

Sydney North Planning Panel Meeting 02 April 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 1- 5
CANBERRA AVENUE ST LEONARDS

Item No:

Subject: S4.55(2) modification to approved residential flat buildings at 1- 5 Canberra Avenue St Leonards

Record No: DA22/79-01 - 1622/25

Division: Planning and Sustainability Division

Author(s): Christopher Shortt

Panel Reference	PPSSNH-574
DA No:	DA79/2022
Street Address:	1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue, St Leonards
Applicant/Owner:	Applicant: SLS Holdsworth Residences Pty Ltd. (New Hope Evergreen) Owner: SLS Holdsworth Residences Pty Ltd. (New Hope Evergreen)
Date Lodged:	18/12/24
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> • 14 • All submissions have been forwarded to the SNPP
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021)	<p>The affordable housing component of the development application has a capital investment value of over \$5 million, in accordance with Schedule 6, Clause 5 of the SEPP (Planning Systems) 2021.</p> <p>The CIV has been confirmed in the QS report for the subject s4.55(2) as being \$42,810,300 million.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments • SEPP (Housing) 2021 - Chapter 2, Division 1 In-fill affordable housing • SEPP (Resilience and Hazards) 2021 • SEPP (Biodiversity and Conservation) 2021 • SEPP (Transport and Infrastructure) 2021 • SEPP 65 – Design Quality of Residential Apartment Development; • SEPP (Building Sustainability Index) 2004; and • Lane Cove Local Environmental Plan 2009. • proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority - N/A • relevant development control plan • Lane Cove Development Control Plan 2009 • relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a

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	<p>developer has offered to enter into under section 7.4</p> <ul style="list-style-type: none">• Planning agreement that the developer had offered to enter into under Section 7.4 under the original development consent. The Applicant has already executed the VPA and the proposed development would have no impacts on the delivery of the VPA. A condition has been included to deal with the 7.11 contributions for the additional dwellings.• relevant regulations e.g. Regs 92, 93, 94, 94A, 288<ul style="list-style-type: none">- Nil• coastal zone management plan<ul style="list-style-type: none">- Nil• other relevant plans<ul style="list-style-type: none">• St Leonards South Section 7.11 Contributions Plan																																																																		
<p>List all documents submitted with this report for the Panel’s consideration</p>	<table><tr><th>Annex.</th><th>Document</th><th>Prepared By</th></tr><tr><td>1</td><td>Recommended conditions of consent</td><td>Lane Cove Council</td></tr><tr><td>2</td><td>ADG Assessment</td><td>Lane Cove Council</td></tr><tr><td>3</td><td>St Leonards South Strategic Planning Context</td><td>Lane Cove Council</td></tr><tr><td>4</td><td>Architectural Plans</td><td>Rothelowman</td></tr><tr><td>5</td><td>Landscaping Plan</td><td>Arcadia</td></tr><tr><td>6</td><td>Civil Plan</td><td>Xavier Knight</td></tr><tr><td>7</td><td>SEPP 65 Verification Statement</td><td>Rothelowman</td></tr><tr><td>8</td><td>s4.55(2) Modification Report</td><td>Ethos Urban</td></tr><tr><td>9</td><td>Statement of Changes</td><td>Rothelowman</td></tr><tr><td>10</td><td>Legal Advice – Modification Application</td><td>Mills Oakley</td></tr><tr><td>11</td><td>Traffic and Parking Assessment</td><td>CJP Consultant Engineers</td></tr><tr><td>12</td><td>Affordable Housing Letter of Support</td><td>Cubic Real Estate</td></tr><tr><td>13</td><td>BASIX Certificate</td><td>IGS</td></tr><tr><td>14</td><td>Acoustic Letter</td><td>Renzo Tonin & Associates</td></tr><tr><td>15</td><td>NCC Compliance Letter</td><td>Certified Building Specialists</td></tr><tr><td>16</td><td>Landscape Design Certificate</td><td>Arcadia</td></tr><tr><td>17</td><td>Structural Design Statement</td><td>Cadigal Group</td></tr><tr><td>18</td><td>QS Report</td><td>WT Partnership</td></tr><tr><td>19</td><td>Solar Reflectivity Statement</td><td>cpp</td></tr><tr><td>20</td><td>Operational Waste Management Plan</td><td>Elephants Foot</td></tr><tr><td>21</td><td>Urban Design Report</td><td>Rothelowman</td></tr></table>	Annex.	Document	Prepared By	1	Recommended conditions of consent	Lane Cove Council	2	ADG Assessment	Lane Cove Council	3	St Leonards South Strategic Planning Context	Lane Cove Council	4	Architectural Plans	Rothelowman	5	Landscaping Plan	Arcadia	6	Civil Plan	Xavier Knight	7	SEPP 65 Verification Statement	Rothelowman	8	s4.55(2) Modification Report	Ethos Urban	9	Statement of Changes	Rothelowman	10	Legal Advice – Modification Application	Mills Oakley	11	Traffic and Parking Assessment	CJP Consultant Engineers	12	Affordable Housing Letter of Support	Cubic Real Estate	13	BASIX Certificate	IGS	14	Acoustic Letter	Renzo Tonin & Associates	15	NCC Compliance Letter	Certified Building Specialists	16	Landscape Design Certificate	Arcadia	17	Structural Design Statement	Cadigal Group	18	QS Report	WT Partnership	19	Solar Reflectivity Statement	cpp	20	Operational Waste Management Plan	Elephants Foot	21	Urban Design Report	Rothelowman
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Clause 4.6 requests	No
Summary of key submissions	<ul style="list-style-type: none"> • Building Height • Amenity impacts • Traffic • Non-compliance with Master Plan/ DCP • Overshadowing of Newlands Park • View Loss
Report prepared by	Chris Shortt
Report date	2 April 2025

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes – condition imposed under original consent**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. EXECUTIVE SUMMARY

Precinct context

The subject development is located within the St Leonards South Precinct (the "Precinct"). The planning context is provided in **Annexure 3** for the benefit of the SNPP as it relates to the approved consent which the subject application seeks to modify.

Planning Context

The application has been lodged in accordance with Chapter 2 Affordable Housing, Division 1 In-fill affordable housing in the Housing SEPP 2021 (the Housing SEPP). The provision of affordable housing enables the applicant to benefit from bonus to the maximum building height (the "height") and a bonus to the Floor Space Ratio (the "FSR") development standards.

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The proposal seeks to benefit from a 30% bonus to the incentive height controls of 65m (Area 1), 53m (Area 2), and 44m (Area 4) which would achieve heights of 84.5m (Area 1), 68.9m (Area 2), and 57.2m (Area 4).

The proposal also seeks to benefit from a 30% bonus to the incentive FSR controls of 3.85:1 (Area 1), 3.55:1 (Area 2), and 3.55:1 (Area 4) which would achieve FSR's of 5:1 (Area 1), 4.6:1 (Area 2), and 4.6:1 (Area 4).

These bonuses are subject to satisfying the Housing SEPP Chapter 2 requirements including the non-discretionary standards, design requirements and the dedication of the affordable housing apartments to a registered community housing provider for at least 15 years. A condition has been recommended to ensure compliance with these requirements, refer to **Annexure 1** for the recommended conditions.

Proposal

The subject s4.55(2) modification application proposes alterations and additions to DA79/2022.

Approved: DA79/2022 obtained consent (as recently amended) 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, landscaping and public benefits such as public open space (1300sqm) and 28 affordable housing units (i.e. key worker housing) to be dedicated to Council in perpetuity.

Modification: The subject proposal primarily seeks consent for the construction of 5 additional levels to Area/Tower 1, 5 additional levels to Area/Tower 2, and 4.5 additional levels to Area/Tower 4 and would accommodate a total of **77 additional apartments (Total = 311 apartments)** across all three areas/towers (refer to proposal for full breakdown). This increase in density is achieved pursuant to bonuses as afforded by Chapter 2 of the Housing SEPP.

The proposal includes the dedication of **58 affordable housing apartments** in accordance with the Housing SEPP Chapter 2 requirements. These apartments would be located throughout both the approved levels under DA79/2022 and within the proposed additional levels. These apartments have been identified in **Tables 5A, 5B and 5C** later in this report.

The proposal also includes the addition of **9 parking spaces (Total = 325 vehicle spaces)** in accordance with the Housing SEPP Chapter 2 requirements.

Notification

The development application has been notified in accordance with Council policy and a total of **14** submissions were received. The concerns raised in these submissions have been addressed later in this report.

Applicable environmental planning instruments

The following environmental planning instruments are relevant and have been satisfied as discussed later in this report:

- SEPP (Housing) 2021 - Chapter 2 - Division 1 In-fill affordable housing
- SEPP (Housing) 2021 - Chapter 4 - Desing of residential apartment development
- SEPP (Resilience and Hazards) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Transport and Infrastructure) 2021; and,
- SEPP (Building Sustainability Index) 2004.

Section 4.15 Matters

The 4.15 matters for consideration (1)(a) – (1)(e) have been satisfied and addressed later in this report.

The development application has been assessed against the requirements of the Housing SEPP.

The Lane Cove LEP 2009 (the “LEP”) and the Lane Cove DCP 2009 (the “DCP”) and other related plans are overridden by the Housing SEPP requirements, in accordance with Section 8, Chapter 1 of the SEPP (Housing) 2021.

Reason for SNPP referral

- The affordable housing component of the development application is over \$5m in accordance with Schedule 6, Clause 5 of the Planning Systems SEPP 2021.

Conclusion

The proposed development satisfies the relevant requirement and is recommended to the Sydney North Planning Panel (SNPP) for determination.

2. HISTORIC STRATEGIC PLANNING CONTEXT

St Leonards South Precinct

Precinct Background for context

The St Leonards South Precinct (the Precinct) was brought into effect through amendments to *Lane Cove Local Environmental Plan 2009*. The vision of the Precinct is for a liveable, walkable, connected, safe, high density residential precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre. This vision is to be achieved through the Part 7 Planning Scheme (Part 7) in the LEP and its related documents.

The objectives of Part 7 are to ensure the Precinct provides:

- (a) **community facilities**, open space, including communal open space, and **high-quality landscaped areas**, and
- (b) **efficient pedestrian** and traffic **circulation**, and
- (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**.

Part 7 establishes an incentive scheme which provides bonuses to the development standards in exchange for the delivery of public benefits. These benefits include affordable housing, public open space, childcare facilities and through site links among others. It is intended that all developments achieve these incentive bonuses to facilitate the complete vision for the Precinct.

The subject development application seeks to modify the approved development DA79/2022 which has already satisfied the incentive scheme requirements through the delivery of the required public benefits.

3. SITE AND SURROUNDS

Subject Site

The subject site is known as Nos. 1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue, St Leonards, St Leonards with a total site area of 2,629.2m². The site is known as Areas 1, 2 and 4 within the St Leonards South Precinct. The site is located at northeastern end of the precinct at the intersection of Holdsworth, Canberra and Marshall Avenues. Demolition works have commenced on site. The key site characteristics are summarised in below.

Table 1 - Site Characteristics of Nos. 1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue, St Leonards

Site Characteristic	Subject Site
Title Particulars	1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue, St Leonards. (Lots 1, 2, 3, 5, 6, 7, 39, 40, 41, 42 /Section 3 of DP 7259)
Total Site Area	6727m ²
Site Frontage	Approx. 90m to Holdsworth Avenue Approx. 37m to Marshall Avenue (excluding 2 Marshall) Approx. 53m to Canberra Avenue (excluding 2 Marshall)
Site width	Irregular up to 84 m between Holdsworth Avenue and Canberra Avenue.
Zoning	R4 High Density Residential



Figure 1: Aerial Photograph - Subject Site outlined in yellow and SLS in red (Source: Nearmap)

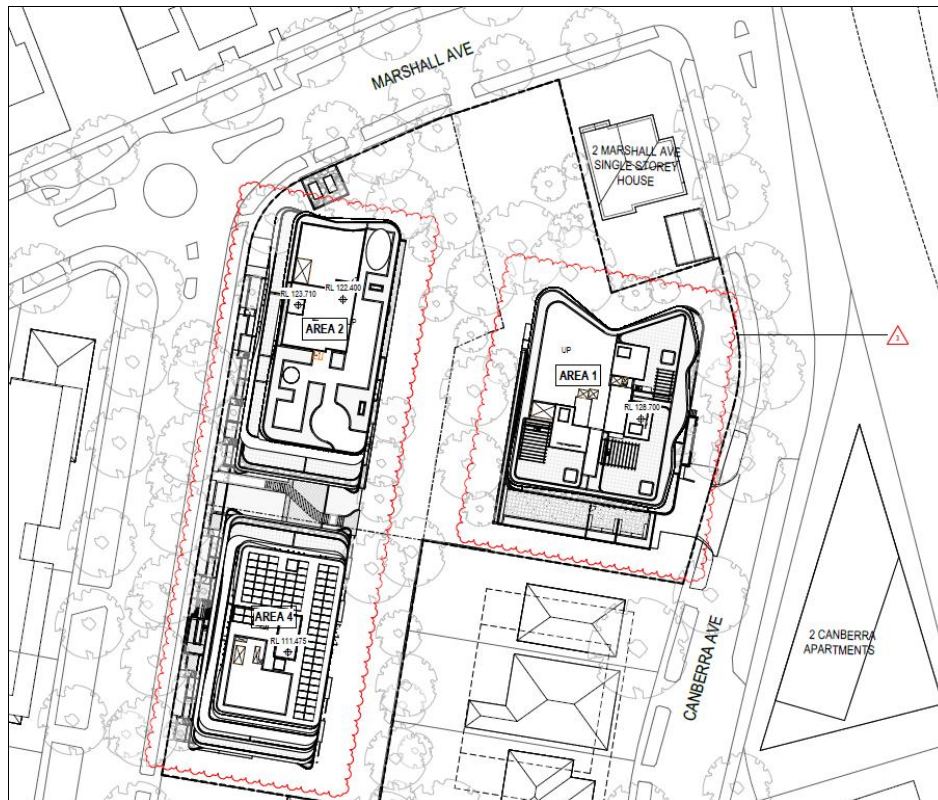


Figure 2: Zoom in of sites. (Source: rothelowman)

Adjoining/Surrounding Sites

The Precinct is in transition towards a desired future character which is reflected in the planning instruments and recently constructed developments. Recently constructed residential flat buildings adjoin the area to the north and east. There have been multiple approvals within the precinct as described below:

- To the east is Canberra Avenue which forms the eastern boundary of St Leonards South Precinct. Further east is the North Shore Railway Line and a 7-storey residential apartment building at 2 Canberra Avenue.
- To the west is Holdsworth Avenue and further west is **Area 12** (1-3 Holdsworth Avenue and 10 -12 Marshall Avenue).
 - On 14 October 2022, the Sydney North Planning Panel (SNPP) determined to approve the demolition of existing structures and construction of a part 10 and part 12 storey residential flat building comprising 96 apartments and basement parking for 110 vehicles. (Ref: 187/2021).
 - On 7 March 2025, the SNPP determined to approve a Development Application for Area 12 for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021 for a part 14 and part 16 storey building. (Ref: DA146/2024)
- To the south of Area 1, and to the south of Area 4, the site is adjoined by **Area 3** and **Area 6** which are currently occupied by single and 2-storey dwellings. These areas are subject to

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incentive controls under Part 7 of the Lane Cove Environmental Plan 2009 which provide bonuses to the development standards in exchange for the delivery of public benefits.

- Further south is **Area 5** at 13-19 Canberra Avenue
 - On 27 June 2022, the SNPP determined to approve the demolition of existing structures and construction of a 12-storey mixed-use development containing 81 apartments basement parking for 116 vehicles (Ref: 162/2021).
 - On 13 August 2024, SNPP determined to approve a Development Application for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021 for a 16-storey building. (Ref: DA33/2024).

PROPOSAL

The section 4.55(2) modification application to 3 approved residential flat buildings as following:

- Area/Tower 1: Five additional storeys
- Area/Tower 2: Five additional storeys
- Area/Tower 4: 4.5 additional storeys

The modification would comprise a total of 77 additional apartments including 58 affordable housing apartments in accordance with the SEPP Housing 2021 and a total of 9 additional vehicle spaces are proposed.

A detailed breakdown of works proposed is shown below in table 3:

Proposed Apartment Mix

Table 2 – Approved vs proposed apartment mix			
	Apartment mix	S4.55	Total
Approved	46 one-bedroom apartments; 134 two-bedroom apartments; 35 three-bedroom apartments; and 19 four-bedroom apartments.		234
Proposed	56 one-bedroom apartments; 188 two-bedroom apartments; 49 three-bedroom apartments; and 18 five-bedroom apartments.	10 54 14 -1	311

In depth proposal breakdown

The subject development application seeks consent for the following works:

Table 3 – In depth proposal breakdown	
	Proposed works
Affordable Housing	<ul style="list-style-type: none"> • Dedication of an <i>*additional</i> 58 affordable housing apartments throughout the development, in accordance with Chapter 2, Division 1 of the Housing SEPP. The dedicated apartments are identified in Table 5, later in this report; <i>*The previously approved 28 affordable housing units (key worker housing) approved under the Lane Cove LEP Part 7 incentive controls will remain.</i>

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Table 3 – In depth proposal breakdown	
	Proposed works
	Parking, adaptable unit provision have been increased to respond to the increase in apartments.
Area/Tower 1	<ul style="list-style-type: none"> • 5 additional storeys (from 19 storeys to 24 storeys); • A proposed building height of 84.5m (19.5m or 30% increase to approved height of 65m); • 8 new affordable dwellings in building 1; • Typical floor plates of levels 11 - 16 replicated in design for levels 17 - 21; • Relocation of penthouses from levels 18 - 19 to levels 22 – 24 (top floors); • Penthouses would have private access to level 24 rooftop; • Replace part of rooftop space previously used for rooftop plant with 2nd storey of penthouses; • Design changes to level 1, location and size of sauna and associated bathrooms amended; • Core walls and risers updated; and • Structural walls updated.
Area/Tower 2	<ul style="list-style-type: none"> • 5 additional storeys (from 17 storeys to 22 storeys); • A proposed building height of 68.9m (15.9m or 30% increase to approved height of 53m); • 27 affordable housing units; • Typical floor plates of levels 11 - 16 replicated in design for levels 17 – 21; and • Level 22 would comprise of a communal rooftop area (similar to approved rooftop on level 17) with added outdoor yoga space and spa; • Storage areas increased in ground floor townhouses; • Core walls and risers updated; and • Structural walls updated.
Area/Tower 4	<ul style="list-style-type: none"> • 4.5 additional storeys (from 13 storeys to 17.5 storeys); • A proposed building height of 57.2.m (13.2m or 30% increase to approved height of 44m); • 23 new affordable housing units in building 4; • Amend floorplates of levels 12 - 15 to mirror typical floorplates of levels 8 – 11; • Penthouses relocated to levels 16 and 17 (top floors); • 1 penthouse across levels 17 & 18 with private access to roof terrace; • Modification to design of rooftop (level 18) and reconfigure PV layout to enlarge residential floorplate; • Storage areas increased in ground floor townhouses; • RLS revised on Building 4 levels 5-14 to accommodate structural slab; • Stair pressurisation fan room added in Building 4 level 7 and intake louvers added on levels 6 and 7; • Core walls and risers updated; and • Structural walls updated.



Figure 3: Proposed perspective from corner of Canberra & Marshall.
(Source: rothelowman)



Figure 4: Approved perspective from corner of Canberra & Marshall.
(Source: rothelowman)

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Figure 5: Buildings 1 & 2 with additional storeys. (Source: rothelowman)

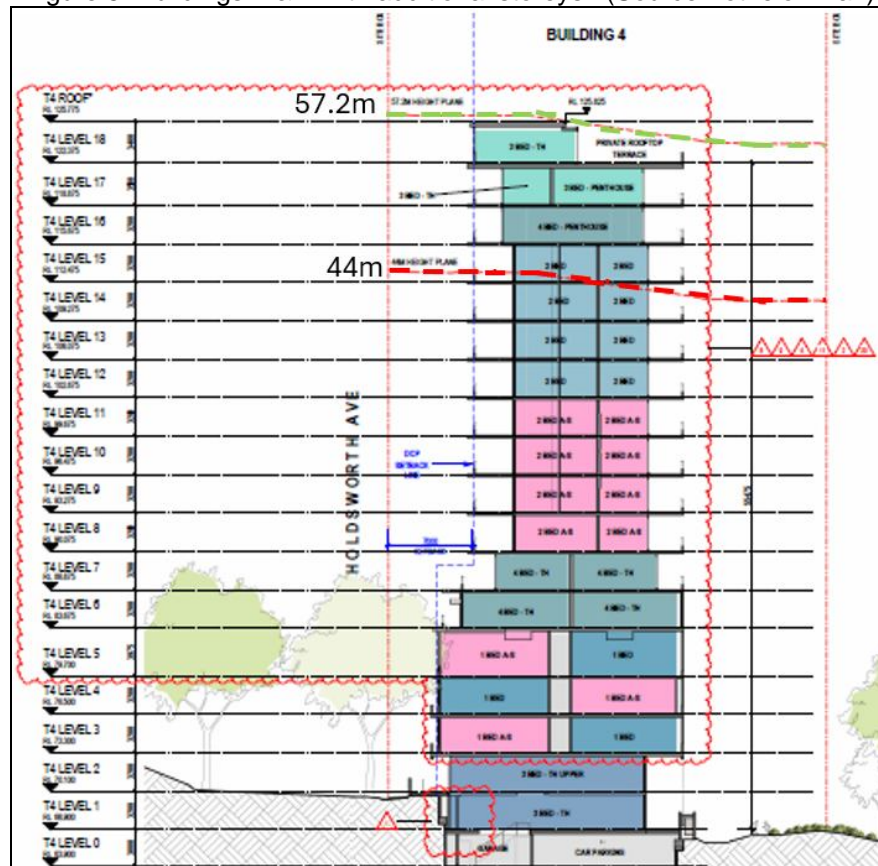


Figure 6: Building 4 with additional storeys. (Source: rothelowman)

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5. HISTORY

5.1 Assessment/History Timeline

The assessment/history timeline is provided in the table below.

Table 4 - Proposal/History Timeline	
Date	Description
6 April 2023	The Sydney North Planning Panel at its meeting determined to approve Development Application DA79/2022 for 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, 28 affordable units (i.e. key worker housing) to be dedicated to Council in perpetuity.
17 April 2023	The development consent and stamped plans were issued by Council.
9 October 2023	A s4.55(1A) modification for minor internal alterations and changes to waste rooms was approved. (Mod 1)
1 June 2024	A s4.55(1A) modification for deletion of conditions FA.8A and FA.8B relating to acoustic attenuation was approved. (Mod 2)
3 September 2024	A s4.55(1A) modification for an additional 5 th level of basement car parking was approved. This increased total car parking from 348 to 405 spaces. (Mod 4)
23 September 2024,	A s4.55(1A) modification for minor internal and external to approved residential flat buildings and pocket park landscaping was approved (Mod 3)
26 November 2024	A s4.55(1A) modification for the deletion of basement level 5 was approved. This reduced overall spaces from 405 spaces to 316 spaces. (Mod 5)
18 December 2024	Council received the subject s4.55(2) modification application (Mod 6)
19 December 2024	Notification commenced in accordance with Council policy
29 January 2025	Notification concluded and a total of 14 submissions were received.
29 January 2025	A briefing meeting was held with the Sydney North Planning Panel for the subject development application.
4 February 2025	Request For Information (RFI) sent to applicant.
18 February 2025	Applicant submitted response to RFI
2 April 2025	Determination meeting to be held with the Sydney North Planning Panel for the subject modification application

6. SECTION 4.15 ASSESSMENT

The following assessment is provided against the relevant provisions of Section 4.15 of the NSW Environmental Planning and Assessment Act, 1979:

Any environmental planning instrument:

SEPP (Housing) 2021 – In-fill affordable housing

The State Environmental Planning Policy (Housing) 2021 (the “Housing SEPP”) was published on 26 November 2021 and aims to incentivise the supply and ensure the effective delivery of affordable and diverse housing. The Housing SEPP was amended on 14 December 2023 to further incentivise affordable housing in order to address the housing crisis and provide for the needs of

moderate, low and very low-income households throughout New South Wales. The subject application seeks to benefit from these in-fill affordable housing incentives.

The relevant chapters of the Housing SEPP which apply to this development are:

- *Chapter 2 Affordable housing, Division 1 In-fill affordable housing; and*
- *Chapter 4 Design of residential apartment development.*

Chapter 2 Affordable housing, Division 1 In-fill affordable housing

The proposed alterations and additions seek to deliver in-fill affordable housing in accordance with Chapter 2 of the Housing SEPP. Recent reforms have sought to encourage developers through bonuses to the height and FSR development standards in exchange for the provision of additional affordable housing. The affordable housing is to be managed by a registered community housing provider and held for a period of 15 years (minimum), which commences from the issue of an Occupation Certificate for the development.

Developments are to provide at least 15% of the GFA as affordable housing to achieve 20 – 30% bonuses for height or FSR.

Character as informed by the Housing SEPP

Chapter 2 of the Housing SEPP now informs the desired future character of transport-oriented development throughout NSW. The density increases and affordable housing now forms part of the desired future character of development within the St Leonards South Precinct. The proposal presents a development outcome which is consistent with the vision and character of development as envisaged through the Housing SEPP. This is attained whilst providing the public benefits required by Part 7 and whilst maintaining reasonable amenity for future occupants and neighbouring dwellings.

The Housing SEPP has already begun to have a direct impact on development within the Precinct with many other sites seeking to utilise this affordable housing bonus scheme.

- On 13 August 2024, the SNPP determined to approve a Development Application at **Area 5** for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021 for a 16-storey building. (Ref: DA33/2024).
- On 7 March 2025, the SNPP determined to approve a Development Application at **Area 12** for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021. (Ref: DA146/2024)

Chapter 2 Affordable housing, Division 1 In-fill affordable housing

15C Development to which division applies

The proposed alterations and additions seek to deliver in-fill affordable housing in accordance with Chapter 2 of the Housing SEPP. The subject site is located within an “accessible area” as defined by the Policy which states:

Accessible area means land within –

- (a) 800m walking distance of-
 - (i) A public entrance to a railway, metro or light rail station

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The subject site is located approximately 250m from the tunnel entrance to St Leonards Railway Station as demonstrated in **Figure 7** below.

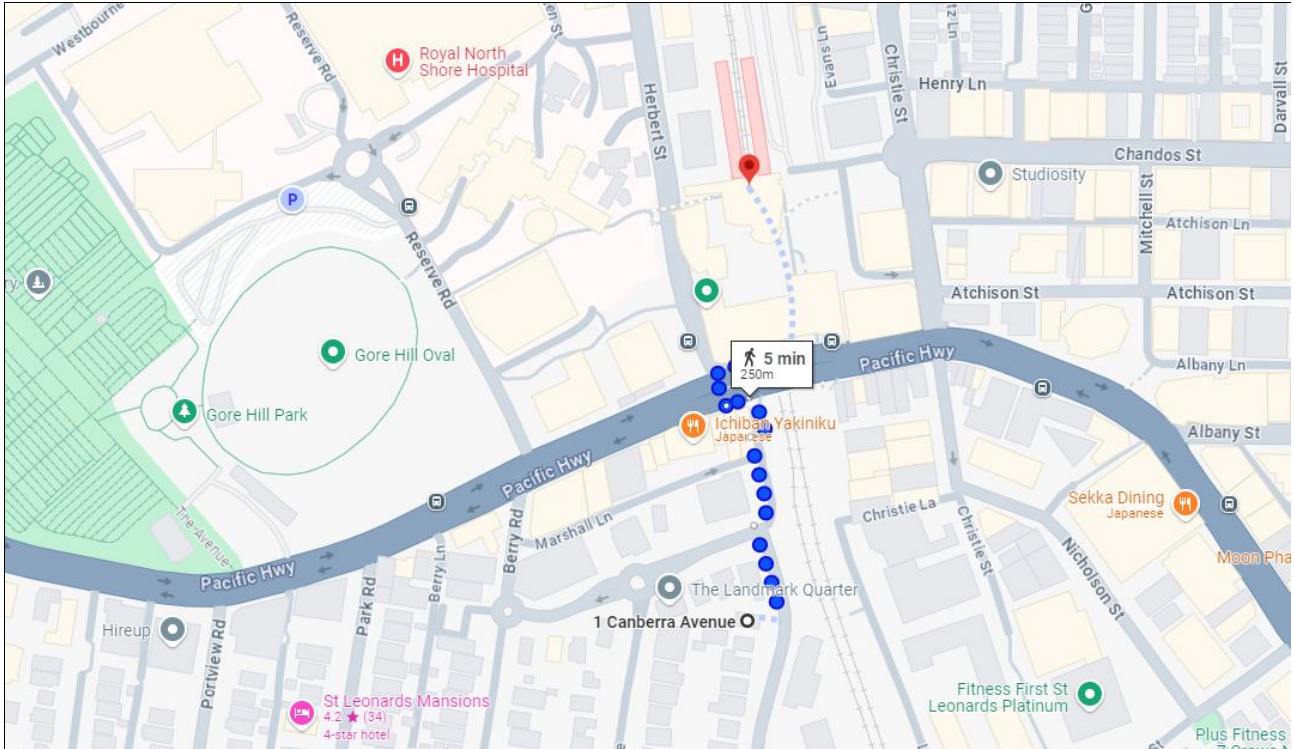


Figure 7: Walking distance to St Leonards Railway Station (Source: Google maps)

16 Affordable housing requirements for additional floor space ratio

Section 16 of the Housing SEPP contains calculations for the provision of floor space ratio and building height bonuses. It is stated in section 16 that:

(1) **The maximum** floor space ratio for development that includes residential development to which this division applies is the 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).

(2) **The minimum affordable housing component**, which must be at least 10%, is calculated as follows—

$$\text{Affordable housing component} = \text{additional FSR (as a percentage)} \div 2$$

(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).

Affordable housing calculation for FSR

The incentive bonuses under Part 7 of the LEP permits the following on the subject site:

- Area 1: 3.85:1 – maximum FSR (Gross Floor Area = 10,535.5m²)
- Area 2: 3.55:1 – maximum FSR (Gross Floor Area = 14,168.6m² -including Area 4)

- Area 4: 3.55:1 – maximum FSR (Gross Floor Area = 14,168.6m² -including Area 4)

The proposal seeks to attain a total 30% bonus FSR/GFA of:

- Area 1: 5:1 (Gross Floor Area = 13,696.15m²).
- Area 2: 4.61:1 (Gross Floor Area = 18,416.60m²).
- Area 4: 4.61:1 (Gross Floor Area = 18,416.60m²).

Additional FSR/GFA

- Area 1: This equates to an additional FSR of 1.15:1 (or additional Gross Floor Area of 3,160.65m².)
- Areas 2 and 4: This equates to an additional FSR of 1.06:1 (or additional Gross Floor Area of 4248m².)

The modification proposes to benefit from the full bonus of 30% when compared to the Part 7 incentive GFA and FSR.

The required affordable housing component has been calculated below:

$$\begin{aligned}\text{Affordable housing component requirement} &= 30\% \div 2 \\ &= 15\%\end{aligned}$$

Conclusion: The required affordable housing component is 15% in relation to the FSR bonus.

Area 1: The proposal provides 2,054m² of GFA dedicated to affordable housing. This equates to 15% of total GFA of Area 1 and complies.

Areas 2 and 4: The proposal provides 2,762m² of GFA dedicated to affordable housing. This equates to 15% of total GFA of Areas 2 and 4 and complies.

Total GFA required for Affordable housing across the development (Areas 1, 2 and 4)
= 2054m² + 2762 m²

= 4816m² or 15% of the overall GFA required.

The applicant is also seeking to rely on the following Section 18 in order to achieve a larger bonus for the maximum building height.

18 Affordable housing requirements for additional building height

Section 18 provides the calculation for the additional building height in the instance that the Section 16 is not used. This allows the applicant to increase the building height beyond the percentage increase available for FSR (30%). It is stated in Section 18 that:

*(1) **This section applies to development that includes residential development to which this division applies if the development—***

*(a) **includes residential flat buildings or shop top housing, and***

*(b) **does not use the additional floor space ratio permitted under section 16.***

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(2) 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 of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).

(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{Affordable housing component} = \text{additional building height (as a percentage)} \div 2$$

Affordable housing calculation for maximum building height

The incentive bonuses under Part 7 of the LEP permits the following on the subject site:

- Area 1: 65m – maximum building height
- Area 2: 53m – maximum building height
- Area 4: 44m – maximum building height

The proposal seeks to benefit from a 30% bonus to the incentive building height on all three Areas/Towers:

- Area 1: 65m as achieved under Part 7 of the LEP. This would achieve a maximum building height of 84.5m.
- Area 2: 53m as achieved under Part 7 of the LEP. This would achieve a maximum building height of 68.9m.
- Area 4: 44m as achieved under Part 7 of the LEP. This would achieve a maximum building height of 57.2m.

The required affordable housing component has been calculated below:

$$\begin{aligned} \text{Affordable housing component requirement} &= 30\% \div 2 \\ &= 15\% \end{aligned}$$

Conclusion: The development application satisfies the required provision of affordable housing apartments in accordance with Section 18 Division 1, Chapter 2 of the Housing SEPP. The applicant has sought to rely upon Section 18 to benefit from a 30% bonus to the maximum building height. This requires that the applicant provides 15% of the total GFA / FSR as affordable housing. The proposed development provides a total of 15% of the GFA as required. This includes 58 apartments equating to a total of 2,054m² (Area 1) and 2762m² (Areas 2 and 4) **Total of 4816m² of GFA for affordable housing required across the development.** this has been detailed in **Tables 5A, 5B and 5C** below.

Table 5A- Dedicated affordable housing apartments Area 1/Tower 1.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	1	T1.05. U01	87.3	2
	2	T1.05. U07	83	2
	3	T1.05. U06	58.4	1
	4	T1.05. U05	55.4	1
	5	T1.05. U04	79.6	2
		Party Walls	6.79	
	6	T1.06. U07	84.4	2
	7	T1.06. U06	58.6	1
	8	T1.06. U05	57.2	1

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	9	T1.06. U04	79.5	2
		Party Walls	5.2	
		Circulation space	44.6	
Total	9		700sqm	14

Table 5B- Dedicated affordable housing apartments Area 2/ Tower 2.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	1	T2.03. U06	85.6	2
	2	T2.03. U07	57.5	1
	3	T2.03. U01	86.2	2
	4	T2.03. U04	79.5	2
	5	T2.03. U08	80.7	2
		Party Walls	8.7	
	6	T2.04. U08	81.8	2
	7	T2.04. U03	86.1	2
	8	T2.04. U07	60.4	1
	9	T2.04. U06	80.6	2
	10	T2.04. U02	56.5	1
	11	T2.04. U01	85.6	2
		Party Walls	11.3	
	12	T2.05. U03	86.1	2
	13	T2.05. U08	81.8	2
	14	T2.05. U06	80.7	2
		Party Walls	6.9	
	15	T2.08. U01	85.1	2
	16	T2.08. U06	79.8	2
	17	T2.08. U02	57.1	1
	18	T2.08. U03	82.4	2
	19	T2.08. U04	83	2
	20	T2.08. U05	57.1	1
		Party Walls	85.7	
	21	T2.09. U01	85.1	2
	22	T2.09. U02	57.1	1
	23	T2.09. U03	82.4	2
	24	T2.09. U04	83	2
	25	T2.09. U05	57.1	1
	26	T2.09. U06	79.8	2
		Party Walls	85.7	
		Circulation space	56.8	
Total	26		2239.7sqm	45

Table 5C- Dedicated affordable housing apartments Area 4/ Tower 4.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	1	T4.03. U08	51.9	1
	2	T4.03. U04	52.9	1
	3	T4.03. U09	54.5	1
		Party Walls	5	
	4	T4.04. U01	52.7	1
	5	T4.04. U07	51.9	1
		Party Walls	1.1	

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	6	T4.05. U07	54	1
	7	T4.05. U06	52.1	1
		Party Walls	5	
	8	T4.08. U01	81.7	2
	9	T4.08. U02	82.1	2
	10	T4.08. U03	80.1	2
	11	T4.08. U04	80.1	2
		Party Walls	8.7	
	12	T4.09. U01	81.7	2
	13	T4.09. U02	82	2
	14	T4.09. U03	79.8	2
	15	T4.09. U04	80.1	2
		Party Walls	9.2	
	16	T4.10. U01	81.2	2
	17	T4.10. U02	81.5	2
	18	T4.10. U03	78.4	2
	19	T4.10. U04	79.7	2
		Party Walls	12.2	
	20	T4.11. U01	82.1	2
	21	T4.11. U02	82.1	2
	22	T4.11. U03	79.8	2
	23	T4.11. U04	80.9	2
	23	Party Walls	9.8	
		Circulation space	135.5	
Total	23		1885.5	39

Area 1 = 700 m²

Area 2 = 2239.7 m²

Area 4 = 1885.5 m²

Total = 4825.2 m² or 15.01 % of overall GFA provide as affordable housing.

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

Chapter 2 of the SEPP provides development standards for the proposed development which, if complied with, prevent the consent authority requiring more onerous standards. The proposed development satisfies all the non-discretionary development standards. The following **Table 6** identifies the compliance in accordance with these standards:

Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies
(a)	A minimum site area of 450sqm	Area 1: 2736.5sqm, Area 2: 2320.5sqm, Area 4: 1670.5sqm - Total: 6727.5sqm	Yes
(b)	A minimum landscaped area that is the lesser of – (i) 35sqm per dwelling, or (ii) 30% of the site area	(i) 35sqm per dwelling = 10,885sqm. (ii) 30% of the site area = 2,018.25sqm	Yes

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Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies
		<p>In this instance (ii) is the lesser landscaped area.</p> <p>No changes to the size of the approved landscaped area being 2,786.6 or 41%. (including dedicated for public open space)</p>	
(c)	<p>A deep soil zone on at least 15% of the site area, where –</p> <p>(i) Each deep soil zone has a minimum dimension of 3m, and</p> <p>(ii) (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p>	<p>Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies.</p> <p>Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.</p>	<i>Not applicable</i>
(d)	<p>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 mid-winter</p>	<p>Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies.</p> <p>Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.</p>	<i>Not applicable</i>
(e)	<p>The following number of parking spaces for dwellings used for affordable housing –</p> <p>(i) 1 bedroom dwelling – at least 0.4 parking spaces</p> <p>(ii) 2 bedroom dwelling – at least 0.5 parking spaces</p> <p>(iii) 3 bedroom dwellings 1</p>	<p>The affordable housing component includes 86 apartments comprised of (28 existing 'key worker' approved)</p> <p>18 x 1 bedroom = 7.2 spaces 68 (28 existing) x 2 bedroom = 34 spaces 0 x 3 bedroom = 0 spaces</p> <p>This requires 41.2 spaces (rounded up to a full space).</p> <p>The 42 spaces have been provided.</p>	Yes
(f)	<p>The following number of parking spaces for dwellings not used for affordable housing –</p> <p>(i) 1-bedroom dwelling – at least 0.5 parking spaces</p> <p>(ii) 2-bedroom dwelling – at</p>	<p>There would be 225 (including 19 proposed) apartments not used for affordable housing comprised of:</p> <p>38 x 1 bedroom = 19 spaces 120 x 2 bedroom = 120 spaces</p>	Yes

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Table 6 - SEPP (Housing) 2021 – Compliance Table			
Part 2 Development for Affordable Housing			
Division 1 In-fill affordable housing			
19 (2) - Non-discretionary development standards			
Clause	Requirement	Proposal	Complies
	(iii) least 1 parking spaces 3-bedroom dwellings 1.5	67 x 3/4 bedroom = 100.5 spaces 239.5 spaces required 240 spaces which have been provided.	
(g)	The minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development.	The proposed apartments satisfy the minimum internal area requirements prescribed by the ADG. The proposed apartments mirror the layout of previously approved apartments.	Yes
(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.	Not relevant for this type of development.	<i>Not applicable</i>
(i)	(i) if paragraphs (g) and (h) do not apply, the (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	Not applicable as (g) and the Apartment Design Guide applies.	<i>Not applicable</i>

20 Design requirements

The Clause 20 requirements include that the consent authority is to be satisfied that the proposed development meets the desired future character for precincts undergoing transition. The proposed development is located within the St Leonards South Precinct. The Housing SEPP has influenced the desired future character of the Precinct which now includes the associated affordable housing bonuses.

On 13 August 2024, the Sydney North Planning Panel (SNPP) recommended approval for affordable housing bonuses in accordance with the Housing SEPP at Area 5 located at 13-19 Canberra Avenue. (Ref: DA33/2024).

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On 7 March 2025, SNPP determined to approve a Development Application for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021 at Area 12 located at 1-3 Holdsworth Avenue. (Ref: DA146/2024).

The proposed development meets the desired future character for the following reasons:

- The proposed development satisfies the overall objectives of the Precinct, and of particular note are the following objectives:
 - *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.*
 - *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.*
- The proposed development maintains the delivery of the required public benefits in accordance with the Part 7 Planning Scheme for the Precinct
- The proposed development provides affordable housing which is one of the public benefits desired by the Part 7 Planning Scheme for the Precinct.
- The proposed development provides (maintains) a high-quality architectural design which is compatible with the desired future character of approved developments within the Precinct.
- The proposed development maintains the high-quality landscaping and there would be no changes to approved deep soil landscaping at ground level.
- The proposed development maintains the modulation (to address the topography of the site), materiality and roof design to retain the approved character under DA79/2022.

Accordingly, the proposed development meets the desired future character of the Precinct as envisaged by Part 7 and as informed by the Housing SEPP.

21 Must be used for affordable housing for at least 15 years

The affordable housing apartments are required to be managed by a registered community housing provider for a period of at least 15 years. The applicant has acknowledged this requirement in the statement and endorsed that a condition is included to ensure this requirement is satisfied, refer to **Annexure 1**.

22 Subdivision permitted with consent

This clause states that the affordable housing apartments may be subdivided with consent from the relevant authority provided the subdivision plans are provided. Strata subdivision is proposed as part of this application and this has been detailed in the submitted documents including.

The Development Application complies with Chapter 2 of the Housing SEPP 2021.

Chapter 4 Design of residential apartment development - ADG

SEPP 65 – Design Quality of Residential Apartment Development has been consolidated into Chapter 4 of the Housing SEPP. Schedule 9 of the Housing SEPP 2021 includes the “Design Quality Principles” which are required to be satisfied for residential apartment developments. These design quality principles aim to ensure the high-quality delivery of residential flat buildings

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within New South Wales. This chapter applies to the subject development as it is a residential apartment development, albeit providing additional apartments to an approved development.

The proposal seeks to amend an approved development which has already satisfied all the design quality principles. The proposed development maintains the high-quality design through the retention of high-quality articulation, materiality, layout of apartments, landscaping and the approved communal open spaces. This ensures that the proposed development satisfies the required design quality principles.

Referral to a Design Review Panel

Council is of the view that there is no need to refer the application to the design review panel in this instance as the overall design of the approved development is largely maintained. The previous advice from the DRP has already been applied to the approved development and maintained within the subject proposal. In accordance with Clause 29 of the EP & A Regulations 2021, a Design Verification Statement accompanies the application (**Annexure 7**) which confirms that the following design principles and objectives have been achieved.

Assessment against the ADG

Table 7 provides an assessment against the Schedule 9 Design Quality Principles as required by Chapter 4 of the Housing SEPP.

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
1 Context and neighbourhood character	<p>Satisfactory - The proposed development seeks to provide affordable housing. This is established in the desired future character through the Part 7 planning scheme (for other sites in the Precinct) and through Chapter 2 of the Housing SEPP.</p> <p>The subject site is located in the St Leonards South Precinct, which has been strategically located to provide high density residential developments within proximity to the St Leonards railway station, being a key transport hub.</p> <p>The application would provide affordable housing not only located within proximity to a transport hub (as envisaged by the Housing SEPP amendments), but also in proximity to other key areas such as Royal North Shore Hospital and the education facilities located in North Sydney. The numerous existing services which employ people eligible to live in affordable housing apartments.</p> <p>This would provide the opportunity for key workers such as nurses and teachers who rely on affordable housing to live in proximity to their place of work.</p> <p>The proposed development maintains its relationship with the site and neighbouring sites through the retention of high-quality landscaping, the retention of the established setbacks and high-quality architectural design.</p>
2 Built form and scale	<p>Satisfactory - The Housing SEPP has now informed the built form and scale of development within the Precinct. The proposed</p>

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Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	<p>development would be constructed in accordance with the envisaged height and scale permitted in Chapter 2 of the Housing SEPP.</p> <p>The proposed development achieves an appropriate built form by maintaining the approved setbacks and high-quality architectural materiality and features of the original development.</p> <p>The public domain remains equally defined through the design of the approved development and retention of the approved ground level structures.</p> <p>The impacts on views and vistas are considered reasonable as discussed alter in the view loss section of this report.</p> <p>The proposal largely maintains the internal layout of approved apartments from the levels below and the approved communal rooftop facilities are relocated to level 22 of Area/Tower 2 with new facilities such as a spa and yoga space.</p> <p>This ensures a high-quality built form and an appropriate scale with reference to the Housing SEPP.</p>
3 Density	<p>Satisfactory – The proposed development provides the strategically planned high density residential scale which corresponds with the recently amended R4 Zoning.</p> <p>The proposed development would attain a 30% bonus to the height and a 30% bonus to the FSR standard in accordance with the prescribed density by Chapter 2 of the Housing SEPP.</p> <p>The proposed development would achieve a density which is consistent with the permitted scale envisioned by the Housing SEPP controls. Other development within the precinct has been granted consent for similarly proportioned uplifts in density.</p> <p>The apartments sizes exceed the ADG minimum requirements to ensure a high level of amenity for the future residents.</p> <p>The density would be sustained through the proximity to existing infrastructure, the future public benefits to be delivered in accordance with Part 7, key public transport hubs and the proximity to the St Leonards, Crows Nest and North Sydney region more broadly.</p>
4 Sustainability	<p>Satisfactory – The proposed development achieves a good sustainability outcome through maintaining the approved deep soil zones on the site to facilitate high quality canopy potential, water sensitive design, and the use of renewable energy within the</p>

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Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	<p>building.</p> <p>The proposed development is cross ventilated at all levels to ensure a positive environmental outcome through reducing the reliance on cooling and heating systems.</p>
5 Landscape	<p>Satisfactory – There would be no changes to the approved high quality landscaping areas located on the site. The proposed works are primarily located above the approved level 14 (Area/Tower 4), level 17 (Area/Tower 2) and level 19 (Area/Tower 1) other than changes to the basement carparking arrangements.</p> <p>The landscaping of the approved communal space has been relocated to level 22 of Area/Tower 2.</p>
6 Amenity	<p>Satisfactory – The proposed development provides high quality amenity through the retention of the communal space and deep soil areas on site.</p> <p>The communal space has been relocated to level 22 of Area/Tower 2 and would provide internal and external areas, a spa, yoga area high quality landscaping and significant views towards the Sydney City Skyline. This provides access to high quality communal space both on top of the building, as well as the deep soil areas located on the ground floor.</p> <p>All apartments include generously sized private open spaces and living rooms. There are large built in storage areas provided in the apartments, as well as storage areas provided in the basement.</p> <p>The proposed development provides acceptable access to sunlight and maintains cross ventilation on all levels to provide a positive living environment. The proposed development maintains high accessibility through the on-grade entrance lobby and 2 lifts per tower which access all levels.</p> <p>It must also be noted that there is direct access provided to the following approved and proposed communal infrastructure with the development: a golf room, music room in Basement 1 of Area /Tower 1, gym, dining and game room, cinema, hot spa, outdoor lap pool, sauna, change room located on level 1 of Area/Tower 1.</p> <p>All these factors ensure the proposed development provides high quality amenity for the future occupants.</p>
7 Safety	<p>Satisfactory – There are no changes to the safety and security provided within the approved development. All relevant conditions remain relevant to the proposal. This includes the recommendations of NSW Police for Crime Prevention Through Environmental Design</p>

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	<p>(CPTED).</p> <p>All public and private spaces remain clearly defined and there are no changes to the passive surveillance provided.</p> <p>A fire control room has been provided on the ground floor to ensure compliance with the fire safety requirements.</p>
8 Housing diversity and social interaction	<p>Satisfactory – The proposed development provides for additional housing diversity through the provision of 58 affordable housing apartments.</p> <p>This equates to a 240% increase planned affordable housing to be provided through the Part 7 incentive scheme for the Precinct.</p> <p>The identified affordable housing apartments would be constructed to the same high-quality finishing and layout as the other departments throughout the development.</p> <p>The affordable housing units would have equal access to all the communal amenities provided by the development.</p> <p>The proposed development provides affordable housing in a key area being close to a transport hub, education facilities (TAFE), emergency service facilities and medical facilities (Royal North Shore Hospital).</p>
9 Aesthetics	<p>Satisfactory – The proposed development maintains the high-quality aesthetic design as supported in the approved dwelling.</p> <p>The materials, landscaping and articulation provides for a visually attractive architectural design.</p> <p>This ensures that design excellence is achieved.</p>

Apartment Desing Guide Provisions

The operations of the Apartment Design Guide (ADG) remain relevant and are to be considered for the proposed works. An assessment against the ADG has been provided in **Annexure 2**. The proposed development is compliant with the ADG requirements other than 4A – Solar and Daylight Access which has been considered under the original DA79/2022 and accepted on merit.

4A – Solar and Daylight Access

The significant slope on the site, together with the north-south orientation of the street grid, existing large developments to the north, introduce site-specific constraints and challenges impacting on solar access.

The proposal includes 60% of all units across Areas 1, 2 and 4 achieving compliant 2 hours solar access during mid-winter which is consistent with the original determination approval granted by the SNPP.

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Over 70% of all apartments across Areas 1, 2 and 4 achieve at least 1 hour and 45 mins solar access during mid-winter.

The proposed solar access is considered to achieve acceptable amenity in context to as individual site constraints. Refer to ADG report.

SEPP Resilience and Hazards 2021

The proposal is assessed against the relevant provisions of SEPP Resilience and Hazard as detailed in the **Table 8** below.

Table 8 - Resilience and Hazard Assessment	
Provision	Compliance
<p><i>(1) A consent authority must not consent to the carrying out of any development on land unless -</i></p> <p><i>(a) it has considered whether the land is contaminated</i></p> <p><i>(b) if the land is contaminated, it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i></p>	<p>Complies - The original development application was accompanied by a Preliminary Site Investigation Report to assist Council in determining compliance with the SEPP which did not raise any issues of contamination.</p> <p>The proposed works are located on top of the approved development or rearranging layout of basement carparking with no additional excavation required.</p>
<p><i>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</i></p>	<p>Complies – This requirement was dealt with in the original development application and the submitted Preliminary Site Investigation Report was found to be satisfactory.</p> <p>Given the residential history of the subject site and area, it is unlikely that contamination would be exposed.</p>
<p><i>(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</i></p>	<p>Complies – The Preliminary Site Investigation Report did not give rise to the requirement for a Detailed Site Investigation Report.</p> <p>Existing conditions from Council's Environmental Health Officer consent adequately deal with the potential exposure of any contaminated materials.</p>
<p><i>(4) The land concerned is—</i></p> <p><i>(a) land that is within an investigation area,</i></p> <p><i>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</i></p> <p><i>(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital—land—</i></p> <p><i>(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been</i></p>	<p>Complies - The site is not within an investigation area or listed in Table 1 to the guidelines. A preliminary site investigation was submitted to the SEPP's satisfaction in the original development application.</p>

Table 8 - Resilience and Hazard Assessment	
Provision	Compliance
<i>carried out, and (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</i>	

The Development Application complies with SEPP Resilience and Hazards 2021

SEPP BASIX 2004

A BASIX certificate accompanies the application and is provided as **Annexure 13** to this report. The BASIX Certificate demonstrates compliance with the provisions of the SEPP.

The Development Application complies with SEPP BASIX 2004

SEPP Transport and Infrastructure 2021

The original development application was assessed against the relevant provisions of SEPP Transport and Infrastructure. The approved development satisfied these requirements and was supported. The proposed development does not change compliance with these requirements as identified below and are also contained within **Annexure 11**.

The proposed modifications do not constitute traffic generating development in of themselves in accordance with Schedule 3 of the Transport and Infrastructure SEPP.

The Development Application complies with SEPP (Transport and Infrastructure) 2021.

SEPP (Biodiversity and Conservation) 2021

The site is located on land to which the Biodiversity and Conservation SEPP 2021 applies. This SEPP aims to protect environmentally sensitive areas and prevent adverse impacts from development on the natural environment. The chapters of this SEPP which are relevant the development application include the following:

- *Chapter 2 Vegetation in non-rural areas; and*
- *Chapter 6 Water catchments.*

Chapter 2 Vegetation in non-rural areas

Chapter 2 of the Biodiversity and Conservation SEPP 2021 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW, to preserve the natural amenity of these areas. The subject proposal does not propose any tree removal. All tree removal has been previously considered by Council's Arborist in the original development application. There would be no changes to the approved replanting schedule or the approved landscaping plan outside of the relocation of the approved communal open space (relocated to level 22. The approved size and quality of this landscaping is maintained.

Chapter 6 Water catchments.

Chapter 6 of the Biodiversity and Conservation SEPP 2021 aim to prevent the adverse run-off of stormwater whether it be changed run-off patterns or quality of stormwater run-off. The subject proposal does not change the run-off pattern or the quality of stormwater run-off. The additional apartments are located on top of the approved development and there are no changes to deep soil landscaping areas. Any new stormwater systems would be connected to the approved stormwater facilities.

The Development Application complies with SEPP Biodiversity and Conservation 2021

SEPP Planning Systems 2021

The Section 4.55 modification is referred to the Sydney North Planning Panel for determination as the Capital Investment Value is \$42,810,300. The affordable housing component of the development application has a capital investment value of over \$5 million, in accordance with Schedule 6, Clause 5 of the SEPP (Planning Systems) 2021.

The Development Application complies with SEPP Planning Systems 2021

PROPOSAL DATA/POLICY COMPLIANCE

SECTION 4.55 ASSESSMENT

The application is made under section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*. This section relates to “other modifications” and provides that the consent authority may modify the consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In relation to section 4.55(2)(a), the legal advice was reviewed by Council, and it is considered that it is possible to rely on the affordable housing incentive provisions under the Housing SEPP by way of a modification application. Therefore, the changes proposed by the modification are substantially the same as those approved.

As per section 4.55(2) (a), the test is whether the development as proposed to be modified is substantially the same development as the development for which consent was originally granted. The relevant citations are provided below in a brief outline of the principles.

- (a) The comparison to be undertaken is between the proposed development as modified and the original approved development.
- (b) In particular, the recent decision of the Chief Judge of the Land and Environment Court in the case of *Canterbury-Bankstown v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (Realize) simplified the approach by the consent authorities in the assessment of modification applications.
- (c) Previous caselaw answered the question of whether a development is substantially the same as that which was originally approved is a question of fact and degree depending on the specific circumstances of each matter which will reasonably admit different conclusions: *Scrap Realty Pty Limited v Botany Bay City Council* (2008) 166 LGERA 342 at [13].
- (d) Previous caselaw established the meaning of "substantially the same" is "essentially or materially having the same essence": *Vacik Pty Limited v Penrith City Council* [1992] NSWLEC 8, Stein J; supported by Mason P in *North Sydney Council v Michael Standley & Assoc Pty Ltd* (1998) 43 NSWLR 468; 97 LGERA at 440.

The applicant provides Legal Advice prepared by Mills Oakley attached in **Annexure 10** to assist the Panel in considering the matter:

***Canterbury-Bankstown v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (Realize)**

The above judgment passed down by the commissioner included the following statement:

"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."

Substantially the same test - Consent

Using the same method as that in the *Realize* judgment, Council is required to be satisfied that the proposed modification is 'substantially the same' as the approved development. The question of whether the development is substantially the same is not a question which is capable of scientific or mathematical precision, but rather is a judgment based on an overall quantitative and qualitative assessment: *Moto Projects No. 2 Pty Limited v North Sydney Council* (1999) 106 LGERA 298 Bignold J at [56]. This means that it must be a comparison not only of the

physical changes, but an appreciation of the qualitative impacts of the development as approved.

The Chief Judge in *Realize* noted that the consent authority was to continue to assess any modification application using appropriate rationale in this method. The Chief Judge recommended a **‘balanced’ approach** to any assessment based on ‘instinct’ or the **‘look and feel’** of the modified proposal. The assess

This rationale is summarised in the following three steps.

1. Identifying the aspects of the approved development which proposed to be modified.
2. Interpreting the words and phrases in the substantially the same test in clause 4.55(2) of the Act. The Chief Judge in *Realize* stated that section 4.55(2) of the Act does not refer to ‘critical elements’ or even ‘elements’ of the two developments (at [38]) and that in relation to the task identifying “the material and essential features of the originally approved and modified developments”, in fact s4.55(2) “does not demand such an enquiry” (at [41] and [42]).
3. Determining whether the aspects (identified in the first step) fall within the ‘substantially the same test’. The Court described this step [at (30)] as “an evaluate once” that involves assigning relative significance or weight to the different facts and balancing the facts as weighted. This categorisation can be instinctive synthesis and not articulated expressly.

A Section 4.55(2) Modification Application can only be applied where an existing active Development Consent exists. As noted previously, Development Consent DA79/2022 which granted approval most recently as per previous s4.55 modifications for the construction of three (3) residential flat buildings (ranging from 12 to 19 storeys) comprising a total of 233 apartments and basement parking for 316 vehicles applies to the site has not lapsed for the purposes of the EP&A Act.

Step 1: The proposal includes the following aspects of the approved development to be modified:

- Area/Tower 1: Five additional storeys
- Area/Tower 2: Five additional storeys
- Area/Tower 4: 4.5 additional storeys

The modification would comprise a total of 77 additional apartments including 58 affordable housing apartments in accordance with the SEPP Housing 2021. The total number of dwellings would increase from 234 to 311 across the three residential buildings. A total of 9 additional vehicle spaces are proposed in the basement.

Step 2: Interpreting the words and phrases in the ‘substantially the same’ test.

In context to the *Canterbury-Bankstown v Realize Architecture Pty Ltd* case, the Chief Judge stated that section 4.55(2) of the EP&A Act **does not refer** to “critical elements” or even “elements”, of the two developments” (at [38]) and that in relation to the task of identifying “the material and essential features of the originally approved and modified developments”, in fact s4.55(2) “does not demand such an enquiry” (at [41] and [42]).

Step 3: Determining if the proposed modifications fall within the ‘substantially the same’ test.

As per the *Canterbury-Bankstown v Realize Architecture Pty Ltd* case an evaluation is required to decipher which elements of the modification should be assigned the most weight or significance. The modification in the *Realize* case included:

- 100% increase in the overall size of the communal opens space;
- Two additional floors to approved development
- Additional 2,368sqm (9.8%) of additional (GFA);
- 10 additional units to 1 additional flat building.

In comparison, the subject modification include:

- No change to overall size of communal open space in green spine;
- 4.5 - 5 additional floors over the 3 buildings;
- Additional (30%) of GFA including Tower in Area 1: additional Gross Floor Area of 3,160.65m². Towers in Areas 2 and 4: additional Gross Floor Area of 4248m².
- 77 additional units over 3 residential flat buildings; and
- No change to the dedicated public open space in Areas 1 and 2.

Substantially the same test – Land Use

The land use in the approved Development Consent DA79/2022 is for ‘three residential flat buildings’, this aspect of the approved development will not change in terms of how the development is viewed or interpreted in terms of the built form.

Residential amenity is maintained, and the modifications merely reflect minor change to the scale of activities that are already approved, rather than the introduction of any uses. The modifications would not alter the essence of the overall development.

Substantially the same test – Built Form

The scheme remains a three-tower residential development with communal open space, public infrastructure and associated landscaping.

There would be no changes to the approved setbacks of all three buildings. Whilst the development will alter the building envelope to some degree, the established ground footprint of the buildings would not be extended in the proposed levels.

The additional storeys do not create further adverse overshadowing or solar impacts to the development, adjoining properties or Newlands Park.

The built form of the development will not cause any additional unreasonable environmental impacts such as overshadowing, visual, and acoustic privacy, traffic generation, or changes to stormwater patterns. In fact, it is noted, that the modifications:

- Provision of the public open space (pocket parks) are maintained.
- Provision of the communal open space (green spine) is maintained.
- Provision of the 28 approved ‘key worker housing’ units is maintained.
- The layout of the additional storeys is generally reflective of the approved layout of the floors below.
- Stormwater management is maintained, and
- No additional tree removal is proposed.
- The proposed development maintains the modulation (to address the topography of the site), materiality and roof design to retain the approved character under the original DA.

The development would remain as three multi-storey residential flat buildings. The affordable housing uplift would not materially change the fundamental nature of the development as viewed from the public domain.

As per the *Canterbury-Bankstown v Realize Architecture Pty Ltd* case, the Court acknowledged that there are quantitative differences between the original development and the proposed modification. Despite this, the focus of the s4.55(2)(a) test is to analyze and balance the two developments holistically. In regard to the subject site, **the ‘qualitative’ similarities between the two schemes are considered enough to override the significant numerical (quantitative) differences.**

Accordingly, the Panel can be satisfied that the proposed modification is of minimal adverse environmental impact and is substantially the same development as the development for which the consent was originally granted.

Accordingly, the Panel can be satisfied in relation to s4.55 of the *Environmental Planning and Assessment Act, 1979*.

SECTION 4.15(1) MATTERS FOR CONSIDERATION

In determining an application for modification of a consent under section 4.55(3), the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The following section 4.15(1) matters have been considered.

Environmental Planning Instruments

State Environmental Planning Policy (Planning Systems) 2024

In accordance with Schedule 6 of the SEPP, development with a capital value of more than \$30 million, or more than \$5 million where Council is the owner of the land is defined as regionally significant development. The proposal triggers both of these criteria.

The Sydney North Planning Panel previously delegated all functions relating to determination of applications to modify consent to Council's General Manager. However, as the Council is the owner of the land, the application is referred to the Lane Cove Local Planning Panel for determination in accordance with the relevant guidelines.

The consent authority for this modification is therefore the Lane Cove Local Planning Panel.

Local Environmental Plan 2009

Permissibility

The site is zoned R4 High Density Residential under LCLEP 2009. Residential flat buildings, restaurants or cafes, centre-based childcare facilities and community facilities are permissible with consent in the R4 High Density Residential zone. The proposed development remains permissible with consent as the proposed application does not change the type of development approved.

Floor Space Ratio:

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Category	Total Approved	Total proposed + 30% AH Bonus	Compliance
Area 1	3.85:1 (10,535.5 m ²)	5:1 (13,696.15 m ²)	Yes
Area 2	3.55:1 (14,168.6 m ² including Area 4)	4.61:1 (18,416.60 m ²)	Yes
Area 4	3.55:1 (14,168.6 m ² including Area 2)	4.61:1 (18,416.60 m ²)	Yes

Height:

Category	Total Approved	Total proposed + 30% AH Bonus	Compliance
Area 1	64.8m	84.5m to lift overrun	Yes
Area 2	52.5m	68.9m to lift overrun	Yes
Area 4	43.5m	57.2m to lift overrun	Yes

Comprehensive Development Control Plan assessment

Car parking

Category	Requirement (LGA wide):		DA Approved:		Mod: 4 Approved: (level 5 basement added)		Mod: 5 Approved (level 5 basement removed)		Mod 6 Proposed:
Parking	Resident:	231	Resident:	305	Res:	335	Res:	246	281
	Visitor:	46.4	Visitor:	42	Vis:	70	Vis:	70	44
Total:		277.4		347		405		316	325
	Motorcycle:	18	Motorcycle:	19	Motorcycle:	24	Motorcycle:	24	19
	Car wash	2	Car wash	5	Car wash	7	Car wash		
	bays:		bays:		bays:		bays:	7	7
	Bicycle:	82	Bicycle:	84	Bicycle:	110	Bicycle:	110	110

View Sharing Analysis

The Tenacity principle is a 4-step test implemented by the Land and Environment Court for the purposes of view loss assessment. The test was established in *Tenacity Consulting v Warringah [2004] NSWLEC 140* appeal. The objectives of the B.4 View sharing section of the Lane Cove Council DCP 2010 outline the key components of this 4-step view sharing principle.

The four steps of the Tenacity principle area as follows:

- **Step 1.** Assessing the types views to be affected. Water views are valued more highly than land views. Iconic views are valued higher than views without icons. Whole views are valued more highly than partial views.
- **Step 2.** Assessing what part of the property the views are obtained. Views over the rear or front boundary area favoured where side views are harder to protect. Seated views are harder to protect than standing views and living rooms and kitchens are more valuable than non-habitable rooms such as bedrooms.
- **Step 3.** Assessing the extent of the impact. This must consider views obtained from the whole property and not just from the location where a view is most affected.

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- **Step 4.** Assessing the reasonableness of the proposal. A proposal which is fully compliant is more reasonable than one which doesn't comply, proposals which have been skilfully designed are considered more reasonable.

The applicant has provided a view loss analysis in the Section 4.55(2) Modification Report **Annexure 8** (pages 35 - 46) and the Urban Design Report **Annexure 21** (pages 40 - 41).

The view analysis focuses on 1 Marshall Avenue (Embassy Tower) which is located north of the site as it relates to the greatest view impacts. Area/Tower 1 is located approximately 68m south of 1 Marshall Avenue and is separated by the road carriageway and the dwelling house at 2 Marshall. Area/Tower 2 is located approximately 54m southwest from 1 Marshall Avenue.

Simulated existing and proposed view analysis diagrams have been submitted with the application. The RLs of the simulated images were obtained from approved plans of 1 Marshall Avenue and surveys to provide an accurate assessment of the subject views. View impacts were assessed at multiple levels of the building facing both south and south-east. These include:

Address	Location:
1 Marshall Avenue (Embassy Tower)	View 1: Lower-Levels: south facing
1 Marshall Avenue (Embassy Tower)	View 2: Mid-Levels: south and southeast facing
1 Marshall Avenue (Embassy Tower)	View 3: Upper levels: south-east facing
1 Marshall Avenue (Embassy Tower)	View 4: Upper Levels: south facing

Context for views

It is important to consider the context of any view loss in relation to the Housing SEPP. This SEPP has ultimately changed the desired future character of the St Leonards South Precinct and all residential flat buildings. The envisaged character of the area now includes residential flat buildings with an uplift in accordance with the maximum building height and FSR bonuses. All sites can implement the 20-30% bonuses which is now the full developable potential of the site. The Sydney North Planning Panel has recently determined a development application at Area 5 within Precinct which utilised the Housing SEPP bonuses. Area 5 is located south of Area 1 and the approved uplift resulted in similar associated view impact to the subject site.

The sharing of views of sites within and adjacent to the St Leonards South precinct was considered in the design of the Precinct Master Plan. This included cascading height controls to enable the fair and equitable sharing of views. The landscaped green spine requires a 24m separation between buildings to ensure a sizeable non-built area allowing unimpeded southern views through the entire precinct and beyond.

The views include district views across Sydney and significant views towards the south including Sydney Harbour, the Harbour Bridge, parts of North Sydney and the City Skyline. If all sites within the Precinct achieve the full developable potential, then the impacts on views would be relative.

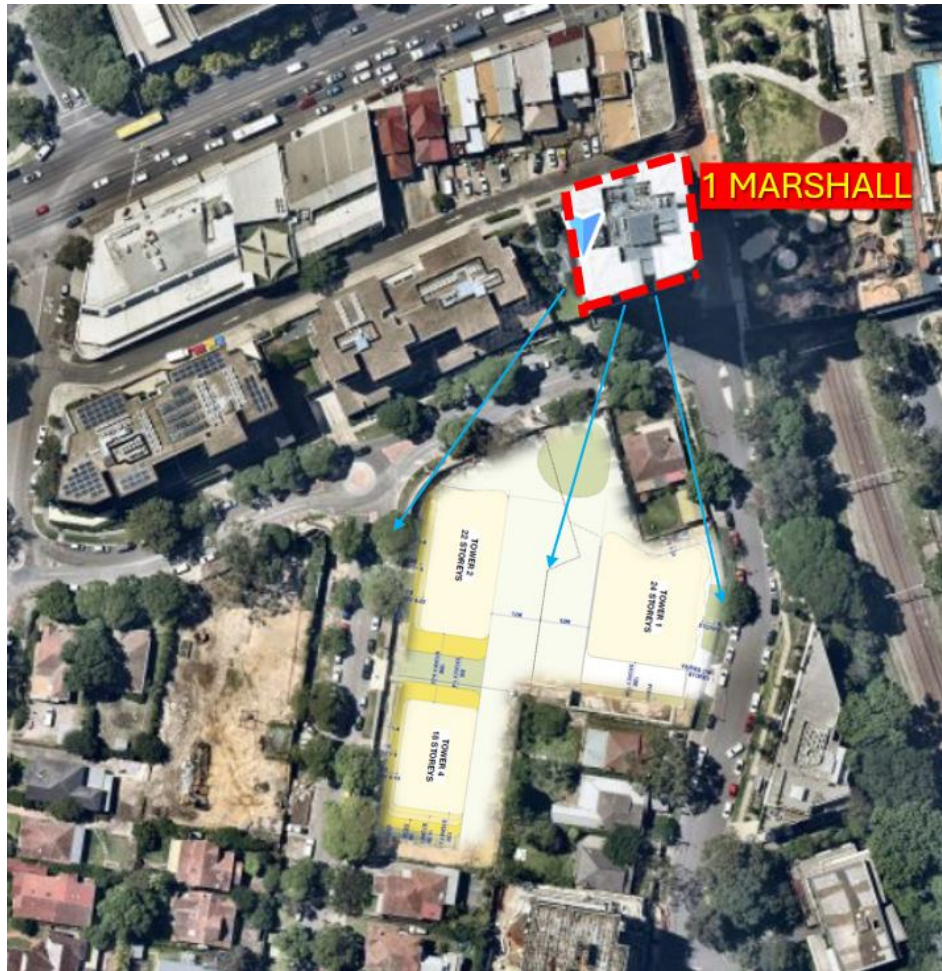


Figure 8: Context of site in context to 1 Marshall Avenue and southern views.

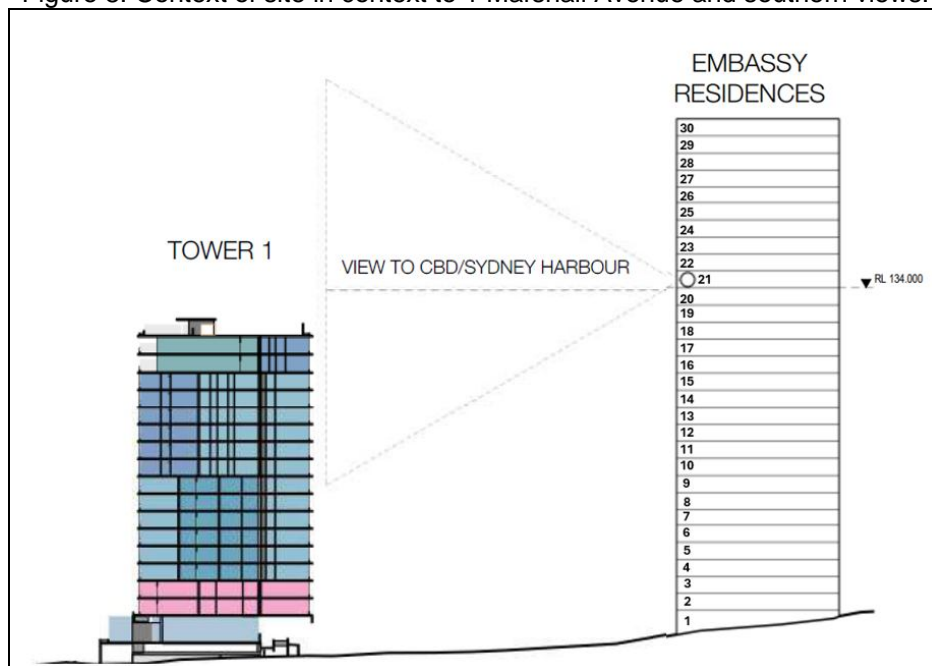


Figure 9: Sightline to CBD diagram approved development

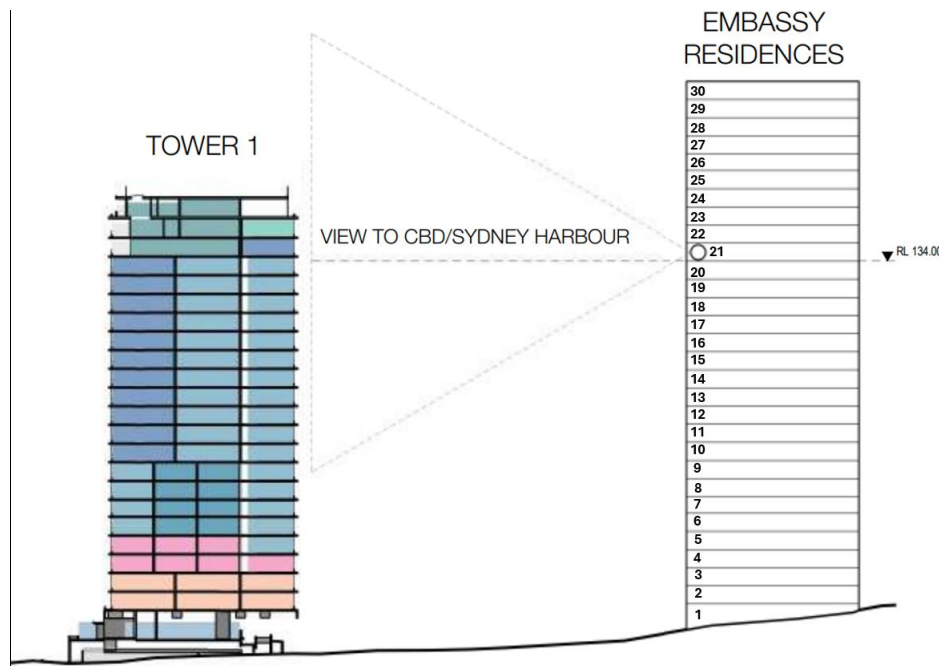


Figure 10: Sightline to CBD diagram proposed modified development

View 1: Lower Levels (level 2) of 1 Marshall Avenue facing south.

Tenacity Step 1: Types of views.

The lower levels of the Embassy Tower receive existing views of vegetation and proportion of sky behind from both sitting and standing positions. A landscaped 'green spine' between Towers 1 and 2 includes a 24m wide non-built area allowing unimpeded southern views through the entire precinct and beyond which some units would benefit from. Views are classified as **low value**.

Tenacity Step 2: Where the views obtained.

The subject view is obtained from the living room/balcony facing south on level 2. See Figures 11 and 12 below which depict a photo within the unit and the floor plate.

Tenacity Step 3: The extent of the impact.

Approved Development:

The lower levels would already have limited southern views to the City skyline and Sydney Harbour due to the approved development in Area 1 (19 Storeys) and other approved developments located in Areas 5 (13-19 Canberra Avenue).

Proposed Addition: The proposed additional levels would obscure some southern views to the sky. This is a minimal change.

Conclusion: Qualitatively the existing foreground views would remain the same. There would be **negligible view impacts** in this instance.

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Figure 11: South views from Level 2 unit at 1 Marshall Avenue. (Source: Domain)

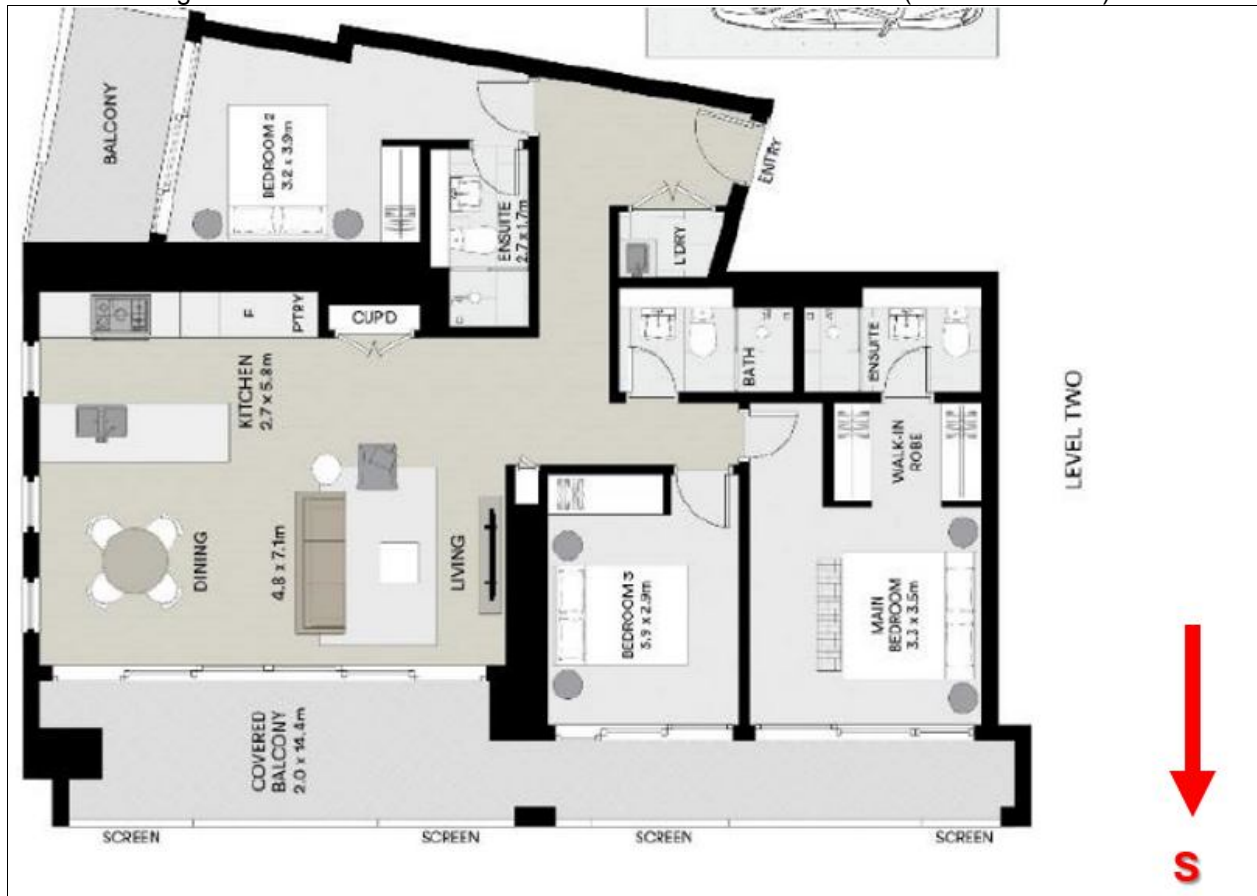


Figure 12: Floor plan of Level 2 unit at 1 Marshall Avenue. (Source Domain)

View 2: Mid-Levels (level 11) of 1 Marshall Avenue facing south & southwest.

Tenacity Step 1: Types of views:

The southern views enjoyed are to the Harbour Bridge, North Sydney City skyline by the mid-levels are demonstrated in figures 13 and 14 below. Views to the foreground (short to mid-range) are to the existing residential flat buildings and landscaping in surrounding suburbs. Sections of the North Sydney and CBD skylines are visible including the upper portion of the Sydney Harbour Bridge. Views to the southwest are to Sydney Harbour and Parramatta River and towards Sydney suburbs of Drummoyne Five Dock, and Concord. Refer to figures 13, 14 and 15 including internal photos and unit floor plan. Views are classified as **high value**.

Tenacity Step 2: Where the views obtained:

Views are obtained from both sitting and standing positions in the open-plan kitchen, living and dining rooms through the full height windows.

Tenacity Step 3: The extent of the impact:

Approved Development: The views to the CBD skyline of unit (1103) are highly likely to already be impacted by the approved development in Tower 1 (19-storeys in height). However, the iconic view to the Harbour Bridge and North Sydney CBD will be largely retained.

Proposed Addition: The iconic views to the south-east including Sydney Harbour Bridge and North Sydney CBD would be largely retained. Extent of views to the sky would be impacted by the addition.

Conclusion: Qualitatively the existing North Sydney and upper portion of the Sydney Harbour Bridge views would remain the same. There would be **minor view impacts** in this instance.



Figure 13: South views from Level 11(1103) Embassy Tower 1 (Source: Domain)

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Figure 14: Southwest views from Level 11(1103) Embassy Tower 1. (Source: Domain)

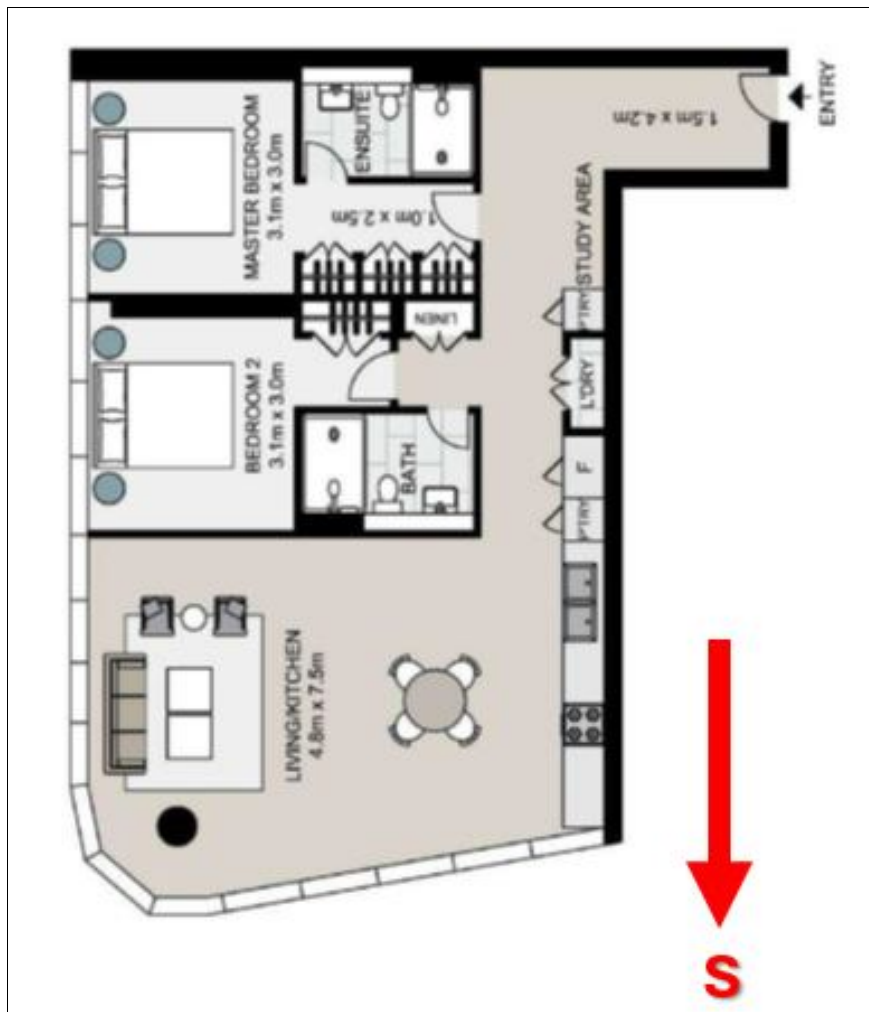


Figure 15: Floor plan of Level 11 unit (1103) 1 Marshall Avenue. (Source Domain)

View 3: Upper Levels (level 26) of 1 Marshall Avenue facing southeast.

Tenacity Step 1: Types of views:

Views to the south include in the foreground (short to mid-range) urban setting of North Sydney and surrounding suburbs. Beyond, parts of the Sydney CBD skyline and areas south and west of the CBD, the Harbour Bridge and parts of the harbour are visible. Refer to figures 16 and 17 for photos within the unit depicting the highest valued views. Views are classified as **high value**.

Tenacity Step 2: Where the views obtained:

Views would be obtained from open plan kitchen, dining, living room and balcony through full height windows.

Tenacity Step 3: The extent of the impact:

Approved Development: The modelling of the approved development indicates southeast views to the foreground towards landscape/existing buildings are likely to be impacted partially. However iconic southeast views to upper portion of Sydney Harbour Bridge and high value views to North Sydney and the Sydney CBD will be largely retained.

Proposed Addition: The modelling indicates that the proposed additions are likely to be increase in views impacted to foreground views and partial interruption of Sydney CBD view.

Conclusion: Despite the partial interruptions, the additions would still largely retain view to Sydney CBD skyline and upper portion of Sydney Harbour Bridge. There would be **minor view impacts** in this instance.



Figure 16: South views from Level 26 (2603) 1 Marshall Avenue. (Source: Obsidian)



Figure 17: South views from Level 26 (2603) 1 Marshall Avenue w/ indicative floor plan. (Source: Obsidian)

View 4: Upper Levels of 1 Marshall Avenue (Embassy Tower) facing southwest

Tenacity Step 1: Types of views:

Foreground views (short to mid-range) are to landscaping and vegetation of neighbouring suburbs. Middle to long-range views to the southwest are water views to Sydney Harbour and Parramatta River, Sydney suburbs of Drummoyne Five Dock, and Concord. Views are classified as **high value**.

Tenacity Step 2: Where the views obtained:

Views would be obtained from open plan kitchen, dining, living room through full height windows.

Tenacity Step 3: The extent of the impact:

Approved Development: The development model indicates foreground views to the toward existing buildings and landscaping 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 Sydney Harbour, the Parramatta River and Sydney suburbs of Drummoyne Five Dock, and Concord would remain largely uninterrupted.

Proposed Addition: Foreground views to the southwest toward existing buildings and landscaping are likely to be partially impacted. Views to Sydney Harbour, the Parramatta River and Sydney suburbs of Drummoyne Five Dock, and Concord would be partially interrupted. The southwest portion of the Embassy Towers, benefit from 'green spine' between Towers 1 and 2 and the 24m wide non-built area allowing unimpeded southwestern views through the entire precinct and beyond.

Conclusion: Despite the likely partial interruption to close views to landscape and the Sydney Harbour, the proposal would largely retain distant water views to inland portions of Sydney Harbour, Parramatta River, the horizon and sky. There would be **moderate view impacts** in this instance.

Views 1- 4 Tenacity Step 4. Assessing the reasonableness of the proposal.

A proposal which is fully compliant is more reasonable than one which doesn't comply, and, proposals which have been skilfully designed are considered more reasonable.

The proposed development fully complies with the maximum building height control and FSR control under Part 7 of the Lane Cove LEP 2009, plus 30% uplifts permitted under Chapter 2 Affordable Housing, Division 1 In-fill affordable housing in the Housing SEPP 2021 (the Housing SEPP).

In this regard the envelope which is consistent with the bulk, scale and character of transit orientated development as informed by the Housing SEPP. This character includes high density residential flat buildings, inclusive of the development standard bonuses. The proposed development would be constructed in accordance with the development standard bonuses afforded by the Housing SEPP.

The proposal complies with the setbacks of the DCP controls and the separation requirements of the ADG Controls.

The view loss analysis illustrates that there would be a range of view impacts from negligible to minor to moderate from the Embassy Tower at 1 Marshall Avenue. The individual apartments located within these developments would also be subject to varying view impacts. These impacts are an inherent byproduct of a transitioning dense urban environment. Southeast iconic views to the upper portion of the Sydney Harbour Bridge and parts of Sydney Harbour at mid and upper levels remain uninterrupted in most instances. Supplementary views can be obtained over the green spine canopy and through site links for the lower apartments.

Step 4 of the Tenacity principles raise the question if a more skilful design would result in reduced view impacts.

The design of the original building was subject to a detailed and thorough assessment process, by the Design Review Panel, Council, The Sydney North Planning Panel.

The proposed layout of the additional storeys is consistent with the design layout of the approved building in the original DA. The proposed addition seeks to achieve additional floor space through additional storeys within the envelope setbacks previously established.

The Tenacity assessment undertaken in steps 1-3, the views impacted are minor to moderate. The assessment concludes that no devastating views loss impacts would result. The proposal is fully compliant with the built envelope controls permitted under Chapter 2 Affordable Housing, Division 1 In-fill affordable housing in the Housing SEPP 2021 (the Housing SEPP).

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.

4.15 (iii) Any development control plan:

Lane Cove Development Control Plan 2010 – Other Sections

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The Lane Cove DCP 2009 (the “DCP”) and other related plans are overridden by the Housing SEPP requirements where there is an inconsistency, in accordance with Section 8, Chapter 1 of the SEPP (Housing) 2021. The relevant sections of DCP have been addressed in the following **Table 14** and through **referrals** where necessary:

Table 14 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
Development Engineer and Civil Engineer	Part O – Stormwater Management	<p>Satisfactory – The proposal was accompanied by stormwater plans which indicates that the additional apartments would be connected to the existing drainage systems. Council's Hydraulic Engineer has no concerns with the proposed development and provided the following comments:</p> <p><i>As per this S4.55 application, there will be addition of few levels and internal changes.</i></p> <p><i>There is no increase in impervious area of original design. No new engineering conditions for this S4.55 application.</i></p> <p>The appropriate engineering conditions from the original determination would be retained in the modified development consent, refer to Annexure 1.</p>
Traffic Engineer	Part R – Traffic, Transport and Parking	<p>Satisfactory – The proposal was accompanied by an updated traffic and parking assessment report and basement level plans which detail the additional parking spaces and impacts on traffic. Council's Traffic Engineer has no concerns with the proposed development.</p> <p>The appropriate traffic conditions from the original determination would be retained within the modified development consent refer to Annexure 1.</p>
Waste Management	Part Q – Waste management and Minimisation	<p>Satisfactory – The proposal was accompanied by an addendum waste management letter. This report confirms that the ground floor waste holding room meets the minimum area requirements.</p> <p>The appropriate waste management conditions from the original determination would be retained within the modified development consent refer to Annexure 1.</p>
Landscaping	Part J – Landscaping	<p>Satisfactory – The proposal was accompanied by an updated landscape plan and landscaping design certificate as required by Part J - Landscaping. There are no changes to the deep soil landscaping</p>

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		<p>provided and it is only the relocation of the communal roof top garden which is changed. This area is maintained and relocated to level 22 (area 2).</p> <p>The appropriate landscaping conditions from the original determination would be retained within the modified development consent refer to Annexure 1.</p>
Tree Preservation	Part J – Landscaping	<p>Satisfactory – The proposal does not include any works which would impact retained or proposed trees.</p> <p>The appropriate tree preservation conditions from the original determination would be retained within the modified development consent, refer to Annexure 1.</p>

4.15 (1) (b) Impacts of development:

The proposal will not adversely impact neighbouring properties or the public domain in terms of overshadowing, visual privacy, acoustic privacy, or traffic and parking. The proposal presents a development outcome that is consistent with the objectives of the relevant planning controls. This ensures that the development doesn't adversely impact the amenity of surrounding developments.

The proposal achieves a development which is consistent with the desired future character as informed by the Chapter 2 of the Housing SEPP. The proposed development satisfies all the non-discretionary standards and is consistent with the objectives and principles of Chapter 4 of the Housing SEPP. Accordingly, the proposal would not have unreasonable impacts on neighbouring properties or the public domain.

The proposed development complies with the solar access provisions of the DCP and the ADG. Newlands Park would receive 5 hours solar access between 9am and 2pm to more than 50% of the total area in mid-winter. Council's traffic team have supported the proposed basement plan and have confirmed that parking is acceptable as it complies with the requirements of the Housing SEPP. The impacts on views are reasonable as detailed in the view impact / Tenacity Principle section of the report.

4.15 (1) (c) Suitability of site:

The site suitability has been established through the Housing SEPPs identification as being within an "accessible area", being 250m walking distance from St Leonards Railway Station. The proposal would appropriately locate affordable housing in proximity to key areas such as Royal North Shore Hospital and the education facilities located in North Sydney.

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The site suitability is also established at the strategic planning stage, being located in the St Leonards South Precinct which has been designed to cater for the needs of a transitioning high-density precinct. The proposed development is also permissible in the zone.

The proposed development would positively contribute to the amenity of the site and surrounding area. The proposed development would not constrain the subject site or neighbouring sites.

4.15 (1) (d) Response to notification:

Council received 11 submissions in response to the notification period. The concerns have been summarised in **Table 15** below.

Table 15 – Summary of submissions and Council's response	
CONCERNS RAISED IN SUBMISSIONS	RESPONSE
Legitimacy of affordable housing	Conditions are included in the consent which require the 58 affordable housing units are to be managed by a registered community housing provider and held for a period of 15 years (minimum), which commences from the issue of an occupation certificate for the development.
Overshadowing to Newlands Park - Overshadowing will be excessive	The proposed development has been carefully designed to minimise overshadowing. The proposed development complies with the solar access requirements of the ADG and DCP. Newlands Park would receive 5 hours solar access between 9am and 2pm to more than 50% of the of total area in mid-winter.
Breach of Planning Laws - The proposed development breaches existing planning laws	The proposed development has been lodged in accordance with the required planning legislation and complies with the Housing SEPP. The proposed development does not breach any planning laws or regulations.
The proposal is not substantially the same development. - The proposal should be a new DA and not a s4.55 modification.	Refer to s4.55(2) pathway assessment section in this report which demonstrates that the proposed modification is substantially the same as originally approved. Reference was made to the Chief Judge of the Land and Environment Court in the case of <i>Canterbury-Bankstown Council v Realize Architecture Pty Ltd</i> [2024] NSWLEC 31 (Realize). The application was supported by legal advice from Mills Oakley which concluded the proposal was consistent with the outcome of <i>Canterbury-Bankstown Council v Realize Architecture Pty Ltd</i> case.
Concerns of lack of infrastructure to support increased residential population and will put strain on Newlands Park.	The site includes updated communal facilities within building 1 to accommodate the additional residents within the building. These include: A golf room, music room, gym, dining and game room, cinema, hot spa, outdoor lap pool, sauna, and change room. The entire St Leonards South precinct will also deliver diverse range of public infrastructure facilities to

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	<p>accommodate the future residential population including:</p> <ul style="list-style-type: none"> • 1 x major public park • 5 x public pocket parks • 2 x childcare/community facilities • 1 x café, retail space • A continuous pedestrian/bicycle link across the entire precinct, between Canberra Avenue and Park Road, through Holdsworth Avenue and Berry Road. <p>Newlands Park will also be increased in size by approximately 4000sqm through the partial closure of Canberra Avenue.</p>
Disregard for initial approvals -The proposed development disregards the consents previously granted.	<p>The development application is proposed in accordance with the Housing SEPP which has changed the desired future character of the Precinct. This character now includes increased density and increased amounts of affordable housing apartments in accordance with the SEPP.</p>
Master Plan not being adhered to -The proposed development does not give regard to the master plan.	<p>The proposed development has been lodged in accordance with the required planning legislation and complies with the Housing SEPP which overrides the Master Plan.</p>
View Sharing - Loss of views	<p>The impacts on views are reasonable and are not a reason for refusal of the application. Refer to view impact analysis earlier in this report.</p>
Height - In excess of LEP and DCP controls. - The 30% height bonuses	<p>The proposed development complies with the height bonus afforded by the Housing SEPP. The SEPP overrides Council's LEP and DCP height controls.</p>
Loss of Privacy and Amenity	<p>The proposed development would not unreasonably impact the privacy or amenity of neighbour developments. The proposal adopts meets or exceeds the minimum setback dimensions between all residential buildings. The proposal has been designed to comply with the objectives of the Apartment Design Guide with regards to privacy and amenity.</p> <p>Refer to ADG assessment earlier in this report.</p>
Property Value - Loss in value	<p>Property value is not a matter for consideration in the Environmental Planning and Assessment Act 1979.</p>
Traffic - Does not address traffic volume impact - Amount of traffic movement is unacceptable. - Traffic study assumptions flawed.	<p>A traffic and car parking assessment report was submitted with the DA. The application was referred to Council's traffic engineer who confirmed the traffic impacts would be acceptable.</p> <p>The proposed development satisfied the requirements of the Housing SEPP for Transport Oriented Development which promotes the use of St Leonards South train station.</p>
DCP non-compliance - Does not meet DCP storeys control	<p>The DCP controls are not a matter of consideration as the Housing SEPP 2021 overrides the requirement to assess the development against Council's DCP.</p> <p>The proposed development satisfies the design related requirements and ADG requirements as discussed throughout the report.</p>
Precedent - Approval of the application would result in a	<p>The proposed development satisfies the requirements of the Housing SEPP and provides affordable housing as</p>

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precedent being created regarding acceptable heights within St Leonards South and Lane Cove Council.	required. The proposed development meets the desired future character of the area as provisioned by the Housing SEPP.
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4.15 (1) (e) Public interest:

The proposal would not have an unreasonable impact on neighbouring properties or the public domain with regard to the Lane Cove LEP 2009, Lane Cove DCP 2009 or any other environmental planning instruments. Therefore, approval of this application would not be contrary to the public interest.

7. Contributions

7.11 Contribution

The s7.11 condition from the original DA was paid in April 2024.

The additional 7.11 contribution has been considered with regards to the modification of total occupants within the approved and additional apartments. The amended proposal would see **77** additional apartments.

As highlighted in **Table 2** on page 8 the s.455 modification proposes a total of 10 additional one-bedroom apartments, 54 additional two-bedroom apartments, 13 additional three + bedroom apartments. The calculations are as below;

Type	Cost per Unit	Number of Units	Total
Studio/1 bedroom	\$23,570.52	10	\$235,705.20
2 bedrooms	\$33,673.17	54	\$1,818,351.18
3 + bedrooms	\$52,194.69	13	\$678,530.97
Total:			\$2,732,587.35

The existing s7.11 contribution condition will be updated to include a new table. Refer to **Annexure 1**.

8. Conclusion

CONCLUSION

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

The proposed modification is of minimal adverse environmental impact and is substantially the same development as the development for which the consent was originally granted.

The application has satisfied the requirements of Chapter 2 of the Housing SEPP 2021.

<p style="text-align: center;">Sydney North Planning Panel Meeting 02 April 2025 S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 1- 5 CANBERRA AVENUE ST LEONARDS</p>
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The proposal would provide 77 affordable housing apartments over the 3 residential flat buildings in an accessible location. The additional units result in a 30% bonus to the maximum building height and a 30% bonus to the floor space ratio development standard.

The proposed modification would be consistent with the relevant planning controls, would provide for the greater housing diversity and achieve design excellence within the St Leonards South Precinct.

On balance as the proposed development would be acceptable, it is reported to The Sydney North Sydney Planning Panel (SNPP) that the application is recommended for approval subject to the provided conditions.

RECOMMENDATION

That:-

The Sydney North Planning Panel determines that it is satisfied:

- (a) That pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel, at its meeting of 3 April 2025, approve the proposed s4.55(2) modification to Development Application DA79/2022 to the approved Residential Flat building for Infill Affordable Housing pursuant to the SEPP (Housing) at Nos. 1-5 Canberra Avenue, 4-8 Marshall Avenue and 2-8 Holdsworth Avenue, St Leonards subject to conditions contained in **Annexure 1**.

Mark Brisby
Director - Planning and Sustainability
Planning and Sustainability Division

ATTACHMENTS:

There are no supporting documents for this report.