

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0471
<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 1 DP 373531, 1955 Pittwater Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Ian Francis Westaway Jan Elizabeth Westaway J A Westaway & Son (Developments) Pty Ltd Cap One Developments Pty Ltd
<b>Applicant:</b>	The Trustee For The 1955 Pr Bay Unit Trust
<b>Application Lodged:</b>	29/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/03/2023 to 07/04/2023
<b>Advertised:</b>	24/03/2023
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 9.4%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seeks to modify Development Consent No.DA2019/0154 which was granted for a seniors housing development by the NSW Land and Environment Court.

The application is referred to the Development Determination Panel due to seven (7) objections being received.

The proposal includes a number of changes to the approved development, including the provision of fire hydrant booster, tree removal, addition of rooftop plant and enclosure/screening; increase in roof parapet height; change in floor levels; new curved balcony design to the front facade and increase in balcony sizes; increase in size of rooftop terrace and a modified landscaping scheme. The proposal also seeks consent for the "use" of existing as built works, which include concrete retaining walls and capping beam slab extension on the site. The physical aspect of these works have been regularised by way of a Building Information Certificate (BC2023/0102).

DA2019/0154 has had two (2) previous modifications approved, one of which approved the construction and use of the basement void area as storage areas for each unit.

A total of seven (7) submissions were received in response to the notification. The submissions include; incompatibility with the character of the area; building height and bulk; amenity issues (primarily regarding solar access, visual privacy and view loss); use of the basement storage area; and non-compliance with relevant planning controls within *SEPP (Housing for Seniors or People with a Disability) 2004* and Pittwater LEP and DCP.

Notification and preliminary assessment raised a number of concerns. These concerns included; insufficient information; unauthorised works on site; design of the storage area facade/opening; height and building bulk; potential view loss; building colours and materials and internal referral concerns.

Amended plans and additional information were submitted by the applicant to address these concerns.

A Building Information Certificate (BC2023/0102) was also submitted to Council's Building Control department to address/regulaise existing building works onsite.

Importantly, the proposal seeks to increase the height of the approved development. The maximum ceiling height will be 8.5m, which is non-complaint with the 8.0m under *SEPP (Housing for Seniors or People with a Disability) 2004*. Additionally, the parapet height of the roof ridge will increase by 662mm, the terrace roof will extend to the north-east by 1m and the overall roof height will measure 9.1m, which does not comply with the 8.5m height requirement stipulated within Pittwater LEP.

The current application is assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004*, it being noted that it has recently been repealed and replaced with *State Environmental Planning Policy (Housing) 2021* (SEPP Housing). It is noted that SEPP Housing permits a building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these requirements. The vast majority of the proposal will be below the applicable height control. The minor height non-compliance is associated with the slope of the site and the rooftop structures will not result in excessive height and scale. The modified proposal steps with the topography, such that it will transition and maintain compatibility with the height and scale of the adjoining development.

The proposal also has a minor encroachment into the rear 25% of the site by a maximum of 0.5m, representing a variation of 4.6% to standards specified in Clause 40 of SEPP HSPD. The encroachment will not have an adverse impact on the amenity of neighbouring properties or character of the area.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site and has submitted evidence to support this.

Impacts on adjoining properties will be reasonable within the context and setting, however, conditions have been imposed requiring additional privacy measures.

On balance, the proposal represents a relatively modest change to the built form of that approved under DA2019/0154 (and subsequent modifications). The overall setbacks, built form, scale and appearance of the building is substantially the same as the approved development, with the proposed changes primarily due to further design refinement and achievement with relevant standards. The resultant development is acceptable for the subject site, for the reasons outlined in this report.

The modified proposal has been refined and enhanced using a new project architect, and represents a significant and substantial improvement in the character, design and external appearance of the approved development, with enhanced architecture, landscaping and external colours and finishes.

Overall, it is considered the modification is reasonable and satisfactory on its merits.

Accordingly, it is recommended that the application be APPROVED subject to modified conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks to modify Development Consent DA2019/0154 approved via the Land and Environment Court Order 1326 (of 2020) for the 'demolition works and construction of a seniors housing development'.

Specifically, the application includes the following changes (as outlined by the applicant within the Statement of Modifications):

- Entry Pedestrian Ramp – Increased pedestrian ramp width to 1600mm for Accessibility
- Building Entry - New centrally sited awning and vertical louvre screen to the entry lobby
- Vertical Screening - Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms.
- Balcony Articulation - New curved balcony design to front facade. This will increase the balcony terrace areas for all units
- New front fencing and retaining wall
- The provision of fire hydrant booster assembly, requiring removal of tree T3 and associated works on the road reserve
- Rooftop plant including lift overrun, air conditioning and exhaust and associated enclosure/screening
- First Floor Roof Deck/ Landscaping - Change in configuration and increase in size of First Floor roof deck. New landscape buffer around perimeter of First Floor roof deck.
- Increase in parapet height roof level and first floor level
- Roof & Floor RL - Adjustment in floor-to-floor heights
- Vehicular Access altered to comply with accessibility & Australian Standards.
- Carpark Floor Plan – Parking reconfiguration
- Lower Ground Floor Plan – Increase in Unit 4 storage area and new doors and panels for maintenance and ventilation.
- Lower Ground Floor Plan –New terrace and plant storage adjoining unit 1 and increase in unit 1 and 3 storage areas.
- Proposed terrace extensions at the front and rear of the site
- Unit layouts - Internal reconfiguration and increase in unit sizes
- Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments.
- Boundary Fence - 1.8m high painted capped and lapped fencing.
- The implementation of a modified landscape regime including on slab planting over the retained capping beam slab within the south-eastern setback.

The proposal also seeks consent for the "use" of existing as built works, which include concrete retaining walls and capping beam slab extension.

The physical component of these works have been regularised by way of a recently issued Building Information Certificate (BC2023/0102).

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality

Pittwater 21 Development Control Plan - B4.5 Landscape and Flora and Fauna Enhancement

Category 3 Land

Pittwater 21 Development Control Plan - B4.14 Development in the Vicinity of Wetlands

Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation

Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public Domain

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access



Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - C1.7 Private Open Space  
 Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures  
 Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure  
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run  
 Pittwater 21 Development Control Plan - D4.3 Building colours and materials  
 Pittwater 21 Development Control Plan - D4.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D4.8 Building envelope  
 Pittwater 21 Development Control Plan - D4.11 Fences - General  
 Pittwater 21 Development Control Plan - D4.14 Scenic Protection Category One Areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 373531 , 1955 Pittwater Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southwestern side of Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 32.64m along Pittwater Road and a depth of 43m. The site has an area of 1296.5m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and is currently under construction pursuant to DA2019/0154 approved for a seniors housing development.</p> <p>The site falls approximately 12m from the south towards the north.</p> <p>The site is generally free of any vegetation due to ongoing construction works. Three canopy trees are located in the street verge along with ground-cover vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by predominantly 1-3 storey dwelling houses. St Luke's Primary School is located nearby to the west and Bayview Anchorage Marina nearby to the east.</p>

Map:



## SITE HISTORY

- Application **DA2019/0154** for Demolition works and construction of a seniors housing development was refused on 16/10/2019 by the Northern Beaches Local Planning Panel. The determination was appealed to the NSW Land and Environment Court which upheld the appeal with amended plans on 28/07/2020 after a conciliation conference between Council and the applicant.
- Application **Mod2021/0101** for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development was approved on 12/05/2021 by Council staff.
- Application **Mod2021/0343** for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development was approved on 27/07/2021 by Council staff. This modification approved the use the basement void area approved under Mod2021/0101 as storage areas for each dwelling.
- **BC2023/0102** - Building Information Certificate (149D Unauthorised) - Shotcrete retaining walls and associated capping beams - Issued 14/08/2023

## APPLICATION HISTORY

### 16 December 2022

Council sent an RFI letter to the applicant, raising concerns primarily in relation to:

- Insufficient information
- Existing works on site
- Use of storage areas
- Height and building bulk
- View analysis
- Privacy

- Building colours and materials
- Internal referral concerns

### 17 March 2023

Amended plans and additional information were submitted to address Council's concerns.

### 20 March 2023

Amended plans were re-notified and re-advertised

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0154, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, 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	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154.</p> <ul style="list-style-type: none"> <li>• The modifications will not change the approved use of the site;</li> <li>• The modifications will retain the approved number of units;</li> <li>• The amount of floor space remains generally consistent with the previous approval and modifications.</li> </ul>

Section 4.56- Other Modifications	Comments
	<ul style="list-style-type: none"> <li>• The modifications will not significantly alter the form of development that was originally approved,</li> <li>• From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.</li> </ul>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2019/0154</p>
<p>(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.</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

## Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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 relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/03/2023 to 07/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mr Leonard William Baillie	58 Alexandra Crescent BAYVIEW NSW 2104
Mr Peter William Gorian Ms Toni Capel	60 Alexandra Crescent BAYVIEW NSW 2104
Mrs Caroline McFarlane	Po Box 583 MONA VALE NSW 1660
Mr Richard Pearse	52 Alexandra Crescent BAYVIEW NSW 2104
Mr David James Carruthers	1957 Pittwater Road BAYVIEW NSW 2104
Claire Louise Young	62 Alexandra Crescent BAYVIEW NSW 2104
Jeromy Young	62 Alexandra Crescent BAYVIEW NSW 2104

Name:	Address:
Mrs Ellen May Barker	56 Alexandra Crescent BAYVIEW NSW 2104

The following issues were raised in the submissions:

- **Building Height**

Comment:

Concern was raised with the proposed height of the modified development and that the proposal does not meet the stipulated height requirement. Following this submission, amended plans were received, which reduced the extent of the proposed height non-compliance. The proposed non-compliance relates to a small section of terrace roof and proposed rooftop plant and is not considered to result unreasonable impacts to the character of the area or the amenity of adjoining neighbours. An assessment of the building height has been undertaken within the relevant section of this report (see *Clause 4.3 Height of buildings of PLEP2014*).

- **View loss**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section *C1.3 View Sharing* of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

Concern was also raised with potential view loss from proposed tree planting. The inclusion of tree planting is reasonable to satisfy the objectives C1.1 and D4.1 of P21 DCP. Furthermore, the objectives of clause C1.3 View Sharing of P21 DCP specifies that canopy trees take priority over views. In consideration of the location of pre-existing canopy trees within the view corridor (on the subject site) as well as the requirements and objectives of P21DCP, the replacement tree planting is supported and associated view loss is considered reasonable in this instance. Additionally, the location of canopy tree planting within the rear is generally consistent with the approved landscaping within the original approval (DA2019/0154).

- **Privacy impacts**

Comment:

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section *C1.5 Visual Privacy* of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties (subject to recommended conditions).

- **Over-development, bulk and scale and not in the character of the area**

Comment:

This matter has been addressed throughout this report, particularly within the section of the report relating to *Clause 4.3 Height of buildings of PLEP2014; A4.4 Church Point and Bayview*

*Locality and D4.8 Building envelope of the Pittwater 21 DCP and SEPP (Housing for Seniors or People with a Disability) 2004.* In summary, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to result in unreasonable additional bulk and scale and will maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

- **Fencing detail and impacts of new fencing on views from rear properties**

Comment:

Following this submission, amended plans were received which includes fence details. The proposal also includes side and rear boundary fencing. In order to ensure that the proposed fencing does not result in unreasonable visual or view impacts to neighbours, conditions will be imposed ensuring that side and rear boundary fencing does not exceed 1.8m from existing ground level and is designed to step with the fall of the land, and is constructed wholly within the boundaries of the subject property. This matter has been addressed within *D4.11 Fences - General* of this report. New fencing is not considered to result in unreasonable view loss given the elevation of properties to the rear.

- **Visual and acoustic privacy from roof terrace and impacts from structures and lighting on this terrace**

Comment:

Concern has been raised by adjoining neighbours with regards to the proposed roof top terrace and associated amenity impacts. The rooftop terrace was approved within the original consent (DA2019/0154). The subject modification seeks to increase the overall size of this roof terrace area.

As detailed within Section *C1.5 Visual Privacy* of the P21 DCP, the proposed increase in size of the rooftop terrace area is not considered to result in unreasonable acoustic or visual privacy impacts to the neighbours to the rear. The trafficable area of the terrace will be over 10m from the rear boundary and will be at a lower elevation than the principal private open space and windows of the properties to the rear. This terrace will also be separated from these properties by proposed screen planting and fencing. Given the spatial separation and differences in levels, the increase in the size of this terrace is not considered to result in unreasonable acoustic, visual privacy or lighting impacts to these neighbours.

The trafficable area of the roof terrace will be setback 6m from the north-western side boundary and within 9m of windows and private open space of the adjoining neighbour to the north-west (1957 Pittwater Road). This terrace will be elevated above the windows and private open space of this adjoining neighbour, which may result in real and perceived downward overlooking. Given the scale and orientation of this terrace, and use as the principal private open space for Unit 4, a condition of consent is recommended to require a privacy screen measuring 1.5m in height on the north-western elevation of this roof terrace area to mitigate potential privacy impacts.

The terrace will serve one unit (Unit 4) and is not considered to result in unreasonable acoustic impacts.

If approved, conditions will be imposed to ensure that there are to be no permanent structures located on the rooftop terrace and that any temporary shade structures are to be taken down when not in use.



- **Photomontage required**

Comment:

Following these concerns amended plans were received, which included an updated photomontage of the modified proposal.

- **Insufficient community consultation**

Comment:

It is considered that the proposal was adequately notified and advertised in accordance with the provisions of the EPA Regulations and the Northern Beaches Community Participation Plan.

- **Solar Access**

Comment:

It is considered that proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

- **Impacts to watercourse and stormwater**

Comment:

The proposal was referred to Council's Development Engineer; Coast and Catchments Officer; Riparian Lands and Creeks Officer and Water Management Officer, who have raised no objection to the proposed development and impacts to watercourses and stormwater.

- **Impacts to property value**

Comment:

Under Section 4.15 '*Matters for Consideration*' of the Environmental Planning and Assessment Act 1979, this concern is not a matter for consideration. It is therefore considered that this issue does not warrant refusal of this application.

- **Concern with use of storage areas for habitable purposes**

The submissions raised concerns that the lower ground floor storage areas will be used for habitable purposes rather than for storage.

Comment:

The lower ground floor storage area was approved within a previous modification application (Mod2021/0343). The subject application will result in a minor increase in the floor area of this storage area. However, during the assessment of the application, Council raised concern with the inclusion of openable glazed doors on the north-east elevation and the resultant appearance of an additional lower ground floor habitable area. Following these concerns, amended plans were received, which reduced the size of the access door with a louvred door and ventilation panel now being proposed.

If this application is approved, conditions are to be imposed to ensure that this area is not to be

used for habitable purposes and shall not to contain any cooking, bathroom/toilet or laundry facilities.

- **Insufficient detail of roof colours**

Comment:

The original approval (DA2019/0154) included the following condition of consent:

*External Roofing - The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.*

This condition will remain applicable to the development.

- **Number of storeys of the development**

The submissions raised concerns that the number of storeys proposed would not meet the requirements of *SEPP (Housing for Seniors or People with a Disability) 2004*

Comment:

The subject application will not increase the number of storeys when compared with previous the modification approval (Mod2021/0343). The additional storey approved within previous modifications (for storage purposes) was predominantly below pre-existing (natural ground) level. The resultant built form of this application will generally retain the approved built form and will not increase the number of storeys proposed.

As addressed within *SEPP (Housing for Seniors or People with a Disability) 2004* of this report, the proposal seeks to increase the footprint of the first floor unit (unit 4) to the rear by 0.5m. This will result in a minor portion of the first floor of the building encroaching into the rear 25% of the site by a maximum of 0.5m. This portion of the development will retain a rear setback of 10.2m from the rear boundary and will be well below building height control, within building envelope control and well exceed Council's rear building line control. The encroachment into the rear 25% will be for a minor portion of the site and is not anticipated to result in unreasonable amenity impacts to adjoining neighbours or character of the area.

The remainder of the site will be single storey above pre-existing (natural ground) ground level within the rear 25% setback.

- **Concern regarding potential future roof additions**

Comment:

Future roof additions will be subject to a separate development application.

- **Geotechnical and structural concerns of existing excavation**

Comment:

Geotechnical and structural concerns associated with the existing excavation works on site were raised. These existing earthworks and structural retaining elements have been sought to be regularised through a Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development, and has been issued.

The remaining earthworks seeking consent as part of this application, have been reviewed Council's Development Engineer and Water Management Officer, who have raised no objection to the application subject to recommended conditions. A geotechnical report has also been submitted with the application and the Building Information Certificate, that the proposed works as part of this modification are considered minor from a geotechnical perspective and do not alter the recommendations original report conditioned in the original consent. In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions were imposed on the original consent which ensure structural adequacy of landfill and excavation work; require a dilapidation report for the adjoining properties; ensure the structural adequacy of proposed retaining wall; ensure the proper installation and maintenance of sediment and erosion control. These conditions will remain on the consent.

- **DCP Non-compliance with C1.25 Plant, Equipment Boxes and Lift Over-Run**

Comment:

This matter has been addressed within the section of this report relating to *C1.25 Plant, Equipment Boxes and Lift Over-Run* of the P21 DCP. In summary, the mechanical services on the roof form are appropriately screened and sufficiently set in from the roof edge to ensure the services are not prominent from the public domain. The area of the mechanical services has been minimised and appropriately screened to integrate into the design of the building. The proposal meets the requirements of the SEPP. The design, scale and density of the proposed development is generally consistent with the existing approved development and the mechanical services on the roof are not considered to result in unreasonable impacts to the character of the locality.

- **Inconsistent with the provisions of SEPP (*Housing for Seniors or People with a Disability*) 2004**

Comment:

This matter has been addressed within in section of this report relating to *SEPP (Housing for Seniors or People with a Disability) 2004*

- **Concerns with unauthorised development**

Comment:

As discussed throughout this report, significant earthworks and basement wall construction has been undertaken on the subject site. These were predominantly approved through the previous development consent and subsequent modifications. However, a site inspection has revealed that there are minor discrepancies between the location and extent of approved excavation and structural basement wall elements and the as-built structural components of the development. These existing earthworks and structural retaining elements have been sought to be regularised through Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development and has issued the certificate.

- **Ensuring that the development is built in accordance with approved plans**

Comment:

It is the role of the principal certifying authority to ensure that the works are carried out in accordance with the approved plans. If there are concerns that the proposed works are not carried out in accordance with the approved plans or conditions of consent, a complaint should be made with Council's Compliance department who will investigate the matter accordingly.

- **Concerns with how "existing ground levels" have been calculated**

The submissions raised concerns with how existing ground levels were calculated in the original approval and how they relate to the subject modification.

Comment:

As discussed throughout this report, the original Development Application (DA2019/0154) was assessed based on extrapolated ground levels for the site (pre-excitation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excitation), consistent with the original assessment (within DA2019/0154). This was based on a survey provided with the original application. The relevant ground levels to accurately determine the height of the building are extrapolated from survey points around the perimeter of the site which generally align with contour mapping.

- **Incomplete plans and insufficient information**

Comment:

Following these submissions, amended plans and additional information was received to provide the necessary information to make an accurate assessment of the application. This included detailed "comparison plans" to demonstrate the proposed changes when compared to previous approvals.

- **The proposed modification is not substantially the same as the original approval**

Comment:

The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154.

- **Non-compliance with DCP Controls**

Comment:

For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Additional gross floor area**

Comment:

The proposed modification seeks an additional 25sqm of gross floor area. The floor area of the lower ground floor storage area was approved within previous modifications. It should be noted that the definition of gross floor area within *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, excludes storage areas and therefore not included

within the Floor Space Ratio calculation.

- **Tree Removal and replacement planting**

Comment:

The proposed modification seeks to remove a *Corymbia maculata*, commonly known as Spotted Gum, from the Council's Road Reserve. The applicant has advised that the removal of this tree cannot be avoided, as the fire hydrant booster assembly is required at the front of the site. The application is supported with advice from *Innova Services Australia Pty Ltd* which confirms that the proposed booster assembly location is the only location on the site that meets the Australian Standard and FRNSW operational requirements, and that there is no feasible alternative location. The application has been reviewed by Council's Landscape and Biodiversity Officers, who have raised no objections subject to recommended conditions and replacement planting.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p><u><b>Amended Plans - (20/2/2023 - 17/3/2023)</b></u></p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>The application is for modification to development consent DA2019/0154.</p> <p><u><b>Additional Information Comment 20/03/23:</b></u></p> <p>The information provided by Innova Services states "the current proposed location is the only location on the site that meets the Australian Standard and FRNSW operational requirements..." and as such the hydrant location and associated access will necessitate the removal of tree 1 (previously identified as tree 3) as identified in the Arboricultural Impact Assessment by Waratah Eco Works (August 2022). Conditions 46. Removal of trees within the road reserve, 49. Tree and vegetation protection, 56. Landscape Works, and 57. Condition of Retained Vegetation, imposed in DA2019/0154, shall be</p>

Internal Referral Body	Comments
	<p>amended as part of this modification. All other conditions remain.</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> <li>the location of the hydrant and extent of hardstand was questioned due to the requirement to remove a significant tree in the road reserve.</li> </ul>
NECC (Bushland and Biodiversity)	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>The modifications to this proposal have been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>SEPP (Resilience and Hazards) 2014 - Coastal Wetland Proximity Area</li> <li>Pittwater LEP 2014 - cl. 7.6 Biodiversity Protection</li> <li>Pittwater 21 DCP - cl. B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land</li> </ul> <p>A total of 9 modifications have been submitted in the master plans as well as an additional arborist report where Tree #3 (as per Arborist report submitted with DA2019/0154), now Tree #1, a mature <i>Corymbia maculata</i> with a high landscape value is the subject of discussion due to impacts stemming from the proposed modifications. The arborist report also alludes to the presence of multiple habitat hollows that could currently be in use by arboreal mammals and birds. Therefore, and as per the Landscape Referral Response, until further documentation has been submitted demonstrating the exhaustion of alternatives to avoid removal of Tree #1, assessment against the relevant biodiversity controls cannot be finalised.</p> <p>AMENDED COMMENTS 20/03/2023</p> <p>The response to the Landscape Referral Response has been noted as well as the proposed replacements for the loss of the canopy tree due to the requirement of the new hydrant. However, due to the presence of hollows and age of the tree conditions will apply to ensure compliance with PDCP B4.5.</p>
NECC (Coast and Catchments)	<p><b>SUPPORTED WITHOUT CONDITIONS</b></p> <p>The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>

Internal Referral Body	Comments
	<p><b>Coastal Management Act 2016</b></p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed modifications are in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b></p> <p>The subject land has been included on the 'Proximity to Coastal Wetlands Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021. Hence, Clauses 2.8, 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 2.8, 2.10, 2.11 and 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>The proposed modification to the basement level has not included any sections, dimensions or levels to determine the grade of the revised driveway from the kerb to the basement. Also the dimension of the proposed driveway width is less than the approved width of 5.5 metres and does not indicate the required depth of 6 metres within the property which will not be supported.</p> <p>The new retaining wall in the road reserve to provide a hardstand adjacent to the fire hydrant booster appears excessive and it is unclear if this hardstand needs to be between the boundary and the kerb. The proposed wall must be reviewed by Council's Road Asset Engineers prior to approval from Development Engineering.</p>

Internal Referral Body	Comments
	<p>Development Engineering cannot support the proposal due to insufficient information in accordance with clause B6 of the DCP.</p> <p><b>Amended Plans submitted 8/05/2023</b></p> <p>The hardstand area has been amended to turf and the proposal has been supported by Road Assets and Landscaping.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p><b>SUPPORTED</b></p> <p>The changes proposed under this modification, Mod2022/0471, do not result in any changes to the riparian lands and creeks referral. Therefore, the proposal is supported.</p>
NECC (Water Management)	<p><b>SUPPORTED</b></p> <p>The proposed changes under the Mod2022/0471 do not result in any changes to the water management referral.</p>
Road Reserve	<p><b>SUPPORTED SUBJECT TO CONDITIONS</b></p> <p>The proposed retaining wall and hard stand area providing access to fire booster is excessive and is not supported. An at grade pathway would be sufficient or relocate booster structure elsewhere within the property adjacent to existing pathways or driveways.</p> <p>20/3/2023 Grasscell pavers or similar are not supported on the verge. No details of retaining wall across verge. Development engineering to condition with s138 Road Act application to ensure design complies with Council requirements.</p> <p>8/5/2023 Amended plans showing removal of grasscel pavers are noted. Development engineering to condition with s138 Road Act application to ensure design of driveway, access path and other walls within the road reserve complies with Council requirements .</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS - SUPPORTED</b>
	Discussion of reason for referral
	The proposal has been referred it is within the vicinity of a local heritage item, being <b><i>Item 2270340 - Maybanke House ('Stoneleigh') and plaque - 1945 Pittwater Road, Bayview.</i></b>
	Details of heritage items affected
	Details of the heritage item in the vicinity, as contained within the Heritage Inventory, are:



Internal Referral Body	Comments		
	<u>Statement of Significance:</u>		
	This house, built at 1945 Pittwater Road, Bayview, in 1901 is historically significant for its association with the early development of Bayview and with the Australian feminist and writer Maybanke Anderson. Maybanke Anderson wrote the first history of Pittwater and was a passionate educator and feminist. The plaque is a tribute to Maybanke and the adjacent cove named after her. For this reason, both the house and the stone boulder mount and plaque at 1945 Pittwater Road, Bayview are socially significant for the local community. The house offers views to the water.		
	<u>Physical description:</u>		
	The house is located on a steep sloped site covered with trees and luxuriant vegetation with scenic views over Pittwater. It is a two-storey sandstone cottage with a tiled roof and veranda on the east and north sides. The house has a terrazzo floor featuring Australian animals and birds		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	This application is for modifications of a seniors housing development approved by the Land & Environment Court in July 2020 (DA2019/0154). The modifications include a change in floor levels which results in an overall increase in height, along with a number of modifications to the detailing of the building, including the balconies.		
	The heritage item in the vicinity, "Maybanke", is located to the south of the site, separated by by 2 properties, 1953 and 1951 Pittwater Road. Additionally, the heritage item is setback from Pittwater Road on elevated land, due to its location on a large battle axe lot.		
	Given this spatial separation and change in elevation, the proposed development will not have any adverse impact upon the heritage significance of "Maybanke".		
	<b>Therefore, no objections are raised on heritage grounds and no conditions required.</b>		

Internal Referral Body	Comments
	<p>Consider against the provisions of CL5.10 of PLEP 2014:  Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A  Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been N/A provided?</p> <p>Further Comments</p>
Strategic and Place Planning (Urban Design)	<p><b>SUPPORTED</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for their consideration and coordination with the overall assessment.</p> <p>The application seeks consent to modify the Land and Environment Court of New South Wales (the Court) granted development consent (Proceedings 2019/00199786) (DA2019/0154).</p> <p>The application includes but is not limited to the follow modifications:</p> <ul style="list-style-type: none"> <li>· Changes to floor-to-floor heights and an increase in height;</li> <li>· Amendments to the approved building envelope &amp; appearance;</li> <li>· Increased pedestrian ramp width;</li> <li>· A new awning and louvre screen;</li> <li>· Curved balustrades to the balconies;</li> <li>· New fencing;</li> <li>· New rooftop plant enclosure;</li> <li>· New landscaping elements;</li> <li>· Addition of vehicular access, hard standing for fire truck, and fire booster assembly;</li> <li>· Amendments to the vehicular access;</li> <li>· Removal of a tree on public land;</li> </ul>

Internal Referral Body	Comments
	<p>Urban Design require the following additional information to be able to assess the application:</p> <ol style="list-style-type: none"> <li>1. <del>The following heights added to the drawings as dotted lines:</del> <ol style="list-style-type: none"> <li>a. <del>8m.</del></li> <li>b. <del>9.5m</del></li> <li>c. <del>11.5.</del></li> </ol> </li> <li>2. <del>Confirmation that the 'shadows cast by existing approval' (in blue) are the shadows cast by the original unaltered LEC approval and not those of subsequent modifications. Please show the shadows in greater detail and similar to the shadow diagrams in the original LEC approved drawings.</del></li> <li>3. <del>Please provide a drawing illustrating the number, location, &amp; size of trees that were to be retained as a part of the original LEC approval, and a drawing of how many trees it is currently proposed to retain.</del></li> <li>4. <del>Inclusion of any proposed booster assembly, including any housing is to be shown on the 3D perspective and the drawn documentation.</del></li> </ol> <p>The applicant has provided the additional information requested, however; the updated photomontage shows the bare exposed pipes of the fire assembly, and the fire booster assembly is not integrated into the design of the building, and no housing is proposed. The exposed fire assembly is in a prominent location when viewed from the public domain. Please provide details of a suitably designed housing that is integrated with the overall design of the building that enhances the streetscape and character as viewed from a public place.</p> <p>Urban Design have received the additional information requested and have no further comment.</p> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p>

Internal Referral Body	Comments
Traffic Engineer	<b>SUPPORTED</b>  The proposed changes under the MOD do not result in any changes to the parking requirements or traffic generation from the development and are not opposed on traffic grounds.
Waste Officer	<b>SUPPORTED SUBJECT TO CONDITIONS</b>  Waste Management Assessment Recommendation - Supported with conditions.  Existing LEC waste conditions of consent to remain.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Integrated Development - Roads and Maritime Services - Roads Act 1993, s138 - Works on classified road where Council is not the consent authority	The proposal was referred to referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act, 1993. TfNSW has reviewed the proposal and provided a response stating that the proposal is acceptable and raises no objection as the proposed development.

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

All, Environmental Planning Instruments (SEPPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.991214M\_04).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40

<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	36

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

## **SEPP (Housing for Seniors or People with a Disability) 2004**

The application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing.

### **Chapter 1 – Preliminary**

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

#### Comment:

a) The modified development is consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs of seniors or people with a disability.

b) The proposal is within an established low density residential area with access to public transport (buses) and a main road to enable travel to the central business areas of Mona Vale, Dee Why, Brookvale, Frenchs Forest, Manly and the city. Existing infrastructure including sewer and reticulated water, electricity and telecommunication's services are all available to the site.

c) Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to be a suitable design as detailed throughout this report.

### **Chapter 2 – Key Concepts**

#### Comment

The proposal satisfies this element of the SEPP HSPD in that the development is for purpose built self-contained dwellings that are for self-care accommodation of seniors or persons with a disability.

### **Chapter 3 – Development for seniors housing**

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an

assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

<b>Development Criteria</b>		
<b>Clause</b>	<b>Requirement</b>	<b>Complies</b>
<b>PART 2 - Site Related Requirements</b>		
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	<b>Complies</b> Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval, the location and access to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road.
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	<b>Complies</b> Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval the location and access to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road.
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	<b>Complies</b> The proposal is subject to Sydney Water requirements via a "Section 73 Certificate".
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):	<b>Complies</b>  Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement.  The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management

Development Criteria		
Clause	Requirement	Complies
	i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	Officer, and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment
<b>PART 3 - Design Requirements – Division 1</b>		
30	A site analysis is provided.	<b>Complies</b>

### Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or	<b>Complies</b> Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change

Section	Requirements	Comment
	DCPs where they may describe the character and key elements of an area that contribute to its unique character.	in built form and the amended scheme is considered to maintain compliance with this requirement.  The non-compliances with Pittlwater LEP and DCP controls have been addressed within this report.
2. Site Planning and design	Objectives of this section are to:  -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	<b>Complies</b> Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	<b>Complies</b>  The proposed modification works are not considered to result in unreasonable streetscape impacts. The proposal will retain suitable front setback and will retain sufficient landscaping to minimise the built form, as viewed from the street.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	<b>Complies</b> The proposed modification works subject of this application are not considered to result in unreasonable impacts on neighbours. This has been addressed throughout this report.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	<b>Complies</b> The site layout provides appropriate and safe access to each unit.

### Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.



Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement (as discussed throughout this report).	<b>Complies</b>
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	Councils Heritage Officers have assessed the application due to the sites close proximity to the heritage listed "Maybanks House (Stoneleigh) and plaque". The proposal will not have any unreasonable impact on the nearby heritage item.	<b>Complies</b>
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the	Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement (as discussed throughout this report).	<b>Complies</b>

Control	Requirement	Proposed	Compliance
	boundary walls on neighbors.		
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The proposed modifications will predominantly retain the approved front building line and is consistent with adjoining properties.	<b>Complies</b>
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	Council's Landscape Officer has reviewed the proposed landscape plan and has raised no objections (subject to conditions).	<b>Complies</b>
	f. retain , wherever reasonable, major existing trees, and	The proposed modification seeks to remove a <i>Corymbia maculata</i> , commonly known as Spotted Gum from the Council's Road Reserve. The applicant has advised that the removal of this tree is required to facilitate necessary fire hydrant booster assembly at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location. The application has been reviewed by Council's Landscape and Biodiversity Officers who have raised no objections subject to recommended conditions and replacement planting.	<b>Complies - subject to conditions</b>
	g. be designed so that no building is constructed in a riparian zone.	Council's Riparian Lands and Creeks Officer has reviewed the proposal and has raised no objections.	<b>Complies</b>
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic	The proposal will comply subject to recommended conditions. Please see <i>C1.5 Visual Privacy</i> of this	<b>Complies</b>

Control	Requirement	Proposed	Compliance
	privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	report for further discussion on privacy.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>The proposed modification works will not unreasonably impact solar access to the subject site or adjoining neighbours.</p> <p>The proposed development retains terraces and living rooms with northerly aspects.</p> <p>Please see <i>C1.4 Solar Access</i> of this report for further discussion on solar access.</p>	<b>Complies</b>
CL 36 Stormwater	Control and minimise the disturbance and impacts of	The proposal has been reviewed by Council's Water Management Officer and Development Engineer	<b>Complies</b>

Control	Requirement	Proposed	Compliance
	stormwater runoff and where practical include on-site detention and water re-use.	who have raised no objections in regards to stormwater.	
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	The units will be oriented to allow for observation of public areas, driveways and streets.	<b>Complies</b>
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that	Development Application <b>DA2019/0154</b> (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval the location and access	<b>Complies</b>

Control	Requirement	Proposed	Compliance
	provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road.  The proposed development will retain convenient access and parking for residents and visitors. The proposal has been reviewed by Council's Traffic Officer who has raised no objections to the works.	
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposal has been reviewed by Council's Waste Officer who has raised no objections in regards to waste management.	<b>Complies</b>

#### Part 4 - Development standards to be complied with

##### Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,296.5sqm	<b>Complies</b>
Site frontage	20 metres	32.6sqm	<b>Complies</b>
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Development Application DA2019/0154 approved the ceiling height at RL18.2 (Unit 4)  The proposed modification proposes a ceiling height of RL18.62 (Unit 4) and maximum ridge height of RL19.973.	<b>Non-compliant</b> - Acceptable on merit. Please see discussion within <i>Clause 4.3 Height of buildings</i> of PLEP 2014.
	A building that is adjacent to a	As approved in previous Development Application and	<b>As previously approved</b>

Control	Required	Proposed	Compliance
	boundary of the site must not be more than 2 storeys in height.	<p>subsequent modifications. The subject application will not increase the number of storeys adjacent to the boundary of the site.</p> <p>The additional storey approved within previous modifications (for storage purposes) was predominantly below pre-existing (natural ground) level. The resultant built form of this modification will retain a maximum of 2 storeys in height from pre-existing (natural ground) level.</p>	
	A building located in the rear 25% of the site must not exceed 1 storey in height	<p>The proposal seeks to increase the footprint of the first floor unit (unit 4) to the rear by 0.5m. This will result in a minor portion of the first floor of building encroaching into the rear 25% of the site by a maximum of 0.5m, representing a variation of 4.6% to this control. This portion of the development will retain a rear setback of 10.2m from the rear boundary and will be well below building height control, within building envelope control and well exceed Council's rear building line control. The encroachment into the rear 25% will be for a minor portion of the site and is not anticipated to result in unreasonable amenity impacts to adjoining neighbours or character of the area.</p> <p>The remainder of the site will be single storey above pre-existing (natural ground) ground level within the rear 25% setback.</p> <p>While the application will be assessed under the provisions of <i>SEPP (Housing for Seniors or People with a Disability) 2004</i>, it should be noted that on 26 November 2021 this SEPP was repealed and replaced with <i>State Environmental Planning Policy (Housing) 2021</i> (SEPP Housing). <i>SEPP Housing</i></p>	<b>Does not comply</b>

Control	Required	Proposed	Compliance
		2021 permits Seniors Housing development to be two storeys within the rear 25% of the site.	

### Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	The proposed modification works will not unreasonably alter the access arrangements as approved within the original Development Application and subsequent modifications. The whole of the site adjoins a public road and wheelchair access via a continuous accessible path of travel (incorporating lifts) is provided to all dwellings, as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>

Control	Required	Proposed	Compliance
	(c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd. Each unit is shown to have a car parking spaces with an overall width of 3.8 metres.	<b>Capable of compliance</b>
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>



<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Capable of compliance</b>
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	<b>Complies</b>
Storage	A self-contained dwelling must be provided with a linen	Capable of compliance as confirmed by the Access	<b>Capable of compliance</b>

Control	Required	Proposed	Compliance
	storage in accordance with Clause 4.11.5 of AS4299	Report (ref: P000737) by Cheung Access Pty Ltd	
Garbage	A garbage storage area must be provided in an accessible location.	A communal bin room is located on the car park level consistent with the original approval.	<b>Complies</b>

### Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Development Application DA2019/0154 approved the ceiling height at RL18.2 (Unit 4)  The proposed modification proposes a ceiling height of RL18.62 (Unit 4) and maximum ridge height of RL19.973.	<b>Does not comply</b> - see discussion within Clause 4.3 Height of buildings of PLEP 2014.
Density and scale	0.5:1	0.495:1	<b>Compliant</b>
Landscaped area	30% of the site area is to be landscaped	45.5%	<b>Compliant</b>
Deep soil zone	15% of the site area .Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	34% (441sqm)  Less than two thirds of total deep soil provided in rear, however, this is generally in accordance with previous approvals. Additionally, more than two the of the <u>required</u> 15% of deep soil will be located in the rear.	<b>Compliant</b>
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development	The location of the living room windows and private open space (in particular the north east facing balconies) would	<b>Compliant</b>

Control	Required	Proposed	Compliance
	receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	remain consistent with the original approval.	
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area</p>	The proposal will increase the size of usable private open space.	<b>Compliant</b>
Parking	(10 bedrooms proposed – 5 carparking spaces required)	9 spaces proved	<b>Compliant</b>
Visitor parking	None required if less than 8 dwellings	1 visitor space provided	<b>Compliant</b>

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

### Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
  - (i) the design of the vehicular access to the land, or
  - (ii) the emission of smoke or dust from the development, or
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

### Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal. The application has been reviewed by Council's Traffic and Development Engineers who have raised no objections subject to conditions.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

## **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management Officer, and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding wetland environment (subject to conditions).

**Division 3 Coastal environment area**

**2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
  - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - b) coastal environmental values and natural coastal processes,
  - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - f) Aboriginal cultural heritage, practices and places,
  - g) the use of the surf zone.

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. Council's Coastal, Biodiversity Officer, Riparian lands and Water Management Officer have reviewed the proposal and have raised no objection to the proposal.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
  - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock
    - ii) platform for members of the public, including persons with a disability,
    - iii) overshadowing, wind funnelling and the loss of views from public places to
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an
    - ii) adverse impact referred to in paragraph (a), or
    - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
  - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores.

The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the approved development on the site and surrounding coastal and built environment. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

**Division 5 General**

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the

consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. The proposal has been reviewed by Council's Coastal and Riparian Lands Officer who has raised no objections.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

#### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

#### **Pittwater Local Environmental Plan 2014**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### **Principal Development Standards**

<b>Development Standard</b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings	8.5m	8.3m (Roof RL18.48)	9.1m (Roof RL 19.142) 9.3m (Lift and servicing equipment RL 19.973)	9.4%	<b>No</b>

**\*Note:** In consideration of the decision in *Alexakis Building Pty Ltd v Waverley Council* [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site. The original Development application was also assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2019/0154)

#### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

### 4.3 Height of buildings

Clause 4.3 (2) of PLEP stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The original Development Application, which is the subject of this modification, was assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD). Clause 40 (4) of SEPP HSPD specified that the height of the development is to be 8.0 metres or less. SEPP HSPD defined height in relation to a building, as the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The maximum ceiling height of Unit 4 was approved within the original Development Application subject of this modification (DA2019/0154) at RL18.2 which met the 8.0m requirement.

In consideration of the decision in *Alexakis Building Pty Ltd v Waverley Council* [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site. The original Development Application was also assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2019/0154).

The proposed height of the modified proposal is as follows (based on pre-existing ground levels and extrapolated ground levels as was assessed within the original Development Application)

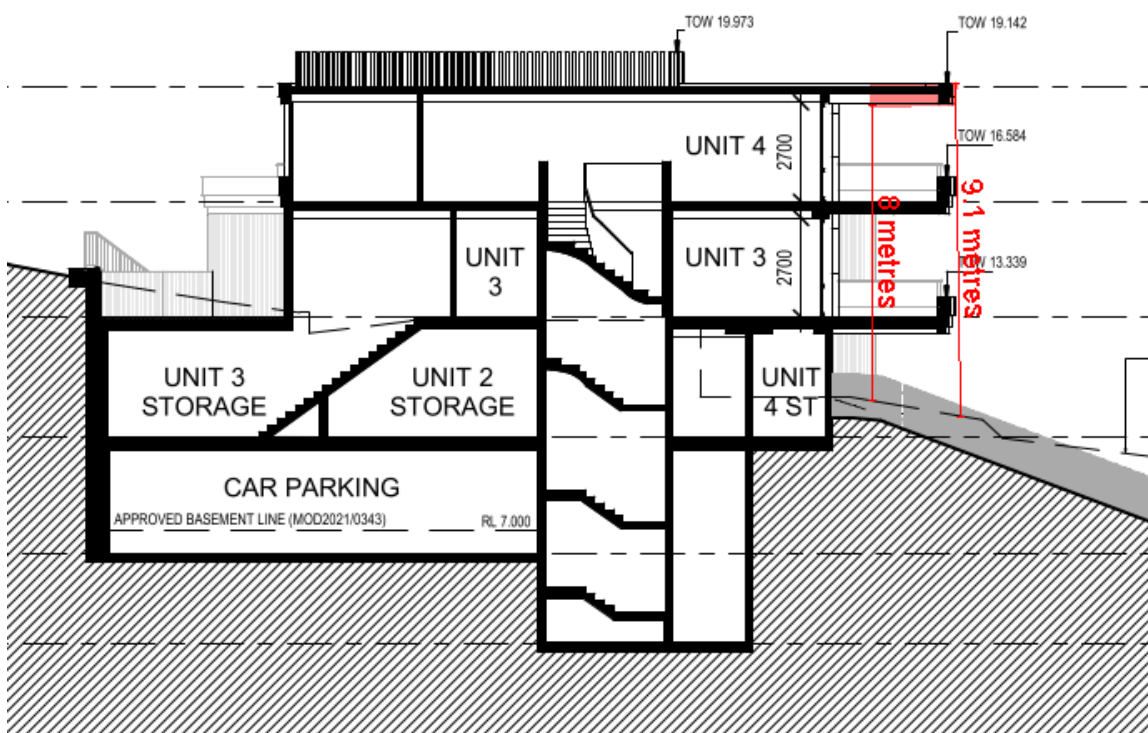
- The ceiling height of Unit 4 was approved within DA2019/0154 at RL18.2. The modification seeks a new ceiling height of Unit 4 of RL18.493 which will result in an increase in height of **293mm**. The unit 4 terrace roof will also extend to the north-east (downslope) by approximately 1.0m. This will result in the maximum ceiling height of Unit 4 being 8.5m which is non-complaint with the 8.0m requirement. It is of note that this will occur for a minor section of the terrace ceiling which is located centrally onsite. This is depicted in Figure 1 below. The remainder of the ceiling will comply with the 8.0m requirement.
- The parapet height of the roof ridge (located over unit 4) was approved within DA2019/0154 at RL18.48. The modification seeks a new parapet height of RL19.142, which will result in an increase in height of **662mm**. The Unit 4 terrace roof will also extend to the north-east (downslope) by approximately 1.0m. This will result in the overall roof height measuring



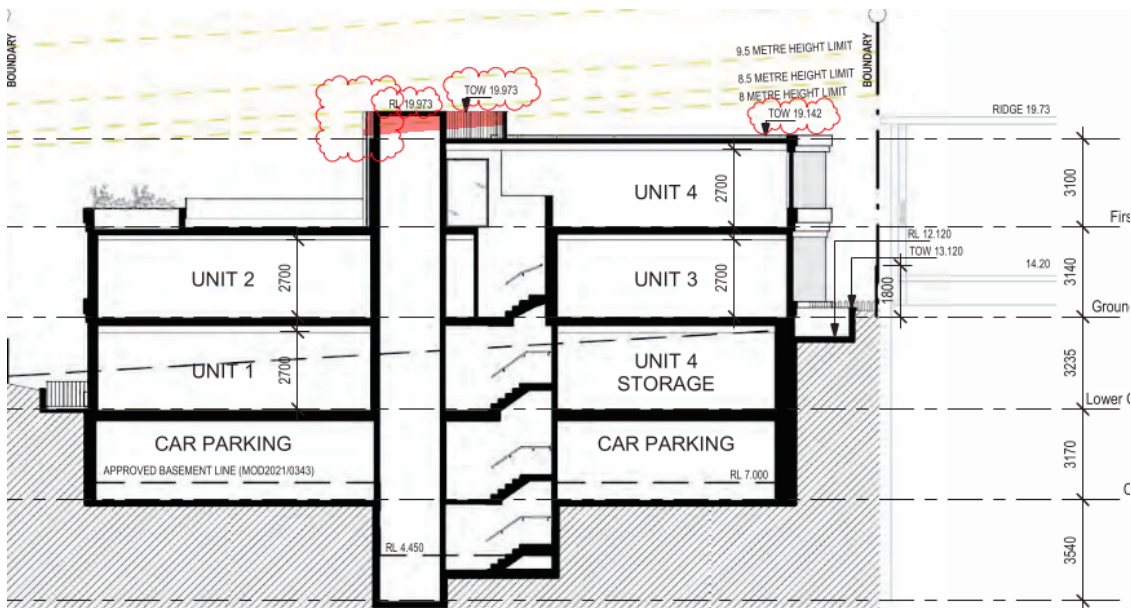
9.1m. This is depicted in Figure 1 below. It is of note that this will occur for a minor section of the terrace roof which is located centrally onsite.

- The modification application also seeks approval for rooftop plant including lift overrun, and associated enclosure/screening with an RL of 19.973, which will result in an increase in height of **1.49m** from the approved ridge height for these elements. This will result in the overall height measuring approximately 9.3m (from pre-existing extrapolated ground levels). This is depicted in figure 2 below.

While the application will be assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004*, it should be noted that on 26 November 2021, this SEPP was repealed and replaced with *State Environmental Planning Policy (Housing) 2021* (SEPP Housing). SEPP Housing permits Seniors Housing development to have a maximum building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these contemporary requirements.



**Figure 1:** Section Plan - Height of building variation in pink (based off pre-existing extrapolated ground levels as assessed within DA2019/0154)



**Figure 2:** Section Plan - Height of building variation in pink (based off pre-existing extrapolated ground levels as assessed within DA2019/0154)

### **Assessment of Request to Vary a Development Standard**

Whilst the modification application will result in a building height that exceeds the maximum permitted by *SEPP (Housing for Seniors or People with a Disability) 2004* and Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6 of PLEP 2014.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the standard, pursuant to *Clause 4.3 – ‘Height of buildings’* of the PLEP 2014 are:

(1) The objectives of this clause are as follows:

*a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment:

As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP and throughout this report, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement. The vast majority of the proposal will be below the height of building requirement. The proposed height non-compliance is largely contained to the north-eastern portion of the building as the land falls away. The rooftop plant including lift overrun will be centrally sited and appropriately screened and will not contribute to excessive height and scale. The proposal also steps with the fall of the land to the north-west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbour to the north-west. As outlined above, while the application will be assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004*, it should be noted that on 26 November 2021 this SEPP was repealed and replaced with *State Environmental Planning Policy (Housing) 2021* (SEPP Housing). *SEPP Housing 2021* permits Seniors Housing development to have a maximum building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these requirements and therefore is consistent with the intended character of future seniors housing development in the locality.

*b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The development is located on the upward slope of Pittwater Road which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The roof parapet height of RL19.142 will be below the ridge height of the adjoining neighbour to the south-east (No.1953 Pittwater Road with a ridge height of 19.73). The vast majority of the proposal will be below the height of building requirement. The proposed height non-compliance is largely contained to the north-eastern portion of the building as the land falls away. The rooftop plant including lift overrun will be centrally sited and appropriately screened and will not contribute to excessive height and scale. The proposal also steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbour to the north-west. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties. This further detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

*d) to allow for the reasonable sharing of views,*

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to *Clause C1.3 View Sharing* of the P21 DCP. Given associated level differences of the nearby built form,

existing views and vistas are anticipated to be equitably retained.

*e) to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

As above, the proposed changes subject of this modification represent a relatively modest change in built form to the original DA (DA2019/0154), and do not result in unreasonable additional excavation. The proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the topography of the land and the height and scale of the adjoining neighbour to the north-west. The proposal will be setback 12m from the front boundary retains suitable landscaping along the front boundary.

*f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,*

Comment:

Proposed landscaping, in conjunction with required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Council's Heritage Officer has reviewed the application and is satisfied that the proposal will not have an adverse impact on surrounding heritage items.

## **Zone Objectives**

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment..*

Comment:

The use of the development for the purpose of seniors housing or housing for persons with a disability will afford members of the community with alternate housing choices to accommodate varying needs and lifestyles.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

This development is for residential accommodation. The SEPP HSPD requires particular distances and accessibility to various services to meet the needs of residents of the development, and this matter has been addressed earlier in this report (see Section: SEPP HSPD). Accordingly, the site is afforded with access to other land uses which provide facilities or services to meet the day to day needs of residents.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

The intensity and scale of the proposed development is generally consistent with the original approval (DA2019/0154). The minor increase in height does not result in unreasonable amenity impacts to surrounding properties and the proposal is considered compatible with the surrounding land uses.

## 5.10 Heritage conservation

The proposal has been reviewed by Council's Heritage Officer who has raised no objections on heritage grounds. Please refer to the Strategic and Place Planning (Heritage Officer) referral response in this report for more detail.

## 7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this original consent to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

Comment: The development has been assessed by Council's Water Management Officer, Riparian Lands Officer, Coast & Catchment Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report and within the original consent that will minimise the impacts of the development.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The proposal has been reviewed by Council's Heritage Officer who has raised no objection to the works.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

## **7.6 Biodiversity protection**

Before determining an application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

*(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

*(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

*(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

*(iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

*(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining an application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical assessment letter that demonstrate geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	12.8m	12m	Yes
Rear building line	3m (Where wall height is less than 3m)  (Based on wall height above 3m)	Carpark 5.5m-6.5m Lower ground : 5.6m - 8.8m GF: 8.8m - 10.75m FF: 8.9m-10.7m	Carpark: 4.8m - 5.5m Lower ground: 4.8m - 5.5m GF Terrace: 5.2 -6m GF: 8.8m - 10.4m FF: 8.8m-10.2m	Yes
Side building line	NW - 3m (Where wall height is less than 3m) 4m - 4.4m (Based on wall height above 3m)	1.5m (Lower floor) 3m (Carpark, GF & FF)	1.5m (Lower floor) 2.5m (Carpark) 3m (GF & FF)	<b>No</b>
	SE - 3m (Where wall height is less than 3m) 3.7m - 4.2m (Based on wall height above 3m)	3m (Carpark, GF & FF)	1.6m (Lower floor terrace) 3m (Lower floor, GF, FF)	<b>No</b>
Building envelope	3.5m (NW)	Within envelope	Within envelope	Yes
	3.5m (SE)	Within envelope	Outside envelope	<b>No</b>
Landscaped area	50% (648.25sqm) *	53%	45.5% 590sqm * 51.5% (with variation)	<b>No*</b> <b>Complies with SEPP</b>

**\*Note: SEPP (Housing for Seniors or People with a Disability) 2004 requires 30% Landscaped Area, and 15% Deep Soil Zone (inclusive)**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	No	Yes
D4.5 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	No	Yes
D4.9 Landscaped Area - General	Yes	Yes
D4.11 Fences - General	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **A4.4 Church Point and Bayview Locality**

Development Application DA2019/0154 (subject of this modification) was approved through the NSW Land and Environment Court.

The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement for the following reasons:

- The proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. This also modulates the built form and breaks up the visual massing of the proposal. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development;
- The proposal will be setback 12m from the front boundary and proposes suitable landscaping along the front, side and rear of the site. Whilst there is tree removal required as part of the development, multiple canopy trees are proposed to be planted to compensate in order to visually reduce the built form. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD.
- The modification works do not increase the approved number of storeys and do not unreasonably increase excavation;
- The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. The proposal includes suitable articulation of the building and balconies and varied use of materials to provide for a high quality building facade that maintain acceptable presentation to the streetscape, including surrounding built forms.

Overall, the proposed modification works will maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

#### **B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land**

The development has been assessed by Council's Biodiversity Team, who raised no objections to an approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land (subject to

conditions).

#### **B4.14 Development in the Vicinity of Wetlands**

Council's Coastal Officer, Biodiversity Officer, Riparian lands and Water Management Officer have reviewed the proposal and have raised no objection to the proposal and potential impacts to surrounding wetlands.

#### **B4.22 Preservation of Trees and Bushland Vegetation**

The proposed modification seeks to remove a *Corymbia maculata*, commonly known as Spotted Gum, from the Council's Road Reserve. The applicant has advised that the removal of this tree is required to facilitate necessary fire hydrant booster assembly at the front of the site.

The application is supported with advice from Innova Services Australia Pty Ltd which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

The application has been reviewed by Council's Landscape and Biodiversity Officers who have raised no objections subject to recommended conditions and replacement planting.

#### **B6.1 Access driveways and Works on the Public Road Reserve**

The proposed modification seeks works on Council's road reserve, including excavation, retaining walls and tree removal.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

Council's Road Assets Officer, Development Engineer and Landscape Officer have reviewed the proposed works on the Road Reserve and have raised no objection subject to conditions. Such conditions ensure appropriate approval under the provisions of the Roads Act 1993 and ensure the works structurally adequate and meet appropriate engineering standards.

If approved, conditions are to be imposed that the proposed retaining wall on the Road Reserve is constructed of sandstone-like finishes inline with the requirements of this control.

#### **B8.1 Construction and Demolition - Excavation and Landfill**

As discussed throughout this report, significant earthworks have been undertaken on the subject site. The works have been predominantly approved through previous development consents and subsequent modifications.

A site inspection revealed that there are minor discrepancies between the location and extent of approved excavation and structural basement wall elements and the as built structural components of the development. As such, these existing earthworks and structural retaining elements have been sought to be regularised through a submitted Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development and the certificate has bene

issued.

The remaining earthworks seeking consent as part of this application, have been reviewed Council's Development Engineer and Water Management Officer, who have raised no objection to the application subject to recommended conditions.

A geotechnical report has also been submitted with the application and Building Information Certificate that the proposed works as part of this modification are considered minor from a geotechnical perspective and do not alter the recommendations original report conditioned in the original consent.

In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions were imposed on the original consent which:

- Ensure structural adequacy of landfill and excavation work;
- Require a dilapidation report for the adjoining properties
- Ensure the structural adequacy of proposed retaining walls
- Ensure the proper installation and maintenance of sediment and erosion control

The proposal has also been assessed by Council's Bushland and Biodiversity; Riparian; Landscape Officer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

### **B8.5 Construction and Demolition - Works in the Public Domain**

The proposed works within the public domain have been reviewed by Council's Roads Assets Officer and Development Engineer who has raised no objections subject to conditions.

### **B8.6 Construction and Demolition - Traffic Management Plan**

The original consent (DA2019/0154) included conditions which required the preparation and implementation of a Construction Traffic Management Plan prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team. This condition will remain on modified consent.

### **C1.3 View Sharing**

#### **Merit Consideration**

Five (5) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 52 Alexandra Crescent, Bayview
- 56 Alexandra Crescent, Bayview
- 58 Alexandra Crescent, Bayview
- 60 Alexandra Crescent, Bayview
- 62 Alexandra Crescent, Bayview

Figure 1 below shows the origin of the submissions relative to the subject site, and the view angles of the sites over the subject site (outlined in blue).



**Figure 1: View angles over the subject site**

The development is considered against the underlying Objectives of the Control as follows:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

- **No.52 Alexandra Crescent, Bayview**

A site visit revealed that the proposal will not result in view loss to No.52 Alexandra Crescent. This property will retain expansive views of Pittwater waterway to the north and north east. As such, no further view loss assessment is required for this property.

- **No.56 Alexandra Crescent, Bayview**

The views from No.56 Alexandra Crescent that are the concern, are to the north-west and include views of Pittwater Waterway. The view is heavily obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-east remain unaffected by the proposal. This is demonstrated in the photos below.





**Photo 1:** Existing views from No.56 Alexandra Crescent to the north-west (first floor balcony located off the living room). Views are unobstructed by the proposal.



**Photo 2:** Existing views from No.56 Alexandra Crescent to the north-east (first floor living room). Views are unobstructed by the proposal.

- **No.58 Alexandra Crescent, Bayview**

The views from No.58 Alexandra Crescent that are the concern are to the north and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-east remain unaffected by the proposal. This is demonstrated below in the photos and view

assessment photomontages prepared by the applicant.



**Photo 3:** Existing views from No.58 Alexandra Crescent to the north (first floor balcony located off the living room). Views are unobstructed by the proposal.

Note\* Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.



**Photo 4:** Existing views from No.58 Alexandra Crescent to the north-east (first floor balcony located off the living room). Views are unobstructed by the proposal.

- **No.60 Alexandra Crescent, Bayview**

The views from No.60 Alexandra Crescent that are the concern are to the north-east and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation and buildings. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the

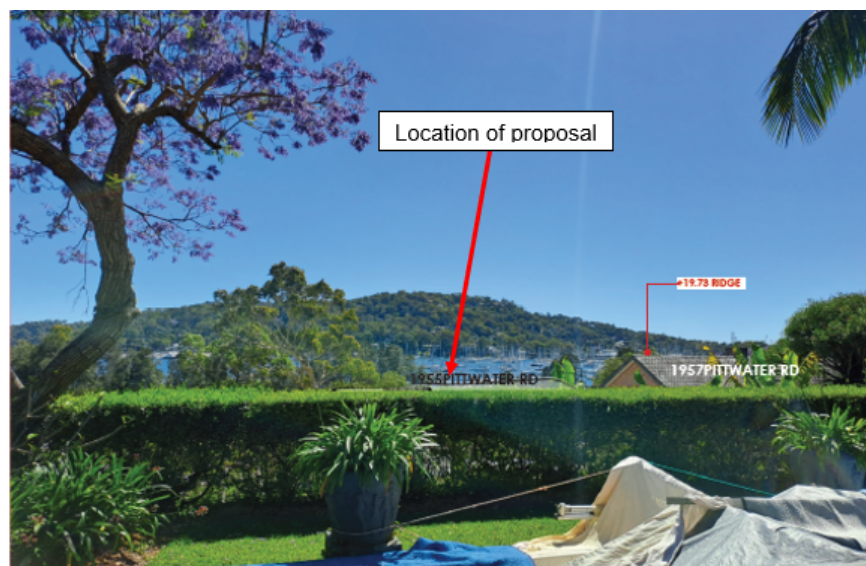


north-east and north-west remain unaffected by the proposal. This is demonstrated below in the photos and view assessment photomontages prepared by the applicant.



**Photo 5:** Existing views from No.60 Alexandra Crescent to the north-east (ground floor rear garden/private open space).

*Note\* : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*



**Photo 6:** Existing views from No.60 Alexandra Crescent to the north-east (ground floor rear garden/private open space).

*Note\* : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*





**Photo 7:** Existing views from No.60 Alexandra Crescent to the north-east (upper floor balcony located off living rooms).

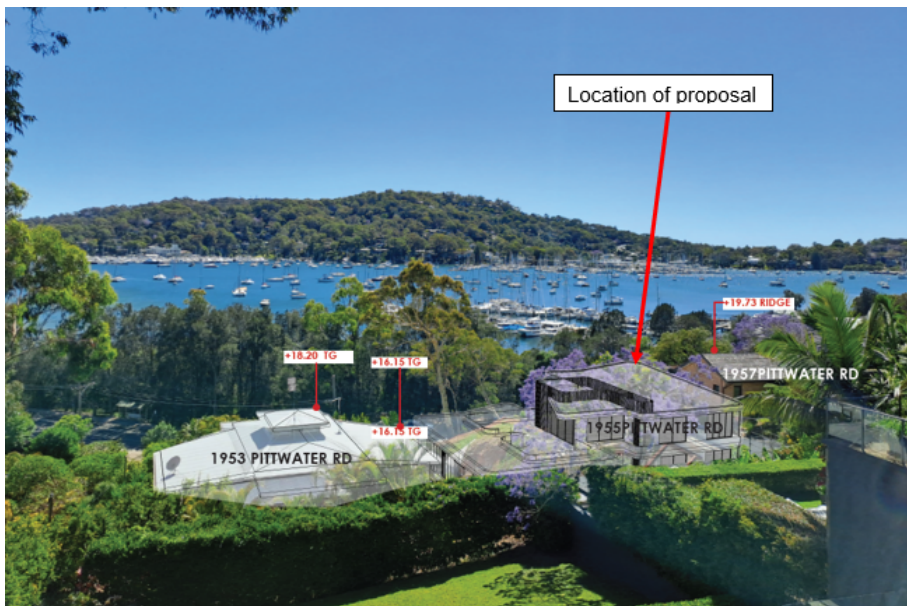
*Note\* : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*



**Photo 8:** Existing views from No.60 Alexandra Crescent to the north-east (upper floor dining room). Views are unobstructed by the proposal.

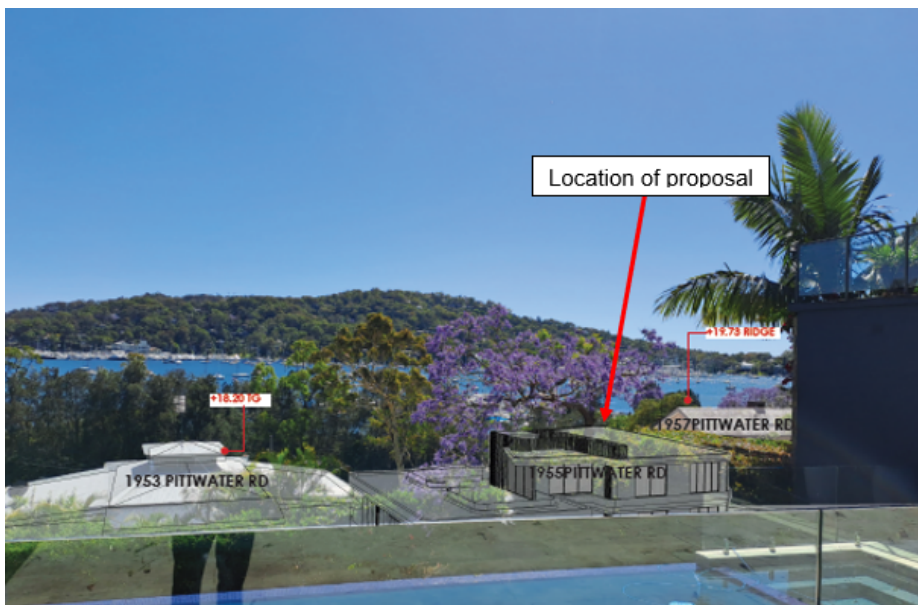
- **No.62 Alexandra Crescent, Bayview**

The views from No.62 Alexandra Crescent that are the concern are to the north-east and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-west remain unaffected by the proposal. This is demonstrated below in the photos and view assessment photomontages prepared by the applicant.



**Photo 9:** Existing views from No.62 Alexandra Crescent to the north-east (upper floor balcony located off living rooms).

Note\* : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.



**Photo 9:** Existing views from No.62 Alexandra Crescent to the north-east (ground floor private open space).

Note\* : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.





**Photo 10:** Existing views from No.62 Alexandra Crescent to the north-east (upper floor balcony located off living rooms). Views are unobstructed by the proposal.

## **2. What part of the affected property are the views obtained**

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.*

### Comment to Principle 2:

- **No.56 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor balcony (and principal private open space) located off the living room and the upper floor living room. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.58 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor living room and the balcony located off this room and the lower floor living room and the balcony located off this room. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.60 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor living room and the balcony located off this room; upper floor dining and kitchen and the balcony located off these rooms; upper floor

bedroom; ground floor balcony located off rumpus; garden and pool level private open space; lower garden level. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.62 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper level living, dining and bedroom and balcony located off these rooms; mid level bedrooms and balcony located off these rooms; ground level living and dining room and balcony located off these rooms and ground floor private open space and garden level. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

### **3. Extent of impact**

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

- **No.56 Alexandra Crescent, Bayview**

Given the location of the proposal in relation to No.56 Alexandra Crescent, no view loss impacts are anticipated. Expansive views of Pittwater Waterway will be retained from this property. This can be seen within photos 1 and 2 above.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible**.

- **No.58 Alexandra Crescent, Bayview**

Given the location and elevation of No.58 Alexandra Crescent above the proposal no unreasonable view loss impacts are anticipated. Expansive views of Pittwater Waterway will be retained from this property over the proposed development and to the north-east. This can be seen within photos 3 and 4 above.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible**.

- **No.60 Alexandra Crescent, Bayview**

As viewed from No.60 Alexandra Crescent, the proposal would result in the partial loss of Pittwater Waterway views available from the ground floor rear garden/private open space. The proposal will also result in loss of Pittwater Waterway views from the lower garden level which is currently being used as a vegetable garden. Expansive views are anticipated to be retained from the upper floor living room and the balcony located off this room; upper floor dining and kitchen and the balcony located off these rooms; upper floor bedroom; ground floor balcony located off rumpus; and rear garden above and to the side of the proposed development. This can be seen within photos 5 to 8 above.

In consideration of the proportion of view lost in comparison to views retained, and that views will be wholly retained from principle living areas, the extent of the impact is considered to be **minor**.

- **No.62 Alexandra Crescent, Bayview**

As viewed from No.62 Alexandra Crescent, the proposal would result in the partial loss of Pittwater Waterway views available from the ground floor rear garden/private open space. Expansive views are anticipated to be retained from upper level living, dining and bedroom and balcony located off these rooms; mid level bedrooms and balcony located off these rooms; ground level living and dining room and balcony located off these rooms.

In consideration of the proportion of view lost in comparison to views retained, and that views will be wholly retained from principle living areas, the extent of the impact is considered to be **minor**.

#### **4. Reasonableness of the proposal that is causing the impact**

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

##### Comment to Principle 4:

The proposal is not considered to result in an unreasonable view loss to surrounding neighbours and will satisfy the provisions of this clause. A reasonable sharing of view is considered to be retained.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

##### Comment:

Views from adjoining roads and public places will be maintained.

- ***Canopy trees take priority over views.***

##### Comment:

Refer to comments from Council's Landscape Officer and Bushland and Biodiversity Officer. Subject to recommended conditions and replacement planting, the site will have suitable

canopy tree planting within the front setback.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance, subject to conditions.

#### **C1.4 Solar Access**

The proposed modifications will not result in an unreasonable impacts to solar access received by the units of the subject site. The development will retain north-east facing terraces and living areas which will retain adequate solar access.

The submitted shadow diagrams indicate that the subject site and neighbouring dwellings will receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The site most affected by overshadowing with respect to the proposed development is the adjoining neighbour to the south-east (No.1953 Pittwater Road). A submission has been received by this neighbour in relation to overshadowing impacts associated with the development.

The application is supported by shadow diagrams which demonstrates that the proposed development will result in slight increase in overshadowing when compared with the original approval (DA2019/0154).

The submitted shadow diagrams indicate that the north-eastern facing first floor balcony, north-eastern facing ground floor terrace and north eastern facing living rooms of No.1953 Pittwater Road will retain 3 hours of sunlight in the morning and early afternoon inline with the requirements of this control.

Overall, the proposed modifications are not anticipated to result in unreasonable overshadowing impacts and No.1953 Pittwater Road is anticipated to retain adequate solar access to north-eastern living areas/private open space.

#### **C1.5 Visual Privacy**

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation.

##### Merit Assessment

- **Proposed Windows**

##### Eastern elevation:

The proposed eastern facing windows to ground floor Unit 3 Ensuite and the first floor Unit 4 Ensuite would be 3m from the side boundary and west facing windows of the adjoining neighbour to the south-east (1953 Pittwater Road). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for these windows to be fitted with obscure glazing.

Western elevation:

The proposed western facing windows to ground floor Unit 2 would be 3m from the side boundary and balcony of the adjoining neighbour to the north-west (1957 Pittwater Road). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this windows to be fitted with obscure glazing. The western facing bedroom windows are proposed to be affixed with privacy louvres to mitigate overlooking.

- **Proposed terrace/balcony extensions**

Eastern elevation:

The proposed modification seeks to extend the front street (north-east) facing terraces to all units. The proposed terrace extensions to Unit 3 and Unit 4 would be 3m from the side boundary of the adjoining neighbour to the south-east (1953 Pittwater Road). However, it is considered that this balcony extension will be suitably offset from this neighbours adjoining private open space. Additionally, the area of proposed terrace area adjoining the side boundary will be approximately 1.2m in width and located off a bedroom and will have a front facing orientation. The size of this terrace area does not facilitate high recreational usage adjacent to the side boundary. As such, the proposed terrace additions are not considered to result in unreasonable privacy impacts.

Western elevation:

The proposed modification seeks to extend the front street (north-east) facing terraces to all units. The proposed terrace extensions to Unit 1 and Unit 2 will contain fixed privacy screens along the western elevation and will have a front facing orientation. As such these terrace extensions are not considered to result in unreasonable privacy impacts to the adjoining neighbour to the north-west (1957 Pittwater Road).

- **Roof terrace extension**

The proposal seeks to increase the size and height of the approved rooftop terrace area of Unit 4. Submissions in relation to privacy impacts from this terrace have been received from adjoining neighbours to the rear/south-west (60 Alexandra Crescent and 62 Alexandra Crescent) and side/north-west (1957 Pittwater Road).

The trafficable area of the terrace will be over 10m from the rear boundary and will be generally at a lower elevation than the principle private open space and windows of the properties to the rear/south-west (60 Alexandra Crescent and 62 Alexandra Crescent). This terrace will also be separated from these properties by proposed screen planting and fencing. Given the spatial separation, differences in levels and proposed screen planting, the increase in the size of this terrace is not considered to result in unreasonable acoustic or visual privacy impacts to these neighbours.

The trafficable area of the roof terrace will be setback 6m from the north-western side boundary and within 9m of windows and private open space of the adjoining neighbour to the north-west (1957 Pittwater Road). This terrace will be elevated above the windows and private open space of this adjoining neighbour which may result in real and perceived downward overlooking. Given the scale and orientation of this terrace and use as the principle private open space for Unit 4, a condition of consent is recommended to require a privacy screen measuring 1.5m in height on the on the north-western elevation of this roof terrace area to mitigate potential privacy impacts.

The proposal also proposes side boundary fencing and will retain suitable areas of landscaping along side and rear boundaries to assist in mitigating potential privacy impacts.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is **supported** on merit, subject to conditions.

### **C1.7 Private Open Space**

The proposed modification will increase and enhance the private open space provided for each unit. The proposal also complies with the requirements of SEPP HSPD which requires at least 15m<sup>2</sup> of private open space per dwelling. The requirements of SEPP HSPD takes precedent over the DCP requirements.

### **C1.14 Separately Accessible Structures**

If approved, conditions are to be imposed to ensure that the lower ground floor unit storage areas are not used for habitable purposes and do not contain cooking facilities.

### **C1.24 Public Road Reserve - Landscaping and Infrastructure**

The proposed modification seeks works on Council's road reserve, including excavation, retaining walls and tree removal.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

The application has been reviewed by Council's Landscape Officer, Biodiversity Officer and Road assets Officer who have raised no objections subject to recommended conditions and replacement planting.

### **C1.25 Plant, Equipment Boxes and Lift Over-Run**

#### **Description of Non-compliance**

The proposal seeks consent for mechanical services including air conditioning units, lift overrun and car park exhaust to be placed on the roof of the development, which does not satisfy the prescribed requirement.

#### **Merit Consideration**

With regard to consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*



Comment:

The mechanical services on the roof are appropriately screened and sufficiently set in from the roof edge to ensure the services are not prominent from the public domain. The area of the mechanical services has been minimised and appropriately screened to integrate into the design of the building. The proposal meets the requirements of the SEPP which permits servicing equipment on the roof of a building. The design, scale and density of the proposed development is generally consistent with the existing approved development and the mechanical services on the roof are not considered to result in unreasonable impacts to the character of the locality. The overall ridge height of the development would be generally consistent with adjoining development.

- *The bulk and scale of the built form is minimised.*

Comment:

The bulk and scale of the built form is acceptable and generally consistent with the original approval. The area of the mechanical services has been minimised and appropriately screened to integrate into the design of the building. The proposal meets the requirements of *SEPP Housing 2021* which permits servicing equipment on the roof of a building.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The mechanical services do not result in unreasonable view loss from surrounding properties. Reasonable view sharing is maintained for surrounding properties. This is further detailed in the section of this report relating to Clause C1.3 *View Sharing* of the P21 DCP.

- *To achieve reduction in visual clutter.*

Comment:

The area of the mechanical services has been minimised and appropriately screened to integrate into the design of the building. This will prevent visual clutter.

- *The appropriate location and design of noise generating equipment.*

Comment:

The mechanical servicing is site centrally on the site and appropriately located to prevent adverse acoustical privacy impacts. If approved, conditions are to be imposed to ensure plant equipment associated with the development, including the passenger lift and air conditioning unit, must be installed and operated at times so as not to cause 'offensive noise'.

#### **D4.3 Building colours and materials**

Part D4.3 of the P 21 DCP requires that buildings be finished in a medium to dark range colour and natural/earthy tones.

The proposal predominantly utilises sandstone and dark finishes which is consistent with the

requirements of the control. However, the proposal consists of light beige along the exterior of the terraces and roof. While not strictly compliant with the requirements of this control, it is considered that the proposed colours scheme is acceptable in this instance as the variation in colours and materials assists in breaking down the visual massing of the proposal.

#### **D4.6 Side and rear building line**

Clause *D4.6 – Side and Rear Building Line* of P21 DCP requires side and rear setbacks of 3 metres where the wall height of the building is 3 metres or less. This control also requires that where the wall height is more than 3 metres above ground level, the minimum distance from any point on the external wall and a side/rear boundary is greater than 3 metres (based on the wall height). In consideration of the decision in *Alexakis Building Pty Ltd v Waverley Council* [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site.

The proposed development has wall heights of up to 7.5 metres (from pre-existing ground levels), which requires setbacks of between 4 metres and 4.4 metres for the upper floor.

Development Application No. **DA2019/0154** (subject of this modification) and the subsequent modification applications have been approved with the following side setbacks:

##### Approved north-western side setback:

- 3m (Carpark, Lower Ground Floor; GF & FF)
- 1.5m (Lower Ground Floor pathway and retaining wall)

##### Approved south-eastern side setback:

- 3m (Carpark, Lower Ground Floor; GF & FF)

The proposed modification application proposes the following side setbacks:

##### Proposed north-western side setback:

- 2.5m (Carpark)
- 1.5m (Lower Ground Floor pathway)
- 3.0m (Lower ground floor)
- 3.0m (Ground floor and terrace)
- 1.5m (Lower Ground Floor pathway and retaining wall)

##### Proposed south-eastern side setback:

- 2.7m (Carpark)
- 3.0m (Lower ground floor)
- 1.6m (Lower ground floor terrace)
- 3.0m (Ground floor and terrace and roof garden)
- 6.2m (First floor roof deck)

The side setbacks will be generally consistent with that approved within DA2019/0154 (subject of this

modification) and the subsequent modification applications. The changes to side setbacks will predominately relate to lower floor levels and terrace areas which will not contribute to additional building bulk.

### **Merit Consideration**

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- *To achieve the desired future character of the Locality.*

#### **Comment:**

As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

- *To bulk and scale of the built form is minimised.*

#### **Comment:**

The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to unreasonably increase the bulk and scale of the built form. The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. Additionally, the proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by an amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form.

- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

#### **Comment:**

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places. The side setback non-compliance will not result in unreasonable view loss impacts.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

#### **Comment:**

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings (subject to conditions).

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The side setback variation will not result in the removal of significant landscaping or vegetation. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

- *Flexibility in the siting of buildings and access.*

Comment:

The modified development demonstrates flexibility in the siting of buildings and access by generally being located within the approved building footprint.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The side setback variation will not result in the removal of significant landscaping or vegetation. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

- *To ensure a landscape buffer between commercial and residential zones is established.*

Comment:

The proposed development does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

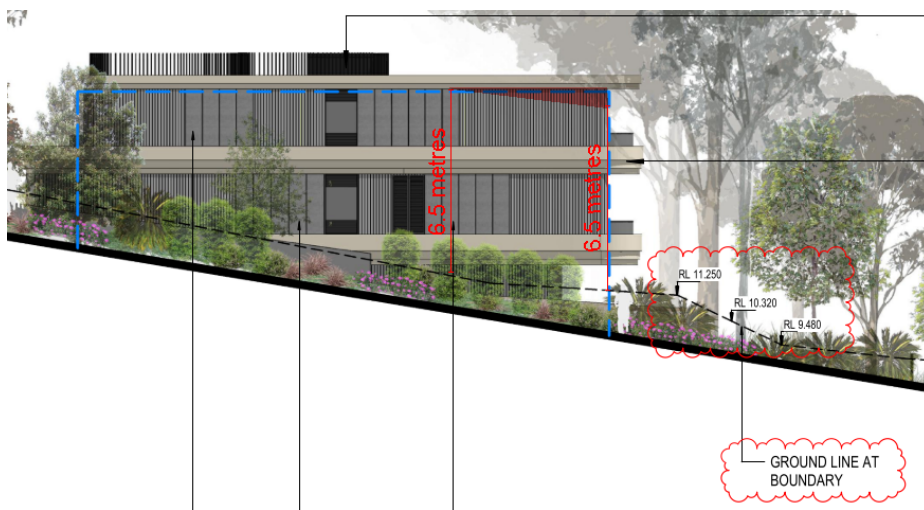
#### **D4.8 Building envelope**

### **Description of Non-compliance**

The clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

The proposal has a minor encroachment into the prescribed building envelope along the eastern elevations. This variation is represented in Figure 1 below.

Clause D4.8 includes a variation which specifies that eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope. Therefore the roof eaves and parapet additions subject of this modification is not applicable to this assessment.



**Figure 1 - Building envelope non-compliance (shown in shaded red)**

### **Merit Consideration**

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- *To achieve the desired future character of the Locality.*

#### **Comment:**

As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

#### **Comment:**

The minor building envelope exceedance will not unreasonably impact on the streetscape or result in a building scale or density that is above the height of surrounding natural and built environment. The application will retain suitable areas of deep soil planting and canopy tree planting within the front setback area to provide screening of the development from the street.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

The proposed development provides modulation in the built form and maintains landscaping to surround the site. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer; Landscape Officer and Riparian Lands Officer who have raised no objection to the proposal subject to recommended conditions.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to unreasonably increase the bulk and scale of the built form. The proposal will be setback 12m from the front boundary retains suitable landscaping along the front, side and rear boundaries to minimise the visual impact of the development to the adjoining neighbours and the street. The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. Additionally, the proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 *View Sharing* of the P21 DCP. The minor envelope non-compliance is not anticipated to result in unreasonable view loss.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings (subject to conditions)..

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

Whilst there is tree removal required as part of the development, multiple canopy trees are proposed to be planted to compensate in order to visually reduce the built form. Vegetation and landscaping will be retained along front, side and rear setbacks.

The application is also supported by an amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

#### **D4.11 Fences - General**

The application proposes a new front fence on the front boundary. The control requires front fences to be no higher than 1.0m. The fence is proposed to be constructed of black aluminum flat bars.

To ensure consistency with the objectives of the clause, conditions are to be imposed to ensure the proposed front fence does not exceed maximum height of 1.0 metre above existing ground level at any point and the fence is designed to 50% or more open. The degree of transparency required by the condition combined will ensure the fence is compatible with the streetscape character.

The proposal also includes side and rear boundary fencing. In order to maintain consistency with this control, conditions will be imposed ensuring that side and rear boundary fencing does not exceed 1.8m from existing ground level and is designed to step with the fall of the lands and is constructed wholly within the boundaries of the subject property.

#### **D4.14 Scenic Protection Category One Areas**

The application will retain suitable areas of deep soil planting and canopy tree planting within the front setback area to provide screening of the development from the waterway, inline with the provisions of this control.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

## **PLANNING CONCLUSION**

The application seeks to modify Development Consent No.DA2019/0154 for a seniors housing development. The application is referred to the Development Determination Panel due to seven (7) objections being received in response to the notification.

The concerns raised in the objections have been addressed and resolved by amended plans and additional information, as well as imposed conditions of consent.

The critical assessment issues include building height; tree removal; *SEPP (Housing for Seniors or People with a Disability) 2004*; view sharing; visual privacy; building envelope; and side building line.

The modified proposal satisfies the test of being substantially the same development as that which was approved originally by the Land and Environment Court.

Overall, the proposed changes subject of this modification represent a relatively modest change in built form. Subject to the recommended conditions of consent, it is considered that the amended proposal will result in a development that displays reasonable size, scale and density which is compatible with the approved built form and surrounding development and will not result in



unreasonable amenity impacts to surrounding properties.

The changes to building height, setbacks and treatment of the curtilage of the building do not translate into adverse impacts. The significant tree to be removed for the fire fighting infrastructure is unavoidable and will be compensated by native tree replanting.

In relation to concerns raised by residents about privacy, suitable conditions have been recommended to mitigate potential privacy impacts.

The modified proposal has been refined and enhanced using a new project architect, and represents a significant and substantial improvement in the character, design and external appearance of the approved development, with enhanced architecture, landscaping and external colours and finishes, which will be more complementary to the local character and fit in with the other seniors housing developments along this stretch of Pittwater Road.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

Accordingly, the application is referred to the DDP with a recommendation for APPROVAL. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0471 for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development on land at Lot 1 DP 373531, 1955 Pittwater Road, BAYVIEW, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-254758 MOD2022/0471	The date of this notice of determination	<p>Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development.</p> <ul style="list-style-type: none"><li>• Add Condition No.1C (Modification of Consent - Approved Plans and supporting Documentation)</li><li>• Add Condition 28A (Access and Facilities for Persons with Disabilities)</li><li>• Add Condition 28B (Submission Roads Act Application for Civil Works in the Public Road (Retaining Wall Works))</li></ul>

		<ul style="list-style-type: none"> <li>• Add Condition 28C (Amendments to the approved plans)</li> <li>• Add Condition 51A (Impacts to Protected Native Wildlife)</li> <li>• Add Condition 51B (Wildlife Protection)</li> <li>• Add Condition 57A (No Weeds Imported On To The Site)</li> <li>• Add Condition 57B (Priority Weed Removal and Management)</li> <li>• Add Condition 71 (Replacement of Canopy Trees)</li> <li>• Add Condition 72 (Plant Noise)</li> <li>• Add Condition 73 (Use of the Roof Terrace)</li> <li>• Add Condition 74 (Use of "Lower Ground Floor storage areas")</li> <li>• Modify Condition 2 (Compliance with Other Department, Authority or Service Requirements)</li> <li>• Modify Condition 46 (Removal of trees within the road reserve)</li> <li>• Modify Condition 49 (Tree and vegetation protection)</li> <li>• Modify Condition 56 (Landscape Works)</li> <li>• Modify Condition 57 (Condition of Retained Vegetation)</li> </ul>
PAN-106400 MOD2021/0343	27/07/2021	<p>Modify development consent DA2019/0154 granted for demolition works and construction of a seniors housing development to use the basement void area approved under Mod2021/0101 as storage areas for each dwelling</p> <ul style="list-style-type: none"> <li>• Add Condition No.1B (Modification of Consent - Approved Plans and supporting Documentation)</li> </ul>
PAN-78870 MOD2021/0101	12/05/2021	<p>Modify development consent DA2019/0154 granted for demolition works and construction of a seniors housing development to amend the location and method of piling and shoring and the reinforced concrete block work retaining walls associated with the excavated carpark levels.</p> <ul style="list-style-type: none"> <li>• Add Condition No.1A (Modification of Consent - Approved Plans and supporting Documentation)</li> </ul>

### **Modified conditions**

#### **A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA.101 Rev. F - Site Plan	29/03/2023	A+ Design Group
DA.201 Rev.E - Entry Floor Plan	29/03/2023	A+ Design Group
DA.202 Rev.E - Carpark Floor Plan	29/03/2023	A+ Design Group
DA.203 Rev.F - Lower Ground Floor Plan	04/05/2023	A+ Design Group
DA.204 Rev.C - Ground Floor Plan	28/01/2023	A+ Design Group
DA.205 Rev.C - First Floor Plan	28/01/2023	A+ Design Group
DA.301 Rev.E - Section AA	08/03/2023	A+ Design Group
DA.302 Rev.E - Section BB	08/03/2023	A+ Design Group
DA.303 Rev.A - Section CC	21/06/2023	A+ Design Group
DA.401 Rev.D - North Elevation	29/03/2023	A+ Design Group
DA.402 Rev.F - West Elevation	14/07/2023	A+ Design Group
DA.403 Rev.D - South Elevation	28/01/2023	A+ Design Group
DA.404 Rev.F - East Elevation	14/07/2023	A+ Design Group
DA.803 - Schedule of Materials & Finishes	28/01/2023	A+ Design Group

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate (99121M_04)	11/08/2022	Efficient Living
NatHERS Certificate (0005395090)	11/08/2022	Efficient Living
Disability Access Report Rev.4 (P000737)	10/02/2023	Inclusive Places
Geotechnical Report (SRE/1020/BV/22)	16/09/2022	Soilsrock Engineering Pty Ltd
Geotechnical Report (SRE/1020/BV/23)	20/04/2023	Soilsrock Engineering Pty Ltd
Arborist Report	01/08/2022	Waratah Eco Works

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
000 Issue.E - Landscape Coversheet	02/03/2023	Site Image Landscape Architects
001 Issue.D - Landscape Area Plan	03/03/2023	Site Image Landscape Architects
101 Issue.D - Landscape Plan - Ground Floor	02/03/2023	Site Image Landscape Architects
201 Issue.D - Landscape Plan - First Floor	02/03/2023	Site Image Landscape Architects

501 Issue.A - Landscape Details	03/08/2022	Site Image Landscape Architects
601 Issue.C - Landscape Sections	02/03/2023	Site Image Landscape Architects
901 Issue.B - Tree Retention Plan	10/02/2023	Site Image Landscape Architects

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Modify Condition 2 (Compliance with Other Department, Authority or Service Requirements) to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
New South Wales Roads & Maritime Services	Response NSW RMS Referral	18 October 2019
Ausgrid	Ausgrid Referral Response	05 October 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**C. Modify Condition 46 (Removal of trees within the road reserve) to read as follows:**

This consent includes approval to remove the following numbered existing species located within the road reserve:

- 3 - *Corymbia maculata* (identified as tree 1 in the Arboricultural Impact Assessment prepared by Waratah Eco Works August 2022),
- 4 - *Ficus rubiginosa*, subject to replacement within the road reserve,
- 5 - *Cocus Palm*,
- 6 - *Buckinghamiana celsissima*.

Removal of approval trees in the road reserve shall be undertaken only by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Tree Services section.

Reason: public safety.

**D. Modify Condition 49 (Tree and vegetation protection) to read as follows:**

a) Existing trees and vegetation shall be retained and protected in accordance with AS4970-2009 Protection of Trees on Development Sites, including:

- i) all trees and vegetation located on adjoining properties, and
- ii) all road reserve trees and vegetation not approved for removal, being existing trees 1 and 2.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009, xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

#### **E. Modify Condition 56 (Landscape Works) to read as follows:**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings 000, 101, 201 by Site Image dated 02/03/23), and inclusive of the following conditions:

- 1) Each tree shall be installed at minimum 75 litre container size, and shall be planted at least 3 metres from buildings or more, and at least 1.5 metres from common boundaries,
- 2) Tree planting shall be located in consideration of neighbouring solar access to living internal and external living spaces and any significant views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

**F. Modify Condition 57 (Condition of Retained Vegetation) to read as follows:**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained in proximity to development works, being existing trees 1, 2 and 25, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works.
- ii) extent of damage sustained by vegetation as a result of the construction works.
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites.

**G. Add Condition 28A (Access and Facilities for Persons with Disabilities) to read as follows:**

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the recommendations contained in the Disability Access Report prepared by Inclusive Places , Reference No. P000737, dated 10/02/2023 are to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

**H. Add Condition 28B (Submission Roads Act Application for Civil Works in the Public Road (Retaining Wall Works)) to read as follows:**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining wall and turf area required for the proposed fire hydrant access for the building which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- 1. Set-out plan with dimensions and proposed retaining wall height.
- 2. Structural plans for the retaining wall.
- 3. Geotechnical certification for the proposed design.
- 4. Landscaping plan for turf and associated landscaping works behind the retaining wall within the road reserve.
- 5. Services plan and concurrence from the relevant service authority for any services affected by the proposed works. All costs associated with the relocation of any services are to be borne by the applicant.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and

Council's specification.

**I. Add Condition 28C (Amendments to the approved plans) to read as follows:**

The following amendments are to be made to the approved plans:

- a) The proposed "ground floor " eastern facing window to the "Unit 3 ensuite" shall be fitted with obscured glazing
- b) The proposed "first floor "eastern facing window to the "Unit 4 ensuite" shall be fitted with obscured glazing
- c) The proposed "ground floor " western facing window to the "Unit 2 ensuite" shall be fitted with obscured glazing
- d) A privacy screen with a minimum height of 1.5 metres (measured from finished floor level) is to be erected for the entire length of the outermost north-western edge (of the trafficable section) of the "Unit 4 Roof Deck". The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- e) The proposed front fence as shown on the approved plans shall not exceed 1 metre in height from existing ground level and shall be designed to step with the fall of the land. This fence shall be designed to be minimum of 50% open/transparent and constructed of dark-coloured, non-reflective materials.
- f) The proposed side and rear boundary fencing shall not exceed 1.8m in height from existing ground levels and shall be designed to step with the fall of the land. This fencing shall be located wholly within the boundaries of the subject site and shall be constructed of dark-coloured, non-reflective materials.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**J. Add Condition 51A (Impacts to Protected Native Wildlife) to read as follows:**

Habitat for native wildlife including Tree 1 (*Corymbia maculata*) is to be inspected for native wildlife prior to removal. If native wildlife is found within habitat to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier.

Reason: To protect native wildlife.

**K. Add Condition 51B (Wildlife Protection) to read as follows:**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be

contacted for advice.

Reason: To protect native wildlife.

Habitat for native wildlife including Tree 1 (*Corymbia maculata*) is to be inspected for native wildlife prior to removal. If native wildlife is found within habitat to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier.

Reason: To protect native wildlife.

**L. Add Condition 57A (No Weeds Imported On To The Site) to read as follows:**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**M. Add Condition 57B (Priority Weed Removal and Management) to read as follows:**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

**N. Add Condition 71 (Replacement of Canopy Trees) to read as follows:**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

**O. Add Condition 72 (Plant Noise) to read as follows:**

Any plant equipment associated with the development, including the passenger lift and air conditioning unit, must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.



Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

**P. Add Condition 73 (Use of the Roof Terrace) to read as follows:**

There are to be no permanent structures located on the rooftop terrace. Any temporary shade structures are to be taken down when not in use.

Reason: To minimise impact on private views toward Pittwater.

**Q. Add Condition 74 (Use of "Lower Ground Floor storage areas") to read as follows:**

The "lower ground floor level" unit storage areas, labelled "UNIT 1 ST"; "UNIT 2 ST"; "UNIT 3 ST"; "UNIT 4 ST"; shall not to be used for habitable purposes and shall not to contain any cooking, bathroom/toilet or laundry facilities.

Reason: To ensure that the storage areas are used for their intended purpose.