

Section 4.55(2) Modification Application

4-8 Marshall Avenue, 1-5 Canberra Avenue, 2-8 Holdsworth Avenue, St Leonards

Submitted to Lane Cove Council
on behalf of SLS Holdsworth Pty Ltd and SLS Canberra Pty Ltd



'Gura Bulga'

Liz Belanjee Cameron

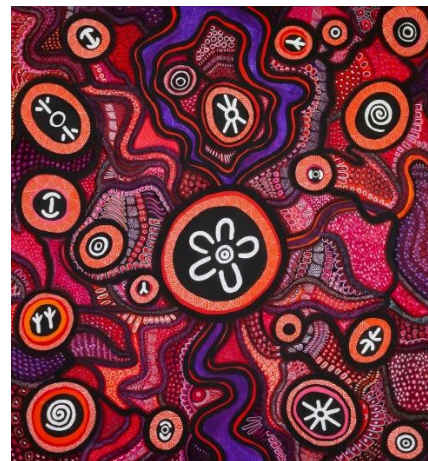
'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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Contents

1.0	Introduction	6
2.0	Consent proposed to be modified	7
2.2	Pre-Lodgement Consultation.....	7
3.0	Proposed modifications to the consent	8
3.1	Modifications to the development.....	8
3.2	Modifications to conditions.....	14
4.0	Substantially the Same Development.....	21
5.0	Environmental Assessment	22
5.1	Planning Assessment.....	22
5.2	Environmental Impact.....	32
5.3	Residential Amenity	48
5.4	Other Impacts.....	49
5.5	Reasons given for Granting Consent	50
5.6	Suitability of the site for the development	50
5.7	Public Interest	51
6.0	Conclusion	52

Figures

Figure 1	Approved and proposed 3D perspective of the development.....	8
Figure 2	Approved vs Proposed Building 1 Rooftop	12
Figure 3	Approved vs Proposed Level 1, Building 1	12
Figure 4	Approved vs Proposed Building 2 Rooftop.....	13
Figure 5	Approved vs Proposed Building 4 Rooftop.....	13
Figure 6	Incentive Height of Buildings Map.....	29
Figure 7	Incentive FSR Map.....	29
Figure 8	Embassy Tower as seen from the North-East.....	35
Figure 9	Embassy Tower as seen from the south.....	35
Figure 10	Section view of approved development (left), proposed development (right) and Embassy Tower	36
Figure 11	Simulated existing view– South direction (extent of proposed addition marked in red box)	37
Figure 12	Simulated proposed view – South direction (extent of proposed addition marked in red box).....	37
Figure 13	View –Embassy Tower Level 2 South direction with indicative floor plan (view location and direction indicated with red arrow)	38

Figure 14 View –Embassy Tower Level 11 South direction with indicative floor plan (view location and direction indicated with red arrow)	39
Figure 15 View –Embassy Tower Level 11 South-west direction	40
Figure 16 View –Embassy Tower Level 11 South-west direction with indicative floor plan (view location and direction indicated with red arrow).....	40
Figure 17 View –Embassy Tower Level 26 South direction with indicative floor plan	41
Figure 18 View –Embassy Tower Level 26 South direction	42

Tables

Table 1 Previous modifications to DA 79/2022	7
Table 2 Key Development Information	9
Table 3 GFA Analysis by Area.....	11
Table 4 Dwelling Mix	11
Table 5 Assessment against SEPPs.....	22
Table 6 Relevant provisions of the Housing SEPP	23
Table 7 Compliance with Lane Cove LEP	28
Table 8 Consistency with the Lane Cove DCP	31
Table 9 Design Excellence Assessment	33
Table 10 Summary of impact.....	44
Table 11 Compliance with the ADG	48
Table 12 Summary of other technical assessments.....	49

Appendices

Appendix	Author
A. Architectural Plans	<i>Rothelowman</i>
B. Urban Design Report	<i>Rothelowman</i>
C. SEPP 65 Verification Statement	<i>Rothelowman</i>
D. Statement of Changes	<i>Rothelowman</i>
E. Landscape Plans	<i>Arcadia</i>
F. Landscape Design Certificate	<i>Arcadia</i>
G. BASIX Assessment Report	<i>Integrated Group Services</i>
H. Tower 1 BASIX Certificate	<i>Integrated Group Services</i>
I. Tower 2 BASIX Certificate	<i>Integrated Group Services</i>
J. Tower 4 BASIX Certificate	<i>Integrated Group Services</i>
K. Construction and Demolition Waste Management Plan	<i>Elephants Foot</i>
L. Operational Waste Management Plan	<i>Elephants Foot</i>
M. Traffic and Assessment Parking Report	<i>CJP Consulting Engineers</i>
N. Statement of Compliance – Access for People with a Disability	<i>Accessible Building Solutions</i>
O. Acoustic Letter	<i>Renzo Tonin & Associates</i>
P. Affordable Housing Letter of Support	<i>Cubic Real Estate CHP</i>
Q. Civil Engineering Design Certificate	<i>Xavier Knight</i>
R. Civil Engineering Plans	<i>Xavier Knight</i>
S. Solar Reflectivity Assessment	<i>CPP</i>
T. Structural Design Statement	<i>Cadigal Group</i>
U. Qualitative Wind Assessment	<i>CPP</i>
V. Legal Advice	<i>Mills Oakley</i>
W. National Construction Code Compliance Assessment Report	<i>Certified Building Specialists</i>

1.0 Introduction

This Modification Application has been prepared by Ethos Urban on behalf of SLS Holdsworth Pty Ltd and SLS Canberra Pty Ltd, pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA 79/2022 relating to 4-8 Marshall Avenue, 1-5 Canberra Avenue, 2-8 Holdsworth Avenue, St Leonards (the site). The site is better known as Areas 1, 2 and 4 of the St Leonards South Precinct. This modification application relates to design amendments and modifications to the conditions of consent.

The proposed amendments sought under this application are driven by continued design development and collaboration between the proponent and Lane Cove Council (Council) to deliver additional affordable housing afforded by the infill affordable housing provisions, pursuant to Chapter 2, Division 1 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

In summary, this application proposes the addition of 77 dwellings, including 58 new affordable housing units. This residential uplift is proposed to be accommodated through the following modifications:

- The addition of five storeys to Building 1 and Building 2,
- The addition of four and a half storeys to Building 4,
- Alterations to the floorplates of the existing buildings,
- Minor alterations to the rooftop on all buildings,
- The addition of a music room and golf room on Basement 1, and
- Minor spatial alterations to the approved development, including provisions for extra storage and other residential amenities.

In addition to the proposed design amendments, a number of corresponding modifications to the conditions of consent are proposed to reflect the development as modified.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in Section 4.55(2) of the EP&A Act.

2.0 Consent proposed to be modified

On 11 April 2023, the Sydney North Planning Panel (SNPP) granted approval for development consent DA79/2022 relating to a new residential development at Areas 1, 2 and 4 of the St Leonards South precincts. Specifically, the consent granted approval for the:

“Demolition of existing structures and construction of three (3) residential flat buildings (ranging from 12 to 19 storeys) comprising a total of 232 apartments and basement parking for 348 vehicles”.

Table 1 below provides a summary of the previous modifications submitted and approved by Council.

Table 1 Previous modifications to DA 79/2022

Modification Number	Determination	Approval Date	Description of Modification
Modification 1	Approved	05/10/2023	This application amended the General Terms of Approval from Water NSW relating to the temporary dewatering of the basement and the requirement for it to be watertight.
Modification 2	Approved	09/10/2023	This application related to a number of internal and external design development changes. The number of apartments increased to 234 units and the number of carparking spaces decreased from 347 to 327.
Modification 3	Approved	22/05/2024	This application removed conditions relating to a 5-star AAAC noise rating.
Modification 4	Approved	03/09/2024	This application sought approval for a number of internal and external development changes, including changes to the external façade materiality, and modifications to the approved apartment mix, resulting in a total of 233 units. Additionally, proposed modifications to the layout of the basement levels resulted an increase of three (3) carparking spaces, amounting to a total of 330 spaces. The application also sought approval for amendments to the wording of certain conditions of consent.
Modification 5	Approved	23/09/2024	This application proposes amendments to the approved basement, including the reconfiguration of the existing levels, extension of Basement Level 4, and the addition of an additional basement level to accommodate alterations to building services and the provision of 78 new carparking spaces, amounting to a total of 405 spaces.
Modification 6	Approved	25/11/2024	This application sought approval for the deletion of Basement Level 5, reconfiguration of Basement Level 4 and adjusted car parking rates. The total parking was reduced by 89 spaces to be compliant with the parking rates in the TfNSW's new Guide to Transport Impact Assessment (September 2024).

2.1 Pre-Lodgement Consultation

An initial meeting was held on 29 May 2024 with the project team and Council to discuss and present the planning pathway and intention to lodge a separate Section 4.55 Modification Application seeking consent for basement amendments with a subsequent Alterations and Additions DA for the affordable housing component to follow. No significant issues were raised, however, upon further collaboration within the project team, an alternative planning pathway was discussed and agreed upon with the input of legal advice from Mills Oakley, attached at **Appendix V**. The advice supported undertaking the amendments through a s4.55(2) modification.

Modifying D79/2022 will result in a much simpler post-approval and construction process with regard to obtaining construction certificates and occupation certificates than the process that would be required to reconcile the works approved under DA79/2022 with the works approved under an alterations and additions development application. The suitability of this approach was discussed with Council in a second meeting on 25 July 2024. Council confirmed via email on 31 July that the applicant could proceed to submitting a s4.55(2) modification.

3.0 Proposed modifications to the consent

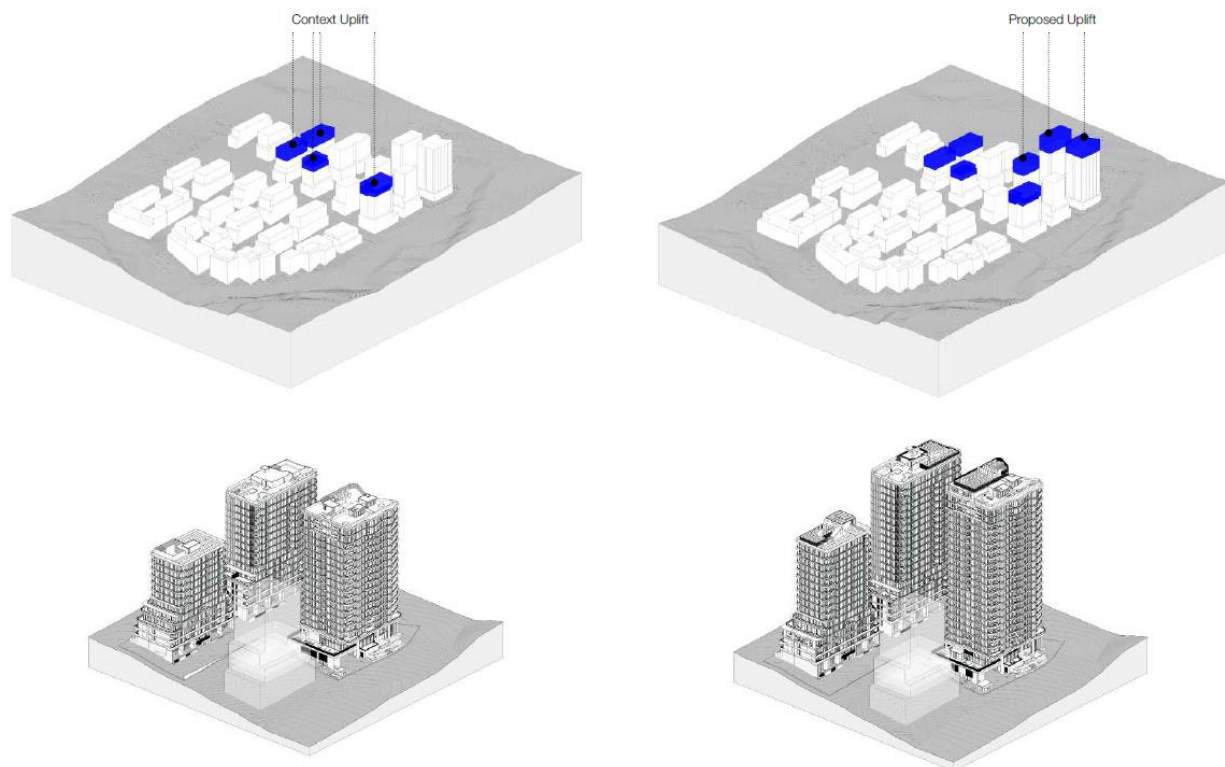
This application proposes structural and design amendments to the approved development to accommodate residential uplift, afforded by the infill affordable housing provisions in the Housing SEPP. The proposed modifications to the development include an increase in dwelling numbers which is accommodated by various additional design amendments. The design of the proposed modifications has deliberately remained consistent with the approved design that was determined to have exhibited design excellence by the Lane Cove Council Design Panel. To support the proposed modifications detailed in **Section 3.1**, various technical studies have been completed to justify the environmental impacts of the proposal, which are recorded in **Section 5.0**.

3.1 Modifications to the development

In summary, this application proposes the addition of 77 dwellings, including 58 new affordable housing units. This residential uplift is proposed to be accommodated through the following modifications:

- The addition of five storeys to Building 1 and Building 2,
- The addition of four and a half storeys to Building 4,
- Alterations to the floorplates of the existing buildings,
- Minor alterations to the rooftop on all buildings,
- The addition of a music room and golf room on Basement 1, and
- Minor spatial alterations to the approved development, including provisions for extra storage and other residential amenities.

Architectural Drawings and an Urban Design Report are provided at **Appendix A** and **Appendix B**, respectively. Additionally, a Statement of Changes detailing the proposed modifications to the development is provided at **Appendix D**. A 3D perspective of the proposed development in comparison to the original development is demonstrated in **Figure 1** below:



Approved Digital 3D Model of the Development

Proposed Digital 3D Model of the Development

Figure 1 Approved and proposed 3D perspective of the development

Source: Rothelowman

3.1.1 Key Numerical Overview

The key numeric development information compared to that of the approved development is summarised in **Table 2** below.

Table 2 Key Development Information

Component	Approved (as modified)		Proposed		Change	
Gross Floor Area (GFA)	24,452.7m ²		32,112.75m ²		+7,662.6m ²	
Floor Space Ratio (FSR)	Area 1	3.85:1	Area 1	5:1	Area 1	+30%
	Area 2 and 4	3.55:1	Area 2 and 4	4.61:1	Area 2 and 4	+30%
Height	Area 1	65m (19 storeys)	Area 1	84.5m (24 storeys)	Area 1	19.5m (+5 storeys)
	Area 2	53m (17 storeys)	Area 2	68.9m (22 storeys)	Area 2	15.9m (+5 storeys)
	Area 4	44m (13 storeys)	Area 4	57.2m (18 storeys)	Area 4	13.2m (+4.5 storeys)
Setbacks (podium)	Building 1 podium setbacks from the boundary: <ul style="list-style-type: none"> 6m setback to 2 Marshall Avenue to the north 7-9.8m setback to Canberra Avenue to the east 4.7m setback to Area 3 to the south 12m setback to the green spine to the west. Building 2 podium setbacks from the boundary: <ul style="list-style-type: none"> 12m setback to the green spine to the east 4-5.5m setback to Holdsworth Avenue to the west. 8m shared building separation between Building 2 and 4. Building 4 podium setbacks from the boundary: <ul style="list-style-type: none"> 12m setback to the green spine to the east 6-10.5m setback to Area 6 to the south 4-5.5m setback to Holdsworth Avenue to the west 8m shared building separation between Building 2 and 4. 		Building 1 podium setbacks from the boundary: <ul style="list-style-type: none"> 6m setback to 2 Marshall Avenue to the north 7-9.8m setback to Canberra Avenue to the east 4.7m setback to Area 3 to the south 12m setback to the green spine to the west. Building 2 podium setbacks from the boundary: <ul style="list-style-type: none"> 12m setback to the green spine to the east 4-5.5m setback to Holdsworth Avenue to the west. 8m shared building separation between Building 2 and 4. Building 4 podium setbacks from the boundary: <ul style="list-style-type: none"> 12m setback to the green spine to the east 6-10.5m setback to Area 6 to the south 4-5.5m setback to Holdsworth Avenue to the west 8m shared building separation between Building 2 and 4. 		No change.	
Setbacks (above podium)	Building 1 above podium setbacks from the boundary:		Building 1 above podium setbacks from the boundary:		No change.	

Component	Approved (as modified)	Proposed	Change
	<ul style="list-style-type: none"> 6m setback to 2 Marshall Avenue to the north 7m setback to Canberra Avenue to the east 12m setback to Area 3 to the south 12m setback to the green spine to the west. <p>Building 2 above podium setbacks from the boundary:</p> <ul style="list-style-type: none"> 12m setback to the green spine to the east 7m setback to Holdsworth Avenue to the west. 18m shared building separation between Building 2 and 4. <p>Building 4 above podium setbacks from the boundary:</p> <ul style="list-style-type: none"> 12m setback to the green spine to the east 12m setback to Area 6 to the south 7m setback to Holdsworth Avenue to the west 18m shared building separation between Building 2 and 4. 	<ul style="list-style-type: none"> 6m setback to 2 Marshall Avenue to the north 7m setback to Canberra Avenue to the east 12m setback to Area 3 to the south 12m setback to the green spine to the west. <p>Building 2 above podium setbacks from the boundary:</p> <ul style="list-style-type: none"> 12m setback to the green spine to the east 7m setback to Holdsworth Avenue to the west. 18m shared building separation between Building 2 and 4. <p>Building 4 above podium setbacks from the boundary:</p> <ul style="list-style-type: none"> 12m setback to the green spine to the east 12m setback to Area 6 to the south 7m setback to Holdsworth Avenue to the west 18m shared building separation between Building 2 and 4. 	
Total apartment numbers	234	311	+77
Carparking	316	325	+9*
Solar Access	61%	60%	-1%
Cross Ventilation	67.5%	68.5%	+1%
Deep Soil	1,330.00m ² (24.5%)	1,323.80m ² ** (24.4%)	-6.4m ² **
Communal Space	3,191.00m ²	3,134.9m ²	-56.15m ²
Public Open Space	1,300m ²	1,300m ²	No change

*Parking numbers are compliant with the rates required by DA 79/2022 Condition C.9.T 'Car parking allocation and restrictions on excess spaces'

3.1.2 GFA

This application seeks approval for modifications to the overall scale of the development due to the proposed increase in dwellings across the site, impacting the GFA of the site, the FSR and the building height. More specifically, this application proposes an increase of 7,409.25m² to the total GFA of the site, where 4,825.2m² of the GFA is allocated as infill affordable units, which equates to 15% of the permissible GFA in Area 1 and 15% of the permissible GFA in Areas 2 and 4, therefore meeting the threshold which enables the 30% height and FSR bonus, pursuant to the Housing SEPP which is further discussed in **Section 5.1.2**.

It should be noted that the GFA of the updated proposal is compliant with the total maximum GFA of the site, which includes the additional GFA afforded by the uplift.

A summary of the proposed GFA is demonstrated in **Table 3** below:

Table 3 GFA Analysis by Area

Component	Area 1	Area 2 & 4
Site Area	2,736.5m ²	3,991.00m ²
Maximum GFA permissible under the Lane Cove LEP 2009	10,535.53m ²	14,168.1m ²
Additional GFA permissible under the Housing SEPP	3,160.65m ² (30%)	4,250.30m ² (30%)
Proposed GFA	13,696.15m²	18,416.60m²
GFA allocated to the infill affordable housing component for the development	2,054m ² (15% of proposed GFA)	2,762m ² (15% of proposed GFA)

3.1.3 Dwelling Mix

The approved dwelling mix is proposed to be modified. It is noted that the proposed 45 infill affordable housing dwellings are in addition and separate to the 28 key worker dwellings that were approved under DA 79/2022 in accordance with the voluntary planning agreement.

A comparison between the approved and proposed dwelling mix is provided in **Table 4** below:

Table 4 Dwelling Mix

Dwelling type	Approved (Modification 2)	Proposed
1 Bedroom	46 (20%)	38 (12.2%)
1 Bedroom (Infill Affordable)	0 (0%)	18 (5.8%)
1 Bedroom (Total)	46 (20%)	56 (18%)
2 Bedroom	106 (45%)	120 (38.6%)
2 Bedroom (Infill Affordable)	0 (0%)	40 (12.9%)
2 Bedroom (Key worker dwellings)	28 (12%)	28 (9%)
2 Bedroom (Total)	134 (57%)	188 (60.5%)
3 Bedroom	35 (15%)	49 (15.8%)
3 Bedroom (Infill Affordable)	0 (0%)	0 (0%)
3 Bedroom (Total)	35 (15%)	49 (15.8%)
4 Bedroom	19 (8%)	18 (5.8%)
4 Bedroom (Infill Affordable)	0 (0%)	0 (0%)
4 Bedroom (Total)	19 (8%)	18 (5.8%)
Total	234	311
Total (Infill affordable and key worker dwellings)	28 key worker dwellings	58 infill affordable dwellings (proposed) and 28 key worker dwellings (approved)

3.1.4 Building 1

Building 1 is located within Area 1, with a primary street frontage to Canberra Avenue. This application proposes the addition of five storeys, modifying the scale of the development from a 19 storey tower to a 24 storey tower with a building height of 84.5m, representing a 30% increase from the approved building height. This application proposes eight (8) new affordable dwellings to be located in Building 1, while the 14 existing key worker units are being retained. In the design of the additional storeys, the typical floorplates from Levels 11-16 were replicated in the design of Levels 17-21.

Additionally, the Building 1 penthouses are to be re-located from Levels 18-19 to Levels 22-24, with two dual level penthouses which will be located across both Level 23 and Level 24. These two penthouses will have private access to the Level 24 rooftop, comprising of terrace areas and spaces for recreational use. A key design modification proposed in this application is the replacement of rooftop space which was previously used for the rooftop plant with the second storey of two penthouses. However, the rooftop is still characterised by generous recreational areas, including spas and lounging areas for residents to utilise.

A comparison between the approved and proposed design of the Building 1 rooftop is demonstrated below in **Figure 2**. Additionally, this application proposes minor design amendments to Level 1 of Building 1. Specifically, the location and size of the bathrooms and sauna have been revised, while a space for a shower has also been proposed adjacent to the pool to improve the amenity of the building's recreational facilities. This is demonstrated in a comparison between the approved Level 1 and proposed Level 1, illustrated in **Figure 3** below.

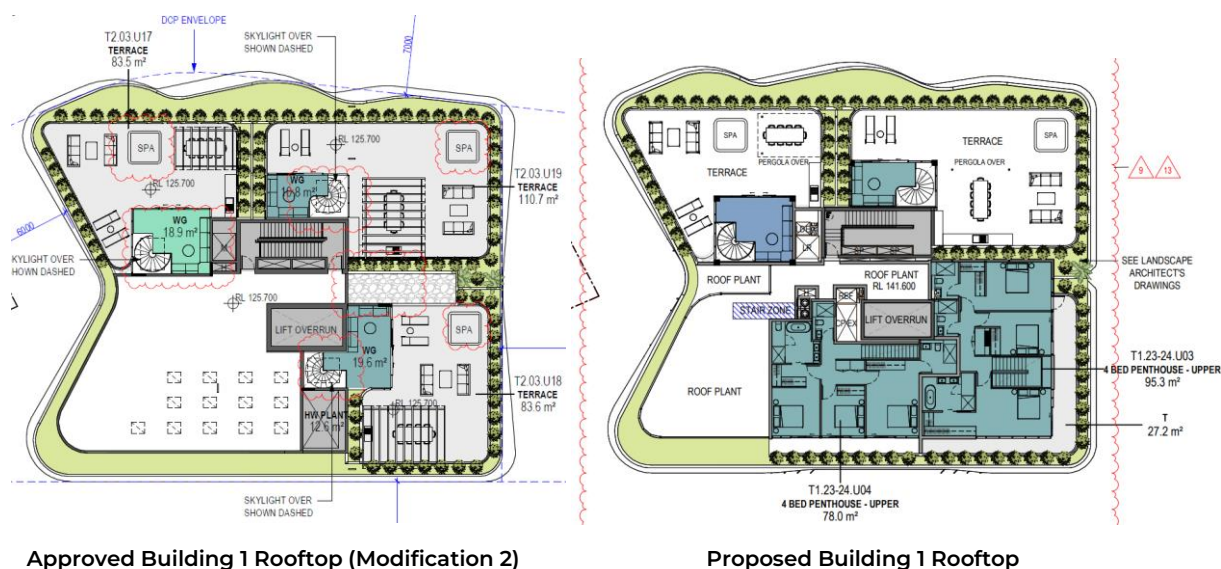


Figure 2 Approved vs Proposed Building 1 Rooftop

Source: Architectural Drawings, Rothelowman

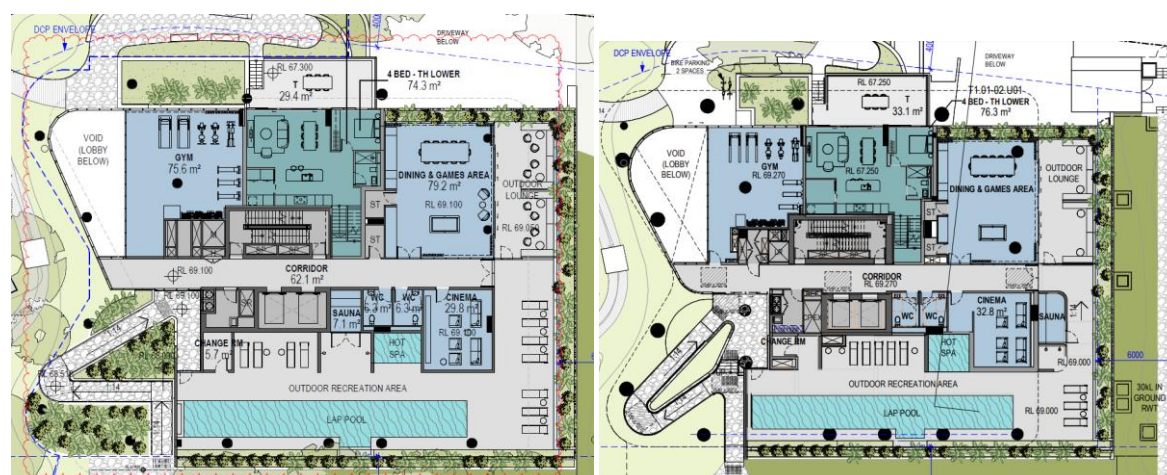


Figure 3 Approved vs Proposed Level 1, Building 1

Source: Architectural Drawings, Rothelowman

3.1.5 Building 2

Building 2 is located within Area 2, with a primary frontage to Holdsworth Avenue. This application proposes the addition of five storeys, modifying the scale of the development from a 17 storey tower to a 22 storey tower with a building height of 68.9m, representing a 30% increase from the approved building height. This application proposes the addition of 27 infill affordable housing units, while retaining the approved seven (7) key worker dwellings. In the design of the additional storeys, the typical floorplates from Levels 11-16 were replicated in the design of Levels 17-21. Level 22 comprises a communal rooftop area, which is not dissimilar to the approved development. However, this modification application proposes a revised design of the Building 2 rooftop, as the recreational area now includes a space for outdoor yoga and a communal spa in addition to the existing lounge and grassed areas. A comparison between the approved and proposed design of the Building 2 rooftop is demonstrated below in **Figure 4**:

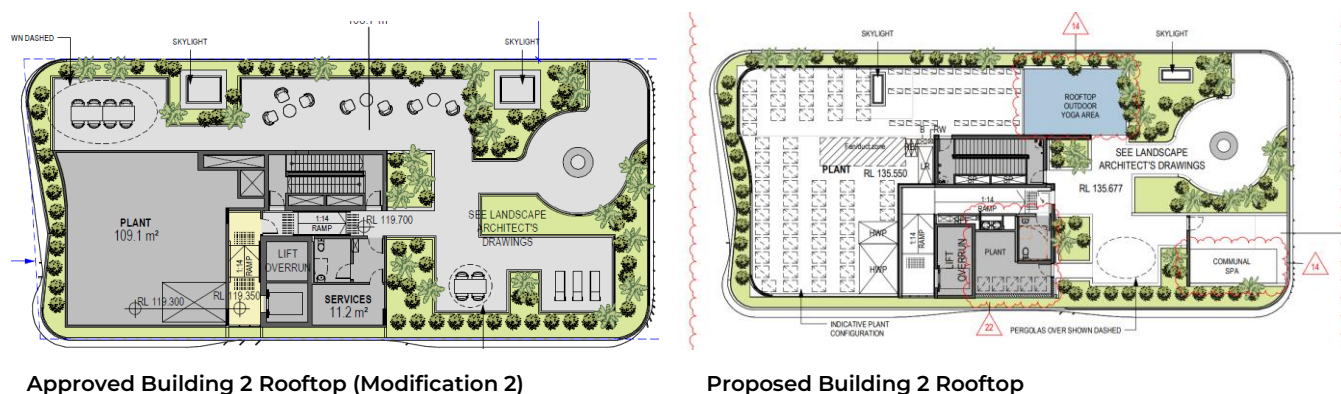


Figure 4 Approved vs Proposed Building 2 Rooftop

Source: Architectural Drawings, Rothelowman

3.1.6 Building 4

Building 4 is located within Area 4, with a primary frontage to Holdsworth Avenue. This application proposes the addition of four and a half storeys, modifying the scale of Building 4 from a 13 storey tower to an 18 storey tower with a building height of 57.2m, representing a 30% increase from the approved building height. This application proposes 23 new infill affordable housing units, while retaining the seven (7) approved key-worker dwellings. The modifications to the design of the building include amending the floorplates of levels 12-15 to mirror the typical floorplates from levels 8-11. Additionally, the penthouses have been relocated to levels 16 and 17, with one penthouse being split across level 17 and 18, benefiting from a private rooftop terrace. Hence, the rooftop design of Building 4 is subject to proposed modifications, namely the enlargement of the plant area to accommodate the additional residential yield, and re-structuring of the indicative PV panel configuration. A comparison between the approved and proposed design of the Building 4 rooftop is shown in **Figure 5** below:

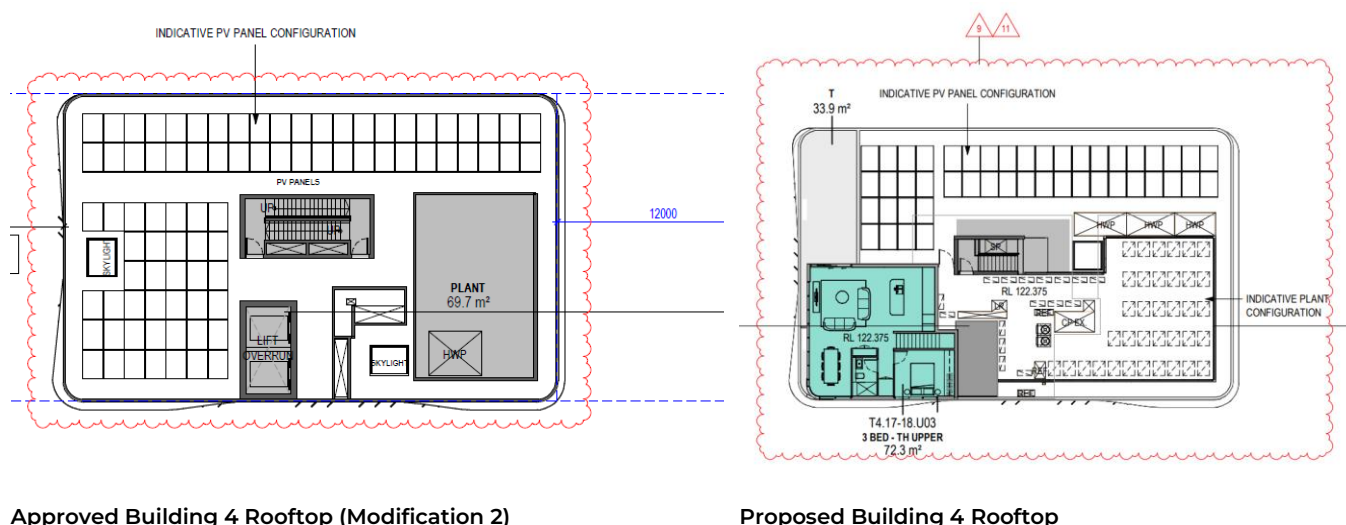


Figure 5 Approved vs Proposed Building 4 Rooftop

Source: Architectural Drawings, Rothelowman

3.1.7 Internal Design and Structural Modifications

This modification seeks consent for minor amendments to the internal design and structure of the development for compliance, mechanical coordination or structural support to accommodate the proposed residential uplift. Specifically, the proposed modifications include:

- The provision of a music room and virtual golf room in Basement 1,
- The provision of additional storage space in the Building 2 and Building 4 Townhouses,
- Revisions to the layout of adaptable units to account for additional units and risers,
- Revisions to the extent of the slab edge on the south façade of Building 4, on level 5 and 6,
- The addition of a stair pressurisation fan room in Building 4 on level 7,
- The addition of intake louvres on level 6 and 7 of Building 4
- Revisions to the core walls and risers in Buildings 1, 2 and 4,
- Revisions to the structural columns, and
- Revisions to the south facing slab edge at Building 1.

3.2 Modifications to conditions

It is requested that the following Architectural Plans and select conditions are approved in place of the corresponding plans and conditions under Development Consent DA79/2022. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

Condition A.1 – Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

<i>Plan No</i>	<i>Revision</i>	<i>Plan Title</i>	<i>Drawn By</i>	<i>Dated</i>
<i>Architectural and Draft Subdivision Plans</i>				
TP00.00	K L	Cover Page	rothelowman	26/07/2023 <i>26/07/2024</i>
TP00.01	E	Site Plan	rothelowman	24/07/2024
TP00.02	C	Demolition Plan	rothelowman	26/07/2023
TP01.00	F N	Basement 4	rothelowman	25/07/2024 <i>26/07/2024</i>
TP01.01	L M	Basement 3	rothelowman	22/07/2024 <i>26/07/2024</i>
TP01.02	L M	Basement 2	rothelowman	22/07/2024 <i>26/07/2024</i>
TP01.03	M P	Basement 1	rothelowman	22/07/2024 <i>26/07/2024</i>
TP01.04	L M	Level 0	rothelowman	22/07/2024 <i>26/07/2024</i>
TP01.05	N P	Level 1	rothelowman	13/09/2024 <i>26/07/2024</i>
TP01.11	N	Level 2	rothelowman	13/09/2024
TP01.12	K L	Level 3	rothelowman	19/07/2024 <i>24/07/2024</i>
TP01.13	K L	Level 4	rothelowman	19/07/2024 <i>24/07/2024</i>
TP01.14	J K	Level 5	rothelowman	19/07/2024 <i>24/07/2024</i>
TP01.15	J L	Level 6	rothelowman	19/07/2024 <i>26/07/2024</i>

TP01.16	H J	Level 7	rothelowman	19/07/2024 24/07/2024
TP01.17	H J	Level 8	rothelowman	19/07/2024 24/07/2024
TP01.18	J K	Level 9	rothelowman	19/07/2024 24/07/2024
TP01.19	J K	Level 10	rothelowman	19/07/2024 26/07/2024
TP01.20	J K	Level 11	rothelowman	19/07/2024 24/07/2024
TP01.21	J K	Level 12	rothelowman	19/07/2024 24/07/2024
TP01.22	J K	Level 13	rothelowman	19/07/2024 24/07/2024
TP01.23	J K	Level 14	rothelowman	19/07/2024 24/07/2024
TP01.24	J K	Level 15	rothelowman	19/07/2024 24/07/2024
TP01.25	J K	Level 16	rothelowman	19/07/2024 24/07/2024
TP01.26	E H	Level 17	rothelowman	26/07/2023-24/07/2024
TP01.27	E H	Level 18	rothelowman	26/07/2023-24/07/2024
TP01.28	D H	Level 19	rothelowman	26/07/2023-24/07/2024
TP01.29	D H	Roof Plan Level 20	rothelowman	26/07/2023-24/07/2024
TP01.30	A	Level 21	rothelowman	24/07/2024
TP01.31	A	Level 22	rothelowman	24/07/2024
TP01.32	A	Level 23	rothelowman	24/07/2024
TP01.33	A	Level 24	rothelowman	24/07/2024
TP01.34	A	Roof	rothelowman	24/07/2024
TP02.01	D J	North Elevation – Building 1 & 2	rothelowman	19/07/2024 24/07/2024
TP02.02	H J	South Elevation – Building 4	rothelowman	19/07/2024 24/07/2024
TP02.03	H J	South Elevation – Building 1 & 2	rothelowman	19/07/2024 24/07/2024
TP02.04	J K	East Elevation – Building 1	rothelowman	19/07/2024 24/07/2024
TP02.05	G H	East Elevation – Building 2 & 4	rothelowman	19/07/2024 24/07/2024
TP02.06	G H	West Elevation – Building 2 & 4	rothelowman	19/07/2024 24/07/2024
TP02.07	H J	West Elevation – Building 1	rothelowman	19/07/2024 24/07/2024
TP02.08	K J	North Elevation – Building 4	rothelowman	25/07/2024 24/07/2024
TP03.01	K L	Section A1	rothelowman	25/07/2024 26/07/2024
TP03.02	J K	Section A2	rothelowman	25/07/2024 26/07/2024

TP03.03	K L	Section B	rothelowman	26/07/2023 24/07/2024
TP03.04	J K	Section C	rothelowman	25/07/2024 26/07/2024
TP03.11	F G	Section – Ramps	rothelowman	25/07/2024 26/07/2024
TP05.00	F N	Overall Development Summary	rothelowman	26/07/2023 26/07/2024
TP11.01	F H	GFA -Tower One – Sheet 01	rothelowman	19/07/2024 26/07/2024
TP11.02	C	GFA – Tower Two – Sheet 02	rothelowman	26/07/2024
TP11.03	F H	GFA – Tower Two and Four – Sheet 01	rothelowman	19/07/2024 26/07/2024
TP11.04	C	GFA – Tower Two and Four – Sheet 02	rothelowman	26/07/2024
TP11.05	F H	GFA – Tower Two and Four – Sheet 03	rothelowman	19/07/2024 26/07/2024
TP11.06	C	GFA – Tower Two and Four – Sheet 04	rothelowman	26/07/2024
TP12.01	E D	3D Solar POV Studies – Sheet 01	rothelowman	26/07/2023 24/07/2024
TP12.02	E D	3D Solar POV Studies – Sheet 02	rothelowman	26/07/2023 24/07/2024
TP12.03	E D	3D Solar POV Studies – Sheet 03	rothelowman	26/07/2023 24/07/2024
TP13.01	E F	SEPP 65 Compliance – Sheet 01	rothelowman	26/07/2023 24/07/2024
TP13.02	E F	SEPP 65 Compliance – Sheet 02	rothelowman	26/07/2023 24/07/2024
TP13.03	E F	SEPP 65 Compliance – Sheet 03	rothelowman	26/07/2023 24/07/2024
TP13.04	E F	SEPP 65 Compliance – Sheet 04	rothelowman	26/07/2023 24/07/2024
TP13.05	F K	Deep Soil + Site Amenity	rothelowman	01/09/2024 13/09/2024
TP13.06	E H	Communal Open Space	rothelowman	13/09/2024 26/07/2024
TP13.07	E F	Height Plane Diagram	rothelowman	26/07/2023 24/07/2024
TP13.08	B	T2-T4 Footprint	rothelowman	26/07/2023
TP13.11	G H	Storage compliance	rothelowman	25/07/2024 26/07/2024
TP14.01	E D	Shadows Proposed	rothelowman	26/07/2023 24/07/2024
TP14.02	E D	Shadows Proposed	rothelowman	26/07/2023 24/07/2024
TP14.03	E D	Shadows Proposed	rothelowman	26/07/2023 24/07/2024
TP15.01	D G	Adaptable and visitable compliance	rothelowman	26/07/2023 24/07/2024
TP15.02	P F	Adaptable layout plans – Sheet 01	rothelowman	26/07/2023 24/07/2024

TP15.03	P1 F	Adaptable layout plans – Sheet 02	rothelowman	26/07/2023 24/07/2024
TP15.04	P1 F	Adaptable layout plans – Sheet 03	rothelowman	26/07/2023 24/07/2024
TP15.05	B E	Adaptable layout plans – Sheet 04	rothelowman	26/07/2023 24/07/2024
Landscape Plans				
000	F	Cover Sheet	Arcadia	16/08/2023
001	F	Legend	Arcadia	16/08/2023
100	F J	Masterplan 0, 1, 2	Arcadia	16/08/2023 26/07/2024
101	F	Masterplan Existing Tree Strategy	Arcadia	16/08/2023
400	F	Planting Schedule	Arcadia	16/08/2023
401	F	Softworks Plan 1	Arcadia	16/08/2023
402	F	Softworks Plan 2	Arcadia	16/08/2023
403	F	Softworks Plan 3	Arcadia	16/08/2023
404	F	Softworks Plan 4	Arcadia	16/08/2023
405	F	Softworks Plan 5	Arcadia	16/08/2023
406	F	Softworks Plan 6	Arcadia	16/08/2023
407	F	Softworks Plan 7	Arcadia	16/08/2023
408	F	Softworks Plan 8	Arcadia	16/08/2023
601	F	Typical Details	Arcadia	16/08/2023
700	F	Landscape Specification	Arcadia	16/08/2023
Civil Plans				
CI-000-001		Cover Sheet Drawing Registry & Locality Plan	stantec	17/06/2022
CI-007-001	C	General Notes	stantec	17/06/2022
CI-050-001	C	Existing Conditions Plan	stantec	17/06/2022
CI-060-001	B	General Arrangements Plan	stantec	17/06/2022
CI-070-001	C	Erosion and Sediment Control Plan	stantec	17/06/2022
CI-076-001	C	Erosion and Sediment Control Details	stantec	17/06/2022
CI-100-001	B	Bulk Earthworks Plan	stantec	17/06/2022

CI-500-001	C	Stormwater Drainage Catchment Plan	stantec	17/06/2022
CI-520-001	D	Stormwater Drainage Ground Floor Plan	stantec	17/06/2022
C105	D	Stormwater Management Plan – Basement 1	Xavier Knight	09/07/2022
C106	D	Stormwater Management Plan – Level 2	Xavier Knight	09/07/2022
C150	C	Catchment Plan and MUSIC Results	Xavier Knight	09/07/2022
C200	C	Stormwater Drainage Details – Sheet 1	Xavier Knight	09/07/2022
C201	C	Stormwater Drainage Details – Sheet 2	Xavier Knight	09/07/2022
C202	C	Stormwater Drainage Details – Sheet 3	Xavier Knight	09/07/2022
CI-526-001	B	Stormwater Drainage Details Sheet 1	stantec	17/06/2022
CI-526-002	B	Stormwater Drainage Details Sheet 2	stantec	17/06/2022
CI-526-003	B	Stormwater Drainage Details Sheet 3	stantec	17/06/2022

Document Title	Ref./Version No.	Prepared By	Dated
Traffic Impact Assessment	Issue D	stantec	30/06/2022
Traffic and Parking Assessment Report	22109	CJP Consulting Engineers	29/07/2024
DA Stage-BCA Assessment Report	115389-BCA-r3	BCA Logie	01/07/2022
National Construction Code Compliance Assessment Report	3U014-03	Certified Building Specialist	31/07/2024
Arboriculture Impact Assessment Report	Version 3	Blues Bros Arboriculture	31/08/2022
Acoustic Report	003	stantec	17/06/2022
Acoustic Letter	TN625-04F01	Renzo Tonin & Associates	29/07/2024

DA Stage Access Assessment Report	115389-Access-r3	BCA Logie	01/07/2022
Statement of Compliance – BCA Access Provisions	Revision A	Accessible Building Solutions	26 July 2024
Preliminary Site Investigation	Revision 1	Geosyntec	18/02/2022
Operational Waste Management Plan	Revision € H	Elephants Foot	01/07/2022-29/07/2024
Construction and Demolition Waste Management Plan	Revision € G	Elephants Foot	01/07/2022-29/07/2024
NatHERS	Certificate Number: D4ZUGH6U4	stantec	02/07/2022
BASIX Assessment Report	Revision 3	Integrated Group Services	26/07/2024
BASIX Assessment – Area 1	Certificate Number: 1315121M_03	stantec	07/09/2022
BASIX Certificate – Area 1	Certificate number: 1315121M_07	Integrated Group Services	25/07/2024
BASIX Assessment – Area 2	Certificate Number: 1315119M	stantec	07/09/2022
BASIX Certificate – Area 2	Certificate number: 1315119M_04	Integrated Group Services	25/07/2024
BASIX Assessment – Area 4	Certificate Number: 1262669M	stantec	07/09/2022
BASIX Certificate – Area 4	Certificate number: 1262669M_04	Integrated Group Services	25/07/2024
Geotechnical Investigation Report	P2160_02	morrow	16/02/2022
ESD Report	301350653 Rev 7	stantec	19/07/2022
Public Art Strategy	P3058	UAP	July 2022
Landscaping Report	Rev I	Arcadia	21 November 2022

Stormwater Management Plan	301350653-SWMP.003	stantec	17/06/2022
SEPP 65 Design Verification Statement/ ADG Compliance Summary	A D	rothelowman	30/06/2022 24/07/2024
Wind Report	16267-R01 R01	CPP	30/06/2022 31/07/2024
Reflectivity Report	16267 Updated drawings	CPP	16/02/2022 19/07/2024
Urban Design Report	-	rothelowman	July 2022 2024

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Reason: This condition is required to be updated to reflect the revised internal and external design changes, as well as administrative matters.

4.0 Substantially the Same Development

Section 4.55(2) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”.

Legal Advice has been prepared by Mills Oakley and is attached at **Appendix V**. The advice identifies that to satisfy the requirements for the proposed development to be approved through a s4.55(2) application, it must satisfy the test of being substantially the same. Mills Oakley engage the recent decision of the Chief Judge of the Land and Environment Court in the case of *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (Realize). The Chief Judge in his decision advocated for a ‘balanced’ approach based on ‘instinct’ or the ‘look and feel’ of the modified proposal when determining the test of substantially the same.

This involves the judgement passed down from the Commissioner, with whom the Chief Judge later agreed with. In reference to the Realize case, the Commissioner stated the following in her judgement:

“Whilst the development will alter the building envelope and to a certain degree, the appearance, the development will remain as a multi-storey, mixed-use development with ground floor commercial uses and communal open spaces and residential floor area above. Importantly, the overall architectural character of the development will not be adversely modified and the proposed changes will maintain the approved design language.”

Through assessing the development in respect to the outcome of the Realize case, Mills Oakley concluded that the proposed development subject to this modification application would be substantially the same as the original development as:

- a) *The scheme remains a three tower residential development with communal open space, public infrastructure and associated landscaping.*
- b) *There are no changes to the setbacks of buildings, so the footprint of the buildings is not being extended.*
- c) *The additional stories do not create further adverse overshadowing or solar impacts to the development and the adjoining properties.*

Further to the views of Mills Oakley, the development as proposed to be modified is substantially the same development as that originally approved in that:

- The buildings remain as significant residential towers in the St Leonards South precinct. This essential element of the approved development has not changed.
- The design language as approved has also been maintained through the proposed modifications.
- Apart from the vertical extension of the buildings, the envelopes of the buildings have not changed. The buildings are no closer to each other or the adjoining buildings.
- There is no material or significant change to the ground plane in terms of use or design changes.
- The proposed modification continues to and will enhance the capacity to achieve a high standard of design excellence.
- The proposed modification maintains the approved diversity in the dwelling mix, including the size and type of dwellings provided across the site.

The potential environmental impacts individually and cumulatively are relative to the scale and character of the area which has been re-established by the state government’s objective to deliver more homes in accessible locations. The environmental impacts are further detailed in **Section 5.2**.

5.0 Environmental Assessment

Under section 4.55(3) of the EP&A Act, the consent authority must take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the environmental impacts of the proposed modifications to the development will be adequately mitigated against or are not detrimental to the overall objectives of the development and the surrounding environment.

5.1 Planning Assessment

The consistency and compliance of the proposed development with the relevant environmental planning instruments is considered in the sections below. Overall, the assessment remains substantially the same as the assessment undertaken for DA79/2022.

5.1.1 State Environmental Planning Policies

The relevant State Environmental Planning Policies (SEPPs) are assessed in **Table 5** below.

Table 5 Assessment against SEPPs

Plan	Comment
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	The assessment undertaken for DA (DA79/2022) concluded that there is no indication of present widespread contamination at the site and that the site can be made suitable for the intended residential uses. This application does not impact the original assessment, as the proposed modifications do not give rise to any further contamination issues, and therefore the site remains suitable for the approved use.
<i>State Environmental Planning Policy (Housing) 2021</i>	A detailed assessment on the proposal's consistency with the relevant provisions in the Housing SEPP is provided in Section 5.1.2 .
<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>	The proposed modifications are submitted with a new BASIX Assessment (see Appendix G) and updated BASIX certificates for each building, (see Appendix H, I, and J) which demonstrates modified proposal achieves the required targets.
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposed modifications do not constitute traffic generating development in of themselves in accordance with Schedule 3 of the Transport and Infrastructure SEPP. Assessment in relation to this section remains unchanged from the original approval, with an addendum traffic assessment also provided at Appendix M .
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	<p>Chapter 2 of the Biodiversity and Conservation SEPP details provisions regarding the preservation and management of vegetation in non-rural areas. The site is zoned R4 High Density Residential and is located within the Lane Cove LGA, the provisions of this chapter apply to the proposed development.</p> <p>This proposal does not include any provisions to remove additional trees or biodiversity, and therefore the existing assessment for the approved development remains relevant.</p>

5.1.2 State Environmental Planning Policy (Housing) 2021

The Housing SEPP sets the standards for the development of different forms of residential accommodation across the State. Specifically, the Housing SEPP provides provisions for infill affordable housing. It is noted that proposed pathway changes to support Transport Oriented Development are currently on exhibition that outline an intention to turn off the applicability of these bonuses within Accelerated TOD Precincts. Whilst the site falls within the broader Crows Nest TOD Precinct, it is not identified as an area receiving additional uplift, and the infill affordable housing provisions will continue to apply to the site.

This modification application proposes to utilise the provisions of the Housing SEPP to accommodate 15% of the proposal's GFA as infill affordable housing (in addition to the key worker housing approved under DA79/2022), which therefore enables the development to seek approval for a 30% increase in both building height and FSR.

The key provisions of the Housing SEPP have been considered in the preparation of this application and are addressed in **Table 6** and within a Design Verification Statement at **Appendix C**.

Table 6 *Relevant provisions of the Housing SEPP*

Clause	Control	Compliance assessment
Chapter 2 Affordable Housing		
Part 1 Preliminary		
Clause 15 Requirement for imposition of conditions— the Act, s 7.32(3)(a)	<p>Before imposing a condition under the Act, section 7.32, the consent authority must consider the following—</p> <p>(a) affordable housing must aim to create mixed and balanced communities,</p> <p>(b) affordable housing must be created and managed so that a socially diverse residential population, representative of all income groups, is developed and maintained in a locality,</p> <p>(c) affordable housing must be made available to very low, low and moderate income households, or a combination of the households,</p> <p>(d) affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income,</p> <p>(e) land provided for affordable housing must be used for the purposes of the provision of affordable housing,</p> <p>(f) buildings provided for affordable housing must be managed to maintain their continued use for affordable housing,</p> <p>(g) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.</p>	<p>Satisfied.</p> <p>A Letter of Support has been provided by Cubic Real Estate (Appendix P), a registered Community Housing Provider who has determined that the proposed 58 infill affordable dwellings are suitable for the purpose of affordable housing.</p>
Part 2 Development for affordable housing		
Clause 15 Development to which Division applies	<p>The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households.</p> <p>(1) This division applies to development that includes residential development if—</p> <p>(a) the development is permitted with consent under Chapter 3, Part 4 or another environmental planning instrument, and</p> <p>(b) the affordable housing component is at least 10%, and</p> <p>(c) all or part of the development is carried out—</p> <p>(i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or</p> <p>(ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.</p> <p>(2) Affordable housing provided as part of development because of a requirement under another environmental planning instrument or a planning agreement within the meaning of the Act, Division 7.1 is not counted towards the affordable housing component under this division.</p> <p>(3) In this section—</p> <p>relevant zone means the following—</p> <p>(a) Zone E1 Local Centre,</p> <p>(b) Zone MU1 Mixed Use,</p> <p>(c) Zone B1 Neighbourhood Centre,</p> <p>(d) Zone B2 Local Centre,</p> <p>(e) Zone B4 Mixed Use.</p>	<p>Satisfied.</p> <p>This division applies to the proposed development as it:</p> <ul style="list-style-type: none"> • Is permitted within the R4 High Density Residential zone under the Lane Cove LEP • 15% of the GFA of the building resulting from the development will be used for the purposes of affordable housing. • The site is located within the Greater Sydney region as identified under the Six Cities Region, being in the Lane Cove LGA.
Clause 16 Floor Space Ratio	(1) The maximum floor space ratio for development that includes residential development to which this division applies is the	Areas 2 and 4 of the site have a maximum permissible FSR of 3.55:1,

Clause	Control	Compliance assessment
	<p>maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</p> <p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$ <p>(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</p> <p><i>Example—</i> <i>Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.</i></p> <p>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</p>	<p>whereas Area 1 has a maximum permissible FSR of 3.85:1.</p> <p>The proposed development seeks to provide greater than the minimum of 10% affordable housing across the site, in accordance with Clause 15 (15% proposed).</p> <p>Therefore, the proposal is afforded an additional 30% FSR for the development, as the maximum bonus.</p> <p>Additionally, the proposal is afforded 30% additional building height for the development.</p>
Clause 19 Non-discretionary development standards	<p>(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p><i>Note—</i> <i>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.</i></p> <p>(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—</p> <p>(a) a minimum site area of 450m²,</p> <p>(b) a minimum landscaped area that is the lesser of—</p> <ol style="list-style-type: none"> 35m² per dwelling, or 30% of the site area, <p>(c) a deep soil zone on at least 15% of the site area, where—</p> <ol style="list-style-type: none"> each deep soil zone has minimum dimensions of 3m, and if practicable, at least 65% of the deep soil zone is located at the rear of the site, <p>(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,</p> <p>(e) the following number of parking spaces for dwellings used for affordable housing—</p> <ol style="list-style-type: none"> for each dwelling containing 1 bedroom—at least 0.4 parking spaces, for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, for each dwelling containing at least 3 bedrooms—at least 1 parking space, <p>(f) the following number of parking spaces for dwellings not used for affordable housing—</p> <ol style="list-style-type: none"> for each dwelling containing 1 bedroom—at least 0.5 parking spaces, for each dwelling containing 2 bedrooms—at least 1 parking space, for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces, 	<p>The following standards set minimums that the consent authority cannot use to refuse consent. The proposed development exhibits the standards as per the following:</p> <ul style="list-style-type: none"> The site area is 6,727.50m². The landscaped area exceeds the minimum required amount. 25.63% of the site area (excluding the area designated as public open space) is allocated for deep soil, in line with the minimum dimension. The distribution of deep soil is evident in the Landscape Design Report at Appendix E. The proposed development does not meet the non-refusal standard for solar access. However, the project has 60% (188) Residential apartments with 2 hours' solar access between 9.00am and 3.00 pm. To maximise the available solar access to all dwellings, the project contains less than 1% apartments with no sun in mid-winter, with over 70% of apartments within the development achieved 1hr 45mins of solar access at the winter solstice. This consistent with the solar access achieved and determined to appropriate by the Sydney North Regional DA79/2022. For further detail, see the SEPP 65 Verification Statement at Appendix C.

Clause	Control	Compliance assessment
	<ul style="list-style-type: none"> (g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development, (h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide, (i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—65m², (ii) for each dwelling containing 2 bedrooms—90m², (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms. (3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies. 	<ul style="list-style-type: none"> • Parking numbers are compliant with the rates required by DA 79/2022 Condition C.9.T 'Car parking allocation and restrictions on excess spaces' which requires compliance with the TfNSW Guide to Transport Impact Assessment (September 2024). • The SEPP 65 Verification Statement at Appendix C confirms that the future dwellings are sized in accordance with the minimum areas set out in the Apartment Design Guide, with the internal layouts focused on generous living areas, and high levels of access to natural light.
Clause 20 Design Requirements	<ul style="list-style-type: none"> (1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy. (2) Subsection (1) does not apply to development to which Chapter 4 applies. (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— <ul style="list-style-type: none"> (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct. 	<p>Satisfied.</p> <p>Chapter 4 is applicable to the proposed site.</p> <p>The development as proposed to be modified is compatible with the desired future character of the St Leonards South Precinct. A compatibility test is detailed in Section 5.1.3.</p>
Clause 21 Must be used for affordable housing for at least 15 years	<ul style="list-style-type: none"> (1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— <ul style="list-style-type: none"> (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider. (2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation. 	<p>Satisfied.</p> <p>The proposed 15% infill affordable housing will be provided for a period of 15 years commencing on the day an occupation certificate is issued for the development. Additionally, the affordable housing component will be managed by a registered community housing provider.</p>
Clause 22 Subdivision permitted with consent	Land on which development has been carried out under this division may be subdivided with development consent.	No subdivision is proposed.
Chapter 4 Design of residential apartment development		
Clause 145 Referral to design review panel for development applications	<ul style="list-style-type: none"> (1) This section applies to a development application for residential apartment development, other than State significant development. (2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be 	The development that was approved in DA79/2022 had been designed in accordance with the outcome of consultation with both Council Officers and the Design Review Panel. The proposed modification retains the

Clause	Control	Compliance assessment
	<p>carried out for advice on the quality of the design of the development.</p> <p>(3) This section does not apply if—</p> <p>(a) a design review panel has not been constituted for the local government area in which the development will be carried out, or</p> <p>(b) a competitive design process has been held.</p> <p>(4) In this section—</p> <p><i>competitive design process</i> means a design competition held in accordance with the Design Competition Guidelines published by the Department in September 2023.</p>	<p>fundamental architectural elements of the approved design and referral to the design review panel is not required.</p>
Clause 148 Non-discretionary development standards for residential apartment development—the Act, s 4.15	<p>(1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p><i>Note—</i> 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.</p> <p>(2) The following are non-discretionary development standards—</p> <p>(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,</p> <p>(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,</p> <p>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.</p>	<p>Satisfied.</p> <p>The proposed development will provide 316 Car Parking Spaces as detailed in the Traffic and Parking Assessment Report at Appendix M. The number of spaces provided are in accordance with Condition C.9.T.</p> <p>All internal apartment areas, room sizes and ceiling heights have been designed in accordance with ADG requirements, refer to the SEPP 65 Verification Statement Appendix C.</p>
Clause 149 Apartment Design Guide prevails over development control plans	<p>(1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—</p> <p>(a) visual privacy,</p> <p>(b) solar and daylight access,</p> <p>(c) common circulation and spaces,</p> <p>(d) apartment size and layout,</p> <p>(e) ceiling heights,</p> <p>(f) private open space and balconies,</p> <p>(g) natural ventilation,</p> <p>(h) storage.</p> <p>(2) This section applies regardless of when the development control plan was made.</p>	<p>The proposed development achieves the design criteria outlined in the Apartment Design Guide which is further detailed in the SEPP 65 Verification Statement at Appendix C.</p>
Schedule 9 Design principles for residential apartment development		
A detailed response to the design quality principles is provided by Rothelowman at Appendix C .		

5.1.3 Compatibility with the local character of the area

Clause 20 (3)(a) and (b) of the Housing SEPP states that development consent must not be granted unless the consent authority has considered whether the design of the residential development is compatible with

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

This section contemplates this test in accordance with the Land and Environment Court Planning Principle 'compatibility in the urban environment' established by Roseth SC during *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. Specifically, it considers compatibility with the future character of the urban environment in St Leonards South.

Roseth SC stated that:

“24 Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of the surrounding sites*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street.*

Physical impacts on the surrounding development

Roseth SC stated that:

“The physical impacts, such as noise, overlooking, overshadowing, and constraining future development potential, can be assessed with relative objectivity”

The following points address each of these impacts in turn.

- Any noise generated by the proposed development will be consistent with the noise generated by the surrounding residential development or through appropriate mitigation measures, discussed in **Section 5.4**.
- The proposed development is setback from the side boundaries in accordance with the ADG design criteria, which remains unchanged from the approved development and continues to restrict and manage overlooking of the existing and future development on the neighbouring sites.
- A shadow study has been prepared by Rothelowman and is provided in the Urban Design Report at **Appendix B**. This study identifies the shadow cast by the proposed buildings on 21 June at one-hour intervals between 9:00am and 3:00pm. The shadow analysis prepared by Rothelowman demonstrates that the impacts of the additional height on the surrounding area will be reasonable in the context of a high-density precinct that is designed to maximise proximity to public transport and services. Further discussion is provided at **Section 5.2.4**.
- The proposed modifications to the development will not constrain the future development potential of the neighbouring properties for the following reasons:
 - The proposal will not act to prevent access to the adjoining sites.
 - The proposal will not act to prevent the ongoing provision of services to the adjoining sites.
 - The proposal will not unreasonably isolate any of the adjoining sites, as was established with the granting of Development Consent DA79/2022.
 - The proposal has been designed to minimise any built form and amenity impacts to the existing and future residential neighbours. Any future residential development would generally be able to utilise the same provisions of the Housing SEPP and be sensitive to the same environmental impact issues experienced by the existing residential development.
 - The proposal provides setbacks in accordance with those anticipated for development in the St Leonards South Precinct.

Visual compatibility with the surrounding context

Roseth SC stated that:

“For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment...The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping.”

Considering the large number of DAs being progressed, and the substantive rezoning undertaken, it is most prudent to give primary regard to the future context of St Leonards South that has been established by the incentive provisions of the Housing SEPP and the Lane Cove LEP 2009. The Precinct is currently undergoing an urban transformation in accordance with the transit-oriented development principles that will shape the areas as a liveable, walkable, connected and safe precinct. To this end, the proposal is highly consistent with the objectives of the St Leonards South Precinct as described in Part C of the Lane Cove DCP:

1. To create a highly liveable transit-orientated residential precinct that integrates with St Leonards Station and proposed over-rail public plaza that encourages community interaction, walking, cycling and use of public transport.
2. To ensure that all new development will achieve design excellence, as well as providing suitable transition and interfaces to adjoining zones and open space.
3. To provide a variety of housing (including affordable housing) that is sustainable, provides housing choice and that meet the needs of residents including access to community facilities.
4. To minimise traffic impacts within the precinct and to and from Pacific Highway and River Road.
5. To facilitate a new, accessible network for pedestrians, cyclists and families that integrate and connect to functional community infrastructure and open space.
6. To create an accessible, well-designed public open space network that provides a variety of recreation spaces (active and passive) and communal open space that is functional and shared by residents.
7. To create a Low Carbon Precinct that delivers sustainable and efficient buildings that provide energy, water and waste efficiency.

The following points address building height, setbacks, and landscaping specifically:

- The building height varies between 18 storeys (57.2m), 22 storeys (68.9m) and 24 storeys (84.5m). Each of these is compliant with the incentive controls within the Lane Cove LEP and the Housing SEPP. The heights are consistent and compatible with the future high rise built form of the St Leonards South area and the St Leonards centre more broadly.
- The approved setbacks are generally in accordance with the requirements of the Lane Cove LEP, Lane Cove DCP and the ADG.
- The landscaping plan which remains unchanged is consistent with the St Leonards South Landscape Masterplan and will provide substantial and improved landscaping that will complement surrounding development as the intentions of the landscape masterplan are fulfilled across developments.

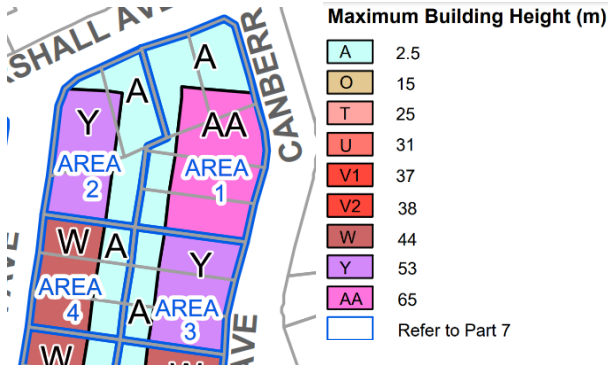
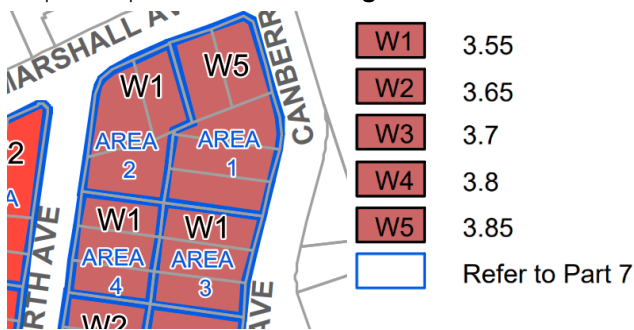
For these reasons, the proposed development is compatible with the desired future character of the precinct.

5.1.4 Lane Cove Local Environmental Plan 2009

The Lane Cove Local Environmental Plan 2009 (Lane Cove LEP) is the primary environmental planning instrument that applies to the site. An assessment of the proposed development against the relevant standards and provisions of the Lane Cove LEP, including those in Part 7, is provided in **Table 7**.

Table 7 Compliance with Lane Cove LEP

Provision	Control	Assessment
Land Use	R4 High Density Residential – Objectives of zone <ul style="list-style-type: none">• 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.	The proposal will remain consistent with the objectives of the R4 High Density Residential Zone as the proposed modifications will provide additional residential dwellings in a location with good access to transport, services and facilities. The additional infill affordable housing proposed will meet the demand

Provision	Control	Assessment
	<ul style="list-style-type: none"> To provide for a high concentration of housing with good access to transport, services and facilities. To ensure that the existing amenity of residences in the neighbourhood is respected. To avoid the isolation of sites resulting from site amalgamation. To ensure that landscaping is maintained and enhanced as a major element in the residential environment. 	for further housing, with high levels of accessibility and amenity.
Clause 7.1 Development on land in St Leonards South Area	<p>(1) The objective of this clause is to promote, by providing building height and floor space incentives, residential development within the St Leonards South Area that provides for—</p> <p>(a) community facilities, open space, including communal open space, and high quality landscaped areas, and</p> <p>(b) efficient pedestrian and traffic circulation, and</p> <p>(c) a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets, including by providing affordable housing, and</p> <p>(d) the amalgamation of lots to prevent the fragmentation or isolation of land.</p>	The proposed modifications do not alter the approved development's consistency with the objectives for development in St Leonards South.
	<p>(3) Despite clauses 4.3 and 4.4, the consent authority may consent to development on land to which this clause applies that will result in a building with both of the following—</p> <p>(a) a building height that does not exceed the increased building height identified on the Incentive Height of Buildings Map. Excerpt demonstrated in Figure 6 below:</p>  <p>Figure 6 Incentive Height of Buildings Map Source: Lane Cove LEP</p> <p>(b) a floor space ratio that does not exceed the increased floor space ratio identified on the Incentive Floor Space Ratio Map. Excerpt demonstrated in Figure 7 below:</p>  <p>Figure 7 Incentive FSR Map Source: Lane Cove LEP</p>	<p>As noted above, under the provisions of the Housing SEPP, the development is eligible for a 30% increase in building height. Therefore, the maximum permissible building heights for the proposed modification are the following:</p> <ul style="list-style-type: none"> Area 1: 84.5m Area 2: 68.9m Area 4: 57.2m <p>The architectural drawings confirm that the proposed modifications comply with the permissible maximum building heights.</p> <p>Similarly, under the provisions of the Housing SEPP, the development is eligible for a 30% increase in FSR. Therefore, the maximum permissible FSRs for the proposed modification are the following:</p> <ul style="list-style-type: none"> Area 1: 5:1 Area 2: 4.61:1 Area 4: 4.61:1 <p>The GFA plans confirm that the proposed modifications comply with the permissible maximum FSR.</p>

Provision	Control	Assessment
	<p>(4) Development consent must not be granted under this clause unless the consent authority is satisfied that:</p> <p>(a) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be studio or 1 bedroom dwellings, or both, and</p> <p>(b) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be 2 bedroom dwellings, and</p> <p>(c) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development will be 3 or more bedroom dwellings, and</p> <p>(d) the development will provide appropriate building setbacks to facilitate communal open space between buildings, and</p> <p>(e) the development will comply with the requirements of clause 7.2 in relation to the minimum site area of the development, and</p> <p>(f) the development will, if applicable, comply with the requirements of clause 7.3 in relation to the minimum number of dwellings that will be used for the purposes of affordable housing, and</p> <p>(g) the development will, if applicable, comply with the requirements of clause 7.4 in relation to the minimum area that will be used for the purposes of recreation areas and community facilities, and</p> <p>(h) the development will, if applicable, comply with the requirements of clause 7.5 in relation to the provision of pedestrian links and roads</p>	<p>The proposed dwelling mix is as follows:</p> <ul style="list-style-type: none"> • 18% of dwellings have 1 bedroom. • 61% of dwellings have 2 bedrooms. • 21% of dwellings have 3 or more bedrooms. <p>Under DA79/2022, 20% of the total number of dwellings were 1 bedroom dwellings (46 apartments). The modification proposes 42 x 1 bedroom apartments. The proposed amendment is appropriate in the circumstances for the following reasons:</p> <ul style="list-style-type: none"> • 14 x 1 bedroom apartments are proposed to be affordable whereas zero x 1 bedroom apartments were affordable homes under DA79/2022. • The proposed modifications will deliver an additional 77 apartments in an accessible location of which 58 are infill affordable homes. • the modified proposal continues to provide a high level of dwelling diversity, offering homes for a wide range of demographics, ultimately aligning with the Council's objectives for the St Leonards South area. • The dwelling mix remains substantially the same as the dwelling mix approved under DA79/2022.
Section 7.2 Minimum site area requirements	<p>For the purposes of clause 7.1(4)(e), the minimum site area for development on land to which clause 7.1 applies is the area specified below:</p> <p>Area 1: 3,000m²</p> <p>Area 2: 2,000m²</p> <p>Area 4: 1,500m²</p>	<p>The site areas remain unchanged from the approved development, which was accompanied by a Clause 4.6 Variation for Area 1.</p>
Section 7.4 Minimum recreation area and community facility requirements	<p>For the purposes of clause 7.1(4)(g), the following requirements apply to development on land to which clause 7.1 applies—</p> <p>Area 1: 900m²</p> <p>Area 2: 400m²</p>	<p>No change from approved development.</p>

5.1.5 Lane Cove Development Control Plan 2009

The proposed development is generally consistent with the DCP and largely remains unchanged from the original assessment. **Table 8** summarises the additional assessment undertaken resulting from the proposed modifications.

Table 8 Consistency with the Lane Cove DCP

Control	Comment	Compliance
B6 Environmental Management		
6.2 Wind Standards for St Leonards	A revised Wind Effects Report has been prepared by CPP Wind and concludes that the proposed modifications do not result in any adverse wind impacts on recreational facilities on podium terraces within developments.	✓
C3 Residential Flat Buildings		
3.9 Design of Roof Top Areas	The composition of rooftop amenities across the three buildings are revised in this proposal. However, the design of exterior private open space such as roof top gardens considers the visual and acoustic privacy, safety, security, and wind effects.	✓
3.10 Size and Mix of Dwellings	The sizes of all proposed dwellings are compliant with the minimum area required. Additionally, this proposal revises the dwelling mix of the development, and demonstrates consistency with the requirement that 10% of each unit type should be provided.	✓
3.13 Storage	Additional areas for residential storage are proposed on the Level 1 for the three-bedroom townhouses in Building 2 and Building 4. The additional space for storage is compliant with the 10m ³ requirement. It is noted that the additional storage proposed within the development is commensurate with the requirements triggered by the additional dwellings. The rest of the storage spaces within the development remain unchanged.	✓
St Leonards South Precinct (Part C8 Residential Locality)		
6. Infrastructure	Affordable Housing The DCP requires that 21 affordable units should be provided across the site. 28 dwellings were approved under DA79/2022 for the purpose of keyworker units, and that provision remains unchanged. The modification proposes an additional 58 infill affordable housing units.	✓
7. Built Form	Height of Storeys The proposed number of stories reflects the 30% increase in the maximum permissible building height available under the provisions of the Housing SEPP and will deliver new homes in a highly accessible location. The proposed variation is appropriate in the circumstances.	Appropriate in the circumstances
	Solar Access The solar access when averaged across the overall development can be achieved for indicatively 60% of apartments. Consideration to the surrounding shadow impacts, particularly from 88 Christie Street is a key site constraint that has been factored into the wider ADG assessment. Additionally, it should also be noted that the proposed development has been designed with the DCP building envelope and is compliant with the Lane Cove LEP. Due to the inability to acquire 2 Marshall Avenue, Tower 1 is shorter in length, and therefore, greater solar access is achieved in the green spine and recreation area than if apartment form were provided on 2 Marshall Avenue. Therefore, there is a solar access improvement to the green spine, without 2 Marshall Avenue. Refer to Appendix B for further detail.	✓
8. Landscape	Roof Terraces	✓

Control	Comment	Compliance
	Consistent with the provisions of the DCP, various accessible roof terraces are provided across the development as proposed to be modified that contain communal amenities but do not include habitable floorspace.	
9. Environment / Sustainability	<p>Environmental Performance</p> <p>BASIX certificates have been provided for Building 1 (Appendix H), Building 2 (Appendix I) and Building 4 (Appendix J). All buildings achieve a score which meets or exceeds the targets for water, thermal comfort and energy.</p>	✓
	<p>Wind Impact</p> <p>A Qualitative Wind Assessment has been prepared by CPP and is attached at Appendix U. The Assessment is determined through the Lawson criteria which mirrors the Lane Cove DCP. The outcome states that all locations would be expected to satisfy the safety and distress criteria.</p>	✓
	<p>Green Roofs</p> <p>The proposed development involves modifications to the rooftops of all buildings. However, the rooftops continue to include provisions for green roofs through the considered design of landscaping.</p>	✓

5.1.6 Consistency with the St Leonards South Landscape Masterplan

The proposed modifications do not alter the project's consistency with the St Leonards South Landscape Masterplan.

5.2 Environmental Impact

The SEE submitted with the approved DA application also considered a range of potential environmental impacts, including:

- Built form;
- Design Excellence;
- Overshadowing and solar access;
- Transport;
- Wind impacts;
- Sustainability;
- Heritage;
- Reflectivity;
- Noise and vibration;
- Flooding and stormwater; and
- Contamination.

The following assessment considers the impacts of the additional height and FSR facilitated by the provisions of the Housing SEPP.

5.2.1 Built Form and Urban Design

The provisions of the Housing SEPP have re-established the built form and scale of development in the St Leonards, and the development as proposed to be modified is compliant with the Housing SEPP.

The vertical extension of the development retains the setbacks and high quality architecture as approved in DA 79/2022. The proposed modification retains the approved façade approach with two key elements – podium and tower. Likewise, each building continues to respond to their specific street contexts, while maintaining a consistent architectural and design theme across the development.

As with DA79/2022, Buildings 1 and 2 have an important transitional role within the St Leonards South Precinct. The proposed modifications retain this role, with the podiums serving to mediate and act as an appropriate transition between the high-density centre to the north and the lower density buildings to the south. Through

conceiving the podium as a landscaped shelf, the scale of the built form underneath is enabled to better fit with the prevailing two storey character. Building 4 continues the two-storey terrace style language along Holdsworth Avenue.

The alternative podium strategy remains unchanged and will enhance the permeability and accessibility of residents throughout the development, particularly, in relation to the communal open space proposed within the podium of Building 1. Stairs and ramps will be provided to allow access to the recreation deck from the green spine to ensure stronger connectivity for all residents across the development.

The proposed tower forms of each building continue to directly respond to orientation and environmental performance considerations, with visual appearance and shape are slightly differentiated across each building, as approved. Feedback from the panel continues to be executed in the design in that:

- The towers have proposed a well-balanced solid to glass ratio.
- The towers are inclusive of shading elements to incorporate building articulation and ensure residential amenity.
- As part of the solar shading devices, vertical sunshades in metallic bronze tone are also proposed to the building, which are angled and placed to block late afternoon summer sun, and allow penetration of winter sun, while still achieving the significant district views.

Overall, the proposed amendments continue to be contextually appropriate and retain the urban design principles and character established in DA 79/2022.

5.2.2 Design excellence

DA79/2022 was subject to thorough and extensive consultation with Lane Cove Council's Design Panel. The development was determined to exhibit design excellence through the approval of DA 79/2022. The additional storeys have deliberately remained consistent with the approved design language and responsive to the commentary of the Design Panel. For completeness, an overview of the proposal's consistency with the provisions of Clause 7.6 of the Lane Cove LEP is provided in **Table 9** below.

Table 9 Design Excellence Assessment

Criteria	Assessment
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	A high standard of architectural design and materials have been used in the development, which includes a differentiated façade expression for each building, consistent with the differentiated facades approved under DA 79/2022.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The proposed development addresses three different street frontages and delivers a new public open space to the north of the site. Each building will enhance the landscape condition to the street frontages and will significantly increase the tree canopy on site and in the precinct.
(c) whether the development protects and enhances the natural topography and vegetation including trees or other significant natural features,	The development retains approximately 20 trees on or in the public domain directly addressing the site. The ground levels of the proposal work with the intended design levels of the green spine in a manner consistent with the DCP Masterplan.
(d) whether the development detrimentally impacts on view corridors,	The proposed envelope is consistent with the controls contemplated under the Lane Cove LEP and Housing SEPP, and accordingly results in an acceptable impact to view corridors. This is detailed in Section 5.2.3 .
(e) whether the development achieves transit-oriented design principles, including the need to ensure direct, efficient and safe pedestrian and cycle access to nearby transit nodes,	The proposal includes a high level of pedestrian connectivity at the ground plane between all three buildings. A high level of passive surveillance is provided for each lobby, and to and from communal areas. A direct pathway is provided from each lobby to Canberra Avenue or Holdsworth Avenue, which provides a short walk to St Leonards Railway Station.
(f) the requirements of the <i>Lane Cove Development Control Plan</i> ,	The proposal generally meets the requirements of the Lane Cove DCP, which is outlined above in Section 5.1.5 . Where variations are proposed, these are justified, and meet the intent/objectives of the provision and Council and state government's fundamental objective to deliver more homes in accessible locations.

Criteria	Assessment
(g) how the development addresses the following matters:	
(i) <i>the suitability of the land for development.</i>	The site is zoned for high density residential development and is not contaminated. It has been amalgamated to deliver the vision and intent of the St Leonards South Precinct as a high-density residential area. The proposed development provides open space at the northern portion of the site.
(ii) <i>Existing and proposed uses and use matrix.</i>	The proposed development is for a high density residential development, comprising of 311 residential dwellings, 58 of which are proposed infill affordable housing units and 28 make up the approved keyworker dwellings. The redevelopment of the site therefore proposes a strategy that will contribute to housing within a strategic location on a site that is currently underutilised.
(iii) <i>Heritage issues and streetscape constraints.</i>	The site is not identified as having heritage significance, nor is it located in proximity to any heritage items. No existing streetscape conditions create significant constraints to the design.
(iv) <i>The relationship of the development with other development (existing or proposed) on the same site or neighbouring sites in terms of separation, setbacks, amenity and urban form.</i>	The proposed development has been designed to be compatible with the desired future character of the precinct that has been established by the incentive provisions of the LEP and the Housing SEPP. The proposal maintains appropriate residential amenity and provides the desired urban form in a reasonable manner for a high-density urban environment. Appropriate setbacks and building separations are proposed for each of the buildings, as approved in DA79/2022.
(v) <i>Bulk, massing and modulation of buildings.</i>	The proposed development is generally consistent with recommended building envelopes set out in the Lane Cove DCP, notwithstanding the bonus height and floorspace allowed under the Housing SEPP. This is discussed and justified throughout Section 5.0 and is considered appropriate for the site.
(vi) <i>Street frontage heights,</i>	The proposed development adopts a street frontage height of 2 storeys for Building 1 and a street frontage height of 4-5 storeys on Building 2 and 4, which comply with the DCP factoring in the allowance of part storeys on a significantly sloping site.
(vii) <i>Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	The proposal achieves a high level of sustainability and does not result in unreasonable reflectivity, overshadowing, acoustic or wind impacts. Further discussion regarding these matters is provided in technical assessments accompanying the SEE as approved, appended to this report, and throughout Section 5.0 .
(viii) <i>The achievement of the principles of ecologically sustainable development,</i>	The proposal will implement several ESD initiatives, consistent with those approved under DA79/2022.
(ix) <i>Pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	No changes are proposed to the approved access and circulation requirements as part of this modification. The proposed development will improve the pedestrian network with the widening of surrounding footpaths and introduction of the through-site link between Holdsworth Avenue and the green spine. The proposed vehicular and service access has been designed to ensure it will seamlessly integrate into the existing traffic network.
(x) <i>The impact on, and any proposed improvements to, the public domain,</i>	The proposed development will result in improvements to the public domain by providing a permeable street network and a public pocket park at the northern gateway of the precinct.
(xi) <i>The configuration and design of publicly accessible spaces and private spaces on the site.</i>	The proposed development has successfully integrated public recreation areas and the communal spaces across the development. They have been located and designed carefully with regard to safety and accessibility.

5.2.3 Visual Impact

Under clause 7.6(4) of the Lane Cove LEP 2009, impact to view corridors is a matter for consideration when determining whether a development exhibits design excellence. We note that assessment of the approved development undertaken by Council found that there were no detrimental impacts to view corridors.

The purpose of this part of the SEE is to identify and determine the acceptability of the proposal's likely view and visual impact. Specifically, this focuses on the proposed addition to the approved development under the Housing SEPP.

View analysis

Consideration of the site's context suggests that the proposal will have the greatest view impact on the existing apartment tower located at 1 Marshall Avenue, St Leonards (Embassy Tower). The Embassy Tower is demonstrated in **Figure 8** and **Figure 9** below.



Figure 8 Embassy Tower as seen from the North-East

Source: REA Group Ltd



Figure 9 Embassy Tower as seen from the south

Source: Sydney Building Management & Projects

View impact assessment

Based on considering a section view of the proposed addition to the approved development relative to Embassy Tower (as shown in the Figure below), it was determined that views from south-facing apartments at RL 134 metres and above (Level 21 to 30) within Embassy Tower would likely be most affected.

To provide an indication of potential view impact, Rothelowman prepared three simulated views from Embassy Tower toward the proposed development (as shown in **Figure 11** and **Figure 12** below). The view selected to be assessed was based on its location on the façade and the orientation towards the harbour and the development site. The simulated view from Embassy Tower is taken from approximately RL 134 metres to assess the part of the building that would likely be most affected (refer to the Figure below).

The viewpoints selected to be simulated for this assessment was based on its location on the façade and the orientation towards the harbour and the development site. The simulated views from Embassy Tower are taken from approximately RL 134 metres to assess the part of the building that would likely be most affected (refer to **Figure 10** below).

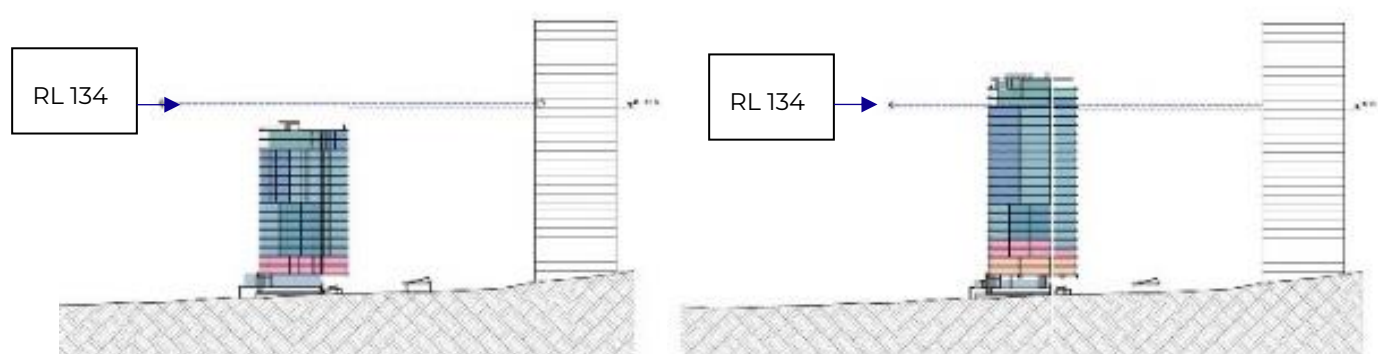


Figure 10 Section view of approved development (left), proposed development (right) and Embassy Tower

Source: Rothelowman

It is a long-established planning principle in Australia that no one has the right to a view from their property.

However, views are often highly valued by residents. In response to this, the NSW Land and Environment Court (LEC) has developed guidance for consideration of view loss from private property through its planning principle established in *Tenacity Consulting v Waringah* [2004] NSWLEC 140 (Tenacity). It is noted that Tenacity related to view loss from a residential property in a suburban context.

Tenacity establishes a chain of reasoning comprising four (4) steps:

- step 1: assessment of views to be affected
- step 2: consider from what part of the property the views are obtained
- step 3: assess the extent of the impact
- step 4: assess the reasonableness of the proposal that is causing the impact.

Assessment of reasonableness is key to Roseth SC's judgement and involves consideration of compliance with planning controls and the use of skilful design to achieve a balance between the interests of both the developer and the affected party:

'The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.'

As can be seen, while views may have considerable value, the scope of assessment in NSW is limited to the parameters outlined in Tenacity.

Informed by the simulated views and complemented by review of publicly available imagery from internal apartments, Ethos Urban has undertaken an assessment of this potential view impact in accordance with the planning principle for views established by the Land and Environment Court of NSW in Tenacity.

As is recognised by other consent authorities, the ability to shape massing to reduce view impact is more challenged in a more urban setting such as this. Therefore, Tenacity should be used as a guide and applied flexibly in these contexts.

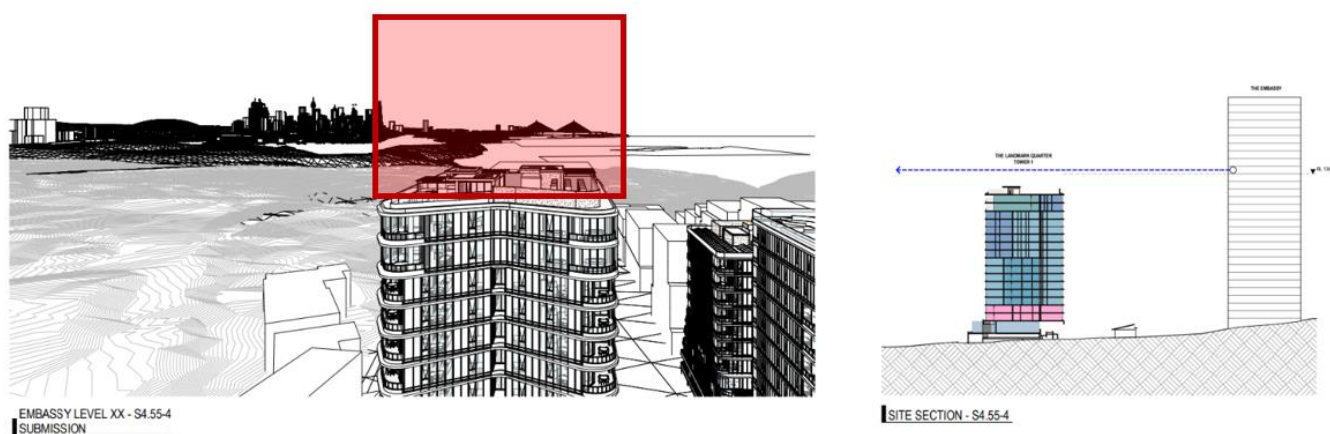


Figure 11 *Simulated existing view– South direction (extent of proposed addition marked in red box)*

Source: Rothelowman

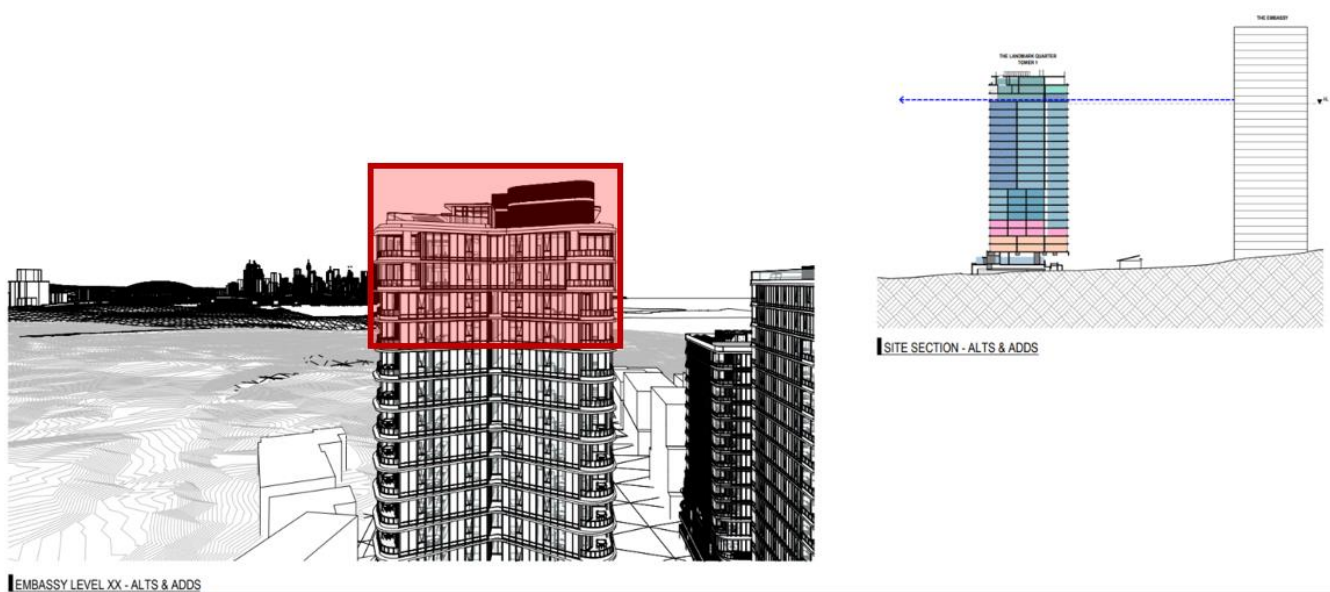


Figure 12 *Simulated proposed view – South direction (extent of proposed addition marked in red box)*

Source: Rothelowman

Tenacity step 1: assess views to be affected

View 1 – Lower levels - south direction

As shown below, the existing view from the lower levels of the Embassy Tower (Level 2) toward the south comprises a mix of established vegetation in the foreground, with a proportion of sky visible in the view.

It is noted that the approved development on the site is anticipated to obscure the view to sky, given the relatively low level this view is taken from (Level 2 of the Embassy Tower).

The resulting objective value assessment of the view is identified as **low**.



0 1 2 3 4 5
All information contained in this document is from sources we believe to be accurate, however we cannot guarantee its accuracy. Interested persons should make their own enquiries as to the accuracy of the information, dimensions, layout, furniture and descriptions.

Figure 13 View –Embassy Tower Level 2 South direction with indicative floor plan (view location and direction indicated with red arrow)

Source: Domain

View 2 – Mid- levels - south direction

The figure below shows the view obtained from Level 11 of the Embassy Tower in the South direction.

Most of the view, including that in the short to mid-range, is of an urban setting comprising a mix of buildings set within established green space.

Parts of the North Sydney and Sydney CBD skylines are visible in the background above and behind this urban setting.

As noted previously, the approved development on the site is anticipated to largely obscure this view, in particular, the extent of the Sydney CBD skyline.

The resulting objective value assessment of the view is identified as **high**. However, the view from this apartment is likely to be obscured by the buildings approved under DA79/2022.

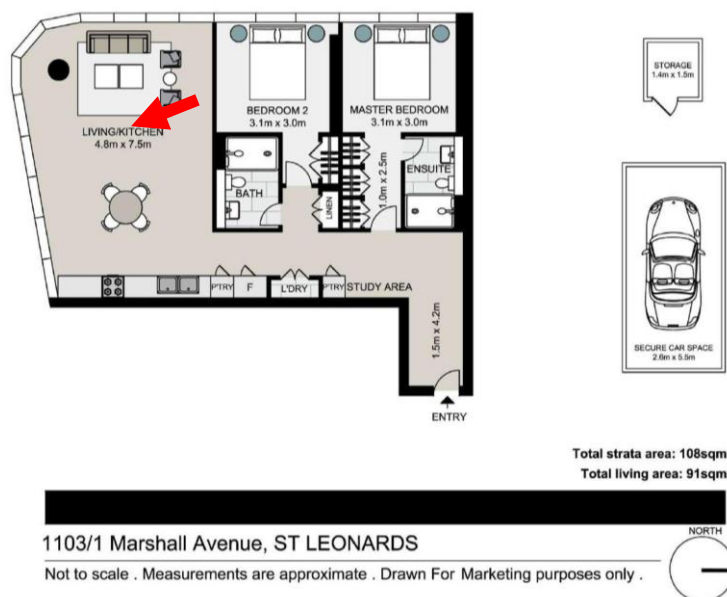
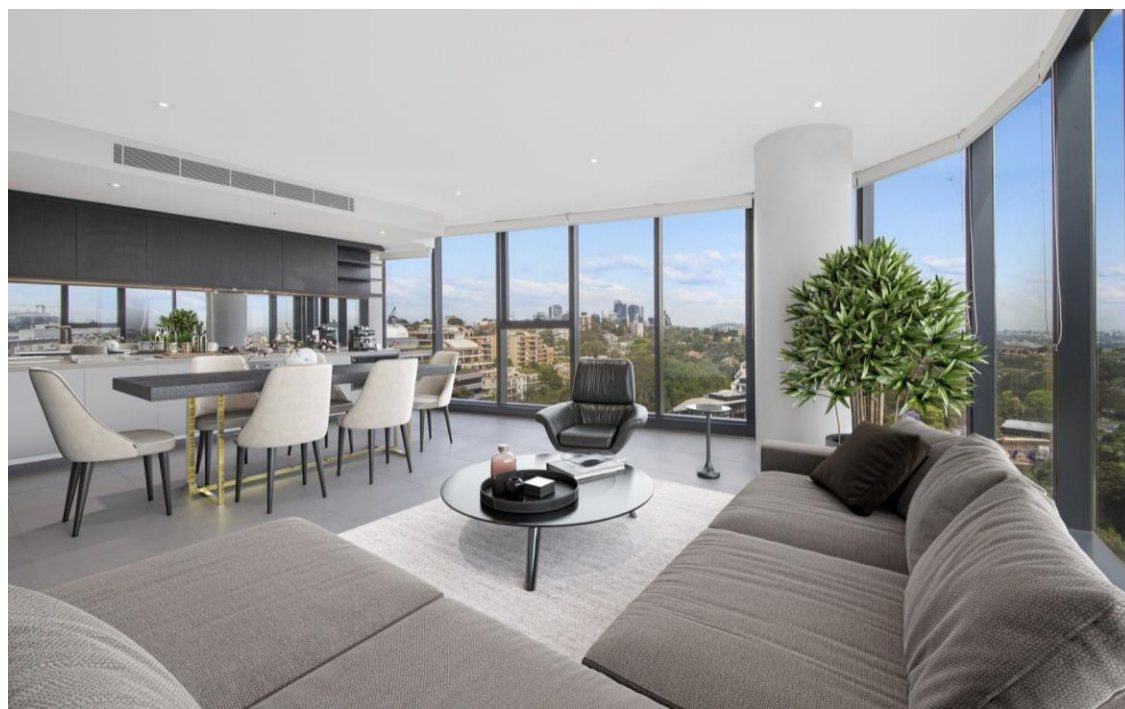


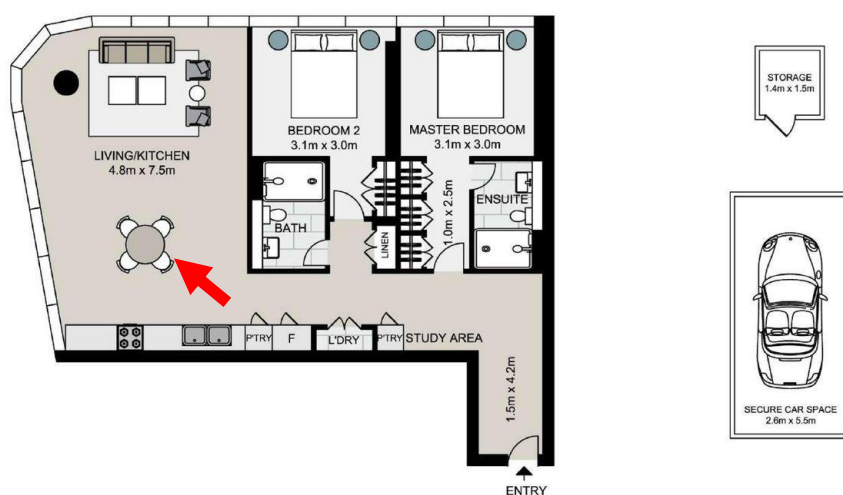
Figure 14 View –Embassy Tower Level 11 South direction with indicative floor plan (view location and direction indicated with red arrow)

Source: Domain



Figure 15 View –Embassy Tower Level 11 South-west direction

Source: REA Group Ltd



Total strata area: 108sqm
Total living area: 91sqm

1103/1 Marshall Avenue, ST LEONARDS

Not to scale . Measurements are approximate . Drawn For Marketing purposes only .



Figure 16 View –Embassy Tower Level 11 South-west direction with indicative floor plan (view location and direction indicated with red arrow)

Source: Domain

View 3 – Upper- levels – south-east direction

The figure below shows the view obtained from Level 26 of the Embassy Tower to the south.

A large part of the view, including that in the short to mid-range, is of an urban setting comprising a mix of buildings set within established green space.

Parts of the North Sydney CBD skyline, the Sydney CBD skyline and areas southern and west of the Sydney CBD are visible in the background above and behind this urban setting. Part of Sydney Harbour is visible.

A substantial proportion of sky is visible in the view.

The resulting objective value assessment of the view is identified as **high**. However, the view from this apartment is likely to be obscured by the buildings approved under DA79/2022.



Figure 17 View –Embassy Tower Level 26 South direction with indicative floor plan

Source: Obsidian

View 4 – Upper- levels – south direction

The figure below shows the view obtained from Level 26 of the Embassy Tower in the south direction.

A large part of the view, including that in the short to mid-range, is of an urban setting comprising a mix of buildings set within established green space.

Parts of the Sydney CBD skyline and areas southern and west of the Sydney CBD are visible in the background above and behind this urban setting. Part of Sydney Harbour is visible.

A substantial proportion of sky is visible in the view.

The resulting objective value assessment of the view is identified as **high**. However, the view from this apartment is likely to be obscured by the buildings approved under DA79/2022.



Figure 18 View –Embassy Tower Level 26 South direction

Source: Obsidian

Tenacity step 2: consider from what part of the property the views are obtained

As noted above, the images represent views obtained at low, mid and upper levels within apartment living spaces, alongside the southern façade of the Embassy Tower.

South facing apartments within Embassy Tower face toward the proposed development, with distant views to the Sydney CBD skyline and Sydney Harbour. As shown above, views are obtained from glazed balconies and internally through glass windows. Due to the floor-to-ceiling windows, subject to the positioning of furniture the view may be experienced from both sitting and standing positions internally.

It is noted that the views illustrated do not represent the full extent of viewing possible from affected apartments, but rather the view towards highest value features. Residents would also experience views to either side of the illustrated view, depending on the angle of viewing.

Tenacity step 3: assess the extent of the impact

View 1 – Lower Level (Level 2) - south direction

- **Approved development:** With consideration of the approved development, views would be dominated by vegetation in the foreground with the approved building form in the background.
- **Proposed addition:** The proposed development within the extent of this view would largely remain unchanged from the approved development with primarily vegetation in the foreground with the approved building form in the background.
- **Approved compared with proposed:** Given the minimal extent of change at the view, the impact to this view is considered negligible.
- **Qualitatively:** The proposal would largely retain views that would be available with the construction of the approved development and is therefore assessed as negligible.

View 2 – Mid Level (Level 11) - south direction

- **Approved development:** With consideration of the approved development from this view, it is highly likely the extent views to the Sydney CBD skyline would be removed by the approved development. The iconic view to the upper portion of Sydney Harbour Bridge and North Sydney CBD will remain uninterrupted.
- **Proposed addition:** Given the increase to building heights of the proposal, less sky is likely to be visible from this view. The iconic and high value view to the upper portion of Sydney Harbour Bridge and North Sydney CBD will remain in view.
- **Approved compared with proposed:** Given the increase to building heights of the proposal, impacts to the extent of sky visible from this view are likely to occur.
- **Qualitatively:** The proposal would largely retain distant views to the south-east, including to North Sydney CBD skyline and the upper portion of Sydney Harbour Bridge. However, a reduction to the extent of sky visible will likely occur and is therefore assessed as minor.

View 3 – Upper Level (Level 26) – south-east direction

- **Approved development:** Consideration of the approved development model indicates views to the lower foreground toward existing buildings and landscape are likely to be partially impacted. Middle to long distance views in this direction toward the iconic view to the upper portion of Sydney Harbour Bridge and high value views to North Sydney and Sydney CBDs will remain uninterrupted. Views to the horizon, water views of Sydney Harbour River and sky would largely remain uninterrupted.
- **Proposed addition:** Consideration of the proposed addition would indicate lower foreground views to surrounding buildings and landscape would be interrupted by the approved development. Distant water views and views to the upper portion of the Sydney Harbour Bridge, Sydney CBD skyline and the horizon will be largely uninterrupted. Uninterrupted view of sky will remain visible.
- **Approved compared with proposed:** There is likely to be an increase in view loss when comparing the proposed development with the approved development – with a greater extent of the close views to surrounding buildings and landscape being interrupted, and potential partial interruption of views of Sydney CBD.
- **Qualitatively:** The proposal would largely retain distant views Sydney CBD skyline and the upper portion of Sydney Harbour Bridge. The proposal will interrupt close views to surrounding buildings and landscape and is therefore assessed as minor.

View 4 – Upper Level (Level 26) - south-west direction

- **Model of approved development:** Consideration of the approved development model indicates views to the lower foreground toward existing buildings and landscape are likely to be partially impacted. Middle to long distance views in this direction toward the iconic view to the upper portion of Sydney Harbour Bridge and high value views to Sydney CBD will remain uninterrupted. Views to the horizon, water views of Sydney Harbour, Parramatta River and sky would largely remain uninterrupted.
- **Proposed addition:** Consideration of the proposed addition would indicate lower foreground views to surrounding buildings and landscape would be interrupted by the approved development. Distant water views to Sydney Harbour and Parramatta River may be partially interrupted, but largely remains visible to the south-west of the proposed development. Views to the sky will remain visible and uninterrupted by the proposed addition.

- **Approved compared with proposed:** There is likely to be an increase in view loss when comparing the proposed development with the approved development – with a greater extent of the close views to surrounding buildings and landscape being interrupted, and potential partial interruption of water views.
- **Qualitatively:** Despite the likely partial interruption to close views to landscape and the Sydney Harbour, the proposal would largely retain distant water views to Sydney Harbour and Parramatta River, the horizon and sky and is therefore assessed as moderate.

Summary of extent of the impact

An overview of the extent of the impact to the three selected views is provided below.

Table 10 Summary of impact

• View	• Value assessment of views to be affected	• Qualitative assessment of extent of impact
1 – Lower level (Level 2)- South direction	Low value – Moderate value – High Value	Negligible – Minor – Moderate – Severe - Devastating
2 – Mid level (Level 11) - South direction	Low value – Moderate value – High Value	Negligible – Minor – Moderate – Severe - Devastating
3 – Upper level (Level 26) – South-east direction	Low value – Moderate value – High Value	Negligible – Minor – Moderate – Severe - Devastating
4 – Upper level (Level 26) – South direction	Low value – Moderate value – High Value	Negligible – Minor – Moderate – Severe - Devastating

Tenacity step 4: assess the reasonableness of the proposal that is causing the impact

Under Tenacity, Step 4 involves assessment of the reasonableness of the proposal that is causing the impact. Reasonableness can be a highly subjective concept involving professional value judgements. Subjectivity can be reduced by reference to the planning framework in totality, including strategic plans and statutory plans. It is also helpful to consider a range of other relevant matters such as context and previous, similar planning decisions.

Changing urban landscape of St Leonards South

The St Leonards South Precinct has recently been rezoned to accommodate significantly higher densities and taller building forms, including heights between 25 metres to 65 metres. Due to the relatively short timeframe since the commencement of the revised planning controls of the St Leonards South rezoning, the maximum building heights under the Lane Cove LEP 2009 have yet to be completely realised.

Given the above, the current urban landscape in St Leonards South is set to change over time as development in the South Leonard South Precinct progresses. With consideration of the changing scale of density and built form anticipated in this area, it can be inferred that view loss arising from development at the site is not a significant concern in the context of accommodating additional density at well-located sites near transport nodes – such as the St Leonards Station.

Application of the in-fill affordable housing bonus of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

The proposed addition to the approved development at the site is compliant with the infill affordable housing bonus provisions of the Housing SEPP, which allows for up 30% additional height and FSR, where affordable housing (up to 15%) is provided. Given its compliance with the provisions of the Housing SEPP, the extent of view impact presented under Tenacity step 3 above is considered to be reasonable and acceptable.

Further, given this recent policy of the Housing SEPP is available to the site's surrounds, it is reasonable to anticipate other development sites within the St Leonards South Precinct that may seek to utilise the infill affordable housing bonus provisions of the Housing SEPP. It can be inferred that through this access to Housing SEPP bonus, view loss arising from the proposed addition at the site is not a significant concern in the context of accommodating additional density where affordable housing is provided.

Skilful design

Tenacity also prompts the question whether a more skilful design would result in a lesser view impact and achieve the same development potential and amenity.

The proposal has a layout that is consistent with the site layout of the approved development. The design process of the approved development was subject to a comprehensive, detailed, and lengthy design process, in line with best design practice. Notably, the form and layout of taller building elements of the approved development, in respect of proposed buildings on Areas 1, 2 and 4 are arranged to remain consistent with the maximum building heights of the LEP, which seek to arrange taller building heights toward Marshal Avenue.

The proposed addition seeks to retain the design layout of the original approved development and obtain additional floor space through the extrusion of building height of the approved building forms up to an additional 5 storeys. Based on the Tenacity assessment undertaken through steps 1-3 above, the assessment concludes that for the views impacted, the impacts range from low-moderate, with no severe or devastating view loss resulting from the proposed addition. This level of view impact is considered to be a reasonable where the proposed remains compliant with the relevant planning controls.

View corridors

Under clause 7.6(4) of the Lane Cove LEP 2009, impact to view corridors is a matter for consideration when determining whether a development exhibits design excellence.

Part B.4 of the Lane Cove DCP outlines objectives and provisions to:

- To minimise the impact of new development on existing public and private views and vistas.
- To preserve or fairly share water views for foreshore residents.

Based on the review of the Lane Cove LEP 2009 and Lane Cove DCP, there are no identified view corridors to, from or through the site, nor the broader St Leonards South Precinct. As such, it is considered that the proposed addition will not have an impact to any identified public view corridors under the existing planning framework.

With regard to view sharing, this assessment has demonstrated that the level of view impact from the proposed addition would be reasonable under the test of Tenacity.

Compatibility with context

As noted previously, the St Leonards South Precinct has recently been rezoned to accommodate significantly higher densities and taller building forms, including heights between 25 metres to 65 metres. Furthermore, recent changes to the infill affordable housing bonus provisions of the Housing SEPP, commenced in 2023, allowing additional floor space and height where affordable housing is proposed to be delivered.

Due to the relatively short timeframe since the commencement of these planning reforms, the context setting of the site and St Leonard South is expected to change as the scale of density and building heights under these reforms are realised. With consideration of the changing scale of density and built form anticipated in this area, it can be inferred that the proposed addition will be compatible with its future context.

Height, bulk and scale

The proposed addition seeks to extrude the building heights of the approved development to utilise the available infill affordable housing bonus of the Housing SEPP. Importantly, the proposed addition retains the site layout and the height and density approach of the approved development, with taller building forms being focused toward Marshall Avenue. This aims to retain the intent of the planning controls of the Lane Cove LEP and DCP by:

- retaining the approved building floor plate sizes and building separation distances to maintain views and vistas between buildings
- providing increased building separation distance to deliver green north-south spines between buildings
- delivering building forms that remain compatible with the future character of the St Leonard South locality.

Conclusion

With respect to the view loss assessment:

- The view loss analysis has concluded that views from the Embassy Tower will experience either negligible to moderate qualitative extent of view loss.
- Some apartments have high value views, which include distant viewing of the North Sydney CBD and Sydney CBD skyline, the upper portion of Sydney Harbour Bridge and water views.
- The proposed addition will result in a partial loss of some apartment's distant viewing of the Sydney CBD skyline and water views. An assessment of these impacts in the context of Tenacity yields a moderate view loss impact, due to addition only partially obstructing these high value views when compared to the approved development.
- The proposed addition is compliant with the maximum building height and FSR of the site, with consideration of the Lane Cove LEP 2009 and the infill affordable housing bonus provisions of the Housing SEPP. Despite the moderate impact to some high value views, this extent of impact is considered to be reasonable given the proposal compliance with the relevant planning controls.
- The density and urban forms in St Leonards South Precinct is anticipated to change as it continues to accommodate significantly higher densities and taller built forms that are allowable under the LEP. As noted, the proposed addition is compliant with the relevant provisions of the LEP and the Housing SEPP and is therefore considered to be commensurate with Council's and the State's long-term vision for the site, with regard to density and height.
- Tenacity does not provide that anyone has a proprietary right to retain all, or part of the views enjoyed from their land. The Court specifically acknowledges that partial loss of a view in some cases (although a moderate view loss) can be reasonable and acceptable if it is a complying development.
- Given the current planning controls that apply to the site, as well as the increasingly urbanised built form of the St Leonards South, the partial retention of views where practical demonstrates the principle of "view sharing".

Taking into consideration the project in its totality and assessment of existing views from private apartments from the Embassy Tower, the addition proposed is reasonable in terms of view loss. On this basis, it is the conclusion of this view loss assessment that the extent of view loss is insufficient in its own right to warrant redesign or refusal of the proposal on merit grounds.

5.2.4 Overshadowing

Rothelowman have prepared mid-winter shadow analysis and solar eye views that illustrate the shadows generated by the proposal and surrounding development. The analysis models the St Leonards South area using the building envelopes permissible under Part 7 of the Lane Cove LEP and the provisions of the St Leonards South Development Control Plan. The model includes the current alterations and additions envelope for Area 5 (DA33/2024) and the approved envelope for Areas 7-11.

While the analysis models the Lane Cove LEP and DCP envelopes, it is reasonable to be cognisant of the additional height that each site can obtain under the Housing SEPP when assessing the impact. The incentive provisions of the Housing SEPP apply to the entire St Leonards South area and therefore all the building envelopes permissible under the Lane Cove LEP are permitted to increase in height by up to 30%.

The planning controls envisage a high density built form environment in response to the NSW Government's objective to deliver more homes in accessible locations. In this context, the building heights as proposed allow for reasonable solar access to existing buildings and public areas. Notwithstanding, the provision of additional density to facilitate affordable housing in accordance with the provisions of the Housing SEPP will generate unavoidable overshadowing.

The Rothelowman analysis (refer to **Appendix C**) demonstrates that the additional height proposed on buildings 1, 2 and 4 will impact building 3, building 5, building 6, building 12, building 14 in the St Leonards South area, and 4-6 Duntroon Avenue. The impact is summarised as follows:

- Building 3 LEP/DCP envelope:
 - The northern façade will receive direct solar between 1pm – 2.15pm.
 - The western façade will receive direct solar between 12.15pm – 3pm.
 - The rooftop will receive direct solar between 12pm – 3pm.

It is anticipated that any future building 3 development would utilise the Housing SEPP incentives which would enable a future building up to a height of 68.9m (+5 storeys) which would increase the percentage of future apartments that receive direct solar access. The degree of impact generated by the proposal to a building 3 envelope that utilises the incentive provisions of the Housing SEPP is consistent with the degree of impact that was generated by the built form approved under DA79/2022 to the building 3 LEP/DCP envelope and is acceptable.

- Building 5 – 13-19 Canberra Avenue: The approved Building 5 development (DA162/2021) accommodates apartments that are oriented east-west to Canberra Avenue and the future green spine. The upper-level apartments with openings on the northern and western façade of Building 5 will receive direct solar access from 12pm-3pm, and solar panel roof areas will receive direct solar access from 12pm onwards.

An alterations and additions DA for Building 5 utilising the incentive provisions of the Housing SEPP is currently under assessment at Lane Cove Council (DA33/2024). The DA proposes five additional residential storeys up to a height of 57.2m. The additional storeys will receive direct solar access to apartments with openings to the northern and western facades from approximately 1pm onwards.

Rothelowman have undertaken an assessment of the impact of the proposal on the 72 units identified in the DA33/2024 that are identified as achieving 2 hours solar access in mid-winter. The assessment concludes that the proposal will maintain 2 hours solar access to a minimum of 52 apartments in building 5 which is acceptable within the context established by the planning controls.

The degree of impact generated by the proposal to the building 5 envelope under assessment is consistent with the degree of impact that was generated by the built form approved under DA79/2022 to the building 5 LEP/DCP envelope and is acceptable.

- Building 6 LEP/DCP envelope:
 - The northern façade will receive direct solar access from 12pm onwards.
 - The eastern façade will receive direct solar access between 10.45am and 11am.
 - The western facade will receive direct solar access from 11.45 onwards.

It is anticipated that any future building 6 development would utilise the Housing SEPP incentives which would enable a future building up to a height of 57.2m (+4 storeys) which would increase the percentage of future apartments that receive direct solar access. The degree of impact generated by the proposal to a building 6 envelope that utilises the incentive provisions of the Housing SEPP is consistent with the degree of impact that was generated by the built form approved under DA79/2022 to the building 6 LEP/DCP envelope and is acceptable.

- Building 12 & 14 LEP/DCP envelopes: The proposal generates some unavoidable additional overshadowing to the eastern facades of buildings 12 and 14 between 9am and 10.30am.

It is noted that an SSDA Scoping Report has been submitted for building 14 to utilise the incentive provisions of the Housing SEPP which will increase the maximum height up to 48.1m (+4 storeys). It is anticipated that any future building 12 development application would utilise the Housing SEPP FSR and height incentives which would enable a future building up to a height of 57.2m (+4 storeys). The increased building height will increase the percentage of future apartments that receive direct solar access and the degree of impact generated by the proposal to building 12 and 14 envelopes that utilise the incentive provisions of the Housing SEPP will be consistent with the degree of impact that was generated by the built form approved under DA79/2022 to the LEP/DCP envelopes and is acceptable.

- 4-6 Duntroon Avenue: the additional height will generate minor additional overshadowing to the northern and western façade between 1pm and 2pm. Rothelowman confirm that 4-6 Duntroon Avenue achieves 2 hours solar access before 1pm. The impact is reasonable on balance as the proposal will deliver new affordable dwellings in a highly accessible location.
- Newlands Park: The additional height will have a minor shadow impact on Newlands Park between 1pm and 2pm in mid-winter. The Park will still 5 hours solar access between 9am and 2pm to more than 50% of the area in mid-winter in accordance with the requirements of the Lane Cove DCP.

The shadow analysis prepared by Rothelowman demonstrates that the impacts of the additional height on the surrounding area will be reasonable in the context of a high density precinct that is designed to maximise proximity to public transport and services.

5.3 Residential Amenity

The proposed development has been designed to provide all dwellings with high quality internal amenity and outlook, commensurate with the premium location and product proposed. As outlined in the Design Verification Statement provided at **Appendix C**, the proposal has been designed in accordance with the nine principles of the Apartment Design Guide (ADG), as enforced by Schedule 9 of the Housing SEPP.

An assessment of the proposal's consistency with the key ADG controls is summarised in **Table 11** below:

Table 11 Compliance with the ADG

Component	Required Amount	Proposed	Compliance
Communal space provided within the development	25% of the effective site area = 1356.9m ²	3,134.9m ²	✓
Communal open space with 2hrs of sunlight	50% of the required communal open space = 678.5m ²	589.87m ²	Further detail provided in Section 5.3.2
Solar Access	70%	60%	Further detail provided in Section 5.3.1
No solar access	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3 pm at mid-winter	<1%	✓
Cross Ventilation	60%	68.5%	✓
Deep Soil	7%	24.4%	✓
Apartment size and layout	1 bedroom = 50m ² 2 bedroom = 70m ² 3 bedroom = 90m ²	Compliant with the minimum required area for all dwellings	✓

5.3.1 Solar Access

The proposed development achieves 2 hours solar access for 60% of the dwellings and a minimum of 1 hour and 45 minutes for over 70% of apartments between 9.00am and 3.00pm in mid-winter. The site constraints, including the significant overshadowing from the buildings to the north, the steep slope of the land, and the south facing district views must be taken into consideration when assessing solar access and wider ADG compliance.

The surrounding context of the St Leonards South Precinct being characterised by high density residential development presents challenges to achieving the level of solar access required by the ADG. However, the proposed development presents a high level of solar access through an alternative measure, as less than 1% of dwellings achieve no solar access, which is an improvement from the approved development.

5.3.2 Communal Open Space

The residential uplift to deliver dwellings in accordance with the Housing SEPP has required amendments to the rooftop mechanical plant. The rooftop communal open space on Building 2 rooftop has reduced to accommodate the required plant. This has resulted in a reduction in the amount of communal open space receiving 2hrs of sunlight in mid-winter as noted in **Table 11** above. Additionally, it is noted that Council have requested that the alignment of the fence between the public park and communal open space at ground is amended to meet the objectives of useable open space and to allow for maintenance. This has resulted in a change to the amount of space within the Green Spine that receives 2hrs of solar access, which is now 307.77m² in comparison to the approved 425.0m². Notwithstanding, the total amount of public open space being 1,300m² remains unchanged, and the proposed amount of communal open space proposed is significantly more than the ADG requirement and will provide residents with enjoyable high quality spaces throughout the year.

5.4 Other Impacts

An assessment of the other impacts of the development have been undertaken by the relevant specialist consultants and appended to this SEE as set out in **Table 12** below.

Table 12 *Summary of other technical assessments*

Consideration	Consultant	Summary	Reference
Acoustic	Renzo Tonin and Associates	<p>The Acoustic Letter provided by Renzo Tonin and Associates assesses the modified development against the relevant statutory provisions. Their review finds that as the modified development is substantially the same as the approved, no further mitigation is required in the following aspects:</p> <ul style="list-style-type: none"> • The amendments to the building design will not impact on the predicted road and rail traffic noise levels at the site, • The location of the mechanical plants remains on the roof, similar to the approved DA and therefore no further assessment is required at this stage, and • The overall traffic noise generation from the development is expected to comply with requirements of the NSW Road Noise Policy. <p>Notwithstanding, this modification proposes additional amenities such as the rooftop yoga, the basement golf room and music room. The golf and music rooms are strategically located in Basement 1 and therefore no additional noise impacts will be perceived.</p>	Appendix O
Reflectivity	CPP	A Solar Reflectivity Assessment has been conducted by CPP, who have determined that the modified development generates no additional impacts in regard to the potential for sunlight to reflect from exterior facade surfaces and generate solar disability glare.	Appendix S
Stormwater	Xavier Knight	<p>Updated Civil Engineering Plans and an accompanying Design Certificate have been provided for this application to ensure that the stormwater systems are designed in accordance with the relevant statutory provisions. Specifically, the Design Certificate confirms that the development complies with the standards listed in the following:</p> <ul style="list-style-type: none"> • Australian Rainfall & Runoff (ARR 2019) • Stormwater Drainage: AS/NZS 3500.3-2021 • Lane Cove DCP Part O – Stormwater Management 	Appendix Q Appendix R
Structural Design	Cadigal Group	A Structural Design Statement has been provided to confirm that the approved development can be designed to accommodate the uplift proposed in this modification and the additional basement amendments proposed in Modification 5. As such, a future modification application will be submitted to detail such design amendments to structurally afford the residential uplift proposed.	Appendix T
Wind Impact	CPP	<p>A Qualitative Wind Assessment has been prepared by CPP to assess the impacts of the additional height of the proposed development on the flow of wind around the development. Ultimately, the assessment states that as the general shape of the towers has not changed, the mechanisms leading to accelerated flow around the development remain largely the same.</p> <p>However, the additional height is expected to generate some additional downwash off the tower façade which will lead to an increase in accelerated flow at ground level. The assessment states that this increased flow will not generate substantial impacts and will not be significantly noticeable in comparison to the wind impacts of the approved development.</p>	Appendix U
Waste Management	Elephants Foot	Updated versions of both the Operational Waste Management Plan and the Construction and Demolition Waste Management Plan have been prepared for this application. Due to the proposed residential uplift and additional height of the development, the total amount of projected waste volumes has increased, which has necessitated revisions in both Waste Management Plans. However, no additional impacts to the waste mechanisms are anticipated, subject to the	Appendix L Appendix K

Consideration	Consultant	Summary	Reference
		implementation of the appropriate mitigation measures proposed in both reports.	
Accessibility	Accessible Building Solutions	A Statement of Compliance has been prepared by Accessible Building Solutions to confirm that the proposed development as modified still maintains the capacity to comply with the relevant provisions around accessibility for people with a disability in the BCA, Access to Premises Standard and the Housing SEPP.	Appendix N
BCA	Certified Building Specialists	A National Construction Code Compliance Assessment Report has been prepared by Certified Building Specialists, outlining the specific departures from the Deemed to Satisfy provisions of the NCC. The Assessment states that all departures may be addressed via obtaining fire engineering Performance Solutions at a later stage. Subject to this, the proposed design is capable of achieving compliance with the applicable codes and standards of the BCA or NCC.	Appendix W
Traffic	CJP Consulting Engineers	A Traffic and Parking Assessment has been prepared by CJP Consulting Engineers to assess the capacity and impacts of the proposed development on the surrounding road network, the nearby public transport options and available active transport solutions. Additionally, the assessment notes that the development complies with the relevant requirements of the AS2890 series.	Appendix M
BASIX	Integrated Group Services	A BASIX Assessment Report and individual BASIX certificates for each building have been prepared. The documents all conclude that the thermal performance of the development will comply with the BASIX thermal comfort requirements.	Appendix G Appendix H Appendix J Appendix I

5.5 Reasons given for Granting Consent

In accordance with Section 4.55(3) of the EP&A Act, the consent authority is required to take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified. The Sydney North Planning Panel listed several reasons for their approval of the development, including the merit of the proposal in demonstrating consistency with:

- The objectives of the R4 High Density Residential Zone by providing a diverse mix of new dwellings for a growing population,
- The community interest as the proposal had undergone extensive consultation with Council, the Design Review Panel and the public, and
- The supporting planning scheme and the desired future character of the area, including the objectives set for the St Leonards South Precinct.

The development as proposed to be modified remains substantially the same as the approved development. The assessment provided demonstrates that the development as proposed to be modified retains the planning merits identified by the Sydney North Planning Panel as the reasons given for granting consent.

5.6 Suitability of the site for the development

The site is suitable for the proposed development for the following reasons:

- It is zoned R4 High Density Residential, and the proposed use is consistent with the permissible uses and the objectives of this zone as well as the specific St Leonards South Precinct objectives.
- The site can appropriately accommodate the proposed development while balancing environmental considerations and preserving the amenity of the neighbouring properties.
- The site is located within a rapidly evolving and strategic location, and the proposed development will result in improved pedestrian environment, providing additional connections in and around the block.
- The proposed development responds to the existing and future character of the area, through providing architectural elements that ensure an appropriate transition between the commercial land uses to the north and the residential uses to the south.

5.7 Public Interest

The proposed development is in the public interest for the following reasons:

- The urban context of St Leonards South will be significantly improved, contributing to its overall vitality and activation.
- It will result in the delivery of a range of dwelling typologies to cater for the growing population and changing demographic within the Lane Cove LGA and provide increased housing supply, including additional affordable housing dwellings.
- The proposal will contribute to the St Leonards open space network by providing a well-designed and landscaped pocket park at the northern gateway of the precinct.
- It will redevelop an underutilised site to provide a much better outcome that is consistent with the vision and direction of St Leonards South;
- The proposal has been architecturally design at a high-quality standard and will demonstrate design excellence, as well as incorporate high sustainability benchmarks.
- The proposal will redevelop an underutilised site to provide a much better outcome that is consistent with the vision and direction of St Leonards South.

6.0 Conclusion

The modification relates to a number of internal and external development changes to DA79/2022, most crucially the utilisation of the height and floorspace bonuses available under the Housing SEPP. The proposed changes will facilitate the delivery of 77 new dwellings, including 58 new infill affordable housing dwellings and contribute towards the statewide objective of providing affordable and well-located homes. The new infill affordable housing dwellings are in addition to and separate from the 28 key workers homes approved under DA79/2022.

In accordance with section 4.55(2) of the EP&A Act, the consent authority may modify the consent as the proposed modification is substantially the same development as development for which the consent was granted and has ameliorated any additional impacts to the necessary extent.

Additionally, the proposed modifications to the development should be approved for the following reasons:

- The provision of 77 additional dwellings, including 58 additional infill affordable housing units addresses the demand for housing in the St Leonards South Precinct, providing a diversity of dwelling types for a wide range of demographics.
- The development continues to provide high levels of residential amenity through the provision of various facilities including a gym, cinema areas, a generous network of recreational open spaces, and a swimming pool. Accordingly, the proposed modifications improve the amount of communal open space through the provision of a golf room and music room in Basement 1.
- The anticipated impacts of the proposed modifications are considered reasonable and are not detrimental to the overall objectives of the proposed development, specifically including the visual impacts and overshadowing impacts produced by the additional height increase.
- The proposed modifications to the development do not detract from the site suitability of the project, as it continues to demonstrate consistency with the R4 High Density Residential objectives and the existing and future character of the area.
- The proposed residential uplift does not negatively impact the demonstration of design excellence, specifically through the façade appearance, the continued high level of pedestrian connectivity at the ground plane and an extensive network of open spaces which complement the approved land use.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.