



## 12 CARSON LANE ST MARYS

**Section 4.55(2) Modification Application**  
Amended August 2022

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# 12 Carson Lane St Marys

## Section 4.55(2) Modification Application

### Prepared for

MARY 88 DEVELOPMENT PTY LTD



### By



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## Acknowledgement of Country

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## Table of Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
1.1	Application history	1
1.1.1	DA14/0513	1
1.2	Type of Application	3
1.3	Purpose of Report	5
<b>2</b>	<b>The Site and Locality</b>	<b>6</b>
2.1	Site location	6
2.2	Site description	6
2.3	Surrounding locality	7
<b>3</b>	<b>Proposed Modification</b>	<b>8</b>
3.1	Amendments to Modification Lodged April 2022	8
3.2	Approved Development Application	10
3.3	Details of Proposed Modification	13
3.3.1	DA14/0513 modified Conditions	21
<b>4</b>	<b>Strategic and Statutory Planning Framework</b>	<b>28</b>
4.1	Environmental Planning and Assessment Act 1979	28
4.2	Environmental Planning & Assessment Regulation 2021	30
<b>5</b>	<b>Matters for Consideration</b>	<b>33</b>
5.1.1	Environmental Planning Instruments - Section 4.15(1)(a)	33
5.1.2	Proposed Instruments - Section 4.15(1)(a)(ii)	39
5.1.3	Development Control Plan - Section 4.5(1)(a)(iii)	39
5.1.4	Planning Agreements - Section 4.15(1)(a)(iia)	41
5.1.5	Regulations - Section 4.15(1)(a)(iv)	41
5.1.6	Likely Impacts of the Development - Section 4.15 (1)(b)	41
5.1.7	Suitability of the Site- Section 4.15 (1)(c)	42
5.1.8	Submissions - Section 4.15 (1)(d)	42
5.1.9	Public Interest - Section 4.15 (1)(e)	42
<b>6</b>	<b>Conclusion</b>	<b>43</b>
<b>7</b>	<b>Glossary</b>	<b>44</b>



## Tables

Table 1	Supporting Reports and Plans	14
Table 2	Conditions for Review under Modification	21
Table 3	Assessment relating to Section 4.55(2) of the EP&A Act	29
Table 4	Assessment against Division 12 of the EP&A Regulation	30
Table 5	PLEP Assessment	35
Table 6	SEPP 65 Assessment	37
Table 7	DCP Assessment	39

## Figures

Figure 1: Site Demolition Works	2
Figure 2 Penrith City Council LGFA – Regional Context	6
Figure 3: Site Location	7
Figure 4: Site Location	7
Figure 5 Approved Outer East Elevation	10
Figure 6: Approved Inner East Elevation	10
Figure 7: Approved Outer West Elevation	11
Figure 8: Approved Outer North Elevation	11
Figure 9: Approved Inner North Elevation	11
Figure 10: Approved Outer South Elevation	12
Figure 11: Approved Inner South Elevation	12
Figure 12 Indicative render of approved development St Marys Public School Sports Ground	13
Figure 13: Amended Outer East Elevation	15
Figure 14 Amended Inner East Elevation	15
Figure 15: Amended Outer West Elevation	15
Figure 16: Amended Inner West Elevation	16
Figure 17: Amended Outer North Elevation	16
Figure 18: Amended Inner North Elevation	17
Figure 19: Amended Outer South Elevation	17
Figure 20: Amended Inner South Elevation	17
Figure 21: Indicative render of modified development St Marys Public School Sports Ground	18
Figure 22: Approved and modified RL's against 24m Height Plane	19
Figure 23: Building Height on Southern elevation and 24m Height Plane	20
Figure 24 Building Height on Northern elevation and 24m Height Plane	20
Figure 25: Land use zoning under Penrith LEP 2010	33
Figure 26: PLEP Maximum Height of Buildings Map	34
Figure 27: PLEP Maximum FSR Map	35



## 1 Introduction

GLN Planning Pty Ltd (**GLN**) has been commissioned by Mary 88 Developments Pty Ltd (ALAND) (the **Applicant**) to prepare this Statement of Environmental Effects (**SEE**) to support a s.4.55(2) modification application for the construction of a residential flat building granted a Deferred Commencement Consent No DA14/0513 at 12 Carson Lane St Marys by the Joint Regional Planning Panel (**JRPP**) on 10 September 2015.

The deferred commencement condition required a drainage diversion strategy for a 3.66m wide drainage pipe that traversed the north-eastern corner of the site including works to increase the kerb and guttering and divert overland flow away from the site and surrounding properties to the south and south-east, and manage flows to the new drainage lines.

The current approval involves:

- the demolition of existing structures
- excavation for two (2) levels of common basement carparking
- the construction of four (4) x eight (8) storey residential flat buildings (289 units)
- associated landscape, drainage and earthworks.

This application has been prepared and is submitted under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (**EP&A Act**).

This SEE has been amended to reflect the amended plans submitted 25 August 2022.

### 1.1 Application history

#### 1.1.1 DA14/0513

DA14/0513 (**Parent DA**) was approved by the former Sydney West JRPP on 10 September 2015 as a deferred development consent.

The development consent became operational on 21 February 2016 following satisfaction of the deferred commencement condition, and demolition works associated with the consent were undertaken in August 2017 as confirmed by aerial photograph in **Figure 1** below. Development Consent DA14/0513 remains an operational consent.

A Construction Certificate was obtained in December 2021 for Site Preparation and Establishment.



Source: Nearmap capture 22 August 2017

### Figure 1: Site Demolition Works

The approved area and apartment mix consists of:

- 289 residential apartments with a total floor area of 26,759m<sup>2</sup> consisting of:
  - 14 x 1 bedroom apartments
  - 38 x 1 bedroom plus study apartments
  - 214 x 2 bedroom units
  - 23 x 3 bedroom units
- 372 car parking spaces across two basement car parking levels.
- Carparking at ground level for 6 vehicles and 2 removalist trucks

The proposal was designed to reflect Council's strategic intention to have an east-west link road along the northern boundary to link Charles Hackett Drive, via Carson Lane to Queen Street, thereby providing the development with an interface to a public road as opposed to Council's Park





The DA was accompanied by a Clause 4.6 Variation request to the maximum height of building control under the PLEP 2010. The Assessment Report indicated that the “variation to the height control is not uniform over the whole site due to the varying topography. Building B generally has the largest variation with the lift overrun exceeding the control and the roof parapet by 1.9m at the highest point.”

As a result of the change of ownership of the site, a review of the overall development was undertaken in preparing the Construction Certificate documentation which has resulted in rationalisation of the proposal as detailed in this modification application.

## 1.2 Type of Application

This application has been submitted to Penrith City Council under Section 4.55(2) of the EP&A Act to modify Development Consent DA14/0513 relating to an approved residential flat building development.

The development as proposed to be modified is substantially the same development as originally approved. The development remains 4 residential flat buildings above a two level basement and does not change as a result of the modification. Any potential environmental impacts are minimal and can be appropriately managed through existing or modified conditions of consent.

The amendments primarily seek to refine the project design outcomes and as a consequence, require modification of certain conditions of consent to reflect the new amended plans and supporting reports.

The modifications sought are generally as follows:

- Increased floor to floor height to 3.1m increasing the maximum height of the proposed buildings to 27.455m from 25.9m approved.
- Improved façade treatments with revised material schedules and removal of green walls.
- Redesign to the basement car park general arrangement including amended Reduced Level (RL) and basement perimeter walls towards the western boundary to accommodate Council’s waste collection vehicle on Basement 2.
- Relocation of multiple lift cores and building services co-ordination to suit amended basement layout.
- Ground floor Building B has be raised to accommodate Council’s waste services truck
- Internal modifications to apartment layouts to improve residential amenity.
- Minor update to Unit Mix noting that the total number of units (289) remains the same as the original DA.
- Amended Landscaping design.
- Amended Stormwater design.
- Incorporated Structural Design





Comprehensive details of the modification sought are set out within **Section 3** of this SEE.

The consent under this application was regionally significant development. Under the then Section 23G of the EP&A Act, the functions of Council were conferred to a regional panel if stipulated under an environmental planning instrument. In this case, the proposed Capital Investment Value (C.I.V.) of the development was \$70,623,463 and then Clause 8(c) of Schedule 3 of the EP&A Act delegated the function of consent authority for development over \$20 million to the regional panel.

The original consent was approved by the Sydney West Planning Panel (**the Panel**), however on 1 August 2020 amendments to then Clause 123BA of the Environmental Planning and Assessment Regulation 2000 and now Clause 275 of the Environmental Planning and Assessment Regulation 2021 (**EP&A Regulations**) have delegated the decision making power from the relevant Panel to Council for applications that include a modification of an existing consent under s4.55(2). The amendments to the EP&A Regulations were part of the NSW Planning Acceleration Program. With the objective to reduce the number of applications required to be determined by a Planning Panel and thereby reduce the approval timeframes.

In accordance with the Instruction on Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents, the proposal is not required to be determined by the Planning Panel as the proposal does not include;

- Amendments to a condition of development consent recommended in the council assessment report which was amended by the Panel,
- Amendments to a condition of development consent that was included in the council assessment report, which was added by the panel, or
- Meets the criterion relating to conflict of interest, contentious development, or departure from a development standard.

The modification application is capable of being determined by Council, subject to there being less than 10 unique submissions being received. It is noted that the Parent DA was notified to 157 land owners and residences in the area. During the exhibition period Council received 1 (one) submission which was subsequently withdrawn.

On 19 June 2015, Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015 was published and commenced 4 weeks following the publication on 17 July 2015. The 2015 Regulation Amendment introduced the Apartment Design Guide (**ADG**) and for applications lodged prior to 19 June 2015 the Residential Flat Design Code (**RFDC**) continued to apply.

DA 14/0513 was lodged with Council on 19 May 2014 and was assessed against the controls of the RFDC. The relevant provisions of State Environmental Planning Policy Design Quality of Residential Apartment Development (**SEPP 65**) and the Regulations are addressed within this SEE.



### 1.3 Purpose of Report

This report has been prepared in accordance with clause 115 of the Environmental Planning and Assessment Regulation 2021 (**EP&A Regulation**) for the purpose of demonstrating the development as proposed to be modified is substantially the same development.

This application is intended to have some other effect as the proposed modifications seek to change the external design of the building, the apartment mix, car parking and changes to conditions of consent to reflect these physical changes.

This SEE concludes the development, as proposed to be amended, is acceptable in that it is consistent with the relevant planning controls, and will have minimal environmental impacts that can be satisfactorily managed.

## 2 The Site and Locality

### 2.1 Site location

The development site is located at 12 Carson Lane, St Marys (**the Site**), in the Penrith Local Government Area (**LGA**), approximately 46 kilometres west of the Sydney CBD (**Figure 2**).



Source: Profile ID

**Figure 2 Penrith City Council LGFA – Regional Context**

### 2.2 Site description

The site is Lot 1 DP 1070784, and also known as 12 Carson Lane, St Marys. The primary frontage of the site is to Carson Lane. To the rear of the site is St Marys Public School. The site is located within the St Marys Town Centre approximately 750m from St Marys Train Station and totals 10,720m<sup>2</sup> in area.

At the time of the assessment and subsequent granting of the development consent between 2014 and 2015, the site was developed a single storey brick commercial building containing Fusion Hub community services, and associated recreational lawns formerly bowling greens. All existing structures have been demolished in accordance with Development Consent No DA14/0513.





Source: Nearmap

**Figure 3: Site Location**

## 2.3 Surrounding locality

The site is located at the southern end of the St Marys Town Centre. The site is adjoined to the east by the existing at grade Council Carpark located at the rear of the Queen Street retail/commercial development. To the south of the site is the St Marys Band Club and associated at grade carpark. St Marys Public School is to the west of the site and to the north in Lang Park.



Source: Nearmap

**Figure 4: Site Location**



## 3 Proposed Modification

### 3.1 Amendments to Modification Lodged April 2022

This SEE has been prepared in response to the Request for Information (**RFI**) from Council dated 6 July 2022. The Environmental Planning and Assessment Amendment (Modifications) Regulation 2021 took effect on 14 July 2021 enables all modification applications to be amended prior to determination. The issues raised by Council and the responses are summarised below:

#### **Urban Design**

##### **Façade facing St Marys Public School**

The proposal has been amended to provide larger window openings to reflect the original approval. We have introduced a number of materials and finishes to the walls that reflect the ALAND brand which have been successfully used in similar projects. The slab edges have been minimised, however, there is a need for those edges to frame the building at those specific levels. These have been purposely introduced to create a horizontal band to the design to minimise the visual impact and bring down the bulk of the building. To address concerns raised by Council's Urban designer the elevations have been refined to ensure that parts of the original design have been maintained, whilst encouraging the modernisation of the building to present a more contemporary building form and design.

#### **Lobby Corridors**

Corridors have been amended to reflect the original approved design. All AC plant rooms have been removed and AC condensers shown on individual balconies with appropriate screening.

#### **Solar Access**

The resubmitted architectural plans reflect the exact number of units as per the original design. Noting that there is an omission on the original approval incorrectly calculating the number of units receiving the 3hour solar access. We have not made any changes to the location of the units. All changes made have been minor in nature to finesse the internal layouts. The location of living rooms and bedroom remain as per the original approval. We believe that the previous architect has justified the receipt of 2 hours of solar were a sufficient outcome for the development.

#### **Cross Section Drawings**

Cross Section drawings for the facades and balcony treatments have been included in the updated architectural set. Please refer to drawing number DA-750 for further details.

#### **Floor to ceiling height**

The increase of the floor to floor is in line with current standards and a minimum requirement. This is also to accommodate the buildability and to ensure that the ceiling heights are maintained once all services are in place. Whilst this application does not fall under ADG, it is desirable that a floor to floor of 3.1m is provided to achieve a 2.7m ceiling heights to the living areas.



## **Landscape Design**

An amended landscape plan has been provided as part of the amended proposed. The landscape plan addresses the concerns raised regarding the overall design and justification. A design statement from the Landscape Architect is submitted which provides a response to Councils' comments including but not limited to:

- Clarification and justification on why a more 'urban' landscape design has been adopted
- Break-away areas
- Amended planting schedule
- Provision of a plaza style car parking area
- High quality green edging and appropriate screening/integration of necessary infrastructure

## **Engineering Matters**

### **Basement Tanking**

An updated letter has been provided from the Geotechnical consultant EIAustralia advising that the standing seepage water in above wells does not constitute a saturated zone or groundwater table. This is provided in support of the removal of condition 81.

### **Basement Pump Out System**

A basement pumps out system plan has been included in the resubmission pack which includes the calculation in accordance with AS3500.3

### **Flood Gate**

In response to Council's advice the flood gate has been removed from the proposal, and Building B has been raised a 500mm above the approved RL of Building B to accommodate Council's approved waste collection vehicle safely entering and exiting the basement.

### **Basement General Arrangement**

The basement car park has been amended and spaces have been modified as per Council's advice.

## **Waste Management**

1. The waste management arrangement has been re-designed in Basement Level 2. Councils waste collection vehicle is no longer required to reverse in an active carriageway. The introduction of a turntable enables the safe and efficient manoeuvring of the waste vehicle, which is verified via updated swept paths and an amended traffic report. Please refer to DA-740 in the architectural package for an illustration of the updated waste arrangement.
2. Waste Rooms have been amended as per Councils' feedback in the RFI letter dated 06 July 2022.
3. An amended waste management report has been included as part of the resubmission pack.





## General

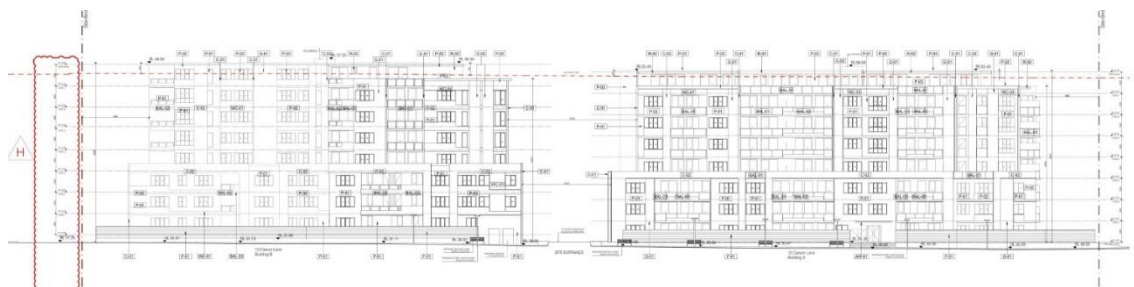
- Conditions 12, 13 – 17, 32(e) and 89 and 92 for which deletion was sought have been deleted from this modification.
- The overall height of Building B has been increased to accommodate Council's waste vehicles and the increase in floor to floor levels as was proposed in the modification as lodged in April 2022.

## 3.2 Approved Development Application

The Parent DA was approved by the former Sydney West JRPP on 10 September 2015 as a deferred development consent. The development consent became operational on 21 February 2016.

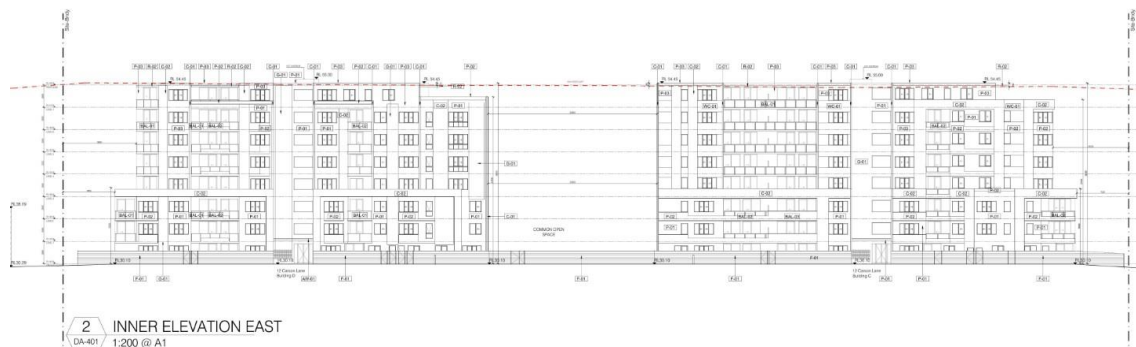
The parent DA granted consent for the following works:

- the demolition of existing structures
- excavation for two (2) levels of common basement carparking
- the construction of four (4) x eight (8) storey residential flat buildings (289 units)
- associated landscape, drainage and earthworks.



Source: Dickson Rothchild

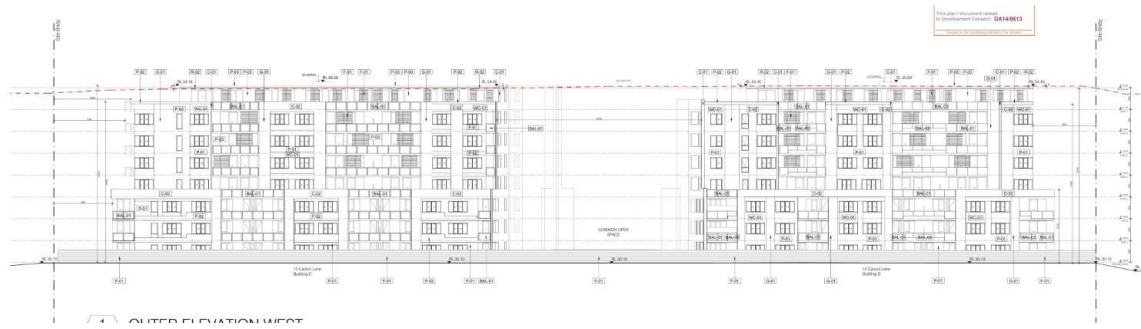
**Figure 5 Approved Outer East Elevation**



Source: Dickson Rothchild

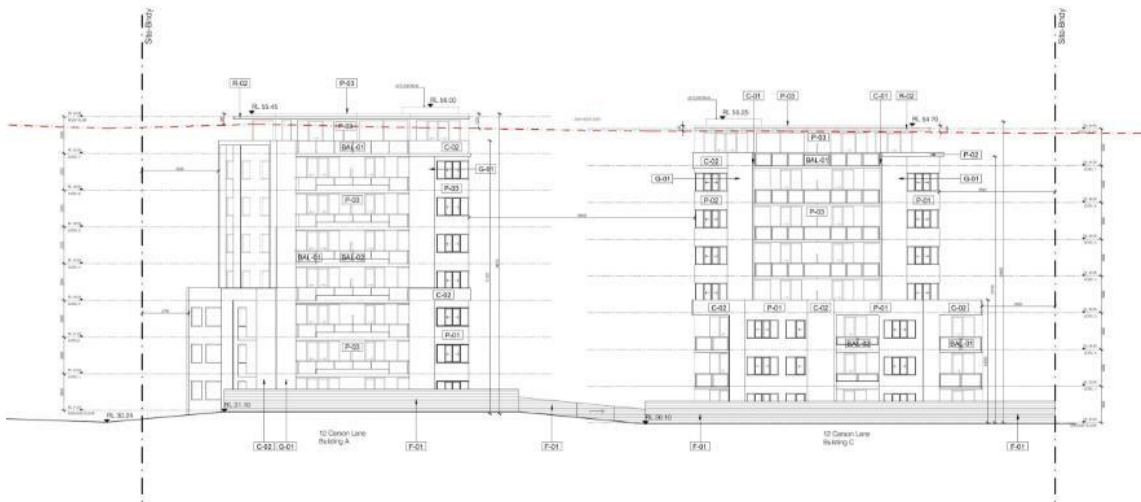
**Figure 6: Approved Inner East Elevation**





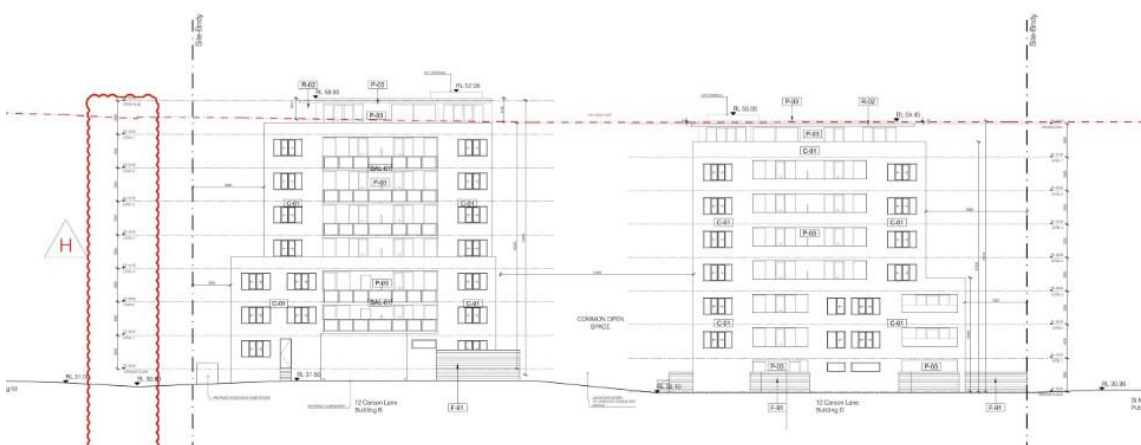
Source: Dickson Rothchild

**Figure 7: Approved Outer West Elevation**



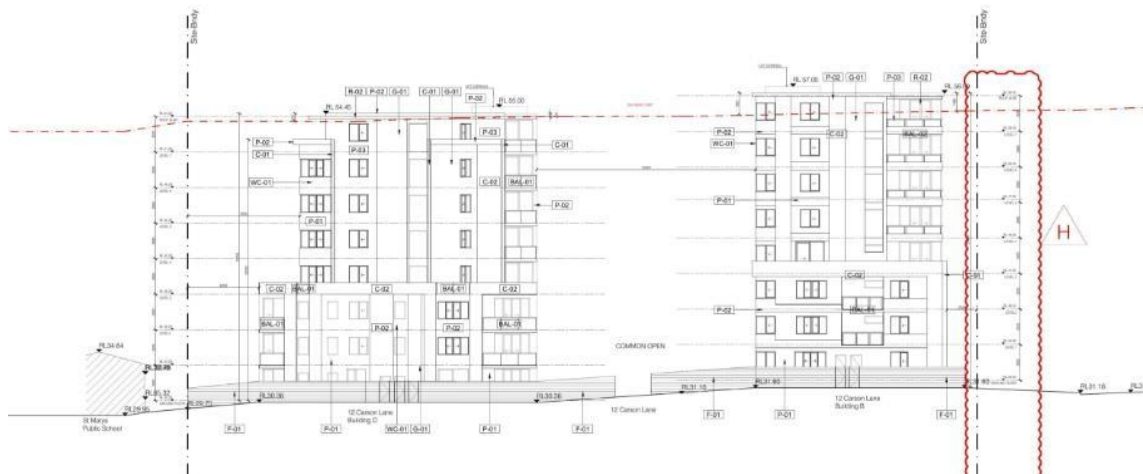
Source: Dickson Rothchild

**Figure 8: Approved Outer North Elevation**



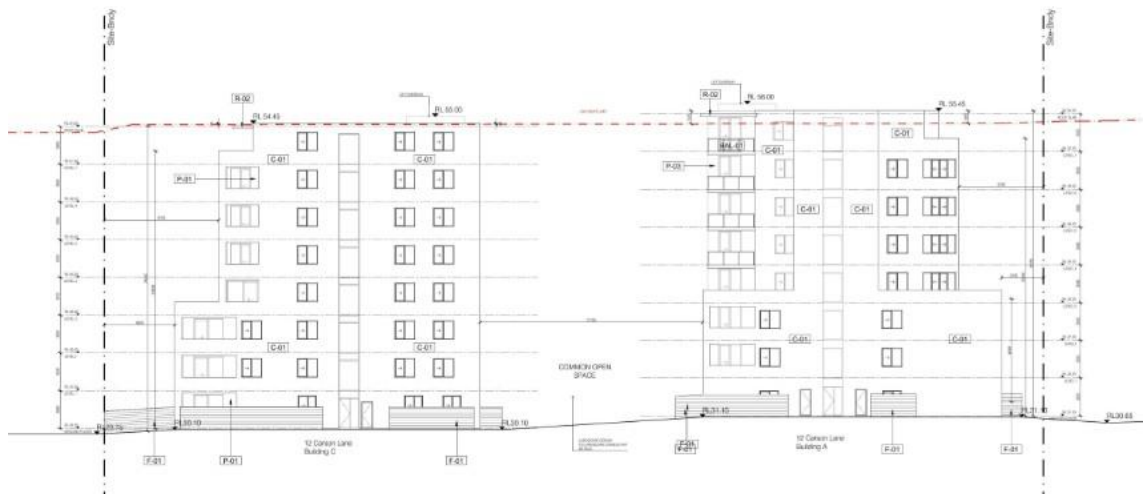
Source: Dickson Rothchild

**Figure 9: Approved Inner North Elevation**



Source: Dickson Rothchild

**Figure 10: Approved Outer South Elevation**



Source: Dickson Rothchild

**Figure 11: Approved Inner South Elevation**

A render of the approved deferred commencement scheme is shown in Figure 12.



Source: Dickson Rothchild

**Figure 12: Indicative render of approved development St Marys Public School Sports Ground**

### 3.3 Details of Proposed Modification

The description of the modified development is the:

- the demolition of existing structures (completed)
- excavation for two (2) levels of common basement carparking
- the construction of four (4) x eight (8) storey residential flat buildings (289 units)
- associated landscape, drainage and earthworks

This modification application seeks:

- Increased floor to floor height to 3.1m increasing the maximum height of the proposed buildings to 27.455m from 25.9m approved.
- Improved façade treatments with revised material schedules and removal of green walls, with further refinement from the April 2022 modification plans in response to Council's initial assessment.
- Redesign to the basement car park general arrangement including amended Reduced Level (RL) and basement perimeter walls towards the western boundary to accommodate Council's waste collection vehicle on Basement 2. Relocation of multiple lift cores and building services co-ordination to suit amended basement layout.

- Internal modifications to apartment layouts to improve residential amenity.
- Minor update to Unit Mix noting that the total number of units (289) the same as the original DA.
- Amended Landscaping design.
- Amended Stormwater design.
- Incorporated Structural Design.
- Amendment of conditions to reflect amended material.

Amended architectural plans Revision K (dated August 2022) prepared by DesignCorp have been prepared and are submitted with this Application.

Table 1 below provides the updated supporting reports prepared in support of the modification application:

**Table 1 Supporting Reports and Plans**

Report	Prepared by	Date
Design Verification Statement	DesignCorp	22 April 2022
Access Report	Access Mobility Solutions	18 August 2022
BASIX	BCA Energy	28 April 2022
BCA	BCA Logic	1 August 2022
Geotechnical and Groundwater Take Assessment	El Australia	20 April 2022 Update Groundwater Letter dated 29 July 2022
Landscape Plan	CONZEPT Landscape Architects	23 August 2022
QS Report	Construction Consultants	20 April 2022
Survey Plan	SDG	18 November 2021
Traffic and Parking	Varga Traffic Planning	18 August 2022
Waste Management	Elephants Foot	August 2022
Civil and Stormwater	Mance Arraj	19 August 2022

All other supporting reports remain applicable to the approved and proposed modifications to the development

The built form, as proposed is included as **Figure 13** to **Figure 20** for the purposes of illustrating the height, bulk and scale of the amended proposal.





Source: DesignCorp

**Figure 13: Amended Outer East Elevation**



Source: DesignCorp

**Figure 14** Amended Inner East Elevation



Source: DesignCorp

**Figure 15: Amended Outer West Elevation**



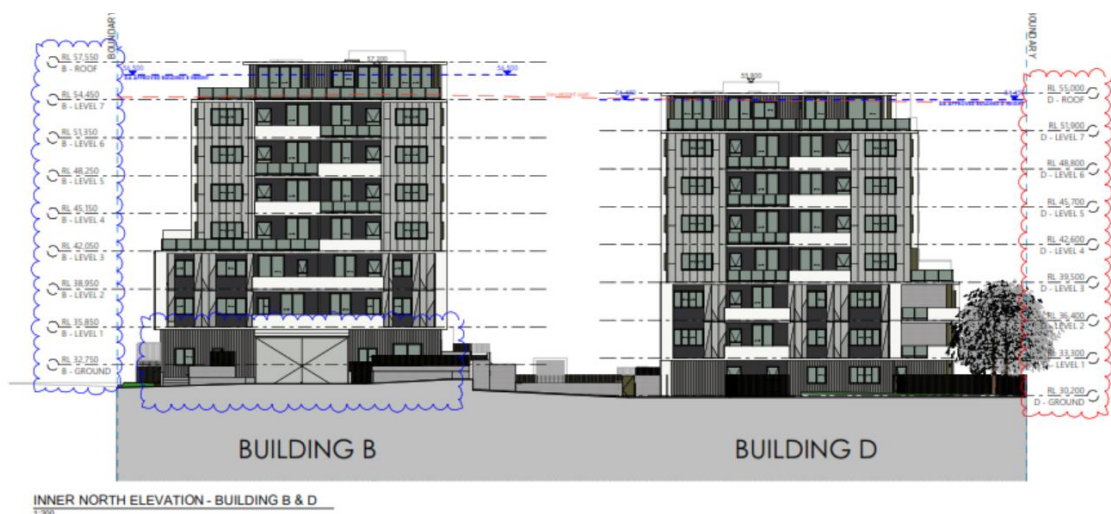
Source: DesignCorp

**Figure 16: Amended Inner West Elevation**



Source: DesignCorp

**Figure 17: Amended Outer North Elevation**



Source: DesignCorp

**Figure 18: Amended Inner North Elevation**



Source: DesignCorp

**Figure 19: Amended Outer South Elevation**



Source: DesignCorp

**Figure 20: Amended Inner South Elevation**





Source: DesignCorp

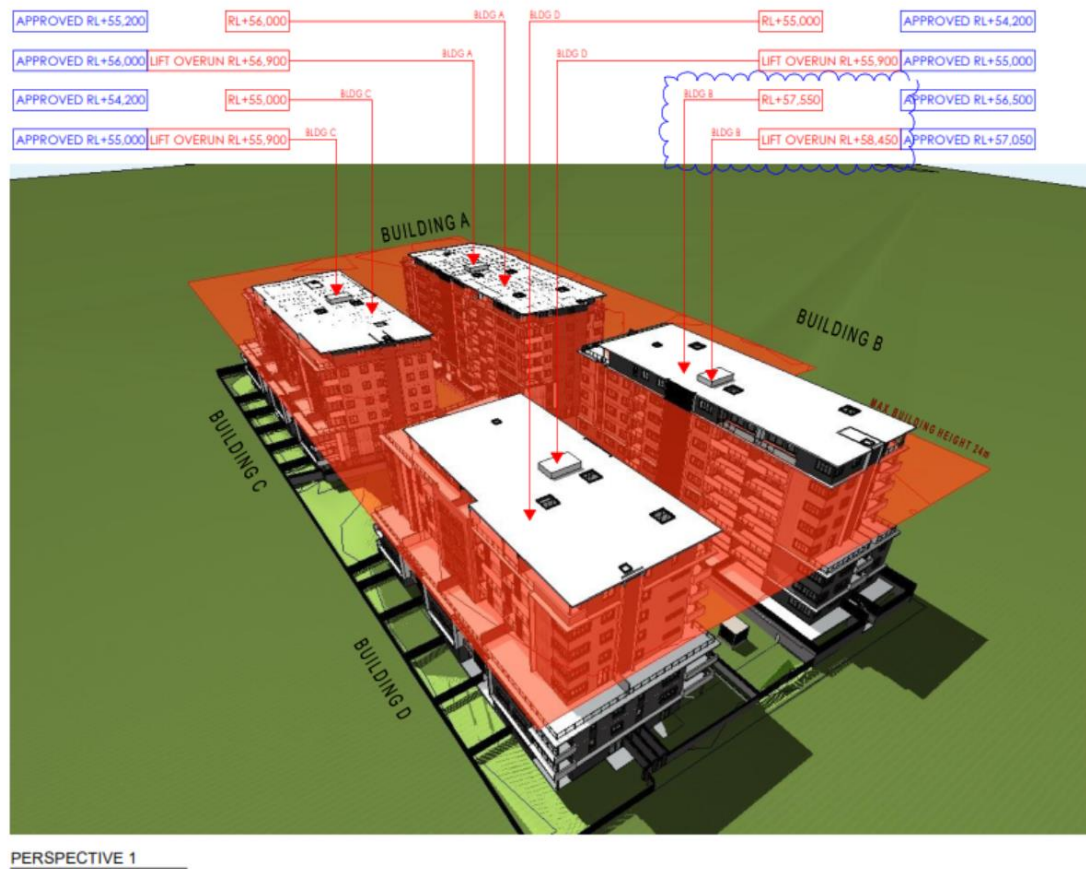
### **Figure 21: Indicative render of modified development St Marys Public School Sports Ground**

The amendment to the overall height of the buildings is in response to structural requirements and to ensure compliance with the BCA and to achieve ADG floor to ceiling heights of 2.7m on each floor.

The tower forms as modified are consistent with the approved setbacks with the footprint remaining as approved.

Each building in the approved development exceed the 24m height limit, a Clause 4.6 variation was supported. The maximum height increase from 25.9m to 27.4555m measured to the lift overrun of Building B is proposed to accommodate the 2.7m floor to ceiling heights on each level . On balance and noting that the original approval exceeded the 24m height standard, there is scope for Council to consider this increased building height which arises. From a planning perspective, there strong justification for the increase, which is required to comply with Council's flooding requirements (and existing conditions of consent), and increase in floor to ceiling heights in keeping with current building requirements. Building B remains the building with the highest RL relative to the other buildings in the approved development.

Overall height of the buildings A, C and D are sought to be increased by 800mm to ensure the minimum 2.7m floor to ceiling height limit is met but without reducing the level of the approved ground floor slabs. Buildings A, C and D remain beneath the maximum height of building achieved by Building B. The resultant form of the development remains substantially the same as the approved development and the increased height will not be discernible due to the relative isolation of the site from other development. The modified development will be consistent with the approved relationship of building heights within the development. Height plane diagrams have been prepared and submitted with the modification application for ease of determining the variation to the overall height of the buildings from DA14/0513 and are shown in **Figures 22 to 24** below.



Source DesignCorp

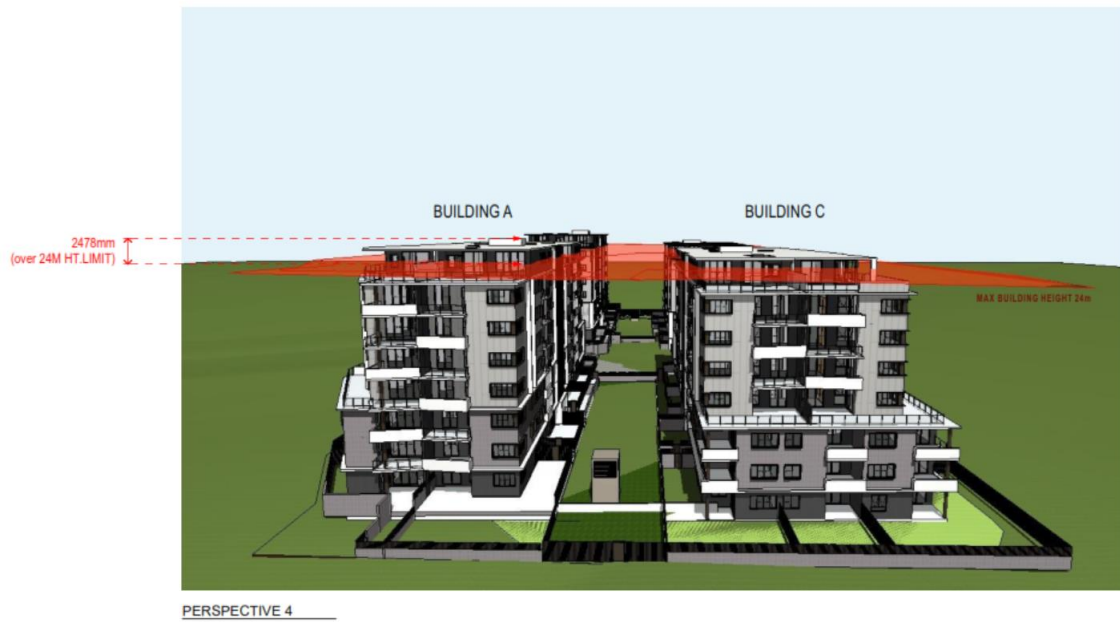
**Figure 22: Approved and modified RL's against 24m Height Plane**



Source DesignCorp



**Figure 23: Building Height on Southern elevation and 24m Height Plane**



Source DesignCorp

**Figure 24 Building Height on Northern elevation and 24m Height Plane**

A minor variation of the unit mix is proposed within the development as a result of internal floor plan adjustments. The overall number of units remains as approved, and the unit mix as a percentage is not significantly varied despite the change in number of units. It is noted that the Parent DA enabled the development of a greater percentage of 2 bedroom units than the DCP standard on the basis of demand for 2 bedroom units within the locality.



### 3.3.1 DA14/0513 modified Conditions

**Table 2** below provides a summary of the modifications sought to Notice of Determination No. DA14/0513.

**Table 2 Conditions for Review under Modification**

Condition	Action	Reason
General	Modify	<ul style="list-style-type: none"> <li>• Architectural Plans, Landscape Plans, BASIX Certificate and car parking requirements to be updated to reflect subject modification.</li> <li>• Amended Architectural Plans prepared by DesignCorp to replace various Architectural Plans as detailed in this SEE below.</li> <li>• Amended Landscape Plans.</li> <li>• Amended Access Report</li> <li>• Amended Stormwater Plans</li> <li>• Amended Hydraulic Services</li> <li>• Amended Geotechnical Report</li> <li>• Amended Waste Management Plans</li> <li>• Updated BASIX Certificate Reference No</li> <li>• Amended Swept Paths</li> </ul>
19	Delete	Duplicate of Condition 18.
40 - Health Matters & OSSM Installations	Delete	Rainwater tank has been removed from the proposal.
48, 49, 50, 51 - Construction	Delete	Rainwater tank has been removed from the proposal
74 & 75 - Engineering	Modify	Delete Reference to OSD as no longer required
68	Delete	Duplicate of Condition 67.
81 - Engineering	Delete	Delete condition as geotechnical report indicates tanking is not required.

The specific modifications of Development Consent DA14/0513 are detailed below, the modifications shown as ~~strikethrough~~ for deletion and **bold** for insert and underline for remaining.

4. The development must be implemented substantially in accordance with the plans and documents listed below and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and documents and by the following conditions.

<u>±</u> <u>Letter</u>	<u>Prepared by</u>	<u>Dated</u>
	<u>Dickson Rothschild</u>	<u>2 February 2015</u>
<u>Clause 4.6 Variations – Revision C</u>	<u>Dickson Rothschild</u>	<u>22 June 2015</u>
<u>Cover Page – Issue I</u> <b>DA 000 -Cover Sheet Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA-001 – Project Summary – Issue H</u>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA- 200 – Basement 2 Plan – Issue I</u> <b>DA-200 – GA Plan Basement 2 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA- 201 – Basement 1 Plan – Issue J</u> <b>DA-201 – GA Plan Basement 1 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>±</u>	<u>Prepared by</u>	<u>Dated</u>
<u>DA-202 – Ground Floor Plan – Issue K</u> <b>DA-202 – GA Plan – Ground Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>17/11/15</u> <b>17/08/22</b>
<u>DA-203 – GA Plan – Level 1 Issue I</u> <b>DA-203 – GA Plan – Level 1 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA- 204 – Level 2 Plan – Issue I</u> <b>DA-204 – GA Plan - Level 2 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA-205 – Level 3 Plan – Issue I</u> <b>DA-205 – GA Plan – Level 3 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA- 206 – Levels 04-06 Plan – Issue I</u> <b>DA-206 – GA Plan -Level 4 – 6 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA- 207 – Level 07 Plan – Issue I</u> <b>DA-207 – GA Plan - Level 7 Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>DA- 208 – Roof Plan – Issue I</u> <b>DA-202 – GA Plan – Roof Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>09/07/15</u> <b>17/08/22</b>
<u>Section A-A &amp; D-D – Issue F</u> <b>DA301 - Sections AA &amp; BB Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA-302 – Section B-B &amp; C-C &amp; E &amp; F – Issues I</u> <b>DA302 - Sections CC &amp; DD Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<b>DA303 – Sections EE &amp; FF Issue</b>	<b>DesignCorp</b>	<b>17/08/22</b>
<u>DA-401- Elevations East – Issue I</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA- 402 – Elevations West – Issue H</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA- 403 – Elevations North – Issue H</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA- 404 – Elevations South – Issue H</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>19/06/15</u> <b>17/08/22</b>
<u>DA 701 –GFA Calculations – Building A – Issue E</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>30/01/15</u> <b>17/08/22</b>
<u>DA 702 –GFA Calculations – Building B – Issue E</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>30/01/15</u> <b>17/08/22</b>
<u>DA 703 –GFA Calculations – Building C – Issue E</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>30/01/15</u> <b>17/08/22</b>
<u>Issue D</u> <b>Issue K</b>	<b>DesignCorp</b>	<b>17/08/22</b>
<u>DA 704 –GFA Calculations – Building D – Issue D</u> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	<u>16/05/14</u> <b>17/08/22</b>



<del>DA -711 -Solar&amp; Cross Ventilation-Vent - Building A - Issue F</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	19/09/14 <b>17/08/22</b>
<del>DA -712 -Solar&amp; Cross Ventilation - Building B - Issue G</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	30/01/15 <b>17/08/22</b>
<del>DA -713 -Solar&amp; Cross Ventilation - Building C - Issue F</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	19/09/14 <b>17/08/22</b>
<del>DA -714 -Solar&amp; Cross Ventilation - Building D - Issue F</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	19/09/14 <b>17/08/22</b>
DA- 740 Waste Room Details Issue	<b>DesignCorp</b>	<b>17/08/22</b>
DA 750 Typical Balcony Detail	<b>DesignCorp</b>	<b>17/08/22</b>
<del>DA- 741 Balcony Detail - Issue A</del>	<u>Dickson Rothschild</u>	30/01/15
<del>DA901 - Materials&amp; Finishes - Issue G</del>	<u>Dickson Rothschild</u>	30/01/15
<del>DA901 - Materials&amp; Finishes - Issue G</del>	<b>DesignCorp</b>	30/01/15
<b>DA -901 - Photomontage 1 Issue K</b>	<b>DesignCorp</b>	<b>17/08/22</b>
<del>DA- 902 916 -Photomontage 2E - Issue B-</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	30/01/15 <b>17/08/22</b>
<del>DA- 903 917 -Photomontage 2F - Issue B-</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	30/01/15 <b>17/08/22</b>
<del>DA- 921 - View Impact Study A - Issue E</del>	<u>Dickson Rothschild</u>	30/01/15
<del>DA- 922 View Impact Study B - Issue E</del>	<u>Dickson Rothschild</u>	30/01/15
<del>DA- 923 View Impact Study C - Issue E</del>	<u>Dickson Rothschild</u>	30/01/15
<del>DA -801DA- 931-Shadow Study A - Winter</del> <b>Issue E Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	30/01/15 <b>19/04/22</b>
<del>DA -802 DA- 932 -Shadow Study B - Equinox - Issue E</del> <b>Issue K</b>	<u>Dickson Rothschild</u> <b>DesignCorp</b>	30/01/15 <b>19/04/22</b>
Final Access for People with a Disability/Adaptable Housing Report	<u>Dickson Rothschild</u> <u>Dickson Rothschild</u>	15 May 2014 15 May 2014
+	Prepared by	Dated
C- 001 - General Notes - Revision A	BG& E	17/9/14
C-0020 - Stormwater Longitudinal	BG& E	29/1/15
C-0010- General Arrangement Plan - Revision B	BG& E	29/1/15
<del>Hydraulic Services Site Plan &amp; Legend -</del>	Cundall	13/11/15
<del>Hydraulic Services Site Plan &amp; Legend -</del>	Cundall	13/11/15
<del>Hydraulic Services Basement 2 Plan -</del>	Cundall	13/11/15
<del>Hydraulic Services Basement 1 Plan - HDA03/P5</del>	Cundall	13/11/15
<del>Hydraulic Services Ground Floor Plan -</del>	Cundall	13/11/15
<del>Hydraulic Services Roof Plan - HDA05/P5</del>	Cundall	13/11/15
<del>Hydraulic Services Detail Sheet 1 - HDA06/P5</del>	Cundall	13/11/15
<del>Hydraulic Services Detail Sheet 2 - HDA07/P5</del>	Cundall	13/11/15
Swept Path Analysis	Calibre Consulting	9/7/15
<del>Swept Paths (4 Sheets) - Rev J</del>	DR Design Pty Ltd	9/7/15
<del>Preliminary Geotechnical Investigation and Phase One Environmental Assessment</del>	Intrax Consulting Engineering Pty Ltd	22/12/14
<del>Additional Environmental Assessment</del>	Consulting Earth Sciences Pty Ltd	23/4/15
<del>BCA Assessment</del>	<u>BCA Logic</u>	15 May 2014 <b>19 August 2022</b>
<del>Landscape Concept Plans Issue J-LPS5.55 22-</del>	<del>Arcadia-ConZept</del>	<del>05/02/2016</del> <b>23 August 2022</b>
	Arcadia	05/02/2016
<del>Landscape Plan 302 - Issue J</del>	Arcadia	05/02/2016
<del>Landscape Plan 303 - Issue J</del>	Arcadia	05/02/2016
<del>Landscape Plan 304 - Issue J</del>	Arcadia	05/02/2016
<del>Landscape Plan 305 - Issue J</del>	Arcadia	05/02/2016
<del>Landscape Plan 301 - Issue J</del>	Arcadia	05/02/2016

Landscape Plan 306 – Issue J	Arcadia	05/02/2016
Landscape Plan 307 – Issue J	Arcadia	05/02/2016
Landscape Plan 501 – Issue J	Arcadia	05/02/2016
Landscape Plan 502 – Issue J	Arcadia	05/02/2016
Waste Management Plan	Elephants Foot	July 2015 <b>August 2022</b>
Cover Letter – Additional Information	Diddum	10 July 2015
<b>Survey Plan</b>	<b>SDG</b>	<b>18 November 2021</b>
<b>Traffic and Parking and Swept Path Analysis</b>	<b>Varga Traffic Planning</b>	<b>18 August 2022</b>
<b>Peer Review and Additional Geotechnical Investigation</b>	<b>EI</b>	<b>20 April 2022</b>
<b>Geotechnical and Groundwater Take</b>	<b>EI Australia</b>	<b>20 April 2022</b>
<b>Updated Groundwater Letter</b>		<b>29 July 2022</b>
<b>Access and Adaptability Assessment Report</b>	<b>Access Mobility Solutions</b>	<b>18 August 2022</b>
<b>WSUD Report _ Issues A</b>		
<b>Stormwater Quality Management Plan Rev</b>	<b>Mance Arraj</b>	<b>March 2022</b>
<b>Stormwater Covering Letter</b>	<b>Mance Arraj</b>	<b>24 March 2022</b>
<b>Erosion and Sediment Control Plan ER010 and ER111 (2 Sheet) Issue A</b>	<b>Mance Arraj</b>	<b>19 August 2022</b>
<b>Stormwater Civil Plans SW001, SW010, SW020, SW021 Rev B</b>	<b>Mance Arraj</b>	<b>19 August 2022</b>

~~19 **DELETED** Erosion and sediment control measures shall be installed prior to the commencement of works on site including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.~~

~~40 **DELETED** Rainwater tank must be maintained so as not to create a nuisance and it must be protected against mosquito infestation:-~~

~~48 **DELETED** The rain water tank(s) is to be:~~

- ~~• erected on a self supporting base in the approved location on the property in accordance with a stamped approved site plans for the development~~
- ~~• structurally sound and constructed in accordance with AS/NZS 3500 1.2 – 1998: National Plumbing and Drainage - Water Supply – Acceptable Solutions'~~
- ~~• fully enclosed and all opening sealed to prevent access by mosquitoes~~
- ~~• fitted with a first flush device~~
- ~~• fitted with a trickle system to top up from mains water~~
- ~~• provided with an air gap; and~~



- installed by a licensed plumber in accordance with Sydney waters plumbing requirements information for rainwater tank supplies and plumbers April 2003 and the NSW Code of Practice Plumbing and Drainage

Additionally, the following are to be provided:

- A backflow prevention device shall be provided at the water meter in accordance with Sydney water requirements;
- In the event of a power failure, a backup supply of mains water shall be provided to at least one toilet in the dwelling.
- The rain water tank(s) and associated piping is to be labeled "Rainwater- Not for Drinking" in accordance with Sydney Water requirements.
- The rain water tank and pipe works to be painted in colours matching the external finishes of the dwelling and is to be of a non-reflective finish.
- the overflow for the rainwater tank is to be connected to the existing stormwater disposal system on the site.

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rain water tank has been installed in accordance with:

- the manufacturer specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rain water tank on the property, and is to be submitted prior to the issue of the Occupation Certificate

49. **DELETED** The catchment area open brackets for the rainwater tank close brackets includes the parts of the roof of the dwelling(s) for which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation
- gutters must have sufficient fall to downpipes to prevent pooling of water overflow comment discharge from bleed off pipes from roof mounted appliances such as air conditioners, hot water services and solar heaters must not discharge into the roof catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- appropriate measures must be installed to prevent foreign materials from contaminating the water which enters the rainwater tank.



~~50 **DELETED** The rainwater tank supply must not be connected to drinking and bathing water tap outlets.~~

~~51. The rain water tank pump must not exceed 5 dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations act 1997 apply to the development in terms of regulating offensive noise.~~

74 Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the:

- a) stormwater management systems (including on-site detention and water sensitive urban design)
- b) Overland flow pathworks
- c) Flood control works
- have been satisfactorily completed in accordance with the approved construction certificate and the requirements of this consent
- have met the design intent with regard to any construction variations to the approved design.
- have remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works as executed drawings.

75. Prior to the issue of a Occupation Certificate, a restriction as to user and positive covenant relating to the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
- b) Overland flow pathworks
- c) Flood control works

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's stormwater Drainage for Building Development.

~~68 **DELETED** Prior to the commencement of works sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.~~

~~81 **DELETED** Prior to the issue of a Construction Certificate, a Geotechnical and Hydraulical report, detailing proposed measures to ensure that the no adverse~~



~~hydraulical impacts shall be submitted to Council to ensure the design of below ground structures has been with the relevant Australian Standards where applicable, the following requirements shall also be complied with:~~

- ~~(a) the basement structure shall be constructed to be fully waterproofed and tanked~~
- ~~(b) be no discharge into councils stormwater system~~



## 4 Strategic and Statutory Planning Framework

Section 4.55(2) of the EP&A Act sets out the requirements for the modifications of approvals involving some other change or impact.

In addition to the EP&A Act, Division 12 of the EP&A Regulation contains matters that must be considered with an application to modify a consent.

### 4.1 Environmental Planning and Assessment Act 1979

The application has been prepared pursuant to section 4.55(2) of the EP&A Act. Section 4.55(2) permits a consent authority to modify a development 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.*

Subsections (1) and (1A) do not apply to such a modification.



**Table 3** provides a response against the matters for consideration under 4.55(2) of the EP&A Act.

**Table 3                      Assessment relating to Section 4.55(2) of the EP&A Act**

Section 4.55(2)	Comment
(a) Substantially the same development	<p>The consent authority must be 'satisfied' that the modified development will be 'substantially the same development' as authorised by the original development consent.</p> <p>The question of substantially the same development is a 'question of fact'. The finding of fact that a modified development is substantially the same as the original approved development requires a comparison between the development as approved and the development as proposed to be modified.</p> <p>The development to be modified remains a residential development containing 4 buildings with associated basement car parking. The proposed modifications to the approved development do not alter the material or essential aspects of the original approval.</p>
(b) Notification in accordance with the regulations (if required) or a development control plan	<p>The proposal will be notified in accordance with the EP&amp;A Regulation and Council's Community Engagement Strategy.</p> <p>Council will arrange for notification of the application.</p>
(c) Consideration of submissions made on the proposed modification	<p>The proposal will be notified in accordance with the EP&amp;A Regulation and Council's Community Engagement Strategy.</p> <p>The applicant requests the opportunity to discuss and address any submissions, if received.</p>



## 4.2 Environmental Planning & Assessment Regulation 2021

Clauses 115-119 of Division 12 of the EP&A Regulation detail the requirements and information to be submitted to a consent authority with an application to modify a development consent. Table 4 details compliance for this application.

**Table 4 Assessment against Division 12 of the EP&A Regulation**

Clause	Matter	Comment
<b>Content of modification application</b>		
1(a)	Name and address of applicant	Mary 88 Development Pty Ltd  PO BOX 4081 Strathfield South NSW 2136
1(b)	A description of the original development	<b>Section 3</b> of this report includes details of the original development and the proposed modifications under this application.
1(c)	Address and formal particulars	The site is Lot 1 DP 1070784, 12 Carson Lane St Marys  NSW 2760.
1(d)	A description of the proposed modification	<b>Section 3</b> of this report includes a description of the proposed modifications to DA14/0513.
1(e)	A statement that indicates the modification is intended to have some other effect	As detailed earlier in this report, the modifications are intended to have some other effect. The modifications seek to reconfigure the basement, increase the height of the building to achieve engineering of building services, structural efficiency and improve residential amenity and manage administrative changes to the development consent to reflect these changes.
1(f)	A description of the expected impacts of the modification	This report details the anticipated impacts of the proposed modifications. These impacts are considered to be minimal. This report concludes they should be supported. All matters have been considered and addressed within the development consent.
1(g)	An undertaking that the development (as to be modified) will remain substantially the same	The development remains substantially the same development as originally

Clause	Matter	Comment
		approved. The development will remain a residential flat building development comprising 4 buildings of 8 storeys above a common basement of 2 levels with 289 units.
1(h)	Biodiversity	The application is not required to be accompanied by a biodiversity development assessment report.
1(i)	Owners Consent	The consent of the owner of the land is submitted with the application.
1(j)	A statement whether the application is being made to the Court or to the consent authority	The application is made to the Consent Authority, being Penrith City Council.
(2)	Owners Consent	Owners Consent is submitted with the modification application.
(3)	Residential Apartment Development-- BASIX	A new BASIX Certificate is provided and submitted with this modification application.
(4)	Biodiversity Credits	Not Applicable
<b>Clause 102</b>	<b>Modification applications for residential apartment development consents</b>	
(1)	Qualified Designer	A Design Verification Statement prepared by a Qualified Designer is submitted with the modification application.
(2)	Design Verification	The Parent DA was approved under the RFDC which predated the ADG. The Design Verification Statement indicates that the proposed modification does not diminish or detract from the design quality and design intent of the original development.
(3)	BASIX	An updated BASIX statement is submitted with this modification application.
(4)	Review by Design Review Panel	Review by the Design Review Panel will be required as original architect did not direct the modification application.





Clause	Matter	Comment
(5)	Advice of Design Review Panel	This is a matter to be undertaken during assessment.
(6)	May refer to Design Review Panel	Clause 102(4) requires referral to the Design Review Panel.
(7)	State significant development	Not Applicable
(8)	Additional Fee for Design Review Panel	The appropriate fee is provided within the application.
Clause 107	Notice of other modification applications	The original DA was notified The requirements under Clause 107 are a matter for Council.
Clause 109	Notification of concurrence authorities and approval bodies	Council will advise concurrence authorities in the course of the assessment of the application.
Clause 110	Fees payable for notice of modification applications	The appropriate fee is provided within the application.
Clause 116	Modifications of consent granted by the Court	N/A. The original DA was not granted by the Land and Environment Court.



## 5 Matters for Consideration

In determining an application for the modification of a consent under section 4.55(2), 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, as well as take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The following sections summarise the key findings in the context of Section 4.15 of the Act, under which the application must be assessed by Council.

### 5.1.1 Environmental Planning Instruments - Section 4.15(1)(a)

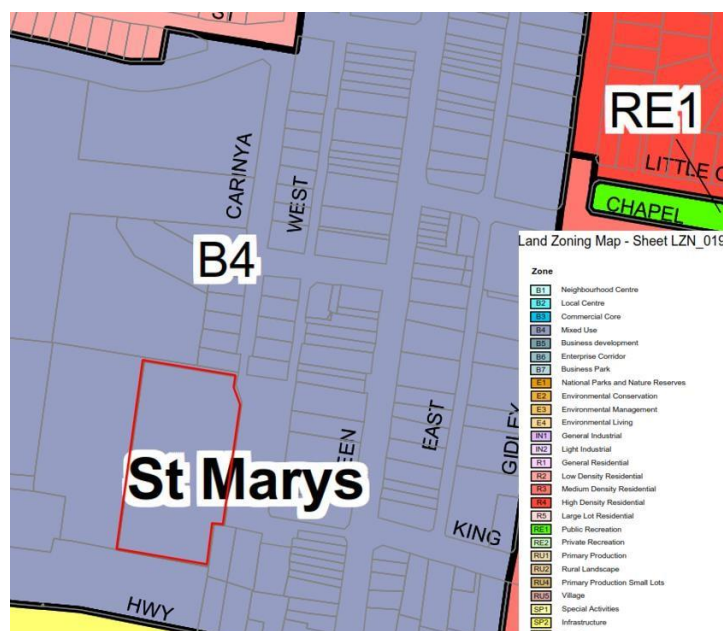
This application has been prepared and lodged pursuant section 4.55 of the EP&A Act, seeking the consent of Council to modify Notice of Determination DA14/0513. Section 4.55 of the EP&A Act is a

‘free-standing provision’ subject to its own stand-alone tests, meaning that a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application; section 4.55 authorises the development to be approved notwithstanding any breach of development standards.

The following discusses the planning controls in the PLEP and DCP, relevant to the assessment of the Section 4.55 Application. The proposed development is not considered to trigger any new assessable considerations under any State Environmental Planning Policy (SEPP) or Regional Environmental Planning Policy (SREP).

#### Penrith Local Environmental Plan 2010 (PLEP)

The subject site is zoned B4. Residential Flat Buildings are a permissible use in the B4 Zone.



Source: NSW Legislation PLEP 2010 LZN Sheet 19

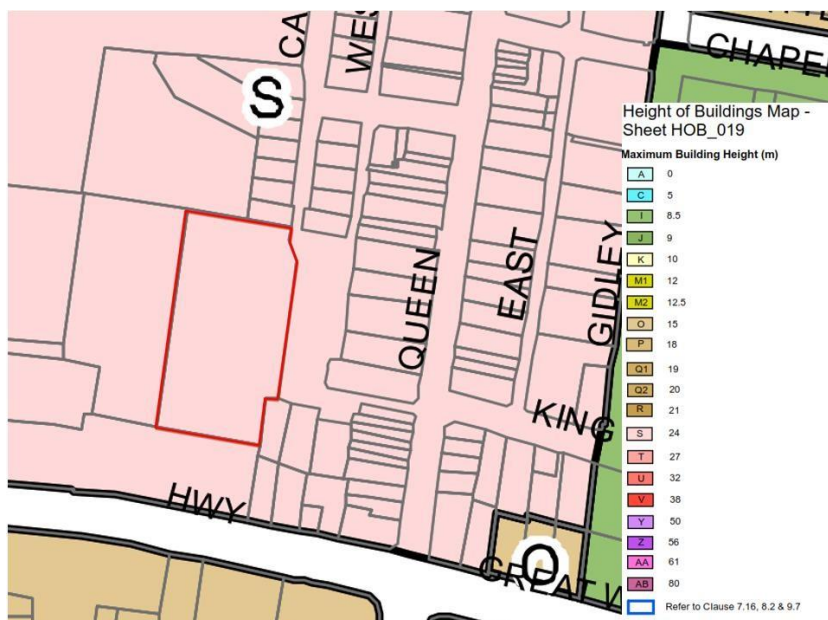
**Figure 25: Land use zoning under Penrith LEP 2010**

The relevant objectives of this zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To create opportunities to improve public amenity.
- To provide a wide range of retail, business, office, residential, community and other suitable land uses.

The scale and type of development remains consistent with that established as an acceptable planning outcome by the development consent granted by Council and the JRPP. The modifications included under this application comply with the zone objectives.

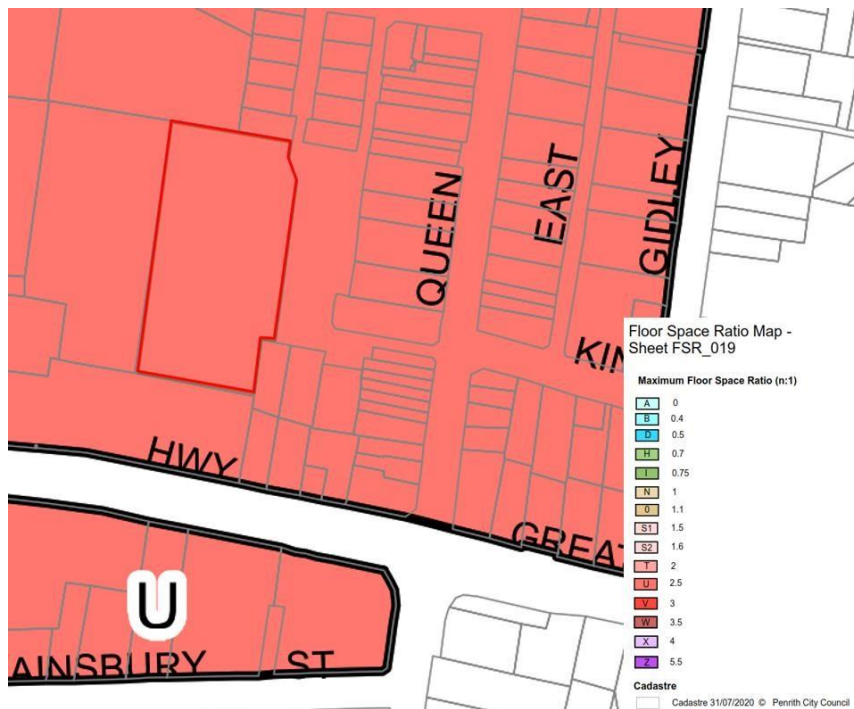
The key built form controls for the area include a maximum height of buildings map and maximum FSR map which were considered previously (See **Figure 26** and **Figure 27** respectively). As noted above, these specific controls do not require revisiting given the modification is a stand alone test to determine whether it is substantially the same development.



Source: NSW Legislation PLEP 2010 HOB Sheet 19

**Figure 26: PLEP Maximum Height of Buildings Map**

The increases in height from that originally approved are discussed in Section 3.2.



Source: NSW Legislation PLEP 2010 FSR Sheet 19

**Figure 27: PLEP Maximum FSR Map**

Notwithstanding the stand alone test as discussed above, the proposed development maintains an FSR of less than the maximum FSR of 2.5:1.

**Table 5 PLEP Assessment**

Provision	Comment
Clause 1.2 Aims of the Plan	Complies
Clause 2.3 Zone Objectives	Complies, no change in proposed development from that approved.
Clause 2.3 Permissibility	Complies, no change in proposed development from that approved
Clause 2.5	Not Applicable
Clause 2.6	Not Applicable
Clause 2.7 Demolition	Not Applicable – all demolition works completed
Clause 2.8	Not Applicable
Clause 4.1 Min Lot Size	Complies
Clause 4.1.1	Not Applicable

Provision	Comment
Clause 4.2	Not Applicable
Clause 4.3 Height of Buildings	Clause 4.6 Variation to 24m maximum height of building provision under parent DA. Approved development of 8 storeys is maintained with a minor variation to enable 3.1 floor to floor heights.
Clause 4.4 FSR	Complies
Clause 4.5	Complies
Clause 4.6	Not Applicable
Clause 5.1	Not Applicable
Clause 5.10 Heritage Conservation	A heritage item is located within St Marys Public School. A heritage Impact Assessment submitted with the parent DA concluded that there is initial impact due to distance of greater than 100m and no visual relationship. All approved setbacks and landscaping is maintained.
Clause 5.11	Not Applicable
Clause 5.12	Not Applicable
Clause 5.13	Not Applicable
Clauses 5.2 – 5.9AA	Not Applicable
Clause 6.1 Earthworks	Complies
Clauses 6.10-6.15	Not Applicable
Clause 6.2	Not Applicable
Clause 6.3 Flood Planning	The site is affected by overland flow. A flood report has been prepared and submitted. Suitable conditions of consent imposed on the consent and subject to modification will ensure compliance with Council's Flood requirements.
Clauses 6.4 -6.5	Not Applicable
Clause 6.6 - Servicing	The site is serviced and conditions of consent address this Clause.
Clauses 6.7- 6.9	Not Applicable
Sch 1	Not Applicable



### Transport and Infrastructure State Environmental Planning Policy SEPP (T&ISEPP)

The parent DA was defined 'Traffic Generating Development' pursuant Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) at the time of determination of the application. The modification, as proposed, does vary the overall parking and remains capable of achieving compliance with all conditions of consent as previously required. A statutory referral under this Policy to the RMS will be required before determination.

### State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)

The aims of SEPP 65 are to improve the quality of Residential Flat development. The Policy applies to the development. The Policy contains design quality principles that must be considered in the design.

The provisions of SEPP 65 were anticipated to be amended with the introduction of the recently abandoned Design and Place SEPP. As at the time of writing this SEE, the references in SEPP 65 to the Environmental Planning and Assessment Regulation 2000 have not been updated. In the interests of clarity, the assessment in this SEE references the Environmental Planning and Assessment Regulation 2000, the intent of the Environmental Planning and Assessment Regulation 2021 being an update but not a change in the intent of the provisions as they relate to residential flat building development.

**Table 6 SEPP 65 Assessment**

Provision	Comment
(1) This clause applies if a consent authority is required by	<p>This application requires referral to Council's Design Review Panel as a different Architect has prepared the modification plans for this application. To enable assessment of the application by Council, a Design Verification Statement for the proposed modification has been prepared.</p> <p>The parent application was determined under the RFDC. A review of the proposed modification against the ADG is not required as the development consent predated the ADG and the development is substantially the same as that approved.</p>
<p>(2) In determining an application to which this clause applies, the consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration)</p> <p>(a) the advice (if any) obtained from the design review panel, and</p> <p>(b) the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and</p> <p>(c) the Apartment Design Guide.</p>	<p>The advice of the Design Review Panel will be obtained during the assessment of the application</p> <p>The parent application was determined under the RFDC and remains substantially the same as that approved.</p>

Provision	Comment
(3) However, if the relevant design review panel fails to inform the consent authority of its advice within 14 days after its first meeting to deal with the application concerned, the consent authority may determine the application without considering any such advice and a modification of consent so granted is not voidable on that ground.	The advice of the Design Review Panel will be obtained during the assessment of the application.
(4) The 14-day period referred to in subclause (3) does not increase or otherwise affect the period within which an application for the modification of development consent is required to be determined by a consent authority	Noted

Clause 30 of SEPP 65 contains standards that cannot be used as grounds to refuse development consent or modification of development consent. The Proponent understands these standards, however, has prepared this modification with the objective of enhancing design outcomes of the development. It is noted that the development was approved prior to the minimum internal areas specified in Part 4D of the ADG. The increase in floor to floor heights within the development is to achieve 2.7m floor to ceiling heights within the development as recommended in Part 4C of the ADG.

The modification as proposed is consistent with the intent of the provisions of SEPP 65 as applicable at the time of the granting of the development consent.

#### **State Environmental Planning Policy – Building Sustainability Index: (BASIX) 2009**

An amended BASIX Certificate has been prepared and submitted with the modification application to ensure continual compliance with this Policy and the lodgement requirements of the EP&A Regulations.

#### **State Environmental Planning Policy-Resilience and Hazards**

The previous State Environmental Planning Policy No. 55 – Remediation of Land applicable at the time of determination of the parent DA was considered. No further consideration is required under this s.4.55 application.

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The previous Sydney Regional Environmental Plan No.20 • Hawkesbury Nepean River applicable at the time of determination of the parent DA was considered. No further consideration is required under this s.4.55 application.

### 5.1.2 Proposed Instruments - Section 4.15(1)(a)(ii)

There are no proposed environmental planning instruments applicable to the proposed modification.

### 5.1.3 Development Control Plan - Section 4.5(1)(a)(iii)

The purpose of DCP is to guide development outcomes within Penrith LGA. The relevant matters for consideration under the DCP relevant to this application to modify the Determination are outlined below.

The approved development and the proposed modifications satisfy the applicable provisions of the DCP. The overall development is consistent with the overall built form as approved and appropriate conditions of consent have been imposed to ensure compliance with the DCP.

**Table 7 DCP Assessment**

Provision	Comment
<b>Part D2 • Residential development</b>	
<b>Part C</b>	
Site Planning and Design Principles	The site has an approved development consent, the modified development is substantially the same.
Energy Efficiency	An updated BASIX certificate is lodged with the application. An update to the BASIX Certificate to reflect the August Amendments is being obtained and will be uploaded to the Planning Portal.
Vegetation Management	An updated landscape plan has been prepared taking into account the approved landscape scheme and conditions of consent.
Water Management	Suitable conditions have been imposed and where amendments are proposed, specialist engineering reports and updated civil plans have been prepared and submitted with this modification application.
Land Management	The modified basement is located in generally the same location as the approved basement. Appropriate conditions of consent have been imposed. Since the issuing of DA14/0513 a Detailed Site Investigation has been prepared.
Public Domain	The modified proposal achieves the same public domain outcomes as the approved development.
Transport, Access and Parking	The modification application is supported by an updated traffic and parking assessment. The modification provides for a minor adjust to the unit mix and basement configuration as is relevant to traffic and parking assessment. The overall development remains consistent with the terms of DA14/0513 as approved.



Provision	Comment
Noise and Vibration	The modification does not give rise to any further considerations not addressed in the original assessment of DA14/0513.
Infrastructure and Services	The site is serviced. Suitable conditions of consent have been imposed on DA14/0513.
<b>Part D2.5 Residential Flat Buildings</b>	
Residential Character and Urban Form	The built form of the development remains substantially the same as that of the approved development.
Landscaped Area	The landscaped area of the development remains substantially the same as that of the approved development.
Front and Rear Setback	There are no amendments to the approved front and rear setbacks.
Side Setbacks	There are no amendments to the approved side setbacks.
Visual and Acoustic Privacy	The impacts of visual and acoustic privacy were assessed in the assessment of DA14/0513 and determined to be appropriate as a result of the setbacks and landscaped areas proposed. The setbacks and landscaped area of the development remains substantially the same as that of the approved development.
Solar Planning	The modified development maintains the solar access of DA14/0513.
Building Design	Varied materials and architectural features which were incorporated in the approved development have been included within the modified design. The modified proposal is substantially the same as that approved.
Energy Efficiency	An updated BASIX Certificate has been obtained and is lodged with this modification application.
Design of Dwellings and Courtyards	All modified balconies meet the ADG minimum area, all other balconies remain as approved in DA14/0513.
<b>Part E15 • St Marys Town Centre controls</b>	
Southern (Mixed Use) Precinct	The site is located within the Southern Mixed Use Precinct on the southern edge of St Marys Town Centre. The approved and modified development is consistent with the aim to provide high quality buildings as the gateway to St Marys.

Provision	Comment
Mix of Units	The development was approved with a greater than the maximum 65% of 2 bedroom units, the assessment noting a demand for 2 bedroom units within St Marys. The overall unit mix remains substantially the same as that of the approved development.
Accessible Housing	The modification application provides for 10% of accessible units consistent with DA 14/0513. An updated Accessibility report is submitted with this application to address the amended plans.
Built Form	The overall form of the modified proposal is consistent with the setbacks, and form of the approved development. Minor amendments to the facades are proposed which is consistent with the approved scheme. The modified proposal seeks to increase the height of the buildings as is discussed within this report. The increase in height results in a development which remains substantially the same as Development Consent No 14/0513.

The development is not considered to trigger any further assessment of matters that have not been previously assessed as part of the parent DA as determined by the Council and JRPP Assessment and Determination. The remaining conditions of consent are sufficient to ensure appropriate compliance with relevant requirements during construction and future use of the building.

#### **5.1.4 Planning Agreements - Section 4.15(1)(a)(iiia)**

There is no applicable Planning Agreement related to the Development Consent which requires consideration in relation to this application.

#### **5.1.5 Regulations - Section 4.15(1)(a)(iv)**

Relevant provisions relating to the modification of development consents issued by Council include Part 5 of EP&A Regulation. These are separately addressed above as part of this SEE.

#### **5.1.6 Likely Impacts of the Development - Section 4.15 (1)(b)**

This modification application provides for the development of 4 x Residential Flat Buildings as anticipated by Development Consent DA14/0513.

Specific regard has been made to maintain the approved setbacks and maintain window openings and balcony locations as approved. The resultant built form is that anticipated under the applicable controls and Development Consent DA14/0513. The buildings remain 8 storeys as approved in a similar layout and format. The reconfiguration of the approved development is required to enable construction of the building in accordance with relevant construction requirements including the BCA.

The approved development provided for variation of the 24m height limit. A Clause 4.6 variation was submitted with the parent DA and supported. The overall height and built form remains





substantially the same as that for which approval was originally granted. As a result of the adjoining and nearby development the increase in height does not impact upon overshadowing of residential properties and enables the provision of 2.7m floor to ceiling heights throughout the development consistent with the ADG.

The proposed development is not considered to have any detrimental economic impact on the locality.

#### **5.1.7 Suitability of the Site- Section 4.15 (1)(c)**

Development Consent was granted for the development of a 4 x residential flat buildings. The modified development is substantially the same development as that for which approval was deemed suitable to the site and surrounding locality by Council and the JRPP. The proposed modifications seek to provide a building of greater housing mix, improved residential amenity and architectural merit and realise development of the site in the manner which development consent has been granted. .

#### **5.1.8 Submissions - Section 4.15 (1)(d)**

The proposal will be notified in accordance with Council's policy with any submissions received during this process required to be considered under Section 4.15 of the Environmental Planning and Assessment Act 1979.

The applicant requests the opportunity to discuss and address any submissions, if received.

#### **5.1.9 Public Interest - Section 4.15 (1)(e)**

The public interest is served by granting consent to this application, as the modifications proposed, enhance the overall design outcomes, enhance on-site and surrounding land amenity, and improves the efficiency of the site and development.

The redevelopment will provide a development which will continue to meet the objectives of PLEP 2010 and DCP. There are no known matters in relation to the public interest relevant to the proposed amendment that has not been canvassed within this Statement



## 6 Conclusion

This application is submitted to Penrith City Council to modify DA14/0513 under section 4.55 of the EP&A Act.

The amendments seek to provide a more considered design and respond to the market after DA14/0513 became operational by satisfying the deferred commencement requirements. The changes generally include minor alterations to the unit mix by the revision of internal layouts and compliance with the 2.7m floor to ceiling heights for greater amenity, rationalisation of the basement levels and make administrative changes to conditions of consent to include updated plans and documents. Additional amendments in response to Council's initial review have been made.

This report concludes the development as proposed to be modified is substantially the same development as originally approved as:

- the primary function and purpose of the approved development does not change as a result of the proposed modification.
- the proposed changes are at a scale that warrants the use of section 4.55(2) of the EP&A Act.
- the proposed changes would result in an improved development that is substantially the same as that originally approved.

On this basis, the application can be approved pursuant to Section 4.55(2) of the EP&A Act, subject to appropriate modified conditions.



## 7 Glossary

Abbreviation	
PLEP	Penrith Local Environmental Plan 2010
Council	Penrith City Council
DA	Development Application
DCP	Penrith Development Control Plan 20210
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
GLN	GLN Planning Pty Ltd
LGA	Local Government Area
SEPP	State Environmental Planning Policy

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