

7<sup>th</sup> February 2022

The General Manager  
Northern Beaches Council  
Po Box 82  
Manly NSW 1655

Dear Sir,

**Statement of Environmental Effects**  
**Section 4.55(1A) Modification of Consent DA2020/1179**  
**Demolition and Construction of a Seniors Housing Development**  
**1793, 1795 and 1797 Pittwater Road and No. 38 Park Street, Mona Vale**

**1.0 Introduction**

On 10<sup>th</sup> February 2021, development consent DA2020/1179 was granted for demolition works and the construction of a senior's housing development on the subject properties pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) with the consent subsequently modified to facilitate the removal of tree T22 being a *Jacaranda mimosifolia*.

This application, made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act), seeks a refinement in the design and detailing of the proposed roof forms, weather protection elements and privacy screening the intent of which is to enhance buildability and amenity in terms of weather protection and privacy. Whilst the modifications to the approved roof forms result in minor increases in overall building height, we are satisfied that the modifications sought will not give rise to any inappropriate or jarring streetscape, residential amenity or overall building design quality consequences.

As the modifications do not significantly alter the previously approved land use or built form circumstances across the consolidated development site, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(1A) of the Act.

## 2.0 Proposed modifications

The proposed modifications are shown clouded and itemised on the following architectural plans prepared by KND Architects:

DA00-001	COVER SHEET
DA01-101	OVERALL PLAN - ROOF PLAN
DA02-001	LOWER ROOF PLAN -SP2
DA02-002	ROOF PLAN - SP2
DA03-001	EAST ELEVATIONS - SP2
DA03-002	SOUTH ELEVATIONS - SP2
DA03-003	NORTH ELEVATIONS - SP2
DA03-004	WEST ELEVATIONS - SP2
DA04-001	SECTION A
DA04-002	SECTION B
DA04-003	SECTION 1
DA04-004	SECTION 2
DA21-001	SHADOW DIAGRAM - 09 AM
DA21-002	SHADOW DIAGRAM - 12 PM
DA21-003	SHADOW DIAGRAM - 03 PM
DA29-001	HEIGHT PLANE DIAGRAM

The modifications can be broadly described as follows:

1. Changes to the lower roof design including height, detailed and materiality.
2. Minor increase in the height of the middle roof element.
3. Changes to the lower roof design including height, detailed and materiality.
4. Introduction of a Vergola to the eastern balcony of Unit 20.
5. Modification to the entry canopy design.
6. Introduction of an operable privacy screen to the eastern balcony of Unit 20.
7. Introduction of an operable pivoting louvre screen to the western balcony of Unit 20.

The balance of the development remains unchanged including the previously approved landscape and stormwater disposal regimes.

Given the minor nature of the modifications sought no amended BASIX Certificate is required.

### **3.0 Section 4.55 of the Environmental Planning and Assessment Act 1979**

Section 4.55(1A) of the Act provides that:

- (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 proposed modification is of minimal environmental impact, and*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (c) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, and*
    - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (3) *In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In answering the above threshold question, we have formed the considered opinion that the modifications sought are of minimal environmental impact given that the previously approved land use, built form and landscape circumstances are not in any significant manner altered.

Whilst the modifications to the approved roof forms result in minor increases in overall building height, we are satisfied that the modifications sought will not give rise to any inappropriate or jarring streetscape, residential amenity or overall building design quality consequences. The accompanying shadow diagrams demonstrate that no additional shadowing impact will occur to any adjoining property at any time between 9am and 3pm on 21<sup>st</sup> June. Under such circumstances we consider the modifications to be both quantitatively and qualitatively of minimal environmental impact.

In answering the threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls. In order for Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his honour said in reference to Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

*“Substantially when used in the Section means essentially or materially or having the same essence.”*

What the abovementioned authorities confirms is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the previously approved land use, built form and landscape circumstances are not compromised with the environmental outcomes associated with the original approval maintained. Again, whilst the modifications to the approved roof forms result in minor increases in overall building height, we are satisfied that the modifications sought will not give rise to any inappropriate or jarring streetscape, residential amenity or overall building design quality consequences. Further, the accompanying shadow diagrams demonstrate that no additional shadowing impact will occur to any adjoining property at any time between 9am and 3pm on 21<sup>st</sup> June.

Under such circumstances we consider the modifications to be both quantitatively and qualitatively of minimal environmental impact.

In this regard, the approved development remains, in its modified state, a development which will continue to relate to its surrounds and adjoining development in the same fashion to that originally approved.

The Court in the authority of *Stavrides v Canada Bay City Council* [2007] NSWLEC 248 established general principles which should be considered in determining whether a modified proposal was “substantially the same” as that originally. A number of those general principles are relevant to the subject application, namely:

- The application remains a proposal involving the construction of senior’s housing on the subject properties,
- The previously approved land use is not altered with the built form, landscape and residential amenity outcomes afforded through approval of the original application not compromised, and
- The modifications do not compromise the overall design quality of the development as approved.

On the basis of the above analysis, we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

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

##### **4.1 Zoning and permissibility**

The development remains permissible with consent pursuant to SEPP HSPD.

##### **4.2 Height of buildings**

The subject application was approved pursuant to the provisions of SEPP HSPD which contains development standards in relation to building height. We note at paragraph 153 of the judgment in the matter of *Eastern Suburbs Leagues Club Ltd v Waverley Council* [2019] NSWLEC 130 Moore J found:

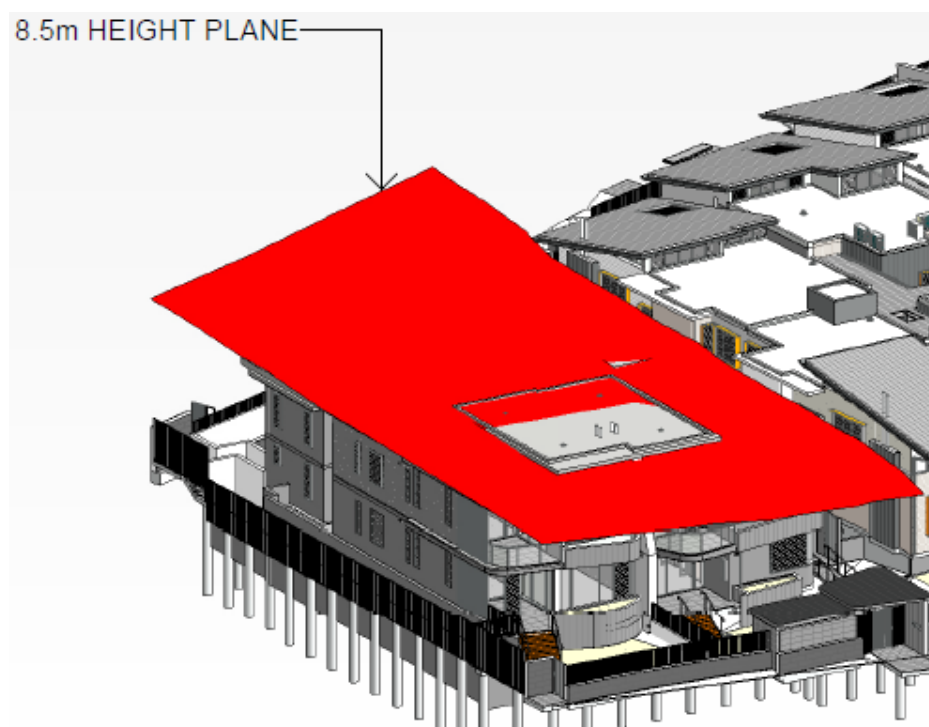
*I have concluded that the provisions of the SEPP do have the effect of overriding both the building height development standard and the FSR development standard otherwise applicable to the site as arising from the WLEP. As a result of this conclusion, it is not necessary for me to consider whether or not the contingent requests made by the Club for dispensation utilising cl 4.6 of the WLEP from compliance with those development standards meets the relevant tests set by cl 4.6(3) and (4).*

Whilst the SEPP HSPD building height provisions prevail over the clause 4.3 PLEP height standard an assessment against the latter numerical provision is considered appropriate. In this regard clause 4.3 states that the height of a building on any land is not to exceed 8.5 metres or 8 metres above any flood planning level (FPL). The stated objectives of such control 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,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

**Building height** (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

We confirm that the proposal, as modified, has a maximum building height of 8.8 metres representing a variation of 300mm or 3.5% with the building height breaching elements limited to those depicted in the building height blanket diagram at Figure 1 below.



**Figure 1** – Building height blanket (8.5 metres) depicting building height breaching elements

Whilst the clause 4.6 PLEP development standard variation mechanism does not apply to an application seeking to modify a consent the acceptability of the increase in building height has been assessed against the objectives of the standard 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: Whilst the modifications result in a minor increase in overall building height the height and scale of the development will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting.

The breaching elements will not impact on the design quality of the development or its streetscape or residential amenity outcomes and to that extent the building, by virtue of its height and scale, will remain consistent with the desired character of the locality being an outcome accepted in the approval of the original scheme. The proposal remains consistent with this objective.

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

Comment: Whilst the modifications result in a minor increase in overall building height the height and scale of the development will remain consistent with the desired character of the locality being 2 storey building forms within a landscaped setting. This submission demonstrates that the modified development is of exception design quality with the development maintaining the previously approved spatial relationship to adjoining development. The proposed development, notwithstanding the building height breaching elements, will remain complimentary and compatible with the height and scale of surrounding and nearby development.

The proposal remains consistent with this objective.

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

Comment: The accompanying shadow diagrams clearly demonstrate the modified shadowing impacts associated with the modifications sought with compliant levels of solar access maintained to surrounding residential development. Notwithstanding the building height non-compliance, overshadowing has been minimised to neighbouring properties to the extent that compliant solar access is maintained.

The proposal remains consistent with this objective.

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

Comment: Having inspected the site and surrounds to determine available view lines we have formed the considered opinion that the view sharing outcomes achieved through approval of the original application are not compromised notwithstanding the building height breaching elements proposed. The proposal remains consistent with this objective.

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

Comment. The building height breaching elements are not a consequence of the desire to further alter the natural topography of the site and to that extent the proposal, as modified, is consistent with this objective.

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

Comment: The minor increase in overall building height will not compromise the heritage conservation outcomes afforded through approval of the original scheme. The proposal remains consistent with this objective.

Given the ability to satisfy the objectives of the height of buildings standard we have formed the considered opinion that the strict compliance with the numerical standard is both unreasonable and unnecessary under the circumstances.

### **4.3 Heritage Conservation – Statement of Heritage Impact**

Pursuant to clause 5.10(4) of PLEP the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Further, pursuant to clause 5.10(5) the consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b) require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

The subject sites are not heritage listed however are within the vicinity of a number of heritage items namely Item 2270021 – Glenroy House at Glenroy at No. 1789 Pittwater Road and Item 2270168- St John’s Anglican Church and gravestones at No. 1624 Pittwater Road, Mona Vale as depicted in Figure 2 over page.





**Figure 2** – PLEP heritage map extract with site shown with red star

Having inspected the site and determined the spatial relationship of the properties it is considered that the proposed seniors housing development, as modified, will have no impact on the heritage significance of the heritage items for the following reasons:

- The heritage items do not immediately adjoin the subject property and to that extent will have no direct physical impact on the items or their immediate setting in terms of overshadowing, privacy or view loss either to or from the items.
- The proposed development maintains a complimentary and compatible articulated 2 storey form viewed from both street frontages and as such will have no impact on the streetscape significance of the heritage items.

Pursuant to Clause 5.10 of PLEP, Council can be satisfied that the proposed development, as modified, will have a neutral impact on the heritage significance on the items, their curtilage or their setting.

## **5.0 Pittwater 21 Development Control Plan**

Having assessed the modified development against the applicable provision of Pittwater 21 Development Control Plan we note the following:

- The siting and scale of the development is generally maintained,
- The previously approved building height is slightly increased to enhance amenity and buildability however such increase does not give rise to any inappropriate or jarring streetscape, residential amenity, heritage conservation or environmental consequences,
- The proposal maintains the previously approved setbacks and an appropriate spatial relationship with adjoining development,
- The modified proposal maintains the previously approved FSR a landscaped area outcomes,
- The modified proposal does not compromise the residential amenity outcomes afforded to adjoining development in relation to visual and aural privacy, solar access and view sharing.
- No additional excavation is proposed.

## 6.0 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The table below provides a summary of details in respect to compliance with standards that apply to this development proposal.

<b>SUMMARY OF COMPLIANCE WITH STANDARDS</b>			
<b>Standard</b>	<b>Required</b>	<b>Provided</b>	<b>Complies</b>
Location, Facilities and Support Services (Clause 26 SEPPHSPD)	Site within 400m of transport that can provide access to Facilities and Support Services	No change	Yes
Building Frontage (Clause 40(3) SEPPHSPD)	Minimum street frontage of 20 metres wide at building line.	>20 metres at building alignment.	Yes
Wheelchair Access Requirements (Schedule 3)	100% access to road or internal driveway; 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirements	100% access to road or internal driveway; greater than 10% access to adjoining road; 100% access to common areas and facilities; 100% adaptable to disabled persons requirement. Refer to accompany access report.	Yes
Height (Clause 40(4) SEPPHSPD)	<8.0m 2 storeys at boundary. Single storey in rear 25% of site.	>8.0m	No. Minor variation acceptable on merit as previously outlined.

		2 storeys	Yes
		No rear boundary	N/A
FSR (Clause 50(b) SEPPHSPD)	Threshold of 0.5:1	No change	-
Landscaped Area (Clause 50(c) and (d) SEPPHSPD)	Minimum 30% of site as landscaped area. Deep soil zone –15% of site area.	No change	Yes Yes
Parking total 48 bedrooms (Clause 50(h) SEPPHSPD)	12 resident spaces	No change	Yes
Neighbour amenity and streetscape (Clause 33 SEPPHSPD)	Attractive residential environment		Satisfactory
Visual and Acoustic Privacy (Clause 34 SEPPHSPD)	Appropriate site planning and acceptable noise levels		Satisfactory
Solar Access (Clause 35 SEPPHSPD)	Adequate daylight to living areas of neighbours and sun to POS		Satisfactory
Stormwater (Clause 36)	Minimise stormwater run-off.		Satisfactory
Crime Prevention (Clause 37 SEPPHSPD)	Personal property security for residents and visitors and encourage crime prevention.		Satisfactory
Accessibility (Clause 38 SEPPHSPD)	Access to public transport, parking and disabled access to all aspects of the development.		Satisfactory
Waste Management (Clause 39 SEPPHSPD)	Waste facilities that maximise recycling.		Satisfactory

## 7.0 Conclusion

This statement has been prepared in support of an application seeking a refinement in the design and detailing of the proposed roof forms, weather protection elements and privacy screening the intent of which is to enhance buildability and amenity in terms of weather protection and privacy. Whilst the modifications to the approved roof forms result in minor increases in overall building height, we are satisfied that the modifications sought will not give rise to any inappropriate or jarring streetscape, residential amenity, heritage conservation or overall building design quality consequences.

As the modifications do not significantly alter the previously approved land use or built form circumstances across the consolidated development site, Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of s4.55(1A) of the Act.

Having given due consideration to the relevant considerations pursuant to s4.15 of the Act it is considered that the modifications, the subject of this document, succeeds on merit and is appropriate for the granting of consent.

Yours faithfully

**Boston Blyth Fleming Pty Limited**



**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

**Director**