

STATEMENT OF ENVIRONMENTAL EFFECTS

Modification of
Development Consent

DA2020/0634

Shop Top Housing
Development

396 – 402 Sydney Road,
Balgowlah Heights

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

Statement of Environmental Effects

Modification of Development Consent DA2020/0634

Mixed Use Development

396 – 402 Sydney Road, Balgowlah

Prepared by Greg Boston

B Urb & Reg Plan (UNE) MPIA

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

November 2022

TABLE OF CONTENTS

1	Introduction	4
2	Description of Proposed Development.....	5
2.1	Detail of the Proposed Architectural Modifications	5
2.2	The Detail of the Proposed Condition Modifications	5
3	statutory planning framework.....	6
3.1	Environmental Planning and Assessment Act 1979	6
3.2	Manly Local Environmental Plan 2013	7
3.2.1	Zoning.....	7
3.2.2	Height of Buildings	8
3.2.3	Floor Space Ratio	9
3.2.4	Active Street Frontages.....	10
3.2.5	Design Excellence	10
3.2.6	Gross Floor Area in Zone B2.....	10
3.3	Manly Development Control Plan 2013	11
3.3.1	Street Townscape.....	11
3.3.2	Landscaping.....	11
3.3.3	Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise).....	11
3.3.4	Sustainability	11
3.3.5	Stormwater Management	11
3.3.6	Waste Management	11
3.3.7	Mechanical Plant Equipment	11
3.3.8	Dwelling Density and Subdivision	12
3.3.9	Setbacks.....	12
3.3.10	Parking, Vehicular Access and Loading	12
3.4	State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.....	12
3.5	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	13
3.6	Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended	13
3.6.1	The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations	13
3.6.2	The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality.....	13
3.6.3	The suitability of the site for the development.....	16
3.6.4	Any submissions received in accordance with this act or regulations.....	16
3.6.5	The public interest.....	16
4	conclusion	17

1 INTRODUCTION

On 18th August 2022, the Northern Beaches Council Local Planning Panel granted consent to Development Application DA220/2013 proposing the demolition of existing structures and construction of a 4 storey shop top housing development containing 3 commercial tenancies at the ground floor level, 12 apartments and basement car parking on the subject site. The approved apartment mix is 3 x 3 bedroom units, 8 x 2 bedroom units and 1 x 1 bedroom unit.

We have been engaged to prepare an application seeking to modify the consent pursuant to section 4.55(2) of the Act. Specifically, the application seeks to split approved apartment 201, being a 3 bedroom apartment, to create a 1 x 1 bedroom and 1 x 2 bedroom apartment consistent with the apartment layout on Level 1 below. This creates a 13th Apartment and changes the apartment mix to 2 x 3 bedroom units, 9 x 2 bedroom units and 2 x 1 bedroom units. It also results in a 5m² increase in gross floor area where the northern façade of the proposed apartments is extended slightly to the north to match the façade alignment of the Level 1 apartments below.

The application also proposes a rationalisation in the design of the central courtyard, the conversion of approved unit 1.04 to be an adaptable unit and the modification in the curve radius of the street facing balconies at each level to enhance buildability. The application also seeks the re-allocation of car parking spaces within the basement levels that the development.

As the proposed modifications are contained wholly within the previously approved building footprint and envelope, Council can be satisfied that the proposed development, as modified, will not compromise the design quality, streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application in terms of privacy, solar access and view sharing. Further, the previously approved excavation, landscape, waste management and drainage regimes are not altered as a consequence of the modifications sought.

The development, as modified, continues to satisfy the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP65) and the objectives and guidelines contained within the Apartment Design Guide (ADG).

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

2 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 Detail of the Proposed Architectural Modifications

The development, as modified, is depicted clouded on plans 000(C), 010(C), 012(C), 013(C), 014(C), 020(C) and 050(C) prepared by DWA.

Specifically, the application seeks to split approved apartment 201, being a 3 bedroom apartment, to create a 1 x 1 bedroom and 1 x 2 bedroom apartment consistent with the apartment layout on Level 1 below. This creates a 13th Apartment and changes the apartment mix to 2 x 3 bedroom units, 9 x 2 bedroom units and 2 x 1 bedroom units. It also results in a 5m² increase in gross floor area where the northern façade of the proposed apartments is extended slightly to the north to match the façade alignment of the Level 1 apartments below.

The application also proposes a rationalisation in the design of the central courtyard, the conversion of approved unit 1.04 to be an adaptable unit and the modification in the curve radius of the street facing balconies at each level to enhance buildability. The application also seeks the re-allocation of car parking spaces within the basement levels that the development.

This application is accompanied by an updated BASIX Certificate.

2.2 The Detail of the Proposed Condition Modifications

The proposed modifications include the deletion/modification of the following conditions:

1. Condition 1 - to be modified to reference the modified plans.
2. Condition 35 - to be modified to reflect the modified basement car parking allocation

3 STATUTORY PLANNING FRAMEWORK

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

3.1 Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Act provides that:

(2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

.....

In answering the above 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 approved development remains, in its modified state, a shop top housing development which will continue to spatially relate to its surrounds and adjoining development in the same manner as originally approved. The previously approved streetscape, privacy, solar access, view sharing and general amenity outcomes afforded by the original application are not compromised.

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 proposed use does not change.
- The approved general building form, footprint, setbacks, car parking and drainage circumstances are not significantly altered. Whilst the previously approved residential density is increased by 1 Apartment, such increase is generally achieved through the reconfiguration of the previously approved floor space.
- Notwithstanding the minor 5m² increase in GFA/FSR appropriate spatial separation is maintained to adjoining development noting that the additional floor space is located within the alignment of the previously approved north facing balcony with the resultant façade alignment consistent with that approved on Level 1 below. In this regard, the minor increase in GFA/FSR does not compromise the streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application.

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.56 of the Act.

3.2 Manly Local Environmental Plan 2013

3.2.1 Zoning

The subject property is zoned B2 Local Centre pursuant to Manly Local Environmental Plan 2013 (“MLEP 2013”) with commercial premises and shop top housing permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail premises with all residential apartments located within a single building form. Accordingly, the development, as modified, remains appropriately defined as shop top housing and permissible with consent in the zone.

The proposed development, as modified, continues to meet the relevant zone objectives given the retention of ground floor commercial uses and the appropriate concentration of residential densities within an established Business zone. The height and scale of the development is not altered and to that extent remain responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity or streetscape impacts.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

3.2.2 Height of Buildings

Pursuant to clause 4.3 MLEP 2013 the height of any building on the land shall not exceed 12.5 metres above ground level (existing) as detailed on the heights of building map. The stated objectives of this clause are:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The dictionary to the LEP defines building height to mean:

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.

ground level (existing) means the existing level of a site at any point.

The proposed modifications do not alter the previously approved building height and to that extent the development, as modified, remains consistent with the objectives of the standard as evidence through approval of the original application which required favourable consideration of a building height variation pursuant to clause 4.6 of MLEP.

3.2.3 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 2:1 representing a gross floor area of 1626 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the modified proposal has a gross floor area of 1629 square metres representing a non-compliance of 3m² or 0.18%.

Although the clause 4.6 MLEP variation provisions do not apply to an application involving the modification of a consent we had undertaken an analysis as to the acceptability of the additional GFA/FSR having regards to the objectives of the standard as follows.

- The additional floor space is located at the rear of the property where it will not be readily discernible in a streetscape context and certainly not to the extent that the resultant additional bulk and scale would be perceived as inconsistent with the existing and desired streetscape character (objective (a)).
- The additional floor space is located generally within the previously approved building envelope such that it will not obscure any important landscape or townscape features (objective (b)).
- The additional floor space is located where it does not materially alter the approved developments visual relationship with adjoining development and does not alter the approved or established landscape character of the site or the area generally (objective (c)).
- The additional floor space is located over the alignment of the previously approved north facing balcony such that it does not compromise the residential amenity outcomes afforded to adjoining development in terms of views, privacy or solar access (objective (d)).

- The modifications do not alter the previously approved commercial floor space on the site which is compliant with the minimum 25% commercial floor space requirement contained within MLEP (objective (e)).
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding properties.

Consistent with the first test in Wehbe as the proposal, as modified, satisfies the objectives of the FSR standard strict compliance is unreasonable and unnecessary under the circumstances.

3.2.4 Active Street Frontages

We confirm that pursuant to clause 6.11 that the Pursuant to clause 6.11 MLEP 2013, development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use. We confirm that the previously approved active street frontage for development on the site is not altered as a consequence of the modifications sought.

These provisions and associated objective are satisfied.

3.2.5 Design Excellence

Pursuant to clause 6.13 development consent must not be granted for development on land in Zone B2 Local Centre unless the consent authority considers that the development exhibits design excellence. In this regard, as the modifications do not materially alter the height, bulk, scale, form or façade presentation of the development the consent authority can be satisfied that the design excellence achieved through a approval of the original application is not compromised.

3.2.6 Gross Floor Area in Zone B2

Pursuant to clause 6.16 development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres.

The previously approved commercial floor space is not altered as a consequence of the modifications sought with a compliant quantum of commercial floor space maintained.

3.3 Manly Development Control Plan 2013

3.3.1 Street Townscape

As the proposed modifications are predominantly contained within the previously approved building envelope the consent authority can be satisfied that the development, as modified, continues to respond appropriately to the Design Principles contained at clause 3.1.1 of the Manly DCP.

3.3.2 Landscaping

Having regard to the landscape provisions at clause 3.3 of Manly DCP the consent authority can be satisfied that landscape outcome achieved through approval of the original application is not compromised notwithstanding the reconfiguration of the approved internal courtyard.

3.3.3 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise)

As the proposed modifications are contained wholly within the previously approved building footprint and envelope, Council can be satisfied that the proposed development, as modified, will not compromise the design quality, streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application in terms of privacy, solar access and view sharing.

3.3.4 Sustainability

The design provides for sustainable development, utilising passive solar design principles, thermal massing and achieves cross ventilation to a complying number of dwellings within the development.

A BASIX Certificate accompanies this application which confirms that development will comply with the NSW Government's requirements for sustainability.

3.3.5 Stormwater Management

No changes are proposed to the previously approved stormwater management regime for the development.

3.3.6 Waste Management

The previously approved waste storage and collection arrangements are not altered.

3.3.7 Mechanical Plant Equipment

The previously approved mechanical plant arrangement is not altered.

3.3.8 Dwelling Density and Subdivision

The previously approved dwelling density is increased from 12 to 13 with the minor increase in GFA/FSR proposed. Notwithstanding the minor 5m² increase in GFA/FSR appropriate spatial separation is maintained to adjoining development noting that the additional floor space is located within the alignment of the previously approved north facing balcony with the resultant façade alignment consistent with that approved on Level 1 below. In this regard, the minor increase in GFA/FSR does not compromise the streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application.

3.3.9 Setbacks

We confirm that the previously approved building setbacks are not materially alter as a consequence of the modifications sought with the additional floor space located within the alignment of the previously approved north facing balcony with the resultant façade alignment consistent with that approved at Level 1 below.

3.3.10 Parking, Vehicular Access and Loading

The previously approved quantum of off-street parking spaces is maintained with such quantum providing appropriately for the off-street carparking requirements of the development.

3.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) aims to improve the design quality of residential flat developments to provide sustainable housing in social and environmental terms that is a long-term asset to the community and presents a better built form within the streetscape.

It also aims to better provide for a range of residents, provide safety, amenity and satisfy ecologically sustainable development principles. In order to satisfy these aims the plan sets design principles in relation to context, scale, built form, density, resources, energy and water efficiency, landscaping, amenity, safety and security, social dimensions and aesthetics to improve the design quality of residential flat building in the State.

SEPP 65 applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

- a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*

- b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

The proposed development is for the erection of a mixed use development containing 17 apartments. As per the definition of a ‘Residential Flat Building’ and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the proposed development.

SEPP 65 requires any development application for residential flat development to be assessed against the 9 principles contained at Schedule 1 of SEPP 65 and the matters contained in the Apartment Design Guide (ADG).

The development application is accompanied by an Architectural Design Statement and the required Design Verification Statement prepared by DWA a copy of which is at ANNEXURE 1.

3.5 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the residential component of the development and aims to encourage sustainable residential development.

An updated BASIX Assessment accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

3.6 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

3.6.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations

This report clearly and comprehensively addresses the statutory regime applicable to the application pursuant to the Manly LEP 2013 and Manly DCP 2013.

3.6.2 The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality.

Context and Setting

i. *What is the relationship to the region and local context in terms of:*

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the applicable legislation.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in conformity with the standards of the policy.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The previously approved landscape outcome for the site is not compromised.

Waste Collection

the application does not alter the previously approved waste collection arrangement/

Natural hazards

N/A

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed development.

Site Design and Internal Design

- i) *Is the development design sensitive to environmental considerations and site attributes including:*
 - *size, shape and design of allotments*
 - *The proportion of site covered by buildings*
 - *the position of buildings*
 - *the size (bulk, height, mass), form, appearance and design of buildings*
 - *the amount, location, design, use and management of private and communal open space*
 - *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the desired future character and built form controls of the DCP.

- ii) *How would the development affect the health and safety of the occupants in terms of:*
 - *lighting, ventilation and insulation*
 - *building fire risk – prevention and suppression*
 - *building materials and finishes*
 - *a common wall structure and design*

- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development, as modified, can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

- i) *What would be the impacts of construction activities in terms of:*
 - *The environmental planning issues listed above*
 - *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

3.6.3 The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography of the site, is of adequate area, and has no special physical or engineering constraints is suitable for the proposed development

3.6.4 Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

3.6.5 The public interest

It is considered that the development, as modified, is sensitive both to the natural and built environments and is consistent with the provisions of the Manly LEP and DCP.

4 CONCLUSION

The application seeks to split approved apartment 201, being a 3 bedroom apartment, to create a 1 x 1 bedroom and 1 x 2 bedroom apartment consistent with the apartment layout on Level 1 below. This creates a 13th Apartment and changes the apartment mix to 2 x 3 bedroom units, 9 x 2 bedroom units and 2 x 1 bedroom units. It also results in a 5m² increase in gross floor area where the northern façade of the proposed apartments is extended slightly to the north to match the façade alignment of the Level 1 apartments below.

The application also proposes a rationalisation in the design of the central courtyard, the conversion of approved unit 1.04 to be an adaptable unit and the modification in the curve radius of the street facing balconies at each level to enhance buildability. The application also seeks the re-allocation of car parking spaces within the basement levels that the development.

As the proposed modifications are contained wholly within the previously approved building footprint and envelope, Council can be satisfied that the proposed development, as modified, will not compromise the design quality, streetscape or residential amenity outcomes afforded to surrounding development through approval of the original application in terms of privacy, solar access and view sharing. Further, the previously approved excavation, landscape, waste management and drainage regimes are not altered as a consequence of the modifications sought.

The minor increase in GFA/FSR has been assessed against the objectives of the standard with strict compliance found to be both unreasonable and unnecessary under the circumstances. The development, as modified, continues to satisfy the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP65) and the objectives and guidelines contained within the Apartment Design Guide (ADG).

On the basis of the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

BOSTON BLYTH FLEMING PTY LIMITED



Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

Director

ANNEXURE 1

Architect Design Verification



16 November, 2022

CERTIFICATE OF VERIFICATION

S4.55 Modification to DA2020/0634 for Demolition of existing buildings and construction of a shop top housing development

398-402 Sydney Road, Balgowlah

This certificate verifies that Robert Gizzi (NSW Registration No 8286)

- a) Personally, directed the design of the above development as architectural director for Design Workshop Australia (DWA) of 81a Princes Highway, Fairy Meadow.
- b) That the design quality principles set out in *State Environmental Planning Policy No. 65 – Design of Residential Flat Development - Apartment Design Guide 2015* are achieved for the S4.55 modifications for the development.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'R. Gizzi', is written over a faint, larger version of the same signature.

Robert Gizzi

Director

Registered Architect No: 8286