

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Item No:

Subject: S4.55(2) modification to approved residential flat buildings at 14-16 Marshall Avenue, 2-10 Berry Road, and 5-9 Holdsworth Avenue, St Leonards South.

Record No: DA23/56-01 - 44553/25

Division: Planning and Sustainability Division

Author(s): Andrew Bland

Panel Reference	PPSSNH-647
DA No:	DA56/2023
LGA:	Lane Cove Council
Project description:	Construction of 3 residential flat buildings (14-storeys) comprising a total of 225 dwellings and basement parking for 345 vehicles.
Street Address:	14-16 Marshall Avenue, 2-10 Berry Road, and 5-9 Holdsworth Avenue St Leonards South.
Applicant/Planner/Owner:	Applicant: DASCO PROPERTY DEVELOPMENT SERVICES PTY LTD – Jack Maalouf Planner: Anna Wang – Urbis Owner: Marshall Land Pty Ltd as Trustee for Marshall Land Unit Trust & Holdsworth Land Pty Ltd as Trustee for Holdsworth Land Unit Trust.
Date Lodged:	18/06/2025
Total number of Submissions Number of Unique Objections	4 unique submissions have been received, 3 by way of objection and 1 in support of the application. - All submissions have been forwarded to the SNPP
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021	The Development is considered regionally significant in accordance with Schedule 6 of the SEPP as the proposal includes an affordable housing component with an estimated development cost of over \$5 million. This has been confirmed through the accompanying EDC report Annexure 18.
List of all relevant s4.15(1)(a) matters	relevant environmental planning instruments - SEPP (Housing) 2021 - Chapter 2, Division 1 In-fill affordable housing - SEPP (Housing) 2021 - Chapter 4 - Design of residential apartment development - SEPP (Resilience and Hazards) 2021 - SEPP (Biodiversity and Conservation) 2021 - SEPP (Transport and Infrastructure) 2021 - 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 developer has offered to enter into under section 7.4 - Planning agreement that the developer had offered to enter into a Voluntary Planning Agreement under Section 7.4 under the original development consent. There are no changes proposed to the execution of the draft VPA and Condition 2A remains relevant. Condition 2B has been updated to deal with the 7.11 contributions. relevant regulations e.g. Regs 92, 93, 94, 94A, 288 - Nil coastal zone management plan - Nil other relevant plans - St Leonards South Section 7.11 Contributions Plan																																							
List all documents submitted with this report for the Panel’s consideration	<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>Amended Architectural Plans</td><td>PTW Architects</td></tr><tr><td>5</td><td>Amended Landscaping Plan</td><td>RPS</td></tr><tr><td>6</td><td>Civil Plan</td><td>Apex Civil Engineers</td></tr><tr><td>7</td><td>Chapter 4 Design Verification Statement</td><td>PTW Architects</td></tr><tr><td>8</td><td>s4.55(2) Modification Report</td><td>Urbis</td></tr><tr><td>9</td><td>Combined Request for Further Information Requests</td><td>Urbis</td></tr><tr><td>10</td><td>Combined Request for Further Information Responses</td><td>Urbis</td></tr><tr><td>11</td><td>Traffic and Parking Assessment + Addendums + Car Share Program</td><td>MLA Transport Planning + arcenergy group</td></tr><tr><td>12</td><td>Updated Hydrological Investigation + Seepage Analysis + Water NSW</td><td>JC Geotechnics Pty Ltd + Water NSW</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	Amended Architectural Plans	PTW Architects	5	Amended Landscaping Plan	RPS	6	Civil Plan	Apex Civil Engineers	7	Chapter 4 Design Verification Statement	PTW Architects	8	s4.55(2) Modification Report	Urbis	9	Combined Request for Further Information Requests	Urbis	10	Combined Request for Further Information Responses	Urbis	11	Traffic and Parking Assessment + Addendums + Car Share Program	MLA Transport Planning + arcenergy group	12	Updated Hydrological Investigation + Seepage Analysis + Water NSW	JC Geotechnics Pty Ltd + Water NSW
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Sydney North Planning Panel Meeting 11 December 2025

S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16 MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS SOUTH.

		Requests for Further Information + Responses	
	13	Water NSW Approval	Water NSW
	14	Acoustic Letter	VMS Australia
	15	Access Statement + Addendum	Access Link Consulting
	16	Updated Geotechnical Report	Foundation Earth Sciences
	17	Community Housing Provider Letter of Support	Cubic Real Estate
	18	EDC Report	Property & Building Assessments
	19	Stormwater Design Report	Apex Civil Engineers
	20	Operational Waste Management Plan	Elephants Foot Consulting
	21	View Analysis	PTW
	22	Detailed Site Investigation Report	Foundation Earth Sciences
	23	Updated BASIX Report	Eco Engineering Group Pty Ltd
	24	S4.55 Ecologically Sustainable Design Report	Eco Engineering Group Pty Ltd
	25	Updated Natural Ventilation	RWDI Australia Pty Ltd
	26	Updated BCA Letter	Nest Consulting Group
Clause 4.6 requests	No		
Summary of key submissions	• Building Height • Amenity impacts • Traffic • Non-compliance with Master Plan/ DCP • View Loss		
Report prepared by	Andrew Bland		
Report date	11 December 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

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Yes – Condition 2.C2 has been recommended to capture the modification works.

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 a bonus to the maximum building height (the "height") and a bonus to the Floor Space Ratio (the "FSR") development standards.

The proposal seeks to benefit from a 29.59% bonus to the height development standard and a 26.46% bonus to the FSR development standard, which are both established in Part 7 of Council's LEP 2009.

These two 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. Condition 2E 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 DA56/2023.

Approved: DA56/2023 obtained consent for the construction of 3 residential flat buildings (10-storeys) comprising a total of 185 dwellings and basement parking for 249 vehicles.

Modification: The subject proposal primarily seeks consent for the construction of 4 additional levels to the Area 13, Area 14 and Area 15 building and 3 additional levels above the approved bridge between Area 13 and Area 15. This would accommodate a total of **38 additional apartments (Total = 225 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 **38 affordable housing apartments** in accordance with the Housing SEPP Chapter 2 requirements. These apartments have been identified in **Tables 5A and 5B** later in this report.

The proposal also includes the addition of 96 **parking spaces (Total = 345 vehicle spaces)**.

Notification

The development application was notified in accordance with Council policy and a total of **4** submissions were received, 3 by way of objection and 1 in support of the application. The concerns raised in these submissions have been addressed later in this report.

In accordance with Council policy, the amended proposal did not require further notification as the amendments were in response to Council's concerns and reduced the impacts of the development.

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 - Design 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.

The Applicant has sought to comply with Council's DCP controls through the amended proposal where appropriate such as the setback controls.

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 requirements and is recommended to the Sydney North Planning Panel (SNPP) for Approval subject to draft conditions.

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 DA56/2023 which has already satisfied the incentive scheme requirements through the delivery of the required public benefits. The development application does not propose to alter the delivery of the incentive scheme provisions.

3. SITE AND SURROUNDS

The subject site is known as 14 - 16 Marshall Avenue, 2 - 10 Berry Road, and 5 - 9 Holdsworth Avenue St Leonards. Area 13 has an area of 1973 m², Area 14 has an area of 1672 m², and Area 15 has an area of 2229 m². The total combined site area is 5874m². The site is known as Areas 13, 14 and 15 within the St Leonards South Precinct planning scheme and is located centrally within the northern end of the of the Precinct.



Figure 1: Aerial Photograph – SLS Red outline/ Areas 13,14 and 15 yellow outline.
 (Source: Nearmap)



Figure 2: Areas 13, 14 and 15 (in pink) within the St Leonards South Precinct

(Source: LCDCP 2009)

Table 1 – Site Characteristics of 14 - 16 Marshall Avenue, 2 - 10 Berry Road, and 5 - 9 Holdsworth Avenue St Leonards.	
Site Characteristic	Subject Site
Title Particulars	14 - 16 Marshall Avenue, 2 - 10 Berry Road, and 5 - 9 Holdsworth Avenue Lots 1, 2, 7, 8, 9 34, 35, 36, 37, and 38 in DP 7259.
Total Site Area	5874 m ²
Site Frontage	Approx. 45.86m to Holdsworth Avenue Approx. 109.1m to Berry Road Approx. 33.3m to Marshall Avenue
Site width	Approx. 73.37m between Holdsworth Avenue and Berry Road
Topography	See existing site survey with spot RLs at Annexure 6
Zoning	R4 High Density Residential
Existing Structures	The site contains single detached or semi-detached dwelling houses on separate allotments with an assortment of ancillary structures.
Existing Use	The site is being used for residential purposes (single dwellings).
Vehicular Access	Vehicular access (existing) is provided through individual vehicle crossovers for each allotment.

Topography

The subject site includes an average cross-fall of approximately 3m from north to south (from Marshall Avenue to the proposed east/west link) and an average cross-fall between approximately 9m from west to east (from Berry Road to Holdsworth Avenue).

Site Photographs



Figure 3: Corner of Marshall Avenue and Berry Road. Facing south. (Source: Council Planner)



Figure 4: Marshall Avenue frontage. Facing west. (Source: Council Planner)



Figure 5: Holdsworth Avenue frontage. Facing north. (Source: Council Planner)



Figure 6: Berry Road Frontage. Facing north. (Source: Council Planner)

Adjoining/Surrounding Sites

The Precinct is in transition towards a desired future character which has been transformed by the recently amended planning instruments and represented by the recently constructed developments. Recently constructed residential flat buildings adjoin the area to the east and south. 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 east within Canberra Avenue and Holdsworth Avenue is **Area 1, 2 and 4**.
 - On 17 April 2023, the Sydney North Planning Panel (SNPP) determined to approve 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.
 - **On 7 April 2025, the SNPP determined to approve uplift in density pursuant to the Affordable Housing Bonuses afforded under the Housing SEPP 2021.** This included 5 additional storeys located on each tower and 77 additional apartments including 58 affordable housing apartments.
- To the East and within **Area 1**, a rezoning review has been approved at 2 Marshall Avenue which permits a 15 storey co-living development.
- To east the site is adjacent to **Area 6** which is currently occupied by single and 2-storey dwellings. This area is subject to 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.
- To the northeast and adjoining the site is Marshall Avenue and is **Area 12** (1-3 Holdsworth Avenue and 10 -12 Marshall Avenue).

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16 MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS SOUTH.

- On 14 October 2022, SNPP determined to approved 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 uplift in density pursuant to the Affordable Housing Bonuses afforded under the Housing SEPP 2021.** This included 4 additional storeys providing 24 additional apartments and 21 dedicated to affordable housing accommodation. (Ref: DA146/2024)
- 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, the **SNPP determined to approve uplift in density pursuant to the Affordable Housing Bonuses afforded under the Housing SEPP 2021.** This included 4 additional storeys providing 22 additional apartments and 23 dedicated to affordable housing accommodation. (Ref: DA33/2024).



Figure 8: North of site at 15 – 25 Marshall Avenue. Facing northwest. (Source: Council Planner)



Figure 9: South of site at Areas 17 and 19. Facing south. (Source: Council Planner)

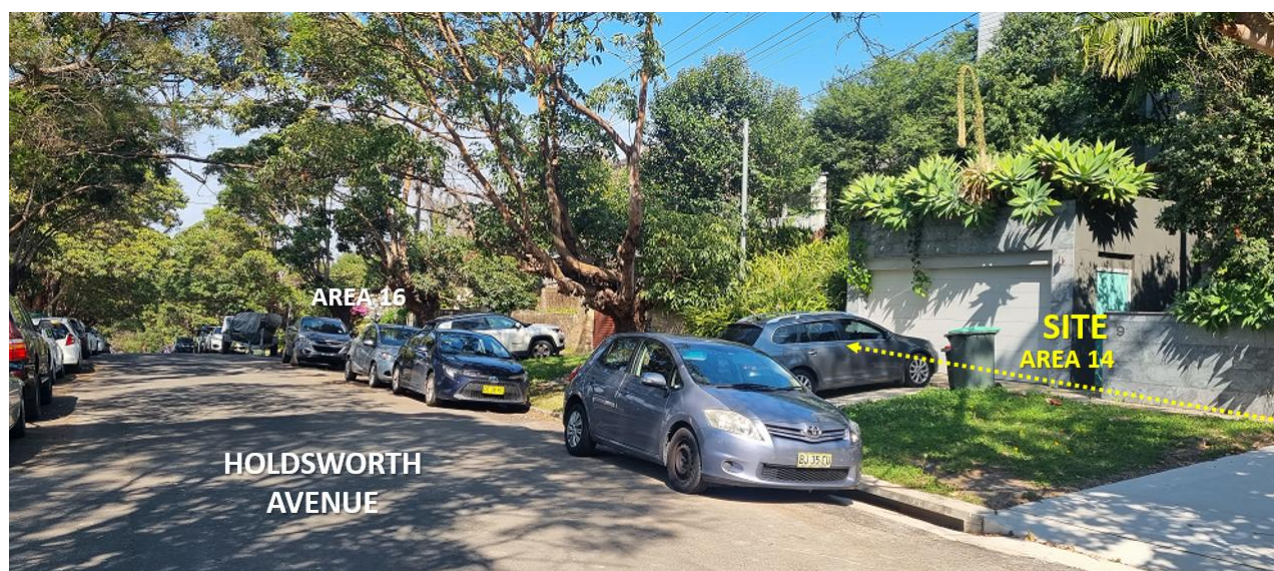


Figure 10: South of site at Area 16. Facing south. (Source: Council Planner)

PROPOSAL

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

- Area/Building 13: 4 additional storeys
- Area/Building 14: 4 additional storeys
- Area/Building 15: 4 additional storeys

This would result in the provision of:

- 38 additional apartments (Total 225),
- 38 additional affordable housing apartments,
- 96 additional vehicle spaces (Total 345).

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

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Proposed Apartment Mix

Table 2 – Approved vs proposed apartment mix				
	Apartment mix	~%	S4.55	Total
Approved	43 one-bedroom apartments; 82 two-bedroom apartments; 50 three-bedroom apartments; and 12 four-bedroom apartments.	23% 44% 27% 6%		187
Amended S4.55 proposal	45 one-bedroom apartments; 105 two-bedroom apartments; 67 three-bedroom apartments; and 8 four-bedroom apartments.	20% 46.7% 29.8% 3.6%	+2 +23 +17 -4	225 (38)

In depth proposal breakdown

The subject development application seeks consent for the following works:

Table 3 – In depth proposal breakdown	
	Proposed works
Affordable Housing	- Dedication of an <i>*additional</i> 38 affordable housing apartments throughout the development, in accordance with Chapter 2, Division 1 of the Housing SEPP. The dedicated apartments are identified in Table 5A and 5B, later in this report; <i>*The previously approved 3 affordable housing units (key worker housing) approved under the Lane Cove LEP Part 7 incentive controls would remain.</i> - Parking and adaptable unit provision have been increased to respond to the increase in apartments.
Area 13	4 additional storeys (from 10 storeys to 14 storeys); - A proposed building height of 47.95m (10.99m increase in height from the approved development). This is within the permissible 48.1 height plane and a 29.59% increase from the maximum permissible height under Part 7 of the LEP; 1 additional basement level 3 to accommodate the additional parking and storage requirements, associated changes are made to basement level 1 and 2 to accommodate the additional excavated level; - Each level accommodates amendments to floor plate layouts ranging from minor to major however the general footprint remain the same. - Minor amendments to the level 3 unit layouts including the 4 bedroom, 2 storey apartments U130305, U130306 and U130307 becoming 3 bedroom with the addition of voids on level 4; - Typical floor plate designs have been modified and separate designs are used for levels 5-7 and levels 9-14; 3 additional storey has been provided to the bridge between the Areas 13 and 15 buildings. This bridge would now be 10 storeys total between and accessed from Level 5 from Area 13. - A double storey penthouse apartments over levels 15 and 16 within Areas 13 and 15; - The rooftop level is primarily retained with amendments to the layout of

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
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Table 3 – In depth proposal breakdown	
	Proposed works
	service areas and the communal areas on the roof of area 13 including layout, treatment and landscaping.
Area 14	• 4 additional storeys (from 10 storeys + two part storeys to 14 storeys + two part storeys); • A proposed building height of 46.85m (10.49m increase in height from the approved development). This is within the permissible 48.1 height plane and a 26.62% increase from the maximum permissible height under Part 7 of the LEP; • Provision of 16 affordable dwellings, in accordance with the infill affordable provisions of the Housing SEPP. • 1 additional basement level 3 to accommodate the additional parking and storage requirements, associated changes are made to basement level 1 and 2 to accommodate the additional excavated level; • Each level accommodates amendments to floor plate layouts ranging from minor to major. • Typical floor plate designs have been modified and separate designs are used for levels 6-13; • Levels 5 to 15 is setback 9m from the southern boundary, which complies with DCP control that requires upper level setback to the pedestrian link. • The northern setback of Levels 10–13 has been revised from 6m to 4.5m. The amended northern façade does not include any windows and full height privacy treatment has been provided to the balconies (treated as a blank wall), which is able to meet the privacy objective under the ADG. The top two levels are setback 6m from northern boundary. • The rooftop level is primarily retained with minor amendments to service locations which would not be discernible from ground level.
Area 15	• 4 additional storeys (from 10 storeys + two part storeys to 14 storeys + two part storeys); • A proposed building height of 47.63m (10.99m increase in height from the approved development). This is within the permissible 48.1 height plane and a 28.73% increase from the maximum permissible height under Part 7 of the LEP; • Provision of 22 affordable dwellings, in accordance with the infill affordable provisions of the Housing SEPP. • 1 additional basement level 3 to accommodate the additional parking and storage requirements, associated changes are made to basement level 1 and 2 to accommodate the additional excavated level; • Each level accommodates amendments to floor plate layouts ranging from minor to major. • Typical floor plate designs have been modified and separate designs are used for levels 9-14; • Levels 7-16 would be setback 9m from the southern boundary, which complies with the DCP control that requires upper level setback to the

Table 3 – In depth proposal breakdown	
	Proposed works
	pedestrian link. The rooftop level is primarily retained with minor amendments to service locations which would not be discernible from ground level.
Basement / Vehicular access	- Addition of a third basement level to accommodate additional parking and storage requirements associated with residential uplift. The RL of the new lower basement level is at 58.25m AHD, and approximately 12m (southeast) to 20.5m (northwest) of excavation is required. This basement level is a duplicate of Basement Level 02 as amended (see description of proposed modification below). - Increase in the number of car parking spaces from 249 to 345. - Re-configuration of the basement layout to allow for additional car parking spaces, while generally maintaining the approved car park layout. - Amendment to the layout of Basement Level 02 beneath Area 14 from two dead-end aisles to a continuous U-shaped aisle to allow for improved vehicle circulation. - Revision to the layout of basement services, including the waste collection services, and loading zone. - No changes are proposed to the footprint of the basement. Therefore the modification would not encroach into the deep soil zone.
Materials	Proposed material for the podium portion of all buildings changed from medium brown pane to light brown brick.
Structural coordination amendments	- Structure columns and slab thickness revised. - Core walls and risers revised in all three buildings. - The stormwater management plan prepared by C&M, Report No. R02527 Rev C, for the original DA submission adopted an incorrect site area for the OSD calculation. For this reason, new calculations were required based on the correct area. Accordingly, the OSD volume increased from 135.6m³ to 149.80m³ with a PSD of 65.13l/s. The plans were amended to reflect the new OSD volume and a direct connection to a kerb inlet pit has been proposed.



**Figure 11: Proposed perspective from Berry Road.
(Source: Applicant)**



**Figure 12: Proposed perspective from Holdsworth Avenue.
(Source: Applicant)**

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.



Figure 13: Floor plates with areas identified (Source: Applicant)

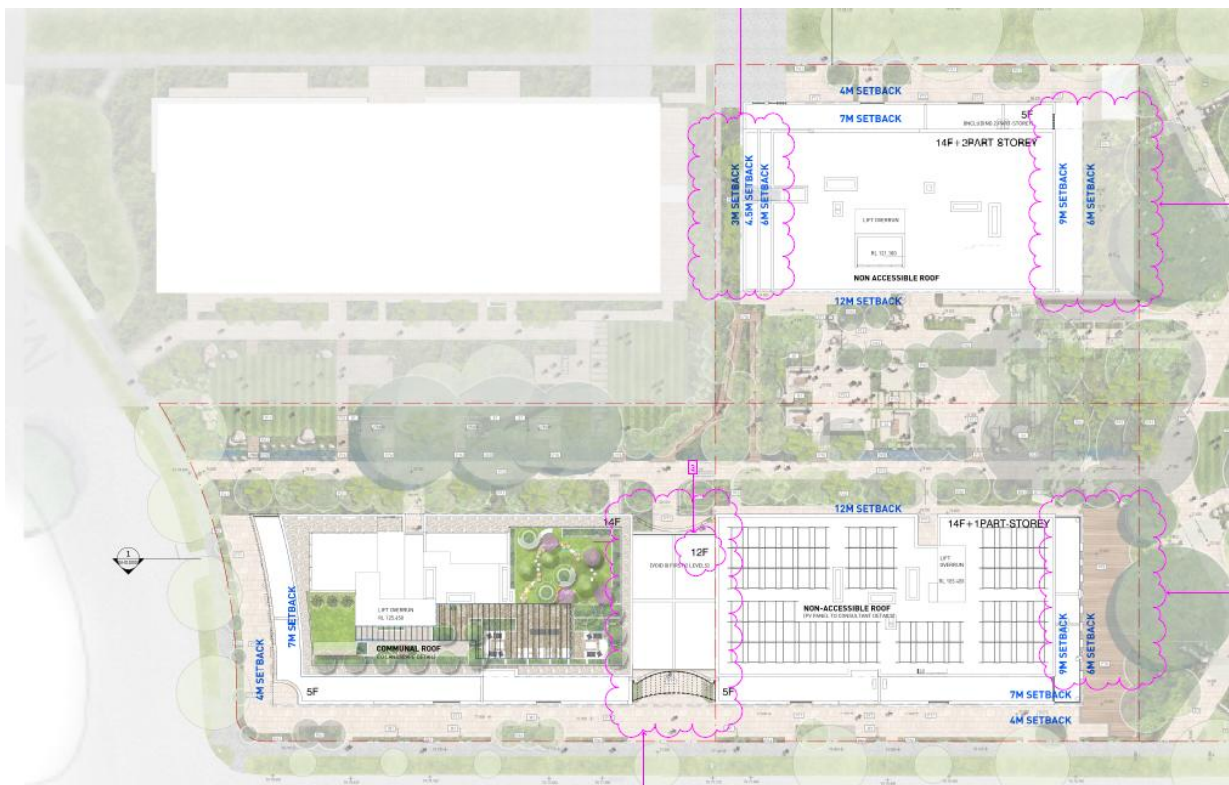


Figure 14: Roof plan (Source: Applicant)

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
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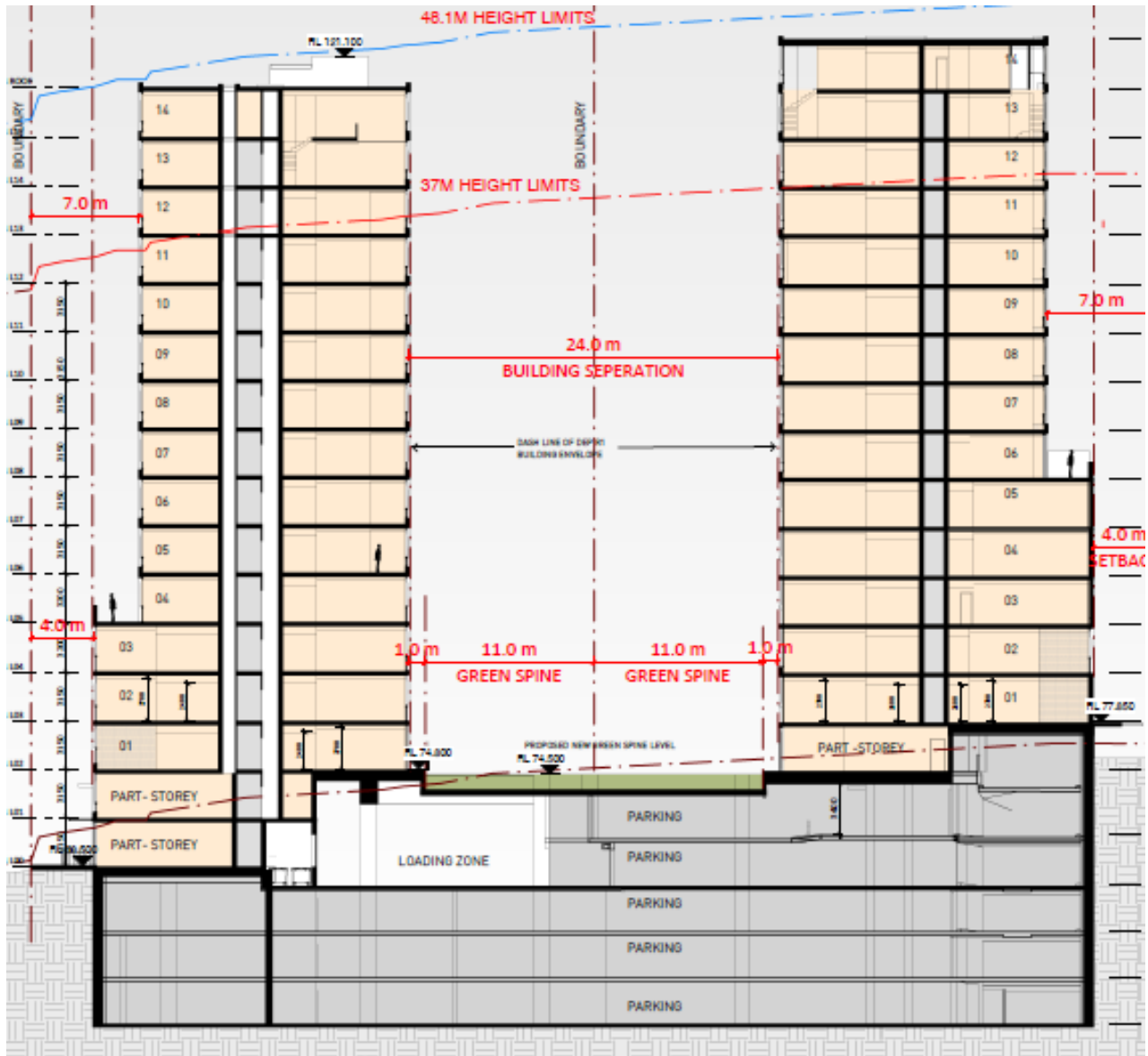


Figure 15: Section through Area 14 and Area 15. (Source: Applicant)

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
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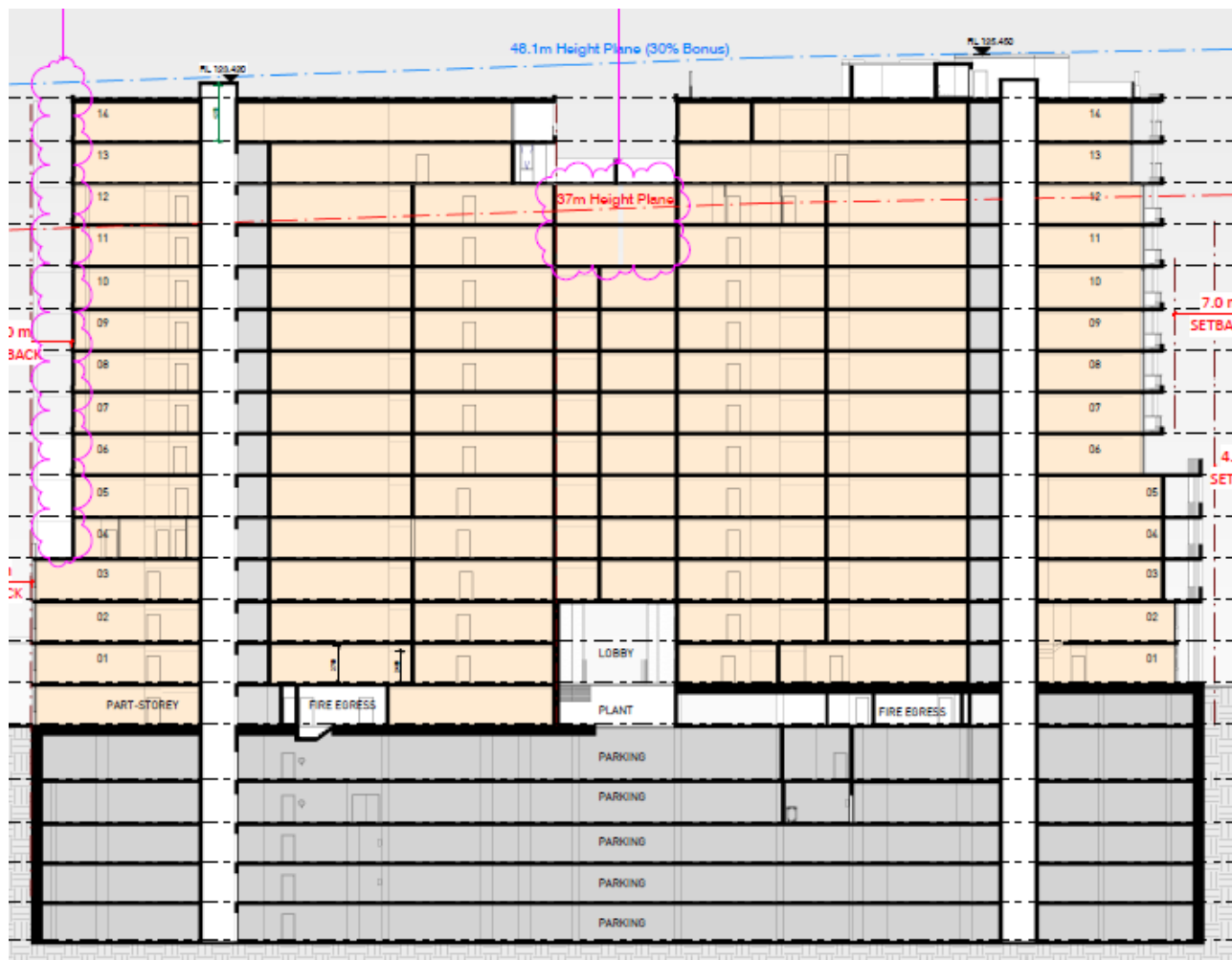


Figure 16: Long section through Area 13 and Area 15 (Source: Applicant)

5. HISTORY

Assessment/History Timeline

The assessment/history timeline is provided in **Table 4** below.

Table 4 – Proposal Timeline Table	
Date	Description
16 June 2021	NSROC Design Review Panel Meeting and Council Pre-DA Meeting.
16 October 2021	NSROC Design Excellence Panel Meeting.
1 February 2022	NSROC Design Excellence Panel 2 nd Meeting.
22 May 2023	Development Application DA56/2023 lodged.
23 May 2023	Public notification of Development Application and Draft VPA commenced.
28 February 2024	Approval granted by the SNPP for the construction of 3 residential flat buildings (10-storeys) comprising a total of 185 dwellings and basement parking for 249 vehicles.

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Table 4 – Proposal Timeline Table	
Date	Description
18 June 2025	Subject S4.55(2) Modification Application was lodged with Council.
31 July 2025	Request for Further Information 1 issued to Applicant.
12 August 2025	Response to RFI 1 received.
13 August 2025	Kick of briefing was held with the SNPP, Council and the Applicant.
21 August 2025	Request for Further Information 2 issued to Applicant which included the Water NSW requirements.
25 August 2025	Response to RFI 2 received.
03 September 2025	Request for Further Information 3 issued to Applicant which included bulk and scale, solar access, view impacts
10 October 2025	Meeting held with Applicant and Council to discuss the amended design proposed to address the matters raised in RFI 3.
7 November 2025	Amended proposal lodged with Council.
11 November 2025	Final amended architectural plans and RFI 3 response provided to Council.

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. 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 between 10-15% of the GFA as affordable housing to achieve the corresponding 20–30% bonuses for height or FSR in accordance with Section 16 and Section 18.

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 increase and affordable housing now form 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 influenced development within the Precinct including approvals in accordance with the affordable housing bonus scheme and in some instances construction has commenced.

- 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)
- On 7 April 2025, the SNPP determined to approve a Modification Application at **Area 1, 2 and 4** for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021. (Ref: DA79/2022)

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

The subject site is located approximately 500m from St Leonards Railway Station as demonstrated in **Figure 7** below.

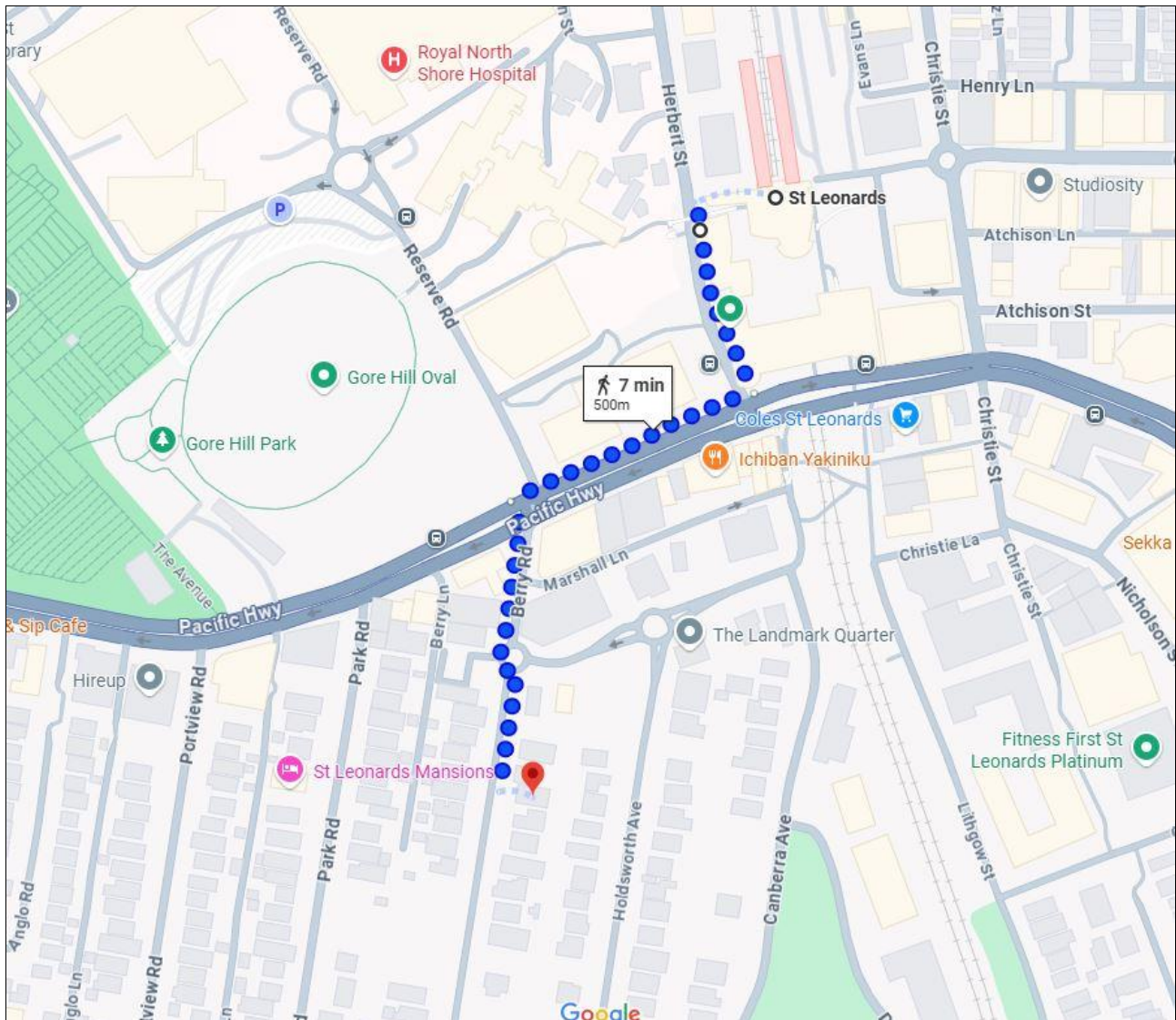


Figure 17: Walking distance to St Leonards Railway Station (Source: Google maps)

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).

The affordable housing calculation for FSR/GFA:

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

- Area 13 and Area 15: 2.85:1 – maximum FSR (Gross Floor Area = 11,975.7 m²)
- Area 14: 3.35:1 – maximum FSR (Gross Floor Area = 5,601.2m²)

Note that Areas 13 and Area 15 have been apportioned.

Total Gross Floor Area = 17,756.9m²

The maximum permissible 30% bonus FSR/GFA:

- Area 13 and Area 15: 3.705:1 (Gross Floor Area = 15,568.41m²).
- Area 14: 4.355:1 (Gross Floor Area = 7,281.3m²).

Total Allowable Gross Floor Area = 22,849.97m²

The proposed FSR/GFA:

- Area 13 and Area 15: 3.705:1 (Gross Floor Area = 15,568.4m²).
- Area 14: 4.119:1 (Gross Floor Area = 6,887.8m²).

Total Proposed Gross Floor Area = 22,456.2m²

Bonus amount of 4,699.3 or 26.4646%

The modification proposes to benefit from a 26.4646% bonus in relation to the Part 7 incentive GFA and FSR.

The required affordable housing component has been calculated below:

Affordable housing component requirement = $26.4646\% \div 2$
= 13.23%

Conclusion: The proposed development seeks a larger bonus to the Height development standard under Section 18 and thus the affordable housing component is calculated in the following section.

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.***

(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—

Affordable housing component = additional building height (as a percentage) ÷ 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 13: 37m – maximum building height
- Area 14: 37m – maximum building height
- Area 15: 37m – maximum building height

The proposal seeks to comply with the 30% bonus to the incentive building height being 48.1m on all three Areas/Towers:

- Area 13: 47.95m (10.95m or 29.59% bonus) – Highest bonus resulting in the required affordable housing component requirement.
- Area 14: 46.85m (9.85m or 26.62% bonus)
- Area 15: 47.63m (10.63m or 28.73% bonus)

The required affordable housing component has been calculated below:

Affordable housing component requirement = 29.59% ÷ 2
= 14.8%

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 29.59% bonus to the maximum building height. This requires that the applicant provides 14.8% of the total GFA / FSR as affordable housing.

Total Proposed Gross Floor Area = 22,456.2m² ÷ 14.8%
= 3,323.5176

The proposed development would provide 38 apartments equating to a **total of 3379.7m² of GFA of affordable housing required across the entire development**, this has been detailed in **Tables 5A and 5B** below.

Table 5A- Dedicated Housing SEPP 2021 affordable housing apartments Area 14.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	1	140101	113.1	2
	2	140201	111.4	3

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Table 5A- Dedicated Housing SEPP 2021 affordable housing apartments Area 14.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	3	140202	87.9	2
	4	140203	76.8	2
	5	140204	96.4	3
	6	140205	107.8	3
	7	140301	89.8	2
	8	140302	88.0	2
	9	140303	76.8	2
	10	140304	96.0	3
	11	140305	96.0	3
	12	140401	89.8	2
	13	140402	87.9	2
	14	140403	76.8	2
	15	140404	82.7	2
	16	140405	80.7	2
		Circulation space	121	
Total		1578.9	sqm	

Table 5B- Dedicated Housing SEPP 2021 affordable housing apartments Area 15.				
	Unit Count	Unit Number	GFA sqm	Bedrooms
	1	150401	97.3	3
	2	150402	97.0	3
	3	150403	79.0	2
	4	150404	53.8	1
	5	150405	80.4	2
	6	150406	80.4	2
	7	150407	51.9	1
	8	150501	97.3	3
	9	150502	82.3	2
	10	150503	55.8	1
	11	150504	57.0	1
	12	150505	54.6	1
	13	150506	58.9	1
	14	150507	80.4	2
	15	150508	51.9	1
	16	150701	96.3	3
	17	150702	100.0	3
	18	150703	57.0	1
	19	150704	54.6	1
	20	150705	59.0	1
	21	150706	80.4	2
	22	150707	51.9	1
		Circulation space	223.6	
Total		1800.8	sqm	

Area 13 = 0

Area 14 = 1578.9m²

Area 15 = 1800.8m²

Total = 3379.7m² or 14.8% 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			
Section	Requirement	Proposal	Complies
(a)	A minimum site area of 450sqm	Total: 5,874sqm	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 = 8,085sqm. (ii) 30% of the site area = 1,762.2sqm 1,784sqm of landscaped are provided in the green spine.	Yes
(c)	A deep soil zone on at least 15% of the site area, where – (i) Each deep soil zone has a minimum dimension of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies. Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.	<i>Not applicable</i>
(d)	Living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm mid-winter	Subclause (3) states that subclause (c) and (d) <u>do not apply</u> to development to which Chapter 4 applies. Chapter 4 Design of residential apartment development applies and as such, (c) is not applicable.	<i>Not applicable</i>
(e)	The following number of parking spaces for dwellings used for affordable housing – (i) 1 bedroom dwelling – at least 0.4 parking spaces (ii) 2 bedroom dwelling – at least 0.5 parking spaces (iii) 3 bedroom dwellings 1	The affordable housing component includes 3 approved apartments and proposed 38 apartments comprised of: 11 x 1 bedroom = 4.4 spaces 20 (17 + 3 existing) x 2 bedroom = 10 spaces 10 x 3 bedroom = 10 spaces This requires 24.4 spaces or 25 rounded up to a full space.	Yes

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

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			
Section	Requirement	Proposal	Complies
		This requires a total of 25 + 200 (parking from (f)) = 225 spaces required. 345 spaces have been provided.	
(f)	The following number of parking spaces for dwellings not used for affordable housing – (i) 1-bedroom dwelling – at least 0.5 parking spaces (ii) 2-bedroom dwelling – at least 1 parking spaces 3-bedroom dwellings 1.5	There would be 184 apartments not used for affordable housing comprised of: 38 x 1 bedroom = 17 spaces 85 x 2 bedroom = 85 spaces 65 x 3/4 bedroom = 97.5 spaces This requires 199.5 spaces or 200 rounded up to a full space. This requires a total of 200 + 25 (parking from (e)) = 225 spaces required. 345 spaces have been provided.	Yes
(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.	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—65m², (ii) for each dwelling containing 2 bedrooms—90m², (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom	Not applicable as (g) and the Apartment Design Guide applies.	<i>Not applicable</i>

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			
Section	Requirement	Proposal	Complies
	in addition to 3 bedrooms.		

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 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 5** located at 13-19 Canberra Avenue. (Ref: DA33/2024).

On 7 March 2025, the 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).

On 7 April 2025, the SNPP determined to approve a Section 4.55(2) Application for additional height and FSR to accommodate affordable housing under the provisions of the Housing SEPP 2021 at **Area 1, 2 and 4** at 1-5 Canberra Avenue.

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 required 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 amendments have been made to address some of the matters raised in Council RFI.
- The proposed development maintains the modulation (to address the topography of the site), materiality and roof design to retain the approved character under DA56/2023.

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 Condition 2E within **Annexure 1**.

22 Subdivision permitted with consent

Subdivision is not proposed within the subject application.

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 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, high level finishing and apartment amenity, 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 Report 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	Satisfactory - The proposed development seeks to provide affordable housing. This is established in the desired future character through Council’s LEP Part 7 planning scheme (for other sites in the Precinct) and through Chapter 2 of the Housing SEPP. The subject site is located in the St Leonards South Precinct, which has been strategically located to provide high density residential

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	developments within proximity to the St Leonards railway station, being a key transport hub. 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. There are numerous existing services which employ people eligible to live in affordable housing apartments. This would provide the opportunity for key workers such as nurses and teachers, who are eligible to utilise affordable housing, to live in proximity to their place of work. The proposed development maintains its relationship with the site and neighbouring sites through the retention of high-quality landscaping, established setbacks and high-quality architectural design.
2 Built form and scale	Satisfactory - The Housing SEPP has now informed the built form and scale of development within the Precinct. The proposed development would be constructed in accordance with the envisaged height and scale permitted in Chapter 2 of the Housing SEPP. The proposed development achieves an appropriate built form by maintaining the approved setbacks and high-quality architectural materiality and features of the original development. The public domain remains equally defined through the design of the approved development and retention of the approved ground level structures. The impacts on views and vistas are considered reasonable as discussed the view loss section later in this report.
3 Density	Satisfactory – The proposed development provides the strategically planned high density residential scale which corresponds with the recently amended R4 Zoning. The proposed development would attain a maximum 29.59% bonus to the height and a maximum 26.46% bonus to the FSR standard in accordance with the density permitted by Chapter 2 of the Housing SEPP. 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 have been granted consent for similarly proportioned uplifts in density.

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	The apartments sizes exceed the ADG minimum requirements to ensure a high level of amenity for the future residents. The density would be sustained through the proximity to existing infrastructure, the future public benefits to be delivered in accordance with Part 7 of Council's LEP, key public transport hubs and the proximity to the St Leonards, Crows Nest and North Sydney region more broadly. The proposed development includes a communal opens space area which is equal to 38% of the site area which is a significant exceedance of the ADG requirements. This is considered reasonable in accommodating the additional density proposed.
4 Sustainability	Satisfactory – The proposed development achieves a good sustainability outcome through maintaining the landscaped areas on the site, to facilitate high quality canopy potential, water sensitive design, and the use of renewable energy within the building. Council's Landscape officer recommended changes to the landscape plans which have been accommodated by the Applicant in the amended package. This seeks to provide appropriate specie selection for canopy longevity and adequate soil depths for planting on structure. Condition 106 has also been recommended to improve the canopy outcome. The proposed development is cross ventilated at all levels to ensure a positive environmental outcome through reducing the reliance on cooling and heating systems.
5 Landscape	Satisfactory – The proposed development seeks to retain the approved 24% deep soil and high quality landscaping approved in the original development.
6 Amenity	Satisfactory – The proposed development provides high quality amenity through the retention of the approved communal space which is equal to 38% of the site area. This significantly exceeds the 25% ADG requirement. 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. 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.

Table 7 - SEPP (Housing) 2021 – Compliance Table	
Schedule 9 Design principles for residential apartment development	
Design quality principle	Satisfaction of the principle
	All these factors ensure the proposed development provides high quality amenity for the future occupants.
7 Safety	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 (CPTED). All public and private spaces remain clearly defined and there are no changes to the passive surveillance provided. A fire control room has been added at level 02 of the Area 15 building.
8 Housing diversity and social interaction	Satisfactory – The proposed development provides for additional housing diversity through the provision of 38 affordable housing apartments. This equates to a significant increase to the planned affordable housing to be provided through the Council's LEP Part 7 incentive scheme for the Precinct. The identified affordable housing apartments would be constructed to the same high-quality finishing and layout as the other departments throughout the development. The affordable housing units would have equal access to all the communal amenities provided by the development. 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).
9 Aesthetics	Satisfactory – The proposed development maintains the high-quality aesthetic design as supported in the approved dwelling. The materials, landscaping and articulation provides for a visually attractive architectural design. This ensures that design excellence is achieved.

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**, and a brief summary is provided in **Table 8** below.

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

Table 8 - Apartment Design Guide key statistics			
	Approved Development	Amended Proposal	Change from Approved
Solar Access of overall development	132/185 – 71%	158/225 – 70.2%	-0.8% Compliant with ADG
Cross Ventilation of overall development	63%	63.8%	+0.8%
Communal Open Space	38% of site area	38% of site area	Unchanged Compliant with ADG
Deep Soil Zone	1,383.6m ² (24% of site area)	No change.	-
Setbacks	Compliant with all ADG setback requirements at all levels.	The northern setback of building 14 includes a 'blank wall' defensive design approach from levels 10 – 13 to ensure compliance.	Complies.

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

SEPP Resilience and Hazards 2021

The original proposal was assessed against the relevant provisions of SEPP Resilience and Hazard. Conditions were approved to ensure adequate management and mitigation of any exposed contamination and hazardous materials. The proposed amendments do not vary any of these considerations and the conditions remain relevant.

The Development Application complies with SEPP Resilience and Hazards 2021

SEPP BASIX 2004

An amended BASIX certificate accompanies the application and is provided as **Annexure 23** 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 to 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 additional tree removal.

All tree removal has been previously considered by Council's Arborist in the original development application. Council's Landscape Officer and Arborist have required changes to be made to the tree planting schedule to ensure the viability and longevity of a mature canopy within a dense urban environment. Inappropriate tree species have been replaced with supported species.

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 as 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 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.

***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.

This rationale is summarised in the following three steps.

1. Identifying the aspects of the approved development which are 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 DA56/2023 which granted approval for the construction of three (3) residential flat buildings (10 storeys) comprising a total of 185 dwellings and basement parking for 249 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: 4 additional storeys
- Area/Tower 2: 4 additional storeys
- Area/Tower 4: 4 additional storeys

The modification would comprise a total of 38 additional apartments, including 38 affordable housing apartments in accordance with the SEPP Housing 2021. The total number of dwellings would increase from 185 to 225 across the three residential buildings. A total of 96 additional vehicle spaces are proposed in the additional basement level.

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 open 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 and or the roof top communal open space;
- 4 additional floors over the 3 buildings;
- Additional 4,879.3 (27.7%) of GFA including in Area 13-15;
- 38 additional units over 3 residential flat buildings.

Substantially the same test – Land Use

The land use in the approved Development Consent DA56/2023 is for ‘three residential flat buildings’, this aspect of the approved development would 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 front setbacks or setbacks to the communal open space (green spine) or the public open space (Eastwest Link), the only changes to setbacks occur on Levels 10 – 13 on the Area 14 building, the defense façade treatment ensures compliance with the ADG is maintained. Whilst the development would alter the building envelope to some degree, the established footprint of the buildings would not be increased in the proposed levels.

The built form of the development would not result in unreasonable environmental impact such as overshadowing, visual, and acoustic privacy, traffic generation, or changes to stormwater patterns. In fact, as it is noted, that the modifications:

- Provision of the public open space (pocket parks) are maintained.
- Provision of the ground floor communal open space (green spine) is maintained.

- Provision of the roof top communal open space is increased.
- Provision of the 3 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. The development would consistently present as three multi-storey residential flat buildings with increased density in accordance with the desired future character as shaped by the Housing SEPP provisions.

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

The Development is considered regionally significant in accordance with Schedule 6 of the SEPP as the affordable housing component of the development application has an estimated development cost of over \$5 million.

Water Management Act 2000

The development application is integrated development with Water NSW in accordance with Section 89, 90 and 91 of the Water Management Act 2000. An integrated referral was issued to Water NSW who have provided response reference number *S4551162300*, confirming support of the modified proposal and the General Terms of Approval conditions, refer to **Annexure 13**.

Approval was originally granted for a tanked basement, however the modified proposal seeks consent for a drained basement. Further information and modelling has been provided supporting this request including an updated Geotechnical Report and an updated Hydrogeological report, refer to **Annexure 16** and **Annexure 12**.

Condition 6 has been amended to include the updated GTA conditions as required by Water NSW.

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:

Table 9 - FSR Compliance Table				
Category	Total Permitted under LEP	Total Permitted with 30% AH Bonus	Amended Proposal	Compliance
Area 13 + Area 15	2.85:1 (11,975.7m ²)	3.705:1 (15,568.41m ²)	15,568.4m ²	Yes
Area 14	3.35:1 (5,601.2m ²)	4.355:1 (7,281.3 m ²)	6,887.8m ²	Yes

Height:

Table 10 - Height Compliance Table				
Category	Total Permitted under LEP	Total Permitted with 30% AH Bonus	Amended Proposal	Compliance
Area 13	37m	48.1m	47.95m to lift overrun	Yes
Area 14	37m	48.1m	46.85m to lift overrun	Yes
Area 15	37m	48.1m	47.63m to lift overrun	Yes

Comprehensive Development Control Plan assessment

Car parking

The proposed development satisfies the SEPP non-discretionary standards for parking.

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.
- **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.

Context for views

It is important to consider the context of any view loss in relation to the Housing SEPP which has changed the desired future character of the St Leonards South Precinct. 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 approved developments with these bonuses within Precinct as previously discussed.

The sharing of views 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.

View Analysis

The Applicant has provided a view loss analysis which is **Annexure 21**.

The view analysis focuses on 1 Marshall Avenue ("Embassy Tower") which is located northeast of the site as it relates to the greatest view impacts. The Area 13 building would be located approximately 130m southwest of 1 Marshall Avenue and is separated by the road carriageway and the approved 12 storey Residential Flat Building development in Area 12.

The Area 14 building is located approximately 160m southwest of the 1 Marshall Avenue, however the view would be fully obstructed by developments in Area 2 and Area 12 and as such would not affect views.

The Developments at 1-13 Marshall Avenue and 17 – 25 Marshall Avenue are also considered in relation to view impacts. These developments attain a height which is beneath that of the approved development and as such there would be no significant views affected by the proposed

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

modifications which are located above the approved development. The amended proposal retains the view corridors provided through the green spines area to protect the approved visual amenity.

Simulated existing and proposed view analysis diagrams have been submitted with the application which include depictions of the approved developments in Area 2 and Area 12. 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 from Levels 10 – 20 of the Embassy Tower as indicated in **Table 11** Below. This table also identifies the finished RLs of referenced buildings and locations to assist the consideration on views.

Table 11 - Confirmed RL table.		
Address / Area	Maximum RL	Comment:
Approved Area 13 building	RL 114.150	The Approved RL of the Area 13 building.
Proposed Area 13 building	RL 125.450	The proposed RL of the Area 13 building.
Approved Area 2 building	RL 138.400	Approved roof plant equipment of the Area 2 building.
Approved Area 12 building	RL 130.400	Approved roof plant equipment of the Area 12 building.
1 Marshall Avenue (Embassy Tower)	RL 103.000	View southwest from Level 10 toward Area 13.
1 Marshall Avenue (Embassy Tower)	RL 133.950	View southwest from Level 20 toward Area 13.
2-17 Marshall Avenue	RL 93.70	The finish roof level of this development is located significantly below the approved level of the subject development. The additional height proposed would have a negligible impact on significant views.
19-25 Marshall Avenue	RL101.00	As above.

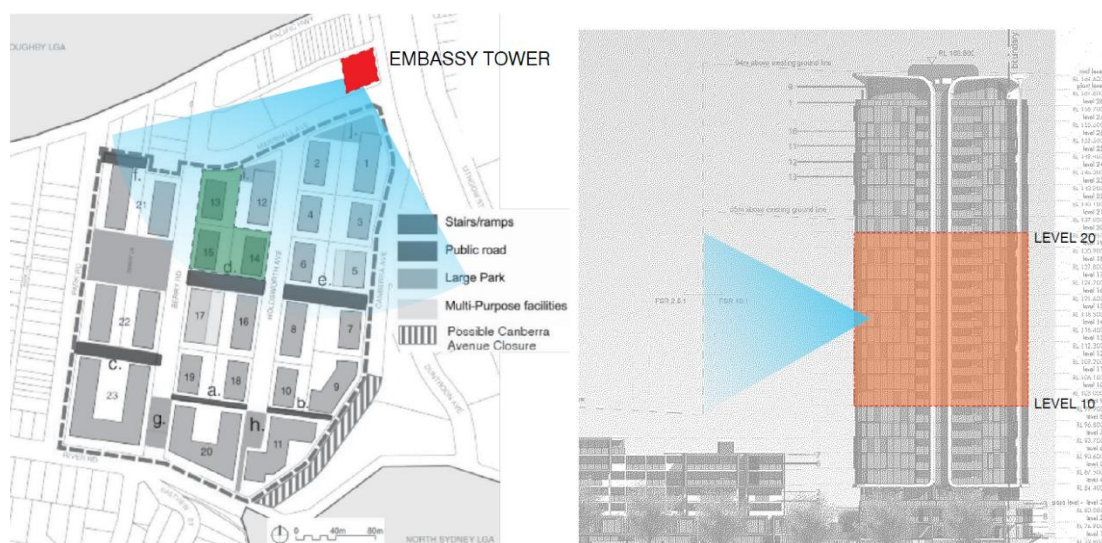


Figure 18: View analysis corridor. (Source: Applicant)

View 1: Level 10 of 1 Marshall Avenue facing south.

Tenacity Step 1: Types of views:

The southern views enjoyed are to the Harbour Bridge, North Sydney City skyline by the units around Level 10 and above which has been demonstrated in **Figure 18 – Figure 23**. 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 also 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 **Figure 18 – Figure 23** including internal photos and unit floor plan. Views are classified as **high value**.

Tenacity Step 2: Where the views obtained:

The views can be enjoyed from both seated and stood positions in the open-plan kitchen, living and dining rooms through the full height windows.

Tenacity Step 3: The extent of the impact:

The Significant views obtained from Levels 10 and above would not be impacted by the proposed developments. The development would be predominately obstructed by the approved buildings in Areas 2 and 12. A partial view of the sky would be impacted which is considered negligible.

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



Figure 19: Approved development (right image) Proposed development (left image) (Source: Applicant)



Figure 20: South views from Level 11(1103) Embassy Tower 1 (Source: Domain)



Figure 21: Southwest views from Level 11(1103) Embassy Tower 1. (Source: Domain)

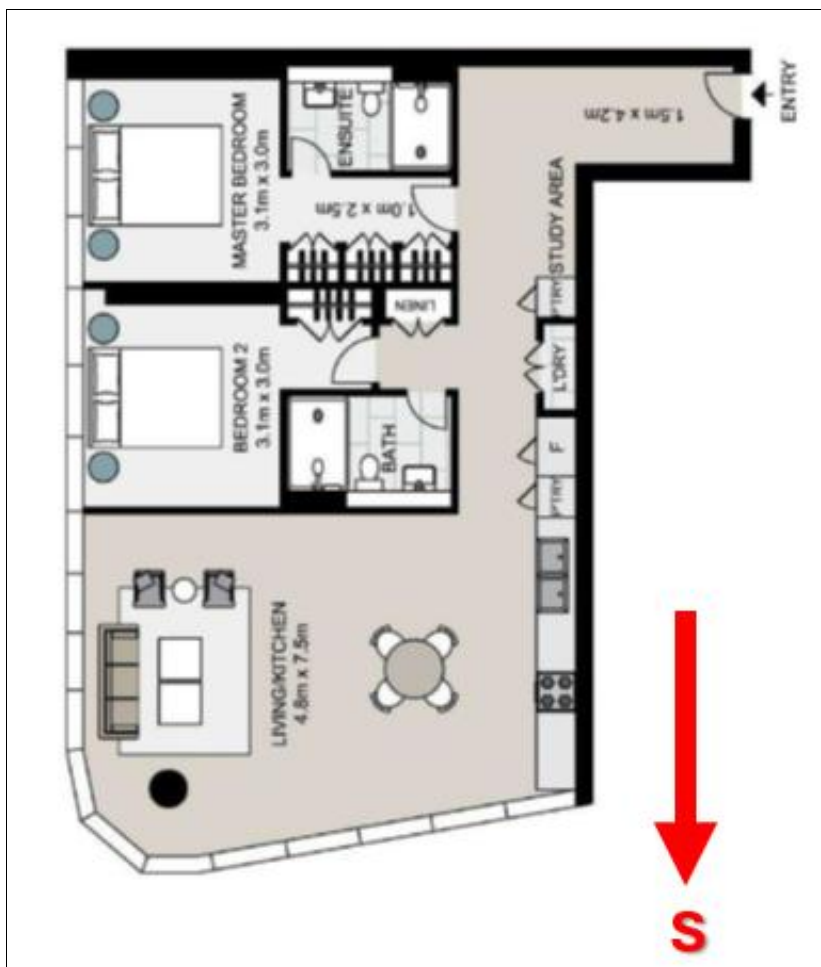


Figure 22: Floor plan of Level 11 unit (1103) 1 Marshall Avenue. (Source Domain)

View 2: Level 20 of 1 Marshall Avenue facing south.

Tenacity Step 1: Types of views:

The southern views enjoyed are to the Harbour Bridge, North Sydney City skyline by the units Level 20 and above which has been demonstrated in **Figure 18 – Figure 22** in the previous section. 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 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 **Figure 18 – Figure 22** in the previous section. Views are classified as **high value**.

Tenacity Step 2: Where the views obtained:

The views can be enjoyed from both seated and stood positions in the open-plan kitchen, living and dining rooms through the full height windows.

Tenacity Step 3: The extent of the impact:

The Significant views obtained from Levels 20 and above would not be impacted by the proposed developments. The development would be predominately obstructed by the approved buildings in Areas 2 and 12. A partial suburban district view would be impacted which is considered negligible.

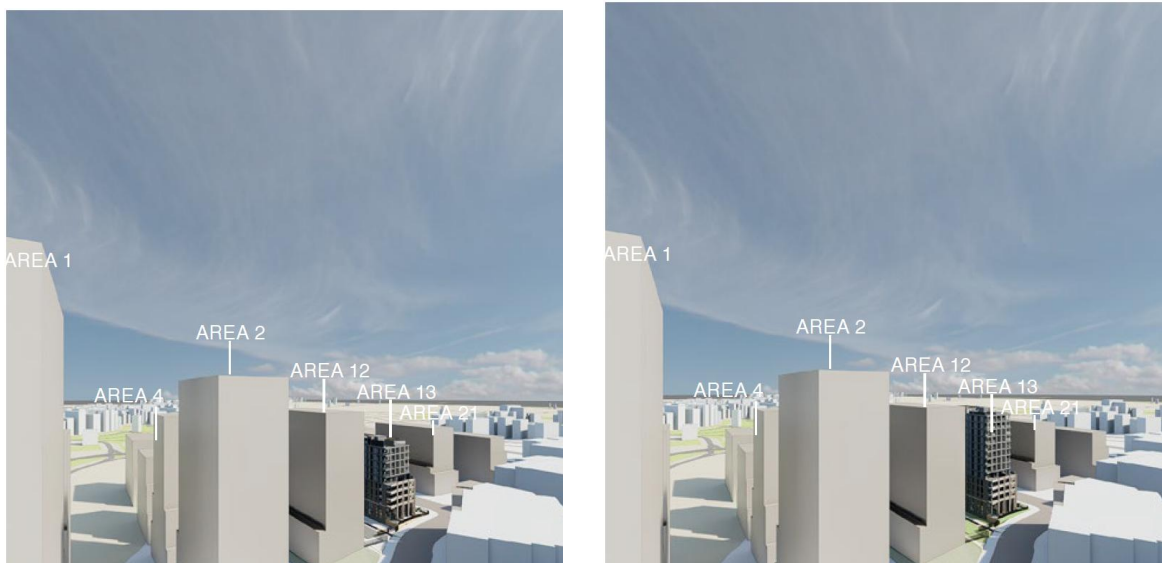


Figure 23: Approved development (right image) Proposed development (left image) (Source: Applicant's View Loss Analysis)

Tenacity Step 4. Assessing the reasonableness of the proposal for all views.

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 proposed development has been amended to comply with the setbacks of the DCP controls and the separation requirements of the ADG Controls.

The view loss analysis illustrates that there would be negligible impact on views resulting from the proposed additions. 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. Any marginal view loss resultant from the additional storeys are an inherent byproduct of a transitioning dense urban environment.

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. Further amendments to address view loss are considered unwarranted in the given circumstances.

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

The Tenacity assessment undertaken in steps 1-3 confirm that the view impacts are negligible to minor. The assessment concludes that no devastating view 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 supportable.

4.15 (iii) Any development control plan:

Lane Cove Development Control Plan 2010 – Other Sections

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 12** and through **referrals** where necessary:

Table 12 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
Development Engineer and Civil Engineer	Part O – Stormwater Management	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: <i>As per this S4.55 application, there will be addition of few levels and internal changes.</i> <i>There is no increase in impervious area of original design. No new engineering conditions for this S4.55 application.</i> The engineering conditions from the original determination would be retained in the modified development consent, refer to Annexure 1.
Traffic Engineer	Part R – Traffic, Transport and Parking	Satisfactory – Supported subject to conditions. 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. 280 vehicle spaces are required where 345 spaces have been provided.

Table 12 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
		The proposal also sought the amendment of condition 69. Council's Traffic Engineer has provided an amended condition. Condition 68 has been amended to include the provision of: 1 visitor space per 5 dwellings, 3 removalist truck spaces, 5 car wash bays are to be provided.
Waste Management	Pat Q – Waste management and Minimisation	Satisfactory – Supported with no changes to approved conditions. The proposal was accompanied by an updated waste management plan. This report confirms that the DCP requirements have been met for waste collection and storage. The appropriate waste management conditions from the original determination would be retained within the modified development consent refer to Annexure 1.
Landscaping	Part J – Landscaping	Satisfactory – The amended proposal was accompanied by an updated landscape plan and landscaping design certificate as required by Part J - Landscaping. Concerns have been raised as to the lack of attention provided to the design related amendments required by Condition's 105, 110, 111, 112 and 132 of the original consent. These are required to be satisfied prior to the issue of a Construction Certificate and approved by Council. The additional Condition 106 has been recommended to ensure the provision of adequate soil volumes to promote full canopies. The landscaping conditions from the original determination would be retained within the modified development consent refer to Annexure 1.
Tree Preservation	Part J – Landscaping	Satisfactory – Council's Landscape officer and Arborist have required replacement planting to be updated to meet Council's requirements. inappropriate specie selection. The Landscape plans have been amended accordingly.

Table 12 - Other Section of the DCP and Referrals		
Referral	DCP	Comment
		The appropriate tree preservation conditions from the original determination would be retained within the modified development consent, refer to Annexure 1.

4.15 (1) (b) Impacts of development:

The proposed development would have acceptable impacts on neighbouring properties and the public domain in terms of overshadowing, visual privacy, acoustic privacy, traffic and parking. The proposal presents a development outcome that is consistent with the aims and objectives of the Housing SEPP 2021 and relevant controls.

The proposed development is consistent with the desired future character as informed by the Chapter 2 of the Housing SEPP. The proposed development satisfies 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, there would be minimal impact at 3pm.

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 and Council's DCP requirements subject to condition amendments. 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 500m 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.

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 4 submissions in response to the notification period. The concerns have been summarised in **Table 13** below.

Table 13 – Summary of submissions and Council’s response	
CONCERNS RAISED IN SUBMISSIONS	RESPONSE
Affordable housing is short sited	Condition 2E is recommended to ensure the Housing SEPP 2021 affordable housing units 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. This meets the Housing SEPP 2021 requirements. This period has been set by the State Government.
Breach of Planning Laws - The proposed development undermines 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.
Concerns of lack of infrastructure to support increased residential population and would put strain on the local area.	The site includes the green spine area communal facilities within the Area 13 building which significantly exceed the ADG requirements for communal open space. The entire St Leonards South precinct would also deliver diverse range of public infrastructure facilities to accommodate the future residential population including: • 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.
Disregard for initial approvals and prior community consultation -The proposed development disregards the consents previously granted.	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.
View Sharing - Loss of views	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.
Height - In excess of LEP and DCP controls.	The proposed development complies with the height bonus afforded by the Housing SEPP. The SEPP

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

- The 30% height bonuses in appropriate	overrides Council's LEP and DCP height controls.
Overshadowing - The proposed development would result in non-compliant solar access.	The proposed development complies with the solar access requirements.
Negative impacts on the community including loss of privacy and amenity	The proposed development would not unreasonably impact the privacy or amenity of neighbouring developments. The proposal 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. Refer to ADG assessment earlier in this report.
Traffic - Does not address traffic volume impact - Amount of traffic movement is unacceptable. - Traffic study assumptions flawed.	A traffic and car parking assessment report was submitted with the modification application. This was referred to Council's Traffic Engineer who supports the Application and has confirmed the traffic impacts would be acceptable. The proposed development satisfied the requirements of the Housing SEPP parking rate requirements.
The DCP and Master Plan should be adhered to - Does not comply with the setback controls. - Does not comply with the storeys control.	The Applicant has amended the development to comply with Council's DCP setback requirements, however the storeys control is redundant with consideration to the height bonuses afforded by the Housing SEPP. The Housing SEPP 2021 takes precedence over the DCP controls and Master Plan. The proposed development satisfies the design related requirements and ADG requirements as discussed throughout the report.
Precedent - Approval of the application would result in a precedent being created regarding incremental changes to approved applications and acceptable heights within St Leonards South and Lane Cove Council.	The proposed development satisfies the requirements of the Housing SEPP and provides affordable housing as required. The proposed development meets the desired future character of the area as provisioned by the Housing SEPP.
Inadequate community consultation - The heights afforded by the bonus should be subject of community consultation and engagement.	The Department of Planning and Infrastructure provisioned these changes to address the demand for housing. The Housing SEPP requirements have been satisfied. The Development Application has been notified in accordance with Council policy.

4.15 (1) (e) Public interest:

Sydney North Planning Panel Meeting 11 December 2025
S4.55(2) MODIFICATION TO APPROVED RESIDENTIAL FLAT BUILDINGS AT 14-16
MARSHALL AVENUE, 2-10 BERRY ROAD, AND 5-9 HOLDSWORTH AVENUE, ST LEONARDS
SOUTH.

The proposal development would have reasonable impact on neighbouring properties and the public domain with regards to the Housing SEPP 2021 and the other relevant planning instruments.

The proposed development complies with the ADG and Chapter 4 of the Housing SEPP 2021. This meets the desired future character as informed by the Housing SEPP 2021.

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 approval has yet to be paid. Accordingly, a recalculation of the entire development has been provided in **Table 14** below.

Table 14 - 7.11 Contribution table			
Type	Cost per Unit	Number of Units	Total
Studio/1 bedroom	\$24,118.28	45	\$1,085,322.60
2 bedrooms	\$34,455.70	105	\$3,617,848.50
3 + bedrooms	\$53,407.64	75	\$4,005,573.00
Total			\$8,708,744.10
Existing Credits	\$20,000.00	10	(-) \$200,000.00
Total Payable 7.11			\$8,508,744.10

The total payable 7.11 contribution after applying the credits is **\$8,508,744.10**.

The s7.11 condition has been accordingly updated and would include the new table. Refer to **Annexure 1**.

8. 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.

The proposal would provide 38 additional affordable housing apartments over the 3 residential flat buildings in an accessible location.

These affordable housing units afford the applicant corresponding bonuses to the maximum building height and 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 11 December 2025, approve the proposed s4.55(2) modification to Development Application DA56/2023 to the approved Residential Flat building for Infill Affordable Housing pursuant to the SEPP (Housing) at 14 - 16 Marshall Avenue, 2 - 10 Berry Road, and 5 - 9 Holdsworth Avenue, St Leonards subject to modified conditions contained in **Annexure 1**, where the changes are shown in [blue text](#).

ATTACHMENTS:

There are no supporting documents for this report.