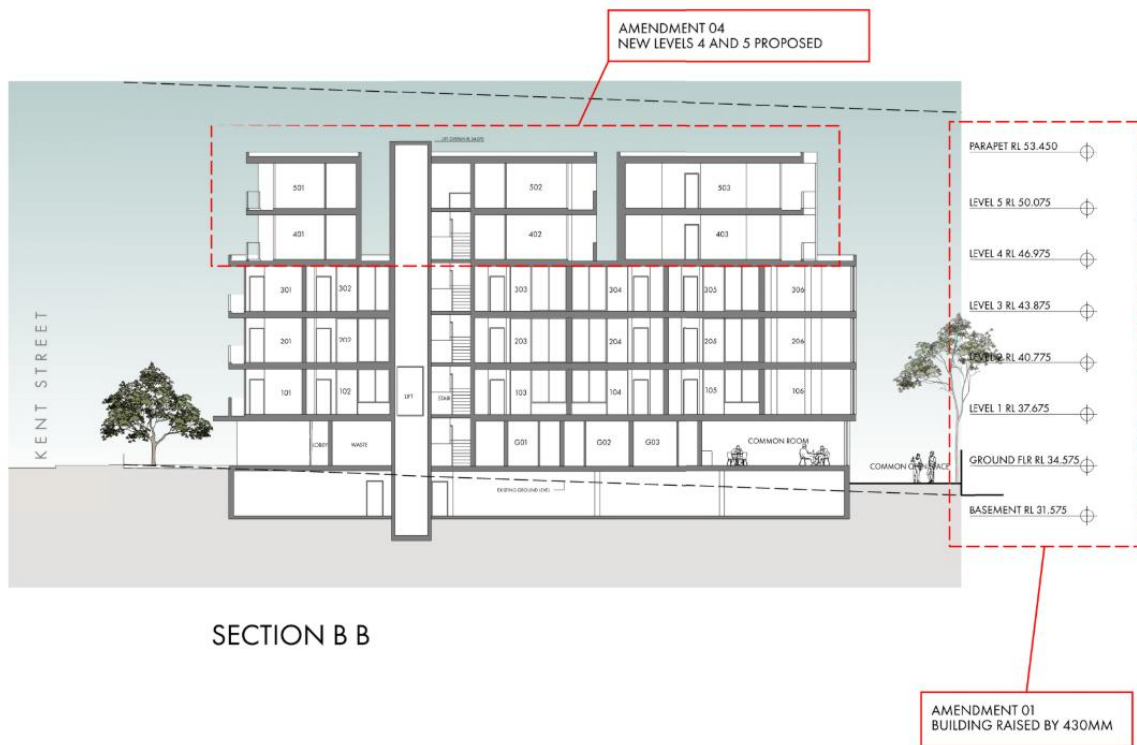


Figure 27
Source: Ross Howieson Architects

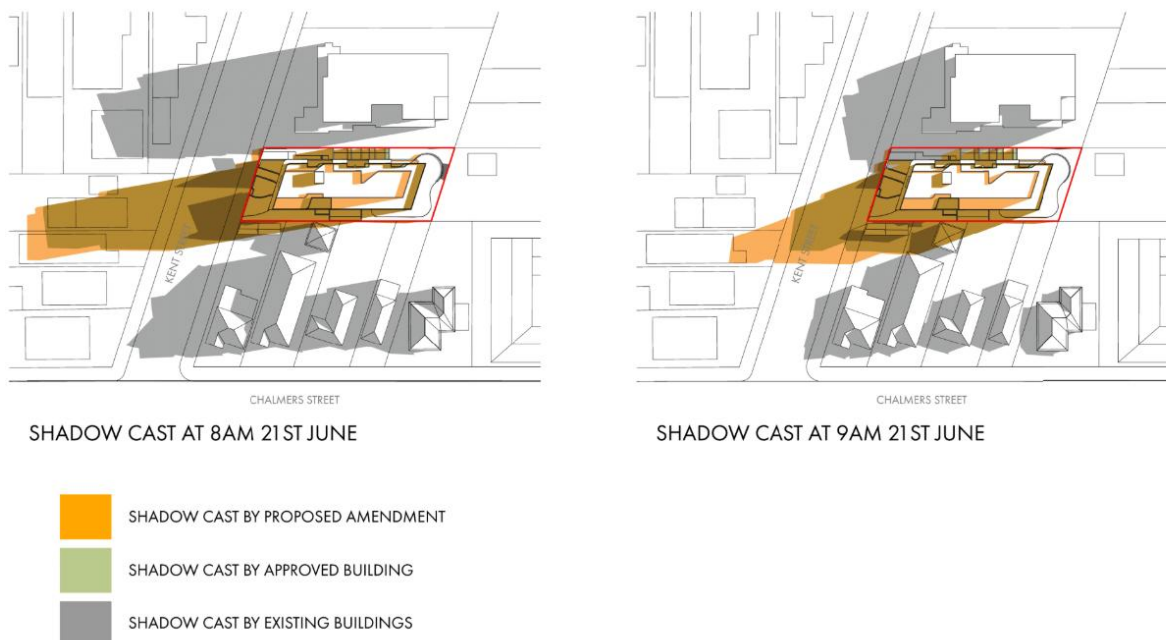
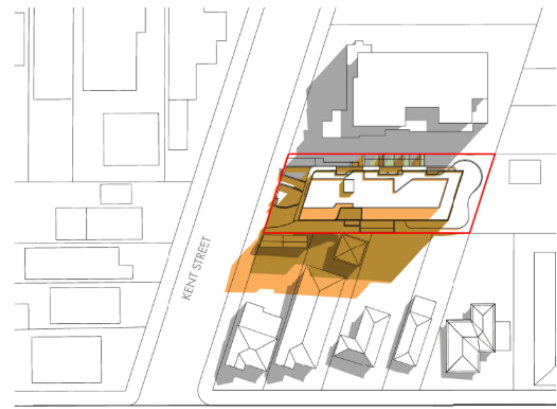


Figure 28
Source: Ross Howieson Architects



SHADOW CAST AT 10AM 21ST JUNE



SHADOW CAST AT 11AM 21ST JUNE

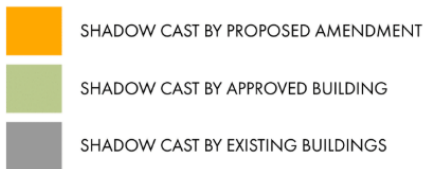
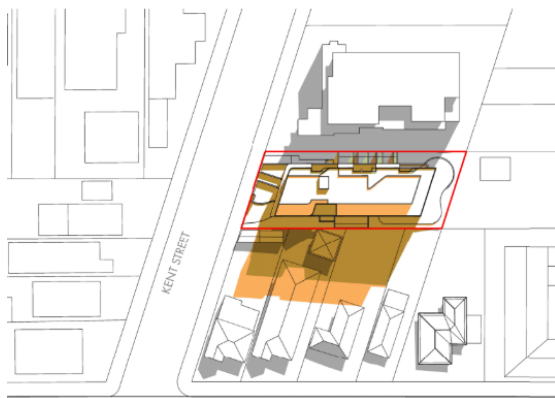


Figure 29
Source: Ross Howieson Architects



SHADOW CAST AT 12PM 21ST JUNE



SHADOW CAST AT 1PM 21ST JUNE

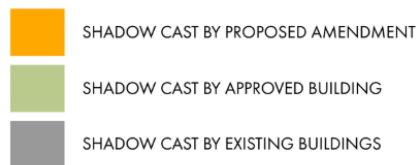
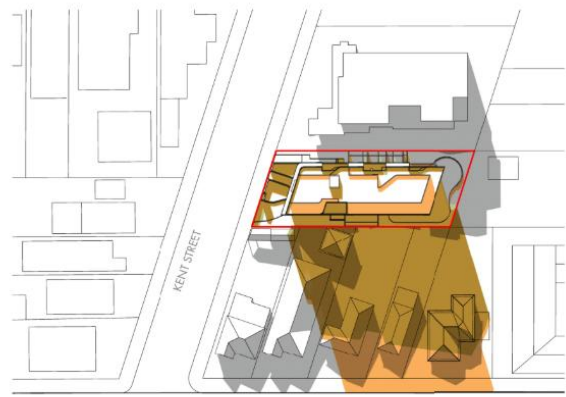


Figure 30
Source: Ross Howieson Architects



SHADOW CAST AT 2PM 21ST JUNE



SHADOW CAST AT 3PM 21ST JUNE

- SHADOW CAST BY PROPOSED AMENDMENT
- SHADOW CAST BY APPROVED BUILDING
- SHADOW CAST BY EXISTING BUILDINGS

Figure 31
Source: Ross Howieson Architects



NORTH ELEVATION

Figure 32
Source: Ross Howieson Architects



Figure 33
Source: Ross Howieson Architects

Environmentally Sustainable Design and Materials

A range of design initiatives and elements have been employed throughout the proposed development to ensure that the proposal optimises its sustainability. Resource, energy and water efficiency have been incorporated into the design and layout to contribute to this high-quality residential housing scheme.

Building materials incorporate the properties use of high thermal mass materials, glazing and insulation, thereby reducing the need for artificial heating, cooling and lighting.

The types of materials to be used consist mainly of face brickwork in a banding design with earthy colour tones used. See **Figure 33**.

The proposal has considered the habitational and social aspects of the typology and integrates a cohesive architectural/urban design solution.

Space has been carefully considered with the proposed building comfortably promoting social interaction and outlook. An enticing balance of compression and expansion of various program components results in a series of environments promising generosity, flexibility and resilience.

Use of high efficiency water fixtures and fittings are proposed throughout the development and will further reduce water consumption.

The approximate quantity and destination of waste generated during the demolition and construction works and recycling are outlined in the waste management plan prepared by the developer.

Natural ventilation of all rooms is achieved due to the design attained by the building form and configuration, thereby reducing the need for continuous use of air conditioning during summer.

Colours and texture have been used with great consideration throughout the facade design to ensure harmonious ties to the site context.

As mentioned previously, earthy colours have been favoured in order to reduce unwanted solar heat gain in summer, and durability has been emphasised in the selection of robust finishes where exposed to the elements.

Lodgers' rooms receive excellent levels (at least 3hours) of direct sunlight onto balconies and rooms during mid-winter. The same applies to the internal communal living area.

5.0 Statutory Compliance Assessment

Statutory Planning Considerations

Section 4.55 (2) Other Modifications - Environmental Planning & Assessment Act 1979

*(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the 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 consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (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*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1) and (1A) do not apply to such a modification.*

Comment

In accordance with the provisions of s4.55 (2) Other Modifications under the EP&A Act 1979 and relevant case law, this modification application must be considered in conjunction with the Parent consent to ensure the development is deemed to be substantially the same as that originally approved. In our view, the modification application now before Council meets the substantially the same development test and therefore is able to be approved.

The Land and Environment Court ruled in *Moto Projects No.2 Pty Ltd v North Sydney Council* (1999) NSW LEC 280 that:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum, rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

Having regard to *ACM Landmark Pty Limited v Cessnock City Council* [2005] NSWLEC 645, Watts C found that development consent can be validly modified under s96(1A) (now s4.55) of the EPA Act 1979 in circumstances where there would not be any adverse impact on amenity. The modification application now before Council is consistent with the outcomes of that judgment, in that the original development consent can be validly modified under s4.55(2) of the EPA Act 1979.

Relevant Case Law

In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8, the threshold test of determining as to whether a proposed development is “substantially the same development” was considered by Justice Stein, who made the following comments:

“In assessing whether the consent as modified will be substantially the same development one needs to compare the before and after situation. In approaching the exercise one should not fall into the trap of saying the development was for a certain use and as amended will be for precisely the same use and accordingly is substantially the same development.”

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 Parent consent that is sought to be modified.

The Chief Justice of the Land and Environment Court, Preston CJ articulated the type of comparison required to satisfy the terms of the precondition to approving the modification of a consent as set out in s 4.55(2)(a) of the EPA Act in the decision of *Feldkirchen Pty Ltd v Development Implementation Pty Ltd* (2022) 254 LGERA 114; [2022] NSWCA 227 (*Feldkirchen*), where Preston CJ at [112] said as follows:

“[112] The comparison required by s 4.55(2)(a) is simply between two developments: the development as modified and the development as originally approved: Scrap Realty Pty Ltd v Botany Bay City Council (2008) 166 LGERA 342; [2008] NSWLEC 333 at [16] and Arrage v Inner West Council [2019] NSWLEC 85 at [24]. Case law on the precondition, both in earlier statutory provisions, such as s 102(1), and the current statutory provision of s 4.55(2), has suggested ways in which this comparison between the two developments might beneficially be undertaken. This includes identifying and comparing the “material and essential features” of the two developments: Moto Projects (No 2) Pty Ltd v North Sydney Council at [55], [56] and [58] and Arrage v Inner West Council at [26]. These suggested ways of undertaking the comparison between the two developments, however, do not displace the statutory test in s 4.55(2)(a) or demand that the required comparison be undertaken in those ways: Arrage v Inner West Council at [27], [28].”

It is helpful to include what Preston CJ said in *Arrage*, at [26] to [28] as follows:

“[26] The choice of language in the judicial decisions of “material and essential features” or a “material and essential physical element” of the development (see, for example, Moto Projects at [58], [59] and

[64]) derives from judicial interpretations of the statutory test that the modified development be “substantially the same” development as the originally approved development. In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8, p 2 Stein J interpreted the word “substantially” in the former s 102(1)(a) of the EPA Act to mean “essentially or materially or having the same essence”. That interpretation of the word “substantially” was accepted in *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475 by Mason P (with whom Sheppard AJA agreed at 403) and at 481-482 by Stein JA and in *Moto Projects* by Bignold J at [30] and [55].

[27] This interpretation of the statutory test that the modified development be substantially the same development as the originally approved development, that the modified development be “essentially or materially” the same or “having the same essence” as the originally approved development could support an inquiry to identify the material and essential features of the originally approved and modified developments in order to undertake the comparative exercise required, but it does not demand such an inquiry.

[28] That is one way, probably in most cases the most instructive way, to identify whether the modified development is substantially the same development as the originally approved development, but it is not the only way to ascertain whether the modified development is substantially (in the sense of essentially or materially) the same development as the originally approved development. For example, comparison could be made of the consequences, such as the environmental impacts, of carrying out the modified development compared to the originally approved development: see *Moto Projects* at [62] and *Tipalea Watson Pty Ltd v Ku-ring-gai Council* (2003) 129 LGERA 351; [2003] NSWLEC 253 at [17].”

The test therefore is factual. Council must be satisfied, as a finding of fact, that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified. Or put another way, Council must form the positive opinion of satisfaction that the modified development is substantially the same development as the originally approved development (Arrage at [32]).

“Nothing can replace the words of s 4.55(2) of the EPA Act which is an observation I also made in the matter of *193 Liverpool Road Pty Ltd ACN 163231810 v Inner West Council* [2022] NSWLEC 1197 (193 Liverpool) at [21] – [25].”

The Four Fold Test

The case law of *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 emphasizes that each case must be considered on its own facts and merits, and therefore the Court has not provided a definitive formula, which is universally applicable to test if the development is substantially the same. However, it is possible to distil from the case law that the following questions that one ought to ask when determining whether a proposal can be properly dealt with under s4.55 of the EPA Act 1979. In this particular case, s4.55(2) “other modifications”.

Question 1: *Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?*

Comment: Yes. While the proposal does increase the buildings approved FSR, the design responds to the new height and FSR controls afforded to the site and neighbouring properties.

The majority of the overall design does not substantially change. The main changes involve the increase in 2 storey’s (levels 4 and 5), creating 8 additional units. The other changes to the building include:

- rearrangement of car spaces to provide for 1 additional car space;
- common room enlarged and reconfigured;
- 1 double residential room (GF) deleted;
- New levels 4 and 5 introduce 8 new units and
- Overall increase in units is 7 - from 32 to 39.

The buildings additional bulk, scale form and height sits on top of the approved 4 storey building, utilising the comparison task, not merely individual aspects of the development. A forensic assessment of the development over each level, while not required demonstrates that most floors do not change from that approved.

While some additional over shadowing is generated, it does not unreasonably impact upon neighbouring properties to that of what has already been approved.

In general, some changes have been made but overall, the modifications proposed do not radically transform the overall approved development.

Question 2: *Is the proposed development essentially or materially the same development as the development for which consent was originally granted?*

Comment: Yes. The modified development as that now proposed will predominantly be used for the purpose short term housing accommodation.

The proposed residential land use remains being permissible in the zone and compatible with the R4 High Density Residential zones objectives.

The modifications do not radically change the buildings overall bulk, scale, form and height. As mentioned above, while most unit layouts have not changed or increased in size, including balconies, the floor plates on each level above the ground floor generally the same as that approved.

Question 3: *Is the way in which the development to be carried out essentially or materially the same?*

Comment: Yes. The approved use of the land will be for the purpose of a Co-Living Housing development remains the same.

The subject proposal can only be regarded a modification if it involves “alteration without radical transformation” (Sydney City Council v Ilenc Pty Ltd [1984]). The proposal seeks consent to make an “alteration without radical transformation”, such as separating the building into two (2) or more buildings or introducing another parcel of land into the development.

If the proposed modification is doing more than simply correcting minor errors, the consent authority must also be “satisfied” that the modified development will be “substantially the same development” as approved by the original development consent.

This means that, among other things comparing the proposed modified development against the development as it was originally approved. That is a factual exercise. The environmental impacts of the proposed modification are relevant to the legal question of whether it is “substantially the same development”. This means it is possible for some issues that might be characterised as “merit” issues, to also arise in addressing the “substantially the same” test.

The extent of the proposed modifications is both quantitatively and qualitatively negligible. The change demonstrates better outcomes for and from the development being beneficial and facultative to the applicant and future occupants of the Co-Living Housing Development.

The proposal responds to Council’s desired future character for the area in terms of increased height and FSR. Changes in environmental impacts such as overshadowing, overlooking and loss of vegetation from that already approved are minor.

Question 4: *Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?*

No. The proposed modifications will have no discernible environmental impacts that were important, material or essential to the approved development.

Bignold J in Houlton v Woollahra Municipal Council (Unreported, 30 July 1997) (at 203) described the power conferred by s 102 [equivalent to s96 & s4.55] as beneficial and facultative.

The s4.55 application now before Council seeks to make changes that are necessary to deliver better outcomes for and from the consent that are beneficial and facultative to the future residents of the Co-Living Housing development for the operator.

Quantitatively

The proposed development will maintain several key quantitative elements of the approved development. Specifically, the proposed modifications will continue to provide a single building (including its location and siting), a single level of basement parking. Whilst these key quantitative elements will be modified in part, it will not result in a development which is dissimilar or inconsistent with that originally approved.

These quantitative modifications will not result in a radical transformation to the overall development. That is, the essence of the approved 4 storey development will be preserved and the increase in floor area and overall height will not result in a development which is uncharacteristic or unrecognizable from that originally approved. Whilst the modifications as viewed in solitary can be considered greater, when focusing on the development as a whole, the modifications will not be so large to change the fundamental nature of the development.

Qualitatively

The increase in overall height will not result in a development which is vastly dissimilar from that originally approved. The two additional storeys proposed are limited to a single building.

Whilst there is an increase in building height, it is limited to 2 floors of the overall 6 floors of the development and is specifically situated so that the overall bulk, scale, form and character will not be substantially different from that originally approved. Ultimately and when considering the development as a whole, there will be no severe transformation in the overall built form which would warrant a new application. That is, the part of the building which has the most bearing on streetscape character is unchanged. As previously mentioned, the proposed modifications will not significantly change the overall contribution of the development to the transitioning character of the Belmore neighbourhood.

Although the FSR is increased, this is confined to the top (2) floors so as to not materially change the character of the development as a whole. The increase in FSR is also supported by the new building envelope, which not change the essence of the development.

The envelope changes, provision of two additional levels and subsequent increase in apartment numbers is not considered to result in a radical transformation which will alter the essence of the overall development. That is, whilst the development will alter the building envelope and to a certain degree, the appearance, the development will remain as a multi-storey co-living housing development. Importantly, the overall architectural character of the development will not be adversely modified and the proposed changes will maintain the approved design language.

The improvements to the building envelope does not materially change the fundamental nature of the development as viewed from the public domain.

Ultimately, the modifications will not adversely alter the use, operation and function of the site. The comparison between the originally approved and proposed plans shows that whilst there will be modifications, it does not present as a different development.

In addition to the above, it is also noted that whether or not there will be increased environmental or neighbourhood amenity impacts under the proposed modification development is not a consideration as to whether or not a modification proposal is substantially the same under Section 4.55 (2) of the EP&A Act 1979.

The following is a summary assessment of the proposed development under the heads of consideration as set out under the provisions contained within Section 4.15 (1) of the EP&A Act 1979.

Section 4.15(1) (i)

The provisions of any environmental planning instrument

State Environmental Planning Policy (SEPP) Housing 2021

Co-Living Housing is defined as:

- (a) *has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (b) *provides occupants with a principal place of residence for at least 3 months, and*
- (c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Response

The modified proposal complies with the definition of Co-Living Housing for the following reasons:

- the proposal now provides for 39 rooms (increase of 7 double private rooms), all of which have private kitchen and bathroom facilities;
- each resident will live on site for at least 3 months or longer, depending on their circumstances and needs;
- has shared facilities in the form of an internal common room and a generous common open space area at the rear of the site, which receives high levels of solar access and
- an onsite manage/agent provides on going management services 24 hours each day, 365 days a year;

Part 3 Co-Living Housing

67 Co-living housing may be carried out on certain land with consent

Development for the purposes of co-living housing may be carried out with consent on land in a zone in which:

- (a) *development for the purposes of co-living housing is permitted under another environmental planning instrument, or*
- (b) *development for the purposes of **residential flat buildings** or shop top housing is permitted under Chapter 5 or another environmental planning instrument.*

Response

The proposed Co-Living Housing development is only permissible under the sites R4 High Density Residential zone, because residential flat buildings are permissible in that zone.

Because there are no planning controls within the CBLEP 2023 that relate to Co-Living Housing, the provisions within Par 3 – Co-Living Housing of SEPP Housing 2021 are the only controls relevant to that specific land use. Therefore, the other controls in CBLEP 2023 and CDCP 2023 do not apply to the modified proposal as neither have controls relevant to Co-Living Housing.

68 Non-discretionary development standards—the Act, s 4.15

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) *The following are non-discretionary development standards in relation to development for the purposes of co-living housing—*

Non- Discretionary Development Standards

(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than-

- (i) the maximum permissible floor space ratio for residential accommodation on the land, and*
- (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,*

(b) for co-living housing containing 6 private rooms:

- (i) a total of at least 30m² of communal living area, and*
- (ii) minimum dimensions of 3m for each communal living area,*

(c) for co-living housing containing more than 6 private rooms—

- (i) a total of at least 30m² of communal living area plus at least a further 2m² for each private room in excess of 6 private rooms, and*
- (ii) minimum dimensions of 3m for each communal living area,*

(d) communal open spaces—

- (i) with a total area of at least 20% of the site area, and*
- (ii) each with minimum dimensions of 3m,*

(e) unless a relevant planning instrument specifies a lower number—

- (i) for development on land in an accessible area—0.2 parking spaces for each private room, or*
- (ii) otherwise—0.5 parking spaces for each private room,*

(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,

(g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.

Response

Commentary on the non-discretionary standards is set out below:

In regards to Section 68(2) (g) relating to minimum landscaping requirements, for residential flat buildings under a relevant planning instrument, a relevant planning instrument under SEPP Co-Living Housing means another EPI or a DCP. See definition below:

- *an environmental planning instrument, other than this Policy, or a development control plan, if any, that applies to the land on which the development will be carried out.*

In this particular case for landscaping, it would involve relevant controls within CBLEP 2023 and CBDP 2023. Having reviewed both documents, neither has a minimum control for landscaping, therefore the proposed landscaping provided is 436m² or 45% and complies as there is no minimum landscape control in either of these planning documents.

Please note that non-discretionary development standards are standards that if complied with, prevent a consent authority from:

- taking the non-discretionary development standards into further consideration in determining the DA;
- refusing the DA on the grounds that the development does not comply with those standards and
- imposing a condition of consent that has the same, or substantially the same, effect as the standard but is more onerous than the standard.

Further, Clause 4.15(3) Evaluation as set out under the EP&A Act 1979 does not prevent development consent from being granted if a nondiscretionary development standard is not complied with.

Non-Discretionary Development Standards

- Maximum permissible Floor Space Ratio plus an additional 10% if used for Co-Living Housing
 - For co-living housing with more than 6 private rooms at least 30m². of communal living area with minimum dimensions of 3m. plus a further 2m². of communal living area for each room that is in excess of 6 private rooms
 - Communal Open Spaces (COS) with a total area of at least 20% of the site area and with a minimum dimension of 3m.
 - For Development within an accessible area – 0.2 car spaces for each private room.
 - For Development on land in Zone R4 High Density Residential – the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.
 - Each private room has a floor area, excluding an area used for the purpose of private kitchen or bathroom facilities of not more than 25m².
 - A minimum internal area of 12m². for a single occupant and 16m² for double occupancy
 - The minimum lot size to be not less than 800m² and be within an accessible area.
 - An appropriate work space is to be provided for the manager
-
- Adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant.
 - Each private room will be used by no more than 2 occupants.
 - The co-living housing will include adequate bicycle and motorcycle parking spaces.
 - Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether the front, side and rear setbacks for the co-living housing on land in Zone R4 High Density Residential are not less than the minimum setback requirements for residential flat buildings under a relevant planning instrument, and if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide (ADG).
 - At least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area. See shadow diagrams accompanying the application.

69 Standards for Co-Living Housing

(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—

(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than:

Response

The rooms vary in size by between 18m² and 39m² (Managers Room), therefore complying with this control.

(i) for a private room intended to be used by a single occupant—12m², or

(ii) otherwise—16m², and

Response

Complies because the smallest room is 18m².

(b) the minimum lot size for the co-living housing is not less than—

(i) for development on land in Zone R2 Low Density Residential—600m², or

(ii) for development on other land—800m², and

(iii) (Repealed)

Response

The subject site has a site area of 963.2m² and exceeds the 800m² control.

(c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing—

(i) will not contain more than 12 private rooms, and

(ii) will be in an accessible area, and

Response

The site is zoned R4 High Density Residential. Because this section refers to R2 Low Density Residential this clause is therefore N/A.

(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and

Response

The proposed communal room is afforded a total floor area of 96m² and therefore can readily accommodate a small workstation, such as a table and chairs. This communal room is regular in shape in order to allow the on-site manager to work from without impacting upon the amenity of those residents using this room. The onsite manager would work from this room during normal business hours when most residents are not on site because of work or social commitments.

(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and

Response

Not applicable as the proposal is not located in a business zone and is to be used for Co-Living residential accommodation.

(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and

Response

Compliance with best practice standards. The abovementioned amenities are provided in each room.

(g) each private room will be used by no more than 2 occupants, and

Response

Each private room is generous in size, having areas of between 18m², 24.5m² and 35m² (Managers Room) and will provide for no more than 2 residents in each room. See Table 1.

(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.

Response

See basement car park. The design provides for 8 bicycle spaces and 3 motor bike spaces, which complies with the respective standards.

(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—

(a) the front, side and rear setbacks for the co-living housing are not less than—

for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or

Response

Not applicable because the site is zoned R4 High Density Residential.

(i) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and relevant planning instrument means an environmental planning instrument, other than this Policy, or a development control plan, if any, that applies to the land on which the development will be carried out.

Response

The following comments are made in respect of this control:

- the site is zoned R4 High Density Residential under the provisions of CBLEP 2023. Co-Living Housing is not permissible under the R4 High Density Residential zone however because residential flat buildings are permissible, Co-Living Housing becomes permissible.
- The definition of “relevant planning instrument” is separately defined under SEPP Housing 2021 as meaning:

*“an environmental planning instrument, other than this Policy, **or a development control plan**, if any, that applies to the land on which the development will be carried out.*

It is noted that that definition includes a DCP, which is quite unusual because the definition of an Environmental planning instrument (EPI) is different to the definition of “environmental planning instrument” as set out under the EP&A Act 1979, is defined as:

“environmental planning instrument means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force”.

Because of the definition of relevant planning instrument in SEPP Housing 2021, consideration must be given to Clause 5.2.6 within Section 5 of CBDPCP 2023 for Residential Flat Buildings. See this control below:

5.2.6 Setbacks Objectives

- 01 To establish the desired spatial proportions of the street and define the street edge.*
- 02 To limit the scale and bulk of development by retaining landscaped open space around.*
- 03 To contribute to the natural landscape by retaining adequate space for new trees and conserving existing visually prominent trees.*
- 04 To provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely potential amenity impacts of new development.*
- 05 To minimise stormwater run-off by retaining deep soil areas that facilitate rainwater infiltration.*

Development controls

Front, side and rear

C1 Development, including basement and sub-floor areas, fronting a major road must have a minimum front setback of 9m.

C2 Development must comply with the minimum setbacks as follows:

- (a) A minimum setback of 6m from the front and rear boundary.*
- (b) A minimum setback of 4m from the side boundaries.*
- (c) All buildings shall provide a building form comprising a podium base element and an upper element which provides an additional setback in accordance with the table below:*

Response

Kent Street is not a major road. The proposed front and rear setbacks of 6m (minimum) comply with clause with C2 (a).

The proposed design provides side building setbacks of between 4m and 6m on both the northern and southern boundaries and as such, the proposal does not fully comply with the minimum side setback controls however those building setbacks less than 6m are measured to non-habitable rooms and therefore complies with the Clause C2 (b).

C3 A minimum width of deep soil alongside boundaries of 2m and minimum of 5m wide along front/rear boundaries.

Response

Pockets of deep soil measuring between 3m and 6m in width is provided along the front and rear boundaries of the site, which readily complies with this control.

(b) *if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and*

Response

The proposed modified Co-Living Housing development now comprises of six (6) storeys, an increase of two (2) storeys above the four (4) storeys approved. Therefore, the Apartment Design Guideline is applicable in terms of this control however in terms of its merits, the relevant control is satisfied because:

- The minimum building separation distance set out under the Apartment Design Guide (ADG) for habitable rooms is 12m, which the proposal exceeds on both side boundaries, avoiding overlooking and loss of privacy.

(c) *at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and*

Response

Full compliance with this control. See extracts of detailed solar access drawings in this report and drawn to scale drawings accompanying the DA.

(d), (e) (Repealed)

(f) the design of the building will be compatible with:

- (i) the desirable elements of the character of the local area, or
- (ii) for precincts undergoing transition—the desired future character of the precinct.

Response

There are a number of examples in case law which demonstrate that the character test found in Clause 30A of that SEPP (and now continued in SEPP Housing 2021 under Clause 69(2)(f)) is “one of compatibility not sameness”, (*Gow v Warringah Council [2013] NSWLEC 1093*) and that compatibility is widely accepted to mean “capable of existing together in harmony” (*Project Venture Developments v Pittwater Council [2005] NSWLEC 1029*).

It had also been found that in measuring the “compatibility” of both the existing and future character of the local area needs to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 and Redevelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029*).

Further, in *Redevelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029*, Commissioner Morris concluded that the “local area” includes both sides of the street and the “visual catchment” as the minimum area to be considered in determining compatibility.

With regards to the subject site, the visual catchment would include both sides of Kent Street and to those new apartments buildings to the north and east of the site.

Of key importance to the character test, is the local area that the site is a part of, which is undergoing a transition from single and two (2) storey dwellings to more intense developments such as multi-level residential flat buildings up to 4 to 6 storeys in height.

It is also noted that the surrounding area, to the east and south of the site, is zoned for a R4 High-Density Residential.

As a result, the character test carried out below will determine whether the design of the building is compatible with the desired future character of the area/precinct.

Having regards to the above comments, it is considered that the proposed development is in keeping with the desired future character of the neighbourhood.

The two (2) new floors proposed are well articulated through the proposed setbacks, curved upper levels, materials and finishes, along with recessions and protrusions of built elements, which alleviate any perception of an adverse built form.

Landscaping, as set out in the proposed landscape plan, also assists in visually softening and providing high biodiversity value of the site to the streetscape and locality.

The proposed development is a positive example of contemporary development that respects the emerging character of the area while providing a modern design that will set a positive precedence for future

high-density developments along Kent Street.

- (3) Subsection (1) does not apply to development for the purposes of minor alterations or additions to existing co-living housing.

Response

Not applicable as the proposal involves the construction of a new four (4) storey building that is only to be used for Co-Living Housing.

70 No subdivision

Development consent must not be granted for the subdivision of co-living housing into separate lots.

Comment

This clause is a prohibition. The proposal does not seek to subdivide each room and common property.

There are no controls within CBDCP 2023 that relate to Co-Living Housing. The amended submission now before Council has considered all of the above controls.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land of SEPP (Resilience and Hazards) 2021 aims to provide a Statewide planning approach to the remediation of contaminated land, in particular, it promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or to the environment in general:

“by specifying when consent is required, and when it is not required, for a remediation work, and by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work, in particular, and by requiring that a remediation work meet certain standards and notification requirements.”

Chapter 4 requires the consent authority when assessing a DA to consider whether the subject land is likely to be contaminated. In this respect, Council must be satisfied that the land is suitable for the purpose for which development consent is sought or whether remediation of the land needs to occur prior to such use occurring.

A desk top search has been carried out to assess whether the site has been used in the past for a non-residential use such as light industrial or any form of commercial purposes. The site appears from archival aerial photos that most existing structures on the land have been there since its original subdivision back in the early 1940's was created. See achieved aerial photo at **Figure 34**.

The land has never been used in the past for non-residential purposes and Council has no records of the site being used for non-residential purposes. Accordingly, having regards to this information, the relevant provisions within Chapter 4 of SEPP (Resilience and Hazards) 2021 are satisfied.



Figure 34
Source: Explorer

State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021

SEPP (Transport and Infrastructure) 2021 was gazetted on 1 March 2022 and aims to facilitate the effective delivery of infrastructure across the State by:

- *“improving regulatory certainty through efficiency through a consistent planning regime for infrastructure and the provisions of services;*
- *providing greater flexibility in the location of infrastructure and service facilities, and*
- *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development, and*
- *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.”*

Comment

The modified proposal continues to provide a semi-basement car park, now containing (8) car spaces (1 additional), 8 bicycle and 3 motorcycle spaces, which comply with the minimum prescribed standards for this type of land use.

Because the site is not within 90m of a classified road the proposal is not required to be referred onto Transport for NSW (TfNSW) for consideration.

The proposed modified development does not substantially increase movements and therefore is not a traffic generating development as it is not development specified in Column 1 of the Table to Schedule 3 of SEPP Transport & Infrastructure 2021.

Based on the above the following conclusions are made:

- The proposed co-living residential development is in a residential area with excellent access to local public transport service and there are a reasonable number of vacant car spaces on a weekday along on Kent Street
- The nearby assessed intersections perform well with spare capacity for the existing traffic conditions
- The car parking requirements outlined in the State Environmental Planning Policy (Housing) 2021 has been used for this assessment. The proposed co-living residential development complies with State Environmental Planning Policy (Housing) 2021's car parking requirements

There are no traffic engineering reasons why the proposed modified development is unreasonable and should be refused.

State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021

SEPP (Biodiversity and Conservation) 2021 applies to land that falls within the catchment of Sydney Harbour, as identified in the SEPP. The land drains into Sydney Harbour Catchment via Parramatta River. The relevant controls contained within SEPP (Biodiversity and Conservation) 2021 are set out as follows:

6.6 Water Quality and Quantity

- (1) *In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*
- (a) *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
 - (b) *whether the development will have an adverse impact on water flow in a natural waterbody,*
 - (c) *whether the development will increase the amount of stormwater run-off from a site,*
 - (d) *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
 - (e) *the impact of the development on the level and quality of the water table,*
 - (f) *the cumulative environmental impact of the development on the regulated catchment,*
 - (g) *whether the development makes adequate provision to protect the quality and quantity of ground water.*
- (2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*
- (a) *the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
 - (b) *the impact on water flow in a natural waterbody will be minimised.*

Comment

The proposed development satisfies the relevant controls under Clause 6.6 for the following reasons:

- Stormwater is to be managed so that there is no opportunity to create polluted discharge into local stormwater catchment such as Parramatta River.
- The site is not located on the Foreshores and Waterways Area Map of SEPP 2021.
- The proposal will not impact on accessibility to and along the Parramatta River and its Foreshore and accordingly, the proposal is consistent with the aims and objectives of the SEPP Housing 2021.

State Environmental Planning Policy (SEPP) (Sustainable Buildings) 2022

Comment

The aim of this policy is to ensure there is consistency in the implementation of the scheme throughout the State. The policy overrides the provisions of other environmental planning instruments and

development control plans that would otherwise add to, subtract from or modify any obligation to comply with this policy.

The application is accompanied by a new BASIX Certificate, which has assessed the environmental qualities of the Co-Living Housing development and therefore complies with best practice standards of the SEPP.

Local Environmental Plan

Canterbury Bankstown LEP 2023

The site is zoned R4 High Density Residential under the provisions of Canterbury Bankstown LEP (CBLEP) 2023. See **Figure 35**.

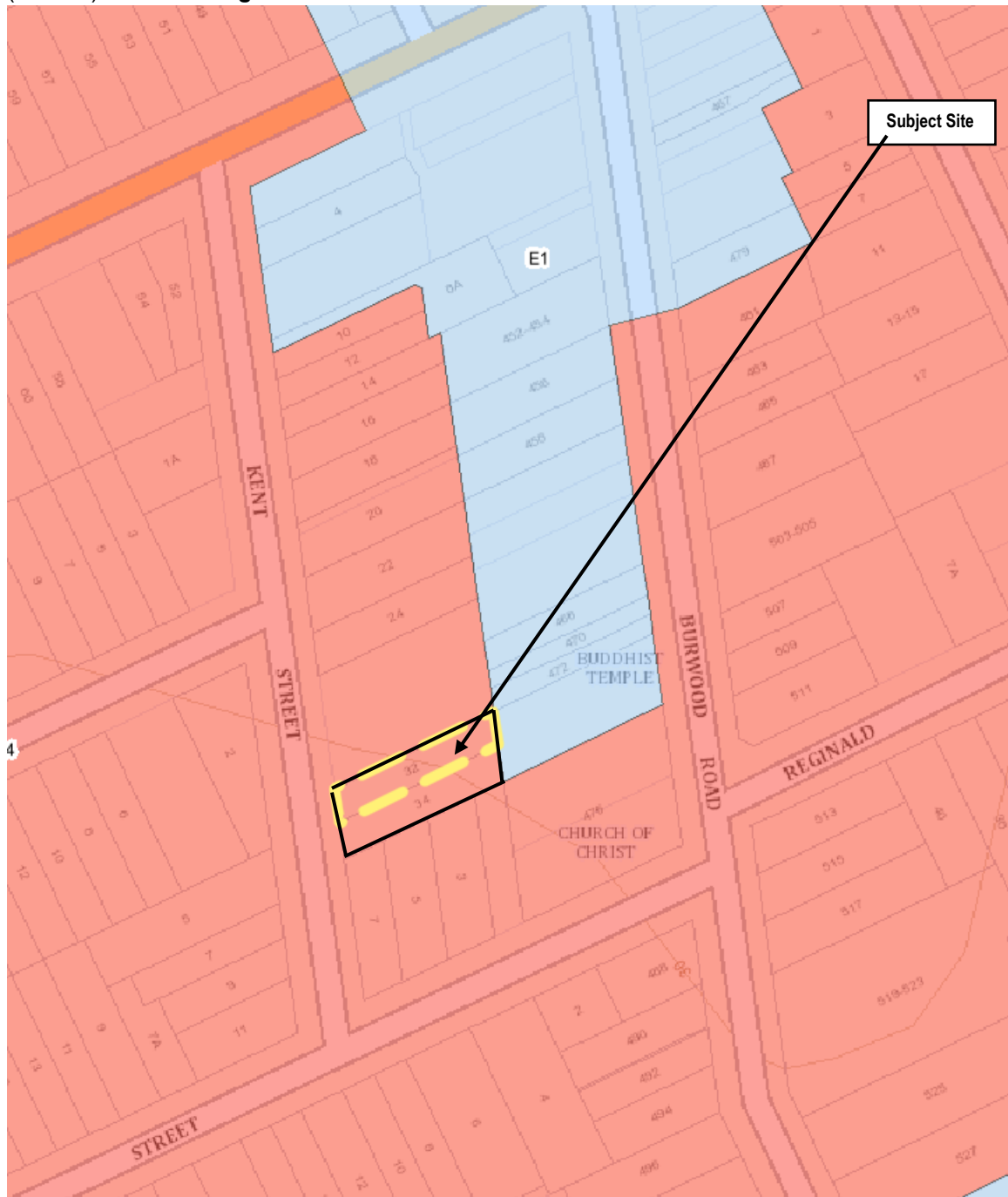


Figure 35

Source: Zone Map – Canterbury Bankstown LEP 2023

The zone objectives and permissible land uses in the zone are set out below:

Zone R4 High Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.
- To promote a high standard of urban design and local amenity.

2 Permitted without consent

Home occupations

3 Permitted with consent

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Dwelling houses; Early education and care facilities; Environmental facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Home businesses; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; **Residential flat buildings**; Respite day care centres; Roads; Secondary dwellings; Serviced apartments; Shop top housing*

4 Prohibited

Any development not specified in item 2 or 3

Comment

Co-Living Housing" is defined under the dictionary of CBLEP 2023 as meaning:

- (a) *has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (b) *provides occupants with a principal place of residence for at least 3 months, and*
- (c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Comment

Co-Living Housing" is not listed as a permissible land use under the R4 High Density Residential zone. However, while Co-Living Housing is included within the definition of Residential Accommodation under CBLEP 2023, it is also not listed as a permissible use under the R4 High Density Residential zone. Having regards to this, Co-Living Housing is prohibited under the R4 High Density Residential zone however is permissible under SEPP Housing 2021 having regards to Section 67(b) of SEPP Housing 2021, which states:

- 67 (b) *development for the purposes of **residential flat buildings** or shop top housing is permitted under Chapter 5 or another environmental planning instrument.*

Co-Living Housing is therefore permissible because of Section 67 (b) of SEPP Housing 2021 because residential flat buildings are permissible in that R4 High Density Residential zone.

2.4 Unzoned Land

Comment

Not applicable to this application.

2.5 Additional Permitted Uses of Particular Land

Comment

Not applicable to this application.

2.6 Subdivision – Consent Requirements

Comment

Not applicable to this application

2.7 Demolition Requires Consent

Comment

The proposal seeks development consent to demolish all existing structures on the land.

2.8 Temporary Use of Land

Comment

Not applicable to this application.

2.9 Canal Estate Development Prohibited

Comment

Not applicable to this application.

Land Use Table

Part 3 Exempt and Complying Development

Comment

Not applicable to this application.

Part 4 Principal Development Standards

4.1 Minimum Subdivision Lot Size

Comment

Not applicable to this application.

4.1AA Minimum Subdivision Lot Size for Community Title Schemes

Comment

Not applicable to this application.

4.1A Minimum Lot Sizes and Special Provisions for Dual Occupancies

Comment

Not applicable to this application.

4.1B Minimum Lot Sizes and Special Provisions for Certain Dwellings

Comment

Not applicable to this application.

4.1C Minimum lot sizes for dwelling houses on battle-axe lots in certain residential zones

Comment

Not applicable to this application.

4.2 Rural Subdivision

Comment

Not applicable to the subject land.

4.3 Height of Buildings

Comment

The height of buildings map contained within CBLEP 2023 identifies the site as having a maximum building height limit of 23m. See Height of Buildings Map a **Figure 36**.

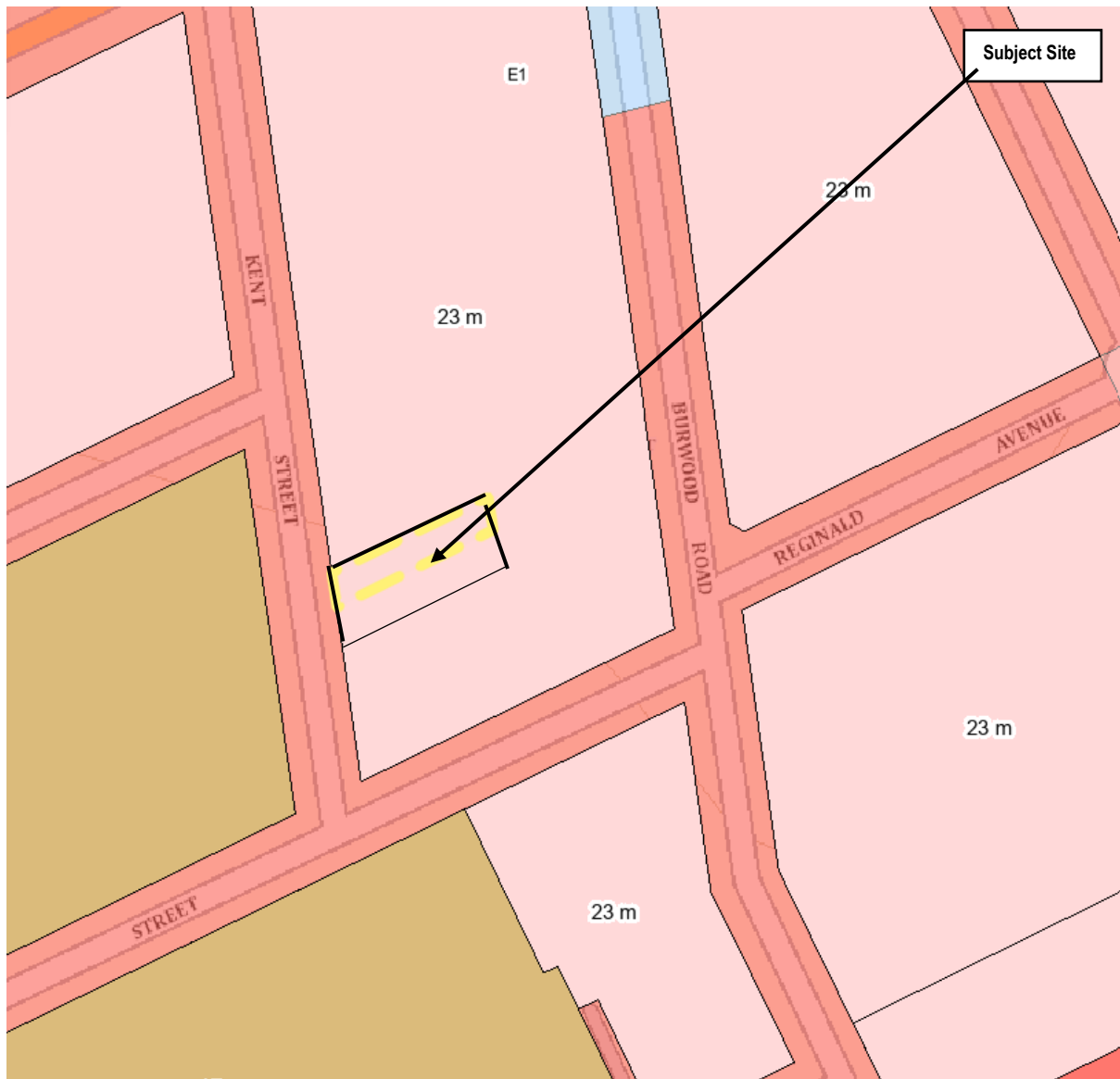


Figure 36

Source: Height of Buildings Map – CBLEP 2023

The accompanying drawings demonstrate that the proposed Co-Living Housing development has a maximum building height of 19m, which is well below the 23m height control and therefore complies with this control.

4.4 Floor Space Ratio (FSR)

Comment

The development site is subject to a FSR control of 1.7:1. See extract of FSR map at **Figure 37**.

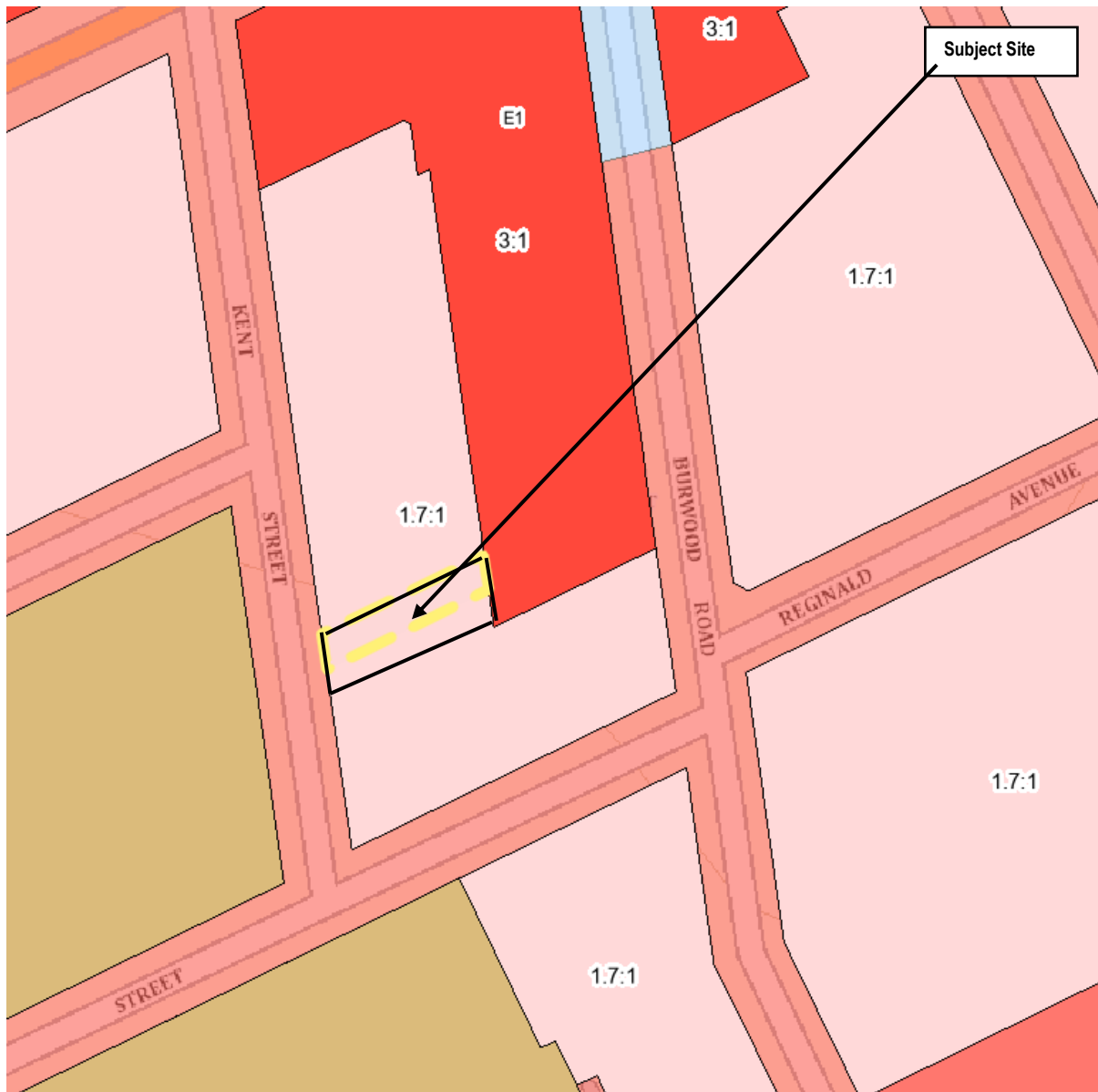


Figure 37
Source: FSR Map – CBLEP 2023

The proposed development inclusive of the additional GFA generated by the 2 level additions is 1.64:1 well below the permissible FSR of 1.7:1, which satisfies this control.

4.5 Calculation of Floor Space Ratio and Site Area

Comment

The amount of GFA has been calculated in accordance with the sites overall site area.

4.6 Exceptions to Development Standards

Comment

This clause is not relevant to the application before Council

Miscellaneous Provisions

5.1 Relevant Acquisition Authority

Comment

This clause is not relevant to the application before Council

5.1A Development on land intended to be acquired for public purposes

Comment

This clause is not relevant to the application before Council

5.2 Classification and Reclassification of Public Land

Comment

This clause is not relevant to the application before Council.

5.3 Development Near Zone Boundaries

Comment

This clause is not relevant to the application before Council.

5.4 Controls Relating to Miscellaneous Permissible Uses

Comment

This clause is not relevant to the application before Council

5.5 Controls Relating to Secondary Dwellings on Land in a Rural Zone

Comment

Not adopted

5.6 Architectural Roof Features

Comment

The proposal does not provide any architectural roof features.

5.7 Development Below Mean High Water Mark

Comment

This clause is not relevant to the application before Council

5.8 Conversion of Fire Alarms

Comment

This clause is not relevant to the application before Council

5.9 Dwelling House or Secondary Dwelling Affected by Natural Disaster

Comment

This clause is not relevant to the application before Council

5.10 Heritage Conservation

Comment

The approved and proposed units and other structures on the site are not listed as heritage items, nor is there any heritage items located in the vicinity of the site. Further, the site is not located within a heritage conservation area and therefore this control is not applicable to this application.

5.11 Bushfire Hazard Reduction

Comment

This clause is not relevant to the application before Council as the site is not located on bushfire prone land.

5.12 Infrastructure Development and Use of Existing Buildings of the Crown

Comment

This clause is not relevant to the application before Council.

5.13 Eco-Tourist Facilities

Comment

This clause is not relevant to the application before Council.

5.14 Sliding Spring Observation – Maintaining Dark Sky

Comment

Not adopted.

5.15 Defence Communication Facilities

Comment

Not adopted.

5.16 Subdivision of Dwellings on, Land in certain Rural, Residential Conservation Zones

Comment

Not adopted.

5.17 Artificial Waterbodies in Environmentally Sensitive Areas in Areas of Operation of Irrigation Corporation

Comment

Not adopted.

5.18 Intensive Livestock Agriculture

Comment

Not adopted.

5.19 Pond- Based, Tank-Base and Oyster Aquaculture

Comment

This clause is not relevant to the application before Council.

5.20 Standards that Cannot Be Used to Refuse Consent to Playing and Performing Music

Comment

This clause is not relevant to the application before Council.

5.21 Flood Planning

Comment

This clause is not relevant to the application before Council.

5.22 Special Flood Considerations

Comment

Not adopted.

5.23 Public Bushland

Comment

This clause is not relevant to the application before Council.

5.24 Farm Stay Accommodation

Comment

Not adopted.

5.25 Farm Gate Premises

Comment

Not adopted.

Part 6 Additional Local Provisions

6.1 Acid Sulfate soils

Comment

Not applicable to this modification application.

6.2 Earthworks

Comment

This control is satisfied because:

- the approved development provides for a semi basement car park. No change is proposed;
- earthworks proposed do not alter existing drainage patterns. No change is proposed;
- Overland flow of stormwater from the subject site will be enhanced by the proposal because it will be captured on-site and re-used to allow for the watering of plants, not dispersed onto adjoining land. No change is proposed and
- no natural watercourses or rivers are being adversely impacted upon by the proposed development. No changes to these natural water features are proposed.

6.3 Stormwater Management and Water Sensitive Urban Design

Comment

The site is not subject to flooding and as such this clause is not relevant to the application before Council

6.4 Biodiversity

Comment

The site is located within a well-established residential neighbourhood where many fundamental services are provided. The biodiversity on the land and the neighbourhood will be enhanced by the proposed development with new native landscaping and subsequent fauna habitats being introduced. The proposed modifications do not impact upon the biodiversity features of this neighbourhood.

6.5 Riparian Land and Watercourses

Comment

This clause is not relevant to the application before Council.

6.6 Limited development on foreshore area

Comment

This clause is not relevant to the application before Council.

6.7 Development in areas subject to aircraft noise

Comment

This clause is not relevant to the application before Council.

6.8 Airspace operations

Comment

This clause is not relevant to the application before Council.

6.9 Essential Services

Comment

This clause is not relevant to the application before Council.

6.10 Active street frontages

Comment

This clause is not relevant to the application before Council.

6.11 Location of sex services premises

Comment

This clause is not relevant to the application before Council.

6.12 Special Provisions for Shop Top Housing

Comment

This clause is not relevant to the application before Council.

6.13 Special provisions for centre-based child care facilities

Comment

This clause is not relevant to the application before Council.

6.14 Restrictions on development in Zone B4

Comment

This clause is not relevant to the application before Council as the subject site is not zoned B4.

6.15 Design Excellence

Comment

This clause is not relevant to the application before Council.

6.16 Design excellence at certain land in Bankstown

Comment

This clause is not relevant to the application before Council.

Section 4.15 (1) (a) (ii)

The provision of any draft environmental planning instrument.

There are no proposed environmental planning instruments that are applicable to this site or the form of development proposed.

Section 4.15 (1) (a) (iii)

Development Control Plan (DCP)

Canterbury Bankstown Development Control Plan (CBDPC) 2023

Because Co-Living Housing (Residential Accommodation) is prohibited under the R4 High Density Residential zone of CBLEP 2023, Co-Living Housing becomes permissible because Residential Flat Buildings are permissible in the R4 High Density Residential zone.

This approach however is to only permit Co-Living Housing, it does not open the gate to introduce and consider all of the controls within CBDPC 2023 to govern the proposal, although I note there are no other controls in the DCP that specifically refer to Co-Living Housing. The only control within CBDPC 2023 that is applicable relates to setbacks.

As mentioned above, Clause 5.2.6 "Setbacks" of CBDPC 2023 is the only policy control applicable to the proposed development.

The proposed development has been designed with particular attention to the amenity of its future occupants, neighbouring properties and the public domain. Other controls within CBDPC 2023 are not applicable to this proposal because as mentioned above, Low-Income Housing is prohibited under the R4 High Density Residential zone of CBLEP 2023.

Section 69 (2) (ii) Standards for Co-Living Housing within SEPP Housing 2021 states that:

“(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—

- (a) or*
- (i) or*
- (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument.*

It is noted by definition under SEPP Housing 2021 that “relevant planning instrument” means:

“an environmental planning instrument, other than” this Policy, or a development control plan, if any, that applies to the land on which the development will be carried out”.

“environmental planning instrument means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force”.

Section 4.15 (a) (iiia)

Any Planning Agreement That has Been Entered into Under Section 7.4 or any Draft Planning Agreement that a Developer has Offered to Enter Into Under Section 7.4

The applicant has at this stage not entered into or has been asked to enter into any agreement under Section 7.4.

Section 4.15 (1) (a) (iv)

Matters Prescribed by the Regulations

There are no matters prescribed by the Regulations applicable to this application.

Section 4.15 (b)

Likely Impacts of That Development

Social and Economic Impacts on the Locality

The approved Co-Living Housing development and the modifications proposed provide a positive social benefit to the community by providing new low cost residential accommodation in an area well-served by public transport services (rail and bus) and local infrastructure.

The approved and modifications to the design now proposed is considered to be of a high architectural quality, promoting residential amenity for future occupants. The proposal introduces a design to positively address the differing lifestyles of future residents.

Furthermore, the proposal will provide for a positive economic impact as the site is in a location that is close to well-served public transport infrastructure, businesses, shops and services, which benefits the future residents of the building who want to live, work and enjoy the amenities provided for in the broader locality.

Notwithstanding, the proposal will provide opportunities for social interaction of occupants within the development within the communal areas. The proposal will also deliver a more affordable housing typology by virtue of the small size of the rooms.

It is anticipated that a large component of the occupants will be key workers offering a diverse social mix.

Accordingly, there are no foreseen negative social or economic impacts associated with the proposed development.

Promote Safety Through Design of Buildings

The proposed development provides significantly increased natural surveillance of the adjacent street both during the day and the night. The entries to the development will be appropriately lit at night to enhance safety, visibility and legibility. Effective access control has been achieved through the provision

of physical barriers to attract, channel and/or restrict the movement of residents within the proposed development. The internal areas within the development such as the entrances, basement and lobbies will be well used by residents. The common area will be under the supervision of the residents of the rooms above. The use and supervision of the common areas will reduce any opportunities for crime.

Communal Living Room

The proposal provides for 1 small and 38 double sized rooms and a common room inside the building, which is afforded an accessible toilet and a kitchen bench. Common tables and chairs will likely be introduced before the premises will be occupied. This is an increase of 7 rooms.

The proposal includes an especially generous provision of communal internal space, and on this basis the location of the communal areas is such that they receive at least 3 hours direct solar access to their windows between 9am and 3pm on the winter solstice.

Building Design

The proposal provides a high quality contemporary development that responds to the anticipated built form character of surrounding development.

The proposal is of a compatible scale with the emerging character in the street block and addresses the street frontage, defines and reinforce the street edge and encloses the common open space to create a secure and protected environment.

A large rear common open space courtyard is provided with excellent landscaping to enhance this areas presentation to users.

Public Utilities

The public utility infrastructure required to be augmented to support the proposed development includes:

- water;
- sewerage;
- electricity;
- telecommunications;
- stormwater systems and
- roads.

Crime Prevention and Safety

The proposed Co-Living Housing development has been designed with respect to the principles of Crime Prevention through Environmental Design.

The following comments are made with respect to the principles of surveillance, access control, territorial reinforcement and space management:

Surveillance

The proposed Co-Living Housing development has been designed to minimise blind corners in communal and entry areas.

The proposal provides for casual surveillance over Kent Street in the form of habitable rooms, communal living areas and private open space in the form of ground floor courtyards and balconies on upper levels.

The entry is clearly identifiable through the use of special design techniques, articulation and different colours and materials; and is easily identified from Kent Street, further encouraging visual and casual surveillance.

Internal and external common areas are to be well-lit, to ensure surveillance is possible at all hours and to minimise dark shadows, without causing light disturbance.

Access Control

The Co-Living Housing development will be clearly identified with street numberings designed in accordance with the Council's requirements. As noted above, the pedestrian entries and vehicular entrance to the site will be clearly delineated with visual cues such as footpaths, driveways and fencing.

Access to the development will be controlled via a security system.

Territorial Reinforcement

The development will be constructed of high-quality materials that can be easily cleaned should vandalism occur. External areas will be well-lit and monitored to discourage graffiti and vandalism.

Space Management

Each room is to be locked with separate keys or swipe cards. Appropriate lighting will be provided to external areas to ensure they are well-lit. The proposed materials and finishes are hardwearing to minimise maintenance costs.

Amenity

The approved development and modifications proposed have been designed with particular attention to the amenity of its future occupants, neighbouring properties and the public domain.

Having regards to the approved and proposed modifications, the proposal is considered an appropriate response to the opportunities and constraints of the site and its surrounds, particularly in regards to topography, vegetation, neighbouring buildings, noise, impact of street traffic, over shadowing, overlooking, solar access into units and common open space and views. This has culminated in generating a unique design which creates a sense of space, connectivity to public and private space, fixed brick walls that do not allow residents to view into neighbouring properties amenity areas.

Landscaping

This application is accompanied by a detailed landscape plan. The species of native landscaping selected is appropriate, particularly for Belmore, which is identified as a hot dry climate.

Parking and Access

A total of 8 car parking spaces (increase of 1 space) is provided in the basement to meet the demand generated by the proposed 39 rooms in the overall development.

Access into and out of the building is over a combined driveway off Kent Street. The car parking provided meets the SEPP's car parking numeric standards of 1 space per 0.2 spaces.

Design Scheme

The approved and modifications now proposed are considered an appropriate response to the opportunities and constraints of the site and its surrounds, particularly with regard to topography, vegetation, neighbouring buildings, internal layout of rooms, crime prevention, noise, impact of street traffic, solar access and views. This has culminated in generating a design which creates a sense of space, connectivity to common open space, solar access and privacy throughout the complex. This is achieved by the following design initiatives:

- providing good sized windows and sliding glass doors to enhance the amenity of future residents through the provision of solar access and ventilation;
- providing each unit with good solar access and cross ventilation to comply and exceed the standards set out under SEPP Housing 2021 for Low-Cost Housing;
- generous setbacks to the front and rear of the building offer good areas for landscaping;
- room sizes meet or exceed market demand for this region;

- water harvesting infrastructure has been introduced;
- short paths of travel between units to access the stairs and central lift, enable ease of access and minimises the volume of persons travelling past each room;
- CPTED principles have been introduced to enhance the sense of safety and security for residents;
- generous open floor plans to promote a quality living environment for future residents;
- floor plan layout will afford a high level of efficiency and privacy and
- balconies to those rooms on the upper floors and face the street are provided with an attractive outlook to the surrounding neighbourhood over landscaped setback.

The proposed design results in a positive outcome with regard to residential amenity and to mitigate potential adverse impacts on future residents.

Solar Amenity & Natural Ventilation

Climate change is a major environmental challenge facing all forms of development and is widely known to be caused by the combustion of fossil fuels during direct and indirect energy consumption. The proposed rooms are unlikely to generate any greenhouse gases that would deny the proposed development from proceeding, particularly when green star appliances will be introduced into the design and internal appliances will further reduce energy consumption.

The building's upper level design provides for recessed windows that afford natural ventilation and access to natural light.

The proposed rooms meet best practice energy efficient standards to ensure the building promotes its green design by having through ventilation for each room.

The building will be afforded with best practice water conservation and recycling methods to conserve and recycle water used throughout the building.

Recycled, green waste and perishable waste will be placed into wheelie bin containers and will be collected by Canterbury Bankstown Council.

The proposed development has responsibly respected fundamental ESD principles throughout the overall development and clearly meets this control.

Operational Waste Management

The operational waste generated by the proposed Co-Living Housing development will be managed in accordance with the approved Operational Waste Management Plan developed by Multiform Design and Construction Waste Pty Ltd.

Nuisance During Construction

All building works on site will be carried out in accordance with the State Governments statutory construction hours for building works.

Initial on-site excavation work is to be carried out to prepare the proposed single basement car parking level, which will require excavation machinery on site for a short period of time, which will depend on the prevailing weather conditions.

Trucks leaving the site will be checked by a designated worker to ensure soil and other materials do not spill onto the public road, however, should this occur for some unforeseen circumstance, the matter will be quickly cleaned from the road surface by a designated worker.

While concrete and material trucks will be servicing the site at various times these will be supervised by an on-site foreman to ensure vehicles are able to unload and depart from the site as quickly and safely as is reasonably possible.

Overall, the amount of nuisance caused by the proposed development would not be unreasonable to cause undue loss of amenity to local residents.

Section 4.15 (1) (c)

The suitability of the site for the development

The site does not have any environmental, physical or engineering constraints which would prevent the approved and proposed modifications from proceeding.

Having regard to the characteristics of the site and its immediate surrounding context, the proposed development is suitable for the site because:

- the proposal will contribute to the urban renewal of an important site nestled within Belmore which provides excellent recreational contributions to the area;
- is capable of being development in a manner that will minimise impacts to the natural, and environmental qualities of the developments setting;
- will not result in any adverse environmental impacts;
- the site is currently an underutilised landholding within a highly accessible and amenity rich location;
- the site is not affected by significant constraints such as bushfire hazards, endangered species and contamination or hazardous material; and
- the site's surrounding context is conducive to supporting built forms of varying heights and contributing to the diversity in housing stock within the local area.

Section 4.15 (1) (d) Submissions Made in Accordance With The Act or The Regulations.

To be determined by Council after public consultation and receipt of referrals from other Council Departments and State Government agencies.

Section 4.15 (1) (e) The Public Interest

The public interest is well served by the proposed Co-Living Housing development as it will assist in providing 8 additional residential apartments within walking distance of excellent public transport, services and amenities.

The overall building design has been well thought through and makes a positive architectural statement that will be to the betterment of the Canterbury Bankstown LGA in terms of design quality and how the building functions.

The proposed development will provide a positive contribution to the streetscape of Kent Street and will facilitate a Co-Living Housing development which will contribute significantly to providing a more affordable housing typology in the area.

The proposed development has been carefully designed to be compatible with the scale and pattern of new development in the area, demonstrating how the proposal responds to the various development possibilities for the site.

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "*Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

This Statement, and the accompanying plans and technical reports demonstrate that there will be no unreasonable environmental, social or economic impacts generated by the approved development and the modifications now proposed.

In summary, the public advantages of this modified development are:

- provision is made for 39 Co-Living housing rooms;
- The proposal will provide short term employment for tradesmen;
- Increasing low income housing supply in an area which is free of any adverse natural or built constraints;
- Creating a design outcome that promotes the controls and design outcomes expected by the aims and objectives of all relevant SEPP's for the future development of this neighbourhood and
- Providing a high quality built form and presentation which will set a standard for future urban renewal in this precinct.

Overall, the proposal is considered to be in the wider public interest as it will provide the local community with a form of high quality, diverse housing stock that takes advantage of its proximity to the full range of urban facilities and services in the locality.

6.0 Conclusion

The site is zoned R4 High Density Residential under the provisions of CBLEP 2023 however because Co-Living Housing is prohibited in that zone, the proposal becomes permissible because Section 67 (b) of SEPP Housing 2021 permits Residential Flat Buildings under the R4 High Density Residential zone of CBLEP 2023.

The design responds well to the surrounding residential context and provides an appropriate form of Co-Living Housing that is in short supply in a well-established medium to high density residential neighbourhood that is well served by excellent public amenities and services.

Landscaping, detailed within the proposed landscape plan, also assists in visually softening and providing high biodiversity values to the streetscape and locality.

The proposed development is a positive example of contemporary Co-Living Housing that respects the expected emerging character of the neighbourhood while providing a modern design that will set a positive precedence for future high-density developments along Kent Street and other surrounding streets that permit high density housing.

This planning report addresses key aspects of the site and implications of the proposed development and collectively, confirm that the proposed development will operate without adverse environmental impact or generate any adverse impacts on the amenity of residents to be housed on site or those within the surrounding area.

The application is subject to a number of statutory planning instruments and policy controls of which the proposal has been assessed against, enabling a conclusion that the proposal meets the objectives behind the controls that are applicable to this form of development.

Other plans and reports comprising the project application address key aspects of the development and its implications for the existing and desired future character. Collectively, these reports and the assessment of other issues in this report confirm the proposed development will have no unreasonable impacts upon the surrounding environment in which the building is to be sited.

In view of the comments contained within this report, we are satisfied that this proposal has properly responded to all relevant matters for consideration under Section 4.15 (1) of the EP&A Act 1979, and the accompanying EP&A Reg's 2021, and accordingly, the proposed Co-Living Housing development will comfortably fit within its urban context and therefore in our opinion warrants approval.