

DATE OF PANEL DECISION	8 September 2026
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Louise Camenzuli
APOLOGIES	None
DECLARATIONS OF INTEREST	None
APPLICATION	PPSSWC-679 (DA-471/2023/A) - s4.56 modification - 31 & 33 Shepherd Street, Liverpool

REQUEST – AMENDMENT OF A MODIFICATION APPLICATION UNDER S 1

Determination: Unanimously approved subject to comments below

Court Granted Consent

*On 18 March 2023 the Land & Environment Court granted development consent to DA471/2023 (PPSSWC-361) (Lateral Estate Pty Ltd v Liverpool City Council [2025] NSWLEC 1155) (**Court Development Consent**) to development comprising the demolition of existing structures, tree removal and the construction of two residential flat buildings, comprising:*

- a) 343 residential apartments;
- b) 66 co-living housing dwellings;
- c) Basement car parking for 425 parking spaces, 50 bicycle parking spaces, 22 motorcycle parking spaces and 7 at-grade public parking spaces;
- d) Torrens title subdivision into three allotments; and
- e) A new public road, ancillary services, landscaped through-site link and open space.

The Court relied upon a s 34 Agreement when granting the Court Development Consent.

The Court Granted Consent also relied upon [State Environmental Planning Policy \(Housing\) 2021](#) Chapter 4 and written requests made pursuant to cl 4.6 of the Liverpool Local Environmental Plan 2008 (LLEP), seeking to vary the development standards for height and maximum floor space for the building (noting that the site was subject to a four separate height of building development standards of 24m, 56m, 65m and 77m).

S 68 of SEPP Housing allows 10% FSR available for the provision of housing for the purposes of co-living, a bonus which was taken up in the Court Development Consent. The Panel notes that the s 4.6 request made in support of the original DA dated 3 August 2023 from SJB Planning included:

“Pursuant to State Environmental Planning Policy (Housing) 2021 (Housing SEPP) the applicant is able to include co-living housing as a component of the overall development. Section 68(2)(a)(ii) provides for an additional 10% of the maximum permissible FSR if the additional floor space is used only for the purposes of co-living housing. Noting the proposed buildings (including the co-living housing component) are sited wholly within the central / eastern portion of the site (Site B), the resultant FSR including the 10% bonus is 3.85:1 (maximum GFA 19,685.05m²).

The maximum ‘cumulative’ GFA for the overall site (including the 10% bonus) increases to 27,349.74m² (if the co-living housing is applied across the overall site).”

The Judgment of the Court records at [34]:

“If the site were developed strictly in accordance with the FSR control, it would deliver fewer dwellings. The proposed exceedance of FSR allows for 40 additional apartments and 66 co-living dwellings.”

It was on that basis that the parties had agreed that the cl 4.6 request with respect to FSR ought to be granted.

Notably, the DA was referred to the Liverpool Design Excellence Panel and issues of building separation were raised but ultimately resolved.

S 4.56(1) Application

On 1 April 2026 an application was made under s 4.56(1) to modify the Court Development Consent (a section which applies specifically to the modification of consents granted by the Court) (**Modification Application**).

The modifications applied for in the Modification Application as originally made were:

- a) Removing all 66 of the ‘co-living dwellings’;
- b) Increasing the residential apartments from 343 to 372;
- c) Changing the floor plans for levels 2 – 5;
- d) Removing 2 car parking spaces from basement 1;
- e) Providing 4 service vehicle spaces on basement 1;
- f) Increasing the GFA for the development by 32m², which is reported to be a variation of 0.018%.

Amendment application

By letter from Lateral Estate Pty Ltd dated 14 August 2026 posted to the Portal to amend the Modification Application. The amendments then proposed were changed parking arrangement, a new acoustic report, and changes to the privacy mitigation measures.

Amendment approved

Amendments to a modification application are regulated by s 113 of the EP&A Regulation 2021.

Under s 113, the Applicant must provide the number and date of the plans that have changed. This does not yet seem to have been done and should be addressed.

Otherwise, the Panel agrees the Amendment should be permitted.

Panel observations

The acceptability of the FSR of the development without the approved co-living housing will require attention.

The letter of 14 August 2026 makes various statements about the consideration of the issue of housing diversity. Without deciding that matter, the deletion of 66 co-living apartments included in the development as approved by the Court would seem to make that issue relevant across the whole development, given how the original planning arguments used by the Applicant relied upon the inclusion of co-living apartments as a justification for increased floor space for the development overall.

It will be necessary in the final determination of the application to consider whether the development is “substantially the same” as the approved development, noting that a legal advice on that subject provided by the Applicant’s solicitors is included in the material posted on the Portal.

PANEL MEMBERS	
Justin Doyle (Chair) 	Louise Camenzuli 
David Kitto 	