

9 September 2026

Jonathon Goodwill
Team Leader – Development Assessment
Ku-ring-gai Council
Locked Bag 1006
Gordon NSW 2072

Via Planning Portal

Dear Mr Goodwill,

**SECTION 4.56 APPLICATION TO MODIFY DA 0539/21
161, 163 and 185A FOX VALLEY ROAD, WAHROONGA NSW 2076 – LOT 102 DP1293107**

1.0 INTRODUCTION

Capital Corporation Pty Ltd (the **Applicant**) requests a modification to DA0539/21 in accordance with Section 4.56 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

To date, DA0539/21 has been the subject of two modifications, MOD0173/22 and MOD0170/24. This request represents the third modification.

This request seeks a modification to the approved documents and conditions as follows:

- Increase the total number of units in Building C from 57 to 60 through the de-amalgamation of three 3-bedroom units into three 2-bedroom and three 1-bedroom units
- Modify conditions 1, 23, 23A, 48 and 90 to reflect the updated architectural plan set and references to documents.

This modification application should be read in conjunction with the following documents:

Attachment A: Architectural Plans prepared by Team 2 Architects

Attachment B: Architectural Design Statement prepared by Team 2 Architects

Attachment C: Housing SEPP Statement prepared by Team 2 Architects

Attachment D: Architectural Compliance Schedule prepared by Team 2 Architects

Attachment E: BASIX Certificate prepared by Windtech Consultants

Attachment F: Access Assessment Letter prepared by Credwell

Attachment G: BCA Assessment Statement prepared by Credwell

Attachment H: Traffic and Parking Assessment prepared by MLA Transport Planning

2.0 BACKGROUND

2.1 *Concept Plan MP 07_0166*

On 31 March 2010, the Minister for Planning approved a Part 3A Concept Plan for the Wahroonga Estate (MP 07_0166). The approval permitted the expansion of The San, a range of commercial, residential, and education projects, and the retention of 31.4 ha of conserved bushland. Twelve modifications to the Concept Plan have been made, with eleven approved and one withdrawn.

2.2 *Development Application no. 0539/21 and approval*

On 15 September 2022, the NSW Land and Environment Court (**LEC**) granted Development Consent No. DA 0539/21 for the “demolition of the existing structures, Torrens Title subdivision into three lots, construction of four residential flat buildings comprising 177 apartments with basement car parking, new internal road and associated site works including tree removal” at 161-163, 167 and 169 Fox Valley Road, Wahroonga (the **site**).

DA 0539/21 comprises the first residential flat building development approved under concept plan MP 07_0166.

2.3 *Modifications*

DA 0539/21 has been the subject of two modifications:

- *MOD0173/22 – Internal and External Changes to Residential Flat Buildings*

On 6 July 2023, the Sydney North Planning Panel approved the first modification to DA 0539/21.

The modification approved internal and external changes to the approved residential flat buildings, including:

- Revised façade materials to all buildings;
- Minor increases to floor-to-floor heights and the overall building height for Buildings A, B, and C;
- Revised floor plans for Buildings A and B to include an additional 3-bedroom apartment and larger 3-bedroom apartments, resulting in a net reduction of 11 apartments; and
- A reduction of 3 car parking spaces in the Stage 1 car park, with the basement extent remaining the same

- *eMOD0170/24 – Amalgamation of Units and Internal Design Changes*

On 23 April 2025, the Sydney North Planning Panel approved the modification to Building C. The approval of the modification resulted in the amalgamation of eight units into four and internal design changes, including the reconfiguration of kitchens, bathrooms, laundries, and wardrobes. Condition 1 was also amended to reflect the updated architectural plans.

The subject modification application is the third modification. Like eMOD0170/24, it applies only to Building C.

2.4 *Construction*

Construction has commenced in accordance with DA 0539/21, as modified to date.

3.0 THE SITE

DA 0539/21 relates to the land currently described as Lot 102 DP1293107, a parcel of land within the Central Church Precinct (Precinct B) of the Wahroonga Estate concept Plan, located at 169 Fox Valley Road, Wahroonga.

4.0 PROPOSED MODIFICATION

4.1 Summary

This modification application seeks approval under Section 4.56 of the EP&A Act to amend the unit mix and yield of Building C and to modify the conditions to recognise the changes.

The modification comprises the de-amalgamation of three x 3-bedroom units in Building C into:

- three x 2-bedroom units
- three x 1-bedroom units

This will increase the yield in Building C from 57 to 60 units, and the total yield across the three buildings (A, B and C) from 128 to 131 units.

The modification requires updates to the approved plans, documents and conditions 1, 23, 23A, 48A and 90.

Appendix A contains the proposed Architectural Drawings.

4.2 Modifications to the Development

A detailed description of the modification is outlined in **Table 1** and **Table 2**.

Table 1: Description of proposed modification

Building C – Building Element	Description of proposed modifications
Basement 1	Nil
Basement 2	Nil
Lower Ground	Nil
Ground	Nil
Level 1	Nil
Level 2	De-amalgamation of C206 (3-bedroom+) to create C205 (2-bedroom) and C206 (1-bedroom)
Level 3	De-amalgamation of C306 (3-bedroom+) to create C305 (2-bedroom) and C306 (1-bedroom)
Level 4	De-amalgamation of C406 (3-bedroom+) to create C405 (2-bedroom) and C406 (1-bedroom)
Level 5	Nil.

The proposed modification will result in an increase to the total number of units across buildings A, B and C from 128 to 131 units.

Table 2: Changes to Apartment Mix – Buildings A, B and C

	DA 0539/21	eMOD0170/24	Proposed Modification	Difference between proposed and eMOD0170/24
1-bedroom	17	13	16	+3
2-bedroom	55	51	54	+3
3-bedroom	59	59	59	0
3-bedroom+	0	4	1	-3
4-bedroom	1	1	1	0
Total	132	128	131	+3

This proposed modification does not change the approved GFA, footprint or façade of the approved development.

4.3 Modifications to the Conditions

Conditions 1, 23, 23A, 48A and 90 are proposed to be amended to reflect the changes to dwelling numbers and plans referenced (insertions noted in **blue**, deletions in **red**):

1. Approved architectural plans and documentation (new development) (Modified – ~~MOD0173/22~~ eMOD0170/24)

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this Development Consent:

Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
A0000 E G A B Location plan & drawing list	Group-GSA Team2 Architects	30/08/2024 26.08.26
A2000 E G A B Basement 2 – Building ABC	Team2 Architects	30/08/2024 26.08.26
A2001 E G A B Basement 1 – Building ABC	Team2 Architects	30/08/2024 26.08.26
A2003 B General Arrangement - LG	Team2 Architects	26.08.26
A2004 B General Arrangement - GF	Team2 Architects	26.08.26
A2005 B General Arrangement – LV 1	Team2 Architects	26.08.26
A2005b A General Arrangement – LV 2	Team2 Architects	26.08.26
A2006 B General Arrangement – LV 3	Team2 Architects	26.08.26
A2007 B General Arrangement – LV 4	Team2 Architects	26.08.26
A2008 B General Arrangement – LV 5	Team2 Architects	26.08.26
A2009 B General Arrangement – Roof Plant	Team2 Architects	26.08.26
A2010 B General Arrangement – Roof	Team2 Architects	26.08.26
A2030 F A B Building C – Ground	Team2 Architects	30/08/2024 26.08.26
A2031 F A B Building C – LV 1- 2	Team2 Architects	30/08/2024 26.08.26
A2032 F A Building C – LV 3 2	Team2 Architects	30/08/2024 26.08.26
A2033 F A B Building C – LV 4 3	Team2 Architects	30/08/2024 26.08.26
A2034 F A B Building C – LV 5 4	Team2 Architects	30/08/2024 26.08.26
A2035 F H A Building C – Roof-plant LV 5	Group-GSA Team2 Architects	21/06/2022 17/05/2023
A3020 E G B Elevation – Building C – North	Group-GSA Team2 Architects	30/08/2024 26.08.26
A3103 E G B Section – Building C	Team2 Architects	30/08/2024 26.08.26

A9000 B Apartment Mix 01	Team2 Architects	26.08.26
A9001 B Apartment Mix 02	Team2 Architects	26.08.26
A9002 B Apartment Mix 03	Team2 Architects	26.08.26
A9003 B GFA Diagram	Team2 Architects	26.08.26
A9004 B GFA Diagram	Team2 Architects	26.08.26
A9030 B Solar Compliance	Team2 Architects	26.08.26
A9031 B Solar Compliance	Team2 Architects	26.08.26
A9032 B Solar Compliance	Team2 Architects	26.08.26
A9040 B Cross Ventilation Diagram	Team2 Architects	26.08.26
A9041 B Cross Ventilation Diagram	Team2 Architects	26.08.26
A9042 B Cross Ventilation Diagram	Team2 Architects	26.08.26
A9050 B Storage Schedule	Team2 Architects	26.08.26
A9103 A B Platinum Apartment Layout	Team2 Architects	30/08/2024 26.08.26
Document(s)	Dated	
Accessibility Report prepared by Accessible Building Solutions, Issue B-C and Covering Letter Credwell Consulting, R2	20 June 2022 1/11/2022 and 23/09/2024 04 September 2026	
Acoustic Report prepared by PKA Acoustic Consulting, Version 5	24 June 2022	
Basix certificate No.914197M_05-6 8 10	23 June 2022 4 November 2022 26 February 2025 31 August 2026	
Basix certificate No.1221329M_04 5	23 June 2022 4 November 2022	
NatHERS Certificate No. PNYUSVTY2Q 1FP4DYW1A8 0013146700	4 November 2022 25 September 2024 31 August 2026	
NatHERS Certificate No. KSIK1CVIX	22 June 2022	
Building Code of Australia Assessment Report prepared by Private Certifiers Australia, Version 2 and Covering Letters Credwell Consulting, R3	23 June 2022, 26 October 2021, and 3 August 2021 04 September 2026	
Design Verification Statement prepared by Group GSA Team2 Architects	23 June 2022 9 June 2023 27 August 2026	
Biodiversity Management Plan prepared by Cumberland Ecology, Version 4	20 May 2022	
Geotechnical Report prepared by Douglas Partners	16 June 2022	
Heritage Impact Statement prepared by GBA Heritage, Issue B	25 October 2021	
Traffic and Car Parking Assessment prepared by TTW (Parts 1 and 2) MLA Transport Planning Rev 6 8 1	17 June 2022 2/11/2022 28 August 2026	
Traffic Impact Statement prepared by TTW	15/11/2024	
Waste Management Plan prepared by EcCell, Version 5 6	27 July 2021 31/10/2022	
Contamination Report prepared by Douglas Partners	6 October 2021	
Construction Management Plan prepared by Westbourne	Undated	
Stormwater Report prepared by Intrax Projects, Revision F	19 May 2022	

23. Storage (Modified – eMOD0170/24)

Prior to the issue of the relevant Construction Certificate, the following units are to demonstrate internal fit-outs of all spaces/rooms without access to natural daylight or natural ventilation - notionally identified as storage, are fitted out to prevent their use as habitable spaces/rooms:

- Building A: AG06, A106, A206, A306, A406, A506,
- Building C: CG01, CG02, CG07, CG08, CG09, C101, C105, C108, C109, C201, C205, C205, C208, C209, C301, C305, C305, C308, C309, C310, C401, C405, C405, C408, C409, C410, C501, C505, C508, C509, C510

Reason: To ensure compliance with SEPP 65 ADG for natural daylight and natural ventilation to all habitable rooms.

23A. Storage (Added – eMOD0170/24)

Prior to the issue of the relevant Construction Certificate, the Certifier shall be satisfied that the designated storage areas within units 106, ~~206, 306, and 406~~, as identified on Drawing No. A 9103 (Title: Platinum Apartment Layout, Revision A, dated 30/08/2024), are permanently secured. Details of storage areas are to be provided on the plans forming the construction Certificate.

Reason: To ensure compliance with SEPP 65 ADG for minimum storage size volume.

48A. Section 7.11 development contributions - other than identified centres (For DAs determined on or after 19 December 2010). (Added - eMOD0170/24)

Section 7.11 Local infrastructure contributions – for Buildings A, B and C

(a) This development is subject to a development contribution calculated in accordance with Ku-ring-gai Contributions Plan 2010, being a Contributions Plan in effect under the Environmental Planning and Assessment Act, as follows:

Key Community Infrastructure	Amount
LGA Wide Local Recreational & Cultural	\$265,497.60 Insert updated \$amount as per current indexed rates
Northern Area Local Parks & Sporting Facilities	\$2,294,502.40 Insert updated \$amount as per current indexed rates
Total:	\$2,560,000.00 Insert updated \$amount as per current indexed rates

The contribution specified above is subject to indexation and will continue to be indexed to reflect changes in the Consumer Price Index (All Groups Sydney) and Established House Price Index (Sydney) until paid in accordance with Ku-ring-gai Contributions Plan 2010. Prior to payment, please contact Council directly to verify the current contribution payable.

(b) A development contribution that is required under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by (c) below.

(c) If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the development contribution must be paid prior to the issue of the first relevant construction certificate, or Occupation Certificate after that date.

Copies of Council's Contributions Plan can be viewed at Council Chambers at 818 Pacific Hwy Gordon or on Council's website at www.krg.nsw.gov.au <<http://www.krg.nsw.gov.au>>.

90. Storage (Modified – eMOD0170/24)

Prior to the issue of the relevant Occupation Certificate, the following units are to demonstrate internal fit-outs of all spaces/rooms without access to natural daylight or natural ventilation - notionally identified as storage, are fitted out to prevent their use as habitable spaces/rooms:

- Building A: AG06, A106, A206, A306, A406, A506,
- Building C: CG01, CG02, CG07, CG08, CG09, C101, ~~C105~~, C108, C109, C201, ~~C205~~ **C205**, C208, C209, C301, ~~C305~~, **C305**, C308, C309, C310, C401, ~~C405~~, **C405**, , C408, C409, C410, C501, C505, C508, C509, C510

Reason: To ensure compliance with SEPP 65 ADG for natural daylight and natural ventilation to all habitable rooms.

5.0 REASONS FOR THE MODIFICATION

The modification is proposed to respond to changes in the housing market and provide a unit mix that aligns with recent purchaser interests.

The change in the unit mix will increase the number of units delivered by the project, contributing additional housing towards the National Housing Accord targets, with the construction set to finish before the 2029 deadline.

6.0 SECTION 4.56 – ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.56 of the EP&A Act sets out requirements for applications to modify development consents granted by the Court. The proposed modifications have been assessed in accordance with section 4.56:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
 - (a) ***it is satisfied that the development to which the consent as modified relates is the same or substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and***
 - (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The consent authority may modify a development consent under the provisions of section 4.56(1)(a) of the EP&A Act if they are satisfied that the development remains 'substantially the same'.

6.1 *Substantially the same development*

The project, as modified, will be substantially the same as the original approved project:

- The building envelopes for the four residential flat buildings are entirely within the approved Concept Plan envelopes (as modified)
- The unit mix is substantially the same as the original approved DA 0539/21
- The land area and purpose of the residential flat buildings and surrounding development remain the same
- There is no change to the GFA of the residential flat buildings
- There are negligible changes to the solar access and cross-ventilation
- There are no new unacceptable environmental impacts to the surrounding area as a result of the proposed modification.

The proposed amendments are substantially the same as the approved development.

6.2 Public Notification

Council will undertake the notification of this application in accordance with the statewide Community Participation Plan (**CPP**).

7.0 SECTION 4.15 – ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

7.1 *Environmental Planning Instruments*

State Environmental Planning Policy (Housing) 2021

The Design Verification Statement prepared by Team2 Architects details the alignment to Schedule 9 *Design principles for residential apartment development* of the State Environmental Planning Policy (Housing) 2021 – refer to **Appendix B**.

State Environmental Planning Policy (Sustainable Buildings) 2022

An updated BASIX certificate is provided in **Appendix D** detailing the compliance of the proposed modification.

State Environmental Planning Policy (Transport and Infrastructure) 2022

Referral to TfNSW is not required as no changes to car parking provisions are proposed.

Ku-ring-gai Local Environmental Plan 2015

No changes are proposed under Clause 4.3 *Height of Buildings* of the Ku-ring-gai Local Environmental Plan 2015 (**KLEP**).

No changes are proposed under Clause 4.4 *Floor Space Ratio* of the KLEP.

7.2 *Development Control Plan*

In accordance with Part 7C.4 *Apartment Mix* of the Ku-ring-gai Development Control Plan 2026 (**KDCP**), 84.2% of the proposed dwellings are of Silver Level, and 15.8% are Platinum Level as indicated in the *Liveable Housing Design Guideline*. The proposed modification will result in Silver Level dwellings decreasing by 0.1%, and Platinum Level dwellings increasing by 0.1%.

All other relevant controls in the KDCP are overridden by Concept Plan MP 07_0166 (as amended) in accordance with Clause 3B (2) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulations 2017*.

7.3 *Planning Agreement*

Not applicable.

7.4 Regulations

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

On 31 March 2010, Concept Approval MP 07_0166 was issued in accordance with the EP&A Act, Part 3A, which has since been repealed. Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulations 2017* allows a Concept Approval to remain active and in force. The schedule outlines a pathway for future detailed development applications in accordance with a Part 3A Concept Approval.

Clause 3B (2) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulations 2017* requires the application of the following relevant provisions:

(2) After the repeal of Part 3A, the following provisions apply to any such development (whether or not a determination was made under section 75P(1)(b) when the concept plan was approved)—

- (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
- (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),*
- (c) any development standard that is within the terms of the approval of the concept plan has effect,*
- (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,*
- (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,*
- (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,*
- (g) this clause applies instead of section 75P(2), but any direction, order or determination made under section 75P(2) in connection with the concept plan continues to have effect.*

Pursuant to Clause 3B (2) (f), the KDCP does not have effect to the extent it is inconsistent with Concept Plan MP 07_0166 (as amended). The approved DA 0539/21 was foreshadowed in the Concept Plan, and the proposed modification is substantially the same.

7.5 Compliance with Concept Approval MP 07_0166

The proposed modification complies with relevant conditions of Concept Approval MP 07_0166 (as amended) – refer to **Table 3**.

Table 3: Compliance with Concept Approval MP 07_0166 conditions (as amended)

Condition	Compliance
<u>A3 Gross Floor Area</u> Precinct B: Central Church Maximum GFA (excluding dwellings): 115,000m² Maximum GFA by land uses: 90,450m² Hospital & Facilities 13,000m² Student Accommodation 1,500m² Hostels / Group Homes / Boarding Houses	Compliance achieved. The Concept Approval (as modified) does not limit residential GFA. The proposed modification does not involve any changes to the GFA approved in the original DA 0539/21.

Condition	Compliance
• 7,050m² Faculty of Nursing • 2,000m² Retail • 1,000m² Commercial	
<u>A3 Dwellings</u> Precinct B: Central Church • 9 dwelling houses • 200 162 Residential Flat Building Dwellings	Compliance achieved. Under Concept Approval MP 07_0166 (as amended), the maximum number of dwellings granted consent for the Central Church Precinct (Precinct B) was 162 residential flat building dwellings and 9 dwelling houses. The proposed modification involves an increase of three residential flat building dwellings in Building C. This equates to a total of 131 units (Buildings A, B & C). The proposed modification does not exceed the original DA 0539/21 approved number of 177 residential flat unit dwellings.
<u>A8 Building Height</u> (1) (j) Precinct B: Central Church residential flat buildings shall be restricted to the maximum RLs as shown on Drawing A007 'Section 75W – Urban Form Control Diagram – Roof Plan Issue G dated 24.07.2020 and the top levels show in green on the plans are not to include any residential floor space	Compliance achieved. The proposed modification does not involve any changes to the building envelopes as approved under the Concept Plan (as amended).
<u>B1 Urban Design and Streetscape</u> (1) Future development applications are to be generally consistent with the following indicative elements of the approved Concept Plan, unless it can be satisfactorily demonstrated to the consent authority that a superior built form and/or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approval and intent of the approved Concept Plan: a) Building footprints b) Asset Protection Zone widths c) Internal road location d) Detention basin location However, driveways and internal road design and locations shown on the plans associated with MP 07- 0166 mod 8, including drawing A001 'Section 75W - Urban Form Control Diagram - Building Footprint' issue G dated 24.07.2020 and drawing A007 'Section 75w- Urban Form Control Diagram - Roof Plan' Issue G dated 24.07.2020 are indicative only and the final design and location of internal roads is to be determined at the DA stage having regard to Council's controls and the potential environmental impacts of the proposal. Further, basement locations shown on the plans associated with MP 07- 0166 MOD 8, including Drawing A001 'Section 75W- Urban Form Control Diagram - Building Footprint' Issue G dated 24.07.2020 and Drawing A007 'Section 75W- Urban Form Control Diagram - Roof Plan' Issue G dated 24.07.2020 are not approved and the final design and location of the basements is to be determined at DA stage having regard to Council's controls and the potential environmental impacts of the proposal. (Amended Mod 8) Additionally, the vehicle access point and basement locations shown on plans associated with MP 07_0166 MOD 9, including Drawing DA-760-001 'BEA Diagram DEA Diagrams L G-Gr' Revision 01 dated 14.04.2022, are indicative only and the final design and location of vehicle access point and basements are to be determined at DA stage having regard to Council's controls and the potential environmental impacts of the proposal. (Added Mod 9)	Compliance achieved. The proposed modification does not involve any changes to the urban design and streetscape. The building footprints, Asset Protection Zone widths, internal road location, detention basin location, and street frontage are not proposed to change as part of the modification. Additionally, the proposed modification does not alter the driveway, internal road, or basement design

Condition	Compliance
(2) Buildings are to be sited to avoid critically / endangered ecological communities, achieve balance between cut and fill, minimise earthworks, provide adequate solar access and minimise impacts on privacy and overshadowing of residential uses within and surrounding the site, in accordance with SEPP 65 (<i>State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development</i>) and the Residential Flat Design Code. (3) Development sited at the intersection of The Comenarra Parkway and Fox Valley Road is to provide activation at ground level to both street frontages, and is to address both street frontages and the intersection, and respond to the intersection's location forming a gateway to the precinct. (4) Buildings with frontage to Fox Valley Road must have an active street frontage and provide a setback of at least 10 metres from the street front boundary. (amended Mod 4) (5) Future development in Precinct D: Fox Valley Road East is to demonstrate compliance with Planning for Bushfire Protection 2019, as amended. If necessary, building footprints shown on the plans approved under MOD 9, are to be reduced to ensure compliance with APZ requirements. (added Mod 9)	
B1 Urban Design and Streetscape (1) Residential car parking rates are to be determined having regard to the rates specified in the Preferred Project Report, with the exception of residential car parking rates for the Residential Flat Buildings within the Central Church Precinct and Fox Valley Road East Precinct, and the mixed use development located at the intersection of Comenarra Parkway and Fox Valley Road (within the Central Hospital Precinct), which are to be as follows: a) 1 bedroom apartment: a maximum of 1 space per dwelling b) 2 bedroom apartment: a maximum of 1.25 spaces per dwelling c) 3 bedroom apartment: a maximum of 2 spaces per dwelling d) visitor parking: 1 visitor space per 4 dwellings e) car share spaces: a minimum of 1 car share space per 90 dwellings or part thereof (amended Mod 8, Mod 9, & Mod 12) (2) Residential car parking is to be provided at grade or below ground level within the footprint of the building. (3) The consent authority is to have regard to the provisions of the relevant Council Development Control Plan regulating car parking at the time of the application, the final Preferred Project Report and any other relevant traffic, transport and car parking reports when determining car parking requirements for employment generating land uses. (4) Applications for non-residential land uses must be accompanied by a traffic and car parking assessment prepared by a suitably qualified traffic planner, demonstrating that sufficient car parking has been provided having regard to the RTA's <i>Guide to Traffic Generating Developments</i> and Council's DCP requirements.	Compliance achieved. The proposed modification does not involve any changes to the approved car parking rates under eMOD0170/24 and remains compliant.

6.7 ADG Compliance

The proposed modification remains compliant with the design criteria of the ADG. An assessment of the modification's compliance is provided in **Table 4**.

Table 4: ADG Compliance Table

Design Criteria	Compliance												
Part 3 Siting the Development													
3D Communal and Public Open Space													
<u>Objective</u> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	Compliance achieved.												
<u>Design Criteria</u> 1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	Compliance achieved. No changes to communal open space are proposed.												
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Compliance achieved.												
3E Deep Soil Zones													
<u>Objective</u> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	Compliance achieved.												
<u>Design Criteria</u> 1. Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site Area</th><th>Minimum Dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m²</td><td>•</td><td rowspan="3">7%</td></tr><tr><td>650m² – 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr></table>	Site Area	Minimum Dimensions	Deep soil zone (% of site area)	Less than 650m ²	•	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Compliance achieved. No changes are proposed to the deep soil.		
Site Area	Minimum Dimensions	Deep soil zone (% of site area)											
Less than 650m ²	•	7%											
650m ² – 1,500m ²	3m												
Greater than 1,500m ²	6m												
3F Visual Privacy													
<u>Objective</u> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	Compliance achieved.												
<u>Design Criteria</u> 1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries area as follows: <table><tr><th>Building Heights</th><th>Habitable Rooms and Balconies</th><th>Non-habitable Rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties	Building Heights	Habitable Rooms and Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Compliance achieved. No changes to the separation distance between windows and balconies are proposed.
Building Heights	Habitable Rooms and Balconies	Non-habitable Rooms											
Up to 12m (4 storeys)	6m	3m											
Up to 25m (5-8 storeys)	9m	4.5m											
Over 25m (9+ storeys)	12m	6m											
3K Bicycle and Car Parking													
<u>Objective</u> Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	Compliance achieved.												
<u>Design Criteria</u>													

Design Criteria	Compliance
1. For development in the following locations: - on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or - on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off-street.	Compliance achieved. The proposed modification does not involve changes to the car parking provisions.
Part 4 Designing the Building	
4A Solar and Daylight Access	
<u>Objective</u> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.	Compliance achieved.
<u>Design Criteria</u> 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	Compliance achieved. The proposed modification allows for 72.7% of apartments to receive a minimum of 2 hours sunlight between 9 am and 3 pm at mid-winter.
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter	Not applicable.
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	Compliance achieved.
4B Natural Ventilation	
<u>Objective</u> The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.	Compliance achieved.
<u>Design Criteria</u> 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Compliance achieved. The proposed modification allows for 66.7% of all apartments to be naturally cross ventilated.
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Not applicable.
4C Ceiling Height	
<u>Objective</u> Ceiling height achieves sufficient natural ventilation and daylight access.	Compliance achieved.
<u>Design Criteria</u> 1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Compliance achieved. No changes are proposed as part of the modified architectural plans.

Design Criteria		Compliance
Minimum ceiling height for apartment and mixed use buildings		
Habitable rooms	2.7m	
Non-habitable rooms	2.4m	
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slop	
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use	
These minimums do not preclude higher ceilings if desired.		

4D-1 Apartment Size and Layout

Objective

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Compliance achieved.

Design Criteria

1. Apartments are required to have the following minimum internal areas:

Apartment Type	Minimum Internal Area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each

Compliance achieved.

All apartments, including the proposed modified additional residential apartments, are greater than the minimum internal areas.

2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

Compliance achieved.

All habitable rooms have a window in an external wall that meets the total minimum glass area of not less than 10% of the floor area of the room.

4D-2 Apartment Size and Layout

Objective

Environmental performance of the apartment is maximised.

Compliance achieved.

Design Criteria

1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

Compliance achieved.

Compliance achieved.

4D-3 Apartment Size and Layout

Objective

Apartment layouts are designed to accommodate a variety of household activities and needs.

Compliance achieved.

Design Criteria

1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)

Compliance achieved.

Compliance achieved.

Design Criteria	Compliance															
3. Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Compliance achieved.															
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Compliance achieved.															
4E Private Open Space and Balconies																
Objective Apartments provide appropriately sized private open space and balconies to enhance residential amenity.	Compliance achieved.															
Design Criteria 1. All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3 bedroom+ apartments</td><td>12m²</td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m.	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3 bedroom+ apartments	12m ²	2.4m	Compliance achieved.
Dwelling Type	Minimum Area	Minimum Depth														
Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m														
3 bedroom+ apartments	12m ²	2.4m														
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	Compliance achieved. No changes are proposed to ground level apartments.															
4F Common Circulation and Spaces																
Objective Common circulation spaces achieve good amenity and properly service the number of apartments	Compliance achieved.															
Design Criteria 1. The maximum number of apartments off a circulation core on a single level is eight	Compliance achieved. The proposed modification increases the maximum number of apartments off a circulation core from five to six. It does not exceed the maximum of eight.															
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable.															
4G Storage																
Objective Adequate, well designed storage is provided in each apartment	Compliance achieved.															
Design Criteria 1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage Size Volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling Type	Storage Size Volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Compliance achieved. The proposed modification exceeds the required storage size for each apartment.					
Dwelling Type	Storage Size Volume															
Studio apartments	4m ²															
1 bedroom apartments	6m ²															
2 bedroom apartments	8m ²															
3+ bedroom apartments	10m ²															

7.6 BCA and Accessibility

An Access Assessment Letter and BCA Assessment Letter are provided in **Appendix E** and **Appendix F**. The statements provide confirmation that the proposed modification is compliant with the relevant provisions of the BCA and NCC.

7.7 Traffic and Parking

A Traffic and Parking Assessment is provided in **Appendix G**. The assessment confirms the modification does not involve any modifications to the approved car parking under eMOD0170/24 and the car parking provisions are in line with the KDCP.

The proposed modification is not expected to create any noticeable traffic effects on the surrounding road network in the future.

7.9 Likely impacts

The likely impacts of the modification are consistent with the impacts considered and deemed acceptable in the assessment of the original application.

7.10 Suitability of the site

The proposed modification does not change the project to such an extent that the site is not suitable for it.

7.11 Public interest

It is in the public interest to ensure the units are modified to allow for more housing to be provided in a strategically well-located area.

7.12 Submissions

Council will consider submissions at the completion of the submission period.

8.0 CONCLUSION

The proposed s4.56 application seeks to modify DA 0539/21 to allow the following amendments to the approved residential flat buildings:

- Increase the total number of units by three through the de-amalgamation of three 3-bedroom units to three 2-bedroom and three 1-bedroom units within Building C
- Modify conditions 1, 23, 23A, 48 and 90 to reflect the updated architectural plan set and references to documents.

The proposed modification is substantially the same as the original approval granted for DA 0539/21 and subsequent modifications MOD0173/22 and eMOD0170/24.

Under section 4.56(1A) of the EP&A Act, the consent authority must take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

In assessing and determining the original application, the LEC considered that the development application was acceptable when assessed against the relevant considerations of the Act, and approval of the development application was granted.

The proposed modifications are consistent with the intent of the original approval; therefore, the proposed modifications do not change this conclusion.

Accordingly, it is requested that the modification be approved.

Should you have any questions, please do not hesitate to contact the undersigned on 0403 356 121 or via email ntopple@capcorp.com.au.

Kind Regards,

Nicole Topple
Group Planning Manager